

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.5169 of 2012

M/s M.M. Udyog

.... ***Petitioner***
Mr. S.B. Jena, Advocate

-Versus-

Chairman, Orissa State Financial Corporation, Cuttack and others

Opp. Parties

Mr. A. Deo, Advocate for O.P.Nos.1 to 3
Mr. P. Mukherjee, Advocate for O.P. No.5

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAİK

ORDER
04.07.2022

Order No.

R.K. Pattanaik, J

9. 1. Instant application under Article(s) 226 and 227 of the Constitution of India, 1950 is at the behest of the Petitioner assailing the action of Opposite Party Nos.1 to 3 (in short 'the OSFC') and for quashing of notice (Annexure-16), whereby, its partner, namely, Anasuya Pattnaik has been required to pay the balance due failing which it would be repossessed and disposed of by auction sale on the grounds *inter alia* that the impugned decision is illegal and arbitrary and bad in law and hence, liable to be set aside with a further direction to the OSFC to issue NDC.
2. The partner acquired the unit in an auction sale held in 1998 and possession was delivered to her. It is contended that loans were received to run the unit and sometime later, settlement

under OTS-Rs.2-50 lac scheme was applied and in due course, payments were made. It is pleaded that a show cause dated 1st November, 2006 (Annexure-4) was issued by the OSFC to pay the dues as per the norms of the scheme. In the meantime, the Director of Industries was moved for issuance of registration certificate after the unit was taken over and accordingly, the same was issued under Annexure-6, however, the OSFC overlooking its own instruction under Annexure-8 and discussions in the Customer's Meet of the year 2011 and furthermore, when payment of Rs,6,70,000/- was to be made in future by 31st March, 2012, in an arbitrary manner, seized the unit in violation of Annexure-10 and took over its possession and notified that the same would be auctioned if the dues are not paid within the time stipulated. According to the Petitioner, the date of auction was fixed to 16th January, 2012 but before that OSFC was approached on 13th January, 2012 and at the time of auction, a sum of Rs.21 lac was paid, as a result of which, the unit was handed over on execution of deed of zimanama (Annexure-14) however the notice dated 6th March, 2012 was received from the OSFC requiring the partner to pay Rs.21,18,224/- before 5th April, 2012 which is currently under challenge as arbitrary and unlawful.

3. The OSFC denied the contentions of the Petitioner and justified the action under Annexure-16 for having required the partner to clear the dues and settle the loan account by paying the balance amount or else to face the consequence. As per the OSFC, the unit was handed over to the partner subject to certain terms and conditions indicated in Annexure-14 and as to the OTS

scheme, since it expired by the end of 2011, the decision was subject to the approval of the Board of Directors which declined to agree to the proposal for condoning the delay to settle the dues under OTS Rs.2-50 lac scheme when the highest bid on sale was Rs.50.50 lac but resolved to allow thirty days time to pay the differential amount i.e. bid amount of Rs.50.50 lac minus amount already paid under the OTS scheme, whereafter, the account would be treated as settled under the said scheme. However, as per the pleading of the OSFC, the payment could be honoured consequent upon which Annexure-16 was issued which is absolutely as per and in accordance with law and therefore, does not call for any interference.

4. O.P.No.5 filed a counter affidavit and challenged the action of the OSFC while supporting the cause of the Petitioner and contended that he on the request of the erstwhile partners of the unit infused funds to pay up the auction amount, whereafter, was inducted as a partner and accordingly, the partnership was reconstituted under Annexure-A/5, as a result of which, certain rights including 90% stake in the unit stood transferred in his favour. O.P.No.5 challenging the legitimacy in the claim of O.P.No.4 pleaded that the latter claimed himself as a stakeholder of the unit and fraudulently obtained the DIC registration receipt further alleging that the action of the OSFC is illegal.

5. Heard Mr. S.B. Jena, learned counsel for the Petitioner, Mr. A Deo, learned counsel for the OSFC and Mr. P. Mukherjee,

learned counsel for O.P.No.5. However, none appeared for O.P.No.4.

