

# Asian Hotels North Ltd vs Yes Bank Ltd & Ors on 24 February, 2022

**Author: C. Hari Shankar**

**Bench: C. Hari Shankar**

\$~18

\*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI  
CS(COMM) 128/2022

ASIAN HOTELS NORTH LTD

..... Plaintiff

Through Mr. Vikram Nankani, Senior  
Advocate along with Mr. Akshit Mago, Mr.  
Sanjay Aggarwal, Mr. Mohit Rai, Mr.  
Sarathak Sachdev, Advocates

versus

YES BANK LTD & ORS.

..... Defendants

Through Mr. Gopal Jain, Sr. Adv. with  
Mr. Raunak Dhillon, Mr. Shubhankar Jain  
and Mr. Nihaad Dewan, Advs. for Defendant  
1 (Yes Bank Ltd)  
Mr Sidhant Kumar, Dr Joginder Singh, Ms.  
Manyaa Chandok, Advocates for Defendants  
2 and 4

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

O R D E R (ORAL)

% 24.02.2022 I.A. 3106/2022 (under Section 151 of CPC, 1908)

1. Subject to deficient court fees, if any, being paid within a period of four weeks from today, exemption is granted for the present.

2. The application is disposed of.

I.A. 3105/2022 (under Section 151 of CPC, 1908- for additional documents)

3. Subject to the right of the defendants to admit or deny the same, the plaintiff is permitted to file additional documents within a period of four weeks from today, exemption is granted for the present.

4. The application stands disposed of.

I.A. 3104/2022 (pre-institution mediation)

5. This application seeks exemption from pre-institution mediation.

6. For the reasons mentioned in the application, the exemption from pre-institution mediation is granted.

7. The application stands allowed.

I.A. 3103/2022 (under Section 151 of CPC, 1908- for exemption)

8. Subject to the plaintiff filing legible copies of any illegible documents on which they may seek to place reliance, within four weeks from today, exemption is granted for the present.

9. The application stands disposed of CS(COMM) 128/2022 and I.A. 3102/2022 (under Order XXXIX, Rules 1 & 2 of CPC, 1908)

10. The plaintiff seeks, in the present plaint, declaration and mandatory injunction. The plaint is, essentially, directed against a "Loan Recall-cum-Guarantee Invocation Notice" dated 17th February, 2022, issued by Yes Bank Ltd ("Yes Bank", hereinafter).

11. By the impugned notice, Yes Bank has recalled (i) term loan facility of 55 crores extended vide Loan Agreement dated 12th July, 2015, (ii) term loan facility of 125 crores extended vide Loan Agreement dated 12th January, 2016, (iii) overdraft facility of 32 crores extended vide Master Facility Agreement dated 9th May, 2016,

(iv) funded interest term loan for 2,60,58,285/-, sanctioned on 1st September, 2020, (v) funded interest term loan for 6,44,19,353/-, sanctioned on 1st September, 2020 and (vi) funded interest term loan for 1,87,65,965 /-, sanctioned on 1st September, 2020.

12. Resultantly, the plaintiff has been directed to pay up, to Yes Bank, the entire amounts covered by the aforesaid facilities extended by Yes Bank.

13. Mr. Vikram Nankani, learned Senior Counsel for the plaintiff, submits that for the default, which constitutes the basis of the impugned notice dated 17th February, 2022, Yes Bank had earlier sought to invoke the pledged security provided by the plaintiff in the form of 5,85,064 shares of the plaintiff, against which Defendant 2 had approached this Court by way of CS (Comm) 626/2021. In that case, vide order dated 6th December, 2021, passed in IA 16083/2021 preferred under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC), this Court had, in terms of the undertaking provided by the learned Senior Counsel for Yes Bank (who also represents the bank today, in the present proceedings), directed maintenance of status quo by Yes Bank regarding the aforesaid 5,85,064 shares of the plaintiff. The impugned Loan Recall Notice having been issued on the basis of the same alleged default on the part of the plaintiff, Mr. Nankani submits that, in the interests of consistency, it would be appropriate that stay of the Loan Recall Notice is granted in the

present case.

