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

\+ W.P.(C) 3499/2020 & C.M. No.12417/2020 (stay)

STATE BANK OF INDIA ..... Petitioner

Through: Mr. Amrendra Kumar Singh, Advocate.

versus

LAANGZA WATERS PRIVATE LIMITED & OTHERS ..... Respondents

Through: Ms. Reena Jain Malhotra, Advocate for respondent No.1.
Mr. Anand Aggarwal, Advocate for respondents No.2 to 7.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

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

% **27.08.2020**

<u>HEARD THROUGH VIDEOCONFERENCING</u>

1. The petitioner by way of this writ petition, seeks to challenge the order dated 8.5.2020, passed by the learned Debts Recovery Appellate Tribunal, Delhi (hereinafter referred to as "DRAT") in I.A. No.5976/2019 moved in a disposed of Misc. Appeal No.24/2019.

2. The brief facts of the case are as under:-

a) On 4.7.2011, the petitioner/Bank sanctioned financial assistance to Gee Cee Corporation Pvt. Ltd./respondent No.2 herein. Respondents No.2 to 6 gave their personal guarantee to secure the loan and respondent No.7/Gee Cee Metals Pvt. Ltd. gave a corporate guarantee to secure the loan assistance granted by the petitioner to the respondent No.2 herein, Respondents No.2 to 7 are hereinafter referred to as "Mittal Group".

b) The account of respondent No.2 was declared as a non performing asset by the petitioner herein. The petitioner/Bank filed an application before the Debts Recovery Tribunal-II, Delhi (hereinafter referred to as "the DRT") under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 for recovery of an amount of Rs.55,82,43,824.35, along with interest.

c) The petitioner/Bank also issued a demand notice dated 8.5.2014 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act") to the respondent No.2 and all its guarantors for an amount of Rs.55,87,25,389.59.

d) Property bearing No.A-6, Preet Nagar Cooperative House Building Society Ltd., Preet Vihar, Delhi-110092 had been mortgaged with the petitioner/bank and it took the symbolic possession of the said property.

e) Another property bearing No.D-8, Maharani Bagh, New Delhi-110065, belonging to the respondent No.7 had also been mortgaged to secure the loan. The same property had also been given as a security in favour of Kotak Mahindra Bank to secure the re-payment of loans taken by the respondent No.7 which the petitioner/Bank states that it was not aware of.

f) Respondent No.7 had defaulted in re-payment of the loan taken from Kotak Mahindra Bank and since that loan was secured by way of equitable mortgage of the property in Maharani Bagh, Kotak

Mahindra Bank initiated proceedings as a secured creditor to recover its money under the SARFAESI Act, by auctioning the said mortgaged house.

g) To protect the Maharani Bagh property from being taken over, the respondent No.7 initiated proceedings against Kotak Mahindra Bank by filing an S.A. before the DRT. During pendency of that S.A., parties came forward to buy the Maharani Bagh property for about Rs. 35 crores which amount would have covered and cleared the liability of Kotak Mahindra Bank which was only to the tune of Rs. 13.50 crores. The officers of the petitioner/Bank got wind of the fact that the respondent No.7 was taking steps to sell the house in Maharani Bagh. The petitioner approached the DRT for attachment of the sale proceeds of the Maharani Bagh house which respondent No.7 would be getting after clearing the dues of Kotak Mahindra Bank.

h) Pending the said application, an understanding was arrived at in the first week of January 2019 between the buyer which purportedly was a Trust, State Bank of India, Kotak Mahindra Bank and the respondent No.7. As per the settlement which was approved by the DRT, the buyer was to clear the dues of Kotak Mahindra Bank and pay Rs. 19 crores to SBI and then only could the Maharani Bagh house be sold to the buyer by the respondent No.7. This arrangement was approved by the DRT. However, there was some fresh understanding arrived at between respondent No.7 and the buyer, to the effect that the buyer would not pay Rs. 19 crores to the petitioner/Bank as had been agreed upon earlier and which agreement had got the approval of the DRT by its order dated 10.01.2019. As per the new arrangement, the entire sale consideration excluding the share of Kotak Mahindra Bank was to be paid directly to the respondent No.7. Accordingly, the buyer paid off the dues of Kotak Mahindra Bank on 11.01.2019 and on same day, sale deeds also came to be executed by the respondent No.7 in favour of the buyer.

i) The petitioner/Bank immediately filed an appeal before the DRAT numbered as Misc. Appeal No.24/2019 challenging the order dated 10.01.2019 passed by the DRT. Notice of the appeal was given and DRAT restrained registration of any sale documents, delivery of possession and title deeds in respect of the Maharani Bagh house by Kotak Mahindra Bank to the buyer. Possession and title documents had however not been delivered to the buyers and in view of the stay order of the DRAT, the buyer did not get the title documents as well as physical possession of the Maharani Bagh house.

j) The DRAT allowed the appeal vide order dated 12.02.2019, set aside the order dated 10.01.2019 passed by the DRT and directed the Mittal Group either to pay the petitioner/Bank or deposit in the Registry of the Tribunal, a sum of Rs.21 crores which they had received in excess, after clearing the dues of Kotak Mahindra Bank. The DRAT came to the conclusion that the sale of the property at Maharani Bagh took place only because of the connivance between the Mittal Group and the buyer of the property.

k) The buyer of the property approached the High Court by filing a writ petition registered as W.P. (C) 2083/2019. The High Court by order dated 28.03.2019, found fault with the DRT for passing the order dated 10.01.2019 permitting sale of the Maharani Bagh house.

