

ITEM NO.40

COURT NO.7

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 3076-3077/2022

DR. P. MAHALINGAM

Appellant(s)

VERSUS

MUTHOOT FINCORP LIMITED & ORS.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.60836/2022-APPROPRIATE
ORDERS/DIRECTIONS)

Date : 16-12-2022 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DINESH MAHESHWARI
HON'BLE MR. JUSTICE HRISHIKESH ROY

For Appellant(s) Mr. Vikas Singh, Sr. Adv.
 Mr. Atul Sharma, Adv.
 Ms. Deepika Kalra, Adv.
 Ms. Renuka Iyer, Adv.
 Mr. Anand Singh Sengar, Adv.
 Ms. Himanshi Rajput, Adv.
 Mr. Aditya Kaul, Adv.
 Mr. Abhishek Agarwal, AOR

For Respondent(s) Mr. Shyam Divan, Sr. Adv.
 Mr. Gautam Swarup, Adv.
 Mr. Aarant Sarangi, Adv.
 Mr. Ankur Das, Adv.
 Mr. Kirtikeya Jaiswal, Adv.
 Mr. Rajat Sehgal, AOR

Mr. R. Venkatavardan, Adv.
 Mr. Anirudh Wadhwa, Adv.
 Mr. Shaishir D., Adv.
 Mr. M. P. Vinod, AOR
 Mr. Atul Shankar Vinod, Adv.
 Mr. Dileep Pillai, Adv.
 Mr. Ajay Kumar Jain, Adv.

Mr. S.Beno Bencigar, Adv
 Mr. Parijat Kishore, AOR
 Mr. Prabhu V., Adv.

Mr. D. Kumanan, AOR
 Mr. Sheikh Fakhruddin Kalia, Adv.
 Ms. Rachheta Chawla, Adv.

Ms. Divya Singh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appellant, being the erstwhile Promoter/ Director of the Corporate Debtor Company, Santosh Hospital Private Limited, has preferred this appeal under Section 62 of the Insolvency and Bankruptcy Code, 2016 ('the IBC') against the common final judgment and order dated 14.02.2022, as passed by the National Company Law Appellate Tribunal, Principal Bench, New Delhi, in relation to two appeals [being Company Appeal (AT) (Insolvency) No. 146 of 2020 and 1121 of 2020], whereby the Appellate Tribunal upheld the orders passed by the Adjudicating Authority, the National Company Law Tribunal, Chennai, being respectively the order dated 04.12.2019 for liquidation of the Corporate Debtor Company; and dated 17.12.2020 for handing over possession of the hospital in question to the respondent No. 1, the Financial Creditor of the Corporate Debtor.

In these appeals, several questions have been raised by the appellant against the order of liquidation of the Corporate Debtor Company and the interplay of the provisions of the IBC and the

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('the SARFAESI Act'). The appellant has also attempted to question the decision of Committee of Creditors, as approved by the Adjudicating Authority and the Appellate Tribunal, as being not in conformity with the object of the IBC i.e., of resolution and maximisation of the value of assets. On the other hand, these appeals are contested, particularly by the respondent Nos. 1 and 2, the Financial Creditors. It has, *inter alia*, been maintained on behalf of the respondent No. 1 that the proceedings undertaken by it under SARFAESI Act have attained finality and under those proceedings, possession of the property in question was taken over by it. It has also been contended that the subject property, the hospital building, being not the property of the Corporate Debtor, stands outside the resolution/liquidation proceedings.

At present, we are only dealing with the prayer for interim relief by the appellant, the erstwhile Promoter/Director of the Corporate Debtor Company, seeking handing over of the possession of the subject property with the offers and

undertaking of making payment of the dues to the respondent No. 1. Hence, we would not make any comments on the merits of the respective contentions, which shall be examined at the final hearing.

In these appeals, as regards interim, on 02.05.2022, this Court ordered *status quo* to be maintained while issuing notice to the respective respondents. On 14.05.2022, the appellant filed an affidavit stating certain propositions on his part for making payment to the respondent No. 1. Later on, the appellant improved upon his offer by another affidavit dated 24.11.2022; and thereafter, the appellant yet further improved upon his offer on 15.12.2022 before us.

We have taken note of the proposition put forward on behalf of the appellant yesterday, i.e., 15.12.2022 as follows:

"Learned senior counsel appearing for the appellant has submitted that in improvement of the offer of Rs.5,00,00,000/- (Rupees five crore) made in the affidavit dated 24.11.2022, the appellant today is offering a sum of Rs.10,00,00,000/- (Rupees ten crore) by way of two demand drafts dated 03.12.2022 and 05.12.2022 bearing Nos.507611 and 507614.

Learned counsel appearing for respondent No.1 submits that he has received the said affidavit dated 24.11.2022 today only and he has serious objections to the propositions as made in the

said affidavit or as made today by the learned senior counsel for the appellant.

Nobody is present for respondent No.3.

List these matters tomorrow, i.e., 16.12.2022.

In the meanwhile, respondent No.1 may file written response to the affidavit dated 24.11.2022, if so advised."

