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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
10 & 11

+ **W.P.(C) 6446/2016**

PUNJAB & SIND BANK

..... Petitioner

Through: Mr Saran Suri, Mr Roshan Kumar and
Mr Jyotisman Kar, Advocates.

versus

M/S INDO FOREIGN COMMERCIAL

AGENCY PRODUCTS PRIVATE LIMITED & ORS.

.... Respondents

Through: Mr Arun Kathpalia, Senior Advocate
with Mr Amit Dhupar, Mr Dhrupad
Das with MsTanvi Jain, Advocates.

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PUNJAB & SIND BANK

..... Petitioner

Through: Mr Saran Suri, Mr Roshan Kumar and
Mr Jyotisman Kar, Advocates.

versus

IQBAL SINGH & ORS

..... Respondents

Through: Mr Arun Kathpalia, Senior Advocate
with Mr Amit Dhupar, Mr Dhrupad
Das with MsTanvi Jain, Advocates.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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21.11.2019

Dr. S. Muralidhar, J.:

1. These two petitions by the Punjab & Sind Bank ('P&SB') are directed against a common order dated 1st March, 2016 passed by the Debt Recovery Appellate Tribunal ('DRAT'), disposing of two Appeal Nos. 37 and 38 of

2015 filed by the Respondents in the present two petitions i.e. M/s Indo Foreign Commercial Agency Products Private Limited (hereafter 'the company') and the other by Shri Iqbal Singh and Mrs Manjit Dhingra.

2. The present petitions are in a narrow compass and concern the legality of the impugned order of the DRAT insofar as it has reduced the rate of interest from 19.5% per annum, compounded with quarterly rest, *pendent lite* and future, to 12% simple interest per annum, from the date the debt was due till the date of payment.

3. The basic transaction, by way of a Letter of Credit ('LoC') opened by the Petitioner/Bank way back in 1979, was for a value of Rs.11,82,392.82. The LoC was opened in favour of Bentrex and Co., Singapore. This was for import of copper scrap from Singapore. The ship bringing the goods sank on 8th September, 1979.

4. According to the Respondents, the shipping documents were of doubtful nature and were rejected by them. On the assurance of the Bank that the insurance money would be received, the insurer signed the necessary documents and endorsed the policies in favour of the Bank. However, the Bank did not sue the insurance company, as a result of which the Respondents filed Suit No.672/1980 in this Court against the Bank. According to the Respondents, no written statement was filed in the suit for over six years.

5. Meanwhile, another LoC was opened in favour of M/s P N Rao and Co. on 27th June, 1983. When the documents were presented to the company,

they did not make payment. The amount due in respect of the LoCs from the company to the Bank in respect of the two LoCs, rose to Rs.14,87,893.39.

6. It appears that on account of certain other credit facilities extended thereafter, a total outstanding, together with interest on the earlier payments, increased to Rs.76,59,952.62, as of 1987, leading the Bank to file CS(OS) No.1679/1987 in this Court on 17th July, 1987, claiming the said sum. It must be noted that this sum was inclusive of the interest that had accrued on the outstanding sum till that date. The said sum was claimed with interest @ 19.5% per annum with quarterly rests.

7. The said suit was transferred to the Debt Recovery Tribunal-II ('DRT') and registered as OA No.443/1996. The said OA came to be disposed of by the DRT-II on 5th June, 2014, holding that the Bank was entitled to recover from the company and its directors and guarantors (except Defendant No.4 who had expired in the meanwhile), a sum of Rs.73,94,114/- with interest @ 19.50% per annum with quarterly rests with cost of Rs.2,44,235/- with effect from 17th July, 1987, till the date of recovery.

8. Aggrieved by the above order, the company filed Appeal No.37/2015 while Shri Iqbal Singh and Mrs Manjit Dhingra filed Appeal No.38/2015.