6. Mr. Jena contends that despite the payment made under the OTS scheme and all the dues cleared towards the loan account of the unit, the OSFC declined to issue NDC rather illegally required the partner to pay balance amount of Rs.21,18,224/- under Annexure-16 and preceded to auction it. The details of the payment made by the partner pursuant to the OTS scheme and as per the terms of the loan agreement were drawn to the notice of the Court by Mr. Jena highlighting upon the execution of Annexure-14 while delivering the possession of the unit on payment of Rs.21 lac. It is lastly contended that the loan should have been allowed to close in similar lines as this Court had directed by order dated 29th September, 2011 in WP(C) No.25615 of 2011.

7. Mr. Deo, on the other hand, submitted that the OSFC initially accepted the proposal of the Petitioner and in principle took a decision to settle the loan account under the OTS scheme but then, there was default in paying the dues and at last, the scheme expired and whatever payment was received at the time of execution of Annexure-14 and delivery of the possession of the unit, it was subject to the approval of the Board of Directors of OSFC which finally rejected the proposal to condone the delay and rightly so and thereafter, correctly demanded payment of differential amount as against the highest bid and the decision is

justified considering the fact that the unit fetched for an amount of Rs.50.50 lac.

8. Mr. Mukherjee would contend that the interest of O.P.No.5 is required to be protected since he infused funds and paid auction amount to the OSFC which of course would depend on the decision in the present case. Furthermore, Mr. Mukherjee while contending so, referred to the deed of partnership (Annexure-A/5) executed in the year 2011 inducting him as a partner.

9. Initially, the unit was taken over by one of the partners and thereafter, the other partners joined including O.P.No.5. Then the unit became sick. In due course, loans were availed. Thereafter, the OSFC was approached when the unit was about to be auctioned in 2012 and a sum of Rs.21 lac was paid which was received with a condition that it would be subject to the decision on condonation of delay by the Board of Directors whether to extend the benefits under the OTS scheme which by then was not there. The proposal was placed before the Board of Directors on 24th February, 2012 but the same was not accepted, rather, it was resolved to direct payment of the differential amount and only then the account to be treated as settled under the OTS scheme as is evident from Annexure-G. The contention of Mr. Jena is that after all the dues were cleared on payment of Rs.21 lac just before the auction sale, Annexure-14 was executed by the OSFC. However, on a bare reading of Annexure-14, it would appear that the unit was handed over subject to a decision thereon and approval by the Board of Directors. Even, the parties agreed to

abide the decision of the Board which is revealed from Annexure-14. Under the above circumstances, the claim that the loan account was allowed to be liquidated in terms of the OTS is totally misconceived. The OSFC never acknowledged closure of the account while receiving said amount of Rs.21 lac before delivery of the unit under Annexure-14. In the considered view of the Court, since the payments could not be made adhering to the norms of the OTS scheme, the OSFC's decision requiring to clear the outstanding dues as per the terms of the agreement was natural and inevitable which cannot therefore be said to suffer from any legal infirmity. The order of this Court in WP(C) No.25615 of 2011 referring to which a similar relief is asked for Mr. Jena turns out to be a decision peculiar to the facts and circumstances of the case and thus, not to be generalized or uniformly applied. Having considered the contentions of the parties, the Court does not find any compelling reason to interfere with the impugned decision of the OSFC vide Annexure-16 which appears to be just and proper.

10. As regards the contention of O.P.No.5, the Court is of the opinion that the payment which was made by him to the OSFC or for that matter, funds infused in running the unit is entirely an independent decision to share the rights and liabilities vis-à-vis the unit and therefore, the same would depend on the fate of the other partners' interest. For having reached at a conclusion that the loan account could not be closed under the OTS scheme and demand was made for payment of the outstanding dues as per the agreement executed originally, O.P.No.5 cannot have any relief

granted except by observing that he would have to equally bear the liabilities along with the other partners. Nonetheless, in order to assert his rights, O.P.No.5 is at liberty to seek such remedy as may otherwise be available under law.

11. Accordingly, it is ordered.

12. In the result, the writ petition stands dismissed.

(R.K. Pattanaik)
Judge

(Dr. S. Muralidhar)
Chief Justice

TUDU

