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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 16.04.2018.

Date of Decision: 04.05.2018.

+ **W.P.(C)3474/2018&C.M.Nos. 13699-13701/2018**

SPENTEX INDUSTRIES LTD Petitioner

Through Mr.SudhirK.Makkar,
Sr.Advocatewith
Ms.BhartiBadresha,Ms.TanujaKhare and
Ms.Saumya Gupta and Ms.RidhiMunjal,
Advocates

versus

STATE BANK OF INDIA & ANR. Respondents

Through Mr.S.L. Gupta, Advocate with
Mr.Sharan Kumar, Advocate

CORAM:

HON'BLE MR.JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE REKHA PALLI

JUDGEMENT

REKHA PALLI, J

1. The Petitioner/Company, who is a manufacturer of various qualities of cotton spun yarn and blended yarn, has preferred the present petition under Articles 226 and 227 of the Constitution of India *inter alia* seeking setting aside of an order dated 23.03.2018 passed by the Debt Recovery Appellate Tribunal (hereinafter referred to as the "DRAT") in Miscellaneous Appeal No. 132/2018 (hereinafter referred to as the "Impugned Order") to the extent it directs the

Petitioner to deposit 25% of the total amount of \$24,74,41,773/- claimed by the Respondent No. 1, as a pre-condition for stay of proceedings before the Debt Recovery Tribunal-I (hereinafter referred to as the 'DRT'). The Petitioner, besides seeking a waiver of the condition of pre-deposit and a consequential direction to the DRAT to entertain and adjudicate the Petitioner's Appeal without insisting on the said deposit, is also seeking a stay of the proceedings pending before the DRT in Original Application No. 823/2017 preferred by the Respondent No. 1 (hereinafter referred to as the "OA").

2. The brief facts as emerge from the record are that, upon the Petitioner's request, the Tokyo branch of Respondent No. 1 had sanctioned a term loan of \$55 Million to Respondent No. 2 (hereinafter referred to as the "Borrower"), which is a company running a Spinning Mill in Tashkent, Uzbekistan and is promoted by the Petitioner. At the Petitioner's request, another loan of \$55 Million was also sanctioned by one Lehman Brothers Commercial Corporation Asia Limited, Hong Kong (hereinafter referred to as the "Co-Lender") to the Borrower. The Borrower and Petitioner executed a Credit Facility Agreement dated 20.07.2007 (hereinafter referred to as the "Original Agreement") with the Respondent No. 1 and Co-Lender, whereby the loan amount was to be repaid in installments, with the Petitioner having specifically undertaken to pay the Respondent No. 1 all such amounts which may become due and payable by the Borrower against the loan granted by Respondent No.1. The Petitioner is referred to as the '*Original Guarantor*' in the said Original Agreement.

3. The Original Agreement was amended by an agreement dated 05.02.2008 (hereinafter referred to as the "Amended Agreement"), as per which the loan amount was reduced to \$42,500,000/-, with the Respondent No. 1's share in the reduced loan amount being \$21,250,000/-. As per the Amended Agreement, the loan was to be repaid in installments, the last installment being payable after 60 months of the last utilization date. However, after availing the loan of \$21,250,000/-, both the Borrower and the Petitioner approached the Respondent No. 1 in 2009 seeking restructuring of the repayment of the said loan, which request was accepted by Respondent No. 1 vide letter dated 16.04.2009, and the final maturity date for paying the last installment of 30% of the total loan amount was extended to June, 2017.

4. The Borrower and the Petitioner-Guarantor, however, failed to pay the due installments towards the repayment of loan amount and in these circumstances, since the Petitioner was carrying on its operations in Delhi, the Respondent No. 1 on 30.08.2017 preferred OA 823/17 before the DRT under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the 'RDB Act'), seeking recovery of the loan amount totaling to \$24,74,41,773/-. Upon notice in the OA, the Petitioner filed an Interim Application under Section 22 of the RDB Act read with Order VII Rule 11 of CPC, challenging the maintainability of the OA before the DRT, contending therein that the OA was barred by law and that the DRT did not have the jurisdiction to entertain the same. The Petitioner's basic plea before the DRT was that, as per the

agreements governing the transactions (the Original Agreement and the Amended Agreement), the parties had agreed to be governed by English Law and to submit to the jurisdiction of the Courts of England, as a consequence of which the Respondent No. 1 could not take recourse to Section 19 of the RDB Act, since it was Indian law and could not be applied to the parties as per the said agreements.

