*IN THE HIGH COURT OF DELHI AT NEW DELHI

% **Date of decision: 15th September, 2016**

\+ **W.P.(C) No.12138/2015, CM No.32241/2015 (for stay) & CM No.5771/2016 (of the petitioners for directions).**

AMIT GOEL AND ORS ..... **Petitioners**

Through: Mr. Rakesh Tiku, Sr. Adv. with Mr. Sandeep Kumar and Mr. Sagar Agarwal, Advs.

Versus

STATE BANK OF INDIA ..... **Respondent**

Through: Mr. Rajiv P. Kapur, Adv.

CORAM:-
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. On 11th May, 2016, after hearing the counsels, the following order was passed:

> "1. The petition seeks mandamus to the respondent bank to consider the proposal dated 31st May, 2014 of the petitioners for settlement of Non-Performing Assets (NPA) /Assets Under Collection Accounts (AUCA) accounts of the petitioners bearing Nos.30107285233, 31685970897, 30513991959 & 30513990309 with the Pushpa Bhawan branch of the respondent bank.
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> 2. Notice of the petition was issued and counter affidavit has been filed to which a rejoinder has been filed by the petitioners.
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> 3. The counsels have been heard.

4. It is the contention of the senior counsel for the petitioners that i) the petitioners had 12 accounts with the respondent bank, ii) that the petitioners in accordance with the One Time Settlement (OTS) Scheme dated 5th March, 2014 of the respondent bank, on 30th May, 2015 (sic 30th May, 2014) made applications for settlement of the five of the accounts and which accounts have been settled; iii) that the petitioners on 31st May, 2014 made applications for settlement of four accounts and with respect to which this petition has been filed; iv) that the respondent bank on 5th July, 2014 came out with another OTS Scheme and under which the petitioners made applications for settlement of the remaining three accounts and which have also been settled; v) that the only reason given by the respondent bank in its counter affidavit for not considering the applications dated 31st May, 2014 is that the said applications were filed at the wrong branch of the respondent bank; vi) that the filing of the applications with the wrong branch of the respondent bank ought not to be a ground for not considering the applications of the petitioners as it is a matter of internal management of the respondent bank and the branch of the respondent bank with which the applications were filed either ought to have forwarded it to the correct branch with which applications according to the respondent bank were to be filed or immediately informed the petitioners so that the petitioners could have moved the applications at the correct branch.

5. Per contra, it is the contention of the counsel for the respondent bank that the dues under the eight accounts which were settled were less than Rs.10,00,000/- in each account and which the Manager of the respondent bank was empowered to settle and the dues under each of the subject four accounts were more than what

was within the power of the Manager of the respondent bank at Pushpa Bhawan branch to settle.

6. It is further contended that the said four accounts had been forwarded to the Stressed Assets Recovery Centre (SARC) of the respondent bank at Najafgarh, New Delhi and the petitioners were informed of the same as far back as on 16th January, 2008 and the applications filed by the petitioners on 31st May, 2014 not at the SARC, Najafgarh branch of the respondent bank but at Pushpa Bhawan branch could not have been considered.

7. It is yet further contended that as per the scheme, the petitioners were to deposit 5% of the outstanding amount by 31st May, 2014 which was the last date for submitting the application and though the petitioners submitted the applications at Pushpa Bhawan branch of the respondent bank along with bank drafts for 5% of the amount but they were advised on 31st May, 2014 itself that the said applications could not be considered at the Pushpa Bhawan branch of the respondent bank and they should approach the SARC branch of the respondent bank and the four bank drafts for Rs.70,000/- each accompanying the applications were returned on 31st May, 2014 itself to the petitioners and not encahsed and the petitioners after having the said drafts re-validated, on 4th September, 2015 deposited the same in settlement of their dues.

8. I have enquired from the senior counsel for the petitioners as to what is there to show that the petitioners after 16th January, 2008 and till 31st May, 2014 were dealing with respect to the subject four accounts with the Pushpa Bhawan branch of the respondent bank. It is felt that unless the petitioners are able to show the same, the submission of the applications, on the last date provided

under the Scheme for applying, at the wrong branch may not entitle the petitioners to the relief.

9. The senior counsel for the petitioners draws attention to page 59 to 70 of the paper book to show the stamp of the Pushpa Bhawan branch of the respondent bank in acknowledgment of the receipt of the four applications dated 31st May, 2014 but contends that the petitioners were informed to keep the original of the bank drafts of Rs.70,000/- each with themselves and to submit only a photocopy thereof and further admits that the original bank drafts after re-validation were submitted to the respondent bank on 4th September, 2015.

