

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT NEW DELHI
(APPELLATE JURISDICTION)
Company Appeal (AT) (Insolvency) No. 911 of 2023

(Arising out of the Impugned Order dated 15.06.2023 passed by
the National Company Law Tribunal, Jaipur Bench in IA(IB) No.
152/JPR/2023 in CP No. (IB)- 39(PB)/2018)

In the matter of:

Niraj Rathore

Erstwhile Director of the Corporate Debtor
Resident of
59, Sardar Patel Marg,
C-Scheme, Jaipur- Rajasthan- 302001.

...Appellant

Versus

1. Mr. Partha Sarathy Sarkar

(Interim Resolution Professional of
Modern Syntex (India) Limited),
Office: No.1 Jalaram Krupa,
Building No.61, Janmabhoomi Marg,
Fort, Mumbai City- 400001
E-mail: sarkarpartho@yahoo.com

Later substituted by **Mr. Ankit Goel**,
Resolution Professional of
Modern Syntax (India) Limited,
Office: AAA Insolvency Professional LLP,
E-10A, Kailash Colony, New Delhi-110048.

...Respondent No.1

**2. Administrator of Specified
Undertaking of Unit Trust of India**

Having its registered office at:
UTI Tower, 'GN' Block, Bandra-Kurla
Complex, Bandra East, Mumbai- 400051

...Respondent No.2

Present :

For Appellant : Mr. Sudhir Makkar, Sr. Advocate with Ms. Mahima
Ahuja, Ms. Varsha Banerjee and Mr. Sauya Gupta,
Advocates.

For Respondents : Mr. Amal Vivek, Advocate for R-1.

J U D G M E N T
(Hybrid Mode)

[Per: Ajai Das Mehrotra, Member (Technical)]

1. The present appeal has been filed by the Erstwhile Director of M/s Modern Syntex (India) Limited (Corporate Debtor) against the order of the Adjudicating Authority (NCLT) dated 15.6.2023 in IA (IB) No. 152/JPR/2023 in CP No. (IB)-39(PB)/2018.

2. The main application bearing CP No. (IB)-39(PB)/2018 was filed jointly by the Administrator of Specified Undertaking of Unit Trust of India (*hereinafter referred as SUUTI*) and its sister concern M/s UTI Trust Private Limited under Section 7 of Insolvency & Bankruptcy Code, 2016 (*hereinafter called IBC, 2016*) seeking initiation of CIRP against M/s Modern Syntex (India) Limited (*hereinafter referred as 'Corporate Debtor'*). The said application was allowed as per order dated 23.8.2022, and Mr. Partha Sarathy Sarkar was appointed as IRP, who was later confirmed as Resolution Professional (*hereinafter called as 'RP'*) by the Committee of Creditors (*hereinafter called as 'CoC'*).

3. In the IA filed before the Adjudicating Authority (*hereinafter referred as 'AA'*), the applicant had submitted that RP had not verified the claim of SUUTI from the books of accounts of the Corporate Debtor and has ignored the One Time Settlement (OTS) dated 23.10.2008 and the balance sheet of the corporate debtor and only an amount of Rs. 34,80,96,657/- was payable to SUUTI by the Corporate Debtor. It was submitted that in the year 1994-95, SUUTI had sanctioned/ subscribed to the unsecured redeemable Non-convertible

Debentures of Rs.53.85 Crores and Unsecured Transferable Notes (UTNs) of Rs.7.00 Crores to the corporate debtor. During the pendency of proceedings before Board for Industrial and Financial Reconstruction (*hereinafter referred as 'BIFR'*), the Corporate Debtor initiated settlement process in the year 2008 and OTS was entered for payment of Rs.16.00 Crores against the complete outstanding dues. It was submitted that the Corporate Debtor paid Rs. 2.40 Crores but failed to pay remaining amount of Rs.13.6 Crores. On admission of application under Section 7 of IBC, 2016 on 23.8.2022, IRP was appointed who made public announcement against which SUUTI filed claim amounting to Rs. 4874,97,58,908/- (Rupees Four Thousand Eight Hundred and Seventy Four Crores Ninety Seven Lacs Fifty Eight Thousand Nine Hundred and Eight Only) as Secured Financial Creditor. The sister concern UTI Trust Private Limited also filed claim of Rs. 916,19,56,515/- (Rupees Nine Hundred and Sixteen Crores Nineteen Lakhs Fifty Six Thousand Five Hundred and Fifteen Only). The RP admitted the claim of SUUTI and sister concern UTI Trust Private Limited totalling to Rs. 5791,17,15,425/-. Both the financial creditors were made Member of CoC and altogether had 88.67% of the voting rights.

