



2023:DHC:8832-DB



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 12.12.2023

+ **FAO(OS) (COMM) 283/2018 & CM APPL. 50200/2018**

KOTAK MAHINDRA BANK LTD

..... Appellant

versus

HASSAD FOOD COMPANY Q S C

& ORS

..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr. T. K. Ganju, Sr. Adv. with Mr. B. L. Wali & Mr. Shahrookh, Advs.

For the Respondent : Mr. Jayant Mehta, Sr. Adv. with Mr. Samar Singh Kachwaha, Ms. Ankit Khushu, Ms. Akansha Mohan & Ms. Aanya Saluja, Advs. for R1&2.

Mr. Adhish Rajvanshi & Mr. Bikram Bhattacharya, Advs. for R3, 4, 5, 7 & 8.
Ms. Usha Singh, Adv. for R10.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

AMIT MAHAJAN, J

1. The appellant, Kotak Mahindra Bank Limited, has filed the present appeal impugning the order dated 14.09.2018 (hereafter '**the impugned order**'), passed by the learned Single Judge under Order 39 Rule 1 & 2 of Code of Civil Procedure (hereafter '**CPC**'), in I.A No.

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7103/2018, in CS (COMM) 9/2018 titled *Hassad Food Company QSC & Ors. v. Bank of India & Ors.*

2. The learned Single Judge by its impugned order has restrained the consortium of banks, including the appellant, from using any coercive methods against Respondent Nos. 1 and 2 (hereafter collectively referred to as '**Hassad Foods**') for recovery of their alleged dues. The learned Single Judge has given liberty to the appellant and other banks to approach the High Court for appropriate orders for protection of their interest, in case the learned Debts Recovery Tribunal (hereafter '**DRT**') issued a Recovery Certificate in their favour, in the pending proceedings initiated by the banks for recovery of their dues before the learned DRT.

BRIEF FACTS:

3. Respondent No. 1 is owned and controlled by Qatar Investment Authorities. Respondent No. 2 is a subsidiary of Respondent No. 1, which was incorporated as a special purpose vehicle for Respondent No.1's investment in Bush Foods Overseas Pvt. Limited (hereafter '**Bush Foods**').

4. Bush Foods is a company that was incorporated by Mr. Virkaran Awasty and his wife Mrs. Ritika Awasty. At the material time it was, *inter alia*, engaged in the business of manufacturing, importing and exporting all kinds of rice, paddy etc.



5. Prior to 2013, 29% of the equity in Bush Foods was held by two Mauritius based indirect subsidiaries of the Standard Chartered Bank, UK, with the balance shareholding being held by its promoters.

6. Sometime in September, 2012, Hassad Foods was approached to invest in Bush Foods. Hassad Foods after conducting due diligence, entered into two Share Purchase Agreements both dated 09.03.2013 with the promoters of Bush Foods and the said subsidiaries of the Standard Chartered Bank respectively for acquisition of 69.5% equity in Bush Foods.

7. Various credit facilities were granted by the banks to Bush Foods. In terms of the agreements with the concerned banks, any change in the shareholding required their consent (No Objection Certificate- 'NOC'). The consortium of banks was led by the Bank of India. Post a meeting held between the banks and Hassad Foods on 11.03.2013, NOCs for the change of shareholding were granted by the banks on the condition that Respondent No.1 would furnish a corporate guarantee securitizing 70% of the working capital facilities availed by Bush Foods from the consortium of banks.

8. The appellant (erstwhile ING Vysya Bank) also gave its NOC to Hassad Foods on 20.03.2013 on the aforesaid condition that Hassad Foods would provide a corporate guarantee to the extent of 70% of the working capital limit of Bush Foods.

9. Thereafter, Respondent No.1 issued a corporate guarantee on 16.05.2013 (hereafter '**the corporate guarantee**') in favour of the



consortium of banks, including EXIM Bank and DBS Bank. The terms of the corporate guarantee states that Hassad Foods was required to securitize 70% of the total credit facilities availed by Bush Foods, that is ₹650 Crores.

10. It appears that between the period of August to September, 2013, the predecessor-in-interest of the appellant, ING Vysya Bank, which had an exposure of ₹50 crores, also agreed to take over the debt of EXIM Bank and DBS Bank, resulting in enhancement of its exposure to ₹110 crores. The same was also consented to by Hassad Foods.

