

**In The High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPO No. 309 of 2020

**The North Western Cachar Tea Company Limited and another
Vs.
Reserve Bank of India and others**

For the petitioner : Mr. Ratnanko Banerji, Sr. Adv.,
Mr. S. N. Mookherjee, Sr. Adv.,
Mr. Meghajit Mukherjee,
Mr. Kanishk Kejriwal,
Mr. Rajesh Gupta,
Mr. Shivangi Thard,
Mr. R. Agarwal

For respondent no.1 : Mr. Debdutta Sen,
Ms. Suchishmita Chatterjee,
Mr. Malay Kr. Seal,
Mr. Rahul Auddy

For respondent no.2 : Mr. Sabyasachi Chowdhury,
Mr. Rajarshi Datta,
Mr. Rahul Auddy

Hearing concluded on : 12.01.2021

Judgment on : 28.01.2021

The Court:

1. The petitioner no.1 is a company. Petitioner no.2 is a Managing Director of petitioner no.1. The company is engaged in the production and sale of tea products and other business activities. Facing shortage of funds regarding tea business, the petitioners approached respondent no.2 (UCO Bank) for grant of credit facilities. On October 5, 2013, respondent no.2 approved Rs. 3.50 crore towards Fund Based Working Capital Limits, Rs. 0.5 crore towards Non-Fund Based

Working Capital Limits and Rs. 4.2875 crore towards Term Loan. The petitioners approached respondent no.2 again for sanction of a fresh Term Loan against security of a residential property, which was sanctioned on November 1, 2016 to the extent of Rs. 2.4 crore.

2. When petitioner no.1, by a letter dated January 17, 2017, submitted a fresh proposal to the respondent no.2-Bank for review of the credit limits, the respondent no.2-Bank informed the petitioner no.1, vide letter dated February 3, 2017 that the account of petitioner no.1 had been classified as Non-Performing Asset (NPA) on January 31, 2017.
3. Subsequently, respondent no.2 issued a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the SARFAESI Act). By a letter dated July 23, 2018, respondent no.2 informed petitioner no.1 that the Competent Authority had decided to refer the loan account of petitioner no.1 to the National Company Law Tribunal (NCLT) under the Insolvency and Bankruptcy Code, 2016 (IBC). On January 21, 2019, respondent no.2 issued a notice under Section 13(4) of the SARFAESI Act. Several correspondences were exchanged between the petitioner no.1 and respondent no.2-Bank in the meantime.
4. By a letter dated February 6, 2019, petitioner no.1 requested the Bank to accept its One-Time Settlement (OTS) proposal. Respondent no.2, in its reply dated February 14, 2019, requested petitioner no.1 to improve the OTS amount. By a subsequent letter dated February 19, 2019, the Bank consented to the request of petitioner no.1 and agreed that a deposit of Rs.1.30 crore would be refunded to the

petitioner no.1 in case the OTS was not approved. Further correspondence followed and petitioner no.1 deposited a sum of Rs.1.30 crore towards 10 per cent of the OTS amount. However, the Bank again asked petitioner no.1 to improve the OTS offer, by a letter dated March 16, 2019.

- 5.** On April 29, 2019, petitioner no.1 made two proposals for OTS settlement. A further break-up of payments was suggested by petitioner no.1 vide letters dated May 15 and August 2, 2019.
- 6.** By a letter dated August 19, 2019, respondent no.2-Bank approved the OTS proposal of petitioner no.1 dated May 15, 2019, for an amount of Rs.17.3139 crore and suggested a break-up of the payment scheme.
- 7.** On August 26, 2019, petitioner no.1 objected to certain conditions of the counter-offer. Vide letter dated November 5, 2019, petitioner no.1 accepted the Bank's counter-offer on the terms as mentioned in such letter. After subsequent correspondence, respondent no.2 issued a letter dated June 25, 2020 requesting petitioner no.1 to make payment of the OTS amount of Rs.10 crore within August 7, 2020 and the balance of Rs.6.01 crore in 36 months. Such contention deviated from the previous counter-offer of the Bank.
- 8.** The Reserve Bank of India (respondent no.1) issued a Circular dated March 27, 2020, in view of the intervention of the pandemic, permitting Banks to grant a moratorium of three months from March 1, 2020 to May 31, 2020, to be attended by rescheduling of the tenure by three months post-moratorium.

