



**No Borrower Can Take Advantage of OTS Scheme as a Right: A Case Study of Bijnor Urban Cooperative Bank Limited vs. Meenal Agarwal & ors. 2021**

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**Abstract**

*One-time settlements give borrowers the chance to pay off their outstanding obligations with lenders for a lower sum and are frequently employed in the lending sectors. But it's important to realise that borrowers don't necessarily have a claim to such settlements. The main determinants of a borrower's capacity to negotiate and get a one-time settlement are examined in this abstract. Clarifying the idea of one-time settlements and their importance in debt resolution is the first step in the examination. The structure governing these settlements is then discussed, highlighting the fact that borrowers must adhere to strict requirements established by lenders or organisations. If a one-time settlement is possible, it depends critically on the borrower's status, the lender's policies, and the type of debt. This abstract also examines the lender's viewpoint, stressing their reasons for providing one-time settlements, including risk reduction and quicker fund recovery. It also clarifies the negotiation process and the significance of openness and honesty in forging agreements that benefit both parties. In conclusion, this abstract emphasises that while one-time settlements may be a good way to reduce debt, borrowers are not automatically entitled to them. To successfully negotiate a one-time settlement, borrowers must be well-informed, responsible, and ready to engage in serious negotiations with their lenders. Borrowers who want to successfully negotiate the debt resolution procedure must comprehend the dynamics of one-time settlements.*

**Keywords:** one-time settlements (OTS), borrowers, financial, debt, resolution, negotiation, legal

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**Introduction**

In the world of finance, debt is a constant reality that affects people, corporations, and organisations alike. Borrowers usually look for relief from increasing debts through a variety of strategies, and one choice that regularly presents itself is a one-time settlement.<sup>2</sup> In essence, a one-time settlement enables debtors to lessen their responsibilities by settling their outstanding debts with creditors for a smaller sum.<sup>3</sup> But it's important to note that pursuing a one-time settlement is not a clear-cut privilege given to debtors. Instead, it operates inside a convoluted

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<sup>2</sup> Thomé, Hugo, "Holding Transnational Corporations Accountable for Environmental Harm Through Counterclaims in Investor-State Dispute Settlement: Myth or Reality?" (2021) 22(5-6) The Journal of World Investment & Trade 651

<sup>3</sup> Mashdurohatun, Anis and Eyrsa Setya Kurnia, "The Settlement Model Against Credit Agreements Between Creditors And Debtors" (2020) 4(2) *International Journal of Law Reconstruction* 124

system of monetary, procedural, and factors.<sup>4</sup> This introduction acts as a starting point for a deeper exploration of the nuances of the borrower's position in the context of one-time settlements, illuminating the variables that affect their eligibility to make use of this debt relief option.<sup>5</sup> One-time settlements have become more popular in the world of finance as a means of reaching a deal between creditors and borrowers. It is a mutually advantageous arrangement that gives lenders the chance to quickly collect a portion of the outstanding debt and gives borrowers the chance to free themselves from obligations, frequently at a lower cost.<sup>6</sup> However, there are several complexities and lender discretion that ultimately determine whether a borrower can take advantage of this choice beneath this seeming fair arrangement.<sup>7</sup> This investigation starts by deconstructing the fundamental ideas behind one-time settlements, deconstructing the framework, and emphasising the standards established by lenders.<sup>8</sup> While some debtors may like to pay off all of their debt at once, this is not always possible. The viability of a one-time settlement is greatly influenced by factors like their status, the policies of the lender, the type of debt, and their negotiating abilities.<sup>9</sup> It is essential to take the lender's viewpoint into account as well to fully understand the borrower's position with regard to one-time settlements. Lenders are not benevolent beings; they too have goals in mind when considering one-time payments.<sup>10</sup> They base their choices on elements like risk reduction, effective resource allocation, and quick debt recovery. Additionally, there are several difficulties and complications involved in the negotiation process itself.<sup>11</sup> As borrowers and lenders work to identify common ground and agree upon terms, transparency, good faith, and efficient communication become essential.<sup>12</sup> The borrower's pursuit of a one-time settlement is not an unrestricted entitlement but rather a complex process driven by a tangle of, interpersonal, and considerations.<sup>13</sup> The complexity of one-time settlements will be further explored in this investigation, giving light on the borrower's rights, the lender's objectives, and the negotiating dynamics that characterise this debt relief choice. Anyone hoping to successfully negotiate the complicated world of debt resolution must have a solid understanding of these dynamics.<sup>14</sup>

