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

\+ **Date of Decision: 15.04.2021**

% W.P.(C) 3872/2021

HASSAD FOOD COMPANY Q.S.C. ..... Petitioner

Through: Mr. Arun Kathpalia, Sr. Advocate with Mr. Raj Shekhar Rao, Sr. Advocate, Mr. Samar Singh Kachwaha, Mr. Ankit Khushu and Mr. Aayush Marwah, Advocates.

versus

RELIANCE ASSET RECONSTRUCTION COMPANY LIMITED ..... Respondent

Through: Mr. Suresh Dutt Dobhal, Advocate for RARC

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

1. The present writ petition has been preferred by the petitioner to seek the following reliefs:

> *"(a) lssue an appropriate Writ, Order or Direction, to set aside the lmpugned Judgment dated 06.05.2019 passed by DRT ll in OA No 347/2014;*
>
> *(b) lssue an appropriate Writ, Order or Direction, to set aside the lmpugned Recovery Certificate No. 246/2019 dated 15.05.2019 passed by DRT ll in OA No.347/2014;*

(c) lssue an appropriate Writ, Order or Direction, to set aside all subsequent or consequential orders, by the Hon'ble DRAT (including presently orders dated 07.08.2019, 11.10.20 19 and 18.02.2020) ;

(d) Alternatively, remand the matter back to DRT-Il for a fresh determination of O.A No. 347/2014 titled Reliance Asset Reconstruction Company Limited v. M/s Bush Foods Overseas Pvt. Ltd. & Ors."

2. By the order dated 06.05.2019, the Debt Recovery Tribunal (DRT) II allowed O.A. No. 374/2014 preferred by ING Vysya Bank Limited, inter alia, against the petitioner herein who was arrayed as defendant No. 4 in the said Original Application. The DRT passed the Recovery Certificate for recovery of sum of Rs.118,85,56,215/- along with interest @14.8% per annum simple from the date of filing of the O.A. till realisation.

3. During the pendency of the said Original Application, the debt owed to ING Vysya Bank was taken over by the respondent Reliance Asset Reconstruction Company Limited, and the Original Application was pursued by the said respondent.

4. Admittedly, the petitioner preferred a statutory appeal before the learned DRAT to assail the said Recovery Certificate. The DRAT, by the impugned order dated 07.08.2019 rejected the application for waiver of pre-deposit on the ground that the petitioner herein had not made out a ground of financial hardship. The petitioner then preferred a writ petition before this Court being W.P.(C) No. 9578/2019. The said Writ Petition was dismissed on 04.09.2019 by this Court. The order passed by the Division Bench shows

that the petitioner sought to raise pleas with regard to an alleged fraud played by the borrower/ debtor Bush Foods in collusion with the Banks. It was also argued that the petitioner was not obliged to make a pre-deposit for hearing of its statutory appeal.

5. While dismissing the said Writ Petition, the Division Bench referred to several decisions placed before it, and rejected the petitioner's submission that it does not require to make the pre-deposit.

6. The petitioner then preferred a Special Leave Petition before the Supreme Court to assail the judgment of this Court dated 04.09.2019 in W.P.(C) No. 9578/2019. In the meantime, the petitioner argued before the DRAT on 11.10.2019, that it had already deposited 50% of the outstanding amount, and that it was not required to make any further payment. That submission was rejected by the DRAT on 11.10.2019. Subsequent thereto, the Special Leave Petition preferred by the petitioner, being SLP(C) No. 26079/2019, was dismissed as withdrawn by the Supreme Court on 15.11.2019. We may observe that the petitioner claims in the present petition that "*the circumstances in which the said SLP came to be withdrawn included the Petitioner submitting that it has already complied with the requirements of Section 21, of the RDB Act but clarifying that this aspect had not been pleaded before the DRAT (when it passed the Order dated 07.08.2019) or before this Hon'ble Court (in Writ Petition (W.P (C)9578/2019)). Accordingly, this aspect had not been dealt with in this Hon'ble Court's Judgment dated 4.09.2019 or in the DRAT's Order dated 07.08.2019. It is clarified that the DRAT's subsequent Order dated 11.10.2019 was not a subject matter of the SLP before the Hon'ble Supreme*

Court, as that Order came to be passed after the SLP had already been prepared and filed. The Hon'ble Supreme Court orally observed that the Petitioner should first urge this submission before the DRAT. ln this light, the Petitioner sought leave and was permitted to withdraw the SLP."

