OCD-2

ORDER SHEET

AP/421/2023

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

MOHIT MALL
Versus
MOTI LAL RATHI AND ANR.

BEFORE:
The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA
Date : 14th July, 2023.

Appearance:
Mr. Swatarup Banerjee, Adv.
Mr. Avishek Guha, Adv.
Mr. Sariful Haque, Adv.
Ms. Debarati Das, Adv.
Ms. Akansha Chopra, Adv.
...for the petitioner

Ms. Usha Doshi, Adv.
Ms. Priyanka Gope, Adv.
...for the respondent no.2

The Court: This is an application filed by the petitioner under Section 9 of the 1996 Act for an order restraining the respondent no.2 Bank/Small Industries Development Bank of India (SIDBI) from giving any effect to a notice of invocation dated 27th June, 2023. The respondent does not seek any other relief and submits, through counsel, that the other relief prayed for in the form of the direction on the first respondent to pay a sum of Rs.1.75 crores can be decided in the arbitration.

The impugned notice of 27th June, 2023 issued by the respondent no.2/SIDBI is a notice enforcing a deed of guarantee executed between the petitioner, the respondent no.1 and others as guarantors with SIDBI on 23rd March, 2017.

The admitted facts in the present application are as follows:

The petitioner was a director and a majority share-holder of a company, namely, Karani Techtex Print Private Limited. The petitioner entered into a Share Purchase Agreement (SPA) dated 19th July, 2019 with the respondent no.1 for selling the petitioner's shares in the said company. The SPA describes the respondent no.1 as the "purchaser" and the petitioner as the "seller". The respondent no.1 bought the petitioner out in terms of the SPA and the petitioner resigned from the company on 13th December, 2019. The company had accepted the resignation by an earlier letter dated 25th November, 2019. The fact of the petitioner's resignation from the company was informed to the respondent no.2 by the company by a letter dated 2nd January, 2020. The petitioner also informed the bank of the said fact by a mail of 8th July, 2020 stating that the petitioner's name will be replaced by the current management of the company and requested the bank to release the petitioner's collateral and personal guarantee. The petitioner reiterated the request for release of personal guarantee by a letter of 10th July, 2020.

The issue which arises is whether the respondent no.2 bank can or is entitled to invoke the deed of guarantee against the petitioner after the respondent no.1 bought the petitioner out from the company and all such facts were made known to the bank. The bank, in fact, replied to the petitioner's mail/letter on 14th July, 2020 stating that the bank will consider the petitioner's proposal for release of security on the company providing additional security to the satisfaction of the bank. The bank also stated that it will release the petitioner's security upon approval of the competent authority and creation of charge on a new security by way of a mail of 19th October, 2020.

Apart from the admitted fact of the bank being duly put on notice of the petitioner's exit from the company as director and share-holder, the SPA contains certain clauses which are significant for deciding the rights of the petitioner to claim relief against the bank. Clause 2.3.1 of the SPA provides that all liabilities of the company past, present and/or future shall now be borne by the purchaser (the first respondent) including but not limited to statutory liabilities, all commitments to private and public financial institutions. Clause 2.3.3 further provides that the purchaser (respondent no.1) shall ensure release of all personal guarantees and collateral of the seller (petitioner) placed on behalf of the company from financial institutions latest by 31st March, 2020. Clause 4 provides for indemnification and damages whereby indemnifying party/defaulting party agrees to indemnify and defend and hold harmless, the other non-defaulting party against damages, losses, liabilities and obligations.

The Clauses, hence, provide for a clean and complete exit of the petitioner from all liabilities and for the respondent no.1/purchaser to take over these liabilities. Admittedly, it appears from the cause of action brought to the Court that the respondent no.1 may not have discharged his liabilities under the SPA.

Whatever the case may be, the respondent no.2/bank cannot plead ignorance of the admitted facts. The letters of the bank would show that the bank had notice of the petitioner selling out his shares in the company in favour of the first respondent and the bank intending to take appropriate steps upon certain other conditions. The bank, hence, cannot invoke or enforce the guarantee against the petitioner long after the liabilities of the petitioner including under the guarantee were to be taken over by the respondent no.1.

There shall, accordingly, be an order restraining the respondent no.2 bank/SIDBI from giving any effect or further effect to the impugned notice dated 27th June, 2023.

Since learned counsel appearing for the petitioner submits that the petitioner will immediately take steps for referring the parties to arbitration, the interim order shall be in place until constitution of the Arbitral Tribunal but not later than 15th September, 2023 for the parties to take requisite steps under the Arbitration Agreement which is contained in Clause 8 of the SPA.

AP/421/2023, is, accordingly, disposed of in terms of the above.

Since affidavits have not been called for, the allegations contained in the application shall be deemed not to have been admitted.

(MOUSHUMI BHATTACHARYA, J.)

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