

In the High Court of Punjab and Haryana at Chandigarh

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CWP No.16806 of 2021

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Date of Decision:09.11.2021**Sarish Mittal****....Petitioner****Vs.****Punjab National Bank and others****.....Respondents**

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Coram: Hon'ble Mr. Justice M.S. Ramachandra Rao
Hon'ble Mr. Justice Karamjit Singh

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

**Mr. Harsh Garg and Mr. Pulkit Goyal, Advocates for
 respondent No.2-Caveator.**

Mr. Manish Jain, Advocate for respondents No.1, 3 to 9.

Mr. Amandeep Singh Talwar, Advocate for respondent No.10.

**Ms. Munisha Gandhi, Senior Advocate with Ms. Salina
 Chalana, Advocate for Caveator-resolution applicant (M/s C.
 Mohan International).**

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M.S. Ramachandra Rao, J.**The background facts:**

M/s K.S.M. Spinning Mills Limited (2nd respondent) was incorporated on 28.09.2004 for manufacturing and supplying cotton/polyester yarn in domestic and export market with around 700 workers.

It availed credit facilities from Consortium comprising 8 Banks amounting to around Rs.165 Crores.

Later it was also expanded by commissioning another Unit No.4 comprising 35,000 spindles which was part financed with term loan of Rs.62 Crores. The petitioner is the suspended Director of the said

Company.

According to him, sanctioned working capital limits of Rs.28 Crores specifically meant for feeding the expansion was not released initially by respondents No.1, 8 and 9 Banks and this resulted in financial stress to the Company. It is stated that later, it was released on 17.08.2015 after execution of joint consortium documents with the Company. The Consortium of Lenders was headed by State Bank of Patiala (which became State Bank of India after merger) and the debt was later on assigned to Assets Care & Reconstruction Enterprise Limited (ACRE), New Delhi (3rd respondent) under Section 5 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'SARFAESI Act') on 50:50 basis.

The loan account of the petitioner came to be declared as Non-Performing Assets (NPA) during 2015-16 and a Demand Notice under Section 13(2) of the SARFAESI Act was issued by the lending Banks.

According to the petitioner, the total outstanding as per symbolic possession notice dt. 24.08.2016 including interest and expenses payable to the Banks amounted to Rs.179.38 Crores.

The petitioner contends that One Time Settlement ('OTS' – for short) offer was given to the Banks with support of the investors in May 2017 and the Punjab National Bank ('PNB' – for short), which was the 1st respondent, sanctioned it on 28.06.2018, but the petitioner contends that the said sanction was not as per of the offer OTS made by the petitioner, and certain oppressive conditions were imposed while sanctioning OTS without

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discussing with the petitioner or with the 2nd respondent-Company.

The petitioner contends that the Bank of Baroda (6th respondent) also sanctioned OTS on 14.11.2018, but even the said OTS offer was not in tune with the petitioner's request and certain harsh conditions were imposed.

The proceedings before the NCLT

On 04.08.2018, the Central Bank of India (4th respondent) served on the petitioner an advance copy of an application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC') for admitting the Company in the NCLT, Chandigarh.

In the meantime, a petition filed under Section 7 of the IBC by the 4th respondent-Bank was registered as CP(IB) No.250/CHD/PB/2018 by the NCLT, Chandigarh.

On 17.12.2019, the said petition got admitted before the NCLT and the Board of Directors/Management of the 2nd respondent-Company came to be suspended and was replaced by Interim Resolution Professional/Resolution Professional by name Mr. Nipan Bansal.

After the admission of the petition by the NCLT, the petitioner/suspended management of the 2nd respondent made an OTS offer on 20.01.2020 to the Joint Lenders' Meeting ('JLM' – for short) comprising of the 8 Banks/Financial Creditors for settling of dues of all the Financial Creditors, and offering Rs.35 Crores.

Other events

In the meantime, the Resolution Professional also invited applications from prospective Resolution Applicants.

Pursuant thereto various offers were received out of which M/s C.

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Mohan International (caveator) submitted a resolution plan offering to pay RS.37.06 Crores to the 7 Financial Creditors of the Corporate Debtor/2nd respondent.

