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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 20.05.2019

\+ W.P.(C) No.5467/2019

AMIRA PURE FOODS PRIVATE LIMITED ..... Petitioner
Through Mr.Ashish Makhija, Adv.

versus

CANARA BANK AND ORS. ..... Respondents
Through Mr.Vijay Kumar, Adv. for R-1.
Mr.Anshul Sehgal, Adv. for R-2.
Ms.Hina Bhargava, Adv. for R-3.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J (ORAL)

C.M. No.23979/2019

1. Exemption allowed, subject to all just exceptions.

W.P.(C) No.5467/2019

1. Issue notice. Mr.Vijay Kumar, Advocate accepts notice for respondent no.1; Mr.Anshul Sehgal, Advocate for respondent no.2 & Ms.Hina Bhargava, Advocate for respondent no.3.

2. The petitioner, who is the corporate debtor, has approached this Court though the Interim Resolution Professional/Resolution Professional (hereinafter referred to as "IRP/RP") appointed by National Company Law Tribunal (NCLT) under the Insolvency & Bankruptcy Code, 2016 with the prayer to set aside the order dated 22.04.2019 passed by learned Debt Recovery Appellate Tribunal (DRAT) in Miscellaneous Appeal No.548/2018, arising out of OA

No.569/2018. The petitioner/corporate debtor had been proceeded against by the respondent/Canara Bank before the Debt Recovery Tribunal (DRT) under the Recovery of Debts Due to Banks & Financial Institutions Act, 1993, by preferring the aforesaid OA No.569/2018. Arising from those proceedings, the matter reached the DRAT. The DRAT vide its order dated 15.11.2018, appointed respondent nos.2 & 3 as Joint Court Commissioners to *inter alia* take over the assets of the petitioner, including the perishable assets, i.e. grains, as also its other assets. Soon thereafter, in proceedings before the NCLT, in relation to the petitioner company, the IRP/RP was appointed on 11.12.2018. With a view to fulfil its mandate in a time bound manner, as prescribed under the Insolvency and Bankruptcy Code, 2017, the IPR/RP approached the DRAT for taking over the godowns/properties of the Corporate Debtor, including its plant, machinery, mortgaged properties and stocks of grain etc., and prayed for an early hearing. Pertinently, the Canara Bank, which is the lender and the initiator of the Original Application, also consented to the said application being allowed. However, the DRAT did not consider the application for early hearing moved by the IRP/RP and the proceedings were adjourned. Consequently, the corporate debtor acting through the IRP/RP, preferred W.P(C) No.3619/2019 before this Court, which writ petition was disposed of by us vide order dated 01.04.2009 in the following terms:-

> *"Though notice could not issue in view of paucity of time, the respondents are represented. Mr. Vijay Kumar appears on behalf of respondent No.1 and the receiver Shri Arjun Nihal Singh is also present.*
>
> *Mr. Vijay Kumar submits that the respondent*

bank had given its no objection to the application moved by the Interim Resolution Professional – who stands appointed as the Resolution Professional, take over the asset of the borrower company, including both movable and immovable in terms of the Insolvency and Bankruptcy Code 2016.

Learned counsel for the petitioner submits that the goods are of perishable nature i.e. grains etc. and their disposal at an early date is of utmost importance to salvage their value. He further submits that the Resolution Professional has to take steps within 180 days and out of that period of 120 days is over. He is not able to proceed in view of the appointment of the Receiver by the learned DRAT. The keys of the premises, which is lying sealed, have been delivered to respondent bank by the two receivers. The premises are being guarded by the guards deployed by consortium of banks led by Canara Bank. The petitioner's application moved, as early as on 24.12.2018, for the purpose of de-sealing of the properties and delivery of the same to the Resolution Professional is still pending. The early hearing application moved by the Resolution Professional has also not been entertained.

In view of the aforesaid circumstances, we direct the learned DRAT to hear and dispose of the applications of the Resolution Professional within the next one week. In the interim, we permit the Resolution Professional to inspect the premises and the goods lying therein, and to make an inventory of the same. He is also permitted to inspect the records. The said inspection shall be carried out in the presence of the officers of the Canara Bank as well as the receivers appointed by the learned DRAT. The receivers shall de-seal the premises so that the Resolution Professional is able to enter the same and carry out the aforesaid activities.

In case, the DRAT does not dispose of the applications preferred by the Resolution Professional within one week, we grant liberty to Resolution Professional to move an application in the present petition.

The petition stands disposed of in the aforesaid *terms.*

Order dasti under the signatures of the Court Master."

