* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 30.05.2025

\+ **W.P.(C) 7939/2025, CM APPLs 34917-18/2025**

BHADRA INTERNATIONAL INDIA PVT LTD & ORS. .....Petitioners

Through: Mr. Rajiv Nayyar and Mr. Ashish Mohan, Senior Advocates with Mr. Samarth Chowdhury, Advocates.

versus

PUNJAB NATIONAL BANK & ORS. .....Respondents

Through: Ms. Nishi Chaudhary, Mr. Yashartha Gupta Advocates for respondent no.1/PNB

Mr. Santosh Kumar Rout, Standing Counsel for Indian Bank/respondent no.2 with Mr. Dhama Veragi, Ms. Shruti Tripathi and Mr. Shakshi Raj, Advocates (M:9990432878).

Mr. Brijesh Kumar Tamber, Ms. Avani Mukherjee, Mr. Prateek Kushwaha, Mr. Yashu Rustagi and Mr. Sahas Bhasin, Advocates for respondent no.3/UCO Bank.

Mr. Sandeep Sethi, Mr. Jeevesh Nagrath, Senior Advocates with Mr. Hardeep Sachdeva, Mr. Parag Maini, Mr. Sanjeev Sachdeva, Mr. Raghav Chadha, Ms. Swati Sharma, Mr. Maaz Ahmed, Ms. Hema Sakhija and Ms. Kritika Rajpal, Advocates for respondent no.4.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present petition under Article 226/227 of Constitution of India, the petitioners seek the following prayers:-

> *A. Direct Respondents No. 1 to 3 to adhere to and implement the binding terms of the One Time Settlement recorded in the Joint Lenders Meeting dated 28 March 2025;*
> *B. Restrain Respondent No. 3, UCO Bank, from taking any coercive measures concerning the Secured Assets of the Petitioners in furtherance of Sale Notices issued on 28 March 2025 and 05 May 2025;*
> *C. Quash and set aside the auctions/sale carried out pursuant to the Sales Notices issued on 28 March 2025 and 05 May 2025 in breach of the OTS recorded in the Joint Lenders Meeting dated 28 March 2025;…*

2. The facts in a nutshell are that from 2010-2019, petitioners No.1 and 2 availed various credit facilities from Respondents No. 1 to 3 ('Consortium of lenders') which they were unable to fully repay. Consequently, their accounts were declared as Non-Performing Assets ('NPA') on 31.03.2021. A recall notice was issued by the consortium on 28.02.2022. The petitioners' case is that they made a number of efforts to settle the dispute, and brought on board respondent No.4, who was willing to settle the dues for Rs 300 Crores in an OTS. A Joint Lenders Meeting (JLM) was conducted on 28.03.2025 wherein the respondents No.1-3 agreed to the terms of the OTS. But later on, respondent No.3 has unilaterally proceeded with securitisation proceedings and issued Sale Notices dated 28.03.2025 and 05.05.2025, and hence the petitioners have filed the present petition.

3. A preliminary objection has been raised on behalf of the respondent Banks as to the maintainability of the present petition by contending that it is the DRT and DRAT which, in exercise of their powers under Section 17 and 18 of the SARFAESI Act respectively, have the requisite jurisdiction to

entertain the reliefs sought herein.

4. Learned Senior Counsels for the petitioner seeks a sympathetic consideration of the OTS proposal of the petitioners by the respondents No.1 to 3. Reliance is placed on the decision of Supreme Court in Plasto Pack, Mumbai vs. Ratnakar Bank Ltd.[1] It is further submitted that the unilateral action of respondents No.3/UCO Bank in issuing Sale Notices dated 28.03.2025 and 05.05.2025 are in breach of the consensus arrived at by the Consortium of Lenders in the JLM. It is further submitted that respondent No.4 through petitioner No.2 has already deposited Rs. 4.95 Crores with respondent No.3 which has already been encashed on 29.04.2025. It is further submitted that a further sum of Rs 30 Crores has also been deposited in the non-lien account of respondent No.1. It is contended that the Sale Notice dated 05.05.2025 pertained to 2 properties in the *Samalakha Village*, having a reserve price of Rs. 41.80 Crores and Rs. 222.30 Crores respectively. While for the first property, a solitary offer of Rs 41.25 Crores was received, for the second property no offer was received at all. Learned Senior Counsels state, on instructions, that the petitioners alongwith respondent No.4, in order to show their willingness, are ready and willing deposit another sum of Rs 10-30 Crores with this Court.

