IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.12953 of 2018 (O&M)
Reserved on 02.03.2022
Date of Decision: 10.03.2022

ARVINDRA ELECTRONICS PVT. LTD. ....*Petitioner*

V/s.

STATE BANK OF INDIA .....*Respondent*

CORAM: ***HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO***
HON'BLE MR. JUSTICE HARMINDER SINGH MADAAN

Present: Mr. V.K.Sachdeva, Advocate,
for the petitioner.

Mr. Akshay Jain, Advocate,
for respondent.

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M.S. RAMACHANDRA RAO, J.

This Writ Petition is filed for issuance of a Writ in the nature of Certiorari for quashing the Impugned Communication dt.16.05.2018 (Annexure P-1) issued by respondent-Bank whereby the request dt.10.05.2018 (Annexure P-2) of the petitioner's company to grant a further time beyond stipulated date of 21.05.2018 for making repayment of balance amount of ₹ 2.52 Crores (alongwith interest on Bank rate) out of total One Time Settlement amount of ₹ 10.54 Crores, has been declined.

The petitioner is a private Company incorporated under the Companies Act, 1956 engaged in sale of electronics goods.

Vide sanction letter dt.28.08.2012, the respondent-Bank sanctioned a cash credit (Hypothecation) Limit of ₹ 15.00 Crores to the petitioner. For the said loan, stocks/assets of the petitioner's Company were offered for hypothecation as primary security, and for additional security, an equitable mortgage of property, comprising Hotel Metro, SCO

No.401-402, Sector 35, Chandigarh in the name of M/s AMG Hotels Pvt. Ltd. having value of ₹ 26.30 Crores, was also offered.

The petitioner's business suffered a setback allegedly on account of recession or global economic meltdown in the year 2014 and the loan account of the petitioner was declared as Non Performing Asset (NPA) by the respondent-Bank on 02.03.2015, and notice dt.03.03.2015 was issued under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the Act") demanding ₹ 15,98,27,434.62 to be paid within 60 days. Later, another notice dt.08.04.2015 was issued under Section 13(2) of the Act, demanding ₹ 16,24,03,431.86.

Petitioner sent a reply/representation dt.10.06.2015 under Section 13 (3A) of the Act.

According to petitioner, the respondent-Bank though mandatorily required, did not consider objections/reply of the petitioner to the notice under Sec.13(2) and did not give any reply thereto.

Subsequently, the respondent-Bank published a possession notice under Section 13(4) of the Act in the Newspaper 'The Tribune' on 30.06.2015 stating that it had taken symbolic possession of the running Hotel of the mortgagor company on 26.06.2015 on the ground that the petitioner defaulted in payment of the amount mentioned in the notice dt.08.04.2015 issued to the petitioner under Section 13(2) of the Act.

According to the petitioner, it had deposited ₹ 49.64 Lakhs in July/August 2015 apart from a further deposit of ₹ 1.50 Crores in the Cash Credit Account after classification of the loan account as NPA. Petitioner also claims to have put on sale certain personal properties including residential house to liquidate dues of the respondent-Bank with an honest intention to repay the loan amount.

The respondent-Bank issued and published a sale notice in the Newspaper 'The Tribune' dt.01.11.2015, proposing to conduct e-auction of the immovable property of the mortgagor on 05.12.2015.

The petitioner then approached the DRT by filing a Securitization Application under Section 17 of the Act on 26.11.2015. However, the said auction did not succeed and the respondent-Bank issued another notice dt.15.12.2015. According to the petitioner, there was also an attempt to settle the matter in Lok Adalat in the DRT, but the same did not succeed. Thereafter, the respondent-Bank filed an OA before the DRT, Chandigarh on 25.04.2016.

