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

% *Date of Decision:* 31.10.2023.

\+ **<u>W.P.(C) 14125/2023 & CM APPL. 55858/2023 & CM APPL. 55859/2023</u>**

M/S TIRATH RAM NARESH KUMAR AND ORS ..... Petitioners

Through: Mr. B. S. Nagar, Adv.

versus

CANARA BANK ..... Respondent

Through: Ms. Seema Gupta & Mr. Akshay Juneja, Advs.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

<u>VIBHU BAKHRU, J.</u>

1. Issue notice.

2. The learned counsel for the respondent accepts notice.

3. The petitioners have filed the present petition, *inter alia*, impugning an order dated 25.09.2023 passed by the Debts Recovery Appellate Tribunal (hereafter '**the DRAT**') in Appeal No. 285/2023. The petitioners had filed the said appeal under Section 20 of the Recovery of Debts and Bankruptcy Act, 1993 impugning an order dated 16.08.2023 passed by the Debts Recovery Tribunal-I (hereafter

'**the DRT**'), Chandigarh in O.A. No.2993/2017.

4. In terms of the said order dated 16.08.2023, the DRT had allowed the original application and directed that the recovery certificate be issued for an amount of ₹1,86,02,695/- (Rupees One Crore Eighty Six Lac Two Thousand Six Hundred Ninety Five only) along with the interest at the rate of 16.65% per annum with the monthly rests in open cash credit and at the rate of 15.40% per annum with monthly rests in the term loan facility from 22.03.2016 till the date of payment.

5. The petitioners' appeal was rejected by the impugned order on the ground that the petitioners had not met the mandatory condition of depositing 50% of the amount of debts as determined by the DRT.

6. It is the petitioners' case that the impugned order has been passed mechanically without considering the petitioners' entitlement for reduction of the pre-deposit amount to 25%. It is contended that the pre-deposit of 50% is the maximum that is required and in the given cases, the said requirement can be relaxed to 25% of the debts as determined. It is also the petitioners' case that the exact amount to be deposited has not been quantified.

7. Section 21 of the Recovery of Debts and Bankruptcy Act, 1993 which provides for pre-condition to deposit part of the debts as determined by the DRT is set out below:-

> "21. **Deposit of amount of debt due, on filing appeal**.—Where an appeal is preferred by any

> person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal [fifty per cent.] of the amount of debt so due from him as determined by the Tribunal under section 19:
>
> Provided that the Appellate Tribunal may, for reasons to be recorded in writing, [reduce the amount to be deposited by such amount which shall not be less than twenty-five per cent. of the amount of such debt so due] to be deposited under this section."

8. It is apparent from the plain reading of Section 21 of the Recovery of Debts and Bankruptcy Act, 1993, that deposit of 50% of the amount, as determined, is the necessary condition for maintaining an appeal before the DRAT under Section 20 of the said Act. However, in terms of the proviso, the DRT can for reasons to be recorded in writing reduce the amount to be deposited, however, the said amount cannot be less than 25% of the debts as payable or as determined. In the present case, the order dated 16.08.2023 passed by the DRT, which was the subject matter of appeal before the DRAT, as noted above, quantified the debts to be recovered. Thus, the petitioners would require to deposit 50% of the said amount.

9. The learned counsel for the petitioners submits that the petitioner is ready and willing to deposit 25% of the debts so determined and seek relaxation of the condition to deposit the balance amount for various reasons including the financial distress. There is merit in the petitioners' contention that the petitioners' claim that the

condition of pre-deposit of 50% be relaxed to 25% has not been considered by the DRAT.

10. In view of the above, we consider it apposite to set aside the impugned order and remand the matter to DRAT to consider the plea of relaxation of the condition of pre-deposit to 25% of the debts as determined. This is subject to the petitioner depositing 25% of the debts as determined within a period of four week from date.

11. If the 25% of the debts due is deposited within the aforesaid period, the DRAT shall consider if there are grounds for relaxing the condition of further pre-deposit as contended by the petitioner.

12. It is clarified that all rights and contentions of the parties in this regard are reserved.

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

VIBHU BAKHRU, J

AMIT MAHAJAN, J

OCTOBER 31, 2023
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