

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 17.04.2023
Pronounced on: 26.04.2023

WP(C) No.526/2023

GHULAM AHMAD MIR ...PETITIONER(S)

*Through: - Mr. Altaf Haqani, Sr. Adv. with
Mr. Shakir Haqani, Advocate &
Mr. Aasif Wani, Advocate.*

Vs.

J&K BANK LTD & OTHERS ...RESPONDENT(S)

*Through: - Mr. Z. A. Shah, Sr. Advocate with
Mr. A. Hana, Advocate.*

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has challenged Special OTS Scheme, 2022, floated by respondent No.1 to the extent it excludes the cases where compromise is under process and the offer amount is on higher side vis-à-vis the OTS amount prescribed under the said scheme. A further direction has been sought upon the respondents to process and settle the financial outstandings of the petitioner in terms of the Special Onetime Settlement Scheme of 2022 and not to give effect to the communication whereby the petitioner has been informed by the respondents that his case is not eligible under the Onetime Settlement Scheme of 2022 guidelines.

2) It is the case of the petitioner that he had obtained a composite loan facility from the respondent Bank in the aggregate amount of

Rs.9,24,35,000/. The said loan was secured against hypothecation of furniture and fixture etc. and collateral security of mortgage of land measuring 03 kanals under Survey Nos.559-min and 560-min situated at Horipora Tehsil Kangan along with a double storeyed residential house standing in the name of Mrs. Shafeeqa. It has been submitted that the loan facility extended to the petitioner has been classified as a Non-performing Asset on 31.12.2019 and a notice dated 01.07.2021 under Section 13(2) of the SARFAESI Act stands issued by the respondents against the petitioner. As per the said notice, an amount of Rs.7,86,88,082.94/ is stated to be outstanding against the petitioner as on 30.06.2021.

3) According to the petitioner, notwithstanding the measures under SARFAESI Act, the petitioner has been trying to negotiate and settle the financial claim against him in terms of the scheme of the Reserve Bank of India adopted by the respondent Bank from time to time. It has been submitted that during the process of negotiations with the respondent Bank, the offer of onetime settlement given by the petitioner initially at Rs.4.90 crores has been raised by him to Rs.6.80 crores on 21.03.2022 but the respondents, instead of accepting the said offer, proceeded to launch proceedings under Section 14 of the SARFAESI Act for recovery of dues against the petitioner by approaching the District Magistrate, Ganderbal, but the same was not given effect by the respondent Bank and in the meantime, a revised Onetime Settlement policy styled as J&K Bank's Special Onetime Settlement Scheme for

NPAs, 2022 (JKB Special OTS, 2022), has been notified by the respondent Bank on 01.11.2022. As per this scheme, NPA accounts with outstanding of Rs.15.00 lacs upto Rs.10.00 crores as on 30.06.2022, are covered. However, as per the covenants of the said scheme, compromise cases under process where the offer amount is on higher side vis-à-vis the OTS amount prescribed under the scheme have been made ineligible under the scheme. Relying upon this covenant, the respondent Bank has turned down the case of the petitioner for Onetime Settlement under the aforesaid scheme and in this regard, an email has been received by the petitioner on 27th February, 2023.

4) The petitioner has challenged the aforesaid covenant of the Onetime Settlement Scheme, 2022, whereby petitioner's case has been found to be ineligible, on the grounds that the same is arbitrary in nature being against public policy declared by Reserve Bank of India. It has been submitted that by such an act of the respondent Bank, an honest borrower has been subjected to hostile discrimination. It has been contended that the Onetime Settlement scheme of 2022 to the aforesaid extent is illegal as the same is in violation of the guidelines notified by the Reserve Bank of India, inasmuch as the guidelines have statutory flavour and are binding upon the respondent Bank. It has been further submitted that the guidelines in question are non-discriminatory and non-discretionary, as such, it is not open to the respondent Bank to reject the request of the petitioner on the basis of the impugned exclusion clause. In this regard, the petitioner has placed reliance upon

the ratio laid down by the Supreme Court in the case of **M/S Sardar Associates & Ors. vs. Punjab & Sindh Bank and others**, (2009) 8 SCC 257.

