
(2013) 08 DEL CK 0074

In the Delhi High Court

Case No : Writ Petition (C) 2641 of 2013

Pintoji Foods Pvt. Ltd.

APPELLANT

Vs

Punjab National Bank and Another

RESPONDENT

Date of Decision : 14-08-2013

Acts Referred:

Citation : (2013) 08 DEL CK 0074

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Prashat Katara, for the Appellant; S.S. Katyal and Mr. Rajesh Katyal for RBI, for the Respondent

Final Decision : Disposed Off

Judgement

V.K. Jain, J.—The petitioner before this Court obtained certain loan/credit facility from respondent No. 1-Punjab National Bank. Vide circular dated 16.01.2002, respondent No. 2, Reserve Bank of India notified certain guidelines for rehabilitation of sick small scale industrial units. The guidelines, to the extent they are relevant, read as under:-

5. Reliefs and Concessions for Rehabilitation of Potentially Viable Units

It is emphasized that only those units which are considered to be potentially viable should be taken up for rehabilitation. The reliefs and concessions specified are not to be given in a routine manner and have to be decided by the concerned bank/financial institution based on the commercial judgment and merits of each case. Banks have also the freedom to extend reliefs and concessions beyond the parameters in deserving cases. Only in exceptional cases, concessions/reliefs beyond the parameters should be considered. In fact, the viability study itself should contain a sensitivity analysis in respect of the risks involved that in turn will enable firming up of the corrective action matrix. Norms for grant of reliefs and concessions by banks/financial institutions to potentially viable sick SSI units for rehabilitation are finished in Appendix-II.

In the accompanying letter, it was emphasized by RBI that timely and adequate assistance to potentially viable SSI units which have already become sick or are likely to become sick is of the utmost importance not only from the point of view of the financing banks but also for the improvement of the national economy, in view of the sector's contribution to the overall industrial production, exports and employment generation. The banks were, therefore, suggested to take a sympathetic attitude and strive for rehabilitation of such units, particularly where the sickness of the unit was on account of circumstances beyond the control of the management.

Pursuant to the said guidelines, the petitioner vide letter dated 11.05.2011 applied to respondent No. 1-bank for rehabilitation in the form of funds and financial support from the bank. Pursuant to the said application, an inspection of the unit of the petitioner was carried out by an officer, appointed by the bank for the purpose and vide his report dated 12.08.2011, the officer, inter alia, reported as under:-

Conclusion:

The accounts of the unit have become NPA on 30.06.2010 and the Company falls under Sick Industrial unit category being erosion of 50% or more of its peak net worth.

So as per the detailed description above, Technical feasibility and Economic viability of the unit is subjected to the following conditions:

1. Availability of power connection from the electricity department and repair of power generator as these are basis requirement to runs the plant.
2. Proper storage of raw material and finished goods as it may incur losses again.
3. Proper fund utilization and availability of working capital.
4. Payment of the rent due for its leased land (F-45 Secunderabad Industrial area)

In case above conditions are fulfilled then the unit is technically feasible and economically viable.

2. However, no funds were provided to the petitioner towards its rehabilitation recommended by the aforesaid officer. Vide letter dated 30.01.2012, the petitioner notified the bank that it had carried out expenditure entailing Rs. 1,41,545/- towards power connection, Rs. 1,11,053/- on account of power 40 KVA GEN SET repairing, Rs. 14,000/- on account of lease-rent to UPSIDC, thereby making a total expenditure of Rs. 2,66,598/-. However, respondent No. 1-Bank decided to have a re-inspection of the premises of the petitioner presumably in order to verify whether the power connection was available or not, power generator had been repaired or not, there was proper storage of raw material and finished goods and rent due from the lease rent had been paid or not. Such an inspection was carried out by an officer of the bank, who vide his

report dated 10.09.2012, reported as under:-

Conclusion

On the basis of the above observation, it can be concluded that the directions are not having sufficient surplus funds/margin to run the unit. The machines also require investments to bring it into serviceable condition. The CMA projections submitted by the company are wrong as far as raw material recruitment is concerned which has abnormally inflated the profitability.

3. The respondent No. 1-Bank has already instituted proceedings before DRT for recovery of its dues from the petitioner and there is a proposal to auction the property which the petitioner had mortgaged with respondent No. 1-bank. The learned counsel for the petitioner has drawn my attention to the circular dated 01.11.2012, notifying guidelines for rehabilitation of Sick Micro Enterprises. To the extent it is relevant, the said circular reads as under:-

b. The declaration of the unit as unviable, as evidenced by the viability study, should have the approval of the next higher authority/present sanctioning authority for both micro and small units. In case such a unit is declared unviable, an opportunity should be given to the unit to present the case before the next higher authority. The modalities for presenting the case to the next higher authority may be worked out by the banks in terms of their Board approved policies in this regard.

c. the next higher authority should take such decision only after giving an opportunity to the promoters of the unit to present their case.

It appears that the aforesaid report has not been conveyed to the petitioner so far and its request for rehabilitation and revival has not been rejected as yet, though it appears that in view of the second report, respondent No. 1-bank is not inclined to accord financial assistance required for rehabilitation and revival of the petitioner company.

Considering the guidelines dated 01.11.2012, issued by RBI, if any request is made by a Micro Small Enterprises for its rehabilitation and it is sought to declare such unit as unviable on account of viability study conducted by the bank, such a declaration should have approval of next higher authority/present sanctioning authority for both micro and small units. Even before declaring a unit to be unviable, an opportunity is required to be given to the owner of the sick unit to presents his case before the next higher authority. The respondent No. 1-Bank has not placed the request of the petitioner before the authority higher to the sanctioning authority, for decision in terms of the above-referred guidelines of the Reserve Bank of India. In fact, even the second Technical Economic Viability Report has not been supplied to the petitioner. In these circumstances, the writ petition is disposed of with a direction to respondent No. 1 to place the aforesaid report, along with all relevant documents before the next higher authority for appropriate decision. The said next higher authority shall give opportunity to the

petitioner to present its case before him and then take an appropriate decision after considering inter alia the material produced by the petitioner in support of its case. The hearing shall be given to the petitioner within two weeks from today and an appropriate decision shall be taken within two weeks thereafter. It is made clear that since the Court has not gone into the merits of the averments made in the writ petition, it would have no bearing on the proceedings pending before the Debt Recovery Tribunal.