

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Writ Petition No. 9757 of 2016

-AND-

IN THE MATTER OF:

An application under Article 102 of the Constitution of
the People's Republic of Bangladesh.

-AND-

IN THE MATTER OF:

Seiko Steels Limited and others

.....Petitioners

-Versus-

The Government of Bangladesh and others

..... Respondents

Mr. Md. Kamruzzaman, Advocate

.....For the petitioner

Mr. Syed Hasan Zobair, Advocate

.....For the respondent No. 2

Mr. Mohammad Mijanur Rahman, Advocate

.....For the respondent No. 3

Heard on: 15.09.2021 and 16.09.2021

Judgment on: **10.11. 2021**

Present:

Mr. Justice Abu Taher Md. Saifur Rahman

And

Mr. Justice Md. Zakir Hossain

Abu Taher Md. Saifur Rahman,J

This Rule was issued on an application filed by the petitioner under Article 102 of the constitution, calling upon the respondents to show cause as to why the publication of the name of the petitioners in the Credit Information Bureau (CIB) of the respondent

No. 1, Bangladesh Bank as loan defaulters should not be declared to have been made without any lawful authority and is of no legal effect and/or pass such other or further order or orders as to this Court may seem fit and proper.

At the time of issuance of the Rule, this Court was pleased to stay the operation of the publication of the name of the petitioners in the CIB report for a period of **6 (six)** months from the date which was time to time extended by this Court.

For disposal of this Rule, the relevant facts may briefly be stated as follows:

That the petitioner's company M/S. Seiko Steel Limited has obtained the credit facility (in terms of LDBP) amounting to **Tk. 18,00,00,000/-** (Eighteen crore) from respondent No. 3, Jamuna Bank Limited vide its sanctioned letter dated 21.07.2011 wherein it has been stated that the aforesaid loan will be adjusted by the Premier Bank Limited on behalf of M/S. Muhib Steel & Ship Re-Cycling Industries on or before 02.02.2011. In this regard, it is further stated that after obtaining the loan the petitioner company made an agreement with the M/S. Muhib Steel & Ship Re-Cycling Industries for selling 5000 Metric ton 5/8 M.S. plate. Accordingly, M/S. Muhib Steel & Ship Re-Cycling Industries opened L.C with respondent No. 4, Premier Bank Limited favouring the petitioner company aiming to purchase goods from the petitioner company. Thereafter, the petitioner's company duly sold the goods to M/S. Muhib Steel & Ship Re-Cycling Industries and obtained sale proceeds/documentary Bills from the concerned Buyer M/S. Muhib Steel & Ship Re-Cycling Industries and accordingly submitted the sale proceeds/documentary bills along with other necessary documents to his bank respondent No. 3, Jamuna Bank Limited for its negotiation. Upon receipt of the said documents respondent No.

3, Jamuna Bank Limited sent the said L/C to respondent No. 4, Premier Bank Limited for its acceptance which was duly accepted vide its letter dated 02.06.2011. After acceptance, the negotiating bank respondent No. 3, Jamuna Bank Limited made payment to the petitioner's company through the Premier Bank. Subsequently, the Premier Bank did not pay the money to the L/C negotiating bank (Jamuna Bank Limited). Accordingly, the L/C negotiating bank, Jamuna Bank Limited demanded the money from the petitioner company which was refused to pay by the petitioner's company. Subsequently to recover the aforesaid loan amount, respondent No. 3 Jamuna Bank Limited (L/C negotiating bank) filed an Artha Rin Suit No. 211 of 2013 against respondent No. 4, Premier Bank Limited (L/C issuing bank) which is now pending before the Court below. Subsequently, respondent No. 3 Jamuna Bank Limited sent the name of the petitioners to the Bangladesh Bank as a loan defaulter. Accordingly, the petitioner's name have been included in the CIB report. Being aggrieved, the petitioners have preferred this application before this Court and obtained the instant Rule and stay the CIB report.

None appears for the petitioner to support the Rule.

On the other hand, no one appears for the respondent Nos. 2 and 3 or file any affidavit in opposition.

