IN THE HIGH COURT OF JUDICATURE FOR THE STATES OF PUNJAB AND HARYANA, AT CHANDIGARH

Civil Writ Petition No. 7381 of 2015 (O&M)

Date of Decision: August 26, 2015

M/s. Malhan Industries Pvt. Ltd. and another ---Petitioners

Versus

Punjab National Bank and others ---Respondents

CORAM: **Hon'ble Mr. Justice Satish Kumar Mittal**
Hon'ble Mr. Justice Mahavir S. Chauhan

Present: Shri Anand Chhibber, Senior Advocate, with Shri Pankaj Gupta, Advocate, for the petitioners.

Shri R.S. Bhatia, Advocate for respondents No. 1 and 2.

Shri Sanjay Kaushal, Senior Advocate, with Shri Aman Dhir, Advocate, for respondents No. 3 and 4.

Shri Tribhuwan Singla and Shri Kanwal Goyal, Advocates, for respondent No. 5.

---

1. *Whether Reporters of local papers may be allowed to see the judgment? Yes/No*
2. *To be referred to the Reporter or not? Yes/No*
3. *Whether the judgment should be reported in the Digest? Yes/No*

Mahavir S. Chauhan, J.

The petitioners availed from Punjab National Bank (here-in-after referred to as 'the bank') (respondent No. 1) various cash credit facilities and to secure the same mortgaged with the bank (i) factory land admeasuring 2500 square yards, and building, situated at Karabarra, G.T.

Road, Ludhiana, (ii) Property No. 4796, admeasuring 300 square yards, situated at Sunder Nagar, Ludhiana, (iii) Property No. 4840, admeasuring 411 square yards, situated at Sunder Nagar, Ludhiana, and (iv) Property admeasuring 5 kanals 2/3 marlas, situated in village Manj, G.T. Road, Jalandhar Byepass, Ludhiana, adjacent to Hardy World. Owing to petitioners' failure in repayment of the outstanding amount, the bank brought two Original Applications (for short, OA) before Debt Recovery Tribunal-II, Chandigarh (here-in-after referred to as the 'DRT') under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (here-in-after referred to as the 'DRT Act') which were decreed on August 08, 2008, by the DRT for Rs. 1,21,70,09,004.00 and Rs. 11,89,74.174.00, respectively. Consequently, the bank, on one hand, initiated recovery proceedings by sale of the mortgaged properties under Section 13 (13) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short, "the SARFAESI Act"), and, on the other, initiated action against the Directors/Guarantors of the petitioners and took symbolic possession of mortgaged properties No. (i) to (iii) and actual possession of mortgaged property No. (iv). In the meantime, on petitioners' request, the bank accepted one time settlement ('OTS', for short) for a sum of Rs. 5,60,00,000.00/- as regards both the petitioners vide letter dated August 03, 2009. Under this OTS petitioners deposited an amount of Rs. 2,55,00,000.00 and the bank released Properties No. (i) and (ii). The petitioners, owing to financial constraints and other circumstances beyond their power and control, could not deposit the remaining amount and requested the bank to extend the time for repayment of the balance amount under the OTS. The bank, vide letter dated May 12, 2011 (Annexure P3), however, cancelled the OTS and attempted to sell the mortgaged properties but could not succeed.

02. The petitioners made another request to the bank for fresh OTS which the bank, vide letter dated October 09, 2014 (Annexure P6), accepted the request and settled the loan at Rs. 3, 98,27,000.00 which was to be deposited within a period of three months reckonable from the date of acceptance of offer, i.e. January 08, 2015.

03. Though the petitioners had arranged a buyer who even deposited an amount of Rs. 25,00,000.00 in 'no lien account' with the bank but the mortgaged properties could not be sold, statedly, because these were under unauthorized possession of respondents No. 3 to 5 and consequently, the petitioners could not honour their commitment under the second OTS and, as a consequence, the mortgaged properties [Nos. (iii) and (iv)] were sold in re-auction held on March 24, 2015 for Rs. 1,51,70,000.00 and Rs. 1,75,10,00.00 to respondents No. 2 and 3 and respondent No. 5, respectively. The sale was to be confirmed after disposal of objections, if any, received within 30 days of the auction sale.

04. Before the auction sale could be confirmed, petitioners approached this Court on April 20, 2015 by way of the instant Civil Writ Petition praying for extension of time for depositing the settled amount in terms of the second OTS and on April 22, 2015 the petitioners offered to pay a sum of Rs. 30 lacs on that very day and a sum of Rs. 1,50,00,00.00 by April 30, 2015. Notice of motion was accordingly issued. On the adjourned date, i.e. April 28, 2015 a Bank Draft for Rs. 1,50,00,000.00 brought by the

petitioners was handed over to learned counsel for the bank to keep the amount in 'no lien account' without prejudice to the rights of any other party.

