

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-12926-2020**Date of Decision: 5th October, 2020**

M/s Syschem (India) Limited

....Petitioner

VERSUS

Punjab National Bank

....Respondent

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE AVNEESH JHINGAN**

Present: Mr. Chetan Mittal, Senior Advocate with Mr. V.K. Sachdeva,
Advocate for the Petitioner.

Mr. Vipul Dharmani, Advocate for the Respondent/ Bank.

Dr. S. Muralidhar, J.

1. The Petitioner seeks the quashing of a communication dated 21st April, 2020 and a subsequent communication dated 5th August, 2020 of the Respondent/Bank rejecting the Petitioner's One Time Settlement ('OTS') proposals.

2. The background facts are that the Petitioner on 11th February, 2012 availed a loan from the Respondent/Bank. According to the Petitioner, the Respondent/Bank declared the loan accounts of the Petitioner as 'NPA' on 29th January, 2015 and issued a demand notice dated 4th February, 2012 under Section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 ('SARFAESI Act').

3. It is stated in the petition that the Respondent/Bank sent an offer letter dated 29th June, 2018 to the Petitioner inviting it to avail the benefit of an OTS scheme initiated by the Respondent/Bank. By a settlement dated 29th August, 2018, the Respondent/Bank accepted the Petitioner's OTS for a sum of Rs. 1295 lakhs against an earlier amount of Rs. 1290 lakhs, towards full and final settlement of the

loan amount. The terms and conditions on which the Petitioner's OTS was accepted read as under:

“Your total OTS offer is of Rs. 12,95,00,000 with a token amount of Rs. 120 lacs and cheque of Rs.10 lacs.

The token amount will be adjusted on sanction immediately and the cheque of Rs. 10 lacs will be got cleared by you within a week of the sanction.

As per your repayment plan proposal the validity of OTS sanctioned is for a period of 3 months from the date of approval. In case of any default in depositing any amount beyond 2 Months the interest is applicable on the default amount making the prior request to the bank.

Default in payment of one instalment 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.”

4. Prior to filing the present petition, the Petitioner had filed CWP No. 6136 of 2020 in this Court. That writ was disposed of by the following order dated 4th March, 2020, which sets out the details of what transpired subsequent to the settlement dated 29th August, 2018 arrived at between the Petitioner and the Respondent/Bank:

“There was One Time Settlement (in short 'OTS') between the parties on 29.8.2018 whereby petitioner had undertaken to deposit the entire amount by November, 2018. The terms and conditions of OTS were not adhered to. Petitioner made a representation on 29.11.2018 which was rejected on 6.4.2019 by respondent bank. Thereafter, petitioner made yet another representation on 29.1.2020 which was rejected on 6.2.2020, but still giving the window to petitioner to submit revised OTS.

Consequently, present petition is disposed of. Petitioner is permitted to submit revised OTS within a period of one week from today and respondent bank shall consider the same in accordance with law and also taking into consideration earlier settlement arrived at between the parties on 29.8.2018, for the reason that respondent bank has been accepting the money even beyond November, 2018.”

5. Thereafter, it appears that the Petitioner submitted a proposal to the Respondent/Bank by a letter dated 9th March, 2020, whereby the Petitioner offered to pay Rs. 1500 lakhs as the revised OTS amount by 31st December, 2020. The Respondent/Bank rejected the said proposal by the impugned letter dated 21st April, 2020. The Petitioner is stated to have then by a letter dated 15th July, 2020, submitted an OTS proposal of Rs. 1520 lakhs as against the previous offer of Rs.

1500 lakhs. That OTS proposal was, by the impugned letter dated 5th August, 2020, rejected by the Respondent/Bank.

6. One of the grounds on which the present petition has been filed is that no reasons were communicated to the Petitioner in the order dated 21st April, 2020 rejecting the Petitioner's OTS proposal. On 31st August, 2020, when the present petition was listed, Mr. Vipul Dharmani, learned Counsel for the Respondent/Bank requested for a week's time so that those reasons could be placed on record.

7. Pursuant thereto, the Respondent/Bank has filed an affidavit dated 10th September, 2020 stating, *inter alia*, that after the earlier OTS proposal was accepted, the Petitioner failed to adhere to the repayment plan. On the last date of the expiry of the OTS period i.e. 29th November, 2018, the Petitioner requested for another three months' time to pay the said dues. It is stated that after waiting for a month, a show cause notice dated 31st December, 2018 was issued by the Respondent/Bank to the Petitioner, requiring the Petitioner to explain why the OTS should not be declared as having failed. Ultimately, by a letter dated 6th April, 2019 the Bank declared the OTS as having failed.

