IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 14689 of 2021 (O&M)
Date of Decision: 16.08.2021

M/s. Adonis Textiles Pvt. Ltd., Panipat
and another

.... Petitioners

Versus

IDBI Bank Limited, Mumbai and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH

Present: Mr. Ashwani Talwar, Advocate
for the petitioners.

Mr. Tajender K. Joshi, Advocate
for the respondents – IDBI Bank.

[The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court]

****

JASWANT SINGH, J.

Petitioner No. 1 – Company is a borrower, which had availed credit facilities from respondent No. 1 / Secured Creditor. Petitioner No. 2 is the Director of petitioner No. 1 – Company. It is the pleaded case of the petitioners that on 07.11.2009, respondent No. 1 – Bank sanctioned credit facilities in the shape of ₹ 80 Lakhs as Cash Credit (CC) Limit and ₹ 120 Lakhs as banking credit / post shipment credit. The said loan was renewed and enhanced from time to time which in terms of the last renewal letter dated 28.11.2014 **(Annexure P-4)** was ₹ 449.50 Lakhs as the revised limit.

[2] On account of the petitioners inability to deposit the due amount towards repayment of the loan facilities, respondent No. 1 declared the loan account Non-Performing Asset (NPA) and issued notice under Section 13 (2) of the Securitisation and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 (in short "the Act, 2002") dated 15.12.2015 **(Annexure P-5)**, claiming **₹ 4,43,06,990.82** as on 01.11.2015.

[3] Respondent No. 1 – Bank introduced a One Time Settlement (OTS) Scheme by the name of "Saral Karj Bhugtan Yojna – II" for settlement of accounts as would be eligible under the said scheme. Vide letter dated 14.01.2021 **(Annexure P-8)**, respondent No. 1-Bank informed the petitioners that they are eligible for settlement of their loan account under the aforesaid scheme and the said account can be closed on payment of the settlement amount of ₹ 2,10,89,379/-. The said amount was to be paid in terms of the schedule provided therein, as per which, 5% of the settlement amount was to be deposited alongwith the acceptance of the offer, 10% at the time of issuance of sanction letter and the balance 85% of the settlement amount was repaid in 4 monthly installments from the date of sanction or till 30.06.2021, whichever is earlier.

[4] The petitioners vide letter dated 17.03.2021 accepted the terms and conditions of the settlement, pursuant to which, respondent No. 1 issued sanction letter for settling the account under One Time Settlement (OTS) on the same day i.e. 17.03.2021 **(Annexure P-9)**.

[5] While referring to para-11 of the petition, the petitioners demonstrate that they have deposited ₹ 35,63,407/- uptill 30.03.2021 towards the aforesaid settlement, but could not pay the remaining amount. The petitioners informed respondent No. 1 its inability to deposit the balance settlement amount vide letter dated 28.06.2021 **(Annexure P-10)**. Respondent No. 1-Bank vide letter dated 28.06.2021 **(Annexure P-11)**

extended the last date for payment of the settlement amount to 31.07.2021. The petitioners again could not make any further deposit but is stated to have submitted various requests to respondent No. 1 seeking further extension of time. The said request was not considered favourably by respondent No. 1 as is evident from email dated 29.07.2021 **(Annexure P-16)**, wherein it reiterated that the settlement amount be deposited latest by 31.07.2021.

[6] Learned counsel for the petitioners places reliance upon Reserve Bank of India guidelines dated 05.05.2021 **(Annexure P-17)**, to contend that similar benefit of rehabilitation, ought to have been extended to the petitioners as well in the shape of granting further extension to pay off the balance settlement amount. Various judgments have been cited to bring home the point that the said guidelines are binding on the respondent-Bank. Reliance is also placed upon the judgment of the Court in ***Anu Bhalla Vs. District Magistrate, Pathankot 2021 AIR (Punjab) 1***, to contend that this Court can extend the time period of settlement in deserving cases.

[7] When the aforesaid matter came up for hearing on 05.08.2021, learned counsel for the petitioners prayed for time to file an undertaking by way of an affidavit, detailing the modalities of repayment of the remaining balance under the OTS, provided some reasonable extension is granted. The matter was adjourned to 16.08.2021 to enable the petitioners to file the aforesaid affidavit.

