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

\+ **W.P.(C) 1072/2020 & CM APPL. 3535/2020**

JAMMU AND KASHMIR BANK LIMITED . .... Petitioner

Through Mr. T.K.Ganju, Senior Advocate with Mr. Syed Arsalan Abid, Mr. Prateek Khaitan, Mr. Jatin Julka and Mr. Apoorv Malhotra, Advocates.

versus

PUNJAB NATIONAL BANK AND ORS. .... Respondents

Through Mr. Hashmat Nabi, Mr. Farah Naaz & Ms. Swathi Vajjhala, Advocates for Respondent No.1/PNB.

Mr. Amit Singh Chadha,Senior Advocate with Mr. Shashank K.Lal and Mr. Sahil Mongia, Advocates for Invent ARC.

Mr. Ravi Data & Mr. Rajesh Sharma, Advocates for Respondent No.3/Caveator.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

<u>O R D E R</u>

% **29.01.2020**

<u>Dr. S. Muralidhar, J.</u>:

1. This petition by the Jammu & Kashmir Bank Limited ('J & K Bank') is directed against the orders dated 18th December, 2019 passed by the Debt Recovery Appellate Tribunal ('DRAT') dismissing J & K Bank's Appeal No. 139/2019 as well as the order dated 21st February, 2019 passed by the Debts Recovery Tribunal-I ('DRT') in OA No.178/2016.

2. By the impugned orders the plea of J & K Bank that it is neither a necessary nor a proper party in the proceedings initiated by Respondent No.1/Punjab National Bank ('PNB') by way of OA No.178/2016 before the DRT was negatived.

3. The background facts are that Respondent No. 3 M/s. Golden Rathi Star Industries Limited (hereinafter 'Golden Rathi') approached J & K Bank on 9th August, 2007 for availing cash credit facilities to the tune of Rs.25 crores. Sanction was secured in the cash credit facility by creating a first charge on current assets, including hypothecation of stocks, raw materials etc. As a collateral, equitable mortgage of the factory premises at Dadri, Noida and residential property in Gurgaon was furnished.

4. On account of defaults committed by Golden Rathi, J & K Bank declared its loan account as Non-Performing Asset (NPA) on 6th January, 2009. On 7th January, 2009 J & K Bank issued to Golden Rathi a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 ('SARFAESI Act'). On 11th July, 2009, J & K Bank issued a possession notice in respect of its properties at Village Bisnoli, Dadri, Gautam Budh Nagar, Noida. On 26th July, 2009 J & K Bank issued a sale notice in relation to aforesaid said properties.

5. Golden Rathi filed a Securitisation Application being SA No.228/2009 before the DRT-III questioning the action taken by J & K. Meanwhile on 1st January, 2010 and 15th March, 2010, the second and third sale notices respectively were issued by J & K in relation to the above properties.

6. On 2nd July, 2010, Invent Assets Securitisation and Reconstruction Company Private Limited (hereinafter, 'Invent') (Respondent No.2), confirmed to J & K Bank by letter dated 2nd July, 2010 its willingness to purchase the debt owed by Golden Rathi to J & K Bank. As part consideration for such assignment, a sum of Rs.2,55,10,000/- was remitted through RTGS to the account of the J & K Bank by Invent on 5th July, 2010.

7. The Assignment Deed whereby the debt of Golden Rathi was assigned by J & K Bank to Invent was signed on 13th August, 2010. On the same day, a part consideration of Rs.3,82,65,000/- was received by J & K Bank from Invent through RTGS. The final consideration of Rs.19,13,25,000/- was received by J & K Bank on 24th September, 2010. These amounts were adjusted in the loan account of Golden Rathi. Separate deeds of assignment were executed in relation to the property in Dadri between J & K Bank and Invent on 4th October, 2010. J & K Bank parted with physical possession of the property in favour of Invent, in the meanwhile. In other words, by this time, J & K Bank completely withdrew from the picture.

8. Invent conducted an auction sale of the property at Dadri on 19th October, 2010 in favour of Supreme Alloys Limited (hereinafter 'Supreme') (Respondent No. 3). In the pending SA No. 228/2009, an order was passed by the DRT-III on 1st November, 2012 substituting J & K Bank (Assignor) with Invent (the Assignee).

