

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

WRIT PETITION No. 7577 of 2018

ORDER: *(per Hon'ble Sri Justice Sanjay Kumar)*

The petitioner company assails the conditional stay order dated 15.12.2017 passed by the Debts Recovery Appellate Tribunal, Kolkata, in Appeal No.165/2017/272, to the extent it imposed the condition that the petitioner company should deposit Rs.50,00,000/-, and the subsequent order dated 07.02.2018 passed by the said Appellate Tribunal vacating the stay granted on 15.12.2017 for non-compliance with the said condition.

The petitioner company admittedly suffered an adverse order in O.A.No.2557 of 2017 (old O.A.No.971 of 1999 before the Debts Recovery Tribunal-I, Hyderabad, and old O.A.No.813 of 1997 before the Debts Recovery Tribunal, Bangalore). This O.A. was filed by the Andhra Bank, the respondent herein, for recovery of Rs.49,28,916/- along with future interest @ 20.75% per annum. The petitioner company was shown as the first respondent therein. By order dated 18.02.2017, the Debts Recovery Tribunal-II, Hyderabad, allowed the said O.A. holding the petitioner company and others jointly liable to pay to the respondent Bank a sum of Rs.49,28,916/- with simple interest @ 20.75% per annum from the date of filing of the O.A. till the date of realisation. Aggrieved by this order, the petitioner company approached the Debts Recovery Appellate Tribunal at Kolkata under Section 20 of the Recovery of Debts and Bankruptcy Act, 1993 (hitherto, known as the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for brevity, 'the RDDB Act')).

Section 21 of the RDDB Act mandates to the effect that where an appeal is preferred by any person from whom the amount of debt is due

to a bank, such appeal shall not be entertained by the Appellate Tribunal unless such person deposits with it 50% of the amount of debt determined as due from him by the Tribunal under Section 19 of the RDDB Act.

However, it appears that the petitioner company brought to the notice of the Appellate Tribunal that it had already deposited a sum of Rs.25,00,000/- in a No Lien Account at the time it sought setting aside of an order setting it *ex parte* in the O.A. Accepting the same, the Appellate Tribunal passed order dated 29.08.2017 in Application No.115 of 2017 in Tender No.29/2017/272, the appeal filed by the petitioner company, waiving the requirement of further deposit by it, holding that the requirement of pre-deposit stood satisfied. However, while considering the stay application filed by the petitioner company in the said appeal, the Appellate Tribunal passed order dated 15.12.2017, taking note of the submission made on behalf of the Bank that the total outstanding dues as on date stood at more than Rs.2.00 Crores, and accordingly directed the petitioner company to deposit a further sum of Rs.50,00,000/- within a time frame. Aggrieved by this order, the petitioner company filed W.P.No.45166 of 2017 before this Court. However, as the petitioner company failed to abide by the aforestated order dated 15.12.2017, the Appellate Tribunal passed order dated 07.02.2018 vacating the interim order granted on 15.12.2017. Thereupon, the petitioner company filed this case.

By a separate order passed today, W.P.No.45166 of 2017 was dismissed as infructuous. Therefore, all issues arise for consideration in the present writ petition.

Heard Sri Chetluru Sreenivas, learned counsel for the petitioner company, and Smt. V. Dyumani, learned counsel for the Andhra Bank.

Perusal of the order passed by the Debts Recovery Tribunal – II, Hyderabad, in O.A.No.2557 of 2017, demonstrates that the petitioner company along with others was held jointly liable to pay the principal amount of Rs.49,28,916/- with simple interest thereon @ 20.75% per annum from the date of filing of the O.A. till the date of realisation. Therefore, the interest component would be substantial given the fact that the same would have to be computed from 1997 onwards.

Smt. V. Dyumani, learned counsel, would submit that, as pointed out before the Tribunal, the total outstanding dues would be in excess of Rs.2.00 Crores.

If that be so, the Appellate Tribunal erred in exercise of its jurisdiction under Section 21 of the RDDB Act. The said provision mandates in no uncertain terms that 50% of the amount determined as due should be paid by the appellant who comes before the Appellate Tribunal. Therefore, mere deposit of Rs.25,00,000/-, and that too in a No Lien Account, would not be sufficient to meet the requirement of Section 21 of the RDDB Act. However, as the bank did not choose to assail the validity of the said order, we need say no more about it. But that does not deviate from the fact that the petitioner company has not complied with the statutory mandate. Even if it does comply with the impugned condition imposed by the Appellate Tribunal while granting the interim order that it should deposit Rs.50,00,000/-, it would still not amount to 50% of the total outstanding dues as determined by the Debts Recovery Tribunal-II, Hyderabad, in O.A.No.2557 of 2017. The petitioner company

can therefore have no legally redressable grievance in the totality of the circumstances.

Sri Chetluru Srinivas, learned counsel, would submit that the petitioner company may be allowed to make the deposit atleast at this stage so as to continue to avail the benefit of the stay granted by the Appellate Tribunal. As the petitioner company failed to make the said deposit owing to the fact that it had already challenged the validity of the order dated 15.12.2017 in W.P.No.45166 of 2017, we find this request to be just and acceptable. The petitioner company shall deposit Rs.50,00,000/- with the Debts Recovery Appellate Tribunal, Kolkata, within two weeks from today. If it does so, the interim order dated 15.12.2017 shall revive and continue to operate pending further orders by the Appellate Tribunal.

The writ petition is disposed of accordingly. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE SANJAY KUMAR

Date: 12.03.2018

JUSTICE D.V.S.S.SOMAYAJULU

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