IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-COM No.15 of 2016 (O&M)
Date of Decision:-29.11.2016

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M/s Megaa Bakers Pvt. Ltd. and others
….. Petitioners

Vs.

Union of India and others
….. Respondents

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

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Present: - Mr.Aalok Jagga, Advocate,
for the petitioners.

None for respondents No.1 & 2.

Mr.Rakesh Gupta, Advocate,
for respondents No.3 & 4.

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RAKESH KUMAR JAIN, J. (ORAL)

The petitioners have prayed for a writ in the nature of mandamus seeking a direction to the respondents to implement "Framework for Revival and Rehabilitation for Micro, Medium and Small Enterprises (MSMEs) dated 17.3.2016" and constitute the requisite committee as required under para 3 thereof and has further prayed that the restructuring proposal dated 29.8.2016, submitted by the petitioners, may be directed to be considered by the aforesaid committee and restructure the loan account of the petitioner to save a running unit. The petitioners have also made a prayer for issuance of a writ in the nature of prohibition seeking a direction to restrain the Bank from taking physical possession of the running unit of the petitioners and also from taking any coercive action including putting the said property to sale.

This case has a chequered history. However, since I am dictating the judgment in Court, I would try to summarize the facts of the case with the assistance of both the counsels.

Petitioner No.1 is a private limited company. It availed credit facilities from respondent No.4 i.e. State Bank of Patiala, Main Branch, Una, Himachal Pradesh vide sanctioned letter dated 11.1.2014, namely, cash credit limit of ₹2 crore, term loan of ₹2.50 crore and inland letter of credit/foreign letter of credit of ₹50 lac (forming a part of CC limit sanctioned of ₹2 crore). In order to avail the said limits, the petitioners mortgaged factory, land and building, comprising of lease hold rights situated at Plot No.2, Industrial Area, Tahliwal, Una worth ₹450.65 lac and extension of charge over house property measuring 1828 sq. meter situated at Mohal Kotla Kalan, Hamirpur Road, Una worth ₹365.52 lac. On 9.1.2015, respondent No.4 issued a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (2^{nd} Ordinance) Act, 2002 [for short 'the Act'] claiming an amount of ₹4,34,26,091.19 as on 8.1.2015. However, the said notice was withdrawn and second notice was issued under Section 13(2) of the Act on 4.7.2015 but that too was withdrawn on account of some payments made by the petitioners. The 3^{rd} notice was issued on 6.10.2015, claiming an amount of ₹4,24,28,520.35 as on 5.10.2015. Respondent No.4 then issued an overdue certificate dated 29.12.2015 indicating the amount of ₹22,99,716/- in Cash Credit and ₹34,12,000/- in Term Loan Account. It is alleged that the petitioners had paid ₹20 lacs on 22.1.2016. Vide letter dated 12.2.2016, respondent No.4 informed the petitioners that they wanted to take physical possession of their factory premises on 16.2.2016 being a Secured Creditor under the Act. The petitioners filed Securitisation Application (SA) No.66 of 2016 before the Debts Recovery Tribunal-III, Chandigarh [for short 'the DRT'] assailing the order of the District Magistrate, Una, (H.P) dated 27.1.2016 in terms of which respondent No.4 passed the order dated 12.2.2016. On 18.3.2016, the DRT passed the following order: -

> *"Counsel for the applicant has argued that the Bank issued third Demand notice on 6.10.2015 whereas as per letter dt. 25.11.2015 (Annex A6), the Bank itself has asked the applicants to regularize the accounts. Not only this even on 29.12.2015 as per Annexure A8, the Bank has certified that in the CC account only ₹22,99,716/- was overdue and in term loan account it is ₹34.12 lakh and thereafter the amount of ₹20 lakh was duly deposited in the CC account. Now the only amount which remains to be regularized in ₹3 lakh approx and in T/L account they are ready to pay the dues. Since the respondent Bank itself has offered to regularize the account, they are ready for the same for which securities to the tune of ₹5.43 crore for the first property and ₹4.90 crore for another second property are in the hands of the Bank which are sufficient to secured the advances but the Bank is adamant to take physical possession of the property of the running unit where more than 15 employees are working. The next contention of the counsel for the applicants is that it is the only unit installed in the area which is provided bakery and*

other items in the surroundings, therefore, the same should be protected and six months time be given to pay the entire dues and also offered to pay ₹55 lakh upto 30 March and ₹45 lakh within 60 days thereafter.

