



2024:DHC:4932



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 13438/2023 & CM APPL. 53055/2023, CM APPL. 65963/2023**

AMBIENCE PRIVATE LIMITED & ANR. Petitioners

Through: Mr. Rajeev Mehra, Sr. Adv. with
Mr. V. Anush Raajan, Mr. Pradyumn
Yadav, Advocates (M:8800247055)
Email: office@anushraajan.com

versus

PUNJAB AND SIND BANK & ORS. Respondents

Through: Mr. Sanjeev Kakra, Sr. Adv. with Ms.
Seema Gupta, Advocate
(M:9810277083)
Email: seemagupta378@yahoo.com

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T
03.07.2024

MINI PUSHKARNA, J:

1. The present petition has been filed seeking to set aside the letter dated 1st August, 2023 issued by the Punjab and Sind Bank (“respondent-bank”) vide Email dated 2nd August, 2023, by which the One Time Settlement (“OTS”) Scheme entered between the parties, was recalled/withdrawn by the respondent-bank.
2. Facts in brief are as follows:
 - 2.1 The petitioner no. 1-company (“the petitioner-company”) was granted a Term Loan of ₹ 125 Crores and an additional Term Loan of ₹ 30 Crores,



totaling to ₹ 155 Crores (“subject loan”) by the respondent-bank towards part financing for the construction and development of a Real Estate Project at Sector-50, Noida (“Noida Project”), under Multiple Banking Arrangement on 14th March, 2013.

2.2 Other lenders for the said Noida Project were HDFC Limited, which advanced loan of ₹ 25 Crores, and erstwhile, Oriental Bank of Commerce, now Punjab National Bank (“PNB”), which advanced an amount of ₹ 124 Crores to the company. Initially the loans were sanctioned and disbursed by the participating member banks under Multiple Banking Arrangement. Later on, consortium was formed amongst the participating banks, wherein, PNB (formerly Oriental Bank of Commerce) was appointed as the lead bank. It is undisputed that the petitioner-company repaid the full loan of HDFC Limited with respect to Noida Project, in July, 2018.

2.3 The respondent-bank, on the request of petitioner-company had granted another Term Loan of ₹ 150 Crores for Panipat Project on 28th November, 2013 by way of Multiple Banking Arrangement.

2.4 Similarly, another credit facility in the nature of ODP (“Overdraft Privilege”) of ₹ 100 Crores was granted by respondent-bank on 1st June, 2007, to meet working capital requirements of the construction division of petitioner-company.

2.5 However, the company failed to adhere to the sanctioned terms and repayment commitments, resulting into classification of the above said loan accounts as Non Performing Asset (“NPA”) on 31st March, 2019 by the respondent-bank.

2.6 During the period from 2020-2022, the company suffered Corporate Insolvency Resolution Process (“CIRP”), which was ultimately set aside by



National Company Law Appellate Tribunal (“NCLAT”) on 2nd August, 2022.

2.7 Subsequently, with a view to pay off its debts, the petitioner-company approached the respondent-bank for settling its accounts. With regard to Panipat Project, an OTS amount of ₹ 122 Crores was approved by respondent-bank vide Sanction Letter dated 17th August, 2022. The said OTS amount of ₹ 122 Crores was paid by the company to the respondent-bank. Accordingly, Term Loan account with regard to Panipat Project, stood adjusted/closed on 28th October, 2022. There is no dispute in respect of the Panipat Project.

2.8 As regards the Term Loan for the Noida Project, which is subject matter of the present petition, the company made a proposal vide letter dated 4th October, 2022, to settle the entire outstanding Principal Loan Account, as on the date of declaring the loan account as NPA, i.e., on 1st April, 2019, along with interest.

2.9 This was followed by another letter dated 9th December, 2022 by the company to settle the account in the sum of ₹ 111.21 Crores as OTS. Pursuant to the said letter, the respondent-bank issued an Email dated 14th December, 2022, wherein, it sought certain clarifications from the petitioner-company. It further requested the petitioner-company to offer right to recompense in case any better settlement was made with the lead bank subsequently.

2.10 In reply to the aforesaid clarification, as sought by the respondent-bank, the company vide its letter dated 16th December, 2022, *inter-alia*, stated that it shall improve its offer, in case it offers any better terms of OTS to PNB, the lead bank.



2.11 Subsequently, vide letter dated 29th December, 2022, the company enhanced the amount of OTS to ₹ 113.84 Crores. However, by its Email dated 13th January, 2023, the respondent-bank rejected the OTS proposal of the petitioner, thereby advising the petitioner to enhance the offer amount.

2.12 Thereafter, a meeting of the Consortium Lenders consisting of the respondent-bank and PNB, the lead bank was held on 4th February, 2023. In the said meeting it was, *inter-alia*, decided that the lenders may consider OTS submitted/to be submitted by the company on bilateral basis, on merits.

2.13 Subsequently, the company made OTS proposals to both the respondent-bank as well as PNB. While the respondent-bank accepted the OTS proposal, PNB, the lead bank did not accept any OTS. Thus, vide its letter dated 4th February, 2023, the company made a final proposal for OTS for the Noida Project to the respondent-bank, for an amount of ₹ 119.50 Crores. The said proposal was accepted by the respondent-bank vide its Sanction Letter dated 6th February, 2023.

2.14 Since the company was unable to pay full amount under the OTS, vide its letter dated 4th May, 2023, the company sought extension of validity of OTS of ₹ 119.50 Crores till 6th November, 2023. However, the respondent-bank vide its letter dated 19th May, 2023 granted extension of OTS period till 30th September, 2023.

2.15 After receiving extension for payment of OTS amount by aforesaid letter dated 19th May, 2023, the company vide its letter dated 19th May, 2023, which was received by the respondent-bank on 20th May, 2023, informed the respondent-bank that it had repaid in full, the Term Loan of ₹ 124 Crores granted by PNB, the lead bank, and also enclosed the 'No Dues Certificate' dated 18th May, 2023 issued by PNB.



2.16 The company deposited the entire OTS amount of ₹ 119.50 Crores by 1st August, 2023 and the interest for the period from 6th February, 2023 up to 1st August, 2023, on a reducing balance basis on 2nd August, 2023.

2.17 However, by its letter dated 1st August, 2023, issued by Email on 2nd August, 2023, respondent-bank withdrew the OTS extension dated 19th May, 2023, alleging deviations and non-compliance of the terms and conditions of the OTS.

2.18 Thus, the present petition has come to be filed.

3. On behalf of the petitioners, though in the pleadings, various issues have been raised, however, at the time of arguments, the following submissions have been made:

3.1 There is no misrepresentation and concealment by the petitioner at the time of availing the OTS or the subsequent extension. The letter dated 16th December, 2022 only states that if a better proposal is given to PNB after the OTS proposal given to the respondent-bank, then, the better terms will be offered to the respondent-bank. This was part of the negotiations in respect of the earlier OTS proposal of the company for an amount of ₹ 111 Crores. However, the said proposal was eventually rejected.

