

(2008) 02 OHC CK 0027

In the Orissa High Court

Prity Industries and Shyam Sundar Agarwalla

APPELLANT

Vs

Orissa State Financial Corporation and Others

RESPONDENT

Date of Decision : 18-02-2008

Acts Referred:

State Financial Corporations Act, 1951 — Section 29

Citation : (2008) 106 CLT 93 : (2008) 2 OLR 1106 Supp

Hon'ble Judges : I.M. Quddusi, J;A.K. Samantaray, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

I.M. Quddusi, J.—These two Writ Petitions are related to the same property and therefore, they were heard together and are being disposed of by this common Judgment.

2. The brief facts of the case are that the Petitioner in O.J.C. No. 3777 of 2002 M/s. Prity Industries installed a cooking fuel plant for cooking purpose. The Petitioner-industry was registered as a Small Scale Industrial unit with the District Industries Center. The same was installed at Badakera in the district of Angul for manufacturing of cooking fuel from Sal leaves, paddy straw, sugarcane straw which is substitute to LB. Gas and other cooking gasses for domestic purpose. Financial assistance in the form of term loan was provided by the Opposite Party Corporation to the tune of Rs. 10,81,500.00 which was disbursed in the month of May, 1995 towards factory shed, installation and acquisition of plant and machineries, its installation and electrification in the month of May, 1995. The Petitioner also acquired land to the extent of Ac 1.47 for that purpose and also invested Rs. 4.80 from her own source. However due to default and non-payment of the loan amount, possession of the unit was taken over by the OSFC u/s 29 of the State Financial Corporation Act on 3.3.2001.

3. In the counter affidavit filed by Opposite Parties 1 to 3, the details of the amount of loan was specifically given by the Opposite Parties according to which

a term loan of Rs. 4,93,000.00 was sanctioned in favour of the unit M/s. Prity Hindu Gas on 16.4.1991 to set up one Agro Culiulous Cooking Gas unit at Badakera in the district of Angul and the agreement was executed on 1.8.1991 to that effect. Petitioner had taken total disbursement of Rs. 2,18,700.00 up to 11.2.1994. Due to non- implementation of the Project, show cause notice was issued to the Petitioner Thereafter on the request of the Petitioner again an additional term loan of Rs. 8,60,000.00 was sanctioned on 27.3.1995 and the Petitioner executed the agreement on 8.5.1995 by changing the unit's name as M/s. Prity Industries and subsequently the change in name was allowed by the District Industries Center (D.I.C.). Out of the sanctioned term loan and additional term loan, the Opposite Parties disbursed a total sum of Rs. 10,81,479.26 in favour of the Petitioner and due to non-payment of the dues of the Corporation by the Petitioner, demand notice was issued on 27.6.1998 but there was no response from the Petitioner. Thereafter, the Corporation again sent two letters dated 8.3.1999 and 23.3.1999 but even then the Petitioner remained silent. Thereafter the Opposite Party Corporation vide letter dated 5.1.2000 recalled the entire loan dues and intimated the same to the Petitioner indicating therein the dues of the Corporation. On 12.9.2000 the Corporation also intimated the Petitioner and guarantor to attend the Default Review Committee for settlement of loan dues but no response was received. Thereafter on 15.12.2002 the Corporation issued a recall notice to the Petitioner and guarantors for payment of loan dues along with interest as they had defaulted and violated the terms and conditions of the agreement but to no effect. They have given the outstanding position against the Petitioner unit as on 3.3.2001 as under:

TERM LOAN: Principal Rs. 2,23,481.26 Interest Rs. 5,36,492.20 Total Rs. 7,59,573.46 ADDL. TERM LOAN: Principal Rs. 8,57,996.00 Interest Rs. 9,38,611.00 Total Rs. 17,96,609.00

Therefore, the Opposite Parties 1 to 3 have denied that the Petitioner was not given reasonable opportunity before exercising power u/s 29 of the State Financial Corporation Act. The Petitioner and the guarantor vide letter dated 8.5.2001 were requested to attend the D.A.C. meeting on 17.5.2001 which was attended by the proprietor of the unit in which it was decided to release the unit in favour of the proprietor on certain conditions but she failed to comply with such conditions. Thereafter again the Petitioner and the guarantor were asked to attend the D.A.C. meeting on 18.8.2001 which they attended wherein it was decided to release the unit in favour of the loanee with certain conditions which she failed to comply and thereafter the unit was sold to the highest bidder. Since the highest bidder did not come forward to complete the sale formalities within the time stipulated, the sale was cancelled and it was decided to sale the unit through Branch Level Negotiation Committee and letter was issued to the loanee and guarantor to attend the D.A.C. meeting to be held on 26.12.2001. As per request made by the loanee, the Committee decided to give her a last chance to release the unit in her favour subject to certain terms and conditions. As the loanee failed to comply with the terms and conditions the sale was cancelled and

the Opposite Parties decided to sale the unit through Branch Level Negotiation Committee and accordingly a letter was sent to the Petitioner and the guarantor to give better offer or to match the offer but since no response was received, the unit was sold to Shyam Sundar Agarwalla, the Petitioner of the other Writ Petition W.P.(C) No. 7395 of 1006 with a total sale price of Rs. 6,01,000.00 with down payment of Rs. 2,00,000.00 vide letter dated 28.2.2002. Under the sale agreement, the balance sale amount of Rs. 4,00,000.00 was converted to differed term loan which was agreed to be paid within 4.5 years by 8 half yearly instalments including 6 months of moratorium period. Accordingly he executed the agreement and took possession of the unit on 28.2.2002. The total outstanding position against the Petitioner-unit as on 30.6.2003 after the seizure and sale has been given as under:

TERM LOAN: Principal Rs. 2,23,481.26 Interest Rs. 2,64,342.78 Others Rs. 4,89,500.00 ADDL. TERM LOAN: Principal Rs. 8,57,998.00 Interest Rs. 20,38,142.25 Total Rs. 28,96,140.25

4. However, the Petitioner has denied to have any knowledge of the decision of the DAC meeting and the selection of bidder and stated that no such letter was allegedly received by the Petitioner and even the BLNC meeting as well as selection of Opposite Party No. 4 (Petitioner in the other Writ Petition) was not intimated to the unit. However, in the other Writ Petition (W.P.(C) No. 7395 of 2006) it is averred that while the situation was thus, an interim order was passed by this Court in O.J.C. No. 3777 of 2002 on 17.6.2002 to the effect that until further orders there shall be stay of the Order Dated 28.2.2002 due to which the Petitioner in W.P.(C) No. 7395 of 2006 did not remain in a position to further proceed but the Opposite Parties again seized the property in question u/s 29 of the State Financial Corporation Act on 6.5.2006. However, it is alleged by the Opposite Parties-Corporation that some machineries and other assets have been taken away by the Petitioner from the premises of the Unit.

5. It cannot be a matter of controversy that once the initial letter dated 28.2.2002 issued in favour of the purchaser, Petitioner in W.P.(C) No. 7395 of 2006, by which the rights to occupy and use the unit were given to him was stayed by this Court, he could not have proceeded to develop or carry on business from the unit and also in that situation, he was not liable to pay the remaining amount under the agreement executed on 28.2.2002. The Opposite Parties should have taken the unit back since the stay order was passed by this Court in O.J.C. No. 3777 of 2002. Therefore, the Petitioner of W.P.(C) No. 7395 of 2006 cannot be said to be at fault for not making payment of the loan towards the unit. However, if any material has been taken away by him, the same could be verified with reference to the possession letter and if it is found that some materials or machineries are missing, cost of the same be assessed and adjusted towards the amount already paid by him to the Opposite Parties.

6. With regard to the sale of the unit to the Petitioner of W.P. No. 7395 of 2006, it is to be observed that the same was sold for a consideration of Rs.

6,01,000.00, but valuation of the unit made by the Branch Manager, O.S.F.C. Angul Branch is much higher than the rate at which it was sold. The valuation report dated 15.5.2001 has been filed as Annexure-B to the counter affidavit filed by Opposite Party Nos. 1 to 3 in O.J.C. No. 3777 of 2002 relevant part of which reads as under:

Land: Rs. 2.94 lakh Building Rs. 2.76 lakh Plant/Machinery Rs. 2.32 lakh Electrification & Installation: Rs. 0.18 lakh. Total: Rs. 8.20 lakh.

Since according to the own document of the Opposite Parties, the valuation of the land in 2001 was shown as Rs. 2.94 lakh and after inclusion of all the assets the valuation came to Rs. 8.20 lakh, the same should not have been sold at a consideration of Rs. 6.01,000.00 to the Petitioner in W.P.(C) No. 7395 of 2006 on 28.2.2002. The Corporation should have made efforts to see that at least the unit should have been sold at a price more than Rs. 8.2 lakhs but it appears that such effort has not been made. Therefore, the land and assets of the unit sold by the OSFC at a lower consideration without making any effort was improper.

7. In view of the above mentioned facts and circumstances, we allow O.J.C. No. 3777 of 2002 in part and quash the sale of the assets of the unit to Opposite Party No. 4 (Petitioner in W.P.(C) No. 7395 of 2006). In view of this a fresh offer shall be given to the Petitioner further to make payment of the dues or such amount, as the case may be, or bring some other better buyer failing which it will be open to the Opposite Parties to hold auction of the property by making wide publication. Regarding the other Writ Petition (W.P.(C) No. 7395 of 2006), we are of the opinion that in view of the above order, the Writ Petition has become infructuous and is dismissed as such. The Opposite Parties may assess the cost of the machineries or other assets of the unit said to have been taken away by the Writ Petitioner during the period the same remained under his possession and adjust the same from the amount deposited by him and if any excess amount remains due, the same can be realized from him in accordance with law.

There would be no order as to costs.

A.K. Samantaray, J.

8. I agree.