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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 10.12.2021

+ **W.P.(C) 14117/2021**

HIND INDUSTRIES LTD & ORS.

..... Petitioners

Through: Mr. Tanmaya Mehta with Mr. Maroof Ahmad, Mr. Anurag Sahay, Mr. Divyansh Hanu, Ms. Sumedha Sindhu, Ms. Shreya Gupta & Mr. Vasu Vats, Advs.

versus

INDIAN BANK & ORS.

..... Respondents

Through: Mr. Brijesh Kumar Tamber, Adv. for Indian Bank.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

10.12.2021

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JASMEET SINGH, J. (ORAL)

C.M. No. 44558/2021

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 14117/2021 and C.M. No. 44557/2021

3. We heard arguments and dismissed the petition on 10.12.2021. The reasons were to follow, which we give in the present Order. The present writ has been filed by the petitioners seeking substantially the following prayers;

- “(a) Pass appropriate Writs, Orders and/or Directions especially in the nature of certiorari quashing and/or modifying the order dated 07.12.2021 passed by DRT, Jaipur in TSA No. 33 of 2021 (Original SA No. 311 of 2021 given by DRT-I, Delhi being transferred pursuant to the order of this Hon’ble Court) and the letters dated 04.03.2021 & 27.10.2021 written by the Receiver (Respondent No.3);*
- (b) Pass appropriate Writs, Orders and/or Directions directing the Respondents not to proceed further pursuant to the orders passed on 16.03.2017 & 12.02.2021 by Learned Metropolitan Magistrate in MCA No. 35 of 2017;*
- (c) Pass appropriate Writs, Orders and/or Directions especially in the nature of certiorari quashing the orders dated 16.03.2017 in MCA No. 35 of 2017 passed under Section 14 of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and dated 12.02.2021 passed on some new application filed in the year 2021 in MCA No. 35 of 2017 under no provisions of the law by Learned Chief Metropolitan Magistrate, Saket Courts, New Delhi on the proceedings initiated by Respondents No. 1 & 2 directing the Respondent No.3 to take over possession of immovable property bearing Flat No.69, Cat-III, 2nd and 3rd Floor and servant quarter No. 6, Sidhartha Enclave DDA, SFS scheme, Ashram, New Delhi - 110014 with further Writs, Orders and/or Directions in the nature of mandamus directing the concerned authorities to abide by due process and Writ of Prohibition prohibiting the Respondents from acting illegally under the pretext of Section 14 of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 with further Writs, Orders and/or Directions appropriate under the entire scenario of the said provision;*
- (d) Pass appropriate Writs, Orders and/or Directions in the nature of prohibition directing the Respondents No. 1 & 2 not to invoke provisions of Section 14 of the Act against the Petitioners;”*

4. Briefly stating, facts giving rise to filing of the present writ petition are as under:-
- a. The Petitioner No. 1, along with its Directors availed of certain financial facilities from the Respondents No. 1 & 2 viz. Indian Bank, and State Bank of Hyderabad (Now State Bank of India) for the purposes of augmenting their commercial activities. Certain Credit facilities were renewed and enhanced by the Respondent No.1 from time to time, subject to hypothecation of stocks.
 - b. The Petitioners' claim that due to non-payment from the side of the buyers of the Petitioners, Petitioner No. 1 started suffering from financial losses, resulting into non-maintenance of financial discipline with the Respondents No. 1 & 2. This led to issuance of certain letters/notices by Respondent Nos. 1 & 2.
 - c. The Respondent No.1 issued a notice dated 27.05.2016 under Section 13(2) of the Act classifying the Petitioners' account as NPA since 02.05.2016, and intimated to the Petitioners that the outstanding amount was Rs. 33,14,61,238.18, as on 02.05.2016. Similar legal notices were got issued by Respondent No. 1 demanding the updated amounts from the Petitioners, on 10.10.2016 and 24.11.2016.
 - d. The Respondent No.1, thereafter, initiated recovery proceedings by way of OA No. 669/2017 - **Indian Bank**

versus Hind Industries Ltd & Ors. before the DRT, New Delhi, which is still pending.

