(2019) 01 DEL CK 0192

In the Delhi High Court

Case No : Civil Writ Petition No. 13968 Of 2018, Civil Miscellaneous No. 54686 Of 2018

Asian Cargo Movers APPELLANT

Vs

Punjab National Bank RESPONDENT

Date of Decision : 15-01-2019

Acts Referred:
Constitution of India, 1950 — Article 23, 226

Citation : (2019) 01 DEL CK 0192

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Siddharth Chopra, Pradeep Mahajan, Sudhir Mahajan, Aditya Awasthi, Nishi Chaudhary

Final Decision : Disposed Off

Judgement

Vibhu Bakhru, J

1. The petitioner has filed the present petition, inter alia, praying as under:

"a. Issue a writ of mandamus or any other appropriate writ directing the Respondent Bank to give the details of the Compulsory OTS Scheme as proposed by the Respondent Bank.

b. Issue a writ of mandamus or any other appropriate writ directing the Respondent Bank to accept the proposal made by the Petitioners in terms of the aforesaid Compulsory OTS Scheme as proposed by the Respondent Bank."

2. The principal grievance of the petitioner is that his proposal for One Time Settlement (OTS) of dues owed to respondent no.1 (PNB) for a sum of Rs. 3.15 crores has been rejected by the PNB without assigning any reasons.

3. Ms Chaudhary, the learned counsel appearing for the PNB submits that there is no dispute with regard to the eligibility of the petitioner to apply under the OTS Scheme. She points out that the petitioner's OTS proposal for a sum of Rs.

3,15,00,000/- was rejected since, it was less than the Net Present Realisable Value (NPRV) of the assets charged to the PNB.

4. She referred to paragraph 9.3 of the "Policy of Bank on Recovery & Management of NPA", which indicates that the PNB is required to estimate the NPRV of the security charged with the bank, and accept an OTS amount for the said value or any sum exceeding the same. She submits that in the case of the petitioner, the PNB had assessed the NPRV of the securities charged at Rs. 10,87,17,000/-(Rupees Ten Crores Eighty Seven Lakhs and Seventeen Thousand only). She submitted that since, the petitioner's offer was below the NPRV of the charged assets, the same was rejected.

5. She further submitted that the petitioner was also required to make an upfront payment of 10% of the OTS amount. Since, in the present case the petitioner's offer was for an OTS amount of Rs. 3,15,00,000/-, the petitioner was required to make an upfront payment of Rs. 31,50,000/-. However, the petitioner had made no upfront payment.

6. Mr Chopra, the learned counsel appearing for the petitioner submitted that the calculation of the NPRV of the security charged as determined by the PNB is flawed, inasmuch as, the amount due from Container Corporation of India Ltd., which has been assessed by PNB at Rs. 8,93,52,000/- is far in excess of the amount recoverable as the said corporation has confirmed the balance outstanding at Rs. 39,87,794/-instead of Rs. 8,93,52,000/-. He further submits that the PNB's OTS scheme also provides for an option to provide upfront payment within a period of fifteen days from the date of approval of the OTS and, in certain cases, the same can be reduced.

7. I have heard the learned counsels appearing for the parties.

8. The learned counsel appearing for PNB has filed a copy of the Circular dated 28.11.2017, which is encloses therewith the "Policy of Bank on Recovery & Management of NPA", which includes provisions relating to an OTS with the borrowers, whose accounts have been classified as NPAs (Non-Performing Assets)

9. Paragraph 10.1 of the said policy provides for the minimum indicative value of OTS and is set out below:

"10.1 Minimum indicative OTS amount will be arrived at as under:

Situation

Minimum Indicative OTS Amount

1. Where NPRV > Recoverable Dues

Recoverable Dues.

2. Where NPRV < Recoverable Dues but more than Book Outstanding

NPRV of the securities

3. Where NPRV < less than Book Outstanding

NPRV of the securities

4. Where NPRV is Zero

Whatever maximum can be recovered

The basis for negotiation shall always be Memoranda Dues and should aim at recovering maximum share of the same.

10. Article 23 of the said policy relates to the down payment/upfront payment required to be made. Paragraphs 23.1, 23.2, 23.3,23.4 and 23.7 are relevant and are set out below:-

"23. DOWN PAYMENT/UPFRONT PAYMENT 23.1 Sanctioning authority should ensure that:

a) Frivolous OTS cases without upfront are generally not entertained.

b) Sources from which the OTS amount will be paid should be specifically mentioned instead of stereo-type statement like borrowing from friends & relatives.

Therefore, efforts should be made to get upfront payment to show borrowers' seriousness in settlement of OTS proposal as under:

S.No.

Details of OTS Offer

Upfront Amount

1.

OTS Offer up to Rs. 10 lacs

Upfront 20%

2.

OTS Offer more than Rs. 10 lacs up to Rs. 15 lacs

Upfront 15%

3.

OTS Offer more than Rs. 50 lacs

Upfront 10%

4.

23.2 The upfront amount may be kept in an 'Escrow'/ 'No Lien Account' with a mandate to appropriate the proceeds towards adjustments of the dues in the event of acceptance of OTS proposal.

23.3. Where due to genuine reasons, the borrower is not in a position to make upfront payment; the competent authority may consider the sanctions of OTS with lower/ no upfront on the merits of the case with proper justification. Cases where the borrower is unable to deposit the upfront amount beforehand due to various reasons, (for example, the OTS amount is to come from the sale of assets, induction of outside investor etc.) then on individual merits a reasonable time of 7-10 days may be given to him to deposit the amount simultaneously with the communication of sanction.

