

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION No. 4683/2017

Galvanotek Industries Private Limited,
a company incorporated under the
provisions of the Companies Act, 1956
and having its registered office at 16,
Ganesh Chandra Avenue, 7th Floor,
Kolkata – 700 072.

PETITIONER

.....VERSUS.....

1. Coventry Spring and Engineering
Company Limited,
a company incorporated under the
provisions of the Companies Act, 1956
and having its registered office at 23,
Ganesh Chandra Avenue, Kolkata,
manufacturing units at J.L. No.25,
Mouza: Alampur, Police Station Sankrail,
District Howrah, West Bengal (Howrah Unit)
and Plot No.D-2, MIDC Industrial Area,
Village Wadi, Nagpur and Bombay Office
at 108, Marol Co-operative Industrial Estate,
Sir M.V. Road, J.B. Nagar Post, Mumbai -
400 059 through it Authorised Officer
Shri Prakashmal Bafna.
2. M/s Coventry Coil-O-Matic (Haryana)
Limited, a company incorporated under
the provisions of the Companies Act, 1956
and having its registered office at Village
Salawas, Post Sangwari, District Rewari-
123 401, Haryana, and having its Mumbai
Office at 107, Marol Co-operative Industrial
Estate, Sir M.V. Road, J.B. Nagar Post,
Mumbai – 400 059 through it Authorised
Officer Shri Prakashmal Bafna.
3. Nishant Bafna,
107, Marol Co-operative Industrial Estate,
Sir M.V. Road, Andheri East,
Mumbai - 400 059.
4. Mr.Ashokmal Bafna of 57,
Raja Basanta Roy Road, Kolkata-700 029.
5. Narendramal Bafna of 1476,
Govande Layout, Snehnagar, Nagpur
- 440 015.
6. Shri Rajendra Bafna of Village Salawas,
Post – Sangwari, District – Rewari -
123 401, Haryana.

7. M/s Assets Reconstruction Company of India Limited (ARCIL), a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 17th Floor, Express Towers, Nariman Point, Mumbai – 400 021.

RESPONDENTS

Shri M.G. Bhangde, Senior Counsel with Shri S.N. Tapadia, counsel for the petitioner.
Shri Anand Jaiswal, Senior Counsel with Shri R.V. Malviya, counsel for the respondent no.1.

Shri Umesh Shetty with Shri C.B. Dharmadhikari, counsel for the respondent nos.2 to 6.
Shri S.N. Kumar, counsel for the respondent no.7.

**CORAM :SMT.VASANTI A NAIK AND
A.D. UPADHYE, JJ.**

DATE : 25TH JANUARY, 2018.

ORAL JUDGMENT (PER : SMT. VASANTI A NAIK, J.)

RULE. Rule made returnable forthwith. The petition is heard finally at the stage of admission with the consent of the learned counsel for the parties.

2. By this writ petition, the petitioner has challenged the order of the Debts Recovery Appellate Tribunal, Mumbai, dated 20.06.2017 allowing an application filed by the respondent no.1 for waiver of pre-deposit for filing the appeal under Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the Securitisation Act' for the sake of brevity) and directing the respondent no.1 to deposit 25% of notice amount, i.e. Rs.1.75 Crores within four weeks.

3. The respondent no.1 had secured a loan from the State Bank of India and after the financial assets were taken over by the respondent no.7-ARCIL from the State Bank of India, a notice under Section 13 of the Securitisation Act was served on the respondent nos.1 to 6 on 26.07.2006. On 25.08.2007 and 29.08.2007, the possession of the secured assets at the Nagpur unit and Alampur unit was taken by ARCIL. An application was filed by the respondent no.1-Coventry Spring and Engineering Company Limited under Section 17 of the Act on 08.10.2007 challenging the measures. It is the case of the respondent that on 23.04.2007 and 24.04.2007, the secured assets were sold by the respondent no.7-ARCIL to the petitioner by a treaty. It is the case of the respondents that on 18.01.2008, by a deed of assignment, the financial assets were transferred by the respondent no.7-ARCIL in favour of BMW Industry. On 03.06.2011, the Debts Recovery Tribunal dismissed the application filed by the respondent no.1-Coventry under Section 17 of the Act. An appeal was filed by the respondent no.1-Coventry against the said order on 24.06.2011. On 04.07.2011, an order of waiver was passed and on 11.04.2012, by withdrawing the said order, an order granting full waiver of the pre-deposit was made. The petitioner challenged the order granting waiver, dated 11.04.2012 in Writ Petition No.5005 of 2012. On 01.11.2012, while admitting the said writ petition, this Court permitted the DRAT to proceed with the appeal on merits after making it clear that