14. Mr. Gopal Jain, learned Senior Counsel for Defendant 1, when queried in this regard, submits, candidly, that the alleged default of the plaintiff, on the basis of which the impugned Loan Recall Notice dated 11th February, 2022 has been issued, also constituted the basis for invocation of 5,85,064 shares of the plaintiff, which forms subject matter of challenge in CS(Comm) 626/2021.

15. Mr Jain, however, emphasizes the fact that there is a qualitative difference between the invocation of pledged securities and recall of the loan facilities. The right to recall loan facilities exists independent of the right to involve pledged securities; ergo, submits Mr. Jain, the order dated 6th December, 2021 (supra) passed in IA 16083/2021 in CS(Comm) 626/2021 cannot by itself constitute a basis to grant interim relief in the present case.

16. I have, accordingly heard, learned Senior Counsel for the parties at considerable length, to assess for myself as to whether any basis exists for this Court to, in the present case, chart a course diverse from that which stands charted in CS(Comm) 626/2021. Else, it is trite, in law, that Courts should sedulously maintain consistency in judicial orders passed in similar circumstances.

17. A brief recapitulation of the facts would assist in this regard.

18. Loan and overdraft facilities were extended by Yes Bank to the plaintiff, vide Loan Agreement dated 11th July, 2015 (for 55 crores), Loan Agreement dated 12th January, 2016 (for 125 crores) and Master Facility Agreement dated 9th May, 2016 (for an overdraft facility of 32 crores).

19. Consequent to the COVID-19 pandemic, when the financial condition of several entities slipped into the red, a resolution process was proposed by the Reserve Bank of India (RBI) under the title "Resolution Framework for Covid 19 related stress", on 5th August, 2020. Yes Bank, along with other lenders, invoked the said Resolution Framework on 9th December, 2020. This came to be known as the "One Time Restructuring (OTR) Arrangement".

20. Consequent thereupon, on 23rd December, 2020, an Inter Creditor Agreement (ICA) was executed by various lenders, which included the consortium of lenders of the plaintiff. Yes Bank was also a signatory to the said ICA, under which the lead lender was the Bank of Maharashtra. Mr. Nankani has invited my attention to sub clauses

(f), (g) and (h) of Clause 2.2 of the ICA, which read thus:

"2.2 Appointment and Authority of Lead Lender Each of the Lenders appoint the Lead Lender act as its agents under the in connection with the formulation and implementation of any Resolution Plan in the manner contemplated in this his Agreement and in accordance with the August 6 Framework. Within limiting the generality of the foregoing, each of the Lenders hereby authorize the Lead Lender to undertake or to appoint a process advisor or resolution Advisor to undertake the following action on the behalf of and in the name of each Lender:

\*\*\*\*

(f) appointing of legal, financial, management or any other consultant in consultation with the Core Committee (or Lenders in the absence of Core Committee) as may be required for formulating and implementing the Resolution Plan;

(g) appointment of a credit agency for independent credit evaluation of any Resolution Plan formulated under the framework of this Agreement;

(h) in consultation with the Core Committee Lenders in the absence of Core Committee negotiation and finalization of the Resolution Documents and entering into such documents and any other ancillary deal document or writing as may be required in connection with implementation of Resolution Plan that has been approved by the Majority Lenders in respect of the Borrower;"

21. It was recorded, inter alia, in the ICA, that, on the date of invocation of the resolution process, i.e. 9th September, 2020, there was no default on the part of the borrowers, including the plaintiff.

