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(2025) 01 DRAT CK 1682

In the Debts Recovery Appellate Tribunal, Mumbai

Case No : I.A. No. 06 Of 2025 (WoD) In Misc. Appeal on Diary No. 18 Of 2025

M/s. Krishna Electrovision Pvt. Ltd. & Ors — APPELLANT

Vs

South Indian Bank — RESPONDENT

Date of Decision : 08-01-2025

Acts Referred:
Securitisation And Reconstruction Of Financial Assests And Enforcement Of Security Interest Act, 2002 — Section 18(1)

Citation : (2025) 01 DRAT CK 1682

Hon'ble Judges : Ashok Menon, Chairperson

Bench : Single Bench

Advocate : Gaurang Kinkhabwala, Kajani Trivedi, Hema Desai, M/s. K. Legal & Ass.

Final Decision : Disposed Of

Judgement

Ashok Menon, Chairperson

1. 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 02.01.2025 in Securitisation Application No. 253/2024 (S.A.) by the Debt Recovery Tribunal-I, Ahmadabad (D.R.T.) declining to grant protection to the appellants against the measures taken by the respondent bank for recovery of the debt due from them under the provision of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act of 2002 (“SARFAESI Act” for short).

2. Three financial facilities were granted to the appellants by the respondent bank and the appellants allegedly defaulted in repayment as a result, the account was classified as a non-performing asset (NPA) on 29.02.2024. Thereafter, a demand notice was issued on 04.04.2024 demanding a sum of ☐ 1,85,97,771.92 as of 03.04.2024. The appellants state that they had raised objections to the demand notice 04.05.2024 stating that the demand notice does

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not specify the rate of the interest which is floating. All three facilities and details of the interest in accordance with the floating rate have not been given and therefore, there is no proper bifurcation.

3. It is also contended that the 3rd facility which was availed on 22. 02.2022 had specifically stated that the 1st instalment of the payment became due only on 23.03.2024 but all the facilities were classified as NPA on 29.02.2024 even before the 1st instalment of the 3rd facility was due and payable. It is also submitted that in the 2nd facility which was sanctioned on 09.06.2020, there was a moratorium period for one year and on that ground, the payment does become due. Hence the classification of the account as NPA is not in accordance with the direction of the RBI. The appellants also contend that the 1st appellant is a company that is an MSME unit entitled to benefit from the MSMED Act and no concession whatsoever was granted by the respondent bank to the 1st appellant as an MSME unit. The respondent bank has allegedly sent the reply to the objection raised by the appellants to the notice issued u/s 13 (2) but that reply does not address the issue raised by the appellants in the proper respective and consequently symbolic possession of the two items of secured assets was taken on 12.07.2024 following which the present S.A. was filed.

4. The appellants prayed for interim protection against taking over physical possession based on the order dated 19.11.2024 obtained from the Chief Metropolitan Magistrate (CMM) u/s 14 of the SARFAESI Act against one of the properties. Vide the impugned order interim protection was declined. The appellants state that they have a very good prima facie case but the D.R.T. has not gone into those aspects of the objection raised by the appellants.

5. It is also contended that the appellants are under financial strain and the income tax returns of the company as well as the directors and guarantors have been produced to indicate that the company running at a loss and the directors and the guarantors do not have sufficient income to pay 50% of the pre-deposit amount required to be paid under 18 (1) of the SARFAESI Act. Hence, the appellants prayed that they may granted a waiver of 25% of the pre-deposit amount exercising the jurisdiction of this Tribunal under the 3rd proviso to section 18 (1) of the SARFAESI Act. The Ld. Counsel appearing for the appellants submits that the appellants are only liable to deposit 25% of the threshold amount of ☐ 1,85,97,771.92 for getting this appeal entertained.

6. Per contra, the Ld. Counsel appearing for the respondent bank submits that none of the contentions raised by the appellants are sustainable. It is stated that the detailed reply is being filed to the S.A. as well as the appeal to establish that the contentions raised by the appellants are not sustainable. It is also pointed out that the appellants do not have a prima facie case and hence, they are not entitled to get any portion of the pre-deposit amount waived and therefore, called upon the deposit a 50% amount demanded as pre-deposit for entertaining the appeal.

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7. After having anxiously considered the rival contentions raised by the parties, it would appear that the appellants have raised the contentions regarding the fluctuating rate of interest and the demand notice not giving any details of the breakup of interest rate. It is observed that the demand notice issued u/s 13 (2) shows a breakup of the principal amount of interest as well as the penial interest. The breakup of the interest in accordance with the fluctuating rate of interest not being shown is no reason to hold that the demand notice is faulty. Such an argument would be too pedantic to be accepted. As regards the classification of NPA, it has to be pointed out that there are two other facilities availed by the appellants in 2019 and 2020 which were defaulted. The Ld. Counsel for the appellants points out that the demand notice issued u/s 13 (2) states that there was a default of three facilities which of course may not be true for the reason that the classification of the NPA as it was before the amount due under the 3rd facility had become payable. However, in view of the directions of the RBI, any one of the facilities turning NPA would render all other facilities to be NPA as well.

8. As regards the benefit claimed by the appellants on the ground that the MSME unit is entitled to the benefit of the MSMED Act. I would only hold that this is not an appropriate stage to enter the finding on that because further evidence is required to uphold the contentions of the appellants regarding their claim for benefit under the MSMED Act. It would suffice to say that the appellants have an arguable case though not a strong prima facie case. They have to a great extent to establish that they are under financial strain and therefore, though they are not entitled to get 25% of the pre-deposit amount waived they are entitled to certain concessions which I am willing to grant and hence, the appellants are therefore, directed to deposit a sum of ☐ 65 lakhs as pre-deposit for entertain this appeal. The Ld. Counsel appearing for the appellants are producing a demand draft for a sum of ☐ 10 lakhs today and the balance of a sum of ☐ 55 lakhs shall be paid in two instalments within the gap of two weeks each as stated hereunder.

Numbers of Instalments

Payment on or before

1st Instalment ☐ 25 lakhs

22.01.2025

2nd Instalment ☐ 30 lakhs

05.02.2025

9. Subject to payment of a sum of ☐ 10 lakhs today, the taking over the possession regarding the one item of property which is Flat No.3 scheduled on 11.01.2025 shall stand deferred till the next date of hearing.

10. In default in payment of any of the amount/instalment on time shall entail the dismissal of the appeal without any further reference to this Tribunal.

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11. The amount shall be deposited in the form of a Demand Draft/RTGS with the Registrar of this Tribunal. Payment by RTGS shall be communicated to the Registry for verification and intimated to the counsel for the respondents.

12. 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.

13. 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.

List the matter on 23.01.2025 for reporting compliance regarding the payment of the 1st instalment of pre-deposit.

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