

BEFORE THE DEBTS RECOVERY
APPELLATE TRIBUNAL, AT: MUMBAI

Present: Mr Justice Ashok Menon, Chairperson

I.A. No. 701/2023 (WoD)

In

Appeal on Diary No. 1790/2023

Between

Matrukrupa Calcin Industry and Ors. ... Appellant/s
V/s.

ICICI Bank Ltd & Anr. ... Respondent/s

Mr. Puneet Gogad, i/b Ms. S. Singh, Advocate for the Appellants.

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

:- Order dated: 19/10/2023:-

The Appellants are in appeal impugning the order dated 01.09.2023 in S.A. No. 435/2023 on the files of Debts Recovery Tribunal-II, Ahmedabad (D.R.T) refusing to grant any protection, vacating the interim protection granted to the Appellants from the Respondent Bank proceeding against their secured assets under the provision of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. ("SARFAESI Act", for short). The Appellants are aggrieved and hence in appeal.

2. The present application is filed u/s. 18 (1) seeking the indulgence of this Tribunal to keep the mandatory pre-deposit at the minimum of 25% of the amount demanded. The Appellants have in the S.A. challenged the measures taken by the Respondent Bank u/s. 13 (4) and Sec. 14 for the reason that the notice contemplated under Rules 8 (1) and 8 (2) of the Security Interest (Enforcement) Rules has not been complied with.

3. It is also pointed out that in the application filed u/s. 14, the nine-pointer Affidavit is not filed. It is further stated that the name

and designation of the authorized officer have not been specified and therefore the Sarfaesi measures should fail. In the demand notice u/s. 13 (2) dated 12.04.2022 there was a demand for ₹ 85,93,711.13/-. The Appellants had raised an objection to that but even after steps u/s. 13 (4) was initiated no S.A. was filed and the S.A. was filed only on the orders u/s. 14 being passed by the CMM for taking physical possession of the property.

4. The Appellants were eager to settle the debt and had made up a proposal and on 17.08.2023 the Ld. Presiding Officer directed the Appellants to deposit a sum of ₹ 10,00,000/- within seven days and to submit an OTS proposal towards payment of the remaining dues in their account. The Appellants deposited a sum of ₹ 10,00,000/- within time and interim protection was granted in their favour but the OTS proposal submitted by the Appellants was rejected by the Respondent Bank for the reason that the amount offered was too meagre. When the S.A. was again taken up for consideration on 01.09.2023, it was brought to the notice of the Tribunal as of the date the outstanding debt was ₹ 90,48,959.73 and that the Appellants are not making any earnest attempt to settle the matter. Yet the Appellants sought for four months time to settle the entire dues.

5. The Ld. Presiding Officer was not amenable to granting further time and hence vacated the order of interim protection giving an opportunity to the Appellants to settle the due within a period of one month. The Appellants therefore apprehend that the Respondent may proceed against the property u/s. 14 to take physical possession which I am told is scheduled on 22.10.2023.

6. The Appellants have pleaded that they have a strong prima facie case to sustain the S.A. It is stated that the 1st Appellant is a proprietorship owned by the 2nd Appellant. His income tax returns have been filed to indicate that he does not have sufficient income to deposit 50% of the amount due. The rest of the Appellants do not have any source of income and therefore have not filed any income tax returns. The Ld. Counsel appearing for the Appellants submits that indulgence may be shown exercising the jurisdiction of this Tribunal under the third proviso of Sec. 18 (1) to reduce the amount to 25% of the debt demanded in the notice u/s. 13 (2).

7. The Ld. Counsel appearing for the Respondent vehemently opposes the application stating that the Appellants had no substantial challenge against the Sarfaesi measures. They were only purchasing time by making submissions before the D.R.T and the D.R.T was generous enough to grant them time but the offer that they made under the OTS was too meagre to be accepted and was therefore rejected. Even when the impugned order was made vacating the interim order the Appellants had offered settlement and had sought for four months time.

8. It is submitted that the Appellants are protracting the matter and are not interested in repaying the debt and therefore they may be asked to deposit 50% of the amount demanded.

9. Considering the entire facts and circumstances of this case I find that the Appellants may not be having a strong prima facie case but it is sufficiently proven that they are under financial strain. There is no business taking place and most of the Appellants do not have

any income. The Appellants are therefore directed to deposit a sum of ₹ 25,00,000/- as pre-deposit.

10. The Ld. Counsel appearing for the Appellants offers to deposit a sum of ₹ 10,00,000/- by way of demand draft today. The balance amount of ₹ 15,00,000/- shall be deposited within three weeks on or before 09.11.2023.

11. In view of the deposit of ₹ 10,00,000/- today the taking over a possession schedule on 22.10.2023 shall stand deferred till the next hearing. In default of payment of the further amount as directed, the Appeal shall stand dismissed, without any further reference to this Tribunal.

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

13. 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.

14. With these observations, the I.A. is disposed of. The Respondent is free to file a reply in the Appeal with an advance copy to the other side.

Post on 10.11.2023 for reporting compliance regarding the payment of instalment.

Sd/-
Chairperson

DRAFT MUMBAI