(2022) 07 DEL CK 0097

In the Delhi High Court

Case No : Civil Writ Petition No. 1591 Of 2022

Prayag Polytech Private Limited & Anr — APPELLANT

Vs

State Bank Of India — RESPONDENT

Date of Decision : 22-07-2022

Acts Referred:

Citation : (2022) 07 DEL CK 0097

Hon'ble Judges : Sanjeev Narula, J

Bench : Single Bench

Advocate : Vipul Ganda, Chaitanya Gaurang Tripathi, Jaya Tomar

Final Decision : Allowed

Judgement

Sanjeev Narula, J

CM APPL.32079/2022 (seeking condonation of delay in filing counter affidavit)

1. For the grounds and reasons stated in the application, the same is allowed and disposed of. The counter affidavit filed on 19th July, 2022 is taken on record.

W.P.(C) 1591/2022

2. Briefly stated, Petitioner No. 1 – Prayag Polytech Private Limited had availed credit facilities from Respondent – State Bank of India ("SBI"). Subsequently, somewhere in 2018, after deterioration of Petitioner-company's financial condition and non-availability of funds, SBI declared Petitioner-company's account to be a Non-Performing Asset ("NPA") and initiated proceedings before the Debt Recovery Tribunal ("DRT"). [State Bank of India v. Prayag Polytech Private Limited & Anr. in (OA/ 490/2020).]

3. In the meantime, on 28th October, 2020, SBI sent a communication to Petitioner-company informing it of a One Time Settlement ("OTS") scheme of NPAs and offered to settle the total outstanding amount i.e., Rs. 7,15,72,836/- for Rs. 2,29,51,380.10/-. The said proposal was discussed by the board of

Petitioner-company in its meeting held on 10th November, 2020 and the acceptance was conveyed to SBI on 11th November, 2020.

4. Thereafter, SBI issued a letter dated 24th November, 2020 [hereinafter, "sanction letter"], setting-out the terms of the OTS. Since the controversy revolves around the construction of the said terms, for quick reference, the same are reproduced hereinbelow:

"Scheme for One Time Settlement of NPAs & AUCAs (Sill OTS 2020)

We refer to your letter no. NIL dated 11.11.2020 for settlement of your dues to the Bank under the captioned scheme. We are pleased to advise that your application under the captioned scheme has been accepted by the appropriate authority.

1 OTS amount payable under the OTS Scheme will be Rs.2,29,51,380,10 Only.

2. Application money of Rs. 11,47,570.00 paid by you will be appropriated towards your OTS amount.

3. Another 10% of the OTS Amount will have to be deposited by you as first instalment within thirty days from the date of sanction of OTS failing which the OTS sanction will be rendered infructuous and OTS treated as failed.

4. Another 10% of the OTS Amount will have to be deposited by you as second instalment of money within sixty days from the date of sanction of OTS failing which the OTS sanction will be rendered infructuous and OTS treated as failed.

5. The balance amount can he paid within 8 months from the date of this letter, i.e. 24/11/2020 (the validity period) together with interest @ 6 Months MCLR on reducing balance basis effective from the date of this letter, i.e. 24.11.2020 failing which the OTS sanction will be rendered infructuous.

6. However, no interest will be charged if the entire OTS amount is paid within 6 months from the date of this letter, i.e. 24 /11/2020.

7. You will be eligible for an additional incentive on the OTS amount, on making payment of the entire OTS amount as given below:

A :

Full payment of OTS amount by

Incentive on full payment of OTS Amount

Within one month from the date of sanction.

15%

Within two months from the date of sanction.

10%

By 31.03.2021

5%

B. Incentive on 50% payment of OTS Amount:

50% payment of OTS amount by

Incentive on full payment of OTS Amount

Within one month from the date of sanction.