4. Before the AA, it was the contention of the applicant that SUUTI is liable to receive only Rs.13.6 Crores along with interest chargeable @ 12% p.a. from 1.4.2009 till the initiation of CIRP and thus the RP should have admitted only the claim of Rs.34,80,96,657/-.

5. The SUUTI submitted before the Learned AA that the resolution plan was approved on 13.3.2023 by the CoC and was approved by the AA on 28.3.2022 and inclusion of dues cannot be open to challenge at this stage. The applicant

had suppressed that OTS sanctioned by SUUTI was revoked in August 2009 and all original liabilities were restored and the said revocation has been acknowledged in the balance sheet of Corporate Debtor for the financial year 2010-11 to 2020-21. The AA dismissed the said IA vide order dated 15.6.2023 noting the cancellation of OTS and the comments in the balance sheet of the corporate debtor.

6. During the hearing before us, the appellant was asked to show how he is legally entitled to file the present appeal, as the appellant is an Independent Director in the Corporate Debtor. Secondly, after the approval of Resolution Plan, it is the Successful Resolution Applicant (SRA) who has to bear the cost of Resolution Plan, including payments to the creditors following the provisions of Section 53 of IBC, 2016, and ex-Management has no financial stake regarding this.

7. IA No. 2076 of 2024 was then filed by Mr. Kamal Ranka, erstwhile Director and share-holder of Corporate Debtor seeking impleadment in the said appeal and it was submitted that Mr. Kamal Ranka is a promoter and majority share-holder and a proper necessary party in the said appeal. The learned counsel for the appellant cited following decisions to support his contention that an Erstwhile Director can file appeal.

(i) Vijay Kumar vs. Standard Chartered Bank & Ors. (2019) 20 SCC 455

(ii) Innoventive Industries Limited vs. ICICI Bank & Anr. (2018) SCC 407

(iii) Nandamuri Meenalatha vs. M/s Quality Steels and Wire Products & Anr. Company Appeal (AT) (CH) (Ins) No. 11 of 2023

8. From perusal of the above judgments, it is seen that none of the judgment relates to the issue of claim of financial creditor. As noted earlier, the present appeal was filed by an independent director who by no stretch of imagination can be considered as aggrieved person regarding acceptance of claim of the financial creditor or the quantum of financial credit admitted. We are of the prima facie opinion that appellant has no locus to file the present appeal as he is nowhere affected by the admission of the claim of the financial creditor or it is quantum.

9. However, since the issue of locus of appellant was not raised before the Learned AA and since we have also heard the appeal on merits we proceed ahead to consider the appeal on merits.

10. The learned senior counsel for the appellant in his oral and written statements stated that pursuant to One Time Settlement (OTS) in the year 2008 entered with SUUTI (R2) an amount of Rs.16 Crores was payable against the complete outstanding dues; that in compliance to the OTS dated 23.10.2008 the Corporate Debtor paid Rs. 2.40 Crores out of the settlement amount but could not pay remaining amount of Rs.13.60 Crores due to pending reference and approval of Draft Rehabilitation Scheme before BIFR and also due to the heavy losses incurred by Corporate Debtor. As per the terms of the aforesaid OTS respondent no.2 is entitled to receive the remainder balance amount of Rs.13.60 Crores along with interest chargeable @ 12% p.a. till date of initiation of CIRP i.e, 28.3.2022. The principal amount of Rs.13.60 Crores and interest of Rs.21.20 Crores from 1.4.2009 to 28.3.2022 will lead to an outstanding of only Rs.34,80,96,657/-. It was submitted that no reasoning is given by the learned

Adjudicating Authority as to how the exorbitant claim was accepted. It was submitted that Resolution Professional should have undertaken appropriate verification and analysis before admitting the claim. The counsel for the appellant cited following decisions to support his contentions:-

(i) P.M. Cold Storage Pvt. Ltd. vs. Goouksheer Farm Frsh Pvt. Ltd. & Anr., Company Appeal (AT) (Ins) No. 6150 of 2020

(ii) Sumat Kumar Gupta vs. M/s Vardhman Industries Limited, Company Appeal (AT) (Ins) No. 762 of 2022

