

SUPREME COURT OF INDIA

Vinay Kumar Mittal

Vs.

Dewan Housing Finance Corporation Ltd.

C.A.No.654 -660 of 2020

(L.Nageswara Rao and Hemant Gupta,JJ.,)

31.01.2020

JUDGMENT

L.Nageswara Rao,J.,

SLP(C)No.30372-30378 of 2019

1. The above appeals are filed against the interim orders passed by the High Court of Judicature at Bombay on 10.10.2019, 17.10.2019 and 13.11.2019. The order dated 08.11.2019 passed by the Debts Recovery Tribunal-I, Mumbai following the order of the High Court dated 17.10.2019 is also in challenge in the above appeals. For the sake of convenience, the facts in Commercial Suit No.1034 of 2019, filed by Reliance Nippon Life Asset Management Ltd. are referred to in this judgment. Reliance Nippon Life Asset Management Ltd. (hereinafter referred to as, 'Respondent No.4') filed Commercial Suit No.1034 of 2019 for recovery of a sum of Rs.479,31,29,113/- along with interest at the rate of 18 per cent. In a nutshell, the case of Respondent No.4 is that it subscribed to Non-Convertible Debentures (NCDs) of Dewan Housing Finance Corporation Limited (DHFL, hereinafter referred to as, 'Respondent No.1') to the tune of Rs.63,41,72,000/, that were issued through a public offer. In 2017-2018, Respondent No.4 further subscribed to NCDs of Respondent No.1, aggregating to Rs.365 crores, issued on a private placement basis. Respondent No.4 became entitled to early redemption of private placement NCDs in March, 2019 due to the down grading in ratings of the NCDs issued by Respondent No.1. Respondent No.1 failed to pay the entire amount towards the early redemption.

2. By an order dated 30.09.2019, the High Court of Judicature at Bombay restrained Respondent No.1 from making further payments disbursements to any unsecured creditors and secured creditors except in cases where payments are to be made on a pro-rata basis to all secured creditors out of its current and future receivables in preference to the payments owed to Respondent No.4.

3. By an order dated 10.10.2019, the High Court directed the continuance of the order passed on 30.09.2019 till the disposal of the motion. Similar orders were passed in the

interim applications filed in the other commercial suits by orders dated 17.10.2019, 08.11.2019 and 13.11.2019. It was clarified by the High Court on 13.11.2019 that Respondent No.1 shall not be prevented from making any payments overdue or payable under the assignment agreements in favour of any or all such banks or assignees of loans.

4. The Appellants are depositors who invested in fixed deposits with the Respondent No.1-DHFL. Having been aggrieved by the interim orders passed by the High Court and the Debts Recovery Tribunal-I, Mumbai restraining Respondent No.1 from making any payments towards their fixed deposits, the Appellants challenged the orders of the High Court with the leave of this Court.

5. By placing reliance on Section 36 and 36 (A) of the National Housing Bank Act, 1987 and Section 45 (q) (a) of the Reserve Bank of India Act, 1934, Mr. Jayant Bhushan, learned Senior Counsel appearing for the Appellants submitted that the repayments of the deposits of the Appellants should be given preference over the contractual claims of the debenture holders. Notice was issued by this Court on 13.12.2019. On that day, Mr. K. V. Vishwanathan, learned Senior Counsel appearing for the Reserve Bank of India submitted that the Reserve Bank of India has filed an application under Section 227 and 239 (2) (zk) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as, IBQ read with Rule 5 and 6 of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicatory Authority), Rules, 2019 (hereinafter referred to as the 'FSP Rules') before the National Company Law Tribunal (hereinafter referred to as, NCLT), Mumbai to initiate the Corporate Insolvency Resolution Process (CIRP) against Respondent No.1. Mr. Vishwanathan also informed this Court that an order was passed by the NCLT on 03.12.2019, imposing moratorium under Section 14 of the IBC prohibiting the institution of any suit or continuation of proceedings or execution of any decree against the Financial Service provider i.e. DHFL and transferring, alienating or disposing of any asset of DHFL and any action to foreclose, recover or enforce any security interest created by DHFL in respect of its property with effect from the date of filing the application i.e. 29.11.2019 till the completion of the Corporate Insolvency Resolution Process.