On the other hand side, counsel for the respondent argued that it is not only the short fall of the amounts but no stocks are available and the applicants are making false averments stating the unit to be running. So far cheque of ₹20 lakh deposited is concerned, that was bounced and ultimately paid by the applicants. The counsel for the respondent Bank further informed that the Bank not only declared the account NPA after watching the status of these accounts but apart from these, six more accounts wherein ₹9 core is yet to be recovered are also NPA. He further declared that the applicants are running parallel account with UBI and siphoning off the funds. So far as the proposal of depositing the amount is concerned, the overdue amount is ₹54 lakh since there is no stock, the entire CC account is overdue to the tune of ₹1.90 crore. If the applicants want to pay the overdue amount then they should have to pay ₹2.5 crore to get the account regularized.

Heard and perused the records.

The arguments of the counsel for the Bank is a clear reply to counter argument of the applicants. In fact the counsel for the Bank has disclosed real picture inside the working of the applicants. No stock is available with *the applicants, the unit is closed, the applicants are having six other accounts which too are bad and even then the applicants are running parallel account with another Bank, these acts are sufficient to decline the interim prayer of the applicants. Since closing of financial years ahead and the applicants are asking breathing time to repay the entire dues and have offered to pay ₹55 lakh by 30th March and ₹45 lakh within 60 days thereafter the applicants are directed to approach the authorized officer with an initial amount of ₹55 lakh on or by 25th March 2016 and with an undertaking to pay ₹45 lakh within 60 days and along with a proposal to pay the entire amount within 6 months. In case the applicants approached the authorized officer on or before 25th March 2016 with an initial amount of ₹55 lakh along with a proposal, the Authorised Officer may defer physical possession of the property till the proposal is decided. In case of non compliance of the order by the applicants or the proposal is found to be not acceptable to the Bank as per the rules, the authorized officer is at liberty to go ahead as per law.*

To be listed on 30.5.2016.

Dasti."

Since the petitioners were given liberty to submit alternative proposal in the order dated 18.3.2016 (referred to above), the proposals were made by the petitioners to the authorized officer of respondent No.4 on

23.3.2016. However the proposals were rejected by respondent No.4 and conveyed to the petitioners on 12.04.2016 with the following observations: -

> *"We have to inform that the competent authority has declined the captioned proposal as the same is not as per the compliance of the orders of Hon'ble DRT, hence, it is not considered viable."*

The petitioners moved an application bearing IA No.510 of 2016 in which the basic prayer was for extension of time to deposit the amount as ordered by the DRT in its order dated 18.3.2016. It was also prayed that the petitioners are not liable to pay the entire amount but wanted to regularize the account by way of clearing overdue and restructuring. The said application was dismissed by the DRT on 26.5.2016 by passing the following order: -

> *"26.05.2016*
>
> *Item No.92*
>
> *Order on IA 510 of 2016*
>
> *The applicant has filed this IA with a prayer to extent the time period to regularize the loan account as granted in order dt. 18.3.2016. The argument of the counsel for the applicant was that the Respondent Bank vide letter dt. 29.12.2015 (Annexure A8) has given certificate that amount of ₹22,99,716/- is due in CC account and ₹34,12,000/- is due in Term Loan Account and that the applicant has already deposited ₹20 lakh on 21.01.2016. Moreover, since from the list of Sudnry debtors major recovery is to be from M/s Sweet Well India Products Pvt. Ltd. who has also to pay ₹48 lakh to the applicant,*

this industry being only state of art industry require 6 months time to pay the overdue amount for which he has offered to pay ₹10 lakh through cheques and has also stated that if the cheques are bounced he will pay himself from his own sources. The only prayer of the applicant was limited to the extension of regularization of the account for which he has given proposal of 5 options to the bank and ready to go for the same whichever is convincing to the Bank. The counsel for the applicant has stated that he ahs not offered to pay the entire amount within 6 months as the Court has directed rather the offer was to pay overdue amount within 6 months because after upgradation of loan account to a standard loan account (the right of which is available to the applicant), directions to pay ₹55 lakh by 25.03.2016 against prayed time of 6 months is too short and thus prayed to be extended. Moreover, the contention was to repay the overdue amount within 6 months and not total due amount.

