

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO.6722 OF 2017

Mr. Jaisingrao s/o Subrao Ghodke
Age 60 years, Occupation Retired
Government Servant,
R/o Plot No.5, S.No.35/2/1,
Tambari, Umbare Kotha, Osmanabad ... **PETITIONER**

VERSUS

1. The Union of India,
(Copy to be served on Standing
Counsel of Union of India)
2. Central Bank of India,
At present Regional Office at
Aurangabad, 5-5-72,
New Osmanpura, Aurangabad
3. M/s Niranjan Alloy Steel Private Limited
Gut No.83, 24 KM Stone, Bidkin Village,
Aurangabad Paithan Road,
Taluka Paithan,
District Aurangabad. ... **RESPONDENTS**

.....
Shri N.B. Suryawanshi, Advocate for petitioner
Shri D.G. Nagode, Advocate for respondent No.1
Shri K.B. Deshapande, Advocate for respondent No.2.
Shri S.C. Bhosale, Advocate for respondent no.3.
.....

WRIT PETITION NO.8263 OF 2017

Smt. Nalini w/o Shripatrao Jadhav,
Age 73 years, Occu. Senior Citizen,
R/o Plot No.18 & 34, CIDCO,
Aurangabad ... **PETITIONER**

VERSUS

1. The Union of India,
(Copy to be served on Standing
Counsel of Union of India)
2. Central Bank of India,
At present Regional Office at
Aurangabad, 5-5-72,
New Osmanpura, Aurangabad
3. M/s Niranjan Alloy Steel Private Limited
Gut No.83, 24 KM Stone, Bidkin Village,
Aurangabad Paithan Road,
Taluka Paithan,
District Aurangabad. ... RESPONDENTS

.....

Shri A.M. Karad, Advocate for petitioner
Shri D.G. Nagode, Advocate for respondent No.1
Shri K.B. Deshapnde, Advocate for respondent No.2.
Shri S.C. Bhosale, Advocate for respondent no.3.

.....

CORAM: ANOOP V. MOHTA AND
 SUNIL K. KOTWAL, JJ.

DATED: 29th June, 2017.

ORAL JUDGMENT (Per Anoop V. Mohta, J.):

1. Rule. Rule made returnable forthwith and heard finally with the consent of learned counsel appearing for the parties.
2. Learned counsel for the petitioners, on instructions, restrict their submission and prayer mainly against impugned order dated 4/5/2017. All other prayers are not pressed.

Therefore, we are not dealing with the same at this stage and those points are kept open.

3. These writ petitions are filed by the guarantors against impugned order dated 4/5/2017, whereby the petitioner/appellants' applications for waiver as contemplated under Section 21 of the Recovery of Debts and Bankruptcy Act, 1993 (for short the R.B.D. Act) has been considered, but by passing the following order :

"I am of the view prima facie grounds to entertain appeal are to be seen to consider waiver application under Section 21 of the Act is to entertain the appeal, I deem it appropriate to direct the appellant to deposit a sum of Rs.3.5 Crores which is roughly 50% of decretal amount as on date with interest within a period of 8 weeks.

Appellant shall deposit above referred amount on or before 29/06/2017, within Registrar, DRAT, Mumbai, failing which appeal stands rejected automatically.

As and when the said amount is deposited it shall be invested in Term Deposit in the name of Registrar, DRAT, Mumbai with respondent Bank, initially for a period of thirteen months and thereafter it will be renewed periodically.

Stand over to 30/06/2017 for compliance.

Appellant is at liberty move stay application after making deposit."

4. A Division Bench of this Court, in ***Sterlite Technologies Ltd. Vs. Union of India & ors. [2012(2) Mh.L.J., 112]***, though based upon the earlier provisions of the Act, but dealing with the aspect of waiver, keeping in mind the power and authority of the appellate Tribunal, while evaluating the merits of the case to grant waiver as prayed, has recorded as under :

"6. The Appellate Tribunal in its appellate jurisdiction is required to evaluate as to whether a prima facie case has been made out for the grant of waiver. Hence, with respect, we are unable to subscribe to the position as set out in paragraph 20 of the judgment of the DRAT quoted above.

7. Counsel appearing on behalf of the Fourth Respondent relied upon a decision of a Division Bench of the Madras High Court in *Malini Srinivasan Vs. Canara Bank, AIR 2009 Mad. 94*. In that case, as the judgment of the Division Bench would indicate, the DRAT noted that the Tribunal had in fact reduced the amount to be deposited to about 25% of the debt determined. Obviously, therefore, there was an application of mind by the DRAT to the merits of the rival contentions.

8. Since the DRAT has not considered the application

for waiver in terms of the legal position as elaborated in the previous paragraph of this judgment, which is consistent with the provisions of section 21, we set aside the impugned order of the Appellate Tribunal and restore the application for waiver of deposit to the file of the Appellate Tribunal for a decision afresh. On the request of the Fourth Respondent, we expedite the disposal of the application and would request the Appellate Tribunal to endeavour a disposal preferably within a period of two months."

5. After considering the rival submissions made by the counsel appearing for the parties, we are inclined to interfere with it also because of following observations, in common order:

"But I am not in agreement with the submission of Id. Counsel for appellant because of the plea that is taken. If that issue is decided at this stage of waiver application, regarding discharge it would amount to accepting the appellants' case at the stage of waiver itself."

6. The learned authority, thereby not given a prima facie finding to deal with the contentions/ submissions so raised by the appellants/ petitioners in their respective waiver applications. The judgment in the matter of Sterlite Technologies Ltd. (supra) made the position very clear that the appellate authority need to deal with the prima facie case for granting the

waiver. The observations, even if made, on such application, in no way considered or stated to be final for deciding the main appeal. In the interest of justice and to give equal opportunity to contest the issue, which is available for the aggrieved parties/ appellants/ petitioners. The petitioners are guarantors, we see no reason for the appellate Tribunal not to deal with the contention though in prima facie nature and pass appropriate order keeping in mind related provisions and/or restricting not less than 25% of the amount of debt due as determined by the Debts Recovery Tribunal.

7. One more facet, which in our view, is required to be considered by the appellate Tribunal whether the sum ordered on such waiver application required to be deposited or need to be divided into three, as there are three appellants/ petitioners and/or whether the amount is required to be deposited by individual petitioners/ appellants separately or the deposit by one party out of three is sufficient. This issue also requires consideration and the detailed reasons to avoid further complications in proceeding with the matter further. This is also in the interest of the respondent Bank that the appellate authority, while passing the order of waiver, and/or deposit, make the position clear to the individual appellant and/ or the parties when common order is passed by the Debts Recovery

Tribunal.

8. Therefore, taking overall view of the matter, a case is made out for the above reasons to interfere with the impugned order so passed, with directions to the appellate authority to deal with the individual application for waiver of deposit in accordance with law, keeping in mind the observations so made above.

9. Therefore, the following order :

ORDER

10. The impugned order dated 4/5/2017, passed by the learned Debts Recovery Appellate Tribunal, Mumbai is quashed and set aside. The waiver applications filed by the appellants/petitioners are restored. The same be decided in accordance with law, as early as possible, preferably within a period of two months. Writ Petition is accordingly allowed. Rule made absolute in above terms.

11. All other points are kept open. No costs.

(SUNIL K. KOTWAL)
JUDGE

(ANOOP V. MOHTA)
JUDGE

fmp/