Before Jaswant Singh & Sant Prakash, JJ.

ANU BHALLA AND ANOTHER—*Petitioner*

versus

DISTRICT MAGISTRATE, PATHANKOT AND ANOTHER—*Respondents*

CWP No. 5518 of 2020

September, 22, 2020

Constitution of India, 1950—Art. 226—Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002—S.13—insolvency and Bankruptcy Code, 2016—S.14—Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Provider and Application to Adjudicating Authority) Rules, 2019—Rl.5—Petitioner availed term loans—Became NPA—Bank issued notice under Securitisation Act, 2002—Both accounts settled—Repayment schedule agreed—Subsequently defaulted—Fresh OTS—New repayment schedule agreed to—Substantial amount paid—Request for reasonable time to pay the balance declined by respondent bank—Default committed—Proceedings under the IBC, 2016 initiated with commencement of moratorium period—Writ petition—Subject to deposit of payment interim protection granted—Out of total outstanding 1.60 Crores—113.80 Lacs stood paid in the interim—Question—Whether Article 226 permits Court to extend time—Held, Yes—Court exercising power under Article 226 can grant time to deposit balance amount and petitioners agreeing to pay reasonable interest—COVID-19 noticed—Pendency of proceedings under the IBC 2016 do not come in the way in arriving at settlement—Object of Code—Replenishing funds back into the coffers of service provider—Willingness of petitioner to pay—Seeking extension of time to do so along with interest—Does not adversely affect the interests of the corporate debtor—Petition allowed—Time to make payment along with 9% simple interest granted.

A. *Held that,* having scrutinized the rival arguments as advanced by the respective counsels for the parties, and with their able assistance perused the record, we find the following issues would arise for determination:-

1. Whether this Court in exercise of its jurisdiction under Articles 226 of the Constitution of India, has the jurisdiction to extend the period of One Time Settlement.
2. Whether in the facts of the present case, the petitioners would be entitled for an extension in making payment of the balance settlement amount pursuant to One Time Settlement dated 29.01.2019 (P-11).
3. Whether the present petition is maintainable in view of the proceedings pending before National Company Law Tribunal, Mumbai.

(Para 16)

B. *Further held that,* we are conscious of the fact, that each Institution has its own set of settlement policies but the reference of the aforesaid three settlement schemes by the three nationalized banks is only for illustrative purpose to bring home the point, that looked even from the perspective of the Financial Institution, One Time Settlement is not cloaked with such rigorous principles which may not permit extension of period to pay the remaining/balance settlement amount. Had that been so, the banks itself would not have provided for an extension clause in their respective settlement policies. If the settlement policies of the banks itself provide for an extension subject to payment of interest, there is no reason to hold that the Courts in exercise of their equitable jurisdiction under Article 226 of the Constitution of India, cannot extend such time period of settlement.

(Para 30)

C. *Further held that,* Court in exercise of its jurisdiction under Article 226 of the Constitution of India would have the jurisdiction to extend the period of settlement as originally provided for, in the OTS letter.

(Para 32)

D. *Further held that,* so long as the respondent No.2 is getting its money back, under as settlement voluntarily entered into by it, it would have no concern with what the petitioners are litigating with the other creditors. We therefore have no hesitation in rejecting this argument of the respondent.

(Para 36)

E. *Further held that,* thus, we hold and direct that the petitioners would have to pay the remaining amount due in two quarterly instalments, of which a sum of Rs. 25 lacs shall be payable on or before

31.12.2020 and the remaining amount by 31.03.2021. The petitioners shall also pay interest @ 9% p.a. simple on the delayed payments on reducing balance payable w.e.f. 01.06.2019 i.e. the closing date of the settlement/OTS. It shall be the responsibility of Respondent NO.2 to calculate the amounts due on account of interest and inform the petitioners well in advance, so as to enable the petitioners to ensure adherence to the time schedule of repayment.

(Para 40)

F. *Further held that,* the precise intent to restrict initiation or continuation of proceedings against a Corporate Debtor is to preserve its assets so that during Corporate Insolvency Resolution Process (CIRP), the Corporate Debtor is subjected to remedial acts to improve its financial condition. It has been further held that Section 14 must be strictly observed so that the corporate debtor may finally be put back on tis feet albeit with a new management. In these circumstances, we do not see as to how, with the relief so claimed by the petitioner herein, i.e. seeking to repay the settlement amount with interest, would adversely effect the interest or the assets of respondent No.2.

(Para 45)

G. *Further held that,* during the continuation of moratorium the license or registration of financial service provider which authorises the financial service provider to engage in the business of providing financial services shall not be suspended or cancelled. It therefore, continues to maintain and retain its character as Financial Service Provider, even during the period of moratorium, in so far as its debtors are concerned. This assumes significance of the objective of moratorium, in relation to Insolvency Proceedings of Financial Service Provider. In our view, a holistic reading of Section 14 read with Rules, 2019 in the peculiar facts of the present case particularly when it is pertaining to Insolvency proceedings of the financial service provider, cannot be stretched to mean that proceedings which are non-adversarial in nature, like the instant proceedings, which aim at replenishing the funds to the back into the coffers of such financial service provider, would not be maintainable in view of Section 14 of the Code, 2016 read with Rules, 2019.

(Para 47)

H. *Further held that,* moreover, in our considered opinion, a relief of such nature claiming extension payment of balance settlement amount pursuant to mutually agreed OTS by the borrower cannot be considered by the Adjudicating Authority/Tribunal while exercising its

jurisdiction under the Code, 2016.

(Para 50)

Aalok Jagga, Advocate, *for the petitioners.*

Harsh Chopra, Advocate, for **contesting** respondent No. 2-Dewan Housing Finance Corporation Limited, Chandigarh. **(Applicant in CM No. 7213-CWP of 2020)**

JASWANT SINGH, J.

(1) The present petition has been filed by the petitioners/principal borrowers who had availed two credit facilities from Respondent No. 2 – a Non Banking Financial Company and are aggrieved of the inaction of the respondent No. 2 in considering their application for grant of extension in time, for making the repayment of the balance settlement amount in terms of One Time Settlement (OTS) dated 02.01.2019 **(AnnexureP-11)** entered between the petitioners and respondent No. 2.

(2) In brief, the pleaded case of petitioners, who are husband and wife, is that they had availed two Term Loans (Loan Against Property) from Respondent No. 2 on **12.08.2015.** The first Term Loan was sanctioned for Rs.1.45 Crore **(Annexure P-1)** in the shape of Loan Against Property (LAP) against the security of a residential house and was repayable in a tenure of 15 years with Equated Monthly Instalment (EMI) of Rs.2,07,036/-. The second Term Loan was availed for Rs. 58` Lakhs, against the same security of the said residential house, (mortgaged in both the accounts) which was to be repaid in a tenure of 30 years with Equated Monthly Instalment of Rs.75,284/-.

(3) The petitioners are stated to be the founder members of Aman Bhalla Foundation, which has set up educational institutions, imparting education in the field of Polytechnic, Engineering, Nursing, Teachers training, Hotel Management etc. at Pathankot (Punjab). Government of India, had introduced Post Matric Scholarship Scheme, pursuant to which educational institutions, would not charge tuition fee from the students of SC/ST/OBC/BC category, which was to be then reimbursed by the State Government, after having received the same from the Centre Government. The petitioners contend that pursuant to the said scheme, various students belonging to SC/ST/OBC/BC category take admission for which their Institutes do not charge tuition fee, and for such reimbursement the Institute is dependant upon the State Government. The petitioners submit that

being a part of management of the Institute, the income of the petitioners was directly dependant upon the satisfactory running of the Institutes. Difficulty arose, when on account of the delay in receiving the reimbursement under the aforesaid scheme from the State Government, it faced financial constraints, due to which they could not repay the instalments of the aforesaid loans on time, which led Respondent No. 2 to declaring both the loan accounts as Non Performing Asset (NPA) by 01.01.2018.

(4) Consequently, on 14.03.2018, Respondent No. 2 issued notice U/s 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (hereinafter referred to as “Securitisation Act, 2002”) claiming an amount of Rs.1,38,02,347/- in the first loan account (Principal Sanctioned amount of Rs.1.45 Crore) and Rs.54,26,617/- (Principal Sanctioned of Rs. 58 lakhs) in the second loan account. Thereafter, on 28.07.2018, Respondent No. 2 issued possession notice U/s 13 (4) of the Securitisation Act, 2002 read with Rule 8(1) of Security Interest (Enforcement) Rules, 2002.

(5) Initially, vide settlement letter dated 28.03.2018 **(Annexure P-10)**, both the aforesaid accounts were settled for Rs.1.60 Crores and a repayment schedule was stipulated therein, as per which the settlement amount was to be paid in six instalments, so as to conclude the accounts by 30.08.2018. It seems that the said settlement did not work out, as payments could not be deposited by the petitioner. Thereafter, on 02.01.2019 **(P-11)**, the petitioners and respondent No. 2 entered into a fresh One Time Settlement (OTS) of both the loan accounts again for the same amount i.e. for Rs.1.60 Crores (Rs.1.15 crore and Rs. 45 lakhs being the settlement of both the accounts respectively). The repayment of the settlement amount was to be made in six instalments which were to conclude till 30.05.2019. The petitioners contend that in compliance of second OTS dated 02.01.2019 **(P-11)** they deposited a sum of Rs.83.80 Lakhs from 29.12.2018 till 29.01.2020, but could not make the remaining payment towards the final conclusion of the OTS.

