

International Asset Reconstruction ... vs Official Liquidator Of Aldrich Pharm. on 24 October, 2017

Equivalent citations: AIR 2017 SUPREME COURT 5013, 2017 (16) SCC 137, (2018) 127 ALL LR 210, (2018) 1 MAD LJ 850, (2018) 1 ICC 836, AIR 2018 SC (CIVIL) 490, (2017) 4 KER LT 611, (2017) 4 BANKCAS 571, (2018) 1 WLC(SC)CVL 41, (2018) 2 CIVLJ 846, (2018) 2 UC 816, (2017) 2 CLR 1227 (SC), (2018) 1 JCR 187 (SC), (2017) 6 ALL WC 5905, (2018) 1 CAL HN 53, (2018) 1 MAD LW 361, (2017) 2 ORISSA LR 1002, (2018) 3 CALLT 25, (2017) 12 SCALE 748, (2018) 125 CUT LT 201, (2017) 4 PAT LJR 304, (2018) 139 REVDEC 285, (2017) 4 RECCIVR 917, (2017) 4 JLJR 261, 2018 (183) AIC (SOC) 1 (SC)

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Bench: Navin Sinha, Abhay Manohar Sapre, Ranjan Gogoi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.16962 OF 2017
(Arising out of SLP (C) No.25815 of 2013)

INTERNATIONAL ASSET RECONSTRUCTION
COMPANY OF INDIA LTD.APPELLANT(S)
VERSUS

THE OFFICIAL LIQUIDATOR OF ALDRICH
PHARMACEUTICALS LTD. AND OTHERSRESPONDENT(S)

With

CIVIL APPEAL NO. 16963 OF 2017
(Arising out of SLP (C) No.29534 of 2014)

IRIDIUM INDIA TELECOM LTD.APPELLANT(S)
VERSUS

DOHA BANK QSC AND ANOTHERRESPONDENT(S)

JUDGMENT

NAVIN SINHA, J.

Leave granted.

2. A common question of law arising for consideration in both appeals is whether Section 5 of the Limitation Act, 1963 (hereinafter referred to as “the Limitation Act”), can be invoked to condone the prescribed period of 30 days, under Section 30(1) of the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred as the “RDB Act”), for preferring an appeal before the Tribunal, against an order of the Recovery officer.

3. In view of the pure question of law involved, the facts of the case need not be elucidated. Suffice to observe that pursuant to a recovery certificate issued by the Tribunal under Section 19(22) of the RDB Act, the Recovery officer passed necessary orders under Section 28 of the Act. An appeal was preferred by the aggrieved against the same before the Tribunal, beyond the prescribed period of 30 days. It was held that Section 5 of the Limitation Act not being applicable to proceedings under Section 30 of the Act, the delay beyond the prescribed period could not be condoned.

4. Ms. Madhavi Divan, learned senior counsel on behalf of the appellants, submitted that the RDB Act was not a complete Code by itself. A mere expeditious procedure for recovery was not conclusive to infer express or implied exclusion of the Limitation Act. In the absence of an express exclusion of the Limitation Act to Section 30, implied exclusion cannot be readily inferred, considering the nature of the rights and interests of the borrower involved, raising issues with regard to fairness of procedure. By virtue of Section 29(2) of the Limitation Act, any implied exclusion is ruled out and the provisions of Section 5 of the Limitation Act will apply to proceedings under Section 30(1) of the RDB Act.

5. Under Section 22(1) of the RDB Act, the Tribunal was not bound by the procedures of the Code of Civil Procedure and was guided by the principles of natural justice, which would include the power to condone delay beyond the prescribed period of 30 days under Section 30(1) of the Act. Section 19(25) provided for passing of necessary orders to secure the ends of justice, which again would include the power for extension of the prescribed period. The scheme of the RDB Act does not exclude application of the Limitation Act to proceedings under it. Referring to Section 2(b) of the Act and reading the same in conjunction with Rule 2(c) of the Debt Recovery Tribunal (Procedure) Rules, 1993, (hereinafter referred to as “the Rules”) it was urged that an “application” filed under Section 30(1) of the Act was also amenable to condonation under Section 24 of the RDB Act. Section 20(3) likewise provides for condoning delay beyond 45 days in preferring an appeal before the appellate tribunal.

