(2023) 03 TEL CK 0007

In the Telangana High Court

Case No : Writ Petition Nos. 29257, 29270 Of 2021

M/S Jyothi Laundry APPELLANT

Vs

Union Of India, And Another RESPONDENT

Date of Decision : 02-03-2023

Acts Referred:

Citation : (2023) 03 TEL CK 0007

Hon'ble Judges : K. Lakshman, J

Bench : Single Bench

Advocate : Cheruku Sindhura

Final Decision : Dismissed

Judgement

1. Heard Ms. Cheruku Sindhura, learned counsel for the petitioner and Mr. M.V.K. Viswanadham, learned counsel appearing for respondent No.2 in both writ petitions.

2. Both the writ petitions are filed to declare the unilateral action of respondent No.2 in foreclosing the accounts of the petitioners by way of demand notice dated 21.08.2021 without taking into consideration of various representations given by them including reply dated 27.08.2021 as illegal, and for a consequential direction to respondent No.2 to extend/renew C.C. limit and review of term loan.

3. Mr. Bangaru Shyam is the proprietor of M/s. Jyothi Laundry, the petitioner in W.P. No.29257 of 2021 and also the proprietor of M/s. Garments Powder Laundry, the petitioner in W.P.No.29270 of 2021. Since the parties in both the writ petitions and lis involved therein are one and the same, both the writ petitions were heard together and are disposed by way of common order.

4. CASTE OF THE PETITIONER:

i) The petitioner in both the writ petitions is a proprietary concern, engaged in laundry business, mainly in Government Railway Tenders, having registration

Nos.36AAPFJ6512P1ZP and 36BTCPB6540C2Z8, dated 21.11.2019 and 15.11.2019, respectively.

ii) It had approached respondent No.2 for term loans and an amount of Rs.30,00,000/- (Rupees Thirty Lakhs Only) was sanctioned as term loan to the respective petitioners. Apart from the same, an amount of Rs.10.00 lakhs towards Cash Credit Facility was also sanctioned vide Credit Sanction Advices dated 09.12.2019 and 06.01.2020 respectively.

iii) Respondent No.2 bank had issued recall notice dated 21.08.2021 directing respective petitioners to pay an amount of Rs.44,46,412/- and Rs.45,01,777/- respectively, along with interest with false allegations of the respective petitioners not submitting the tax invoice, delivery challan, installation certificate of the machinery and that they are not operating their CC account regularly and not submitting the stock statement regularly etc. The petitioners herein had submitted reply dated 27.08.2021 with a request to extend time for one year to make the payments. 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.

iv) 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 27.08.2021 by respondent No.2. There is no diversion of funds by the petitioner herein. Declaring the account of the petitioner as NPA on 30.06.2021 and 19.08.2021 respectively 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 27.08.2021 and requested respondent No.2 to restructure the loan. Instead of considering the same, respondent No.2 had issued another recall notice dated 14.10.2021 demanding the petitioner to repay the loan amount. Thus, there is no consideration of reply dated 27.08.2021. Therefore, the present writ petition.

5. CONTENTIONS OF RESPONDENT No.2:

i) Respondent No.2 has filed counter contending that the petitioner was sanctioned term loan facility of Rs.30.00 lakhs vide sanction advise dated 09.12.2019 and 06.01.2020 for purchase of machinery etc.,; cash credit facility of Rs.10.00 lakhs was also sanctioned against hypothecation of stocks and receivables, under sanction advice dated 09.12.2019 and 06.01.2020 of the bank respectively on execution of necessary loan documents. As on 21.08.2021, the outstanding due in the accounts of the respective petitioners is Rs.44,46,412/- and Rs.45,01,777/- with interest respectively etc.

ii) One of the conditions laid down in the sanction advice is that the Bank reserves its right to amend, alter or vary the terms and conditions or withdraw all or any of the credit limits sanctioned at any time at its discretion without assigning any reason whatsoever.

iii) Thus, the petitioner shall 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.

iv) The limit continues to be primarily secured by hypothecation of fully paid stocks of raw materials, work in process, finished goods and book debt. Stocks/ Debtors statement is to be submitted every month on or before 10th of every month and debtor's statement is to be certified by statutory auditor of the firm once in quarter. The offer made by respondent No.2 bank was accepted by the petitioner without any demur and it has become a contract.

v) On 25.02.2021, respondent No.2 bank addressed the petitioner to submit invoice of purchased machinery along with delivery challan and installation certification, original lease deed, GST returns month-wise and audited balance sheet of 2022, provisional of 2021 and projections of 2022, 2023 and 2024. The petitioner having acknowledged the said letter, did not respond to it. Then respondent No.2 sent a reminder on 07.06.2021 even asking to pay the dues, but there was no response to it.

vi) As the petitioner was not adhering to the terms of sanction, not submitting the documents as required and not paying the outstanding amounts, respondent No.2 bank had issued demand and recall notice by its letter dated 21.08.2021.

vii) After receipt of the said letter, the petitioner submitted its reply dated 27.08.2021 stating that on account of COVID-19 pandemic situation, it was unable to submit the stock statements as the Unit is not operating.