5. The DRT, upon considering the terms of the agreements, dismissed the Petitioner's Application vide its order dated 03.03.2018, holding that the OA was maintainable since Clause 43.1 of the agreements, while prescribing that the parties would be governed by English Law and would submit to the jurisdiction of English Courts, also specifically provided that the finance parties may take proceedings in any other court and concurrent proceedings in any number of jurisdictions.

6. Thereafter, the Petitioner preferred a Miscellaneous Appeal before the DRAT impugning the aforesaid order dated 03.03.2018 of the DRT. The DRAT while issuing notice on the Petitioner's Appeal vide its order dated 23.03.2018, directed the Petitioner to deposit 25% of the total loan amount of \$24,74,41,773/- claimed by the Respondent No. 1 within two weeks, and granted a stay of the pending proceedings before the DRT subject to the Petitioner complying with the aforesaid condition.

7. The present petition impugns the aforesaid direction of the DRAT, whereby the deposit of 25% of the claimed amount has been made a pre-condition for stay of further proceedings before the DRT.

8. Before us, Mr. Sudhir Makkar, learned Senior Counsel for the Petitioner, contends that the Impugned Order, in so far as it imposes the aforementioned pre-condition for entertaining the Petitioner's Appeal, is wholly unsustainable. He contends that both the DRAT and DRT have failed to appreciate that Clause 43.1 of the Original Agreement as also the Amended Agreement, which clause forms the basis of the Respondent No. 1's claim before the DRT, clearly stipulates that the parties would be governed exclusively by English law and, therefore, the Respondent No. 1 could not take recourse to Section 19 of the RDB Act. He contends that not only are the parties governed exclusively by English Law but even the exclusive jurisdiction to deal with the dispute between the parties, vests with the English Courts.

9. Therefore, Mr. Makkar's contention is that, once the agreements governing the parties contain a specific clause which confers exclusive jurisdiction on a foreign court being a neutral court and also prescribes that the agreement and the parties thereto are governed by foreign law, the parties cannot subsequently invoke domestic law or the jurisdiction of domestic courts. In support of his aforesaid contention, Mr. Makkar relies on two decisions of Single Benches of this Court, *i.e. Piramal Healthcare Limited (formerly known as Nicholas Piramal India Ltd). v. Diasorin S.P.A* [172 (2010) DLT 131] and *Bush Foods Overseas Pvt. Ltd v. Sentinel Capital PTE Ltd. and Anr.* [IA No. 8084/2011 and CS (OS) No. 1074/2011].

10. Mr. Makkar further contends that, in view of the aforesaid decisions of this Court, the OA preferred by Respondent No. 1 is

barred by law, since resorting to the provisions of the RDB Act was wholly impermissible in light of the parties specific agreement to be governed by English Law. He submits that, in view of the contractual clause in the agreements envisaging the jurisdiction of English Courts, the DRT did not even have the territorial jurisdiction to entertain the OA.

11. Mr. Makkar further contends that the reliance of the DRT on the decision of the Hon'ble Supreme Court in the case of ***Laxman Prasad vs. Prodigy Electronics Ltd. And Another*** [(2008) 1 SCC 618], was wholly misplaced. He submits that the DRT failed to appreciate that, unlike the instant case where the parties had mutually agreed to invoke the jurisdiction of English Courts, in the case of ***Laxman Prasad (supra)*** the contract did not oust the jurisdiction of the Indian court, within whose territorial jurisdiction the cause of action had wholly or partly arisen.

