

**BEFORE THE DEBTS RECOVERY**  
**APPELLATE TRIBUNAL, AT: MUMBAI**

**Present : Mr. Justice Ashok Menon, Chairperson**

**I.A. No. 429/2023 (WoD)**

**In**

**Appeal on Diary No. 1056/2023**

**Between**

M/s. Oriana Diamonds & Ors.

... Appellant/s

V/s.

Authorized Officer,

... Respondent/s

Dhani Loan & Services Ltd., & Ors.

Mr. Dhruvit Chauhan, Advocate for Appellants.

Mr. T.N. Tripathi along with Ms. Somya, i/b M/s. T.N. Tripathi & Co., Advocate for Respondents.

**-: Order dated: 28/06/2023:-**

The matter is taken up for hearing by way of a Praecipe filed by the Appellants for seeking urgent relief. This Appeal is filed by the Applicants in Securitization Application (S.A.) No. 329/2022 on the files of Debts Recovery Tribunal–II, Ahmedabad (D.R.T.) wherein, the Ld Presiding Officer vide order dated 23.06.2023 declined to grant any interlocutory relief with regard to secured assets namely Shop Nos. 13 and 18. The reliefs have been granted with regard to the rest of the assets.

2. The Appellants are aggrieved and hence in Appeal. In order to entertain the Appeal, the Appellants will first have to cross the hurdle of making a pre-deposit as contemplated u/s 18 (1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“the SARFAESI Act”,

for short).

3. The demand notice was issued on 23.06.2021 u/s 13 (2) with regard to two financial facilities demanding a sum of 1, 62, 09, 068/- as of 27.05.2021. The 2<sup>nd</sup> demand notice was issued on 22.06.2021 for the remaining facilities granted to the Appellants demanding a sum of ₹ 1, 30, 31, 975.37/- as of 28.05.2021. The total amount which is claimed due from the Appellants would come to ₹ 2, 92, 41, 043.37/- since the notice was issued in the year 2021, subsequent interest has also accrued.

4. The Appellants have challenged the Sarfaesi measures under various heads. The demand notice issued u/s 13 (2) is challenged on the ground that the breakup of the amount as required u/s 13 (3) is not specified. It is also stated that due service of notice was not effected on the borrowers. Subsequently, the property was put up for auction. At that point, in time the Appellants sought amendment of the S.A. incorporating their challenge to the auction proceeding as well. The Respondent Bank thereafter took steps for physical possession of the property and obtained an order u/s 14 of the SARFAESI Act from the Additional Chief Juridical Magistrate- Surat on 03.04.2023. The proprietary of the said order is also challenged. For the reason that the Ld. Magistrate has authorized stenographers for taking physical possession of the property which according to the Ld. Counsel appearing for the Appellants, that may not be in conformity with section 14 which indicate that only an officer subordinate to the Magistrate can be designated for taking over of possession.

5. The Ld. Counsel appearing for the Appellants submits that the Appellants have a strong prima facie case challenging the Sarfaesi measures under the various grounds and moreover, they are also suffering from financial strain as substantiated by the income tax returns pertaining to Appellants Nos. 2 and 3 which indicate that they have very meagre income for the assessment year starting from the 2020-2021 and that they have not been paying any income tax for wants of sufficient income. It is also submitted that the subject Shop Rooms Nos.13 & 18 belong to said Appellant No. 3 and therefore, his income in particular would be relevant for the purpose of disposing of the Application u/s 18 (1) of the SARFAESI Act.

6. The Ld. Counsel appearing for Respondent Bank has vehemently opposed the application stating that the Appellants do not require any indulgence for getting the amount of pre-deposit reduced. The amount due from the Appellants is approximately ₹ 4.66 Crores and it is also pointed out that all the contentions raised challenging the Sarfaesi measures are totally untenable and unsustainable. It is also submitted that the Appellants have not been successful in proving their financial strain because the balance sheets and income pertaining to the 1<sup>st</sup> Appellant firm is not produced. The income tax returns pertaining to the rest of the Appellants is also not produced.