5) The respondent Jammu and Kashmir Bank Limited has contested the writ petition by filing a reply thereto. In their reply, respondents No.1 to 4 have submitted that on 30.03.2022, a proposal on behalf of the petitioner was received from Branch Kangan in which he had offered Rs.6.80 crores as full and final settlement of his loan account. It has been contended that the petitioner had borrowed an amount of Rs.9,60,52,561.62/ from the respondent Bank and in respect of this loan, the offer of the petitioner was processed under the General Onetime Settlement Scheme which is in existence and the same is under active consideration of the respondent Bank. According to the respondents, the petitioner's application seeking consideration under JKB Special OTS, 2022, has been declined as the petitioner was not found eligible under the said scheme. It has been contended that in para 3(vi) of the JKB Special OTS, 2022, it is provided that compromise cases under process where the offer amount is on higher side vis-à-vis the OTS amount prescribed under the scheme are not eligible to be covered under the scheme. Since the offer of the petitioner to settle his loan account at Rs.6.80 crores is on higher side than what his entitlement would have been under JKB Special OTS, 2022, as such, his case was found to be ineligible. It has been further submitted that JKB Special OTS, 2022, has expired on 31.03.2023.

6) I have heard learned counsel for the parties and perused the record of the case.

7) In order to understand and test the merits of the rival contentions raised by the parties, it would be apt to refer to and reproduce the relevant extracts of JKB Special OTS, 2022:

1. **Salient Features:**

- i) This is a non-discretionary and non-discriminatory scheme.
- ii) Last date of receipt of application (Within 3 months from the date of circulation of the scheme).
- iii) The sanction to be accorded and conveyed within 7 days from the date of receipt of application. (Hence the last day of sanction under the scheme will be 03 months and 07 days after the date of circulation of the Scheme)
- iv) The scheme is applicable to all NPAs classified DF-2, DF-3 and Loss Assets accounts with NPA balance from Rs. 15.00 lacs to Rs. 10.00 Crores as on 30.06.2022.
- v) Entire unapplied interest, legal and other expenses from date of NPA in respect of all eligible accounts shall be waived-off.
- vi) Concessions in NPA (Principal) balance will be given as under:

NPA Outstanding balance as on 30.06.2022	IRAC Classification as on 30.06.2022	Permissible waiver in NPA outstanding balance	Permissible waiver in unapplied interest and charges incurred
Rs. 15.00 lacs and up to Rs. 10.00 crore	DF-2	Nil	100%
Rs. 15.00 lacs and up to Rs. 10.00 crore	DF-3 and Loss	15%	100%

- vii) In case of accounts where restructuring has failed, the outstanding balance as on date of NPA of the account less by recovery effected from the date of NPA in FITL & WCTL shall be considered as part of principal NPA outstanding and concessions shall be extended as applicable.
- viii) In case of outstanding LC/BG 100% margin in the form of term deposit shall be obtained before entertaining the OTS proposals under the scheme. This term deposit can be released only after the expiry of LC/BG or adjusted against devolvement / invocation as the case may be. Similarly, CGTSME claims / Govt. subsidy received on or after circulation of the scheme and claim/subsidy received but not adjusted, will not be appropriated towards recovery
- ix) Based on the implementation and success of the Scheme, bank may, if considered necessary, amend the OTS Scheme /extend the periodicity of the scheme by further 03 months.

2. **Coverage:**

- i) Accounts classified as DF-2, DF-3 and Loss Assets having NPA outstanding of Rs.15.00 lakhs and up to Rs. 10.00 Crore as on 30.06.2022. ii. Cases pending before Courts / DRTS will be eligible. However, consent terms with default clause will have to

be filed before Presiding Officer of Court/ DRT for obtaining consent decree

- ii) Cases where Bank has issued notice u/s 13(2) or taken action u/s 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI- 2002) will also be eligible. Branch Managers will defer conducting auctions under SARFAESI in those borrower accounts, eligible for OTS under J & K Bank's Special One Time Settlement Scheme for NPAs (JKB Special OTS, 2022), who submit application for OTS of their loan liability. However, in cases where OTS applications is/are not accepted by the Bank or borrower fails to abide by the payment schedule the SARFAESI action should be restored initiated immediately. Accounts under Consortium or Multiple Banking arrangements will also be eligible under the Scheme.

