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

\+ W.P.(C) 4763/2016

P & R OVERSEAS PVT. LTD. & ANR ..... Petitioners

Represented by: Mr.Pallav Saxena, Advocate with Ms.Bindu Das, Advocate

versus

ORIENTAL BANK OF COMMERCE & ORS ..... Respondents

Represented by: Mr.Balvinder Ralhan, Advocate with Mr.A.K.Mishra, AGM for R-1

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

O R D E R

% 24.05.2016

CM No.19866/2016

Allowed subject to just exceptions.

W.P.(C) No.4763/2016

1. Seeking recovery of its dues the respondent filed OA No.344/2011 against the petitioners. The OA was filed under Section 19 of the Recovery of Debts Due to Bank and Financial Institutions Act, 1993. Simultaneously, action was initiated under Section 13 of SARFAESI Act, 2002. The petitioners resorted to the remedy under Section 17 of the said Act resulting in SA No.55/2011 being registered.

2. Both, OA No.344/2011 and SA No.53/2011 were decided by a singular order dated May 20, 2015.

3. Aggrieved by the order dated May 20, 2015 appeal under Section 19

of the Recovery of Debts Due to Bank and Financial Institutions Act, 1993 was filed which was registered as Appeal No.443/2015. Another appeal was filed under Section 18 of SARFAESI Act, 2002 which was registered as Inward Appeal No.404/2015.

4. Whereas under SARFAESI Act, 2002 the power of the Appellate Tribunal is to direct pre-deposit which cannot be less than 25% of the amount held due and payable. Under Recovery of Debts Due to Bank and Financial Institutions Act, 1993 the power is to completely waived the pre-deposit.

5. The grievance of the petitioners is that whereas an order was passed in the Inward Appeal No.404/2015 directing that 25% of the sum held due and payable be deposited, the application filed by the petitioners in Appeal No.443/2015, which was filed under the Recoveries of Debts Due to Bank and Financial Institutions Act, 1993, was not decided and the said appeal has been dismissed on account of 25% pre-deposit not being made pursuant to an order passed in Inward Appeal No.404/2015.

6. Learned counsel for the respondent who appears on advance copy being served does not dispute said fact.

7. Thus, the only order which we have to pass is to restore Appeal No.443/2015 with a direction to the learned Debts Recovery Appellate Tribunal to decide application filed by the petitioners praying for 100% waiver of the sum held due and payable.

8. Request of learned counsel for the petitioners to restrain the bank from taking any further action pursuant to the proceedings initiated under SARFAESI Act is noted and rejected for the reason under said Act the Tribunal cannot waive more than 75% of the amount held due and payable

by the Debts Recovery Tribunal i.e. minimum 25% of the amount has to be deposited. The learned Debts Recovery Appellate Tribunal extended the benefit of the waiver by directing 25% of the amount held due and payable to be deposited. This was way back on August 13, 2015. Compliance not being made till November 09, 2015, Inward Appeal No.404/2015 was rightly dismissed.

9. No costs.

CM No.19865/2016

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

MAY 24, 2016
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