(2021) 10 KAR CK 0014

In the Karnataka High Court

Case No : Writ Petition No. 33016 Of 2011 (GM-RES)

M/S Jnana Sarovara APPELLANT

Vs

Housing And Urban Development Corporation Ltd RESPONDENT

Date of Decision : 29-10-2021

Acts Referred:

Companies Act, 1956 — Section 617
Constitution Of India, 1950 — Article 21A

Citation : (2021) 10 KAR CK 0014

Hon'ble Judges : Krishna S.Dixit, J

Bench : Single Bench

Advocate : Ganapathi Bhat, Udaya Holla, Varadaraj R Havaldar, S.G. Bhagavan

Final Decision : Partly Allowed

Judgement

Krishna S.Dixit, J

1. Petitioner a borrower whose OTS proposal has been rejected on the sole ground of the value of secured assets being higher than the loan outstanding, is knocking at the doors of Writ Court for assailing the same; this is a decade old legal battle between the borrower and the lender which apparently is an instrumentality of the State u/a 12 of the Constitution; it has the following fact matrix:

(a) Petitioner is a registered educational trust; respondent happens to be a Govt. Company as defined u/s 617 of the erstwhile Companies Act, 1956; it is Public Sector Undertaking; initially, petitioner got sanctioned from the respondent, a loan of Rs.4.60 crore for the construction of a residential school vide Sanction Letter dated 23.5.2003; later, by a subsequent Sanction Letter dated 2.7.2004, an addl. loan of Rs.4 crore was availed; both the loans are secured by the mortgage of properties.

(b) The debt repayment having suffered defaults, the petitioner made the request for restructuring of the loan; to show its bonafide, some amount was remitted too; the request for restructuring of the loan or for waiving of compound interest in the light of pleaded Global Recession was not acceded to by the respondent; ultimately, DRT proceedings were initiated in O.A.No.244/2009; this was followed by the SARFAESI proceedings, as well.

(c) Petitioner's W.P.No.1858/2009 (GM-DRT) was disposed off by a Co-ordinate Bench of this Court on 24.3.2010 along with respondent's W.P.No.1361/2009 directing the respondent to consider petitioner's request for rescheduling of the loan in terms of RBI Guidelines if the petitioner deposited Rs.3,00,00,000/- within six weeks the matter was carried in W.A.No.1525/2010 which came to be disposed off by the Division Bench on 23.04.2010 granting some more time for making the said deposit; petitioner in compliance paid Rs.3,00,00,000/-; however, petitioner's request inter alia for OTS was turned down on 28.9.2011 on the ground that the security value was higher than the loan outstanding; aggrieved thereby, the petitioner is knocking at the doors of the Writ Court for quashing of the said letter dated 28.9.2011 and for a direction to the respondent to consider its OTS representation dated 15.7.2001.

(d) After service of notice, the respondent having entered appearance through its Panel Counsel, resists the Writ Petition by filing the Statement of Objections; petitioner has filed its Rejoinder to the same; learned counsel for the petitioner seeks to falter the action of the respondent, in law; he takes the court through a bunch of correspondence that happened between the parties, in support of his submission; the Panel Counsel for the respondent per contra contends in support of the impugned communication whereby, the request for restructuring is turned down; he opposes issuance of any direction to the respondent, as sought for by the petitioner.

2. Having heard the learned counsel for the parties and having perused the Petition Papers, this Court is inclined to grant indulgence in the matter as under and for the following reasons:

(a) Petitioner, as already mentioned above runs a residential school of some repute emerges from the material on records; the respondent has lent the money with which petitioner has constructed the building for the residential school and for its infrastructural development; the repayment of loan is secured by mortgage of the property; it is a valuable property, is also true; thus, the loan is availed for educational purpose and not for some business adventures, is true; Article 21A of the Constitution guarantees Fundamental Right to Primary Education and the corresponding duty rests on the State; since the State is not in a position to cater to the educational needs of the communities, the private educational institutions are founded; they are regulated by the law like the Karnataka Education Act, 1983, etc; in the matter of loans granted by instrumentalities of State u/a 12 like the respondent, law needs to recognize some principle & policy difference between a commercial/business loan and the loan availed for educational purpose; in fact, the respondent does not carry on the banking business pure & simple, unlike the Commercial Banks; the impugned decision of the respondent does not bear this difference; it treats petitioner's loan on par with a commercial/business loan;; thus, there is an error apparent on the face of the record.

(b) The right to restructuring of the loan and the right to One Time Settlement (OTS) avails under the Extant RBI Guidelines and such a right is justiciable vide Apex Court decisions in M/s Devidayal Castings Pvt. Ltd. Vs. Haryana Financial Corporation, (2016) 16 SCC OnLine SC 1134; there was a Global Recession during the relevant period and the debts of many borrowers remained unpaid or defaulted, cannot be much disputed; courts have granted reprieve to the defaulting borrowers who were otherwise scrupulous and have shown bonafide; at least, this reprieve consisted of extension of the OTS timeline vide M/s Kemprode Pvt. Ltd Vs. The Recovery Officer, DRT & Another in W.P.No.3749/2007 disposed off on 1.8.2008; similarly, a lenient approach is shown by the Division Bench of this Court in more or less a comparable matter in M/s Hotel Vandana Palace Vs. The Authorized Officer & Another, 2011 SCC OnLine KAR 3928; the DB granted reprieve to the borrower inter alia because of breach of fair standard procedure; these Rulings were already there and therefore, the respondent ought to have adverted to the same; this having not been done, the impugned action of the respondent is infected with yet another legal infirmity.

