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

% *Date of decision: 26.04.2022*

\+ **W.P.(C) 6575/2022**

ANIL SYAL ..... Petitioner

Through: Mr Manohar Malik with Ms Nupur Maharaj, Advocates.

versus

UNION BANK OF INDIA & ORS. ..... Respondents

Through: Mr Santosh K. Rout with Mr Abhishek Chakraborty, Advocates for respondent no.1.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MS JUSTICE POONAM A. BAMBA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

CM APPL. 19996/2022

1. Allowed, subject to just exceptions.

W.P.(C) 6575/2022 & CM APPL. 19995/2022 ***[Application filed on behalf of the petitioner seeking interim relief]***

2. This is a writ petition directed against order dated 18.02.2022 passed by the Debt Recovery Tribunal-I, Delhi [in short 'the Tribunal'] in O.A. No 683/2020.

2.1 The operative directions issued by the Tribunal are set forth in paragraph 10 of the said order which reads as under:

> *"10. Heard the Ld. Counsels for both the parties and perused the records and in the light of submission of Ld. Counsel for the applicant bank, the present applications stands disposed of with direction that the present OA proceedings against the defendant no.2 Mr. Anil Syal (guarantor) shall be kept sine die till further order, however, the present OA proceedings shall be continued against the defendants no.3 and 4.*
>
> *List this case on 30.03.2022 before the Ld. Registrar for completion of pleadings qua the defendants no.3 and 4."*

3. Mr Manohar Malik, who appears on behalf of the petitioner, says that the direction issued by the Tribunal is flawed as once the application was filed by the petitioner under Section 94 of the Insolvency and Bankruptcy Code, 2016 [in short '2016 Code'] the respondent no.1-bank could not have initiated proceedings against the petitioner.

3.1 In support of this plea, Mr Malik relies upon Section 96(1)(b)(ii) of the 2016 Code.

4. Counsel for the respondent no.1-bank contends that the petitioner did not disclose the fact that he had filed the application under Section 94 of the 2016 Code.

4.1 According to the learned counsel, the respondent no.1-bank received an e-mail dated 17.02.2020 informing the respondent no.1-bank that the petitioner intended to file an application under Section 94 of the 2016 Code.

5. We are informed, and which is something the record also reveals, that respondent no.1/bank filed its action i.e., OA/683/2020 against the principal borrower as well as the petitioner, who is a guarantor, only on 12.03.2020.

5.1. Interestingly, for some strange reason, the petitioner has not placed on record with this petition, the application or the e-mail dated 17.02.2020.

5.2. However, on being queried, Mr Malik says that the application on which the impugned order has been passed, i.e., I.A. No. 331/2022, has been placed on record.

6. We are informed that the application under Section 94 of the 2016 Code was filed with the National Company Law Tribunal [in short 'NCLT'] on 19.02.2020.

6.1. To the query as to whether the information regarding the filing of the aforementioned application was furnished to the respondent no.1-bank, Mr Malik says that advance copy was served on respondent no.1-bank. Reference in this behalf was made to page 81 of the case file. Pertinently, the communication accompanying the purported acknowledgement was not placed on record.

6.2. This aspect attained criticality, as counsel for the respondent no.1-bank, says that factum of service is disputed.

7. To unravel this mystery, we have perused the application that the petitioner had filed before the Tribunal, on which the impugned order was passed. As noticed above, this application is numbered as IA 331/2022. The application bears the date 14.11.2021.

7.1. A perusal of the application shows that it is brief, to the point that it misses out the vital details. Importantly, there is no reference in the application to the fact that the e-mail of 17.02.2020 was sent.

7.2. It is another matter that the respondent no.1-bank, in fairness, did accept unequivocally, before the Tribunal, that the e-mail dated 17.02.2020 was received by them.

7.3. The assertion made before us that a copy of the application filed under Section 94 of 2016 Code was served on respondent no.1-bank is not an aspect which is mentioned in the application. Therefore, there was no occasion for respondent no.1-bank to deny something which was not asserted in the IA 331/2022.

7.4. Given this position, in our view, the Tribunal has adopted the best course which was available in law.

8. Section 96(1)(b)(i) of 2016 Code, *inter alia*, provides that during the moratorium period, any legal action or proceedings which are pending in respect of any debt, shall be deemed to be stayed.

8.1 Therefore, given the foregoing circumstances, it is quite possible that respondent no.1-bank, not having received any information after 17.02.2020, went ahead and filed the aforementioned OA on 12.03.2022.

8.2. If the respondent no.1-bank was fair in admitting the receipt of the e-mail dated 17.02.2020, despite the same having not been mentioned in IA 331/2022, we see no reason as to why it would deny receipt of a copy of the application under Section 94 of the 2016 Code.

9. We are thus of the view that presently, the impugned order does not, in any way, impact the interests of the petitioner. As to whether or not ultimately, respondent no.1's action instituted in the Tribunal can proceed *vis-à-vis* the petitioner, it may perhaps depend upon the outcome of the proceedings pending before the NCLT.

10. The writ petition is accordingly closed.

11. Consequently, the pending application shall also stand closed.

(RAJIV SHAKDHER)
JUDGE

(POONAM A. BAMBA)
JUDGE

APRIL 26, 2022/tr

Click here to check corrigendum, if any