IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1359 of 2019
In
Civil Writ Jurisdiction Case No.2775 of 2017

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M/s Pareena Motors Private Limited a company under Companies Act, 1956, through its Director Sri Akhouri Gopal, S/o Late Akhouri Banshidhar having its Registered Office at banshi Sada, At Mohalla- Chandchaura, P.S. Civil Lines, Gaya Anchal- Chandauli, Distt.- Gaya.

... ... Appellant/s

Versus

1. State Bank Of India Branch at Dakbunglow Road, Patna SBI Specialised Commercial Branch, Account migrated at State bank of India, Stressed Assets Management Branch, 5th Floor, SBI patna, Zonal Office Building, J.C. Road, Patna through Assistant General manager
2. Presiding Officer Debt Recovery Tribunal, Karpuri Thakur Sadan, Ashiana Digha Road, patna

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr.Arbind Kumar Jha, Advocate
For the State Bank of India: Mr. Anjani Kumar Mishra, Advocate
Mr. Ambarish Bhardwaj, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-07-2024

The writ petition challenged the order passed by the Debt Recovery Tribunal in exercise of the power conferred under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (‘Act of 1993’ for short).

2. The learned Single Judge was of the opinion that the extraordinary remedy under Article 226 of the Constitution of India should not be invoked in view of the adequate and

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efficacious alternative remedy of appeal available under Section 20 of the Act of 1993 as has been held by the Hon'ble Supreme Court in the case of ***United Bank of India Vs. Satyawati Tandon & Ors*** reported in ***(2010) 8 SCC 110.*** However, since the question raised against the order was one on jurisdiction; which the writ petitioner asserted that the Debt Recovery Tribunal lacked, under Section 19 of the Act of 1993, the matter was elaborately heard. The learned Single Judge found that on the admitted position of the two companies being under the control of the identical management comprising of the very same Directors, the default in the loan of one of the companies leads to declaration of loans in the other Company to be a Non Performing Asset ('NPA' used as the initialism), by the RBI Master Circular regulating the declaration of NPA. The petitioner's loan have also could be declared NPA. Learned Single Judge also found that even otherwise by invoking the measure of lifting of the 'c*orporate veil*' both the companies are identifiable as the very same entity and even otherwise they are associate companies as defined under Section 2(6) of the Companies Act, 2013. The learned Single Judge found the declaration of NPA with respect to the loans availed by the writ petitioner company, to be perfectly in order, despite the Cash

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Credit Account having not been availed to its full limit. The jurisdictional error asserted by the writ petitioner was negatived.

3. The learned Counsel appearing for the petitioner in the appeal, filed by the writ petitioner, argued that the learned Single Judge fell into an error in equating the two companies as one entity. It is argued; the trite law is that the holding company and the subsidiary company are two different entities and the default of one cannot lead to the other being made a defaulting company. The petitioner-company had taken loan which were not fully drawn up to the sanctioned limit and there was absolutely no question of declaration of such loans as NPA. Merely, for reason of the other company's loans having been declared NPA, there could not have been proceeding taken under Section 19 of the Act of 1993. The appellant asserted that the proceedings are without jurisdiction.

4. The learned Counsel appearing for the Bank on the other hand has pointed out that the loans to the two companies were disbursed as Group Companies, the Directors were the same and the management was also hence identical. The loan to the present company was sanctioned without taking any collateral security and merely on the personal guarantee issued by the Directors who were the Directors in the other company

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whose loans were declared NPA.

5. The provision in the RBI Master Circular provided that a borrower having more than one facility within a Bank would face the consequence of all the facilities being declared NPA on one of such facilities being declared NPA; having become irregular. The Master Circular also permitted declaration of an asset as NPA if there is threat of loss or the recoverability of the advance is in doubt. The defaulting company had significant influence in the affairs of the appellant and since both are joint ventures; on that count also the declaration of NPA is perfectly in order. The learned Standing Counsel urged that the appeal is to be dismissed.

6. Admittedly, the appellant-company, M/s Pareena Motors Private Limited and M/s Ramanandi Automobiles Private Limited were under the same management and the Directors were identical. The Cash Credit Account of M/s Ramanandi Automobiles Private Limited, without dispute, was classified as NPA on 30.09.2014 in accordance with the Reserve Bank of India Master Circular. It was on the default that occurred in the Cash Credit Account of the other company that the appellant company’s loan account was also declared as NPA under Clause 2.2.2 of the RBI Master Circular.

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7. The appellant-company had taken a Cash Credit Facility under Electronic Dealer Finance Scheme (for brevity 'EDFS') of Rs. 10 Crores on 22.03.2013. When the loan account of the company was classified as NPA on 30.09.2014 the ledger balance of the company was within the limit; the debit balance being Rs. 6,59,19,692.07 as on 30.09.2014. On 26.09.2014 the appellant Company had requested conversion of the entire outstanding as a Fund Based Working Capital (hereinafter initialism used of 'FBWC'). For conversion of the entire outstanding as a FBWC limit, sanctioned under EDFS facility, the bank had issued a letter of arrangement dated 08.10.2014, wherein it had agreed to sanction or renew the working capital limits and/or term loan limits at existing/enhanced levels subject to certain conditions. It is after such agreements being executed that the petitioners loan account was classified as NPA on 30.09.2014; which date was prior to the submission of the letter of arrangement and deed of guarantees. By reason of the change in the character of the loan account, agreed upon by the Bank and the limit in the earlier facility also not having exceeded, it did not have debit balance liable for recovery or demand. The Bank is estopped from declaring the loan account of the assessee as a NPA is the

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primary argument.