On 22.09.2020, during the 8th meeting of the Committee of Creditors (COC), the resolution plan of M/s C. Mohan International was received and it revised it's final offer to Rs.38 Crores of which RS.37.06 Crores is payable to Financial Creditors, Rs.0.50 Crores was required to be paid to the Operational Creditors and RS.0.44 Crore was to be paid to the labourers/workers with no payment towards dues of Punjab State Power Corporation Limited ('PSPCL' – for short), taxes and other dues.

On 30.09.2020, the petitioner increased his OTS offer to Rs.38 Crores (including the releasing of all guarantees in the account) to Financial Creditors only and requested that the matter be settled for that figure since he was offering more amount to the Banks/Financial Creditors, as compared to H-1 Resolution Applicant i.e. M/s C. Mohan International.

According to the petitioner, the 3rd respondent, which is the lead lender, informed him vide an email dt. 12.10.2020 that JLM was held on 09.10.2020 to discuss the revised OTS of the petitioner; that in the said JLM, all the 8 lenders, after discussing among themselves the settlement amount in the petitioner's OTS proposal of Rs.38 Crores, in writing resolved that petitioner's revised OTS of Rs.38 Crores was not acceptable to them; that petitioner ought to increase settlement amount to Rs.45 Crores and the entire amount (less an amount of Rs.2.50 Crores deposited earlier) should be deposited with any of the lenders as a condition precedent to enable

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consideration of the petitioner's offer by the lenders. It was also mentioned that a response should be filed by the petitioner to the Transaction Audit Report dt. 09.07.2020 to the lenders along with it's revised offer.

On 21.10.2020, the petitioner agreed and increased the offer to Rs.45 Crores payable in three months.

The Joint Lenders Meeting held on 21.10.2020 rejected the petitioner's proposal only on the ground that entire offer amount of Rs.45 Crores (less Rs.2.50 Crores already deposited) ought to have been deposited upfront, and communicated this decision to the petitioner through email dt. 23.10.2020 of the 3rd respondent.

It is this condition which has made the petitioner to approach this Court contending that the same be quashed as it is arbitrary and violative of Article 14 of the Constitution of India and also the decision of the Supreme Court in **M/s Sardar Associates v. Punjab & Sind Bank¹**.

We may also point out that the petitioner had filed an application under Section 60(5) of the IBC to restrain the respondents-creditors from approving resolution plan of M/s C. Mohan International (the Caveator) on the ground that his offer was higher at Rs.45 Crores, that said offer was made at the desire of the 3rd respondent, the lead lender of the Consortium of the Creditors, but the NCLT has rejected the same through an order dt. 27.07.2021. It categorically held that there is no provision in the Code to deal with OTS proposal of any Corporate Debtor with its lenders, and it is for the lenders of Corporate Debtor to consider or not to consider a

¹ **2009 (8) SCC 257.**

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One Time Settlement proposal of any borrower or Corporate Debtor. It also opined that the merits or demerits of OTS proposal vis-a-vis merits and demerits of the resolution plan approved by the COC cannot be compared as the equity and scope of both are separate and different. It opined that the said application filed by the petitioner was not even maintainable and it refused to go into its merits.

This order has not been assailed by the petitioner before the NCLAT, New Delhi and the counsel for the petitioner accepted that the view of the NCLT that petitioner's application is not maintainable, is unexceptionable.

Order dt.6.9.2021 of this Court

On 06.09.2021, while issuing notice of motion to respondents No.1 and 3 to 9, this Court observed *inter alia* that the secured creditors have to apprise the Court of their stubborn stand coupled with other instances where similar onerous conditions have been imposed in the previous three years.

Thereafter, a short reply was filed on behalf of the 3rd respondent contending that the condition to deposit the entire amount of Rs.45 Crores upfront was imposed since the petitioner had earlier entered into settlements, but did not honour the same; only to ensure that the payment of the settlement amount is made in time if the offer is accepted, such a condition of payment upfront was imposed. The 3rd respondent, however, did not dispute that such a condition was never imposed previously on any of the borrowers in the past.

