

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5858 of 2020

M/s Naturals Dairy (P) Ltd. A Company registered under the Companies Act, 1956 having its registered office at 225, Ashoka Place, Exhibition Road, P.S.- Gandhi Maidan, Town and District- Patna through its Managing Director Sri Hemant Kumar Das son of Sri Awadhesh Kumar Das, Resident of 504, White House, Block- A, Budha Marg, P.S.- Kotwali, Town and District Patna, Bihar.

... .. Petitioner/s

Versus

1. The Bank of Baroda A Banking Company Constituted under the Banking Companies (Acquisition and Transfer of Undertakings), Act, 1970 having its head office at Mandvi, Baroda, through its Managing Director.
2. The Chief Manager Bank of Baroda, S.K. Puri Branch, Patna.
3. The Deputy General Manager Bank of Baroda, Regional Office, West Boring Canal Road, Patna.
4. The Chief Manager Bank of Baroda, S.K. Puri Branch, Patna.
5. The Chief Manager Regional Office Stressed Asset Recovery Branch (ROSARB), C/o Bank of Baroda Patliputra Branch 1st Floor, Saryug Complex, Nehru Nagar, Patliputra, Patna.
6. The Zonal Manager Zonal office, Bank of Baroda, Boring Canal Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Singh
	:	Mr. Nikhil Kr. Agrawal
	:	Ms. Aditi Hansaria
For the Respondent/s	:	Mr. Vivek Prasad

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
C.A.V. JUDGMENT

Date : 05-03-2021

1. The present writ petition has been filed seeking the following reliefs :-

(i) To issue an appropriate writ(s)/ order(s)/ directions(s) in the nature of Certiorari quashing the letter no. BOB:SARPTN: 2019-20 dated 06.02.2020, whereby and whereunder the respondents



have malafidely and arbitrarily refused to issue No Dues Certificate to the Petitioner unless and until further interest is paid.

(ii) To issue an appropriate writ/ order/ direction in the nature of Mandamus declaring that the demand of interest by the respondents upon the OTS amount is not in consonance with the Baroda MSME OTS Scheme No. BCC:BR:111/333 dated 09.07.2019 under which the OTS was sanctioned to the petitioner-Company.

(iii) To issue an appropriate writ/order/direction in the nature of Mandamus directing the respondents to forthwith issue a No Dues Certificate to the petitioner-Company as the complete amount of Rs. 240 lakhs under the OTS sanction has been duly paid by the petitioner-Company in terms of the Baroda MSME OTS Scheme.

(iv) To issue an appropriate writ/order/direction in the nature of Mandamus directing the respondents to also release all the original collateral security documents in favour of the petitioner-Company and release the personal guarantees of all the Directors/ Guarantors in their individual capacity.

(v) To issue an appropriate writ/order/direction in the nature of



Mandamus directing the respondents to remove all charge/mortgage/lien on the assets of the petitioner-Company by issuing appropriate letters to the concerned authorities including BIADA and MCA portal.

2. The brief facts of the case are that the petitioner-Company had established a factory in the year 2008 for manufacturing milk, *ghee, panner, dahi*, ice-cream and other related milk products. The petitioner- Company had then approached the respondent-Bank of Baroda for availing term loan advance for a sum of Rs. 200.00 lacs and the same was sanctioned by the respondent-Bank in the month of February, 2008 vide letter dated 12.03.2008. Without going into the details and history of the case, it would suffice to state here that ultimately, the petitioner had submitted a One- time Settlement Proposal vide letter dated 29.08.2019, addressed to the Chief Manager, Bank of Baroda, Asset Recovery Branch, Patliputra Colony, Patna, relevant portions whereof is reproduced herein below :-

“As per the discussion held whereby confirm and revise our One Time proposal from Rs. 1,90,000,00/- (Rupees One crore Ninety lac only) to Rs. 2,40,000,00/- (Rupees two crore forty lac only). This



amount of Rs. 2,40,000,00/- (Rupees two crore forty lac only) has been agreed by the officials present in this meeting. This is absolute amount including all.

As soon as the Bank agrees with the abovementioned proposal, we shall make a fixed deposit of Rs. 240.00 lacs and submit a zerox copy of the said FDR receipt in order to show my bonafides. Once an OTS sanction letter is received from the competent authority of the Bank, we shall submit/ deposit the said FDR receipt in original to the Bank towards full and final settlement of the loan amount with the assurance that a NO DUES certificate would be immediately issued in favour of the Company. It would also be incumbent upon the Bank to release all security documents in original mortgaged with the Bank. Furthermore, the Bank will withdraw all litigation from all the courts/ DRT.”

