



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**

**IA(I.B.C)/999(KB)2025
IN
C.P. (IB)/175(KB)2023**

*An application under Section 60 (5) and/or Section 65 of the Insolvency and
Bankruptcy Code, 2016 read with Rule 11 of the National Company Law
Tribunal Rules, 2016 for recalling of order dated 3rd April, 2023*

In the matter of:

IDBI Bank Limited.

... .. **Financial Creditor**

Versus

Jain Infraprojects Limited

... .. **Corporate Debtor**

And

In the matter of:

Jain Infraprojects Limited, a company incorporated under the provisions of the Companies Act, 2016 and having its registered office at 11A, Rawdon Street, 4th Floor, Kolkata- 700017.

... .. **Applicant**

Versus

IDBI Bank Limited, formerly known as “Industrial Development Bank of India Limited”, a Banking Company within the meaning of the Banking Regulations Act, 1949 and registered under the Companies Act, 1956 and a Company within the meaning of Section 2 (20) of the Companies Act, 2013 (18 of 2013) and having its registered office at “IDBI Tower”, WTC Complex, Cuffe Parade, Colaba, Mumbai- 400005 and having its branch at IDBI Tower, NPA Management Group, 7111 Floor, WTC Complex, Cuffe Parade, Colaba, Mumbai- 400005 and its local branch at “IDBI House”, 44, Shakespeare Sarani, Kolkata- 700017.

... .. **Respondent**

Date of pronouncement:16.09.25

CORAM:

SMT. BIDISHA BANERJEE, HON’BLE MEMBER (JUDICIAL)

SHRI SIDDHARTH MISHRA, HON’BLE MEMBER (TECHNICAL)

Appearance (via video conferencing/physically)

Mr. Joy Saha, Sr. Adv.] For the Applicant

Mr. Snehasish Chakraborty, Adv.]

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**



**IA(I.B.C)/999(KB)2025
IN
C.P. (IB)/175(KB)2023**

| | | |
|------------------------------|---|--------------------------|
| Mr. Jishnu Saha, Sr. Adv. |] | For the Corporate Debtor |
| Ms. Manju Bhuteria, Sr. Adv. |] | |
| Mr. Tanay Agarwal, Adv. |] | |
| Mr. Ram Maroo, Adv. |] | |

ORDER

Per: Bidisha Banerjee (Judicial)

1. This Court convened via hybrid mode of conferencing.
2. Heard the learned Senior Counsel appearing on behalf of the parties.
3. This application has been preferred to seek the following reliefs, *inter alia*:
 - (a) *An order recalling the order dated 3rd April, 2025 passed by the Hon'ble Tribunal;*
 - (b) *An order dismissing the Section 7 application filed in C.P. (IB) No.175/KB/2023 as being premature, vitiated by suppression, and barred by limitation;*
 - (c) *Ad interim orders in terms of the prayers above;*
 - (d) *Such further and/or other order or orders and/or direction or directions as this Hon'ble Tribunal may deem fit and proper;*
4. **Submissions of the Corporate Debtor:**

Per contra the respondent CD would submit as under:

 - (i) The original debt of the Financial Creditor is ₹ 162.44 crores and not ₹ 1100 crores as claimed by the Financial Creditor on the last date of hearing i.e. 27.06.2025.
 - (ii) The claim of the FC with regard to the date of default is wholly misconceived and legally untenable. The FC has, through its own conduct repeatedly entered into One Time Settlement (hereinafter referred to as "OTS") arrangements with the CD which clearly

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**



**IA(I.B.C)/999(KB)2025
IN
C.P. (IB)/175(KB)2023**

shows that the original default was no longer treated as subsisting.

- (iii)** Repeated OTS arrangements, some of which were accepted and part-paid by the CD, demonstrate that a fresh understanding was reached between the parties, replacing earlier defaults and terms. Hence, the petition under Section 7 cannot now go back and rely on a 2013 default.
- (iv)** On 25.03.2025, the learned Counsel for the FC made a false and misleading submission that the settlement has failed. In view of such submission made by the learned Counsel for the FC, the matter was kept for hearing on 03.04.2025 when this Tribunal reserved the matter for orders. Pursuant to such order dated 03.04.2025 passed by this Tribunal, the FC vide its letter dated 15.04.2025 rejected the OTS proposal.
- (v)** The CD availed loan facilities from eleven consortium members in total. Out of the said 11 consortium members, the CD has successfully settled with 7 consortium lenders and have also received a No Dues Certificate from those 7 lenders. the CD has settled its account with Central Bank of India who was the Lead Banker.

