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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-5481-2021 (O&M)
Date of Decision: 06.05.2024

M/S MANDAL AND ASSOCIATES .... Petitioner

Versus

M/S DEWAN HOUSING FINANCE CORPORATION LTD AND OTHERS ...... Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. Aditya Dassaur, Advocate for petitioner.

Mr. Harsh Chopra, Advocate for respondents.

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<u>LISA GILL, J.(Oral)</u>

1. Prayer in the writ petition is for setting aside letters attached as Annexures P-13 and P-14 of even date i.e. 18.06.2020 whereby One Time Settlement (‘OTS’) which had been sanctioned in favour of petitioner in respect of two loan accounts has been cancelled. Petitioner also seeks setting aside decision/communication dated 20.02.2021 received from respondents whereby petitioner’s proposal for restructuring OTS has been rejected. There is further prayer for setting aside possession notice dated ‘Nil’ (Annexure P-15) issued under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short ‘SARFAESI Act’).

2. Learned counsel for petitioner submits that petitioner availed credit facility in the form of term loans of Rs. 1,27, 44, 599/- and Rs.80,40,660/- from respondent – Financial Institution. It is submitted that due to circumstances beyond petitioner's control there was financial indiscipline, loan account (s) was/were declared Non-Performing Asset ('NPA') on 01.11.2018. Proceedings under SARFAESI Act were initiated with notice (s) under Section 13 (2) being issued on 26.07.2019 raising demand of Rs.73,87,148/- and Rs.1,42,07,477/- (Annexure P-3 & P-4). Account of petitioner was, however, settled under OTS for Rs.1,40,00,000/- according to which petitioner was required to deposit Rs.1,06,00,000/- on or before 30.09.2019 and Rs.34,00,000/- till 30.11.2019 but petitioner could only deposit Rs.92 lakhs. Consequently, OTS was cancelled vide letter (s) dated 18.06.2020 (Annexure P-13 & P-14). Aggrieved thereof, petitioner preferred Civil Writ Petition No.11273-2020 assailing action of respondents. Learned counsel for the respondents in the said case took a stand that in case a proper representation with a reasonable upfront amount is deposited, the same may be considered. On account of this vide order dated 05.01.2021. petitioner was permitted to approach respondents with an application for restructuring of OTS along with a sum of Rs.20 lakhs upfront. It was directed that outcome of proposal should be placed before the Court. Petitioner's proposal for restructuring was rejected upon which CWP-11273-2020 was dismissed as infructuous vide order dated 22.02.2021 while giving liberty to petitioner to avail legal remedy available to him. Thereafter, present writ petition was filed with the prayers as are mentioned in para No.1.

3. Learned counsel for petitioner argues that proposal for restructuring of OTS submitted by petitioner has been illegally rejected by

giving vague reasons and by citing internal policies never provided to petitioner. The amount in terms of OTS sanctioned in favour of petitioner could not be deposited due to unavoidable reasons and also the outbreak of pandemic of covid-19. Petitioner only seeks continuation of OTS and sought time to make remaining payment and is also ready to deposit the interest on the said amount. Learned counsel further submits that an amendment of present writ petition has been sought inasmuch as respondent - M/s Dewan Housing Finance Corporation Limited has been overtaken by Piramal Capital and Housing Finance Corporation Limited, therefore, the amended writ petition should be taken on record and response from Pirmal called for with the writ petition thereafter being adjudicated finally.

4. *Per contra*, learned counsel for respondents submits that there is no requirement of amendment in writ petition except formal impleadment of Piramal Capital as respondent No.4. It is further pointed out that reply has been filed on behalf of respondent Nos.1 to 3 being Authorised Representative of Piramal Capital and Housing Finance Corporation Limited and successor of M/s Dewan Housing Finance Corporation Limited. There was in-fact reverse merger of both entities. Resolution plan in the petition filed by Reserve Bank of India was duly approved by learned NCLT, Mumbai. Change of name has since been carried out. Thus the matter should be decided. While raising objection of entertainability of the writ petition submits that entire amount of OTS was admittedly not deposited. It is submitted that neither OTS nor extension can be claimed as a matter of right. It was clear/declared in OTS Scheme (Annexure P-5 & P-6) that in case borrower, fails to comply with time frame as fixed therein, offer would lapse and payments made towards such OTS would be appropriated towards the outstanding in the manner stipulated in the loan agreement. Dismissal of

writ petition is sought.

