

CWP-27677-2022 (O&M)

2024:PHHC:058588-DB

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

CWP-27677-2022 (O&M)

Date of Decision: April 29, 2024

M/S AUTONATION PVT. LTD.

..... Petitioner

Versus

SOUTH INDIAN BANK LTD. AND OTHERS

..... Respondents

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

Present: Mr. Rajiv Kataria, Advocate for the petitioner.

Mr. C.S. Pasricha, Advocate for the respondents.

LISA GILL, J.

1. Prayer in this writ petition is for setting aside notice dated 11.05.2022 (Annexure P18) and quashing proceedings under Section 14 of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act').

2. Learned counsel for petitioner submitted that petitioner – Company, which is in business of sale of machinery of small industrial cranes is registered as MSME under the Micro, Small and Medium Enterprises Development Act, 2006. Financial facility to the extent of Rs. 2 crores (Cash Credit limit) was availed of by petitioner from respondent – Bank in April 2016. Thereafter, housing loan was also taken by Directors of petitioner – company to the tune of Rs.17.71 lakhs on 29.01.2018. Cash Credit facility was renewed lastly on 04.07.2018. Property, as detailed in para 7 of writ petition, was mortgaged to secure both the loans. It was submitted that due to medical problem of a family

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member of the Director of petitioner, certain irregularities crept in Cash Credit facility. Subsequently, due to outbreak of pandemic COVID-19, there was greater financial indiscipline on the part of petitioner leading to declaration of accounts as Non Performing Asset (NPA) on 30.04.2021. Housing loan account of petitioner was declared NPA on 06.05.2021. Notice under Section 13(2) of SARFAESI Act was issued on 18.05.2021 and 10.06.2021 in respect to housing loan and Cash Credit facility respectively for recoveries of Rs.18,59,662.58 and Rs.2,17,04,202.87 as on 08.05.2021 and 09.06.2021, respectively. Petitioner submitted objections, which were rejected by respondent – bank, statedly in an illegal fashion vide communication dated 28.07.2021 and 23.08.2021 (Annexure P10 and P11) respectively. Petitioner, however, approached the bank with proposal for One Time Settlement (OTS) and for dropping of proceedings under SARFAESI Act.

3. OTS was approved in favour of the petitioner vide sanction letter dated 08.10.2021 (Annexure P13) for a sum of Rs.2.25 crores against total outstanding of Rs.2,35,63,865.45 as per both notices. Amount was to be deposited on or before 31.10.2021 thereby affording only a period of 23 days to the petitioner. Petitioner deposited sum of Rs.3,15,483.73 on 08.10.2021 and Rs.16,64,229.45 pursuant to sanction of OTS. Amount was not deposited in any specific account as OTS scheme was a consolidated one. However, respondent – bank without any intimation to petitioner deposited this entire amount in housing loan account and account was declared to be clear on 08.10.2021. Petitioner had intended to deposit entire OTS amount by selling property mortgaged with bank but on 03.03.2021 notification under Section 7A of Haryana Development and Regulation of Urban Areas Act, 1975 by State of Haryana, Town and Country Planning Department, was issued with area in question being included therein.

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Therefore, said property could not be disposed of without No Objection Certificate from the Director of Town and Country Planning, due to which buyers at hand, backed out. Request for extension of time was made by petitioner while depositing certain more amounts in loan account as detailed in para 16 of writ petition. It was submitted that possession notice dated 11.05.2022 was illegal issued in an arbitrary manner. Complete violation of applicable provisions of law in proceedings undertaken under SARFAESI Act is alleged by the petitioner. It is submitted that once consolidated OTS scheme was sanctioned, both accounts should have been clubbed together and amount be deposited qua both and, in any case, if housing loan account was settled, documents of secured assets should have been returned. As substantial payment has been deposited by petitioner in terms of OTS sanctioned in its favour, period for deposit of complete amount should have been extended by respondent – bank, especially keeping in view the effect of notification dated 03.03.2021 issued by Department of Town and Country Planning.

4. Learned counsel for petitioner also submitted that petitioner being MSME, it was incumbent upon respondent – Bank to have referred its case before Designated Committee prior to declaration of its account NPA. Thus, once declaration of account to be NPA is illegal, further proceedings should be quashed. It was submitted by learned counsel for petitioner that fresh proposal for OTS had also been submitted alongwith upfront amount of Rs.20 lakhs but same has not been decided by respondent – Bank. It was, thus, prayed that this petition be allowed.

