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

+ **W.P.(C) 11880/2019 and CM APPL. 48656/2019 (stay)**

ZAKIR ALI RANA

..... Petitioner

Through: Mr. Sanjeev Bhandari with Mr.
Prateek Kumar, Advocates

versus

EDELWEISS ASSET RECONSTRUCTION COMPANY LIMITED

..... Respondent

Through: Mr. R.P. Agrawal, Advocate

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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08.11.2019

Dr. S. Muralidhar, J.:

1. This writ petition is directed against an order dated 25th October, 2019 passed by the Debt Recovery Appellate Tribunal (DRAT) in Miscellaneous Application No. 458/2019 arising out of RC No. 200/2015.

2. Notice. Mr. R.P. Agrawal, Advocate, accepts notice for the Respondent. With the consent of learned counsel for the parties the Court proceeds to dispose of the writ petition finally.

3. The facts in brief are that Edelweiss Asset Reconstruction Company Limited, the Respondent herein, took over the debts owed to the Oriental

Bank of Commerce (OBC) by M/s. Rana Heavy Engineering Ltd. and the its guarantors/directors. The present Petitioner Mr. Zakir Ali Rana is one such director and guarantor of the aforementioned company. With the assignment of the said debts, the Respondent stepped into the shoes of OBC which had filed OA No.258/2013 before the Debts Recovery Tribunal (DRT), New Delhi against the company and its directors under the Recovery of Debts and Bankruptcy, 1993 (RDB Act) for recovery of Rs.40,41,22,317.23. Pursuant to the final order dated 1st May, 2015 passed by the DRT under Section 19 (20) of the RDB Act, a Recovery Certificate, i.e. RC No. 200/2015 was issued under Section 19 (22) of the RDB Act. The said RC is pending adjudication before the Recovery Officer (RO-II) functioning under the DRT, Delhi.

4. The Respondent on 1st February, 2018 filed an application for execution of the aforementioned RC in which it sought the arrest of the present Petitioner under Section 25 (b) of the RDB Act read with Rules 73, 76 and 77 of the 2nd Schedule to the Income Tax Act, 1961 and Section 29 of the RDB Act. On 22nd November, 2018 the RO-II passed an order in which *inter alia* a direction was issued to the present Petitioner, who incidentally is Certificate Debtor ('CD') No.4 in the proceedings, to comply with the earlier directions issued by the RO and file a status of the property at Muzaffarnagar in UP. In this order, the RO expressly observed that in view of the availability of secured assets in the present RC, the request of the Respondent to invoke Section 25 (b) of the RDB Act against the CDs for their arrest and detention in prison 'at this stage is not required.' Hence, the request of the Respondent was 'not allowed.' It appears that this order was

not challenged by the Respondent.

5. The RO again took up the application on 20th September, 2019. In para 10 of the said order, again, in relation to the present Petitioner, who is CD No.4, it was observed by the RO that CD No.4 had fully cooperated with the Certificate Holder Financial Institution (CHFI), i.e. the Respondent, in handing over the physical possession of the mortgaged properties and in not creating any hindrance. The RO observed 'hence, the arrest CD No.4 is not required at this stage. Ordered accordingly.' A number of directions were issued by the RO and the case was adjourned to 21st October, 2019.

6. It appears that at this stage, instead of questioning the above orders of the RO in appeal before the Presiding Officer of the DRT, which is a remedy available to it under Section 30 (1) of the RDB Act, the Respondent straightaway filed an application under Section 17A of the RDB Act before the DRAT. This was registered as Miscellaneous Application No. 458/2019. The said application was listed before the DRAT on 25th October, 2019 when the impugned order was passed. The operative portion of the impugned order reads as under:

“Before the next date, the concerned Recovery Officer shall submit a report as to why he has not been able to execute the recovery certificate for recovery of such a huge amount of public money and why the prayer made in this matter for passing of an order for arrest and detention of CD could not be passed for over a year.

Accordingly, while issuing notice of this petition to the respondents, respondent CD NO.4 Zakir Ali Rana will also be required to show cause as to why recovery certificate in

question be not executed by his arrest and detention in civil prison.

The authorised officer of the applicant CHFI will collect *dasti* notice and ensure service. Notice be issued for 1.11.2019.”

7. Mr. Sanjeev Bhandari, learned counsel appearing for the Petitioner, informs the Court that the Petitioner did appear before the DRAT on 1st November, 2019 and that the matter has now been adjourned to 14th November, 2019.

8. Mr. Bhandari submits that the Respondent could not have bypassed the remedy available to it against the order of the RO by filing an appeal before the DRT under Section 30 (1) of the RDB Act. He refers to Section 7 (2) of the RDB Act, which expressly states that the ROs, other officers and other employees of the DRT “shall discharge their functions under the general superintendence of the Presiding Officer”. He accordingly submits that the DRAT ought not to have entertained the application of the Respondent under Section 17A of the RDB Act. He submitted that in passing the impugned order the DRAT exceeded its jurisdiction. He referred to the decisions in *Meena Aggarwal v. Punjab National Bank 2016 SCC Online 380*, *M/s. Sikka Papers Ltd. v. Indian Overseas Bank* (decision dated 1st February, 2016 of this Court in W.P.(C) 9636/2015), *M/s. Patna Bakhtiyarpur Tollway Limited. v. ICICI Bank Limited* (decision dated 28th September, 2018 in W.P.(C) 9951/2018) and *L. Madhusudan Rao v. ICICI Bank Limited* (decision dated 1st November, 2019 in W.P.(C) 1158/2019).

