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

\+ W.P.(C) 9084/2019

RANJIT KAPOOR ..... Petitioner

Through: Mr. Sukumar Pattjoshi, Senior Advocate along with Mr. Naveen Chawla & Mr. Mayank Bughani, Advocates.

versus

ASSET RECONSTRUCTION COMPANY (INDIA) LIMITED (ARCIL) AND ORS. ..... Respondents

Through: Mr. Gaurav Ray, Advocate for respondent No.1.
Mr. Rajinder Wali, Advocate for respondent No.2/ PNB.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

<u>O R D E R</u>

% **22.08.2019**

<u>C.M. No. 37521/2019</u>

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

<u>W.P.(C) 9084/2019 and C.M. Nos.37520/2019 & 37522/2019</u>

3. The petitioner has preferred the present writ petition to assail the order dated 08.05.2018, whereby the petitioner's appeal No.187/2018

arising out of S.A. No.155/2013 (DRT-III, Delhi) has been rejected merely on the ground that the petitioner/ appellant stated that it is not in a position to make pre-deposit of even the minimum amount of 25% of the debt. The other substantive prayers sought by the petitioner in the writ petition are as follows:

> *"a. Pass a writ of Certiorari or any other writ, order or direction of appropriate nature directing the Ld. Debt Recovery Tribunal-III, Delhi to decide and adjudicate on the issue of non existence of the alleged grounds of shortfall in Drawing Power and non serving of interest to ascertain the validity of declaration of account of White Metals Ltd. as Non Performing Asset;*
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> *b. Pass a writ of Certiorari or any other writ, order or direction of appropriate nature setting aside the order dated 21.03.2018 passed by the Ld. Presiding Officer, Debt Recovery Tribunal-III, Delhi in R.A. No. 24 of 2016 in SA 155 of 2013 as also the order dated 25.07.2016 passed by the ld. DRT III in SA No. 155 of 2013, as also the order dated 08.05.2018 passed by Ld. DRAT in Appeal No. 187/2018 and consequential order dated 30.10.2018 passed by the Ld. NCLAT in Company Appeal (AT) (Insolvency) No. 410/2018.*
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> *c. Pass a writ of Mandamus or any other writ, order or direction of appropriate nature directing the Respondents to remove the name of White Metals Ltd. and/or its Promoter(s)/Director(s) from the List of Willful Defaulters;"*

4. Firstly, we are of the view that the dismissal of the petitioner's appeal by the learned DRAT was justified since the petitioner/ appellant stated that it is not in a position to deposit 25% of the relevant amount. We are informed that the Original Application has already been allowed and the amount has been quantified and awarded by the Tribunal against the

petitioner. The petition itself discloses that the petitioner has earlier as well approached this Court vide W.P. (C.) No. 6052/2018, which was disposed of on 30.07.2018 by the following order:

> "*Learned counsel appearing for Asset Reconstruction Company(India) Ltd. states that proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016 („Code") have been invoked and the petition was admitted before the National Company Law Tribunal („NCLT") on 13.6.2018. Interim Resolution Professional has been appointed. Accordingly, the moratorium period has commenced in terms of Section 14 of the Code and depending upon the outcome, further proceedings to be held before the NCLT.*
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> *In view of the said position, proceedings initiated by the first respondent for sale of mortgaged assets under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 have been rendered infructuous and mortgaged assets will be dealt with in accordance with the Code.*
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> *At this stage, learned counsel for the petitioner states that they would raise all issues and contentions, including the contention that account of the petitioner was wrongly declared as „non-performing asset" before the NCLT. Learned counsel for the petitioner also states that the writ petition may be disposed of, in view of the statement made by the counsel for Asset Reconstruction Company(India) Ltd.*
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> *Recording the aforesaid, the writ petition is disposed of, without any order as to costs. Pending application is also disposed of. We clarify that we have not made any comments or observations on the statements made and have merely recorded the same.*"

5. From the above order, it is evident that the petitioner itself stated that it wishes to raise all issues and contentions before the NCLT. This Court had

not granted any liberty to the petitioner for the said purpose. Even otherwise, we have perused the order passed by the DRT-III, Delhi in S.A. No.155/2013. The relevant extract from the said order reads as follows:

> "19. *Heard the ld counsels for the parties and perused the records. The applicant company raised grievance that its account should have been upgraded after consideration CDR and because of fight between two banks its account declared as NPA is bad in law and SARFAESI action is not maintainable in the eyes of law. Let us examine whether bankers have considered the request of the applicant or not. The banks have duly considered request of the applicant for upgradation of the account as the overdue interest was converted into FITL but still applicant company has not fulfilled its liability to pay interest which was to the tune of Rs. 11.00 crores. Thereafter, the applicant company has also given the proposal for OTS for a sum of Rs. 60.0 crores but the same was not acceptable to the bank.*
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> *20. That the moratorium period for two years sought by the applicant company was rejected by both the banks as no further exposure by both the banks aggrieved under CDR package. During the inspection conducting by the Auditor it was has come to light that the applicant company has not come to light that the applicant company has not made provision in financial statement for the interest of Rs. 11.95 crores for the year 2009-2010 which was converted into FITL by respondent no. 1 bank and as per the Stock Audit the drawing power in the account was below the balance outstanding and company was not in a position to honour its L.C. commitments on due dates.*
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> *21. The applicant company has also disposed of the immovable properties worth Rs. 10.00 crores and sale proceed of Rs 1.16 crore was inducted. The bank has informed the applicant company that as per the stock statement submitted no drawing power is available and as such drawing power allocated has withdrawn and being nil.*

22. Thereafter, the respondent no. 2 bank advised the applicant to take immediate steps for regularisation of the account and despite of repeated communications and reminders, no sale proceeds were deposited by the applicant in the account which was running highly irregular. The respondent no. 2 bank submitted that the applicant company on one hand received the goods and used them but did not arrange for payment of the bills on due dates. That the outstanding dues under due date default account are Rs. 47,82,73,930.90 i.e. the respondent no. 2 bank has paid the bills under LCs for which the applicant failed to make any provision and most of the bills were usance i.e. payable after some time and goods covered under these bills were received by the applicant."

6. The petitioner's review being R.A. No.24/2016 has also been rejected by the DRT by a detailed order on 21.03.2018. There is no denying the fact that, as of date, there is huge outstanding against the petitioner. We are informed that the resolution plan is at an advanced stage of consideration before the NCLT.

7. We are, therefore, not inclined to interfere with the impugned order.

8. Dismissed.

VIPIN SANGHI, J

RAJNISH BHATNAGAR, J

AUGUST 22, 2019
B.S. Rohella