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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION NO. 119 OF 2016
ALONG WITH
NOTICE OF MOTION NO. 81 OF 2017

The Abhyudya Co-operative Bank Ltd.
(A Multi State Co-operative Society)
having its Administrative Office at K.K. Tower,
Abhyudaya Bank Lane,
G.D. Ambekar Marg, Parel Village,
Mumbai – 400 012. ... Petitioner/ Applicant

V/s.

1. M/s. Rainproof
through its Proprietor Prakash Thakkar,
having office at 139, Masjid Bunder Road,
Mumbai – 400 003.

2. M/s. Rainproof Exports Pvt. Ltd.,
A Private Limited Company registered
Under the provisions of the Companies Act 1956
Having its registered office at 139,
Masjid Bunder Road, Mumbai – 400 003. ... Respondents

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Mr. Vishal Chandrakant Ghosalkar a/w M/s. Kshama R. Bhandari, Advocates for the Petitioners/Applicants.
Mr. Gaurav Joshi, Senior Advocate a/w Mr. Arun Panicker and Ms. Aditi Bhat i/by M/s. Markand Gandhi and Co., Advocates for the Respondents.

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CORAM : R.D. DHANUKA, J.

RESERVED ON : 24th JULY, 2019

PRONOUNCED ON : 6th AUGUST, 2019

-: J U D G M E N T :-

. By this petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Arbitration Act'), the petitioner has impugned the Arbitral Award dated 29th April 2016 passed by the leaned Arbitrator, allowing substantial part of the claim of the respondent and directing the petitioner to refund an alleged excess amount of Rs.2,35,29,720/- to the respondents within a period of one month from the date of receipt of the said award. Some of the relevant facts for the purpose of deciding this petition are as under:-

2. Sometime in the year 1995, the respondent no.1 was granted Cash Credit facility by the petitioner in the sum of Rs.15 lakhs. On 30th January 1995, the respondent no.2 was granted Term Loan facility in the sum of Rs.52 lakhs by the petitioner, repayable in 60 monthly installments. On 30th January 1995, the respondent no.2 was also granted Cash Credit facility by the petitioner in the sum of Rs.45 lakhs. Till 31st January 1995, the respondent no.2 only paid a

sum of Rs.1 lakh against the repayment of the Cash Credit facility to the petitioner. It is the case of the respondents that the Cash Credit facility remained overdrawn till about January 1996 with an outstanding balance of Rs.54,55,342/- against the sanctioned limit of Rs.45 lakhs.

3. It is the case of the petitioner that on 31st October 2005, the said Cash Credit facility enjoyed by the respondents had become non operational. The petitioner filed recovery applications against the respondents under Section 101 of the Maharashtra Co-operative Societies Act, 1960 for recovery of various amounts jointly and severally before the Assistant Registrar, Co-operative Societies. On 20th December 2006, the Assistant Registrar, issued a common recovery certificate against the respondents for total sum of Rs.28.88 lakhs on all the three loan accounts, as on 20th December 2006. The petitioner filed three separate Writ Petitions bearing Nos. 558 of 2007, 559 of 2007 and 560 of 2007 in this Court, on 25th April 2007, impugning the said recovery certificate.

4. This Court by an order dated 25th April 2007 directed the petitioner to approach the Divisional Joint Registrar under Section 154 of the Maharashtra Co-operative Societies Act, 1960 by way of

Revision Application. The petitioner thereafter filed three separate Revision Applications bearing Nos. 238, 239 and 240 of 2007 before the Divisional Joint Registrar impugning the common recovery certificate. The Divisional Joint Registrar passed an order dated 10th September 2007 remanding the matter back to the Assistant Registrar for fresh hearing of the three recovery applications filed by the petitioner.

5. On 11th January 2007, the petitioner bank got converted into Multi State Co-operative Society. The Assistant Registrar accordingly passed an order on 26th March 2009 holding that he has no jurisdiction to decide the said recovery applications and directed the petitioner to approach the learned Arbitrator under Section 84 of the Multi State Co-operative Societies Act, 2002 (for short 'the said Multi State Act'). On 24th February 2010, the petitioner filed a dispute before the learned Arbitrator appointed by the Central Registrar under Section 84 of the said Multi State Act. The respondents challenged the jurisdiction of the learned Arbitrator appointed by the Central Registrar by filing an application under Section 16 of the Arbitration Act, on 27th December 2010, raising an issue of jurisdiction before the learned Arbitrator.

