**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**
**APPEAL (L) NO. 331 OF 2017**
**IN**
**COMPANY APPLICATION (L) NO.95 OF 2017**
**WITH**
**OFFICIAL LIQUIDATOR'S REPORT NO.18 OF 2017**
**IN**
**COMPANY PETITION NO.270 OF 2001**

| | | |
|---|---|---|
| **SICOM Limited, a Company registered under Companies Act, 1956 having Registered Office at Solitaire Corporate Part, Building No.4, Guru Hargovindji Road, Andheri (East) Mumbai 40093** | ) | **..Appellant** |

**Versus**

| | |
|---|---|
| **1 Official Liquidator, High Court Bombay as Liquidator of Set Telecommunications Limited (In-liquidation) having office at 5th floor Bank of India Building, M. G. Road, Fort, Mumbai 400 023** | ) |
| **2 Maharashtra State Financial Corporation formed and established under the State Financial Corporation Act, 1951 and having its Head Office at New Excelsior Building, 5th, 7th, 8th and 9th floor, Amrit Keshav Nayak Marg, Fort, Mumbai 400001 and its Regional Office at Office Complex Building 6th floor, MIDC, Wagale Estate, Thane 400 604 through its authorized person** | ) |
| **3 Asset Reconstruction Company (India) Limited, a Company incorporated under the Companies Act, 1956, having** | ) |

**office at The Ruby, 10th floor, 29 )**
**Senapati Bapat Marg, Dadar )**
**(West) Mumbai 400 028 ) ..Respondents**

**Mr. Rohan Cama a/w Mr. T. N. Tripathi a/w Ms Sapana Rachure i/b T. N. Tripathi & Co. for the Appellant**
**Mr. Prathamesh Kamat for the Official Liquidator**

**CORAM :R. M. SAVANT, &**
**SARANG V KOTWAL, JJ**
**DATE : 16th NOVEMBER, 2017**

**<u>ORAL JUDGMENT (PER R. M. SAVANT J.)</u>**

1 Admit. Considering the issue involved heard forthwith.

2 The above Appeal arises out of the order dated 23-6-2017 passed by a Learned Single Judge of this Court A. S. Gadkari J., by which order the Official Liquidator's report No.18 of 2017 was came to be allowed in terms of prayer clauses (a), (b) and (d) of the said report.

3 Shorn of unnecessary details a few facts can be stated thus:

The company in liquidation is the Respondent No.3 who was extended financial facilities by the SICOM i.e. the Appellant herein. On the said company being ordered to be wound up and the Official Liquidator being appointed as a provisional liquidator, the Official Liquidator was directed to reassess the claims of the secured creditors and the workers as per the order dated 12-8-2016. The Official Liquidator accordingly reassessed the claims of the secured creditors amongst who was the Appellant-SICOM. The Official Liquidator accordingly submitted his report and sought condonation of delay of 39 days in reassessment of the claims.

4 The Appellant-SICOM filed the instant application being Company Application (L) No.95 of 2017 for setting aside the reassessment made by the Official Liquidator and for adjudication of its entire claim as per its affidavit of debt dated 8-9-2016 and for adjudication of its claim to the extent f Rs.5,73,35,714/- as secured creditors. In the context of the application and the reliefs sought by the Appellant vide the said Company Application, the clause providing for payment of interest in the Mortgage Deed dated 4-9-1987 and the Mortgage Deed dated 5-12-1990 assumed importance. The Learned Single Judge considered the said application and as indicated above has allowed the Official Liquidator's report in terms prayer clauses (a), (b) and (d) and resultantly has rejected the application filed by the Appellant – SICOM. The gist of the reasoning of the Learned Single Judge as can be seen from the impugned order is that since by the subsequent Mortgage Deed dated 5-12-1990 revised terms and conditions were introduced the contention of the Appellant-SICOM that it is entitled to compound interest as the same is implied in the contract could not be accepted. The Learned Single Judge has adverted to the fact that in executing the subsequent Mortgage Deed there was a novation of the terms contained in the earlier Mortgage Deed of 1987. The Learned Single Judge adverted to the Judgment of Karnataka High Court in the case of Jaykumar Shah Vs. Syndicate Bank held that the same would have no application as the said judgment was rendered in the facts of the case as

prevailing before the Karnataka High Court. The Learned Single Judge observed that he did not find any reason to interfere with reassessment carried out by the Official Liquidator as the same was done with the assistance of a Chartered Accountant. As indicated above, it is the said order dated 23-6-2017 which is taken exception to by way of the above Appeal.

