

Before Sanjay Kishan Kaul, CJ & Augustine George Masih, J.

GOBINDER KAUR AND OTHERS—Petitioners

versus

PUNJAB NATIONAL BANK AND OTHERS—Respondents

CWP No. 13384 of 2013

December 02, 2013

Constitution of India, 1950 - Art. 226/227 - SARFAESI Act, 2002 - S. 13(2) - Respondent Bank filed OA for recovery of loan amount - In order to save the mortgaged property petitioners before DRAT offered to deposit 50% of notice amount but no interim was granted - Auction however, failed as there was no bidder - OTS proposal was made by petitioners but the same was sought to be cancelled on an internal security despite the fact that the Chief Manager had financial powers to settle the dispute - Held, it was not within the domain of the Respondent Bank to have withdrawn the proposal which already stood concluded - Petitioners entitled to relief of quashing of subsequent notice and all steps taken thereto must be held to be bound by terms of OTS.

Held, that the OTS proposal having been made by the petitioners, the terms being set out by the respondent-Bank and the same being accepted by the petitioners to be deposited with the initial amount was sought to be cancelled on an internal scrutiny despite the fact that the Chief Manager had the financial powers to settle the dispute.

(Para 9)

Further held, that the main basis for the withdrawal was a single conditional offer received in a bid of Rs.165.11. This was not an unconditional offer and thus, could not really have been entertained. Not only that, it has been shown that thereafter payments were made from time to time by the auction purchaser at his own whims and fancies. The last such amount of Rs.38.83 lacs is stated to have been deposited on 12.6.2013 after acceptance of the OTS.

(Para 10)

Further held, that we are thus, clearly of the view that it was not within the domain of the respondent-Bank to have withdrawn the proposal which already stood concluded. Infact, as pointed out by the learned counsel for the petitioners, the legal proposition arising from evaluation of the property is not material and what is material is the policy decision of the OTS as enunciated in *M/s Sardar Associates and others Versus Punjab and Sindh Bank and others*, AIR 2010 Supreme Court, 218. The fact remains that despite having a decree in the year 2001, the respondent-Bank was not able to sell the asset and the first endeavour made under the said Act in December, 2003 also proved to be fruitless. Thereafter, for four years there has been silence on part of the bank when again an endeavour to sell the asset was being made, at which stage of time the petitioners as heirs of the guarantor/owner of mortgaged property made an offer as per OTS proposal which was accepted by the bank.

(Para 11)

I.P. Singh, Advocate, *for the petitioners*.

G.S. Anand, Advocate, for respondents No. 1 and 2.

Pankaj Gupta, Advocate, for respondent No. 3.

SANJAY KISHAN KAUL, CHIEF JUSTICE (ORAL)

(1) Rule DB.

(2) Learned counsels for respondents accept notice.

(3) At request of learned counsels for the parties, the petition is taken up for final disposal.

(4) The respondent No. 3-M/s Divpreet Organics Ltd. availed of a loan facility from respondent No. 1-Bank on 9.7.1997 which loan was secured by the mortgage of the residential house C-56, Ganesht Nagar, New Delhi, owned by the deceased father of the petitioners. The loan went into default with a result that the respondent-Bank filed Original Application for recovery of Rs.51,53,123/- against respondent No. 3-Company while also impleading late father of the petitioners. Only two legal heirs of late father of the petitioners are stated to have been impleaded without impleading the others and this suit was decreed on 2.11.2004.

(5) A second set of proceedings was initiated by the respondent-Bank under Section 13(2) the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the said Act') against the mortgaged property on 16.12.2003. It appears from the petition that thereafter there was silence and a second notice under Section 13(2) of the said Act was issued on 24.8.2007. The endeavour of the petitioners to challenge this action was not fruitful and even possession notice dated 21.9.2012 was issued. In order to save the property in the proceedings filed by the petitioners before the Debt Recovery Appellate Tribunal (DRAT), offer is stated to have been made for deposit of 50% of the notice amount, but no interim orders were granted. However, the auction failed as there was no bidder.

