IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

105+216 **CWP-15248 of 2021 (O&M).**
Date of Decision: 17.11.2021.

M/s Hara Seeds and another ....Petitioners.

Versus

Punjab National Bank ...Respondent.

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CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE JASJIT SINGH BEDI

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Present**:** Mr. Aalok Jagga, Advocate for the petitioners.

Mr. P.S. Sobti, Advocate for the respondent.

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M.S. RAMACHANDRA RAO, J. (Oral)

The petitioner No.1 is a proprietorship concern and certain cash credit facilities were availed by it from the respondent-Bank since 2007 onwards. The loan account of the petitioner No.1 was declared as 'NPA' on 30.06.2016 and a notice under Section 13(2) of the SARFEASI Act was issued on 30.07.2016.

Petitioners contend that thereafter petitioner No.1 paid substantial amounts with an attempt to regularize the loan account and the respondent-bank upgraded the account to a standard account but subsequently, it has slipped into 'NPA' category on 15.10.2018.

Petitioners contends that the respondent-bank came up with 'One Time Settlement Scheme' dt.09.09.2020 known as 'Special OTS Scheme for the financial year 2020-21; non-discriminatory and non-discretionary Special OTS : 2020 for NPA account up to Rs.5 crore' and as per the said scheme, all accounts with ledger balance less than Rs.5 crore as on 31.03.2020 would be eligible for settlement of the loan account.

Clause 6(c) of the above said Scheme indicates the OTS amount payable by the borrowers and the scheme includes all accounts, irrespective of the security coverage.

Counsel for petitioners contends that loan account of petitioner No.1 is eligible under OTS Scheme; that a proposal dt. 04.01.2021 was handed over by petitioners to the respondent-bank on 20.01.2021 for settlement of the loan account in view of above said OTS Scheme, and petitioner No.1 had offered to pay Rs.2.32 crore and to show its *bonafides*, enclosed cheque of Rs.10 Lakhs towards initial deposit.

There was an amendment to the OTS Scheme, vide Circular No.04 of 2021 w.e.f. 30.01.2021 superseding the earlier scheme dt. 09.09.2020 and under this amended scheme, a new criteria was added to the effect that *"if the market value of securities is more than 125% of the balance outstanding on the date of receipt of proposal, such cases shall not be covered by the said OTS Scheme and shall be dealt as per guidelines mentioned in the scheme on Recovery & Management of NPA"*.

The OTS proposal of petitioner No.1 was rejected by the respondent-bank on 05.04.2021 with the following observation, "*In response to your letter dated 04.01.2021, we have already informed you by telephonically and on personal meetings that OTS offer of Rs.232.00 lacs is very lower side. <u>Keeping in view the realizable value of securities of Rs.661.93 lacs, you are advised to improve your offer substantially so that we may be able to consider your proposal."</u>*

According to the petitioners, the said rejection of OTS proposal of petitioner No.1 was done as per the amended scheme of the respondent-bank which came into effect on 30.01.2021 by applying the new criteria introduced thereunder i.e. the market value of securities of petitioner No.1 available with the respondent-bank, being more than 125% of the balance outstanding, which was not there under the scheme drawn on 09.09.2020 initially. Petitioners contend that it was obligatory on the part of respondent-bank as per Clause 10.2 read with Clause 10.5 of the scheme dt. 09.09.2020 to immediately, within a week personally follow up with the petitioner No.1, so that the compromise can be carried into effect, but respondent-bank had slept on the petitioner's proposal and on 05.04.2021, rejected the same applying the amended scheme which came into effect on 30.01.2021. Counsel for petitioners contends that the amended scheme will not have any retrospective operation and cannot be applied to the proposal made by the petitioner-company to the respondent-bank on 20.01.2021 for OTS.

A reply was filed by the respondent contending that under the OTS Scheme framed on 09.09.2020, at the time of making/sending proposal, petitioner No.1 should have deposited 15% upfront amount of the OTS amount which comes to Rs.34,80,000/-, but petitioner No.1 gave a cheque of Rs.10 Lakhs and so the petitioners were not eligible for consideration under OTS Scheme. It is also contended by the counsel for the respondent-bank that the petitioner No.1 was orally informed about its obligation of depositing 15% upfront amount in terms of the OTS scheme dt. 09.09.2020; and that there was an earlier proposal of the petitioner No.1 for OTS for Rs.3 crores, but the petitioner No.1 did not implement the same.

Learned counsel for the petitioners denied that the petitioner No.1 was informed orally about the short fall in the deposit made by it when it had given a proposal on 20.01.2021 to the respondent-bank. He further contended that the reasons now being given by the respondent-bank for non consideration of the petitioner's OTS proposal are not mentioned in the rejection letter dt. 05.04.2021. Placing reliance upon the judgment of Hon'ble Supreme Court in ***Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others, 1978 AIR (SC) 851***, counsel for petitioners contended that it is not open to the respondent-bank to support its rejection order dt. 05.04.2021 on the basis of new reasons now furnished in the reply/affidavit. He also contended that it was obligatory on the part of the respondent-bank to respond to the petitioner's OTS proposal within one week and the respondent-bank cannot deliberately wait till 05.04.2021 to reject the petitioner's OTS proposal by applying the amended scheme brought into effect from 30.01.2021, and then reject the petitioner's proposal.