3. The respondent-Bank by its letter dated 24.09.2019 had sanctioned a compromise proposal for the petitioner in the following terms :-

“We are pleased to inform you that our higher authority has sanctioned Compromise Proposal offered by you in tune of Rs. 240.00 lakh (Rupees Two Crore



Forty Lac only) towards the full and final settlement of the account in name of M/s Natural Dairy Pvt. Ltd. having book dues of Rs. 61.97 lac in Term Loan Account (18630600001230) & Rs. 32.03 lacs in Term Loan Account (18630600001835) and Rs. 75.59 lac in Cash Credit Account (18630500000025) i.e. total Rs. 169.59 lac (Rs. One Crore Sixty Nine Lac Fifty Nine Thousand only), subject to the compliance of following terms and conditions :

- 1. The amount liable to pay towards the compromise is Rs. 240.00 lac (Rs. Two Crore Forty Lac only) as per the stipulated terms of the compromise.*
- 2. The total compromised amount shall be deposited immediately in compliance of the sanctioned settlement after acceptance of sanctioned terms and conditions by company through its authorized signatory.*
- 3. Sanction will be valid for 15 days from the date of sanction/acceptance.*
- 4. NOC will be issued in favour of borrower & guarantor only on receipt of full & final compromise amount as per the sanctioned terms and conditions and after the withdrawl of all the suits and litigations filed by you against the bank before any Courts/ Tribunals/ Forums/ any other Authority.*



5. If any of the terms and conditions of the sanction is not complied with, the compromise shall be treated as frustrated/lapsed and bank is free to proceed with all legal action including suit in DRT action under SARFAESI Act, 2002 and other legal recourses available to the Bank for recovering the total dues of the Bank. Besides, in case of frustration/lapse of the compromise settlement, the entire amount paid by the party shall not be refundable and the same shall be treated as a part of general recovery in the account. ”

6. In case of delay in repayment of compromise amount beyond the agreed period of settlement interest to be charged at 4% Over Base rate i.e. 13.40% from next day on the balance amount of compromise.

7. Any other condition as stipulated or accorded by Bank's Management Committee of Board/ Sanctioning Authority from time to time shall be applicable with respect to this compromise settlement.

8. All the guidelines in respect of settlement of Bank's dues by way of compromise as mentioned in the Bank's Recovery Policy shall be applicable.”

4. The petitioner is stated to have then made payments in the following manner:-



<i>Date of Payment</i>	<i>Amount in Rs.</i>
<i>30.09.2019</i>	<i>50,00,000/-</i>
<i>01.11.2019</i>	<i>25,00,000/-</i>
<i>29.11.2019</i>	<i>20,00,000/-</i>
<i>24.12.2019</i>	<i>50,00,000/-</i>
<i>30.12.2019</i>	<i>95,00,000/-</i>
<i>Total</i>	<i>240,00,000/-</i>

5. It appears that the petitioner, vide its letters dated 05.10.2019 and 29.11.2019, had made a request to the respondent-Bank to extend the validity of the sanction of the One-time Settlement Scheme, however the respondent-Bank by its letter dated 17.12.2019 had rejected the request of the petitioner and replied to the request of the petitioner in the following terms :-

“We refer to your captioned letter dated 29.11.2019, wherein you have made a request to extend the period of OTS sanction as accepted by you till 25.12.2019. Before advertizing/ deliberating on your request of extension for OTS sanction period we reiterate herein the terms of sanction dated 24.09.2019 pertaining to payment of OTS amount which was also accepted by you, as under :-

1. The total compromised amount shall be deposited immediately in compliance of the



sanctioned settlement after acceptance of sanctioned terms and conditions by company through its authorized signatory.

2. In case of delay in repayment of compromise amount beyond the agreed period of settlement interest to be charged at the rate of 13.40% from next day on the balance amount of compromise.

It is evidently clear in the accepted sanction terms and in our subsequent letter dated 04.10.2019 that as per the sanction dated 24.09.2019, one time payment of Rs. 240 lacs (Rupees Two Crore Forty Lakhs Only) has to be paid immediately and as per the terms of sanction a rate of interest of 13.40% is liable to be imposed on the residual amount not paid immediately on the acceptance.

