

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: October 03, 2016

Judgment delivered on: March 08, 2017

+ W.P. (C) 10765/2015 & CM. No. 27682/2015 (for Stay)
ICICI BANK LTD.

..... Petitioner

Through: Mr. Abhinav Vasisht, Sr. Adv. with Mr. E.R.
Kumar, Ms. Raveena Rai & Mr. Abhiram
Naik, Advs.

Versus

KAPIL PURI & ORS.

..... Respondents

Through: Mr. Kamal Mehta with Mr. Sunil Choudhary,
Advs. for R-1 and R-2.

CORAM:

HON'BLE MS JUSTICE INDIRA BANERJEE

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The challenge in this petition by the ICICI Bank Limited is to the order dated June 12, 2015 of the Debt Recovery Appellate Tribunal (DRAT) passed in Appeal No. 196/2015, whereby the appeal filed by the respondents 1 and 2 challenging the orders of the Debt Recovery Tribunal (DRT) dated May 9, 2014 and February 23, 2015 directing respondents 1 and 2, if they will go out, they will inform the Tribunal and seek its permission as well, in other words, restraining respondents 1 and 2 to travel abroad, was set aside.

Brief Facts:-

2. It is the case of the petitioner Bank that it had sanctioned various facilities to the respondent No.3 Company, including credit facilities in the form of working capital limits, comprising fund based and non-fund based limits aggregating to Rs.1100.00 million. Respondents 1 and 2 executed Deeds of Guarantee dated October 21, 2011 and October 29, 2012 containing inter-alia the following term:

“2. The Guarantors further agree that unless the said Banks shall otherwise previously approve in writing the Guarantors shall not:

.....

(v) Leave India for employment or business or for long term stay abroad so long as any amounts remain outstanding under the Facility together with interest and other dues and charges including prepayment charges as per the rules of the said Banks then in force. Whether the stay is long term or not shall be decided solely by the said Banks.”

3. According to the petitioner, the respondents 1 and 3 also executed an Agreement to Mortgage dated October 29, 2012 whereby they agreed to mortgage their properties (5 in number) mentioned therein. However, it is a fact that they created a mortgage only in respect of three of them and failed to mortgage the remaining two properties. In terms of the Credit Facility Agreements, respondent No.3 was to repay the interest on a monthly basis and the Working Capital Facility was repayable on demand. However, respondent No.3 committed multiple payment defaults under the Facility Agreements from time to time between January 24, 2012 and December 13, 2013. Hence, demand notices were issued by

the petitioner Bank. The petitioner Bank, vide its letter dated January 31, 2014 to the respondent No.3 demanded repayment of the principal sum of Rs.109,99,40,876.83/-, along with the interest of Rs.11,19,32,309/- payable by the respondent No.3. The petitioner Bank issued a recall notice to respondent No.3 to repay a total amount of Rs.126,70,99,428.83/- payable along with contractual interest within 7 days from the date of the aforesaid notice. The respondent No.3 acknowledged vide letter dated December 13, 2013 that the outstanding balance due to the ICICI under the Working Capital Facility was of Rs.119,40,01,614/- as on December 12, 2013. The petitioner Bank filed an application dated April 23, 2014 under Section 19 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ('Act of 1993' in short) being O.A No. 125 of 2014 before the Debt Recovery Tribunal against respondents 1 to 4. The said OA was filed as the respondents 1 to 3 had failed to repay the credit facilities. Apart from other reliefs sought, the petitioner prayed for an interim relief including an ad-interim relief that till the final disposal of the application, respondents 1 and 2 be directed not to travel outside India without the prior permission of the Tribunal.

4. The learned Tribunal vide its order dated May 09, 2014 passed an ex parte interim order allowing the prayer to the extent that as and when the guarantors i.e respondents 1 and 2 will go out of India, they will inform the Tribunal and seek its permission. Respondents 1 and 2 again filed applications before the learned Tribunal with the prayer to vacate the interim order dated May 09, 2014. However, these applications were also dismissed by the

learned Tribunal vide order dated February 23, 2015 on the ground of them having become infructuous. Respondents 1 and 2 preferred an appeal against the orders dated May 09, 2014 and February 23, 2015 before the Debt Recovery Appellate Tribunal (DRAT) being Appeal No. 196/2015. The learned DRAT vide order dated June 12, 2015 allowed the appeal of the respondents 1 and 2 and set aside the impugned order of the learned Tribunal in O.A No. 125/2014 in so far as it restrained the respondents 1 and 2 from travelling abroad without the permission of the Tribunal.