The order dt.20.9.2021 of this Court

Thereafter, on 20.09.2021, this Court considered the contentions of the counsel for the petitioner, counsel for 3rd respondent and

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also Senior Counsel for M/s C. Mohan International (who contended that petitioner did not want to settle his account and is only trying to delay the matter) and opined that the proposal to settle the account for Rs.45 Crores was initiated by none else but the Financial Creditors themselves vide their letter dt. 12.10.2020; that the resolution plan submitted by the Resolution Applicant-M/s C. Mohan International was not yet approved by the NCLT and so the said entity would not derive any enforceable right till such an approval is made; and non-consideration of the proposal of the petitioner leads to a loss of Rs.7.94 Crores to the financial creditors.

It was also opined that the petitioner's proposal did not seek any waiver of the dues of Operational Creditors, Workmen and Employees, Government dues, Statutory liabilities etc., but the resolution plan submitted by M/s C. Mohan International seeks waiver of part of the dues of such stakeholders; that the proposal of the petitioner puts all the other stakeholders at an advantageous position; that it would be necessary to ensure the maximization of the assets of the Corporate Debtor and to ensure best interest of all stakeholders and not the Financial Creditors alone; that a period of 90 days sought by the petitioner cannot be said to be unreasonably long, especially when creditors are prepared to give 90 days to the Resolution Applicant to pay the offer amount after the plan is approved by NCLT where the matter is still pending.

It also placed on record photocopies of FDR statements of the prospective investor to show readiness of payment.

The Bench opined that the condition of making upfront payment

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ensured by the secured creditors though well founded, it is necessary to balance out all odds, to ensure a workable situation. It therefore directed that in case the petitioner's proposal is accepted by the creditors, a single default by the petitioner of any of the undertaken payments would lead to forfeiture of the amount already deposited with the creditors. It then referred to the decision of the Supreme Court in **Swiss Ribbons Pvt. Ltd. v. Union of India**² and **Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta**³ and the principles laid down therein that the very object of the IBC is maximization of the value of assets to Corporate Debtor and it is the duty of the Court to ensure protection of best interest of all stakeholders.

It observed that a proposal of Rs.45 Crores pumps in more and more money to the share of Financial Creditors as also other stakeholders of Corporate Debtor i.e. Operational Creditors, workmen and employees, Government dues etc., and none of the parties could dispute that granting a reasonable time to pay off the settlement amount, has been a consistent practice of all lenders throughout in terms of their respective settlement policies/practices.

It observed that the Writ Petition thus hinges on the short issue:

“Whether a reasonable time, is to be given to pay off the settlement amount or not?”

It, therefore, directed the Joint Lenders Forum to convene a meeting

² **2019 (4) SCC 17**

³ **2020 (8) SCC 531**

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not later than 30.09.2021, to consider the clarified proposal dt. 13.09.2021 of the petitioner on merits. It also directed that the petitioner or its authorized representative be permitted to appear in the said meeting so as to crease out any doubts. It further directed that outcome of the same should be placed on record before the next date of hearing, which was fixed on 11.10.2021.

The JLM meeting dt.28 .9.2021 and decision taken therein

Pursuant to the said direction of this Court, on 28.09.2021, a Joint Lenders Meeting was held in which the petitioner and his representatives were allowed to participate.

In the said meeting, it was averred on behalf of the petitioner that a sum of Rs.45 Crores offered by him was for all the lenders, that Rs.2.5 Crores was already deposited by him with the 3rd respondent along with the previous OTS proposal, that a further amount of Rs.8.75 Crores would be paid within 15 days of the communication of the sanction of the OTS by all the lenders and the balance Rs.33.75 Crores would be paid within 85 days as upfront of the communication of the sanctioned OTS by all lenders. It was also stated that upon receipt of Rs.45 Crores by the lenders, possession of the unit should be given back to the suspended Director. The petitioner's representative further offered that after receipt of the OTS, lenders will issue 'No Due Certificate' and release mortgage/hypothecation charge and guarantees and also withdraw all the cases/recovery proceedings initiated by all the lenders.

The minutes of the said meeting have been placed on record

which indicate that after the petitioner's representatives made the above proposal, the lenders then asked the representative of the petitioner about the source of payment of OTS amount or Rs.42.50 Crores to which, the petitioner's representative responded that copy of FDR statement of Rs.10.72 Crores from the investor has been submitted before the High Court to show bona fides, that this sum is more than the amount of second instalment of Rs.8.75 Crores proposed under the OTS.

