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

\+ W.P.(C) 3843/2015 & CM No.6881/2015

M/S PARASRAMPURIA SYNTHETICS LTD. ..... Petitioner

Through: Mr. Arvind Kumar, Ms. Henna George & Ms. Purti Marwaha, Advocates

versus

UNION OF INDIA & ANR ..... Respondents

Through: Mr.Vijay Joshi & Mr. Sushil Kumar Pandey, Advocates. for respondent No. 1.
Mr. Punit .K. Bhalla & Ms. Chetna Bhalla, Advocates for respondent No. 2.

CORAM:
HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

O R D E R

% 16.08.2016

1. The short question involved in this writ petition is whether a bank or a financial institution within the meaning of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, hereinafter referred to as the 'Debt Recovery Act', can take recourse to the remedy under the said Act in its capacity as a debenture trustee.

2. The writ petitioner, M/s. Parasrampuria Synthetics Limited incorporated on 24.04.1982, is engaged in manufacture and supply of different kinds of yarn. According to the writ petitioner, the writ petitioner incurred huge losses, as a result of which its network eroded

and the writ petitioner was referred to the Board for Industrial and Financial Reconstruction (BIFR), under the Sick Industrial Companies (Special Provisions) Act, 1986, hereinafter referred to as the SICA.

3. Pursuant to the reference, as aforesaid, Case No.180/2011 was started before the BIFR. By an order dated 07.11.2016, the writ petitioner was declared a sick company.

4. The respondent No.2, ICICI Bank filed an application being OA No.37/2010 before the Debt Recovery Tribunal for recovery of money in respect of certain convertible and non-convertible debentures due upon redemption of debentures issued by the writ petitioner company and subscribed by the debenture-holders.

5. The petitioner-company filed an application under Section 19(25) of the Debt Recovery Act, being IA No.230/2013 taking a preliminary objection to the jurisdiction of the Debt Recovery Tribunal to decide the original application. By an order dated 21.01.2014, the said application being IA No.230/2013 was dismissed.

6. The petitioner filed an appeal against the order of dismissal dated 21.01.2014 before the Debt Recovery Appellate Tribunal. The appeal was also, dismissed.

7. Section 2(g) of the Debt Recovery Act defines ‘debt’ as follows:-

> “”debt” means any liability (inclusive of interest) which is claimed as due from any person by a bank of a financial institution or by a consortium of banks or financial institution during the course of the any business

activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application."

8. Section 17 of the Debt Recovery Act provides that a Tribunal is to exercise, on and from the appointed day, jurisdiction powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to banks and financial institutions. Sub Section (2) of Section 17 provides that an Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under the Debt Recovery Act.

9. Section 18 of the Debt Recovery Act bars the jurisdiction of all other Courts and authorities to deal with the matters specified in Section 17. Section 18 is set out herein below for convenience:-

"(18) Where it appears to the Tribunal to be just and convenient, the Tribunal may, by order-

(a) appoint a receiver of any property, whether before or after grant of certificate for recovery of debt;
(b) remove any person from the possession or custody of the property;
(c) commit the same to the possession, custody or management of the receiver;
(d) confer upon the receiver all such powers, as to bringing and defending suits in the courts or filing and defending application before the Tribunal and for the realization, management, protection,

> preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Tribunal thinks fit; and
>
> (e) appoint a Commissioner for preparation of an inventory of the properties of the defendant or for the sale thereof."

10. On a plain reading of clause (g) of Section 2, it appears that the word 'debt' means any liability which is claimed and due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of their business activity.

11. In **Eureka Forbes Ltd. vs. Allahabad Bank** reported in *(2010) 6 SCC 193*, the Supreme Court held that the word 'debt' in the Debt Recovery Act cannot be given a restricted meaning. However, sub Section (1) of Section 17 confers jurisdiction on the Debt Recovery Tribunal to deal with the applications made by Banks and Financial Institutions for recovery of debts **due to such banks and financial institutions.**

12. As held by the Supreme Court in **Eureka Forbes** (*supra)*, the Debt Recovery Tribunal can entertain an application for recovery, provided the application is made by a bank or a financial institution for the recovery of debt due to bank or financial institution. If recovery is sought of a debt which is not due to a bank or a financial institution, the Debt Recovery Tribunal will not have jurisdiction under Section 17.

13. Under the Regulations of the Securities and Exchange Board of India framed under Section 30 of the Securities and Exchange Board of India Act, 1992 namely, the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, a debenture trustee means a trustee of a trust deed for clearing any issue of debentures of a corporate. Clause (ba) of Regulation 2 defines a debenture by giving the same meaning to it, which is provided in sub Section 12 of Section 2 of the Companies Act, 1956. Regulation 15(1)(d) enables the debenture trustee to enforce security in the interest of the debenture-holders. Sub-Section (3) enables the debenture trustee to do such acts as are necessary in the event the security becomes enforceable and sub-Section (f) enables the debenture trustee to carry out such acts as are necessary for the protection of the debenture-holders and to do all things necessary in order to resolve the grievances of the debenture-holders. It is patently clear that the debenture trustee is obliged to enforce security in the interest of the debenture-holders.

14. The definition of financial institution in Clause (h) of Section 2 of the Debt Recovery Act has been amended by incorporation of Clause (ia) which provides that even a securitization company or a reconstruction company which had obtained a certificate of registration under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act') would be included in the definition of

financial institution.

15. Definition of secured creditor in Section 2(zd) of the SARFAESI Act reads:-

> “2. Definitions.-
>
> (zd) secured creditor" means any bank or financial institution or any consortium or group of banks or financial institutions and includes-
>
> (i) debenture trustee appointed by any bank or financial institution; or
>
> (ii) securitisation company or reconstruction company; or
>
> (iii) any other trustee holding securities on behalf of a bank or financial institution, in whose favour security interest is created for due repayment by any borrower of any financial assistance;

16. In **ICICI Bank Ltd. vs. Unimers India Ltd. and Ors.** reported in *2016 (2) Mh.L.J.* 794 a Special Bench of Bombay High Court held that the definition of secured creditor did not include a debenture trustee appointed by a company in terms of the regulations. It only includes debenture trustees appointed by a bank or a financial institution. We are in full agreement with the view taken by the Special Bench of Bombay High Court.

17. The writ petition is therefore, allowed. The impugned orders of the Debt Recovery Appellate Tribunal and the Debt Recovery Tribunal are set aside and quashed. The proceedings initiated by the ICICI Bank in the Debt Recovery Tribunal

being OA 37 of 2010 is quashed. It shall be open to ICICI Bank to pursue its remedy of a suit. Needless to mention that ICICI Bank would be entitled to the benefit of Section 14 of the Limitation Act, 1963.

INDIRA BANERJEE, J

V. KAMESWAR RAO, J

AUGUST 16, 2016
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