Submissions:-

5. Mr. Abhinav Vasisht, learned Senior Counsel for the petitioner Bank would submit that Section 19(25) of the Act of 1993 read with Rule 18 of the Debt Recovery Tribunal (Procedure) Rules, 1993 confers powers on the Tribunal to pass any such order to secure inter-alia the ends of justice. Section 22(1) of the Act of 1993 further provides that the Tribunal is not bound by the procedure laid down by the Code of Civil Procedure, 1908. Therefore, in adjudicating the disputes arising under the Act, the Tribunal, in exercise of the power under Sections 19(25) and 22(1) of the Act of 1993, can pass such orders as to secure the ends of justice and in doing so, the Tribunal is only bound to observe the Principles of Natural Justice and is not bound by CPC. He would rely upon the judgments in the case reported as *(1999) 4 SCC 710 Industrial Credit and Investment Corporation of India Ltd vs. Grapco Industries Ltd and ors*, *(1999) 6 SCC 755 Allahabad Bank, Calcutta vs. Radha Krishna Maity and others*, *AIR 1966 All 84 Raj Narain Saxena vs. Bhim Sen*, *AIR 2011*

SC 1137 Rajendra Prasad Gupta vs. Prakash Chandra Mishra.

6. He would state that similar to Section 151 of CPC, Section 19(25) of the Act of 1993 empowers the Tribunal to pass any orders necessary in the interests of justice or for the prevention of the abuse of the process of the Court. Section 19(25) of the Act of 1993, being an enabling provision confers wide powers on the Tribunal to pass any orders to secure the ends of justice. Further, there are no prohibitions, express or implied, under the Act of 1993 that prevents the Tribunal from passing an order restraining a person from travelling abroad without its permission, as in the instant case, to secure the ends of justice. In the absence of any such bar, the power of restraining a person from travelling abroad can be inferred to be included within the powers granted under Section 19(25) of the Act of 1993 in view of the settled position of law that a provision has to be interpreted to mean that every procedure is permitted to the Court for doing justice unless expressly prohibited. He would submit that even otherwise the Tribunal is empowered by virtue of Section 22(1) of the Act of 1993 to travel even beyond CPC. Even otherwise, although the jurisdiction of the Tribunal is limited to deciding the disputes arising under the Act of 1993, to that extent it discharges the judicial functions of the State, inasmuch as the DRT/DRAT decide the 'lis' between the Banks/Financial Institutions and their debtors. This limited jurisdiction, until the enactment of the Act of 1993, was being exercised by the Civil Courts. Even today, the money claims by Banks/Financial Institutions/petitioner below Rs.10 Lakhs can be filed only before the Civil Courts and powers can be exercised under Section 151 of the CPC.

7. He would state, the Tribunal has the power to restrain a person from travelling abroad. In this regard, he would rely upon the judgments in the case reported as ***AIR 2005 Ker 137 Smt. Annai Jayabharathi vs. Debt Recovery Tribunal (Kerala and Lakhadweep) Ernakulam & (2011) 6 CTC 70 ICICI Bank Limited vs. The Debts Recovery Appellate Tribunal.***

8. It is his submission, in view of the decisions cited above, the Tribunal is empowered to restrain a respondents who owes debt to the petitioner Bank from travelling abroad. The only fetter that has been put on the powers of the Tribunal is that such orders should relate only to ensure the implementation of the provisions of the Act of 1993, particularly to protect the interest of the Banks/Financial Institutions to recover the dues. He would state that in the instant case, the debt/liability of the respondent No.3 is not disputed insofar as the acknowledgement of debt dated December 13, 2013 is concerned. He states it is further an admitted position that as per the Agreement dated October 29, 2012 respondents 1 and 3 had to create mortgage over five properties. However, mortgage was only created with respect to three of the said properties. He would state, in the light of the above stated position of law and facts, the interests of the petitioner are currently not protected or secured as there is not enough securities in its favour to recover its due and the Tribunal did possess the power to pass an order to restrain the respondents 1 and 2, who are the Guarantors under the Deeds of Guarantee dated October 21, 2011 and October 29, 2012 from travelling abroad without taking its permission, to secure the ends of justice. He

would state, that the Madras High Court in *ICICI Bank Ltd. (supra)* also considered and dealt with various decision, which have held to the contrary namely *154(2008) DLT 77 Sanjeev R. Apte vs. IFCI & Ors (supra)* and *2004 (72) DRJ 440 A.S. Mittal vs. PO Debt Recovery Tribunal and ors* and noted inter-alia that the Court did not have the occasion to consider the provisions of Section 19(25) of the Act of 1993.

9. He would also state that in terms of Section 19(5)(iii) of the Act of 1993, the Tribunal has the power of detention in case of non compliance of any order made under sub-Section (4) thereof, after giving an opportunity of hearing that the person or officer of the Company who is in default be detained in civil prison for a term not exceeding three months unless in the meantime the Tribunal directs his release. He would also state, that the Kerala High Court in *Annai Jayabharathi (supra)* relied upon Section 29 of the Act of 1993, which provides for the application of the provisions of the II and III Schedules to the Income Tax Act, 1961 and the Income Tax (Certificate Proceedings) Rules, 1962, and held that the Tribunal is empowered to order interim detention pending enquiry relating to final detention in jail to recover the debt amount. He would rely upon Section 25 of the Act of 1993, which provides for the arrest of the judgment debtor as one of the modes of attachment. He heavily relies upon the conclusion in the judgment of *Annai Jayabharathi* to contend that the power to arrest judgment debtor for recovery of the debt due also gives rise to an incidental power to order restraint on travels abroad as an interim measure.