(6) The petitioners have tried to justify their inability to complete the payment of settlement amount by the due date, by contending that they had faced financial difficulties, on account of non-disbursement of the reimbursement, to be made by the Government under the Post-Matric Scholarship Scheme, to the Institutions due to which they had even approached this Court by filing

CWP No. 16997 of 2015 titled as *"Aman Bhalla Foundation and others V/s State of Punjab"*, seeking direction to the Government, to release the pending reimbursement under the aforesaid Scheme for the Session 2013-14 onwards. The said writ petition was disposed off vide order dated 22.03.2016, whereby directions were issued to the Government to disburse the dues of the petitioners. Against the aforesaid order, State of Punjab preferred LPA No. 1819 of 2017, which was attached with another LPA No. 410 of 2017, wherein vide interim order dated 01.11.2017, the recovery of the amount was stayed. The petitioners acting on behalf of their educational society, contested the said appellate proceedings and finally on 26.09.2018, the Division Bench of this Court vacated the interim order which was earlier passed in favour of the Appellant-Government. The petitioners contend that during this period, the accounts of the petitioners were declared NPA by respondent No. 2. Anticipating that the due amounts were now be released by the Government, they had settled the loan account with the respondent on 02.01.2019 **(P-11)**, but since the Government still took ample time to complete the process of verification of claims, the payments were delayed which further adversely effected the competence of petitioner to complete the payment of the settlement with Respondent No. 2 on time. It is with this background, that vide letter dated 29.06.2019 **(Annexure P-13)** followed by a reminder dated 23.09.2019 **(Annexure P-14)**, petitioners requested Respondent No. 2 for extension of time to make the balance payment arising out of the aforesaid OTS, but having received no response, have preferred the present petition, seeking extension to repay the balance OTS amount.

(7) Vide order dated 28.02.2020, this court issued notice in the aforesaid petition, returnable on 14.05.2020 and in the meantime, stayed the operation of the notice U/s 13 (2) and 13 (4) of the Securitization Act, 2002 **(Annexure P-7 to P-9)** subject to petitioner depositing a sum of Rs.15 Lakhs with Respondent No. 2 within four weeks. The said order reads as under :-

> "Present: Mr.Aalok Jagga, Advocate, for the petitioners.
>
> Notice of motion, returnable on 14.5.2020.
>
> Till then there shall be stay of impugned notices dated 14.3.2018 (Annexures P-7 and P-8 and dated 28.7.2018 (Annexure P-9), **subject to the petitioners depositing a sum of Rs. 15 lacs (Rupees fifteen lacs)** with the respondent-bank within a period of four weeks from today.

It is made clear that in case, the amount is not deposited within the prescribed period aforesaid, the interim order would cease to operate.”

(8) It is undisputed by Respondent No. 2 that pursuant to the aforesaid order, petitioner has complied with the directions and deposited Rs. 15 lakhs with Respondent No. 2 within time.

(9) The petition thereafter could not be taken up in routine, due to restrictive functioning of this Court on account of COVID-19 pandemic. However, respondent No. 2, filed ***CM No. 7213 of 2020***, seeking vacation of *ex parte* interim stay order dated 28.02.2020, which was taken up through Video Conferencing on 06.08.2020 on which date, notice of the application was issued to the non-applicant/petitioner for the date fixed i.e. 07.09.2020.

(10) On 07.09.2020, both the parties appeared and after a brief hearing, this Court passed the following order:-

“Case has been taken up through video conferencing in view of the outbreak of Pandemic COVID-19.

CM No.7213-CWP of 2020

Notice in the application, which has been accepted by Mr. Aalok Jagga, Advocate appearing for non-applicant-petitioners.

CWP No.5518 of 2020

Learned counsel for the petitioners has submitted a schedule of refund of loan amount whereas learned counsel for respondent No.2-Bank submits that three loans amount are outstanding against the family of the petitioners and there is delay in not only making payment but the petitioners have backed out from the settlement earlier arrived at between the parties. **Just to show their bonafide, learned counsel for the petitioners undertakes to deposit an amount of Rs. 15 lacs by the petitioners before the next date of hearing.**

Adjourned to 22.09.2020.

Meanwhile, respondent No.2-Bank is directed to give a schedule of refund of outstanding amount after considering the schedule, submitted by the petitioners.”

(11) It is apparent, that while adjourning the matter to 22.09.2020, the proposed/fresh statement of repayment schedule of the remaining amount to be paid under the One Time Settlement Letter **(P-11)** was considered, and the matter was adjourned for the Respondent No 2 to give its counter schedule as would be acceptable to it. It is further evident that the fresh schedule was favourably considered by the court, subject to payment of Rs. 15 lakhs before the next date fixed i.e. 22.09.2020, which duly stands complied with.

(12) When the matter came up for hearing today, it was conceded by the learned counsel for respondent No. 2, that pursuant to the aforesaid order dated 07.09.2020 the petitioner has again deposited Rs.15 Lakhs, apart from the one deposited pursuant to notice of motion order dated 28.02.2020. Thus, the petitioner deposited Rs. 83.80 lacs before filing of the petition and Rs. 30 lacs during the pendency of the present petition, sum totalling the entire deposit to be Rs. 113.80 Lacs, out of the total settled amount of Rs. 1.60 Crore.That apart, respondent No. 2 has filed a short reply, and sought to controvert the submissions made by the petitioner in the writ petition. Both the Ld. Counsels, have addressed their respective submissions.

(13) Opening the argument, Sh. Aalok Jagga, learned counsel appearing for petitioners has submitted written as well as oral submissions. He contends that with the factum of there being a settlement dated 02.01.2019 **(P-11)**, it is evident that both the parties intended to finish and conclude off the pending dispute. The intention of the petitioner to clear the settled amount is further apparent from the fact that inspite of the financial difficulties being faced by the petitioner, on account of the aforesaid circumstances, it was beyond their control and with every possible legal action initiated by the petitioners to seek early reimbursement of its dues from the Government, still petitioners deposited Rs.59.80 Lakhs by the due date i.e. 30.05.2019, as per the OTS dated 02.01.2019 and further deposited Rs.24 lakhs from September, 2019 up to January, 2020, sum totalling to Rs. 83.80 Lakhs, which they deposited before filing the instant writ petition. Secondly, to prove their bonafide, Rs. 30 lacs have been deposited during the pendency of the petition and hence petitioner has already paid Rs. 113.80 Lacs out of the total settled amount of Rs. 1.60 Crores, thirdly, the petitioners are ready and willing to deposit the balance amount within reasonable time period, as would permitted by this Court and with reasonable interest, which this Court may deem fit in the facts of the present case. Fourthly, he emphasised that, where

the inability to clear the remaining amount of settlement, is on account of circumstances which were completely beyond their control of the petitioners, delay in making payment of the balance amount can be condoned keeping in view the bonafide intent of the borrower and the respondent can be compensated with interest. He then argues that extension in repayment of the balance OTS amount is permissible and that various banks, like for example, State Bank of India, Punjab National Bank and Punjab and Sind Bank have settlement policies which itself permit extension of time in making balance payment of the settlement amount. Thus, extension of time, to make the balance settlement amount, is not an alien concept and if the banks themselves have such a provision of granting extension, then this Court, would definitely have the jurisdiction under Article 226 of the Constitution of India to extend such period of settlement.

(14) Sh. Jagga, learned counsel for petitioner, has relied upon the judgments of Hon'ble Supreme Court in ***State Bank of India*** *versus* ***Vijay Kumar***[1] and ***P. Vijayakumari*** *versus* ***Indian Bank***[2] and judgments of Division Bench of this Courtin ***Sat Kartar Ice and General Mills*** *versus* ***Punjab Financial Corporation***[3]***; Lord Budha Society*** *versus* ***State Bank of Patiala***[4] ***; M/s A-One Megamart Pvt. Ltd.*** *versus* ***HDFC Bank and Anr.***[5] ***and M/s Malhan Industries Pvt. Ltd.*** *versus* ***Punjab National Bank***[6] to contend that the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India can direct extension of one time settlement, if the bonafide of the petitioner is up to the satisfaction of the Court. He further, emphasises that a sympathetic view may be taken, in view of the current situation, of having adversely affected by COVID-19 pandemic and hence has prayed for allowing the present petition.

