

2024:PHHC:018608-DB

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-7794-2023(O&M)

Date of Decision:- 08.02.2024

Simfer Impex (India)

....Petitioner

Vs.

Punjab National Bank and Anr.

...Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MS. JUSTICE AMARJOT BHATTI**

Present:- Mr. Sanjeev Duggal, Advocate for the petitioner.

Mr. P.S.Sobti, Advocate for respondent No.1.

Mr. Sandeep Jain, Addl. A.G. Punjab.

LISA GILL, J.

1. Prayer in this writ petition is for quashing auction notice dated 05.04.2023 (Annexure P-8) issued by respondent-Bank under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 Act.

2. Petitioner it is pleaded, is a partnership firm engaged in business of kitchen appliances. Availing of financial credit from respondent as is described in Para No.3 of writ petition is a matter of record. It is further a matter of record that on account of financial indiscipline on the part of petitioner, its account was declared Non Performing Asset (NPA) and proceedings under SARFAESI Act were initiated by respondent-Bank. Notice

under Section 13(2) and 13(4) was issued on 20.09.2021 and 15.03.2023 (Annexure P-7). However, matter was settled between petitioner and respondent-Bank. One Time Settlement (OTS) was sanctioned in favour of petitioner on 31.03.2022 (Annexure P-2). Payment schedule provided in the said sanction letter reads as under:-

“Payment Schedule:-

- * *Upfront amount of Rs.2130000.00 (15.1% of OTS amount) deposited.*
- * *Remaining OTS amount of Rs.12070000.00 will be deposited on or before expiry of 90 days from the date of approval of SOTS.*
- * *@MCLR (1-year)+1%) on simple basis on reducing balance from the date of conveying approval in writing to the borrower if the OTS amount is paid beyond a period of 90 days.”*

3. Learned counsel for petitioner submits that entire OTS amount could not be deposited within the period of 90 days as stipulated, however, in terms of the provision that balance amount can be paid beyond period of 90 days with interest @ MCLR+1% being levied up to one year after lapse of OTS, petitioner represented before respondent-Bank for extension of six months to deposit the balance amount. However, their request for extension was rejected on that very day i.e. 16.09.2022.

4. Possession notice dated 03.12.2022 (Annexure P-5) was issued to petitioner upon which petitioner yet again represented before respondent-Bank that Rs.20 lakhs should be kept in a No Lien Account which would reflect *bona fide* of petitioner but their request was again declined orally. Notice under Section 13(4) was issued on 15.03.2023 (Annexure P-7) and public notice dated 05.04.2023 was issued for auction of various assets of petitioner on 10.05.2023. Learned counsel for petitioner

submits that this action of respondent-Bank is in complete violation of terms and settlement of OTS sanctioned on 31.03.2022 and Bank has acted absolutely in an illegal and arbitrary manner.

5. It is further argued that three demand drafts for a sum of Rs.50,00,000/- were handed over to learned counsel for respondent-Bank on 03.05.2023 pursuant to order dated 29.04.2023. In terms of order dated 03.05.2023, wherein it was directed that balance amount as per OTS should be deposited and an affidavit should be filed that amount would be paid failing which petitioner would be liable to be proceeded against in accordance with law, petitioner approached respondent-Bank with a demand draft of Rs.20 lakhs on 10.07.2023 but same was not accepted. petitioner had a prospective buyer for the asset and it was requested to respondent-Bank that petitioner should be permitted to sell the asset mortgaged with respondent No.1 subject to deposit of entire amount received from transaction in their 'No Lien Account' with respondent-Bank.

6. It is submitted that respondent-Bank in an illegal manner despite interim order in favour of petitioner proceeded to take possession of property in question. Reference is made to notice dated 02.01.2024 issued by Tehsildar-cum-Executive Magistrate, Phagwara pursuant to order dated 27.03.2023 passed under Section 14 by Additional District Magistrate, Phagwara. Furthermore, respondent-Bank is alleged to have issued an advertisement in various newspapers for e-auction of property on 09.02.2024. Learned counsel for petitioner submits that respondent should be directed to abide by the terms and conditions of OTS sanctioned on 31.03.2022.

7. Learned counsel for respondents has opposed this writ petition while submitting that petitioner did not abide by terms and conditions of OTS sanctioned on 31.03.2022 and admittedly did not deposit settled amount of Rs.1.42 lakhs within the period of 90 days as had been agreed upon. Learned counsel for respondents explains that provision in the payment schedule regarding simple interest is being misinterpreted. There is no such clause which entitled petitioner to pay balance amount within one year as per their choice.

