Appeal Dy. No. 107/2024

Bank of India Vs. M/s Famica Press Industries Pvt. Ltd.

Present: Shri Alok Rai, counsel for the appellant-Bank,
Shri Ashok Kumar Yadav, counsel for the respondent,

ORDER
Date of Pronouncement: 13.05.2026

The present appeal was heard and reserved by this Appellate Tribunal vide order dated 02.04.2026 for orders.

Learned counsel for the appellant-Bank submitted that the appellant-Bank had filed an original application no. 69 of 2017 for recovery of Rs.19,01,79,877/- along with pendentalite and future interest, which was allowed vide judgment and order dated 18.02.2019 and the recovery certificate was instituted as RC Case No. 295/2019 before the Recovery Officer for its recovery. It was further contended that pursuant to the One Time Settlement Scheme of the Bank, 2017, the respondent-borrower offered one time settlement for a sum of Rs.11,08,68,000/- as against the NPA amount of Rs.15,84,89,955.66, which was ultimately approved by the Bank vide letter dated 29.10.2019 for a sum of Rs.12.50 crore as full and final payment with certain conditions as mentioned in the said letter. It was also contended that on the complaint of the appellant-Bank, the CBI lodged the RC Case No. 4(S) of 2018-EQW-R u/s 420, 409 & 120(B) of the Indian Penal Code against the respondents as well as Directors by making allegation that the borrowers have diverted the funds.

Learned counsel further submitted that the respondent-borrower has filed a Writ Petition(C) No. 750/2019 before the Hon'ble High Court along with I.A. No. 10241/2019, which was disposed of with certain observations vide order dated 06.11.2019. It was further contended that since the FIR was instituted against the respondents and its Directors, therefore,

the Directors namely Jairam Prasad, Rakesh Singh and the other accused namely Nishtia Katyal filed Anticipatory Bail Application before the Hon'ble High Court (A.B.A No. 9404/2019), wherein the Hon'ble High Court vide order dated 20.10.2020 directed the respondents-borrowers to pay remaining of settlement amount of Rs.8,58,50,000 /- on or before 29.10.2020, but the same was not honoured by the borrowers and as such it was contended that the said order was passed by the Hon'ble High Court only for granting the anticipatory bail. It was also contended that although the facility of OTS Scheme was provided to the respondent-borrower and the borrower was required to pay Rs.12.50 crore in place of Rs.21.32 crore, but the same was not paid within the time as provided in the OTS Scheme, rather it was paid till 12.10.2022. It was thus contended that the appellant-Bank has rightly demanded the interest @ 7.9% over the unpaid amount.

Learned counsel further submitted that the Misc. Application filed by the borrower before the Tribunal below is not maintainable and the Tribunal below cannot modify the terms of the OTS Scheme. It was further contended that the Tribunal below has erred in observing that the terms of OTS were taken into consideration by the Hon'ble High Court while passing the order dated 20.01.2020 in ABA No. 9404/2019, whereas the said order was passed in the said bail application and the same was not passed for complying the terms of the OTS, as it was the condition for granting the anticipatory bail and the Hon'ble High Court has never modified the terms of the OTS scheme and only granted the provisional bail subject to deposit of the amount in terms as mentioned in the order and it was directed that on completing payment of total amount of Rs.8,85,50,000/- on or before 29.10.2020, the provisional bail granted shall be confirmed by the Trial Court till disposal of the case.

It was further contended that the Tribunal below has further erred in observing that the Hon'ble High Court vide order dated 05.03.2021 permitted the respondents to deposit the amount of installment directly with the Bank in place of the Court, meaning thereby that the Hon'ble High Court in effect had permitted the appellant to deposit the amount of installment. Thus it was contended that the Tribunal below has wrongly interpreted the order of the Hon'ble High Court according to its own whims and fancies. It was thus contended that the Tribunal below has erred in directing the appellant to issue no dues certificate and also to release the original title deed in respect of the mortgaged property and further directing the Recovery Officer to close the recovery certificate and file appropriate application. It was, therefore, prayed that the order impugned may be set aside and the appeal filed by the appellant may be allowed.

