



2024:DHC:6982



\$~70

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 10th September, 2024**

+ W.P.(C) 11150/2024

BAREILLY HIGHWAYS PROJECT LIMITED.PetitionerThrough: **Mr. Siddharth Yadav, Sr. Adv.**
along with Ms. Divya Verma &
Ms. Ritika Gusain, Advs.

versus

RESERVE BANK OF INDIA & ORS.RespondentsThrough: **Mr. Siddharth Sangal & Ms.**
Richa Mishra, Advs.**CORAM:****HON'BLE MR. JUSTICE DHARMESH SHARMA****DHARMESH SHARMA, J. (ORAL)****CM APPL. 52872/2024 (SEEKING EXTENSION OF INTERIM ORDER)**

1. This is a fresh application moved on behalf of the applicant/petitioner seeking extension of the interim order passed by this Court dated 12.08.2024.

2. Learned counsel for the respondent No.2/SBI¹ is present on advance notice. He submits that he has authorization to appear only on behalf of respondent No.2/SBI and not on behalf of the Consortium Banks.

3. Briefly stated, the grievance of the petitioner is that pursuant to the directions of this Court dated 12.08.2024, though a proposal was



submitted for OTS² on 20.08.2024, the officials of the respondent No.2/SBI again in a mechanical manner hurriedly convened a meeting through video conferencing on 03.09.2024 at 04.30 p.m., the intimation of which was given to him only at 11.45 a.m. It is submitted that although Mr. Nakul Bharana and Mr. Hem Singh appeared in the meeting through video conferencing, they were not asked any questions or queries; and that no introduction of the officials who were present in the meeting was even given to them and then abruptly a decision was taken on the same day rejecting the OTS, which was conveyed *vide* letter dated 6th September, 2024.

4. Learned counsel for the respondent No.2/SBI refuted such allegations and submitted that the aforesaid persons, who were present on behalf of the petitioner, were heard in the meeting which lasted for about an hour and the issues were discussed threadbare and eventually the OTS was rejected. Learned counsel for the respondent No.2/SBI alluded to reasons that are disclosed in the Minutes of Meeting dated 03.09.2024, wherein it is recorded as follows:

“(c). Internal deliberations amongst lenders:

- Upon detailed discussions, Joint Lender Members examined the settlement proposal dated 20th August 2024 in the light of RBI Framework on compromise settlements and individual Bank’s policy on the Compromise Settlements framed under RBI framework.
- After detailed discussions and deliberations, lenders found that the settlement proposal is not feasible and viable on the following grounds:

¹ State Bank of India

² One Time Settlement



(i) Settlement amount is too low viz-a-viz total dues of lenders and arbitration claim filed by the BHPL and hence not acceptable.

(ii) Upfront payment is not in line with member Bank' extant guidelines on Compromise Settlement. Substantial upfront and initial deposit is required to consider any compromise settlement proposal. However, only minimal upfront amount is proposed, which is not acceptable. Further, certain conditions associated with upfront amount are also not acceptable.

(iii) BHPL has not provided any definitive source of funds to honour the obligation under Settlement Proposal. Further, BHPL has not provided any visibility on alternate source for funding of Settlement Proposal. Source of funds for repayment of Settlement proposal is not assured to the satisfaction of the lenders.

(iv) Tenor of 3 years for payment of the Settlement proposal are not acceptable.

In view of the foregoing, lenders unanimously agreed to reject the Settlement proposal and authorized Lead Bank, SBI to convey the decision (on behalf of the lenders) to the Borrower.

- It has been noted by lenders that as per existing RBI Framework on Compromise Settlements there is no Settlement Advisory Committee. Hence, to comply the direction of Hon'ble High Court, it is decided to consider the settlement proposal in accordance with prevailing RBI framework. Accordingly, lenders should decided to the affidavit (jointly or individually) regarding the compliance of Hon'ble High Court order dated 12th August 2024.

Since there were no other matters to discuss, the meeting concluded with a vote of thanks.”

5. Mr. Siddharth Yadav, learned Senior Advocate for the petitioner, however, urged that the copy of the minutes has not been shared with the petitioner. It is further urged that as per previous order dated 12.08.2024, this Court had directed that the OTS be considered in a fair and dispassionate manner by the SAC³, which was evidently not done. It was also pointed out that the letter and spirit of

³ Settlement Advisory Committee



the earlier order dated 12.08.2024 is that a counter offer may also be given by the respondents/consortium banks, which was also not done.

6. *Per contra*, it was urged by the learned counsel for the respondent No.2/SBI that no SAC is required to be constituted in a matter like the present one since there is no Scheme of revival envisaged and for the fact that the petitioner happens to be a Corporate Debtor.

7. Much was urged by the learned Senior Advocate for the petitioner that respondent No.2/SBI, which is the lead bank, is not appreciating the proceedings in a fair and professional manner and they are overlooking the fact that the petitioner is already in arbitration against NHAI⁴ wherein it has raised a substantial claim against the opposite party, in which proceedings final arguments have already been heard and the passing of the final award has been reserved on 22.08.2024. It was vehemently urged that some time may be given to the petitioner so as to pay the entire loan amount which has spiralled due to excessive interest computed on the principal amount of loan.

8. Although, the pleas raised by the learned Senior Advocate for the petitioner have to be appreciated in the context that no decision should be taken in a hurried and apparently unprofessional manner, however, since the matter is pending before the NCLT⁵, the said forum would be the appropriate one where such grievances be aired and redressed. Indeed, in such matters where the banks keep on calculating interests on compound interest and/or penal interests, the

⁴ National Highway Authority of India

⁵ National Company Law Tribunal



2024:DHC:6982



NPA⁶ amount becomes such that at times, it becomes difficult to seek a resolution under Section 12A of the IBC⁷. However, this Court believes that the NCLT is not unaware of such unsavoury practices on the part of the financial institutions and the NCLT would be in a better position to consider and adjudicate upon the whole gamut of the issues raised herein.

9. In the said view of the matter, this Court is not inclined to give any further extension of the interim order passed *vide* order dated 12.08.2024. Accordingly, the present application is dismissed.

10. Nothing contained herein shall tantamount to an expression of opinion on the merits of the case.

11. Re-notify on the date already fixed i.e. 03.12.2024.

12. As requested, a copy of this order be given *dasti*.

DHARMESH SHARMA, J.

SEPTEMBER 10, 2024

Sadiq

⁶ Non Performing Asset

⁷ Insolvency and Bankruptcy Code, 2016