

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 2nd February, 2011.

+ **W.P.(C) 6557/2008, CM No.605/2009 (for condonation of delay)**
& CM No.12546/2008 (for stay).

ARJUN INDUSTRIES LTD & ANR Petitioners
Through: Mr. P.S. Bindra, Advocate.

versus

INDUSTRIAL DEVELOPMENT BANK OF INDIA [IDBI]
& ORS Respondents
Through: Mr. Arvind Kumar, Advocate for R-1.
Mr. Suresh Dutt Dobhal, Advocate for R-2.
Ms. Priya Kumar, Advocate for R-3.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petitioners being debtors of the respondent no.1 IDBI have filed this petition for restraining the respondent no.1 IDBI from assigning the

debt owed by the petitioner no.1 to any third party and seeking mandamus directing IDBI to accept the One Time Settlement (OTS) approved by the North Zone Committee of IDBI in the meeting held on 21st March, 2006 and the minutes whereof were approved on 27th March, 2006, for a sum of ₹250 lacs. The petitioners also seek quashing of assignment of the debt by IDBI to the respondent no.2 M/s Kotak Mahindra Bank Ltd. (KMBL) and assignment by KMBL of the said debt to the respondent no.3 M/s. Jumbo Chemicals & Allied Industries Pvt. Ltd. (JCAIPL).

2. The counsel for the petitioners and the counsels for the respondents no.2&3 have been heard.

3. The counsel for the petitioners has drawn attention to page 80 of the paper book being a part of the information furnished to the petitioners on 6th March, 2007 in response to an RTI query. The document at page 80&81 is a part of the minutes of the meeting of the North Zone Committee of the IDBI held on 21st March, 2006. In the said meeting it was decided as under:-

“Decision

Having regard to the revised offer of KMBL the Committee decided to increase the crystallized amount

from ₹225 lakh to ₹250 lakh, out of which ₹225 lakh would be paid at the time of issue of LOI and balance ₹25 lakh by March 30, 2006 and in any case, not later than June 30, 2006. Committee further decided that in case the company does not accept the OTS, the loan may be assigned to KMBL. However, before that similar offer be accepted from the company in case it is inclined for settlement on terms similar to KMBL.

The Committee also authorized, CGM (NZO) to approve the minor variations, if any, in the amount of waivers/sacrifices on account of recalculation at a later date.”

4. The counsel for the petitioners has argued that though a decision had been taken to give an option to the petitioners of OTS of ₹250 lac but no Letter of Intent was issued to the petitioners communicating the said position to enable the petitioners to comply therewith. It is contended that since the IDBI in violation of its own decision has assigned the debt on 30th March, 2006 to KMBL, without giving an opportunity/offer to the petitioners, the assignment in favour of KMBL and the consequent assignment in favour of JCAIPL are bad.

5. The counsel for KMBL has invited attention to the letter dated 29th April, 2006 of the petitioners to KMBL in which the petitioners *inter alia* stated:-

“In fact, we have submitted OTS Proposal of ₹225 lacs to IDBI on 10th March, 2006. We were informed telephonically on 26th March, 2006 to deposit ₹225 lacs by 30th March, 2006 which we could not arrange in such a short period of time. Till date we have not received any written communication from IDBI about the above proposal.

Now, we have arranged the proposed amount and contacted IDBI for OTS payment but we were informed by IDBI Jaipur Office that the above loan account has been assigned to your Bank.”

6. The counsel for JCAIPL has also invited attention to another letter dated 20th April, 2006 of the petitioners to the IDBI in which the petitioners *inter alia* stated that:-

“Kindly refer to our above offer for One Time Settlement of outstanding due with your esteemed organization and we have not received any written communication so far. However, we were informed by your office that we can make the payment of ₹225 lacs on or before 31.3.2006. Unfortunately, due to some unavoidable circumstances, we could not make the payment within the short period.”

7. Faced with the aforesaid, the counsel for the petitioners states that it was however not intimated to the petitioners that if the petitioners did not pay the debt by 30th March, 2006 the consequence of assignment to KMBL shall follow.

8. Without going into controversy as to whether the same was required to be communicated to the petitioners, the counsel for KMBL has also invited attention to the letter dated 11th November, 2008 of the Central Vigilance Commission (CVC) of the Government of India to the petitioners and copy whereof is annexed by the petitioners to their rejoinder to the counter affidavit of KMBL. The CVC has on the complaint of the petitioners reported that as per the records of the Jaipur Branch Office of IDBI, the said Branch Office had informed Ms. Mausumi Bhattacharje (petitioner no.2), Managing Director of the petitioner no.1 over phone on 22nd and 23rd March, 2006 to arrange for payment of the OTS amount, so that Letter of Approval could be exchanged. The same was reported on the basis of the statement of the Branch Incharge as well as the file notings. It is also reported that Ms. Mausumi Bhattacharje informed the Jaipur Branch office on 25th March, 2006 that the buyer namely M/s. Supagi Engineers Pvt. Ltd., arranged by her of the assets of the petitioner no.1, had backed out and she was not in a position to honour the OTS commitment. The CVC thus did not find any malpractice in the decision of the competent authority of IDBI to assign the debt in favour of

KMBL who paid the entire OTS amount on 30th March, 2006 itself.

