IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.27780 of 2019

P.Naveen Chakravarthy
Suspended Board of Directors of
M.K.Cables & Conductors (P) Ltd.,
(Under Corporation Insolvency Resolution Process),
Plot No.D16(N), 1st SIPCOT Industrial Complex,
Gummidipoondi,
Chennai-601 201. .. Petitioner

-vs-

1.Punjab National Bank,
rep. by its Authorized Officer,
Asset Recovery Management Branch,
PNB Towers, Mezzanine Floor,
No.46-49, Royapettah High Road,
Chennai - 600 014.

2.Drill Jig Bushing Co. (Madras) Pvt. Ltd.,
No.44, Sidco Ambattur,
Chennai - 600 098.

3.R.Sankaran,
(Interim Resolution Professional of
M/s.M.K.Cables & Conductors Pvt. Ltd.)
J-3, Rajendra Prasand 1st street,
West Mambalam,
Chennai - 600 033.

4.Ramakrishnan Sadasivan
(Proposed Resolution Professional of
M/s.M.K.Cables & Conductors Pvt. Ltd.)
Old No.22, New No.28, Menod street,
Purasawalkam,
Chennai - 600 007. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records of impugned order dated 21.08.2019 passed by the Hon'ble Debts Recovery Appellate Tribunal, Chennai in R.A. (S.A) No.7/2019 and quash the same.

For Petitioner	:	Mr.P.H.Arvind Pandian Senior Counsel for M/s.Genicon and Associates
For Respondents	:	Mr.M.L.Ganesh for respondent No.1 Mr.K.V.Babu for respondent No.2 Mr.T.Ravichandran for respondent No.4 No appearance for respondent No.3

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

At the highest, if the writ petition succeeds it may only be a pyrrhic victory and there may not be much cheer for the writ petitioner at the end of the day.

2. The essential facts are undisputed. The petitioner was a shareholder and director in a company. The respondent bank accorded credit facilities to such company which were secured, inter alia, by a mortgage or the like of an immovable property against which the bank proceeded under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002. Upon the bank seeking to auction the property in favour of the respondent auction purchaser, the debtor company challenged the transaction by way of proceedings under Section 17 of the Act of 2002. On grounds that are not relevant for the present context, the relevant Debts Recovery Tribunal annulled the transaction. The concerned bank carried an appeal to the appropriate Debt Recovery Appellate Tribunal.

3. During the pendency of the proceedings before the DRAT, an operational creditor of the debtor company invoked the provisions of the Insolvency and Bankruptcy Code, 2016 and

brought an action before the National Company Law Tribunal in such regard. In due course, a declaration of moratorium under Section 13 of the Code of 2016 came to be made on July 30, 2019 upon admission of the application of the operational creditor.

4. In terms of Section 14 of the Code of 2016, a moratorium fell into place. The combined effect of Section 238 of the Code of 2016 read with Section 231 thereof and Section 14 makes such a moratorium as watertight as possible. As a consequence, no proceedings for the recovery of any dues against the corporate debtor or recovery of its assets or the like could be proceeded with before any forum whether by way of a suit or by way of any other proceedings. The issue that arises is whether the bank's appeal before the DRAT fell within the dragnet of the moratorium under Section 14 of the Code of 2016.

5. However, before such issue is addressed, a question of propriety has to be attended to since the bank questions the very maintainability of the present proceedings by referring to a Supreme Court judgment reported at (2018) 1 SCC 407 (Innoventive Industries Limited v. ICICI Bank). The bank claims that by virtue of such dictum, proceedings cannot be pursued by or at the behest of a corporate debtor while a moratorium is in place and the erstwhile directors of the corporate debtor lose their right to espouse the cause of the company. Notwithstanding the judgment, it does not appear that the right of an erstwhile director as director or the right of a shareholder of a corporate debtor who continues to be a shareholder is jeopardized to the extent that an erstwhile director or a shareholder of a corporate debtor cannot espouse his cause qua the company by seeking to right a perceived wrong. There is no doubt that the Writ Court will be extremely circumspect in entertaining a plea by a director or shareholder of a corporate debtor, but the petition will be maintainable if brought against a statutory authority.

6. Indeed, what the writ petitioner suggests in the present case is that the DRAT order impugned herein dated August 21, 2019 is wholly without jurisdiction and non-est as it is contrary to law. Though the bank seeks to indicate the description of the writ petitioner in the cause-title, the writ petitioner relies on the body of the petition to show that he has also instituted the writ petition in his capacity as a shareholder of the corporate debtor and as such shareholder of the company, he is entitled to bring it to the notice of a constitutional Court that a quasi-judicial tribunal had committed a grievous error in transgressing its authority and passing an order in breach of the statutory command as contained in Section 14 of the Code of 2016. Thus, the initial ground urged by the bank is negatived. A writ petition, challenging an

order on the ground of jurisdiction may be carried by a shareholder prejudiced by the same insofar as the order is directed against the concerned company and the shareholder is aggrieved as he has an interest in the company. Such an action is not precluded by anything contained in the Code of 2016 and the doors of the constitutional Court cannot be shut out to a shareholder, if he perceives something remiss and if appropriate action in such regard is not taken by the Resolution Professional or any other entitled to espouse the cause of the corporate debtor. The derivative right that inheres in a shareholder qua the company will permit such course of action.

