

(2000) 09 PAT CK 0073
In the Patna High Court
Case No : L.P.A. No. 1207 of 1999

Bihar State Financial Corporation and Others	APPELLANT
Vs	
Swad Pharmaceuticals Pvt. Ltd. and Others	RESPONDENT

Date of Decision : 14-09-2000

Acts Referred:

State Financial Corporations Act, 1951 — Section 21, 24, 29, 30, 43

Citation : (2001) 1 BLJR 131 : (2000) 4 PLJR 595

Hon'ble Judges : Nagendra Rai, J;Indu Prabha Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Nagendra Rai, J.—This appeal is directed against the judgment dated 17.8.1999, passed by a learned Single Judge of this Court in C.W.J.C. No. 171 of 1994, by which he has allowed the writ application filed by Respondent No. 1 and has quashed the notice dated 20.12.1993 (Annexure 15 in the writ application), whereby the appellant-Bihar State Financial Corporation (hereinafter referred to as "the Corporation") took action under Sections 30 and 29 of the State Financial Corporation Act (hereinafter referred to as "the Act") and directed the Corporation to release the remaining amount as per the agreement and also to make attempt to make the unit viable and put it in workable condition by discharging statutory duty provided u/s 24 of the Act and recover the loan amount and the interest accrued thereon by fixing instalment so that the unit comes into production and survives. The learned Single Judge also directed the Industries Department to release the amount of subsidy as sanctioned by it by letter dated 19.9.1991.

2. Necessary facts for disposal of the present appeal are that respondent No. 1 Dr. Dinesh Kumar Mani, a Homoeopathic Doctor, with a view to developing-the Homoeopathic Medicine decided to establish a Homoeo Medicine Industry at Muzaffarpur and got the respondent-Company incorporated as a Company under the provisions of the Companies Act in the name and style of M/s. Swad

Pharmaceuticals Pvt. Ltd. in the year 1987. The respondent-Company approached the Corporation for loan for establishment of the said industry and a sum of Rs. 26 lakh was sanctioned by the Corporation on 23.2.1988 to set up the aforesaid Homoeopathic Medicine Manufacturing Unit, An agreement between the parties was executed on 3.2.1989. One of the clauses in the agreement was that the release of the sanctioned loan (quantum of release) would depend upon proportionate investment/contribution made by the promoter at the Project Site in creation of assets within the stipulated period. The said amount was sanctioned by the Corporation on the refinance by the Small Industries Development Bank of India (hereinafter referred to as "the S.I.D.B.I."). The validity period of the sanctioned loan amount was fixed for two years, which was to lapse on 9.5.1990. On submission of the papers and the verification of the Plant, the Corporation released 5.07 lakh up to 14.3.1990. In the meanwhile, the refinance sanctioned by the S.I.D.B.I, lapsed on 9.5.1990 and the same was again revalidated by the Corporation up to 4.12.1990 and during this period a sum of Rs. 6.47 lacs was released to the respondent-Company.

3. The stand of the Respondent-Company is that due to delay and indifferent attitude of the Corporation, the project was not completed. In this connection, it is stated that between the period of two years i.e. from 9.5.1989 to 12.3.1991, only a sum of Rs. 10.85 lakh was disbursed to the Respondent-Company. Similarly, an amount of Rs. 3.84 lakh as the cost of machinery was released and disbursed after a long delay. Out of the amount disbursed, Rs. 75,000/- was adjusted towards interests and the commitment charges. After last disbursement on 12.3.1991, no further disbursement was made on the ground that the sanction period of two years for disbursement and utilization had ended and unless the sanction was revalidated, no further disbursement would be made. The respondent-Company on 22.2.1991 sent a request letter to the Branch Manager of the Corporation for revalidation of the sanctioned loan, but nothing was done by the Corporation, on the other hand, it asked the Company to submit the programme for completion of the Project vide letter dated 20.7.1991. The Company approached for disbursement of the further amount for completion of the Project but nothing was done in spite of the several reminders sent by the Company, on the other hand, the appellant-Corporation treated the Company as a defaulter and placed the matter before the Advisory Committee on 25.2.1992, where the representative of the Company, who was one of the Directors thereof appeared, reiterated the grievance and expressed its difficulties but the Corporation acted in an arbitrary manner and by letter dated 15.9.1992 communicated the Company to submit a revised project for re-appraisal of the case. Thereafter, the Respondent-Company submitted a revised proposal along with all the relevant documents on 24.9.1992 and a sum of Rs. 5,228/- was deposited as process fee for processing the revised project and the matter was again put up before the Advisory Committee and the Managing Director of the Company appeared, but instead of considering its grievance, the Advisory Committee took a decision that the Company should pay Rs. 1 lakh and,