11. Shri Ankit Goel, the present Resolution Professional (Respondent No. 1) filed response dated 02.12.2023 wherein he submitted that in the 19th CoC Meeting held on 01.09.2023, the CoC resolved to replace Mr. Partha Sarthy Sarkar and appointed Mr. Ankit Goel as the Resolution Professional of the Corporate Debtor. The NCLT, Jaipur vide order dated 05.09.2023 confirming the appointment of Mr. Ankit Goel. The erstwhile Resolution Professional has filed Company Appeal (AT) (Insolvency) No.1340 of 2023 before this Tribunal challenging the order passed by NCLT appointing Mr. Ankit Goel as the Resolution Professional. The present Resolution Professional submitted that Mr. Partha Sarthy Sarkar is not cooperating and has not handed over the records to him. Shri Ankit Goel submitted as under:

“It is pertinent to state that the Respondent No. 1 herein is appointed in the capacity of the Resolution Professional. Hence, the Respondent No. 1 shall proceed in accordance with the directions of this Hon’ble Tribunal. It is pertinent to state that the Respondent No. 1 does not have access to necessary documents to substantiate on the manner of acceptance of claim by the erstwhile RP in absence of handover not being provided.”

12. In his oral and written submissions on behalf of Respondent No. 2, the Learned Counsel submitted as under:

- i) The present Appeal is not maintainable as the Appellant cannot be a person aggrieved under Section 61(1) of the IBC as he is an independent Director and there cannot be any question of any loss being caused to the Appellant.
- ii) As per Section 149(6) of the Companies Act, 2013, an independent director cannot have any pecuniary relationship with the company.
- iii) That the Appellant is undertaking proxy litigation on behalf of the erstwhile management and has no locus in law to make any claim on behalf of the company.
- iv) Similar proxy litigation was noticed by this Tribunal in *Company Appeal (AT) (Insolvency) No. 578 of 2023* titled *Dynamix Growth Avenues Pvt. Ltd. vs. Mr. Partha Sarathy Sarkar & Anr.*
- v) It was submitted that even on merits the Appeal is not maintainable. The OTS given by the Corporate Debtor was cancelled by Respondent No. 2 vide letter dated 12.08.2019, since the total amount under the OTS was to be paid by 31.03.2009 which was not complied with. The OTS letter of 2008 had a clear term providing for such cancellation and restoration of all original liabilities.
- vi) The balance sheets of the Corporate Debtor themselves mention the factum of cancellation of OTS by Respondent No. 2.
- vii) That after cancellation of OTS, correct total dues of Respondent No. 2 have been repeatedly communicated by Respondent No. 2 to the Corporate Debtor.
- viii) It was submitted that corrected total dues of Respondent No. 2 as of 15.11.2017 were clearly stated in Form 1 filed by Respondent No. 2 while

initiating proceedings under Section 7 of the IBC. The said Form was duly served on the Corporate Debtor and no dispute regarding the quantum of dues was raised by the Corporate Debtor in its reply filed to the Section 7 Application.

ix) It was further submitted that the quantum of dues are clearly set out in para 6 of the order of NCLT dated 28.03.2022 initiating CIRP under Section 7, which was not challenged either by the Appellant or the erstwhile management.

x) It was submitted that the same amount of dues (updated as per passage of time) was filed by Respondent No. 2 before the Resolution Professional and is reflected in the list prepared by the Resolution Professional under Regulation 13(2) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

xi) It was further submitted that the Appellant was nominated to the CoC by the erstwhile management of the Corporate Debtor and had access to the said list and at no stage did the Appellant raise any objection to such quantum of dues submitted by Respondent No. 2.

xii) It was further submitted that main purpose of the IA before NCLT and the Appeal thereof was to delay the proceedings of resolution. The CoC had approved the resolution plan on 13.03.2023 and immediately thereafter the said IA was filed by the Appellant.

xiii) It was submitted that Respondent No. 2 is a Statutory Entity and functions under the control and supervision of the Central Government and deals with public funds and monies and its accounts are rigorously maintained and scrutinised. The Respondent No. 2 supported the claim filed by it.

