



IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI ATUL CHATURVEDI
HON'BLE TECHNICAL MEMBER**

IA(IB) No. 152/JPR/2023
In CP No. (IB)- 39(PB)/2018

IN THE MATTER OF:

**ADMINISTRATOR OF SPECIFIED
UNDERTAKING OF UNIT TRUST
OF INDIA & ANR.**

...Petitioners

VERSUS

MODERN SYNTEX (INDIA) LIMITED

...Corporate Debtor

MEMO OF PARTIES:

IA(IBC) NO. 152/JPR/2023:

NIRAJ RATHORE

Erstwhile Director of The Corporate Debtor
R/o: 59, Sardar Patel Marg, C-Scheme,
Jaipur-Rajasthan-302021

... Applicant

VERSUS

1. MR. PARTHA SARTHY SARKAR
Interim Resolution Professional of
Modern Syntex (India) Limited
Office no.1, Jalaram Krupa, Building
no.61, Janmabhoomi Marg, Fort,
Mumbai city- 400001
Email:sarkarpartho@yahoo.com

... Respondent No.1



**2. ADMINISTRATOR OF SPECIFIED
UNDERTAKING OF UNIT TRUST OF INDIA**

R/O: UTI Tower, 'GN' Block, Bandra-
Kurla Complex, Bandra East, Mumbai
- 400051

... Respondent No.2

FOR THE APPLICANT : Mr. Sudhir Kumar Makkar, Sr. Adv.

FOR THE RESPONDENT(S): Mr. Partha Sarathy Sarkar, RP present in person
Mr. Deeptakirti Verma, Adv.

Order Pronounced On: - 15.06.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The present Application bearing *IA(IBC) No. 152/JPR/2023* has been filed through *Mr. Neeraj Rathore*, Erstwhile Director of *Modern Syntex (India) Limited* ('Corporate Debtor') under Section 60(5) of Insolvency and Bankruptcy Code, 2016 (Code) read with Rule 11 of National Company Law Tribunal Rules, 2016 (NCLT Rules) against the action of the Resolution Professional ('RP') of the Corporate Debtor in admitting the claim amount of Rs. 4874,97,58,908/- (Rupees Four Thousand Eight Hundred and Seventy-Four Crores Ninety-Seven Lakhs Fifty-Eight Thousand Nine Hundred and Eight Only) of *Administrator of Specified Undertaking of Unit Trust of India* ('Financial Creditor'/ 'Respondent No. 2') without verifying the same from the Books of Accounts and the Record of the Corporate Debtor.



2. The main application bearing *CP No. 39(PB)/2018* was filed jointly by the Financial Creditor and its sister concern namely, *M/s UTI Trust Private Limited* under Section 7 of the Code seeking initiation of CIRP against the Corporate Debtor which came to allowed vide order dated 28.03.2022. *Mr. Partha S. Sarkar* was appointed as the Interim Resolution Professional and later confirmed as the RP in the meeting of Committee of Creditors ('CoC').
3. The present application has been filed alleging the following set of facts:
 - 3.1. The Applicant submits that the RP has not verified the claim of the Respondent No. 2 from the books of accounts of the Corporate Debtor and the documents executed amongst the Corporate Debtor and Respondent No. 2, wherein as per the One Time Settlement ('OTS') of 17% NCDs of Modern Syntax (India) Limited dated 23.10.2008 and the balance sheet of the Corporate Debtor, only an amount of Rs. 34,80,96,657/- (Rupees Thirty-Four Crores Eighty Lakhs Ninety-Six Thousand Six Hundred and Fifty-Seven Only) was payable to the Respondent No. 2 by the Corporate Debtor.
 - 3.2. It has been stated that in the year 1994- 1995, Respondent No. 2 had sanctioned/subscribed to the Unsecured Redeemable Non- Convertible Debentures ('NCDs') of Rs. 5385 lakhs and Unsecured Transferable Notice ('UTNs') of Rs. 700 lakhs to the Corporate Debtor. During the pendency of the reference before BIFR, the Corporate Debtor initiated



settlement process and in the year 2008 an OTS was entered into for payment of Rs. 16 crores against complete outstanding dues. Further, it is alleged that the Corporate Debtor paid Rs. 2.4 Crores out of the settlement, but failed to pay the remaining amount of Rs. 13.6 Crores for reason of pending reference and approval of draft rehabilitation scheme before BIFR. Despite being sick, the Erstwhile Management of the Corporate Debtor tried to settle the outstanding principle of Rs. 500 crores with various lenders/Creditors and settle all the outstanding dues except that of Respondent No. 2, *M/s UTI Trust Private Limited* and one more lender. As per the statement of settlement, it was apparent that on 31.08.2018, out of total lenders with outstanding of more than 500 crores, Corporate Debtor had settled with lenders having outstanding of Rs. 450 crores.