On the other hand side, counsel for the respondent Bank reiterated that in this unit no stock is available and that the unit is also not running. Earlier a cheque for ₹20 lakh issued by the applicant had bounced, may be later on paid by the applicant. He further informed that in all 6 loan accounts more than ₹9 crore is due and the applicant is running parallel account with another nationalized bank. Pointing out towards the previous orders whereby the interim prayer *of the applicant has already been decided and now cannot be further extended or altered, as the same has been passed in the presence of the applicant and on their approval.*

Heard both the counsel and perused the record.

Before parting with the orders, I have perused previous orders dt. 18.3.2016 and has also considered assurance of payment of an amount of ₹45 lakh by 25.04.2016 through one of the Sundry Creditor M/s Sweet Well India Products Pvt. Ltd. which has already expired and not adhered. Moreover, I could not ignore that more than ₹9 crore is yet to be recovered from the applicants in total and particularly under this notice more than ₹4 core is to be recovered. Even offer to pay ₹10 lakh by the applicant in TL is not acceptable and once the interim prayer has already been considered and detailed order has been passed which the applicant has failed to comply with, therefore, finding no merit, the IA is dismissed.

Be listed on 30.08.2016. Order dasti."

Aggrieved against the order passed by the DRT dated 26.5.2016, the petitioners filed CWP No.12358 of 2016 before this Court with the following prayers: -

"i. this Hon'ble Court may be pleased to issue a writ in the nature of certiorari quashing order date 26.5.2016 (Annex P-21), passed by respondent

No.1 in IA No.510/2016 in SA No.66/2016 in the case titled as Megaa Bakers & others Vs. State Bank of Patiala, whereby the genuine request of the petitioner, seeking extension in deposit of the amount, to regularize the loan account has been denied in complete contravention to the law laid down by this Hon'ble Court in Sat Kartar Ice and General Mills Vs. Punjab Financial Corporation 2008(1) ISJ (Banking) 248, M/s Lord Budha Society and others Vs. State Bank of Patiala 2013(3) PLR 146 and M/s A-One Mega Mart P. Limited Vs. HDFC 2013(1) PLR 688.

ii. *this Hon'ble Court may be please to grant the petitioner time upto 6 months, to regularize the loan account by paying the overdue amount with a further prayer that the Bank be directed to upgrade the loan account to a standard loan account in view of clause 4.2.5 of Master Circular – Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances, as upheld by Hon'ble Supreme Court in Mardia Chemical Vs. Union of India; 2004 (4) SCC 311 and which has been held to be binding in view of the judgment of Hon'ble Supreme Court in case*

Sardar Associates Vs. Punjab & Sind Bank 2009 (1) SCC 257.

iii. this Hon'ble Court may be pleased to issue a writ in the nature of prohibition, restraining the respondent Bank from taking physical possession of running factory unit of petitioner and restrain the Bank from taking physical possession of the same and in case if the Bank has taken physical possession, restore the same to the petitioner."

On the preliminary hearing of the said writ petition on 7.6.2016, the following order was passed: -

"Learned counsel for the petitioners submits that the petitioners, in order to show their bona fide, are ready to deposit an amount of ₹20 lacs within a period of one week from today.

Keeping in view the submission made by learned counsel for the petitioners, let notices be issued to the respondents for 08.07.2016 subject to their depositing an amount of ₹20 lacs before the Debts Recovery Tribunal, within a period of one week from today.

However, status quo, as it exists today, shall be maintained till the next date of hearing."

The proceedings continued on various dates and the following interim orders were passed:-

"A written request for an adjournment has been made on behalf of learned counsel for the petitioners.

Learned counsel appearing for the petitioners submits that in compliance to the order passed by this Court on 07.06.2016, an amount of ₹20 lacs has been deposited before the Debts Recovery Tribunal.

As per office report, notices issued to respondents No.2 and 4 have not been received back served or otherwise.

