
(2007) 04 CAL CK 0059

In the Calcutta High Court

Case No : G.A. No. 3848 of 2006 and W.P. No. 749 of 2006

Bilaspur Spinning Mills and Industries Ltd. and Another

APPELLANT

Vs

UCO Bank

RESPONDENT

Date of Decision : 12-04-2007

Acts Referred:

Citation : (2008) 3 BC 412

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : Pinky Anand, P. Das Chowdhury and D. De and Ajit Panja and A Roy, for the Appellant; Ajoy Gupta and S. Bhattacharya, for the Respondent

Final Decision : Dismissed

Judgement

Dipankar Datta, J.—This Court has considered the application for impleadment taken out by the guarantors being G.A. No. 3848 of 2006. Upon hearing learned Counsel for the applicant and considering the averments contained in the application, this Court is of the considered view that the presence of the applicant is not at all necessary for effective adjudication of the issue involved in the writ petition. The application for impleadment stands dismissed, without order for costs.

2. Petitioner No. 1 (hereafter the company) was extended credit facilities by the respondent-Bank (hereafter the Bank). However, the company failed to clear its dues on time. The Bank filed a suit for recovery of its dues against the company in this Court being Suit No. 457 of 1985. After creation of the Debts Recovery Tribunal in terms of the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the suit was transferred to the Tribunal and renumbered as T.A. No. 22 of 1994. Before the Tribunal, terms of settlement was filed by the parties. The proceeding before the Tribunal stood disposed of in terms of the settlement. A certificate was issued directing the company to make payment of Rs. 8,70,06,172.56. The company, however, failed to clear the dues of the Bank resulting in the Bank taking recourse to a proceeding for execution.

There were certain other proceedings initiated by the company and its guarantors, reference to which is, unnecessary for the purpose of deciding the present petition.

3. On July 27, 2000, the Reserve Bank of India (hereafter RBI) issued a circular to all public sector Banks conveying guidelines for recovery of dues relating to non-performing asset (NPA) of public sector Banks. Revised guidelines were issued by the RBI on January 29, 2003. The company sought to take advantage of the guidelines issued by the RBI for one-time settlement and approached the Bank in this respect. It offered to pay a sum of Rs. 3 crores which, on the request of the Bank, was increased to Rs. 3.5 crores. However, there being no further development, the company by its letter dated June 20, 2005, again requested the Bank to settle the issue once and for all. The Bank not having responded, the petitioners approached this Court by filing Writ Petition No. 344 of 2006, which stood disposed of on March 7, 2006. By the said order, the Bank was directed to reply to the company's application and to dispose of the same by passing a reasoned order within four weeks from the date. The reply was directed to be a reasonable one and non-discriminatory.

4. The company supplemented its application by filing a representation dated March 23, 2006. The Bank by its letter dated March 27, 2006, rejected the prayer of the company based on a number of grounds.

5. Although this letter of the Bank dated March 27, 2006, has given rise to the cause of action for filing the present petition, no formal prayer has been made to set it aside. On the contrary, the petitioners have prayed for reconsideration of the issue for granting benefits in accordance with the guidelines issued by the RBI on July 27, 2000, and January 29, 2003, referred to above.

6. Despite the prayers of the petition not being appropriately framed, I have proceeded to consider the issue on the merits.

7. Elaborate submissions have been made on behalf of the petitioners by learned Counsel while assailing the contents of the letter dated March 27, 2006. I do not consider it necessary to discuss the arguments advanced in detail, for the first ground on which rejection is based appears to be sustainable in law. It was held by the Bank as follows:

Board held that the company was not entitled to be given the benefit of RBI one-time settlement scheme in view of the fact that the company had already entered into a compromise with the Bank for payment of Rs. 8.70 crores and a consent decree was obtained. Since the company had not paid its dues under the settlement made earlier, it had become a wilful defaulter and as per RBI scheme, a wilful defaulter is not entitled to RBI-one-time settlement scheme benefits apart from the fact that after a compromise and consent decree RBI-one-time settlement is not applicable as such.

8. Guidelines for recovery of NPAs upto Rs. 5 crores laid down in the guidelines

dated July 27, 2000, since revised by the guidelines dated January 29, 2003, do provide for one-time settlement and it is not the case of the Bank that the guidelines issued by the RBI are not binding on it.

