IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 18816 of 2021 (O&M)
Date of Decision: 24.09.2021

M/s. Daya Krishan Rajinder Kumar, R/o B-II/666,
Pharwahi Bazar, Barnala (Punjab), through its
Proprietor Pankaj Kumar Garg

.... Petitioner

Versus

State Bank of India, Barnala and others

.... Respondents

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

Present: Mr. Hari Chand Arora, Advocate
for the petitioner.

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

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JASWANT SINGH, J. (ORAL)

The petitioner, a sole proprietorship concern, had availed a Cash Credit (CC) Facility of ₹ 20 Lakhs, as also a Term Loan of ₹ 5 Lakhs from the State Bank of Patiala (now merged with State Bank of India w.e.f. 01.04.2017) in the year 2014. It is alleged that after merging of State Bank of Patiala with the State Bank of India, the said cash credit limit of the petitioner could not take place for renewal and the respondent – Bank started charging penal interest in the said account. The said facility / loan was declared as Non-Performing Asset (NPA) on 31.03.2018 following which a notice under Section 13 (2) Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, issued on 08.11.2018 **(Annexure P-3)** seeking to recall outstanding due in both the loan accounts to the extent of ₹ 22,41,411.54 [Cash Credit + Term Loan, i.e. ₹ 20,03,573.26 + ₹ 2,37,838.28 = 22,41,411.54] . The petitioner had made representations / replies dated 01.01.2019 & 26.12.2018 **(Annexures P-4 & P-5 respectively)** before respondent Nos. 2 & 3 – State Bank of India for withdrawing the securitization notice **(P-3)**. The petitioner also submitted an appeal dated 26.12.2018 **(Annexure P-6)** before the Regional Director, Reserve Bank of India, Chandigarh (respondent No. 4) seeking its intervention for withdrawal of the securitization notice **(P-3)**. Ultimately, the respondent – SBI offered a scheme for One Time Settlement-2019 (OTS-2019) to the petitioner for settlement of both the accounts for a sum of ₹ 17,95,993/- (₹ 16,04,754/- + ₹ 1,91,239/-). It is averred that inspite of depositing the 5% upfront amount of ₹ 90,000/- (approx.) by the petitioner, respondent No. 3 – SBI did not take any action to finalise the amount of OTS-2019 and the said upfront amount stood credited in the account of the petitioner on 13.09.2019 **(Annexure P-15)**. Further, an OTS-2020 **(Annexure P-11)** was offered to the petitioner for a sum of ₹ 16,82,836/- for settlement of both the accounts and despite depositing the 5% upfront amount of ₹ 85,808/- by the petitioner, as alleged, respondent No. 3 again did not take any action to finalise the amount of OTS-2020 and the said upfront amount stood credited in the account of the petitioner on 17.03.2021 **(Annexure P-14)**. Respondent No. 3 issued a memo dated 10.03.2021 **(Annexure P-13)** to the petitioner for submission of requisite documents for renewal of its cash credit limit. Thereafter, the petitioner made a representation dated 20.07.2021 **(Annexure P-16)** before respondent No. 2 (Assistant General Manager, State Bank of India, Barnala) requesting to settle both the accounts under OTS-2020 Scheme. However, the respondent – Bank issued a legal notice dated 02.08.2021 **(Annexure P-17)** calling upon the petitioner to deposit an amount of ₹ 20,12,569.26 with interest.

By filing the present petition, the petitioner seeks quashing the letter dated 10.03.2021 **(P-13)** calling upon the petitioner to submit requisite documents and complete the formalities for renewal of its loan accounts; **further seeks** quashing of the legal notice dated 02.08.2021 **(P-17)** calling upon the petitioner to repay the amount ₹ 20,12,569.26 alongwith interest; **as also** seeking a *mandamus* for issuing a direction to the respondents to determine the due amount in accordance with the OTS-2020.

We have heard learned counsel for the petitioner at length and find no ground to direct the extension of OTS.

It is not in dispute that as per the sanctioned OTS-2020, the petitioner was required to pay a total sum of ₹ 16,82,836/- with certain conditions mentioned in the OTS-2020 **(P-11)**, the said conditions are re-produced as under :-

" (i) *Book outstanding (excluding notional interest from the date of NPA) as on 31.03.2020 Rs. 22,43,781 / 54.*

(ii) *OTS Amount* ***16,82,836 / 15****.*

(iii) *Application for OTS will be processed only on deposit of minimum 5%, 15% (for wilful defaulters) of the OTS amount.*

(iv) ***Another 10% of the OTS Amount will have to be deposited by you as second installment of money within sixty days from the date of sanction of OTS failing which the OTS sanction will be rendered infructuous and OTS treated as failed****.*

(v) *Another 10% of the OTS Amount will have to be deposited by you as second installment of money within sixty days from the date of sanction of OTS failing which the OTS sanction will be rendered infructuous and OTS treated as failed.*

(vi) *The balance amount can be paid within 8 months from the date of sanction of OTS (the validity period) together with interest @ 6 months MCLR on reducing balance basis effective from the date of sanction of the OTS, failing which the OTS will be rendered infructuous and OTS treated as failed.*

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

(viii) *You will be eligible for an additional incentive on the OTS amount, on making payment of the entire amount as given below :-*

A.

Full payment of OTS amount by	*Incentive on full payment of OTS Amount*
Within one month from the date of sanction	*15%*
Within two months from the date of sanction	*10%*
31.03.2021	*5%*

B.

Incentive on 50% payment of OTS amount.

Full payment of OTS amount by	*Incentive on full payment of OTS Amount*
Within one month from the date of sanction	*7.5%*
Within two months from the date of sanction	*5%*

 # Incentive will be available at the time of making payment of the last installment of OTS amount within the stipulated time.

Eligibility will be for only one of the above incentives. Incentive A and B cannot be clubbed together. "

It is also not in dispute that apart from the upfront amount of ₹ 85,808/- (i.e. 5% of the OTS amount), no other installment was paid by the petitioner. The case of the petitioner does not warrant further indulgence, as the amount paid upfront amounts to only five (05) *per cent* of the settled amount. That apart, we are of the opinion that by non-payment of the installment of ₹ 1,68,284/- (i.e. 10% of the OTS amount) in terms of the aforesaid Clause (iv) of the OTS-2020 **(P-11)**, there is no concluded contract *viz.* OTS scheme and thus OTS has lapsed. Any tinkering at this stage would amount to re-writing the terms of the OTS contract, which is impermissible in law.

In view of the above, no case for interference in the present petition is made out, the same is hereby **dismissed**.

(JASWANT SINGH)
JUDGE

September 24, 2021
'dk kamra'

(SANT PARKASH)
JUDGE

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