9. On 27th June, 2013 the DRT-III allowed the aforementioned SA and set aside the auction sale of the property at Dadri to Supreme. This order was

upheld by the DRAT, dismissing the appeals of Invent and Supreme respectively on 26th June, 2015.

10. In the meanwhile, it appears that Supreme, which had purchased the property at Dadri mortgaged it to PNB for availing a loan. With Supreme defaulting, OA No.178/2016 was filed by PNB before the DRT-I for recovery of its dues. A copy of the said OA, which has been placed on record, reveals that although J & K Bank was impleaded as Defendant No. 5 and Invent as Defendant No.6 but no reliefs as such were sought in the said OA against either of them.

11. By the order dated 21st February, 2019, the DRT-I allowed the OA No.178/2016. In the said order, certain observations made by the DRAT in its order dated 26th June, 2015, dismissing the appeals of the Invent and Supreme, were referred to. One observation highlighted by the DRT, contained in para 33 of the order of the DRAT dated 26th June, 2015, was that the assignment was made on 4th October, 2010, and the property was sold by a private treaty within 15 days thereafter, on 19th October, 2010, even while the Assignment Deed was corrected on 3rd November, 2010. The other remark, drawing on para 34 of the aforesaid order of the DRAT, was that one of the directors of Supreme was witness to the Assignment Deed. The DRT then observed in para 21 (viii) of its order as under:

> "(viii) In view of the above observations made by Hon'ble DRAT, Delhi, in case defendant No. 5 also received any sum of bid amount of Rs.20.31 along with defendant No.6 then defendant No.5 is also liable to refund the said amount along with interest to the applicant bank and liability of defendant

No.5 shall remain upto the said extent only."

12. In the operative portion of the order, in para 23 (ii), it was directed by the DRT as under:

> "(ii) The liability of the defendant No.5 & 6 is upto the extent of Rs.20.31 crores along with interest. The defendant No.5 & 6 are hereby directed to refund the amount of Rs.20.31 crores along with interest @24% p.a. from 19.10.2010 till the date of payment to the applicant bank immediately. It is made clear that the liability of defendant No.5 & 6 is upto the extent amount received from auction dated 19.10.2010."

13. This direction was passed despite the DRT noting the contentions of the J & K Bank in para 21 (i) of its order as under:

> "21. (i) The main ground taken by the defendant No.5 is that the defendant No. 6 herein entered into an assignment agreement whereby the defendant No.5 assigned its loan/debt to M/s Invent Assets Securitization & Reconstruction Pvt. Ltd. i.e. defendant No.6 therefore, no relief is maintainable against the defendant No.5 thus, it is stated that the OA qua defendant No.5 is liable to be dismissed."

14. The J & K Bank then filed Appeal No. 139/2019 before the DRAT. The DRAT has in the impugned order dismissing the appeal held as under:

(i) Paras 23, 33 and 34 of the orders passed by the DRT, in the SA filed by Golden Rathi and the order dated 26th June, 2015 of the DRAT, which had already attained finality, "clearly show that the assignment of the debt for Rs.20 crores was a collusive and sham affair". Therefore, "just because the so-called assignment consideration received by the appellant Bank from Respondent No. 2 was prior to the so-called sale private treaty of the property in question in favour of

Respondent no.4 will not make any difference as far as its liability to return the sale consideration of Rs. 20.31 crores as directed by DRT is concerned."

(ii) The "entire assignment of debt having been found to be an act of collusion it will not make any difference whether the appellant bank actually and directly received any full or part of the sale consideration for the sale of the mortgaged property of Respondent no.3 herein". The reason for this was that in view of the "sham sale certificate in respect of the property in question" by Invent in favour of Supreme, Supreme was able to get a loan from P & B to the tune of over Rs.50 crores and, therefore, with the quashing of that sale certificate by the DRT, PNB became entitled to recover part of its dues recoverable from its defaulting borrower i.e. Supreme, "from J & K Bank also" and that the DRT was "fully justified in directing recovery of Rs.20.31 crores with interest from J & K Bank also", as both J & K Bank and Invent "were found to be in collusion with each other" in making Supreme the owner of the property in question.

