



CRP No.976 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.10.2025

DELIVERED ON : 04.02.2026

CORAM :

THE HONOURABLE MR. MANINDRA MOHAN SHRIVASTAVA,
CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

C.R.P.No.976 of 2021
and CMP No.7822 of 2021

ETA Engineering Private Limited
having its registered office at
No.1, Moores Road, Chennai – 600 006
and having its corporate office at
New No.71, Old No.63
Sterling High Road
Nungambakkam, Chennai – 600 034.

.. Petitioner

Vs

Jammu and Kashmir Bank Limited
Parrys Branch, rep. by its Senior Executive
and Power of Attorney Holder, Ravi Kumar Trichal
Voltas International Building, No.52
Armenian Street, Parrys,
Chennai – 600 001.

PRAYER: Petition under Article 227 of the Constitution of India to set aside the impugned order of DRAT, Chennai, dated 8.2.2021 in R.A. (SR) No.10 of 2021 and to confirm the order of the DRT-I, Chennai, dated 11.5.2020 in S.A.No.165 of 2018.



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For Petitioner(s):

Mr.Jose John
and Mr.M.Narendran
for M/s.King and Partridge

For Respondent(s):

Mr.E.Om Prakash
Senior Advocate
for Mr.Chethan Sagar
and M/s.Dua Associates

ORDER

THE CHIEF JUSTICE

The petitioner has filed this revision petition under Article 227 of the Constitution of India embittered by the order dated 8.2.2021 passed by the Debt Recovery Appellate Tribunal, Chennai [DRAT].

2. The nub of the revision petition runs thus:

2.1. The petitioner company, which is engaged in the execution of various Heating Ventilation and Air Conditioning (HVAC) Engineering, Procurement and Construction (EPC) contracts for private parties as well as many public projects, approached the respondent bank seeking financial assistance and the same was granted over a period of time from 2003 to 2016.



2.2. It is stated and alleged that, during the period from April 2016 to July, 2016, as the cash credit facility exceeded the limit, the respondent stopped the facilities in contravention of the Reserve Bank of India Directions on Revitalisation of Distressed Financial Assets. It is added that the abrupt stoppage of non-fund based facilities had serious financial implications and resulted in devolvement of Bank Guarantees/Letters of Credit to the tune of approximately Rs.18.42 crore between September and October, 2016.

2.3. It is averred that the petitioner was in dire need of funds to execute various projects and, therefore, it approached the respondent to issue various bank guarantees. It is alleged that from February 2017, the bank paid wrongfully the bank guarantees without any default and without even the employer/beneficiary seeking for payment under the bank guarantees. This act of the respondent, it is averred, resulted in termination of several ongoing contracts, resulting in huge loss to the petitioner. It is further averred that the conduct of the respondent reeks of arbitrariness and is in contravention of the provisions of law of guarantee under



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the Indian Contract Act, 1872 as well as the Reserve Bank of India Directions and Guidelines.

2.4. It is further stated that, on 31.3.2017, the petitioner received a demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for brevity "*the Act*"] for an alleged outstanding amount of Rs.82.16 crore, after classifying the petitioner's account as Non-Performing Asset [NPA] with retrospective effect from 30.6.2016.

2.5. Apropos of the alleged wrongful payment of bank guarantees, without there being any default by the petitioner or demand from the employer, the petitioner filed a suit, being C.S.No.257 of 2017 before this court, wherein, it is stated that an interim mandatory injunction was granted on 28.4.2017. It is alleged that even thereafter the respondent proceeded to make further payments in respect of the bank guarantees, despite specific request for extension of bank guarantees by the petitioner.



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2.6. It is submitted that, when things stood thus, out of the blue, the petitioner received an order dated 24.4.2018 passed under Section 14 of the SARFAESI Act directing delivery of possession. The petitioner as well as the respondent bank filed applications before the Debts Recovery Tribunal [DRT]. During the pendency of these proceedings, the respondent took possession of the ground and first floors of the registered office of the petitioner.