6. Sh. Arvind P. Datar, learned senior counsel for the respondents, contended that the RDB Act was a complete Code by itself with regard to recovery of dues to banks and financial institutions. Section 24 of the RDB Act applied only to an application made under Section 19 by a bank or financial institution, to the Tribunal for recovery of a debt. Section 20(3) expressly applied to proceedings before the appellate tribunal only. The scheme of the Act manifests, that the Legislature expressly intended to exclude any extension of the prescribed period of 30 days under Section 30(1), which is further manifest from the amendment to the same in the year 2000 denuding the deemed status of the Recovery officer as a Tribunal, for purposes of the provision.

7. The definition of “application” under Section 2(b) of the Act was confined to Section 19 of the RDB Act only. Its meaning could not be extended beyond that prescribed under the Act, by invoking Rule 2(c) which had to be read with Rule 4 providing the procedure for making an application, inter-alia, under Section 30 of the RDB Act in the prescribed Form III.

8. Shri Datar with all fairness also invited our attention to a two-Judge Bench decision dated 01.07.2015 in Civil Appeal No. 4926 of 2015, A.R. Venugopal @ R.Venugopal vs. Jotheeswaran & ors., holding that the delay in preferring an appeal under Section 30(1) beyond the prescribed 30 days was condonable by virtue of Section 20 read with Section 24 of the RDB Act.

9. We have considered the submissions. The RDB Act was enacted to facilitate and expedite recovery of debts due to banks and financial institutions by summary proceedings before a statutory Tribunal. Section 18 bars the jurisdiction of any court or other authority in such matters (except the Supreme Court/High Court under Articles 226 and 227 of the Constitution). Section 31 provides for transfer of pending cases from a Court to the Tribunal. The Act provides a complete procedure for institution of recovery proceedings, the method of its enforcement including the right to appeal. The RDB Act is undoubtedly a special law and a complete code by itself with regard to expeditious recovery of dues to banks and financial institutions.

10. The fact that the Tribunal may be vested with some of the powers as a Civil Court under the Code of Civil Procedure, regarding summoning and enforcing attendance of witnesses, discovery and production of the documents, receiving evidence on affidavits, issuing commission for the examination of witnesses or documents, reviewing its decisions etc. does not vest in it the status of a Court. Section 22(1), in fact, provides that the Tribunal shall not be bound by the procedures under the C.P.C., and can regulate its own procedures in accordance with natural justice.

11. Section 5 of the Limitation Act provides that the appeal or application, with the exception of Order XXI, CPC may be admitted after the prescribed period, if the applicant satisfies the court that he has sufficient cause for not preferring the application within time. The pre-requisite, therefore, is the pendency of a proceeding before a court. The proceedings under the Act being before a statutory Tribunal, it cannot be placed at par with proceedings before a court. The Tribunal shall therefore have no powers to condone delay, unless expressly conferred by the Statute creating it. In *Sakuru vs. Tanaji*, (1985) 3 SCC 590, it was observed that:

“3...that the provisions of the Limitation Act, 1963 apply only to proceedings in ‘courts’ and not to appeals or applications before bodies other than courts such as quasi-judicial Tribunals or executive authorities, notwithstanding the fact the such bodies or authorities may be vested with certain specified powers conferred on courts under the Codes of Civil or Criminal Procedure. The Collector before whom the appeal was preferred by the appellant herein under Section 90 of the Act not being a court, the Limitation Act, as such, had no applicability to the proceedings before him. But even in such a situation the relevant special statute may contain an express provision conferring on the appellate authority, such as the Collector, the power to extend the prescribed period of limitation on sufficient cause being shown by laying

down that the provisions of Section 5 of the Limitation Act shall be applicable to such proceedings. Hence it becomes necessary to examine whether the Act contains any such provision entitling the Collector to invoke the provisions of Section 5 of the Limitation Act for condonation of the delay in the filing of the appeal...”

