ORDER SHEET

DEBTS RECOVERY TRIBUNAL, SILIGURI

NDN/379/2025(MA) in TOA/604/2017

The Kohinoor Tea Co. Pvt. Ltd. & Ors — Applicants

Vs

Central Bank of India — Respondents

Date of Order	Order with Signature	Office action with date and dated signature of parties when necessary.

Item No.37 **Order No.**

21.09.2026

Present :-

Counsel for the Applicants : Ms. Mohana Agarwal, virtual Mode for Mr. K.L. Lohiya.

Counsel for the Respondent : Mr. Rajjak Hossain, physical mode for Mr. Rahul Mishra.

Judgment is passed in NDN/379/2025(MA) in TOA/604/2017 and a copy of the Judgment is kept on record.

Let the judgment be uploaded on website of the Tribunal and the Registry is directed to serve/send copy of this judgment to the parties free of cost.

Record be consigned to the record room along with the judgment.

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(RAKESH PATI TIWARI)
Presiding Officer
DRT-Siliguri

IN THE DEBTS RECOVERY TRIBUNAL, SILIGURI

M.A. Dy. No. 379/2025
arising out of T.O.A. No. 604/2017 arising out of O.A. No. 08/2004

KOHINOOR TEA COMPANY PVT. LTD. Having its registered office at Holding No. 10/33, Kohinoor Building, Thana Road, Jalpaiguri, West Bengal, India. PIN 735101.

…….Misc. Applicant

Vs.

Central Bank of India, Jalpaiguri Branch Registered Office at Merchant Road, P.O. Jalpaiguri, P.S. Kotwali, Jalpaiguri, West Bengal. PIN 735101.

……..……Opposite Party

Counsel for the Applicant : Mr. K.L. Lohiya and Ms. Mohana Agarwal.
Counsel for the opposite party : Mr. Rahul Mishra and Mr. Rajjak Hussain.

PRESIDING OFFICER: RAKESH PATI TIWARI

Date of Judgment - 21.09.2026

J U D G M E N T

1. The instant M.A. Dy. No. 379/2025 along with I.A. No. 610/2025 for condonation of delay has been filed by the Misc. applicant seeking recall/set-aside of the ex parte judgment and order dated 28.04.2023 passed in T.O.A. No. 604 of 2017, originally instituted as O.A. No. 08 of 2004 before the DRT-II, Kolkata and subsequently transferred to the DRT, Siliguri and renumbered as TOA No. 604/2017.

2. The case of the MA applicant in short is that although it had initially contested the proceedings, the matter proceeded ex parte on 20.09.2018 owing to a change in management and alleged failure of the erstwhile management to properly monitor the proceedings. On learning of the matter, the applicant filed an application under Order IX Rule 7 CPC, pursuant to which the ex-parte order was recalled on 06.09.2022 subject to payment of costs of Rs.10,000/- and filing of an additional written statement. The applicant deposited the said costs with the respondent bank, but alleges that on 01.11.2022 the Tribunal, proceeding on the bank's objection that the costs had not been paid and the additional written statement had not been filed, again directed the matter to proceed ex-parte and its subsequent I.A. No. 582 of 2022 seeking recall of the said order was dismissed. The Original Application was thereafter decided ex parte on 28.04.2023 for recovery of approximately Rs.5.37 crore with interest and costs. The applicant further pleads that following the change in management, settlement/OTS negotiations were conducted with the bank from 2020 onwards and ultimately, according to the applicant, a

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settlement was arrived at for Rs.2.26 crore, against which Rs.50 lakh was paid, but the bank subsequently disclosed that the original title deeds of the secured property had been lost from its custody and did not proceed with the settlement. The applicant states that it came to know of the ex-parte decree only upon receipt of the recovery notice dated 23.08.2024 and contends that its non-appearance was neither wilful nor deliberate, that it has a substantial defense on merits, including objections regarding maintainability, limitation, quantum and enforcement of the security, and that denial of an opportunity to contest the Original Application has caused serious prejudice.