(15) On the other hand, Sh. Harsh Chopra, learned counsel appearing for contesting Respondent No. 2, while opposing the argument of the petitioner, argues that firstly the petitioner has availed credit facilities from two other financial institutions and have defaulted in the same, with pending litigation and hence the petitioner does not

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[1] 2007 (3) RCR (Civil) 380
[2] 2018 AIR (SC) 759
[3] 2008 (1) ISJ (Banking) 248
[4] 2013 (3) PLR 146
[5] 2013 (1) PLR 688
[6] 2015 (67) RCR (Civil) 782

deserve the concession of extension of time to deposit the remaining OTS amount. He has relied upon an order dated 13.12.2017 **(Annexure R-2/1)** titled as *"Aman Bhalla **Vs.** Debts Recovery Appellate Tribunal"* bearing *CWP No. 18720 of 2017*, which appears to be a dispute with another financial institutions (name of which does not find mention either in the order or in the pleadings). As per the said order, it appears that the petitioner No. 2 had preferred an appeal before Debts Recovery Appellate Tribunal, Delhi, which was not entertained on account of lack of pre-deposit. This Court while disposing of the petition, had set aside the impugned order and directed deposit of Rs. 1 Crore, towards pre-deposit, pursuant to which his appeal shall be heard on merits. The second order is dated 12.12.2019 **(Annexure R-2/2)** passed by this Court in a petition titled as "*Aman Bhalla Foundation **Vs.** State of Punjab"* bearing *CWP No. 35553 of 2019* which also pertains to another financial institution, where petitioner laid challenge to the validity of clause 5 (II) (a) of One Time Settlement Scheme, 2019 in which notice of motion has been issued by this Court. Thus, the petitioner while relying upon the aforesaid two orders contends that since the petitioners have defaulted with other institutions, the relief claim in the present petition should not be granted. Secondly, since the petitioner have concealed the factum of the order **Annexures R-2/1** and **R-2/2**, therefore, the present petition is liable to be dismissed. Thirdly, the plea taken by the petitioners with regard to its inability to repay the loan account on account non-disbursement of scholarship fee under the Post-Matric Scholarship Scheme by the Government has been considered and rejected by this Court in CWP No. 3683 of 2018 and CWP No. 5907 of 2018 disposed off vide common orders dated 04.09.2015 **(Annexure R-2/3)** and therefore, the petitioners cannot take advantage of the aforesaid plea to claim the relief as prayed for in the instant petition. Fourthly, he submits that this is the second settlement, with the petitioners and therefore, since they had not deposited the settlement amount on time, therefore concession granted to the petitioners, by virtue of OTS no longer exist and therefore extension cannot be granted. In any case, the petitioners in the writ petition have claimed extension till 30.09.2020, and therefore, no further time beyond this can be granted. Lastly, learned counsel submits that Reserve Bank of India has initiated insolvency proceedings under the provisions of Insolvency and Bankruptcy Code (hereinafter referred to as "Code, 2016") against respondent No. 2 by filing CP (IB)-4258/MB/2019 in terms of Rule 5 of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial

Service Provider and Application to Adjudicating Authority) Rules, 2019, wherein vide order dated 03.12.2019 **(Annexure R-2/5)** National Company Law Tribunal, Mumbai has admitted the petition and on account of commencement of moratorium U/s 14 of the Code, 2016, the present proceedings are not maintainable. He has thus prayed for dismissal of the present petition.

(16) Having scrutinised the rival arguments as advanced by the respective counsels for the parties, and with their able assistance perused the record, we find the following issues would arise for determination:-

1. Whether this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, has the jurisdiction to extend the period of One Time Settlement.

2. Whether in the facts of the present case, the petitioners would be entitled for an extension in making payment of the balance settlement amount pursuant to One Time Settlement dated 29.01.2019 **(P-11)**.

3. Whether the present petition is maintainable in view of the proceedings pending before National Company Law Tribunal, Mumbai.

ISSUE NO. 1

(17) We find that this issue is already covered by various judgments of the Hon'ble Supreme Court as well as Division Bench of this Court. We notice that the Courts have taken a view that in deserving cases a borrower is entitled to extension in time for payment of the balance settlement amount, if he has already made substantial payments and for reasons beyond his control, could not make the remaining payment within the prescribed schedule under One Time Settlement.In ***State Bank of India** versus **Vijay Kumar***[7]**,** the Hon'ble Supreme Court dismissed the appeal filed by the appellant bank , which laid challenge to the order of the High Court granting extension to the borrower to make the payment of the balance settlement amount. Similarly, a Division Bench of this Court, in ***Sat Kartar Ice and General Mills** versus **Punjab Financial Corporation***[8] considereda situation, where petitioner therein failed to deposit the settlement amount in terms of the schedule fixed by the financial corporation but

[7] 2007 AIR SC 1689

[8] 2008 (1) ISJ Banking 248

deposited the settlement amount at a belated stage. He filed an application for condonation of delay before the Respondent-Financial Corporation, and the same having not been considered,it led to the filing of the writ petition seeking condonation of delay in depositing the balance amount of settlement. This Court while noticing the fact that the borrower, had paid the entire amount of settlement, though at a belated stage, condoned the delay on examining the reasons explaining such delay, which were found to be reasonable. It also noticed that in large number of cases since Respondent Corporation itself had condoned the delay and it was not justified for the respondent - financial corporation to claim cancellation of settlement, especially when the petitioner was ready to pay interest for the delayed period and also on the ground that the corporation, itself had accepted the amount even after the last date stipulated for deposit of the entire settlement amount. The relevant para No. 2 of the said judgment reads as under:-

> "2. It is not in dispute that in the month of August 2001, benefit of one time settlement scheme, was extended to the petitioner and it was asked to deposit an amount of Rs. 5.20 lacs. 25% of the said amount was to be paid on or before 30.9.2001. The petitioner failed to make payment as per time schedule given to it. However, subsequent thereto, it paid the entire amount i.e. Rs. 7.70 lacs, though at a belated stage. Vide document Annexure P 16, the petitioner was intimated that onlya sum of Rs. 50 remains due from the petitioner. The petitioner, vide receipt Annexure P17, cleared that amount an amount of Rs. 15 lacs on the ground that as the petitioner had failed to deposit the amount which was offered to it under one time settlement scheme, within time, as such, that offer failed and it is bound to make payment of amount demanded by the Corporation. It is apparent from the records that in the meantime, the petitioner had moved one application for condonation of delay in making the payment That application was rejected without assigning any reason. When this matter came up for hearing before this Court on 15.12.2006, following order was passed: During arguments, it has been noticed that the defaulted account of the petitioner was settled under one time settlement scheme of 2001 and it was asked to pay an amount of Rs. 5.20 lacs. 25% of the amount was to be paid upto 30.09.2001. The petitioner failed to adhere to the schedule fixed payment and deposited the entire amount at a

belated stage. Its application for condonation of delay was not considered. The petitioner was even ready to pay interest for the delayed period. Counsel for respondent No. 1, is directed to file an affidavit stating as to whether under similar circumstances, where payment was made beyond period fixed under the settlement, the delay was condoned or not, if that has been done in other cases, why it was not done The case of the petitioner. Affidavit be tiled before the next date of hearing.

Shri Duggal states that in large number of cases, under similar circumstances, delay in depositing the amount, offered under one time settlement scheme, was condoned by the respondent Corporation. To this, ShriSagar has failed to show anything to the contrary. ShriSagar has only stated that as the petitioner had not utilised the amount, for the purpose for which it was released, the Corporation was justified in demanding the entire amount. **Be that as it may, once one time settlement has already been offered to the petitioner and no such plea was taken in the written statement, no relief can be given to the respondent Corporation on this account.**

We feel that in the case of the petitioner also, the Corporation was bound to condone the delay and it was not open to the Corporation to reject the offer made under one time settlement scheme, after accepting the entire amount. In view of this, the writ petition is allowed and action of the respondent Corporation in rejecting the one time settlement offered to the petitioner is declared null and void."

[Emphasis supplied]

(18) Similarly another Division Bench of this Court in M/s ***Lord Budha Society and others*** *versus* ***State Bank of Patiala***[9]***,*** also considered a similar situation where the petitioner, could not deposit the entire settlement amount within the stipulated period and claimed extension in time to make the payment of the remaining settlement amount. This Court while accepting the request of the petitioner, held that the action of the bank in cancelling the settlement and claiming the entire dues alongwith contractual rate of interest was unsustainable. The petitioner therein had deposited the entire balance amount

[9] 2013 (3) PLR 146

alongwith interest for the delayed period, and hence this Court extended the time to pay the balance settlement amount by condoning the delay. The relevant paras being Para no. 12 to 16 of the said judgment read as under:-

> "11. Mr. Gupta argued that since the petitioners have defaulted to comply with the terms and conditions as per the settlement dated 11.08.2011, therefore, the Bank has rightly revoked the settlement and is entitled to recover the entire due amount along with contractual rate of interest.
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> 12. We have heard learned counsel for the parties and find that there is default on the part of the borrower to make the payment of the settlement amount. The Bank has sought deposit of entire settlement amount with interest for the delayed period without any further delay even after the expiry of stipulated period mentioned in the settlement. The said communication unequivocally leads to the inference that the time prescribed in the settlement was not the essence of the contract. In case of delay, the Bank is thus entitled to claim interest for the delayed period.
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> 13. In view of the said fact, the Bank is entitled to the interest for the delayed payment of the settlement arrived at on 11.08.2011. Since the petitioners have deposited the amount and also paid the interest up to 30.03.2013, as per the calculations given by the Bank, we do not find any merit in the argument that the Bank has right to revoke the settlement.
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> 14. The settlement arrived at is in public interest, as it ensures payment of the due amount to the Bank and also absolves the Public sector undertaking to take recourse of cumbersome process of sales of assets by auction. Therefore, in the larger public interest, the payment of the settled amount along with accrued interest is considered appropriate.
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> 15. Consequently, order dated 15.02.2012 (P-14) is set aside. The respondent-bank is directed to release the title deeds of the petitioners as well as that of the guarantors. Mr. Gupta, learned counsel for the Bank has handed over all the title deeds to Mr. Patwalia for handing over to the petitioners & the guarantors of the borrowers. However, the

interest for the period from 01.04.2013 till today shall be paid by the petitioners, within one week from today.

16. The petitions are accordingly allowed. The order dated 02.05.2012 subject matter of challenge in CWP No.9186 of 2012 is set aside. CWP No.4348 of 2012 is disposed of in view of the payment of settlement amount only subject to payment of interest for the period 01.04.2013 till 12.04.2013.

