Before K. Kannan, J.

M/S PML INDUSTRIES LTD—*Petitioner*

versus

DEBTS RECOVERY APPELLATE TRIBUNAL & OTHERS—*Respondents*

C.W.P. No. 58 of 2010

11th January, 2010

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002—S.17—Constitution of India, 1950—Art. 226—DRT directing Company to pay Rs. 28 crores as an interim measure to retain its possession in review application filed by Company—Company filing appeal before Appellate Tribunal—Appellate tribunal giving direction for making payment to retain its possession—It was for Debt Recovery Tribunal to decide on equities—In a case where petitioner's claim is that entire proceedings are legally vitiated, directions for deposit of Rs. 28 crores could be a stiff and a tall order—An ultimate decision to be given by Debt Recovery Tribunal on the contentions raised in review application—Directions given by Appellate Tribunal set aside and matter remanded to DRT for examining contentions within strict confines of Section 17.

Held, that for a Company that is unable to raise the resources to pay even at Rs. 13.5 crores to be directed to pay Rs. 28 crores as an interim measure to retain its possession and prosecute the review application before the Debt Recovery Tribunal, was indeed a tall order. The issue before the Appellate Tribunal was whether the Debt Recovery Tribunal was competent to entertain a review application and whether it had exceeded its brief in directing the parties to settle and provide to it a reprieve against dispossession. An application for review was possible in law and keeping the petition entertained and giving the parties a time to settle was not illegal probably, though it was inexpedient to push the parties to a settlement, if they were not willing. The appellate tribunal ought to have therefore, merely sent back the matter to the Debt Recovery Tribunal for an immediate disposal without

compounding the problems further by giving directions for more payments to be made to retain its possession. It was for the Debt Recovery Tribunal to decide on the equities when it had before it a review application for disposal. The debtor company is at the end of the tether; it has to either show that the notice under Section 13(2) and further proceedings relating to possession taken by the creditor as not valid in law or fail totally. The decision of the Debt Recovery Tribunal will consider the observations of this Court already made in CWP No. 19406 of 2006 and consider all the relevant objections that the respective parties have taken . In a case where the petitioner's claim is that the entire proceedings are legally vitiated, to give a direction for deposit of Rs. 28 crores could be a stiff and a tall order. The petitioner has but paid so far only Rs. 4 crores but its own conduct will determine in future whether it can survive or not. An ultimate decision to be given by the Debt Recovery Tribunal on the contentions raised in the review application will seal or open a new chapter.

(Para 5)

Ashwani Chopra, Senior Advocate, with

Shaibya Sood, Advocate, *for the petitioner.*

Kanwaljit Singh, Senior Advocate, with Sumeet Goel, Adovocate, for the Caveator-respondent No.2

K. KANNAN, J.

(1) Aggrieved by the interim directions given by the Debt Recovery Tribunal (DRT) in an application for review of its decision passed in proceedings under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter called 'the Act'), the Asset Reconstruction Company (India) Ltd, (hereinafter referred as ARCIL) had preferred an appeal to the Debt Recovery Appellate Tribunal (DRAT). The interim directions of the DRT gave no more directions than advising the parties to explore the possibility of resolving the dispute and work out a scheme for repayment of loan. ARCIL wanted nothing of that and peeved at its inability to bring a denouement by taking possession of the property sought to contend before the DRAT that DRT was exceeding in its breadth of discretion by pushing an agenda for settlement against its

