

(2006) 06 PAT CK 0057

In the Patna High Court

Case No : C.W.J.C. No. 7977 of 2005 & CWJC No. 7977 of 2005

SCI (India) Limited

APPELLANT

Vs

The Bihar State Financial Corporation and Others

RESPONDENT

Date of Decision : 27-06-2006

Acts Referred:

Citation : AIR 2007 Patna 37 : (2006) 3 PLJR 511

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Rambalak Mahto and Satyabir Bharti, for the Appellant; Y.V. Giri and Raju Giri, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—Heard Mr. Ram Balak Mahto, Sr.Advocate appearing on behalf of the petitioner and Mr. Y.V. Giri, Sr.Advocate representing the Bihar State Financial Corporation and its officers.

2. The petitioner, which is a company incorporated under the Companies Act, paid a sum of Rs. 89,45,056.70 to the Bihar State Financial Corporation, under a rehabilitation package formalised in an agreement. Having made full payment of the amount stipulated in the agreement along with interest, the petitioner thought that it was at last free of the Corporations's demands. The Corporation, however, thinks otherwise. It served upon the petitioner an additional demand of Rs. 36,09,115.00 paise (as on 28.02.2005) vide letter, dated 26.02.2005 and took the position that the petitioner's dues would stand settled only on payment of the aforesaid amount.

3. This writ petition is filed challenging the demand letter dated 26.2.2005 and seeking a declaration that the petitioner has cleared off its dues to the Corporation. The petitioner seeks a further direction to the Corporation to return the documents submitted by it as security for the payment of the amount.

4. The material facts for appreciating the stand of the parties are brief and

admitted. The petitioner took loan from the Corporation. It badly defaulted in its repayment. As a result the dues swelled up with the accrual of interests. Finally, the petitioner made a request for settlement of its dues under a rehabilitation package. The petitioner's request was sanctioned by the Corporation by order dated 8.12.1998 (Annexure-2) passed by its Managing Director. The order contained the provisions for payment of the dues under certain terms and conditions that were stipulated in paragraphs 1, 2, 4, 6 and 14 of the order. The sanction order was followed by the execution of a fresh agreement between the parties on 8.1.1999 (Annexure-3). The terms and conditions for repayment of the outstanding dues as stipulated in the sanction order were fully incorporated in the agreement. Paragraph 1 of the agreement stated the outstanding dues against the petitioner as on 31.08.1998, including interest and penal charges. Paragraph 2 stated the amount payable by the petitioner in terms of the agreement after waiving off the Penal Charges, on certain terms. The other relevant terms and conditions were contained in paragraphs 3, 4, 6 and 14. It will be useful to reproduce here the aforementioned paragraphs of the agreement as both sides rely on the stipulations contained therein.

1. The balance outstanding against the company as on 31.8.1998 at 12.5% interest along with the penal charges worked out to Rs. 1,01,45,837.70 P. This includes penal charges amounting to Rs. 12,00,781/-. This penal charge is waived subject to right of recompense in case of default.

2. The remaining balance outstanding after waiving penal charges worked out to Rs. 89,45,056.70 25% of this amount works out to Rs. 22,36,264.70p. The Company will pay this amount to the Corporation within a month from the date of issue of this order.

3. The balance 75% works out to Rs. 67,08,792.52 p. The company will pay this amount in 10 half-yearly instalments beginning from 1.3.99 and ending on 1.9.2003 payable on 1st March and 1st September every year. The first nine instalments will be of Rs. 6,70,880/- each and last (10th instalment) will be of Rs. 6,70,872.52p.

4. The rescheduled amount will attract interest @ 17% with 2% penalty if any default for payment.

5. Paragraph 6 of the agreement provided that interest would be payable from 1.9.1998 and it would be realised on quarterly rests basis. Then comes paragraph 14, strongly relied upon by the Corporation. It is as follows:

14. The amount of waived penal interest will be segregated and kept separately in a non interest bearing suspense account and if any default takes place in future in the payment of loan according to the revised schedule, the Corporation retains the right to recompense the amount of waived penal interest.

6. From paragraphs 2 and 3 of the agreement, it would appear that after waiving off penal charges (on certain terms) the outstanding balance against the

petitioner came to Rs. 89,45,056.70 p, 25% of which being a sum of Rs. 22,36,264.70 p was required to be paid within one month from the date of issuance of the sanction order. The balance 75%, that is, a sum of Rs. 67,08,792.52 paise was to be paid in ten half-yearly instalments payable on March 1 and September 1 every year beginning from 1.3.1999 and ending on 1.9.2003.

