

BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI

Present: Mr Justice Ashok Menon, Chairperson

I.A. No. 509/2023 (WoD)

In

Misc. Appeal on Diary No. 1245/2023

Between

M/s. Sandeep Textiles & Ors.

... Appellant/s

V/s.

The Authorized Officer,
IDFC First Bank Ltd.

...Respondent/s

Mr. Sachin Kaikini, i/b Mr Dhruvit, Advocate for Appellants.

Mr. R.L. Motwani along with Mr. Sachin Salunke, Advocate for
Respondent No.1

-: Order dated: 26/07/2023:-

The matter is taken up for hearing by way of a praecipe filed by the Appellants for seeking urgent relief.

The Appellants are in Appeal impugning the order of the Debts Recovery Tribunal-II, Ahmedabad (D.R.T.) dated 17.07.2023 in Securitization Application (S.A.) No. 398/2022 declined to grant any relief in favour of the Appellants to stall the Sarfaesi measures initiated by the 1st Respondent Bank for recovery of the amount allegedly due from the Appellants towards the facilities of loan granted to them. The 1st Appellant is a proprietorship of which the 2nd Appellant is a sole proprietor. The rest of the Appellants are co-borrowers/guarantors/mortgagors.

2. The Appellants filed the aforesaid S.A. on receipt of notice of physical position in compliance with the order passed by the District

Magistrate u/s 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act', for short). The Appellants had prior to that received the demand notice u/s 13 (2) of the SARFAESI Act demanding a sum of ₹ 29,74,292.15 as of 13.03.2020. The Appellants did not respond to that notice and therefore, the 1st Respondent proceeded with the Sarfaesi measures by taking the symbolic possession of the secured assets on 17.10.2020 u/s 13 (4) of the SARFAESI Act. Even subsequent to the taking over of symbolic possession of the property the Appellants did not take any steps to challenge the Sarfaesi measures. The 1st Respondent thereafter obtained the order of taking physical possession u/s 14 of the SARFAESI Act from the District Magistrate and notice was issued to the Appellants fixing the date of taking physical possession of the property. It is at that stage that the Appellants approached the D.R.T. with an application to set aside Sarfaesi measures. From the Application, it seems that the Appellants have challenged all the Sarfaesi measures starting from the classification of debt as NPA till the order was passed for physical possession u/s 14 of the SARFAESI Act.

3. Notice was issued to the Appellants to take over possession of the property on 19.07.2023. The Appellants approached the D.R.T. seeking an interlocutory relief to stall the possession stating that they are willing to entire debt. They also paid made a deposit of ₹6.40 lakhs directly to the bank. The Ld. Presiding Officer in the impugned order has stated that the OTS proposal offered by the Appellants to settle the debt was for a meagre amount and was therefore rejected

by the bank. The Appellants did not take any steps to make substantial payment thereafter, and therefore, the 1st Respondent was at liberty to take possession of the property. The Appellants were aggrieved and hence, in Appeal.

4. The Appellants have filed I.A. No. 509/2023 u/s 18 (1) seeking a waiver of mandatory pre-deposit by exercising jurisdiction of this Tribunal under the 3rd proviso to section 18 (1) of the SARFAESI Act.

5. The Ld. Counsel appearing for the Respondent Bank submits that the Appellants do not have any prima facie case, they made an OTS proposal for a very meager amount and the facts that they made a OTS proposal by itself would indicate that they have waived all their challenges to the Sarfaesi measures. It is also submitted that they did not take any action challenging the Sarfaesi measures in consequence of the taking over symbolic possession of the property on 17.10.2020. The Appellants cannot now contend that the Sarfaesi measures starting from the classification of debt as NPA were faulty.

6. The Appellants have pleaded that they are under financial strain but the income tax return of the 3rd Appellant and 4th Appellant alone are produced. The 3rd Appellant's income tax return is for the year 2013-14 and the 4th Appellant is for the year 2019-20. The statutes of the present income of the Appellants have not been produced. The income tax return of the rest of the Appellants more particularly the 2nd Appellant who is the sole proprietor of the 1st Appellant has not been produced.

7. Under the circumstance, I find that the Appellants are not entitled to any indulgence to get the amount of pre-deposit to reduce

a minimum of 25% as pleaded. After adjusting the payment of ₹ 6.40 lakhs, the outstanding amount as of date is ₹ 26,76,789.12. The Appellants are, therefore, directed to deposit a sum of ₹ 13 lakhs as pre-deposit for entertaining the Appeal. The Ld. Counsel appearing for the Appellants submits that the demand draft for ₹ 2 lakhs would be submitted tomorrow. The balance ₹11 lakhs shall be payable within three weeks, i.e. on or before 16.08.2023. In default of payment of the amount within the stipulated time shall entail in dismissal of Appeal without any further reference to this Tribunal. On payment of the aforesaid amount, the Appellants shall be entitled to get the taking over possession deprived until further order.

8. The amount shall be deposited as a Demand Draft with the Registrar of this Tribunal. 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.

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

Post on 17.08.2023 for reporting compliance.

Sd/-
Chairperson