

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

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

**I.A. No. 663/2023(WoD)**

**In**

**Appeal on Diary No. 1693/2023**

**Between**

Shri Shakti Cement Products and Ors.

... Appellant/s

V/s.

Rajkot Nagrik Sahakari Bank Ltd & Ors.

...Respondent/s

A.R. Gupta, along with Ms. N. Pandit and Mr. Aditya Bhatt,  
Advocate for Appellant.

Mr. Janak S, Advocate for Respondent.

**:- Order dated: 04/10/2023:-**

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 12.09.2023 in I.A. No. 2794/2023 in S.A. No. 321/2019 on the files of Debts Recovery Tribunal – II, Ahmedabad (D.R.T). The Appellants had earlier sought an interim relief seeking protection from taking over possession of the secured assets u/s. 14 of the SARFAESI Act. By order dated 04.09.2020, the interim relief was declined. Thereafter, the Appellants filed present I.A. No. 2794/2023 seeking a preponement of the S.A. to be heard expeditiously and till disposal of the S.A. to grant an interim relief protecting their possession of the secured assets.

2. The Ld. Presiding Officer by the impugned order held that the interim reliefs were already declined once and thereafter, the S.A. is sought to be taken up expeditiously and in the alternative prayer is

sought to protect the possession of the Appellants, refused to entertain the prayer again observing that the Tribunal has a number of older matters which need to be attended. The prayer for early hearing of the S.A. was therefore declined and no interim reliefs till the hearing of the S.A. was granted. The Appellants are aggrieved and hence, in appeal.

3. The Appellants would contend that the 1<sup>st</sup> Appellant is a proprietorship belonging to the predecessor of the present Appellants who had registered the proprietorship as a MSME and obtained a certificate. The classification of the account as a Non-Performing Asset (NPA) was improper because it requires not less than 180 days of default for classification of an account as NPA.

4. Subsequently, a notice u/s. 13(2) was issued to the original borrower proprietor, his two sons who were the guarantors and also the present Appellant Nos. 2 and 3. An amount of ₹ 1,82,73,318/- as of 31.07.2018 was demanded. A reply was sent to the bank stating that there was no bifurcation of the principal amount and interest which rendered the notice invalid for non-compliance with Sec.13(3) of the SARFAESI Act.

5. The Bank responded to that reply stating that the notice complies with all the requirements of Sec. 13 (2) of the SARFAESI Act and hence, is not defective. The original borrower proprietor and his sons who are the guarantors had earlier filed S.A. No. 202/2019 challenging the classification of the debt as NPA, the validity of the notice u/s. 13 (2) and the steps taken u/s. 13 (4). But there was a delay in filing the application u/s. 17 of the SARFAESI Act in

consequence of which the S.A. was dismissed on the ground that the S.A. was filed out of time, and vide order dated 28.05.2019, dismissed the S.A. That order has not been challenged.

6. Subsequently, steps were taken for dispossessing the Appellants of the secured assets and notice was received from Mamlatdar in consequence to the order passed by the District Magistrate u/s. 14 of the SARFAESI Act. The Appellants including the deceased proprietor approach the D.R.T once again by filing the present S.A. No. 321/2019 and suffered an adverse order of not being granted an interlocutory order to protect their possession. The proprietor who was the original borrower, died on 14.08.2022 pending the S.A. and an application was filed for bringing the legal representatives on record. His sons were already on record, and so, his wife was impleaded as Appellant No. 1.3. The Appellants' prayer for interlocutory relief was again declined by the D.R.T and the prayer for expeditious disposal of the S.A. was also declined in view of the huge pendency of matters before the Tribunal. The Appellants are aggrieved.

7. The Appellants would state that they have a very good prima facie case in view of the wrongful classification of the debt as NPA by not considering the fact that the 1<sup>st</sup> Appellant is an MSME and that the notice u/s. 13 (2) is defecting for want of bifurcation of the demanded amount and also for the reason that consequent to the demise of the original borrower proprietor a fresh notice needs to be issued to the Appellants as legal representatives of the deceased borrowers. The Ld. Counsel appearing for the Appellants has also

relied on the decision of Madras High Court in Writ Petition No. 27230/2009 wherein it is held that a notice u/s. 13 (2) issued to the original borrower becomes invalid when he dies, and on the basis of that notice, no steps could be initiated against the legal representative of the borrowers.

