IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3766 OF 2023

Ms. Archana Wani D/o Deepak Wani
Aged about 47 yrs, Occ. Business,
R/o. 455, Saroj Villa,
New Colony, Nagpur .....PETITIONER

...V E R S U S...

1. Indian Bank (Erstwhile Allahabad Bank)
Deputy General Manager, Stressed Asset
management Department, 7th Floor, Mittal
Chambers, Nariman Point, Mumbai

2. Indian Bank (Erstwhile Allahabad Bank)
A body corporate constituted under the
Banking Companies (Acquisition and
Transfer of Undertaking) Act, 1970,
branch office at Civil Lines, Palm Road,
Nagpur, through its Authorized Officer.

3. The Reserve Bank of India,
Financial Inclusion and Development
Department, Central Office, 10th Floor,
Central Office, 10th floor, Central Office
Building, Shahid Bhagat Singh Marg,
Mumbai 01, through its General Manger.

4. M/s Poonam Resorts Ltd Having
Having its office at 1st floor, B, Poonam
Chambers, Byramji Town,
Chhindwara Road, Nagpur

5. N.Kumar Housing and Infrastructure,
a company registered under the provisions
of Companies Act, 1956 having its
registered office at 1st Floor, B, Poon Chambers,
Byramji Town, Nagpur 440 013 through its
Interim Resolution Professional, Minita D Raja,
aged about major years, having

office at Plot No. 138, Charukeshi Apartments,
3rd Floor, Flat No. 18, Khare Town, Dharampeth,
Nagpur 440 010, email id ipnkhipl@gmail.com
Reg. IBBI No. IBBI/IPA-001/IP-P00635
/2017-2018/11088 ..RESPONDENTS

Mr. Devendra V. Chauhan, Senior Advocate a/b Mr. Chaitanya Dhruv & Parth C. Malviya, Advocate for petitioner.
Mr. A.T. Purohit with Mr. T.Y. Sharif, Advocate for respondent nos. 1 and 2.
Mr. S.N. Kumar, Advocate for respondent no. 3.
Mr. Akshay Naik, Senior Advocate a/b Mr. Rohan Deo, Advocate for respondent No. 4.
Mr. C.S. Dhore, Advocate for respondent No. 5.

CORAM:- ANIL S. KILOR, &
RAJNISH R. VYAS, JJ.

DATE : 17/10/2025

JUDGMENT (Per : Rajnish R. Vyas)

The petitioner is a Director and Shareholder of respondent No. 5/ N. Kumar Housing and Infrastructures/ mortgager. Respondent Nos.1 and 2 had extended term loan facility to Respondent No. 4 /principal borrower for the advancement of business of contractor (Development and Construction of Club House cum Resort Project).

2. A request of principal borrower was considered by the respondent Nos. 1 and 2 and accordingly term loan of Rs. 62 crores was

granted on 8.3.2011. The sanction of the term loan was at the floating interest and cost of project was initially Rs. 93.70 crores. The tenure of repayment was 110 months. Respondent No. 5 had also executed deed of guarantee and mortgaged documents to secure the loan, so also, letter confirming deposit of title deed.

3. As the principal borrower defaulted in repayment of loan due, same resulted into classification of credit facility as non performing asset on 31.3.2017.

4. Consequently recourse to Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "SARFAESI Act") was taken by res. no. 1 and 2, since notice was not complied. Further measures under Section 13(4) of the SARFAESI Act were taken recourse to.

5. Respondent Nos. 1 and 2 filed Original Application before the Debts Recovery Tribunal, Nagpur for recovery of dues principal borrower and guarantors. The said action of the respondent bank was taken exception to by the borrower/mortgagor by preferring appeal under Section 17 of the SARFAESI Act.

6. A Company Petition No. 3631/2018 was also filed by respondent Nos. 1 and 2, against respondent borrower and guarantor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (For short, "Code of 2016") before NCLT, Mumbai.

7. According to the petitioner respondent bank is acting like a private money lender and is trying to recover the dues without following policy laid down by respondent No. 3 Reserve Bank of India. By taking the said argument further it is contended by the petitioner that on several occasions, proposal for One Time Settlement ("OTS") was submitted but same was rejected on the ground that proposal submitted by the petitioner fails to meet the benchmark.According to the petitioner, what is the benchmark is still not disclosed by the respondent no. 1 & 2.

