**207 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-12726-2016 (O&M)
Date of decision : 03.04.2019

M/s Mannsfield Foods Pvt. Ltd. and others

... Petitioners

Versus

Union of India and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Jhanji, Advocate, for the petitioner(s).

Mr. Alok Kumar Jain, Advocate for respondent No.1.

Mr. Dalip Singh, Advocate, for respondent No.2.

Mr. Manish Jain, Advocate, with
Mr. Mayur Kanwar, Advocate, for respondent No.5.

****

AMIT RAWAL, J. (ORAL)

The petitioners have approached this Court by invoking the provisions of Articles 226227 of the Constitution of India for setting aside the arbitration proceedings initiated by respondent No.2, in Case No.AC-259.

It was alleged that the petitioner with erstwhile name and style M/s Friends Cold Store Private Limited, incorporated under the Indian Companies Act, had entered into an agreement dated 05.01.2007 with Small Farmers Agri-business Consortium (SFAC) Society, registered under the Act. The aforesaid Society, on receipt of the request from the petitioner-company, extended the facility of Venture Capital Assistance, to the tune of ₹75 Lacs. The company had already taken the term loan from Bank, in the year 2007 to the extent of ₹5.70 Crores, which was extended to ₹8.20 Crores, for a period of seven years.

Mr. Amit Jhanji, learned counsel appearing on behalf of the petitioner submitted that the terms and conditions of the agreement are sacrosanct and cannot be deviated, for, the action of the respondent No.2 for initiating the arbitration proceedings, is premature. The agreement does not envisage the initiation of any action by respondent No.2, before end of the schedule date or prior to the due date, whichever is earlier, but with a condition that the first party i.e. the petitioners, would refund the amount of Venture Capital Assistance, on liquidation of bank's term loan, in lump-sum. The Bank, vide letter dated 25.11.2013 (Annexure P-4), restructured the term loan for another period of seven years, with an end date of 28.11.2020, subject to the imposition of the interest and other conditions. In lieu of aforementioned restructuring, the petitioner-company, on 27.10.2014, wrote a letter (Annexure P-5), to respondent No.2, requesting the refund of the venture capital to be deferred, by six years as the period of one year was over. The same was responded, on the ground that the restructuring was at their back, in other words, their consent was not taken, but however, it was clarified that the request would be considered, if the lending bank advises the reasons to their satisfaction, for not obtaining the consent and in the recommendations, the bank would specifically mention the projection of the unit, expected to generate sufficient cash profits and position to refund the venture capital upto ₹75 Lacs, on a rescheduled or due date. Accordingly, the letter dated 22.11.2014 (Annexure P-7) was written to the Bank and the Bank, vide letter dated 12.01.2015, communicated respondent No.2 about the revised last repayment due date as 28.11.2020, by taking the restructure date as 28.11.2013. Despite that, respondent No.2, submitted an application to the Registrar, Indian Council of Arbitration, Federation House, New Delhi, for appointment of the Arbitrator, as the agreement contained the resolution of dispute, through the aforesaid agency and also filed the claim petition. The petitioners were flabbergasted to receive the notice dated 24.05.2016 (Annexure P-23), from the Arbitrator, entering into the reference. It is, in these circumstances, cause of action accrued to file the present writ petition.

It was next contended that once the bank had already intimated to respondent No.2, vide letter dated 12.01.2015, cannot be permitted to deviate from the period of restructured term loan.

Learned counsel appearing on behalf of respondent No.2, submitted that as per the contents of the written statement, objection qua maintainability of the writ petition and purported to be without cause of action, much less, concealment of material facts have been raised and supported the stand of initiation of the arbitration proceedings as the restructure of the loan by the lending bank was without their consent. The whole purpose is to avoid of the liability of the interest as the company is not financially well and adopting all possible efforts to avoid of the liability.

It was further pointed out that the petitioners, vide letter dated 23.02.2015, sought the repayment of the loan in installment upto 30.11.2015, by acknowledging a token cheque of ₹5 Lacs, but there is no adherence and in response to that, the petitioner-company was communicated with the schedule of four installments, on 12.03.2015 (Annexure P-16). Since the petitioners could not adhere to the schedule as communicated to them vide Annexure P-16, another request, vide letter dated 10.12.2015, was received for extension upto March 2016, thus, urges this Court for dismissal of the present writ petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Jhanji.