thereafter, the matter would be processed and considered on merit. An information to that effect was given by letter dated 1.10.1992 (Annexure 8 to the writ application). Respondent-Company sent a reply on 10.10.1992 to the said letter stating therein that the Corporation failed to discharge its obligation under the agreement and the Project was not completed due to non-payment of the sanctioned loan and, thereafter, the Corporation sat over the matter. Again, the Corporation vide letter dated 31.5.1993 asked the respondent-Company to redeem the entire liability up to 10.6.1993. In the meantime, again the matter was again placed before the Advisory Committee and, thereafter, again on 4.6.1993, the respondent-Company was asked to redeem the entire liability up to 10.6.1993. The respondent Company in pursuance of the said letter submitted a request letter to the Senior Branch Manager of the Corporation requesting him to not treat the matter as a case of default for the reason that the Project was not completed due to fault of the Corporation, but the Corporation did not pay any heed and issued a notice dated 20.12.1993 under Sections 30 and 29 of the Act. A copy of which was appended as Annexure 15 to the writ application.

4. Thus, according to the respondent-Company, the Corporation did not perform its duty as a public body and made default in payment of the sanctioned amount, as a result of which the Project could not be completed. The action of the appellant-Corporation in issuing the impugned notice was wholly arbitrary and illegal. On the basis of the said assertion, the respondent-Company filed the writ application for quashing the aforesaid notice and for a direction for disbursement of the remaining amount of loan. It also made a prayer for direction to the other authorities for grant of seed money and subsidy.

5. The stand of the appellant-Corporation, on the other hand, is that there was no fault on the part of the Corporation, rather it was the Company, which had defaulted at every stage, as a result of which the Corporation had no other option but to take recourse to the provision of Sections 30 and 29 of the Act. It is stated that the respondent-Company approached for the second release after three months of the expiry of the period without submission of the relevant papers. It is stated that the releases were not made within time to the Company due to non-filing of the relevant papers and due to adoption of delaying tactics by the Company, the stipulated period for the disbursement of the loan fixed by the S.I.D.B.I, lapsed and, thereafter, on the recommendation of the appellant-Corporation, the refinance period was extended and, thereafter, further amount was disbursed to the Company, but the Company failed to raise the promoter's contribution, as a result of which the entire sanctioned amount was not availed by it within the stipulated period. Apart from the delaying tactics, further fund was not released in favour of the respondent-Company due to non-availability of the finance. The Corporation has been always co-operating and taking interest in the matter, which is evident from the fact that the matter was placed before the Advisory Committee on three occasions and Dinesh Kumar, one of the Directors, represented the Company and after full discussion and consultation in the meeting, he was directed to submit the revised project report for re-appraisal of

the Project with the Bank Assurance Letter for working capital fund, but the Company did not file any revised project report nor did it take any step to pay other dues, The matter was placed before the Advisory Committee and a decision was taken to consider the Company's case for additional loan if it deposited Rs. 1 lakh by 31.9.1992, but it failed to comply with the aforesaid direction. To help the Company, again the matter was placed before the Advisory-Committee and the Director of the Company was informed but he did not attend the meeting and, thereafter, the Corporation having no option took a decision that step be taken under Sections 30 and 29 of the Act and, thereafter, notice was issued under the said Sections.

6. Thus, the stand of the Corporation is that there was no fault on the part of it. Every time, the Corporation wanted to help the Company, but the fault was on the part of the Company and as such the action was justified under Sections 30 and 29 of the Act.