It is to be informed you that your request of extension may be considered only within the four corners of the sanctioned compromise terms and as such you may deposit the entire remaining amount by 25.12.2019, as per your request, along with interest amount @ 12% on the balance amount as on 01.10.2019, as per the terms of sanctioned settlement. It is highly apropos to inform you that the validity of sanction stands till 31.12.2019 and as such you are requested to pay the aforesaid



amount accordingly otherwise the sanctioned compromise stands to be frustrated/ becomes void.”

6. Thereafter, the petitioner had filed a representation for waiver of interest amount, which was also rejected by the respondent-Bank by the impugned letter dated 06.02.2020, in the following terms:-

“We refer to the captioned matter as regard to waive off the interest accrued on the remaining compromise amount not paid by 30.09.2019 and paid up to 31.12.2019 and for issuance of ‘No Dues Certificate’.

The matter was put before the competent Authority for their consideration. In the matter, it is informed that waiver is not acceptable considering the sanctioned terms and conditions of the compromise and the acceptance of the same by the borrower.

Therefore, you are requested to make the payment of interest on the remaining compromise amount not paid up to 30.09.2019. “No Dues Certificate” with respect to the account may be issued on receipt of interest amount.”

7. The learned counsel for the petitioner Sri Sanjay Singh, assisted by Sri Nikhil Kr. Agrawal, Advocate has



submitted that though it is true that the petitioner in its One-time Settlement proposal dated 29.08.2019 had promised the moon to the respondent-Bank, nonetheless it was incumbent upon the respondent-Bank to have adhered to the guidelines pertaining to the Baroda MSME OTS Scheme, as contained in letter of the respondent-Bank dated 09.07.2019 (Annexure-5 to the writ petition), whereby and whereunder it has been stipulated that a borrower has to deposit 5% of the OTS amount at the time of submission of the application, whereafter it has to deposit 25% of the OTS amount as upfront money within 30 days from the date of sanction of OTS and the balance amount of the OTS is to be paid, without interest, within three months from the date of sanction of OTS, hence it is submitted that since the sanction of compromise proposal was made by the respondent-Bank vide letter dated 24.09.2019, the petitioner was entitled to make payment of the balance amount upto 24.12.2019 and in fact, the entire payment has in fact been made by 30.12.2019, hence at best, interest can be charged on the balance amount for the period 25.12.2019 to 30.12.2019 and not for the period starting from 01.10.2019 to 30.12.2019.

8. *Per contra*, the learned counsel for the respondent-Bank has submitted that the present case has a chequered history, inasmuch as initially, SARFAESI proceeding was initiated



against the petitioner as far back as in the year 2010 and the same was assailed on one ground or the other by the petitioner by way of filing several writ petitions. The loan account of the petitioner was classified as non-performing assets as back as in the month of December, 2010, proceedings were initiated under **Section 13(2) of the SARFAESI Act, 2002** and a notice dated 03.01.2011 was issued thereafter, however the same was challenged by the petitioner in CWJC No. 569 of 2011, whereupon interim protection was granted to the petitioner vide order dated 14.01.2011. The said writ petition was ultimately disposed of on 29.08.2013. The petitioner was then given sufficient opportunity to settle the matter as per the guidelines of the respondent-Bank and several meetings were held in between the parties but the petitioner-Company never fulfilled its commitment, resulting in the Bank issuing a notice dated 23.12.2014 under Section 13(2) of the SARFAESI Act, 2002, asking the petitioner to discharge the liabilities of the Bank totalling to a sum of Rs. 2.15 crores approximately, whereafter the petitioner had filed an objection under **Section 13(3-A) of the SARFAESI Act, 2002**, which was rejected by the Bank on 04.03.2015. The petitioner had again challenged the SARFAESI proceedings in C.W.J.C. No. 3044 of 2015, followed by initiating contempt proceedings bearing M.J.C. No. 611 of 2017, however the same was subsequently



withdrawn by the petitioner. Again the Bank had initiated SARFAESI proceedings against the petitioner by giving a notice dated 25.07.2018. The petitioner is stated to have earlier also entered into a One-time settlement on 07.11.2017 and the petitioner was asked to pay the entire amount by 31.01.2018 but it could only pay a sum of Rs. 30 lacs approximately by 15.01.2018, hence the petitioner was granted time to pay the balance amount by 31.01.2018 but again the petitioner committed default and instead, challenged the SARFAESI proceedings in C.W.J.C. No. 19008 of 2018, wherein the Hon'ble High Court directed the petitioner to make endeavours to deposit a sum of Rs. 1 crore within a period of one week but the petitioner did not do so and after sensing the pulse of the Hon'ble Court, it withdrew the said writ petition on 15.10.2019, with liberty to approach the respondent-Bank for redressal of his grievances.