8. It is in this background, the petitioner has made various prayers including direction to Reserve Bank of India to appoint an independent senior officer to undertake the scrutiny/audit of the accounts originally maintained by respondent No. 2 bank and transfered to respondent No.1 bank. Prayers are also made that declaration be given that action of interim resolution professionals is also illegal. A prayer for direction to the Tribunal to take up and decide securitisation

appeal preferred by respondent No. 4 expeditiously is also made.

9. Though various prayers are made, controversy involved in the present petition settles down to the issue as to whether borrower/guarantor can ask mandate from the court to compel the creditors/bank to disclose benchmark and settle the matter ignoring OTS proposal submitted? The question is also whether Court can give direction to disclose benchmark, which according to the petitioner has not been disclosed and changed from time to time by way of vague replies.

10. In pursuance with notice, respondent bank has appeared and has contended that the loan agreement entered into amongst creditor, principal borrower and guarantor is nothing but a contract and asking the creditor / bank to settle the amount as per OTS proposal would amount to rewriting terms and conditions of contract.

11. It is the case of respondent bank that since question is of public money and as proceedings are initiated by creditors/bank not only under the provisions of SARFAESI Act but also taking recourse to Section 7 of the Code of 2016, powers conferred by the Constitution

under Article 226 may not be invoked.

12. The bank has further contended that though initial loan was disbursed in the year 2011, much time lapsed and due to pendency of petition and interim order passed by this Court, respondent bank is not in a position to go ahead with recovery proceedings.

13. According to the respondent bank, though by way of interim order, the petitioner has deposited the amount, same is not enough to satisfy the outstanding amount.

14. A detailed affidavit is filed by the interim resolution professional contending that since it was appointed as per order dated 24.2.2023, passed by National Company Law Tribunal, Mumbai Bench, Court – IV vide Company Petition (IB) NO. 1093/MB/IV/2020, it is under statutory obligation to follow the procedure prescribed under the Code of 2016. According to the IRP, since the petitioner has shown willingness to settle the account by offering a certain amount, a recourse can be taken to the provisions of the Code of 2016.

15. In the aforesaid background, we have heard learned counsels at length and perused the record. Though, volume of case runs into more than 2000 pages and prayer clauses are more than 20, controversy involved is very short. At this stage, it is necessary to clarify that what matters to us are not figures but the fact of the case.

16. Admittedly, respondent bank while advancing loan, deals with a public money. Execution of loan agreement and respondent No. 5 standing as a guarantor to respondent No. 4 is not disputed. The question is only whether bank was under legal obligation to consider the proposal of OTS submitted by the principal borrower/guarantor and whether by not doing so, whether it has acted arbitrarily.

17. It is necessary to mention here that due to non-payment of dues, proceedings under the SARFAESI Act are already initiated by the bank. Recourse is also taken to Section 7 of the Code of 2016. Thus, special law which was enacted in order to deal special category of cases (in present case default on the part of borrower),and thus the question whether power of judicial review can be exercised or not will also have to be tested.

18. It is clear that no specific policy of the bank has been brought on record by the petitioner to show that for any particular period for particular amount at particular stage OTS scheme is made applicable. Just because borrower has submitted the proposal for OTS which from time to time is taken into consideration and rejected by giving reason that it does not match benchmark, will not create semblance of right in favour of the borrower. The contention of petitioner that bench mark was not disclosed by the bank is also not very appealable argument as nothing has been brought to our notice that disclosing benchmark was mandatory under any provision. It thus cannot be said that bank has acted arbitrarily by not disclosing the benchmark.

19. As rightly submitted by the learned counsel for the bank that it deals with public money and therefore, asking it to settle the account by accepting OTS would not be in the interest of public at large.

20. In so far as contention of the petitioner that main aim of the Code of 2016 is not to recover the amount but give lease of life to the company which are running, is also cannot be doubted. Fact remains that the borrower and guarantor are debtors and have not repaid the outstanding. When parties are governed by terms and conditions of

contract with full understanding, they cannot subsequently change their stand and deviate from obligation to repay the amount.

21. The contention of learned counsel for petitioner that he was legitimately expecting that respondent bank would act as per the guidelines framed by the Reserve Bank of India, may at first glance, seems to be attractive, but it ignores the fact that the doctrine of legitimate expectation is rooted in fairness. The fairness would obviously mean repayment of outstanding amount within the period agreed.