(c) The respondent in its impugned letter dated 28.9.2011 has stated that the value of the security interest is very high and therefore, it did not favour the OTS proposal of the petitioner; the relevant text of the letter is reproduced below:

"Please refer to your above referred letters wherein you have requested for extending OTS in respect of the cited scheme. We have been directed to inform you that the OTS is not agreed to because the value of the properties mortgaged for the loan is much higher than the outstanding dues to HUDCO..."

The learned Panel Counsel appearing for the respondent though has filed a bulky Statement of Objections with several documents, is not in a position to show that the higher value of the security qua the quantum of loan accruing due per se can be a ground for rejecting the OTS proposal; this apart, the stand of the respondent is liable to suffer constructive res judicata since that ground was not pressed into service in the earlier rounds of litigation between the parties i.e., W.P.No.1858/2009 & W.P.No.1361/2009 and W.A.No.1525/2010, wherein the petitioner had earned some reprieve.

(d) The opinion of the respondent that the market value of the security interest is much higher, again is defective; in fact, Sri.H.D.Vasudev who happened to be a Chartered Engineer & Government approved valuer has worked out the distress value of the mortgaged property at Rs.14,36,18,727/-which is a little less than the outstanding due of Rs.15,84,21,000/-; this has been done on the basis of the extant Guideline Values prescribed by the Government; the respondent has got the valuation of the security interest on the basis of the Guideline Values that do not relate to the area in which the mortgaged properties are situate; this is yet another error apparent on the face of the record to the detriment of the petitioner.

(e) The conduct of the respondent falls short of Fair Procedure Standards; the reason on which the OTS proposal is turned down was available to respondent for opposing the petitioner's case in earlier round of litigation; however, that was not notified to the learned Single Judge nor to the Division Bench in petitioner's W.A.No.1525/2010 wherein extension for making the deposit of Rs.3,00,00,000/- was accorded; the petitioner made the said deposit which is evidenced by the acknowledgement dated 28.6.2011; in all, acting on the stand of the respondent, petitioner proposed to pay Rs.1174.55 lakh by way of OTS as against the outstanding balance of Rs.1582.94 lakh; the OTS quantification was made acting on the respondent's letter dated 15.7.2011; petitioner had deposited Rs.58 lakh vide Axis Bank Cheque dated 30.6.2011, in compliance with the pre-condition of depositing 5% of the OTS amount; in all, petitioner has deposited a sum of Rs.10,90,32,100/-; the balance of OTS amount payable is only Rs.84,23,000/-; the respondent appears to have kept in view the amount proposed in OTS in forming an opinion that the value of the security interest is much higher; thus, the impugned order has accumulated errors, warranting indulgence of this court.

(f) It is not that the petitioner is not at all at the fault; invariably in matters like this, some fault lies with the borrowers too; whether the gravity of the fault is so high as to deny the benefit of statutory OTS schemes, ought to have been examined by the respondent, keeping in view all the attending circumstances; as already mentioned above, the respondent happens to be a Govt. Company and it does not undertake the commercial banking unlike the regular banks; the State and its instrumentalities are expected to conduct themselves as the model persons in their dealing with the citizens; their actions have to be just & reasonable; after all, "justice as fairness" has to animate their actions; the officials of the respondent cannot act as the East India Company of the by-gone era, ours being a Welfare State; balancing of the competing equities between the parties warrants that the petitioner should pay another sum quantified at 10% of the OTS amount of Rs.11,74,000,55/-; this done, will put into the purse of the respondent an addl. sum of Rs.1,17,40,005/-; this is in addition to what the petitioner is liable to pay as the balance of the OTS sum and the interest accruing at the agreed rate thereon within a reasonable period; however, if the amount already deposited by the petitioner exceeds this computation, the excess needs to be refunded.

(g) It needs to be stated that ordinarily a Writ Court does not much interfere in matters pertaining to banking business since they involve professional prudence which as an ideal should be respected; Courts ordinarily are not well equipped to adjudge the right or wrong of the exercise of such prudence; it is a matter that essentially lies in the domain of the lender; however, at least two exceptions are recognized to this general norm: (i) where matter is governed by Reprieve Schemes having statutory flavour such as OTS Schemes, & (ii) the decision of the lender-bank which is an instrumentality of the State, as it is here, is so unreasonable & unfair as to suffer invalidation on that very ground; if respondent's action is adjudged on these grounds, it only warrants invocation of the Biblical quote: "Thou art weighed in the balances, and art found wanting".

In the above circumstances, I make the following:

ORDER

(i) This Writ Petition succeeds in part; a Writ of Certiorari issues quashing the impugned letter. A Writ of Mandamus issues to the respondent to consider & accept petitioner's OTS proposal in a sum of Rs.11,74,000,55/- (Rupees Eleven Crore Seventy Four Lakh & Fifty Five) only, forthwith.

(ii) Petitioner shall make good the deficit of the OTS amount, if any, along with interest at the agreed rate, within a period of four weeks and shall also pay to the respondent an addl. sum of Rs.1,17,40,005/- (Rupees One Crore Seventeen Lakh Forty Thousand & Five) only, within a period of eight weeks, from the date the respondent communicates the acceptance of OTS proposal.

(iii) All collateral cases and proceedings pending before any Court or Tribunal essentially concerning the same subject matter shall stand closed.

(iv) If the amount already deposited by the petitioner towards the loan account in question exceeds the amount payable in terms of this order, the excess part shall be refunded to him without brooking any delay.

(v) If the petitioner fails to avail the benefit granted in terms of this judgment, the impugned letter now quashed shall revive on it's own as phoenix and that the parties shall stand relegated to their earlier position and consequently, respondent shall be at liberty to take all coercive action for the repayment of the loan de hors OTS proposal.

Costs made easy.