IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-3317-2022
Reserved on: 30.03.2022
Date of Decision: 22.04.2022

M/s Noel Pharma (India) Pvt. Ltd. and others
. . . . Petitioners

Vs.

State Bank of India
. . . . 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.V.K. Sachdeva, Advocate, for the petitioners.

Ms. Madhu Dayal, Advocate, for the respondent.

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M.S. RAMACHANDRA RAO, J.

The Background facts

Petitioner No.1 is the Private Limited Company incorporated under the provisions of the Companies Act, 1956.

Petitioners No.2 & 3 are *guarantors* and *mortgagers* for the loan availed by petitioner No.1 from the State Bank of India (Respondent).

In October 2005, petitioners set up a manufacturing unit at Tehsil Baddi, District Solan, Himachal Pradesh.

In 2007, petitioner No.1-company was granted certain credit facilities (including term loans, cash credit limit (book debt & Hypothecation), SME credit, ILC/FLC) by the respondent-Bank, and by 05.12.2022, the total credit facilities granted to petitioner No.1 by the respondent-Bank amounted to ₹42.89 crores. This included five term loans and cash credit (H & BD).

13 properties were given as security for the loans availed from the respondent-Bank by petitioner No.1, details of which are set out in para No.4(v) of the Writ Petition.

The 5 term loan accounts were repaid and closed.

<u>The proceedings initiated under the SARFAESI Act,2002 against the petitioner No.1</u>

On account of non-payment of the outstanding amount due under the cash credit limit (book debt & Hypothecation) facility, the loan accounts of petitioner No.1 were declared as NPA on 27.09.2018, and thereafter, a notice under Section 13(2) of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 [for short 'the SARFAESI Act'] was issued on 08.02.2019 to petitioner No.1 demanding ₹38,64,04,864.52 with future interest, incidental expenses and costs.

A notice dt. 06.05.2019 was also issued to petitioner No.1 under Section 13(4) of the SARFAESI Act.

<u>The request for OTS dt.3.8.2019 made by petitioners</u>

On 03.08.2019, petitioner No.1 gave a representation to the respondent-Bank explaining it's difficulties in making the repayment and made an offer to the respondent-Bank for resolution of the loan accounts through an OTS for ₹16.16 crores. It also requested the respondent-Bank to release secured assets of the petitioner on a pro rata basis as per the amount deposited each time, so that petitioner No.1 is able to sell the same and deposit the sale proceeds with the respondent-Bank for the next installment.

<u>The acceptance of the OTS proposal by the respondent on 7.3.2020</u>

Eight months thereafter, on 07.03.2020, the respondent-Bank accepted the OTS proposal of the petitioner No.1 for ₹16.16 crores wherein an upfront amount of ₹0.80 crore was required to be paid by petitioner No.1 and the balance amount of ₹15.36 crore was to be paid on or before 06.07.2020. It was stipulated that in case of non-payment before 06.07.2020, the respondent-Bank would charge interest @ one year MCLR from 22.03.2020. The said letter dt. 07.03.2020 (P1) also stipulated that the *respondent-Bank shall release it's charge on the properties on pro rata basis upon receipt of payment of amount equivalent to full value of each property*.

For the purpose of submitting compromise proposal for OTS to the respondent-Bank, one of the guarantors by name Korram Narsing Naik, allegedly authorized on 3.3.2020 *vide Annexure R1*, the Managing Director of petitioner No.1.

However, subsequently when the compromise settlement/OTS was sanctioned vide letter dt. on 07.03.2020 (P1) and communicated to the borrowers/guarantors for their acceptance, the borrower and only 3 out of the 4 guarantors accepted and acknowledged the compromise settlement/sanctioned letter issued by the Bank but, the fourth guarantor Korram Narsing Naik did not accept and sign the same.

According to the respondent-Bank, it was given an impression by petitioner No.2 that the said guarantor's signature could not be obtained due to Covid-19.

The said Korram Narsing Naik however expired on 10.05.2020 and the respondent-Bank states that the said fact was also concealed from it by the petitioners at that time.

After receiving the OTS sanction letter dt. 07.03.2020 (P1), the petitioners paid the upfront amount of ₹0.80 crores, and the respondent-Bank issued a letter on 13.05.2020 asking petitioner No.1 to deposit ₹162.40 lakhs stating that this amount represents the balance 10% of the pending 15% upfront amount after adjustment of the initial deposit of ₹0.80 crore. It also stated that in case of non-deposit of this amount within one month, it would cancel the OTS and initiate recovery measures against petitioner No.1.

