IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **06.04.2018**

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.8052 of 2018
and WMP No.10037 of 2018

1. M/s.Spear Technology Alliance India Pvt. Ltd.,
Rep. by its Managing Director,
S-1, Elite Empire No.317,
Valluvarkottam, High Road,
Nungambakkam, Chennai - 34.

2. S.Dhandayuthapani

3. Mrs.Nirmala Devi ... Petitioners

vs.

1. The Registrar,
Debts Recovery Appellate Tribunal, Chennai,
4th Floor, Indian Bank Circle Office,
No.55, Ethiraj Salai,
Chennai - 600 008.

2. M/s.HDFC Bank Ltd.,
3rd Floor, Mariam, Centre,
751-B, Anna Salai,
Chennai - 600 002.
Rep. by its Senior Manager,
Mr.K.N.Prakash Narayanan.

3. M/s.Biral Surya Ltd.,
Dalammal House, Ground Floor-II,
J.B.Marg, Nariman Point,
Mumbai - 400 021. ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorari, calling for the records of the 1st respondent herein in its proceedings AIR No.633 of 2017 in I.A.No.1690 of 2017 dated 13.03.2018 and quash the same.

For Petitioner : Mr.S.Kasirajan

ORDER

(Order of the Court was made by **S.MANIKUMAR,** *J)*

Petitioner, Managing Director of M/s.Spear Technology Alliance India Private Limited, Chennai, has filed the instant writ petition to quash the order made in AIR No.633 of 2017 in I.A.No.1690 of 2017 dated 13.03.2018, which is extracted hereunder

"Ld. Counsel Mr.N.Vivekanandan for Appellant present.

Ld. Counsel Mr.C.Kotteeswaran for R1 present and files Memo of Vakalat of M/s.K.Rajeasekaran today.

Proof of Service by publication for R2 filed, and on perusal it is found that in Vernacular language publication, summons is printed in English, hence By way of pre-caution appellant is directed to take publication in widely circulated leading newspaper in vernacular language afresh for R2 ensuring script of summons also should be in vernacular language only.

Heard IA 1690/2017, which is an application for waiver.

Appellant has challenged the order dated 15.09.2017, passed by DRT-II, Chennai, in OA 55/2015, by which the OA was decreed for recovery of a sum of Rs.1.42 Crores.

Ld.counsel for Appellant submits that so far bank has recovered a sum of Rs.44 Lakhs by way of sale of mortgaged property and prayed to presume that waiver has been complied with.

Ld. Counsel further submits that non payment of dues is that he had supplied some materials to R2 & R3 and cheques were issued by R2 to a tune of Rs.2 Crores and bounced for insufficient funds and bank has also not taken any steps for recovery of the amount from the guarantors. Further matter has been referred to Company Court and Company Petition is also pending, hence Tribunal should proceed slowly in recovery of dues when the matter is dealt with by Company Court and within three months time Appellant will pay the due and settle the entire amount.

Whatever has been averred by the parties can be discussed and decided at the time of final hearing of the case, further in view of the dispute between guarantors and borrowers, bank cannot be left to suffer ultimately. In view of the fact that DRAT cannot entertain an Appeal filed by any aggrieved person unless and until the Appellant complies with the formalities on pre-deposit up to 50% of debt amount, which can be reduced to 25%, but not less than 25% in any case and considering the recovery of the dues made by the bank by way of sale of the mortgaged property, I hereby direct the Appellant to make pre-deposit of Rs.30 Lakhs with the Registrar of this Tribunal, out of which Rs.15 Lakhs to be paid by the Appellant within four weeks from today as 1st part of payment and 2nd part of payment of Rs.15 Lakhs will be paid by another four weeks thereafter.

In the event of failure in complying with the order on pre-deposit, the Appeal shall stand dismissed automatically for want of mandatory compliance. IA is disposed of.

List for confirmation of pre-deposit of 1st part of payment of Appellant by 10.04.2018."

2. Petitioner has availed loan and defaulted. M/s.HDFC Bank limited, Chennai has filed OA No.55 of 2015 before Debts Recovery Tribunal-II, Chennai and vide order dated 15.09.2017, the Debts Recovery Tribunal-II, Chennai, allowed the original application as hereunder:

> "(a) The applicant is entitled to recover a sum of (i) Rs.1,81,44,115.24 with interest @ 12% p.a (simple) in respect of Sales Bill Discounting facility from D1 to D4 jointly and severally and (ii) Rs.4,85,692.71 with interest @ 12% p.a. (simple) in respect of Overdraft against property from D1 to D3 jointly and severally from the date of OA till the date of realization together with costs. If the defendants failed to pay the due amount, the applicant bank is entitled to recover the due amount by sale of schedule mentioned properties.
>
> (b) The applicant bank is directed to file costs memo within two weeks for the receipt of this order.
>
> (c) Issue recovery certificate in favour of applicant bank in terms of this final order."

