

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-II**

**I.A (IBC) No 418 /KB/2025
In C.P (IBC) No 98 /KB/2024**

**An Application under Section 60(5) of the insolvency and bankruptcy
read with rule 11 of the National Company Law Tribunal, 2016**

IN THE MATTER OF:

Bank of Maharashtra

Financial Creditor

Versus

Senbo Engineering Limited

Corporate Debtor

AND

IN THE MATTER OF:

Senbo Engineering Limited

Applicant

Versus

Bank of Maharashtra

Respondent

Coram:

Shri Labh Singh, Member Judicial

Ms. Rekha Kantilal Shah, Member Technical

Date of Pronouncement: 26.06.2025

Appearance (Hybrid Mode)

For Corporate Debtor

- i. Mr. Joy Saha, Sr. Adv
- ii. Mr. Altama Alim, Adv.
- iii. Mr. Nilay Sengupta, Adv.
- iv. Mr. Srijit Banerjee, Adv.

For Financial Creditor

- i. Mr. Sourav Kumar Mukherjee, Adv.
- ii. Falguni Jana, Adv.
- iii. Sahana Pal, Adv.
- iv. Souhardya Mitra, Adv.

ORDER

Per: Rekha Kantilal Shah, Member (Technical)

1. This Court is congregated through hybrid mode.
2. This application has been filed in CP (IB) No. 98/KB/2025 by Senbo Engineering Limited (Hereinafter referred to as **Applicant**) against the Bank of Maharashtra (Hereinafter referred to as **Respondent**). This IA seeks the following reliefs:
 - a. Stay of the present Proceeding being C.P (IBC) No 98 /KB/2024 till disposal of the conciliation proceeding initiated between the Financial Creditor and Corporate Debtor, before the mediation & conciliation committee of High Court of Calcutta.
 - b. Ad interim Orders in terms of the prayers above:

c. Such further order or orders and/or direction or directions be passed as to this hon'ble Adjudicating Authority may deem fit and proper.

I.A (IBC) No. 418/KB/2025:

Submission of the Applicant:

3. During the hearing of the main Petition being C.P (IBC) No 98/KB/2024, the Applicant has offered to settle the matter with the Respondent at the existing OTS offer at Rs 55 Crore. However, the Financial Creditor requested to increase the amount by another Rs. 1.00 crore (Rs. One Crore only) and directed the applicant to pay Rs. 1.00 crore (Rs One Crore only) vide letter dated 31st December 2024.
4. Upon the request of the Respondent, the Applicant increased the OTS proposal amount by Rs. 1.00 Crore (Rs. One Crore Only) and paid to the Respondent.
5. It stated that it is a very settled principle of law, that when the offering accepted the offer without any dispute to the same, then offering cannot subsequently be retarded from such offer. The purported rejection of the offer of the Corporate Debtor by the Financial Creditor, after accepting said Rs. 1.00 Crore is completely bad and illegal and the same is required to be declared by competent court of law.

6. The Corporate Debtor has been advised to file a civil suit for a specific performance of the aforesaid contract before the Hon'ble Calcutta High Court. It is stated that such suit was supposed to be filed in the commercial jurisdiction of the said Hon'ble Court.
7. Since, the Corporate Debtor had no time to initiate a conciliation proceeding in terms of section 12A of the Commercial Courts Act, such exemption was prayed before the Hon'ble Calcutta High Court by filing commercial suit, being CS-COM NO. 22 of 2025, whereby, prayer for exemption was rejected and leave was granted to the Corporate Debtor to initiate pre-institution mediation process.
8. The Corporate Debtor moved an application for conciliation on 27th February 2025 before the mediation and conciliation committee of the Hon'ble Calcutta High Court and the same is pending.
9. Until such conciliation proceeding be complete all the proceedings of present CP (IB) No. 98/2024, otherwise said conciliation proceeding will become infructuous and this Corporate Debtor shall suffer irreparable loss and injury.
10. Applicant relies on the judgment passed by the Hon'ble SC in Vidarbha Industries Power Limited Vs Axis Bank Limited ((2022) 8 SCC 352).

