
(2016) 04 OHC CK 0042
In the Orissa High Court
Case No : W.P.(C) No. 5004 of 2016

Sree Metallicks Ltd.

APPELLANT

Vs

Kotak Mahindra Bank

RESPONDENT

Date of Decision : 05-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 122 CutLT 944 : (2016) 1 ILRCuttack 897

Hon'ble Judges : Vineet Saran, CJ. and Dr. R.B.R. Sarangi, J.

Bench : Division Bench

Advocate : M/s. S.S. Das, Senior Advocate, S. Das & B. Sahu, Advocates, for the Petitioner; Sri R. Roy, M/s. S.P. Mishra, Senior Advocate, N.K. Das, Advocates, for the Opp. Parties

Final Decision : Allowed

Judgement

Vineet Saran, C.J.—The petitioner is a Company incorporated under the Companies Act, 1956 and is engaged in the business of manufacturing

steel. On 25.05.2009, the petitioner had opened a current account with the opposite party no.1- Kotak Mahindra Bank. After a gap of more than

two years, i.e. on 17.09.2011, the petitioner had availed a credit facility to the tune of Rs. 30 crore from the opposite party no.2-ICICI Bank.

Admittedly, the petitioner- Company ran into financial distress and could not pay the loan of ICICI Bank, regarding which proceedings are

pending before various courts/Forums. Besides winding up petition having been filed by ICICI Bank before the Calcutta High Court, the matter is

also pending consideration before the Board for Industrial and Financial Reconstruction (BIFR) under the Sick Industries Companies Act. It is not

in dispute that the account of the petitioner-Company with the opposite party

no.1-Kotak Mahindra Bank is a regular account, wherein there is no default.

2. The grievance of the petitioner is with regard to the letter dated 14.03.2016 (Annexure-5) issued by opposite party no.1-Kotak Mahindra

Bank, freezing the bank account on the basis of communication having been made by the opposite party no.2-ICICI Bank. Challenging the said

communication by which the account of the petitioner with opposite party no.1-Kotak Mahindra Bank has been frozen, and being under threat that

the amount lying in credit in Kotak Mahindra Bank account of the petitioner may be transferred to ICICI Bank, the petitioner has filed this writ

petition.

3. We have heard Sri S.S. Das, learned Sr. Counsel along with Ms. S. Das, learned counsel appearing for the petitioner, Sri R. Roy, learned

counsel for the opposite party no.1-Kotak Mahindra Bank and Sri S.P. Mishra, learned Sr. Counsel along with Sri N.K. Das, learned counsel

appearing for the opposite party no.2-ICICI Bank and perused the records.

4. With the consent of learned counsel for the parties, this petition has been heard at this stage and is being finally disposed of without calling for counter affidavit.

5. The specific case of the petitioner is that admittedly there is no default by the petitioner in payment of any dues of Kotak Mahindra Bank, and

the account of the petitioner with the said bank is absolutely regular, and thus the Kotak Mahindra Bank cannot act on any communication of

another bank with regard to freezing of the said account of the petitioner, or transfer of the balance of the said account to any other bank. Learned

Sr. Counsel for the petitioner has specifically submitted that the opposite party-Banks have to transact their business in terms of the banking

regulations and guidelines issued by the Reserve Bank of India from time to time, which in no way provides for one bank to direct or ask another

bank to freeze the account of a particular party, even when the account maintained by that party with the Kotak Mahindra Bank is not in default.

6. Sri R. Roy, learned counsel for the opposite party no.1-Kotak Mahindra Bank, has tried to justify the issuance of the letter dated 14.03.2016

on the ground that since there was irregularity in the account of the petitioner maintained with the ICICI Bank, it had in turn, on 22.02.2016,

written to the Kotak Mahindra Bank to freeze the account of the petitioner maintained with it, relying upon Clause-5.11 of the R.B.I. Master

Circulars Customer Service in Banks dated 1.7.2015. During course of the argument, Sri Roy has very fairly admitted that the said Clause-5.11

does not strictly apply to the present case, but since it had come to their knowledge that the petitioner-Company was in some default, they had

issued the letter directing for freezing the current account of the petitioner maintained with Kotak Mahindra Bank, and required the petitioner to

furnish information as to how they opened the account with Kotak Mahindra Bank without disclosing that they were enjoying the credit facility

from the ICICI Bank. However, Mr. Roy, learned counsel for opposite party no.1, does not dispute the fact that the account of the petitioner with

Kotak Mahindra Bank was opened much prior to the petitioner availing the credit facility from the ICICI Bank and as such, according to the own

statement of the opposite party-Bank, the same could not have been a valid ground for freezing the account of the petitioner. Sri Roy also could

not justify the suggestion in the said letter that in case the reply of the petitioner was not satisfactory, then the balance in the petitioner's account

maintained with the Kotak Mahindra Bank can be transferred to the ICICI Bank.

7. Sri S.P. Mishra, learned Sr. Counsel appearing for opposite party no.2, ICICI Bank also could not justify the issuance of the communication by

his client on 22.02.2016, requiring the Kotak Mahindra Bank to freeze the account of the petitioner. He has also submitted that the same was

based on the circular of the Reserve Bank of India, but could not justify the applicability of the relevant Clause 5.11 of the said circular in case of

the petitioner.

8. There is no doubt about the fact that the Scheduled Banks like both the opposite parties are required to function as per the R.B.I. Guidelines

and other Banking Norms. Learned counsel for the opposite parties-Banks could not justify the action of one bank requesting the other bank to

freeze the account of a particular party, who has not committed any default while maintaining the account in the Bank, which has been requested to

freeze the account. In our view, if a bank account of a party is to be frozen, the same can only be done in accordance with law and by an order

passed by the competent court or an authority like the B.I.F.R. or D.R.T. In the

present case, there is no such direction issued by any court of law

or any authority requiring the Kotak Mahindra Bank to freeze the account of the petitioner- Company, or to transfer the amount lying in balance

with Kotak Mahindra Bank to ICICI Bank, which may be a creditor, but realisation of the dues of ICICI Bank is also to be made in accordance

with law for which ICICI Bank had already approached the B.I.F.R., and has also filed winding up petition, which is pending before the Calcutta

High Court. Resorting to the methods other than which are not permissible under law cannot be permitted.

9. This is a clear case where two private Scheduled Banks have joined hands and proceeded to take action against the petitioner without any

authority of law and without such action being backed by any circular or guidelines issued by the Reserve Bank of India. The submission of learned

counsel Mr. Roy appearing for Kotak Mahindra Bank that since the company had been incorporated in 1995 and had started commercial

production in 1998, they must have taken loan from other banks for the purpose of their business prior to the opening of the account with Kotak

Mahindra Bank in the year 2009, and on the basis of such presumption they have started an inquiry with regard to the correctness of declaration

given by the petitioner- Company at the time of the opening of the account, cannot justify the issuance of the direction as has been given in the

impugned letter dated 14.03.2016, as the same would be nothing but a fishing and roving inquiry being conducted without there being any basis

and merely on apprehension. If at all any such action is to be taken, it should be done only after enquiry, and when some substance is found against

the petitioner, then alone suitable action, permissible in law, could have been taken with regard to the bank account of the petitioner-Company

maintained with the opposite party-Kotak Mahindra Bank.

10. For the reasons given herein above, we are of the considered opinion that the issuance of the direction by Kotak Mahindra Bank vide

communication dated 14.03.2016 cannot be justified in law and is thus liable to be quashed. Accordingly, we allow the writ petition and quash the

letter dated 14.03.2016 passed by the opposite party no.1-Kotak Mahindra Bank.

11. No order as to costs.