

\$~25

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

% *Date of Decision: 26th October, 2021*

+ LPA 388/2021

YES BANK LIMITED

..... Appellant

Through: Mr. Rajiv Nayyar, Senior Advocate
with Mr. Raunak Dhillon, Ms. Madhavi Khanna,
Ms. Isha Malik & Mr. Nihaad Dewan, Advocates

versus

DEWAN HOUSING FINANCE CORPORATION LTD & ANR.

..... Respondents

Through: Mr. Ramji Srinivasan, Senior
Advocate with Ms. Pooja Mahajan, Mr. Vikram
Sobti, Mr. Shivkrit, Mr. Mehul Parti, Mr. Savar
Mahajan & Mr. Ashwani Malhotra, Advocates for
R-1
Mr. Giriraj Subramaniam, Mr. Simarpal Sawhney,
Mr. Akhilesh Talluri & Mr. Sidhant Juyal,
Advocates for R-2

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

: **D. N. PATEL, Chief Justice (Oral)**

C.M.Nos.37360-37362/2021(exemptions)

Allowed, subject to all just exceptions.

Applications are disposed of.

LPA 388/2021 & CM APPL.37359/2021 (Stay)

1. Present appeal has been filed assailing the order dated 08.10.2021

LPA 388/2021

Page 1 of 6

Signature Not Verified

AMIT NARAYAN
BHARTHUAR
Location:
Signing Date: 10.11.2021
21:07:48

(Annexure A-1 to the memo of this LPA), passed by the learned Single Judge in W.P.(C) 11572/2021. The relief sought in the writ petition is as follows:

“(a) Issue a writ in the nature of Certiorari, or any other appropriate writ, order or direction, quashing and setting aside the order dated September 30, 2021 passed by Hon'ble National Company Law Tribunal, New Delhi in I.A. No. 4439 of 2021 INCOMPANY PETITION (IB) NO. 472 OF 2021 to the extent that the same interferes with the statutory rights granted to the Petitioner under the SARFAESI Act by directing the Petitioner (without jurisdiction and in violation of the principles of natural justice) and the Respondent No.2 to maintain status quo qua the assets of the Respondent No.2, particularly when the Respondent No.2 has not been admitted into CIRP till now;
(b) Issue a writ in the nature of Certiorari, or any other appropriate writ, order or direction, quashing and setting aside the order dated October 05, 2021 passed by Hon'ble National Company Law Tribunal, New Delhi in LA. I. A No.4516 of 2021 IN COMPANY PETITION (IB) NO. 472 OF 2021 in as much as the same amounts to continuing of the Status Quo Order; and
(c) Pass such other order or orders as this Hon'ble Court may deem fit and proper under the circumstances of the case.”

2. We have heard learned Senior Counsels for the parties.
3. Learned Senior Counsel appearing on behalf of the Appellant contends that the learned Single Judge has erroneously dismissed the application seeking stay of the order dated 30.09.2021 passed by the National Company Law Tribunal (NCLT) in I.A. No. 4439 of 2021 in Company Petition (IB) No. 472 of 2021. It is urged that the Appellant/YES Bank sanctioned credit facilities to the corporate debtor/Respondent No. 2 herein for an amount aggregating to Rs. 650 Crores approximately. The

facilities were secured by an exclusive security of mortgage by deposit of title deeds in relation to a hospital property as well as hypothecation over the current and moveable fixed assets of Respondent No. 2. Due to payment defaults by Respondent No. 2, the account turned into a Non-Performing Asset w.e.f. 30.11.2020 but was classified later in March, 2021. Subsequently, the Appellant issued a Loan Recall Notice-cum-Guarantee Invocation Notice and a Demand Notice under Section 32 of the SARFAESI Act. A company petition was filed by Respondent No. 1/DHFL on 26.08.2021 under Section 7 of IBC, before NCLT, seeking to initiate Corporate Insolvency Resolution Process against a Corporate Debtor, where the Appellant is not a party. The Appellant had, on 10.09.2021, issued a Possession Notice under Section 13(4) of the SARFAESI Act and accordingly took physical possession of the hospital property.

