IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2019

CORAM

THE HON'BLE MRS.VIJAYA K.TAHILRAMANI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE M.DURAISWAMY

W.P.No.7812 of 2019

The Oriental Insurance Co. Ltd.
having its Head Office at:
Oriental House, P.B.No.7037
A25/27, Asaf Ali Road, New Delhi - 110 001
Division Office:
Division No.10, Oriental House, 3rd Floor
No.7, Tata Road, Churchgate
Mumbai - 400 020
through its Deputy General Manager,
Ramamoorthy. .. Petitioner

Vs.

1. State Bank of India
Stressed Assets Management Branch
Red Cross Buildings
No.32, Montieth Road, Egmore
Chennai - 600 008.

2. Paramount Airways Pvt. Ltd.
rep. by the Official Liquidator
29, Rajaji Salai, 2nd Floor
Chennai - 600 001.

3. The Debt Recovery Appellate Tribunal
4th Floor, Indian Bank Circle Office
55, Ethiraj Salai
Chennai - 600 008. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a writ of Certiorarified mandamus calling for the records in respect of order dated 20.2.2019 in R.A.No.78 of 2015 against O.A.No.246 of 2010 passed by the third respondent, quash the same and to direct the third respondent to waive the pre-deposit to be made for hearing the appeal filed by the petitioner, namely R.A.No.78 of 2015 against O.A.No.246 of 2010.

For Petitioner : Mr.M.V.Swaroop

For Respondents : Mr.M.Devaraj
for 1st respondent

Mr.S.Gopalakrishnan
for second respondent
(Official Liquidator)

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

Heard Mr.M.V.Swaroop, learned counsel for the petitioner; Mr.M.Devaraj, learned counsel for the first respondent and Mr.S.Gopalakrishnan, learned counsel for the second respondent.

2. This petition has been filed by the Oriental Insurance Company Limited challenging the order dated 20.2.2019 passed by the Debt Recovery Appellate Tribunal, Chennai, directing them to make a pre-deposit of Rs.49 Crores, which is 50% of the debt amount.

3. The brief facts are that the first respondent, i.e., State Bank of India, filed O.A.No.246 of 2010 before the Debts Recovery Tribunal-I, Chennai, to recover a sum of Rs.98,64,08,182/-. The petitioner- Insurance Company was made as a second defendant in the said Original Application for the reason that the insurance company indemnified the bank in respect of the insurance subject for the loss sustained as a result of insurance peril up to the policy limit for spares and ATF (Aviation Turbine Fuel).

4. The petitioner-Insurance Company contended that the claim against the Insurance Company cannot be construed as "debt" under the Recovery of Debts and Bankruptcy Act and the relationship between the Bank and the Insurance Company is that of the "insured (Bank)" and the "insurer (Insurance Company)" and not that of "lender" and "borrower". The petitioner-Insurance Company contended that the Original Application filed under Section 19 of the Act is neither maintainable nor the Tribunal has got jurisdiction to entertain the Original Application against them. The petitioner-Insurance Company contended that neither they have borrowed any money from the Bank nor they stood as guarantor for any alleged borrowing by the 2nd respondent-Paramount Airways Private Limited. Hence, according to the insurance company, there is no "debt" as defined in Section

2(g) of the Act. However, the Debts Recovery Tribunal, by order dated 6.10.2015, held that the liability of the petitioner-Insurance Company has to be determined as per the insurance policy. Challenging the said order passed by the Debts Recovery Tribunal-I, Chennai, the Insurance Company filed an appeal in R.A.No.78 of 2015 before the Debt Recovery Appellate Tribunal, Chennai. The Debt Recovery Appellate Tribunal, Chennai, by order dated 20.2.2019, directed the petitioner-Insurance Company to make pre-deposit of Rs.49 Crores, which is 50% of the debt amount.

5. The very same issue, i.e., whether the insurance company is liable to make pre-deposit, has been considered by this Court in Sree Jeya Soundharam Textile Mills Pvt. Ltd. v. Canara Bank and others, reported in MANU/TN/1681/2019, in paragraphs (19) to (20.3) and it has been held that the insurance company is not liable to make pre-deposit.

6. After having heard the learned counsel on either side, we are of the opinion that the relationship between the petitioner-Insurance Company and the first respondent-Bank is only that of an "Insured" and "Insurer". Hence, the petitioner-Insurance Company cannot be called upon to make pre-deposit in view of the decision of this Court in Sree Jeya Soundharam Textile Mills Pvt. Ltd., supra.

7. In this view of the matter, the order dated 20.2.2019 passed by the Debt Recovery Appellate Tribunal, Chennai, in R.A.No.78 of 2015 is liable to be set aside and, accordingly, the same is set aside. The Debt Recovery Appellate Tribunal, Chennai, is directed to decide the appeal in R.A.No.78 of 2015 afresh, on merits and in accordance with law, without insisting the petitioner-Insurance Company to make pre-deposit.

The writ petition is allowed in the above terms. No costs. Consequently, W.M.P.No.8447 of 2019 is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To:

1. The Registrar
Debt Recovery Appellate Tribunal
4th Floor, Indian Bank Circle Office
55, Ethiraj Salaim, Chennai - 600 008.

2. The Official Liquidator
Paramount Airways Pvt. Ltd.
29, Rajaji Salai, 2nd Floor
Chennai - 600 001.

3. The State Bank of India,
Stressed Assets Management Branch,
Red Cross Buildings,
No.32, Montieth Road, Egmore,
Chennai - 600 008,

+1cc to Mr.M.Devaraj, Advocate, S.R.No.45696
+1cc to Mr.S.Gopalakrishnan, Advocate, S.R.No.46835

W.P.No.7812 of 2019

GJ II(CO)

RRS(04/07/2019)