
(1999) 06 GAU CK 0030
In the Gauhati High Court
Case No : Civil Rule No. 5668 of 1997

Baishya Brothers Pvt. Ltd. and Another	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision : 17-06-1999

Acts Referred:

State Financial Corporations Act, 1951 — Section 29

Citation : AIR 2000 Guw 83 : (1999) 3 GLT 41

Hon'ble Judges : D.N. Chowdhury, J

Bench : Single Bench

Advocate : N.M. Lahiri, N. Choudhury, S.C. Kayal and B.W. Phira, for the Appellant; A.K. Phukan, for AIDC, Bhuyan and H. Das, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Chowdhury, J.—The legitimacy of the action initiated on behalf of the respondent No. 2 in aid of Section 29 of the State Financial Corporation Act, 1951 (hereinafter referred to as the Act) is the core question requiring adjudication in this proceeding. The facts and the circumstances which gave rise to the proceeding under Article 226 of the Constitution are summed up below :

2. The petitioner company moved the respondent No. 2 for financial assistance by way of term loan in its venture of Hotel Samrat. Accordingly the parties entered into a loan agreement whereby respondent No. 1 sanctioned a sum of Rs: 58.25 lakhs. As per the contractual stipulation the loan was repayable within March, 1991. There was some modification of the schedule of pay. The repayment of Rs. 50 lakhs of term loan was to commence from Sept. 1988 and to be completed in March, 1992. Further the additional loan of Rs. 6.24 lakhs was repayable commencing from Nov. 1990 and completing in Nov. 1997. The interest was due in May and Nov. every year. It was averred that because of change of economic scenario; the petitioner's Hotel incurred financial loss from the beginning which caused serious set back on their project, On the pressure of the respondent for immediate liquidation of the debt, the petitioner company

increased its monthly payment to Rs. 50,000/- against the earlier payment schedule of Rs. 10,000/-per month. The petitioner company could not cope with the pace, but the respondent with improper motive mounted its pressure for making immediate payment on pain of action u/s 29 of the Act. Failing to keep pace and generate more resources, the petitioner company sought for collaboration with M/s. Baruah Overseas Private Limited. In the process, the petitioner company came to an understanding with M/s Baruah Overseas Private Limited that subject to approval of respondent No. 2 M/s. Baruah Overseas (P) Limited would take over management of the unit at its own expenses and the petitioners would transfer 57% share in favour of M/s Baruah Overseas (P) Ltd. A registered agreement was entered into between the petitioner company and M/s. Baruah Overseas (P) Ltd. On the basis of the promise of respondent No. 2, the petitioner transferred 57% of its share in favour of M/s. Baruah Overseas Private Limited on consideration that the latter would effectively run, manage and maintain Hotel Samrat and would liquidate all overdue to the AIDC. But the respondents resiled from their stand and issued a Notice on 18-10-1997 to the petitioner u/s 29 of the State Financial Corporation Act, 1951 and threatened to take over the project of the petitioner.

3. Situated thus the Managing Director of Baruah Overseas (P) Limited approached the Chairman of the AIDC for providing him with a chance of reviving the Hotel by utilising his expertise in the business venture. Respondent No. 4, the Chairman interim advised respondent No. 3, the Managing Director to examine the proposal by his endorsement on the body of a letter dated 23-10-1997. In spite of the said endorsement respondent No. 3 on his own accord and without any reason, took over the possession of the hotel, closed it down and put locks on it. The petitioner contended that respondent No. 3 thereby crippled the growing concern without accepting the liability of making payment of the staffs of the Hotel including the Manager and other staffs. The petitioners referred to the instances of two such hotels namely, Hotel Kuber of Guwahati and Ashok Hotel of Tinsukia which were similarly situated with that of the petitioner. The petitioner asserted that the respondent in both the cases entered into one time settlement with the parties and gave them scope to revive their business. The Managing Director of Baruah Overseas (P) Limited brought this aspect to the notice of the Chairman of the Corporation and the Chairman in turn mentioned the same to the Managing Director (Res. 3). Respondent No. 3 then invited the parties for discussion at the instance of respondent No. 4. Both the parties i.e. the petitioner as well as the Managing Director of Baruah Overseas (P) Limited attended the office of respondent No. 3 but without any result. The petitioner thus questions the legitimacy and propriety of the action of respondents 2 and 3 as unjust, unfairly discriminatory. Respondents 2, 3 and 4 contested the proceeding and submitted one consolidated affidavit on their behalf through the Managing Director of the Corporation. The respondent in their affidavit while denying the assertions of the petitioners stated about the initiative of the petitioner for borrowing a sum of Rs. 42 lakhs under the IDBI's re