9. By a Circular dated May 23, 2020, such moratorium was extended by another three months by the Reserve Bank of India.
10. By an e-mail dated June 30, 2020 and a letter dated July 7, 2020, petitioner no.1 requested the respondent no.2-Bank to extend the repayment schedule by six months due to the lock-down which followed the pandemic, citing substantial loss of production in the tea business due to inability to pluck green leaves in time resulting from the lock-down.
11. Respondent no.2 refused to extend the repayment period on July 8, 2020 and warned that if the petitioner no.1 failed to pay as per payment schedule, the OTS would be treated to have failed, enabling the Bank to take recovery action as per its Guidelines. Petitioner no.1, however, renewed its request for a meeting with the CMD of the Bank on July 16, 2020. There were further requests by the Bank for the petitioner no.1 to make payment of the OTS amount.
12. On August 19, 2020, petitioner no.1 informed respondent no.2 that they could not honour the commitment schedule due to default by buyers of the tea estate as well as loss of production due to the Covid-19 pandemic. A further offer of immediate payment of Rs. 2 crore was also given by petitioner no.1.
13. On September 2, 2020 the Bank informed respondent no.1 (RBI) that, since the petitioner no.1 had failed to make payment of the OTS amount, the respondent no.2-Bank had started recovery action by e-auction, declaring the petitioners as wilful defaulters and by filing proceedings before the Debts Recovery Tribunal and NCLT. In the

said letter, it was also mentioned that the loan account of petitioner no.1 was NPA since May 31, 2015. Subsequently, respondent no.2 has frozen all the bank accounts of petitioner no.1, including accounts maintained with other Banks.

14. The petitioners have filed the present writ petition challenging the letters dated February 13, June 25, July 8, July 18, August 10 and September 2, 2020 and has claimed the benefit of moratorium of six months in accordance with the RBI Circulars dated March 27 and May 23, 2020.
15. Learned senior counsel appearing for the petitioners argues that the contentions of respondent no.2, that there was no OTS Scheme, is belied by the Bank's letters dated June 25, July 8, July 18, August 10 and September 2, 2020, wherein the OTS was admitted.
16. Even in the proceedings instituted under Section 7 of the IBC, respondent no.2 has admitted the existence of the OTS.
17. As far as the applicability of the RBI Circulars of March 27 and May 23, 2020 is concerned, learned senior counsel for the petitioners contends that the RBI Circulars do not specifically exclude OTS schemes from the purview of the Circulars. An OTS is a settlement, which necessarily means that a debt repayment of an account is the subject-matter thereof. Since the RBI Circulars were issued as a Covid-19 Regulatory Package to mitigate the burden of debt servicing brought about by disruption on account of the pandemic and to ensure the continuity of viable businesses and pertained to imparting priority to relaxing repayment pressures and prevent transmission of

financial stress to the real economy, and since the OTS covered both Term Loan Account and Working Capital Facility Accounts, the OTS does not change the nature of credit facility, thus attracting the RBI Circulars to it.

18. The Debt Resolution Framework of respondent no.2 covers accounts in respect of which there has been an OTS as on March 1, 2020. Since the business of the petitioners was adversely affected by the pandemic, the RBI Circulars apply to the petitioners and are required to be interpreted in such manner.
19. Counsel argues that the opinion of the RBI, as expressed in the present writ petition, cannot be a determinant of the independent assessment of the effect of the Circulars by the court.
20. Learned senior counsel cites *Punjab Traders & Ors. Vs. State of Punjab & Ors.*, reported at (1991) 1 SCC 86 and *Bengal Iron Corporation & Anr. Vs. Commercial Tax Officers & Ors.*, reported at (1994) Supplement 1 SCC 310, in this context.
21. The decision of a learned Single Judge of the Delhi High Court in *Amit Khaneja & Ors. Vs. IL&FS Limited*, dated December 18, 2020, relied on by respondent no.2 for the proposition that OTS settlement are independent of the RBI Circulars and, being in respect of a party who has already defaulted, cannot entitle the borrower to the benefits of the RBI Circulars, it is argued by the petitioners in reply, is not applicable in the present context.

