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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2864 OF 2013

**Asset Reconstruction Company (India)
Ltd.**

Having their Office at 10th Floor, The Ruby,
29 Senapati Bapat Marg, Dadar (West),
Mumbai – 400 028.

...Petitioner

Versus

**1. M/s. Khade Bapat Kabe Sinha &
Associates & Ors.**

An Association of persons having their office
at 27-B, Bansilal Mansion, 3rd Floor, Homi
Mody Street, Opposite Kapol Co-Op Bank
Ltd., Fort, Mumbai – 400 023.

...Respondents

Mr. Rafique Dada, Senior Advocate with Rohan Cama with
Bhalchandra Palav with Shreya Jha, i/b. Cyril Amarchand
Mangaldas for Petitioner.

Mr. Prasad Dhakephalkar, Senior Advocate with Jai Chhabria with
Pooja Kothari with Kyrus Modi, i/b. Rashmikanth and
Partners for Respondent Nos. 1 to 5.

**CORAM: A.A. SAYED &
 R.I. CHAGLA, JJ.**

JUDGMENT RESERVED ON 31ST JANUARY, 2019.

JUDGMENT PRONOUNCED ON 27TH JUNE, 2019

J U D G M E N T :- (Per R.I. Chagla J.)

1. The Petitioner by this Petition impugns order dated 20th
June, 2013 passed by the Debt Recovery Appellate Tribunal (for
short “DRAT”) by which the DRAT had directed the Recovery

Officer to settle the fees / commission of the Receiver (Respondent No.1 herein) after affording the Receiver an opportunity to be heard. It was further clarified that the amount of Rs.50 lacs kept aside by the Recovery Officer vide order dated 16th October, 2007 will not be treated as "outer limit" for settling the Receiver's fees.

2. The Petitioner is a successor in interest of ICICI Bank Ltd. being the recovery certificate holder in proceedings *inter alia* against Daewoo Motors (India) Ltd. (in liquidation) (for short "Daewoo") in the Debt Recovery Tribunal (for short "DRT") for an approximate amount of Rs.511 Cr as on 31st March, 2002 along with further interest under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for short "the said Act"). The Respondent No.1 came to be appointed as private Receiver pursuant to an application for appointment of Receiver of movable and immovable properties of Daewoo. Respondent No.1 is stated to be run by a group of individuals viz. Respondent Nos.2 to 5. This application had been preferred by ICICI Bank Ltd. in its proceedings against Daewoo. The appointment of Respondent No.1 as private Receiver was by order dated 9th May, 2002 passed by the Presiding Officer of the DRT. The Presiding Officer

of DRT had in the operative part of the impugned order directed that “the fees of the Receiver will be fixed as per Rules of the Hon'ble High Court”. On 8th January, 2007, the Respondent also sought directions and orders for acceptance of an offer of Rs.765 Crores for purchase of the securities of Daewoo which was paid in a staggered manner, which included upfront payment of cash component of only 35% of the sale proceeds (Rs.267.75 Crores) while the balance (i.e. Rs.497.25 Crores) was to be paid to the Petitioner and Respondent No.7 by way of secured debentures. An application was accordingly made before the Recovery Officer. The Recovery Officer issued directions, the relevant direction being clause (h) to the effect that the Petitioner shall pay the Receiver's Commission / Fees, as per order dated 9th May, 2002 passed by the Presiding Officer of the DRT.

3. It is the Petitioner's case that the Receiver's Commission / Fees were not fixed by the order dated 9th May, 2002 as it stated that the payment would be as per the High Court Rules and that the fees were still to be determined. It is in this connection that the Petitioner has stated that an application had been made before the Recovery Officer *inter alia* seeking a direction to fix the fees of the Receiver. An order came to be passed by the Recovery Officer

on 16th October, 2007 which is stated to be in super-session of his earlier order dated 12th February, 2007 and by which the Recovery Officer is claimed to have fixed the fees of the Receiver by directing that a sum of Rs.50 lacs out of the sale proceeds be kept aside to settle the fees of the Receiver and that the sale proceeds minus Rs.50.50 Crores (Rs.50 Crores for workmen plus the said Rs.50 lakhs) would be released to the Petitioner for clearing its dues and for rateable distribution amongst secured creditors. The Petitioner has stated that the said order dated 16th October, 2007 passed by the Recovery Officer has not been challenged by the Receiver and has been acted upon. Certain correspondence had been relied upon by the Petitioner including a letter dated 25th October, 2007 addressed by the Receiver which relies upon order dated 16th October, 2007 and requests the Petitioner's Advocate to set aside the sum of Rs.50 lakhs towards the fees of the Receiver. The Petitioner has also relied upon a supplementary report of the Receiver filed on 2nd November, 2007 in which reliance is placed on order dated 16th October, 2007 claiming an amount of Rs.50 lakhs towards the Receiver's fees.

