$~73 & 74

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

\+ W.P.(C) 4121/2024, CM APPL. 16832/2024 & CM APPL. 16833/2024

SANJAY SINGAL ..... Petitioner

Through: Mr. Vivek Kohli, Sr. Advocate with Mr. Sandeep Bhuraria, Mr. Monish Surendran and Ms. Bhavya Bhatia, Advocates.
Mob: 9717371601
Email: monish.surendran@zeus.firm.in

versus

SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA ..... Respondent

Through: Mr. Mohd Moonis Abbasi, Advocate

74

\+ W.P.(C) 4122/2024, CM APPL. 16834/2024 & CM APPL. 16835/2024

AJAY SINGAL ..... Petitioner

Through: Mr. Vivek Kohli, Sr. Advocate with Mr. Sandeep Bhuraria, Mr. Monish Surendran and Ms. Bhavya Bhatia, Advocates.
Mob: 9717371601
Email: monish.surendran@zeus.firm.in

versus

SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA ..... Respondent

Through: Mr. Mohd Moonis Abbasi, Advocate

% ***Date of Decision: 19th March, 2024***

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

CM APPL. 16833/2024 & CM APPL. 16835/2024 (For Exemptions)

1. Exemptions allowed, subject to just exceptions.

2. Applications are disposed of.

W.P.(C) 4121/2024 & CM APPL. 16832/2024
W.P.(C) 4122/2024 & CM APPL. 16834/2024

3. The present petitions have been filed seeking directions against the Small Industries Development Bank of India (respondent-bank) to issue No Objection Certificates ("NOCs") to GRJ Distributors and Developers Private Limited ("the Company") for sale of units in projects Avalon Garden, Avalon Plaza and Avalon Galleria, which are mortgaged in favour of the respondent-bank, so that the proceeds thereof, can be deposited with the respondent-bank for repaying the loan availed by the Company from the respondent-bank. The petitioners are the guarantors of the said loan availed by the Company.

4. Further, the petitioners also seek quashing of proceedings pending in National Company Law Tribunal ("NCLT") in *C.P. (IB) No. 71/ND/2024*, including the quashing of the order dated 13th February, 2024 passed by NCLT in *C.P. (IB) No. 71/ND/2024*.

5. The facts on the basis of the pleadings on record, are that the Company availed loan of Rupees Five Crore (Rs. 5,00,00,000/-) from the respondent-bank, to facilitate its business operations, vide Loan Agreement dated 20th November, 2015. The said loan of Rupees Five Crore (Rs.

5,00,00,000/-) was sanctioned by the respondent-bank vide Letter of Intent dated 20th November, 2015. In order to secure the said loan, the Company pledged title documents of various immovable properties, primarily comprising residential and commercial units within Avalon Garden and Avalon Plaza, located in Alwar, Rajasthan.

6. The Company applied for an additional Term Loan from the respondent-bank. Thus, the respondent-bank sanctioned a second loan in favour of the Company for a sum of Rupees Four Crore (Rs. 4,00,00,000/-), vide Letter of Intent dated 28th September, 2016. In pursuance to the Letter of Intent dated 28th September, 2016, a Loan Agreement dated 4th October, 2016 was executed between the respondent-bank and Company. In order to secure the second loan, the Company mortgaged its units in project Avalon Galleria, situated in Alwar, Rajasthan, in favour of the respondent-bank.

7. As per the terms of Letters of Intent, the Company is required to obtain NOC from the respondent-bank, as and when any of the units were to be sold, alienated, mortgaged or dealt in any manner.

8. Subsequently, the respondent-bank declared the loan account of the Company as Non Performing Asset ("NPA") on 10th June, 2019. Subsequently, an Original Application, i.e., *OA No. 285/2021* was filed by the respondent-bank against the Company and the petitioners under Section 19 of the Debts due to the Banks and Financial Institutions Act, 1993 for an amount of Rupees Six Crore Forty Two Lakh Forty Nine Thousand Seven Hundred Eighty Nine (Rs. 6,42,49,789/-).

9. The Company engaged in negotiations with the respondent-bank, proposing settlements and exploring avenues for loan repayment. The efforts included multiple requests for NOCs to facilitate the sale of mortgaged

units, allowing for the repayment of outstanding amounts. However, the respondent-bank did not give the necessary NOCs to the Company.

10. Thereafter, an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") was filed by the respondent-bank against the Company before the National Company Law Tribunal ("NCLT") in the year 2023 for a debt of Rupees Eight Crore Forty Six Lakh Thirty Three Thousand Fifty Seven (Rs. 8,46,33,057/-) arising out of the aforesaid loans, praying for initiation of Corporate Insolvency Resolution Process ("CIRP") proceedings against the Company.

