(2016) 07 JH CK 0132

In the Jharkhand High Court

Case No : Company Petition No. 13 of 2015

HDFC Bank Limited APPELLANT

Vs

M/s. Everest Electrical and Engineering Company Pvt. Limited RESPONDENT

Date of Decision : 15-07-2016

Acts Referred:

Citation : (2017) 1 AIRJharR 137 : (2017) 1 JBCJ 113 : (2016) 4 JCR 666

Hon'ble Judges : Mr. D.N. Patel, J.

Bench : Single Bench

Advocate : M/s. Bharat Kumar, Advocate, for the Respondents; M/s. Ashish Jha and M.M. Sinha, Advocates, for the Petitioners

Final Decision : Disposed Off

Judgement

D.N. Patel, J. - These Company Petitions have been preferred by the petitioner for binding up of the respondents-Companies.

2. At the request of both parties, this matter was referred to the mediation. Both parties were heard. Mediation report has been received by this Court and an amicable settlement has already arrived at between the parties to these Company Petitions.

3. The terms and conditions of the amicable settlement are as under: -

"1. The parties agreed to settle for Rs.714.19 Lakhs to be paid on or before 31.03.2017 in the manner specified in details herein below as full and final settlement as against the admitted outstanding dues amounting to Rs.9.28 crores (as on 31.03.2016) as claimed by the Petitioner Bank against the Respondents in C.P. No.13 of 2015 and C.P. No.14 of 2015.

2. That the Petitioner Bank along with the above captioned matters has also instituted O.A. No.348/2015 & O.A. No.534/2015 which is pending adjudication before the Hon''ble Debts Recovery Tribunal, Ranchi for the admitted outstanding due of Rs.9.28 crores (as on 31.03.2016) against the Respondents.

3. That the Petitioner Bank has agreed vide its Sanction Letter dated 17.6.2016 to accept the proposal of Rs.714.19 Lakhs (Rupees Seven Crores Fourteen Lakhs and Nineteen Thousand only) towards full and final settlement of dues against the Respondent Companies which has to be paid by the Respondents to the Petitioner as under:

(i) Rs.200 lacs on or before 30.06.2016 (from sale of property described below);

(ii) Rs.14.19 lacs on or before 31.07.2016;

(iii) Rs.60 lacs on or before 31.08.2016;

(iv) Rs.250 lacs on or before 30.09.2016 (final payment - from sale of property described below)

(v) Rs.75 lacs on or before 30.11.2016

(vi) Rs.85 lacs on or before 28.02.2017

(vii) Rs.30 lacs on or before 31.03.2017

4. Upon receipt of Rs.450 lacs on or before 30.09.2016, the Petitioner Bank shall release the mortgaged property situated at Industrial Plot No. M-31(P) & M-32(P), 4th Phase, Industrial Area, Adityapur, Jamshedpur, standing in the name of M/s. Indico Automotive Private Limited and hand over the original title deeds held with the Bank."

4. It has been settled between the parties that upon receipt of Rs.450 lakhs on or before 30th September, 2016, the Petitioner Bank shall release the mortgaged property situated at Industrial Plot No. M-31(P) and M-32(P), 4th Phase, Industrial Area, Adityapur, Jamshedpur, which is standing in the name of M/s. Indico Automotive Private Limited.

5. Further terms of the agreement between the parties are as under: -

"5. The first tranche of payment of Rs.200 Lakhs payable on or before 30.06.2016 has already been paid by the respondent companies on 27.06.2016 to the Petitioner Bank and the Petitioner Bank acknowledge the receipt of the same.

6. The time being the essence of this settlement, the respondents have been advised to strictly adhere to the payment timeliness as stated herein above at Point no.3. Any delay for repaying the Settlement Amount as per the respective due dates indicated above shall be considered as a "default" and Bank shall be entitled to all the recourse available under law.

7. In case of a "default" by the respective Borrowers/Respondents:

(i) the entire outstanding amount as mentioned in Point 2 above, along with further interest (less any instalment already paid) and as mentioned in Original Application (as mentioned above filed by the bank against the borrower shall forthwith become due and payable for which respective Borrowers and Guarantors hereby irrevocably agree, declare, confirm and acknowledge;

(ii) all the concessions/waivers agreed to be granted shall stand withdrawn immediately without any further notice, reference and/or recourse, and Borrower and Guarantors shall become liable to pay the entire balance dues along with interest. Thus, in such circumstances, this terms of Settlement shall stand revoked automatically and the bank shall be entitled to proceed to recover its entire balance claim forthwith, without any further reference and/or recourse notwithstanding what is provided herein.

8. Further, in the event of default, the bank shall be entitled to get the Recovery Certificate for its entire outstanding claim amount together with further interest at contract rate until full realisation along with other consequential reliefs as prayed for in terms of the prayers made in the original application, after adjusting any amounts received as per this settlement terms and the Hon''ble Tribunal may be pleased to issue necessary Certificate in respect of the aforesaid claim of the bank treating this terms of settlement as an admission by and behalf of the borrowers jointly and severally. Amounts paid by the borrowers under this Settlement terms, shall be adjusted/reduced from the Recovery Certificate.

9. Upon receipt of entire settlement amount of Rs.714.19 Lakhs (Rupees Seven hundred Fourteen Lakhs and Nineteen Thousand only) within the timeline mentioned above in clause 3, the Bank:

(a) shall issue No Dues Certificate

(b) shall release the title deeds relating to all the mortgaged properties

(c) shall discharge the liability of the guarantors

(d) shall withdraw all cases filed by the bank in courts and tribunals."

6. Hence, these Company Petitions are hereby disposed of in view of the settlement arrived at between the parties before the mediator as stated herein above.

7. The parties will be at liberty to move this Court in case of any difficulty or breach of the conditions of the settlement as stated herein above.

8. In view of the final order passed in the Company Petitions, I.A. No.6060 of 2015 also stands disposed of.

