(2011) 07 PAT CK 0051

In the Patna High Court

Case No : CWJC. No. 6079 of 2011

Ajay Shankar Prasad — APPELLANT

Vs

State Bank of India and Others — RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4), 17

Citation : AIR 2011 Patna 155 : (2012) 1 BC 486

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Judgement

S.N. Hussain, J.—This writ petition has been filed by the petitioner for directing the respondents to accept the proposal of the petitioner for settlement of cash credit loan account of M/s. Lily Labs, Gaya (respondent No.4) in terms of the SBI OTS SME, 2010 Scheme (OTS Scheme, 2010), which is lying pending with the authorities of respondent-State Bank of India, Gaya since long without any response and also for directing the respondents to allow the petitioner to liquidate the dues of respondent No.4 in terms of the aforesaid OTS Scheme, which is applicable in this case and also for restraining the authorities of respondent-Bank from taking any coercive action for recovery of outstanding dues relating to the cash credit loan account of respondent No.4 under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter to be referred to as ''the Act'' for the sake of brevity) as the petitioner''s case was fully covered by the above named OTS Scheme.

2. Learned counsel for the petitioner stated that M/s. Lily Labs, Gaya (respondent No. 4) is a firm engaged in trade and marketing of medicine and drugs run by Smt. Kusum Devi (wife of the petitioner). The petitioner is the guarantor in the cash credit loan account availed by respondent No. 4, by which financial assistance was granted by respondent Bank in the year 2006.

3. It was claimed by learned counsel for the petitioner that respondent No.4 carried on its aforesaid business operations in sound state and maintained its account with respondent-Bank in proper order, but after October, 2008 respondent No.4 fell into some unavoidable difficult situation, due to which it was unable to maintain the orderly status of the cash credit loan account with respondent-Bank. Due to the said reason, respondent-Bank issued legal notice to the petitioner as well as to respondent No.4 through its Advocate on 26-2-2009, which, was replied by respondent No. 4. But since payment was not made, demand notice u/s 13(2) of the Act was issued by the Bank demanding the petitioner and respondent No.4 payment of arrears of the cash credit loan account and when the said payment was not made, a possession notice u/s 13(4) of the Act was issued on 1-11-2009. Learned counsel for the petitioner stated that the aforesaid steps in the proceeding under the Act were taken by the Bank despite the petitioner being in regular dealing with the respondents in connection with settlement of the cash credit loan account of respondent No.4, subject to settlement of certain issues regarding calculation of interest, charges and credit etc.

4. Learned counsel for the petitioner further submitted that the Corporate Centre of respondent State Bank of India came up with the aforesaid OTS Scheme, 2010, which was circulated vide letter dated 5-3-2010 (Annexure I) in all the circles of respondent-Bank inviting entrepreneurs carrying accounts, which have been declared non-performing assets (NPA) to submit their proposal for settlement of account under the Scheme. In addition to the circulation of the said Scheme, respondent-Bank particularly wrote letter dated 23-4-2010 (Annexure 2) to respondent No.4 asking it to submit proposal in terms of the said OTS Scheme for settlement of its cash credit loan account. The date fixed for settlement of the proposal was extended and within the extended time, the petitioner submitted a proposal for settlement of the cash credit loan account of respondent No. 4 in terms of the OTS Scheme vide letter dated 12-6-2010 (Annexure 3), which was received by respondent Bank.

5. Learned counsel for the petitioner also averred that in terms of stipulations contained in the OTS Scheme, 2010, he deposited 5% of the proposed settlement made by way of upfront money in three parts on 14-6-2010, 10-7-2010 and 26-7-2010 (Annexures 4 series), which were duly received by respondent Bank, but all of a sudden, letter dated 9-10-2010 (Annexure 5) was sent by the Bank to the petitioner and respondent No.4 without any whisper about the fate of the proposal submitted by the petitioner for settlement of the cash credit loan account of respondent No. 4 under the OTS Scheme. It was only stated in the said letter that since the cash credit loan account of respondent No.4 had become irregular since 5-1-2009, notices were sent under the provisions of the Act but in spite of that the said account was not regularized nor did they act as per the rules and hence having no way out, the Bank was breaking the short term deposit of the petitioner and was depositing the said amount in the cash credit loan account of respondent No. 4. After the said letter,

the authorities of respondent Bank again sent letter dated 2-12-2010 (Annexure R/3) asking the petitioner to repay the entire dues of Rs. 18,03,250.68 and interest thereon from 11-5-2009 till date within ten days from the date of receipt of the said letter or else the Bank will be constrained to initiate action under the Act.

