

\$~3 & 4.

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

+ W.P.(C) 4850/2015 and CM APPL. 8750/2015

YOGESH CHANDRA JHALANI Petitioner

Through: Mr. Anil Sapra, Senior Advocate with
Mr. Aman Vachher, Mr. Ashutosh Dubey,
Mr. Kartik Bhardwaj and Ms. Piyusha Singh,
Advocates

versus

INDUSTRIAL FINANCE CORPORATION OF INDIA & ORS

..... Respondents

Through: Mr. R.P. Agarwal, Mr. Sahil and
Ms. Shibani, Advocates for R-1/IFCI.
Mr. Sugam Seth and Ms. Yamini Khurana,
Advocates for R-3/IDBI.
Mr. Ramesh Kumar, Advocate for R-4.

+ W.P.(C) 11435/2015 and CM APPL. 30146/2015

PRAKASH CHANDRA JHALANI AND ORS Petitioners

Through: Mr. Anil Sapra, Senior Advocate with
Mr. Aman Vachher, Mr. Ashutosh Dubey,
Mr. Kartik Bhardwaj and Ms. Piyusha Singh,
Advocates

versus

INDUSTRIAL FINANCE CORPORATION OF INDIA AND ORS

..... Respondents

Through: Mr. R.P. Agarwal, Mr. Sahil and
Ms. Shibani, Advocates for R-1/IFCI.
Mr. Sugam Seth and Ms. Yamini Khurana,
Advocates for R-3/IDBI.
Mr. Ramesh Kumar, Advocate for R-4.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

%

23.05.2017

1. This order is in continuation of the order dated 18.05.2017, on which date, after briefly referring to the facts of the case, in view of the submission made by Mr. Anil Sapra, learned Senior Advocate appearing for the petitioners in W.P.(C) 11435/2015 had urged that while passing the impugned order dated 10.02.2015, the learned DRAT had fallen into an error by arriving at the conclusion that the High Court in Company Petition No.539/1998 and Company Appeal No.39/2011 had held that there was no One Time Settlement. He had also drawn our attention to the order dated 05.04.2016 passed in W.P.(C) No. 7259/2015 by a Co-ordinate Bench of which one of us (Hima Kohli, J.) was a member, wherein the aforesaid aspect had come up for consideration and been clarified.

2. Having regard to the fact reliance was placed by learned counsel for the petitioners on the orders passed in W.P.(C) 7259/2015, a petition filed by one of the guarantors of the loans extended by Canara Bank, (one of the consortium Banks) to the respondent No.2 herein, M/s Jhalani Tools (India) Ltd., it was deemed appropriate to summon the file of the said case. The said file has been placed before us today and we have perused the order dated 05.04.2016, which is reproduced hereinbelow for ready reference:-

“1. The petitioner has filed the present petition assailing the order dated 9th February, 2015, passed by the Debts Recovery Appellate Tribunal (hereinafter referred to DRAT) in Misc. Appeal No.471/2010 in S.A. No.24 of 2009 (Delhi-II) allowing the appeal filed by the Asset Reconstruction Company (India) Limited (hereinafter referred to as ARCIL) against the order dated 9 th November, 2010, passed by the Debts Recovery Tribunal (hereinafter referred to as DRT), whereunder it was held that the One Time Settlement (hereinafter referred to as OTS) offered by the Principal Debtor is pending and binding on the parties.

2. Aggrieved by the aforesaid finding returned by the DRT, ARCIL had stated in the appeal preferred before the DRAT that the DRT cannot go against the findings recorded by the High Court in Company Petition No.539/1998, particularly the orders dated 24th & 25th May, 2011 and the revival scheme of the Principal Debtor was primarily sought on the ground that there was an OTS proposal with the lead Bank i.e. Dena Bank and all the other banks, which had been accepted and the monies realized by the Official Liquidator would be sufficient to discharge the liabilities in terms of the said OTS. The said submission was however opposed by learned counsel for the petitioner (respondent before the DRAT) on the ground that a substantial amount has already been paid to the Banks by the Official Liquidator from the amount that had been realized from the sale of the properties.

3. In the course of the passing the impugned order and remitting the matter back to the DRT, it was noted by the DRAT that the High Court had clearly ruled that there was no OTS which fact is denied by the petitioner. Mr. Sapra, learned Senior advocate appearing for the petitioner points out that it

has been wrongly observed by the DRAT that once the OTS has been rejected or has not come through, the findings returned by the DRT on that basis would be difficult to sustain. He argues that the OTS had not been rejected by the Company Judge while passing the orders dated 24th & 25th May, 2011 or for that matter, by the Division Bench while passing the order dated 21st August, 2012 in Company Appeal No.39/2011. He states that by making such an observation, the DRAT has closed the doors in so far as the reworking of the OTS is concerned and therefore, simply remanding the matter back to the DRT for a fresh consideration, would be a useless exercise.

4. Mr. Singh, learned counsel for the respondent No.1-Bank, submits that while passing the order dated 24th May, 2011, the Company Judge had recorded that the lead Bank i.e. Dena Bank had clarified that it opposes the OTS offered by the Principal Debtor and taking into consideration the said submission, it had opined that the revival and rehabilitation scheme filed by the Principal Debtor was untenable for the lead Bank and other banks and therefore, unworkable.

