HIGH COURT FOR THE STATE OF TELANGANA
AT: HYDERABAD

Delivered on: 28-02-2019

Coram :

The Honourable Mr. Justice V. RAMASUBRAMANIAN
And
The Honourable Dr. Justice SHAMEEM AKTHER

<u>Writ Petition No.38891 of 2018</u>

<u>Between</u>:

1. M/s. Bhavani Industries,
   H. No. 42141/A, Stantanpuram Road,
   near Railway Gate, Peddapalli,
   rep by its Managing Partner Venkat Rao

2. T. Venkat Rao S/o T. Narsing Rao,
   aged 49 years, Occ: Business,
   H.No.42141/A, Near Railway Gate, Peddapalli. .. Petitioners

vs.

1. The State Bank of India, Peddapalle Branch,
   Rep. by its Authorised Officer,

2. The Assistant General Manager,
   Stressed Assets Recovery Branch, State Bank of India,
   TSRTC Commuter Amenity Centre,
   Bus Terminal Complex, Koti, Hyderabad,

3. Union of India, Ministry of Finance,
   New Delhi. .. Respondents

For Petitioners	: Mr. A. Sudarshan Reddy, Senior Counsel for Mr. G. Madhusudhan Reddy
For Respondent Nos.1 & 2	: Mr. B.S. Prasad,
For Respondent No.3	: Mr. D. Narender Naik, Standing Counsel for UOI

HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

WRIT PETITION No.38891 OF 2018

ORDER: *(Per Hon'ble Sri Justice V. Ramasubramanian)*

The petitioners have come up with the above writ petition challenging a communication sent by the Bank informing the petitioners of the failure of a One Time Settlement (OTS).

2. Heard Mr. Sudarshan Reddy, learned senior counsel appearing for the petitioners and Mr. B.S. Prasad, learned counsel appearing for the respondent-bank.

3. The petitioners availed credit facilities from the 1st respondent bank and the account became a Non-Performing Asset (NPA). Therefore, a demand notice under Section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'Act, 2002') was issued on 06.05.2014 followed by a possession notice, dated 12.07.2014 under Section 13 (4) of the Act, 2002. A notice for sale under Rule 8 (6) of the Security Interest (Enforcement) Rules, 2002 was issued on 20.05.2016 followed by a sale notice, dated 24.06.2016.

4. The petitioners filed an appeal in S.A. No.286 of 2016 under Section 17 of the Act, 2002 before the Debts Recovery Tribunal (DRT). The DRT granted interim orders permitting the bank to proceed with the sale, but not to confirm the sale. The said order was passed on 27.07.2016. Eventually, the appeal was disposed of setting aside the sale

in respect of one of the secured assets and confirming the sale in respect of another asset.

5. Thereafter the bank obtained an order from the District Collector, Peddapalli, on 18.12.2017 under Section 14 of Act, 2002, for taking physical possession of the secured asset. The said order was challenged by the petitioners in another appeal S.A. No.59 of 2018 on the file of the DRT-I, Hyderabad. In the said appeal filed under Section 17 of the Act, the Tribunal granted an interim conditional order of stay on 09.03.2018. Challenging the conditions so imposed, the petitioners filed an appeal before the Debts Recovery Appellate Tribunal (DRAT). The DRAT passed final orders on 17.05.2018 directing the DRT to dispose of the appeal, S.A. No.59 of 2018, within two (02) months and directing the bank to maintain *status quo* order till the disposal of the appeal.

6. It appears that thereafter the tenants of the property moved a writ petition on the file of this Court in W.P. No.7810 of 2016 and obtained three (03) months time to vacate the property. They made yet another attempt in another writ petition, but failed.

7. As against one portion of the order passed by the DRT, Hyderabad, on 28.07.2017 in the first round of litigation S.A. No.286 of 2016 (confirming the sale in respect of one item and setting aside the sale in respect of another item) the petitioners filed an appeal before the DRAT along with a condonation of delay application. Notice was ordered in the condonation of delay application.

