(2023) 03 TEL CK 0006

In the Telangana High Court

Case No : Writ Petition No. 1207 Of 2022

M/S Jonnas Enterprises — APPELLANT

Vs

Union Of India And Another — RESPONDENT

Date of Decision : 02-03-2023

Acts Referred:

Citation : (2023) 03 TEL CK 0006

Hon'ble Judges : K. Lakshman, J

Bench : Single Bench

Advocate : Kasi Somayajula Jayashree

Final Decision : Dismissed

Judgement

1. Heard Mr. K. Sai Rama Murthy, learned counsel for the petitioner and Mr. M.V.K. Viswanadham, learned counsel appearing for respondent No.2.

2. This writ petition is filed to declare the unilateral action of respondent No.2 in foreclosing the account of the petitioner by way of demand notice dated 21.08.2021 without taking into consideration of various representations given by the petitioner including reply dated 13.08.2021 as illegal, and for a consequential direction to respondent No.2 to extend/renew C.C. limit and review of term loan.

3. CASTE OF THE PETITIONER:

i) The petitioner is a proprietary concern, engaged in running the business of Silica Sand Sieving and Processing (Dry Process) under the Scheduled Castes and the Scheduled Tribes Women Entrepreneur Scheme/MSME Scheme (Micro, Small and Medium Enterprises Scheme).

ii) It had approached respondent No.2 for term loan and an amount of Rs.40,00,000/- (Rupees Forty Lakhs Only) was sanctioned as term loan to the petitioner concern. Apart from the same, an amount of Rs.50.00 lakhs towards Cash Credit Facility was also sanctioned vide Credit Sanction Advice dated 04.11.2019 and GECL of Rs.7,89,000/- on 10.06.2020.

iii) Respondent No.2 bank had issued recall notice dated 28.07.2021 directing the petitioner to pay an amount of Rs.57,12,472.72ps., along with interest with false allegations of diversion of funds. The petitioner herein had submitted reply dated 13.08.2021 with a request to withdraw the recall notice dated 28.07.2021. The petitioner has also requested respondent No.2 to restructure the said loan amount in terms of the Circulars issued by the Reserve Bank of India (RBI) with regard to the loans availed by MSMS Units. Respondent No.2 did not consider the said request. Therefore, the petitioner herein had filed a writ petition vide W.P.No.22105 of 2021 to declare the unilateral action of respondent No.2 in foreclosing the account of the petitioner by way of demand notice dated 28.07.2021 without taking into consideration of various representations given by the petitioner including the reply dated 13.08.2021, as illegal.

iv) This Court, vide order dated 28.09.2021, disposed of the said writ petition directing respondent No.2 bank to consider the representation dated 13.08.2021 submitted by the petitioner and pass appropriate orders in accordance with law within a reasonable period of time, preferably within a period of eight (08) weeks from the date of receipt of copy of order.

v) According to the petitioner, notice dated 21.08.2021 issued by respondent No.2 foreclosing the account of the petitioner unilaterally is arbitrary, illegal and in violation of principles of natural justice and also in violation of Circular dated 05.05.2021 issued by the RBI. There is no consideration of the representation dated 13.08.2021 by respondent No.2. There is no diversion of funds by the petitioner herein. Declaring the account of the petitioner as NPA on 19.08.2021 is also contrary to the guidelines issued by the RBI and also the benefits/schemes announced by the RBI in respect of MSME Units. The petitioner has explained the said facts in its reply dated 13.08.2021 and requested respondent No.2 to restructure the loan. Instead of considering the same, respondent No.2 had issued another recall notice dated 21.08.2021 demanding the petitioner to repay the loan amount. Therefore, there is no consideration of reply dated 13.08.2021 and compliance with the order dated 28.09.2021 in W.P. No.22105 of 2021. Therefore, the present writ petition.

4. CONTENTIONS OF RESPONDENT No.2:

i) Respondent No.2 has filed counter contending that the petitioner was sanctioned term loan facility of Rs.40.00 lakhs vide sanction advise dated 04.11.2019 for construction of a building on the prime security i.e., land property – factory premises, purchase machinery and set up a Silica sand processing unit; cash credit facility of Rs.50.00 lakhs was also sanctioned against hypothecation of stocks and receivables. The petitioner was also sanctioned Working Capital (GECL) facility of Rs.7.89 lakhs under sanction advice dated 04.11.2019 of the bank on execution of necessary loan documents. The total loan facilities sanctioned to the petitioner amounting to Rs.97.89 lakhs. As on 01.09.2021, the outstanding due in the account of the petitioner is Rs.55,58,909 and as on 01.04.2022, the same is Rs.60,62,413/- with further interest etc.

