
(2020) 12 DEL CK 0219

In the Delhi High Court

Case No : Civil Writ Petition No. 3437 Of 2020, Civil Miscellaneous Application No. 12185, 12186, 12187, 12188, 15963 Of 2020

Vayam Technologies Limited And Anr

APPELLANT

Vs

Canara Bank And Ors

RESPONDENT

Date of Decision : 23-12-2020

Acts Referred:

Citation : (2020) 12 DEL CK 0219

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Navaniti Prasad Singh, Ashutosh Thakur, Jeewesh Prakash, PBA Srinivasan, Parth Tandon, Rimjhim Naudiyal, Avinash Mohopatra, Hitender

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

1. This hearing has been done by video conferencing.
2. The present petition has been filed by Petitioner No. 1, Vayam Technologies Limited, which is an IT company engaged in providing IT services for various governmental bodies across the country, and Petitioner No.2, Mr. Ashok Tiwary, who is a shareholder, Chairman cum Managing Director of the Petitioner No.1 Company (hereinafter jointly referred to as "Petitioners"). As per the petition, Petitioner No.2 is stated to hold 34.54% of the paid-up share capital in the Company. The Petitioner Company is stated to be a Small and Medium-sized Enterprise. registered under the Micro, Small and Medium Enterprises Development Act, 2006.
3. The Respondents in this petition are various Banks, who are part of a consortium of lenders/ joint lender forum, and have extended various loan

facilities to the Petitioner Company. The members of the said consortium are Canara Bank, IDBI Bank limited, Axis Bank Limited, Dena Bank (now Bank of Baroda) and Corporation Bank (now Union Bank of India) (hereinafter, 'consortium/JLF') and DBS Bank.

4. It is the case of the Petitioners that more than 20000 persons, which includes employees, staff, business associates, agents and village level entrepreneurs, are dependent on the Petitioner Company. In 2014-15, the business of the Petitioners is stated to have been adversely affected due to non-payment by several clients and other debtors, as also cancellation of some contracts. In 2014, the RBI issued a circular, being Circular No.

DBOD.BP.BC.NO. 97/21.04.132.2013-14, dated 26th February, 2014, w.e.f 1st April, 2014, which provided for a framework for revitalizing

distressed assets in the economy and also provided guidelines for creation of a joint lenders forum and corrective action plans. In view of the financial

distress which was being faced by the Petitioner Company, a meeting of the consortium was held on 31st March, 2005, wherein, it was decided that

since there was a shortage in working capital of the petitioner to execute the on-going government projects, a Techno-Economic Viability study

(hereinafter as 'TEV') would be carried out.

5. The RBI then issued another circular, being Circular No. DBR.BP.BC.No.101/21.04.132/2013-15, dated 8th June, 2015, which provided for a

'Strategic Debt Restructuring' scheme (hereinafter, 'SDR'), by which loans could be converted to equity shares of the borrower, and would

be issued to the lender banks.

6. The TEV report in respect of the Petitioner was then approved by the consortium on 20th August, 2015 and the Petitioner No.2 brought in

additional collateral security of Rs. 5-6 crores, in the favour of Respondents, along with pledging his equity shares. At that stage, a moratorium period

of 18 months was declared, from the cut-off date beginning 1st January, 2015.

7. However, in 2016, the business of the Petitioners faced further distress. Reliance was placed on a further circular issued by the RBI, similar to the

2014 circular, for the JLF and Corrective Action Plans.

8. A Debt Restructuring scheme was submitted by the Petitioners, and the same was approved by the consortium. A master restructuring agreement

was also entered into on 6th February, 2016. As per the said agreement, funds were to be released by all the consortium members, but as per the

Petitioners, due to a delay in release of the funds, the schedule provided in the agreement was completely derailed.

9. According to the Petitioners, their liquidity crunch continued, despite further amounts being released by the banks. Thereafter, changes were made

to the Memorandum and Articles of Association of the Petitioner Company, towards implementation of the Strategic Debt Restructuring scheme.

