

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

**I.A. No. 266/2022 (WoD)**

**In**

**Appeal on Diary No. 555/2021**

**Between**

M/s. U Tech Agro Industries & Ors. ... Appellant/s

V/s.

Authorised Officer,  
Dombivli Nagari Sahakari Bank Ltd. & Anr. ... Respondent/s

Mr Puneet Gogad, Advocate for Appellants.

Mr Sanjay Anabhawane, i/b M/s. M & S Legal Ventures, Advocate  
for Respondents.

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

The Appellants have filed this appeal challenging the order of the Debts Recovery Tribunal-III, Mumbai (D.R.T.) dated 16/11/2021 in I.A. No. 1064/2021 in Securitisation Application (S.A.) No. 135/2021 wherein the Ld. Presiding Officer declined to grant the stay in favour of the Appellants who are the Applicants in the aforesaid S.A. filed under section 17(1) of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 ('SARFAESI Act', for short).

2. The facts and brief can be encapsulated thus for the purpose of this application filed under section 18 (1) of the SARFAESI Act seeking the indulgence of this to keep the amount of mandatory pre-deposit for entertaining the appeal at a minimum of 25% of the amount due.

3. The 1<sup>st</sup> Appellant is a partnership firm and the principal borrower. Appellant Nos. 2 and 3 are the partners of the firm. Appellant Nos. 4 to 7 are the guarantors/mortgagors for the loan availed by the 1<sup>st</sup> Appellant firm.

4. The 1<sup>st</sup> Appellant firm had availed 5 financial assistances from the 1<sup>st</sup> Respondent bank consisting of a cash credit facility, 3 term loans and a vehicle loan. The 1<sup>st</sup> Appellant firm suffered losses as a result of which, it stopped functioning. The Respondent bank classified the account pertaining to the 1<sup>st</sup> Appellant as Non-Performing Assets (NPA) on 31/03/2018. Thereafter, a demand notice under section 13 (2) of the SARFAESI Act was issued by the Respondent bank demanding payment of ₹2,00,75,260.81 from the Appellants on 14/07/2018. Alleging that the Appellants failed to clear the debt, steps were initiated under section 13 (4) of the SARFAESI Act the issuance of possession notice dated 14/09/2018. Subsequently, the 1<sup>st</sup> Respondent filed an application under section 14 of the SARFAESI Act before the Additional District Magistrate for physical possession of the secured assets. Consequently, the Appellants approached the D.R.T. with an application under section 17 (1) of the SARFAESI Act.

5. The contentions raised by the Appellants in challenging the Sarfaesi measures are that the demand notice under section 13 (2) was not served upon them. Secondly, the notice is not in compliance with section 13 (3) giving the breakup of the amount demanded and is therefore vitiated. It is also contended that the proceedings under section 14 of the SARFAESI Act are vitiated for

not filing a 9-pointer Affidavit as required by law. That apart, it is also contended that the reply to the Appellant's response to the demand made is not given by the Authorised Officer but by an advocate. Moreover, it is also alleged that the exercise of taking physical possession has been delegated by the Tahsildar to a subordinate officer which is in contravention of the settled position that the person authorised by the District Magistrate cannot sub-delegate the authority of taking possession to any other officer.

6. The Ld. Presiding Officer disagreed with all the contentions raised by the Appellants except the contention regarding sub-delegation by Tahsildar to take possession of the property. The SA was effectively dismissed except with a direction that the Tahsildar alone shall take over possession of the secured assets without sub-delegate the exercise to anyone else. The Appellants are aggrieved and hence in appeal.

7. Since this Tribunal was not manned by the chairperson, the Hon'ble High Court of Bombay had in Writ Petition (L) No. 24293/2021 and Writ Petition (L) No. 24630/2021 made a common order on 02/12/2021 giving the liberty to the borrowers who are aggrieved by the orders of the Presiding Officers intending to file an appeal before the DRAT to deposit 25% of the debt due as claimed by the secured creditors or determined by the D.R.T. and that on such deposit, there would be an injunction against the secured creditors from taking any adverse action against the borrowers. The Appellants deposited a sum of ₹51 lakhs claiming to be 25% of the amount mentioned in the demand notice, before this Tribunal drawn in favour of the Registrar. The Appellants

submit that the amount deposited by them may be considered sufficient for the purpose of due compliance of the 2<sup>nd</sup> proviso to section 18 (1) by invoking the discretion of this Tribunal under the 3<sup>rd</sup> proviso keeping the mandatory pre-deposit at the minimum of 25%.

8. Mr Puneet Gogad, the learned counsel appearing for the Appellants submits that subsequent to the issuance of the demand notice the Appellants had paid ₹31,21,298/-directly to the Respondent Bank. That apart, the notices were defective for not giving the breakup of the amount claimed. Moreover, it is contended that the notice was never served on the Appellants. Service of notice is mandatory and therefore, the entire proceedings under the SARFAESI Act are vitiated.