3.2 In terms of the Joint Meeting of the Consortium Lenders on 4th February, 2023, the company made separate OTS proposals to the PNB, the lead bank as well as the respondent-bank, that were to be considered independently by the two banks, as per their respective Recovery Management Policy.

3.3 The company apprised the respondent-bank of the status of its repayment of the dues of PNB in several correspondence, though, there was no requirement of the same. There was complete transparency and no



misrepresentation by the company.

3.4 By its Email dated 19th May, 2023, the company forwarded the 'No Dues Certificate' received from the PNB, recording that the entire dues of PNB had been fully repaid in normal course without OTS. Even after receipt of the aforesaid 'No Dues Certificate', as submitted by the company to the respondent-bank, the respondent-bank did not take any action to withdraw the OTS sanction, until it received the entire OTS amount.

3.5 Learned Senior Counsel for the petitioners drew the attention of this Court to the letter dated 5th June, 2023 written by the respondent-bank to the petitioner seeking certain documents alleging that despite several reminders, the petitioner-company had failed to provide the said documents. It is submitted that no such letters or reminders were ever written or placed on record by the respondent-bank, as alleged in its letter dated 5th June, 2023. Further, attention of this Court was also drawn to the letter dated 28th July, 2023 issued by the respondent-bank, to submit that the respondent-bank wrongly directed the petitioner-company by the said letter, to submit the details of source of funds after receipt of full amount under the OTS.

4. On behalf of the respondent, though various issues have been raised in the pleadings, however, at the time of arguments, the submissions were confined to the following:

4.1 The company misrepresented the respondent-bank at the time of giving its proposal for OTS. The bank considered the proposal of the company for OTS on the basis of the information given by the company. The OTS was entered on the basis of various letters written by the petitioner-company to the respondent-bank, wherein, the company pleaded that it did not have the capacity to pay.



4.2 Attention of this Court has been drawn to letter dated 4th October, 2022 and 9th December, 2022 written by the petitioner-company to the respondent-bank offering to settle the outstanding loan amount on the basis of its proposal for OTS. In the said letters, the petitioner-company stated its financial difficulties, owing to which it had proposed for an OTS.

4.3 Learned Senior Counsel for the respondent relies upon Email dated 14th December, 2022 issued by the respondent-bank, wherein, the respondent-bank had asked for statement of Escrow Account from loan disbursement date, maintained with the lead bank, i.e., PNB. Further, the respondent-bank also asked the petitioner-company to offer right to recompense, in case, any better settlement is made with the lead bank subsequently.

4.4 Reliance is also placed upon the letter dated 16th December, 2022 issued by the petitioner-company to the respondent-bank, wherein, it was stated by the petitioner-company that in case they offered any better terms of OTS to the PNB, the lead bank, the petitioner-company shall improve its offer submitted to the respondent-bank, accordingly.

4.5 The petitioner-company has given a better offer to PNB, the lead bank, by making full payment to the lead bank. The petitioner-company did not give proper facts to the respondent-bank and concealed the same from it. It was only on the basis of misleading information and soft story provided by the petitioner-company that the respondent-bank entered into an OTS with the petitioner-company.

4.6 Reliance is placed upon the meeting of the Consortium dated 4th February, 2023 consisting of the respondent-bank and PNB, the lead bank with the petitioner-company. It is submitted that OTS cannot be considered



in isolation, and has to be read in conjunction with submissions of the petitioner-company in the said meeting.

4.7 The Sanction Letter dated 6th February, 2023 approving the OTS offer of the petitioner-company, has to be read in conjunction with the various representations made by the petitioner to the respondent-bank. The Sanction Letter was issued only on account of the representation of the petitioner-company that it did not have the requisite finances. However, the petitioner-company entered into a better bargain with PNB, the lead bank, as it paid the full amount of loan to the said bank.

4.8 Learned Senior Counsel relies upon letter dated 4th May, 2023 written by the petitioner-company to the respondent-bank requesting for extension of validity of OTS, wherein, it had been stated by the petitioner-company that it was expecting loan and advances from other sources and was also expecting to receive substantial amount from the flats already sold in the Noida Project. Thus, it is submitted that the petitioner-company portrayed financial difficulties, on account of which OTS was sanctioned by the respondent-bank, after taking into account the problems as raised by the petitioner. However, the same is total misrepresentation, as the petitioner has paid full and final payment of the Term Loan to PNB, the lead bank. Therefore, the respondent-bank was justified in withdrawing the OTS.

4.9 Learned Senior Counsel appearing for the respondent relied upon judgment in the case of ***Babusha International Versus Canara Bank, 2008 SCC OnLine Del 619***, to urge that in certain circumstances, banks may be justified in not proceeding with the OTS.

5. I have heard learned Senior Counsels for the parties and have perused the record.



6. At the outset, this Court notes that the issue raised by the respondent-bank for withdrawing the OTS is that there was misrepresentation by the petitioner-company at the time of submission of its proposal for OTS. The respondent-bank has alleged that it was only on the basis of the financial difficulties having been portrayed by the petitioner-company, that the respondent-bank accepted the proposal of the petitioner-company and entered into OTS with the petitioner. However, the petitioner-company misrepresented in this regard, as it has paid the loan account of PNB, the lead bank, fully without any OTS.

7. Considering the facts and circumstances of the present case, the aforesaid contentions raised by the respondent-bank have necessarily to be rejected for the reasons, as elucidated, in the following paragraphs.

8. It is to be noted that there were three lenders of the Noida Project, i.e., HDFC Limited, PNB and the respondent-bank. All three banks had sanctioned their respective loan under Multiple Banking Arrangement independently, as follows:

S. No.	Name of the Lender Bank	Amount (Rupees in Crores)
1.	Punjab and Sind Bank	155.00
2.	Punjab National Bank (formerly Oriental Bank of Commerce)	124.00
3.	HDFC Limited	25
Total		304.00

9. The loans were sanctioned and disbursed by the lender banks initially under Multiple Banking Arrangement. Later on, consortium was formed amongst the participating banks, wherein PNB (formerly Oriental Bank of



Commerce) was appointed as the lead bank.

10. Since HDFC Limited refrained from aligning its terms of sanction with other participating member banks, the petitioner-company repaid the full loan of HDFC Limited way back in July, 2018, which the respondent-bank was aware of.

11. The respondent-bank had also granted two other Term Loans to the petitioner-company, for which also the respondent-bank entered into OTS with the petitioner-company. With respect to one Term Loan regarding Panipat Project, the petitioner-company paid the amount as per the OTS Sanction Letter dated 17th August, 2022 and the respondent-bank issued 'No Dues Certificate' to the petitioner-company with respect to the said Term Loan. With respect to the second Term Loan and the OTS entered with respect thereto, a separate litigation is pending between the parties. The present case pertains to OTS with respect to only the Noida Project.