5. Learned counsel for the respondent No.1 draws our attention to paragraph No.9 of the order dated 21st August, 2012, passed by the Division Bench to submit that it was observed that they need not go into the question as to whether the Banks were bound by the settlement offered by the Principal Debtor for the simple reason that the monies realized from the sale of the assets of the Company in liquidation were insufficient for the OTS proposal. He submits that it was for the said reason that the Company Appeal preferred by the Principal Debtor was rejected. Paragraph No.9 of the order dated 21st August, 2012 is relevant and reproduced below for ready reference: -

“9. In the aforesaid state of affairs, we need not to go into the question as to whether the Banks are bound or not by their settlement offer inasmuch as the monies realized from the sale till now of assets of the Company in Liquidation are not sufficient for the Scheme proposed. We accordingly dismiss Company Appeal No.39/2011.”

6. Having perused the orders dated 24th May, 2011 and 25th May, 2011, passed by the Company Judge in Company Petition No.539/1998 and the tone and tenor of the order dated 21st August, 2012 passed by the Division Bench in Company Appeal No.39/2011, we are of the opinion that the observations made by the DRAT to the effect that the High Court had clearly ruled that there was no OTS, cannot be sustained. It is quite evident from a perusal of the aforementioned orders that though an OTS was under the consideration of the lead Bank and the other Banks, they had finally rejected the same and vide order dated 21st August, 2012, the Division Bench had declined to go into the question of the binding effect of the OTS only for the reason that there were insufficient monies realized from the sale of the properties of the Principal Debtor so as to satisfy the rehabilitation scheme.

7. Learned Senior counsel for the petitioner submits that as on date, there are sufficient funds available with the Official Liquidator for the Banks to rework the already suggested OTS.

8. The petitioner shall be at liberty to make the said submission before the DRT, which shall be duly considered on merits in accordance with law, after getting a response from the respondent-Banks.

9. Having regard to the vintage of the litigation, it is deemed appropriate to request the DRT to expedite the hearing in the case and decide the same preferably within a period of eight weeks from the date of conclusion of arguments. Neither side be accommodated for any unnecessary adjournments.

10. The present petition is disposed of.” (emphasis added)

3. Mr.Sapra, learned Senior Advocate appearing for the petitioners states that the order dated 09.02.2015 passed by the DRAT, that was subject matter of consideration in W.P.(C) 7259/2015, finds mention in the impugned order dated 10.02.2015, wherein a similar conclusion was arrived at by the DRAT that the learned Single Judge of the High Court in Company Petition No.539/1998, had clearly ruled that there was no One Time Settlement and the same view was expressed the Division Bench in the order dated 21.08.2012, passed in Company Appeal No.39/2011.

4. It was noted in the aforesaid order dated 05.04.2016, passed in the captioned petition that the observation of the learned DRAT that the High Court had clearly ruled that there was no One Time Settlement, could not be sustained and a perusal of the orders dated 24.05.2011 and 25.05.2011 passed by the Company Judge in Company Petition No.539/1998 and the order dated 21.08.2012 passed by the Division Bench in Company Appeal No.39/2011, was unsustainable.

5. Taking note of the submission made by the counsel for the petitioners

in the captioned case to the effect that as on date, there are sufficient funds available with the Official Liquidator of the Bank for the Banks to re-work the already suggested One Time Settlement and without commenting on the merits of the said submission, it was directed that the petitioners therein shall be at liberty to state so before the DRT and the said submission shall be duly considered on merits in accordance with law, after obtaining a response from the respondents/Banks.

6. We propose to reiterate the same observations in the present petitions as well. While holding that the orders dated 24.05.2011 and 25.05.2011 passed by the Company Judge in Company Petition No.539/1998 and the order dated 21.08.2012 passed by the Division Bench in Company Appeal No.39/2011 did not rule that there was no One Time Settlement, the present petitions are disposed of by reviving the amendment application filed by the petitioners and granting them liberty to take such a plea before the learned DRAT. Similarly, the respondents/Banks shall also be at liberty to take all the pleas that they had taken before the learned Company Judge as also before the learned DRAT to urge that the contention of the petitioners that the conduct of the respondents/Bank demonstrates that they had accepted the One Time Settlement, is erroneous.

7. After taking into consideration the arguments advanced by both sides, the learned DRAT is requested to pass a fresh order on the amendment application filed by the petitioner, in accordance with law. As there is no

date fixed before the learned DRAT as of now, the parties are directed to appear before the said forum on 18.07.2017, for fixing a date for hearing arguments on the amendment application filed by the petitioner, as per its convenience.

8. We are informed that the respondents/Banks did not have an opportunity to file replies to the amendment application as the learned DRAT had opined that the said application had been filed by the petitioners as a dilatory tactics. Having regard to the fact that the application has been revived for seeking fresh adjudication by the learned DRAT, the respondents/Banks are permitted to file their replies in opposition to the said application within four weeks from today with copies to the counsel for the petitioner, who may file rejoinders well before the date fixed before the DRAT.

9. The petitions are disposed of alongwith the pending applications. The parties are left to bear their own expenses.

HIMA KOHLI, J

SANGITA DHINGRA SEHGAL, J

MAY 23, 2017

rkb/ap