OCD-15 ORDER SHEET

AP-COM/39/2023
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
(COMMERCIAL DIVISION)
ORIGINAL SIDE

M/S UGRO CAPITAL LTD
VS.
BHARAT ELECTRICAL ACCESSORIES P LTD AND ORS

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 12th November, 2024.

Appearance:
Mr. Satarup Banerjee, Adv.
Mr. Paritosh Sinha, Adv.
Mr. K.K. Pandit, Adv.
...for the Petitioner

Mr. Ishan Saha, Adv. (V.C)
Mr. ShivamBhimsaria, Adv.
Ms. AkanshaSinghania, Adv.
...for the Respondent No. 1.

Mr. A. Avasthi, Adv.
...for the Respondent No.2 to 6.

The Court : This is an application under Section 9 of the Arbitration and Conciliation Act, 1996 for an injunction in terms of prayer (d) of the application. Prayer (d) is quoted below;

(d) "Injunction restraining the respondents their men, servants, agents, assigns and representatives from withdrawing any money from bank accounts

morefully mentioned in Annexure G hereof without keeping aside an amount of Rs.2,08,19,870/-."

Mr. Satarup Banerjee, learned Advocate for the petitioner draws the attention of the Court to the loan sanction letter dated July, 25, 2023 and submits that the facility amount of Rs.2 crores having a tenure of 12 months with a the tenure of 90 days for each tranche, was sanctioned in favour of the petitioner. Page 32 of the application contains the schedule of terms. Reliance has been placed on the said terms. It is submitted that irrespective of the fact that Vedanta Limited was the principal of the borrower, the respondents were treated to be the borrowers all along and were liable to repay the amount as per the schedule. The recall notice has been placed in detail to show that an amount of Rs.2,08,19,871/- was due and payable by the respondents against loan account No.UGDADEL000000481. It is contended that the term of the facility ended in July, 2024, but the amount remained outstanding. Reliance has been placed on the accounts of the petitioner, as furnished by the respondent No.1 in the affidavit-in-opposition. Mr. Banerjee submits that the documents show that the loan transaction was in the nature of a current continuing account or bill discount account and as soon as the payment was received from the respondent No.1, disbursement was made on the basis of the invoices raised by the respondent No.1 of almost an equivalent sum, by keeping a margin of interest for the financier.

According to Mr. Banerjee, the documents at pages 10 to 15 of the affidavit-in-opposition could not, in any way, establish that the total outstanding of Rs.2,08,19,871/- had been repaid by the respondents. It is further submitted that queries were made with the petitioner as to whether they were in a position to establish the issue of repayment, supportedby bank statements, but they were not responded to. Reference has been made to an email dated March 19, 2024, by which the petitioner had sought for an opportunity to regularize the account which was running in multiple tranches, involving payment of Rs.25 lakhs each. According to Mr. Banerjee, had the petitioner paid back the entire amount, there would be no reason as to why the prayer for regularization of the account would be made. Mr. Banerjee further contends that the amount payable as per the first recall notice, remains outstanding. As and when the payments were received, disbursements were also made. The amounts had not been repaid. Thus, the question of liquidation of the principal amount did not arise and the cause of action survived against the respondents. It is contended that in view of the unpaid dues for over a period of six months after the term for re-payment had ended, there is alegitimate apprehension that the respondents would not be in a position to repay the amount and/or avoid paying the amount. Unless the money is secured by court, the situation will become irreversible by the time the dispute is finally decied. Further emphasis has been placed on a letter dated August, 6, 2024, by which the learned Advocate for the respondents was asked to clarify with bank details to substantiate the re-payment made. According to Mr. Banerjee, such letter was not answered. As the money had not been paid,supporting documents could not be filed by the respondents.

Mr. Banerjee submits that all the respondents were severally and jointly liable to repay the loan.The respondent Nos. 2 to 6 had affixed their digital signatures in the documents and their names have also been incorporated as borrowers, just below the name of the respondent No. 1.

Mr. Ishan Saha, learned Advocate for the respondent No. 1 draws the attention of the Court to page No. 9 of the affidavit in opposition. The same is an email dated April 24, 2024. The email was written by a representative of the lender, in respect ofthe loan account being No.UGDADEL000000481. Mr. Saha's contention is that the email clearly indicates that the principal amount was no longer due, but only interest of Rs.22,373/- was due and payable. The principal amount was shown as INR0. Reference was further made to the document at page 10, which showed the loan details i.e. sanction of Rs.2 crores against application No. 15800, disbursed on August 1, 2023. Pages 14 and 15 have been relied upon to show that against the application No. 15800, payments to the tune of Rs.25 crores on three occasions, Rs.24, 50,000/- on one occasion and finally Rs.1,50,000/- on the last occasion, were made.

