

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No.1323 of 2022**

**&**

**I.A. No. 1417, 4291, 4221, 4340 of 2022 & 82, 314, 385, 399 & 389**  
**of 2023**

(Arising out of Order dated 28.10.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench (Court-II), Kolkata in CP(IB) No.1382/KB/2020)

**IN THE MATTER OF:**

Ashok Kumar Tyagi,  
S/o Sh. Ram Nath Tyagi,  
R/o, C-193, Devendra Puri,  
Modinagar, Ghaziabad,  
UP-201204

.... Appellant

Vs

1. UCO Bank  
Head Office at 10, B.T.M. Sarani,  
Kolkata - 700001, West Bengal  
and the Flagship Corporate Branch  
at 2, India Exchange Place,  
Kolkata -700001, West Bengal.
2. Mr. Santanu Brahma,  
being the Interim Resolution  
Professional of Darjeeling  
Organic Tea Estates Private Limited,  
having his office at AH 276, Salt Lake,  
Sector - II, Kolkata - 700 091, West Bengal. .... Respondents

**Present:**

**For Appellant: Mr. Arvind Kumar Gupta, Ms. Henna George,  
Advocates**

**For Respondents: Malvika Trivedi, Sr. Advocate with Ashish  
Choudhury, Akash Tandon, Advocates for UCO  
Bank.**

**Madhumita Bhattacharjee, Srijia Choudhury,  
Advocates for State of WB**

**Mr. Akash Agarwal, For IRP  
Mr. Abhijeet Sinha, Advocate for R-3, Indian Bank**

**Mr. Palash S. Singhai, Ms. Varsha Himatsingka,  
Advocates for Intervener in I.A. No. 389 of 2023**

**Ms. Vivya Nagpal and S. Karim, Advocates for  
Intervenor**

**With**

**Company Appeal (AT) (Insolvency) No.1507 of 2022**

(Arising out of Order dated 28.10.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench (Court-II), Kolkata in CP(IB) No.1382/KB/2020)

**IN THE MATTER OF:**

1. M/s Lemongrass Organic Tea Estates Private Limited,  
Having its Registered Office at City Centre,  
Office Block-F, 2<sup>nd</sup> Floor, Room No, 0208,  
Uttorayon Towbship NH-31,  
Matigara, Dist. Darjeeling, Siliguri-734010.
2. Hill Terai Dooars Plantation Workers  
Union Central Committee, having its  
Registered Office at : Judge Bazar  
Hill Cart Road, Darjeeling – 734101,  
West Bengal. .... Appellants

Vs

1. UCO Bank,  
Having its Registered Office at  
10, BTM Sarani, Kolkata 700001, West Bengal.
2. Mr. Santanu Bramha,  
Being the Interim Resolution Professional of  
Darjeeling Organic Tea Estates Private Limited,  
having his office at AH 276, Salt Lake,  
Sector - II, Kolkata - 700 091, West Bengal.
3. M/s. Darjeeling Organic Tea  
Estates Private Limited  
Having its Registered Office at  
34A, Metcalfe Street, 7<sup>th</sup> Floor,  
Kolkata 700013. .... Respondents

**Present:**

**For Appellant: Mr. R. Balasubramani, Sr. Advocate with Mr.  
Akhilesh Shrivastava, CMA Sumit P. Sunita  
Yadav, Abhigya Kushwaha, Advocates**

**For Respondents: Malvika Trivedi, Sr. Advocate with Ashish Choudhury, Akash Tandon, Advocates for UCO Bank.**

**Madhumita Bhattacharjee, Srija Choudhury, Advocates for State of WB**

**Mr. Akash Agarwal, For IRP**

## **ORDER**

**ASHOK BHUSHAN, J.**

This Appeal by a Suspended Director of the Corporate Debtor – M/s Darjeeling Organic Tea Estates Pvt. Ltd. has been filed challenging the order dated 28.10.2022 passed by National Company Law Tribunal, Kolkata bench (Court-II) admitting Section 7 Application filed by the UCO Bank and appointing Respondent No.2 - Mr. Santanu Brahma as Interim Resolution Professional (“**IRP**”).