05. Respondents No. 3 and 4 have filed a joint written statement and respondent Nos. 1 and 5 have filed their returns separately while no return has been filed on behalf of respondent No. 2.

06. We have heard learned counsel for the parties.

07. It has been urged on behalf of the petitioners that they honestly and sincerely intended to repay the entire loan amount in terms of the second OTS and to arrange money for the purpose had even found out a purchaser for the mortgaged property, who even deposited an amount of Rs. 25,00,000/- in 'no lien account' with the bank, but the bargain could not be finalized as the said property was under unauthorized occupation of respondents No. 3 to 5. Still, in addition to the afore-stated amount of Rs. 25,00,000.00 the petitioners have deposited an amount of Rs. 1,80,00,000.00 out of the total amount of Rs. 3, 98,27,000.00 under the second OTS and are ready to deposit the entire remaining amount, together with interest, within the period that may be allowed to them by this Court. By referring to ***M/s. A-One Mega Mart P. Limited and Ors. Versus HDFC Bank and another, 2013(1) Punjab Law Reporter 688***, ***Sat Kartar Ice and General Mills versus Punjab Financial Corporation, 2008(1) ISJ (Banking) 248***, and ***Punjab and Sind Bank versus Balraj Singh and others, CWP No. 1534 of 2012, decided on December 11, 2013*** time for complying with the OTS can be extended by the Debt Recovery Appellate Tribunal while hearing an appeal under the DRT Act and by this Court in

exercise of its jurisdiction under Article 226 of the Constitution of India and as held in ***Seth Kashi Ram Chemical (India) versus State of Haryana and others, 1991 Supp(1) Supreme Court Cases 215***, and ***Rashpal Singh versus Debt Recovery Appellate Tribunal and others, CWP No. 975 of 2008, decided on January 22, 2008***, the auction purchasers can be duly compensated by refund of the money deposited by them, together with interest.

08. Per Contra, on behalf of the respondents it has been argued that when first OTS was accepted by the respondent bank for Rs. 5,60,00,000.00 in the year 2009, the respondent bank had agreed to forego its claim to an amount of Rs. 8, 58,03,698.00 but the petitioners did not comply with the terms of that OTS. Inspite of that the bank accepted petitioners' offer for the second OTS for Rs. 3,98,27,000.00 believing petitioners' undertaking to repay the agreed amount of money within the stipulated period of three months, i.e. on or before January 08, 2015 but the petitioners have failed to honour that undertaking also thus exhibiting their intention not to repay the settled amount and, as such, they are liable to pay the entire amount outstanding against them and this Court cannot extend the time for repayment in exercise of its jurisdiction under Article 226 of the Constitution of India, more so because rights of auction purchasers (respondents No. 3 to 5) have also intervened in view of sale of the mortgaged property to them by way of the auction held on March 24, 2015.

09. No other or further point has been urged on either side.

10. Facts are not in dispute. Still we may recapitulate that after lapse of the first OTS, mortgaged properties have been sold to respondents No. 3

to 5 in the auction held on March 24, 2015 but the sale, admittedly, has not been confirmed. During the course of hearing it has also transpired that the auction money deposited by the auction purchasers is lying deposited in Fixed Deposits and is earning interest. It is also not in dispute that as against the settled amount of Rs. 3,98,27,000.00 under the second OTS an amount of Rs. 25,00,000.00 stands deposited by the prospective purchaser of the mortgaged property and Rs. 1,80,00,000.00 by the petitioners in the 'no lien account' with the respondent Bank. Thus, the total amount deposited by the petitioners or on their behalf after the second OTS comes to Rs.2,05,00,000.00. It is true that after failure of the second OTS entire amount payable under the orders dated August 08, 2008 of the DRT became payable and against the action of the Bank an appeal lies to the DRT under Section 17 of the SARFAESI Act, and against any order passed by DRT, an appeal is maintainable under Section 18 of the said Act to Debt Recovery Appellate Tribunal (DRAT). An order passed by DRAT is amenable to writ jurisdiction of the High Court. Section 34 bars jurisdiction of the civil court in matters relating to actions where provisions of SARFAESI Act have been invoked. Be that as it may, Constitution of India guarantees equality and strikes against any arbitrary action of an authority. It cannot be said that wherever any authority acts in a discriminatory or unreasonable manner, the aggrieved party would be without any remedy either by way of civil suit or by invoking writ jurisdiction of the High Court. In such circumstances, it cannot be held action by a Scheduled Bank enjoys immunity from the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India only because provisions of SARFAESI Act are applicable and have been invoked by it. As regards extension of time for repayment of the settled amount under the OTS, a reference may be made to ***M/s. A-One Mega Mart P. Limited and Ors. Versus HDFC Bank and another*** (supra) wherein, dealing with a somewhat similar situation, a Division Bench of this Court has held as under:

> "*29. Now taking up the issues arising at Nos. (b) and (c), they can be adjudicated together. The petitioners had submitted a proposal for OTS to the respondent Bank which was accepted whereby petitioners were required to liquidate the outstanding liability by 22.3.2011 which period was extended vide letter dated 18.4.2011. The petitioners had deposited ₹ 50,00,000/- and the balance amount of ₹ 2 crores was to be deposited to complete the requirements of OTS accepted by the Bank. The petitioners due to certain personal and practical difficulties could not honour the commitment and had sought further extension which, however, was declined. On 17.6.2011, father of petitioners No.2 and 3 after illness for over a month expired and thereafter the petitioners again approached the respondent Bank to pay the balance outstanding amount of ₹ 2 crores. The bank refused to accept the same. The petitioners in order to show their bona fides had presented drafts for ₹ 2 crores on 26.7.2011 to the Bank and had also produced four demand drafts duly revalidated in this Court on 10.2.2012 which were deposited with the Registrar (Judicial) of this Court. Further on 25.7.2012, learned counsel for the petitioners had stated that to pay additional amount of ₹ 50 lakhs. This intention clearly depicts the bona fides of the petitioners. The narration of events noticed hereinbefore shows that it was due to certain unfortunate exigencies, the petitioners could not honour the terms of the OTS. In such circumstances, the action of the respondent-Bank in rejecting the OTS is harsh and unjust. It may also be noticed that the petitioners have no other remedy available against the rejection of extension of time for OTS proposal. This Court in* ***Sat Kartar Ice and General Mills v. Punjab Financial Corporation, 2008(1) ISJ Banking 248*** *had condoned the delay in depositing the amount of OTS and directed the Bank to abide by the OTS. Similarly in* ***State Bank of India v. Vijay Kumar, AIR 2007 SC 1689*** *again, the delay in depositing the amount which was condoned by the High Court was upheld by the Apex*

> *Court. Accordingly, in the present facts and circumstances after condoning the delay in depositing the amount, while allowing the writ petition, it is directed that in case, the petitioners deposit another sum of ₹ 50 lakhs in terms of the statement made by their counsel on 25.7.2012 within two months of receipt of a certified copy of this order, the OTS shall be implemented. It is further directed that the drafts deposited in pursuance to the order of this Court dated 10.2.2012 shall be returned to the petitioners, who after getting them revalidated, shall deposit the same with the bank within the aforesaid period for getting the OTS implemented."*

Nothing to the contrary could be shown on behalf of the respondents during the course of hearing. Therefore, we are not inclined to accept the contention that this Court while exercising jurisdiction under Article 226 of the Constitution of India, cannot extend time to repay the settled amount under OTS. It would stand repetition that as against the settled amount of Rs. 3,98,27,000.00 under the second OTS an amount of Rs.2,05,00,000.00 stands deposited by or on behalf of the petitioners in the 'no lien account' with the respondent Bank and if that amount of money is adjusted towards the loan account of the petitioners only an amount of Rs. 1,93,27,000.00 would be payable by the petitioners to the respondent. For the delay in repayment of the settled amount, respondent bank can be duly compensated by payment of interest for the period of delay. At the same time, the auction purchasers can be compensated by refund of the amount(s) deposited by them, together with interest for the period during which they have been deprived of user of the deposited amounts.

11. Therefore, we accept the writ petition and extend the time for repayment of the settled amount under the second OTS by four weeks reckonable from today. While the respondent bank shall be at liberty to adjust the amount of Rs. 2,05,00,000.00 already deposited by or on behalf

of the petitioners towards their loan account and the petitioners shall pay, within four weeks, the balance amount of Rs. 1,93,27,000.00, together with interest at the rate of 15 % (reducing) on the defaulted amount as also interest at the rate of 15% on the amounts deposited by respondents No. 3 to 5 as auction money, for the period from the date(s) of deposit of these amounts till the expiry of the afore-stated period of four weeks, to the respondent bank within the afore-stated period of four weeks. It may be clarified that the amount of interest on the auction money shall be paid by the respondent bank to respondents No. 3 to 5 while refunding the auction money to them and it shall be over and above the interest earned by those amounts. Further, in the event of non-compliance of these directions by the petitioners, the writ petition shall be deemed to have been dismissed.

12. No costs.

[SATISH KUMAR MITTAL]
JUDGE

[MAHAVIR S. CHAUHAN]
JUDGE

August 26, 2015
adhikari