No doubt, the terms and conditions of the agreement are sacrosanct and adherence to the schedule and repayment to respondent No.2 after having cleared the loan of the lending bank.

For the sake of brevity, relevant clause reads as under:-

> *"Whereas the first party is in need of Venture Capital Assistance which will be converted to loan after recovery of term loan of Lending Bank, Karnataka Bank Ltd., SCO-66, Sector 11, Panchkula, 134109 (Haryana), hereinafter called the Bank (which includes its successor banks) prior to due date or on the scheduled end date of their term loan whichever is earlier. At the request of first party vide their application received through lending bank vide its letter No.KBL/PKL/PF-403 dated 16th November, 2006, SFAC has considered the sanctioned Venture Capital Assistance of ₹ 75.00 Lacs (Rupees Seventy five lacs only) to the first party. The first party will refund the amount of Venture Capital granted by SFAC on liquidation of bank's term loan in lump-sum."*

The extension of the term loan, letters, exchange amongst the parties and the intimation dated 12.01.2015, by the bank to the respondent No.2, are not in dispute.

I would be failing in my duty in not extracting the relevant contents of the letter dated 12.01.2015, written by the Bank to SFAC/respondent No.2, which reads as under:-

> *"The Director VCA,*
> *Small Farmers Agribusiness Consortium, August Kranti Marg-Hauz Khas*
> *New Delhi – 110016*

Dear Sir,

Sub: Restructure of Credit Facilities of M/s Mannsfield Foods P. Ltd enjoying Venture Capital Assitance of ₹ 75 Lakhs.

Ref: SFAC/etter/9-20/PP-2006/XVI/3561 dated 20.11.2014

Our letter dated OR687/23.12.2014

In continuation, this is to kindly put up as follows:

a) Revised last repayment due date is 28.11.2010, as per restructure dated 28.11.2013.

b) That the Bran was not aware to obtain consent before Restructure and hence it is requested to kindly treat the same in advertent and unintentional.

It is kindly requested to provide a copy of Extant Guidelines Copy to the Branch for further reference, please kindly also provided the Contact Details of the department for future reference please.

c) It is to kindly put up that Branch has submitted a copy of appraisal note to your good office with all details of Financials and projections for 2014 to 2020.

It is therein Projected by the Company that Sales shall grow to ₹2692 Lakhs by Mar 2020 and Net profit shall stand at ₹698.14 Lakhs. Depreciation a Non Cash Component, being ₹52.00 Lakhs. DSCR by 2020 shall improve to 1.59 times. The said Financials Company would generate adequate cash profits during the period, thus, the company was provided Revised Repayment Terms of 7 years with soft repayment of Installment and Interest for the initial 2 years, anticipating that the Company shall be gradually in a position to repay Existing Liabilities.

Accordingly, it is recommended you may consider that Borrower company shall be in a position to refund VCA of ₹75 Lakhs on reschedule date of 28.11.2020."

There would have been some force in the submissions of Mr. Jhanji, had the petitioner adhered to the schedule or there was no default. The argument that the claim is premature, in the absence of any determination, must fail, for, the Bank, vide notice dated 21.12.2015, had already determined the loan, by issuing a notice under Section 13(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short 'SARFAESI Act').

No doubt, the request to the Arbitrator and claim filed on behalf of respondent No.2, is dated 11.04.2016 i.e. post notice *ibid.* The petitioners cannot be permitted to keep the action of respondent No.2, in abeyance, till 28.11.2020. The aforesaid condition was in the background, as if there was no default. The contingency clauses, as usually, contained in the agreement, are conspicuously wanting, but the common knowledge would definitely come into play, when the petitioner-company became a defaulter of the bank, therefore, respondent No.2 cannot be permitted to wait till expiry of seven years i.e. 28.11.2020.

Keeping in view the aforementioned facts, the initiation of the arbitration proceedings, in terms of the arbitration clause, cannot be said to be falling within the realm of judicial review to come rescue of the petitioner under Article 226-227 of the Constitution and the present petition is devoid of merits and accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

03.04.2019
Yogesh Sharma

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**