11. Subsequently, a writ petition, being *W.P.(C) No. 1894/2024* was filed by the Company before this Court praying for issuance of NOCs for the units mortgaged to the respondent-bank. Thus, this Court vide order dated 9th February, 2024, in the interim, stayed the pronouncement of order by the NCLT in *C.P. (IB) 619/ND/2023*.

12. In March 2024, the respondent-bank initiated proceedings against the petitioners, invoking guarantees and seeking recovery of outstanding amounts. Thus, the present writ petitions have been filed.

13. On behalf of the petitioners, it is submitted that the refusal to issue NOCs to the Company by the respondent-bank, despite willing buyers ready to make payments directly to the bank, violates and infringes upon the right to livelihood under Article 21 of the Constitution of India.

14. It is submitted that the security provided by the Company to the respondent-bank significantly exceeds the outstanding loan amount, making repayment feasible, if the respondent-bank had provided the necessary NOCs. It was mutually agreed that the respondent-bank would issue NOCs for the mortgaged units upon the condition that all proceeds from their sale

be deposited with the bank, as per the terms of the agreement.

15. Despite the Company's willingness to repay the loans promptly with the bank's assistance, the respondent-bank has arbitrarily refused any recourse and rejected payments that would have fully satisfied the loans within a short time frame.

16. Per contra, learned counsel appearing for the respondent-bank submits that Section 128 of the Indian Contract Act, 1872 gives authority to the bank to initiate parallel proceedings against the petitioners, who are the guarantors of the Company's loans. It is submitted that the liability of the guarantors is joint, several and co-extensive.

17. It is further submitted that the petitioners have also been contesting matter before the NCLT. Thus, it is submitted that this Court ought to interfere only if some public law is involved. If the petitioners are aggrieved by order of NCLT, they should approach National Company Law Appellate Tribunal ("NCLAT").

18. It is submitted that Interim Resolution Professional ("IRP") has already been appointed by the NCLT pursuant to the CIRP proceedings pending against the Company. Thus, the petitioners should approach NCLT, which has the authority to decide whether the petitioners or the Company have committed any default.

19. Learned counsel appearing for the respondent-bank further submits that the Letter of Intents provided for issuance of NOCs for sale of units, when the Company and the petitioners were not in default. It is submitted that the account of the Company has already been declared NPA on 8th June, 2019. Further, the One Time Settlement ("OTS") Scheme floated by the Government of India was a Special Scheme, that was introduced during the

Covid-19 Pandemic, which the Company did not avail of. The said Scheme has already expired on 31st March, 2022. As on date, the Company is liable for payment of more than Rs. 9.15 Crores.

20. At this stage, learned counsel appearing for the petitioners submits that the proposal of the Company for repayment of loan be considered by the respondent-bank in view of the various requests made by the Company on this behalf, wherein the Company had sought NOC from the respondent-bank on various occasions for sale of its units mortgaged with the respondent-bank, for the purposes of repayment of loans.

21. This Court notes that by Letter dated 3rd February, 2024, the petitioner had written to the respondent-bank regarding issuance of NOC on account of the fact that the Company had confirmed buyers for certain units. Copy of letter dated 3rd February, 2024 issued by the petitioner to the respondent bank reads as under :

*"**From:** Ajay Singal ajays@ayalongruop.in*
Subject: GRJ
***Date:** 3 February 2024 at 12:55:27 PM IST*
***To:** csthanvi@sidbi.in*

Mr. C S Thanvi,

Chief General Manager (Asset Recovery & Legal),

Small Industries Development Bank of India,

Lucknow, UP.

Sir,

Reference: Loan account # D0000TC5 & # D0000VFU

Reg. Issue of No Objection Certificates (NOC's) for the sale of the following units in project Avalon Gardens, Bhiwadi, Rajasthan.

We have visited your Delhi office few weeks back & have met Mr. Mukesh Kumar, DGM in your Delhi Office & have been trying to contact him & yourself for last few weeks/days in regards to the above mentioned issue.

We have confirmed buyers for few units in project Avalon Gardens, Bhiwadi, Rajasthan.
The details are:

1. A2/1103 Kaamal Dayma

2. A4/1103 Kaamal Dayma

3. A5/804 Ajay Shishodia

4. A5/830 Ajay Shishodia

5. C3/1501 Sushil Jasra

6. C3/1502 Sushil Jasra

7. C4/1502 Rajesh Kumari

8. C4/1504 Rajesh Kumari

9. C5/1501 Ajay Shishodia

10. C5/1502 Ajay Shishodia

Considering the extreme stress in the real estate geography of Bhiwadi, Rajasthan, we have been able to find these buyers with great difficulty & efforts.

