2025 INSC 1119

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 11134 OF 2025
[ARISING OUT OF SLP (CIVIL) NO. 2456 OF 2025]

ASSISTANT GENERAL MANAGER STATE BANK OF INDIA & ANR. … APPELLANTS

VS.

TANYA ENERGY ENTERPRISES THROUGH ITS MANAGING PARTNER SHRI ALLURI LAKSHMI NARASIMHA VARMA … RESPONDENT

J U D G M E N T

DIPANKAR DATTA, J.

THE APPEAL

1. In this appeal, by special leave, a challenge has been mounted to the judgment and order dated 21st December, 2022 passed by a Division Bench of the High Court of Judicature of Andhra Pradesh at Amravati[1]. An intra-court writ appeal[2] of the Assistant General Manager and the Deputy General Manager[3] of the State Bank of India[4] came to be

[1] High Court
[2] Writ Appeal No. 918 of 2022
[3] the appellants
[4] SBI

dismissed thereby. The writ appeal was directed against the judgment and order dated 22nd September, 2022 of a Single Judge, who allowed the respondent's writ petition[5].

THE FACTS

2. The facts leading to presentation of this appeal are not in dispute.

a) SBI is a "secured creditor" and the respondent a "borrower" as defined in Section 2(zd) and 2(f), respectively, of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002[6].

b) Having availed credit facilities from the SBI by mortgaging 7 (seven) immovable properties, the respondent failed to adhere to the payment schedule and defaulted in its obligation to repay. Additional time granted for regularising the payments proved abortive.

c) Respondent's account was then classified as "non-performing asset", triggering a demand notice dated 31st May, 2017 under Section 13(2) of the SARFAESI Act. A sum of Rs. 7 crore (approximately) was demanded from the respondent, with further interest from 1st June, 2017.

d) Such demand not having been met by the respondent, recovery proceedings under Section 19 of the Recovery of Debts and

[5] Writ Petition No. 22706 of 2020
[6] SARFAESI Act

Bankruptcy Act, 1993[7] were initiated by the SBI on 22nd December, 2017 by filing an original application[8] before the Debts Recovery Tribunal, Vishakhapatnam[9]. A decree was sought in a sum of Rs. 8 crore approximately, with future interest at 13.65% till date of realisation.

e) On 14th May, 2018, while transferring Rs.50 lakh to the account of the SBI, the respondent requested for full and final settlement of the total dues of Rs.8.14 crore by paying Rs.5 crore. The first appellant acceded to the request and issued a "compromise sanction letter" on 23rd November, 2018 containing the following terms and conditions:

> "a. Up-front amount of Rs 0.50 crores was already paid by you, which is kept in parking account will be appropriated immediately towards your settlement amount
>
> | |
> |---|
> | The balance amount of Rs 4.50 crores to be paid as under:
Rs. 0.25 crore to be paid on or before 30 11 2018.
Rs. 1.00 crore to be paid on or before 20 02 2018.
Rs. 1.00 crore to be paid on or before 20 05 2019.
Rs. 1.00 crore to be paid on or before 20 08 2019.
Rs. 1.25 crore to be paid on or before 20 11 2019. |
>
> b. If entire compromise amount is not paid within 4 months, interest at minimum MCLR for the balance compromise amount paid after 4 months shall be charged from 30th day from the date of letter conveying approval of the compromise to the borrower.
>
> c. If, for any reason, the compromise amount or any installment, as agreed, is not received within scheduled period, the Bank reserves the right to cancel the compromise settlement and entire dues of the Bank along with interest and costs will become due for payment."

