

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

% *Date of decision : April 25, 2016*

+ **W.P.(C) 3439/2016**

M/S D GROUP INTERNATIONAL PVT
LIMITED AND ORS

..... Petitioners

Represented by: Mr.Rajeeve Mehra,
Sr.Advocate instructed by
Mr.Sanjeev Bhandari,
Mr.Dhananjay Singh and
Ms.Shruti Aggarwal,
Advocates.

versus

M/S PRIDHVI ASSET RECONSTRUCTION AND
SECURITIZATION COMPANY LTD

..... Respondent

Represented by: Ms.Maneesha Dhir, Mr.Aseem
Swaroop and Mr.Abhrup Das
Gupta, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (ORAL)

Cav.No.345/2016

Counsel as above appears for the respondent/caveator and thus the
caveat is discharged.

CM No.14705/2016 (Exemption)

Allowed, subject to all just exceptions.

W.P.(C) 3439/2016

1. Notice is waived and writ petition is heard on merits.
2. We are pained to note the obstructive, recalcitrant and obstinate

attitude of the Chairperson of the Debts Recovery Appellate Tribunal.

3. Reason for our strong expression aforementioned needs to be recorded.

4. S.A.No.23/2009 was instituted by the petitioners invoking remedy under Section 17 of SARFAESI Act, 2002. A notice under Section 13(2) of SARFAESI and an action taken pursuant thereto to take possession and sell the mortgaged assets was challenged.

5. At the forefront of the challenge was the plea that the account could not have been declared a Non Performing Asset in respect of which the credit was availed of.

6. The said application was disposed of by the Debts Recovery Tribunal vide order dated December 16, 2011. The application was allowed and suffice would it be to note that the reason given by the Debts Recovery Tribunal was that the bank which had granted the credit had failed to justify a specific date with reference where to the account was declared a Non Performing Asset by it.

7. It is not in dispute that RBI guidelines issued are that an account would be liable to be declared a Non Performing Asset if the credit outstanding under the transaction with the Bank remains beyond the sanctioned limit for a period of 90 days from the date of the default.

8. Appeal filed against the order passed by DRT was disposed of by DRAT vide order dated May 19, 2015. It is apparent that the task of the DRAT was to decide whether DRT was justified in returning a finding that the Bank failed to justify with reference to a specified date the account having become a Non Performing Asset.

9. Allowing the appeal, the reason given by DRAT is as under:

“Noticing the issue involved in this case, the counsel for the

appellant is addressed a specific query as to what should be the date of the NPA as per the Bank. The counsel for the appellant has with some justification succeeded in showing that the date of NPA was 30.06.2008 and that can be taken as the date of NPA which would be in accordance with law. Since the proxy counsel was still making request on behalf of the respondents to await presence of their arguing counsel, the case was kept for orders with liberty to the counsel for the respondents to submit his submissions in writing. The case still in hand when the arguing counsel has appeared and is given opportunity to make submission.”

10. Writ petition filed against the order dated May 19, 2015 was disposed of by this Court. The order is by consent. It is dated December 16, 2015. With consent the order dated May 19, 2015 was set aside and the appeal restored before DRAT for adjudication on merits.

11. At the remanded stage DRAT has disposed of Appeal No.18/2012. The DRAT has wondered as to what could be the possible reason for the remand, scratching his head, the Chairperson of DRAT has said that he was groping in the dark to understand the reason for the remand.

12. We think there was no occasion for any scratching of any head or to grope in the dark. The reason for the remand was apparent. Non recording of reasons by the learned DRAT in its order dated May 19, 2015 and observing that there was some justification to show that the date of Non Performing Asset being declared was May 13, 2008 is a loose and a laconic finding. A definite finding relating to a fact has to be with reference to evidence, be it documentary or ocular.

13. We dispose of the instant writ petition quashing the order dated March 23, 2016. Appeal No.18/2012 is restored with a direction to the

learned DRAT to dispose of the appeal giving reasons. It is trite that when an appellate forum overrules the view taken by a forum of original jurisdiction the appellate order must record what it finds incorrect and therefore worthy of being overruled in the order passed by the forum of original jurisdiction. The finding has to be returned with reference to the evidence and not with a finding, as was in the order dated May 19, 2015 that '*with some justification succeeded in showing that the date of LPA was 30.06.2008.*' The basis for the so called some justification has to be recorded and for which the material with reference where to the conclusion is arrived at needs to be highlighted.

14. At the remanded stage learned DRAT shall positively determine with reference to the evidence the debt with reference thereto the predecessor in interest of the respondent declared the account to be a non-performing asset.

15. No costs.

CM No.14704/2016 (Stay)

Application is dismissed as infructuous.

**(PRADEEP NANDRAJOG)
JUDGE**

**(MUKTA GUPTA)
JUDGE**

**APRIL 25, 2016
'vn'**