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C.R.P.Nos. 1978 and 1979 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

C.R.P.Nos. 1978 and 1979 of 2023

and C.M.P.Nos. 12484 and 12486 of 2023

C.R.P.No.1978 of 2023:-

1. Govindasamy Balasubramaniam
2. Jeevarathinam

..Petitioners

-VS-

1. The Authorized Officer
Indian Overseas Bank
Large Corporate Branch
No.10, Kannusamy Street
DB Road, R.S.Puram
Coimbatore-641002.
2. M/s.Organomix Ecosystems Private Ltd.
Rep. by its Managing Director
No.64, Dr.Nanjappa Road
Coimbatore – 641 018.
3. M/s.Garuda Steels
A Partnership Firm
Represented by its Partners
Mr. M.Ramesh
Mrs. R.Dhanalakshmi
S.F.No.309/1-A, Kulathupalayam Pudur
Devanampalayam, Kanathukkadavu Taluk
Coimbatore – 642 120.



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4. Mr.R.Natarajan
S/o.Mr.Rangasamy
No.3/252, NM Hospital Compound
Allikaranpalayam Pirivu
Annur, Coimbatore – 641 653.

5. M/s. Shree Murugan Flour Mills Pvt. Ltd.
(Undergoing CIRP)
Represented by the Resolution Professional
Having its Registered Office at
No.5, Vinayakar Kovil Street
Krishnaswamy Nagar, Ramanathapuram
Coimbatore District – 641 045.

.. Respondents

Prayer: Petition filed under Article 227 of the Constitution of India against the order dated 05.06.2023 passed in I.A.No.53 of 2023 in AIR (SA) No.462 of 2022 on the file of Debts Recovery Appellate Tribunal, Chennai.

For the Petitioners : Mr.Srinath Sridevan
Senior Counsel
For M/s.Surya Teja SS Nalla

For the Respondents : Mr.K.S.Karthick Raja (R3)

C.R.P.No.1979 of 2023:-

1. Govindasamy Balasubramaniam
2. Jeevarathinam

..Petitioners

-vs-

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Indian Overseas Bank
Large Corporate Branch
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3. M/s.Garuda Steels
A Partnership Firm
Represented by its Partners
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Mrs. R.Dhanalakshmi
S.F.No.309/1-A, Kulathupalayam Pudur
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.. Respondents

Prayer: Petition filed under Article 227 of the Constitution of India against the order dated 05.06.2023 passed in I.A.No.50 of 2023 in AIR (SA) No.461 of 2022 on the file of Debts Recovery Appellate Tribunal, Chennai.

For the Petitioners : Mr.Srinath Sridevan
Senior Counsel
For M/s.Surya Teja SS Nalla

For the Respondents : Mr.Imayavarambhan (R2)
For M/s.Ramalingam & Associates
Mr.A.M.Esakkiappan (R4)
Mr.M.L.Ganesh (R1)
Mr.K.S.Karthick Raja (R3)



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COMMON ORDER

(Common order of the Court was made by The Hon'ble Chief Justice)

We have heard Mr.Srinath Sridevan, learned senior counsel for the petitioners; Mr.M.L.Ganesh, learned counsel for the first respondent; Mr.Imayavarambhan, learned counsel for the second respondent; Mr.K.S.Karthick Raja, learned counsel for the third respondent and Mr.A.M.Esakkiappan, learned counsel for the fourth respondent.

2. The petitioners herein had filed Securitization Applications challenging the possession notice and the sale before the Debts Recovery Tribunal, Coimbatore. The petitioners claim to be guarantors.

3. The petitioners had filed appeals before the Debts Recovery Appellate Tribunal, Chennai against the orders of the DRT. The DRT directed the petitioners to deposit Rs.9,47,25,692/- [Rupees Nine Crore Forty Seven Lakhs Twenty Five Thousand Six Hundred Ninety Two only] as 50% pre-deposit and the same is assailed in the present petitions.



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4. Learned Senior Advocate for the petitioners submits that pursuant to the orders of the DRT, the petitioners have already deposited Rs.7.50 crores, which would be more than 25% of the amount outstanding. According to the learned Senior Advocate, discretion ought to have been exercised in favour of the petitioners inasmuch as all the assets have been sold out by the respondents and major amount has been recovered. According to the learned Senior Advocate, no reasons are given for not exercising the discretion in favour of the petitioners.

5. Learned counsel for the respondent Bank submits that the amount outstanding as per the sale notice is required to be considered. The amount realized from the sale cannot be considered while ordering pre-deposit. The Tribunal has rightly considered the said aspect. Reliance is placed on the judgments of the Hon'ble Apex Court in case of **Narayan Chandra Ghosh -vs- UCO Bank & Ors.** (Order made in Civil Appeal No. 2681 of 2011, dated 18.03.2011) and also in case of **M/s.Sidha Neelkanth Paper Industries Private Limited and Ors. -vs- Prudent ARC Limited and Ors.** reported in **AIR 2023 SC 368.**



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6. We have considered the submissions.

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7. We asked the learned Advocate for the respondent bank as to what is the amount due and payable after the sale of the properties. The learned Advocate for the respondent bank, on instructions, submits that after the sale of the properties, the amount outstanding and due would be lesser than Rs.50 or 60 lakhs.

8. No doubt the amount realized from the sale of the assets need not to be deducted while calculating the pre-deposit. However, it also needs to be considered that all the assets are sold off. The company is in liquidation. The petitioners have deposited almost 25% of the amount of the sale notice under the orders of the DRT, i.e., about 7.50 crores. The said aspect ought to have been considered by the DRAT while ordering pre-deposit. The impugned orders do not give any reason for not exercising the discretion in the facts and circumstances of the case for reducing the pre-deposit to 25%. The reasons are now considered to be the third pillar of the principles of natural justice. The reasons depict the application of the mind of the authority passing the orders.



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9. Considering the aforesaid conspectus of the matters, we are inclined to exercise our discretion and observe that the amount already paid by the petitioners, i.e., 7.50 crores, which would be more than 25% of the amount outstanding, be accepted as pre-deposit by the DRAT. If the appeals are otherwise in order and in conformity with all other legal requirements, the same may be heard on merits.

10. The civil revision petitions are allowed and the impugned orders are quashed and set aside. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(S.V.G., CJ.)

(P.D.A., J.)

02.08.2023

Index : yes/no

Neutral Citation : Yes/No

Maya

To:

The Registrar,
Debts Recovery Appellate Tribunal,
Chennai.



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THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKESSAVALU, J.

(Maya)

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