- e. Simultaneously, the Respondent No.1, also initiated proceedings under Section 14 of the SARFAESI Act before the Chief Metropolitan Magistrate, Saket Courts, New Delhi, which passed an order on 16.03.2017, appointing a receiver viz. Mr. Manoj Kumar, Advocate to take possession of the mortgaged property bearing Flat No. 69, Cat-III, 2nd & 3rd Floor and Servants Quarter No. 6, Siddhartha Enclave DDA, SFS Scheme Ashram, New Delhi-110014. The Petitioner was put to notice of the same on 29.04.2017.
- f. The Petitioner filed S.A. No. 92/2017 before the DRT to challenge to initiation of proceedings under SARFAESI Act by Respondent No.1. The DRT initially granted interim protection in respect of the property in dispute on 28.04.2017 in favour of the Petitioners. However, the same was not extended. Consequently, the receiver Mr. Manoj Kumar, Advocate again issued notice for taking over possession of the properties.
- g. The Petitioner then started negotiating with the Respondent Banks to seek a One Time Settlement (OTS). However, these efforts did not fructify.
- h. Apprehending dispossession by the Receiver, the Petitioner filed W.P.(Crl) No. 632 of 2021 before this Court. However, on 18.03.2021, it was withdrawn with liberty to file a better petition.

- i. The Petitioners then preferred W.P. (CrI) No. 656 of 2021 before this Court.
- j. The said petition W.P. (CrI) No. 656 of 2021 came to be listed, for the first time, on 19.03.2021 before the Court, and notices were issued to the Respondents.
- k. The Petitioners claim that after having filed the aforesaid Writ Petition, they enhanced the OTS amount to Rs. 17 Crores vide dated 22.03.2021.
- l. The Petitioners state that they were expecting positive response from the Respondent bank, and, consequently, the Writ Petition was withdrawn.
- m. Thereafter, the Petitioners were seriously pursuing with the Respondent bank the OTS proposal and again approached the bank by their letter dated 09.04.2021, wherein the Petitioner enhanced its OTS proposal to 21 Crores. The Respondent bank responded vide email dated 11.04.2021, requiring the Petitioner to make an upfront payment of amount of Rs. 2.10 Crores and given a net-worth certificate from a Chartered Accountant of the company to enable the Respondent to take up the OTS proposal with the competent authority for sanction. However, the said amount was, admittedly, not deposited by the Petitioner. Thereafter, there were numerous communications which are not relevant.

5. It may be relevant to mention that from 11.04.2021 till date, the Petitioner has made a deposit of only Rs. 40 lakhs, which includes an earlier deposit of Rs. 28 lakhs.
6. The Petitioner claims that it has not received any notice from Mr. Avinash Kumar, Advocate, calling for taking over the possession of the property on expiry of 15 days from issuance of Possession Notice i.e. on 15.11.2021. The said notice was challenged by filing SA before DRT Delhi vide diary no. 217 of 2021 dated 8.11.2021. Since the DRT was not functional, Writ Petition (C) No. 12773/2021 was filed, which was disposed by this Court on 15.11.2021 directing the DRT Jaipur to hear the SA filed by the Petitioner. DRT Jaipur vide the impugned order dated 07.12.2021 has rejected the interim relief sought by the Petitioner. It is this order of the DRT, which is impugned before us.
7. From the e-mails dated 19.12.2017, 11.03.2021, and 11.04.2021 sent by the Respondent and letters dated 28.06.2021, 25.08.2021, 18.01.2018, 19.03.2018, 04.06.2018, 12.08.2018, 24.10.2018, 18.03.2019, 21.02.2020, 06.08.2020, 24.09.2020, 04.11.2020, 22.03.2021, 09.04.2021, 16.05.2021, 05.07.2021, 26.08.2021 sent by the Petitioner, it is apparent that the petitioners and the respondent-bank were talking about an OTS, but there is no document which shows that any OTS had been reached or accepted by the Respondent banks.
8. It is argued by the Ld. Counsel for the Petitioner that the Petitioner is keen on arriving at an OTS with the Respondent Bank, and made several offers. It is the contention of the Petitioners, that the Respondent Bank has yet not rejected the OTS Proposal of the

Petitioners, and it is under their active consideration. Infact, the Respondents have accepted 40 lakhs as upfront payment. Since the OTS is under active consideration, the Notice issued by the receiver should be stayed.

9. We have heard learned counsel for the petitioner and Mr. Brijesh Kumar Tamber, learned counsel for the respondent-Indian Bank.
10. The challenge in the present case is to the order dated 07.12.2021, wherein the prayer for interim stay in S.A. No. 311/2021 of the petitioner has been rejected on two grounds:
 - (i) That S.A. No. 311/2021 before DRT-I, Delhi, is on the same cause of action as that of S.A. No. 92/2017, which is pending;
 - (ii) No physical possession should be taken as OTS proposal is pending, cannot be a ground for consideration, as the applicant cannot claim it as a matter of right to claim interim relief.
11. A comparison of SA 92/2017 (though typed in the impugned order as SA 98/2018) and SA 311/2021 show that both the Applications are challenging the SARFAESI action of the Respondents. Both the Applications are seeking restraint against the Respondent from taking possession of the secured asset of the Petitioner. Besides certain cosmetic changes, and besides incorporating subsequent events, both Applications are identical in most material particulars. For example common grounds are as under:

S. no.	Petition Component	S.A. No. 92/2017	S.A. No. 311/2021
1	Grounds	B. Because the Defendants are illegally and arbitrarily classified NPA	<i>E. BECAUSE the Respondents must have filed a false affidavit as</i>

			<i>required under Section 14(1) Proviso naturally they concealed the vital fact that the Applicants have already paid amount of Rs. 45 Lakhs in order to show their sincerity for OTS offer.</i> <i>G. BECAUSE the account of the Applicants has not been classified as NPA according to Section 134(2) and Section 14 of the Act.</i>
2	Grounds	E. Because the Defendants are also duty bound to assist the Applicants in re-establishing their commercial establishment as the Applicants have been earning Crores of US Dollars and contributed the same for the foreign exchange of our Country	A. BECAUSE the Respondents have not positively considered the offer of the Applicants for Rs. 21 Crores as an OTS amount. B. BECAUSE the Applicants have established their bonafide for setting the dispute once for all.
3	Relief Sought	Set aside the proceedings initiated by the Respondents/Defendants classifying NPA and under Section 13(2) & 13(4) of The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and pass appropriate directions for declaring nullification of the order allegedly passed by learned CMM and thereby restrain the Receiver from taking over possession of the property i.e. 69, CAT-III, 2nd & 3rd Floor and Servant Quarter No.6 of Siddharth Enclave, DDA SFS	Declare that the action initiated by the Respondent bank under Section 13(4) of SARFAESI Act, 2002 and the rules framed there under, including but not limited to the issuance of the impugned notice dated 27.10.2021 by the Court Receiver acting on behalf of Respondent against the alleged secured asset i.e. the residential flats of the Applicants bearing No. 69, Cat-III, 2nd and 3rd Floor and Servant Quarter No.6, Sidhartha Enclave, DDA, SFS Scheme, Ashram, New Delhi- 110014, as null and

		Scheme, Ashram, New Delhi in any manner whatsoever.	void, illegal, untenable, uncalled for, unwarranted and bad in law and against the provisions of the SARF AESI Act, 2002 and the Security Interest Enforcement Rules, 2002 and consequently set aside and quash the same and also pass necessary orders of cancellation of the e-auction of the aforesaid property;
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12. In this view of the matter, it is clear that both S.A.s. are on the same cause of action. The Petitioners, in both applications, have alleged that the proceedings under the Securitization Act were wrongly initiated, and the Respondents had not accepted their OTS request, or considered their representations. Once an S.A. is already pending on a particular cause of action, another S.A. cannot be permitted to be filed on the same cause of action, as the same would result in a clear overlap and an attempt to overreach the judicial process. This principle has been stated in *M/s Integrated Tech 9 Labs Private Limited v. State of U.P.*¹, wherein it was observed “*It is settled law that successive writ petitions for the same cause of action are not maintainable and all questions which could have been taken or ought to have taken and if not decided would be deemed to have been adjudicated or declined.*”. The only way forward is for the petitioner to await the outcome of S.A. No. 92/2017 and, thereafter, if aggrieved, take further action as available in law. Two applications on the same cause of action are neither permissible,

¹ Write Tax No. 1492/2018, Allahabad High Court, Order dated 27.11.2018.

nor maintainable in law.

13. As far as OTS proposal made by the Petitioners is concerned, the purpose of an OTS is that the banks can recover dues from a defaulter. The Introduction² in the OTS Scheme states the following:

“Introduction:- A large part of various types of loans dispersed from time to time by the urban co-operative banks of the state to the institutions/ members are currently in the form of time-less loans has been blocked. Despite all the efforts regarding recovery of such lapsed loans, the recovery of loans is not being done for a long time. According to the guidelines issued by the Reserve Bank of India for OTS from time to time, it has been decided to implement the revised one time settlement (OTS) for recovery of nonperforming assets in the state so that serious timeless debts of the bank can be saved to get maximum recovery.”

14. The Allahabad High Court in *M.M. Accessories v. U.P. Financial Corporation*³ has explained the purpose of settlement, wherein the bench has observed:

“4. Before considering whether such a prayer can be granted, it is necessary to understand the precise meaning of the word “settlement”. In the context in which the word is used here, its meaning in the New Shorter Oxford Dictionary is settling or payment of an account; the action of coming to terms with a person. In Black's Law Dictionary, its meaning is adjustment or liquidation of mutual accounts; the act by which the parties, who have been dealing together arrange their accounts and strike a balance; an adjustment of difference or accounts; a coming to an agreement. In Law Lexicon by P. Ramanatha Aiyar, the meaning of the expression “settlement of accounts” is a compromise or a contract between two parties by means of which they ascertain

² As reproduced in *The Bijnor Urban Cooperative Bank Limited, Bijnor & others v. Meenal Agarwal & others*, Civil Appeal No. 7411/2021, Supreme Court of India, Date of Decision: 15.12.2021.

