

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL APPLICATION
APPELLATE SIDE

Present:
Hon'ble Justice Shampa Sarkar

C.O. 3647 of 2022
With
CAN 1 of 2024

Punjab National Bank
Vs.
Indian Care for Advancement & Research Education (ICARE) and Ors.

For the petitioner : Mr. Joy Saha, Senior Advocate
Ms. Aparajita Rao

For the opposite party Nos.1 to 3 : Mr. Debnath Ghosal,
Mr. Debanik Banerjee,
Mr. Sarosij Dasgupta,
Mr. Nilay Sarkar,
Mr. Steven S. Biswas

Hearing concluded on: 08.04.2024
Judgment on: 21.05.2024

Shampa Sarkar, J.:-

1. The revisional application arises out of an order dated September 21, 2022 passed by the learned Debts Recovery Appellate Tribunal (DRAT) Kolkata, in Appeal Dy. No.12 of 2022 from an order passed by the learned Debts Recovery Tribunal-II (DRT), Kolkata, in IA 983 of 2021 arising out of OA No.94 of 2015.

2. The learned DRAT dismissed the appeal filed by the bank, thereby, affirming the order dated December 24, 2021 passed by the DRT-II. The learned DRAT was of the opinion that under the One Time Settlement Scheme (OTS) contained in the letter dated September 26, 2019, the initial period of three months was settled for payment of Rs. 5.50 crores by the

borrower/opposite party No.1. There was a clause that in case of delay beyond three months, simple interest @ MCLR (applicable on the date of sanction on reducing balance basis) would be charged. Thus, even at the time of finalising the OTS proposal, the bank was conscious of the fact that there could be a situation where the payment could not be made by the borrower within the time stipulated in the OTS. The provision for charging interest had been kept by the bank to meet a situation when the borrower failed to pay the money on time. The proposal was not time bound and an extension was contemplated by incorporation of the interest clause. Initially, extension was granted by the bank upto August 31, 2020. The opposite party No.1 sought for extension upto October 2020. Such prayer for extension was not denied by the bank, although no communication was made in this regard. The rejection letter with regard to the prayer for extension was communicated by the bank on September 14, 2021, and September 30, 2021 when the interim application being IA 983 of 2021 seeking recording of satisfaction with regard to payment made by the borrower under OTS and prayer for release of title deeds by the bank was pending before the learned DRT-II. The bank could not explain before the DRAT as to why no rejection letter was issued to the opposite party No.1, soon after such prayer was made. In the meantime, the entire OTS amount of Rs.5.50 crores had been paid by the opposite party No.1 within October 2020. The bank had appropriated the same.

3. Thus, according to DRAT, non-communication of an order of rejection and acceptance of the balance amount of Rs.1.35 crores within October

2020, would amount to estoppel by conduct and the bank could not treat the OTS as cancelled.

4. The learned Appellate Tribunal further held that in the facts of this case, the decisions of the Hon'ble Apex Court that Courts or Tribunals could not compel the banks and financial institutions to enter into a settlement with the borrower, would not apply. Upon perusal of the records and the letters exchanged between the parties, the learned DRAT arrived at the conclusion that the DRT-II had not directed the bank to enter into any settlement with the opposite party No.1. Rather, the settlement was arrived at between the parties. Later on, there was some delay on the part of the opposite party No.1 to make the payment within three months and extension was requested. The bank allowed such extension upto August 31, 2020.

5. The learned DRAT also held that time was not the essence of the contract and in the settlement scheme; no specific time frame had been fixed. Initially, three months' time was mentioned in the letter dated September 26, 2019 which was the first proposal of the OTS. Time was extended and even delayed payments were accepted. Had time been the essence of the settlement, the bank would not have accepted the delayed payments and the interest clause would not be added to the OTS letter dated September 26, 2019. The Appellate Tribunal also discussed a decision of the Hon'ble Supreme Court in the matter ***P. Vijay Kumari vs. Indian Bank*** reported in ***AIR 2018 SC 759*** and held that if the agreed amount was paid, condonation of delay was a possible course of action. In this case, the Covid-19 pandemic had hit the country and the educational institution was

closed for a long time. Scope of earning from the institution was absent. A sympathetic consideration of the case was possible. The DRAT found that the learned DRT-II did not err in holding that the one-time settlement had been satisfied. Liberty was granted to the bank to claim the interest amount at the contractual rate and the opposite party No.1 was directed to pay the same. Direction upon the opposite party No.1 was also issued to pay a further sum of Rs.27,33,836/- as interest on delayed payment.

6. The bank is aggrieved and dissatisfied with the order dated September 21, 2022, and has filed this revisional application. The bank contended that the order had an effect of forcing the petitioner/bank to enter into a settlement with the opposite party No.1.