11. On 06.01.2014, Hassad Foods filed a Criminal Complaint before the Economic Offence Wing (EOW) of the Delhi Police alleging that they had been cheated by Bush Foods. It was alleged that the erstwhile promoters of Bush Foods, including Mr. Virkaran Awasty and Mrs. Ritika Awasty, had committed the offence of cheating. This allegation was founded on the basis that the physical stock verification report made by various agencies engaged by Bush Foods, including Deloitte, had represented that stock worth more than ₹1000 crores was available with Bush Foods, whereas it was discovered that the same was not worth more than ₹20 crores. Thereafter, FIR No. 136/2014 was registered on 03.12.2014 on the said complaint given by Hassad Foods. This Court is informed that a chargesheet was filed by the EOW on 08.08.2016 in respect of offence under Section 409, 420, 468, etc. of the Indian Penal Code, 1860, and cognizance has been taken by the concerned Court.



12. Hassad Foods defaulted on payment of its loans and its accounts with the banks, including the one with the appellant, became irregular. Legal notices were issued by various banks to Hassad Foods. The appellant invoked the corporate guarantee by notice dated 11.04.2014. Thereafter, Hassad Foods paid an amount of ₹490 crores approximately to the consortium of banks, including an amount of ₹35,93,00,000/- to the appellant.

13. The non-payment of the balance amount led the appellant to file an Original Application, being O.A. 347 of 2014, before the learned DRT for recovery of the dues amounting to ₹1,18,85,56,215/-, wherein 70% of the said sum was sought to be recovered from Hassad Foods in terms of the corporate guarantee.

14. In the meantime, Hassad Foods also initiated arbitration against Mr. Virkaran Awasty and Mrs. Ritika Awasty, in regard to the losses incurred by it under the corporate guarantee. We are informed that the Arbitral Tribunal has awarded a total of USD 197.41 million in favour of Hassad Foods. The said amount has not been recovered as both Mr. Virkaran Awasty and Mrs. Ritika Awasty have fled to Cyprus. It is stated by the counsel that the challenge to the award by the said erstwhile promoters of Bush Foods has been dismissed.

15. During the pendency of the proceedings before the learned DRT, Hassad Foods filed the present suit seeking a declaration that the corporate guarantee is vitiated on account of the misrepresentation and fraud on the part of the consortium of banks. It is alleged that the



consortium of banks actively concealed the knowledge about the poor financial health of Bush Foods. The reliefs sought by Hassad Foods in the suit are as under:

- “a) pass a decree declaring that the Corporate Guarantee dated 16th May, 2013 issued by Plaintiff No. 1 herein by the BoI Consortium members is vitiated by fraud or misrepresentation including under Sections 17, 18, 142, 143 of the Contracts Act and is therefore invalid in law and further that the Plaintiff is entitled to consequential reliefs in law.*
- b) pass a decree in favour of Plaintiff No. 1 and against Bank of India (Defendant No.1) for a sum of Rs. 1,43,22,00,000.00 (Rupees One Hundred Forty Three Crores and Twenty Lakhs).*
- c) pass a decree in favour of Plaintiff No. 1 and against Bank of Baroda (Defendant No.2) for a sum of Rs. 30,07,00,000.00 (Rupees Thirty Crores and Seven Lakhs).*
- d) pass a decree in favour of Plaintiff No. 1 and against Punjab National Bank (Defendant No.3) for a sum of Rs. 40,06,82,247.68 (Rupees Forty Crores Six Lakhs Eighty Two Thousand Two Hundred and Forty Seven and paise Sixty Eight).*
- e) pass a decree in favour of Plaintiff No. 1 and against Defendant Nos. 4 and 12 (i.e. Allahabad Bank and Invent Asset Securitisation and Reconstruction Pvt. Ltd.), jointly and severally, for a sum of Rs. 91,11,00,000.00 (Rupees Ninety Crores and Eleven Lakhs).*
- f) pass a decree in favour of Plaintiff No.1 and against the Central Bank of India (Defendant No.5) for a sum of Rs. 13,12,00,000.00 (Rupees Thirteen Crores and Twelve Lakhs).*
- g) pass a decree in favour of Plaintiff No. 1 and against the Export-Import Bank of India (Defendant No.6) for a sum of US\$ 1,434,957.59 (US Dollar One Million Four Hundred and Thirty Four Thousand, Nine Hundred and Fifty Seven and cents Fifty Nine) = Rs.9,28,41,756.00 @ Rs.64.7 per US\$ as on 24th November, 2017.*