7.5%

Within two months from the date of sanction

5%”

[Emphasis Supplied]

5. In terms of the above-extracted conditions no. 5 & 6, the OTS amount of Rs. 2,29,51,380.10/- could have been paid either (i) within six months without interest from the date of the sanction letter (condition no. 6); or (ii) within eight months with interest @ six-months Marginal Cost of Funds Based Lending Rate (“MCLR”) on reducing balance basis, effective from the date of the sanction letter (condition no. 5). It is further stipulated in condition no. 5 that failure of payment would render the OTS sanction infructuous.

6. Petitioner-company complied with the terms of sanction letter and made payments to SBI in the following manner:

STATE BANK OF INDIA-OTS

Date

Account

Amount

CHQ. No. / RTGS No.

13-11-

2020

BANK- ALLAHABAD

BANK (ALC NO.50501227919)

11,47,570.00

CHQ TRANSFER - 125805 - RTGS-SBIN-STATE BANK OF I- ALLA2O2O 11135014122517

23- 12-

2020

BANK- ALLAHABAD BANK (A/C

NO.50501227919)

22,95,139.00

TO TRANSFER - -RTGS-SBIN- SBI-ALLA202012235014494720

22-01-

2021

BANK- ALLAHABAD BANK (A/ C

NO.50501227919)

22,95,138.00

CHQ TRANSFER - 125823 RTGS-SBIN-STATE BANK OF I-ALLA202101225014809430

23-02-

2021

BANK- ALLAHABAD BANK (A/ C

NO.50501227919)

22,95,138.00

CHQ TRANSFE-STATE BANK OF INIDIBR52021022322346212

20-03-

2021

BANK.- ALLAHABAD

BANK (A/ C NO.50501227919)

22,95,

138.00

CHQ TRANSFE-STATE BANK OF INIDIBR5202 1032022770607

20-04-

2021

BANK- ALLAHABAD BANK (A/ C

NO.50501227919)

21,95,

138.00

CHQ TRANSFE-STATE BANK OF INIDIBR5202 1042023227515

21-04-

2021

BANK- ALLAHABAD BANK (A/ C

NO.50501227919)

1,00,000.00

CHQ TRANSFE-STATE BANK OFINIDIBH2 1111363589

13-05-

2021

BANK- ALLAHABAD

BANK (A/C NO.50501227919)

22,95,138.00

CHQ 00785794 TRANSFESTATE BANK OF INDIA

17-06-

2021

BANK- ALLAHABAD

BANK (A/C NO.50501227919)

22,95,138.00

TRANSFER STATE BANK OF

IN/ IDIBH21168377334/NEFT/SBIN TRANSFER TO 89634064780

19-07-

2021

BANK- ALLAHABAD BANK (A/ C

NO.50501227919)

22,95,

138.00

CHQ TRANSFERTGS/ SBIN STATE BANK OF IN/ IDIBR5202 1071924208554

23-07-

2021

BANK- ALLAHABAD BANK LA/c

NO.50501227919)

40,

13,586.00

CHQ NO. 785863

Total (Rupees)

11.00

7. Since the afore-noted payments were made in eight months, condition no. 5 became applicable and in terms thereof, the validity was to expire on or before 23rd July, 2021. The final payment of Rs. 40,13,586/- was made on 23rd July, 2021 by way of a cheque bearing no. 785863 drawn on Indian Bank (formerly Allahabad Bank).

8. The afore-noted cheque was duly encashed by SBI, yet, the loan account was not closed. Petitioner-company started following up with SBI for issuance of a no-dues certificate and closure of proceedings before the DRT, however, neither did SBI withdraw the DRT proceedings nor issued the no-dues certificate.

9. Aggrieved with SBI's failure to accede to its request, Petitioner-company has been constrained to approach this Court by way of the instant petition.

