

ORDER
(Hybrid Mode)

20.05.2026 Heard Ld. Counsel appearing for the Appellant and Ld. Counsel appearing for the Bank.

2. These two Appeals have been filed against the same order dated 11.05.2026 by which order Section 7 application filed by the Bank of India has been admitted. The Appeals have been filed by Suspended Director of the borrower as well as Corporate Debtor.

3. Ld. Counsel for the Appellant submitted that the Corporate Debtor had submitted the OTS proposal to the Bank for an amount of Rs. 13,00,00,000/- shall stating that the said amount is more than the amount of security. In Para-B has stated following:

“That as per Section 8 of the Indian Contract Act it is stipulated that performance of the conditions of a proposal and providing and accepting the consideration asked for in a reciprocal proposal is acceptance on the part of the offeree. Section 8 of Indian Contract Act is reproduced hereinbelow for the kind perusal of this Hon'ble

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"Section-8 - Acceptance by performing conditions, or receiving consideration. -Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal. "

4. The OTS was accompanied with cheque of Rs. 25,00,000/- the Bank although encashed the cheque of Rs. 25,00,000/- but did not communicate

any acceptance of the OTS proposals and subsequently, the Bank by the letter dated 08.12.2025 communicated that the proposal of Rs. 13,00,00,000/- are quite low. The amount of Rs. 25,00,000/- was returned along with the Bank Draft. Ld. Counsel for the Appellant submitted that they have not accepted the Demand Draft and same was returned to the Bank.

5. A Writ Petition was instituted by the Corporate Debtor before the Hon'ble Delhi High Court where the Delhi High Court passed an order on 12.03.2026 in Writ Petition 3186 of 2026. In Para 11, 12 and 14 are as follows:

“11. Let the notice be issued to respondent No. 1 through all modes including electronic on the petitioner taking steps within 1 week from today, returnable on 24.07.2026.

12. The respondent encashed the cheque of Rs. 25 Lakhs signifying acceptance to the OTS, on 20.08.2025. It is only subsequently the respondent rescinded the same. The Hon'ble Supreme Court in Bhagwati Prasad Pawan Kumar v. Union of India (2006) 5 SCC 311, has held that an offer by a party can also be accepted by conduct and specially encashment of cheque in terms of an offer, prima facie, shows that by conduct the respondent has accepted the OTS. Whether concluded contract came into being, which was unilaterally rescinded by the respondent, requires consideration.

14. Thus, it is directed that subject to deposit of Rs. 13 Crores with Registrar General, Delhi High Court within 8 weeks from today, the Recovery Certificate No. 260/2017 shall remain stayed and no coercive action shall be taken against the petitioner till the next date of hearing.”

6. The Corporate Debtor to file order of the Hon'ble Delhi High Court dated 12.03.2026 before the Adjudicating Authority, filed an application I.A. No. 1161 of 2026 which application was rejected by the Adjudicating Authority on 18.03.2026, observing that order of an interim stay of recovery proceedings is unrelated to the present controversy. The NCLT refused to accept the copy of the order on the record and thereafter proceeded to pass the impugned order admitting Section 7 application.

7. Ld. Counsel for the Appellant challenging the order submit that when the High Court has expressed prima-facie opinion that OTS has been impliedly accepted and the High Court has permitted the Corporate Debtor to deposit the amount of Rs. 13,00,00,000/- within 8 weeks, in view of the aforesaid, there was no occasion for the Adjudicating Authority to proceed and admit Section 7 application, the Adjudicating Authority committed error in not accepting the order of the Delhi High Court on record. It is submitted that once OTS is accepted the default cannot be further pressed by the Financial Creditor and the application ought not to have been admitted.

8. Shri Krishnendu Datta, Ld. Sr. Counsel for the Financial Creditor refuting the submission submit that the OTS was never accepted by the Bank and communication has already been issued to the Corporate Debtor along with the draft of Rs. 25,00,000/-. It is submitted that the High Court interim order is only to stay the recovery certificate which can have no bearing on proceeding under Section 7 application, the debt and default having been proved the Adjudicating Authority has rightly admitted Section 7 application.

9. We have considered the submissions of the parties and perused the record.

10. The question which has been raised by the Appellant of implied acceptance of the OTS is a question, which is being considered by the High Court and the High Court after forming prima-facie opinion has issued notice and passed an interim order permitting to the Corporate Debtor to deposit the amount of Rs. 13,00,00,000/- within 8 weeks. The said order was sought to be placed by the Corporate Debtor before the Adjudicating Authority which was rejected. We are of the view that even if, the Adjudicating Authority had reserved order, any order subsequently passed by the constitutional Court ought to have been taken on record. It was required to be looked into, which is the principle well established for maintaining comity of courts. The High Court being examining the issue whether the OTS is impliedly accepted, at this stage, we do not express any opinion on the said issue. However, we are of the view that the admission of Section 7 application in the above background was uncalled for.

11. Ld. Counsel for the Respondent submitted that the Appellant has not even deposited the amount of Rs. 13,00,00,000/- and sought for extension of time to deposit by 05.06.2025. We are of the view that this Appeal need to be taken after that date.

12. List both these Appeals on **02.07.2026**.

13. In the meantime, the impugned order dated 11.05.2026 shall remain stayed.

14. Reply be filed within three weeks by the Respondent. Rejoinder, if any, be filed before the date fixed.

**[Justice Ashok Bhushan]
Chairperson**

**[Indevar Pandey]
Member (Technical)**

Abhishek/Manu