OD-11

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

IA NO. GA/1/2022
In CS/27/2022

GLOSTER LIMITED
Vs
IDBI BANK LIMITED

BEFORE:
The Hon'ble JUSTICE RAVI KRISHAN KAPUR
Date : 25th August, 2022.

Appearance:
Mr. Sakya Sen, Adv.
Mr. M. Dutta, Adv.
Mr. S. Rudra, Adv.
…for the plaintiff

Mr. Basudeb Mukherjee, Adv.
…for the IDBI Bank

The Court: This case presents an example of the redtapism and the inability to take a reasonable decision with alacrity and speed which is to be commonly found whilst dealing with nationalized banks and other governmental institutions.

The suit is filed for recovery of money. By an order dated 10th September, 2001 passed in BIFR case no. 143 of 2001, the Board for Industrial and Financial Reconstruction (BIFR) declared Fort Gloster Industries Limited (FGIL) as a sick industrial company under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985. The defendant bank was appointed as an Operating Agency to examine the viability of FGIL and formulate a rehabilitation scheme in respect thereof. Subsequently, in view of the directions of the BIFR, appropriate advertisements were issued in various newspapers inviting offers pertaining to the sale of FGIL.

Pursuant to such advertisements, by a letter dated 8th March, 2011, the plaintiff had sent a bank draft for Rs. 96,39,340/- drawn in favour of the defendant bank towards earnest money. The bank draft was duly encashed by the defendant bank. Admittedly, the defendant bank has retained the proceeds thereof till date. Thereafter, diverse orders were passed in respect of FGIL and that lis remained pending before the BIFR and the Appellate Authority of Industrial and Financial Reconstruction (AAIFR).

Subsequently, the Central Government in exercise of its powers under Section 4(b) of the Sick Industrial Companies (Special Provision) Repeal Act, 2003 notified 1st December, 2016 as the date for abatement of all appeals pending before the AAIFR or enquiry pending before the BIFR.

It is significant to mention that the proviso to the said Act provided that, the company in respect of which the reference or the enquiry should have abated be permitted to make a reference to the National Company Law Tribunal (NCLT). Admittedly, FGIL did not make any reference to the NCLT notwithstanding the lapse of the stipulated period. Consequently, there was no change in the status of the abatement of the BIFR Case No.143 of 2001 and all connected proceedings therewith.

In such circumstances, the respondent bank became instantly liable and obliged to forthwith refund the entire earnest money deposit of Rs. 96,39,340/-

deposited by the plaintiff and lying with the defendant bank since no lis remained pending before any fora.

Thereafter, a spate of correspondence ensued between the plaintiff and the respondent bank. After repeated requests and reminders made by the plaintiff the respondent bank, by a letter dated 5th July, 2021, directed the plaintiff to approach the NCLT for issuance of necessary directions in order to seek release of the earnest money. In this background, the plaintiff has been compelled to file this suit praying for refund of the amount of Rs. 96,39,340/- along with interest and costs.

I have considered the submissions made on behalf of the parties.

I find that pursuant to the Notification issued by the Central Government, BIFR Case no. 143 of 2001 and all connected proceedings thereunder including the proceedings pending before the AAIFR stood admittedly abated on 1st December, 2016. Significantly, no reference had been made within the stipulated 180 day period by any of the parties to the NCLT. There was no lis pending before the NCLT. There was also no change in the status of the abatement of BIFR Case No.143 of 2001 or any of the proceedings connected therewith. Hence, NCLT had no jurisdiction to entertain any matter far less issuing a direction for release of the earnest money.

In my view, the respondent bank continued to hold the entirety of the earnest deposit, as Trustee for the benefit of the plaintiff and was obliged to forthwith return the same upon the plaintiff making a demand. In view of the aforesaid, the pre-condition or stipulation by the defendant bank that an appropriate order be passed by the NCLT is incomprehensible, unjustified and without any basis whatsoever. There is also an element of harassment which the plaintiff has had to undergo in running from pillar to post including filing of this suit in order to seek directions in respect of the earnest money which has been lying with the defendant bank and was liable to be returned forthwith on demand.

Even on the touchstone of the commercial sense and fairness the conduct of the defendant bank is unexplainable. In a country where the mantra is that of *"Ease of Doing Business*", it is unfortunate that reputed nationalized banks should act in such an unreasonable and mechanical manner.

Admittedly, the funds have been enjoyed by the respondent bank for more than a decade. Pursuant to an order dated 11th July 2022, passed in this proceeding, the respondent bank had repaid the principal amount to the plaintiff on 11th July 2022. In view of the aforesaid, the only question which remains for consideration is whether the respondent bank is obliged to pay interest on the said sum and costs, if any. In my view, having retained the aforesaid sum of Rs. 96,39,340/- for more than a decade and even after the proceedings had abated i.e on 1st December 2016, the defendant bank should pay interest on the principal amount of Rs. 96,39,340/- from the date when the proceeding had abated i.e from 1st December 2016 till 11th July 2022. Such interest is to be paid at the rate of 6% per annum forthwith and positively within 2 weeks from the date of communication of this order.

The defendant bank shall also pay costs assessed at Rs.1,00,000/- (One Lac) to the plaintiff in respect of the harassment which the plaintiff has been forced to suffer in filing this suit and being compelled to approach this Court.

With the aforesaid directions, GA/1/2022 stands disposed of.

It is fairly submitted by the parties that nothing survives in this suit. Accordingly, with the aforesaid directions, CS 27 of 2022 also stands disposed of. The Department is directed to draw up a decree expeditiously in terms of the aforesaid order.

(RAVI KRISHAN KAPUR, J.)

S.Bag