The OTS Offer

Notwithstanding the same, the respondent-Bank sent a letter dt.11.09.2017 to the petitioner informing the petitioner that it had come out with a scheme of One Time Settlement (OTS), and that the petitioner is eligible for the OTS under the said scheme named as SBO-OTS-2017. It stated that the ledger outstanding as on 31.03.2017 is ₹ 13,99,89,273.99, and the OTS amount offered was ₹ 10,53,75,069.74.

In response thereto, the petitioner vide letter dt.31.10.2017 deposited an upfront amount of ₹ 1.40 Crores, and submitted its offer for settlement.

The respondent-Bank vide letter dt.21.11.2017 sanctioned the OTS proposal, confirmed the receipt of ₹ 1.40 Crores, and required the petitioner to deposit 25% of the OTS amount of ₹ 2,63,43,768/- by 21.12.2017, and stated that balance can be paid within six months from the date of the letter i.e. by 25.01.2018 together with interest MCLR+ 2% failing which the OTS would be rendered infructuous.

Thereafter, petitioner deposited ₹ 1,23,45,000/- by 30.12.2017 and thus, complied with the stipulation of deposit of 25% of the OTS amount.

The balance, which was to be deposited by the petitioner as per the sanctioned OTS was ₹ 7,90,31,301/- by 21.05.2018.

Petitioner deposited ₹ 1,20,00,000/- on 26.02.2018, ₹ 18,00,000/- on 27.02.2018 and ₹ 50.00,000/- on 16.03.2018 totaling ₹ 1,88,00,000/- leaving ₹ 6,02,31,301/- to be paid by 21.05.2018.

Request of petitioner for extension of time to pay amount as per the OTS sanctioned and it's refusal

On 10.05.2018, petitioner approached the respondent-Bank with a request letter stating that it can pay ₹ 3.50 Crores on 21.05.2018 and requested for grant of further period of 9 months to pay the balance amount of ₹ 2.52 Crores. It also undertook to pay interest for the extended period on the base rate of interest. It also made a deposit of ₹ 3.5 Crores on 21.05.2018.

Thus, within time granted for completing the OTS, petitioner had deposited ₹ 8.02 Crores out of ₹ 10,53,75,069.74 i.e. 80% of the OTS amount, leaving balance of ₹ 2.52 Crores (about 20% to be paid).

But the said request for extension of time was rejected by the respondent-Bank vide letter dt.16.05.2018 (Annexure P-1), stating as under:-

> *"In this regard, we advise that One Time Settlement was approved in your account under Bank's special OTS scheme 2017, applicable to a particular category of accounts. The scheme was non-discretionary and non-discriminatory. The terms & conditions of the scheme are applicable uniformly to all the eligible borrowers. No change in the terms & conditions is allowed this scheme.*
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> *As such, your request for extension, for a period of 8 to 9 months to make payment of part of residual amount i.e. ₹ 2.52 Crores cannot be considered. You are requested to ensure to make the payment of whole residual amount of OTS along with due interest by stipulated date i.e. by 21.05.2018 to avoid cancellation of OTS."*

Assailing the same, the instant Writ Petition was filed on 19.5.2018.

Contentions of Counsel for Petitioner

It is the contention of the petitioner that the action of the respondent-Bank in refusing the request to extend the time to repay the balance OTS amount was unreasonable and unjust, that the respondent-Bank failed to consider the *bona fides* of the petitioner which had only sought a short span of 7-8 months after having already paid ₹ 8.02 Crores out of the above referred OTS amount, and was seeking extension only for payment of ₹ 2.52 Crores.

