

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

**I.A. No. 163/2023 (WoD)**

**In**

**Appeal on Diary No. 1423/2022**

**Between**

M/s. M. B. Shah Jewellers & Ors.

... Appellant/s

V/s.

Deutsche Bank AG

...Respondent/s

Ms Sonali Jain, i/b Ms Khushboo Agarwal, Advocate for Appellants.

Mr R. L. Motwani, Advocate for Respondent Bank.

**:- Order dated: 15/03/2023:-**

The Appellants are in appeal aggrieved with the judgment passed in S.A. No. 46 of 2019 on the files of the Debts Recovery Tribunal -I, Mumbai (D.R.T.) dismissing the S.A. vide order dated 27.12.2021. The Appellants have filed this application for invoking the discretionary power of this Tribunal in reducing the amount of mandatory pre-deposit as contemplated under Sec. 18(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI', for short). The first Appellant is a proprietorship represented by the second Respondent before the D.R.T. In the appeal, however, it is the fourth Respondent representing the proprietorship. Proprietorship means the sole owner of a business and the Appellants do not appear to be sure of who the owner of the

business run under the name and style M. B. Shah Jewellers is. The Appellants have challenged the Sarfaesi measures in the S.A. on various grounds. It is stated that the demand notice issued under Sec. 13(2) of the SARFAESI Act on 07.09.2017 demanding a sum of ₹6,32,83,506.61 is not in accordance with the law and that subsection 3 of Sec. 13 which insists on giving a break-up of the demanded amount has not been complied with. That apart, defect is also found in the demand notice for not being issued by a proper Authorised Officer who should be a Chief Manager of the Bank. The notice does not clarify as to who Mr D.V. Satelkar, who has signed the notice as the Authorised Officer is. It is further contended that the said person was not authorised on the date of issuance of the notice and Authority authorising him had come much later and consequent to the issuance of the notice. It is further contended that there is no CERSAI Registration of mortgage which is mandatory. Certain payments made by the Appellants have not been recorded in the statement of account. The Appellants had got favourable interlocutory order of stalling the Sarfaesi measures in the initial stage before the D.R.T. but subsequently when the S.A. was taken up for hearing finally the stand taken by the D.R.T. changed and the contentions raised by the Appellants except for the contention regarding the appointment of Commissioner to take over possession by the CMM were not upheld. Aggrieved by that, the Appellants are in appeal.

2. According to the Appellants, the amount that is due as per the notice is ₹6,32,83,506.61 and therefore, the appeal may be entertained on receiving 25% of that amount as pre-deposit

exercising jurisdiction under the third proviso to Sec. 18(1) of the SARFAESI Act. That apart, it is also contended that the Appellants are all senior citizens and they have little source of income which stands proved by Income Tax Returns filed by them for the period 2020-2021 to 2022-23. In view of the fact that they have a strong prima facie case and that they are in pecuniary strain, the Ld. Counsel Ms Sonali Jain seeks indulgence of this Tribunal to keep pre-deposit at the minimum.

3. Per contra, the Ld. Counsel appearing for the Respondent Bank has vehemently opposed the application stating that the Appellants do not come with clean hands and it is also stated that the interlocutory order earned by the Appellants in their favour from the D.R.T. in the first instance was undone by the Hon'ble High Court of Bombay in Writ Petition that was filed by the Bank and the Writ Petition was disposed of with a direction to dispose of the S.A. untrammelled by whatever is observed in the interlocutory order. Under the circumstances, the Ld. Counsel appearing for the Respondent Bank submits that the observations made in the interlocutory stage by the Ld. Presiding Officer in the S.A. cannot be regarded as substantiate and cannot be looked into for any purpose. All the other objections raised with regard to the Sarfaesi measures have been disregarded by the D.R.T. in the final order and therefore, the Appellants cannot contend that they have a strong prima facie case. The Ld. Counsel appearing for the Respondent Bank has together with the reply filed an account statement which indicates that as of the date of filing the appeal the amount outstanding and due from the Appellants is ₹12,25,48,453

and therefore, the Appellants be asked to deposit 50% of that amount for entertaining the appeal.

4. After having heard and considered the rival contentions raised by both sides, I see that the Respondent did not raise any objections regarding the insufficiency of the steps taken under Sec. 13(2) and 13(4) of the SARFAESI Act. They come up with S.A. only on steps being taken under Sec. 14 of the SARFAESI Act before CMM. Prima facie it would have to be considered that the objections as regards Sec. 13(2) and 13(4) stand waived. Moreover, at no point in time did the Appellants get a clarification regarding the break-up of the amount claimed and demanded in the notice under Sec. 13(2). Section 13(2) notice states that the amount due as of 01.09.2017 issuance of notice and future interest. The rate of interest is not shown in a housing loan, as the rate of interest would fluctuate and could not have been shown at that point but towards the end of the notice it is clarified that there is an account statement enclosed with the notice and the account statement produced by the Respondent gives details of the rate of interest as break up the principal amount and interest. The Appellants would contend that they did not receive the account statement together with a notice under Sec. 13(2) but this objection comes very late, and therefore, the veracity of that contention is doubtful. All other contentions were considered by the Ld. Presiding Officer and concluded against the Appellants. The contentions raised regarding the insufficiency of the proceedings under Sec. 14 have been addressed and relief granted. Even if certain amounts pointed by the Ld. Counsel appearing for the Appellants has not been accounted for as prayed

by the Appellants, the amount would definitely have swelled close ₹12 crores on the date of filing the appeal because it was definitely more than ₹6 crores as of 01.09.2017. Under the circumstances, I find that the Appellants would have to pay a sum of ₹3 crores as pre-deposit under Sec. 18(1) of the SARFAESI Act for entertaining the appeal.

5. The Ld. Counsel for the Appellants is furnishing a demand draft for ₹50 lacs today. The balance of ₹2.50 crores shall be paid in two equal instalments of ₹1.25 crores each. The first instalment shall be payable within a period of three weeks, on or before 05.04.2023 and the second instalment shall be payable within three weeks therefrom, on or before 26.04.2023. Since the Appellants have already deposited ₹50 lacs today, there shall be a stay of further Sarfaesi measures with regard to the secured assets, and breach of payment of the subsequent instalments shall entail in dismissal of the appeal without further reference to this Tribunal.

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

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

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

Post on 06.04.2023 for reporting compliance concerning the payment of the first instalment.

Sd/-  
Chairperson

mks-25

DRAFT MUMBAI