7. The learned Single Judge, after having heard the parties, allowed the writ application on two grounds, firstly that the issuance of the notice under Sections 30 and 29 of the Act was without jurisdiction as it was not issued by a competent authority, i.e., by the Corporation and secondly, that the fault was on the part of the Corporation and not on the part of the respondent-Company.

8. Earned Counsel appearing for the appellant-Corporation submitted that the notice was issued in pursuance of the decision taken by the Corporation, meaning thereby the Board of Directors (for short "the Board"), in which the management of the Corporation is vested u/s 9 of the Act and as such, the learned Single Judge was not justified in quashing the said notice on the ground of it having not been issued pursuant to the decision taken by the competent authority. It is further submitted that the notice was issued on behalf of the Corporation, which is evident from the notice itself (Annexure 15). An Advisory Committee was constituted by the Corporation u/s 21 of the Act for the purpose of assisting it in efficient discharge of its functions and the minutes of every meeting of the Committee after confirmation is laid before the Board for approval in terms of Section 43(b) of the Act and as such, the decision of the Advisory Committee was vetted and approved by the Board. He further submitted that the finding of the learned Single Judge that the fault was of the Corporation and not of the Company is against the evidence and material on the record. The learned Single Judge without adverting to the terms of the agreement has proceeded with the matter as if he was hearing an appeal against the decision taken by the Corporation ignoring the fact that the Court has no such jurisdiction and it can interfere only when the decision of the Corporation is in breach of the statutory provision or the order is arbitrary. The materials on the record show that the Company did not adhere to the terms of the agreement and made default and as such, the Corporation was fully justified in taking recourse to the provisions of Sections 30 and 29 of the Act.

9. Earned Counsel appearing for the Company, on the other hand, submitted that

the notice under Sections 30 and 29 of the Act was issued by the Senior Branch Manager on the basis of the decision taken by the Advisory Committee and as such, the notice was not issued on the basis of the order of competent authority and the learned Single Judge has rightly quashed the notice on the aforesaid ground. He also submitted that the Company was ready to perform its duties and it was the Corporation, which was at fault.

10. The Financial Corporation is a statutory body and the scope of judicial review over the decision of the Corporation is well-settled. The Court will interfere only when there is statutory violation by the Corporation or where it has acted arbitrarily, unfairly or its action is mala fide (see U.P. Financial Corporation and Others Vs. Naini Oxygen and Acetylene Gas Ltd. and Another, and Karnataka State Financial Corporation Vs. Micro Cast Rubber and Allied Products (P) Ltd. and Others, . In the former case, the apex Court held that with regard to the decision taken by the Corporation, the High Court should not step in and substitute its own judgment for the judgment of the Corporation, which should be deemed to know its interests better whatever the sympathies the Court had for the propriety of the Company. It further held as follows:

The Corporation is an independent autonomous statutory body having its own constitution and rules to abide by, and functions and obligations to discharge. As such, in the discharge of its functions, it is free to act according to its own light. The views it forms and the decisions it taken are on the basis of the information in its possession and the advice it receives and according to its own perspective and calculations. Unless its action is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however, more prudent, commercial or businesslike it may be, for the decision of the Corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed for making the Corporation liable in matters commercial the Court should not risk their judgment for the judgments of the bodies to whom that task is assigned.

11. The submissions advanced by the learned Counsel for the parties have to be considered in the light of the settled law as indicated above. So far as the first ground given by the learned Single Judge that notice under Sections 30 and 29 of the Act published was invalid and without jurisdiction is concerned, from a perusal of the notice (Annexure 15), it would appear that the Senior Branch Manager has issued the notice on behalf of the Corporation, which is a competent body to take action under Sections 30 and 29 of the Act. It was nowhere challenged by the Company in the writ application that the notice was not issued pursuant to the order passed by the Board, with which the Management of the Corporation is vested in terms of Section 9 of the Act. There is a presumption of correctness of the official act. In such a situation, the learned Single Judge should not have entertained the said point during the course of the argument without having any foundation laid in the writ petition. As there was no averment in the writ application, the Corporation had no occasion to controvert the same.