3.3. Again, the Corporate Debtor tried to settle the dues, but the OTS dated 23.10.2008 was not accepted. Subsequently, the Respondent No. 2 along with its sister concern filed the Section 7 application of IBC which was admitted vide order dated 28.03.2022. Thereafter, public announcement was made by RP on 30.03.2022 and the Respondent No. 2 filed its claim amounting to Rs. 4874,97,58,908/- (Rupees Four Thousand Eight Hundred and Seventy-Four Crores Ninety-Seven Lakhs Fifty-Eight Thousand Nine Hundred and Eight Only) as one of the Secured Financial Creditors of the Corporate Debtor.



The sister concern i.e. *M/s UTI Trust Private Limited* also filed its claim amounting to Rs. 916,19,56,515/- (Rupees Nine Hundred and Sixteen Crores Nineteen Lakhs Fifty-Six Thousand Five Hundred and Fifteen Only) as one of the Financial Creditors of the Corporate Debtor. The RP by admitting the claim of the Respondent No. 2 and its sister concern totalling to Rs. 5791,17,15,425/- (Rupees Five Thousand Seven Hundred and Ninety-One Crores Seventeen Lakhs Fifteen Thousand Four Hundred and Twenty-Five Only) has given 100% voting share to the two entities in the CoC. As on date of filing of the instant application, the Respondent No. 2 and its sister concern held 88.67% voting share in the CoC, thereby creating majority and passing resolutions to their benefits.

3.4. As per the OTS dated 23.10.2008, the Respondent No. 2 is liable to receive remainder balance amount of 13.6 crores with interest chargeable at the rate of 12% per annum from 01.04.2009 till the date of initiation of CIRP. Thus, the claim of the Respondent No. 2 ought to comprise of principle amount of 13.60 crores and interest amount of Rs. 21,20,96,657/- (Rupees Twenty-One Crores Twenty Lakhs Ninety-Six Thousand Six Hundred and Fifty-Seven Only) calculated at the rate of 12% per annum from 01.04.2009 to 28.02.2022. Hence, the claim ought not to have been more than Rs. 34,80,96,657/- (Rupees Thirty-Four Crores Eighty Lakhs Ninety-Six Thousand Six Hundred and



Fifty-Seven Only) and the Corporate Debtor is only liable to make payment to the Respondent No. 2 as per outstanding calculated in view of the OTS dated 23.10.2008.

4. The Respondent No. 2 filed reply to the said application vide Diary No. 921/2023 dated 10.04.2023, wherein it has submitted the following : -

4.1. The Application has been filed on the basis of OTS dated 23.10.2008 which was sanctioned by the Respondent No. 2 in regard to Corporate Debtor. The answering respondent states that the order dated 28.03.2022 has not been assailed and the same has attained finality in law. The Respondent also relied on certain paragraphs of the order to submit that the order is binding on all concerned parties/persons.

4.2. The Respondent also highlighted the settled law that once an issue is decided by a Court of Law at one stage of proceeding, the same cannot be sought to be reagitated again at any subsequent state. For the same, the applicant has relied on the judgment of the Hon'ble Supreme Court in the case of *Y.B. Patil & Ors. v. Patil*, (1976) 4 SCC 66 and *Hope Plantations Ltd. v. Taluk Land Board*, (1999) 5 SCC 590.

4.3. However, it has been submitted that the erstwhile management of the Corporate Debtor, immediately after Resolution Plan was approved by the CoC on 13.03.2023, filed the present application on 17.03.2023 so as to derail the process of the CIRP. Inclusion of the dues cannot be open to challenge at this stage. Moreover, the Application suppresses the



fact that the OTS sanctioned by Respondent No. 2 was invoked in August, 2009 and all original liabilities were restored due to non-payment of any amount as per the OTS sanctioned. The said revocation has been acknowledged in the balance sheet of the CD from Financial Year 2010-2011 to 2020-2021.

