

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

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

**Appeal No. 61/2013**

**Between**

Ramashree Conductors Ltd. & Ors. ... Appellant/s  
V/s.  
Asset Reconstruction Company (India) Ltd. ... Respondent/s

**AND**

**Appeal No. 99/2013**

**Between**

Ramashree Conductors Ltd. & Ors. ... Appellant/s  
V/s.  
Asset Reconstruction Company (India) Ltd. ... Respondent/s

Mr M Ramesh, Advocate for Appellants.

Mr Rajesh Nagory along with Ms Khushboo, i/b M/s Manilal Kher  
Ambalal & Co., Advocate for Respondent.

**-: Common Order dated: 30/08/2023:-**

These are two appeals preferred by the very same Appellants impugning the judgment and order dated 03.12.2012 in Original Application (O.A.) No. 194 of 2009 on the files of the Debts Recovery Tribunal No. II, Mumbai (D.R.T.). Appeal No. 61 of 2013 challenges the allowing of the O.A. in part while Appeal No. 99 of 2013 is against the rejection of the counter-claim filed by the Appellants in the aforesaid O.A.

2. The first Appellant is a company which is the principal

borrower. The second Appellant was a director of the company who had mortgaged her flat for the debt as a personal guarantor. The third Appellant is also a company and a corporate guarantor for the aforesaid debt.

3. The Respondent is an Asset Reconstruction Company (ARC) and an assignee of the debt from the original creditor namely the State Bank of India (SBI). The O.A. was filed by the Respondent for recovery of the amounts due from the Appellants/Defendants. The Appellants had also raised a counter-claim under various heads to the tune of ₹133,26,80,000/-. The first Appellant claims to be a hundred per cent Export-Oriented Unit (EOU) engaged in manufacturing copper stripes. On 15.05.1999, The SBI sanctioned to the first Appellant an Export Packing Credit (EPC) Limit, Export Bill Discounting (EBD) Limit to the tune of ₹5 crores and a Letter of Credit (Imp/Inl/DP/DA) Limit of ₹2.50 crores. The loan agreement was executed together with a deed of hypothecation and letter of guarantee. A mortgage by way of deposit of title deeds of Flat No. 15 admeasuring 1200 Sq.ft. on the 8<sup>th</sup> Floor of Varsha Co-operative Housing Society Ltd., 69 B, Nepean Sea Road, Mumbai 400 006 was also created by the Second Appellant. A revival letter was allegedly executed on 19.03.2002. The Appellants defaulted payment. Hence, the O.A. The first Defendant Company had approached the Board of Industrial and Financial Reconstruction (BIFR). In the meanwhile, the State Industrial and Investment Corporation of Maharashtra (SICOM) proceeded against the Appellants under the provisions of the SARFAESI Act. Some of the properties belonging to the first

Appellant were sold and the Respondent received a sum of ₹12,30,000/- from out of those sale proceeds.

4. The Appellants/Defendants had filed a written statement objecting to the claim contending that apart from the SBI the Appellants had also availed a loan of ₹3 crores from SICOM and another loan of ₹7.80 crores from the IDBI in the year 1995. Though the factory was to be commissioned in the year 1998 it got delayed till November 2000 for obtaining licences and electricity connection. Manufacturing was also delayed. Export of the goods was possible only between March to December 2001. Due to a delay in commissioning the plant, the credit facility from the SBI could not be availed on time and was later revived. The account was classified as a non-performing asset (NPA) and SBI gave consent to SICOM to proceed under the provisions of the SARFAESI Act. It was also contended that the Respondent and the other consortium creditors caused a loss of ₹6 crores to the first Defendant and exposed the other Defendants to a claim of ₹30 crores. The creation of the mortgage as well as the guarantee deeds by Defendants Nos. 2 and 3 are admitted. It is contended that the SBI had disbursed a loan amount of approximately ₹2 crores alone. The first Defendant had exported copper strips worth ₹3.25 crores to M/s. Exim Inc., New Jersey. The documents were routed through the SBI. Due to a shortage of the export facility at the Mumbai Port, there was a delay in shipping the goods to the USA. This resulted in a delay in realising the export value. Moreover, because of the terror attack on the USA on 11.09.2001, the port activities there came to a grinding halt and consequently buyer

