

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

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

**I.A. No. 183/2023 (WoD)**

**In**

**Appeal on Diary No. 445/2023**

**Between**

Ramchandra Khandu Shinde

... Appellant/s

V/s.

GIC Housing Finance Ltd.

...Respondent/s

Ms. Sonali Jain along with Ms. Khushboo Agarwal, Advocate for Appellant.

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

**-: Order dated: 27/03/2023:-**

The Appellant is before this Tribunal challenging the order dated 29.08.2022 in Interlocutory Application (I.A.) No. 1974/2022 in Securitization Application(S.A.) No. 256/2022 on the files of Debts Recovery Tribunal- II, Mumbai (D.R.T.) wherein the injunction sought against 1<sup>st</sup> Respondent from taking physical possession of the secured assets was declined to be stalled.

2. The Ld. Presiding Officer found that there is no prima facie case because the Appellant did not respond to the demand notice u/s 13 (2) despite being served and that the Appellant had approached the bank with an OTS proposal. Although the OTS proposal was accepted by the Appellant, he failed to pay that amount and hence, the Ld. Presiding Officer refused to grant any injunction.

3. Thereafter, there is another order which also stands challenged but two orders cannot be challenged in one Appeal and therefore, the Appellant shall file a separate Appeal to challenge the subsequent order. As regards the present Appeal challenging the order dated 29.08.2022 there is a delay in filing the Appeal. The Ld. Counsel for the Appellant submits that an application for condonation of delay has been filed which would be considered in due course.

4. At present we are concerned with the application for waiver of pre-deposit filed u/s 18 (1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act" for short). The demand notice claims an amount of ₹ 38,16,781/- as of 31.03.2019. The notice is dated 25.03.2019 the Respondent thereafter took measures u/s 13 (4) because there was no response from the Appellant. After the receipt of the notice measures u/s 13 (4) and also u/s 14 of the SARFAESI Act, the Appellant paid some amount in instalments. There was an offer of OTS for ₹ 56,61,000/- and the Appellant paid ₹ 23 lakhs in four instalments towards that amount. Thereafter, there was a default and the OTS proposal failed.

5. The Ld. Counsel for Respondents submits that after adjusting the amount which was paid in consequence of the OTS proposal, to the balance of ₹ 67 lakhs, there is still an outstanding amount of ₹ 38,31,275/- due from the Appellant as of the date of Appeal.

6. The Ld. Counsel appearing for the Appellant would contend that as per the OTS proposal, there was only an outstanding amount of ₹ 60,99,631/- allegedly due as January 2023 and the interest

accumulated thereafter, could not have brought the amount to over ₹ 67 lakhs as now claimed by Respondent, and therefore, even if the amount paid subsequently adjusted there would be a very minimum balance due from the Appellant to be paid. Even the order u/s 14 of the SAFAESI Act states the outstanding amount of only ₹ 38,16,781/- as of 28.01.2020. Hence, the Appellant may be asked to deposit only 25% of the amount that actually due from the Appellant.

7. The Ld. Counsel for the Appellant is offering to deposit a sum of ₹ 5 lakhs today towards the pre-deposit. The argument of the Ld. Counsel is that a notice u/s 13 (2) was not served and the proceeding u/s 13 (4) also stands challenged.

8. However, because the Appellant had approached the bank with an OTS proposal consequent to the notice received u/s 13 (2) and 13 (4) and there is an element of waiver also which need to be considered. The Appellant has submitted that he is under financial strain and that he has little income, but his income tax return has not been filed. The plea regarding the financial strain is not readily acceptable.

9. However, because the Appellant has made some payment after the demand notice, it is observed that he has made an earnest attempt to wipe the debt. The Appellant is directed to pay the total sum of ₹ 15 lakhs towards the pre-deposit u/s 18 (1) of the SARFAESI Act. The amount of ₹ 5 lakhs is accepted towards the said payment. The balance of ₹ 10 lakhs shall be paid within two equal instalments. The 1<sup>st</sup> instalment of ₹ 5 lakhs shall be payable within two weeks from

today, on or before 10.04.2023 and the 2<sup>nd</sup> instalment of ₹ 5 lakhs shall be payable within two weeks therefrom, on or before 24.04.2023. Failure to pay the amount of subsequent instalment shall entail dismissal of the Appeal.

10. Since the ₹ 5 lakhs have been paid, the further Sarfaesi measures stands stalled till further orders.

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

12. 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.

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

Post on 11.04.2023 for reporting compliance concerning the payment of the 1st instalment.

Sd/-  
Chairperson

psa-05