10. In his rejoinder submissions Mr. Vashist would state that the Gujarat High Court in

AIR 2011 Guj 81 State Bank of India v. Praful Chandra V. Patel, even though referred to the judgment of the Supreme Court in *Allahabad Bank case (supra)* and *Grapco (supra)* and the decision of the Division Bench of the Kerala High Court in *Annai Jayabharathi (supra)* it did not give reasons to differ from the same. He would state that the argument of the respondents that the order of the Tribunal restraining the respondents 1 and 2 from travelling abroad, violates their Fundamental Right to travel abroad as envisaged in *1978 (1) SCC 248 Maneka Gandhi v. UOI* is misconceived and without any merit. According to him, in *Maneka Gandhi (supra)* the breach of fundamental right was through State/Executive action i.e the Passport Authority, and that too without following any procedure established by law. In the instant case, the power being exercised is by a Tribunal, it has been empowered under a statute to pass such an order. In other words, an order passed in exercise of this power cannot be said to be violating the fundamental rights of the respondents. In support of his submission, he would rely upon the case reported as *1966 (3) SCR 744 Naresh Shridhar Mirajkar and Ors v. State of Maharashtra and Ors*.

11. Without prejudice, it is his contention that one of the distinguishing feature in the case in hand, is that the Deeds of Guarantee executed between respondents 1 and 2 and the petitioner contain a specific Covenant, whereby the said respondents have themselves agreed not to leave India for employment or business or for long term stay abroad so long as any amounts remain outstanding under the Working Capital Facility without the permission of the ICICI. He states that freedom to enter into a contract cannot be curtailed or curbed

relying on fundamental rights under the Constitution against State action. This proposition of law has been laid down by the Supreme Court in the case reported as **(2005) 5 SCC 632 Zoroastrian Cooperative Housing Society Ltd v. District Registrar Cooperative Societies (Urban)**.

12. In substance, it is his submission that the respondents herein entered into contract on their own volition and considering their commercial interest. Thus, like in **Zoroastrian Cooperative Housing Society Ltd (supra)**, the respondents cannot claim breach of fundamental rights by the said Covenant. Further, he would submit that the argument on behalf of the respondents to the effect that the aforesaid Covenant contained in the Deeds of Guarantee dated October 21, 2011 and October 29, 2012 is in violation of the fundamental rights of the respondents, does not hold water in view of the legal position that fundamental rights in Part III of the Constitution are enforceable against State action only and not against private individuals. In that regard, he would rely upon **P.D. Shamdasani vs. Central Bank of India 1952 SCR 391 (CB)**. In the end, it is his submission that the Tribunal has the power and jurisdiction to pass, if deem necessary an order restraining respondents 1 and 2 from travelling abroad without seeking its prior permission for the same in order to inter-alia secure the ends of justice.

13. On the other hand, Mr. Kamal Mehta, learned counsel for the respondents 1 and 2, apart from the facts narrated above, would submit that the respondents 1 and 2 thrice filed applications before the Tribunal seeking permission to go abroad to meet certain urgent

situations on May 17, 2014, October 7, 2014 and December 12, 2014 citing reasons being respondents son's examinations in U.K as he is studying abroad; respondents son having fallen resulting in fractured hand requiring surgical intervention and respondent No.1 needed to attend his important business interest in U.K. His first submission that the present petition being under Articles 226 and 227 of the Constitution of India is not maintainable as the impugned order is neither perverse, nor passed by Appellate Tribunal without jurisdiction, nor it is in violation of the principle of natural justice. It is a well reasoned judgment with strong foundation in law and the writ petition needs to be dismissed.

14. That apart, it is his submission that Part III of the Constitution of India guarantee fundamental rights, which cannot be interfered without following procedure established by law and without meeting the test of reasonableness, non-arbitrariness and exceptions carved out in Article 19(6) of the Constitution of India. According to him, the right to go abroad forms part of Article 21 in view of the judgment of the Supreme Court in ***Satwant Singh Sawhney v. D. Ramarathnam* AIR 1967 SC 1836**. He would also rely upon ***Maneka Gandhi v. Union of India & another* 1978 (1) SCC 248**, wherein the Supreme Court while approving and considering the ***Satwant Singh's case*** has unanimously upheld the aforesaid principles. In substance, it is his submission that Article 21 of the Constitution safeguards the right to go abroad against executive action which is not supported by law and law here means 'enacted law' or 'state law'. Thus, no person can be deprived of his right to go