4. On 31st October, 2007, the Receiver filed a report in which it is contended that the Receiver was entitled to the fees being fixed at 1% of the sale proceeds under the High Court Rules. This report / application preferred before the Recovery Officer was opposed by the Petitioner wherein it was claimed that the fees could not exceed Rs.50 lakhs as fixed by order dated 16th October, 2007. By an order dated 1st February, 2008 passed by the Recovery Officer, it was held that in light of Notification dated 17th August, 2006 issued by the Presiding Officer, the figure of Rs.50 lakhs should be read as Rs.5 lakhs which was held to be the maximum remuneration fixed for a single assignment by the said Notification. This order was challenged by the Respondent Nos.1 to 5 by filing an Appeal to the Presiding Officer of the DRT. The Appeal has sought for quashing of the order dated 1st February, 2008 which had reduced the fees of the Receiver's to Rs.5 lakhs. During the course of the Appeal, the Receiver filed an application for amendment of the Appeal to challenge the order dated 16th October, 2007 as being illegal and bad in law. The Petitioner had contended in its reply to the amendment application that the order of the Recovery Officer dated 16th October, 2007 had attained finality and any Appeal therefrom was barred by limitation under Section 30 of the said Act. The Presiding Officer

by order dated 24th March, 2009 refused the amendment application as being barred by limitation. The Receiver filed Appeal before the DRAT against the rejection of the amendment application on 15th May, 2009 which was opposed by the Petitioner. However, the Receiver filed an undertaking to withdraw the Appeal filed against rejection of the amendment application and by order dated 11th March, 2010, the same was withdrawn unconditionally.

5. The Presiding Officer of the DRT by order dated 11th June, 2010 set aside the order of the Recovery Officer which had reduced the fees from Rs.50 lacs to Rs.5 lacs without hearing the Receiver and the matter was remanded back to the Recovery Officer to decide the issue regarding the fees of the Receiver after hearing the Receiver. The Respondent Nos.1 to 5 being aggrieved by order dated 11th June, 2010 filed an Appeal before the DRAT. By the impugned order dated 20th June, 2013, the DRAT remanded the matter back to the Recovery Officer for settling the Receiver's fees after affording the Receiver an opportunity of being heard. It was clarified by the Chairperson of the DRAT that the amount of Rs.50 lacs kept aside by the Recovery Officer vide order dated 16th October, 2007 will not be treated as 'outer limit'

for settling the Receiver's fees. The Petitioner being aggrieved by the impugned order has filed the present Writ Petition.

6. This Court by order dated 13th March, 2014, expedited the hearing of the Writ Petition and passed interim order directing the Petitioner to deposit in this Court a sum of Rs.50 lakhs by 10th April, 2014 and Respondents were entitled to withdraw the said amount subject to furnishing an unconditional guarantee of a nationalised bank to the satisfaction of the Prothonotary and Senior Master of this Court for the said amount together with interest @ 10% p.a. which shall be subject to final orders in the Writ Petition. The Petitioner was directed to either deposit the sum of Rs.7.15 crores in this Court or furnish guarantee of a nationalised bank of an amount of Rs.7.15 crores which shall provide an adhoc rate of interest of 10% p.a. subject to final orders in the Petition. Subject to the Petitioner complying with the interim order, the Recovery Officer was not to proceed with the adjudication proceedings. The Petitioner complied with the said interim order by furnishing the guarantee of a nationalised bank as directed.