- h) *pass a decree in favour of Plaintiff No. 1 and against the Hong Kong and Shanghai Bank Corporation (Defendant No.7) for a sum of US\$ 5,806,272.73 (US Dollar Five Million Eight Hundred and Six Thousand, Two Hundred and Seventy Two and cents Seventy Three) = Rs. 37,56,65,846.00 @ Rs.64.7 per US\$ as on 24th November, 2017.*
- i) *pass a decree in favour of Plaintiff No. 1 and against Defendants No. 8 and 10 i.e. Kotak Mahindra Bank and DBS Bank Limited (jointly and severally) for a sum of Rs. 35,93,00,000.00 (Rupees Thirty Five Crores Ninety Three Lakhs).*
- j) *Declare the categorisation of Plaintiff No. 1 as a 'wilful defaulter' by Defendant No. 8 and 9 as bad in law and non-est.;*
- k) *A decree of mandatory injunction directing Defendants No. 8 and 9 to forthwith take corrective steps to remove the name of Plaintiff No. 1, its officials and directors as 'wilful defaulters' from any official record, including from the website of 'TransUnion CIBIL'.*
- l) *A declaration that any purported action by the Defendants herein under the said Deed of Guarantee dated 16th May, 2013, seeking any alleged dues or balance dues or any claim relating to or under the said Deed of Guarantee is null and void and non-est.*
- m) *A decree of mandatory and permanent injunction, to restrain the Defendants herein from invoking any legal action under the said Deed of Guarantee dated 16th May, 2013, seeking any alleged dues or balance dues or any claim relating to or under the said Deed of Guarantee.*
- n) *Award pre pendente lite; pendente lite and post pendente lite interest qua each Defendant on the decreed sums, in accordance with law.*
- o) *Pass appropriate order in favour of Plaintiff No. 1 and against the Defendants herein (jointly or severally) as to legal costs including court fees and other costs as payable under the provisions of Section 35 of the CPC.*
- p) *Pass any other order as this Hon'ble Court may deem just and proper in the facts and circumstances of the case."*



16. The learned Single Judge, by the impugned order, has passed an interim order in favour of Hassad Foods, which has led to filing of the present appeal.

17. It is also informed that after passing of the impugned order, the learned DRT has also passed a final order dated 06.05.2019 in O.A. 347 of 2014, holding that Reliance Asset Reconstruction Company, the assignee of the appellant, is entitled to recover a sum of Rs.1,18,85,56,215/- along with interest at 14.8% per annum from date of filing of the O.A. till realisation, and directing a Recovery Certificate to be issued forthwith. Hassad Foods has been held liable for 70% of the said amount in terms of the corporate guarantee. Hassad Foods had also preferred a statutory appeal before the learned Debts Recovery Appellate Tribunal (hereafter '**DRAT**'). However, the same was not entertained by the learned DRAT as Hassad Foods had failed to make the requisite pre-deposit for maintaining the appeal. The writ petition challenging the order of the learned DRAT was also dismissed by this Court by its order dated 04.09.2019. We are informed that a Special Leave Petition was preferred against the said order of this Court, but the same was also dismissed on 15.11.2019.

18. Hassad Foods again approached this Court by filing a writ petition, being W.P.(C) 3872/2021, challenging the order dated 06.05.2019, passed by the learned DRT in O.A. 347 of 2014. The said writ petition was dismissed by this Court, and a cost of ₹2,00,000/- was imposed on Hassad Foods.



ARGUMENTS

19. Mr. T. K. Ganju, learned senior counsel who appeared on behalf of the appellant, contended that only a part payment of the dues has been made. He submitted that the entire story of fraud has been concocted by Hassad Foods only as an afterthought in order to bypass their liability, and shift the burden of the loss, which was incurred because of Hassad Foods own commercial decision.

20. He submitted that the decision of Hassad Foods to invest in Bush Foods and to enter into the Share Purchase Agreements was pursuant to their negotiations with Bush Foods and after due diligence. Thus, by no stretch of imagination, the investments made by Hassad Foods could be said to have been triggered by any representation by the appellant or the other banks.

21. He submitted that in terms of the corporate guarantee, Hassad Foods is liable to pay a sum of ₹650 crores to the consortium of banks, whereas admittedly only a sum of ₹490 crores approximately has been disbursed.

