

215 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 10539 of 2021

Date of Decision: 02.09.2021

Balwinder Kumar Sharma and another

.... Petitioners

Versus

Authorised Officer, Punjab National Bank, Ludhiana
and others

... Respondents

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

Present: Mr. Vikas Bali, Advocate
 for the petitioners.

Mr. Gaurav Goel, Advocate
for respondent No.1.

Mr. K.P.S.Dhillon, Advocate
for respondent No.2.

Mr. C.S.Pasricha, Advocate
for respondent No.3.

JASWANT SINGH, J. (ORAL)

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

Balwinder Kumar Sharma (petitioner No.1) and Suraj Prakash Sharma (petitioner No.2) are suspended directors of a company namely M/s Tripurari Agro Pvt. Ltd., which was engaged in the business of manufacturing and export of Basmati Rice at its unit situated in Ludhiana. M/s Tripurari Agro Pvt. Ltd. had raised a loan/CC limit of Rs.40 Crores from a consortium with Punjab National Bank as the lead bank from the year 2017 onwards. The present petitioners apart from being directors of the

said company had also executed deeds of guarantee/personal guarantee as mortgaging the properties owned by them towards collateral security to secure the said loans. The said company was proceeded against under the IBC Code, 2016 before the NCLT at the instance of the operational and financial creditors. The proceedings against the corporate debtor i.e. the aforesaid company are stated to be pending.

During the aforesaid proceedings, the respondent banks proceeded against the guarantors for recovery of the outstanding amounts under the provisions of the SARFAESI Act. The proceedings have reached the stage of sale notice of the mortgaged/immovable properties. At that stage, the two petitioners have filed the aforesaid petition invoking the writ jurisdiction of this Court.

This Court while issuing notice of motion on 28.05.2021, passed the following order:-

“Learned counsel for the petitioners refers to the orders passed by Division Bench of this Court in CWP-PIL-77-2021 (Annexure P-5), whereby specific directions have been given that all Courts, Tribunals, Judicial and Quasi-Judicial authorities shall abide by the directions by not putting any property to auction till 30.06.2021. In the present case, the respondent No.1-Bank had issued an auction notice (Annexure P-6).

Notice of motion.

Mr. Gaurav Goel, Advocate, accepts notice on behalf of respondent No.1, Mr. K.P.S. Dhillon, Advocate, accepts notice on behalf of respondent No.2, and Mr. Rajansh Thukral, Advocate, accepts notice on behalf of respondent No.3-Liquidator. Learned counsel for respondent No.1 states that

keeping in view the directions given by this Court vide Annexure P-5, the auction proceedings initiated vide Annexure P-6 have been kept in abeyance. Learned counsel for respondent No.3 states that petitioners are no longer directors of the company and they have been discharged way back on 07.02.2020 and the property was in the possession of the liquidator since 19.07.2019. He further states that the petitioners have no locus standi to seek any directions against respondent No.3.

The matter is adjourned to 26.08.2021.

In view of the fact that respondent No.3 has proceeded to auction the properties and the issue is pending before the National Company Law Tribunal, the proceedings qua Annexure P-6 shall be kept in abeyance, keeping in view the directions given by this Court vide Annexure P-5.

Reply, if any, be filed in the meantime.”

At the time of resumed hearing today, the uncontroverted facts which emerged are that the guarantors i.e. the two petitioners have no proceedings pending before the NCLT, which factually relate to the corporate debtors i.e. M/s Tripurari Agro Pvt. Ltd. It is well settled that the liability of the guarantor being coextensive is not affected by the proceedings before the NCLT against the defaulting borrower.

In view of such circumstances, the action initiated by the banks/official liquidator for recovery of their outstanding dues against the guarantors i.e. the petitioners can not be faulted with.

At this stage, learned counsel for the petitioners prays for permission to withdraw the present petition to enable his clients to seek their remedy in accordance with law.

Dismissed as withdrawn with the aforesaid liberty.

(JASWANT SINGH)
JUDGE

(SANT PARKASH)
JUDGE

02.09.2021
Maninder

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No