(2019) 09 CAL CK 0110

In the Calcutta High Court

Case No : Tender Application (TA) No. 20 Of 2019, General Application (GA) No. 817, 02 Of 2019, Civil Suits (CS) No. 145 Of 2019

Shristi Infrastructure Development Corporation Limited APPELLANT

Vs

Lakshmi Vilas Bank Limited RESPONDENT

Date of Decision : 27-09-2019

Acts Referred:

Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 12A, 17, 34

Citation : (2019) 09 CAL CK 0110

Hon'ble Judges : Bibek Chaudhuri, J

Bench : Single Bench

Advocate : Utpal Bose, Aniruddha Roy, Subhojit Roy, Labanyasree Sinha, K.V. Viswanathan, Arijit Bardhan, Sambhu Nath Bera

Judgement

Bibek Chaudhuri, J

The Court : Affidavit of service be kept with the record.

By filing the instant application it is alleged by the plaintiff/petitioner obtained term loan for a sum of Rs.75,00,00,000/- from the defendant/opposite party for construction of a five star hotel at New Town, Rajarhat. The said loan was sanctioned on condition that the Regional Manager of the defendant-bank would ensure that the extension of original date of Commencement of Commercial Operation (DCCO) of the project should be in line with the Reserve Bank of India guidelines. The said loan was duly secured by the petitioner by executing a deed of mortgage in favour of the defendant-bank dated 30th March, 2017 and a deed of declaration dated 22nd June, 2017. In terms of loan agreement, the petitioner regularly deposited instalments with the bank for repayment of the said loan. Accordingly DCCO was deferred for one year by an extension with effect from 30th April, 2018 to 30th April 2019 without consequent shifting in the repayment. By a communication through e-mail dated 21st May, 2019, the defendant informed the petitioner that the authorised officer of the defendant visited the project site on 15th May, 2019 and found that the project was still incomplete. Therefore, the bank proposed to convert the loan account to a non-performing asset (NPA). In view of such unilateral decision taken by the bank, the petitioner was supposed to repay the loan in full before 30th June, 2019. The petitioner in turn made a communication with the bank on 16th July, 2019 stating, inter alia, that the petitioner is entitled to deferment of DCCO and consequent shifting for repayment for a further period of three years from the date of original DCCO. However, the bank declined to extend the said DCCO for further period of three years. In the mean time, the petitioner has completed its project and applied for occupancy certificate before the concerned local authority till date such occupancy certificate is not issued by the local authority. It is further stated by the petitioner that it already paid a sum of Rs.25.77 lacks in favour of the petitioner since the defendant refused to defer the DCCO in term of the Master Circular, the petitioner filed CS 145 of 2019 for declaration, permanent injunction and consequential reliefs.

The petitioner moved an application for temporary and ad-interim injunction being G.A No.1826 of 2019 on 8th August, 2019. A Coordinate Bench of this Court passed the following order:-

"Considering the facts of the case, I am of the opinion that the merit of the contention raised by the petitioner can be decided only after granting the opportunity to the petitioner to file their affidavit-in-opposition.

Accordingly, the respondent is directed to file their affidavit-in-opposition to the petitioner as well as two supplementary affidavits filed by the petitioner within three weeks from date; reply thereto, if any, be filed two weeks thereafter.

The application will appear, under the heading, 'Adjourned Motion' on September 25, 2019.

The point of maintainability of the suit as well as the application shall be decided at the time of hearing of this application."

In the instant application it is alleged by the petitioner that after the order dated 8th August, 2019 being passed by this Court, the respondent was requested by an Advocate's letter not to take any coercive step against the petitioner during the pendency of G.A 28 of 2019. Despite receipt of the aforesaid application the petitioner received an e-mail communication on 23rd September, 2019 from one of the bankers and lenders of the petitioner, namely, Union Bank of India that the defendant has already reported the petitioner's Loan Account as a Special Mention Account to the Central Repository of Information on Large Credits (CRILC). The reference of petitioner's Loan Account to CRILC is, according to the petitioner, the first step for declaration the said Loan Account either as non-performing asset or stressed assets under Special Mention Account (SMA). The respondent appears to have declared the account of the petitioner as SMA-2 on the expiry of 60 days from the purported default of instalment and reported the same to CRILC. The said period of overdue from 61 days to 90 days would expire on 30th September, 2019 and immediately upon expiry of the said period, the petitioner apprehends that the Loan Account of the petitioner would be declared as Non Performing Assets.

Under such factual background, the petitioner has prayed for the following reliefs:-

(a) An order of injunction restraining the respondent and/or its men, agents, servants and assigns to take any step or further steps or to give any effect or further effect to the said report made by it to Reserve Bank of India to the effect that the status of the account of the petitioner stands as SMA-2 and/or to declare the term Loan Account of the petitioner as a Non Performing Assets and/or to take any coercive step or steps against the petitioner in any manner whatsoever until the instant application is disposed of;

(b) Ad-interim order in terms of prayer above;

(c) Costs of and incidental to this application be paid by the respondent;

(d) Such other and/or further order or orders be made and/or direction or directions be given as to this Hon'ble Court may deem fit and proper.

The defendant entered appearance through its learned Advocate on notice. The learned Advocate for the defendant submits that the suit itself is not maintainable in view of the provisions contained in Section 34 read with Section 12A and Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

It is further submitted by the learned Advocate for the defendant-bank that the application for injunction being GA 1826 of 2019 is fixed for hearing. The Coordinate Bench of this Court passed an order on the aforesaid application refusing the prayer for ad-interim injunction against the defendant. The instant application was filed by the petitioner only to obtain an order of injunction in a roundabout way by passing the order dated 8th August, 2019 passed by a Coordinate Bench of this Court. For the reasons aforesaid, as the defendant has raised vehement objections against the prayer for injunction as prayed by the petitioner in the instant application. Having heard submissions made by the learned Counsels for the petitioner and the defendant and on perusal of the application and the documents annexed therewith, I like to record that the principle of equity demands that the defendant should not take any coercive action against the petitioner during pendency of the application for temporary injunction. I have given anxious thought over the question as to whether this Court should pass any ad-interim order of injunction upon this application when the G.A 1826 of 2019 is pending in file and the Court has passed an order on 8th August, 2019 directing the defendant to file affidavit-in-opposition against the application for temporary injunction as well as affidavit-in-reply thereto. When a particular dispute is lying before the court for adjudication, and the court decides to adjudicate the dispute between the parties, principle of equity demands that the defendant should not take any coercive step against the petitioner declaring this Loan Account as NPA.

At this stage, I am not going to deal with the question as to the maintainability of the suit or the issues relating to prima facie case, balance of convenience and inconvenience etc.

As a court of equity, I am inclined to record with if the petitioner's Loan Account is declared NPA during pendency of GA No.1826 of 2019, the petitioner shall suffer irreparable loss and injury because of the fact that in case of petitioner's being declared NPA, the petitioner would be deprived from any loan facility from its bankers which will ultimately tell upon its business.

In view of the above discussion, the defendant-bank shall not take any coercive action in respect of the Loan Account of the petitioner till 30th October, 2019. GA 1826 of 2019 and this GA be listed for hearing on 31st October, 2019. Since the opposite party has entered appearance on notice, requirement of certified of copy of the instant application and the plaint of the suit upon the defendant is waived.