7. It is an admitted position that the petitioner paid Rs. 22,36,264.70 p within the time stipulated in the sanction order. The balance amount (Rs. 67,08,792.52 p) payable in ten half-yearly instalments was admittedly paid by the petitioner in the following manner:

PAYMENT POSITION OF PRINCIPAL - RS. 67,08,792.52

Due date

Amount

Payment date

Amount

Delay if any

1.3.99

6,70,880.00

2.2.99

3,30,000.00

No delay

10.2.99

3,40,880.00

No delay

1.9.99

6,70,880.00

22.7.99

99,000.00

No delay

12.8.99

5,80,000.00

No delay

6,79,000.00

1.3.2000

6,70,880.00

21.2.2000

6,70,880.00

No delay

1.9.2000

6,70,880.00

31.8.2000

6,70,880.00

No delay

1.3.2001

6,70,880.00

12.3.2001

6,70,880.00

11 days

1.9.2001

6,70,880.00

21.9.2001

6,70,880.00

20 days

1.3.2002

6,70,880.00

30.3.2002

6,70,880.00

29 days

1.9.2002

6,70,880.00

13.9.2002

3,00,000.00

15 days
16.9.2002
3,70,880.00
1.1.2003
6,70,880.00
10.3.2003
50,000.00
26 days
18.3.2003
1,20,880.00
27.3.2003
5,00,000.00
1.9.2003
6,70,872.52
21.8.2003
28,733.00
25.8.2003
1,62,752.00
27.8.2003
4,71,267.00
6,62,752.00
..67,08,792.00

PAYMENT POSITION OF INTEREST

Due date

Amount

Payment date

Amount

Delay if any

28.2.1999

2,96,694.00

9.03.1999
2,96,694.00
9 days
31.5.1999
2,65,055.00
3.06.1999
2,64,055.00
3 days
22.07.1999
1,000.00
31.08.1999
2,55,836.00
01.09.1999
2,55,836.00
No delay
30.11.1999
2,31,673.00
30.11.1999
2,31,673.00
No delay
28.02.2000
2,29,803.00
06.03.2000
2,29,803.00
6 days
31.05.2000
2,05,495.00
19.06.2000
2,04,897.00
19 days

24.07.2000
598.00
54 days
31.08.2000
2,06,832
31.08.2000
2,06,832.00
No delay
30.11.2000
1,73,666.00
07.12.2000
1,73,666.00
7 days
28.02.2001
1,73,300.00
12.03.2001
1,73,300.00
12 days
31.05.2001
1,51,163.00
03.07.2001
1,51,163.00
33 days
31.08.2001
1,48,762.00
05.09.2001
1,48,762.00
5 days
30.11.2001
1,23,095.00

1.12.2001
1,23,095.00
No delay
08.02.2002
1,15,390.00
16.3.2002
1,15,390.00
16 days
31.05.2002
1,08,074.00
20.6.2002
1,08,074.00
20 days
31.08.2002
88,926.00
10.9.2002
88,926.00
10 days
30.11.2002
61,199.00
2.12.2002
61,199.00
02 days
28.02.2003
56,907.00
5.03.2003
56,907.00
05 days
31.05.2003
35,742.00

19.6.2003

35,742.00

19 days

27.08.2003

29,527.00

27.8.2003

29,527.00

No delay

8. From the actual schedule of payments, it would appear that though there were a few days' delay in payments of some of the half-yearly instalments, the date of the last payment (1.9.2003) was adhered to by the petitioner both in case of the principal and the interest accruing on it. It is also undeniable that on each occasion when there was some delay in payment of half-yearly instalments, payments were made along with interest @ 17% with 2% penalty as provided in paragraph 14 of the agreement.

9. After making payment of the entire dues as provided in the agreement dated 8.1.1999 the petitioner made a request to the Branch Manager for "No Dues" Certificate and for return of the documents submitted by it as security for repayment of the loan.

10. The Branch Manager apparently did not like to take a decision at his own level. He, therefore, addressed a letter dated 3.9.2003 to the Manager (I/c Zone-III) in the Head Office of the Corporation. In the letter it was stated that the petitioner had "liquidated the entire outstanding as on 27.8.2003." But making a reference to the delay of a few days in payments of some of the half-yearly instalments the Branch Manager further wrote as follows:

However, since there was a condition in the order issued from H.O. that this penal charges is waived subject to right of recompense in case of default we are not in a position to issue no dues certificate to the concern for want of instruction from H.O. whether in this case as per the order the penal charges would remain waived or it would be recompensed. However, from the perusal of the above payment position it may be clear to your honour that the repayment of loan has not been abnormally delayed by the concern.

11. The concerned authorities in the Corporation slept over the matter for about a year and half and finally came out with the impugned demand letter dated 26.2.2005 raising an additional demand for Rs. 36,09,115.00 paise.

12. Mr. Ram Balak Mahto strongly argued that the demand was wholly unreasonable, unfair, unjust and untenable. Full payment was made by the petitioner in terms of the agreement and on occasions when there was delay of a

few days in payments of the half-yearly instalments, interest @ 17% along with 2% penalty was also charged on the due instalment. There was, therefore, no question of any further demand against the petitioner.