ii) The petitioner's unit was inspected on 20.07.2021 by the Bank officials in the routine course and it was found that there is no machinery and the factory shed (there is a thatched hut only) is not constructed, book debts are not available. Two sieving machines which are totally rusted and not in usable condition are available at the site and they are old and unused machinery. Absolutely, there was no activity on the site. Unit is not at all functioning. There were four stitching machines at the office unrelated to the finance activity. E-way bills are meagre compared to the quantum of cash credit facility of Rs.50.00 lakhs.

iii) In the letter dated 28.07.2021 addressed to the petitioner, respondent No.2 has stated in unambiguous terms about its findings. If the petitioner is not satisfied, it has to take appropriate steps elsewhere instead of filing the second writ petition.

iv) In this regard, paragraph No.2.a of the credit sanction advise, dated 04.11.2019 is relevant and the same is extracted as under:

"Bank reserves its right to amend, alter the terms and conditions or withdraw all or any of the credit limits sanctioned at any time at its discretion without assigning any reasons whatsoever."

Similarly, paragraph No.2.c is extracted as under;

"The credit facility should be utilized for the specific purpose for which the same has been sanctioned and if the Bank has reason to believe that you have violated, or apprehends that you are about to violate the said conditions, the Bank shall have the option to exercise its right to recall the entire loan or any part thereof at once, in addition to its right to withdraw the undrawn limits not withstanding anything contrary contained in this Sanction Advice. It is affirmed that this right is without prejudice to the Bank's right to demand the Loan amount for violation of other terms and conditions of the sanction."

v) Thus, the petitioner should bank exclusively with respondent No.2 bank, current accounts with other banks are to be closed and proof should be submitted, no account should be opened with any other bank without NOC from respondent No.2 bank. The petitioner also undertook not to bank with any other bank/finance institution without prior written permission from all the present multiple lenders and proceeds of the term loan are not diverted to sister concerns/group companies/speculative activities.

vi) The petitioner has to submit stocks and receivables statement every month, on or before 10th of succeeding month. The receivables statement along with retention money should be certified by the statutory auditors once in a quarter.

vii) The said sanction advise including the conditions laid down in the sanction advice were accepted by the petitioner without any demur and the petitioner has also executed the loan documents for the loans availed subsequent to the said sanction advice.

viii) The petitioner is maintaining a current account with State Bank of India, Chintavaram Village, contrary to the terms of sanction advice.

ix) Out of the term loan amount sanctioned, Mr. D. Anil Kumar, an employee of the petitioner, was paid Rs.8.25 lakhs, which is a major diversion of funds from the term loan account.

x) The account of the petitioner is highly irregular and there has been full diversion of funds other than the purpose for which credit limit was sanctioned.

xi) The petitioner failed to adhere to the contractual obligations. During unit inspection on 20.07.2021, it was evident that there were no sufficient stocks (10-15 Metric Tonnes) and the same is lying along road side without any security and care. No machinery was available which shows that processing was happening. On assessing the status, the account was declared as fraud and there was violation of terms and conditions of credit facility. The bank cannot restructure the fraud account and accordingly account was reported to RBI under FMR No.IOBK 2103-0029. Accordingly, respondent No.2 bank had considered the explanation dated 13.08.2021 submitted by the petitioner in the larger interest of public money and safety of advances. Without considering the same, the petitioner herein has filed the present writ petition with the very same relief which was sought in W.P. No.22105 of 2021. Therefore, the present writ petition is not maintainable.

xii) In the earlier writ petition viz., W.P. No.22105 of 2021, the petitioner herein has filed a truncated sanction advice dated 04.11.2019 withholding crucial pages from the scrutiny of this Court. Therefore, the petitioner is estopped from doing the same. Thus, there is no illegality in issuing demand notice dated 21.08.2021. With the said submissions, it sought to dismiss the present writ petition.

5. ANLYSIS AND FINDING OF THE COURT:

i) The petitioner has filed reply to the counter affidavit along with purchase invoices, GST Returns, Income Tax Returns Audit CA Fund Utilization Certificate. Referring to the same, Mr. K. Sai Rama Murthy, learned counsel for the petitioner, would submit that respondent No.2 bank has not considered the said aspects and also the explanation dated 13.08.2021.

ii) In the said Audited CA Fund Utilization Certificate, dated 11.01.2021, it is specifically mentioned that the audited expenditure and utilization of fund proof and purpose, details of undergoing project of the petitioner were enclosed and an amount of Rs.10.00 lakhs out of sanction term loan of Rs.40.00 lakhs to the petitioner project. Photographs of undergoing works carried out at the site were also enclosed. Due to Covid-19 pandemic situation, works at the site is going slow due to shortage of labour/manpower and other Covid-19 restrictions and now the works at the site is picking up at good pace.

