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

***CWP No.15895 of 2020 (O&M)***
***Reserved on 30.03.2022.***
***Date of Decision: 26.04.2022***

***M/S. SAMARTH WOOLLEN MILLS AND ANOTHER***

*……..Petitioners*

***V/s.***

***INDIAN BANK (ERSTWHILE ALLAHABAD BANK)***

*…..Respondents*

***CORAM:*** ***HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO***
***HON'BLE MR. JUSTICE JASJIT SINGH BEDI***

Present: Mr. Aalok Jagga, Advocate, for the petitioners.

Mr. Rajiv Joshi, Advocate, for the respondent.

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***M.S. RAMACHANDRA RAO, J.***

**The Background facts**

Petitioner No.1 is a partnership firm engaged in the business of manufacturing and trading of Yarn, Knitted clothes and Hosiery goods, and falls under the category of Micro, Small & Medium Enterprises (MSME). Petitioner No.2 is its partner.

Prior to 2016, it had availed a loan of ₹18.4 Crores from the Allahabad Bank, the predecessor of the respondent-Indian Bank, and it had mortgaged 3 properties covered by 3 sale deeds bearing Nos. 18465, 18479 and 22379 measuring 1210 sq. yards, 1570 sq. yards and 9740 sq. yards in Village Bajra, Rahon Road, Village Meharban, Ludhiana in which the factory of the petitioners was located.

Since the petitioners faced financial difficulties in recovering the money from their sundry debtors in 2017, they addressed several letters to the Allahabad Bank to consider the rehabilitation proposal of the petitioners in terms of the Reserve Bank of India (RBI) guidelines known as *"Framework for Revival & Rehabilitation of Micro, Small & Medium Enterprises"* dt. 17.03.2016. The said request was rejected by the Allahabad Bank vide letter dt.13.10.2017 without placing it before the Designated Committee.

**CWP No.22963 of 2017**

The petitioners challenged the same by filing CWP No.22963 of 2017 in this Court, which was allowed on 14.08.2018 by this Court, holding that the rejection of the petitioners' proposal for restructuring by the Allahabad Bank without referring it to the Designated Committee amounts to contravention of the RBI guidelines, and a direction was given to the Allahabad Bank to place it before the Designated Committee.

Thereafter, the Allahabad Bank again rejected the proposal of the petitioners by getting the proposal examined by the said Committee.

But the said Committee was not constituted in terms of Clause 3 of the above RBI guidelines dt. 17.03.2016 which mandated that a Government nominee should be a member in the same.

**CWP No.657 of 2019**

The petitioners again approached this Court by way of filing CWP No.657 of 2019, in which notice of motion was issued on 17.01.2019.

**The First OTS dt.7.6.2019 sanctioned by Allahabad Bank**

While the said Writ Petition was pending, vide Annexure P-3 dt.7.6.2019, the Allahabad Bank offered an One Time Settlement (OTS) under which the petitioners had to pay ₹14.75 Crores.

The OTS letter stated that the application money of ₹75 Lakhs would be appropriated towards the OTS amount; 20% of the OTS amount should be deposited as upfront money within thirty days from 06.07.2019; and the balance should be paid within six months from the date of the said letter i.e. 07.12.2019.

It was further stated that no interest would be charged if the entire OTS amount is paid within three months from that date i.e. by 06.09.2019, and if not, interest @ One year MCLR which was then 8.65% was to be paid on reducing balance basis w.e.f. 07.06.2019. Certain other incentives were also provided.

It was also stated that in the event of failure to repay the entire amount within the stipulated period, the OTS would become infructuous, and the amount paid under the OTS will not be refunded.

The petitioners thereafter withdrew CWP No.657 of 2019.

**The payments made by petitioners between 7.6.2019-2.12.2019**

Between 07.06.2019 and 23.09.2019, the petitioners deposited ₹5,05,00,000/- and also made deposits totaling ₹50 Lakhs in a no lien account by 02.12.2019.

The petitioners arranged the OTS money by getting buyers for two properties covered by sale deeds No. 18465 and 18479 by entering into agreements to sell dt. 30.04.2019, after informing the purchaser about the interest of the said Bank in the property.