However, at the time of hearing Mr. Md. Kamruzzaman, the learned Advocate appearing for the petitioner submits that the petitioner company did not take any loan from respondent No. 3, Jamuna Bank Limited and as such it has no liabilities to adjust the unpaid dues to the Jamuna Bank Limited and as such inclusion, the names of the petitioners in the CIB report an illegal and is of no legal effect.

Mr. Syed Hasan Zobair, the learned Advocate for respondent No. 1, Bangladesh Bank submits that it is admitted fact that the petitioner's company has obtained the loan from Jamuna Bank Limited vide its sanctioned letter dated 21.07.2011 which was not adjusted by the petitioner's company as yet. As a result, respondent No. 3 Jamuna Bank Limited rightly reported the name of the petitioners to the CIB report which does not call for any interference by this Court under the writ jurisdiction.

Mr. Mohammad Mijanur Rahman, the learned Advocate for the petitioner submits that admittedly the petitioner company has obtained the loan facilities from respondent No. 3, Jamuina Bank Limited amounting to **Tk. 18,00,00,000/-** vide its sanctioned letter dated 21.07.2011. As per the terms of the sanctioned letter which has not been adjusted as yet and as such the petitioners' names have been rightly included in the CIB report.

Heard the submissions of the learned Advocates of both sides and perused the writ petition along with the impugned order thoroughly.

The only issue for determination of this Rule is to see, whether the inclusion of the names of the petitioners in the CIB report is sustainable in law.

On perusal of the instant writ petition, it transpires that admittedly the petitioner company has obtained the credit facilities (in terms of LDBP facility) amounting to Tk. **18,00,00,000/-** (Taka Eighteen crore) against the L/C amount of **Tk. 20,00,00,000/-** (Taka Twenty crore) as evident from **Annexure-'A' and 'B'** to the writ petition. So the contention as raised by the petitioners that the petitioner company has not obtained any credit facility from respondent No. 3, Jamuna Bank Limited is not accepted.

We have further noticed that regarding the mode of payment of the aforesaid loan, it has been categorically stated in the aforesaid sanctioned letter (**Annexure-‘A’**) that liabilities will be adjusted from the proceeds of the concerned Documentary Bills or from its own sources. So the petitioner is liable to pay the aforesaid loan if the loan amount is not adjusted from the L/C amount. In the instant case, the petitioner’s aforesaid loan has not been adjusted from the L/C amount, so the petitioner company is a loan defaulter.

In the instant case, respondent No. 3, Jamuna Bank Limited is a L/C negotiation bank and respondent No. 4, Premier Bank Limited is an L/C issuing bank. We have observed that for the purpose of purchasing 500 M.T. 5/8 M.S. Plates from the petitioner’s company, the L/C was open by one M/S. Muhib Steel and Ship Re-cycling Industries in favour of the petitioner company. After selling the aforesaid goods the petitioner company obtained the sell proceeds/documentary bills from the concerned Buyer which was later on placed before the Jamuna Bank Limited for its negotiation which was duly accepted by the L/C issuing bank respondent No. 4, Premier Bank Limited. After accepting the aforesaid L/C respondent No. 3, Jamuna Bank Limited made the payment to the petitioner’ company but subsequently the L/C issuing Premier Bank neither pay the L/C amount to Jamuna Bank Limited or adjusted the loan amount as per terms of the sanctioned letter. So the petitioner company as well as the respondent No. 4, Premier Bank Limited both are liable to be treated as a loan defaulter. We have to keep in mind that as per provision of section 2Ga of the Artha Rin Adalat Ain, 2003 the L/C amount is a loan. Since the petitioner loan is a loan defaulter their names have been rightly included in the CIB report which does not call for any interference by this Court under the writ jurisdiction.

Under the given circumstances of the case and the reasons as stated above, we do not find any substances of this Rule.

As a result, the Rule is discharged.

The order of stay granted earlier by this Court is hereby stand vacated,

Communicate this judgment and order to the respondents at once.

Md. Zakir Hossain, J

I agree