IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09.07.2018

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.5121 of 2017
and
WMP.Nos.5417 and 8850 of 2017

Asset Reconstruction Company India Ltd., (Arcil)
represented by its Authorized Officer
The Ruby, 10th Floor
29, Senapati Bapat Marg
Dadar (West), Mumbai - 400 028.

.. Petitioner

Versus

1. Debts Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office
55, Ethiraj Salai
Chennai 600 008.

2. Debts Recovery Tribunal - I
6th Floor, Spenser's Tower, 770 A;
Anna Salai, Chennai - 600 002.

3. Dena Bank
G.T.Main Branch
340, Mint Street
Chennai - 600 079
represented by its Authorized Officer

4. UCO Bank
Chennai Main Branch
169, Thambu Chetty Street
Chennai - 600 001
represented by its Authorized Officer.

5. Union Bank of India
represented by its Authorized Officer
Asset Recovery Branch
No.139, Broadway, Chennai - 600 108.

6. M/s.Boss Profiles Limited
SDV Arcade
Ab-5, 2nd Avenue
Anna Nagar, Chennai - 600 040
represented by its Authorized Officer.

7. S.Ghosh

8. Mrs.Rujutu Ghosh

9. K.Umapathy Rao

10. Mrs.D.Sharada

11. Mr.R.K.Venkatesha

12. Shaik Akthar Ali

13. M/s.Nissan Developers & Properties P. Ltd.,
Poddar Court, IX Floor
18, Rabandra Sarani
Kolkatta - 700 001
represented by its Authorized Officer.

14. Shameem

15. Bank of India
Chennai Corporate Banking Branch
4th Floor, Tarapore Towers,
826, Anna Salai
Chennai - 600002
represented by its Authorized Officer.

16. Indian Overseas Bank
Commercial and Industrial Credit Branch
"Aarao Corporate Centre",
98-A, Dr.R.K.Salai
Mylapore, Chennai - 600 004
represented by its Authorized Officer

.. Respondents

Writ petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records in M.A.No.74 of 2013 on the file of the first respondent herein and to quash the order dated 06.01.2017 passed by the first respondent in M.A.No.74 of 2013 as illegal and unconstitutional.

For Petitioner : Mr.G.Kalyan Jhabakh
for
M/s. Surana and Surana

For Respondents 3 to 5 :Mr.R.Gowthama Narayanan

RR1 & 2 : Tribunal

ORDER

(Order of the Court was delivered by V.BHAVANI SUBBAROYAN,J.)

This Writ Petition is filed against the order of Debt Recovery Appellate Tribunal questioning the legality of the order passed on 06.10.2017 in M.A.No.74 of 2013 wherein the Debt Recovery Appellate Tribunal has dismissed the M.A filed by the petitioner company. The petitioner company had challenged the order dated 11.04.2013 passed by the Debt Recovery Tribunal in M.A.No.142 of 2012 in O.A.No.243 of 2007.

2. The case of the petitioner company is that the petitioner company is an Asset Reconstruction Company Limited (herein after referred to as ARCIL), who seems to have executed a trust deed dated 29.03.2008 for the benefit of the holders of the secured receipts issued by the trustee therein. The petitioner company further claims that it is a Securitisation Asset Reconstruction Company registered with the Reserve Bank of India as per the provisions of Section 3 of the Securitisation and Assets Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (herein after referred to as 'SARFAESI Act').

3. The petitioner states in its affidavit filed in support of the Writ Petition that it has entered into an Assignment Agreement dated 31.03.2008 document No.7399 of 2008 at Sub Registrar Office, Ambattur, with M/s. Bank of India, 15th respondent herein, who had unconditionally and irrevocably assigned, transferred and released in favour of the petitioner company in their capacity as trustee of ARCIL, all the financial assets granted to the sixth respondent i.e., M/s. Boss Profiles Limited together with all the underlying securities, interests, guarantee etc., and mortgagor's right, interest and title thereto in terms of Section 5 of the SARFAESI Act. Thus, the petitioner claims that by virtue of Section 5(4) of the SARFAESI Act, the petitioner company is entitled to continue, prosecute and enforce all the applications, appeals and legal proceedings of whatsoever nature, which are pending on the date of Deed of Assignment with regard to 6th respondent.

