### IN THE HIGH COURT OF JHARKHAND AT RANCHI

### L.P.A No. 486 of 2019

1.M/s Sarthi Kumar Industries, a proprietorship concern, C-93, 2<sup>nd</sup> Phase, AIADA, Adityapur, Post Office and Police Station-Adityapur, District-Saraieklla-Kharsawan in the State of Jharkhand through its proprietor Samir Kumar Jha

2.Samir Kumar Jha, Age about 64 years, Son of Late Gunanand Jha, Proprietor of M/s Sarthi Kumar Industries at C-93, 2<sup>nd</sup> Phase, AIADA, Adityapur, Post Office and Police Station Adityapur, District-Saraieklla-Kharsawan in the State of Jharkhand

.... Appellants

#### Versus

UCO Bank, a body Corporate constituted under the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970 having its head office at 10, Biplabi Trilokya Maharaj Sarani (Brobourne Road), Kolkata-70001 and Branches amongst other places being need as Commercial Branch, Sakchi at 82, Tank Road, Sakchi, Post Office and Police Station-Sakchi, Jamshedpur, in the State of Jharkhand.

..... Respondent

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# CORAM: HON'BLE THE CHIEF JUSTICE HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

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For the Appellants : Mr. Rajeeva Sharma, Sr. Advocate For the Respondent-Bank : Dr. Gyanendra Kumar, Advocate

**Oral Judgment:** 

Order No.7/Dated: 19th February, 2021

1. With consent of the parties, hearing of the matter has been done through video conferencing and there is no complaint whatsoever regarding audio and visual quality.

### I.A.No.6902 of 2019

- 2. This interlocutory application has been preferred under Section 5 of the Limitation Act for condoning the delay of 1979 days in preferring this Letters Patent Appeal.
- 3. Heard.
- 4. In view of the submissions made on behalf of the parties and the averments made in the interlocutory application, we are of the view that the appellants were prevented by sufficient cause in preferring the appeal within the period of limitation.
- 5. Accordingly, I.A.No.6902 of 2019 is allowed and delay of 1979 days in preferring the appeal is condoned.

## L.P.A No. 486 of 2019

- 6. The instant appeal under Clause 10 of the letters patent, is directed against the order/judgment dated 06.05.2015 passed in W.P.(C) No.1526 of 2012, whereby and whereunder the writ Court has declined to interfere with order dated 27.02.2012 passed in Appeal No.113 of 2011 by the Debts Recovery Appellate Tribunal, Kolkata whereby, the writ petitioner was directed to deposit Rs.5,00,000/ as the pre-condition for hearing the appeal.
- 7. The brief fact, which requires to be enumerated, reads as under:

The petitioner no.2 is the proprietor of the petitioner no.1, M/s Sarthi Kumar Industries which had availed financial assistance of Rs.7,00,000/ as term loan and a sum of Rs.18,00,000/ as cash credit by hypothecation of stocks and bank debts. The Account on becoming non-performing assets (NPA) Original Application No.07 of 2008 was

filed by the respondent-UCO Bank which was allowed vide order dated 13.02.2009. The writ petitioner thereafter, filed Miscellaneous Application No.20 of 2009 for recall of *ex-parte* order dated 13.02.2009 which was dismissed vide order dated 12.05.2011. Challenging the same, the petitioner no.1 preferred Appeal No.113 of 2011 and vide order dated 27.02.2012 the Debts Recovery Appellate Tribunal directed the petitioner no.1 to deposit a sum of Rs.5,00,000/ as pre-condition for hearing of appeal. Aggrieved thereof, the petitioners have preferred writ petition by invoking jurisdiction conferred under Article 226 of the Constitution of India.

The writ petitioners had taken the plea before the writ Court that in view of Sections 20 and 21 of the Recovery of Debts Due to Bank and Financial Institutions Act, 1993 (hereinafter referred to as 'Act, 1993') the writ petitioner is not liable to make pre-deposit as a condition for hearing of appeal since the writ petitioner is challenging the *ex-parte* order seeking recall of the same passed by Debt Recovery Tribunal. According to him, only in case where debt of the Financial Institution/Bank to an individual/company has been finally determined by the Tribunal then only pre-condition of hearing of appeal filed under Section 20 of the Act, i.e. pre-deposit in terms of Section 21 of the Act can be insisted upon.

