IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

116 **CWP-28976-2024.**
Date of Decision: 13.11.2024.

State Bank of India ....Petitioner

VERSUS

Union of India and others

....Respondents

CORAM : HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL
HON'BLE MS. JUSTICE LAPITA BANERJI

Present: Mr. Chandeep Singh, Advocate for the petitioner.

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ANUPINDER SINGH GREWAL, J. (Oral)

Learned counsel submits that petitioner-bank had advanced loan for a sum of Rs.6 Crores to respondents No.7 to 11. However, on failure of the said respondents to repay the loan amount, notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'SARFAESI Act'), was issued on 15.09.2023 for a sum of Rs.6,06,22,848.41 and notice under Section 13(4) of the SARFAESI Act, was issued on 06.12.2023. Thereafter, petitioner had preferred an application under Section 14 of the SARFAESI Act and the District Magistrate, vide order dated 30.04.2024, directed handing over of the physical possession of the secured asset. The petitioner has been trying to execute the order dated 30.04.2024, but on one pretext or the other, the execution is being thwarted.

2. Thereafter, application was preferred by respondents No.7 to 11 to the District Magistrate for review of the order dated 30.04.2024, on the ground that one Gaurav Singla (respondent No.9 herein) had preferred an application under Section 94 of the IBC, which is pending adjudication before the NCLT, as he is stated to be a partner of the firm and personal guarantor of the loan, although there is no provision for such an application to be filed against a borrower which is a firm. He also submits that this application had been filed by respondents No.7 to 11 with several defects which have not been cleared and, therefore, it has not been put up for hearing. He further submits that District Magistrate, after passing the order under Section 14 of the SARFAESI Act, does not have the power to review the same. The petitioner has preferred representation dated 05.09.2024 (Annexure P-7) in that regard before the District Magistrate, but the same has not been decided.

3. Issue notice to respondents No.1 to 6 only at this stage.

4. Mr. Alankrit Bhardwaj, Advocate has put in appearance and accepts notice on behalf of respondents No.1 and 2. At the asking of the Court, Mr. Aftab Singh Khara, Senior Deputy Advocate General, Punjab, accepts notice on behalf of respondents No.3 to 6.

5. Learned counsel for respondents No.1 and 2 submits that respondent No.9 has not cleared the objections as pointed out by the Registry of the NCLT till date although he was required to remove the objections within a period of seven days of the filing.

6. Heard.

7. A gainful reference may be made to the Apex Court's decision in '**Dilip B. Jiwrajka Vs. Union of India and others'** reported in **2023 SCC online SC 1530.** Paragraph 54 is reproduced for ready reference.

> *"54. The salient aspect which emerges from the above anaylsis is that the resolution professional does not possess an adjudicatory function in terms of the provisions of Section 99. In chapter III of Part III, the legislature has dealt with the resolution of individual or partnership insolvencies and bankruptcies. Therefore, the legislature considered it appropriate to interpose the resolution professional before the adjudicatory function of the adjudicating authority commences under Section 100. The resolution professional does not have the kind of power which their counterpart has in Part II. No provision has been made in Part III empowering the resolution professional to take over the assets or the business which is being carried on by the individual or the partnership. The role under Section 99 which is ascribed to the resolution professional is that of a facilitator and is to gather relevant information on the basis of the application which has been submitted under Section 94 or Section 95 and after carrying out the process which is referred to in sub-section (2), sub-section (4) and sub-section (6) of Section 99, to submit a report recommending the acceptance or rejection of the application. Significantly, the statute has used the expression "examine application", "ascertain" and "satisfies the requirements" and "recommend" the acceptance or rejection of the application. The use of these expressions leaves no manner of doubt that the resolution professional is not intended to perform an adjudicatory function or to arrive at binding conclusions on facts. The role of the resolution professional is purely recommendatory in nature and cannot bind the creditor, the debtor or, the adjudicating authority."*

8. In view of above, we deem it appropriate to direct District Magistrate, Malerkotla, to consider and decide representation dated

05.09.2024 (Annexure P-7), preferred by the petitioner, in accordance with law within a period of one month from the date of receipt of certified copy of this order, after considering the provisions of the IBC and ensure its compliance.

(ANUPINDER SINGH GREWAL)
JUDGE

(LAPITA BANERJI)
JUDGE

13.11.2024
jitender/vandana

Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No