2.7. The DRT allowed the application filed by the petitioner by order dated 11.5.2020 and directed the respondent to restore the actual possession of the subject property to the petitioner. Assailing the said order, the respondent/bank approached this court by filing a revision petition, as the Debt Recovery Appellate Tribunal was not functioning owing to Covid pandemic, and this Court directed the parties to maintain status quo in respect of the possession. Subsequently, the matter was relegated to the DRAT, noting its functioning. The Debt Recovery Appellate Tribunal, by the order dated 8.2.2021, which is impugned in this revision, allowed the appeal of the respondent/bank. Hence, this revision petition.



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SUBMISSIONS MADE ON BEHALF OF THE PETITIONER:

3.1. Oppugning the legality of the order passed by the DRAT, learned counsel for the petitioner contended that:

a) The petitioner's account was wrongfully declared as NPA. At the stage when the petitioner's account was reported as Special Mention Account (SMA-2), the respondent/bank was obliged to undertake restructuring plan by convening Joint Lenders Forum Meeting as mandated under RBI guidelines of 2014, but the respondent/bank illegally exited from meetings. Due to non-cooperation of the respondent/bank, restructuring plan could not be framed and the petitioner was illegally forced to become NPA. Therefore, demand notice issued under Section 13(2) of the Act was based on a wrongfully declared NPA. Therefore, notice issued under Section 13(2) of the Act is antithetical to the provisions of the Act.



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b) The invocation of bank guarantees by various employers under supply agreements was not due to any default made in due performance of contract by the petitioner, but because of a communication made by the bank to those parties that the bank is not going to extend bank guarantees. Having come to know this, those parties sought invocation of bank guarantees, which were allowed and the bank made wrongful payment to those parties towards invocation of bank guarantees resulting in corresponding inflation of loan liability under the head "Non-fund credit facility", which forms major portion of the entire loan liability along with cash loan liability. Since wrongful payment was made as surety, purporting to be on behalf of the petitioner/principal debtor, petitioner could not be fastened with the liability in view of the provision contained in Section 145 of the Indian Contract Act, 1872.



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c) Rejection of application for extension of bank guarantees itself was based on an erroneous consideration that the petitioner's account was classified as NPA, whereas such classification was illegal. Consequently, rejection of application for extension was also illegal and, therefore, from this point of view, payment was wrongful.

d) Payment was wrongful also for the reason that it was made during the period when the injunction order passed by the Court in the civil suit was in operation.

3.2. To bolster the aforesaid arguments, learned counsel for the petitioner relied upon the following decisions:

- i. *Tarachand Lakshmichand Chuhan v. Gopal Lachiramkumar*¹;
- ii. *D.T.H.Construction (P) Ltd v. Steel Authority of*

¹AIR 1959 MP 297



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India Ltd and another²;

iii. Nangia Construction India (P) Ltd v. National Buildings Construction Ltd and others³;

iv. Mardia Chemicals Ltd and others v. Union of India and others⁴;

v. Authorised Officer, Indian Overseas Bank and others v. Ashok Saw Mill⁵;

vi. Hindustan Steel Works Construction v. State of Bihar and others⁶;

vii. Signal Apparels Pvt Ltd v. Canara Bank and others⁷;

viii. Standard Chartered Bank and others v. V.Noble Kumar and others⁸;

ix. Mathew Varghese v. M.Amritha Kumar and others⁹;

x. Misons Leather Ltd v. Canara Bank¹⁰;

²AIR 1986 Cal 31

³(1992) 7 CompCas 701 (Delhi)

⁴AIR 2004 SC 2371

⁵AIR 2009 SC 2420

⁶2009 (2) PLJR 909

⁷2010 (5) CTC 337

⁸(2013) 9 SCC 620

⁹(2014) 5 SCC 610

¹⁰(2007) 139 Comp Cas 302



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- xi. *Periyanayagi Seed Processing Unit and others v. Authorised Officer, Branch Manager, Indian Bank and others*¹¹;
- xii. *Sardar Associates and others v. Punjab and Sind Bank and others*¹²;
- xiii. *Lakshmi Shankar Mills (P) Ltd v. The Authorised Officer/Chief Manager, Indian Bank*¹³; and
- xiv. *Pro Knits v. The Board of Directors of Canara Bank and others*¹⁴.

