BEFORE THE DEBTS RECOVERY APPELLATE TRIBUNAL, AT: MUMBAI

Present: Mr Justice Ashok Menon, Chairperson

M.A. No. 03/2023
In
(Appeal No. 69/2010- Disposed of)

Between

Invent Asset Securitization & Reconstruction Pvt. Ltd. … Applicant/s (Orig. Respondent No.3)

In the matter between
M/s. Kartik International & Ors. . . . Appellant/s

V/s.
Central Bank of India & Ors. …Respondent/s

Mr Dinesh Purandare, i/b M/s. T.N. Tripathi & Co., Advocate for Applicant (Orig. Respondent No.3)

Mr Puneet Gogad along with Deshpande, Advocate for Appellants.

Mr Sharath Pai, Advocate for Intervener.

AND

M.A. No. 15/2023
In
(Appeal No. 69/2010- Disposed of)

Between

M/s. Kartik International & Ors. … Appellant/s

V/s.
Central Bank of India & Ors. …Respondent/s

Mr Puneet Gogad along with Deshpande, Advocate for Applicants.

Mr Dinesh Purandare, i/b M/s. T.N. Tripathi & Co., Advocate for Orig. Respondent No.3

Mr Sharath Pai, Advocate for Intervener.

-: Common Order dated: 11/04/2023:-

Appeal No. 69 of 2010 was filed by Defendants Nos. 1 to 6 in Original Application (O.A.) No. 234 of 2001 on the files of the Debts Recovery Tribunal-I, Mumbai (D.R.T.) challenging the judgment dated 06/11/2009. The 1st Respondent is the original Certified Creditor namely Central Bank of India. The debt was however assigned to the third Respondent.

2. M.A. No. 225 of 2010 was filed by the Appellants for waiver of deposit. This Tribunal directed the Appellants to deposit ₹2 crores as pre-deposit under Sec. 21 of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993 ("RDDB & FI Act", for short). The aforesaid order of this Tribunal was challenged by the Appellants in Writ Petition No. 1119 of 2016 before the Hon'ble High Court of Bombay. The Writ Petition was dismissed vide order dated 02/02/2016. Thereafter, the Appellants approached the Hon'ble Supreme Court by filing a Special Leave Petition (SLP) No. 9515 of 2016 and were granted an extension of six weeks to deposit the amount failing which, the SLP was ordered to be dismissed. Eventually, the Appellants deposited ₹ 2 crores with the Registrar of this Tribunal on 04/05/2016. The fact regarding the deposit was recorded in the SLP vide order dated 11/05/2016.

3. I .A. No. 2 of 2016 was filed by the 3rd Respondent, the assignee of the debt from the Certified Creditor, before the Hon'ble Supreme Court for release of ₹ 2 crores deposited by the Appellants together with accrued interest. Vide order dated 28/11/2016, the

Hon'ble Supreme Court directed this Tribunal to dispose of Appeal No. 69/2010 expeditiously, and it was further directed that the amount deposited by the petitioner may be put in an interest-bearing short-term fixed deposit and appropriate orders concerning the disposal of the amount shall be passed at the time of disposal of the appeal.

4. The appeal was dismissed by this Tribunal vide order dated 27/06/2018. Aggrieved by the dismissal, the Appellants filed Writ Petition No. 10514 of 2018 before the Hon'ble High Court of Bombay. The said Writ Petition was dismissed upholding the order of this Tribunal. SLP No. 1988 of 2020 filed by the Appellants before the Hon'ble Supreme Court too was dismissed vide order dated 22/08/2022.