Further, another TEV was conducted, as per which the Petitioner Company exhibited earning potential.

10. On 22nd December, 2017, another agreement, called the Management Framework Agreement, was entered into by the Petitioner Company and

the consortium, by which the shareholding pattern was changed and the consortium was given the majority shareholding in the Company. The

Petitioner No.2's shareholding dropped from 81.92% to 34.54%.

11. On 12th February, 2018, the RBI issued another circular, being Circular No. DBR.NO.BP.BC.101/21.04.048/2017/18, which withdrew the

existing instructions in relation to SDR schemes, and introduced a new regime.

12. On 23rd May, 2018, the account of the Petitioner Company with Canara Bank was classified as a non-performing asset (hereinafter, 'NPA'),

with retrospective effect, and repayment of the entire loan was sought. Other Respondents also issued loan recall notices, including notices under the

SARFAESI Act, on the basis of the said circular of the RBI dated 12th February 2018. At this stage, a writ petition was filed before this court by the

Petitioners claiming the RBI Circular dated 12th February to be unconstitutional and the loan recall notices to be invalid thereto. The case of the

Petitioners was that the RBI circular dated 12nd February, 2018, would not be applicable to the case of the Petitioners, and the original SDR

scheme had already been implemented inasmuch as the share holding pattern in the Petitioner Company had already changed completely.

13. In the said writ petition, bearing no. W.P(C) 7221/2018, titled Vayam Technologies Ltd. and Anr. v. Union of India and ors., vide order dated 16th

July, 2018, the directions were issued:

5. The learned counsel appearing for respondent no.6 (Dena Bank) submits that SDR has not been implemented as the shares allotted

are not in dematerialised form. Prima facie, this contention seems untenable. The conversion of debt into equity shares is not dependent on

the form of shares. The conversion of physical share certificates into a dematerialised form does not change the rights of the allottee in any

manner; the allottee continues to hold the beneficial interest in such shares. Once, it is acknowledged that the shares were allotted to the

banks by conversion of the debt owed to them, it follows that the debt no longer exists. The fact that physical share certificates have not

converted in a non fungible form is only a matter of form of holding interest in such shares and does not change the nature of the

investment.

6. Prima facie, it would also follow that any proceedings instituted by the banks for recovery of the debt would obviously be contested on

the ground that what is outstanding in favour of the banks is not a loan but outstanding share capital. And, their priority in the order of

preference for payments would also be determined on the said basis.

7. Issue notice. Mr Parihar, learned counsel appearing for respondent no.2/RBI accepts notice. Learned counsel appearing for respondent

no.1 (UOI), respondent no.3 (Canara Bank), respondent no.5 (Corporation Bank), respondent no.6 (Dena Bank) also accept notice.â??

14. At that stage, it was agreed that the parties would explore a strategic investor who would invest in the Petitioner Company, and accordingly, a

forensic audit was also directed.

15. The circular dated 12th February, 2018 was challenged before the Supreme Court and finally the said circular was struck down on 2nd April,

2019.

16. It is the case of the Petitioner that the Respondent No. 1, Canara Bank, however, adopted a completely impractical attitude and wrote e-mails to

various debtors claiming their accounts to be NPAâ??s, thereby causing further financial problems for the Petitioners. Repeatedly, the Petitioners

objected to the modus operandi of the Canara Bank and sought a JLF meeting. Parallely, the auditorâ??s report noted as under:

â??We cannot categorically come to a conclusion that the company has committed fraud and the factual details in this regard are already

furnished in the report/ supplementary reportsâ??

17. At this stage, the members of the consortium had different stands, qua the Petitioners. While Axis Bank was willing to give the Petitioner

Company the benefit of doubt, on the other hand, the Corporation Bank decided to declare the Company's account as a fraudulent account. The

Trust & Retention Account (hereinafter as TRA) which was created by the master restructuring agreement, was also frozen and no

operations were permitted on the same. Thereafter, repeated representations were made by the Petitioners to various banks.