8. During the pendency of the said petition, the petitioners approached the bank seeking OTS. The Bank issued a OTS offer by a letter, dated 14.08.2018.

9. As per the conditions stipulated in the said offer letter, dated 14.08.2018, the petitioners paid a sum of Rs.6,41,608/- representing 5% of the OTS amount *viz.,* Rs.1,28,32,152/-. Another 20% of the amount was to be paid within thirty (30) days from the date of sanction of the OTS and the balance amount was required to be paid within six (06) months from the date of sanctioning of the OTS.

10. However, the bank issued a communication dated 08.10.2018, impugned in this writ petition, stating that the petitioners are not eligible for the OTS Scheme for two reasons; *viz.,* (i) that they had not chosen to withdraw the Court Cases; and (ii) that they had not given up their claims against the property sold in the *e-auction* held on 29.07.2016. Aggrieved by the said communication, the petitioners are before us.

11. The limited question that arises for our consideration here, is as to whether the stand taken by the bank that the OTS has failed, is arbitrary or not.

12. In view of the limited scope of the dispute arising in the writ petition, all that we are called upon to consider is the validity of whatever has happened post 14.08.2018. Since the entire controversy revolves around the letter, dated 14.08.2018 and the impugned communication, dated 08.10.2018, it may be useful to extract both of them in entirety. The letter, dated 14.08.2018, reads as follows:

"State Bank of India has come out with a scheme for One Time Settlement (OTS) of non-performing assets 2018. In this connection, we would like to advise you that your dues to the Bank are eligible for settlement under the SBI SCHEME FOR ONE TIME SETTLEMENT OF NPAs & AUCAs (SBI OTS 2018) on the following terms and conditions:

(i) Book outstanding (excluding notional interest from the date of NPA) on 31-03-18: **Rs.1,84,80,511**

(ii) OTS Amount : **Rs.1,28,32,152** Total Dues : **Rs.28478073/-**

(iii) Application for OTS will be processed only on deposit of minimum **5% (Rs.641608.0)** of the OTS Amount.

(iv) **20% (Rs.2566430.0)** of the OTS amount will have to be deposited by you as upfront money within thirty days from the date of sanction of OTS. This would include the amount deposited by you along with the days from the date of sanction of OTS. This would include the amount deposited by you along with the application.

(v) The balance amount can be paid within **6 months** from the date of sanction of OTS (the validity period) together with interest @ One Year MCLR on reducing balance basis effective from the date of sanction of the OTS, failing which the OTS sanction will be rendered infructuous.

(vi) However, **no interest** will be charged, if the entire OTS amount is **paid within 4 months** from the date of sanction.

(vii) You will be eligible for an additional incentive on the OTS amount, on making payment of the entire amount as given below.

Full payment of OTS amount within	Additional Incentive on OTS amount
One month of date of sanction	15%
Two month of date of sanction	12%
Three month of date of sanction	10%

2. (Where applicable)

Since your case is pending before Court/Lok Adalat/DRT any settlement will be subject to filing of consent term for consent decree from the respective court.

> Since you have been issued notice under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, this notice is without any prejudice to our rights to take/continue actions under the Act unless a compromise is settled under the present SBI OTS 2018 II Scheme as stated above.
>
> 3. Please advise your willingness to settle the dues by 30.09.2018. Your request for settlement will be processed for acceptance only on receipt of your communication and deposit of minimum 5% of the OTS Amount."