22. In the said report, it is argued, the OTS was not final but a counter-offer which was contained in an “in-principle Agreement for One-Time Settlement”. The challenge was to the revocation of the same. Defaults had been incurred by the petitioner therein with regard to orders of court. The petitioner therein had also failed to establish disruption of business due to the Covid-19 pandemic.
23. Rather, in fit cases, the High Court granted extension of time to make OTS payments in view of the RBI Circulars. In support of such proposition, learned senior counsel cites *Lhakpa Trading Agency & Ors. Vs. Bank of India & Anr.*, reported at 2020 SCC OnLine Gau 3100, rendered by the Gauhati High Court.
24. Learned senior counsel for the petitioner next focuses on the due date of payment of the sum of Rs. 10 crore, being the first instalment under the OTS. It is submitted that the Competent Authority of respondent no. 2 had approved the compromise proposal of petitioner no. 1 (dated May 15, 2019) on July 24, 2019, on certain terms.
25. On August 19, 2019, respondent no.2 approved the compromise proposal submitted by petitioner no.1 for an amount of Rs.17.3131 crore on certain additional terms.
26. The conditions stipulated in the letter dated August 19, 2019 of respondent no.2 were at variance with the letters of the petitioner no.1 dated May 15 and August 2, 2019.
27. Learned senior counsel for the petitioner contends that, after several correspondences between the parties, the OTS was concluded between

the petitioner no.1 and respondent no.2 on November 5, 2019 and, as such, Rs. 10 crore was required to be paid by petitioner no.1 on or before November 5, 2020. As such, no reliance can be placed by respondent no. 2 on the letter dated August 19, 2020, in view of the terms of the OTS being plain and unambiguous.

28. In any event, the issue of whether the time for payment of first instalment under OTS was August 19 or November 5, 2020 is of no direct consequence to the petitioners' prayer in the instant writ petition, since the petitioners seek extension of time owing to the impact of the pandemic on their earning and ability to repay debt. Moreover, in view of the ongoing OTS, there was no default on the part of the petitioner no.1 prior to March 1, 2020.
29. The next question addressed by learned senior counsel for the petitioners is whether, in the facts and circumstances of the case, respondent no.2 was required to extend time for petitioner no.1 to make payments of instalment under the OTS, even if the RBI Circulars and the Debt Resolution Framework of respondent no.2 were not applicable.
30. By relying on *P. Vijaya Kumari & Anr. Vs. Indian Bank represented by its Chief Manager*, reported at (2018) 14 SCC 735, learned senior counsel argues that it is permissible for the Bank, as also this court, to grant extension of time to make payment of amounts agreed in a settlement reached by a constituent Bank.
31. The Division Bench judgment in Civil Writ Petition No. 5518 of 2020 [*Anu Bhalla & Anr. Vs. District Magistrate Pathankot & Anr.*], rendered

by the Punjab and Haryana High Court (at Chandigarh), is relied on for the proposition that the court, in exercise of its jurisdiction under Article 226 of the Constitution, can extend the period of making payment under an OTS. The said case pertained to the Covid-19 pandemic as well.

32. A Division Bench of the High Court at Telangana at Hyderabad, in its order dated July 2, 2020 in Writ Petition No. 9408 of 2020 [*Sri Yadadri Lifesciences Pvt. Ltd. Vs. State Bank of India*], endorsed the same view.
33. The petitioners submit that the circumstances of the present case, as evident from the pleadings of the parties, clearly indicate that the petitioners suffered production loss due to the pandemic. There is no controversy in such regard in the affidavit-in-opposition filed by respondent no.2. The petitioner no.1 supplied industry data to respondent no.2 in support of such contention, which were never controverted by respondent no.2.
34. Learned senior counsel next argues that respondent no.2 failed to take into consideration relevant materials in refusing to extend time to petitioner no.1 to make payment under the OTS, thus, acting unfairly. Relying on *Popatrao Vyankatrao Patil Vs. State of Maharashtra*, reported at 2020 SCC OnLine SC 291, counsel argues that, where relevant materials were not considered but the Bank acted unfairly, it failed to act as a model litigant.
35. It is also contended that the conduct of the petitioner no.1 did not disentitle the petitioners to reliefs sought in the writ petition.

