

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF JANUARY, 2020

PRESENT

THE HON'BLE MR. JUSTICE ARAVIND KUMAR

AND

THE HON'BLE MR. JUSTICE E.S. INDIRESH

W.P. NO.36422/2018 (GM-DRT)

BETWEEN:

MR. RAJEEV CHANDRASEKHAR
S/O MR. M.K. CHANDRASHEKAR
AGED ABOUT 53 YEARS
RESIDING AT NO.64 DYNAMIC
HOUSE, CHURCH STREET
BENGALURU – 560 001.

...PETITIONER

(BY SRI. MRINAL SHANKAR, ADVOCATE)

AND:

- 1 . IFCI LIMITED
A COMPANY INCORPORATED
UNDER THE COMPANIES ACT
1956, HAVING ITS REGISTERED
OFFICE AT IFCI LIMITED
N.R. SQUARE, NO.3,
CUBBONPET MAIN ROAD,
BENGALURU – 560 002
REPRESENTED BY ITS
GENERAL MANAGER.
- 2 . INDIA PAGING SERVICES
LIMITED (IN LIQN)
A COMPANY INCORPORATED

UNDER THE COMPANIES ACT
1956, HAVING ITS OFFICE AT 1/1
PALACE ROAD,
BENGALURU – 560 004
REPRESENTED BY THE
OFFICIAL LIQUIDATOR
HIGH COURT OF KARNATAKA.

- 3 . BPL ENGINEERING LIMITED (IN LIQN)
A COMPANY INCORPORATED
UNDER THE COMPANIES ACT, 1956
HAVING ITS OFFICE AT 13/5
HOSUR ROAD BOMMANAHALLI
BENGALURU – 560 027 AND
AT 110, LALBAGH ROAD,
BENGALURU – 560 027
REPRESENTED BY THE OFFICIAL
LIQUIDATOR,
HIGH COURT OF KARNATAKA.
- 4 . BS REFRIGERATORS LIMITED
A COMPANY INCORPORATED
UNDER THE COMPANIES ACT
1956, HAVING ITS OFFICE AT
PLOT NO.1A & D, KADUGODI
SADARAMANGALA INDUSTRIAL
AREA, WHITEFIELD,
BENGALURU – 560 066
AND ALSO AT 2ND FLOOR,
NO.1/1, PALACE ROAD,
BENGALURU – 560 004
REPRESENTED BY ITS MANAGER.

...RESPONDENTS

(BY SRI. AVINASH B, ADVOCATE A/W
SRI. O.P. AGARWAL, ADVOCATE FOR R-1;
NOTICE TO R-2 TO R-4 ARE DISPENSED WITH)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF CONSTITUTION OF INDIA PRAYING TO CALL
FOR THE RECORDS OF R.A. NO.9/2018 ON THE FILE OF
THE LEARNED DEBTS RECOVERY APPELLATE TRIBUNAL,

CHENNAI AND RECORDS OR ORIGINAL APPLICATION NO.133/2002 ON THE FILE OF THE LEARNED DEBTS RECOVERY TRIBUNAL, BANGALORE CULMINATING IN THE ORDER DATED:20.07.2018 (ANNEXURE-A).

THIS PETITION COMING ON FOR ORDERS THIS DAY, **ARAVIND KUMAR J**, MADE THE FOLLOWING:

ORDER

In this writ petition orders passed by the Debt Recovery Appellate Tribunal (for Short 'DRAT'), Chennai in R.A.No.9/2018 dated 20.07.2018- Annexure-A confirming the order passed by the Debt Recovery Tribunal (For short 'DRT') in O.A.No.113/2002 dated 31.05.2016- Annexure-B has been called in question. Parties are referred to as per the rank before DRAT. First respondent filed an application for recovery of money of more than Rs.50 Crores against respondent Nos.2 to 4 in O.A.No.113/2002. Said application came to be allowed by order dated 31.05.2016- Annexure-B holding that liability of the defendants is joint and several.

2. Being aggrieved by the said order petitioner herein filed R.A.No.9/2018 before DRAT contending that appellant cannot be fastened with liability as he has already resigned from the directorship of second respondent-company and this fact namely, the fact of petitioner tendering resignation was within knowledge of first respondent herein and was never objected to. It was also contended that demand was made only against principal borrowers and guarantors and at no point of time there was demand made against the petitioner. It was further contended by the learned counsel appearing for the petitioner that there is no privity of contract between the petitioner and first respondent in respect of loan borrowed by the second respondent -company and by virtue of the decree passed claim against the petitioner is being pursued by the first respondent as a pressure tactics by taking coercive steps. As such, he sought for allowing the appeal and absolving the petitioner of liability.

3. Appellate tribunal after considering the rival contentions raised at the bar, by its order dated 20.07.2018 has rejected the contentions so raised by arriving at a conclusion that at the time of availment of loan there had been two directors in the second respondent-company and it was the petitioner who had signed all the papers on behalf of the second respondent –company for obtaining loan and in addition to it he further signed a letter of undertaking on 01.07.1998 and in the background the resignation tendered by the petitioner to the post of director of second respondent –company on 10.01.2001, his liability would not be absolved and on these lines dismissed the appeal by order dated 20.07.2018-Annexure-A. Hence, this writ petition.

4. We have heard the arguments of Sri.Mrinal Shankar, learned counsel appearing for petitioner and Sri. Avinash B, learned counsel appearing on behalf of Sri.O.P.Agarwal for respondent No.1 and we have perused the records.