### The goals of OTS

- The OTS Policy's primary goal is to maximise the recovery of unpaid debts from technically written-off cases and non-performing assets.
- Bring consistency and objectivity into the approach

<sup>4</sup> International Monetary Fund, "Republic of Belarus: Financial Sector Assessment Program - Detailed Assessment of Observance of CPSS Core Principles for Systemically Important Payment Systems - Belarus Interbank Settlement System: BISS: RTGS Service" (2006) 06(177) IMF Staff Country Reports 1

<sup>5</sup> Chamber of Digital Commerce, "Chamber of Digital Commerce Launches Smart Contracts Alliance", July 2016

<sup>6</sup> J.P. Morgan, "Australia Quantitative and Derivatives Strategy", March 2016

<sup>7</sup> Bloomberg, "With Loan Market Still Using Faxes, Settlement Times Trail Goal", April 2015

<sup>8</sup> Stone Harbor Investment Partners, "The Globalization of the High Yield Market", March 2015 Update; CVC Credit Partners, "Sub-Investment Grade Debt Capital Markets", Accessed August 2016

<sup>9</sup> Stone Harbor Investment Partners, "The Globalization of the High Yield Market", March 2015 Update; CVC Credit Partners, "Sub-Investment Grade Debt Capital Markets", Accessed August 2016

<sup>10</sup> Fivethirtyeight.com, "How Many Homeowners Have Paid Off Their Mortgages?", December 2014

<sup>11</sup> Capgemini Consulting Interview, June-July 2016

<sup>12</sup> Van Eck Global, "An Alternative to Bank Loans", Accessed August 2016

<sup>13</sup> Expert estimates, Leveragedloan, <http://www.leveragedloan.com/primer/#!whatisaleveragedloan> S&P Report, "A Guide To The U.S. Loan Market", September 2013

<sup>14</sup> Lexology, "LSTA Imposes New Rules for Par Trades in the Secondary Bank Loan Market", July 2016

- Ensure that all deserving cases are duly attended to and an appropriate OTS formula is applied promptly.<sup>15</sup>
- Recover a reasonable amount before assets lose value
- Prevent costly recovery and drawn-out proceedings
- Introduce an empathic approach in OTS settlement.<sup>16</sup>

### Research Methodology

This research aims to investigate the concept of borrowers' rights in the context of one-time settlements and understand procedural aspects that influence a borrower's ability to claim one-time settlements. To achieve this objective, a comprehensive research methodology is designed, with qualitative research methods. This approach is chosen to provide a comprehensive understanding of the topic, factors, and case studies.

### Historical Background

With the growth of systems and frameworks has come the idea of debtors negotiating one-time settlements for their obligations. The chances and rights provided to borrowers in such agreements have drastically changed over the years.<sup>17</sup> It is essential to comprehend this historical setting to appreciate the current dynamics of former towns. There were simple systems for debt forgiveness in ancient civilizations like Mesopotamia and ancient Greece.<sup>18</sup> A jubilee, sometimes known as debt forgiveness, was occasionally used to eliminate debts and provide debtors with a fresh start.<sup>19</sup> Although not formally recognised procedures, these practices were mostly motivated by religious or moral reasons. Debtors in medieval Europe frequently had few options when they were facing unmanageable constraints.<sup>20</sup> Prisons for debtors were prevalent, and creditors held a lot of influence. The ability of debtors to negotiate settlements was constrained, and settlement terms were frequently skewed strongly in favour of creditors.<sup>21</sup> More organised loan and borrowing practices emerged in the 17th and 18th centuries with the expansion of contemporary institutions.<sup>22</sup> The demand for standardised debt resolution procedures increased along with the development of systems. Borrowers started to have certain rights in settlement negotiations but within the confines of the framework established by developing banking rules.<sup>23</sup> Diverse nations created laws and rules governing debt settlements in the late 19th and early 20th centuries. These regulations sought to find a balance between safeguarding the interests of creditors and ensuring that debtors are treated fairly.<sup>24</sup> Within these frameworks, borrower rights in one-time settlements were more clearly established. Economic Crises and Government Interventions: Several economic crises occurred during the 20th century, which led governments

