Diksha Rane

DIKSHA DINESH RANE Digitally signed by DIKSHA DINESH RANE Date: 2022.01.17 17:05:53 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 454 OF 2022

Horizon Flora India Limited ..Petitioner
vs.
Asset Reconstruction Company (India) Limited and ors. ..Respondents

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Mr. Rajeev Carvalho i/b. Mr. Bipin J. Joshi for the petitioner.
Mr. Vinod Kothari i/b. M/s. Apex Law Partners for respondent no.1.
Mr. K.D. Shukla for respondent no.2.

CORAM : DIPANKAR DATTA, CJ &
M. S. KARNIK, J.

DATE : JANUARY 17, 2022.

P.C. :

1. The Debts Recovery Tribunal, Pune [hereafter 'DRT(P)' for short] by an order dated July 14, 2021 disposed of Original Application No. 58 of 2006. It was at the instance of the respondent no.2/Bank of Baroda and the respondent no.1/Asset Reconstruction Company (India) Limited and against the present petitioner (being the respondent no. 1). The operative part of the order reads as follows: -

"(A) A consent decree is passed for Rs.8,00,00,000/- (Rupees Eight Crore only).

(B) Defendant nos. 1 to 5 are ordered and directed to pay to the ARCIL jointly and severally the sum of

Rs.8,00,00,000/- (Rupees Eight Crore only) within a period of 06 (six) months.

(C) The payment shall be made within 06 (six) months as per the schedule given in the acceptance letter of the ARCIL. However, it is made clear that entire payment has to be made within 06 (six) months and default will be treated if it is not made within 06 (six) months. On payment as above the defendant nos. 1 to 5 shall stand discharged and all securities shall stand released.

(D) In the event of default, ARCIL shall be at liberty to proceed further in the matter for execution of the Recovery Certificate and shall be entitled to recover from sale of mortgaged property and in case of any shortfall, from sale of personal assets of defendant nos. 1 to 5.

(E) OA No.58/2006 filed on 17th March, 2006 stands disposed of with the above orders. No order as to costs.

(F) File be consigned to record room.

(G) A certified copy of this final order be issued to the parties free of cost."

2. It is not disputed that the petitioner paid in parts Rs.4,00,00,000/-, between July 21, 2021 and January 14, 2022. However, it has defaulted in payment of the balance Rs.4,00,00,000/- by January 14, 2022, being the stipulated

date. Having realized that the timeline fixed by the DRT(P) cannot be complied with by it, the petitioner has instituted this writ petition on January 12, 2022 seeking time till March 31, 2022 to make the balance payment of Rs.4,00,00,000/-.

3. It is averred in paragraph 11 of the writ petition that an approach before the Tribunal was attempted to be made for extension of time; however, since the office of the Tribunal is presently vacant due to non-availability of the Presiding Officer, such attempt proved abortive. In paragraph 12 of the writ petition, the petitioner has also stated that it is willing to pay interest at the rate of 6% or such other rate as this Court thinks fit and proper towards belated tender of payment of Rs.4,00,00,000/-.

4. Mr. Carvalho, learned Advocate for the petitioner submits that because of the present testing times of the third wave of the pandemic, the petitioner, despite its best intention, could not arrange for the balance funds of Rs.4,00,00,000/- for which it is in default. Stating that a mercy plea has been raised in this writ petition, he implores for grant of relief to the petitioner to tender payment of the balance amount.

5. Mr. Kothari, learned advocate appearing for the respondent no.1 has opposed the writ petition by submitting that even when Original Application No. 58 of 2006 was disposed of by the Tribunal on July 14, 2021, the

second wave of the pandemic was raging and that there is no substantial or material difference in the facts and circumstances then existing and now for which the petitioner could legitimately raise a plea of the third wave of the pandemic impeding payment as directed by the Tribunal. However, he finally submits that the Court, if it is inclined to grant the prayer of the petitioner, may enhance the rate of interest proposed by the petitioner while tendering the balance payment as well as advance the date suitably instead of the last day of March.

6. We have entertained this writ petition in view of the order dated December 16, 2021 of the Supreme Court of India in SLP (C) No. 10911 of 2021.

7. Having heard learned advocates for the parties and taking into consideration the fair approach of the respondent no.1, we dispose of this writ petition with a direction upon the petitioner to tender payment of Rs.4,00,00,000/- by March 28, 2022 together with interest at the rate of 9% p.a. positively, failing which this order shall stand vacated forthwith and the respondent no.1 shall be at liberty to take steps in accordance with law, as per operative direction (D) of the order dated July 14, 2021 extracted supra.

(M. S. KARNIK, J.) **(CHIEF JUSTICE)**