

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND  
HARYANA AT CHANDIGARH

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*CWP No.25705 of 2016*  
*Date of Decision:21.08.2018*

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HUCH Agro India Pvt. Ltd.

..... Petitioner

Vs.

State Bank of India and others

..... Respondents

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**CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN**

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Present: - Mr.Sangram S. Saron, Advocate,  
for the petitioner.

Mr.Rakesh Gupta, Advocate,  
for the respondents.

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***RAKESH KUMAR JAIN, J.***

The petitioner has prayed for the issuance of a writ in the nature of mandamus to direct respondents No.1 & 2 to refund the upfront amount tendered by it under no lien account of respondent No.3.

In brief, respondent No.3 set up a manufacturing unit at District Una (Himachal Pradesh) to manufacture steric acid and raw glycerin. It had obtained loan from the State Bank of India who had declared it a Non-Performing Asset (NPA) in the year 2010. The petitioner, a private limited company, entered into an agreement with respondent No.3 on 19.8.2011 to purchase the assets of respondent No.3 for a sum of ₹10,50,00,000/-. It was decided between the petitioner and respondent No.3 that the petitioner, out of total consideration of ₹10,50,00,000/-, would pay ₹1,01,00,000/- as advance and the balance sale consideration, subject to the fulfillment of the conditions set in Clause 4 of the said agreement and the remaining amount of ₹9,49,00,000/- shall be paid as per Clause 6(C)(i) to

of India initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for short 'the Sarfaesi Act'] by issuance of a demand notice of ₹6,02,59,531.51 dated 8.10.2011 under Section 13(4) of the Sarfaesi Act. The petitioner made an amendment on 27.3.2012 in the agreement dated 19.8.2011 raising the amount from ₹10,50,00,000/- to ₹11,50,00,000/-. The petitioner allegedly made 5 demand drafts of ₹40 lacs dated 13.2.2012 in favour of the State Bank of India in the account of respondent No.3 which was directly paid. It is further averred that the State Bank of India offered a 'One Time Settlement' (OTS) with respondent No.3 at a total amount of ₹7,17,86,228.36. The upfront amount of the said 'One Time Settlement' was ₹1,77,00,000/- i.e. 25% and as per the terms and conditions of the OTS, the petitioner had prepared a draft of ₹1,12,00,000/- on behalf of respondent No.3 which was deposited by respondent No.3 with the State Bank of India Stressed Asset Management Branch along with the covering letter dated 27.10.2012 in which it was mentioned by respondent No.3 that *"we confirm our intent to deposit the balance amount at the earliest to avail maximum benefit under the scheme through our strategic investor who will arrange for the balance payment from their bankers (Indian Overseas Bank) for which Tripartite agreement (TPA) will be required . Proposed draft of the TPA is enclosed for your approval. Kindly approve the TPA to facilitate balance payment for us to avail maximum benefit under OTS scheme."*

It is further averred that out of the total settled amount of ₹7,17,86,228.36 an amount of ₹25 lacs was also paid by respondent No.3 by way of demand draft on 30.10.2012, prepared from the account of the petitioner, with the covering letter dated 30.10.2012 in which a similar

which has already been reproduced hereinabove. However, on 10.11.2012, the State Bank of India wrote a letter stating therein that the “tripartite agreement” (TPA) with other bank is not acceptable to it under the Scheme. The petitioner has averred that it had already got sanctioned a loan of ₹17.50 crores from the Indian Overseas Bank for the purpose of discharging debt of respondent No.3 but the State Bank of India refused to execute the tripartite agreement though by that time the petitioner had paid ₹1.77 crores by way of different demand drafts on behalf of respondent No.3 and in the absence of the tripartite agreement, the petitioner’s bank, namely, Indian Overseas Bank refused to pay the remaining amount to the State Bank of India which was to be paid by the petitioner on behalf of respondent No.3. The petitioner has further averred that the State Bank of India e-auctioned the property of respondent No.3 on 30.3.2014 to a single bidder for a sum of ₹2.33 crores as against the value of the plant and machinery estimated at ₹10 crore. Respondent No.3 filed Securitization Application No.94 of 2014 before the Debts Recovery Tribunal-II, Chandigarh titled as M/s Viren Agro Tech. Pvt. Ltd. Vs. SBI and others. In the said application, the petitioner had also filed two applications bearings IA Nos.644 & 645 of 2014 for staying the removal of the machinery from the factory of respondent No.3 and to implead them as a party but both the applications were dismissed by the Tribunal vide its order dated 3.7.2014. The petitioner, thereafter made a representation on 26.2.2016 followed by the reminder dated 31.8.2016 for refund of the upfront amount of ₹1.77 crore which was paid by it on account of respondent No.3 with an expectation to takeover the assets of respondent No.3 which has already been sold by respondents No.1 & 2 in an e-auction but the said representations were not decided and hence, the present petition

Learned counsel for the petitioner has submitted that the petitioner had made the payment of ₹1.77 crore to respondents No.1 & 2 on account of respondent No.3. Some payment was made at the time when the notice under the Sarfaesi Act was issued by respondents No.1 & 2 and some payment was made in view of the OTS scheme of respondents No.1 & 2 but respondent No.3, who had taken the money, did not sign the tripartite agreement and as a result thereof, the petitioner's bank, namely, Indian Overseas Bank backed out from extending the finance/loan which was sought to be taken not only to discharge the liability of respondent No.3 but also for the purpose of arranging capital to run the unit of respondent No.3 after taking over the same. It is submitted that the amount having been paid by the petitioner is not denied by respondents No.1 & 2 and since the assets of respondent No.3 have already been sold by respondents No.1 & 2, therefore, they have no right to retain their amount which is liable to be refunded forthwith.