<sup>15</sup> European Mortgage Federation, "HYPOSTAT 2015 A review of Europe's mortgage and housing markets", September 2015

<sup>16</sup> Capgemini Consulting Interview, June-July 2018

<sup>17</sup> Nick Szabo, "The Idea of Smart Contracts", 1997

<sup>18</sup> Oxford University, "Smart Contracts: Bridging the Gap Between Expectation and Reality", July 2016

<sup>19</sup> MIT, "Enigma: Run Code on Encrypted Data", Accessed September 2016

<sup>20</sup> IT World Canada, "As a blockchain-based project teeters, questions about the technology's security", July 2016

<sup>21</sup> Caisse des Dépôts, "Launch of a market initiative on the block chain with 11 partners, December 2015"

<sup>22</sup> Axa, "AXA Strategic Ventures invests in blockchain technology", February 2016

<sup>23</sup> Drought, A, Perry, R and A Richardson (2018) 'Aspects of implementing monetary policy in New Zealand' Reserve Bank of New Zealand Bulletin, Vol. 81. No. 4

<sup>24</sup> Rogoff, K (2016) 'The curse of cash', Princeton University Press, Princeton.

to step in and enact laws to protect borrowers.<sup>25</sup> Laws and rules governing debt restructuring were among these actions. During this time, borrowers received more structured rights while negotiating settlements, frequently with the assistance of bankruptcy courts.<sup>26</sup> The idea of one-time settlements spread due to the globalization of finance and expanded lending practices. Borrowers who were looking for relief from large debts looked into negotiating possibilities.<sup>27</sup> However, considerations, lender regulations, and the form of the debt continued to have an impact on how far borrowers' rights to one-time settlements could be asserted.<sup>28</sup> The evolving dynamics of debt resolution are reflected in the borrowers' rights in one-time settlements. The relationship between borrowers and lenders in the context of one-time settlements has been impacted by societal, economic, and pressures, ranging from primitive debt relief practices to contemporary systems.<sup>29</sup> When seeking one-time settlements, today's borrowers must navigate a complicated terrain of rights and obligations, with their eligibility impacted by a variety of historical, and circumstances.<sup>30</sup>

### Benefits

- Negotiating a one-time settlement with your creditors has many advantages.
- This can offer you much-needed debt relief and assist you in getting your finances back on track.
- There are some possible risks, though. Before choosing this route, be aware of this.<sup>31</sup>
- One of a one-time settlement's main advantages. It can considerably lower the amount of money you owe.
- Long-term savings are possible if you can agree to a smaller settlement sum. It is crucial to keep this in mind.<sup>32</sup>

However, your creditors are not required to accept a settlement offer, and even if they do, it might only be for a small portion of what you owe. A one-time settlement also has the advantage of raising your credit score. Your debt will be listed as settled on your credit record once it has been paid in full.<sup>33</sup> Over time, this could raise your credit score and make applying for new credit lines simpler. Pursuing a one-time settlement may potentially have some negative effects.<sup>34</sup>

<sup>25</sup> Sveriges Riksbank (2017) 'The Riksbank's e-krona project', Sveriges Riksbank Report

<sup>26</sup> Drought, A, Perry, R and A Richardson (2018) 'Aspects of implementing monetary policy in New Zealand', Reserve Bank of New Zealand Bulletin, Vol. 81. No. 4

<sup>27</sup> Fung, B, Hendry, S and W Weber (2017) 'Canadian Bank Notes and Dominion Notes: lessons for digital currencies', Bank of Canada Staff Working Paper 2017-5.

