

(2023) 03 DEL CK 0005

In the Delhi High Court

Case No : I.A. No. 1746 Of 2023 In Civil Suit (COMM) No. 128 Of 2022

Asian Hotels North Ltd

APPELLANT

Vs

Yes Bank Ltd & Ors

RESPONDENT

Date of Decision : 03-03-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Order 1 Rule 8, Order 1 Rule 10

Citation : (2023) 03 DEL CK 0005

Hon'ble Judges : Chandra Dhari Singh, J

Bench : Single Bench

Advocate : Vikram Nankani, Gurpreet Singh Bagga, Sandeep Sethi, Shreya Sethi, Vikram Singh Dalal, Tanvi Tewari, Raunak Dhillon, Ananya Dhar Chaudhury, Nihaad Dewan, Sidhant Kumar, Manyaa Chandhok, Dr. Joginder Singh, Vidhi Udayshankar, Vivek Tankha, Arjun Rekhi, Tushar Gupta, Mohinder Rupal

Final Decision : Allowed

Judgement

Chandra Dhari Singh, J

I.A. No.1746/2023 (u/O I Rule 10 CPC by proposed defendant Exclusive Capital Limited)

1. The present application under Order I Rule 10 of the Code of Civil Procedure, 1908 (hereinafter "CPC") has been filed on behalf of the applicant/proposed defendant, Exclusive Capital Limited, seeking the following reliefs:-

"a. Allow the present Application and implead Exclusive Capital Limited, Bank of Maharashtra Limited, Axis Bank and Punjab National Bank Limited as Defendants in the captioned Suit;

b. Pass any other order or order that may be deemed fit and proper in the interest of justice."

2. Mr. Vivek Tankha, learned senior counsel appearing on behalf of the applicant

submitted that the present application has been seeking impleadment of all the Lenders of the plaintiff in the captioned suit. Vide order dated 30th January 2023, notice has already been issued to the non-applicants and four weeks' time was given to the non-applicants to file their replies/objection. It is submitted that no reply to the instant application has been filed on behalf of any non-applicant.

3. The learned senior counsel submitted that the applicant had been assigned the loan and overdraft credit facilities to the tune of approximately Rs. 122 crores extended to the plaintiff by IndusInd Bank Ltd. by the Deed of Assignment dated 28th December 2022. The plaintiff and IndusInd Bank had also entered into an Overdraft Facility Agreement dated 20th November 2017 for Rs. 5 crores and a Term Loan Agreement dated 29th September 2017. In addition to the same, IndusInd Bank also extended Sanction letter dated 24th September 2020 for Rs.23,13,741/- in favour of the plaintiff to be paid in three monthly installments starting from 31st January 2021. Accordingly, Funded Interest Term Loan for Rs.23,13,741/- was executed on 27th October 2020 between the plaintiff and IndusInd Bank.

4. It is submitted that on 6th August 2020, the Reserve Bank of India notified Resolution Framework for all borrowers stressed due to Covid-19 and enabled the borrowers and lenders to implement a one-time resolution for inter alia restructuring loans and granting concessions on account of financial difficulties of the borrowers. Pursuant to the notification, the plaintiff approached its lenders, including the IndusInd Bank, with a proposal of One-Time Restructuring of loan, overdraft and other credit facilities.

5. Learned senior counsel submitted that after certain negotiations, all lenders agreed to accept the plaintiff's proposal for One-Time Restructuring and accordingly, a Consortium of lenders was formed comprising of Yes Bank/ defendant no. 1, IndusInd Bank, Bank of Maharashtra, Axis Bank and Punjab National Bank. On 9th December 2020, the resolution process was invoked by IndusInd Bank alongwith other lenders of the Consortium and on 23rd December 2020, an Inter-Creditor Agreement was executed between the Consortium. It is further submitted that a Master Amendment Agreement in June 2021 amongst the Consortium lenders/Banks, and amongst the plaintiff and the lenders a Trust and Retention Account Agreement and Funded Interest Term Loan Agreement were executed.