The petitioners also entered into another agreement of sale dt. 30.04.2019 for another property measuring 10 *marla* in Village Daad, Hadbast No.279, Tehsil and District Ludhiana in the name of Shri Gagan Sarin for ₹95 Lakhs which was not encumbered to any financial institution.

The target dates under these agreements for execution of sale deeds, after making the balance payment by the purchaser, was agreed to be 20.11.2019. However, the purchaser/s requested for more time to make the balance payment of ₹7.6 Crores through a letter dt. 13.11.2019.

The petitioners then approached the Allahabad Bank on 15.11.2019 seeking extension of time for paying the balance amount payable under the OTS of ₹9.20 Crores.

In the meantime, a suit for permanent injunction was filed by one Saleem Ansari in respect of the property which had been agreed to be sold by the petitioners to the purchaser under the agreement of sale dt.30.4.2019.

Due to the pendency of the said suit, the purchaser refused to pay the balance amount till he was assured of getting physical possession of the property.

**Petitioners' request for extension of time to pay the OTS amount and CWP No.35810 of 2019**

When the request of the petitioners for extension of time for complying with the terms of the OTS made on 15.11.2019 was not taken up by the Allahabad Bank, petitioners filed another CWP No.35810 of 2019 in this Court.

The said Writ Petition came to be disposed of on 09.01.2020, directing the Allahabad Bank to take a final decision on the request for extension made by the petitioners on 15.11.2019 within three weeks.

**The rejection of the OTS extension request by the Allahabad Bank**

Allahabad Bank then rejected the request letter dt.15.11.2019 made by the petitioners for extension of time for complying with the OTS, stating that the OTS had failed since the petitioners did not adhere to the terms of the sanctioned OTS.

**CWP No.2555 of 2020**

The petitioners thereafter filed CWP No.2555 of 2020 challenging the said rejection of letter dt. 15.11.2019.

On 05.02.2020, notice of motion was issued and *status quo* was directed to be maintained by this Court.

**Offer of Second OTS vide Annexure.P16 on 26.3.2020 by Allahabad Bank**

While the said Writ Petition was pending, the Allahabad Bank came out with another OTS scheme and again settled with the petitioners for an OTS for ₹10,60,32,000/- vide Annexure P-16 letter dt. 26.03.2020.

Under the terms of the said letter, ₹4 Crores paid by the petitioners were stated to have been appropriated towards the OTS, and the petitioners were to pay 20-25% of the OTS within 30 days, and the balance amount of the OTS within six months from the date of sanction i.e.by 26.9.2020, failing which the OTS sanctioned would be rendered infructuous.

It was further stated that no interest would charged if the entire OTS amount is paid within three months from the date of the sanction letter, and that beyond three months, interest would be charged from the date of approval of the compromise at simple rate (1 Month MCLR) on reducing balance effective from the date of sanction.

It was further stated that in the event of failing to repay the entire amount within the stipulated time period, the OTS would become infructuous, and the amount paid under this OTS, if any, will not be refunded.

**Petitioners' request for extension of OTS on 26.3.2020**

The petitioners then addressed a letter on 26.03.2020 to the Allahabad Bank stating that the time mentioned in the letter to pay the remaining amount would have to be extended because w.e.f. 24.03.2020, on account of COVID-19 pandemic, there was a lockdown imposed in the entire country by the State and Union Governments, and it was not certain till when the situation would get normalized.

It was stated that in view of the prevailing situation, it would be difficult to make the entire payment by 26.09.2020; that on account of COVID-19 pandemic, even the purchasers of the properties with whom the petitioners had entered into agreements to sell delayed in making the balance payments, and the occupant of the property in respect of which the Civil Suit was filed by Saleem Ansari, who was to vacate the same by 30.06.2020 also requested time to vacate the premises. The petitioners therefore sought extension again on 09.09.2020 for six more months for making the balance payment pursuant to the OTS sanctioned on 26.03.2020 to them.

**The instant Writ Petition**

The petitioners then filed the instant Writ Petition and sought the Writ in the nature of *Mandamus* directing the respondent to grant extension of time for making the balance payment of the OTS pursuant to the Annexure P-16 letter dt. 26.03.2020 stating that the settlement was for

₹10,60,32,000/- out of which they have already paid ₹4 Crores, and the payment of the balance amount got delayed due to the circumstances beyond their control. They also sought a direction to respondent not to take any coercive action against the properties of the petitioners, and to maintain *status quo* regarding the mortgaged properties pending the disposal of this Writ Petition.