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Submission of Respondent:

11. Mr. Sumit Barat, the director of applicant has no locus to affirm the proceeding, as he was not the director of Applicant at the time of execution of the loan document, also he does not have any knowledge of the credit facilities.
12. The Respondent on 07.08.2015, declared the loan account of the Corporate Debtor as NPA. Thereafter, issued notice under section 13(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, of Rs 108,45,25,777/- as on 13.10.2017.
13. In 2019, the Respondent filed Application being OA 182 of 2019 before the learned Debt Recovery Tribunal-1 Kolkata claiming to Rs 149,94,78,647/. Thereafter, the Applicant has made OTS offer Rs 77 Crore and again Rs 95.71 Crore on 09.12.2019 and 23.03.2021 respectively. However, the OTS settlement failed.
14. Again on 29.09.2023, the Applicant prayed for revalidation of the OTS that was sanctioned on 21.03.2022 which was on several occasions the Corporate Debtor requested for revision of its OTS proposal by its letter dated 13.03.2023, 19.05.2023 and 18.09.2023. The Applicant claimed that its dues was only Rs. 48 Crore. Thereafter, the applicant enhanced its offer to Rs 53.64 Crore on 09.10.2023 and 27.12.2023. Again, by letter dated 29.12.2023 the Financial Creditor rejected the proposal as it was failed. The Applicant made payment of Rs 50 lakhs in the loan

account, which was appropriated against the recovery of total dues in NPA account since there was no valid OTS in vogue.

15. Again, the Applicant deposited Rs 50 lakh and claimed that it has deposited a total of Rs 1 Crore (Rs one Crore only) in terms of the OTS that was revalidated in 21.03.2022. the Applicant has paid Rs. 1 crore against its OTS offer of Rs 55 crore.
16. Further, by letter dated 13.06.2024, the Applicant has offer Rs 55 Crore (Rs fifty-five Crore only) in full and final settlement. As per Applicant the amount of Rs. 56 crore is to be paid to Respondent for full and final settlement.
17. However, the Respondent on 04.11.2024 categorically informed the applicant that proposal of full and final settlement is incomplete as the per the OTS proposal minimum 10% of the OTS amount to be deposited as upfront amount for credit to loan account on 25% of OTS offer amount to be kept in no real account.
18. Since the Applicant, has paid only Rs 1 Crore (Rs One Crore Only) as against OTS offer of Rs. 55 Crore (Rs fifty-five Crore only). Therefore, its offer cannot be treated as offer of OTS.
19. Further, by letter 31.12.2024, the Respondent asked Applicant to deposit Rs 1 crore (Rs one Crore only) towards upfront amount, so that the Applicant request for OTS could be processed.
20. Further, by the letter dated 21.01.2025 the Respondent informed the Applicant that its proposal has been discussed with higher authority of the bank, where in the authority has held that

applicant has neither paid up front amount (minimum 10%) nor deposited in No lien account (minimum).

21. After paying Rs 2 crore (Rs Two Crore only), the Applicant began to raising 3.60 crore so that it can deposit minimum 10% of the OTS amount. However, exercising its commercial wisdom, the Respondent decided not to accept the OTS Proposal.

22. During the process of OTS settlement, the Applicant has instituted a suit being CS-Com No 22 of 2025 before the hon'ble High Court of Calcutta seeking the following reliefs.

a. A decree of declaration that the acceptance of consideration by the Respondent against the enhance office OTS proposal has resulted into a concluding contract.

b. A decree of specific performance of the contract in respect of the concluded contract between the applicant and Respondent there by directing the Respondent to accept the remainder of amount Rs 54 Crore within 31st December, 2025 in lieu of full and final discharge of all the liabilities of the applicant against the Respondent.

c. A decree of permanent injunction restraining the applicant from taking any coercive steps against the applicant which frustrate the concluded contract of OTS between the applicant and Respondent.

d. Decree for delivery of and cancellation of the letters of the applicant dated 5th February 2025 and 18th February 2025

and defendents letter dated 21st January 2025, 13th February 2025 and 19th February 2025;

e. Receiver

f. Injunction

g. Judgement upon admission

h. Attachement before judgement

i. Costs

j. Any further relief or reliefs as this hon'ble court may deem fit and proper.

23. Respondent relies on judgment passed by the Hon'ble SC in Krishnamurthy v. Bharath Hi-Tecch Builders (P) Ltd., (2022) 3 SCC 161, wherein it was categorically held that the adjudicating authority must only see whether there is a debt, default and whether the application filed under Section 7 is complete in all aspects or not.

Analysis and Finding

24. Heard the learned counsel and perused the record.

25. As per the MCA website Sumit Barat is one of the Director of the applicant. Therefore, he has locus to affirm the pleading.