Learned counsel for the respondent-borrower submitted that the borrower-company had approached the Bank for settlement of its loan account, which was sanctioned vide letter dated 29.10.2019 for a sum of Rs.12.50 crore. It was further contended that pursuant to the said OTS, the borrower had already deposited Rs. 1.00 crore and immediately after sanction, an amount of Rs.2.50 crores was deposited on 29.10.2019 and as such by 16.12.2019, the respondent had deposited Rs.4.00 crores leaving a balance of Rs. 8.50 crores.

Learned counsel further submitted that in the proceeding before the Hon'ble High Court of Jharkhand in Anticipatory Bail Application No. 9404/2019, the respondent-borrower undertook to deposit of balance amount and on the basis of the same, the anticipatory bail was granted, but due to Court strikes, COVID-19 pandemic and closure of Courts, the payment schedule was affected, but by 08.08.2022, the respondent-borrower deposited Rs.8,58,52,000/-, which is

over and above the settled amount i.e. Rs. 12.50 crore. It was further contended that despite receiving the entire settlement account, the bank issued a letter dated 20.01.2023 demanding additional interest of Rs.1,44,85,732/-, which was contrary to the OTS and as such, the Tribunal below has rightly directed the appellant to issue no dues certificate, release the original title deeds and close the recovery certificate as well as upgrade the CIBIL rating. It was thus contended that the order impugned does not call for any interference by this Court. It was, therefore, prayed that the appeal filed by the appellant may be dismissed with heavy costs.

Having heard the learned counsels for the parties and considering the material available on record, undisputedly, the appellant-Bank had filed an Original Application No. 69 of 2017 for recovery of Rs.19,01,79,877/- along with interest w.e.f. 19.01.2017, which was decreed vide order dated 18.02.2019 in toto and the Recovery Certificate was issued accordingly and the same was instituted as RP Case No. 295/2019 before the Recovery Officer for its execution.

It appears that pursuant to the OTS Scheme of the appellant-Bank, 2017, the respondent-borrower submitted a compromise proposal with the Bank for settling its loan account, which was approved by the appellant-Bank for a sum of Rs.12.50 crore as full and final payment with certain conditions as mentioned in the sanction letter dated 29.10.2019. Copy of the letter dated 29.10.2019 issued by the appellant-Bank is placed as annexure no. 2 at page no. 49 of the paper book. In persuasion of the same, the respondent-borrower deposited Rs.4.00 crores, which is not disputed by the appellant-Bank, but the remaining amount could not be paid in terms of the compromise letter dated 29.10.2019 issued by the Bank.

It transpires that on complaint of the appellant-Bank, one criminal case was instituted by the Central Bureau of

Investigation vide RC Case No. 4(S) of 2018-EQW-R u/s 420, 409 and 120(B) of the Indian Penal Code against the respondent-borrower as well as Directors making allegation that they have diverted the funds, against which the respondent-borrower preferred an Anticipatory Bail Application No. 9404/2019, which was disposed of vide order dated 20.01.2020. The relevant portion of the said order is as under:-