Counsel for the petitioner has placed reliance on the following judgments:-

- *Anu Bhalla and another Vs. District Magistrate, Pathankot.*[1]

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[1] CWP-5518-2020 P& H (DB) DT.22.9.2020

- *Milkhi Ram Bhagwan Das Vs. District Magistrate and Another.*[2]
- *M/s Behl Roller Floor Mills Vs. Punjab and Sind Bank*[3]
- *Amit Mahajan and another Vs. Punjab Natinal Bank*[4]
- *M/s. A-One Mega Mart P. Ltd. Vs. HDFC Bank*[5]
- *M/s Lord Budha Society Vs. State Bank of Patiala*[6]
- *M/s Malhan Industries Ltd. Vs. Punjab National Bank*[7]
- *Sat Kartar Ice and General Mills Vs. Punjab Financial cORPORATION*[8]
- *State Bank of India Vs. Vijay Kumar*[9]

Events after filing of the Writ Petition

Notice of motion was issued on 22.05.2018 for 25.07.2018 by a Division Bench of this Court and the DRT, Chandigarh was directed to adjourn the case, the OA filed by the Bank, beyond the date fixed in the instant case.

Thereafter, reply was filed by the respondent-Bank on 20.08.2018. Later , on 09.10.2018, interim order was directed to continue.

The matter underwent subsequent adjournments on 20.11.2018, 15.01.2019, and on 21.02.2019, petitioner was directed to deposit a further sum of ₹ 50 Lakhs to show the petitioner's *bona fides*.

This direction was also complied with by the petitioner on 24.6.2019, leaving only balance of ₹ 2.02 Crores to be paid towards the OTS.

It is contention of the counsel for the petitioner that the petitioner is entitled for the extension of time for complying with the OTS

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[2] CWP No.327 of 2020 P & H (DB) DT.23.12.2020
[3] CM-1375-2021 IN RA-CW-22-2021 IN CWP-20520-2019 DT.29.1.2021
[4] CWP-6809-2021-P&H DT.10.12.2021
[5] 2013(1)PLR 688 P&H (DB)
[6] CWP No.4348 of 2012 P&H (DB)
[7] 2015(67) R.C.R (Civil) 782 P &H (DB)
[8] 2008(1) ISJ (Banking) 248 P&H (DB)
[9] AIR 2007 SC 1689

as the petitioner fulfills the guidelines laid down in the case of *Anu Bhalla* (1 Supra) and others judgments referred to above.

Counsel for the petitioner contended that the petitioner will deposit the balance due of ₹ 2.02 Crores with the applicable interest also if the petitioner is given time of two months from today to do so.

Contentions of Counsel for the Respondent Bank

In it's written reply, the respondent-Bank denied that the petitioner's business suffered on account of recession or global economic meltdown and stated that the similarly placed business entities had done roaring business. It was pointed out that the petitioner's loan account was rightly declared as NPA on 02.03.2015, and action under the Act was rightly initiated against the petitioner.

It is contended that a Circular/Policy dt.01.09.2017 was issued by the respondent-Bank, floating an OTS scheme for the NPA accounts with outstanding amount of ₹ 20 Lakhs and upto ₹ 25 Crores as on 31.03.2017, and the said scheme was non-discretionary and non-discriminatory.

It is admitted that on the basis of the said policy, a letter dt.11.09.2017 was issued offering OTS to the petitioner.

It is contended that once outstanding amount payable by the petitioner had been crystallized on acceptance of the OTS proposal vide letter dt.21.11.2017, question of seeking any concession subsequently by the petitioner from the respondent-Bank does not arise.

It is contended that the petitioner is making an attempt to wriggle out of the agreed OTS; and that ₹ 6,02,31,301/- was required to be deposited on or before 21.05.2018, but the said amount was not deposited.

According to the respondent, an amount of ₹ 3.50 Crores was deposited on 22.05.2018, and there is still balance ₹ 2.52 Crores out of the total OTS amount.

It is contended that the OTS arrived at between the petitioner and the respondent-Bank came to an end on account of non-payment of the entire OTS amount by 21.05.2018, and the respondent-Bank became entitled to claim the total outstanding amount along with upto date interest and charges.

It is denied that no prejudice would be caused to the respondent-Bank if the period of repayment of the remaining amount is extended to 8-9 months.