12. An “application” is defined under Section 2(b) of the RDB Act as one made under Section 19 of the Act. The latter provision in Chapter IV, deals with institution of original recovery proceedings before a Tribunal. An appeal lies against the order of the Tribunal under Section 20, before the Appellate Tribunal within 45 days, which may be condoned for sufficient cause under the proviso to Section 20(3) of the Act. The Tribunal issues a recovery certificate under Section 19(22) to the Recovery officer who then proceeds under Chapter V for recovery of the certificate amount in the manner prescribed. A person aggrieved by an order of the Recovery officer can prefer an appeal before the Tribunal under Rule 4, by an application in the prescribed Form III. Rule 2(c) defines an “application” to include a memo of appeal under Section 30(1). The appeal is to be preferred before the Tribunal, as distinct from the appellate tribunal, within 30 days. Section 24 of the RDB Act, therefore, manifestly makes the provisions of the Limitation Act applicable only to such an original “application” made under Section 19 only. The definition of an “application” under Rule 2(c) cannot be extended to read it in conjunction with Section 2(b) of the Act extending the meaning thereof beyond what the Act provides for and then make Section 24 of the RDB Act applicable to an appeal under Section 30(1) of the Act. Any such interpretation shall be completely contrary to the legislative intent, extending the Rules beyond what the Act provides for and limits. Had the intention been otherwise, nothing prevented the Legislature from providing so specifically.

13. A comparative study of Section 30, pre and post amendment in the year 2000, reveals that the deemed status of proceedings before the Recovery officer, as a Tribunal, stands denuded. Had the proceedings before the Recovery officer deemed to be before a Tribunal, entirely different considerations may have arisen.

Old Section 30 before 2000 amendment
Old Section 30 after 2000 amendment
“S. 30 Orders of Recovery Officer— (1) Notwithstanding anything contained in Section 29, any person aggrieved by an order made by the Recovery Officer in exercise of his powers under this Act may, within thirty days from the date on which a copy of the order is issued to him, prefer an appeal to the Tribunal. and an appeal against such (2) On receipt of an appeal orders shall lie to the Appellate under sub-section (1), the Tribunal.” Tribunal may, after giving an opportunity to the appellant to be heard, and after making such enquiry as it deems fit, confirm, modify or set aside the order made by the Recovery Officer in exercise of his powers under Sections 25 to 28 (both inclusive).”

14. The RDB Act is a special law. The proceedings are before a statutory Tribunal. The scheme of the Act manifestly provides that the Legislature has provided for application of the Limitation Act to original proceedings before the Tribunal under Section 19 only. The appellate tribunal has been conferred the power to condone delay beyond 45 days under Section 20(3) of the Act. The

proceedings before the Recovery officer are not before a Tribunal. Section 24 is limited in its application to proceedings before the Tribunal originating under Section 19 only. The exclusion of any provision for extension of time by the Tribunal in preferring an appeal under Section 30 of the Act makes it manifest that the legislative intent for exclusion was express. The application of Section 5 of the Limitation Act by resort to Section 29(2) of the Limitation Act, 1963 therefore does not arise. The prescribed period of 30 days under Section 30(1) of the RDB Act for preferring an appeal against the order of the Recovery officer therefore cannot be condoned by application of Section 5 of the Limitation Act.

15. Insofar as A.R. Venugopal @ R.Venugopal (supra) is concerned, all that would be required to be noticed and observed is that the entire statutory scheme did not fall for consideration of the court in that case.

16. The appeals lack merit and are dismissed.

.....J. (Ranjan Gogoi)J. (Abhay Manohar Sapre)
.....J. (Navin Sinha) New Delhi, October 24, 2017