12. The alternate submission raised by Mr. Makkar is that, once the DRAT issued notice in the Petitioner's Appeal, after appreciating that there was merit in the Petitioner's application under Section 22 of the RDB Act read with Order VII Rule 11 of CPC, it could not have directed the Petitioner to deposit 25% of the total amount being claimed by the Respondent No. 1 as a pre-condition for grant of stay of further proceedings before the DRT. He submits that the direction for pre-deposit was *dehors* the scheme of the RDB Act and that such a condition can be imposed only after the amount due has been determined under Section 19 of the RDB Act. In support of his

aforesaid plea, Mr. Makkar has relied on Sections 19 and 21 of the RDB Act as also the following decisions: -

- i) ***Zubaida Begaum (Dr.) & Anr. Vs. Indian Bank & Ors. [IV (2014) BC 672 (DB) (Mad.)]***
- ii) ***Fine Platinum (India) Ltd. & Anr. Vs. Indusland Bank Ltd. & Ors. [III (2017) BC 297 (DB) (Bom.)]***
- iii) ***M/s.Kavita Pigments & Chemicals (P) Ltd. vs. Allahabad Bank & Ors. [AIR 2000 Patna 43]***
- iv) ***Sutapa Chatterjee &Anr. Vs. UCO Bank & Ors. [IV (2013) BC 252 (Cal.)]***

13. On the other hand, Mr. S.L. Gupta, learned counsel for the Respondent No. 1, while referring to Clause 43.1(c) of the agreements, submits that the DRT has rightly rejected the Petitioner's application, which was wholly misconceived. He submits that both the agreements between the parties, give a specific option to the finance party, i.e. Respondent No. 1, to invoke the jurisdiction of any other court also and, therefore, the Respondent No. 1 was fully justified in invoking the jurisdiction of the DRT in view of the admitted position that the registered office of the Petitioner, which is not only the Guarantor but also the promoter company of the Borrower, was in Delhi and was carrying out its activities in Delhi.

14. Mr. Gupta submits that, in view of the admitted position that the Petitioner was carrying out its activities in Delhi and Clause 43.1(c) of both agreements gives an option to the Respondent No. 1 to invoke

the jurisdiction of any other court, the DRT had rightly placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Laxman Prasad (supra)***, which was squarely applicable to the facts of the present case.

15. It is pertinent to note that, even though the maintainability of the Petitioner's application under Order VII Rule 11 of CPC is still pending consideration before the DRAT and the Petitioner had initially approached this Court being aggrieved by the DRAT's direction to deposit 25% of the claimed amount as a pre-condition to staying the proceedings before the DRT, Mr. Makkar had not only addressed arguments at length regarding the maintainability of the Petitioner's Application under Order VII Rule 11 of CPC, but had prayed that this aspect may also be decided by this Court.

16. Having heard the learned counsels for the parties at length, we find that the first and foremost issue which arises for our consideration is whether resorting to a legal remedy under the Indian law would be barred altogether, merely because the parties were entitled to invoke remedies in English Courts in accordance with English law, even if the remedy sought to be invoked is a special remedy under a special statute?

17. Before dealing with the rival contentions of the learned counsels of the parties on the aforesaid issue, it would be appropriate to refer to the relevant clauses of the Original Agreement dated 20.07.2007 and Amended Agreement dated 05.02.2008, which read as under:-

"Clause 22.16 of Original Agreement dated 20.07.2007 and Amended Agreement dated 05.02.2008

22.16 Jurisdiction/governing law

a) Its and its subsidiaries

i) Irrevocable submission under this agreement to the jurisdiction of the courts of England;

ii) Agreement that this Agreement is governed by English law;

iii) Agreement that this Agreement is governed by English law;

iv) Agreement not to claim any immunity to which it or its assets

may be entitled,

are legal, valid and binding under the laws of its jurisdiction of incorporation or any of its subsidiaries jurisdiction of incorporation; and

b)Any judgment obtained in England will be recognized and be enforceable by the courts of its jurisdiction or incorporation or any of its Subsidiaries jurisdiction of incorporation

"Clauses 42 and 43 of Original Agreement dated 20.07.2007: -

42.GOVERNING LAW

This agreement is governed by English Law.

