

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

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CWP No. 19210 of 2020

Reserved on: 17th December, 2020

Date of Decision: 22nd December, 2020

Dwarkadhis Projects Pvt. Ltd.

.....Petitioner

Versus

Punjab National Bank and another

.....Respondents

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

Present: Mr. Puneet Bali, Senior Advocate with Mr. Alok Mittal, Advocate for the petitioner.

Mr. P.B.A. Srinivasan and Mr. Parth Tandon, Advocates for the respondents.

Avneesh Jhingan, J.

1. The Petitioner is a company incorporated under the Companies Act, 1956. The writ petition is filed through its authorised signatory for quashing an order dated 6th October, 2020 of the Respondent Bank (erstwhile Oriental Bank of Commerce now Punjab National Bank) whereby the re-structuring of its loan has been cancelled.

2. The Petitioner is a real estate developer. The Petitioner availed a term loan from the Bank for construction of a Residential Group Housing Project “Casa Romana” at Dharuhera. On 30th January, 2014, a Rs.100 crore term loan was sanctioned. Certain properties were offered as primary and collateral securities. Due to financial constraints in 2017, the project was downsized; resultantly the term loan was reduced from Rs.100 crores to Rs.80 crores. On 12th March, 2019, the Petitioner sought permission from the Bank for selling the collateral securities. There was a default in repayment of the loan and on 2nd April 2019, the account was declared as Non-Performing Asset ('NPA'). Thereafter, the Bank allowed the

request of the Petitioner for sale of the collateral security, subject to deposit of Rs.18 crores.

3. On 15th April 2019, a notice under Section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('the Act') was issued by the Bank to the Petitioner. In terms of the said notice, the amount due as of that date was Rs.53,14,36,305/- plus future interest and other charges. On 26th May 2019, objections under Section 13 (3A) of the Act were filed to the notice and a request was made by the Petitioner for re-structuring of the loan. Thereafter reminders were sent for re-structuring. On 4th January 2020, the loan was re-structured by the Bank subject to the pre-condition that the Petitioner had to infuse Rs.1.20 crore. The repayment of Funded Interest Term Loan ('FITL') was to be made in five equated quarterly instalments. The first instalment was to be paid upto 31st March, 2020. There was a moratorium period upto 31st December, 2019 from the cut-off date (i.e. 31st October 2019).

4. The Petitioner failed to deposit the first instalment and made a request on 27th March, 2020 for providing a further moratorium. There was also a failure to deposit the second and third instalments. On 6th October 2020, the Bank terminated the re-structuring of the loan. On 16th October 2020, the Petitioner replied to the termination intimation. The Bank then served a legal notice-cum-demand notice dated 30th October 2020, seeking repayment of dues of Rs.63.25 crore (interest and penal charges upto 30th September, 2020) within 10 days. At this stage, the present petition was filed.

5. Mr. Puneet Bali, learned Senior counsel for the Petitioner contends that the termination of the re-structuring of the loan is bad for lack of prior intimation. The order of termination is vague and not reasoned. It is argued that the Bank has wrongly recorded in impugned order that the Petitioner had not infused Rs.1.20 crore into the project account when there was no such specific condition. He relies upon the certificate dated 16th January, 2020 issued by the Chartered Accountant ('CA') to show that Rs.1.20 crores were in fact contributed by promotees. It is further argued that the Bank had to sell the some of the properties mortgaged after No Objection Certificate ('NOC') from the Petitioner but it failed to do so. The grievance is that due to the COVID-19 situation, the moratorium as per the RBI Circular should have been extended. He states that if sufficient time is provided,

the Petitioner was even now willing to infuse the aforementioned amount of Rs. 1.2 crores into the project account.

6. Mr. P.B.A. Srinivasan, learned counsel for the Bank, refuted the contentions raised by Mr. Bali. He contended that the Petitioner failed to comply with pre-condition of re-structuring i.e. infusing Rs.1.20 crore into the project account, there is no such reflection in the account of the Petitioner with the Bank. The termination of the re-structuring is defended on the ground that the Petitioner failed to comply with the terms and conditions of re-structuring. It is pointed out that in spite of the Bank granting the NOC, the Petitioner never sold the collateral security. The Petitioner had to exclusively deal with the Bank, whereas as per certificate issued by the CA the Petitioner had violated the said condition.