It is pointed out that the OTS Scheme dt.01.09.2017 was for a fixed period with an object of garnering funds from the stressed accounts within a short period of time, and certain benefits & incentives were extended to the borrower with underlying objectives of the respondent-Bank for recovery of substantial amount within a short period of time. It is contended that the outstanding as on 31.03.2017 was ₹ 13,99,89,273.99 excluding the accrued interest from the date of NPA and other charges, but the account was agreed to be settled for smaller amount of ₹ 10,53,75,069.74, and thus, the respondent-Bank had sacrificed a huge amount to recover the remaining outstanding amount within the shortest period of time.

It is contended that if the period for payment of the OTS amount or part thereof is extended, as sought by the petitioner, the objective sought to be achieved by way of the OTS, would be defeated.

The respondent-Bank also to justified its decision contained in the letter dt.16.05.2018 rejecting the request of the petitioner for extending the time for complying with the OTS.

Counsel for the respondent-Bank reiterated the above submissions and placed reliance on the following judgments:-

- *Bijnor Urban Cooperative Bank Ltd. Vs. Meenal Aggarwal*[10]
- *Asokan Vasu Vs. State Bank of India*[11]
- *V.K. Milk Chilling Centre Vs. Punjab Financial Corporation Bank*[12]
- *Digivision Electronics Ltd. Vs. Indian Bank*[13]
- *Vipin Kumar Gupta Vs. Branch Manager, Union Bank of India*[14]
- *Tamil Nadu Industrial Investment Coporation Ltd. Vs Millennium Business Solutions Pvt. Ltd*[15]
- *M.M. Accessories Vs. UP Financial Coporation*[16]
- *M/s Chinar Fabrics Vs. State Bank of India*[17]

The consideration by the Court

First we shall consider the question:

> ***"W****hether an OTS scheme can be extended by the High Court and if so, in what circumstances?"*

This issue had been considered by a coordinate Bench of this Court in the case of **Anu Bhalla and Another (1 supra)** .

[10] Civil Appeal No.7411 of 2021 dt.15.2.2021 (SC)
[11] 2020 SCC Online Ker 4282
[12] (2007) 4 BC 474
[13] (2005) 3 CTC 513
[14] AIR 2004 ALL 319
[15] (2005) 1 LW 58
[16] AIR 2002 ALL 96
[17] 2006(2) AD (Delhi) 167

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** (1 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.

Therefore, the contention of the respondent-Bank that in no circumstance can the Court grant extension of time for completion of the payment under the OTS, cannot be countenanced. Such a power undoubtedly exists, though not as a matter of right, and must be exercised by a High Court keeping in mind the above guidelines/principles.

Counsel for the respondent-Bank, however, sought to contend that the said judgment deals with only cases of settlement *other than* under the OTS scheme, and would have no application to settlement entered into *under* the OTS scheme, and sought to distinguish **Anu Bhalla (1 Supra)**.

We may point out that in **Anu Bhalla (1 Supra)**, the Court had framed the specific issue in Para 14 "*as to whether this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, has the jurisdiction to* ***extend the period of OTS***", and then said Bench answered the said issue in Para No.24 in the affirmative. Therefore, we reject this contention of the counsel for the respondent-Bank.

Counsel for the respondent-Bank then sought to contend that the Hon'ble Supreme Court recently in the case of **Bijnor Urban Cooperative Bank** (10 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** (10 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 (10 Supra)** had not taken note of the decision of the Supreme Court in the case of **Sardar Associates Vs. Punjab and Sind Bank**[18] 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 offred a particular sum, but the Bank demanded more from the borrower as it had better security 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.

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[18] 2009 (8) SCC 257

The Supreme Court in **Sardar Associates** (18 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**[19]**,** 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 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.

