IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.16110 of 2018.
Date of Decision: July 12, 2018

Haravtar Singh Arora ......Petitioner

versus

Debt Recovery Appellate Tribunal and others .....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE SUDIP AHLUWALIA.

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Present: Ms.D.Geetha, Advocate, for the petitioner.

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Surya Kant, J. (Oral)

The petitioner is promoter of M/s James Hotel Limited, namely, 5th respondent which is a public limited Company registered under the Companies Act, 1956. The Company has set-up a hotel in Sector-17, Chandigarh on a piece of land measuring 9602 square yards which was taken on 99 years lease from Chandigarh Administration.

[2] The Company is borrower of respondent No.3-Bank (Punjab National Bank). It appears to have taken loan from various other banks as well. Punjab National Bank served the Company with a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the 2002 Act) on 09.08.2014 alleging that the Company is in default of payment of about Rs.33.50 crores. Similar notice was issued by Union Bank of India also for recovery of about Rs.11.61 crores. Likewise, State Bank of India transferred its right and lien in favour of Asset Reconstruction Company (ARC), who too issued notice under Section 13(2) of the 2002 Act demanding recovery of more than Rs.58 crores from the Company. These

notices were followed by action under Section 14 of the 2002 Act as the District Magistrate, Chandigarh vide order dated 23.08.2016 directed the borrower(s) to hand-over the 'secured assets' to the bank(s). The aforesaid action led to certain proceedings before the Debt Recovery Tribunal which were decided vide order dated 30.08.2016 (P-2). The order would reveal that the Presiding Officer passed strictures against the PNB officials and made some other observations which are not necessary to be quoted for the purpose of this order.

[3] Suffice to say that Punjab National Bank has taken up the matter in appeal before the Debts Recovery Appellate Tribunal, Delhi and the matter is still sub-judice before the Appellate Tribunal. The Appellate Tribunal has passed certain self-speaking interlocutory orders including the one vide which it has noticed that the 'moratorium period under IBC-2016 has expired as far as the bank's corporate-debtor is concerned and there was thus no impediment in the way of the bank for proceeding further for recovery of its dues in accordance with law'. We are informed that the Appellate Tribunal is yet to pass the final order.

[4] Simultaneously, Punjab National Bank has also moved an application under Section 7 of the Insolvency and Bankruptcy Code-2016 against the Company in which the National Company Law Tribunal (NCLT) has appointed 4th respondent as the Insolvency Resolution Professional. The proceedings before the NCLT too are still pending as it has stated that passing of final order has been stayed by this Court in some other proceedings.

[5] Be that as it may, in the instant writ petition the petitioner, namely, the promoter of the borrower-Company claims, *inter-alia,* the

following reliefs:-

(i) To declare that simultaneous proceedings will clash in between the two Tribunals, i.e., DRAT and NCLT for the same relief, hence, these proceedings are not maintainable;

(ii) initiation of simultaneous proceedings by the Punjab National Bank amounts to Forum Shopping and contrary to Section 234 of the Insolvency and Bankruptcy Code, 2016;

(iii) all the further proceedings before DRAT and NCLT be stayed; and/or

(iv) this Court may issue any other appropriate writ, order or direction.

[6] In all fairness, learned counsel for the petitioner while touching upon the merits of the case, urges *inter-alia* that the DRAT is likely to pass an adverse order against the petitioner and NCLT cannot proceed in the matter as it amounts to initiation of parallel proceedings before two different Tribunals.

[7] Having given our thoughtful consideration to the submissions, we do not deem it necessary to go into the merits of the case at this stage. The instant writ petition appears to be pre-mature and misdirected. We say so for the reasons that the DRAT has not passed yet any final order and it would be inappropriate for this Court to infer that the order to be passed by the Appellate Tribunal would necessarily be against the petitioner. Still further, even if an adverse order is passed by the Appellate Tribunal, the petitioner in no way is remediless as such an order can be assailed in appropriate proceedings.

[8] As regard to continuation of parallel proceedings before NCLT, it appears prima-facie that the nature of proceedings under the 2016 Code or

the relief sought therein are alien and distinct from the measures which a secured creditor is entitled to take under the provisions of 2002 Act. Nevertheless, nothing precludes the petitioner to move an application before NCLT and make out a case that such proceedings pending are liable to be kept in abeyance till the decision of the appeal by the DRAT. We grant leave to the petitioner to move an application within one week from today, if already not moved, and if any such application is filed or is already filed, we direct NCLT to decide the same in accordance with law within one month.

The writ petition stands disposed of accordingly.

[SURYA KANT]
JUDGE

July 12, 2018 **(SUDIP AHLUWALIA)**
mohinder **JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No