2. Brief facts of the case, giving rise to this Appeal are:

- (i) The Corporate Debtor is a Company, which is running several Tea Gardens. In the year 2017, UCO Bank issued sanction letter to the Corporate Debtor, granting approval to the Corporate Debtor for renewal/ review of various credit facilities. The Corporate Debtor requested the Financial Creditors including the UCO bank for approval of change of Management.

- (ii) The UCO Bank filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**Code**”) claiming an amount of Rs.115,41,78,101/- as due on 22.09.2020 inclusive of the interest from the date of NPA. The Corporate Debtor became NPA on 30.06.2017.
- (iii) In Section 7 Application, Corporate Debtor filed a reply. In its reply the Corporate Debtor has stated that the Corporate Debtor proposed a debt restructuring exercise to the Financial Creditor as per the Circular issued by the Reserve Bank of India (“RBI”) on 07.06.2019. All the erstwhile Directors of the Corporate Debtor had resigned since June 2020 onwards. Various foreign investors of the Corporate Debtor invested amount of Rs.189 crores since the date of NPA, which amount had been used by the Corporate Debtor to pay its workers, statutory liabilities etc. It was also stated that UCO Bank had appointed one Resurgent India Limited to assess the Techno Economic Viability (TEV) of the Corporate Debtor and vide its TEV report dated 12.03.2021, it opined that Corporate Debtor is technically feasible and financially viable. It was further stated in the reply that Corporate Debtor and the UCO Bank were in advanced stages of discussions for restructuring of the concerned account in June 2020. The Corporate Debtor has further stated that total liability of the Corporate Debtor is about Rs.50 crores.

- (iv) The Adjudicating Authority heard the parties on 24.08.2022 and reserved the order.
- (v) M/s Lemongrass Organic Tea Estates Pvt. Ltd. (hereinafter referred to as “Investor”) issued an Expression of Interest (“**EoI**”) to the Corporate Debtor for purchase of seven Tea Estates of the Corporate Debtor.
- (vi) On 25.10.2022, the UCO Bank appointed one Contemporary Brokers Pvt. Ltd. to conduct valuation of the six Tea Gardens/ Estates of the Corporate Debtor and the Contemporary Brokers Pvt. Ltd. has written to the UCO bank that the total valuation of the Estates is approximately Rs.39 crores.
- (vii) The Corporate Debtor on 26.10.2022 wrote to the UCO Bank that M/s Lemongrass Organic Tea Estates Pvt. Ltd. had extended its support to Corporate Debtor and offered to settle the outstanding dues of the Corporate Debtor and OTS offer of Rs.41 crores was made. It was also requested that the Corporate Debtor is ready to enter into a tri-partite Agreement with the Bank, Lemongrass and Corporate Debtor. The letter further mentioned that Company has decided to sell six Gardens to protect the livelihood of 7000 workers and their dependents living in these Gardens. The Corporate Debtor was facing difficulty in running the Gardens and hence accepted the offer made by the Lemongrass to invest.

(viii) The Adjudicating Authority on 28.10.2022 admitted the Section 7 Application and appointed Respondent No.2 as IRP.

3. This Appeal was filed challenging the order dated 28.10.2022 in this Tribunal and was heard on 04.11.2022, on which date the Appeal was adjourned to 07.11.2022 to give opportunity to the Bank and a direction was issued to IRP to not constitute the Committee of Creditors (“CoC”). The Appeal was heard on 07.11.2022, on which date this Tribunal recorded a statement of UCO Bank that OTS proposal has already been received and is under consideration and time of few weeks is required. Noticing the said statement, this Tribunal on 07.11.2022 stayed the impugned order. Indian Bank has also filed an IA No.4221 of 2022 for impleadment. IA No.4291 of 2022 was filed by the Appellant, praying for certain interim directions. The IA Nos.4291, 4221 and 4340 of 2022 were heard and this Tribunal by order dated 21.11.2022 issued certain directions to ease the difficulty in running the Corporate Debtor as a going concern. Subsequent to the order of this Tribunal, the Corporate Debtor has been running as a going concern. Several other IAs have been filed in the Appeal, which we shall notice hereinafter.

