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

\+ W.P.(C) 8901/2018

MICRO ENTERPRISES PVT. LTD. AND ANR ...... Petitioners

Through: Mr Rajiv Bansal, Sr. Advocate with Ms Awantika Manohar, Mr Dhawesh Pahuja, Ms Fiza Saluja, Ms Kamma Singh and Ms Aprajita Gupta, Advocates.

versus

SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA ..... Respondents

Through: Mr Hasan Murtaza, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% 27.08.2018

<u>CM Nos.34233/2018 & 34234/2018</u>

1. Allowed, subject to all just exceptions.

<u>W.P.(C) 8901/2018 & CM No. 34232/2018</u>

2. The petitioner has filed the present petition, *inter alia*, praying as under:-

> "(a) Pass an appropriate writ, order or direction directing the respondent not to discriminate against the petitioners vis-a-vis the OTS proposal of the petitioners, insofar as the OTS proposal of the petitioners is at par or is not in any manner less advantageous/gainful/remunerative/cost effective as compared to the other One Time Settlements entered into by the respondent bank in the past with its other borrowers;

> (b) issue appropriate writ or order or direction directing Respondent to consider and accept the OTS proposal offered by the Petitioners vide their letters dated 29.05.2018;
>
> (c) restrain the Respondent from taking over the possession of the Properties of the Petitioners in view of the OTS proposals made by the Petitioners to the Respondent."

3. Mr Bansal, learned senior counsel appearing for the petitioner contends that the petitioner had held negotiations with the respondent and had framed a proposal for a One Time Settlement (OTS) in accordance with the discussions held with the officers of the respondent bank. Despite the same, the petitioner believes, that the respondent had rejected the OTS offer made by the petitioner. It is emphatically contended that the rejection of the OTS has also not been formally communicated by the respondent.

4. It is further contented that the rejection of the OTS proposal is not only arbitrary but also discriminatory as similar OTS proposals by other borrowers have been accepted by the respondent.

5. I have heard the counsel for the parties.

6. The question whether as to what settlement should be arrived at by the parties is purely a matter of negotiations between the said parties and no interference by this Court in this procedure is called for. The decision of the respondent bank either to accept an OTS offer or to reject the same is a commercial decision and not amenable to judicial review under Article 226 of the Constitution of India. The present petition is, thus, unmerited.

7. Having stated the above, it is also clarified that even though the petitioner's proposal has been rejected, it is, nonetheless open for the bank to consider an OTS of the dues of the petitioner. In the event the respondent

bank has found the petitioner's OTS offer to be inadequate, but is otherwise willing to enter into a settlement with the petitioner, it would be apposite for the respondent to communicate the amount, which would be acceptable by the bank as OTS of the dues owned by the petitioner.

8. The petition is disposed of with the aforesaid observation. The pending application is also disposed of.

VIBHU BAKHRU, J

AUGUST 27, 2018
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