IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-19231-2021 (O&M)
Reserved on: 25.04.2022
Date of Decision: 11.05.2022

Kurukshetra Automobile Pvt. Ltd. through its Director and another

. . . . Petitioners

Vs.

Deputy Commissioner-District Collector, Kurukshetra and others

. . . . Respondents

****

CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MR JUSTICE H.S. MADAAN

****

Present: - Mr.Akshay Kumar Jindal, Advocate,
for the petitioners.

Mr.Rajesh Gaur, Addl. A.G., Haryana,
for respondent No.1.

Mr.Bhushan Bhatia, Advocate,
for the respondent-Bank.

****

M.S. RAMACHANDRA RAO, J.

The Background facts

Petitioner No.1 is engaged in manufacturing of automobiles and its parts. Petitioner No.2 is it's Director.

Petitioners had obtained credit facility from the Punjab National Bank (respondent No.2) by giving security of certain assets located in Kurukshetra in the State of Haryana.

A loan sanction/limit increase letter dt. 01.01.2018 (P1) was issued by the said Bank granting CC limits (H & BD) of ₹325 lakh.

There was a fire in the factory of petitioner No.1 on 06.11.2018, resulting in huge loss to the petitioners.

Petitioner No.1 also lodged an FIR No.145 dt. 06.11.2018 (P2) under Section 435 IPC, at Police Station Kala Amb, District Sirmour of Himachal Pradesh.

The loss caused to the petitioners due to the said fire was claimed by them from their Insurer i.e. New India Insurance Company.

The claim was accepted 8-9 months after making of the said claim, and an amount of ₹2,53,62,642/- was credited by the said Insurance Company to the account of the petitioners.

Petitioners had made a request to the Bank for restructuring of the credit facility given to it.

According to the petitioners, such restructuring was done on 14.06.2019 in the following manner: -

	Existing	Proposed
FB CC (H&BD) Working Capital Term Loan (WCTL)	360.00 0.00	35.00 325.00
Non Fund Based	40.00	5.00
FITL	0.00	35.00
Working Capital Celling	400.00	400.00

Three new accounts were opened around 14.06.2019 by the Bank:

(i) Account No.388700IB400003736 for ₹325 lacs (Term Loan-1)

(ii) Account No.388700IB400003745 for ₹35 lacs (Term Loan-2)

(iii) Account No.388700IL00000405 for ₹5 Lacs (Term Loan-3)

But sanction letter was not provided to the petitioners immediately.

The above restructuring indicates that the CC limit of the petitioners was reduced from ₹360 lakh to ₹35 lakh, and a term loan of ₹325 lakh was given to the petitioners apart from a Non Fund Based credit limit of ₹5 lakh and FITL of ₹35 lakh.

The sanction letter was issued to the petitioners only on 24.07.2019 (P7) and the terms of the said letter, insofar as the dealing with WCTL of ₹325 lakh, stated that the same would have to be repaid in 102 monthly installments w.e.f. 30.04.2020 after allowing moratorium period of 18 months in the following manner: -

Year	No. of Installment	Installment Amount (in lakhs)	Total (Rs.in lakhs)
2020-21	12	1.50	18.00
2021-23	24	2.08	49.92
2023-26	36	3.01	108.36
2026-27	12	4.13	49.56
2027-29	18	5.51	99.16
Total	102		325.00

Entire interest on WCTL limit from Nov 2018 to Sept 2019 charged/to be charged shall be converted into FITL, thereafter interest will be repaid and when levied.

However, there was a clause inserted to the following effect:-

"The said WCTL shall be liquidated from insurance claim to be received from Insurance Company and if any remaining amount left of WCTL, shall be repaid in proportionate installment in

> *remaining period of 102 months w.e.f. 30.04.2020 to 30.09.2028 after allowing moratorium period of 18 months from cutoff date of restructuring i.e. 30.11.2018."*

Thus, this clause practically negated the earlier clause which had provided for repayment of WCTL of ₹325 lacs in 102 monthly installments w.e.f. 30.04.2020, after allowing moratorium period of 18 months.

