THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

WRIT PETITION No.12947 OF 2016

ORDER: *(ORAL)*

Vide the present petition, the petitioner seeks direction thereby declaring the action of the respondent in not considering the request of the petitioner to enhance the OCC limits from Rs.10.00 crores to Rs.20.00 crores to the petitioner company by receiving additional security and without considering the orders of this Court and rejecting the renewal of enhancement through its letter dated 31.03.2016, as illegal, arbitrary and discriminatory. Consequently direct the respondent to enhance the OCC credit limit from Rs.10.00 crores to Rs.20.00 crores to the petitioner company.

2. The petitioner company is incorporated under the Companies Act 1956 with its Corporate Identity No. U15122AP2013PTC085714. It deals with the business of procuring, handling, processing, preserving, packaging, marketing, selling and export of all kinds of milk and milk products etc.

3. Vide the present petition, the action of the respondent bank is challenged by stating that on the pretext of this Court order dated 18.03.2013, the respondent bank has not enhanced the OCC limit from Rs.10.00 crores to Rs.20.00 crores. The Banks conduct is motivated, and prompted at the instance of the political interested parties. In a similar way, a W.P No.18280 of 2014 was filed before this

Court questioning the self-same contentions of the respondent Bank letter dated 26.06.2014, and this Court granted interim direction clarifying the orders passed in W.P.No.7942 of 2013. Without properly considering the orders of this Court, the bank simply mechanically rejected the enhancement of the OCC limit from Rs.10.00 crores to Rs.20.00 crores.

4. Learned Senior Counsel appearing on behalf of the petitioner submits that the bank is a nationalized bank and its behaviour is unjust and discriminatory wholly contrary to the principles of equality and equal justice to all its customers including the petitioner, who is also one of the customers. Initially bank had granted OCC limit of Rs.6 crores and thereafter after merging the petitioner company as Mutual Aided Cooperative Society, the limit of OCC was increased from Rs.6.00 crores to Rs.10.00 crores. Consequently, the petitioner sought to increase the OCC limit from Rs.10.00 crores to Rs.20.00 crores by offering the property as security. However, the same was rejected by the respondent bank vide order dated 31.03.2016.

5. The respondent bank has filed its counter affidavit whereby stated that the enhancement of credit limits is the discretion of the bank and the petitioner is not entitled to claim it as a matter of right. The bank shall not mechanically enhance the OCC limit from Rs.10.00 crores to Rs.20.00 crores. The proposal for enhancement of the limits will be

considered on merits and subject to offering of property as security, which is having a clear marketable title.

6. Learned counsel appearing on behalf of the respondent bank submits that A.P. Dairy Development Cooperative Federation Limited filed W.P.No.7942 of 2013 before this Court against the Government of A.P., including the petitioner, the Registrar of Cooperative Society, the District Cooperative Officer, Prakasam District and the Registrar of Companies, Hyderabad, to declare the action of the petitioner herein, in incorporating the petitioner as a Producer company under the Companies Act with the certificate of incorporation dated 13.02.2013, contrary to Section 581(c), (j) & (J)(2) of the Companies Act 1956, the G.O.Ms.No.242, dated 23.06.1986, and the agreement dated 16.07.1986. Consequently direct the 4th respondent to cancel the Certificate of Incorporation dated 13.02.2013 issued by him converting the petitioner herein into the producer company and the said writ petition is pending for adjudication.

7. Learned counsel has asserted that vide order dated 18.03.2013 passed in WPMP No.9957 of 2013 in WP No.7942 of 2013, this Court granted interim direction that pending further orders, transfer of assets in possession of the erstwhile society in favour of the petitioner herein, was stayed.

8. Learned counsel submits that vide order dated 25.07.2014 in WPMP No.22923 of 2014 in WP No.18280 of 2014 clarified that prima facie from the reading of the order passed by the Court in WVMP No.430 of 2014 in WPMP No.9957 of 2013 in WP No.7942 of 2013, it does not appear that such a restraint was imposed on the bank against consideration of the request for enhancement of the loan account. Hence, the respondent bank was directed to consider the request of the petitioner for enhancement of the limit of the loan account on merits.

9. Accordingly, vide communication letter dated 31.03.2016 the existing limit of Rs.10.00 crores was renewed and the same was communicated. For enhancement of limit from Rs.10.00 crores to Rs.20.00 crores, the petitioner offered additional security at Survey No.140/2B, Peramitta Village, Sathanugalpadu Mandal, an extent of Ac 9.00 cts. However, Andhra Pradesh Diary Development Co-operative Federation Limited (APDDCF Ltd) informed that the MD, APDDCF Ltd., filed W.P.No.7942 of 2013 and WPMP No.9957 of 2013 before this Court challenging the conversion of company and this Court has passed interim direction vide order dated 18.03.2013 stating that "staying of transfer of assets in possession of the erstwhile MACS Union, Ongole in favour of M/s Prakasam Milk Producers Company Limited". Accordingly, the respondent bank could not accept the additional collateral offered.

10. It is not in dispute that the additional security was offered by the petitioner in Survey No.140/2B, Pernamitta Village to an extent of Ac 9.00 cents which was originally acquired by Government of A.P. under Land Acquisition Act for the purpose of Milk Production Society under Award No.14/88-89 dated 08.12.1988. It is also not in dispute that there is no deed of conveyance as required under Section 17 of the Registration Act, 1908 in favour of the petitioner, whereby conveyance right, title and interest are given in favour of the petitioner herein. To accept the said additional security, the same should be with clear marketable title and free from encumbrances and court litigation.

11. In the case in hand, the conversion of society into Limited Company is under challenge in W.P.No.7942 of 2013 and the final outcome of the judgment in the said writ petition may impact on the rights of the respondent bank to enforce the said security.

12. I note vide impugned order dated 13.03.2016, the respondent bank has clearly stated the facts noted above stating that this Court has given interim direction on 18.03.2013 stating that "staying of transfer of assets in possession of the erstwhile MACS Union, Ongole in favour of M/s Prakasam Milk Producers Company Ltd". Accordingly, the respondent bank has rejected the additional collateral security offered by the petitioner.

13. As argued by the learned Senior counsel for the petitioner that they are ready to offer any sound additional collateral security. However, the respondent bank has not clearly stated in the impugned order dated 31.03.2016 and mechanically passed the order saying that there is a stay granted by this Court in W.P.No.7942 of 2013 despite the orders passed by this Court as noted above.

14. Keeping in view the stand taken in the impugned order dated 31.03.2016 and the counter affidavit filed by the respondent bank, I am of the considered opinion that there is no discrepancy, illegality or perversity in the order passed by the respondent bank.

15. Finding no merit in the instant petition and the same is accordingly dismissed.

16. However, liberty is granted to the petitioner company that if they come forward and offer additional collateral security, which is free from the encumbrance, the respondent bank shall consider the same and pass a fresh order thereon.

There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE SURESH KUMAR KAIT.

Date :07-04-2017
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