6. On 9th May 2011, the learned Arbitrator passed an award accepting the plea of jurisdiction raised by the respondents and held that he had no jurisdiction to entertain the recovery dispute filed by the petitioner under the provisions of the said Multi State Act. The petitioner impugned the said order dated 9th May 2011 passed by the learned Arbitrator by filing three separate appeal before this Court under Section 37 of the Arbitration Act. This Court by a Judgment dated 23rd January 2013 allowed the said appeals filed by the petitioner and held that the learned Arbitrator had jurisdiction to entertain, try and adjudicate upon the dispute. Being aggrieved by the said order dated 23rd January 2013, the respondents filed three separate Special Leave Petitions bearing nos. 935, 936 and 937 of 2013 before the Supreme Court.

7. On 9th April 2015, the learned Counsel for the respondents submitted before the Supreme Court that his client were ready and willing to make payment as per One Time Settlement (OTS) Scheme, 2008. However, he had expressed his doubt about the calculation of the amount mentioned by the petitioner in the letter dated 6th April 2015 by which the petitioner had shown its willingness to accept sum of Rs.2,41,76,719.17 as against the sum of Rs.7,93,51,486.17/- under One Time Settlement Policy of the bank.

8. The Supreme Court recorded that at that stage on ad-hoc basis, the respondents herein were prepared to accept the sum referred in the said One Time Settlement Policy. The Supreme Court accordingly directed that 25% of the said amount shall be paid by the respondents to the petitioner within one month from the date of the said order and the remaining 75% shall be paid by the respondents as per the guidelines dated 10th March 2008 issued by the Reserve Bank of India in maximum 11 equal monthly installments with interest at the Minimum Lending Rate from the date settlement up to day of final payment. The Supreme Court recorded that there were some issue with regard to calculation of an amount referred in the said letter. It had been agreed by the learned Counsel for both the parties that as per the provisions of Section 84(4) of the said Multi State Act, an Arbitrator to be appointed by the Central Registrar or his nominee, who shall determine the amount payable and if the said amount was more or less than the said amount stated in the said letter, the sum shall be adjusted within one month from the date of which the Arbitrator would determine the amount payable.

9. The Supreme Court in the said order also referred to the particular paragraph of the policy prescribing the mode and manner of the payment under One Time Settlement Scheme. The Supreme Court directed that no coercive action shall be taken against the respondents by the petitioner for recovery of the amount due and payable, if the amount was paid as per the said arrangement.

10. It is the case of the respondents that on 30th December 1985, as per the Master Circular of Reserve Bank of India on income recognition, asset classification, provisioning and other related matters updated upto 30th June 2006, since the interest/installment of principle amount remained overdue for a period of more than 90 days in respect of the Term Loan facility, the Term Loan account of respondent no.2 become NPA. It is the case of the respondents that on 3rd February 1996 the petitioner sanctioned an additional amount of Rs.40 lakhs in favour of the respondents and debited the said amount on 7th February 1996 in the Term Loan account raising the balance from Rs.58,32,930/- to Rs.98,32,930/- and transferred as a credit entry in the cash credit account reducing the cash credit liability from Rs.54,55,342/- to Rs.14,55,342/-.

11. It is the case of the respondents that on 19th April 2006 Reserve Bank of India issued guidelines on OTS Scheme for SME Account of primary Urban Co-op Banks. As per the said settlement formula under the OTS Scheme issued by the Reserve Bank of India, the OTS account of NPA was classified as doubtful or loss as on 31st March 2004 was to be 100% of outstanding balance in the accounts as on date on which accounts were categorized as doubtful NPA. It was the case of the respondents that as per the said OTS Scheme of 2006, the Term Loan account of respondent no.2 became doubtful NPA on 30th June 1997 with outstanding balance of Rs.1,20,87,031. The Cash Credit account of respondent no.2 became doubtful NPA on 30th June 1997 with outstanding balance of Rs.51,58,901/-. The Cash Credit account of respondent no.1 became doubtful NPA on 30th June 1997 with outstanding balance of Rs.12,51,126/-. According to the respondents, the total outstanding in all the accounts as on the date of doubtful NPA i.e. 30th June 1997 was Rs.1,84,97,058/-.