43. ENFORCEMENT

43.1 Jurisdiction

(a) The English courts have exclusive jurisdiction to settle any dispute in connection with any Finance Department

(b) The English courts are the most appropriate and convenient courts to settle any such dispute in connection with any Finance Document. Each Obligor agrees not to argue to the contrary and waives objections to those courts

on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with any Finance Document.

(c) This clause is for the benefit of the Finance Parties only. To the extent allowed by law, a Finance Party may take:

i) Proceedings in any other court; and

ii) Concurrent proceedings in any number of jurisdictions.

d) References in this Clause to a dispute in connection with a Finance Document includes any dispute as to the existence, validity or termination of that Finance Document

Clause 43 of Amended Agreement dated 05.02.2008: -

43. ENFORCEMENT

43.1 Jurisdiction

(a) The English courts have exclusive jurisdiction to settle any dispute in connection with any Finance Document.

(b) The English courts are the most appropriate and convenient courts to settle any such dispute in connection with any Finance Document. Each Obligor agrees not to argue to the contrary and waives objections to those courts on the grounds of inconvenient forum or otherwise in relation to proceedings in connection with any Finance Document.

(c) This clause is for the benefit of the Finance Parties only. To the extent allowed by law, a Finance Party may take:

i) Proceedings in any other court; and

ii) Concurrent proceedings in any number of jurisdictions.

d) References in this Clause to a dispute in connection with a Finance Document includes any dispute as to the existence, validity or termination of that Finance Document.”

18. At this stage, it would also be appropriate to refer to the Statement of Objects and Reasons of the RDB Act, as the remedy invoked by the Respondent No. 1 is under the provisions of this Act. The relevant provisions of the Statement of Objects and Reasons reads as under:-

STATEMENT OF OBJECTS AND REASONS

Banks and financial institutions at present experience considerable difficulties in recovering loans and enforcement of securities charged with them. The existing procedure for recovery of debts due to the banks and financial institutions has blocked a significant portion of their funds in unproductive assets, the value of which deteriorates with the passage of time. The Committee on the Financial System headed by Shri M. Narasimham has considered the setting up of the Special Tribunals with special powers for adjudication of such matters and speedy recovery as critical to the successful implementation of the financial sector reforms. An urgent need was, therefore, felt to work out a suitable mechanism through which the dues to the banks and financial institutions could be realized without delay. In 1981, a Committee under the Chairmanship of Shri T. Tiwari had examined the legal and other difficulties faced by banks and financial institutions and suggested remedial measures including changes in law. The Tiwari Committee had also suggested setting up of Special Tribunals for recovery of dues of the banks and financial institutions by following a summary procedure. The setting up of Special Tribunals will not only fulfill a long-felt need, but also will be an important step in the implementation of the Report of Narasimham Committee. Whereas on 30th September, 1990 more than fifteen lakhs of cases filed by the public sector banks and about 304 cases filed by the financial institutions were pending in various courts, recovery of debts involved more than Rs.5622 crores in dues of Public Sector Banks and about Rs.391 crores of dues of the financial institutions. The locking up of such huge amount of public money in litigation prevents proper utilisation and recycling of the funds for the development of the country.

The Bill seeks to provide for the establishment of Tribunal and Appellate Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions. Notes on clauses explain in detail the provisions of the Bill. ”

19. Having noted the relevant provisions of the two agreements entered into between the parties, we find that there can be no doubt about the fact that, while the parties had agreed to be governed by English law, the Respondent No. 1, being the Finance Party, could not only invoke the jurisdiction of other courts, but also pursue concurrent proceedings in multiple jurisdictions. Therefore, we find merit in Mr. Gupta's submission that Clause 43.1, which stipulated that the parties would be governed by English law, did not preclude the Respondent No. 1 from invoking the jurisdiction of Indian Courts. Even though it has been contended by Mr. Makkar that, since Clause 43.1(a) stipulates that the parties are bound by English law, they are precluded from invoking the jurisdiction of Indian Courts, on a combined reading of the Clauses 43.1(a) and (c) of the agreements, we are unable to find that the aforesaid contention is sustainable.

