

(2008) 11 MAD CK 0125

In the Madras High Court

Case No : Writ Petition No's. 3958 and 5172 of 2008 and C.R.P. (PD) No's. 1591 and 3301 of 2007

Indian Bank Asset Recovery Management Branch

APPELLANT

Vs

Hamosons Apparels Private Ltd. and The Debts Recovery
Appellate Tribunal
Hamosons Apparels Private Ltd. Vs
Indian Bank Asset Recovery Management Branch and Indian
Bank
Ms. S. Chitra Vs Syndicate Bank

RESPONDENT

Date of Decision : 18-11-2008

Acts Referred:

Income Tax Act, 1961 — Section 156

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 19, 20

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13, 13(10), 13(13), 13(2), 13(3)

Transfer of Property Act, 1882 — Section 16

Citation : (2008) 11 MAD CK 0125

Hon'ble Judges : V. Dhanapalan, J;S.J. Mukhopadhaya, J

Bench : Division Bench

Advocate : V. Ramachandran, SC for Zaforullah Khan, in WP No. 5172/08, G. Masilamani, SC for Aiyar and Dolia in WP 3958 and 3959/08 and K. Ramalinga Gounder, in WP 17009 and CRP PD 1591 and 3301/07, for the Appellant; V. Ramachandran, SC, for Zaforullah Khan, for RR-3 to 6 in WP 3958 and 3959/08, G. Masilamani, SC for Aiyar and Dolia in WP 5172/08, T.R. Rajagopalan, SC, for Anita Sumanth for R-1 in WP 3958 and 3959/08, P. Sreenivasalu in CRP (PD) 3301/07 and P. Wilson, Asst. Solicitor General for R-1 in WP 17009/07, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—Common question of law being involved, though the cases were heard separately, they are disposed of by this

common judgment.

2. In both the cases, the borrowers, while raised question of Debts Recovery

Appellate Tribunal"s (hereinafter referred to as "Appellate Tribunal")

jurisdiction to pass conditional interim orders, they have also challenged the validity of Section 18(1) of the Securitisation and Reconstruction of

Financial Assets and Enforcement of Security Interests Act (hereinafter referred to as "NPA Act").

3. The borrower of the first set of cases, M/s.Hamosons Apparels Pvt. Ltd., filed a petition for condonation of delay along with an appeal u/s 18

of the NPA Act, wherein, by impugned orders dated 28th Jan., 2008, Appellate Tribunal passed conditional order on payment of Rs. 2.5 Crores.

The delay having condoned and interim order having passed, while bank preferred two writ petitions (W.P. Nos. 3958 & 3959/08), against the

conditional order of payment of Rs. 2.5 Crores, M/s.Hamosons Apparels Pvt. Ltd., challenged the said order in W.P. No. 5172/08.

Another borrower, Ms. S.Chitra, of the 2nd set of cases, has also challenged the conditional interim order and dismissal of the appeal by filing

revision petition, C.R.P. (PD) No. 1519/07 and also challenged the validity of Section 18(1) of NPA Act in W.P. No. 17009/07.

In original application, Ms. S. Chitra also prayed for cross-examination of the bank manager and to send the documents for expert"s opinion, but it

having been negatived, she has preferred another revision petition, C.R.P. (PD) No. 3301/07.

Stand of borrower ið½ M/s.Hamosons Apparels Pvt. Ltd. (in 1st set of cases):

4. Mr. V. Ramachandran, learned senior counsel appearing for the borrower submitted that pursuant to judgment of Supreme Court in Mardia

Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc., , the Parliament amended NPA Act, but what was sought to be corrected by

