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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 05th July, 2022

\+ W.P.(C) 6516/2022

M/S. KUMAR CONTRACTORS ..... Petitioner

Through: Mr. Vivek Gupta and Mr. Ankit Verma, Advocates.

versus

STATE BANK OF INDIA & ANR. ..... Respondents

Through: Mr. Bheem Sain Jain and Ms. Vaishali Kalerr, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

SANJEEV NARULA, J. (Oral):

1. The Petitioner is aggrieved with rejection of his proposal for One Time Settlement under SBI OTS Scheme 2021/ RINN SAMADHAN YOGNA 2021 [*hereinafter* "***Scheme***"] conveyed to him *vide* letter No. SARB/2021-22/410 dated 11th March, 2022, issued by the Asst. General Manager of Stressed Asset Recovery Branch, Dehradun, State Bank of India/ Respondent No. 2 [*hereinafter* "***SARB SBI***"].

2. The Court has heard counsel for the parties at sufficient length. Briefly stated, as the Petitioner fulfilled the eligibility criteria, in accordance with the provisions of the Scheme, an intimation was given to the Petitioner

vide letter dated 25th January, 2021, setting out detailed terms and conditions of the Scheme. As on 31st March, 2021, Petitioner had an outstanding of Rs. 1,04,13,979.64/-, which under the Scheme, could be settled on 'OTS amount' of Rs. 51,90,780.66/-. To avail the benefit of the Scheme, Petitioner was required to deposit 10% of the OTS amount, as a pre-condition for processing the application/ proposal.

3. The Petitioner applied under the Scheme on the last date prescribed therein i.e., 21st February, 2022 and deposited 10% of the OTS amount by way of: (*a*) cash deposit of Rs. 1,19,100/-, and (*b*) Rs. 4 lacs by way of cheque dated 21st February, 2022. Sanction of the OTS proposal was to be communicated to Petitioner/ Borrower within a period of 7 (seven) days from the date of receipt of application (i.e., latest by 28th February, 2022). When the application of the Petitioner was processed, the cheque of Rs. 4 lacs towards part-payment of 10% of the OTS amount was dishonoured on 24th February, 2022, on account of "*insufficient funds*". State Bank of India/ Respondent No. 1 [*hereinafter* "***SBI***"] *vide* impugned communication dated 25th February, 2022 informed the Petitioner that his proposal was rejected. The said communication reads as follows: -

> "*Sir,*
>
> *Ref: SBI OTS Scheme 2021*
>
> *With reference to the above mentioned scheme and the proposal given by you, the token money paid vide of cheque 2470012302 dated 21.02.2022 for Rs. 4,00,000/- Bank of Baroda, besides cash, has been returned due to insufficient fund in the account. Therefore, the proposal, which has been made under the aforesaid scheme, is treated as rejected. This is for your information.*"

4. Thereafter, Petitioner *vide* communication dated 25th February, 2022 addressed to SARB SBI requested for one more opportunity for depositing Rs. 4 lacs against the dishonoured cheque. In response thereto, SARB SBI *vide* letter dated 11th March, 2022 returned the amount of Rs. 1,19,100/- *vide* a banker cheque, which was deposited in cash by the Petitioner and rejected the said request. The said communication reads as under: -

> "*With reference to your letter no. nil dated 25.02.2022 on the captioned subject, we submit as under: -*
>
> *2. After submitted your consent on 21.02.2022 you have deposited Rs. 1,19,100.00/ by cash and also submitted a cheque no. 010644 dated 21.02.2022 fir Rs.4.00 lakh against the 10% of OTS amount Rs. (5,19,100.00) as per the term & condition of the scheme.*
>
> *3. Your above said cheque has been returned unpaid on 24.02.2022 with the reason "insufficient funds".*
>
> *4. We have already advised about the returning of cheque vide our letter dated 25.02.2022.*
>
> *5. We further advised you that your request in this matter cannot be considered as the last date for admission in the said scheme along with 10% of the OTS amount was 21.02.2022.*
>
> *6 Since your application was rejected and accordingly we are returning herewith Rs. 1,19,100.00 through Banker cheque no 870989 dated 11.03.2022 favoring M/s Kumar Contractors as per the terms & condition of the scheme.*"

5. Mr. Vivek Gupta, counsel for the Petitioner, contends that since the Petitioner has been found eligible for settlement under the Scheme, they should be afforded an opportunity to make payment of the OTS amount of Rs. 51,90,780.66/-. He argues that the OTS amount was required to be paid within a period of six months from the date of acceptance of the proposal, which would expire only on 28th August, 2022. Therefore, the Petitioner still has the window open to avail the benefit of the Scheme. He emphasises that

as per the Scheme, payment of the OTS amount has to be done by way of instalments, but nonetheless, the Petitioner is willing to make the entire payment of OTS amount upfront, within a period of four weeks from today.