Petitioners had given a letter on 17.06.2019 (P3) to the Bank requesting it to credit of ₹2,53,62,642/- received from the Insurance Company to the CC account of Petitioner No.1. Importantly, the petitioners never requested for adjustment of the same to the CC account.

But notwithstanding the same, out of the amount of ₹2.53 crore received by the petitioners as insurance claim, ₹34 lakh was adjusted in the previous CC account and ₹2,02,91,000/- was transferred to the newly opened WCTL account from the CC account of the petitioners on 26.6.2019 and adjusted to that account. This was done inspite of the fact that the repayment of ₹4 crores was to be made in equal installments within a period of approximately 8½ years starting from 13.04.2020 i.e, by 2029.

Petitioners contend that as per the restructured loan account of the petitioners, the CC limit was only ₹35 lakh as reflected in the sanctioned letter dt. 24.07.2019 (P7); and without their consent, the Bank cannot transfer the insurance amount received by them from their CC account and adjust it to their newly opened WCTL account.

Petitioners also contend that the Bank had acted arbitrarily in incorporating in the sanction letter dt. 24.7.2019 (P7) (vide which the loan account of the petitioners was restructured), a clause stating that the receipt of insurance claim will be credited to the WCTL. According to the petitioners, the loan was actually restructured on 14.06.2019 though the sanction letter was issued on 24.07.2019 and this condition was incorporated as an afterthought without it's consent.

They contend that there was no use of restructuring the entire loan amount of ₹3.60 crore when the insurance claim of the petitioners, which was around 2.53 crores, was already transferred to the WCTL account and adjusted against dues in it.

According to the petitioners, this conduct of the Bank is arbitrary and renders the entire restructuring proposal a sham transaction done only for the purpose of enticing the petitioners to deposit the insurance claim with them, that it was a calculated move on its part, and is *ex facie* one sided, unfair and unreasonable.

Petitioners made a representation dt.21.11.2019 (P8) stating that they had received an order from the Indian Railway for railway parts and was having shortfall of working capital due to the act of the respondent Bank; and the amount which was illegally transferred from the CC account to the WCTL account be transferred back or their CC limit be increased by ₹2.53 Crore enabling them to start their manufacturing unit.

When there was no response to this, petitioners approached the Banking Ombudsman (Respondent No.5) with a complaint pointing out the wrongful conduct on the part of respondent No.1-Bank on 13.01.2020 (P9).

Respondent No.5 passed an order on 02.03.2020 (P10) stating that the insurance amount settled by the insurance company received by the Bank should be earmarked for the purpose of raw material/for labour, that the end use may be earmarked and the adjustment in FITL (wrongly mentioned instead of WCTL) is not correct, as the bank had not followed the terms of restructuring.

This was followed up by another letter dt.06.03.2020 (P11) issued by respondent No.5 to the Bank stating that it had received a complaint from the petitioners regarding insurance claim not being credited to the Working Capital account that the Banking Ombudsman had passed order on 04.02.2020 instructing the Bank to transfer the insurance claim amount to the Working Capital account, but the Bank had not complied with the said direction till date and to show cause why the award under the Banking Ombudsman Scheme 2006 be not passed against the Bank. Response was requested by 13.03.2020.

Thereafter, lockdown was imposed in the country on account of Covid 19 Pandemic and no further action was taken against the petitioners by the office of Banking Ombudsman.

The proceedings initiated under the SARFAESI Act, 2002 against petitioners

Taking advantage of the same, the respondent-Bank issued notice under Section 13(2) of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 [for short 'the SARFAESI Act'] on 18.5.2021 (P12) to the petitioners, stating that the loan account of the petitioners had been declared as an NPA and a sum of ₹2,09,82,899.68 ps. was due to the Bank on 31.03.2021 with further interest plus other charges and threatening to put the secured assets on sale if the amount was not paid within 60 days.

Petitioners contend that only installments of ₹7 lakh would have been due if the Bank had not transferred the insurance claim illegally to the term loan account and the petitioners would have restarted the unit, and the petitioners were ready to pay a sum of ₹7 lakh for regularization of their account in case the respondent-Bank transferred back the insurance claim in the CC account of the petitioners.

Petitioners stated that the respondent-Bank can deduct a sum of ₹7 lakh due towards installments while transferring the insurance claim amount back to the CC account of the petitioners.