Petitions allowed."

[Emphasis supplied]

(19) Again a Division Bench of this Court in ***M/s A-One Megamart Pvt. Ltd.*** *versus* ***HDFC Bank and Anr.***[10] considered a similar issue and extended the period to deposit the remaining amount of settlement pursuant to OTS having been entered between the parties. In the said case, parties had entered into One Time Settlement vide letter dated 22.01.2011 for Rs. 250 Lakhs, which amount was to be paid by 22.03.2011. The Petitioner could deposit Rs. 50 lakhs in terms of the said settlement but was unable to pay the remaining amount of Rs. 200 lakhs by 22.03.2011. It sought extension from the bank. In the meantime, the father of petitioner Nos. 2 and 3 therein expired and due to family circumstances, the balance amount could not be arranged. Vide impugned letter dated 24.08.2011, the bank withdrew the One Time Settlement, on account of failure of the petitioner to deposit the amount within the stipulated time provided under the settlement, which came to be challenge by the petitioner before this Court. This Court recorded its satisfaction regarding the genuine difficulty of the petitioner, of not having been able to arrange the deposit of the amount within the stipulated time, as also the *bona fide* intention to pay, as the petitioner had deposited the amount during the pendency of the petition and sought condonation of delay. To balance the equities, the Court also compensated the bank for the period of delay.This Court noticed that since the petitioners suffered unfortunate exigencies, it is for such reasons that they could not honour the terms of settlement. In such circumstances rejection of settlement would be harsh and unjust. Finally, this Court condoned the delay while placing reliance upon the judgment of Hon'ble Supreme Court in ***State Bank of India*** *versus* ***Vijay Kumar*** *(supra)* and the earlier judgment of the Division Bench in ***Sat Kartar Ice and General Mills*** *(supra)*. Para no. 29 of the said

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[10] 2013(1) PLR 688

judgment reads as under:-

> "29. Now taking up the issues arising at Nos.(b) and (c), they can be adjudicated together. The petitioners had submitted a proposal for OTS to the respondent Bank which was accepted whereby petitioners were required to liquidate the outstanding liability by 22.3.2011 which period was extended vide letter dated 18.4.2011. The petitioners had deposited Rs. 50,00,000/- and the balance amount of Rs. 2 crores was to be deposited to complete the requirements of OTS accepted by the Bank. The petitioners due to certain personal and practical difficulties could not honour the commitment and had sought further extension which, however, was declined. On 17.6.2011, father of petitioners No.2 and 3 after illness for over a month expired and thereafter the petitioners again approached the respondent Bank to pay the balance outstanding amount of Rs. 2 crores. The bank refused to accept the same. The petitioners in order to show their bonafides had presented drafts for Rs. 2 crores on 26.7.2011 to the Bank and had also produced four demand drafts duly revalidated in this Court on 10.2.2012 which were deposited with the Registrar (Judicial) of this Court. Further on 25.7.2012, learned counsel for the petitioners had stated that besides the aforesaid amount of Rs. 2 crores, the petitioners were prepared to pay additional amount of Rs. 50 lakhs. This intention clearly depicts the bonafides of the petitioners. The narration of events noticed hereinbefore shows that it was due to certain unfortunate exigencies, the petitioners could not honour the terms of the OTS. In such circumstances, the action of the respondent-Bank in rejecting the OTS is harsh and unjust. It may also be noticed that the petitioners have no other remedy available against the rejection of extension of time for OTS proposal. This Court in ***Sat Kartar Ice and General Mills v. Punjab Financial Corporation*, 2008(1) ISJ Banking 248** had condoned the delay in depositing the amount of OTS and directed the Bank to abide by the OTS. Similarly in ***State Bank of India v. Vijay Kumar*, AIR 2007 SC 1689** again, the delay in depositing the amount which was condoned by the High Court was upheld by the Apex Court. **Accordingly, in the present facts and circumstances after condoning the delay in depositing the amount, while**

> **allowing the writ petition, it is directed that in case, the petitioners deposit another sum of Rs. 50 lakhs in terms of the statement made by their counsel on 25.7.2012 within two months of receipt of a certified copy of this order, the OTS shall be implemented.** It is further directed that the drafts deposited in pursuance to the order of this Court dated 10.2.2012 shall be returned to the petitioners, who after getting them revalidated, shall deposit the same with the bank within the aforesaid period for getting the OTS implemented."

[Emphasis supplied]

(20) The aforesaid judgment was then considered and followed by a Division Bench of this Court in ***M/s Malhan Industries*** *versus* ***Punjab National bank***[11], wherein the petitioner had earlier entered into a One Time Settlement with the bank on 03.08.2009 for Rs.5.60 Crores, against which the petitioner therein could deposit only Rs.2.55 Crores and failed to deposit the remaining amount within the stipulated period as per the settlement. Thereafter, keeping in view the request of the petitioner therein, the parties again entered into a settlement dated 08.01.2015 for Rs.3,98,27,000/- The petitioners therein deposited Rs.25 Lakhs but since the properties could not be sold, from where the petitioners intended to arrange the balance amount of settlement, they could not deposit the remaining amount within the stipulated period. The bank had proceeded to sell the property of the petitioner in an auction held on 24.03.2015. The petitioners therein approached this Court and prayed for extension of time for depositing the balance settled amount in terms of the second OTS. The petitioners displayed their *bona fide* intention and deposited Rs.1.80 Crores out of the total settlement amount of Rs.3,98,27,000/- and offered to deposit the remaining amount together with interest. This Court while relying upon the earlier judgment in the case of ***M/s A-One Megamart Pvt. Ltd.*** (supra) held in para 10 (relevant extract) to 11, as under:-

> "10. ....Nothing to the contrary could be shown on behalf of the respondents during the course of hearing. **Therefore, we are not inclined to accept the contention that this Court while exercising jurisdiction under Article 226 of the Constitution of India, cannot extend time to repay the settled amount under OTS.** It would

[11] 2015 (67) RCR Civil 782

stand repetition that as against the settled amount of Rs. 3,98,27,000.00 under the second OTS an amount of Rs. 2,05,00,000.00 stands deposited by or on behalf of the petitioners in the 'no lien account' with the respondent Bank and if that amount of money is adjusted towards the loan account of the petitioners only an amount of Rs. 1,93,27,000.00 would be payable by the petitioners to the respondent. **For the delay in repayment of the settled amount, respondent bank can be duly compensated by payment of interest for the period of delay. At the same time, the auction purchasers can be compensated by refund of the amount(s) deposited by them, together with interest for the period during which they have been deprived of user of the deposited amounts.**

11. Therefore, we accept the writ petition and extend the time for repayment of the settled amount under the second OTS by four weeks reckonable from today. While the respondent bank shall be at liberty to adjust the amount of Rs. 2,05,00,000.00 already deposited by or on behalf of the petitioners towards their loan account and the petitioners shall pay, within four weeks, the balance amount of Rs. 1,93,27,000.00, together with interest at the rate of 15 % (reducing) on the defaulted amount as also interest at the rate of 15% on the amounts deposited by respondents No. 3 to 5 as auction money, for the period from the date(s) of deposit of these amounts till the expiry of the afore-stated period of four weeks, to the respondent bank within the afore- stated period of four weeks. It may be clarified that the amount of interest on the auction money shall be paid by the respondent bank to respondents No. 3 to 5 while refunding the auction money to them and it shall be over and above the interest earned by those amounts. Further, in the event of non- compliance of these directions by the petitioners, the writ petition shall be deemed to have been dismissed."

[Emphasis supplied]

(21) It was thus held, that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India can extend the time to pay the remaining settlement amount, especially after being satisfied with the bonafide of the petitioner. At the same time, it was also held

that for the period of delay the respondents could be compensated by payment of interest. Thus, the Court condoned the delay in making payment of the balance settlement amount.

(22) Not only the judgments of this Court, the issue has now been settled with recent the judgment of Hon'ble Supreme Court in ***P. Vijayakumari*** *versus* ***Indian Bank***[12], wherein also appellants could not make timely payment of the settlement amount and were seeking extension of time to make the balance payment of settlement. The facts of the case were, that a settlement had taken place on 10.09.2004, whereby the parties had agreed for an amount of Rs.34.50 Lakhs which was payable within 3 months. The appellant could not pay within the stipulated time period but paid Rs.3 Lakhs on 08.02.2005 and a further sum of Rs. 35 lakhs on 17.10.2006, in terms of the conditional ordered passed by Debt Recovery Appellate Tribunal (DRAT) while staying the auction of the mortgaged property. Another sum of Rs.3 lakhs was paid on 29.10.2006, with which the total amount paid by the appellants, came to be Rs.41 lakhs by 29.10.2006. **As against the original period of 3 months, the appellants therein had taken about 2 years to deposit the said amounts.** Aggrieved against the conditional interim order of deposit made by DRAT, the bank approached the High Court, which allowed the petition and had set aside of the impugned order of DRAT. Laying challenge to the said order passed by the High Court, the borrower approached the Hon'ble Supreme Court and prayed for condonation of delay of having paid the settlement amount with the aforesaid delay. Hon'ble Supreme Court, while condoning the delay held in para Nos. 8 to 11, as under:-

> "**8. We have considered the matter. There was undoubtedly some delay in payment of the amount due as per the terms of the settlement reached in the Lok Adalat.** It was also agreed by and between the parties that if the terms of payment including the time schedule of payment is not adhered to, the respondent-Bank will be at liberty to recover the entire amount due. The DRAT in the impugned order had considered the matter and had taken the view that even on the face of the express terms between the parties that the bank would have a right to recover the full amount due in the event of default on the part of the appellants, the same was not the only course of action or the

[12] 2018 AIR (SC) 759

sole option and that on the grounds shown for the delay the same is liable to be understood in favour of the borrower. Accordingly, the matter was closed. In the writ petition filed by the Bank the position was reversed.