7. Mr. Rafique Dada, learned Senior Counsel for the Petitioner has submitted that the Recovery Officer by order dated 16th October, 2007 had fixed the cap of Rs.50 lakhs for the fees / commission of the Receiver and that this order has attained finality upon the Petitioner giving up its challenge to this order. He has submitted that the Chairperson of the DRAT in the impugned order should not have disturbed the said order and / or clarified that the amount of Rs.50 lakhs kept aside by the Recovery Officer vide the said order was not to be treated as 'outer limit' for settling the Receiver's fees. He has submitted that the Respondent Nos. 1 to 5 belatedly had sought to challenge the order dated 16th October, 2007 by taking out amendment application in the Appeal before the DRT. This application was rejected by the DRT on the grounds that the Appeal was barred by the limitation under Section 30 of the said Act. Thereafter, the Appeal filed by the Respondent Nos.1 to 5 before the DRAT against the rejection of the amendment application was unconditionally withdrawn by these Respondents as recorded in the order dated 11th March, 2010 of the DRAT. He has submitted that the order dated 16th October, 2007 which had fixed the Receivers fees at Rs.50 lakhs merged into the DRAT order dated 11th March, 2010. He has submitted that in the light of the DRAT order, the order dated 16th

October, 2007 is deemed to have attained finality and could not have been reopened as has been done by the impugned order. He has submitted that the order dated 16th December, 2007 had been passed pursuant to an application filed by the Petitioner and the specific prayer made therein to fix the fees payable to the Receiver. He has submitted that the Receiver in its report dated 31st October, 2007 filed before the Recovery Officer had made a prayer that the fees be paid at 1% of the sale proceeds, which clearly shows that the Receiver itself had accepted that fixation of fees was to be done by the Recovery Officer. He has relied upon the judgment of the Supreme Court in ***International Asset Reconstruction Company of India Ltd. Vs. Official Liquidator of Aldrich Pharmaceuticals Ltd & Ors.***¹ in support of his submission that the Receiver having failed to challenge the order dated 16th October, 2007 passed by the Recovery Officer within the prescribed period of 30 days under Section 30 of the said Act, the prescribed period cannot be extended by applying Section 5 of the Limitation Act, 1963 and hence the challenge to the said order had been correctly rejected by the DRT as being barred by the limitation. He has relied upon certain decisions of the Supreme Court, in particular ***M. Nagabhushana Vs. State of Karnataka &***

1 (2017) 16 Supreme Court Cases 137.

Ors.² in support of his contention that the order dated 16th October, 2007 having attained finality cannot be reopened on grounds of the principles of *res judicata*. He has also relied upon the judgment of the Supreme Court in **Allahabad Bank Vs. Canara Bank and Anr.**³ in support of his submission that the Recovery Officer has a power to fix the fees of the Receiver. He has submitted that in the present case the power of the Recovery Officer to fix the fees has been accepted by the Respondent herein by not challenging the order dated 16th October, 2007, which has attained finality.

8. He submitted that on perusal of the order dated 9th May, 2002 passed by the Presiding Officer of the DRT, the Presiding Officer had not fixed the fee of the Receiver and he had left the same to be fixed by the Recovery Officer as per the High Court Rules. The fees were accordingly fixed by the Recovery Officer as Judge exercising its discretion under the High Court Rules Viz. 591 of the Bombay High Court Original Side (Rules) by deviating from the schedule under the Rules and fixing the fees at the cap of Rs.50 lakhs. He has relied upon the Regulation 46 of the Debt Recovery Tribunal, Maharashtra and Goa Regulations of Practice,

² (2011) 3 Supreme Court Cases 408.

³ (2000) 4 Supreme Court Cases 406.

2003 which governs as to how the fees are to be adjudicated and contemplates fixation of fees by the Tribunal as defined in Regulation 3 (17) as *inter alia including* the Recovery Officer. The discretion had been conferred upon the Tribunal to fix the fees as sought fit having regard to variety of factors. This exercise had been done by the Recovery Officer by the order dated 16th October, 2007. He has also relied upon Section 29, the provisions of Second and Third schedules to the Income Tax Act, 1961 and the Income Tax (Certificate Proceedings) Rules, 1962 which are made applicable to the recovery proceedings. He has relied upon Rule 9 of these Rules which expressly states that every question arising between the Recovery Officer and the defaulter or their representatives, relating to the execution, discharge or satisfaction of a certificate or relating to the confirmation or setting aside by an order under this Act of a sale held in execution of such certificate, shall be determined not by a suit, but by order of the Recovery Officer before whom such questions arise. He has submitted that there is a distinction between a Court Receiver and a Private Receiver and it is wholly untenable for a private Receiver, who has carried out activities relating to managing the property, to claim an entitlement to 1% of the sale proceeds. In this context he relied upon the judgment of this Court in ***J.K. Synthetic V. State of***

Maharashtra⁴ which was tendered by the Advocates for the Respondent. He has accordingly submitted that the impugned order of the DRAT be quashed and set aside and that the Receiver's fees which have been fixed by order dated 16th October, 2007 stood capped at Rs.50 lakhs and that the impugned order has erroneously held the amount of Rs.50 lakhs as not being the "outer limit" for settling the Receiver's fees.

