

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Comp. App. (AT) (Ins.) No. 519 of 2022

In the matter of:

Sudarshan Das Mundhra (Suspended Director of Simplex Projects Ltd.)Appellant

Vs.

State Bank of India & Anr. ...Respondents

For Appellant: Mr. Anupam Lal Das, Sr. Advocate with Sinha Shrey Nikhilesh, Swastik Verma, Advocates

For Respondents: Mr. Joy Saha, Senior Advocate with Mr. Rahul Gupta, Mr. Nikhil Mathur, Advocates for R1.
Advocate Ms. Shweta Dubey and Ms. Ishita Srivastava, Advocate for R-2, RP

ORDER

(Through Virtual Mode)

19.07.2022: Heard Shri Anupam Lal Das, Learned Senior Counsel for the Appellant and Shri Joy Saha, Learned Senior Counsel for the Respondent-State Bank of India.

2. This Appeal has been filed against the order dated 27.04.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata, by which order Section 7 Application filed by the State Bank of India has been admitted.

3. The Appellant's case in the Appeal is that the Bank had earlier approved One Time Settlement with regard to which certain amounts were already deposited by the Appellant. However, the Appellant could not deposit the amount as contemplated in the OTS by the date fixed, hence, Corporate

Insolvency Resolution Process (CIRP) was initiated. Learned Counsel for the Appellant submits that the substantial amount of 42% has already been deposited. The Adjudicating Authority ought not to have initiated the CIRP and given an opportunity to Appellant to deposit the balance amount of the OTS specially when even after the expiry of the period, the amount was accepted by the Bank.

4. We have entertained this Appeal and passed an interim order on 17.05.2022. In pursuance of the interim order, the Appellant has deposited an amount of Rs.5 Crores. However, Appellant could not deposit the further amount of Rs. 8.5 Crores, hence, the interim order stands vacated in terms of the order itself. Learned Counsel for the Appellant in the last hearing has prayed that the Bank should be directed to refund the amount of Rs.5 Crores on which we directed the Counsel for the Bank to obtain instructions. Counsel for the Bank today after obtaining instructions submits that the said amount has been kept in a no lien account, hence, the Bank is ready to refund the said amount of Rs. 5 Crores to the Appellant.

5. Recording the aforesaid statement, we direct the Bank to refund the said amount deposited in pursuance of the interim order of this Tribunal within two weeks.

6. Now, coming to the Appeal. The submission of the Appellant is that an opportunity ought to have been given by the Bank since even after the expiry of the last date certain amounts were received. There is no denial to the fact that the OTS as was granted by the Bank was not honored by the Appellant

and he could not make deposit as per OTS. There is no dispute regarding debt and default. In the present case, the Adjudicating Authority has rightly admitted Section 7 Application. We, thus, do not find any error of the order of the Adjudicating Authority admitting Section 7 Application.

7. Learned Counsel for the Appellant submits that the Appellant may be given liberty to approach the Bank for considering the case of the Appellant for One Time Settlement, if any. It is always open for the Appellant to approach the Bank for One Time Settlement and if there is any settlement made out, then parties can take the recourse of Section 12A before the Adjudicating Authority in accordance with the law.

8. With these observations, the Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Justice M. Satyanarayana Murthy]
Member (Judicial)**

**[Barun Mitra]
Member (Technical)**

Anjali/nn