12. It is the case of the respondents that in the year 2000, the three term loan accounts were rescheduled by the petitioner. On 18th May 2006, the respondents approached the petitioner for one time settlement of the account on the basis of Circular dated 19th April

2006 issued by the Reserve Bank of India. It is the case of the respondents that on 28th June 2006, the petitioner accepted the said application for OTS and informed the respondents that the OTS amount payable against all three accounts in the sum of Rs.2,55,85,068/-.

13. On 18th May 2006, the respondents also made an application for one time settlement of the accounts to the Commissioner of Co-operation and Registrar of Co-operative Societies, Maharashtra State. The Commissioner of Co-operation directed the petitioner to submit a detailed report in the matter. On 19th July 2006, the petitioner submitted a detailed report to the Commissioner of Co-operation. It is the case of the respondents that on 20th November 2006, the Commissioner and Registrar of Co-operative Societies, directed the petitioner to accept the amount outstanding as on 30th June 1997 as the OTS amount after deducting the interest and recoveries made thereafter as per the applicable Reserve Bank of India guidelines.

14. It is the case of the petitioner that on 7th January 2011, the respondents sought directions from Reserve Bank of India to be issued to petitioner to rectify the OTS amount claimed by following RBI guidelines to calculate the same. It is the case of the respondents

that on 28th January 2011, the petitioner addressed a letter to the Reserve Bank of India admitting the 31st December 1995 as NPA date as against 30th June 1995 claimed by the respondents. It was the case of the respondents that according to the said guidelines, the total outstanding in all three accounts as on 31st December 1997 was Rs.2,01,24,619/-. On 25th February 2011, the Reserve Bank of India informed the respondents that the matter regarding NPA classification stood closed.

15. On 16th June 2011, the Commissioner of Co-operation directed the petitioner to take appropriate action for the OTS of the accounts of the respondents. The petitioner thereafter initiated an action under SARFAESI Act, on 17th August 2011. The Supreme Court granted a stay in respect of action initiated by the petitioner under SARFAESI Act on 10th February 2012. On 13th April 2012, the Reserve Bank of India directed the respondents to approach the Central Registrar of Co-operative Societies for issue related to one time settlement as the petitioner was converted into Multi State Bank. The Supreme Court by an order dated 13th September 2013, restrained the petitioner form taking any coercive action against respondents. On 26th March 2015, the Supreme Court recorded an undertaking

given by the respondents that they will deposit a sum of Rs.50 lakhs. The respondents made a statement that they would take instruction, if the matter could be settled out of Court.

16. The petitioner accordingly by letter dated 6th April 2015 addressed to the respondents conveyed to the respondents that as on date, a sum of Rs.7,93,51,486.17/- was due and payable by respondents to the petitioner under various credit facility accounts. However, under the OTS Policy of the bank, the accounts of the respondents could be settled for Rs.2,41,76,719.17/-. On 9th April 2015, the Supreme Court recorded the statement made by the learned Senior Counsel for the respondents that they are willing to pay according to the OTS Scheme of 2008.

17. On 10th July 2015, the petitioner filed an interim application before the Supreme Court for modification of order dated 9th April 2015 to substitute the words "as per the guidelines dated 10.03.2008 issued by RBI" with the words "as per OTS Scheme framed by Respondent No.2 Bank" i.e. the petitioner herein, which was submitted for approval to RBI by the petitioner by its letter dated 18th August 2008 and letter dated 24th December 2008 and which was approved by RBI in terms of letter dated 27th February 2009. On

14th September 2015, the Supreme Court dismissed the said interim application for modification filed by the petitioner.

18. The Central Registrar thereafter appointed the learned Arbitrator. The respondents filed a statement of claim dated 5th August 2015 before the learned Arbitrator *inter-alia* praying for determination of the OTS amount payable by the respondents to the petitioner as per order dated 20th November 2006 and for an order and directions against the petitioner to refund the amount allegedly paid in excess by the respondents after such determination of OTS amount. The petitioner filed a detailed reply to the said statement of claim filed by the respondents before the learned Arbitrator. The respondents filed an affidavit in rejoinder and also their written submissions.