12. The petitioner-company submitted offers for OTS to the respondent-bank vide letters dated 4th October, 2022 and 9th December, 2022, for an amount of ₹ 111 Crores, which were not accepted by the respondent-bank. In response to the aforesaid letter dated 9th December, 2022 of the petitioner-company, the respondent-bank responded vide its Email dated 14th December, 2022, in the following manner:

“xxx xxx xxx

Dear Sir,

This has reference to your letter dated 09.12.2022 received on 13.12.2022, vide which you have offered to settle the term loan accounts of Noida project, offering Rs.111.00 Cr. The Competent Authority has gone through the offer letter and has raised some query. In this regard, you are requested to provide the following documents to enable us proceed further in the matter;



1. Audited balance sheet of Noida Project of the last 3 years.
2. CA Certified Net Worth Certificate and ITR returns of Promoter, Guarantors and Directors of Noida Project loan for the last three years.
3. Duly signed Inventory details and receivable of sold/unsold units. Status of COD achievement and completion percentage of Noida project.
4. Source of fund of the offered amount in Noida Term loan with documentary evidence.
5. **Copy of statement of Escrow account from loan disbursement date till now maintained with Punjab National Bank.**
6. CA Certificate of Cash Flow of Noida Project.
7. No Dues Certificate received from Noida Authority on rental lease arrears.
8. Status of suit filed against the company and its directors/guarantors.
9. Status of NCLT applications filed against the company, if any.
10. Status of Personal Insolvency proceedings initiated against the directors/guarantors, if any.
11. Payment of Upfront amount on OTS offer.
12. Copy of Insurance on security mortgaged in the account.
13. Status of payment to be made to Resolution Professional under NCLT.
14. **Please offer the right to recompense in-case of any better settlement is made with the lead Bank, subsequently.**

Your offer of OTS will be considered on merit, on receipt of the above information and documents.

Thanks & regards.

xxx xxx xxx”

(Emphasis Supplied)

13. Replying to the aforesaid letter, by its reply dated 16th December, 2022, the petitioner-company, *inter-alia*, stated as follows:

“xxx xxx xxx

14. It is submitted that in case we offer any better terms of OTS to Punjab National Bank, the other member bank of the subject project we shall improve our offer submitted to your bank also accordingly.

xxx xxx xxx”

(Emphasis Supplied)



14. However, the aforesaid correspondence did not lead to any OTS between the parties and the OTS offer of the petitioner-company of ₹ 111 Crores, later revised to ₹ 113.84 Crores, was rejected by the respondent-bank vide its Email dated 13th January, 2023, in the following manner:

“xxx xxx xxx

This has reference to your two letters dated 29.12.2022, for the settlement of Overdraft account dues and Noida Term Loan, you are advised to enhance your offer amount after including all the litigation cost including CIRP Cost, as the present offer amount is below the benchmark and not in consonance with the value of securities held in the account.

xxx xxx xxx”

15. After the aforesaid OTS proposal of the petitioner-company was rejected, the Consortium Lenders consisting of the respondent-bank and PNB, the lead bank, held a meeting with the petitioner-company on 4th February, 2023. In the said meeting, *inter-alia*, the request of the petitioner-company to pay off the dues of the banks was taken up for consideration. While the respondent-bank requested the company to make a joint OTS for both banks, PNB, the lead bank, declined such request. The banks directed the petitioner-company to make separate proposals to each of them, which would be considered by the banks on its own merit on the basis of the respective Recovery Management Policy. Relevant portions of the Minutes of Meeting dated 4th February, 2023, are extracted as below:

“xxx xxx xxx

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f) As regards future strategy for repayment of outstanding loan of the lenders he apprised the meeting that the recovery of sales receivables may take time since majority of the amount is due for payment on possession, which is going to take time due to various reasons completely beyond the control of the promoter. Actually, buyers are



not ready to make payment of their flat unless their flats are not ready for possession and to make the flats ready for Possession Company needs to infuse money for which it is depending upon the recovery from the buyers. Hence, it is a Catch-22 situation for the company. Management has therefore decided to square-off loans of both the lenders by entering into OTS on bilateral basis with them. He requested member banks to expedite the OTS proposal of the company so that their loans can be squared-off at the earliest. PSB requested to the borrower to offer a joint OTS offer, so that both the banks can negotiate and finalize the settlement amount. However, PNB management opined that both the Bank can consider the settlement on bilateral basis as per their respective Recovery Management Policy.

xxx xxx xxx

Thereafter detailed discussion was held amongst the member banks and following decisions were taken:

1. PNB shall continue issuing provisional NOC for Sale to ensure recovery of funds. PNB shall also issue final NOC for Sale in respect of the flats for which entire sale consideration has been received.
2. Amount collected in Master Collection Account shall continue to be distributed in the ratio of 50:50 till a further sum of Rs.10 crore is being utilized towards construction of the project and thereafter, the lender's share shall be enhanced to 55% or from 01.03.2023 whichever is earlier.
3. In view of submission of CA certificate, architect certificate and engineer certificates by the company appointment of ASM may be kept in abeyance till 31.03.2023. Company shall provide copies of all such certificates with P&SB.
4. Lenders will inspect the project individually.
5. Lenders may consider OTS submitted/ to be submitted by company on bilateral basis, on merit.
6. PSB shall share copy of Forensic Audit Report with PNB.
7. PNB shall provide copy of Master Collection Account to PSB.
8. PNB shall obtain legal opinion regarding validity of security documents and shall provide copy of the same to PNB.
9. PNB shall provide copy of the existing valuation report to PSB.
10. JLM will be on regular basis.

xxx xxx xxx”

(Emphasis Supplied)



16. Pursuant to the aforesaid meeting, the petitioner-company made OTS proposals to both PNB, lead bank, as well as the respondent-bank. The PNB did not accept any OTS, whereas, the respondent-bank accepted the OTS proposal as per its existing Recovery Policy. The Sanction Letter dated 6th February, 2023 issued by the respondent-bank, reads as under:

“xxx xxx xxx

M/s Ambience Pvt Ltd (Noida Project) HO SAMVERT

REF: HO SAMVERT/775/ 2022-2023/973

DATE 06.02.2023

The Director,
M/s Ambience Pvt. Ltd.
L-4, Green Park Extension,
New Delhi-110016

Dear Sir,

Reg: Approval for the One Time Settlement Offer of Rs.119.50 Crores in the Two Term Loan Account No. 00131200914622 & 00131200914619 of M/s Ambience Pvt. Ltd (Project- Ambience Tiverton, Noida), H.O SAMVERT, New Delhi under Bank's Recovery Management Policy circulated vide Law Cir No. 110 dated 09.05.2022.

Keeping in view your OTS offer vide letters dated 04.02.2023, 27.01.2023, 29.12.2022, 09.12.2022 & 04.10.2022, the Competent Authority has approved the OTS offer of Rs. 119.50 Crores in the captioned account on the following terms and conditions.

