**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Writ Petition No.12142 of 2019(O&M)
Date of decision: January 13, 2020

M/s Hari Kewal Private Limited and another ...Petitioners

Versus

Punjab and Sind Bank, Branch Office
Sunam and others ...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Aalok Jagga, Advocate for the petitioners.

Mr.A.B.S.Sidhu, Advocate for respondents No.2 and 3 – Bank.

Mr.H.S.Grewal, Additional Advocate General, Punjab for respondent No.3 - State.

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Harinder Singh Sidhu, J. :

1. The petitioner-company has filed this petition impugning the letter dated 11.02.2019 of respondent No.1- the Punjab and Sind Bank, Branch Office, Sunam, Punjab vide which the application of the petitioner for One Time Settlement has been rejected. The petitioner has also prayed that the respondents be directed to consider the offer of the petitioner for One Time Settlement.

2. The Petitioner company was incorporated on 01.05.1982. It was to set up a solvent plant engage in rice husking and to act as Millers

and whole sale sellers of rice and allied products. It availed a Cash Credit Limit of Rs.6 crore from the respondent No.1 Bank on 31.03.2008. It later availed a Term Loan of Rs.65 lakhs on 28.02.2009.

3. The case of the petitioner is that it continued to maintain the credit facilities to the best of its capability. But in 2008 there was a massive fire in its premises because of which the company suffered huge losses. On 11.10.2009 the Promoter and Managing Director of the Petitioner company suffered a heart attack and expired.

4. The petitioner approached the Bank for regularization of its loan limits for which it submitted a request letter dated 07.12.2009. On 21.01.2010 the Bank replied vide letter dated 21.01.2010 requiring the petitioner to deposit the over due amount of Rs.39,20,384.60 by 31.01.2010. The petitioner to show its bonafide intention to regularize the amount deposited a total of Rs.1.50 crores in 2009-10. But the Bank did not regularize the account. Instead it issued notice dated 29.01.2010 for taking symbolic possession. The petitioner filed SA No.197 of 2010 before the Debts Recovery Tribunal-II, Chandigarh (for short "Tribunal") u/s 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 challenging the action of the Bank. The same was dismissed vide order dated 19.12.2014. The appeal filed by the petitioner before the Debts Recovery Appellate Tribunal, Delhi (Appellate Tribunal) was dismissed for failure of the petitioner to comply with the requirement of the mandatory pre-deposit.

5. Against the order of the Tribunal and the Appellate Tribunal,

the petitioner filed CWP No.23767 of 2015. The same was however withdrawn on 22.05.2017 with liberty to the petitioner to approach the Respondent Bank for amicable settlement. On 02.01.2018 the petitioner submitted a proposal to the Bank for One Time Settlement offering to pay 50% of the NPA amount.

6. While the proposal was yet under consideration the Bank obtained order dated 12.07.2018 from the District Magistrate to take physical possession of the mortgaged properties. The petitioner filed CWP No.2930 of 2019 challenging the order of the District Magistrate and the consequential orders. Certain amounts were deposited by the petitioner with the respondent Bank with a view to show his bona fides for a settlement.

7. On 11.02.2019 the Bank rejected the OTS offer of the petitioner.

8. Aggrieved the petitioner has filed the present petition.

9. In the written statement filed by the respondent Bank it has been stated that the company had obtained Cash Credit Limit of Rs.6 Crores and Term loan of Rs.65 lakhs in 2008 and 2009. As it failed to maintain financial discipline the accounts were declared NPA on 31.07.2009. The bank initiated action under the SARFESI Act, It issued notice dated 01.09.2009 claiming a sum of Rs.6,95,62,499.68 in respect of the Cash Credit Account and Rs.69,14,322/- in the Term Loan Account making a total of Rs.7,64,76,821.68 as on that date. The petitioner was given permission to sell three of the properties to liquidate the debt. The

properties were sold for an amount of Rs.85 lakhs. A total of Rs.1.50 Crores including the sale proceeds of the properties was deposited in the petitioner's two accounts between November 2009 and March 2010. However, the accounts could not be regularized due to continuous default. As on 30.06.2019 an amount of Rs.25,52,98,915.60 is due.

10. The offer of the petitioner to settle was not acceptable to the Bank. The claim of petitioner in his proposal dated 19.11.2018 that the value of the mortgaged properties was only about Rs.5 crores and if sold it could not fetch more than Rs.3.5 crores had already been rejected by the Tribunal in its order dated 19.12.2014 while dismissing its OA. The Tribunal had observed that the valuation projected by the petitioner was nothing else but an attempt to dictate their own terms upon the Bank by giving wrong information about valuation. The Bank had given independent valuation through approved valuer, who had assessed the realizable value of the property at not less than Rs.14.04 crores. The Tribunal while dismissing the SA had in conclusion observed:

> *"Since the applicants have failed to prove their case and I do not find any lapse on the part of the Authorized Officer, the SA is dismissed with the observation that the bank shall not indulge in any type of concession below the valuation of the property which as per their own statement is Rs.14 crores. "*

11. The Bank had intimated the petitioner vide letter dated 08.07.2019 that the OTS proposal for Rs.3 crores against a total recoverable amount of Rs.24.60 crores as on 30.09.2018 had been declined as the same was not in consonance with the Recovery Management Policy

of the Bank. The loan facilities were secured against mortgaged assets worth 1301.64 lacs. It is also stated that the Bank had filed application before the DRT, Chandigarh for recovery of Rs.7,73,41,919.60 as due on 28.02.2011 and the same was pending.

12. It is thus clear that against an outstanding amount of Rs.24.60 crore as on 30.09.2018 the petitioner had offered an OTS proposal for Rs.3 crore only. The Bank has rejected the same as being not in consonance with its Recovery Management Policy. The mortgaged assets are worth about Rs.14 crores. In these circumstances there is no reason to interfere with the action of the Bank in rejecting the OTS proposal of the petitioner. Consequently, no direction can also be given to the Bank to consider the OTS proposal of the petitioner.

13. Accordingly, there is no merit in the petition and the same is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

January 13, 2020

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No