Supreme Court by striking down Section 17(2) as onerous found itself once again under 2nd proviso to Section 18(1) of the said Act. u/s 13(2), a

secured creditor makes claim for recovery of money due and payable by borrower by putting him on notice and on failure the secured creditor

invokes Section 13(4) for taking further course of action of one or more options or measures to recover the secured debt. The borrower can react

under the provision of Section 13(3-A), which also imposes condition upon the secured creditor to reply to the objections that may be received

from the borrower within a week, stating the reasons for non-acceptance of the

objections raised by the borrower. The further course of action as detailed u/s 13(4) could be taken by the secured creditor while not accepting the objections. Section 13(13) imposes a restraint upon the borrower from transferring the secured asset by way of sale, lease or otherwise without prior consent of the secured creditor. This would mean that, immediately on communication of notice u/s 13(2), the borrower is restrained from liquidating his asset, which the secured creditors have included in their notice, this notwithstanding the fact that the said asset may not have been offered as security. According to learned senior counsel, Section 17 provides first opportunity to the borrower, which, however, is limited only to the extent to decide whether measures referred u/s 13(4) taken by secured creditor for enforcement of security interest is in accordance with the provisions of the Act and the rules made therein. None of the sections confer the borrower any right to move the Debts Recovery Tribunal (hereinafter referred to as "Tribunal") to question the quantum of money claimed by the secured creditor. The correctness of action u/s 13(4), if upheld by the Tribunal, a right of appeal is provided u/s 18. At that stage, the assets of the borrower stands frozen with the secured creditor, in view of Section 13(13). In this background, demand for payment of 50% of the debt claimed by the secured creditor or liability determined by the Tribunal is an onerous condition. An analysis of such provision, which has been imposed by amendment after Mardia Chemicals case amounts to relocation of onerous condition that existed u/s 17(2) prior to Mardia Chemicals case, without change of situation in any manner for the borrower. Even at the appellate stage, the plight of the borrower in no manner eases. Therefore, the condition imposed upon the borrower not pursuant to any determination of liability, but by an independent authority, if allowed to continue, ultra vires for the same reason for which Section 17(2) was so declared. Reliance was placed on Supreme Court decision in Seth Nand Lal and Another Vs. State of Haryana and Others, wherein the Supreme Court held as follows :

½that the right of appeal is a creature statute and there is no reason why our legislature, while granting the right cannot impose conditions for the exercise of such right so long as conditions are not so onerous as it amounts to unreasonable restrictions rendering the right almost illusory.

Supreme Court decision in Commissioner of Civil Supplies v. V. Sethuraman 1974 TNLJ 511, was also relied, relevant portion of which reads as

follows :

When an authority which is entrusted with only power of execution cannot assume for itself a jurisdiction to resolve interior disputes by

adjudication. Judicial power to decide civil disputes should not be confined with execution entrustment of recovery powers of a summary character

as an expedient for equal recovery on grounds of State interest.

5. According to learned Counsel for the borrower, the provision of Section 18(1) imposing condition of pre-deposit for preferring appeal are

onerous and economic blockade is created upon borrower denying him the right to prefer appeal. While Section 13(13) imposes a restraint, 2nd

and 3rd proviso to Section 18(1) imposes a financial burden upon already overburdened borrower. The appeal provided u/s 18 is nothing but a

mirage for the borrower and imposition of condition under 2nd and 3rd proviso to Section 18(1) without being heard on merit on the quantum of

amount claimed by the secured creditor could never have been intended by the Legislature as it would amount to denial of natural justice and ultra

vires the Constitution, being arbitrary, rendering the legal remedy beyond the reach of the borrower. The Supreme Court embarked on a process

to correct the unconstitutional or onerous condition, which were found u/s 17(2), but the very same provisions have been inserted as 2nd and 3rd

proviso to Section 18(1) even where no determination of quantum is done by the Tribunal. According to learned Counsel, the following condition

set out in para-64 of Mardia Chemicals case are also applicable in the present case :

i) The action u/s 13(4) of NPA Act is taken even while adjudication of the debt due is pending before the Debts Recovery Tribunal, which is the

authority of the first instance;

ii) There is no determination of the amount due by the DRT;

iii) The secured assets are under the control of the secured creditor insofar as they have issued notice u/s 13(2) and taken action u/s 13(4) of the

Act in view of Section 13(13); and

iv) There is no special reason for double security in respect of an amount yet to be determined and settled.

