IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CWP No.7990 of 2021(O&M)

Date of Decision:-12.07.2021

Vivek Goenka.

......Petitioner.

Versus

Union of India & Ors.

......Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH

Present:- Mr. Abhilaksh Grover, Advocate for the Petitioner.

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JASWANT SINGH, J.(ORAL)

[The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court.]

1. Petitioner is stated to be a proprietorship concern by the name of M/s Krishna Udyog and is involved into the business of timber. It had availed credit facilities from Respondent No.6/Dewan Housing Finance Corporation (Secured Creditor). On having committed default in repayment, the loan account of the petitioner was declared as Non-Performing Asset on 01.01.2020. This was followed by issuance of notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "Securitisation Act, 2002") on 07.07.2020 (Annexure **P-5**) and thereafter a notice under Section 13(4) of the Securitisation Act, 2002 on 18.11.2020 (Annexure **P-6**) claiming Rs. 59,57,705/-.

2. Learned Counsel for the petitioner contends that Respondent No.6/DHFL, has been subjected to Insolvency proceedings before the National Company Law Tribunal, Mumbai Bench, initiated by Reserve Bank of India under Rule 5 of the Insolvency and Bankruptcy (Insolvency & Liquidation Proceedings of Financial Service Provider and Application to Adjudicating Authority) Rules, 2019 (hereinafter referred to as "*Rules,2019"*). The said petition was filed on 29.11.2019 and has been admitted vide order dated 31.12.2019 (Annexure **P-2**) pursuant to which moratorium has been imposed leading to appointment of an Administrator replacing the management of Respondent No.**6/**DHFL**.**

Learned Counsel for petitioner while referring to Section 18 to Section 25 of the Insolvency and Bankruptcy Code, 2016 contends that the Administrator is to perform functions akin to the Resolution Professional. He refers to the Notification dated 30.01.2020 (Annexure P-4) issued by the Ministry of Corporate Affairs, Government of India, which notifies the manner in which assets of the third party in custody of the Financial Service Providers facing Insolvency Proceedings is to be dealt with. His grievance is that neither the provisions of the Code, 2016 nor does the said notification provides for enabling the Administrator of the Financial Service Provider to take over the assets of the borrower under the Securitisation Act, 2002 and hence the impugned notices are without jurisdiction.

3. Since, the petitioner has raised a jurisdictional issue, we deem it appropriate to deal with the same. There is a fundamental fallacy in the argument. Clause 2 of the Notification dated 30.01.2020 (Annexure **P-4**), notifies the manner of dealing of the assets belonging to the customers of

Financial Service Provider, which are in its possession on the date of commencement of insolvency. The assets of the petitioner do not fall within the said scope because the assets of the petitioner are not in the possession of the Financial Service Provider on the notified date, rather are secured by way of mortgage and are sought to be taken possession. That apart, infact, the Notification is dealing with receivables collected and deposited with the Financial Service Provider which has been done on behalf of its customers. The scope of the Notification is thus completely alien to the cause sought to be projected by the petitioner.

4. The argument that the aforesaid notification does not provide for a manner in which the secured assets are to be enforced, is rather answered in the Notification dated 15.11.2019 (Annexure P-3), which notifies the Rules, 2019. Rule 5(b)(ii) of the said Rules, 2019 clearly states that the license or registration which authorizes the financial service provider to engage in the business of providing financial services shall not be suspended or cancelled during interim moratorium and the Corporate Insolvency Resolution Process. This signifies that inspite of imposition of moratorium by the Adjudicating Authority vide order dated 03.12.2019 (Annexure P-2), Respondent No. 6 continues to act like a Financial Secured Creditor qua its borrowers. For the purpose of enforcement of secured assets, such secured creditor would always have the benefit of invoking the provisions of the Securitisation Act, 2002 even during moratorium.

5. Reliance upon Section 238 of the Code, 2016 to contend that provisions of the Code, would have overriding effect is rather misplaced. As per Section 238 overriding is only to the aspect which runs inconsistent with the provisions of the Code, 2016. Enforcing of securities by Financial

Service Provider under the provisions of the Securitisation Act, 2002 is not inconsistent with the provisions of the Code, 2016 to the extent of allowing insolvency proceedings against Financial Service Provider. Rather, such power is reserved by way of Rule 5(b)(ii) of the Rules, 2019 which permits retention of the character of a creditor by the Financial Service Provider during Corporate Insolvency Resolution Process.

6. Learned Counsel had also tried to raise a plea that his client wishes to settle his liabilities with the DHFL, however, in the light of the moratorium operating in view of the provision of Section 14 of the Code 2016, he is seeking interference of this Court. We find that the plea for invocation of writ jurisdiction to be untenable. The respondent-DHFL is operating as a financial service provider and the petitioner is free to approach DHFL to settle his account as the moratorium does not operate qua the debtors like the petitioner for the purpose of maximising the value of the assets of the DHFL by settling their outstanding liabilities. This issue has already been settled by this Court in **Anu Bhalla & Anr. Vs. District Magistrate, Pathankot & Anr. <u>2021(1) RCR (Civil) 30</u>.**

7. For the reasons stated above, we do not find the impugned notices dated 07.07.2020 (Annexure P-5) and 18.11.2020 (Annexure P-6) to be suffering from any jurisdiction error.

Learned Counsel for petitioner, apart from above, seeks to demonstrate other infirmities in the notices. It is not disputed that the impugned notices can be challenged under Section 17 of the Securitisation Act, 2002. Since, we have restricted ourselves to examine only the jurisdictional aspect of this matter, we refrain ourselves from examining such contentions, and leave it open to the petitioner to approach the alternative statutory remedy provided under Section 17 of the Securitisation Act, 2002.

Consequently, the present petition is **disposed off**, reserving the aforesaid liberty to the petitioner.

(JASWANT SINGH)
JUDGE

(SANT PARAKSH)
JUDGE

July 12, 2021
Vinay

Whether speaking/reasoned	***Yes/No***
Whether Reportable	***Yes/No***