7. The Ld. Counsel pointed out that as per the partnership deed which form part of the documents produced along with the Appeal Memorandum. The 4<sup>th</sup> Appellant has major shares having 90% shares in the profit of the firm and his financial status would definitely have to be relevant for the purpose of determining the pre-

deposit. It is further argued that even going by the income tax returns filed it seems that Appellants Nos. 2 and 3 have sufficient properties worth crores of rupees and therefore, the facts that they do not have any income by itself would not indicate their financial status. They have properties which are not among the secure assets and could easily be liquidated for the purpose of payment of the debt or the pre-deposit. Hence, it is submitted that the amount may not be reduced to the minimum of 25 % as sought by the Appellants.

8. After having heard the rival submission and the documents of the evidence produced by the parties, I find that the contentions regarding the inadequacy of the notice u/s 13 (2) as also the infirmity in the auction taken u/s 14 will have to be ultimately decided by the D.R.T. Contentions are also raised regarding the authority of the Authorized Officer who has issued notice u/s 13 (2) for not being an officer of the rank of a Chief Manager as contemplated under Rule 2 (a) of the Security Interest (Enforcement) Rules.

9. The Ld. Counsel appearing for Respondent has countered the arguments by stating that Respondent is not a public sector bank, and therefore, the Board is authorized to take a resolution regarding the authority to be given to any person to act as an Authorized Officer and therefore, that contentions would not sustainable. I find that there is an outstanding balance of approximately ₹ 4 Crores due from the Appellants. It is pointed out by the Respondent that the property has already been sold. The Sale Certificate has been issued and registered and possession has already been handed over to the auction purchaser. This fact of handing over possession to the auction purchaser is challenged by the Appellants and it is submitted

that the possession is still with the borrowers. This fact also will have to be decided by the Ld. Presiding Officer considering the S.A.

10. Going by the nature of the contentions raised, I find that the Appellants have an arguable case even though it has not been established beyond doubt. The argument of the Ld. Counsel for Respondent that the Appellants have substantial assets will not do because what is required for the purpose of considering the ability to deposit the money for entertaining the Appellants is the availability of income and therefore, to some extent, I am also convinced regarding the financial strain undergone by the Appellants.

11. The Appellants however not entitled to get the amount reduced to a minimum of 25 %. Considering the fact that there is a huge balance due to be paid by them, and also the fact that the actual income of the firm which is the original borrower has not been established, the Appellants are directed to deposit a sum of ₹ 1.5 Crores as pre-deposit. The Ld. Counsel for the Appellants submits that he is depositing a demand draft of ₹ 35 lakhs today. The balance amount of ₹ 1.15 Crores shall be payable in three equal instalments within a gap of three weeks each. The 1<sup>st</sup> instalment of ₹ 38,33,334/- shall be payable within three weeks, i.e. on or before 19.07.2023 and the 2<sup>nd</sup> instalment ₹ 38,33,333/- shall be payable on or before 09.08.2023 and the 3<sup>rd</sup> instalment of ₹ 38,33,333/- shall be payable on or before 30.08.2023. On failure to pay the instalment within the stipulated time, the Appeal shall stand dismissed without any further reference to this Tribunal.

12. In view of the deposit of ₹ 35 lakhs, the parties are directed to maintain the status-quo as of today. The auction purchaser has not appeared despite being served with notice. Under the circumstances, he is directed not to create any third-party interest.

13. The amount shall be deposited in the form of a Demand Draft with the Registrar of this Tribunal.

14. As and when the said amounts are deposited, they shall be invested in term deposits in the name of Registrar, DRAT, Mumbai, with any nationalised bank, initially for 13 months, and thereafter to be renewed periodically.

15. With these observations, the I.A. is disposed of. The Respondent is at liberty to file a reply in the Appeal with an advance copy to the other side.

Post on 20.07.2023 for reporting compliance regarding the payment of 1<sup>st</sup> instalment.

Sd/-  
Chairperson

psa-06