6. It is submitted that the defendant no. 1, vide its 'Loan Recall cum Guarantee Invocation Notice' dated 17th February 2022 issued to the plaintiff, sought to recall the loan facility granted to the plaintiff and called upon the plaintiff as well as its guarantors to deposit a sum of Rs. 2,22,92,43,603/-. The said Recall Notice has been challenged on behalf of the plaintiff in the captioned suit against the defendant no. 1.

7. It is submitted that on the first date of hearing, that is, 24th February 2022, the Predecessor Bench granted an ad-interim restrain on the defendant no. 1

from acting upon the Recall Notice. The said interim order has been continued since and remains to be in operation. While passing the said order, the Predecessor Bench prima facie found that the defendant no. 1 had sought to jettison the implementation of the One-Time Restructuring and the Master Amendment Agreement.

8. It is submitted that the applicant, as well as the other lenders, are gravely affected by the passing and continuation of interim order dated 24th February 2022 passed in the captioned matter. It is further submitted that the status and consequences of One-Time Restructuring would largely depend on the outcome of the present proceedings. Moreover, the adjudication of the plaintiff's liabilities during the moratorium period under Master Amendment Agreement shall also impact the rights and obligations of the applicant and the other lenders.

9. Learned senior counsel for the applicant submitted that the applicant as well as the other lenders are the necessary and proper parties to the present proceedings since any adjudication, and any decision thereafter, in the instant matter shall have a direct bearing on the rights and obligations of the applicant and other lenders/Banks.

10. Therefore, it is prayed that the applicant as well as the aforesaid lenders/Banks shall be impleaded as defendants in the instant suit for proper adjudication of the matter.

11. Mr. Vikram Nankani, learned senior counsel appearing on behalf of the plaintiff submitted that he has no objection if the proposed defendants, including the applicant, are impleaded in the instant suit. Learned senior counsel submitted that the reliefs sought in the captioned suit are not limited to the defendant no. 1 since the Master Amendment Agreement and One-Time Restructuring scheme also involves the other lenders constituting the Consortium.

12. Per Contra, Mr. Sandeep Sethi, learned senior counsel appearing for defendant no. 1 vehemently opposed the instant petition and submitted that the applicant has no locus standi to seek impleadment of the lenders/Bank constituting the Consortium. It is submitted that the plaintiff had filed the instant suit and sought relief only against the defendant no. 1 and if the need be, any impleadment should come either from the plaintiff or from the party seeking impleadment itself. It is submitted that only the applicant is the assignee of IndusInd Bank and not the other Banks. Hence, it is submitted that the instant application is liable to be dismissed.

13. In rejoinder, Mr. Tankha, learned senior counsel submitted that Order I Rule 8 of the CPC allows one person to sue or defend on behalf of all in same interest, therefore, the lenders/Banks having the same interest and being similarly affected by any or all orders flowing from this Court in the instant suit may be impleaded on the basis of the instant application.

14. Heard the learned senior counsels for the parties and perused the record.

15. The applicant has moved the instant application under for its impleadment as well as the impleadment of other lenders/Banks under Order I Rule 10 of the CPC, which is reproduced hereunder:-

"10. Suit in name of wrong plaintiff.—

(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) Court may strike out or add parties.—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where defendant added, plaint to be amended.—Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant

(5) Subject to the provisions of the Indian Limitation Act, 1877 (XV of 1877), section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons."

16. The provision under sub-rule 2 of the aforementioned Rule empowers the Court to add any party at any stage of the proceedings, where it finds that presence of such party is necessary to enable the Court to effectually, efficiently, completely and effectively adjudicate upon the disputes before it. The power is wide enough to make such an amendment and add the party even without an application on behalf of either party. In the instant application, the applicant has sought its impleadment alongwith impleadment of the other lenders/Banks. The primary objection on behalf of the defendant no. 1 is that the applicant may not seek impleadment of the other lenders/Banks since the applicant is only the Assignee of IndusInd Bank and not of the other Banks it has sought to implead as defendants by way of the instant application.

