IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CWP No.9430 of 2021(O&M)

Date of Decision:-14.07.2021

Adesh Welfre Society (Regd.).

......Petitioner.

Versus

Reserve Bank of India & Ors.

......Respondents.

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

Present:- Mr. Gurminder Singh, Senior Advocate assisted by
Mr. Jatinder Singh Gill, Advocate for the Petitioner.

Mr. Harsh Chopra, Advocate &
Mr. Manoj Sharma, Advocate for the Respondents.

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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.]

Petitioner-Society is a Charitable Society and engaged in establishing and running educational institutions including medical institutions. It had availed three loans from Dewan Housing Finance Corporation (a non banking financial institution) i.e. Respondent nos.2 & 3. The details are as under:-

(i) *a loan of Rs.9.50 crores on 12.06.2015 (loan account No.1350005804) under the category of Medical Equipment for a period of 5 years with monthly EMI of Rs.21,45,100/-;*

(ii) Second loan of Rs.7,09,00,000/- on 31.01.2016 (loan account No.13500006478) for a period of 10 years with monthly EMI of Rs.11,26,601/-;

(iii) Third loan of Rs.3,50,00,000/- on 28.12.2017 (loan account No.13500008481 for a period of 07 years with monthly EMI of Rs.6,19,170/-

Due to non payment of the EMIs the aforesaid three loans were declared NPA, the details of which are as under:-

(i) First loan was declared as NPA on 1.11.2018;
(ii) Second loan was declared as NPA on 01.01.2019; &
(iii) Third loan was declared as NPA on 01.02.2019.

The first loan was secured through hypothecation of the machineries etc., as primary security and it is stated that there was no collateral security demanded or accepted. In the second and third loan different set of properties were offered as collateral security to secure the loan.

The present petition has been filed seeking quashing of Notice dated 31.07.2019 (**P-6**) under Section 13(2) and Notice dated 6.2.2020 (**P-7**) under Section 13(4) of the SARFAESI Act qua the second property term loan of Rs.7,09,00,000/-**;** a notice dated 22.07.2019 **(P-8)** seeking symbolic possession under Section 13(4) qua the third loan (for a sum of Rs.3,50,000/-)**;** a notice dated 3.3.2021 (**P-17**) issued by the office of District Magistrate, SAS Nagar on an application under Section 14 for securing physical possession qua the mortgaged property in the Second Loan (for a sum of Rs.7,09,00,000/-). That apart challenge has been made to the several orders whereby OTS Proposal has been declined.

It is conceded fact that the financial service provider/DHFL-respondent Nos.2 & 3 is facing insolvency proceedings and is being managed by RBI appointed Administrator duly approved by NCLT, Mumbai. It is also not in dispute that the respondent being financial provider is functioning during the insolvency proceedings in light of the Rule 5 of Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Provider and Application to Adjudicating Authority) Rules, 2019 which is reproduced hereunder:-

> " *5.* ***Corporate Insolvency Resolution Process of financial service providers***.*— The provisions of the Code relating to the Corporate Insolvency Resolution Process of the corporate debtor shall, mutatis mutandis apply, to the insolvency resolution process of a financial service provider subject to the following modifications, namely:—*
>
> ***(a) Initiation of Corporate Insolvency Resolution Process***.*-*
>
> *(i) no corporate insolvency resolution process shall be initiated against a financial service provider which has committed a default under section 4, except upon an application made by the appropriate regulator in accordance with rule 6;*
>
> *(ii) the application under sub-clause (i) shall be dealt with in the same manner as an application by a financial creditor under section 7, subject to clause (iii); and*
>
> *(iii) on the admission of the application, the Adjudicating Authority shall appoint the individual proposed by the appropriate regulator in the application filed under sub-clause (i) of clause (a) of rule 5, as the Administrator.*
>
> *(b) Moratorium.- Save as provided in section 14,-*
>
> *(i) an interim moratorium shall commence on and from the date of filing of the application under clause (a) till its admission or rejection; and*
>
> *(ii) the license or registration which authorises the financial*

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> *<u>service provider to engage in the business of providing financial services shall not be suspended or cancelled during the interim-moratorium and the corporate insolvency resolution process</u>.*
>
> *Explanation.- For the purposes of this clause, "interim moratorium" shall have the effect of the provisions of sub-sections (1), (2) and (3) of section 14.*
>
> *xxx xxxx* "

Emphasis Supplied

In the present writ petition notice of motion is yet to be issued, however, on the request of the Bench, Mr. Harsh Chopra, Advocate has been appearing on behalf of the contesting DHFL on previous dates.

It is not disputed that pursuant to the interim orders passed by this Court dated 13.05.2021, a sum of Rs.5 Crores was deposited by the petitioner for parties to work out an amicable solution within stipulated time. It is also not in dispute that pursuant to a subsequent interim order dated 27.05.2021 another sum of Rs.5 Crores has been deposited within stipulated time.

At the time of hearing, learned Counsel for the petitioner submits that the first NPA loan under the medical category bearing account No.1350005804 has been liquidated in light of adjustment of Rs.5,60,00,000/- under the accepted OTS proposal from the deposited 10 Crores. In respect of the other two NPA loan accounts a fresh invite to offer under the OTS for amicable settlement pursuant to the letters dated 28.06.2021 are stated to have since been declined, however, complete details are not on record.

In view of lack of clarity in the pleadings and subsequent developments, learned Counsel for the petitioner prays for permission to withdraw the instant petition with liberty to file fresh one with better particulars. The withdrawal is without prejudice to the right of the petitioner to seek the refund of remaining amount after adjustment in the first NPA loan account under the medical category out of Rs.10 Crores deposited pursuant to the directions passed by this Court.

Learned Counsel appearing for the respondents has no objection to the aforesaid request made for withdrawal on behalf of the petitioner.

Dismissed as withdrawn with aforesaid liberty.

(JASWANT SINGH)
JUDGE

(SANT PARAKSH)
JUDGE

July 14, 2021
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Whether speaking/reasoned	***Yes/No***
Whether Reportable	***Yes/No***