(6) The respondent No. 3-Company submitted an OTS proposal to the respondent-Bank for an amount of Rs. 1.02 crores under the policy of the respondent-Bank and after discussions, this amount was enhanced to Rs. 1.10 crores as per letter dated 13.5.2013 which was accepted on 16.5.2013 by the Chief Manager of the respondent-Bank dealing with the Asset Recovery Management Branch. The terms of settlement are reproduced herein under :-

"Dear Sir,

Reg: One Time Settlement (OTS) offer in NPA A/C : M/s. Divpreet Organics Ltd.

This is with reference to your letter dated 13.5.2013 vide which you have offered Rs. 1.10 Crore for final settlement of the captioned account. In this regard, it is submitted that your OTS proposal was put up to Competent Authority who has approved the same for Rs. 1.10 crores, with the following terms and conditions :-

-Rs. 10.00 Lac deposited with bank in 'no lien account' (which is kept in FDRs) shall be appropriated immediately on approval of OTS;

-Rs. 10.00 Lac shall be deposited within 24 hours from the date of conveying the approval of OTS;

-The remaining amount of OTS shall be deposited within three months from the date of conveying the approval of OTS.

-If the full OTS amount is not paid within the period of 3 months from the date of conveying approval of the OTS, it will be treated as cancelled. Default in payment as per sanction of OTS shall render the OTS as failed and all reliefs and concessions given under OTS shall stand withdrawn automatically and bank will be at liberty to continue its action under SARFAESI Act and recovery proceedings before Hon'ble DRT for recovery of bank's dues in terms of Recovery Certificate;

-Party shall withdraw their claims/counter claim/criminal case filed against the bank/its officials immediately.

-Charges on security/Title Deeds of the property mortgaged shall be released only after receipt of entire OTS amount along with interest, if any and after withdrawals of cases filed/pending against bank or/and its officials by the borrower and other interested parties in respective Courts, Tribunals, or any other forum.

-The terms of OTS shall be recorded before the Hon'ble DRT-II, Chandigarh immediately;

-Compromise is being considered by the bank as a commercial decision and shall have no bearing whatsoever on the ongoing criminal case/investigation, if any, being carried out by CBI/Police/Any other agency and the same shall proceed as per law;

You are requested to give your acceptance of terms and conditions of OTS and ensure to make payment as per terms of One Time Settlement.”

(7) The aforesaid letter was conveyed by e-mail on 17.5.2013 at 3:13 PM, a Friday. The acceptance was conveyed on the same day at 6:13 PM. The next day was a Saturday on which three amounts were deposited of Rs. 5 lacs, Rs.1 lac and Rs. 49,500 x 5, totalling to Rs. 8,97,500/-. The balance of Rs. 1,02,500/- was deposited on 20.5.2013, a Monday. The requirement of thus, deposit of Rs.10 lacs within 24 hours stands satisfied for the reason that the next day was a Saturday not a full working day on which the arrangement for money had to be made and thus, the

small shortfall was deposited on Monday. The respondent-Bank surprisingly after having received the amount of Rs. 10 lacs issued a letter dated 28.5.2013 seeking to resile from the same. The letter reads as under :-

“Reg: One Time Settlement (OTS) offer in NPA A/C : M/s. Divpreet Organics Ltd.

This is with reference to this office letter dated 16.05.2013 vide which One Time Settlement for Rs. 110.00 lakhs was approved in principle and same was conveyed to you along with other terms and conditions.

The OTS was submitted to Higher Authorities for its final approval and they have observed that there is no justification for acceptance of the OTS amount at Rs. 110.00 Lakhs.

Since the OTS amount is much less than realizable value of the mortgaged property/bid amount received by the Bank, it has been decided to cancel the One Time Settlement of Rs. 110.00 lakhs.”