17. Upon a perusal of the plaint alongwith the instant application, it is found that the applicant and other lenders/Banks have collectively executed the Master

Amendment Agreement and are also subject to the One-Time Restructuring scheme for which the plaintiff had approached all its lenders. The relevant paragraphs of the plaint are reproduced hereunder:-

"23. That pursuant thereto, the Defendant Bank issued a Facility Letter dated 07.06.2021 with a detailed restructuring of the existing Facility Agreements along with other credit facilities in favour of the Plaintiff. This Facility Letter was revised by an Addendum dated 19.06.2021. Upon acceptance of the said Facility Letter and Addendum thereto offered by Defendant, the Plaintiff and Defendant Bank executed the Master Amendment Agreement on 24.06.2021 ('Master Amendment Agreement'), as part of the OTR which laid down the amended terms of the Facility Agreements as existing between the parties.

24. That the recitals of the said Master Amendment Agreement stated and recorded:

"(H) In terms of the approved resolution plan, it is stipulated, inter alia, that (i) with respect to the Term Loan Facilities, there shall be an extension in the residual tenor of such facilities by two years along with ballooning in the existing repayment schedules of such facilities; and (ii) the Term Loan Facilities and the OD facilities shall be secured by the security (as defined hereinafter)."

26. That plainly therefore, as per the said Master Amendment Agreement, Defendant Bank, along with the consortium of banks, expressly agreed that there shall be a moratorium on any installments due and payable by the Plaintiff to the Defendant Bank and the consortium of lenders for the period between September 1, 2020 and March 30, 2022.

27. That thereafter, in furtherance of the OTR arrangement and in order to clarify the rights of the lenders inter se and those with Defendant Bank, two additional agreements were executed including a (i) Trust and Retention Account Agreement ('TRA Agreement'); and (ii) Funded Interest Term Loan Agreement ('FITL Agreement'). Particularly, as per Section XII of the TRA Agreement, the Lead Bank is mandated to notify that an Event of Default, Potential Event of Default, or a TRA Default has occurred on part of the borrower i.e. Plaintiff as per its Facility Agreement with the individual lender or other terms and conditions as agreed in writing. Further, upon occurrence of such an Event of Default by Plaintiff qua any lender/ bank, no such lender/ bank.

31. That notably the resolution process under the Resolution Framework was invoked by the creditors of the borrower, including the Defendant Bank, on December 9, 2020 unanimously and the ICA was entered into on December 23, 2020 in terms of the RBI Resolution Framework. Pursuant thereto a resolution plan in respect of the Plaintiff was finalized and approved by the creditors of the Plaintiff, including the Defendant Bank in terms of the Resolution Framework. Given the same, all the lenders of the Plaintiff, including the Defendant Bank, communicated their decisions regarding the status of implementation of the OTR of the loan facilities extended to the Plaintiff. By letter dated 07.06.2021, the

Lead Bank recorded that 75% of the lenders, including the Defendant Bank holding a substantial share of 27% in the total outstanding amount due from the Plaintiff, gave their sanction for implementation of the Resolution Plan. Consequently, the Lead Bank declared that the OTR Resolution Plan of the Plaintiff was approved on 07.06.2021 and requested all the lenders to implement the same by execution of all supplementary documents in due course.

32. That subsequently, on 18.01.2022, IndusInd Bank holding 15% of the total lending to the Plaintiff, has also granted its approval to the Resolution Plan and sanctioned the same. IndusInd Bank has executed various deeds of accession to the Master Amendment Agreement, FITL Agreement and the TRA Agreement each. Therefore, as on date 100% of the lenders of the Plaintiff have granted approval/ sanction to the Resolution Plan and are in the process of implementing the same.

33. That at this stage, it is pertinent to note that Article 2.2 (f) and (h) of the ICA, stipulate that preparation of the security documents for implementation of the Resolution Plan is the obligation of the Defendant Bank and other lenders of the Plaintiff. The Plaintiff and the security providers are merely to execute the security documents as proposed by the Defendant Bank and other lenders. For the said purpose, Defendant Bank and the other lenders are entitled to appoint legal advisors/ consultants.

34. That the aforesaid position is also borne from Clause 10 of the conditions under the Resolution Framework, which stipulates that it is the obligation of the lenders, for preparation, completion of all documentation to be executed, including necessary agreements between lending institutions and borrower and collaterals provided, in consonance with the Resolution Plan sought to be implemented.