The order of the DRAT dated 12.2.2019 was affirmed.

l) Since the order dated 12.02.2019 of the DRAT in Misc. Appeal No.24/2019 was not being complied with and the Mittal Group was not depositing the amount and the petitioner/Bank was unable to get the money, it moved an application before the DRAT. The Mittal Group filed a list of various accounts and movable properties belonging to it. The DRAT by an order dated 6.5.2019, restrained operation of those bank accounts, as per the details given in the said affidavit. The said accounts included the accounts belonging to respondent No.1 herein.

m) Respondent No.1 herein filed an application, being Misc. Case No.380/2019, stating *inter alia* that it is neither a borrower, nor a guarantor and therefore, its accounts could not be attached in the ongoing dispute between the Banks and the Mittal Group. In the application, the respondent No.1 gave a shareholding pattern which is as under:

S. No.	Name of the Shareholder	Type of Share	Number of Shares	% of Shareholding
1	Madan Mohan Mittal	Equity Share	1	0.0002
2	Gee Cee Metals Private Limited	Equity Share	32,49,999	24.9998
3	Visvires Indian Consumers Pte Ltd.	Equity Share	48,75,025	37.5000
4	RB Investments Pte. Ltd.	Equity Share	48,75,028	37.5000
Total			1,30,00,053	100.0000

n) It was submitted that the respondent No.1 is an independent company not belonging to the Mittal Group and therefore, there could not have been any restraint order on its bank accounts. The learned DRAT by the impugned order dated 8.05.2020, found that just because the respondent No.7 herein holds some shares in the respondent No.1/company, it does not become a company belonging to the Mittal Group. The Tribunal also noticed that the respondent no.1 was the erstwhile M/s. G.C. Beverages Pvt. Ltd. and its entire shareholding was sold to companies in Singapore and this was done only after obtaining the permission of the petitioner/Bank herein. After sale of shares, the name of the company was changed from M/s. G.C. Beverages Pvt. Ltd. to M/s. Laangza Waters Pvt. Ltd. By the impugned order, the DRAT vacated the order dated 6.05.2019. The said order dated 8.05.2020, has been challenged in the instant petition.

3. Mr. Amrendra Kumar Singh, learned counsel for the petitioner states that the respondent No.1/company belonged to the Mittal Group and the corporate veil must be lifted to ascertain the said true ownership of the company. He states that substantial shareholding in the respondent No.1/Company is that of the Mittal Group and therefore, the accounts of the respondent No.1 ought to have been attached and the order of vacating the attachment, is unsustainable in law. He contends that the Mittal Group has resorted to all kinds of tactics and is facing contempt proceedings for violating the orders of the Tribunal in failing to deposit the amount which was directed to be deposited vide order dated 12.02.2019.

4. The High Court in its order dated 28.02.2019, came down heavily on the DRT which had passed the order dated 10.01.2019, permitting sale of the Maharani Bagh property. The Mittal Group has not paid the sum of Rs.21

crores, as directed to be paid vide order dated 12.02.2019 passed in Misc. Appeal No.24/2019. The DRAT has gone into details and has considered the facts of the case and has rightly come to the conclusion that the property of the respondent No.1 cannot remain attached just because the respondent No.7 herein holds shares in the respondent No.1/company. The DRAT was conscious of the fact that the Mittal Group had lost control of the respondent No.1/company when the majority of the shares were sold to companies from Singapore. The DRAT was also alive to the fact that shares were sold after obtaining the consent of the petitioner/Bank herein. The DRAT arrived at the conclusion and in our opinion correctly, that the respondent No.1 herein cannot be punished for the disobedience of orders by the Mittal Group that did not comply with the directions of the DRAT as given in the order dated 12.02.2019.

5. We are not impressed by the argument of learned counsel for the petitioner/Bank that the sale of shares of M/s. G.C. Beverages Pvt. Ltd. which is now known as M/s. Laangza Waters Pvt. Ltd., had been approved by a separate branch of SBI and the petitioner herein was unaware of the permission granted by another branch. The petitioner is State Bank of India. We cannot be persuaded by an argument that one branch of SBI will not be bound by the action of another branch and that each branch is independent of the other. It cannot be denied that the petitioner/Bank had issued a "No Dues Certificate" to the erstwhile M/s. G.C. Beverages Pvt. Ltd. for sale of the shares and that after obtaining the "No Dues Certificate", substantial amount of money was invested by the Singapore companies who have purchased over 50% of shares of earstwhile M/s. G.C. Beverages Pvt. Ltd. and later on, the name of the said company was changed to M/s. Laangza

Waters Pvt. Ltd. Since the respondent No.1/company is neither the borrower, nor the guarantor, its accounts cannot be attached for the amounts payable to the petitioner/Bank by the Mittal Group.

6. In view of above, we see no merit in the writ petition which is dismissed.

HIMA KOHLI, J

SUBRAMONIUM PRASAD, J

AUGUST 27, 2020
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