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

Date of Decision: 01.08.2023

+ **W.P.(C) 2859/2015 & CM APPL. 38804/2023**

M/S JAYEM AUTO INDUSTRIES
(P) LTD.

..... Petitioner

Through: Mr. Anil Panwar, Ms.
Ridhima Mohanty, Mr.
Deepanjali Chaudhary &
Mr. Tanishq Panwar,
Advocates.

versus

BANK OF BARODA & ORS.

..... Respondents

Through: Mr. R.P. Agrawal & Ms.
Snigdha Agrawal,
Advocates on behalf of
Bank.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition impugning an order dated 15.04.2011 passed by the learned Debts Recovery Tribunal-II, New Delhi (hereafter '**the DRT**') in Original Application (OA) No.54/2002 captioned ***Bank of Baroda v. M/s Reinz Talbros Ltd. & Ors.*** The petitioner also impugns an order dated 08.12.2014 passed by the learned Debts Recovery Appellate Tribunal (hereafter '**the DRAT**') in Appeal



No.449/2012 captioned *M/s Jayem Auto Industries (P) Limited v. Bank of Baroda & Ors.*, whereby the petitioner's appeal against the DRT's order dated 15.04.2011 was disposed of.

2. Respondent no.1 (hereafter '**BOB**') had filed an Original Application under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (now known as Recovery of Debts and Bankruptcy Act, 1993) seeking recovery of the amounts due in respect of financial facilities provided to M/s Reinz Talbros Ltd. (hereafter '**the Borrower**'). The petitioner was arrayed as respondent no.7 in the said proceedings instituted in the DRT.

3. BOB had proceeded against the petitioner for recovery of amounts, which it claimed were due against certain Bills of Exchange (*hundies*) accepted by it. BOB states that the financial facilities extended by it to the Borrower also included Bill discounting facilities and the Borrower had discounted certain Bills of Exchange, which included those accepted by the petitioner.

4. Admittedly, the petitioner had drawn / accepted four *hundies*, which were discounted by BOB. These were against invoices for supplies made by the Borrower to the petitioner. The details of the Invoices and the said *hundies* are set out below:

S. No.	Bill Number	Hundies No./ Bank Ref. No.	Date	Amount
1.	39	2831	12.11.2000	2,51,335.40
2.	41	2884	23.11.2000	3,10,116.80



3.	44	Xxxx	Xxxxxx	3,57,251.80
4.	45	2882	26.11.2000	2,12,599.40

5. It is the petitioner's case that it had discharged its liability against the said *hundies* by making payments directly to BOB. The petitioner claims that it had released the payment against the *Hundi* Nos.2831 prior to the date of its maturity pursuant to the request made by the Borrower. It had made a payment of ₹2,50,000/- by a cheque bearing no.221488 dated 07.11.2000. The said *Hundi* No. 2831 was issued in respect of Bill No. 39 for an amount of ₹2,51,335.40/-. The petitioner claims that the balance amount of ₹1,335.40/- was adjusted towards the freight paid by the petitioner. Thus, the petitioner had discharged its liability against the said Invoice in full.

6. The petitioner claims that *Hundi* Nos. 2884 and 2882, which were accepted against the Bill Nos. 41 and 45 for amounts of ₹3,10,116.80/- and ₹2,12,599.40/- were maturing on 23.11.2000 and 26.11.2000 respectively. However, the said date was extended. The petitioner claims that it discharged its liability in respect of the said two *hundies* (*Hundi* Nos. 2882 and 2884) by issuing cheques bearing no.196897 and 196898 dated 11.01.2001 for amounts of ₹2,12,599.40/- and ₹3,10,116.80/-, respectively being the value of the said *hundies*.

7. The petitioner claims that the remaining *hundi* (*hundi* issued against Bill No.44) for a sum of ₹3,57,251.80/- was also discharged by payment directly to BOB. It claimed that the Bank



Manager (Mr P.K. Nagpal) had approached the petitioner and demanded payment in respect of the said *hundi* and the same was also paid by a cheque bearing no.203354 dated 05.03.2001 for an amount of ₹3,57,251.80/-.

8. There appears to be no dispute regarding the receipt of payment of ₹3,57,251.80/- against the *Hundi* accepted against Bill No.44. The controversy relates to the liability against the remaining three *hundies*. Whilst, BOB does not dispute that the payment of ₹3,57,251.80/- was received by it against the Bill of Exchange, it disputes that the petitioner has discharged its liability in respect of the remaining three *hundies* aggregating to an amount of ₹7,74,051.60/-. BOB accepts that the cheques issued by the petitioner in respect of other *hundies* were duly encashed and received but claims that the same were credited by the Borrower in its other accounts and not against the Bill Discounting facilities extended by it.

