
(2010) 04 AHC CK 0082
In the Allahabad High Court
Case No : C.M.W.P. No. 16321 of 2010

Metlon India (P.) Ltd.

APPELLANT

Vs

State Bank of India and Another

RESPONDENT

Date of Decision : 02-04-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Securitisation and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (SARFAESI) — Section 29

Citation : (2010) 5 AWC 4408 : (2010) 4 BC 120

Hon'ble Judges : Y.C. Gupta, J;S.K. Singh, J

Bench : Division Bench

Judgement

S.K. Singh and Y.C. Gupta, JJ.—Heard Sri Shashi Nandan, learned senior advocate assisted by Sri C. P. Upadhyaya, learned advocate who appeared in support of this petition and Smt. Archana Singh, learned advocate who appeared for the respondent Bank.

2. Prayer in this petition is for quashing the sale notice dated 14.3.2010 (Annexure-7 to the writ petition).

3. There is another prayer for a direction to the respondent bank to permit the petitioner to sale its properties and a portion of secured assets through private negotiations in order to repay the entire outstanding dues of the bank.

4. Petitioner obtained a loan from the respondent bank and regular payment towards loan amount was being paid but on account of certain factors beyond the control company suffered huge financial loss as a result of which the amount became in default. Respondent bank proceeded under Securitisation Act. An objection was filed by the petitioner but that was rejected.

5. At the very outset Sri Shashi Nandan, learned senior advocate submitted that so far the liability of the petitioner to pay and the validity of the proceedings petitioner is not challenging the same and no issue is being made on that count

but on the facts petitioner wants small indulgence as has been permitted by the Apex Court and as has been given by this Court also in other cases.

6. Argument is that according to the notice, amount sought to be recovered from the petitioner as on 12.3.2010 is about 20 crores and odd. The reserve price of the land, machinery etc. as is mentioned in the notice is 30.57 crores. Sri Nandan points out that according to the valuation report of the property in the year 2008, the valuation of the property was Rs. 53 crores and odd and so far plant and machinery installed in the premises is about 15 crores and thus even if petitioner is permitted to get the sale of portion of his property so to be proceeded then entire defaulted amount which is just to the tune of Rs. 20 crores and odd may be paid and petitioner may be saved of irreparable injury.

7. Submission is that there is no lack of bona fide on the part of the petitioner and he is engaged in a good business but due to bad times this an unforeseen situation.

8. Smt. Singh submitted that so far the bank is concerned the loan was advanced for the purposes of improvement in the business so that the petitioner may be benefitted and there is never an intention that petitioner may suffer and that too in the event of non-payment for recovery by coercive measures.

9. Submission is that if the petitioner is invoking the equity powers of this Court then every kind of bona fides will have to be shown in his conduct and reasonable amount will have to be immediately deposited so as to receive a breathing time for the purpose.

10. At this stage Smt. Singh placed before the Court the letter of the bank dated 30.3.2010 by which the amount as on 31.3.2010 is found to be mentioned as 21,04,75,549.11.

11. We are to refer the judgment of the Apex Court given in the case of Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and others, which was placed before the Court. Observation as made in the judgment of the Apex Court in para 15 is hereby quoted:

Similarly various situations may arise which may hamper start of the unit-delay in electric supply or delayed delivery of machinery vital for the functioning of the unit. Such difficulties do require rescheduling of payment of instalment because, if the unit, for reasons beyond the control of unit holder, could not start, then how will the amount be repaid. Endeavour should be to adjust and accommodate as business considerations require the unit to function for benefit, both, of the general public and the Corporation. It is not mandatory, as a matter of law, to observe the process of taking over strictly. But if there is no option left and the unit is taken over then its transfer requires not only sincere effort but to act reasonably and fairly.

12. The final direction by making arrangement in a particular manner as was made by the Apex Court in the case of Mahesh Chandra (supra) as contained in

para 22 of the said judgment is hereby quoted:

22. Keeping these various factors giving rise to conflicting interest the following directions are necessary to be issued to be observed by the Corporation while exercising power u/s 29. Every endeavour should be made, to make the unit viable and be put on working condition. If it becomes unworkable:

(1) Sale of a unit should always be made by public auction.