<sup>28</sup> Wadsworth, A (2018b) 'Decrypting the role of distributed ledger technology in payments processes' Reserve Bank of New Zealand Bulletin, Vol 81. No. 5

<sup>29</sup> Kay, J (2009) 'Narrow banking: the reform of banking regulation', Centre for the study of financial innovation, 88.

<sup>30</sup> Koning, J (2016) 'Fedcoin: A central bank-issued cryptocurrency'

<sup>31</sup> He, D, R Leckow, V Haksar, T Mancini-Griffoli, N Jenkinson, M Kashima, T Khianonarong, C Rochon and H Tourpe (2017) 'Fintech and financial services: initial considerations', IMF Staff Discussion Note, SDN/17/05.

<sup>32</sup> Weber, W (2015) 'Government and private e-money-like systems: Federal Reserve notes and National Bank notes, Bank of Canada Staff Working Paper 2015-18.

<sup>33</sup> Furletti, M (2004) 'Prepaid cards: How do they function? How are they regulated?' Federal Reserve Bank of Philadelphia Conference Summary

<sup>34</sup> Wright, M (2016) 'The imagery and themes of the Series 7 "Brighter Money" banknotes', Reserve Bank of New Zealand Bulletin, Vol. 79, No. 15.

### Disadvantages

- The cost is typically higher than with other types of financing.
- There is no conflict of interest.
- If you lack the funds in your savings account to repay your one-time settlement loan. Then you will be in charge of paying it back completely.<sup>35</sup>
- OTS amount but borrower cannot look for such addition as a matter of right

The High Court has the authority to extend the deadline for paying the remaining OTS amount. Although a High Court must exercise jurisdiction in accordance with the rules/principles established by this Court in *Anu Bhalla and Others v. District Magistrate, Pathankot and Others*, CWP No. 5518 of 2020, it cannot be asserted by the borrower as a matter of right.<sup>36</sup>

*Sardar Associates v. Punjab and Sind Bank*, 2009(8) SCC 257, neither public sector banks nor private sector banks are permitted to deny OTS requests from borrowers as long as they comply with the bank's OTS Policy. OTS letter, but it set forth instructions that must be followed. Additionally, it was decided that OTS is not governed by strict rules that might forbid extending the deadline for paying the balance of a settlement; in fact, some banks' OTS policies explicitly allow for extensions of the deadlines set forth in their own settlement policies.<sup>37</sup>

An institution or bank cannot be ordered by the High Court to positively give the benefit of OTS to a borrower in the exercise of its authority under Article 226 of the Indian Constitution. The eligibility requirements listed in the OTS Scheme and the occasionally updated guidelines always apply to the grant of benefits under the OTS. The Supreme Court of India previously issued such a statement in the case of *The Bijnor Urban Cooperative Bank Limited vs. Meenal Agarwal & ors.* 7411 of 2021, a civil appeal. The Honourable Supreme Court noted that under the published guidelines, the OTS Scheme's grant of benefits cannot be prayed for as a matter of right and is instead contingent upon meeting the qualifying requirements specified in the scheme.<sup>38</sup> The Supreme Court further noted that the High Court's assertion that the original writ petitioner was denied a hearing in the assailed judgement and order was false in reality. As a result, it is impossible to claim that the decision violated the natural justice criterion. The Supreme Court ruled that the bank could not be held accountable for the SARFAESI Act proceedings just because they have been pending for seven years. And the bank is not to be accorded guilty. What must be taken into account is the Bank's conscious decision that it will be able to recover the entire loan amount by selling the mortgaged property at auction and the Bank's due consideration of the fact that there are all possible ways to do so, rather than granting the benefit under the OTS Scheme and recovering a smaller amount. In the end, the Bank must decide consciously in its own best interests and secure/recover the outstanding debt.<sup>39</sup>

