HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1441 of 2019

1. Shri Mohan Products Pvt. Ltd. A Company Registered Under The Provisions Of The Companies Act. 1956, Village Borjara, Urla Industrial Area, Raipur, Chhattisgarh, Through Its Director Shri Ghanshyam Agarwal
2. Ghanshyam Agrawal S/o Shri Mohanlal Agarwal, R/o Flat No. 2, Ashoka Park, Khamardih Road, Shankar Nagar, Raipur, Chhattisgarh.
3. Sajjan Agarwal S/o Shri Mohanlal Agarwal, R/o Flat No.2, Ashoka Park, Khamardih Road, Shankar Nagar, Raipur, Chhattisgarh.

---- Petitioners

Versus

1. State Bank Of India, Stressed Assets Recovery Branch, 1st Floor, Madan Complex, Shankar Nagar, Lodhipara Road, Raipur- 492007, Chhattisgarh, Through Its Authorized Officer
2. M/s Barbarik Transmission 211, Samta Shopping Arcade, Samta Colony, Raipur-492010, Chhattisgarh, Through Its Authorised Person Shri Manish Agrawal (Auction Purchaser)

---- Respondents

For Petitioners	:	Mr. Banhiman Roy & Mr. Rajeev Shrivastava, Advocates
For Respondents	:	Mr. P.R. Patankar, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

17.05.2019

Heard

1. The present petition is filed against the order dated 05.07.2018 passed by the Debts Recovery Appellate Tribunal, Allahabad (for short 'DRAT') on an appeal filed by the petitioner under Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'SARFAESI Act, 2002'). By such an order, the application for waiver has been dismissed which requires that in order to maintain the appeal, 50 percent of the decretal sum should be paid.

2. Learned counsel for the petitioner would submit that Section 18 of the SARFAESI Act, 2002 contains proviso and as per the third proviso it gives discretionary power to the Appellate Tribunal for reasons to be recorded in writing to reduce the amount not less than 25 percent of the debt referred to in the second proviso. It is further contended that the DRAT order which was of 19.05.2018 at para 11 records that there has been some contradictory direction given by the Bank which speaks of fraud. Further, it is contended that after the DRAT order, when the auction was made, an amount of Rs.2,73,98,000/- has been recovered. Under these circumstances, the Appellate Tribunal failed to apply its judicial mind and mechanically dismissed the application to waive the payment of 50 percent of the amount. He would further submit that under these circumstances, the waiver should have been allowed so as to allow the appeal to be heard, since, in absence of it, the right of the petitioner shall be defeated. He also submits that the entire facts were not considered which failed into application of judicial mind by the Appellate Tribunal.

3. Per contra, learned counsel for the Respondents oppose the same and submits that the discretionary power has been given to the Debts Recovery Appellate Tribunal and also places his reliance in ***Parsn Medicinal Plants Private Limited And Another versus Indian Bank And Others reported in (2011) 15 SCC 253.***

4. I have heard learned counsel for the parties and perused the voluminous documents filed along with the petition.

5. It is not in dispute that the petitioner suffered a decree of Debts Recovery Appellate Tribunal on 19.05.2018. Section 18 of the SARFAESI Act, 2002 provides appeal to the Appellate Tribunal. Section 18 of the Act for the sake of brevity the section is re-produced.

> **18. Appeal to Appellate Tribunal.**—(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal [under section 17, may prefer an appeal along with such fee, as may be prescribed] to an Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.
>
> [Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:]
>
> [Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty percent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:
>
> Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five percent of debt referred to in the second proviso.]
>
> (2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder.

6. The decree passed by the DRAT was of Rs. 4,65,22,303.23/- which was subject of appeal by the petitioner passed in Original Application and before that the property was auctioned whereby an amount of Rs. 2,73,98,000/- came to the account of the Bank. It is on this count the petitioner seeks that the waiver should have been given as considerable amount have already come to the Bank.

7. The Supreme Court in the case of ***Prasn Medicinal Plants Private Limited (Supra)*** has made it clear that the amount so recovered during the proceeding for intergenum period of appeal that cannot be part of consideration. The Supreme Court held that if the amount is deposited by some auction-purchaser to the guarantor, then it cannot be considered as to invoke the second proviso to Section 18 of the Act which requires the payment of 50 percent of the amount. After going through the order of the Appellate Tribunal, it appears that all the

aspects have been considered by the Appellate Tribunal at detail and the reasoned order has been passed.

8. Therefore, in the facts of this case, I do not find any reason to interfere.

9. With such observations, the petition is dismissed.

Sd/-
(Goutam Bhaduri)
Judge

Vishakha