

(2016) 04 MAD CK 0192
In the Madras High Court
Case No : Writ Petition No. 3835 of 2016.

GET Power Limited

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 20-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 BankJ 54 : (2016) 4 BC 294 : (2016) 2 DRTC 72 : (2016) 4 MLJ 347

Hon'ble Judges : R. Subbiah, J.

Bench : Single Bench

Advocate : J. Sivanandaraj, Advocate, for the Appellant; M.L. Ganesh, Advocate and Anil Relwani for NVS Associates and P.N. Radhakrishnan, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R. Subbiah, J. - The petitioner has come forward with this writ petition challenging the decision taken in the Joint Lenders meeting held on 21.07.2015 in which it was decided that the member banks have decided to evaluate the revival package submitted by the petitioner company and the future course of action will be decided later, interalia authorising the member banks to initiate appropriate recovery measures against the petitioner company for recovery of the amount due and payable by them.

2. The brief facts which are necessary for the purpose of deciding the issues involved in this writ petition are as follows:-

(i) The petitioner company is engaged in the field of providing turnkey electrical solutions for sub-stations, rural electrification and wind power infrastructure. During the course of it's business, the petitioner has been banking with the first respondent bank for their financial needs. The petitioner is also stated to have availed credit facilities with the respondents 2 to 8. During 2014, according to the petitioner, the power sector witnessed severe financial crisis. Therefore, in

order to tide over the situation and to arrest imminent financial crisis, the petitioner decided to seek restructuring of its finances with the respondents bank. On the basis of such request made by the petitioner, the respondents 1 to 8 formed a Joint Lender's Forum (in short JLF) with whom the petitioner also executed an agreement dated 23.04.2014. On 25.04.2014, the petitioner sent a re-structuring proposal to the Forum setting out in detail the proposed plan for restructuring the entire financial aspects of their company. The proposal was referred to an independent evaluation committee consisting of experts from the power and financial sector. According to the petitioner, on 18.07.2014, the independent evaluation committee recommended and approved the re-structuring proposal of the petitioner company. In furtherance to such recommendation, the forum convened a meeting on 25.07.2014 wherein they have recorded the recommendation of the independent committee and agreed to forward it to the respective Board for approval/sanction.

(ii) According to the petitioner, the proposal submitted by them envisaged a contribution by the promoters of the petitioner to the extent of 23.40 crores. As per the existing Reserve Bank of India (in short RBI) guidelines, the promoters contribution is required to be infused within 90 days of the sanction of the proposal by the banks. However, contrary to RBI guidelines, the respondents 1 to 8 insisted the petitioner's promoters to make their contribution of Rs.23.40 crores upfront even before the restructuring proposal is accepted by them and such amount has to be deposited in the joint account opened by JLF known as TRA Account. Even though the promoters of the petitioner company have strained and made all out efforts, by the end of December 2014, they could mobilise only 4.20 crores. It is also alleged by the petitioner that ICICI Bank insisted the petitioner not to deposit the amount mobilised with the TRA Account, instead, to deposit the amount towards the amount payable to them. As there was tremendous pressure, the petitioner deposited the sum of Rs.4.20 crores in the account of ICICI Bank directly instead of the TRA Account.

(iii) According to the petitioner, on 15.12.2014, the JLF meeting was convened during which the forum insisted the ICICI Bank to transfer the amount of Rs.4.20 crores deposited by the petitioner immediately with the TRA Account. It was further resolved that the sum of Rs.4.20 crores deposited by the petitioner shall not be treated as upfront amount which has to be paid as a condition precedent for accepting the restructuring proposal. Thereafter, on 18.04.2015, another meeting of JLF was convened during which the respondents 1, 4, 6 and 9 have agreed for accepting the proposal but the other respondents have imposed several conditions for accepting the proposal of the petitioner. In this direction, meeting of the JLF was convened on several other dates and ultimately, in the meeting dated 21.07.2015, the respondents have decided to take recovery measures against the petitioner. It is this decision taken by the JLF which is questioned by the petitioner in this writ petition.