(8) What is, however, sought to be conveyed by the aforesaid letter, in our view, is not the complete picture for the reason that it was not as if the officer who accepted the settlement acted beyond his financial authority. It is in fact a post facto scrutiny of the OTS proposal, despite the financial authority, which made the respondent-Bank rake up this issue as is apparent from Annexure-R-5 dated 21.5.2013 addressed to the Chief Manager by the AGM and reads as under :-

“Reg: Post facto scrutiny of OTS proposal in NPA Account of M/s. Divpreet Organic P. Ltd. at yours.

This has reference to your letter dated 18.05.2013 received at ours on 20.05.2013 whereby OTS proposal approved under your vested powers for Rs. 110.00 lac against recoverable dues of Rs. 104.44 lac and memoranda dues of Rs. 234.10 lac was submitted for post facto scrutiny.

On perusal of the contents of the proposal, we observe as under :

- In the brief history, it has been mentioned that the property was put on sale and one conditional bid for Rs. 165.11 lac against the reserve price of Rs. 165.00 was received and the bidder deposited more than Rs. 100.00 lac in E-auction account of the branch but there is no mention about the disposal of the bid and what about the amount deposited by the bidder.
- There is no justification for acceptance of the OTS amount at Rs. 100.00 lac when the bid of Rs. 165.11 lac was in hand and bidder has deposited more than Rs. 100.00 lac.
- No doubt as per OTS policy there is no loss but as per memoranda dues there is a loss of Rs. 124.10 lacs which is on the higher side even when the IP has been sold for Rs. 165.11 lac.
- Party deposited only Rs. 10.00 lac in the shape of FDR and Rs. 10.00 lac will be deposited within 24 hours and remaining amount of Rs. 90.00 lac will be deposited within 3 months. Whether post date cheques have been taken ?

Keeping in view the above facts of the case, we observe that OTS amount is less than NPRV of Rs. 166.86 lac. Efforts should have been to recover at least the minimum reserve price of Rs. 165.00 lac. As such, you are advised to give proper justification for acceptance of Rs. 110.00 lac against the minimum reserve price of Rs. 165.00 lac even when one conditional bid of Rs. 165.11 lac was received and bidder has deposited more than Rs. 100.00 lac.”

(9) The aforesaid shows that the OTS proposal having been made by the petitioners, the terms being set out by the respondent-Bank and the same being accepted by the petitioners to be deposited with the initial amount was sought to be cancelled on an internal scrutiny despite the fact that the Chief Manager had the financial powers to settle the dispute.

(10) It is also interesting to note that the main basis for the withdrawal was a single conditional offer received in a bid of Rs. 165.11. This was not an unconditional offer and thus, could not really have been entertained. Not only that, it has been shown that thereafter payments were made from time to time by the auction purchaser at his own whims and fancies. The last such amount of Rs. 38.83 lacs is stated to have been deposited on 12.6.2013 after acceptance of the OTS.

(11) We are thus, clearly of the view that it was not within the domain of the respondent-Bank to have withdrawn the proposal which already stood concluded. Infact, as pointed out by the learned counsel for the petitioners, the legal proposition arising from evaluation of the property is not material and what is material is the policy decision of the OTS as enunciated in *M/s Sardar Associates and others* versus *Punjab and Sind Bank and others (1)*. The fact remains that despite having a decree in the year 2001, the respondent-Bank was not able to sell the asset and the first endeavour made under the said Act in December, 2003 also proved to be fruitless. Thereafter, for four years there has been silence on part of the bank when again an endeavour to sell the asset was being made, at which stage of time the petitioners as heirs of the guarantor/owner of mortgaged property made an offer as per OTS proposal which was accepted by the bank.

(12) The result of the aforesaid is that the petitioners are entitled to the relief of quashing of the subsequent notice dated 7.6.2013 and all steps taken in pursuance thereto and must be held to be bound by the terms of the One Time Settlement dated 16.5.2013. The petitioners will, however, have to adhere to the terms of the settlement by making the payment within time stipulated, but the integrum time period from the date of cancellation of the proposal i.e. 28.5.2013 till date will have to be excluded for time period calculation.

(13) The writ petition is allowed in the aforesaid terms, leaving the parties to bear their own costs.

A. Aggarwal