

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

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

**I.A. No. 588/2023 (WoD)**

**In**

**Appeal on Diary No. 1507/2023**

**Between**

M/s. Janvi Ornament & Anr.

... Appellant/s

V/s.

M/s. Cholamandalam Investment & Finance  
Company Ltd.

... Respondent/s

A.R. Gupta & Mr. Aditya Bhatt & Ms. Neeta Pandit, Advocate for  
Appellants.

An Advocate for the Respondent is present.

**:- Order dated: 31/08/2023:-**

The matter is taken up for hearing by way of a praecipe filed by the Appellants for seeking urgent relief.

The first Appellant is a proprietorship represented by the second Appellant and has come up in Appeal aggrieved by the order dated 24.08.2023 in Securitization Application (S.A.) No. 518/2023 on the files Debts Recovery Tribunal-II, Ahmedabad (D.R.T.) where the Ld. Presiding Officer declined to grant any interlocutory reliefs to the Appellants with regard to the Sarfaesi measures initiated by the Respondent Financial Institution against him under the provision of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“SARFAESI Act” for short).

2. The Appellants have filed this application seeking a waiver of the mandatory pre-deposit u/s 18 (1) of the SARFAESI Act.

3. The Appellants have challenged the Sarfaesi measures on various grounds which include the defects in the notice issued u/s 13 (2) of the SARFAESI Act by stating that he does not show bifurcation of the interest that is calculated to the classification of the debt as Non-Performing Assets (NPA) is also challenged. That a part of the order of the Chief Judicial Magistrate u/s 14 of the SARFAESI Act stands challenged for the reason that there was no proper 9-pointer affidavit on the basis of which the order could be made. It is also contended that a reply was sent to the notice u/s 13 (2) on behalf of the Appellants by his lawyer to which the Respondent has sent the reply u/s 13 (3A) through its lawyer, which according to the Ld. Counsel for the Appellants are improper because the Authorized Officer himself should have replied to it rather than resorting to the engagement of a lawyer. It is also stated that the reply does not in any way clarify the query that has been put by the Appellants in his reply to the demand notice and is, therefore, inadequate.

4. The Appellants states that this application for stalling the Sarfaesi measures was declined improperly and therefore, requires interference in appeal. It is stated that the Appellants have a good prima facie case and does have not a good financial condition to pay the pre-deposit of 50% of the debt due, and therefore, seeks the indulgence of this Tribunal to reduce the amount of the pre-deposit to the minimum of 25% exercising jurisdiction under the 3<sup>rd</sup> proviso to section 18 (1) of the SARFAESI Act.

5. There were two demand notices issued. One demand notice was withdrawn and a second demand notice was issued on 31.03.2023 which indicates that there were arrears of ₹92,63,326.99/- due as of 30.03.2023 to be paid. The Ld. Counsel for the Appellants submits that the provided bifurcation indicates the principle amount of ₹ 71,83,480/- but there is a foreclosure notice also issued by the Respondent which indicates the principle amount as early as ₹67,37,156/- as on date of 30.03.2023. There is a discrepancy in the principal amount. It is also contended that the 1<sup>st</sup> demand notice issued u/s 13(2) in the year 2021 indicates a rate of interest of 10.25% whereas the latest demand notice claimed to show a rate of interest of 12.25% and therefore, if there is a changed in floating rate of interest the rate of interest as and when is changed ought to have been shown in the demand notice submits the Ld. Counsel appearing for the Appellants. The Ld. Counsel submits that the Appellant is a physically disabled person having 70% disability and is, therefore, not in a position to earn his livelihood. Moreover, his income tax return also would show that his business is running at a loss.

6. Per contra, the Ld. Counsel appearing for the Respondent Bank would contend that the Appellant is running a very lucrative jewellery business for which his disability will not be an impediment and that the disability certificate is dated 2015 at least 3 years prior to his availing the loan which indicates that despite the disability he was a running a very successful jewellery business and did not affect his means of livelihood. He also has been paying some amount but later defaulted. It is further contended that the bifurcation as required u/s 13 (3) of the SARFAESI Act is provided in the demand notice and

the rate of interest is in accordance with the sanction letter which indicates that it would be fluctuating and it is not incumbent upon the Respondent to have provided details of every change in the interest rate in the demand notice. Reply has been provided to the reply which was given by the Appellants to the demand notice and the Ld. Counsel for Respondent also submits that there is no embargo in resorting to the assistance of the lawyer for sending the reply u/s 13 (3A) of the SARFAESI Act.

7. The Ld. Presiding Officer has considered all these contentions which were raised by the Appellants in detail. Precedents have also been followed and he came to the conclusion that the contentions raised are not prima facie sustainable.

8. At this point when this Tribunal is called upon to determine the pre-deposit amount to be paid by the Appellants, I do not intend to delve deep into the merits of the contentions raised by the Appellants. It would be sufficient to say that the contentions raised by the Appellants would put forth an arguable case. The income tax returns and the audit reports of the statement of account produced by the Appellants would indicate that the person has limited income at least in the year 2021-2022, and therefore, is not in a financial position to deposit the 50% of the amount that is demanded.

9. Considering the entire facts and circumstances of this case and having anxiously considered the rival submissions, and after perusing the records, I am of the opinion that though the Appellants are not entitled to get the amount reduced to 25% of the amount demanded, some concession needs to be given and hence, I fix the amount to be payable as pre-deposit at ₹30 lakhs. The Ld. Counsel appearing for

the Appellants submits that she is producing the demand draft of ₹12.5 lakhs today. The balance amount of ₹17.5 lakhs shall be payable within four weeks, i.e. on or before 29.09.2023. In view of the fact that the Appellants have produced the demand draft for ₹12.5 lakhs, the further Sarfaesi measures shall stand stalled till the next date of hearing before the bench.

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

11. 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 after that to be renewed periodically.

12. 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 03.10.2023 for reporting compliance.

Sd/-  
Chairperson

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