Stand of the Guarantor i.e. Ms. Shirin Iqbal (in the 1st set of cases) :

6. Learned Counsel for the guarantor, while referred to the fact that Indian Bank has already filed original application before the Tribunal for

recovery of Rs. 304.09 lakhs, informed that the Tribunal has not yet finalised the quantum. Therefore, there is no determination of debt due to the

bank. According to him, the 2nd proviso to Section 18(1), while imposes a restriction on right to appeal, it stipulates pre-deposit of quantum only

by determination as to which one is lower of the two amounts, viz., the amount of debt claimed by the secured creditor or the amount of debt

determined by the Debts Recovery Tribunal. Thus, the 2nd proviso could come into operation only if both the above details of amounts are

available before the Appellate Tribunal and not otherwise. Where the original application is pending before the Tribunal for determination of debt

amount, the 2nd proviso cannot be given effect to and no pre-deposit could be ordered by the Appellate Tribunal. In absence of determination of

amount by Tribunal, the second operative figure in calculation would be ""Zero"" and, consequently, lower of the two amounts being ""Zero"", 50%

thereof would be ""Nil"". Hence, the application of 2nd proviso would not arise in appeal where no determination of due is made by Tribunal. It is

only if such interpretation of 2nd proviso to Section 18(1) is accepted, i.e., the appeal to be entertained without any deposit, the question of

reducing the deposit under 3rd proviso would not arise and the provision could be saved.

Stand of secured creditor - Indian Bank (in the 1st set of cases) :

7. Mr. G.Masilamani, learned Advocate General appeared for the Bank. Referring to Section 18(1) he submitted that any person aggrieved by any

order of Tribunal is entitled to prefer appeal to Appellate Tribunal. Under 2nd proviso to Section 18(1), no such appeal could be entertained

unless the borrower deposits with the Appellate Tribunal 50% of the amount of debt due from the borrower as claimed by the secured creditor or

as determined by Tribunal, whichever is less. The 3rd proviso provides that the Appellate Tribunal, may, in exercise of its discretion, for reasons

recorded in writing, may reduce the amount to be so deposited to 25%. The expression ""amount as determined by Debts Recovery Tribunal

found in 2nd proviso to Section 18(1) requires, as a condition precedent for

exercising power u/s 18(1), if pre-determination of amount due is determined by the Tribunal.

It was submitted that the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "DRT Act, 1993") is

enacted prior to NPA Act, 2002 and both Acts operate independently in different fields. NPA Act was enacted with the intent of facilitating

recovery of dues to the secured creditor without the intervention of the court and Tribunal, which is similar to Section 16(a) of the Transfer of

Property Act. DRT Act, 1993, envisages adjudication and determination of claim made by the Bank or Financial Institution by the Tribunal as a

pre-condition to initiate recovery proceeding. On the other hand, NPA Act presupposes determination of amount by the secured creditor itself

prior to issuance of Section 13(2) notice. Such determination is recognised for taking action against the borrower for recovery of the amount even

without institution of the suit or recovery application by declaring the account of the borrower as Non-Performing Asset (NPA). All that is required

is the procedure laid down under the NPA Act and the Rules framed therein should be adhered to.

Stand of the borrower, Ms. S.Chitra (in the 2nd set of cases) :

8. This petitioner claims to be a third-party, neither the borrower nor the guarantor and further according to her she has not obtained any loan from

Syndicate Bank. She was impleaded as defendant along with her father and sisters in O.A. No. 278/04 preferred by Syndicate Bank. The

ancestral property in which the petitioner, along with other defendants 2 to 8 are the co-owners was mortgaged without her knowledge. It was

submitted that proviso to Section 18(1) of NPA Act is bad and ultra vires. u/s 18(1), ""any order passed by Tribunal could be challenged, including

an interim order by any person including a stranger to a loan transaction, even who is not a borrower or a guarantor"". The law is silent as to

purpose and manner of the word ""as claimed by secured creditors or determined by the Debts Recovery Tribunal, whichever is less"", so far as it

relates to a third-party. Further, according to this petitioner, the 2nd proviso to Section 18(1), even before determination of amount of debt by