4. The appeal was taken up on 05.04.2023, on which date UCO Bank sought for some more time and informed that the settlement process of the Corporate Debtor with the Bank is likely to take some time. The Appeal was adjourned for 25.04.2023. On 25.04.2023, this Tribunal directed the UCO Bank to file an affidavit explaining sequence of events and various

steps taken by the Bank. In pursuance of the order dated 25.04.2023, an affidavit dated 03.05.2023 has been filed on behalf of the UCO Bank. Subsequently, on 17.05.2023, this Tribunal allowed the UCO Bank to bring on record Valuation Reports obtained by Bank, in pursuance of which order, an additional affidavit dated 25.05.2023 has also been filed.

5. We have heard Shri Arvind Kumar Gupta, learned Counsel for the Appellant (in Company Appeal (AT) (Insolvency) No.1323 of 2022); Malvika Trivedi, learned Senior Counsel for UCO Bank; Shri Abhijeet Sinha, learned Counsel for Indian Bank, Madhumita Bhattacharjee, learned Counsel for State of West Bengal and other learned Counsel appearing for the Intervenors.

6. The learned Counsel for the Appellant challenging the impugned order contends that One Time Settlement (“**OTS**”) proposal submitted by the Corporate Debtor on 26.10.2022 before the UCO Bank on the basis of Expression of Interest received from Lemongrass was already under consideration when the order dated 28.10.2022 was passed admitting Section 7 Application. It is submitted that several letters were received from UCO Bank asking the Corporate Debtor to increase the offer from Rs.41 crores and the Corporate Debtor has communicated to the Bank increasing its offer and the Corporate Debtor was in continuous correspondence with the Bank and the Bank was considering the OTS proposal and ultimately issued a letter on 10.04.2023 whereby the Corporate Debtor was informed about the advise to re-negotiate with the

Corporate Debtor to improve the OTS offer to the Outstanding Ledger Balance (“**OLB**”), which was Rs.50.79 Crores. It is submitted that the Appellant has accepted the offer during the hearing before this Tribunal and has expressed its agreement. By letter 18.04.2023, the Corporate Debtor communicated to the Bank that offer of the Corporate Debtor was 91% of the OLB. By letter dated 18.04.2023, the Corporate Debtor has informed that Rs.46 crores is the best offer, but during hearing in the Tribunal the Appellant has expressed their agreement to pay the entire amount of Rs.50.79 Crores as asked by the Bank. However, the Bank has not issued any letter accepting the OTS. The Bank has obtained several Valuation Reports in respect of the Tea Gardens, which valuation Reports were below the OTS offer, which was made. In pursuance of OTS proposal, M/s Lemongrass has already deposited an amount of approximately Rs.04.10 Crores in the “No Lien” account/ Escrow account. It is submitted by learned Counsel for the Appellant that on 03.05.2023 the Appellant has communicated their acceptance to pay Rs.50.79 Crores. It is submitted that Bank has offered the amount of Rs.50.79 Crores, which the Appellant is ready to pay with the assistance of M/s Lemongrass. The Bank cannot go back from its offer and after the letter dated 03.05.2023 sent by the Corporate Debtor to the Bank, the Bank has not yet issued any letter accepting the offer. It is submitted that the settlement with the UCO Bank is only with regard to those Tea Gardens which are mortgaged with the UCO Bank and after the liabilities of the UCO Bank are settled, the Corporate Debtor shall take steps with regard to other creditors, including



the Indian Bank. It is submitted that the Indian Bank holds the mortgage of three Tea Estates, which are different from those, which are mortgaged with the UCO Bank. Hence, the Indian Bank has no authority to interfere with the settlement, which is proposed by the Appellant. It is submitted that there are more than 7000 workers in the Tea Gardens and the Corporate Debtor is being run as a going concern with the financial assistance of the M/s Lemongrass and initiation of Corporate Insolvency Resolution Process (“**CIRP**”) shall jeopardize the livelihood of these 7000 workmen and a running business. It is submitted that UCO Bank has ought to have issued a letter accepting the OTS offer of Rs.50.79 Crores, which was offered by the Bank itself. The Bank is acting arbitrarily in not cooperating with the running of the Corporate Debtor and revival of the Corporate Debtor.

