

(2016) 08 GAU CK 0009
In the Gauhati High Court
Case No : Writ Petition (C) No. 74 of 2010

M/s Assam Oxygen Private Limited

APPELLANT

Vs

Assam Financial Corporation

RESPONDENT

Date of Decision : 09-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) AIR(Gauhati) 4 : (2016) 5 GauLJ 385 : (2016) 4 GauLT 790

Hon'ble Judges : Mr. Arup Kumar Goswami, J.

Bench : Single Bench

Advocate : Mr. O.P. Bhati, Advocate, for the Petitioner; Mr. L.P. Sharma, Standing Counsel, Assam Financial Corporation, for the Respondents

Final Decision : Allowed

Judgement

Mr. Arup Kumar Goswami, J.(Oral)—Heard Mr. O. P. Bhati, learned counsel for the petitioner. Also heard Mr. L. P. Sharma, learned Standing counsel, appearing for the respondents, i.e., Assam Financial Corporation (for short, "Corporation") and its functionaries.

2. The petitioner is a private limited company incorporated under the provisions of the Companies Act, 1956. Respondent No. 1 Corporation had sanctioned and released a loan of Rs. 60.00 lakhs on execution of a Deed of Hypothecation/ mortgage dated 19.04.1984 to the petitioner for the purpose of setting up of an oxygen gas manufacturing unit and the loan was to be repaid in instalments. The petitioner's plant was set up and commissioned in the year 1990 and for some reasons, which need not detain this Court for the purpose of disposal of the writ petition, there was some default on the part of the petitioner in repaying the loan amount. The plant of the petitioner had been shut down in the year 2001. In such circumstances, the petitioner, by letter dated 12.12.2005, made an offer for one-time settlement by agreeing to pay Rs. 20 lakhs towards liquidation of the loan account. The proposal of the petitioner was rejected by the Corporation by letter dated 10.01.2006 on the ground that the amount at which the petitioner

wanted to settle the loan account, did not come within the norms of one-time settlement in force. Once again, by a letter dated 24.08.2006, proposal was made by the petitioner for one-time settlement offering to make payment of Rs. 40 lakhs. In response to a representation dated 26.06.2007, submitted by the petitioner in connection with the aforesaid settlement, the respondent Corporation, by letter dated 07.07.2007 directed the petitioner to pay Rs. 25 lakhs within 7 days from the date of issuance of the letter, and the balance amount of Rs. 34,27,484.65 within 3 months thereafter indicating that on such payment being made, the petitioner's proposal for one-time settlement would be placed before the Board of Directors for consideration and to take a decision in the matter. The petitioner was not happy with the rider for payment of the aforesaid amount before its proposal was placed before the Board of Directors of the Corporation and, accordingly, it solicited the decision of the Board of Directors confirming one-time settlement of its loan account on payment of the amounts. Further parleys took place on the petitioner's proposal for one-time settlement and, by a letter dated 30.08.2007, the petitioner enhanced the amount proposed to be paid by him to Rs. 75 lakhs - Rs. 25 lakhs within 30 days on acceptance of the proposal and remaining 50 lakhs by 31.12.2008. However, the respondent Corporation, by letter dated 14.09.2007, requested the petitioner to revise and enhance the amount offered towards one-time settlement and, consequently, by a letter dated 20.09.2007, the petitioner communicated its willingness to enhance the amount to Rs. 80 lakhs. Consequent upon the petitioner offering to make payment of Rs. 80 lakhs, the Corporation, by letter dated 26.09.2007, asked the petitioner to deposit the entire amount of Rs. 80 lakhs on or before 30.09.2007. On failure of the petitioner to deposit the amount, once again there was a request made by the respondent Corporation by letter dated 12.10.2007 to deposit the amount on or before 31.10.2007. As the petitioner did not make payment of the amount of Rs. 80 lakhs, the respondent Corporation cancelled the said package by letter dated 24.01.2008 and submitted two alternatives and, as per the first alternative, all the three directors were required to deposit Rs. 30 lakhs each and on realisation of the amount of Rs. 90 lakhs, the matter was to be recommended to the Board of Directors for waiver of the balance dues as on 30.07.2007 and for closure of the loan account. The period for payment of the amount was extended up to 31.03.2008. The amount of Rs. 90 lakhs was not deposited.

3. In the meantime, the respondent Corporation formulated a scheme for one-time settlement, namely, OTS Scheme, 2007, with the objective of reducing all non-performing assets (NPA), which was gaining alarming proportions. Initially, the scheme was made operative for a period from 01.12.2007 to 31.03.2008, which was subsequently extended up to 31.08.2008. By a letter dated 18.03.2008, issued by the Deputy General Manager of the Corporation, the petitioner was informed about the OTS Scheme, 2007 and intimated that in case it was desirous of liquidating its loan account under the OTS Scheme, 2007, it may do so by obtaining an application form to be submitted with processing fee

of Rs. 10,000/- and initial deposit of amount equivalent to 10% of the principal amount on or before 31.03.2008, or by deposit of bank guarantee of Rs. 90 lakhs on or before 25.03.2008.