was not able to take delivery of the goods. Further time was sought for making payments. The first Defendant had informed about crises to its creditors nevertheless, SICOM resorted to the Sarfaesi measures, apart from criminal proceedings for dishonouring of cheques, under Sec. 138 of the Negotiable Instrument Act. The Defendants were left with no other option but to make a reference to the BIFR under the provisions of the Sick Industries Companies Act, 1985 (SICA). The Defendants also contended that the SBI had assumed responsibility to obtain a post-shipment export credit guarantee from ECGC at the cost of the first Defendant with respect to the bills to be negotiated. SBI ought to have received the amount from ECGC but it suppressed the fact that no ECGC Insurance cover was obtained. The Appellants had challenged the Sarfaesi measures before the D.R.T.-III, Mumbai. O.A. No. 193 of 2006 was filed by SICOM against the Appellants before the D.R.T. was allowed on 21.07.2009. An additional written statement was also filed contending that the 1<sup>st</sup> Defendant company had exported its products to an Export Credit Guarantee Corporation (ECGC) approved by in the USA and thereafter negotiated the bills with the Applicant for which, the Applicant was to procure policy from ECGC. The Applicant had forwarded the bills to the corresponding bank for collection with necessary endorsement in favour of the corresponding bank. The US buyer accepted the bills whereupon the corresponding bank released the title deeds of the goods on the basis of which the buyer was to take delivery of the consignment. However, the buyer defaulted on payment due to economic upheaval in the US at that time. The statutory notice ought

to have been issued to the 1<sup>st</sup> Defendant. It is only after a lapse of considerable time that the 1<sup>st</sup> Defendant came to know about the outstanding dues. It was also revealed that the ECGC necessary for exports was not taken. It was only after the 1<sup>st</sup> Defendant came to know about the failure of the Applicant to obtain the ECGC cover did the 1<sup>st</sup> Defendant obtained a policy in 2002, much after the shipment.

5. The Defendants also filed a counter-claim stating the omissions and commissions on the part of the Applicant in sanctioning and disbursement of credit facilities, failure to present the negotiable export bills within a reasonable time and failure to get the dishonoured export bills noted and protested, failure to issue dishonour notice and for not obtaining the ECGC cover. The Applicant filed a written statement to the counter-claim stating that the same is not maintainable under is also hopelessly barred by limitation. It is also contended that the assignment to the Applicant by SBI was only the debt and not the obligation. Hence, it was incumbent upon the Defendants to have impleaded the SBI as a party.

6. After considering the evidence placed and hearing both sides, the O.A. was allowed in part and the Defendants were directed to pay a sum of ₹2,85,75,704.22 together with interest @12% per annum (the rate of interest was directed to be reduced to 6% p.a. in case payment was affected within six months) with effect from 19.04.2004 till realisation. A charge over mortgaged property was also granted. A Recovery Certificate was issued. The counter-claim was disallowed. Aggrieved by this, the Defendants have come in appeal.

7. Heard both sides. Records perused.

8. One of the contentions raised by the Appellants before the D.R.T. is that the claim is barred by limitation. The Applicant had in the O.A. contended that reference was made by the 1<sup>st</sup> Defendant before BIFR during the period 21.03.2002 to 04.03.2008. In case the said period is excluded under section 14 of the Limitation Act, the O.A. is within limitation. However, the Ld. Presiding Officer has observed that even otherwise the limitation for recovery of the amount with reference to the mortgaged property would be 12 years and therefore there is no bar of limitation. The Ld. Counsel for the Appellants submits that the exclusion of the period during which the matter was pending before BIFR can only be taken advantage of by the Defendants and not by the Applicant. A reading of section 22 of SICA, 1985 would indicate that a suit for recovery of money or Enforcement of Security could not have been filed against the company but not vice versa. In other words, for the purpose of computation of limitation, the loss of period before the BIFR is not available to the company. If that be so, it is a counter-claim which is filed only in 2011 for the cause of action which arose in 2001 is barred by limitation, held the D.R.T. It is pertinent to note that the BIFR had passed an ex-parte order on 13.07.2005 holding that the reference stood abated in view of the Sarfaesi measures taken by the majority of the secured creditors. This order was challenged by the 1<sup>st</sup> Appellant in Appeal and the AAIFR remanded the matter to BIFR on 05.01.2006. The matter was again decided ex-parte by the BIFR on 03.04.2006 and once again it was remanded by AAIFR on 08.05.2007.

