

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

Present: Mr Justice Ashok Menon, Chairperson

I.A. No. 586/2023 (WoD)

In

Appeal on Diary No. 1453/2023

Between

Shree Balaji Homes Pvt. Ltd. & Ors.

... Appellant/s

V/s.

SICOM Ltd.

... Respondent/s

Mr Gaurang Kinkhabwala along with Dhawani Patel, i/b Mr Tushar Goradia, Advocate for Appellants.

Mr Rishabh Shah along with Mr Nikhil Gupta, i/b M/s Wadia Gandhi & Co., Advocate for Respondent.

Ms Vishakha Tambe, Officer of SICOM Ltd is also present.

:- Order dated: 30/08/2023:-

The Appellants are in appeal impugning the order dated 18.05.2023 in the Interlocutory Application (I.A.) No 785 of 2023 in Securitisation Application (S.A.) No. 125 of 2023 on the files of the Debts Recovery Tribunal-II, Mumbai (D.R.T.). For the purpose of entertaining the appeal, the Appellants have filed this application under Sec. 18(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act', for short) for a waiver of the mandatory pre-deposit.

2. The facts relevant to the disposal of this I.A., in brief, are thus:
The aforesaid S.A. was filed by the Appellants who are the borrower/guarantors/mortgagors with regard to debts/facilities

availed from the first Respondent SICOM Ltd. The Appellants allegedly defaulted on the payment of the debts in consequence of which Sarfaesi measures were initiated by the Respondent. The relevant loan account with regard to which the S.A. is filed was classified as a non-performing asset (NPA) on 09.12.2017. A demand notice under Sec. 13(2) of the SARFAESI Act was issued demanding a payment of ₹7,35,12,005/-. The Appellants state that they had sent a reply pointing out the inadequacies of the demand notice. Ignoring that, steps were taken under Sec. 13(4) and a notice was issued on 10.05.2019. Symbolic possession was purportedly taken on 07.06.2019. The Appellants claimed that no proper notices in compliance with the rules were issued. The Respondent obtained an order under Sec. 14 of the SARFAESI Act from the Chief Metropolitan Magistrate (CMM) on 15.03.202. A notice was received for taking physical possession of the secured asset on 01.04.2023. Consequently, the aforesaid S.A. was filed challenging the Sarfaesi measures on the grounds as stated above. The Appellants filed I.A. No. 692 of 2023 for interim relief to stall the Sarfaesi measures initiated by the Respondent to dispossess the Appellants from the secured assets. During the pendency of the application, there was a proposal of settlement of the entire debt the Appellants had undertaken to pay a sum of ₹5.65 crores in instalments and had also undertaken to surrender possession of the first floor of the building which was part of the secured assets within a stipulated time stretching from 20.04.2023 till the 30.09.2023. The undertaking made by the Ld. Counsel appearing for the Appellants under instructions with regard

to the amounts and the debts on which the payments were to be made were recorded in the order passed by the Ld. Presiding Officer. The Ld. Counsel appearing for the Respondent also submitted that in case of breach in handing over possession of the first floor of the building named Narang Manor, and on non-payment of the amount as per the schedule proposed, liberty may be given to proceed and take further action under the SARFAESI Act and Rules.

3. The Appellants neither paid any amount as per the undertaken nor did they hand over possession of the first floor of the building and even sought adjournment twice to comply with the undertaking. Ultimately, the above-mentioned I.A. No. 785 of 2023 was filed seeking a modification of the undertaking dated 31.03.2023. They wanted the total amount payable by them to the Respondent to be enhanced to ₹7 crores and also undertook to pay that amount by July 2023.

4. The Ld. Presiding Officer in the impugned order made scathing remarks regarding the honesty, integrity and reliability of the Applicants/Appellants and declined to grant any reliefs and rejected the application with permission to the Respondent to proceed with the Sarfaesi measures.

5. The Appellants are aggrieved and hence in the appeal.

6. Heard Mr Gaurang Kinkhabwala, the Ld. Counsel appearing for the Appellants and Mr Rishabh Shah, the Ld. Counsel appearing for the Respondent.

