IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3972 OF 2021
WITH
INTERIM APPLICATION NO. 1860 OF 2021

1. M/s. Ace Agro Bio-Energy Farms Pvt. Ltd., The Iconic Living Pan Card Club Road, Baner, Pune, Maharashtra - 411 045.
2. M/s. Ace Nurseries Pvt. Ltd., The Iconic Living Pan Card Club Road, Baner, Pune, Maharashtra - 411 045.
3. M/s. Ace Agro Bioscience Ltd., The Iconic Living Pan Card Club Road, Baner, Pune, Maharashtra - 411 045.
4. M/s. Sona Organic Farms Pvt. Ltd., The Iconic Living Pan Card Club Road, Baner, Pune, Maharashtra - 411 045. ... **PETITIONERS**

Versus

1. State Bank of India, Stressed Assets Recovery Branch, Having its office at Vardhaman Building, 2nd Floor, 321/A/3, Mahatma Phule Peth, Seven Loves Chowk, Shankarsheth Road, Pune - 411 042.

   And also having address at

   Varma Chambers, Homji Street, Fort, Mumbai 400 001, Maharashtra.
2. Reserve Bank of India, Having address at New Central Office Building, Shahid Bhagat Singh Road, Fort, Mumbai - 400 001.

3. Union of India, through
the Jt. Secretary
Ministry of Law & Justice,
Ayakar Bhavan, M.K. Road,
Churchgate, Mumbai.

4. Union of India
Having address at 2A, Arora
Towers, 69, Moledin Road,
Pune Camp - 411 001. ... **RESPONDENTS**

Mr. Mihir Desai, Senior Advocate a/w. Mr. Sidharth Samantarey, Mr. A. P. Steenson and Mr. Shivam Laturiya i/b. APS Law Associates for Petitioners.

Mr. Suhail Farooqui and Mr. Inayat Ali Qureshi i/b. KK Associates for the respondent No.1 - SBI and for applicants in IA/1860/21.

CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.

JUDGMENT RESERVED ON : 18/11/2021
JUDGMENT PRONOUNCED ON : 06/05/2022

JUDGMENT : (PER M. S. KARNIK, J.) :

1. This petition under Article 226 and 227 of the Constitution of India, *inter alia*, seeks the following substantive reliefs:

(a) That this Hon'ble Court be pleased to issue a writ of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India calling for records and papers pertaining to the letter dated 03/10/2020 rejecting the OTS and after examining the validity, legality and propriety thereof, the same be quashed and set aside.

(b) That this Hon'ble Court may be pleased to issue Writ of Mandamus and/or direction in the nature of the Writ of Mandamus or any other writ and direct the Respondent Bank to enforce the OTS and accept the monies balance residue amount towards OTS from the Petitioners.

(c) That the Hon'ble Court may be pleased to issue Writ of Mandamus and/or direction in the nature of the Writ of Mandamus or any other writ and quash and set aside the e-auction notice dated 29th October, 2020.

(d) That this Hon'ble Court may be pleased to issue Writ of Mandamus and/or direction in the nature of the Writ of Mandamus or any other writ directing the Reserve Bank of India to exercise powers of superintendence and control of the Respondent Bank for conducting an investigation into the management and affairs of the Respondent Bank under section 351A of the RBI Act.

2. In brief, it is the grievance of the Petitioners that they have been illegally deprived of the benefit of One Time Settlement scheme (OTS for short) introduced by Respondent No.1-State Bank of India ('Bank' for short), on a frivolous ground of ineligibility.

3. For seeking the aforementioned reliefs, the following factual foundation is pleaded in the petition by the Petitioners:

A) The Petitioners are carrying out Agro based business in the name and style as M/s. Ace Agro Bio-Energy Farms Pvt Ltd. (Petitioner No.1), M/s. Ace Nurseries Pvt. Ltd. (Petitioner No.2), M/s. Ace Agro Bioscience Limited (Petitioner No.3) and M/s. Sona Organic Farms Pvt. Ltd. (Petitioner No.4). The promoter of the Petitioners was Late Shri Avinash Rangnekar who expired sometime in the year 2017. Respondent No.2 is the Reserve Bank of India ('RBI' for short). RBI exercises powers of supervision and inspection on the Bank.

