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

\+ W.P.(C) 11166/2015

M/S BPL LIMITED ..... Petitioner

Represented by: Ms.Mallika Parmar, Advocate with Mr.Anupam, Advocate

versus

INDIAN OVERSEAS BANK AND ORS. ..... Respondents

Represented by: Mr.Karan Khanna, Advocate for R-1 Mr.Nitin Garg, Advocate with Ms.Neha Garg, Advocate for R-3 to R-5

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

<u>O R D E R</u>

% 28.03.2016

1. Indian Overseas Bank filed OA No.8/2005 impleading M/s.A.S.Impex Ltd. as respondent No.1, Arun Bhatia, J.N.Bhatia, Anand Krishan, Poonam Bhatia and M/s.BPL Ltd. (the writ petitioner) as respondents No.2 to 6. It was pleaded that respondent No.1 was the principal borrower and respondents No.2 to 6 were guarantors. A vague plea against respondent No.6 was pleaded concerning a bill accepted by it.

2. As OA No.8/2005 proceeded the bank realized that respondent No.6 was misdescribed as a guarantor. The case of the bank actually was that respondent No.6 had purchased some bill from respondent No.1 and was liable to pay said sum.

3. The bank accordingly prayed for and was allowed to amend only the

prayer clause in OA No.8/2005 against which order passed by the learned Debts Recovery Tribunal appeal filed before the Debts Recovery Appellate Tribunal has been dismissed vide impugned order dated March 03, 2015 on the reasoning that in the original application BPL Ltd. was misdescribed as a guarantor and that the mistake was being corrected by the bank.

4. Having perused the application filed by the bank seeking amendment of OA No.8/2005 we find that the only amendment prayed for is to amend the prayer clause without any amendment to the pleadings in OA No.8/2005.

5. Now, if the case of the bank against BPL Ltd. is that it had purchased some bill or bills from M/s.A.S.Impex Ltd., there have to be pleadings that the book debts were assigned to the bank for the reason the bank cannot recover any due from a debtor of BPL Ltd. unless the debt is assigned to the bank. If the bank was to plead so, an issue would then arise whether a composite action can be maintained by the bank against the principal debtor and the guarantors as also a third party which had purchased a bill from the principal debtor. The issue of limitation concerned the purchaser of the bill would have to be considered keeping in view the applicable article in the Indian Limitation Act, 1963.

6. Learned counsel for the bank prays that under the circumstances the petition may be disposed of setting aside the impugned order dated March 03, 2015 as also the order dated January 30, 2014 passed by the Debts Recovery Tribunal and restore the application filed by the bank seeking amendment with further liberty granted to the bank to amend the application seeking amendment of OA No.8/2005. Learned counsel for the petitioner says that she has no objection to the suggestion given by learned counsel for the bank.

7. We dispose of the writ petition setting aside the order dated March 03, 2015 passed by the Debts Recovery Appellate Tribunal as also the order dated January 30, 2014 passed by the Debts Recovery Tribunal and restore the application filed by the bank to amend its pleadings with further liberty granted to the bank to amend the application filed by it seeking to amend its plea before the bank in OA No.8/2005.

8. No costs.

<u>CM No.29008/2015</u>

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

MARCH 28, 2016
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