6. The Reserve Bank of India appointed Mr.R. Subramaniakumar as the Administrator of Respondent No.1 under Section 45 (1) (e)(i) of the Reserve Bank of India Act, 1934 on 20.11.2019. On 29.11.2019, the RBI filed a petition to initiate the corporate insolvency resolution process against Respondent No.1 under Rule 5 of the FSP Rules. The NCLT confirmed the name of Mr. R. Subramaniakumar, Administrator and directed him to perform all the functions of Resolution Professional and to complete the insolvency resolution process.

7. To complete the narration of the facts, it is relevant to refer to an order dated 03.12.2019 passed by the High Court on being informed that the Reserve Bank of India had filed an application for initiation of corporate insolvency resolution process. The High Court took note of the fact that the moratorium shall operate from the date of the filing of the application i.e. 29.11.2019. The High Court granted liberty to the parties before the

Court to approach the NCLT for redressal of their grievances.

8. On 03.12.2019, the NCLT directed that a moratorium as defined under Section 14 of the IBC shall commence with effect from the date of the application i.e. 29.11.2019. On commencement of the moratorium, the institution of any suit or continuation of any proceedings or execution of any decree against the Financial Service Provider i.e. the Respondent No.1 herein shall be prohibited. The transfer alienation or disposal of any asset of the FSP were forbidden. Any action to foreclose, recover or enforce any security credit by the FSP in respect of a property was also debarred. However, the supply of essential goods or services to the FSP was permitted to be continued in an un-interrupted manner and not to be terminated or suspended by the supplier during the moratorium.

9. The Administrator was permitted to cause a public announcement intimating the initiation of corporate insolvency resolution process and calling for admission of claims as prescribed in Section 15 of the IBC. The NCLT referred to the Appellants in its order dated 03.12.2019 and directed the Administrator to update the list of depositors along with the outstanding amounts payable to each one along with their address and communication information so that in future their interests can be taken care of, along with other stakeholders.

10. Consequently, the Administrator made a public announcement under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. On 04.12.2019, public depositors were included as a class of creditors under Section 21 (6A) (b) of the IBC. Three names of insolvency professionals were proposed by the Administrator and the public depositors were required to select one of three persons to act as their authorized representative.

11. The first meeting of the Committee of Creditors was held on 30.12.2019, during which it was decided that Respondent No.1-Corporate Debtor can commence disbursement of loans to the tune of Rs.500 crores per month. It was also resolved in the said meeting of the Committee of Creditors that the interests of the depositors shall be taken into account, in accordance with the provisions of the IBC.

12. The Appellants filed an Interlocutory Application seeking a direction to restrain Respondent No.1 from commencing its lending operations till the matured deposits of the depositors are duly paid.

13. Mr. Jayant Bhushan, learned Senior Counsel appearing for the Appellants expressed his apprehension that the interim orders dated 10.10.2019 as modified by the order dated 13.11.2019 might come in the way of consideration of the claims that are made by the depositors before the Committee of Creditors and the Administrator. After hearing the learned counsel for the Administrator and the RBI on this point, we are of the opinion that the claims that are made by the depositors shall be considered by the Committee of Creditors and the Administrator without being influenced by the orders passed by the High Court on 10.10.2019 as modified by order dated 13.11.2019, as well as the order passed by

the Debts Recovery Tribunal-I, Mumbai on 08.11.2019.

14. Mr. Bhushan further submitted that the decision taken by the Committee of Creditors on 30.12.2019 by which the Administrator was permitted to carry on the lending operations of the first Respondent without paying the depositors is arbitrary and illegal.

15. After considering the submissions made by Mr. Jayant Bhushan, learned Senior Counsel for the Appellants, Mr. Ramji Srinivasan, learned Senior Counsel for the Administrator and Mr. K. V. Vishwanathan, learned Senior Counsel for the RBI and in view of the order that we propose to pass, we deem it not necessary to examine the merit of the contentions made by the learned Senior Counsel. The depositors are being represented by the Authorized Representative before the Committee of Creditors. We leave it open to the Appellants to raise all points and contentions before the Committee of Creditors, the Administrator and if necessary, the NCLT. In view of the above, we are not inclined to interfere with the decision of the Committee of Creditors taken on 30.12.2019. We are informed that there are nearly one lakh depositors who have invested their life time earnings with Respondent No.1. Some of the deposits have matured and some of the depositors are critically ill. We have no doubt that the concerns of the depositors and their rights shall be considered in accordance with law.

16. The appeals are, accordingly disposed of.