abroad unless there is a law made by the State prescribing the procedure for so depriving him and the deprivation is effected strictly in accordance with such procedure. He states, sub-section (12), (13A), (17) and (18) of Section 19 of the Act of 1993 does not empower the Tribunal to issue any prohibitory order prohibiting the respondents Guarantors from leaving the country without permission. He also states, that power conferred under Section 19(25) of the Act of 1993 read with Rule 18 of the DRT (Procedure) Rules, 1993 are merely enabling provisions empowering the Tribunal to pass interim order to prevent abuse of its process or to secure the ends of justice. The said provisions of the Act of 1993 cannot be conferred by any stretch of imagination the status of the “procedure established by law” as contemplated under the scheme of the Constitution of India and principles laid down by the Supreme Court to restrict the exercise of the fundamental rights of the respondents by impounding of the passport, or restraining persons from travelling abroad or restraining from leaving the country without prior permission as no specific power has been conferred upon the Tribunal in this regard, while such powers are specifically conferred upon the appropriate authority under Passport Act, 1967 which is not only specifically regulated, clearly defined and with respect to which the detailed guiding principles have been laid down by the Supreme Court with all its checks, balances and safeguards.

15. He would also state that there is no scope of reading any implied power under the said provisions of the Act of 1993 and Rules framed there under, to restrict a person from travelling abroad. Hence, the DRT had no jurisdiction to prohibit the respondents to leave

the country. He would justify the order of the Appellate Tribunal in setting aside the order of the Tribunal. He would also state, the Legislature never intended to confer such a power on the Tribunal, otherwise it would have provided for it when the Act was amended in the year 2000. He states, that the power under Section 19(25) of the Act of 1993 read with Rule 18 of the DRT (Procedure) Rules, 1993 as also under Section 151 CPC cannot be exercised in relation to a subject with respect of which specific statutory provisions, powers and detailed procedure has been duly laid down through a specialized central legislative enactment being Passport Act, 1967. He would also state that the procedural power cannot override or cannot be exercised in derogation of the substantive power and/or rights found to exist in other statute dealing with the subject.

16. Mr. Mehta has also tried to highlight the performance of the respondent No.3 Company and the reasons which resulted in the depletion in the turnover and the profits. He would rely upon the following judgments in support of his contention:-

- (i) ***AIR 1967 SC 1836 Satwant Singh Sawhney v. D. Ramarathnam;***
- (ii) ***1978 (1) SCC 248 Maneka Gandhi v. Union of India & another;***
- (iii) ***2004 (6) SCC 186 Collector of Central Excise Calcutta vs. Alnoori Tobacco Products & Another;***
- (iv) ***2004 (72) DRJ 440 (Single Judge) A.S. Mittal v. PO, Debt Recovery Tribunal and ors;***
- (v) ***154 (2008) DLT 77 Sanjeev R. Apte v. IFCI Ltd;***
- (vi) ***163 (2009) DLT 369 (Division Bench) Gurbachan Singh Saluja v. Debt Recovery Tribunal & Ors;***

(vii) AIR 2011 Gujarat 81 (Division Bench) State Bank of India vs. Praful Chandra Patel;

(viii) 2008 (3) SCC 674 Suresh Nanda v. Central Bureau of Investigation;

(ix) AIR 2002 Karnataka 118 (Single Judge) ICICI Ltd Bangalore vs. Passport Officer, Bangalore & ors.

17. Having heard the learned counsel for the parties, the question, which arise for consideration is whether the Tribunal constituted under the Recovery of Debts Due to Banks & Financial Institutions Act, 1993 ('Act of 1993') has the power in terms of the provisions of the said Act to impose travel restrictions on a defaulting borrower/guarantor.

18. One of the submissions and the primary one of Mr. Vasisht is that, powers under Sections 19(25) and 22(1) of the Act of 1993 enables the Tribunal to impose travel restrictions on a defaulting borrower/guarantor. To decide this question, it is necessary to reproduce some of the relevant provisions of the Act of 1993 i.e Sections 19, 22, 25 and Rule 18 of the Debt Recovery Tribunal (Procedure) Rules 1993:-

19. Application to the Tribunal-*(12) The Tribunal may make an interim order (whether by way of injunction or stay or attachment) against the Defendant to debar him from transferring, alienating or otherwise dealing with, or disposing of, any property and assets belonging to him without the prior permission of the Tribunal.*

(13)(A) Where, at any stage of the proceedings, the Tribunal is satisfied, by affidavit or otherwise, that the Defendant, with intent to obstruct or delay or frustrate the execution of any order for the recovery of debt that may be passed against him, (i) is about to dispose of the whole or any part of his property; or (ii) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Tribunal; or (iii) is like to cause any

damage or mischief to the property or affect its value by misuse or creating third party interest, the Tribunal may direct the Defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Tribunal, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the certificate for the recovery of debt, or to appear and show cause why he should not furnish security.

(B) where the Defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Tribunal, the Tribunal may order the attachment of the whole or such portion of the properties claimed by the applicant as the properties secured in his favour or otherwise owned by the Defendant as appears sufficient to satisfy any certificate for the recovery of debt.

(17) In the case of disobedience of an order made by the Tribunal under Sub-sections (12), (13) and (18) or breach of any of the terms on which the order was made, the Tribunal may order the properties of the person guilty of such disobedience or breach to be attached and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Tribunal directs his release.