the outcome of the proceedings of the appellate tribunal would be subject to the result of the petition. On 07.08.2013, since the petitioner had not removed certain objections, a conditional order that the writ petition would stand dismissed automatically without further reference to Court, if appropriate steps are not taken within two weeks, was passed. Since the compliance was not made within two weeks, the writ petition stood dismissed in default on 21.08.2013. After the writ petition was dismissed in default and before it was restored on 28.02.2014, the appeal filed by the respondent no.1 was allowed by the DRAT on 13.01.2014. The judgment of DRAT allowing the appeal of the respondent no.1 was challenged by the petitioner in Writ Petition No.1006 of 2014. The respondent no.7-ARCIL had also filed Writ Petition No.3574 of 2014 against the judgment of the DRAT. On 09.03.2015, the writ petition filed by Galvanotek bearing Writ Petition No.5005 of 2012 was allowed and the order granting complete waiver dated 11.04.2012 was set aside. The matter was remanded to the DRAT to reconsider the application filed by the respondent no.1-Coventry for grant of waiver. On 31.03.2015, the respondent no.1 filed a special leave petition before the Hon'ble Supreme Court challenging the judgment dated 09.03.2015 in Writ Petition No.5005 of 2012 but the special leave petition was dismissed on 24.03.2015. On 04.10.2015, a review application was filed before this Court seeking a review of the judgment dated 09.03.2015 in Writ Petition

No.5005 of 2012 on the ground that the fact that the appeal filed by the respondent no.1 was allowed by the DRAT and the effect thereof on the order granting waiver and the dismissal of the writ petition in default was not considered. The review application was, however, disposed of by the order dated 04.10.2016 after observing that the contentions raised in the application were hypothetical. However, the contentions raised on behalf of the respondent no.1-Coventry were kept open for consideration if a cause of action arises in future. The order disposing of the review application was carried by the respondent no.1-Coventry in a special leave petition to the Hon'ble Supreme Court. The special leave petition was however dismissed after recording a statement made by the learned Senior Counsel for the respondent no.1-Coventry that the respondent no.1 would make a submission before the DRAT in view of the order passed in the main appeal by the DRAT and the other issues which are pending before the High Court in Writ Petition No.1006 of 2014. The said order dated 27.02.2017 was modified by substituting the earlier statement of the Senior Counsel by the statement that the respondent no.1 would make a submission before the DRAT in view of the order passed by it in main appeal no.135 of 2011 and the other issues that are pending before the High Court in Writ Petition No.1006 of 2014. After the said order was passed, by the order dated 20.06.2017, the DRAT re-decided the application filed by the respondent no.1-Coventry for seeking

a waiver of the statutory deposit and granted partial waiver by directing the respondent no.1-Coventry to deposit 25% of notice amount, i.e. Rs.1.75 Crores within four weeks. The said order is challenged by the petitioner in the instant petition.

4. Shri Bhangde, the learned Senior Counsel for the petitioner, submitted that the impugned order is liable to be set aside as no reasons whatsoever are recorded by the appellate tribunal while partly allowing the application for waiver of pre-deposit. A reference is made to the provisions of the third proviso to Section 18(1) of the Act to submit that it would be obligatory for the appellate tribunal to record reasons in writing for granting the waiver. It is submitted that since the provisions of Section 18 clearly provide for recording of the reasons in writing, waiver could not have been granted without recording reasons. It is submitted that the appellate tribunal was not only required to record the reasons in view of the provisions of the third proviso to Section 18 of the Act but also in view of the directions issued by this Court to the appellate tribunal to pass an appropriate reasoned order on the application for waiver of the deposit. It is submitted that a duty was cast on the tribunal by the provisions of Section 18 of the Act and also by the directions in the judgment dated 09.03.2015 in Writ Petition No.5005 of 2012 to record reasons. It is submitted that in the circumstances of the case, the impugned order is unsustainable.

