

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2017

CORAM

THE HONOURABLE MR.JUSTICE K. RAVICHANDRABAABU

W.P.No.29024 of 2017

and

W.M.P.Nos.31263 and 31264 of 2017

IG3 Infra Limited
Registered Office at
"Chennai One"
Pallavaram-Thoraipakkam
200 feet Road,
Thoraipakkam,
Chennai-600 097
represented by its Director
Ms.Rukmini Thiagarajan

... Petitioner

vs.

UCO Bank,
3rd Floor, International Banking Branch
No.328, Thambu Chetty Street,
Chennai - 600 001
represented by its Asst.General Manager

...Respondent

PRAYER:

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of certiorari to call for the records of the respondent Bank in connection to the letter dated 03.11.2017 in Ref.No.IBB/ADV/394/2017-18 and quash the same as the same is arbitrary, against promissory estoppels and contrary to the letter dated 10.10.2017 for releasing the security and the title deeds and the confirmations of balance outstanding as on 22.10.2017.

For Petitioner : Mr.R.Krishnamurthy,
Senior counsel
for Mr.George Cheriyan

For Respondents: Mr.A.V.Radhakrishnan,
Standing counsel.

O R D E R

The petitioner is aggrieved against the communication issued by the respondent bank dated 3.11.2017 and consequently seeks for releasing of the security and the title deeds given by the petitioner to the respondent Bank while availing the loan facility.

2. The case of the petitioner is as follows:

The petitioner is engaged in the business of providing infrastructure service for IT land ITES Industries and obtained loan and other facilities from several Banks and Financial Institutions including the respondent Bank herein by pledging the securities with the State Bank of India on pari-pasu basis. In order to consolidate most of the loans and to reduce the cost of borrowings, the petitioner decided to retire substantial loans due and outstanding to various banks including the respondent bank by obtaining lease rental discounting facility of Rs.1125 Crores from the Punjab National Bank, Punjab National Housing Finance Ltd. and Union Bank of India Ltd. Thus, the petitioner had approached the respondent Bank to settle the dues of the petitioner to the respondent and requested them to issue No Objection Certificate certifying that the amount of outstanding as on that particular date if paid, the respondent will release all the securities held by the respondent bank in favour of the lending banks, namely, Punjab National Bank, Punjab National Housing Finance Ltd. and Union Bank of India Ltd. Obtaining of such No Objection Certificate was a condition precedent by the lenders to the disbursement of Rs.1125 Crores. Accordingly, the respondent forwarded vide email dated 16.10.2017 to the petitioner, an NOC dated 10.10.2017 addressed to Punjab National Bank, Large Corporate Branch, Mount Road, Chennai and Punjab National Bank Housing Finance Limited, New Delhi, stating that the respondent Bank is agreeing and confirming that INR 233,11,44,603/- is outstanding against the facility as on 10.10.2017 inclusive of interest upto 13.10.2017. It is further confirmed therein that upon payment of the outstanding amount with further interest from 13.10.2017, the respondent Bank shall release their charge over the security and shall hand over the original title deeds in relation to the said security to the authorised officer of Punjab National Bank. The respondent vide email dated 23.10.2017 had forwarded an intimation to the Punjab National Bank stating that the total outstanding of the petitioner as on 22.10.2017 would be Rs.234,05,60,600/- and requested the Punjab National Bank to send the amount to the respondent's account. Accordingly, the Punjab National Bank disbursed the said amount of Rs.234,05,60,600/- to the respondent on 23.10.2017 directly and called upon the respondent Bank to release the securities held by the respondent bank in favour of the lending banks in terms

of the NOC. However, the petitioner and Punjab National Bank were shocked to note that contrary to the NOC and the email issued by the respondent, a further claim was raised to the tune of Rs.6 Crores through their letter dated 03.11.2017.