**The events after filing of the Writ Petition**

On 08.10.2020, when the matter was listed before this Court, counsel for the petitioners stated that the petitioners would discharge all their liability on or before 31.12.2020, but this was opposed by the counsel for the respondent, and so counsel for the petitioner sought time to get instructions as to whether the balance amount could be paid within four weeks from that date. The matter was thus adjourned to 15.10.2020.

On 15.10.2020, counsel for the petitioners stated that the petitioners would pay ₹50 Lakhs by 16.10.2020, ₹50 Lakhs by 27.10.2020, ₹1.5 Crores by 31.12.2020, ₹1.5 Crores by 31.01.2021, ₹1.5 Crores by 28.02.2021, and the balance amount along with interest on delayed payment would be paid by 31.03.2021.

To test the *bona fides* of the petitioners, the hearing of this case was deferred to 28.10.2020, and on that date it was reported that there was a mistake in the earlier order (dt. 15.10.2020) in regard to the payment of **₹1.5 Crores** by 31.12.2020 which should have read as **₹1 Crore** by 31.12.2020. It was also recorded that ₹1 Crore was already deposited by then with the respondent-Bank which had been taken over the Allahabad Bank and the balance of ₹1 Crore would be deposited before 31.12.2020.

After taking into account the facts and circumstances, the Division Bench rejected the opposition to the request for extension of time by the respondent-Bank, and adjourned the matter to 11.01.2021 with a default clause stating that in default of payment of amount fixed as per the schedule mentioned in the order dt.15.10.2020, the Writ Petition would stand dismissed.

When the matter was next listed on 11.01.2021, it was informed that the petitioners had paid ₹2.5 Crores during the pendency of the Writ Petition, and they would clear the balance on or before 31.03.2021. The matter was, therefore, adjourned to 26.04.2021.

It is not in dispute that the entire amount of the OTS amount ₹10,60,32,000/- (excluding interest) sanctioned on 26.3.2020 was paid by the petitioners by 31.3.2021.

**The stand of the respondent -Bank**

Initially a short reply was filed by the respondent in October, 2020 which was followed-up by a detailed written statement on 06.01.2022.

In the initial short reply, the plea taken by the respondent is that the previous OTS was sanctioned vide Annexure P-3 on 07.06.2019 for ₹14.75 Crores which was later reduced to ₹10,60,32,000/- in the second OTS dt.26.03.2020 sanctioned vide Annexure P-16. It is stated that there was a condition in the said OTS letter that in the event of failure to repay the entire OTS amount within stipulated time period, the OTS would become infructuous, and so the petitioners were not entitled for any extension of time.

It was also contended that the petitioners ought not to have entered into any agreement to sell on 30.04.2019, since there was a *status quo* order granted on 05.02.2020 in CWP No.2555 of 2020.

It is contended that the without prior permission of the respondent, such agreements to sell could not have been entered into, and that even though registration of the sale deeds was to happen by 18.11.2019, they were not done even though no COVID-19 pandemic was prevailing in India at that time.

It is further contended that the petitioners have incorrectly mentioned that they have not filed any other Writ Petition, though they have filed CWP No. 2555 of 2020 which was pending in this Court.

It is pointed out that the petitioners were not running the factory and a Local Commissioner be appointed to verify whether the factory is being run by the petitioners or not.

In the detailed written statement filed by the respondent, similar stand is taken and certain decisions of the Supreme Court are relied upon to contend that the OTS having failed, the petitioners are still liable to pay ₹9,01,04,640/- more.

It is contended that the decision to grant benefit of the OTS and its extension ought to be left to the commercial wisdom of the respondent-Bank and it cannot be compelled to settle the account of the petitioners for a meager amount of ₹10,60,32,000/- when it has security worth more than ₹18.68 Crores.

