

**BEFORE THE DEBTS RECOVERY**  
**APPELLATE TRIBUNAL, AT: MUMBAI**

**Present: Mr Justice Ashok Menon, Chairperson**

**I.A. No.461/2023(WoD)**

**In**

**Appeal on Dairy No.1166/2023**

**Between**

M/s. Ambika Jewellers & Ors.

... Appellant/s

V/s

Authorised Officer.

...Respondent/s

Shriram City Union Finance Ltd & Ors.

Mr. Prashant Pandit, along with Mr. Jay Pandit, Advocate for Appellants.

Mr. Nikhil Rajani, along with Rupak Sawangikar, i/b M/s. V. Deshpande & Co., Advocate for Respondent No. 1.

Mr. Puneet Gogad, Auction Purchaser.

**∴ Order dated: 17/07/2023∴**

The Appellants were the Applicants in S.A. No. 477/2020 on the files of Debts Recovery Tribunal- II, Ahmadabad (D.R.T) and are aggrieved by the dismissal of the said S.A. by the Ld. Presiding Officer vide order dated 29.04.2023. They had filed the aforesaid S.A. under the provisions of Sec.17 (1) of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (“SARFAESI Act”, for short) challenging the entire proceedings Sarfaesi measures initiated by the 1<sup>st</sup> Respondent bank.

2. The Appellants contend that demand notice u/s. 13 (2) demanding a sum of ₹ 88,82,997/- as on 13.12.2018 was improper

and not served upon them. It is also contended that the requisite notice was not served before taking symbolic possession of the property u/s. 13 (4) of the SARFAESI Act. It is further contended that the proceedings u/s. 14 of the SARFAESI Act for taking physical possession of the property were faulty.

3. The facts indicate that the 1<sup>st</sup> Appellant who is the proprietor of the proprietorship firm namely M/s. Ambika Jewellers had borrowed money from the 1<sup>st</sup> Respondent Bank. Respondent No. 2 who is the father of the proprietor and Respondent No. 3 who is his wife are the co-borrowers, mortgagers/guarantors. The Appellants defaulted in repayment as a result of which the account was classified as a non-performing asset (NPA).

4. Thereafter, proceedings u/s. 13 (2) demanding an outstanding amount was issued. Symbolic possession was allegedly taken under the provisions of Sec. 13 (4) of the SARFAESI Act and the property was put up for sale. The auction sale failed twice when the reserve price for the property was fixed at ₹ 1,29,93,341/-. On the third attempt, the reserve price was brought down to ₹ 1 crore and the secured assets were sold to Respondent Nos. 2 to 4 on 30.03.2021 for a sum of ₹ 1 crore which is the reserve price. None bid for an amount exceeding the reserve price, and therefore, the sale was confirmed, and the sale certificate was issued and registered. It is also submitted that the possession of the property has been handed over to the auction purchaser on 08.07.2021.

5. It is pertinent to note that soon after steps u/s. 14 were initiated, the Appellants had approached the Debts Recovery

Tribunal, (D.R.T) with S.A. No. 363/2019 challenging all proceedings up to Sec. 14 of the SARFAESI Act and while that was pending, the property was put up for sale and hence, the Appellants filed the present S.A. No. 477/2020 challenging the sale on various grounds. The earlier Sarfaesi measures u/s. 13 (2) and 13 (4) as well as Sec. 14 were once again challenged in this present application. Nothing was mentioned about the filing of the earlier S.A. No. 363/2019 by the Appellants in the subsequent S.A.

6. The Ld. Counsel appearing for the Appellants submits that there is a clear infringement of the procedures as the property worth ₹ 4 crores was sold for a pittance of ₹ 1 crore. It is submitted that no notices were served on any of the measures taken under the SARFAESI Act, on the Appellants. The sale took place without obtaining any valuation certificate from a government-approved valuer as required under the provisions of the Security Interest (Enforcement) Rules. It is also contended that the sale was held without giving 30 days' notice to the borrowers which itself would make it faulty.

