(2013) 09 AHC CK 0104

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No''s. 29676 of 2013, 64527, 55804 of 2012 and 23279 of 2010

M/s. Sameer Ispat and Others APPELLANT

Vs

U.P. Financial Corporation and Another RESPONDENT

Date of Decision : 30-09-2013

Acts Referred:

Citation : (2013) 8 ADJ 707

Hon'ble Judges : Manoj Kumar Gupta, J;Ashok Bhushan, J

Bench : Division Bench

Advocate : Mayank Agrawal, for the Appellant; Archana Singh, Vipin Sinha, Ravindra Singh, Anurag Khanna and S.C., for the Respondent

Judgement

Ashok Bhushan, J.—All these writ petitions filed by the same petitioner raise issues which are interconnected hence all the writ petitions have been heard together and are being decided by this common judgment. Counter and rejoinder-affidavits have been exchanged in between the parties in Writ petition No. 29676 of 2013, which is being treated as leading writ petition. It is sufficient to refer the pleadings of the main writ petition for deciding all the four writ petitions. Brief facts giving rise to these writ petitions now need to be noted. The petitioner is a registered company which claims to be running a small scale industry engaged in manufacturing of mild steel ingots. The petitioner was sanctioned a term loan of Rs. 34,37,000/- from the U.P. Financial Corporation in the year 1995 and a loan of Rs. 33,15,000 from PICUP. Default having been committed by the petitioner in repayment of the loan, the U.P. Financial Corporation issued notice u/s 29 of the State Financial Corporations Act, 1951 in pursuance of which possession of the unit was taken by the U.P. Financial Corporation on 27.8.1997. The petitioner incurred heavy loss due to financial recession. On 3.8.2001 the petitioner submitted an application to the Joint Director of Industries Saharanpur to declare the unit as a sick unit and to provide a rehabilitation package as contemplated by the Government Order dated 13.11.1995. On 27.9.2002 the Joint Director of Regional Rehabilitation Committee issued a sickness certificate to the petitioner.

U.P. Financial Corporation being a primary lender was appointed as operating agency.

2. Rehabilitation package as claimed by the petitioner was not being considered hence, a writ petition being writ petition No. 38735 of 2001 was filed by the petitioner, which writ petition was disposed of by a Division Bench of this Court on 8.9.2005, directing Regional Rehabilitation Committee, Saharanpur Region to decide the petitioner''s application for grant of rehabilitation package. On 9.6.2004, the State Government issued another Government Order providing scheme for rehabilitation package to sick industrial units by modifying the earlier Government Order'' dated 13.11.1995 issued on the subject. Initially, the U.P. Financial Corporation took the view that the unit is not viable. However, subsequently vide its report dated 8.8.2005, the U.P. Financial Corporation stated that rehabilitation of the unit is possible only when the unit agrees for one time settlement. Regional Rehabilitation Committee held its meting on 19.10.2005 and considered the petitioner''s case in which it was resolved that on principal amount due from the date of unit being declared as sick, one time settlement be entered and the rate of interest be fixed less than 3% of the prime lending rate declared by the Reserve Bank of India. The Regional Rehabilitation Committee further resolved that the entire matter of the petitioner''s unit be sent to the State Level Rehabilitation Committee and to the Commissioner and Director of Industries U.P. Kanpur for implementation of the proposal. After the approval of the rehabilitation package, the possession of plant and machinery including the land and shed was handed back by the U.P. Financial Corporation to the petitioner on 22.6.2007. On 26.2.2009, the Commissioner, Saharanpur Division wrote to the Managing Director U.P. Financial Corporation to implement the rehabilitation package in accordance with the Government Order dated 9.6.2004. Director of Industries also wrote to the U.P. Financial Corporation on 22.3.2010 to provide facilities to the petitioner''s unit as per rehabilitation package prepared by the Regional Rehabilitation Committee. Details of rehabilitation package as were approved on 19.10.2005 were also indicated in the letter. On 26.3.2010 U.P. Financial Corporation wrote to the Joint Director of Industries Saharanpur Division that no one time settlement proposal below the matrix approved by the Board of Directors will be considered for approval. It was further mentioned that unit be asked to submit their one time settlement proposal as per new one time settlement guidelines of the U.P. Financial Corporation, if the unit wants to settle their accounts under the one time settlement.

