
(2002) 06 SHI CK 0014
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 589 of 2002

Chanana Steel Tubes Pvt. Ltd.

APPELLANT

Vs

H.P.S.I.D.C. and Others

RESPONDENT

Date of Decision : 20-06-2002

Acts Referred:

Constitution of India, 1950 — Article 12
State Financial Corporations Act, 1951 — Section 29

Citation : AIR 2003 HP 36 : (2002) 2 ShimLC 472

Hon'ble Judges : W.A. Shishak, C.J;A.K. Goel, J

Bench : Division Bench

Advocate : R.K. Bawa, Rajpal Thakur, for the Appellant; Balwant Kukreja, for Respondent 1, Kanwar Kuldip Singh and Bimal Gupta, for Respondent 2, N.D. Sharma, vice Ajay Kumar, for Respondent 3 and K.D. Sood, for Respondent 4, for the Respondent

Judgement

Arun Kumar Goel, J.—This petition has been filed for the grant of following reliefs :--

- i) To set aside and quash the notice/Letter No. PAC-126-VII-8851, dated 6-1-1999 issued by the respondent No. 1 as contained as Annexure P-38 supra, whereby the offer of Rs. 65.00 lacs made by the respondent No. 4 has been intimated to be acceptable to the respondent No. 1;
- ii) To set aside and quash the orders of sale, dated 15-9-2001 as contained at Annexures P-62 and P-63 supra passed by the respondent No. 1;
- iii) To set aside and quash the notice/ order No. HPSIDC/PAC-126/6119, dated 23-11-2001 as contained at Annexure P-64 supra passed by the respondent No. 1;
- iv) To direct the respondents to hand over the possession of the Unit along with the land/buildings, plants, machinery, assets, stores, stocks lying therein etc. etc. in accordance with law to the petitioner company;

v) To direct the respondent Nos. 1 to 3 to reschedule the repayment of the loan and to rehabilitate the petitioner-company, in accordance with law in the peculiar facts and circumstances of this case;

vi) To set aside and quash the notice/ Orders No. HPSIDC/PAC-352/4693, dated 20-7-1995 as contained at Annexure P-27, supra for taking over the Unit of the petitioner company;

vii) To call for the entire relevant records of the case;

viii) To award the costs of this petition in favour of the petitioner-company;

and

ix) To pass any other and further relief(s) which this Hon''ble Court may deem fit and proper in the facts and circumstances of this case and in the interest of justice in favour of the petitioner-company and against the respondents.

2. Admitted facts of this case are that petitioner No. 1 is a Private Limited Company, It established an industrial unit at Parwanoo. It was financed by respondent Nos. 1 to 3, petitioner-company was also provided rehabilitation package by these respondents. So far respondent Nos. 1 and 2 are concerned, they had by and large provided rehabilitative finances to petitioner-company, whereas respondent No. 3 did not meet its liability. Reason given at the time of hearing by the bank was that petitioner-company had failed to bring its share of the requisite finance as a part of the package for its rehabilitation.

3. [t was also not disputed at the time of hearing that petitioner No. 1 failed to meet its liability so far repayment of the assistance provided by respondent Nos. 1 to 3 was concerned. In this background petitioners claim that unit became sick because of under financing, and also for not releasing the finances in time and other acts of omission and commission on the part of these respondents until its becoming a sick unit. It is their further case that despite having will to honestly run the unit after putting in all its savings by the petitioner No. 2 into the project; and also having sufficient orders within the country as well as queries for export orders, these three respondents ensured the financial ruination. This resulted in the unit not being run. From the copies of correspondence placed on record by the parties, it is clear that after the company persistently defaulted in meeting its liability regarding repayment of the outstanding amount on due dates, loan was recalled.

4. Before proceeding further it may also be noted that respondent Nos. 1 to 3 having financed the unit, they rank *pari passu*. It was not disputed either by the petitioners or respondents. For all matters respondent No. 1 was dealing in the matter.

5. After being satisfied, respondent No. 1 recalled the loan in question and initiated steps for taking over the assets of petitioner No. 1 company in exercise of powers u/s 29 of the State Financial Corporation Act, 1951. This provision

applies in case of respondent No. 1 in its dealings with loanees like petitioner No. 1 company was also not disputed at the time of hearing of this petition.

6. Unit was in fact taken over on 21-7-1995 and, thereafter, was notified for sale. In the first instance an offer of Rs. 91 lacs was received, but it was not accepted as it was considered to be on lower side, as is evident from Annexure P-36 attached with the writ petition. Contents of Annexure P-36 are extracted hereinbelow :--

The Managing Director M/s. Chanana Steel Tubes (P) Ltd. 26/4, East Patel Nagar, New Delhi--110008.