Petitioner No.1 vide its letter dt. 05.06.2020 (P12) sent its confirmation to the OTS dt. 07.03.2020 (P1).

However, by 15.06.2020, petitioner No.1 deposited only ₹90 lakhs.

The request of the petitioners dt.29.6.2020 to extend the time for payment of balance amount of OTS

Vide letter dt. 29.6.2020 (P13), petitioner No.1 requested the respondent-Bank to extend the stipulated time for OTS payment on account of Covid-19 Pandemic from December 2020 till December 2021 and not to charge any interest. It also requested the respondent-Bank to release collateral property i.e. Plot No.56 (325 sq. yards) worth ₹41 lakh, and assured the respondent-Bank that it would pay the amount to the extent of the value of the property released by the respondent-Bank.

Petitioner No.1 also deposited a sum of ₹32 lakh on 31.07.2020 and a further sum of ₹9 lakh on 10.08.2020 with the respondent-Bank.

Thereafter, petitioner No.1 vide letter dt. 18.8.2020 (P-15) requested the respondent-Bank to release collateral properties of the petitioner i.e. Plots No.107 & 108 to enable petitioner No.1 to sell the same and to deposit the amount of sale proceeds.

Petitioner No.1 also deposited ₹20 lakh on 19.10.2020, ₹10 lakh on 30.12.2020, ₹5 lakh on 26.02.2021, ₹45 lakh on 31.3.2021 and ₹100 lakh on 30.06.2021.

Thus the total amount deposited by petitioner No.1 between 01.08.2019 to 30.06.2021 amounted to ₹3.02 Cr.

In the meantime, the respondent-Bank addressed a letter/email dt.25.06.2021 (P18) stating that for accepting extension of OTS period till 30.06.2021, the petitioner No.1 should deposit ₹1.50 crores immediately with the respondent-Bank so that steps can be taken for extension with the higher authorities of the respondent-Bank.

Petitioner No.1 then deposited ₹5 lakh in a 'No Lien Account'.

Petitioners were insisting the respondent-Bank for release of properties on pro rata basis and also for extension of time for the OTS amount by giving a representation on 30.06.2021 (P19).

<u>The letter dt.3.9.2021 of the respondent granting extension of time for payment of amount of OTS</u>

Ultimately, the respondent-Bank vide letter dt. 03.09.2021 (P2) allowed extension of OTS till 31.03.2022 stating specifically that

₹1.50 crores was to be repaid by 30.09.2021, ₹4 crore to be repaid by 31.12.2021 and *₹7.64 crore plus applicable interest to be repaid by 31.03.2022*.

It also stated that *all other terms and conditions would remain the same as per the OTS sanction letter dt. 07.03.2020 (P1,) and that no further extension or deviation in repayment schedule shall be allowed, and petitioner No.1 was bound to adhere to the repayment schedule*.

According to the respondent-Bank, even at the time of grant of extension of OTS vide letter dt. 03.09.2021 (P2), the demise of fourth guarantor Korram Narsing Naik was not informed by the petitioners to the respondent-Bank and such information was given only on 25.11.2021, more than 2 months after the OTS extension letter dt. 03.09.2021 (P2) was issued, and copies of death certificate and affidavit of legal heirs of the deceased guarantor Korram Narsing Naik were then submitted to it.

It is also the contention of the respondent-Bank that the OTS had been sanctioned by it after taking into consideration the valuation of all mortgaged properties including the properties mortgaged by the guarantors and out of the mortgaged properties offered for the compromise, the property belonging to the deceased guarantor Korram Narsing Naik had a high value of ₹13.15 crore (market value) and ₹11.18 crore (realizable value) at the time of sanction of the compromise on 07.03.2020, which was extended again on 03.09.2021 till 31.03.2022.

According to the respondent, the valuation of the property of the deceased guarantor comprised about 69% of the total compromise amount.

It alleges that the petitioners made verbal excuses at the time of securing the OTS on 7.3.2020 (P1) that the guarantor was not able to come due to Covid-19 and he would come later on and they also concealed the death of the guarantor Korram Narsing Naik from it at the time of securing OTS extension on 3.9.2021 (P2). According to it, this is a fraud committed by the petitioners on the respondent and though it was entitled to cancel the compromise, it still honoured the same by granting the extension and asked the petitioners to get the acceptance and signatures on the terms and conditions of the compromise from the legal heirs of the deceased guarantor.