B) The Petitioners had availed loan facilities from the Bank for which they had mortgaged immovable properties being Gat Nos.91, 100, 102, 103, 107, 112 and 113 at Belaj, Taluka Maval, District Pune and Gat Nos.43 and 44 at Kondiwade, Taluka Maval, District Pune. The Petitioners suffered business losses due to which they were not able to make repayments and the account was classified as Non-Performing Asset ('NPA' for short) way back in the year 2013 itself. Thereafter, the Bank filed Original Application ('OA' for short) before the Debts Recovery Tribunal, Pune ('DRT' for short). During pendency of the OA, Shri Avinash Rangnekar expired and the responsibility of the entire business fell on the shoulders of his son Shri Aniruddha Rangnekar.

C) The Bank had intimated and informed the Petitioners vide its letter dated 20/10/2020 about the scheme of OTS of NPA and clarified the scheme of OTS thereby offering the Petitioners the OTS in line with the RBI guidelines (Exhibits "A", "A1", "A2" and "A3"). The DRT vide e-auction sale notice dated 29/10/2020 put up one of the immovable properties for e-auction sale which was to be conducted on 08/12/2020 (Exh. "B") by way of auction through online electronic bidding.

D) The Petitioners accepted the OTS offer as per the OTS scheme of the Bank vide its letter dated 05/11/2020 and deposited 5% of the OTS amount as per the OTS scheme i.e. Rs.12,43,000/- + Rs.2,94,000/- + Rs.84,000/- + Rs.1,42,000/- against the sanctioned OTS. The Bank accepted this 5% amount vide its acceptance letter dated 05/11/2020. By letter dated 07/11/2020, the Bank gave a written confirmation that all the mortgaged properties shall be released by the Bank after receipt of the full and final settlement in accordance with the OTS. The Bank addressed a letter to the Petitioners clarifying the terms and conditions of settlement and, accordingly, the amount as per the OTS scheme was intimated by way of letter dated 09/11/2020 to each of the Petitioners. Vide this letter dated 09/11/2020, the Bank granted time to the Petitioners for repayment of money as per the OTS and also granted certain incentives for early repayment. The Bank sanctioned OTS of the dues for a total amount of Rs.2,48,56,334/- + Rs.58,68,652/- + Rs.16,61,603/- + Rs.28,35,450/- in accordance with the Bank's letters bearing Ref. Nos. SARB/PUNE/RAN/463, 464, 465 & 466, all dated 09/11/2020.

E) The concerned Official on behalf of the Petitioners visited the office of the Bank on or about 01/12/2020 with a request to accept the remaining amount of OTS by availing the incentive granted by the Bank to the extent of 15% against payment of OTS amount within one month. The Petitioners tried to hand over the following Demand Drafts to the Bank being the entire residual amount of OTS.

DD/Cheque No.	**Name of the Bank**	**Date**	**Amount of DD**
002276	Syndicate Bank	01/12/2020	75,56,183/-
307135	Kotak Mahindra Bank	27/11/2020	89,68,701/-
052164	Cosmos Bank	01/12/2020	33,60,000/-
180477	Yes Bank	01/12/2020	46,94,355/-
180475	Yes Bank	01/12/2020	22,68,135/-
17671	Kotak Mahindra Bank	27/11/2020	7,28,363/-
180476	Yes Bank	01/12/2020	6,00,000/-

F) The Petitioners approached the Bank under an impression that after making the entire payment of OTS, the Bank would issue NOC along with letter of release of the securities mortgaged in favour of the Bank for the loans availed by them. The Bank refused to accept the balance amount as per the OTS. The Petitioners were told that this was on account of the Recovery Officer of the DRT having put up the properties for sale and as the sale of the properties is to be conducted on 08/12/2020, the Bank was well within its right to refuse to accept the payment. Further the Petitioners were informed that the Bank had received some complaints through the DRT thereby indicating that the complainant is ready to purchase the property in auction scheduled to be held on 08/12/2020. The Petitioners allege that there seems to be a collusive effort to deprive them of the OTS incentive for reasons unknown and there are apparently unknown forces working against the OTS offered to them with a view to scuttle the settlement process.