5. We have heard the Ld. Counsels for the parties and perused the averments made in the application, reply, rejoinder, written submissions and the documents enclosed with the application.
6. At first, we refer to the order dated 28.03.2022 passed by this Adjudicating Authority wherein CIRP was initiated against the Corporate Debtor for default in repayment of the Financial Debt of the Respondent No. 2 and its sister concern. In the order dated 28.03.2022, this Adjudicatory Authority on being satisfied with the ingredients enumerated Section 7 of the Code i.e., falling within the threshold prescribed and the existence of debt being due and payable, had passed the order for initiation of CIRP. At the time of filing of the main Petition, the minimum amount of default as specified under Section 4 of the Code was Rupees One Lakh. Hence, while admitting the Application, the Adjudicatory Authority had to determine the default of Rs. 1 Lakh or more against the Corporate Debtor which was duly fulfilled.
7. The Applicant has preferred mainly 3 contentions, *firstly*, the RP while admitting the claim of the Respondent No. 2 has failed to consider the balance sheet of the Corporate Debtor, *secondly*, as per the OTS between the



Corporate Debtor and the Respondent No. 2 the payable claim should amount to Rs. 34,80,96,657/- (Rupees Thirty-Four Crores Eighty Lakhs Ninety-Six Thousand Six Hundred and Fifty-Seven Only) and *lastly*, due to the exorbitant claim of the Respondent No 2 and its sister concern, the resolutions passed in the CoC are favourable towards the Respondent No. 2 and its sister concern as the two constitute the majority shareholding in the CoC.

8. It is seen that the alleged OTS which has time and again been relied upon by the Applicant herein, was cancelled on 12.08.2009 and the same has been observed in the order of admission of CIRP. It is clearly manifested that the Applicant has failed to appreciate the fact that there was no Settlement between the parties to the case. Till date, there has been no settlement between the parties to the main petition which is apparent from the records of the case.
9. Even though, this Authority at the time of admission of the CIRP against the Corporate Debtor had not opined upon the quantum of the claim of the Applicant, there is no explanation as to why the Applicant is approaching this court at a belated stage, when the CoC has already approved the Resolution Plan. The Applicant was privy to the proceedings of the Resolution which the Corporate Debtor was undergoing on account of being part of the erstwhile management of the Corporate Debtor. Hence, the act of



the Applicant in moving this Application at a belated stage seems to be an endeavour to derail the Resolution Proceedings.

10. Also, it is seen that the Balance Sheet of the Corporate Debtor entails the following clause:

“11. SUUTI & UTI MF has restored the total liabilities due to default in payment of OTS amount and have intimated the outstanding dues of Rs. 2,41,038.59 Lacs including unsecured debts, dues of SUUTI & UTI MF, overdue & penal interest etc. as per their records as on 31st March, 2017. However, SUUTI and UTI MF have not provided balance confirmation as on 31st March, 2020. The company has disputed the entire dues of SUUTI and in the process of renegotiating the OTS proposal with them, pending which, unpaid liability of Rs. 1,360.00 Lacs is kept in books of accounts as per earlier settlement terms. In case, the liability is accounted for as restored by SUUTI and UTI MF. “Current Liabilities” and “Accumulated Losses” would have been higher by Rs. 2,41,038.59 Lacs.”

11. From the aforesaid, it is clear that the full liabilities of the Respondent No. 2 and its sister concern were restored for failure of settlement between the parties. The Applicant has only quoted certain parts of the paragraph and not the paragraph in full so as to base its submissions which cannot be allowed.
12. Hence, we find no reason to entertain this Application at this juncture of the Corporate Insolvency Resolution Process of the Corporate Debtor.
13. The Application bearing number *IA(IB) No. 152/JPR/2023* filed in the main petition *CP No. (IB)- 39(PB)/2018* is dismissed as rejected.



14. The Registry is directed to communicate the order to the parties.

-Sd-

**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

-Sd-

**ATUL CHATURVEDI,
TECHNICAL MEMBER**