7. The learned Counsel for the UCO Bank has opposed the submissions of learned Counsel for the Appellant and submits that the Bank was in correspondence with the Corporate Debtor regarding the OTS. It is submitted that on 10.04.2023, the Bank has advised the Corporate Debtor to improve the OTS offer to OLB, which is Rs.50.79 Crores, in reply to which letter on 18.04.2023 the Corporate Debtor informed that Rs.46 Crores OTS offer as total outstanding dues is their best offer. Hence, on 25.04.2023, the Bank communicated to the Corporate Debtor that OTS offer dated 18.04.2023 offered by the Corporate Debtor is declined by the Bank. It is submitted that Valuation Reports, which were obtained by the Bank were on the lower side, since the Valuers were not able to freely assess the Tea

Gardens. The learned Counsel for the Bank referring to additional affidavit of the UCO Bank dated 25.05.2023 submitted that Valuation Report dated 26.10.2022 mentions the value of seven Tea Gardens as approx. Rs.39 Crores, which was revised on 04.11.2022 as Rs.32.29 Crores. Another Valuer appointed by the Bank, submitted Valuation Report dated 10.01.2023 stating the value of seven Tea Estates as approx. Rs.39.45 Crores. Again on 24.02.2023, another valuer namely M/s. Biplob Nandy and Associates was engaged by the Bank, who gave value of seven Tea Estates approximately Rs.49.81 Crores. It is submitted that the valuation by the Valuers were on the lower side, hence, the Bank had not accepted the Valuation Reports, nor has accepted the OTS offer. Default in payment of the debt of the Bank being an admitted fact, the Adjudicating Authority rightly admitted the Section 7 Application, which does not warrant any interference in this Appeal.

8. The learned Counsel for the IRP has referred to its Reports, which have been filed on 23.01.2023 and 07.07.2023. It is submitted that subsequent to the orders of this Tribunal on 21.11.2022 the IRP placed the details of the expenditure. It is stated that the Corporate Debtor has been transferring resources and assets, being tea stock, inventory, warehousing facilities etc. to different companies. The Corporate Debtor has taken several actions without obtaining any permission or leave of the Tribunal and there is an attempt to alienate, transfer and assign of the assets of the Corporate Debtor being its leasehold rights vested in Ambootia Tea Garden and Montevoit Tea Garden to one Lemongrass Organic Tea Estates Pvt. Ltd.

9. The learned Counsel appearing for Indian Bank submits that Indian Bank had filed a petition under Section 7 against the Corporate Debtor for non-payment of various credit and other facilities amounting to Rs.74.17 Crores, which petition could not be completed due to the impugned order dated 28.10.2022. The Indian Bank shall not be able to recover its dues in event the CIRP is not allowed to continue against the Corporate Debtor. The Corporate Debtor cannot settle dues with the UCO Bank without taking the steps for settlement of its dues with the Indian Bank. The intention of the Corporate Debtor is to sell its assets to the third parties, which shall cause prejudice to the rights of the Indian Bank.

10. An Intervention Application has also been filed being I.A. No.389 of 2023 on behalf of Sanjay Prakash Bansal and Reena Bansal, opposing the Appeal and seeking intervention. They claimed to be Ex-Promoter of the Corporate Debtor. They had also given personal guarantee to the Bank.

11. Another IA has been filed by Axis Overseas Ltd., praying for intervention in the Appeal. Applicant's case is that the Applicant is ready and willing to propose a better offer to the Banks in the best interest of Respondent No.1.