Thereafter, the reference was finally disposed of by the BIFR on 04.03.2008. The O.A. was filed on 08.07.2009. The writ petition challenging the AAIFR order before the Bombay High Court and the SLP filed before the Hon'ble Supreme Court by the 1<sup>st</sup> Appellant were dismissed on 12.11.2009 and 11./01.2010 respectively. According to the Ld. Counsel appearing for the Appellants, the account was classified as non-performing assets (NPA) on 23.07.2002 and therefore, the claim would be barred by limitation on 22.07.2005. Even if the revival letter obtained from the Appellants on 19.03.2003 is to be considered the limitation would end by 18.03.2006. According to the learned counsel for the Appellants section 14 of the Limitation Act provides the exclusion of time that has been spent by the Plaintiff in a bona fide proceeding before a court not having jurisdiction. In the instant case, the proceedings before the BIFR were initiated by the Appellants are not by the Respondent. Hence, the Respondent cannot take refuge under section 14 of the Limitation Act. The Ld. Counsel also points out that section 15 of the Limitation Act provides for the exclusion of time in case a stay on the injunction is obtained. In the instant case, there was no such order preventing the Respondent from proceeding with the filing of the O.A. The learned counsel for the Appellants would point out that the protection under section 22 of SICA would not be applicable in the instant case because it was only a Reference under section 15 that was pending. Hence the claim is barred by limitation and the D.R.T. has committed an error which needs to be rectified in appeal.

9. Per contra, the Ld. Counsel appearing for the Respondent

submits that the cause of action arose only when the Appellants committed default of payment and the SBI declared the amount under the loan/facilities in question having become due and payable. Moreover, the repayment of the outstanding amount is secured by the creation of a mortgage of immovable properties and the O.A. was filed for recovery of the debts and enforcement of the mortgage. Referring to section 22 of SICA it is contended that the Respondent could not have proceeded against the Appellants when the proceedings are pending before the BIFR. The 1<sup>st</sup> Appellant had on the basis of its audited balance sheet as of 31.12.2001 filed a reference under section 15 of SICA. The proceedings before the BIFR stood abated pursuant to the action taken by SICOM with the consent of the IDBI and SBI under the provisions of the SARFAESI Act. After being remanded twice by the AAIFR, the reference was finally disposed of by the BIFR on 04.03.2008. It is pointed out that section 22 of SICA refers to the suspension of legal proceedings and contracts, etc. The Ld. Counsel appearing for the Respondent submits that section 34 (2) of the RDDB&FI Act granted an exemption from the overriding effect under section 34 (1) and it includes the provisions of SICA. Hence it is clear that the intention of the legislation was not to detract from or abrogate the provisions of SICA in any way. The Ld. Counsel relies on the decision in *KSL Industries Ltd. vs. Aribant Threads Ltd. (2008) 9 SCC 763* in support of his arguments.

10. After considering the rival arguments on the point of limitation, I find that the Ld. Presiding Officer was justified in observing that the O.A. is not barred by limitation because the filing of a reference before



the BIFR had prevented the Respondent from proceeding under the provisions of the RDDB & FI Act. That apart, the finding that the claim in the O.A. is based on a mortgage would also save limitations. I find no reason to interfere with those findings of the Ld. Presiding Officer.

11. The next point that is urged by the Appellants is regarding the failure on the part of the SBI to insure the post-shipment under ECGC cover. The facts would indicate that the 1<sup>st</sup> Appellant company had requested the SBI for a credit facility of ₹1.25 crores. The facility was sanctioned on 15.05.1999. This consisted of Export Packing Credit/Export Bills Discounting Facility of ₹5 crores, Export Bill Negotiation Limit of ₹2.5 crores and Letter of Credit on Non-Fund Basis of ₹5 crores subject to the terms and conditions mentioned in the letter. The sanction was acknowledged by the 1<sup>st</sup> Appellant on 24.06.1999. The facilities were renewed vide the sanction letter dated 09.06.2000. Charge and hypothecation of the company's movable assets were created and a further 2<sup>nd</sup> charge was created on the immovable properties of the 1<sup>st</sup> Appellant which was sold. When the Appellants failed to pay the amount and settle the dues, the Respondent consented to SICOM taking action under the provisions of the SARFAESI Act. It is pertinent to note that ECGC provides a guarantee for export finance release to exporters by banks provided banks and exporters comply with relevant terms and conditions stipulated under the guarantee schemes of ECGC. In case of default in export finance, ECGC reimburses the export finance not recovered by exporters/banks. The Ld. Counsel appearing for the Respondent