4. As noted earlier, the OTS Scheme, 2007, stood extended up to 31.08.2008. The petitioner submitted duly filled up application form along with a Cheque dated 27.08.2008 for Rs. 6 lakhs purporting to be 10% of the principal outstanding amount along with a Cheque for Rs. 10,000/-, being the processing fee. It appears that the Cheque for Rs. 10,000/- was dishonoured on 19.09.2008 due to insufficiency of funds and, thereafter, the petitioner deposited an amount of Rs. 10,000/- on 22.09.2008, which was accepted. Subsequently, by letter dated 18.03.2009, the petitioner was informed that the application for one-time settlement under OTS Scheme, 2007, was rejected as the petitioner had earlier offered to settle the loan account at Rs. 75 lakhs.

5. Mr. Bhati has submitted that the ground for rejection of the petitioner's application for settlement under OTS Scheme, 2007 is not tenable in law and the same reflects total non-application of mind. No doubt, the petitioner had offered to settle the loan account at Rs. 75 lakhs, but there was no decision of the Board to accept the proposal of the petitioner to pay Rs. 75 lakhs. He has submitted that when the petitioner had made the offer to make payment of Rs. 75 lakhs, the OTS Scheme, 2007, had not come into being. Therefore, the Board could not have rejected the application of the petitioner for settlement of its loan under the OTS Scheme, 2007, on the vexatious ground that the petitioner had offered to pay Rs. 75 lakhs and, consequently, the respondent Corporation is liable to be directed to consider the petitioner's application for settlement of its loan account under OTS Scheme, 2007, he submits.

6. Mr. Sharma, learned counsel for respondents No. 1 to 3, has submitted that in the attending facts and circumstances, taking note of the offer made by the petitioner to settle the loan account at Rs. 75 lakhs, the decision of the Board of Directors to reject the petitioner's application under OTS Scheme, 2007, cannot be faulted with.

7. There is no dispute on facts. It is admitted by Mr. Sharma that the Board had not taken any decision at any point of time to accept the offer of Rs. 75 lakhs made by the petitioner. It is also noticed that the letter was also issued by the respondent Corporation to the petitioner soliciting its response as to whether it was willing to settle its loan account under OTS Scheme, 2007. It is not the case of the respondent Corporation that the petitioner was otherwise not eligible for consideration under the OTS Scheme, 2007. Only ground on which the petitioner's application was rejected was on account of the fact that the petitioner had, at one point of time, made offer to pay Rs. 75 lakhs. It appears that under the OTS Scheme, 2007, the amount of settlement would be less than Rs. 75 lakhs for the purpose of liquidation and settlement of the loan account.

8. Now, the question that arises is as to whether only for the reason that the

petitioner had offered to pay a sum of Rs. 75 lakhs, the petitioner can be denied the benefit available to him under OTS Scheme, 2007. In the considered opinion of the Court, when the offer of the petitioner to pay Rs. 75 lakhs had not been accepted by the Board of Directors of the respondent Corporation, its decision to reject the petitioner's application for one-time settlement under OTS Scheme, 2007, is not tenable in law. To constitute waiver, there must be a intentional relinquishment of a known right or voluntary relinquishment or abandonment of known existing legal right, or such conduct as would warrant inference of the relinquishment of known right or privilege. The materials on record demonstrate that the offer of settlement at Rs. 75 lakhs was made by the petitioner at a point of time when the OTS Scheme, 2007, had not seen the light of the day. If the OTS Scheme, 2007, was in force and, thereafter the petitioner had made a prayer for settlement of its loan account at Rs. 75 lakhs, the question might have arisen as to whether the petitioner had waived its right to submit its application under the OTS Scheme, 2007. The subordinate authorities of the Board dilly-dallied the matter and, as it appears, at no point of time the matter was placed before the Board. Letters were written to the petitioner requesting to pay certain amount even without soliciting the opinion of the Board of Directors and, in the meantime, the OTS Scheme, 2007, was introduced by the respondent Corporation to wipe out non-performing assets.

9. As is noticed earlier, the plant of the petitioner had been shut down before the year 2001 and statement is made at the Bar that even as of today, the plant is not functional. The respondent Corporation had issued notice indicating that it will be compelled either to take possession and management of the petitioner's concern under Section 29 of the State Financial Corporation Act, 1951, or initiate legal proceedings for realisation of dues, but no steps had been taken by the Corporation towards that end in spite of the fact that there is no interim order.

10. In view of the above discussion, the writ petition is allowed. The Board of Directors of the respondent Corporation shall now consider the petitioner's case for one-time settlement under the OTS Scheme, 2007, within a period of two months from the date of receipt of a certified copy of this order. No cost.