12. We have considered the submission of the learned Counsel for the parties and have perused the record.

13. The Adjudicating Authority passed the order dated 28.10.2022 admitting Section 7 Application, holding that it is admitted that a principal

amount of Rs.50 Crores is payable by the Corporate Debtor and that no OTS has yet been materialized. The submission of learned Counsel for the Corporate Debtor during the course of hearing was noticed, which has been noted in paragraph 8.9, which is to the following effect:

“9 Further, during the course of arguments, the Ld. Counsel of the Corporate Debtor stated that the amount repayable by the Corporate Debtor is to the tune of Rs.50 Crore. It is significant to note that there has been effort of OTS which did not materialize. Again on 18<sup>th</sup> June 2022, during the Joint Lenders Meeting, wherein a number of officials of the lender banks were present, the following was recorded and is reproduced hereinunder:

*"Way forward towards resolution plan:*

*DGM, Branch Head of UCO FCC Branch informed that they are in receipt of a letter dated 17/06/2022 from the borrower company wherein they have requested for allowing time up to 30/06/2022 to submit OTS proposal from the company/ new investors. However, it was informed to the lenders that the branch has replied via letter no. FCC/IEP/CR/525/2022-23 dated 17/06/2022 copy enclosed as annexure - I. It was further informed that the letter was just an EOI from the company and no detailed OTS plan or upfront amount has been received. Hence the bank has stated that the letter has been treated just for information purpose and Bank is free to take strict recovery action against the company to recover banks dues."*

14. As noted above, when the Appeal was taken up for hearing, learned Counsel for the Appellant has submitted that a proposal of One Time Settlement has already been given to the UCO Bank. The statement of Counsel for the UCO Bank was recorded in the order dated 07.11.2022 that OTS proposal has been received and time of few weeks shall be required to consider the OTS proposal. The order dated 07.11.2022 is as follows:

*“**07.11.2022:** This Appeal has been filed against impugned order passed by the Adjudicating Authority on 28.10.2022 allowing Section 7 application filed by the UCO Bank. This Appeal was taken up on 04.11.2022 on which date following order was passed:*

**“O R D E R**

***04.11.2022:** A request has been made on behalf of learned counsel for the UCO Bank to take the matter on 07.11.2022. Learned counsel for the Appellant submits that there is urgency in the matter. However, to give opportunity to the Respondent Bank we adjourn this Appeal to 07.11.2022.*

*Till the next date the IRP may not constitute the COC.*

*Indian Bank is permitted to file Intervention Application.”*

*Learned counsel for the UCO Bank submits that OTS proposal has already been received and it is under consideration and time of few weeks shall be required to consider the OTS proposal. Learned counsel appearing for the Indian Bank submits that Indian Bank has already filed*

*application for intervention which may also be permitted to be listed alongwith this Appeal. It is submitted that there is some defects in the Intervention Application. Defects may be cured by the applicant and I.A. may also be listed alongwith this Appeal on the next date.*

*List this Appeal on 10.01.2023.*

*In the meantime, impugned order shall remain stayed.”*

15. During the pendency of the Appeal, there have been correspondence between the Corporate Debtor and the UCO Bank. The correspondence indicate that the letter dated 26.10.2022 for OTS offer of Rs.41 Crores was given on behalf of the Corporate Debtor with Expression of Interest received from Lemongrass and Lemongrass has also deposited an amount of Rs.04.10 Crores in the “No Lien” account/ Escrow account of the Bank. The correspondence which has been brought on record indicates that Corporate Debtor has increased its offer from time to time. Lastly, the Corporate Debtor has given a proposal of Rs.46 Crores, in response to which the Bank has issued an email dated 10.04.2023. It is useful to extract the entire email dated 10.04.2023, which is to the following effect:

*“Re: Darjeeling Organic Tea Estate Pvt. Ltd.*

*IFB Kolkata Branch <calind@ucobank.co.in>*

*Mon: 10/04/2023 18:15*

*To: DOTEPL Info <info@dotepl.com>*

*Madam/ Sir,*

*With reference to your OTS proposal, wherein you have submitted the OTS proposal of Rs.46.00 Crore as full and final settlement in the a/c of Darjeeling Organic Tea Estates Private*

Limited, in this regard we would like to inform you that the Competent Authority has advised us to re-negotiate with the borrower company to improve the OTS offer upto OLB.