9. Per contra, Mr Sanjay Anabhawane appearing for the 1<sup>st</sup> Respondent Bank submits that the Appellants have never denied the advancement of the loan, execution of loan documents and creation of mortgage of secured assets. The Appellants have knowledge about the issuance of demand notice under Sec. 13(2) of the SARFAESI Act on 14.07.2018 demanding payment of an outstanding dues of ₹2,00,75,266.81. Although they feign non-receipt of notice. They failed to raise any objection regarding the demand made in the notice nor did they send any representation as contemplated under Sec. 13(3A) of the SARFAESI Act. The Appellants have suppressed the material facts with regard to the availment of OTS concession from the Respondent Bank and its consequent breach. The second Appellant had sent a letter to the Bank on 02.03.2020 offering to pay an aggregate amount of ₹1.91

crores as full and final settlement of the debt. The first Respondent had even consented to the settlement offer. Despite granting the OTS concession the Appellants failed to honour the commitment made in their letter. Despite the failure to comply with the OTS proposal, vide letter date 05.08.2020, the Appellants again offered to settle the dues within 45 days. And the same was sanctioned by the Respondent Bank vide letter dated 21.08.2020. However, the Appellants again failed to honour their commitments. An OTS made subsequently on 17.03.2021 by the first Appellant for ₹2.15 crores was also defaulted. All these facts have been conveniently suppressed by the Appellants in their application and appeal. They have now come up with untenable contentions regarding the Sarfaesi measures initiated by the first Respondent and seek to take advantage of the orders passed by Hon'ble High Court Bombay under peculiar circumstances and want to get away with making payment of just ₹51 lacs and cross the hurdle of the mandatory provisions of Sec. 18(1) of the SARFAESI Act. The Ld. Counsel would also rely on the decision of the Hon'ble Bombay High Court in *MRB Roadconst. Pvt. Ltd. v/s Rupee Co-operative Bank Ltd. (2016) 3 Mah. LJ. 589* which insists on the deposit of the amount demanded under the notice contemplated under Sec. 13(2) of the SARFAESI Act and subsequent interest accrued till the date of filing the appeal. The amount due from the Appellants as on 31.10.2022 is ₹2,70,28,184.81. The Appellants are, therefore, liable to pay 50% of the amount due. The account statement is also produced.

10. The Ld. Counsel appearing for the Appellants would rely on the decision of the Hon'ble Supreme Court reported in *Sidha*

*Neelkanth Paper Industries Pvt. Ltd & Ano v/s Prudent ARC Ltd & Ors.*  
2023 SCC OnLine SC 12 to argue that in cases where the amount mentioned in the notice under Sec. 13(2) of the SARFAESI Act, the debt due would be that amount and that only in cases where subsequent steps taken under Sec. 13(4) and the auction sale of the secured assets are challenged would it mean the liability inclusive of interest.

11. After having considered rival contention made on both sides. I find that the Appellants had after receiving the notice under Sec. 13(2) approached the first Respondent Bank with OTS proposal which they could not have done without being served with the notice of the demand. More than once did the Appellants reach out to the first Respondent with an offer for settlement. Under the circumstances, it cannot be said that the Appellants were not served with the notice under Sec. 13(2). In the instant case, the Appellants have challenged the Sarfaesi measures only after the notice of dispossession was received by them consequently to taking steps under Sec. 14. The Appellants had admittedly paid some amount towards the debt consequent to receipt of the demand notice. No prima facie case is, therefore, made out by the Appellants in their favour to challenge the Sarfaesi measures. The definition of 'debt' under Sec. 2 (g) of the RDB Act, 1993 means any liability inclusive interest claimed as due from any person. The Appellants are, therefore, liable to pay 50% of the amount outstanding as of the filing of the appeal as per the account statement the amount due inclusive of interest as of 31.10.2022 is ₹2,70,28,184.81. The appeal was filed on 20.12.2021. Considering this fact, I determine the

amount payable as pre-deposit to be ₹1.25 crores. The Appellants have already deposited ₹51 lacs. The balance of ₹74 lacs shall be paid in two equal instalments of ₹37 lacs each. The first instalment shall be payable within a period of two weeks, on or before 29.03.2023 and the second instalment shall be payable within three weeks therefrom, on or before 19.04.2023. In default, the Appeal shall stand dismissed without any further reference to this Tribunal.

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

13. 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.

14. On payment of the first instalment within the stipulated time, the Appellants shall be entitled to stay of the further Sarfaesi measures initiated by Respondents.

15. 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 30.03.2023 for reporting compliance concerning the payment of the first instalment.

Sd/-  
Chairperson