(2024) 05 GUJ CK 0002

In the Gujarat High Court

Case No : R/Special Civil Application No. 7541 Of 2024

Artiston Apparels Pvt Ltd. & Ors — APPELLANT

Vs

Tamilnad Mercantile Bank Ltd — RESPONDENT

Date of Decision : 03-05-2024

Acts Referred:

Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 2(ha), 17, 18
Recovery Of Debts Due To Banks And Financial Institutions Act, 1993 — Section 2(g)
Securities Contracts (Regulation) Act, 1956 — Section 2(d)

Citation : (2024) 05 GUJ CK 0002

Hon'ble Judges : Hemant M. Prachchhak, J

Bench : Single Bench

Advocate : Ravish Kumar, Nishan U Majumdar, Vinay Bairagra, Himani Kini

Final Decision : Dismissed

Judgement

Hemant M. Prachchhak, J

1. The present petition is filed by the petitioner challenging the order dated 11.03.2024 passed by the Debt Recovery Appellate Tribunal (DRAT), Mumbai, in IA No.181 of 2024 in Appeal on Diary No.153 of 2024, whereby, the petitioners were directed to deposit a sum of Rs.1.35 Crores in three installments within a gap of three weeks each i.e. 1st installment of Rs.35,00,000/- to be paid on or before 01.04.2024, 2nd installment of Rs.50,00,000/- to be paid on or before 22.04.2024 and 3rd installment of Rs.50,00,000/- to be paid on or before 13.05.2024 and the matter was ordered to be posted on 02.04.2024.

2. Heard learned advocates appearing for the respective parties.

3. It appears that the Tribunal had shown indulgence to deposit the pre-requisite 50% of the due in three installments, however, after depositing the 1st installment, the petitioners had moved an application for review of the order passed by the DRAT as the petitioners were not in a position to deposit the

remaining amount, which came to be dismissed by the DRAT observing that the petitioners are unable to show prima facie case since they have not produced copy of the It returns. Therefore, again the petitioners had moved an application for extension of time and for filing that application, the petitioners had further deposited Rs.20,00,000/- instead of depositing the 2nd installment of Rs.50,00,000/-. Even thereafter, the petitioners had moved an application before the DRAT and the subsequent order was passed on 23.04.2024, which the petitioners have not placed on record of the present petition, which shows the conduct of the petitioners. While passing the order, the DRAT has shown sufficient indulgence in favour of the petitioners by granting installments to deposit 50% as pre-requisite to challenge the appeal under Section 18 of the SARFAESI Act before the DRAT.

4. Learned advocate for the petitioner has referred and relied upon the decision of this Court passed in Special Civil application No.9564 of 2023 dated 30.06.2023. Infact, the Hon'ble Apex Court has decided the very same issue with regard to pre-requisite deposits at the time of filing of an appeal under Section 18 of the SARFAESI Act in case of M/s. Sidha Neelkanth Paper Industries Private Limited and Another Vs. Prudent ARC Limited and Others, reported in AIR 2023 SC 368, wherein, it has been observed and held in paragraph 12 as under :

"12. While considering the aforesaid issues/questions, Section 18, & 2(ha) of the SARFAESI Act and section 2(g) of the Recovery of Debts and Bankruptcy Act, 1993, which would have a direct bearing are required to be referred to. The said provisions read as under:

18. Appeal to Appellate Tribunal.—(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal [under section 17, may prefer an appeal along with such fee, as may be prescribed] to an Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.

[Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:] [Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent. of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred to in the second proviso.](2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder.

2(ha) "debt" shall have the meaning assigned to it in clause

(g) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions

Act, 1993 (51 of 1993) and includes—

(i) unpaid portion of the purchase price of any tangible asset given on hire or financial lease or conditional sale or under any other contract;

(ii) any right, title or interest on any intangible asset or licence or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable any borrower to acquire the intangible asset or obtain licence of such asset; Section 2(g) of the Recovery of Debts and Bankruptcy Act, 1993 - "debt" means any liability (inclusive of interest) which is claimed as due from any person [or a pooled investment vehicle as defined in clause (da) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956),] by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application [and includes any liability towards debt securities which remains unpaid in full or part after notice of ninety days served upon the borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of debt securities or;]"

5. The facts of the case which is referred and relied upon by the learned advocate for the petitioner in the order passed by this court is quite different from the facts of the present case. Infact, by the subsequent order dated 23.04.2024 passed by the DRAT, the DRAT has shown further indulgence by extending the time for second time upto 13.05.2024 to deposit the balance amount of Rs.80,00,000/-.

6. Considering the order passed by the DRAT, which is just, proper and in consonance with the settled legal principles enunciated by the Apex Court in its reported decision as referred hereinabove, the present petition being devoid of any merits, this Court is not inclined to interfere in the order passed by the DRAT and hence, the present petition is hereby dismissed.