7. However, the order passed by the Supreme Court does not record the aforesaid submission of the petitioner. Pertinently, the order of the DRAT had already been passed on 11.10.2019, and the SLP was taken up for consideration on 15.11.2019, and, evidently, the petitioner did not place, much less assail before the Supreme Court, the said order of the DRAT.

8. The petitioner states that Nasser Mohammed M.F Al Hajri, Former Chairperson of the petitioner, who was also arrayed as a party in the DRAT proceedings, preferred W.P. (C) No. 225/2020 claiming that he was neither the borrower nor the guarantor, and this Court on 13.01.2020, while issuing notice in the petition directed that no coercive steps be taken against him. It is also the case of the petitioner that in another Original Application i.e. O.A. No. 242/2015 preferred by several banks and financial institutions, the DRT has returned a finding in favour of the petitioner herein, that the applicant banks had failed to establish their claim outside the purview of the Corporate Guarantee. He seeks to place reliance on paragraph 9 and 10 of the said order, which reads as follows:

> *"(9) Applicant Banks further failed to establish their claim outside the purview of the corporate guarantee. So far as D-3 is concerned D-3 paid the amount as per terms & conditions of the corporate guarantee and thereafter filed a case against; the Banks and the other Directors of D-1 in the Hon'ble High Court of Delhi being No. CS (Comm) 9 of 2018 for fraud perpetuated against him. The contention of the D-3 is that the*

applicant banks suppressed the real financial condition of the D-1 company and induced D-3 to furnish the corporate guarantee as there are stocks of worth Rs. 1000 Crores and in fact, on verification the stocks are not found to be even worth of Rs. 20 Crores. This Tribunal is not concerned with the merits of the case so far as the case filed by D-3 in CS(C) 9 of 2018 before the Hon'ble High Court of Delhi against D-1 and the consortium of banks.

10. Since D-3 is able to prove that they have discharged their liability to the extent of 70% of the corporate guarantee furnished by them, I am of the view that no liability can be fastened against D-3. So far as other defendants are concerned, they did not adduce any evidence or exhibit any documents to controvert the facts established through the evidence filed and proved on behalf of the applicant banks. In the present circumstances the OA against Defendant No. 3 is dismissed and OA against other Defendants is allowed. The liability of Defendants No. 1,2,4 & 5 is joint and several."

9. At this stage, counsel for respondent No.1, who appears on advance notice points out that respondent No.1 Reliance Asset Reconstruction Company Limited has been wrongly shown as an applicant in the order dated 19.06.2020, whereas it was not one of the applicants. In this regard, he has drawn our attention to the opening paragraph of the said order/ judgment, which records that the applicants/ banks; (1) Bank of India (2) Bank of Baroda (3) Punjab National Bank (4) Allahabad Bank (5) Central Bank of India (6) Export – Import Bank India, had preferred the said Original Application. This position is not disputed by the petitioner.

10. The petitioner sought to move another application to seek review of the order rejecting the application for waiver of pre-deposit passed by the DRAT, on which the DRAT has passed the impugned order dated

18.02.2020. The learned DRAT has held the said application to be an abuse of the process of the law.

11. The DRAT has taken note of the remedies availed of by the petitioner against the earlier order passed by it rejecting the said prayer for waiver, i.e. writ petition being W.P.(C) No. 9578/2019 rejected on 04.09.2019, and the Special Leave Petition i.e. SLP(C) No. 26079/2019, withdrawn on 15.11.2019. Consequently, the review was dismissed with costs of Rs.5,00,000/- on the petitioner.

12. In this background, the submission of Mr. Kathpalia, learned Senior Counsel for the petitioner is that the only liability of the petitioner stems from the Deed of Guarantee dated 16.05.2013, whereunder the petitioner had stood guarantor to the extent of 70% of the claim amount in respect of advances of Rs.650 crores provided to Bush Foods by the Consortium of Banks and Financial Institutions. Mr. Kathpalia submits that the petitioner has already discharged the said liability. To buttress his submission that we do have, and that we should exercise our extraordinary jurisdiction in the facts of the present case, and to remind us of the extent of our jurisdiction under Article 226-227 of the Constitution of India, Mr. Kathpalia has placed reliance, firstly, on ***State of Uttar Pradesh v. Mohd. Nooh***, AIR 1958 SC 86, and in particular to paragraph 10 and 11 thereof, which reads as follows:

> *"**10.** In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy.* ***It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute, (Halsbury's Laws of England, 3rd Edn., Vol. 11, p. 130 and the cases cited there). The fact that the***

aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. *But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies. In the King v. Postmaster General Ex parte Carmichael [(1928) 1 KB 291] a certiorari was issued although the aggrieved party had an alternative remedy by way of appeal.* ***It has been held that the superior court will readily issue a certiorari in a case where there has been a denial of natural justice before a court of summary jurisdiction.*** *The case of Rex v. Wandsworth Justices Ex parte Read [(1942) 1 KB 281] is an authority in point. In that case a man had been convicted in a court of summary jurisdiction without giving him an opportunity of being heard. It was held that his remedy was not by a case stated or by an appeal before the quarter sessions but by application to the High Court for an order of certiorari to remove and quash the conviction. At p. 284 Viscount Caldecote, C.J. observed:*

> *"It remains to consider the argument that the remedy of certiorari is not open to the applicant because others were available. It would be ludicrous in such a case as the present for the convicted person to ask for a case to be stated. It would mean asking this Court to consider as a question of law whether Justices were right in convicting a man without hearing his evidence. That is so extravagant an argument as not to merit a moment's consideration. As to the right of appeal to quarter sessions, it may be that the applicant could have had his remedy if he had pursued that course, but*

> *I am not aware of any reason why, if in such circumstances as these, he preferred to apply for an order of certiorari to quash his conviction, the court should be debarred from granting his application."*

Likewise in Khurshed Modi v. Rent Controller, Bombay [AIR (1947) Bom 46] it was held that the High Court would not refuse to issue a writ of certiorari merely because there was a right of appeal. It was recognized that ***ordinarily the High Court would require the petitioner to have recourse to his ordinary remedies, but if it found that there had been a breach of fundamental principles of justice, the High Court would certainly not hesitate to issue the writ of certiorari****. To the same effect are the following observations of Harries, C.J., in Assistant Collector of Customs v. Soorajmull Nagarmul [(1952) 56 CWN 453, 467] at p. 470:*

> *"****There can, I think, be no doubt that Court can refuse to issue a certiorari if the petitioner has other remedies equally convenient and effective****. But it appears to me that there can be cases where the Court can and should issue a certiorari even where such alternative remedies are available.* ***Where a court or tribunal, which is called upon to exercise judicial or quasi-judicial functions discards all rules of natural justice and arrives at a decision contrary to all accepted principles of justice then it appears to me that the court can and must interfere****."*

It has also been held that a litigant who has lost his right of appeal or has failed to perfect an appeal by no fault of his own may in a proper case obtain a review by certiorari. (See Corpus Juris Secundum, Vol. 14 Article 40, p. 189). If, therefore, the existence of other adequate legal remedies is not per se a bar to the issue of a writ of certiorari and if in a proper case it may be the duty of the superior court to issue a writ of certiorari to correct the errors of an inferior court or tribunal called upon to exercise judicial or quasi-judicial functions and not to relegate the petitioner to other legal remedies available to him and if the superior court can in a proper case exercise its jurisdiction in *favour of a petitioner who has allowed the time to appeal to expire or has not perfected his appeal e.g. by furnishing security required by the statute, should it then be laid down as an inflexible rule of law that the superior court must deny the writ* ***when an inferior court or tribunal by discarding all principles of natural justice and all accepted rules of procedure arrived at a conclusion which shocks the sense of justice and fair play merely because such decision has been upheld by another inferior court or tribunal on appeal or revision****? The case of In re Authers [(1889) LR 22 QBD 345] referred to in Janardan Reddy case [(1951) SCR 344] furnishes the answer. There the manager of a club was convicted under a certain statute for selling beer by retail without an excise retail licence. Subsequently he was convicted of selling intoxicating liquor, namely, beer without a license under another statute. Upon hearing of the later charge the Magistrate treated it as a second offence and imposed a full penalty authorised in the case of a second offence by the latter statute. His appeal to the quarter sessions having been dismissed, he applied for a writ of habeas corpus and it was granted by the King's Bench Division on the ground that the Magistrate could not treat the later offence as a second offence, because it was not a second offence under the Act under which he was convicted for the second time. Evidently the point was taken that if there had been any error, irregularity or illegality committed by the Magistrate, the quarter sessions could have on appeal corrected the same and that the quarter sessions having dismissed the appeal, the Court of Queen's Bench Division could not issue the writ of habeas corpus. This was repelled by the observation of Hawkins, J.:*

