(2016) 01 P&H CK 0421

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 23232 of 2015 (O and M)

AB Refer Warehousing Pvt. Ltd. APPELLANT

Vs

State Bank of India and Others RESPONDENT

Date of Decision : 12-01-2016

Acts Referred:

Citation : (2016) 1 LawHerald 532 : (2016) 2 PLR 19

Hon'ble Judges : Satish Kumar Mittal and Harinder Singh Sidhu, JJ.

Bench : Division Bench

Advocate : Sanjay Tangri, Advocate, for the Appellant; Inder Pal Singh Doabia, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Harinder Singh Sidhu, J.—1. The petitioner-Company has filed this writ petition seeking directions to the respondent-Bank to adjust the amount of subsidy lying in the Subsidy Reserve Fund of the petitioner towards repayment of interest and installments of loan as per the instructions of the petitioner and further not to treat it as a defaulter till the time the amount of more than Rs. 14 crores and 23 lakhs is lying with it as the subsidy amount.

2. The Government of India in the Ministry of Agriculture had floated a scheme under the name "Horticulture Mission for North Eastern and Himalayan States" (hereinafter referred to as "HMNEH Scheme") (Annexure P-1) in the year 2010. Initially, this horticulture mission was limited to the North Eastern States including Sikkim, but it was extended to the Himalayan States of Jammu and Kashmir, Uttarakhand and Himachal Pradesh during 2003-04. This is a centrally sponsored scheme for which 100% assistance is provided by the Government of India. The Objectives of the Mission were to harness potential of Horticulture in the region by increasing production and productivity of horticultural crops, maximize economic, ecological and social benefits through diversification, provide skillful employment in the region etc. The Mission Structure was divided into four Mini Missions, as under: Mini Mission-1 (Research); Mini Mission-II

(Production and Productivity Improvement); Mini Mission-III (Post Harvest Management and Marketing); Mini Mission-IV (Processing and Value addition).

3. The petitioner wanted to establish and operate Integrated Control Atmosphere Chamber with a Pre Cooling and Grading Facility at Village Kotla, Tehsil Baddi, District Solan, Himachal Pradesh. It applied to the respondent bank for sanctioning of the Term Loan and Cash Credit facility to the extent of Rs. 23.50 crore as Term Loan and Rs. 20.00 crore as Cash Credit facility on 02.01.2013.

4. Vide letter dated 14.03.2013, the respondent bank sanctioned Rs. 23.50 crore as a Term Loan facility to the petitioner Company and stated that the petitioner''s request for sanction of the Cash Credit facility of Rs. 20.00 crore would be processed after assessing the audited balance sheet of 31.03.2013 of the sister concern of the petitioner company.

5. As per 2010-Operational Guidelines for the HMNEH Scheme, all the project proposals relating to the Scheme were required to be received by the National Horticulture Board for appraisal. The petitioner applied to the National Horticulture Board for the grant of Subsidy under the Scheme "Integrated Cold Atmosphere Multi Chambers Cold Store under Post Harvest Management under MM-III of (HMNEH) Unit" The National Horticulture Board vide its letter dated 20.09.2013, (Annexure P-4) issued a Letter of Intent (LOI) to the petitioner under the HMNEH Scheme. After availing the loan facility and Letter of Intent of Subsidy, the petitioner completed the project and the same was inspected on 18.05.2014. After the joint inspection of the Plant by the officials of the Ministry of Agriculture and the officials of the respondent bank on 24.08.2015, the Directorate of Horticulture, Shimla, released the 1st installment of Rs. 1138.00 Lac i.e., 80% of the total grant to the petitioner vide letter dated 27.08.2015 a copy whereof is Annexure P-7. After the 2nd inspection the 2nd installment of Rs. 285.47 lac being full and final payment of the Subsidy amount in view of the satisfactory report of procurement storage of apple was released to the petitioner vide letter dated 19.09.2015. (Annexure P-8).

6. It is the case of the petitioner that the amount of subsidy was wrongly and illegally kept by the respondent bank in the Subsidy Reserve Fund of the petitioner instead of putting it into the account of the petitioner itself.