SUBMISSIONS MADE ON BEHALF OF THE RESPONDENT:

4.1. *Au contraire*, learned Senior Counsel appearing on behalf of the respondent submitted as under:

(a) The petitioner had already availed cash credit facility of more than Rs.45 crores and was also sanctioned non fund credit facility and it was on petitioner's request that bank guarantees were

¹¹2021 SCC OnLine Mad 2744

¹²(2009) 8 SCC 257

¹³2008 SCC OnLine Mad 279

¹⁴(2024) 10 SCC 292



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created towards due performance of contracts with third parties. These were unconditional bank guarantees.

(b) Various documents were alluded to in support of the submission that the petitioner admitted having failed to perform its part of the contract leading to request for invocation of bank guarantees. Communications from the contracting parties were also referred to, to fortify the plea that due to default committed by the petitioner, the bank guarantees were invoked. Therefore, it is incorrect to say that bank guarantees were invoked without there being any default or failure to perform contract, only because application for extension of bank guarantee was rejected.

(c) Once it is clearly borne out from records that invocation of bank guarantee was on account of default and failure towards due performance, even if



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there would have been extension of bank guarantee, the same was liable to be invoked in view of the letters of invocation sent to the bank by the other employers.

(d) The petitioner, having availed non fund credit facility to further its business prospects, cannot raise any issue with regard to invocation of bank guarantees and payments made on behalf of the petitioner by the bank to the employers, merely because a corresponding loan liability is created.

(e) The petitioner failed to make repayments and, finally, as per the report of the statutory auditor, it fell into the classification of NPA with effect from 30.6.2016.

(f) The Reserve Bank of India Guidelines for restructuring do not apply in respect of NPA, according to the guidelines itself.



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(g) Since the bank received auditor's report, it had no option but to exit from joint lenders forum which had started its meetings. In any case, only meetings were held and it is not a case where any restructure plan was formulated.

(h) No objection was recorded in writing in response to notice issued under Section 13(2) of the Act. That was the stage when all objections regarding alleged wrongful payment or wrongful classification as NPA could have been raised. The petitioner only sought time to submit objection, which was thereafter never filed. Having not filed any objection, the petitioner could not have raised any objection at any later stage.

(i) After first possession notice was issued, the petitioner filed S.A.No.12 of 2018 before the DRT. In that also, the petitioner did not raise any such



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ground based on wrongful payment through invocation of bank guarantees or that its account was wrongfully declared as NPA. Finally, the application was rejected and it was not challenged. Therefore, it had attained finality. This order operated as *res judicata*.

(j) When the second possession notice was given, possession was handed over stating that petitioner may approach the court/tribunal. The second application was barred by *res judicata*, because, in the first round, the petitioner's application was rejected. The second possession notice was towards realisation of the same loan advanced and default made, and the notice issued under Section 13(2) of the Act was earlier rejected and, therefore, the application was liable to be dismissed at the threshold by the DRT.

4.2. To fortify the aforesaid submissions, learned Senior



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Counsel relied upon the following decisions:

- i. *Kesar Multimodal Logistics Ltd v. Union of India*¹⁵;
- ii. *Transstroy India Ltd and another v. Canara Bank and others*¹⁶;
- iii. *Shri Shri Swami Samarth Construction and Finance Solution and another v. Board of Directors of NKGSB Co-op Bank Ltd and others*¹⁷;
- iv. *Central Bank of India and another v. Prabha Jain and others*¹⁸;
- v. *Priyadharsini Athreya v. Authorised Officer, Union Bank of India and another*¹⁹.

ANALYSIS AND CONCLUSION

5.1. The DRT framed the following issues for determination:

"(i) *Whether the Securitisation Application is barred by limitation?*

¹⁵ILR (2018) MP 1652 (DB)

¹⁶2018 SCC OnLine Hyd 793;

¹⁷(2025) 258 Comp Cas 163

¹⁸(2025) 4 SCC 38

¹⁹2025 SCC OnLine Mad 5975



(ii) Whether the Securitisation Application is barred by the principle of Res Judicata?

