(2018) 06 CAL CK 0146

In the Calcutta High Court

Case No : C.O. No. 993 of 2018

Cic Steels Pvt. Ltd. APPELLANT

Vs

Alogoma Steels Limited & Anr. RESPONDENT

Date of Decision : 15-06-2018

Acts Referred:

Recovery of Debts and Bankruptcy Act, 1993 — Section 2(9), 17, 19, 19(25)
Indian Contract Act, 1872 &mdash Section 3, 4
Constitution of India, 1950 — Article 227

Citation : (2018) 06 CAL CK 0146

Hon'ble Judges : SABYASACHI BHATTACHARYYA, J

Bench : Single Bench

Advocate : Hirak Kumar Mitra, Suddhasatva Banerjee, Shounak Mitra, Siddharth Chatterjee, Suchishmita Chatterjee, Rishav Dutt, Zulfiqar Ali Al Quaderi, Arijit Bardhan, Prasenjit Pal, Avirup Chatterjee, Joy Saha, Kunaljit Bhattacharya

Final Decision : Allowed

Judgement

The present application under article 227 of the Constitution of India has been preferred by an intending purchaser in connection with a proceeding

under Section 17 of the Recovery of Debts and Bankruptcy Act, 1993. It is submitted on behalf of the petitioner that initially an order was passed by

the Debts Recovery Tribunal on December 07, 2017, whereby one M/s. Sunflower Goods (P) Limited was permitted, as the then intending purchaser,

to deposit an amount as earnest money, upon which the applicant bank was to communicate its decision on such proposal for the purpose of sale of

the property in question to the said intending purchaser. Subsequently, such arrangement having failed to materialize due to M/s. Sunflower Goods (P)

Limited having not taken steps in terms of the same, the borrower/present opposite party no. 1, M/s. Alogoma Steels Limited, took out an application before the tribunal, praying inter alia that the name of the intending purchaser, M/s. Sunflower Goods (P) Limited, be substituted by M/s. CIC Steels

Pvt. Ltd. (the present petitioner), as well as for consequential reliefs, including that the properties in question be sold free from all encumbrances,

charges, liabilities, liens, including charges of the applicant bank in favour of the present petitioner, at a consideration of Rs.7,70,00,000/-, as well as to

appoint a Receiver to execute and register necessary deeds/documents for transferring the said properties in favour of the present petitioner.

Such application was adjudicated by the Debts Recovery Tribunal vide order dated December 15, 2017, whereby the Tribunal passed an order that the

intending purchaser, being the present petitioner, must deposit Rs.50 lakhs by December 18, 2017 and further Rs.1,42,50,000/- by January 03, 2018

with the applicant bank, that the applicant bank was directed to communicate their decision regarding the proposal to the intending purchaser (present

petitioner) within 25 days from depositing the earnest money and, if the proposal was not accepted by the applicant bank, the applicant bank was

directed to refund the amount of Rs.1,92,50,000/- to the intending purchaser, being the present petitioner. The previous order dated December 07,

2017 was modified to such extent. Thereafter, there were communications between the present petitioner and the applicant bank (present opposite

party no. 2) whereby the petitioner not only expressed its intention to proceed with the purchase but also deposited the amount, as directed by virtue of

the order dated December 15, 2017.

Â Learned senior advocate appearing for the petitioner refers to several documents, photocopies of which have been annexed to the present revisional

application, in support of such contention of the petitioner. It is submitted on behalf of the petitioner that at no point of time did the opposite party no.

2/bank communicate its decision, regarding proposal of purchase, to the petitioner, let alone within 25 days from deposit of earnest money as directed

in the order dated December 15, 2017. Photocopy of a document, apparently being a purported communication dated March 28, 2018, from the

opposite party no. 2-bank to the opposite party no. 1-borrower, is placed on behalf of the petitioner, from which it appears that the opposite party no.

2-bank communicated to the borrower that, with reference to a purported letter given by the opposite party no. 1, received by the bank allegedly on

January 03, 2018, the bank advised the borrower that the proposal had been approved and controlled by the appropriate authority of the bank. By the

same communication, it was advised to deposit the entire amount of the proposal positively by the next date, that is, March 29, 2018. It is pointed out

that even this date was much beyond the stipulated 25 days as per order dated December 15, 2017. At the bottom of the purported communication

dated March 28, 2018, there was an endorsement â??Copy forwarded to â??CIC STEELS PVT. LTD.â?? 4, Fairlie place, Kolkata â?" 700001 for

informationâ??.

