

**“OTS” CANNOT BE CLAIMED AS A MATTER OF RIGHT BY THE BORROWER
FROM THE BANK**

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Key Aspects: One Time Settlement (OTS)

- i. An OTS, like an order granting facility of repaying the loan in instalments, really amounts to rescheduling the loan.
- ii. It is only the bank/ financial institution which has granted the loan can reschedule the same.
- iii. A court of law cannot direct OTS because that would mean the court is directing rescheduling of a loan.
- iv. No writ of mandamus can be issued under Article 226 of the Constitution of India, 1950 (hereinafter referred to as the COI) directing the banks/ financial institutions to enter into an OTS facility with the defaulting borrower. It is settled law that a court of law cannot direct repayment of bank loans in instalments as that would mean rescheduling of a loan.
- v. Where a creditor is enforcing its liability upon the debtor, the debtor has no legal right to claim that the claim be settled on favourable terms proposed by him (debtor) whereby the claim of the creditor is reduced.
- vi. Guidelines framed by Reserve Bank of India (RBI) for recovery of dues relating to non-performing assets (NPAs) of public sector banks, cannot be utilized by borrowers who have wilfully defaulted in repayment of loan and have diverted funds to other businesses. [*Simco Rubber Products (P) Ltd. V/s Bank of India*, (2004) 51 SCL 272 (All)]

Rescheduling of loan cannot be claimed as a matter of right:

- i. In the matter of: *D.K. Gupta & Anr V/s Oriental Bank of Commerce*, 127 (2006) DLT 488, it was held that:

- (a) No defaulter has legal right to get rehabilitation. When a person has taken loan, he has to repay the same in accordance with the loan schedule as per the agreement between the parties.
 - (b) Rescheduling of the loan is in the sole discretion of the bank or the financial institution which granted the loan and the court cannot compel it to reschedule the loan.
 - (c) The matter regarding loan from financial corporations/ banks is purely contractual and the borrower has to abide by the agreement which he has entered into with the financial corporation/ bank.
- ii. In the matter of: ***M.M. Accessories V/s U.P. Financial Corporation***, 2002 (46) ALR 261, it was observed that:
- (a) Settlement in context of OTS means compromise, cooperation or arrangement between two parties, namely, debtor and creditor, for settlement of loan account on such stipulations to which both, the lender and the borrower, give their consent.
 - (b) If a bank/ financial institution is not willing to offer an OTS facility to a borrower/ defaulter then the creditor-bank cannot be compelled (legally or otherwise) to enter into an OTS facility with the borrower/ defaulter.
- iii. In the matter of: ***Haryana Steel & Alloys Ltd. V/s IFCI Ltd. & Anr***, LPA No. 1947/ 2006, High Court of Delhi, Date of Decision: 05.12.2006, it was held that:
- (a) RBI is the prime banking institution of the country and it is entrusted with supervisory role over other banking institutions of the country. RBI is conferred with the authority of issuing binding directions, having statutory force, in the interest of public in general and preventing banking affairs from deterioration and prejudice as also to secure the proper management of any banking company generally.
 - (b) In Para 20 of the report, it was observed that:

“... no one has a right to get OTS or rehabilitation as the same is really rescheduling of the loan and this can only be done by the bank or financial institution which granted the loan in its discretion. It was observed that granting OTS or rehabilitation or fixing instalments is really varying the

contract between the parties which cannot be done by the court.” (emphasis supplied)

Applicability of OTS:

- i. In the matter of: *Chemosyn Ltd. & Anr V/s Union Bank of India & Anr*, W.P. (C) No. 973/ 2003, High Court of Bombay, Date of Decision: 03.07.2003, it was observed that:
 - (a) Facilities/ schemes in the nature of OTS do not apply in cases where decrees have already been passed or where execution proceedings pursuant to the decree passed are pending before the court of competent jurisdiction.
 - (b) In case of decreed-debts, the banks can straightaway execute the same and recover their dues. In case of decreed-debts the question of compromise/ settlement does not arise.
- ii. In the matter of: *Deluxe Electrical & Mechanical Industries V/s Union Bank of India & Ors*, W.P. (C) No. 1351/ 2004, High Court of Delhi, Date of Decision: 28.04.2004, it was observed that:
 - (a) As a matter of policy, the general rule is that, a “willful defaulter” is not eligible to seek benefit of any OTS facility/ scheme, launched or initiated by the RBI.
 - (b) Once a borrower/ defaulter suffers a decree passed against him, such borrower/ defaulter steps outside the realm of being considered eligible for OTS facility/ scheme, launched or initiated by the RBI.

Out of Court Settlement is different from OTS:

- i. “Out of Court Settlement” is in the nature of ADR (Alternate Dispute Resolution) and is governed by Section 89 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC). However, OTS is governed by directions/ circulars issued by the RBI.
- ii. Unlike the scheme of things in an “out of court settlement”, in an OTS much depends on the discretion of the bank/ financial institution. The purpose of OTS is to save the bank/ financial institution from incurring “high costs of recovery”.

- iii. That OTS scheme is not applicable to decreed-debts. However, on the contrary, even when a decree has been passed and the matter is pending before the executing court, an “out of court settlement” can take place between the judgment-debtor and the decree-holder.
- iv. An OTS entered into between the bank and the borrower results in novation of contract (loan agreement) which was principally entered into between the bank and the borrower. However, “out of court settlement” results in an agreement being entered into between the parties to dispute in terms of Section 89 of the CPC read with Chapter IX, Rules 1 and 7 of the Delhi High Court (Original Side) Rules, 2018 while the matter/ *lis* is still pending for adjudication before the court of law.