[7] RDB Act
[8] OA No. 4013 of 2017
[9] DRT

f) Respondent did not adhere to the terms and conditions, as a sequel whereto the sanction letter was cancelled on 22nd February, 2019.

g) Thereafter, while making a request to the appellants on 13th August, 2019 not to take possession of the secured assets, the respondent made a further payment of Rs.50 lakh.

h) On 16th October, 2019, measures under Section 13(4) of the SARFAESI Act were initiated by issuing sale notice in respect of the 7 (seven) properties mortgaged as security by the respondent.

i) Respondent challenged the sale notice before the DRT on 25th October, 2019 by filing an application under Section 17 of the SARFAESI Act[10]. DRT, *vide* order dated 21st November, 2019, granted interim stay of the sale till 23rd December, 2019 subject to payment of Rs. 1 crore (in two instalments) by the respondent in 30 days. Although deposit of Rs.50 lakh was made, the respondent failed to deposit the balance amount of Rs.50 lakh. This resulted in the DRT declining extension of time, as prayed by the respondent.

j) The stay order having stood vacated, a fresh sale notice was issued on 12th February, 2020. Respondent again challenged this

[10] S.A. No. 399 of 2019

notice by filing an interim application[11] in the pending application under Section 17 of the SARFAESI Act. DRT declined to pass an order of stay; instead, granted liberty to the appellants to proceed with the sale. In pursuance thereof, one of the mortgaged properties was sold in an auction on 18th March, 2020 and sale confirmation letter was issued to the auction purchaser on 15th April, 2020.

k) While things stood thus, on 12th October, 2020, SBI introduced a scheme for One Time Settlement[12] of outstanding dues in excess of Rs. 20 lakh and up to Rs. 50 crore, as on 31st March, 2020[13]. A week later, a clarificatory circular under the OTS 2020 Scheme was issued publishing an internal legal opinion dated 29th August, 2019 on the applicability of the aforesaid scheme in respect of proceedings pending before judicial fora for decision wherein measures under Section 13(4) of the SARFAESI Act were under challenge.

l) By his letter dated 19th October, 2020 addressed to the first appellant, the respondent referred to 3 (three) payments of Rs. 50 lakh each made by him for liquidating the dues and queried as to whether such amount had been adjusted with the dues of the SBI. Reference was also made to a meeting that the respondent had with the Chief Manager of SBI on 15th October, 2020, wherein

[11] I A No 637 of 2020
[12] OTS
[13] THE OTS 2020 Scheme

a proposal for settlement through new compromise for a sum of Rs. 5,07,44,250/- had been given to the respondent upon granting 25% rebate on the total outstanding dues of Rs. 6,76,59,000/-, as on 31st March, 2020. According to the respondent, the amount of Rs. 5,07,44,250/- "specified for new compromise" was very high considering the earlier compromise amount of Rs. 5 crore, of which Rs. 1.5 crore had already been paid. A counter proposal was given by the respondent to accept Rs. 3,75,00,000/-, in addition to the already paid amount of Rs. 1.5 crore, "towards new compromise to pay and settle" the "total dues".

m) Close on the heels of the said letter dated 19th October 2020, the respondent addressed a letter dated 10th November, 2020 to the appellants. The said letter dated 10th November requested the addressees to consider the contents of the respondent's letter dated 19th October, 2020 as an integral part of the current letter too. While placing on record its request for availing the OTS 2020 Scheme, the respondent conveyed, *inter alia,* as follows:

> "2. It is on record that from May, 2018, I have paid an amount of Rs 1.50 crores to the bank and this amount is needed to be given credit in the principal portion of the loan account while determining the outstanding amount payable by me in accordance with guidelines of fresh OTS floated during October, 2020.
>
> 3. Subject to your consent in writing about grant of OTS to my account by precisely working out outstanding liability in accordance with fresh scheme and as per the guidelines of Reserve Bank of India, I am willing to deposit upfront amount - within the stipulated time and I am also willing to withdraw S A

399/2019 pending on the file of Honourable Debts Recovery Tribunal, Visakhapatanam."