9. Shri Prasad Dhakephalkar, learned Senior Counsel for Respondent Nos. 1 to 5 has submitted that the Petitioner has erroneously contended that the fees of the Receiver are fixed within the "outer limit" of Rs.50 lakhs. He submitted that the interpretation of the Petitioner of order dated 16th October, 2007 is erroneous. He points out that the Receiver in discharge of its duties and functions and with a view to give effect to the orders and directions of the DRT and DRAT, carried out voluminous work consisting of multiple assignments, over a period of 10 years. He has submitted that the impugned order of the DRAT rightly holds that the order dated 16th October, 2007 did not fix the fees of the Receiver with an "outer limit" of Rs.50 lakhs and that the said order simply states that "Rs.50 lacs out of sale proceeds to be

4 2006 SCC Online Bom 710 para 20.

kept aside for settling the fee of DRT Receiver". He has submitted that the said order itself did not use the words "cap", "outer limit", "maximum" and / or "upper limit" as contended by the Petitioner. He has submitted that as the order dated 16th October, 2007 did not cap and / or fix an outer limit of Receiver's fees, the Petitioners contentions that the said order having not been challenged by the Receiver, attained finality and could not have been reopened by varying the fees is untenable and erroneous.

10. He has submitted that although the principles of *res judicata* relied upon by the learned Senior Counsel for the Petitioner are well settled, the principles of *res judicata* have no application in the facts and circumstances of the present case. He has submitted that there was no application filed by the Petitioner before the Recovery Officer for changing the basis of payment of fees of the Receiver from 1% of the sale proceeds of the fixed assets in accordance with Rule 591 of this Court's Original Side Rules, to capping the fees with an outer limit of Rs.50 lakhs. There was also no issue framed by the Recovery Officer as to whether the fees should be capped at Rs.50 lakhs and hence at the time when order dated 16th October, 2007 was passed the question of fixing of fees of the Receiver with an outer limit of Rs.50 lakhs was

not a matter which was directly and substantially in issue. Further, he has submitted that neither the Petitioner nor the Receiver were heard on any issue of fixing the fees of the Receiver with a outer limit of Rs.50 lakhs. Hence, there was no question of this issue being finally decided by the Recovery Officer at the time of passing of the order dated 16th October, 2007. He has submitted that the said order had also not given any reasons for allegedly fixing the outer limit of the fees of the Receiver. He has submitted that as the issue of fixing of fees at a cap of Rs.50 lakhs had not been heard and / or finally decided, the essential conditions of *res judicata* has not been met. He has submitted that there is also no question of any acquiescence on the part of the Receiver and / or acceptance of the order dated 16th October, 2007. He has submitted that it has been the consistent stand of Respondent No.1 that the Receiver's fees were to be paid at 1% of the sale proceeds of fixed assets in accordance with the order dated 9th May, 2002 passed by the Presiding Officer of the DRT. He has submitted that the Presiding Officer of the DRT had fixed the fees of the Receiver vide order dated 9th May, 2002 as per the Rules of this Court, viz. Rule 591 of this Court's Original Side Rules and hence it can be only the Presiding Officer who can for exceptional reasons vary the fees. He has submitted that by an order dated

6th May, 2004, the Receiver was directed to be paid and was in fact paid an amount of Rs.5,34,000/-, being 1% of the amount of sale proceeds realised on sale of movable assets of Respondent No.6. The Petitioner had not taken any objection at that time and hence the Petition would be estopped from claiming otherwise. He has relied upon decision of Division Bench of this Court in **J.K. Synthetic (Supra)** in support of his submission that the departure from the scale prescribed in Rule 591 of this Court's Original Side Rules can only be in exceptional cases and for considering whether a particular case is an exceptional case, various factors will have to be considered by the Court. He has submitted that the above decision makes it clear that on a plain reading of Rule 591 it is apparent that the intention is that in normal circumstances, the Receiver must charge fees at the scale prescribed in Rule 591. He has submitted that the Recovery Officer has no power to override and / or change the order of the Presiding Officer of the DRT. He has submitted that it is only the Presiding Officer who has power to fix the remuneration of the Receiver and that the impugned order of the DRAT also makes it clear that the settlement of the Receiver's fees by the Recovery Officer is to be in accordance with the order dated 9th May, 2002 passed by the Presiding

Officer. He has accordingly submitted that there is no merit in this Petition and that this Petition be dismissed.

