

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

% Date of decision: 28th November, 2018

+ W.P.(C) 4828/2017

M/S TUFF DRILLING PVT. LTD.

..... Petitioners

Through: Mr. Sanjeev Bhandari, Adv.

versus

PUNJAB NATIONAL BANK & ORS

..... Respondents

Through:

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

1. This writ petition has been filed by the petitioner praying for the following reliefs:

"In view of the facts and circumstances explained above and in the interest of justice it is therefore most respectfully prayed that this Hon'ble Court may be pleased to:

(a) Allow the present writ petition with costs;

(b) Issue a Writ of Certiorari or any other appropriate Writ thereby quashing and setting impugned order dated 09.05.2017 (ANNEXURE A-1) and more particularly

directions contained in order dated 09.05.2017 passed by Ld. DRAT, Delhi whereby the petitioner has been directed to deposit an amount of Rs.40.00 crores and;

(c) Issue appropriate direction and / or order to the Ld. DRAT, Delhi to decide and / or pass a final order and / or judgment in appeal No.310 of 2016 filed by petitioner before Ld. DRAT, Delhi afresh without taking into consideration any of the observations and expressions and / or opinion expressed in its order dated 09.05.2017; and / or;

(d) Issue a Writ of Certiorari or any other appropriate Writ thereby quashing and setting impugned order dated 09.05.2017 (ANNEXURE A-1) and more particularly directions contained in order dated 09.05.2017 passed by Ld. DRAT; Delhi whereby the petitioner has been directed to deposit an amount of Rs.40.00 crores and consequently allow the appeal No.310 of 2016 filed by the petitioner before Ld. DRAT, Delhi by setting aside order dated 19.08.2016 passed by Ld. DRT-II, Delhi in MA.No.66 of 2016 filed by petitioner and thereby further set aside order dated 10.06.2016 passed by Ld. DRT-II,

Delhi in relation to I.A.No.460 of 2016 filed by intervener i.e. respondent No.3 in O.A.No. 142 of 2013 by dismissing I.A.No.460 of 2016 filed by intervener respondent No.3 herein;

(e) In the alternative; issue a Writ of Certiorari or any other appropriate Writ thereby quashing and setting impugned order dated 09.05.2017 (ANNEXURE A-1) and consequently orders dated 19.08.2016 (passed in M.A. No.66 of 2016 filed by the petitioner and also order dated 10.06.2016 (passed in I.A. No.460 of 2016) filed by intervener i.e. respondent No.3 herein; with liberty to petitioner to file reply to I.A.No.460 of 2013 and decide the issue in relation prayer sought in relation to I.A.No.460 of 2013 as per law after hearing the parties;

(f) Pass such other orders or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The facts as noted from the record are, the petitioner Company was sanctioned term loan of ₹15.90 crores in June 2009; foreign currency loan of US \$ 15.21 million was given in February 2010 and a further amount of ₹2.50 crores was granted in March 2010. Since the petitioner failed to repay the dues to

respondent No.1 Bank, the Bank filed OA 142/2013 seeking recovery of ₹92,16,65,079/- against the petitioner before DRT-II, Delhi. It is the case of the petitioner that respondent No.3(M/s Pavamanna Drilling Pvt. Ltd.) was not a party in the OA 142/2013 and it had no privity of any contract or agreement of any nature whatsoever with the respondent No.1 and respondent No.2 (United Bank of India). It is an admitted case of the petitioner that it was *ex parte* during the pendency of the proceeding in OA 142/2013.

3. It is averred in the petition that, the petitioner entered into an agreement of acquisition of assets dated March 15, 2016, with the respondent No.3, where the respondent No.1 (PNB), respondent No.2 (UBI) are not parties. It is averred that in May 2016, that the two Banks were paid their dues of ₹36.25 crores (to the respondent No.1) and ₹10 crores (to the respondent No.2).