Let fresh notices to respondents No.2 and 4 be issued for 01.08.2016.

Interim order to continue till then."

"At the request of learned counsel for the petitioners, adjourned to 9.8.2016 for arguments."

"Learned counsel for the respondent Bank submitted that the unit was lying closed and there was no stock found at the site at the time of inspection by the officials of the respondent Bank. However, this fact was disputed by the learned counsel for the petitioners.

Let the concerned official or the authorized representative of the respondent Bank inspect the site of the unit by tomorrow itself in the presence of the representative of the petitioners and submit his report in Court on the next date of hearing.

Adjourned to 16.08.2016."

"Learned counsel for the petitioners states that draft proposal for restructuring of loan shall be produced in Court on the next date of hearing and it shall be furnished to the bank within next three days.

It was submitted that in the meanwhile ₹10 lacs shall be deposited with the Bank to show the bona fides of the petitioners who want to clear the entire outstanding amount. However, it shall be accepted by the bank without prejudice to its rights in the pending writ petition.

Mr. Rakesh Gupta, Advocate appears for respondent No. 2 and states that the proposal shall be put up before the competent authority to take sympathetic view in accordance with law.

Adjourned to 30.08.2016."

"Learned counsel for the petitioners has furnished the proposal for restructuring of loan today in Court. He also states that ₹10 lacs in terms of order dated 16.8.2016 shall be deposited on or before 05.09.2016.

To come up on 07.09.2016."

"Learned counsel for the petitioners states that there has been two day's delay in depositing the amount of ₹5 lacs which has been transferred in the account of respondent-bank today and has also brought a cheque bearing No.822834 dated 01.09.2016 for balance amount of ₹5 lacs which was ordered on 30.08.2016. Learned

> *counsel for the respondent-bank accepts the same without prejudice to its rights in the pending writ petition. Copies of the receipt of deposit and cheque are taken on record.*
>
> *Learned counsel for the respondent-bank states that proposal of the petitioners for restructuring of loan has already been submitted to the bank. However, the bank could not forward it to the higher authorities due to non compliance of the order dated 30.08.2016. He states that the proposal which was furnished by learned counsel for the petitioners shall be forwarded to the higher authorities for approval.*
>
> *For further proceedings, to come up on 23.09.2016."*

Ultimately, CWP No.12358 of 2016 was disposed of by this Court vide order dated 23.9.2016 on the ground that the petitioners had the alternative remedy under the Statue in terms of Section 18 of the Act to file an appeal before the Debts Recovery (Appellate) Tribunal. Admittedly, the petitioners did not file any appeal against the order which was challenged in CWP No.12358 of 2016 and the said order became final. During the pendency of the said petition, the petitioners made the proposal to respondent No.4 for the purpose of restructuring of loan account. Although at one point of time CWP No.12358 of 2016 was disposed of relegating the petitioners to approach the Debts Recovery (Appellate) Tribunal but the petitioners filed the present petition for seeking the relief as prayed before any action could have been taken by the respondents on their application for restructuring of loan account.

The law was set into motion on 27.10.2016 by calling upon the respondents. On the same day, Mr.Rakesh Gupta, Advocate appeared on behalf of respondents No.3 & 4 and filed written statement on the next date of hearing i.e. on 31.10.2016.

Learned counsel for respondents No.3 & 4 gave assurance to this Court on 28.11.2016 at about 3:00 PM that after this time, the respondents No.3 and 4 will not take possession till tomorrow. In the meantime, respondent No.3 passed the order declining restructure proposal by its letter dated 24.10.2016 (Annexure P-28).