19. On 29th April 2016, the learned Arbitrator made an award holding that the claim of the petitioner bank is quantified at Rs.1,84,97,058/- assuming the date of doubtful NPA as 30th June 1997. The respondents have paid an amount of Rs.4,20,26,779/- to the petitioner bank, which is excess of the claim of the petitioner, which is quantified at Rs.1,84,97,058/-. The learned Arbitrator accordingly directed the petitioner to refund an amount of

Rs.1,35,29,720/- to the respondents within a period of one month from the date of the said award. The petitioner has impugned the said arbitral award dated 29th April 2016, in this petition.

20. Mr. Ghosalkar, learned Counsel for the petitioner invited my attention to some of the annexures to the arbitration petition, some of the averments made in the pleadings filed by the parties before the learned Arbitrator. It is submitted by the learned Counsel that the learned Arbitrator had accepted the plea of jurisdiction raised by the respondents before the learned Arbitral and held that he had no jurisdiction to entertain the claims. This Court had set aside the said order passed by the learned Arbitrator in three separate appeals filed by the petition under Section 37 of the Arbitration Act before this Court and held that the learned Arbitral had jurisdiction. The Special Leave Petition was filed by the respondents before the Hon'ble Supreme Court. He submits that during the course of hearing of the said Special Leave Petition filed by the respondents before the Supreme Court, the parties made an attempt to settle the dispute amicably in the other proceedings filed by the respondents challenging an action on the part of the petitioner under Securitization Act. The petitioner accordingly furnished a statement

to the respondents on 6th April 2015 informing that the respondents were liable to pay sum of Rs.7,93,51,486/- to the petitioner. However, on the basis of the One Time Settlement proposal scheme of the petitioner, the matter could be settled for an amount of Rs.2,41,76,719/-.

21. It is submitted that the respondents through their learned Senior Counsel made a statement before the Supreme Court that they were willing to pay in accordance with the said OTS policy, however there was some confusion about the calculation made by the petitioner. The respondents also agreed to pay to the petitioner in the meanwhile in installments on ad-hoc basis, the said amount of Rs.2,41,76,719/- mentioned in the said letter dated 6th April 2015. He submits that in view of the request made by the respondents through their Senior Counsel before the Hon'ble Supreme Court that there was some confusion about the amounts mentioned by the petitioner in the said letter dated 6th April 2015 arrived at under OTS 2008, the Hon'ble Supreme Court directed the Central Registrar to appoint an arbitrator to resolve the said issue.

22. Learned Counsel for the petitioner submits that though the scope of reference before the learned Arbitrator was very limited and

was only to clear the so called confusion in the mind of the respondents about the calculation made by the petitioner in the said letter dated 6th April 2015 and though, the respondents had agreed to pay the petitioner according to the said OTS 2008 offer of the petitioner, the respondents widened the scope of reference before the learned Arbitrator and tried to reopen the entire dispute, which was not referred to the learned Arbitrator by the Hon'ble Supreme Court. He submits that respondents have already paid in installments the said amount referred in the said letter order 9th April 2015 passed by the Hon'ble Supreme Court.

23. Learned Counsel for the petitioner invited my attention to the arbitral award rendered by the learned Arbitrator. He submits that though the scope of reference was very limited, the Arbitrator framed the following issues:-

	Issues	Finding
i.	Whether the Applicant Bank proves that the Respondent M/s. Rainproof Exports Pvt. Ltd. is obliged to pay the claim amount as per the OTS scheme framed by the Bank in accordance with the directions issued by the Reserve Bank of India.	Negative
ii.	Whether the Respondent M/s. Rainproof Exports Pvt. Ltd. proves that the said company is liable to pay the dues of the	Affirmative

> Applicant Bank in accordance with the directions issued by the Commissioner for Co-operation and Registrar of Co-operative Societies, Govt. of Maharashtra, Pune, dated 20/11/2006 and the further directions issued by the Central Registrar, dated 10/05/2013?

and answered those issues.

24. It is submitted by the learned Counsel that there was no dispute referred to the learned Arbitrator by the Hon'ble Supreme Court about the liability of the respondents in accordance with the directions issued by the Commissioner of Co-operation and Registrar of Co-operative Societies, Government of Maharashtra, Pune dated 20th November 2006 and the further directions issued by the Central Registrar, dated 9th May 2013. He submits that the learned Arbitrator had thus exceeded his jurisdiction and has travelled beyond the scope of reference made by the Hon'ble Supreme Court in the order dated 9th April 2015. The entire award is thus without jurisdiction and deserves to be set aside on that ground itself.