1. Settlement amount is Rs 119.50 Crores (Rs. One Hundred Nineteen Crore and Fifty Lakh Only).

2. Upfront 10% amount of Rs.11.95 Crores already received and appropriated in the account by bank towards part settlement amount. Additionally, Rs.2.79 Cr. received in the account is also appropriated by Bank towards part of settlement amount.

3. Balance amount of Rs 107.55 Crores will be deposited by you within 90 days from the date of conveying sanction as under:-

- Rs.17.92 Cr (15%) within 30 days from the date of conveying the sanction. Out of this amount Rs.2.79 Cr. already received.



- *Rs.89.63 Cr within 90 days from the date of conveying the sanction.*
- 4. *Postdated cheques for the aforesaid repayment schedule shall be provided at the time of acceptance of OTS sanction.*
- 5. **Charge on security/ title deeds shall be released to the consortium only after receipt of entire OTS amount against the Noida Term Loan.**
- 6. *The personal Guarantee of Mr. Raj Singh Gehlot shall be released upon settlement of all the related account of M/s Ambience Pvt. Ltd.*
- 7. **No dues certificate and all concessions will be issued/ credited only after receipt of entire OTS amount within 90 days from the date of conveying the sanction.**
- 8. **OTS is being 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.**
- 9. *The party shall withdraw the counter claim /criminal case filed against the bank/ its official immediately for which they have to submit an undertaking before release of the property.*
- 10. *Default in payment of the installment shall render the OTS as failed and all the reliefs and 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.*
- 11. **In case the borrower seeks “No- dues Certificate” after depositing the entire settlement amount, it shall be mentioned that the account has been adjusted through concessions under one time Settlement.**
- 12. *In case the entire OTS amount, as per sanction is paid within 90 days of conveying sanction, no interest will be charged, However, simple interest @ One year MCLR +3.50% on reducing balance (applicable from the date of sanction) basis will be charged where OTS amount is paid beyond 90 days.*
- 13. *Any Credit facility to Borrower/ Guarantors shall be dealt in future as per Banks extant guidelines*
- 14. **In the event of Bank finding any misrepresentation of facts, bank reserves the right to withdraw the OTS permitted and proceed legally for recovery of entire dues.**
- 15. **OTS shall stand cancelled automatically if any of the terms and**



conditions of the sanction is not complied with.

The acceptance of OTS Sanction and terms & Condition is to be submitted within 7 days.

xxx xxx xxx”

(Emphasis Supplied)

17. Perusal of the aforesaid Sanction Letter dated 6th February, 2023, shows that there was no stipulation that OTS granted by the respondent-bank will be rejected, if PNB, the lead bank, rejects the OTS proposal submitted to it. Moreover, it is to be noted that there was no stipulation in the Sanction Letter of either re-compensation or rejection of OTS, if PNB declines to entertain OTS offer.

18. Reliance by the respondent-bank upon the earlier letter dated 14th December, 2022 written by the respondent-bank, wherein, it had requested the petitioner-company to offer right to recompense, in case, any better settlement is made with the lead bank subsequently, is totally misplaced. No mileage can be drawn by the respondent-bank from the said letter. Similarly, the respondent cannot seek any benefit out of the letter dated 16th December, 2022 written by the petitioner-company, wherein, it had stated that it shall improve its offer, in case it offers any better terms of OTS to PNB, the lead bank. The aforesaid correspondence was part of the negotiations in respect of the OTS proposals given by the petitioner-company earlier, which were eventually rejected.

19. Holding that terms of the OTS were independent of any condition that might have come from any party in course of negotiations preceding the OTS, Supreme Court in the case of ***U.P. Financial Corporation and Ors. Versus Sri Bharat Paper Udyog P. Ltd. and Ors.***¹, has held as follows:

¹ MANU/SC/1049/2011



“xxx xxx xxx

13. In any event, in regard to the payment schedule, the Respondent was bound by the terms of the OTS. Further, the terms of the OTS were independent of any condition that might have come from the Respondent in course of negotiations preceding the OTS or any condition that the Respondent might have put in its application for grant of OTS. The terms of the OTS would also not be controlled or altered by any decision taken in any regional industrial meeting chaired by the State's Industrial Commissioner. The terms of the OTS would continue to bind the Respondent until those are duly changed and amended by the Corporation.

xxx xxx xxx”

(Emphasis Supplied)

20. Considering the law laid down by the Supreme Court, it is clear that terms of sanction are alone final and binding on the parties. Any negotiations or discussions, prior to the sanction or subsequently consented to be added by one party, which is not reflected in the Sanction Letter, is not binding on the parties. Therefore, the averments made by respondent-bank that certain discussion took place prior to sanction which provides for a right to recompense to the respondent-bank, cannot be countenanced. Terms of negotiations which were not subsequently made part of the sanction, cannot be a binding obligation.

21. In the present case, the petitioner-company had subsequently, vide letter dated 4th May, 2023, made a request to the respondent-bank for extension of validity of OTS. In the said letter, the petitioner-company had categorically stated that only an amount of ₹ 3.60 Crore was outstanding in the Loan Account of PNB, the lead bank. The relevant portion of the letter dated 4th May, 2023 written by the petitioner-company seeking extension of validity of OTS, reads as under:



“xxx xxx xxx

*We have now taken-up the matter with VUDA and are hopeful to get refund of balance amount of Rs.96 crore at the earliest. Also, now Sh. Raj Singh Gehlot has secured regular bail in the ED matter and thus, it will be helpful to arrange funds from family, friends, relatives and associates. **Further, now only an amount of Rs.3.60 crore is outstanding in the loan accounts of Punjab National Bank, which we are planning to pay shortly post which only your bank shall be left as the sole lenders in the said. Ambience Tiverton, Sector-50, Noida project.** Hence, it will not only expedite issuing of remaining provisional/ final NOCs for Sale of Flats and collection of receivables from the flat buyers of said project but the entire lender's share will be utilized towards payment of your OTS amount for said project. Pertinent to mention here that Punjab National Bank (earlier Oriental Bank of Commerce) had sanctioned LRD loan in favour of one of our group concerns and out of free float of funds available in the said LRD loan promoters have partly paid their loan before turning their loan account as NPA and resultantly, their exposure has reduced as compared to your bank.*

xxx xxx xxx”

(Emphasis Supplied)

22. Reading of the aforesaid letter clearly shows that, the petitioner-company had categorically stated as regards the status of the outstanding Loan Account of PNB, the lead bank. There was no misrepresentation by the petitioner-company as regards its dealing with the lead bank.