13. In its Rejoinder, the Appellant reiterated the submissions made earlier and further stated as under:

“The submissions of the Respondent no. 2 alleging valid and natural cancellation of the OTS dated 12.08.2009 cannot be sustained in view of the fact that there existed no default / termination clause rather there existed only a Rate of Interest for delayed OTS payment clause meaning that the Respondent no. 2 had no power to revoke the OTS dated 23.10.2008 unilaterally. As per Clause D of the OTS dated 23.10.2008 (which is being reproduced herein for the ready reference of this Hon’ble Tribunal) the Respondent no. 2 was entitled to levying of interest @ 12% p.a. for the delayed period in the even of a default of OTS payment. There existed no terms with regard to termination / cancellation / revocation of OTS in the event of default only levying of interest.”

14. We have carefully considered the submissions made by the Appellant and the Respondent and perused the records. We have noted that the Appellant herein is an independent Director having no pecuniary interest in the resolution of the Corporate Debtor. We also note that the Appellant was representative of the ex-Management in the Committee of Creditors (CoC) since the very beginning.

14.2 We have gone through the decisions cited by the Appellant quoted in para 10 (*Supra*) which mainly are relating to admission of claim by IRP/RP.

14.3 The main contention of the Appellant is that the claim of Respondent No. 2 admitted by the RP should have been as per the One Time Settlement (OTS) dated 23.10.2008 and thus the claim should have been admitted at Rs.

34,80,96,657/- being unpaid amount of settlement of Rs. 13.60 cores and the interest @ 12% p.a. thereon till the date of admission of Corporate Debtor in CIRP, i.e., 28.03.2022. In this connection we have gone through the OTS of 17% NCDs vide letter dated 23.10.2008 of SUUTI addressed to the Corporate Debtor wherein the following payment schedule was agreed to by SUUTI:

“C) Payment Schedule of Crystallised Settlement Amount:

15% of the OTS amount (i.e. Rs. 240 lacs) or SUUTI’s share of sale proceeds from closed units whichever is higher will be paid within 30 days, i.e. on or before November 22, 2008. The balance OTS amount shall be paid on or before 31st March 2009.”

14.4 We also note that Point ‘G’ of the settlement letter is relevant which reads as under:

“G) Additional terms & conditions: *The OTS will also be subject to the additional terms and conditions as mentioned in the Annexure-1.”*

14.5 We note that while the OTS letter has been annexed with the Appeal, the said annexure has not been supplied by the Appellant. The said annexure has been supplied by the Respondent No. 2 in their submission dated 06.02.2024. The clause 2 of the said annexure, which is also part of the OTS as per clause (G) cited supra gives the right to SUUTI to revoke the OTS package, reverse the waiver of dues and restore the original liabilities in case of default in payment. The relevant clause is reproduced below for reference:

“2)In the event of default, in making the payments as per the Settlement or dishonour of any cheque, we shall have the right to revoke the above OTS package, reverse the waiver of dues and restore the liabilities as per the original Agreement/Documents. In

case of our exercising the right of revocation, the OTS package sanctioned as above shall be treated as withdrawn and all the terms and conditions of the original Agreements/ documents shall come into force as if, no such OTS package was ever granted to the Company.”

14.6 We note that in the order of admission under Section 7 dated 28.03.2022 it has been noted in para 6 as under:

“The Financial Creditors have submitted that the total outstanding financial debt as on 15.11.2017, along with interest, amounts to Rs. 33,00,34,87,999.99/- (Rupees Three Thousand Three Hundred Crores Thirty-Four Lacs Eighty-Seven Thousand Nine Hundred and Ninety-Nine and Ninety Nine Paise Only).”

14.7 The admission order further noted in para 9 the submissions of the petitioners and noted in sub-para ‘b’ as under:

“b. The Petitioners further submitted that the OTS sanctioned by the Petitioner No. 1 in terms of its letter dated 23.10.2008 was cancelled in August 2009 & all original liabilities were restored in terms of Petitioner No. 1’s letter dated 12.08.2009. Copy of the same has been annexed as Annexure A of the Rejoinder.”

14.8 In sub-para ‘d’ of para 9 it is further noted as under:

“d. It was further mentioned in rejoinder that as per the OTS sanctioned, the Corporate Debtor was required to make a payment of Rs. 16 Crores whereas no payment was made, hence the OTS was cancelled in August 2009. In December 2009, SUUTI, received Rs. 2.40 Crores from IFCI from the sale proceeds of two units of the Company sold under SARFEESI Act, 2002 situated at Alwar, Rajasthan. After the repeal of Sick Industrial Companies (Special

Provisions) Act, 1985, the reference to what transpired before BIFR is not relevant for the purpose of deciding this petition which is within four corners of the IBC Code.”