In view of the above, we request you to improve the OTS offer up to OLB which is Rs.50.79 Crore.

Regards,

FCC India Exchange Place  
UCO Bank  
Kolkata”

16. In the letter dated 18.04.2023 written on behalf of the Corporate Debtor to the Bank it was communicated that Rs.46 Crores is their best offer. The letter dated 18.04.2023 of the Corporate Debtor, was replied on 25.04.2023 by the Bank where the offer given on 18.04.2023 was declined by the Bank. The letter dated 25.04.2023 read as follows:

“Ref:FCC/IEP/REC/149/2023023 Date: 25/04/2023

The Director(s)  
M/s Darjeeling Organic Tea Estates Pvt. Ltd.  
C/o Regus Grandeur Officers Pvt. Ltd.  
PS Arcadia, 9<sup>th</sup> Floor, 4A Abanindra Nath Thakur Sarani  
Kolkata 700016.

Dear Sir,

**Sub: Decline of your OTS Proposal**

We refer to your letter dated 18-04-2023 wherein you stated that Rs.46.00 crores OTS offer as total outstanding dues is your best offer and further reiterated that seeing the situation of tea estates and total accumulated liabilities sum of Rs.46.00 crores is your best offer to the bank as an OTS of total outstanding dues. However, in order to honour the Bank’s request, vide email dated 10.04.2023 and in view of the timeline imposed by Hon’ble NCLAT, if the bank puts some additional terms at the

*time of sanction of ITS proposal, you shall be ready and willing to meet the same in order to complete the OTS process.*

*In this context, we would like to state that your OTS offer dated 18.04.2023 as above has been declined by the Bank.*

*Regards,*

*Deputy General Manager  
FCC India Exchange Branch  
Kolkata”*

17. The letter dated 25.04.2023 itself indicates that in event Bank puts some additional terms at the time of sanction of OTS proposal, the Corporate Debtor would be ready and willing to meet the same. The letter also indicates that the offer dated 18.04.2023 is not acceptable.

18. The reply to the above affidavit has been filed by the Appellant in this Appeal on 09.05.2023, where the Appellant has brought on record a letter dated 03.05.2023 sent to the Bank, where the Corporate Debtor has expressed its willingness to make OTS payment of Rs.50.79 Crores, as requested by the Bank. The Bank was requested to apply for disposal of the proceedings before the Adjudicating Authority and the Appellate Tribunal.

19. The learned Counsel for the UCO Bank during the oral submissions has submitted that the Bank has communicated on 25.04.2023 that the OTS offer given by the Corporate Debtor is not acceptable. It is, however, relevant to notice that Bank itself on 10.04.2023 has asked the Corporate Debtor to improve the OTS offer up to Rs.50.79 Crores, which was the Outstanding Ledger Balance. The Appellant has communicated its



acceptance to the said offer during the course of the hearing as well as by letter dated 03.05.2023, which has been brought on record. There is no communication subsequent to letter dated 03.05.2023 by the Bank brought on the record by the Bank.

20. Now, we come to the submission of learned Counsel for the parties regarding order dated 28.10.2022, by which Section 7 Application has been admitted. The learned Counsel for the Appellant has relied on the judgment of the Hon'ble Supreme Court in **Vidarbha Industries Power Limited vs. Axis Bank Limited – (2022) 8 SCC 352** to contend that in the facts of the present case their OTS proposal which was under consideration and the fact that the Corporate Debtor is a running entity with 7000 workmen, the Adjudicating Authority ought to have exercised its discretion in rejecting Section 7 Application.

