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

<u>*Decided on 13th April, 2015*</u>

\+ W.P.(C) 3461/2015
M/S AERENS ENTERTAINMENT ZONE PVT. LTD.
..... Petitioner
Through: Mr.Sacchin Puri and Ms.Aastha Lumba, Advs.

versus

PHOENIX ARC PVT. LTD. ..... Respondent
Through: Mr.Ashwani Mata, Sr.Adv. with Mr. Suresh Dutta Dobhal, Adv.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)
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CAV. No. 334-335/2015

Since the respondent put in appearance, both the caveats stand discharged.

W.P.(C) 3461/2015

1. The petitioner challenges an order of the Debts Recovery Appellate Tribunal (DRAT) dated 19.01.2015 whereby its request for waiver of pre-deposit was granted to the extent of 25% of the determined amount.

2. Learned senior counsel for the respondent Mr.Ashwani Mata is present on advance notice.

3. The brief facts are that the petitioner was debtor to the Indian

Overseas, Bank, Allahabad Bank and Bank of Rajasthan (the last bank later merged with the ICICI Bank). On 31.03.2010, a joint notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act") was issued by the petitioner's creditors. The petitioner preferred an application under Section 17 of the SARFAESI Act aggrieved by the securitization measures taken on 31.03.2010. Subsequent to this event the ICICI Bank assigned its NPA to a non-banking third party. The said entity is not before the Court. The proceedings under Section 17 the SARFAESI Act, were, however, pursued by other two creditors (banks). An Original Application (OA) was filed by the two secured creditor banks. On 05.04.2011 an Assignment Agreement was entered into with the other secured creditor-Allahabad Bank. As a result of this arrangement, Phoenix ARC became the owner of the NPA. The assignment of these debts became the bone of contention before the Debts Recovery Tribunal (DRT). In those proceedings, the petitioner contended, *inter alia,* that the assignee – ARC who has also been in the array of parties, assigned its interest in favour of a third party and therefore lost locus to pursue the measures under SARFAESI. The said assignee/company resisted this submission and urged that the Assignment Agreement had not been concluded, in the sense that final transfer of the subject matter had not taken place. The DRT ultimately by its order dated 02.09.2014 dismissed the petitioner's application (S.A.No.62/2010) and decreed O.A. No. 249/2011 filed by Phoenix ARC, the original assignee. The DRT, *inter alia,* dealt in negative the petitioner's contention with respect to the locus of the assignee, Phoenix ARC.

4. The petitioner's appeal is pending before the DRAT. It has sought

stay of the final order. It sought waiver of the requirement of depositing the amount determined and demanded, under Section 18(1) of the SARFAESI Act. By the impugned order, the DRAT granted relief to the extent of 25% of the demand but declined relief for the balance amount.

5. Learned counsel for the petitioner urged that the DRT's order is *ex facie* untenable. It was argued that the provision of SARFAESI nowhere provides for the further presumption of an assignee's interest and consequently in the given circumstances of the case Phoenix could not have maintained the proceedings and proceeded under SARFAESI. Learned counsel sought to urge the merits of the findings of the DRT, saying that in absence of any enable provision in SARFAESI since Phoenix has parted with its interest to a third party, the securitization measures were prima facie illegal. The counsel for the ARC, who has appeared on advance notice – resisted the submissions. It was urged that this Court should not consider and record any findings on the merits of petitioner's submissions because this is a subject matter of the appeal pending before the DRAT. Besides, as to whether Phoenix had interest at the relevant time or not is a factual aspect on which findings have been returned by the DRT after considering the facts and this Court should not upset those findings under Article 226 of the Constitution, especially since they are interlocutory in nature.

6. This Court has considered the submissions. The facts discussed above show that DRAT followed the mandate of the law provided in Section 18(1) of the SARFAESI. The third proviso to Section 18(1) enables the DRAT to grant relief from the mandate of second proviso to Section 18(1), which requires pre-deposit of at least 50% of the determined amount. The third proviso relieves the requirement and allows the DRAT to

reduce the pre-deposit amount to 25%. The Supreme Court in its ruling in *Narayan ChanderGhosh vs.UCO Bank* 2011 4 SCC 548 has commented on the imperative nature of Section 18(1) and stated that no Court can deviate from the statutory requirement of minimum pre-deposit of 25% of the determined amount.

7. Given the binding nature of the ruling in *Narayan Chander* (supra) and compulsory nature of the third proviso of Section 18(1) and especially having regard to the fact that the respondent's O.A. was decided on merits, this Court is of the opinion that it would not be appropriate to comment on the legality or otherwise of the submissions made by the petitioner, especially since they are the subject matter of the appeal before DRAT. Having regard to this view of the matter, we see no reason to interfere with the order of the DRAT.

8. The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

APRIL 13, 2015

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