7. Mr. Joy Saha, learned Senior Advocate appearing on behalf of the petitioner, submitted that the order impugned was passed in violation of the terms of the OTS. The time for payment was extended by letter dated June 18, 2020, upto August 31, 2020. The opposite party No.1 had failed to deposit the entire OTS amount within the extended date and the OTS stood cancelled. The opposite party No.1 had availed of the credit facilities from the petitioner. The opposite party No.1 defaulted to repay such credit and consequently the account of the opposite party No.1 was classified as a non-performing asset on December 31, 2012. Recovery application being OA No.94 of 2015 under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (herein after referred to as the 1993 Act) was filed by the bank. Simultaneously, the borrower also took steps under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short SARFAESI Act). During the pendency

of the proceedings, the opposite party No.1 on or about September 26, 2019 approached the petitioner with a proposal for a settlement under the one-time settlement scheme of the balance outstanding dues of the bank. The bank approved the OTS for an amount of Rs.5.50 crores, but the opposite party No.1 failed to honour the settlement. The learned Tribunal, by its order dated December 24, 2021, wrongly recorded satisfaction with regard to the compliance of the OTS. The DRT erroneously held that even if there was a delay in payment of the amount, such delay would be irrelevant as the bank had waived its right to reject the OTS by accepting the belated deposits.

8. According to Mr. Saha, the DRT-II and the Appellate Tribunal passed the orders without considering the OTS and the terms and conditions thereof. The OTS categorically stated that in case of default in payment of any one of the instalments, the entire scheme would fail. Mr. Saha referred to page 108 of the revisional application being a letter dated June 9, 2020. By the said letter, the bank had communicated to the opposite party No.1 that it had decided to treat the OTS as cancelled, on account of failure of the opposite party No.1 to repay the money in terms of the OTS.

9. Thus, according to Mr. Saha, the concurrent findings of the Tribunals that the bank had never refused or denied to accept the amount beyond the extended period were incorrect and contrary to the records. The bank had already exercised its power arising out of the settlement scheme by cancelling the same. Referring to the letter dated June 18, 2020, Mr. Saha emphasized that the last extension that was given, was upto August 31, 2020. The remaining balance of Rs.2.10 crores had been directed to be

deposited in instalments within such time. The said letter also contained a term that the other terms and conditions as per the original approval would remain valid for the extended period. This meant that the cancellation clause would apply *mutatis mutandis*.

10. Mr. Saha emphasized that the learned DRT-II erred in allowing the I.A., which was an application under Section 19 (20A) of the 2019 Act. The said provision was *pari materia* with Order 23 Rule 3 of the Code of Civil Procedure. The Tribunal had the power to record a compromise on satisfaction that the OTS had been honoured by the parties and the account had been closed. The learned DRT-II acted beyond its jurisdiction and contrary to the decisions of the Hon'ble Apex Court, by directing the opposite party No.1 to pay Rs.27,33,836/- as interest for the delayed payment as already demanded by the bank, within 10 days from the date of the order with a further direction that the opposite party No.1 would be liable to pay the contractual rate of interest as would be calculated by the bank for the subsequent delay caused. Admittedly, there had been a delay in compliance with the OTS proposal, even after the extension had been granted. Further directions that upon compliance of the said order within the stipulated period, the bank should issue a no-due certificate and return the original deeds which were lying with the bank, were also illegal and beyond jurisdiction.

11. The learned DRT-II did not have any authority to impose such conditions by compelling the parties to record the compromise on the basis of the OTS. Such adjudicatory process was not available to the learned DRT-II. The provision of Section 19 (20A) was not applicable in the facts of this

case as the opposite party No.1 had not repaid the amount as per the OTS. Compromise and satisfaction of the claim of the bank could not be recorded. Only upon closure of the loan account by the bank after satisfaction of the OTS, a compromise could be recorded by learned DRT-II. The DRT-II exceeded its jurisdiction. The order dated December 24, 2021, was perverse. Compromise and satisfaction were recorded with further directions for payment of interest to be calculated at the contractual rate by the bank. This was beyond the scope of Section 19(20A) of the 1993 Act.

12. It was also contended that OTS was a settlement arrived at between the parties. The learned tribunal did not have the power to exercise discretion by directing the mode and method of the final settlement. The bank had not issued a single letter indicating that the extension for payment was granted beyond August 31, 2020. The fact that the bank accepted the money, would not amount to estoppel by conduct. The bank always reserved the right to recover the money due from the borrower, even if the OTS had failed. The amount which was accepted beyond the extended period, would be adjusted against the amount due. The learned DRT-II could not take a sympathetic view and thereby extend charity to the borrower on the bank's money. The observations of the appellate tribunal that a sympathetic view should be taken, as payment could not be made during the Covid-19 pandemic when the institutions under the opposite party No.1 were closed, was totally misconceived. According to Mr. Saha, the amount fell due, long before the Covid-19 pandemic hit the nation. The OTS was entered into in 2019.