(iii) Whether the measure impugned in this application is not in accordance with the provisions of the SERFEASI Act [sic "SARFAESI Act"] and the rules made thereunder? if so, can the same be set aside? and the respondent be directed to restore the actual possession of the subject property to the applicant?

5.2. While holding the application to be within limitation, the DRT went on to further hold that the application is not hit by the principle of *res judicata* and the dismissal of the first application seeking to assail the first possession notice, even if dismissed and having attained finality, would not come in the way of entertaining the second securitisation application under Section 17 of the Act, when the second possession notice is issued, even though the notice under Section 13(2) of the Act remains the basic and fundamental cause of action.

5.3. The DRT further held that the endeavour of the secured



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creditor/bank to recover the debt in question within 60 days from the demand notice dated 30.3.2017 was in violation of the RBI Circulars [dated 26.2.2014, 21.10.2024, 24.9.2015, 13.6.2016 and 1.7.2015].

5.4. The DRT was of the view that once the meetings of the Joint Lenders Forum were initiated, the bank was bound to participate and assist in working out a rehabilitation scheme for the petitioner. On this finding, the DRT concluded that the debt sought to be recovered could not be held to be legally recoverable.

5.5. The DRT further held that the bank guarantees created in favour of the beneficiaries by the bank as guarantee towards payment by the petitioner/borrower to the contracting parties (beneficiaries) was illegal, in as much as unless defaults were made by the borrower in performance of its contractual obligation with the beneficiaries, the bank guarantees ought not to have been allowed to be encashed by the beneficiaries.

5.6. It was held by the DRT that in terms of Section 145 of the



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Indian Contract Act, in every contract of guarantee, there is an implied promise by the principal debtor to indemnify surety; and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee. The DRT held that the sums were not rightfully paid and the bank guarantees were allowed to be invoked wrongfully, without there being any default. It was observed by the DRT that the bank was obligated to continue to extend the bank guarantees and whatever was paid to the beneficiaries by the bank could not be added to loan liability as part of non fund credit facility. The demand illegally included the amount paid towards encashment of bank guarantees as loan liability. Therefore, the demand under Section 13(2) of the Act itself was bad in law.

6.1. The DRAT, however, reversed the order passed by the DRT and recorded a finding to the effect that, as per the records, the borrower did not make any repayments voluntarily, even after the expiry of time period of bank guarantees and, therefore, those bank guarantees were revoked on or before issuance of demand notice under Section 13(2) of the Act by the Authorised Officer of



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the bank and further held that the said issues are not relevant to be discussed.

6.2. The DRAT further held that the classification of the loan account as NPA and the issuance of demand notice are not normally done after the due amount is negotiated.

6.3. On the aforesaid two findings, the DRAT held that the order passed by the DRT is unsustainable, in so far as setting aside of the classification of the loan account by the respondent/bank as NPA is concerned. It also held that the merits of the possession notice issued by the Authorised Officer of the bank and the order of the Chief Metropolitan Magistrate were not at all discussed by the DRT and, therefore, on this ground also the order passed by the Debts Recovery Tribunal does not pass muster.

6.4. The DRAT further recorded that the classification of the loan account of the petitioner/borrower as NPA by the respondent/bank and the consequential measure initiated by issuing demand notice under Section 13(2) of the Act by the Authorised



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Officer are correct.

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6.5. On such finding and conclusion, the DRAT allowed the appeal and set aside the order of the DRT.

7. In the present case, as we see, serious issues arise for consideration. We find that it is a case where the petitioner/borrower, during the period from 15.1.2013 to 6.10.2015, was granted credit facilities to the tune of Rs.321 crores, which included Rs.45 crores towards fund based facility (cash credit) and Rs.276 crores towards enhanced non fund based facility (bank guarantee/letter of credit). The petitioner/borrower, towards security, mortgaged seven immovable properties in favour of the respondent/bank, including the schedule property mentioned in the securitisation application.