8. Learned counsel for respondent refers to Para No.4 of reply to the writ petition to submit that there is no such clause in sanction letter dated 31.03.2022, which enables petitioner to deposit OTS amount at their option beyond the agreed date. Reference to interest @ MCLR for one year means that even if RBI reduces Repo Rate thrice a year, the Bank will charge MCLR rate only once a year. A huge concession was granted to petitioner by accepting compromise amount as Rs.1.42 lakhs instead of Rs.1,70,28,496.36 but still the amount was not deposited. Reply to their request for extension was duly conveyed to petitioner clearly stating therein that no extension can be granted. It is further submitted that period of 180 days had also expired long ago but the amount was never deposited thus showing that intention of petitioner is merely delay proceedings. Reference is made to Clause 7.5 of Policy which is attached with written statement as Annexure R-2. It is thus prayed that this writ petition be dismissed.

9. We have heard learned counsel for parties and have gone through the file with their assistance. Availing of financial credit by peti-

tioner from respondent-Bank, subsequent financial indiscipline for reasons as may be and declaration of account as NPA with proceedings under SAR-FAESI Act being initiated is a matter of record. petitioner admittedly failed to deposit settled amount within stipulated period in terms of sanction afforded to them vide sanction letter dated 31.03.2022. Learned counsel for petitioner was at pains to urge that there has been violation of terms and conditions of OTS sanctioned by respondent-Bank inasmuch as petitioner was not permitted to deposit the amount in question within the period of one year. It is pertinent to note relevant clauses of sanction letter dated 31.03.2022 which read as under:-

Competent Authority has approved SOTS for acceptance of OTS offer of the party on the following terms and conditions:

Terms & Conditions:-

“Payment Schedule:-

* Upfront amount of Rs.2130000.00 (15.1% of OTS amount) deposited.

* Remaining OTS amount of Rs.12070000.00 will be deposited on or before expiry of 90 days from the date of approval of SOTS.

* @MCLR (1-year)+1%) on simple basis on reducing balance from the date of conveying approval in writing to the borrower if the OTS amount is paid beyond a period of 90 days.”

Other Terms & Conditions:-

(a) Post-dated cheques for the aforesaid installments shall be obtained simultaneously at the time of conveying approval. However, last installment shall be paid for the balance amount plus remaining interest, if any, on OTS amount.

(b) to (h) xx xx xx xx

(i) Default in payment of 1 installments shall render the OTS as failed and all reliefs and concessions shall lapse automatically and bank will be entitled to recover the entire dues as per documents prayer in the plaint, after adjusting the payment, if any, received.

(j) A supplementary agreement to keep the SARFAESI action in abeyance shall be obtained.

(k) Circle Sastra must ensure examination of staff accountability in consultation with Circle Office as per extent guidelines.

(l) Simple Interest @ MCLR for one year (applicable on the date of sanction) plus 1 on reducing balance basis will be charged where OTS amount is paid beyond 90 days effective from the date of Sanction.

Xx xx xx xx xx”

10. We find merit in explanation offered by learned counsel for respondent in respect to clause regarding levy of simple interest @MCLR for one year as it is apparent that it is the rate of interest which is to be levied on reducing balance from the date of conveying approval to borrower.

11. It is further to be noticed that vide order dated 03.05.2023 Co-ordinate Bench while issuing notice of motion directed that:-

“Keeping in view the above, let the balance amount be deposited as per the OTS and an affidavit be filed giving the undertaking that the due amount will be paid, failing which, the petitioner will make themselves liable for action in accordance with law.

Keeping in view the fact that substantial amount has been furnished, we stay the auction of the property to avoid further complications for the proposed auction purchaser.

The respondent No.1-Bank shall file a short affidavit showing the interest element which would become payable on account of the delay in not adhering to the terms of the OTS by the next date of hearing.”

12. Admittedly, petitioner did not deposit balance amount in terms of order dated 03.05.2023. We do not find merit in arguments raised by learned counsel for petitioner that respondent-Bank had been approached with Rs.20 lakhs on 10.07.2023 with an assurance that complete balance amount would be deposited by petitioner within next one week and once respondent-Bank refused to accept the said Rs.20 lakhs, there was no question of approaching respondent-Bank again with complete amount before 02.08.2023. It is to be noted at this stage that on a pointed query by the Court as to whether petitioner at any point of time had approached respondent-Bank with complete balance amount before 02.08.2023 is answered in negative but, with the explanation that once Rs.20 lakhs was not accepted, there was no occasion for petitioner to have approached respondent-Bank again.