4. The petitioner further claims that the petitioner had executed another Assignment Agreement dated 17.03.2008 registered on 19.03.2008 with 16th respondent i.e., Indian Overseas Bank and by virtue of that Assignment Agreement, the said bank, has unconditionally and irrevocably assigned, transferred and released in favour of the petitioner company, in

their capacity as trustee of ARCIL, all the financial assets granted to the sixth respondent with all the underlying securities, interest, guarantees etc., and the mortgagor's right, interest and title thereto as per Section 5 of the SARFAESI Act. Thus, by virtue of Assignment Agreement with respondents 15 and 16, namely, Bank of India and Indian Overseas Bank, the petitioner holds 38.15% of the total outstanding debt pertaining to the sixth respondent.

5. The petitioner further claims that pursuant to the acquisition of financial assets by the petitioner company, the sixth respondent had approached the petitioner company for One Time Settlement and the petitioner company had sanctioned all settlement package to the sixth respondent and the sixth respondent did not honour the same, inspite of repeated reminders for payment.

6. It is stated by the petitioner company that on 29.07.2009, the petitioner company entered into an Arrangement with one M/s.Poddar Projects Limited (in short "M/s.PPL") for assigning the dues pertaining to the sixth respondent on certain terms and conditions, which includes that M/s.PPL shall pay a total sum of Rs.6.85 crores to the petitioner company, in which the upfront payment shall be Rs.0.60 crores to be paid by M/s.PPL on or before 15.07.2009 and the balance payment of Rs.6.25 crores will be paid in 36 monthly instalments till 01.07.2012 and the petitioner company shall enter into an agreement with M/s.PPL for assignment of debt of the sixth respondent herein, upon payment of the entire consideration for assignment of debt.

7. The further contention of the petitioner company is that as if M/s.PPL failed to pay entire purchase consideration to the petitioner company, the petitioner company shall forfeit and appropriate the money received till the date of default without any reference to M/s.PPL and M/s.PPL shall loose all its right, title, interest including right to acquire financial assets pertaining to the sixth respondent.

8. The petitioner further claims that it had communicated the above said agreement with M/s.PPL during the meeting of consortium banks held on 27.07.2009 and the petitioner claimed that it had entered into an Agreement to Assign with M/s.PPL, only after duly intimating all the consortium members against which nobody raised their objection during such meeting. However, the petitioner claims that it had not assigned its dues pertaining to the sixth respondent to M/s.PPL as M/s.PPL had not kept its promise and failed to pay the entire purchase consideration, as agreed, in the terms of agreement to assign and consequently, the petitioner company by letter dated 13.03.2013 had terminated and revoked the Agreement to Assign

entered with M/s.PPL and hence, claimed that the petitioner continues to be a secured creditor of the debts of the sixth respondent with all rights and interest in the underlying securities as a member of consortium banks.

9. The petitioner further submits that the petitioner (ARCIL) can step into the shoes of the 15th and 16th respondents and the Agreement with M/s.PPL was acted upon only as per Section 62 of The Contract Act. The petitioner further claims that since there was failure on the part of M/s.PPL, the earlier contract of assignment has been discharged and once the said contract is over, they are entitled to claim and can be substituted in the place of 15th and 16th respondents.

10. Section 62 of the Indian Contract Act, 1872 reads as follows:-

> 62. Effect of novation, rescission, and alteration of contract.—
> If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed. —If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed."
> Illustrations:
> (a) A owes money to B under a contract. It is agreed between A, B and C, that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted. (a) A owes money to B under a contract. It is agreed between A, B and C, that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted."
>
> (b) A owes B 10,000 rupees. A enters into an agreement with B, and gives B a mortgage of his (A’s), estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old. (b) A owes B 10,000 rupees. A enters into an agreement with B, and gives B a mortgage of his (A’s), estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old."
>
> (c) A owes B 1,000 rupees under a contract, B owes C 1,000 rupees, B orders A to credit C with 1,000 rupees in his books, but C does not

assent to the agreement. B still owes C 1,000 rupees, and no new contract has been entered into. (c) A owes B 1,000 rupees under a contract, B owes C 1,000 rupees, B orders A to credit C with 1,000 rupees in his books, but C does not assent to the agreement. B still owes C 1,000 rupees, and no new contract has been entered into."

