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

CWP-12780-2022
Date of Decision: **December 16, 2023**

M/S DHIR ENTERPRISES ..... Petitioner

Versus

CAPITAL SMALL FINANCE BANK LTD. AND ANR ..... Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Bhupinder Gupta, Advocate for the petitioner.

Mr. Puneet Sharma, Advocate for respondent No. 1.

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LISA GILL, J.

1. Prayer in this writ petition is for directing respondent – Bank to consider representation dated 27.05.2022 (Annexure P8) whereby petitioner seeks to settle the loan account by way of One Time Settlement (OTS).

2. Learned counsel for respondent – Bank submits that OTS was entered into between the parties qua five loan accounts of petitioner, its sister concerns and other associated persons, whereby petitioner had undertaken to deposit sum of ₹1.06 crores with sum of ₹54 crores, to be paid by 31.03.2023 and remaining amount of OTS by 31.05.2023. Sum of ₹54 crores was deposited. However, rest of the amount was not deposited. One of the secured assets/properties at request of petitioner was released and period for deposit of amount was extended to 05.08.2023 but the amount was still not deposited. As of now, no OTS is in currency.

3. Learned counsel for petitioner submits that remaining amount due as per OTS earlier entered into between parties would be deposited by

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30.03.2024 in case period for deposit thereof is directed to be extended till then. No concession in this regard is forthcoming from respondent – Bank.

4. Having heard learned counsel for parties, we do not find any ground to interfere in the matter as it is a settled position that borrower/guarantor does not have a vested right to OTS. It is has been held by Hon'ble the Supreme Court in judgment of **The Bijnor Urban Cooperative Bank Limited, Bijnor and others vs. Meenal Aggarwal and others, 2022 AIR (SC) 56** as under:-

> "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 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. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
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> 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

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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.

5. Furthermore, borrower having no vested right to an OTS, cannot claim extension of time period for deposit of amount thereunder as has been held by Hon'ble the Supreme Court in **State Bank of India Vs. Arvindra Electronics Pvt. Ltd., 2023(1) SCC 540**.

6. Keeping in view of the facts and circumstances, this writ petition is dismissed with liberty to parties to enter into any mutually acceptable settlement.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

December 16, 2023
Rts

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No

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