$~55

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

\+ W.P.(C) 8185/2018

M/S ASSET CARE RECONSTRUCTION AND ENTERPRISE LTD.

... Petitioner

Through: Mr. Dinkar Singh, Advocate

versus

M/S KWICK TRAVELS PRIVATE LIMITED AND ANR.

..... Respondents

Through

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

<u>O R D E R</u>

% **06.08.2018**

<u>CM No.31345/2018</u>

Allowed, subject to all just exceptions.

Application is disposed of.

<u>WP(C) No.8185/2018 & CM No.31346/2018</u>

M/s Asset Care Reconstruction and Enterprise Ltd., is a company registered with the Reserve Bank of India as Securitization and Reconstruction Company under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act, for short).

2. By the present writ petition, they have impugned order dated 23.07.2018 passed by the Debts Recovery Appellate Tribunal ('DRAT') dismissing Miscellaneous Application 371/2016 in appeal no. 318/2015.

3. M/s Bank of India had filed Original Application (OA) No. 85/1999 against the respondents before the Debt Recovery Tribunal (DRT) Delhi for recovery of Rs. 1,74,86,886.90 with *pendente lite* and future interest. During

pendency of the OA, the debt was assigned by the said bank in favour of the petitioner vide documents executed on 26.06.2008. Petitioner, during pendency of the said OA, took physical possession of secured assets under the SARFAESI Act. The secured assets were sold for Rs.5,68,50,000/-, which payments were received by the petitioner between 9.5.2011 and 25.7.2011. The OA was allowed by the DRT vide judgment dated 25.03.2015 for Rs. 1,71,95,425 with simple interest at 15% per annum from 26.2.1999.

4. Respondents had challenged the judgment dated 25.03.2015 before the DRAT. The petitioner had, however, accepted the decision and did not file an appeal or cross objections challenging the rate of interest awarded. The appeal preferred by the respondents was decided by the DRAT vide order dated 02.12.2015 holding that the respondents were entitled to recover surplus amount, if any, recovered by the petitioner from sale of the secured assets, with simple interest @15% from the date of recovery till payment.

5. The petitioner, being aggrieved by the order dated 02.12.2015, had preferred ***W.P.(C) No.1190/2016, M/s Asset Care & Reconstruction Enterprise Ltd. Vs. M/s Kwick Travels Private Ltd. & Ors***., which was disposed of vide order dated 15.02.2016, which reads:

> *"1. The grievance of the appellant is capable of rectification by moving an appropriate application before the Debts Recovery Appellate Tribunal which has disposed of the appeal filed by the respondents without crystallizing the effect of the issue which has been discussed by the Debts Recovery Appellate Tribunal. The Debts Recovery Appellate Tribunal has simply noted a contention advanced by the respondents that certain amounts realized by the appellant were not given credit adjustment of by crediting the same to the account of the respondents.*
> *2. DRAT has simply held that the appellants are entitled to the surplus amounts, 'if any'.*

> *3. This 'if any' cannot be left as 'if any'. The Appellate Tribunal has to crystallize the amount if there was: 'if any'.*
> *4. Learned counsel for the writ petitioner is permitted to withdraw the writ petition with liberty to file an application before the Debts Recovery Appellate Tribunal, and if such an application is filed the Tribunal would decide the same by crystallizing the amount recoverable with reference to the statement of account and the amounts 'if any' realized by the writ petitioner.*
> *5. The Appellate Tribunal would not rest with a declaratory order in the appeal. It shall determine the exact amount payable or refundable.*
> *6. No cost."*

5. Aforesaid order refers to the limited grievance and objection raised by the petitioner that the DRAT had failed to opine and compute the surplus amount due and had simply held that the respondents would be entitled to surplus amounts, if any, without quantifying and crystallizing the amount. After recording lack of adjudication and decision on the specific aspect, the petitioner was permitted to withdraw the writ petition and approach DRAT by way of appropriate application.

6. Impugned order 23.07.2018 decides the application M.A. No. 371/2018 filed by the petitioner pursuant to the said liberty, which was limited to the question of qualification of realisation and credit of the amounts by the petitioner.

7. Calculation sheet was placed on record before the DRAT by the respondents quantifying the amount refundable. The petitioner did not file counter statement contesting the calculation sheet. Arithmetical calculation in terms of the orders of the DRT and DRAT was not disputed. A new and different challenge was raised questioning the order of the DRT awarding interest at the rate of 15% per annum from 26.2.1999. Submission was that DRT should have awarded interest at the contractual rate with compound interest. Accordingly, challenge and modification of the order of the DRT was prayed.

8. The impugned order correctly and rightly rejects the new contention and plea, as the question of rate of interest @ 15% per annum with effect from 26.2.1999 awarded by the DRT vide order dated 25.03.2015, was not an issue questioned and challenged by the petitioner before the DRAT. The petitioner had not preferred any appeal or cross objection, challenging the order dated 25.03.2015 of the DRT, Delhi, whereby *pendent lite* and future interest @ 15% annually was awarded. In fact, it was the respondents who challenged the order dated 25.3.2015 passed by the DRT-II, Delhi, before the DRAT.

9. It being an admitted position that the petitioner had not filed an appeal or cross-objections, challenging the order dated 25.03.2015 passed by the DRT, Delhi awarding 15% *pendente lite* and future interest, the issue and claim of rate of interest could not have been examined by the DRAT in an application filed pursuant to liberty granted by the High Court vide order dated 15.02.2016.

10. We have also noted the limited issue raised by the petitioner in W.P.(C) No.1190/2016 and the order passed by the High Court, permitting the petitioner to file an application. This order had not expanded scope and ambit of the appeal filed by the respondents and decided by the DRAT.

11. In view of the aforesaid position, the petitioner cannot challenge the order dated 25.03.2015 passed by the DRT granting *pendente lite* interest and future interest @ 15% in this writ petition. The said direction has attained finality. The Writ Petition claiming and praying for compound *pendente lite* and future interest at the contractual rate has no merit and is dismissed. Pending application is also disposed of.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

AUGUST 06, 2018/tp