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[19] 2002 (1) SCC 367

In the decision of the Full Bench of this Court in the case of **M/s Indo Swiss Time Ltd. Vs. Umarao and Others**[20] , 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 (18 Supra)** the Court had elaborately considered the issue of grant of OTS rather than in case of **Bijnore Urban Cooperative Bank** (10 Supra) and the decision in **Sardar Associates** (18 Supra) was not noticed by the Supreme Court in the **Bijnore Urban Cooperative Bank** (10 Supra) case. So we prefer to follow the decision in **Sardar Associates** (18 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** (10 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, 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

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[20] AIR 1981 Punjab 213

of India has no power for grant extension of OTS to a borrower under any circumstances.

So this issue is answered in favor of the petitioner.

Now we shall consider the question:

> *"whether, in the facts and circumstances of the case, it is permissible for this Court to grant to the petitioner extension of time for the payment of the balance amount of the OTS with interest ?"*

There is no dispute in the instant case that the respondent-Bank vide letter dt.11.08.2007 offered an OTS to the petitioner of ₹ 10,53,75,069.74, requiring the petitioner to pay 10% of the ledger amount alongwith application, 25% of the OTS amount within one month from the date of sanction, and remaining 75% within six months from the date of sanction.

The petitioner agreed to it vide its letter dt.31.10.2017 by depositing ₹ 1.4 Crores and submitted its offer for settlement.

On 21.11.2017, the respondent-Bank sanctioned the OTS proposal and required the petitioner to deposit 25% of the OTS amount of ₹ 2,63,43,768/- by 21.12.2017, and stated that the balance amount can be paid within six months from the date of the said letter i.e. 21.05.2018 vis-à-vis interest MCLR with 2% failing which the OTS would be rendered infructuous.

The petitioner deposited a sum of ₹ 1,23,45,000/- by 30.12.2017 which was confirmed by the respondent-Bank vide letter dt.09.01.2018. The petitioner paid ₹ 1.88 Crores till 16.03.2018.

Thus, ₹ 4.52 Crores had been paid by the petitioner leaving a balance of ₹ 6.02 Crores payable by 21.05.2018.

Vide Annexure P-2 letter dt.10.05.2018, the petitioner promised to pay ₹ 3.50 Crores by 21.05.2018 and requested 8-9 months' time to pay balance of ₹ 2.52 Crores due to difficulty arising out of its inability to sell properties and make arrangements to raise funds.

According to the petitioner ₹ 3.50 Crores was deposited for payment on 21.05.2018, but the respondent-Bank gave credit to the said amount only on the next day i.e. 22.05.2018.

Even assuming that the respondent-Bank is right regarding the date of payment, 24 hours' delay in such payment cannot be considered to be a very serious violation of the commitment made by the petitioner in its letter dt.10.05.2018.

Thus, what remained to be paid was ₹ 2.52 Crores (20% of the OTS), and ₹ 8.02 Crores had been received by the respondent-Bank being 80% of the OTS amount sanctioned by it to the petitioner.

It is also not in dispute that after filing of this Writ Petition, there was a direction by this Court on 21.02.2019 to the petitioner to deposit ₹ 50 Lakhs before the next date of hearing on 25.03.2019, and the petitioner paid the said amount on 24.06.2019 with a delay of 3 months. Thus, what remained of the OTS as of date is a sum of ₹ 2 Crores.

During the subsequent period, though the Writ Petition was listed on 25.07.2019, 05.08.2019, 24.10.2019, 22.11.2019, 19.04.2021, 29.04.2021, 18.08.2021, 27.10.2021, 13.12.2021, 01.02.2022 and 15.02.2022, the arguments were concluded only on 02.03.2022. It appears that the matter was not listed in the year 2020 at all on account of the COVID-19 pandemic and also on account of restricted listing of cases in the year 2021 for the same reason, and the matter was also adjourned sometimes thereafter at the request of counsel for the petitioner and other times at the request of counsel for the respondent-Bank.

It is the contention of the counsel for the petitioner that if two months time is granted to the petitioner, the petitioner would pay with interest the balance the balance OTS amount of ₹2 Crores as per the sanction letter issued on 21.11.2017.