9. *In the facts of the present case, the view taken by the* learned Appellate Tribunal (DRAT), as noted above, cannot be said to be so wholly unreasonable or unsustainable so as to justify interference by the High Court. If the agreed amount stood paid though with some delay, condonation of the delay is a possible course of action, if the grounds for delay justified a departure from what was also agreed upon, i.e., the right of a Bank to recover the entire dues. All would depend on the facts of each case. Having regard to the totality of the facts of the present case, we are of the view that the ends of justice would be met if for the delay that had occurred, the appellants are made liable to pay simple interest @ 24% p.a. on the amount of Rs. 34.5 lakhs (as agreed to in the Lok Adalat) for the period from the date of the Award of Lok Adalat, i.e., 10.09.2004 to the date of last payment, i.e., 29.10.2006. In addition, a further amount of Rs. 10 lakhs to be paid by the appellants to the respondent-Bank as compensation and costs.

10. The above amounts will be paid by the appellants to the respondent-Bank within a period of 45 days from today failing which the respondent-Bank may understand the present order to be recalled and the mortgaged property to be open for auction/disposal in accordance with law.

11. Consequently, the appeal shall stand allowed to the extent indicated above. The impugned order passed by the High Court is set aside."

[Emphasis supplied]

(23) A perusal of the above would reveal, that if the agreed amount stood paid with some delay, condonation of delay is a possible course of action, if the grounds for delay justified a departure from what was agreed upon i.e. the right of the bank to recover the entire dues. It further held that it would depend on facts of each case, of its entitlement to claim condonation of delay and the terms at which such delay could be condoned i.e. a higher rate of interest (like 24% in the above cited cases for 2 years of delay) on delayed payment in terms of the OTS, to compensate the creditor / bank

(24) With all due fairness to the learned counsel for the respondent,we would also deal with a judgment by a Division Bench of this Court in ***Rama Industries** versus **Assistant General Manager, State Bank of India***[13]**,** in which it was held that since the petitioner did not make the entire payment upto the last date prescribed under the OTS, it would not confer any enforceable right in favour of the petitioner seeking direction to the bank to accept such deposit. The relevant paras being Para No. 8 to 10 of the judgment, reads as under:-

> "8. Learned counsel for the petitioners has vehemently argued that the revised guidelines issued by the Reserve Bank of India on 29.1.2003 are in continuation of earlier guidelines dated 27.7.2000. The petitioners have deposited the balance 75% amount on 23.7.2004. Therefore, the terms of one time settlement scheme stand fully complied with. Thus, it is not open to the Bank to put the property of the petitioner No. 2 to sale. It was argued that the guidelines issued by the Bank are non-discretionary and non-discriminatory for settlement and, therefore, the petitioners having deposited the amount in terms of the said scheme, the bank has no jurisdiction to auction the property of the petitioners.
>
> 9. On the other hand, it is the stand of the respondents that the petitioners had entered into one time settlement in the year 2001. The amount was to be deposited in terms of such settlement upto 31.3.2002. The petitioners failed to deposit the amount settled before the date fixed and, therefore, the concessions extended to the petitioners are no longer available. Therefore, the bank is entitled to recover the amount as per recovery certificate issued by the Debt Recovery Tribunal. It has been pointed out that a sum of Rs. 2.3 crores with interest calculated upto 2.9.2005 is outstanding against the petitioner.
>
> 10. The petitioners have not made payment in terms of one time settlement, the acceptance of which was communicated to the petitioners on 30.3.2001. The deposit of balance 75% is much after the time stipulated for such settlement. The said amount has been deposited after filing of the present writ petition. It will not confer any enforceable right in

[13] 2006 AIR (Punjab) 95

favour of the petitioners seeking directing to the bank to accept such deposit. However, it is open to the petitioners to seek settlement of its outstanding dues from the Bank in terms of the guidelines which may be in force or be issued by the Reserve Bank of India in future.

11. Keeping in view the circumstances of the case discussed above, we do not find that the conduct of the bank is either unfair or unreasonable which may warrant interference in exercise of extra-ordinary writ jurisdiction of this Court.

12. Dismissed with no orders as to costs. Petition dismissed."

[Emphasis supplied]

(25) We find that the above cited judgment is distinguishable and would not be applicable to the facts of the present case. Firstly, no such argument was raised by the petitioner therein, that on account of circumstances beyond control, there occurred delay in repayment of the remaining settlement amount and therefore did not seek condonation of delay in making payment of the settlement amount. Therefore, the court did not have any opportunity to examine the validity of such explanation or justification, which could have been considered for condonation of delay. In fact, the specific argument raised by the petitioner therein was, that though its account was settled pursuant to RBI guidelines dated 27.07.2000 whereunder it could not deposit the entire settlement amount within the stipulated date, as mentioned in the settlement letter, but on account of revised guidelines dated 29.01.2003 issued by the RBI, another opportunity was given to the borrowers to come forward for settlement of the outstanding dues. It was thus contended that since, the petitioner therein had deposited the amount within the stipulated period of the revised guidelines, therefore, the payment made by the petitioner ought to be considered towards the settlement of the loan account. The Court did not accept the aforesaid argument and hence did not consider the payments deposited by the petitioner towards the settlement under the original scheme dated 27.07.2000. Secondly, it is to be noticed that in the aforesaid case, the settlement had taken place pursuant to OTS Scheme formulated by the Reserve Bank of India and not by the respondent therein – State Bank of India, therefore the State Bank of India was right in contending that it (the Bank) could not have extended the period provided under the aforesaid original scheme issued by Reserve Bank of India, having no jurisdiction to do so. Thirdly, the Court granted option to the petitioner

therein to seek settlement under the revised guidelines enforce or fresh settlement scheme, if any meaning issued by RBI. It is thus to be acknowledged that the entire context of the observations therein, were different and distinguishable. Lastly, in view of the later/recent judgment of the Hon'ble Supreme Court in ***P. Vijayakumari*** *versus* ***Indian Bank*** supra, wherein it has been held that condonation of delay while seeking extension in OTS is possible, no support can be drawn in favour of respondent on the basis of the aforesaid judgment. Thus, while dealing with the conspectus of the judgments on this issue, it is apparent that the consistent view has been that extension in OTS, is permissible in law.

(26) We have been informed that many of the banks have already provided for an extension of One Time Settlement under their respective Settlement Schemes itself. Such self contained provision enables the respective banks itself to extend the period of settlement, as originally agreed for between the parties. For the purpose of illustration, we notice that Punjab National Bank formulated a One Time settlement scheme titled as "**Policy on Compromise/Negotiated Settlement/Write Off/Waiver of Legal Action/Appeal etc.**", being Recovery Division Circular No. 05/2016, dated 20.02.2016, in which **Clause 24** deals with the "Payment Terms of OTS Amount" and **Clause 25** deals with "Extension of Time Period for Payment of OTS Amount". The relevant extract of the said policy reads as under:-

"**24. PAYMENT TERMS OF OTS AMOUNT**

> 24.1 As the name indicates 'One Time Settlement,' obviously acceptance of negotiated amount as one time down payment is preferable way of settlement compared to payment in installments.
>
> 24.2 Cases where the OTS amount is to be paid beyond a period of 3 months from the date of conveying approval, and/or payment in installments, future interest on the settlement amount to be charged atleast @ 6-10% on simple basis on reducing balance from the date of conveying approval in writing to the borrower by the branch. Within the aforesaid range appropriate rate of interest shall be stipulated by the competent authority looking to NPRV, attachable assets and other attendant circumstances of the case."

xxxx xxxx

"**25. EXTENSION OF TIME PERIOD FOR PAYMENT OF OTS AMOUNT**

25.1 Without further Sacrifice:

25.1.1Extension of time period beyond the originally stipulated due date of payment for OTS amount without any further sacrifice can be granted by respective sanctioning authorities maximum up to -

COCAC Level – I	FGMOCAC (previously COCAC Level-II)	HOCAC Level – II	HOCAC Level III	MC
12 months	15 months	18 months	24 months	Full

25.1.2 Same/Similar powers shall be exercised by a higher authority for the OTS proposal approved by their lower authority.

25.1.3 HOCAC Level III may approve extension as above even in cases sanctioned by MC.

25.2**With Further Sacrifice**

25.2.1 Extension of Time Period with further sacrifices i.e. without/partial payment of interest shall be placed to the next higher authority other than who had originally approved the OTS, who shall exercise the above powers subject to his delegated authority provided total sacrifice (sacrifice at the time of approval plus further proposed sacrifice of interest loss) remains in his powers. Proposals approved originally by MC shall be placed to MC only.

25.2.2 Proposals sanctioned by HOCAC Level II or earlier by Executive Director/HOCAC Level III or earlier by CMD/MD & CEO/Management Committee shall be considered by respective Sanctioning Authority within delegated powers."