5. Heard learned counsel for the parties and have perused the file. It is pertinent to note that insofar as challenge to proceedings under SARFAESI Act is concerned, the said Act is a complete code in itself providing for specific remedy (ies) for any grievance (s) which may arise on account of action taken thereunder. Interference in exercise of jurisdiction under Article 226/227 of the Constitution of India has to be minimal and restricted to exceptional or extraordinary circumstances. Gainful reference in this regard can be made to judgments of Hon'ble the Supreme Court in ***Union Bank of India v. Satyawati Tandon and others 2010(8) SCC 110, M/s South Indian Bank Ltd. and others v. Naveen Mathew Philip and another, 2023(2) RCR (Civil) 771, Phoenix ARC Private Limited vs. Vishwa Bharti Vidya Mandir and others, 2022 (1) RCR (Civil) 888.***

6. Petitioner primarily seeks setting aside rejection of its request for restructuring of OTS and prior cancellation of OTS. It is an admitted position that petitioner did not adhere to the terms and conditions of OTS which was cancelled. It is to be noted, at this stage, that a borrower/guarantor does not have a vested right for OTS and neither can there be a specific direction to respondent Bank/financial institution to extend the period of OTS. Useful reference, in this regard, can be made to judgment of Hon'ble the Supreme Court in ***The Bijnor Urban Cooperative Bank Limited, Bijnor and*** **others vs. Meenal Agarwal and others,** ***2021 SCC Online SC 1040*** wherein it has been held that a borrower/guarantor does not have vested right for an OTS while holding as under:-

> "9. Even otherwise, as observed here-in-above, 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.

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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.

The Hon'ble Supreme Court in the case of ***State Bank of India Vs. Arvindra Electronics Pvt. Ltd***., ***2023(1) SCC 540,*** while reiterating the aforesaid held that the Bank can mutually agree to extend the time which is permissible under Section 62 of the Indian Contract Act. However, the borrower as a matter of right, cannot claim further extension and moreover, no negative discrimination can be claimed. It was held as under:-

"13. Therefore, the short question which is posed for consideration of this Hon'ble Court is whether in the facts and circumstances of the case the High Court is justified in extending the period to make the payment of balance amount under sanctioned OTS Scheme beyond the time granted under the sanctioned OTS Scheme, while exercising the powers under Article 226 of the Constitution of India?

14. While considering the aforesaid issue the recent decision of this Court in Meenal Agarwal is required to be referred to.

15. In Meenal Agarwal this Court answered the following two questions: (SCC para 6)

"6.1. (i) Whether benefit under the OTS Scheme can be prayed as a matter of right?;

6.2 (ii) Whether the High Court in exercise of powers under Article 226 of the Constitution of India can issue a writ of mandamus directing the Bank to positively consider the grant of benefit under the OTS Scheme and that too dehors the eligibility criteria mentioned under the OTS Scheme?"

16. On a detailed analysis of the OTS Scheme, it is observed and held by this Court in Meenal Agarwal that:

(i) No borrower can, as a matter of right pray for a grant for the benefit of One-Time Settlement scheme;

(ii) No writ of mandamus can be issued by the High Court in exercise of Article 226 of the Constitution of India, directing the financial institution/bank to positively grant a benefit of OTS to a borrower;

(iii) The grant of benefit of OTS Scheme is subject to the eligibility criteria and the guidelines issued from time to time.

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22. Even otherwise as rightly submitted on behalf of the Bank directing the Bank to reschedule the payment under OTS would tantamount to modification of the contract which can be done by mutual consent under section 62 of the Contract Act. By the impugned judgment and order rescheduling the payment under the OTS Scheme and granting extension of time would tantamount to rewriting the contract which is not permissible while exercising the powers under Article 226 of the

Constitution of India."

7. It is thus abundantly clear that no ground for interference is made out in this writ petition. Arguments raised by learned counsel for the petitioner that writ be permitted to be amended first, fresh return called for and then decided is clearly devoid of any merit. It is duly explained that in the petition filed by Reserve Bank of India under the Insolvency and Bankruptcy Code, 2016 process of Corporate Insolvency Resolution Process (CIRP) was carried out with the management and corporate structure of DHFL undergoing the change resolution plan was duly approved by learned NCLT Mumbai vide order dated 07.06.2021 whereby reverse merger of Pirmal into and with DHFL was approved. The combined merged entity of both DHFL and PCHFL was renamed as Pirmal Capital and Housing Finance Corporation Limited and certificate of incorporation dated 03.11.2021 was issued by the competent authority. The short reply has been filed through Area Legal Manager of Pirmal Capital and Housing Finance Corporation Limited. Petitioner also seeks to challenge notice dated 08.11.2023 seeking symbolic possession of the property. In this respect as has been held in the forgoing paras, petitioner has an efficacious alternate remedy. In the given factual matrix, it is directed that Pirmal Capital and Housing Finance Corporation Limited be mentioned in the place of M/s Diwan Housing Finance Corporation Limited in the memo of parties. There is evidently no requirement of amendment of writ petition nor any justification for calling a fresh reply and thereafter adjudicate the matter.

8. Keeping in view the facts and circumstances, we do not find any ground for interference in this writ petition. Writ petition is accordingly dismissed with liberty to petitioners to avail statutory remedy (ies) available to them in accordance with law in respect to any grievance (s) petitioner may

have qua action under SARFAESI Act. Furthermore, it is always open to parties to arrive at any mutually acceptable settlement.

9. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

(LISA GILL)
JUDGE

(AMARJOT BHATTI)
JUDGE

06.05.2024
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Whether speaking/reasoned: Yes/No.
Whether reportable: Yes/No