Tribunal as due from borrower, mandates any person including third-party to deposit 50% of the debt amount, which could be reduced to 25% by

the Appellate Tribunal. Therefore, proviso to Section 18(1) is more onerous than unamended Section 17(2), which was struck down by the

Supreme Court. The condition of pre-deposit is alleged to be bad rendering the remedy illusory for the following grounds :

(i) it is imposed while approaching the Appellate Tribunal even against an interim order ;

(ii) there is no determination of amount due as yet ;

iii) the possession of the secured asset or its management with transferable interest is taken over by the secured creditor and is in their control ;

iv) there is no special reason for double security in respect of an amount yet to be determined and settled ;

v) 50% of the amount claimed is by no means would be a meagre amount ;

vi) it will leave not only the borrower or guarantor, but also a total stranger in a position where it would not be possible for him/her to raise any

funds to make the deposit of 50% of the unnamed or uncertain amount ; and

vii) the borrower, including the guarantor and a stranger-third party are treated alike.

Stand as secured creditor, M/s.Syndicate Bank (in 2nd set of cases) :

9. This bank has denied the fact that the petitioner S.Chitra is a third-party. According to the bank, the petitioner and her sisters, who were

defendants 5, 6 and 8, through their father and power of attorney holder (4th defendant), by giving personal guarantee, have mortgaged their

property in favour of the bank by depositing the title deeds and executing registered memorandum of deposit of title deeds in favour of the bank as

security for due payment of credit facilities availed by M/s.Aandavar Electrical Distributors represented by partners, who are defendants 1 to 3.

So far as validity of law is concerned, learned Counsel for the bank took similar plea as taken by Indian Bank in the first set of cases.

10. We have heard the learned Counsel for the parties and noticed their rival contentions.

11. The reasons for enactment of DRT Act, 1993 and NPA Act, 2002, fell for consideration before Supreme Court in Transcore Vs. Union of

India (UOI) and Another, . In the said case, object of both the Acts were noticed and following observation was made :

13. ... The object of the DRT Act as well as NPA Act is recovery of debt by non-

adjudicatory process. These two enactments provide for cumulative remedies to the secured creditors. By removing all fetters on the rights of the secured creditor he is given a right to choose one or more of the cumulative remedies. The object behind Section 13 of the NPA Act and Section 17 read with Section 19 of the DRT Act is the same, namely, recovery of debt. Conceptually there is no inherent or implied inconsistency between the two remedies. Therefore, as stated above, the object behind the enactment of the NPA Act is to accelerate the process of recovery of debt and to remove deficiencies in the way of realization of debt under the DRT Act by the enactment of the Act, 2002.

The Supreme Court further held in the case of Transcore that the bank or financial institution having elected remedy in terms with DRT Act, 1993, can also invoke the NPA Act, 2002, for realising the secured debt without withdrawing or abandoning the original application filed before the Tribunal under the DRT Act, 1993. Therefore, it will be clear that the secured creditor can recover the secured debt under NPA Act by invoking any one or more measures mentioned u/s 13(4), independent of an application u/s 19 of the DRT Act, 1993.

12. There can be a case where, without filing an application u/s 19 of DRT Act, 1993, a secured creditor can take steps to recover his debt u/s

13(4) of NPA Act. In such case, question of determination of amount u/s 19 of DRT Act, 1993, do not arise.

There can be another situation where the secured creditor, though elected to opt for remedy u/s 19 of DRT Act, 1993, may also invoke Section

13(4) of NPA Act, 2002. In such a case, the secured creditor is not supposed to wait for determination of the claim by the Tribunal u/s 19 of DRT

Act, 1993, for the purpose of taking action u/s 13(4), as otherwise the object of Section 13(4) of NPA Act will be defeated.