36. Learned senior counsel argues that the title deeds of the tea estates of the petitioners are still lying with respondent no.2 and its security has not been jeopardised.
37. Although respondent no.2 feigned ignorance of the deal between the petitioner no.1 for sale of one of its tea estates in the letter dated July 8, 2020, respondent no.2 was always aware of such deal and the Manager had also met the prospective buyers of the tea estate. Such contentions, made by the petitioner no.1 in its letter dated July 16, 2020 were never denied by respondent no.2, the petitioners argue.
38. The agreement to deal with Bicrampore Tea Estate was contemplated in the OTS itself. Such tea estate still remains with petitioner no.1, furnishing further security to allay apprehensions of respondent no.2 with regard to non-payment.
39. The conduct of respondent no.2 in contending, as an afterthought, that there was no OTS and its failure to look into relevant materials referred to above justifies grant of reliefs to petitioner no.1, it is submitted.
40. Learned counsel for respondent nos. 2 to 5 corroborates substantially the facts of the case, as contended by the petitioners, apart from minor deviations. However, counsel lays stress on certain portions of the facts.
41. It is admitted by respondent nos. 2 to 5 that the Competent Authority of the Bank had approved an OTS proposal for the sum of Rs. 17.31 crore on the terms and conditions indicated in a letter dated August 8,

2019. On the basis of such approval, respondent no.5, by a letter dated August 19, 2019, informed petitioner no.1 and its Directors the terms and conditions on which the OTS offer for such sum was accepted and approved. Petitioner no. 1 issued a letter dated August 26, 2019, alleging deviation in the OTS approval from the proposal of the petitioners. On November 5, 2019, petitioner no.1 communicated its acceptance of the OTS approval subject to the terms mentioned therein.

- 42.** Apart from a sum of Rs. 1.30 crore, it is alleged, no further payment was made by petitioner no.1 in terms of the OTS proposal dated August 19, 2019. By subsequent e-mails dated June 30 and July 7, 2020, petitioner no.1 requested for extension of six months' time for repayment of the OTS amount. Thereafter, correspondence ensued regarding sale of a tea estate of the petitioners. However, as no payment was forthcoming from petitioner no.1 in terms of the approved OTS, the Bank, vide letter dated August 10, 2020, informed the petitioner no.1 that the OTS was treated as failed, further calling upon petitioner no.1 to pay the entire outstanding dues with interest. Such failure was admitted by the petitioners in a letter dated August 19, 2020. Thereafter, recovery action was taken by the Bank.
- 43.** Learned counsel for the respondent nos. 2 to 5 argues that although the OTS scheme took on the shape of a concluded contract on August 19, 2019, binding both parties, petitioner no.1 failed to honour the same, alleging deviation from the original OTS proposal.

- 44.** The conduct of petitioner no.1 in requesting for extension of time via e-mail and by a letter dated August 19, 2020, evidently shows that petitioner no. 1 made false representations and assurances to pay, but did not pay up in terms of the OTS scheme. Since the petitioner no.1 was in breach of the OTS and failed to clear off its unpaid dues, appropriate legal proceedings have been initiated by the Bank, including a proceeding under Section 7 of the IBC to trigger a Corporate Insolvency Resolution Process of the petitioner no.1-company.
- 45.** Learned counsel next contends that the RBI Circulars-in-question are not applicable in respect of accounts which have already been declared NPA. Therefore, the benefit of moratorium cannot be extended to the account of petitioner no.1. An account must have been classified as 'standard' as on February 29, 2020 to derive benefit under the Circulars dated March 27 and April 17, 2020.
- 46.** The RBI Circulars and Policy Guidelines are meant for mitigating the burden of debt brought about due to the Covid-19 pandemic. In the present case, however, the petitioners were in default much prior to the OTS proposal. Thus, the legality of the revocation of OTS in August, 2020 cannot be tested on the benchmark of the RBI Circulars and Policy Guidelines. Moreover, an OTS is independent of the said Circulars and Guidelines. The Bank relies in this regard on the unreported judgment dated December 18, 2020 delivered by the Delhi High Court in the matter of *Amit Khaneja & Ors. Vs. IL&FS Limited (supra)*, already referred to above while discussing petitioners' reply.

