

CIVIL REVISION

Present:

The Hon'ble Mr. Justice Prasenjit Mandal

Judgment on 03.09.2010

C.O. No.2681 of 2010

Chota Tingrai Tea Estates Pvt. Ltd.

Versus

HDFC Bank Ltd. & ors.

Points:

Condition for Appeal- Deposit of amount for preferring an appeal to the Debts Recovery Appellate Tribunal whether can be waived by High Court when the appellate tribunal has taken a lenient view- Recovery of Debts due to Banks and Financial Institutions Act, 1993- S. 21

Facts:

Debt recovery tribunal passed a decree of Rs.2,55,67,902/ including interest calculated upto November 1, 2004. The petitioner filed appeal before the Debt Recovery Appellate Tribunal. In the appeal the petitioner filed a application under section 21 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 and the Appellate tribunal directed the petitioner to deposit a sum of Rs.20,00,000/- against which the petitioner earlier moved revision before this court and this court directed the tribunal to rehear the matter. After rehearing the tribunal asked the petitioner to deposit Rs.10,00,000/-. Against the order petitioner moved revision.

Held:

A lenient view was taken by the learned Appellate Tribunal directing to deposit Rs.10,00,000/- only by the order impugned. The provisions of Section 21 of the said Act lays down for deposit of 75% of the certificate

amount with a proviso that the learned Appellate Court may make direction for any lesser amount or even waiver in the appropriate situation. Para 6

If further leniency is shown to the petitioner, the object of the Act would be frustrated. Para 7

For the Petitioner: Mr. Saptangshu Basu,

Mr. Anirban Roy,

Mr. S. N. Pyne.

For the Opposite parties: Mr. Rupak Ghosh,

Mr. S. Banerjee.

Prasenjit Mandal, J.: This application is directed against the order dated August 3, 2010 passed by the learned Chairperson, Debts Recovery Appellate Tribunal, Kolkata in an application No.43 of 2009 arising out of the original application no.12 of 2005 pending before the learned Debt Recovery Appellate Tribunal.

2. The Debt Recovery Tribunal disposed of an application under Section 21 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 directing the appellant/petitioner to deposit a sum of Rs.20,00,000/- with the creditor bank by December 31, 2009. The petitioner preferred a revisional application before this Hon'ble High Court being the C.O. No.3817 of 2009 and the Hon'ble High Court set aside the order of the learned Appellate Tribunal directing the said learned Appellate Tribunal to take a fresh decision. Accordingly, the learned Appellate Tribunal heard on behalf of both the sides and observed that the petitioner should deposit 10,00,000/- instead of 20,00,000/- as directed earlier, within a period of two weeks from the date of the order dated August 3, 2010. In the event such deposit is

made, the appeal may be listed for hearing on August 18, 2010. Being aggrieved by the said order, the petitioner has come up with this revisional application afresh.

3. Mr. Basu, learned Advocate appearing on behalf of the petitioner, submits that the financial condition of the petitioner company is very poor and it is not in a position to clear its dues. He points out that the cash balance is to the extent of 2,00,000/- and odd as per schedule of assets as on March 31, 2010 and so it is not in a position to deposit Rs.10,00,000/- as directed by the learned Appellate Tribunal. So, he has prayed for passing order of exemption. During the course of argument Mr. Basu also contends that in case the appeal is allowed, then his client need not deposit the amount and so the Court can very well exercise its discretionary power to waive deposit or to pass appropriate orders so that a minimum deposit might be made within the capacity of the petitioner.

4. Such prayer was opposed by the learned Advocate for the opposite party, this is, the crediting bank contending, inter alia, as per Section 21 of the said Act the petitioner is required to deposit 75% of the amount ordered to be paid before admitting the appeal. The learned Appellate Tribunal has taken a very lenient view initially directing to pay or deposit Rs.20,00,000/- and thereafter, Rs.10,00,000/-. If further relaxation is made, the object of the provisions of the Act would be frustrated.

5. So the question is whether the impugned order can be sustained.

6. Having considered the submission of the learned Advocate of both the sides and on perusal of the materials on record, I find that the outstanding amount recoverable from the petitioner by the creditor is to the extent of Rs.2,55,67,902.31 paise with interest calculated up to November 1, 2004. The certificate for recovery of the said amount was issued accordingly. The

petitioner prayed for exemption before the learned Appellate Tribunal and initially the learned Appellate Tribunal directed the petitioner to deposit Rs.20,00,000/- with the creditor bank by December 31, 2009 as a condition for stay. The petitioner moved the Hon'ble High Court against the said order and the Hon'ble High Court by the order dated February 15, 2010 in C.O. No.3817 of 2009 directed the learned Appellate Tribunal to consider waiver of deposit for hearing the appeal and accordingly, a lenient view was taken by the learned Appellate Tribunal directing to deposit Rs.10,00,000/- only by the order impugned. The provisions of Section 21 of the said Act lays down for deposit of 75% of the certificate amount with a proviso that the learned Appellate Court may make direction for any lesser amount or even waiver in the appropriate situation.

7. The petitioner's contention is that at present it has no capacity to deposit such amount. In consideration of the financial condition of the petitioner, the learned Appellate Tribunal has taken a lenient view. If further leniency view is considered then the purpose of the Act would be totally frustrated. Upon perusal of the papers, it does not appear that the petitioner need not pay the amount because there is a finding by the Debt Recovery Tribunal. The petitioner has also admitted its liability up to Rs.1.20 crore to the Bank. The contention of Mr. Basu that if the petitioner is ultimately exempted from making any payment what would happen. In this regard, the Act is very much clear that such deposit must be made in the learned Appellate Tribunal. So, according to the situation, the learned Appellate Tribunal will deal with the deposit to be made but there is a specific provision for giving direction of a certain percentage of the certificate or to waive of the said amount according to the situation. I am of the clear view that if further leniency is shown to the petitioner, the object of the Act would be frustrated.

8. Under the circumstances, prayer for exemption from making deposit cannot be considered. This application has no merit at all.

9. It is, therefore, dismissed.

10. There will be no order as to costs.

11. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

(Prasenjit Mandal, J.)

