

State Bank Of India vs Arvindra Electronics Pvt. Ltd. on 4 November, 2022

Author: M.R. Shah

Bench: Krishna Murari, M. R. Shah

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6954 OF 2022

State Bank of India

...Appellant

Versus

Arvindra Electronics Pvt. Ltd.

...Respondent

JUDGMENT

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 10.03.2022 passed by the High Court of Punjab and Haryana at Chandigarh in CWP No.12953 of 2018 by which in exercise of powers under Article 226 of the Constitution of India the High Court has granted further six weeks' time to the original writ petitioner to make the payment of balance amount (Rs.2.02 crores with interest) as per the sanctioned letter of OTS dated 21.09.2017, the State Bank of India has preferred the present appeal.

2. The facts leading to the present appeal in a nutshell are as under:

2.1 That the State Bank of India (hereinafter referred to as 'the Bank') sanctioned a cash credit in favour of the respondent □Arvindra Electronics Private Ltd. (hereinafter referred to as 'Borrower'). In 2012, the account of the borrower was classified as NPA in 2015. The Bank came out with one time settlement (hereinafter referred to as 'OTS Scheme') dated 01.09.2017.

OTS specifically provided for making payment as settled under the OTS scheme within six months from the date of sanction, else infructuous. The Bank sent OTS offer to the borrower for OTS and ledger outstanding as on 31.03.2017 was Rs.13,99,89,273.99. The amount payable under the OTS was Rs.10,53,75,069.74. The borrower accepted the OTS offer and deposited an amount of Rs.1.40 crores with the Bank on 31.10.2017.

2.2 The Bank sanctioned OTS and confirmed receipt of Rs.1.40 crores. Under the sanctioned OTS the borrower was required to deposit 25% of the OTS amount by 21.12.2017 and the balance amount to be deposited within six months from the date of letter upto 21.05.2018 with interest. The borrower was also informed that on non-payment of the aforesaid amount within the time stipulated under the OTS, the OTS will be rendered infructuous. The borrower deposited amounts of Rs.4,51,45,000/- on 31.12.2017/21.05.2018. The borrower agreed/committed to pay Rs.3.50 crores on 21.05.2018 and requested extension of 8 to 9 months for repayment of the balance amount of Rs.2.50 crores. The bank declined extension of 9 months and directed the borrower to make the payment of 2.52 crores by 21.05.2018. Feeling aggrieved the borrower filed the writ petition before the High Court for extension of 8 to 9 months to pay the outstanding amount of Rs.2.52 crores beyond 21.05.2018.

2.3 That thereafter the Bank floated another OTS Scheme for settlement of outstanding payment of Rs.9,48,39,614/- for an amount of Rs.4,48,79,711/- However, the borrower did not opt for the said scheme. That thereafter one another OTS Scheme was floated by the Bank in the year 2019 and the Bank made an offer to the borrower to settle the account for an amount of Rs.4,11,13,953/- against outstanding amount of Rs. 5,98,39,614/- The borrower again did not opt for the scheme. Even one another OTS Scheme was floated which was offered to the borrower and the borrower did not opt for the scheme. Vide communication dated 24.02.2021 the bank rejected the OTS offer of Rs.2.05 crores as according to the Bank amount due by the borrower was Rs.23.54 crores. By the impugned judgment and order the High Court has set aside the communication dated 24.02.2021 rejecting the OTS offer of Rs.2.05 crores made by the borrower and has granted further six weeks' time from the impugned judgment and order passed by the High Court to the borrower to make the payment of Rs.2.02 crores with interest as per the OTS sanctioned letter dated 21.09.2017.

2.4 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court granting further six weeks' time to the borrower to make the payment of balance amount under the OTS Scheme, the Bank has preferred the present appeal.

3. Shri Sanjay Kapur, learned counsel appearing on behalf of the Bank has vehemently submitted that the High Court has committed a very serious error in granting further six weeks' time to the borrower to make the payment of balance amount due and payable under the OTS which was due and payable in the year 2017, in exercise of powers under Article 226 of the Constitution of India.

3.1 Shri Kapur, learned counsel appearing on behalf of the Bank relying upon the decision of this Court in the case of Bijnor Urban Cooperative Bank Limited, Bijnor and Others vs. Meenal Agarwal and Others, (2021) SCC Online SC 1255 has submitted that as observed and held by this Court, the grant of benefit of OTS Scheme cannot be claimed as a matter of right and shall always be subject to

fulfilling the eligibility criteria mentioned in the scheme. It is submitted that in the present case the borrower was required to fulfil the terms and conditions of the OTS and was required to make the payment as per the schedule mentioned in the sanctioned letter of OTS. It is submitted that any deviation from making the payment as per the sanctioned OTS Scheme would render the OTS sanction infructuous, as per the sanction letter dated 21.11.2017. It is submitted that therefore the High Court in exercise of powers under Article 226 of the Constitution of India ought not to have granted any further time de hors the sanctioned scheme and/or the sanction letter dated 21.11.2017 and that too in exercise of powers under Article 226 of the Constitution of India. 3.2 It is submitted by Shri Kapur, learned counsel appearing on behalf of the Bank that the Hon'ble High Court under Article 226 of the Constitution of India cannot direct rescheduling the payment under the OTS as it amounts to modification of the contract which can be done by mutual consent under Section 62 of the Indian Contract Act.

