

BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI

Present : Mr. Justice Ashok Menon, Chairperson

I.A. No. 653/2023 (WoD)

In

Appeal on Diary No. 845/2023

Between

Harshlok Motors India Pvt. Ltd. & Ors. ... Appellant/s

V/s.

The Authorized Officer, ... Respondent/s
Kotak Mahindra Bank Ltd.

Mr. Puneet Gogad, i/b Mr. M.M. Avhad, Advocate for Appellants.

Mr. R.L. Motwani, Advocate for Respondent.

:- Order dated: 05/10/2023:-

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

The Appellants are in appeal impugning the order dated 28.04.2023 in Securitization Application (S.A.) No. 53/2019 on the files of the Debts Recovery Tribunal, Aurangabad (D.R.T.) whereby the D.R.T. observed that there is no interim order of the stay to protect the Appellants from the Respondent taking possession of the secured assets.

2. Certain earlier orders passed by the D.R.T. would be pertinent in this case. The Respondent Bank had issued the notice u/s 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act" for short) on 04.07.2018 demanding the total sum of ₹2,34,89,701.22 on account of three loans facilities which had existed. The Appellants

moved the D.R.T when the symbolic possession of the property was taken on 27.09.2018. Thereafter, the order u/s 14 of the SARFAESI Act was also obtained from the District Magistrate on 31.12.2018. The S.A. was amended and the challenge to the order u/s 14 was also incorporated in the S.A. On 04.02.2020 when the S.A. came up for consideration before the D.R.T. the Ld. Presiding Officer directed the Appellants to deposit 25% of the amount demanded in the demand notice in two instalments. And subject to payment of that amount to the bank directly, and an interim order of the stay was granted protecting the Appellants from losing possession of the property.

3. Thereafter, when the matter came up for consideration before the D.R.T. on 11.11.2022 the Ld. Presiding Officer observed that the Appellant had paid only a sum of ₹40.85 lakhs towards 25% directed to be paid and that the balance amount was paid towards dues on an unsecured loan. The D.R.T. vide order dated 04.02.2020 directed payment of 25% of the amount demanded. The Ld. P.O. observed that payment was intended to be paid towards secured loans only, and therefore, the Appellants were directed to make good the balance of 25% within the period of two weeks. The Appellants did not comply with that order dated 11.11.2022, nor was it challenged in appeal. Even subsequent to that, no steps were taken to take possession of the property by the bank. On 28.04.2023 when the matter came up before the D.R.T. for consideration again, it was observed by the Ld. Presiding Officer, there is no interim order in place preventing the Respondent bank from taking over possession of the property, as the earlier order to pay the balance of 25% was

not complied with. On being informed about the fact that there is no interlocutory order preventing the dispossession of the Appellants from the property, the Respondent bank has now taken steps to get the order u/s 14 executed through the Circle Officer. The Appellants have serious objections regarding the facts that the order of the District Magistrate cannot be executed through the Circle Officer when it was Tahsildar who was directed to take possession and that sub-delegation is not possible. The Ld. Counsel appearing for the Appellants would also submit that subsequent to receipt of the notice u/s 13 (2) a sum of ₹27,28,160/- was paid to the bank directly and in compliance with the direction of the D.R.T. the Appellants have deposited a total sum of ₹57,96,000/- towards two facilities, the outstanding amount of which were demanded in the notice u/s 13 (2).

4. The order dated 04.02.2020 has not been properly interpreted by the Ld. Presiding Officer in his subsequent order of 11.11.2022 and 28.04.2023. The direction on 04.02.2022 was only to pay 25% of the amount as demanded in the notice and the Appellants have already paid (₹27,28,160/- before the filing of the S.A. and a sum of 57,96,000/- post-filing S.A., aggregating) ₹85,24,160/- towards the outstanding dues demanded. According to the Ld. Counsel appearing for the Respondent bank the outstanding amount after deducting the payment made as of date is ₹3.32 crores and therefore, the Appellants may not be granted any concession in the matter of making the mandatory pre-deposit.

5. The Appellants produce their income tax returns which would indicate that they have little income except for the hiked income of Appellant No.3 during the assessment year of 2019-2020 which according to the Ld. Counsel appearing for the Appellants is attributed to the sale of the property to raise the amount to pay the 25% amount as directed to be paid by the D.R.T. Capital gains have been added, as a result of which the income was hiked. There is no other source of income for the Appellants, submits the Ld. Counsel appearing for the Appellants.

6. It is submitted that the business has been stopped and no income derived from the business. The Appellants have been earnestly attempting to pay the amount as is evident from their action of payment of ₹27,28,160/- and the subsequent payment of ₹57,96,000/-. Hence, it is prayed that the amount to be deposited u/s 18 (1) of the SARFAESI Act may be kept at a minimum of 25%.

7. The amount demanded in the notice u/s 13 (2) ₹2,34,89,701.22. In view of the latest judgment of the Hon'ble Supreme Court of India *Sidha Neelkanth Paper Industries Pvt. Ltd. & Ano. vs. Prudent ARC Ltd & Ors., 2023 OnLine SC 12*, the threshold amount for calculating the pre-deposit should be the amount demanded u/s 13 (2) as long as the property has not been put up for sale or sale has not taken place, and the Sarfaesi measures only up to the stage of section 14 order has been challenged by the Appellants. Hence, I would take the amount mentioned in the notice u/s 13 (2) as the threshold amount. Considering the attempt made by the Appellants to pay the amount and also considering the fact that they do not have substantial income from the sources as revealed from

the income tax returns. The Appellants are given concession and the amount to be paid is determined at ₹80 lakhs. The Ld. Counsel appearing for the Appellants is depositing a sum of ₹8 lakhs by way of demand draft today. The balance of ₹ 72 lakhs shall be payable in three equal instalments within the gap of two weeks each as hereunder.

<u>Numbers of Instalments</u>	<u>Payment on or before</u>
1 st Instalment of ₹ 24,00,000/-	19.10.2023
2 nd Instalment of ₹ 24,00,000/-	02.11.2023
3 rd Instalment of ₹ 24,00,000/-	16.11.2023

8. Default of payment of any of the instalments shall entail in dismissal of the appeal without any further reference to this Tribunal.

9. In view of the payment of ₹8 lakhs towards the pre-deposit amount, the taking over possession of the secured assets shall stand deferred till the next date of hearing. The Ld. Counsel appearing for the Respondent is directed to inform the authority who intends to take possession accordingly.

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 thereafter to be renewed periodically.

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

Post on 20.10.2023 for reporting compliance regarding the payment of the 1st instalment.

Sd/-
Chairperson

psa-06

DRAFT MUMBAI