We have noted the contentions of both the parties.

We might point out that the petitioners OTS proposal was dt.04.01.2021 but it reached to the respondent-bank on 20.01.2021. At that point of time, the initial OTS scheme dt.09.09.2020 of the respondent-bank was in vague. The said scheme made no mention of the eligibility of the borrower to avail the OTS on the basis of the security available for the creditor.

Clause 10.2 of the OTS scheme dt.09.09.2020 states *"Have discussions with circle offences/amongst verticals, immediately (not later than a week's time), emphasizing the need, salient features of the scheme and formulation of result oriented strategies with the time line."*

Clauses 10.5, 11.2 and 12.1 of the OTS scheme dt.09.09.2020 are also relevant and they states as under:-

> "*10.5 Accounts covered under the scheme may be allocated amongst all vertical members for contacting the borrowers/guarantors, personally and for subsequent personal/telephonic follow-up for striking compromise proposals in these accounts during the period of this Scheme"*
>
> *11.2 Vertical Staff to ensure personal meetings with each borrower, negotiate for settlement through compromise and make efforts for maximizing the cash recoveries during the period of scheme.*
>
> *12.1 All compromise proposals approved by any functionary should be promptly reported to the next higher authority for post facto scrutiny; For proposals approved by sanctioning authorities, the guidelines w.r.t. reporting of approvals and monitoring of approved OTS under Special OTS Scheme 2020 shall be as under:-*

S. No.	*Minutes of Appraisal Committee/Authority*	*To be placed for Post Facto Scrutiny To*
1.	*Branch Head*	*Circle Office Compromise Committee*
2.	*Circle SASTRA Head*	*Zonal SASTRA Committee*
3.	*Circle Office Compromise Committee/Zonal SASTRA Head*	*Zonal Office Compromise Committee*
4.	*Zonal Office Compromise Committee*	*HOCAC Level II*
5.	*HOCAC Level I*	*HOCAC Level II*

A combined reading of all these clauses indicates that it was incumbent on the part of the respondent-bank to respond immediately (not later than a week) to the proposal received by it from petitioners, and its officers must personally follow up the same with borrowers and ensure that a settlement is arrived at to maximize the cash recovery during the period of the scheme.

But the respondent-Bank sent a reply on 06.04.2021, more than two months after the petitioner No.1 made OTS proposal on 20.01.2021. Also there is no material placed on record by the respondent-bank to satisfy this Court that it had informed the petitioner No.1 immediately on receipt of the proposal on 20.01.2021 about the short fall in deposit required to be made by it.

We are also of the opinion that the amendment to the OTS scheme of the respondent-bank introducing the new criteria of non-applicability of the OTS scheme if the market value of securities available with the respondent-bank is more than 125% of the balance outstanding as on the date of receipt of the proposal, having coming into effect from 31.01.2021, the said criteria could not have been applied to the petitioners by the respondent-bank to reject the petitioner's OTS proposal dt. 20.01.2021 on 05.04.2021. The new Scheme will not have retrospective operation. Moreover, it is not in dispute that the written reply to the petitioner's proposal came from the respondent-bank only on 05.04.2021 and the said reply did not contain the reasons now being given i.e that the petitioner's deposit fell short of the deposit which was required to be made under the OTS scheme dt.09.09.2020 or that earlier OTS was not complied by petitioners.

We are of the opinion that it is not open to the respondent-bank to support its rejection order dt.05.04.2021 by giving new reasons in the reply/affidavit filed in this case.

In **Mohinder Singh Gill case (supra),** the Hon'ble Supreme Court held:

> "8. *The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad inthe beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji case: "Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.*
>
> *Orders are not like old wine becoming better as they grow older."*

We are also of the opinion that the respondent-bank did not act as per Clauses 10.2 and 11.2 referred (supra) of its OTS scheme dt.09.09.2020 and has applied the amended OTS scheme erroneously to the petitioners.

Having regard to the aforesaid reasons, we allow the Writ Petition and set aside the letter dt.05.04.2021 (Annexure P/8) issued by the respondent-bank and remit the matter back to the respondent-bank with a direction to consider the OTS application dt.04.01.2021 submitted by petitioner No.1 as per OTS Scheme dt.09.09.2020, allow the petitioner No.1 to make good the short fall amount within one week from the date of receipt of copy of this order, and consider the case of the petitioner No.1 for OTS under the said Scheme dt.09.09.2020, if it is otherwise eligible. The decision by the respondent-bank shall be taken after giving an opportunity of personal hearing to petitioners within four weeks from the date of receipt of the copy of this order and shall be communicated to the petitioners.

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No order is required to be passed.

Disposed of.

(M.S. RAMACHANDRA RAO)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

17.11.2021
komal

Whether speaking/reasoned? : Yes/ No

Whether reportable? : Yes/ No