(2018) 10 P&H CK 0218

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No.24137 of 2018

M/S Milan Exports & Others — APPELLANT

Vs

State Bank Of India & Another — RESPONDENT

Date of Decision : 01-10-2018

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13(2), 13(4), 14

Citation : (2018) 10 P&H CK 0218

Hon'ble Judges : Ajay Kumar Mittal, J;Avneesh Jhingan, J

Bench : Division Bench

Advocate : Rajesh Gupta, Rakesh Gupta

Final Decision : Dismissed

Judgement

1. The present writ petition has been filed seeking direction to the respondent-bank to adjust the amount of Rs.50 lakhs towards Rs.1.50 crores to be

paid as per the proposal (Annexure P-7) dated 14.08.2018 under the latest scheme of One Time Settlement (OTS).

2. Petitioner No.1 is a partnership firm and petitioners No.2 to 4 are partners. State Bank of India, Stressed Assets Recovery Branch, Ludhiana and

State Bank of India, Railway Station Road Branch, Ludhiana have been arrayed as respondents No.1 and 2, respectively, in the writ petition.

3. The petitioners availed a cash credit facility of Rs.2.50 crores from the respondent-bank. In order to secure the credit facility availed, following

properties were mortgaged:

1. Property measuring 250 sq. yards residential land and building MC No. B-XIX-354-E, Dr. Hira Singh Road, Ghumar Mandi, Ludhiana.

2. Property measuring 136.37 sq. yards bearing MC Unit No. B-XXV-G-5/946,

Pritampura, Sardar Nagar, Sekhowal Ludhiana.

4. The petitioners failed to maintain financial discipline and as a result recovery proceedings under the Securitisation and Reconstruction of Financial

Assets and Enforcement of Security Interest Act, 2002 (for brevity 'the Act') were initiated. Notice was issued under Section 13(2) of the Act and

thereafter notice dated 10.02.2015 under Section 13(4) of the Act was issued. The respondent-bank filed an application on 11.05.2015 under Section

14 of the Act before Additional District Magistrate, Ludhiana and the same was allowed vide order dated 11.07.2016. Police help was ordered to be

provided for taking over physical possession of the mortgaged properties.

5. On 11.09.2017, the bank offered to the petitioners to settle their account under OTS. The outstanding amount of Rs.2,50,51,781/-was to be settled

for Rs.1,71,00,929/-. To avail the OTS, the petitioners were required to deposit 5% of the OTS amount for processing of application and 20% of the

OTS amount as upfront money within 30 days from the date of sanction of OTS. Balance amount was to be repaid in six months together with

interest. The OTS lapsed on 31. 10.2017.

6. The petitioners filed CWP No.4944 of 2018. On 28.02.2018, it was contended before this Court that at the time of offer of OTS, the petitioners

were not in a position to deposit the requisite amount, but they have now arranged Rs.50 lakhs and would pay the balance amount within a period of

two months. The writ petition was adjourned so as to enbale the petitioners to bring a demand draft of Rs.50 lakhs and to file an affidavit that

remaining amount will be deposited within two months. Till the next date of hearing, it was ordered that physical possession of the mortgaged property

shall not be taken.

7. On next date i.e. 06.03.2018, the petitioners produced a demand draft of Rs.50 lakhs and also filed an affidavit of undertaking regarding payment of

balance amount upto 30.04.2018. Notice of motion was issued, the petitioners were directed to deposit demand draft of Rs.50 lakhs with the

respondent-bank without prejudice to the legal rights of the parties. The petitioners deposited the demand draft with the bank.

8. The respondent-bank rejected the offer of OTS vide letter dated 02.05.2018. On 16.08.2018, the petitioners withdrew the writ petition as in the

meantime, respondent-bank had floated a new OTS and had made offer to the petitioners under the said scheme. The petition was dismissed as

withdrawn and liberty was granted to the petitioners that in case any grievance survives after submission of the proposal, it shall be open to the

petitioners to take recourse to the remedies in accordance with law.

9. In the present writ petition, learned counsel for the petitioners submitted that the bank be directed to adjust amount of Rs.50 lakhs deposited during

pendency of earlier petition against the payment to be made under OTS to settle the account for Rs.1.50 crores.

10. Learned counsel appearing for the respondent-bank resisted the contention and submitted that the bank has given the credit of Rs.50 lakhs against

the NPA amount and has not adjusted the said amount against the interest due. He argued that Rs.50 lakhs deposited could not be considered against

the OTS offer of Rs.1.50 crores.

11. The contention raised by the learned counsel for the petitioners deserves rejection.

12. Earlier the OTS offer was made by the respondent-bank on

9. 09.2017. The scheme lapsed on 31.10.2017. The petitioners made an offer of OTS to the respondent-bank for an amount of Rs.1,71,00,929/-. The

said offer was rejected by the respondent-bank considering same to be too low. After the withdrawal of CWP No.4944 of 2018, the bank acting very

fairly adjusted Rs.50 lakhs against the NPA amount and not against the interest due. After giving credit of the said amount the respondent-bank has

now offered to settle the outstanding dues of Rs.2,50,51,781/- for Rs.1,50,38,836/-.

13. The endeavour of the petitioners is to have double credit of the amount of Rs.50 lakhs deposited during the pendency of the earlier writ petition.

The bank has offered OTS for Rs.1,50,38,836/- after considering the deposit of Rs.50 lakhs. The petitioners want to have benefit of settling the

account of amount of Rs.2,50,51,781/- for Rs.1,50,38,836 by actually paying Rs.1 crore only. If the prayer of the petitioners is accepted, it would

tentamount to give benefit of Rs.50 lakhs twice i.e. firstly while calculating the amount for settlement and secondly while making the payment for the

settled amount.

14. The writ petition has no merit, the same is dismissed.

