Tuffware Industries & Ors. v. Union Bank of India & Anr.

Tuffware Industries & Ors.

…Appellant

Union Bank of India & Anr.

…Respondent

Case No: Appeal on Diary No. 1872/2023

Date of Judgement: 13/11/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Dinesh Purandare along with Mr Gurang Kinkhabwala & Mr Puneet Gogad, i/b Ms Mumtaz Khan, Advocate.

For Respondent: Mr Rajesh Nagory along with Mr Ayush Kothari, i/b Mrs. Uma Fadia, Mr Umesh Shetty along with Mr Bhavin Gada, i/b Ms Pratibha Mehta, Advocate.

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Facts:

Tuffware Industries (Appellant 1) is a partnership firm engaged in manufacturing and export of stainless steel products. Appellants 2-5 are partners of the firm. The Appellants were banking with Union Bank of India (Respondent 1) since 1995. Their business was severely affected by the 2008 global recession, leading to delays in debt repayment. The Respondent Bank allegedly charged excessive interest rates violating RBI guidelines. The debt doubled from ₹8.25 crores in 2010 to ₹16.35 crores by 2014. On 28/10/2016, the Respondent Bank issued a demand notice under Section 13(2) of the SARFAESI Act demanding ₹18.27 crores as outstanding dues. The Appellants challenged the demand notice stating that specific notices were not issued to

Appellants 2-5, the option of redemption under Section 13(8) was not provided, and the breakup of interest was not detailed as required under Section 13(3). The Respondent Bank took symbolic possession of the secured assets. Attempts to settle the debt through negotiations failed. The Respondent Bank initiated e-auction proceedings against the Appellants' property on 01/09/2022. The Appellants filed Securitisation Application (S.A.) challenging the auction notice. Interim relief was sought through I.A. No. 2373/2022 but dismissed on 26/10/2022. The Appellants approached DRAT in Misc. Appeal (Diary) No. 1288/2022, which is pending. The Respondent Bank sold the secured asset to M/s AIRPAC Filters & Systems Pvt. Ltd. (Respondent 2) for ₹8.53 crores and issued a sale certificate on 03/11/2023. The Respondent Bank obtained an order from the District Magistrate, Palghar, for taking physical possession of the secured assets. A third-party creditor of Appellants 2-5 invoked Section 95 of the IBC, and an interim moratorium under Section 96 came into effect from 10/11/2022. The Appellants obtained a stay order from the District Magistrate on 06/12/2022, which was later quashed by the Bombay High Court in Writ Petition No. 1422/2023 on 29/03/2023. The Supreme Court dismissed the Appellants' SLP No. 7132/2023 against the High Court order on 13/04/2023. The Appellants amended the S.A. to implead the auction purchaser (Respondent 2) and challenge the auction sale and issuance of the sale certificate. The Appellants filed I.A. No. 1240/2023 seeking a declaration that, due to the IBC moratorium under Section 96, no further action could be taken against the secured assets, including taking physical possession and handing it over to the auction purchaser. The DRT dismissed I.A. No. 1240/2023, observing that since the sale certificate was issued before the IBC proceedings and the entire debt was satisfied through the auction sale, Section 96 of the IBC would not apply. The Appellants have challenged the dismissal of I.A. No. 1240/2023 in the present appeal, and an application for waiver of mandatory pre-deposit under Section 18(1) of the SARFAESI Act has been filed.

Arguments by Parties:

Appellants' Arguments:

The demand notice under Section 13(2) is illegal and suffers from infirmities, as specific notices were not issued to Appellants 2-5, the option of redemption under Section 13(8) was not provided, and the breakup of interest was not detailed as required under Section 13(3). The Respondent Bank failed to provide the option of redemption contemplated under Section 13(8) of the SARFAESI Act. In view of the operation of Section 96 of the IBC, no further action can be initiated against the secured assets or the loan account, including taking physical possession of the property and handing it over to the auction purchaser, as long as the moratorium is in force. The order passed by the District Magistrate on 11/01/2019 is concerning the "debt" of the Appellants towards the Respondent Bank and falls under Section 96(1)(b)(i) of the IBC. The proposed SARFAESI measures of taking physical possession under Section 14 flow from the procedure to recover the debt, and the fact that the property has been sold does not change the nature of the recovery process. Relying on the Bombay High Court's decision in Keystone Constructions vs. State Bank of India, the Appellants argued that the DRT's prima facie determination of the debt due in an interlocutory proceeding under Section 17 of the SARFAESI Act would constitute the amount of debt due for the purpose of the second proviso to Section 18(1). Relying on the Supreme Court's decision in ITC Limited vs. Blue Coast Hotels Limited & Ors., the Appellants contended that since the creditor did not have actual possession but only constructive or symbolic possession, the transfer of the secured asset cannot be construed as a complete transfer under Section 8 of the Transfer of Property Act. Therefore, the entire interest in the property could not pass to the auction purchaser, and the creditor remained as such.

Respondent Bank's Arguments:

The amount due from the Appellants, inclusive of interest, is ₹57.19 crores, and the Appellants are liable to pay 50% of that amount as a pre-deposit.

In the pending Misc. Appeal (Diary) No. 1288/2022, the Appellants have admitted that an amount of ₹24.42 crores is due and payable by them.

Respondent 2 (Auction Purchaser)'s Arguments:

(No specific arguments mentioned in the order)

Court's Elaborate Opinions:

The District Magistrate's act of passing an order under Section 14 of the SARFAESI Act is a ministerial act and cannot be delayed, as held in NKGSB Co-operative Bank Ltd. vs. Subir Chakravarty and Balkrishna Rama Tarle (Dead through LRs) & Ano. vs. Phoenix ARC Pvt. Ltd. & Ors. In the present case, the auction purchaser had paid the entire sale consideration before the filing of the IBC proceedings, and the order of the District Magistrate was also prior in time. On confirmation of the sale and receipt of the entire sale consideration, it cannot be said to be an incomplete sale. The moratorium under Section 96 of the IBC comes into effect subsequently and would not affect the sale, as per Indian Overseas Bank vs RCM Infrastructure Ltd & Ano. The argument that there is a prima facie determination of the debt due by the DRT while dismissing the interlocutory application is not acceptable. The DRT's observation that there is no debt due was made concerning the application of the moratorium and not the determination of the debt. As per the Supreme Court's decision in M/s Sidha Neelkanth Paper Industries Pvt. Ltd. & Ano. vs. Prudent ARC Ltd & Ors, the sale consideration received on an auction sale cannot be adjusted towards the debt due as long as the debtor challenges the sale. When the SARFAESI measures, including the sale, are challenged, the debt due would be the entire amount inclusive of interest. Considering the entire facts and circumstances, the Appellants were directed to deposit a sum of ₹20 crores as a pre-deposit, out of which ₹1.5 crores had already been deposited. The balance of ₹18.5 crores was to be deposited in three instalments within specified dates.

Cases Cited:

Keystone Constructions vs. State Bank of India (Bombay High Court)

ITC Limited vs. Blue Coast Hotels Limited & Ors. (Supreme Court)

NKGSB Co-operative Bank Ltd. vs. Subir Chakravarty (Supreme Court)

Balkrishna Rama Tarle (Dead through LRs) & Ano. vs. Phoenix ARC Pvt. Ltd. & Ors. (Supreme Court)

Indian Overseas Bank vs RCM Infrastructure Ltd & Ano. (Supreme Court)

M/s Sidha Neelkanth Paper Industries Pvt. Ltd. & Ano. vs. Prudent ARC Ltd & Ors (Supreme Court)

Sections and Laws Referred:

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

- Section 13(2): Demand notice
- Section 13(3): Requirements for demand notice
- Section 13(8): Option of redemption
- Section 14: Taking possession of secured assets
- Section 17: Interlocutory orders
- Section 18(1): Appeal to DRAT (second proviso on pre-deposit)

Insolvency and Bankruptcy Code, 2016 (IBC)

- Section 95: Initiation of insolvency resolution process for individuals
- Section 96: Interim moratorium

Transfer of Property Act, 1882

- Section 8: Operation of transfer