3. After issue of the letter dated 26.3.2010, the petitioner filed writ petition No. 23279 of 2010 praying for quashing the letter dated 26.3.2010 of U.P. Financial Corporation with further prayer of mandamus to comply the letters dated 9.2.2010/22.3.2010 issued by the Commissioner of the Division to implement the decision of the Regional Rehabilitation Committee. A mandamus was also sought to implement the approved rehabilitation package. The issue of rehabilitation package to the petitioner and certain other units was taken for consideration by the State level Inter Institutional Committee (SLIIC). The State

level Inter Institutional Committee noted the stand of U.P. Financial Corporation that rehabilitation package as approved by the Regional Rehabilitation Committee cannot be accepted it having been recommended on an amount less than the approved matrix. The State level Inter Institutional Committee further noticed that the petitioner had already filed a writ petition in the High Court for implementation of approved rehabilitation package hence, the petitioner''s matter being sub-judice, the same is adjourned.

4. On 28.9.2012, the U.P. Financial Corporation issued a demand notice to the petitioner demanding an amount of Rs. 11,60,31,496/- failing which the Corporation threatened to initiate proceedings u/s 29 of the State Financial Corporations Act, 1951. On receipt of the notice dated 28.9.2012, the petitioner filed another writ petition being writ petition No. 55804 of 2012 praying for quashing the demand notice dated 28.9.2012 and further mandamus commanding the respondents not to adopt any coercive measures. The petitioner further filed writ petition No. 64527 of 2012 praying for issue of a writ of mandamus directing the respondents to forthwith decide the issue of implementation of approved rehabilitation package dated 19.12.2005.

5. On 29.11.2010, Regional Rehabilitation Committee took a decision that till the matter is sub-judice, no further action shall be taken by the U.P. Financial Corporation. On 14.5.2013, the U.P. Financial Corporation issued an advertisement inviting applications for sale of units which advertisement included the petitioner''s unit also. The said advertisement was uploaded on the website of the U.P. Financial Corporation on 14.5.2013. The petitioner after above advertisement by the U.P. Financial Corporation for sale of the unit has filed the leading writ petition No. 29676 of 2013. In the leading writ petition following are the reliefs claimed by the petitioner:

i. To issue a writ, order or direction in the nature of certiorari quashing the impugned sale advertisement (Filed as Annexure 17 to this writ petition) issued by the respondents (uploaded on the Internet at the official website of the U.P. Financial Corporation);

ii. To issue a writ, order or direction in the nature of mandamus restraining the respondents from selling/disposing, alienating or transferring or creating any third party right pursuant to the aforesaid impugned sale advertisement (filed as Annexure 17 to this writ petition);

6. A counter-affidavit and Supplementary counter-affidavit have been filed by the U.P. Financial Corporation in the leading writ petition. In the counter-affidavit filed by the U.P. Financial Corporation it has been stated that the rehabilitation package which was approved on 19.10.2005 by the Regional Rehabilitation Committee was never approved by the U.P. Financial Corporation hence, the said package could not have been implemented, it is submitted that no rehabilitation package for a sick unit can be enforced unless the financial institution/U.P. Financial Corporation approves the said rehabilitation package. It is submitted