iii) Vide circular dated 05.05.2021, the RBI issued guidelines with regard to restructuring of advances to MSME borrowers. The said Circular also refers to its earlier Circular dated 06.08.2020. In the said Circular, dated 05.05.2021, it was reiterated that lending institutions shall put in pace a Board approved policy on restructuring of MSME advances under the said instructions at the earliest, and in any case not later than a month from the date of the said Circular. The said Circular also says that restructuring of MSME account shall be contingent on the lending institutions satisfying themselves that the same is necessitated on account of the economic fallout from Covid-

19. The respondent bank has issued a Circular dated 21.05.2021, which is in tune with the RBI guidelines in which eligibility criteria is also specifically mentioned. Therefore, according to respondent No.2, the petitioner has violated the terms and conditions of the sanction advise by opening another account and also credit facility in the form of two term loans i.e., Rs.13.83 lakhs and Rs.35.27 lakhs in the name of M/s. Jonna Earth Movers, to which Mrs. J.V. Srilatha is the proprietor, who is also proprietor of the petitioner herein. She has also availed a Housing loan account under Pradhan Mantri Awas Yojana for Rs.16.00 lakhs on 19.12.2017. Thus, there is clear violation of paragraph Nos.2.1 and 2.c of the sanction advice dated 04.11.2019. In the inspection conducted on 20.07.2021, it was found that no sufficient stock (10-15 Metric Tonnes) and the same is lying along roadside without any security and care. No machinery was available which shows processing was happening. On assessing the status, the account was declared as fraud and there was violation of terms and conditions of credit facility. According to the respondent bank, the account was reported to the RBI.

iv) There was no machinery and factory shed. There is only a thatched hut. The petitioner failed to construct any shed. Book debts are not available. Two sieving machines which are totally rusted and not in usable condition are available at the site and they are old and they are not in usable condition. Absolutely, there was no activity at all. Unit is not at all functioning. There were only four stitching machines at the office unrelated to the finance activity. E-way bills are meagre compared to the quantum of cash credit facility of Rs.50.00 lakhs. Thus, according to respondent No.2 bank, the petitioner has violated the aforesaid credit sanction advice and diverted the amount, the details of which are specifically mentioned in the notice dated 28.07.2021 and also notice dated 21.08.2021. The said facts were also mentioned in the counter.

v) The aforesaid writ petition was disposed of on 28.09.2021 directing respondent No.2 bank to consider the representation dated 13.08.2021 submitted by the petitioner and pass appropriate orders in accordance with law within a reasonable period of time, preferably within a period of eight (08) weeks from the date of receipt of copy of order. According to respondent No.2 bank, it has considered the said representation dated 13.08.2021 submitted by the petitioner.

vi) In compliance with the said order, vide e-mail dated 12.11.2021, respondent No.2 sought certain clarifications i.e., including the source from which the petitioner is making prepayment of the housing loan under PMAY and reason for not making any repayment of unsecured loan (M/s. Jonnas Earth Movers and Jonnas Enterprises). Vide another letter, dated 21.12.2021, respondent No.2 requested the petitioner to close its accounts by making payment in the name of the petitioner and M/s. Jonnas Earth Movers immediately, failing which, the name of petitioner will be sent for willful defaulter and necessary legal action will be initiated to recover bank's dues.

vii) It is relevant to note that respondent No.2 bank has issued Circular dated 21.05.2021, which is in tune with the Circular dated 05.05.2021 of the RBI. There is no violation of the said Circular issued by respondent No.2. In the said Circular, dated2 1.05.2021, the eligibility criteria for restructuring of advances to MSME Units is specifically mentioned. The criteria for arriving eligibility is also specifically mentioned.

viii) Mr. M.V.K. Viswanadham, learned counsel appearing for respondent No.2, has also produced letter dated 15.06.2022 of M/s. C.V.S. Balachandra Rao & Co., Chartered Accountants and would contend that the GST returns filed by the petitioner are not correct and the details are also specifically mentioned therein.

6. CONCLUSION:

i) In view of the aforesaid specific allegations, the petitioner herein is not falling within the eligibility criteria mentioned by respondent No.2 in the Circular dated 21.05.2021. According to respondent No.2, though the Credit Sanction Advice was dated 04.11.2019, as on the date of 20.07.2021, the date of inspection, there was no processing of Silica or any sand at the unit site. According to respondent No.2 bank, the petitioner is not entitled for restructuring of its account. Therefore, the petitioner herein failed to make out any case, more particularly, violation of Circular, dated 05.05.2021 of RBI with regard to the restructure of loans in respect of MSME Units and the Circular of respondent No.2 bank dated 21.05.2021 for restructure of advances. Therefore, the writ petition is devoid of merits and the same is liable to be dismissed.

ii) The present writ petition is accordingly dismissed. However, there shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in the writ petition shall also stand closed.