Today, the learned senior counsel, Shri Shyam Divan appearing for respondent No.1, has submitted that the appellant is not entitled to any discretionary relief with respect to the subject property, essentially for the following, amongst other, reasons:

- a) These proceedings arise from an application filed under Section 10 of the IBC by the Corporate Debtor; and in terms of Section 29A(h) of the IBC, the present appellant is expressly barred from participating in the resolution process.
- b) The appellant made repeated offers for settlement and they all were breached, as could be noticed from various orders placed on record, including the judgment dated 20.02.2019 in Writ Petition No.24867 of 2018 by the High Court of Madras, as also the orders dated 21.11.2019 and 17.12.2019 passed by the

National Company Law Tribunal, Chennai. This is apart from the fact that the appellant could never adhere to any of his offers and kept on seeking time; and the incomplete offers made by the appellant were rejected by the Committee of Creditors as also by respondent No.1.

- c) The subject property is not the property of the Corporate Debtor.
- d) The appellant has attempted to project that the hospital was required to combat the fallout of the COVID-19 pandemic but, such an assertion remains incorrect inasmuch as both the Liquidator and the Chennai Municipal Corporation have confirmed that the hospital was totally unfit for use.
- e) The respondent No.1 is entitled to pursue its remedy through sale of assets under the SARFAESI Act; and as on date, the estimated amount owed to respondent No.1 is in excess of Rs.98.8 crores.

The learned senior counsel for respondent No. 1 would, therefore, submit that although, this Court had provided for maintaining *status quo* by the order dated 02.05.2022 but, without any other alteration in

the status as obtaining, the matter may be placed for hearing.

The learned counsel appearing for respondent No.2, DCB Bank Limited, has also opposed the prayer made by the appellant and has pointed out that as on date, about a sum of Rs.17.3 crores is owed to respondent No.2.

We have taken note of the totality of the facts and circumstances of the case. Though at present, we are not making any comments on the merits of the case either way but, it is particularly noticed that the subject property, on which respondent No.1 is said to be carrying security interest for having been mortgaged with it, is a building of the hospital and therein, the hospital was, in fact, functioning for about 25 years up to the years 2017/2018; and the building is at present not being used for any purposes at all, though the appellant is said to be making payment of electricity and other dues.

Taking the totality of circumstances into account and the nature of the building in question, as also taking into account the offer made by the appellant in his affidavits dated 14.05.2022, 24.11.2022 and

the statement made before us on 15.12.2022 with two demand drafts totaling to a sum of Rs.10,00,00,000/- (Rupees ten crore), to show that the appellant is ready and willing to make payment, we are of the view that while keeping all the objections of the respondents open, before taking final decision in this matter, an opportunity be extended to the appellant to use the building for the purpose it is meant, i.e., for the purpose of hospital while, also giving him an opportunity to adhere to the propositions made in his affidavit dated 24.11.2022, that is, of making further payment.

Therefore, without any other comment, we direct as under:

(1) The possession of building in question may be handed over to respondent No.3, the Official Liquidator who, in turn, may hand over its possession to the appellant for the purpose of its use as a hospital.

(2) Such handing over possession of the building in question to the appellant shall be without accrual of any additional right in the appellant or the Corporate Debtor and shall not prejudice the rights of the respondents in any manner.

(3) The Liquidator shall be entitled to make all the provisions for monitoring and supervising the use of the building in question and the expenditure in that regard shall be borne by the appellant.

(4) When respondent No.1 has shown disinclination in accepting the amount of Rs.10 crore offered by the appellant, the same may be deposited with respondent No.3, the Official Liquidator, who may invest the same in an interest bearing deposit. The necessary remittance be made within a week from today.

(5) The possession of the building in question may be made available to the appellant on or before 31.12.2022, of course, after the respondent No. 3 receives the remittance as aforesaid.

(6) Keeping in view the spirit of paragraph 8 of his affidavit dated 24.11.2022, the appellant shall make payment of a further sum of Rs.5 crore towards dues of respondent No.1 on or before 31.03.2023 to the respondent No. 3, who shall invest the same too in an interest bearing deposit.

(7) Any expenditure made for the purpose for making the premises fit for use as hospital shall, obviously, be borne by the appellant.

(8) The appellant shall not be entitled to claim

any equity or any additional legal right merely for the interim arrangement as provided by this order nor shall be entitled to make any claim towards the expenditure incurred in making the premises fit for use as hospital and for its improvement. However, all such processes shall strictly be undertaken in the supervision of the Official Liquidator (respondent No. 3).

(9) It goes without saying that this order is, otherwise, not of given a licence to the appellant to run a hospital and for that purpose, all the necessary permissions and licences shall have to be obtained by the appellant strictly in accordance with law.

(10) Having regard to the circumstances and taking into account the apprehensions indicated by the learned senior counsel for respondent No.1, it is also considered appropriate and hence provided that while entering into any arrangement with any person in the course of running the hospital, the appellant shall disclose that this litigation is pending in this Court and that all the arrangements shall remain subject to the final orders to be passed by this Court.

**List these appeals for final disposal on
11.04.2023.**

Liberty to mention.

**(NEETU KHAJURIA)
ASTT. REGISTRAR-cum-PS**

**(MONIKA DEY)
COURT MASTER**