3. The DRAT has now passed the impugned order dated 22.04.2019 and has taken the view that in the light of the moratorium imposed by Section 14 of the Insolvency & Bankruptcy Code, 2016, the continuation of the proceedings against the corporate debtor are prohibited. The operative part of the impugned order reads as follows:-

> *"xxx However, this Tribunal is of the view that the aforesaid rival submissions need not be gone into at this stage by this Tribunal because of the admitted position that a moratorium has been ordered by the NCLT in exercise of its powers under section 14 of the Code of 2016 which prohibits continuation of any proceedings against the corporate debtor. The present proceedings arise out of O.A. proceedings initiated by the bank against its borrowers and the corporate debtor being one of the defendants in the bank's O.A, prohibition under section 14 of the Code will come into operation and the Tribunal will stand prohibited from proceeding in the present matter. In case any direction(s) which is being sought on behalf of the Resolution Professional and the alleged landlord of the one godown in question is passed, the moratorium will stand violated. Consequently, the application moved by the Resolution Professional is dismissed. It will, however, be open for the Resolution Professional to have recourse to legal remedies which may be available to it in law for enforcement of its rights and fulfillment of its obligations as Resolution Professional in the matter.*
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> *The application of Sidhartha Global Pvt. Ltd. will remain pending till the moratorium period does not expire. The grievances in the said application are kept open to be considered at*

appropriate stage."

4. The submission of learned counsel for the petitioner is that the view taken by the learned DRAT is not legally correct. He submits that Section 14 of the Insolvency & Bankruptcy Code, 2016, only imposes a moratorium and prohibits the institution of pending suits or proceedings **against the corporate debtors**. However, there is no prohibition against the undertaking of proceedings which cannot be considered as being against the corporate debtor. He submits that since the IRP/RP has been appointed in respect of the corporate debtor, its Board of Directors stands suspended and the IRP/RP has to now manage the affairs of the corporate debtor. He, thus, contends that it is in the interest of the corporate debtor that its assets, including the perishable assets, are managed efficiently so as to salvage the best value of the said assets. However, the appointment and continuation of the Court Commissioners with vesting of the assets of the corporate debtor in them, is preventing the IRP/RP from discharging his time bound duties and the interest of the corporate debtlor is suffering. Learned counsel submits that the effect of the impugned order is that the Court Commissioners, appointed by the DRAT, continue to remain in control and custody of the assets of the corporate debtor, which would be detrimental to the interest of the corporate debtor, as due to the non-disposal of the perishable goods in a timely manner, their best value will not be realised.

5. Learned counsel submits that under the Insolvency & Bankruptcy Code, 2016, Section 12 lays down the time limit of 180 days during which the IPR/RP has to achieve its mandate. The said period is extendable only by another 90 days. Since the

IRP/RP in the present case was appointed on 11.12.2018, the said period of 180 days will be expiring on or about 10th June, 2019. Learned counsel has also drawn our attention to Section 18 of the Insolvency & Bankruptcy Code, 2016 which entitles the IRP/RP to monitor the assets and take control and custody of the assets of the corporate debtor.

6. Since the respondent no.1/Bank has also expressed its willingness to the IRP/RP taking control of all the assets, including the perishable assets of the corporate debtor, there is no real contest in the present case. We have considered the submissions of learned counsels and are of the view that the DRAT was not powerless to modify its own order whereby the two court commissioners had been appointed to take over control of the assets of the petitioner/corporate debtor. In the facts of the case, the learned DRAT should have recalled its order so that the IRP/RP could take over the assets of the corporate debtor in the exercise of its mandate under the Insolvency & Bankruptcy Code, 2016.

7. We, therefore, set aside the impugned order dated 22.04.2019 passed by the DRAT in the aforesaid proceedings, and recall the appointment of the two Court Commissioners vide order dated 15.11.2018. We further permit the IRP/RP to act in exercise of the power vested in it by the Insolvency & Bankruptcy Code, 2016. The Court Commissioners are directed to deseal the premises of the petitioner/corporate debtor tomorrow i.e. 21.05.2019 at 11.00 A.M. and hand over the possession of the same to the IRP/RP within the next two days.

8. Since the two Court Commissioners were appointed by the learned DRAT, and they have continued to act in accordance with

their appointment, the Court Commissioners shall be paid Rs.25,000/- each towards their fee. The said amount shall be defrayed by the IRP/RP.

9. The petition stands disposed of in the aforesaid terms.

10. DASTI under signatures of Court Master.

VIPIN SANGHI, J

MAY 20, 2019/aa **REKHA PALLI, J**