23.4 Even in such cases where it is considered that upfront amount is difficult to be insisted in advance (reasons to be recorded specifically), minimum amount to be deposited shall be insisted upon before considering the OTS proposal as follows:

OTS Offer

Upfront Amount

Upfront Amount where it is difficult to provide prescribed Upfront Amount

UptoRs. 10 lacs

20%

NIL

Rs. 10 lacs to Rs. 50 lacs

15%

Rs. 0.50 lacs

Rs. 50 lacs to Rs. 100 lacs

10%

Rs. 1.00 lacs

Rs. 100 lacs to Rs.500 lacs

10%

Rs. 5.00 lacs

Rs. 500 lacs& Above

Rs. 10.00 lacs

23.7 In cases where it is stipulated that upfront amount be recovered simultaneously, instead of holding back the sanction of OTS for want of upfront amount, formal sanction be conveyed on approval with a condition in payment terms to deposit the balance upfront amount within 15 days failing which OTS is treated as cancelled/withdrawn and conveyed to the borrower in writing. Such cases be diarized properly and in the event of non-compliance by the borrower, the failure notice of OTS be given promptly."

11. It is apparent from the above that the petitoner's OTS proposal was not in terms of the aforesaid scheme. The petitioner had neither offered the indicative OTS amount, nor made the upfront payment as required. In terms of paragraph 23.1, the petitioner was required to make an upfront payment of Rs. 31,50,000/-. However, the petitioner had not made any upfront payment whatsoever. The petitioner had offered to pay a sum of Rs. 3,15,00,000/- in the following manner:

"PAYMENT MODE

1. Rs 1,20,00,000/- (Rupees One Crores Twenty Lacs Only) to be paid by the sell of one property 17-C, Row House, Surya Vihar, Gurgaon within 45-60 days after execution of tripartite agreement between me, bank and proposed purchaser with the condition that purchase consideration shall be deposited directly with the bank. Buyer is available.

OR

We are ready to sell the same property through bank, if realize that amount is less and can be sold in higher rate, we are ready to allow bank for sale without any litigation and cost of expenses for sale will be bear by us.

2. Remaining balance of Rs. 195,00,000/- (Rupees One Crore and Ninety Five Lacs only), I will pay within one year with PLR, Interest charges applicable will be paid on monthly basis.

3. My firm is ready to remit all payment through your bank account and will start tagging @ 10% on all payment received from CONCOR.

UPFRONT PAYEMNT

1. In view of my firm present status (as mentioned above marked as "D") I request you to kindly accept my offer of Rs 10 Lacs (Rupees Ten Lacs) and payment of the same will be as follows:-

i. Within 15 days of formal sanction conveyed and with 45-60 days intends to sell the Gurgaon Property with Bank's permission then directly deposition entire amount to the bank within current Financial Year.

ii. With in 30 days from our proposal in case of letter written to CONCOR under SARFAESI ACT to be withdrawn along with tagging @ 10% with immediate effect."

12. It is apparent from the above that although, the petitioner had mentioned an upfront payment of Rs. 10,00,000/-, his proposal did not indicate that the same would be paid within a period of fifteen days. On the contrary, his proposal indicates that the payments would be made on sale of the property located in Gurgaon. It is relevant to note that the said property is in any event, mortgaged with the PNB.

13. The contention that the upfront amount could be reduced in terms of paragraph 23.3 of the OTS Scheme and, therefore, the petitioner was not required to make an upfront over and above Rs. 10,00,000, is erroneous. PNB could accept a proposal with the reduced upfront payment, in terms of paragraph 23.3 and paragraph 23.4 of the policy in question provided it was convinced that there are genuine reasons for the same. Further, even in such cases, certain upfront payment was required to be made in terms of paragraph 23.4, which the petitioner had failed to make.

14. It is also apparent that the OTS amount offered by the petitioner was much below NPRV of the charged assets as assessed by the PNB. The PNB had assessed the NPRV of the immovable property mortgaged with it at Rs. 10,87,17,000/-. In addition, PNB also has a charge on the book debts due to the petitioner. Even according to the petitioner, a sum of Rs. 39,84,794/- is realisable from Container Corporation of India Ltd.

15. In view of the above, the decision of the PNB to reject the OTS proposal submitted by the petitioner, cannot be faulted. It is also important to note that the question as to what is the NPRV of charged assets is a matter which is required to be considered by the PNB and is not subject to judicial review in proceedings under Article 226 of the Constitution of India. Plainly, this Court will not supplant its opinion with regard to the value of charged assets over that as assessed by the PNB.

16. However, since the petitioner contends that the NPRV of the charged assets is below the value assessed by the PNB, it would be apposite for the petitioner to make a representation or to give a fresh OTS proposal to the PNB along with the necessary documents in support of its contentions with regard to the NPRV of charged assets. The PNB will consider the same and take an informed decision.

17. This Court is informed that PNB had already commenced proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002. In this regard, it is clarified that the order passed by this Court permitting the petitioner to make a fresh OTS proposal is not to be construed as interdicting the said proceedings in any manner. The PNB will consider any such proposal if made by the petitioner without prejudice to its rights to continue the proceedings initiated by it under the aforesaid Act.

18. Needless to state that the petitioner is also not precluded from availing any remedies as available to him under the said Act.

19. The petition is disposed of. The pending application is also disposed of.

20. Order dasti under signature of Court Master.

