



Application No.5106 of 2019

SENTHILKUMAR RAMAMOORTHY, J.

The present application is filed to raise the order of attachment dated 30.06.2011 in application No.5106 of 2019.

2. The applicant seeks to raise the attachment on the ground that the order of attachment was only till the disposal of the arbitral proceedings. Consequently, the applicant contends that the said order of attachment lapsed upon an arbitral award being pronounced in the arbitral proceedings. As regards the remedy of the 1st respondent herein, the applicant asserts that the remedy of the 1st respondent would be either by approaching the jurisdictional NCLT or by instituting appropriate execution proceedings. In fact, the applicant points out that such execution proceedings have already been instituted by the 1st respondent.

3. The 1st respondent herein challenges the maintainability of the application under Section 9 of the Arbitration and Conciliation Act 1996. The challenge is on the basis that an arbitral award was pronounced and such award is enforceable as on date. The judgment of the Division Bench of this Court is pressed into service in support of the said contention. The 1st respondent also



contends that it is a deposit taking NBFC and therefore has subsisting liabilities to its depositors. Therefore, it is contended that the applicant herein should be directed to deposit a sum of money as security for the claim of the 1st respondent. The 2nd respondent is represented by Counsel and the Liquidator concerned is also present. The 2nd respondent refers to the order of the NCLT dated 22.01.2018 by which the liquidation of the 2nd respondent was ordered. Consequently, it is submitted that no suit or other legal proceedings can be instituted by or against the corporate debtor as per Section 33(5) of the Insolvency and Bankruptcy Code 2016. The liquidator points out that even the proviso thereto only comes to the aid of the liquidator and not to any other person.

4. In response to the submissions of the 1st respondent herein, the applicant contends that it is an auction purchaser, which had ploughed in money by way of sale consideration into the Company in liquidation. As such, it is contended that the applicant cannot be called upon to make any deposit at this juncture.



Section 33 (5) of the Insolvency and Bankruptcy Code 1996, reads as

under:-

Section 33: Initiation of liquidation.

(1).....

(2).....

.

.

.

(5) Subject to section 52, when a liquidation order has been passed, no suit or other legal proceeding shall be instituted by or against the corporate debtor:

Provided that a suit or other legal proceeding may be instituted by the liquidator, on behalf of the corporate debtor, with the prior approval of the Adjudicating Authority.

5. In view of the above Section, no legal proceedings can be instituted by or against the corporate debtor once a liquidation order is passed.

In addition, as correctly contended by learned counsel for the 1st respondent, the arbitral award has become enforceable as on date. Therefore, the present application is not maintainable.



WEB COPY

6. Nevertheless, the order of attachment of this Court should be noticed. The said order, in relevant part, is set out below:

“That immovable property morefully set out in the schedule II hereunder, shall stand attached, and the same do remain under attachment till the disposal of the arbitration proceedings.”

7. The said order is self explanatory and in the light of the fact that such order was till the disposal of the arbitral proceedings, it is left open to the parties to seek any further orders after complying with Section 33(5) of the Insolvency and Bankruptcy Code 2016.

8. Accordingly, the Application No.5106 of 2019 is disposed of on the above terms without any order as to costs.

30.11.2021

bsm

SENTHILKUMAR RAMAMOORTHY, J.



WEB COPY



bsm

Application No.5106 of 2019

30.11.2021