that U.P. Financial Corporation has already communicated to the petitioner on 26.3.2010 that rehabilitation package approved by the Regional Rehabilitation Committee cannot be accepted it being below the matrix. It has been submitted by the U.P. Financial Corporation that one time settlement offered had to be given in accordance with the one time settlement policy of the corporation. It is stated that although the possession of the unit was given on 26.6.2007 to facilitate the promoters to put the unit in running condition but the same was with a rider that Corporation as and when requires may take back the possession. It has been stated that the State Level Udyog Bandhu has already informed the petitioner that they should submit the one time settlement proposal in accordance with the one time settlement guidelines of the Corporation. The Corporation further states that it referred the matter to the State level Inter Institutional Committee Lucknow. The corporation has further stated that the petitioner was asked on several occasions to submit one time settlement proposal in accordance with the guidelines of the Corporation but the petitioner neither submitted any one time settlement proposal nor appeared for discussion with the Corporation. It has been stated by the Corporation that after taking possession, the petitioner has removed the hypothecated machines hence, the petitioner unit cannot be revived. The Corporation has legal right to proceed against the petitioner u/s 29 of the State Financial Corporation Act, 1951. The notice issued to the petitioner demanding an amount of Rs. 11,60,31,496 on 28.9.2012 was in accordance win the existing liability of the petitioner and the Corporation is rightly proceeding for sale of the unit. It is stated that unless the Corporation approves the rehabilitation package, the same cannot be implemented against the Corporation. It is further pleaded that the Circular of the Reserve Bank of India relied by the petitioner relates to scheduled commercial banks and same has no application on the U.P. Financial Corporation. The petitioner has filed Supplementary-affidavit annexing the guidelines for rehabilitation of sick units issued by the Reserve Bank of India.

7. The petitioner in the rejoinder-affidavit has reiterated its stand. It has been pleaded by the petitioner that the decision of the Regional Rehabilitation Committee is binding upon the U.P. Financial Corporation and it cannot act contrary to the rehabilitation package approved by the Regional Rehabilitation Committee.

8. We have heard Sri Sashi Nandan, learned Senior Advocate assisted by Sri Mayank Agrawal, for the petitioner and Sri Ravindra Singh for the U.P. Financial Corporation as well as learned Standing Counsel for the State respondents.

9. The State Government from time to time has issued various Government Orders for rehabilitation of sick industrial units. The Government Order provides for timely determination by a body of experts of the preventive, ameliorative, remedial and other measures that need to be adopted with respect to such sick units and a mechanism for enforcement of appropriate measures, the State has formulated industrial policy from time to time for giving impetus to the industrial

growth of the State. The State being conscious of various facts such as cessation of production, recession of economic growth, labour problems, has framed industrial policy to revive the sick units and to give a protective hand to such sick industries so that they may come out from sickness and generate growth and employment. The Government Order dated 13.11.1995 was a step taken in the said direction. The definition of sick unit, the procedure for declaration of unit as a sick unit, the constitution of Regional Rehabilitation Committee and the State level Inter Institutional Committee are provided in the said Government Order. The Government Order enumerates the benefits to be extended to such units which are found fit to be rehabilitated by various departments including the Industries Department, Trade Tax Department, Commercial Tax Department, Excise Department, Labour Department and certain other departments. As noted above, the petitioner had made application on 3.8.2001 for declaring it as a sick unit and to provide it rehabilitation package. The U.P. Financial Corporation was appointed as an operating agency being the primary lender. The Regional Rehabilitation Committee had undertaken consideration of the petitioner''s case for providing rehabilitation package. The U.P. Financial Corporation as operating agency had prepared draft proposal which included the account position. The draft proposal of the U.P. Financial Corporation has been brought on record by the petitioner as Annexure-5 to the writ petition, which are part of the letter dated 8.8.2005 of the U.P. Financial Corporation addressed to the Joint Director of Industries. The loan outstanding was mentioned as 34.37 lacs, expenses 8.45 lacs. The rehabilitation package was submitted by the petitioner. The draft report of the U.P. Financial Corporation mentioned as follows:

M/s. Sameer Ispat has submitted a Rehabilitation package under which it has sought certain relief from UPFC, PICUP, Allahabad Bank, UPPCL etc. in accordance with the RBI guidelines for revival/rehabilitation of sick industrial unit falling under Small Scale Sector.