The minutes thereafter recorded that there was no satisfactory response from the petitioner with regard to the sources of the remaining OTS amount.

Thereafter, the petitioner left the meeting along with his other representatives and the following was decided in the said JLM held on 28.09.2021 after deliberations:-

- “ *The suspended directors have in the past failed to adhere with the OTS sanctioned by the Lenders from time to time.*
- *The account of KSM Spinning Mills Limited has already been declared as “**fraud**” by most of the lenders. Further some banks have also declared the borrower as “**willful defaulter**”.*
- *Under the OTS proposal dt. 13.09.2021 the Guarantees would also be released.*
- *The resolution professional has already filed the application under Section 66 of IBC, 2016 and the same is pending adjudication before the adjudicating authority. The amount involved in the said application is **Rs.88.96 crores** and the lenders are hopeful of getting a favourable order in the said case.*
- *On earlier occasion the Resolution Plan was under*

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consideration with the COC and voting on the same was deferred from 23.10.2020 to 13.11.2020 at the request of the suspended directors in the JLM held on 22.10.2020 and a fair chance was given to the suspended directors to arrange for the funds for OTS.

- The Resolution Plan was approved by the COC and the same is pending adjudication before the adjudicating authority and accordingly the Lenders could not proceed simultaneously with the OTS proposal and CIRP.*
- OTS proposal cannot be compared with the Resolution Plan received under the CIRP as the Lenders would still have their rights to proceed against the Guarantors.*
- Keeping in view the past record of the promoters, the intention of the suspended directors is also suspicious and the Lenders are cautious.*
- The Promoters have also not submitted the reply to the Transaction Audit Report as was asked on various occasion.”*

Therefore, a decision was arrived at by the lenders in the special JLM that *the OTS proposal dt. 13.09.2021 made by petitioner be not accepted.*

Contentions of counsel for petitioner

Counsel for the petitioner contends that most of the circumstances mentioned in the above bullet-points in the minutes of the meeting dt. 28.09.2021 of the Joint Lender's Meeting had already been within their knowledge by 12.10.2020 (when the 3rd respondent made the offer to the petitioner to pay Rs.45 Crores), and when the said offer had been made by them with such knowledge of those circumstances, the OTS offer of the petitioner dt. 13.09.2021 cannot be rejected for the said reasons.

Counsel also offered that the guarantees offered for the loans need

not be released though in his OTS proposal dt. 13.09.2021, the petitioner had insisted on such release. He also contended that the reply to the Transaction Audit Report had been given to the NCLT which is seized of the application filed by the CIRP for approval of the resolution plan submitted by the entity M/s C. Mohan International (which fact was also corroborated by the counsel for the CIRP Shri Harsh Garg).

He placed strong reliance on the decision of the Supreme Court in **M/s Sardar Associates and others v. Punjab & Sind Bank and others** (*supra*), and contended that even in the said case it was the secured creditors who initially made the offer to the Corporate Debtors for one time settlement and then turn around and resiled from it for untenable reasons and the Supreme Court interfered with the said decision on the ground that it was contrary to the RBI guidelines.

He further contended that the scheme of OTS proposed by the petitioner was more beneficial to the creditors of the Corporate Debtors than the resolution plan submitted by M/s C. Mohan International, and if this be so, on flimsy grounds his OTS proposal dt. 13.09.2021 could not have been rejected by the JLM on Creditors.

Contentions of counsel for respondents 1,3 to 9

Shri Manish Jain, counsel for respondents No.1 and 3 to 9 contended that in the Writ Petition petitioner's prayer was that its OTS proposal be considered by the creditors; once the Division Bench of this Court had given the directions on 20.09.2021 that the petitioner's OTS proposal dt. 13.09.2021 be considered on its merits by the creditors, and the petitioner's

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OTS proposal was duly considered, in obedience of the said direction, in the Joint Lender's Meeting held on 28.09.2021 and rejected, the petitioner is not entitled to any further relief because the creditors had considered the OTS proposal dt. 13.09.2021 without insisting on upfront deposit of the entire amount of Rs.45 Crores which was the contention of the petitioner too.

