

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 14958 of 2022

Sk. Asgar Ali
Vs.
The State of West Bengal & Ors.

Mr. Akash Dutta,
Mr. Zafar Sultan,
Ms. Sadhana Sultan,
Ms. Subharthi Bhattacharya
...for the petitioner

Mr. Santanu Kumar Mitra,
Mr. Mirza Mamruddin
...for the State

Despite service, none appears for the respondents when the matter is called on for hearing, except the State of West Bengal, which is represented through counsel.

Affidavit-of-service filed in Court today be kept on record.

Learned counsel appearing for the petitioner has taken an issue with the fact that after admission and commencement of CIRP proceedings under the provisions of Insolvency and Bankruptcy Code, 2016 (IBC), on December 03, 2019, a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), was issued on December

19, 2019. Pursuant thereto, ultimately the impugned order was passed by the concerned Magistrate under Section 14 of the SARFAESI Act. However, it is contended that at the time of issuance of the said notice, that is, December 19, 2019, the control and operation of the property was in the hands of the administrator, as stated in the application under Section 17(1) of the SARFAESI Act preferred by the petitioner before the appropriate forum, that is, the DRT.

It is submitted that due to dearth of Presiding Officer in the DRT, the said application under Section 17 has not yet been taken up by the DRT. It is submitted that only the First Bench of the DRT is functioning at present, whereas the other two are vacant.

Upon considering the submissions of the petitioner, it is evident that the petitioner has specifically taken an objection to the commencement of the entire proceeding under Section 13 of the SARFAESI Act and consequentially the impugned order under Section 14 of the said Act, in view of the prevalent moratorium within the contemplation of the IBC with regard to the petitioner, since the CIRP Proceeding was admitted on December 03, 2019.

There is *prima facie* substance in the contention of the petitioner that the order under Section 14 and the

proceeding under the SARFAESI Act are vitiated by operation of moratorium under the IBC.

It is well-settled that the litigant cannot go remediless merely due to vacancy in the forum for challenge.

In view of the huge pendency of matters before the sole Bench of the DRT which is functioning now, that is, the First Bench and in view of a strong *prima facie* case being made out by the petitioner in support of a stay of operation of the impugned order under Section 14 of the SARFAESI Act, in consonance with the application under Section 17(1) of the said Act pending before the DRT, the operation of the impugned order dated February 23, 2022, signed by the District Magistrate, South 24-Parganas on April 21, 2022 (which has been impugned in the present writ petition) in Case No. 671/SARFAESI shall remain stayed for a period of six weeks from date or until further order of the DRT, whichever is earlier.

The First Bench of the DRT, which is now functioning, shall call for the records of the application under Section 17(1) of SARFAESI Act preferred by the writ petitioner immediately and shall consider the same for the purpose of grant of interim orders within four weeks from the date of communication of this order to the said Bench.

The DRT as well as all concerned shall act on the written communication of the learned Advocate for the petitioner, accompanied by a server copy of this order, without insisting upon prior production of a certified copy thereof.

It is made clear that the merits of the case, as pleaded before the DRT by the petitioner, has not been entered into by this Court and it will be open to the DRT to decide the application under Section 17(1) of the SARFAESI Act without being influenced in any manner by any of the observations made herein, independently on its own merits and in accordance with law.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)