OD-8

RVWO/4/2016
ACO/1/2016
(OLD NO.ACO/14/2016)
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

M/S.KOTAK MAHINDRA BANK LIMITED
VS
M/S.SAUMYA MINING LIMITED

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
The Hon'ble JUSTICE RAI CHATTOPADHYAY
Date : 8th July, 2022.

Appearance:

Mr.Vikram Wadekar,Advocate
Ms. Vidushi Chokhani,Advocate
...for petitioner.
Mr.Rohit Das,Advocate
Mr.K.Rounak,Advocate
Mr.Preetam Majumdar,Advocate
Mr.Pranit Biswas,Advocate
....for respondent.

THE COURT: This application has been filed for review of an order dated 20th April, 2015 passed in ACO 38 of 2015.

The review petitioner (in short “Bank”) says that it had entered into a financial agreement with the respondent/company whereunder large sums of money were advanced to the respondent. Upon the respondent failing to repay such loan, the bank filed a winding up petition against the company being C.P.No.953 of 2014. The winding up petition was, however, dismissed. The bank filed an appeal being APO 41 of 2015.

By an order dated February 17, 2015, the appeal was disposed of. The operative portion of the said order reads as follows:-

> *"While giving reply, Mr.Ghosh would volunteer not to press his winding up petition of Rs.5.6 crores approximately on account of overdue interest and other charges as claimed in the petition reserving his liberty to approach the appropriate authority for recovery of the same. He would contend, the principal sum would have no defence.*
>
> *Considering the rival contentions, we allow the appeal in part. The judgment and order impugned herein is set aside. The winding up petition would be restricted to Rs.41,75,100.75 to be remanded back to His Lordship for being heard afresh.*
>
> *Learned Counsel appearing for the respondent prays for two weeks' time to file affidavits. Let affidavit-in-opposition be filed within two weeks; reply if any, within one week thereafter. The parties would be at liberty to approach His Lordship for an early date of hearing after completion of affidavits.*
>
> *With regard to the balance claim, the parties would be at liberty to approach the appropriate forum in accordance with law."*

Subsequently, the bank approached the Appeal court contending that a sum much in excess of Rs.41,75,100.75 was, in fact, due and payable by the company to the bank on account of principal. It was due to communication gap between the bank and its Advocate that an incorrect submission had been made on the day the order dated 17th February, 2015 was passed to the effect that the dues of the bank on account of principal was only Rs.41,75,100.75.

The bank prayed for suitable modification of the order dated February 17, 2015. The modification application was disposed of by the order dated April 20, 2015 which is under review in the present application. The operative portion of the said order reads as follows:-

> "*The appellant volunteered not to press their winding up petition for the balance amount over and above Rs.41,75,100.75. On that basis, we allowed the appeal in part on concession. We also permitted them to proceed before the appropriate forum against the balance claim. If there was any further sum due on account of principal that was included in the sum of Rs.5.6 crores, the appellant would be at liberty to approach the appropriate forum, for that we need not modify our order. We make it clear, the winding up petition would be*

proceeded with in respect of Rs.41,75,100.75 as contended by the applicant so recorded in the order dated February 17, 2015.

The application is disposed of without any order as to costs."

Learned Advocate for the review petitioner, i.e. bank, says that proceedings are pending before the Debts Recovery Tribunal. The bank is facing undue difficulty in establishing that its dues on account of principal are more than Rs.41,75,100.75 by reason of this Court's orders dated February 17, 2015 and April 20, 2015.

Learned Advocate has referred to the audited Balance-Sheet of the company for the year ended on 31st March, 2015 to demonstrate that the company itself has admitted in that Balance-Sheet that it owes a sum in the region of Rs.3.91 Crores to the bank on account of principal.

Be that as it may, we are not concerned with how much is actually due from the company to the bank. We only clarify that if the bank can demonstrate before any forum, on the basis of acceptable documents, that its claim against the company on account of principal is more than Rs.41,75,100.75, then the orders dated February 17, 2015 and April 20, 2015 passed in APO 41 of 2015 shall not stand in the way of such forum adjudicating such claim of the bank in accordance with law.

The company's learned Advocate says that the bank failed to disburse the promised amount by reason of which the company could not purchase the machinery which had been agreed to be financed by the bank. This is strongly disputed by learned advocate appearing on behalf of the bank. In any event, we are not concerned with such dispute.

Accordingly, the RVWO/4/2016 along with ACO/1/2016 are disposed of .

(ARIJIT BANERJEE, J)

(RAI CHATTOPADHYAY, J.)

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