1. OTS dated 03.12.2019:

The CD floated an OTS proposal to the FC for ₹ 31.95 crores. The FC accepted this OTS proposal from the CD for settlement of its dues for a total amount of ₹ 31.95 crores.

The CD made an upfront payment of ₹ 4.45 crores towards this settlement. Unfortunately, amid the outbreak of COVID-19, and despite payments already made, the Bank arbitrarily cancelled the said OTS on

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**



**IA(I.B.C)/999(KB)2025
IN
C.P. (IB)/175(KB)2023**

05.04.2021, without affording the CD an opportunity to comply with the remaining terms of the said OTS.

2. OTS proposal dated 18.12.2023:

The CD submitted a fresh OTS proposal on 18.12.2023 to the tune of ₹ 25 crores.

As per the terms of the said OTS, 5% i.e., ₹ 1.25 crores was to be paid at the time of processing of the OTS proposal.

Another 5% i.e., ₹ 1.25 crores was to be paid by the CD to the FC after clearing the proposal from the external committee.

Another 10% was to be paid after sanction.

Thereafter, on 29.12.2023 the FC as per the OTS sought for the upfront payment of ₹ 1.25 crores i.e., 5% to be paid at the time of processing the OTS. Hence, it was a deemed acceptance on part of the FC that the OTS was processed.

The CD paid the upfront amount of ₹ 1.25 crores i.e., 5% which was to be paid at the time of processing the OTS on 09.02.2024.

The terms of the OTS further stated that the FC will allow sale of consortium property as sold earlier also by the Lead bank on a private treaty basis and as per the DRT Orders at a fair market value and proceeds received, will directly be deposited to the banks as per their share. The FC on 13.02.2024, sought for documents such as CA certified statements, notarized affidavit by all guarantors, ITRs of all

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**



**IA(I.B.C)/999(KB)2025
IN
C.P. (IB)/175(KB)2023**

guarantors, affidavit declaring assets and liabilities of all guarantors, bank account statements and audited financials of all guarantors. In a bona fide attempt to settle the loan accounts, the CD provided all the documents as sought for by the FC on 23.02.2024 and 04.03.2024.

Further, vide an email dated 04.03.2024 and 07.05.2024, the FC asked the CD to pay another 5% which was to be paid after getting external clearance from the committee as per the OTS offer dated 18.12.2023.

The CD in a bona fide attempt to settle the loan accounts with the FC, made payment of ₹ 1.25 crores on 27.06.2024 i.e. if paid 5% of the OTS amount that was to be paid after clearance from the external committee.

Thereafter, the FC sought for further documentations from the CD vide its email dated 12.07.2024, the same was provided by the CD on 15.07.2024 and 03.08.2024.

By 12.07.2024, the CD had already made a payment of 10% of the OTS proposal, but still no sanction letter was issued. Instead the FC kept on asking for further documents and then suddenly rejected the OTS on 02.09.2024, demanding a higher amount.

While the instant Section 7 application filed on 28.07.2023 was pending and both parties were jointly seeking adjournments on the ground of settlement. After ten months of continuous efforts by several negotiations and discussions with the FC, the FC rejected the OTS proposal without according a chance to the CD and while holding the

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**



**IA(I.B.C)/999(KB)2025
IN
C.P. (IB)/175(KB)2023**

Section 7 application as a leverage against the CD and accepting part payments thereunder.

- 3. Revised OTS Proposal dated 13.09.2024** was given by the CD on 13.09.2024 for ₹ 31.95 crores. The FC conveyed that in principle settlement of dues at ₹ 35 crores.

The CD vide its email dated 05.10.2024 and 15.10.2024 communicated to the FC its inability to increase the offer amount, but the FC kept pressurizing the CD under the constant threat of CIRP admission.

Vide an email dated 04.12.2024, the FC unilaterally demanded an additional ₹ 4.50 crores i.e., 20% of the OTS amount, without any prior negotiation, and threatened cancellation if payment was not made.

- 4.** A revised offer was sent by the CD to the FC for ₹ 35 crores on 26.12.2024. This offer also stated that the FC will allow sale of mortgaged consortium properties as per the DRT Orders at current market value which will be deposited in the bank account of the FC as per its share.

Pursuant thereto, the Corporate FC vide its email dated 10.01.2025, once again raised a demand of ₹ 4.50 crores without according any formal sanction letter.

