

**BEFORE THE DEBTS RECOVERY**  
**APPELLATE TRIBUNAL, AT: MUMBAI**

**Present: Mr Justice Ashok Menon, Chairperson**

**I.A. No. 356/2022 (Amendment)**

**In**  
**Appeal No. 20/2022**

**Between**

Invent assets Securitisation & Reconstruction Pvt. Ltd. ... Appellant/s

V/s.

Bank of Baroda & Ors. ... Respondent/s

Mr Rajesh Nagory along with Mr Rohit Gupta, Mr Harsh Behany, Mr Gaurave Gandhi and Rajat Jain, i/b Mr Harsh L Behany, Advocate for Appellant.

Mr Bhaskar Sharma, Advocate for Respondent No.1.

Ms Aanandini Thakare, i/b M/s. Phoenix Legal, Advocate for Respondents Nos. 2 & 3.

Mr Shubham Dubey, i/b Ms Mumtaz Khan, Advocate for Respondent No. 5.

**:- Order dated: 19 /05/2023:-**

This is an application for amendment of the appeal memorandum filed by the Appellant. The appeals filed impugning the judgment and order dated 31/03/2022 of the Debts Recovery Tribunal-I, Ahmedabad (D.R.T.) in Appeal No. 2/2022. The 2<sup>nd</sup> Respondent M/s Hans Ispat Ltd. is the borrower which was granted financial assistance by the Appellant's assignor, the State Bank of India (SBI) and

the 1<sup>st</sup> Respondent Banks in the ratio of 60:40. The debt was secured by an equitable mortgage created by deposit of title deeds. The borrower company defaulted payment and the account was classified as Non-Performing Asset ('NPA' for short). In the negotiated settlement, the company agreed to the dues to the Appellant estimated at ₹45 crores payable in 18 quarterly instalments and an agreement was executed on 15/06/2015. Later, the settlement was rescheduled for 15/03/2019.

2. The other creditor namely, the Bank of Baroda (BOB) had in the meanwhile filed an Original Application (O.A.) No. 525/2015 before the D.R.T. and the same was allowed on 15/04/2019 and a Recovery Certificate was issued in favour of BOB sum of ₹32,82,25,570/- the order of the D.R.T. stands challenged before this Tribunal and the appeal is still pending consideration. The secured assets were in the meanwhile put up for sale in Recovery Proceedings No. 246/2019 by the Recovery Officer. The auction sale failed several times for want of bidders and the

reserve price of the property had to be reduced. Ultimately, the property was purchased by the 5<sup>th</sup> Respondent Kemo Steel Industries Pvt. Ltd. for ₹33.03 crores. The bid was confirmed and the entire sale consideration was paid. Sale Certificate was issued in favour of the 5<sup>th</sup> Respondent on 07/04/2022 and possession was handed over.

3. On 19/4/2022 this Tribunal directed the status quo to be maintained by both sides. The contention of the Appellant was that the borrower had defaulted on the settlement terms and in consequence of that, the settlement agreement was withdrawn on 16/09/2021. The Appellants would therefore have the right to proceed against the secured asset for the realisation of the debt. When the borrower attempted to remove certain movables from the secured asset, the Ld. R.O. appointed commissioners to take an inventory of the property and the Receiver to take account of the removal of goods from the secured asset. The Appellant had challenged the order before the Hon'ble High Court of Gujarat by filing SCA

117750/2021 which was disposed of with a direction to the Appellant filed an appeal challenging the order of the R.O. That is how Appeal No. 2/2022 was filed by the Appellant before the D.R.T. under Sec. 30 of the RDB Act. The appeal was disposed of by the D.R.T. directing the Recovery Officer to distribute the proceeds of the auction sale rateably between the Banks. The sale was confirmed. The Appellant was aggrieved and hence this appeal. The order of status quo passed by this Tribunal was later modified vide order dated 10/08/2022 in the stay application filed as I.A. No. 80/2022. The auction purchaser was permitted to run the factory subject to the ultimate decision to be taken by this Tribunal.

4. In the present application, the Appellant wants paragraphs to be added to the appeal memorandum explaining how the impugned order was passed by the D.R.T. and the Recovery Officer and seeks to add a prayer quash and set aside all consequential orders passed pursuant to the impugned order dated 31/03/2022 and to declare that handing over of

possession to the 5<sup>th</sup> Respondent is bad in law, unenforceable and perverse.

5. Respondents Nos. 1 & 5 have filed separate replies to this application for amendment. The first Respondent points out that the application for amendment is not maintainable in view of the fact that the appeal was filed as early as 04/04/2002 and the order of the Recovery Officer confirming the sale on 04/04/2022 was not challenged. The sale certificate was issued on 07/04/2022. The first Respondent contends that the order of the Recovery Officer can only be challenged before the Presiding Officer, D.R.T. under Sec. 30 of the RDB Act. No such appeal is filed. Each cause of action that the Appellant gets is to be challenged by way of a separate appeal. The Appellant cannot challenge the order of the Recovery Officer directly in the appeal before this Tribunal without resorting to the remedy under Sec. 30 in the first instance. The borrower had challenged the order before the Hon'ble High Court of Gujarat by filing SCA No. 6913/2022 which was disposed of as

withdrawn on 07/04/2022. The Appellant also had filed SCA No. 7087/2022 before the Hon'ble High Court of Gujarat and that was also disposed of as withdrawn on 13/04/2022.

6. The fifth Respondent also filed a reply to the amendment application on similar lines. It is further submitted by the fifth Respondent that it had purchased the property in the public auction and was permitted to run the factory only vide order dated 10/08/2022 by this Tribunal. The fifth Respondent is a bona fide purchaser after depositing the sale consideration of ₹33.36 crores.

The Appellant financial institution had approached the R.O. laying a claim over the secured assets. The R.O. had disposed of the application against which the Appellant had approached the D.R.T. which had disposed of the appeal granting certain relief to the Appellant to share the sale proceeds with BOB the other creditor. In consequence to that order, the sale was confirmed and the possession was handed over to the auction purchaser. The order of the D.R.T. is

under challenge. The question that may have to be determined in the appeal is whether the order of D.R.T. upholding the auction of the property is justified or not. The confirmation of the sale by the R.O. in consequence of the disposal of the appeal by the P.O. is now sought to be challenged by way of amendment in this appeal. Whether the action of R.O. in confirming the auction sale and handing over possession of the secured assets to the auction purchaser was proper or in accordance with Rules is a fresh cause of action for the Appellant to be challenged under Sec. 30 of the RDB Act. Without exercising its remedy under Sec. 30, the Appellant cannot approach D.R.A.T. directly. Since the remedy cannot be exercised directly before the second Appellate Forum, no such relief by way of amendment can be allowed.

The application for amendment is, therefore, dismissed.

Sd/-  
Chairperson