points out that it is a gross misconception of the Appellants that in the event of receiving a claim from ECGC, recovery measures against the Appellants cannot be taken. The SBI and the Appellants were involved together in realising the claim from ECGC. From the communications which were produced before the D.R.T. It can be seen that the ECGC had settled claims with respect to shipments and rejected claims of the 1<sup>st</sup> Appellant in respect of other shipments in the event of default. The Appellants had never submitted any documents in support of the default, if any, on the part of the SBI in realising the claim from ECGC. Even if there was any contravention of the contract by the SBI, it was for the Appellants to proceed against SBI and not against the assignee of the debt. The Ld. Counsel appearing for the Appellants had relied upon the decisions of *State Bank of Saurashtra vs. Chitranjan Ranganath Raja & Ors.* MANU/SC/0006/1980 and *Canara Bank vs. Leatheroid Plastics Pvt. Ltd.* MANU/SC/0446/2020 in support of his arguments.

12. The Respondent is a purchaser of the debt from the SBI. As per the assignment agreement, the assignee has been protected under clauses 7 and 8 which specifically state that the purchaser does not by virtue of entering into or carrying out the terms of the agreement or purchasing the loans assume any of the financial or pecuniary obligations of the seller under the financing documents which shall be the sole responsibility of the seller. Even section 5 of the SARFAESI Act, refers only to only assets and not liabilities while the sale of any debt by a bank. The 1<sup>st</sup> Appellant did not submit the stock statement to the SBI as per the terms and conditions of these sanctioned letters.

The contention of the Respondent is that the other terms and conditions relating to the Working Capital Finance for export were also not complied with. ECGC has an export finance procedure which includes a buyer-wise credit limit. According to the Respondent due to the non-approval of the buyer-wise limit by the ECGC, the SBI could not have disbursed sanctioned export credit limits for export to the 1<sup>st</sup> Appellant. Moreover, the 1<sup>st</sup> Appellant did not repay the initial disbursements of Working Capital Finance within the stipulated time limits. The SBI was duty-bound under the RBI guidelines to discontinue further drawing of Working Capital Finance if the Working Capital Finance dispersed initially had become overdue/irregular. Under the circumstances, the SBI was not expected to release the Working Capital Finance to the Appellant as its account had already become irregular and overdue.

13. The counter-claim was filed by the Appellants after the additional claim affidavit was filed by the Appellant. Since the cause of action alleged in the counter-claim had arisen prior to the filing of the O.A., it should have been filed along with the written statement. The very purpose of the implementation of the statute for recovery of debts by banks and financial institutions is to expeditiously dispose of the matter. The D.R.T. cannot even grant an extension of time to file the written statement. Under the circumstances, I find that the claim raised as per the counter-claim is undoubtedly barred by limitation and there is no reason why the order impugned should be disturbed or set aside. Under section 19(6) of the RDDB&FI Act whereas Defendants claim set off against the Applicant the demand the Defendants may at

the 1<sup>st</sup> hearing of the application but not afterwards unless permitted by the Tribunal present the written statement containing the particulars of the debt sought to be set off along with the original documents and other evidence relied on in support of the claim of set off in relation to an ascertained sum of money against the Applicant. Under the provisions of the Act and Rules, the counter-claim cannot be filed after the defence has been delivered.

The upshot of the discussions made earlier, it will have to be concluded that the Appellants are not entitled to any relief in the appeals. There are no merits in the appeals sufficient to interfere with the impugned judgment in order of the D.R.T. Hence the appeals are dismissed.

Sd/-  
Chairperson

mks-1 & 2.