7. Before proceeding further, the relevant portion of terms and conditions of re-structuring are reproduced below:

“Facility-2

Nature of facility-II FITL I (funded interest term loan)

Amount Rs.6.30 Crore (Rs. Six Crore and Thirty Lacs Only)

Purpose Overdue interest on existing term loan as on Cutoff Date

Primary Security As per security column

Collateral Security

Margin Not applicable

Interest 12.50% p.a. (linked to 1 Yr. MCLR at the date of sanction). Interest shall be serviced as and when due.

The bench mark MCLR rate so applicable shall remain fixed for a period of one year. The effective MCLR Benchmark rate shall be communicated on the date of sanction. ROI shall not be lower than 1 Yr. MCLR of the bank at any point of time.

Penal interest @ 2% p.a. over and above the normal rate on overdue portion shall be charged.

Reset of Benchmark The benchmark MCLR Rate shall be reset at frequency MCLR Rate (Yearly) linked to date of sanction.

Reset of spread	The applicable spread shall be reset on review/ renewal date/change in credit profile of the borrower. Further, the Bank shall have right to review/withdraw the Concession granted in the account and/or Review of Applicable RoI/Service Charges in the event of down-gradation in External Rating/Internal Rating with reference to Date of Sanction).
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Interest Reset, if any	On annual review
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Moratorium Period	Upto 31 st Dec. 2019 from cutoff date
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Repayment	FITL 1 amount shall be repaid in 5 structured quarterly installments starting from 31 st March, 2020 (date of first installment) to 31 st March, 2021 (date of last installment) as under:
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Other Approvals:-

- (a) NOC to sell the Collateral secur4ity i.e. Warehouse land measuring area 6.693 Acres situated at Village Ghatal Maniwas, Dharuhera, Rewari, Haryana belonging to M/s Navtech Projects Pvt. Ltd. to pay off Term Loan outstanding to the extent of sale proceedings.
- (b) NOC to develop and sell the plots on land measuring 4.862 acres situated at Sec-22, Dharuhera, Rewari, Haryana currently which is not part of the project land/prime security due to reduction of project size and loan amount from Rs. 100 Crores to 80 Crores.
- (c) Waiver/relaxations/concessions in penal charges from the cutoff date (31.10.19) in line with restructuring.

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Collateral Security
Equitable mortgage of Immovable Properties:

Description(Res./Com./Agrl. Land) and address	Total Area Sq.	Name of Owner(s)
Exclusive charges over Warehouse Land admeasuring 6.69375 acres (53 kanal 11 Marla) situated at Village Ghatal Maniawas, Dharuhera, Rewari, Haryana belonging to group company M/s Navtech Projects Pvt. Ltd.	27063.12 Sq. meters	M/s Navtech Projects Pvt. Ltd.

- (2) All related documentation, including execution of necessary agreements between landers and borrower/creation of security charge/perfection of securities are completed prior to implementation of restructuring in consultation with respective legal retainer/Law Officer and charges in the terms of conditions of the existing loans get duly reflected in the books of bank and the borrower.
- (3) Promoters shall infuse promoter's contribution amounting to Rs.1.20 Crore after cutoff date as per restructuring plan upfront prior to implementation of restructuring towards bank's certificate. A CA certificate in this regard shall be obtained and kept on record.
- (4) Comprehensive insurance of all the securities shall be done and all the cost in this regard shall be borne by the borrower.

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VARIOUS UNDERTAKINGS TO BE OBTAINED FROM THE BORROWER ON LETTER PAD.

(As applicable according to the constitution of the borrower/ to be discussed with the borrower before stipulating any undertaking)

The borrower shall undertake:

1. To maintain deposits (unsecured loans) by family members, friends and relatives or directors/partners at estimated/projected level during the currency of the Bank's advance.
2. That the names of Borrower or its Directors/Partners or Guarantors do not figure in any list of defaulters circulated by RBI or any bank and Financial Institution nor do the names of partners/directors/guarantor appear in caution list issued by RBI/CIBIL/ECGC etc.
3. To deal with our bank exclusively, shall not open current account/s with any other bank without our prior permission. The borrower's entire business relating to their activity including deposit, remittances, bills/cheque purchase, non-fund based transactions including LCs and Bgs. Forex transactions, merchant banking, any interest rate or currency hedging business etc. should be restricted only to the financing bank i.e. our bank.

