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

% *Date of decision: 26th November, 2018*

\+ W.P.(C) 10649/2018, CM Nos. 41534/2018, 41535/2018 & 43375/2018

JAIN STUDIOS LTD.

..... Petitioner

Through: Mr. Vivek Chib, Ms. Ruchira Goel, Mr. Saurabh D. Karan Singh, Ms. Kanika Jain, Mr. Asif Ahmed, Ms. Pracheta Kar and Mr. Kaushal Sharma, Advs.

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Mr. Ateev Mathur, Mr. Sanjay Gupta, Mr. Jagriti Ahuja and Mr. Amol Sharma, Advs. For R-2

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

V. KAMESWAR RAO, J. (ORAL)

CM No. 41535/2018 (for exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 10649/2018

1. The present writ petition has been filed by the petitioner challenging the order dated August 01, 2018 passed by the learned

Debt Recovery Appellant Tribunal (in short 'DRAT') in Appeal No. 130/2018.

2. The facts as noted from the record are that the M/s Standard Chartered Bank had filed an Original Application before the DRT-II for recovery of Rs. 4,07,84,150.55/- from the petitioner and the M/s Sprit Infra Power and Multiventures Private Limited the respondent No.3, herein, along with interest. The said OA was allowed by the Debt Recovery Tribunal (in short 'DRT') vide order dated July 22, 2017.

3. The petitioner has filed an appeal being Appeal No.130/2018 before the DRAT. It appears that the said appeal had come up for hearing along with the I.A. No.229/2018 which was an application for waiver of pre-deposit. The DRAT, in I.A. No.229/2018 directed the compliance of the condition of pre-deposit as provided under Section 21 of the RDDB Act, 1993 (for short 'Act of 1993'). On August 01, 2018, on the failure of the appellant to make the pre-deposit, the appeal was dismissed as being, not maintainable.

4. The facts as averred by the petitioner are that the petitioner maintains a Current Account in the respondent No.2 Bank, with

admittedly no overdraft facility. The petitioner started providing technical services like software feeds and uplinking services to the Zee Telefilms Ltd (for short 'ZTL'). The petitioner provided a security cheque dated July 31, 2001 for an amount of Rs. 2 crores, drawn on the respondent No.3 Bank, in favour of the predecessor-in-interest of the respondent No.3 as collateral security for the future business engagements of the petitioner with the ZTL. It is the case of the petitioner, at the request of the ZTL, the aforesaid security cheque was replaced by the petitioner, with a cheque dated December 01, 2001, drawn on the respondent No.2 Bank, in favour of the respondent No.3 for an amount of Rs.2,11,94,000/- with a clear understanding that the said cheque would not be presented for encashment as it was a collateral security.

5. It is the case of the petitioner that the respondent No.3 illegally presented the said cheque for encashment to the respondent No.2 Bank, when admittedly, carry forward balance of the petitioner's bank account with the respondent No.2 was Rs.292/-. The respondent No.2 illegally cleared the cheque, despite the petitioner not having availed any overdraft facility in its Current Account with it.

6. On June 21, 2002, the petitioner received a legal notice from the respondent No.2 Bank, calling upon the petitioner to pay the amount of the aforesaid security cheque, i.e. Rs.2,11,94,000/-, which according to the Bank had been honoured by mistake, despite the petitioner's Current Account having insufficient balance.

7. On July 13, 2002, the petitioner replied to the aforesaid legal notice denying any debt or liability to pay the claimed amount to the respondent No.2 Bank, since, the petitioner had never availed any overdraft facility in its Current Account maintained with the respondent No.2. On July 27, 2002, the respondent No.2 Bank responded to the aforesaid reply of the petitioner to legal notice, stating therein that once a cheque is issued there is a mandate to honour the same. Thereafter, the respondent No.2 Bank filed an OA No.114/2004 before the learned DRT-III, which was later transferred to learned DRT-I, Delhi and re-numbered as T.A. No. 08/2005. The petitioner filed its written statement to the OA filed by the respondent No.2 Bank.

8. The petitioner filed an I.A. No.820/2005 challenging the jurisdiction of the DRT on the ground that the amount claimed by the respondent No.2 Bank does not qualify as a 'debt' under Section

2(g) of the Act of 1993. On February 22, 2006, the learned DRT stated that the I.A. No.820/2005 would only be decided after the petitioner files the written statement. The petitioner's case is that it filed its reply-cum-counterclaim to the original application filed before the learned DRT-I by the respondent No.2 Bank, wherein it again objected to the jurisdiction of the learned DRT to proceed with the matter and also brought to light the collusion between respondent No.2 Bank and respondent No.3, in illegally clearing the said cheque.

9. The learned DRT-I, vide its order dated November 01, 2009, dismissed the I.A. No.820/2005, and held that the issue relating to jurisdiction would 'automatically' be taken up through the final arguments. The learned DRT decided the T.A. No.08/2005 vide its order dated July 22, 2017, in which it held that the petitioner and the respondent No.3 are jointly and severally liable to pay to the respondent No.4 Bank a decretal amount of Rs.4,07,84,150,55/- along with pendent lite and future interest at 11% per annum.