8. It is stated that the Petitioner by a request dated 17th December, 2019 again asked for a revival of the earlier OTS. By a reply dated 27th December, 2019 the Respondent/Bank informed the Petitioner that the earlier OTS could not be revived. The Petitioner was advised to submit a fresh enhanced OTS proposal comparable to the recoverable dues in terms of the Bank's guidelines. On 29th January, 2020, the Petitioner again sought extension of time and this was declined by the Bank on 6th February, 2020.

9. It is stated that the Petitioner, in compliance of the order dated 4th March, 2020 of this Court in CWP No. 6136 of 2020, submitted a fresh OTS proposal dated 9th March, 2020. While according to the Petitioner, the fresh proposal was for paying Rs. 1500 lacs, according to the Respondent/Bank, this included the amounts already paid by the Petitioner and the amount adjusted by auction of one of the secured assets after sanction of the previous OTS. According to the Respondent/Bank, effectively, the amount proposed to be paid by the Petitioner was only Rs. 1131.26 lakhs.

10. It is stated that the said proposal was deliberated by the Managing Committee/ Board of the Respondent/Bank and the factors that were kept in view were as under:

“1. That as on 21.04.2020 an amount of Rs. 40,21,88,650/- (Rupees Forty Crores Twenty One Lacs Eighty Eight Thousand Six Hundred and Fifty) was outstanding and payable by the Petitioner-Company to the Bank.

ii. That after 29.08.2018 i.e. when the earlier OTS was sanctioned the total recovery of an amount of Rs. 3,69,11,076/- had been effected by the Bank as on 21.04.2020, out of which an amount of Rs. 40,40,000/- have been recovered from auction of one of the secured asset during the interregnum.

iii. That the valuation of all the securities mortgaged with the Bank as collateral was taken into consideration and it was realized that the total realizable value of the securities/net present realizable value to be Rs. 2315.57 Lac. (Rupees Twenty Three Crores Fifteen Lac and Fifty Seven Thousand).

iv. Realizability and Marketability of the secured assets, especially the land & building and Plant & Machinery. Expected time-lines and expenses for realizing payments from sale of such secured assets.

v. Status of the proceedings initiated by the Bank under the SARFAESI Act, 2020, which have reached the stage of auction of the secured assets.

vi. The Original Application for recovery of outstanding dues stands filed before Ld. Debts Recovery Tribunal, Chandigarh in the year 2019 for Rs. 3587.21 lacs and the proceedings are underway.

vii. The non-seriousness of act and conduct as well as no endeavors made by the Borrower for repayment of the outstanding dues and effective deposits towards repayment made by the Borrower in view of the fact that the Company is working.”

11. The affidavit filed by the Respondent/Bank then refers to the Policy dated 27th March, 2020 for Recovery and Management of NPAs (hereafter ‘Policy’). Clause 3 therein provided for the guidelines of the Reserve Bank of India (‘RBI’) to be followed by the Respondent/Bank. The relevant RBI instructions, as contained in RBI’s letter dated 28th July, 1995, which have been highlighted in the affidavit, are as under:

“3.1.1. Compromise should be a negotiated settlement by which the Bank should ensure to recover its dues to the maximum extent possible at minimum expenses;

3.1.2 Proper distinction has to be made between willful defaults and the borrowers defaulting in repayments due to circumstances beyond their control.

3.1.3. Where security is available for assessing the realizable value, proper weightage has to be given to the location, condition, marketable title and possession thereof;

3.1.4 What is important in such cases is that the bank could promptly recycle the funds with advantage instead of resorting to expensive recovery and uncertain proceedings spread over a long period;

3.1.5 Where staff accountability has not been examined, it should be ensured that it is completed expeditiously within a time-frame;

3.1.6 Banks have to ensure that there should not be any significant deviation from the principles of compromise/ negotiated settlement/ write off and the decisions should be judicious and in the best interest of the Bank;

3.1.7 All compromise proposals approved by any functionary should be promptly reported the next higher authority for post facto scrutiny.”

12. Clause 4 of the Respondent/Bank’s Policy dated 27th March, 2020 refers to the “factors to be taken into account” and in particular, refers to the following factors:

“

4.4 Availability of primary and/ or collateral securities and/ or other attachable securities of the borrower(s)/partner(s)/guarantor(s) realizability thereof in due time without any lengthy/ costly court proceedings at the expense of the Bank;

4.5 Realizability value of the primary and/ or collateral securities and other attachable securities as stated in above and whether it covers the dues to be recovered by the Bank fully or partially;

4.6 Present business activities of the borrower(s), partner(s) and guarantor(s) and source of funds for compromise/ negotiated settlement
.....”