He sought to justify the view taken by his clients in JLM dt. 28.09.2021 by contending that, in the said meeting, the lenders were not agreeable to release the guarantees as were demanded by the petitioner and they had insisted the guarantors to provide Net Worth Statement Certificate by Chartered Accountant, but they did not do so.

He also pointed out that an OTS proposal cannot be compared with the resolution plan received in the CIRP as the lenders still have their right against the guarantors separately; whatever was done is to get more recovery; and keeping in view the past record of the promoters of noncompliance of earlier OTS proposals, no fault can be found with the decision of creditors in rejecting the OTS proposal dt. 13.09.2021 submitted by the petitioner.

According to him, the account of 2nd respondent-Company has already been declared as 'fraud' by most of the lenders, some of the lenders have also declared the borrower as 'willful defaulter', the application under Section 66 of the IBC (alleging fraudulent trading/wrongful trading by the Corporate Debtors with intent to defraud the creditors) is pending before the NCLT, and the amount alleged to have been defrauded is to the tune of Rs.88.96 Crores.

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He also contended that the total dues of the 2nd respondent-Company are in excess of Rs.300 Crores; that the petitioner had been convicted in a case under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act') at the instance of third party; and that several other cases under Section 138 of the NI Act are pending against him.

He also stated that vide order dt. 07.04.2021, Judicial Magistrate, Ist Class, Chandigarh, in a case filed by **M/s Indian Acrylics v. KSM Spinning Mills etc.** had declared the petitioner as a 'proclaimed person' and the petitioner remained in jail since his bail application was rejected by the ASJ, Ludhiana on 02.08.2021 in FIR No.218 dt. 23.08.2019 registered with Police Station Moti Nagar, Ludhiana, under Sections 406, 420, 506 and 120-B IPC.

He also contended that the promoter of the NBFC entity (from whom the petitioner is sourcing the funds for the OTS) by name M/s J.R. Finance Ltd., namely, Mr. Kuldip Bansal was a defaulter of Rs.8.13 Crores to Indian Bank and the said NBFC had been categorized as "High Risk Financial Institution" by the Financial Intelligence Unit, Government of India.

He also stated that the respondents are not aware of the antecedents of M/s Siddhi Impex from whom the petitioner is now arranging funds.

He, therefore, prayed that the Writ Petition be dismissed.

Contentions of counsel for workmen (10th respondent)

Shri Amandeep Singh Talwar, Advocate appearing for the workmen (10th respondent) supported the case of the Writ Petitioner and contended that the workers will not get much if the resolution plan of M/s C. Mohan

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International is accepted and the OTS of the petitioner is a superior and better offer benefiting not just the Financial creditors but also all other stakeholders.

Contentions of Sr. Counsel for Caveator

Ms. Munisha Gandhi, counsel for M/s C. Mohan International-the Resolution Applicant (Caveator) contended that the resolution plan of her client had been approved by the Committee of Creditors (CoC) and the approval of the NCLT under Section 31 of the IBC is awaited.

According to her, the petitioner is barred under Section 29-A of the IBC from presenting a resolution proposal/plan; and to get over the said ban, the petitioner had approached this Court by invoking extraordinary jurisdiction under Article 226 of the Constitution of India.

She pointed out that the Parliament has introduced Section 29-A of the IBC with a specific purpose to ensure that persons responsible for the Insolvency of the Corporate Debtors like the Writ Petitioner do not participate in the resolution process, and persons such as the petitioner whose misconduct has contributed to the default on the part of the 2nd respondent, cannot be permitted to make any proposal for settlement of the debts with the creditors.

She also emphasized that the intention of the petitioner is to delay the resolution process so that the value of the assets of the 2nd respondent would deplete and if his contentions are accepted, it would defeat the purpose of IBC to provide for mechanism for Insolvency of the Corporate Debtors in a time bound manner to ensure that the value of the assets of the

Corporate Debtors would not deplete.

She also drew the attention of the Court to the Preamble to the IBC and contended that the Corporate Debtor has to be protected from its own management and backdoor entry of promoter ought not to be permitted.

The consideration by the Court

We have noted the contentions of all the parties.

The question to be considered is:

‘Whether in exercise of its power under Article 226 of the Constitution of India, this Court should interfere with the decision of the creditors taken in the JLM held on 28.09.2021 rejecting the petitioner's OTS proposal dt. 13.09.2021, and review the commercial wisdom of the said decision?’