(iii) As regards the plea of J & K Bank that in the SA filed by Golden Rathi, no relief was granted against J & K Bank, it was observed by the DRAT that in the OA by PNB, to which J & K Bank was a party, the DRT could well give a direction to J & K Bank also to pay PNB irrespective of whether in fact appellant J&K Bank had received any money or not out of the sale proceeds of the mortgaged property of Golden Rathi.

15. This Court has heard the submissions of Mr. T. K. Ganju, learned Senior Counsel for the J & K Bank Limited, Mr. Amit Singh Chadha, learned Senior Counsel appearing for Invent and Mr. Hashmat Nabi, learned counsel appearing for PNB and Mr. Ravi Data, learned counsel appearing for Golden Rathi.

16. When asked how PNB could possibly make J & K Bank a party to its OA, when in fact no relief was sought against it, learned counsel for the PNB submitted that although in the main OA no such relief had been sought, an application for interim relief had been filed, seeking such directions against the J & K Bank. When further asked on what basis was any relief being sought against J & K Bank, when in fact it received no part of the auction proceeds deposited by Supreme with Invent, learned counsel for the PNB sought to suggest that some part of the amount paid by Supreme "had flown to J & K Bank Limited". In support of his submissions, he referred to a letter dated 5th July, 2010 written by Invent to J & K Bank Limited, in which, *inter alia,* it was stated as under:

> "In terms of your approval conditions, an amount of Rs.2,55,10,000 (Rupees Two crores Fifty Five Lakhs ten thousand only) has been today remitted to your Vikas Margi, Delhi Branch through RTGS under UTR number SYNBH10186380283 (Remitter: Us. account Mr. Jagjiv Kumar Arora), We would request you to acknowledge receipt of these funds."

17. The Court notices that the above letter is dated 5th July, 2010, whereas the auction in which Supreme purchased the property in question, took place on 19th October, 2010 i.e. more than 3 months later. The remitter is mentioned as "us" i.e. Invent. Therefore, no part of the auction proceeds

could possibly have been paid to J & K Bank as of 5th July 2010.

18. The Court, fails to appreciate how, therefore, J & K Bank Limited, after assignment of Golden Rathi's debt to Invent, could remain in the fray. Clearly, Invent had stepped into the shoes of J & K Bank Limited, thereafter. J & K Bank was nowhere involved in the process by which Supreme came to purchase the property in question in a subsequent auction.

19. Learned counsel appearing for Golden Rathi sought to suggest that there was in fact no assignment and that some amount had been paid by PNB to J & K Bank Limited. Apart from the fact that no such submission finds mention in either the impugned orders of the DRT or DRAT that have been challenged in the present petition, the Court finds no basis whatsoever for this kind of a submission. It is not the case of PNB that it paid any amount to J & K Bank. In fact, the parties have proceeded on the basis that there was an assignment of the debt, owed by Golden Rathi to J & K Bank Limited, in favour of Invent.

20. The Court finds no basis for the conclusion drawn by the DRAT that J & K Bank colluded with Invent to facilitate the purchase of the property in question by Supreme. The said conclusion appears to be not based on any material on record.

21. The observations in the order dated 26th June, 2015 passed by the DRAT, refer to the conduct of Invent and Supreme, and not that of J & K Bank. To simply extrapolate the liability of Invent to J & K Bank was, in the circumstances, unwarranted.

22. At this stage, it must be noted that Invent has supported the stand of J & K Bank Limited that no liability could attach to J & K Bank, after the assignment of the debt in its favour.

23. For the aforesaid reasons, the Court finds that both the orders dated 21st February, 2019 of the DRT and 18th December, 2019 of the DRAT, dismissing Appeal No.139/2019 of the J & K Bank Limited, are unsustainable in law and are hereby set aside.

24. The writ petition is allowed in the above terms. The pending application is also disposed of. No costs.

Caveat Nos. 79/2020, 80/2020 & 81/2020

25. Since the Caveators have appeared, the caveats stand discharged.

CM APPL 3536/2020 (Exemption)

26. Allowed, subject to all just exceptions.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 29, 2020

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