11. While that being the scenario, since the sixth respondent has committed default in repayment of the outstanding dues, the respondent banks 3, 4, 5, 15 and 16 together filed O.A.No.243 of 2007 before the Debt Recovery Tribunal-I, Chennai for recovery of Rs.87,72,82,921/- (Rupees eighty seven crores seventy two lakhs eighty two thousand nine hundred and twenty one only) in the year 2007 and further interest thereon. During the pendency of the above O.A, the 15^{th} and 16^{th} respondent banks had assigned their share of debt to the petitioner company in the year 2008. When that being so, the petitioner company has taken over the Agreement of Assignment of debts of the sixth respondent towards 15^{th} and 16^{th} respondent bank, whereas the petitioner company had filed a Substitution Application in M.A.No.142 of 2012 in O.A.No.243 of 2007, in order to substitute itself in the place of the 15^{th} and 16^{th} respondent banks in the O.A.

12. The petitioner company further claims that the counter filed by the respondents 3,4 and 5 to the Substitution Application contains only false representations stating that the petitioner company has lost its right, title and interest as a secured creditor, as the petitioner company had further entered into an Assignment Agreement with M/s.PPL and the petitioner company had lost its right to recover the dues of the sixth respondent.

13. It is also further claimed that the petitioner company is aware that the 5^{th} respondent, on behalf of itself and on behalf of the respondents 3 and 4, had issued a demand notice under Section 13(2) of SARFAESI Act to the sixth respondent, as the same copy was marked to the petitioner company, which action, the petitioner company states that the respondents 3, 4 and 5 without taking permission from the petitioner company, which holds 38.15% of total debts of the sixth respondent, had proceeded to issue possession notice also and later, issued a sale notice dated 14.01.2012 fixing the auction sale of the properties on 22.02.2012.

14. Mean while, challenging the sale notice, one R.K.Venkatesh, in his capacity, as a guarantor for repayment of credit facilities availed by the sixth respondent, filed Securitisation Appeal bearing S.A.No.73 of 2010 before the Debt

Recovery Tribunal - I and the Debt Recovery Tribunal - I dismissed the same and aggrieved by the order of the Debt Recovery Tribunal - I, an Appeal was preferred by the said third party. The mortgagor has also challenged the sale notice under a separate S.A.No.26 of 2012. Further, the Debt Recovery Tribunal - I has permitted the respondents 3, 4 and 5 to proceed with the sale of assets of the sixth respondent in S.A.No.26 of 2012.

15. When that being so, the petitioner company also filed Substitution Application in M.A.No.142 of 2012 in O.A.No.243 of 2007 and the same was dismissed by order dated 11.04.2013 by the Debt Recovery Tribunal. The petitioner, aggrieved by the said order passed by Debt Recovery Tribunal, preferred an Appeal before the Debt Recovery Appellate Tribunal in M.A.No.74 of 2013. However, the Debt Recovery Appellate Tribunal, while upholding the order of the Debt Recovery Tribunal, dismissed the Appeal vide its order dated 06.01.2017.

16. Correctness of the said order passed by the Debt Recovery Appellate Tribunal has been challenged in this Writ Petition, mainly on the ground that both the Debt Recovery Appellate Tribunal and Debt Recovery Tribunal have failed to appreciate that the petitioner company, being an assignment holder of the debts due by the sixth respondent towards 15th and 16th respondent banks, had every right to be substituted by virtue of the Assignment Agreement entered into between the petitioner company and the 15th and 16th respondent banks.

17. The fifth respondent has also filed a counter affidavit, on behalf of the respondents 3, 4 and 5, in which it is submitted that the sixth respondent company had availed credit facilities from the consortium of banks, consisting of respondents 3, 4, 5, 15 and 16. In view of the default committed by the borrower company in repaying the loan, the consortium of banks initiated legal proceedings in O.A.No.243 of 2007 on the file of Debt Recovery Tribunal, at Chennai, for recovery of the above dues.