7. The petitioner received a letter dated 17.9.2015 from the respondent Bank stating that the cash credit account of the petitioner is running irregular since 31.7.2015 and an amount of Rs. 10,30,934/- was due on 17.9.2015. The petitioner vide its letter dated 25.9.2015 and 14.10.2015 requested the respondent Bank to transfer the amount from the Subsidy Reserve Fund Account in which Rs. 1423.47 lakhs was lying. However no such adjustment/transfer was done. Later the petitioner received a letter dated 7.10.2015 to the effect that the irregularity in the Cash Credit Account had increased to Rs. 15,49,691/- as on 7.10.2015. Once again the petitioner requested the respondent bank to transfer the required amount from the Subsidy Reserve Fund of the petitioner. The

petitioner approached the Project Director, MIDH, Directorate of Horticulture, Shimla, who clarified vide his letter dated 26.10.2015 (Annexure P-18) that the Department of Horticulture had released the full and final subsidy amount of Rs. 1423.47 lakhs in favour of the petitioner after completion of all codal formalities as per guidelines vide release orders dated 27.8.2015 and 19.9.2015 respectively as Credit Linked back ended Subsidy. The petitioner was asked to utilize the subsidy amount as per the terms and conditions of the release order and maintain subsidy account of the grant-in-aid alongwith audit statement of accounts. The petitioner thereafter forwarded this communication to the respondent bank and again requested it to adjust the irregularity out of the subsidy fund of the petitioner lying with it. When this was not done, and the account of the petitioner was in danger of being put in the list of non performing assets, the petitioner filed the present petition praying for directions as aforementioned.

8. Separate written statements have been filed by respondents No. 1 and 2. In the written statement filed on behalf of respondent No. 1-Bank, it has been stated that the respondent bank vide letter dated 19.10.2015 had sought clarification from the Government of India, in the Ministry of Agriculture regarding adjustment of the subsidy amount as requested by the petitioner. In response to the said letter, clarification dated 19.11.2015 (Annexure R1/5) was received from the Ministry of Agriculture which clearly stated that the projects of the petitioner were sanctioned Credit Linked Back Ended Subsidy against capital cost as per financial closure worked out by the Bank under erstwhile MM-III Norms of HMNEH under MIDH Guidelines. It was stated that the back ended subsidy received by the lending bank is to be kept in a separate Subsidy Reserve Fund Account. No interest will be applied on the term loan equivalent to subsidy portion by the Bank. The adjustment of subsidy is to be done on the pattern of back ended subsidy in a manner that the subsidy amount is adjusted after the term loan portion (excluding subsidy) is repaid by the promoters. It was further stated that the adjustment of subsidy received from SHM is to be on the pattern of back ended subsidy for which the bank has to follow suitable instructions issued in this regard by the RBI from time to time.

9. In the written statement filed on behalf of Respondent No. 2 it has been stated that the Government had floated and implemented a Scheme ''Horticulture Mission for North East and Himalayan States'' (HMNEH) as per Operational Guidelines 2010. The said scheme of HMNEH vide CCEA decision in December, 2013, was subsumed in the scheme ''Mission for Integrated Development of Horticulture'' (MIDH). In terms of the said scheme the subsidy was granted to eligible projects under the pattern of "Credit Linked Back Ended Subsidy".

10. It is explained that adjustment of subsidy has to be done on the pattern of Back-Ended Subsidy, wherein, the full project cost including the subsidy amount but excluding the margin money contribution from beneficiary would be

disbursed as loan by the banks. The repayment schedule is drawn on the term loan amount in such a way that the subsidy amount is adjusted after the bank term loan portion (excluding subsidy) is liquidated. The subsidy amount in the borrower''s Term Loan account should be adjusted only as a part of the recovery of last installment. The subsidy is kept in the Subsidy Reserve Fund Account and no interest is applied on term loan equivalent to subsidy portion of the term loan by the Bank. Accordingly it has been stated that the prayer of the petitioner for adjustment of the amount of subsidy against the cash credit facility availed by the petitioner cannot be accepted.