25. It is submitted by the learned Counsel that at the request of the respondents, the petitioner had transferred further sum of Rs.40 lakhs in the account of the respondents, which amount was utilized by the respondents in the year 2013. It is submitted that instead of

allowing the claims made by the petitioner against the respondents, the learned Arbitrator has directed the petitioner to refund substantial amount to the respondents without application of mind. The award shows patent illegality on the face of the award.

26. Mr. Gaurav Joshi, learned Senior Counsel for the respondents on the other hand submits that the petitioner had sanctioned three loan facilities to the respondent nos. 1 and 2 in the year 1995. The respondent no.2 could pay only Rs.1 lakh to the petitioner against the repayment of the credit facility. He placed reliance on the Master Circular issued by the Reserve Bank of India on 30th December 1995. He submits that according to the said circular, which was applicable to the parties, since the interest/principle amount had remained overdue for the period of more than 90 days in respect of the Term Loan Facility, the Term Loan account of respondent no.2 had become NPA as on 30th December 1995.

27. Learned Senior Counsel invited my attention to some of the correspondence exchanged between the respondents with the Reserve Bank of India and also with the office of the Commissioner for Co-operation and Registrar of Co-operative Societies, Government of Maharashtra. He tendered a separate compilation

containing the application filed by the petitioner before the Hon'ble Supreme Court for seeking modification of the order dated 9th April 2015 passed by the Hon'ble Supreme Court and the order passed by the Supreme Court on the said application on 14th September 2015. He also placed reliance on the averments in paragraphs 7, 8 and 13 of the claim filed by the petitioner before the learned Arbitrator based on OTS 2008. He submits that the petitioner had specifically applied for modification of the order dated 9th April 2015 before the Hon'ble Supreme Court by substituting the words “as per the guidelines dated 10th March 2008 issued by RBI” with the words “as per OTS Scheme framed by Respondent No.2 Bank which was submitted for approval to Reserve Bank of India by letter dated 14th August 2008 and subsequent to letter dated 24th December 2008, which had been approved by Reserve Bank of India on the terms of letter dated 27th February 2009”. He submits that the said application for modification was dismissed by the Hon'ble Supreme Court on 14th September 2015.

28. Learned Senior Counsel submits that in view of the application for modification filed by the petitioner having been dismissed by the Hon'ble Supreme Court, the petitioner could not have filed its claim before the learned Arbitrator based on the said OTS 2008.

29. Learned Senior Counsel placed reliance on the statement of claim filed by his clients before the learned Arbitrator and submit that since the Supreme Court had directed the Central Registrar or his nominee to appoint the Arbitrator to determine the amount payable by the respondents, the respondents had rightly prayed for a declaration before the learned Arbitrator that the respondents were entitled to settle the dispute with the petitioner under earlier One Time Settlement Scheme sanctioned by the Reserved Bank of India and in terms of the directions issued by the Commissioner for Co-operation and Registrar of Co-operative Societies. He submits that the entire dispute thus referred to the learned Arbitrator and not only to calculate the amount payable as per the OTS Scheme, 2008 of the petitioner bank as sought to be canvased by the petitioner.

30. Learned Senior Counsel for the respondents placed reliance on the application dated 18th May 2006 filed by the respondents to the petitioner under One Time Settlement Scheme issued by Reserve Bank of India and Commissioner of Co-operation and Registrar of Co-operative Societies, Pune. He submits that in the said application the respondents specifically requested the petitioner to consider the

said proposal on the basis of the guidelines/circular dated 27th July 2000 for One Time Settlement issued by Reserve Bank of India and Circular dated 18th March 2005 issued by the Commissioner of Co-operation Department of Government of Maharashtra.

31. Learned Senior Counsel placed reliance on the letter dated 28th June 2009 from the petitioner to the respondents in response to the application dated 18th May 2006 informing the respondents that the petitioner had decided to allow the respondents the benefit of Rs.1,82,04,633/- against then total outstanding of Rs.3,66,86,449/- and thus the respondents will have to pay Rs.1,84,81,816/- immediately to settle the said account. The petitioner advised the respondents to make payment of Rs.1,84,81,816/- upfront to avoid further payment of interest @ 10.5% as upfront payment would be beneficial to them. The petitioner informed the respondents that they may also foreclose their account any time before 27th June 2007. The petitioner made it clear that if the respondents did not adhere to those terms and conditions and did not pay the entire dues of the bank as per the settlement, all concession under the said scheme approved by the Reserve Bank of India and Commissioner of Co-operation and Registrar of Co-operative Societies would be treated as

cancelled and the respondents would have to pay the entire dues with up to date interest. The petitioner bank in that event would have liberty to initiate any further recovery action. The petitioner also made an offer to the respondents to pay 100% upfront or 25% immediately and balance 75% in monthly installments. It is submitted that the petitioner did not have any One Time Settlement Scheme at that point of time.

