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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9304 OF 2014

Mr. Ross Deas & Anr. .. Petitioners

Versus

Central Bank of India & Ors. .. Respondents

Mr. Rohit Gupta a/w Mr. Nikhil Rajani & Ms. Jyoti Sanap i/by M/s. V. Deshpande & Co. for Petitioners.

Ms. Usha K. Srivastava a/w Nupur Awasthi i/by Consulta Juris for Respondent No.1.

Ms. Sapana Rachure for Respondent No.2.

Mr. M. M. Pabale, AGP for State.

CORAM: PRADEEP NANDRAJOG, CJ. &
SMT. BHARATI DANGRE, J.

JANUARY 06, 2020

P.C.

1. Heard learned Counsel for the parties.

2. The Writ Petition, filed by the guarantors, questions the legality of the order dated 15.07.2014 passed by the learned

Debts Recovery Appellate Tribunal, Mumbai disposing of Misc. Application No. 109 of 2008 which was filed in Appeal No. 37 of 2008.

3. The Appeal was preferred against an order passed by the Debts Recovery Tribunal and in the Misc. Application waiver of the amount required to be deposited by the Petitioners as contemplated by Section 21 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 was prayed for.

4. It was pleaded that the assets of the Company which was the principal borrower and qua whose debts to the Bank the Petitioners had stood as guarantors were liquidated by the Liquidator on the Company being wound-up and thus prayer made was to waive the deposit of the decretal amount.

5. The decree was in sum of ₹ 40 lakhs together with interest from the date when the claim was lodged and the view taken by the Appellate Tribunal is that more than ₹ 1 Crore would be payable.

6. The Application was disposed of directing that ₹ 40 lakhs be deposited in two tranches within a period of six weeks.

7. The Writ Petition has remained pending in this court for nearly six years and in the interregnum lot of water has flown under the bridge.

8. A report dated 04.07.2019 is submitted by the Official Liquidator informs that a sum of ₹ 9,09,95,492.73 is lying with the Official Liquidator to the account of the Company in liquidation and that the liquidator has paid to the Central Bank of India ₹ 41,30,765/- i.e. the decretal sum. The report informs that 27 claims totaling ₹ 4,78,29,140/- have been received.

9. Neither party is able to guide the Court whether the assets sold by the liquidator were secured assets or not. This information would be relevant for the reason if the assets sold were secured assets the bank would be entitled to receive the sale consideration before any part thereof was utilized to clear the debts of unsecured creditors.

10. Be that as it may, the information provided by the Official Liquidator is treating ₹ 4,34,21,760/- as the secured claim of the Central Bank of India. From the report it is apparent that of the total claims in sum of ₹ 4,78,29,140/- lodged with the Official Liquidator the claim of Central Bank of India itself is

₹ 4,34,21,760/-. Meaning thereby, the other claims i.e. of the Income Tax, Sales Tax and other unsecured creditors would be to the tune of around ₹ 45 lakhs.

11. We are surprised that the Central Bank of India has not filed an application before the learned Company Judge praying that the entire amount due and payable to the Bank be released from the amount lying to the credit of the Company in liquidation.

12. From the aforesaid facts it is apparent that from out of the assets of the principal debtor enough funds are available to clear the dues of the Bank and thus we dispose of the Writ Petition setting aside the impugned order dated 15.07.2014. We allow Misc. Application No. 109 of 2008 and direct that Appeal No. 37 of 2008 be heard by Debts Recovery Appellate Tribunal, Mumbai without any pre-deposit.

**SMT. BHARATI DANGRE, J.** **CHIEF JUSTICE**

Pravin D. Pandit

Digitally signed by Pravin D. Pandit
Date: 2020.01.06 17:21:37 +0530