IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.18477 of 2017 (O&M)

Date of decision : 17.01.2018

M/s AMICO Textiles

......Petitioner

Versus

Allahabad Bank through its authorized-cum-Chief Officer, Sector 8-C, Madhya Marg, Chandigarh Branch.

...Respondent

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present **:** Mr. Palak Dev, Advocate for the petitioner.

Ms. Jasleen Kaur, Advocate for the respondent.

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DAYA CHAUDHARY, J. (*Oral*)

Petitioner-firm is a manufacturing unit established in the year 2010 in the name and style of M/s AMICO Textiles, for manufacturing of yarn. For the purpose of setting up the unit, a term loan of ₹ 19.55 crores was sanctioned. Subsequently, the petitioner-firm was allowed to change the nature of its project and it was changed from manufacturing of yarn to Polyester Staple Fiber manufacturing. Earlier sanctioned loan was cancelled and fresh term loan was sanctioned for setting up a new plant. Said sanction was given under technology upgradation fund scheme (hereinafter referred to as 'TUF') of the Ministry of Textiles. As per case of the petitioner, the bank was supposed to send sanction letter and the other documents to the Ministry of Textiles for disbursement of subsidy for the project. A fresh working capital was sanctioned to the petitioner-company of ₹6.20 crores with one time bank guarantee of ₹0.27 crores vide letter dated 10.06.2011. The Assistant General Manager of the Bank sent a letter to the TUF Cell of the bank for condonation of delay with regard to subsidy claim papers of the loan amount. Thereafter, some clarification was sought from the bank. Subsequently, more loan amount was sanctioned under TUF for installation of additional machineries and buildings. Approval for renewal of credit facilities was upto 30.06.2015 as there was delay in disbursement of the loan. There was delay in payment of installment from December, 2014 to September, 2015. Petitioner-firm requested respondent-bank for temporarily overdrawing ₹1.00 crore for smooth functioning of the firm. There were many communications between the petitioner-firm and the respondent-bank. As per case of the petitioner, there was delay on the part of the respondent-bank in filing of TUF documents and because of that reason, the TUF claim is still pending.

When nothing was done, the petitioner-firm approached this Court for issuance of direction to respondent-bank to take necessary steps to adjust the TUF subsidy claim of the petitioner, which has been delayed because of the fault of the respondent-bank and to restructure the account of the petitioner-firm. A prayer has also been made for direction to respondent-bank to upgrade the account of the petitioner-firm from NPA category to standard category and to permit the petitioner-firm to operate its account till the pendency of this petition before this Court subject to outcome of the petition.

In response to notice of motion, reply has been filed by respondent-bank.

Learned counsel appearing for respondent-bank submits that the petitioner is having alternative efficacious remedy to approach DRT under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'SARFAESI Act'). The petitioner-firm has been declared NPA w.e.f. 31.12.2016 as loan amount has not been repaid, whereas there is huge liability of approximately ₹31.58 crores with interest upto 31.12.2016.

Learned counsel for the respondent also submits that an action has been initiated against the petitioner-firm under SARFAESI Act and notice under Section 13(2) has already been issued. He further submits that petitioner-firm is a defaulter and non-cooperative borrower. From the very beginning the delay has occurred even in implantation of the project. In spite of asking time and again, the required documents were not supplied to the respondent-bank. The claim of the petitioner was rejected earlier in the year 2011 and no such objection was raised as the petitioner firm did not approach any Court regarding this issue. The loan of the petitioner under TUF was subject to certain terms and conditions as it was a project of Ministry of Textiles, Government of India and IDBI. An appeal is also pending before Ministry of Textile.

Heard arguments of learned counsel for the parties and have also perused the relevant documents available on the file as well as certain documents supplied during course of the arguments.

On perusal of all documents, it is an admitted fact that loan has been obtained by the petitioner-firm and the request of the petitioner is only to adjust the amount of subsidy towards loan amount by respondent-bank. The request has not been accepted, whereas verbal assurance was given by respondent-bank that amount of subsidy will be adjusted towards loan amount. Petitioner is claiming that delay was on the part of respondent-bank, whereas as per stand of respondent-bank the documents were not supplied to the bank by the petitioner-firm and, therefore, its claim could not be considered. It is also not disputed that no order of rejection of the claim of the petitioner has been passed but many communications are there between the petitioner-firm and the respondent-bank.

In a writ petition, disputed questions of fact cannot be decided as it is a matter of evidence as to whether the delay is on the part of the petitioner or on the part of respondent-bank. It has been stated by learned counsel for the petitioner that oral assurance was given by respondent-bank to adjust the subsidy to its loan amount. Learned counsel for respondent-bank has denied that any representation was submitted by the petitioner and has even denied that the required documents were supplied to forensic audit team. The petitioner-firm is aggrieved by the action of the respondent-bank that an application was submitted to the respondent-bank much earlier but no action has been taken so far and an oral assurance was given to adjust the amount of subsidy, whereas it is denied by respondent-bank.

On perusal of the documents supplied during arguments, it appears that many communications are there between parties. Without going into the controversy and mentioning any expression on merits of the present case and to draw a conclusion as to who was instrument in causing delay, it would be in the interest of justice that the issue pending between both the parties cannot be decided on merits in the writ petition being disputed. However, a liberty is given to the petitioner to submit a detailed application to the respondent-bank mentioning therein the facts of the case with all relevant documents within a period of one week from the date of receipt of certified copy of this order. In case such application/ representation is submitted by the petitioner-firm to respondent-bank within said period, the respondent-bank is directed to consider the claim of the petitioner in accordance with terms and conditions applicable to the case of the petitioner and also in accordance with law as applicable. The respondent-bank shall decide petitioner's claim for subsidy independently without being influenced by the earlier communication, if any, and pass an appropriate order as may deem fit and proper in accordance with provisions of the scheme, without considering the factum of delay or non-supply of the documents. In case the presence of any representative of the petitioner firm is required, he may be called by sending notice in writing. The necessary exercise be done within a period of two weeks after receipt of representation/application of the petitioner.

It is also clarified that the Court has not expressed any opinion on the merits of the case and has also not entered into any issue as to whether the documents were supplied by the petitioner-firm or objections were removed or not. The claim of the petitioner be decided without being influenced with the earlier orders or communications but strictly in view of provisions of the scheme and by applying the mind independently. A detailed speaking order be passed. In case the petitioner is aggrieved by that order in any manner, the petitioner-firm is at liberty to challenge the same before the appropriate authority.

Disposed of

17.01.2018 **(DAYA CHAUDHARY)**
sunil yadav **JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No