13. Relying on the decision of ***Bijnor Urban Cooperative Bank Ltd., Bijnor & ors. vs. Minal Agarwal & ors.***, reported in ***2021 SCC online SC 1255***, Mr. Saha contended that the borrower could not, as a matter of right, pray for the benefit of an OTS scheme. If such prayer was allowed, it would be giving a premium to a dishonest borrower. Under any OTS scheme, the debtor would get away by paying a lesser amount than the actual amount due and payable under the loan account. Even under such circumstances, if the borrower could not comply with the terms and conditions of the OTS, then such borrower was not entitled to any encouragement or indulgence from the courts and tribunals. The bank was perfectly justified is not granting any further benefit under the OTS scheme.

14. Mr. Saha contended that re-scheduling of the payment mode under the OTS, by the DRT, amounted to modification of the contract. Neither a writ court nor any court or tribunal had the jurisdiction to do so. In support of such contention, Mr. Saha relied on the decision of ***State Bank of India vs. Arvindra Electronics Pvt. Ltd.*** Reported in ***(2023) 1 SCC 540***.

15. Reliance was further placed on a decision of the ***Telengana High Court in Maruthi Corporation Ltd. vs. Sicom Ltd.*** reported in ***2020 SCC online TS 907***.

16. Mr. Saha submitted that benefit of OTS could not be prayed as a matter of right and the same was subject to the liability criteria mentioned in the scheme. The bank could not be compelled to accept a lesser amount under the OTS or to extend the period of payment. Despite having had numerous opportunities, opposite party No.1 had failed to comply with the terms and conditions of the settlement. Even if there were some hardships

on the part of the opposite party No.1 in repaying the amount within the extended period of August 31, 2020, the Tribunals could not interfere and rewrite the terms and conditions of the settlement thereby.

17. Relying on a Division Bench decision of this court in ***Fairdeal Supplies Limited & ors. vs. Indian Overseas Bank & ors.*** reported in ***2022 SCC OnLine Cal 2104***, Mr. Saha contended that once the OTS was cancelled by the bank and the interest claim was withdrawn, no compromise or satisfaction could be recorded. It was solely within the autonomy and discretion of the bank to decide whether to treat the OTS as extended or not. The tribunals were creatures of the statute and should operate within the four corners of the statute. The statute did not bestow any right upon the adjudicating authority to direct the mode and method of settlement or how the bank could act in furtherance of the OTS in full and final settlement. The OTS had admittedly failed. The directions by the learned DRT-II were beyond the scope of the law and the learned tribunal had ventured into the contractual domain. The contract was restricted to the terms and conditions of the OTS. The DRAT upheld such erroneous assumption of jurisdiction of the DRT and put a seal on a perverse order.

18. Mr. Ghosh, learned Advocate appearing for the opposite party No.1 submitted that the SARFASEI proceeding initiated by the bank, was challenged by the opposite party No.1, and the same was dismissed.

19. The One-Time Settlement proposal issued on September 26, 2019, by the branch head of the petitioner/bank was in compliance of the said order. The bank acted upon such direction. Thus, the allegation that the DRT had exceeded its jurisdiction was not available to the bank. OTS proposal for

payment of Rs.5.5 crore as a full and final settlement had been accepted by the bank on certain terms and conditions. The parties were bound by such agreement. The terms were that upfront amount of Rs.1.50 crore deposited with the bank would be appropriated. Remaining amount of Rs.4 crores would be deposited within 90 days from the date of knowledge of approval of the OTS. In case the entire OTS amount, as per instalments terms finalized in the sanction, was paid within three months/90 days from conveyance of such approval to the borrower, no interest would be charged. However, simple interest @ MCLR for one year (applicable on the date of sanction) on reducing balance basis, would be charged if the OTS amount was paid beyond three months to be effective from the date of sanction. In case the borrower proposed to pay OTS in instalments, default in payment of any one instalment would render the OTS as failed.

20. In the instant case, there was no condition for automatic termination of OTS. If the payment was made beyond three months/90 days, a condition that interest would be charged at the rate specified in the terms and conditions of the OTS proposal, had been imposed.

21. Mr. Ghosh further contended that upto February 2020, a sum of Rs.2.40 crores had been deposited with the bank. The opposite party No.1 ran educational institutions. Due to the global pandemic and the onset of Covid-19, the institutions were closed. By a letter dated June 18, 2020, the opposite party No.1 prayed for extension of time for payment of balance due of Rs.3.10 crore. The said extension was granted by the bank upto August 2020. During the period between July 2020 and August 2020, the opposite party No.1, paid a further sum of Rs.1.75 crores to the bank. By a letter

dated August 28, 2020, the opposite party No.1 sought for further extension to pay the balance dues under the OTS. On September 01, 2020, the opposite party No.1 was informed by the bank that the money should be paid within that day. On September 29, 2020 and September 30, 2020, the opposite party No.1 paid a total sum of Rs.1 crore to the petitioner/bank and the same were accepted. On October 31, 2020, the opposite party No.1 again paid a sum of Rs.35 lakhs to the petitioner through RTGS. Thereafter, the opposite party No.1 sought for issuance of a no-dues certificate and release of the title deeds. The recovery division of the bank issued a letter to the opposite party No.1 on November 25, 2020, calling upon the opposite party No.1 to pay interest on the delayed payment of the OTS., amounting to Rs.27,33,836/-. On the very next day, the said letter was recalled.

