

BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI

Present: Mr Justice Ashok Menon, Chairperson

I.A. No. 640/2023(WoD)

In

Appeal on Diary No.1634/2023

Between

M/s. Bhavani Enterprises & Ors.

... Appellant/s

V/s.

The Authorized Officer, Saurashtra Gramin Bank ...Respondent/s

Mr. Dhruvit Chauhan, Advocate for Appellant.

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

-. Order dated: 26/09/2023:-

The Appellants are in appeal impugning the order dated 06.09.2023 in S.A. No. 282/2023 on the files of the Debts Recovery Tribunal – II, Ahmadabad, wherein the Ld. Presiding Officer declined to grant any protection order with regard to the secured assets which is being proceeded against by the Respondent Bank under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. (“SARFAESI Act” for short) holding that there is no prima facie case in favour of the Appellants. The Appellants are aggrieved and hence, in appeal.

2. In order to entertain the appeal the Appellants will first have to cross the hurdle of making a mandatory pre-deposit u/s. 18 (1) of the SARFAESI Act. The Appellants prayed that the mandatory pre-deposit may be reduced to the minimum of 25% exercising the jurisdiction of this Tribunal under the third proviso of Sec. 18(1) of the SARFAESI Act. The Appellants have challenged the notice u/s.

13 (2) stating that there is no bifurcation of the amount that is claimed from the Appellants by the various facilities granted to them by the Respondent Bank.

3. It is also stated that the application was filed u/s. 14 of the SARFAESI Act before the District Magistrate is not accompanied by a 9-pointer affidavit as required, it is therefore defective. The details of the objection filed by the Appellants to the demand notice and the reply received from the bank are not stated in detail in the application filed u/s. 14.

4. It is therefore stated that the Appellants have a strong prima facie case to maintain an application under the SARFAESI Act. It is also submitted that the Appellants are under financial strain and therefore unable to deposit 50% of the amount demanded. In order to prove their financial strain, income tax returns of Appellant Nos. 2 and 6 have been produced stating that they are the persons concerned with the property against which the Sarfaesi measures have been initiated.

5. The Id. Counsel appearing for the Respondent has vehemently opposed the application stating that the Appellant has no prima facie case. It is also stated that the financial strain has not been sufficiently proven because the tax returns of all the Appellants have not been produced. They are jointly and severally liable to repay the debt as mortgage/guarantors and therefore in order to get benefit under the third proviso of Sec. 18 (1), the financial strain of all the Appellants needs to be established.

6. After hearing both sides find that in view of the decisions of

the Hon'ble Supreme Court in the case of *M/s. Sidha Neelkanth paper Industries Private Limited & Another 2023 SCC Online 12*, which has been followed by the Hon'ble High Court of Gujarat in the decision of *M/s. Shree Rajmoti Industries V/s The Authorized Officer, Union Bank of India R/Special Civil Application No. 9564/2022*, the threshold amount for determining the pre-deposit is the amount mentioned in the demand notice. In the instant case, the amount demanded in the notice u/s. 13 (2) is ₹ 74,57,300/-.

7. Considering the plea of the Appellant and the financial strain relied upon by them, I am of the opinion that the Appellants should be directed to deposit a sum of ₹ 30,00,000/- as pre-deposit. The Ld. Counsel appearing for the Appellants is depositing a sum of ₹ 7,00,000/- today and the balance of ₹ 23,00,000/- shall be deposited in two equal instalments. The 1st instalment of ₹ 10,00,000/- shall be payable within one week and the 2nd instalment of ₹ 13,00,000/- shall be payable within two weeks therefrom, as stated hereunder.

<u>Numbers of Instalments</u>	<u>Payment on or before</u>
1 st Instalment	03.10.2023
2 nd Instalment	17.10.2023

8. In view of the deposit ₹ 7,00,000/- today the sale which is scheduled to take place today shall stand deferred till the next date of hearing. In default of payment of any of the instalments, the Appeal shall stand dismissed, without any further reference to this Tribunal.

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

10. 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.

11. 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 04.10.2023 for reporting compliance regarding 1st instalment.

Sd/-
Chairperson

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DRAT, MUMBAI