

BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI
Present: Mr Justice Ashok Menon, Chairperson

I.A. No. 90/2023(WoD)
In
Appeal on Diary No. 225/2023

Between

Ternate Hospitality Pvt. Ltd. & Anr. ... Appellant/s
V/s.
Piramal Capital and Housing Finance Ltd. & Anr. ... Respondent/s
Mr Siddharth Samantray along with Mr Niket Harit and Ms Jigna,
i/b Mr Manoj Harit, Advocate for Appellants.
Mr R. L. Motwani, Advocate for Respondent No. 1.
Ms Rashmi D. Dhogde, Advocate for Respondent No.2.

-: Order dated: 16/02/2023:-

This is an application filed under section 18 (1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act', for short) by the licensee of the secured assets seeking a waiver of mandatory pre-deposit contemplated under 2nd proviso to section 18 (1) of the Sarfaesi Act.

2. The appeal is directed against the impugned order dated 09/02/2023 of the Debts Recovery Tribunal, Pune (DRT) in I.A. No. 109 of 2023 in Securitisation Application (S.A.) No. 292 of 2022 declining to grant any interim relief of stalling the Sarfaesi measures initiated by the 1st Respondent against the 2nd Respondent herein who is the borrower/mortgagor with regard to the secured

assets belonging to him. Yet another application filed by the Appellants as I.A. No. 1695/2022 filed by the Appellants was dismissed vide order dated 11/10/2022 by the Ld. Presiding Officer. I.A. No. 109 of 2023 was dismissed mainly for the reason that the prayers in that application were identical to the prayers in I.A. No. 1695/2022 and hence, cannot be entertained. The Appellants are aggrieved and hence in appeal.

3. The Appellants had filed a Praecipe seeking urgent relief in view of the impending dispossession of the subject property under the Sarfaesi measures initiated under section 14 of the SARFAESI Act. Respondents 1 and 2 appeared and they vehemently opposed the application for waiver and sought time to file replies. However, the Ld. Counsel for the Appellants, considering the urgency of the matter, insisted on hearing the application even before the replies had come in. Hence, this application for waiver was heard in detail.

4. The Ld. Counsel appearing for the Respondents submitted that the Appellants do not have the locus to file an application under section 17 of the SARFAESI Act before the DRT because they are in no way aggrieved by the Sarfaesi measures initiated by the 1st Respondent against the 2nd Respondent and the secured assets.

5. The Ld. Presiding Officer did not consider the maintainability of the securitisation application under section 17 even though such a contention was raised by the Respondents, and it is also mentioned in the order passed on I.A.No.1695/2022. The plea of the Appellants for interim relief against this possession was declined without going into the merits of the contention regarding the

maintainability.

6. Section 18 (1) provides for an appeal by any person aggrieved by any order made by the DRT under section 17 to the Appellate Tribunal. The 2nd proviso states that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal 50% of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less. In the instant case, the Appellants are admittedly licensees in occupation of the secured property under an agreement of leave and license executed on 10/12/2008 for a period of 5 years with the provision of further extension for a maximum period of 15 years on payment of monthly license fees of ₹4,27,000/- for use and occupation of the premises. The agreement itself would indicate that the Appellants do not have legal possession over the property. They were permitted to conduct a restaurant and banquet styled as “ATLANTIS-Bar-Grill-Banquet” on the premises. The 2nd Respondent who had purchased the property after obtaining a loan from the 1st Respondent’s predecessor Dewan Housing Finance Ltd (DHFL), was made a director in the 1st Appellant company. The equated monthly instalments towards the loan were, however, being paid by the Appellants. This fact was also known to the 1st Respondent. Though the Appellants do not have a case that they are tenants on the premises, the Ld. Counsel has attempted to bring out in his argument that the Appellants are tenants holding over the property and that their possession can be viewed as an oral lease. Under the circumstances, the Ld. Counsel argues that the Appellants are ‘aggrieved persons’ entitled to challenge the Sarfaesi

measures initiated by the 1st Respondent. That apart, the proceedings under sections 13 (2), 13 (4) and 14 of the SARFAESI Act also stand challenged by the Appellants. The learned counsel would also rely upon a catena of decisions to establish that the Appellants can take a plea of a tenancy.

7. Unfortunately, the Appellants have not taken up a plea that they are tenants in the property and therefore, their possession needs to be protected under the provisions of sections 13 (4) and (13) of the SARFAESI Act.

8. When on their own admission the Appellants are licensees in the premises, they cannot now turn around and contend that they are entitled to continue in possession of the secured assets as 'tenants'. The term of the license has admittedly expired. It is contended that the 2nd Respondent had entered into an agreement to sell the property to the Appellants and that they had performed their part of the agreement, and were therefore entitled to part performance of the contract with the second Respondent. The dispute over the property inter-se the Appellants and the 2nd Respondent is something to be determined by a civil court. Admittedly, a suit was filed before the civil court for specific performance of the contract by the Appellants against the 2nd Respondent and is pending determination.

9. The Appellants cannot interpret their occupation of the property as a tenancy at this stage. Nor can they say that the license fee paid by them is to be considered as rent payable by them to the 2nd Respondent as a landlord. This contention would go against the written terms of the agreement between the Appellants and the

second Respondent.

10. Under the circumstances, I find that prima facie, the Appellants are not 'aggrieved persons' coming within the purview of section 17 of the SARFAESI Act entitling them to move the DRT under section 17 challenging the Sarfaesi measures initiated against the 2nd Respondent. The Appellants have challenged the entire Sarfaesi measures at all stages right from the classification of the debt as Non-Performing Assets, the order passed by the District Magistrate under section 14. It is also contended that the successor to the original creditor cannot continue with the proceedings unless they get themselves impleaded or file a fresh application under section 14. It is submitted that the original creditor namely, DHFL went into liquidation and merged with Piramal Capital & Housing Finance Ltd. And therefore, the Sarfaesi measures will have to start afresh. It is the 2nd Respondent who is a borrower and therefore, even if there are any such objections, all those objections can be waived by him as the person affected, and protected by the statute.

11. However, the maintainability of the securitisation application filed by the Appellants is something to be determined in the first instance by the DRT. Since there are no specific findings on maintainability, I am not inclined to entertain the application for waiver or the appeal. On my prima facie findings, the application and the appeal are dismissed with a direction to the DRT to consider the objection regarding the maintainability of the S.A. and the contention that the Appellants are not 'aggrieved persons' coming within the purview of section 17 of the SARFAESI Act. It is made clear that none of the observations made in this order shall

influence the ultimate finding of the DRT. Hence, the DRT is directed to consider the contentions raised by the Respondents untrammelled by whatever is observed in this order and dispose of the S.A. on merits, expeditiously. All the contentions raised by the parties are kept open for consideration in the S.A.

The application and the appeal stand dismissed.

Sd/-
Chairperson

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