NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT)(Insolvency) No. 819 of 2023

IN THE MATTER OF:

Imtiyaz Javed Siddiqui **...Appellant**

Versus

Bank of India & Anr. **...Respondent**

Present:

For Appellant : Mr. Mukul Rohatgi, Mr. Arun Katpalia, Sr. Advocates, Mr, Vimal Singh, Mr. Mahesh Agarwal, Mr. Rishi Agarwal, Ms. Geetika Sharma, Mr. Akash Agarwal and Mr. Manab Virjee, Advocates

For Respondent : Mr. Azeem Khan, Mr. Akshada and Mr. Karan , Advocates for R-1/BOI
Mr. Sumesh Dhawan and Mr. Sghaurya Shyam, Advocates for R-2/IRP

With
Company Appeal (AT)(Insolvency) No. 820 of 2023

IN THE MATTER OF:

Hifzurrehman Abdullah **...Appellant**

Versus

Bank of India & Anr. **...Respondent**

Present:

For Appellant : Mr. Mukul Rohatgi, Mr. Arun Katpalia, Sr. Advocates, Mr, Vimal Singh, Mr. Mahesh Agarwal, Mr. Rishi Agarwal, Ms. Geetika Sharma, Mr. Akash Agarwal and Mr. Manab Virjee, Advocates

For Respondent : Mr. Azeem Khan, Mr. Akshada and Mr. Karan , Advocates for R-1/BOI
Mr. Anup Jain and Mr. Udit Gupta, Advocates for R-2/RP

With
Company Appeal (AT)(Insolvency) No. 821 of 2023

IN THE MATTER OF:

Nabil Yusuf Patel **...Appellant**

Versus

Bank of India & Anr. **...Respondent**

Present:

For Appellant : Mr. Mukul Rohatgi, Mr. Arun Katpalia, Sr. Advocates, Mr, Vimal Singh, Mr. Mahesh Agarwal, Mr. Rishi Agarwal, Ms. Geetika Sharma, Mr. Akash Agarwal and Mr. Manab Virjee, Advocates

For Respondent : Mr. Azeem Khan, Mr. Akshada and Mr. Karan, Advocates for R-1/BOI

Mr. Anup Jain and Mr. Udit Gupta, Advocates for R-2/RP

O R D E R

06.07.2023: Heard Mr. Mukul Rohatgi, learned Sr. Counsel appearing for the Appellant, Mr. Azeem Khan, learned Counsel appearing for R-1/Bank in appeal Nos. 819, 820 & 821 of 2023. These three appeals have been filed against the same order dated 4th July, 2023 passed by the Adjudicating Authority (NCLT, Mumbai, Bench-IV) admitting Section 7 Application in which Appeal No. 819 of 2023 has been filed by the Principal Borrower and other two Appeals i.e., No. 820 and 821 of 2023 have been filed by the Guarantor.

2. Mr. Rohatgi, Ld. Sr. Counsel appearing in the Appeals, at the outset submits that the order was reserved in Section 7 Application on 02.05.2023 and after the said date, on 30.05.2023, One Time Settlement (in short OTS) proposal was given for an amount of Rs. 387.44 Crores. It is submitted that RBI Circular was issued on 08.06.2023 requiring Bank/Financial Institutions to have a policy with regard to entertaining OTS proposal and settlement. It is submitted that an Application was filed by the Corporate Debtor praying for deferment of the pronouncement of order being I.A. No. 2717 of 2023. In the said Application brief Written Submissions on behalf of the Financial Creditor

were also submitted on 29.06.2023 in the Court. It is submitted that the matter was taken on 28.06.2023 by the Adjudicating Authority and on that date, Adjudicating Authority had directed that the matter would be taken upon 04.07.2023. It is submitted that in view of the OTS proposal having been given and pending for consideration before the Bank and Bank in their Written Submission has expressed 'no objection' for deferment of the pronouncement of the order, there was no occasion for the Adjudicating Authority to admit Section 7 Application.

3. Learned Counsel for the Bank submits that there has been several OTS proposals by the Appellant during the pendency of Section 7 Application, which were all rejected and the proposal which was lastly submitted on 30.05.2023, could not have been considered by the Bank in view of RBI Circular dated 08.06.2023 which requires framing of Policy by the Bank. It is submitted that in view of the aforesaid, the Bank was unable to consider or take any decision in the said proposal.

