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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 28.08.2023*

+ **W.P.(C) 10705/2019**

PRAHALAD DUTTA LATA Petitioner
Through: Mr Vaibhav Dang, Advocate.

versus

JAMMU AND KASHMIR BANK
LTD. AND ORS. Respondents
Through: Mr Rohit Singha, Advocate for
R-1.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition impugning an order dated 19.08.2019 passed by the Debts Recovery Appellate Tribunal, Delhi (hereafter '**DRAT**') in Misc. Appeal (MA) No. 148/2013 arising out of Original Application (OA) No. 44/2006.

2. Respondent no.1 (hereafter '**the J&K Bank**') had filed the Original Application under Section 19 of the Recovery of Debts due to Banks Financial Institutions Act, 1993 before the Debts Recovery Tribunal-II, Delhi (hereafter '**DRT**') claiming an amount of ₹18,08,82,432.02/- (Rupees eighteen crores eight lacs eighty two thousand four hundred thirty two and two paise only) as outstanding



on 30.06.2006, along with the interest at the rate of 15% per annum with monthly rests with effect from the said date till the date of realisation.

3. The J&K Bank claims that it had extended financial facilities to M/s Lata Steel Agency Pvt. Ltd. (hereafter '**the company**'), which was arrayed as respondent no.1 before the learned DRT and the repayment obligations were guaranteed by three individuals arrayed as respondent nos. 2, 3 and 4 before the learned DRT. The petitioner before this Court was arrayed as respondent no.3.

4. The J&K Bank claims that the petitioner (respondent no.3 before the learned DRT) was liable to repay the amount advanced to the company in terms of the guarantee dated 30.05.1995. The J&K Bank claimed that it had sanctioned a credit limit of ₹80,00,000/- and bank guarantee limit of ₹40,00,000/- at the initial stage. Thus, the fund based and non-fund based facilities sanctioned by the J&K Bank aggregated to a sum of ₹1,20,00,000/- (Rupees one crores twenty lacs only). The said amount was guaranteed by the company as well as the guarantors by executing several documents including the Guarantee Deed dated 30.05.1995 (hereafter '**the Guarantee**') executed by the petitioner. The facilities extended to the company were further enhanced from time to time and in addition, other financial facilities were also provided.

5. According to the J&K Bank, the said facilities were continued and enhanced on the basis of documents executed by the company as well as its promoters. In so far as the personal liability of the



petitioner is concerned, it is conceded that it had not executed any document other than the Guarantee dated 30.05.1995. However, the petitioner had executed a mortgage deed in respect of an immovable property belonging to him. It is alleged that the petitioner had also handed over title documents of an immovable property to secure the facilities extended by the J&K Bank.

6. The company defaulted in repayment of its debts. In view of the above, the J&K Bank issued a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter '**the SARFAESI Act**'). The J&K Bank filed the original application being OA No. 44/2006 against the company as well as the guarantors including the petitioner. The petitioner claims that the summons issued by the learned DRT in the said OA were not served on him as he has been residing in Kolkata for the last forty-five years. It is the petitioner's case that being unaware of the proceedings before the learned DRT, the petitioner did not take the necessary steps to defend the same.

7. The learned DRT issued a Recovery Certificate dated 11.11.2010 for a sum of ₹18,08,82,432.02/- along with interest at the rate of 15% per annum jointly and severally against the company and the guarantors including the petitioner. The petitioner claims that it received a notice from the office of the Recovery Officer on 08.04.2011 and on the receipt of the same became aware of the proceedings instituted by the J&K Bank. The petitioner claims that immediately thereafter, it sought assistance for inspecting the judicial



records, which was permitted by the learned DRT on 29.04.2011. Thereafter, on 16.05.2011, the petitioner filed an application before the learned DRT for recall of *ex parte* order dated 11.11.2010. The petitioner also filed an application seeking condonation of delay in filing the said application.

8. The petitioner's application for recall of the order whereby, he was proceeded against *ex parte*, was dismissed by the learned DRT by an order dated 21.01.2013. Aggrieved by the same, the petitioner preferred an appeal before the learned DRAT being MA No. 148/2013. However, the same was rejected by an order dated 25.11.2014.