10. I have further enquired from the senior counsel for the petitioners what steps the petitioners took between 31st May, 2014 and 4th September, 2015 and whether they wrote to the respondent bank confirming that the original demand drafts have been returned to them on representation as aforesaid. Ordinarily, a person who has applied under an OTS Scheme and who is desirous of settling at merely 25% of the outstanding amount ought to diligently pursue his application and if does not receive any response ought to enquire about the same and is not expected to keep quiet.

11. The senior counsel seeks time to respond.

12. Last opportunity is given to the petitioners to file affidavits along with documents on all the aforesaid aspects within 10 days.

13. List on 27th May, 2016."

2. The petitioners in the additional affidavit filed in pursuance to the order set out hereinabove have stated i) that the petitioner no.1 kept visiting the Pushpa Bhawan branch of the respondent bank "several times to inquire about the status" of the pending applications and was being repeatedly informed that a formal decision was yet to be taken by the SARC; ii) that an RTI application dated 25th May, 2015 was filed seeking status of the application; iii) that no reply was received; iv) that the petitioners were thus compelled to file an appeal under the Right to Information Act, 2005; v) that the petitioners were telephonically called to the Pushpa Bhawan branch and asked to get the bank drafts re-validated and the re-validated drafts were duly received by the Pushpa Bhawan branch of the respondent Bank on 4th September, 2015; vi) that on enquiry of the exact amount payable, the petitioners were informed by the Pushpa Bhawan branch that after encashment of the said drafts, the total outstanding in the AUCA amount was Rs.9,77,358/- and a status report was also handed over; vii) that as no reply to the RTI application was being received and no formal response to the OTS application also had been received, the present petition was filed; and, viii) that after the filing of the present petition, the petitioner had deposited a sum of Rs.1,80,000/- in the loan account towards balance

payment against the OTS settlement amount before the Debt Recovery Tribunal (DRT) on 9th March, 2016.

3. The counsel for the respondent Bank on 27th May, 2016 stated that no response was required to be filed to the additional affidavit aforesaid as the petitioners in the affidavit had not answered the two queries qua which the additional affidavit was permitted to be filed. The counsels were heard further on 27th May, 2016 and order / judgment reserved.

4. The senior counsel for the petitioners contended; i) that the respondent Bank in reply to the RTI query "ducked the issue"; ii) that four re-validated bank drafts of Rs.70,000/- each were collected by the Pushpa Bhawan branch and encashed; iii) that if the Pushpa Bhawan branch was not competent, why should it have collected the bank drafts; iv) that the petitioners as citizens have a right to be considered under the Scheme and cannot be denied the said consideration; and, v) that the delay is entirely on the part of the respondent bank.

5. Per contra, the counsel for the respondent bank argued i) that the petitioners had re-validated the four bank drafts of Rs.70,000/- each and had deposited the same on 4th September, 2015 at Pushpa Bhawan branch for

AUCA recovery account maintained with the SARC branch and the said amount has been credited in the AUCA recovery account of the petitioners as per the instructions of the petitioners; ii) that the suit for recovery of money had also been filed by the SARC branch of the respondent Bank and the petitioners therefrom also should have been aware; and, iii) that the writ petition has been filed after more than one year of the closure of the Scheme.

6. The senior counsel for the petitioners in rejoinder argued that the petitioners cannot be expected to remember from the memorandum of parties of the suit that which branch of the respondent bank had filed the suit.

7. I have considered the rival contentions and am of the view that the petitioners, for the reasons here after given, are not entitled to the writ of mandamus directing the respondent Bank to consider the proposal dated 31st May, 2014 for settlement of the NPA / AUCA accounts of the petitioners:

A. Admittedly, the proceedings before the DRT initiated by the respondent Bank against the petitioners are pending since prior to the institution of the present petition. The writ petition itself is accompanied with CM No.32241/2015 for stay of the said proceedings. Though no stay was granted but vide orders dated 22nd December, 2015 (when the petition had come up first before this Court) and 8th January, 2016, liberty was granted to the petitioners to apply to the DRT for adjournment of the proceedings owing to pendency of this petition. It was the contention of the counsel for the respondent Bank on 1st March, 2016 and not controverted by the counsel for the petitioners (and as recorded in order sheet) that this writ petition was filed only when proceedings for attachment of assets of the petitioners were taken by the DRT. In my opinion, once DRT is seized of the matter, it was open for the petitioners to, before the DRT, raise grievance of being entitled to the benefit of any OTS Scheme of the respondent Bank or for settlement of the claims of the respondent Bank against the petitioners before the DRT in terms of the said OTS Scheme. The very fact that the petitioners did not, *res ipsa loquitur* speaks of the petitioners being not genuinely and *bona fidely* interested in availing of the OTS Scheme and using the same only as a guise to defeat /

delay the recovery from them of the dues of the respondent Bank.

