(2009) 04 PAT CK 0022

In the Patna High Court

Case No : CWJC No. 4082 of 2009

Dwarakadhish Agro Pvt. Ltd. APPELLANT

Vs

The UCO Bank and Others RESPONDENT

Date of Decision : 06-04-2009

Acts Referred:

Citation : (2010) 8 RCR(Civil) 2712

Final Decision : Allowed

Judgement

Navaniti Prasad Singh, J.—Petitioner-Company was sanctioned a term loan of Rs. 75 lakhs and a cash credit limit of Rs. 52 lakhs, vide sanction letter dated 10.10.2005 by the respondent - UCO Bank. This was to set up an industrial unit for manufacturing agro industrial products. On 1.4.2006, the unit started commercial production but because of adverse market condition it could not achieve breakthrough and as a consequence thereof defaulted in meeting its loan repayment liability. The Bank then initiated a proceeding under SARFAESI ACT but could not finalize the sale of property. On 13.3.2008 (Annexure 3), petitioner made an offer to settle both the said accounts i.e. the term loan and cash credit account. They offered to settle the entire due at Rs. 82 lakhs. Out of which they were ready to pay 25% cash down upfront and the balance within three months in equal monthly instalments free of interest or within six months the balance thereof. Nothing was then heard in positive from the Bank and as such petitioner again by his letter dated 30.7.2008 (Annexure 4) made a representation after depositing Rs. 5 lakhs in no lien account of the Bank. They undertook to pay by 20th August, 2008 Rs. 21 lakhs inclusive deposit of Rs. 5 lakhs as made and the balance they requested for six months time interest free assuring that monthly instalment would start from September, 2008 and the last would be paid by the end of February, 2009. The petitioner then informed the Bank on 10th of October, 2008 (Annexure 5) that they had deposited Rs. 21 lakhs and requested the Bank to confirm the compromise proposal, so that the petitioner could start depositing interest free monthly instalments. Bank ultimately on 16.12.2008 (Annexure 6) responded. All it said was that the petitioner should improve their offer and Bank may not be in a position to extend the period beyond 31.3.2009. This was then followed by another letter of the Bank dated 30.1.2009/2.2.2009 in which Bank wanted the petitioner to increase their offer by at least Rs. 10 lakhs. On 3.2.2009, the very next day, petitioner expressed its inability to increase the offer by 10 lakhs but agreed to increase by Rs. 1 lakh. On 6.2.2009, respondent-Bank responded. They clearly indicated that the offer of the petitioner was not acceptable but gave liberty to the petitioner to meet the Executive Director of the Bank at Calcutta. The petitioner thereafter met the official of the Bank and by letter dated 23.2.2009 (Annexure 10) the Bank sanctioned the compromise proposal. It accepted the compromise at Rs. 84 lakhs towards full and final settlement of the due of the Bank. It acknowledged that it had already received a sum of Rs. 21 lakhs but it directed the petitioner to pay the balance Rs. 63 lakhs in equal monthly instalment within 31.3.2009. This letter also mentions that their local branch was advised to vigorously pursue with the party to pay the residual balance on or before 18.3.2009 on the eve of MEGA RECOVERY CAMP to be held at Patna.

2. On behalf of the petitioner, Mr. Suraj Samdarshi, learned Advocate, submits that right from July, 2008, petitioner was seeking compromise and effectively six months time to liquidate the due. The compromise, as sought for, was Rs. 83 lakhs. Bank took its time and it is ultimately on 23.2.2009 it agreed for compromise at Rs. 84 lakhs. In the meantime, petitioner had deposited Rs. 21 lakhs even without acceptance of the compromise to show its bonafide. As against petitioner''s request for six months to pay the balance Rs. 63 lakhs as made as far back in July and in the end of February, 2009, petitioner is being told to pay the balance of Rs. 63 lakhs in equal monthly instalments within 31.3.2009. This last part, it is submitted, shows total lack of application of mind. Petitioner had asked for time from September to February to pay but it got delayed at the instance of the Bank and now, though the Bank was permitting deposit of balance on equal monthly instalments, there was any hardly monthly instalment as only one month was left. This was said quite arbitrary when the petitioner bonafide wanted to compromise the matter.

3. On the other hand, Mrs. Nilu Agrawal learned Counsel for the Bank, points out that, in fact, the terms and conditions, as appended to the letter received by the petitioner from the local branch on 25.2.2009 by one of the Directors, two months time was given, which is, in fact, correct but not born out by the communication itself. She further submits that the petitioner did not move the competent authority at Calcutta once again for extension.

4. Be that as it may, the correspondences and the payment, as made by the petitioner in the opinion of this Court clearly establishes bonafide of the petitioner in trying to compromise and clear off the debt. The Bank should have come with an early settlement. The matter was lingered from July, 2008 and ultimately it is on 23.2.2009, after eight months, that the Bank finally agreed. Instead of six months prayed for, hardly one month time was granted. It is the

extension of this time period that the petitioner have come to this Court pointing out that it was arbitrary on the part of the Bank to show its action.

5. Having heard learned Counsel for the parties and with their consent, this application is being disposed of at this stage itself.

6. As held above the bonafide and anxiety of the petitioner to compromise the liability and pay up cannot be doubted. Even without acceptance they paid up Rs. 21 lakhs being 25% upfront. They clearly stipulated that from September to February, 2009, in six months they would liquidate the due and this permission, as sought in July, was ultimately granted on 25.2.2009 to be fulfilled by the petitioner within one month, an impossibility for a period closed down unit, then to say they should again move for extension to the higher authority is quite futile. The higher authority, at the first instance, itself should be realized that the petitioner was consistently praying for six months time and, in fact, as apparent from letter of the Bank, as contained in Annexures 10 and 11, they intended to give monthly instalment but for some reason they could not go beyond 31.3.2009, which left petitioner only one month time to pay the balance Rs. 63 lakhs. In this connection I may also refer to the decision of the Apex Court in the case of Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, , the relevant passage from which has been quoted with approval in the case of S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others, and in particular para 23 thereof, which is quoted hereunder:

In Jagdamba Oil Mills it was observed (at SCC p. 507, para 15) that the court may "assist the borrower who has intention to repay, but is prevented by insurmountable difficulties in meeting the commitments". The borrower in that case had made no payment whatsoever to State financial corporation of its outstanding loan. As not even a minimal portion of the amount borrowed had been paid the Court refused to help the defaulter. The borrower, in this case had paid over Rs. 14 lakhs as against the principal amount of Rs. 44.56 lakhs. A further amount of Rs. 10 lakhs was paid on 27-3-2002 by the appellant to BICICO i.e. the day after the impugned sale notice was published. Before the High Court a sum of Rs. 10 lakhs was paid pursuant to the interim order. In addition, the appellant had approached BICICO to settle its outstanding dues under the one-time settlement policy. As we have already recorded, we entertained the special petition on the condition that the appellant would deposit a sum of Rs. 1 crore over and above the amount already paid by it to BICICO. This the appellant has also done. All this shows that the appellant could not be termed to be such a defaulter who deserved no sympathy or assistance by the court.

7. In view of the facts, as noted above, I direct the Bank to grant time to the petitioner to liquidate the amount of balance outstanding of Rs. 63 lakhs by 31st of July, 2009. On such payment being made by the said date, Bank would close both accounts of the petitioner and the petitioner''s property, which the Bank has seized, would be released to the petitioner along with all other relevant papers

duly discharged free from encumbrance. On failure the petitioner to discharge the said liability within the said period, Bank would proceed in the matter, as if this Court had passed no order.

The writ application in terms aforesaid, stands, allowed.

