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# IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

**Civil Writ Petition No. 18960 of 2021 (O&M)**
**Date of Decision: 24.09.2021**

M/s. Witty Auto Engineering Pvt. Ltd.,
H. No.1, Jharoda Majra, Bhradi, Delhi and others

.......... Petitioners

***Versus***

State Bank of India, New Delhi

.......... Respondent

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

Present: Mr. Anuj Thakur, Advocate
for the petitioners.

*[ 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)**

M/s. Witty Auto Engineering Pvt. Ltd. (petitioner No. 1) had availed credit facilities in five different accounts (Cash Credit Facility + Term Loan) from the respondent – State Bank of India from the year 2012 onwards. Vinod Tyagi, Poonam Tyagi and Suresh Kumar Tyagi (petitioner Nos. 3 to 5, respectively) stood as guarantors in such accounts of petitioner No. 1 – Company.

M/s. Witty Engineering, petitioner No. 2, is a proprietorship concern of Smt. Archana Tyagi wife of Sh. Suresh Kumar Tyagi, who also availed the credit facilities and a notice under Section 13 (2) Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short **"SARFAESI Act"**) stands issued on 01.12.2015 **(Annexure P-2)** to it seeking to recall and outstanding due in the Cash Credit Account to the extent of ₹ 1,34,75,848/-, however, we find that no relief *qua* petitioner No. 2 has been claimed in the present petition.

The five (05) specified loan accounts noticed in the Compromise Proposal dated 30.09.2019 **(Annexure P-3)** submitted by petitioner No. 1 – Company were declared Non-Preforming Asset (NPA) and proceedings for recovery initiated under the SARFAESI Act, leading to the aforesaid compromise proposal **(P-3)** being offered by the defaulting borrower – petitioner No. 1. The said offer **(P-3)** was accepted by the respondent – Bank vide memo dated 30.11.2019 **(Annexure P-4)**, whereby the offer of a payment of ₹ 6,10,00,000/- towards full and final settlement was accepted with certain terms and conditions subject to clearance of all dues by 30.04.2020. Since, petitioner No.1 could not adhere to the schedule of re-payment, the prayer for extension of time was rejected and the compromise settlement dated 30.11.2019 **(P-4)** cancelled vide memo dated 07.10.2020 **(Annexure P-5)**. Hence, the present petition assailing the said memo dated 07.10.2020 **(P-5)** and seeking a *mandamus* for revival of the compromise / One Time Settlement (OTS) dated 30.11.2019 **(P-4)** by grant of extension of six (06) months.

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

It is not in dispute that as per the sanctioned OTS, the petitioners were required to pay a total sum of ₹ 6,10,00,000/- with conditions mentioned in the compromise / OTS dated 30.11.2019 **(P-4)**, the said conditions are re-produced as under :-

> ***" (i)*** *Total amount payable under the settlement will be* ***Rs. 610.00 Lakhs (Rupees Six Crore Ten Lakhs Only).***
>
> ***(ii)*** *Upfront amount of* ***Rs. 91,50,000/-*** *paid by you has been appropriated towards your settlement amount.*

***(iii)*** *Rs. 259.25 Lakh to be paid within three months from conveying sanction i.e. 28.02.2020.*

***(iv)*** *Balance amount of Rs. 259.25 Lakhs to be paid further in next two months i.e. up to 30.04.2020. No interest will be charged, the compromise amount paid within four months from the date of approval of compromise conveyed to the borrowers, if the entire compromise amounts not paid within four months interest at MCLR for one year on the balance amount paid after four months will be charged from 30th day from the date of letter conveying approval of the compromise to the borrower, failing which the compromise/sanction will be rendered infructuous.*

***(v)*** *All cases filed by the company/directors/guarantors, if any including any consumer forums against the Bank are to be withdrawn.*

***(vi)*** ***In the event of failure of any of the terms of the compromise settlement, the compromise will be treated as cancelled and the entire amount due prior to the compromise settlement together with (illegible) charges will be payable by the borrower**. "*

It is also not in dispute that apart from the upfront amount of ₹ 91,50,000/-, no other installment was paid by petitioner No. 1 – Company by 30.04.2020. It is also apparent that a similar prayer, as made before this Court, was also made before the Debts Recovery Tribunal-II, Chandigarh by the petitioners in the pending S.A. filed by the Bank, which was declined. The reference to the judgments also do not advance the case of the petitioners as the amount paid upfront amounts to only fifteen (15) *per cent* of the settled amount warranting no further indulgence. That apart, we are of the opinion that by non-payment of the first installment of ₹ 2,59,25,000/- in terms of the aforesaid Clause (iii) of the compromise / OTS dated

30.11.2019 **(P-4)**, petitioner No. 1 – Company had not even entered into the OTS scheme. 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** **( SANT PARKASH )**
*'dk kamra'* **JUDGE**

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