

BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI

Present : Mr. Justice Ashok Menon, Chairperson

I.A. No.10/2022 (WoD)

In

Misc. Appeal No. 06/2022

Between

M/s. Neil Extrulamipack Pvt. Ltd. & Ors. ... Appellant/s

V/s.

Pegasus Asset Reconstruction Pvt. Ltd. & Anr. ... Respondent/s

Ms. Sonali Jain, Advocate for Appellants.

Mr. Rishab Shah along with Ms. Shweta Tingle, i/b M/s. Fortis India Law, Advocate for Respondent No.1

Mr. Robin J., i/b J. D'silva, Advocate for Respondent No.2

:- Order dated: 23/06/2023:-

The Appellants are in appeal impugning the order of dismissal of the S.A. No. 446/2018 on the files of Debts Recovery Tribunal – II, Mumbai (D.R.T) wherein the challenges raised u/s. 17 of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (“ the SARFAESI Act”, for short) were declined to be found in favour of the Appellants by the Ld. Presiding Officer vide order dated 04.12.2018 and hence, the Appellants are in appeal.

2. The present application is for waiver of deposit which was filed much after the appeal was filed and the Appellants state that they have a very strong prima facie case. It is also contended that they are under financial strain and hence, mandatory pre-deposit may be

reduced to a minimum of 25% of the amount due. The Appellant had earlier filed another S.A. No. 204/2018 challenging the Sarfaesi measures till the auction sale of the secured assets took place. But in the interregnum period, the sale took place because there were no prohibitory orders and therefore, the Appellant sought about an amendment to S.A. No. 204/2018 incorporating their challenge to the sale of the property.

3. Thereafter, the Appellant filed another Interlocutory Application as I.A. No. 917/2018 seeking to redeem the property u/s. 13 (8) of the SARFAESI Act. The Ld. Presiding Officer considered that application and allowed the prayer to redeem the property within a period of 30 days. There was a rider to that order stating that in case the property is not redeemed within 30 days the sale in favour of the 2nd Respondent shall stand confirmed and the sale certificate shall be issued. The Appellant did not redeem the property by depositing the entire amount. In consequence, of which the sale was confirmed in favour of the 2nd Respondent, the sale certificate was issued and registered. The 2nd Respondent is presently in possession of the property, the old bungalow which was standing on the property was knocked down and a new structure has come up and almost completed construction. At this stage, the Appellant seeks to challenge the Sarfaesi measures right from the issuance of the notice u/s. 13 (2) that was issued on 05.04.2017 demanding payment of a sum of ₹ 5,71,22,063/- and the consequential Sarfaesi measures which include the measures taken under 13 (4) and u/s. 14.

4. The order of the Chief Metropolitan Magistrate (CMM) u/s. 14 of the SARFAESI Act dated 08.02.2018 also stands challenged in the present S.A. No. 446/2018. The Ld. Presiding Officer after considering the rival submissions found that the Appellant is estopped from contesting the matter. In view of the fact that all the contentions were raised earlier in S.A. No. 204/2018 and there was a specific application filed for redemption of the mortgage therefore the earlier challenges are expressly given up by the Appellants and thereafter having failed to redeem the property within the time stipulated the Appellants have again come up with a challenge to the Sarfaesi measures taken by the bank.

5. The S.A. was therefore dismissed. The Appellants are aggrieved and hence, in appeal.

6. The Appellants contend that the property was undervalued and that the adjoining property situated in Juhu was sold for a much higher price and therefore, apparently the sale is vitiated. It is also contended that the land on which the bungalow stands was never mortgaged.

7. It is further contended that the loan facility was given to the Appellant under two heads and only one of them actually was a secured loan. The second loan was not a secured loan and the Sarfaesi measures were initiated for both loans together which is improper. Further, it is also contended that the 1st Appellant which is a company that had a factory manufacturing plastic disposable items, met with a fire accident way back on 11.07.2015 as a consequence of which the entire factory was gutted and the only source of income

derived by the Appellants came to a standstill.

8. The Appellants Nos. 2 and 3 have produced their income tax returns to indicate that they have a very meagre income and are therefore unable to deposit the mandatory amount contemplated u/s. 18 (1) the SARFAESI Act.

9. The Ld. Counsel appearing for the Respondent Bank submits that the property was sold for a sale consideration of ₹ 13.38 crores after wiping out the entire debt due from the Appellants under the two facilities and also adjusting the amount towards the third facility regarding which no steps were yet taken but it still the amount of ₹ 5 crores is lying in deposit with a bank which the Appellants were free to withdraw but they had not yet withdrawn.

10. Since the sale is challenged the sale consideration received on the sale of the property cannot be accounted for. Under the circumstances, the present outstanding amount due from the Appellants is approximately ₹ 12.6 crores and the Ld. Counsel submits that the Appellants may be directed to deposit 50 % of that amount for entertaining the appeal.

11. The Ld. Counsel appearing for the 2nd Respondent submits that hard-earned money has been spent after purchasing the property way back in 2018 and the structure is almost completed. The only intention of the Appellant is now to frustrate the 2nd Respondent from selling the apartments and put him into difficulty. Therefore, there is no bonafide in the appeal filed by the Appellants. It is also pointed out that the appeal was filed nearly two years ago and the defects pointed out by the Registry were never cured for the last 2

years. The application for waiver has also been filed by the end of the second year which indicates that the Appellants had malafide intentions.

12. After having heard the rival submissions of the parties and going through the record, I do not find any prima facie case in favour of the Appellants because they themselves had filed an application in the earlier S.A. filed as S.A. 204/2018 seeking a redemption giving up their entire challenge to the Sarfaesi measures. They also agreed to deposit the amount within 30 days which they failed to do.

13. The order of disposal of the S.A. No. 204/2018 has not been challenged in appeal. The undervaluation of the property is also a contention that was taken up by the Appellants in S.A. No. 204/2018.

14. Under the circumstances I find that the Ld. Presiding Officer was justified in finding that the Appellants are estopped from raising all those contentions all over again.

15. I find no reason to exercise the discretion of this Tribunal under the 3rd proviso to Sec.18 (1) of the SARFAESI Act.

16. However, the appeal need not be dismissed at the threshold without affording an opportunity for the Appellants to be heard. Hence, the Appellants are directed to deposit a sum of ₹ 5 crores as pre-deposit in two equal instalments of ₹ 2.5 crores each. The first instalment shall be payable within a period of four weeks, on or before 21.07.2023 and the second instalment shall be paid within two weeks on or before 04.08.2023 therefrom. In default, the Appeal

shall stand dismissed, without any further reference to this Tribunal.

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

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 24.07.2023 for reporting compliance regarding the payment of 1st installment.

Sd/-
Chairperson

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DRAFT MUMBAI