While on the other hand, the respondent-Bank has taken the plea that it is incorrect to say that only in the final adjudication of the Tribunal, the requirement as stipulated under Section 21 of the Act,

1993 for filing an appeal under Section 20 of the Act is required, rather the implication of Section 21 which stipulates about deposit of due is required to be deposited as pre-condition for filing an appeal under Section 20 of the Act, 1993 and therefore, the writ petitioner was liable to deposit Rs.5,00,000/ under Section 21 of the Act.

The Appellate Tribunal by taking into consideration the plea and considering the scope of the provision of Section 21 of the Act, 1993, has reduced the quantum of amount to the tune of Rs.5,00,000/ and as such, there is no infirmity in the order passed by the Appellate Tribunal, requiring interference by the writ Court and taking into consideration the aforesaid aspect of the matter, the learned Single Judge has declined to interfere with the impugned order. Hence the said order since suffers from no infirmity, may not be interfered with.

The learned Single Judge after appreciating the argument advanced on behalf of the parties has found no merit, against which the present intra court appeal has been filed.

- 8. Mr. Rajeeva Sharma, learned senior counsel appearing for the appellants/writ petitioner has reiterated the ground which was agitated before the writ Court as indicated hereinabove, so also the learned counsel appearing for the respondent-Bank.
- 9. We have heard learned counsel for the parties, perused the document on record as also the finding recorded by the learned Single Judge.

Before proceeding to decide the issue on merit, it requires to refer herein certain statutory provision i.e. Section 20 and 21 of the Act, 1993 which reads herein as under:

- **"20.** Appeal to the Appellate Tribunal.—(1) Save as provided in sub-section (2), any person aggrieved by an order made, or deemed to have been made, by a Tribunal under this Act, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter.
- (2) No appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties.
- (3) Every appeal under sub-section (1) shall be filed within a period of [thirty days] from the date on which a copy of the order made, or deemed to have been made, by the Tribunal is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

- (4) On receipt of an appeal under sub-section (1), [or under sub-section (1) of section 181 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016)] the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.
- (5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Tribunal.
- (6) The appeal filed before the Appellate Tribunal under subsection (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.
- 21. Deposit of amount of debt due, on filing appeal.—Where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal [fifty per cent] of the amount of debt so due from him as determined by the Tribunal under section 19:

Provided that the Appellate Tribunal may, for reasons to be recorded in writing, [reduce the amount to be deposited by such amount which shall not be less than twenty five per cent of the amount of such debt so due] to be deposited under this section."

It would be evident from Section 20 that any person aggrieved by an order made, or deemed to have been made, by a Tribunal under this Act, may prefer an appeal to the Appellate Tribunal having jurisdiction in the matter. Such appeal shall be filed within a period of 30 days from the date on which a copy of the order made, or deemed to have been made, by the Tribunal is received by him. However, the Tribunal may entertain an appeal after expiry of the said period if sufficient cause for not filing has been shown.

Section 21 stipulates about the requirement of deposit of amount of debt due, on filing appeal. It stipulates therein that where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal (50%) of the amount of debt so due from him as determined by the Tribunal under Section 19.

Provided that the Appellate Tribunal may, for reasons to be recorded in writing, reduce the amount to be deposited by such amount which shall not be less than 25% of the amount of such debt so due, to be deposited under the section.

It is further evident that the quantum of 75% has subsequently been substituted being 50% by the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 1916 with effect from 01.09.2016 and further the power to "waive or reduce the amount" has subsequently been substituted to "reduce the

amount to be deposited by such amount which shall not be less than 25% of the amount of such debt so due with effect from 01.09.2016.

Thus, it is evident from Section 20 of the Act, 1993 that any person aggrieved by an order made, or deemed to have been made, by a Tribunal under this Act, may prefer an appeal to the Appellate Tribunal by invoking the jurisdiction conferred under Section 20 of the Act, 1993 and if such person is invoking the jurisdiction, the requirement stipulated for deposit of amount as provided under Section 21 is to be resorted.