(27) Apart from above, we have found a similar provision in the One Time Settlement Policy of Punjab and Sind Bank as well, by the name of "**Recovery Management Policy and Guidelines for Settlement / Write off in Borrowal Accounts (Amended)" dated 08.08.2018**, which also provides for extension of time in OTS, and the relevant extract of the same is as under :-

> “**B. EXTENSION / CONDONATION OF DELAY IN PAYING SETTLEMENT AMOUNT**
>
> The normally acceptable time in making payment of settlement amount alongwith interest is 12 months w.e.f. the date of intimation of sanction to the borrower. **If the sanction initially stipulates a repayment period less than 12 months, the same can be extended / condoned upto 12 months by the sanctioning authority.** There can also be cases where there is delay in repayment of settlement amount with interest which was initially sanctioned upto 12 months but the same is paid / proposed to be paid within a total repayment period of more than 12 months but not exceeding 24 months.
>
> **In such exceptional cases, after recording proper justification, an extension / condonation of delay can be considered** as under, subject to charging interest at one year MCLR (as applicable at the time of settlement) PLUS 2.5 % p.a. compounded monthly, on the defaulted amount for the period of delay, beyond 12 months period (during which the interest would be chargeable on simple basis).”

(28) We have been informed that keeping in view the current situation where the entire country has been adversely effected by COVID-19 pandemic, even State Bank of India, granted extension to all its borrowers who had settled their accounts under One Time Settlement Scheme by the name of SBI – OTS – 2019 wherein the last date of deposit of settlement was 31.03.20, which was first extended to 30.06.2020 and then to 30.09.2020. Ld. Counsel for the petitioner has brought to our notice one letter dated 26.08.2020, granting extension in time to pay the remaining settlement amount, written by the Deputy General Manager of State Bank of India, Stressed Assets Management Branch, Zonal Office Building, Civil Lines, Ludhiana to one of its borrowers which had settled the account under the OTS Scheme as mentioned above, the relevant extract of the said letter reads as under:-

> “As per the SBI OTS 2019 you were required to make the payment of Rs. 11,49,98,166/- upto 31.03.2020 and the said **period stands extended upto 30.06.2020** by the bank and it was extended upto 31.08.2020 and **now further extended upto 30.09.2020** with the interest @ MCLR for 3 months to be charged on the amount to be paid for the extended period of 3 months i.e. from 01.07.2020 to 30.09.2020”.

[Emphasis supplied]

(29) It is thus clear from the above few illustrations, that the banks themselves, have the discretion to extend the period of OTS keeping in view attending and demanding circumstances, which is only to ensure that ultimately the purpose of settlement is achieved.

(30) We are conscious of the fact, that each Institution has its own set of settlement policies but the reference of the aforesaid three settlement schemes by the three nationalised banks is only for illustrative purpose to bring home the point, that looked even from the perspective of the Financial Institutions, One Time Settlement is not cloaked with such rigorous principles which may not permit extension of period to pay the remaining/balance settlement amount. Had that been so, the banks itself would not have provided for an extension clause in their respective settlement policies. If the settlement policies of the banks itself provide for an extension subject to payment of interest, there is no reason to hold that the Courts in exercise of their equitable jurisdiction under Article 226 of the Constitution of India, cannot extend such time period of settlement.

(31) Further, it is also to be noticed, that invariably in all the settlement schemes or the policies, there are already sufficient checks and balances to identify eligible borrowers to whom such concessions can be extended to lead to an OTS. It is needless to mention that settlement takes place, only after the case of the borrower has been tested on the basis of criteria of eligibility for settlement provided under the scheme or policy itself. For example we see, that cases of wilful default and fraud are normally excluded. Once the borrower is found to be eligible and a settlement takes place, it is important to keep in mind, that during the period of settlement, minor differences *inter alia* extension to pay the remaining settled amount in deserving cases, are creased out, equities are balanced in terms of the policy itself by the bank officials so that the settlement achieves its final goal, aimed at the betterment of both the parties. An amicable settlement is drawn up to achieve a win-win situation for both the creditor and debtor. The former is able to recover the amounts, in a more simplified manner and then use the same in its commercial cycle to pump in more liquidity and resultant revenues. On the other hand, the latter is able to settle a long dispute so as to focus its attention to a more productive field, rather than being involved in a litigative sphere. In such a situation, a deserving borrower, who has deposited substantial amounts within the originally stipulated period of settlement, proved his *bona fides* and is

willing to clear the remaining in a reasonable period, and compensate the creditor with interest for the period of delay, should be considered with some flexibility to achieve the ultimate aim of such settlements. It is with this perspective, that extensions can be considered to be granted to deserving cases.

(32) Thus, in view of above, we answer this issue in **AFFIRMATIVE** and hold that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India would have the jurisdiction to extend the period of settlement as originally provided for, in the OTS letter.

ISSUE NO. 2

(33) This issue deals with the question as to whether the petitioners would be entitled for an extension of time in making balance payment of OTS or not. It is also to be seen whether the petitioners would be deserving of this concession or not.

(34) Once having held in Issue No. 1, that extension of time in making balance payment of OTS is permissible in law, it would now be appropriate to lay down certain illustrative guidelines, to be considered cumulatively or individually, on case to cases basis, whether an applicant would be entitled for an extension of OTS or not. In our view, some of them would be:-

i. **The Original Time provided in the Settlement** - In our considered opinion, the first and foremost aspect to be noticed would be the time period originally granted by the bank to pay off the settlement amount. If the time period originally stipulated in the settlement letter to pay off the settlement amount is short or is not excessive, the case for extension then could be considered. It is to be noticed that the borrower is to arrange funds to complete the OTS. If reasonable time period is not given, the very purpose of settlement would be defeated. In that eventuality application for extension can be considered so that the borrower gets a reasonable time to clear off the settlement amount and the ultimate purpose of settlement is achieved.

ii. **Extent of payments already deposited under the settlement or before filing of the petition** – While considering an application for extension of time under OTS, the prime objective to be noticed is the intention of the borrower to culminate the settlement. If the borrower has

already paid substantial amounts, to the creditor under the OTS, and for some remaining amounts, is seeking a reasonable extension, such requests can be considered favourably. This shows, that the applicant had an intention to clear the settlement and the deposit of substantial amounts, is an indication in this regard.

iii. **Reasons which led to delay in payment** – It is important to notice, the reasons, which led to the delay on the part of the borrower. If the borrower was prevented by certain reasons or circumstances beyond his control it could be a reason to consider an application for extension favourably. It would be imperative for the borrower to show, that he made his best efforts to ensure that the requisite amounts, are arranged within the specified time, but inspiteof all his best efforts, he could not arrange for the same.

iv. **Payments having been accepted by the Bank / Financial Institution, after the stipulated date** – If the bank or the Financial Institution has been accepting the payments from the borrower towards the settlement even after the stipulated period of time, it shows that the time was not the essence of contract. It would be apparent from such conduct of the parties, that certain amount of relaxation or flexibility in making the payment of OTS amount is reserved between the parties.

v. **Bona fide Intent of the borrower to pay the remaining amounts under the settlement** – In order to test the bonafide intention of such an applicant, it could be reasonably be tested while asking such an applicant to deposit some further amount, towards the balance amount before calling upon the bank to consider the issue of extension. If such amounts are deposited under the orders of Court and the bonafides are established, such an applicant would be entitled for a favourable consideration of an application for extension.

We would like to add a caveat, that if for any reason, the effort does not lead to extension of time, as prayed for by the petitioner, then the amounts deposited by the borrower/depositors under the interim orders of the Court, would have to be returnd back by the creditor to the

petitioner. We draw strength from the recent judgment of the Hon'ble Supreme Court in ***M/s Kut Energy Pvt. Ltd. v. Authorized Officer, Punjab National Bank bearing Civil Appeal No. 6016-6017/2019 decided on 20.08.2019***. In the said case, the petitioner therein deposited upfront amount with the Registry of the Court to show its bonafide in support of its OTS proposal which was offered for consideration to the bank. The bank while rejecting the proposal sought to adjust the upfront amount against the contractual dues. The plea of refund raised by the petitioner was rejected by the High Court, which led to filing of an appeal before the Hon'ble Supreme Court. While allowing the appeal, it was held that deposit of the amounts in terms of the interim order of the High Court was only to show the bona fides of the appellants when a revised offer was made by them. The deposit was not towards satisfaction of the debt in question. Hence, the bank was not justified in retaining the said upfront amount, while rejecting the OTS offer of the appellant therein and hence the bank ought to have refunded the upfront amount, if the OTS offer of the borrower was found to be unacceptable.

vi. **Time period being demanded by the applicant to clear the remaining / balance settlement amount.** – An applicant whose intention would be to clear the balance settlement amounts, would not claim for an unreasonable period of an extension, as otherwise, the intention would be to gain more time, without any actual intent to clear the settlement. In the facts and circumstances of each case, the Courts would therefore determine a reasonable period, to enable the borrower to clear the remaining settlement amount, subject ofcourse, to payment of reasonable interest for the delayed period, to balance the equities.

vii. **Attending factors and circumstances**– Attending factors and circumstances involved, while making an application for extension play an important role to identify eligible and deserving cases as also to determine the extent of extension to be granted. For example, the current situation where the entire country has been adversely effected on account of COVID-19 pandemic, the difficulties in arranging the amounts could be taken note of while

determining the period of extension to be granted to an applicant. Further, accounts which have suffered losses and became NPA on account of having suffered natural calamities, unfortunate accidents, fire incidents, thefts, damage by floods, storms etc. and have come forward for an eventual settlement, can also be considered for extension of time.

viii. **Irreparable loss and injury to the applicant** – While examining an application for extension of settlement, it could also be seen to be noticed, the extent of an injury to be suffered by an applicant.