The impugned letter, dated 08.10.2018, reads as follows:

> "With reference to our OTs offer letter dated 14.08.2018, you have paid 5% of upfront amount of Rs.6,41,608/-. You have submitted your letter dated 29.09.2018 in which you have not committed for withdrawal of cases filed against the Bank in DRT/DRAT/High Court and in other courts. You have also not mentioned no claim against the property sold in e-Auction by the Bank on 29.07.2016. Hence you are not eligible for SBI OTS Scheme 2018.
>
> We have returned the amount of Rs.6,41,608/- paid by you, remitted through the account No.044811100002713 of M/s Bhavani Industries maintained at Andhra Bank Peddapalli on 08/10/2018.
>
> We therefore advise that you are liable to pay the entire dues to the Bank immediately, failing which we shall continue with our action under LEGAL/SARFAESI Act.
>
> This letter is issued to you Without Prejudice to Bank's rights and claims."

13. It may be seen from the impugned communication, dated 08.10.2018, that the bank rejected the OTS primarily on two grounds, *viz.,* (a) that the petitioners had not undertaken to withdraw the cases filed before the DRT/DRAT/High Court; and (b) that the petitioners had

not given up their claim against the property already sold in the *e-Auction* conducted on 29.07.2016. Therefore, we are obliged to see whether these conditions are borne out by the OTS offer letter, dated 14.08.2018. Unless the two conditions, on the foundation of which the OTS is rejected, are traceable to the OTS offer dated 14.08.2018, the bank cannot take refuge under those two conditions.

14. A careful look at the OTS offer, dated 14.08.2018, shows that there is no mention therein, about the property that was already sold in *e-Auction* dated 29.07.2016. Therefore, we do not know how a condition not incorporated specifically in the OTS offer dated 14.08.2018 can be a ground for rejection of the OTS.

15. In order to give the benefit of doubt to the bank, we directed the learned counsel for the bank at least to show whether there is circumstantial evidence from which an inference about the existence of such a condition relating to giving up of the claim in respect of one property could be drawn. In other words, if there are sufficient indications in the OTS offer, dated 14.08.2018 that the amount realized through the sale of one asset on 29.07.2016 has already been appropriated before arriving at the OTS amount, we were prepared to infer the existence of such a condition about the giving up of the claim against the property already sold. But, the statement of accounts speaks otherwise.

16. The OTS offer, dated 14.08.2018, contains a mention about three different amounts. They are:

(i)	total dues amounting to	.. Rs.2,84,78,073/-;
(ii)	book outstanding (excluding notional interest from the date of NPA) on 31.03.2018	.. Rs.1,84,80,511/-
(iii)	OTS amount	.. Rs.1,28,32,152/-

17. It appears that one of the secured assets sold on 29.072016, fetched an amount of Rs.36,51,000/-. If the OTS offer was to be confined only to the balance outstanding, after appropriating the sale proceeds of that one property sold for Rs.36,51,000/-, then the statement of accounts should indicate the adjustment of the sale proceeds either against the amount indicated as total dues or against the amount indicated as book outstanding as on 31.03.2018. But, the statement of accounts does not show the appropriation of these sale proceeds, for arriving at the total dues as Rs.2,84,78,073/- or for arriving at the book outstanding on 31.03.2018 as Rs.1,84,80,511/- indicated in the OTS offer letter, dated 14.08.2018. The OTS figure of Rs.1,28,32,152/- has been arrived at, obviously on the basis of two amounts, one indicated as total dues and another indicated as book outstanding in the OTS offer letter, dated 14.08.2018.

18. In other words, (i) the OTS offer letter, dated 14.08.2018, does not expressly state that the property already sold is excluded; and (ii) the OTS offer letter, dated 14.08.2018, does not even contain any indication at least suggestively, in the form of appropriation of the sale proceeds of one property either towards the total dues or towards the book outstanding or towards the OTS amount.

19. The bank actually had four alternatives while issuing the OTS offer, dated 14.08.2018. They are: (i) they could have expressly stated in

the OTS offer, dated 14.08.2018 that the property already sold was excluded from the purview of OTS; (ii) they could have arrived at the total dues after appropriating the sale proceeds of that property; (iii) they could have alternatively arrived at the book outstanding as on 31.03.2018 after appropriating the sale proceeds of that property; or (iv) the bank could have at least fixed the OTS amount after clearly showing that the sale proceeds was inbuilt into the amount of the OTS arrived at by them.

