

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

WRIT PETITION No.12639 of 2017

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

Challenge in this writ petition is to the order dated 07.03.2017 passed by the Debts Recovery Tribunal, Visakhapatnam, in M.A.No.08 of 2017 in SA (UN).

The said Securitisation Application was preferred by the petitioner herein aggrieved by the measures initiated by the Indian Overseas Bank, Guduru Branch, Gudur, under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for brevity, 'the SARFAESI Act'). However, as the said Securitisation Application was filed with delay, the petitioner filed M.A.No.08 of 2017 therein seeking condonation of such delay. By the order under challenge, the Tribunal opined that Section 5 of the Limitation Act, 1963 (for brevity, 'the Act of 1963'), would have no application to a Securitisation Application filed under Section 17 of the SARFAESI Act. Reliance in this regard was placed by the Tribunal upon the recent judgment of the Supreme Court in *BALESHWAR DAYAL JAISWAL V/ s. BANK OF INDIA*¹. M.A.No.08 of 2017 was accordingly dismissed. In consequence, the Tribunal refused to entertain the Securitisation Application.

A Division Bench of this Court comprising one of us, SK,J, and another learned Judge had occasion to consider this issue in *PORUS LABORATORY PRIVATE LIMITED V/ s. INDIAN BANK, ASSET RECOVERY*

¹ (2016) 1 SCC 444

MANAGEMENT BRANCH, HYDERABAD². Having considered the judgments of the Supreme Court in *BALESHWAR DAYAL JAISWAL*¹ and *INTERNATIONAL ASSET RECONSTRUCTION COMPANY OF INDIA LTD. V/s. THE OFFICIAL LIQUIDATOR OF ALDRICH PHARMACEUTICALS LTD*³, this Court opined that a Debts Recovery Tribunal is empowered and entitled to entertain a condone delay application under Section 5 of the Act of 1963 in relation to a Securitisation Application filed under Section 17 of the SARFAESI Act. The Bench pointed out that the observations in both the judgments of the Supreme Court support this conclusion and the non-applicability of Section 5 of the Act of 1963 to an appeal under Section 30 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, presently renamed as the Recovery of Debts and Bankruptcy Act, 1993, as pointed out in *INTERNATIONAL ASSET RECONSTRUCTION COMPANY OF INDIA LTD*¹, could not be the basis for drawing an adverse inference as to the applicability of Section 5 of the Act of 1963 to an application filed under Section 17 of the SARFAESI Act.

In the light of the aforestated judgments, it is clear that the opinion of the Tribunal that it has no power to entertain an application under Section 5 of the Act of 1963 and condone the delay in the presentation of the Securitisation Application under Section 17 of the SARFAESI Act if sufficient cause is shown therefor, is incorrect and cannot be sustained. The order under challenge is accordingly set aside. M.A.No.08 of 2017 in SA (UN) is accordingly restored to the file of the Debts Recovery Tribunal, Visakhapatnam, for consideration afresh on its own merits and in accordance with law. In the event the Tribunal finds sufficient cause for

² W.P.No.45198 of 2017, dated 15.06.2018

³ AIR 2017 SC 5013

condoning the delay, it shall entertain the Securitisation Application and deal with the same on its own merits and in accordance with law.

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

JUSTICE SANJAY KUMAR

JUSTICE T. AMARNATH GOUD

Date: 27.06.2018
GJ