In a third situation, even after obtaining a decree and issuance of a recovery certificate u/s 19 of DRT Act, 1993, with regard to certain assets, it is

also open for a secured creditor to take independent action u/s 13(4) of NPA Act for recovery of certain dues due to the secured creditor.

There can be a fourth situation in which the secured creditor may take recourse to recovery of amount only u/s 19 of DRT Act, 1993 without

taking recourse u/s 13(4) of NPA Act.

From the aforesaid fact it will be evident that it is not necessary that in all such cases the borrower (including the guarantor) or any person who has

preferred appeal u/s 18 of NPA Act or u/s 20 of DRT Act, 1993, there will be pre-determination of amount by the Tribunal. It will depend on the

situation whether while taking action taken u/s 13(4) of NPA Act any pre-determination has been made by Tribunal u/s 19 of the DRT Act, 1993.

13. Section 18(1) contemplates presentation of appeal if any person, including the borrower is aggrieved against any order passed u/s 17 of NPA

Act. However, entertaining the appeal and passing orders there on, is subject to 2nd proviso to Section 18(1), and exercising of power by

Appellate Tribunal under 3rd proviso to Section 18(1).

It cannot be presupposed that Section 18 appeal will only be against a final order that may be passed u/s 17 of NPA Act. Even against an interim

order or non-grant of an interim order, any person, including the borrower may prefer appeal u/s 18. In such a case, a person, including the

borrower do not allow the Tribunal to make any determination of the claim or counter-claim or the legality of the action taken u/s 13(4) and before

that the person moves in appeal u/s 18. Therefore, it cannot be presumed that in all such cases, pre-determination of the by Tribunal is mandatory.

14. Section 13 is a pivotal section in NPA Act, which stipulates that in default in repayment of secured debt and account in respect of such debt is

classified as NPA, further action could be taken u/s 13(4). The term ""debt"" defined u/s 13 of NPA Act and DRT Act, 1993, includes ""money due

under a decree"". Therefore, even this category of money due in terms of debt or a decree could attract action u/s 13 of NPA Act, provided that

other eligibility conditions as specified under NPA Act are satisfied.

In certain cases there is no possibility for Tribunal to determine the amount; in certain other cases there can be a possibility of determination by

Tribunal, but actually determination has not been made; in some other cases determination of claim may have been made by Tribunal. From the

Supreme Court decision in Transcore's case, as it is evident that the NPA Act could be invoked for realisation of secured debt without

withdrawing or abandoning the original application before the Tribunal and such secured debt could be realised u/s 13(4) of NPA Act even

without filing an application u/s 19 of DRT Act, 1993, it cannot be said that a pre-

determination of claim to be made by Tribunal, for the purpose of invoking 2nd or 3rd proviso to Section 18(1) of NPA Act.

15. The safeguard against action u/s 13(4) of NPA Act is available to any aggrieved person, including the borrower (guarantor) u/s 17 of NPA

Act, wherein Tribunal is required to consider whether any measures referred u/s 13(4) taken by secured creditor is in accordance with Act and

Rules framed there under. The following was the observation of Supreme Court in Transcore's case (supra) :

.... the DRT is required to consider whether any of the measures referred to in Section 13(4) taken by the secured creditor for enforcement of

security are in accordance with the provisions of the NPA Act and the Rules made thereunder. If the DRT, after examining the facts and

circumstances of the case and the evidence produced by the parties, comes to the conclusion that any of the measures taken u/s 13(4) are not in

accordance with the NPA Act, it shall direct the secured creditor to restore the possession/management to the borrower (vide Section 17(3) of

NPA Act).

