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

CWP-16798-2020

DECIDED ON: 9th October, 2020

M/s Keerti Flour Mills Pvt. Ltd.

.......Petitioner

Versus

State of Punjab and others

......Respondents

**CORAM: JUSTICE S.MURALIDHAR
JUSTICE AVNEESH JHINGAN**

Present: Mr. APS Deol, Sr. Advocate with
Mr. Himmat Singh Deol, Advocate for the Petitioner.

AVNEESH JHINGAN, J.

1. This petition is filed seeking quashing of e-auction notice dated 24th September, 2020 issued by the Punjab Financial Corporation (PFC) for the sale of the mortgaged property of the Petitioner, M/s Keerti Flour Mills, Focal Point, Village Balluana, District Bathinda.

2. The Petitioner took a term loan of Rs. 94 lakhs from PFC for setting up a Roller Flour Mill. The loan was sanctioned on 6th October, 2000 and the property of the Flour Mill was mortgaged to secure the loan. The monthly instalments were paid till 2004. Thereafter, the payment schedule was not adhered to. As a result, PFC took possession of the Flour Mill on 22nd June, 2007. In December, 2009 pursuant to certain relaxations extended to the industries under a scheme, the promoters of the Petitioner were allowed to operate the flour mills. This continued till December, 2013. Again, there was default in the re-payment of the loan, and the possession of the flour mill was taken back by the PFC.

3. In 2018, a One Time Settlement (OTS) policy was introduced by PFC with regard to all non-performing assets as on 31st March, 2017. The Petitioner applied for OTS. The PFC vide communication dated 28th May, 2019 accepted the OTS. Against an outstanding amount of Rs. 6,70,84,372/- along with interest from 1st September 2014, the settlement was for Rs. 1,03,69,896/- plus expenses and with

further interest from 1st March, 2019. Rs. 21,17,500/- received by the Petitioner as subsidy from the Punjab Government was treated as 20% down payment towards the OTS amount. The relevant portion of the communication dated 28th May, 2019 addressed by PFC to the Petitioner reads as under:

> *"However, after updating the interest on the said OTS amount, the amount recoverable under OTS policy, 2018 works out as under:*
>
> - *OTS amount approved : Rs.1,03,69,896/-*
> - *Interest on the OTS amount: Rs. 2,15,921/-*
>
> *Total OTS amount : Rs.1,05,85,817/-*
>
> *Hence, you are required to pay to sum of Rs.42,34,827/- being 40% of the OTS amount plus expenses under the OTS Policy 2018. You are, therefore, advised to pay at least 40% of the OTS amount (including down payment already received) of Rs.11,19,327/- within thirty days from the date of issuance of this acceptance letter for approval of settlement and the balance OTS settlement amount within 90 days of issuance of acceptance letter for approval of settlement amount without any interest."*

4. The Petitioner was required to deposit 40% of the OTS amount within 30 days from issuance of the acceptance letter, for approval of the OTS. The balance settled amount was to be paid within 90 days of issuance of the letter. However, the Petitioner failed to make the pre-requisite deposit of 40% of the settled amount within the stipulated date. Thus, the OTS fell through.

5. On 24th September, 2020, PFC advertised an e-auction notice for auctioning the mortgaged property of the Petitioner. Aggrieved by the e-auction notice, the present petition has been filed.

6. Mr. A.P.S. Deol, learned Senior counsel appearing for the Petitioner, submits that the unit was set up, relying upon promises made by the State in the industrial policy. It was due to delay in providing electricity connection and non-grant of the incentives as promised in the industrial policy, that the Petitioner was constrained to default on the re-payment of the loan. He further submits that the Punjab Government, considering the COVID-19 situation, has extended the OTS policy of 2018 upto 31st December, 2020. The outer date for re-payment has been extended from 2 years to 2 ½ years. The grievance raised is that despite the extension of time, PFC is going ahead with the auction of the Petitioner's property. Lastly, it is submitted that the reserve price fixed for the property is irrational and is far less than the actual market value.

7. The above submissions have been considered. Admittedly, the Petitioner defaulted in re-payment of loan in 2004. The possession of the flour mill was taken way back on 22nd June, 2007. Thereafter, on certain relaxations given, the Petitioner was allowed to operate the unit from May, 2010 to December, 2013. However, the Petitioner failed to maintain the financial discipline for re-payment of the outstanding loan.

8. The PFC settled the outstanding amount of Rs. 6.71 crores approximately for Rs. 1.4 crores approximately plus expenses. The amount received on account of subsidy of Rs. 21,17,500/- was treated as 20% down payment for OTS. The Petitioner was given 30 days' time in May, 2019 to make payment of 40% of the settled amount i.e. Rs. 42,34,827/-, so that the OTS can be approved. The Petitioner never complied with the condition of payment of 40% of the settled amount. It would be pertinent to note here that the Petitioner defaulted even in paying the balance settled amount within 90 days of the issuance of the approval letter. In other words, as a result of the repeated failure of the Petitioner to comply with the OTS stipulations regarding payment, the proposal never matured.

9. The submission of learned Mr. Deol, learned Senior counsel for the Petitioner, that on account of the Covid 19 relief measures announced by the Government of Punjab, on payment schedule in terms of the OTS policy of 2018 stood automatically extended, is not well founded. The salient features of the extension as set out in the document annexed with the writ petition, are as under:

- *OTS Policy extended up to 31st December, 2020.*
- *Extension of the outer date of repayment from 2 years to 2 ½ years for already approved OTS cases.*
- *Moratorium of three months on payment of installment in line with the RBI* guidelines for already approved OTS cases."

10. It is clear that the outer date for re-payment has been extended for OTS cases 'already approved'. There is a moratorium of three months on the payment of installments for 'already approved OTS cases'. In the case in hand, the OTS proposal of the Petitioner never matured since the Petitioner failed to comply with the condition of the initial deposit of 40% of the settled amount within the stipulated time.

11. The grievance with regard to the fixation of the reserve price of the mortgaged property for the purposes of the e-auction, raises a disputed question of fact. In any event, the Petitioner is always free to participate in the e-auction or to bring a better buyer. No interference is called for on this ground also.

12. The petition is dismissed.

(S. MURALIDHAR)
JUDGE

(AVNEESH JHINGAN)
JUDGE

9th October, 2020
sham

Whether speaking/reasoned: Yes
Whether Reportable: Yes