7. The question that arises for consideration in this application is whether the Appellants are entitled to any concession with regard to

payment of the mandatory pre-deposit contemplated under Sec. 18(1) of the SARFAESI Act.

8. The Appellants have challenged the Sarfaesi measures on various grounds which include inadequacy of the notice under Sec. 13(2), the impropriety regarding the service of notice and also the measures taken under Sec. 14 of the SARFAESI Act. The Ld. Counsel appearing for the Respondent submits that the Appellants have been dishonest in their transactions and submissions. They have not come up with clean hands and therefore, are not entitled to any equity. It is pointed out that as of date the debt due from the Appellants has accumulated to a sum of ₹19.60 crores and therefore, the Appellants may be directed to deposit not less than 50% of that amount as pre-deposit for entertaining the appeal. That apart, the Ld. Counsel Mr Shah vehemently argues that the Appellants have admitted to pay a sum of ₹5.65 crores and thereafter offered to pay ₹7 crores towards the liability and therefore, it is only appropriate that the Appellants be directed to deposit a sum of ₹7 crores undertaken to be paid by them before July 2023.

9. Ld. Counsel for the Appellants Mr Kinkhabwala undertakes that he would deposit ₹25 lakhs by 01.09.2023 and the balance amount as directed by this Tribunal would be deposited in instalments without much delay. The Ld. Counsel also undertakes to surrender $\frac{2}{3}$ of the first floor of the building and points out that as per the valuation, the said floor would be more than sufficient to discharge the entire debt. The Ld. Counsel would also indicate the provisions under Rule 8(5) of the Security Interest (Enforcement) Rules as also to Order 21 Rule

64 of the Code of Civil Procedure to indicate that only that portion of the property as required for satisfying the debt need be put for sale.

10. After having examined the rival submissions, perused the records and bestowed anxious consideration on the facts and circumstances, I would want to record the Ld. Presiding Officer had in the order dated 31.03.2023 in I.A. No.692 of 2023 recorded the undertaking made by the Ld. Counsel appearing for the Appellants as also the rival submissions made by the Ld. Counsel for the Respondent. Surprisingly, there were no clear findings of the Tribunal made in that order dated 31.03.2023. Recording the submissions made by either side is not an order of the Tribunal. After recording the rival submissions/undertaking, the Tribunal should have come to a conclusion regarding the order to be made which should have been in the form of a direction to the parties concerned and intended to be compiled. There is no such direction in that order. The Tribunal is not expected to munch words while pronouncing and ordering. It must be clear and unambiguous. Under the circumstances, there was no reason for the Ld. P.O in the order dated 18.05.2023 for fretting and fuming over the non-compliance of the undertaking by the parties.

11. I am not delving deep into the merits of the impugned order at this stage. In view of the settled positions regarding the pre-deposit in the decision of the Hon'ble Supreme Court in *Sidha Neelkanth Paper Industries Pvt. Ltd. & Ano. vs. Prudent ARC Ltd & Ors., 2023 OnLine SC 12*, the threshold amount for the payment of pre-deposit in cases where the Appellants have challenged the notice under Sec. 13(2) and the measures under Sec. 13(4), should be the amount demanded in the

demand notice. In the instant case, the demand under Sec. 13(2) is for ₹7,35,12,005/-.

12. I do not find it essential to invoke the discretionary provisions of the third provision to Sec. 18(1). The Appellants have not pleaded and proved that they are under any financial strain which is an essential ingredient to reduce the amount from the mandatory 50%.

13. The Appellants are therefore, directed to deposit a sum of ₹3,67,56,000/- as pre-deposit within a period of two weeks, i.e. on or before 13.09.2023, failing which the appeal shall stand dismissed without any further reference to this Tribunal.

14. The Ld. Counsel for the Respondent submits that the possession of the first floor of the secured assets has already been taken by the bank. An affidavit to that effect is also being filed. On depositing the pre-deposit amount, the Appellants shall be entitled to an interlocutory relief of getting the further Sarfaesi measures of taking over physical possession of the rest of the secured assets by the Respondent under Sec. 14 of the SARFAESI Act stalled till disposal of this appeal.

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

16. 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.

17. 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 14.09.2023 for reporting compliance concerning the payment.

Sd/-
Chairperson

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DRAFT MUMBAI