financing scheme. In pursuance of the loan application of the petitioner dated 2-7-1984 for construction of the Hotel, respondents sanctioned a term loan of Rs. 42 lakhs on 13-2-1985 and the first instalment of the term loan was disbursed on 6-9-1995. To meet the cost of the over run of the project, the petitioner applied for additional term loan of Rs. 8 lakhs which was sanctioned on 11-2-1987. The petitioner thereafter also applied for additional term loan of Rs. 6.25 lakhs which was sanctioned on 8-9-1989. The total term loan sanctioned stood at Rs. 56,25 lakhs. The respondents stated that at all an amount of Rs. 56,24,200.27 (Rs. Fifty Six Lakhs Twenty four thousand and two hundred approx) was disbursed to the petitioner by the respondents. The respondents reiterated that the money was lent to the petitioner out of the fund borrowed from IDBI under the refinancing scheme. Failure, to pay the principal loan amount was visited for penal interest, additional interest etc. On 28-4-1994, the Corporation issued legal notice to the petitioner demanding the payment of the outstanding dues. But in spite of making the payment, the petitioner approached the then Chief Minister of Assam imploring for a direction on the Corporation not to act upon the notice and provide 5 to 6 months time for repayment of the loan. The petitioners informed the respondents that they were trying to explore some arrangement with the Arunachal Pradesh Govt. and in the meantime, they would pay Rs. 40,000/- to 50,000/- per month to the Corporation and accordingly the Corporation granted 6 months time to the petitioners as prayed for. The petitioners, however, failed to fulfill the promise and to pay the money as promised. The petitioners also failed in its move to have any arrangement with the Govt. of Arunachal Pradesh. In the month of Dec. 95 the respondents again remained the petitioner to pay its dues which stood at Rs. 108.50 lakhs. The petitioner company again approached the Chief Minister making request for necessary orders to protect the company from the proposed action of the respondents so much so that the company was unable to pay more than Rs. 50,000/- per month. By letter dated 2-5-1996, the respondent Corporation requested the petitioner company to pay the dues within 15-5-1996 failing which the Corporation would be compelled to initiate proper legal action. The petitioner company repeatedly failed to pay its dues and accordingly the respondents initiated steps to take over the unit to recover its outstanding dues in August, 1996.

4. The company approached the then Industry Minister of Assam and made similar requests as was made earlier. Consequently proposed take over action was deferred on 19-12-1996. The petitioner company submitted proposal for one time settlement of the dues in April, 1997. The respondents Corporation after a thorough security of the proposal of the petitioner company informed him about its inability to accept the proposal since the petitioner company failed to fulfill the minimum requirement matching their dues. The petitioner company was, however, given a chance for offering revised proposal and accordingly a meeting was convened with all the Directors of the Company on 17-5-1997. The response of the petitioner company was not found encouraging to the Corporation and

therefore was not acceptable to the Corporation. The Board of Directors thereafter took a conscious decision to take over the unit u/s 29 of the Act to recover its dues. The respondents accordingly issued notice for taking over the unit on 21-7-1997. The petitioner company again approached the then Industry Minister seeking 2 to 3 months time to wipe out the debt. On the advice of the Industry Minister the Board of Directors in its meeting decided to take over the unit on expiry of 2 months from the date of appeal and same was intimated to the company. The petitioner company this time also failed to honour its commitment and accordingly notice was issued on the petitioner company on 18-10-1997 and the unit was taken over on 28-10-1997. The respondents in its affidavit further stated that it was not aware about the alleged understanding entered between the petitioner Company as well as M/s Baruah Overseas (P) Ltd. regarding the management of the company and transfer of the shares and for the first time it came to know that when the petitioners preferred an appeal before the respondents on 23-10-1997 and also about the execution of agreement on 18-10-1997. The respondents Corporation was never a party to the agreement nor it ever consented to either in writing or orally. Therefore, question of approving the petitioner company by the respondents did not arise. Respondents further stated that Sri Ajit Pathak an officer of the Corporation purportedly who allegedly acted as an attesting witness in the Memo of agreement made in his own accord and capacity and not under the authority of the respondents. The respondents stated that it duly considered the proposal of the petitioner-company . In pursuance of the proposal indicated in the letter dated 1-11-1997 by M/s. Baruah Overseas (P) Ltd. along with the petitioner company for discussion. The discussion took place on 1-12-1997. In the meeting the respondent Corporation intimated that the proposals submitted by the aforesaid parties were not acceptable since it did not match with the requirement of one time settlement and accordingly they were requested to submit fresh proposal. In the said meeting the petitioner company explained the case of Hotel Kuber of Guwahati and Ashok Hotel of Tinsukla which were on different footing. The respondents did not turn up with any other proposal despite advised by the petitioner company.