22. The opposite party No.1 by a letter dated December 7, 2020, requested the petitioner to reduce the delayed interest amount and to accept a sum of Rs.10 lakh as settlement of the dues. The said request was rejected by the bank and on August 13, 2021, the opposite party No.1 despatched a demand draft of Rs.27,33,836/-. The demand draft was returned by the bank under a cover letter dated August 16, 2021. Under the said circumstances, the opposite party No.1 moved an application being I.A. 983 of 2021, before the learned Debt Recovery Tribunal –II, Kolkata, in connection with O.A 94 of 2015. The I.A. was disposed of by the learned DRT-II, in exercise of power under Section 19 (20A) on December 24, 2021.

23. The relevant portion of the order is quoted below:-

“The defendant no.1 is directed to pay Rs.27,33,836/ the delayed period interest already determined by the bank and which has been returned, within 10 days from the date of this order to the loan account and shall also be liable to pay contractual rate of interest on

the partial amount deposited with delay as calculated by the bank for the subsequent delay caused in compliance of the OTS settlement proposal as admittedly there is a delay in compliance of the OTS proposal. The bank is directed to accept such payments and also calculate the subsequent delay period on simple interest under contractual rate to be paid by the defendant no.1 upon such demand by the bank. That upon compliance of this order by the petitioner/defendant no.1 within the stipulated period the bank shall issue No dues certificate and original title deeds if any lying with the bank within 15 days from the date of compliance by the petitioner/defendant no.1, failing to comply this order, the bank shall treat the said OTS as failed and shall proceed further in accordance with law.”

24. Aggrieved by the said order, the bank approached the DRAT and the learned DRAT upon satisfying itself with the facts and the terms of the OTS, held that learned DRT-II was correct in passing the order impugned.

25. Mr. Ghosh relied on the provisions of Section 19 (20A) and submitted that the learned DRT-II had the power to record a compromise upon being satisfied that the agreed amount had been paid or that the parties had agreed to settle the dispute on the basis of the OTS. Rather, the learned DRT-II, being conscious that there was a delay, permitted the bank to claim simple interest in the manner which has been quoted hereinabove.

26. Mr. Ghosh further contended that this revisional court should not interfere with the concurrent findings of both the learned Tribunals.

27. Having heard the learned Advocates for the respective parties, this court finds that both the fora had specifically recorded that pursuant to the direction of the learned tribunal dated September 28, 2018, in S.A. 134 of 2014, the opposite party No.1 submitted a proposal under the OTS vide letter dated September 26, 2019.

28. The following order was passed in SA 134 of 2014. The same is quoted below:-

ORDER

- (1) The Respondent Bank shall provide upto date statement of account disclosing the dues of the Respondent Bank after giving adjustment of the payments made by the Applicant after Issuance of 13(2) notice dated 11.01.2013 and payments made after settlement of the loan accounts arrived at between the parties during pendency of the SA forthwith.
- (2) It is expected that the Appellants submit any concrete proposal for settlement of the balance dues of the Respondent Bank or proposed for regularisation of the loan accounts within thirty days from the date of this order and it is expected that the Respondent Bank shall consider the proposal as per their recovery policy guidelines, and also taking into account the aspect of the running educational institutions, academic career of the students as discussed hereinabove and convey their decision accordingly before taking any coercive action in respect of the secured assets.

29. The bank approved and sanctioned the OTS proposal for an amount of Rs.5.50 crores as against the original claim of the bank. Rs.5.50 crores was payable within 90 days with effect from September 26, 2019.

30. Thus, the contention of Mr. Saha that the tribunals could not compel the bank to enter into an OTS, is not correct. In this case, on the approach made by the opposite party No.1, the bank entered into an OTS proposal with the borrower on certain terms and conditions. The relevant clauses of the said OTS proposal out of which the reciprocal obligations of the parties arose, are quoted below :-

“The Competent authority has approved OTS Proposal for Rs. 5,50,00,000.00 against book outstanding of Rs. 4,20,07,558.00 and memoranda dues of Rs.29,54,00,000.00 as on 30.06.2019 on the following terms & Conditions:

1. Upfront amount of Rs 1,50 Crore deposited with the Bank shall be appropriated in the account. Immediately. Remaining amount of Rs 4.00 Crore will be deposited within 90 days from date of conveying approval of OTS to the borrower to avoid delayed interest

2. In case the entire OTS amount, as per the installment terms finalized in the sanction, is paid within 3 months/90 days of conveying approval to the borrower, no interest will be charged. However, simple interest MCLR for one-year (applicable on the date of

sanction) on reducing balance basis will be charged where OTS amount is paid beyond 3 months, effective from the date of Sanction.