32. Learned Senior Counsel for the respondents also placed reliance on a letter dated 20th November 2006 from the Commissioner and Registrar of Co-operative Societies directing the petitioner to accept the amount outstanding as on 30th June 1997 as the One Time Settlement amount after deducting the interest and recoveries made thereafter as per applicable Reserve Bank of India guidelines. He placed reliance on the letter dated 9th May 2013 issued by the Ministry of Agriculture and Co-operation, Government of India directing the petitioner to execute the order dated 20th November 2006 issued by the office of Registrar of Co-operative Societies, Pune in compliance of the Reserve Bank of India guidelines and to intimate the department to take action in that regard accordingly.

33. Learned Senior Counsel invited my attention to the One Time Settlement Scheme of 2008 and other correspondence annexed to the compilation of documents. It is submitted by the learned Senior Counsel that there are no such guidelines dated 10th March 2008 issued by the Reserve Bank of India for One Time Settlement as referred by the Hon'ble Supreme Court in the said order dated 9th April 2015. The reference made to the learned Arbitrator by the Supreme Court did not restrict to any particular One Time Settlement Scheme.

34. Mr. Ghosalkar, learned Counsel for the petitioner submits that none of these documents which are sought to be relied upon by the respondents across the bar in this petition were pointed out before the learned Arbitrator. The submission made before the learned Arbitrator were on the other hand totally different then the submissions advanced before this Court by the learned Senior Counsel for the respondents. He submits that since the entire award is totally without jurisdiction and beyond the scope of reference, the same deserves to be set aside by this Court by exercising powers under Section 34 of the Arbitration Act.

REASONS AND CONCLUSION :-

35. The question that arises for consideration of this Court is whether the learned Arbitrator could have ignored and overlooked the One Time Settlement Scheme of 2008 framed by the petitioner and approved by the Reserve Bank of India and could have relied upon the directions of the Commissioner of Co-operation and Registrar of Co-operative Societies, Government of Maharashtra, Pune. Though, the scope of reference before the learned Arbitrator was very limited and more particularly whether the calculation of the petitioner worked out under the said OTS Scheme of 2008 was correct or not.

36. It is not in dispute that the respondent had filed three Special Leave Petitions bearing nos. 935, 936 and 937 of 2013 before the Hon'ble Supreme Court of India impugning the Judgment dated 23rd January 2013 delivered by this Court in three Arbitration Petitions filed by the petitioner under Section 37 of the Arbitration Act and setting aside the order passed by the learned Arbitrator accepting the plea of jurisdiction raised by the respondents in the dispute filed by the petitioner. At the same time, challenge to the actions initiated by the petitioner under SARFAESI Act filed by the respondents was also

pending before the Hon'ble Supreme Court in Writ Petition (C) No. 48 of 2012 filed by the respondents. The said writ petition was listed before the Hon'ble Supreme Court on 9th April 2015. In the meantime, the petitioner had already framed the One Time Settlement policy, which was approved by the Reserve Bank of India in response to one of the letter addressed by the petitioner to the respondents regarding settlement.

37. The petitioner by letter dated 6th April 2015 addressed to the respondents based on the said OTS Scheme of 2008 framed by the petitioner informed the respondents that the outstanding dues as the respondent was in the Sum of Rs.7,93,51,486.17/-. In the said letter it was clearly stated by the petitioner that the loan account were to be considered under the said OTS policy of the petitioner, then the amount payable was sum of Rs.2,41,76,719.17/- after adjusting the payment made by the respondents.