23. Thus, it is manifest that the respondent-bank was aware of the fact that only a small sum was due and payable to the PNB. Despite the same, pursuant to the aforesaid request by the petitioner-company, by letter dated 19th May, 2023, the respondent-bank extended the OTS repayment period till 30th September, 2023, in the following manner:

“xxx xxx xxx

Ref: H.O/SAMVerT/14/2023-24/1096

Date: 19.05.2023

The Director

M/s Ambience Pvt. Ltd

L-4, Green Park Extension



New Delhi-110016

Dear Sir,

Reg: Extension of OTS repayment period in the account of M/s Ambience Pvt. Ltd (Noida Project-00131200914622 & 00131200914619), HO SAMVerT, New Delhi under Bank's Recovery Management Policy.

This has reference to your letter dated 04.05.2023, vide which you informed that due to several unavoidable externalities, you failed to honor the repayment schedule and other terms & conditions of OTS sanction dated 06.02.2023 and requested to extend the validity of the OTS Sanction (Noida TL-00131200914622 & 00131200914619) by 180 days i.e.06.11.2023

Keeping in view your request, the Competent Authority has approved the extension of the validity of the OTS till 30.09.2023, subject to compliance of following terms & condition:

Borrower to provide fresh post dated cheques for balance OTS amount Rs.64.56 Cr. plus interest at the time of acceptance of this extension letter. Borrower to comply with all the terms & conditions of OTS sanction.

All the other terms & conditions of our sanction letter dated 06.02.2023 shall remain the same.

xxx xxx xxx”

(Emphasis Supplied)

24. Subsequently, by its Email dated 19th May, 2023, the company forwarded the ‘No Dues Certificate’ issued by PNB, the lead bank, wherein, it was clearly recorded that the entire dues of PNB had been fully repaid in normal course, without OTS.

25. After receipt of the aforesaid Email dated 19th May, 2023 containing the ‘No Dues Certificate’ issued by the lead bank, from the petitioner-company, the respondent-bank did not take any action to withdraw the OTS sanction, until it received the entire OTS amount. As per the terms of Sanction Letter dated 6th February, 2023, along with Extension Letter dated 19th May, 2023, the company was required to pay the entire OTS amount of



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₹ 119.50 Crores, along with interest, by 30th September, 2023.

26. It is undisputed that the petitioner-company discharged its entire obligation by paying the amount of ₹ 119.50 Crores by 1st August, 2023 and the interest amount ₹ 3.75 Crores on 2nd August, 2023, as reflected in the Email dated 2nd August, 2023, which was sent by the petitioner-company to the respondent-bank at 14:42 (2:42 PM). The said Email dated 2nd August, 2023 is reproduced as under:



Vijay Singh <vijay.singh@ambienceindia.in>

Request for appropriation of Funds.

Vijay Singh <vijay.singh@ambienceindia.in>

2 August 2023 at 14:42

To: Richa.Tripathi@psb.co.in, G.Parthiban@psb.co.in, Brijesh Dabral <brijesh.dabral@ambienceindia.in>

Dear Madam/Sir,

It is submitted that Punjab National Bank has transferred an amount of Rs. 3.75 crore from the Master Collection A/c No.00071072000048 to Current A/c No.07171100011204 in the name of Ambience Pvt. Ltd. maintained with your bank.

You are requested to please debit said amount of Rs.3.75 crore from said Current A/c No.07171100011204 towards payments of interest as per terms of your OTS sanction in respect of Residential Complex, Sector-50, Noida, UP.

We hope you would do the needful at the earliest and oblige.

Regards

Vijay Singh
(AGM Finance)**Ambience Group**L-4, Green Park Extn., New Delhi 110 016
Mobile: 9818300771WhatsApp Image 2023-08-02 at 14.37.00 (4).jpeg
92K

Signature Not Verified

Digitally Signed By: CHARU
CHAUDHARY
Signing Date: 04.07.2024
09:27:55

W.P.(C) 13438/2023

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27. After receipt of full amount under the OTS, by Email dated 2nd August, 2023, sent at 7:16 PM, the respondent-bank sent letter dated 1st August, 2023, thereby withdrawing the OTS. The letter dated 2nd August, 2023, reads as under:

“xxx xxx xxx

Ref: PSB/HO/SAMVerT/2023-24/1288

Date: 01.08.2023

The Director,
M/s Ambience Pvt Ltd
L-4, Green Park Extension,
New Delhi-110016.

Without Prejudice

Dear Sir,

Reg: Withdrawal of our letter dated 19.05.2023 extending the OTS period in the account of Ambience Pvt Ltd (Noida Term Loans & ODP).

This has reference to the OTS sanctioned in the captioned account, which were extended vide letter dated 19.05.2023 in both the above mentioned accounts.

In this regard, it is to inform you that due to deviations and non-compliance of the terms & conditions of OTS by the borrower, our letter dated 19.05.2023 w.r.t extension of OTS stands withdrawn with an opportunity for fresh negotiations in both the accounts.

Thanks & Regards.

xxx xxx xxx”

(Emphasis Supplied)

28. It is well settled that OTS offer, its acceptance and the Sanction Letter constitute a sufficient contract. Thus, the respondent-bank, which is a nationalized bank and an instrumentality of the State, cannot act arbitrarily or whimsically in matters of contract. OTS is binding on the bank and



cannot be unilaterally withdrawn after accepting payments. Further, the aforesaid letter dated 2nd August, 2023 withdrawing the OTS is a cryptic order, bereft of any reasons.

29. In this regard, it would be apposite to refer to judgment of Supreme Court in the case of *Kranti Associates Private Limited and Another Versus Masood Ahmed Khan and Others*², wherein, it has categorically been stated that reasons must be recorded even in administrative decisions, if such decisions affect anyone prejudicially. Reasons in support of decisions must be cogent, clear and succinct. Thus, the Supreme Court has held as follows:

“xxx xxx xxx

47. Summarising the above discussion, this Court holds:

(a) *In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*

(b) *A quasi-judicial authority must record reasons in support of its conclusions.*

(c) *Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*

(d) *Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*

(e) *Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.*

(f) *Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*

(g) *Reasons facilitate the process of judicial review by superior courts.*

(h) *The ongoing judicial trend in all countries committed to rule of*

² (2010) 9 SCC 496



law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37] .)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR, at 562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

xxx xxx xxx"

(Emphasis Supplied)



30. As noted earlier, the respondent bank is a nationalized bank, and is a State under Article 12 of the Constitution of India. Thus, the respondent-bank is enjoined upon to act fairly in such commercial transactions. Upon receiving extension on 19th May, 2023, the petitioner-company paid the entire OTS amount of ₹ 119.50 Crores on 1st August, 2023 and instructed the respondent-bank to appropriate amount of ₹ 3.75 Crores towards interest on 2nd August, 2023, from its account maintained with the respondent-bank. There is no stipulation in the Sanction Letter that the company was required to make full payment of dues as was done with PNB, the lead bank. The petitioner-company was required to act as per the terms of the sanction with regard to the repayment of the OTS amount to the respondent-bank, and no further. The petitioner has paid the entire OTS amount along with interest, stipulated in the sanction. Thus, there is no question of any deviation or violation or breach of the Sanction terms.