5. Shri Jaiswal, the learned Senior Counsel for the respondent no.1, has supported the order. It is submitted that it appears from the impugned order that the entire material on record and the contentions of all the parties were considered while directing the respondent no.1-Coventry to deposit 25% of the notice amount. In the alternative, it was submitted that on the date of filing of the appeal before the DRAT by the respondent no.1-Coventry, there was no debt due either to the bank or to the respondent no.7-ARCIL. It is submitted that on a reading of the definition clause and the third proviso to Section 18, it could be gathered that what is required to be deposited before the appellate tribunal by a party filing an appeal is 50% of the amount of the debt due from him. It is submitted the Securitisation Act would come into play only if the secured creditor is the one falling within the definition of the said term. It is submitted that in the instant case, the secured assets are transferred from a financial institution to a non-financial institution, viz. BMW Industry and the provisions of the Act would not apply after the said assignment. It is submitted that there would be no debt due from the respondent no.1-Coventry either to the bank or to the respondent no.7-ARCIL as the secured assets and the debt was assigned to BMW Industry much before the appeal was filed by the respondent no.1-Coventry before the DRAT. It is submitted that there was an assignment of the debt on 18.01.2008 to a non-financial institution, viz. BMW Industry and the

appeal was filed by the respondent no.1-Coventry before the tribunal on 24.06.2011. It is stated that considering this aspect of the matter, the writ petition is liable to be dismissed. It is submitted that the said contentions, as are made on behalf of the respondent no.1-Coventry were kept open in view of the order passed by this Court in the review application and the order of the Hon'ble Supreme Court in the special leave petition challenging the order dismissing the review application dated 04.10.2015. It is submitted that in the aforesaid set of facts, the writ petition is liable to be dismissed.

6. Shri Shetty, the learned counsel for the respondent nos.2 to 6, has also supported the order. It is submitted that the petitioner would not have a locus standi to file the appeal. It is stated that the facts in regard to the assignment of the debt to the non-financial institution were brought to the notice of the DRAT by the respondent nos.2 to 6 by filing an affidavit and the respondent no.7-ARCIL had not filed a counter affidavit in denial. It is submitted that in view of the assignment of the debt to a non-financial institution, the provisions of pre-deposit would not apply. It is submitted that in view of the assignment to the BMW Industry, it was not necessary for the respondents to make the pre-deposit. It is submitted that since the appeal filed by the respondent no.1 was allowed by the DRAT, the present writ petition is liable to be dismissed.

7. Shri Kumar, the learned counsel for the respondent no.7, has supported the case of the petitioner and canvassed that the impugned order is liable to be set aside as it is sans reasons.

8. To consider the submissions made on behalf of the parties, it would be necessary to refer to the impugned order. The impugned order is reproduced here for ready reference:-

“Heard both sides.

This application is filed seeking waiver of statutory deposit.

From the submissions of both sides that original appeal is already allowed and matter is pending before the Hon'ble High Court where all the parties are agitating their respective rights. This Tribunal at the time of entertaining appeal granted total waiver which was set aside by the Hon'ble High Court of Judicature at Bombay, Nagpur Bench at Nagpur on 09.03.2015 and remitted back waiver to this Tribunal to decide the same as per law. High Court order was challenged in the Supreme Court and Hon'ble Supreme Court dismissed Special Leave Petition on 24.08.2016.

Now at this stage section 18 application has to be decided, therefore, I deem it appropriate not to go into merits and demerits of contentions raised on behalf of all parties and only to consider the amount to be deposited by appellants as required under section 18 of SARFAESI Act.

Advocate for appellants submitted that as the sale conducted by the respondent is held as illegal by this Tribunal in

Appeal No.135/2011 and as the property is not under the enjoyment of appellants minimum amount may be fixed for compliance of section 18 of Act.

Advocate for appellant further submitted that as on today there is no debt in view of dismissal of the O.A. which was dismissed for default as no steps are taken till today for restoration.

On the other hand Mr.Nagori on behalf of respondent no.6 represented that no grounds are made out to reduce 50% statutory deposit therefore, appellants have to deposit 50%. He submitted if for any reason order passed in the appeal is set aside and appeal is restored respondent no.6 cannot again request this Tribunal to enhance the statutory deposit, therefore, 50% has to be deposited.

Advocate for respondent no.1 submitted that amount as on date of filing of waiver application has to be taken by calculating interest till that date for considering pre-deposit amount.

Advocate for appellants submitted that respondent no.1 has already assigned debt and therefore respondent no.1 has no right to say anything and cannot have any locus standi in the matter.

Considering material on record and contention of all parties without prejudice to the respective rights of the parties, I deem it appropriate to direct the appellants to deposit 25% of notice amount i.e. Rs.1.75 Crores, within four weeks.

Appellants shall deposit above referred amount on or before 18.07.2017 with Registrar of this Appellate Tribunal, failing which application stands rejected.