13. Reference has also been made to Clause 5 of the Policy which provides for “Norms for Permitting Sacrifice/Waiver” and Clause 9 which provides for “Net Present Realizable Value (NPRV)”. It is stated by the Bank that the following factors were also taken into consideration in terms of its Policy:

“i. Effective OTS amount proposed by the petitioner was only Rs. 1131.26 Lac as against total Outstanding of Rs. 40,21,88,650/-.

ii. Total realizable value of the secured assets duly mortgaged with the Bank Rs. 2315.67 Lac and the status of SARFAESI proceedings which had reached at the stage of conducting auction of the secured assets.

iii. Payment received from the Petitioner inclusive of realizing the amount from the sale of one secured asset is Rs. 3,69,11,076/- as on 21.04.2020.’

iv. Total up-to-date recovery made since 29.08.2018 of Rs. 3,72,63,076/-.”

14. It is stated that after taking the above factors into account, as well as the RBI guidelines, a decision was taken to reject the OTS proposal, since “the total outstanding dues stood at Rs. 40,21,88,470/- and the realizable value/distress value of the securities being about Rs. 24 crores (as per the valuations), therefore the proposal of the Petitioner for an amount of Rs. 1131.26 Lacs which the Petitioner proposed to pay by 31.12.2020 was even less than half of the realizable value of the secured assets”. It is stated that a further revised OTS proposal dated 15th July, 2020 was submitted by the Petitioner by revising the amount offered by Rs. 20 lakhs. This too was considered by the Respondent/Bank and rejected.

15. Mr. Chetan Mittal, learned Senior Counsel appearing for the Petitioner submitted that the earlier order dated 4th March, 2020 passed by this Court in CWP No. 6361 of 2020 was not merely to consider the Petitioner’s fresh OTS proposal simpliciter, but to also take into consideration the earlier settlement arrived at between the parties on 29th August, 2018, since the Respondent/Bank had been accepting money even beyond November, 2018. According to him, the affidavit filed by the Respondent/Bank does not advert to this aspect.

16. Mr. Chetan Mittal next submitted that the impugned rejection letter dated 21th April, 2020 did not spell out the reasons for the rejection and this was only set out in the affidavit filed by the Bank subsequently. It is not known whether this was based on the record, since the record has not been produced. He referred to the RBI guidelines and in particular Clause 29 of the Respondent/Bank’s Policy, which according to him was not adhered to. Extensive reliance was placed by Mr. Mittal on the decision of the Madras High Court in ***Narmathaa Textiles Ltd. v. Union Bank of India 2012 (1) C.W.C. 740*** where, according to him, in similar circumstances the decision of the Bank in that case to reject the revised OTS proposal of the Petitioner therein was set aside and the matter was referred to the Management Committee of the Bank to take a fresh decision.

17. Mr. Chetan Mittal also questioned the calculation of the total outstanding amount, as indicated in the Respondent/Bank’s affidavit. According to him, what had to be taken into account was only the “recoverable dues” and this would exclude the interest payable. According to Mittal, if the amount was correctly

calculated it would seem that the present revised OTS offer as a percentage of total outstanding amount would be 94.46% and as percentage of the book outstanding amount would be 63.64%. Mr. Mittal submitted that the present claim of the Respondent/ Bank was, therefore, exaggerated and highly inflated. Interest at 16.25% per annum compounded monthly was being charged as against 6 to 10% simple interest per annum as per the Recovery Policy. In other words, he contested the OTS amount as put forth by the Respondent/Bank.

18. Appearing for the Respondent/Bank, Mr. Vipul Dharmani, learned counsel, submitted at the outset that the submissions of Mr. Mittal give rise to disputed questions of facts which could not possibly be examined in a petition under Article 226 of the Constitution of India. On merits, he submitted that pursuant to the order dated 4th March, 2020 of this Court, the fresh OTS proposal of the Petitioner was carefully considered and was rejected for the reasons set out in the affidavit filed by the Bank in the present petition. Mr. Dharmani contended that not only was the rejection consistent with the order passed by this Court, since it took into account both the factors mentioned therein, but was also fully consistent with the Policy of the Bank as well as the RBI guidelines. He pointed out that the initial loan of Rs. 18.75 Crores was sanctioned on 11th February, 2012 and the notice under Section 13 (2) of the SARFAESI Act was issued way back on 29th January, 2015. Therefore, effectively, for well over five years the Petitioner had several opportunities to make good the dues. According to Mr. Dharmani, with the Petitioner having defaulted even in adhering to the terms of the first OTS, there was no ground made out for any further indulgence. Nevertheless, the fresh OTS was duly considered.

19. Having considered the above submissions of learned counsel for the parties, the Court is of the view that no case has been made out by the Petitioner for any further interference. There are several factors to be taken into account by the Respondent/Bank in considering the Petitioner's fresh OTS proposal. Having carefully perused the affidavit of the Respondent/Bank as well as the Bank's policy for dealing with OTS proposals, the Court is unable to agree with the Petitioner that the rejection of the Petitioner's fresh OTS proposal was not consistent with the said policy.