4. Learned Counsel for the Bank further submits that Bank has insisted before the Adjudicating Authority to proceed with CIRP in the facts of the case. Learned Counsel for the Bank further submitted that on 03.07.2023, DGM of Bank also appeared before the Adjudicating Authority and made oral statements.

5. We have heard the Counsel for the parties and perused the records. There is no dispute between the facts and events that the matter was reserved by the Adjudicating Authority on 02.05.2023. It is the subsequent events that led to the Appellant in filing the deferment Application, especially the OTS Proposal given on

30.05.2023. It is true that under RBI Circular dated 08.06.2023 the Bank could not immediately proceed either to accept or reject the OTS proposal as it was necessary for framing of policy as required by aforesaid circular of RBI.

6. Learned Counsel for the Appellant has referred to the Written submissions on behalf of the Financial Creditor especially referring to paragraphs 2 & 3 of the said submission at pages 1135 & 1136 which are to the following effect:

> ..
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> "2. However, the Corporate Debtor/Applicant has filed an Interlocutory Application be3aring No. 2717/2023 praying for deferral/postponement of pronouncement of any final order/judgment in the Company Petition (CP 1163/2021) and to keep the matter in abeyance until the Financial Creditor is in a position to consider the OTS proposal submitted by the Corporate Debtor.
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> 3. In response to the prayer clause of the said Interlocutory Application, the financial Creditor submits its current factual position as under:
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> a. The Corporate Debtor submitted an OTS proposal, to the Financial Creditor for the settlement of its dues, which is under consideration with the Financial Creditor.
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> b. In furtherance of the same, the Corporate Debtor deposit INR 10 Crores with the Financial creditor as a token amount in No Lien Account with the Financial Creditor.

c. Accordingly, the OTS Amount, as offered by the Corporate Debtor, has to be paid within 90 days from the date of approval, if the same is approved.

d. Since the Account is classified under fraud category, the Financial Creditor is in the process of formulating a Board Policy on dealing with the fraud accounts in terms of settlement, in accordance with the recent RBI circular dated 08.06.2023.

e. Thereafter, the Corporate Debtor's request would be submitted to the Competent Authority for consideration as per the Financial Creditor's extend guidelines.

And therefore, the Financial Creditor has no objection to the matter being kept in abeyance till the Competent Authority of Financial Creditor has taken a decision in the matter."

7. Mr. Rohatgi, learned Sr. Counsel for the Appellant further submits that the Bank having given their 'no objection' to deferring the pronouncement, it could not have done a somersault in the same proceeding. Learned Sr. Counsel also submits that to show the bonafide of the Appellant, the Appellant is ready to deposit the amount that the Appellant offered as OTS proposal in the Court within 90 days from today.

8. Learned Counsel for the Bank submits that he does not have any instructions with regard to the deposit of the said amount and payment of the

said amount to the Bank and after obtaining necessary instructions, the same shall be brought to the notice of this Tribunal.

9. Mr. Rohatgi, learned Sr. Counsel for the Appellant further submits that apart from the aforesaid, there are submissions on the merits of the case including submission that the Application was barred under Section 10-A of IBC. It is submitted that Application was also filed for dismissal of the Application under Section 10-A of IBC which fact has also been noticed in the impugned order itself.

10. Learned Counsel for the bank submits that the contention of Section 10-A of IBC was also considered but did not find favour.

11. Mr. Rohatgi, learned Sr. Counsel for the Appellant further submits that the observation of the Adjudicating Authority that the Application is not barred under Section 10-A is erroneous and first notice was given on 14.08.2020 was clearly within Section 10-A and Application could not have been proceeded with. Learned Sr. Counsel further submits there are other submissions on merit.

12. Considering the sequence of the facts, we are of the opinion that to meet the ends of justice, one opportunity be given for payment of the amount, as offered in OTS, to the Bank in the Court. Learned Counsel for the Bank submits that he has no instruction with regard to receiving of the said amount. We direct that the above amount be deposited with the Registrar of NCLAT drawn in favour of Pay and Accounts Officer, Ministry of Corporate Affairs within three months.

13. Issue Notice. Requisites along with process fee, if not filed, be filed within five days. If the Appellant provides the e-mail address of Respondent, let notice be

also issued through e-mail. Let Reply Affidavit be filed within two weeks. Thereafter two weeks' time is allowed to file Rejoinder.

List these appeals on **6th September, 2023**. In the meantime, the impugned order dated 04.07.2023 shall remain stayed. Appellant is permitted to file additional documents within two weeks.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

akc/nn