Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1379 OF 2020

1. **Shirdi Country-Inns Pvt Ltd,**
A Company incorporated and registered under the provisions of the Companies Act, 1956 having its registered office at 15A, Koregaon Road, Pune 411 001.

2. **Lakshman Kariya,**
Director, Shirdi Country-Inns Pvt Ltd, Having its office at 15A, Koregaon Road, Pune 411 001.

3. **Mona Kariya,**
Director, Shirdi Country Inns Pvt Ltd, Having her address at 15A, Koregaon Road, Pune 411 001.

...Petitioners

~ versus ~

1. **Union of India,**
through the Joint Secretary, Ministry of Law & Justice, Akaka Bhavan, MK Road, Churchgate, Mumbai 400 020.

2. **Union Bank of India,**
2A, Arora Towers, 69, Moledina Road, Pune Camp 411 001.

3. **Reserve Bank of India,**

...Respondents

New Central Office Building,
Shahid Bhagat Singh Road,
Fort, Mumbai 400 001.

APPEARANCES

FOR THE PETITIONER	**Mr Zal Andhyarujina, Senior Advocate**, *with Ishani Khanwilkar, Tasneem Zariwala & Rushab Chopra, i/b Vidhii Partners.*
FOR RESPONDENT NO.1-UNION OF INDIA	**Mr Mohamedali M Chunawala**, *with Anil Yadav, i/b AA Ansari.*
FOR RESPONDENT NO.2	**Mr Prathamesh Kamat**, *with Nakul Jain, i/b NI Bakali.*

CORAM : G.S.Patel & Neela Gokhale, JJ.

DATED : 10th April 2023

ORAL JUDGMENT (*Per GS Patel J*):-

1. **Rule.** There is an Affidavit in Reply and an Affidavit in Rejoinder. By consent, Rule returnable forthwith and the Petition is taken up for hearing and final disposal.

2. It is settled law that in exercise of a High Court's discretionary extraordinary jurisdiction under Article 226 of the Constitution of India to issue a high prerogative remedy, no writ will issue compelling a bank, even if it be an instrumentality of the State, to compulsorily grant or act upon a One Time Settlement ("**OTS**") proposal. The present case stands apart on facts, as we shall presently see. The issue here is whether a public sector bank, having once offered an OTS proposal, one propounded by the bank itself—and we will consider the conspectus of the expression "offer" in light of Mr Kamat's arguments on behalf of the bank—can at some later point reverse course to contend that the borrower was never even eligible for the benefit of that OTS scheme.

3. The facts are not many. The 2nd Respondent is the Union Bank of India ("**UBI**"), one of the largest Government owned banks in the country. There is no dispute that UBI sanctioned a loan of Rs. 21.26 crores to the 1st Petitioner on 20th October 2009 as a term loan and another Rs. 1 crore as a bank guarantee facility. The 1st Petitioner took this loan to set up a five star hotel at Shirdi. A short while later, on 15th December 2010, the 1st Petitioner took an additional loan of Rs. 5.90 crores for modifications or additions to the Shirdi hotel project.

4. By May 2012, the 1st Petitioner's account with UBI had become irregular. It stood classified as a Non Performing Asset ("**NPA**") in May 2012. Now, as is well known, the NPA declaration is very nearly automatic. It follows certain prescriptive requirements, guidelines and rules of the banking regulator, the Reserve Bank of India ("**RBI**"), the 3rd Respondent. There are defined parameters and once these are met, the result is that an account is declared NPA. It is not necessary to examine this aspect of the matter in greater detail because the fact that the 1st Petitioner's account was declared NPA in May 2012 is not contentious. Relevant at this point is the statutory auditor's report which said that all facilities had become NPA in May 2012 and therefore the 1st Petitioner's account was eligible for classification in what is called a 'Doubtful-2' category. We are given to understand that this means that it is Doubtful as between one to three years.

5. On 27th September 2012, the 1st Petitioner's account with UBI was downgraded by the RBI to a substandard level. This position about the RBI's grading changed somewhat on 28th March 2013 since there was a payment made in the interregnum and the 1st Petitioner's account was changed from substandard to standard. The NPA declaration was thus removed in consequence.