According to the petitioners, the transfer of the insurance claim amount from the CC account of the petitioners to the restructured WCTL account of the petitioners without their consent is illegal and is not permitted by Banking Regulations, and the respondent-Bank is bound to comply with the directions of respondent No.5 issued on 02.03.2020 and 06.03.2020.

Filing of Present Writ petition

Petitioners, therefore, filed the instant Writ petition seeking:

(i) a Writ the nature of Certiorari to quash the notice dt. 18.5.2021 (P12) issued under Section 13(2) of the SARFAESI Act;

(ii) a Writ in the nature of Mandamus directing respondents No. 2 to 4-Bank to transfer the amount received as insurance claim amounting to ₹2,53,62,642/- to the CC Account of the petitioners, which was illegally transferred without the consent of the petitioners to the restructured WCTL; and

(iii) a writ of Mandamus not only to regularize the loan account of the petitioners but, also to comply with the orders dt. 02.03.2020 (P10) and 06.03.2020 (P11) of respondent No.5.

Events after filing of the Writ Petition

Notice of motion was issued on 24.09.2021 for 28.10.2021.

Written statement was filed by respondents No.2 to 4 on 25.10.2021 and after hearing the arguments, order was reserved on 25.04.2022.

Written statement of respondents No.2 to 4-Bank

The Bank contends that it had sanctioned to the petitioners CC limit of ₹325 lakh, which was further enhanced to ₹350 lakh, and it had sanctioned other facilities of ₹50 lakh, totalling ₹400 lakh from its Ambala Cantonment, Branch Office.

After the fire accident on 16.11.2018, pending settlement of the claim, it admits that it had approved a package on 14.06.2019 for CC limit of ₹35 lakh (reduced from ₹350 Lakh), WCTL of ₹325 lakh, Non Fund Based facility of ₹5 lakh and FITL of ₹35 lakh.

It contends that the restructuring package was sanctioned for FITL of ₹35 lakh on accumulated interest charged/to be charged on the total FBWC limit of ₹360 lakh (from November 2018 to September 2019), and sanction of WCTL of ₹325 lakh was to cover up irregularity due to deficiency of drawing power on account of insurance claim remaining pending with Insurance Company as on that date.

It stated that three new accounts being Term Loan-1 for ₹325 lakh, Term Loan-2 for ₹35 lakh and term loan-3 for ₹5 lakh were opened on 14.06.2019.

It is contended that the sanction letter dt.24.7.2019 contained the terms and conditions of the restructuring done on 14.6.2019 , and the said terms and conditions of the restructuring package were accepted by the petitioners.

It contends that one of the clauses of sanction letter dt. 24.07.2019 (P7), stated that *on receipt of insurance claim, the same would be credited to WCTL account immediately without any delay*; that after constant follow up, the insurance claim of ₹2,53,62,642/- was settled by the Insurance Company; and the said amount was credited to the CC account of petitioner No.1 on 26.06.2019.

It is stated that from that account, ₹2,02,91,000/- was transferred to the WCTL account in terms of the restructuring package.

According to it, the Insurance Claim amount was deposited in the CC account No.3887008700002979 on 26.06.2019 as per the procedure with the consent of the petitioners.

It denied that the petitioners had no knowledge or that they did not consent to the said clause in Sanction Letter dt. 24.07.2019 (P7) referred to above which permitted adjustment of the Insurance Claim amount to the WCTL account.

It is then contended that two guarantors gave a letter on 14.05.2019 (R2) seeking withdrawal of their guarantee as well as release of property being Shop Nos.444 & 445. It thus contended that it was the petitioners who failed to comply with the terms and conditions of the sanction of the restructuring package.

According to the Bank, though there were orders of the Banking Ombudsman dt.02.03.2020 (P10) and 06.03.2020 (P11), it would act only as per its guidelines.

It reiterated that the loan accounts of the petitioners were classified as NPA on 31.03.2021, that it had issued notice under Section 13(2) of the SARFAESI Act on 18.05.2021 to safeguard its interest to recover the amounts due to the petitioners, and that it was entitled to do so. It denied that the petitioners had agreed to pay ₹7 lakh to regularize their accounts.