(emphasis ours)

n) Seeking objective consideration of the aforesaid points together with other points, as mentioned, the respondent sought for settlement.

o) This was followed by a letter of the first appellant dated 17th November, 2020 containing the order of rejection of the respondent's application for OTS of the dues under the OTS 2020 Scheme. The first appellant referred to the previous conduct of the respondent of having failed to comply with the order passed by the DRT, seeking extension of time to make deposit which was declined resulting in vacation of the interim order of stay, sale by auction of one mortgaged property as well as suppression of facts. These constituted the grounds for rejection of the application for OTS.

p) Crestfallen, the respondent invoked the writ jurisdiction of the High Court seeking quashing of the letter containing the order of rejection and for a direction on the appellants - respondents in the writ petition - to consider the application under the OTS 2020 Scheme. Exception was taken to the order of rejection on the ground that sale by auction of one mortgaged property did not disentitle the respondent to have his application under the OTS 2020 Scheme considered favourably.

q) While the writ petition was pending, the respondent's application under Section 17 of the SARFAESI Act before the DRT succeeded. Measures taken by the appellants under Section 13(4) thereof including the sale notice and the sale certificate were set aside.

r) A fresh sale notice was issued on 6th April, 2022. In pursuance thereof, another auction was held on 27th April, 2022. Challenging such auction, the respondent once again approached the DRT by filing a fresh application[14] under Section 17 of the SARFAESI Act, which is reportedly pending.

s) The writ petition of the respondent, in due course, came up for consideration before the Single Judge. Respondent was held entitled to the benefit of the OTS 2020 Scheme, which was non-discretionary and non-discriminatory, and the appellants were directed to process the respondent's prayer contained in its letters dated 19th October, 2020 and 10th November, 2020 in accordance with such scheme.

t) The judgment and order of the Single Judge having been carried in appeal, the Division Bench referred to clause 2.1 of the OTS 2020 Scheme dealing with *"Cases not eligible to be covered under the scheme"*. The Bench was of the opinion that there was no bar for considering cases where proceedings under the SARFAESI Act have been initiated and auction of the property is underway; hence, the respondent could not have been held not eligible under

[14] S.A. 238 of 2022

the OTS 2020 Scheme. The Division Bench also held that since the list of cases/borrowers who are not eligible had been provided under clause 2.1, other cases falling outside the coverage of the *"not eligible"* criteria should be treated as eligible. Consequently, the appeal was dismissed by the Division Bench as having no substance.

ARGUMENTS OF THE PARTIES

3. Mr. Venkatraman, learned Additional Solicitor General appearing for the appellants, contended that not only the Single Judge fell in error in allowing the writ petition of the respondent, the Division Bench equally erred in the exercise of its jurisdiction in dismissing the writ appeal of the appellants.

4. Mr. Venkatraman contended that the OTS 2020 Scheme cannot be enforced under Article 226 of the Constitution unless all terms and conditions are satisfied. According to him, a public duty must be shown to exist before a mandamus could issue directing a public authority to discharge such duty. Here, there was no such public duty which the appellants failed to discharge having noted the conduct of the respondent in failing to clear his debt despite having been granted sufficient opportunities.

5. Referring to the letter dated 23rd November, 2018 being the prior OTS offer of the appellants, Mr. Venkatraman asserted that except for payment of the up-front amount of Rs. 0.50 crore (i.e., Rs.50 lakh),

the respondent did not pay a penny. He also referred to the order dated 21st November, 2019 of the DRT to drive home his point that failure and/or neglect of the respondent to pay the balance sum of Rs.50 lakh resulted in vacation of the interim order of stay.

6. Stressing that the conduct of the party invoking the writ jurisdiction of a high court under Article 226 is relevant, Mr. Venkatraman submitted that here is a litigant who not only does not honour his commitments but also has scant respect for orders passed by the DRT.

7. Drawing our attention to the rejection order, Mr. Venkatraman submitted that there is no infirmity therein. All factors were objectively considered and the application of the respondent for OTS was rightly rejected.

8. Mr. Venkatraman, thus, prayed that the judgment and order (both of the Division Bench and the Single Judge) be set aside and the appellants permitted to proceed for putting up the remaining 6 (six) properties for sale by public auction.

9. *Per contra*, learned senior counsel Mr. D.S. Naidu representing the respondent contended with vehemence that there is no infirmity in the impugned judgment and order warranting interference.

