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IN THE HIGH COURT OF ORISSA AT CUTTACK

WRIT PETITION (CIVIL) No.15349 of 2010

M/s. Utkal Nirman	....	***Petitioner***
	-versus-	
Orissa State Financial Corporation	....	***Opposite Party***

Advocates appeared in this case:

For Petitioner	:	Mr. Prafulla Kr. Rath, Advocate
For Opposite Party	:	Mr. P.K. Routray, Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

JUDGMENT
31.03.2022

Dr. S. Muralidhar, CJ.

1. This petition under Articles 226 of the Constitution of India questions the order dated 19th September, 2009 of the Odisha State Financial Corporation (OSFC) rejecting its application on the one time settlement (OTS) scheme. The Petitioner also seeks for quashing of a letter dated 22nd February, 2008 addressed by the OSFC to the Petitioner cancelling the rephasement of the loan as was permitted by its earlier letters dated 6th February, 2006 and 5th July, 2006.

2. It must be noted here that this is the second round of litigation in this Court concerning the above issue. Earlier the Petitioner had filed W.P.(C) No.4693 of 2008 which came to be disposed of by this Court by an order dated 9th July, 2009. By the said order, this Court permitted the Petitioner to make an application for OTS. The OSFC was to furnish the Petitioner with the statement of account showing the present outstanding amount and to take into account the payments made till then by the Petitioner. The application for OTS was to be considered and disposed of within a month from the date of receipt of the application. Till then no coercive action was to be taken against the Petitioner.

3. Pursuant to the above order, on 25th July, 2009 the OSFC communicated the Petitioner the position of its loan account which showed the total principal amount due as on 30th June, 2009 to be 19,69,568.73 and the interest to be Rs.5,72,234/-. Thus, the total amount due was Rs.25,41,802.73. This was followed by a correspondence exchanged between the parties whereby the Petitioner furnished details of payments made by it. This was responded to by the OSFC by letter dated 25th August, 2009 acknowledging receipt of payments from 31st March, 2002 onwards till 6th September, 2008 in the sum of Rs.16,80,286.27. OSFC asked for proof of additional payments within a week, failing which the OTS proposal would be processed under the parameters of the MFT-OTS-2007 Scheme basing on the records available with the OSFC.

4. Thereafter by letter dated 19th September, 2009 OSFC communicated to the Petitioner its rejection of the application. One of the reasons stated was that the Petitioner had not complied with the requirement of furnishing an undertaking to withdraw the pending proceedings before the Courts and Tribunals.

5. On 27th January, 2012 the OSFC informed the Petitioner that after adjusting the payments made, the total amount due was Rs.5,92,655/- and called upon the Petitioner to discharge the liability failing which action would be taken under Section 29 of the State Finance Corporation Act, 1951 (SFC Act).

6. In the meanwhile, the Petitioner filed the present petition on 7th September, 2010. However, it came up for hearing for the first time only on 5th January, 2012 when notice was issued to the Opposite Parties. On 19th March, 2012 it was directed that no coercive steps will be taken against the Petitioner pursuant to the aforementioned letter dated 27th January, 2012 of the OSFC.

7. On the next date i.e. 18th April, 2012 the following order was passed by this Court:

> "It is stated by the learned counsel appearing for the petitioner that Orissa State Financial Corporation has not complied with the order dated 5.3.2012. The learned counsel for the Corporation submits that the said order could not be complied with for the reason that the petitioner has to submit the statements of accounts regarding the amount which is due to the OSFC. Learned counsel for the petitioner submits that the

> statement of account prepared by the OSFC is not on the basis of the correct entries made in respect of the account particulars of the petitioner.
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> 2. In this view of the matter, we direct the petitioner to furnish the correct statement of account by tomorrow for having paid amount to the OSFC to the learned counsel appearing for the OSFC. After verifying those documents, the OSFC shall furnish a statement of account to learned counsel for petitioner as to the amount due to the Corporation by the petitioner within a period of one week. The statement of account shall be prepared by the Corporation in accordance with the Constitution Bench decision of the Hon'ble Supreme Court in the case of ***Central Bank of India Vs. Ravindra and Others,*** reported in ***AIR 2001 SC 3095*** and in accordance with the rephasement agreement.
>
> List this matter after one week."

8. The interim order has nevertheless continued thereafter.

9. This Court has heard the submission of Mr. P.K. Rath, learned counsel appearing for the Petitioner and Mr. P.K. Routray, learned counsel for the Opposite Party (OSFC).