20. Clause 29 of the Policy referred to by Mr. Mittal reads as under:

“29. RE-OPENING OF FAILED OTS CASE

In certain cases the approved OTS may not have fructified/ implemented due to failure of the borrower/ guarantor to pay the approved OTS amount or cases which were abinitio not honoured and/ or had not taken of beyond the payment of upfront amount and OTS has been treated as failed by the Bank and/or written communication regarding failure of OTS has been communicated to the obligant/s. In such cases, if a proposal is offered by the borrower for revival of the failed OTS and/or OTS is offered with revised terms and if such revised proposals are considered beyond the scope of delegated powers for Extension of Time Period (with/without further sacrifice), such proposals shall be considered as Fresh/Denovo proposals.”

21. The Court is unable to agree that the above clause in the Policy was not followed. As regards the actual outstanding amount, according to the Bank, which has been disputed by the Petitioner, the Court is inclined to agree with the Mr. Dharmani that it does give rise to disputed questions of fact, which cannot possibly be gone into by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution. The scope of judicial review in such matters is essentially to examine whether in arriving at a decision on the Petitioner’s revised OTS proposal, the Bank followed the prescribed procedure which would include the Bank’s own policy and the RBI guidelines. On that yardstick, the Court is unable to see any violation of the procedure by the Respondent/ Bank in deciding to reject the Petitioner’s revised OTS proposal.

22. The reason furnished by the Respondent/Bank for rejecting the OTS proposal is to be found in the communication dated 5th August, 2020. It is claimed therein that the offer of Rs. 11.50 crores, as against the earlier OTS offer of Rs. 12.95 crores, which was in fact the OTS amount as per the earlier settlement dated 29th August, 2018, was found to be “on lower side.” The relevant portion of the communication dated 5th August, 2020 reads thus:

“In this regard it is intimated that said OTS of Rs 1295.00 Lakhs was considered by the bank as pe special scheme for one-time settlement of NPA – 2018 on 29.08.2018.

Now, your offer of one-time settlement amount of Rs. 11.50 crore is not acceptable to the bank, being on the lower side.

You may in your own discretion may submit substantially enhanced OTS proposal.

Please note that bank has already initiated recovery actions, which are continuing and will be followed up till logical ends.”

23. The above communication cannot be said to be an unreasoned one. In fact, a further option was given to the Petitioner to submit a revised proposal by the impugned letter dated 21st April, 2020. However, as already noticed hereinbefore, the Petitioner increased the amount by just Rs. 20 lakhs. This was rejected by the impugned letter dated 5th August, 2020, which again afforded the Petitioner an opportunity to “submit a substantially enhanced OTS proposal”. While the communication dated 5th August, 2020 did communicate the principal reason for the Respondent/Bank’s rejection, a more elaborate explanation has been given in the affidavit filed by the Bank. Consequently, the Court is unable to interfere in the impugned communication dated 5th August, 2020 on the ground that it contains no reasons.

24. The Court has also carefully examined the decision of Madras High Court in *Narmathaa Textiles Ltd. (supra)* and finds it to be distinguishable on facts. For instance, in the first round in that case, while allowing the writ petition and referring the matter to the Managing Committee, the Court noticed that the OTS had been cancelled by the Chief Manager “on his own and the same is not in consonance with the RBI guidelines”. It was further factually found that the Settlement Committee in the Administrative Committee of the Bank in that case had “omitted to consider the relevant materials and by completely overlooking and ignoring the nature of the application filed by the Petitioner, rejected the request to condone the delay”. It was in those circumstances that it was found that “the decision-making process was therefore not in accordance with the directives of the Reserve Bank of India and the Recovery Policy and the Guidelines of the Bank.”

25. The facts of the present case speak for themselves. The affidavit filed by the Bank explains in sufficient detail, the process of examining the fresh OTS proposals, the factors taken into account by the Respondent/Bank and the reasons for rejection of the fresh OTS proposal. The Court is satisfied, therefore, that in the present case, there is no deviation from the prescribed procedure for examining the revised OTS proposal. The contention of the Petitioner that the decision-making process underlying the impugned letters of the Respondent/Bank was not in

accordance with the Policy of the Respondent/ Bank or the RBI guidelines, is accordingly untenable.

26. For all the aforementioned reasons, the Court finds no grounds to have been made out for grant of the reliefs prayed for in the writ petition. The writ petition is accordingly dismissed. No order as to costs.

(S. MURALIDHAR)
JUDGE

(AVNEESH JHINGAN)
JUDGE

5th October, 2020
Satyawan

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