10. While acknowledging that the benefit of the OTS cannot be claimed as an absolute right and that no mandamus can be issued compelling an authority to exercise discretion in a particular manner, as reiterated by this Court in ***Bijnor Urban Coop. Bank Ltd. v. Meenal Agarwal***[15],

[15] (2023) 2 SCC 805

Mr. Naidu contended that the decision to accept or reject an OTS proposal must be reasoned, based on scheme eligibility, and in compliance with the principles of natural justice.

11. Mr. Naidu urged that in the present case, neither the writ court nor the appellate court directed a positive grant of OTS; what the court required was a consideration of the respondent's application under the OTS 2020 Scheme. Rejection of the respondent's application without due consideration or opportunity of hearing is wholly arbitrary, given the fact that the respondent had already deposited about Rs.1.5 crore (inclusive of Rs. 0.50 crore pursuant to an earlier failed compromise) in good faith.

12. Drawing attention to this Court's order dated 18th September 2023 whereby notice was issued, Mr. Naidu argued that the plea of ineligibility under clause 2.1(iii) of the OTS 2020 Scheme had already been negated, and that the failure of the earlier compromise settlement of 2018 could not justify rejection of the subsequent application. Hence, it was contended that the appellants should not now be permitted to argue beyond the question framed by this Court for adjudication.

13. Turning to the auction process, Mr. Naidu asserted that the authorised officer of the SBI had issued a sale notice on 12th February 2020, followed by an auction on 18th March 2020 and confirmation of sale on 15th April 2020. Before completion of the process, the respondent challenged it under Section 17 of the SARFAESI Act and by an order

dated 1st September 2021, the DRT set aside the notice, the auction, and any sale certificate. This fact, it was urged, has been suppressed in the present proceedings. Moreover, 25% advance deposited by the auction purchaser was never credited to the respondent's account and was refunded on 8th September 2021 by the authorized officer himself. Hence, no third-party rights accrued. Reference was also made to the respondent's letter dated 10th November 2020 offering to indemnify the SBI against any vexatious claims by the purchaser.

14. With regard to the second auction of 26th April 2022, Mr. Naidu submitted that the sale remains under challenge before the DRT, and the auction purchaser's deposit too has been refunded, leaving no subsisting sale consideration with the SBI.

15. On the question of *bona fides*, it was contended that the respondent is not a wilful defaulter. Respondent, an operational creditor of ICOMM Tele Limited, has unpaid claims of Rs. 5 crore, in respect of which it only received a sum of Rs. 9,63,123/- in the insolvency proceedings. Such circumstances directly impaired the repayment capacity of the respondent and contributed to default.

16. Resting on these foundations, Mr. Naidu sought to contend that the respondent's application under the OTS 2020 Scheme deserved fair consideration, and that its rejection stands vitiated by arbitrariness which was rightly interdicted by the Single Judge and affirmed by the Division Bench.

THE NOTICE ISSUING ORDER

17. Notice on the special leave petition, giving rise to this appeal, was issued on 18th September, 2023. In such order, the coordinate Bench recorded as follows:

> ***
> *The first contention of the petitioners – the Assistant General Manager and Deputy General Manager of State Bank of India, Siripuram, Vishakhapatnam branch, that there was an earlier compromise settlement/sanction dated 23.11.2018, would not be a good ground and a relevant consideration to reject the OTS proposal under the scheme dated 12.10.2020. The compromise settlement had failed since amounts were not received by SBI within the stipulated time.*

18. Since this Court had issued notice noting that "*** *the question which will arise is whether borrower could have applied under the OTS Scheme dated 12.10.2020 with respect to the arrears after excluding the amount receivable under the first auction* ***", it has also been vehemently contended by Mr. Naidu that it is no longer open to the appellant to argue beyond the question posed by this Court for an answer.

ANALYSIS AND REASONS

19. We have heard Mr. Venkatraman and Mr. Naidu and perused the order rejecting the respondent's application under the OTS 2020 Scheme. We have also perused the impugned judgment and order of the Division Bench dismissing the writ appeal of the appellants as well as that of the Single Judge, allowing the respondent's writ petition.