will. The interim stay that had been granted by the DRT during the continuation of proceedings before it against dispossession was in the meanwhile running out and in the appeal filed by ARCIL, the debtor Company had filed an application for stay, when the Appellate Tribunal, by interim order dated 25th November, 2009, granted the stay against the order of possession and also directed as an interim measure Rs. 28 crores to be paid within a particular time and directed the matter to come up for hearing on 25th January, 2010. The direction for payment of Rs. 28 crores seemed a trifle too harsh for the debtor Company and it sought intervention of this Court in Civil Writ Petition No. 18912 of 2009. The learned Judge of this Court passed an order on 9th December, 2009 disposing of the writ petition with a direction to pre-pone the hearing to 15th December, 2009 before the Tribunal and dispose of the case before 23th December, 2009. That the Appellate Tribunal did by its decision dated 23th December, 2009, but it maintained its interim order dated 25th November, 2009 and said that Rs. 2 crore will be paid before 29th December, 2009 and the rest of the amount of the 50% of the demand notice should be deposited before 7th January, 2010 as a condition precedent for maintaining the possession. By the final order, the Appellate Tribunal afforded to the reconstruction Company ARCIL liberty to withdraw the amount and directed the Debt Recovery Tribunal to dispose of the case as per law.

(2) The order in challenge before this Court is the final order of disposal by the Appellate Tribunal. The grievance of the petitioner is that the Appellate Tribunal had literally chocked the petitioner out of its resources and was pre-determining its issue by directing a large sum to be deposited to retain possession when the issue before the Debt Recovery Tribunal itself was the proceedings pursuant to a notice which was issued under Section 13(2) of the Act, was illegal and the subsequent proceedings relating to possession under Section 13(4) and the coercive steps that the reconstruction Company was taking with the assistance of the Chief Judicial Magistrate was really an attempt to over-awe the petitioner and make meaningless the point for adjudication before the Debt Recovery Tribunal. According to the learned senior counsel appearing on behalf of the petitioner, the Debt Recovery Tribunal had originally dismissed the appeal filed under Section 17 of the Act on 31st August, 2009 holding that the appeal was premature, in brazen violation of the directions given by this Court in Civil Writ Pitition

No. 19406 of 2006 and the directions of the Hon'ble Supreme Court in Special Leave Petition No. 12989 of 2008. The final order of the Debt Recovery Tribunal on 30th August, 2009 was itself challenged originally by means of a writ petition before this Court in Civil Writ Petition No. 13853 of 2009 but later the debtor Company withdrew the writ petition with liberty to file a petition for review and it was in that review application that the Debt Recovery Tribunal had given some interim directions that had been made the subject of appeal before the Appellate Tribunal .

(3) It could be noticed that the debtor Company is really at its wits end trying to retain its possession, unable still as it is to match the expectations of the creditor and the reconstruction Company of what is legitimately due to them. The claim in the notice under Section 13(2) of the Act was in the range of Rs. 56 crores plus but by the time when the possession was sought to be taken with the assistance of the Chief Judicial Magistrate, the claim had escalated to a sum of Rs. 300 crores by loading interest. The debtor Company was looking for a settlement in the range of 13.5 crore which at one time in the year 2003 was a sum determined as OTS but the debtor Company was not able to pay even that amount and the reconstruction Company which had transferred the debt to itself was, therefore, looking for what according to it was just. The debtor Company which had enjoyed a long leash by the pendency of proceedings before BIFR never used the reprieve to its advantage but was merely filybustering. The two extremes of the pendulum, therefore, consisted of one, the debtor Company desiring to retain its possession even when it was unable to pay the amount for all these years on its own admitted proclaimed status that it was a sick Company and when the rehabilitation scheme did not work. In its characterization, the reconstruction Company made no attempt to reconstruct the Company but was looking for the last bit of scrap, trying to feast on the last breath of a Company as a hungry vulture would do.At the other hand of the pendulum is a vocal indignation of the reconstruction Company of its inability to recover any substantial sums, although it had obtained a transfer of the credits of the financial institutions and has waited sufficiently long to take what is justifiably due to it in spite of obtaining favourable observations of this Court at one point of time in Civil Writ Petition No. 19406 of 2006, when this Court frowned upon the delaying tactics adopted by the petitioner in engaging the secured creditors in long drawn litigations.