8. It is borne out from the records that the bank/secured creditor had issued large number of unconditional bank guarantees to various beneficiaries at the instance of the petitioner/borrower, as per of non fund based facilities. The records show that the



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respondent/bank had in total issued approximately 155 number of bank guarantees to the beneficiaries at the request of the petitioner/borrower. However, the borrower committed default in making repayment as per the terms and conditions of the loan and its accounts was eventually classified as NPA with effect from 30.6.2016, which, according to the respondent/bank, was in accordance with Clause 2.1.2(ii) of the RBI Guidelines/Norms contained in the Master Circular – Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances. It has been the case of the bank that, even according to the petitioner, it had overstretched credit of Rs.64.68 crores as in January, 2017.

9. From the records it is described that, though Joint Lenders Forum meetings were convened on 21.11.2016 and 24.11.2016, where the lenders felt that invoking sustainable structure of stressed assets would be viable option and that IDBI Bank will take the lead and initiate various process under the JLF/S4A, the respondent/bank exited on the basis that the borrower was classified as NPA with effect from 30.6.2016 and, therefore, no



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restructuring could take place, as benefit of rehabilitation policy is not applicable in those cases where the borrower has been classified as NPA.

10. We find that the bank then proceeded to issue notice under Section 13(2) of the Act on 30.3.2017 raising a demand of Rs.82,16,64,015.08, including interest as on 29.3.2017. In terms of Section 13(2) of the Act, the bank was entitled to recover the amount from the defaulting borrower in the manner prescribed under the provisions of the Act.

11. The petitioner's response given on 29.5.2017 shows that some time was sought to file reply. This, according to the bank, was evasive and does not constitute any material objection in terms of the provisions contained in Section 13(3A) of the Act and, therefore, it was rejected as without any basis. We further find that thereafter the bank proceeded to recover possession by taking recourse to remedy available under Section 14 of the Act by moving an application before the Magistrate and recovering possession through the Advocate Commissioner.



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12. This was challenged by the borrower by filing first Securitisation Application No.12 of 2018 under Section 17 of the Act. Though possession notice was challenged on certain grounds, the borrower neither challenged the correctness and validity of the notice dated 30.3.2017, nor the action of the bank by which it was declared as NPA. This Securitisation Application was finally dismissed on merits. The order attained finality.

13. When another possession notice was issued, the petitioner filed second Securitisation Application No.165 of 2018, wherein it challenged the action of the bank in declaring it NPA and raising various grounds that its loan was liable to be restructured, followed by rehabilitation under various circulars issued by the RBI. It has also raised an issue, though for the first time, that encashment of bank guarantees was illegal and, therefore, the borrower was not liable towards the amount against encashment of bank guarantees by the beneficiaries and that could not be added in its loan liability.

14. The bank raised a serious objection to the second



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Securitisation Application on the ground that it is barred by *res judicata*, in so far as challenge to notice issued under Section 13(2) of the Act on 30.3.2017 and declaring borrower as NPA is concerned.

15. The DRT, relying upon various provisions of the Indian Contract Act and several decisions, came to the conclusion that unless defaults are made, bank guarantees could not be allowed to be encashed on the demands made by the beneficiaries and, therefore, towards that the liability would not accrue as part of non fund credit facility enjoyed by the borrower.

16. Whether or not the bank was obligated under the RBI Guidelines to participate in the Joint Lenders Forum meeting towards restructuring of loan and rehabilitation of the borrower was also raised as a principal issue.

17. Both the parties before us have made their submissions *in extenso* revolving around two issues: (i) whether it was a case of restructuring of loan and rehabilitation through the process of Joint



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Lenders Forum meeting; and (ii) whether invocation of bank guarantees by the beneficiaries was in accordance with law or not.

