



\$~14

* IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Decision delivered on: 22.07.2022+ **LPA 775/2019 & CM No.53506/2019**

ORIENTAL BANK OF COMMERCE Appellant
Through: Mr S.K. Sharma, Adv.

versus

UNION OF INDIA & ORS Respondents
Through: Mr Ripu Daman Bhardwaj, Mr
Kushagra Kumar and Ms Aakriti Roy,
Advs. for UOI.
Mr Sandeep Sethi, Sr. Adv. with Mr
Deepak Khurana and Mr Abhishek
Bansal, Advs. for R-4.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MS. JUSTICE TARA VITASTA GANJU
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. This appeal is directed against the order dated 21.10.2019 passed by the Learned Single Judge in W.P.(C)No.10998/2019.
2. The Learned Single Judge, *via* the impugned order had quashed the lookout circular issued against respondent no.4/Harpinder Singh Narula.
- 2.1. Being aggrieved, the appellant has preferred the instant appeal.
3. On 16.01.2020, while issuing notice in the appeal, the following directions were issued *qua* respondent no.4/Harpinder Singh Narula:

“....Accordingly, we direct the respondent No.4 to surrender his



passport with the Registrar General of this Court on or before 17.01.2020 before 4:30 p.m. If there is any need for respondent No.4 to travel abroad, an application shall be preferred before this Court.”

4. The record shows (and something which is not in dispute), that the appellant-bank has executed a One Time Settlement (OTS) agreement with the borrowing company i.e., DSC Ltd.

4.1. Respondent no.4/Harpinder Singh Narula was, at the relevant point in time, a Director in DSC Ltd.

4.2. Admittedly, respondent no.4/Harpinder Singh Narula has also furnished a personal guarantee to secure the loan extended by the appellant bank to DSC Ltd.

5. Apart from respondent no.4/Harpinder Singh Narula, two other persons have furnished personal guarantees i.e., Mr Mohinder Singh Narula and Narinder Singh Narula.

5.1. Mr Narinder Singh Narula is the brother of respondent no.4/Harpinder Singh Narula, while Mohinder Singh Narula is his nephew.

6. It is not in dispute that under the OTS agreement, DSC Ltd. is required to pay to the appellant-bank Rs.145 crores, *albeit* in tranches.

6.1. The last tranche is due and payable on or before 31.12.2023, along with up-to-date interest.

7. Furthermore, the amounts due and payable under the OTS are secured. For this purpose, the following immovable properties have been given as security. The particulars of these properties along with the amounts that would have to be paid to secure release of the title deeds, are set forth in the table below:



<i>Particular of the property</i>	<i>Amount to be deposited for release (Rs. in Crore)</i>
<i>Commercial Unit at SCO 193-195, Sector-34A, Chandigarh</i>	<i>23.20</i>
<i>Commercial property at SCO 134-136, Sector-34A, Chandigarh</i>	<i>24.36</i>
<i>1/3rd Share in Residential Property at 3, Golf Links, New Delhi</i>	<i>69.43</i>

7.1. Admittedly, the title deeds concerning these properties are in the possession of the appellant bank.

8. We may note that, apart from the immovable properties detailed out above, towards security, a property described as Commercial Unit Nos. 343, 344 and 345, Sector 34A, Chandigarh, had also been offered as security.

8.1. Since the amounts payable against the said property have been made over i.e., paid to the appellant bank, the title deeds concerning this property have been released to the owner=company.

8.2. Besides this, it is also relevant to record that insofar as the immovable property described as property located at 3, Golf Links, New Delhi is concerned, a company by the name of Phoenix Asset Reconstruction Company Ltd. [in short “PARCL”] has a partial charge over it.

8.3. Although, PARCL has a charge over the said property to the extent of 2/3rd, the title deeds concerning the same are in the possession of the appellant bank.

9. In addition to the above, the record also shows that in the recent past,



respondent no.4/Harpinder Singh Narula had moved two applications in this Court for travelling out of the country. The first application moved, in this behalf, was CM No.15525/2022.