9. It is the petitioner's case that it had accepted the *hundies* in respect of four invoices raised by the Borrower and had paid the entire consideration. BOB does not dispute that the petitioner had paid the said amounts. Notwithstanding the same, BOB claims that the petitioner's liability was not discharged because the cheques paid by the petitioner were deposited by the Borrower in its account maintained with BOB, and not for discharging the *hundies* discounted by it.

10. Thus, insofar as BOB's claim against the petitioner is



concerned, the only dispute required to be addressed by the learned DRT was whether the payments made by the petitioner discharged its liability against the Bills of Exchange issued by it.

11. The petitioner had filed an affidavit of evidence before the DRT affirming that it had duly informed BOB regarding the payments made by it against the *hundies* in question. It led evidence to the effect that BOB had accepted the said arrangements of making payments against the *hundies* and had never objected to the same. It also affirmed that the letters under the cover of which, cheques were forwarded by it were endorsed to BOB. Thus, BOB was fully aware of the discharge of the liability against the petitioner. In addition, the petitioner affirmed that BOB did not present the *hundies* for payment and had never issued any letter of protest. Further, the petitioner had not received any notice regarding the dishonour of any of the *hundies*. The petitioner also claims that whilst its Bank Manager had demanded the payment against Bill No.44 and had collected the amount of ₹3,57,251.80/-, it had not made any demand against the other *hundies* as it was accepted that the same were discharged.

12. It was also contended by the learned counsel for the petitioner that the payments were made by the petitioner by cheques drawn in favour of BOB – A/c Reinz Talbros Limited. Thus, the payments were made to BOB and not to the Borrower. Since the cheques were drawn in favour of BOB, it was not open for BOB to claim that it had not received the said amount.



13. The learned DRT had allowed BOB's action and had also held that the petitioner was liable to pay a sum of ₹9,59,853.60/- along with interest at the rate of 14% per annum with quarterly rests from the date of filing of the OA, till the date of payment. The amount of ₹9,59,853.60/- included an aggregate amount of three *hundies*, ₹7,74,051.6/- plus interest thereon as claimed by BOB.

14. The defence raised by the petitioner to the action instituted by BOB is not insubstantial. However, we find that the learned DRT has neither discussed the evidence led by the petitioner nor the defence raised by it. BOB's claim against the petitioner was allowed and the petitioner's defence was rejected by the DRT in the following words:

“46. I have given my anxious thought to the pleas raised by the defendants No.6 and 7. As indicated and discussed hereinabove the defendants No.6 and 7 are liable to pay the amount as mentioned in para 9 of the OA.”

15. It is apparent from the above, that the impugned order passed by the learned DRT is not informed by reason and the learned DRT had failed to consider and address the issues raised by the petitioner.

16. The petitioner had preferred an appeal against the said order before the learned DRAT. However, the said appeal was dismissed for non-prosecution on 24.03.2014. The petitioner had applied for recall of the said order, which was allowed. In the meantime, BOB recovered an amount of approximately ₹31 lacs



from the petitioner's account maintained with the bank. Further, in the meantime, BOB also recovered an amount of ₹7.56 crores from the Official Liquidator pursuant to the winding up proceedings initiated against the Borrower.

17. Although the learned DRAT noted the contentions advanced on behalf of the petitioner, it did not return any findings regarding the same. The learned DRAT rejected the petitioner's appeal by merely recording that it did not find any merit in the pleas raised on behalf of the petitioner. The learned DRAT also observed that once BOB had realised the amount from the petitioner, the appeal preferred by the petitioner would not survive.

18. The impugned order passed by the DRAT is *ex facie* erroneous and fails to adjudicate the issues raised. Merely because BOB had realised funds from the petitioner by debiting its bank accounts was no ground to reject the petitioner's appeal. As noticed above, neither the contentions advanced by the petitioner nor the evidence led by the petitioner in support of its pleas was considered.

19. In view of the above, we consider it apposite to set aside the impugned order dated 15.04.2011 passed by the learned DRT and the order dated 08.12.2014 passed by the learned DRAT and remand the matter to the learned DRT to consider afresh. The learned DRT shall pass an order after evaluating the evidence led by the parties and determine the claim against the petitioner



afresh. The learned DRT shall also consider the effect of BOB's settlement in respect of the dues of Borrower by recovery of an amount of ₹7.56 crores from the Official Liquidator.

20. Needless to state that if the learned DRT finds in favour of the petitioner, BOB shall forthwith refund the amount, which was collected by BOB by debiting the petitioner's bank account, along with interest as may be determined by the DRT.

21. The petition is allowed in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

AUGUST 1, 2023
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