20. It is a well-settled legal principle that Courts, in constructing/interpreting contracts, should endeavour to give expression to the true intention of the parties at the time of entering into the contract. In our considered view, merely because Clause 43.1 stipulates that the parties are bound by English law and that English courts have exclusive jurisdiction to settle any dispute between the parties pertaining to finance documents, it does not preclude the invocation of the jurisdiction of Indian courts, since the said clause

also stipulates in sub-clause (c) that the finance party, i.e., Respondent No. 1, can initiate proceedings in any other jurisdiction or initiate concurrent proceedings in multiple jurisdictions. In our considered opinion, a bare perusal of Clause 43.1(c) reveals that it was included especially for the benefit of Respondent No. 1 and expresses the intention of the parties to safeguard the interests of Respondent No. 1, which is the creditor in the present case, and allow it follow the Petitioner and pursue its remedies against the Petitioner in other jurisdictions, should the need so arise. It is further pertinent to observe that the relevant clause clearly and unequivocally postulates that “This clause is for the benefit of the finance party only”.

21. In this light, when we examine the Statement of Objects and Reasons of the '*Recovery of Debts Due to Banks and Financial Institutions Act, 1993*', it becomes evident that the Act provides for the creation of specialized Tribunals to redress the difficulties of banks and financial institutions in recovering advanced loans, by resorting to ordinary civil courts. Thus, the RDB Act is a special enactment prescribing a mechanism which can only be invoked by banks and financial institutions, and it was for this purpose of ensuring an expeditious adjudication and recovery of debts due to banks and financial institutions that the DRT and the DRAT were established. It is in the light of this background that we have to consider the maintainability of the Petitioner's OA under Section 19 of the RDB Act before the DRT.

22. There is no doubt about the general legal principle that, if a contract specifically confers jurisdiction on the courts of one country

to deal with any disputes arising between the parties to the contract, then the parties are precluded from invoking the jurisdiction of other courts. However, it is an equally well settled legal position that a special law prevails over the provisions of general law. Reliance may be placed on paragraph 140 of the decision of the Hon'ble Supreme Court in the case of ***St. Stephen's College v. University of Delhi*** [(1992) 1 SCC 558], which reads as under:-

"The golden rule of interpretation is that words should be read in the ordinary, natural and grammatical meaning and the principle of harmonious construction merely applies the rule that where there is a general provision of law dealing with a subject, and a special provision dealing with the same subject, the special prevails over the general. If it is not constructed in that way the result would be that the special provision would be wholly defeated."

23. In our considered opinion, in the instant case, in view of the very object for which the RDB Act, which is special law, was enacted, and considering the settled legal position that a special law must prevail over the provisions of general law, this Court cannot at all accept the contention raised by Mr. Makkar, that the Respondent No. 1 should be precluded from invoking the jurisdiction of the DRT. There is no reason to compel the Respondent No. 1 to invoke the jurisdiction of English Courts, by giving up its right to approach the DRT under the RDB Act. Once the Petitioner is admittedly working for gain in Delhi, this Court sees no reason to hold that the Respondent No. 1 should be asked to follow the Borrower, which is only a subsidiary company of the Petitioner, by initiating proceedings in the English courts.

24. We have carefully considered the decisions relied upon by Mr. Makkar and find that the same do not further the Petitioner's case in any manner. We find that the decision of the learned Single Judge of this Court in the case of *Piramal Health Care Ltd. (supra)*, on which reliance has been placed, relates to a Suit between two private parties who had agreed to the exclusive jurisdiction of an Italian Court in Milan. Thus, it was in these circumstances, that the Court had opined that the parties must be bound to their bargain, conferring exclusive or non-exclusive jurisdiction on a foreign court. However, it is interesting to note that the learned Single Judge, while returning the plaint in the aforesaid case for want of jurisdiction, had in no uncertain terms held that the court can never be divested of its discretion to determine as to whether in a given case, it ought to hold parties to their bargain. Merely because in the aforesaid decision, the learned Single Judge upon consideration of the nature of the dispute between the private parties, had exercised his discretion to return the plaint, does not at all compel us to exercise our discretion in the same way. The facts of the present case are indeed very different, as the Respondent No. 1, being a Bank, has invoked the jurisdiction of the DRT by resorting to the provisions of a special act, i.e the RDB Act and, therefore, we see no reason to hold that the OA was not maintainable before the DRT.