3. In case borrower proposes to pay OTS in instalments, then default in payment of one instalment shall render the OTS as failed.

4. The Post-dated cheques coinciding with the dates of payment for the remaining amount of OTS amount be obtained, while conveying the sanction.

5. Party shall withdraw case/claim filed against the bank, for which sufficient documentary proof may be provided for bank's record, like moving application for withdrawal or counter claim-etc., if any, immediately.

6. OTS is considered by the bank as a commercial decision and shall have no bearing whatsoever on the ongoing, criminal case/investigation. if any, being carried out by the CBI/Police and the same shall proceed as per law.

7. In case Bank has filed a suit against the borrower/obtained a Decree, Bank's satisfaction of its claim may be got recorded only after closure/settlement of account completely.

8. Default in payment of OTS amount & interest as per terms approved, shall render the OTS as failed and all reliefs, concessions shall lapse automatically, and bank will be entitled to recover the entire dues as per documents/prayer in the plaint, after adjusting the payment, if any, received.

17. Charge on security/title deeds shall be released only after receipt of entire OTS amount along with interest, if any.”

31. Clause 8 talks of default. It has been specifically stated that default in payment of OTS and of the interest, would render the OTS as failed and all reliefs and concessions would lapse automatically. The bank would be entitled to recover the dues as per the documents and prayers in the O.A., after adjusting the payment if any, received.

32. However, the proposal also provides in the preceding clauses, especially Clause 2, that if the borrower failed to pay the amount within 90 days/three months, from receipt of knowledge of such approval, simple interest at the rate of MCLR for one year (applicable on the date of sanction) on reducing balance basis would be charged. Thus, the bank had also kept a clause with regard to charge of interest if the amount was paid beyond the stipulated period of three months or 90 days. The default clause and

automatic lapse of all reliefs and concessions would operate upon failure to pay the OTS amount and interest. The last clause numbered as 17, provides that charge on the security/title deeds, would be released upon receipt of the entire amount, with interest.

33. From the record, it appears that due to onset of the Covid-19 pandemic and the nation-wide lockdown, the bank had extended the period of repayment by 180 days, subject to payment of delayed interest. The same was accepted by the opposite party No.1, but the opposite party No.1 failed to comply with the settlement proposal. Thereafter, the bank vide its letter dated June 9, 2020, communicated to the opposite party No.1 that the OTS had failed.

34. It is also evident from the records that on the prayer of the opposite party No.1 for extension of time for payment of balance OTS dues, by a letter dated June 18, 2020, the bank extended the time for payment of the balance OTS upto August 31, 2020. Thus, the letter dated June 9, 2020, on which Mr. Saha had put a lot of stress to indicate that the bank had cancelled the OTS, lost its force as soon as the letter dated June 18, 2020, was considered. The time for payment of the balance OTS dues was extended upto August 31, 2020. Such decision was communicated by the bank to the opposite party No.1. Accordingly, 75% of the approved OTS dues totalling to Rs.4.15 crores was paid within August 31, 2020, as was confirmed by the learned DRT-II from the records.

35. The contents of letter is quoted below:-

“Punjab National Bank/eOriental Bank of Commerce/eUnited Bank.of.india
BO: ARMB, Kolkata.

Date: 18-06-2020

APPROVAL FOR EXTENSION OF PAYMENT PERIOD IN OTS

Borrower Indian Centre for Advancement of Research and Education (ICARE) vide letter dated 17-06-2020 (copy enclosed) has requested for extension in payment period of already approved OTS.

In accordance with approval given by Board in its meeting held on 29.05.2020 vide resolution number 7 and subsequent guidelines circulated vide SASTRA Division Circular 31/2020 dated 01:06.2020, power for extension In payment period upto 30.09.2020 for OTS cases falling overdue from 01.01.2020 onwards have been vested with Branch Heads

(Amt in Crores)

SN	Particulars	
1	Name of Borrower	Indian Centre for Advancement of Research and Education.
2	Branch/Circle/Zone	BO: ARMB, Kolkata CO: Kolkata Zone: Kolkata
3	Original OTS Approval Date	26-09-2019 for Rs. 5.50 Crore
4	Original OTS Approving Authority	COCAC, Kolkata
5	Original Approved Payment Period	> 30 days wef 26-09-2019 > <u>180 days maximum extension period with delayed Interest (expired on 24-03-2020)</u>
6	Proposed Payment Period	➤ Rs. 100 Crore will deposit within 30 June 2020. ➤ Remaining balance OTS amount for Rs. 2.10-Crore will deposited within next two months, in Installments, that is within 31" August 2020.
7	Reasons for Seeking Extensiorrin Time Period	Due to outbreak of the Pandemic COVID 19 (CORONAMIRUS)
8	Interest Rate To be Charged	Already Approved Rate Le. @ MCLR for one-year.