3. Thereafter, Corrigendum has been issued in terms of Memo in SR No.10935/17 dated 07.10.2017, as hereunder:

> "8(a) pending the OA, the applicant bank has sold Schedule-B property to the OA under SARFAESI Act and appropriated a sum of Rs.44,21,806.15 in the loan account and in this regard a part satisfaction is recorded on 14.02.2017".

	For	Read
Page No.7 Para No.11(a)	The applicant is entitled to recover a sum of (i) Rs.1,81,44,115.24 with interest @	The applicant is entitled to recover a sum of (i) Rs.1,81,44,115.24 with

	For	Read
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Other contents of the order dated 15.09.2017 remain unaltered.

4. Being aggrieved, petitioner has filed an appeal to the Debts Recovery Appellate Tribunal under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Taking note of the submissions, vide proceedings dated 13.03.2018, the appellate tribunal in AIR No.633 of 2017 dated 13.03.2018, has directed, the petitioner to deposit of Rs.30 Lakhs with the Registrar of Debts Recovery Appellate Tribunal in two equated instalments. Appellate Tribunal has directed the Registry to list the matter on 10.04.2018, for confirmation of deposit of first part of payment.

5. Though, on the basis of the averments made in the supporting

affidavit to the instant writ petition, Mr.S.Kasirajan, learned counsel for the petitioners contended that when the cheques issued by the 3rd respondent were returned, the writ petitioners has filed C.P.No.443 of 2013, against M/s.Nirmala Devi, Director, Chennai, 3rd respondent, before the Bombay High Court for recovery of Rs.18,23,75,685/- and that the Bombay High Court was pleased to appoint an Official Liquidator to recover the said amount from 3rd respondent and in the abovesaid circumstances, petitioner could not make any deposit and that the entire amount will be deposited in three months, this Court is not inclined to accept the said submission for entertaining this writ petition, for the reason that in **Narayan Chandra Ghosh vs. Uco Bank & Ors.** reported in **AIR 2011 SC 1913**, the Hon'ble Apex court, at paragraph No.8 of the said judgment, held as follows:

> *"8. Section 18(1) of the Act confers a statutory right on a person aggrieved by any order made by the Debts Recovery Tribunal under Section 17 of the Act to prefer an appeal to the Appellate Tribunal. However, the right conferred under Section 18(1) is subject to the condition laid down in the second proviso thereto. The second proviso postulates that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty percent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less. However, under the third proviso to the sub-section, the Appellate Tribunal has the power to reduce the amount, for the reasons to be recorded in writing, to not less than twenty-five percent of the debt, referred to in the second proviso. Thus, there is an absolute*

bar to entertainment of an appeal under Section 18 of the Act unless the condition precedent, as stipulated, is fulfilled. Unless the borrower makes, with the Appellate Tribunal, a pre-deposit of fifty percent of the debt due from him or determined, an appeal under the said provision cannot be entertained by the Appellate Tribunal. The language of the said proviso is clear and admits of no ambiguity. It is well-settled that when a statute confers a right of appeal, while granting the right, the Legislature can impose conditions for the exercise of such right, so long as the conditions are not so onerous as to amount to unreasonable restrictions, rendering the right almost illusory. Bearing in mind the object of the Act, the conditions hedged in the said proviso cannot be said to be onerous. Thus, we hold that the requirement of pre-deposit under sub-section (1) of Section 18 of the Act is mandatory and there is no reason whatsoever for not giving full effect to the provisions contained in Section 18 of the Act. In that view of the matter, no court, much less the Appellate Tribunal, a creature of the Act itself, can refuse to give full effect to the provisions of the Statute. We have no hesitation in holding that deposit under the second proviso to Section 18(1) of the Act being a condition precedent for preferring an appeal under the said Section, the Appellate Tribunal had erred in law in entertaining the appeal without directing the appellant to comply with the said mandatory requirement."

6. As per Section 21 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and in the light of the decision of the Hon'ble Supreme Court in **Narayan Chandra Ghosh vs. Uco Bank & Ors.,** reported in **AIR**

2011 SC 1913, pre deposit is mandatory, for entertaining an appeal. Hardship faced by the petitioner, cannot be countenanced. Writ Petition is dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

(S.M.K., J.) (V.B.S., J.)
06.04.2018

Index: Yes/No.
Internet: Yes.
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To

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Debts Recovery Appellate Tribunal, Chennai,
4th Floor, Indian Bank Circle Office,
No.55, Ethiraj Salai,
Chennai - 600 008.

2. The Senior Manager,
M/s.HDFC Bank Ltd.,
3rd Floor, Mariam, Centre,
751-B, Anna Salai,
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