- 47.** By placing reliance on relevant Clauses of the RBI Circulars, in particular Clauses 2 and 3 of the Circular dated March 27, 2020, learned counsel for the respondent nos. 2 to 5 submits that such Circulars are for continuity of viable businesses and in respect of those Term Loans/Working Capital Facilities where there is no default and where the account has not been declared as NPA. In case of an OTS, the amount is crystallised and question of deferment of recovery of interest by granting moratorium cannot arise.
- 48.** Learned counsel appearing for the Reserve Bank of India (RBI) argues that the Regulatory measures announced by the RBI vide Circulars dated March 27, 2020 and May 23, 2020, had the limited objective of mitigating the burden of debt servicing brought about by disruptions on account of the pandemic and to ensure the continuity of viable businesses. Lending institutions were permitted to grant moratorium of six months on payment of all instalments of Term Loans falling due between March 1, 2020 and August 31, 2020. *Amit Khaneja & Ors. Vs. IL&FS Limited (supra)* is also relied on by the RBI in this context.
- 49.** Any recovery proceeding initiated by the concerned lending institutions, including recovery pursuant to a compromise settlement agreement, would lie beyond the scope of the two Circulars, as evident from paragraph no. 8 of the Circular dated April 17, 2020.
- 50.** Thus, the RBI takes a specific stand that the Circulars issued by it are not applicable to the petitioners in the present case.
- 51.** The first question which falls for consideration is whether there was a concluded OTS scheme between the parties. The materials on record,

as referred to by the parties, clearly indicate that there was a concluded OTS scheme between petitioner no.1 and the respondent no.2-Bank as on August 19, 2019. The Bank's letter dated August 19, 2019 assumes particular importance in this context. The previous correspondences on settlement between the parties culminated in the said letter, which is captioned: "Compromise proposal of M/s The North-Western Cachar tea Co. Ltd.". Respondent No. 2-Bank informed Petitioner No. 1 in the said letter that the compromise proposal submitted by the latter vide letter no. NWC/UCO/30 dated May 15, 2019, as well as various correspondences resting on the subject, had been 'approved' by the Competent Authority as per the conditions set out therein. The Bank issued a sanction letter and requested petitioner no. 1 to return one copy of the same duly signed, "having accepted" all terms and conditions of the sanction "unconditionally". Thus, the proposal of OTS of the petitioner no. 1 was accepted at the Bank's end, if at any point of time, by the letter dated August 19, 2019.

- 52.** However, admittedly, the petitioners failed to honour such scheme. Instead, petitioner no. 1 alleged deviation from the original proposal on the bank's part, vide letter dated August 26, 2019. Interestingly, petitioner no. 1, by its letter dated November 5, 2019, allegedly "accepted" the "compromise proposal of UCO Bank". There could not arise any proposal being issued by the Respondent No.2-Bank, since the proposal was initiated by petitioner no. 1 itself. The bank, at best, modified the proposal and accepted it on the Bank's terms. Hence, the

petitioner no. 1 cannot claim that November 5, 2019 was the date of acceptance of any proposal. The letter dated November 5, 2019 at best reopened the discussions on settlement, thereby rendering irrelevant the concluded OTS scheme already reached on August 19, 2019. Thereafter, further correspondences were exchanged between the Bank and the petitioners, each of which sought to offer new modifications to the already-concluded OTS scheme, but there was no *consensus ad idem* between the parties at any other juncture, fit to crystallise into a further concluded OTS scheme. As such, the several correspondences between the parties could not justify the petitioners' arguments that there was an existing OTS scheme at the juncture when the RBI Circulars came in.