31. The terms of Sanction letter dated 6th February, 2023 read with Extension Letter dated 19th May, 2023, are clear and unambiguous and final in nature. Indisputably, there was no modification of the Terms of Sanction and Extension. The facts and documents on record make it evident that the petitioner-company has abided by all the Terms of the Sanction, read with the Extension Letter. Once the respondent-bank recovered its entire outstanding along with interest, the respondent-bank could not have cancelled/withdrawn the OTS extension period.

32. The petitioner-company had no OTS with PNB, the lead bank. There is nothing on record to show that this fact was not known to the respondent-bank. The respondent-bank had approved the OTS on bilateral basis, without stipulating any condition as to adjustment of loan of PNB on similar terms.



The respondent-bank has failed to justify the unilateral and unreasoned withdrawal of the OTS sanction.

33. Holding that a bank having accepted the offer of the party at every step, could not have wriggled out by cancelling OTS at the climax, in the case of ***Rima Transformers and Conductors Pvt. Limited. Versus Canara Bank***³, it has been held as follows:

“xxx xxx xxx

12. The learned senior counsel appearing for the respondent would submit that the amount was not paid in full, interest had to be paid and, therefore, exercising liberty that it had reserved to itself while offering OTS, the OTS comes to be cancelled. No fault can be found with the said action. This submission, in the peculiar facts of this case, is unacceptable. **It is not in dispute that the Bank is a State under Article 12 of the Constitution of India. Even in a commercial transaction of this kind, it has a duty to act fairly.** It is not in dispute that the petitioner has deposited Rs. 18.90 crores by selling his property and the Bank retains Rs. 18.90 crores and proceeds to auction other properties of the petitioner on the ground that the loan is not cleared. **It would have been a circumstance altogether different if the petitioner had defaulted in OTS. Before the deadline that was stipulated by the Bank on agreed terms and conditions which was on 28-02-2021 the petitioner had deposited Rs. 18.90 crores and later on 26-03-2021 deposits Rs. 52/-lacs and on 10-05-2021 deposits another Rs. 25/-lacs. All these amounts are accepted by the Bank. In one breath amount is accepted and in the other SARFAESI proceedings are instituted by cancelling OTS. If the Bank had cancelled OTS it could not have retained the amount paid under OTS and put the property of the petitioner to sale as well. This action of the Bank does not behove its status of being a State under Article 12 of the Constitution of India.**

xxx xxx xxx

15. **The petitioner becomes entitled to the prayer that is sought in the peculiar facts of this case, as the Bank has been absolutely unfair to the petitioner. Whether a defaulter should be shown any indulgence would have been the question if the petitioner had not complied with OTS or not fulfilled any condition of OTS. According to the**

³ MANU/KA/5930/2022



petitioner, he has paid the entire amount that was indicated in the OTS by selling his property that he had mortgaged with the Bank with the permission of the Bank. Therefore, the Bank having accepted the offer of the petitioner at every step, could not have wriggled out by cancelling OTS at the climax and further could not have retained the entire amount of Rs. 19 crores and again sought to e-auction the other properties of the petitioner for realizing the alleged interest, which according to the petitioner nothing remains to be paid, but according to the Bank certain amounts are due. It would have been open for the Bank to have had a dialogue with the petitioner in the peculiar facts rather than putting other properties of the petitioner to sale after having received Rs. 19.52 crores towards the amount offered in OTS.

xxx xxx xxx”

(Emphasis Supplied)

34. Likewise, holding that on payment of OTS amount in compliance of the Sanction Letter, bank has to act fairly and reasonably and OTS cannot be rendered infructuous on fanciful reasons, a Coordinate Bench of this Court in the case of ***Prayag Polytech Private Limited and Another Versus State Bank of India***⁴, has held as follows:

“xxx xxx xxx

18. That apart, the fact that the payment was made on 23rd July, 2021, is not controverted. The conditions of sanction letter do not stipulate that the payments have to be made only by way of electronic transaction, and not by way of negotiable instruments - such as cheques. Payment by way of cheque is thus presumed to be a valid mode of payment. The same, as observed above, was indeed accepted on 23rd July, 2021. Pertinently, if SBI was to consider the date of encashment of cheque as the date of payment, Petitioner-company should have been intimated of this stipulation in the sanction letter itself, or at least on the date when the cheque was accepted by SBI. Even on 23rd July, 2021 i.e. the date of payment, had the Petitioner-company been informed that the payment by way of cheque would be accepted only on the date of encashment, Petitioner-company could have resorted to other modes of making good the payment electronically. The cheque was encashed as there was sufficient balance in the Petitioner-company's bank account for encashment of

⁴ 2022 SCC OnLine Del 2175



the said amount. Mr. Vipul Ganda, counsel for Petitioner-company, states that the funds were also available on 23rd July, 2021. Be that as it may, the cheque has already been encashed and sufficiency of funds is immaterial.

19. SBI has a duty to act fairly and reasonably. The OTS cannot be rendered infructuous on fanciful reasons otherwise the intent of bringing an OTS scheme, and the ensuing consequences, would stand defeated. The reasons offered by SBI have trivialized the 'non-discretionary' aspect of the scheme.

20. In light of the fore-going, the Court is satisfied that Petitioner-company has complied with the terms of the sanction letter, and therefore, the petition deserves to be allowed. SBI is directed to forthwith issue the no-dues certificate in terms of the OTS sanction letter. The intimation of OTS shall also be brought to the notice of DRT by filing an appropriate application to bring closure to the ongoing proceedings against Petitioner-company.

xxx xxx xxx”

(Emphasis Supplied)

35. While considering the issue whether a public sector bank was justified in withdrawing an accepted OTS proposal, in the case of ***Pawan Aggarwal Versus Small Industries Development Bank of India (SIDBI), through its Assistant General Manager***⁵, it has been held as follows:

“xxx xxx xxx

13. Indeed, the dispute herein is only with regard to personal guarantee given by the petitioner. In the petition, it is averred that the respondent/Bank has already recovered a huge amount of Rs. 3,28,91,948/- in June/July 2020 from the borrower. It has become a conundrum as to why the respondent-Bank is not settling the dispute finally despite the fact the offer was itself made by them to the petitioner, which he accepted and also complied with the necessary stipulations therein by depositing the required upfront amount. It is to be kept in mind that when the Bank sponsors One Time Settlement Scheme for settling the liabilities finally, thereby it proffers an opportunity to the borrower for settling his dispute with the Bank by offering a lump sum amount so as to amicably settle the account. **The basic object of the OTS Scheme is that the account which became irregular and/or declared Non-Performing Account and if an acceptable offer is made by the defaulter for settling the dispute**

