IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 14.03.2018

CORAM:

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

W.P.No.5516 of 2013
and
M.P.No.1 of 2013

Sri Hemang D Jangla .. Petitioner

Vs.

1.Oriental Bank of Commerce,
27-33-40, 1st Floor,
Gudavallivari Street,
Beasant Road, Governorpet,
Vijayawada.

2.M/s ARCIL rep by its Power of
Attorney Holder
M/s BFI Factoring
No.154, Kutchery road,
Mylapore, Chennai.

3.Sibar Media & Entertainment Ltds.,
Rep. by its Managing Director,
Dr.K.Anil Kumar,
Sibar Towers,
Door No.27-16-75, III Floor,
Besant Nagar, Vijayawada.

4.Dr.K.Padma
Governorpet
Vijayawada.

5.M/s.Sibar Estates (P) Ltd.,
Rep. by its Authorised Signatory,
Dr.K.Anil Kuamr,
Sibar Towers, Besant Nagar,
Vijayawada.

6.Dr.K.Anil Kumar

7.Sri Y.S.K.Kishore

8.Sri.L.Durga Prasad

9.Sri.P.V.V.Satyanarayana

10.Sri.L.Subba Rao

11.The Presiding Officer,
The Debts Recovery Appellate Tribunal,
Chennai. .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records and quash the order dated 28.01.2013, passed by the DRAT, Chennai in I.A.No.1416/2009 in AIR No.353/2009.

For Petitioner : Mrs.Jaya Ganga
for M/s.Ananda Gomathy Sivakumar
For R1 : Mr.Mr.Murthi and Vasan
For R2 : No Appearance
For R3 to R10 : Given up
R11 : Tribunal

ORDER

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

Proceedings of the DRAT, Chennai, dated 28.01.2013, impugned in the writ petition, is as follows:-

"PROCEEDINGS DATED 28.01.2013

IA 1416/2009(Waiver):

Ld. Counsel Ms.Ananda Gomathi appearing on behalf of the petitioner drew the attention of this tribunal to the order of the Hon'ble High Court of Madras and stated that the Hon'ble High Court of Madras was pleased to remit the matter back to this tribunal for a fresh consideration. Ld. Counsel further stated that an amount of Rs.2.15 crores has already been realized by ARCIL and that the other directions have paid certain sums of money to the bank and that therefore the petitioner is entitled for a complete waiver in this case and prayed that orders may be passed.

Ld. Counsel Shri A. Ramaswamy appearing on behalf of ARCIL to whom the debt has been assigned by the bank stated that the amount realized through the sale of "A" Schedule property being Rs.56.10 lakhs and the payment made by other Directors towards settlement of their dues being Rs.1.61 crores have been duly taken into consideration and that the total amounting to Rs.2,17,10,000/- has been deducted from the amount due in this case and that the amount due as on the date of filing of this appeal after the deduction of the aforesaid sums comes to Rs.3,55,93,147/- and that this tribunal being bound by Sec.21 of the RDDBFI Act should proceed to impose a condition of 75% of the aforesaid amount and pass orders for the pre-deposit.

At this juncture Ld. Counsel Ms.Ananda Gomathi appearing on behalf of the petitioner stated that the statement made by Ld. Counsel Shri A. Ramaswamy for ARCIL is not correct and that the payment made by the order directors should be deemed to be the pre-deposit in this case and that this petitioner should be given a complete waiver of the pre-deposit and prayed and orders may be passed.

Heard both sides.

It is seen that the sum of Rs.3,55,93,147/- which is the amount due in this case has been arrived at after giving due credit to the sums received by the sale of 'A' Schedule property and the payments made by the other Directions of the company and therefore the submissions made on behalf of the petitioner that the payments made by the other directors of the company have not been taken into account cannot be accepted. It is seen that the amount in this case is Rs.3,55,93,147/- and this tribunal is required to pass an order for the pre-deposit under Sec.21 of the RDDBFI Act. Therefore in view of the fact that no financial hardship has been pleaded by the petitioner, from the fact that no money has been pad by the petitioner after the OA was filed, from the fact that the petitioner cannot be permitted to enjoy public money in its hands without repaying the same to the bank which is the custodian of public money, from the fact that this Tribunal cannot give a complete waiver of the pre-deposit solely on the ground that certain amount has been realized through the sale of the 'A' Schedule property and that the other directors of the company have made certain payments, from the fact that the interest of the bank outweighs the interest of the petitioner, from the fact that the petitioner is duty bound to return public money and which money is meant for other citizens of the country, from the fact that NPAs limit recycling of funds, from the fact that the capital adequacy ratio is disturbed as NPAs enter into the calculation, from the fact that the asset and liability mismatch will widen, from the fact that the economic well being of the country depends on the prompt repayment of loans availed by its citizens, from the fact that the increase in the number of NPAs of public sector banks would adversely affect the economy of the nation, from the fact that the NPA affects the profit of the bank and recovery of debt is essential to ensure that the bank functions smoothly, from the fact that when money is trapped through a NPA the bank faces difficulty in funding projects which it could earlier do and in view of the fact as NPAs erode current profits through provisioning requirements this Tribunal is of the opinion that the petitioner is not entitled to a reduction in the pre-deposit in this case and driven to pass the following order:

"The petitioner is directed to deposit a sum of Rs.1,77,96,574/- as the pre-deposit into this tribunal on or before 28.02.2013. In the event the said deposit is not made into this tribunal or or before 28.02.2013 this IA shall stand automatically dismissed."

2. Record of proceedings shows that the matter is pending, under the caption "Notice Regarding Admission" since 2013. There is no interim order in W.P.No.5516 of 2013. In the order impugned before us, the Tribunal has directed the petitioner to deposit a sum of Rs.1,77,96,574/- as pre-deposit with the Registrar of the Tribunal, on or before 28.02.2013, and it further directed the petitioner, that in the event of failure to deposit the said amount before the due date as stated supra, I.A. No.1416/2016, would automatically stand dismissed.

3. Such being the case, the Appellate Tribunal would have called the application on 28.02.2013, and dismissed the same for non-compliance of the order directing the petitioner to make pre-deposit and subsequently, A.I.R.No.353 of 2009 would have been rejected, order in I.A.No.1416 of 2009 dated 28.01.2013, would have reached finality, depending upon compliance, when there was no stay. No purpose would be served, in adjudication of the correctness of the order, at this length of time.

4. In view of the above, the Writ Petition is dismissed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

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

True Copy

Sub-Assistant Registrar

dm

To

The Presiding Officer,
The Debts Recovery Appellate Tribunal,
Chennai.

+1 CC to MR. Ananda Gomathy, Advocate sr 19593.

W.P.No.5516 of 2013
and
M.P.No.1 of 2013

BR(CO)
SP(05/04/2018)