Learned counsel for the petitioners has submitted that respondent No.3 had no jurisdiction to consider the proposal made by the petitioners for restructuring of the loan account in view of guidelines dated 17.3.2016 issued by the RBI to all Scheduled Commercial Banks (excluding RRBs) as according to them the petitioner-Company is a "Borrower Enterprise" and its case falls in Clause 2.3 of the RBI guidelines and the proposal for restructuring has to be dealt with by a committee constituted for stressed micro, small and medium enterprises as mentioned in Clause 3 of the RBI guidelines. It is further submitted that the composition of committee is provided in Clause 3.3 of the RBI guidelines and the action to be taken by the committee is provided in Clause 4.1 'Corrective Action Plan' of the RBI guidelines. It is also submitted that the petitioners are eligible for restructuring of loan account by the committee in terms of Clause 10 of the RBI guidelines. It is further submitted that the order passed by respondent No.3 dated 24.10.2016 is patently erroneous and illegal as it has no jurisdiction even to consider the application of the petitioners for restructuring of the loan account. The petitioners have thus also made a prayer during the course of hearing that the said decision taken by respondent No.3 may also be declared illegal. It is submitted by learned counsel for the petitioners that the RBI guidelines are statutory in nature. In support of his submissions, he has relied upon two decisions of the Supreme Court rendered in the case of ***"Central Bank of India*** *Vs.* ***Ravindra"*** *2002(1) RCR (Civil) 49* and ***"M/s Sardar Associates and Others*** *Vs.* ***Punjab & Sind Bank & others"*** *2009(3) RCR (Civil) 927.*

On the other hand, learned counsel appearing on behalf of respondents No.3 & 4, who are the contesting respondents, has raised a preliminary objection about the maintainability of the petition before this Court on the ground that the petitioner-Company is situated in Himachal Pradesh, respondents No.2 & 3 are the residents of District Una, Himachal Pradesh, financial facilities were availed of the Bank branch at Una and the entire cause of action had occurred in the said State, therefore, this petition lacks territorial jurisdiction. In support of his submission, he has relied upon a decision of the Supreme Court in the case of ***"Alchemist Limited and another*** *Vs.* ***State Bank of Sikkim and others"*** *2007(3) PLR 475.* The second objection raised by the respondents is that the present petition is not maintainable as it is barred by the provisions of Order 2 Rule 2 of the Code of Civil Procedure, 1908 [for short 'the CPC'] because when the earlier petition bearing CWP No.12358 of 2016 was filed on 06.06.2016, the RBI guidelines dated 17.3.2016, relied upon by the petitioners, were already in vogue and the petitioners could have claimed the said relief at that time but in view of the fact that the petitioners had not asked for that relief, therefore, they can not be allowed to ask for the said relief now in the present petition. Finally it is submitted that the RBI guidelines dated 17.3.2016 are not applicable in view of Clause 2.1 of the RBI guidelines as the petitioners did not submit the proposal for restructuring of loan account in terms of Clause

2.3 of the RBI guidelines. On merits, it is submitted that in terms of the order passed by the DRT on 18.3.2016, the proposal of the petitioners for restructuring of loan account was put up before the Zonal Office Credit Committee, Ludhiana consisting of several high ranking officers and headed by DGM in which the following recommendations were made by the committee:-

> *"In view of the order passed by the Hon'ble DRT on 18.03.2016, the borrower had to pay ₹55.00 lacs as initial amount till 25.03.2016 with proposal for further repayment, ₹45.00 lacs within 60 days and entire amount within 6 months. However, the borrower did not deposit any initial amount as ordered by the Hon'ble DRT and has submitted a proposal for rephasement of the loan accounts without any concrete plan to regularize the accounts. Since the proposal is not as per the compliance of orders of Hon'ble DRT, hence it is not considered viable.*
>
> *The borrower in his proposal has offered the Bank to conduct a stock audit after restructuring of the facilities and has mentioned that the unit is running. However, on 25.03.2016 Chief Manager, Una Branch visited the unit and observed no activity at the unit and stock available at the site is approximately valued at ₹20.00 lacs consisting of packing material only. The borrower has not submitted any stock statement since September, 2015 in spite of constant follow up by the Branch. Therefore, at this juncture conducting of*

stock/receivable audit will not serve any purpose and will merely delay the recovery process.

The renewal of the credit facilities sanctioned to the borrower is due since 26.01.2015. After regular follow up by the Branch the borrower has submitted financial data is February 2016 without any income tax returns. The borrower has been advised by the branch to explain the reasons for not achieving the sales as projected in CMA data. The borrower submitted his clarification and other documents on 09.03.2016.