4. According to the Petitioners, under no circumstance, can the Bank refuse to accept the remaining amount of payment under OTS and that the Bank is bound to release the securities mortgaged. The Petitioners have discharged their part of obligations and the Bank now cannot refuse to perform its part of obligation as the same would tantamount to breach of contract on the part of the Bank. The Petitioners through their Advocate issued a legal notice dated 03/12/2020 calling upon the Bank to accept the balance residue as per the OTS scheme.

5. Learned senior advocate, Shri Mihir Desai submits that it is not open for the Bank to refuse the benefit of OTS only because there has been a mistake on the part of the Bank as there is now a concluded contract between the Petitioners and the Bank. It is submitted that the communication dated 03/12/2020 informing that the OTS given to the Petitioners is being withdrawn on the ground that their account is ineligible as the same was given by mistake, is unsustainable in the teeth of Section 22 of the Indian Contract Act, 1872 ('Contract Act' for short). Learned senior advocate was at pains to point out that once the OTS was offered to the Petitioners by the Bank which is accepted by them having complied with the requisite condition of making payment as stipulated under the scheme, it is then not open for the Bank to take a stand that as a result of mistake on their part the OTS is being withdrawn. Learned senior advocate urged that though the Petitioners offered to make the payment and avail the incentive scheme as per the OTS, the action on the part of the Bank to unilaterally withdraw the benefit of OTS, already granted, is arbitrary. It is submitted that there is no change in circumstances between the period the letters (dated 07/11/2020 & 09/11/2020) sanctioning the OTS and the impugned communication dated 03/10/2020 rejecting the OTS were issued. According to him, the action on the part of the Bank in rejecting the OTS benefit already sanctioned is an instance of complete non-application of mind as at least in case of Petitioner Nos.2 and 4,

proceedings were pending before the DRT, despite which the Bank in utter haste rejected the OTS on the ground that no case was pending before the DRT.

6. On the other hand, learned counsel appearing on behalf of respondent No.1 submitted that there was a bona fide mistake on the part of the Bank in offering the benefit of OTS scheme to the Petitioners. According to him, the Petitioners are not eligible for the benefit of OTS scheme as the OA was finally adjudicated and the decree is passed by the DRT. He submits that it is only when the proceedings are pending before the DRT that such debtors are eligible for the OTS scheme. He submits that even the consent terms are subject to the orders of DRT. Learned counsel next contended that even when a settlement is reached upon sanctioning of the OTS scheme, consent terms are to be drawn which are subject to the DRT's orders. It is submitted by learned counsel that instead of approaching the DRT in the first instance, the Petitioners have directly filed this writ petition. Learned counsel submits that the petition should not be entertained in view of the recourse available under the Recovery of Debts and Bankruptcy Act, 1993 (hereafter "RDDB Act"). Learned counsel therefore submits that the present petition should not be entertained.

7. Heard learned counsel for the parties. Perused the memo of petition, relevant exhibits, reply filed on behalf of the Bank and the rejoinder. The Petitioners defaulted in the payment of loan taken from the Bank. The Bank

filed OA before the DRT for recovery of outstanding loan. The claim of the Bank was adjudicated by issuing recovery certificate against the Petitioners. The Petitioners were directed to make payment of Rs.13,11,57,069.70 along with interest from the date of default till realization of payment. Neither an appeal was preferred against such order, nor payments were made by the Petitioners. The recovery proceedings came to be initiated by the Recovery Officer for recovery of outstanding dues from the Petitioners.