14.9 The above references clearly show that all the original liabilities of the Corporate Debtor were restored and the liabilities as on the date of filing of Section 7 application have been duly noted in para 6 of the said order dated 28.03.2022.

14.10 We also note that this order has not been challenged and the contents of the said order were known to the Appellant and the ex-Management.

14.11 We also note that in sub-para ‘e’ of para 8, the submissions of Corporate Debtor as under has been recorded:

“e. The Corporate Debtor has also submitted that on 30.01.2018 a proposal for One Time Settlement was sent to the Petitioners/Financial Creditors which was rejected vide letter dated 05.02.2018. Therefore, numerous letters came to the exchanged to arrive at a One Time Settlement but the same could not be achieved.”

14.12 The very fact that Corporate Debtor had submitted another OTS proposal on 30.01.2018 acknowledges that the earlier OTS was revoked.

14.13 The Respondent No. 2 had revoked the OTS vide letter dated 12.08.2009, which has been enclosed in its reply dated 18.08.2023. The letter is scanned below for ready reference:

Annexure - A

भारतीय यूनिट ट्रस्ट के विनिर्दिष्ट उपक्रम के प्रशासक
Administrator of the Specified Undertaking of the Unit Trust of India

UT/DOIM/M- 121 / 335 /2009-10

August 12, 2009

Without Prejudice

The Chairman & Managing Director
 Modern Syntex (India) Limited
 107, Turf Estate, E Moses Road
 Mahalaxmi
 Mumbai 400 011.
 Fax No.: 022: 3042 0634

ole

Dear Sir,

Sub: Revocation of One Time Settlement (OTS) of dues of Debentures

We had vide our letter No.UT/DOIM/M-121/696/2008-09 dated October 23, 2008 sanctioned an OTS to the Company for a crystallized amount of Rs.16 crores in full and final settlement of our dues. The said amount was supposed to be paid by March 31, 2009. The terms and conditions of the OTS were duly accepted by the Company vide their letter dated December 1, 2008.

In spite of repeated reminders / follow up the Company has failed to make the payment as per the terms of sanction of OTS and not made any payment.

Since the Company is not adhering to the terms of sanction and defaulted in payments, the OTS package sanctioned to the Company hereby stands cancelled and all the original liabilities are restored. Accordingly the outstanding dues pertaining to Administrator of specified undertaking of Unit Trust of India (SUUTI) as on 31.07.2009 are given below:-

(Rs Laacs)					
Instrument	Principal Amount	Simple Interest	Overdue Interest	Penal Interest	Total
17% NCDs	6085.00	11794.67	27760.84	999.38	46639.89
16% OFCDs	1184.90	2190.18	4725.95	252.13	8353.18
Total	7269.90	13984.86	32486.79	1251.51	54993.07

(We reserve the right to revise these figures on the basis of relevant facts that may come to our notice in future)

The Company is now advised to pay the entire outstanding dues with future interest immediately without any further delay, failing which, we shall be constrained to take appropriate legal action against the Company.

P.T.O.

- 1 -


एच.डी. टॉवर, "जे.एन." कॉम्प्लेक्स
 सफर-कुर्सी, अजिंक्यनगर
 कोल्हापूर (मि.) 400 051
 फोन 0478 6666 • फॅक्स 0478 6667
 वेबसाइट: www.utmf.com

UT Tower, G-Block,
 Sankar-Burja Complex,
 Sankar, E.I. Mumbai-400 051
 Phone 0478 6666 • Fax 0478 6667
 Website: www.utmf.com

Please acknowledge and confirm the receipt of this letter.

Thanking you,

Yours faithfully,


(D T Gokhe)
Assistant Vice President
Department of Investment Monitoring

O/C



14.14 It is further seen that Respondent No. 2 has been periodically writing to the Corporate Debtor regarding its updated dues. Copy of these letter dated 03.09.2013 giving outstanding as on 31.07.2013 of Rs. 144104.3/- lacs, letter dated 25.02.2014 giving outstanding as on 31.03.2014 of Rs. 143163.23/- lacs, letter dated 30.05.2014 giving outstanding as on 31.03.2014 of Rs. 163803.83/- lacs, letter dated 04.07.2014 giving outstanding as on 31.05.2014 of Rs. 169213.09/- lacs and letter dated 29.01.2015 giving outstanding as on 31.12.2014 of Rs. 189420.62/- lacs. The copy of letter dated 29.01.2015 is scanned below for ready reference:

भारतीय यूनिट ट्रस्ट के विनिर्दिष्ट उपक्रम के प्रशासक
Administrator of the Specified Undertaking of the Unit Trust of India

UT/DOIM/M- 121 /1348/2015-16

29th January, 2015

Without Prejudice

The Chairman and Managing Director
 Modern Syntex (India) Limited,
 68/69 Godavari Poachkhanwala Road
 Worli, Mumbai- 400 030
 Fax No.: 022: 2495 0962

Kind Attn: Shri Kamal Ranka

Dear Sir,

Reg: SUUTI's outstanding dues of Modern Syntex (India) Ltd.