18. On 12th August, 2019, the Petitioners informed the consortium banks that it had identified M/s EBIX Inc. as a potential investor. Another investor

M/s Aurinpro Solutions Ltd. also gave a letter of interest. Both these expressions of interest were communicated to the consortium on 30th October

2019, with a request to convene a JLF meeting.

19. On 5th November 2019, a JLF meeting was held and the members of the consortium had a discussion in respect of giving no objections for

operating the TRA. Some banks agreed for the operation of the TRA, however these negotiations with the consortium members finally came to a

standstill. Finally, on 15th April, 2020, the JLF meeting was held wherein the Company was directed to submit a concrete restructuring plan, without

the presence of the Petitioners. On 24th April, 2020, the Petitioner was informed of the meeting that was held on 15th April, and that the lenders were

not in favour of allowing operations of the TRA. Thereafter, on 6th May, 2020, the Petitioner sought 4 months' time to submit a viable

restructuring plan in view of the COVID-19 pandemic. This was however not agreed to, leading to the filing of the present writ petition.

20. The matter was first heard on 10th June, 2020, on which date, a direction was issued that no coercive steps would be taken against the Petitioners.

The Petitioners were also permitted to submit restructuring plans/proposals, in the meantime. Thereafter, vide order dated 22nd July, 2020, the

Petitioners were directed to place on record an affidavit with various details which were sought by the Banks.. Upon the said affidavit being filed, the

Company showed that it had receivables of more than Rs.379 crores. However, since the Banks were not satisfied, further data was sought, but it

was clear that there was a stalemate on the restructuring proposal. On 21st August, 2020, the Petitioners were permitted to hold a meeting with the

consortium members for submitting a concrete proposal on behalf of M/s EBIX Inc. or any other third party however, the proposal did not fructify.

Vide order dated 3rd December, 2020, last and final opportunity was given to file any revised proposal on behalf of the Petitioners, however, the same rendered no fruition.

21. Mr. Navniti Prasad Singh, Id. Sr. counsel appearing for the Petitioners, submits that sometime around 10th June, 2020, the TRA account of the Petitioner was frozen and no further operations could be carried out. It was at this stage that the present writ petition came to be filed.

22. Reliance is placed by Mr. Singh, Id. Sr. counsel, on the reply filed by the Respondents to the effect that the Petitioner is a sound company and as on 31st March, 2020, it is undertaking 66 projects and has receivables of Rs. 354/-crores. Accordingly, it is submitted that the consortium is also aware that the Petitioner is not a company which should be sent into liquidation and has huge potential.

23. Mr. PBA Srinivasan, Id. counsel, on the other hand, has taken the position that despite repeated opportunities being given to the Petitioner, no concrete proposal of investment or restructuring has been received from M/s EBIX Inc. or any other third party. According to him, the only purpose of the Petitioner herein, is to keep delaying the adjudication of the present petition. Various correspondences are relied upon to show that the consortium has made enough efforts to give adequate opportunities to the Petitioners for restructuring and submitting proposals. It is, thus, submitted that the Banks should be allowed to take action in accordance with law.

24. Heard Id. Counsels for the parties. A perusal of the pleadings and the various chronology of events shows that the business of the Petitioner Company was quite successful till 2015. However, since then, there has been a downward trend. Pursuant to various circulars of the RBI, the consortium members have agreed to consider restructuring proposals by the Petitioner Company. However, no viable alternative has been put forth till this stage.

25. Considering that the Petitioner Company is stated to have more around Rs. 354 crores as receivables, this Court gave adequate opportunities to the Petitioners to come up with proposals or obtain expressions of interest from third party investors and present the same to the JLF. For whatever

reason though, there has been no positive outcome out of these meetings and proposals. The Petitioners do not have any legal right, of which,

enforcement can be sought in the present writ petition. The consortium members who are now the majority shareholders of the Company, have to

take their own decision as to whether the business of the Company should be continued or whether they wish to pursue other remedies.