Â It is submitted by learned senior advocate for the petitioner that such communication was never received by the petitioner at any point of time.

Subsequently, the petitioner came to know that the opposite party no. 1-borrower had moved on April 03, 2018 an application for a direction upon the

opposite party no. 2-bank to forthwith hand over the original title deed of the properties in question to the opposite party no. 1 and issue No Dues

Certificate for the said properties and for a direction on the opposite party no. 2-bank to refund the pay order/orders amounting to Rs.1,92,50,000/- to

the present petitioner. Such application was made on the purported premise that in the interregnum, a complete stranger, namely M/s. LOCO

Industries, had paid the entire consideration amount of Rs.7,70,00,000/- and, as such, the properties in question would be sold to the said M/s. LOCO

Industries.

Surprisingly, on the same date, that is on April 03, 2018 itself, the Debts Recovery Tribunal took up the application upon allowing put up petition filed

by the opposite party no. 1 in hot haste and allowed the substantive application on that date, thereby directing inter alia the opposite party no. 2-bank to

refund the pay order amounting to Rs.1, 92,50,000/- to the present petitioner.

At the earliest thereafter, the present petitioner approached the Tribunal with two applications â?" one for intervening in the original application and

the other for recall of the order dated April 03, 2018, referred to above. The primary grievance of the petitioner in such applications was that, despite

having complied with the specific direction of the Debts Recovery Tribunal stipulated in the order dated December 15, 2017, by making the entire

payment, the petitioner was entirely kept in the dark while the property was arranged to be transferred to a complete stranger. The least which could be done according to the petitioner was that a notice could be given to the petitioner and the petitioner to be heard prior to the order dated April 03,

2018 being passed. Since certain rights had already accrued in favour of the petitioner by virtue of the previous order dated December 15, 2017, such

rights could not be taken away at the drop of a hat in a clandestine manner, without even giving the petitioner an opportunity of hearing. In this

context, it is further argued that since there was no communication of any decision of the bank regarding the proposal to the petitioner, while the

petitioner made full payment as per direction of the Tribunal, there arose no occasion for any conclusion to be drawn, that the sale could not be

concluded in favour of the petitioner, for any reason whatsoever to justify subsequent sale to a stranger.

The said two applications were dismissed by the tribunal. Challenging the said refusal by the tribunal, the petitioner approached the appellate tribunal,

which, vide order dated April 24, 2018, dismissed the petitionerâ??s appeal, thereby affirming the order of refusal of the Tribunal. The present

revision has been preferred against the order of affirmance of the appellate Tribunal. It is submitted on behalf of the petitioner that the impugned order

cannot stand a momentâ??s scrutiny in view of patent illegality and jurisdictional error involved therein.

In controverting such submission, it is argued by learned senior advocate appearing for the opposite party no. 2-bank that the grievance of the

petitioner was entirely de hors the ambit of the original proceeding pending before the Tribunal. On such premise, the Debts Recovery Tribunal acted

without jurisdiction in refusing both the said applications of the petitioner for intervention as well as for recall of the order dated April 03, 2018, upon

assigning reasons which were not in accordance with law.

The aforesaid contentions were squarely controverted by learned senior advocate appearing for the opposite party no. 2, primarily on the premise that

the disputes raised by the petitioner were beyond the ambit of the original proceeding pending in the Tribunal. Referring to Section 17 of the Recovery

of Debts and Bankruptcy Act, 1993, as well as Section 19 of the said Act, it is submitted that the scope of the lis before the tribunal was confined tp

the adjudication as to recovery of debt from the borrower at the instance of the bank and whatever rights were claimed by the present petitioner, were entirely independent of the scope of such lis. Redressal of any grievance as to violation of such right inter se the petitioner and the borrower-opposite

party no. 1 could not be brought in to enlarge the ambit of the present proceeding before the tribunal. If the petitioner was entitled to any redressal at

all, the remedy of the petitioner lay in an appropriate proceeding before a different forum and not in the present proceeding under Section 17 of the

Act of 1993.

It is further submitted on behalf of the bank that the bank is interested only in recovery of dues due to it. The source of money of the intending

purchaser had nothing to do with the action initiated by the bank and any dispute inter se between the borrower and the intending purchaser could not

be introduced to enlarge the scope of the present proceeding. In this context, reliance is also placed on section 2(9) of the Act of 1993 to explain what

the scope of the term â??debtâ?? was, which had to be the entire basis of any claim made before the tribunal.

