

MAYFAIR BIOTECH PVT. LTD. v. CANARA BANK,

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice M.S. Ramachandra Rao and Mr. Justice Jasjit Singh Bedi.

MAYFAIR BIOTECH PVT. LTD. – Petitioner,

versus

CANARA BANK – Respondent.

CWP No.24149 of 2021

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 (54 of 2002) Section 13(2) - OTS - Petitioner had not shown inclination to improve the OTS proposal made by it and had categorically stated in its letter that it will not improve the mentioned amount - It is categorically pointed out that it had never turned down OTS offer and had asked the petitioner to improve the OTS offer since such offer made was not in tune of the recovery policy of the Bank - It also stated that the petitioner was always heard by the officers of the Bank and discussions were held specifically - Petitioner did not give any concrete proposal and did not even show its intention to stick to its previous offer of Rs. 5.00 Crore - Its intent seems to be to somehow or the other compel the Bank to agree to the OTS at a very low figure - No illegality in the action of the respondent in not accepting OTS proposal of the petitioner or in selling the petitioner's property.

Mr. Amandeep Singh Samra, for the petitioner. Mr. Rakesh Gupta, for the respondent-Bank.

M.S. Ramachandra Rao, J. - (10th December, 2021) - The petitioner is a Company registered under the Companies Act, 1956.

2. It had availed credit facility from Canara Bank (respondent) vide sanction letter dt. 03.07.2012 and the said Policy also incorporated a clause as regards term loan repayment which loan had been availed in March 2001.

3. According to the petitioner, there was a delay in release of term loan preventing the petitioner from commencing operations, buying machinery and also it was also disabled from meeting repayment obligations.

4. The loan accounts of the petitioner were declared as Non Performing Asset (for short - 'NPA') on 14.10.2013 and a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 (hereinafter referred to as 'SARFAESI Act') was issued demanding Rs. 12,81,05,737/- from

the petitioner.

5. Objections were filed by the petitioner to the said notice on 26.02.2014 and 01.03.2014 and the objections were also replied to by the respondent-Bank on 15.03.2014.

6. Thereafter, the Bank filed application under Section 14 of the SARFAESI Act before the District Magistrate, Una, who allowed the said application on 07.06.2014 and directed taking of physical possession.

7. Though the petitioner approached the Debts Recovery Tribunal, Chandigarh (for short - 'DRT') by filing SA No.138 of 2014, in the absence of interim order granted by the DRT, physical possession was taken by the Bank on 04.08.2014. Thereafter, SA No.138 of 2014 was withdrawn by the petitioner on 21.11.2016.

8. According to the petitioner, it had withdrawn it subject to a condition that its case would be considered for One Time Settlement (for short - 'OTS').

9. Auction notice was issued on 12.10.2014 for auctioning the mortgaged property of the petitioner fixing the date for auction on 26.11.2014 and the reserve price was fixed as Rs. 4,56,49,000/-, but the said auction could not be proceed on account of lack of bidders.

10. On 16.02.2015, the petitioner made OTS offer for Rs. 4.26 Crore.

11. The property was notified again for public auction on 11.06.2015, but even the said auction failed.

12. For the third time, auction was proposed on 29.02.2016 fixing the reserve price for Rs. 3,90,29,895/-, but it also failed.

13. On 19.12.2016, the petitioner along with a foreign Company, namely, M/s Mihama India Pvt. Ltd. offered to buy the mortgaged property and made an OTS offer on 19.12.2016 of Rs. 7 Crore.

14. The petitioner contends that the said proposal was not considered in proper perspective by the respondent.

15. The Bank then notified the 4th round of auction on 07.09.2018 with reserved price of Rs. 3.70 Crore, but even the said auction failed. Even at that time an OTS offer of Rs. 5 Crore was made by the petitioner on 17.9.2018.

16. According to the petitioner, the Bank had retained a cheque of Rs. 50 Lacs which was earlier deposited by it with the Bank and even made a complaint against the petitioner to the Central Bureau of Investigation, Shimla, but closure report was filed subsequently on 14.11.2018 in regard to the said complaint. According to the petitioner, certain findings were made in the said order regarding the conduct of the Bank.

17. The petitioner then made a complaint to the Hon'ble PMO vide letter dt. 17.03.2020 complaining against the Bank (respondent), and it's conduct owing to which the petitioner

had been forced to shut operations.

