

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

**I.A. 1961/2022
IN
C.P. 289/I&B/MB/2022**

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016

Canara Bank**Applicant**

Versus

Mr. Vishnu Kant Kabra **Respondent**

In the matter of:

Glamour India Private Limited **Financial Creditor**

V/s.

Shree Sai OTO Tube Mills Ltd. **Corporate Debtor**

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Ms Madhu Sinha, Member (Technical)

Order Reserved on : 16.02.2023

Order Pronounce on : 02.03.2023

Appearance:

For the Applicant: Mr. Nishit Dhruva a/w Meghna Arvind &
Prakash Shinde i/b MDP & Partners, Advocate

For the Respondents: Mr. Shyam Kapadia, Advocate

Per: Shri H.V. Subba Rao, Member (Judicial)

ORDER

The above Interlocutory Application is filed by the Canara Bank having aggrieved and dissatisfied against the action of the RP in restricting their claim only to the remaining unpaid OTS amount of Rs. 22,62,37,748 (Rupees Twenty-Two Crores Sixty-Two Lakh Thirty-Seven Thousand Seven Hundred Forty-Eight only) against their original claim of Rs. 130,59,00,000 (Rupees One Hundred Thirty Crores Fifty-Nine Lakh only) praying the following reliefs:

- a) Directions may be issued to the IRP to admit the entire claim of the Applicant;*
- b) Pending the final hearing of this present Interlocutory Application, IRP may direct not to conduct any CoC;*

The RP filed detailed reply trying to justify his action contending that the applicant bank has sanctioned OTS to the borrower vide their sanction letter dated 17.08.2021 which was subsequently extended by them from time to time and finally withdrew the same after commencement of the moratorium and therefore the applicant bank cannot claim the original amount contrary to the OTS settlement.

In the light of the above pleadings the issue that needs to be decided is:

Whether the action of the RP is in accordance with law? and whether the RP has jurisdiction to decide and adjudicate the amount of the applicant as an Adjudicating Authority?

Heard the submissions of Mr. Nishit Dhruva, counsel appearing for the applicant Canara Bank and Mr. Shyam Kapadia, counsel appearing for the RP and perused the record.

1. After hearing the submissions on both sides and upon perusing the record, this bench observes that an OTS proposal has been sanctioned to the Corporate Debtor by the applicant bank on 17.08.2021 whereunder the Corporate Debtor agreed to settle the total dues of the Corporate Debtor in full and final settlement for an amount of Rs.25,00,00,000/- (Rupees Twenty-Five Crores only) Crore subject to making an upfront payment of Rs. 3,75,00,000/- (Rupees Three Crore Seventy-Five Lakh only) and the balance amount of Rs. 21,25,00,000/- (Rupees Twenty-One Crore Twenty-Five Lakhs only) to be made on or before 16.11.2021.
2. This bench further observes that the Corporate Debtor has paid Rs. 3,75,00,000/- (Rupees Three Crore Seventy-Five Lakh only) upfront amount in several tranches up to 20.10.2021 and thereafter committed default in repaying the balance amount. Subsequently the bank vide their communications dated 20.08.2021, 18.10.2021, 20.12.2021 and 03.03.2021 demanded the Corporate Debtor to pay the remaining amount else they would recall the OTS sanctioned to the Corporate Debtor. Finally, the applicant bank withdrew the OTS sanction letter dated 25.05.2022 after declaration of moratorium.
3. This bench further notes that the bank in its OTS sanction letter dated 17.08.2021 clearly stipulated in clause “7” as under:

“In the event of non-compliance with any of the term of the sanction by you, including payment of the OTS amount as per the stipulated schedule, the OTS sanction stands automatically withdrawn without

assigning any reasons for the same and the bank reserves the right to proceed as it deems fit including proceeding legally for recovery of the entire dues.”

4. It is very clear from the above clause that if the Corporate Debtor failed to pay the remaining amount under the OTS within stipulated date, the OTS stands automatically withdrawn without assigning any reasons. It is a settled proposition of law laid down by the Hon'ble Apex Court in catena of decisions that the grant of benefit of OTS scheme by the bank is subject to the eligibility criteria and the guidelines issued from time to time and the borrower cannot claim extension of time period under OTS scheme as a matter of right nor courts have power to direct bank to accept OTS after stipulated time or in spite of breach committed by the borrower. The defaulted borrower who failed to honour the terms of OTS has no legal right to contend that the bank is not entitled to recover the original amount even after committing breach by them. The generous extension of time by the bank will not confer any unfettered right on the borrower to defeat the original claim of the bank since grant of OTS scheme is the sole discretion of the bank. The cancellation of OTS by the bank on account of breach committed by the borrower does not amount to initiation of any proceedings and therefore, the question of applicability of moratorium does not arise.
5. The learned RP has miserably failed to notice the above legal position and exceeded his jurisdiction in restricting the claim of the bank only to the extent of OTS amount. It is not the case of the RP that the books of accounts of the Corporate Debtor does not reflect the original

outstanding other than the OTS amount. When once the books of accounts of the Corporate Debtor reflects the total outstanding of the bank, the RP has no business nor power to play the role of Adjudicating Authority and restrict the claim of the bank. The above action of the RP would certainly amounts to exceeding his role under the Code.

6. For the aforesaid reasons this tribunal is of the considered opinion that the RP has committed grave error in restricting the claim of the applicant and the said action of the RP needs to be set aside.

Accordingly, this bench hereby direct the RP to admit the original claim of the applicant as per the claim form submitted by the bank or as per the books of accounts of the Corporate Debtor forthwith.

With the above observations and direction, the above Interlocutory Application is **allowed** and **stands disposed of**.

Sd/-
MADHU SINHA
MEMBER (T)

Sd/-
H.V. SUBBA RAO
MEMBER (J)