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IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction

ORIGINAL SIDE

WPO/630/2024
HARISH KUMAR AGARWAL & ORS.
VS
AXIS BANK & ANR.

BEFORE :
THE HON'BLE JUSTICE SHAMPA SARKAR
Date : 20th August, 2024

Appearance :
Mr. D.N. Sharma, Adv.
Mr. Arkodeb Sinha, Adv.
Mr.Mainak Biswas, Adv.
Ms. Simran More, Adv.
..for the petitioner.

Mr. Pourush Bandyopadhyay, Adv.
..for the respondent no.2.

Mr.Souradeep Banerjee, Adv.
Ms. Sanjana Sinha, Adv.
Mr.S.K. Banerjee, Adv.
..for the respondent no.1.

The Court : 1. The writ petition has been filed challenging the order dated May 2, 2024 passed by the Fraud Identification Council in respect of classification of the account of Supreme & Co. Private Limited as fraud. The Fraud Identification Council of the Axis Bank passed the order. Axis Bank is one of the consortium of banks. The account of the petitioner was classified as NPA by the Axis Bank on December 29, 2022. The advances were recalled on March 13, 2023 and notice under Section 13(2) of the SARFAESI Act was issued on November 17, 2023. The forensic audit was conducted by the consortium. The forensic audit report indicated non-cooperation by the borrower indicating that the borrower had withheld information pertaining to its books of accounts and other key documents. The borrower did not provide any cooperation or assistance towards verification of quantity/value of stock, stock-inwards and stock-outwards registers. The borrower was found to have entered into sales transactions with Utkal Galvanisers, a related party. As per the stock statement of the borrower, there were outstanding receivables of Rs.16.22 crores from Utkal Galvanisers. As Utkal Galvanisers was found to have positive net worth for financial years 2020-21 and 2021-22, it was observed that the outstanding receivables from related party against sales made in the financial year 2019-20 amounted to diversion of funds by the petitioners.

2. A show cause notice was issued to the petitioners. The petitioners filed answers to the show cause notice. It is an admitted position that the forensic audit report was served upon the petitioners. Details of the forensic report have been provided in the order itself. The Fraud Identification Committee/Council gave a hearing to the petitioners and details of the personal hearing have been referred to in a schedule to the order. The final order was passed upon deliberation and consideration of the correspondence, representations and documents and also upon taking into account the submissions of the petitioners. The petitioners were classified as Fraud and the bank had filed the Fraud Monitoring Return with the RBI and also updated the status of the account on CRILC platform. The bank has lodged a complaint with the police and reserved the right to continue with the recovery.

3. The learned advocate appearing for the petitioners submits that page 51 of the order does not reflect any reason for declaration of fraud and the only reason assigned,

is "Adverse findings of the forensic audit report". It is submitted that the Committee, wrongly referred to as the Council, had not applied its mind. The names of the members of Committee/Council were not disclosed. The addendum to the forensic audit report was not supplied to the petitioners. The petitioners obtained the same from another source. The petitioners have placed reliance on the following decisions :

(i) Prashant Bothra And Another Vs. Bureau of Immigrations and Others, reported at 2023 SCC Online Cal 2643;

(ii) Rajaram Sevak Multipurpose Cold Storage (P) Ltd. And Others Vs. Punjab National Bank and Anr., reported at 2024 SCC Online Cal. 4260;

(iii) Ridhi Sidhi Cold Storage Pvt. Ltd. and Others Vs. Punjab National Bank and Another reported at 2024 SCC Online Cal. 4261.

4. Learned advocate appearing for the Axis Bank, which is one of the members of the consortium banks and was responsible for declaration of fraud, submits that the Schedule III, referred to at page 51 was one of the conclusions backed by other findings of the Committee. The Committee had categorized the proceedings, findings and submissions into separate schedules. The order should be read along with the said schedules. The schedules contained the gist of the forensic report and other observations which persuaded the Committee to arrive at a conclusion that the account should be declared as fraud. It is further submitted that the addendum was not relied upon by the Committee. There is no reference to any of the contents of the addendum in the order. The specific case of the bank is that the Committee had recorded the

submissions of the petitioners, how the proceedings continued and how each of the findings of forensic audit would match the situation, which persuaded the Committee to take support from the audit report and arrive at the conclusion.