10. The fact of the case in hand, is that the cash credit facility as also the term loan benefit has been extended in favour of the writ petitioner prior to the substitution to the quantum of amount to be deposited under Section 21 to 75% which has subsequently reduced from 01.09.016 to 50% and "waive or reduce" clause has also been substituted to "reduce the amount" with effect from 01.09.2016 since the term loan and the cash credit facility is prior to 01.09.2016, therefore the substituon made in the statutory provision as contained under Section 21 of the Act, 1993 pertaining to amount of debt due to the tune of 50% of the amount of debt so due as determined by the Tribunal under Section 19 and such amount can be reduced by passing an order by recording reason in writing but such amount shall not be less than 25% of the amount so due, will be applicable.

So far as fact of this case is concerned, the respondent-Bank has resorted to the provision of Act, 1993 for recovery of amount by

invoking jurisdiction conferred under Section 19 of the said Act wherein an order has been passed by the Debt Recovery Tribunal in Original Application No.07 of 2008 dated 13.02.2009, however, an exparte one. But, the said application has been disposed of by directing the writ petitioner to deposit an amount of Rs.22,64,345.51 *paise* along with interest @ 10 % per annum (simple) for the *pendente lite* and future period from 20.09.2005 has been found to be just and proper and accordingly, the direction has been passed to that effect.

11. The writ petitioner has preferred an appeal before the Appellate Tribunal by invoking the jurisdiction conferred under Section 20 of the Act, 1993 and as would appear from the impugned order along with the application under Section 20 of the Act that the Tribunal has considered the application filed under Section 20 and after taking into consideration pre-deposit amount to the tune of Rs.5,00,000/ for hearing of appeal, has been declined to be interfered with the same.

The contention which has been raised by the learned counsel for the appellants/ writ petitioner that the implication of Section 21 of the Act, 1993 will not be applicable if the ex-parte order is questioned before the Appellate Tribunal and by not considering the same, the Appellate Tribunal has committed gross illegality so also learned Single Judge. But, we are not impressed because the provision under Act, 1993 clearly stipulates that any order passed by the Tribunal under Section 19 of the Act, 1993, the compliance is required under Section 21 of the

Act, 1993 will have to be followed while preferring appeal to Appellate Tribunal.

The statute has conferred power upon the Tribunal under Section 21 of the Act, 1993 and the Appellate Tribunal can reduce the amount which shall not be less than 25% of the said debt so due. Considering the said aspect as also the quantum of liability as has been fixed along with interest by the Debt Recovery Tribunal, has considered it fit to reduce the amount to the tune of Rs.5,00,000/.

Learned Single Judge after taking into consideration more specifically the fact that in case of an appeal refused or the case under Section 19 if filed under Section 20 of the Act, 1993, the requirement of pre-deposit is *sine qua non*. Learned Single Judge found the quantum as fixed by the Tribunal and has refused to interfere with the same.

12. This Court, after considering the reason assigned in the order passed by the Tribunal in Appeal No.113 of 2011 whereby, it is evident that the application has been filed under Section 21 of the Act seeking waiver of the pre-deposit has been dealt with, according to our considered view, the waiver clause has been inserted with effect form 01.09.2016, and as such, there is no question of waiver of an issue which has been crept up prior to 01.09.2016 and therefore, the Tribunal by taking into consideration the statutory provision as it was prior to 01.09.2016 has reduced the amount to the tune of Rs.5,00,000/ after considering the fact that if the amount will be reduced from Rs.5,00,000/ it would be less than 25% of the amount of debt since

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Section 21 provides that reduction of pre-deposit amount shall not be

less than 25%.

13. In that view of the matter, according to our considered view, the

pre-deposit amount of Rs.5,00,000/ cannot be said to be unjustified.

In view thereof, we are in agreement with the finding recorded by

the Appellate Tribunal as also by the learned Single Judge.

14. Accordingly, we find no reason to interfere with the impugned

orders.

15. The instant appeal, therefore, lacks merit, hence dismissed.

(Dr. Ravi Ranjan, C.J.)

(Sujit Narayan Prasad, J.)

Saket/-

N.A.F.R.