11. We have considered the rival submissions. The Presiding Officer of the DRT by order dated 9th May, 2002 directed the fees of the Receiver (Respondent No.1 herein) to be fixed as per this Court's Original Side Rules. Thereafter, the Recovery Officer had carried out the directions of the Presiding Officer of the DRT vide order dated 12th February, 2007 by directing the Petitioner to pay the Receiver Commission / Fees as per order dated 9th May, 2002 passed by the Presiding Officer of the DRT. We find that subsequently by the order dated 16th October, 2007 on which much reliance has been placed by the Petitioner, it was ordered by the Recovery Officer that the Receiver shall continue as DRT Receiver for current assets till the sale of current assets and Rs.50 lakhs out of sale proceeds be kept aside for settling the fee of the DRT Receiver and that the sale proceeds minus Rs.50.50 Crores (Rs.50 Crores for workmen plus the said Rs.50 lakhs) would be released to the Petitioner for clearing its dues and for rateable distribution amongst secured creditors. We find that this order had only provided for the setting aside of the sum of Rs.50 lakhs out of the sale proceeds towards the fees of the DRT

Receiver. We do not find merit in the submissions of the learned Senior Counsel for the Petitioner that by the said order, the fees of the Receiver had been fixed and capped at Rs.50 lakhs. We do not find the initial order of the Presiding Officer of the DRT dated 9th May, 2002 which appointed the Receiver and directed the fees of the Receiver to be fixed as per the Rules of this Court to be in any manner modified and / or varied by the said order dated 16th October, 2007. There is no merit in the contention on behalf of the Petitioner that, the Respondent No.1 acquiesced in the order dated 16th October, 2007 and by not challenging the said order, the order had attained finality and the Receiver could not claim fees in excess of Rs.50 lakhs. It has at all times been the case of the Receiver from inception that its fees are entitled to be fixed at 1% of the sale proceeds in conformity with Rule 591 of the Bombay High Court (O.S.) Rules. The distinction between a Private Receiver and a Court Receiver raised by the learned Senior Counsel on behalf of the Petitioner is irrelevant in the light of the order of the Presiding Officer of DRT dated 9th May, 2002.

12. It is necessary to consider Rule 591 of this Court Original Side Rules. Rule 591 reads as under:-

Rule 591 : Fees of the Court Receiver – Unless otherwise ordered by the Judge, the Court Receiver shall be charge fees according to the following scale:

Sr. No.	Scale of Fee	Percent
1		
2		
3		
4	<i>On sale of properties movable or immovable calculated on the total value realised in any one estate;</i>	
		
		
		
	<i>On any further sum over Rs.5,00,000/-</i>	1

It is clear from this Rule that the Receiver shall charge fees according to the above scale unless otherwise ordered by the Judge fixing the fees.

13. We do not accept the submission of the Petitioner that the Recovery Officer had the power to vary the fees which were fixed by the Presiding Officer in the present case. We are of the view that the fees fixed by the Presiding Officer could only be varied by him as provided in Rule 591 of the Original Side Rules. The DRAT in the operative part of the impugned order held as under:-

O R D E R

The Appeal is being disposed of with the observation that the Recovery Officer shall settle the receiver's fee / commission after affording the receiver an opportunity to be heard.

The Recovery Officer while settling the fee of the receiver, will take into consideration the order dated 09.05.2002 passed by the Ld. P.O., DRT in O.A. No.162 of 2002. The judgment and order dated 08.08.2002 passed by the DRAT permitting the receiver to sell the properties of defendant no.1, the order dated 06.05.2004 passed by the Presiding Officer, accepting the prayers sought for by the receiver to pay his fee/commission in accordance with the order dated 09.05.2002 passed by the Ld. P.O., the order dated 12.02.2007 passed by the Recovery Officer and the voluminous work executed by the receiver during his long tenure, who is still continuing as DRT Receiver with regard to the current assets. It is clarified that an amount of Rs.50.00 Lacs kept aside by the Recovery Officer vide order dated 16.10.2007, will not be treated as "outer limit" for settling the receiver's fee. The receiver will continue as regards the current assets are concerned, unless he declines to continue. The Recovery Officer shall settle the receiver's fee expeditiously, preferably within a period of two months from the date he receives a copy of this order.