> *"This is true as a fact, but it puts the prosecution in no better position, for* ***if the Magistrate had no power to give himself jurisdiction by finding that there had been a first offence where there had been none, the Justices could not give it to him****."*

11. *On the authorities referred to above it appears to us that there may conceivably be cases — and the instant case is in point — where the error, irregularity or illegality touching* *jurisdiction or procedure committed by an inferior court or tribunal of first instance is so patent and loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision.* ***If an inferior court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior court's sense of fair play the superior court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the court or tribunal of first instance, even if an appeal to another inferior court or tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what ex facie was a nullity for reasons aforementioned. This would be so all the more if the tribunals holding the original trial and the tribunals hearing the appeal or revision were merely departmental tribunals composed of persons belonging to the departmental hierarchy without adequate legal training and background and whose glaring lapses occasionally come to our notice. The superior court will ordinarily decline to interfere by issuing certiorari and all we say is that in a proper case of the kind mentioned above it has the power to do so and may and should exercise it. We say no more than that***.*"*

(emphasis supplied)

13. He has also placed reliance on ***Achutananda Baidya v. Prafullya Kumar Gayen***, (1997) 5 SCC 76, and in particular to paragraph 10 thereof, which reads as follows:

"10. *The power of superintendence of the High Court under Article 227 of the Constitution is not confined to administrative superintendence only but such power includes within its sweep the power of judicial review. The power and duty of the High Court under Article 227 is essentially to ensure that the courts*

> *and tribunals, inferior to High Court, have done what they were required to do. Law is well settled by various decisions of this Court that* ***the High Court can interfere under Article 227 of the Constitution in cases of erroneous assumption or acting beyond its jurisdiction, refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of law, arbitrary or capricious exercise of authority or discretion, a patent error in procedure, arriving at a finding which is perverse or based on no material, or resulting in manifest injustice. As regards finding of fact of the inferior court, the High Court should not quash the judgment of the subordinate court merely on the ground that its finding of fact was erroneous but it will be open to the High Court in exercise of the powers under Article 227 to interfere with the finding of fact if the subordinate court came to the conclusion without any evidence or upon manifest misreading of the evidence thereby indulging in improper exercise of jurisdiction or if its conclusions are perverse*”
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> *(emphasis supplied)*

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14. He submits that the legal position remains unchanged. His submission is that since the liability of the petitioner is limited by the terms of the Deed of Guarantee, and the same already stands discharged, it is most unjust and unfair to subject the petitioner to the condition of pre-deposit for hearing of its appeal by the DRAT. He also submits that the present is a fit case for this Court to invoke and exercise its extraordinary jurisdiction in the interest of justice as the Judgment/ Order passed by the DRT dated 06.05.2019, holding the petitioner liable, in *ex facie* mindless and illegal and one that should shock the conscience of the Court. Therefore, despite the petitioner not pursuing its statutory appeal, this Court should examine the submissions of the petitioner on merits to find whether, or not, the petitioner has any further outstanding liability.

15. We have heard Mr. Kathpalia, learned senior counsel for the petitioner, and perused the record. We have also considered the decisions relied upon by Mr. Kathpalia to submit that despite the petitioner having availed of the statutory remedy of appeal and not pursued the same by making the pre-deposit of 50% of the outstanding debt, it is open to the petitioner to approach this Court to assail the order passed by the DRT on 05.06.2019 granting Recovery Certificate against the petitioner, on the ground that it is patently illegal and would shock the conscience of the Court, and that this is a fit case for this Court to exercise its wide discretionary jurisdiction under Articles 226/227 of the Constitution of India.

16. Decisions relied upon by Mr. Kathpalia, no doubt, recognise the fact that the scope of jurisdiction of this Court under Article 226-227 of the Constitution is wide enough to interfere with orders of inferior Courts and Tribunals in appropriate cases, even when the appellate remedy may be available, and may either not have been pursued, or given up. But those are cases where the illegality which is pointed out is apparent on the face of the record; where Principles of Natural Justice, and binding Rules of procedure – which effectuate those principles, are flouted by the concerned Court or Tribunal, or the inferior Court/ Tribunal while passing the order assailed has acted beyond its jurisdiction and/ or dealt with an aspect over which it had no jurisdiction. We have consciously highlighted the relevant observations in the relied upon decisions which lead us to conclude that the petitioner has not been able to make out a case for us to interfere with the impugned orders in this writ petition.