9. Aggrieved by the rejection of his appeal before the learned DRAT, the petitioner preferred a petition before this Court (being W.P.(C) 1169/2015) on 16.01.2015. The said petition was disposed of by an order dated 24.02.2016. This Court did not find any merit in the petitioner's contention that he was never served as his correct address was not mentioned in the notices. The Court noted that the learned DRT had also directed service of notice by way of publication. Further, the records of the Registrar of Companies also indicated that the petitioner was one of the directors of the company.

10. Notwithstanding the same, this Court set aside the order dated 25.11.2014 passed by the learned DRAT as the learned DRAT had not considered the question whether the petitioner could be made personally liable for the default of the company and the extent to which the bank was secured by the petitioner. The relevant extract of



the said order is set out below:

“6. Though the claim of the petitioner before the DRAT and before this Court is that he was never served and his correct address was not mentioned as for the last many years he was settled and residing with his family at Kolkata, he was neither a shareholder nor a director nor office bearer of M/s. Lata Steel Agencies (P) Ltd., thus the impugned order and the order of DRT-II dated November 11, 2010 are liable to be set aside, however we find no merit in these contentions for the reason that the Tribunal ordered for effecting service on the petitioner by way of publication as well, and as per Form-32 produced by the bank, the petitioner was one of the directors of the company. We however note that the learned DRAT vide the impugned order did not avert itself as to how the petitioner could be made personally liable for the default of the company. There is no discussion in the impugned order as to the extent the bank was secured by the assets of the petitioner or whether he stood personal guarantee.

7. It is trite law that a company is a juristic entity independent of its directors and/or shareholders, enjoys its own legal rights and is subjected to duties statutory or otherwise. The company alone is bound to discharge its debts and liabilities unless the directors of the company have stood as guarantors for discharge of such a liability. There is no discussion in the impugned order as to how the petitioner even though a director of M/s.Lata Steel Agencies (P) Ltd. was personally liable for the debts of the company.

8. Even though the petitioner was proceeded ex-parte, the DRAT could not have dismissed the appeal without considering the legal aspects as noted above. Consequently the impugned order is set aside. Miscellaneous appeal No.148/2013 is restored to its original position. DRAT will reconsider the



miscellaneous appeal in the light of the law noted above.”

(emphasis added)

11. Pursuant to the aforesaid order, the learned DRAT reconsidered the petitioner’s appeal. The learned DRAT noted the averments made by the J&K Bank in its original application (OA No. 44/2006) before the learned DRAT and reasoned that since the petitioner had not filed a written statement contesting the said averments, the same stood admitted by non-traverse. Accordingly, the learned DRAT held that the appellant had stood as a guarantor for the company, which had availed of a financial facility aggregating ₹1,20,00,000/- from the J&K Bank way back in 1995. The learned DRAT further noted that although the said facts were admitted, the J&K Bank had also led the necessary evidence and had proved that the Guarantee (Guarantee Deed dated 30.05.1995) was executed by the petitioner. Accordingly, the DRAT dismissed the appeal by the impugned order which led to filing of the present writ petition.

12. It is the petitioner’s case that he had not executed any guarantee but his signatures had been forged by his brothers (who are arrayed as respondent nos.2 and 4 before the learned DRT and as respondent nos. 3 and 4 before the learned DRAT). The learned DRAT rejected the said contention on the ground, as stated above, that the petitioner had not filed a written statement traversing the averments made by the J&K Bank. Thus, the J&K Bank had proved the Guarantee executed by the petitioner.



13. Mr Dang, learned counsel appearing for the petitioner has, after some arguments, confined the challenge only on the question of quantum of the petitioner's liability in terms of the Guarantee (Guarantee Deed dated 30.05.1995). In other words, he does not assail the Guarantee as forged or fabricated. Concededly, it would not be open for the petitioner to raise the said issue before this Court. First of all because the petitioner had not prevailed in his challenge to being proceeded *ex parte*. Secondly, the question whether the Guarantee was forged or fabricated was not within the ambit of the learned DRAT in terms of the order dated 24.02.2016 passed by this Court whereby, the matter was remanded to the learned DRAT. The scope of examination by the DRAT was limited to considering whether the petitioner was personally liable for default of the company and the extent to which he was liable. Insofar as the personal liability of the petitioner is concerned, the same was required to be determined on the basis of the Guarantee executed by the petitioner, which was relied upon by the J&K Bank.

14. Mr Dang presses the present petition to assail the impugned order on a *demurer* – that is, on the basis that the petitioner had executed the Guarantee and was liable under its terms. He submits that even if the Guarantee as produced by the J&K Bank is accepted, the petitioner's liability was limited to an aggregate sum of ₹1,20,00,000/- and no further.

