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

\+ W.P.(C) 7259/2015

M/S BANARSI DAS KHANDELWAL & SONS .....Petitioners

Through: Mr. Anil Sapra, Senior Advocate, with Mr. Aman Vachher, Mr. Ashutosh Dubey, Mr. Abhishek Chauhan and Mr. Sagar Mehra, Advocates

versus

CANARA BANK & ORS .....Respondents

Through: Mr. Dinakar Singh, Advocate for respondent No.1
Mr. Rajiv Behl, Advocate for Official Liquidator-respondent No.2
Mr. S.N. Relan and Mr. Abhinav Thareja, Advocates for respondent No.3-PNB

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE SUNIL GAUR

O R D E R

% **05.04.2016**

1. The petitioner has filed the present petition assailing the order dated 9th February, 2015, passed by the Debts Recovery Appellate Tribunal (hereinafter referred to DRAT) in Misc. Appeal No.471/2010 in S.A. No.24 of 2009 (Delhi-II) allowing the appeal filed by the Asset

Reconstruction Company (India) Limited (hereinafter referred to as ARCIL) against the order dated 9th November, 2010, passed by the Debts Recovery Tribunal (hereinafter referred to as DRT), whereunder it was held that the One Time Settlement (hereinafter referred to as OTS) offered by the Principal Debtor is pending and binding on the parties.

2. Aggrieved by the aforesaid finding returned by the DRT, ARCIL had stated in the appeal preferred before the DRAT that the DRT cannot go against the findings recorded by the High Court in Company Petition No.539/1998, particularly the orders dated 24th & 25th May, 2011 and the revival scheme of the Principal Debtor was primarily sought on the ground that there was an OTS proposal with the lead Bank i.e. Dena Bank and all the other banks, which had been accepted and the monies realized by the Official Liquidator would be sufficient to discharge the liabilities in terms of the said OTS. The said submission was however opposed by learned counsel for the petitioner (respondent before the DRAT) on the ground that a substantial amount has already been paid to the Banks by the Official Liquidator from the amount that had been realized from the sale of the properties.

3. In the course of the passing the impugned order and remitting the matter back to the DRT, it was noted by the DRAT that the High Court had clearly ruled that there was no OTS which fact is denied by the petitioner. Mr. Sapra, learned Senior advocate appearing for the petitioner points out that it has been wrongly observed by the DRAT that once the OTS has been rejected or has not come through, the findings returned by the DRT on that basis would be difficult to sustain. He argues that the OTS had not been rejected by the Company Judge while passing the

orders dated 24th & 25th May, 2011 or for that matter, by the Division Bench while passing the order dated 21st August, 2012 in Company Appeal No.39/2011. He states that by making such an observation, the DRAT has closed the doors in so far as the reworking of the OTS is concerned and therefore, simply remanding the matter back to the DRT for a fresh consideration, would be a useless exercise.

4. Mr. Singh, learned counsel for the respondent No.1-Bank, submits that while passing the order dated 24th May, 2011, the Company Judge had recorded that the lead Bank i.e. Dena Bank had clarified that it opposes the OTS offered by the Principal Debtor and taking into consideration the said submission, it had opined that the revival and rehabilitation scheme filed by the Principal Debtor was untenable for the lead Bank and other banks and therefore, unworkable.

5. Learned counsel for the respondent No.1 draws our attention to paragraph No.9 of the order dated 21st August, 2012, passed by the Division Bench to submit that it was observed that they need no go into the question as to whether the Banks were bound by the settlement offered by the Principal Debtor for the simple reason that the monies realized from the sale of the assets of the Company in liquidation were insufficient for the OTS proposal. He submits that it was for the said reason that the Company Appeal preferred by the Principal Debtor was rejected. Paragraph No.9 of the order dated 21st August, 2012 is relevant and reproduced below for ready reference: -

> *"9. In the aforesaid state of affairs, we need not to go into the question as to whether the Banks are bound or not by their settlement offer inasmuch as the monies realized from*

the sale till now of assets of the Company in Liquidation are not sufficient for the Scheme proposed. We accordingly dismiss Company Appeal No.39/2011."

6. Having perused the orders dated 24th May, 2011 and 25th May, 2011, passed by the Company Judge in Company Petition No.539/1998 and the tone and tenor of the order dated 21st August, 2012 passed by the Division Bench in Company Appeal No.39/2011, we are of the opinion that the observations made by the DRAT to the effect that the High Court had clearly ruled that there was no OTS, cannot be sustained. It is quite evident from a perusal of the aforementioned orders that though an OTS was under the consideration of the lead Bank and the other Banks, they had finally rejected the same and vide order dated 21st August, 2012, the Division Bench had declined to go into the question of the binding effect of the OTS only for the reason that there were insufficient monies realized from the sale of the properties of the Principal Debtor so as to satisfy the rehabilitation scheme.

7. Learned Senior counsel for the petitioner submits that as on date, there are sufficient funds available with the Official Liquidator for the Banks to rework the already suggested OTS.

8. The petitioner shall be at liberty to make the said submission before the DRT, which shall be duly considered on merits in accordance with law, after getting a response from the respondent-Banks.

9. Having regard to the vintage of the litigation, it is deemed appropriate to request the DRT to expedite the hearing in the case and decide the same preferably within a period of eight weeks from the date of conclusion of arguments. Neither side be accommodated for any

unnecessary adjournments.

10. The present petition is disposed of.

HIMA KOHLI, J

SUNIL GAUR, J

APRIL 05, 2016

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