

Harshlok Motors India Pvt. Ltd. & Ors. v. Kotak Mahindra Bank Ltd.

Harshlok Motors India Pvt. Ltd. & Ors.

...Appellant

Kotak Mahindra Bank Ltd.

...Respondent

Case No: Appeal on Diary No. 845/2023

Date of Judgement: 05/10/2023

Judges:

Mr. Justice Ashok Menon, Chairperson

For Appellant: Mr. Puneet Gogad, i/b Mr. M.M. Avhad, Advocate.

For Respondent: Mr. R.L. Motwani, Advocate.

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Facts:

This is an Interim Application (I.A.) No. 653/2023 (WoD) in Appeal on Diary No. 845/2023, filed by Harshlok Motors India Pvt. Ltd. & Ors. (Appellants) against the order dated 28.04.2023 passed by the Debts Recovery Tribunal, Aurangabad (D.R.T.) in Securitization Application (S.A.) No. 53/2019. The Respondent is the Authorized Officer of Kotak Mahindra Bank Ltd. The D.R.T. had observed that there was no interim order of stay to protect the Appellants from the Respondent bank taking possession of the secured assets. The Respondent bank had issued a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) on 04.07.2018, demanding a total sum of ₹2,34,89,701.22 on account of three loan facilities. The Appellants

moved the D.R.T. when symbolic possession of the property was taken on 27.09.2018. Thereafter, an order under Section 14 of the SARFAESI Act was also obtained from the District Magistrate on 31.12.2018. On 04.02.2020, the D.R.T. directed the Appellants to deposit 25% of the amount demanded in the demand notice in two instalments, subject to which an interim order of stay was granted, protecting the Appellants from losing possession of the property. On 11.11.2022, the D.R.T. observed that the Appellants had paid only ₹40.85 lakhs towards the 25% directed to be paid, and the balance amount was paid towards dues on an unsecured loan. The D.R.T. directed the Appellants to make good the balance of 25% within two weeks, which the Appellants did not comply with. On 28.04.2023, the D.R.T. observed that there was no interim order in place preventing the Respondent bank from taking over possession of the property, as the earlier order to pay the balance of 25% was not complied with.

Arguments by the Appellants:

The Appellants' counsel, Mr. Puneet Gogad, submitted that subsequent to receiving the notice under Section 13(2), a sum of ₹27,28,160/- was paid to the bank directly, and in compliance with the D.R.T.'s direction, the Appellants have deposited a total sum of ₹57,96,000/- towards two facilities, the outstanding amount of which was demanded in the notice under Section 13(2). Mr. Gogad argued that the order dated 04.02.2020 was not properly interpreted by the D.R.T. in its subsequent orders of 11.11.2022 and 28.04.2023. The direction on 04.02.2022 was only to pay 25% of the amount as demanded in the notice, and the Appellants have already paid a total of ₹85,24,160/- towards the outstanding dues demanded. The Appellants produced their income tax returns, which indicated that they have little income except for the hiked income of Appellant No. 3 during the assessment year 2019-2020, which was attributed to the sale of property to raise the amount to pay the 25% as directed by the D.R.T. Mr. Gogad submitted that the business has been stopped, and the Appellants have no income derived from the business. He argued that the Appellants have been earnestly attempting to pay the amount, as evident from their payment of ₹27,28,160/- and the subsequent payment of

₹57,96,000/- . Mr. Gogad prayed that the amount to be deposited under Section 18(1) of the SARFAESI Act may be kept at a minimum of 25%.

Arguments by the Respondent Bank:

The Respondent bank was represented by Mr. R.L. Motwani, Advocate.

According to Mr. Motwani, the outstanding amount after deducting the payment made by the Appellants as of the date is ₹3.32 crores, and therefore, the Appellants may not be granted any concession in the matter of making the mandatory pre-deposit.

Court's Elaborate Opinions:

The Tribunal observed that the order dated 04.02.2020 was not properly interpreted by the D.R.T. in its subsequent orders of 11.11.2022 and 28.04.2023. The direction on 04.02.2022 was only to pay 25% of the amount as demanded in the notice, and the Appellants have already paid a total of ₹85,24,160/- towards the outstanding dues demanded. The Tribunal considered the latest judgment of the Hon'ble Supreme Court of India in Sidha Neelkanth Paper Industries Pvt. Ltd. & Ano. vs. Prudent ARC Ltd & Ors., 2023 OnLine SC 12, which held that the threshold amount for calculating the pre-deposit should be the amount demanded under Section 13(2) as long as the property has not been put up for sale or sale has not taken place, and the SARFAESI measures only up to the stage of Section 14 order have been challenged by the Appellants. Based on the above judgment, the Tribunal took the amount mentioned in the notice under Section 13(2), i.e., ₹2,34,89,701.22, as the threshold amount. Considering the attempt made by the Appellants to pay the amount and the fact that they do not have substantial income from the sources as revealed from the income tax returns, the Tribunal granted the Appellants a concession and determined the amount to be paid as ₹80 lakhs. The Tribunal directed the Appellants to deposit ₹8 lakhs by way of a demand draft on the same day, and the balance of ₹72 lakhs shall be payable in three equal instalments within the gap of two weeks each, with specific dates mentioned in the order. The Tribunal warned that default in payment of any of the instalments shall entail the dismissal of the appeal without any

further reference to the Tribunal. In view of the payment of ₹8 lakhs towards the pre-deposit amount, the taking over of possession of the secured assets shall stand deferred till the next date of hearing. The Tribunal directed the Respondent's counsel to inform the authority who intends to take possession accordingly. The Tribunal ordered that the amounts deposited shall be invested in term deposits in the name of the Registrar, DRAT, Mumbai, with any nationalized bank, initially for 13 months, and thereafter to be renewed periodically.

Cases Cited:

Sidha Neelkanth Paper Industries Pvt. Ltd. & Ano. vs. Prudent ARC Ltd & Ors., 2023 OnLine SC 12

Sections and Laws Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act)

- Section 13(2) (Notice of Demand)
- Section 14 (Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset)
- Section 18(1) (Right to appeal)

Conclusion:

Based on the above analysis, the Tribunal disposed of the I.A. No. 653/2023 with the following directions:

The Appellants shall deposit ₹8 lakhs by way of a demand draft on the same day. The balance of ₹72 lakhs shall be payable in three equal instalments within the gap of two weeks each, with specific dates mentioned in the order. Default in payment of any of the instalments shall entail the dismissal of the appeal without any further reference to the Tribunal. The taking over of possession of the secured assets shall stand deferred till the next date of hearing. The Respondent's counsel shall inform the authority who intends to take possession accordingly. The amounts deposited shall be invested in term deposits

in the name of the Registrar, DRAT, Mumbai, with any nationalized bank, initially for 13 months, and thereafter to be renewed periodically. The Respondent bank is at liberty to file a reply in the Appeal with an advance copy to the other side. The matter is posted on 20.10.2023 for reporting compliance regarding the payment of the first instalment.