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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 11283/2015

GLOBAL HERITAGE VENTURE LTD.

..... Petitioner

Through: Mr.Darpan Wadhwa, Sr.Advocate
with Ms.Ruchira Gupta, Ms.Mona
Sinha and Ms.Cauveri Birbal,
Advocates.

versus

PUNJAB NATIONAL BANK & ORS

..... Respondents

Through: Mr.Karan Khanna with Ms.Asmita
Kumar, Advocates for R1, 3 to 7.
Mr.Sanjeev Sagar, Advocate for R2.
Mr.Sanjeev Sagar, Standing Counsel
for UBI with Ms.Nazia Parveen,
Advocate for UBI.

CORAM:

**JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH**

ORDER

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16.10.2019

Dr. S. Muralidhar, J.:

1. This petition has been filed by the original borrower challenging the impugned order dated 7th September, 2015 passed by the Debt Recovery Appellate Tribunal ('DRAT') in IA No.649 of 2015 (new No.4037 of 2015) filed in SA No.65 of 2012 (Delhi-2), holding that the Petitioner's aforementioned application (SA) before the Debt Recovery Tribunal ('DRT') was not maintainable.

2. The background facts are that the Petitioner, which is a company engaged in the business of development and construction, undertook the project of constructing a five-star hotel at Gurgaon, Haryana for which it was sanctioned a loan of Rs.180.00 crores by a consortium of banks i.e., Respondent Nos.1 to 7, at various points in time. The project was unable to be completed and the consortium declared the debt owed by the Petitioner as a Non-Performing Asset (NPA). This led to initiation of proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 ('SARFAESI') culminating in a public auction of the hotel project. As a result of the auction, a sum of Rs.406.50 crores was collected by the consortium on 5th September, 2011.

3. The admitted position is that after a series of meetings between the consortium and the Petitioner, the money recovered by the auction has been utilised for liquidating the debts owed to the members of the consortium, leaving a residue amount, which was made over to the Petitioner on 28th September 2011.

4. After 249 days, the Petitioner filed the aforementioned SA against the consortium banks before the DRT, along with an application for condonation of delay, claiming that an excess amount had been recovered from it and that, therefore, a further sum ought to be returned to it as residue of auction proceeds. Initially, the application for condonation of delay was rejected by the DRT by an order dated 6th March, 2014 holding that the DRT had no power to condone the delay in filing the SA. The said order dated 6th March, 2014 was assailed by the Petitioner in appeal before the DRAT. By

an order dated 30th December, 2014 the DRAT remanded the matter to the DRT to again consider the application for condonation of delay in filing the SA.

5. On remand, the DRT for a second time on 18th June, 2015 held that sufficient reason had not been shown by the Petitioner for the delay in filing the application. Accordingly, it was held that the SA 65/2012 was barred by limitation. Against the said order, the Petitioner once again approached the DRAT. By the impugned order dated 7th September, 2015 the DRAT has, while dismissing the appeal, held that the SA itself was not maintainable before the DRT.

6. This Court has heard the submission of Mr. Darpan Wadhwa, learned Senior Counsel for the Petitioner and Mr. Karan Khanna, learned counsel for the Respondents.

7. The relevant provisions of the SARFAESI Act in the context of the residue of auction proceeds are Section 13 (4) read with Section 13 (7), which read as under:

“13. Enforcement of Security Interest—

.....

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole, of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security or the debt;

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

.....

(7) Where any action has been taken against a borrower under the provisions of sub-section (4), all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the absence of any contract to the contrary, be held by him in trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, in is charge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests.”

8. Immediately relevant for the present case are the steps taken under Section 13 (4) (a), read with sub clause (d) and Section 13 (7) of the

SARFAESI Act. A careful reading of the said provisions would reveal that the steps under Section 13 (7) of the SARFAESI Act are in continuation of the steps taken under Section 13 (4). In other words, after ascertaining the costs, charges and expenses incurred by the creditors, which are recoverable from the borrower, the money recovered in the auction would have to be applied first in the payment of cost, charges and expenses and secondly, in the discharge of the dues of the secured creditor. Section 13 (7) explicitly states that the residue of the money, after adjusting for the cost, charges, expenses and the dues of the creditors “shall be paid to the person entitled thereto in accordance with their rights and interests”.

9. It may be noticed at this stage that while the DRAT has in the impugned order referred to Section 13 (4)(d) of the SARFAESI Act, it has failed to notice that the steps under Section 13 (7) are in continuation of the steps initiated under Section 13 (4) of the SARFAESI Act and that both subsections, therefore, form a complete scheme.

10. Turning now to Section 17 (1), it states that any person aggrieved by “any of the measures referred to in subsection 4 of Section 13 taken by the secured creditor or his authorized officer..... may make an application along with such fee as being prescribed for the Debt Recovery Tribunal having jurisdiction of the matter within 45 days from the date on which such measures had been taken.” It is plain that the measures referred to in Section 13 (7) have to be seen as continuing in terms of Section 13 (4), till such time the money recovered in an auction has been utilised to recover the cost, charges, expenses as well as the dues of the secured creditor and the residue,

if any, has been paid to the person entitled thereto. In other words, the measures under Section 13 (7) read with Section 13(4) would be covered by the expression “any of the measures referred to in sub-section 4 of Section 13” occurring in Section 17 (1) of the SARFAESI Act.

11. Read as above, it is clear that a person aggrieved by the measures taken on a collective reading of Section 13 (4) with Section 13 (7) of the SARFAESI Act would be entitled to maintain an application before the DRT. Consequently, the Court disagrees with the DRAT that the aforementioned SA No.65 of 2012 filed by the Petitioner was not maintainable before the DRT.

12. The further question that arises is whether the Petitioner had given sufficient explanation for the condonation of delay in filing the application before the DRT. The Court has perused the application filed by the Petitioner which refers to the fact that the Petitioner first approached the Respondents by issuing notices and then approached the Reserve Bank of India (‘RBI’).

13. The Petitioner has placed on record the responses received from the RBI on 2nd February, 2012 stating that the RBI would revert to the Petitioner ‘in due course’. On 12th April, 2012 the RBI advised the Petitioner to approach the Banks in question. A reminder was sent by the Petitioner to RBI on 14th July, 2012 and thereafter, the Petitioner filed the aforementioned SA on 31st July 2012 before the DRT.

14. The Court is of the view that the explanation offered by the Petitioner for

the delay in approaching the DRT with SA No.65 of 2012 is satisfactory and that the delay was due to bonafide reasons. The Court accordingly sets aside the order dated 18th June, 2015 of the DRT declining to condone the delay. In other words, IA No.571 of 2012 before the DRT should be held to have been allowed.

15. The Court accordingly sets aside the impugned order dated 7th September, 2015 of the DRAT and restores SA No. 65 of 2012 to the file of DRT for disposal on merits. The said SA shall now be placed before the concerned DRT on 8th November, 2019 for being proceeded with in accordance with law.

16. The petition is disposed of. The application is also disposed of. It will be open to the parties to request the DRT for expeditious disposal.

CM APPL. 37772/2018 (delay)

17. For the reasons stated in the application, the delay in filing the affidavit is condoned. The application is allowed. Order *dasti*.

S. MURALIDHAR, J.

TALWANT SINGH, J.

OCTOBER 16, 2019/tr