5. Learned counsel for respondent No.3/UCO Bank submits that there has been a material suppression of facts by the petitioners. It is submitted that Sale Notices pertaining to the properties at *Plot No.42 Rani Jhansi Road* and *Samalakha Village* had already been challenged before the DRT in SA/5/2025 and SA/20/2024 respectively, both of which stand dismissed. It is further submitted that a review of the dismissal order in SA/5/2025 was also

unsuccessful, however the petitioners have failed to assail the said dismissal orders before the DRAT, instead choosing to approach this Court. It is submitted that the orders passed in these securitisation applications under Section 17 of the SARFAESI Act have not been disclosed or annexed with the present petition, which is a suppression of material facts. It is submitted that the petitioner, choosing not to pursue the statutory remedies under the SARFAESI Act, cannot now seek the same reliefs by invoking the writ jurisdiction. Reliance is placed on the decisions in Celir LLP vs. Bafna Motors (Mumbai) Pvt. Ltd. and Ors[2]; Mardia Chemicals Ltd. and Ors. vs. Union of India and Ors. [3] and Bijnor Urban Cooperative Bank Ltd. vs. Meenal Agarwal and Ors.[4] It is also submitted that the reliance placed by the petitioners on the decision in Plasto Pack, Mumbai (Supra) is misplaced since the same is prior to the enactment of the SARFAESI Act. Lastly, it is submitted that the OTS relied upon by the petitioner already stands rejected vide email dated 11.04.2025 and as of now there is no OTS before the Bank pending consideration.

6. Learned counsel for the respondent No.1 has also raised an objection as to the maintainability of the present proceedings.

7. Learned Senior Counsel for the respondent No.4 has supported the case of the petitioner and submits that the respondent No.4 is willing to go ahead with the OTS offer.

8. I have heard learned counsel for the parties and gone through the records.

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[1] (2001) 6 SCC 683.
[2] (2024) 2 SCC 1.
[3] (2004) 4 SCC 311.
[4] (2023) 2 SCC 805.

9. SARFAESI Act has been enacted to tackle the problem of unrecovered debts and provide for a speedier mechanism since the normal process of recovery of debts through litigation is a lengthy and time consuming process. SARFAESI adopts a faster and more streamlined process for recovery of dues declared as NPAs which is intended to ensure better availability of capital liquidity and resources in the country. In fact, jurisdiction of civil courts have been ousted in Section 34 of the SARFAESI Act. Section 13 of the Act is the main enforcing provision which provides a slew of measures which the secured creditor can take to enforce his security interest, including sale for realising the secured asset. Any person (including borrower) who is aggrieved by the action of a secured creditor under Section 13(4), can make an application to the DRT under Section 17 of the SARFAESI Act. The DRT has the jurisdiction to determine whether the measures undertaken are in conformity with the Act and rules. If the DRT determines that the action of secured creditor was not in accordance with law, it can make a declaration to that effect and also restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person. Any person aggrieved by the order of the DRT can approach the DRAT under Section 18 of the Act. Thus, it is seen that the statute provides a specific and comprehensive mechanism for challenging the measures taken by the secured creditor. In view of this, the question arises whether this Court, in writ jurisdiction can review the very same measures.

10. Rule of exhaustion of alternate remedy states that this Court would not normally exercise its writ jurisdiction under Article 226 of the Constitution if an effective remedy is available to the aggrieved person. Though this rule

is a rule of discretion and is not without exceptions, however, it is strictly enforced in cases such as that of recovery of public dues, especially when special legislations have been enacted by the legislature for this very purpose and an alternate quasi-judicial forum has also been provided to adjudicate only on this particular aspect.

11. The Supreme Court, in the case of Bafna Motors (Supra), have categorically held that equitable considerations cannot be applied under Article 226 of the Constitution to override the statutory auction process prescribed under the SARFAESI Act, particularly when the borrower had already approached the DRT under Section 17 of the Act. A reference may be made to some relevant excerpts from the said decision:-

> "*97. This Court has time and again, reminded the High Courts that they should not entertain petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person under the provisions of the SARFAESI Act. This Court in Satyawati Tondon [United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260] made the following observations : (SCC pp. 123 & 128, paras 43-45 & 55)*
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> > *"43. Unfortunately, the High Court [Satyawati Tondon v. State of U.P., 2009 SCC OnLine All 2608] overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.*
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> > *44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate*

cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.

45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.