Considerations by the Court

Counsel for the respective parties reiterated the stand of their respective clients.

From the facts narrated above, it is clear that initially the Bank had only granted a CC Limit facility to the petitioners on 11.12.2017 for ₹325 lakh with account No.388700870002979, that later this was enhanced to ₹360 lakhs and a Non Fund Based funding of ₹40 lakhs was also given- totalling ₹400 lakhs.

Thereafter, the factory premises of the petitioners had a fire accident on 16.11.2018.

The petitioners had made a claim to M/s New India Assurance Company which granted ₹2,53,62,642/- to petitioner No.1.

Simultaneously, the petitioners had approached the respondent-Bank for restructuring which was agreed to on 14.06.2019 and the same was done by reducing the CC Limit from ₹360 lakh to ₹35 lakh, , granting ₹325 lakh of WCTL, 5 lakh Non Fund Based facility and ₹35 lakh FITL, totalling ₹400 lakh.

The specific request of the petitioners vide letter dt. 17.06.2019 (P3), *after such restructuring of the loan accounts was done on 14.06.2019*, to the Branch Manager of the respondent was to credit ₹2,53,62,642/- to the *earlier Cash Credit account* No.3887008700002979 so that it can start its manufacturing unit with the said money.

By that time, there was already restructuring of the credit facilities on 14.6.2019 itself even according to the respondent-Bank and the CC limit had been reduced to only ₹35 lakh admittedly.

Without the petitioners consent, on 26.6.2019, the Bank transferred ₹2,02,91,000/- to the newly opened WCTL account No.388700IB00003736 for ₹325 lakh and liquidated the WCTL.

After making the said adjustment, without the consent of the petitioners, it then conveniently issued sanction letter of restructuring on 24.07.2019 (P7) incorporating the clause that *the WCTL would be liquidated from the Insurance claim which was to be received from the Insurance Company.* There was no consent given proved to have been by the petitioners to the inclusion of the said clause.

In fact, the said clause is contrary to the *repayment clause* of the said WCTL in the sanction letter P7 dt.24.7.2019 which contemplated *it's repayment in 102 monthly installments w.e.f. 30.04.2020 after allowing moratorium period of 18 months.*

Thus, in effect by incorporating the clause permitting it to *liquidate* the WCTL from insurance claim, the Bank rendered the clause therein which had for repayment of ₹325 lakh of WCTL in 102 installments w.e.f. 30.04.2020 after allowing moratorium period of 18 months i.e. by 2028, totally otiose. This conduct /action of the Bank is arbitrary, unreasonable and unfair and violates Art.14 of the Constitution of India.

The decision in 2008 of the Supreme Court in Indian Bank Vs. Godhara Nagrik Cooperative Credit Society Limited

In **Indian Bank Vs. Godhara Nagrik Cooperative Credit Society Limited**[1], the Supreme Court has observed:

> *"a writ court exercising the power of judicial review has a limited jurisdiction. A writ petition would lie against a State within the meaning of Article 12 of the Constitution of India. Indisputably, exercise of jurisdiction by the High Court is permissible in a case where action of the State is found to be unfair, unreasonable or arbitrary. The question which should have been posed by the High Court was as to whether the action of the bank was so arbitrary so as to invoke the public law jurisdiction. If the answer to the said question was to be in the negative, the High Court should have refused to exercise its jurisdiction".* (emphasis supplied)

So normally, this Court may not entertain Writ Petitions under Article 226 of the Constitution of India with regard to contracts between the Bankers and their customers; but, in a situation where the respondent-Bank is a *State* within the meaning of Article 12 of the Constitution of India, and where it acts in an unfair, unreasonable or arbitrary manner, the High

[1] 2008(12) SCC 541

Court is entitled to interfere with the said action in exercise of their jurisdiction under Article 226 of the Constitution of India.

The decision in 1991 of the Supreme Court in Hyderabad Commercials Vs. Indian Bank

In **Hyderabad Commercials Vs. Indian Bank**[2]**,** a three Judges Bench of the Supreme Court held that Nationalized Banks are instrumentalities of the State and amenable to Writ jurisdiction, and *they must function honestly to serve their customers*.