5. It is the contention of Sri.Mrinal Shankar, learned counsel appearing for petitioner that writ petitioner cannot be fastened with any liability, that too, based on an undertaking dated 01.07.1998-Annexure-G, inasmuch as, the said conditions stipulated in the undertaking does not fasten any liability on the petitioner to the loan borrowed by the second respondent-company or the liability of the petitioner to be co-extensively that of second respondent as it is not a contract of guarantee. As such, he contends that recovery certificate issued by the DRT as affirmed by the DRAT is erroneous and petitioner is liable to be absolved of his liability.

5.1. He would elaborate his submission by contending that even otherwise petitioner having tendered his resignation on 10.01.2001 came to be approved by the Board of Directors of second respondent-company on 29.06.2001 in which meeting the representative of the secured creditor was present and as such there is deemed consent to have been given

by the secured creditor accepting the resignation of the petitioner and thereby there is no violation of the conditions of undertaking as sought to be made out by the secured creditor-Bank. On this ground also he seeks for liability of the petitioner being absolved.

6. Per contra Sri.Avinash B, learned counsel appearing for respondents would support the orders passed by the tribunal and seeks for dismissal of the writ petition.

7. Having heard the learned Advocates appearing for parties and on perusal of the orders passed by the Debt Recovery Tribunal as affirmed by the DRAT we notice that on 13.06.1997 a loan agreement came to be executed by the second respondent-firm in favour of the first respondent for a sum of Rs.42 Crores and same was signed and executed by the petitioner herein as director of said company. In fact on 02.07.1997 respondent Nos.3 and 4 have executed corporate guarantees for the said loan which was accompanied by a letter of undertaking given

by the petitioner on 01.07.1998 (Ex.A.10) whereunder it has been agreed by the petitioner that in consideration of the facilities granted to respondent No.2 and in pursuance of the provisions contend in Section 7.5 of Article VII of General Conditions which forms part of the loan agreement that he would undertake to abide by the conditions stipulated in the said undertaking. We would not burden our judgment with said conditions, inasmuch as, at paragraph 6 of the order of the DRAT, same has already been extracted and as such extraction of said conditions would only be repetition. However, it would be apt and appropriate to notice at this juncture itself that secured creditor in order to fasten the liability on petitioner herein had pressed into service clause (1) or condition No.1 as found in the letter of undertaking dated 01.07.1998 (Ex.P.10) as a ground. In other words to contend that liability of the petitioner is also co-extensive with that of principal borrower as well as guarantors. As such it would suffice if condition No.1 is extracted. It reads;

“(i) That except under the provisions of the Companies Act, 1956 and during the term or terms of my office approved by the Central Government from time to time, I shall not resign from my office without your prior written consent during the term or terms of my office”.

8. Based on the above undertaking proceedings came to be initiated by the first respondent –Bank herein against principal borrower as well as guarantors including petitioner herein by filing an application before the jurisdictional tribunal in O.A.No.113/2002. The defense set up by the petitioner before DRT & DRAT was two fold as already noticed hereinabove namely, **(i)** the letter of undertaking dated 01.07.1998 given by petitioner under the loan agreement dated 13.06.1997 is not a contract of agreement for guarantee; and **(ii)** he had resigned from directorship of the second respondent-company on 10.01.2001 and said resignation had been placed before the Board of Directors of second respondent company in its meeting held on 23.03.2001 in which meeting the representative of secured creditor was present and as such there is

deemed approval on sanction or permission granted to the petitioner to resign from second respondent-company, which was rightly so, not accepted by tribunal as well as DRAT.

9. Express condition which the petitioner had undertaken to abide by during subsistence of the loan agreement was to the effect that before resigning or tendering resignation as director from the board of directors of second respondent-company he would obtain express permission or written permission or written consent from the secured creditors. Undisputedly, there is no such written permission or approval granted by first respondent and in fact it was never sought for by the petitioner. Mere presence of the representative of the first respondent in the meeting of the board of directors of the second respondent-company held on 23.03.2001 wherein resignation letter of the petitioner came to be accepted would not partake the character of the first respondent-Bank having given consent to the resignation letter of petitioner or same

having been accepted by the secured creditor. The consent to permit the petitioner to resign from Board of Directors of the second respondent-company ought to have been a written permission or written consent from first respondent herein and it is this undertaking which was given by the petitioner to first respondent-Bank having not been complied, first respondent- bank as rightly contended before the tribunal as well as the DRAT liability of the petitioner would be co-extensive with that of the liability of the principal borrower as well as guarantors namely, respondent Nos.2 to 4. As such, contention raised in this regard by the learned counsel appearing for petitioner cannot be accepted.

10. The other contention which came to be raised was to the effect that undertaking given by the petitioner would not partake the character of contract of guarantee and thereby petitioner would not be liable to discharge the liability of the second respondent-company, inasmuch as the agreement should be express and it cannot be inferred or implied, which

contention cannot be accepted for the simple reason that in clause 2(v) of the undertaking letter dated 01.07.1998- Annexure-G, it is specifically undertaken by the petitioner that breach of the terms of the conditions namely, condition Nos.(i) to (v) therein would be deemed to be breach of conditions contained in the rupee loan agreement dated 13.06.1997 and by virtue of same first respondent –Bank was at liberty to take such action against petitioner and/or the company as may be deemed fit. It is in this background secured creditor had initiated the proceedings against petitioner for recovery of debt due to it against respondent Nos.2 to 4 and petitioner herein. As such, we affirm the finding recorded by the DRAT under the impugned order dated 20.07.2018-Annexure-A as there is no error or illegality in the said order.

For the reasons aforestated, we proceed to pass the following ;

ORDER

- (1) Writ petition is hereby dismissed.

- (2) Order dated 20.07.2018-Annexure-A
passed by DRAT in RA.No.9/2018
(arising out of O.A.No.113/2002 on
the file of DRT, Bangalore) stands
affirmed.
- (3) Costs made easy.

**SD/-
JUDGE**

**SD/-
JUDGE**

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