3. The learned counsel for the petitioner would vehemently contend that the

decision of the JLF consisting of the respondents 1 to 9 is contrary to and in violative of the guidelines laid down by RBI. According to the learned counsel for the petitioner, the revival process initiated by the petitioner has been hampered by the lack of coordination and unfair attitude on the part of the respondents, who, among themselves are not united. The pre-condition imposed for sanctioning the proposal for revival by the petitioner to make an upfront contribution of 23.40 crores is arbitrary and contrary to the prevailing RBI Guidelines. The petitioner is an on-going company having turnover worth Rs.133 crores and have 75 employees who are depending on the petitioner company for their livelihood. It is vehemently contended on behalf of the petitioner that even before the secured assets of the petitioner could be declared as non-performing assets (NPA) they have come up with a revival proposal and this shows their bona fide attitude. The decision taken in the JLF meeting on 21.07.2015 would amount to indirectly throttling the business activities of the petitioner and it is in violation of the fundamental rights guaranteed to the petitioner company under Article 14 of The Constitution of India. Therefore, the learned counsel appearing for the petitioner prayed this Court for allowing the writ petition.

4. Mr. M.L. Ganesh, learned counsel appearing for the respondents 1, 5, 6 and 9 vehemently opposed the writ petition by relying upon the separate counter affidavits filed by the respondents 1, 5, 6 and 9. According to the learned counsel appearing for the respondents 1, 5, 6 and 9, the proposal submitted by the petitioner company is not technically feasible and economically viable and therefore it was decided to initiate legal proceedings for recovery of the amount payable by the petitioner. According to the learned counsel, there are several factors which made the petitioner company ineligible for restructuring of the loan account. For example, the inability on the part of the petitioner to execute EPC contracts resulted in cancellation of orders and invocation of bank guarantees. The receivables became unrealizable due to delay/other issues in execution. The excess borrowing made by the petitioner is not commensurate with the working lead to high financial costs. Therefore, the consortium member banks were not ready to support the proposal submitted by the petitioner company inasmuch as it is impossible of implementation. The reason being the petitioner company borrowed credit facilities beyond their capacity to repay and created inventories and receivables making the recovery initiatives more complex. Further, when the restructuring proposal is pending consideration, the petitioner has violated the procedures and opened a current account with Jammu and Kashmir Bank Limited as well as Kotak Mahindra Bank without prior permission making the acceptability of their proposal more complicated. The business operation of the petitioner company has come to a grinding halt and in such circumstances, the revival or restructuring proposal is not feasible of consideration. According to the learned counsel, the petitioner company as well as it's sister company called M/s. Tecpro Infra Projects Limited are due to pay a sum of Rs.547.57 crores and Rs.14.01 crores as on 31.01.2016 to the State Bank of India alone. The writ petition has been filed by the petitioner with a view to delay the recovery proceedings.

5. The learned counsel for the respondents 1, 5, 6 and 9 would further contend that in all the Joint Lenders Forum meetings, the majority of the secured creditors have accorded approval for initiation of recovery action against the petitioner. The learned counsel also brought to the notice of this Court that some of the respondents have already initiated legal proceedings for recovery of the amount before the Debt Recovery Tribunal-II, Chennai and they are pending adjudication.

6. As regards the maintainability of this writ petition before this Court, the learned counsel for the respondents 1, 5, 6 and 9 relied on the decision of the Division Bench of this Court in (Tamil Nadu Industrial Investment Corporation Limited v. Millenium Business Solutions Pvt Ltd.,) reported in 2004 (5) CTC 689 wherein the Division Bench of this Court held that in matters related to recovery of loans, which are based on contracts, writ petition is not a proper remedy. It was further held that the Court has no right under Article 226 of The Constitution of India to grant One Time Settlement or for re-scheduling the loans or fixing instalments. For the very same proposition, the learned counsel also relied on another decision rendered by the Division Bench of this Court in (Maruti Acetylene Co., Pvt Ltd., v. Central Bank of India, Coimbatore) reported in (2009) 2 CTC 193 wherein also this Court held that this Court is not competent to direct any of the parties to a case pending before it, to settle the dispute on a particular terms and conditions, till the parties themselves agree to settle such dispute on certain terms and conditions either before Court or outside the Court. By placing reliance on the above decisions, the learned counsel for the respondents prayed for dismissal of the writ petition.

7. The learned counsel appearing for the third respondent vehemently contend that the writ petition is not maintainable at the instance of the petitioner, who has committed default in payment of the loan amount. The respondents banks have convened a meeting and attempted to explore the possibility of restructuring the loan amount borrowed by the petitioner. However, as the proposal of the petitioner is not feasible of compliance it was rejected with a direction to initiate appropriate legal action for recovery of the amount. While so, this Court, in exercise of powers under Article 226 of The Constitution of India need not issue any direction to respondents as it would amount to compelling the respondents to accept the proposal of the petitioner which is not viable and feasible.