[8] At the time of resumed hearing on 16.08.2021, learned counsel for the petitioners points out to ***CM No. 10899 of 2021*** and the affidavit dated 11.08.2021 of Sh. Vivek Gupta, Director, M/s. Adonis Textiles Pvt.

Ltd., Panipat, annexed thereto, having been filed in compliance of the aforesaid order, to demonstrate their proposal to repay the balance amount. Para-3 to 6 of the aforesaid affidavit dated 11.08.2021 depicts ***that the petitioners proposed that respondent No. 1 – Bank may be called upon to grant approval for release of one of the secured assets, pursuant to which ₹ 1.50 Crore would be deposited and the balance shall be deposited by 31.01.2022***.

[9] Having considered the aforesaid proposal and after hearing the learned counsel for petitioners, we are unable to accept the submissions of the petitioners, for more than one reason, which are as follows.

(i) **Firstly**, there is no provision in the settlement letter dated 14.01.2021 **(P-8)** providing for any release of secured assets on part payment of the settlement amount. The petitioners were fully aware of the terms of the settlement and had conveyed their acceptance to the same. Accepting the instant proposal, would virtually amount to rewriting a commercial contract which cannot be done while adjudicating a *lis* between two commercial entities. It was for the petitioners to have negotiated with respondent No. 1 at the time of entering into the settlement to seek such modalities, if at all the same was essence for compliance. Having not done so, and having accepted the terms of settlement, in our considered opinion, the petitioners are estopped from raising submissions contrary to the terms of a concluded contract.

(ii) **Secondly**, we find that the proposal made by the petitioners, is even beyond the prayer and the pleadings contained in the present petition. There is no prayer, seeking release of a secured asset to pay off the remaining dues of the Bank. No provision or precedent has been cited to claim such a benefit.

(iii) **Thirdly**, reliance placed by the petitioners upon the Reserve Bank of India Guidelines dated 05.05.2021 **(P-17)**, is wholly misplaced. The said policy is for those borrowers whose account were standard as on 31.03.2021 and are seeking restructuring of the credit facilities. Apparently, the case of the petitioners does not fall within the ambit of the aforesaid guidelines. Neither the account of petitioners was standard as on 31.03.2021 nor the petitioners herein are seeking restructuring of its advances.

(iv) **Fourthly**, reliance placed by the petitioners upon the judgments of Hon'ble Supreme Court in the case of ***Sardar Associates Vs. Punjab and Sind Bank 2009 (8) SCC 257*** and ***Central Bank of India Vs. Ravindra 2002 (1) SCC 367*** is also misplaced as the proposition laid down in the cited judgments are not applicable to the facts of the instant case. There is no doubt regarding the settled proposition of law that Reserve Bank of India

(RBI) guidelines are binding on the Banks and have a statutory flavour. Section 21 and 35A of the Banking Regulation Act, 1949 gives the statutory backbone to these guidelines. Having said so, since the guidelines so relied upon by the petitioners, are not even applicable to the facts of the present case, no support can be drawn by the petitioners from the said judgments.

(v) **Fifthly**, as regards the reliance placed by the petitioners upon the judgment of this Court in ***Anu Bhalla's case (supra)*** is concerned, we find that no such direction regarding release of secured assets to pay off the balance settlement amount was either claimed or granted in the said case. Therefore, the said judgment would also not advance the case of the petitioners. We could have considered the prayer of the petitioners for grant of an extension of reasonable time period to pay off the balance settlement amount, but keeping in view the strings and conditions attached by the petitioners, as noticed above, we do not find the judgment in the case of ***Anu Bhalla (supra)*** supporting the petitioners in any way.

[10] For the aforesaid reasons, we express our inability to accept the submissions as advanced by learned counsel for the petitioners. Consequently, the present **petition** stands **dismissed**. However, this would not preclude the petitioners to avail any other alternate remedy as may be available to them, in accordance with law.

Since the main case itself has been decided / dismissed, no orders are required to be passed in the pending miscellaneous application(s), if any, and the same stand(s) disposed of.

(JASWANT SINGH)
JUDGE

August 16, 2021
'dk kamra'

(SANT PARKASH)
JUDGE

Whether Speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*