TERMS AND CONDITIONS:

1. For cases where subsequent to extension, the total time period exceeds 3 months and interest payment was not part of original sanctioned terms, the rate of interest applicable will be MCLR-1 year+1%
2. All other terms and conditions as per the original approval shall remain valid for the extension period.

(ARVIND KRGUPTO) AGM

APPROVING AUTHORITY

(Name, Designation & Signature of Branch Incumbent)"

36. Mr. Saha has not denied such fact. However, even after August 31, 2020, Rs.1.35 crore was due. The pandemic was continuing at the said point of time and the opposite party No.1 was facing severe financial stress as the educational institutions were not running. This aspect has been taken note of by both fora.

37. On August 28, 2020, a request was made to the bank to extend further time. However, the bank did not respond to such letter. The bank kept quiet. Yet, the bank received and appropriated the amount which was paid beyond August 31, 2020 without intimating the opposite party No.1 that the OTS had either been cancelled or that the bank had proposed to cancel the OTS.

38. The bank issued letters dated September 14, 2021 and September 30, 2021 cancelling the OTS, after the opposite party No.1 had filed the IA before the learned DRT-II, Kolkata, for recording satisfaction of the OTS and for a direction upon the bank to release the title deeds, upon issuance of a no-dues certificate. Numerous letters written by the opposite party No.1 dated October 31, 2020, November 19, 2020, December 7, 2020, January 6, 2021 and March 4, 2021, calling upon the bank to issue the no-dues certificate and for release of the deeds, were of no avail. It is also a matter of

record that the bank had issued a letter on November 25, 2020, demanding Rs.27,33,836/- towards payment of interest for delayed payment.

39. Immediately, another letter was issued on November 26, 2020, asking the opposite party No.1 to ignore the contents of the letter dated November 25, 2020 and meet the bank for resolution and closure of account. Thus, even though Mr. Saha had contended that the letter dated November 25, 2020 was issued by mistake and the same was recalled on the next date, such letter of recall does not indicate that the bank did not want to continue with the settlement upon receipt of interest. I find that the letter by which the bank asked the opposite party No.1 to ignore the contents of the letter was not a communication that the letter dated November 25, 2020, had been issued by mistake, rather the same was a communication with an intimation to the opposite party No.1 to ignore the claim for interest at the rate mentioned in the letter dated November 25, 2020, and to meet the bank for settlement and closure of the account. The letter of withdrawal does not indicate that the bank had decided to cancel the OTS. Rather, the bank indicated by the said letter that the opposite party No.1 should meet the bank and settle the accounts for closure of the entire matter. This indicates that the bank wanted to settle the amount and close the matter, which was also in consonance with Clause 17 of the OTS letter dated September 26, 2019.

40. It is an admitted fact, which is borne out by the records that after 31st August, 2020, the remaining Rs.1.35 crores had been paid by the opposite party No.1 to the bank and the bank had appropriated the said amount. At no point did the bank indicate after August 31, 2020, that the money

deposited was not being accepted under the OTS, as the OTS had been cancelled, but was appropriated against the money which the bank was entitled to recover.

41. All the decisions which have been relied upon by Mr. Saha, deal with a direction either by the tribunal or by the High Court under Article 226 of the Constitution of India upon the bank, to enter into an OTS or in case the first OTS had failed, to enter into a second OTS by re-writing the terms and conditions thereof.

42. With regard to Mr. Saha's contention that the tribunals could not have directed the bank to accept the interest at the rate which was stated in the order of the DRT-II thereby, rewriting the contract between the parties, is also not accepted. The tribunals after giving due consideration to the provisions in the OTS by which the bank had consciously provided an interest clause for payment beyond 90 days, interpreted the clause and directed that the bank should charge interest and close the account.

43. The default clause could not be read in isolation to the other clauses. The default clause deals with cancellation of OTS upon failure to pay the amount and interest. No such situation arose. The Tribunal interpreted the said clause and recorded compromise upon liberty to the bank to charge interest and the contractual rate with further direction upon the opposite party No.1 to pay Rs.27,33,836/.

44. The bank was within its right to claim the interest as per the clauses in the OTS and the opposite party No.1 was also bound to pay the interest. The opposite party No.1 offered a sum of Rs.10 lakh towards interest, which the bank did not accept. Thereafter, the entire amount of Rs.27,33,836/-

was sent by demand draft, which was returned by the bank. The opposite party No.1 requested the bank to issue a no-due certificate and return the title deeds, which the bank did not respond to. Such silence of the bank compelled the opposite party No.1 to approach the tribunal and when the opposite party No.1 approached the tribunal with the prayers in the I.A., the bank communicated to the opposite party No.1 that the OTS had failed. This denial by the bank is clearly an afterthought as the records reveal that the bank had acted on the basis of the OTS and also had decided to invoke the interest clause for the delay which had occurred. It is a given fact that by October 31, 2020, the entire OTS amount of Rs.5.50 crores had been paid. All that the DRT-II proceeded to do was to pass directions upon the parties to comply with the OTS for discharge of security and release of the title deeds.