This has reference to our earlier various letters requesting the Company to provide us certain information. However till date we have not received any communication from the company.

Please note the following dues are outstanding as on 31/12/2014

(Rs. in Lacs)					
Instrument	Principal Amount	Simple Interest	Overdue Interest	Penal Interest	Total
17% NCDs (SUUTI)	6085.00	17749.80	106810.66	4031.53	134676.99
16% OFCDs (SUUTI)	1184.90	3285.56	17527.47	908.13	22906.06
16% OFCDs (UTIMF)	1646.92	4566.66	24361.77	1262.22	31837.57
Total	8916.82	25602.01	148699.91	6201.88	189420.62

(We reserve the right to update the above figures on the basis of relevant facts that may come to notice in future)

You are once again requested to provide the following information immediately.

- Details of distribution of sale proceeds of Rs.42 crores received from sale of Yarn & Suitings divisions of Modern Syntex (India) Ltd., situated at Alwar Rajasthan, which were sold in the year 2009.
- Details of the settled secured lenders
- Copy of No Dues Certificates received from secured lenders and also copy of satisfaction of Charge.
- The details of the Charge holders of the Petrofil division of the Company as on date.
- Details of the total surplus land available for sale.
- The present market value of the surplus land.
- The Debt Profile of the company as on 31/12/2014 with list of all the settled and unsettled secured/unsecured lenders of the Company along with the outstanding amount and the OTS payment details.

सुदीर्घा लॉकर, 'जी' ब्लॉक,
 बान्द्रा-कुर्ला कॉम्प्लेक्स,
 बान्द्रा (ईस्ट), मुंबई - 400 051.
 फोन : (022) 6678 6666 • फैक्स : 6678 6677
 वेबसाइट : www.utimf.com


UTTI Tower, 'Gri' Block,
 Bandra-Kurla Complex,
 Bandra (East), Mumbai-400 051.
 Phone : (022) 6678 6666 • Fax : 6678 6677
 Website : www.utimf.com


The Company is also advice to meet Shri B Baburao, President and CEO (Tel NO.022:66786676) at a mutually convenient time and date to discuss the issue of clearance of dues.

Please treat the matter as 'Most Urgent'.

Thanking you,

Yours faithfully,


(Anita Patole)
Vice President
Department of Investment Monitoring



14.15 From the documents available on record it is clear that the OTS of 2008 was revoked on 12th August, 2009 and thereafter Respondent No. 2 had been periodically intimating the Corporate Debtor regarding the amounts due from it. The impugned order in para 10 also noted that Balance Sheet of the Corporate Debtor contains 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.”

15. Considering the factual matrix of the case, and the documents produced by both the parties, it is apparent that the OTS of 2008 was revoked and that the claim made by Respondent No. 2 was filed ignoring the said revoked OTS. The appellant’s submission that the OTS was not revoked is not borne out from the documents cited above. The admission of claim of Respondent No. 2 is in accordance with the application and order of admission under Section 7 of IBC, 2016, the correspondence between the financial creditor and corporate debtor and other records of the Corporate Debtor. The claim, as well as constitution of CoC with voting share as per claim, was in the knowledge of appellant from the very beginning. We do not find any fault in the RP’s admission of claim of Respondent No. 2. We find no merit in this Appeal. The Appeal is accordingly dismissed. We also are of the opinion that this is a frivolous litigation through proxy by the ex-Management to delay the resolution of the Corporate Debtor and we levy a cost of Rs. 50,000/- on the Appellant to be paid to the Prime Minister’s

National Relief Fund within 15 days and compliance affidavit be filed within a week thereafter. All pending connected Interlocutory Applications are closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Ajai Das Mehrotra]
Member (Technical)

Place: New Delhi
Dated: 13.05.2024
Ram N./Harleen