10. In the aforesaid facts, Mr. Vivek Chib also submits that the DRT had no jurisdiction to entertain the OA as the petitioner did not owe any *'debt'* to the respondent No.2 Bank in terms of Section

2(g) of Act of 1993. Further, the Banks claim must arise from business activity. Since, this issue goes to the root as to the maintainability of the OA under the Act of 1993, the provision of appeal under the Act could not have been invoked and as such the petitioner has filed the present writ petition. He also submits Section 72 of the Indian Contract Act recognizes the principle of unjust enrichment, which principle in fact is the foundation of the law governing restitution. The retention of money or property of another is against the principles of justice, equity and good conscious and has been held to be unjust enrichment.

11. He states that it is admitted case of respondent No.2 Bank that the payment was made by mistake, further no over draft facility was taken by the petitioner herein. In other words, the petitioner could not have been held accountable for the loss suffered by the Bank because of its own mistake. According to him, the payment having made to the respondent No.3, the claim has to be against the said respondent. He submits, the obligation of the petitioner to pay to the respondent No.3, if any is an independent transaction and cannot be a subject matter before the DRT. In support of his submissions, he has relied upon the following judgments ***Krishna***

Filaments Ltd. v. Industrial Development Bank of India 2004 (2) MahLJ 823; Shiba Prasad Singh v. Maharaja Srish Chandra Nandi 1949 LR 76 IA 244; Ameen Trading Co. v. Bank of Baroda and Anr. of High Court of Kerala*; *Hyderabad State Bank v. Ranganath Rathi of the Andhra Pradesh High Court.

12. That apart, he states that even the finding of the Tribunal that the petitioner and the respondent No.3 are jointly and severally liable is also untenable.

13. We are not impressed by the submissions made by Mr. Chib firstly for the reason that the petitioner is estopped from taking the plea that the DRT did not have the jurisdiction as the petitioner did not owe any debt to the respondent no.2 Bank. This we say so firstly because against the order of the DRT, petitioner had filed an appeal before the DRAT. As the DRAT was insisting upon the pre-deposit to be made by the petitioner and the petitioner having not made the same, the appeal was dismissed. On such dismissal, the petitioner has approached this Court. So, having submitted to the jurisdiction of the DRAT, such a plea is unsustainable. Secondly, even otherwise, the plea of Mr. Chib that the petitioner does not owe a *'debt'* to the respondent no.2 Bank is also not appealing. The DRT,

had rightly relied upon the judgment of the Coordinate Bench of this Court in ***M/s Panjwani Packaging Ltd. & Ors. v. Allahabad Bank W.P.(C) No. 1803/2015 decided on February 25, 2015,*** wherein this Court in paras 8 and 9, held as under:-

> *8. The RDDBFI Act was enacted to provide for expeditious adjudication and recovery of "debts" due to the banks and financial institutions. The application by the bank for recovery of a "debt" due to it lies before DRT in terms of Sections 19. The expression "debt" for such purposes is defined in Section 2(g) which reads as under:*
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> > *"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.*

9. The word "debt" is ordinarily used to connote a loan of money advanced. But, understood in its wider sense, it means something (as money, goods or services) "owed or due" or something which one person is "under an obligation to pay or render to another" [Shorter Oxford English Dictionary]. The definition of the expression "debt", as given in RDDBFI Act also adopts the wider and more expansive connotation. It defines it to mean "any liability" which is claimed by the applicant bank (or a financial institution, as the case may be) as "due" resulting from "any business activity undertaken by the bank" and subsisting, as indeed "legally recoverable", on the date of the application."

14. So, the issue of jurisdiction of the DRT to entertain the OA, being well settled, the question whether the Tribunal was right in holding the petitioner and the respondent No.3, are jointly and severally liable or it is only the respondent No.3 as put by Mr. Chib by relying on Section 72 of the Indian Contract Act is an issue relatable to the merit of the dispute. The Tribunal has taken a view. The legality of the view can only be considered, by the DRAT in an appeal as per the provisions of the Act of 1993 which remedy as per Supreme Court is mandatory. [Ref. ***(2018) 3 SCC 85 Authorized Officer, State Bank of Travancore and Another v.***

Mathew K.C.] The petitioner having availed the remedy by filing the appeal but got the same dismissed by not making the mandatory pre-deposit cannot now agitate / challenge the findings of the Tribunal in this writ petition. [Ref. ***2011 (4) SCC 548 Narayan Chandra Ghosh v. UCO Bank].*** The DRAT had rightly dismissed the appeal. Surely, this Court cannot allow the petitioner to bypass the process of appeal and agitate the issue in these proceedings.

15. We do not see any merit in the petition. The same is dismissed.

CM Nos. 41534/2018 & 43375/2018

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

NOVEMBER 26, 2018/*aky*