29.01.2025
Item No.20
gd/ssd

CO/4121/2024
BASANT LALL SHAW
VS
KOTAK MAHINDRA BANK LTD. AND ORS.

Mr. Soumitra Ganguly,
Ms. Atreyee De (Ganguly)
..for the Petitioner.

Mr. Pratik Ghosh,
Mr. Avishek Roy Chowdhury
..for the Respondents.

The petitioner, who claims to be the guarantor, has challenged the order dated 2nd July, 2024 passed by the Debts Recovery Appellate Tribunal, Kolkata (for short, the Appellate Tribunal) in Appeal No.84 of 2015 arising out of Transfer Application No.66 of 2014.

By the impugned order the learned Appellate Tribunal allowed IA 608 of 2017 by directing the petitioner, who is the appellant in Appeal No.84 of 2015, to make pre-deposit under Section 21 of the Recovery of Debts and Bankruptcy Act, 1993 to the extent of 25% of the amount of Rs.61,47,240/- within the time limited stipulated thereunder.

The short question that falls for consideration in this civil revisional application is whether the amount which the petitioner should be directed to deposit should be a percentage on the total debt due or the sum due after adjustment of the sale proceeds of the secured asset.

The learned Debts Recovery Tribunal-1, Kolkata by an order dated 25th May, 2015 in TA 66 of 2014 has directed that the defendant nos.2 and 6 are jointly and severally liable to pay the amount due as on the date of their resignation from the Directorship minus the amount recovered by sale of hypothecated assets during the pendency of the proceeding.

Thereafter pursuant to the direction issued by the learned Appellate Tribunal, to determine the amount due on the date of resignation of the petitioner herein, the learned Debts Recovery Tribunal by an order dated 13th April, 2023 observed that the defendant no.6 i.e. the petitioner herein is liable to pay principal and interest of Rs.61,47,240/- and it was further recorded that the moveable assets have been sold at Rs.19,40,000/-

The learned Appellate Tribunal after noting that the learned DRT did not adjust the sale proceeds at the time of quantifying the amount, by an order dated 24th August, 2023 held that the appellant in Appeal No.84 of 2015 i.e. the petitioner herein is required to make 50% of Rs.42,07,240/- as the pre-deposit within the time limit indicated in the said order. The learned Appellate Tribunal in the said order found the amount due to be Rs.42,07,240/-

after deducting the sale proceeds from the total amount due of Rs.61,47,240/-.

Challenging the said order dated 24th August, 2023 the petitioner preferred an application under Article 227 of the Constitution of India being CO 3790 of 2023.

A Coordinate Bench by an order dated April 22, 2024 disposed of the said revisional application by setting aside the impugned order and directing the Appellate Tribunal to decide the matter afresh in the light of the observations of the decision of the Bombay High Court in the matter of *Sterlite Technologies Ltd. v. Union of India and Others* reported at *2012 (2) Mh.L.J. 112*.

Thereafter the learned Appellate Tribunal passed an order dated 2nd July, 2024 which is impugned in this application.

The learned Advocate appearing for the petitioner submits that the petitioner is only aggrieved by the direction passed by the Appellate Tribunal upon the petitioner to deposit the amount to the extent of 25% of Rs.61,47,240/-. According to him, the amount of pre-deposit should have been calculated on Rs.42,07,240/- and not Rs.61,47,240/-.

Per contra, the learned Advocate appearing for the opposite party/bank places reliance upon a decision of the Hon'ble Supreme Court in the case of *Kotak Mahindra Bank Private Limited v. Ambuj A. Kasliwal and Others* reported at *(2021) 3 SCC 549* in support of his contention that it is only for the Appellate Tribunal to exercise its discretion as to the amount to be deposited as pre-deposit.

He further submits that the discretion lies with the Appellate Tribunal to quantify the amount which is to be deposited by the appellant before the Appellate Tribunal.

He, thus, submits that since the amount has been quantified by the Appellate Tribunal, this court should not interfere under Article 227 of the Constitution of India.

After going through the materials placed, this court finds that the learned Appellate Tribunal in the earlier round of litigation while passing the order dated 24th August, 2023 observed that the amount due comes to Rs.42,07,240/- after deduction of the sale proceeds. Though it is not in dispute that the said order was set aside by the Coordinate Bench in CO 3790 of 2023, the learned Advocate appearing for the opposite party/bank does not dispute that the amount due after adjustment of sale proceeds comes to Rs.42,07,240/-.

The learned Appellate Tribunal while exercising its discretion reduced the percentage of pre-deposit as per the provisions of Section 21 of the 1993 Act to Rs.25%. However, the petitioner herein was directed to deposit 25% of Rs.61,47,240/- instead of Rs.42,07,240/- which is the balance amount after adjustment of the sale proceeds.

It is not in dispute that the petitioner is entitled to the benefit of adjustment of the sale proceeds from the total amount due. Since the total amount due as per the order of the DRT and the sale proceeds are not in dispute, the balance amount of Rs.42,07,240/- cannot also be in dispute. The learned Appellate Tribunal, in the impugned order, instead of calculating the amount of pre-deposit to be made on Rs.42,07,240/- directed petitioner to deposit 25% of Rs.61,47,240/-.

Such error in the order dated 2nd July, 2024 is an apparent error.

Accordingly, the order dated 2nd July, 2024 is modified only to the extent that the petitioner shall make a pre-deposit under Section 21 of the 1993 Act to the extent of 25% on Rs.42,07,240/-.

The learned Advocate appearing for the petitioner submits that the amount in excess of the amount as directed by this court has already been deposited by the petitioner before the learned Registrar, Debts Recovery Appellate Tribunal.

Accordingly, the petitioner shall be entitled to refund of the balance amount in excess of 25% of Rs.42,07,240/-.

The petitioner will be at liberty to approach the learned Registrar, Debts Recovery Appellate Tribunal for refund of the said amount by making an application along with a copy of this order and if such an application is made, the learned Registrar, Debts Recovery Appellate Tribunal shall refund the balance amount to the petitioner within a period of four weeks from making of such application.

The other portions of the order shall remain unaltered.

With the above observations and directions, CO 4121 of 2024 stands disposed of.

There will be no order as to costs.

Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities.

(HIRANMAY BHATTACHARYYA, J.)