

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No.3349 of 2022
With
I.A. No.6410 of 2022

Ambey Castings Pvt. Ltd., Gola Road, Ramgarh,
 through its Director, Raj Kumar Choudhary,, Petitioner.

-Versus-

1. Punjab National Bank, through its Chairman-cum-Managing Director, Plot no.4, Sector-10, Dwarka, New Delhi-110075.
2. Zonal Head, Jharkhand, Punjab National Bank, First Floor, Plot no.46, Sector-24, Opposite Block- A, Office Campus, Atal Nagar, Naya Raipur, District Raipur-492018 (Chhatisgarh).
3. Circle Head, North Circle, Ranchi, Punjab National Bank, Pee Pee Compound, Hindpiri, Ranchi-834001 (Jharkhand).
4. Assistant General Manager, Punjab National Bank, Harmu Road, Ranchi-834002 (Jharkhand).
5. Chief Manager/Branch Manager, Punjab National Bank, Main Road, Ramgarh.
6. Yash Alloys Pvt. Ltd., through its Director, Room no.301, 3rd Floor, Bank More, New Market, Dhanbad.
7. Rajiv Kumar Agarwalla.

..... Respondents.

CORAM : HON'BLE MR. JUSTICE RAJESH SHANKAR

For the Petitioner : Mr. Sumeet Gadodia, Advocate
 For the Res. Nos.1 to 5: Mr. Deepak Kr. Bharti, Advocate
 For the Res. Nos.6 & 7: Mr. Shailesh, Advocate

Order No.03

Date: 27.07.2022

1. The present writ petition has been filed for issuance of direction upon the respondent- Punjab National Bank to enter into a tripartite agreement between the petitioner, Yash Alloys Pvt. Ltd. and Punjab National Bank for giving effect to take over the entire induction furnace unit and rolling mill unit of the respondent no.6 along with land, measuring an area of 1.78 acres and 2.44 acres, standing in the name of the respondent no.7- Rajeev Kumar Agarwalla, who is Director of the respondent no.6. Further prayer has been made for declaration that the action of the respondent-Bank in declaring loan account of the respondent no.6 as non-performing assets (for short 'NPA') is wholly illegal and arbitrary. The petitioner has also prayed for declaration that the action of the respondent-Bank on one hand in not entering into tripartite agreement with the petitioner and the respondent no.6 for facilitating to take over the assets of the respondent no.6 and on the other hand declaring the loan account of the respondent no.6 as NPA is wholly illegal, arbitrary and contrary to the principles of promissory estoppel and legitimate expectations.

2. Learned counsel for the petitioner submits that the respondent no.6 was an industrial unit in Ramgarh district, wherein an induction furnace unit and rolling unit was established. The respondent no.6 obtained loan from the respondent-bank. It is further submitted that the petitioner entered into negotiations with the respondent no.6 for purchase of its induction furnace unit and rolling unit and, accordingly, an agreement was executed on 24th March, 2021 between the petitioner and the respondent no.6 for purchase of the said units. The petitioner agreed to purchase the said industrial units of the respondent no.6 on payment of total consideration of Rs.14.00 crores. Pursuant to the said agreement, the petitioner was given possession of the entire industrial unit of the respondent no.6 with effect from 1st April, 2021 and even possession letter was duly received by the respondent-bank. It is also submitted that there was an understanding between the petitioner and the respondent-bank along with the respondent no.6 that entire consideration to the extent of Rs.14.00 crores towards purchase was to be utilized for discharging loan liability of the respondent no.6. It was further agreed that in order to facilitate the petitioner to pay the said amount, a tripartite agreement would be entered among the petitioner, respondent no.6 and the respondent-bank, however, no such agreement was entered among them. The petitioner filed representation before the respondent no.5 requesting therein to execute tripartite agreement on 9th February, 2022. A meeting was held in the office of the respondent no.3, which was attended by the respondent no.2 and other authorities of the respondent-bank as well as the petitioner and the representative of the respondent no.6. In the said meeting, it was stated by the respondent no.2 that the petitioner should deposit an amount of Rs.58.24 lacs to regularize the loan account of the respondent no.6. It was also agreed that on payment of Rs.13.50 crores by the petitioner, entire industrial units of the respondent no.6 along with land standing in the name of the respondent no.7 would be transferred to the petitioner and for completing the said transaction, a tripartite agreement would be executed. The minutes of the said meeting was duly communicated to the petitioner by the respondent-bank vide its letter dated 18th February, 2022 in which agreement arrived at among the parties (petitioner, respondent-bank and respondent no.6) was duly recorded. It has also been mentioned in the said letter that any

amount paid by the petitioner towards loan account of the respondent no.6 would be deducted from total consideration value of Rs.13.50 crores. On receipt of the aforesaid letter, the petitioner made payment of Rs.58.24 lacs in the loan account of the respondent no.6 and informed the same to the respondent-bank vide letter dated 19th February, 2022.

