D/L. 4.
May 16, 2024.
MNS

WPA No. 13416 of 2024

Bank of Baroda
Vs.
West Bengal Essential Commodities Supply Corporation Limited and another

Mr. Avishek Guha,
Ms.Sonal Agarwal

…for the petitioner-bank.

Mr. Susanta Dutta,
Mr. Sanjay Saha

…for the respondent no. 1.

Mr. A. N. Bhattacharyya,
Ms. Sayani Das,
Ms. Sreyashi Basu

….fopr the respondent no. 2.

1. The petitioner-bank contends that initially there was a bipartite lease and service agreement between the respondent no.1 and respondent no. 2, by which the respondent no. 2 let out a godown to the respondent no. 1.

2. As per clauses 6 and 7 thereof, the lessee shall pay the rent through the bank nominated by the lessor during the guarantee period from the date of taking over the godown. Bank loan if required could be had from any banker at the initiative of the lessor. It was further provided that the choice of the bank loan, bank and branch to be borrowed from, are the choice of the lessor

and the lessee will give consent if required only to the extent of entering into tripartite agreement with the bank and the lessor for payment of rent directly to the bank upon taking over the godown.

3. Clause 7 stipulates the rate of rent.
4. Learned counsel for the bank also places reliance on a subsequent tripartite agreement dated March 24, 2015 entered into between the petitioner, the respondent no. 1 and respondent no. 2 in terms of Clause 6 of the bipartite lease and service agreement between respondent no. 1 and the respondent no. 2.
5. As per clause 2 of the tripartite agreement, in terms of Clause 6 of the lease and service agreement between the respondent no. 1 and respondent no. 2 already executed, the first party to the tripartite agreement (the present respondent no. 1) consented to transfer the rent amount directly in the account of bank vide Account No. 4824020000060 maintained with the named branch of the petitioner-bank.
6. Pursuant to the same, the respondent no. 1 has all along been paying rent directly to such account of the petitioner-bank. However, although the respondent no. 1 surrendered the tenancy in favour of the respondent no. 2, the rent for the months of July, August and half of September, 2023 were not paid to the petitioner.
7. Claiming such outstanding amount, the petitioner gave representations to the respondent no. 1, despite which

such amount has not been paid, leading to the present writ petition.

8. Learned counsel for the respondent no. 1 submits that the bank never raised any bill directly on the respondent no. 1, but the respondent no. 2 has been raising bills on the respondent no. 1.
9. Learned counsel for the respondent no. 1 further denies having received the alleged representations by the petitioner as annexed to the writ petition regarding such payment.
10. It is argued that in the absence of bills having not been raised against the respondent no. 1, no liability accrues against the respondent no. 1.
11. Learned counsel for the respondent no. 2 / lessor contends that there is already a pending proceeding before the MSME Council under the MSME Act between the respondent no. 1 and respondent no. 2 on the self-same issue. The respective dues and liabilities between the respondent no. 1 and respondent no. 2 are the subject matter of dispute in the said proceeding.
12. That apart, learned counsel for the respondent no. 2 argues that the said respondent has preferred a challenge against the classification of the account of respondent no. 2 by the petitioner-bank as Non Performing Asset (NPA).
13. Hence, the respondent no. 2 apprehends that in the event the claim of the petitioner-bank is disbursed to the

respondent no. 1, the same may be debited from the dues of the respondent no. 2 from the respondent no. 1, thus directly affecting the interest of the respondent no. 2.

14. Upon hearing learned counsel for the parties, certain facts are evidenced from the annexures to the writ petition as well as the submissions of all the parties.

15. First, in terms of Clause 6 of the Lease and Service agreement entered into between the respondent no. 2 and the respondent no. 1, which is an admitted document, the lessee, that is, the respondent no. 1 was to pay rent through the bank nominated by the lessor during the guarantee period. The choice given to the lessee was only to give consent if required to the extent of entering into a tripartite agreement with the bank and the lessor for payment of rent directly to the bank upon taking over the godown. The choice of the bank etc. was reserved with the lessor. Such choice was admittedly exercised by the respondent no. 2, nominating the petitioner as the bank of choice. Thus, Clause 6 became binding on the respondent no. 1 insofar as the payments were to be made directly to the petitioner. The said position was further strengthened by the petitioner, respondent no. 1 and respondent no. 2 having entered into a tripartite agreement on March 24, 2014 pursuant to Clause 6 of the Lease and Service agreement, which was specifically referred to in the

tripartite agreement, and the number of the particular account in which the amount was to be directly paid by the respondent no. 1 was also clearly enumerated.

16. Thus, there is no ambiguity whatsoever in the agreement entered into between the three parties concerned as regards the liability of the respondent no. 1 to pay the rent directly to the nominated account of the petitioner.

17. Such position was cemented further by the respondent no. 1 having all along paid rent in such account of the petitioner pursuant to the two agreements referred to above.

18. Thus, the respondent no. 1, having acquiesced to such position and being bound by two agreements, cannot now resile from the said position and, merely relying upon the flimsy pretext that no bills were raised directly on them, cannot be permitted to disown its liability to pay the rent for the months of July, August and half of September, 2023 directly to the said account of the petitioner.

19. Insofar as the pendency of the MSME Council matter is concerned, the petitioner / bank is not bound by the bipartite agreement between respondent nos. 1 and 2, being a third party thereto.

20. The MSME Council cannot exceed its jurisdiction insofar as the dispute before it does not extend to third parties to the agreement from which the dispute emanates.

Thus, it cannot be said that the MSME Council matter is a deterrent to the petitioner's present claim.

21. Although there may be disputes *inter se* between the respondent no.1 and the respondent no. 2, the same cannot debar the petitioner from claiming its dues in terms of the loan agreement with the respondent no. 2 as well as the tripartite agreement and the lease and service agreement by which the respondent no. 1 is bound in any event.

22. The respondent no. 2's challenge to the NPA classification has nothing whatsoever to do with the present dispute.

23. In view of the above observations, it is the incumbent duty of the respondent no. 1, a State entity, to deposit the due rents for the months of July, August and half of September, 2023 to the tune of Rs.44,40,000/- in the designated account of the petitioner-bank mentioned in Clause 2 of the tripartite agreement dated March 24, 2015 entered into between the petitioner, respondent no. 1 and the respondent no. 2.

24. Accordingly, WPA No. 13416 of 2024 is allowed on contest, thereby directing the respondent no. 1 to deposit the outstanding rent dues of Rs.44,40,000/- to the account of the petitioner as indicated above within June 15, 2024.

25. It is made clear further that none of the observations made herein shall prejudice the rights and contentions

of either the respondent no. 1 or the respondent no. 2 in the pending proceeding before the MSME Council or before any other forum.

26. There will be no order as to costs.

27. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)