

14.02.2022
Ct. 21
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C.O. 915 of 2021
With
IA No. CAN 1 of 2021
(Via Video Conference)

M/S Aluminium Industries (Assam) Pvt. Ltd. & Anr.
-Vs-
Assets Reconstruction Company India ltd & Anr.

Mr. Subhankar Nag,
Mr.Kaushik Banerjee,
Ms.Rashmita Sen

... for the petitioner

Mr.Victor Dutta

.... for the opposite party

The instant application under Article 227 of the Constitution of India has been filed challenging the order dated 17.3.2021 passed by the Learned Chairperson, Debts Recovery Appellate Tribunal, Kolkata, in I.A No.10 of 2021 whereby appeal was admitted against the ex- parte order, but on condition of deposit of Rs.57,70,387/- i.e 25% of determined due of Rs. 2,30,81,549/- by the petitioners before the Tribunal who passed ex- parte order against them by 20.4.2021.

The facts giving rise to the present application in gist is that OP no.1 being Assets Reconstructions Company filed an application under section 19 The

Recovery of Debts and Bankruptcy Act, 1993 being O.A no.539 of 2011 for issue of recovery certificate for Rs.2,30,81,549/- along with interest @ 16.25% per annum from 1.12.2011 till date, for issue of sale order of immovable property upon which equitable mortgage was created by the petitioners in favour of OP No.2, sale of hypothecated goods, attachment and other ancillary reliefs. The O.A 539 of 2011 was decreed ex-parte by the learned DRT-1, Kolkata on 12.11.2014.

It has been contended by learned advocate for the petitioners that no notice of such proceedings and as well that of ex-parte order were ever served upon the present petitioners/respondents. They came to know about the proceedings under section 19 of The Recovery of Debts and Bankruptcy Act, 1993 and about the ex-parte order when they received demand notice dated 4.2.2016 on 15.3.2016 and when they received a notice under section 13(2) of SARFAESI Act. Immediate thereafter, the petitioner applied for certified copy and filed M.A no.24 of 2016 for setting aside the ex-parte order along with an application under section 5 for condition of delay in filing the application before the DRT- 1, Kolkata. Unfortunately, DRT-1, Kolkata pleased to dismiss the application under section 5 of the limitation Act along with M.A 24 of 2016, the application for recalling the ex-parte order on 27.7.2020.

Being aggrieved by such order the petitioner filed I.A. no. 10 of 2021 before the Debt Recovery Appellate Tribunal. By passing the impugned order Learned Chairperson DRAT, Kolkata was pleased to admit O.A no.539 of 2011 and directed the petitioners/ appellants to deposit 25% of O.A amount of Rs.2,30,81,549/- amounting to Rs.57,70,387/- on or before 20.4.2021 and failing which I.A shall stand automatically dismissed and appeal shall be lodged.

Perused the section 20 and 21 of the Recovery of Debts and Bankruptcy Act, 1993 and which clearly provides the appellate authority will admit the appeal preferred by any person from whom the amount of debt is due to a bank or a financial institution or consortium of banks or financial institutions unless such person deposit 75% of the amount of debt so due from him as determined by the Tribunal under section 19 of the Act of 1993. The Appellate Tribunal may for reason to be recorded in writing waive or reduced the amount to be deposited under section 22 of the Act of 1993.

The impugned order shows that while admitting the appeal instead of 75% of the due as determined by the tribunal in ex- parte decree, the Appellate Authority has asked the petitioner to deposit only 25% of the determined due and that too with a reason. Therefore, this Court does not find any material irregularity or

illegality in the order impugned. Consequently, the revisional application fails.

Accordingly **C.O. 915 of 2021 is dismissed.**

Connected applications are disposed of.

Interim order, if any, stands discharged.

In view of the order made above Affidavits are not invited. Allegations made shall be deemed to be denied. There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(**Kesang Doma Bhutia, J.**)