In that case, the appellant had a Current Account with Indian Bank and was depositing money through cheques in the said *current account* from time to time. For some period the amount that were realised were credited to the appellants account, but later on, a sum of ₹12.95 lakh was transferred to the account of a third party. The appellant protested the transfer of the said amount on the ground that it had never authorized the Bank to transfer the amount to the third party account. The Bank even admitted that the transfer was unauthorized and the amount would be re-credited to the appellant's account within 2 months but, it did not do so.

When a Writ Petition was filed by the appellant before the High Court for a direction to the Bank to deposit the said amount in its account, the Bank opposed the claim on the ground that the transfer of the amount was made on oral instructions of the appellant.

The High Court dismissed the Writ Petition on the ground that the case involved disputed questions of fact.

---

[2] AIR 1991 SC 247= 1991 Supp (2) SCC 340

The Supreme Court set aside the order of the High Court and allowed the Writ Petition holding that there was clearly a transfer of the disputed amount from the appellant's account to the third party account; that this was admitted by the Bank to have been unauthorized, and done without obtaining any instruction or authority from the appellant, and it had even accepted its liability to re-credit the amount to the appellants account. On such admission, the Bank, which is an instrumentality of the State, was under a legal obligation to pay back the disputed amount to the appellant, and it cannot resile later and raised a plea of oral authority only to defeat the appellants claim. The Court held that such a plea of oral instructions justifying transfer of such large amount was an afterthought which did not inspire any credence; that the Bank's conduct was reprehensible and such functioning of the nationalized bank is detrimental to public interest.

<u>The conclusion in the instant W.P</u>

Admittedly, the letter addressed on 17.06.2019 by the petitioners was to transfer the *insurance amount* to the old CC account No.3887008700002979 (which was not in existence on the said date). Even according to the Bank, on 14.06.2019, the CC limit facility had been reduced to ₹35 lakh.

Therefore, the amount can only be credited to the new CC limit account which was having A/c No.388700IB400003745 or not at all.

On the date the amount of ₹2,02,91,000/- was transferred from the previous CC account of the petitioners to the WCTL account i.e. on 26.6.2019, there was no written authority from the petitioners authorizing the Bank to do so.

The whole purpose of giving a WCTL of ₹325 lakhs is defeated, if such a loan amount, which was repayable by 2029, is drastically reduced by adjusting the insurance amount on the basis of the clause incorporated on 04.07.2019, permitting such liquidation/adjustment.

It is unfortunate that the Bank had even ignored the directive of respondent No.5 issued vide orders dt. 02.03.2020 (P10) and 06.03.2020 (P11) directing the insurance amount to be permitted to be utilized for the purpose of raw material or for labour and finding fault with the adjustment in the FITL (wrongly mentioned by the Ombudsman for WCTL).

Ex facie the conduct of the respondent-Bank in crediting this amount and adjusting it to the WCTL account is arbitrary, unreasonable and unfair. It cannot be said to have functioned honestly as is required to be done, being an instrumentality of the State, which is bound to follow Article 14 of the Constitution of India.

Respondents No.2 to 4, therefore, cannot take advantage of their own illegal action and proceed against the petitioners under the SARFAESI Act.

Result

Accordingly, the Writ Petition is allowed. Respondents No.2 to 4 are directed to transfer back the amount received as insurance claim amounting to ₹2,53,62,642/- to the Working Capital account of the petitioners with interest @ 6% per annum from 26.06.2019 till such transfer is made so as to enable the petitioners for utilizing it for running its unit within *four weeks* from the date of receipt of a copy of this order; petitioners shall transfer ₹7 lakh to the respondents 2-4 within 4 weeks for regularizing their loan accounts; and on such payment, they are directed to regularize the loan account of the petitioners one week thereafter; they are also restrained from proceeding against the petitioners under the SARFAESI Act,2002.

Respondents No.2 to 4 shall also pay costs of ₹30000/- to the petitioners within *four weeks* from today.

(M.S. Ramachandra Rao)
Judge

11.05.2022
Vivek

(H.S. Madaan)
Judge

1. Whether speaking/reasoned? Yes/No
2. Whether reportable? Yes/No