35. That in pursuance of the same, a Joint Lenders Meeting was held on 24.09.2021 ('JLM') to discuss inter alia the OTR documentation and status of the implementation of the Resolution Plan. During the JLM, the Defendant Bank and other lenders unequivocally agreed to grant a further extension of 9 months for making all necessary compliances for implementation of the Resolution Plan including execution of necessary documents...

40. That it is clear from the foregoing, that solely due to the intransigence of the Defendant Bank, the other lenders have also been unable to finalize the security and other documentation. In the absence of security documents having the approval of the all the lenders including the Defendant Bank, the obligation of the Plaintiff and other security providers in fact cannot arise.

43. That in addition to the default in respect of execution of necessary security documents, the Defendant Bank has also stated that the Plaintiff has defaulted in obtaining the credit evaluation rating. This is ex-facie erroneous and contrary to the obligation imposed on the Lead Bank i.e. Bank of Maharashtra to appoint a credit rating agency for obtaining an Independent Credit Evaluation Report (the

'ICE Report') in respect of the Resolution Plan, under Clause 2.2 (g) of the ICA.

XXXXX

PRAYER

....

(d) Pass a decree of mandatory injunction in favour of the Plaintiff directing Defendant No.1 to continue funding the Funded Interest Term Loan Account in favour of the Plaintiff in accordance with the terms of the Master Amendment Agreement and Funded Interest Term Loan Agreement executed inter alia between the Plaintiff and Defendant No.1;

(e) Pass a decree of mandatory injunction in favour of the Plaintiff directing Defendant No.1 to finalize the security and other documentation to be executed by or on behalf of the Plaintiff, to ensure implementation of the OTR Resolution Plan;

(f) Pass a decree of specific performance in favour of the Plaintiff and against Defendant No. 1 directing to specifically perform its obligations under the approved One-Time Restructuring Resolution Plan and ancillary agreements; and..."

18. A perusal of the paragraphs and the prayers quoted above, it is clear that the cause of action that has arisen between the original parties to the suit extends to the parties that have been sought to be impleaded by the instant application them being the lenders. This Court is satisfied with the argument advanced on behalf of the applicant that the any order which may be passed by this Court in the instant suit will directly and automatically affect the lenders of the plaintiff, including the applicant, and hence, they are proper parties in accordance with the mandate of Order I Rule 10 of the CPC.

19. So far as the argument advanced on behalf of the defendant no. 1 is concerned, this Court deems it fit to refer to Order I Rule 8 of the CPC, which allows a person to sue or defend before the Court of law on behalf of all those interested, as well as to the as well as Order I Rule 10 of the CPC, which empowers the Court to add or strike a party without even an application for the same. The lenders being similarly placed in the instant dispute need not approach this Court one by one and seek their impleadment on the same grounds.

20. Moreover, a perusal of the order dated 30th January 2023 shows that this Court upon prima facie being satisfied of the plea raised on behalf of the applicant and considering the opposition on behalf of the non-applicants issued notice to the non-applicants, including the plaintiff and the originally impleaded defendants, and also directed them to file reply to the application, within a period of four weeks. However, none of the non-applicants filed a reply to the instant application, including the defendant no. 1 who has vehemently opposed the

instant application.

21. Therefore, keeping in view the contents of the application, the plaint, the contentions raised on behalf of the applicant and the no-objection furnished on behalf of the plaintiff, this Court is of the considered view that the instant application is fit to be allowed.

22. Accordingly, the instant application seeking impleadment of Exclusive Capital Limited, Bank of Maharashtra Limited, Axis Bank and Punjab National Bank Limited as defendants is allowed.

23. The plaintiff is directed to file the amended Memo of Parties within one week from today, thereby impleading the aforesaid lenders/Banks as the defendants to the captioned suit.

24. It is made clear that the interim order passed by the Predecessor Bench on 24th February 2022 in CS(COMM) 128/2022 shall extend to the newly impleaded parties.

25. The application stands allowed.

26. The order be uploaded on the website forthwith.