9. In the impugned order dated 1st March, 2016, the DRAT noted the submission of learned counsel for the Respondents i.e. the company, Shri Iqbal Singh and Mrs Manjit Dhingra that though the appeals were according to them likely to succeed on merits, they still "would wish to buy peace by settling the case with the bank". Accordingly, it was submitted that the

DRAT may determine “the interest considered reasonable and appropriate”. It was pointed out that a basic liability of around Rs.11.50 lakhs had led to a liability of Rs.76 lakhs, and has now assumed a huge liability of Rs.120 crores, essentially on account of interest. The DRAT then observed as under:

“The liability has become many-folded primarily because of the rate of interest which the Tribunal has allowed, which is 19.50% p.a. with quarterly rests. This rate of interest apparently is harsh and cannot pass off as fair. Counsel for the bank has not been able to show any justification for claiming the amount with this rate of interest as allowed by the Tribunal below. This is a case where the ship had sunk and rightly or wrongly the appellants had claimed that they were persuaded or coerced to sign documents on the assurance that the bank would claim the amount from ECGC, that not done. Obviously, this aspect cannot be ignored.”

10. It then proceeded to record what appears to be some kind of concession by the bank as under:

“The counsel for the bank has also very fairly stated that the discretion to grant concession in the interest would be that of this Tribunal, Both the counsel, however, have not passed for allowing any particular rate of interest which according to them, would be reasonable, The counsel for the appellants, however, in a subdued manner has prayed for allowing interest at the rate of 11% p.a., simple once the interest at the rate of 10% p.a. simple is not found acceptable or reasonable”.

11. The DRAT then noted the following factors:

- (i) The rate of interest allowed by the DRT was “rather harsh and stiff”.
- (ii) Although the Respondents may be delayed in settling the issue with the bank, that itself cannot be taken as a circumstance to make the amount of recovery look unreasonable.
- (iii) The basic liability of Rs.11.50 lakhs had become Rs.120 crores.

- (iv) The Respondents, without arguing on merits, had come forward to buy peace and settle the matter with the Bank.
- (v) The Bank, after taking responsibility, did not make any effort to recovery the amount as insurance.

12. The DRAT accordingly observed that the interest @ 12% per annum simple would meet the ends of justice and would be just and reasonable.

13. This Court has heard the submissions of learned counsel for the parties. Mr Saran Suri, learned counsel appearing for the bank, referred to the decision of the Supreme Court in *Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co. Ltd.* 2018 SCC OnLine SC 1922 and submitted that in exercising discretion in terms of Section 19 (20) of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ('RDDDB Act'), the DRAT had failed to take into account several factors highlighted in the said judgment. In particular, he referred to para 12 of the said decision, where the factors to be taken note of by an Arbitrator while awarding interest were highlighted as under:

- “(i) the ‘loss of use’ of the principal sum;
- (ii) the types of sums to which the Interest must apply;
- (iii) the time period over which interest should be awarded;
- (iv) the internationally prevailing rates of interest;
- (v) whether simple or compound rate of interest is to be applied;
- (vi) whether the rate of interest awarded is commercially prudent from an economic stand-point;
- (vii) the rates of inflation, (viii) proportionality of the count awarded as Interest to the principal sums awarded.

On the one hand, the rate of Interest must be compensatory as it is a form of reparation granted to the award-holder; while on the other it must not be punitive, unconscionable or usurious in nature. Courts may reduce the Interest rate awarded by an arbitral tribunal where such interest rate does not reflect the prevailing economic conditions or where it is not found reasonable, or promotes the interests of justice.”.

14. He also drew attention to a decision of this Court in ***Punjab & Sindh Bank vs . Vinod Kumar Jain (2016) 229 DLT (CN) 11 (DB)***, where it was observed in the context of that case, as under:

“6. While exercising the discretion with respect to rate of interest, the DRAT ought to have noted the facts and circumstances of the case. The prime lending rates of the RBI in the year 1986 when the two suits were instituted were 16.50% p.a. to 17.50% p.a. The DRT awarded interest @14% p.a. for the reasons as noted above. No appeal against the said order was filed by the bank. However, on an appeal of Vinod Kumar Jain, the rate of interest was reduced to 11% p.a. without assigning reasons. Considering the facts that suits for recovery were instituted in the year 1986 and the respondents after admitting their liability failed to discharge the same and protracted the proceedings, the DRT committed no error in awarding interest at the rate of 14% p.a. simple. No case was made out before the DRAT for reduction of the rate of interest to 11% p.a.”