22. He further submitted that no specific allegation as to fraud has been levelled against the appellant in the present suit, and that no such plea was ever raised in their reply, which was filed before the learned DRT.

23. He contended that even if the allegations that the banks were involved in “painting a rosy picture” or were negligent in keeping a tab on the inventory are accepted, the same will not constitute a case of a



fraud being played by the banks on Hassad Foods. Even if it is to be assumed that the banks were negligent in advancing the loan to Bush Foods, the same cannot be termed as misrepresentation on part of the banks to Hassad Foods. The corporate guarantee given by Hassad Foods was not dependent on any representation, and the reliance of the learned Single Judge on the minutes of meeting dated 11.03.2013 is thus misconceived.

24. He further submitted that the chargesheet filed by the EOW or the status reports of the Serious Frauds Investigation Office ('SFIO') in relation to the alleged fraud committed by Bush Foods, did not in any manner implicate the consortium of banks.

25. He submitted that even otherwise, ING Vysya Bank, which is the predecessor-in-interest of the appellant, was not part of the consortium when the meeting was held on 11.03.2013. He further submitted that Hassad Foods had been admittedly cheated by their own employee, namely Mr. Sai Chandrasekhar, who even as per their complaint filed before the EOW, had colluded with the erstwhile promoters of Bush Foods, and had received huge amount of money.

26. The learned senior counsel further relied upon the decision of the Hon'ble Apex Court in the case of *Bank of Rajasthan Limited v. VCK Shares and Stock Broking Services Limited: 2023 (1) SCC 1*, and contended that the Hon'ble Supreme Court has emphatically stated that under no circumstances, proceeding before the learned DRT will be impeded or stayed.



27. He submitted that the learned Single Judge by the impugned order, had in effect interdicted the recovery process and any such order defeated the very object of the Recovery of Debts and Bankruptcy Act, 1993 (hereafter '**RDB Act**'), and is contrary to the decision of the Hon'ble Apex Court.

28. Mr. Jayant Mehta, learned senior counsel who appeared on behalf of Hassad Foods, submitted that Hassad Foods had been cheated for a huge amount of money.

29. He submitted that after acquiring the majority shareholding in Bush Foods, the Audit Report disclosed a shocking state of affairs. Large number of bags were filled with plant sweepage and rice husk. These bags were stacked to give a false impression that the warehouses were full at maximum quantity whereas that was only a window dressing. Some warehouses were found to be empty. At the material time, the inventory of paddy and rice was certified to be around ₹1,000 crores, but in reality, it was not even worth ₹20 crores.

30. He submitted that Bush Foods had taken a credit of over ₹650 crores on the strength of this fake inventory. The banks had wrongly executed a joint deed of hypothecation on the stocks and had sanctioned credit limit of about ₹650 crores on this fabricated inventory. He submitted that the banks had been grossly negligent in keeping a track of the inventory of rice and paddy.



31. He contended that the banks had been facing great difficulties with the account of Bush Foods but the same was wrongfully concealed, which induced Respondent No.1 to furnish the corporate guarantee.

32. He further submitted that the banks did not disclose the correct state of their relationship with Bush Foods, as the same could not have been termed as satisfactory, in the meeting dated 11.03.2013. The banks were negligent in holding out their principal security, that is, the stock of rice and paddy, and did not carry out any independent physical verification or valuation of the same.

33. He submitted that the banks are guilty of fraud and misrepresentation as they concealed their knowledge about the poor financial health of Bush Foods.

ANALYSIS

34. The impugned order passed by the learned Single Judge decided two issues. The first regarding the maintainability of the suit, and the second being whether the plaintiffs (Hassad Foods) were entitled for any order under Order 39 Rule 1 & 2 of the CPC.