18. The fifth respondent further claimed that during the year 2008, both the 15th and 16th respondent banks had assigned their debts in favour of the petitioner company and in view of the said assignment, 15th and 16th respondent banks went out of the consortium of banks. Though the petitioner being the assignee could have continued to be a member of consortium, however, the petitioner company without the consent of other banks, namely respondents 3, 4, and 5 and contrary to their interest, entered into an arrangement with the totally different entity, namely, M/s.PPL, wherein they agreed to assign the debts to the said company. In addition to that, the petitioner company also withdrew the consent already given to take action

under SARFAESI Act, by the consortium of banks and it could be seen from the Minutes of the meeting of the secured lenders of Boss Profiles Limited (Boss Profiles), which is enclosed at page 27 of the typed set of papers filed by the respondents 3, 4 and 5 and the relevant portion at page 28 of the typed set of papers reads as follows:-

> "ARCIL had further informed that the consent given to the Union Bank of India for taking action under Securitisation Act automatically stands withdrawn pursuant to the provisions of Securitisation Act upon entering into any settlement scheme with promoters of the borrower company. "

By the said act of the petitioner, who had opted out of the consortium, the petitioner company has no right to be substituted in the O.A filed by the respondents 3, 4 and 5. As such, the consortium of banks was reconstituted with only three banks as its members and the Union Bank of India as its lead bank.

19. The fifth respondent also submitted that the claim of the petitioner company that the Agreement of Assignment does not in any way preclude the rights of the petitioner as secured creditor cannot be accepted. The petitioner cannot have two simultaneous recoveries, one from M/s.PPL and another, as the secured creditor. The fifth respondent further submitted that the petitioner company has to work out the remedy only in terms of the agreement with M/s.PPL and they cannot claim any right under the earlier agreement by revoking the subsequent agreement.

20. The respondents also brought to the notice of this Court the Agreement to Assign dated 29.07.2009, wherein under the heading "3. Assignment" in clauses (b)III and IV, it is stated as follows:-

> "3. Assignment
>
> (a) ....
>
> (b) ...
>
> (II) In case of any delays in the payments to be made by the Intending Assignee to the Intending Assignor, the Intending Assignee would be liable to pay interest @ 20 per cent per annum for the delayed period. In any case, the Intending Assignee has to complete the entire transaction within a period of 36 months from the date of this agreement.
>
> (III) In case, the Intending Assignee fails to remit the Purchase Consideration on or before the stipulated date as mentioned in Schedule I and / or in terms of clause II

above, the Intending Assignor shall be entitled to forfeit and appropriate all the monies paid till the date of default without any reference to the Intending Assignee and the Intending Assignee shall lose all the rights, interest and title on the Financing Documents and the Financial Assets as well as the right to acquire and all whatsoever assignable rights the Intending Assignor had agreed to assign and transfer to the Intending Assignee by virtue of this agreement. Before exercising the right contained in this clause, the Intending Assignor shall give to the Intending Assignee a 30 days notice in writing for making the payment in default.

IV. The parties agree that the Intending Assignor shall also have the right to proceed legally against the Intending Assignee for specific performance of this contract including for all costs, damages and compensation and to pay all liquidated damages (not by way of penalty) incurred by the Intending Assignor.".

For the aforesaid reasons, the respondents have prayed for sustaining the order passed by the Debt Recovery Appellate Tribunal and to confirm the order passed by the Debt Recovery Tribunal.

21. Heard both sides and perused the materials available on record.

22. It could be seen from the documents, especially O.A.No.243 of 2007 filed by Bank of India, Dena Bank, Indian Overseas Bank, UCO Bank and Union Bank of India, as applicants have filed O.A.No.243 of 2007 against the sixth respondent herein, claiming to recover a huge sum of money, which was sanctioned to the sixth respondent company to an extent of Rs.3,673 lakhs, in which, Rs.3,040 lakhs constituted Term Loan and Rs.633 lakhs being the EPCG Guarantee. The above said term loan was sanctioned initially to the sixth respondent, who had agreed to repay the said loan along with interest in half yearly instalments. It could be seen that ever since 2002, when the loan was sanctioned and till today in 2018, not even a single paisa is recovered from the sixth respondent, who are the borrowers.

23. While that being so, the petitioner company seems to have filed M.A.No.142 of 2012 seeking a prayer to substitute the petitioner company as a proposed applicant in the place of

applicants 1 and 3, namely, Bank of India and Indian Overseas Bank.

24. On perusal of the affidavit filed in support of the M.A., it could be seen that the petitioner has claimed that the Deed of Assignment dated 31.03.2008 and 19.03.2008 from the Bank of India and Indian Overseas Bank respectively being assigned the debts due to the banks by the sixth respondent herein, by virtue of Section 5(4) of the SARFAEASI Act.

