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

\+ W.P.(C) 5509/2017 and CM Nos.23182/2014 and 23181/2017

M/S A.H. WHEELER PVT. LTD. ..... Petitioner

Through: Mr Ajay Jain and Mr S.P. Mehta, Advs.

versus

BANK OF BARODA & ORS ..... Respondents

Through: Mr Arun Aggarwal, Adv for Respondent No.1/Caveator
Ms Praveen Rawal, Adv for R-2
Ms Usha Singla, Adv for R-8

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% 05.07.2017

Caveat No. 598/2017

Since the caveator has put in appearance, the caveat stands discharged.

W.P.(C) 5509/2017

1. The petitioner is aggrieved by order dated 29.05.2017 passed by the learned Debt Recovery Appellate Tribunal (DRAT) in Miscellaneous Appeal No.192/2015 filed against an order dated 13.05.2015 passed by Debt Recovery Tribunal-II, Delhi (DRT-II) on an application filed by the respondent No.2 (defendant No.1 before DRT-II).

2. By the impugned order, the learned DRAT has directed the petitioner to deposit a sum of Rs.1.38 crores with the Tribunal as a

pre-condition to hear its appeal. Pursuant to passing of the said order, the petitioner had filed an application for review of the order dated 29.05.2017, which was rejected by the DRAT on 28.06.2017.

3. Learned counsel for the petitioner states that the provisions of Section 21 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 which mandates deposit of the amount of debt due at the time when the appeal is preferred by any person, do not apply to the petitioner. He states that the debt due to the respondent No.1-Bank is payable by the respondent No.2/company and in any case, so far, the said amount has not been determined by the Debt Recovery Tribunal as a "debt due" as has been contemplated under Section 19 of the said Act.

4. Learned counsel for respondent No.1/Bank, who appears on caveat, clarifies that the impugned order came to be passed by the DRT-II only to test the *bona fides* of the petitioner who is a consenting party to the said order, whereunder a miscellaneous application filed by the respondent No.2 for seeking permission to redeem a parcel of land situated in Village Pathreri, Near Bilaspur Chowk, Tehsil Manesar, District Gurgaon (Haryana) was allowed and with the consent of all the parties, the said parcel of land was agreed to be sold to the respondent No.8, the purchaser, for a sum of Rs.1.38 crores. He states that pursuant to the aforesaid order, the respondent No.8 has paid a sum of Rs.1.38 crores to the respondent No.1/Bank and a Sale Certificate has been issued by the Bank. The Sale Certificate has yet to be registered though the

respondent No.8 has already purchased stamp papers worth of Rs. 7 lakhs for the said purpose. It is submitted that it was after the aforesaid steps had been taken that the petitioner had approached the DRAT raising a grievance against the order dated 13.05.2015 passed by Debt Recovery Tribunal-II.

5. Learned counsel for the respondent Nos.2 and 8 submit that though the petitioner had hived off its interest in Respondent No.2/company by selling their shares to Sh. Nilesh Kumar, who has taken over the management, it continues to remain a corporate guarantor in respect of the debt due to the respondent No.1/Bank and in those circumstances, the provisions of Section 21 would squarely apply to it. It is further clarified that the respondent Nos.3 to 5, who are Directors of the petitioner-company, are also guarantors of the debt due to the respondent No.1/Bank.

6. It is not denied that the debt claimed as due and payable by the respondent No.2 and the guarantors as per the respondent No.1/Bank is over Rs.3,76,98,186.60, as on 24.08.2004. In such circumstances, the contention of the learned counsel for the petitioner that the petitioner company cannot be treated as a party from whom debt is due and payable to the respondent No.1/ Bank for attracting the provisions of Section 21 of the said Act, is found to be untenable. The submission of the learned counsel for the petitioner that the exact amount due has yet to be determined by the DRT would have cut ice had it been a case where the amount that has been directed by the learned DRAT to be deposited by the petitioner, was found to be over

and above the debt claimed as outstanding by the respondent No.1/Bank. That being not the position, we decline to interfere with the impugned order.

7. The petition is disposed of on the above terms alongwith the pending applications.

HIMA KOHLI, J

DEEPA SHARMA, J

JULY 05, 2017/bg