25. We have also carefully considered the decision of another learned Single Judge of this Court in the case of *Bush Food Overseas (supra)* relied upon by Mr. Makkar. We find that the said decision also does not advance the Petitioner's case in any manner. In the aforesaid

case, the Court, having found that no cause of action had arisen in Delhi and the Defendants therein were not situated in Delhi within the meaning of section 20 (a) of the CPC, did not deem it appropriate to entertain the Suit in the Courts at Delhi for lack of territorial jurisdiction.

26. On the other hand, we find that the decision of the Hon'ble Supreme Court in ***Laxman Prasad (supra)*** relied upon by Mr. Gupta, is squarely applicable to the present case and has been rightly relied upon by the DRT. In ***Laxman Prasad (supra)***, even though the parties had specifically agreed that they would be governed by the law of Hong Kong Special Administrative Region, the contention that the Indian Court, where the cause of action had arisen, did not have the jurisdiction to entertain a Suit, was rejected by the Hon'ble Supreme Court. It may be useful to refer to paragraphs 28, 46 and 47 of the ***Laxman Prasad (supra)***, which read as under:

"28. Clause 18 is material for the purpose of controversy and may be reproduced:

"18. The terms and conditions as stipulated above shall be interpreted in accordance to the laws of the Hong Kong Special Administrative Region."

(emphasis supplied)

It is this clause (Clause 18), which requires interpretation.

46. Territorial jurisdiction of a court, when the plaintiff intends to invoke jurisdiction of any court in India, has to be ascertained on the basis of the principles laid down in the Code of Civil Procedure. Since a part of "cause of action" has arisen within the local limits of Delhi as averred in the plaint by the plaintiff Company, the question has to be considered on the basis of such averment. Since it is alleged that the appellant-defendant had committed breach of agreement by using trade mark/trade name in Trade Fair, 2005 in Delhi, a part of cause of action has arisen in Delhi. The

plaintiff Company, in the circumstances, could have filed a suit in Delhi. So far as applicability of law is concerned, obviously as and when the suit will come up for hearing, the Court will interpret the clause and take an appropriate decision in accordance with law. It has, however, nothing to do with the local limits of the jurisdiction of the Court

47. The High Court, in our opinion, was right in rejecting the application and in overruling preliminary objection. Since prima facie the plaint disclosed a cause of action as also territorial jurisdiction of the Court, the High Court rightly rejected both the contentions and no error was committed by it in not rejecting plaint, nor returning it for presentation to proper court. "Applicability of Hong Kong law", "entering into an agreement in Hong Kong" or "defendant residing in Ghaziabad (Uttar Pradesh)" or any of them does not take away the jurisdiction of the Delhi Court since a "cause of action" at least in part, can be said to have arisen in Delhi. We, therefore, see no substance in the contention of the appellant-defendant."

27. We cannot also lose sight of the fact that one of the most pressing problems affecting the Indian Economy these days is the poor health of its banking system. The rising percentage of non-performing assets and defaulters has reached alarming levels as a number of banks have been unable to recover huge amounts of loan only because the borrower is no longer in the country. For all the aforesaid reasons, we find absolutely no reason to hold that the Respondents instead of availing of the special mechanism provided under the RDB Act, should be compelled to invoke the jurisdiction of English courts, and that too when we find that the Petitioner is working for gain within the jurisdiction of the DRT and is thus, undoubtedly situated within its jurisdiction.