3. The Respondent Bank has filed their preliminary objection stating therein that the present application is not maintainable either in law or on facts and is liable to be dismissed at the threshold. It is the case of the Bank that the Applicant has no locus standi or cause of action and has approached the Tribunal with suppression of material facts, while the application is stated to be frivolous and intended to delay and protract the recovery of the Bank's dues. The Bank has further submitted that Order IX Rule 13 CPC is inapplicable as the Applicant had duly participated in the original proceedings before the DRT and had filed its Written Statement, and had also challenged interlocutory orders passed therein before the Hon'ble Calcutta High Court in CO/76/2022 and CO/154/2022, both of which were dismissed. It is further contended that the present application has been filed after more than two years from the date of the Judgment and is barred by limitation, and that the Tribunal has no jurisdiction to condone such delay in the absence of any express statutory provision. The Bank has also raised objections on the grounds of estoppel, waiver, acquiescence, mis-joinder and non-joinder of necessary parties and has submitted that similar reliefs have been sought by the Applicant in proceedings before DRT-I, Kolkata in SA/252/2017 and before the Civil Judge (Senior Division), Jalpaiguri in Title Suit No. 111 of 2025. According to the Bank, the present application has been filed as an afterthought after initiation of recovery proceedings in RC/105/2023 and is intended to obstruct and delay the recovery process. On these grounds, the Respondent Bank has prayed for dismissal of the application as non-maintainable, with costs, and for passing of such further orders as may be deemed fit and proper.

4. Ld. Counsels of both the parties have already been heard and perused the written notes of argument of the applicant and also the citations filed by the Ld. Counsels of both the parties.

5. For proper appreciation of the instant MA case it would be just and proper to go through the entire sequence of events of the OA case filed by the applicant bank in the year 2004.

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Chorological order of the OA Case No. 8/2004 (TOA Case No. 604/2017)

1. OA case was filed by the Bank in the year 2004 against three defendants.

2. On 26.05.2004 defendant no. 1 appeared and service was also found complete against defendant nos. 2 & 3 as they were the then Directors of the company.

3. On subsequent date (date portion of the order sheet is torned) defendant no. 2 filed objection against the interim relief.

4. On 06.12.2004 order sheet it is mentioned that defendant's counsels were present.

5. On 10.12.2004 also Ld. Counsel of the defendant no. 2 & 3 was present.

6. On 15.02.2005 Ld. Counsel of all the three defendants were present.

7. On 02.03.2005 also Ld. Counsels of all the three defendants were present and it has been recorded in the order that defendant no. 1 was under liquidation.

8. On dated 17.03.2005 official liquidator for the defendant no. 1 was not present but defendant no. 2 & 3 had put their appearance through counsel and they had sought time to file the W.S. which was allowed for 15 days along with evidence on affidavit also within such 15 days.

9. On next date i.e. 07.04.2005 also Ld. Counsels for the defendant no. 2 & 3 were present but neither the defendant no. 1 nor the official liquidator was present.

10. On dated 08.06.2005 defendant no. 1 or on its behalf no one was present but the Ld. Counsel of defendant no. 2 & 3 was present.

11. On dated 14.07.2005 also defendant no. 1 or on its behalf no one was present but the Ld. Counsel of defendant no. 2 & 3 was present.

12. On dated 01.08.2005 also defendant no. 1 or on its behalf no one was present but the Ld. Counsel of defendant no. 2 & 3 was present.

13. On 05.09.2005 all the three defendants were present and defendant no. 1 filed order of the Hon'ble Court wherein binding proceeding of the company was stayed and thus opportunity was given by the Tribunal to the defendant no. 1 to file written statement.

14. On 06.10.2005 all the 3 defendants were present through their counsels and another 15 days time was given to the defendant no. 1 to file written statement.

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15. On dated 14.11.2005 all the defendants were present through their counsel and another 7 days time was given to the defendant no. 1 to file written statement.

16. On dated 01.12.2005 defendant no. 1 filed the W.S. after serving copy to the applicants.

17. On 12.12.2005 all the three defendants were present through their counsel.

18. On dated 19.12.2005 also all the three defendants were present through their counsel.

19. On dated 23.12.2005 also all the three defendants were present through their counsel.

20. On dated 12.01.2006 defendant no. 1 was present through counsel.

21. On dated 24.02.2006 defendant no. 2 & 3 were present through counsel.

22. On dated 09.03.2006 defendants were present through their counsel.

23. On dated 20.03.2006 defendant no. 2 & 3 present through their counsel.

24. On dated 10.05.2006 also defendant no. 2 & 3 present through their counsel.

25. On dated 15.09.2006 also defendant no. 2 & 3 present through their counsel.

26. On dated 14.11.2006 counsel of the defendants were present.

27. On dated 06.08.2007 counsel of the defendants were present.

28. On dated 19.11.2007 counsel of the defendants were present.

29. On dated 30.04.2008 counsel of the defendant no. 1 was present.

30. On dated 07.07.2008 counsel of the defendants were present.

31. On dated 29.06.2008 counsel of the defendant no. 1 was present.

32. On dated 24.02.2009 it was informed by the Ld. Counsel of the defendant no. 1 that company was revived and winding up petition was disposed of by the Hon'ble Court.