15. It was submitted that there was no justification in the DRAT reducing the rate of interest in the above manner.

16. Appearing for the Respondents, Mr Arun Kathpalia, learned Senior Counsel along with Mr Amit Dhupar appearing for the Respondents submitted that there was discretion available to the DRAT in terms of

Section 19 (20) of the RDB Act, to reduce the rate of interest. Reliance is placed on the decision in ***Central Bank of India v. Ravindra (2002) 1 SCC 367*** where it was *inter alia* observed as under:

“(8) Award of interest pendente lite and post-decree is discretionary with the Court as it is essentially governed by Section 34 of the CPC de hors the contract between the parties. In a given case if the Court finds that in the principal sum adjudged on the date of the suit the component of interest is disproportionate with the component of the principal sum actually advanced the Court may exercise its discretion in awarding interest pendente lite and post-decree interest at a lower rate or may even decline awarding such interest. The discretion shall be exercised fairly, judiciously and for reasons and not in an arbitrary or fanciful manner.”

17. A reference is also made in the context of the RDDB Act itself to a decision of the Constitution Bench in ***State Bank of India v. Sarathi Textiles (2009) 16 SCC 328*** where it was held as under:

“4. The present proceeding arises out of an application filed before the debts Recovery Tribunal under the provisions of Recovery of Debts (Due to Banks and Financial Institutions) Act, 1993, hereinafter referred to as "the Act". The Tribunal did grant interest @ 19-1/2 percent, but on appeal being carried, the same has been reduced to 10 per cent by the Appellate Tribunal. The Act clearly stipulates that the provisions of the Code of Civil Procedure will have no application except certain provisions thereof as mentioned in Section 22. Section 19 deals with the procedure to be followed by Tribunal on an application being filed by Bank and Financial Institutions and Sub-section (20) deals with the power of the Tribunal in the matter of grant of interest. A special procedure having been provided in the special enactment for recovery of debts due to the Banks and Financial Institutions and special procedure having been provided therein, the question of considering the provisions of Order 34 Rules 2, 3, 4 and 11 of the Code of Civil Procedure in

the case in hand, does not arise. Prima facie, Sub-section (20) of Section 19 confers a discretion on the Tribunal to award interest on an application being filed as it thinks fit to meet the ends of justice. That being so, in the case in hand, we see no justification for interference by this Court Under Article 136 of the Constitution of India against the appellate order of the Tribunal.

This petition accordingly stands dismissed.”

18. Having heard learned counsel for the parties and in light of the above decisions of the Supreme Court, particularly the decision of the Constitution Bench of the Supreme Court in *State Bank of India v Sarathi Textiles (supra)*, this Court is of the view that the DRAT did not exceed its jurisdiction in modifying the rate of interest to 12% simple interest per annum, in the facts and circumstances highlighted in the impugned order of the DRAT.

19. The factors highlighted in the judgment of the Supreme Court in *Vedanta Ltd. v Shenzhen Shandong Nuclear Power Construction Co. Ltd. (supra)*, do appear to have been broadly accounted for by the DRAT keeping in view the peculiar facts and circumstances of the case. These include the length of time over which the litigation has stretched, and the fact that the original principal amount has swelled to several hundred of crores mainly on account of the claim of interest. Consequently, the approach of the DRAT in accepting the offer of the Respondents herein to settle the matter to buy peace and not contest the principal amount claimed, cannot be faulted. The Court would also like to note that the Respondents have since discharged the entire liability in terms of the impugned order of the DRAT.

20. Consequently, it is not a case where the Court is persuaded to interfere with the impugned order of the DRAT. The petitions are accordingly dismissed. No costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

NOVEMBER 21, 2019

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