SALE OF TAKEN-OVER ASSETS Dear Sir,

Please refer to your Registered Letter No. CST/293/95-96 dated 29th March, 1996.

2. You have sought permission for showing the taken-over assets of the Company to the prospective buyer namely M/s. Walcut Engineers. Delhi who have offered to you an amount of Rs. 180.00 lacs against the cost of plant and machinery. You may show these assets to the prospective buyer on any working day with prior intimation. Instructions have been passed on to Shri M. R. Kanwar, Assistant Engineer, Baddi; who will show the assets to the purchaser proposed by you.

3. You are, therefore, requested to take necessary action in the matter and intimate us well in advance. However, it is added that the offer of Rs. 91.00 lacs received in response to our earlier advertisement, has been considered very low and, therefore, it has been rejected. A fresh advertisement is being released in the Newspapers shortly inviting offers for the sale of these assets. Please bring it in the notice of all concerned parties who are interested in the purchase of these assets.

Thanking you,

Yours faithfully, for HP SIDC Ltd. Sd/- Manager (R & M)

Copy to :--

1. The Managing Director H. P. Financial Corporation, Shimla--171 001.

2. The Chief Manager Punjab National Bank Parwanoo--173220 3. SE HPSIDC Ltd. Shimla : With a request to pass on the instructions to Sh. M.R. Kanwar, AE to do the needful."

7. What action was taken by the petitioner-company in response to this, there is nothing on record placed by it. Again vide advertisement, Annexure P-38, this unit along with other units was put to sale vide Annexure P-37. Petitioner No. 1 company figure at Sr. No. 2 of this advertisement notice. Conditions No. 1 and 7 of this advertisement which were pressed into service at the time of hearing are extracted hereinbelow:--

1. Offer for each unit on "as is where is basis" should reach separately in sealed covers superscribing on envelope "Offer for the purchase of" along with earnest money @ 10% of the offered amount in the form of Bank Draft only drawn on any scheduled bank in the name of HPSIDC Ltd. Payable at Shimla. Offers should reach this office on 27-8-1997 by 5.00 P.M. Offers will be opened in the presence of all and further negotiated openly on 28-8-1997 at 11.00 AM, 12 Noon, 2 PM. 3 PM and 4 PM for Unit No. 1, II and III, IV and V respectively.

X X X X X X 7. All statutory liabilities will have to be borne by the prospective buyers. They will also bear the arrears of electricity, unearned increase of lease hold plot, expenses on registration of free hold plot and water and maintenance charges, if any."

8. After receipt of offer pursuant to Annexure P-37, negotiations were undertaken by respondent No. 1 and offer was increased to Rs. 65 lacs. This fact was notified to the petitioner-company on 6-1-1999 vide Annexure P-38. This letter was in the following terms :--

Ref. No. PAC-126-VI1-8851 Dated 6-1-1999

REGISTERED

The Managing Director, M/s. Chanana Steel Tubes Pvt. Ltd., 26/4, East Patel Nagar. New Delhi--110008.

Subject : SALE OF ASSETS OF M/S. CHANANA STEEL TUBES PVT. LTD., PARWANOO.

Dear Sir,

This is in continuation to our letter No. HPSIDC/PAC-126 (VII)/98-5327-30 dated 15-9-1998, on the captioned subject. In this connection we are to inform you that the offer of Rs. 41.25 lacs was further negotiated with the bidder and they have raised the offer to Rs. 65.00 lacs inclusive of dues of H.P. Housing Board for obtaining NOC from them. In case you have any higher/ better offer you may send the same along with the earnest money @ 10% by way of bank draft in favour of HPSIDC. Ltd. payable at Shimla within 15 days of issuance of this letter failing which Corporation will presume that this is the highest offer received by the Corporation and further action shall be taken as deemed fit on the above offer.

Thanking you,

Yours faithfully. for H.P.S.I.D.C. Ltd. Sd/- Sr. Manager (Proj. Appraisal)

Copy to :--

Shri Sanjay Mehra, Prop, M/s. Shivam Enterprises, C-3/88. Phase-II, Ashok Vihar, New Delhi--110 052 with reference to your offer dated 5-10-1998."

9. From the communications addressed by the petitioners, copies whereof are

placed on the record, it is made out that one time settlement offer was made by them. Tone and tenor of this communication further point out that it was respondents No. 1 to 3 who were at fault at all times in petitioner-company becoming sick and unviable.