However, the petitioners sought time to get this done through a letter dt.25.01.2022 (P3) informing the respondent-Bank that acceptance by the legal heirs of the guarantor would take time and the principal borrower would undertake to remit the whole amount of compromise with interest, if any, on its own by liquidating the properties released on pro rata basis and by borrowing from friends and relatives for the shortfall.

However, it is not in dispute that till the date of hearing of this matter on 30.03.2022, no acceptance of the OTS was given by the legal heirs of the said guarantor Korram Narsing Naik in spite of reminders (R3 to R8) issued by the Bank.

Contentions of petitioners

Petitioners contend that the respondent-Bank committed breach of the OTS dt. 07.03.2020 because, having agreed for a pro rata release of the collateral securities offered by the petitioners, and having received from them ₹3.02 crores (out of the OTS of ₹16.16 crores), the respondent-Bank released properties worth only ₹94 lakhs (as admitted in letter dt. 16.9.2021 (P-21) of the respondent); and it is the respondent-Bank which is responsible for the petitioners not being able to comply with the OTS repayment schedule post-extension of time for payment of the OTS.

It is the contention of the petitioners that the respondent cannot appropriate ₹1.28 crores out of ₹3.02 crores paid by the petitioners towards interest, and such appropriation itself is in violation of the terms of the sanction letter dt. 07.03.2020 (P1) and the extension letter dt. 03.09.2021 (P2). It is their contention that the interest component, applicable from 22.03.2020 was to be paid only along with the last installment of the OTS i.e. by 31.3.2022 and it cannot adjust the sum of ₹1.28 crores out of ₹3.02Cr paid by them towards interest.

Petitioners also dispute the valuation of the properties released by the respondent-Bank and contend that it is not ₹94 lakhs as is alleged by the respondent-Bank but only ₹63 lakhs.

Petitioners, therefore, insist that the respondent-Bank be directed to release the property worth ₹1.28 crores so that payment of OTS amount in a timely manner can takes place.

Petitioners also contend that it was not possible to secure the acceptance of Korram Narsing Naik, the guarantor, on account of his death on 10.05.2020, and that they are ready to deposit ₹7.25 crores within 2 months from the date of release by the Bank of the secured properties totalling a value of ₹10.27 crores.

They contend that the respondent-Bank did not heed this request and instead issued arbitrarily a notice dt. 02.02.2022 (P4) under

Section 13(4) of the Act, so that it can take symbolic possession of the Baddi factory of the petitioner No.1 and all the fixed assets of petitioner No.1.

Counsel for the petitioners also contends that the Reserve Bank of India had framed certain guidelines to protect MSMEs like petitioner No.1, but the benefits under the said guidelines framed on 17.03.2016 were denied arbitrarily to petitioner No.1.

Petitioners, therefore, seek a direction to the respondent to continue with and not to foreclose the OTS valid till 31.03.2022; to release the remaining properties of equivalent pro rata value on the basis of payment of ₹3.02 crores already made so that the petitioners are enabled to realize and pay the OTS amount; and to quash the possession notices dt. 02.02.2022 (P4) and 06.05.2019 (P19A) issued under Section 13(4) of the Act.

They also sought an interim relief that during the pendency of the Writ Petition, the respondent-Bank be restrained from cancelling the OTS.

Events after filing of the Writ Petition

After issuing notice of motion on 22.02.2022, this Court directed that no coercive action would be taken against the petitioners by the respondent-Bank till 31.03.2022.

The stand of the respondent-Bank

It is the contention of the respondent-Bank that at the time of submitting the initial compromise proposal/OTS proposal, one of the guarantors Korram Narsing Naik allegedly authorized the Managing

Director of petitioner No.1 to enter into an OTS vide *Annexure R1,* but subsequently after 07.03.2020 only the borrower and three other guarantors accepted and acknowledged the OTS sanction letter dt. 07.03.2020 (P1) issued by the respondent-Bank but, the fourth guarantor Korram Narsing Naik did not accept and sign the compromise, and an impression was given to the respondent-Bank by petitioner No.2 that the guarantor's signature could not be obtained due to Covid-19, and that subsequently his acceptance would also be obtained.

It contends that even though Korram Narsing Naik expired on 10.05.2020 and the petitioners were aware of the same when the Bank granted extension vide letter dt 03.09.2021 (P2), the factum of death of Korram Narsing Naik was not brought to the knowledge of the Bank by the petitioners; and they informed the said fact to it only on 25.11.2021 and thus, committed fraud on the respondent-Bank.