22. At this stage, it is necessary to discuss various judgments cited by the parties. Learned counsel for the petitioner, in order to put forward his contention has relied upon the judgment in case of ***Power Grid Corporation of India Vs. Jyoti Structures Limited***, reported in ***2017 SCC OnLine Del 12189***. In the aforesaid judgment, Hon'ble Apex Court has observed as under:

> *"10. In the light of above purpose or object behind the moratorium, Section 14 of the Code would not apply to the proceedings which are in the benefit of the corporate debtor, like the one before this court in asmuch as these proceedings are not a "debt recovery action" and its conclusion would not endanger, diminish, dissipate or impact the assets of the corporate debtor in any manner whatsoever and hence shall*

be in sync with the purpose of moratorium which includes keeping the corporate debtor's assets together during the insolvency resolution process and facilitating orderly completion of the process envisaged during the insolvency resolution process and ensuring the company may continue as a going concern."

"14. Hence for following reasons I conclude the present proceeding would not be hit by the embargo of Section 14(1)(a) viz., (a) "proceedings" do not mean "all proceedings";(b) moratorium under section 14(1)(a) of the code is intended to prohibit debt recovery actions against the assets of corporate debtor; (c) continuation of proceedings under section 34 of the Arbitration Act which do not result in endangering, diminishing, dissipating or adversely impacting the assets of corporate debtor are not prohibited under section 14(1)(a) of the code; (d) term "including" is clarificatory of the scope and ambit of the term "proceedings";(e) the term "proceeding" would be restricted to the nature of action that follows it i.e. debt recovery action against assets of the corporate debtor; (f) the use of narrower term "against the corporate debtor" in section 14(1)(a) as opposed to the wider phase "by or against the corporate debtor" used in section 33(5) of the code further makes it evident that section 14(1)(a) is intended to have restrictive meaning and applicability; (g) the Arbitration Act draws a distinction between proceedings under section 34 (i.e. objections to the award) and under section 36(i.e. the enforceability and execution of the award). The proceedings under section 34 are a step prior to the execution of an award. Only after determination of objections under section 34, the party may move a step forward to execute such award and in case the objections are settled against the corporate debtor, its enforceability against the corporate debtor then certainly shall be covered by moratorium of section 14(1)(a)".

23. Thus, it can be seen that the ratio of case is section 14 of the Code would no t apply to the proceedings which are in the benefit of the corporate debtor like proceedings under Section 34 of Arbitration

and Conciliation Act in as much as these proceedings are not debt recovery action. There cannot be any about the aforesaid proposition but fact remains that here the principal question is regarding non payment of the dues and further non consideration of proposal of OTS.

A judgment, in case of ***Indian Overseas Bank Vs. RCM Infrastructures Limited and Another,*** reported in ***2022 Vol.8 SCC 516*** is also relied upon. In the aforesaid judgment, the Hon'ble Apex Court has observed as under:

> *"35. In view of the provisions of Section 14(1)(c) of the IBC, which have overriding effect over any other law, any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the SARFAESI Act is prohibited. We are of the view that the appellant Bank could not have continued the proceedings under the SARFAESI Act once the CIRP was initiated and the moratorium was ordered."*

The proposition of law laid down by the Hon'ble Apex Court cannot even be doubted but the facts in the instant case travels on different path. The default in repayment was made by the petitoner is not even disputed for the loan which was granted in the year 2011. Thus, the ratio cannot be applied to the case in hand.

24. Much reliance is placed upon judgment in case of ***Vidarbha***

Industries Power Limited Vs. Axix Bank Limited, reported in ***(2022)8 SCC 352***. In order to appreciate the ratio of aforesaid case, following observations in the said case are relevant.

