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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ FAO(OS) (COMM) 105/2021 & CM APPL. 26504/2021

PAWAN BUILDWELL PVT LTD THROUGH: MR ARUN CHADHA LIQUIDATOR ..... Appellant

Through: Mr. Abhishek Anand, Advocate.

versus

BAJAJ FINANCE LIMITED & ORS. ..... Respondents

Through: Mr. Rajat Katyal, Advocate.
Mr. Piyush Singh with
Mr. Akshay Srivastava and Ms. Aditi
Sinha for R-2 to R-5.

% Date of Decision: 17th August, 2021

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

MANMOHAN, J: (Oral)

1. The appeal has been heard by way of video conferencing.

2. Present appeal has been filed challenging the order dated 06th July, 2021 passed by the learned Single Judge of this court in O.M.P.(I) (COMM) 366/2020 whereby Section 9 Petition filed by the Respondent No. 1, Bajaj Finance Limited, was disposed of and an injunction was granted.

3. Learned counsel for the appellant states that the learned Single Judge erred in law in entertaining the Section 9 petition filed by Respondent No.1,

in view of the bar contained in Sections 231, 60(5), 33(5) and 238 of the Insolvency and Bankruptcy Code, 2016.

4. Issue notice.

5. Mr. Rajat Katyal, Advocate accepts notice on behalf of Respondents. He states that the impugned order passed by the learned Single Judge no longer survives in view of the subsequent order passed by the NCLT on 31st July, 2021. He further states that the NCLT vide order dated 31st July, 2021 has directed the Liquidator to act in accordance with the order dated 3rd January, 2020 passed in CA No. 367/2019. The relevant portion of the order dated 3rd January, 2020 is reproduced herein below:-

> *"CA-367/19 has been filed by an applicant viz. Bajaj Finance Ltd. The grievance of the applicant is that their claim has been rejected by the RP. The relevant facts necessary for adjudicating this application is that loans had been availed by the ex-Directors in the personal capacity. However along with their personal capacity, equitable mortgage of the Corporate Debtor was also given by way of security. A charge over the same has duly been notified with the Ministry of Corporate Affairs. Ld. Counsel for the applicant submits that since the Corporate Debtor had furnished a Corporate Guarantee, the claim should be taken into consideration. Upon hearing arguments, it is confirmed that there is no default in adhering to the repayment schedule by the ex-Directors. The loans are being serviced regularly. The applicant is duly secured by mortgage of their property. They are well within their rights to retain the secured asset till the entire loan amount is repaid. Under such circumstances more specifically since there is no default in the loan amount, we do not find any merit in the prayer made by the applicant that their claim should also be taken into consideration by the RP. There is no infirmity in the order passed the RP rejecting the claim of the applicant. However, if the security offered by the Corporate Debtor is sought to be released, then the RP has to take into consideration the claim of the applicant before the security can be released. It cannot be*

expected of any creditor to relinquish their secured assed and yet not to have a claim registered. CA stands disposed off."

6. Keeping in view of the aforesaid statement, this Court holds that in view of the subsequent order passed by the NCLT, the impugned order dated 06th July, 2021 no longer survives. Accordingly, the present appeal along with pending application is disposed of as infructuous.

7. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

NAVIN CHAWLA, J

AUGUST 17, 2021
AS