At the stage of Section 17 there is no scope of determination of dispute regarding liability as Section 13(2) of NPA Act deals with liquidation of

liability. That is a stage in which the borrower (includes guarantor) gets liberty to object u/s 13(3-A), which is adjudicated by the secured creditor

who may accept or reject the objection but is liable to communicate the reasoning to the borrower within a specified period. This will be evident

from the Supreme Court decision in Transcore's case (supra) and quoted hereunder :

On reading Section 13(2) it is clear that the said Sub-section proceeds on the basis that the borrower is already under a liability and further that his

account in the books of the bank or FI is classified as substandard, doubtful or loss. The NPA Act comes into force only when both these

conditions are satisfied. Section 13(2) proceeds on the basis that the debt has become due. It proceeds on the basis that the account of the

borrower in the books of bank/FI, which is an asset of the bank/FI, has become non-performing. Therefore, there is no scope of any dispute

regarding the liability.

..... Section 13(2) deals with liquidation of liability. Section 13 deals with

enforcement of security interest, therefore, the remedies of enforcement of security interest under the NPA Act and the DRT Act are complementary to each other. There is no inherent or implied inconsistency between these two remedies under the two different Acts.

Section 13(3) inter alia states that the notice u/s 13(2) shall give details of the amount payable by the borrower as also the details of the secured

assets intended to be enforced by the bank/FI. In the event of non-payment of secured debts by the borrower, notice u/s 13(2) is given as a notice

of demand. It is very similar to notice of demand u/s 156 of the Income Tax Act, 1961. After classification of an account as NPA, a last

opportunity is given to the borrower of sixty days to repay the debt. Section 13(3-A) inserted by amending Act 30 of 2004 after the judgment of

this Court in *Mardia Chemicals (supra)*, whereby the borrower is permitted to make representation/objection to the secured creditor against

classification of his account as NPA. He can also object to the amount due if so advised. u/s 13(3-A), if the bank/FI comes to the conclusion that

such objection is not acceptable, it shall communicate within one week the reasons for non-acceptance of the representation/objection.

* * * * *

... if the DRT as an Appellate Authority, after examining the facts and circumstances of the case comes to the conclusion that any of the measures

u/s 13(4) taken by the secured creditor are not in accordance with the provisions of the Act, it may, by order, declare that the recourse taken to

any one or more measures is invalid, and, consequently, restore possession to the borrower and can also restore management of the business of

the borrower. Therefore, the scheme of Section 13(4) read with Section 17(3) shows that if the borrower is dispossessed, not in accordance with

the provisions of the Act, then the DRT is entitled to put the clock back by restoring the status quo ante.

16. In the case of *Mardia Chemicals Ltd. Vs. Union of India (UOI) and Others Etc. Etc.*, , Supreme Court declared the condition of pre-deposit

under unamended Section 17(2) bad, rendering the remedy illusory as the condition was imposed while approaching the adjudicating authority at

the first instance and not in appeal. That was a stage where no provision like Section 13(3-A) was inserted. There was no such provision as

Section 13(3-A) to submit objection pursuant to Section 13(2) notice. In absence of any such determination by secured creditor accepting or

rejecting such application, as action u/s 13(4) used to be taken, the Supreme Court held the same violative of rules of natural justice and the other

reasons as mentioned at para-64 of the judgment (Mardia Chemicals). In view of the said decision of Supreme Court in Mardia Chemicals case,

Section 13(3-A) was inserted making it mandatory to secured creditor to entertain an objection and communicate reasons to borrower for non-

acceptance of objection.

17. The Supreme Court decisions in Vijay Prakash D. Mehta v. Collector of Customs 1998 (4) SCC 402 and Shyam Kishore and others Vs.

Municipal Corporation of Delhi and another, , were noticed by Supreme Court in Mardia Chemicals case, wherein it observed that requirement of

pre-deposit of any amount at first instance of proceeding is not found in those two decisions. All those cases related to appeals. In the aforesaid

case of Vijay Prakash D. Mehta (supra), Supreme Court held that right to appeal is neither an absolute right nor an ingredient of natural justice,

which principles are to be followed in judicial and quasi-judicial proceeding, but it is a statutory right, which can be circumscribed by conditions.