8. The Bank informed the Petitioners about OTS scheme by its letter dated 20/10/2020. Such offer was made on the terms and conditions stated in the communication dated 20/10/2020. Clause No.3 of the proposal mentions that the application for OTS will be processed only on deposit of minimum 5% of the OTS amount. Clause No.8 provides that the Petitioners are eligible for an additional incentive on the OTS amount on making payment of entire amount as indicated in such communication. The Bank is heavily relying on Para No.2 of the OTS offer dated 20/10/2020, which according to the Bank renders the Petitioners ineligible for availing the benefit of the OTS scheme. Para No.2 of the said OTS offer dated 20/10/2020 reads thus: -

> "2. (Where applicable) Since your case is pending before Court / Lok Adalat / DRT any settlement will be subject to consent decree from the respective court. Since you have been issued notice under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, this notice is without any prejudice to our

> rights to take / continue actions under the Act unless a compromise is settled under the present SBI OTS 2020 Scheme as stated above."

9. The Petitioners acting in furtherance of the communication dated 20/10/2020 accepted the OTS offer by depositing 5% of the OTS amount on 05/11/2020. By a letter dated 05/11/2020, in response to the OTS offer, the Petitioners conveyed their acceptance of the terms and conditions stated in the OTS offer dated 20/10/2020. The Bank on 07/11/2020 informed the Petitioners that the properties mortgaged to the Bank for credit facilities granted to them will be released only after full and final settlement of the accounts strictly as per the terms and conditions under sanction letter given to the Petitioners.

10. On 09/11/2020, the Bank informed the Petitioners that the application for OTS has been accepted by the appropriate authority. The terms and conditions were set out thereunder. Clause No.8 of the terms and conditions provided that the consent terms with the default clause will be filed before the Presiding Officer of DRT / Court for obtaining consent decree.

11. The Bank then realized that as O.A. No.186/2013 had already attained finality and final decree having been passed, the Petitioners are ineligible for the OTS scheme. This mistake they sought to rectify by rejecting the OTS granted in favour of the Petitioners.

12. According to learned senior advocate for the Petitioners, the sanction by the Bank to the OTS scheme amounts to a concluded contract between the parties

within the meaning of Section 22 of the Contract Act. Section 22 provides that "A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact". Learned senior advocate urged that the OTS sanction is not voidable merely because the Bank was under a mistake as to a matter of fact as regards the pendency of the proceedings before the DRT. The Bank contends that the RBI guidelines provided that the OTS schemes are applicable to the matters which are pending before the DRT and can take effect only on the orders of DRT on the consent terms.

13. During the course of hearing of this petition, it is pointed out that as on the date of consideration of the OTS proposal, final decree has been passed by the DRT as against Petitioner No.1 - Ms. Ace Agro Bi-Enery Farms Pvt. Ltd. and Petitioner No.3 - M/s. Ace Agro Bioscience Limited. However, there is no final decree passed as against Petitioner No.2 - M/s. Ace Nurseries Pvt. Ltd. and Petitioner No.4 - M/s. Sona Organic Farms Pvt. Ltd. It is relevant to place on record that O.A. Nos.188/2013 and 189/2013 filed against the Petitioner Nos.2 and 4 are pending before the DRT. This is so stated in para No.10 of the rejoinder filed on behalf of the Petitioners and the same is not controverted by the Bank. Resultant position is that there is final decree so far as Petitioner Nos.1 and 3 are concerned and so far as Petitioner Nos.2 and 4 are concerned, final decree is yet to be made.

14. It is pertinent to note that in the execution proceedings in respect of O.A. No.186/2013, a notice for auction dated 03/11/2020 was issued by the DRT, Pune and the same was published in the newspaper on 06/11/2020 indicating the reserved price of Rs.18.76 Crores. In the meantime, the respondent No.1 - Bank received the OTS proposal from the Petitioners for a sum of Rs.3.52 crores. The Recovery Officer was requested to defer the E-auction for considering the OTS proposal furnished by the Petitioners. The Recovery Officer suggested the Petitioners to approach the DRT for seeking necessary orders and directions from the Presiding Officer. It is the contention of the Bank that instead of approaching the Presiding Officer seeking necessary orders or directions, the Petitioners filed writ petition to hamper the recovery proceedings. It is then pointed out that the present petition was filed on 04/12/2020.