On the other hand, learned counsel for respondents No.1 & 2 has submitted that firstly there is no privity of contract between petitioner and respondents No.1 & 2. Secondly, the amount has been deposited with it by respondent No.3 and are not concerned with the source of the amount whether it has been obtained by respondent No.3 from the petitioner or somebody else and thirdly, exactly the same matter was argued by the petitioner before the Debt Recovery Tribunal-II, Chandigarh in the applications bearing IA Nos.644 & 645 of 2014 and the prayer made by them was rejected which was not further challenged by the petitioner though the said order was appealable under Section 18 of the Sarfaesi Act. In this regard, attention of this Court is drawn to the observations made by the Debt

*“Perusal of record shows that the applicant who are now claiming themselves to be having any interest in this property has failed to prove that by which document or by which action of the respondent bank they had become a party to any OTS or any other commitment of Tripartite Agreement with the respondent bank. In fact I have gone through Ann. R-2 dated 10.11.2012 which was written by DGM of the bank to the applicant in the main SA which reads as “with reference to your letter dated NO.VAPL/SB/011 dated 30.10.2012 we advise that TPA with other bank is not acceptable to the bank under the scheme and the security documents can be handed over to the another bank on receipt of balance amount of OTS through them if the same is mandated by you and rather further requesting the applicant/borrower to deposit the remaining amount of OTS under the captioned scheme at the earliest” not only this we also could not understand that the applicant who might have paid an amount of Rs.1.77 crore in the account of the borrower company but how they can stake their claim on that amount was without any arrangement*

*with the respondent bank and moreover if any OTS has been arrived at that was qua between borrower company and the respondent bank and the terms and conditions were duly acknowledged by the applicant/borrower company who themselves have failed to honour the terms and conditions of OTS the respondent bank who received this amount is purely in its wisdom to accept the same on the behest of the borrower company and bank is not interested to look beyond that who is depositing the amount. It is only the applicant in the IA who should have to ensure that they are dealing with the applicant/borrower with some understanding and in such a case if the OTS cannot be matured they should be prepared to take the risk or at the most they should take the appropriate remedy against the borrower/applicant. Further I cannot understand that why the 3<sup>rd</sup> party applicant are so interested in OTS which is none of business of applicant who jumped into relation of borrower as well as respondent bank. In fact it seems the applicant who were claiming themselves to be a depositor of the amount on the behest of the company are in*

*connivance with defaulter as they failed to place on record any such action either civil or criminal taken by the applicant against the defaulter company putting them into the loss by deposited such amount on behest of the applicant with the respondent bank. More over the learned counsel for the applicant who has also taken a support of Section 7 of Contract Act failed to convince even on the preliminary issues of the case and further since there is no relationship between the applicant and the respondent bank, no question of either acceptance of any proposal or its rejection could arise. Therefore finding no weight in the arguments of the learned counsel for the Applicants and further through the documents annexed by the respondent bank alongwith reply, I do not find any merit in the IAs. The IAs dismissed being devoid of any merit with a cost of ₹10,000/- to be deposited with DRT Bar Association.*

I have heard learned counsel for the parties and perused the available record with their able assistance.

The case set up by the petitioner is for refund of ₹1.77 crores, purported to have been paid/deposited by it with respondents No.1 & 2 on

behalf of respondent No.3 in order to discharge the debt of respondent No.3 so that the plant and machinery of the manufacturing unit of respondent No.3, mortgaged with respondents No.1 & 2, may be released, which was sought to be purchased by the petitioner but with the sale of the plant and machinery of respondent No.3 in e-auction, the agreement entered into between the petitioner and respondent No.3 became redundant and respondents No.1 & 2 has no justification to retain the said amount which was allegedly paid by the petitioner on behalf of respondent No.3.

The petitioner has no privity of contract with respondents No.1 & 2 as at no point of time any TPA was entered into between the parties i.e. the petitioner, respondent No.3 and the State Bank of India. There was no agreement signed by the State Bank of India even with the petitioner or the Indian Overseas Bank. The money which has been paid by the petitioner was to respondent No.3, who had been depositing the same with respondents No.1 & 2, therefore, respondent No.3 would at the most be liable to refund/return the said amount to the petitioner. Moreover, the petitioner, while it was before the Debt Recovery Tribunal, had obtained an adverse finding against it when its applications bearing IA Nos.644 & 645 of 2014 were dismissed vide order dated 3.7.2014 and the said findings were not challenged further in appeal though the same was available.

The petitioner cannot make grouse against respondents No.1 & 2 for the alleged illegal retention of its money because the same was never paid by it to respondents No.1 & 2 rather the said amount was paid by respondent No.3 to respondent No.1 & 2 and there was no agreement at all between the petitioner and respondents No.1 & 2 much less respondent No.3 as well as a tripartite agreement.

In view of the above, the present writ petition is found to be denuded of any merit and the same is hereby dismissed though without any order as to costs.

21.08.2018

*Vivek*

(RAKESH KUMAR JAIN)  
JUDGE

*Whether speaking /reasoned : Yes/No*

*Whether Reportable : Yes/No*