7. The Appellants had in the first instance approached the Hon'ble High Court of Gujarat by filing a Civil Application No. 8655/2023, and vide order dated 05.05.2023 the Ld. Judge on prima facie consideration found that there was a violation of the Rules and the provisions of the law, and hence, granted an interim relief to maintain the status quo. Subsequently, vide order dated 04.07.2023 the Hon'ble High Court disposed of the application on the submission made by the Ld. Counsel appearing for the Appellants

that they would like to withdraw the application and proceed with the matter before this Tribunal. The order of status quo was directed to be maintained till 17.07.2023 and the Civil Application No. 8655/2023 was disposed of as withdrawn. The Appellants apprehend that they may be dispossessed from the property and have therefore approached this Tribunal with the present appeal and an application for waiver of deposit.

8. The Ld. Counsel appearing for the Appellants submits that they have a very good prima facie case and that they are also under financial strain which enables them to request this Tribunal for exercising indulgence under the third provision of Sec. 18 (1) of the SARFAESI Act. to reduce the amount of pre-deposit to the minimum of 25 % of the amount due.

9. The Ld. Counsel appearing for the bank and the auction purchaser have vehemently opposed the application as also the appeal. It is stated that the Appellants do not have any prima facie case. It is further pointed out that all the requisite Rules prior to the auction sale were complied with. The property had come up for auction for the third time and therefore, 30 days' notice was not required. The notices were published in the vernacular as well as English newspaper, and personal notices were also served on the Appellants and therefore, there is no gain saying that the 1<sup>st</sup> Respondent had violated the provision of the Rules and the Act. It is also submitted that on the date of sale, the outstanding amount of debt was ₹ 1,35,77,458/- and since the Appellants had challenged all the Sarfaesi measures starting from the demand notice u/s. 13 (2) till

the sale, they are liable to pay 50 % of the on the entire amount due inclusive of interest as on the date of filing of the appeal. It is pointed out that as of the date a sum of ₹ 1,80,26,468/- is due to be paid.

10. The Ld. Counsel appearing for the Respondents further submits that the Appellants have no prima facie case to sustain the appeal and financial strain has also not been proved adequately. They had assets worth lakhs of rupees as is evident from the income tax returns filed by them and therefore, there is no need for any indulgence in reducing the amount of pre-deposit to be made.

11. After having heard the entire submission made by the parties and going through the material that is placed, I find that the Appellants do not have a very strong prima facie case and it apparently appears that all the formalities required under the SARFAESI Act and the Rules have been complied with. It is true that from the income tax returns which have been filed by the 1<sup>st</sup> Appellant, he has meagre income. The 2<sup>nd</sup> Appellant is an octogenarian with no source of income and the 3<sup>rd</sup> Appellant claims to be a housewife with no independent source of income.

12. Under the circumstances, even though the Appellants are not entitled to get the amount reduced to the minimum of 25% some indulgence can be shown. The application is therefore disposed of with a direction that the Appellants deposit a sum of ₹ 75,00,000/- as pre-deposit. The Ld. Counsel appearing for the Appellants undertakes to deposit a sum of ₹ 15,00,000/- by tomorrow i.e. on 18.07.2023. The balance of ₹ 60,00,000/- shall be paid in two equal

instalments of ₹ 30,00,000/- each. The first instalment shall be paid within three weeks, i.e. on or before 07.08.2023 and the second instalment shall be payable within two weeks therefrom, i.e. on or before 21.08.2023. Failure on the part of the Appellants to pay the amount shall entail dismissal of the appeal.

13. On payment of ₹ 15,00,000/- of the pre-deposit amount it is directed that the auction purchaser namely Respondent Nos. 2 to 4 shall not create any third party interest.

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

15. 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.

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

Post on 08.08.2023 for reporting regarding the payment of 1<sup>st</sup> instalment.

Sd/-  
Chairperson