

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

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

**I.A. No. 547/2023 (WoD)**

**In**

**Appeal on Diary No.1389/2023**

**Between**

M/s Tauschen Tradelink Pvt. Ltd. & Ors. ... Appellant/s  
V/s.  
Indian Bank & Anr. ...Respondent/s  
Mr Rajesh Nagory, i/b Mr Niraj Ashar, Advocate for Appellants.  
Ms Vaishali Bhilare, Advocate for Respondent Bank.  
Mr. Hitesh Phulwani, Advocate for Respondent No. 2.

**:- Order dated: 16/08/2023:-**

The Appellants are in appeal impugning the order dismissing the Securitisation Application (S.A.) No. 232/2023 by the Debts Recovery Tribunal-I, Ahmadabad, (D.R.T) vide order dated 15.07.2023. The Appellants were aggrieved and approached the Hon'ble High Court of Gujarat for orders to stall the intended taking over physical possession of the property on 16.07.2023. The Hon'ble High Court while disposing of the petition filed by the Appellants directing them to approach this Tribunal with an appeal challenging the impugned order granted interim reliefs against the Respondent Bank preventing them from taking possession of the secured assets which is a residential house, till the 17.08.2023.

2. The Appellant had filed the aforesaid S.A. u/s. 17(1) of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (“SARFAESI Act”, for short) challenging the measures taken by the Respondent Bank starting from the classification of the debt as NPA and challenged the demand notice u/s. 13 (2) demanding a sum of ₹3,15,60,186/- and consequent steps u/s. 13 (4) of taking symbolic possession of the property was also challenged. The property was sold for ₹ 2,26,50,000/- in the public auction held on 15.06.2023 and the sale certificate was issued on 22.06.2023 in favour of Respondent No. 2 being the highest bidder. The possession is yet to be handed over to the auction purchaser. The sale also stands challenged by the Appellants mainly on the grounds that valuation was insufficient and that another property lying adjacent has been valued higher, and also on the ground that 30 days' notice was not served before the sale was conducted.

3. The Ld. Presiding Officer did not find favour with the contentions raised by the Appellants with regard to the classification of NPA and the subsequent Sarfaesi measures. The Ld. Presiding Officer has not found favour with the challenges on other grounds raised.

4. The Appellants contend that they have a prima facie case and that they are in a difficult financial position having no means to pay the amount and therefore it is requested that the discretion of this

Tribunal under the third proviso of the Sec. 18 (1) of the SARFAESI Act may be invoked to keep the mandatory pre-deposit at a minimum of 25% of the amount due.

5. The Ld. Counsel appearing for the Respondent Bank as also the Ld. Counsel appearing for the auction purchaser have vehemently opposed the application stating that there are absolutely no grounds to sustain the S.A. and also that there are no reasons for granting any indulgence to reduce the amount to 25% of the debt. The Ld. Counsel also submits that the issue regarding the classification of the NPA has been dealt with in the impugned order and therefore, the contentions raised by the Appellants are not sustainable.

6. According to the Respondent Bank, the outstanding amount as of date is ₹3.25 crores. Since the Appellant is challenging all the Sarfaesi measures and the sale, the amount due as of the date of the filing of the appeal inclusive of interest should be taken for the purpose of determining payment of the pre-deposit. The Ld. Counsel appearing for the Respondents, therefore, submits that the Appellants may be directed to deposit nothing less than 50% of the amount which is due from them.

7. After considering the entire facts and circumstances of this case I find that even though the Appellants may have projected an arguable case with regard to the valuation of the property and the insufficiency of the notice of sale. They are not being successful in

establishing that they are under any financial strain.

8. Therefore, the Appellants are directed to deposit a sum of ₹1,30,00,000/- as pre-deposit. The Ld. Counsel appearing for the Appellant undertakes to deposit a demand draft of ₹5,00,000/- by tomorrow (17.08.2023) and ₹ 10,00,000/- within a week i.e. on or before 23.08.2023. The balance amount of ₹1,15,00,000/- shall be paid in two equal instalments within a gap of two weeks each. The first instalment of ₹57,50,000/- shall be payable within two weeks, i.e. on or before 06.09.2023 and the second instalment of ₹ 57,50,000/- shall be payable within two weeks therefrom, i.e. on or before 20.09.2023. On payment of ₹5,00,000/-, there shall be an interim order preventing the Respondent from taking over possession of the secured assets till the next date of hearing. In default, the Appeal shall stand dismissed, without any further reference to this Tribunal.

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

10. 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.

11. 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 24.08.2023 for reporting compliance regarding the payment of the 1<sup>st</sup> instalment.

Sd/-  
Chairperson

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DRAFT MUMBAI