15. At this juncture, we need to make a reference to the interim order dated 08/12/2020 passed by this Court. The order dated 08/12/2020 reads thus: -

> "Heard learned Counsel for the parties.
>
> 2. The grievance of the Petitioners is that on 9 November 2020 scheme of One Time Settlement was offered to the Petitioners and confirmed. The case of the Petitioners is that pursuant to the said offer of One Time Settlement, the Petitioners deposited the initial amount and when the Petitioners approached the Bank with the remaining amount, on 3 December 2020, the Petitioners were informed that One Time Settlement is being withdrawn and the same was extended by mistake

as the account is ineligible. The Petitioner is aggrieved by putting up the property for auction.
3. The learned Counsel for Respondent-Bank seeks time to file reply and states that the auction is being conducted by the officers of the Debt Recovery Tribunal and the Petitioners can approach the Debt Recovery Appellate Tribunal.
4. The impugned order dated 3 December 2020 does not give any reasons, except that the account is ineligible. Considering the communications dated 9 November 2020 and 3 December 2020 and the fact that the Petitioners have deposited the initial amount and have offered the remaining amount, we are of the opinion that the Petitioners are entitled to ad-interim protection in the meanwhile.
5. Stand over to 14 January 2021.
6. The auction as proposed shall be now be rescheduled to a date beyond the date assigned to this petition.
7. All parties to act on authenticate copy of this order.
8. The Petitioners to give notice to the unrepresented respondents."

16. It is undisputed that the OTS scheme in favour of the Petitioners was sanctioned by the Bank and it is even acted upon by depositing a sum of Rs.3.52 crores in compliance with the terms and conditions of the sanction. The Petitioners approached the Bank with the readiness to pay the entire dues as per the OTS scheme so as to avail the incentive benefits of the OTS scheme.

17. The Bank having sanctioned the OTS scheme and the Petitioners having acted in furtherance thereof, we have no hesitation in observing that there was a settlement between the Petitioners and the Bank. To appreciate the binding nature of the settlement and whether the same amounts to a concluded contract, a close scrutiny of the

terms and conditions of OTS offered by the Bank and the subsequent sanction of the OTS scheme by the Bank in favour of the Petitioners is necessitated. If we go through the contents of the proposal dated 20/10/2020, the same is subject to following the terms and conditions set out thereunder. Clause No.2 of the proposal reveals that the case has to be pending before the DRT and any settlement will be subject to consent decree from the DRT. The case against the Petitioner Nos. 2 and 4 was pending before the DRT. Therefore, it is obvious that even if there is any settlement reached between the Bank and the Petitioners, the same is subject to consent decree from the DRT. The Petitioner Nos.2 and 4 can at the highest submit that the sanction of OTS and the subsequent acceptance thereof would tantamount to a settlement. This settlement however will be subject to consent decree from the DRT in terms of the OTS offer dated 20/10/20202 and the subsequent sanction. Even the Petitioners had so understood that the sanction of the OTS scheme is on the terms and conditions stated therein. This can be gathered from the communication dated 05/11/2020 addressed by the Petitioners to the Bank accepting the OTS offer clearly indicating that the OTS amount is being paid as per the settlement terms stated in their letter. Even if we are to accept the contention of Petitioner Nos.2 and 4 that the settlement is reached between the Petitioners and the Bank, the same however is subject to consent decree from the DRT. It is, therefore, only appropriate in the fact situation of the present case that Petitioner Nos.2 and 4 approach the DRT for a consent decree on the basis of such settlement pleaded by them. If it is the case of Petitioner Nos.2 and 4 that the Bank has proceeded to auction the properties which adversely affect Petitioner Nos.2 and 4, it is for them to bring this aspect to the notice of DRT in the first instance. In such view of the matter, we do find substance in the contention of the learned counsel for the Bank that the DRT cannot be bypassed at the cost of entertaining this writ petition. In the affidavit-in-reply, the Bank has taken the stand that assuming any OTS settlement is applicable, the same was only possible under the orders of the DRT.