13. Keeping in view, factual matrix of the case, we do not find any ground whatsoever to interfere in this matter wherein OTS sanctioned in favour of petitioner has admittedly failed. It is a settled position of law that a borrower/guarantor does not have a vested right to OTS. Gainful reference in this regard can be made to judgments of Hon'ble the Supreme Court in '**The Bijnor Urban Cooperative Bank Limited, Bijnor and others vs. Meenal Agarwal and others**', 2021 SCC Online SC 1040 and '**State Bank of India vs. Arvindra Electronics Pvt. Ltd.**' (2021) 3 SCC 1. It has been held in the case of **The Bijnor Urban Cooperative Bank Limited, Bijnor and others** (supra) as under :-

"9. Even otherwise, as observed hereinabove, no borrower can, as a matter of right, pray for grant of benefit of One Time Settlement Scheme. In a given case, it may happen that a person would borrow a huge amount, for

example Rs.100 crores. After availing the loan, he may deliberately not pay any amount towards installments, though able to make the payment. He would wait for the OTS Scheme and then pray for grant of benefit under the OTS Scheme under which, always a lesser amount than the amount due and payable under the loan account will have to be paid. This, despite there being all possibility for recovery of the entire loan amount which can be realised by selling the mortgaged/secured properties. If it is held that the borrower can still, as a matter of right, pray for benefit under the OTS Scheme, in that case, it would be giving a premium to a dishonest borrower, who, despite the fact that he is able to make the payment and the fact that the Bank is able to recover the entire loan amount even by selling the mortgaged/secured properties, either from the borrower and/or guarantor. This is because under the OTS Scheme a debtor has to pay a lesser amount than the actual amount due and payable under the loan account. Such cannot be the intention of the Bank while offering OTS Scheme and that cannot be purpose of the Scheme which may encourage such a dishonesty.

xxx xxx xxx

11. The sum and substance of the aforesaid discussion would be that no writ of mandamus can be issued by the High Court in exercise of powers under [Article 226](#) of the Constitution of India, directing a financial institution/Bank to positively grant the benefit of OTS to a borrower. The grant of benefit under the OTS is always subject to the eligibility criteria mentioned under the OTS Scheme and the guidelines issued from time to time. If the Bank/financial institution is of the opinion that the loanee has the capacity to make the payment and/or that the Bank/financial institution is able to recover the entire loan amount even by auctioning the mortgaged property/secured property, either from the loanee and/or guarantor, the Bank would be justified in refusing to grant the benefit under the OTS Scheme. Ultimately, such a decision should be left to the commercial wisdom of the Bank whose amount is involved and it is always to be presumed that the financial institution/Bank shall take a prudent decision whether to grant the benefit or not under the OTS Scheme, having regard to the public interest involved and having regard to the factors which are narrated hereinabove.”

14. In the case of ‘**Arvindra Electronics (Supra)** Hon’ble the Supreme Court while reiterating its decision in ‘**Urban Bijnor**’ case

(Supra) observed that directing the Bank to reschedule the payment under OTS would tantamount to modification of contract which can be done only by mutual consent of parties. Thus there cannot be extension of time for deposit of amount in terms of OTS under direction of Court.

15. In our considered opinion, there is no merit in the argument raised by learned counsel for petitioner that there has been violation of terms and conditions of OTS by respondent-Bank itself, therefore, interference should be caused in this writ petition. Equally devoid of merit is the argument raised by learned counsel for petitioner that there has been violation of any interim orders passed by this Court inasmuch as respondent-Bank has proceeded to take steps for taking possession of property in question and auction property during currency of interim orders. It is specifically mentioned in order dated 02.08.2023 passed in this writ petition that:-

“Admittedly, petitioner have not deposited the balance amount in terms of order dated 03.05.2023.

At request, adjourned to 09.10.2023 for arguments. Needless to say, non-deposit in terms thereof, would invite necessary consequences.”

16. Doubtlessly an application has been filed by petitioner for placing on record demand draft dated 10.07.2023 for a sum of Rs.20 lakhs while stating that there was a communication gap between petitioner No.2 and his counsel due to which said fact could be brought to notice of this Court on 02.08.2023 but in the given factual matrix we are not inclined to issue any direction as has been sought to respondent-Bank to comply with

terms and conditions of OTS dated 31.03.2022 which has clearly failed on account of petitioner inability to deposit the amount in terms thereof. Undertaking by petitioner at this stage for deposit of balance amount in terms of OTS cannot be countenanced and in view of categoric judgment of Hon'ble the Supreme Court as above no such direction can be issued. This writ petition is accordingly dismissed its remedies in accordance with law for challenging pleadings under SARFAESI Act initiated against them. Needless to say parties are at liberty to arrive at any mutually acceptable settlement.

17. Pending miscellaneous application(s), if any, stand disposed of accordingly.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

08.02.2024
Sunil Devi

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No