22. Towards implementation of the ICA, a Master Amendment Agreement (MAA) was executed between the plaintiff and Yes Bank on 24th June, 2021. Clause 2.1.1 of the MAA provided for a moratorium on any instalment due and payable by the borrower between 1st September, 2020 and 30th March, 2022. Clause 2.1.1, in its entirety, reads thus:

"2.1.1 Pursuant to the provisions of the Approved Resolution Plan, the Parties agree that:

(i) there shall be a moratorium on any instalments due and payable by the Borrower between September 1, 2020 and March 30, 2022 ("Moratorium Period"), towards repayment of the 'principal' amounts of the Term Loan Facilities ("Instalment"); and

(ii) the residual tenor of each of the Term Loan Facilities shall accordingly stand extended and the revised repayment schedule with respect to the Term Loan Facilities shall be in the manner set out in Schedule II of this Agreement."

23. In furtherance of the OTR arrangement, a Trust and Retention Account Agreement (TRA Agreement) and a Funded Interest Term Loan Agreement (FITL Agreement) were also executed between the plaintiff and Yes Bank. Under the FITL mechanism, interest liability on running term loans, payable by the plaintiff, would be funded by Yes Bank and would constitute augmentations to the term loan, payable at the end of the moratorium period.

24. The plaintiff alleges that, having credited the FITL account till August, 2021, Yes Bank stopped crediting the account suddenly, without any prior provocation, intimation or cause.

25. On 7th June, 2021, the Bank of Maharashtra, as the lead bank of the consortium of lenders of the plaintiff declared that the OTR resolution plan of the plaintiff stood approved. All lenders were requested to implement the plan by execution of supplementary documents. Mr. Nankani has emphasised the fact that, per sub-clauses

(f) and (h) of Clause 2.2 of the ICA, the responsibility of appointing legal, financial or other consultants, for formulating and implementing the resolution plan and finalisation of the resolution documents, was the responsibility of the lenders including Yes Bank.

26. In pursuance thereof, in a joint lenders meeting held on 24th September, 2021, Yes Bank and other lenders agreed to grant further extension of nine months for execution of necessary documents. The time for execution of documents, for implementation of the resolution plan, thus, stood extended till 7th March, 2022.

27. In this context, Mr. Nankani has invited my attention to the following resolutions taken in the joint lenders meeting on 24th September, 2021:

"3. Discussion on various compliances after OTR documentation and additional monitoring mechanism of cash flow:- Mr. Bikram Tripathy informed to all that • Work on rating of revised resolution plan has been assigned to Acquite Rating Agency and the report shall be submitted by 30th Sep' 2021. We shall do necessary follow-up for early submission of rating. Yes Bank highlighted the delay in obtaining rating to the borrower and expressed inability to disburse FITL due to pending documentation under OTR and rating on revised resolution plan.

• BOM informed that LLC is in process for appointment and requisite documents will be prepared for OTR & for perfection of securities. PNB Officials and other lenders agreed for appointment of Juris Corp for OTR documentation. In respect of appointment of security trustee all lenders shown inclination for appointment of security trustee except DBS Bank. The matter of appointment of security trustee was unresolved. Hence, firstly the security shall be created under pari passu arrangement and DBS shall keep holding the title deeds on behalf of all lenders.

\*\*\*\*\*

4. Any other matter:-

• PNB Officials requested all for creation & perfection of securities at the earliest so as to comply with OTR terms. Pledge of share of subsidiary is pending. It was proposed that on or before 15.10.2021 the documentation & perfection of securities are to be completed for which each concerned is requested to extend their required support. Yes Bank reiterated that any change in timeline is not possible as per YBL's OTR sanction.

BOM informed to all lenders that in view of pending perfection of securities related to mortgage & Pledge of shares including exploring possibilities of appointment of security trustee with consent of DBS & relevant documentation with the help of LLC, it has sent a proposal for extending time limit perfection of security for 9 months from the implementation date 07.06.2021 to appropriate authority. Majority Lenders were agreed for taking help of Juris Corp for above purpose and conclude the documentations including creation & perfection of security at the earliest."

28. Thereafter, Mr. Nankani submits that the plaintiff had been in repeated communications with Yes Bank for completion of the necessary documentations, but that Yes Bank had been prevaricating.