15. Although this Court had in the earlier round remanded the matter to the learned DRAT to consider the extent of the petitioner's liability on the basis of the record, the learned DRAT has not



considered the extent of the petitioner's liability in terms of the Guarantee and as directed by this Court. The learned DRAT proceeded on the basis that the petitioner had executed the Guarantee and therefore, would be liable for the amounts as claimed by the J&K Bank.

16. In order to consider the petitioner's case that his liability was limited to ₹1,20,00,000/-, it is relevant to refer to the Guarantee. The relevant extract of the same reads as under:

“IN CONSIDERATION OF THE JAMMU & KASHMIR BATK LIMITED, a Bank incorporated under the J & K Companies Act, XI of 1977 (Samvat) having its Head/Registered, Office at Srinagar, Kashmir and a Branch amongst others at Connaught Place, New Delhi, (hereinafter referred to as the Bank, which expression shall wherever the contest so admits, mean and include its assignees,-successors, administrators etc.) having at the request of M/s Lata Steel Agency (P) Ltd. 1/6-B, Asaf Ali Road, New Delhi, through its Managing Director, which expression shall wherever the contest so admits, mean and include its successors, administrators and assignees etc. Granted for its business Letters of Credit Limit of Rs. 80,00,000/- (Rupees eighty lacs only), and bank Guarantee Limit of Rs.40,00,00,000/- (Rupees Forty Lacs only), I, Prahlad Dutt Lata S/o Sh, Puran Mal Lata, R/o BQ-63, Shalimar Bagh, Delhi, hereinafter referred to as the GUARANTOR, which expression shall wherever the context so admits means and includes his legal heirs, legal representatives, successors, assigns etc., do hereby agree to pay and satisfy to the Bank on demand all of every sum(s) of money which are now or shall at any time be owing to the bank in any of its office on account of the above said facilities and/or any other



financial accommodation granted or may be granted by the to the company whether such liability has matured or not and whether the liability is absolute or contingents including the liability towards the aforesaid limits.

PROVIDED ALWAYS THAT the total liability against the Guarantor under these presents shall not exceed the aforesaid amount of Rs.1,20,00,000/- (Rupees One crore twenty lacs only) together with interest, bank charges, bank commission etc. thereon at such rate as may be prescribed by the bank in this behalf.”

17. The proviso makes it clear that the petitioner’s liability was limited to ₹1,20,00,000/- together with interest, bank charges, bank commission etc. at such rate as may be prescribed by the bank. Although the first paragraph of the Bank Guarantee does record that the petitioner would be also liable for “*any other financial accommodation granted or may be granted*”, the proviso expressly confines the liability only to a sum of ₹1,20,00,000/- along with interest, bank charges, bank commission etc.

18. In view of the above, it is *ex facie* clear that the petitioner’s liability for financial assistance granted to the company over a period of time is not joint and several; his liability was specifically limited to a sum of ₹1,20,00,000/- by the proviso as stated above.

19. It is well settled that in interpretation of statutes, the “normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would



be within the purview of the enactment”¹. This principle is equally applicable for constructing deeds. Clearly, the import of the proviso, as quoted above, is to limit the petitioner’s liability to the quantum as stated.

20. Insofar as the mortgage of the immovable property is concerned, it is not open for the petitioner to raise any challenge to the same as admittedly equitable mortgage of the said property was created in favour of the J&K Bank. Mr Dang has fairly advanced no arguments in this regard.

21. Although, we were inclined to remit the matter to the DRAT for reconsideration; we do not consider it expedient to do so for the second time. We remand the matter to the learned DRT for examining the extent of the petitioner’s liability in terms of this order. In other words, the learned DRT shall determine the quantum of interest, commission etc. on ₹1,20,00,000/-, which is the petitioner’s maximum liability in terms of the Guarantee as stated above.

22. The petition is disposed of in the aforesaid terms.

23. We clarify that we have not interfered in any manner with the Recovery Certificate issued by the learned DRT in so far as other respondents are concerned. The same would continue to be operative and enforced against the other respondent to the full extent. However, the petitioner’s liability under the Recovery Certificate would be

¹ GP Singh, Principles of Statutory Interpretation, 14th Ed page 215



confined to a sum of ₹1,20,00,000/- together with interest, bank charges, bank commission etc. and the same would be determined by the learned DRT.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

AUGUST 28, 2023
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