⁵ 2022 SCC OnLine MP 2455



finally, then to avoid time consuming litigation in the courts and wasting energy in recovering the amount, it could be settled so as to recover the amount, which is undoubtedly a public money. In other words, the Bank may be writing off possibly substantial portion of its liabilities, but once it agrees, the borrower can take appropriate steps to raise the amount, and ordinarily, the bank should not resile from this arrangement. In the case at hand, the petitioner being a guarantor had mortgaged his personal property and after much haggling happened between the parties, the offer made by the respondent-Bank was accepted by the petitioner and therefore looking to the object of OTS Scheme which ensures speedy closer of the cases to avoid tardy recovery from borrower in which to larger extent the bank faces difficulty to recover the amount, unflaggingly I find no justifiable reason for the respondent-Bank to back-out from the offer accepted by the petitioner that too pursuant to the offer made by the Bank. Conversely, it can be understood that if the offer given by the borrower does not appeal to the Bank, then the Bank is not under obligation to accept it and no borrower can, as a matter of right, pray for grant of benefit of One Time Settlement Scheme. However, in the case at hand, the offer given by the Bank has been accepted by the borrower, but then the Bank backed out from the said offer that too without assigning any reason. Obviously, the respondent-Bank is a Government Bank and creation of Statute come within the definition of State, therefore, it is expected to act in a bona fide manner and take a prudent decision having regard to involvement of the public money.

xxx xxx xxx

18. In view of above discourse, the action of respondent-Bank of withdrawing its offer already accepted by the petitioner and asking him to deposit full amount, cannot be given stamp of approval.....

xxx xxx xxx”

(Emphasis Supplied)

36. Position in the present case would have been different, if the respondent-bank had not entered into OTS with the petitioner-company, or if the petitioner-company had defaulted in payment of the OTS amount, or if no extension of time had been granted by the respondent-bank for making payment under the OTS. It is settled law that a bank cannot be coerced to enter into an OTS and no person has any vested or legal right to claim OTS



with respect to a Loan Account. Thus, if the respondent-bank was of the view that the petitioner-company had the capacity to make payment of the loan account, the petitioner-company could not have claimed OTS with respect to the said Loan Account, as a matter of right. However, once there is an OTS between the parties, and the petitioner-company has paid the entire amount in terms of the OTS along with interest, the respondent-bank cannot retract from the OTS in an arbitrary manner by way of a non-reasoned order. Moreover, the respondent-bank has failed to establish that there was any misrepresentation by the petitioner-company in any manner, at the time of entering into OTS.

37. While dealing with the Scheme of OTS, the doctrine of *Legitimate Expectation* has also been pressed into service by a Division Bench of Madhya Pradesh High Court in the case of ***Mohanlal Patidar Versus Bank of Maharashtra, Jabalpur and Another***⁶, wherein, it has been held as follows:

“xxx xxx xxx

29. The impugned action of the Bank can be tested on the doctrine of legitimate expectation. *The concept of legitimate expectation is of European origin. It is one of the fundamental Principles of European Community Law. [See : Durbeck v. Hauptzollant Frankfurt an Main Flughafen, 1981 ECR 1095, at 1120; Mulder v. Minister Van Landbouw en Visserji, 1988 ECR 2321; Spagl v. Hauptzollant Rosenteim, 1990 ECR 453. For some more cases on legitimate expectation from European Law, see, Sedley, J.'s opinion in R. v. Maff, ex p. Hamble Fisheries, (1995) 2 All ER 714].*

The statement of Lord DIPLOCK in CCSU [[1985] A.C. 374 at 408] is regarded as envisaging legitimate expectation extending to an expectation of a benefit. This may arise from—

(i) what a person has been permitted by the concerned authority to enjoy and which he can legitimately expect to be permitted to continue to enjoy until “there has been

⁶ 2022 SCC OnLine MP 5387



communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment”;

(ii) he has received assurance from the concerned authority that the benefit will not be withdrawn without giving him first an opportunity of advancing reasons for contending that it should not be withdrawn,

(iii) It may also extend to a benefit in the future which has not yet been enjoyed but has been promised.

30. **Lord FRASER** [See: Page No. 1656 of Principles of Administrative Law by M.P. Jain and S.N. Jain] also observed as follows:

“But even where a person claiming some benefit or privilege has no legal right to it, as a matter of private law, he may have a legitimate expectation of receiving the benefit or privilege, and, if so, the Courts will protect his expectation by judicial review as a matter of public law... Legitimate or reasonable expectation may arise from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue.”

31. Characterizing the doctrine of legitimate expectation as a valuable and developing doctrine, **BINGHAM, L.J.**, stated in the case of *R. v. Inland Revenue Commissioners, ex. p. MFK Underwriting Agents Ltd.*, (1990) 1 All ER 90 as under:

“If a public authority so conducts itself as to create a legitimate expectation that a certain course will be followed it would often be unfair if the authority were permitted to follow a different course to the detriment of one who entertained the expectation, particularly if he acted on it... The doctrine of legitimate expectation is rooted in fairness.”

32. **SEDLEY, J.**, ruled that even though policy change may take place from time to time, the policy maker should seek to accommodate legitimate expectations.

33. SEDLEY, J., has observed:

“Thus it is an obligation to exercise powers fairly which permits expectations to be counterpoised to policy change, not necessarily in order to thwart it but... in order to seek a proper exception to the policy within the British Oxygen principle.”
[*British Oxygen Co Ltd v. Minister of Technology*, [1970] 3 WLR 488]



He went on to observe:

“While policy is for the policy maker alone, the fairness of his or her decision not to accommodate reasonable expectations which the policy will thwart remains the Court's concern....”

While the Court accepts ministerial freedom to formulate and to reformulate policy, ‘it is equally the Court's duty to protect the interest of those individuals whose expectation of different treatment has a legitimacy which in fairness out-tops the policy choice which tends to frustrate it’. Finally, SEDLEY, J., has said:

“Legitimate expectation is now in effect a term of art, reserved for expectations which are not only reasonable but which will be sustained by the Court in the face of changes of policy : secondly, that whether this point has been reached is determined by the Court, whether on ground of rationality, of legality or of fairness, of all of which the Court, not the decision-maker is the arbiter.”
[R v. Ministry of Agriculture Fisheries and Food ex p Hamble (offshore) Fisheries Ltd., (1995) 2 All ER 732]

34. The Supreme Court of India in the case of National Buildings Construction Corporation v. S. Raghunathan, (1998) 7 SCC 66: AIR 1998 SC 2779 has held as under:

“The doctrine of ‘Legitimate Expectation’ has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statement cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice. It was in this context that the doctrine of ‘Legitimate Expectation’ was evolved which has today become a source of substantive as well as procedural rights. But claims based on ‘Legitimate Expectation’ have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel.”