13. Mr. Y.V. Giri on the other hand tried to defend and justify the additional demand on the basis of the provisions contained in paragraphs 1, 3 and 14 of the agreement, Mr. Giri submitted that the penal charges (amounting to Rs. 12,00,781/-) were waived subject to the right of recompense in case of default (Para-1). Para 3 of the agreement had fixed the dates for payments of half-yearly instalments and paragraph 14 provided that in case of default the Corporation would retain the right to recompense the amount of waived penal interest. He contended that the petitioner had undeniably defaulted in payment of a number of half-yearly instalments even though the default was of no more than a few days. The defaulted payments of the half-yearly instalments by the petitioner, according to Mr. Giri, gave the Corporation the right to recompense the amount of penal interest.

14. In answer to a question how did the amount of Rs. 12 lacs and odd got increased to Rs. 36 lacs and odd, Mr. Giri filed a supplementary counter affidavit in which it is stated that on the first default by the petitioner in payment of the half-yearly instalments the waived amount of penal interest was added to the outstanding balance w.e.f. 17.12.1998 and then, following the practice of accounting by the Corporation, the subsequent payments made by the petitioner were first adjusted against the dues of interest rather than the principal. In this way the amount of waived penal interest added up to Rs. 36 lacs and odd as on 28.2.2005.

15. As to the question why did the Corporation raise the demand after a year and half even though the payments were completed by the petitioner on 27.2.2003 and intimation in that regard was given to the Head Office vide letter 3.9.2003, there was no answer.

16. On hearing counsel for the parties and on a careful consideration of the matter I find the stand of the Corporation wholly unreasonable and bordering on perversity.

17. Under the payment schedule laid down by the agreement, defaults were possible in two ways. One, failure to adhere to the dates fixed for payments of the half-yearly instalments and the other failure to meet the dead line of 1.9.2003 and not being able to clear off the entire outstanding dues by that date. The agreement also provided for two kinds of penalties as consequence of the two defaults. One was payment of 2% penalty on the interest @ 17% and the other was the right to recompense the amount of penal interest waived off at the time of execution of the agreement.

18. Clearly, the penalty of 2% additional interest was relatable to the minor default in adhering to the dates fixed for the half-yearly instalments and the major penalty to recompense the waived of penal interest could only be relatable

to the major default in failing to stick to the last date for clearing the dues.

19. Even in that event, it is significant to note that under paragraph 14 of the agreement, the Corporation retained the right to recompense the amount of waived penal interest. The expression used is recompense and not revival or restoration of the claim of penal interest. The word recompense is described in the New Oxford Dictionary of English (Publication 1998) as follow:

verb: make amends to (someone) for loss or harm suffered; compensate.

noun- compensation or reward given for loss or harm suffered or an effort made.

20. The word is defined by the Oxford Advanced Learner's Dictionary, Sixth edition 2000 as follow:

noun -(formal). something, usually money, that you are given because you have suffered in some way or as a payment for sth:

verb-(formal) to do sth for sb or given them a payment for sth that they have suffered. COMPENSATE:

21. It is plain and clear that recompense does not mean the same thing as revival or restoration and it is, therefore, highly debateable whether the action of the Corporation was justified and in conformity with the agreement even in case there was a few days" delay in meeting the final dead line of payment by 1.9.2003.

22. In the case in hand the default was only of a few days in payments of the half-yearly instalments and for that the petitioner was charged the additional 2 % interest over the interest @ 17%, as provided in paragraph 3 of the agreement. Therefore, in the facts of the case there was no occasion for the Corporation to claim any further recompensation for the waived penal charges at the time of execution of the agreement and to further multiply it over years by following its own curious mode of accounting.

23. In this State, the Government controlled Boards and Corporations created by Statutes or otherwise are mostly deeply in the red. The reasons are manifold, not the least being mal-administration and corruption & a curious prediliction mostly to deal with sharp, dishonest and unscrupulous beneficiaries who have no intention to repay the loan or pay back for the privilege from the very beginning. It is the Court's experience that most of these Corporations and Boards share a common weakness, that is, the tendency to try to make good their losses by squeezing as much as possible the party/customer/client who by temperament is honest and law-abiding and desires to follow the rules. As a result, it is the few honest people who suffer mostly while the dishonest and the unscrupulous appear to thrive and prosper at the expense of the Corporations/Boards.

24. The case in hand simply illustrates the point.

25. For the reasons discussed above I have no hesitation in holding that the

impugned demand raised by the Corporation is quite illegal, bad and untenable. The demand notice dated 26.2.2005 is accordingly quashed. It is held and declared that the petitioner's loan account with the Corporation stands fully settled and satisfied. The Corporation is accordingly directed to issue to the petitioner the "No Dues" Certificate and to hand over to it all its documents submitted as security for repayment of loan.

26. In the result, this writ petition is allowed.