The proposal was examined within the provisions of RBI guidelines and on that basis, the cost of production & profitability statement and the funds flow statement were prepared and according to those parameters, the unit is not viable. We have re-worked out the profitability considering proposed settlement of outstanding loans of institutions/Bank etc. involved on liberal terms, on which the unit can be viable and according to that the year wise position of profitability/ cash accruals & the position of funds requirement for the next seven years of operations after rehabilitation have been worked out. The details are placed at Annexure I and II.

From the revised profitability statement, it appears that the project would be viable subject to the condition that the concerned institutions/Bank etc. agree to the reliefs and party arranges required funds from their own resources to bring the plant in operation, arranges required working capital and Additional Funds to meet short fall of Rs. 23.44 lac cash accruals in the first year. The reliefs and concessions desired from different institutions are as under:

UPFC: It is proposed that the UPFC will consider OTS on OSP+Exp/ASC i.e. Rs. 42.82 lac to be paid in three years in equal installments bearing interest(r) 13.5%.

PICUP: It is proposed that the PICUP will consider OTS on SSP i.e. Rs. 33.15 lac bearing interest @ 13.5%, waiving balance overdue interest.

10. In the same draft proposal, it was further mentioned in following words: page 70:

As per recently formulated policy of UPFC OTS in this case can be considered at 11% OSA+EXP+ASC which works out to Rs. 56.50 lac, but in order to consider viability of the project, it is proposed by the Company to consider OTS on OSP+EXP/ASC i.e. Rs. 42.82 lac for which Company has to deposit earnest money of 10% of OTS amount before processing of OTS proposal, as per the terms & conditions of OTS that OTS application will not be entertained until borrower deposits at least 10% of proposed OTS amount with application to confirm his sincerity and interest in settling the dues.

11. The Regional Rehabilitation Committee has considered the case of the petitioner for rehabilitation in its meeting dated 19.10.2005. The proceedings of the meeting dated 19.10.2005 has been filed as Annexure-7 to the writ petition. In the proceeding dated 19.10.2005, it was noted that in the meeting dated 10.8.2005 rehabilitation package submitted by the petitioner was forwarded to the financial institutions for their report. The Regional Rehabilitation Committee recorded in its proceedings that rehabilitation package being pending for long time hence, the rehabilitation proposal prepared by the U.P. Financial Corporation alongwith the Joint Director of Industries be approved and the Joint Director of Industries was directed to send the entire matter of the petitioner before the State level Inter Institutional Committee for consideration and the same may be also send to the Commissioner and Director industries U.P. Kanpur. After the aforesaid decision dated 19.10.2005, the possession of the Unit was also handed over to the petitioner on 26,6.2007. The possession memo has been filed as Annexure-8 to the writ petition. The Commissioner Saharanpur Division also wrote to the Managing Director of U.P. Financial Corporation referring to the decision taken by the Regional Udyog Bandhu Committee to implement the approved rehabilitation package in accordance wit the Government Order dated 9.6.2004. The letters were also written by the Commissioner on 9.2.2010 and 22.3.2010 reiterating requirement of implementing the one time settlement as approved on 19.10.2005. The letter dated 22.3.2010 mentions the approved one time settlement in following manner:

(1) Principal amount of Rs. 34.37 lac be treated as OTS and the same has to be repaid in three years in equal installments.

(2) The interest shall be charged 3% less than the prime lending rate.

(3) six months gestation period shall be allowed in first year.

(4) After implementation of rehabilitation package, alongwith one time settlement proposal 10% of the one time settlement amount be deposited.

(5) After account having been declared as NPA, if any amount has been deposited by the petitioner, the same be reduced in the principal amount.