It contends that since the value of the property of Korram Narsing Naik constitutes 69% of the total compromise amount, and till date the consent of his legal heirs has not been obtained to the initial OTS or to the extended OTS, though it is entitled to cancel the OTS, it still magnanimously granted the extension on 03.09.2021; and tried to persuade the petitioners to obtain the consent of the legal heirs of the deceased guarantor Korram Narsing Naik but, till date the same has not been furnished.

It also disputed the contention of the petitioners that it is not entitled to charge interest till March 2022 and that the interest component would have to be paid only in the end by 31.03.2022.

It pointed out that when the petitioner made such a request to it vide letter dt. 15.09.2021 (P20) and also vide letter dt. 20.09.2021 (P-23), the Bank had clarified on 16.09.2021 itself the position that interest is payable not at the end but along with each installment; and it had rightly appropriated ₹0.80 crore towards upfront amount and ₹94 lakhs towards the principal while releasing three properties worth ₹94 lakhs and it was entitled to adjust balance ₹128 lakhs towards interest.

It is pointed out that the sanction letter dt. 07.03.2020 (P1) indicated that the interest is to accrue upon the compromise amount in case the petitioners failed to deposit the entire compromise amount by 06.07.2022; that petitioners did not deposit the entire OTS amount by the said date; and thereafter, as per Clause III of the letter dt. 07.03.2020 (P1), interest @ year MCLR would be charged from 22.03.2020 till the entire compromise amount is paid. It is also pointed out that Clause IV of the letter dt. 07.03.2020 (P1) states that release of charge on the properties and other securities would be done by the Bank only on payment of the amount of ₹15.36 crore *plus interest*. These terms therefore disentitle the petitioners to raise such a contention and that they cannot take advantage of the statement in the letter dt. 03.09.2021 (P2) that ₹7.64 crore plus applicable interest was to be repaid by 31.03.2022.

It is pointed out that interest has to be paid simultaneously as is the standard procedure in the Banking system, and that if interest is not paid in periodical intervals and mortgaged property is released, it dilutes the collateral security coverage.

It also stated that it clarified the same on 16.09.2021 itself so that there is no ambiguity in that regard by stating that shortfall of interest as well as monthly interest regularly should be paid along with the OTS payment installment equivalent to the value of the property sought to be got released.

It stated that the interest on the compromise amount works out of ₹246 lakhs as on 31.03.2022 and in case the balance compromise amount along with up to date interest is not paid within the stipulated validity period, a total sum of ₹38,64,04,864.52 plus contractual interest since 01.02.2019 is payable.

It, therefore, opposed grant of any relief to the petitioners in the Writ Petition.

Consideration of the Court

We have noted the contentions of both the sides.

It is a matter of record that OTS was sanctioned to the petitioners on 07.03.2020 (P1) for ₹16.16 crores, requiring the petitioner to pay upfront amount of ₹80 lakhs which would be appropriated towards the settlement amount and the petitioners had to pay ₹15.36 crore before 06.07.2020.

Clause III of the said letter specifically stated that in case of nonpayment before 06.07.2020, interest @ one year MCLR will be charged from 22.03.2020. Clause IV of the said letter stated that the Bank will release its charge on the properties and other securities on payment of remaining amount of ₹15.36 crore *plus interest*, if any.

Thus the obligation to pay interest from 22.3.2020 was always specified if total OTS was not paid before 6.7.2020. It was never stated to have been postponed to the end to be paid with the last installment.

When OTS extension was given on 03.09.2021 (vide Annexure P2) at the request of the petitioners, by that date petitioners had deposited only ₹3.02 crores and there was a balance of ₹13.14 crores plus applicable interest to be paid.

As per this letter dt.3.9.2021, ₹1.5 crore was to be repaid by 30.09.2021, ₹4 crore was to be repaid by 31.12.2021 and ₹7.64 crore *plus applicable interest* was to be repaid by 31.03.2022. It was specifically stated that *"all other terms and conditions will remain the same as were conveyed to you on sanction of the compromise proposal"*.

This meant that the obligation to pay interest along with the OTS installment was never diluted and the petitioners cannot take advantage of the language used in the letter dt. 03.09.2021 (P2) (i.e. *that ₹7.64 Cr plus applicable interest to be repaid by 31.3.2022*).

Admittedly in a meeting held at the Branch of the respondent on 14.09.2021 and 15.09.2021 the petitioners raised this issue, but on 16.09.2021 (vide Annexure P-21), the Bank clarified the issue with regard to payment of interest stating categorically that it had appropriated ₹3.02 crores out of the total compromise amount of ₹16.16 crores plus interest in the following manner i.e. ₹80 lakhs towards upfront, ₹94 lakhs towards principal and ₹128 lakhs towards interest payable from 22.03.2020 in terms of the sanction letter dt. 07.03.2020 (P1). It in fact informed the petitioners that there was a shortfall of ₹45 lakh regarding payment of interest upto

31.08.2021 and they should pay the shortfall of interest as well as monthly interest regularly, if they wish to have properties released of equivalent value.