8. The Learned Single Judge had looked at the definition of 'Associate Company' under the Companies Act, 2013 to find that the two companies which are the subject of the controversy in the above case are associate companies liable to be treated as one single entity. Learned Counsel for the appellant, however, argues that the other company is the holding company and it does not have the influence which could classify both as associate companies.

9. We are of the opinion that there is no sufficient material to find that both the companies are associate companies. 'Associate Company, as per the definition, in relation to another company means a company in which the other company has a significant influence. The explanation appended exclude a subsidiary company from the definition. The explanation to the definition also qualifies 'significant influence' as control of at least twenty percent of total share capital.

10. Learned Single Judge has found that there is significant influence for reason of the company which was declared as NPA having 20 per cent of the share capital in the appellant. It is not clear as to whether the shareholders are the

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Directors or the other Company itself. The admitted position is only that the Directors are the same and the management is identical. Though, we find that there is insufficient material to find the two companies to be associate companies under the Companies Act, we cannot but approve of the decision of the learned Single Judge that the measure of lifting of *'corporate veil'* would squarely apply with respect to the two private limited companies; on the admitted position that both of them are controlled by the very same people, who are the Directors.

11. In this context, we have to specifically notice the submission of the respondent-Bank, which has not been controverted by the appellant, that, no collateral security has been taken or mortgage of properties carried out for extending the loans to the appellant-companies; which has been done only on the personal guarantee of the Directors, who are the Directors in the defaulting Company too.

12. We have also looked at paragarph no. 2.2.2 of the RBI Master Circular produced as Annexure-8 in the counter affidavit filed on behalf of respondent-State Bank of India which is also extracted in the judgment of the learned Single Judge. Sub-clause (i) of Clause 2.2.2 which has the nominal heading of 'Treatment of NPAs- Borrower-wise and not

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Facility-wise' mandates that in respect of a borrower having more than one facility with the bank, all the facilities granted by the bank will have to be treated as NPA and not the particular facility or part thereof which has become irregular. When the measure of lifting of 'c*orporate veil*' is employed, the identity of management of the two companies, which have the very same Directors, brings both the companies clearly under the Master Circular; enabling the facilities availed by the two companies to be treated as a single borrower. The facility of the appellant-company, despite it having not been defaulted or exceeded the limit granted, is liable to be treated as NPA for reason of the facilities granted to another private limited company with the very same Directors, having been declared as NPA. We have to pertinently observe that there is no dispute with respect to the declaration of NPA of M/s Ramanandi Automobiles Private Ltd.

13. The further condition urged is that the petitioner had entered into an agreement for conversion of the limit in the Cash Credit as a working capital and there could not have been a retrospective declaration of NPA as on 30.09.2014, when subsequent to that date, the agreements were executed for reworking the facility which changed the character of the loan itself. True, the Bank had agreed to conversion of the loan on

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certain conditions and agreements were also executed, but this does not deviate from the fact that the facility which was availed by the appellant company was rendered a NPA under the Master Circular on 30.09.2014 itself by reason of the facility granted to the other company having been declared NPA on the very same date. There is no question of retrospective declaration since the categorization of NPA is an automatic consequence of the facility granted to the other company having been declared a NPA on 30.09.2014. The further agreements executed without reckoning the declaration of an asset as NPA, would be negatived and neither the bank nor the borrower can wish away the consequence of the facility having been declared NPA. Further action of the bank would be rendered nugatory as it has no such authority to override the Master Circular of the Reserve Bank of India; the regulatory authority, and treat the NPA as a functional loan account.

14. We would also specifically rely on sub-clause (i) of Clause 2.2.1 (Record of Recovery) as is available in the Master Circular, which has also been extracted by the learned Single Judge. This permits the declaration to be made as NPA when there is a threat of loss or the recoverability of the advances is in doubt. Admittedly, the facilities given to the appellant company;

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though not exceeding the limit sanctioned, is running with a debit balance and recovery is in doubt for reason of the other company's account having been declared NPA; which raises a reasonable apprehension of threat of loss. This is a compounding factor in treating the account of the appellant company's loan account as NPA.

15. We have also gone through the order of the Tribunal produced along with the writ petition which specifically speaks of the proceedings under Section 19 of the Act of 1993 having been initiated against the company for the debt due to the bank from the company. The Tribunal has found the declaration of NPA of the appellant company's loan account as perfectly within the four walls of the RBI Master Circular. We agree with the Tribunal as also the order of the learned Single Judge; except for the reservation regarding the two companies being treated as associate companies; which we are not venturing into for reason of sufficient material not been available. We make it clear that we have not held that the two companies are not associate companies, but restrain ourselves from ruling on that aspect on the ground of insufficient material. However, on the other aspects we perfectly agree with the learned Single Judge and the jurisdictional question raised in the writ petition is

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answered in favour of the respondent-Bank and against the appellant company. We further make it clear that the appellant-company would have the remedy of appeal, wherein, all questions would be left open; except the question of jurisdiction which has been answered by this Court. The appellant company could avail the remedy of appeal; with just exceptions including that of limitation.

16. The appeal would stand rejected leaving the parties to suffer their respective costs.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.07.2024
Transmission Date	NA

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