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55. Unconditional Cancellable Clause (UCC): The Bank shall have absolute discretion to reduce/stop/cancel the said loan facility or refuse to enhance the aforesaid loan facility subsequent to the initial disbursement of the credit facility or to reduce/stop/cancel sanctioned credit facility and/or financial assistance without notice to the borrower and the Borrower shall have no right to question, challenge or dispute the said discretion and act of the Bank. The Bank shall intimate the borrower before cancellation/Reduction/ Stoppage of the limits. The Bank will always be at liberty in its discretion to stop making advances at any time without previous notice and without assigning any reason whatsoever to the Borrower even though the said limit has not been fully availed by the Borrower.”

8. From the terms and conditions, it is evident that there was a moratorium period from the cut-off date i.e. 31st October, 2019 till 31st December, 2019. The FITL was to be paid in five structured quarterly instalments starting from 31st March, 2020, the last instalment payable by 31st March, 2021. The Petitioner had to infuse Rs.1.20 crore after 31st October 2019, upfront prior to implementation of the restructuring. The Bank was to issue NOC for selling the land situated in village Ghatal Maniawas, Dharuhera belonging to M/s Navtech Projects Pvt. Ltd., to pay the outstanding to the extent of sale proceeds. Further, the NOC was to be issued to develop and sell the plots on land situated at Sector-22, Dharuhera which was not part of the project due to reduction of the project size. The Petitioner had to exclusively deal its finances with the Respondent Bank. The entire business related activity including deposit, remittance etc. were to be restricted only to the Respondent Bank. There was an unconditional cancellable clause in the terms and conditions.

9. The Petitioner miserably failed to fulfil the obligations cast upon it by the terms and conditions. The Petitioner had to infuse Rs.1.20 crore prior to implementation of the restructuring, however, the petitioner failed to do so. The certificate dated 16th January, 2020 issued by the C.A. nowhere established that the said amount was infused as per the terms and conditions. There was no deposit in the bank account of the petitioner with the Respondent Bank. There was a clause obliging the Petitioner to have exclusive dealing with the Respondent Bank despite which not a penny of the contribution was deposited in the account with the Respondent Bank. The pleadings reveal that the alleged infusion of funds was done through Karur Vysya Bank. Even if it is taken that the said amount was withdrawn from the other bank yet same was not deposited in account of the petitioner with the Respondent Bank.

10. In this context, it would be relevant to reproduce the last paragraph of the CA certificate, which reads thus:

“This Certificate has been issued on the basis of examination of books of accounts and other records produced before us and information and explanation provided to us by the management of the Company without any liability on our part.”

From the language of the above sentence, it is evident that while issuing certificate even reliability of the account books so produced has not been certified.

11. As per ‘other approvals’ quoted above, the Petitioner had to sell collateral securities at village Ghatal Maniawas, Dharuhera and develop and sell the plots situated at Sector 22, Dharuhera. In spite of issuance of an NOC by the Bank, the Petitioner failed to do the needful. The contention of Mr. Bali that the Bank had to sell the collateral security is misplaced. From a reading of the terms and conditions, it is clear that the NOC was to be issued by the Bank and the sale of collateral security as well as development and sale of property at Sector 22, Dharuhera was to be undertaken by the Petitioner.

12. It is admitted fact that not even a single instalment out of the five structured quarterly instalments was deposited. The reliance by Mr. Bali on the circular seeking further moratorium is noted only to be rejected. As pointed out by Mr. Srinivasan, the Petitioner’s account was declared NPA long before the said circular i.e. way back in April, 2019 and therefore was not covered by the said

circular. Moreover, the restructuring never kick started as the Petitioner failed to infuse the sum of Rs. 1.2 crores as per the pre-condition for restructuring.

13. The contention of the Petitioner that there was no prior intimation in terms of clause-55 before termination of the restructuring, is not well-founded. From the impugned order, it is evident that the Petitioner, during the visits to its site and visit to the Bank, was informed about its failure to fulfil the obligations cast by the restructuring document. There was no progress and the Bank was left with no other alternative except to terminate the restructuring.

14. The contention that the termination order is vague and not well reasoned does not advance the case of the Petitioner. The termination was on account of non-compliance of the terms and conditions. The Petitioner has miserably failed even to *prima facie* establish that it honoured its part of terms and conditions.

15. No case is made out for interfere with the impugned order. The writ petition is accordingly dismissed. Nevertheless, the Petitioner would be at the liberty to avail of the alternative remedies available to it in law against the legal notice/demand issued by the Bank.

(AVNEESH JHINGAN)
JUDGE

(S.MURALIDHAR)
JUDGE

22nd December, 2020
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Whether speaking/reasoned:	Yes
Whether Reportable:	Yes