5. Learned counsel for respondent - bank while raising objection qua entertainability of writ petition itself vehemently argued that proceedings undertaken against petitioner under SARFAESI Act are in complete consonance

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with applicable provisions. It was contended that OTS was sanctioned qua both the accounts for a sum of Rs.2,25,00,000/- to be paid on or before 31.10.2021, however, only a sum of Rs.65 lakhs was remitted as on 27.01.2022. Bank while taking a lenient view extended OTS till 15.03.2022, as per communication dated 25.02.2022 (Annexure R1). While referring to written statement filed on behalf of respondents No. 1 and 2, learned counsel submits that no payment was made by petitioner after 27.01.2022 despite extension being granted till 15.03.2022, therefore, argument that hardly any time was afforded to make the deposit is incorrect. It is denied that OTS dated 03.08.2021 was sanctioned on the basis of contingent sale of secured asset. It was further submitted that Section 7A of Haryana Development and Regulation of Urban Areas Act, 1975 is applicable to vacant land and assets secured whereas petitioner's land is not covered thereunder. Moreover, petitioner at no point approached respondent – bank with any buyer for tripartite sale. Be that as it may, it was contended that said grounds are, in any case, not sufficient for stalling proceedings under SARFAESI Act. Last One Time Settlement offer of Rs.1.49 crores submitted by petitioner on 12.02.2024, was declined on the same date itself taking into consideration that balance outstanding as on 11.02.2024 was Rs.270.13 lakhs and value of secured asset was higher than OTS amount offered by petitioner. Said rejection letter was duly received by petitioner on 12.02.2024 itself. Photocopy of rejection letter furnished in Court with copy thereof to learned counsel for petitioner was taken on record subject to just exceptions. In view of above, dismissal of writ petition was sought.

6. We heard learned counsel for parties at length and have perused the file. However, we do not find any ground whatsoever to interfere in this writ petition in exercise of jurisdiction under Article 226 of Constitution of India.

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This is so for the reason that SARFAESI Act is a complete code in itself providing for specific remedies for any grievances which may arise in respect to proceedings taken thereunder. Reference in this regard can be made to judgments of Hon’ble the Supreme Court in **Union Bank of India v. Satyawati Tandon and others, 2010(8) SCC 110; Varimadugu Obi Reddy v. B. Sreenivasulu and others, 2023(1) R.C.R.(Civil) 34,M/s South Indian bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771.** Hon'ble the Supreme Court in the case of **M/s South Indian Bank** (supra) held as under:-

“13. We may, however, reiterate the settled position of law on the interference of the High Court invoking Article 226 of the Constitution of India in commercial matters, where an effective and efficacious alternative forum has been constituted through a statute.

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14. A writ of certiorari is to be issued over a decision when the Court finds that the process does not conform to the law or statute. In other words, courts are not expected to substitute themselves with the decision-making authority while finding fault with the process along with the reasons assigned. Such a writ is not expected to be issued to remedy all violations.

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15. The object and reasons behind the Act 54 of 2002 are very clear as observed by this Court in **Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311.** While it facilitates a faster and smoother mode of recovery sans any interference from the Court, it does provide a fair mechanism in the form of the Tribunal being manned by a legally trained mind. The Tribunal is clothed with a wide range or powers to set aside an illegal order and thereafter, grant consequential reliefs, including re-possession and payment of compensation and costs. Section 17(1) of the SARFAESI Act gives an expansive meaning to the expression “any person”, who could approach the Tribunal.

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18. While doing so, we are conscious of the fact that the powers conferred under Article 226 of the Constitution of India are rather wide but are required to be exercised only in extraordinary circumstances in matters pertaining to proceedings and adjudicatory scheme qua a statute, more so in commercial matters involving a lender and a borrower, when the legislature has provided for a specific mechanism for appropriate redressal.”

7. Learned counsel for petitioner is unable to point out any extraordinary and exceptional circumstance which calls for interference by this

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Court. All pleas, as raised before us, are very well within the realm of consideration by learned Tribunal.

8. In respect to argument raised qua illegal rejection of petitioner’s request for OTS, we again do not find any ground for interference. It is a settled position that borrower or guarantor does not have a vested right for 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.

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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

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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. In the case of **State Bank of India Vs. Arvindra Electronics Pvt. Ltd., 2023(1) SCC 540**, Hon’ble the Supreme Court has categorically held that guarantor/borrower is not entitled to seek extension of period of OTS as a matter of right. In the present case, extension of OTS had been granted once by respondent – bank and petitioner’s subsequent offer for a sum of Rs. 149 lakhs qua outstanding amount of Rs. 225 lakhs has been rejected. It is undeniable that a positive direction for extension of period of OTS or for a fresh OTS is not to be issued, though it is always open to parties to arrive at any mutually acceptable settlement at any point of time.

10. Another argument raised by learned counsel for petitioner was that petitioner was MSME, therefore, its case should have been placed before Designated Committee before declaration of its account as NPA. This aspect is squarely covered against petitioner in terms of order dated 18.12.2023 in **CWP-21657-2022 (M/s Technico Strips and Tubes Pvt. Ltd. and another vs. Deutsche Bank AG and another)** and connected writ petitions.

11. Keeping in view the facts and circumstances as above, this writ petition is dismissed with liberty to petitioner to avail statutory remedy(ies) available to it in accordance with law. However, keeping in view the fact that

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interim order in favour of petitioner was granted on 02.12.2022 to the extent that there would be stay of dispossession of petitioner from secured asset, same shall continue for fifteen (15) working days to enable petitioner to avail remedy as may be available to it. Question of continuance or otherwise of interim order in petitioner’s favour shall necessarily be within the realm of consideration by the appropriate Forum which will be considered in accordance with law, without being influenced by any order, which may have been passed in this writ petition.

12. It is clarified that interim protection afforded to petitioner shall automatically stand vacated in the absence of any order by the appropriate authority.

13. Pending application(s), if any, stand(s) disposed of.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

April 29, 2024
rts

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