3. **Cases not eligible to be covered under the scheme.**

- i) Cases that are analyzed for fraud and wilful default shall not be eligible to be covered under the OTS Scheme till the wilful default and fraud angles are ruled out.
- ii) Cases which are under any internal or external investigation.
- iii) Central Govt. State Govt. guaranteed accounts.
- iv) "Compromise cases" where repayment has already commenced as per the agreed terms, are not eligible. However, cases of failed compromise settlement, where the OTS amount has not been received in full or within the stipulated time and Branch has issued formal OTS revocation letter to the borrower, can be considered afresh
- v) Cases admitted in NCLT and cases under liquidation
- vi) **Compromise cases under process and the offer amount is on higher side vis-à-vis the OTS amount prescribed under this scheme.**
- vii) Units under rehabilitation/restructuring will not be eligible.
- viii) Loan granted against the Bank Deposits, Life Insurance policies, Kissan Vikas Patra, Mutual Funds, Shares etc.
- ix) The NPA accounts which have been decreed by the Court in favour of the bank and where the concerned Zonal Level Committee is convinced that the chances of recovery of maximum outstanding through execution are reasonably strong will not be eligible under the scheme.

4. **Settlement Formula OTS Amount:**

The OTS amount would be calculated as under:

S/No.	Asset Classification as on 30.06.2022	Settlement amount
A	DF-2	100% of NPA Balance
B	DF-3 and Loss assets	85% of NPA balance

Payment schedule:

- i) The borrower shall have to deposit 10% of the OTS Amount (As per the settlement formula) at the time of submission of application (in the form of a letter addressed to Branch expressing willingness for OTS, failing which the application will not be processed. In the event of the application for OTS being rejected by the Bank, such payment, which shall be held in a separate account, will be refunded without interest within three months.
- ii) The borrower shall have to deposit another 20% of the OTS Amount (As per the settlement formula) as first instalment within thirty (30) days from the date of sanction of OTS failing which the

OTS sanction will be rendered infructuous and OTS treated as failed.

- iii) The borrower has to deposit another 20% of the OTS Amount (As per the settlement formula) as second instalment within sixty (60) days from the date of sanction of OTS failing which the OTS sanction will be rendered infructuous and OTS treated as failed.

Note:

50% of the OTS amount to be paid by the borrower within sixty (60) days as per schedule given above at para 41, 11 B (10% 20%-20%) shall not carry any interest.

- iv) Balance OTS amount (Remaining 50%) should preferably be paid within three months from the date of sanction. However, the amount (beyond 50%) can also be paid within 6 months from the date of sanction of OTS (the validity period) together with interest @ 6 months MCLR on reducing balance basis effective from the date of sanction of the OTS, failing which the OTS sanction will be treated as failed/revoked.

5. Incentive for Early Payments

To encourage faster payments of OTS amount, incentive on OTS amount arrived at as per the settlement formula will be allowed to those borrowers who make full payment as given below!

Full Payment of OTS amount	Incentive on OTS amount
Within 30 days from the date of sanction	5%
Within 60 days from the date of sanction	2%
Beyond 60 days from the date of sanction	Nil

Borrower will get the incentive on payment of Total OTS amount within the stipulated time only.

Example:

If a borrower, who is sanctioned OTS for Rs.1000/- under J & K Bank's Special One Time Settlement Scheme for NPAS (JKB Special OTS, 2022) and if he pays full OTS amount within 30 days/60 days from the date of sanction, borrower will get following incentive on Full payment of OTS amount as per the following schedule:

Sr. No.	Payment of OTS amount	OTS amount	Incentive % rate on OTS amount	Incentive on OTS amount	OTS amount to be paid by borrower
01	Within 30 days	1000	5%	50	950
02	Within 60 days	1000	2%	20	980
03	Beyond 60 days	1000	Nil	Nil	1000

6. Nature of the Scheme

- The Scheme is non-discretionary and non-discriminatory
- Branch Managers shall identify eligible cases and send written intimations to all eligible borrowers for availing of this facility
- Intimations to all eligible borrowers should be sent within 10 days from the date of circulation of the Scheme by the Bank and proof of dispatch/ acknowledgment should be kept on record. (Format attached as Annexure -1).
- No proposal which is strictly in conformity with the Scheme shall be rejected.

7. Approving Authority:

- a) Branch Managers shall be the Sanctioning Authority under this Scheme for accounts maintained at their respective Branches.
- b) In process note of all such cases, it should be clearly mentioned that the compromise amount has been arrived at strictly as per the Scheme and the Branch Manager approving a settlement under this Scheme shall provide for scrutiny of all documents relating to OTS proposals to the Risk-Based Internal Audit teams at the time of conducting an internal audit.

8. Processing of applications:

The applications should be processed within 7 days from the date of receipt.