Under constant pressure from the FC and the continued threats of CIRP admission, the CD finally gave in to the extortion of the FC on

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**



**IA(I.B.C)/999(KB)2025
IN
C.P. (IB)/175(KB)2023**

24.01.2025. Thus, all throughout a valid and a binding OTS was in performance between the parties.

- 5.** It is submitted that to the utter shock and surprise of the CD, when the matter was taken up for hearing on 25.03.2025, the FC's counsel made a false and misleading submission stating that the settlement has failed. Relying on such false statement, this Hon'ble Tribunal fixed the matter for hearing on 03.04.2025 when the instant company petition was reserved for orders. Pursuant to such Order passed by the Hon'ble Tribunal, the FC vide its letter dated 15.04.2025 has unilaterally cancelled the OTS and forfeited the amounts already paid.

Therefore, as on date of the matter was getting reserved for orders on 03.04.2025, the OTS was subsisting and the FC had already received a sum of ₹ 6.95 crores across various settlements, from 2019 to 2025.

It is alleged that the conduct of the FC reeks of mala fide.

- 6.** It is submitted that one of the important terms of the OTS proposals was that the FC will allow release and sale of consortium mortgaged properties at fair market value which will enable the CD to settle its loan accounts in a timely manner under several repeated requests and reminders made by the CD. That the FC did not release such properties thereby defaulting on their part of the obligations in terms of the OTS proposal. The CD bought investors who were ready and willing to buy such properties at a price of ₹ 8 crores which is higher than the Bank's valuation of ₹ 7 crore and themselves wrote to the FC vide letter dated 24.02.2023 communicating its willingness to purchase the Jalpaiguri property after payment of ₹ 8 crores directly to the FC. Moreover, the

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**



**IA(I.B.C)/999(KB)2025
IN
C.P. (IB)/175(KB)2023**

said investor along with the letter, also annexed a cheque amounting to ₹ 8 crores towards purchasing such property. The bank's valuation of such property situated at Jalpaiguri was ₹ 7 crores, however with the help of the CD, the investor was willing to buy the same at higher value. But, the FC did not even care to respond to such notice.

- 7.** It is alleged that the conduct of the FC in the instant company petition squarely falls within the ambit of Sections 53 and 54 of the Indian Contract Act, 1872. Section 53 provides as follows:

“When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract.”

It is submitted that in the present case, the FC's refusal to issue sanction letter in spite of the fact that the CD made payment of a sum of ₹ 2.5 crores i.e., 10% of the OTS amount, without even a valid and an enforceable sanction letter at hand. The FC's failure to release properties in spite of several orders passed by a competent court of law and several repeated requests and reminders made by the CD as well as the investors who were willing to purchase the property and help the CD to come back on its feet and shifting demands effectively prevented the CD from performance of the OTS.

This conduct is governed by Section 54 of the Indian Contract Act, 1872, which states as follows:

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**



**IA(I.B.C)/999(KB)2025
IN
C.P. (IB)/175(KB)2023**

“When a contract consists of reciprocal promises, such that one of them cannot be performed unless the other has been performed, and the promisor of the first fails to perform it, he cannot claim the performance of the reciprocal promise”.

- 8.** It is contended that **once OTS is Acted and Accepted, the FC cannot shift back to the Original Date of Default:**

The CD has referred to a decision in ***IFCI Ltd. v. Patil Construction and Infrastructure Pvt. Ltd. (CP (IB) No. 142/MB/2023) @ Paras 6, 7, 9 & 10***, where the NCLT, Mumbai Bench vide its Order dated 04.03.2025 on identically similar facts, has held that once an OTS is accepted and part payment is received, CIRP under Section 7 cannot be filed based on an older default. In doing so, it would amount to misusing the Code for recovery purposes. Relevant paragraph from the said Order is as follows:

“...In this regard, the Corporate Debtor placed reliance on the judgement of the Hon'ble High Court at Madhya Pradesh in the matter of Shri Mohanlal Patidar v. Bank of Maharashtra [W.P No. 22127/2021] and Pawan Agarwal v. Small Industries Development Bank of India [W.P No. 8213/2022]. As contended, IFCI Ltd. is a government of India undertaking and bears significant responsibilities. The Financial Creditor has misused its position as a government undertaking by failing to comply with the established norms associated with OTS process.”