5. Recovery Proceeding No. 140 of 2019 is pending before the Ld. Recovery Officer for recovery of the debt. The 3rd Respondent applied the Ld. Recovery Officer in Recovery Proceeding No. 140 of 2019 for attachment of ₹2 crores lying in deposit in this Tribunal. The Ld. Recovery Officer vide order dated 08/08/2018 was pleased to restrain the Appellants from withdrawing the aforesaid amount of ₹2 crores. The restraining order passed by the Ld. Recovery Officer was communicated to this Tribunal. The Appellants however sought adjournment in the Recovery Proceedings stating that SLP has been filed before the Hon'ble Supreme Court and undertook not to withdraw the amount of ₹2 crores lying in deposit before this Tribunal. The Hon'ble Supreme Court had in the order

dated 20/11/2016, left it to this Tribunal to decide on the release of the deposit. Though the 3rd Respondent had earlier filed M.A.(L) No. 377 of 2022 before this Tribunal it was declined to be registered by the Ld. Registrar on the opinion that the claim over the amount deposited has to be decided by the Ld. Recovery Officer. The 3rd Respondent thereafter approach the Ld. Recovery Officer for the realisation of the deposited amount. Vide order dated 22/08/2022, the Ld. Recovery Officer held that because of the order of the Hon'ble Supreme Court, it is for this Tribunal to decide on the release of the deposit.

6. As per the Recovery Certificate, the Appellants are liable to pay a sum of ₹ 16.60 crores together with future interest and costs. The amount has now further inflated. Since the Ld. Recovery Officer refused to release the amount in favour of the 3rd Respondent, M.A. No. 3 of 2023 was filed by the third Respondent for favourable orders from this Tribunal to get the deposited amount together with the accrued interest released for appropriation towards the debt due.

7. M.A. No. 15 of 2023 is filed by the Appellants to refund the pre-deposit amount of ₹2 crores together with accrued interest. The Appellants contend that the amount was deposited as a precondition for considering the appeal and is not a part of the secured asset. And therefore, on disposal of the appeal, the Appellant is at liberty to make a prayer for a refund of the pre-deposit and the same has to be returned to the Appellant.

8. Since both these Miscellaneous Applications pertain to the refund of the pre-deposit amount, the applications are disposed of by a common order.

9. Heard both sides. Records perused.

10. Mr Dinesh Purandare, the Ld. Counsel appearing for the Certified Creditor submits that the Hon'ble Supreme Court had while disposing of the application filed by the creditor laying a claim over the pre-deposit amount, disposed of the application with the specific direction to consider the appeal and dispose of the same within a timeframe, and also to make appropriate orders concerning the disposal of the amount. There was no direction that the amount had to be returned or refunded to the Appellant on disposal of the appeal. Under the circumstances, this Tribunal has the authority to decide regarding the disbursal of the amount. Since there is a huge amount to be recovered from the Appellants, it is only appropriate that the amount be released to the creditor for realisation towards the debt.

11. Mr Puneet Gogad ,the Ld. Counsel Appearing for the Appellants would contend that the question as to who is entitled to the amount made as pre-deposit to entertain the appeal is no longer res integra given the decision of the Hon'ble Supreme Court in *Axis Bank vs. SBS Organics Private Limited & Ors. (2016) 12 SCC 18* where, it is held that on disposal of the appeal, the borrower is entitled to a refund of the pre-deposit made as a precondition to filing the appeal. The aforesaid decision has been followed by the Hon'ble

Supreme Court in *KUT Energy Private Limited & Ors vs. Authorised Officer, Punjab National Bank, Large Corporate Branch, Ludhiana & ORS (2020) 19 SCC 533*. It is also submitted that there is no order of attachment made by the Ld. Recovery Officer in the Recovery Proceedings. There was only an injunction restraining the Appellants from withdrawing the amount. And the Appellants had undertaken not to withdraw the amount till disposal of the S.L.P. By the Hon'ble Apex Court. The Ld. R.O had subsequently, disposed of the application without any orders of attachment. Hence, there is neither any injunction nor attachment of the pre-deposit amount in favour of the creditor. Mr Gogad also relies on the decision of the Hon'ble Supreme Court in *State of U.P. & Ors vs. Prem Chopra 2022 SCC OnLine SC 1770* to argue that an order of stay order granted during the pendency of a proceeding comes to an end with the dismissal of the substantive proceedings. Thus, the injunction granted by the Ld. Recovery Officer restraining the Appellants from withdrawing the amount comes to an end on dismissal of the claim for the reason that the claim of the parties over the deposit has to be determined by this Tribunal. Mr Gogad submits that the pre-deposit amount together with accrued interest should rightfully be refunded to the Appellants.