4. On May 20, 2016, in the pending OA 142/2013, the respondent No.3 filed an intervention application being IA 460/2016, which was decided on June 10, 2016, wherein the DRT-II directed the Punjab National Bank to hand over possession of 1500 HP Rig to the respondent No.3. It is averred in the writ

petition that the petitioner filed an application dated July 14, 2016 vide Diary No. 66 dated July 15, 2016 for recalling of the order dated June 10, 2016. The said application was finally heard on August 01, 2016, and decided vide order dated August 19, 2016, when the DRT-II dismissed the application filed by the petitioner. The petitioner challenged the order dated August 19, 2016, of the DRT-II before the DRAT. The DRAT while considering this appeal has passed the impugned order dated May 09, 2017 whereby it directed the petitioner to deposit an amount of `40 crores, with Registrar of DRAT.

5. It is the submission of Mr. Bhandari the learned counsel for the petitioner that the DRAT, could not have passed such an order as an interim measure, when itself has framed question for its consideration which goes to the root of the jurisdiction of DRT to entertain an application moved by a third party (respondent No.3) and give direction to the Bank to release the equipment to it, that too without notifying the petitioner on this application filed by the respondent No.3. Further, the DRT after the withdrawal of the OA ought to have left the decision regarding the release of the Bank's charge over this equipment to the Bank's discretion to be exercised

in accordance with law of hypothecation after having received its dues as per OTS from the borrower.

6. According to Mr. Bhandari the payment made to the Bank pursuant to the OTS was by the petitioner herein. Further, any rights being claimed by the respondent No.3 on the equipment are independent rights claimed by the said respondent against the petitioner on which the DRT has no power, authority and jurisdiction to decide in the facts of the present case in pending OA No.142/2013, filed by the Bank seeking an adjudication of debt as envisaged under Section 2(g) of the Act of 1993.

7. That apart, he submits that the petitioner herein disputes the letter dated March 15, 2016. In substance, he submits in the above background without deciding the issue of jurisdiction, which falls for consideration the DRAT could not have fastened the liability of ₹40 crores by directing the petitioner to deposit the amount with the Registrar of the DRAT.

8. On the other hand, we note the case of the Bank is by relying on the letter dated March 15, 2016 addressed to it by the petitioner for releasing the equipment in favour of respondent No.3. In other words, it is their case that they dealt with the

respondent No.3 as per the command of the petitioner. The Bank did not oppose this application, since the Banks claim stood cleared and the OA was withdrawn. The respondent No.3 stand is that the petitioner should not be heard, without the petitioner requiring, to pay even a single rupee from its pocket. Further, the plea of the petitioner that there is a breach of letter dated March 15, 2016 is without specifying the breach. It is the case of the respondent no.3, if at all there is a breach of the agreement on the part of respondent No.3 the conditional OTS accepted by the Banks would have to be revoked.

9. Having noted the case of the parties, the only issue which arises for consideration is whether the DRAT could have while deciding the issues framed by it for its consideration and decision direct the deposit of ₹40 crores by petitioner with the Registrar New Delhi. The questions, the DRAT has framed for its consideration are as under:

"(1) Whether the DRT had the jurisdiction to entertain an application moved by a third party for closure of the pending O.A. proceedings after giving directions to the bank to release the hypothecated equipment from its charge as the hypothecate and to deliver its possession to the third party applicant Company?"

(2) Whether the appellant was entitled to be notified of the application moved by M/s Pavamanna Drilling Pvt. Ltd for a direction by the DRT to the bank to release the hypothecated equipment in favour of the said third party applicant Company?

(3) Whether the DRT after withdrawal of the O.A. by the applicant Bank ought to have left the decision regarding the release of bank's charge over hypothecated equipment to the bank's discretion to be exercised itself in accordance with law of hypothecation after having received its dues as per the OTS from the borrower?

(4) Whether the appellant has in any manner been prejudiced by the direction given by the DRT for the release of the hypothecated equipment in favour of Pavamanna Drilling Pvt. Ltd. and if not then can it be permitted to keep the litigation alive?"