18. On 04.08.2020, the Bank replied to the complaint and again expressed willingness to consider an offer for OTS. It also returned a sum of Rs. 50 Lacs which it had retained since December 2016.

19. The petitioner contends that in December 2020, it had made another proposal for Rs. 3.50 Crore as OTS in the presence of the Executive Director, Delhi Zonal Office of the respondent-Bank, but it was not accepted.

20. Even thereafter, the petitioner made an OTS offer on 04.06.2021 proposing payment of Rs. 4.30 Crore, but the Bank did not accept it.

21. Consequently, the mortgaged property was put for auction vide notice dt. 26.10.2021 with the reserved price of Rs. 3,41,10,000/- and the auction was scheduled for 30.11.2021.

22. The petitioner then made a fresh offer for OTS on 10.11.2021 for Rs. 3.50 Crore.

23. The petitioner then filed this Writ Petition challenging the notice dt. 03.01.2014 issued under Section 13(2) of the SARFAESI Act as well as subsequent proceedings under the Act including the order passed by the District Magistrate, Una directing the taking of physical possession of the property mortgaged by the petitioner to the Bank, and seeks direction to the Bank to consider the OTS offer dt. 10.11.2021.

24. The petitioner also sought interim relief of stay of all further proceedings pursuant to the notice dt. 26.10.2021.

25. Counsel for the petitioner contended that the petitioner was always acting diligently and was making offer for OTS from time to time, but the respondent was not willing to accept the OTS proposal made by the petitioner at any point of time arbitrarily. He contended that the Bank has misused its power by retaining the cheque of Rs. 50 Lacs for the last more than 4 years after such deposit was made by the petitioner for consideration of OTS offer made by it and acted maliciously.

26. Shri Rakesh Gupta, counsel for the respondent-Bank refuted the said contentions.

27. According to him, the procedure under the SARFAESI Act had been validly followed and the subject property has been put for auction after repeated attempts to sell the property made earlier did not fructify.

28. He pointed out that the petitioner had started with an OTS offer for Rs. 4.26 Crore on 16.02.2015, which was raised to Rs. 5.00 Crore on 19.12.2016, but on 04.06.2021 petitioner had reduced the offer of OTS to Rs. 4.30 Crore, and on 24.11.2021 in the last OTS offer, he reduced it even further to Rs. 3.50 Crore; and this conduct of the petitioner is not bona fide.

29. According to the Bank, even on 03.01.2014, when notice under Section 13(2) of the

SARFAESI Act had been issued, the dues were Rs. 12,89,05,737/-, and as on 31.07.2021, the dues of the petitioner had ballooned to Rs. 53,24,28,010.33, and the offer of the petitioner to pay a mere Rs. 3.50 Crore as OTS is not acceptable to the Bank.

30. We find force in the contention of the counsel for the respondent.

31. The petitioner had not shown inclination to improve the OTS proposal made by it and had categorically stated in its letter dt.04.06.2021 that it will not offer beyond Rs. 4.30 Crore, which was further reduced to Rs. 3.50 Crore in its offer made on 10.11.2021. By that later date, the dues of the petitioner had increased to more than Rs. 53,24,28,010/- and the offer of the petitioner was not as per the OTS policy of the respondent-Bank.

32. In the letter dt. 04.08.2020 addressed by the respondent-Bank to the petitioner, it is categorically pointed out that it had never turned down OTS offer and had asked the petitioner to improve the OTS offer since such offer made was not in tune of the recovery policy of the Bank. It also stated that the petitioner was always heard by the officers of the Bank and discussions were held specifically in December 2019 and again on 17.03.2020, but the petitioner did not give any concrete proposal and did not even show its intention to stick to its previous offer of Rs. 5.00 Crore.

33. It appears that whenever there is a sale of the secured assets proposed by the respondent, the petitioner would come forward with an OTS offer which is very low as compared to the dues payable by it. It's intent seems to be to somehow or the other compel the Bank to agree to the OTS at a very low figure.

34. We therefore find no illegality in the action of the respondent in not accepting OTS proposal of the petitioner or in selling the petitioner's property.

Accordingly, the Writ Petition is dismissed. No costs.

Sd/- Jasjit Singh Bedi, J.

R.M.S.

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Petition dismissed.