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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 28th July, 2014

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W.P.(C) 3690/2014

M/S. INDIAN DELCO PVT LTD & ORS. Petitioner
Through Mr. Sudhir Nandrajog, Sr. Advocate
with Mr. Muneesh Malhotra and Mr. Vikram V.
Minhas, Advocates.

versus

CHAIRMAN & MANAGING DIRECTOR & ORS.
..... Respondent
Through Mr. Vijay Kumar and Ms. Rekha
Anand, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J. (ORAL)

M/s Indian Delco Pvt. Ltd. has filed this writ petition impugning order dated 5th March, 2014 passed by the Chairman, Debts Recovery Appellate Tribunal, Delhi-I (Appellate Tribunal for short). It is submitted that the Chairman, Appellate Tribunal has incorrectly held that there was a concession and waiver of jurisdiction and, therefore, the order passed by the Presiding

Officer, Debts Recovery Appellate Tribunal, Delhi-II (DRT-II), was legal and valid. Secondly, on merits, it is submitted that there were errors and mistakes and the respondent bank has charged exorbitant interest at 17.5% compounded monthly and penal interest @ 2%. Notice, dated 1st April, 2010, under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, had quantified the amount payable as Rs 26,73,20,851.44. The account was treated as a non-performing asset w.e.f 31st March, 2010. Thereafter, the petitioner had made payment of Rs.4.48 crores. But the respondent bank in the OA, filed on 4.3.2011, had quantified the amount payable as Rs.25,41,14,536.00, which was an incorrect figure as it did not account for payment of Rs.4.48 crores.

2. As we perceive, the two questions/issues raised are inter-connected. The petitioner, herein, had filed an application, under Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, before Debt Recovery Tribunal. During the pendency of the proceedings i.e.

the application under Section 17, the original proceedings (O.A for short) was initiated by the respondent bank. The petitioner in turn had filed W.P.(C) 7572/2011 before the Delhi High Court. Copy of the said writ petition, has not been placed on record by the petitioner but orders passed in the said writ petition are enclosed and available. Order dated 4th September, 2012, indicates that the issue and dispute raised related to the alleged outstanding amount and interest due and payable by the petitioner to the respondent bank. The petitioner had written letter dated 17th Sept. 2012, to the Assistant General Manager of the respondent bank, enclosing a proposal in form of a schedule of payment calculated on the non-performing asset (NPA, for short) amounting to Rs.26,70,88,620/-. This was the same figure of the outstanding amount mentioned in the notice dated 1.4.2010. It was proposed that the petitioner would pay simple interest @ 10% per annum on the aforesaid amount in 18 equal monthly instalments beginning 31st March, 2013 and ending 31st August, 2014. For the sake of completeness, we are reproducing the relevant paragraphs of the said letter:-

“I am enclosing herewith the schedule of payment as calculated on the NPA amount of Rs. 26,70,88,620/- as stated in your notice dated 01.04.2010 under Sec. 13(2) of the SARFEASI Act. The repayment schedule has been worked out @ 10% p.a. simple interest. The copy of the statement is being enclosed as Annexure-1 for your kind perusal and necessary action. It is also brought to your kind notice that we shall be depositing Rs. 25 lacs per month from September, 2012 to February 2013.

We have also worked out the balance outstanding to be repaid in 18 equal monthly installment commencing from 31st March, 2013 till 31st August, 2014 as per the order dated 04.09.2012 of the Hon’ble High Court. The copy of the same is annexed herewith as Annexure-2. It is apparent from the aforesaid statements that last payment shall be paid on 31st August, 2014 i.e. within the period of 2 years.”

3. Thereafter, on 4th October, 2012, submission was made on behalf of the petitioner before the writ Court that they had already submitted a proposal to the respondent bank and were willing to pay interest @ 10% per annum. Though the petitioner had earlier asked for two years’ time for repayment, but they were willing to reduce the time to one year and six months. The respondent bank had submitted that a settlement would be facilitated if the petitioner would meet their Assistant General Manager. The date and time of meeting was fixed. The order dated

4.10.2012, specifically noticed that the counsel for the petitioner had been shown the outstanding amount payable as 15.50 crores (approximately) and counsel for the petitioner had submitted that this figure provided by respondent bank was not correct and amount payable was much less.