10. SBI has filed a counter affidavit strongly opposing the present petition. Ms. Jaya Tomar, Advocate, representing the Respondent-bank, submits that the petition is not maintainable as condition no. 5 of the sanction letter has not been complied with by Petitioner-company. She emphasises that Petitioner-company was obligated to deposit/ transfer the entire balance amount to SBI by 23rd July, 2021 – which they have failed to do. She explains that the statement of account filed by Petitioner-company reflects that the cheque for Rs. 40,13,586/- was cleared only on 27th July, 2021. Thus, the said amount stood transferred to SBI only on the that date, and not on or before 23rd July, 2021, as per condition no. 5, which proves that Petitioner-company did not deposit the entire amount under OTS sanction terms within the stipulated timelines. Any deposit after the cut-off date cannot revive the OTS which had become infructuous on account of non-payment. The scheme is non-discretionary and not discriminatory; the branch functionary has no discretion to extend the time or reconsider the conditions under the sanction letter. As regards the Petitioner-company's contentions that the payment was made to SBI on 23rd July, 2021, Ms. Tomar submits that the cheque is payable on presentation and encashment, and not on demand. Cheque no. 785863 was given by Petitioner-company to SBI on 23rd July, 2021 which was a Friday; and the same was sent for clearance only on the next working day i.e,. 26th July, 2021 (Monday) as the previous two days were bank holidays – being Saturday and Sunday. The payment received thereunder was beyond the validity period as the actual date of payment has to be construed to be 27th July,

2021, and thus, it is evident that the terms of sanction letter have not been satisfied. In such circumstances, Petitioner-company is not entitled to the reliefs sought for in the present petition.

11. Having considered the afore-noted contentions, in the opinion of the Court, the present petition deserves to be allowed for the reasons discussed hereinafter.

12. The dispute between the parties surrounds the construction of the terms of the sanction letter. It cannot be disputed that the amounts which fell due under sanction letter, stand paid. Controversy has arisen because the last payment made by Petitioner-company by way of a negotiable instrument (a cheque) on 23rd July, 2021 i.e. the last date of the validity period, stood credited into the account of SBI only on 27th July 2021. For the sake of clarity, it would be apposite to extract condition no. 5, which reads as under:

"5. The balance amount can he paid within 8 months from the date of this letter, i.e. 24/11/2020 (the validity period) together with interest @ 6 Months MCLR on reducing balance basis effective from the date of this letter, i.e. 24.11.2020 failing which the OTS sanction will be rendered infructuous."

13. Condition no. 5 clearly stipulates that the payment has to be made within the 'validity period'. This entails application of interest @ six months MCLR on reducing balance basis, from date of the sanction letter. Since Petitioner-company did not avail the benefit of condition no. 6, and instead, chose to pay the OTS amount in eight months, interest had to be calculated and levied by SBI. Petitioner-company had made payment of Rs. 22,95,138/- by 19th July, 2021. The remaining amount under the sanction letter, inclusive of interest, thus, had to be calculated for making the payment. Accordingly, in terms of condition no. 5 of the sanction letter, the total amount due as on 23rd July, 2021 (Rs. 40,13,586/-) was paid by cheque. This calculation has not been disputed by SBI in its counter affidavit.

14. The only dispute raised by SBI is that the cheque tendered by Petitioner-company was encashed on a later date past the 'validity period', and hence, condition no. 5 has been violated. In the opinion of the Court, this argument cannot be accepted for several reasons. When Petitioner-company tendered the final amount by cheque, SBI accepted the same without any condition. During the course of arguments, Ms. Tomar made an oral submission, without any supporting specific averment in the counter affidavit, that it could be a possibility that Petitioner-company simply deposited the cheque in the dropbox/ dak and moved away. However, the Court finds no mention of such contention in the counter affidavit. The Court also finds it hard to believe that the exact calculation of payable interest amount would have been done by Petitioner-company unilaterally. Nonetheless, SBI did not dispute the cheque even on the subsequent date, and instead, proceeded to encash the same. This is supported by the pleading in the counter affidavit, which reads as:

"Therefore, cheque was presented by the bank without any delay, on very first working day".