We have met & explained the market situation to Mr. Mukesh Kumar, DGM, Delhi office & have requested him to get a current independent 3rd party valuation of these units. 6 units our of these are the top of floor units which have negative sentiments & are very difficult to sell in tier 3 towns.

A payment of approx. 1.25-1.30 crs will be released from the sales of these units within a period of 40-45 days.

All these payments will be remitted directly to your account only.

Kindly issue the conditional Noc's for these units so this transaction of sale of these units may go thru & substantial part of your loan is repaid.

You are requested to kindly issue these No Objections Certificates (NOC's) on priority basis at earliest.

Ajay Singal"

22. Subsequently, by Email dated 19th February, 2024, the respondent bank wrote to the petitioner for holding a meeting to discuss the issue of NOCs. The Email dated 19th February, 2024 issued by the respondent bank reads as under:

*"**From**: SARB_NewDelhi <sarb_newdelhi@sidbi.in>*
***Date**: 19 February 2024 at 4:59:53 PM IST*
***To**: Ajay Singal <ajays@avalongroup.in>*
***Cc**: Pankaj Kumar Sahu <Pankaj@sidbi.in>, Roopali Gupta <roopalig@sidbi.in>*
Subject: Schedule for meeting: GRJ Distributors and Developers Pvt. Ltd.

Dear Sir,

This is in reference to your email dated 03.02.2024 addressed to CGM,HO for issuance of various NoC(s). In this regard, kindly note that the case relating to the captioned borrower is sub-judice and is pending for submission of reply by SIDBI before the Delhi High Court.
To discuss your concerns regarding your email, you are requested to kindly attend our Delhi Office so that a meeting can be conducted along with the Head Office through VC.
We propose to hold the meeting tomorrow (20.02.2024) at 3 p.m. However, if the date/time is not suitable to you kindly suggest a mutually convenient time for 21.02.2024.

Thanks and Regards:
SIDBI SARB, New Delhi
xxx xxx xxx"

23. This Court also takes note of the Letter dated 7th March, 2024 issued by the respondent-bank to the petitioner, wherein, the respondent-bank directed the petitioner to submit a Comprehensive Restructuring Plan. The relevant portion of the letter dated 7th March, 2024 issued by the respondent bank reads as under:

"xxx xxx xxx

Subject- Reply to your OTS offer dated 27.02.2024

Please have reference to your OTS proposal of Rs. 3.67 Crores along with your email dated 27.02.2024 which was sent by you pursuant to the VC meeting with the Branch and HO held on 21.02.2024. The meeting was conducted with a view to understand your concerns and way forward for stress reduction in the account in light of the Hon'ble Delhi High Court order dated 14.02.2024 vide which stay has been granted by the High Court on the pronouncement of Section 7, IBC admission order by NCLT. We hereby bring to your kind notice that the OTS proposal is not in consonance with either the commitments

> *given by you before the Hon'ble High Court/ order of Hon'ble High Court or with SIDBI during the meeting. In this regard, we wish to bring the following to your kind notice:*
>
> *xxx xxx xxx*
>
> *v. Keeping the aforesaid in view, however as a last chance, we advise that, in case the promoters are willing to resolve the default/insolvency in a time bound manner, by repayment of the dues under the comprehensive restructuring guidelines of SIDBI as per the RBI framework, one last opportunity is being provided to promoters/management to approach SIDBI with a concrete restructuring plan (including sale of mortgaged flats/units), along with related supporting documents and financial details of the company, net worth of the promoters, etc. within a maximum period of 7 days from the date of this letter.*
>
> *xxx xxx xxx"*

24. Pursuant to the aforesaid mail by the respondent-bank, the petitioner by Email dated 11th March, 2024 prayed for some time for submitting a Restructuring Plan. Subsequently, by email dated 18th March, 2024, the petitioner prayed for further time for submitting a Restructuring Plan.

25. In view of the aforesaid facts and circumstances, it is directed that the petitioners shall submit proposal and a Restructuring Plan to the respondent-bank as per the RBI Guidelines, within a period of one week. Upon the petitioners submitting a Restructuring Plan, the same shall be considered by the respondent-bank as per Banking Norms.

26. The present petitions are disposed of in terms of the aforesaid directions, along with the pending applications.

MINI PUSHKARNA, J

MARCH 19, 2024
ak