> *"81. The title "Insolvency and Bankruptcy Code" makes it amply clear that the statute deals with and/or tackles insolvency and bankruptcy. It is certainly not the object of the IBC to penalize solvent companies, temporarily defaulting in repayment of its financial debts, by initiation of CIRP. Section 7(5)(a) of the IBC, therefore, confers discretionary power on the Adjudicating Authority (NCLT) to admit an application of a Financial Creditor under Section 7 of the IBC for initiation of CIRP.*
>
> *82. The Adjudicating Authority (NCLT) failed to appreciate that the question of time bound initiation and completion of CIRP could only arise if the companies were bankrupt or insolvent and not otherwise. Moreover the timeline starts ticking only from the date of admission of the application for initiation of CIRP and not from the date of filing the same."*

Thus, the ratio can be culled out with the object of ICB is not to penalize a solvent companies temporarily defaulting in repayment of its financial debt. It is necessary to mention that the guarantor in the present case is solvent and therefore, bank has every right to recover the entire outstanding amount from the guarantor since the bank deals with the public money, therefore, the ratio of the said case, will not be applicable to the case in hand.

25. Learned Senior Counsel for petitioner has also relied upon the judgment in case of ***Sardar Associates and Others Vs. Punjab and Sind***

Bank and Others reported in ***2009(8) SCC 257***, more particularly, on paragraph 36, which reads thus:

> *36. While making a deviation, the Board of Directors of a public sector bank could not have taken recourse to a policy decision which is per se discriminatory. Respondent - Bank is a `State' within the meaning of Article 12 of the Constitution of India apart from the fact that it is bound to follow the guidelines issued by the Reserve Bank of India. If, therefore, the broad policy decisions contained in the guidelines were required to be followed, the power of the Board of Directors to make deviation in terms of Clause 4 thereof would only be in relation to some minor matters which does not touch the broad aspects of the policy decision and in particular the one governing the non-discriminatory treatment. In a case of this nature, we are satisfied that the respondent - Bank is guilty of violation of the equality clause contained in the Reserve Bank of India guidelines as also Article 14 of the Constitution of India.*

In that case, there was a specific policy regarding OTS scheme which was adopted in view of guidelines of Reserve Bank of India. In the instant case, no such guidelines has been produced on record.

26. He has also relied upon judgment of Madhya Pradesh High Court in case of ***Mohanlal Patidar Vs. Bank of Maharashtra, Jabalpur*** reported in ***2022(2) MPLJ 276***, more particularly, paragraphs 29 and 30, which reads thus:

> **Legitimate Expectation :**
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> *"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).*
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> *The statement of Lord DIPLOCK in CCSU* is regarded as envisaging legitimate expectation extending to an expectation of a benefit. This may arise from-*
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> *(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 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** 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."*

No doubt, the issue of legitimate expectation was dealt with by the Court in detail but fact remains that there was absolutely no policy laid down by the respondent lender bank for OTS, therefore, there is no question of legitimate expectation since there was no expressed

promise or existing regular practice of OTS which has brought to the notice of the Court.

27. Learned counsel for respondent has brought to our notice judgment reported in case of ***Bijnor Urban Cooperative Bank Ltd and Ors Vs. Meenal Agrawal and Others***, reported in ***(2023)Vol.2 SCC 805 (" Bijnor Urban").*** Hon'ble Apex Court in the said judgment has observed as under:

> *"6. Having heard learned counsel for the respective parties at length, the following issues/questions are posed for consideration of this Court:*
>
> *6.1. (i) Whether benefit under the OTS Scheme can be prayed as a matter of right?;*
>
> *6.2(ii) Whether the High Court in exercise of powers under Article 226 of the Constitution of India can issue a writ of mandamus directing the Bank to positively consider the grant of benefit under the OTS Scheme and that too de hors the eligibility criteria mentioned under the OTS Scheme?*
>
> *9. In the present case, despite the fact that it was specifically pointed out before the High Court by way of counter affidavit that (i) the recovery proceedings under SARFAESI Act are pending; (ii) the borrower and her husband have availed two credit facilities and both the loan accounts are maintained regularly and the money is being deposited on regular basis; (iii) the Settlement Advisory Committee concluded that the borrower is enjoying a good financial status and the secured assets are sufficient in case if any recovery is to be made and by auctioning the mortgaged property the bank can recover the entire loan amount, the High Court failed to consider the aforesaid aspects in their true perspective and has issued a writ of mandamus as if*

the grant of benefit under the OTS Scheme can be claimed as a matter of right.