3. Learned counsel for the petitioner further submits that the petitioner took over the said industrial units of the respondent no.6 with effect from 1st April, 2021 and has been running the same in its own name. Even GST registration certificate was also amended, wherein activity of manufacturing was also included in the said certificate. Since formalities of change of name and transfer of the said units of the respondent no.6 were not completed, electricity connection granted by the Damodar Valley Corporation (DVC) to the unit in question is continuing in the name of the respondent no.6 and the petitioner has been regularly discharging electricity bills by making payment of electricity bills in the account of the respondent no.6 and in turn has been remitted to the DVC. The petitioner vide its letter dated 21st February, 2022, enclosing a copy of draft tripartite agreement, requested the concerned authority of the respondent-bank to enter into tripartite agreement so that entire formality of taking over the assets of the respondent no.6 along with land standing in the name of the respondent no.7 is completed. It is also submitted that for the month of March, 2022, total electricity bill in the name of the respondent no.6 was Rs.1,17,55,258/-, but the petitioner was compelled to deposit an amount of Rs.1,37,97,000/- for discharging the liability of the said electricity bill and, thus, an extra amount of Rs.20,53,498/- paid by the petitioner was adjusted by the respondent-bank against the agreed amount of Rs.13.50 crores. Immediately after payment of the said amount, letter dated 21st April, 2022 was issued by the respondent-bank, recognizing the said payment and informing the petitioner that the aforesaid paid amount of Rs.20.53 lacs along with earlier payment of Rs.58.24 lacs would stand reduced from total consideration value of Rs.13.50 crores. Again for the month of April, 2022, electricity bill was raised by the DVC, which was to be paid by the petitioner within due date i.e. up to 23rd May, 2022. Apart from the bill amount, the petitioner was compelled by the respondent-bank to deposit an amount of Rs.12.88 lacs on 19th May, 2022 and a further

sum of Rs.9.00 lacs on 26th June, 2022. Deposit of the aforesaid amount by the petitioner was duly acknowledged by the respondent-bank vide its letter dated 26th May, 2022. In this way, the petitioner was repeatedly being compelled to deposit further amount towards discharge of loan amount of the respondent no.6. Again for the month of May, 2022, electricity bill was raised for Rs.85,16,139/- and the petitioner was compelled to deposit an amount of Rs.97,45,500/- with the respondent-bank and accordingly, an extra amount of Rs.12,40,892/- was deposited by the petitioner against loan account of the respondent no.6.

4. Learned counsel for the petitioner further submits that repeated payments in the loan account of the respondent no.6 were being asked by the respondent no.5 from the petitioner on the pretext that if the said amount was not deposited, the account of the respondent no.6 would become NPA. The petitioner is still ready and willing to deposit the entire amount of Rs.13.50 crores with the respondent-bank, out of which it has already deposited Rs.1,13,33,995/-. Similarly, monthly electricity bill for the month of June, 2022 was raised by the DVC for Rs.1,10,90,601/- and the same was payable by 22nd July, 2022. On receipt of the monthly bill for the month of June, 2022, the petitioner approached the respondent no.5 and requested to execute tripartite agreement. However, the said respondent asked the petitioner to deposit Rs.78.00 lacs in the loan account of the respondent no.6 before transferring the payment of electricity bill of June, 2022. The petitioner has also annexed a chart (Annexure-16 to the writ petition) and on perusal of the same it would appear that the amount of monthly electricity bills raised by the DVC was deposited by the petitioner in the account of the respondent no.6. The petitioner filed representation before the respondent no.5, informing that the petitioner was agreeable even to pay the amount of Rs.78.00 lacs for execution of tripartite agreement, however, no tripartite agreement was entered among them. Thereafter, the respondent-bank vide letter dated 27th June, 2022 issued a notice to the respondent no.6 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short 'SARFAESI Act'), a copy of which was also marked to the petitioner. The petitioner, thereafter, on 15th July, 2022 filed representation before the respondent authorities to recall the aforesaid notice, requesting to

execute tripartite agreement at the earliest, but nothing has been done. Hence this writ petition.

5. Mr. Deepak Kumar Bharti, learned counsel for the respondent-bank submits that even as per the understanding arrived at among the petitioner, the respondent- bank and the respondent no.6, as mentioned in the letter dated 18th February, 2022, the petitioner had to make payment of Rs.13.50 crores, whereafter entire induction furnace unit and rolling mill unit in the name of Yash Alloys Pvt. Ltd.- respondent no.6 and the land measuring an area of 1.78 acres and 2.44 acres standing in the name of Rajiv Kumar Agarwalla- respondent no.7 were to be transferred to the petitioner. For this, a tripartite agreement was to be executed among the petitioner, respondent-Bank and the respondent no.6, however, the petitioner made payment of Rs.78.00 lacs only (which according to the petitioner is more than one crore) and, therefore, the understanding arrived at among the parties in the meeting held on 9th February, 2022 was not honoured by the petitioner. Under the said circumstance, a notice under Section 13(2) of the SARFAESI Act was issued to the respondent no.6 on 27th June, 2022, raising demand of Rs.15.76 crores approx. as on 14th June, 2022.
6. Having heard learned counsel for the parties and keeping in view the nature of the dispute raised in the present writ petition, this Court is not inclined to entertain the same on merit. However, the petitioner is given liberty to prefer a fresh representation before the respondent no.2 on the present issue. On receipt of the said representation, the respondent no.2 after providing opportunity of hearing to the petitioner's representative or any other concerned person(s) shall take an informed decision in accordance with law within one week from the date of filing of the representation.
7. The writ petition is disposed of with the aforesaid liberty and direction.
8. I.A. No.6410 of 2022 is also disposed of.

Sanjay/

(Rajesh Shankar, J.)