IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2019

CORAM :

THE HON'BLE DR.VINEET KOTHARI, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.19076 of 2019
and
W.M.P.No.18441 to 18442 of 2019

1.M/s.PJS Knit Garmets,
rep.by its Partner,
Shri.P.Sugansaran

2.Shri P.Sugansaran .. Petitioners

-vs-

The Authorised Officer,
Bank of Baroda,
Tirupur Main Branch,
696, Kamarajar Road,
Tiruppur-641 604 .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorarified Mandamus calling for the records pertaining to the order in I.A.No.521 of 2019 in AIR (SA) No.193 of 2019, on the file of the Hon'ble Debts Recovery Appellate Tribunal, Chennai and quash the same and consequently direct the Hon'ble Debts Recovery Appellate Tribunal, Chennai, to entertain the appeal of the petitioner in AIR (SA) No.193 of 2019, on its file, without insisting for pre-deposit of any amount and dispose of the same within the time limit that may be fixed by this Court.

For Petitioners : Mr.R.Selvakumar

For Respondent : Mr.M.Arun Kumar for
M/s.Sampath Kumar Associates

ORDER

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

The petitioner/borrower-M/s.PJS Knit Garments is aggrieved by the order dated 13.6.2019 passed by the Debts Recovery

Appellate Tribunal, Chennai, in AIR (SA) 193 of 2019, by which, the Debts Recovery Appellate Tribunal imposed a precondition of pre-deposit of Rs.1.30 Crores for entertaining the Appeal against the Interlocutory Order passed by the Debts Recovery Tribunal, on 26.04.2019, directing the petitioner/borrower to deposit certain amounts with the respondent bank. The operative portion of the order passed by the Debts Recovery Tribunal is quoted below for ready reference.

> "5.Be that it may so, this Tribunal is of the considered view that one more opportunity has to be given to the Petitioners/Applicants to show their bona fides in payment of the outstanding loan dues to the respondent bank. Hence, Ad Interim stay is granted not to confirm the sale, if it so held, till 29.07.2019, with respect to the petition mentioned properties, against the respondent bank, subject to payment of Rs.35,00,000/- directly to the Respondent bank, on or before 27.5.2019, as first installment, another sum of Rs.35,00,000/- directly to the Respondent bank, on or before 26.6.2019, as 2nd installment and another sum of Rs.35,00,000/- directly to the Respondent bank, on or before 26.07.2019, as 3rd installment. However, in the event of failure to pay any of the installments as ordered above, the Ad-Interim stay granted till 29.07.2019 against the Respondent bank, shall stand vacated automatically and the I.A.No.1227/19 shall stand dismissed. Call on 29.07.2019."

2.The Debts Recovery Appellate Tribunal passed the order on 13.06.2019, by which, the petitioner felt aggrieved, which is quoted hereunder for ready reference:

> "In view of the fact that DRAT cannot entertain any Appeal unless and until the appellants comply with the formalities on pre-deposit up to 50% of debt amount, which can be reduced to 25%, but not less than 25% in any case, I hereby direct the appellants to make a pre-deposit of Rs.1.30 Crores with the Registrar of this Tribunal within a period of four weeks from today."

3.The learned counsel for the petitioner Mr.R.Selvakumar has drawn our attention to the judgment of the Division Bench of this Court in the case of Sree Jaya Soundharam Textile Mills Pvt.Ltd., rep.by its Managing Director, Sivagangai and Others vs. Canara Bank, rep.by its Manager Tirupur and Others (CDJ 2019 MHC 2385), in which the Co-ordinate Bench of this Court passed the following order with regard to deposits to be made before the Debts Recovery Appellate Tribunal for entertaining the Appeals under Section 18 of the Act. The operative portion of the Division Bench Judgment is quoted below for ready reference:

> "22.For the reasons stated above, we decide the issue with regard to making of pre-deposit for preferring an appeal before the Debt Recovery Appellate Tribunal as follows:
>
> (i) The borrowers and guarantors are liable to make pre-deposit as per the provisions of Section 18 of the SARFAESI Act or under Section 21 of the Recovery of Debts and Bankruptcy Act, 1993 for preferring an appeal before the Debt Recovery Appellate Tribunal.
>
> (ii) The 3rd parties, who had purchased the property prior to the date of mortgage or derived/accrued title or right or tenancy right over the property prior to the date of mortgage, are not liable to make any pre-deposit for preferring an appeal before the Debt Recovery Appellate Tribunal, provided that they establish before the Debt Recovery Appellate Tribunal that they derived/accrued title or right or tenancy right over the property prior to the date of mortgage and that the property was mortgaged with the Bank without their knowledge. If such 3rd parties file applications for waiver and if they establish that they have purchased the property or that they derived/accrued title, right or tenancy right prior to the date of mortgage and the property was mortgaged with the Bank without their knowledge, the Debt Recovery Appellate Tribunal shall give a finding with regard to the same and give exemption to such 3rd parties from making pre-deposit.
>
> (iii)The 3rd parties who had purchased the property either after the date of mortgage or derived/accrued title or right or tenancy right in respect of the property in question or after the initiation of SARFAESI proceedings are liable to make the pre-deposit and they should be treated on par with the borrower and the

guarantor as per the provisions of both the Acts for the purpose of making pre-deposit.

(iv) The Debt Recovery Appellate Tribunal shall consider the waiver applications filed by the 3rd parties, on merits and in accordance with law, following the principles laid down in this judgment and pass appropriate speaking orders giving findings with regard to the rights of the 3rd parties.

(v) The secured creditors viz., the Banks and Financial Institutions or a Consortium or Group of Banks and Financial Institutions are not liable to make any pre-deposit for preferring an appeal before the Debt Recovery Appellate Tribunal.

(vi) The auction purchaser is not liable to make any pre-deposit while preferring an appeal to the Debt Recovery Appellate Tribunal as against the order passed by the Debts Recovery Tribunal.

(vii) The appellant who has filed an appeal before the Debt Recovery Appellate Tribunal as against the Interlocutory order passed by the Debts Recovery Tribunal, is not liable to make the pre-deposit if the liability is not determined by the Debts Recovery Tribunal in the interlocutory order.

(viii) In any other category other than the categories mentioned above, the Debt Recovery Appellate Tribunal shall decide the waiver application as per the principles laid down in this judgment."

4.The learned counsel for the petitioner submitted that as per clause (vii) of the judgment quoted above, if the appeal is preferred against the Interlocutory Order passed by the Debts Recovery Tribunal, the Debts Recovery Appellate Tribunal cannot insist on pre-deposit. This judgment was rendered by the Division Bench of this Court on 11.04.2019, with which, we respectfully agree and probably the same was not brought to the notice of the learned Debts Recovery Appellate Tribunal while passing the order on 13.06.2019. It is needless to add that the judgment of the Division Bench of this Court is binding upon all Subordinate Courts, including the Debts Recovery Appellate Tribunal.

5.In view of the above, the impugned order dated 13.06.2019, passed by the Debts Recovery Appellate Tribunal, cannot be sustained and it has to be set aside. The writ petition is accordingly allowed and the impugned order dated 13.6.2019 and the consequential dismissal order of appeal, if any, passed by the Debts Recovery Appellate Tribunal, is set aside and the appeal is restored back to the file of the Debts Recovery Appellate Tribunal, Chennai, for passing fresh order in accordance with law, after taking into account the aforesaid Division Bench Judgment of this Court. The parties may appear, in the first instance, before the Debts Recovery Appellate Tribunal, on 12.11.2019. No costs. Connected miscellaneous petitions are closed.

msk

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Authorised Officer,
Bank of Baroda,
Tirupur Main Branch,
696, Kamarajar Road,
Tiruppur-641 604

Copy to:-

The Registrar,
Debts Recovery Appellate Tribunal,
Chennai.

W.P.No.19076 of 2019

Kak(07/11/2019)