8. The learned counsel for the seventh respondent also would contend that when proceedings have been initiated before the Debts Recovery Tribunal against the petitioner, the petitioner is not entitled to seek any relief before this Court in this writ petition.

9. The petitioner has filed a rejoinder contending interalia that the business of the petitioner company has not come to a grinding halt and they have the wherewithal to execute several projects in their pipeline. It is stated that despite the withdrawal of the support of the banks, the petitioner company is still

continuing its operation and successfully executing the projects.

10. I heard the learned counsel on either side and perused the materials placed on record. Admittedly, the petitioner has committed default in repayment of the loan amount they borrowed from the respondents 1 to 9. However, even before their secured assets are declared as Non-performing Asset, they have approached the respondents with a proposal for re-structuring the loan amount. In this context, as contemplated in the RBI guidelines, the respondents 1 to 9 have formed themselves into a consortium called Joint Lenders Forum (JLF) to review the financial position of the petitioner company. In this context, several meetings have been convened in which the petitioner participated. The constitution of JLF is in accordance with the RBI guidelines, the relevant portion of which are extracted hereunder:-

"Part-C

Early recognition of financial distress, prompt steps for resolution and Fair recovery for Lenders : Framework for Revitalising Distressed Assets in the Economy:-

Guidelines on Joint Lenders Forum (JLF) and Corrective Action Plan (CAP)

20. These guidelines will be applicable for lending under Consortium and Multiple Banking Arrangements (MBA) (except instructions in paragraphs 21.1, 26.1, 27 and 28 below, which will be applicable in all cases of lending) and should be read with our prudential norms on "Restructuring of Advances by banks" as contained in Part B of this Master Circular and any other instruction issued in this regard from time to time.

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21.3 Banks are advised that as soon as an account is reported by any of the lenders to CRLC as SMA-2, they should mandatorily form a committee to be called Joint Lenders" Forum (JLF) if the aggregate exposure (AE) (fund based and non-fund based taken together) of lenders in that account is Rs.1000 million and above. Lenders also have the option of forming a JLF even when the AE in an account is less than Rs.1000 million and/or when the account is reported as SMA-0 or SMA-1.

21.4 While the existing Consortium Arrangement for consortium accounts will serve as JLF with the Consortium Leader as convener, for accounts under Multiple Banking Arrangements (MBA) the lender with the highest AE will convene JLF at the earliest and facilitate exchange of credit information on the account. In case there are multiple consortium of lenders for a borrower (e.g. separate consortium for working capital and term loans) the lender with the highest AE will convene the JLF.

21.5 It is possible that a borrower may request the lender/s, with substantiated

grounds, for formation of a JLF on account of imminent stress. When such a request is received by a lender, the account should be reported to CRILC as SMA-0, and the lenders should also form the JLF immediately if the AE is Rs.1000 million and above. It is however, clarified that for the present, JLF formation is optional in other cases of SMA-0 reporting.

21.6. All the lenders should formulate and sign an agreement (which may be called JLF agreement) incorporating the broad rules for the functioning of the JLF. The Indian Banks Association (IBA) has prepared a Master JLF agreement and operational guidelines for JLF which can be adopted by all lenders. The JLF should explore the possibility of the turnover setting right the irregularities/weaknesses in the account. The JLF may invite representatives of the Central/State Government/Project Authorities/local authorities, if they have a role in the implementation of the project financed."

11. Thus, it is evident that as per Clause 21.3 of the RBI guidelines mentioned above, the JLF came to be constituted by the respondents 1 to 9 to review the financial position of the petitioner company. The JLF so constituted have referred the proposal of the petitioner to an Independent Evaluation Committee who are experts in the field of finance and power sector. It is contended that the committee of experts have recommended for re-structuring the petitioner company by accepting their proposal. The grievance of the petitioner company is that the JLF has not accepted their proposal for re-structuring the financial pattern submitted by them and on the other hand they imposed unreasonable conditions relating to payment of upfront contribution of Rs.23.40 crores by the promoters of the petitioner company dehors the recommendation made by the Independent Evaluation Committee. This is countered by the respondents by contending that the proposal submitted by the petitioner is not feasible of acceptance, financially as well as technically and therefore they have resolved to proceed against the petitioner for recovery of the loan amount. It is also brought to the notice of this Court that some of the respondents have initiated recovery proceedings by filing Original Application before the Debts Recovery Tribunal, Chennai and the application is pending. While so, whether this Court, can exercise the power conferred under Article 226 of The Constitution of India and interfere with the decision taken by JLF and direct them to accept the proposal submitted by the petitioner company for re-structuring of the loans availed by them. The answer will be an emphatic "No" and in matters of this nature where there is a contractual dispute, the interference of this Court will be very limited. Unless it is shown that the respondents have failed to follow and adhere to certain statutory guidelines, this Court cannot interfere with the decision taken by the respondents. As mentioned above, as per the RBI guidelines, the respondents have constituted the JLF. This is also not disputed by the petitioner company. But what is disputed is that the JLF did not accede to the proposal submitted by the petitioner company for revival of their company and are attempting to throttle the functioning of their company. It is to be pointed out that the JLF constituted by the respondents have not rejected the proposal of the