21. The learned Counsel for the Bank in reply to the said submission contends that judgment of the Hon'ble Supreme Court in **Innoventive Industries Ltd. vs. ICICI Bank and Anr. – (2018) 1 SCC 407** covers the issue. The judgment of the Hon'ble Supreme Court in **E.S. Krishnamurthy v. Bharath Hi-Tecch Builders (P) Ltd. - (2022) 3 SCC 161** also covers the case. A recent judgment of the Hon'ble Supreme Court in **Civil Appeal No.7121 of 2022 – M. Suresh Kumar Reddy vs. Canara Bank** has also been relied. The Hon'ble Supreme Court in M. Suresh Kumar Reddy after referring to the judgment of **Vidarbha Industries** and **E.S. Krishnamurthy**, concluded in paragraph 13 in following words;

*“13. Thus, it was clarified by the order in review that the decision in the case of **Vidarbha Industries** was in the setting of facts of the case before this Court. Hence, the decision in the case of **Vidarbha Industries** cannot be read and understood as taking a view which is contrary to the view taken in the cases of **Innoventive Industries** and **E.S. Krishnamurthy**. The view taken in the case of **Innoventive Industries** still holds good.”*

22. In the present case, the Adjudicating Authority has noticed in the impugned order that there was admission on behalf of the Corporate Debtor of the debt of Rs.50 Crores, which was noticed in paragraphs 8.9 and 8.10 of the order. The present is a case where, there is no denial to the debt and default. On the date when Adjudicating Authority heard the matter and reserved the order, there was no OTS proposal under consideration before the UCO Bank, since according to the Appellant, the letter submitting OTS proposal of Rs.41 Crores was given on 26.10.2022, after it received the Expression of Interest from Lemongrass. We, thus, are of the view that no error can be found in the order of the Adjudicating Authority, admitting Section 7 Application by its order dated 28.10.2022. We, however, cannot be oblivious to the facts and sequence of events, which took place during the pendency of the Appeal. This Tribunal in its order dated 21.11.2022 noticed several difficulties in the running of the Corporate Debtor. This Tribunal noticed that a strategic investor namely M/s. Lemon Grass Organic Tea Limited has entered into an Agreement with the Corporate Debtor to take over three Tea Gardens, which are charged

with the UCO Bank subject to entering into and funding the OTS. By the order dated 21.11.2022, certain interim arrangements were made to enable the Corporate Debtor to run as a going concern. The difficulty of payments of wages to the workers, ration to be distributed by the Company to the worker, electricity dues and other dues were taken note of and for mitigating the difficulty in running of the Corporate Debtor, certain directions were issued. The Corporate Debtor is being run as per the said directions till date.

23. We may also notice the fact that has been brought on record by the UCO Bank by means of additional affidavit dated 25.05.2023. The Bank has brought on record the Valuation Reports of seven Tea Estates for settlement of which, offer was given by the Corporate Debtor, which was sought to be done by the Lemongrass. A Report submitted by Contemporary Brokers Pvt. Ltd. on 26.10.2022 was for Rs.39 Crores, which was subsequently revised on 04.11.2022 to Rs.32.39 Crores. Another Report obtained by the Bank from M/s. Paramount Tea Marketing Pvt. Ltd. dated 10.01.2023 was for Rs.39.45 Crores. Lastly, the Bank engaged M/s Biplob Nandy and Associates on 24.02.2023 as another independent Valuer, who submitted the Valuation of seven Tea Estates as approximately Rs.49.81 Crores. The Bank in the affidavit has however pleaded that Valuation Reports were on the lower side and proper Valuation could not be conducted. Be that as it may, last of the Valuation Report obtained by the Bank was for Rs.49.81 Crores and the outstanding balance of the Corporate Debtor was Rs.50.79 Crores and the Corporate Debtor has

accepted offer of the Bank as indicated in the oral submissions as well as by email dated 03.05.2023 sent to the Bank. It is further relevant to notice that a strategic investor Lemongrass has also invested certain amount in the Corporate Debtor after submission of proposal on 26.10.2022. The Bank in its correspondence with the Corporate Debtor has time and again advised to increase the offer. Hence, by letter dated 10.04.2023, the Bank has asked the Corporate Debtor to increase the amount to the Outstanding Ledger Balance, i.e. Rs.50.79 Crores. When offer is given by the Bank to increase the amount to Outstanding Ledger Balance, which has been accepted by the Corporate Debtor, it has to be given some sanctity. We, however, in the facts of the present case are inclined to direct the Bank to consider the response given by the Corporate Debtor by letter dated 03.05.2023 in reference to the offer made by the Bank on 10.04.2023. No material has been brought on record by the Bank in its affidavit that after 03.05.2023, that is after acceptance of offer of payment of Outstanding Ledger Balance by the Corporate Debtor, any communication has been given by the Bank. There has to be some consideration by the Bank, when Corporate Debtor accepts the offer made by the Bank itself.

