IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17855 of 2017

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Tahiti Resort Pvt. Ltd. through Tripurari Prasad Singh, S/o Late Ram Narayan Singh, Managing Director, Tahiti Resort Pvt. Ltd. NH-31, Singbaul, District-Begusarai.

.... Petitioner

Versus

1. IDBI Bank, Frazer Road Main Branch, Patna.
2. Authorised Officer (SARFAESI Act) IDBI Bank Ltd, IDBI House, 44, Shakespeare Sarni, Kolkata - 700017.
3. Deputy General Manager, IDBI Bank Ltd., IDBI House 44, Shakespeare Sarni, Kolkata - 700017.
4. Assistant Manager Recovery NPA, IDBI Bank Ltd. IDBI House, 44, Shakespeare Sarni, Kolkata - 700017.
5. The District Magistrate Begusarai, District- Begusarai.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Y.V. Giri, Sr. Advocate. Mr. Raj Dular Sah, Advocate.
For the State	:	Mr. Kumar Samarjeet Singh, AC to SC-21
For the IDBI Bank	:	Mr. Shivendra Kumar Roy, Advocate.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 09-01-2018

Heard learned senior counsel for the petitioner, learned counsel for the State as well as learned counsel for the respondent-Bank.

2. The present writ petition has been filed for the following reliefs:

> *"(a) For issuance of a writ of certiorari for quashing the letter no. IDBI-SCB No. 7806/NMG (TRPL) dated 18.11.2017 passed by Deputy General Manager IDBI Bank Ltd. (respondent no. 3) whereby and whereunder restructuring proposal dated 18.07.2017 of the petitioner given in compliance of order dated 10.05.2017 passed in C.W.J.C. No. 309 of 2016, has been*

rejected as contained in Annexure-8.

(b) For issuance of an appropriate writ/writs, direction/directions in the nature of mandamus commanding the Respondents authorities restructuring proposal of the petitioner as claimed by petitioner in pursuance of the order and direction issued by this Hon'ble Court in C.W.J.C. No. 309 of 2016.

(c) For issuance of appropriate writ/writs, direction/ directions commanding the Respondents authorities not to proceed further in SARFAESI matter to take any coercive step during pendency of this writ application.

(d) For issuance of appropriate writ/writs, direction/ directions commanding the Respondents authorities for any other relief/reliefs for which the petitioner is entitled in the facts and circumstances of the case."

3. Learned counsel for the petitioner makes a short submission to the effect that this Court had directed the respondent-Bank by its judgment dated 10.05.2017 passed in C.W.J.C. No. 309 of 2016 (Annexure-4) to grant an opportunity of hearing to the petitioner before taking a decision with regard to restructuring of the loan, in the following terms:

"The petitioner, if so liked, should file a fresh proposal for restructuring of the loan amount with the condition attached that the petitioner must deposit Rs. 30 lacs within two weeks from today. If the petitioner deposits the said amount, the bank, after giving opportunity of hearing to the petitioner, shall take a decision in accordance with the guidelines issued by the RBI as well as its own banking rules".

4. It is stated that the amount of Rs. 30,00,000/- as

required was duly deposited within the period of two weeks stipulated and a fresh proposal for restructuring of the loan was also thereafter submitted to the Bank. In turn, the Bank by its letter dated 08.08.2017 (Annexure-6) required further information/documents, which was fully complied by the petitioner, said to have been filed on 07.09.2017 (Annexure-7).

5. Thereafter without grant of any opportunity of hearing as required by the order of this Court, the respondent Bank has gone forward and passed the impugned order dated 18.11.2017 and that too with the bald statement that " After scrutinizing the proposal, the Bank regrets to advice that the same is not found acceptable". It is therefore submitted that the order in any event is bad in law for want of any reason being assigned for rejection of the petitioner's proposal.

6. Learned counsel for the Bank, on the other hand, submits that after passing of the impugned order dated 18.11.2017, a further letter dated 14.12.2017 (Annexure-C to the counter affidavit) was sent to the petitioner detailing the reasons for rejection for restructuring proposal.

7. Having heard learned counsel for the parties and on a consideration of the materials on record, this Court finds merit in the writ petition. The specific requirement in the judgment dated 10.05.2017 in C.W.J.C. No. 309 of 2016 was to grant an opportunity of hearing to the petitioner before taking a decision with regard to the re-

structuring proposal of the petitioner. Apart from the letter dated 08.08.2017 calling various information/documents, which was also duly complied with by the petitioner, no opportunity *per se* appears to have been given to the petitioner before passing of the impugned order of rejection, apart from the fact that the impugned order itself assigns no reason for rejection of the petitioner's proposal. The subsequent letter dated 14.12.2017 (Annexure-C to the counter affidavit) cannot also come to the rescue of the respondent-Bank as the same has been issued after filing of the present writ petition and more significantly on the well settled principle that an order has to be tested on the reasons stated therein and cannot be supplemented thereafter by filing a counter affidavit.

8. In the above circumstances, the impugned order dated 18.11.2017 is hereby set aside with a direction to the Deputy General Manager, IDBI Bank Limited, Kolkata (respondent no. 3) to take a fresh decision by passing a speaking order after grant of proper opportunity of hearing to the petitioner with regard to the restructuring proposal of the petitioner.

9. The writ petition accordingly stands allowed.

10. Needless to say, the respondent-Bank shall not take coercive steps against the petitioner until passing of the fresh orders by the respondent no. 3.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	12.01.2018
Transmission Date	N.A.