9. Review of progress:

The Scheme will be closed for receipt of OTS applications after 03 months from the date of circulation of the Scheme and report on progress of the Scheme will be submitted to the General Manager (IAPM) on fortnightly basis and the MD & CEO on monthly basis. The report under progress of the Scheme to be furnished by the IAPMD of the concerned Zone as per the Annexure

10. Staff Accountability:

The staff accountability aspect will have to be examined and concluded by placing the findings before the appropriate authority, as required under the extant rules. Such cases shall be eligible for OTS under the scheme only after the investigation regarding the staff accountability is completed.

11. Other Terms:

- In respect of borrowal accounts, not eligible for settlement under Scheme for One Time Settlement approval for compromises will continue to be accorded by the appropriate Authority as per the Bank's extant policy.
- Branch Manager shall be the Sanctioning Authority for all eligible cases under the Scheme, except that such Authority / Official should not be the one who sanctioned the loan in question in his/her individual capacity. The decision in such cases should be taken by the next high authority.
- Branch Manager shall invariably obtain latest contact details and PAN/Aadhar Card details and update the same in CBS/Finacle, while accepting OTS.
- Any claim / subsidy received under any of the Credit Guarantee Schemes will also not be reckoned as payment received from borrowers.
- Entire OTS amount to be repaid within a maximum period of six months from the date of sanction.

8) From a perusal of the covenants of the aforesaid scheme, it is clear that the same is non-discretionary and non-discriminatory in nature. It is also clear that the scheme is applicable to all NPAs with NPA balance from Rs.15.00 lacs to Rs.10.00 crores as on 30th June, 2022. However, the scheme excludes certain categories of cases. These

cases pertain to fraud and wilful default, cases under investigation, Central/State Government guaranteed accounts, compromise cases, cases admitted in NCLT and cases under liquidation, compromise cases under process where offer amount is higher than prescribed OTS amount, units under rehabilitation/re-structuring, loan granted against bank deposits, LIC policies etc and NPA accounts decreed by Court where chances of recovery of maximum of outstanding through execution are reasonably strong. A common thread running through the excluded cases, as indicated hereinbefore, is that the cases where the Bank feels or is of the opinion that the chances of recovery of outstanding amount from a borrower are bright, have been excluded from the purview of JKB Special OTS, 2022.

9) A financial institution like the respondent Bank would be well within its jurisdiction to exclude a particular class of borrowers from a scheme in the interests of its financial health. A banking company is free to make policies and issue guidelines so as to differentiate the cases of those borrowers where the chances of recovery are bright from those where the chances of recovery are bleak. Merely because a banking company has formulated a scheme excluding the cases of borrowers where the chances of recovery are bright, it cannot be stated that such a scheme or such covenants of the scheme are discriminatory in nature against the excluded borrowers. A bank would be justified in refusing to grant the benefit under the OTS Scheme to a particular class of borrowers where it is of the opinion that recovery of the dues can be

effected by sale of mortgaged property or that there are higher chances of recovery keeping in view the financial health of the borrower.

10) The argument of learned counsel for the petitioner that by excluding the case of the petitioner from the OTS Scheme, 2022, an honest borrower has been discriminated against, is without any merit and the same sounds preposterous. If the argument is accepted, then even a borrower who is regularly paying his EMIs can feel discriminated against if the scheme of OTS is not made applicable to his case by claiming that despite being an honest borrower, he is not being extended the benefit of the OTS Scheme. The OTS schemes offered by the banks in accordance with the guidelines of the Reserve Bank of India are in nature of concessions offered to defaulting borrowers with an aim to recover the dues from the borrowers whose accounts have been rendered as Non-performing Assets. Even amongst such borrowers, a financial institution would be well within its jurisdiction to segregate those NPA accounts where chances of recovery are high and those where the chances of recovery are poor. This is what has been done by the respondent Bank by incorporating the exclusion clause in the Scheme.

11) In the instant case, the petitioner has offered a higher amount under the General OTS scheme to the Bank and the same is under process, meaning thereby that the chances of recovery of a higher amount than what can be recovered from the petitioner under the OTS Scheme of 2022 are bright and for this reason, the respondent Bank

cannot be asked and forced to accept a lower amount by applying the Special OTS Scheme, 2022. This would be against the financial prudence of the respondent Bank, which is after all dealing with public funds.