18. Let us now consider the case of Petitioner Nos.1 and 3 where a decree is already passed by the DRT. Learned senior advocate for the Petitioners wants us to take a broad view of the expression 'case pending before the DRT' within the meaning of Clause No.2 of the settlement dated 20/10/2020. He wants this expression to be extended to the proceedings before the Recovery Officer in execution of the decree as well. We are not persuaded at this juncture to decide the contention of learned senior advocate that even the execution proceedings are to be regarded as a case pending before the DRT. Having regard to the terms and conditions of the settlement, the OTS scheme was accepted by the Petitioners which has an express clause that any settlement will be subject to consent decree from the DRT. There is nothing on record to indicate that the Petitioners expressed any reservation

to the clause as regards the settlement being subject to consent decree from the DRT. As indicated earlier, even in the communication dated 05/11/2020 at Exh.C addressed by the Petitioners to the Bank, the Petitioners had accepted the OTS on the terms and conditions as mentioned in the Bank's sanction letter. In such circumstances, we have no hesitation in observing that the terms and conditions of sanction to the OTS scheme have to be read in its entirety and not in a piecemeal manner which suits the Petitioners' convenience. It is also pertinent to note here that the OTS scheme is introduced by the Bank on the basis of the guidelines issued by the Reserve Bank of India which are of binding nature. The Bank is bound to follow and act in accordance with these guidelines issued by the Reserve Bank of India.

19. At this juncture, a reference needs to be made to Clause No.8 of the sanction letter dated 09/11/2020 to the OTS by the Bank. Clause No.8 states that 'Consent terms with default clause will be filed before the Presiding Officer of the DRT for obtaining consent decree.' It is therefore imperative for the Petitioners to approach the DRT in the first instance even if they are making out a case of concluded contract. The Petitioners are seeking enforcement of a concluded contract by this petition. All these are issues, which ought to be raised before the DRT in the first instance for its consideration in accordance with law.

20. Viewed from any angle, whether in the case of

Petitioner Nos.1 and 3 where decree is already passed or as in the case of Petitioner Nos.2 and 4 where the decree is yet to be passed, the Petitioners must approach the DRT for obtaining consent decree.

21. We have also examined the contention of learned senior advocate that no fruitful purpose will be served by approaching DRT as the Bank has made clear its intention of not honouring the settlement in which case it is not expected that the Bank will co-operate with the Petitioners in filing the consent terms. Even if it is the Petitioners case that the Bank will not now sign the consent terms, still then the provisions of sub-Sections 20 and 20-A of Section 19 of the RDDB Act cannot be overlooked which reads thus: -

> **"Section 19(20)** : The Tribunal may, after giving the applicant and the defendant an opportunity of being heard, pass such interim or final order, including the order for payment of interest from the date on or before which payment of the amount is found due upto the date of realisation or actual payment, on the application as it thinks fit to meet the ends of justice.
>
> **Section 19 (20-A)** : Where it is proved to the satisfaction of the Tribunal that the claim of the applicant has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties or where the defendant has repaid or agreed to repay the claim of the applicant, the Tribunal shall pass orders recording such agreement, compromise or satisfaction of the claim."

22. In view of the language of sub-Section (20-A) of Section 19 of the RDDB Act, if it is a case of the Petitioners that there is concluded contract between the

parties on the basis of the settlement, it is for the Petitioners to approach the DRT and to prove to its satisfaction that the Petitioners having agreed to repay the claim of the Bank as per the settlement, appropriate orders in the light of such settlement be passed. We also note that sub-Section (25) of Section 19 of the RDDB Act provides that the Tribunal may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice. In the teeth of such provisions, we are not inclined to entertain the petition even before the Petitioners have approached the DRT seeking the reliefs sought in this petition.

23. We are therefore of the opinion that it is for the Petitioners to approach the DRT by making appropriate application/applications for claiming the reliefs prayed for in this petition. If such application/applications is/are made by the Petitioners, the same shall be considered by the DRT on its own merits and in accordance with law without being influenced by any observations made by us on the merits of the contention raised by either parties.

24. The writ petition is dismissed with no order as to costs.

25. In view of the above, nothing survives in the Interim Application No. 1860 of 2021 and the same stands disposed of.

(**M. S. KARNIK, J.)** **(CHIEF JUSTICE)**

Waghmare/Choulwar