6. Between 3rd June 2013 and 1st March 2014, UBI sent several letters to the 1st Petitioner saying that its account or accounts with UBI were included in the memorandum of charges as NPA as of September 2013. UBI asked the 1st Petitioner to pay overdue amounts to avoid a classification as NPA. On 30th December 2014, the 1st Petitioner tendered a cheque for Rs. 1.60 crores to UBI but this was returned unpaid. That very month, VJ Kulkarni and Associates were appointed by UBI to audit the books of account for the October 2014 to December 2014 quarter. That report showed the asset classification as standard but that the account was NPA and was under active consideration for restructuring.

7. On 4th February 2015, UBI classified the 1st Petitioner's account as NPA. It then moved for recovery including issuing a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 ("**SARFAESI Act**") on 16th March 2015. There were some intervening events regarding a query under the Right to Information Act 2005, but we will pass over those events because they do not seem to us material to what followed.

8. On 28th March 2019, UBI came out with a specific scheme under an Instructions Circular No. 1533 of 2018. This was a 'Centenary Settlement Scheme for Doubtful and Loss Assets for NPAs up to and including Rs. 50 crores' ("**the Scheme**").

9. A copy of this Scheme is at Exhibit "A" to the Petition at page 52 and it is probably best to examine the relevant portions at this stage. The eligibility is in respect of all loans classified as doubtful or loss assets on or before *31st December 2018* with an outstanding of or greater than Rs. 50 crores. The scheme was valid until 31st March 2020. This was said to be a non-discretionary and non-discriminatory Scheme to empower "field functionaries" (meaning officers charged with recovery) for quick settlement of NPA accounts up to the limit specified. The details of the scheme are in a table below paragraph 4. Item 1 has the name of the scheme. Item 2 sets out its validity. Item 3 is an important clause which specifies in the 'details' section the eligibility and coverage. It reads thus:

3.	**Coverage/ Eligibility**	All loans classified as doubtful or loss assets as on 31.12.2018, with outstanding up to and including Rs.50.00 crores. As the scheme is effective with immediate effect, any amount recovered in eligible accounts on or after the date of circular will be treated as part of settlement. Farmers who settle their accounts under the scheme are again eligible for fresh

	financing subject to eligibility norms for lending to agriculture.

10. Item 4 is captioned 'Settlement Account' and in this, in a graded fashion, there is a settlement account expressed in percentage terms of the running ledger. Item 4 is in two parts. The first relates to NPAs up to (and including) Rs. 25 lakhs, with which we are not concerned. The second part at page 54 relates to NPAs above Rs. 25 lakhs and up to and including Rs. 50 crores. This is where the 1st Petitioner falls. That table reads as follows:

4.	**Settlement amount**	… … …
		… … …
		For NPAs with outstanding above Rs.25.00 lacs up to and including Rs. 50.00 crore:

Running Ledger Outstanding balance as on date of circular	Classification of Account	Settlement amount on Secured Portion of Outstanding	Settlement amount on Unsecured Portion of Outstanding
Above Rs 25 lakhs and up-to Rs 5 crores	D1	80%	50%
	D2	75%	50%
	D3, Loss & Prudential Written Off Accounts	70%	50%
Above Rs 5 crores and up-to Rs 25 crores	D1	80%	60%
	D2	75%	60%
	D3, Loss & Prudential Written Off Accounts	70%	60%
Above Rs 25 crores and up to Rs 50 cores	D3, Loss & Prudential Written Off Accounts	70%	60%
Outstanding equivalent to the value of primary and collateral security # Outstanding in excess of the value of primary and collateral security **Settlement Amount under the scheme = A + B**			
Note:			

1. Security consists of both primary as well as collateral security. Valuation of securities should not be older than 12 months. Securities valued at Rs. 1 crore and above have to be inspected by RO official of the rank not below Senior Manager for acceptance of the valuation. Justification in deterioration in value, if any, should invariably be presented before respective approving authority. In case of properties valued at Rs. 5.00 core and above, two valuation reports from our empanelled valuers and higher of them should be taken into consideration while arriving settlement amount under the scheme. ***Security value means the value at the time of last renewal or the latest valuation whichever is higher.*** In case there is decline in the value by more than 25%, role of valuers should also be examined, for lapses if any. 2. In case of agricultural advances, interest held in partition account to be treated as part of running ledger outstanding for the purpose of arrive at settlement amount.

11. The first column speaks of 'the date of the Circular' and this is 28th March 2019. The expressions D1, D2 and D3 are the classifications of Doubtful 1, Doubtful 2, and Doubtful 3. The next column deals with the settlement amounts on the portion covered by security and the portion without security. The last two rows deal with the slabs of ledger outstandings above Rs. 5 crores and up to Rs. 25 crores and above Rs. 25 crores and up to Rs. 50 crores.