> *"Considering the submissions of learned counsels and the facts and circumstances stated above, I am inclined to grant privileges of anticipatory bail to the petitioners. Accordingly, the petitioners are directed to surrender in the Court of learned SDJM-cum-Special Judge, Ranchi within four weeks from today and in the event of their arrest of surrendering, they will be enlarged on bail provisionally for a period of one month from the date of their surrender on jointly depositing a demand draft of Rs.85,85,000/- drawn in favour of the Bank of India, Telco Branch, Jamshedpur and on furnishing bail bond of Rs.2,00,000/- (Two Lakhs) each with two sureties of the like amount each to the satisfaction of learned SDJM-cum-Special Judge, Ranchi in connection with the R.C. Case No. 4(S) of 2018-EOW-R subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure. In case the petitioners jointly deposit another demand draft of Rs.85,85,000/- with the Bank of India, Telco Branch, Jamshedpur within the period for which the provisional bail is granted, then the provisions bail shall be extended for further one month from the date of their deposit by the trial court. Accordingly, on jointly depositing of each demand draft of Rs.85,85,000/- drawn in favour of the Bank of India, Telco Branch, Jamshedpur, the provisional bail granted to the petitioners shall be extended for the period of further one month and on the petitioners' depositing the last demand draft of Rs. 85,85,000/- drawn in favour of the Bank of India, Telco Branch, Jamshedpur thereby completing payment of the total amount of Rs.8,58,50,000/- on or before 29.10.2020, the provisional bail granted to the petitioners shall be confirmed by the trial court till disposal of the case."*

From the above, it is clear that the Hon'ble High Court had permitted the borrower to deposit the remaining amount of the total settled amount on or before 29.10.2020, but it appears that the said order could not be fully honoured by the borrowers, therefore, they preferred again a Criminal Misc. Petition No. 848/2020 before the Hon'ble High Court for modification of the order dated 20.01.2020 passed in ABA No.

9404/2019, which was disposed off vide order dated 05.03.2021, copy of which is placed at page no. 59 of the paper book. The operative portion of the said order is as under:-

> *"Considering the aforesaid facts, prayer for extension of time for the petitioners to surrender in terms of the order dated 20.01.2020 passed in A.B.A. No. 9404/2019 is extended by four weeks from this order and the petitioners are permitted to deposit the installment amount of Rs.85,85,000/- each directly with the Bank of India, Telco Town Branch, Jamshedpur and produce the proof of deposition of the same with the Bank of India, Telco Town Branch, Jamshedpur, in the trial court for the purpose of extension of provisional bail. Hence, the petitioners are directed to surrender before the court below "within four weeks from the date of this order in terms of the order dated 20.01.2020 passed in A.B.A. No. 9404/2019."*
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> *The order dated 20.01.2020 passed in A.B.A No. 9404/2019 is modified to the aforesaid extent."*

From the above, it is clear that the remaining amount of OTS was being deposited by the borrowers and was being accepted by the appellant-Bank on the direction/order of the Hon'ble High Court. The aforesaid orders also show that the Hon'ble High Court each and every time tried to compel the borrower to liquidate the remaining amount of the OTS and ultimately, the respondent-borrower has deposited entire amount of Rs.8,58,52,000/- on different dates i.e. from 16.12.2019 to 08.08.2022, which were accepted and the payment receipts were also issued by the Bank, which is filed annexure no. 6 to the M.A. before the Tribunal below, meaning thereby that the appellant-Bank had no objection with regard to the deposit of amount being made by the borrower under the order/direction of the Hon'ble High Court. If the appellant-Bank had any grievance against the direction of the Hon'ble High Court, the appellant-Bank ought to have challenged the aforesaid orders before the Court of competent jurisdiction, but the Bank did not do so. It is also to be borne in mind that during these recovery proceedings, COVID-19 pandemic was on its peak and each and every business activity was closed in India.

Inspite of such hard and crucial situation, the respondent-borrower has paid such a huge amount to the Bank, but the Bank did not appreciate the bonafide attempt of the borrower in liquidating the dues of the Bank, instead it after receipt of entire amount from the borrower proceeded for recovery of further amount. Such conduct of the Bank is deprecated. Thus the Tribunal below has rightly held that the letter dated 20.01.2023 for additional recovery of a sum of Rs.1,44,85,732/- from the respondents-borrowers is issued an afterthought by the appellant-Bank. As such, there is no infirmity or illegality in the order impugned. Consequently, the appeal filed by the Bank stands dismissed with no order as to costs.

A copy of this order be forwarded to the parties as well as the DRT concerned and be also uploaded on the e-DRT portal.

Justice R. D. Khare
Chairperson

VN GIRI,PS