5. Mr. N.M. Lahiri, the learned Advocate General of Meghalaya appearing on behalf of the petitioner submitted that the petitioner company is a state within the meaning of Article 12 and the Act not only arm the respondents with power but it also entrust them with duties and responsibilities. The scheme of the Act does not enable the respondents to act like an ordinary money lender but it is entrusted with the responsibility of promoting small scale and medium industries. Mr. Lahiri submitted that the Corporation which is a creature of the statute at all relevant time was required to act justly and fairly. At all relevant stages the petitioner company went through financial crises and to overcome the situation the petitioner company submitted its offer along with M/s. Baruah Overseas (P) Ltd. which was arbitrarily rejected in most mechanical fashion in violation of equality clause. Mr. A.K. Phookan, the learned counsel appearing on behalf of the

respondents submitted that the respondent-corporation was fully alive of its rights and duties and all throughout acted justly and fairly but the petitioner company did not come forward to avail the opportunity provided to it. Mr. Phookan, the learned counsel for the respondents in support of his contention referred to the records of the case and submitted that at all relevant time the respondents act reasonably, lawfully with utmost good faith.

6. The Act was enacted to provide for the establishment of the State Financial Corporation with the object of capital formation. The object of establishment of such institutions is to finance medium and small scale industries and to render funds to such industries for investment in most effective and productive manner. The powers and duties of the Board of Directors are delineated in Chapter 3 of the Act. In discharging its functions under the Act, the Board is to confirm to the business principles having due regard to the interest of industry, commerce and the general public. Section 26 defines the limit of accommodation, the power to impose the condition for accommodation is enjoined in Section 27. The rights of financial Corporation in case of default is prescribed in Section 29 of the Act. Section 29(1) of the Act arms the Corporation the right to take over the management or possession of both of the industry concern as well as right to transfer by way lease or sell and realise the debt from property placed, mortgaged, hypothecated or assigned to the Corporation. The Corporation is thus invested with the power to take over the possession and management of defaulting until and realise the property placed, mortgaged, hypothecated or assigned to the corporation including the right to sell and recover the loan or advance. The Corporation is no doubt bestowed with the right and far-reaching power to ensure the payment and the enormous the power the greater norms is the responsibility. Mr. Lahiri, the learned counsel is right in his arguments that the wide power is conferred in such institutions to accomplish the purposes of the Act for the general benefit and therefore, which he insists for a meaningful approach. The role of the Corporation is that of a trustee which owes responsibility in the performance of its duties and as a trustee it must act exclusively in the interest of trusts. It is required to observe highest standards of integrity at the same time reasonable standard of efficiency in the management of the affairs of the trusts. Duty is an obligation which is to be carried out. Law insists that trustees must act honestly and in managing affairs trustees is to take "all those precautions which an ordinarily prudent man on business would take in managing similar affairs on his own" (Recalled the observation of Lord Blackburn in *Speight v. Gaunt* (1883) 9 AC 1

7. There is no material to dispute the facts of this case. The petitioner accepted the terms loan from the respondents for business venture and tried to pull out its resources for repayment of the debt to the respondents. Finally it did not succeed and approached the respondents from time to time and the materials on record discloses that the respondents deferred from Initiating coercive measure. The parties tried on their own to resolve the situation but ultimately it did not yield any result. I have gone through the records which did not persuade me to

hold the inference of any arbitrariness. There is no allegation of mala fide or improper motive though there is allegation of unfairness. I have indicated earlier that the constitutional commitment of the respondent Corporation as well as the mandate of the statute which requires fairness in action, fairness to ensure the law and Justice as well as to prevent the failure of justice. Going through the materials on record I could not discern any unfair treatment meted out to the petitioner. Their offers were duly considered by the respondents but did not find viable. It is true that Corporation is not to act like the character portrayed by Shakespeare in the Merchant of Venice. The Corporation has undoubtedly a meaningful role to promote small scale and medium industries but at the same time it cannot rake havoc or fritter away Public fund. Public money is made for public purpose to be recycled to the needy entrepreneur. In the factual situation of the case it is not indicated in whatsoever from of any unfair or unequal to the petitioner instances referred in petition. The situation of two other institutions referred were different with that of the petitioner. In these situations I do not find any Infringement of any statutory right or otherwise constitutional violation of the duties requiring interference from this Court. It would always be open to the petitioner to offer the sale price tendered by the buyer and in such event the respondent tenderer should offer all the facilities to the petitioner and the unit undoubtedly be transferred to him by rescheduling the money and after that the payment of the sale price would be recovered in instalments by the respondents. Even otherwise respondents shall take all precautions for getting the maximum offer. Valuation of the property for the purpose of determining adequacy of the offer for determining as to whether the offer was adequate, the respondents must intimate the petitioner to enable him to file objection if any since the petitioners are vitally interested in getting maximum price. Subject to the observation made above, this writ petition stands dismissed.

8. There shall however be no order as to costs. Interim order stands vacated.