3. The respondent Bank filed a counter affidavit wherein it is stated as follows:

Accepting the terms and conditions among other things, the petitioner company availed a sum of Rs.87.50 Crores as Term Loan-I for IT Park Project, a sum of Rs.50.00 Crores as Term Loan-II for part financing Power Project, a sum of Rs.43.00 Crores as term Loan-III for the additional Term Loan for partaking cost overrun of IT Park Project and a sum of Rs.11.00 Crores for Part financing the Respondent bank's portion of IDC upto revised DCCO of Power Projects and all these facilities were from the Respondent Bank. After availing the loan, the petitioner Company were highly asymmetrical without adhering to the schedule as contemplated for repayment of the instalment. The petitioner Company, by way of email dated 28.03.2016 requested the respondent bank to provide the Statement of Accounts in respect of their loan amount dated 29.03.2016. There is a technical impediment for the Computer System calculating the interest on each and every day breakup, since the Loan Accounts were declared as Non-performing assets. The respondent bank manually calculated the interest and produced the balance as on 29.02.2016 and specifically pointed out that the balance as on 29.02.2016 excludes the interest from 01.07.2015. The petitioner vide email dated 10.10.2017 informed the respondent that the dues in their loan accounts maintained will be adjusted with the Term Loan facility from the Punjab National Bank and Punjab National Bank Housing Finance Limited. Immediately, the respondent Bank manually calculated the dues of the petitioner Company and sent an outline of the outstanding of the dues by the petitioner Company. The respondent bank, by way of email dated 23.10.2017 stated that the balance outstanding amount as on date with interest applied upto 22.10.2017 would be Rs.234,05,60,600/-. On receipt of the email, the said Punjab National Bank, International Banking Branch, transferred an amount of Rs.234,05,60,600/- and the same was taken into the Four Loan accounts of the petitioner Company. However, when the said amount was taken on account and adjusted for the purpose of final calculation, it was found that there was a shortfall of a sum of Rs.7.75 Crores from the petitioner Company which includes the penal interest of about Rs.1.75 Crores. Immediately, the said fact was communicated to the petitioner through phone followed by email dated 24.10.2017 and 25.10.2017 to the Punjab National Bank, International Banking Branch, Chennai. Apart from that, the respondent Bank also sent a letter dated 03.11.2017 which is the impugned in this writ petition.

4. Heard Mr.R.Krishnamurthy, learned senior counsel appearing for the petitioner and Mr.A.V.Radhkrishnan, learned standing counsel appearing for the respondent.

5. There is no dispute to the fact that the petitioner has availed loan facility from the respondent Bank and that the Punjab National Bank has come forward to step into the shoes of the respondent Bank by paying the dues on behalf of the petitioner to the respondent, thereby such Bank namely Punjab National Bank has taken the role as the lender. It is also not in dispute that the respondent Bank, through their communication dated 10.10.2017 informed that a sum of Rs.233,11,44,603/- is the outstanding due as on 10.10.2017 inclusive of interest upto 13.10.2017. The said communication reads as follows:

"We hereby agree and confirm that INR 233,11,44,603/- (Rupees two hundred and thirty three crores eleven lacs forty four thousand six hundred and three only) ("the Outstanding Amount") is outstanding against the facility as on 10-10-2017 inclusive of interest upto 13-10-2017 only. We further confirm that upon the payment of the Outstanding Amount, with further interest from 13-10-2017 we shall release our charge over the Security and shall hand over the original title deeds, whose description is mentioned under Schedule Part-II hereto. In relation to the said Security to the authorized officer of Punjab National bank. After the realization of the Outstanding Amount with further interest from 13-10-2017 all our interest in the Security shall stand extinguished and discharged.
Yours faithfully,
For UCO Bank

Authorised Signatory
Employee Code: 29716"

6. There is no dispute to the fact that in pursuant to the above said communication, Punjab National Bank transferred a sum of Rs.234,05,60,600/- on 23.10.2017 to the respondent Bank and the same was received to the credit of the petitioner's loan account. The said communication of the Punjab National Bank dated 27.10.2017 reads as follows:

"The Asst.Gen.Manager, 27.10.2017
UCO Bank,
3rd Floor, International Banking Br.,
328, Thambu Chetty Street
Chennai-01

Dear Sir,

Reg: M/s.IG3 Infra Ltd.

At the request of the company and our NOC dated 10.10.2017 & e-mail dt.23.10.2017, we have transferred an amount of Rs.234,05,60,600/- on 23.10.2017 to your account for adjustment of various facilities availed by the company with you.

We request you to inform us the present status of issuing of No Dues certificate in favour of company and also issue of NOC in favour of SBI for release of security in favour of PNB (Leader of proposed consortium)

Thanking you,

Asst.Gen.Manager."

