$~46

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

\+ W.P.(C) 9503/2018, CM Nos. 36991-36992/2018

M/S SNF ALLOYS PVT. LTD. AND ANR.

..... Petitioners

Through: Mr. Hashmat Nabi, Mr. Farah Naaz and Ms. Swathi Vajjhala, Advs.

versus

PUNJAB AND SIND BANK

..... Respondent

Through: Mr. Rajinder Wali, Adv.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

O R D E R

% **11.09.2018**

CM No. 36992/2018 (for exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 9503/2018

1. The present petition has been filed by the petitioners against the order dated April 16, 2018 passed by the Debt Recovery Appellate Tribunal (in short DRAT) in Miscellaneous Case No.137/2018 in Appel No.325/2018 arising out of T.A. No. 25/2002 passed by the DRT-III Delhi, whereby the DRAT has rejected the application being 137/2018 which was filed pursuant

to the liberty granted by this Court in W.P. (C) 11312/2017 wherein the petitioners have sought the restoration of the appeal.

2. The briefs facts are that the Original Application being OA No. 536/1999 (re-numbered as TA.25/2002) was filed by the respondent Bank which was for recovery of an amount of Rs.1,74,33,433.72 along with pendente lite and future interest from the date of the Original Application @ 18.10% per annum with quarterly rests.

3. Suffice to state, the TA was decided by the DRT-III in favour of the Bank vide order dated January 11, 2017. Being aggrieved by the order dated January 11, 2017 in TA No.25/2002, the petitioners herein preferred an appeal before the DRAT, Delhi being appeal No.325/2018 along with an application under Section 20 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 for waiver of pre-deposit.

4. It is the case of the petitioners that they were not aware of the sale consideration received as the petitioner No.2 has shifted to Mumbai. The petitioners herein filed an application under Section 21 of the Act of 1993 requesting the Appellate Tribunal that the sale proceeds received from the sale of the mortgage property of the petitioners be considered as compliance of provision of Section 21 of the Act of 1993. Later it transpired that the

appeal of the petitioners was listed before the Tribunal on September 04, 2017 which was dismissed in default. The recall application filed before the Tribunal resulted in restoration of the appeal, but the appeal was dismissed on account of non-compliance of directions contained in order dated August 03, 2017 to the extent that the Appellate Tribunal directed the petitioners to appear before the Appellate Tribunal on September 01, 2017.

5. The petitioners filed writ petition being W.P. (C) 11312/2017 against the order dated August 03, 2017 of the DRAT. The writ petition was disposed of by this Court on December 19, 2017 with the following order:

> *"Learned counsel appearing on behalf of the petitioner would urge that it had been brought to the notice of the learned DRAT that an asset mortgaged by them had been auctioned by the respondent/Punjab and Sind Bank, under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act'), but the details of the proceeds thereof were not within the petitioner's knowledge at that stage and as a consequence thereof, the learned DRAT opined that it was an attempt on their part to delay the proceedings. It is also urged that it was in this view of the matter that the learned DRAT had dismissed the said appeal.*
>
> *It is further urged that it has now come to their knowledge that the respondent/Punjab and Sind Bank, had recovered a sum of Rs.70.50 lakhs, as proceeds of the sale of the mortgaged asset, which in their view would suffice to meet the requirements of pre-deposit, in terms of the directions issued by the learned DRAT on 03.08.2018.*

Learned counsel appearing on behalf of the petitioners seeks leave to withdraw this petition with liberty to approach the learned DRAT afresh, in this behalf.

Learned counsel appearing on behalf of the respondent/Punjab National Bank, on advance notice, does not oppose this submission made on behalf of the petitioners.

In view of the foregoing, leave and liberty is granted.

The petition is disposed of whilst permitting the petitioner to approach the learned DRAT afresh in this behalf, in accordance with law."

