

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

Present: Mr Justice Ashok Menon, Chairperson

I.A. No. 827/2023(WoD)

In

Appeal on Diary No. 2287/2023

Between

Mahip Industries Ltd. & Ors.

... Appellant/s

V/s.

Authorised Officer,

...Respondent/s

Reliance Commercial Finance Ltd.

Mr S.S. Panesar along with Mr A. S. Panesar, Advocate for Appellant.
Mr Sanjay Anabhawane along with Mr Mohit Shamdasani, i/b Mr
Nikhil Salvi, Advocate for Respondent.

:- Order dated: 20/12/2023:-

The Appellants are in appeal impugning the order dated 07.12.2023 in Securitisation Application (S.A.) No. 365 of 2023 on the files of the Debts Recovery Tribunal-I, Ahmedabad declining to grant any protection to the applicants against the Sarfaesi measures initiated against the secured assets by the Respondent financial institution(F.I.) under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act', for short).

2. The Appellants had approached the D.R.T. with an application under Sec. 17(1) raising various challenges. One of the main challenges raised was that the debt which is claimed is not a secured debt. The

argument of the Ld. Counsel appearing for the Appellants is that the two indentures of the mortgage concerning three items of the properties limit the mortgage to a sum of ₹20 lakhs and therefore, the mortgage is not available for an amount beyond ₹40 lakhs altogether. The Appellants would further contend that Sec. 13(2) notice does not give a breakup of the principal and interest as contemplated under Sec. 13(3) of the SARFAESI Act. There is also a challenge raised about the order passed under Sec. 14 for the reason that the documents of the mortgage have not been either perused or satisfactorily gone into the said order. The Appellant would also contend that the Sarfaesi measure could not have been initiated given the embargo under Sec. 26(D) of the SARFAESI Act which requires registration before proceeding with the securitisation measures. The Ld. Presiding Officer considered the contention raised and found that the prima facie is not sustainable and hence, declined to grant any protection.

3. The Appellants would contend that they have a very strong prima facie case and that they are under financial strain for the reason that the major portion of their factory had been acquired vide Notification in the year 2018 for National Highway which substantially affected the functioning of the factory and that no profit whatsoever was being derived from the factory. The Income Tax Returns of all the Appellants including the company have been produced to indicate that the income derived is not sufficient to pay 50% of the mandatory pre-deposit. Hence, the Appellants seek the indulgence of this Tribunal to keep the mandatory pre-deposit the minimum of 25% of the amount due.

4. The Ld. Counsel appearing for the Respondent F.I. vehemently

opposed the application stating that the Appellants are not entitled to any indulgence to get the amount as pre-deposit reduced by 25%. Since the measures under Sec. 13(4) and 14 are challenged as per the latest decision of the Hon'ble Supreme Court in *Sidha Neelkanth Paper Industries Private Limited & Ano. vs Prudent ARC Limited & Ors.* 2023 SCC OnLine SC 12. The Appellants are liable to pay 50% of the amount which is demanded in the notice under Sec. 13(2) which is ₹5,80,99,420/-. The Ld. Counsel appearing for the Respondent also points out that CERSAI registration was not mandatory and the provision under Sec. 26(D) came into effect only on 24.01.2020 and the loan was sanctioned and disbursed in the year 2017.

5. The Ld. Counsel appearing for the Appellants in response points out that even though chapter IV-A of the SARFAESI Act came into effect from 24.01.2020, Sec. 26(D) makes it adequately clear that the recovery measures could be effected only after the registration and therefore, issued a notice under Sec. 13(2) resorting to the provisions of the SARFAESI Act registration under CERSAI is mandatory. Therefore, the fact that the loan was sanctioned in the year 2017 will not be of any help to the Respondent.

6. The Ld. Counsel for the Respondent points out the demand notice under Sec. 13(2) and points out that there is a column giving the breakup of the principal amount and interest which is claimed. Therefore there is no infirmity in compliance of Sub-Sec. (3) to Sec. 13 of the SARFAESI Act. It is also pointed out by the Ld. Counsel for the Respondent that in case of land acquisition for National Highway the Appellants would be compensated and nothing is mentioned in the application about what compensation the Appellant

had got and therefore, it has been assumed that the Appellants have substantial amount received by way of compensation under the Land Acquisition Act.

7. In response to that, the Ld. Counsel appearing for the Appellants would contend that the amount was used to clear the loans due to the Punjab National Bank as they were the secured creditor of the factory and therefore, nothing remains by way of compensation amount with the Appellants.

8. The contentions will have to be gone into detail to determine the appeal. The amount to be paid as pre-deposit under Sec. 18(1) of the SARFAESI Act is to be based on the existence of a prima facie and the financial strain of the Appellants. I find that the Appellants have succeeded in establishing the prima facie case challenging the Sarfaesi measures. Since the Appellants have also succeeded in establishing their impecuniosity to some extent, they cannot be directed to deposit 50% as pre-deposit and are entitled to some concession.

9. Considering the entire facts and circumstances of this case, I direct the Appellants to deposit a sum of ₹1.75 crores as pre-deposit. The Ld. Counsel appearing for the Appellants submits that a demand draft of ₹30 lakhs is being submitted in the name of the Registrar, DRAT toward the payment of pre-deposit. The balance of the amount of ₹1.45 crores shall be paid in three instalments within a gap of two weeks each as mentioned hereunder.

<u>Numbers of Instalments</u>	<u>Payment on or before</u>
1 st Instalment of ₹48,33,333/-	03.01.2024
2 nd Instalment of ₹48,33,333/-	17.01.2024
3 rd Instalment of ₹48,33,334/-	31.01.2024

10. Default in payment of any of the instalments entails in dismissal of the appeal without any further reference to this Tribunal.

11. Given the payment of ₹30 lakhs today, the taking over of physical possession of the secured asset on the 25th instant shall stand deferred till the next date of hearing.

12. The amount shall be deposited as 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 after that to be renewed periodically.

14. 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 04.01.2024 for reporting compliance regarding the first instalment.

Sd/-
Chairperson

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