5 Heard the Learned Counsel for the parties.

6 The principal contention of the Learned Counsel for the Appellant Mr. Cama is that though a subsequent Mortgage Deed was executed on 5-12-1990, there is virtually no change in the terms as regards payment of interest. The Learned Counsel by referring to the first part of the clause as appearing in the 1987 Mortgage Deed and the 1990 Mortgage Deed would submit that the said clause is identical in both the Deeds and therefore the interest calculated would have to be on the basis of the compound interest. The Learned Counsel sought to draw our attention to the document which is at page 102 i.e. document titled as “Basis of Reassessment”, wherein a table is appearing below paragraph (7) of the said document in which table in the second column the interest payable is mentioned as 15.5% compoundable interest which is referable to the clause as appearing in the 1987 Mortgage Deed. It was therefore the submission of Mr. Cama that since the clause in the two Deeds is identical the SICOM is entitled for reassessment on the basis that in terms of

the clause as appearing in the 1990 Mortgage Deed, compound interest is payable. The Learned Counsel would contend that though the word “quarterly rests” is not appearing in the clause of the 1990 Mortgage Deed, the word “quarterly” is appearing, the said word therefore can be said to imply the payment of compounded interest. The Learned Counsel would contend that the said word “quarterly rests” had come up for interpretation before the Apex Court in the matter of **Central Bank Of India Vs. Ravindra & Ors.**[1]. The Learned Counsel would also contend that the banking practice is of payment of compound interest for which he placed reliance on the judgment of the Division Benches of this Court in **M/s Good Luck Talkies & Ors. Vs. The Bank of Maharashtra**[2] and **State Bank of India Vs. Smt. Neela Ashok Naik & Anr.**[3] It was therefore the submission of Mr. Cama that the Learned Single Judge has erred in accepting the reassessment carried out by the Official Liquidator on the basis that the Appellant-SICOM is entitled to only simple interest.

7 Per contra, the Learned Counsel appearing for the Official Liquidator Mr. Kamat would support the impugned order. It was the submission of the Learned Counsel that there has been a novation of the contract by the execution of the subsequent Mortgage Deed dated 5-12-1990. The Learned Counsel would contend that the clause appearing in the 1987

1 **(2002)1 Supreme Court Cases 367**
2 **1982(1) Bom.C.R. 268**
3 **AIR 2000 Bombay 151**

Mortgage Deed and the clause appearing in the 1990 Mortgage Deed are different and distinct. The Learned Counsel would contend that in so far as the 1987 Mortgage Deed is concerned, the clause contemplates the payment of 15.5% by half yearly rests on 31st March and 30th September every year and in default the said clause provided additional interest / compound interest @ 2.5% p.a. over and above SICOM lending rate. The Learned Counsel would contend that in so far as the clause in the 1990 Mortgage Deed is concerned, the interest rate has been hiked to 16.5% and the sum is payable quarterly on 31st January, 30th April, 31st July and 31st October every year. The said clause also provides for the eventuality of default and contemplates the payment of additional interest @ 2.5% p.a. on the total amount in default. Hence it was the submission of the Learned Counsel that where compound interest was contemplated, it was specifically provided for in the clause as in the 1987 Mortgage Deed and when it was not so in contemplation the words “rests” and “compound” are conspicuously absent, that is in the 1990 Mortgage Deed. The Learned Counsel would contend that the Official Liquidator having regard to the terms of the contract has carried out the reassessment as the original clause as well as the amended clause as is appearing in form Nos.8 and 13 with the Registrar of Companies.

8 Having heard the Learned Counsel for the parties, we have considered the rival contentions. The issue that arises is whether the

Appellant is entitled to interest which is compounded under of the clause as in the 1990 Mortgage Deed. To answer the said issue it would be apposite to refer to the clause as appearing in the 1987 Mortgage Deed and the clause as appearing in the 1990 Mortgage Deed which clauses for the sake of ready reference are reproduced hereinunder:

> **<u>Clause appearing in the 1987 Mortgage Deed</u>**
>
> "The Company agreed to pay interest at the rate of 15.5% payable by half yearly rest on 31st March and 30th September every year with proviso to pay additional interest / compound interest at the rate of 2.5% p.a. over and above SICOM's lending rate as applicable prior to IDBI refinance on the total amount in default during the period of such default."
>
> **<u>Clause appearing in the 1990 Mortgage Deed</u>**
>
> "The company agreed to pay interest on the said loan of Rs.65,00,000/- at the rate of 16.5% per annum with effect from 1st April 1990 payable quarterly on 31st January, 30th April, 31st July and 31st October every year and agreed to pay additional interest at the rate of 2.5% per annum on the total amount in default during the period of such default."

9 A reading of the aforesaid clauses therefore discloses that in so far as the clause in the 1989 Mortgage Deed is concerned, the interest was payable @ 15.5% by half "yearly rests" on the date specified in the said clause and the proviso was made to pay additional / compound interest @ 2.5% p.a. over and above the SICOM lending rate.