9.1. *Via* order dated 05.04.2022, permission had been granted to respondent no.4/Harpinder Singh Narula to travel out of the country on fulfilment of the conditions stipulated in the said order.

9.2. The record shows that respondent no.4/Harpinder Singh Narula complied with the conditions and, in fact, had returned to the country earlier than the end date indicated in the order dated 05.04.2022 i.e., 05.05.2022.

9.3. It is also apparent from the record that a second application i.e., CM No.22539/2022, as indicated above, was moved by respondent no.4/Harpinder Singh Narula, for traveling abroad for business purposes, *qua* which orders were passed on 11.05.2022.

9.4. This time around when permission was granted, it was made clear that the conditions which were stipulated in the order dated 05.04.2022 would apply *mutatis mutandis* to the said application of respondent no.4/Harpinder Singh Narula, as well.

9.5. Like in the first instance, respondent no.4/Harpinder Singh Narula, concededly, complied with the conditions set forth by this Court and returned to the country.

10. To be noted, when the appeal was taken up for hearing on 12.07.2022, it was suggested by Mr Sandeep Sethi, learned senior counsel, who appears on behalf of respondent no.4/Harpinder Singh Narula, that the appeal can be disposed of based on the condition that at any given point in time, one of the three guarantors, i.e. Mohinder Singh Narula, Narinder Singh Narula and respondent no.4/Harpinder Singh Narula, will remain in the country.



11. At this stage., we may point out that there is a fourth guarantor involved in the subject transaction entered into between the appellant-bank and DSC Ltd i.e., one Mr Manhad Narula. Mr Manhad Narula, we are told has also furnished a personal guarantee to secure the interest of the appellant-bank.

11.1. Mr Manhad Narula, though, is not located in the country. Therefore, when the conditions were stipulated in the orders dated 05.04.2022 and 11.05.2022, they were directed only against the guarantors who were located in the country.

12. It is in this background that we had called upon Mr S.K. Sharma, who appears on behalf of the appellant-bank, to take instructions as to whether the appeal could be disposed of, bearing in mind the suggestion made by Mr Sethi.

13. Mr Sharma returned with instructions on 15.07.2022 when he made the following submissions:

“2. Mr Sharma says that, broadly, the appellant-bank is in agreement with the proposal handed over on behalf of respondent no.4, save and except with regard to the following aspects:

(i) Mr Mohinder Singh Narula and Mr Narinder Singh Narula, the nephew and brother of respondent no.4/Mr Harpinder Singh Narula respectively, are not parties to the present proceedings, and therefore, a modality would have to be devised, to bind them as regards directions that are issued by this Court in the instant appeal.

(ii) In case the conditions set forth by this Court in terms of the proposal made, are breached, respondent no.4/Mr Harpinder Singh Narula, Mr Mohinder Singh Narula and Mr Narinder Singh Narula will ensure that the companies which own the subject properties (the details concerning which are set forth in the order dated 05.04.2022), shall hand over vacant physical possession of those properties to



enable the appellant bank to effectuate their sale, in pursuance of the One Time Settlement (OTS) arrived at between the concerned parties.”

13.1. Bearing in mind the submissions that Mr Sharma made on that date, we had put to Mr Sethi whether Mr Mohinder Singh Narula and Mr Narinder Singh Narula would file affidavits, to the effect, that they would remain bound by the directions issued by the Court in the instant appeal, having regard to the fact that they are not parties in the appeal.

14. Furthermore, we had also sought Mr Sethi’s response as to whether a condition could be incorporated in the order, concerning handing over of vacant physical possession of the subject properties over which the appellant-bank asserts security interest, to the appellant-bank without let or hinderance in event conditions are violated.

14.1. This suggestion was made to secure the interest of the appellant-bank, in case there was a breach of the OTS conditions and in that eventuality, a need arose to sell the immovable properties.

14.2. Mr Sethi, in no uncertain terms, had indicated that such conditions could be incorporated in the order. Accordingly, the undertakings by way of affidavits have been filed by respondent no.4/Harpinder Singh Narula, Mr Mohinder Singh Narula and Mr Narinder Singh Narula.