- 9.** Admittedly, the original date of default fell on 30.09.2013. However, the CD floated an OTS proposal in 2019 which was accepted and acted upon by the parties and a sum of ₹ 4.45 crores was partly paid by the

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**



**IA(I.B.C)/999(KB)2025
IN
C.P. (IB)/175(KB)2023**

CD towards such settlement. It is submitted that the FC unilaterally rejected the OTS on 05.04.2021 for failure to pay by 30.11.2020. Thus, 30.11.2020 should effectively be considered to be the date of default.

It is urged that since the FC chose to substitute the 2013 debt with new contractual obligations under OTS dated 03.12.2019 and again in 2023, the date of default if any, can only be reckoned from 2020, thereby making the application barred under Section 10A of the Code. The date of Default as mentioned in the Section 7 application is untenable in law and/or in facts.

- 10.** Further the contention if the CD is that after having accepted the OTS proposal in 2019 and 2023 and part performance made under both the OTS and acceptance of payment to the tune of ₹ 6.95 crores, the FC cannot now shift back to the original date of default. Reference is made to ***Hero Fincorp Limited v. Feedback Power Operations & Maintenance Services Pvt. Ltd. (2025 SCC online NCLAT 2094, paras 12-18)***, wherein the Hon'ble NCLAT has observed that rescheduling of debt resets default date.

Reference is also made to Hon'ble Apex Court decision in ***Ramesh Kymal v. Siemens Gamesa Renewable Power Pvt. Ltd. (2021) 3 SCC 224, paras 11, 12, 25 to 30)***, the date of default cannot shift as per the whims and fancies of the FC.

- 11.** CD also refers to ***REC Limited v. Global metal & Energy Private Limited (CP (IB) No. 956/MB/2023), paras 5.1 to 5.6)***, passed by the Hon'ble NCLT, Mumbai Bench on 15.10.2024, wherein it has been

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**



**IA(I.B.C)/999(KB)2025
IN
C.P. (IB)/175(KB)2023**

categorically held that if the date of default is coming within the Section 10A period, it cannot be shifted. Hence, the FC cannot be allowed to retract its stand and go back to its original date of default as alleged in the company petition.

12. CD contends that IBC is Not a Recovery Forum:

It is argued that the Hon'ble Supreme Court in **Swiss Ribbons Pvt. Ltd. v. Union of India ((2019) 4 SCC 17, paras 12)**, has categorically held that IBC is not meant to be used as a recovery mechanism, but for resolution of a viable business.

It is alleged that the FC, is using CIRP as pressure tactics only to take undue advantage of the CD and to extort a better OTS offer while simultaneously accepting payments and pursuing Section 7 application.

13. We have heard learned Senior Counsel/Counsels and perused records.

14. Admitted facts:

1. The CP was filed for a default of more than ₹ 1072 crores as on 01.07.2023.
2. The CD has floated at least three OTS offers, which are the following:
 - (i) OTS dated 03.12.2019 for an amount of ₹ 31.95 crores. Against which CD has made a payment of ₹ 4.45 crores.
 - (ii) OTS dated 18.12.2023 of an amount of ₹ 25 crores with breakup of
 - (a) 5% i.e., ₹ 1.25 crores at the time of processing the OTS.
 - (b) 5% i.e., ₹ 1.25 crores at the time of clearance from external

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**

**IA(I.B.C)/999(KB)2025
IN
C.P. (IB)/175(KB)2023**

committee.

(c) 10% after sanction.

The first 5% was paid by the CD but no clearance was obtained from FC's side. Hence, no further payments were released by CD.

(iii) OTS proposal of 13.09.2024 of ₹ 31.95 crores.

FC agreed at ₹ 35 crores.

On 04.12.2024 FC demanded ₹ 4.5 crores (20% of OTS)

(iv) A revised OTS of 28.12.2024 which required FC to allow CD to sale mortgaged property at current market value.

An amount of ₹ 4.5 crores was paid by the CD.

(v) Thus, the FC has so far received a sum of ₹ 10 crores and odds from 2019-2025 from the CD against a debt of ₹ 1072 crores and settlement proposal if ₹ 35 crores.

(vi) The FC has not allowed sale of the mortgaged property which, if allowed, would have fetched not more than ₹ 8 crores, as admitted by CD itself, not sufficient to cover even the OTS amount.

15. It is also evident that out of 11 consortium Banks, the CD has settled with 7 Banks and has received no dues certificate from them.

Thus the CD has intention to settle its debt with the Banks. But the outstanding due still remains at a staggering amount of more than ₹ 1065 crores as per original debt and ₹ 25 crores as per OTS proposal.