As per sanction conveyed by Zocc vide its Agenda Item No.446/47 dated 08.01.2014, the term loan was sanctioned for construction of Building and Purchase of P&M but no construction was made except just laying slabs at basement level and no new P&M was installed. As regarding the utilization of funds disbursed under term loan of ₹250 lacs, no CA certificate/Utilization Certificate is submitted by the party. On inspection of the unit the branch has found that only ₹25 lacs (approx) have been utilized out of the disbursed funds, as such it is evident that the funds have been diverted and end use has not been made.

Further all other accounts of the promotes and their family members with the Branch are also NPA and are not being regularized after regular follow up. Hence, necessary

> *action for recovery of bank dues is already initiated by the Branch.*
>
> *Further the above facts, it is concluded that the borrower is neither serious nor have proper strategy/plan to regularize its accounts and just delaying on the Bank's action under SARFAESI Act. We have already submitted a proposal for declaring the borrower as willful default to the competent authority.*
>
> *In view of the above, we recommend for declining the proposal of M/s Mega Bakes Pvt. Ltd. for restructuring of credit facilities in lines with orders of Hon'ble DRT dated 18.03.2016 and we may be allowed to continue our action under SARFAESI Act for taking physical possession of the property for which DM permission has been obtained."*

These recommendations were conveyed to the petitioners in the month of April 2016. It is submitted that the petitioners have been found remiss in their act and conduct as they had opened a parallel account in Union Bank of India and diverted the funds without the prior permission of the respondent-Bank and were not using their end use. It is further submitted that the proposal made by the petitioners about which they now have the grievance was considered by respondent No.3 in terms of the order passed by this Court on 16.8.2016 in CWP No.12358 of 2016 and rejected. It is also submitted that the RBI guidelines are not mandatory in nature as the Bank has taken a commercial decision and in order to support his contention, he has relied upon two decisions of this Court rendered in ***CWP No.5120 of 2016*** titled as ***"M/s Ranbir Textiles and another*** Vs. ***Reserve Bank of India***

and others" decided on 22.3.2016 and ***CWP No.5699 of 2016*** titled as ***"M/s N.K. Rubber Industries*** *Vs.* ***Reserve Bank of India and others"*** decided on 12.4.2016.

In rebuttal, the learned counsel appearing on behalf of the petitioners, at the first instance, opposed the contentions of the respondents that this Court does not have the jurisdiction to entertain and decide the petition submitting that the order of considering the proposal for restructuring the loan account has been passed at Chandigarh by respondent No.3 i.e. State Bank of Patiala, Stressed Assets Management Branch, Madhya Marg, Sector 8-C, Chandigarh, therefore, since the cause of action has arisen within the territorial jurisdiction of this Court, therefore, the present petition has been filed. In support of his submissions, he has relied upon two decisions of the Supreme Court rendered in ***"Om Prakash Srivastava*** *Vs.* ***Union of India and another"*** *2006(3) RCR (Civil) 720* and ***"Eastern Coalfields Ltd. and others*** *Vs.* ***Kalyan Banerjee"*** *2008(2) RCR (Civil) 685***.**

In respect of the objection raised by the respondents with the aid of Order 2 Rule 2 of the CPC, it is submitted by learned counsel for the petitioners that the cut of date was 30.6.2016 and in this regard, he has read over the following lines from the RBI guidelines: -

> *"The Board approved policy to operationalize the framework may be put in place by the banks not later than June 30, 2016."*

It is further submitted by the learned counsel for the petitioners that the petitioners were actually not aware of the RBI guidelines. He has also submitted that the restructuring of loan account is the part of the guidelines which are formulated by the RBI under Section 21 of the Banking Regulation Act, 1949 and thus has a statutory base and in this regard he has relied upon judgments of the Supreme Court rendered in the cases of ***Central Bank of India (Supra)*** and ***M/s Sardar Associates and others (Supra).*** It is also submitted that the judgments relied upon by the respondents rendered by this Court are not applicable because in those cases, the proposal was considered and rejected wherein in their case the proposal has not been considered by the competent authority much less the committee as provided in the RBI guidelines. Learned counsel for the petitioners has further submitted that the petitioners had opened an account in the Union Bank of India after their account in the respondent-Bank was declared NPA.