10. At the time of hearing, learned senior Counsel for the petitioners stated, that a suit had to be filed claiming damages to the tune of more than Rs. 20 crore in this Court which was dismissed for want of Court fee.

11. Another important fact which is admitted in the writ petition is that the petitioners did file a suit in the Court of Sub-Judge, Kasauli at Solan, along with an application under Order 39, Rules 1 and 2, C. P. C. Wherein interim order was passed as far as back in the year 1999. This order was vacated and, thereafter, appeal was preferred by the petitioners in the Court of District Judge. This appeal stood dismissed. Suit being still pending, they have filed application for withdrawal of the same before the trial Court. What is the effect of this suit, will be dealt with hereinafter. Offer of one time settlement made by the petitioners was not accepted.

12. In the aforesaid background petitioners have prayed for grant of relief extracted above for quashing Annexure P-38 supra and consequently setting aside Annexures P-62 and P-64. So far Annexure P-62 is concerned, it is confirmation of all the assets of petitioner-company in favour of respondent No. 4 and Annexure P-64 is the copy of notice issued to petitioner No. 1 and two other persons calling upon them to pay the balance outstanding amount due.

13. At the time of hearing of this petition, learned Senior Counsel appearing for the petitioners urged that action of respondent No. 1 in taking over the unit in a hush-hush and capricious manner can never be justified in any circumstances. According to him notice of take over was issued on 20th July, 1995 and the assets were taken over on 21st July, 1995. According to him, his clients received the same on 27-7-1995. Thus, if notice of proposed take over is quashed and set aside, all subsequent actions on the part of the respondents must fall,

14. This plea prima facie appears to be well founded. Reason being that respondent No. 1 is a wholly State Government Owned Company Incorporated under the Companies Act, 1956. Government has got pervasive control over this company. Its Managing Director is appointed by the State Government, as also other officials are also appointed as Directors. Thus, it is an "other authority", within the meaning of Article 12 of the Constitution of India; Therefore, all its actions have to be tested on the touchstone of Article 14 of the Constitution of India. Even if petitioner-company was defaulter and respondent No. 1 could have taken over its assets, still taking over has neither to be in a clandestine manner nor it has to be at the whim and fancy of respondent No. 1. Thus the issuance of notice on 20th July, 1995 for take over of assets on 21st July, 1995 cannot be justified unless there were compelling reasons.

15. Mr. Balwant Kukreja by referring to the record of respondent No. 1 pointed

out that an attempt was made to serve the notice on petitioner No. 1 company, but its Manager held out that he will only receive it after talking to the management of the company at Delhi. Even if this position is taken to be correct, still action of respondent No. 1 in taking over the unit on the very next day of the date of notice cannot be upheld. However, for reasons to be recorded hereinafter this by itself cannot be made a ground to allow this writ petition.

16. Next submission of Mr. Bawa was that his client approached all the three respondents, i.e. the financial institutions for one time settlement. Instead of examining its viability and without looking into over all merit of such claim, these respondents arbitrarily and in a whimsical manner rejected prayer of the petitioners. Such an action of the respondents is liable to be struck down by allowing this writ petition.

17. With a view to test the bona fide of the petitioners so far this plea is concerned, on every date of hearing learned senior counsel for the petitioners was asked to call upon his clients to deposit some money with any of the three respondents so that they can be asked to re-examine the whole case including proposal for one time settlement. Necessity of calling upon the petitioner to deposit the amount arose because the petitioners were making offers without giving any concrete proposal of depositing any amount with the concerned respondents,

18. Learned Senior Counsel clearly stated that his clients cannot deposit even a single penny. He. however, stated that before his clients being called upon to deposit, respondents may be asked to negotiate with the petitioners and, thereafter, his clients will make concrete offer for repayment. Here too petitioners were not willing to make any firm commitment regarding deposit of even token money. In view of this position, we are not impressed by the submission made on behalf of the petitioners that earnest efforts were made for one time settlement. What we are able to conclude from this stand of the petitioners is that if after conclusion of negotiations with respondent Nos. 1 to 3, the situation is favourable to him only then he will give the proposal for repayment. Such stand in the circumstances of the case cannot be accepted.

19. We would like to add here that respondent Nos. 1 and 2 together with respondent No. 3 are established for providing financial assistance to the intending entrepreneurs like petitioner No. 1. Object of such financing is to improve the industrial health of the State. At the same time with the growth of industry, direct/indirect employment to local people is also there. And generation of revenue payable to Central and State Government is the further consequence.