It is no doubt true that the petitioner had sought extension of time - only 8-9 months for payment of OTS amount in the letter dt.10.05.2018 addressed by it to the respondent-Bank, but the same had been rejected by the respondents vide impugned order dt.16.05.2018.

The mere fact that the said 8-9 months' time sought by the petitioner had expired by now, cannot be a ground, in our opinion, to hold that the OTS extension should now be denied to the petitioner.

Had the respondent-Bank agreed to the said request at that point of time, or if it had granted even a lesser amount of time, it is probable that the petitioner might have paid the balance of ₹2.00 Crores with the applicable interest.

The delay in disposal of the Writ Petition cannot be put against the petitioner since it is a settled law that actions or inactions of the Court cannot prejudice any party; and time taken in legal proceedings cannot be put against a party.

In **Essar Steel India Ltd. Committee of Creditors** **v.** **Satish Kumar Gupta**[21]**,** the Supreme Court declared:

*"**124.** Given the fact that timely resolution of stressed assets is a key factor in the successful working of the Code, the only real argument against the amendment is that the time taken in legal proceedings cannot ever be put against the parties before NCLT and NCLAT based upon a Latin maxim which subserves the cause of justice, namely, **actus curiae neminem gravabit**.*

***125.** In **Atma Ram Mittal v. Ishwar Singh** [22], this Court applied the maxim to time taken in legal proceedings under the Haryana Urban (Control of Rent and Eviction) Act, 1973, holding: (SCC pp. 288-89, para 8)*

> *"8. It is well settled that no man should suffer because of the fault of the court or delay in the procedure. Broom has stated the maxim actus curiae neminem gravabit — an act of court shall prejudice no man. Therefore, having regard to the time normally consumed for adjudication, the ten years' exemption or holiday from the application of the Rent Act would become illusory, if the suit has to be filed within that time and be disposed of finally. It is common knowledge that unless a suit is instituted soon after the date of letting it would never be disposed of within ten years and even then within that time it may not be disposed of. That will make the ten years holiday from the Rent Act illusory and provide no incentive to the landlords to build new houses to solve problem of shortages of houses. The purpose of legislation would thus be defeated. Purposive interpretation in a social amelioration legislation is an imperative irrespective of anything else."*
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> *127. … … Given the fact that the time taken in legal proceedings cannot possibly harm a litigant if the Tribunal itself cannot take up the litigant's case within the requisite period for no fault of the litigant, a provision which mandatorily requires the CIRP to end by a certain date — without any exception thereto — may well be an excessive interference with a litigant's fundamental right to non-arbitrary treatment under Article 14 and an excessive, arbitrary and therefore unreasonable restriction on a litigant's fundamental right to carry on business under Article 19(1)(g) of the Constitution of India. This being the case, we would ordinarily have struck down the provision in its entirety. However, that would then throw the baby out with the bath water, inasmuch as the time taken in legal proceedings is certainly an important factor which causes delay, and which has made previous statutory experiments fail as we have seen from Madras Petrochem31. Thus, while leaving the provision otherwise intact, we strike down the word "mandatorily" as being manifestly*

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[21] (2020) 8 SCC 531, at page 626

[22] 1988 (4) SCC 284

arbitrary under Article 14 of the Constitution of India and as being an excessive and unreasonable restriction on the litigant's right to carry on business under Article 19(1)(g) of the Constitution. The effect of this declaration is that ordinarily the time taken in relation to the corporate resolution process of the corporate debtor must be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. However, on the facts of a given case, if it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short period is left for completion of the insolvency resolution process beyond 330 days, and that it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation and that the time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed to the litigants before the Adjudicating Authority and/or Appellate Tribunal, the delay or a large part thereof being attributable to the tardy process of the Adjudicating Authority and/or the Appellate Tribunal itself, it may be open in such cases for the Adjudicating Authority and/or Appellate Tribunal to extend time beyond 330 days. Likewise, even under the newly added proviso to Section 12, if by reason of all the aforesaid factors the grace period of 90 days from the date of commencement of the Amending Act of 2019 is exceeded, there again a discretion can be exercised by the Adjudicating Authority and/or Appellate Tribunal to further extend time keeping the aforesaid parameters in mind. It is only in such exceptional cases that time can be extended, the general rule being that 330 days is the outer limit within which resolution of the stressed assets of the corporate debtor must take place beyond which the corporate debtor is to be driven into liquidation." (emphasis supplied)

