Item No. 18
24.08.2023
Court. No. 19
GB

C.O. 2494 of 2023

Anirban Aditya & Ors.
Vs.
Kotak Mahindra Bank

Mr. Debnath Ghosh,
Mr. Sarosij Dasgupta,
Mr. Gaurav Singh,
Mr. Steven S. Biswas

... for the Petitioners.

Mr. Debashis Karmakar,
Mr. Santosh Kr. Roy,
Ms. Sonal Agarwal

... for the Opposite Party.

The revisional application arises out of an order dated July 3, 2023 passed by the learned Debts Recovery Appellate Tribunal, Kolkata in I.A. No.233 of 2023 arising out of Misc. Appeal No.07 of 2023. The Misc. Appeal No.07 of 2023 arose out of an order passed in O.A. No.438 of 2019.

By the order impugned, the application filed by the petitioners claiming waiver of pre-deposit under Section 21 of the Recovery of Debts Due to Banks and Bankruptcy Act, 1993 was disposed of with a direction upon the petitioners to make a pre-deposit of 50% of Rs.3,88,67,695/- within four weeks. Failing which, the appeal was liable to be dismissed.

Mr. Ghosh, learned advocate appearing on behalf of the petitioners has challenged the aforementioned order on the ground that the learned appellate tribunal ought to have shown a little more leniency in view of the fact that the Hon'ble Apex Court had permitted waiver of pre-deposit upto 75 per cent, in suitable cases. The debtor being an educational institution could not be saddled with the pre-deposit of 50% of Rs. 3,88,67,695/-. Imposition of such a heavy amount as a pre-condition to hearing of the appeal would adversely affect the administration and management of the institution.

Mr. Ghosh further submits that the learned appellate tribunal went wrong in directing that pre-deposit should be 50% of Rs. 3,88,67,695/- as the borrower had admitted to pay Rs.,3,50,00,000/- as per the memorandum of understanding. It is further contended that Rs.25,00,000/- has already been paid.

The learned advocate for the bank submits that clause 7 of the memorandum of understanding specifically provided that the bank could also asserts its rights arising out of the said memorandum and proceed with the execution in order to recover the entire amount which the borrower owed to the bank. As the borrower did not comply with its liability under the MOU, the question of reduction of the pre-deposit would not arise. That the tribunal was lenient enough to reduce the pre-deposit by 50% and further leniency was not required to shown to the borrower.

Both parties relied on the decision of the Hon'ble Apex Court in the matter of ***Kotak Mahindra Bank Private Limited versus Ambuj A. Kasliwal and Others*** reported in ***(2021) 3 SCC 549***.

In the said decision, the Hon'ble Apex Court held that when a further amount was found due and payable either in discharge of a decree or a recovery certificate issued by the DRT in favour of the bank, the High Court did not have the power to waive the pre-deposit in its entirety nor could the High Court exercise discretion which was against the mandatory requirement of Section 21 of the said Act. 50% of the decretal amount, should be deposited before the DRAT. However, in an appropriate case and for reasons to be recorded, the deposit could be waived upto 75% of the debt but entire waiver could not be allowed in law.

Drawing strength from this decision of the Hon'ble Apex Court, Mr. Ghosh submits that this Court should reduce the pre-deposit to 25% of Rs.3,50,00,000/-.

The learned advocate for the bank however submits that the Hon'ble Apex Court did not hold that the pre-deposit should be 25% of the due but in an appropriate case a discretion could be exercised to reduce the said pre-deposit but not below 25% of the decretal amount.

Having considered the rival contentions of the parties, this Court finds that the first contention of Mr. Ghosh that 50% of Rs.3,88,67,695/- should not have been directed by the tribunal as the admission in the OTS was for payment of Rs.3,50,00,000/-, is not acceptable. Such contention of Mr. Ghosh, that under the MOU Rs.3,50,00,000/- was due and payable and the decision of the DRT for payment of Rs.3,88,67,695/- was an error apparent on the face of record, was rejected by the DRT in the review application. Such decision is under challenge before the DRAT. As per the decision of the learned DRT, Rs.3,88,67,695/-, is payable. The second contention of Mr. Ghosh is also not accepted as the decision in Ambuj A. Kasliwal (supra) did not lay down the principle that 25% of the dues was the amount of pre-deposit to be made by a debtor, to get his appeal registered and heard by the DRAT.

On the contrary, the Hon'ble Apex Court held that the High Court did not have any discretion to bye-pass the statutory provision of Section 21 of the said Act which mandated 50% pre-deposit. However, the Hon'ble Apex Court made an exception that in a proper case, a further reduction would be possible for reasons to be recorded in writing but not below 25%. Applying such ratio of the Hon'ble Apex Court, this Court finds that this is a fit case for exercise of discretion for the following reasons:-

a) The borrower is an educational institution.
b) During the COVID period large amounts could not be paid and at the relevant point of time some moratorium was also given by the banks.
c) If the institution is saddled with such a huge liability then the administration and management of the institution may suffer which may result in hardship to the staff, teachers. The quality of education which is being imparted in the said educational institution may be compromised on account of curtailment of costs.

Under such circumstances, the order impugned is modified to the extent that 35% of Rs.3,88,67,695/- shall be deposited within three weeks from date. Failing which, the appeal shall stand dismissed. If such payment is made as directed by this Court, the learned DRAT, Kolkata shall proceed with the hearing of the appeal and dispose of the same within a period of three months.

All points available to the parties with regard to the transaction and the memorandum of understanding shall be available at the hearing of the appeal. The observations in this revisional application are restricted to the prayer for waiver of pre-deposit and nothing else.

Accordingly, the revisional application is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)