In the Report of the Insolvency Law Committee dt. 03.03.2018 (mentioned in the judgment of the Supreme Court in **Arun Kumar Jagatramka v. Jindal Steel and Power Ltd. and another**⁴ and batch), it had opined that *the intent behind introducing Section 29-A of IBC through an amendment in 2017 was to prevent unscrupulous persons from gaining control over the affairs of the Company, and these persons included those who by their misconduct have contributed to the defaults of the Company or are otherwise undesirable*. The Committee had observed that by virtue of Section 29-A of IBC, persons who by their misconduct contributed to the defaults of the Corporate Debtor or are otherwise undesirable, are prevented from gaining or regaining control of the Corporate Debtor.

In **Chitra Sharma v. Union of India**, (2018) 18 SCC 575, the Court

⁴ **2021 (2) R.C.R. (Civil) 469**

had held that the provisions of Section 29-A of IBC were intended to ensure that among others, persons responsible for insolvency of the Corporate Debtor do not participate in the resolution process.

In **Arun Kumar Jagatramka v. Jindal Steel and Power Ltd. and another (supra)**, the Court also observed that the purpose of the ineligibility under Section 29-A was to achieve a sustainable revival and to ensure that a person who is the cause of the problem either by a design or a default cannot be a part of the process of solution. The Court went to the extent of stating that the prohibition placed by Parliament in Section 29-A and Section 35(1)(f) of the IBC would attach itself even to a compromise or arrangement under Section 230 of the Companies Act, 2013 as well, when the Company is undergoing liquidation under the auspices of IBC.

Keeping in mind these principles we shall now proceed to consider the respective contentions of the parties.

Admittedly, the process under the IBC has been commenced against the 2nd respondent /Corporate Debtor, and an application under Section 7 of the IBC presented by the 4th respondent in CP(IB) No.250/CHD/PB/2018 was admitted by the NCLT, Chandigarh on 17.12.2019 and the Board of Directors/Management of the 2nd respondent, Corporate Debtor has been suspended and replaced by an Interim Resolution Professional/Resolution Professional by name Mr. Nipan Bansal.

Also claims against the second respondent to the tune of Rs.316.14 Crores have been admitted by the Resolution Professional.

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It is also undisputed that the Committee of Creditors (CoC) had approved the resolution plan proposed by M/s C. Mohan International and the same is pending approval before the NCLT.

The petitioner had filed an application under Section 60(5) of the IBC to restrain the respondents-creditors from approving resolution plan of M/s C. Mohan International (the Caveator) on the ground that his offer was higher at Rs.45 Crores, that said offer was made at the desire of the 3rd respondent, the lead lender of the Consortium of the Creditors, but the NCLT has rejected the same through an order dt. 27.07.2021. It categorically held that there is no provision in the Code to deal with OTS proposal of any Corporate Debtor with its lenders, and it is for the lenders of Corporate Debtor to consider or not to consider a One Time Settlement proposal of any borrower or Corporate Debtor. It also opined that the merits or demerits of OTS proposal vis-a-vis merits and demerits of the resolution plan approved by the COC cannot be compared as the equity and scope of both are separate and different. It opined that the said application filed by the petitioner was not even maintainable and it refused to go into its merits.

This order has not been assailed by the petitioner before the NCLAT, New Delhi and the counsel for the petitioner accepted that the view of the NCLT that petitioner's application is not maintainable, is unexceptionable.

The counsel for the petitioner did not dispute the contentions of counsel for respondents 1, 3 to 9 that:

(a) the account of 2nd respondent-Company has already been declared as

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‘fraud’ by most of the lenders and some of the lenders have also declared the borrower as ‘willful defaulter’;