9. The counsel for the petitioners has argued that there could be no oral communication of the decision dated 21st March, 2006 of the IDBI and the petitioner was required to be issued a Letter of Intent first.

10. I am afraid that is not what was decided in the meeting aforesaid. The Letter of Intent was to be issued upon payment by the petitioners of the amount of ₹225 lac out of the OTS amount of ₹250 lac. Oral communication of the decision is sufficiently established from the contemporaneous letters dated 20th April, 2006 and 29th April, 2006 of the petitioners themselves. The contention of the petitioners that though the OTS amount was communicated, the last date for payment was communicated but it was not communicated that upon non-payment the debt shall be assigned, cannot be accepted when the petitioners claim to have made averments contrary to its own letters. I also do not find any error in the commercial decision of the IDBI as a creditor to orally communicate the offer rather than put the same in writing in as much as it is found that once a writing is given, unscrupulous debtors use the same as a benchmark and for delaying the payments thereunder and keep on

seeking extension of time. The Supreme Court recently in ***ICICI Bank Ltd. v. Official Liquidator of APS Star Industries Ltd.*** (2010) 10 SCC 1 has held that debts are the assets of the assignor bank and the assignor bank is fully entitled to transfer its rights under a contract and its own asset without in any manner affecting the rights of the borrower and such transfer in no manner affects any right or interest of the borrower and there is no prohibition under the Banking Regulations Act, 1949 in the bank transferring its assets *inter se*.

11. The counsel for JCAIPL has also drawn attention to the order dated 23rd May, 2007 of the Division Bench of this Court in W.P.(C) No.3535/2007 filed by KMBL and in which the petitioners herein were respondents no.3&4. It is contended that the matter of assignment of the debt by the IDBI to KMBL stands settled by the said judgment and the petitioners, in abuse of the process of the Court are re-agitating the same contentions which were raised before the Division Bench and which were negatived.

12. The counsel for the petitioners with respect thereto has contended that though the Division Bench had directed the Debt Recovery Tribunal

(DRT) where the proceedings initiated by IDBI against the petitioners were pending to enquire into the averments but no progress is being made before the DRT. He states that the questions raised in this petition be directed to be decided by the DRT in a time bound manner.

13. However what emerges is that owing to the assignment, the proceedings before the DRT are held up. It will have to be decided whether JCAIPL is entitled to proceed for recovery before the DRT or not. Thus the said contention of the petitioners also cannot be accepted.

14. The counsel for IDBI has also informed that the claim before DRT against the petitioners in the year 1998 was for in excess of ₹6.28 crores and by now a sum of over ₹30 crores would be due from the petitioners. It is stated that the petitioners by obtaining the interim order in this petition of restraining JCAIPL from assigning the debt in favour of any third party have tied the hands of the JCAIPL leading to the present situation. It is also argued that the OTS aforesaid for ₹250 lac was the third OTS proposal given to the petitioners and the petitioners in the past also had not honoured the earlier two OTS proposals. It is thus contended that no further latitude can be given to the petitioners.

15. The counsel for the petitioners has then contended that the petitioners are entitled to enforce the OTS in accordance with the judgment of the Apex court in *Sardar Associates v. Punjab and Sind Bank* (2009) 8 SCC 257. The counsel KMBL controverts by contending that the said judgment was on the basis of OTS Scheme and the OTS offer in the meeting of 21st March, 2006 to the petitioners was not in pursuance to any OTS Scheme and the petitioners are thus not entitled to mandamus.

16. The petitioners have not made any basis in the pleadings for the said claim; in fact neither any Notification of Reserve Bank of India nor the judgment in *Sardar Associates* is available and adjournment is sought for the said purpose. When the petitioners have not come to the Court with the case of being covered by the judgment in *Sardar Associates* and when the said argument is raised only upon not succeeding on the case pleaded, adjournment is not deemed appropriate.

17. Reference may also be made to the judgment of the Division Bench of this Court in *Haryana Steel & Alloys Ltd. v. IFCI Ltd.* AIR 2007 Delhi 65 where it has been held that no notice is required to be given to the debtor before disposal by the creditor bank of the debt and that since the

debtor does not stand to lose by such assignment, he has no right to challenge the same.

18. The counsel for the petitioners has contended that the petitioners are ready and willing to abide by the OTS sanctioned in the meeting of 21st March, 2006.

19. On the basis of the documents on record I am satisfied that opportunity was given to the petitioners to abide by the said offer but the petitioners failed to do so and rather in the letters dated 20th April, 2006 and 29th April, 2006 admitted so. Thus it cannot be said that assignment is not in accordance with the said decision.

20. No merits are found in the petition, the same is dismissed. The interim orders are vacated. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

FEBRUARY 2, 2011
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