5. Heard learned advocates for the respective parties. Page 40 of the writ petition is a forwarding letter by which the order of the bank was communicated to the petitioners. Clause A at page 41 talks about the brief background of the account. The background of the account has been provided in details in seven clauses. Clause B mentions the Early Warning Signals (EWS), Red Flag Account (RFA) and Forensic Audit Report. The details of each of these factors have been provided in Schedule I Part A of the order. Schedule I Part B of the order contains the sum and substance of the EWS, RFA and Forensic Audit Report. These were the aspects which were relied upon by the bank. Schedule I Part B consists of key findings of the Forensic report which were summarized by the bank in the order. Details of the show cause notice/reminders, follow ups and replies received, were summarized in Schedule II, Part A. Clause C at page 41 deals with the subject matter of the show cause notice(s)/reminders, follow ups and replies received. Clause D deals with details of personal hearing granted which have been summarized in Schedule II Part B of the order. Schedule 2 Part E deals with the finding/decision.

6. Thus, the order itself consists of various parts/schedules which deal with each of the aspects taken into consideration by the Committee/Council. Schedule I Part B deals with the key findings of the Forensic audit report and such key findings have

been categorized into various heads, i.e. non-cooperation from the borrower, observations on movement of inventory, longstanding receivables from related party, comparative analysis of trade payables as per Stock Statement and ABS. Comparative analysis of trade payables as per audited balance-sheet and stock statement for financial year 2020-21 till 2022 have been depicted at page 45. Similarly, observations on movement of long term loans and advances, party-wise details of advances extended by the borrower, all have been mentioned in a tabular form at page 45 and 46. It was found that advances amounting to Rs.2.69 crores were given to one of the subsidiaries of the borrower although there were prior outstanding upto 2019. Thus, the conclusion of the Forensic Auditor was taken into account and relied upon. It was found that the fraud which was declared by the Forensic auditor was applicable in the facts and circumstances of the case. The details of the Forensic audit report which forms a part of Schedule 1 and which was relied upon by the bank by categorizing each of the findings under different sub-heads, shows application of mind by the Committee. The response of the borrower has been elaborately discussed in pages 47 and 48 of the writ petition. Schedule II Part A also deals with the queries made in the show cause notice, the borrower's response to the show cause notice, the auditor's view and a comparative analysis on trade payables as per the statement and ABS. The details of the personal hearing which was given to the petitioners have been highlighted in Schedule II Part B. In the personal hearing an opportunity was given to one Harish Agarwal, the promoter director and Rajesh Agarwal part of promoter family and acting president. With regard to adverse observations, Rajesh Agarwal responded to the queries of the respondents.

The company's representatives were asked about the reason for longstanding receivables from Utkal Galvanizers which was a related party. Response of Rajesh Agarwal to the query was again dealt with and enumerated. All these aspects have been enumerated at pages 49 and 50. At page 51, the reason given for declaring Supreme & Co. as fraud is "adverse findings of the forensic audit report". This is a reflection of the reliance placed on such report.

7. Under such circumstances, the bank placed reliance on the forensic audit report and analysed the findings along with the answers to the queries given by the representatives of the petitioners and came to the conclusion that fraud should be declared. The findings of the report were found to be correct and reliable, upon considering the answers of the petitioners. Judicial review of the order, under such circumstances, is not called for. The order should be read as a whole. The order runs from pages 41 to 51. The writ court, in judicial review cannot decide the propriety of the order which are entirely based on records, facts and the finding of the auditor. The factual aspects with regard to EWS, FMR, Forensic Audit Report and correctness cannot be the subject matter of judicial review. In this case, principles of natural justice have been followed. The order is reasoned. Reliance was placed on the forensic audit report which was supplied to the petitioner. The answers were found unsatisfactory. A comparison and analysis of the auditor's view with the submissions of the petitioners was made and thereafter the classification of fraud was done.

8. The decision in Prashant Bohtra and Anr. (supra) will not apply. The decision was with regard to a look-out circular and His Lordship was of the view that even if the bank declared the petitioner's account as fraud and there was a forensic audit report, in order to originate a look out circular other parameters as per the memorandum of the government had to be met.

9. With regard to Rajaram Sevak Multipurpose Cold Storage (P) Ltd., the co-ordinate Bench held that the declaration of fraud could not be sustained as the forensic audit report was not supplied to the party and also because the order was devoid of reasons.

10. In Ridhi Sidhi Cold Storage Pvt. Ltd. & Ors. (supra), the finding of the co-ordinate Bench was similar to the one in Rajaram Sevak Multipurpose Cold Storage (P) Ltd (supra). Here, is not a case where either the forensic report was not supplied to the petitioner or the finding is of devoid of any reason. The addendum was not relied upon and the pleadings do not indicate whether the findings were influenced by the addendum.

11. In such circumstances, the writ petition is dismissed.

12. All parties are to act on a server copy of the order.

(SHAMPA SARKAR, J.)

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