7. Thereafter, when the petitioner sought for release of the securities, the respondent bank, instead of considering the said request, has raised a further claim by way of the present impugned communication dated 03.11.2017 which reads as follows:

We refer to your letter dated 27-10-2017 requesting to inform us the present status of issuing of No Dues Certificate in favour of the company, we have to submit as under.

We have already informed your branch over phone on 23-10-2017 itself followed by email on 24-10-2017 and 25-10-2017 that there was a short claim by us to the tune of about Rs.6 crores payable by the company. The above amount does not include the penal interest of Rs.1.75 crores charged in the account for which the company has sought waiver which is yet to be approved by our competent authority.

While communicating the due amount on 10/10/2017 we have inadvertently mentioned the total amount payable without taking into the account the compounding effect on interest chargeable ;in the account from the date of NPA.i.e. 31-12-2015. Hence the difference of Rs.6.00 crores between the amount mentioned by us and the due amount shown by the system after application of interest.

The above facts have already been informed to the company in person to Mr.Thiagarajan, on 24-10-2017 and through email dated 25-10-2017 with a request to verify the interest

calculation and arrange for remitting the balance amount of Rs.6.00 crores, as per our calculation. In case waiver of penal interest is not approved by our competent authority the total amount payable would be Rs.7.75 crores.

8. From the above three communications made between the parties, it could be seen that the respondent bank has already received a sum of Rs.234,05,60,600/- towards the loan amount availed by the petitioner. However, the respondent Bank further claims a sum of Rs.7.75 crores by contending that it was left out by mistake while making the calculation, when the actual outstanding was informed through their communication dated 10.10.2017. The petitioner is disputing such claim made by the respondent Bank by contending that the respondent having issued a communication dated 10.10.2017 stating that only a sum of Rs.233,11,44,603/- is due, is not justified or entitled to seek further claim. These rival contentions of the parties would undoubtedly indicate that there is a disputed claim with regard to a sum of Rs.7.75 crores, which according to the respondent bank is due from the petitioner, whereas it is denied by the petitioner by disputing their liability. This disputed question of fact with regard to such claim, therefore, has to be agitated only before the competent authority, namely, the Ombudsman dealing with these kinds of dispute. Therefore, it is for the petitioner to raise these contentions before the Ombudsman with regard to the disputed claim of the respondent Bank, namely Rs.7.75 Crores.

9. However, as the loan amount as indicated by the respondent in their communication dated 10.10.2017 was admittedly paid by the Punjab National Bank and received by the respondent Bank, I do not find any justification on the part of the respondent Bank to retain the security without releasing the same in favour of the Punjab National Bank. Certainly the Bank which has lend the money in favour of the petitioner would certainly feel that their lending is to be protected suitably. At the same time, the dispute with regard to Rs.7.75 crores is to be finally decided by the said authority, namely Ombudsman, a fact finding authority as well. Equally, the petitioner also should protect the interest of the respondent Bank as they have to release the security pending decision by the Ombudsman as stated supra.

10. Accordingly, considering all these facts and circumstances, this Writ Petition is disposed of by passing the following order.

a) The petitioner shall give a bank guarantee for a sum of Rs.7.75 Crores in favour of the respondent Bank within a period of two weeks from the date of receipt of a copy of this

order, without prejudice to their contentions to be raised before the Ombudsman.

b) The petitioner is directed to file appropriate application before the Ombudsman to deal and decide the dispute with regard to the claim of Rs.7.75 Crores by the respondent Bank.

c) On receipt of the Bank guarantee as stated in clause (a) supra, the respondent Bank shall release the securities in favour of the Punjab National Bank and Punjab National Bank Housing Finance Limited forthwith.

11. It is made clear that this Court is not expressing any view on the merits of the rival contentions of the parties in respect of the disputed sum of Rs.7.75 crores which has to be considered and decided only by the fact finding authority namely, Ombudsman. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

vsi

To

+1 CC to Mr.A.V. Radhakrishnan, Advocate sr 84118.
+1 CC to Ms. George Cheriyan, Advocate sr 84262.

W.P.No.29024 of 2017

RV(CO)
SP(29/11/2017)

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