Reliance is placed on the judgement of the Hon'ble Supreme Court in the case of *Bijnor Urban Cooperative Bank Ltd. and Others* Vs. *Meenal Aggarwal and Others* [1] and other decisions of the Gujarat High Court and the Delhi High Court. It is also asserted that the time is of utmost essence as per the OTS sanction letter dt. 26.03.2020.

**CM-2703-CWP-2022 and CM-2704-CWP-2022**

Subsequently, CM-2703-CWP-2022 and CM-2704-CWP-2022 were filed by the respondent for placing on record Annexures A-3 to A-5 and the additional affidavit of the Chief Manager of the respondent. The same were allowed on 30.03.2022 i.e. the date on which this case was ordered to be reserved and the said documents were taken on record.

**The plea in the additional affidavit of the respondent**

It is contended that certain machinery was removed from the mortgaged property by the petitioners without any prior permission from the respondent, and there was a sharp decline in the valuation of the property between the previous report dt. 28.01.2020 (Annexure A-2) and the subsequent valuation report dt. 30.11.2021 (Annexure A-3). It is contended that there has been a change in the nature of the property, and machinery was removed without permission of the respondent.

**Petitioners' counsel refutes the contentions of respondent Bank**

These contentions were refuted by the counsel for the petitioners pointing out that the machinery which was sold was located not in the mortgaged property, but in a different property of 2 Kanals in Village

[1] Civil Appeal No.7411 of 2021 dt. 15.02.2021(SC)

Daad covered by Annexure P-7 agreement to sell which has never been mortgaged with the Bank.

Reliance is placed on the decision in **Anu Bhalla and Another Vs. District Magistrate, Pathankot and Another**[2] and the decision in the **Arvindra Electronics Pvt. Ltd. Vs. State Bank of India**[3].

**Consideration by the Court**

From the facts and circumstances narrated above, it is clear that certain loan facilities have been availed by the petitioner No.1 from the Allahabad Bank by mortgaging properties covered by three sale deeds bearing No.18465, 18479 and 22379.

Since, there was no proper consideration of the petitioners' restructuring proposals made in the year 2017, petitioners had to approach this Court by way of CWP No.22963 of 2017 and CWP No.657 of 2019, both of which were disposed by this Court after the first OTS dt. 07.06.2019 (Annexure P-3) was granted by the Allahabad Bank to the petitioners for ₹14.75 Crores.

It is not disputed by the respondent that while this OTS was in force upto 07.12.2019, petitioners had paid ₹5.25 Crores to the respondent, and they had also deposited a sum ₹50 Lakhs in a no lien account by 02.12.2019.

In the meantime, respondent had again sanctioned an OTS vide letter dt. 26.03.2020 (Annexure P-16) for ₹ 10,60,32,000/- and upfront payment of ₹4 Crores was paid at that time.

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[2] CWP-5518-2020 DT.22.9.2020 (DB)
[3] CWP No.12953 of 2018, dt. 10.03.2022 (DB)

The petitioners were able to do so by entering into agreements to sell dt. 30.04.2019 in respect of lands covered by sale deeds No.18465 and 18479, dealing with 1210 sq. yards and 1570 sq. yards respectively, and also by agreeing to sell another property of 10 Marla at Village Bajra, and also another property of 10 Marla at Village Daad in the name of the petitioner No.2 which was never mortgaged to the Allahabad Bank. The agreements to sell dt.30.4.2019 in respect of lands covered by sale deeds No.18465 and 18479 specifically inform the buyer of the mortgage created in favor of the Allahabad Bank and that the sale deeds will be executed after obtaining NOC from the said Bank.

Thereafter, after filing of this Writ Petition, the entire amount of ₹10,60,32,000/- , the amount sanctioned under the second OTS dt.26.3.2020 was paid to the respondent Bank/Allahabad Bank except the interest component which is required to be paid.

The plea of the respondent that the petitioners could not have entered into agreement to sell when there was *status quo* order granted in CWP No. 2555 of 2020 on 05.02.2020 cannot be accepted because the said interim order of *status quo* was passed on 05.02.2020 admittedly, and there was no such interim order in force as on 30.04.2019 when the three agreements to sell were entered into by the petitioners with third party for sale of two of the properties mortgaged with the Bank and one property which was not mortgaged to the Bank.