petitioner at the threshold. Even as admitted by the petitioner company, several meetings have been convened to consider the proposal submitted by the petitioner for revival but ultimately it was concluded that the proposal submitted by the petitioner is not technically and financially viable and feasible for consideration. This decision of the JLF is called in question by the petitioner.

12. It is well settled proposition of law that this Court, in exercise of powers conferred under Article 226 of The Constitution of India cannot conduct a roving enquiry into the disputed facts projected on behalf of both sides. In such an event, the remedy under Article 226 of The Constitution of India is not a proper remedy. It is for the respondents, who have granted loan in favour of the petitioner company have to either accept or reject the proposal submitted by the petitioner company for re-structuring the loan account in which this Court has no jurisdiction to either direct the respondents to accept the proposal or grant an opportunity to the petitioner to settle the loan amount in a manner convenient to them. In this context, useful reference can be made to the decision of the Division Bench of this Court, relied on by the learned counsel for the respondents 1, 5, 6 and 9 in (Tamil Nadu Industrial Investment Corporation Limited v. Millenium Business Solutions Pvt Ltd.,) reported in 2004 (5) CTC 689 wherein it was held as follows:-

"16. A loan granted in terms of the contract, and grant of one time settlement or re-scheduling of the loan amount is relaly a modification of the contract, which can only be done by mutual consent of the parties, vide Section 62 of The Contract Act, 1872. The Court cannot alter the terms of the contract.

17. For the reasons stated above, this writ appeal is allowed and the impugned order passed in WP No. 14013 of 2004 is set aside. Consequently, connected miscellaneous petitions are closed.

18. Before parting with the case we would like to mention that recovery of tens of thousands of crore rupees of loans of banks and financial institutions has been held up by Court orders under Article 226 proceedings which were really unwarranted. However, much sympathy a Court may have for a party, a writ Court must exercise its jurisdiction on well settled principles, and not on mere sympathy or compassion. No doubt, there may be hardship to a party, but unless violation of law is shown, the Court cannot interfere. Holding up recoveries of loans by unwarranted Court orders is causing incalculable harm to our economy, since unless the loan is recovered a fresh loan cannot be granted to needy persons. The courts must keep these considerations in mind."

13. As held by the Division Bench of this Court, if the prayer sought for by the petitioner is granted, it would amounts to altering the terms and conditions of the contract governing the sanction of loan in favour of the petitioner by the respondents and it will be in violation of Section 62 of the Contract Act. This is more so that in the present case, as could be seen from the counter affidavit of the respondents, the petitioner company and it's sister company called M/s.

Tecpro Infra Projects Limited are due to pay a sum of Rs.547.57 crores and Rs.14.01 crores as on 31.01.2016 to the State Bank of India alone. When such a huge amount is payable by the petitioner to the respondents, this Court hesitates to interfere with the decision taken by the respondents in the meeting held on 21.07.2015.

14. The learned counsel for the petitioner vehemently contend that the petitioner company has the wherewithal to take up new projects and they are financially capable of executing the projects in their pipelines. The petitioner also specifically denied the fact that their operations have come to a grinding halt. According to the petitioner company, their company has overcome all the financial hurdles and have secured new projects. However, it is alleged that the respondents are not cooperating with the proposal submitted by them. If it is so, it is for the petitioner company to take up the matter with the respondents and engage in mutual discussion to settle the loan amount. In such event, it is for the respondents to accept the proposal. The non-cooperation or otherwise by the respondents is neither a ground for this Court to interfere with the decision of the respondents nor can this Court compel the respondents to accept the offer made by the petitioner company for re-structuring the loan.

15. For all the reasons mentioned above, the writ petition fails and it is dismissed. No costs. Consequently, connected W.M.P. Nos. 3207 and 3208 of 2016 are closed.