(35) It is clarified that the guidelines/factors are not exhaustive but only illustrative for guidance of the parties and the courts while considering the prayer for extension of the time under by OTS by the borrower on case to case basis. We would like to add that the Courts would be free to consider the credentials of the borrower as well, being an equitable and discretionary relief.

(36) Coming back to the facts of the present case, and on examining the instant case on the basis of the factors laid down above, we find that the petitioner is entitled to extension of time to repay the remaining amount of settlement as we have not been able to agree with the contentions raised by the learned counsel for the respondent No. 2. The first contention of learned counsel for respondent No. 2 is that the petitioners have concealed the factum of having availed loans from other two banks and there being a litigation pending qua the same. The said argument cannot be a reason to reject the plea of the petitioners. Hon'ble Supreme Court in ***M/s SJS Business Enterprises Pvt. Ltd.*** *versus* ***State of Bihar***[14], held that as a general rule, suppression of a **material fact** by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the Courts to deter a litigant from abusing the process of Court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed, it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the Court, whatever view the Court may have taken. In the present case, the petitioner has prayed for extension of settlement period pursuant to an OTS entered with respondent No. 2 and has paid substantial portion of the same and is willing to pay the remaining with interest. In our

[14] 2004 (7) SCC 166

considered opinion, if the petitioners are in litigation with other creditors the same by no stretch of imagination constitutes to be a material fact, disclosure of which would have had any impact over the decision of the present case. So long as the respondent No. 2 is getting its money back, under a settlement voluntarily entered into by it, it would have no concern with what the petitioners are litigating with the other creditors. We therefore have no hesitation in rejecting this argument of the respondent.

(37) The next argument of the learned counsel for respondent No. 2 is that in another case bearing CWP No. 3683 of 2018 and CWP No. 5907 of 2018 this Court had rejected the similar submission regarding non disbursement of the dues under the Post Matric Scholarship Scheme, as advanced by the petitioner therein. A perusal of the said order, relied upon by the respondent would reveal that the petition has not been dismissed on the merits, rather the petitioner therein, has been relegated to avail the alternative remedy under Section 17 of the Securitisation and Reconstruction of Financial Assets of Enforcement of Security Interest Act, 2002. Moreover, the petitioner therein had laid challenge to the validity of the demand and possession notice issued by the Respondent Financial Institution which is quite different from the issue involved in the present case, where the petitioner is praying for grant of extension to repay the settlement amount, and the pleading regarding non disbursement of the dues to it by the Government is infact a reason given by the petitioner to demonstrate its financial difficulties which firstly led to the account being declared NPA and then delay in making payment of the settlement amount. We do not find even a persuasive value of the aforesaid order(s) relied upon by the counsel for the respondent much less any binding precedent in adjudication of the issue raised in the present petition. Therefore, we reject this argument of respondent No. 2 as well.

(38) The next argument of the learned counsel for respondent No. 2 is that this being the second settlement, and the petitioners having defaulted the same, are not entitled for any extension and concession already given, are revoked and the respondent-NBFC is now entitled to claim the entire amount with contractual interest *dehors* the terms of OTS. It is to be noticed that the respondent on its own will having entered into a second settlement cannot be permitted to have a grievance regarding the same. As regards the claim of the petitioners for extension is concerned, it is admitted fact, that the petitioners have

paid Rs. 83.80 lacs out of the settlement amount of Rs. 1.60 Crore, before filing of the present petition, and another sum of Rs. 30 lacs in compliance of the interim directions passed by this Court, sum totalling to Rs. 113.80 lacs as on today. This shows that the petitioners have paid more than 50% of the settlement amount before filing the petition. The time period provided to the petitioner to make payment of the settlement amount was about 6 months which cannot be said to be excessive. During the pendency of the present petition, the *bona fide* of the petitioners were tested and on two occasions i.e. vide order dated 28.02.2020 and 07.09.2020, they were directed to deposit Rs. 15 lacs each, which they have complied with. It is the respondent No. 2, which kept on accepting the amounts even after the settlement and did not issue any specific revocation of settlement letter. The financial difficulty of the petitioners to make the balance settlement amount has also been noticed i.e. the delay on the part of the Government to disburse the reimbursement to which the Institute of the petitioners were entitled to on account of Post Matric Scholarship Scheme, for which petitioners did make sufficient efforts by filing CWP No. 16997 of 2015 seeking direction to the Government to release the funds, which was allowed vide order dated 22.03.2016, and then the petitioners contested the interim stay granted by the Division Bench in LPA No. 1819/2017 and 410/2017 preferred by the Government challenging the final order passed by the learned Single Judge. The petitioners who are stated to be the founder members of the said Institutes were dependant upon the income so generated by the said Institutes and due its financial constraints, they were directly effected as initially their accounts were declared NPA and thereafter it led to delay in clearing the settlement amounts. We have also noticed the current attending circumstances, of widespread of COVID -19 pandemic, while considering to determine the extension of period to be granted to petitioners to clear the remaining dues. Further, the petitioners have also agreed to pay reasonable interest for the period of delay. Hence, we are unable to agree with the respondent and reject this argument as well.

(39) Learned counsel for respondent has further argued that in the writ petition, the petitioners themselves have claimed time till 30.09.2020 to repay the settled amount and now the petitioners are claiming another 9 months time to clear the remaining amounts. On the other hand, learned counsel for the petitioners has submitted that that the writ petition was filed in the last week of February 2020, when there was no outbreak of COVID- 19 pandemic, and therefore, they did

not expect any curfew or lockdown, which would have impacted their ability to pay. On evaluating the respective arguments from both sides, we find merit in the argument of the petitioners. The petitioners since were not expecting the subsequent unexpected developments of lockdown and curfew, had made a prayer keeping in view the position which existed in February 2020. It is well settled that in exercise of writ jurisdiction, the Court may mould the relief having regard to subsequent developments, the facts of the case and interest of justice [refer to ***Food Corporation of India*** *versus* ***S.N. Nagarkar***[15]**].** We are therefore, not much impressed by this argument of the respondent as well.

(40) To conclude, on a careful examination of facts and circumstances, of the present case as also the rival arguments of the parties, we find that since that the petitioners are entitled to extension of time to repay the remaining settlement amount, as they meet most of the factors deliberated upon in para No. 27.1 hereinabove (not repeated for the sake of brevity), they are entitled for extension of time. Though the petitioners, have pleaded that keeping in view the current situation where COVID-19 has adversely the capabilities of the petitioners, they may be permitted to repay the amount in 4 quarterly instalments (one year), but we feel that an extension of 6 months would be reasonable keeping in view the current situation. Thus, we hold and direct that the petitioners would have to pay the remaining amount due in two quarterly instalments, of which a sum of Rs. 25 lacs shall be payable on or before 31.12.2020 and the remaining amount by 31.03.2021. The petitioners shall also pay interest @ 9% p.a. simple on the delayed payments on reducing balance payable w.e.f. 01.06.2019 i.e. the closing date of the settlement/OTS. It shall be the responsibility of Respondent No 2 to calculate the amounts due on account of interest and inform the petitioners well in advance, so as to enable the petitioners to ensure adherance to the time schedule of repayment.

ISSUE NO. 3

(41) Learned counsel for the respondent No. 2 has argued that Reserve Bank of India has initiated insolvency proceedings under the provisions of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "Code, 2016") against respondent No. 2 by filing CP (IB)- 4258/MB/2019 in terms of Rule 5 of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial

[15] 2002 (2) SCC 475

Service Provider and Application to Adjudicating Authority) Rules, 2019, wherein an order dated 03.12.2019 **(Annexure R-2/5)** has been passed vide which, the aforesaid petition has been admitted and hence, on account of commencement of moratorium U/s 14 of the Code, 2016, the present writ petition would not be maintainable in view of Section 14(1)(a) of the Code, 2016.

(42) Before dealing with the argument, It would be advantageous to reproduce Section 14 of the Code, 2016 as under:-

> **"14. Moratorium.** - (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-
>
> (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
>
> (b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
>
> (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, *2002;*
>
> (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
>
> (2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
>
> [(3) The provisions of sub-section (1) shall not apply to-
>
> (a) such transaction as may be notified by the Central Government in consultation with any financial regulator;
>
> (b) a surety in a contract of guarantee to a corporate debtor.]
>
> (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency

resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be. ”

(43) A careful reading of Section 14 of the Code, 2016 would show that the purpose and object of the moratorium imposed by Section 14 is to preserve the assets of the Corporate Debtor (like respondent No. 2 herein) during the resolution process and to save the Corporate Debtor from its own management. Hon'ble Supreme Court in ***Swiss Ribbons Pvt. Ltd.*** *versus* ***Union of India***[16], in para No. 12 held as under :-

> "12. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters / those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. **The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process.** The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends."