10. The reasoning given by the DRAT, for giving the direction is the following:

"While expecting favourably verdict from this tribunal on all these points the appellant wants this tribunal to restrain the Banks from handing over the possession of the hypothecated equipment and Payamanna Drilling Pvt. Ltd. from taking the delivery of the same, a relief which the appellant has failed to get from the DRT. It is well settled proposition of law that grant of injunction by Civil Courts of quasi judicial tribunals is totally within the discretion of the Courts/tribunals and the Courts/tribunals can refuse to exercise that discretion in favour of the litigation invoking the discretionary jurisdiction of the Court/tribunals if the action initiation

by that litigant is found to be lacking in bona fides and its own conduct is such which disentitles it from claiming discretionary relief of injunction from the Courts/tribunals. In the present case, the appellant has been able to settle its loan matters with the two Banks with the money pooled in by M/s Pavamanna Drilling Pvt. Ltd. and now that it has succeeded in getting rid of huge liability of payment of crores of rupees to the two Banks, it wants its hypothecated equipment also to be returned to it and not to the said purchaser Company and it is the case of the appellant that this Company should approach Civil Court either for refund of the money paid by it or for specific performance of the sale agreement in respect of the hypothecated equipment.

It appears that the appellant wants to have the cake and eat it too. The appellant can be compared with a fan of some sport which is being played inside a stadium where he cannot enter for some reason and, therefore, he climbs upon a tree while others have to shell out huge amount of money to gain entry into the stadium to enjoy the sport of their liking. The authorities managing the stadium, however, cannot force that fan sitting on the tree and enjoying the game being played inside the stadium to come down to seek entry into the stadium by paying the entrée fee. Here also, the appellant is watching the game being played inside this quasi judicial stadium without entering the stadium by paying

the entry fee. In the process, the appellant appears to be only taking chances that one day it may succeed in getting the impugned orders of the DRT set aside while retaining the money already pocketed by it after having obtained it from M/s Pavamanna Drilling Pvt. Ltd. However, the authority managing this quasi judicial stadium, where these legal battles are fought, can certainly force such litigants like the appellant to first shell out the money from its pocket to gain entry into the legal battle to gain some benefits arising out of the deal which it had arrived at the with M/s Pavamanna Drilling Pvt. Ltd."

11. In effect the reasoning given by the DRAT for directing the petitioner to deposit the amount is that the DRAT can force litigants like the petitioner to first shell out money from its pocket to gain entry into the legal battle. No doubt the reasoning given by the DRAT is appealing on a first blush, but on a deeper consideration more particularly on the questions it has posed for its decision which includes whether the DRT had the jurisdiction to entertain the application moved by a third party for closure of the OA proceedings after giving directions to the Bank to release the hypothecated equipment to it, the reasoning is not justified. The issue goes to the root of the jurisdiction of the DRT to

entertain such an application and give a direction for the release of the equipment. When such an issue has been framed, DRAT could not have at an interim stage given directions for the deposit of the money to the petitioner. If finally, the DRAT concludes that the DRT had no jurisdiction surely, the direction to deposit `40 Crores by the petitioner shall be inequitable. Even otherwise, if the DRAT finds DRT had the jurisdiction, DRAT while deciding the appeal can give such directions, as deem fit, for binding the petitioner herein. It is not an order where ₹40 Crores is sought as a prerequisite for the DRAT to hear an appeal. We are of the view that the DRAT could not have passed the order of deposit of `40 Crores by the petitioner. The impugned order to that extent is set aside. It shall hear the appeal in terms of the questions posed by it for its consideration. The appeal shall be decided as expeditiously as possible. Liberty is with the petitioner to file an application along with this order and order in W.P.(C) No. 3436/2018 for the consideration of the Tribunal for revival of the hearing of the appeal by the DRAT. In view of above, the petition stands disposed of.

CM No. 20832/2018 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

NOVEMBER 28, 2018/ak

