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

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Date of Judgment: 25.03.2019

+ **W.P.(C) 2177/2019 and C.M. Appl. Nos. 10238-39/2019**

SANMAN DISTRIBUTORS PVT LTD

..... Petitioner

Through: Mr. Rajiv Nayyar and Mr. Amit S. Chaddha, Sr. Advocates with Mr. Sanjay Chhabra, Mr. Mamik and Ms. Vijay Laxmi, Advocates.

versus

ANA ARC PVT LTD & ORS

..... Respondents

Through: Mr. Rakesh Tikku, Sr. Advocate with Ms. Risha Mittal and Ms. Arpan Wadhawan, Advocates for R-1.
Mr. S.K. Aggarwal, Court Commissioner with Mr. Jai A Dehadrai and Mr. Sidharth Arora, Advocates for R-3.
Mr. C.S. Gupta, Advocate for R-4.

+ **W.P.(C) 12164/2018 and C.M. Appl. Nos. 47211/2018, 52266-67/2018, 515/2019 & 1705/2019**

SANMAN DISTRIBUTORS PVT LTD

..... Petitioner

Through: Mr. Rajiv Nayyar and Mr. Amit S. Chaddha, Sr. Advocates with Mr. Sanjay S. Chhabra, Mr. Mamik and Ms. Vijay Laxmi, Advocates.

versus

ANA ARC PVT LTD & ORS

..... Respondents

Through: Mr. Rakesh Tikku, Sr. Advocate with Ms. Risha Mittal and Ms. Arpan Wadhawan, Advocates for R-1.
Mr. C.S. Gupta, Advocate for R-4.

CORAM:
HON'BLE MR. JUSTICE G.S. SISTANI
HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

1. Writ Petition No. 12164/2018 was filed being aggrieved by an interim order dated 2.11.2018 passed by the Chairman, Debt Recovery Appellate Tribunal. On 28.11.2018 a statement was made on behalf of the respondent nos. 1 and 2 that the Recovery Officer, Debt Recovery Tribunal, would be requested not to proceed with the recovery and to keep the same in abeyance for a period of one month. This statement continued till 8.1.2019 when in C.M. Appl. No. 515/2019 the Predecessor of this Court directed the Recovery Officer not to proceed with the recovery till the next date of hearing. This order continues till date.

2. During the pendency of this writ petition, admittedly, the Debt Recovery Appellate Tribunal has passed a final order which is the subject matter of W.P. 2177/2019, and in view of the fact that the final order has been passed W.P. 12164/2018 is withdrawn by the petitioner herein.

3. Some necessary facts which are required to be noticed for disposal of W.P. 2177/2019 are that loans were advanced by the respondent no. 2-Dena Bank to Vindale Distilleries Limited in January, 1972. The loans were secured by way of mortgage of properties of the borrower company. It is also not in dispute that there are internal fictions between different groups of shareholders/directors who are contesting for taking over of the control and management of the borrower company. Since the outstanding amounts were not cleared, an O.A. was filed by Dena Bank for recovery of

Rs.4,63,67,534/- with interest at 19.75% per annum compounded quarterly. O.A. was initially instituted in Hyderabad but subsequently transferred to DRT-II in Delhi pursuant to order passed by the Supreme Court of India. The petitioner herein opposed the certificate of recovery having been issued by the DRT. An application being M.A. No. 116/2018 was filed by the petitioner herein under Sections 27(1) and 19(25) of the RDDBFI Act, 1993 before the Debt Recovery Tribunal offering to liquidate the dues of Dena Bank which have been assigned in favour of respondent no. 1 herein.

4. Aggrieved by the order passed by the Debt Recovery Tribunal directing the respondent nos. 1 and 2 herein to deposit the title deeds, Dena Bank filed an appeal before the Debt Recovery Appellate Tribunal. Since the Debt Recovery Appellate Tribunal had stayed further proceedings before the Debt Recovery Tribunal, the first writ petition came to be filed being W.P. 12164/2018. The present writ petition with which we are concerned today arises out of the final order passed by the Debt Recovery Appellate Tribunal dated 4.12.2018. Appellants are aggrieved by the direction issued by the Debt Recovery Appellate Tribunal contained in para 17 which is reproduced below:-

“17. Considering all the facts and circumstances of the case, this Tribunal is of the view that the only appropriate order to be passed is to direct the DRT to dispose of appellants’ M.A. No. 1595/2018 and M.A. No. 116/2018 of respondent no. 7 herein within a period of ten days from the date of receipt of this order and till the disposal of these applications the direction given to appellants to deposit the title deeds in the Registry of DRT will remain stayed. It is ordered accordingly.”

The same is to the effect that M.A. No. 1595/2018 be disposed of by the Debt Recovery Tribunal and till the disposal of the application the

directions given to the appellant to deposit the title deeds in Registry of DRT is to remain stayed.

5. Mr. Nayyar and Mr. Chaddha, learned senior counsels appearing for the petitioner submit that petitioner has already deposited Rs.7 crores with the Registrar, Debt Recovery Tribunal on 26.9.2018. In fact, three bank drafts in the sum of Rs.1,64,44,612/-, Rs.65,00,00,000/- and Rs.1,23,191.36 were also tendered but while the photographs were retained, the originals were returned to the petitioner. They, however, submit that they are willing to deposit the balance amount subject however to the condition that the original title deeds be deposited with the Debt Recovery Tribunal.

6. Learned senior counsels for the petitioner further submit that they apprehend that the original title deeds have either been misplaced by the respondents or in future may be used to create another debt. They submit that on deposit of the balance amount, the original title deeds and certified copies of those title deeds of which originals are not available, be handed over to the petitioners with an undertaking that the originals, which are not available, have not been used to create a debt in any other account and further that the recovery certificate would stand satisfied.

7. Mr. Tiku, learned senior counsel appearing for respondent nos. 1 and 2 submits that in case the petitioner clears the outstanding amounts, respondent nos. 1 and 2 would deposit and/or would have no objection if the documents filed before the Debt Recovery Tribunal in the form of originals or certified copies are released. Mr. Tiku further submits that the respondents would also furnish an undertaking that the title deeds have not

been deposited in any other account and are not subject matter of any other mortgage and that the RC would stand discharged.

8. Having regard to the agreed stand taken by counsel for the parties, we direct as under:-

(i) Subject to the payment of the balance amounts by the petitioners the original title deeds/certified copies filed before the DRT and/or in possession of respondent nos. 1 and 2 shall be taken in person by the Registrar, DRT-II and hand over the same to the Registrar General, Delhi High Court to enable him to place the same in a sealed cover in Suit No. 1514/1994 pending in this Court.

(ii) Title deeds shall be kept in safe custody by the Registrar General subject to further order which may be passed by the Single Judge.

(iii) It is agreed that by depositing the balance amount no special equities will flow in favour of the petitioner herein in the collateral proceedings. The certified copies, if not available, shall be applied for forthwith by the respondent nos. 1 and 2.

(iv) Undertaking shall be filed by the respondent no. 1 and 2 that upon deposit of the balance amount the RC shall stand discharged. Respondent nos. 1 and 2 shall also state in the undertaking that the title deeds in respect of the properties are not subject matter of any other debt.

9. W.P. 12164/2018 accordingly stands withdrawn.

10. In view of the above, W.P. 2177/2019 stands disposed of. All pending applications also stand disposed of accordingly.

10. Parties to appear before the Debt Recovery Tribunal on the date fixed.

G.S.SISTANI, J

JYOTI SINGH, J

MARCH 25, 2019

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