Similar provision was upheld by Supreme Court in Sam Kishore's case (supra), without there being any provision for waiver of condition.

18. The 2nd proviso to Section 18(1) mandates the Appellate Tribunal not to entertain an appeal unless the borrower deposits with the Appellate

Tribunal 50% of the debt amount, which can be waived upto 25% under 3rd proviso. The sentence ""as claimed by secured creditors or

determined by Debts Recovery Tribunal, whichever is less"", though presupposes that there is a claim by secured creditor, but in all cases it cannot

be presumed that there shall be a determination by the Tribunal. It has been noticed that in all cases there may not be a determination by the

Tribunal, as action u/s 13(4) of NPA Act can be taken independently without taking recourse u/s 19 of the DRT Act, 1993.

In all cases it is not necessary that the borrower will dispute the claim. It may not dispute the claim, but while taking action u/s 13(4), if such action

is not in accordance with the Act or rules, the borrower may object to the same by filing a petition u/s 17. In such case, the question of

determination of dues by the Tribunal u/s 17 does not arise, which is only supposed to determine whether any of the action taken u/s 13(4) is in

accordance with the Act and Rules. In such case, if an appeal is preferred u/s 18 of NPA Act, the aggrieved person cannot say that the Tribunal

has to determine the claim, even though the borrower has not disputed such claim. Similarly, in a case where appeal u/s 18 is preferred against

interim order or for non-grant of interim order, the aggrieved persons, while praying for interim injunction to stall the proceeding, cannot allege that

no determination has been made by DRT with regard to the claim. It cannot blow hot and cold by moving in appeal u/s 18 against interim order or

non-grant of interim order, for the purpose of getting an appropriate interim order in appeal u/s 18 and allege non-determination of claim by

Tribunal, which at best can be determined at the time of final hearing of the case, that too in a case where if any dispute is raised by party u/s 19 of

DRT Act, 1993 or bank files an application u/s 13(10) of NPA Act. Therefore, the effect and correct meaning to give to the sentence ""the amount

of debt due from him as claimed by secured creditor or determined by Debts Recovery Tribunal, whichever is less"" as mentioned under 2nd

proviso to Section 18(1), a harmonious reading has to be made, which may fit in all situations. Therefore, we hold that the 2nd proviso to Section

18(1) stipulates pre-deposit of 50% due as claimed by the secured creditor or determined by the Debts Recovery Tribunal, whichever is less, and

in absence of a determination by the Tribunal, the person has to deposit 50% of the amount claimed by the secured creditor, subject to waiver

under 3rd proviso to Section 18(1). If any person, after notice u/s 13(2) has deposited any amount, including amount, if any, deposited during

Section 13(4) stage or pendency of appeal u/s 17, it can be brought to the notice of the Appellate Tribunal for adjusting such amount for the

purpose of determination of amount of claim for the purpose of 2nd proviso to Section 18(1). Similarly, it is also open to any aggrieved person to

show that another aggrieved person, for same action taken by secured creditor, while preferring appeal u/s 18 against common order, has

deposited certain amount and in such case, the Appellate Tribunal will take into consideration such amount for the purpose of determination of

amount to be paid under 2nd proviso to Section 18(1) or for waiver under 3rd proviso to Section 18(1).

As we find no ambiguity or illegality in the 2nd or 3rd proviso to Section 18(1) of NPA Act, we hold the said provision intra vires and reject the contention as raised by the petitioners.

19. So far as individual cases are concerned, in the first set of cases, we have noticed that there was a delay of 119 days in preferring appeal u/s

18, which was condoned by Appellate Tribunal by order dated 28th Jan., 2008, as challenged by Indian Bank in W.P. No. 3958/08. By the said

very order, the borrower, M/s.Hamosons Apparels Pvt. Ltd., having asked to deposit Rs. 2.5 Crores, the borrower lended the said order in W.P.