Mr. Saha further refers to the disbursement made by the lender upon receipt of such payment and submits that those disbursements were in relation to other agreements and or transactions. The money was sent to the account of the respondent No.1 directly and not through Vedanta. They were not a part of the loan agreement which is the subject-matter of this proceeding. Those were separate loan facilities and not the subject-matter of the arbitration agreement. Reference has also been made to page 15 of the opposition, to show the statement and monthly interest status. The loan status against the application No. 15800 depicted the same as ‘closed’, indicating that neither any interest, nor any principal was payable. The closure was dated March 31, 2024. These documents relied upon by the respondent No. 1 belonged to the lender. They were annexed to the opposition to establish how the transactionswere going on and further establish that the amount disbursed by the lender on August 1, 2023 pursuant to the invoice of Vedanta dated July 31, 2023, which was the subject matter of the recall notice, had been paid back. It is the contention of the respondent No. 1 that the subsequent payment by the bank was on account of restructurization, and not part of the agreement out of which the dispute had arisen.

Mr. Avasthi, learned Advocate for respondent Nos. 2 to 6 submits that the signatures which are appearing in the documents relied upon by Mr. Banerjee, were not consented to. The learned Advocate denies that the loan amount had benefitted the respondent Nos. 2 to 6. They had no opportunity to use the facility given by the lender. They were not beneficiaries. Reference has been made to the expression ‘borrower’ at page 32 of the applicaiton, to indicate that only the respondent No. 1 was mentioned as the borrower in the document. Even if the respondent Nos. 2 to 6 were co-applicants, no duty was cast upon the co-applicants to repay the money. He further submits that the names of the respondent Nos. 2 to 6 were mentioned as persons to whom notices or communications were to be sent, but they were never mentioned as borrowers anywhere in the loan agreement. Reliance has also been placed on the promissory note.

The question is whether the injunction, as prayed for in this application, should be allowed. From the affidavit-in-reply filed by the litigation manager of the petitioner, it appears that there is an admission with regard to the payment claimed to have been made by the respondent No. 1. The averments narrate that during the pendency of the application under Section 9, the petitioner was approached by the respondents for reschedulement of the account, by an email dated March 19, 2024. This is the email on which Mr. Banerjee has placed reliance upon. In view of the request, the account of the respondents were restructured by the petitioner. Reference has been made in this regard to the document at page 9 of the affidavit-in-reply. The same is an e-mail dated April 24, 2024, written by the lender to the borrower, indicating that only the interest amount of Rs. 22,373/- was due. The documents at pages 10 to 15 were statements annexed to the said email, which indicated restructuring. It has also beenadmitted by the deponent that the amount of Rs. 2 crores which was paid on August 1, 2023,and is the subject matter of the arbitration agreement as also the recall notice, had been restructured. Paragraphs 3 and 4 of the affidavit-in-reply clearly indicate so. It has been stated in paragraph 5 that after the restructuring, further financial assistance was given to the respondents and fresh tranches were created in terms of the restructuring requested by the respondents. The disbursement dates have been mentioned at page 5. The loan account number is the same. The invoices have been mentioned along with the disbursement dates, which tally with the documents annexed by the respondent no. 1 in the affidavit-in-opposition.

Thus, the respondent No.1 has made out a case of restructuring of the loan account, if not a case of payment of the entire outstanding. There is a clear admission of such restructuring by the petitioners' officer. The restructuring took place admittedly, after the application under Section 9 had been filed. Fresh payments/disbursements were made by the lender on 23rd March, 2024, 26th March, 2024, 27th March, 2024, 28th March, 2024 and 10th April, 2024. The contention of Mr. Banerjee that the tenure for repayment of the loan amount of Rs. 2,08,19,871/- had expired in July, 2024 and the respondents were sitting tight over the matter without payment of a single farthing, has not been established. The arguments advanced by Mr. Banerjee are questions of trial before the learned arbitrator. At the time of consideration of, prima facie case, balance of convenience and inconvenience and irreparable loss and injury, a mini trial is not required to be held by court. Whether the money disbursed on the above dates after the restructuring have been repaid or not, is not an issue before this court. The lender may also proceed according to law against such outstandings. As of now, the prayer for injunction has to be restricted to the subject matter of the agreement which has been annexed to this application.From the records and the admissions made by the lender that the restructuring was done at the request of the respondent no. 1, the court does not deem it either fit or necessary to grant an injunction in terms of prayer (d). The subsequent events have been taken into account. The pleadings are not in consonance with the latest development.

This Court does not make any observation with regard to the steps the respondent may take in respect of the subsequent dues. In this proceeding, the petitioner has failed to, prima facie, establish that there are grounds for passing an order of injunction, restraining the respondents from withdrawing money from their bank accounts, unless an amount of Rs. 2,08,19,871/- is kept aside.

Accordingly, the prayer is refused.

The application is disposed of. The observations are, prima facie, only for the disposal of the application for injunction.

All parties are to act on the basis of the server copy of this order.

(SHAMPA SARKAR, J.)

KB/TR