(18) Where it appears to the Tribunal to be just and convenient, the Tribunal may, by order (a) appoint a receiver of any property, wither before or after grant of certificate for recovery of debt;

(b) remove any person from the possession or custody of the property;

(c) commit the same to the possession, custody or management of the receiver;

(d) confer upon the receiver all such powers, as to bringing and defending suits in the courts or filing and defending application before the Tribunal and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Tribunal

thinks fit; and (e) appoint a Commissioner for preparation of an inventory of the properties of the Defendant or for the sale thereof.

(25) The Tribunal may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

22. Procedure and Powers of the Tribunal and the Appellate Tribunal. - (1) The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act any of any rules, the Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or deciding it ex parte;
- (g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;
- (h) any other matter which may be prescribed.

(3) Any proceeding before the Tribunal or the Appellate Tribunal shall be deemed to be a judicial proceedings within the meaning of Sections 193 and 228, and for the purposes of

Section 196, of the Indian Penal Code (45 of 1860) and the Tribunal or the Appellate Tribunal shall be deemed to be a civil court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

25. Modes of recovery of debts.- *The Recovery Officer shall, on receipt of the copy of the certificate under Sub-section (7) of Section 19, proceed to recover the amount of debt specified in the certificate by one or more of the following modes, namely:*

- (a) attachment and sale of the movable and immovable property of the Defendant;*
- (b) arrest of the Defendant and his detention in prison;*
- (c) appointing a receiver for the management of the movable or immovable properties of the Defendant.*

Under Rule 18 of the Debts Recovery Tribunal (Procedure) Rules, 1993, the Tribunal is empowered to make such orders or to give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

19. In support of his contention, Mr. Vashist had relied upon the judgments, being ***Industrial Credit & Investment Corporation of India Ltd. (supra)***, ***Allahabad Bank, Calcutta (supra)*** and ***Raj Narain Saxena (supra)*** and ***Rajendra Prasad Gupta (supra)***.

20. In ***Industrial Credit & Investment Corporation of India Ltd. (supra)***, the petitioner therein had filed an application under Section 19 of the Act of 1993 claiming dues of debt owed by the respondents therein. The Tribunal granted an ex-parte order of injunction restraining the respondents therein from transferring or alienating the property hypothecated to the ICICI Bank. The High Court set aside the order of the Tribunal, which order was challenged before the Supreme Court. The issue arose for consideration of the Supreme

Court, was whether the Tribunal had the power under Section 19(6) of the Act of 1993 to grant ex-parte orders. The Supreme Court in paras 11 and 12 held as under:-

11. We, however, do not agree with the reasoning adopted by the High Court. When Section 22 of the Act says that the Tribunal shall not be bound by the procedure laid by the Code of Civil Procedure, it does not, mean that it will not have jurisdiction to exercise powers of a Court as contained in the Code of Civil Procedure, Rather, the Tribunal can travel beyond the Code of Civil Procedure and the only fetter that is put on its powers is to observe the principles of natural justice.....

12.....It will, thus, be seen that while there are no limitations on the powers of the Tribunal under the Act, the legislature has thought fit to restrict the powers of the authorities under various enactments while exercising certain powers under those enactments. We have to give meaning to Section 22 of the Act as here the Tribunal is exercising powers of a Civil Court trying a money suit. Further, when power is given to the Tribunal to make interim order by way of injunction or stay, it inheres in it the power to grant that order even ex parte, if it is so in the interest of justice.....

21. A similar question arose in **Allahabad Bank, Calcutta (supra)**, wherein the Supreme Court referred to its earlier decision in the case of **Industrial Credit and Investment Corporation of India Ltd. (supra)**. The facts as noted in **Allahabad Bank, Calcutta (supra)** were that the Bank filed a suit under Section 19(1) of the Act before the Tribunal on March 27, 1997 for recovery of monies in a sum of Rs.46.54 lakhs and odd from respondents 1 to 3 and for other reliefs. Pending the case, the Bank applied on March 29, 1997 seeking temporary injunction restraining the respondents from taking any monies or sums from M/s. Braitewaite and Co. When the advance copy of the IA was sought to be served on the learned counsel for respondents, the same was refused. The Tribunal passed

an interim injunction on April 30, 1998 directing “*In the meantime, the respondents 1, 2 and 3 are restrained from recovering any money from M/s Braitewaite and Co. Ltd., till disposal of the interim matter*”. The following were the conclusion in paras 9 and 10:-

“9. The scope and the extent of the powers of the Tribunal are mainly referred to in Sub-clause (1) of Section 22 of the Act which says that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure but shall be guided by principles of natural justice. As stated in Grapco by this Court, the Tribunal can exercise powers contained in the Code of Civil Procedure and can even go beyond the Code as long as it passes orders in conformity with principles of natural justice. We may add that Section 19(6) does not in any manner limit the generality of the powers of the Tribunal under Section 22(1). It merely states that certain types of injunction or stay orders may be passed by the Tribunal. It is to be noticed that Sub-clause (6) of Section 19 starts with the words - “The Tribunal may make an interim order...” The provision is an enabling provision and merely states that certain types of injunction or stay orders mentioned therein can be passed by the Tribunal but such an enumeration cannot, in our opinion, be deemed to be exhaustive nor restricting the Tribunal's powers only to those types of injunction or stay orders. The width and amplitude of the powers are to be gathered from Section 22(1) as stated in Grapco. In addition, Rule 18 enables the Tribunal to pass orders to secure the ends of justice.”