33. On dated 11.09.2009 Ld. Counsel of the defendants present.

34. Thereafter defendants did not appear in this matter for 7-8 years and as per order dated 04.07.2017 OA case was transferred to DRT-Siliguri from DRT-II Kolkata.

35. After transfer of the case to DRT-Siliguri, fresh summons were issued to the defendants and on dated 05.02.2018 service was found complete against the defendants through newspaper publication and as the defendants were not

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appearing in this matter and as such an order of ex-parte hearing was made on dated 20.09.2018.

36. After transfer of the case in this Tribunal, for the first time on dated 07.12.2020 followed by 07.04.2021, Ld. Counsel of the defendants appeared.

37. Again after a gap of one year fresh set of Counsels of the defendants appeared on dated 18.05.2022 but without any vakalatnama. However, on next date i.e. 14.06.2022 Ld. Counsel of the defendant no. 1 filed her vakalatnama and in the ordersheet dated 14.06.2022 it is clearly mentioned that W.S. was already filed on dated 01.12.2005.

38. It also transpires from the order dated 06.09.2022 that on the petition of defendant no. 1, ex-parte hearing was recalled subject to payment of Rs. 10,000/- in the loan account itself and filing of additional W.S. was also allowed but they did not deposit it as per the direction of the court nor filed any additional W.S. and thus again matter was ex-parte vide order dated 01.11.2022.

39. On dated 11.11.2022 defendant no. 1 filed I.A. No. 582/2022 on the ground that certified copy was not supplied but when the office assistant was called for with the register, it was found that certified copy was ready since 14.10.2022 but no one was turning up to receive the same.

40. Defendant had challenged the order of this Tribunal before the Hon'ble Court under Writ jurisdiction as it transpires from the order dated 03.12.2022 & 05.12.2022.

41. On dated 12.12.2022 also defendant took adjournment in the name of filing of writ petition before the Hon'ble Court.

42. Lastly Ld. Counsels of the defendants appeared in the TOA case on dated 04.01.2023 and thereafter they remained absent.

43. After hearing to the Ld. Counsel of the applicant, this Tribunal passed the order on dated 28.04.2023 and in the judgment W.S. filed by the defendant no. 1 has also been taken into consideration.

6. Now question arises that if at various occasions defendants plea to vacate the ex-parte hearing was rejected by this Tribunal vide order dated 11.11.2022 and 04.01.2023 and the orders were challenged before the Hon'ble Court also, then how any application filed under order 9 Rule 13 is maintainable as only on the ground of non-service of summons or non-appearance due to sufficient cause any such petition may be filed and both the ground are

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not applicable in this matter as defendants were already participating in the hearing and they had filed W.S also and so far the non-appearance due to reasonable cause is concerned defendants are lingering the matter for last 22 years on one ground to other and once they appears but next dates they remained absent without any reason.

7. From perusal of the record it transpires that after 11.09.2009 defendants stopped putting their appearance and when the case was transferred to this Tribunal, even fresh summons were issued and lastly it was served through newspaper publication, as it transpires from the ordersheet dated 05.02.2018, but even then defendants did not appear and as such vide order dated 20.09.2018 the predecessor Presiding Officer of this Tribunal ordered to proceeded ex-parte against the defendants.

8. From perusal of the record it further transpires that while hearing the petition of the defendant, ex-parte order was recalled vide order dated 06.09.2022 subject to payment of cost of Rs. 10,000/- to be deposited in the Bank and liberty was given to file the additional W.S. within 15 days but once the such liberty was given, defendants again started dragging the matter as per their whim and they did not file any additional W.S. till 01.11.2022 and they did not deposit the cost amount and even did not appear on 01.11.2022.

