

Appeal No. 69 of 2019-DRAT-Kolkata

IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA

Appeal No. 69 of 2019

(Arising out of M.A. 09 of 2019 in O.A. 70 of 2014 in DRT, Cuttack)

**HON'BLE MR. JUSTICE ANIL KUMAR SRIVASTAVA
CHAIRPERSON**

State Bank of India, a body corporate constituted under the State Bank of India Act, having its Central Office at Madam Cama Road, Mumbai-400021, Local Head Office at Pt. Jawaharlal Nehru Marg, Bhubaneswar-751001 and having its branch office at Stressed Assets Recovery Branch, Cuttack, at Madhupatna, Cuttack – 753 .010 under P.S.- Madhupatna ... Appellant

-Versus-

1. M/s. Kamyab Television Private Limited, Represented through its Managing Director, Sri Manoj Dash, at 159, Alaka Building, Unit-2, Ashok Nagar, Bhubaneswar - 751 009, District – Khurda;
2. Sri Manoj Dash, son of Goura Charan Dash, Managing Director of M/s. Kamyab Television Private Limited , at F/2, Amruta Residency, Jaydev Vihar. Bhubaneswar - 751 013 (Odisha);
3. Smt. Lipi Dash, wife of Sri Manoj Dash, Director of M/s. Kamyab Television Private Limited at F/2, Amruta Residency, Jaydev Vihar, Bhubaneswar - 751 013 (Odisha);
4. Sri Prafulla Kumar Mishra, since deceased substituted by his legal representatives vide order dated 14.5.2024:
 - 4(A) Anshuman Mishra, son of Late Prafulla Kumar Mishra, at Parad Padia, Ward No. 10 Behind Surya Niwas, P.O./P.S. Baripada, District: Mayurbhanj, Odisha; P.I.N. -757 001;
 - 4(B) Arati Mishra, widow of Late Prafulla Kumar Mishra, at Parad Padia, Ward No. 10 Behind Surya Niwas, P.O./P.S. Baripada, District: Mayurbhanj, Odisha; P.I.N. -757 001;
 - 4(C) Linu Mishra, daughter of Late Prafulla Kumar Mishra, at Parad Padia, Ward No. 10 Behind Surya Niwas, P.O./P.S. Baripada, District: Mayurbhanj, Odisha; P.I.N. -757 001;
 - 4(D) Lipi Das, daughter of Late Prafulla Kumar Mishra, at Brahma Mandir Sati Unit No. 10, P.O./P.S. Baripada, District: Mayurbhanj, Odisha; P.I.N. -757 001;
5. Smt. Sulochana Dash @ Manujubala Dash, wife of Goura Chandra Dash, at Plot No. 1962, Sriram Nagar, Old Town, Bhubaneswar - 751 002, District: Khurda;
6. M/s. Kamyab Exports Private Limited, Represented through its Managing Director, at F/2, Amruta Residency, Jaydev Vihar, Bhubaneswar - 751 013 (Odisha).

... Respondents

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Counsel for Appellant ... Mr. Debasish Chakrabarti

Counsel for Respondents ... None

JUDGMENT : 7th July, 2025

THE APPELLATE TRIBUNAL :

1. Heard the Learned Counsel for the Appellant and perused the record. None appears for the Respondents despite service.

2. Instant appeal has arisen against judgment and order dated 21.2.2019, passed by Learned DRT, Cuttack, allowing M.A. 09 of 2019. (State Bank of India -vs- M/s. Kamyab Television Private Limited & Others).

3. As per the pleadings of the parties, it appears that an O.A. was filed by the Bank for realization of a sum of Rs.5,81,26,384.02p wherein the Respondents No. 4 and 5 herein were a mortgagors. It appears from the record that the Respondent, namely, Manoj Dash, was in judicial custody in some matter. One OTS Scheme, being SBI One Time Settlement-2017 was floated by the Appellant Bank for settlement of N.P.A. and Aucas in Manufacturing Trade, Services and Agricultural Sector, being SBI OTS 2017, which was in force wherein the proposal for One Time Settlement was arrived at between the parties for an amount of Rs.9,00,804.00 at 35% of the OTS amount, i.e. Rs.6,75,604.00 was deposited on 27.11.2007. Last date for compliance under the Scheme was 30th April, 2018. Rest of the amount i.e. Rs.47,29,222.00 could not be deposited by the stipulated date, i.e. 30th April, 2018, and an extension

was sought from the Bank which was refused. Thereafter, M.A. was filed before the Learned DRT which was allowed by the Learned DRT by passing the impugned order directing the Bank to collect the Demand Draft from the Respondent. The Bank is entitled for 10% interest simple from 30th April, 2018 till 20th February, 2019 and the balance amount of OTS Rs.47,29,222.00 which is paid by the Respondent No. 2. Further interest is to be calculated by the Bank and to be informed to the Respondent which shall be deposited by him and notice shall be issued by the Bank. Feeling aggrieved by the impugned order, Bank preferred the appeal.

4. Learned Counsel for Appellant would submit that the Scheme was effective till 30th April, 2018 but the amount was not deposited by the Respondents. A request was made for extension of time which was duly replied and rejected vide letter dated 23.4.2018. Thereafter, Scheme expired on 30th April, 2018. Learned DRT erred in passing the impugned order.