In so far as the clause in the 1990 Mortgage Deed is concerned, it is not necessary to go into the background as to why the said Mortgage Deed was executed but probably it seems there were negotiations between the parties and thereafter the loan advanced to the company in liquidation, seems to be restructured leading to the novation of the contract. A reading of the said clause therefore discloses that the words yearly “rests” and “compound” are conspicuously absent in the clause. As indicated above the interest has been hiked to 16.5% payable quarterly and the word “rests” has not been suffixed to the word “quarterly” as is usually done in lending contracts.

9 Apart from the aforesaid, it is also required to the noted that in so far as the payment of additional interest on account of default is concerned, it is stipulated that the parties agreed to payment of additional interest @ 2.5% p.a. on the total amount in default during the period of such default. Hence there is no mention of any interest which is compounded, to be paid on the defaulted amount. We therefore find merit in the submission of Mr. Kamat that when the parties had agreed to the payment of compound interest, it was specifically provided for, as in the 1987 Mortgage Deed and when they did not do so, it was conspicuously absent as in the 1990 Mortgage Deed. Hence the parties by contract having not provided for payment of compound interest the claim of the Appellant for computation of the amount on the basis of the usual banking practice of capitalisation of interest cannot be entertained.

10 Now coming to the judgment cited on behalf of the Appellant i.e. in Central Bank of India (supra), the Apex Court in the said case was concerned with the interpretation of the term "principal sum adjudged" and "such principal sum" as appearing in Section 34 of the CPC and it is in the context of the said issue that the Apex Court referred to the usual banking practice of capitalisation of unpaid interest. The Apex Court concluded that the "principal sum adjudged" may include the amount of interest charged on periodical rests and capitalised with the principal sum actually advanced so as become a part of the principal. Paragraph 44 of the said judgment is material and is reproduced hereinunder:

> 44. We are of the opinion that the meaning assigned to the expression "the principal sum adjudged" should continue to be assigned to "principal sum" at such other placed in Section 34(1) where the expression has been used qualified by the adjective "such" that is to stay, as "such principal sum". Recognition of the method of capitalisation of interest so as to make it a part of the principal consistently with the contract between the parties or established banking practice does not offend the sense of reason, justice and equity. As we have noticed, such a system has a long established practice and a series of judicial precedents upholding the same. Secondly, the underlying principle as noticed in several decided cases is that when interest is debited to the account of the borrower on periodical rests, it is debited because of it having fallen due on that day. Nothing prevents the borrower from paying the amount of interest on the date it falls due. If the amount of interest is paid there will be no occasion for capitalising the

> amount of interest and converting it into principal. If the interest is not paid on the date due, from that date the creditor is deprived of such use of the money which it would have made if the debtor had paid the amount of interest on the date due. The creditor needs to be compensated for deprivation. As held in Pazhaniappa Mudaliar Vs. Narayana Ayyar the fact situation is analogous to one as if the creditor has advanced money to the borrower equivalent to the amount of interest debited. We are, therefore, of the opinion that the expression “the principal sum adjudged” may include the amount of interest, charged on periodical rests, and capitalised with the principal sum actually advanced, so as to become an amalgam of principal in such cases, where it is permissible or obligatory for the court to hold so. Where the principal sum (on the date of suit) has been so adjudged, the same shall be treated as “principal sum” for the purpose of “such principal sum” --- the expression employed later in Section 34 CPC. The expression “principal sum” cannot be given different meanings at different placed in the language of same section i.e. section 34 CPC.

In so far as the judgments (supra) of the Division Benches are concerned, they also deal with the issue of the “Principal Amount Due”. It has been held in State Bank of India's case that principal sum adjudged can include in it interest as well depending upon the contract between the parties. In the said case there was a contract for payment of interest with quarterly rests.

In M/s. Good Luck Talkies & Ors (supra) the Division Bench held that the unpaid interest merges in the principal which under the contract is to be treated as principal. The said judgments are predating the judgment of the

Constitution Bench in Central Bank of India's case (Supra). The Constitution Bench Judgment of the Apex Court has settled the law in so far as the “Principal Sum Adjudged” is concerned. The Apex Court as well as the Division Benches hence concerned with the issue as to on which amount the interest under Section 34 was payable. It is in the said context that the components of the “principal sum adjudged” as appearing in Section 34 of the CPC were set out by the Apex Court.

11 In our view the aforesaid judgments would not aid the Appellant to contend that the Appellant is entitled to compound interest in terms of the clause as appearing in the 1990 Mortgage Deed, when the parties by contract have not provided for the same. We therefore do not find any fault with the order passed by the Learned Single Judge allowing the Official Liquidator's report in terms of prayer clauses (a), (b) and (d), resultantly rejecting the Company Application filed by the Appellant. There is therefore no merit in the above Appeal which is accordingly dismissed. However, time to deposit the amount as directed by the Learned Single Judge is extended by a period of 4 weeks from date.

12 In view of the dismissal of the above Appeal the Notice of Motion (L) No.1699 of 2017 does not survive and to accordingly stand disposed of as such.

**[SARANG V KOTWAL, J]** **[R.M.SAVANT, J]**