It is stated in the rejection letter dt.16.05.2018 that the OTS scheme was non-discriminatory and non-discretionary; and that the terms and conditions of the scheme are applicable uniformally to all the eligible borrowers; and that no change in the terms and conditions is allowed under this scheme.

Much emphasis has been laid on the terms "non-discretionary" and "non-discriminatory" by the counsel for the respondent-Bank, and it is contended that if the petitioner was granted any extension by the Bank, other borrowers might also seek it.

In *Anu Bhalla* (1 Supra), this Court had referred to grant of extensions of OTS by public sector Banks such as Punjab National Bank, Punjab and Sind Bank; and even the State Bank of India (respondent herein) which had settled their accounts under the OTS by name SBI-OTS-2019, by extending the last date of deposit of settlement from 31.03.2020 to 30.06.2020 and then to 30.09.2020, when the Country was effected by COVID-19 pandemic.

So we do not agree that the deadline fixed in the OTS sanction letter is sacrosanct and cannot be extended by the Bank for any reason whatsoever.

Accordingly we set aside the rejection letter Annexure P1 dt.16.5.2018 issued by the respondent refusing to grant time to petitioner to comply with the terms of the OTS.

We shall now see whether the petitioner fulfills conditions laid down in the case of **Anu Bhalla** (1 Supra) for granting extension of OTS.

Admittedly, the petitioner had already paid 80% of the OTS amount by the last date fixed under the OTS i.e. 21.05.2018, and only ₹ 2.52 Crores were left to be paid.

As per the sanctioned OTS, the petitioner had to raise more than ₹ 10 Crores in six months between 21.11.2017 and 21.05.2018, and such a large amount of money is difficult to arrange in such a short time; and yet by making best efforts, the petitioner had made 80% payment of the OTS amount by 21.05.2018, and was only seeking a reasonable extension to pay the balance of ₹ 2.52 Crores and it had exhibited an intention to clear the settlement amount. The reasons assigned by the petitioner for the delay in payment was the difficulty in selling the secured assets/properties for a decent price, which cannot be dismissed as false outright; the petitioner did make efforts to sell the same which is also admitted by the respondent-Bank; the *bona fides* of the petitioner is also established by the payment of ₹ 50 Lakhs after filing of the Writ Petition; the time period demanded by the petitioner to clear the balance amount is a mere two months; and the COVID-19 pandemic's deleterious effect on businesses during the period 2020 to 2021 is also to be taken into account.

So we are of the opinion that for the aforesaid reasons, this is a fit case to grant to the petitioner extension of time for a reasonable time and compensate the Bank by payment of interest for the same.

Accordingly, the Writ Petition is allowed; the rejection letter Annexure P1 dt.16.5.2018 is set aside; and the petitioner is granted 6 weeks time from today to make the payment of ₹ 2.02 Crores with interest as per the sanction letter of the OTS dt.21.09.2017. The respondent-Bank shall intimate the petitioner the amount of interest payable by the petitioner within one week from the date of receipt of the certified copy of this order.

In default of making of the payment along with interest as specified above, the Writ Petition shall stand dismissed.

Accordingly, the Writ petition is allowed to the above extent. No costs.

March 10, 2022 **[M.S. RAMACHANDRA RAO]**
Ess Kay **JUDGE**

[HARMINDER SINGH MADAAN]
JUDGE

Whether Reportable : Yes
Whether speaking / reasoned : Yes