12. The Corporation on 26.3.2010 has informed the Joint Director of Industries with copy to the petitioner that the matter of one time settlement proposal as approved by Sub Committee of Mandaliya Udyog Bandhu, Saharanpur, was discussed with the Managing Director and it has been concluded to inform that no OTS proposal below the Matrix approved by the Board of Directors will be considered for approval. The petitioner was therefore, advised to submit the one time settlement proposal as per the new OTS guidelines of the U.P. Financial Corporation. It is useful to quote the letter dated 26.3.2010 which is to the following effect:

Dear Sir,

Sub: Implementation of Rehabilitation Package in case of

1. M/s. Sameer Ispat, Muzaffarnagar.

2. M/s. Ashoka Laminators, Muzaffarnagar.

3. M/s. Meenu Spinning Mills, Muzaffarnagar.

The subject-matter was again referred by this office vide letter No. 725 dated 11.1.2010 to our Head Office for taking stand of the Corporation on the issue of implementation of rehabilitation package as approved by Sub Committee of Mandaliya Uydyog Bandhu, Saharanpur.

In this regard our head office vide fax dated 26.3.2010 has informed that the matter has been discussed with the Managing Director and it has been concluded to inform concerning departments/officers that no OTS proposal below the Matrix approved by the Board of Directors of the Corporation will be considered for approval.

You are, therefore, requested to kindly bring this fact into the knowledge of Hon''ble Mandaliya Udyog Bandhu in ensuing meeting on 27.3.2010 and also to advise the promoters/Directors of above three units to submit their OTS proposal as per new OTS guidelines of the UPFC, if they want to settle their accounts under O.T.S.

yours faithfully, (A.P. Nigam) Regional Manager

13. Thus, the U.P. Financial Corporation has taken its stand that the one time settlement proposal as approved on 19.10.2005, which has been also mentioned in the letter dated 22.3.2010 is not acceptable to the Corporation. The Corporation has throughout taken the stand that the one time settlement proposal as approved on 19.10.2005 never received any approval by the Corporation. The Corporation was insisting that units may submit a fresh one

time settlement proposal as per the new one time settlement policy of the Corporation. The petitioner has brought on record the letter dated 18.1.2008 of Regional Manager of the U.P. Financial Corporation addressed to the Manager Zone-6 for taking decision in accordance with the one time settlement proposal approved by the Regional Udyog Bandhu. The note which is appended to the letter dated 18.1.2008 notices the new one time settlement policy of the Corporation which was changed. Following portion of the note is relevant which is extracted as follows:

It may be mentioned that, in the meantime, the OTS policy of the Corporation has also changed and as per prevailing OTS policy, the OTS amount on liabilities upto 20.9.2007 worked out at 58.45 lacs (110% of OSA+EXP.+Annual Service Charge).

From the above details, it may be observed that:

(1) This induction furnace unit is lying closed since 1997 whereas other similar type of units are running well in this area, almost with uninterrupted profits from 2001.

(2) The party is interested in OTS and had also earlier submitted an OTS proposal in 1999 alongwith earnest money of Rs. 50,000/- on 26.5.99 but OTS could not be finalised due to lack of consensus between party and the Corporation on the OTS amount.

(3) The Mandaliya Udyog Bandhu has recommended for taking a sympathetic approach in deciding the OTS amount and has recommended to consider OTS at principal amount only.

The liabilities of outstanding principal amount only of UPFC and PICUP amount of Rs. 67.52 lacs besides OTS amount of Allahabad Bank is Rs. 36.00 lacs, whereas the valuation of the assets of the unit, conducted by an independent valuer in July, 2007 is Rs. 90.42 lacs. Main plant and machinery of the unit is financed by us and more than 20 years old which would not fetch more than scrap value. The machines financed by PICUP are incomplete and a part of it has turned into scrap. The valuation of entire assets of the unit could hardly match the aforesaid principal amount liabilities besides liabilities of Central Excise. Labour Deptt, Power Corporation and Trade Tax Deptt, which ran in Crores of rupees.

The project would be viable subject to the condition that the concerned institutions/Bank etc. agree to the reliefs and party arranges required funds from their own resources to bring the plant in operation, arranges required Working Capital and additional funds.

14. From the materials brought on record, it is clear that the one time settlement as approved on 19.10.2005 by the Regional Rehabilitation Committee was not accepted by the U.P. Financial Corporation and the U.P. Financial Corporation has been writing to the petitioner to submit one time settlement proposal as per the new one time settlement policy of the Corporation. The petitioner never

submitted another one time settlement proposal as requested by the U.P. Financial Corporation. The Government Order dated 9.6.2004 has been filed as Annexure-4 to the writ petition.

