BEFORE THE DEBTS RECOVERY APPELLATE TRIBUNAL, AT: MUMBAI

Present: Mr Justice Ashok Menon, Chairperson

Appeal No. 165/2014

Between

Bank of India … Appellant/s

V/s.

M/s. Nexus Minmet Merchandising Pvt. Ltd. & Ors. …Respondent/s

Mr. O.A. Das, Advocate for Appellant.

-: Order dated: 07/11/2023:-

This is an appeal filed by the Bank of India impugning the judgment and order dated 09.04.2014 in Original Application (O.A.) No. 32 of 2013 on the files of the Debts Recovery Tribunal, Nagpur (D.R.T.).

2. The Respondents are ex-parte and hence, the Ld. Counsel appearing for the Appellant was heard and records perused.

3. The scope of this appeal is on a very narrow compass. The facts essential for the disposal of this appeal in brief are thus:

The first Respondent is a company and the rest of the Respondents are its directors. The company has had various credit facilities with the bank since 2008 as the principal borrower with the rest of the Respondents as the guarantors. Properties were mortgaged to secure the debts. The company requested the bank to review/ restructure/enhance the financial facilities in 2009 and a total facility of ₹121.1 crores was sanctioned. There was a specific term that the company and its promoters would infuse funds by way of unsecured loans. In 2010, the financial facilities were further enhanced to the tune

of ₹128.2 crores while so, a sum of ₹1.70 crores was found credited through RTGS into the account of the first Respondent on 30.09.2013 by the Buldana Urban Co-operative Credit Society Ltd. (society) transferred from its account with Union Bank of India, Buldana. Despite the knowledge that the amount was mistakenly debited into its account, the first Respondent claimed that amount and appropriated it. The Appellant received a letter from Buldana Urban Co-operative Credit Society on 14.06.2011 informing that the amount transferred by the society was not given credit to. On verification of records, it was revealed that the RTGS of ₹1.70 crores was wrongly credited to the account of the first Respondent company. The Appellant informed the first Respondent by letter dated 15.06.2011 stating that the amount will have to be refunded immediately. Vide letter dated 16.06.2011 the first Respondent company admitted the mistake and informed the Appellant that it had transferred a sum of ₹50 lakhs forthwith to the society and assured that the balance of ₹1.20 crores would be remitted to the society within seven days. The Appellant informed the society vide letter dated 21.06.2011 that the balance amount would be refunded within 7 days. However, the first Respondent failed to fulfill the promise. On 12.07.2011, the Appellant Bank transferred the balance amount of ₹1.20 crores to the account of the society by debiting the amount in the account of the first Respondent. The Appellant is, therefore, entitled to the said amount from the first Respondent together with interest from 30.09.2010 to 11.07.2011.

4. The Respondents did not repay the debt or the interest and

hence, the account of the company was classified as a non-performing asset (NPA) on 30.08.2011. Thereafter, the demand notice was issued to the Respondents under the provisions of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 ('SARFAESI Act', for short). The Respondents filed Securitisation Application (S.A.) No. 34 of 2012 before the D.R.T. raising contentions regarding fraudulent debit of the amount in their loan account. The D.R.T. dismissed the S.A. vide order dated 31.07.2012. The dismissal of the S.A. was challenged by the Respondents by filing a Writ Petition No. 4530 of 2012 before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench. The Writ Petition was dismissed on 15.10.2012. The Respondents had undertaken to settle the entire dues after selling some properties. No appeal was preferred before the D.R.A.T. challenging the order of dismissing the S.A. That order has now become final. It is also pertinent to note that the mortgaged properties belonging to the Respondents at Nagpur and Kolkata were sold and a substantial amount was realised. There was still the balance of ₹3.78 crores due from the Respondents inclusive interest for which the O.A. was filed.

5. In the impugned order, the Ld. Presiding Officer observed that the Bank had unauthorisedly debited the amount of ₹1.20 crores from the loan account of the Respondents without their sanction and therefore, no interest could have been claimed. The rate of interest is also found to be excessive. However, the O.A. was allowed, directing the Appellant Bank to calculate the due afresh after reversing the entry of ₹1.20 crores with effect from 12.07.2011. The interest along with

the penal interest was also directed to be reversed. On submission of a fresh statement of account by the Appellant Bank, a Recovery Certificate was directed to be issued.

6. The only question that arises for consideration in this appeal is whether the amount of ₹1.20 crores was debited into the account of the Respondent without their knowledge or authority.

7. The Ld. Counsel appearing for the Appellant relied upon two decisions in support of his arguments. In *Indian Bank vs. M/s Mocro Electronics & Ano. AIR 2005 AP 328*, it was held that the amount given credit to by mistake could be realised together with interest. Similarly, in *Saseendrakumari, Sreepadmam, SEKT vs. State Bank of Travancore AIR 2011 (Ker) 58*, it was held that an amount wrongfully credited should be reimbursed with interest at the rate of 15.5%.

8. The fact that the amount wrongfully credited in the account of the first Respondent is throughout admitted by the Respondents. In fact, they have volunteered and reimbursed ₹50 lakhs forthwith and had agreed to refund the balance of ₹1.20 crores within a week. They failed to fulfill the promise and in consequence, the Appellant Bank had to refund the amount to the society and debit the same into the loan account of the first Respondent. The very same D.R.T. approved this act of the Appellant while determining the S.A. The order of the S.A. was never challenged. A different view could not have therefore been taken by the very same D.R.T. in the O.A. The finding is apparently erroneous and requires to be set aside. The O.A. is to be allowed as prayed for.

In the result, the appeal is allowed setting aside the impugned

judgment and order and allowing the O.A. as prayed for against the Respondents jointly and severally directing them to pay a sum of ₹3.78 crores together with interest at the rate of 14.5% per annum with monthly rests with effect from filing of the O.A. till 09.04.2014 and future interest at the rate of 6% per annum on the aforesaid principal amount adjudged from the date of the disposal of the O.A. till realisation. A Recovery Certificate shall be issued in the aforesaid terms.

Sd/-
Chairperson

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