12. This apart, on merit also, the notice appears to have been validly issued in this case. The Advisory Committee is constituted by the Board u/s 21 of the Act and its every decision after confirmation is laid before the Board for approval. It is asserted on behalf of the Corporation that the decisions were laid before the Board for approval and, thereafter, steps were taken against the Company.

13. As stated above, this Court does not act as an appellate Forum over the decision of the Corporation and it has only to see as to whether the Corporation has acted in a just and fair manner or not in dealing with the matter. The stand of the Corporation from the very beginning, as appears from the record, was that the delay was done on the part of the Company and several times, the meetings of the Advisory Committee were held to help the Company, which was directed to comply with certain directions in terms of the decisions of the Advisory Committee but the Company did not obey the same and as such, the Corporation had no option but to take recourse to the provisions of Sections 30 and 29 of the Act. In this connection, reference may be made to a letter dated 21.2.1992 of the Corporation (Annexure 5 to the writ application), whereby the Company was informed that in view of the mounting level of default against the concern, it has been decided that the position of default vis-a-vis the affairs of the concern be discussed at the meeting of the Advisory Committee of the Corporation.

14. Admittedly, when the loan was sanctioned, the validity period of the sanctioned loan was two years. During that period, a sum of Rs. 5.07 lakh was sanctioned by the Corporation. In the meantime, the validity period lapsed and the same was again extended at the instance of the Corporation and another sum of Rs. 6.47 lakh was again released. The promoters/Directors, according to the Corporation did not contribute any further investments in terms of the agreement leading to the stoppage of further release of the sanctioned amount, but even then the Corporation with a view to assist the Company referred the matter to the Advisory Committee and the meeting of the Advisory Committee was held on 25.2.1992, in which one of the Directors of the Company appeared and he was directed to submit a revised project-supported by the Bank assurance for providing need based working capital fund within six months, but neither the revised project was submitted within time nor was any payment made to the amount due and as such reminder was issued on 15.9.1992 vide Annexure 6 to the writ application. Again with a view to help the Company was held on 29.9.1992 and the promoter/Director appeared and it was decided in the said meeting that the additional loan would be considered provided the Company deposits Rs. 1 lakh towards the dues and one month's time was granted for the said purpose, but even then the Company did not pay any amount.

15. Again the Corporation placed the matter before the Advisory Committee on 16.6.1993 but, in spite of notice, no body appeared on behalf of the Company and then a decision was taken to take steps under Sections 30 and 29 of the Act due to default and callous attitude of the Company. Thus, it cannot be said that the Corporation was at fault, rather, on the other hand, due to the inaction of the

Company, the entire amount was not disbursed, for which the Corporation cannot be faulted or blamed.

16. The learned Single Judge did not consider the aforesaid matter while coming to the conclusion that the fault was on the part of the Corporation. The public money is meant to recycle all the needy entrepreneurs and the dilatory tactics adopted by the entrepreneurs have resulted in making the Corporation sick to such an extent that it has now no fund to advance loan to the new entrepreneurs. Even in the counter-affidavit, it was stated on behalf of the Corporation that at the latest stage, the Corporation did not reimburse the amount due to non-availability of the fund.

17. Learned Single Judge has failed to appreciate that the Corporation is at liberty to take action against the entrepreneur defaulter under Sections 30 and 29 of the Act in case of the default and the Court will protect only when the entrepreneur is honest and sincere. If the entrepreneur has failed to discharge its obligation and delayed to project and made a default in payment of the instalments, the Court will not protect such recalcitrant defaulter as that will amount to an abuse of the process of the Court.

18. In the result, both the grounds given by the learned Single Judge for allowing the claim of the writ petitioner-respondent are not sustainable in law and, accordingly, this appeal is allowed and the order passed by the learned Single Judge is set aside. The Corporation is at liberty to proceed in terms of the notice issued under Sections 30 and 29 of the Act.

Indu Prabha Singh, J.

19. I agree.