6. Learned counsel for the petitioner argued that on 29-7-2010 (Annexure R/1) he wrote to the Bank about the deposit of Rs. 96,000.00 as required under the OTS Scheme, in which it was also stated that he was trying to liquidate the amount within March, 2011. In response to the said letter, the authorities of the Bank sent letter dated 14-8-2010 (Annexure R/2) asking the petitioner to give a definite programme of repayment of the compromised amount enabling the Bank to send approval letter to him.

7. Learned counsel for the petitioner further argued that the processing of the proposal of OTS Scheme was to be done only after deposit of 5% of the amount claimed but there was nothing under the said provision that the amount of 5% was to be deposited in one lump sum. Hence the petitioner has fully complied the said requirement and although he was required to pay only Rs. 90,000.00 he deposited Rs. 96,000.00 before 31-7-2010 for the said purpose i.e. within the time extended by the Bank vide letter dated 24-5-2010 (Annexure 6). After such deposit, the petitioner or respondent No. 4 had nothing to do and it was only for the authorities of the Bank to take steps regarding process etc. and to inform the petitioner for final payment under the OTS Scheme, but the authorities of respondent-Bank neither issued any acceptance letter nor sent any information to the petitioner or respondent No. 4 to make final payment as per the OTS Scheme, 2010.

8. In the said circumstances, learned counsel for the petitioner claimed that although the petitioner had submitted the proposal under the OTS Scheme, 2010 and had deposited the required amount of 5% within the time prescribed on the directions of the authorities of respondent Bank themselves, but even then they sat tight over the matter and did not send any information whatsoever about the fate of his proposal and issued the impugned orders directing him to deposit the full amount with interest without any whisper about the OTS Schame, 2010.

9. On the other hand, learned counsel for respondent-Bank submitted that the coverage of the OTS Scheme, 2010 dated 5-3-2010 (Annexure 1) detailed in Clause 1.1 thereof is with respect to all NPAs in the SME sector, classified as "doubtful" or "loss" on or before 31-3-2009 with outstanding balance of Rs. 1 crore and below on the date on which the account was classified as "doubtful" or "loss".

10. Learned counsel for respondent-Bank also argued that the letter of the Bank dated 23-4-2010 (Annexure 2) formed part of the OTS Scheme, 2010 (Annexure 1) and one of the conditions prescribed therein was to deposit the entire amount by 31-3-2011 by "SAMJHAUTA". Learned counsel for respondent Bank stated that

vide letter dated 12-6-2010 (Annexure 3) the petitioner accepted the offer of the OTS Scheme, 2010 with respect to the dues of respondent No. 4, in which it was specifically mentioned that he would be depositing Rs. 50,000.00 by 14-7-2010, whereafter the programme for payment of the remaining amount will be submitted on 22-7-2010, but the petitioner never submitted any repayment programme either in July, 2010 or even thereafter. He further stated that thereafter on 29-7-2010 (Annexure R/1) the petitioner again wrote to the authority of respondent Bank stating that he had deposited Rs. 96,000.00 as 5% of the total dues as required by the OTS Scheme, 2010 stating that he was trying to liquidate the amount within March, 2011, but he did not submit any repayment programme due to which the authorities of respondent Bank had to send letter dated 14-8-2010 (Annexure R/2) to the petitioner to immediately submit the payment programme to enable the Bank to send its approval. Thereafter, several months passed, but the petitioner dd not take any step and hence there was no option left for the authorities of respondent-Bank to take impugned action as the Bank is the custodian of public money and has to take all steps for its realisation in accordance with law.

11. Considering the entire pleadings and materials of both the parties as well as the arguments of their learned counsel, it is quite apparent that the cash credit loan account had been availed by respondent No. 4 from respondent Bank and the petitioner was guarantor. It is also not in dispute that although earlier respondent No.4 maintained and regularized the account, but from October, 2008 it became irregular and was declared NPA, whereafter a proceeding under the Act was initiated and demand notice u/s 13(2) of the Act was issued, to which there is nothing to show that any objection u/s 13(3A) of the Act was filed either by respondent No. 4 or by the petitioner and subsequently possession notice u/s 13(4) of the Act was issued by the authorities of respondent-Bank on 11-11-2009. There is no pleading that against the said notice, respondent No.4 or the petitioner ever filed an appeal u/s 17 of the Act before the Debt Recovery Tribunal.