6. Pursuant to the order of this Court, the petitioners filed a miscellaneous application No.137/2018 before the DRAT to restore the appeal to its original number being 325/2018. But later on, April 16, 2018 the application was dismissed with the following stated as under:

"As per the provisions of Section 21 of the Recovery of Debts and Bankruptcy Act, 1993, a deposit of 50% of the amount of debt adjudicated by the DRT to be recoverable from the borrower / mortgagor / guarantor is to be made with the DRAT as condition precedent for the entertainment of the appeal. The appellants are thus required to make a pre-deposit of Rs.2.5 crores approx., which the appellants have not made. Counsel for the appellants has argued that this Tribunal had directed the appellants to make pre deposit of 25% only. However, that was not the final order of this Tribunal and the appellants were yet to get waiver of pre-deposit of balance 25%. Even today, the appellants have not shown any willingness to make deposit of minimum 25%. Therefore, I find no justification for restoration of the appeal."

7. It is the submission of Mr. Hashmat Nabi, learned counsel for the petitioners that the original OA was filed by the petitioners for a claim of Rs.1,74,33,433.72 with interest @ 13% per annum from the date of filing of the O.A. till realisation. According to him, an amount of Rs.85 Lacs already stood recovered by the respondent Bank and as such the said amount would meet the requirement of at least 25% of the pre-deposit.

8. He would rely upon the order passed by this Court on 19th December, 2017 and the following judgments in support of his contention:

(i) ***Poonam Manshani vs. J & K Bank Ltd. & Another, 2009 SCC OnLine Del 3615;***

(ii) ***Hamosons Apparels Pvt. Ltd. vs. Indian Bank, 2014 SCC OnLine Mad 561.***

9. We are unable to agree with the submission made by Mr. Hashmat Nabi for the simple reason that Section 21 of the Act of 1993 stipulates as under:

> *"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 [fifty 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, [reduce the amount to be deposited*

by such amount which shall not be less than twenty-five per cent. of the amount of such debt so due] to be deposited under this section."

10. From the above, it is seen that the requirement for hearing of the appeal is the pre deposit of 50% of the amount of debt so due from the appellant as determined by the Tribunal under Section 19. The amount of 50% can be reduced for the reasons recorded in writing by the Tribunal. The word debt has been defined by the Act of 1993 vide a Section 2(g) which is reproduced as under:

> *"[(g) "debt" means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application [and includes any liability towards debt securities which remains unpaid in full or part after notice of ninety days served upon the borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of debt securities or;]"*

11. In the case in hand the appeal has been filed by the petitioners against the order of the DRT deciding O.A. whereby the DRT has determined the total amount of debt due from the petitioners which according to the

respondent Bank is an amount of Rs.5 crores approximately after giving benefit of Rs. 85 Lacs approx. So, it necessarily follows that the petitioners have to deposit an amount of Rs.2.5 crores with the Tribunal, so that the appeal can be entertained by DRAT. This is the interpretation that can be given to the provisions of Section 21 and 2(g) of the Act of 1993 read together. The reliance placed by Mr. Hashmat Nabi on the order dated 19th December, 2017 is misplaced inasmuch in the order dated 19th December, 2017, this Court had only noted the submission on behalf of the petitioners about the recovery of a sum of Rs.70.50 Lacs as proceeds of the sale of the mortgaged asset, which in their view would suffice to meet the requirement of the deposit. The order dated 19th December, 2017 nowhere states that the amount of Rs.70.50 Lacs, or for that matter Rs. 85 Lacs be treated as a pre-deposit for the purpose of hearing of the appeal. The issue of pre-deposit has to be seen from the perspective of Section 2 (g) and Section 21 of the Act of 1993 which according to us does not help the case of the petitioners. In so far as the judgments relied upon by Mr. Nabi are concerned, suffice to state that the two judgments of this Court and the Madras High Court have no connection / applicability to the facts / issue, which falls for our consideration in this case, the same are not applicable.

12. We do not see any merit in the writ petition, the same is dismissed.

CM No. 36991/2018 (for stay)

Dismissed as infructuous.

CHIEF JUSTICE

V. KAMESWAR RAO, J

SEPTEMBER 11, 2018/*aky*