24.02.2022
Item no. 3
Aloke
Ct. no.29

WPA 11243 of 2021
Varun Dinodiya @ Varun Agarwal
Versus
Bank of Baroda & Ors.

Mr. Debasish Roy, Advocate
Mr. Koushik Kundu, Advocate
… for the petitioner
Mr. Y.J. Dastoor, ld. ASG
Mr. Avinash Kankani, Advocate
… for the UOI
Mr. Dipanjan Datta, Advocate
… for the respondent/Bank of Baroda
Mr. Avinash Kankani, Advocate
… for the respondent nos. 3, 5 and 6

Affidavit-in-opposition filed in Court be taken on record. Petitioner does not want to file any response thereto. Therefore, this petition is taken up for final hearing.

The writ petitioner assails a Look Out circular issued at the request of the Bank of Baroda.

Learned Advocate appearing for the petitioner submits that the petitioner is a Professional Consultant of Commodities Business Strategy, Business development & product Management. The petitioner was working as a Professional Consultant on behalf of Good Earth Resources Trading Limited in the United Kingdom. The petitioner wanted to travel abroad for the purpose of discharge of his duties. He was deboarded from the flight on May 11, 2021. Thereupon the petitioner came to learn of the action taken by Bank of Borada against the petitioner. He made a representation on May 24, 2021. It was replied by the Bank of Baroda on June 6, 2021. In their response, the Bank of Baroda took the stand that the petitioner is a guarantor in respect of loans enjoyed by Dynametic Overseas Pvt. Ltd. formerly known as Piyarelall International Pvt. Ltd. The account of such borrower is a non-performing asset (NPA). The petitioner was a willful defaulted. The petitioner was trying to escape the liability by fleeing abroad.

Learned Advocate appearing for the petitioner submits that recovery proceeding was initiated by the Bank of Baroda against the principal borrower from the year 2014. Since 2014 the petitioner went abroad for at least 30 times and came back. Therefore, the apprehension of Bank of Baroda that the petitioner would flee the country in the event the petitioner was allowed to travel abroad for his employment and livelihood, was mis-placed. He submits that, the petitioner possesses educational qualification and expertise which permits him to earn abroad. That is the only source of livelihood for the petitioner. In the event the petitioner is allowed to travel abroad, he submits that, the petitioner will return to India and will abide by such terms and conditions that the Court may prescribe.

Learned Advocate appearing for the Bank of Baroda submits that the Bank approached the National Company Law Tribunal as against the principal borrower. After conclusion of the proceedings before the NCLT, the Bank filed a proceeding under Section 19 of the Recovery of Debts Due to Banks and Bankruptcy Act, 1993. The proceeding being OA No. 376 of 2014 is pending before the Debts Recovery Tribunal, Kolkata-I. The evidence of the parties are being recorded in such proceeding. The petitioner is a guarantor of the credit facilities enjoyed by the principal borrower. The liability of the petitioner is co-extensive with that of the principal borrower, and, therefore, the petitioner cannot absolve himself of the liability. The petitioner should not be permitted to travel abroad since there is apprehension of the petitioner fleeing the country in order not to pay the liability of the petitioner. Moreover, the petitioner was declared as a wilful defaulter.

Learned Additional Solicitor General appearing for the added respondents submits that the Ministry of Home Affairs acted on the basis of the request made by Bank of Baroda and prevented the petitioner from travelling abroad.

The petitioner admittedly is not the principal borrower. However, the petitioner is the guarantor of the credit facilities enjoyed by the principal borrower from the Bank. The liability of a guarantor is co-extensive as that of the principal borrower.

In the facts of the present case, Bank of Baroda initiated proceedings under the provisions of the Companies Act, 2013 against the principal borrower before the NCLT. On such proceeding Bank of Baroda realised a portion of their claim against the principal borrower. The remaining claim not being satisfied Bank of Baroda filed an application under Section 19 of the RDB Act, 1993 before the Debts Recovery Tribunal, Kolkata-I being OA No. 376 of 2014. Significantly, although the original application under Section 19 of the RDB Act, 1993 is pending since 2014, the Bank of Baroda did not take any steps in such proceeding to ensure that the petitioner does not leave the country.

The Bank of Baroda issued a Look Out Notice to the Home Ministry who acted on the basis of the apprehension expressed by Bank of Baroda and, therefore, disallowed the petitioner from abroad the flight on May 11, 2021.

It appears from the pleadings in the writ petition made in paragraph 7 thereof that the petitioner was working abroad from January 6, 2010. He was out of

India from 2014 onwards for several periods of time. He came back to India every time he went out. The petitioner was out of India for at least 35 times for the period from February 2014 onwards. The averments in paragraph 7 of the writ petition are not denied by the Bank in their affidavit-in-opposition so far as the travel of the petitioner is concerned.

The original proceeding before the Debt Recovery Tribunal was filed on 2014. Since then the petitioner was travelling out of India and returning for at least 30 times. He came back on each of such occasions. Moreover the bank did not apply before the Debts Recovery Tribunal seeking an order of restraint on the petitioner from leaving the country. The petitioner did not approach the Debts Recovery Tribunal even after the filing of the writ petition when the petitioner approached the writ Court for permission to travel abroad.

In such circumstances, in my view the apprehension of the Bank that the petitioner will flee India in the event allowed to travel abroad does not stand on a sound footing given the previous conduct of the petitioner and the Bank.

In such circumstances, it would be appropriate to allow the petitioner to travel abroad. The petitioner will intimate the Bank to the dates of travel and the place of his residence abroad at least a fortnight prior to the date of his travel. He will intimate the Bank of his return to India also.

In such circumstances, the Look Out Notice issued by the authorities as against the petitioner is set aside.

WPA 11243 of 2021 is disposed of

This order will not prevent the Bank from approaching the appropriate forum for obtaining orders on the travel plans of the petitioner, in accordance with law.

This order will also be construed to be an adjudication on the quantum of liability of the petitioner to the Bank.

(Debangsu Basak, J.)