5. It is undisputed that SBI One Time Settlement Scheme was launched by the Bank which was non-discretionary and non discriminatory and was in force till 30th April, 2018. Respondents herein could not fulfill the conditions within the stipulated period and sought for extension of time which expired on 30th June, 2018 on the ground that some transactions and proposal of the Respondent are at final stage which may take some time accordingly time for making the deposit may be extended till 30th June, 2018. This request was declined by the Bank on 23.4.2018

referring to paragraph 4 of the Sanction Letter No. SARB/CTC/08/585 dated 30.10.2017 which reads as under:

"2) As per the terms & conditions enumerated in sanction letter No. SARB/CTC/08/585 dt. 30.10.2017 in para IV it is mentioned that "the balance amount can be paid within 6 months from the date of the letter i.e. 30/04/2018 (the validity period) together with interest @ MCLR + 2% for six months failing which the OTS sanction will be rendered in-fructuous."

3) The said OTS scheme is non-discretionary and non-discriminatory and it is strictly time bound one. Hence your request for extension of two months time i.e. upto 30/06/2018 is not acceded to. Therefore, please arrange to deposit the balance amount of OTS amount together with interest due within 30/04/2018, otherwise you will be liable to pay the total dues of the bank i.e. principal with interest & other expenses accrued to your loan account."

6. Thereafter M.A. was filed by the Respondents on the ground that he was in judicial custody thereafter on release he fell ill and could not make the deposit. Learned DRT was persuaded by this ground and allowed the application.

7. It is held by the Hon'ble Apex Court in ***Bijnor Urban Co-operative Bank Limited, Bijnor & Others -vs- Meena Agarwal & Others 2021 SCC Online SC 1255*** that in a case of OTS Scheme grant of benefit of OTS Scheme cannot be prayed as a matter of right and the same is subject to fulfilling the liability criteria mentioned in the Scheme. A procedure is set for grant of benefit of OTS Scheme to a Borrower. Further, in the aforesaid case the Hon'ble High Court granted benefit under the OTS Scheme by issuing a Writ of Mandamus which was quashed by the Hon'ble Apex Court holding that the High Court failed to consider the Scheme in its true perspective and has issued a Writ of Mandamus as if the grant of benefit under the OTS Scheme can be claimed as a matter of right. In paragraphs 28 to 30 it has been held that:

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"28. Even otherwise, as observed hereinabove, no borrower can, as a matter of right, pray for grant of benefit of One Time Settlement Scheme. In a given case, it may happen that a person would borrow a huge amount, for example Rs. 100 crores. After availing the loan, he may deliberately not pay any amount towards installments, though able to make the payment. He would wait for the OTS Scheme and then pray for grant of benefit under the OTS Scheme under which, always a lesser amount than the amount due and payable under the loan account will have to be paid. This, despite there being all possibility for recovery of the entire loan amount which can be realised by selling the mortgaged/secured properties. If it is held that the borrower can still, as a matter of right, pray for benefit under the OTS Scheme, in that case, it would be giving a premium to a dishonest borrower, who, despite the fact that he is able to make the payment and the fact that the bank is able to recover the entire loan amount even by selling the mortgaged/secured properties, either from the borrower and/or guarantor. This is because under the OTS Scheme a debtor has to pay a lesser amount than the actual amount due and payable under the loan account. Such cannot be the intention of the bank while offering OTS Scheme and that cannot be purpose of the Scheme which may encourage such a dishonesty.

29. If a prayer is entertained on the part of the defaulting unit/person to compel or direct the financial corporation/bank to enter into a one-time settlement on the terms proposed by t/him, then every defaulting unit/person which/who is capable of paying its/his dues as per the terms of the agreement entered into by it/him would like to get one time settlement in its/his favour. Who would not like to get his liability reduced and pay lesser amount than the amount he/she is liable to pay under the loan account? In the present case, it is noted that the original writ petitioner and her husband are making the payments regularly in two other loan accounts and those accounts are regularised. Meaning thereby, they have the capacity to make the payment even with respect to the present loan account and despite the said fact, not a single amount/installment has been paid in the present loan account for which original petitioner is praying for the benefit under the OTS Scheme.

30. 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".

8. In the case of *State Bank of India -vs- Aravindra Electronics Private Limited* 2022 SCC OnLine SC 1522 = (2010) 8 SCC 110, *Union Bank of India -vs- Satyawati Tondon & Others*, the Hon'ble Apex Court has

placed reliance upon *Bijnor Urban Co-operative Bank Limited* (supra).

9. When the One Time Settlement Scheme was effective till 30th April, 2018 and a request was made by the Respondent for an extension of time which was duly considered and rejected by the Bank, Learned DRT was not within its jurisdiction to extend the time. It was a non-discretionary scheme which should have been and should be followed by one and all. Impugned order suffers from material illegality. Accordingly, the appeal deserved to be allowed.

O R D E R

Appeal is allowed. The impugned judgment and order dated 21.2.2019, passed by Learned DRT, Cuttack, allowing M.A. 09 of 2019 (State Bank of India -vs- M/s. Kamyab Television Private Limited & Others), is set aside.

Consequently M.A. 09 of 2019 stands dismissed.

No order as to costs.

Copy of the order be supplied to Appellant and the Respondents and a copy be also forwarded to the concerned DRT.

File be consigned to Record room.

Order pronounced in open Court.

(Anil Kumar Srivastava,J)
Chairperson