4. On 16th November, 2012, the writ petition again came up for consideration and the Court noticed that liability treated as NPA on 31st March, 2010, as per the petitioner, was Rs.26,73,20,851.44. It was recorded that the petitioner as on 16th November, 2012, had repaid Rs.21.25 crores. The petitioner, at the time of hearing on 16th November, 2012, had taken the stand that they would pay the entire balance amount, provided the bank takes a reasonable position qua interest and period of payment. However, the respondent bank had demanded interest in the notice dated 1st April, 2010, @ 17.5% per annum compounded at monthly rests. The order dated 16th April, 2012 records the submissions made on behalf of the respondent bank to the effect that period for repayment should be reduced to 1 year and then interest on the balance amount would be charged @ 16% p.a along with penalty @ 2%. Respondent bank had pleaded that the realisable

security was worth Rs.44 crores and it would not be possible to settle the matter for less than the present value of the realisable security. However, if a representation was made to the Board of Directors, the penalty chargeable @ 2% could be waived. After recording the submissions, Court gave direction to the respondent bank to file an affidavit stating the number of cases settled by them in terms of the RBI circular dated 4th October, 2007 for values less than the realisable securities of the borrower. Other directions were also given to the respondent bank.

5. Aggrieved by the aforesaid directions, the respondent bank preferred an appeal before the division bench, which was disposed off with liberty to the respondent bank to file an appropriate application seeking review before the single Judge. Review application was filed and disposed off vide order dated 4th February, 2013. While disposing off the review application, the single Judge observed that as per the respondent bank, if interest was factored in @ 16% compounded monthly and adjustments were made for the amounts paid by the petitioner, then the outstanding amount due and payable as on that day would be Rs.14,06,40,580.04. In case penal interest @ 2% per annum

was added, Rs.59,69,348.56 in addition would be payable. However, the respondent bank had conceded that they would not ask for penal interest in case settlement was offered. Insofar as the pendent lite interest was concerned, (i.e., for the period commencing the date when the OA was filed, till the date of decree,) interest was normally left to the discretion of the Debt Recovery Tribunal. It was also recorded that as per the respondent bank, Debt Recovery Tribunal was ordinarily awarding simple interest @ 12% per annum for the aforementioned period.

6. After chronicling the aforesaid submissions in the order dated order dated 4th February, 2013, the Court proceeded to dictate and record:-

“Mr Bhagwati Prasad, learned senior counsel for the petitioner, says that ,though the figures mentioned by the respondent-bank are not completely accurate, he would be willing to suffer a decree whereby the petitioner would have to pay the outstanding amount on the date when the OA was filed in the DRT plus simple interest at the rate of 12% p.a.

In view of the fact that the DRT is in seisin of the matter and having regard to the aforesaid stand of the petitioner, the DRT will consider passing a decree based on the aforesaid offer of the petitioner after factoring in interest which is ordinarily awarded by the DRT in such

like matters for the pendente lite period.

The review petition is disposed of directing the DRT to pass an appropriate orders having regard to the observations made above. In so far as the figures given by the respondent-bank are concerned, they will be duly scrutinized by the DRT.

WP(C) No. 7572/2011 and CM No. 11321/2012

In view of the observations made above, the learned counsel for the petitioner does not wish to press the petition any further.

The writ petition and the application are, accordingly, disposed of.”

7. The aforesaid quote from the order dated 4th February, 2013, is lucid and clear. It is apparent that the petitioner had disputed the figures mentioned by the respondent bank but had ultimately agreed and accepted to suffer a decree for the amount claimed. They had made a prayer that pendent lite interest should be awarded @ 12% per annum. They had agreed to pay the outstanding amount along with pendente lite simple interest calculated @ 12% per annum. The Court noticing that proceedings were already pending before the Debt Recovery Tribunal and having regard to the offer made by the petitioner, recorded that the said tribunal would consider passing a decree in terms of the aforesaid offer after factoring the interest, which it ordinarily

awards in such matters for pendente lite period.