17. In the present case, admittedly, the petitioner was arrayed as a defendant in the Original Application and the petitioner contested the Original Application of the respondent on merits.

18. The DRT has rendered its decision on merits after hearing the submissions of the parties, including the petitioner. That decision may be right, or wrong. The law provides, and the petitioner has, a statutory remedy by way of an appeal to the DRAT. That appeal is a full-fledged appeal – both on facts, and in law. When the petitioner calls upon us to examine the record, including the Deed of Guarantee and the order of the DRT dated 06.05.2019, the petitioner essentially wants us to re-appreciate the pleas/ defences of the petitioner– in answer to the claim of the respondent, on merits. The petitioner has not pointed out how the DRT has acted beyond its jurisdiction. It is not its case that it was denied the right to be heard, or there was a breach of the principles of natural justice. Thus, what the petitioner is asking us to do is to hear the matter as an Appellate Forum and examine the correctness of order of the DRT dated 06.05.2019 on merits. This is not what we are expected to do while exercising our jurisdiction of Judicial Review.

19. The petitioner even availed of the appellate remedy but did not chose to deposit the amount that it was required to deposit as a pre-deposit in terms of Section 21 of the Recovery of Debts and Bankruptcy Act (RDB Act), 1993 to get its appeal heard. The plea of the petitioner for waiver of pre-deposit has already been rejected by the DRAT; by this Court, and; by the Supreme Court, since the petitioner had unconditionally withdrawn its SLP.

20. From the detailed order passed by this Court in the aforesaid writ

petition (W.P.(C) No. 9578/2019), it is evident that the petitioner raised several grounds which were considered by the Court. The petitioner was still not satisfied, and approached the Supreme Court by preferring a Special Leave Petition which he withdrew because the Supreme Court was not inclined to interfere with the order passed either by the Tribunal, DRAT, or by this Court. The submission now sought to be urged, was open to be urged when the earlier writ petition was preferred. If the petitioner did not choose to raise it then, it cannot be permitted to raise it now. The petitioner cannot have two bites at the cherry. He is barred from doing so. Otherwise, there would be no end to the number of attempts the petitioner may make to challenge the same orders of the DRT and DRAT before this Court. This is, therefore, nothing short of abuse of the process of this Court.

21. As noticed hereinabove, the petitioner claims in this petition that before the Supreme Court, it was argued that it had already made sufficient deposit to satisfy the condition of pre-deposit. However, the position on record is otherwise. Firstly, the order passed by the DRAT on 11.10.2019 was already available when the Supreme Court dealt with the Special Leave Petition on 15.11.2019. Therefore, it was open to the petitioner to place that order before the Supreme Court, and assail the same. There is no whisper in the order passed by the Supreme Court dated 15.11.2019, preserving the right of the petitioner to re-argue the said aspect before the DRAT, or any other Forum.

22. The submission that Mr. Nasser Mohammed M.F Al Hajri has filed a writ petition – being W.P. (C) No. 225/2020, wherein he has obtained orders against coercive proceedings, is neither here nor there, since that is a petition

preferred by Mr. Nasser Mohammed M.F Al Hajri in his own individual capacity. The Court was not concerned with the rights and liabilities of the petitioner herein in that case. Reliance placed on the recent order dated 19.06.2020 passed by the DRT in O.A. No. 242/2015 is also of no relevance, for the reason, that the said order does not deal with, consider, or even raise any doubt with regard to the order passed in the O.A. preferred by ING Vysya Bank Limited and continued by respondent No.1. Respondent No. 1 herein was not a claimant in the said Original Application i.e. O.A. No. 242/2015. The claim of respondent No. 1 was not under examination in the said O.A. In any event, all these are issues which arise primarily on merits, and ought to be agitated before the appellate forum i.e. the DRAT.

23. For all the aforesaid reasons, we find absolutely no merit in this petition, and dismiss the same with costs of Rs.2,00,000/-. The costs be deposited with the Delhi High Court (Middle Income Group) Legal Aid Society within two weeks. In case, these costs are deposited, it shall be open to the petitioner to make the pre-deposit before the DRAT, and to request the DRAT to hear its appeal on merits, provided steps in this regard are taken within the next four weeks.

24. Dismissed.

VIPIN SANGHI, J.

REKHA PALLI, J.

APRIL 15, 2021
N.Khanna