15. It is also relevant to note that Mr Narinder Singh Narula stands appointed as director in three companies i.e., Season Impex Pvt. Ltd, Devkusha Buildcon Pvt. Ltd. and Select Promoters Pvt. Ltd.

15.1. It is these companies that own the immovable properties referred to in paragraph 7 above.

15.2. For the sake of convenience, the relevant detail, concerning the



owner-company and the immovable property, over which, the appellant-bank asserts security interest, is set forth hereafter:

<i>Particular of the property</i>	<i>Owned by</i>
<i>Commercial Unit at SCO No. 193-195, Sector -34A, Chandigarh</i>	<i>Season Impex Pvt. Ltd.</i>
<i>Commercial Unit at SCO 134-136, Sector -34A, Chandigarh</i>	<i>Devkusha Buildcon Pvt. Ltd.</i>
<i>1/3rd Share in Residential Property at 3, Golf Links, New Delhi</i>	<i>Select Promoters Pvt. Ltd.</i>

16. Mr Sharma says that he has received copies of the undertakings filed [in the form of three separate affidavits] by the aforementioned persons with this Court.

16.1. Mr Sharma also affirms that the undertakings given by Mr Narinder Singh Narula, in his capacity as the Director of the three companies, referred to hereinabove, along with the relevant Board of Directors resolutions have also been received by him.

17. In view of the fact that the undertakings have been filed; at the behest of Mr Deepak Khurana, counsel-on-record for respondent no.4/Harpinder Singh Narula, Mr Mohinder Singh Narula and Mr Narinder Singh Narula are also arrayed as parties to the instant appeal.

17.1. Accordingly, they shall stand impleaded as respondent nos. 5 and 6, respectively.

17.2. Mr Sharma will file an amended memo of parties, for the purposes of good order and record, within two weeks from today.

18. Thus, having regard to the backdrop of the case and given the fact that the OTS proposal is being honoured and adhered to, we are inclined to



dispose of the appeal, as agreed, based on the following directions:

- (i) Respondent no.4/Harpinder Singh Narula, Respondent no.5/Mohinder Singh Narula and Respondent no.6/ Narinder Singh Narula [hereafter collectively referred to as “Narulas”] will ensure that the timelines for payment of monies under the OTS are scrupulously followed.
- (ii) In case any Narulas are required to travel abroad, they will approach the Registrar General of this Court for the release of their passports. The Registrar General will release the passport of such person(s) and, while doing so, it will ensure that at any given point in time, passports of one of the following persons i.e., Respondent no.4/Harpinder Singh Narula, Respondent no.5/Mohinder Singh Narula and Respondent no.6/Narinder Singh Narula remains in the custody of the court. Thus at any given time, one of the aforementioned three Narulas shall remain in the country.
- (iii) In case there is any breach of the conditions stipulated in the OTS, the appellant-bank will have liberty to approach the Court, for recall of the order passed by this Court.
- (iv) Till such time the obligations undertaken *via* OTS stand completely satisfied and /or discharged, in particular, monies payable to the appellant-bank are made over and all conditions are fulfilled, the title deeds concerning the immovable properties referred to in paragraph 7, will continue to remain in possession of the appellant-bank.
- (v) Lastly, in the event of there being a breach of the terms of the OTS agreement and the appellant-bank is required to sell the immovable properties, referred to in paragraphs 7, the owners of these properties i.e., Season Impex Pvt. Ltd, Devkusha Buildcon Pvt. Ltd. and Select Promoters Pvt. Ltd., will not create any impediment and will hand over vacant physical



possession of the said properties.

(vi) In view of the undertakings given by Respondent no. 5/Mr Mohinder Singh Narula and Respondent no. 6/Mr Narinder Singh Narula, they shall remain bound by the directions issued by this Court.

19. The captioned appeal is disposed of, in the aforesaid terms.

20. Consequently, the pending application shall stand closed.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

JULY 22, 2022/aj

Click here to check corrigendum, if any