12. It further transpires that several months thereafter the said notice of the OTS Scheme, 2010 was circulated by respondent-Bank vide letter dated 5-3-2010 (Annexure 1) and in furtherance thereto the authority of respondent-Bank sent letter dated 23-4-2010 (Annexure 2) to respondent No. 4 asking it to submit proposal for one time settlement of cash credit loan account as per the OTS Scheme, 2010. In the said letter the date of filing an application and payment of 5% of the total dues was given as 31-5-2010, which was extended by the Bank till 31-7-2010 vide letter dated 24-5-2010 (Annexure 6).

13. It is not in dispute that respondent No. 4 accepted the said proposal of one time settlement sent by the Bank within time vide letter dated 12-6-2010 (Annexure 3) as well as letter dated 29-7-2010 (Annexure R/1) and also deposited more than 5% of the total amount due before the date fixed i.e. 31-7-2010. There is nothing to show that the said amount could not have been

deposited in part. Hence when the last part of the said amount of 5% was deposited on 26-7-2010 i.e. well. within time prescribed, the deposit of the said amount was clearly legal and proper and was also accepted by the Bank without any objection.

14. In the letter of the Bank dated 23-4-2010 (Annexure 2), it has been specifically stated that after payment of the aforesaid 5% of the amount within prescribed time, proceeding was to be initiated by respondent-Bank on the proposal of respondent No.4 for settlement, but the entire amount of settlement has to be deposited by 31-3-2011. From the aforesaid facts, it is quite apparent that the petitioner having completed his part, the authorities of the Bank should have initiated proceeding for settlement of the amount and unless the amount for one time settlement was finalized by the Bank, there was no occasion for the petitioner to submit the programme of repayment of the settled amount. The said fact is also apparent from letter dated 14-8-2010 (Annexure R/2) sent by the Bank to respondent No. 4 as the amount of settlement was not disclosed by the Bank but it was asking the petitioner to submit the programme of payment of the settled amount.

15. From the OTS Scheme, 2010 dated 5-3-2010 (Annexure 1) as well as letter dated 23-4-2010 (Annexure 2) sent by the Bank to respondent No.4 also, it is quite apparent that the only requirement was that the settled amount should be paid by 31-3-2011 and there was no condition that any programme of payment shall be submitted by respondent No.4 or the petitioner.

16. From the aforesaid facts and circumstances, it is quite apparent that the plea of non-submission of programme for payment of the settled amount by respondent No. 4 has been raised by the authorities of respondent Bank as a lame excuse, meant only to conceal their own fault because it was their duty as per the one time settlement scheme and the follow-up letter of respondent Bank to start the proceeding of settlement after receiving the proposal and 5% of the total amount from respondent No.4, which was completed within time in July, 2010 itself and the petitioner had since then been awaiting for the communication from respondent Bank regarding acceptance of the proposal and fixation of the settled amount as per the OTS Scheme, 2010 which has not yet been supplied to him although even 31-3-2011 has lapsed.

17. Thus, the authorities of respondent Bank cannot legally take benefit of their own wrong as it is quite apparent that letter dated 23-4-2010 (Annexure 2) sent by respondent-Bank as per the OTS Scheme, 2010 was an invitation for offer and within the prescribed time the petitioner sent his offer/proposal along with the requisite money within time in July, 2010. Thereafter the authorities of respondent Bank were duty bound to inform the petitioner about acceptance of the offer and about the amount so settled by the Bank, but although a period of more than eight months had elapsed and even the date fixed in the Scheme and the letter of Bank expired, but no such information was given to the petitioner.

18. In the aforesaid facts and circumstances, this writ petition is allowed and the authorities of respondent-Bank are directed to accept the petitioner''s proposal for settlement of the cash credit loan account of respondent No. 4 in terms of the OTS Scheme, 2010 after processing the proposal /offer of the petitioner within two months from the date of receipt/production of a copy of this order and fixing the settled amount as per the OTS Scheme, 2010 deeming it to continue for the purpose of this case and inform the petitioner about the same within the said period directing/allowing him to pay the amount so settled within six months thereafter.

19. Since the claim of the petitioner and respondent No.4 is fully covered under the OTS Scheme, 2010, the authorities of respondent Bank shall not take any coercive action for recovery of the outstanding dues relating to the cash credit loan account of respondent No.4 under the provisions of the Act till the date of payment by the petitioner, which is going to be fixed by the authorities of respondent Bank in the light of the aforesaid directions.