35. Insofar as the maintainability of a suit filed by a borrower against a bank is concerned, concededly, the issue is no longer *res integra*. Recently, the Hon'ble Apex Court in the case of ***Bank of Rajasthan Limited v. VCK Shares and Stock Broking Services Limited*** (*supra*) has held that unless there is an express or implied exclusion to that effect, there are no restrictions on the power of a Civil Court under Section 9 of the CPC to entertain a suit. A defendant in a proceeding



before the learned DRT has the right to defend the claim and also to file a counter claim in terms of sub-Sections (6) and (8) of Section 19 of the RDB Act. However, there is no provision in the RDB Act by virtue of which the remedy of a defendant to file a civil suit is ousted. It is a matter of choice of that defendant whether to file a counter claim before the learned DRT or to avail his remedy of filing a civil suit. It was held as under:

“53. We certainly would not like that the process envisaged under the RDB Act be impeded in any manner by filing of a separate suit if a defendant chooses to do so. A claim petition before DRT has to proceed in a particular manner and would so proceed. There can be no question of stay of those proceedings by way of a civil proceeding instituted by a defendant before the Civil Court. The suit would take its own course while a petition before DRT would take its own course. We appreciate that this may be in the nature of parallel proceedings but then it is the defendant’s own option. We see no problem with the same as long as the objective of having expeditious disposal of the claim before DRT under the RDB Act is not impeded by filing a civil suit. Thus, it is not open to a defendant, who may have taken recourse to the Civil Court, to seek a stay on the decision of DRT awaiting the verdict of his suit before the Civil Court as it is a matter of his choice.

54. We thus make it abundantly clear that in case of such an option exercised by the defendant who filed an independent suit, whatever be the nature of reliefs, the claim petition under the RDB Act would continue to proceed expeditiously in terms of the procedure established therein to come to a conclusion whether a debt is due to a bank and/or financial institution and whether a recovery certificate ought to be issued in that behalf.

55. We may say that if the legislature were to think otherwise, nothing prevented the legislature nor prevents it now from making suitable amendments in the RDB Act to meet such a scenario.



56. *In view of the discussion aforesaid, the questions framed above are to be answered as under:*

(c) Is the jurisdiction of a Civil Court to try a suit filed by a borrower against a Bank or Financial Institution ousted by virtue of the scheme of the RDB Act in relation to the proceedings for recovery of debt by a Bank or Financial Institution?

The aforesaid question ought to be answered first and is answered in the negative.

(a) Whether an independent suit filed by a borrower against a Bank or Financial Institution, which has applied for recovery of its loan against the plaintiff under the RDB Act, is liable to be transferred and tried along with the application under the RDB Act by the DRT?

In the absence of any such power existing in the Civil Court, an independent suit filed by the borrower against the bank or financial institution cannot be transferred to be tried along with application under the RDB Act, as it is a matter of option of the defendant in the claim under the RDB Act. However, the proceedings under the RDB Act will not be impeded in any manner by filing of a separate suit before the Civil Court.

(b) If the answer is in the affirmative, can such transfer be ordered by a court only with the consent of the plaintiff?

Since there is no such power with the Civil Court, there is no question of transfer of the suit whether by consent or otherwise.

57. *The aforesaid takes care of the reference.*

58. *Now coming to the factual scenario of the case. The fact is that the proceedings under the RDB Act in any case have reached a culmination with satisfaction of the claim and, thus, no proceedings instituted by the appellant are pending before the DRT. As for the suit, there is no question of a counterclaim or a transfer or any other manner other than trial of the suit instituted by the respondent. In fact, some part of the claim of the bank was not even allowed and some adjustments were directed to be made. Even thereafter so far as any other claims of the respondent are concerned, DRT in terms of the order dated 19.05.2003 permitted*



the respondent to pursue the remedy in accordance with law - which can only mean the civil proceedings. Thus, the suit is liable to proceed accordingly.”

36. Proceedings before the learned DRT and Civil Court were held to be permitted to continue independently. It was, however, held that the process envisaged under the RDB Act is not to be impeded in any manner by filing of a separate suit, and there will be no stay of the proceedings before the learned DRT, and both the proceedings would take their own course. It was also made clear that a defendant, who chooses to file a suit before the Civil Court, would not be entitled to seek a stay on the decision of the learned DRT awaiting the verdict of the said suit filed by him before the Civil Court.

37. In view of the above, as far as the issue in relation to the maintainability of the suit is concerned, the decision of the learned Single Judge does not warrant any interference.

38. Hassad Foods in the suit has sought a declaration that the corporate guarantee is vitiated by fraud and misrepresentation. It is significant to note that the learned DRT by its judgment dated 06.05.2019, in OA No. 347/2014, has already held Hassad Foods liable for the payment of 70% of the total sum of ₹1,18,85,56,215/- along with interest at 14.8% p.a. from the date of filing of the said Original Application till realisation (taking into consideration the amount of ₹35.93 crores that had already been paid to the appellant by Hassad Foods), on the basis of the said corporate guarantee. The learned DRT



has also issued Recovery Certificate No. 246/2019 dated 15.05.2019 in the said Original Application to this effect.