At that point of time, petitioners did not come to this Court challenging the bank's stand in the said letter dt.16.9.2021.

We agree with the contentions of the respondent-Bank that when any repayment of the loan is made, interest is payable as per normal banking practice and that such interest charged periodically should be paid along with the repayment. We also agree with the contention of the respondent that if interest is not paid at the periodical intervals, and mortgaged properties are released, it would dilute the collateral security coverage.

It is highly unreasonable on the part of the petitioners to expect the Bank to release securities to them when they do not pay the interest component along with the OTS installment. The Bank cannot be expected to *jeopardise* its position because the collateral security coverage would be diluted if it does so.

We also are of the opinion that the conduct of the petitioners in merely giving an authorization letter of the fourth guarantor Korram Narsing Naik while persuading the Bank to enter into an OTS on 07.03.2020, without following up the same by a written acceptance of the said borrower to the Bank of the OTS dt.07.03.2020, at least through email, was highly improper.

There is also no valid explanation coming forth from the petitioners as to why when Korram Narsing Naik died on 10.05.2020, they did not inform the said fact to the Bank immediately, instead persuaded the Bank to grant an extension of the OTS vide letter dt. 03.09.2021 (P2) and informed about his death only on 25.11.2021, long afterwards.

This amounts to fraudulent conduct on behalf of the petitioners which caused serious prejudice to the respondent-Bank.

When the respondent Bank had still shown its magnanimity by granting extension vide letter dt.03.09.2021 (P2) for payment of the OTS amount till 31.03.2022, it cannot be found fault with for not granting a further extension to the petitioners for payment of the OTS amount.

In fact the counsel for the respondent-Bank has placed before us a letter dt.28.03.2022 addressed to it by the legal heirs of late Korram Narsing Naik disputing that the said individual had given any assent or acceptance to any kind of compromise during his life time. They contended that the action of the Bank in releasing properties unilaterally would adversely affect their rights as legal heirs.

Thus, there appears to be a serious dispute as to whether Late Korram Narsing Naik ever authorized the OTS on 07.03.2020 (P1) at all and agreed to provide his property as security thereto and there is thus a doubt whether the authorization letter given allegedly by Late Korram Narsing Naik to the petitioners to enter into the OTS was in fact signed by him or not.

Counsel for the petitioners sought to contend that there is a discrepancy in the value of the factory premises at Baddi village admeasuring 6 bigha 5 biswa and that it is actually worth ₹6.91 crores (releasable value) as on 14.03.2022 while the Bank had taken the valuation at only ₹2.69 crores as on 05.04.2019.

Counsel for the respondent-Bank however placed before us the title deed of the factory premises dt.13.8.2009 which indicated that only 25720 sq. feet was purchased along with 6 bighas 5 biswas.

In the valuation report produced by the petitioners an extent of 29250 sq. feet covered area was taken in the ground floor along with 25700 sq. feet covered area on first floor. Thus, the petitioners' valuer seems to have taken wrong quantity of constructed areas in the said property.

He has also taken the cost of construction to be ₹1000/- per sq. feet.

In our opinion, since the property is admittedly at least 20 years old, it cannot have a construction cost of ₹1000/- per sq. feet.

Therefore, this plea of the petitioners about incorrect valuation by the Bank also cannot be countenanced.

In fact, the petitioners had addressed a letter to the Bank on 25.01.2022 (P29), wherein they had actually accepted the valuation of the factory land at Baddi as at ₹2.69 crore, which was the valuation of the respondent-Bank, and had not disputed the same at that point of time.

Therefore, if the property of Korram Narsing Naik is excluded (and it is not disputed that it is worth ₹11.18 crores (which is 69% of the OTS value)), the rest of the properties available with the Bank will not be adequate to cover the risk. So it would not be practicable for the respondent to keep releasing the secured assets when the petitioners are not paying interest along with the OTS installments.

For all these reasons, we do not find any merit in the Writ Petition. It accordingly fails and is dismissed. No costs.

(M.S. RAMACHANDRA RAO)
JUDGE

22.04.2022 **(JASJIT SINGH BEDI)**
Vivek **JUDGE**

1. Whether speaking/reasoned? Yes
2. Whether reportable? Yes