14. The DRAT had in the operative part of the impugned order directed the Recovery Officer to only settle the Receiver's fee / commission after affording the Receiver an opportunity to be heard by *inter alia*, taking into consideration the order dated 9th May, 2002 passed by the Presiding Officer of the DRT which had

directed the fees to be fixed as per this Court's Original Side Rules. We do not find any infirmity in the impugned order of the Chairperson of the DRAT. We find merit in the submissions made on behalf of Respondent Nos.1 to 5 that the fees are fixed as per this Court's Original Side Rules and can be varied by the Judge fixing the fees and that too in exceptional circumstances. In this context reliance has been placed on the decision of the Division Bench of this Court in **J.K. Synthetic (Supra)** which held as follows:-

***“10.... Rule 591 lays down the scale of fee and / or commission to be charged by the Receiver. Items 1 to 8 provide for a specific percentage to be charged by way of fees by the Receiver. Item No.1 provides for fees of 6% on rents, royalties or licence fees recovered by the Receiver. Item 8 provides for 5% of fee which is payable on interest earned on the funds invested by the Court Receiver. Fee prescribed in items 1 to 8 has no correlation with the efforts put in by Office of the Receiver. However, item 9 gives complete discretion to the Court to fix remuneration of the Receiver for any special work which is not provided for in items 1 to 8. Rule 591 makes it very clear that normally the charges of the Receiver will be as per the scale prescribed by the rule unless the Court otherwise directs. Rule 592 provides that the Receiver has a discretion to charge to the suits a sum which he in his discretion considers proper towards the expenses of his office. While charging the said amount, the Receiver has to give due regard to the fee charged by him under Rule 591 and the labour and trouble involved in the management. Thus the sum which can be charged*”**

under Rule 592 is in addition to the fee payable under Rule 591. It is pertinent to note that while framing the Rules a fixed percentage is prescribed so far as work covered by items 1 to 8 of Rule 591 is concerned. However, for the work covered by item 9 of Rule 591 and the Rule 592, the fee will have to be fixed commensurate with the actual work done....”

14.... On plain reading of Rule 591, it is apparent that the intention is that in normal circumstances the Receiver must charge fees as per the scales prescribed in Rule 591. Only by way of an exception that the fee payable as per the scale prescribed in items 1 to 8 of the Rule 591 of the O.S. Rules can be reduced. The learned Single Judge in our view, has rightly held that the fee shall be charged in accordance with the scale prescribed by the Rule 591 and reduction of fee by exercising discretion vested in the Court cannot become a normal feature. He has rightly held that reduction of fees can be only by way of exception. The learned Single Judge by way of illustration has stated that the discretion of reducing the fee or commission payable under Rule 591 can be exercised where the party liable to pay fee belongs to a weaker strata of the society or the party is a widow or a minor. Thus it is very clear to us that departure can be made from the scale prescribed by Rule 591 only by way of an exception. The Court has to exercise discretion of reducing fee prescribed by Rule 591 only in exceptional cases considering the peculiar facts of the case. The reduction of fee cannot become a normal feature...”.

15. ... It is obvious from the language of Rule 591 that the rule makers did not intend that while taking fee or commission on the royalty or rent collected and on interest earned on the amounts invested by the Receiver, the amount of fee or commission shall be commensurate with the

efforts put in by the Court Receiver. If that was the intention, the framers of the rules could not have provided for payment of fee on percentage of the royalty received and interest earned on fixed deposit. That is the reason why the earlier rule which provided for upper limit of scale of fees had been replaced by the present Rule 591..."

18... Thus in our view departure can be made from the fixed percentage of fees prescribed in Rule 591 only in exceptional cases. For considering the question whether a particular case is an exceptional case, various factors will have to be considered by the Court in each case. It is very difficult to give exhaustive list of such factors. However, the discretion will have to be exercised having regard to the nature of the litigation, the financial capacity of the litigant, the social status of the litigant. In case of a person who belongs to weaker strata of society or a widow or a minor, the question of exercising the discretion can be considered..."