12. Paragraph 5 at page 56 set out the action points and paragraph 5.1 said that regional offices should identify the accounts eligible under the Scheme before 5th April 2019. Paragraph 5.2 said that a notice should be sent by the branches to all eligible borrowers in the prescribed format indicating the settlement amounts payable. We reproduce Clauses 5.1, 5.2, 5.3, 5.4 and 5.5 from pages 56 and 57.

> "5. **<u>ACTION POINTS FOR BRANCH/ REGIONAL OFFICE:</u>**
>
> 5.1 Regional Offices should identify the accounts eligible

under the Scheme for Settlement before 05.04.2019. **Eligible accounts may be identified from the Asset Classification Statement (A2 to A4) as of 31.12.2018. List of such eligible accounts should be sent immediately to the respective Branches and Branches must ensure that the accounts mentioned in the list are actually eligible for settlement under the Scheme with special reference to the exceptions given in the Scheme.** A copy of list of eligible accounts should be sent to Credit Recovery Department, Central Office latest by 7th April, 2019.

5.2 A notice should be sent by the Branches to all eligible borrowers in the prescribed format (as per Annexure I) by registered post indicating the settlement amount payable by them. A copy of the notice be also handed over to the borrower personally by the Branch after obtaining acknowledgement to draw immediate response of the borrower. While calculating the total dues in the account, the unapplied interest and expenses are to be added in to it. (Settlement amount is to be calculated after considering the ECGC/CGTMSE claim settled in the account and write off effected in the account). Regular follow up should be made by Regional Office/branch officials with the borrowers and if the borrower does not respond within 15 days, a reminder should be sent.

5.3 Regional Office has to ensure that all eligible borrowers/guarantors are contacted by 15.04.2019 and make all out efforts for adjustment of all eligible accounts to derive maximum benefit out of the Scheme. Regional Office should proactively take all necessary steps to ensure that the entire exercise of issuance of notices, further follow up for settlement, processing of settlement proposals and follow up for recovery is carried out smoothly and expeditiously.

5.4 Wherever Borrowers have filed cases/claims against

Bank, they have to withdraw all the cases filed against Bank including third party cases before settlement is implemented.

5.5 A format of simplified process notice is attached (Annexure-II) for according sanction of Settlement in eligible accounts and reporting to Controlling Office."

(*Emphasis added*)

13. The table in Clause 4 which had the details also set out the terms of the payment. Logically, this would follow paragraphs 5.1 to 5.4 and we now reproduce Item 8 of the table from pages 55 to 56.

8.	**Terms of payment**	The borrower has to deposit 5% of the OTS Amount at the time of submission of the application (in the form of letter addressed to branch head) to indicate his willingness for OTS, failing which the application will not be processed. In the event the application for OTS is rejected by the bank, such payment, which shall be held in a separate account, will be refunded without interest within three months. The borrower has to deposit 20" of the OTS amount within thirty days from the date of sanction of OTS failing which the OTS sanction will be rendered infructuous. This will include the amount deposited along with the application for OTS The balance of the OTS amount is to be paid, without interest, within three months from the date of sanction of OTS. However, the balance amount can also be paid within 6 months from the date of sanction of OTS (the validity period) together with interest " One-year MCLR on reducing balance basis effective from the date of sanction of the OTS. Failing to repay the entire amount within stipulated time-period, will render the OTS infructuous, and therefore amount paid under this OTS if any, will not be refunded.

14. On 3rd April 2019, i.e., well before the time line set out in the Scheme, UBI wrote to the 1st Petitioner. A copy of that letter is at page 95 at Exhibit "D". Paragraph 1 listed the facilities that the 1st Petitioner had availed. It then said there was default and that the account had become NPA. It set out the amount due and claimed namely, Rs. 52,70,67,703.24. UBI then said that it had come out with the Scheme, and that this was for a limited period. Paragraphs 2 and 3 of this letter are important and they read as follows:

> "Bank has come out with **Centenary Settlement Scheme for Doubtful and Loss Assets**, which is valid for a limited period only. As per this scheme, you have to pay a minimum amount of Rs. **214578314.00**. Against the total dues in your account. **If you wish to avail the benefit of the scheme, you are requested to submit your offer within one month from the date of receiving this notice, and your account should be adjusted within the validity period of the scheme. You will appreciate that this is a one time opportunity afforded to settle your dues with maximum possible concessions and it will be in your own interest to clear your liability.**
>
> Please note that this notice is issued without prejudice to Bank's right to recover the entire dues in your account. If you fail to fully adjust your account within the time frame of the scheme, Bank will be initiating/continuing recovery measures to recover the entire dues in your account with up to date interest and cost.
>
> CC: Guarantor 1. Mr. Lakshman Kariya 2. Mrs. Mona Kariya
>
> **Please ensure that the borrower avails the above opportunity and settle the Bank's dues so that you will also be relieved from your liability as guarantors, failing which bank shall be compelled to take necessary action**

> **against you for recovery. Please also note that you can come forward and the settle the dues under account.**"

(*Emphasis added*)

15. Clearly, this was in line with paragraphs 5.1, 5.2 and 5.3 of the Scheme.

16. On 5th April 2019, the 1st Petitioner replied (Exhibit "E", page 96) accepting the offer and issuing a demand draft for Rs. 1,07,28,916/- saying that this was 5% of the Scheme settlement amount of Rs. 21,45,78,314/-. The 1st Petitioner requested that the OTS be sanctioned.

17. On 8th April 2019, the 1st Petitioner deposited a further sum of Rs. 3 crores with UBI. The aggregate paid by these two Demand Drafts was thus Rs. 4,07,28,916/-.

18. On 22nd April 2019, UBI wrote to the 1st Petitioner. It referenced its letter of 3rd April 2019 and the 1st Petitioner's responses of 5th April 2019 and 8th April 2019. It said that the proposal had been sent to "the competent authority" but on perusing the proposal, the 1st Petitioner's "request" could not be accepted as it did not 'conform to the special OTS scheme'; and then UBI gave the reason "account is not classified as D-3 as on 31st December 2018". A copy of this letter is at Exhibit "G" at page 101.

19. There is a second communication of 22nd April 2019 at Exhibit "G2" from UBI to the 1st Petitioner saying that the 1st

Petitioner's "proposal" did not conform with the special OTS scheme of the bank.

20. The 1st Petitioner replied on 24th May 2019 pointing out that it was in fact eligible. It said that it was the bank that had offered the scheme to the Petitioner. Acting on that representation the Petitioner had deposited two Demand Drafts. As to the statement that the 1st Petitioner's account was not classified as D-3 on 31st December 2018, the 1st Petitioner pointed out that VJ Kulkarni And Associates had on 31st December 2014 said that the account was NPA and was under active consideration of restructuring. Later, another set of accountants GD Apte and Co had in paragraph 11 of their audit report mentioned the downgrading to substandard and that the Petitioner's account was in then in the Doubtful 2 category. Later, the bank had itself demanded payment of overdue amounts and it was the bank itself that had asked the Petitioner to avail of the scheme.

21. On 24th June 2019, the 1st Petitioner's Advocate wrote to UBI protesting against the rejection of the 1st Petitioner from the scheme. On 9th July 2019, UBI's Advocate replied to the 1st Petitioner's Advocate and now said that the 1st Petitioner was trying to "take undue advantage of the letter of 3rd April 2019", and that this was "inadvertently" issued by the Assistant General Manager of UBI although the 1st Petitioner was not "qualified" under the scheme.

22. There is no dispute that UBI first encashed the two Demand Drafts presented by the 1st Petitioner. Mr Kamat says that UBI then attempted to return the amount, and issued a demand draft from its sundry account (which was debited), but the 1st Petitioner refused to accept this. The amount of UBI's demand draft was therefore not encashed and lies in a suspense account.

23. This Petition was filed on 28th November 2019. The Petitioners filed Interim Applications seeking disclosure and stay. In the meantime, the SARFAESI proceedings were pursued resulting in a notice by the Talati. On 17th January 2023, this Bench allowed the Interim Application for disclosure and an application for amendment. On 8th March 2023, there was a time-limited protective order prohibiting coercive steps against the Petitioners.

24. The submission by Mr Andhyarujina, learned Senior Advocate for the Petitioners, is that there is not the slightest possibility in these circumstances of UBI going back on its statement of 3rd April 2019. There is no question of this being inadvertent. The scheme itself is said to be non-discretionary and non-discriminatory. The attempted reversal in course by UBI is based on a complete misreading of the Circular and an impermissible conflating of eligibility criteria with the tabulated statement determining the settlement amounts.

