

Diamond and Gem Development Vs. Karnataka State Financial

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Court : DRAT Madras

Decided On : Aug-18-2003

Reported in : II(2004)BC191

Judge : A Subbulakshmy

Appellant : Diamond and Gem Development

Respondent : Karnataka State Financial

Judgement :

1. The appellant filed IA-II before the DRT, Bangalore for disposal of the Original Application (OA) as not maintainable. That IA was dismissed by the Tribunal by Order dated 30.4.2001. Aggrieved against that Order the appellant has preferred this appeal.

2. The appellant contends that the Term Loan facility and Working Capital facility granted to several individual beneficiaries ought to have been identified by Government of Karnataka and the applicant Karnataka State Financial Corporation (KSFC) and the amount of loan granted to each beneficiary is in the order of Rs. 25,000/- which is towards the machinery and the working capital and each loan transaction in respect of individual beneficiary is a distinct and different loan transaction and admittedly none of the beneficiaries are made parties in the OA nor the documents executed by various beneficiaries in respect of the individual loan transactions have been produced before this Tribunal and no loan documents executed by the defendant in favour of the applicant and the defendants only

supplied the machineries to the beneficiaries as per the term loan sanctioned to it and the working capital amount was also received on behalf of the beneficiaries and the ultimate liability as per the documents produced by the applicant vests with the beneficiaries and so the OA itself is not maintainable. It is further contended that the individual transaction is only around Rs. 25,000/- and the amount granted under each loan is far less than Rs. 10 lakhs and so the DRT has no jurisdiction to entertain that OA and it is barred by Rule 10 of the DRT Rules, 1995 and DRT has no jurisdiction to entertain the OA and so the OA filed by the applicant has to be dismissed as not maintainable.

3. The KSFC filed objections contending that the applicant paid the amount to the defendant by means of Cheques and the same is realised by the defendant and the defendant cannot put the liability on others and ask the applicant KSFC to file the case against those beneficiaries. It is further contended by the applicant that the applicant Corporation has paid a sum of Rs. 1,13,81,200/- and the defendant has replied that it has paid Rs. 75 lakhs and prayed for waiver of interest and the defendant has to account for the amount paid by the Corporation and the defendant is liable to pay the amount to the Corporation and the Corporation had paid the public money in the interest of public in implementing the Vishwa Scheme and the application IA-II filed by the defendant is not sustainable. This application was heard by the PO, DRT and the PO, DRT dismissed that petition. The PO, DRT, has observed in his Order that the defendant has received a sum of Rs. 7 lakhs and it made a request to the applicant to waive of the interest and accept the principal in instalments and in view of that letter the defendant cannot be permitted to claim now that the beneficiary has taken the amount and the defendant is not liable and so the IA has to be dismissed and the PO, DRT, accordingly dismissed that IA-II. That Order Passed by the PO, DRT was challenged before the High Court of Karnataka in W.P. No. 25108/2001 and the High Court dismissed the Writ Petition with liberty reserved to the petitioner to challenge the impugned Order before the Appellate Tribunal.

4. Counsel for the appellant submitted that no loan document was executed by the defendant to KSFC and all the loan documents were executed by the beneficiaries and the loan transactions are individual transactions with the KSFC by the

beneficiaries and the defendant never executed any loan document with KSFC and the defendant is not liable for the Suit claim and the OA filed by the applicant has to be dismissed as not maintainable and so the IA-II filed by the defendant has to be allowed. Counsel for the appellant further submitted that the defendant only supplied the machineries to the beneficiaries and for those machineries only the KSFC paid the Cheque on all the individual loan transactions and there is no contract with regard to the payment of the loan amount granted to the beneficiaries by the defendant. He further submitted that no documents pertaining to the grant of loan has been filed by the KSFC and the documents filed by KSFC do not reveal with regard to the sanction of the loan and the loan transactions are only individual transactions and all the loan documents are inter se between the KSFC and the individual beneficiaries and since the loan documents were not executed by the defendant, the defendant is not liable for the Suit claim. Counsel for the appellant also drew my attention to the list showing the sanction amount to the individual beneficiaries and Counsel for the appellant emphatically contends that the loan was sanctioned by the KSFC for individual beneficiaries only and the sanction amount is Rs. 25,000/- for each of the beneficiaries and the loan was sanctioned on 30.12.1993 to the beneficiaries mentioned in the list and with regard to the loan transaction the defendant does not come in the picture at all and the defendant is not at all liable for the Suit claim and the OA filed against the defendant has to be dismissed as not maintainable.