³ (2002) 46 ALR 261.

the state of the accounts between them and strike a balance; a determination by agreement; a mutual adjustment of accounts between different parties and an agreement upon the balance. Therefore, the dictionary meaning of the word shows that settlement pre-supposes consent of both the parties whereunder a creditor relinquishes his claim to a sum of money due to him and voluntarily agrees to take a lesser amount for the liquidation of the liability of the debtor. It is obvious that there can be no settlement without the consent of both the parties, especially that of the creditor. The agreement or consent of the creditor is sine qua non for a settlement and in absence of his consent, there can be no settlement of accounts.”

(emphasis supplied)

15. The Petitioners cannot thrust a settlement on the Respondents on their own terms.
16. Additionally, OTS is not a matter of right. The same has been observed by the Supreme Court in *The Bijnor Urban Cooperative Bank Limited, Bijnor & others v. Meenal Agarwal & others*⁴, wherein it was observed:

“9. Even otherwise, as observed hereinabove, no borrower can, as a matter of right, pray for grant of benefit of One Time Settlement Scheme. In a given case, it may happen that a person would borrow a huge amount, for example Rs. 100 crores. After availing the loan, he may deliberately not pay any amount towards installments, though able to make the payment. He would wait for the OTS Scheme and then pray for grant of benefit under the OTS Scheme under which, always a lesser amount than the amount due and payable under the loan account will have to be paid. This, despite there being all possibility for recovery of the entire loan amount which can be realised by selling the mortgaged/secured properties. If it is held that the borrower can still, as a matter of right, pray for benefit under the OTS Scheme, in that case, it would be giving a premium to a dishonest

⁴ Civil Appeal No. 7411/2021, Supreme Court of India, Date of Decision: 15.12.2021.

borrower, who, despite the fact that he is able to make the payment and the fact that the bank is able to recover the entire loan amount even by selling the mortgaged/secured properties, either from the borrower and/or guarantor. This is because under the OTS Scheme a debtor has to pay a lesser amount than the actual amount due and payable under the loan account. Such cannot be the intention of the bank while offering OTS Scheme and that cannot be purpose of the Scheme which may encourage such a dishonesty.

11. The sum and substance of the aforesaid discussion would be that no writ of mandamus can be issued by the High Court in exercise of powers under Article 226 of the Constitution of India, directing a financial institution/bank to positively grant the benefit of OTS to a borrower. The grant of benefit under the OTS is always subject to the eligibility criteria mentioned under the OTS Scheme and the guidelines issued from time to time. If the bank/financial institution is of the opinion that the loanee has the capacity to make the payment and/or that the bank/financial institution is able to recover the entire loan amount even by auctioning the mortgaged property/secured property, either from the loanee and/or guarantor, the bank would be justified in refusing to grant the benefit under the OTS Scheme. Ultimately, such a decision should be left to the commercial wisdom of the bank whose amount is involved and it is always to be presumed that the financial institution/bank shall take a prudent decision whether to grant the benefit or not under the OTS Scheme, having regard to the public interest involved and having regard to the factors which are narrated hereinabove.”

17. Hence, the second ground of the petitioner that OTS has not been considered by the respondent-bank is also misconceived, for the reasons as stated above. There is no vested right in the Petitioner to command the Respondent bank to accept an OTS offered by the Petitioner. In addition, a bare perusal of the communications referred to by us above clearly show that the respondent bank has never accepted

as OTS offered by the Petitioner. At best, it is an exchange of communication which does not result in a vested right in the petitioner. In fact, when the Petitioner made an OTS offer of Rs. 21 crores, the Respondent required the Petitioner to deposit Rs. 2.10 crores upfront before the offer could be considered. However, the Petitioner did not make the said deposit. Obviously, its proposal could not be expected to be considered by the Respondents. Thus, we see no reasons to interfere in the impugned order dated 07.12.2021 passed by DRT Jaipur in S.A. No. 311/2021.

18. There is no merit in the present writ petition and the same is, accordingly, dismissed. However, nothing stated hereinabove is an expression on the merits of the main case which shall be heard and adjudicated, as and when the appeal is heard by the DRAT.

VIPIN SANGHI, J

JASMEET SINGH, J

DECEMBER 10, 2021

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