15. It is thus clear from the above decision that in normal circumstances, the Receiver must charge fees as per the scales prescribed in Rule 591 and it is only by way of exception that the Court will exercise the discretion of reducing the fees prescribed by Rule 591 and that too by considering the peculiar facts of the case.

16. The Petitioner has relied upon the principles of *res judicata* in submitting that the order dated 16th October, 2007 having attained finality could not have been reopened by the DRAT. We

do not accept this submission on behalf of Respondent Nos. 1 to 5 as in our view the order dated 16th October, 2007 had not decided the issue of fixing the fees of the Receiver by capping the fees at Rs.50 lakhs. We find from the record that there was no such issue framed and / or hearing held on the issue of fixing the fees of Respondent No.1 by capping it at Rs.50 lakhs. Thus the principles of *res judicata* or the judgements relied upon by the Petitioner would have no application in the facts and circumstances of the present case. Further in our view it was not necessary for the Petitioner to challenge the said order dated 16th October, 2007 as the fees of the Receiver had not been fixed and / or varied by the said order. The fees of the Receiver was to be fixed as ordered by the Presiding Officer of the DRAT at 1% of the sale proceeds in conformity with the Original Side Rules of this Court viz Rule 591. The Chairperson in the impugned order in paragraph 55 as held as under:-

55. The Ld. P.O. has observed that the Recovery Officer vide order dated 16.10.2007 has fixed maximum limit of Rs.50.00 lacs as Receiver's fee, out of which the Receiver's fee is to be settled. He further observed that the aforesaid order dated 16.10.2007 passed by the Recovery Officer was not challenged by the appellants, therefore the same has attained finality. But this observation of the Ld. P.O. is not in conformity with the initial order dated 09.05.2002, passed by the Ld. P.O. DRT, appointing

the Receiver / Commissioner, wherein it was clearly observed that the fee of the receiver was to be fixed as per Hon'ble High Court Rules. The Receiver was subsequently permitted by the DRAT to sell the properties described in Exhs., "A, B & C" annexed to the O.A. and he conducted the sale of the fixed assets. The Recovery Officer himself vide order dated 12.02.2007 had ordered that the fee / commission of the Receiver will be paid by ARCIL in accordance with the order dated 09.05.2002 passed by DRT i.e. as per the High Court Rules. The observation of the Ld. P.O. that the maximum limit of the receiver's fee was fixed by the Recovery Officer as Rs.50.00 lacs, vide order dated 16.10.2007 is not in conformity with his initial order dated 09.05.2002 and the order dated 12.02.2007 passed by the Recovery Officer. Therefore, the aforesaid observation of Ld. P.O. does not appear to be sound and proper, which is to be quashed.

17. We are in conformity with the view expressed by the Chairperson of the DRAT in above extracted paragraph. We are of the view that the Chairperson of the DRAT has correctly held that the observation of the Presiding Officer that the maximum limit of the Receiver's fees was fixed by the Recovery Officer at Rs.50 lakhs is not sound and proper as it is not in conformity with the initial order dated 9th May, 2002 passed by the Presiding Officer of the DRT which directed the fees of the Receiver to be fixed as per the High Court, Original Side Rules.

18. We accordingly find the Petition to be without merit. The Petition is dismissed with the following directions:-

- (a) We direct the Recovery Officer to settle the Receiver's Fees / Commission in conformity with the order of the Presiding Officer of the DRT dated 9th May, 2002 and after considering the voluminous work executed by the Receiver during his long tenure as held by the Chairperson of the DRAT in the impugned order. The exercise shall be completed by the Recovery Officer within a period of three months from the date of this judgment and order.
- (b) We direct the Petitioner to continue its guarantee of the Nationalised Bank for the amount of Rs.7.15 Crores at adhoc interest of 10% p.a. and the amount of Rs.50 lakhs shall remain deposited in this Court as directed by this Court vide order dated 13th March, 2014 for a further period of three months and / or till the order is passed by the Recovery Officer settling the fees of the Receiver, which ever is earlier.
- (c) The Recovery Officer shall issue appropriate directions as regards the bank guarantee and the

deposit of Rs.50 lacs made in this Court pursuant to
order dated 13th March, 2014.

(R. I. CHAGLA J.)

(A.A. SAYED, J.)