3.3 It is submitted that the Hon'ble High Court ought to have appreciated that the OTS does not involve any public element and the OTS is/was non-discriminatory and non-discretionary and shall be applicable uniformly to all borrowers. 3.4 It is submitted that by the impugned judgment and order the Hon'ble High Court has rewritten the contract which is not permissible that too while exercising the powers under Article 226 of the Constitution of India.

3.5 It is further submitted by learned counsel appearing on behalf of the Bank that though the decision in the case of Bijnor Urban Cooperative Bank Limited (supra) was pointed out to the High Court, the High Court has not followed the said binding decision by observing that the earlier decision of this Court in the case of Sardar Associates versus Punjab & Sind Bank and Others, (2009) 8 SCC 257 is more elaborate and accurate. It is submitted that apart from the fact that the issue involved in the case of Sardar Associates (supra) was entirely different, the decision in the case of Bijnor Urban Cooperative Bank Limited (supra) is subsequent and on the point the same was binding upon the High Court and the High Court ought to have followed the same.

Making above submissions and relying upon the decision of this Court in the case of Bijnor Urban Cooperative Bank Limited (supra), it is prayed to allow the present appeal and set aside the judgment and order passed by the High Court.

4. Present appeal is vehemently opposed by Shri D.P. Singh, learned Advocate appearing on behalf of the respondent. 4.1 Learned Advocate appearing on behalf of the borrower has submitted that the appellant being a State is duty bound to act in a fair, transparent and non-discriminatory manner and any arbitrary action of the Bank is amenable to the writ jurisdiction of the High Court.

4.2 It is submitted that in the present case the Bank arbitrarily and without just cause or explanation rejected the respondent's request for extension while extending the benefit of extension of OTS to other borrowers.

4.3 It is submitted that as per the Bank the refusal was because the OTS is non-discretionary and non-discriminatory. However, at the same time the Bank has been granting time to other such borrowers who are similarly placed at the respondents. It is submitted that therefore differential

treatment by the Bank to the similarly placed borrowers is nothing but an arbitrary action and therefore the Hon'ble High Court has wrongly granted further six weeks' time to the borrower to make the payment of balance amount under the OTS Scheme.

4.4 It is submitted that even the action of the Bank is contrary to the spirit of the guidelines of the Reserve Bank of India. It is submitted that the Bank has not set any eligibility criteria under any policy or under any OTS Scheme under which it can or cannot grant extension. It is submitted that the same is contrary to the spirit of the guidelines of the Reserve Bank of India, especially since one of the Scheduled Banks have already set a criterion of such nature which has also been dealt with by the High Court in the case of Anu Bhalla and Another vs. District Magistrate, Pathankot and Another, (2020 SCC Online P&H 4387), the judgment which has been relied upon by the High Court. It is submitted that thus, in absence of any criterion and an arbitrary rejection by the Bank, the Hon'ble High Court has rightly allowed the prayer of the respondent □borrower for extension of time.

4.5 Relying upon the decision of the High Court of Punjab and Haryana in Anu Bhalla (supra) and the decision of this Court in the case of Sardar Associates (supra), it is vehemently submitted by learned Advocate appearing on behalf of the respondent – borrower that the High Court has powers under Article 226 of the Constitution of India to extend the time period under the OTS.

4.6 It is submitted by learned Advocate appearing on behalf of the respondent – borrower that even otherwise, consistent view has been taken by different High Courts that the High Court look into justiciability of the actions taken by the banks. 4.7 It is further submitted by learned Advocate appearing on behalf of the respondent that the High Court has rightly observed that the decision of this Hon'ble Court in the case of Bijnor Urban Cooperative Bank Limited (supra) is distinguishable since it deals with the issue of grant of OTS and not extension of time once OTS has already been granted and acted upon by the parties.

4.8 Learned Advocate appearing on behalf of the respondent – borrower has submitted that equities are in favour of the respondent. In support of the above it is submitted that

(i) the respondent paid 80% of the OTS amount i.e. INR 8,01,45,000/□within the stipulated time by selling its residential establishment;

(ii) In addition to the above, the cleared pending mortgage lien of INR 3.50 crores to the appellant – bank;

(iii) the respondent – borrower sold 31% of its share in commercial establishment and used the advance of INR 3.50 crores to repay the OTS amount to the appellant – bank;

(iv) the remaining amount had to come by the sale of the other property and therefore the extension was sought on this ground alone which was in the knowledge of the officials of the bank;

(v) the respondent – borrower is an MSME and does not have the requisite legal framework which is as efficient/effective as the SARFESI Act to retrieve its dues from defaulting parties; 4.9 It is submitted that the respondent has paid the entire amount with interest and is ready to pay further reasonable interest with this Hon'ble Court or the Bank deem fit to impose which would balance both the appellant – bank and that of the respondent – borrower.

