

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

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

**I.A. No. 452/2023 (WoD)**

**In**

**Appeal on Diary No729/2023**

**Between**

Ternate Hospitality Pvt. Ltd. & Anr.

... Appellant/s

V/s.

The Authorised Officer,

Piramal Capital & Housing Finance Ltd. & Anr.

... Respondent/s

Mr Raffeeque Peer Mohiddin along with Mr Manoj Harit and Neel Shetty, i/b M/s. Manoj Harit & Co., Advocate for Appellants.

Mr R. L. Motwani, Advocate for Respondent No. 1.

An advocate for Respondent No. 2 is present.

**:- Order dated: 10/07/2023:-**

The matter is taken up for hearing by way of praecipe dated 30.06.2023 filed by the Appellants seeking urgent relief.

2. The Appellants are in appeal challenging the order dated 13.04.2023 in I.A. No. 708 of 2023 in Securitisation Application (S.A.) No. 292 of 2019 on the files of the Debts Recovery Tribunal, Pune (D.R.T.) wherein the Ld. Presiding Officer has refused to grant any reliefs to the Appellants against the Sarfaesi measures initiated with regard to the property which is the secured asset. The Appellants had earlier, in the very same S.A., preferred two similar applications before the D.R.T. The first application, filed as I.A. No. 1695 of 2022 was dismissed vide order dated 11.10.2022 and thereafter, the second application filed as I.A. No. 109 of 2023 too was dismissed, mainly for

the reason that the prayers in the earlier applications were identical. Aggrieved by the order of the D.R.T. in I.A. No. 109 of 2023, the Appellants came on Appeal at Diary No. 225 of 2022 wherein an application was filed as I.A. No.90 of 2023 for waiver of deposit. This Tribunal had, in the order disposing of the I.A., observed that there was no prima facie case. Nevertheless, since the Respondents had contested the locus of the Appellants to maintain the application under Sec. 17(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act' for short), the application, as well as the appeal, was disposed of with the direction to the D.R.T. to enter into a finding with regard to the maintainability of the S.A., and proceed to dispose of the S.A. as expeditiously as possible. Subsequent to the disposal of the earlier appeal, the Appellants filed an application for amendment of the S.A. which according to the counsel appearing for the parties was dismissed and never challenged in the appeal. Thereafter, this third application as I.A. No. 708 of 2023 was filed to stall the Sarfaesi measures initiated by the first Respondent.

3. The Ld. Presiding Officer vide the impugned order dismissed the application stating that there are no grounds for granting any interim reliefs and I am told that the S.A. is now posted for disposal.

4. The Appellants are in appeal and have filed this application for waiver requesting this Tribunal to exercise discretionary jurisdiction to keep the mandatory pre-deposit minimum of 25% of the amount due.

5. The Respondent Financial Institution has not filed any reply regarding the application but orally opposed the application. The

statement of account with regard to the exact amount due from the Appellants is not available. As per the records in the demand notice under Sec. 13(2) dated 23.04.2018 the amount demanded for ₹3,84,50,000/- interest thereafter was also become due. Admittedly, the Appellants have paid ₹85 lakhs consequent to the receipt of the demand notice which needs to be deducted from the amount claimed. According to the Ld. Counsel appearing for the first Respondent, after adjusting the amount that is paid there is still a sum of ₹6,70,00,000/- to be paid. Since the statement of account is not available, this amount cannot be readily acceptable as the amount due. The calculation will have to be made regarding the amount to be paid to the first Respondent. The Appellants are admittedly not the owner of the property. The second Respondent is the owner of the property who had entered into an agreement with the Appellants. The Appellants are actually licensees on the property and conducting a restaurant and hospitality business on the premises. The original leave and license was for five years which has since expired and has not been extended. The civil suits were admittedly pending between the Appellants and the second Respondent has been dismissed and the Ld. Counsel appearing for the Appellants submits that the appeal has been preferred. There is also an irrevocable power of attorney purportedly executed by the second Respondent in favour of the Appellants which according to the second Respondent has rescinded it for the reason that there was a breach of the terms of the agreement between them. Appellants claim to be in exclusive possession of the property though as the licensee. There is absolutely no document to indicate that the

Appellants are tenants entitled to be protected under the provisions of the SARFAESI Act. The Appellants undertake to deposit 25% of the amount. Considering the amount due to be around ₹5 crores, this Tribunal had already noticed in the earlier order dated 16.02.2023 in Appeal at Diary No. 225 of 2023 that the Appellants have failed in establishing a prima facie case of right over the property. However, the matter was remanded for considering the contention whether the Applicants have locus standi to maintain an application under Sec. 17(1) of the SARFAESI Act. That point has not yet been answered by the D.R.T. for the reasons stated that the application for amendment as well as another application for interim reliefs were filed before the S.A. could be taken up for hearing. Considering the threshold amount due to approximately ₹5 crores, the Appellants are directed to deposit a sum of ₹2.50 crores as pre-deposit. It is pointed out that the property intended to be taken possession on 14.07.2023. The Appellants undertake to deposit ₹1.50 crores before 14.07.2023 and the balance amount of ₹1crore shall be paid within the period of four weeks, therefrom, i.e. on or before 07.08.2023. Failure to pay any of the amounts shall entail in dismissal of the appeal without any further reference to this Tribunal.

6. On deposit of an amount of ₹1.50 crores before 14.07.2023, the Appellants shall be entitled to an interlocutory relief of stay of taking over possession of the secured asset.

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

8. 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.

9. With these observations, the I.A. is disposed of. The Respondents are at liberty to file a reply in the Appeal with an advance copy to the other side.

Post on 17.07.2023 for reporting compliance concerning the first instalment.

Sd/-  
Chairperson

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DRAT.MUMBAI