

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**  
**Company Appeal (AT) (Insolvency) No. 277 of 2020**

**In the matter of:**

**Akshay Arun Shetty**

**....Appellant**

**Vs.**

**Bank of India & Anr.**

**....Respondents**

**Present:**

**Appellant:** Ms. Shradha Agrawal, Ms. Neela Gokhale, Advocates  
and Mr. Sanjay K Ruia, CA.  
**Respondents:** Mr. R.B. Trivedi, Advocate for R1.  
Mr. Rakesh Tulsyan, (IRP, R3)

**ORDER**

**(Through Virtual Mode)**

**05.01.2021:** Mr. Sanjay K Ruia, Chartered Accountant appearing on behalf of the Appellant submits that the outstanding liability of Rs.9.08 Crores in terms of the OTS approval has been cleared in terms of order dated 9<sup>th</sup> November, 2020. Mr. R.B. Trivedi, Advocate representing the Respondent No.1- Bank of India submits that the outstanding amount short of Rs.57,00,000/- was paid by 31<sup>st</sup> December, 2020 and balance amount of Rs. 57,00,000/- has been cleared by 1<sup>st</sup> January, 2021. It is, therefore, an admitted position at the Bar that the amount sought to be paid to Respondent No.1- Bank of India in terms of compromise offer manifesting in OTS has been cleared. Mr. R.B. Trivedi, Advocate further submits that in terms of the OTS proposal, the Appellant was under a legal obligation to clear the outstanding amount within 90 days from 21<sup>st</sup> May, 2020. Reference in this regard is made to Exhibit-'N' at Page No.75 of I.A. No. 1864 of 2020 which substantiates his arguments. As per Clause 8 of the approved OTS proposal, the Appellant was liable to pay interest at the rate of 1% above base rate per annum simple on reducing balance from the date of approval of OTS if the amount was not paid by 21<sup>st</sup> August, 2020. Mr. R.B. Trivedi, Advocate

Contd/-.....

further submits that though the liability has been cleared in terms of the approved OTS proposal/ settlement, the Appellant is bound to pay interest as stipulated in Clause 8 of the OTS proposal. He also submits that the Appellant is bound to pay the Corporate Insolvency Resolution Process costs as also the counsel fee. Mr. Sanjay K Ruia, Chartered Accountant appearing on behalf of the Appellant submits that on account of the hardship due to outbreak of COVID 19, the Appellant was unable to adhere to the terms though it was keen to ensure that the OTS terms were honored and having pointed out this difficulty before this Appellate Tribunal time was extended upto 31<sup>st</sup> December, 2020. Therefore, the interest may be waived.

After hearing learned counsel for the parties, we are of the view that having regard to the economic hardship arising out of imposition of lockdown due to outbreak of COVID-19 declared as Pandemic and ensuing disruption of economic activities and operations, relaxation in terms of settlement for clearing the liability by extending time till 31<sup>st</sup> December, 2020 was warranted. Though the Appellant has admittedly cleared the liability short of - Rs.57,00,000/- by 31<sup>st</sup> December, 2020 but having regard to the fact that the balance amount of Rs.57,00,000/- has been cleared on the very following date i.e. 1<sup>st</sup> January, 2021 the terms of approved OTS as regards payable dues has been complied with. In the circumstances, mitigating of hardship arising out of imposition of lockdown and slowdown of economic activities as an aftermath of outbreak of COVID-19 would become meaningless if the Appellant is saddled with the liability of paying the interest as contemplated in Clause 8 of the approved OTS proposal. We, in the given circumstances, waive the imposition of interest as referred to hereinabove. So far as CIRP costs and counsel fee are concerned, in absence of any specific provision in the approved OTS approval, this Appellate Tribunal is not inclined to pass any order in regard to the same.

As a sequel to the above, the Company Petition pending before the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-IV, shall stand closed. The Corporate Debtor shall stand released from rigour of CIRP. IRP shall be relieved of his duties. The Adjudicating Authority will be at liberty to pass appropriate order in regard to CIRP costs and fees as deemed fit.

Since no issue remains to be settled, the appeal is disposed off.

**[Justice Bansi Lal Bhat]**  
**Acting Chairperson**

**[Justice Anant Bijay Singh]**  
**Member (Judicial)**

**[Dr. Ashok Kumar Mishra]**  
**Member (Technical)**

*AR/g*