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

+ **Date of Decision: 02.04.2019**

% **W.P.(C) 6742/2016**

IFCI LTD.

..... Petitioner

Through: Mr. Prashanto Chandra Sen, Sr. Adv.
with Mr. Nitin Dahiya and
Mr.Kaustubh Singh, Adv.

versus

STATE BANK OF INDIA & ORS

..... Respondents

Through: Mr. Bheem Sain Jain, Adv. for R-1.
Mr. Viney Kumar, Adv. with
Mr.H.K.Meena, DGM and Ms.Surbhi,
AM for IDBI.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

1. The petitioner IFCI Ltd. (IFCI) has preferred the present writ petition to assail the order dated 21.07.2015, passed by the learned Debts Recovery Appellate Tribunal, Delhi (DRAT) in Appeal No. 441/2014, in Appeal No. 56/2011 (Delhi-I). The scope of the dispute before us is with regard to the distribution of the liquidated amount released upon sale of the asset of the debtor. The dispute is between three financial institutions/ banks, namely IFCI, SBI Ltd. (SBI) and IDBI Ltd. (IDBI).

2. The SBI initiated an Original Application to recover its dues from the principle borrower M/s Flistex Magnetics Ltd., and others vide O.A. No. 511/1997. The petitioner IFCI and respondent IDBI jointly initiated O.A.

No. 197/1999 against the same principle borrower and others to recover their respective dues from the borrowers. On 12.05.1992, a mutual agreement/ understanding was reached between the three financial institutions aforesaid and Punjab National Bank Ltd. (PNB), which also had its claims against the same borrower. So far as the PNB is concerned, it is out of the present picture, since its dues were fully satisfied. Vide letter dated 12.05.1992, the petitioner IFCI, SBI and IDBI agreed that they would distribute the recovered amount on *pari passu* in the ratio of IFCI: IDBI: SBI:: 1140:1105:225. These ratios were agreed on the basis of the principal amounts loaned to the borrower by the three Banks/ financial institutions.

3. The Recovery Officer passed an order on 14.11.2011 in RC NO.39/2006, State Bank of India Vs. Flistex Magnetics Ltd. & Ors. In this order, he directed distribution of the liquidated amount recovered from the debtor in the following manner:

“As there is no unanimity on the appropriation of the amount amongst creditors it is considered prudent that this amount shall be appropriated on the basis of principal amount in terms of the mandate of Hon'ble PO.

<i>Stakeholders</i>	<i>Principal amount</i>	<i>Rate of Appropriation</i>	<i>Amount of share</i>
<i>IDBI</i>	<i>2987.00</i>	<i>37.78</i>	<i>-illegible-</i>
<i>IFCI</i>	<i>4677.63</i>	<i>59.35</i>	<i>-illegible-</i>
<i>SBI</i>	<i>225.00</i>	<i>02.87</i>	<i>-illegible-</i>
<i>Total</i>	<i>7889.63</i>	<i>100.00</i>	<i>-illegible-</i>

Based on the amount determined. The institutions SBI and IFCI,- shall release the surplus amount to IDBI within 10 days, However, it shall be provisional appropriation depending on the outcome of application filed by the auction purchaser.”

4. We may observe that, admittedly, there was a typographical error in the order passed by the Recovery Officer in respect of the ratios indicated against the names of IDBI and IFCI, and the same have been corrected by us hereinabove.

5. The SBI was aggrieved by the said distribution, and sought to place reliance on the ratios mutually agreed and incorporated in the communication dated 12.05.1992 issued by the IFCI. The SBI preferred its appeal before the Learned DRT.

6. The IDBI was also a respondent in those proceedings, apart from IFCI. The learned DRT allowed the said appeal of SBI and directed that the distribution shall take place in terms of the communication dated 12.05.1992. The learned DRAT has affirmed the order passed by the DRT, and the same is now assailed before us by the IFCI.