10. Thus, we are of the view that the Tribunal certainly has power to pass other types of injunction orders or stay orders apart from what is stated in Section 19(6). It may issue notice and after hearing the opposite side, pass orders. Or, it may pass ad interim orders without hearing the opposite side and then give a subsequent hearing to the opposite party and pass final orders. We may also point out that Section 22(2) too does not limit the general powers referred to in Section 22(1). All that Section 22(2) states is that in respect of the type of applications falling under (a) to (h), the Tribunal has only powers as are vested in a Civil Court.”

22. From the reading of the aforesaid judgments, it is clear that the Supreme Court referring to Sections 19(6) (as existed) [presently Section 19(12)] and 22(1) has held that the Tribunal is not bound by the procedure laid by the Code of Civil Procedure. The

Tribunal can travel beyond the Code of Civil Procedure and the only pre-condition is that it has to observe the principles of natural justice. The power of the Tribunal under sub-section 6 of Section 19 to pass injunction or stay orders is not exhaustive but the width and amplitude of the powers can be gathered from Section 22(1). The Supreme Court also observed Rule 18 of the Tribunal enables the Tribunal to pass orders to secure ends of justice.

23. No doubt, the Supreme Court was considering the scope of the provisions of Section 19(6) (as it stood) and Section 22 of the Act of 1993. The facts as noted above would reveal in none of the cases, the facts were, relatable to injunction granted by the Tribunal enjoining the guarantor/borrower from travelling abroad. But were against orders, where the Tribunal granted ex parte order (in ***Industrial Credit and Investment Corporation of India Ltd.***) and restraining the respondents from recovering money from M/s. Braitewaite and Co. Ltd till disposal of the interim matter, (in ***Allahabad Bank, Calcutta***).

24. Insofar as the other two judgments relied upon by Mr. Vasisht i.e ***Raj Narain Saxena*** (*supra*) and ***Rajendra Prasad Gupta*** (*supra*), even though not relatable to provisions of Section 19(6) (as it stood), 22(1) or 19(25) of the Act of 1993 or Rule 18 of the Rules but to Section 151 of the Code of Civil Procedure, in these judgments also, the Court has inter-alia held that inherent power pre-supposes that any order that is not prohibited, is, within the competence of the Court.

25. Mr. Vasisht, who also relied upon the judgment in the case of *Annai Jayabharathi (supra)*, the Kerala High Court held, if a power is given to arrest the judgment debtor and to detain him in prison for enforcing the realisation of a debt ordered to be paid in decree by issuance of a Certificate under Section 19(7) of the Act, it carries with it an incidental power to prevent a person from going abroad, as an interim measure, so as to give effect to the power of ordering arrest of the judgment debtor and his detention in prison conferred by Section 25(b) of the Act. Otherwise, the said provision becomes redundant and otiose. The Kerala High Court also held that Section 22(1) has to be read in the context that it relieves the DRT from the bondage of rigour of procedure laid down by the Code of Civil Procedure, leaving it to be guided by the Principles of Natural Justice, subject to other provisions of the Act and the Rules, and, vests the DRT with such wide powers to regulate its own procedure including the place at which it can have sittings. It also held that the powers of DRT have not to be read to have been truncated by Section 22(1) of the Act and in fact, it has to be read and understood to have been widened giving a free hand to the Tribunal to pass any such orders, which have got the effect of not only speedy trial, but, effective enforcement of the decree in the event of the same being passed. It also held that it cannot be denied that presence of the appellant in the country enables the smooth and speedy disposal of the case before the DRT, and, in the event of the decree being passed and a Certificate is issued under Section 19(7) of the Act, the same can be effectively executed.

26. Similarly, the judgment of the *ICICI Bank Ltd vs. Debt Recovery Appellate*

Tribunal (supra), on which Mr. Vasisht had relied upon wherein the Madras High Court had referred to **Annai Jayabharathi (supra)**, **Grapco (supra)**, **Allahabad Bank (supra)** and inter-alia held that the Passport Act shall not exclude the inherent power of the Debt Recovery Tribunal to pass order impounding passport in order to meet the ends of justice for which, power flows from special enactment namely Act of 1993.

27. No doubt, the Madras High Court has read the power of the Tribunal under Section 19 of the Act to include the power to impound a passport, whereas on an identical issue, the High Court of Gujarat in **State Bank of India vs. Praphul Chandra V. Patel (supra)**, has in paras 25 to 27, held as under:-

“25. From the reasons mentioned in the aforesaid case, it follows that under Article 21 of the Constitution, no person can be deprived of his right to travel except according to the procedure established by law. The law means 'enacted law' or 'State law'.

