2024:PHHC:059067-DB

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

CWP-9033-2019 (O&M)
Date of Decision: April 26, 2024

N.K. Matcon ..... Petitioner

Versus

Punjab National Bank and others ..... Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MS. JUSTICE AMARJOT BHATTI**

Present: Ms. Supriya Garg, Advocate for the petitioner.

Mr. Gaurav Goel, Advocate for respondent - Bank.

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LISA GILL, J.

1. Petitioner in this writ petition seeks setting aside of communications dated 01.01.2019 (Annexure P16) and 08.01.2019 (Annexure P18) whereby its proposals for One Time Settlement (OTS) have been rejected statedly in contravention of OTS Scheme dated 12.02.2016 (Annexure P7) and 15.06.2018 (Annexure P8). It is further prayed that direction should be issued to respondent – Bank to settle the account of petitioner in terms of said policies without taking into consideration the value of sold flats in the project in question. Status quo with regard to mortgaged property during pendency of writ petition is also sought.

2. Learned counsel for petitioner submits that residential project by the name of 'Aero Homes' was set up by petitioner in village Gazipur, Zirakpur. Same was in the shape of Group Housing over 20,500 square yards with 288

flats to be constructed. Project was divided into two phases. Financial facility was availed of from Punjab and Sind Bank in the year 2011-12 i.e. term loan of Rs.14 crores. Same was reduced to Rs.8 crores in March, 2014 when debt was taken over by Punjab National Bank i.e. respondent No. 1. Additional term loan of Rs.19.55 crores was sanctioned with total exposure coming to Rs.27.55 crores in March, 2014.

3. It is submitted that construction work was carried on in the most satisfactory manner with construction of 288 flats being completed. However, due to a glut in property market with demand dipping considerably in the area of Zirakpur and cost of construction rising, there was financial indiscipline on the part of petitioner leading to its account being declared NPA on 13.07.2015. Notice under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act') was issued on 14.07.2015 and notice under Section 13(4) of SARFAESI Act was issued on 29.07.2016. Order dated 02.08.2016 under Section 14 of SARFAESI Act was passed by learned District Magistrate, SAS Nagar. It is submitted that money received by petitioner out of sale proceeds of flats was deposited with Bank. 265 flats already stood sold and 15 of them were sold with consent of the bank. Partner of petitioner – Firm had to face criminal proceedings at the hands of buyers of flats on the ground that sale deeds were not being registred, however, this was due to action of bank not granting No Objection Certificate.

4. Proposal for OTS was submitted on 01.09.2018 (Annexure P10) for a sum of Rs.24.38 crores seeking time frame of one year to comply with proposed terms. Said proposal, it is stated, was submitted during pendency of

CRM-M-50754-2018 filed by petitioner's partner seeking concession of regular bail. However, petitioner after coming out of custody took stock of the entire position, submitted a revised OTS proposal dated 13.12.2018 for a sum of Rs.13.33 crores. Said offer was not considered favourably and petitioner enhanced OTS to Rs.15.87 crores. Learned counsel referred to various details which were sought by the Bank. Said information, it is stated, was provided vide communication dated 01.01.2019. Petitioner was informed that its OTS of Rs.15.87 crores cannot be considered due to the fact that on earlier occasion on 01.09.2018 higher offer had been submitted and for certain other reasons as are detailed in said communication. Petitioner was thereafter vide letter dated 08.01.2019 asked to increase the proposal to the level of previous OTS offer at least.

5. Learned counsel for petitioner submits that OTS proposal submitted by petitioner is not being considered in correct perspective and it is not understandable as to how any action can be taken against petitioner under SARFAESI Act once as per admitted case of the petitioner its earlier OTS offer of Rs.24.38 crores is yet to be decided. It is vehemently argued that it is incumbent upon respondent – Bank to decide OTS offer of Rs.24.38 crores before proceeding any further. Further subsequent proposals for OTS submitted by petitioner have been rejected on the ground of pendency of earlier offer of Rs.24.38 crores but said proposal is not being decided. It is, thus, prayed that this petition be allowed.