No. 5172/08. Conditional interim order against the same very cause of action having allowed till 6th march, 2008, by another order dated 26th

June, 2008, Indian Bank has challenged the same in W.P. No. 3959/08.

Now it is settled law that the Appellate Tribunal has jurisdiction to condone the delay, if satisfied, on the grounds shown by the appellant. Though it

is alleged by the Bank that the appeal was hopelessly barred and stated that it was not filed within the period of limitation, we find that the limitation

of 30 days prescribed for preferring appeal to be counted from the date of receipt of the order.

The Indian Bank initially filed original application before the Tribunal for recovery of Rs. 3,05,09,000/= in O.A. Nos. 1214/01, 1217/01, 1371/01

and 53/00. By interim order, the Appellate Tribunal having asked the borrower to deposit a sum of Rs. 2.50 Crores out of the claim made by the

bank, the ground for delay having properly explained, we find no illegality in the order condoning the delay or asking the borrower to deposit the

amount of Rs. 2.5 Crores. We have noticed that the borrower, M/s.Hamosons Apparels Pvt. Ltd., originally paid certain amount with the bank,

but having challenged the conditional order, has not paid the balance amount. Pursuant to this Court's interim order, it has deposited further sum of

Rs. 2.35 Crores, which was accepted by the bank and kept in an interest bearing no lien account. By order dated 25th April, 2008, having noticed

the intention of the borrower company (M/s.Hamosons Apparels Pvt. Ltd.), and that it wanted to make one-time settlement with the Bank, notice

was issued to the Bank. However, we are not expressing any opinion with regard to one-time settlement, though give liberty to the parties to

negotiate the matter. However, as we find that auction of secured asset was not

confirmed because of the interim order passed by this Court, we direct that the said sale in favour of the auction purchased be not confirmed till the appeal is decided by the Appellate Tribunal on merits.

20. So far as the second set of cases filed by Ms. S.Chitra is concerned, the Appellate Tribunal, by order dated 10th April, 2007, directed the

borrower to deposit a sum of Rs. 10 lakhs in two spells. This was affirmed by this Court in C.R.P. No. 1269/07. The amount having not

deposited, the Appellate Tribunal, by order dated 7th May, 2007, dismissed the appeal preferred by Ms. S.Chitra, u/s 18 of NPA Act. The said

order has been challenged in C.R.P. (PD) No. 1519/07, while questioning the validity of proviso to Section 18(1) in W.P. No. 17009/07. In view

of our decision above, the aforesaid civil revision petition and the writ petition cannot be allowed and they are accordingly dismissed.

It further appears that two original application Nos. 42/05 and 278/04 were preferred by the Bank before the Debts Recovery Tribunal,

Coimbatore. In the said case, the borrower, Ms. S.Chitra, wanted to cross-examine the Manager of Syndicate Bank and to send certain

documents for expert's opinion. The Tribunal, by its order dated 27th Sept., 2007, having noticed the earlier order passed by this Court in C.R.P.

No. 1269/07, rejected the applications for cross-examination and refused to send the documents for expert's opinion and fixed the case for

hearing. Against the said order, another revision application, C.R.P. (PD) No. 3301/07 has been preferred by the borrower, Ms. S. Chitra. On

behalf of the borrower, Ms. S. Chitra, the petitioner in the second set of cases, learned Counsel for the petitioner has failed to make out any case

for fresh cross-examination of the Manager of Syndicate Bank or sending the documents for expert's opinion and has also failed to show necessity

for such cross-examination or obtaining expert's opinion, the liability otherwise having not disputed, we are not inclined to interfere with the order

dated 27th Sept., 2007, passed by Debts Recovery Tribunal, Coimbatore, and dismiss C.R.P. (PD) No. 3301/07.

21. All the writ petitions and revision petitions are accordingly dismissed, but with observation of one-time settlement and confirmation of sale as

made with regard to the case of the borrower, M/s.Hamosons Apparels Pvt. Ltd. Consequently, connected miscellaneous petitions are also

dismissed. But there shall be no order as to costs.