*SBI v Arvindra Electronics Pvt. Ltd.* (Civil appeal 6954, 2022). By the impugned judgement, granting an extension of time after rescheduling the payment under the OTS Scheme would tantamount to writing the contract again, which is not permissible while exercising the powers in

<sup>35</sup> Wadsworth, A (2018a) 'What is digital currency?' Reserve Bank of New Zealand Bulletin, Vol 81. No. 3

<sup>36</sup> *Anu Bhalla and Others v. District Magistrate, Pathankot and Others*, CWP No. 5518 of 2020

<sup>37</sup> *Sardar Associates v. Punjab and Sind Bank*, 2009(8) SCC 257

<sup>38</sup> *Bijnor Urban Cooperative Bank Limited vs. Meenal Agarwal & ors.* 7411 of 2021

<sup>39</sup> *Bijnor Urban Cooperative Bank Limited vs. Meenal Agarwal & ors.* 7411 of 2021

accordance with Article 226 of the Constitution of India. The Court decided that while exercising its authority under Article 226 of the Indian Constitution, the High Court should not have given a further extension outside of the authorized OTS Scheme.<sup>40</sup> The Court further ruled that the Bank and the extension of the time allowed by Section 62 of the Indian Contract Act could mutually agree. Due to this, the Court overturned the High Court's contested order, and the appeal was subsequently granted.<sup>41</sup>

### Conclusion

A form of solution that enables an individual is one-time settlement funding, the process of giving up future payments in return for a one-time payment from a lawsuit for personal injury with a one-time payment.<sup>42</sup> One will be required to pay a single fixed sum each month, which can be done via bank transfer or debit card. One has to make sure that he comprehends the agreement's conditions and the amount of money he will receive.<sup>43</sup> This loan will be used to pay for his defence. Due to the lack of collateral requirements, it can be a perfect option to finance a claim. Before one pursues this form of finance, one should be aware of a few factors.<sup>44</sup> These loans have costs and interest rates that can pile up quickly. That is among the main advantages of a one-time settlement. It may considerably lower the amount one owes.<sup>45</sup> Additionally, there may be some disadvantages to employing this kind of finance. There is no interest involved, although it is typically more expensive than alternative financing options.<sup>46</sup> Utilizing this kind of money has some drawbacks. Generally speaking, it is more expensive than other types of financing. There is no conflict of interest.<sup>47</sup> One can consider the scenario when one doesn't have enough cash on hand to pay back a one-time settlement loan. In this case, that person will be in charge of paying it back completely.<sup>48</sup>

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<sup>40</sup> SBI v Arvindra Electronics Pvt. Ltd. Civil appeal 6954, 2022

<sup>41</sup> Article 226 of the Indian Constitution & Section 62 of the Indian Contract Act

<sup>42</sup> Aaron, M, F Rivadeneyra and S Sohal (2017) 'Fintech: Is this time different? A framework for assessing risks and opportunities for central banks', Bank of Canada Staff Discussion Paper 2017-10

<sup>43</sup> Barrdear, J and M Kumhof (2016) 'The macroeconomics of central bank issued digital currencies', Bank of England Staff Working Paper 605

<sup>44</sup> Bordo, M and A Levin (2017) 'Central bank digital currency and the future of monetary policy', Hoover Institution Economic

<sup>45</sup> Committee on Payments and Markets Infrastructures (2015) Digital currencies. Bank for International Settlements

<sup>46</sup> Davoodalhosseini, M and F Rivadeneyra 'A policy framework for E-money: A report on Bank of Canada research', Bank of Canada Staff Discussion Paper 2018-5.

<sup>47</sup> Committee on Payments and Markets Infrastructures (2016) 'Statistics on payment, clearing and settlement systems in the CPMI countries', Bank for International Settlements.

<sup>48</sup> Ali, R, Barrdear, J, Clews, R and J Southgate (2014) 'The economics of digital currencies', Bank of England Quarterly Bulletin, 54(3), 276-286