From the resume of the aforesaid facts, the following questions arise for adjudication: -

(i) Whether this Court has territorial jurisdiction to entertain this petition?

(ii) Whether the prayer made in this petition is barred by Order 2 Rule 2 of the CPC?

(iii) Whether the guidelines issued by the RBI are statutory in nature or otherwise?

(iv) Whether the petitioners can claim restructuring of their account by constitution of committee in the absence of any proposal having been made in terms of Clause 2.3 of the RBI guidelines?

(v) Whether the proposal made by the petitioner, in terms of the order passed by

the DRT and this Court has rightly been considered by respondent No.3?

The first question is pertaining to the territorial jurisdiction of this Court. The objection raised by the respondents is that the petitioner-Company is a private limited company, located in District Una, Himachal Pradesh, the credit facilities were advanced by the State Bank of Patiala, Main Branch, Una, H.P. and the mortgaged property is also located at District Una, therefore, the entire cause of action arisen to file the writ petition is within the territorial jurisdiction of High Court at Shimla, Himachal Pradesh. However, it is not denied by respondent No.3 that the decision on the proposal made by the petitioners for the purpose of restructuring of loan account has been taken by the Branch at Chandigarh but the said decision has been conveyed to the Branch at District Una, H.P.

Learned counsel for the petitioners has submitted that Article 226 (2) of the Constitution of India deals with power to issue writs by a High Court exercising its jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. He has also referred to Section 20(c) of the CPC wherein it is provided that the suit shall be instituted in a Court within the local limits of whose jurisdiction the cause of action, wholly or in part, arises.

In the decision, relied upon by the counsel for the petitioners, of the Supreme Court in the case of ***Om Prakash Srivastava (Supra),*** the appellant had filed writ petition before the Delhi High Court taking the stand that he was being tried in several cases contrary to the extradition decree. He came to India by way of extradition from Singapore and was facing trial in eight cases which is in complete violation of the provisions of section 21 of the Extradition Act, 1962. He was kept in solitary confinement without proper medical aid in the Central Jail in the State of UP. The respondent therein had taken a stand that the appellant therein should have brought his grievance before the Allahabad High Court. In this background, the Supreme Court has observed that the only question though requires to be answered is whether the Delhi High Court had jurisdiction to deal with the matter and while referring to Article 226(2) of the Constitution of India, it was held that if the cause of action, wholly or in part had arisen within the territories in relation to, within it exercise of jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is to be issued. It is further observed that the cause of action consists of bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law.

In the case of ***Eastern Coalfields Ltd. and others (Supra)***, the respondent therein had alleged that he was an employee of the Eastern Coalfields Limited which is situated in Mugma area in District of Dhanbad, Jharkhand. His services were terminated at Mugma. He filed writ petition before the Calcutta High Court because the Appellate Court was in Calcutta where his appeal was dismissed. In this background, the Supreme Court has again, while referring to Article 226(2) of the Constitution of India, observed that the cause of action for the purpose of the said provision, for all intents and purposes, shall be assigned the same meaning as envisaged under Section 20 (C) of the CPC which means a bundle of facts are required to be proved. The entire bundle of facts pleaded need not constitute a cause of action as what is necessary to be proved is material facts whereupon a writ petition can be allowed.

On the other hand, in the judgment relied upon by the counsel for respondents No.3 & 4 in the case of ***Alchemist Limited and another (Supra)***, the facts of the case were that the appellant-company therein was having its registered and corporate office at Chandigarh whereas respondent No.1 therein was the State Bank of Sikkim and respondent No.2 was the State of Sikkim. The State of Sikkim disinvesting 49% of its equity capital in the first respondent-State Bank of Sikkim to a strategic partner with transfer of management in the first respondent Bank. For that purpose the Government of Sikkim issued an advertisement and invited offers for strategic partnership. Interested parties, firms and companies having management expertise were asked to apply with detailed biodata profiles to the State Bank of Sikkim at his head office at Gangtok. The appellate company submitted its formal proposal for the strategic business partnership. Several proposals were received from various entities, namely, the appellant-company and the other companies based in Calcutta. Vide letter dated 20.2.2004, the first respondent-Bank informed the appellant company that its proposal was accepted in principle subject to consideration and approval of the Government of Sikkim. The appellant-company received a communication at Chandigarh by the respondent-Bank on 23.2.2006 that the Government of Sikkim had not approved the proposal submitted by the appellant-company and sought to withdraw the communication dated 20.2.2004. Aggrieved against the order dated 23.2.2006, the appellant-company filed writ petition before this High Court which was dismissed only on the ground of territorial jurisdiction as no cause of action had arisen within the territorial jurisdiction of the Court. After considering the contentions of both the appellant-company and the respondent-Bank, the Supreme Court held that *"from the aforesaid discussion and keeping in view* *the ratio laid down in catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the petitioner-appellant, would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential, or integral part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the Court, the Court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a 'part of cause of action' nothing less than that".*