26. In the present case, there is nothing on record to show that a law has been made by the State regulating or depriving a person of such right in case proceeding under Section 19 of the DRT Act, 1993 is pending. Section 19(25) read with Rules 18 of the Debts Recovery Tribunal (Procedure), Rules, 1993 empowers the Tribunal to make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice. It is an enabling provision empowering the Tribunal to pass interim order to prevent abuse of its process or to secure the ends of justice. Section 19(25) or Rule 18 cannot be held to be procedural law.

27. Section 22 deals with the procedure and powers of the Tribunal and the Appellate Tribunal. It relates to summoning and enforcing the attendance, requiring the discovery and production of documents, receiving evidence on affidavits, issuing commissions for the examination of witnesses or documents, reviewing its decisions, dismissing an application for default or

deciding it ex-parte, setting aside any order of dismissal of any application for default or any order passed by it ex-parte, or any other matter which may be prescribed, but no provision has been made therein or by a separate notification issued by the Central Government empowering the Tribunal to deprive a person of his personal liberty to move abroad as guaranteed under Article 21 of the Constitution of India. In absence of any such 'enacted law' or 'State law', we hold that the Tribunal had no jurisdiction to deprive the Defendants, the Respondents herein, of their right to go abroad. The learned Single Judge for the very same reason having set aside the order passed by the Tribunal, no interference is called for. In absence of any merit, the appeal is dismissed, but there shall be no order as to costs."

28. We note, that a learned Single Judge of this Court in **A.S. Mittal (supra)**, has considered a similar question and in paras 4 and 5, has held as under:-

"4. A reading of Section 19(6) of the Act makes it abundantly clear that the power of the Tribunal are, namely, to make interim order whether by way of an injunction or stay against the defendant to debar him from transferring, alienating or otherwise dealing with, or disposing of, any property and assets belonging to him without the prior permission of the Tribunal. This certainly does not empower the Tribunal to restrain the petitioner from travel. Section 22(1) of the Act provides for procedure and does not give powers as have been exercised by the Tribunal. Needless to say that Rule 18 could not be construed to give powers beyond the substantive Section.

5. Having gone through the powers enumerated above, I hold that the Tribunal had no authority whatsoever to either impound the passport of the petitioner or to put any restriction on the travel of the petitioner. In the present case, the tribunal is entitled to pass interim orders in accordance with Section 19(6) of the Act and no more. In this view of the matter, I set aside the order dated 4th May, 1999. However, the petitioner is directed to make himself available before the Tribunal as and when he is required, for which purpose he shall give an undertaking to the Tribunal."

29. The said judgment was also considered by the Division Bench of this Court in **Sanjeev R. Apte (supra)**, wherein the Division Bench of this Court in paras 5 and 6 has

confirmed and endorsed the judgment of the learned Single Judge in **A.S. Mittal (supra)** and held as under:-

“5. The law laid down by the learned Single Judge is clear that the Tribunal does not have any power to restrain a citizen from travelling. This determination of law by the learned Single Judge that the Tribunal had no authority whatsoever to either impound the passport of the petitioner or to put any restriction on the travel of the petitioner abroad in exercise of its powers to pass an interim order under Section 19(6) of the Act is not dependent upon determination of liability by the Tribunal. In our view, the judgment has been totally misconstrued by the DRAT in confining it to matters where the liability has not been determined.

6. In our view, the judgment of the learned Single Judge of this Court, which we hereby affirm and endorse, is categorical and denies the Tribunal such a right to impose any restriction on the passport of the petitioner. The applicability of the judgment of the learned Single Judge in A.S. Mittal's case was applicable to the exercise of the jurisdiction by the Tribunal and was not conditional as wrongly construed by the Tribunal. Accordingly, the order of the Tribunal, to the extent which imposes restriction on the travelling and passport of the petitioner is quashed and set aside.”

30. That apart, a similar question arose before a Division Bench of this Court in **Gurbachan Singh Saluja (supra)**, wherein the Division Bench relying upon the judgment of the Division Bench in **Sanjeev R. Apte (supra)** has disposed of the writ petition by noting the position of law as laid down by the Division Bench in **Sanjeev R. Apte (supra)** being clear.

31. The argument of Mr. Abhinav Vashist by placing reliance on the judgment of the Supreme Court in **Naresh Shridhar Mirajkar and Ors. (supra)** is concerned, the Supreme Court through its majority view has held that the judicial verdict pronounced by the Court

cannot be said to affect the fundamental rights and the character of the judicial order remains the same whether it is passed in matter directly in issue between the parties or is passed incidentally to make the adjudication of the dispute between the parties fair and effective. But the said judgment would not help the petitioner as at the most, such a submission based on the judgment of the Supreme Court in ***Naresh Shridhar Mirajkar and Ors. (supra)*** would only demolish the argument of Mr. Kamal Mehta that the fundamental right of the respondents 1 and 2 to go abroad, which forms part of Article 21, cannot be deprived unless there is a law made by the State prescribing the procedure for so depriving them of the said right but that would still not persuade us to take a different view or make us deviate from the consistent view taken by this Court in the judgments of ***A.S. Mittal (supra)***, ***Sanjeev R. Apte (supra)***, ***Gurbachan Singh Saluja (supra)***, on the powers of the Tribunal to pass interim order under Section 19(6) [now Section 19(12)] of the Act of 1993 for impounding the passport or restricting the travel abroad.