20. Money has to be recycled. This is only possible when entrepreneur starts repaying the amount, otherwise blockade of money will put a spoke in the industrial growth of the State. It will be against the purpose for which the money is provided to the units like petitioner No. 1. In the circumstances of this case we are satisfied that offer of one time settlement was nothing, but a subterfuge on

the part of the petitioners to keep the matter alive without meaning it. This view of ours is reinforced when the petitioners refused to deposit even a single penny as ordered by this Court.

21. Sale of taken over assets of industrial unit in favour of respondent No. 4 for a total sum of Rs. 65 lacs was also challenged by Mr. Bawa, learned Senior Counsel. According to him when at one stage offer of Rs. 91 lacs was considered to be inadequate, there is no justification for any of the respondents to have accepted offer of Rs. 65 lacs, that too inclusive of the amount payable to the H.P. Housing Board, as is evident from Annexure P-38. Thus this action on the part of the respondents cannot be sustained either in law or in fact. He also submitted that even if power to sell the taken over assets is held to be rightly exercised, still the sale should be carried out in a manner to fetch maximum price. While challenging the sale in favour of respondent No. 4, Mr. Bawa pressed into service condition Nos. 1 to 7 noted above, as according to him it was for the intending purchaser to pay liability of Housing Board, Electricity Department etc. And the offer was to be accompanied with a bank draft, In the instant case instead of bank draft, respondent No. 4 had attached a cheque instead of bank draft. Thus offer of respondent No. 4 could not have been entertained. If this is the factual position, then in no case offer of the said respondents could have been accepted.

22. With a view to ascertain the facts and test this submission. Mr. Balwant Kukreja was directed to produce the original record of respondent No. 1 relating to the unit of the petitioners. That was produced by him. In File No. PAC-126 Vol. VII Branch/Department IFD. Subject : M/s. Chanana Steel Tubes, offer of respondent No. 4 is there at page 1199. Tenders were opened on 4th September, 1998 when Mr. N. K. Chanana, petitioner No. 2 was present. At such time cheques were replaced by bank drafts. Presence of the persons who were present at the time of opening of tenders is recorded at page 1197 of this file and N. K. Chanana figures at Sr. No. 1.

23. In this view of the matter it cannot be said that before accepting the offer, bank drafts were not there. Petitioners may be justified in case bank drafts were not there at all. Flaw, if any, is technical in nature. Thus no benefit can be derived by the petitioners on this count.

24. So far other plea that condition No. 7 of the advertisement notice extracted hereinabove, has been violated is concerned, it also does not hold good. From Annexure P-64 produced by the petitioners, it is clear that sale proceeds of Rs. 65 lacs have been shared by respondent Nos. 2 to 4 as detailed in para 5 of this Annexure. For ready reference this paragraph is extracted hereinbelow:--

"5. That the sale proceeds were shared between HPSIDC, HPFC and PNB as under:--

a) HPSIDC

Rs. 20.66.927/-

b) PHFC

Rs. 23.23.924/-

c) PNB

Rs. 21.09.149/-

Total

Rs. 65.00.000/-

25. Petitioners are precluded from making a grievance that after rejecting offer of Rs. 91 lacs, respondents accepted the offer of Rs. 65 lacs. Reason being that vide Annexure P-38, extracted hereinabove, they were called upon to bring better buyer. There is nothing on record to suggest that any better buyer was brought by the petitioners.

26. For the reasons set-out hereinabove, plea that earnest offer by the petitioners to run the unit was defeated because of unbusinesslike, arbitrary and unjust acts of respondent No. 1 must fail. The respondents did everything possible to see that petitioners-company is able to be back on rails but without any results. Thus the plea of earnest efforts having been defeated cannot be accepted.

27. Suit was filed in 1999 for almost identical reliefs in Court at Solan. So long benefit of interim order was there petitioners were happy. After interim orders got vacated, present writ is filed. Learned counsel for the petitioners stated that his clients could not withdraw it, as the Presiding Officer was on leave. If they genuinely wanted to withdraw the suit, they could approach the District Judge for transfer of the suit to some other Court. As such we are further satisfied that petitioners are indulging in Court hunting with a view to get interim relief, without meaning anything further. It was not disputed that suit was pending when the matter was heard finally.

28. No other point is urged.

29. In view of the aforesaid discussion, there is no merit in this writ petition which is accordingly dismissed at the admission stage. Record produced by Mr. Balwant Kukreja, Advocate, is hereby returned to him.

CMP No. 580/02

30. No order in view of the order passed in the main writ. Disposed of accordingly.