38. The Hon'ble Supreme Court referred to the said letter dated 6th April 2015 addressed by the petitioner to the respondents in the order dated 9th April 2015 and the amount mentioned therein as per One Time Settlement Scheme 2008. It is clear that the respondents through their Counsel made a statement before the Hon'ble Supreme

Court that his clients were ready to make payment as per the said One Time Settlement Scheme 2008. However, they had expressed doubt about the calculation of the said amount mentioned in the letter dated 6th April 2015. The Hon'ble Supreme Court also recorded the statement made by the respondents through the learned Senior Counsel that they were prepared to accept the said offer on ad-hoc basis and were agreeable to pay the said amount in the manner prescribed in the guidelines dated 10th March 2008 issued by the Reserve Bank of India i.e. 25% of the said amount within one month from the date of the said order and 75% in maximum 11 equally monthly installments together with interest @ minimum lending rate from the date of settlement up to the date of final payment.

39. The Hon'ble Supreme Court clearly recorded in the said order that as there was some doubt with regard to the calculation of the amount which had been referred to in the said order, the parties through their learned Counsel agreed that as per the provisions of Section 84(4) of the said Multi State Act, Arbitrator to be appointed by the Central Registrar or his nominee to determine the amount payable and if the said amount was more or less than the amount mentioned in the said order, the same shall be adjusted within one

month from the date on which the Arbitrator would determine the amount payable. The Hon'ble Supreme Court accordingly directed the respondents to pay the said amount in the manner set out in the guidelines dated 10th March 2008.

40. A perusal of the said order clearly indicates that there was no dispute about the entitlement of the petitioner to recover a sum of Rs.7,93,51,486.17/-. However, since the matter was to be settled at the request of the respondents, the petitioner had worked out the amount payable as per the OTS Scheme of 2008 duly approved by the Reserve Bank of India and computed the said amount Rs.2,41,76,719.17/-. The limited dispute which was thus referred to the learned Arbitrator by the said order dated 9th April 2015 passed by the Hon'ble Supreme Court was regarding the correctness of the calculation of the petitioner of the said amount as per OTS Scheme 2008 worked out by the petitioner, in view of the doubt raised about the calculation of the said amount by the respondents. No dispute about the applicability of the OTS Scheme of 2008 was raised by the respondents before the Hon'ble Supreme Court.

41. Though, the order passed by the Hon'ble Supreme Court was absolutely clear, the respondents deliberately filed a statement of

claim before the learned Arbitrator *inter-alia* praying for determination of the OTS amount payable by the respondents as per the order dated 20th November 2006 passed by the Commissioner and Registrar of Co-operative Societies, Government of Maharashtra, Pune. In my view, the said statement of claim filed by the respondents itself was not maintainable and was in the teeth of the specific order of reference made by the Hon'ble Supreme Court in the said order dated 9th April 2015 restricting the scope of reference to the calculation in the letter dated 6th April 2015 issued by the petitioner calculating the amount payable under OTS Scheme 2008. Though, the petitioner had raised a specific objection before the learned Arbitrator about the maintainability of such claim made by the respondents, the learned Arbitrator ignored the said objection and entertained the said claim made by the respondents, which was beyond the scope of reference made by the Hon'ble Supreme Court.

42. The learned Arbitrator also totally overlooked the statement of claims separately filed by the petitioner before the learned Arbitrator on 26th August 2015 pursuant to the order passed by the Hon'ble Supreme Court *inter-alia* praying for a declaration that the OTS amount of Rs.2,41,76,719.17/- calculated by the petitioner was in

conformity with the OTS Scheme 2008 as formulated by the petitioner and the said amount be confirmed and the contentions raised by the respondents disputing the said amount be rejected. The petitioner had also filed detailed written submissions before the learned Arbitrator.

43. A perusal of the award indicates that thought the learned Arbitrator has held that OTS Scheme of petitioner was approved by the Reserve Bank of India, he relied upon the general guidelines issued by the Reserve Bank of India dated 19th April 2006 and the Master Circular contrary to the order of reference passed by the Hon'ble Supreme Court. In my view, such general guidelines and the master circular could not have been followed by the learned Arbitrator at all firstly, on the ground that the claim based on such circular was beyond the scope of reference made to the learned Arbitrator by the Hon'ble Supreme Court and secondly on the ground that specific OTS Scheme 2008 framed by the petitioner and approved by the Reserve Bank of India was already in place and was applicable to the parties. The general guidelines issued by the Reserve Bank of India did not have any statutory force in view of a specific OTS Scheme framed by the petitioner in 2008, which was duly approved by the Reserve Bank of India.