25. We believe this submission to be correctly placed. As we have noted above, the eligibility is not that an account must be classified as D1, D2 or D3 but that the account should be classified as doubtful or loss assets as on 31st December 2018. The second part of Item 4 of the table below paragraph 4 of the Scheme Circular does not set out *eligibility* criteria but it shows the amounts that are to be accepted in settlement depending on where a borrower's classification falls. For those who are classified as D1, D2 or D3 the amounts are different. These are again linked to the amount of the outstanding. Mr Andhyarujina submits that the slab-wise calculation of the settlement amounts cannot be confused or conflated with the eligibility criteria separately set out in Item 3 of the table below paragraph 4.

26. This is plainly correct. The first question therefore is whether the 1st Petitioner was classified as an NPA and doubtful as on 31st December 2018. The facts above shows that this was indeed so . UBI's attempt to impose a further qualification that the eligibility must be a D3 is not one that finds place in Item 3 of the table below paragraph 4 of the Circular. The 1st Petitioner's account was declared as an NPA in May 2012 and again on 4th February 2015 as we have seen above. Its account was doubtful on 4th February 2016 and consequently the Petitioner met the eligibility criteria set out in Item 3 of the table below paragraph 4.

27. Consequently, on 3rd April 2019 UBI correctly identified the 1st Petitioner as being eligible under the scheme. Any rejection thereafter by demanding a Doubtful 3 categorization is entirely arbitrary and contrary to the circular itself. The eligibility criteria are not part of Item 4 of the table below paragraph 4 at all. Item 4 deals with settlement amount, not eligibility. Eligibility is determined by Item 3 of the table and not Item 4. It is for the purposes of the settlement amount that slabs of D1, D2, D3 and amounts due are specified in the second sub-table of Item 4 of the table below paragraph 4. When Items 3 and 4 of the table are set next to each other, this is abundantly clear.

28. Mr Andhyarujina has some arguments to make regarding violations of principles of natural justice and not being afforded a hearing, but we need not let that detain us. He also canvasses the argument of legitimate expectations. Again, since we see that there is a clear case of arbitrariness under Article 14 of the Constitution, it is not necessary to fall back on the doctrines of either legitimate expectation or promissory estoppel.

29. Mr Kamat's argument is briefly that the letter of 3rd April 2019 was inadvertently issued. This is not an argument we are prepared to accept at all. A fair reading of the 3rd April 2019 letter shows that it could not conceivably have been inadvertent. Not only is the name of the 1st Petitioner mentioned but the letter is not in generalized terms as might be expected if an identical proforma standard letter was issued to all borrowers whose accounts were irregular. We find here a specific mention of the borrowings, unapplied interest, legal expenses, total dues down to the last naya paisa. There is then a mention not only of the Scheme but a computation of the amount of settlement from the 1st Petitioner under that scheme. The letter then goes on to say that this is a one time opportunity and of course it is without prejudice but interestingly the last paragraph says that if the 1st Petitioner "fails to fully adjust the account within the time frame of the scheme" the bank would initiate recovery proceedings. The letter is copied to both guarantors. They were asked to 'ensure' that the 1st Petitioner "avails of the above opportunity and settles the bank's dues so that it will also be relieved of your liability as guarantors ..."

30. Further, the communication of 3rd April 2019 could not possibly have been inadvertent. It was *exactly* in line with paragraphs 5.1 to 5.3 of the Circular itself. Once the eligibility criteria were met, such a communication had to follow; and the issuance of that communication is predicated on the Bank's acknowledgement of the 1st Petitioner's eligibility under the Scheme. Witness the operation of paragraphs 5.1 to 5.3: *First*, "eligible" accounts had to be identified as of 31st December 2018; with a verification of actual eligibility (paragraph 5.1). *Second*, a notice was mandated under paragraph 5.2 and that notice had to indicate the settlement amount computed as above. Obviously, no notice could have been sent without a prior verification of eligibility under 31st December 2018; and it is nobody's case that the 1st Petitioner's account was not 'verified'. *Third*, the Regional Office was to 'ensure' that all *eligible* borrowers and guarantors were contacted by 15th April 2019. Again, this postulates a prior verification of eligibility.

31. It is not shown that any such similar 'mistake' was made with other borrowers. It is impossible to accept that this is the only account and the only borrower who received a notice 'inadvertently'.