8. We do not agree with the petitioner that the question of the principal or outstanding amount due and payable was an issue, which was left undecided. The pendente lite interest remained undecided and on the said aspect no statement was made on behalf of the petitioner, but the respondent bank had stated that ordinarily in such cases, simple interest @ 12% per annum was decreed. As both the counsel were ad idem regarding suffering of decree, the Court deemed it appropriate to dispose of the writ petition leaving the question of pendent lite interest open and to be decided by the Tribunal.

9. It is possible to argue that disposal of the writ petition would not have prohibited the petitioner herein from challenging the amount claimed in the original application. The petitioner had the said chance, but did not contest the principal amount before the tribunal. The petitioner filed an application, dated 26.2.2013, under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 read with Section 34 of the Code of Civil Procedure. The said application refers to the writ petition, orders passed therein and also meeting of the petitioner with the officers of the respondent bank. Our attention has been drawn to paragraph 11 of the said application, wherein reference was made to the order dated 16th November, 2012. This

order was earlier in point of time and at that time, there were issues and dispute between the petitioner and the respondent bank on the outstanding amount. However, the final order dated 4th Feb, 2013, passed by the Court does not refer to any dispute on the principal amount. It is apparent and manifest that the petitioner, had given up the challenge to the quantum of the outstanding amount payable and had confined and restricted his submissions on the rate of pendente lite interest. Paragraph 17 and prayer clause of the said application is material and reads as under:-

17. In light of the aforesaid, the present application is being filed by the applicant inter -alia for passing an appropriate orders/directions on the' following terms:-

“a)The applicant shall pay the outstanding amount from the date of the O.A. @ simple interest of 9% p.a. from the date of the filing of the O.A;

b) The bank: shall give due credit for the amount paid by the applicant under various orders of the different court i.e. DRT/DRAT and the Hon'ble High Court, after the issuance of notice U/s. 13(2) of the SARFEASI Act i.e 01/04/2010;

c) The balance outstanding shall be payable in 18 equal monthly installment commencing from 31st March, 2013 till 31st August, 2014;

d) On payment of the NPA amount, the bank shall duly Inform the concerned authority that the petitioner/applicant ceased to be NPA forthwith.

PRAYER

In light of the aforesaid, it is most respectfully submitted that the Hon'ble Tribunal may be pleased to:

a) Pass an appropriate order in terms of the proposal of the applicant as presented before the Hon'ble High Court and In terms of the order dated 4.2.2013;

b) Pass any other or further order that this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case in the interest of justice and fair play.”

10. A reading of aforesaid paragraph and prayer clause would show that the petitioner was not disputing the outstanding amount but was only praying for award of simple interest @ 9% from the date of the filling of the OA. Payment of pendent lite interest and prayer would only arise once the outstanding amount was adjudicated or accepted/admitted. Courts/tribunal determine and decide pendent lite interest only when the final order/determination is made. It was averred in the application that the respondent bank should give due credit of the amount paid by the petitioner, under various orders of different courts, after issue of notice under Section 13(2) dated 1st April, 2010. Clause (b) of the paragraph 17 does not state that they were disputing the outstanding amount claimed by the respondent-bank

in the notice dated 1st April, 2010 or interest as claimed prior to the date of filling of OA. The petitioner had prayed that they would pay the balance outstanding amount in 18 equal monthly instalments commencing from 31st March, 2013 till 31st August, 2014.

11. After the aforesaid application was filed, the matter was taken up for hearing on 23rd September, 2013, by the Presiding Officer, DRT-II, being the link Presiding Officer. The aforesaid OA was pending before the DRT-I, but as the Presiding Officer was on leave, the OA was listed before the Presiding Officer, DRT-II. On the said date, the OA was disposed of noticing the fact that the petitioner herein had agreed before the High Court that they would pay simple interest @ 12% and, therefore, their prayer for concessional interest @ 9% cannot be allowed. It records that in view of the earlier orders passed by the High Court, the dispute had narrowed down. The petitioner herein had submitted that they would pay the outstanding amount as on the date when the OA was filed in the DRT, plus simple interest @ 9%. The respondent bank, however, had claimed interest @ 16% per annum pendent lite with monthly rests and 2% over due penal interest for the outstanding liability. The OA was disposed of decreeing the respondent bank's claim of Rs.25,41,14,536.00 along with simple interest

@ 12% per annum from 4th March, 2011, till payment was made. The payments received by the respondent bank after institution of OA, it was directed, shall be credited with effect from the date on which payments were received. Details of the balance amount recoverable as on the date of order were to be furnished by the respondent bank within 30 days.