20. The bank did not take recourse to any one of the above four alternatives. The OTS offer, dated 14.08.2018 does not state either expressly or by necessary implication that the OTS was only for the remaining properties and also in respect of the balance outstanding after appropriating the sale proceeds of one property. Hence, one of the two grounds, on which the OTS was rejected, is completely arbitrary.

21. The second ground on which the OTS was rejected, was that the petitioners failed to give a commitment for withdrawal of cases filed against the bank. Let us now see whether such a condition is there in the OTS offer, dated 14.08.2018. We have already extracted the OTS offer letter, dated 14.08.2018 in full else-where in this order. The relevant portion of the said letter, which forms the basis for one of the reasons for the bank to reject the OTS offer, reads as follows:

> "Since your case is pending before Court/Lok Adalat/DRT any settlement will be subject to filing of consent term for consent decree from the respective court."

The above clause contained in the first portion of paragraph No.2 of the OTS offer letter dated 14.08.2018, will not advance the cause of the bank for the following reasons:

(i) The above clause is an o*mnibus* and general clause, contained in all the OTS offer letters. This is why it mentions three different forums, *viz.*, Court, Lok Adalat and DRT. The above clause is not specific to the case of the petitioners;

(ii) Even assuming that the said clause specifically applies to the case of the petitioners, even then what is mandated by the above clause is "not withdrawal" but "filing of consent terms for consent decree". Filing of consent terms for consent decree cannot be equated to withdrawal of cases. If the bank had prepared consent terms and sent it for the signature of the petitioners, the bank can raise an issue that those consent terms had not been signed by the petitioners. No consent terms were drafted by the bank for the petitioners to sign. The withdrawal of a case stands on a different footing from the filing of consent terms. It is not the case of the bank that they advised the petitioners to come up with consent terms and that the petitioners failed to comply with the same.

22. Therefore, it is clear that both the grounds, on which the impugned communication was issued, were completely arbitrary. We are conscious of the fact that this Court has no role to play in OTS. An

OTS is fundamentally in the realm of a contract. No Court, much less a Constitutional Court, can compel the parties to contract one way or the other. But, when parties arrive at some kind of a settlement in principle and one of the parties attempts to wriggle out of the obligations under the settlement, the Court would have no option except to test the reasons.

23. We have repeatedly been holding that OTS is a commercial decision which cannot be tampered with by a judicial decision. Therefore, whenever borrowers/guarantors come up before this Court with a prayer for directing the banks to consider their cases under the OTS, we are loathe to interfere.

24. But, in the case on hand, the OTS offer, dated 14.08.2018, was accepted by the petitioners and the acceptance communicated to the bank. The first pre-condition was also complied with by the petitioners. Thereafter the bank went out of the OTS offer on two grounds, both of which do not find a place in the OTS offer. Therefore, we are of the considered view that the impugned communication is liable to be set aside.

25. That takes us to the next question as to what should follow as a consequence of our setting aside the impugned communication. If we were a Civil Court, we would have had no hesitation to grant the consequential relief of permitting the petitioners to pay the amounts due as per the OTS offer, dated 14.08.2018. But, we would not do it, as what is involved is public money. Therefore, all that we can do is to direct the bank to reconsider their decision within a time frame and to direct the

bank further not to proceed with any coercive action till a decision is taken.

26. Therefore, the Writ Petition is allowed. The impugned communication, dated 08.10.2018, is set aside and a direction is issued to the bank to reconsider the matter and take a decision within a period of eight (08) weeks from the date of receipt of a copy of this order. Till then, no further steps under Act, 2002, in respect of any of the properties (sold or unsold) shall be taken. However, in the circumstances of the case, there shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the writ petition shall stand closed.

V. RAMASUBRAMANIAN, J

Dr. SHAMEEM AKTHER, J

February 28, 2019
Mgr