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

<u>WRIT PETITION NO.26115 of 2018</u>

<u>ORDER</u>: (per SK,J)

M/s. Nawa Engineers and Consultants Private Limited, Hyderabad, the first petitioner, is the principal borrower from the State Bank of India, the respondent herein, while petitioners 2, 3 and 4 stood as guarantors for the loan availed by the first petitioner company and offered their properties to the bank as collateral security. Their grievance in the writ petition is with regard to the action of the bank in seeking to put to sale the properties belonging to the guarantors under e-auction sale notice dated 06.07.2018.

Sri Sreenivasa Rao Velivela, learned counsel for the petitioners, would state that proceedings have been initiated under the Insolvency and Bankruptcy Code, 2016 (*for brevity,* 'the Code'), in so far as the first petitioner company is concerned and in that view of the matter, the moratorium under Section 14(1) of the Code would bar the bank from seeking to recover its dues even by initiating action against the security interest created by the guarantors.

It may however be noticed that Section 14(1) of the Code states to the effect that the Adjudicating Authority shall, by order, declare moratorium on the insolvency commencement date prohibiting any action to recover or enforce any security interest created by the corporate debtor in respect of its property, including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, amongst others.

It is therefore clear from bare perusal of the aforestated provision that the moratorium under Section 14 of the Code operates only against the security interest created by the corporate debtor in respect of its property. This aspect has now been clarified by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, whereby sub-section (3) was inserted in Section 14 of the Code. This sub-section reads as under:

> '(3) The provisions of sub-section (1) shall not apply to –
> (a) such transaction as may be notified by the Central Government in consultation with any financial regulator;
> (b) a surety in a contract of guarantee to a corporate debtor.'

It is therefore manifest beyond the pale of doubt that the moratorium under Section 14(1) of the SARFAESI Act shall not apply to a surety in a contract of guarantee to a corporate debtor. The contention of the petitioners in this regard is without merit and is therefore rejected.

The writ petition fails and 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:31.07.2018

GJ