THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.12898 of 2018

ORDER: (per SK,J)

The petitioner is a former Director of M/s. Super Agri Seeds Private Limited (in Liquidation), Medak District, the fourth respondent herein. He states that he gave his personal guarantee in relation to the loans availed by the said company apart from creating security interest in his own properties. His prayer in this writ petition reads as under:

> 'For the reasons stated in the accompanying affidavit, it is therefore just and essential that the Hon'ble Court may be pleased to issue writ of mandamus or any other appropriate, writ or order or direction declaring that:
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> i) To set-aside the order dated 06.09.2017 passed by the Ld. National Company Law Tribunal, Hyderabad, in Company Petition CP (IB) No.172/10/HDB/2017 to the extent that direction passed to conduct e-auction of properties by the Respondent No.1 Bank on 08.09.2017 is void because the same order is passed without jurisdiction and the same are bad in law under the provisions of IBC, 2016 in view of the judgements passed by this Hon'ble Court and Hon'ble Supreme Court of India.
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> ii) To set-aside the e-auction dated 08.09.2017 same being held without the mandate of law as the petition of the Respondent No.4 Company under Section 10 of IBC was already admitted on 06.09.2017 and the Ld. Adjudicating Authority acted without jurisdiction to permit the same.
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> iii) To set-aside all the actions taken by the Respondent No.1 bank pursuant to e-auction proceedings held on 08.09.2017 as being null and void as the same is bad in law.
>
> iv) To declare, set-aside all the acts committed by the Respondent No.1 against the petition schedule of properties being violative of the procedure contemplated under the provisions of the SARFAESI Act, 2002, read with Rules thereunder, arbitrary, illegal, unjust, colourable exercise of power, violative of the fundamental rights guaranteed under Articles 14 & 19 and the

> constitutional rights guaranteed thereunder Article 300A of Constitution of India, contrary to the judgments of the Apex Court and consequently set-aside the auction notice dated 31.07.2017 there under.'

Perusal of the order dated 06.09.2017 passed by the National Company Law Tribunal, Hyderabad Bench, Hyderabad (NCLT), in CP(IB) No.172/10/HDB/2017 reflects that the said petition was filed by the corporate debtor, the fourth respondent herein, under Section 10 of the Insolvency and Bankruptcy Code, 2016 (*for brevity*, 'the Code'), seeking to initiate the Corporate Insolvency Resolution process in relation to itself. By the said order, the NCLT admitted the company petition but permitted the State Bank of India to go ahead with the e-auction proposed to be held by it on 08.09.2017 under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*for brevity*, 'the SARFAESI Act'). The NCLT however made it clear that the proceedings with regard to the said e-auction should be kept on hold till further orders were passed by the Adjudicating Authority.

Sri M.Srikanth Reddy, learned counsel for the State Bank of India, would inform this Court that the properties put to sale on 08.09.2017 comprised four items but eventually the sale stood confirmed only in respect of two items belonging to the petitioner herein.

Though Sri S.Suman, learned counsel for the petitioner, would contend that the provisions of Section 14 of the Code would benefit the petitioner also, we are not inclined to accept the said submission.

Section 14(1)(c) of the Code makes it clear that the moratorium declared thereunder would posit a prohibition against any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the SARFAESI Act. The language of the provision therefore puts it beyond the pale of doubt that the moratorium thereunder would operate only in respect of the property owned by the corporate debtor itself and would not extend to the properties offered as security by the guarantors.

This aspect has been further clarified by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, spelling it out that the moratorium would not apply to the properties offered by a surety or guarantor.

In that view of the matter, the petitioner cannot claim any benefit under the provisions of the Code in relation to his properties which were brought to sale by the State Bank of India. We are further informed that the NCLT passed order dated 21.03.2018 directing liquidation of the fourth respondent company. We are also informed that Company Appeal (AT) (Insolvency) No.124 of 2018 filed against the said order has also been dismissed by the National Company Law Appellate Tribunal, New Delhi.

On the above analysis, we are of the opinion that the petitioner lacks locus to approach this Court in relation to the order dated 06.09.2017 passed by the NCLT, Hyderabad Bench. The very basis for this writ petition is his assumption that he is entitled to the protection of Section 14 of the Code but as we have already indicated that the said provision is not applicable to him, the writ petition is devoid of merit.

The writ petition is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

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SANJAY KUMAR,J

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T.AMARNATH GOUD,J

Date:08.08.2018
GJ