It is true that the prior consent was not obtained for such sales, and therefore, the said agreements to sell would be subject to the mortgage in favour of the respondent-Bank. But the petitioners were able to raise money to pay for the OTS only by executing the same. So prejudice to the Bank cannot be said to have been caused.

The question in the circumstances is whether the petitioners are entitled to grant of extension of time.

Counsel for the petitioners placed strong reliance on the decision rendered in the case of **Anu Bhalla (2 Supra)**.

In that decision, this Court considered whether in exercise of jurisdiction under Article 226 of Constitution of India, a High Court can grant extension of time for payments of amounts under the OTS and if so in what circumstances.

In that the case, the Division Bench specifically held that in exercise of the jurisdiction under Article 226 of the Constitution of India, the High Courts would have the jurisdiction to extend the period of settlement as originally provided for in OTS letter, but laid down certain guidelines to be followed.

It held that One Time Settlement is not cloaked with rigorous principles which may not permit extension of period to pay the remaining / balance settlement amount; and in fact OTS policies of certain Banks themselves contain provisions for extension for the time period in their respective settlement Policies.

Once this is so, the Bench held that there is no reason to hold that the Courts, in exercise of their *equitable jurisdiction* under Article 226 of the Constitution of India, cannot extend such time period of settlement.

It held that the willful defaulters and fraudsters would not be entitled to such extension, and in the case of a deserving borrower, who has deposited substantial amount within the original stipulated period of settlement, and proved his bona fides, and is willing to clear the remaining amount in a reasonable period and also compensate the creditor with interest for the period of delay, the Court can consider extending the period with some flexibility to achieve the ultimate aim of such settlement.

It laid down certain illustrative guidelines which are required to be considered cumulatively or individually on case to case basis to decide whether in a given case an applicant would be entitled for the extension of OTS.

They are as under:-

A. **The original time provided in the Settlement**:-

If the time period originally stipulated in the settlement letter to pay off the settlement amount is short or is not excessive, the case for extension could be considered, and reasonable time must be given to the borrower to arrange the funds to clear off the OTS.

B. **Extent of payments already deposited under the settlement or before filing of the petition**:-

If the borrower has already paid substantial amounts to the creditor under the OTS, and for some remaining amounts, is seeking a reasonable extension, such request can be considered favourably.

C. **Reasons which led to delay in payment** –

If the borrower was prevented by certain reasons or circumstances beyond his control, it could be a reason to consider an extension favourably. It would be imperative for the borrower to show, that he made his best efforts to ensure that the requisite amounts are arranged within the specified time, but in spite of all his best efforts, he could not arrange for the same.

D. **Payments having been accepted by the Bank/Financial Institution, after the stipulated date**:-

If some payments were accepted by the Bank even after the stipulated period of time, it would show that the time was not the essence of contract, and it would be apparent from such conduct, that certain amount of relaxation or flexibility in making the payment of OTS amount is reserved between the parties.

E. **Bona fide Intent of the borrower to pay the remaining amounts under the settlement –**

The bonafide intention of such an applicant could reasonably be tested by asking such an applicant to deposit some further amount, towards the balance amount before calling upon the bank to consider the issue of extension. If such amounts are deposited under the orders of Court and the bonafides are established, such an applicant would be entitled for a favourable consideration of an application for extension.

F. **Time period being demanded by the applicant to clear the remaining / balance settlement amount**.

An applicant whose intention would be to clear the balance settlement amounts, would not claim an unreasonable period of time extension, as otherwise, the intention would be to gain more time, without any actual intent to clear the settlement. In the facts and circumstances of each case, the Courts would therefore determine a reasonable period, to enable the borrower to clear the remaining settlement amount, subject of course, to payment of reasonable interest for the delayed period, to balance the equities.

G. **Attending factors and circumstances–**

Illustrations of such factors could be the situation created by COVID-19 pandemic, and the difficulties in arranging the amounts could be taken note of while determining the period of extension to be granted to an applicant. Likewise, losses suffered on account of natural calamities, unfortunate accidents, fire incidents, thefts, damage by floods, storms etc. could also be the factors to be taken into account for extension of time.

