$~42

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

\+ W.P.(C) 1625/2019 AND CM APPL. 7480/2019

ANIL SAXENA & ORS ..... Petitioners

Through Counsel (Appearance not given).

versus

DENA BANK & ANR ..... Respondents

Through None.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% 18.02.2019

1. The petitioners have preferred the present writ petition to assail the order dated 08.01.2019 passed by learned Recovery Officer-II, DRT-1, Delhi in R.C.No. 45/2010 ***Dena Bank Vs. Ms. Stuti Electronics Ltd. & Ors.***

2. By the said order, the certificate holder bank was directed to trace the assets of the certificate debtors and suggest further course of action. Moreover, the Registry was directed to issue notice to attach all the bank accounts, demat accounts and mutual funds of certificate debtor-2 and certificate debtor-3 having PAN – AATPS4639Q and BHZPS7693Q.

3. The submission of the learned counsel for the petitioners is that the respondent Bank was not entitled to proceed with the recovery proceedings in view of the One Time Settlement (OTS) offer made by the petitioners having been impliedly accepted. Reference is made to the OTS offer made

by the petitioners on 21.03.2014 by offering a total amount of Rs. 42 lakhs towards full and final settlement of all pending dues of the debtors and guarantors. The petitioners offered a cheque/demand draft for 25% down payment of the offer amount. The petitioners requested that the said amount be kept in a No Lien Account pending final confirmation/ approval by the Bank of the petitioner's offer and that, if the offer is not accepted by the bank, the amount may be returned to the company - petitioner no. 3.

4. The submission of learned counsel for the petitioners is that the respondent Bank, without communicating the acceptance of the OTS offer, proceeded to appropriate the amount of Rs. 10.5 lakhs and did not refund the same. Thus, the petitioners contends, that it is a case of implied acceptance of the OTS offer and the respondents are bound by the OTS offer made by the petitioners.

5. We cannot agree with this submission of petitioners. For the OTS offer to be binding on the respondent Bank, it was necessary that the said offer should have been expressly accepted by the respondent Bank. That has not being done. In fact, the OTS offer stands rejected vide letter dated 05.01.2016, though, the reference made to the petitioner's letter is incorrect. Merely because the respondent Bank has appropriated the amount of Rs. 10.5 lakhs deposited by the petitioners in terms of its offer, it cannot lead to the conclusion that the OTS offer made by the petitioners is binding on the respondent Bank. At the highest, the petitioners may be entitled to seek a recovery of the said amount, if at all, and there may be much to be said in that regard as well. However, we are not getting in the said aspect, as it was for the petitioners to take appropriate steps in that regard. Since the OTS

offer of the petitioners has not been accepted, and rather rejected, the recovery proceedings undertaken by the Recovery Officer, in our view, cannot be assailed.

6. Dismissed.

VIPIN SANGHI, J

A. K. CHAWLA, J

FEBRUARY 18, 2019
rc