5. Counsel for the respondent KSFC pointed out that the defendant has sent letter to KSFC for waiver of interest and there is also Memorandum of Understanding between the Government of Karnataka and the appellant and contends that as per the letter sent by the defendant, the defendant has sought for waiver of interest and so the defendant has admitted the liability and has sought for only waiver of interest and so the defendant is liable. The KSFC sent notice to the defendant on 26.9.1997 claiming the amount due to it. The defendant sent reply for the letter dated 26.9.1997 on 17.10.1997 and it is stated in that reply that the defendant sent a proposal to the Commissioner, Industries and Commerce Department of the State Government of Karnataka and that proposal contains inter alia the manner in which dues of the financial institutions would be settled and in fact it goes beyond that and concurs with the views of the MD of KSFC expressed by him during their

meeting on 9.7.1997 at Bangalore and the above proposal is under active consideration of the State Government and they have been expecting approval of the same soon. The defendant also sent letter dated 30.4.1997 to the MD, KSFC with regard to the outstanding dues to KSFC stating that loans were taken by individual beneficiaries to buy machines and DGDC supplied the same and the amount was advanced to DGDC on behalf of the beneficiaries and the defendant Corporation received in aggregate Rs. 75 lakhs under this Head for all the beneficiaries and for the last 1 1/2 year or so, no payment has been done by the defendant towards return of the working capital because they had requested KSFC to waive off the interest and permit them to repay the principal amount of the working capital in instalments and requested the KSFC for waiver of interest and they agreed to repay the principal amount in instalments. Relying upon this letter, Counsel for the respondent KSFC contended that the defendant itself has admitted to pay that amount and has requested for waiver of interest and the defendant has agreed for repayment of the principal amount in instalments and so the defendant is liable for the amount due to KSFC. The KSFC has also written letter to the appellant dated 16/19.4.1997 with copy to the Principal Secretary, Commerce and Industries Department, Government of Karnataka and the Director, Department of Industries and Commerce, Government of Karnataka, wherein the respondent has stated that KSFC has granted loans to beneficiaries under the VISHWA Scheme in various centres and a sum of Rs. 205.69 lakhs has been disbursed to 1,155 beneficiaries and as per the MoU signed by the appellant on 27.6.1992 with the Secretary, Department of Industries and Commerce, Government of Karnataka, the appellant had assured creation of 10,000 jobs in the State of Karnataka for selected beneficiaries who were also to be given technology and machinery by the appellant and the appellant further assured market support for the products of the beneficiaries. It is further stated that the commitments made by the appellant have not been honoured as a result of which most of the centres stated by the appellant are closed and beneficiaries are idle and this has given rise to a great deal of dissatisfaction and embarrassment to the Vishwa Scheme and working capital component out of the loans granted to the beneficiaries have been released to the appellant and the equipment has also been supplied by the appellant and under such circumstances the appellant is

liable for the failure of the scheme and for repayment of dues to KSFC and the appellant was asked to make arrangements for repayment of the dues to KSFC. This letter indicates that the loans were granted to the beneficiaries.