45. Furthermore, the learned tribunal also took into account the pandemic situation which had hit the country and the learned appellate tribunal recorded that when the Hon'ble Apex Court had extended the period of limitation for initiation of all proceedings upto February 28, 2022, there was no reason why the payment made in September and October 2020, could not be treated as valid. The extended period of two months (within the extended period of limitation as per the order of the Hon'ble Apex Court) should be allowed to the opposite party No.1 as the opposite party No.1 was a bona fide borrower, who wanted to payback the amount as per the OTS.

46. Thus, the DRT-II recorded satisfaction that the amount had been paid with a further direction that Rs.27,33,836/- shall be paid as interest,

as had been already determined by the bank, within 10 days from the date of the order. The opposite party No.1 was further made liable to pay the contractual rate of interest proportionate to the amount deposited beyond August 31, 2020.

47. The bank was directed to accept the payment of Rs.27,33,836/- and calculate the interest for the subsequent delay at the contractual rate which was to be paid by the opposite party No.1 upon demand by the bank. Upon compliance of such directions for payment, the bank was to issue the no-due certificate and return the title deeds.

48. I do not find any material irregularity or perversity in the order of the learned DRAT. The learned DRAT had rightly recorded that the judgments relied upon by Mr. Saha would not be applicable as in the present case the bank had accepted the proposal for OTS made by the opposite party No.1. Secondly, the learned DRAT also recorded that during the Covid-19 pandemic there may have been some delay because the educational institutions run by the opposite party No.1 were closed and could not be reopened for a considerable time. It might have been difficult to generate funds. However, the borrower had displayed bona fide intention to comply with their obligation under the OTS and had liquidated the entire amount within two months from August 31, 2020. The relevant portion of the order is quoted below :-

“17. In the present case, extension was sought on the ground of Pandemic Covid 19. We take judicial notice of the fact that whole nation came to a standstill during that period, even the Hon’ble Apex Court had extended the period, even the Hon’ble Apex Court had extended the period of Limitation for filing the petitions in suo motu case No. 3 of 2020. In such circumstances, Appelants Bank should have sympathetically considered and allowed the extension for making payments of instalments. It is also pertinent to mention that the

Respondent is a bona fide borrower which was filed against the order passed on SARFAESI Application. Payments were made by the Respondent.”

49. It appears that the bank had extended the time on the ground of Covid-19 pandemic. The said extension also spoke about charging interest at the rate specified under the clause 1 of the terms and conditions.

50. Thus, the approval for extension of payment period by the letter dated June 18, 2020 also incorporated an interest clause in a situation when even if the amount could not be paid within three months from the extended period, interest would be charged. Accordingly, the learned DRT-II directed the petitioner/bank to charge the interest on the basis of the extension letter given by the bank and also the original OTS proposal and close the account. Only upon completion of such exercise, was the bank directed to return the title deeds upon issuance of a no-dues certificate. The learned DRT-II did not act beyond the OTS entered into between the parties and did not impose any further conditions for settlement of the account, which were not a part of the OTS settlement. The relevant portion of the order is quoted below :-

“a) Pursuant to the direction of the Tribunal dated 28.9.2018 in SA.134 of 2014 filed by the defendant no. 1 for settlement of its dues or seek for restructuring of its accounts. The petitioner/ defendant no.1 submitted proposal under OTS vide letter dated 26.9.2019, the applicant bank has approved and sanctioned OTS proposal for Rs.5.50 crore as against the original claim of the Bank and the same was payable within 90 days w.e.f. 26.9.2019 and due to onset of covid-19 global pandemic and nation-wide lock down, the bank has extended 180 days subject to payment of delayed period interest. That the same were accepted by the defendant no.1 but failed to comply the settlement proposal, thereby the bank vide its letter dated 96.2020 intimated the borrower that OTS has failed.

b) It is evident that the on the appeal of the defendant no.1, for extension of balance OTS dues, the bank vide its letter dated 18.06.2020 extended the time for payment of balance OTS dues up to

31.08.2020. That accordingly 75% of the approved OTS dues totalling Rs.4.15 Crore was already paid within 31.08.2020 and the balance Rs.1.35 Crore could not be paid due to the continuation of the T pandemic impact resulting closure of the educational institutions for more than a year and thereby the defendant no.1 subjected to severe financial stress and strain addressed a letter dated 28.08.2020 requesting the bank to extend some more time to pay the balance OTS dues. Further it is observed that the bank neither replied for the same nor raised any objection but have duly received and appropriated the same towards OTS dues in terms of the OTS settlement after 31.08.2020 without cancelling the OTS.

