

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

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

**I.A. No. 79/2023 ((Stay)**

**In**

**Appeal on Diary No. 146/2023**

**Between**

M/s Aarav Industries & Ors. ... Appellant/s

V/s.

Bank of Baroda & Anr. ... Respondent/s

Mr Prashant Pandit, along with Mr Jay Pandit, Advocate for Appellants.

Ms Sandhaya Sondhi, Advocate for Respondent No.1.

Mr Rohit Gupta along with Mr S. Solanki, Advocate for Respondent No. 2.

**:- Order dated: 09/02/2023:-**

The 1<sup>st</sup> Appellant is a partnership firm represented by Appellants Nos. 2 and 3 who are the partners of the firm. They are in appeal impugning the order of the Debts Recovery Tribunal-II, Ahmedabad (DRT) dated 19/01/2023 in I.A. No. 4064/2022 in Securitisation Application (S.A.) No. 509 of 2022.

2. The present I.A. No. 79/2023 is for a stay of the operation of the aforesaid impugned order of the Ld. Presiding Officer.

3. The Appellants who are the Applicants in the S.A., had sought an interlocutory relief to restrain the 1<sup>st</sup> Respondent bank from taking physical possession of the shop room leased out by the Applicants, against which, being the secured assets, measures were

being taken under the provisions of the Securities & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 ('SARFAESI Act', for short). The Applicants had undertaken to pay ₹91 lakhs towards the debt due. Vide order dated 15/12/2022, the Ld. P.O. granted a stay preventing the Respondent bank from taking possession of the secured assets on condition that the Applicants paid a sum of ₹91 lakhs to the Respondent bank, as undertaken. The amount was deposited by the Applicants in a no-lien account with the Respondent bank.

4. The Respondent bank filed the above-mentioned I.A. No. 4064/2022 seeking a modification of the order dated 15/12/2022 contending that the secured assets were already sold in the auction that was held on 17/08/2022 for an amount of ₹1,97,05,600/-and that the auction purchaser, who is the 2<sup>nd</sup> Respondent herein, had deposited the entire amount with the Respondent bank and the sale certificate was also issued on 17/10/2022 and registered on 28/11/2022. The possession of the secured assets could not be taken and handed over to the auction purchaser because of the restraining order passed by the DRT on 15/12/2022. And hence, the Respondent bank requested a modification of the order.

5. The auction purchaser also appeared and submitted that despite the deposit of the entire amount due to the sale consideration in getting the sale confirmed, the sale certificate issued and registered in his favour, he was still waiting to get physical possession of the property purchased by and therefore, seeks modification of the protection granted to the Applicants.

6. The Applicants had opposed the application seeking a modification of the order pointing out that they had deposited a sum of ₹91 lakhs towards the total dues of ₹95,70,886/-as on the date of the restraining order.

7. The Ld. P.O. after considering the rival contentions, allowed I.A. No. 4064/2022 in part and withdrew the protection granted to the Appellants with regard to the taking over of possession of the secured assets by the 1<sup>st</sup> Respondent bank. The Appellants are aggrieved and hence, in appeal.

8. In compliance with the mandatory provisions of the 2<sup>nd</sup> proviso to section 18 (1) of the SARFAESI Act, the Appellants had requested the amount of ₹91 lakhs deposited in a no-lien account with the 1<sup>st</sup> Respondent bank. This Tribunal directed the 1<sup>st</sup> Respondent bank to produce the amount aforesaid, and accordingly, the same was produced and considered as mandatory pre-deposit for the purpose of entertaining the appeal as required under section 18 (1).

9. The learned counsel appearing for the Appellants, Mr Prashant Pandit fervently argues that the Appellants have deposited a major portion of the debt due from them, and therefore, the 1<sup>st</sup> Respondent bank may be restrained from taking physical possession of the property which is the secured assets. The Ld. Counsel would also point out that the Appellants were willing to cooperate with the 1<sup>st</sup> Respondent bank by offering to sell the secured assets for a sum of ₹4,65,00,000/-to a purchaser who was ready and willing to purchase the property. A letter was issued to

the 1<sup>st</sup> Respondent bank on 23/12/2021 with the aforesaid proposal and reminders were sent on 25/03/2022 and on 20/06/2022. It is pointed out by the learned counsel that the property was sold for a pittance of ₹1,97,05,600/-to the 2<sup>nd</sup> Respondent. The reserve price fixed for the property was highly inadequate and the 1<sup>st</sup> Respondent bank had fraudulently sold the property to the 2<sup>nd</sup> Respondent for a song in violation of the Act and Rules.

10. Per contra, the learned counsel appearing for the Respondents would submit that in the auction sale that was held on 17/08/2022, there were no other bidders apart from the 2<sup>nd</sup> Respondent. The person who was allegedly willing to purchase the property for ₹4,65,00,000/-did not even participate in the auction. According to the learned counsel Mr Rohit Gupta, appearing for the 2<sup>nd</sup> Respondent, the offer made by the Appellants to sell the property to a willing purchaser, was only fictitious. Had there been such a purchaser, he would have participated in the auction sale and bid for the amount stated by the Appellants in their letter to the 1<sup>st</sup> Respondent bank. The intention of the Appellants in making a such offer was only to protract the auction sale, submits Mr Gupta. It is further pointed out that the Appellants had never raised any objection regarding the insufficiency of the reserve price fixed for the property.

11. The learned counsel appearing for the bank would submit that the symbolic possession of the secured assets was taken by the bank as early as 15/09/2021. Notice was served on the Appellants affixture of the notice was made on the property and publication as

required to be made into newspapers were also made. Application for physical possession of the property was made before the District Magistrate, Daman under section 14 of the SARFAESI Act. The property was valued through a board-approved valuer and a sale notice was issued on 12/07/2022 fixing the auction on 17/08/2022. Publication of the proposed auction was also made in newspapers in accordance with the Rules. It is pointed out that the letters sent by the Appellants offering to sell the property for a fabulous amount, were only a ruse to protract the matter by deploying such dilatory methods. It is therefore prayed that no stay may be granted in favour of the Appellants to stall the handing over of possession to the auction purchaser.

12. After having considered the submissions made by the learned counsel appearing for the parties, I find that the Appellants do not have a case sufficient to stall the proceedings before the DRT. It is true that the Appellants have deposited a major portion of the debt due from them. However, it was a bit too late since the property was already sold and the 2<sup>nd</sup> Respondent has already deposited the entire sale consideration and got the sale confirmed, the sale certificate issued and registered in his favour. The right of redemption is therefore not available to the Appellants at this stage. No prejudice would be caused to the Appellants in case the physical possession of the property is handed over to the 2<sup>nd</sup> Respondent in consequence of the confirmation of the sale. The Appellants are not without remedy. In case they are able to establish that the sale price for which the secured assets were sold was inadequate or that the

proceedings were not in accordance with the Rules, the sale could always be set aside by the DRT in the SA that is pending consideration. It is also pertinent to note that despite having written three letters, the Appellants did not produce any auction purchaser to wait for the property in the public auction that had taken place. They also did not raise any objection regarding the insufficiency of the reserve price despite having received the notice on time.

I am therefore of the opinion that the Appellants are not entitled to any stay of the impugned order or the Sarfaesi measures initiated and handing over the possession to the auction purchaser. The application for stay is only to be dismissed, and I do so.

Sd/-  
Chairperson

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