15. In the counter-affidavit, the U.P. Financial Corporation has taken a clear stand that the petitioner''s matter was referred by the Corporation to the State level Inter Institutional Committee Lucknow which fact has been pleaded in paragraph 10 of the counter-affidavit. From the note which has been annexed alongwith the letter dated 18.1.2000 of the Corporation it does admit that Regional Udyog Bandhu has also decided to refer the matter to the State level Inter Institutional Committee. The Government Order dated 9.6.2004 has been issued by the State on the subject of Rehabilitation of the Sick Units. Regional Rehabilitation Committee and the State Level Committee have been constituted under the Government Orders to implement the scheme of rehabilitation. The Corporation having also referred the petitioner''s matter to the State level Inter Institutional Committee, it was for the State level Inter Institutional Committee to examine the matter and to take appropriate decision, which may bind both the petitioner as well as U.P. Financial Corporation. The proceeding dated 21.9.2512 of the State level Inter Institutional Committee has been brought on record as Annexure-14 to the writ petition. In the proceedings, the case of the petitioner was undertaken at item No. 5. The State level Inter Institutional Committee took following decision at item No. 5:

16. Learned Counsel for the parties have submitted that the matter is still pending before the State level Inter Institutional Committee and no decision has yet been taken. From the proceedings dated 21.9.2010 of the State level Inter Institutional Committee, it is clear that the Committee had not taken any final decision on the pretext that the matter is sub-judice since the petitioner has filed a writ petition for implementation of the approved rehabilitation package. Reference in the proceeding is of writ petition No. 23358 of 2010 which was filed by the petitioner for implementing the approved rehabilitation package. It is relevant to note that in the said writ petition, there is no order of this Court which may have effect of stopping any proceeding before the State level Inter Institutional Committee. The Government Order dated 9.6.2004 provides a scheme for rehabilitation so that the sick units may revive. Time factor for revival of the units has its own importance and relevance. The State level Inter Institutional Committee approved the rehabilitation package on 19.10.2005 and thereafter could not proceed any further. The U.P. Financial Corporation took the stand that it having never accepted the package, it did not proceed any further although the matter was referred to the State level Inter Institutional Committee. The said Committee due to insufficient reasons, has adjourned the matter on 21.9.2010 and did not proceed any further.

17. We are of the view that there was no justification for not proceeding further in the matter of the petitioner''s rehabilitation package by the State level Inter Institutional Committee. The passing of several years in between have further

worsen the situation. In the such matters, where rehabilitation of sick units are involved all concern are duty bound to take urgent steps. All the reports, materials and facts are before the authorities, which are entrusted with the rehabilitation of the sick units and their non action have caused loss to both the parties. When the Government Order contemplated the State level Inter Institutional Committee to take final decision regarding the issues between the sick units and financial institutions, the said Committee has to act with sense of urgency so that the dispute may be resolved and things may be moved in all positive direction to achieve the object for which the committee has been constituted.

18. In the facts of the present case, we are of the view that ends of justice would be served in disposing of the writ petitions with the direction to the State level Inter Institutional Committee to consider the petitioner''s case for rehabilitation of the sick unit after considering the stand of the U.P. Financial Corporation and all others, who are concerned with the revival of the units. The matter having been adjourned on 21.9.2010, due to insufficient reasons and years having passed thereafter, it is desirable that the final decision be taken within a time bound period. We direct that the State level Inter Institutional Committee shall take appropriate final decision within three months from the date a copy of this order is produced before the Principal Secretary, Small Scale Industries Government of U.P. For a period of three months U.P. Financial Corporation shall not proceed with sale of the petitioner''s unit. We make it clear that it shall be open for the U.P. Financial Corporation to proceed further in accordance with the decision taken by the State level Inter Institutional Committee as per law. All the writ petitions are disposed of accordingly.