25. Section 5 of the SARFAEASI Act is extracted hereunder:-

> "5. Acquisition of rights or interest in financial assets:
>
> (1) Notwithstanding anything contained in any agreement or any other law for the time being in force, any securitisation company or reconstruction company may acquire financial assets of any bank or financial institution--
>
> (a) by issuing a debenture or bond or any other security in the nature of the debenture, for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them; or
>
> (b) by entering into an agreement with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them.
>
> (2) If the bank or financial institution is a lender in relation to any financial assets acquired under sub-section (1) by the securitisation company or the reconstruction company, such securitisation company or reconstruction company shall, on such acquisition, be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to such financial assets.
>
> (3) Unless otherwise expressly provided by this Act, all contracts, deeds, bonds, agreements, powers-of-attorney, grants of legal representation, permissions, approvals, consents or no-objections under any law or otherwise and other instruments of whatever nature which relate to the said financial asset and which are subsisting or having effect immediately before the acquisition of

financial asset under sub-section (1) and to which the concerned bank or financial institution is a party or which are in favour of such bank or financial institution shall, after the acquisition of the financial assets, be of as full force and effect against or in favour of the securitisation company or reconstruction company, as the case may be, and may be enforced or acted upon as fully and effectually as if, in the place of the said bank or financial institution, securitisation company or reconstruction company, as the case may be, had been a party thereto or as if they had been issued in favour of the securitisation company or reconstruction company, as the case may be.

(4) If, on the date of acquisition of financial asset under sub-section (1), any suit, appeal or other proceeding of whatever nature relating to the said financial asset is pending by or against the bank or financial institution, save as provided in the third proviso to subsection (1) of section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) the same shall not abate, or be discontinued or be, in any way, prejudicially affected by reason of the acquisition of financial asset by the securitisation company or reconstruction company, as the case may be, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the securitisation company or reconstruction company, as the case may be.”

26. On a plain reading of the said Section and the clause, it could be seen that sub clause (1) allows any securitisation company or reconstruction company to acquire the financial assets of any bank or financial institution by issue of debentures or bonds or any other security in the nature of debenture for consideration agreed upon between the said companies and the bank or financial institution incorporating therein such terms and conditions as may be agreed upon between them. This is more like delegating the power of the banks to recover from the debtors by securitisation company or acquisition company. However, there is no explicit power given to such delegated securitisation company or asset recovery company to further assign the same to another company or enter upon Assignment Agreement with another company to recover the secured debts of the bank.

27. On a plain reading of the affidavit filed in support of the application in M.A.No.142 of 2012 seeking substitution of the petitioner in the place of 15th and 16th respondents in O.A.No.243 of 2007 before the Debt Recovery Tribunal, it could be seen that the petitioner had filed the application in July 2010, but had not whispered anywhere in the affidavit about the association with M/s.PPL, to which the petitioner company had entered into an agreement on 29.07.2009 itself for assigning the dues pertaining to the 6th respondent company towards 15th and 16th respondents herein. Only it came to light from the counter filed by the banks before the Tribunal that the petitioner company had further assigned the secured debts in favour of the third party ie., M/s.PPL. The Debt Recovery Tribunal dismissed the said application on the ground that the petitioner company, which had assigned the debts to M/s.PPL, cannot maintain the application before the Tribunal as the said M/s.PPL will not come under the provision of Banking and Financial Institutions and held that the application filed by the proposed applicant in M.A.No.142 of 2012 is not maintainable in view of the further assignment made in favour of the company and the petitioner company has to pursue its remedy and rights elsewhere and accordingly, the applicants 2,4 and 5 will contest the matter.

28. The learned counsel for the petitioner urged upon this Court that only with the concurrence of the consortium of banks held on 27.07.2009, the petitioner company had entered into an Agreement to Assign and the debts due, by the sixth respondent towards 15th and 16th respondents was assigned to M/s.PPL with certain terms and conditions, which was pointed out in the "Minutes of the Meeting of the Secured Lenders of Boss Profiles Limited (Boss Profiles)" as follows:-

> "It was further informed to the participants that Arcil has now entered into an arrangement with PPL for restructuring of the dues pertaining to Boss Profiles on the following terms and conditions:-
>
> - Total dues payable by Boss Profiles to Arcil for loans availed by them from Bank of India & Indian Overseas Bank would be crystallized at 6.85 crore.
> - The total upfront payment shall be Rs.0.60 crore to be paid on or before July 15, 2009.
> - Balance payment of Rs.6.25 crore will be paid in 36 monthly instalments.
> - Arcil shall enter into an agreement with PPL for assignment of debt. The total dues of Boss Profiles shall be assigned to PPL upon payment of entire settlement amount.
>
> ARCIL further informed participants that the consent given to the Union Bank of India (UBI) for taking action under Securitisation Act automatically

stands withdrawn pursuant to the provisions of Securitisation Act upon entering into any settlement scheme with promoters of the borrower company."