26. Further, upon perusal of record, we find that the applicant has been asked to deposit Rs 1 Crore towards the upfront amount vide letter dated 31.12.2024 and the same has been deposited by applicant. As per the Respondent's policy (bank's policy) minimum

10% of OTS be kept as upfront amount for credit to loan account and the if the customer is not ready to deposit minimum of 10% OTS, then minimum 25% amount to be kept in NO lien account as upfront cost. However, the applicant till date has not paid the offer amount as per Respondent's policy (Bank Policy) as per the letter dated 21.01.2025 issued by Respondent.

27. We rely on the judgement passed by Hon'ble NCLAT (Chennai) in Koshy Varghese Vs India Resurgence ARC Private Limited & Ors in Company Appeal (AT) (CH) (Ins) No. 167/2023, refer para 7 and 8 of the Order that:

7. As regards the submission of the Learned Counsel for the Appellant that the Arbitration has been initiated and therefore, the Admission by the 'Adjudicating Authority', is unjustified, cannot be sustained as firstly, the Arbitration proceedings were sought to be kept in abeyance as settlement talks were ongoing between the Parties and further Section 238 of the Code provides that the Provisions of this Code shall have effect, notwithstanding anything inconsistent therewith, contained in any other Law for the time being in force. The Hon'ble Supreme Court in the matter of '*Tata Consultancy Services Ltd. V. SK Wheels (P) Ltd.*' reported in *[(2022) 2 SCC 583]*, held as follows:

“Section 238 provides that IBC overrides other laws, including any instrument having effect by virtue of law.

Even if an application under Section 8 of the Arbitration and Conciliation Act, contentions put forth on the application filed under Section 7 IBC, examine the material placed before it by the financial creditor and record a satisfaction as to whether there is default or not. While doing so the contention put forth by corporate debtor shall also be noted to determine as to whether there is substance in the defence and to arrive at the conclusion whether there is default. If the irresistible conclusion by the adjudicating authority is that there is default and the debt is payable, the bogey of arbitration to delay the process would not arise despite the position that the agreement between the parties indisputably contains an arbitration clause.”

8. The facts of the aforementioned judgment of the Hon’ble Supreme Court are squarely applicable to this case. Therefore, the existence of an Arbitration clause does not prevent the Parties from initiating Insolvency Proceedings under Section 7 of the Code.

28. We further rely on judgment passed by Hon'ble NCLAT in State Bank of India Vs Abhijeet Ferrotech Ltd in (2024) ibclaw.in 428 NCLAT, para 16 of the Order that:

16. Section 238 of the IBC as extracted above, gives overriding effect to the proceedings under Section 7. Thus, despite the provision of Section 10 of CPC, the proceedings under Section 7 has to be proceeded with. The clear intendment of the statute is that the provisions of the Code shall have effect, notwithstanding anything inconsistent therewith in any other law for the time being in force. Even if for argument sake, it is accepted the provisions of Section 10 CPC will be attracted, the clear intendment of the statute is that proceedings under the IBC shall have effect. Insolvency resolution of the Corporate Debtor has to be detected at the earliest and remedial measures are to be taken to bring back the Corporate Debtor on its feet. The statute under the IBC never contemplated that proceedings under IBC to await outcome of any previously instituted proceeding under any other statute. The Adjudicating Authority thus, fell into the error in taking the view that Section 10 of CPC is attracted in the facts of present case. Section 7 Application ought to have proceeded with despite pendency of proceedings under Section 19, which at present are pending at the stage of Calcutta High Court as

the order of DRT dated 17.06.2022 was set aside by the DRAT vide its order dated 19.03.2024. The question framed by the Adjudicating Authority as extracted above was that whether the proceeding of this petition under Section 7 is barred in view of the order passed by DRT-II dated 17.06.2022. As noted above, in view of the overriding provision of Section 238, the proceedings under Section 7 shall not be barred by any proceeding initiated under Section 19. As noted above, Section 19 proceedings are for the purpose of recovery of dues by the Bank and Section 7 proceedings are for insolvency resolution of the Corporate Debtor. Both proceedings covers entirely different field and rejection of proceedings under Section 19 by DRT on 17.06.2022 cannot operate as any bar for Application under Section 7.

29. In view of above finding and judgments relied upon by us, we do not find merit in the case and accordingly the I.A (IBC) No. 418 /KB/2025 is rejected.

30. List the C.P (IBC) No. 98/KB/2024 on 09.07.2025.

Rekha Kantilal Shah
Member (Technical)

Labh Singh
Member (Judicial)

Order Signed on 26.06.2025