I have heard both the learned counsel for the parties on the first question.

The judgment relied upon by respondents No.3 & 4 in the case of ***Alchemist Limited and another (Supra)*** rather helps the petitioners because in para 43 of the judgment, the Supreme Court has held that even if a small fraction of the cause of action arises within the jurisdiction of the Court, the Court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a 'part of cause of action, nothing less than that.

In the present case, the cause of action has arisen to the petitioners, may be part of it, with the rejection of the application filed by the petitioners for restructure of loan account by respondent No.3 located at Chandigarh i.e. State Bank of Patiala, Stressed Assets Management Branch, Madhya Marg, Sector 8-C, Chandigarh, therefore, a part of action has arisen to the petitioners in Chandigarh i.e. within the territorial jurisdiction of this Court.

Consequently, agreeing with the petitioners, the first question is decided in their favour holding that this Court has the jurisdiction to entertain and decide the petition. The first question is accordingly decided.

The second question raised by learned counsel for respondents No.3 & 4 is that in the present petition the petitioners would not be entitled to any relief in view of the fact that they could have sued in respect of the restructure of loan account in view of RBI guidelines but since they omitted to do so therefore, they have relinquished their right and cannot agitate the same in the subsequent writ as the same is barred by Order 2 Rule 2 of the CPC as per which in case the plaintiff omits to suit in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

Learned counsel for the petitioners has submitted that the petitioners had no knowledge about the RBI guidelines and had also no occasion to invoke the RBI guidelines and even if it is presumed, that they had the knowledge, the cut off date was 30.6.2016 and they have filed the petition in this Court on 6.6.2016.

On the other hand, the contention of the learned counsel for respondents No.2 & 3 is that ignorance of law is not an excuse insofar as the RBI guidelines are concerned and the petitioners had specifically averred in the earlier writ petition to which there is no denial that the petitioners gave the proposal dated 23.3.2016 (Annexure P-13) for restructure of loan account to respondent No.4. Without any application of mind, the same was rejected by writing one line by the Bank that the same is not viable. The said rejection letter dated 12.4.2016 is in complete contravention to the law laid down by Division Bench of this Hon'ble Court in ***"Kumar Hotels and Restaurants Vs. Indian Overseas Bank"*** *2012 AIR (Punjab) 167.*

From these averments in the pleadings of the previous writ petiotn bearing CWP NO.12358 of 2016, it is apparent that the petitioners had the knowledge about the RBI guidelines and could have asked for the relief which is being sought in the present case but since it was omitted to be claimed in the said writ petition, therefore, I am of the considered opinion that the petitioners are not entitled to raise this plea in the present petition because Order 2 Rule 2 of the CPC is based upon public policy that the cause of action available at one point, should not be considered for the purpose of filing another petition, not only qua to save the precious time of the Courts but also to protect gullible litigants. Consequently, agreeing with the objection raised by the respondents the second question is decided in favour of the respondents holding that the prayer made in the present writ petition is barred by Order 2 Rule 2 of the CPC and the writ petition deserves to be dismissed by this Court on this ground alone.

Since, I am not deciding the writ petition on the ground of Order 2 Rule 2 of the CPC, therefore, I do not think that there is any requirement to decide the other issues which are on merits. Consequently without touching the merit of the case as the writ petition is being barred by Order 2 Rule 2 of the CPC, the present petition is hereby dismissed.

(RAKESH KUMAR JAIN)
JUDGE

29.11.2016
Vivek

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*