The learned counsel for the petitioner would also claim that the other consortium banks raised no objections during the said meeting held between them and these banks cannot now raise any objections for substitution petition, substituting the petitioner in the place of 15^{th} and 16^{th} respondents before the Debt Recovery Tribunal.

29. The learned counsel for the petitioner would further contend that the Debt Recovery Appellate Tribunal had committed a grave error, apparent on the face of record, by not accepting the substitution petition, that too, when the Assignment Agreements executed by 15^{th} and 16^{th} respondents herein, were in force. The learned counsel would also urge upon this Court that it was a misrepresentation by respondents 3,4 and 5 before the Debt Recovery Tribunal, which was accepted erroneously and the Tribunal had come to the conclusion that the Assignment Agreement entered by the petitioner company with M/s.PPL was in force.

30. The learned counsel for the petitioner would also contend that since M/s.PPL did not fulfil the terms and conditions, the petitioner company till date, has not assigned its dues pertaining to the sixth respondent, as M/s.PPL failed to pay the entire purchase consideration, as agreed in terms of the agreement as stated supra in clause 6 (c) of Agreement to Assign and consequently, the petitioner had terminated and revoked the said Agreement to Assign dated 13.03.2013.

31. The learned counsel for the petitioner company also would contend that it is not an Assignment, but it is simply an Agreement for Assignment.

32. On the aspect as to whether the further assignment made in favour of M/s.PPL by the petitioner company, whether the same was in force or not, it is clear from the records that at the time of pendency of M.A.No.142 of 2012, the same assignment was in force. Suppressing the same, without informing the respondents 3, 4, 5, 15 and 16, petitioner company has filed the case before the Tribunal, which cannot be accepted. We do not find any infirmity to set aside the order passed by the Debt Recovery Appellate Tribunal, who had confirmed the order passed by Debt Recovery Tribunal as early as on 11.04.2013. The petitioner company cannot blow hot and cold, on the one hand, by entering into an Assignment Agreement with the third party and on the other hand, when the said agreement did not fructify, now reverting back to the original position and trying to step into the shoes of the 15^{th} and 16^{th} respondents and the same cannot be

permitted. Under these circumstances, We do not find any merit in the Writ Petition and the Writ Petition has to be dismissed.

33. It would be pertinent to make this observation that the banks which had issued the loan as early as in the year 2002 to an extent of Rs.3673 lakhs had fought among themselves with the petitioner herein and had not proceeded to recover the amount due, which is a huge amount from the sixth respondent company. The banks are run only with the public money and such amount of money has not been recovered due to the lethargic acts of the banks, which are highly condemnable. Hence, a direction is issued to the Debt Recovery Tribunal to complete all the proceedings pending before it pertaining to the recovery of dues from the sixth respondent, within a period of three months from the date of receipt of copy of this order. The petitioner company is directed to deposit a sum of Rs.10,000/- (Rupees ten thousand only) to the account of "Juvenile Justice Fund, Office of the Director of Social Defence, Government Girls Home, Purasawalkam High Road, Kellys, Chennai" for protracting the proceedings successfully for such a long period. It is made clear that the said sum to be spent for providing compensation to the POCSO victims.

34. With the above observation and direction, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

mra

To

1. The Chairperson,
Debts Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office
55, Ethiraj Salai
Chennai 600 008.

2. Debts Recovery Tribunal - I
6th Floor, Spenser's Tower, 770 A;
Anna Salai, Chennai - 600 002.

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Commercial and Industrial Credit Branch
"Aarao Corporate Centre",
98-A, Dr.R.K.Salai
Mylapore, Chennai - 600 004
represented by its Authorized Officer.

9. Juvenile Justice Fund
Office of the Director of Social defence
Government Girls Home
Purasawalkam High Road
Kellys, Chennai

+1 CC to Surana and Surana, Advocate sr 44489.
+1 cc to Mr.R. Gowthama Narayanan, Advocate sr 44669.
+1 CC to Surana and Surana, Advocate sr 44489.(05/10/2018)

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VBA(CO)
SP(20/09/2018)