11. Giving details of the outstanding amount against the petitioner it has been stated that it has availed a term loan amount of Rs. 23.50 crore from respondent No. 1 vide sanction letter dated 14.3.2013. This loan is to be repaid by the petitioner in 72 equated monthly installments (in a period of six years) starting from 31.12.2013. First twelve equated monthly installments were of Rs. 27.00 lakh each, next 24 equated monthly installments commencing from 31.12.2014 are of Rs. 31.25 lakh each and from 31.12.2016 the petitioner would be liable to pay 36 equated monthly installments for Rs. 35.41 lakh each. As on date the petitioner had to pay around 23 installments, which have not been paid regularly by the petitioner and approximately Rs. 15.50 lakh was over due and payable by the petitioner to respondent No. 1, the bank on 7.10.2015., which has now increased further. It has been explained that the adjustment of subsidy amount of Rs. 14,23,47,000/- (Rupees Fourteen Crore, Twenty Three Lakh and Forty Seven Thousand Only) lying in the subsidy reserve account with respondent No. 1 can only be done when the outstanding principal term loan amount of the petitioner will stand reduced to Rs. 14,23,47,000/- (equivalent to the subsidy amount lying deposited in Subsidy Reserve Account). No adjustment can be done against the cash credit limit availed.

12. Ld. Counsel for the petitioner has argued that no reliance can be placed on the clarification (Annexure R1/5) received by the Bank. He states that the clarification refers to the MIDH guidelines which as per the clarification came into existence only on 1.4.2014 and are hence not applicable to the petitioner. He states that that the petitioner had set up the unit under the HMNEH 2010 Scheme (Annexure P-1) and as such he is to be governed by these guidelines. He states that neither in these guidelines, nor in the letter of intent (Annexure P-4) or the subsidy release orders (Annexure P-7 and P-8) is there any condition prohibiting the Bank from adjusting the amount of subsidy as per the instructions of the petitioner company. Pointed reference has been made to condition No. 5 of the subsidy release order (Annexure P-7) to urge that the subsidy amount can be utilized for meeting revenue/recurring expenditure of the company. It has been urged that payment towards interest is such a recurring expenditure and is thus clearly permissible.

13. He further argued that the credit facilities extended to the petitioner Company by the Bank are totally secured against primary securities, collateral

securities and personal guarantees to the extent of more than Rs. 102.00 Crores and thus there is no reason for the Bank not to make the adjustments of any pending amount from the subsidy amount lying to the credit of the petitioner.

14. He further argued that the subsidy amount belongs to the petitioner and the respondent Bank cannot withhold it on any ground. He contended that non-utilization of the subsidy amount when the project is at the stage of infancy, has resulted in putting undue financial constraints on the project which may prove fatal to the project and in that event the whole objective of the Horticulture Mission would be frustrated.

15. He has further argued that the action of the respondent Bank is discriminatory as in an identical case of M/s. Anubhuti Apples Pvt. Ltd., a sister concern of the petitioner company which had also received the subsidy under the HMNEH-2010 Scheme, the Bank has already adjusted the subsidy of Rs. 4,76,80,000/- in which the amount of Rs. 85,00,000/- has been adjusted in the Cash Credit Account and Rs. 3,91,80,000/- has been adjusted in the Term Loan Account on 31.03.2015.

16. Sh. Puneet Gupta appearing for respondent No. 2 on the other hand has referred to condition No. (vii) in the LOI (Annexure P-4) as per which any subsequent conditions could be intimated which would need to be complied with. He has further drawn attention to the letter dated 19th November, 2015, (Annexure R-1) of the Ministry of Agriculture & Farmers Welfare, addressed to the respondent No. 1 Bank wherein it is mentioned that the petitioner company and its sister concern M/s. Anubhuti Applies Private Ltd. had been sanctioned credit linked back ended subsidy against capital cost under erstwhile MM III norms of HMNEH under MIDH guidelines. The adjustment of this subsidy is to be done on the pattern of back ended subsidy in such a way that the subsidy amount is adjusted after the term loan portion (excluding subsidy) is repaid by the promoters. He states that as per the decision of December 2013 of the Cabinet Committee of Economic Affairs the HMNEH Scheme was subsumed in the ''Mission for Integrated Development of Horticulture'' (MIDH) Scheme and in terms of the said Scheme subsidy is granted to eligible projects under the pattern of "Credit Linked Back Ended Subsidy" but no such decision has been placed on record.

