BEFORE THE DEBTS RECOVERY APPELLATE TRIBUNAL, AT: MUMBAI

Present: Mr Justice Ashok Menon, Chairperson

Appeal No. 14/2021

Between

Pandiyan Nallakannu Naidu & Anr. … Appellant/s

V/s.

The Authorised Officer, …Respondent/s
Punjab National Bank & Anr.

Mr Rajesh Nagory, i/b Ms Sanjana Ghogare, Advocate for Appellants.

Ms Asha Bhuta, i/b M/s. Bhuta & Associates, Advocate for Respondent No. 1.

-: Order dated: 09/03/2023:-

Aggrieved by the dismissal of S.A. No. 5 of 2020 on the files of Debts Recovery Tribunal-I, Ahmedabad (D.R.T) vide order dated 28.12.2020, The Applicants therein are in appeal.

2. The Appellants are alleged to be guarantors to the credit facilities granted to M/s. S. R. Constructions, a partnership firm, the partners of which were none other than the father-in-law and elder brother of the first Appellant, who died in 2018.

3. The borrowers defaulted payment of the loan as a result of which the account was classified as a Non-Performing Asset (NPA) on 28.12.2018. The notice under Sec. 13(2) of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 ('SARFAESI Act' for short) was issued on 29.12.2018 demanding a sum of ₹1,14,00,405.05 within sixty days. The Appellant would contend that the said demand notice was

never served upon the legal representatives of the borrowers. Hence, the notice is faulty. The Respondent Bank after that took physical possession of the secured assets belonging to the Appellants on 11.03.2019 without issuing any notice in compliance with Rules 8(1) and (2) of the Security Interest (Enforcement) Rules, 2002 ('Rules' for short). Thereafter, an application was filed under Sec. 14 of the SARFAESI Act before the court of the Chief Metropolitan Magistrate, Ahmedabad, and the same was allowed vide order dated 03.09.2020. The proceeding is also bad for non-compliance with the mandatory affidavit in compliance with Sec. 14 (1) (i) to (ix) of the SARFAESI Act.

4. However, the Appellants submitted a proposal of one-time settlement (OTS) under the scheme floated by the Respondent Bank. After having accepted the OTS proposal for ₹95 lacs and having received ₹5 lacs towards payment, the Respondent still proceeded with the auction sale of the property for the reason that there was a delay in payment of ₹10 lacs towards the OTS. The auction sale proceeded and was confirmed in favour of the additional Second Respondent who is impleaded subsequently.

5. The Appellants would contend that the Ld. Presiding Officer failed to appreciate the objections raised by the Appellants in the S.A. in the proper perspective. There was a gross violation of the provisions of the SARFAESI Act. The finding of the learned P.O. that the legal representatives of the deceased partners of the borrower firm are not necessary parties and that there was no need to serve notice on them because the subject property does not belong to them and that it belongs exclusively to the Appellants, is

an erroneous finding. The non-acceptance of the OTS proposal by the Respondent Bank displays the high-handed manner in which they have handled the situation. The Ld. P.O. also failed to notice that the classification of the account as NPA was defective. The demand notice under Sec. 13(3) of the SARFAESI Act requires a break-up of the amount demanded. Default in doing so would render the notice invalid. The entire Sarfaesi measures should, therefore, fail.

6. One of the main contentions raised is regarding the Sarfaesi proceedings initiated without issuing notice to the legal representatives of the deceased borrowers. It has to be understood that the borrowers/sureties/mortgagors/guarantors are jointly and severally liable to repay the debt incurred by the principal borrower. A guarantor can definitely not racist the recovery proceedings against him on the ground that the borrower is not proceeded against. In the instant case, both the ordinary borrowers who are partners in a partnership firm died even before the Sarfaesi measures were initiated. The legal representatives of the borrowers would definitely not step into their shoes as far as the Sarfaesi measures are concerned. In a civil proceeding for the recovery of money due from a deceased borrower, the legal representatives would be liable to the extent of property inherited by them. But at the same time, there is absolutely no embargo in a creditor bank proceeding against the guarantors alone for the realisation of the amount due for which they had stood guarantee. Under the circumstances, the fact that no notice under section 13 (2) under the SARFAESI Act was issued to the legal representatives of the

borrowers is no reason to hold the notice invalid. There is no adjudication taking place in the Sarfaesi proceedings. Only when an adjudicatory proceeding like an original application filed under the provisions of the Recovery of Debts and Bankruptcy Act, 1993 is initiated, the need for proceeding against the legal representatives would arise. The contention that the legal representatives of the borrowers should have been made a party to the proceedings under section 14 of the SARFAESI Act is also not sustainable for the reasons stated above. There is no doubt that the property which is being proceeded against in the instant case belongs exclusively to the Appellants. Under the circumstances, I do not find it necessary to bring the legal representatives of the deceased partners of a partnership firm on record in a Sarfaesi proceeding. I find that the Ld. Presiding Officer was justified in not accepting the contentions of the Appellants. I am in agreement with the findings in the impugned order to the extent that the Appellants failed to challenge the Sarfaesi action within the stipulated time of limitation. Moreover, it is also pertinent to note that the Appellants had voluntarily surrendered the possession of the secured assets.

7. One of the main contentions raised by the Appellants is regarding the rejection of their OTS proposal submitted to the bank. It is no longer Res Integra that the acceptance of an OTS proposal should ultimately be left to the commercial wisdom of a bank whose amount is involved and it is always to be presumed that the banks would take a prudent decision whether to grant the benefit or not under the OTS scheme, having regard to the public interest involved and having regard to the other factors in each of

the cases. (See *The Bijnor Urban Co-Operative Bank Ltd. Bijnor & Ors. Vs. Minal Agarwal & Ors. AIR 2022 SC 56*). Hence there is little scope for this Tribunal to intervene in a matter where the OTS proposal was not accepted by the bank.

In the result, I find no reason whatsoever to interfere with the impugned judgment of the D.R.T. The appeal has no merits and hence, it is dismissed.

Sd/-
Chairperson

mks-1