9. In its para no. 10, M.A. applicant has pleaded that cost amount was duly deposited but neither the date of deposit is mentioned nor the proof of such deposit has been annexed with the MA. However irrespective of the fact of deposit of cost amount, nowhere the MA applicant pleaded that why as per the order of this Tribunal, did not file any additional W.S. within such 15 days and as such when again the matter has been proceeded ex-parte on dated 01.11.2022, it is clearly mentioned in the ordersheet that as the additional WS has not been filed as per the previous order and as such any further adjournment to the defendants would not be given for filing the additional WS and thus only for the purpose of filing the additional WS matter was proceeded ex-parte and in other words it can be said that the defendant was debarred from filing the additional W.S. So far the W.S. is concerned, it was already filed on dated 01.12.2005 which has been recorded in the order dated 14.06.2022 also and from perusal of the judgment passed on dated 28.04.2023 it is crystal clear that the W.S. filed on dated 01.12.2005 has been taken into consideration and ex-parte judgment has not been passed rather it has been passed on the basis of contested pleadings but knowingly MA applicants are trying to divert the issue and they chose only the word “ex-parte” from the ordersheet of the case record.

10. From perusal of the entire facts placed in this matter by the parties and also on the basis of order sheet of the original OA case No. 8/2004 (TOA/604/2017) it transpires that on one ground to other defendants have moved up to the Hon’ble High Court at various occasions

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and even upto Hon'ble Supreme Court and now the defendants have stated a fresh round of litigation and even false pleading has been made with respect to their presence and submission made on dated 01.11.2022, although on such date i.e. 01.11.2022 defendants were not present.

11. It is pertinent to mention that with a view to expeditious adjudication of Bank/F.I. recovery cases, The Recovery of Debts and Bankruptcy Act 1993 was enacted and in its sub-section (24) of Section 19 it is clearly mentioned that every effort shall be made to dispose of the recovery case within 180 days from the date of receipt of the application before the Tribunal, but even then some of the parties tries to linger the case for an indefinite period and this case is the correct example where since 22 years recovery case is still pending and the defendants are trying to linger it further.

12. So far the question of OTS in between the parties is concerned this Tribunal has got no role in it. However, parties are always at liberty to enter into settlement.

13. MA applicant as well as the opposite party/bank have relied upon the various judgments of the Hon'ble High Court and the Hon'ble Supreme Court which are mentioned here-in-below:

JUDGMENTS RELIED UPON BY THE MA APPLICANT

a) **Tea Auction Limited vs Grace Hill Tea Industry & Anr {Reported in (2006) AIR SC W 5161}** wherein Hon'ble the Supreme Court has held that the Courts have wide discretion to set aside an ex-parte decree on satisfying itself as regard existence of the sufficient cause and the defendant cannot be penalized for his previous conduct which had been overlooked and thereby condoned earlier.

Aforesaid judgment of Hon'ble Supreme Court (supra) is not applicable in this case on various grounds out of which first is that in the case in hand W.S. was already filed which has been considered while passing the final judgment and the second is that even if affording an opportunity to file the additional W.S., defendant/MA applicant did not comply it.

b) **Sangam Singh vs Election Tribunal, Kotah and another { reported in AIR 1955 SC 425}** Hon'ble the Supreme Court has held in para-40 of the judgment as under:

> *"In the present case, we are satisfied that the Tribunal did not exercise its discretion because it considered that it had none and thought that until the 'ex parte' order was set aside the defendant could not appear either personally or through counsel. We agree with the Tribunal, and with the High Court, that no good cause was shown and so the defendant had no right to be relegated to the*

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position that he would have occupied if he had appeared on 17-3-1953, but that he had a right to appear through counsel on 20-3-1953 and take part in the proceedings from the stage at which they had then reached, 'subject to such terms and conditions as the Tribunal might think fit to impose', is, we think, undoubted.

Whether he should have been allowed to cross-examine the three witnesses who were examined after the appearance of his counsel, or whether he should have been allowed to adduce evidence, is a matter on which we express no opinion, for that has to depend on whatever view the Tribunal in a sound exercise of judicial discretion, will choose to take of the circumstances of this particular case, but we can find no justification for not at least allowing counsel to argue."