12. Even otherwise, as observed hereinabove, no borrower can, as a matter of right, pray for grant of benefit of One Time Settlement Scheme. In a given case, it may happen that a person would borrow a huge amount, for example Rs. 100 crores. After availing the loan, he may deliberately not pay any amount towards installments, though able to make the payment. He would wait for the OTS Scheme and then pray for grant of benefit under the OTS Scheme under which, always a lesser amount than the amount due and payable under the loan account will have to be paid. This, despite there being all possibility for recovery of the entire loan amount which can be realised by selling the mortgaged/secured properties. If it is held that the borrower can still, as a matter of right, pray for benefit under the OTS Scheme, in that case, it would be giving a premium to a dishonest borrower, who, despite the fact that he is able to make the payment and the fact that the bank is able to recover the entire loan amount even by selling the mortgaged/secured properties, either from the borrower and/or guarantor. This is because under the OTS Scheme a debtor has to pay a lesser amount than the actual amount due and payable under the loan account. Such cannot be the intention of the bank while offering OTS Scheme and that cannot be purpose of the Scheme which may encourage such a dishonesty.

14. The sum and substance of the aforesaid discussion would be that no writ of mandamus can be issued by the High Court in exercise of powers under Article 226 of the Constitution of India, directing a financial institution/bank to positively grant the benefit of OTS to a borrower. The grant of benefit under the OTS is always subject to the eligibility criteria mentioned under the OTS Scheme and the guidelines issued from time to time. If the bank/financial institution is of the opinion that the loanee has the capacity to make the payment and/or that the bank/financial institution is able to recover the entire loan amount even by auctioning the mortgaged property/secured property, either from the loanee and/or guarantor, the bank would be justified in refusing to grant the benefit under the OTS Scheme. Ultimately, such a decision should be left to the commercial wisdom of the bank whose amount is involved and it is always to be presumed that the financial institution/bank shall take a prudent decision whether to grant the benefit or not under the OTS Scheme, having regard to the public interest involved and having regard

to the factors which are narrated hereinabove.

Thus, it is crystal clear that issuing writ of mandamus under Article 226 of Constitution, would not in the interest of justice by directing the bank to consider the benefit of OTS to the borrower – guarantor.

28. He also relied upon the judgment in a case of ***State Bank of India Vs. Arvind Electronics Pvt Ltd***, reported in ***2023(1) SCC 540.*** The Hon'ble Apex Court in the said Judgment in paragraph 22 has observed as under:

> *"22. Even otherwise as rightly submitted on behalf of the Bank directing the Bank to reschedule the payment under OTS would tantamount to modification of the contract which can be done by mutual consent under Section 62 of the Indian Contract Act. By the impugned judgment and order rescheduling the payment under the OTS Scheme and granting extension of time would tantamount to rewriting the contract which is not permissible while exercising the powers under Article 226 of the Constitution of India."*

Thus, we cannot direct the bank to rewrite the terms and conditions of the agreement.

29. As observed above, no scheme is produced for our perusal. In the light of observation of the Hon'ble Apex Court that it can be said that

if the bank/financial institution is of opinion that loanee has the capacity to make the payment or bank is able to recover the entire loan amount, even by auctioning the mortgaged property, the bank would be justified in refusing to grant benefit under the OTS scheme, and ultimately, such decision should be left to the commercial wisdom of the bank whose amount is involved and it is always to be presumed that bank shall take a prudent decision whether to grant the benefit under the OTS scheme, having regard to the public interest involved, we do not intend to interfere.

30. So far as other prayers made in petition are concerned, suffice it to say that any observations made here may affect the proceedings pending before the Tribunals. Thus, we are not passing any specific orders as core issue is already answered in this petition.

In view of the aforesaid discussion, we are of the opinion that exercising power under Article 226 of the Constitution of India would not be in the interest of justice and therefore, petition is dismissed.

(RAJNISH R. VYAS, J.) (ANIL S. KILOR, J.)

At this juncture, Shri D.V. Chauhan, learned Senior Counsel

for the petitioner submits that the stay granted by this Court vide order dated 20.06.2023 shall be continued for another eight weeks.

Such request is strongly opposed by Shri Purohit, learned Counsel for respondent Nos. 1 and 2 /Bank.

Considering the fact that since last two years, the interim order is in operation, we are of the opinion that, no prejudice will be caused to the respondent(s) if it continues for another six weeks.

Accordingly, the interim order dated 20.06.2023 to continue for another six weeks. After six weeks, the stay shall stand automatically vacated.

(RAJNISH R. VYAS, J.) (ANIL S. KILOR, J.)