M/s. Wateredge Hospitality Pvt. Ltd. & Ors. v. State Bank of India

M/s. Wateredge Hospitality Pvt. Ltd. & Ors.

…Appellant

State Bank of India

…Respondent

Case No: Misc. Appeal No. 97/2023

Date of Judgement: 20/11/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Herbert A. Noronha, Advocate.

For Respondent: Ms. Vinaya Chavan, i/b M/s. Vinaya Chavan & Co., Advocate.

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Facts

This is an order passed by the Debts Recovery Appellate Tribunal (DRAT) at Mumbai in an application filed by M/s. Wateredge Hospitality Pvt. Ltd. & Ors. (Appellants) under Section 18(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) seeking waiver of pre-deposit to entertain their appeal against the State Bank of India (Respondent Bank). Earlier, vide order dated 11/01/2023, DRAT had directed the Appellants to deposit ₹3 crores in two equal instalments as pre-deposit under Section 18(1) to get stay on further SARFAESI measures initiated by the Respondent Bank. The Appellants challenged this DRAT order before the Hon’ble High Court of Gujarat in SCA No.

4405/2023. Vide order dated 06/09/2023, the High Court quashed and set aside DRAT's order with a direction for fresh consideration of the waiver application.

Arguments by the Parties

The Appellants argued that their hotel business failed due to CRZ Regulations preventing completion of the proposed hotel construction. They requested the Respondent Bank to restructure the loan due to financial strain which was evident from their income tax returns.

Court's Elaborate Opinions

Condonation of Delay Application

The High Court observed that DRAT failed to first decide the Appellants' application for condonation of delay in filing the appeal before considering the waiver application under Section 18(1). However, DRAT referred to the Bombay High Court's contrary view in M/s Deluxe Cotton Corporation v. Bank of Baroda that an appeal along with a delay condonation application amounts to 'entertaining the appeal' itself, attracting the requirement of pre-deposit under Section 21 of the SARFAESI Act. DRAT noted that before the Gujarat High Court's order, it had already entertained and allowed the delay condonation application after the Appellants deposited the full pre-deposit amount. This order was upheld by the Gujarat High Court vide order dated 17/10/2023 in SCA No. 14688/2023, subject to costs.

Prima Facie Case

DRAT had earlier observed that it was not enthused by the prima facie case in favour of the Appellants while challenging the SARFAESI measures of the Respondent Bank. However, considering the Appellants' financial strain evidenced by their income tax returns and failure of hotel business due to CRZ Regulations, DRAT found the existence of a prima facie case allowing it to reduce the pre-deposit from 50% to 25% under the third proviso to Section 18(1) of the SARFAESI Act.

Threshold Amount for Pre-deposit Calculation

Referring to the Supreme Court's decision in Sidha Neelkanth Paper Industries Pvt. Ltd. v. Prudent ARC Ltd., DRAT held that the threshold amount for calculating the pre-deposit should be the amount mentioned in the Section 13(2) demand notice, which was ₹97,187,207/- in this case. Accordingly, 50% of ₹97,187,207/- was ₹48,593,603.50, and 25% was ₹24,296,801.80. Since DRAT had directed the Appellants to deposit ₹3 crores (over 30% of the demand amount), it found no reason to alter the pre-deposit amount.

Sections and Laws Referred

Section 18(1) of the SARFAESI Act – Power to Appellate Tribunal to grant stay of the order of the Secured Creditor subject to conditions including pre-deposit.

Section 13(2) of the SARFAESI Act – Demand Notice by Secured Creditor.

Section 20 of the SARFAESI Act – Appeal to the Appellate Tribunal.

Section 21 of the SARFAESI Act – Deposit of amount of debt due, for entertaining appeal.

Cases Cited

M/s Deluxe Cotton Corporation & Ors. v. Bank of Baroda (2016 SCC OnLine Bom 2629) – Bombay High Court's view on entertaining appeal along with delay condonation application.

Sidha Neelkanth Paper Industries Private Limited & Anr. v. Prudent ARC Limited & Ors. (2023 SCC OnLine SC 12) – Supreme Court's decision on threshold amount for pre-deposit calculation.

Conclusion

Based on the above analysis, DRAT concluded that there was no need for further directions regarding pre-deposit already made by the Appellants. It directed the Respondent Bank to file a reply to the appeal and get ready for hearing on 07/02/2024. The SARFAESI measures were stayed till the hearing of the appeal.