53. If the petitioners take the stand that the OTS scheme was concluded on November 5, 2019, such contention has to be turned down in view of the subsequent replies of the Bank. Vide the communication dated February 13, 2020, for example, the Respondent No. 2-Bank categorically iterated that the date of acceptance of OTS would be from the issuance of sanction letter by the branch to the company, that is, August 19, 2019. The proposal of petitioner no. 1, although couched cleverly as an 'acceptance', was never accepted by the Bank unconditionally at any subsequent point of time, nor was any sanction letter issued for any further OTS scheme on the basis of the November 5, 2019 letter. In fact, Respondent no. 2 insisted upon payment by petitioner no. 1 in terms of the OTS dated August 19, 2019, inter alia by its letter dated June 25, 2020. Thus, the only concluded OTS, if

any, was reached on August 19, 2019 by the Bank's acceptance and sanction of the previous offer of petitioner no. 1. In the event the petitioners argue that OTS was not finalized on August 19, 2019, there is no other concluded OTS scheme that the petitioners can rely on.

54. Since the petitioner no.1 failed to honour its commitments under the concluded OTS scheme of August 19, 2019, as mentioned above, no further extension of time on the basis of the OTS could be claimed validly by the petitioners. The Respondent no. 2-Bank, by its letter dated August 10, 2020, made it clear that, in view of the failure of petitioner no. 1 to honour payment of OTS amount as per sanction terms, the OTS was treated as failed and, as a consequence, requested petitioner no. 1 to pay up the entire outstanding due of Rs. 16.01, as on that date, with interest.
55. At the juncture when the pandemic set in and the Covid-19 Circulars-in-question were issued, the petitioner no.1 was already a defaulter and its account had been declared NPA. Such default could not be connected with the pandemic, for the victims of which the Circulars were intended. Thus, such account could not be considered to be a 'standard account' to attract the benefits of the RBI Circulars. Even if the petitioners seek extension of the Circular benefits to the petitioners on the ground that the NPA declaration was subject to compliance of the OTS scheme, the absence of any concluded OTS, at the juncture when the Circulars came in, negates the plausibility of such an argument.

- 56.** The petitioners have consistently defaulted in repayment, having only paid a meagre part of the dues, let alone interest, and having subsequently defaulted on the OTS scheme as well. Thus, there is no handle in favour of the petitioners to extend the benefits of the RBI Circulars to them.
- 57.** *Amit Khaneja & Ors. Vs. IL&FS Limited (supra)*, although rendered in respect of an “in-principle Agreement” for One-Time Settlement, the propositions laid down therein apply to the present case. Applying the tests laid down in the said report, an OTS proposal, once revoked, could not be tested on the benchmark of the RBI Circulars. Such settlements are, by their very nature, independent of the said Circulars and Guidelines. An OTS is a settlement scheme and does not confer any special sanctity to the NPA status of the defaulters. Undoubtedly, if an OTS scheme is honoured to the hilt, the borrowers might revert back and ask for their NPA status to be reversed and the account to be reverted back to a ‘standard’ classification. However, in case the borrower fails to honour its commitments as per the OTS, the question of claiming benefits of the Circular does not arise.
- 58.** In the present case, not only was there no existing OTS in place when the RBI Circulars were issued, in view of the previous OTS scheme having been revoked due to default of the petitioners, there was no scope to argue that the benefits of the RBI Circulars were applicable to the petitioners, since an incomplete OTS, in any event, cannot be a trigger for extending the benefits of the RBI Circulars.

- 59.** Petitioner no. 1 clearly admitted, inter alia in its letter dated December 10, 2019 (Annexure P-57 at page 180 of the writ petition), that its account had become NPA in October, 2017 (as per the Bank's version, though, it stood NPA since the year 2015). Subsequent talks of settlement, which never reached fruition, cannot afford leverage to the petitioners to claim benefits under the 2020 RBI Circulars, as those extend only to 'standard' accounts, which character was lost by the account of petitioner no. 1 the moment it was classified as NPA long prior to the onset of the pandemic. As on February 29, 2020, the cut-off date provided in the Circulars, the account of petitioner no. 1 was already marked 'NPA' and was not a 'standard' account to which the benefits of the Circulars could be extended.
- 60.** In such view of the matter, the contentions of the petitioners have to be turned down on all scores.
- 61.** Accordingly, WPO No. 309 of 2020 is dismissed on contest, without any order as to costs.
- 62.** Urgent certified website copies of the order shall be provided to the parties upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)