15. The above submission clearly suggests that SBI was in possession of the cheque and conscious of the fact that it had to encash the same without any delay. There is no explanation why the cheque was not sent for clearing on 23rd July, 2021 itself. Although it is orally argued that the same was perhaps for the reason that it was deposited by Petitioner-company after the clearing hours; however, again, there is no such averment in the counter affidavit. Further, a glaring fact that emerges in the instant case is that after deposit of the cheque, Petitioner-company followed up by sending an e-mail communication to the bank on 26th July, 2021, which reads as under:

"From: Milan Aggarwal

Sent: 26/07/2021 6:55 PM

To: SAR Retail North – New Delhi-I – SBI 5169 sbi.05169@sbi.co.in

Cc: Manish Aggarwal manish@prayagmb.com; SANJAY JHA jha@prayagmb.com

Subject: RE: OTS sanctioned letter dated 24.11.2020

Dear Sir

We would like to update you about the OTS sanction provided to us on 24/11/2020 after the proposal was accepted by us and upfront paid for in November 2020.

We have paid the entire amount as per the OTS guidelines/ Sanction and proposal letter exactly.

The last EMI amount has been paid on 23/07/2021 by way of cheque payment after having received the pending principal plus interest amount.

We were informed the Principal amount 34,42,705/- and the interest amount of 5,70,881.48/-

We have provided the cheque no. 785863 on 23/072021.

With this, we have honoured out OTS sanctioned to us in all aspects

You are requested to acknowledge this and provide the NOC accordingly.

We are providing the attachment of the total amount paid towards this.

Thanks

MILAN AGGARWAL"

16. The afore-noted communication has neither been replied to by SBI, nor has the same been categorially denied in its counter affidavit. Rather, there is only an evasive general denial of the corresponding paragraph of the petition in the counter affidavit. Several regular e-mail correspondences between the Petitioner-

company and SBI after each payment have been placed on record, and the same are not specifically denied by SBI.

17. After having received the afore-noted communication, there was radio silence on SBI's end. The first communication relied upon by SBI to defend its inaction is the letter dated 31st January, 2022 wherein for the first time, referring to a meeting held in the first week of January and on 31st January, 2022, it is contended that no-dues certificate cannot be issued towards the settlement of account. In view of the above, it emerges that SBI unconditionally accepted the payment; made no protest and credited the payment. Having accepted the payment and not offering any plausible explanation for the delay in responding can only lead to one inference– the stand now put forth by SBI is an after-thought.

18. That apart, the fact that the payment was made on 23rd July, 2021, is not controverted. The conditions of sanction letter do not stipulate that the payments have to be made only by way of electronic transaction, and not by way of negotiable instruments – such as cheques. Payment by way of cheque is thus presumed to be a valid mode of payment. The same, as observed above, was indeed accepted on 23rd July, 2021. Pertinently, if SBI was to consider the date of encashment of cheque as the date of payment, Petitioner-company should have been intimated of this stipulation in the sanction letter itself, or at least on the date when the cheque was accepted by SBI. Even on 23rd July, 2021 i.e. the date of payment, had the Petitioner-company been informed that the payment by way of cheque would be accepted only on the date of encashment, Petitioner-company could have resorted to other modes of making good the payment electronically. The cheque was encashed as there was sufficient balance in the Petitioner-company's bank account for encashment of the said amount. Mr. Vipul Ganda, counsel for Petitioner-company, states that the funds were also available on 23rd July, 2021. Be that as it may, the cheque has already been encashed and sufficiency of funds is immaterial.

19. SBI has a duty to act fairly and reasonably. The OTS cannot be rendered infructuous on fanciful reasons otherwise the intent of bringing an OTS scheme, and the ensuing consequences, would stand defeated. The reasons offered by SBI have trivialized the 'non-discretionary' aspect of the scheme.

20. In light of the fore-going, the Court is satisfied that Petitioner-company has complied with the terms of the sanction letter, and therefore, the petition deserves to be allowed. SBI is directed to forthwith issue the no-dues certificate in terms of the OTS sanction letter. The intimation of OTS shall also be brought to the notice of DRT by filing an appropriate application to bring closure to the ongoing proceedings against Petitioner-company.

21. With the above directions, the present petition is allowed.