17. We have heard Ld. Counsel for the parties and perused the record.

18. The petitioner had applied for assistance under Mini Mission-III of the HORTICULTURE MISSION FOR NORTH EAST AND HIMALAYAN STATES (HMNEH). As per the OPERATIONAL GUIDELINES 2010, Mini Mission-III is concerned with Post Harvest Management & Marketing and aims to create suitable infrastructure facilities for efficient post harvest management, integrated cool chain system, primary processing/value addition and marketing of horticulture produce.

19. After scrutiny of the application of the petitioner it was decided to approve issue of LOI under the "Capital Investment Subsidy for Construction/

Modernization/Expansion of Cold Storage and Storages for Horticulture Produce". The letter (Annexure P-4) also incorporated the conditions of LOI.

20. After completion of the project and the joint inspection of the plant established by the petitioner by the officials of the Ministry of Agriculture and the Bank, the first instalment of the Rs. 1138.00 lacs was released vide letter dated 27.8.2015.(Annexure P-7), which incorporated the terms and conditions to which the grant-in-aid shall be subject.

21. Clause (vii.) of the LOI on which Ld. Counsel for the respondents has placed reliance is extracted below:-

"vii) Mere issuance of LOI will not guarantee the grant of subsidy to the beneficiary unless the proposal is implemented in accordance with the information given in the application of LOI/Detailed Project Report (DRR), subsequent conditions intimated and within guidelines of the scheme. Any deviation in implementation of project will lead to rejection of proposal for which promoter will be solely responsible."

22. This condition only states that issuance of the LOI does not guarantee the grant of subsidy to the beneficiary unless the proposal is implemented in accordance with the information given in the application for LOI and the Detailed Project Report or any other conditions intimated within the guidelines of the scheme failing which the proposal would be rejected. Clearly this condition operates only till the grant of subsidy. It does not deal with the manner of utilization of the subsidy which would be governed by the conditions in the letter of release (Annexure P-7) which specifically sets out the terms and conditions to which the grant-in-aid shall be subject.

23. Ld. Counsel for the petitioner has referred to condition No. 5 of this release letter which is extracted below:-

"5. A detailed account of expenditure incurred out of the grant-in-aid shall be maintained and got audited by Chartered Accountant or other recognized body of auditors. The audited statements of accounts together with separate utilization certificate in a prescribed Performa for (a) building and capital auditions to the buildings etc. (b) equipments, furniture and books and (c) revenue/recurring expenditure shall be furnished to this Department as early as possible after the close of the financial year, but in no case later than 12 months of the closure of the financial year in which the grant-in-aid has been sanctioned."

24. A plain reading of this condition which requires that the account of expenditure incurred out of the grant-in-aid should contain separate utilization certificates in respect of (a) building and capital additions to the buildings etc. (b) equipments, furniture and books and (c) revenue/recurring expenditure indicates that the grant-in-aid can be used for any of these listed purposes, because if the grant-in-aid could not be used for such purposes, there would be no question of any requirement to gave a separate utilization certificate in

respect thereof.

25. Further no specific prohibition regarding the use of the subsidy amount in the manner as prayed for by the petitioner has been pointed out by the Ld. Counsel for the respondents nor do we find any such prohibition in Annexure P-7.

26. Ld. Counsel for the respondents have not been able to place on record any policy or guidelines or decision to indicate that HMNEH Operational Guidelines-2010 have been superseded by any other Guidelines and that such guidelines would apply to the units, subsidy claims in respect whereof were applied for and processed before the subsequent guidelines come into force. In the absence of such material, no reliance can be placed on the clarificatory letter dated November 19, 2015 (Annexure R-1/5) which forms the bedrock of the case of the respondents to contend that the subsidy amount can be adjusted only after the term loan portion (excluding subsidy) is repaid by the promoters.

27. In any case we find no such condition imposed in the subsidy release letters dated 27.8.2015 and 19.9.2015 (Annexures P-7 and P-8 respectively).

28. Accordingly this petition is allowed. The respondent Bank is directed to adjust the amount of subsidy belonging to the petitioner and lying with it towards the repayment of interest and installments of loan as per the instructions of the petitioner.