6. Mr. Gupta further argues that Petitioner's eligibility under the Scheme is not in controversy. The Petitioner has already accepted the OTS terms and is ready and willing to comply with the same. The Scheme is beneficial in nature and therefore, benefit thereof should not be denied on account of default that occurred for genuine and *bona fide* reason(s) that are beyond the control of the Petitioner. The cheque could not be honoured due to unforeseen circumstances as the Petitioner did not receive the expected payment from Haryana Development Authority. Nevertheless, the Petitioner had immediately requested SBI for permission to make the payment *qua* the dishonoured amount. He further states that no prejudice would be caused to the Respondents in case such a direction is issued by this Court. The Petitioner had earlier been regular in making payments in the loan account and there was no delay on its part. Owing to failure on part of the Government of Haryana in 2018-19 in making certain payments to the Petitioner, unfortunately some delay in repayment of loan facility arose. The Petitioner had requested for the time to clear the dues; however, Respondents wrongly declared the account as 'NPA'.

7. *Per contra,* Mr. Bheem Sain Jain, counsel for the Respondents argues that the terms of the Scheme have to be interpreted strictly. The benefit thereof cannot be extended to the Petitioner as its application has rejected for non-fulfilment of the pre-conditions provided under the Scheme. The

terms of the Scheme categorically provide that it is a non-gazetted monetary and non-discretionary scheme and the officers of SBI are prohibited from deviating from the terms and conditions contained therein. Since the Petitioner's application has been rejected, the only option now available to it is to avail benefit of any subsequent scheme that SBI may launch in future.

8. The Court has considered the contentions urged by the counsel. In the opinion of the Court, the undisputed fact remains that the Petitioner has not been able to fulfil the requirement of the Scheme. The Scheme provided the following timelines: -

"*ii. The timelines under the Scheme are as under:*

Sr. No.	*Timeline for*	*Proposed Dates*
1	*Intimation to all eligible borrowers should be sent before*	*31.01.2022*
2	*Last date for receipt of application*	*21.02.2022*
3	*Last date for conveying sanction*	*28.02.2022*"

9. Under the Scheme, concessions given are quite attractive, however, if the Petitioner was motivated to take benefit of the same, it ought to have to strictly complied with and adhered to the terms of the Scheme and made the payment of 10% of the OTS amount within the timelines referred above. The payment clause of the Scheme, reads as under: -

> "***5. <u>PAYMENT:</u>***
> *i. The borrower has to deposit 10% of the OTS Amount (As per the settlement formula point v) at the time of submission of application (in the form of a letter addressed to Branch Head) to indicate his willingness for SBI OTS SCHEME 2021, failing which the application will not be processed. In the event the application for OTS is rejected by the Bank, such payment, which shall be held in a separate account, will be refunded without interest within three months.*"

10. Petitioner's application has been rejected for reasons which are not in dispute. Petitioner may have been an eligible borrower; however, it does not mean that its application ought to be processed *de hors* the terms provided under the Scheme. The requirement for depositing 10% of OTS amount is a crucial and mandatory condition to indicate willingness of the applicant. With the dishonour of the cheque, the pre-condition for processing of the application had not been met; this proposal remained a non-starter. In fact, dishonour of the cheque exhibits Petitioner's lack of commitment, interest, or readiness to comply with the Scheme. At this stage, Petitioner seeks to impress upon the Court that it is in a position to pay entire OTS amount in one shot and that too before the expiry of the six-month period stipulated in the Scheme. However, such considerations cannot weigh with the Court to dilute the mandatory conditions provided in the Scheme, which have irrefutably not been met.

11. It must also be added that the Court can issue a mandamus if the action of the Respondents is found to be violative of the Scheme or there was manifest arbitrariness in the same. It is not for the Court to re-write the terms of the Scheme. The terms and conditions of the Scheme have to be implemented and if the pre-condition for processing the application has not been met, the Court cannot issue a mandamus overriding the same. Petitioner has failed to make out a case for this Court to invoke its extraordinary jurisdiction. The action of the Respondents in rejecting the application, is in consonance with the terms of the Scheme. No reason is seen for the Court to invoke the extraordinary jurisdiction vested under

Article 226 of the Constitution of India.

12. For the foregoing reasons, the Court does not find any merit in the present petition.

13. Dismissed.

SANJEEV NARULA, J

JULY 5, 2022/as