208 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 12631 of 2021
Date of Decision: 27.07.2021

Sarish Mittal **....** Petitioner

Versus

Punjab National Bank and others ... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH

Present: Mr. Aalok Jagga, Advocate
for the petitioner.

Mr. Manish Jain, Advocate
for respondent No.3.

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SANT PARKASH, J.

[The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court]

The instant writ petition has been filed under Article 226/227 of Constitution of India seeking issuance of a writ in the nature of mandamus directing respondent No.11-National Company Law Tribunal, Chandigarh to decide the pending I.A. No.816 and 817 of 2020 (Annexures P-12 and P-13) in CP (IB) No.250/CHD/PB/2018 filed in view of Section 12A of the Insolvency and Bankruptcy Code, 2016 (for short 'Code, 2016') in the Corporate Insolvency Resolution process of M/s KSM Spinning Mills Limited-respondent No.2, which has been reserved for orders vide order dated 10.02.2021 (Annexure P-16) offering to pay Rs.45 Crore to the Financial Creditors; as also for issuance of directions restraining respondent No.11 from proceedings with the I.A.No.914 of 2020 (Annexure P-17) filed by the Resolution Professional-respondent No.2 for approval of Resolution

Plan offering to pay Rs.37.06 Crores to the Financial Creditors under Section 30 of the Code, 2016, being without jurisdiction till the decision of the I.A.No.816-817 of 2020 filed by the petitioner.

At the time of issuing notice of motion for today to respondents No.2, 3 and 11 only, this Court passed the following order:-

> *"Petitioner is the suspended Director of M/s. KSM Spinning Mills Ltd. (respondent No. 2), which is facing Corporate Insolvency Resolution Process (CIRP) pursuant to admission order dated 17.12.2019 (Annexure P-1) passed by National Company Law Tribunal (in short "NCLT") in a petition filed by a Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short "the Code, 2016"). The petitioner initially submitted a settlement plan to invoke Section 12-A of the Code, 2016 offering ₹35 crores which did not find favor with the Creditors. Meanwhile, a Resolution Plan of ₹38 crore was finalized by the Committee of Creditors (in short "CoC"), pursuant to which Creditors were to get ₹37.06 crores. On 12.10.2020 (Annexure P-8), the creditors offered the petitioner to increase the settlement offer amount to ₹45 crores payable to all creditors, but imposed a condition that the entire amount be deposited upfront. The petitioner accepted the proposal for ₹45 crores vide letter dated 21.10.2020 (Annexure P-9), but challenged the oppressive condition of depositing the entire amount upfront on the ground that it is beyond the settlement policies of the respective member banks of CoC. He offered to pay the entire settlement amount in 85 days of approval which is identical time being given to Resolution Applicant which is offering to pay much*

lesser amount i.e. ₹37 Crores. Since the creditors did not agree for the same, petitioner challenged the said oppressive condition by filing IA No. 817 of 2020 and prayed that assets of Corporate Debtor be not leased out. Vide order dated 14.12.2020 (Annexure P-14), notice was issued by the NCLT in the said application and in the meantime, the CoC was directed not to alienate the assets of the corporate debtor. The said IA No. 817 of 2020 was heard and reserved for orders on 10.02.2021 (Annexure P-16).

The grievance of the petitioner is that on one hand, orders are yet to be pronounced on IA No. 817 of 2020, while on the other hand, NCLT is proceeding to hear and dispose off IA No. 914 of 2020 (Annexure P-17) filed by Resolution Professional under Section 30 and 31 of the Code, 2016 seeking approval of the Resolution Plan submitted by the Resolution Applicant.

Learned counsel for the petitioner submits that the result of IA No. 817 of 2020 has direct bearing over the adjudication of IA No. 914 of 2020 as both cannot simultaneously co-exist. In other words, if IA No. 817 of 2020 is allowed, the natural result would be that the IA No. 914 of 2020 would not be maintainable being without jurisdiction. He further contends that the rights of the petitioner are being adversely affected by proceeding with adjudication of approval of resolution plan, while keeping its application for settlement pending for orders.

Issuing notice of motion for 27.07.2021 to respondent Nos. 2, 3 (the lead Bank) and 11 only at this stage, on the limited plea of directing the NCLT to decide the application IA No. 817 of 2020 filed for

> *settlement under Section 12-A of the Code, 2016 (in which the judgment stands reserved) prior to the applications filed by the Resolution Professional for accepting the Resolution Plan, which concededly now stands adjourned to 03.09.2021.*
>
> *Dasti as well."*

In response thereto, respondent No.3-Assets Car & Reconstruction Enterprise Limited (ACRE) has filed a short reply wherein it has been urged that the present writ petition deserves to be dismissed on the ground of maintainability as there is an appropriate, efficacious and alternate remedy available to the petitioner under provisions of the Insolvency and Bankruptcy Code, 2016.

At the time of resumed hearing today, it is fairly conceded by all the parties that NCLT has passed an order in IA NO.817 of 2020 vide which the plea of the present petitioner has been rejected, rendering the present petition having become infructuous.

Accordingly, the present writ petition is dismissed as having been rendered infructuous.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

27.07.2021
Maninder

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No