He has invited my attention in this context to an e-mail communication dated 21st October, 2021, from Yes Bank to the plaintiff under the heading "Fwd: EXTERNAL: RE: Pending Call for documentation with YBL - Asian Hotel", which reads thus:

"----- Forwarded message ----- From: ankit.jain4@yesbank.in <ankit.jain4@yesbank.in> Date: Thu, Oct 21, 2021 at 3:46 PM Subject: RE: EXTERNAL : RE: Pending Call for documentation with YBL - Asian Hotel North Limited To: Sanjive Gupta <sanjive.gupta@ahlnorth.com>, Connaught Place Branch, CM <bom343@mahabank.co.in>, deepak.gupta7@yesbank.in <deepak.gupta7@yesbank.in> Cc: Disha Saxena <disha.saxena@jclex.com>, garima.kothari@yesbank.in <garima.kothari@yesbank.in>, Rupul Jhanjee <rupul.jhanjee@jclex.com>, Ankit Sinha <ankit.sinha@jclex.com>, Vidhi Porwal <vidhi.porwal@jclex.com>, Divya Dhage <divya.dhage@jclex.com>, Ashish dhanku <ashish.dhanku@ahlnorth.com>, Amritesh Jatia <amritesh.jatia@ahlnorth.com> Dear Sir, We are tied up in some meeting today and tomorrow. We can have the call on Monday.

Thanks & Regards, Ankit Jain SAM | North"

29. Mr. Nankani has pointed out that, repeated communications have been made by the Bank of Maharashtra to Yes Bank on, inter alia, 11th November, 2021 and 15th November, 2021, seeking concurrence of Yes Bank for finalisation of the documents towards implementation of the OTR arrangement in respect of the plaintiff, but to no avail.

30. This aspect, submits Mr. Nankani, remains unresolved till date.

31. In the meanwhile, after August, 2021, he reiterates that Yes Bank has stopped funding the FITL and is, therefore, in breach of the agreement with the plaintiff.

32. As such, submits Mr. Nankani, it cannot lie in the mouth of Yes Bank to contend that the plaintiff is in default of the term loans advanced and other facilities advanced by Yes Bank to the plaintiff, as it was essentially to restructure and workout a manner to resolve these loans that the

OTR had been put in place, to which Yes Bank was a signatory. Yes Bank itself having defaulted in complying with the terms thereof, as is apparent from the communication addressed by it, inter alia, the Bank of Maharashtra, Mr. Nankani submits that Yes Bank cannot be permitted to take punitive action against the plaintiff on the ground of any default in complying with term loan agreements, or to withdraw the loan facility.

33. It was precisely on the ground of the same alleged default, submits Mr. Nankani, that Yes Bank had sought to invoke the pledged securities in the form of 5,85,064 shares of the plaintiff, which stands stayed by order dated 6th December, 2021 passed by this Court in IA 16083/2021 in CS (Comm) 626/2021.

34. Mr. Nankani has also expressed undisguised chagrin at the assertion, by Yes Bank, in para 5 of the impugned loan recall notice to the effect that the OTR had not been implemented/could not be considered as having been implemented. He submits that Yes Bank had no right to unilaterally come to any such conclusion.

35. Responding to the submissions of Mr. Nankani, Mr. Jain, learned Senior Counsel for Yes Bank draws my attention to a communication dated 19th June, 2021, from Yes Bank to the plaintiff, which proposes change in the security towards facilities extended to the plaintiff by Yes Bank. He submits that the said securities had not been provided by the plaintiff, as was mandatory under norms issued by the RBI under its "Prudential Framework for Resolution of Stressed Assets Directions, 2019".

36. The reliance, by Mr. Nankani, on the MAA, submits Mr. Jain, is misguided, in view of the specific provision in the MAA, to the effect that, in the event of discrepancy between the provisions of Article 2 of the MAA and the corresponding terms of the sanction letter whereby the loan was sanctioned to the borrower by the lender, the latter would prevail.