C) The bank has issued letter dated 14.09.2021 and 20.09.2021 after filing of the interim application in IA.No.983 of 2021 by the defendant no.1 which is made as an afterthought. The defendant no.1 has made all efforts vide its numerous letters dated 31.10.2020,19.11.2020, 07.12.2020, 06.01.2021 and 04.03.2021 apart from calling upon the applicant bank to issue NOC and release/return the mortgage deeds.

d) The letter dated 25.11.2020 of the bank (Annexure-J) in response to the letter's dated 31.10.2020 and 19.11 2020 wherein the bank has demanded to make the payment of Rs.27,33,836/towards delayed period Interest and the letter dated 26.11.2020 to ignore the contents of the letter dated 25.11.2020 and to meet the undersigned for final resolution and closure of account. The defendant no.1 has made serious efforts for payment of the delayed period Interest of Rs.27,33,830/ towards balance dues Le Interest part against the loan account vide letter dated 13.08.2021 in compliance to the demand of the bank, Since the demand of the bank has been complied with and all the dues of the bank as per the OTS settlement are complied with, the defendant The entitled to receive the No dues certificate and original title deeds if any lying In the custody of the bank.

e) 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.

f) The instance matter I am satisfied that the claim of the petitioner/defendant no. 1 has been adjusted pursuant to the OTS settlement which has been acted upon by both parties and that the same is a lawful agreement of compromise in writing and accepted by both parties and accordingly the payment was made though not by the stipulated period but with delay which has been accepted by the bank without any objection/resistance and hence the instant matter is within the stipulated conditions enshrined in the provisions aforesaid.

I am of the opinion that the instant case for non compliance of the OTS proposal by the defendant is in view of the above stated facts and taking into consideration of the unforeseen and unscheduled plight of affairs due to, on going covid pandemic resulting the defendant Institutions shut down and unable to generate income to repay the dues of the bank within the stipulated time frame, the payment of the residual amounts was evidently delayed which is neither wanton or Intentional but only due to the afore said reasons and hence, the Bank shall consider in the interest of justice and accept the OTS proposal which is acted upon and issue No dues certificate and return the title deeds to the respective defendants by following the due procedure as per banking rules.

g) This Tribunal is very conscious about the huge outstanding dues of the bank for a considerable period and keeping in view of the settlement entered into between the parties and having accepted the delay in compliance by the bank and in view of the global pandemic that broke out which is unprecedented and unwarranted and also the defendant no.1 being an educational institute shall be protected during this critical pandemic time, I am of the considered opinion that this is a desirable case where the bank shall exercise its discretion and consider the appeal of the petitioner/defendant no.1 in settling the matter without referring to any authorities and without going into other aspects. This order is made applying the principles of natural justice.

h) The defendant no. 1 is directed to pay Rs.27,33,838/ the delayed period interest already determined by the bank and which has been returned, within 10 days from the date of this order to the loan account and shall also be liable to pay contractual rate of interest on the partial amount deposited with delay as calculated by the bank for the subsequent delay caused in compliance of the OTS settlement proposal as admittedly there is a delay in compliance of the OTS proposal. The bank is directed to accept such payments and also calculate the subsequent delay period on simple interest under contractual rate to be paid by the defendant no.1 upon such demand by the bank. That upon compliance of this order by the petitioner/defendant no.1 within the stipulated period the bank shall issue No dues certificate and original title deeds if any lying with the bank within 15 days from the date of compliance by the petitioner/defendant no.1, failing to comply this order, the bank shall treat the said OTS as failed and shall proceed further in accordance with law.”

51. Thus, this Court under Article 227 of the Constitution of India does not deem it fit to interfere with the impugned order.

52. Almost in a similar situation in the matter of ***M/s Ganga Foundation Pvt. Ltd. vs The State Bank of India & Anr.***, decided in ***SLP © Nos.***

14979-14980 of 2021, the Hon'ble Apex Court allowed the extension of time and the bank was directed to furnish the amount of interest to be paid by the borrower at 12% from the date when the amount became due. Such order was passed during the Covid-19 pandemic, when the borrowers business was not doing very well.

53. In the matter of ***M/s. Puri Investments vs M/s. Young friends and Co. and Ors*** decided in ***Civil Appeal No. 1609 of 2022***. The Hon'ble Apex Court held as follows:-

“10..... The High Court was conscious of the restrictive nature of jurisdiction under Article 227 of the Constitution of India. In the judgment under appeal, it has been recorded that it could not subject the decision of the appellate forum in a manner which would project as if it was sitting in appeal. It proceeded, on such observation being made, to opine that it was the duty of the supervisory Court to interdict if it was found that findings of the appellate forum were perverse. Three situations were spelt out in the judgment under appeal as to when a finding on facts or questions of law would be perverse. These are:-

- (i) Erroneous on account of non-consideration of material evidence, or
- (ii) Being conclusions which are contrary to the evidence, or
- (iii) Based on inferences that are impermissible in law.”

54. Thus, the revisionsal application along with connected application, stand disposed of without any interference with the order impugned.

55. There shall be no order as to costs.

56. Parties are to act on the basis of the server copy of this judgment.

(Shampa Sarkar, J.)