The opposite party no. 2 also relied on Sections 3 and 4 of the Indian Contract Act, 1872 to argue that communication as regards acceptance, if any,

by the bank was complete as soon as the communication was put into course of transmission to the proposer, that is, the present petitioner. As such, it

is argued, it is too late in the day for the petitioner to urge a grievance in respect of such communication before the tribunal.

Learned advocate for the opposite party no. 1 virtually argues in the same tune as the opposite party no. 2-bank and submits that the remedy of the

petitioner, if any, being amenable to the jurisdiction of some other forum by an appropriate proceeding and not the present lis. Upon query from the

Court, learned advocate for the opposite party no. 1 is fair enough to indicate that the tribunal had powers to pass orders for implementation of its own

orders by virtue of Section 19 (25) of the Act of 1993.

The arguments and counter-arguments of the parties revolve around the question, whether the petitioner had a right to be heard before orders were

passed for sale of the property in question in favour of subsequent intending purchaser, without the ongoing process of purchase with the present

petitioner being terminated in any manner. The petitioner, it is evident, squarely had a right to purchase the property, the genesis of which right was the

order of the tribunal itself dated December 15, 2017. By virtue of the said order, the bank was specifically directed to communicate its decision on the

proposal given by the petitioner within 25 days from the deposit of earnest money. No dispute has been substantially raised regarding payment of such

earnest money.

On the other hand, the bank has failed to substantiate by any material that any effective communication as to their decision either way, was

communicated at all to the petitioner. There is nothing even to show that any communication was put in the course of transmission to justify invocation

of Section 4 of the Indian Contract Act. As such, it could never be said that there was any plausible reason to terminate the process of purchase by

the petitioner abruptly and to conclude the sale to a complete stranger at the drop of a hat in hot haste.

It is, in fact, strange that all of a sudden the borrower woke up to the fact that there was a stranger who would purchase the property at a purchase

price, not even above that offered by the petitioner, but at par with the petitioner, and would take out an application with a put-up petition to finalize

sale in favour of the said third party, being M/s. LOCO Industrie,s and to seek a direction on the applicant-bank to refund the amount deposited by the

present petitioner. More surprising is the modus operandi, which was adopted in allowing the said application on the same day on which it was filed, ex

facie without any notice to the petitioner, let alone hearing the petitioner on such application.

The petitioner, it might be logically argued, has other remedies in other proceedings, including specific performance of contract and/or damage, but the

fallacy in such logic would be that the genesis of the present right of the petitioner was not a stand-alone agreement, divorced from the present

proceeding, but a specific order passed by the tribunal. The intending purchaser was proceeding under the umbrage of the said order of the tribunal

and the entire procedure of sale was to be conducted under the aegis of the tribunal. As such, neither the borrower nor the bank could subsequently

terminate such procedure all of a sudden, seeking to refund the earnest money paid by the petitioner and to seek sale in favour of some stranger.

Even if the relief of the petitioner lay before some other forum, the tribunal could not shut its eyes to the injustice committed by passing the order all of

a sudden without any notice to the present petitioner, directing sale in favour of some complete stranger. The arbitrariness involved in such hush-hush

hasty order itself justifies setting aside the same, to sub-serve the ends of natural justice and judicial propriety. The argument of availability of

alternative remedy does not cut ice, in view of the specific provision of sub-section (25) of Section 19 of the Act of 1993, which confers upon the

tribunal power to make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its

process or to secure the ends of justice.

This is not a question of the petitioner getting a remedy for the violation of an agreement with the petitioner but a more fundamental issue of violation

of principles of natural justice and judicial transparency. Hence the clandestine manner, in which the petitionerâ??s proposed purchase was halted

midway and a stranger was brought in as purchaser, has to be set at naught. In such circumstances, C.O. No. 993 of 2018 is allowed on contest,

thereby setting aside the order impugned herein and recalling the order dated April 03, 2018, whereby a direction was given to the opposite party no.

2-bank to refund the pay order deposited by the present petitioner.

All proceedings subsequent to the said order dated April 03, 2018, taken towards the end of effecting sale of the property in question in favour of any

stranger would be deemed to stand cancelled. The tribunal will pass consequential orders to negate the effect of any subsequent developments which

might have taken place pursuant to the order dated April 03, 2018, and to facilitate sale of the property in question in favour of the present petitioner in

accordance with law, subject to the petitioner complying with the petitionerâ??s part of the agreement relating to the sale, as stipulated in the order

dated December 15, 2017. There will be no order as to costs. Urgent certified website copies of this order, if applied for, be made available to the

parties upon compliance of all requisite formalities.