As and when the said amount is deposited it shall be invested in term deposit in the name of Registrar, DRAT, Mumbai with any nationalized bank, initially for a period of thirteen months and thereafter it will be renewed periodically.

Stand over to 19.07.2017 for compliance.”

It would be necessary to note at this stage that though the fact in regard to the allowing of the main appeal filed by the respondent no.1-Coventry under Section 18 of the Act was brought to the notice of this Court in the review application and to the notice of the Hon'ble Supreme Court in the special leave petition challenging the order disposing of the review application, the review application and the special leave petition was disposed of without giving any weightage to the judgment passed in favour of the respondent no.1 in the main appeal, at that stage. This would clearly show that the DRAT was duty bound to decide the application filed by the respondent no.1 seeking a waiver of the statutory deposit on merits after recording reasons. We find that this Court had, while disposing of the review application and the Hon'ble Supreme Court had, while disposing of the special leave petition kept the contentions raised on behalf of the respondent nos.1 to 6 open. Therefore, the submissions that are sought to be made on behalf of the respondent nos.1 to 6 in this Court cannot be for the first time considered and adjudicated upon in this writ petition as the DRAT has not considered the same while

partly allowing the application seeking the waiver of statutory deposit though a reference to one of them is made in the order dated 20.06.2017. We are therefore not inclined to consider the submissions made on behalf of the respondent nos.1 to 6 in this writ petition, specially when this Court had not dealt with the same while disposing of the review application filed by the respondent no.1 and the Hon'ble Supreme Court had not thought it fit to decide the same before the special leave petition was disposed of. If at all the respondent nos.1 to 6 were permitted to raise the contentions that were sought to be raised in the review application before this Court and before the Hon'ble Supreme Court in the special leave petition, the respondent nos.1 to 6 were free to agitate them before the DRAT. We do not find anything in the impugned order to show that it was canvassed on behalf of the respondent no.1 before the appellate tribunal that since no 'debt' was due from the respondent no.1 on the date of filing of the appeal, there was no question of seeking a waiver of the pre-deposit. It is apparent from the impugned order that it was not the case of the respondent nos.1 to 6 before the appellate tribunal that they were not liable to make any deposit at all. A contention was, however, raised on behalf of the respondent no.1 that since the respondent no.7-ARCIL had already assigned the debt, it would have no right to say anything in the matter. Be that as it may, we find from the impugned order that though the appellate tribunal has recorded the

submissions made on behalf of the respondent nos.1 to 6 for seeking the waiver of the pre-deposit, there is no consideration or discussion of the said submissions. It is observed by the appellate tribunal that “considering the material on record and the contentions of all the parties, without prejudice to the respective rights of the parties, I deem it appropriate to direct the appellant to deposit 25% of notice amount within four weeks”. It is time and again held by this Court and the Hon'ble Supreme Court that where an authority is bound to record reasons for an order, it would be necessary for the said authority to give at least some reasons while passing the order. We find that the appellate tribunal has not recorded a single reason for allowing the application for waiver of the pre-deposit. The observation that the material on record and the contentions of all parties were considered, would not be a reason for allowing the application for waiver of the pre-deposit. Since the third proviso to Section 18(1) of the Act enjoins a duty on the appellate tribunal to record reasons in writing while granting an application for waiver of the pre-deposit it would be the duty of the appellate tribunal to do so. In the instant case, apart from the duty cast on the appellate tribunal under the provisions of the third proviso to Section 18(1) of the Act, a duty was further enjoined on the appellate tribunal to pass an appropriate reasoned order. While quashing the earlier order of the appellate tribunal granting full waiver, this Court had, while allowing

Writ Petition No.5005 of 2012, observed that the order passed by the appellate tribunal was not in consonance with the provisions of Section 18 of the Act. Since the impugned order is sans reasons and since it was necessary for the appellate tribunal to record reasons in writing for granting an application for waiver of the pre-deposit, the impugned order is liable to be set aside.

9. Hence, for the reasons aforesaid, the writ petition is partly allowed. The impugned order of the appellate tribunal is quashed and set aside. The matter is remanded to the appellate tribunal for deciding the application filed by the respondent no.1-Coventry for waiver of the pre-deposit in accordance with law. The appellate tribunal is directed to decide the application within six weeks from the date of appearance of the parties before the appellate tribunal. The parties undertake to appear before the appellate tribunal on 12.02.2018 so that issuance of notice to the parties could be dispensed with.

Rule is made absolute in the aforesaid terms with no order as to costs.

JUDGE

JUDGE

APTE