(2) Valuation of a unit for purposes of determining adequacy of offer or for determining if bid offered was adequate, should always be intimated to the unit holder to enable him to file objection if any as he is vitally interested in getting the maximum price.

(3) If tenders are invited then the highest price on which tender is to be accepted must be intimated to the unit holder.

(4) (a) If unit holder is willing to offer the sale price, as the tenderer, then he should be offered same facility and unit should be transferred to him. And the arrears remaining thereafter should be rescheduled to be recovered in instalments with interest after the payment of last instalment fixed under the agreement entered into as a result of tendered amount.

(b) If he brings third parties with higher offer it would be tested and may be accepted.

(5) Sale by private negotiation should be permitted only in very large concerns where investment runs in very huge amount for which ordinary buyer may not be available or the industry itself may be of such nature that by normal buyers may not be available. But before taking such steps there should be advertisements not only in daily newspapers but business magazines and papers.

(6) Request of the unit holder to release any part of the property on which the concern is not standing of which he is the owner should normally be granted on condition that sale proceeds shall be deposited in loan account.

13. Recently this Court in the Writ Petition No. 3223 of 2009 M/s. Rajesh Paper Mills Limited and Anr. v. Punjab National Bank and Ors. gave the following directions:

Under such circumstances, we are of the view that the writ petition can be disposed of and accordingly disposed of with following directions:

(a) to the test of bona fide, the petitioners will deposit a token amount of Rs. 20 lacs with the bank within a period of one month from this date at first;

(b) then the petitioners will make representation to the bank and produce all the guarantors physically for the purpose of bank's verification on a particular date and time to be notified by the bank well in advance for their consent about sale of their properties to liquidate the bank's claim;

- (c) if necessary bank can also make further valuation of such properties;
- (d) in case bank is satisfied, it can either sell the said property/properties by itself or allow the petitioners to sell such properties in their presence for the purpose of realisation of the bank's due fully and finally;
- (e) only after realisation of entire outstanding demand in full and final, the no dues certificate be issued and documents inclusive of primary security, title deed and other documents of property No. 2866 which is in respect of the primary security be released; and
- (f) time bound period of sixty days is fixed for the purpose of taking all the steps and same will start running from today itself.

14. Here is the case where amount required to be paid is about Rs. 21 crores and odd.

15. Recently an amount of Rs. 2.1 crores was deposited by the company on various dates as is mentioned in the letter of the bank dated 30.3.2010 as was shown by Smt. Singh, as noted above.

16. On record petitioner has filed the valuation report of the land, plant, machinery etc. which is for much more amount than the amount sought to be recovered and as the reserved price is mentioned in the notice.

17. Here we are to observe that for these kind of creditors the Court has to be satisfied with their bona fides. On the facts of each case, consideration/direction has to vary. No hard and fast rule and a mandate for each case as a guidance can be given. If extreme hardship beyond control of petitioner is pleaded and there is a will/intention to pay which is found to be genuine then even bank can get the needful done and if there is any reservation then the Courts exercising equity powers under Article 226 of the Constitution of India taking help of decision of Mahesh Chandra (supra) can certainly do the same, unless there is some legal impediment.

18. On these facts and keeping in mind the good spirit of the respondent bank of not causing irreparable injury to the petitioner and keeping in mind the interest of both sides to be served we are to dispose of the writ petition by giving following directions:

- (i) Petitioner is to deposit an amount of Rs. 2 crores within 15 days from today directly with the respondent bank;
- (ii) In respect to the secured property subject-matter of process on moving the application by the petitioner immediate permission will be given by the respondent bank of sale of the portion/part of the property as the petitioner may want to proceed;
- (iii) If the bank wants the valuation of that property it can also be obtained;
- (iv) If the bank is satisfied, it can either sale the said portion/part of the properly

or allow the petitioner to sale such property in the presence of the bank official for the purpose of realization of the bank's due fully and finally;

(v) The sale proceeds will be directly deposited with the respondent bank so that all dues get its clearance; and

(vi) After realisation/payment of entire outstanding demand in full and final no dues certificate is also to be issued and deeds lying with the bank for the purpose is to be released.

Time for completion of the entire exercise and for ensuring the payment is fixed as sixty days which is to be counted from today and thus, all the steps will take immediate start accordingly.

With the aforesaid direction, as agreed by both sides the writ petition is disposed of.