39. The learned Single Judge held that the banks had held out to Hassad Foods about their satisfactory relation with Bush Foods. The Court also noted that the banks had represented that they had full faith in Mr. Virkaran Awasty, whereas the actual facts on that date were totally different. At the material time, Bush Foods had defaulted in its repayment obligations and was struggling to stay afloat. The learned Single Judge thus accepted that Hassad Foods had been able to make a *prima facie* case in their favour to show that the bankers had painted a rosy picture to Hassad Foods, about the financial health of Bush Foods, to induce them to go ahead with the transaction. The learned Single Judge also noted that the banks had given a loan of over ₹700 crores to Bush Foods on the charge of an inventory of rice and paddy, which was supposed to be worth about ₹1000 crores, but on physical verification was found to be not even worth ₹20 crores. The consortium of banks was thus, *prima facie*, held to be grossly negligent in keeping a tab on the physical inventory of paddy and rice hypothecated to them.

40. The learned Single Judge also placed a strong reliance on the minutes of the meeting held on 11.03.2013, which reads as under:

"MINUTES OF THE CONSORTIUM MEETING HELD ON 11.03.2013 AT Hotel The Oberoi, Dr. Zakir Husain Marg, NEW DELHI.

...

Mr. Sood extended special welcome to representatives of Hassad Foods. He informed that Bank of India has had satisfactory relationship with company for over six years. On behalf of consortium



he welcomed Hassad Foods and informed that the consortium expects the relationship with Bush Foods will grow further.

Hassad Foods' representative informed that Hassad Foods is owned and was established by Qatar Investment Authority. Qatar Holdings is a subsidiary of Qatar Investment Authority. He informed that Qatar Investment Authority has invested in reputed companies like Porsche, Qatar Airways, Credit Suisse, Barclays Bank, Volkswagon, Al Jazeera etc. He also informed that Qatar Investment Authority makes sector specific investments through separate subsidiaries which have been incorporated for different sectors. For e.g. investments in the agri sector are being done through Hassad Foods, investments in the mining sector has being done through Qatar Mining. He informed that company wants to extend its presence in rice domain (Food and Agri Business segment) He informed that Hassad Foods has found a right partner and he expects their relationship with Bush Foods will grow further in future.

Hassad Foods informed that partnership with Bush Foods falls in line with company's future vision and it views its investee companies as standalone investments and they expect to develop solid partnership with consortium members. It was further informed that post (primary and secondary) funding by Hassad Foods (whereby Hassad will own 70% and Mr. Awasty will continue to hold the balance 30%), there will be no major change in management of Bush Foods (other than 4 new board members and the CFO to be eventually nominated by Hassad Foods) and Mr. Vir Karan Awasty will continue as CEO of the company. Company expects long term commitment from the partners.

Regarding Exim Bank's query on investment, Mr. Khalid clarified that Hassad Foods Netherlands, an SPV of Hassad Foods will acquire 70% stake in Bush Foods Overseas Pvt. Ltd.

Mr. Sood informed that as far as Bank of India & consortium member banks are concerned, we have full faith in Mr. Vir Karan Awasty and with Hassad Foods investing in the company, financial position of Bush Foods Overseas Pvt. Ltd. will become strong. Consortium informed that they have good relationship with Bush Foods and assured that they will continue their support to Hassad Foods and Bush Foods."



41. The learned Single Judge relied upon the said minutes of the meeting to, *prima facie*, hold that the conduct of the banks had misled Hassad Foods to invest in Bush Foods.

42. The learned Single Judge had thus restrained the consortium of banks, including the appellant, from using any coercive methods against Hassad Foods for recovery of their dues.

43. We are unable to concur with the decision of the learned Single Judge that any interim order was warranted for more than one reason.

44. It is an admitted fact, as also noted by the learned Single Judge, that Hassad Foods, prior to entering into the Share Purchase Agreements dated 09.03.2013, had carried out the due diligence with regard to the financial health and other aspects, including the inventory of stock. For the said purpose, the services of various well-known agencies and the law firms such as Pricewaterhouse Coopers, Mumbai; Ernst & Young; Deloitte, etc., were engaged by Hassad Foods.

