April 22, 2024
Sl. No.20
Court No.19
s.biswas

CO 3790 of 2023

Basant Lall Shaw
vs.
Kotak Mahindra Bank Ltd. and others

Mr. Souritra Ganguly
Ms. Atreyee De (Ganguly)
... for the petitioner
Mr. Pratik Ghosh
Mr. Avishek Roy Chowdhury
... for the opposite party

1. The issue which falls for a decision in this revisional application is whether the learned Debts Recovery Appellate Tribunal (DRAT) erred in law in not considering the decision of the Bombay High Court in the matter of **Sterlite Technologies Ltd. vs. Union of India and others** reported in 2012 (2) Mh.L.J. 112. Paragraph nos.6 and 8 of the said decision are quoted below:

6. Section 21 provides that where an appeal is preferred by any person from whom an amount of debt is due to a Bank or a financial institution or a consortium, the appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal seventy five per cent of the amount of debt so due from him as determined by the Tribunal under section 19. Under the proviso to section 21, the Appellate Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under section. The mandate of the statute is that ordinarily an Appellant before the Appellate Tribunal must deposit 75% of the amount of the debt due as determined by the Tribunal under section 19. Parliament, however, has in its wisdom conferred a wholesome power upon the Appellate Tribunal to reduce the amount to the deposited under the section. The exercise of that power is a judicial power which is further structured by the requirement that reasons have to be recorded in writing for reducing the amount to be deposited to less than 75% of the debt as determined by the Tribunal. The Appellate Tribunal has proceeded in the present case on an erroneous conception as to its own jurisdiction. The Learned Chairperson has observed that at this stage it is not possible to make any comment on the impugned judgment and order of the Tribunal. Now, at the stage when it considers an application for dispensing with the condition of deposit, the contentions urged in regard to the judgment of the Tribunal. That has await the final determination of the appeal. But, it is a well settled principle of law that even at that stage, the question as to whether a prima facie case has been made out has to be evaluated by the Appellate Tribunal. For the limited purpose of considering whether a dispensation should be granted, the Appellate Tribunal has necessarily to evaluate as to whether a prima facie case is made out and the reasons which are to be formulated have to be confined only to that determination. <u>If the proposition which has been laid down by the DRAT were to be accepted as good law that would mean that a litigant who does not plead financial hardship is disabled from urging that the requirement of pre-deposit should be reduced or waived within the parameters laid down by the statute. That is not reflective of the legal position. In considering as to whether a waiver should be granted, both the elements of a prima facie case and the question of financial hardship would have to be considered by the Appellate Tribunal. Whereas in the present case, the Appellant does not plead financial hardship that is a relevant consideration which has to be taken into consideration and placed in the valance by the Appellate Tribunal. But that is not dis-positive of the jurisdiction is required to evaluate as to whether a prima facie case has been made out for the grant of waiver. Hence, with respect, we are unable to subscribe to the position as set out in paragraph 20 of the judgment of the DRAT quoted above.</u>

....

8. Since the DRAT has not considered the application for waiver in terms of the legal position as elaborated in the previous paragraph of this <u>judgment, which is consistent with the provisions of section 21, we set aside the impugned order of the Appellate Tribunal and restore the application for waiver of deposit to the file of the Appellate Tribunal for a decision afresh</u>. On the request of the Fourth Respondent, we expedite the disposal of the application and would request the Appellate Tribunal to endevour a disposal preferably within a period of two months.

2. While considering an application for waiver of the fixed deposit in terms of Section 21 of the Recovery of Debts and Bankruptcy Act, 1993, the order impugned was passed.
3. The learned tribunal relying on the decision of the Hon'ble Apex Court in **M/s Sidha Neelkanth Paper Industries Private Limited and another vs. Prudent ARC Limited and others** reported in 2022 LiveLaw (SC) 11, held that the decision in **Sterlite Technologies** (supra) would not have any application.
4. The learned advocate for the petitioner/borrower submits that when the learned DRAT was empowered by law to reduce the pre-deposit from 50% to 25%, such exercise should have been undertaken. The learned Tribunal failed to take into consideration the ratio of **Sterlite Technologies (supra).** A specific question with regard to the correctness of the decision of the DRT had been raised. Consideration of not only financial stringency, but also a good prima facie case should have been undertaken by the learned DRAT.
5. Learned advocate for the bank submits that the Hon'ble Apex Court in **M/s Sidha Neelkanth Paper Industries** (supra) held that only upon

deposit of 50% of the amount due, an appeal could be entertained. There is no quarrel with proposition of law that a proviso has been added to Section 21 of the Act of 1993. The section is quoted below:-

> "21. Where an appeal is preferred by any person from whom the amount of financial 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 of the amount of debt so due from him 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."

6. The proviso empowers DRAT to record reasons in writing to reduce the pre-deposit from 50% of the debt due to the bank, to 25% thereof.
7. In the present case, the learned DRAT failed to exercise jurisdiction to arrive at a conclusion as to whether such proviso could be imported in case of the petitioner who prayed for waiver of pre-deposit in the facts and circumstances pleaded in the said application.
8. In my view, the learned DRAT ought to have recorded the reasons as to why the pre-deposit

could not be reduced to any quantum less than 50% of the debt due, but not below 25% thereof.

9. The order impugned is set aside. The amount already deposited by the petitioner, will be retained with the records till the application is decided afresh, in accordance with law, upon allowing the parties to contest the same. The application for waiver shall be heard afresh and disposed of within a period of two months from date. Thereafter, the appeal shall be expedited and disposed of on an urgent basis. The deposit so made will abide by the result of the application. It is the law that waiver upto 25% of the debt due (principal + interest) can be allowed and not below 25% of the debt.
10. This court has not gone into the merits of the application. The issues raised in terms of **Sterlite Technologies (supra)** shall be decided by the learned DRAT while disposing of the application for waiver.
11. The revisional application stands disposed of.
12. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)