20. ***Meenal Agarwal*** (supra), cited by Mr. Naidu, is an authority for the proposition that no court can, by issuing a writ of mandamus, direct a

secured creditor to positively grant benefit of OTS to a defaulting borrower; such grant is always subject to the eligibility criteria being satisfied. The law declared therein has been affirmed in ***State Bank of India v. Arvindra Electronics Private Limited***[16].

21. The principle of law, as aforesaid, may not have any direct application here, since it is merely a re-consideration that the High Court has directed and there is no positive direction for granting an OTS.

22. Notwithstanding limited notice having been issued on a special leave petition, that this Court can expand the scope of the *lis* is no longer *res integra*. One may profitably refer to the decision of this Court in ***Biswajit Das v. Central Bureau of Investigation***[17].

23. The only question that we are tasked to decide is, whether the High Court erred in its interference with the said order of rejection of the respondent's application under the OTS 2020 Scheme and directing re-consideration thereof.

24. For the discussions and reasons that follow, we are of the opinion that the High Court was not justified in its interference with the order of rejection.

25. OTS 2020 Scheme was launched by the SBI to augment efforts towards recovery of outstanding dues. Apart from clause 2.1 of the OTS 2020 Scheme providing *"cases not eligible to be covered"*, heavily relied on by the Division Bench, clause 4(i) thereof provided as follows:

[16] (2023) 1 SCC 540
[17] 2025 SCC OnLine SC 124

> "The borrower has to deposit 5% or 15%(for wilful defaulters) of the OTS Amount (As per the settlement formula point v) at the time of submission of application (in the form of letter addressed to branch head) to indicate his willingness for OTS, failing which the application will not be processed. In the event the application for OTS is rejected by the Bank, such payment, which shall be held in a separate account, will be refunded without interest within three months."

26. It is, therefore, clear that every borrower in default, to have his application under the OTS 2020 Scheme considered, was required to apply together with an up-front payment of 5% of the OTS amount. The manner of calculation of the OTS amount was provided in clause 3A (v) of the OTS 2020 Scheme. For wilful defaulters, payment of 15% was required. It has not been argued before us that the respondent falls in the category of a 'wilful defaulter'; however, it is certainly a defaulter.

27. We did not find the respondent, while applying for the benefit of the OTS 2020 Scheme, to have deposited a single paisa towards up-front payment. In terms of clause 4(i) of the OTS 2020 Scheme, any application received without up-front payment is not required to be processed even. Thus, in the first place, the respondent's application was incomplete and it did not have any right in law to claim that such application should be processed.

28. Significantly, the first appellant did not reject the application of the respondent on the ground of its failure to deposit 5% of the OTS amount as required under the OTS 2020 Scheme at the time of submission of its application.

29. The High Court too – both the Division Bench and the Single Judge – missed this aspect altogether because neither omission to make up-front payment assigned as a ground for rejection of the respondent's application by the first appellant nor clause 4(i) of the OTS 2020 Scheme was brought to the notice of the relevant courts.

30. Mr. Venkatraman appeared clueless as to why rejection of the respondent's application based on clause 4(i), despite being available to the first appellant, was not mentioned as a ground in the letter dated 17th November, 2020.

31. In course of hearing, Mr. Naidu's attention was invited by us to clause 4(i). We had called upon him to explain the basis for claiming eligibility under the OTS 2020 Scheme without making the requisite up-front payment of 5%. Accepting Mr. Naidu's prayer, we had given him time to respond.

32. Mr. Naidu returned on the next day of hearing and submitted that clause 4 read with clause 6 of the OTS 2020 Scheme makes it clear that all branches of the SBI were obligated to identify eligible borrowers, send intimation specifying dues, payment modalities, and last date for application under the scheme. However, despite the appellants not following the OTS 2020 Scheme by sending intimation with quantification of the respondent's dues and the payment modalities, the respondent, in filing the application accompanied by the upfront amount, fully complied with the scheme requirements.

