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

+ W.P.(C) 1954/2020 & CM APPL. 6850/2020

M/S SASHA TELECOM PVT. LTD. AND ORS.Petitioners

Through: Mr. Tarun Rana, Mr. S. Pandey, Mr.
Waseem Akram, Mr. Anish Singh and
Mr. Shivam Veena, Advocates

versus

M/S PHOENIX ARC PVT. LTD.Respondent

Through: Mr. Samrendra Kumar, Advocate

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

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28.08.2024

1. The only issue raised in the present petition is with regard to interpretation of the proviso under Section 19(5) of the Recovery of Debt and Bankruptcy Act, 1993.
2. This Court vide order dated 10th March, 2022 has held that the issue in the present petition is squarely covered by the Division Bench judgment in *Anita Garg Vs. SBI, 2021 SCC Online Del 431*, wherein this Court has taken the view that the time for filing the written statement under Section 19(5) is mandatory.
3. Today, learned counsel for the petitioner refers to and relies upon the judgment of the Supreme Court in *Dr. A Suresh Kumar & Ors. Vs. Amit Agarwal, (2021) 7 SCC 466*, to submit that the judgment in the case of *New India Assurance Co. Ltd. Vs. Hilli Multipurpose Cold Storage (P) Ltd.,*



(2020) 5 SCC 757, with regard to para materia provisions, has been held to apply prospectively.

4. The learned predecessor Division Bench of this Court vide order dated 8th April, 2022 has rejected the said argument. The relevant portion of the order dated 8th April, 2024 is reproduced hereunder:-

“....

2. The petitioners' grievance against the order of the DRT was that the written statement was not taken on record.

2.1. The impugned order of the DRAT records that the summons in the O.A. preferred by the respondent was served on 22.05.2017.

2.2. As per the provisions of Section 19(5) of the Recovery of Debts and Bankruptcy Act, 1993 [in short, '1993 Act'], the petitioners i.e., the original defendants were required to file a written statement, including the claim for set-off or counter-claim along with the original documents or true copies of the same, within 30 days of the service of summons.

2.3 It appears that the DRT vide order dated 25.07.2017 granted one week to the petitioners/defendants for filing a written statement. Concededly, the petitioners/defendants did not file the written statement, within the timeframe allocated by the DRT.

2.4. The petitioners/defendants, evidently, filed the written statement before the Registrar, DRT on 15.09.2017.

3. The impediment before the petitioners/defendants is the provisions of Section 19(5)(i) of the 1993 Act.

3.1. As noted above, the written statement was required to be filed by the petitioners/defendants, within 30 days of the summons being served upon them.

3.2 However, in exceptional cases or special circumstances, which the presiding officer is required to record as per the proviso to the aforementioned section, a further period could be granted to the litigant [in this case, the petitioners/defendants], which cannot exceed 15 days.

3.3. In this case, as noted above, one week was granted to the petitioners/defendants by the DRT via order dated 25.07.2017. The petitioners/defendants, in fact, have crossed even the 15 days' timeframe provided in the proviso to Section 19(5) (i) of the 1993 Act.

4. The record shows that the coordinate bench on 10.03.2022 had brought to the notice of the counsel for the petitioners/defendants, the view taken by the coordinate bench of this court in Anita Garg & Ors. v. State Bank of India, 2021 SCC OnLine Del 4311. The Division Bench in the said judgment has concluded



that the DRT cannot extend the time for filing the written statement, as provided in Section 19(5)(i) of the 1993 Act, read with the proviso appended thereto.

5. Mr Tarun Rana, who appears on behalf of the petitioners, has not been able to place any judgment before us which adverts to the aforementioned provision found in the 1993 Act, and takes a position different to the view held in Anita Garg case.

5.1. Although, Mr Rana has referred to the judgment rendered by the Supreme Court in Dr. A Suresh Kumar & Ors. v. Amit Agarwal, (2021) 7 SCC 466, which, inter alia, highlights the fact that the Supreme Court in New India Assurance Co. Ltd. v. Hilli Multipurpose Cold Storage (P) Ltd., (2020) 5 SCC 757 has held that its decision would apply prospectively; in our view, that will not help the cause of the petitioners as only the Supreme Court can say that their judgments will apply prospectively.

5.2 The reason Mr Rana has cited the aforementioned judgment is on account of the fact that the provisions the Consumer Protection Act, 1986 with regard to the timeframe for filing the defense in an action filed under the said Act is and somewhat similar to Section 19(5)(i) of the 1993 Act.

5.3 To be noted, in New India Assurance Co. Ltd., even according to Mr Rana, the Supreme Court has stated that the consumer forum cannot exceed the timeline for filing the defense beyond 30 days plus 15 days.

5.4. The fact that the dicta in New India Assurance Co. Ltd. will apply prospectively was reiterated by the Supreme Court in Dr. A Suresh Kumar. As noted above, it is not open to this court to state that a judgment would apply prospectively except in exceptional circumstances, say, when an act is declared as an offence for the first time.....”

5. Consequently, the argument advanced by learned counsel for the petitioner cannot be accepted by this Court. Accordingly, the present writ petition along with application is without merit and dismissed.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

AUGUST 28, 2024/ms