9. Mr. Aggarwal, learned counsel appearing for the Respondent, on the other

hand, referred to Section 17A of the RDB Act and submitted that there was no restriction on the DRAT entertaining the application directly against the order of the RO. According to him, the grievance of the Respondent was that the RO was not disposing of the application filed by the Respondent seeking the arrest of the CDs. It was for that reason that the Respondent straight away approached the DRAT. He submitted that it was difficult to affect any recoveries in the proceedings under the RDB Act as they were long drawn. According to him, the conduct of the CDs would disentitle them to resist the proceedings before the DRAT or even approach this Court for relief in the writ jurisdiction. He placed reliance on the decision of the Supreme Court in *Prestige Lights Limited v. State Bank of India Ltd. (2007) 8 SCC 449*.

10. Having considered the above submissions, the Court is of the view that the DRAT exceeded in its jurisdiction in passing the impugned order and the reasons are as follows. The organisational structure under the RDB Act is that the ROs function under the general superintendence of the Presiding Officers of the DRTs. This is evident from Section 7(2) of the RDB Act which reads as under:

“7. Staff of Tribunal—

....

(2) [The Recovery Officers] and other officers and employees of a Tribunal shall discharge their functions under the general superintendence of the Presiding Officer”.

11. As far as the DRAT is concerned, the parallel provision in Section 17A of the RDB Act which recognises the DRAT’s power of superintendence and control of the DRTs. Section 17A reads as under:

“17A. Power of Chairperson of Appellate Tribunal.

(1) The Chairperson of an Appellate Tribunal shall exercise general power of superintendence and control over the Tribunals under his jurisdiction including the power of appraising the work and recording the annual confidential reports of Presiding Officers.

(2) The Chairperson of an Appellate Tribunal having jurisdiction over the Tribunals may, on the application of any of the parties or on his own motion after notice to the parties and after hearing them, transfer any case from one Tribunal for disposal to any other Tribunal.”

12. It is thus clear that while the DRTs would have general superintendence over the ROs, the DRAT would have such superintendence over the DRTs.

13. As far as the functioning of the ROs is concerned, their orders have been expressly made appealable before the DRTs and not directly appealable before the DRAT. Section 30 of the RDB Act reads as under:

“30. Appeal against the order of Recovery Officer. - (1) Notwithstanding anything contained in section 29, any person aggrieved by an order of the Recovery Officer made under this Act may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal.

(2) On receipt of an appeal under sub-section (1), the Tribunal may, after giving an opportunity to the appellant to be heard, and after making such enquiry as it deems fit, confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers under sections 25 to 28 (both inclusive).”

14. The only reason given by the Respondent for bypassing the remedy available under Section 30 is that according to the Respondent, the RO had

not disposed off the application filed by the Respondent seeking arrest of the CDs. The Court is unable to agree with the submission. It is plain from a reading of the orders dated 22nd November, 2018 as well as 20th September, 2019 of the RO that at each of those stages the RO expressly came to the conclusion that the arrest of the present Petitioner was not warranted at that stage. In fact, even in the impugned order dated 25th October, 2019 the DRAT itself notes that the RO had rejected the request of Respondent for arrest of the Petitioner by the order dated 20th September, 2019. Accordingly, the said orders of the RO were appealable orders and there is no reason why the Respondent should not have filed an appeal before the DRT.

15. There was no occasion for the Respondent to have invoked Section 17(A)(1) of the RDB Act to straight away approach the DRAT considering that the RO had in fact passed an order on two occasions declining its request for arrest of the Petitioner. In other words, this was not a case of failure by the RO to deal with the application of the Respondents. There was, therefore, no occasion of the DRAT to be approached under Section 17(A) (1) of the Act. In any event what was being questioned before the DRAT was not an order of the DRT but the order of the RO. In the view of this Court, Section 17(A) (1) of the RDB Act gives power to the DRAT to question the order of the DRT and not to directly entertain a challenge to proceedings or orders of the RO. The first point of judicial review against the orders of the RO could only be the DRT and not the DRAT.

16. For the aforementioned reasons, without entering into the merits of the

Respondent's case for the arrest of the Petitioner, the Court holds that the DRAT exceeded its jurisdiction in entertaining the Miscellaneous Application No.458/2019 filed by Respondent under Section 17A of the RDB Act. On that short ground, the impugned order dated 25th October, 2019 of the DRAT is hereby set aside. This order would mean that Miscellaneous Application No.458/2019 before the DRAT stands dismissed.

17. This order will not prevent the Respondent from availing the remedy available to it under Section 30 of the RDB Act and to approach the DRT against the orders of the RO referred to hereinbefore. If such appeal is filed before the DRT within a week from today, the DRT will endeavour to dispose of such an appeal as expeditiously as possible, and in any event, not later than eight weeks thereafter. If such an appeal is filed within one week, the DRT will entertain it without the Respondent being called upon to satisfy the question of limitation.

18. The petition and the pending application are disposed of.

CM APPL. 48657/2019 (exemption)

19. Allowed, subject to all just exceptions. Order *dasti*.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 08, 2019/pa