BEFORE THE DEBTS RECOVERY APPELLATE TRIBUNAL, AT: MUMBAI

Present: Mr Justice Ashok Menon, Chairperson

I.A. on Diary No. 390/2023 (Stay)
In
Appeal on Diary No.388/2023

Between

SAM Family Trust & Anr. … Appellant/s
V/s.
Catalyst Trusteeship Ltd. & Ors. …Respondent/s

Mr Rafeeq Peermohideen along with Mr T. N. Tripathi & Ms. Somya Tripathi, i/b M/s. T. N. Tripathi & Co., Advocate for Appellants.

Mr Tushad Cooper, Senior Counsel along with Mr Sachin Chandarana, Mr Archit Shah & A Mehta, I/b M/s. M. K. Ambalal & Co., Advocate for Respondents Nos. 1 to 3.

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

This is an application filed by the Appellants in the aforesaid appeal seeking a stay of the impugned order dated 10/03/2003 passed by the Debts Recovery Tribunal, Pune (D.R.T.) in I.A. No. 6 of 2023 in Securitisation Application (S.A.) No. 1 of 2023, declining to grant an interlocutory relief with regard to the secured asset against the Respondents.

2. Section 18 (1) of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act 2002 ('SARFAESI Act', for short) mandates a deposit of 50% of the debt due or determined. The Appellants had therefore filed an application as I.A. No. 169/2023 for waiver of deposit. After

hearing both sides and on perusal of the records available, this Tribunal assessed the debt due as ₹280 crores and directed the Appellants to deposit a sum of ₹135 crores as pre-deposit within a period of 8 weeks on or before 20/06/2023, failing which, the appeal is to be dismissed.

3. The Appellants filed a Writ Petition challenging the order of this Tribunal before the Hon'ble High Court of Bombay, which is pending consideration. It is submitted across the Bar by the Ld. Counsel appearing for the Appellants that the Hon'ble High Court while considering the Writ Petition observed that the application for stay filed by the Appellants is still pending consideration and hence passed an order directing this Tribunal to hear the application for stay on 02/05/2023 and pass orders on that application on or before 10/05/2023. The order of the High Court was not however placed before this Tribunal for perusal. Despite that, in compliance with the purported directions of the Hon'ble High Court, this Tribunal heard the application for stay in detail.

4. The 1st Respondent issued a demand notice on 03/07/2020 under section 13 (2) of the SARFAESI Act demanding a sum of ₹2,68,98,77,917/-. An order was also obtained under section 14 of the SARFAESI Act from the District Magistrate, Pune. Challenging that order, the Appellants filed S.A. No. 207 of 2021 before the D.R.T. The said S.A. was allowed by the D.R.T. vide order dated 28/02/2022. The Respondents challenged that order before this Tribunal by filing Appeal No. 30 of 2022. The operation of the impugned order of the D.R.T. in S.A. No. 207 of 2021, was stayed

by this Tribunal, and the appeal is still pending consideration.

5. It is submitted that the Respondents are proceeding with taking over possession of the property. It is submitted that in view of the allowing of the S.A., despite the stay of the operation of the impugned order, the order of this Tribunal does not nullify the impugned order of the D.R.T. And hence, at present, there is no demand notice under section 13 (2) of the SARFAESI Act since it has been quashed by the D.R.T. It is further stated that the possession was not taken after due compliance with the provisions of the Security Interest (Enforcement) Rules.

6. While considering the application for waiver of deposit filed as I.A. No. 169/2023, this Tribunal has observed that the Appellants do not have a prima facie case and the financial strain has also not been proved. This Tribunal did not grant a total exemption of the pre-deposit sought. The Appellants were directed to deposit a sum of ₹ 135 crores within eight weeks as pre-deposit for entertaining the appeal.

7. The Ld. Counsel appearing for the Appellants would contend that since time has been granted for payment of the mandatory pre-deposit, a case has been made out for stay of the operation and implementation of the Sarfaesi measures and therefore, the stay application may be allowed. The Ld. Counsel has relied upon the decision of the Hon'ble Bombay High Court reported in *Chandrika Dairy Industries Private Limited & Ors vs. Bank of Baroda 2018 SCC OnLine Bom 17006* to argue that a stay can be granted where time has been granted to make a pre-deposit.

8. The Hon'ble Supreme Court has in *Narayan Chandra Ghosh UCO Bank (2011) 4 SCC 538* and in *Kotak Mahindra Bank Private Limited vs. Ambuj A.Kasliwal & Ors (2021) 3 SCC 549* and more recently in *Sidha Neelkanth Paper Industries Pvt. Ltd. & Ano. vs. Prudent ARC Ltd. & Ors. 2023 SCC OnLine SC 12* held that under Sec. 21 of the RDB Act which is analogous to Sec. 18 of the SARFAESI Act, "the appeal shall not be entertained" unless the Appellant has deposited with the Tribunal, 50% of the debt due or determined. The only discretion granted to the Appellate Tribunal is to reduce the amount to 25%.

9. The Hon'ble High Court of Bombay as earlier in *Deluxe Cotton Corporation & Ors vs. Bank of Baroda 2016 SCC OnLine Bom 2629* held that in view of the legal position that a mandatory pre-deposit has to be made for entertaining the appeal, the Appeal accompanied by an application for condoning the delay in filing the appeal is itself an application in the appeal for the purposes of section 20 of the RDB Act. Accordingly, unless the predicates in section 21 of the RDB Act were complied with, there was no question of DRAT even entertaining the appeal or the application for condonation of delay in filing the appeal. When an application for condonation of delay cannot be entertained, how can an application for stay be entertained. Granting of time to make the pre-deposit is granted as a matter of convenience. The Appellants should be granted sufficient time to pay the pre-deposit before the Appeal is dismissed. The time to make the payment is not granted on the basis of the Appellants having a prima facie case. For granting a stay, the

main requirement is the Appellant having a prima facie case. There is a specific finding in the application for waiver of deposit that no prima facie case is made out. Hence, the Appellant is not entitled to any interim relief of injunction.

10. The Hon'ble Supreme Court has in *United Bank of India vs. Satyawati Tandon AIR 2010 SC 3413* expressed its displeasure against the grant of interim injunctions against banks restraining them from availing of their remedies under the SARFAESI Act without any condition.

11. Under the circumstances, this Tribunal is of the view that unless the pre-deposit is made, the appeal or any application filed along with the appeal cannot be entertained. No interim stay can be granted.

The application for a stay shall therefore be considered after compliance with the order of this Tribunal directing the Appellants to make the pre-deposit.

Post the application on 21.06.2023.

Sd/-
Chairperson

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