6. A Memorandum of Understanding (MoU) was made on 22.6.1992 between the appellant DGDC and the President/Managing Director of Mysore District, Industrial Supply and Marketing Co-operative Society (DSMS) and under the MoU, the appellant DGDC shall impart training free of cost to the beneficiaries on their machine and the Corporation shall also give training in entrepreneurship, personal health and hygiene and house-keeping and the Corporation shall give assured market support to the beneficiaries either on job work basis or on buy-back arrangements for their product and the DSMS shall nominate an officer to co-ordinate with DGDC for implementation of the Scheme and DSMS shall arrange for term-loan from KSFC to the beneficiaries for buying their machinery, equipments, tools and accessories on turnkey basis from DGDC at the price fixed by the DGDC and the DSMS shall make payment of the term loan of the beneficiaries directly to DGDC, on receipt of which DGDC shall deliver, instal and commission the machine and the term loan for the purpose of liability shall be deemed to have been given to the beneficiary on principle-to-principle basis and all legal documentary formalities shall be completed between KSFC and the beneficiary. It has further been stated in the MoU that the working capital required for each beneficiary is Rs. 10,000/- to SDL for giving working capital support to the beneficiary and the amount shall carry rate of interest as would happen if paid by the beneficiary and the interest on this working capital amount and the return of the amount shall be the liability of SDL/DGDC so long as the money remains with SDL/ DGDC. "The machine, tools and accessories purchased under the term-loan will remain hypothecated with KSFC and shall be considered adequate security for the loan. No margin money shall be payable by the beneficiary nor he will be required to give guarantee of any other party. Personal guarantee, however, shall be taken from the beneficiary." "The term-loan given by the KSFC shall be payable in seven (7) years time with moratorium on payment of the Principal and interest from the first six months. Repayment thereafter shall be on the basis of adequate monthly instalment." "DGDC shall assist KSFC/DSMS on repayment of the loan. DSMS shall deduct the Equated Monthly instalments every month from the

repayment due to the beneficiary arising out of the job work/sales proceeds for the work done by the beneficiary. However, the prime responsibility of repayment of term-loan and interest shall be of the beneficiary." 10. This MoU dated 22.6.1992 reveals that the DSMS shall make the payment of term loan of the beneficiaries directly to the appellant for delivering the machineries. It is also stated in the MoU that the appellant shall assist KSFC/DSMS on repayment of the loan. This MoU also reveals that the appellant will only assist the KSFC for repayment of the loan and the loan was granted only to the beneficiaries.

11. A Memorandum of Understanding (MoU) was entered into on 27.6.1992 between the Commissioner and Secretary, Department of Industry, Government of Karnataka the State Government and the appellant DGDC. Clause 3 of this MoU states that the State Government shall, through KSFC, help the beneficiaries in getting terms and working capital loans without any margin money and the appellant shall give technology and machinery to the selected beneficiaries. This MoU entered into between the State Government of Karnataka and the appellant also reveals that the State Government through KSFC shall help the beneficiaries in getting terms and working capital loans without any margin money. These documents clearly reveal that the term loan and the working capital loan were disbursed only to the beneficiaries and only for purchase of these machineries, Cheques have been issued by KSFC to the appellant towards the supply of the machineries by the appellant. So, it has been established that with regard to the loan, the contract is between the beneficiaries and the respondent KSFC. 12. Counsel for the respondent KSFC also conceded, that all the loan documents are between the beneficiaries and the KSFC. None of the documents relating to the loan transaction have been filed either before the DRT or before this Appellate Tribunal. Direction was also given by this Appellate Tribunal for production of the loan documents and those documents were not at all filed by the KSFC. So, adverse inference has also to be drawn. From the MoU, it is crystal clear that the loans were granted only to the individual beneficiaries. Only from the mere letter written by the appellant to the KSFC seeking for waiver of interest, that will not establish that the appellant has admitted liability and the appellant is liable to pay that amount. Even in the MoU it has been clearly set out that the appellant would assist the KSFC/DSMS on repayment of the loan. Under such circumstances, the

appellant has sought for waiver of interest. That does not mean that the loan has been sanctioned to the appellant and the appellant is liable to pay the Suit claim. In the absence of specific loan documents between the appellant and the KSFC and when it has not been proved that loans were sanctioned only to the appellant, the appellant cannot be fastened with the liability for repayment of the loan when the loan were granted to the individual beneficiaries separately. The documents filed do not reveal that the appellant is the borrower from the KSFC and the loan was sanctioned only to the appellant and appellant only availed that loan. It has clearly been borne out by the MoU that the loans were granted only to the beneficiaries. In the absence of specific documents to prove that the loans were sanctioned only to the appellant and the appellant only availed that loan, it is very difficult to sustain the case of the respondent KSFC to fasten the appellant with this loan liability. There are no documents to prove that is appellant availed the loan and OA has to be filed only against this appellant defendant.

13. Under such circumstances, I hold that the OA filed by the KSFC against the appellant is not maintainable and it is liable to be dismissed. The Order passed by the PO, DRT, Bangalore, in IA-II is liable to be set aside and it is set aside and IA-II is allowed and it is declared that the OA filed against the appellant is not maintainable.

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