

BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI

Present: Mr. Justice Ashok Menon, Chairperson

I.A. No. 489/2023 (WoD)

In

Appeal on Diary No. 1136/2023

Between

M/s. Shree Nivasan Sales

... Appellant/s

V/s.

The Authorized Officer,
State Bank of India & Anr.

...Respondent/s

Mr. Sandeep Bhatt, Advocate for Appellant.

Mr. Vinaya Chavan, Advocate for Respondent.

Mr. S.S. Panesar, Advocate for Respondent No.2

:- Order dated: 03/10/2023:-

The Appellant is in appeal impugning the order dated 30.06.2023 in Interim Application (I.A.) No. 1641/2023 in Securitization Application (S.A.) No. 240/2023 on the files of the Debts Recovery Tribunal-II, Ahmedabad (D.R.T.) whereby the aforesaid application for amendment of the S.A. was dismissed.

2. The Appellant has filed I.A. No. 489/2023 seeking a complete waiver of the mandatory pre-deposit contemplated u/s 18 (1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“SARFAESI Act” for short). A complete waiver of the pre-deposit is not possible as the Appellant is admittedly a borrower, and this Tribunal is only concerned with whether the pre-deposit amount should be reduced from the mandatory 50% to 25% of the debt due from the

Appellant.

3. The Appellant has filed the aforesaid S.A. challenging various Sarfaesi measures initiated by the 1st Respondent Bank. It is contended that the notice issued u/s 13 (2) is not valid. The symbolic possession taken u/s 13 (4) is inadequate and no notice was served before the order was passed by the District Magistrate, Surat on 06.06.2022 under the provision of section 14 of the SARFAESI Act. The aforesaid S.A. was filed on 30.03.2023 challenging the measures up to the steps taken u/s 14 of the SARFAESI Act. The sale notice which was received fixing the sale on 28.03.2023 was challenged. There was no interlocutory order passed in favour of the Appellant. As a consequence of this, the sale was completed and the 2nd Respondent being the highest bidder got a confirmation of the sale in his favour. He has paid the entire sale consideration. The sale certificate has been issued and registered in favour of the 2nd Respondent and physical possession of the property has been handed over to him. The Appellant filed an aforesaid application for an amendment to incorporate the challenge to section 14 which was declined. He is aggrieved and hence, in appeal.

4. In order to entertain the appeal the Appellant would undoubtedly have to comply with the mandatory pre-deposit. The amount that was demanded in the notice issued u/s 13 (2) was ₹3,28,89,052.43/- as of 30.04.2021. The Respondent Bank has filed the affidavit and reply which states that as of date the amount due from the Appellant inclusive of interest is ₹3,41,99,057.47/-. The Ld. Counsel appearing for the Respondents would content that the Appellant has not made out any case so as to invoke the indulgence

of this Tribunal to get the amount reduced to the minimum of 25% and hence, the Appellant may be directed to 50% of the amount due as on date.

5. The Ld. Counsel appearing for the Appellant has filed this application for the waiver in which he has contended that he has a very good prima facie case with regard to the challenge raised about the notice issued u/s 13 (3) and also regarding the amendment which is sought to the S.A. It is also pleaded that the Appellant is under financial strain since his business has come to a halt and he has no income whatsoever. The Appellant is a proprietorship represented by a sole prospector. No statement of account pertaining to the business of the proprietorship has been produced to prove the financial status of the Appellant. No income tax returns have been forthcoming.

6. Hence, I find that the Appellant has not succeeded and established that he is under financial strain. The Appellant has also not succeeded in establishing a strong prima facie case in his favour since the challenges raised to the order u/s 14 or the inadequacy of the symbolic possession taken u/s 13 (4) and the demand notice 13 (2) do not appear to be adequate. Anyhow at present, I am not concerned with the details of those inadequacies pointed out by the Appellant which would definitely have to be gone into while considering the appeal. In view of the latest decision of the Hon'ble Supreme Court of India in *Sidha Neelkanth Paper Industries Pvt. Ltd. & Ano. vs. Prudent ARC Ltd & Ors., 2023 OnLine SC 12*, since the Appellant has also challenged the entire Sarfaesi measures inclusive of the sale. The Appellant will have to deposit the 50% amount that

is due from him which includes the interest as of date. Considering these aspects, I am of the opinion that the Appellant has to deposit ₹1.70 crores as pre-deposit. The said amount shall be payable in three instalments as follows:

| <u>Numbers of Instalments</u> | <u>Payment on or before</u> |
|---|------------------------------------|
| 1 st Instalment of ₹ 60,00,000/- | 25.10.2023 |
| 2 nd Instalment of ₹ 60,00,000/- | 08.11.2023 |
| 3 rd Instalment of ₹ 50,00,000/- | 22.11.2023 |

7. In default of any amount, shall entail in dismissal of the appeal without any further reference to this Tribunal.

8. On the deposit of the first instalment amount on time, the Appellant shall entitled to get the interim relief to the extent that the 2nd Respondent shall not create any 3rd party interest over the property till the next date of hearing.

9. The amount shall be deposited in the form of Demand Drafts 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 Respondents is at liberty to file a reply in the Appeal with an advance copy to the other side.

Post on 26.10.2023 for reporting compliance regarding the payment of the 1st instalment.

Sd/-
Chairperson