09.06.2022
Item no. 2&3

Aloke

Calcutta High Court
In The Circuit Bench at Jalpaiguri

(Through Video Conference)

CO 27 OF 2021
with
IA No. CAN 1 of 2021
IA No. CAN 2 of 2021

AND

CO 9 OF 2021
with
IA No. CAN 1 of 2021
IA No. CAN 2 of 2021

B.U. Industries & Anr.
Vs.
Central Bank of India & Anr.

Mr. S.P. Chatterjee, Advocate
Mr. Subham Ghosh, Advocate
… for the petitioners
Mr. Rahul Mishra, Advocate
Mr. Sudipta Choudhuri, Advocate
Ms. Sumita Roy, Advocate
Ms. Khushi Barman, Advocate
… for the respondent no. 1
Mr. Ajit Kr. Mishra, Advocate
… for the respondent no. 2

The revisional application is directed against an order dated June 2, 2020 passed by the Presiding Officer, Debts Recovery Tribunal exercising jurisdiction under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The revisional applicants are the borrowers in respect of credit facilities enjoyed by the revisional applicants from the opposite party no. 1

There being default, at the behest of the revisional applicants in repayment of the credit facilities, the opposite party no. 1 issued a notice under Section 13 (2) of the Act of 2002. The opposite party no. 1 sought to proceed against the secured assets of the opposite party no. 1 inter alia being two immovable properties belonging to the revisional applicants. One of such immovable property is lying and situate at Darjeeling while the other is in Gangtok. The revisional applicants approached the jurisdictional Debts Recovery Tribunal under Section 17 of the Act of 2002 with regard to the measures taken by the opposite party No. 1 in respect of the secured assets.

In such proceedings, ultimately orders for sale of the secured assets were passed. The opposite party no. 1 put up the two immovable properties being portions of its secured assets for sale. The auction sale was conducted and such sale was confirmed. The auction purchaser initially paid for the Gangtok property which the opposite party no. 1 found to be insufficient to cover the claim of the opposite party no. 1 against the revisional applicants. Thereafter the auction purchaser paid the consideration for the Darjeeling property. On receipt of such consideration the opposite party no. 1 found that it received excess payment to the extent of a sum in excess of Rs.77 lakhs than its claim. The opposite party no. 1 wanted to make over such sum in excess of Rs.77 lakhs to the revisional applicants. On the revisional applicants' refusal to accept such sum, the opposite party no. 1 approached the Debts Recovery Tribunal for order with regard thereto. The Debts Recovery Tribunal initially directed the opposite party no. 1 to make over possession of the Gangtok property to the revisional applicants. The auction purchaser being aggrieved by such order applied before the Debts Recovery Tribunal for recalling of such order when the impugned order was passed. The impugned order is appealable under Section 18 of the Act of 2002.

Learned Advocate appearing for the revisional applicants submits that in view of the requirement of the law of pre-deposit of the amounts specified under Section 18 of the Act of 2002, the provision for appeal is practicably non-existent so far as the revisional applicants are concerned. Moreover, in the facts of the present case, the debt of the revisional applicants stands completely paid off. He refers to various documents in support of his contention. In addition to that, the learned Advocate for the revisional applicants draws the attention of the Court to Section 31(j) of the Act of 2002 and submits that the Act of 2002 is not attracted in view of such provision.

So far as the second point of non applicability of the Act of 2002 is concerned, it is the revisional applicants who approached the Debts Recovery Tribunal under Section 17 of the Act of 2002 resulting in the impugned order. Therefore, it would not be permissible to allow the revisional applicants to urge the point of non applicability of the Act of 2002.

The first point of revisional applicants with regard to the onerous duty of making a pre-deposit to prefer appeal under Section 18 of the Act of 2002 is concerned, the same is without any substance. Firstly, the revisional applicants are at liberty to establish before the Appellate Tribunal that the entire claim of the revisional applicants stands paid off and, therefore, the requirement for pre-deposit is not attracted as there is no debt due. Moreover, the mere plea that the statutory provisions for pre-deposit is onerous is of no consequence.

In view of the impugned order being appealable under Section 18 of the Act of 2002 interference thereof at the behest of the revisional applicants, under Article 227 of the Constitution of India is not called for. The revisional applicants are at liberty to avail of their remedies in accordance with law before the Appellate Tribunal. The order of status quo granted will continue for a period of four weeks from date.

Apparently, only one revisional application was filed which was ultimately numbered as CO 27 of 2021. The same is disposed of along with connected applications. The department will treat the revisional application being CO 9 of 2021 along with the connected applications to be disposed of also.

(Debangsu Basak, J.)