12. Mr Purandare further submits that the Certified Creditor had approached the Hon'ble Supreme Court for the realisation of the amount and the Hon'ble Supreme Court had relegated the prayer of the creditor to be decided by this Tribunal on disposal of the Appeal. However, this Tribunal while dismissing the appeal but did

not make any specific order regarding the claim over the pre-deposit amount. The Certified Creditor had applied to the release of the amount but the application was not registered by the Ld. Registrar and as directed, an application was filed before the Ld. Recovery Officer for release of the amount. There was an injunction granted restraining the Appellants from withdrawing the amount, and the said order was also communicated to this Tribunal. Subsequently, after the dismissal of the SLP challenging the orders of this Tribunal dismissing the appeal, the Certified Creditor requested a favourable order in the Recovery Proceedings. The Ld. Recovery Officer was of the view that in the order of the Hon'ble Apex Court, it was for this Tribunal to decide on the disposal of the amount and hence declined to pass any order. Hence, the present application M.A. 3 of 2023 was filed. The Ld. Counsel relied on the decisions in *Chowthmull Maganmull vs. The Calcutta Wheat & Seeds Association 1924 SCC OnLine Cal 335*, a decision of the Hon'ble Calcutta High Court to argue that on dismissal of appeal filed by the defendant judgment debtor, the amount on deposit was payable to the decree-holder. The Ld. Counsel also relies on the decision of the Hon'ble Supreme Court in *Central Bank of India vs. State of Gujarat & Ors (1987) 4 SCC 407* to argue that when in a money decree, an appeal is preferred by the judgment debtor and the decretal amount is deposited in the executing court, on dismissal of the appeal the amount on deposit shall not be refunded to the judgment debtor and that the court could in his discretion direct payment of the amount of the decree-holder.

13. In *Axis Bank* (supra) the questions that arose for consideration were whether the pre-deposit was made in an appeal filed under Sec. 18(1) of the SARFAESI Act before the DRAT could be adjusted towards the amount due to the bank concerned and whether the bank concerned had a lien over the money so deposited. It was held that the secured creditor was entitled to proceed only against the secured asset. The contention of the bank that it had a lien over the deposited amount in terms with Sec. 171 of the Contract Act, 1872 was also rejected on the ground that the secured creditor is entitled to proceed against the secured assets mentioned in the demand notice under Sec. 13(2) of the Act.

14. The case in hand is distinguishable on facts. The Certified Creditor had obtained a Recovery Certificate against the borrowers in the O.A. The amount due is determined and crystalised. The creditor had in the first instance moved the Hon'ble Apex Court for appropriating the deposited amount towards the debt. Since the appeal was pending before this Tribunal, the Hon'ble Supreme Court relegated that decision to this Tribunal to be considered while disposing of the appeal. Though the appeal was dismissed, the fate of the deposit was left out to be determined. The creditor had thereafter filed an application before this Tribunal claiming the amount. Unfortunately, that application was rejected by the threshold of the Registry. Thereafter, the creditor filed a petition before the Ld. Recovery Officer who had in the first instance granted a stay but did not pass any order attaching the deposit, which was within the jurisdiction of the Recovery Officer. The

creditor had moved the forums for appropriate orders but failed to get any favourable orders. The creditor cannot be found at fault. The decision in *Axis Bank* (supra) does not apply to the instant case.

15. There is a huge debt outstanding to be realised from the Appellants. The amount in the deposit is only a small portion of the public money that is to be recovered. This Tribunal is therefore of the considered view that the amount in deposit together with the accrued interest has to be released to the Applicant in M.A. 3 of 2023. The connected M.A. 15 of 2023 is devoid of any merits and deserves to be dismissed.

Resultantly, M.A. 3 of 2023 is allowed and M.A. 15 of 2023 is dismissed. The amount lying in deposit in Appeal No. 69 of 2010 together with the accrued interest shall be released to the Applicant in M.A. 3 of 2023 on proper acknowledgement.

Sd/-
Chairperson

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