16. We have noted that the matter was reserved for orders first on 3rd April, 2025 under the impression that the OTS has been rejected as would appear from the daily order sheet.

When the matter was again taken up for consideration on 25th June, 2025, a communication dated 15.04.2025 (Annexure C to IA 999 of 2025) was placed before us.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**



**IA(I.B.C)/999(KB)2025
IN
C.P. (IB)/175(KB)2023**

It appears from the said communication that the OTS was rejected only in April and vide letter dated 15.04.2025. Hence, on 03.04.2025, the learned Counsel appearing for the FC had wrongly claimed that OTS proposal stood rejected, due to which the petition was reserved for orders.

However, we notice that finally the OTS was rejected on 15.04.2025.

- 17.** The CD has relied upon the decision in Vidarbha, where the Hon'ble Apex Court holds as follows:

xxx xxx xxx

“62. As pointed out by Mr Gupta legislature has, in its wisdom, chosen to use the expression "may" in Section 7(5)(a) IBC, When an adjudicating authority (NCLT) is satisfied that a default has occurred and the application of a financial creditor is complete and there are no disciplinary proceedings against proposed resolution professional, it may by order admit the application. Legislative intent is construed in accordance with the language used in the statute.

xxx xxx xxx

63. The meaning and intention of Section 7(5)(a) IBC is to be ascertained from the phraseology of the provision in the context of the nature and design of the IBC. This Court would have to consider the effect of the provision being construed as directory or discretionary.

xxx xxx xxx

64. Ordinarily the word "may" is directory. The expression "may admit" confers discretion to admit. In contrast, the use

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**



**IA(I.B.C)/999(KB)2025
IN
C.P. (IB)/175(KB)2023**

of the word "shall" postulates a mandatory requirement. The use of the word "shall" raises a presumption that a provision is imperative. However, it is well settled that the prima facie presumption about the provision being imperative may be rebutted by other considerations such as the scope of the enactment and the consequences flowing from the construction.

xxx xxx xxx

65. It is well settled that the first and foremost principle of interpretation of a statute is the rule of literal interpretation, as held by this Court in Lalita Kumari v. State of U.P. If Section 7(5)(a) IBC is construed literally the provision must be held to confer a discretion on the adjudicating authority (NCLT).

xxx xxx xxx

66. In Hiralal Rattanlal v. State of U.P.⁸, this Court held: (SCC p. 224. f para 22)

“22. In construing a statutory provision, the first and the foremost rule of construction is the literary construction. All that we have to see at the very outset is what does that provision say? If the provision is unambiguous and if from that provision, the legislative intent is clear we g need not call into aid the other rules of construction of statutes, The other rules of construction of statutes are called into aid only when the legislative intention is not clear.”

xxx xxx xxx

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**



**IA(I.B.C)/999(KB)2025
IN
C.P. (IB)/175(KB)2023**

69. As argued by Mr Gupta, had it been the legislative intent that Section 7(5)(a) IBC should be a mandatory provision, legislature would have used the word "shall" and not the word "may" (There is no ambiguity in Section 7(5)(a) IBC. Purposive interpretation can only be resorted to when the plain words of a statute are ambiguous or if construed literally, the provision would nullify the object of the statute or otherwise lead to an absurd result, In this case, there is no cogent reason to depart from the rule of literal construction

- 18.** It is noted that with time “Vidharbha” affect may have been diluted to some extent, however, till date “Vidharbha” has not yet been overruled. We also note that OTS proposal from the CD stands rejected on 15.04.2025 during pendency of the CP and the outstanding due is still huge.
- 19.** In view of the above discussions, we reject the prayer in the IA(I.B.C)/999(KB)2025 and proceed to pass order in the C.P. (IB)/175(KB)2023.
- 20.** However, we have also noted the tenor of the decision in Vidharbha, and the communication which clearly shows that the Bank was considering the OTS proposal and rejected it only on 15.04.2025, and we have also noted the fact that the CD has settled with at least 7 Banks out of the consortium of 11 lenders.
- 21.** Therefore, the CD may also settle with the FC Bank at the earliest and seek a recall of the admission order within 2 months.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**



**IA(I.B.C)/999(KB)2025
IN
C.P. (IB)/175(KB)2023**

- 22.** The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- 23.** Certified copy of this order, if applied for with the Registry, be supplied to the parties upon compliance with all requisite formalities.

**Siddharth Mishra
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order signed on this, 16th Day of September 2025.

SM (Steno)