37. To a query from the court as to what discrepancy exists in the present case, at least insofar as the moratorium on payment of loans has been extended under Clause 1.2.2 of the MAA, Mr. Jain submits that the MAA could not override the requirement of providing security in terms of the communication dated 16th June, 2021 from Yes Bank to the plaintiff. In this context, he has drawn my attention to Clause 2.4 of the MAA, which provides thus:

"2.4 The Borrower further undertakes and declares that it shall abide by the terms, conditions, covenants and obligations of the respective Lenders in respect of the Secured Facilities, as communicated by them from time to time, and as stipulated in their respective sanction letters as well as the Approved Resolution Plan."

38. Clause 2.4 of the MAA, submits Mr. Jain, obligated the plaintiff to provide securities as per the letter dated 16th June, 2021 from Yes Bank to the plaintiff. With this not having been done, Mr. Jain submits, that the plaintiff could have no legitimate cavil to the impugned loan recall notice dated 11th February, 2022. Mr. Jain has also relied, in this context, on the definition of "Financing Documents" as contained in MAA, which reads thus:

"Financing Documents" shall mean this Agreement, the Existing Facility Agreements, the Security Documents, the sanction letters of the respective Lenders, the Approved Resolution Plan and any other document designed as a 'Financing Document' by the Lenders."

39. In view thereof, Mr. Jain submits that the plaintiff, who is in breach of the requirement to provide security against the loans extended by Yes Bank, cannot seek any interlocutory interdiction from this Court.

40. Mr. Nankani has, responding to the submissions of Mr. Jain, drawn my attention to the definition of "Security Documents" in the MAA, vis-a-vis the definition of "Financing Documents", to which Mr. Jain had drawn attention.

41. "Security Documents" is defined in the MAA thus:

"Security Documents shall mean all documents creating and/or perfecting and/or evidencing Security Interest in favour of and/or for the benefit of the Lenders to secure the Secured Obligations, as amended, amended and restated, modified, substituted or replaced from time to time and any documents executed pursuant thereto.

42. Reading the definitions of "Financing Documents" and "Security Documents" in conjunction with Clause 2.4 of the MAA, on which Mr. Jain places reliance, Mr. Nankani submits that no security documents have been communicated by Yes Bank to the plaintiff after the execution of the MAA and that this aspect has been highlighted by the Bank of Maharashtra in repeated communications to the plaintiff. The responsibility to do so, under the relevant agreements, submits Mr. Nankani, is clearly that of Yes Bank. Having defaulted in that regard, as a result of which implementation of OTR is being jeopardized, Mr. Nankani submits that Yes Bank cannot seek, at this juncture, to recall the loan extended to the plaintiff.

43. The above recital of facts and the respective contentions advanced by learned Senior Counsel for both sides reveal that the issue is highly arguable and a thorough study of all documents would be necessary before the Court could come to any positive conclusion regarding the merits of either side. The submissions of Mr Jain do not seriously traverse the contention, of Mr Nankani, that Yes Bank has, to some extent, reneged on its obligations under the ICA and has also discontinued funding the FITL, having done so for some time. Nor do his submissions meet the contention of Mr Nankani that the lead lender (Bank of Maharashtra) had addressed repeated communications to the lenders (including Yes Bank) to complete and approve the documentation so that the OTR could be consummated, but that Yes Bank was being recalcitrant in that regard. Mr Jain, rather, seeks to raise the legal issue of whether, in view of the terms of the MAA, the provision for moratorium in the MAA, and the covenants of the ICA, would, or would not, trump the provisions for security as contained in the document advancing loan to the petitioner.