7. The submission of Mr. Sen, learned senior counsel for the petitioner IFCI is that after the issuance of the communication dated 12.05.1992, the IFCI substituted the earlier granted loans, with new loans, after re-capitalising the unpaid interest. According to the petitioner, it is the re-capitalised principle amounts which should form the basis of determining the *pari passu* distribution of the realized assets. Mr. Sen submits that the property which was sold to realize the outstanding dues of the three financial institutions, was mortgaged with the petitioner IFCI and, therefore, the

petitioner was entitled to claim a higher share by re-capitalising the loans.

8. He further submits that so far as the IDBI is concerned, it had accepted the order passed by the Recovery Officer on 14.11.2011 and had, in fact, opposed the appeal preferred by the SBI before the DRT. Therefore, so far as the IDBI is concerned, it cannot have any grievance with regard to the order passed by the Recovery Officer.

9. On the other hand, the submission of learned counsel for IDBI is that the order passed by the Recovery Officer, itself, record that there was no unanimity on appropriation of the amounts amongst the creditors. Therefore, the ratios determined by the Recovery Officer in his order dated 14.11.2011, were not with the consent of the IDBI. If the appeal of the SBI were not to succeed, the IDBI would have gained. However, that does not mean that the IDBI is bound by the determination of the ratios/ proportions by the Recovery Officer, as determined in his order dated 14.11.2011.

10. Learned counsel for the SBI submits that the orders passed by the DRT and DRAT are sound, and enforce the mutual understanding of the three financial institutions/ Banks. He further submits that merely because the property, which was liquidated, was mortgaged to the IFCI, it does not entitle the IFCI to renege from its agreement contained in the communication dated 12.05.1992.

11. Having heard learned counsels, we find no merit in the present petition. The petitioner IFCI had itself issued the communication dated 12.05.1992 – clearly stating the manner in which the recovered amount was

to be shared *pari passu* between the parties i.e. IFCI, IDBI and SBI. Nothing prevented the petitioner IFCI from not agreeing to the said arrangement. However, having done so, it is not open to it to later renege from the said understanding. The petitioner, therefore, cannot be heard to say that merely because the asset of the borrower was mortgaged to the petitioner, it is entitled to shift the goal post and enhance its share by re-capitalising its loans after the issuance of the communication dated 12.05.1992.

12. Our attention has also been drawn to the order dated 09.09.2014, passed by the learned DRT in appeal, which notes that as per the Board Resolution of the respondent No.3 borrower company dated 30.03.2012, the movable and immovable assets of the borrower company were secured in favour of the IDBI to the tune of Rs. 1140 lakhs, and in favour of IFCI to the tune of Rs. 1105 lakhs. As per Forms 8 and 13 filed by the IFCI issued by the Registrar of Companies, the charges of IFCI and IDBI were registered only for the aforesaid stated loans, and no more.

13. Therefore, the petitioner IFCI, and IDBI - both were aware that their loans were secured only to the aforesaid extent of Rs.1105 and Rs. 1140 lakhs respectively, and no more.

14. So far as the submission of the petitioner qua IDBI is concerned, we do not find merit in that either. As noticed hereinabove, the order of the Recovery Officer clearly records that there was no unanimity in the matter of distribution of the proceeds. Therefore, IDBI did not consent to the manner in which the assets were sought to be distributed by the Recovery

Officer. Merely because the IDBI did not prefer its own appeal, or it opposed the appeal preferred by the SBI before the learned DRAT, is no reason for the petitioner to claim that the IDBI is bound by the manner in which the distribution was worked out by the Recovery Officer. Apparently, it was in the interest of IDBI to oppose the appeal of SBI, and if the said appeal were to be dismissed, it suited the IDBI to go along with order passed by the Recovery Officer. But, once the appeal of SBI succeeded before the DRT, it did not suit the IDBI to support the petitioner's contentions. As a matter of fact, the IDBI also preferred an appeal before the learned DRAT against the order passed by the DRT. The petitioner IFCI cannot grudge that position.

15. Be that as it may, in our view, that by itself is no reason to deviate from the agreement arrived at between the parties as contained in the communication dated 12.05.1992. For the aforesaid reasons, we dismiss the petition leaving the parties to bear their respective costs.

16. The interim order passed stands vacated.

17. The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J.

REKHA PALLI, J.

APRIL 02, 2019/N.Khanna