6. Learned counsel for respondent - Bank has opposed this writ petition. It is submitted that only object of petitioner is to delay the recovery proceedings. Petitioner has not discharged his liability towards bank and has

CWP-9033-2019 (O&M)

clearly diverted funds from purchasers of flats as well. It was denied being incorrect that petitioner had deposited entire amount obtained by it from purchasers in its account with the bank. Money obtained by petitioner from bank as loan and from the flat owners, it is submitted, has been misappropriated. Moreover, submission of different OTS proposals, as detailed in writ petition itself, clearly reveals lack of bonafides on the part of petitioner. As per notice dated 14.07.2015, amount due to the bank was Rs.28,21,04,599/- as on 13.07.2015 with interest w.e.f. 01.07.2015 and charges until deposit of payment. As on today, outstanding amount qua petitioner has necessarily increased manifold. Having once submitted OTS proposal for Rs.24.38 crores and thereafter submitting proposals for lesser amount and the latest offer being submitted by petitioner on 25.04.2024 for a sum of Rs.14 crores and then taking the pleas as above clearly reflect lack of bonafides on the part of petitioner. Learned counsel further submits that petitioner in a clever and illegal manner sold the flats except fifteen of them without obtaining No Objection Certificate from the Bank, making it difficult for the Bank to take possession from flat purchasers who were also duped by it. It is, thus, prayed that this writ petition be dismissed.

7. We have heard learned counsel for parties and have gone through file with their assistance.

8. Availing of financial facility by the petitioner, subsequent financial indiscipline and initiation of proceedings under SARFAESI Act are a matter of record. Learned counsel for petitioner strenuously argued that subsequent proposals submitted by petitioner, after proposal dated 01.09.2018, have been rejected only on the ground that petitioner's proposal for a sum of Rs.24.38

crores (dated 01.09.2018) was still pending, therefore, it is incumbent upon respondent – Bank to first and foremost decide proposal dated 01.09.2018. This argument raised on behalf of petitioner is absolutely devoid of any merit, hence rejected. Once petitioner itself has backed out in regard to proposal for Rs.24.38 crores submitted on 01.09.2018, it is indeed illogical and impractical on the part of petitioner to submit that this proposal should be decided by the respondent – Bank. Once said proposal dated 01.09.2018 no longer holds good inasmuch as even on 25.04.2024 proposal given by petitioner is for Rs.14 crores qua huge liability, it does not lie with petitioner to raise such an argument. Moreover, it is to be noted that borrower/guarantor does not have vested right to seek OTS. It has been held by Hon'ble the Supreme Court in judgment of **The Bijnor Urban Cooperative Bank Limited, Bijnor and others vs. Meenal Aggarwal and others, 2022 AIR (SC) 56** as under:-

> "9. Even otherwise, as observed hereinabove, no borrower can, as a matter of right, pray for grant of benefit of One Time Settlement Scheme. In a given case, it may happen that a person would borrow a huge amount, for example Rs.100 crores. After availing the loan, he may deliberately not pay any amount towards installments, though able to make the payment. He would wait for the OTS Scheme and then pray for grant of benefit under the OTS Scheme under which, always a lesser amount than the amount due and payable under the loan account will have to be paid. This, despite there being all possibility for recovery of the entire loan amount which can be realised by selling the mortgaged/secured properties. If it is held that the borrower can still, as a matter of right, pray for benefit under the OTS Scheme, in that case, it would be giving a premium to a dishonest borrower, who, despite the fact that he is able to make the payment and the fact that the Bank is able to recover the entire loan amount even by selling the mortgaged/secured properties, either from the borrower and/or guarantor. This is because under the OTS Scheme a debtor has to pay a lesser amount than the actual amount due and payable under the loan account. Such cannot be the intention of the Bank while offering OTS Scheme and that cannot be purpose of the Scheme which may encourage such a dishonesty. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

CWP-9033-2019 (O&M)

> 11. The sum and substance of the aforesaid discussion would be that no writ of mandamus can be issued by the High Court in exercise of powers under Article 226 of the Constitution of India, directing a financial institution/Bank to positively grant the benefit of OTS to a borrower. The grant of benefit under the OTS is always subject to the eligibility criteria mentioned under the OTS Scheme and the guidelines issued from time to time. If the Bank/financial institution is of the opinion that the loanee has the capacity to make the payment and/or that the Bank/financial institution is able to recover the entire loan amount even by auctioning the mortgaged property/secured property, either from the loanee and/or guarantor, the Bank would be justified in refusing to grant the benefit under the OTS Scheme. Ultimately, such a decision should be left to the commercial wisdom of the Bank whose amount is involved and it is always to be presumed that the financial institution/Bank shall take a prudent decision whether to grant the benefit or not under the OTS Scheme, having regard to the public interest involved and having regard to the factors which are narrated hereinabove."

9. Learned counsel for petitioner is unable to point out any ground which calls for interference. There is no merit in the argument raised on behalf of petitioner that OTS offer dated 01.09.2018 should have been decided in terms of prevalent policy. As perusal of fact reveals that petitioner has not in effect made any bonafide attempt to discharge its liability.

10. Keeping in view the facts and circumstances as above, writ petition is dismissed.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

April 26, 2024
rts

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No