Therefore, it cannot be argued that the respondent was ineligible on grounds of non-compliance of the terms.

33. In light of his arguments, Mr. Naidu prayed for dismissal of the appeal and for an order on the appellants to proceed in terms of the directions in the impugned judgment and order.

34. A question would obviously arise for our answer, having regard to the Constitution Bench decision in ***Mohinder Singh Gill v. Chief Election Commissioner***[18] and the larger Bench decisions of this Court in ***Commissioner of Police v. Gordhandas Bhanji***[19] and ***Opto Circuits (India) Ltd. v. Axis Bank***[20], as to whether, a court can uphold an order rejecting an applicant's claim based on a ground appearing from the records of the case which could have been but has not been mentioned, if the grounds mentioned in such order of rejection are not found to be tenable?

35. To refresh our memory, the aforesaid decisions are authorities for the proposition that validity of an order, which is under challenge in the proceedings, must be tested on the basis of the ground(s) mentioned in it in support thereof; and any additional ground, to support the order under challenge, cannot be allowed to be raised in the reply affidavit or in course of arguments. The underlying principle is that an order which is bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later

[18] (1978) 1 SCC 405
[19] AIR 1952 SC 16
[20] (2021) 6 SCC 707

brought out. As Hon'ble Vivian Bose, J. famously remarked in ***Commissioner of Police*** (supra), orders are not like old wine becoming better as they grow older. What was later held in ***Mohinder Singh Gill*** (supra) drew inspiration from the principle of law laid down in ***Commissioner of Police*** (supra).

36. ***Mohinder Singh Gill*** (supra) has been considered by this Court in ***All India Railway Recruitment Board v. K. Shyam Kumar***[21]. It has been held there that the principle laid down in ***Mohinder Singh Gill*** (supra) is not applicable where larger public interest is involved and in such a situation, additional grounds can be looked into, to examine the validity of an order. To the same effect is the decision in ***PRP Exports v. State of Tamilnadu***[22]. However, ***K. Shyam Kumar*** (supra) and ***PRP Exports*** (supra) have been considered in ***63 Moons Technologies Ltd. v. Union of India***[23] where it has been held in paragraph 102 by a coordinate Bench that there is no broad proposition that the law laid down in ***Mohinder Singh Gill*** (supra) will not apply where larger public interest is involved. The decisions in ***K. Shyam Kumar*** (supra) and ***P.R.P. Exports*** (supra) were distinguished on the ground that the coordinate Benches there had proceeded to consider subsequent materials that emerged for the purpose of validating the order under challenge.

37. The need, thus, arises to reconcile the decisions noticed above.

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[21] (2010) 6 SCC 614
[22] (2014) 13 SCC 692
[23] (2019) 18 SCC 401

38. The respective Benches in ***Commissioner of Police*** (supra), ***Mohinder Singh Gill*** (supra), ***Opto Circuits (India) Ltd.*** (supra) and ***63 Moons Technologies Ltd.*** (supra), in our reading, while mandating what has been noticed above was not required to and, as such, rightly did not go that far in establishing the principle that, in all cases coming before it, the court is necessarily bound to confine itself to the grounds mentioned in the administrative order under challenge and cannot look beyond such grounds at all. While the courts, in course of reviewing administrative orders, may not permit additional grounds not found within the four corners of the said order to be raised in an affidavit or in oral arguments, we are inclined to the view that the factual narrative in such order and the documents referred to therein can certainly be considered together with the case set up in the writ petition, but in appropriate cases. Such cases could include a case, as the present, where the mentioned grounds are found to be untenable and, thus, unsustainable, but an alternative ground (appearing from the factual narrative in the order itself and/or from the records relevant thereto) is traceable which could have validly been mentioned as a ground to support the impugned rejection had there been a proper application of mind by the administrative authority. In all such cases, it would be open to the court to uphold it on such alternative ground subject, of course, to the affected party being put on notice and an opportunity to respond. This approach, which would prioritize fairness

and justice over technicalities, does not run contrary to or inconsistent with the law laid down in the afore referred precedents.

