

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION NO. 642 OF 2016**

HDFC Bank Limited	..	Petitioner
versus		
Ashima Limited & Ors.	..	Respondents

**WITH
WRIT PETITION NO. 506 OF 2016**

Ashima Limited	..	Petitioner
versus		
HDFC Limited & Ors.	..	Respondents

Mr. Ismail Nasikwala i/b. Kanga & Co. for petitioner in WP 642 of 2016.

Mr. Janak Dwarkadas – Senior Advocate with Mr. Swanand Ganoo, Mr. N. Dhruva, Mr. Prakash Shinde, Mr. Nishand Roha i/b. MDP & Partners for petitioner in WP 506 of 2016.

Mr. Nupur Awasthi i/b. Consulta Juris for respondent No. 2.

**CORAM: D. H. WAGHELA, C. J. AND
M. S. SONAK, J.
DATE : 9 MARCH 2016**

P.C.:

- 1] Heard learned counsel for the parties.
- 2] In both these petitions, the challenge is to the common order dated 27 January 2016 made by the Debt Recovery Appellate Tribunal (DRAT) in appeal nos. 362 of 2015 and 348 of 2015 instituted by Ashima Limited challenging the orders dated 3 December 2015 and

11 December 2015 made by the Debt Recovery Tribunal (DRT) in the context of interim orders.

3] By the impugned order dated 27 January 2016, the orders made by the DRT have been modified to the extent indicated therein. At the request of HDFC Bank Limited (HDFC) however, the DRAT stayed operation of its order till 9 February 2016. The stay was extended by this Court until today, when both the petitions were taken up for consideration.

4] Upon hearing the learned counsel for the parties and perusing the material on record, we are satisfied that the workable order made by the DRAT sufficiently protects the interest of both Ashima Limited and HDFC, at the interim stage. The apprehensions expressed by the learned counsel appearing for HDFC, have been sufficiently redressed in the impugned order. At the *prima facie* stage, and considering the nature of disputes between the parties, it is really not possible, either for the DRAT or this Court to go into the issues of rigid compliance if the directions issued by the Hon'ble High Court of Gujarat whilst granting approval to the scheme to the agreement for reconstruction and compromise dated 30 September 2015 between Ashima Limited and its secured creditors. At this stage, HDFC cannot claim that it is a secured creditor.

5] Besides, Mr. Janak Dwarkadas, learned Senior Advocate appearing for Ashima Limited, on basis of instructions has made the following statement for and on behalf of Ashima Limited:-

- (i) Ashima Limited confirms that in pursuance to the rights issue, all amounts received from such allotment will be used for compliance of the claim approved by the Hon'ble Gujarat High

Court and no amount shall be paid over or retained by promoters;

- (ii) Ashima Limited confirms that there will be no deviation from the scheme of reconstruction and compromise approved by the Hon'ble Gujarat High Court;
- (iii) Ashima Limited confirms that all amounts collected from the rights issue will be paid to the secured creditors in compliance with the scheme of reconstruction and compromise as approved by the Hon'ble Gujarat High Court;
- (iv) The promoters of Ashima Limited also confirm that no amounts will be received or appropriated by them from the rights issue in any manner whatsoever;
- (v) The promoters of Ashima Limited hereby confirm that in terms of affidavit dated 3 February 2016 filed before the DRT, the excess amount of Rs.5,64,76,360/- (Rupees Five Crores Sixty Four Lacs Seventy Six Thousand Three Hundred Sixty), collected from the rights issue shall be refunded to non allottees and no portion of such amounts will be retained or appropriated by the promoters;

6] In the affidavit dated 3 February 2016, to which reference is made hereinabove, the authorized signatory of Ashima Limited has made the following statements at paragraphs 7 and 8 in the context of the excess amount of Rs.5,64,76,360/- (Rupees Five Crores Sixty Four Lacs Seventy Six Thousand Three Hundred Sixty) :

“7. I say that it can be seen from the Affidavit of Registrar to the Issue filed before the Hon'ble Debt Recovery Appellate Tribunal, Mumbai that refund amount (including unblocking of funds under ASBA method of applications) is Rs.5,64,76,360/- and the same is out of the funds received /

*blocked in the Rights Issue. The list containing names with amount, of Refundees is annexed and marked hereto as **Annexure – D.***

8. *I say that Defendant No. 2 states that out of the said amount of Rs.5,64,76,360/- to be refunded to the Right Shares Applicants who have not been allotted Right Shares as applied for by them and the Promoters are not entitled to any refund amount from out of the funds received for the Rights Issue. The Defendant No. 2 is implementing the Scheme as sanctioned by the Gujarat High Court and that funds will be utilized for the objects of the Scheme as sanctioned by the High Court.”*

7] The aforesaid statements made by Mr. Janak Dwarkadas for and on behalf of Ashima Limited are accepted as statements made to this Court. In addition to the safeguards provided in the impugned order, said statements will also to a certain extent, allay the apprehensions expressed by Mr. Nasikwala, the learned counsel for HDFC.

8] Taking into consideration that all these are interim arrangements pending the final disposal of proceedings before the DRT, we are satisfied that no interference is warranted with the impugned order at the behest of either of the parties. Both the petitions are therefore liable to be dismissed and are hereby dismissed. There shall be no order as to costs. The interim orders made or continued by this Court are hereby vacated.

9] It is however made clear that the observations in the impugned order, as well as in the present order are only *prima facie* and the DRT, which is now to dispose of the proceedings before it on its own merits and in accordance with law, need not be influenced by such

prima facie observations. Accordingly, all contentions of all parties, on the merits are left open to now be decided by the DRT in the proceedings before it.

10] All concerned to act on basis of authenticated copy of this order.

CHIEF JUSTICE

(M.S.SONAK, J.)

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