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

\+ W.P.(C) 7897/2016 and CM APPL. 32692/2016

BANK OF INDIA ..... Petitioner

Through: Mr. Jitendra Kumar, Advocate with Mr. Alok Kumar, Advocate

versus

HOTEL KASHISH INTERNATIONAL AND ORS..... Respondents

Through: Mr. Praveen Chauhan, Advocate with Mr. Akash Raj, Advocate

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE A.K. CHAWLA

ORDER

% **16.10.2017**

1. The petitioner/Bank is aggrieved by an order dated 31.03.2016 passed by the Debts Recovery Appellate Tribunal (DRAT) in Miscellaneous Appeal No. 66/2016, filed by the respondent assailing an order dated 10.06.2014 passed by the Debts Recovery Tribunal-I (DRT-I) whereby an ex parte order dated 11.02.2013 passed earlier, was set aside, subject to the respondent paying 50% of the amount due to the bank.

2. In the impugned order, the learned DRAT had observed that the direction issued to the respondent to deposit 50% of the amount due to the petitioner/Bank was too harsh and accordingly, the said condition was set aside and it was directed that the respondent was entitled to be heard on merits, after the ex parte order dated 10.02.2013 was set aside, subject to payment of costs of Rs.1 lac to the petitioner/Bank.

3. On 12.05.2017, we had enquired from learned counsel for the petitioner/Bank as to whether the costs imposed by the DRAT had been tendered to the other side. Learned counsel had submitted that the costs were tendered and accepted by the Bank without prejudice to its rights. At that, we had asked learned counsel for the petitioner/Bank to inform us as to whether the Bank had taken any effective steps to pursue the pending Original Application filed by it before the DRT, in view of the fact that the *ex-parte* order dated 10.02.2013 had been set aside by the DRAT vide order dated 31.03.2016 and there was no stay granted in this petition, in respect of the proceedings before the DRT. The reply was, however, in the negative.

4. Given the above position, it was deemed appropriate to direct the Senior Manager of the petitioner/Bank to explain the inaction on the part of the Bank in pursuing the matter against the respondent before the DRT after 31.03.2016. Pursuant to the said order, an affidavit has been filed by Shri Satnam Singh, Senior Manager of the petitioner/Bank, wherein he has sought to explain that the Bank did not pursue the proceedings before the DRT after passing of the order dated 31.03.2016 by the DRAT under an impression that if the Bank would pursue the said proceedings, then it would have amounted to acceptance of the impugned order and the present petition would have been rendered infructuous.

5. We are not satisfied with the aforesaid explanation, particularly, when there was no stay of the proceedings before the DRT directed in the present petition. In other words, the petitioner/Bank was expected to have pursued the proceedings against the respondent before the DRT-I. The inaction on the part of the petitioner/Bank is all the more incongruous in view of the fact that while the Bank has accepted the costs of Rs.1 lakh imposed by the

learned DRAT while setting aside the ex-parte order dated 10.02.2013, without prejudice to its rights, it has simply sat back thereafter, instead of taking effective steps to prosecute the pending Original Application filed against the respondent, knowing very well that this court had not stayed the said proceedings and the doctrine of *lis pendis* would have applied.

6. At this stage, counsel for the petitioner/Bank states on instructions that the Bank would be satisfied if directions are issued to the DRT to expedite the hearing in the pending Original Application.

7. It is noteworthy that no steps have been taken by the petitioner/Bank for the past one and a half year to even approach the Recovery Officer for cancellation of the Recovery Certificate and for placing the matter back before the DRT-I. Ideally, costs ought to be imposed on the petitioner/Bank for adopting such a casual approach and that too in respect of an Original Application where public money of over Rs.10 crores is involved.

8. While cautioning the petitioner/Bank to be more vigilant in future, this Court is refraining from passing any adverse orders against it. The next date fixed before the Recovery Officer is stated to be 07.11.2017. The petitioner/Bank is directed to take immediate steps to approach the Recovery Officer for seeking cancellation of the Recovery Certificate and for getting the matter placed back before the Presiding Officer, DRT-I, for taking denovo proceeding in the matter.

9. Having regard to the time lost on account of the indolent approach adopted by the petitioner/Bank and its officers, the DRT-I is requested to expedite the hearing in the Original Application and take it to its logical conclusion.

10. The petition is disposed of alongwith the pending application, while leaving the parties to bear their own expenses.

HIMA KOHLI, J

A.K. CHAWLA, J

OCTOBER 16, 2017
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