B. Disputed questions of fact arise from the respective contentions of the parties. While it is the plea of the petitioners that their applications dated 31st May, 2014 under the OTS Scheme were accepted by the Pushpa Bhawan branch but the monies required to be tendered as per the OTS Scheme along with the said applications, tendered by way of pay orders not accepted, it is the contention of the respondent Bank that the applications were required to be submitted to the SARC branch and the petitioners though were guided to the said branch did not and thus failed to make the application under the OTS Scheme and are not entitled to the benefit thereof. The said disputed questions also could at best have been agitated and adjudicated before the DRT and not in this writ petition.

C. It is even otherwise unbelievable that when the OTS Scheme itself required payments in terms thereof to be tendered, the same would not be accepted along with the application. If that was the case, the petitioners should have realized so on 31st May, 2014 itself and ought to have taken steps for being considered under the said Scheme. The version of the respondent Bank, of the petitioners inspite of having been informed not approaching the SARC branch and not having submitted the application with the monies required to be deposited in terms thereof, is more believable than the version of the petitioners.

D. The OTS Scheme under which the petitioners applied and copy whereof is at page 41 of the paper book was operational from 10th March, 2014 to 31st May, 2014 with the last date for receipt of applications being 31st May, 2014 and the last date for conveying the sanction being 15th June, 2014. It was further the term of the said OTS Scheme that "If the entire settlement amount is not paid within 3 months from the date of conveying the approval to the borrower, the OTS will stand automatically cancelled and the borrower shall be liable to pay the entire outstanding due." It was yet further the term of the OTS Scheme that "Borrower has to deposit minimum 5% of the outstanding as upfront amount along with the OTS offer letter and the remaining OTS amount to be deposited within 3 months from the date of conveying the approval." Thus the deposit of 5% of the outstanding amount along with the application and for which the petitioners claim to have tendered bank drafts of Rs.70,000/- each and deposit of the balance settlement amount within three months of the date of conveying the approval and the last date of which was 15th June, 2014, were the essential requisites of the OTS Scheme. The petitioners admittedly neither deposited 5% of the outstanding as upfront amount along with the OTS offer letter nor the balance settlement amount within three months of the last date for conveying sanction i.e. 15th June, 2014 i.e. by 15th September, 2014. The petitioners themselves claim to have deposited the bank drafts towards 5% of the amount on 4th September, 2014. This writ petition has been filed only on 19th December, 2015 i.e. much after the closure of the OTS Scheme on 31st May, 2014 and long after the last date for deposit of the entire OTS amount.

E. Once under the OTS Scheme, the last date for conveying the approval was 15th June, 2014 and approval had not been conveyed to the petitioners, the petitioners could not have remained under any impression that their applications dated 31st May, 2014 were pending consideration. The petitioners, if had applied under the OTS Scheme and were keen to settle thereunder, would have taken immediate action after 15th June, 2014. The petitioners however did not do so. Similarly though the last date for payment of the entire amount as per the OTS Scheme was 15th September, 2014 but the petitioners by that date claim to have deposited only 5% of the amount and which 5% was to be deposited along with the application. All this leaves no manner of doubt that the petitioners were fully aware that they had not applied for consideration under the Scheme and are using the Scheme only to defeat and delay the claims of the respondent Bank.

F. This Court cannot compel the respondent Bank to settle with its debtors who approach this Court, when the said debtors are not found to have abided by the OTS Schemes of the respondent

Bank. There is merit in the contention of the counsel for the respondent Bank that the present petition is but a devise to ward off the attachment of the properties of the petitioners pursuant to the orders of the DRT.

G. The writ jurisdiction of this Court entitles this Court only to see that the State and the bodies / institutions qualifying as State within the meaning of Article 12 of the Constitution of India abide by the laws and act within the framework of the law and does not entitle this Court to, on its own parameters of with whom the banks as the respondent should settle and on what terms, direct such settlement.

H. The respondent Bank in the present case is not found to have violated its OTS Scheme under which the petitioners claim to have applied and thus the question of issuing any mandamus as is sought by the petitioners does not arise.

I. A Division Bench of this Court in ***Chinar Fabrics and Furnishing Pvt. Ltd. Vs. State Bank of India*** MANU/DE/2981/2005, also filed with a prayer to direct the respondent bank in that case to accept the one time settlement offered by the petitioners therein, held that the matter was entirely contractual and no writ could be issued. It was held that a writ lies if there is violation of law or error of law apparent on the face of the record and a writ cannot be issued merely on sympathetic considerations. It was further held that the Court should observe judicial restraint in matters relating to loan recoveries and should not embarrass financial institutions or banks which granted loans, by over activism. A writ of mandamus, it was held, could be issued only when there is a legal right with a party asking for the writ to compel the performance of some statutory duty.

8. There is no merit in the petition.

Dismissed.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 15, 2016
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