2023:PHHC:162562-DB

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

CWP-15618-2022
Date of Decision: December 18, 2023

SANT FOOTWEAR PVT LTD ..... Petitioner

Versus

STATE BANK OF INDIA AND ANR ..... Respondents

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

Present: Mr.Vikas Bali, Advocate for the petitioners.

Ms. Madhu Dayal, Advocate for the respondent-Bank.

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LISA GILL, J.

1. Prayer in this petition is for quashing notice (Annexure P19) under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short – 'SARFAESI Act'); notice dated 07.10.2021 (Annexure P23) under Section 13(4) of SARFAESI Act as well as notice dated 28.06.2022 (Annexure P29).

2. Learned counsel for petitioner submits that at this stage, petitioner restricts its prayer for direction to respondent – Bank to consider fresh proposal for One Time Settlement (OTS), which has been submitted by petitioner on 16.12.2023.

3. Notice of motion was issued in this writ petition on the ground that rejection of OTS offered by petitioner appears to be arbitrary. Thereafter, petitioner has raised an objection that representative of State Government should have been a part of Committee for considering, Restructuring/Rehabilitation proposals in respect to MSMEs in terms of circular dated 17.03.2016 issued by RBI. It is submitted that due to

consideration and rejection of petitioner's case for Restructuring/ Rehabilitation by an incompetent Committee as per decisions taken on 07.08.2021 and 17.08.2021 all proceedings under SARFAESI Act undertaken against petitioner are vitiated, hence, should be set aside.

4. Objection in respect to violation of circular dated 17.03.2016 stands decided vide detailed order dated 18.12.2023 in CWP-21657-2022 (M/s Technico Strips and Tubes Pvt. Ltd. and another vs. Deutsche Bank AG and another) and connected writ petitions wherein it has been held that all such pleas can very well be taken by affected party before the competent Forum/Tribunal provided under the SARFAESI Act and no interference is called for by High Court in exercise of jurisdiction under Article 226 of Constitution of India in such matters. There is no distinguishing factor in this writ petition which calls for a different dispensation.

5. Additional argument raised by learned counsel for petitioner that matter should be kept pending to await decision of respondent – bank qua OTS proposal, is devoid of any merit inasmuch 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. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
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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 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.

6. Keeping in view the aforesaid, we do not find any justification for continuation of present proceedings.

7. Writ petition is, accordingly, dismissed in the same terms as decision dated 18.12.2023 in CWP-21657-2022 (<u>M/s Technico Strips and</u>

Tubes Pvt. Ltd. and another vs. Deutsche Bank AG and another) and connected writ petitions.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

December 18, 2023
Rts

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