

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Civil Writ Petition No. 17624 of 2021 (O&M)
Date of Decision: 08.09.2021**

M/s. Jamboree Education Private Limited, New Delhi

..... Petitioner

Versus

District Magistrate, Gurugram and others

..... Respondents

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

Present: Mr. Jagmohan Bansal, Senior Advocate, assisted by
Mr. Surjeet Bhadu, Advocate
for the petitioner.

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

JASWANT SINGH, J.

Petitioner-Company claims itself to be a tenant in the property in question i.e. House No. 1591-BB, Sector 23-23A, Urban Estate, Gurugram measuring 420 Square Meters on the basis of a registered lease deed dated 24.07.2014 (**Annexure P-3**) seeking to reserve tenancy rights for nine (09) years in favour of petitioner i.e. from 01.06.2013 upto 31.05.2022. The said premises is owned by Sh. J.D. Gupta who is a guarantor for the loan facilities availed by M/s Parabolic Drugs Limited from various banks including State Bank of India, IDBI Bank , UCO Bank and ICICI Bank. To secure the said credit facilities the said property was mortgaged with the creditors. Subsequently, vide deed of assignment dated 09.12.2016, the said debts were assigned to respondent No. 3 – an Asset Reconstruction Company (hereinafter referred to as “**secured creditor**”) under Section 5 of the Securitisation and Reconstruction of Financial Assets and Enforcement

of Security Interest Act, 2002 (hereinafter referred to as “**Act, 2002**”). The secured creditor applied to the District Magistrate under Section 14 of the Act, 2002 for seeking assistance to take physical possession of the secured assets, who initially passed an order dated 08.09.2020 (**Annexure P-4A**). On 16.10.2020, the secured asset is said to have been sold by respondent No. 3 – secured creditor in favour of Sunil Kumar Yadav, Narendra Yadav and Preeti Yadav and issued a sale certificate. Sunil Kumar – one of the purchaser approached this Court by filing CWP No. 565 of 2021 seeking implementation of the order passed under Section 14 of the Act, 2002 so as to obtain possession of the secured assets. CM Nos. 2779 and 2781 of 2021 came to be filed by the petitioner tenant objecting to the said prayer. Vide order dated 08.03.2021 (**Annexure P-7**), this Court remanded the matter back to the District Magistrate, who has now passed a fresh order dated 28.07.2021 (**Annexure P-1**) holding that it has no power of adjudication of *inter se* dispute as the jurisdiction vests with the Debts Recovery Tribunal (in short “**DRT**”).

It is this order, which is under challenge at the hands of the petitioner-tenant in the present petition. Primary ground of challenge is that in the month of May-2021, respondent No. 3 – Secured Creditor filed an application under Section 95 of the Insolvency and Bankruptcy Code, 2016 (in short “**the Code, 2016**”) before the Adjudicating Authority i.e. National Company Law Tribunal (in short “**NCLT**”) and seeking to initiate Insolvency Resolution Process against JD Gupta being personal guarantor to Corporate Debtor namely M/s Parabolic Drugs Ltd.. Consequently, interim moratorium under Section 96 of the Code, 2016 comes into operation the

moment the said application is filed, and therefore, no proceedings for possession are maintainable against the secured asset.

Since the petitioner has raised a pure jurisdictional issue, we are proceeding to examine the same. Having considered the aforesaid submission, we are unable to comprehend as to how, Section 96 of the Code, 2016 would even remotely be applicable to the present proceedings, especially when the secured asset stood sold in favour of auction purchaser way back on 16.10.2020. Section 96 of the Code, 2016 provides for an interim moratorium to protect the assets of the personal guarantor, and it commences from the date of filing of such application before the Adjudicating Authority. However, the noticeable feature in this case is that the said application under Section 95 was filed in the month of May 2021, whereas the property of the personal guarantors stood sold on 16.10.2020. Therefore, on the date when the interim moratorium came into operation the property in question was no longer an asset of the personal guarantor, and hence was not protected by Section 96. That apart, the benefit of Section 96 of the Code, 2016 cannot be raised by anybody else than the guarantor himself, and the petitioner-tenant thus would have no locus to claim the protection on the basis of interim moratorium under Section 96 of the Code, 2016.

It is well settled that the title of the secured asset vests with the auction purchaser immediately on issuance of the sale certificate. Section 96 of the Code, 2016 cannot be made applicable for enforcement of a secured asset which does not belong to the personal guarantor on the date when such application is filed with the Adjudicating Authority, i.e. NCLT.

Therefore, in our view, Section 96 of the Code, 2016 would not be applicable to the present case nor would it advance the case of the petitioner.

Learned Senior Counsel for petitioner then sought to claim benefit of the judgment of Hon'ble Supreme Court in ***Harshad Sondagar Goverdhan Versus International Assets Reconstruction Company Limited 2014 (6) SCC 1***, to contend that a tenant is protected from the applicability of the Act, 2002. This argument, we find, has to be raised before the DRT under Section 17 (4-A) of the Act, 2002, which was incorporated by way of an amendment w.e.f. 01.09.2016 to determine the limited rights of the tenants, if any. On a query put to the petitioner, as to how a registered lease deed for nine (09) years period could be sustained in view of Section 65A of the Transfer of Property Act, 1882, learned Senior Counsel for the petitioner, on instructions, submits that he would like to withdraw the instant petition with liberty to avail alternative remedies available to the petitioner in accordance law.

In view of the aforesaid submission, we do not wish to proceed further to examine the case of the petitioner. As prayed for, present **petition is dismissed as withdrawn** with liberty to take all such pleas before the alternative Forum, in accordance with law.

(JASWANT SINGH)
JUDGE

September 08, 2021

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(SANT PARKASH)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No