26. During the pendency of this petition, a couple of proposals have been put forward for restructuring the Petitioner Company and it is up to the

consortium to consider whether this restructuring is feasible or not, with some external investment. This court does not deem it fit to adjudicate upon

these issues in writ jurisdiction, inasmuch as the prayers sought in the writ petition are primarily for further time to enable bringing in of strategic

investment and to submit proposals in respect thereof. The prayers sought in the writ petition are:

â??(i) Issue an appropriate writ/ order or directions in the nature of Certiorari quashing the letter bearing Re. No. LBA/JANPATH/ CR

TL/0531/2020 dated 16.5.2020 by which the representation of the petitioner for additional 4 monthsâ?? time to submit restructuring plan

post complete lifting of Covid-19 lockdown has been arbitrarily rejected; and/or

(ii) Issue an appropriate writ/ order or directions in the nature of Certiorari thereby quashing the minutes of the Consortium/JRF meeting

dated 15.4.2020 by which decision to initiate recovery proceedings against the petitioners has been taken; and or

(iii) Issue an appropriate writ/order or directions in the nature of Mandamus prohibiting the respondents from taking all/any coercive

action of recovery against the petitioners pursuant to the decision contained in the Consortium/JLF meeting dated 15.4.2020; and/or

(iv) Issue an appropriate writ/order or directions in the nature of Mandamus directing the respondents towards taking further steps in

pursuance to the Strategic Debt Restructuring to find a Strategic Investor by Swiss Challenge Method; and/ or

(v) Issue an appropriate writ/order or directions in the nature of Mandamus directing the respondents to allow 4 monthsâ?? additional

time to the petitioners post complete lifting of Covid-19 lockdown for submission of a viable Restructuring Plan; and/or

(vi) Issue an appropriate writ/order or directions in the nature of Mandamus directing the respondents for allowing operations in the Trust

& Retention Account (TRA) and allow hold on permission at existing level of outstanding; and/ or

(vii) Issue any appropriate writ, order or direction which the Honâ??ble Court deems just and proper, in the facts and circumstances of

the present matter; and/or

(viii) The costs of the present writ petition may also be awarded in favour of the petitioners.â??

27. A perusal of the above mentioned prayers in the writ petition, shows that the primary relief sought for is further time for submitting the

restructuring plan and for being permitted to operate the TRA account. This writ petition has been pending since June 2020 and sufficient time has

already gone by. The apprehension expressed in respect of the TRA account, is an issue which would have to be taken up by the Banks directly, and

it cannot be claimed by the Petitioners as a matter of right that they ought to be permitted to operate the TRA Accounts especially when the various

banks feel that they have huge dues to recover.

28. Since the time this petition was entertained, i.e., in June 2020, more than six months have passed, and despite repeated opportunities, no viable

proposals have come forward before this Court at least. This Court cannot be asked to supervise such proposals which may be discussed between the

consortium and Petitioners. There can however be no doubt that considering the fact that the company claims to have a considerable client-base, any

viable investment proposal ought to be taken into consideration by the lendersâ?? consortium. Accordingly, the following directions are issued:

i) The Petitioners are given time till 31st January to submit any other proposal for the restructuring of or investment in the Company.

ii) Before the end of January 2021, a meeting shall be held between the Petitioners, all the third parties who may have expressed interest in the

Petitionersâ?? business and who have submitted their expressions of interest to the consortium, along with all the Bankers forming part of the

consortium and any other bank which has taken legal proceedings against the Petitioners for recovery of dues. The said meeting shall be held under

the supervision of the lead Bank i.e., Canara Bank. If in the said meeting any

proposals for restructuring are materialized, then an agreement shall be entered into between the parties.

iii) The parties may by mutual consent agree to extend the said period, but not beyond a further period of three months.

iv) If there is no resolution which is possible between the parties, then the consortium and their members are left to avail of their remedies in accordance with law.

29. The writ petition and all pending applications, are disposed of in the above terms.