32. The plea of Mr. Vashist that in these judgments, this Court did not have the occasion to consider Section 19(25) of the Act of 1993 is concerned, even this provision would not support the order of the DRT and in this regard we agree with the following reasoning of the DRAT:-

“The Debts Recovery Tribunal being a creature of statute would have power as conferred on these Tribunals by the statute. If the intention was to confer such power allowing the Tribunal to restrain a person from travelling abroad, it ought to have been so conferred on the Tribunal. Here notice can be taken of the provisions of Section 19(17) of the RDDDBFI Act which

empowers the Recovery Tribunal to order detention of a person in civil prison for a period not exceeding three months if such person is found guilty of disobedience or breach of any order made by the Tribunal. Apparent reason for not bestowing power to the Tribunal to restrain the borrower from travelling abroad may be because borrower is not needed to remain present in person before the Tribunal when the recovery proceedings are in progress. It is his property only which is the security for recovery of the debt and his presence may be need at much later stage during the recovery proceedings as and when ordered if full amount is not recovered from the secured assets. To justify passing of such order by invoking the provisions of Section 19(25) of the RDDBFI Act or Rule 18 of the Rules to urge that these would be available to ensure recovery may lead to creating or recognizing a right or liability or obligation which is not provided for in the Statute.”

33. Apart from the above, which answer's the question whether the Tribunal can pass an order restraining a defaulting borrower/guarantor from travelling abroad, we note, in the case in hand, the Tribunal has set aside the impugned order on the following finding of fact:-

“Before parting with the case, protest raised by the Counsel for the Bank may call for a notice when he says that if permitted to travel abroad, the appellants are not likely to return back. There is no material shown to me in support of this contention. More so, for prosecution of OA presence of the borrower or the guarantor before the Tribunal is not necessary. Facilities advanced by the Bank/Financial Institution are generally secured by the property(ies) which is/are known as secured assets. These may be by personal guarantees which are accompanied by mortgage of some property or otherwise. Thus, these are the securities through which recovery is to be effected. No doubt, a stage may come when need for taking the borrower in custody may arise but generally that is very rare and may have to be resorted in exceptional cases. Unlike, criminal trials where proceedings cannot continue in the absence of accused, the proceedings before the Debts Recovery Tribunals can continue even when the borrower or the guarantor is not present. Thus, the order pacing restriction on the movement of the appellants is not called for though prosecution of the OA is pending before the Tribunal below.”

34. Insofar as the plea of Mr. Vasisht in the alternative that even in terms of the Deeds of Guarantee dated October 21, 2011 and October 29, 2012, the respondents 1 and 2 have agreed not to leave India for employment or business or for long term stay abroad so long as any amounts remain outstanding under the Facility together with interest and other dues and charges including repayment charges as per the Rules of the said Bank then in force and by relying upon the judgment of the Supreme Court in the case of *Zoroastrian Cooperative Housing Society Ltd (supra)*, is concerned there is no doubt on the proposition of law laid down by the Supreme Court. Surely, the Deeds of Guarantee being contractual in nature would bind the respondents 1 and 2 but a closure look of the stipulation would reveal that the respondents 1 and 2 have contracted not to leave India for employment or business or for long stay abroad, so long as any amount remain outstanding without the permission of the petitioner. The eventualities have been stipulated i.e employment or business or for long term stay abroad, surely reveals that as long as the visit is not for employment or for business or for a long stay abroad, they can leave India. The order of the Tribunal dated May 9, 2014 does not take into consideration these aspects but it is a general order that as and when they would go out of India, they will inform the Tribunal and seek permission of the Tribunal and such a blanket order is unjustifiable nor the Tribunal drew sustenance from the provisions of the Deeds of Guarantee as, the term of contract stipulates without the permission of ICICI, which surely would not empower the DRT to direct, that the

respondents 1 and 2, would seek its permission. It is surely an order, which appears to have been passed by the DRT purportedly invoking its power under Section 19(25) of the Act of 1993 and in view of our aforesaid finding, could not have been passed.

35. In the impugned order, the Tribunal has in the penultimate para held that there is no material to show to the Tribunal that if the respondents 1 and 2 are permitted to travel abroad, they are not likely to return back. The same is a finding of fact and nothing has been shown to us nor any material placed in support of this stand of the petitioner Bank.

36. In view of the aforesaid discussion, we do not see any merit in the present petition. The same is dismissed.

CM. No. 27682/2015 (for Stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

INDIRA BANERJEE, J

MARCH 08, 2017/ak