OCD-2

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

CS-COM/22/2025

SENBO ENGINEERING LIMITED
VS
BANK OF MAHARASHTRA

BEFORE:
The Hon'ble JUSTICE KRISHNA RAO
Date: February 25, 2025.

Appearance:
Mr. Altamash Alim, Adv.
Mr. Nilay Sengupta, Adv.
Mr. Sujit Banerjee, Adv.
...for the plaintiff

The Court:- Mr. Altamash Alim, learned Counsel, is appearing for the plaintiff.

The plaintiff has filed the present suit praying for decree of declaration that the acceptance of consideration by the defendant bank against the enhanced offer of OTS proposed by the plaintiff has resulted into a concluded contract. The plaintiff has also prayed for several reliefs including specific performance of contract.

The matter is fixed today for presentation of plaint. The plaintiff has prayed for exemption under Section 12A of the Commercial Courts Act, 2015.

Counsel for the plaintiff submits that by a letter dated 27th December, 2024, the plaintiff has made a proposal for One Time Settlement with the bank for a total sum of Rs.56 crore. On receipt of the said letter, the defendant bank by a letter dated 31st December, 2024 has informed the plaintiff that the offer is to be increased from Rs.55 crore to Rs.56 crore with modified terms as discussed in the meeting dated 20th December, 2024 with the high level committee of the top executives. It was further advised to the plaintiff to deposit Rs.1 crore towards the upfront amount as discussed and agreed.

Counsel for the plaintiff says that as per the letter dated 31st December, 2024, the plaintiff has deposited the amount of Rs.1 crore but after receipt of the said amount of Rs.1 crore, the defendant bank had issued a letter dated 2st January, 2025 wherein the defendant bank has informed the plaintiff that as per bank policy minimum 10% of OTS offer amount be kept as upfront amount for credit to loan account and if the customer is not ready to deposit the above amount, minimum 25% amount be kept in lien account as upfront amount wherein the plaintiff has deposited only Rs.2 crore i.e. 3.57% of the OTS offer. The defendant bank further informed the plaintiff that since the OTS proposal is not in line with the discussion and the source of OTS repayment is not clear, thus, the OTS proposal is not acceptable as per the policy and guidelines.

Now, the plaintiff has filed the suit for specific performance of contract on the allegation that once the defendant has agreed for the proposal of Rs.56 crore, out of which the plaintiff has deposited Rs.1 crore but on receipt of the amount of Rs.1 crore, the defendant bank has turned down OTS.

The plaintiff has prayed for exemption on the pretext that the defendant bank is proceeding against the plaintiff under Section 7 of the Insolvency and Bankrupcy Code, 2016 before the NCLT and thus, the plaintiff has no time to initiate pre-institution mediation process under Section 12A of the Commercial Courts Act, 2015.

The plaintiff intends to settle the dispute by paying an amount of Rs.56 Crores but the bank has not accepted. This is the fit case where the plaintiff can initiate pre-institution mediation process for settlement.

This Court did not find any urgency to dispense with Section 12A of the Commercial Courts Act, 2015. The plaint is returned to the plaintiff with liberty to initiate pre institution mediation process. The Court fee may also be refunded to the plaintiff.

CS-COM/22/2025 is dismissed.

(KRISHNA RAO, J.)

Sbghosh