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

+ **W.P.(C) 3217/2024**

APRESH GARG & ANR.

..... Petitioners

Through: Mr. Mohit Chaudhary, Mr. Kunal Sachdeva, Ms. Srishti Bajpai and Mr. Prakhar Mithal, Advocates

versus

INDIAN BANK (ERSTWHILE ALLAHABAD BANK)

..... Respondent

Through: Mr. Rajesh Kumar Gautam, Mr. Anant Gautam, Mr. R.P. Daida, Mr. Dinesh Sharma, Mr. Anani Achumi and Ms. Shivani Sagar, Advocates

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Date of Decision: 4th March, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, ACJ: (ORAL)

CM APPL. 13212/2024 (For exemption)

Allowed, subject to all just exceptions.

Accordingly, present application stands disposed of.

W.P.(C) 3217/2024

1. The present petition has been filed under Article 226 of the Constitution of India seeking quashing of the order dated 04th January, 2024



passed in O.A. No. 654/2023 pending before Debt Recovery Tribunal-II, Delhi ('DRT').

2. The Respondent Bank filed an O.A. before the DRT against the principal borrower firm M/s Agson Global Private Limited ('borrower firm') and the Petitioners herein, on 25th August, 2023.

3. The Respondent thereafter initiated personal insolvency proceedings against the Petitioners by filing an application under Section 95 of the Insolvency and Bankruptcy Code, 2016 ('IBC') registered as IB/745/ND/2023 and IB/746/ND/2023. In the said application the National Company Law Tribunal, New Delhi ('NCLT') passed an order dated 20th December, 2023 appointing a Resolution Professional ('RP').

4. It is stated that Corporate Insolvency Resolution Proceedings ('CIRP') has also been initiated against the borrower firm by NCLT vide order dated 30th January, 2024 passed in CP (IB) No. 614(ND) of 2023

5. Learned counsel for the Petitioners states that in view of the institution of the application under Section 95 of IBC, the interim moratorium has come into effect at the instance of the Respondent itself.

5.1 He states that under Section 96 of IBC, there is a statutory moratorium and therefore, Petitioners cannot submit themselves to the authority which has no jurisdiction as per the said moratorium.

5.2 He states that Petitioners could not have filed and maintained the O.A. before DRT in view of the pendency of the CIRP proceedings against the borrower firm and the Petitioners herein.



5.3 He states that the Respondent has suppressed this material fact from DRT and obtained the impugned order dated 04th January, 2024 in teeth of statutory prohibition contained in Section 96 of IBC.

6. In reply, learned counsel for the Respondent states that the O.A. was filed on 25th August, 2023 i.e., much prior to the filing of the Section 95 IBC application against the Petitioners. He states that therefore, the allegation of suppression or fraud as alleged by the Petitioners is contrary to the record and misconceived. He states that the said proceedings are liable to be stayed and not to be quashed as alleged.

6.1 He fairly concedes that the interim order dated 04th January, 2024 passed in O.A. No. 654/2023 could not have been passed in light of the statutory moratorium.

7. In response, learned counsel for the Petitioners admits that the O.A. was filed before DRT prior in time on 25th August, 2023.

8. We have heard the learned counsel for the parties and perused the record.

9. In view of the admitted facts, prayer (a) of the petition is allowed and the interlocutory order dated 04th January, 2024 is quashed. With respect to proceedings i.e., O.A. No. 654/2023 pending before DRT it is directed that the same shall remain stayed in terms of Section 96(1)(b)(i) of the IBC and the said proceedings shall abide by any further orders to be passed by the competent authority under the IBC.

10. With the aforesaid directions, the present petition stands allowed in the aforesaid terms.



2024 : DHC : 1842-DB



ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MARCH 4, 2024/msh/sk