9. However, learned Counsel representing the Bank has invited the attention of this Court to the following decisions:

(1) Deluxe Electrical and Mechanical Industries Vs. Union of India (UOI) and Others, ;

(2) Mono Caps (India) Vs. State Bank of India and Others, ;

(3) The Sathe Biscuits and Chocolates Co. Ltd. and Another Vs. Bank of Maharashtra and Others, ; and

(4) II (2006) BC 140 , for the proposition that once an order or decree has been passed by competent Tribunal and the borrower has failed to pay in terms thereof, the question of the Bank being obliged to settle the dues in terms of the RBI guidelines would not arise.

10. In Deluxe Electrical and Mechanical Industries Vs. Union of India (UOI) and Others, , the learned Judge of the Delhi High Court had the occasion to consider a judgment delivered by the Bombay High Court in W.P. No. 973 of 2003 [Chemosyn Ltd. Vs. Union Bank of India, wherein clarification of the RBI with regard to its aforesaid guidelines was extracted. The said clarification being relevant for the present purpose is quoted below (page 325):

These guidelines do not cover the cases where decrees have already been passed. The objective of the RBI guidelines is to provide a fast track channel of recovery of NPAs. Whereas in the case of decreed debts the Banks can straightaway execute the same and recover their dues. In the case of decreed debts the question of compromise/settlement does not arise.

11. Although date of the clarificatory guideline does not appear in the judgment referred to above, from the unreported decision of the Apex Court in Civil Appeal No. 4929 of 2004 (X-Calibre Knives P. Ltd. v. State Bank of India (2006) 131 Comp Cas 274) decided on August 3, 2004, the clarificatory guideline extracted above appears to have been issued by the RBI vide a communication dated October 7, 2003, i.e. at a time when the revised guidelines dated January 29, 2003, was in existence.

12. When the RBI has made the position clear, by clarifying that the guidelines relating to one-time settlement of the dues were not intended to cover cases where decrees/necessary orders have already been passed by the Tribunal, the petitioners cannot claim any judicially enforceable right, which is legally protected, to insist that the Bank must settle the issue in terms of the RBI guidelines. The contention that the company is entitled to benefits flowing from the RBI guidelines is misconceived and accordingly stands rejected.

13. Further it appears from the RBI guidelines that wilful defaulters would not be

covered by the one-time settlement scheme. The suit of the Bank was decreed in 1995 in terms of the settlement arrived at between the parties. Payment was not made by the company in terms of the agreed terms. Five years passed by. Only after the RBI guidelines dated July 27, 2000, was issued did the company wake up from slumber. Not having honoured the first settlement, it insisted for a fresh settlement. The conduct of the company leaves a lot to be desired and on facts and in the circumstances, the company has to be branded a wilful defaulter. I respectfully agree with the opinion of the Division Bench of the Delhi High Court expressed in D.K. Gupta, (2006) 127 DLT 488, that wilful defaulters can claim no right of further settlement once it has not availed of the initial settlement and that equity does not favour such a party.

14. Learned Counsel for the petitioners urged that the decision of this Hon'ble Court dated March 7, 2006, on the earlier writ petition filed by the petitioners would operate as res judicata and certain decisions of the Apex Court have also been cited in support of such contention. There cannot be any dispute so far as the principle of law laid down therein but I am of the humble view that those decisions have no application on facts and in the circumstances of this case for the simple reason that this Court on the previous occasion did not decide any of the points raised by the contesting parties on merits. This would be evident from two paragraphs of the said order, which are quoted hereunder:

I have considered the rival submissions made by the learned Advocates. I am of the considered view that for the present I should rather use restraint in expressing any view as regards the correctness of the points urged before me on merit.

The only point, which to my mind needs a finding by this Court, is "whether the Bank was justified in not responding to the application made by the borrower for one-time settlement in terms of the scheme enunciated by the Reserve Bank of India?" In exercise of writ jurisdiction, scope of inquiry, in a case of this nature, cannot be more than that in my view.

15. The contention that the previous decision operates as res judicata being equally misconceived stands rejected.

16. Learned Counsel for the petitioner also referred to the letter of the Bank dated March 11, 2004, by which it invited the company to avail of one-time compromise settlement scheme and submitted that the Bank could not have resile from the invitation, extended.

It appears from the said letter that it was issued "without prejudice". This itself shows that the offer was not final and conclusive and the petitioners cannot claim imposition of a settlement on the Bank by an order of the writ Court on the basis of such tentative offer of the Bank.

17. For the reasons discussed, this Court holds that the petitioners are not entitled to any relief in this petition which stands dismissed. However, the parties

shall bear their own costs.

18. Urgent certified photocopy of this judgment, if applied for, be furnished to the applicant within three days from the date of putting in requisites therefor.