H. **Irreparable loss and injury to the applicant**

The Division Bench in **Anu Bhalla** (2 Supra) clarified that the guidelines/factors are not exhaustive but only illustrative for the guidance of the parties and the Courts, while considering the prayer by the borrower for extension of the time under OTS on case to case basis. It also held that the Courts would be free to consider the credentials of the borrower as well, being an equitable and discretionary relief.

Several decisions rendered by different High Courts and Supreme Court were considered by the said Division Bench while rendering the above judgment.

These principles have again been reiterated in **Arvindra Electronics Pvt. Ltd** ( 3 Supra) and also in **Amrik Singh v. DCB Bank Ltd**[4] by this very Bench of this High Court.

Counsel for the respondent-Bank however sought to contend that the Supreme Court recently in the case of **Bijnor Urban Cooperative Bank (1 Supra)** had taken a view that the High Court under Article 226 of the Constitution of India cannot direct a Bank to positively consider or grant benefit of OTS to a borrower, and therefore, even extension of time to comply with the OTS, cannot be granted to a borrower by this Court.

We may point out that in the case of **Bijnor Urban Cooperative Bank (1 Supra),** the Supreme Court was not concerned with the question of extension of time to comply with an OTS *already sanctioned* to a borrower by a Bank. It was dealing with the case of non-grant of OTS scheme benefit to a borrower. Therefore, the said decision has no application to the instant case.

In fact, the judgment in **Bijnore Urban Cooperative Bank (1 Supra)** had not taken note of the decision of the Supreme Court in the case of **Sardar Associates Vs. Punjab and Sind Bank**[5] which had taken a diametrically opposite view.

In **Sardar Associates** ( 18 Supra), a borrower of Punjab and Sind Bank , in terms of RBI guidelines for OTS offered a particular sum, but the Bank demanded more from the borrower as it had better security

[4] CWP No.4631 of 2021 decided on 06.04.2022
[5] 2009 (8) SCC 257

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available with it , and defended it's decision saying that it was a policy decision of it's Board. The Supreme Court rejected the said plea.

The Supreme Court in **Sardar Associates (5 Supra)** held that the Reserve Bank of India is a statutory authority, that it exercises supervisory power in the matter of functioning of the Scheduled Banks, and that matters relating to supervision of the Scheduled Banks is also governed by the Reserve Bank of India Act, 1934. It held that guidelines have been issued by the Reserve Bank of India through a letter dt.03.09.2005 addressed to the Chairman/Managing Director of all Public Sector Banks; that the said letter refers to circular dt.19.08.2005 issued by the Reserve Bank of India; in terms of the said circular, guidelines for grant of OTS scheme for recovery NPAs below ₹10 crore were laid down; and the letter dt.03.09.2005 categorically stated that such OTS scheme had to be implemented by all Public Sector Banks and the guidelines were non-discretionary and non-discriminatory in SME Sector.

It held that the Public Sector Banks have to implement the guidelines of the RBI relating to the OTS as per it's decision in **Central Bank of India v. Ravindra**[6]**,** that the Board of Directors of the Bank in the said case could not have deviated from the said guidelines, and it's conduct was violative of the equality Clause contained in the RBI guidelines and also Article 14 of the Constitution of India.

It held that the Bank itself had made an offer to accept the proposal of the appellant in regard to enforcement of OTS pursuant to the RBI guidelines, and it was certainly aware of the amount of securities lying

[6] 2002 (1) SCC 367

with it. It declared that if in terms of the guidelines issued by the RBI, a right is created in a borrower, even a writ of Mandamus can be issued.

In the decision of the Full Bench of this Court in the case of **M/s Indo Swiss Time Ltd. Vs. Umarao and Others**[7] , it was held that if there is direct conflict between the decisions of the Supreme Court rendered by two equal Benches, the High Court must follow the judgment which appears to lay down the law more elaborately and more accurately; and that mere incidence of time-whether judgement is earlier or later, could hardly be relevant.

We are of the view that in the case of **Sardar Associates (5 Supra)** the Court had elaborately considered the issue of grant of OTS rather than in case of **Bijnore Urban Cooperative Bank (1 Supra)** and the decision in **Sardar Associates (5 Supra)** was not noticed by the Supreme Court in the **Bijnore Urban Cooperative Bank (1 Supra)** case. So we prefer to follow the decision in **Sardar Associates (5 Supra)** and hold that it would not be open to a Bank to decline OTS sought by a borrower, provided he falls within the OTS policy being followed by the said Bank.