24. We have noticed that in the Tea Gardens, there are 7000 workers and at present the Corporate Debtor is being run in pursuance of the interim order passed by this Tribunal on 21.11.2022. Thus, the Bank need to consider and take a decision in reference to the letter dated 03.05.2023 given by the Corporate Debtor, keeping in view the Valuation and other relevant factors. We are of the view that a period of 60 days from today

shall be sufficient to take a decision by the Bank in respect of the OTS proposal, after obtaining such information as may be required by the Bank. The Corporate Debtor is also free to enter into dialogue with the Bank towards arriving at a settlement, if any.

25. We have already found that the impugned order dated 28.10.2022, admitting Section 7 Application was an order, which cannot be faulted in law. However, we are inclined to direct that for a period of 60 days, no further steps in pursuance of the order dated 28.10.2022 of the Adjudicating Authority shall be taken and interim directions issued by this Tribunal by order dated 21.11.2022 shall continue for a period of 60 days, during which period, the Bank may take a final decision in reference to the OTS proposal lastly increased by the Corporate Debtor by its letter dated 03.05.2023, accepting the offer of the Bank for Outstanding Ledger Balance. In event of a settlement accepted by the Bank, the Bank is permitted to file an application through IRP to close the CIRP.

26. In event, the parties are unable to arrive at any settlement, CIRP proceedings shall commence after 60 days and the interim directions issued by this Tribunal in this Appeal shall become inoperative.

27. Coming to the Application filed by the Indian Bank, in event any settlement is entered between the parties and CIRP terminated, the Indian Bank will be free to take its recourse to its rights, either by reviving the Section 7 Application filed earlier or to take up any proceedings in accordance with law.

28. All other Intervention Applications filed in this Appeal stand disposed of.

29. The Company Appeal (AT) (Insolvency) No.1507 of 2022 filed by M/s Lemongrass Organic Tea Estates Private Limited, who has also challenged the order dated 28.10.2022 is also disposed of in terms of the order disposing of Company Appeal (AT) (Insolvency) No.1323 of 2022.

30. The Company Appeal (AT) (Insolvency) No.1323 of 2022 as well as The Company Appeal (AT) (Insolvency) No.1507 of 2022 are disposed of in following manner:

- (I) The order dated 28.10.2022 is not interfered with.
- (II) The order dated 28.10.2022 shall not be given effect to for a period of 60 days, to enable the UCO Bank to consider the OTS proposal lastly submitted by letter dated 03.05.2023 by the Corporate Debtor, accepting the offer of Outstanding Ledger Balance of Rs.50.79 Crores as given by the UCO Bank on 10.04.2023. It shall be open for the UCO Bank to obtain such other relevant information for considering the proposal as may be advised. The Corporate Debtor may also enter into dialogue with the UCO Bank in the above regard to arrive at a settlement.
- (III) After a period of 60 days, in event settlement is not arrived at, order dated 28.10.2022 of the Adjudicating Authority be

implemented in accordance with law. The directions passed in this Appeal shall become inoperative after a period of 60 days.

- (IV) The Indian Bank in event the CIRP is terminated and settlement is arrived at, shall be entitled to revive its Section 7 Application and take such other steps as permissible in law and in event the CIRP continues after 60 days, the Indian Bank will be entitled to submit its claim in accordance with law.
- (V) All other Intervention/ Interlocutory Applications stand disposed of.

Parties shall bear their own costs.

**[Justice Ashok Bhushan]  
Chairperson**

**[Mr. Barun Mitra]  
Member (Technical)**

**NEW DELHI**

**21<sup>st</sup> July, 2023**

Ashwani