

HON'BLE SRI JUSTICE SANJAY KUMAR
AND
HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION Nos.18185 & 20588 of 2017

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

Challenge in these two Writ Petitions is to the order dated 08.5.2017 passed by the Debts Recovery Appellate Tribunal at Kolkata in Tender No.167/2015 arising out of S.A.No.119 of 2015 on the file of the Debts Recovery Tribunal at Visakhapatnam. By the said order, the Appellate Tribunal exercised its discretion under the second and third provisos to Section 18(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the SARFAESI Act') and reduced the pre-deposit amount to 25% with a further direction to the appellant before it, the petitioner in Writ Petition No.18185 of 2017, to deposit a further sum of Rs.50 lakhs within a time frame. M/s Arya Sea Food Private Limited, the auction purchaser, filed Writ Petition No.20588 of 2017, aggrieved by the reduction of the statutory pre-deposit.

Perusal of the impugned order reflects that the Appellate Tribunal did not record any reasons whatsoever as to why it exercised discretion in favour of the appellant before it and reduced the pre-deposit amount from 50% to 25%.

As rightly pointed out by Sri G.Vasanth Rayudu, learned counsel appearing for the auction purchaser, the second proviso to Section 18(1) of the SARFAESI Act mandates that no appeal shall be entertained unless the borrower deposits with the appellate Tribunal 50% of the amount of the debt due from him as claimed by the secured creditor or determined by the Debts Recovery Tribunal whichever is less. The third proviso however vests the Appellate Tribunal with discretion to reduce the amount

to not less than 25% of the debt referred to in the second proviso, subject to the condition that it records the reasons therefor in writing.

Sri Arvind Kumar Agarwal, learned counsel appearing for the borrower, the appellant before the Appellate Tribunal, would inform this Court that in terms of the demand notice dated 18.12.2014 issued by the Industrial Development Bank of India, the secured creditor, the dues of his client stood quantified at Rs.62,13,94,066/- as on 31.8.2013. 50% of the said amount would be Rs.31,06,97,033/- and 25% of the said amount would be Rs.15,53,48,516/-. Learned counsel would state that the bank already recovered Rs.15,61,65,000/- by virtue of the sales effected and the Export Credit Guarantee Corporation of India Limited also paid a sum of Rs.20,52,34,555/- to the said bank. He would therefore submit that requiring his client to pay a further sum of Rs.50 lakhs was unjustified.

Sri Nisaruddin Ahmed Jeddy, learned counsel for the Export Credit Guarantee Corporation of India Limited, would inform this Court that the amount paid by his client to the bank is refundable and therefore the Appellate Tribunal was correct in its finding that the said amount could not be adjusted towards the pre-deposit. We find merit in this submission.

In any event, as the Appellate Tribunal failed to record reasons for reducing the statutory pre-deposit from 50% to 25%, the order dated 08.5.2017 passed by it cannot be sustained. Further, it may be noted that the Appellate Tribunal wrongly recorded the amount already recovered by the bank as Rs.15,32,85,755/- as the total recovery effected aggregates to Rs.15,61,65,000/-. Further, as pointed out by Sri G.Vasantha Rayudu, learned counsel, the said amount was recovered by virtue of sales which were the subject matter of the appeal, and as to whether such amount could be adjusted towards the pre-deposit would require consideration.

On the above analysis, we set aside the order dated 08.5.2017 passed by the Debts Recovery Appellate Tribunal at Kolkata in Tender

No.167/2015 and remit the matter for consideration afresh to the Appellate Tribunal. The finding of the Appellate Tribunal to the extent that no benefit could be given to the amount of Rs.20,52,34,555/- paid by the Export Credit Guarantee Corporation of India Limited is however confirmed but all other aspects are left open to be considered afresh.

Writ Petition No.20588 of 2017 is accordingly allowed and Writ Petition No.18185 of 2017 shall stand disposed of in terms of the aforestated order.

Pending Miscellaneous Petitions, if any, shall stand closed in the light of this final order. No order as to costs.

24th July, 2018
DR



JUSTICE SANJAY KUMAR

JUSTICE T. AMARNATH GOUD