Making the above submissions and relying upon the decision of this Court in the case of Sardar Associates (supra) and the decision of the Punjab and Haryana High Court in Anu Bhalla (supra) and decisions of some of the High Courts, it is prayed to dismiss the present appeal.

5. Heard learned counsel for the respective parties at length.

6. At the outset, it is required to be noted that by the impugned judgment and order the High Court has extended time by a further period of six weeks from 10.03.2022 in favour of the respondent □ borrower – original writ petitioner to make the payment of the balance amount which was due and payable under the sanctioned OTS Scheme which was sanctioned in the year 2017 in exercise of powers under Article 226 of the Constitution of India.

6.1 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?

6.2 While considering the aforesaid issue the recent decision of this Court in the case of Bijnor Urban Cooperative Bank Limited (supra) is required to be referred to. 6.3 In the case of Bijnor Urban Cooperative Bank Limited (supra) this Court answered the following two questions:

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

(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 de hors the eligibility criteria mentioned under the OTS Scheme?” 6.4 On a detail analysis of the OTS Scheme, it is observed and held by this Court 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.

Though the decision of this Court in the case of Bijnor Urban Cooperative Bank Limited (supra) was specifically pressed in service on behalf of the Bank and was pointed out to the High Court, the High Court instead following the binding decision of this Court in the case of Bijnor Urban Cooperative Bank Limited (supra) has not followed the same by observing that the earlier decision of this Court

in the case of Sardar Associates (supra) is more elaborate. We do not approve such an observation by the High Court and not following the subsequent binding decision of this Court which as such was on the point. Being a subsequent decision on the point/issue, the High Court was bound to follow the same.

6.4 Even otherwise it is required to be noted that the decision of this Court in the case of Sardar Associates (supra) is distinguishable on facts. In the case of Sardar Associates (supra) it was found that the Bank deviated from the OTS guidelines issued by the Reserve Bank of India and therefore this Hon'ble Court held that the RBI Guidelines are binding on the bank and that the bank shall deal with the case of the borrower under the RBI Guidelines on OTS. Therefore, even otherwise on facts the said decision was not applicable at all. 6.5 In the present case in the sanctioned letter dated 21.11.2017 it was specifically provided that the entire payment to be made by 21.05.2018. The schedule to make the payment under the instalments was also mentioned. It is an admitted position that the borrower did not make the payment due and payable under the sanctioned OTS Scheme on or before the date mentioned in the sanctioned letter. The prayer of the borrower for extension of nine months came to be rejected as far as back on 16.05.2018 and the borrower was directed to make the payment of Rs.2.52 crores by 21.05.2018, the borrower failed to make the payment. At this stage, it is required to be noted that during the pendency of the writ petition there were as many as three different OTS floated by the Bank and the Bank offered the respondent □borrower to settle the outstanding payment under the OTS Scheme. However, the borrower did not opt for any of the scheme. By the impugned Judgment and Order the High Court has granted further six weeks' time from 10.03.2022 which would be beyond even the time prayed by the borrower in the year 2018. As observed above earlier period of 8 to 9 months was sought in the year 2018 and by the impugned judgment and order the borrower has got time upto May, 2022. 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 Indian 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.

6.6 It is required to be noted that under the OTS Scheme which was originally sanctioned in the year 2017 the borrower was required to pay Rs.10,53,75,069.74 against the outstanding of Rs.13,99,89,273.99. Therefore, under the original sanctioned OTS Scheme the borrower was getting the substantial relief of approximately 3 crores. The Bank agreed and accepted the OTS offer on the terms and conditions mentioned in the letter dated 21.11.2017. In the sanctioned letter dated 21.11.2017 it was specifically mentioned in Clause

(iv) that the entire payment under the OTS Scheme was to be made by 21.05.2018, otherwise OTS would be rendered infructuous. Therefore, borrowers were bound to make the payment as per the sanctioned OTS Scheme. Therefore, the High Court ought not to have granted further extension de hors the sanctioned OTS Scheme while exercising the powers under Article 226 of the Constitution of India.

7. The submissions on behalf of the borrower that in case of some other borrowers the time was extended is concerned, the same is neither here nor there. The Bank mutually can agree to extend the time which is permissible under Section 62 of the Indian Contract Act. The borrower as a matter of right cannot claim that though it has not made the payment as per the sanctioned OTS Scheme still it be granted further extension as a matter of right. There cannot be any negative discrimination claimed. The borrower has to establish any right in their favour to claim the extension as a matter of right.

7.1 Now so far as the reliance placed upon the decision of Punjab and Haryana High Court in the case of Anu Bhalla (supra) is concerned, in view of the direct decision of this Court in the case of Bijnor Urban Cooperative Bank Limited (supra), the decision of this Court would be binding on the High Court.

8. In view of the above and for the reason stated above, the impugned judgment and order passed by the High Court granting further time to the respondent – borrower to make the balance payment under the OTS Scheme in exercise of powers under Article 226 of the Constitution of India is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. Consequently, the original writ petition filed by the respondent – borrower stands dismissed.

Present appeal is accordingly allowed. However, in the facts and circumstances of the case there shall be no order as to costs.

.....J. (M. R. SHAH)J. (KRISHNA MURARI) New Delhi;

November 04, 2022.