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55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

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101. More than a decade back, this Court had expressed serious concern despite its repeated pronouncements in regard to the High Courts ignoring the availability of statutory remedies under the RDBFI Act and the SARFAESI Act and exercise of jurisdiction under Article 226 of the Constitution. Even after, the decision of this Court in Satyawati Tondon [United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260] , it appears that the High Courts have continued to exercise its writ jurisdiction under Article 226 ignoring the statutory remedies under the RDBFI Act and the SARFAESI Act.

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110.1. The High Court was not justified in exercising its writ jurisdiction under Article 226 of the Constitution more particularly when the borrowers had already availed the alternative remedy available to them under Section 17 of the SARFAESI Act.

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110.5. The High Court under Article 226 of the Constitution could not have applied equitable considerations to overreach the outcome contemplated by the statutory auction process prescribed under the SARFAESI Act."

12. Since the petitioners herein are aggrieved by respondent No. 3 issuing sale notices and undertaking the securitisation process, the appropriate remedy lay in approaching the DRT in an application under Section 17 of the SARFAESI Act. If the petitioners continues to remain aggrieved, they could have approach the DRAT under Section 18 of the Act. It has come to light that the petitioners did approach the DRT by way of securitisation applications under Section 17 of the Act challenging the issuance of sale notices and auction process by respondent No.3 in SA/20/2024 with respect to the land in *Samalakha* and in SA/5/2025 for the property at *Rani Jhansi Road*. It is pertinent to note that in both the applications, the factum of the petitioners making settlement offers in JLM was brought to the attention of the DRT, which took the same in account, and noted that mere pendency of settlement proposals could not be considered for granting any interim relief and consequently, both the applications were dismissed vide orders dated 19.06.2024 and 16.04.2025 respectively. While no appeal was preferred under Section 18 of the SARFAESI Act with respect to SA/20/2024, an application was filed for the review of the dismissal order in SA/5/2025, and even that stands dismissed vide order dated 09.05.2025. DRAT has not been approached in the case of SA/5/2025 either.

13. It is seen that proper disclosure of these proceedings before the DRT has not been made in the present petition. Neither these securitisation applications, nor the orders passed therein have been placed on record by the petitioners. Only a passing and vague mention is made in the petition to the replies of the respondent No.3 to SA/5/2025 and its review, however, no mention is made about the own stand of the petitioners before the DRT. Notably, only a copy of replies in SA/5/2025 and the Review application is

filed that too without the documents especially the order passed by the Tribunal.

14. Respondent No.3 has taken a categorical stand that the OTS offer already stands rejected and this rejection was communicated to the petitioners vide email dated 11.04.2025. It has further been stated that no OTS proposal is under consideration by the respondent no.3 at present. It is trite law that this Court cannot direct the banks to accept the OTS if they do not find it financially viable. Reference in this regard may be made to the decision of Supreme Court in Bijnor Urban Cooperative Bank Ltd (Supra) wherein it was held that:-

> *14. The sum and substance of the aforesaid discussion would be that no writ of mandamus can be issued by the High Court in exercise of powers under Article 226 of the Constitution of India, directing a financial institution/bank to positively grant the benefit of OTS to a borrower. The grant of benefit under the OTS is always subject to the eligibility criteria mentioned under the OTS scheme and the guidelines issued from time-to-time. If the bank/financial institution is of the opinion that the loanee has the capacity to make the payment and/or that the bank/financial institution is able to recover the entire loan amount even by auctioning the mortgaged property/secured property, either from the loanee and/or guarantor, the bank would be justified in refusing to grant the benefit under the OTS scheme. Ultimately, such a decision should be left to the commercial wisdom of the bank whose amount is involved and it is always to be presumed that the financial institution/bank shall take a prudent decision whether to grant the benefit or not under the OTS scheme, having regard to the public interest involved and having regard to the factors which are narrated hereinabove.*
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> *15. In view of the aforesaid discussion and for the reasons stated above, we are of the firm opinion that the High Court, in the present case, has materially erred and has exceeded in its jurisdiction in issuing a writ of mandamus in exercise of its powers under Article 226 of the Constitution of India by directing the appellant Bank to positively consider/grant the benefit of OTS to the original writ petitioner. The impugned judgment and order [Meenal Agarwal v. State of U.P., 2021 SCC OnLine All 989] passed by the High Court is hence unsustainable and deserves to be quashed and set aside and is accordingly quashed and set aside.*

15. In view of the petitioners already approaching the appropriate forum at DRT and the stand of the respondent No.3 that no OTS proposal is under consideration, this Court does not deem it fit to exercise its writ jurisdiction and consequently, the present petition is dismissed alongwith pending applications.

MANOJ KUMAR OHRI
(JUDGE)

MAY 30, 2025/*ry*