

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C). No.30139 of 2011

MD. Alla Rafique

....

Petitioner

Mr. S.P.Mishra, Senior Advocate

-versus-

***Managing Director, OSFC,
Cuttack & Others***

....

Opp. Parties

Mr.P.R.Barik, Advocate
for O.P.Nos. 1 to 3

**CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAİK**

Order No.

**ORDER
06.04.2022**

07.

1. The short point involved in the present petition is whether the Petitioner continues to be liable to the Opposite Party-OSFC for a loan borrowed by the Company in which he was a Director?

2. The background facts are that a loan amount of Rs.30 lakhs was sanctioned in favour of M/s. Technomix Steel (P) Ltd. ('Company') by the OSFC on 8th October, 1985 for establishing a Steel Rolling Mill.

3. Admittedly, the relevant point of time, the present Petitioner and one Mr. A.N.Bibi were Directors of the aforementioned Company.

4. As surety for the loan, property of an area measuring Ac.3.00 dec., which was the leasehold family property of the father of the Petitioner, was on 4th July, 1989 mortgaged in favour of OSFC. Later OSFC released a 1 acre plot from Plot No.12 thereby enabling the Managing Director of the Company to mortgage it with the State Bank of India for availing a loan.

5. Sometime in 1993, the Company became a sick unit. On 7th January, 2000 one Shri S.N.Satpathy was an inducted as a Director. After the Petitioner's mother resigned as a Director, Shri Rajani Kanta Satapathy the father of S.N.Satapathy became a Director on 1st July, 2000. On 11th July, 2005 both Soumendra Nandan Satapathy and his father Shri Rajani Kanta Satapathy executed guarantee deeds in favour of the Company.

6. On 27th October, 2005 Shri S.N.Satapathy filed an affidavit before the OSFC admitting to the liability of the Company and undertook to pay the same. Pursuant thereto the Managing Director applied to the OSFC for a One Time Settlement (OTS) on 29th October, 2005.

7. Shri Rajani Kanta Satapathy and the present Petitioner resigned on 1st August, 2007 from the post of Director of the Company and they filed their respective Form 32 with the Registrar of Companies. In their place Ashok Kanungo and Smita Kanungo became the Directors.

8. The OTS with the OSFC did not materialize. In the meanwhile, on 11th January, 2008 the Petitioner informed the OSFC that he had ceased to be a Director of the Company. Thereafter, the Directors of the Company i.e. S.N.Satapathy, Smita Kanungo and Ashok Kanungo applied to the OSFC afresh for an OTS.

9. The grievance of the Petitioner is that despite all the above developments, OSFC continued to keep sending intimations to him on the basis that he continued to be Managing Director of the Company. In particular, the letters dated 17th October, 2011 and 24th October, 2011 issued by the OSFC to the above effect have challenged in the present petition.

10. The Court has heard Mr. S.P.Mishra, learned Senior counsel for the Petitioner and Mr. Barik, learned counsel appearing for the OSFC. With the Form 32 having been filed by the Petitioner on 1st August, 2007 itself, it is plain that the Petitioner ceased to be a Director of the Company with effect from that date. This fact is not denied by the OSFC. The Petitioner cannot therefore be any longer personally responsible for repayment of the loans of the Company. In any event, the other Directors appear to have furnished guarantees for the loan advanced to the Company.

11. For the aforementioned reasons, the impugned communications 17th October, 2011 and 24th October,

2011 issued by the OSFC insofar as they seek to fasten liability on the Petitioner are hereby quashed.

12. The writ petition is allowed in the above terms. No order as to costs.

13. An urgent certified copy of this order be issued as per Rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K.Pattanaik)
Judge



Kabita