4. During the pendency of the Section 7 application, on 25.09.2021, an interlocutory application being IA No.4439/2021 was filed by DHFL/Respondent No.1 seeking to restrain the Appellant and Respondent No.2 herein from creating third party rights on the assets of the Corporate Debtor and stay on the possession notice. Respondent No.1 had purportedly extended some loan facilities to Respondent No.2. The NCLT vide order dated 30.09.2021 ordered status quo with respect to the assets of the Corporate Debtors and aggrieved by the order, the Appellant filed an application being IA No.4516 of 2021 for vacation of the status quo order. However, the NCLT declined to vacate the status quo order despite the Appellant raising an objection to the jurisdiction of the Tribunal.

5. Aggrieved by the order of the NCLT dated 30.09.2021 as also the order dated 05.10.2021 whereby the Tribunal simply adjourned the matter to 15.11.2021 and declined to vacate the stay, the Appellant filed a writ petition before the learned Single Judge being WP(C) 11572/2021. The learned Single Judge has, vide the impugned order dated 08.10.2021, dismissed the application seeking stay of the order dated 30.09.2021 passed by NCLT, primarily on the presumption that the Appellant has taken physical possession of the Hospital property and the application for vacation of stay is pending before the NCLT and thus, no grave urgency is made out in the matter.

6. Having perused the impugned order, we find that the learned Single Judge has declined to stay the order of the NCLT dated 30.09.2021 granting status quo order, on the ground that the Appellant has already filed an application for vacation of the status quo order, which is pending adjudication before the Tribunal and is listed on a short date i.e. 15.11.2021. Learned Single Judge has also observed that the Tribunal will necessarily consider the Appellant's plea that the impugned order was without jurisdiction. What has also weighed with the learned Single Judge is the Appellant's own case that it has taken possession of the subject properties and merely because it has been directed to maintain status quo, no grave or irreparable loss is caused. Relevant part of the impugned order reads as under:

“5. Having considered the submissions of learned senior counsel for the petitioner and perused the record, I see no reason to stay the impugned order. Once the petitioner has itself approached the Tribunal by way of an application to seek vacation of order

of status quo granted on 30.09.2021, which application is pending adjudication before the Tribunal and is now listed on 15.11.2021, the Tribunal will necessarily consider the petitioner's plea that the impugned order was without jurisdiction. Moreover, it is the petitioner's own case that it has already taken possession of the subject properties and therefore merely because it has been directed to maintain status quo, no grave or irreparable loss is likely to be caused to the petitioner if the direction to maintain status quo continues further. However, it is expected that on 15.11.2021 the Tribunal will consider the petitioner's application being I.A.No. 4516/2021 as it has directed all parties to complete pleadings in the application."

7. We find no infirmity with the observations of the learned Single Judge and the order passed, which is impugned in the present appeal. Learned Senior Counsel does not dispute that the application for vacation of stay is pending adjudication and is listed on 15.11.2021. Mr. Nayyar strenuously contends that the Tribunal has no jurisdiction in the matter and, therefore, the interim order could not have been passed. We are sanguine that once the said objection to the jurisdiction of the Tribunal is taken by the Appellant before the NCLT, the same shall be dealt by the Tribunal in accordance with law. Learned Single Judge has already taken note and made an observation in that regard in para 5 of the impugned order. In view of the following facts viz., (a) Appellant is undisputedly in possession of the subject property and (b) application preferred by the Appellant for vacation of the status quo order is pending before the Tribunal and is coming up for further hearing on 15.11.2021, we see no reason to entertain the present appeal as there is no error or infirmity in the order passed by the learned Single Judge. We may also note that the impugned order is only in the nature of an interim order as the writ

petition is listed for further consideration by the learned Single Judge on 29.11.2021.

8. Hence, there is no merit in the present appeal and the same is accordingly dismissed alongwith the pending application.

9. It is made clear that this Court has not expressed any opinion on the merits of the case and the NCLT shall decide the application preferred by the Appellant for vacating the status quo order on its own merits and in accordance with law. Parties shall not seek unnecessary adjournments before the NCLT and shall cooperate so that the application can be disposed expeditiously by the Tribunal.

CHIEF JUSTICE

JYOTI SINGH, J

OCTOBER 26, 2021

ns