45. It is also not disputed that the predecessor-in-interest of the appellant, that is, ING Vysya Bank, had enhanced its exposure into Bush Foods from 50 crores to 110 crores after the execution of the said Share Purchase Agreements by taking over the loans of DBS Bank and EXIM Bank.

46. It is also significant to note that the complaint given to the EOW by Hassad Foods, which led to the registration of FIR on 03.12.2014, under Sections 409, 420 and 120B of IPC, did not, in any manner, allege



any fraudulent act on the part of the appellant. It is also not denied that the SFIO, in its report, has not implicated the appellant as an accused responsible for cheating Hassad Foods.

47. Thus, *prima facie*, it cannot be held that issuance of the corporate guarantee given by Respondent No. 1, was induced by fraudulent acts on part of the appellant. *Prima facie*, the execution of the corporate guarantee was not founded on the alleged representations made by the appellant. The same was issued by Respondent No.1 after conducting due diligence.

48. It is also not the case of Hassad Foods that the investments were made after taking any approval from the appellant or its predecessor-in-interest.

49. The learned Single Judge, in our opinion, is wrong in placing reliance on the minutes of the meeting held on 11.03.2013 to, *prima facie*, hold that the conduct of the banks had misled Hassad Foods to invest in Bush Foods.

50. It is significant to note, and not denied, that the parties had already entered into two Share Purchase Agreements on 09.03.2013, prior to the meeting held on 11.03.2013. The minutes of the said meeting, *prima facie*, show that the same was for the purpose of introduction of Hassad Foods to the representatives of the banks for the purpose of future relationship of Hassad Foods with the banks.



51. It is also not in dispute that the account of Bush Foods with ING Vysya Bank (predecessor-in-interest of the appellant) was being serviced. It was declared as a Non-Performing Asset ('NPA') in the year 2014.

52. In our opinion, Hassad Foods has not been able to show that the investments were made by them on a representation of the appellant or the consortium of banks.

53. Hassad Foods had entered into a commercial transaction with Bush Foods after carrying out their due diligence and the responsibility for the same cannot be fastened on a third party unless it is shown that prior to the investment being made, the said party had misrepresented the facts which were relevant for the purpose of taking the decision of investment.

54. The banks, including the appellant, can be held to be negligent in keeping a track of the inventory of rice and paddy which was supposed to be hypothecated with them. However, *prima facie*, mere negligence on the part of the banks cannot be a ground to hold that any fraud was played by the banks on Hassad Foods. The question whether any fraud was committed by the banks is a matter of trial, and requires to be decided after the evidence is led by the parties.

55. Another aspect which cannot be lost sight of is that the Hon'ble Apex Court in ***Bank of Rajasthan Limited v. VCK Shares and Stock Broking Services Limited*** (*supra*), had categorically held that the



proceedings under the RDB Act, are not to be impeded, in any manner, by filing a suit before a Civil Court.

56. The proceedings before the learned DRT, in terms of the RDB Act, are not only for the expeditious adjudication of the claim of the banks, but also for recovery of the debts due to banks and financial institutions. Interim order granted by the learned Single Judge, in the present case, has the effect of impeding the recovery proceedings which were instituted under the RDB Act. It is an admitted case that the Recovery Certificate has already been issued by the learned DRT against Hassad Foods. Hassad Foods had unsuccessfully challenged the order passed by the learned DRT, not only before the learned DRAT, but also before this Court. Hassad Foods, thus, had been unsuccessful in obtaining any order against the order passed by the learned DRT, issuing a Recovery Certificate in favor of the appellant.

57. The order passed by the learned Single Judge has indirectly impeded the recovery proceedings, even though Hassad Foods has not been able to obtain an order to that effect in an appeal filed before the learned DRAT or in a writ petition filed before this Court.

58. In view of the above, we are of the opinion that the learned Single Judge fell in error in passing the impugned order, and the same is, accordingly, set aside.

59. The appeal is allowed in the aforesaid terms.



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60. It is clarified that the observations made in this judgment are solely in the context of determining whether the impugned order is sustainable. Nothing stated herein should be construed as an opinion on merits, and the learned Trial Court shall decide the suit uninfluenced by this judgment.

AMIT MAHAJAN, J

VIBHU BAKHRU, J

DECEMBER 12, 2023

SK / KDK/SS

Signature Not Verified

Digitally Signed
By: HARMINDER KAUR
Signing Date: 12.12.2023
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