(Emphasis Supplied)

35. The Apex Court opined that the doctrine of legitimate expectation is a ‘latest recruit’ to a long list of concepts fashioned by the Courts for review of administrative actions. No doubt, the doctrine has an important place in the review. Under the said doctrine, a person may



have reasonable or legitimate expectation of being treated in a certain way by an administrative authority even though he has no right in law to receive the benefit. In such a situation, if a decision is taken by an administrative authority adversely affecting his interests, he may have justifiable grievance in the light of the fact of continuous receipt of the benefit, legitimate expectation to receive the benefit or privilege which he has enjoyed all throughout. Such expectation may arise either from the express promise or from consistent practice which the applicant may reasonably expect to continue [See: Confederation of Ex-Serviceman Associations v. Union of India, 2006 MPLJ OnLine 55 = (2006) 8 SCC 399, 416].

36. If the present case is examined on the anvil of principles laid down in aforesaid cases, it will be crystal clear that the petitioner was clearly given to understand that the OTS amount determined is based on a valid OTS scheme and in order to get the benefit of said scheme, petitioner was required to fulfil certain formalities. It was further made clear in the communication dated 4-1-2021 (Annexure P/1) that if petitioner is willing to pay the said amount (10% of which was required to be paid forthwith) the only formality on the part of the Bank will be to examine the petitioner's eligibility. As discussed above, the petitioner cannot be treated as ineligible. Thus, doctrine of legitimate expectation can be pressed into service in a case of this nature where a Public Sector Bank, a 'State' within the meaning of Article 12 of the Constitution has given the petitioner to understand that if he accepts the offer and acts in a particular manner, he will get desired result.

37. The stand unilaterally taken by the Bank in the subsequent communication dated 25-8-2021 runs contrary to the OTS scheme and doctrine of legitimate expectation.

The decision dated 25-8-2021 (Annexure P/4) whereby Bank enhanced OTS amount unilaterally has an adverse impact on the petitioner which is arbitrary and contrary to Principles of Natural Justice. Fairness is an integral part of good administration. The Bank has not acted in a just, proper and reasonable manner.

xxx xxx xxx”

(Emphasis Supplied)

38. As regards the letter dated 28th July, 2023 written by the respondent-bank to the petitioner-company regarding details of source of funds for payment of the OTS amount, the said stand of the respondent-bank cannot



be accepted. In this regard, order dated 26th April, 2022 passed in W.P.(C) 12042/2021, *M/s Oberoi Cars Pvt. Ltd. and Another Versus Punjab and Sind Bank*, passed by a Coordinate Bench of this Court, may be referred to, wherein, it was held as follows:

“xxx xxx xxx

5. It appears that the parties have not been able to resolve the matter, and today, learned counsel for the respondent once again reiterates that since the payment made by the petitioners was not from the proceeds of the sale of mortgaged property, it cannot be said that the petitioners have complied with the terms of the OTS. He therefore contends that the respondents are justified in refusing to releasing the title documents till further amounts are paid by the petitioners.

6. Having considered the submissions of the parties, I find absolutely no merit in the stand taken by the respondent bank. Once it is an admitted position that the petitioners have paid the entire amount in terms of the OTS alongwith interest at the rate mentioned in the sanctioned letter, the respondent cannot now turn around and contend that because the said amount has been paid from the petitioners’ own sources and not after the sale of the mortgaged property, or that a tripartite agreement was not been entered into between the parties, the OTS will no longer be binding on it.

7. In my considered view, merely because the petitioner has paid the amount from its own sources, cannot entitle the respondent bank to wriggle out of the OTS and that too after it has received the entire amount with the agreed rate of interest. The purpose of the OTS entered into between the parties was to ensure that the petitioners pay the amount to the respondent, in terms of the settlement, and the source from which the amount was to be paid, was an essential condition of the OTS, and therefore, the respondent’s plea that despite receiving the amount, it can decline to abide by the OTS, and claim further amounts from the petitioners, is wholly fallacious. The stand taken by the respondent clearly shows that the bank is now trying to have second thoughts on the OTS offer and is trying to extract undue amounts from the petitioners. This Court cannot refrain itself from deprecating this stand taken by the respondent-bank, whereby despite the petitioner having discharged its obligation under the OTS, the respondent is still trying to illegally retain the title documents in respect of the mortgaged properties.

xxx xxx xxx”

(Emphasis Supplied)



39. The above order was challenged before Division Bench in the case of *Punjab and Sind Bank Versus M/s Oberoi Cars Pvt. Ltd. and Another*⁷, wherein, it was held as follows:

“xxx xxx xxx

19. It is only on deposit of the interest amount that the appellant/Bank sought to contend that the terms of the OTS need to be revised as the respondents have paid the OTS amount without selling the mortgaged properties. We are afraid that this stand of the appellant cannot be accepted. It is not the case of the appellant that the respondents had, in any manner, misguided or misrepresented to the appellant into accepting the OTS by concealing any information or intentionally stating any incorrect facts. Merely because the respondents were later able to generate the funds to meet the OTS amount through means, other than the sale of mortgaged properties, it cannot be said that the OTS could not be enforced or needed to be revisited. In fact, the appellants have not even sought to make an enquiry from the respondents about the source of funds from which the OTS amount has been paid by the respondents. The sale of mortgaged properties was a concession sought by the respondents and not a pre-condition for the OTS to work itself out. We find no term in the OTS which permits the same to be reopened in case the respondents pay the OTS amount for source other than sale of the mortgaged properties. It was for the appellant/Bank to have made inquiries at the time of sanctioning the OTS on whether the respondents had other means to pay the OTS amount. Having not done so, and it not being the case of the appellant/Bank that the respondents in any manner concealed or misstated any information from/to them, the appellant/Bank cannot be permitted to unilaterally reopen the terms of the OTS.

xxx xxx xxx”

(Emphasis Supplied)

40. As regards reliance by the respondent upon the judgment in the case of *Babusha International (Supra)*, the same does not come to the aid of the respondent and is clearly distinguishable. In the said case, the borrower at the time of entering into OTS, and before the Court, had suppressed material

⁷ 2022 SCC OnLine Del 1430



2024:DHC:4932



facts with regard to its ownership of the mortgaged property. In that case, the borrower mis-declared/inflated his properties/assets by filing false affidavit at the time of recovery proceedings, which properties later were discovered to be belonging to third parties. In view of the gross representations by filing false affidavit and defaults committed by the borrower, the bank withdrew the OTS. It was in these facts and circumstances, that the action of the bank withdrawing the OTS, was upheld, in the said case. However, as held in the preceding paragraphs, it cannot be said that there is any misrepresentation by the petitioner-company to the respondent-bank, at the time of entering into the OTS.

41. Considering the detailed discussion hereinabove, this Court is of the view that the withdrawal of the OTS by the respondent-bank is arbitrary and unsustainable. Accordingly, the letter dated 1st August, 2023 issued by the respondent-bank withdrawing the OTS, is hereby set aside. Consequently, the respondent-bank is directed to release the securities furnished by the petitioner-company in the subject Loan Account, and release charge thereon.

42. The present writ petition is allowed, in the aforesaid terms.

**(MINI PUSHKARNA)
JUDGE**

JULY 3, 2024
ak