We also hold that the decision in the case of **Bijnor Urban Cooperative Bank (1 Supra)** cannot be interpreted to the effect that in all circumstances the High Court is helpless to extend the OTS scheme offered by a schedule Bank, since the said issue did not arise for consideration in that case.

Though, decisions of other High Courts referred to above were cited by the counsel for the respondent-Bank supporting his contentions,

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[7] AIR 1981 Punjab 213

having regard to the decision in the case of **Anu Bhalla** **(1 Supra)** of this very High Court, which is binding on this Bench, we reject the contentions of the respondent-Bank that this Court under Article 226 of the Constitution of India has no power for grant extension of OTS to a borrower under any circumstances.

However, the question still remains whether in the facts and circumstances, the petitioners are entitled to the extension of time as sought for in this Writ Petition.

Firstly, we may point out that as per the OTS sanctioned on Annexure P-16/ dt.26.03.2020, the time for making the full payment was 26.09.2020.

There is no dispute that there was COVID-19 pandemic which resulted in lockdowns in the country which continued from 24.03.2020 to 30.06.2020 preventing operation of industries and movement of men and vehicles. Even though lockdown was lifted on 01.07.2020, still the restrictions on running of factories continued for considerable period of time.

According to the petitioners, for the above reason and also because the purchasers, who had agreed to purchased the properties under the agreements of sale dt.30.04.2019 (Annexures P-6 and P-7) delayed payment of the amounts thereunder to the petitioners, it was forced to seek extension of time for making payment under the said OTS.

Out of 10,60,32,000/-, substantial payment of ₹4 Crores was made on the date of sanction, and subsequently, as per the scheduled fixed by this Court in its order dt.15.10.2020 as modified on 21.10.2020, the balance payments were made by 31.03.2021 except the interest component.

The contention of the Bank that the time limit fixed in the OTS is final, and the same cannot be extended under any circumstances cannot be countenanced since having regard to the COVID-19 pandemic, it would have been virtually impossible for the petitioners to make the full payment by 26.09.2020 with the lockdowns in place, and the prohibition to the industrial activities being enforced by the State and Center Governments strictly in the Country.

So the reason for delay in the payment was on account of the circumstances beyond their control.

Moreover, the *bona fide* intent of the borrower to pay the remaining amount under the OTS was clear, not only from the fact that for the first OTS sanctioned on 07.06.2019, they had paid ₹5.25 Crores to the respondent and under the Second OTS for ₹10,60,32,000/-, the petitioners had paid the said amount by 31.03.2020 as per the time schedule fixed by this Court except the interest component. Therefore, in these facts and circumstances, request of the petitioners for extension of time for payment of OTS requires to be granted in terms of the decision in **Anu Bhalla (2 Supra).**

As regards that plea of the respondent that there was some sale of the machinery by the petitioners, the same has been vehemently denied by the petitioners and it is contended that the machinery was not in the properties mortgaged to the Bank.

Be that as it may, since the entire amount of OTS was paid, though with some delay, and the circumstances of the case justify the grant of extension of time by about six months; and for the said delay the respondent can be compensated by payment of interest; the said sale of machinery, even if true, has no bearing on this case.

Accordingly, the Writ Petition is allowed; the time for payment of the OTS as per Annexure P-16 letter dt.26.03.2020 shall stand extended upto 31.03.2021 subject to the petitioners paying interest @ 1 month MCLR on reducing balance w.e.f. 26.03.2020 till 31.03.2021 within four weeks from the date of receipt of certified copy of this order; on receipt of the same, the loan dues of the petitioners shall be treated as having been fully satisfied, and the documents of title deposited by the petitioners with the respondent shall be returned to the petitioners within 4 weeks of receipt of such payment.

No costs.

**(M.S. RAMACHANDRA RAO)**
**JUDGE**

**(JASJIT SINGH BEDI)**
**JUDGE**

**April 26, 2022**
*Ess Kay*

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|---|---|---|
| *Whether speaking / reasoned* | : | *Yes* |
| *Whether Reportable* | : | *Yes* |