44. Significantly, Mr Jain has sought to contend that the ICA, being an internal arrangement of the lenders to which the plaintiff is not a party or a signatory, the plaintiff cannot seek to gain any advantage therefrom. This, in my view, is, prima facie, an oversimplification. The ICA was undoubtedly a fall out of the steps taken by the RBI for providing succour to entities hit by the pandemic. Its solemnity cannot be wished away. Prima facie, the submission of Mr Nankani that Yes Bank has been placing roadblocks in the consummation of the OTR does merit consideration. If this is so, at least at the interlocutory stage and keeping the balance of convenience in mind, a case for interlocutory relief does exist

45. Significantly, and at the cost of repetition, Mr. Gopal Jain, does not dispute the fact that the invocation of the pledged securities was for the same default which constitutes basis of the issuance of the impugned letter dated 17th February, 2022.

46. By order dated 6th December, 2021 passed in IA 16083/2021 in CS (Comm) 626/2021, this Court had, albeit consequent to a statement made by the defendant, stayed the invocation of the pledged shares. The application under Order XXXIX, Rules 1 and 2 of the CPC, 1908, in the said case is yet to be heard.

47. Pleadings in the said application are complete.

48. The order dated 6th December, 2021, passed by this Court in the said case, has not been modified or set aside. It continues to hold the field.

49. Given the nature of the dispute and keeping in mind the fact that one action, of the respondent, also predicated on the very default which constitutes the basis for issuance of the impugned letter dated 17th February, 2022, already stands stayed by this Court, it would be discrepant for this Court to take an opposing view in this case, at the stage of Order XXXIX.

50. As such, given the nature of the dispute and keeping in mind the order passed by this Court on 6th December, 2021 in IA 16083/2021 in CS (COMM) 626/2021, the Court deems it appropriate to balance the interests by granting a temporary stay of the operation of the impugned letter dated 17th February, 2022 till 7th March, 2022 and fixing IA 3102/2022 for hearing, along with IA 16083/2021 in CS (COMM) 626/2021, on 7th March, 2022.

51. Let the plaint be registered as a suit.

52. Issue summons in CS(COMM) 128/2022. Summons are accepted on behalf of Defendant 1 by Mr. Raunak Dhillon and on behalf of Defendant 2 by Mr. Sidhant Kumar.

53. Written statement, accompanied by affidavit of admission and denial of the documents, filed by the plaintiff, be filed within four weeks, with advance copy to learned counsel for the plaintiff, who may file replication thereto, if any, accompanied by affidavit of admission and denial of the documents filed by the defendants, within two weeks thereof.

54. List before the Joint Registrar for completion of pleadings, admission/denial of documents and marking of exhibits, on 10th May, 2022.

55. Issue notice in IA 3102/2022. Notice is accepted on behalf of Defendant 1 by Mr. Raunak Dhillon and on behalf of Defendant 2 by Mr. Sidhant Kumar.

56. Let notice issue to Defendants 3 and 4 in normal course as well as dasti.

57. Affidavit of service along with proof thereof be placed on record before the next date of hearing.

58. Reply, if any, be filed within a period of four weeks, with advance copy to learned counsel for the plaintiff, who may file rejoinder thereto, if any, before the next date of hearing.

59. Till the next date of hearing, Defendant 1 shall remain restrained from taking any action against the plaintiff on the basis of the impugned letter dated 17th February, 2022.

60. Given the stakes involved and the nature of the dispute, it is made clear that ordinarily no adjournment would be granted for filing of reply or rejoinder. Both sides are also directed to file short notes of their respective submissions, not exceeding five pages each, after exchanging copies with each other, at least 48 hours in advance of the next date of hearing in both the matters.

61. Learned Counsel may also place duly indexed compilations of any judicial authorities on which they propose to rely and cite during arguments, at least 48 hours in advance of the next date of hearing, after exchanging copies with each other. The judgements should not be marked or highlighted; however, relevant page numbers should be mentioned in the index accompanying the compilations.

62. List the present IA 3102/2022 along with IA 16083/2021 in CS(COMM) 626/2021, for hearing and disposal at 02:15 p.m. on 7th March, 2022.

63. Let a copy of this order be emailed to learned Counsel for all parties without delay.

C. HARI SHANKAR, J FEBRUARY 24, 2022 SS/dsn/r.bararia