12) The Supreme Court in the case of **The Bijnoor Urban Cooperative Bank Limited, Bijnor & others vs. Meenal Agarwal & others**, (2023) 2 SCC 805, has, while considering the power of a bank to exclude certain classes of borrowers from the OTS scheme, made certain observations which are relevant to the context and the same are reproduced as under:

“11..... What is required to be considered is a conscious decision by the Bank that the Bank will be able to recover the entire loan amount by auctioning the mortgaged property and a due application of mind by the Bank that there are all possibilities to recover the entire loan amount, instead of granting the benefit under the OTS Scheme and to recover a lesser amount. It is ultimately for the Bank to take a conscious decision in its own interest and to secure/recover the outstanding debt. No bank can be compelled to accept a lesser amount under the OTS Scheme despite the fact that the Bank is able to recover the entire loan amount by auctioning the secured property/ mortgaged property. When the loan is disbursed by the bank and the outstanding amount is due and payable to the bank, it will always take a conscious decision in the interest of the bank and in its commercial wisdom.

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 instalments, 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 the purpose of the scheme which may encourage such a dishonesty.

13. *If a prayer is entertained on the part of the defaulting unit/person to compel or direct the financial corporation/bank to enter into a one-time settlement on the terms proposed by it/him, then every defaulting unit/person which/who is capable of paying its/his dues as per the terms of the agreement entered into by it/him would like to get one-time settlement in its/his favour. Who would not like to get his liability reduced and pay lesser amount than the amount he/she is liable to pay under the loan account? In the present case, it is noted that the original writ petitioner and her husband are making the payments regularly in two other loan accounts and those accounts are regularised. Meaning thereby, they have the capacity to make the payment even with respect to the present loan account and despite the said fact, not a single amount/instalment has been paid in the present loan account for which original petitioner is praying for the benefit under the OTS Scheme.”*

13) From the foregoing analysis of law on the subject, it is clear that the grant of benefit under the Onetime Settlement Scheme is always subject to eligibility criteria mentioned under the scheme. It is also clear that it has to be presumed that a bank would take a prudent decision whether or not to include a particular class of borrowers in the OTS Scheme having regard to public interest involved. It is for the person seeking to challenge a guideline or covenant of an OTS scheme which excludes him from its purview to show that he has been invidiously discriminated against. In the instant case, as already noted, the respondent Bank has, while framing covenants relating to exclusion of certain classes of borrowers, kept in mind the financial prudence and

this Court, in exercise of its writ jurisdiction, cannot question the decision of the respondent Bank in this regard. In fiscal matters, the Courts do not ordinarily interfere in exercise of power of judicial review. The conclusion reached by the experts, particularly in the field of finance and banking cannot be substituted with the views of the Court. Interference in such matters in writ jurisdiction would be uncalled for unless it is shown that the decision of a banking company is illegal or perverse. No such case has been made out by the petitioner and, as such, no interference is called for so far as the impugned covenant of the OTS Scheme, 2022 is concerned.

14) Learned Senior Counsel appearing for the petitioner has placed heavy reliance upon the judgment of the Supreme Court in **Sardar Associates** case (supra) and contended that the covenants of the OTS Scheme, 2022, to the extent it excludes the cases of borrowers like the petitioner, is discriminatory and contrary to the guidelines issued on the subject by Reserve Bank of India.

15) In the above context, it is to be noted that in **Sardar Associates** case, the offer for settlement under the Scheme was made by the Bank which was responded to by the borrower and the proposal of the borrower was within the framework of the guidelines issued by the Reserve Bank of India. It was in those circumstances that the Supreme Court held that the Bank could not have rejected the proposal of the borrower as the same was covered by the guidelines of the Reserve Bank of India which have statutory flavour. In the instant case, the

respondent Bank has never offered to settle the accounts of the petitioner under the OTS Scheme, 2022, but the offer of the respondent Bank was made under the General OTS Scheme, to which petitioner submitted his proposal and the same is under consideration of the Bank. The facts of the instant case are clearly distinguishable.

16) In **Sardar Associates** case (supra), it was found that the Bank deviated from the guidelines issued by Reserve Bank of India and, therefore, the Supreme Court held that the RBI guidelines are binding on the bank and that the bank shall deal with the case of the borrower under RBI guidelines on OTS. In the instant case, as already noted, the exclusion clause in OTS Scheme, 2022, has not been found discriminatory and, as such, case of the petitioner is not covered under the said Scheme and the respondent Bank was right in rejecting the consideration of petitioner's case under the said Scheme.

17) For the foregoing reasons, I do not find any merit in the petition. The same is, accordingly, dismissed.

(Sanjay Dhar)
Judge

SRINAGAR
26.04.2023
"Bhat Altaf, PS"

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No