viii) On 14.10.2021, respondent No.2 addressed a letter stating that after availing the loan, the petitioner did not pay a single installment. It was further stated that the Bank inspected the Unit and found that the petitioner is non-existent and no machines are available as per the quotations/invoices submitted by the petitioner. The entire loan amount was diverted unrelated to nature of business for which the petitioner availed the finance from respondent No.2 bank. The account of the petitioner was classified as NPA under fraud category.

ix) The petitioner has filed a sub-lease agreement dated 15.09.2019 in respect of the premises. The lease is for a period of five

(5) years. It is a compulsorily registerable document. The petitioner has not filed any document to prove that the Lessee is competent to execute the said sub-lease agreement. In the absence of the same, it is presumed to be a doubtful document.

x) In view of the above, there is no illegality in issuing demand notice dated 21.08.2021 and sought to dismiss the present writ petition.

6. ANLYSIS AND FINDING OF THE COURT:

i) Learned counsel for the petitioner would submit that due to lock down imposed on account of Covid-19 pandemic situation, there was disruption in working the unit and, therefore, the petitioner could not pay the amount to respondent No.2 bank.

ii) 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.

iii) Perusal of the record would reveal that the petitioner had availed term loan facility of Rs.30.00 lakhs each vide sanction advise dated 09.12.2019 and 06.01.2020 for purchase of machinery etc.; apart from cash credit facility of Rs.10.00 lakhs each as against hypothecation of stocks and receivables, under sanction advice dated 09.12.2019 and 06.01.2020 from respondent No.2 bank respectively. The petitioner had also executed necessary loan documents to the said effect. As on 21.08.2021, outstanding amount due and payable by the petitioner is Rs.44,46,412/- and Rs.45,01,777/- with interest respectively etc.

iv) One of the conditions laid down in the sanction advice is that respondent No.2 Bank reserves its right to amend, alter or vary the terms and conditions or withdraw all or any of the credit limits sanctioned at any time at its discretion without assigning any reason whatsoever. 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.

v) The limit continues to be primarily secured by hypothecation of fully paid stocks of raw materials, work in process, finished goods and book debt. Stocks/ Debtors statement is to be submitted every month on or before 10th of every month and debtor's statement is to be certified by statutory auditor of the firm once in quarter. The offer made by respondent No.2 bank was accepted by the petitioner without any demur and it has become a contract.

vi) Since the petitioner failed to make payments to respondent No.2 bank, it had addressed a letter dated 25.02.2021 to the petitioner requesting it to submit invoice of purchased machinery along with delivery challan and installation certification, original lease deed, GST returns month-wise and audited balance sheet of 2022, provisional of 2021 and projections of 2022, 2023 and 2024. But, the petitioner failed to submit the same. Then respondent No.2 sent a reminder dated 07.06.2021, wherein it also requested the petitioner to pay the dues, but there was no response from the petitioner. As the petitioner was not adhering to the terms of sanction, not submitting the documents as required and not paying the outstanding amounts, respondent No.2 bank had issued demand and recall notice dated 21.08.2021.

vii) After receipt of the said letter, the petitioner submitted its reply dated 27.08.2021 stating that on account of COVID-19 pandemic situation, he was unable to submit the stock statements as the Unit is not operating. Thereafter, respondent No.2 addressed another letter dated 14.10.2021 stating that after availing the loan did not pay a single installment. It was further stated that the Bank inspected the Unit and found that the petitioner is non-existent and no machines are available as per the quotations/invoices submitted by the petitioner. The entire loan amount was diverted unrelated to nature of business for which the petitioner availed the finance from respondent No.2 bank. The account of the petitioner was classified as NPA under fraud category. Further, the petitioner has filed a sub-lease agreement dated 15.09.2019 in respect of the premises. The lease is for a period of five (05) years. It is a compulsorily registerable document. The petitioner has not filed any document to prove that the Lessee is competent to execute the said sub-lease agreement. In the absence of the same, it is presumed to be a doubtful document.

viii) 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, dated 21.05.2021, the eligibility criteria for restructuring of advances to MSME Units is specifically mentioned. The criterion for arriving eligibility is also specifically mentioned.

7. 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 Advices were dated 09.12.2019 and 06.01.2020 respectively, as on 14.10.2021, the date of inspection, the petitioner is non-existent and no machines were available as per the quotations/invoices submitted by the petitioner. Further, the petitioner had diverted the entire loan amount to other purpose. Therefore, the account of the petitioner was classified as NPA under fraud category. The petitioner has also not submitted the invoice of purchased machinery along with delivery challan and installation certificate, original lease deed, GST returns month wise and audited balance sheet etc. as mentioned above. In view of the same, according to respondent No.2 bank, the petitioner is not entitled for restructuring of its account. Therefore, the petitioner herein failed to make 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, both the writ petitions are devoid of merits and the same are liable to be dismissed.

ii) Both the writ petitions are accordingly dismissed. However, there shall be no order as to costs.

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