

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

% Date of decision: 26th November, 2018

+ W.P.(C) 12507/2018, CM No. 48539/2018

KUMAR ALUMINIUM LIMITED AND ORS.

..... Petitioners

Through: Mr. M. Dutta, Adv. with
Mr. Arvind Sharma, Adv.

versus

ASSET RECONSTRUCTION COMPANY (INDIA) LTD.

..... Respondent

Through: Ms. Usha Singh, Adv. for Respondent.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (ORAL)

CM No. 48539/2018 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 12507/2018

1. This petition has been filed by the petitioners with the following prayers:-

“(a) Set aside the impugned judgment dated 27.09.2018 passed by Learned DRAT in Appeal No. 39 of 2013 titled as M/s Kumar Aluminium Ltd. & Ors. v. Asset Reconstruction Company (India) Ltd. & Anr. thereby directing the DRAT / Registrar DRAT to release the pre-deposit amount to the extent of 75%

with accrued interest to the respondent ARCIL and the balance 25% of the pre-deposit amount along with accrued interest to the petitioner herein in terms of the law settled by the Hon'ble Supreme Court in the case of Axis Bank v. SBS Organics.

(b) Pass such other or further orders / directions and grant such other reliefs in favour of the petitioner that this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. Vide the impugned order dated September 27, 2018, the DRAT has decided on merits two Miscellaneous Case Nos. 220/2018 and 442/2018. The case of the petitioners before the DRAT was for the release of pre-deposit amount, which the Tribunal had earlier declined. The plea of the petitioners before the DRAT was that there has been a settlement but the respondent ARC is not issuing formal sanction of settlement and will be issued by ARC only upon making some payment by petitioners as upfront amount and the petitioners will make upfront amount from the money, which is lying deposited with the DRAT. The plea made by the learned counsel for the petitioners was that the amount be released in favour of the ARC so that a formal sanction letter can be issued.

3. The learned counsel for the respondent, had before the DRAT submitted that as far as OTS is concerned, there has been a settlement but as per the settlement, the petitioners are supposed to make some upfront payment for which last date was 30th September, 2018 and till date, the payment has not been made. The DRAT was of the view that it has got nothing to do with the alleged settlement between the parties. In case any settlement has been arrived at, it is for the petitioners to comply with the terms of the settlement and to make upfront payment, if any from its own funds. The Tribunal was also of the view that vide order dated August 17, 2017, such a prayer has already been rejected by the Tribunal on the basis of the judgment of the Supreme Court in the case of *Axis Bank v. SBS Organics Private limited & Anr. Civil Appeal No. 4379/2016 decided on April 20, 2016*, which order has not been challenged.

4. We have been informed by Mr. Dutta that none of the SAs are pending consideration before the DRT/DRAT. He also submits that there is no reason for the DRAT to pass an order for release of pre-deposit, that too in favour of the respondent, who is the secured creditor and who has no objection for the same. The learned

counsel for the respondent has also joined Mr. Dutta by stating that the respondent has no objection if the amount of pre-deposit lying with the DRAT along with interest is released in favour of the respondent.

5. Noting the submissions made by the learned counsel for the parties, we direct that the amount of pre-deposit made by the petitioners, which is lying deposited with the DRAT, be released to the respondent along with accrued interest within a period of two weeks from today, on the petitioners / respondent complying with such formalities, as required by the DRAT. Writ petition is disposed of.

V. KAMESWAR RAO, J

CHIEF JUSTICE

NOVEMBER 26, 2018/ak