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

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Judgment delivered on: 21.12.2020

+ CM(M) 647/2020 & CM APPL.33938-39/2020

MR. VINEET KHOSLA

..... Petitioner

versus

M/S EDELWEISS ASSET RECONSTRUCTION COMPANY LTD.
& ORS. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Deepak Khosla, Advocate.

For the Respondent: Mr. Mr. Abhishek Anand and Mr. Viren Sharma,
Advocates for R-2, 4 & 5.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. The hearing was conducted through video conferencing.
2. Petitioner impugns order dated 15.10.2020 whereby a liquidator has been appointed and the company has been directed to be liquidated, consequent to an order of admission dated 15.03.2019.
3. It is contended by the learned counsel for the petitioner that order dated 15.10.2020 is without jurisdiction as the proceedings were initiated beyond limitation.

4. Learned counsel submits that an application being CA No.307/2020 had been filed on 02.01.2020, prior to the passing of the subject order dated 15.10.2020 and the Tribunal without adjudicating on the application seeking recall of the order of admission has passed the subject order appointing a liquidator and directing liquidation of the company.

5. Learned counsel submits that petitioner cannot file an appeal against the order dated 15.10.2020 because in terms of Section 61 of the Insolvency and Bankruptcy Courts, 2016 an appeal has to be filed within 30 days and the National Company Law Appellate Tribunal can extend the period for on showing sufficient case by a maximum period of 15 days.

6. He submits that today the appeal is beyond limitation and even the period extendable by the National Company Law Appellate Tribunal is over. Learned counsel submits that appeal could not be filed within the time as the counsel for the petitioner was diagnosed with Covid-19 and had been under treatment and in isolation, during which period the period for filing an appeal as well as the extendable period lapsed. He submits that in view of the above, petitioner has approached this Court under Article 227 of the Constitution of India.

7. Learned counsel for the respondent submits that Section 238A which has been incorporated by a subsequent amendment to the Insolvency and Bankruptcy Court w.e.f. 06.06.2018, limitation Act has been made applicable and accordingly, the provisions of Section 5

of the Limitation Act may be applicable.

8. Mr. Khosla, learned counsel appearing for the petitioner submits that his understanding is that Section 5 of the limitation Act would not apply where the Statute specifically provides that the limitation period for filing an appeal may be extended but such period of extension shall not exceed 15 days.

9. It is settled position in law that powers of the High Court under Article 227 of the Constitution of India are discretionary and have to be sparingly used and cannot be exercised in the “cloak of an appeal in disguise”¹.

10. The admitted case of the petitioner is that the limitation as prescribed under Section 61 Sub Section (2) read with proviso is a strict period of limitation which cannot be extended. Admittedly the period to file an appeal has already lapsed.

11. In my view, High Court should resist from exercising jurisdiction under Article 227 of the Constitution of India specifically in a case where a remedy of appeal is provided and a strict period of limitation is made applicable and the aggrieved party permits the period of limitation to lapse, maybe for valid or reasons otherwise.

12. Since order dated 15.10.2020 was admittedly an appealable order, though subject to the period of limitation and no appeal has

¹ *State through Special Cell CBI Versus Navjot Sandhu alias Afshan Guru (2003) 6 SCC 641*

been filed by the petitioner within the statutory period or the extendable period under proviso to Section 61(2) of the Insolvency and Bankruptcy Court, 2016, I am not inclined to exercise the discretionary powers under Article 227 of Constitution of India to permit a challenge to the said order.

13. The contention of learned counsel for the respondent that Section 5 of the Limitation Act may apply does not arise for consideration in these proceedings. Though, it may arise in case petitioner were to file an appeal before the Appellate Tribunal, in which case it would be for the Appellate Tribunal to consider as to whether provisions of Section 5 of the Limitation Act would apply or not.

14. I find no ground to entertain the present petition. The petition is accordingly dismissed.

15. Copy of the Order be uploaded on the High Court website and be also forwarded to learned counsels through email.

SANJEEV SACHDEVA, J.

DECEMBER 21, 2020

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