28. The second issue which arises for our consideration is whether the aforesaid pre-condition imposed by the DRAT for staying the

proceedings before the DRT was *dehors* the provisions of Section 21 of the RDB Act. At this stage, it will be useful to refer to the relevant provisions of Sections 19 and 21 of the RDB Act, which read as under:-

“19. Application to the Tribunal:-

(1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction—

(a) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides or carries on business or personally works for gain; or

(c) the cause of action, wholly or in part, arises:²⁷

[Provided that the bank or financial institution may, with the permission of the Debts Recovery Tribunal, on an application made by it, withdraw the application, whether made before or after the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 for the purpose of taking action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), if no such action had been taken earlier under that Act: Provided further that any application made under the first proviso for seeking permission from the Debts Recovery Tribunal to withdraw the application made under sub-section (1) shall be dealt with by it as expeditiously as possible and disposed of within thirty days from the date of such application: Provided also that in case the Debts Recovery Tribunal refuses to grant permission for withdrawal of the application filed under this sub-section, it shall pass such orders after recording the reasons therefor.]

.....

(20) The Tribunal may, after giving the applicant and the defendant an opportunity of being heard, pass such interim or final order, including the order for payment of interest from the date on or before which payment of the amount is found due upto the date of realisation or actual payment, on the application as it thinks fit to meet the ends of justice.

(21) The Tribunal shall send a copy of every order passed by it to the applicant and the defendant.

(22) The Presiding Officer shall issue a certificate under his signature on the basis of the order of the Tribunal to the Recovery Officer for recovery of the amount of debt specified in the certificate.

(23) Where the Tribunal, which has issued a certificate of recovery, is satisfied that the property is situated within the local limits of the jurisdiction of two or more Tribunals, it may send the copies of the certificate of recovery for execution to such other Tribunals where the property is situated: Provided that in a case where the Tribunal to which the certificate of recovery is sent for execution finds that it has no jurisdiction to comply with the certificate of recovery, it shall return the same to the Tribunal which has issued it.

(24) The application made to the Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application finally within one hundred and eighty days from the date of receipt of the application.

(25) The Tribunal may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

21. Deposit of amount of debt due, on filing appeal:-

Where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal seventy-five per cent. of the amount of debt so due from him as determined by the Tribunal under section 19.

Provided that the Appellate Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section."

29. Mr. Makkar has contended that, since the amount, if any, payable by the Petitioner was yet to be adjudicated by the Tribunal, the direction to make any pre-deposit was contrary to the very provisions of Section 21 of the RDB Act. He has vehemently contended that Section 21 of the RDB Act makes a provision for pre-deposit of 75% of the amount of the debts found to be due from the Appellant upon determination by the Tribunal under section 19 of the RDB Act. Having considered the scheme and the relevant provisions of the RDB Act, as also the impugned order, we find that the direction of DRAT requiring the Petitioner to deposit only 25% of the amount claimed by the Respondent No. 1, as against 75% of the due amount mandated in Section 21 of the RDB Act, were not with reference to its power under Section 21 of the RDB Act but was by way of a pre-condition for stay of the proceedings before the DRT. In our considered opinion, Section 21 of the RDB Act was not at all applicable to the issue at hand. The present case related to an application moved by the Petitioner at the very threshold of the proceedings and, thus there could be no question of any adjudication of the amount at this stage by the DRT. However, merely because the DRT was yet to determine the amount payable by the Petitioner to the Respondent No. 1, it could not be said that the amount claimed by the OA was wholly imaginary.

30. We have also considered the various decisions relied upon by Mr. Makkar in support of his contention, that till the amount of debt due from the Petitioner was determined by the Tribunal, there was no

question of the DRAT directing the Petitioner to make a pre-deposit under Section 21 of the RDB Act. However, in view of our conclusion hereinabove that the direction given by the DRAT to make a pre-deposit of only 25% of the amount being claimed by the Respondent No. 1 did not fall within the ambit of Section 21 of the RDB Act, which provides for the deposit of 75% of the due amount, we find that the decisions relied upon by the Mr. Makkar do not apply to the facts of the instant case.

31. In our considered opinion, the DRAT had, vide its impugned order, balanced the equities by directing the Petitioner to deposit only 25 % of the claimed amount and that too only as a condition for grant of stay of further proceedings before the DRT and thus we find absolutely no infirmity with the aforesaid direction of the DRAT.

32. For the aforesaid reasons, we find absolutely no merit in the petition and the same is dismissed with no order as to costs.

(REKHA PALLI)
JUDGE

MAY 04, 2018

(SIDDHARTH MRIDUL)
JUDGE