[Emphasis supplied]

[16] 2019 (4) SCC 17

(44) Still further , Hon'ble Supreme Court in ***Rajendra K. Bhutta*** *versus* ***Maharashtra Housing and Area Development Authority***[17]***, held as under :-***

> "16. There is no doubt whatsoever that important functions relating to repairs and re-construction of dilapidated buildings are given to MHADA. Equally, there is no doubt that in a given set of circumstances, the Board may, on such terms and conditions as may be agreed upon, and with the previous approval of the Authority, handover execution of any housing scheme under its own supervision. However, when it comes to any clash between the MHADA Act and the Insolvency Code, on the plain terms of Section 238 of the Insolvency Code, the Code must prevail. This is for the very good reason that when a moratorium is spoken of by Section 14 of the Code, the idea is that, to alleviate corporate sickness, a statutory status quo is pronounced under Section 14 the moment a petition is admitted under Section 7 of the Code, so that the insolvency resolution process may proceed unhindered by any of the obstacles that would otherwise be caused and that are dealt with by Section 14. The statutory freeze that has thus been made is, unlike its predecessor in the SICA, 1985 only a limited one, which is expressly limited by Section 31(3) of the Code, to the date of admission of an insolvency petition up to the date that the Adjudicating Authority either allows a resolution plan to come into effect or states that the corporate debtor must go into the liquidation. For this temporary period, at least, all the things referred to under Section 14 must be strictly observed so that the corporate debtor may finally be put back on its feet albeit with a new management."

[Emphasis supplied]

(45) Even the aforesaid judgment reiterates the very purpose of imposing a statutory moratorium i.e. to alleviate corporate sickness. **This clearly shows that the precise intent to restrict initiation or continuation of proceedings against a Corporate Debtor is to preserve its assets so that during Corporate Insolvency Resolution Process (CIRP), the Corporate Debtor is subjected to remedial acts**

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[17] 2020 SCC Online SC 292

to improve its financial condition. It has been further held that Section 14 must be strictly observed so that the corporate debtor may finally be put back on its feet albeit with a new management. In these circumstances, we do not see as to how, with the relief so claimed by the petitioner herein, i.e. seeking to repay the settlement amount with interest, would adversely effect the interest or the assets of respondent No. 2.

(46) We find the present case is peculiar in nature, inasmuch as, usually it is Corporate Debtors of private and public nature which are subjected to Insolvency proceedings at the instance of the creditors (Financial / Operational). However, proceedings before the Adjudicating Authority i.e. the National Company Law Tribunal, in the present case, have been initiated against the Respondent/Financial Service Provider i.e. the creditor itself, at the instance of the Regulator i.e. Reserve Bank of India. Such proceedings against the Financial Service Provider are governed under the Code, 2016 by virtue of Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Provider and Application to Adjudicating Authority) Rules, 2019 (hereinafter referred to as "Rules,2019"). Relevant portion of Rule 5 of the said Rules, 2019 read as under :-

> "**5. Corporate Insolvency Resolution Process of financial service providers**.— The provisions of the Code relating to the Corporate Insolvency Resolution Process of the corporate debtor shall, mutatis mutandis apply, to the insolvency resolution process of a financial service provider subject to the following modifications, namely:—
>
> (a) **Initiation of Corporate Insolvency Resolution Process.-**
>
> (i) no corporate insolvency resolution process shall be initiated against a financial service provider which has committed a default under section 4, except upon an application made by the appropriate regulator in accordance with rule 6;
>
> (ii) the application under sub-clause (i) shall be dealt with in the same manner as an application by a financial creditor under section 7, subject to clause (iii); and
>
> (iii) on the admission of the application, the Adjudicating Authority shall appoint the individual proposed by the appropriate regulator in the application filed under sub-

clause (i) of clause (a) of rule 5, as the Administrator.

(b) **Moratorium**.- Save as provided in section 14,-

(i) an interim moratorium shall commence on and from the date of filing of the application under clause (a) till its admission or rejection; and

(ii) the license or registration which authorises the financial service provider to engage in the business of providing financial services shall not be suspended or cancelled during the interim-moratorium and the corporate insolvency resolution process.

Explanation.- For the purposes of this clause, "interim moratorium" shall have the effect of the provisions of sub-sections (1), (2) and (3) of section 14.

xxx xxxx"

(47) It can be seen from the aforesaid provision, that during the continuation of moratorium the license or registration of financial service provider which authorises the financial service provider to engage in the business of providing financial services shall not be suspended or cancelled. It therefore, continues to maintain and retain its character as Financial Service Provider, even during the period of moratorium, in so far as its debtors are concerned. This assumes significance of the objective of moratorium, in relation to Insolvency Proceedings of Financial Service Provider. In our view, a holistic reading of Section 14 read with Rules, 2019 in the peculiar facts of the present case particularly when it is pertaining to Insolvency proceedings of the financial service provider, cannot be stretched to mean that proceedings which are non-adversarial in nature, like the instant proceedings, which aim at replenishing the funds to the back into the coffers of such financial service provider, would not be maintainable in view of Section 14 of the Code, 2016 read with Rules, 2019.

(48) It is to be noticed that Insolvency proceedings under the Code, 2016 commence when the Adjudicating Authority i.e. National Company Law Tribunal is satisfied, that the Corporate Debtor is unable to meet its financial obligations and hence the petition is admitted and an independent person by the name of Resolution Professional or Administrator, as in this case, is appointed in place of management. After the admission order, moratorium is imposed under Section 14 of

the Code, 2016 to prevent institution or continuation of any proceedings against the interest of the Corporate Debtor or intending to enforce rights against the assets of the Corporate Debtor. **On the contrary**, the relief claimed in the present case, is to pay back to the Corporate Debtor with interest, an amount which was agreed to be settled by respondent No. 2 much prior to the passing of the admission order. Further, there is not even a remote allegation pleaded or argued by respondent No. 2 to contend, that the settlement in any way was an act contrary to the interest of respondent No. 2. It is, therefore, a commercial decision taken by an institution, agreeing to settle a debt of the borrower for the stipulated amount. It is this amount, which the petitioner is willing to pay and is seeking a direction to grant an extension to pay this amount with interest. We have not been able to comprehend as to how this kind of litigation can be treated to be an adversarial litigation or would in any way adversely effect the interests or assets of the Corporate Debtor. Rather, this would enhance the assets and liquidity of the respondent, precisely which is required while insolvency proceedings are in process. It is thus evident, that the present proceedings would not fall within the ambit of Section 14(1)(a) of the Code, 2016.

(49) Further, if the argument of respondent No. 2 is accepted, a very anomalous situation would arise, where respondent No. 2 would continue with its coercive action against the secured/mortgaged assets owned by the petitioners and the petitioners would be left remediless. Law cannot be permitted to be interpreted in such a manner which would put the petitioners in an unreasonably disadvantageous position, leaving it remediless virtually to the mercy of respondent No. 2/lender [refer to para 31 in ***Sunil Vasudeva*** *versus* ***Sundar Gupta***[18]]. A relief of such a nature, where petitioner is coming forward to pay his dues, cannot be denied on such limited interpretation of Section 14(1)(a) of the Code, 2016. Moreover, pursuant to two interim directions of this Court dated 28.02.2020 and 2.9.2020 passed by this Court, the petitioners complied with the same and deposited Rs. 30 lacs to show their bonafide in support of their claim in the writ petition. Respondent No. 2 having accepted the aforesaid amounts from the petitioners without any protest or demur during the pendency of petition, we find it unreasonable for respondent No. 2 to claim that the petition is not maintainable.

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[18] 2019(8) SCALE 488

(50) Moreover, in our considered opinion, a relief of such nature claiming extension payment of balance settlement amount pursuant to mutually agreed OTS by the borrower cannot be considered by the Adjudicating Authority / Tribunal while exercising its jurisdiction under the Code, 2016. The judgments referred to us in paras No. 14-18, while deciding Issue No. 1, have considered granting extension in OTS in exercise of jurisdiction of this Court under Article 226 of the Constitution of India which is also an equitable jurisdiction. It is well settled, that every provision must be interpreted with the precise aim and object of the Statute, for which it was enacted. Code, 2016 was enacted with the primary object to provide for a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues. In our view, the relief as sought for by the petitioner, in no way runs contrary to the object of the Code, 2016 or the precise purpose for which Section 14 was provided for. It is precisely for this reason, that we believe that making such an argument by the respondent is a self defeating argument. On one hand, the respondent, is facing liquidity issues resulting into initiation of insolvency proceedings and surprisingly on other hand is opposing the prayer of a borrower who intends to make payment to the respondent, which should be the need of the hour, as far as the respondent is concerned. We are yet to notice a plea taken by an entity facing insolvency proceedings, to oppose the prayer of the petitioner which is proposing to make payment of its dues payable to respondent. In our opinion, the interpretation sought to be given by the respondent, is a self defeating argument and hence we express our inability to accept the same.

(51) In view of above, we answer this issue in **AFFIRMATIVE** and hold that in the peculiar facts and circumstances of the present petition, the petition would be maintainable.

RELIEF

(52) In view of aforesaid reasons, the present **petition** stands **allowed**. We **hold** and **direct** that the petitioners would have to pay the remaining amount due pursuant to OTS dated 02.01.2019 **(P-11)** in two quarterly instalments, of which a sum of Rs. 25 lacs shall be payable on or before 31.12.2020 and the remaining amount by 31.03.2021. The petitioners shall also pay interest @ 9% p.a. simple on the delayed payments on reducing balance payable w.e.f. 01.06.2019 i.e. the

closing date of the settlement/OTS. It shall be the responsibility of respondent No 2 to calculate the amounts due on account of interest and inform the petitioners well in advance, so as to enable the petitioners to adhere to the time schedule of repayment.

(53) Since the main case itself has been decided / allowed, no orders are required to be passed in the pending miscellaneous application(s), and the same stand(s) disposed of.

Sanjeev Sharma, Editor and Shubreet Kaur