32. The only possible conclusion is that the 3rd April 2019 communication by UBI was in no sense, shape, fashion or form an error, an act of inadvertence, or an oversight. It followed the Scheme and Circular to the letter.

33. We therefore entirely fail to see what about this could be said to be "inadvertent", at least not without doing some very considerable violence to the English language. There was no mistake about this letter.

34. Mr Kamat emphasizes one sentence in this letter which says that if the 1st Petitioner wishes to avail of the credit of the scheme, it was requested "to submit its offer" within a month of receiving the notice. Mr Kamat's submission is that UBI's letter of 3rd April 2019 W/S only an invitation to offer, and that the offer that followed by the 1st Petitioner was rejected and therefore there was no enforceable contract nor any right.

35. The argument must be commended for its ingenuity, if not its appeal in any Court of equity or law. If there was anything inadvertent in this letter it is perhaps this sentence of asking for an offer. All that this really means is that the bank was willing to negotiate the amount of the OTS, not that it could then decide whether or not there was eligibility.

36. Mr Kamat's argument does not go the necessary distance; it cannot. For the simple reason that when UBI purported to resile, it did not do so on the basis that there was an invitation to offer, and then an offer that was not accepted but only on the basis that the 1st Petitioner did not meet the eligibility criteria. This clearly shows that UBI's letter of 3rd April 2019 was in no sense an invitation to offer, nor was it perceived as such and nor was it intended as such.

37. The prayers in the Writ Petition, as amended, read thus:

> "(a) This Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or Direction calling for the papers and proceedings culminating in the two letters, both bearing Ref. No. CAMP/NPA/2204/19 and both dated 22.04.2019 and after examining the legality and propriety thereof quash and set aside the same.
>
> (a-1) That this Hon'ble Court be pleased to declare that the account of Petitioner No. 1 held with Respondent No. 2 is eligible under the Centenary Settlement Scheme for Doubtful and Loss Assets (CSSDL) (For NPA's Up to and Including Rs.50.00 crores);
>
> (c) This Hon'ble Court be further pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ/Order/Direction, directing the Respondent No. 2 to issue a letter of sanction to the Petitioner No. 1 under the Centenary Scheme.
>
> (d) This Hon'ble Court be pleased to restrain the Respondent No. 2, its servants, agents, officers and representatives from taking any further steps against the Petitioners under the original contract, whether under the SARFAESI Act, IBC or any other law for the time being in force.
>
> (e) This Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other Writ/Order/Direction directing the Respondent No.

3 to inspect the books and accounts of the Respondent No. 2 under Section 35 of the Banking Regulation Act 1949 and to issue such directions as it deems necessary, under Section 35-A of the said Act to the Respondent No. 2;

(f) This Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other Writ/Order/Direction directing the Respondent No. 3 to exercise its powers of superintendence and control over the Respondent No. 2 and to conduct an investigation into the management and affairs of the Respondent No. 2 under Section 35(1-A)(a) of The Reserve Bank of India, 1934;

(f-1) That pending the hearing and final disposal of the present Petition, this Hon'ble Court be pleased to order stay on the effect, operation, implementation and enforcement of Respondent No. 2's action of freezing the account no. 587701010050100 of Petitioner No. 1."

38. Some of these are unnecessary now. At least one is over ambitious (prayer clause (f)). The important prayers for our purposes are prayer clauses (a-1), (c) and consequently (d).

39. This requires some amount of computation because there are amounts that have been paid by the 1st Petitioner and are currently held by UBI in a suspense account. From September 2019 until today no interest is generated on that amount in suspense. We have made clear to Mr Andhyarujina that if his clients are at all serious about this Scheme and OTS, then there is no question of making payments in prolonged stages or instalments. There is also no question of waiving interest for the intervening period from 2019 until today. Mr Andhyarujina submits that there is an amount of Rs. 90 lakhs in the 1st Petitioner's account with UBI. That account is frozen, and the 1st Petitioner has no objection to that amount in that account being adjusted. We have also sought a suggestion from both Mr Andhyarujina and Mr Kamat about an applicable rate of interest. Predictably, Mr Kamat's suggested rate is as high as Mr Andhyarujina's is low. Neither of these is acceptable to us. There has to be some reasonable commercially viable rate. The numbers that come from Mr Andhyarujina are much too low. We have therefore asks for a computation at a rate that we believe is reasonable of 7.5% per annum. This is lower than the bank's demand but this is the result of our finding that the bank's action in refusing the payment made by the 1st Petitioner was itself wrongful. Both have to be balanced.