In the instant matter defendants did not appear to participate in the hearing on the basis of W.S. filed on dated 01.12.2005 and when again the matter was proceeded ex-parte with respect to filing of additional W.S. vide order dated 06.09.2022, the defendant did not participate in the hearing since 05.01.2023. Thus aforesaid judgment of the Hon'ble Supreme Court is not applicable in this case.

c) **Tamil Nadu Mercantile Bank Limited vs G. Vijayalakshmi and others { reported in AIR 2017 SC 2691}** is on the point of condonation of delay in filing of the case for setting aside the ex-parte decree but this judgment is not applicable in this case as the MA itself is not maintainable, even if the delay is condoned.

d) **Collector, Land Acquisition, Anantang and another vs Mst. Katiji and other {reported in AIR 1987 SC 1353}** is also on the point of condonation of delay and same is not applicable in this case.

14. Judgments relied upon by the opposite party/applicant bank can be divided in two parts out of which first part is the order and judgments passed by the Hon'ble High Court and the Hon'ble Supreme Court in this case itself and the second part of the citations are the judgments of the Hon'ble Supreme Court passed in other cases.

a) <u>ORDERS/JUDGMENTS PASSED IN THIS CASE BY THE HON'BLE HIGH COURT OR THE SUPREME COURT</u>

i. **Kohinoor Tea Company Ltd. & Anr vs Central Bank of India (C.O. no. 76/2022 decided on 15.07.2022 & 13.07.2022 by Hon'ble Calcutta High Court)**

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ii. **Kohinoor Tea Company Ltd. & Anr vs Central Bank of India (C.O. no. 154/2022 decided by Hon'ble Calcutta High Court)**

iii. **Kohinoor Tea Company Ltd. & Anr vs Central Bank of India & Ors (C.O. no. 139/2025 decided on 06.11.2025 by Hon'ble Calcutta High Court)**

iv. **Kohinoor Tea Company Ltd. & Anr vs Central Bank of India & Ors (WPA no. 710/2025 decided on 08.04.2025 by Hon'ble Calcutta High Court)**

v. **Kohinoor Tea Company Ltd. & Anr vs Central Bank of India & Ors (C.O. no. 32/2026 decided on 21.05.2026 by Hon'ble Calcutta High Court)**

vi. **Kohinoor Tea Company Ltd. & Anr vs Central Bank of India & Ors (SLA no. 26537/2026 decided on 05.08.2026 by Hon'ble Supreme Court).**

b) JUDGMENTS OF HON'BLE SUPREME COURT PASSED IN OTHER CASES

i. **Standard Chartered Bank vs MSTC Ltd. {reported in (2020) 13 SCC 618}**

ii. **Sunil Poddar & Ors vs Union Bank of India {reported in (2008) 2 SCC 326}**

iii. **Parimal vs Veena alias Bharti {reported in (2011) 3 SCC 545}**

iv. **Sunil Poddar & Ors vs Union Bank of India {reported in (2008) 2 SCC 326}**

v. **Bhanu Kumar Jain vs Archana Kumar & Anr {reported in (2005) 1 SCC 787}**

vi. **P.K. Ramachandran vs State of Kerala & Anr {reported in (1997) 7 SCC 556}**

vii. **Esha Bhattacharjee vs Managing Committee of Raghunathpur Nafar Academy & Ors {reported in (2013) 12 SCC 649}**

viii. **International Asset Reconstruction Company of India Limited vs Official Liquidator of Aldrich Pharmaceuticals Limited & Ors {reported in (2017) 16 SCC 137}**

ix. **Property Company Pvt. Ltd. vs Rohinten Daddy Mazda {reported in (2026) 4 SCC 1}**

All the above judgments (supra) cited by the opposite party/applicant bank are either on the point of maintainability of order 9 Rule 13 CPC petition or on the ground of delay in filing of the petition.

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15. On the basis of the discussions made here-in-above in foregoing paragraphs, this Tribunal is of the view that the MA applicant has not approached this Tribunal with clean hands or for any reasonable cause rather only with an intentions to drag the recovery proceeding for an indefinite period, the instant MA has been filed and as such the MA as well as I.A. No. 610/2025 for condonation of delay filed by the applicant is not maintainable in the eye of law and accordingly, **dismissed**.

16. No order as to cost

17. Registry is directed to send/serve copy of this order to both the parties free of cost.

18. Let the record be consigned to the record room after uploading the order on the website of the Tribunal.

The judgment is signed and pronounced in the open Tribunal on 21st day of September, 2026.

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Presiding Officer
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