12. To our mind, it is lucid and intelligible that the application filed by the petitioner herein was accepted and allowed, with one modification that the pendent lite rate of interest was awarded at 12% instead of 9%. The Presiding Officer DRT-II while issuing direction had kept in mind the concession or the statement made by the counsel for the petitioner in the High Court as recorded in the order dated 4th February, 2013. Even evidence had not been recorded before the Debt Recovery Tribunal till then. But the petitioner, had invited the tribunal to pass the final order by not disputing the outstanding amount as claimed by the respondent bank but wanted reduction or favourable treatment in respect of pendente lite interest. Clause (b) in paragraph 17, which postulates that “bank shall give due credit” was with reference to the amount paid by the petitioner on or after notice dated 1.4.2010, either before the tribunal or the High Court. It has not been stated in paragraph 17 (b) as noted above, or in the prayer

clause of the application that the outstanding amount as prayed for in the OA should be recomputed or required correction or was not acceptable. The petitioner, it is apparent, gave up the said contention, including the question relating to rate of interest charged, which was their earlier plea and contention in the writ petition. Apparently, they wanted an early and expeditious decisions of the SA and OA, which were pending. The order passed by the Presiding Officer, DRT-II on 23rd September, 2013 was clearly on the basis of the concession, made by the petitioner herein, in view of the assertion and prayer made in the application filed.

13. In view of the aforesaid discussion, the petitioner cannot now question and state that the Presiding Officer of the DRT-II, Delhi could not and should not have disposed of the application along with the original pending proceedings, vide its order dated 23rd September, 2013, because this was not in nature of “urgent work” covered by the administrative order dated 6th April, 2009, passed by Chairman, Debt Recovery Appellate Tribunal. No doubt that the OA was pending before the Presiding Officer, DRT-I, Delhi, but the said Presiding Officer was not functioning/holding court being on leave or because he was not performing judicial work. Administrative order dated 6th April, 2009, directs that whenever Presiding

Officer of any Bench of DRTs happens to be on leave, the urgent judicial matters shall be taken up by one of the other Link Officer/Presiding Officer. Urgency, in the present case, was the desire of the petitioner for early disposal of the entire proceedings, a fact which has been duly noticed and is apparent. The OA was disposed of on the basis of concession given by the petitioner before the High Court, as recorded in paragraph 4 of the order dated 23rd September, 2013.

14. In these circumstances, in our opinion, the petitioner cannot rely upon orders in other cases, wherein it was held that the Presiding Officer, DRT-II was not empowered and lacked jurisdiction to pass final adjudication order relating to cases before DRT-I. This aspect has been also highlighted in the impugned order passed by the Appellate Tribunal. We may note that the petitioner herein has not filed copy of the grounds of appeal by which they challenged the order dated 23rd September, 2013 before the Appellate Tribunal.

15. In view of the findings given above, we need not go into the question whether the Presiding Officer, DRT-II lacked jurisdiction or not, though he was also a Presiding Officer of equal status and rank. He had subject matter jurisdiction as such. Undoubtedly, the administrative order dated 6th

April, 2009 states that when a Presiding Officer of one DRT happens to be on leave, urgent matters shall be taken up by the designated Presiding Officer of the other DRT. The administrative order ensures that the link Presiding Officer was not suddenly burdened with additional work and was issued to curtail possibility of forum shopping and misuse, an aspect, that has been noticed in subsequent guidelines dated 5th March, 2014. Therefore, we agree with the findings of the Appellate Tribunal that the petitioner had duly participated in the proceedings on 23rd September, 2013 and invited the said decision on the ground that it required urgent hearing. Accepting the submissions, Presiding Officer, DRT-II, had passed the final adjudication order.

16. The writ petition is devoid of merits and is accordingly dismissed. Stay order is vacated. No costs.

SANJIV KHANNA, J.

V. KAMESWAR RAO, J.

JULY 28, 2014
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