44. A perusal of the record further indicates that though the respondents had applied for benefit of One Time Settlement even in past, which was though approved by the petitioner and the terms and conditions were duly conveyed to the respondents for making payment in accordance with such sanction, the respondents did not pay the said amount and did not avail of the benefits under the said OTS Policy prior to 2008. The said offer thus lapsed.

45. In my view, the learned Arbitrator has thus travelled beyond the scope of reference made by the Hon'ble Supreme Court by the said letter dated 9th April 2015 and could not have awarded any amount in favour of the respondents on the basis of the general guidelines of the Reserve Bank of India or the Master Circular relied upon by the respondents. The respondents had already agreed to pay the petitioner in accordance with OTS Scheme of 2008 framed by the petitioner. The impugned award shows patent illegality and thus deserves to be set aside on this ground alone.

46. In so far as the submission of the learned Counsel for the respondents that the application for modification made by the petitioner before the Hon'ble Supreme Court on 29th July 2015 having been rejected by the Hon'ble Supreme Court, no reference on

the OTS Scheme of 2008 of the petitioner could be made by the petitioner is concerned, in my view, there is no substance in this submission of the learned Senior Counsel for the respondents. A perusal of the said order dated 9th April 2015 passed by the Hon'ble Supreme Court clearly indicates that a reference was made in the said order to the guidelines dated 10th March 2008 issued by the Reserve Bank of India.

47. The reliance was placed on the said guidelines by the respondents for the purpose of making payment to the petitioner on ad-hoc basis, till such time the adjudication was made by the learned Arbitrator as to whether the calculation of the amount mentioned in the letter dated 6th April 2015 showing the amount derived was according to the One Time Settlement Scheme of 2008 was correct or not. In my view, even though the Hon'ble Supreme Court did not allow the said application filed by the petitioner for modification of the said order, that would not indicate that the respondents had not agreed to pay the amount under OTS Scheme of 2008 clearly reflected in the said letter dated 6th April 2015. The said OTS Scheme of 2008 was also clearly reflected in the said order dated 9th April 2015.

48. In my view, the learned Arbitrator ought to have considered the claim made by the petitioner, which was in-line with the scope of reference made by the Hon'ble Supreme Court before the learned Arbitrator and ought to have rejected the claim made by the respondents before the learned Arbitrator, which was *ex-facie* beyond the scope of reference.

49. In my view, the learned Arbitrator could not have framed an issue as to whether the respondent no.1 had proved that the said company was liable to pay the dues in accordance with the directions issued by the Commissioner of Co-operation and Registrar of Co-operative Societies, Government of Maharashtra dated 20th November 2006 and the further directions issued by the Central Registrar dated 9th May 2013. The impugned award rendered by the learned Arbitrator shows total non application of mind and patent illegality. The learned Arbitrator has exceeded the scope of reference and has acted contrary to the order passed by the Hon'ble Supreme Court. If that was the intention of the parties, the respondents would not have agreed to pay to the petitioner in accordance with OTS Scheme of 2008 framed by the petitioner and approved by the Reserve Bank of India and the petitioner also could have filed a

dispute for the entire amount payable by the respondents to the petitioner and not restricted to the amount payable under the OTS Scheme of 2008.

50. In my view, the petitioner has thus made out a case for setting aside the impugned award dated 29th April 2016.

51. I, therefore, pass the following order:-

(a) The impugned award dated 29th April 2016 passed by the learned Arbitrator is set aside.

(b) The petitioner would be at liberty to withdraw the amount deposited by the petitioner pursuant to the order dated 16th March 2017 passed by this Court in Notice of Motion No. 81 of 2017 with accrued interest, if any within one week from the date of communication of this order.

(c) Commercial Arbitration Petition No.119 of 2016 is disposed off on the aforesaid terms. There shall be no order as to costs.

(d) Parties as well as the Prothonotary and Senior Master to act on the authenticated copy of this order.

(R.D. DHANUKA, J.)

52. At this stage, learned Counsel for the respondent seeks stay of the operation of the order pronounced by this Court today, which is vehemently opposed by the learned Counsel for the petitioner.

53. Learned Counsel for the petitioner states that his client would not withdraw the said amount pursuant to the liberty granted by this Court for the period of four weeks from today. Statement is accepted.

(R.D. DHANUKA, J.)