40. The total OTS amount under the scheme was Rs. 21,45,78,314/-. Mr Andhyarujina's submission is tabulated thus:

Particulars	Amount	Amount
Total OTS amount payable under the Scheme (100%)		**21,45,78,314.00**
<u>Less:</u> Amounts paid by Petitioner No. 1 under the Scheme (subsequently DD returned but not encashed by Petitioner till date) [23.18%]		**(4,07,28,916.00)**
DD No. 086774 dated 05.04.2019	1,07,28,916.00	
DD No. 086782 dated 08.04.2019	3,00,00,000.00	
Balance Sum payable under the scheme [81.01%]		**17,38,49,398.00**
<u>Less:</u> Bank Balance in		**(90,00,000)**

Petitioner No. 1's account with Respondent No. 2 to be adjusted per this Hon'ble Court's direction (Account has been frozen since 28.07.2022)		
Balance OTS amount payable		**16,48,49,398**
Interest amount being voluntarily paid by Petitioner No. 1 [17,38,49,398 x 7.5% x 4 years]		**5,21,54,819.40**

41. The net OTS amount payable is thus Rs. 16,48,49,398/-. Mr Andhyarujina makes a statement on instructions that the Petitioners will deposit this amount with UBI within 30 days from today. The interest is computed at our direction at 7.5% per annum for four years on the balance sum (excluding the amount tendered) i.e., Rs. 17,38,49,398/-. The interest component is Rs. 5,21,54,819.40/- and on similar instructions Mr Andhyarujina says that this amount will be paid within an additional period of 60 days. We accept both those statements.

42. Accordingly, we hold that the 1st Petitioner's account with UBI was eligible under UBI's Centenary Settlement Scheme for Doubtful and Loss Assets for NPAs up to and including Rs. 50 crores. UBI is directed to act upon an authenticated copy of this order accepting the aggregate amount of Rs. 21,45,78,314/- plus the interest of Rs. 5,21,54,819.40/- to meet the requirements of the scheme. Upon payment of the entire amount in 30 days plus 60 days, the NPA classification and the doubtful classification of the 1st Petitioner's account is to be removed and reversed. All proceedings under the SARFAESI Act are stayed for the period of 30 days plus 60 days. Upon payment of the entire amount as computed above, the guarantees given by Petitioners Nos. 2 and 3 will have to stand discharged.

43. We specifically permit UBI to adjust an appropriate amount of Rs. 90 lakhs, that is the balance in the frozen account.

44. In the event that the Petitioners fail to make either of these payments, UBI will be at liberty to proceed in the existing SARFAESI proceedings as also to adopt any further or other proceedings for recovery of its entire claim with interest as specified in the sanctioned letter and all penal charges adjusting for any amount that has already been paid. In the event of a default, UBI will be entitled to appropriate any amount already paid in such manner as it thinks fit in accordance with law. We make it clear that if there is a default by the Petitioners, any protective orders such as of stay against any proceedings or recoveries will cease forthwith. Any attachments that have been levied and held in abeyance will be restored and may be proceeded.

45. Having regard to these circumstances, and even before the 1st Petitioner contemplates any such application, we reject any application for an extension of time even by a day.

46. We have to bear in mind that UBI is, after all, a public sector bank. Its original claim is much higher, in excess of Rs. 68 crores as of today. The only reason to intervene is because we have found unequivocally and categorically that as a matter of law UBI's rejection was wrongful and could not be sustained and because it constituted an unreasonable and arbitrary action within the meaning of Article 14 of the Constitution of India.

47. We clarify that no part of our order today is to be misconstrued or misunderstood as being a concession of any kind either by Mr Kamat or his attorneys or the officers who are instructing them. Throughout, Mr Kamat's instructions have been only to oppose the Petition on every available ground and his concluding submission in fact has been that the Petition is entirely without substance and must be dismissed with exemplary costs.

48. The Petition is disposed of in these terms. No costs.

49. On instructions, Mr Kamat seeks a stay of the operation of this order for three weeks. We decline that request. Far too much time has been squandered already. We have held the action of UBI in rejecting the payment made by the 1st Petitioner.

(Neela Gokhale, J) **(G. S. Patel, J)**