18. A serious objection was taken by the bank that in the first round of litigation before the Debts Recovery Tribunal, when possession notice was issued, no challenge was made to the legality of the proceedings declaring the petitioner's account as NPA. The borrower was declared NPA strictly in accordance with the guidelines applicable. In the absence of there being any substantial objection under Section 13(3A) of the Act, the challenge to notice dated 30.3.2017 issued under Section 13(2) of the Act itself was not maintainable.

19. The first securitisation application having been rejected, without having any challenge made, the second securitisation application, upon issuance of another possession notice in respect of another schedule property, was barred by *res judicata/constructive res judicata*, in so far as declaration as NPA and validity of notice issued under Section 13(2) of the Act, as also encashment of bank guarantees is concerned. Both sides referred to number of



decisions before us on the aforesaid serious issues.

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20. We find that albeit the DRT has passed a detailed order on various issues, the order passed by the DRAT, if we may say so, is perfunctory. None of the serious issues raised by the parties was considered. In a very slipshod manner, the DRAT allowed the appeal setting aside the order of the DRT, without traversing the detailed findings recorded by the DRT. We may extract the findings of the DRAT infra:

"17. In my considered view, in view of the facts and circumstances of this case, the Bank was having a valid option for encashment of Bank Guarantees also. Whether the due amount is of Rs.82 Crores or more Rs.217 Crores, can be encashed and discussed across table. Litigations cannot be used as a tool for arm-twisting. It is not open for the Bank as well as the borrowers.

18. Record reveals that the Respondent neither made any repayments voluntarily even after the expiry of time period of Bank Guarantees. Those were revoked on or before the issuance of the Demand Notice under Section 13(2) of the SARFAESI



Act, 2002 by the Authorised Officer of the Appellant Bank i.e. 30.03.2017, are not now relevant to discuss. The classification of the loan account as NPA and the issuance of Demand Notice are, normally done after the due amount is negotiated. The real problem arose after the issuance of the Possession Notice.

19. Accordingly, the impugned Order remains unsustainable in so far as the setting aside of the classification of the loan account by the Appellant Bank as NPA is concerned. Admittedly, the merits of the Possession Notice issued by the Authorised Officer of the Appellant Bank and the impugned Order of the Chief Metropolitan Magistrate before DRT, were not discussed at all.

20. Under such situation, the classification of the loan account of the borrower as NPA by the Appellant Bank and consequent measures initiated by issuing the Demand Notice under Section 13(2) of the SARFAESI Act, 2002, by the Authorised Officer of the Appellant Bank, are found to be correct.

21. Further, the part of the impugned Order, in respect of the direction of delivering of possession of



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the property to the Respondent borrower, remains unsustainable and is hereby set aside. Accordingly, the Authorised Officer of the Appellant Bank is directed to proceed further in accordance with law.”

On the face of it, there is hardly any consideration of many pivotal issues raised by both the parties by the DRAT.

21. In our considered view, the DRAT has exceeded its jurisdiction in setting aside the order passed by the DRT, without traversing the specific findings recorded by the DRT on various issues.

22. Present being a petition under Article 226/227 of the Constitution of India, we would not arrogate to ourselves the role of the appellate authority and interest of justice would be served if the matter is remanded to the DRAT for consideration anew of various serious issues raised by both the parties before it, but not answered in the impugned order.

23. *Ex consequenti*, the petition is allowed. The order passed



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by the DRAT is set aside. The case is remanded for consideration anew on all issues and contentions raised by both the parties. The DRAT shall do well to finally decide the appeal ere long, within an outer limit of four months from the date of first appearance of both the parties.

There shall be no order as to costs. Consequently, interim application stands closed.

(MANINDRA MOHAN SHRIVASTAVA, CJ) (G.ARUL MURUGAN,J)
04.02.2026

Index : Yes
Neutral Citation : Yes
sasi

To:

1. The Senior Executive
and Power of Attorney Holder
Jammu and Kashmir Bank Limited
Parrys Branch, Voltas International Building,
No.52, Armenian Street, Parrys,
Chennai – 600 001.
2. The Registrar
DRAT, Chennai.



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THE HON'BLE CHIEF JUSTICE
AND
G.ARUL MURUGAN,J.

(sasi)

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