7. The bank seeks to assert that the proceedings before the DRAT could not be seen to be a suit or continuation of any suit and even goes to the extent of suggesting that a writ petition under Article 226 of the Constitution may not lie against an order passed by a DRAT, though a petition under Article 227 of the Constitution may be brought. It is too late in the day to suggest that a writ petition against a quasi-judicial authority will not lie under Article 226 of the Constitution and the grievance has to be carried only by way of a petition under Article 227 of the Constitution. It is the quality of the grievance that may decide whether a party invokes Article 226 of the Constitution or Article 227 thereof against a quasi-judicial body. A quasi-judicial body, particularly a statutory body which is not a Court in the sovereign system of Courts but may be a tribunal, will be amenable to the writ jurisdiction. Such a body has to be regarded as a State within the meaning of Article 12 of the Constitution and, in any event, several provisions in comparable statutes, like Section 18 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, specifically recognise the authority of a constitutional Court in respect of the remedy available under Article 226 of the Constitution.

8. There is no doubt that simultaneously with the order of admission of the operational creditor's petition before the NCLT, the moratorium under Section 14 of the Code of 2016 came to be in place. By virtue of such moratorium, particularly in view of clauses (a) and (c) of sub-section (1) of Section 14 of the Code of 2016, the action or proceedings before the DRAT could not have been continued. The embargo under Section 14 of the Code of 2016 was expressly brought to the notice of the DRAT, but it appears to have bludgeoned its way through nonetheless. In so doing, the DRAT acted completely without jurisdiction as there can be no greater bar than a statutory prohibition to check any adjudicating authority in carrying on its adjudicatory or quasi-judicial functioning.

9. The bank has also referred to the operational creditor in the present case being a "friendly" creditor of the corporate debtor who happened to arrive at the right place at the right time to apparently bail the corporate debtor out of the miseries that lay in store for the corporate debtor in the appeal before the DRAT. The bank suggests that the concerned property that the corporate debtor had specifically agreed to make over possession of, could not be robbed from the bank by a side-wind or by resorting to collusive proceedings under the Code of 2016. The bank also points out that it is the only secured creditor of corporate debtor, which has now gone into liquidation at the bank's suggestion. The Resolution Professional (RP) confirms such position. It is also submitted by the RP that at the behest of the bank the concerned immovable property was kept out of the assets of the company now in liquidation and there is no embargo on the bank otherwise proceeding against such asset.

10. For whatever it is worth, notwithstanding the practical effect of this order being close to nothing, once it is brought to the notice of a constitutional Court that a quasi-judicial authority had acted in error or excess of jurisdiction and in derogation of a statutory mandate, the constitutional authority has per force to correct the mistake. As a consequence, the order of the DRAT passed on August 21, 2019 and challenged in the present writ petition is set aside and the matter restored to the board of the relevant DRAT at the stage immediately prior to the date when the order was passed. As the moratorium is no longer in place since the company has gone into liquidation, the RP, who has metamorphosed as the liquidator of the company, will espouse the cause of the company in liquidation before the DRAT. If, as the liquidator reports, the relevant secured asset proceeded against by the bank has been kept outside the purview of the liquidation proceedings, the RP may have precious little to say before the DRAT, for the DRAT to, in effect, pass the same order now that the embargo no longer operates.

11. As far as the merits of the DRAT decision is concerned, the same is not required to be gone into, particularly in this jurisdiction and once it is noticed that the order itself was without jurisdiction.

12. In effect, though the order dated August 21, 2019 is set aside, it will be open to the respondent bank to seek a similar order, which the DRAT may now pass, if it so perceives and upon taking necessary steps in accordance with law.

13. W.P.No.27780 of 2019 succeeds to the extent indicated above. It is hoped that the matter receives the DRAT's attention at the earliest so as not to prejudice the bank and the auction purchaser who has put in a sum in excess of Rs.5

crore and has waited so long to enjoy the fruits of its substantial investment. There will be no order as to costs. Consequently, W.M.P.Nos.27314, 34511 of 2019 and 11253 of 2020 are closed.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

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To:

1.The Debts Recovery Appellate Tribunal, Chennai.

2.The Authorized Officer,
Punjab National Bank,
Asset Recovery Management Branch,
PNB Towers, Mezzanine Floor,
No.46-49, Royapettah High Road,
Chennai - 600 014.

+2ccs to M/s.Genicon and Associates, Advocate SR.No. 5485
+1cc to Mr.K.V.Babu , Advocate SR.No. 5292

SR II co
A.SK(16.02.2021).