9. The learned counsel for the respondent-Bank has further submitted that thereafter, the petitioner had approached the respondent-Bank by submitting One-time Settlement Proposal dated 29.08.2019, as aforesaid and he had undertaken to pay the lump-sum compromise amount of Rs. 240 lacs in one go, however the petitioner had again defaulted and instead of depositing the entire sum of Rs. 240 lacs on or before



30.09.2019, it could ultimately deposit the said sum of Rs. 240 lacs only by 30.12.2019, resulting in charging of interest to the tune of Rs. 4,83,452/-, in terms of the aforesaid letter of the respondent-Bank dated 24.09.2019, whereby and whereunder the Bank had sanctioned compromise proposal for the petitioner herein.

10. I have heard the learned counsel for the parties and gone through the materials available on record. It is clear from the Proposal submitted by the petitioner for One-time settlement vide its letter dated 29.08.2019 that the petitioner had undertaken to immediately deposit a sum of Rs. 240 lacs upon receipt of OTS sanction letter from the competent authority of the Bank and in pursuance thereof, the respondent-Bank had sanctioned the compromise proposal for the petitioner by not only stipulating therein that the petitioner would be liable to deposit a sum of Rs. 240 lacs, as per the OTS proposal of the petitioner herein but the Bank had also accommodated the petitioner by being gracious enough to grant 15 days' time to the petitioner to deposit the said sum of Rs. 240 lacs i.e. by 30.09.2019, however it had been stipulated in the said sanction letter dated 24.09.2019 itself that in case of delay in repayment of the compromise amount, beyond the agreed period of settlement, interest shall be charged @ 4% over base rate i.e. @ 13.40% from the next day on



the balance amount of compromise.

11. This Court finds from the records of the present case that the petitioner has not only defaulted in honouring its One-time settlement Proposal but has also failed to honour the terms and conditions of the letter of the respondent Bank dated 24.09.2019, whereby and whereunder the compromise proposal had been sanctioned by the respondent-Bank for the petitioner, inasmuch as it has not only failed to deposit the aforesaid sum of Rs. 240 lacs in one lump-sum but has also failed to deposit the same on or before 30.09.2019 and instead has deposited the said sum of Rs. 240 lacs only by 30.12.2019, hence I find that the respondent-Bank has rightly charged interest, as agreed, on the balance compromise amount, not paid on or before 30.09.2019. As far as reference of the learned counsel for the petitioner to the One- time Settlement Scheme of the respondent-Bank and the guidelines issued by the respondent-Bank, pertaining to the Baroda MSME OTS Scheme, as contained in letter dated 09.07.2019, is concerned, firstly this Court finds that the respondent-Bank had sanctioned the compromise proposal vide letter dated 24.09.2019 in terms of the One-time settlement Proposal submitted by the petitioner before the respondent-Bankvide letter dated 29.08.2019 and secondly, the One-time settlement Proposal submitted by the petitioner before the



respondent-Bank as also sanction of compromise proposal are not in terms of the aforesaid Baroda MSME OTS Scheme, as contained in letter of the respondent-Bank dated 09.07.2019, nonetheless, the said letter dated 09.07.2019 itself contains a caveat to the following extent :-

“The above list of action points is illustrative only and not exhaustive. Zones/ Regions/ Branches may draw action plans as deemed fit according to their locations/ circumstances.”

12. Yet another aspect of the matter is that the petitioner has not challenged the letter the of the respondent-Bank dated 24.09.2019, whereby the respondent-Bank has sanctioned the compromise proposal for the petitioner, hence it does not lie in the mouth of the petitioner to now turn around and vent his grievance regarding charging of interest by the respondent-Bank for the delay caused in repayment of the compromise amount, beyond the agreed period of settlement.

13. This Court further finds that the petitioner has been a perpetual defaulter and has left no stone unturned to evade making payment of the outstanding dues of the respondent-Bank and now, when the Compromise Proposal has been sanctioned by



the respondent-Bank vide letter dated 24.09.2019 in terms of the proposal submitted by the petitioner vide its letter dated 29.08.2019, it is still maliciously and unnecessarily engaging in vexatious litigation without there being any legal basis to do so.

14. Having regard to the facts and circumstances of the case and for the grounds mentioned hereinabove in the preceding paragraphs, I do not find any merit in the present writ petition, hence the same stands dismissed.

(Mohit Kumar Shah, J)

rinkee/-

AFR/NAFR	AFR
CAV DATE	22.02.2021
Uploading Date	05.03.2021
Transmission Date	NA