8. In order to entertain this appeal the Appellants would first have to comply with the mandatory provisions of making a pre-deposit u/s. 18 (1) of the SARFAESI Act. In view of the latest decision of the Hon'ble Supreme Court in *Sidha Neelkanth Paper Industries Pvt. Ltd. & Ano. vs. Prudent ARC Ltd & Ors.*, 2023 OnLine SC 12, the Appellants have only challenged steps up to Sec. 14 of the SARFAESI Act and therefore, the threshold amount for calculating and the deposit is the amount mentioned in the demand notice u/s. 13 (2) which is ₹ 1,82,73,318/-. The Appellants have produced their income tax returns and attempted to impress upon this Tribunal that they have limited means for the last three years and that they are under financial strain. In view of the fact that they have a good prima facie case, and considering their financial strain, it is urged that the amount of mandatory deposit be kept to a minimum of 25% of the demanded amount. The Ld. Counsel appearing for the Appellants also offers to deposit a sum of ₹ 20,00,000/- towards the deposit by way of demand draft today.

9. The Ld. Counsel appearing for the Respondent has vehemently opposed the application and stated that the contentions regarding the challenge to the demand notice u/s. 13 (2) and the classification of the account as NPA would not lie because those contentions were

already raised in the earlier S.A. No. 202/2019, in vain, which stood dismissed. And therefore, the principle of res judicata would apply in agitating those issues all over again as the earlier dismissal order was never challenged in appeal.

10. The Ld. Counsel appearing for the Respondent submits that the prayer for interlocutory reliefs against the dispossession of the property was also declined by D.R.T vide order dated 04.09.2020 and that too was never challenged in the appeal. The present application is a reiteration of the interlocutory reliefs sought by the Appellants and was rightly declined by the Ld. Presiding Officer vide the impugned order. Hence there is no infirmity in the order and therefore, the Appellants do not have a case to maintain this appeal, submits the Ld. Counsel. They may be directed to deposit 50% of the amount demanded, states the Ld. Counsel appearing for the Respondent.

11. After having heard both sides I find that the Appellants have already suffered an order of dismissal in S.A. No. 202/2019 as far as the challenge to notice u/s. 13 (2) and the steps u/s. 13 (4) as well as the classification of the debt as NPA is concerned. Whether those issues could be re-agitated in the present S.A. is something to be determined by the D.R.T while disposing of the S.A. No. 321/2019, and hence, I am not delving deep into those issues at present while deciding the payment of the pre-deposit, which requires only limited consideration. The Appellants had suffered an earlier order of dismissal of the interlocutory relief which was never challenged.

12. The Ld. Counsel appearing for the Appellants submits that the

threat for dispossession was no longer there since the notice on the basis of which the possession was intended to be taken was not acted upon by the Mamlatdar and subsequent action was anticipated by the Appellants and therefore, they sought for an early hearing on S.A. and for an interlocutory relief till the S.A.

13. It is true that the Appellants have some financial strain as is borne out by the income tax returns filed by them. Since the existence of the prima facie case is not established beyond doubt, I am not inclined to state that the Appellants have a strong prima facie case. The Appellants are therefore not entitled to get the mandatory pre-deposit reduced to the minimum of 25%. Considering the fact that they are under financial strain they are entitled to some concession.

14. The Appellants are therefore directed to deposit a sum of ₹ 70,00,000/- as pre-deposit for entertaining this appeal. The Id. Counsel appearing for the Appellant has already submitted a demand draft of ₹ 20,00,000/- today the same shall be accepted as payment towards the aforesaid amount. The balance amount of ₹ 50,00,000/- shall be deposited in two equal instalments of ₹ 25,00,000/- each, which shall be deposited as stated hereunder.

<b><u>Numbers of Instalments</u></b>	<b><u>Payment on or before</u></b>
1 <sup>st</sup> Instalment	25.10.2023
2 <sup>nd</sup> Instalment	08.11.2023

15. In view of the fact that the Appellants have deposited ₹ 20,00,000/- today by way of demand draft, the taking of physical

possession of the subject property stands deferred till the next date of hearing. In default of payment of the instalments, the Appeal shall stand dismissed, without any further reference to this Tribunal.

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

17 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.

18. 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 26.10.2023 for reporting compliance regarding the 1<sup>st</sup> instalments.

Sd/-  
Chairperson

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