39. Much as Mr. Naidu would like us to accept that the respondent had complied with the requirements of the OTS 2020 Scheme, the respondent's letter dated 10th November, 2020 is evidence of up-front payment not having been made. It is clear as a sunny day that an application for availing the benefit thereunder would be processed if such application were accompanied by an up-front payment of 5% of the outstanding dues. Indubitably, the respondent faltered in not adhering to the express terms of such scheme by not depositing 5% of the outstanding dues as up-front payment, thereby rendering its application disentitled to be processed even, far less deserving a favourable consideration.

40. True it is, this ground flowing from clause 4(i) is not mentioned in the letter dated 17th November, 2020 as a ground for rejection of the respondent's application. However, in view of what we have held above, this ground is fundamental to the case, strikes at the heart of the matter and fully justifies the conclusion in the impugned order of rejection that the respondent, by its own conduct, did not and does not deserve to be extended the benefit of the OTS under the OTS 2020 Scheme. SBI would be well advised to ascertain and fix responsibility as to how the respondent's application could be processed when it did not comply with the terms of the OTS 2020 Scheme.

41. No doubt, clause 2.1 of the OTS 2020 Scheme laying down cases which are "not eligible" had no application *qua* the respondent but overcoming the "not eligible" criteria did not amount to satisfying the other eligibility criteria. Not being covered by clause 2.1 does not necessarily lead to the conclusion that a defaulting borrower is automatically entitled to have the loan account settled on the basis of the OTS 2020 Scheme. Crossing the hurdle of eligibility *per se* would not entitle a defaulting borrower to claim consideration of his/its application unless the application itself satisfies the other stipulated conditions.

42. Assuming *arguendo* that a ground not mentioned in the administrative order under challenge cannot be permitted to be raised in an affidavit or in course of arguments, we bear in mind that the High Court – both the Single Judge and the Division Bench – did not issue any positive direction to the appellants to grant the proposal of the respondent for an OTS. What the High Court required was a re-consideration of the respondent's application for OTS, treating it to be eligible under clause 2 of the OTS 2020 Scheme. However, clause 2 was not the only clause relating to eligibility. There were other clauses too, viz. the various sub-clauses of clause 1 apart from clause 4. Having regard to the fact that applicability of clause 4(i) of the OTS 2020 Scheme as a potential ground for rejection had been brought to the notice of the parties and responses elicited, as noted above, even if the impugned judgment and order were not disturbed and the appeal dismissed by us, it would

still be open to the appellants to fall back on the omission of the respondent to comply with clause 4(i) of the OTS 2020 Scheme to reject its application for OTS. Would, in such circumstances, the cause of justice be advanced by not interfering with the impugned judgment and order? We think not.

43. From whichever angle one looks at the issue, the conclusion is irresistible that the respondent's conduct disabled itself to have a fair and objection consideration of its application for OTS.

CONCLUSION

44. For the reasons aforesaid, this civil appeal deserves to succeed. Dismissal of the intra-court appeal of the appellants by the impugned judgment and order of the Division Bench is set aside together with the judgment and order of the Single Judge allowing the respondent's writ petition because a relevant factor was kept out of its consideration, which has the effect of significantly impacting the outcome of the respondent's application for OTS.

45. The appellants are free to proceed in accordance with law for enforcement of the security interest. At the same time, we also grant the respondent an opportunity to submit a fresh proposal for OTS but not under the OTS 2020 Scheme. If the terms and conditions put forth by the respondent are found reasonable, workable and acceptable, the appellants may take such decision on it as deemed fit and proper in the circumstances.

46. The civil appeal, thus, stands allowed. Connected applications, if any, will stand closed.

47. Except to the extent decided, this judgment of ours shall, however, not have any effect on the proceedings pending before the DRT.

.....J.
(DIPANKAR DATTA)

.....J.
(AUGUSTINE GEORGE MASIH)

NEW DELHI;
SEPTEMBER 15, 2025.