IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CWP No.11690 of 2021(O&M)

Date of Decision:-05.07.2021

A.K.M. Foods Private Limited.

......Petitioner.

Versus

State Bank of India & Anr.

......Respondents.

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

Present:- Ms. Pallavi Singh, Advocate for the Petitioner.

Mr. Rakesh Gupta, Advocate for Respondent No.1-SBI.

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JASWANT SINGH, J.

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

Petitioner is a private limited company engaged in the business of processing of Paddy and Rice at Kaithal. The case set up by the Petitioner is that it was approached by Respondent No. 2 Borrower-Company, for investing into its Rice Shelling Unit, which was in default of its credit facilities availed from State Bank of India – Respondent No. 1 (Secured Creditor). Respondent No. 2 company had been served with a notice dated 17.9.2017 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 issued by Respondent No.1. In order to settle the dues, Respondent No. 2 submitted a proposal for One Time Settlement dated 12.03.2021 and deposited Rs.2 Crore as upfront amount with Respondent

No. 1. Petitioner contends that Rs. 1.20 Crore was contributed by it, towards the upfront amount as it was interested to further invest into the company if the proposal would have been finally accepted and relies upon Memorandum of Understanding (Annexure P-1). The said proposal was rejected by Respondent No.1. Another proposal dated 07.02.2019 (Annexure P-3) was submitted by Respondent No. 2, which was also rejected by Respondent No.1. Vide letter dated 07.02.2019 (Annexure P-3), the Respondent No.1 bank called upon Respondent No.2 to collect the upfront amount of Rs. 2.85 Crore.

While the aforesaid upfront amount was yet to be collected, the Respondent No.1 bank approached National Company Law Tribunal, Principal Bench, New Delhi under Section 7 of the Insolvency and Bankruptcy Code, 2016 seeking to initiate Corporate Insolvency Resolution Process against Respondent No.2. Vide order dated 13.09.2019 the said petition was admitted and Interim Resolution Professional was appointed replacing the existing management of Respondent No.2. Vide letter dated 25.09.2019 (Annexure P-6), petitioner sought refund of its amount of Rs. 1.20 Crore from Respondent No.2, which did not see any outcome.

Learned Counsel for the petitioner further refers to the Resolution Plan dated 10.10.2019 (Annexure P-9) to contend, that the amount of the petitioner could not be treated to be a source of fund by the Resolution Applicant, as the said amount neither belongs to the Corporate Debtor (Respondent No.2) nor does it belong to the Prospective Resolution Applicant. In these circumstances, petitioner claims refund of the said amount.

Having heard learned Counsel for the petitioner at some length, we find that the present petition is not maintainable. It is undisputed that Respondent No. 2 Company is facing Corporate Insolvency Resolution Process. Section 18 of the Insolvency and Bankruptcy Code, 2016 enables the Resolution Professional to take control over all the assets of the Corporate Debtor. The term "asset" as referred to under Section 18(f) is subjected to an Explanation which includes those assets upon which Corporate Debtor has ownership rights. Thus, if the petitioner contends that the upfront amount as referred to above, does not fall within the ambit of the term "asset", it is required to make an appropriate application to the Resolution Professional. It is only thereafter, can this aspect be examined by the Resolution Professional in terms of the provisions of the Code, 2016 to identify whether such an amount belongs to the Corporate Debtor or not. The petitioner has not filed any such application before the Resolution Professional or if filed not acceded to by the Resolution Professional and the instant issue, therefore, cannot be examined in the writ jurisdiction as the remedy of the petitioner lies elsewhere i.e. before the NCLT.

For the reasons stated above, we do not deem it appropriate to entertain the present petition. The same is **dismissed on the ground of maintainability**. The petitioner is at liberty to raise all such issues before the appropriate authority under the Code, 2016.

(JASWANT SINGH)
JUDGE

(SANT PARAKSH)
JUDGE

July 05, 2021
Vinay

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