The Division Bench of this Court even held dispelling the contention raised by the debtor Company that the notice under Section 13(2) of the Act was not competent, when it pointed out that the reconstruction Company held 33% of the total secured debts in value and in terms of Section 13(9) of the Act, it had the consent of IDBI which was holding 32% of the total secured debt and SBH which was holding 34% of the total debt. The Division Bench held that the reconstruction Company was entitled to proceed for enforcement of security interest under Section 13(4) of the Act and the principles of estoppel invoked by the petitioner Company against the reconstruction Company would not come to its rescue.

(4) If the decision of the Division Bench was to rest all the legal contentions between parties, probably the law would have taken its own course when the reconstruction Company would have proceeded to take possession of the assets but the Division Bench still provided for a reprieve and did not want to close the options by giving the liberty to the debtor Company to proceed under Section 17 of the Act. If the issue of notice and possession could be challenged by means of an appeal under Section 17, inevitably the Debt Recovery Tribunal was bound to give an adjudication. If it had originally chosen not to adjudicate the issue by saying that it was premature, it was definitely flouting the direction of this court which later stood affirmed by the decision of the Hon'ble Supreme Court. The Hon'ble Supreme Court's decision did not again direct that the property must be immediately dispossessed out of the hands of the debtor Company. It gave the directions to the Debt Recovery Tribunal to give appropriate orders in the matter of possession. The Debt Recovery Tribunal had also granted an interim order of putting the debtor Company to some terms and had directed subsequently in the order of the review that party should attempt to settle. A meaningful intervention , it would have been, if it was the first round of litigation. It had gone through several vicissitudes and the relationship had soured, there was nothing to settle unless the parties voluntarily decided to do so. The settlement to the debtor Company was a sweet word if only it prolonged the litigation and made it possible for it to retain its possession. To the reconstruction company, it was no palliative and meant as an instrument to beat it with and delay further the process of taking possession.

(5) For a Company that is unable to raise the resources to pay even at Rs. 13.5 crores to be directed to pay Rs. 28 crores as an interim measure to retain its possession and prosecute the review application before the Debt Recovery Tribunal, was indeed a tall order. The issue before the Appellate Tribunal was whether the Debt Recovery Tribunal was competent to entertain a review application and whether it had exceeded its brief in directing the parties to settle and provide to it a reprieve against dispossession. An application for review was possible in law and keeping the petition entertained and giving the parties a time to settle was not illegal probably, though it was inexpedient to push the parties to a settlement, if they were not willing. The Appellate Tribunal ought to have therefore merely sent back the matter to the Debt Recovery Tribunal for an immediate disposal without compounding the problems further by giving directions for more payments to be made to retain its possession. It was for the Debt Recovery Tribunal to decide on the equities when it had before it a review application for disposal. The debtor Company is at the end of the tether; it has to either show that the notice under Section 13(2) and further proceedings relating to possession taken by the creditor as not valid in law or fail totally. The decision of the Debt Recovery Tribunal will consider the observations of this Court already made in Civil Writ Petition No. 19406 of 2006 and consider all the relevant objections that the respective parties have taken. In a case where the petitioner's claim is that the entire proceedings are legally vitiated, to give a direction for deposit of Rs. 28 crores could be a stiff and a tall order. The petitioner has but paid so far only Rs. 4 crores but its own conduct will determine in future whether it can survive or not. An ultimate decision to be given by the Debt Recovery Tribunal on the contentions raised in the review application will seal or open a new chapter.

(6) The directions given by the Appellate Tribunal are set aside and the matter will now be taken up by the Debt Recovery Tribunal and examine the contentions within the strict confines of Section 17 of the Act. Till a final decision is given, the debtor Company will retain its possession without any further imposition of terms. The writ petition is allowed but in the circumstances, where the reconstruction Company is delayed in the ultimate process of the decision whether it could take possession or not, the petitioner shall pay to the respondent costs of Rs.25,000/-.

R.N.R.