- (b) the application under Section 66 of the IBC (alleging fraudulent trading/wrongful trading by the Corporate Debtors with intent to defraud the creditors) is pending before the NCLT, and the amount alleged to have been defrauded is to the tune of **Rs.88.96 Crores**;
- (c) that the total dues of the 2nd respondent-Company are in excess of **Rs.300 Crores**;
- (d) that the petitioner had been convicted in a case under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as ‘the NI Act’) at the instance of third party; and
- (e) that several other cases under Section 138 of the NI Act are pending against him.
- (f) vide order dt. 07.04.2021, Judicial Magistrate, Ist Class, Chandigarh, in a case filed by **M/s Indian Acrylics v. KSM Spinning Mills etc.** had declared the petitioner as a ‘proclaimed person’ and the petitioner remained in jail since his bail application was rejected by the ASJ, Ludhiana on 02.08.2021 in FIR No.218 dt. 23.08.2019 registered with Police Station Moti Nagar, Ludhiana, under Sections 406, 420, 506 and 120-B IPC.
- (g) that the promoter of the NBFC entity (from whom the petitioner is sourcing the funds for the OTS) by name M/s J.R. Finance Ltd., namely, Mr. Kuldip Bansal was a defaulter of **Rs.8.13 Crores** to Indian Bank and the said NBFC had been categorized as “High Risk Financial

Institution” by the Financial Intelligence Unit, Government of India.

That apart, we do not appreciate the conduct of the petitioner (in the meeting of Joint lenders held on 28.9.2021) of refusing to disclose even the source of payment of the OTS amount of Rs.42.50 Crores made in his OTS proposal dt. 13.09.2021. Earlier OTS proposals made by petitioner were also not complied by petitioner.

In view of all these circumstances, we are of the opinion that respondents No.1 and 3 to 9 were justified in not having confidence that the petitioner would comply with the terms of his OTS proposal and were also justified in refusing to accept his OTS proposal dt. 13.09.2021 in their commercial wisdom.

No doubt the creditors, through the 3rd respondent, had initiated a proposal and asked the petitioner to make an OTS offer of Rs.45 Crores through email dt. 12.10.2021. But when the petitioner did not come forward to indicate the source of funds for the said proposal, keeping in mind his past conduct as well, they were well within their rights in not acceding to his OTS proposal.

In the decision of the Supreme Court in **M/s Sardar Associates v. Punjab & Sind Bank (supra)**, relied upon by the petitioner, the RBI guide-lines permitted an OTS for Rs.3,45,31,000/-, but the Punjab & Sind Bank, the Creditor Bank, deviated from the RBI guide-lines in an arbitrary manner. The Supreme Court, in that context, held that such a public sector bank is otherwise bound by the guide-lines issued by the Reserve Bank of India and such guide-lines can be enforced by the Forums provided under

the SARFAESI Act, 2002. It held that when the offer was made by the Bank to the borrower, it cannot turn around and contend that the borrower had furnished security of only Rs.11 Crores and deviate from the RBI guide-lines which were binding on it. The Court held that in terms of the guide-lines issued by the Reserve Bank of India, a right was created in a borrower and a Writ of Mandamus can, therefore, be issued under Article 226 of the Constitution of India.

The said principle cannot be applied in the instant case though the offer in the instant case also proceeded from the creditors asking the petitioner to make an offer of Rs.45 Crores for the following reasons.

In view of the past defaults committed by the petitioner by failing to comply with the OTS proposals accepted by the respondents-Banks, it cannot be said that respondent No.1 and 3 to 9 were obligated to accept the OTS proposal merely because they made it when the petitioner was not forthcoming about the source of the payment of the OTS proposal of Rs.45 Crores. There is no violation of any guidelines of RBI in the instant case, unlike in the case of **M/s Sardar Associates v. Punjab & Sind Bank** (supra).

We are also of the opinion that in the exercise of extra-ordinary jurisdiction conferred on this Court under Article 226 of the Constitution, it is not permissible for this Court to go into a comparative assessment of the OTS proposal made by the petitioner *and* the resolution plan proposed by M/s C. Mohan International, as this Court has no expertise in that regard.

We are of the opinion that the respondents 1 and 3 to 9 Banks have

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given cogent and convincing reasons for not accepting the OTS Proposal dt.13.9.2021 of the petitioner and their view cannot, in the facts and circumstances of this case, be said to arbitrary or unreasonable warranting interference by this Court in exercise of it's extraordinary jurisdiction under Art.226 of the Constitution of India.

We, therefore, find no merit in this Writ Petition. It is accordingly dismissed. No Costs.

(M.S. Ramachandra Rao)
Judge

(Karamjit Singh)
Judge

November 09, 2021.

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NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	Yes