

# **M/s Tauschen Tradelink Pvt. Ltd. & Ors. v. Indian Bank & Anr.**

M/s Tauschen Tradelink Pvt. Ltd. & Ors.

**...Appellant**

Indian Bank & Anr.

**...Respondent**

**Case No: Appeal on Diary No.1389/2023**

**Date of Judgement: 16/08/2023**

**Judges:**

Mr Justice Ashok Menon, Chairperson

**For Appellant: Mr Rajesh Nagory, i/b Mr Niraj Ashar, Advocate.**

**For Respondent: Ms Vaishali Bhilare, Mr. Hitesh Phulwani, Advocate.**

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**Facts:**

This case pertains to an appeal filed by M/s Tauschen Tradelink Pvt. Ltd. & Ors. (Appellants) against an order dismissing Securitisation Application (S.A.) No. 232/2023 by the Debts Recovery Tribunal-I, Ahmedabad (D.R.T.), vide order dated 15.07.2023. The Appellants had approached the Hon'ble High Court of Gujarat for orders to stall the intended taking over of physical possession of the property on 16.07.2023 by the Respondent Bank (Indian Bank & Anr.). The Hon'ble High Court, while disposing of the petition filed by the Appellants, directed them to approach the Debts Recovery Appellate Tribunal, Mumbai, with an appeal challenging the impugned order and granted interim relief against the Respondent Bank, preventing them from taking possession of the secured assets (a residential house) until

17.08.2023. The Appellants had filed the aforementioned S.A. under Section 17(1) of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act), challenging the measures taken by the Respondent Bank, including the classification of the debt as a Non-Performing Asset (NPA), the demand notice under Section 13(2) demanding a sum of ₹3,15,60,186/-, and the consequent steps under Section 13(4) of taking symbolic possession of the property. The property was sold for ₹2,26,50,000/- in a public auction held on 15.06.2023, and the sale certificate was issued on 22.06.2023 in favor of Respondent No. 2, being the highest bidder. The possession was yet to be handed over to the auction purchaser. The Appellants challenged the sale primarily on the grounds that the valuation was insufficient, another adjacent property was valued higher, and that a 30-day notice was not served before the sale was conducted. The Presiding Officer of the D.R.T. did not find favor with the contentions raised by the Appellants regarding the classification of the NPA and the subsequent SARFAESI measures, as well as the other grounds raised.

### **Arguments by the Parties:**

#### **Arguments by the Appellants:**

The Appellants contended that they had a prima facie case and were in a difficult financial position, having no means to pay the amount. They requested the Debts Recovery Appellate Tribunal to invoke its discretion under the third proviso of Section 18(1) of the SARFAESI Act and keep the mandatory pre-deposit at a minimum of 25% of the amount due.

#### **Arguments by the Respondent Bank:**

The Respondent Bank's counsel vehemently opposed the application, stating that there were no grounds to sustain the S.A. and no reasons for granting any indulgence to reduce the amount to 25% of the debt. The counsel submitted that the issue regarding the classification of the NPA had been dealt with in the impugned order, and therefore, the contentions raised by the Appellants were not sustainable. According

to the Respondent Bank, the outstanding amount as of the date was ₹3.25 crores. Since the Appellants were challenging all the SARFAESI measures and the sale, the amount due as of the date of filing the appeal, inclusive of interest, should be taken for the purpose of determining the payment of the pre-deposit. The Respondent Bank's counsel submitted that the Appellants should be directed to deposit nothing less than 50% of the amount due from them.

#### **Arguments by Respondent No. 2 (Auction Purchaser):**

The counsel for Respondent No. 2 (the auction purchaser) also vehemently opposed the application, stating that there were no grounds to sustain the S.A.

#### **Court's Elaborate Opinions:**

The Debts Recovery Appellate Tribunal considered the entire facts and circumstances of the case and found that although the Appellants may have projected an arguable case regarding the valuation of the property and the insufficiency of the notice of sale, they were not able to establish that they were under any financial strain. The Tribunal directed the Appellants to deposit a sum of ₹1,30,00,000/- as a pre-deposit. The Appellants' counsel undertook to deposit a demand draft of ₹5,00,000/- by 17.08.2023 and ₹10,00,000/- within a week, i.e., on or before 23.08.2023. The balance amount of ₹1,15,00,000/- was to be paid in two equal installments within a gap of two weeks each. The first installment of ₹57,50,000/- was payable on or before 06.09.2023, and the second installment of ₹57,50,000/- was payable on or before 20.09.2023. Upon payment of ₹5,00,000/-, there would be an interim order preventing the Respondent from taking over possession of the secured assets until the next date of hearing. In default of payment, the Appeal would stand dismissed without any further reference to the Tribunal. The amount was to be deposited in the form of a Demand Draft with the Registrar of the Debts Recovery Appellate Tribunal, Mumbai. As and when the said amounts were deposited, they were to 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 was at liberty

to file a reply in the Appeal with an advance copy to the other side.

**Cases Cited:**

None

**Sections and Laws Referred:**

Section 17(1) of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act)

Section 13(2) of the SARFAESI Act

Section 13(4) of the SARFAESI Act

Section 18(1) of the SARFAESI Act (Third Proviso)

In summary, the Debts Recovery Appellate Tribunal directed the Appellants to deposit a sum of ₹1,30,00,000/- as a pre-deposit in installments, with an interim order preventing the Respondent Bank from taking over possession of the secured assets until the payment of the first installment. The Tribunal considered the Appellants' arguments regarding their financial strain but did not find them convincing. The Respondent Bank and the auction purchaser vehemently opposed the Appellants' contentions.