10. The background facts are that Petitioner applied to the OSFC on 26th July, 2001 for a loan to set up a fly ash brick unit at Chandaka Industrial Estate, Bhubaneswar. The OSFC sanctioned a term loan of Rs.16,48,000/- and a sum of Rs.7,18,000/- under the National Equity Fund (NEF) on 12th September, 2001. On 5th February, 2002 the Petitioner executed a loan agreement. The

total loan amount availed by the Petitioner was Rs.19,89,340/-. The industrial assets including the industrial land and building were mortgaged to the OSFC and the lands were hypothecated as security for the loan. The Petitioner also provided collateral security by the guarantor to secure the loan. The loan had to be repaid within a period of seven years in 12 half yearly instalments. Besides paying the principal amount by way of instalments, the Petitioner was also to pay interest.

11. On account of default committed in repayment of the loan, the Petitioner represented to the OSFC for rephasement of the loan. The conditions on which the rephasement was permitted was communicated by OSFC to the Petitioner by letters dated 6th February and 5th July, 2006. These letters indicated how the first term loan and the additional term loan and the NEF amounts, apart from the interest outstanding of Rs.3,79,550/- were to be rephased and what the instalment payment were to be. The effective rate of interest in rephasement was 13.5% per annum. In the event of default of payment of principal or interest, penalty @ 2% would be charged on the defaulted dues for the defaulted period.

12. According to OSFC, the Petitioner defaulted even on the rephasement terms and conditions. As a result, by a letter dated 22nd February, 2008 OSFC cancelled the rephasement. This led to the Petitioner filing the first writ petition which was disposed of in the manner indicated.

13. In the counter affidavit filed in response to the present petition, the OSFC has indicated that after the recalling of the loan and in terms of the recall notice dated 27th January, 2012 the outstanding position of the loan dues i.e. the term loan, the additional term loan and the NEF amount together with interest worked out in the aggregate to be Rs.34.12 lakhs.

14. In the counter affidavit, OSFC pointed out that the Petitioner had filed the case against the OSFC in the Competition Appellate Tribunal being CA No.43 of 2008 which was disposed of on 29th March, 2011 by that Tribunal holding the application to be not maintainable. Pursuant to an order dated 23rd March, 2011 passed by this Court in another writ petition i.e. W.P.(C) No.15426 of 2010 the eligible loan accounts of the Petitioner was settled at Rs.7,01,800/- along with further payment of NEF dues of Rs.4,19,233/-. However, the settlement order dated 10th June, 2011 was not honoured. Accordingly, OSFC cancelled the said order on 9th November, 2011

15. The case of the OSFC is that despite repeated opportunity the Petitioner has not come forward to clear the outstanding dues. No action has been able to be taken under Section 29 of the SFC Act on account of interim order of this Court. An additional affidavit was filed on 23rd July, 2012 accounting for the payments made by the Petitioner as per the receipts handed over by it.

16. The latest position as per Annexure-B to the affidavit is that as regards the term loan, the Petitioner owed OSFC as of 13th June, 2012 Rs.14,60,095/- towards term loan, Rs.5,84,734/- towards additional term loan and Rs.4,85,106/- towards NEF.

17. On 15th March, 2012 order was reserved in the present petition after hearing submissions of learned counsel for the parties. An affidavit was filed by the Petitioner together with additional documents claiming that it has already made payment of Rs.36,32,726/- after the rephasement of the agreement. It appears that after filing of the present petition in 2010 as per the receipt enclosed with the affidavit, the Petitioner paid Rs.11,65,000/- on 29th June, 2012; Rs.2,60,000/- on 8th August, 2012 and Rs.5,16,000/- on 26th May, 2017.

18. What can be gathered from all the documents filed is that the payments made by the Petitioner have been sporadic and from the point of view of the OSFC, there is still a considerable loan amount outstanding. Despite the order in the earlier writ petition and the present petition, the differences in the outstanding amount as per the version of the Petitioner and that of the OSFC cannot be reconciled. As a result, the petition raises disputed questions of fact which cannot possibly be attempted to be reconciled in the present proceedings.

19. It is not as if the Petitioner has not been given sufficient opportunity to repay the loan. As the above narration itself

indicates there was first rephasement of the loan and then pursuant to the order of this Court consideration of the Petitioner's case under the OTS scheme. The Petitioner has not been able to meet the terms and conditions of either the rephasement or of the OTS. While the Petitioner makes claim that it has made sufficient payments, clearly there is a sizeable sum outstanding. Further, when a loan amount is outstanding for over ten years, as in the present case, the interest component is bound to be substantial. Also, there is the question of penal interest, due to default in meeting the terms of rephasement ot of the OTS scheme.

20. Consequently, the Court is not persuaded to hold that the OSFC has acted arbitrarily in the matter. It is not persuaded to interfere with the orders/decisions of the OSFC which are the subject matter of challenge in the present proceedings.

21. For all of the aforesaid reasons, the interim order passed by this Court on 19th March, 2012 is hereby vacated. The writ petition is dismissed, but in the circumstances, with no order as to costs.

(S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K.Jena/PA