(2025) 01 DRAT CK 1688

In the Debts Recovery Appellate Tribunal, Mumbai

Case No : M.A. No. 03 Of 2025 (Restoration) In I.A. No. 643 Of 2024 (WoD) In Misc. Appeal on Diary No. 1995 Of 2024

M/s. Live In Aqua Solution Pvt. Ltd. & Ors — APPELLANT

Vs

HDFC Bank & Ors — RESPONDENT

Date of Decision : 03-01-2025

Acts Referred:

Securitisation And Reconstruction Of Financial Assests And Enforcement Of Security Interest Act, 2002 — Section 13(3), 18(1)

Citation : (2025) 01 DRAT CK 1688

Hon'ble Judges : Ashok Menon, Chairperson

Bench : Single Bench

Advocate : Prashant Pandit, Jay Pandit, Rajesh Nagory, Indrajeet Deshmukh, Vidhii Partners

Final Decision : Disposed Of

Judgement

Ashok Menon, Chairperson

1. The appellants are in appeal impugned the order dated 18.09.2024 in Securitisation Application No. 491/2024 (S.A.) on the files of the Debt Recovery Tribunal-II, Ahmedabad (D.R.T.) declining to grant any protection to the appellants as against the measures taken by the respondent bank for recovery of the debt allegedly due from the appellant under the provision of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act of 2002 ("SARFAESI Act" for short).

2. To entertain the appeal, the appellants must first comply with the mandatory requisite of making the pre-deposit u/s 18 (1) of the SARFAESI Act. When this appeal came for consideration on 20.09.2024 there was no time for the respondent to be heard after filing the reply and therefore, as an interim arrangement the Ld. Counsel appearing for the appellants volunteered to deposit 25% of the pre-deposit amount upfront and let this Tribunal decide whether the appellants are entitled to a waiver of the balance of 25% at a later stage.

Accordingly, the appellants were directed to deposit a sum of ☐ 1,44,75,000/- toward pre-deposit and considering the threshold amount as ☐ 5,78,32,283.70. Toward the aforesaid, a sum of ☐ 15 lakhs was paid upfront by the appellants on the date of the order and the balance amount a sum of ☐ 1,29,75,000/- was directed to be paid in two equal instalments within the gap of two weeks each and the appellants failed to pay that amount, and resulted in getting the appeal dismissed. When the appellants were not able to comply with the payment of the entire amount an extension was sought. Some extension was also granted and they had to pay a balance of ☐ 93 lakhs. The appeal was dismissed because further extension of time was not granted and the appellants have now come up with an application for restoration of this appeal and to accept the balance amount belatedly.

3. The Ld. Counsel appearing for the respondents has vehemently opposed this application stating that the appellants have been taking undue advantage of the order that they have received and after 20.09.2024 three months have lapsed and they have not paid even the 25% amount which was directed to be paid There are no bonafides in their submission and therefore, the further extension may not be granted and the appeal may not be restored to file, submits the Ld. Counsel for the respondent.

4. The application for waiver of pre-deposit was not heard on merits, and it was only as an interim arrangement that the appellants were protected on payment of 25% in instalments, but that too was not paid by them and therefore, question whether they are entitled to any indulgence has to be considered.

5. It is also pertinent to note that the appellants had approached the Hon’ble High Court of Gujarat challenging the order of dismissal of the appeal by this Tribunal and no decision has yet been rendered in that writ petition.

6. The appellants have challenged the Sarfaesi action on various grounds. It is contended that the 13 (2) demand notice issued on 12.02.2020 demanding a sum of ☐ 5,78,32,283.70 does not give a breakup of the principal amount and the interest in violation of section 13(3) of the SARFAESI Act. It is also contended that the 1st appellant is an MSME entitled to the benefit of the MSMED Act and the classification of the account as Non-Performing Assets (NPA) was improper and no opportunity was granted for reference to the committee constituted as per the said Act for allowing the appellants for reconstruction of the loan and revival of the industry.

7. The S.A. is still pending and I am not inclined to delve deep into the claim of the appellants as to whether they are entitled to the benefit of the MSMED Act. The Hon’ble Supreme Court has in the decision of Pro Knits V/s. The Board of Directors of Canara Bank & Ors. (2024)10 SCC 292 held that the borrower will have to inform at this stage of classification of the account as NPA submitting the claim under the MSMED Act, only then, can they take advantage and this particular claim.

8. It is observed in the impugned order that the appellants had applied for registration as MSME only in the year 2024 before filing the S.A. and therefore, it is doubtful whether they can be classified as MSME unit. Anyhow, I am not delving deep into those aspects and at this stage of considering the application for restoration and waiver of pre-deposit. The appellants are at liberty to produce evidence regarding the S.A. which would be considered by the D.R.T. at this stage of determining the S.A. which is still pending consideration.

9. Coming to the prayer regarding restoring the appeal to file the Ld. Counsel appearing for the appellants submit that the entire balance amount directed to be paid by this Tribunal as per order dated 20.09.2024 is being produced today by way of a demand draft, and therefore, the appeal may be restored to file.

10. It is pertinent to note that the order to pay 25% of the pre-deposit was a condition precedent to grant the interim relief on 20. 09.2024. Much time has elapsed since then, even the minimum of 25% directed to be paid was not paid on time. The appellants had sought an extension of time which was granted. Hence, the appellants may not be entitled to any further indulgence from this Tribunal. However, I am not shutting the doors to the appellants in this appeal at the threshold. The appeal is therefore allowed to be entertained subject to payment of this amount.

11. Considering the application for a waiver, it is ordered that the appellants will pay the total sum of ☐ 2.50 crore as a pre-deposit for entertaining this appeal, considering the amount mentioned in the demand notice as the threshold amount. A sum of ☐ 93 lakhs has already been deposited and the appellants are now producing a demand draft of a sum ☐ 51.75 lakhs. The balance amount sum of ☐ 1,05,25,000/- shall be paid into two instalments within the gap of two weeks each as stated hereunder.

Numbers of Instalments

Payment on or before

1st Instalment ☐ 55.25 lakhs

17.01.2025

2nd Instalment ☐ 50 lakhs

31.01.2025

12. The appeal is restored. The interlocutory order is also restored. The Ld. Counsel appearing for the respondents submits that a total sum of ☐ 13 crores is due and payable as of the date and the demand notice which was issued in the year 2020. During this period, the appellants have not paid any amount towards the debt, and therefore, they can not be granted any protection from further Sarfaesi action, unconditionally. However, since the appellants have come in appeal challenging the impugned order declining to grant protection, they shall be granted protection but since there is an outstanding due of ☐ 13 crores.

Moreover, it is also pointed out that there is an outstanding due payable by the sister concerned by the first appellant. The appellants shall pay as cost a sum of ☐ 1 crore to the respondent bank which shall be accounted for toward the due payable by them within four weeks after payment of the pre-deposit, i.e., on or before 28.02.2025.

13. The restoration is allowed and the appeal is restored to file and this application for waiver is also considered and disposed of on condition to pay a sum of ☐ 2.50 crores as pre-deposit, and a sum of ☐ 1 crore shall be deposited in the respondent bank.

14. 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.

15. 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.

16. As and when the said amounts are deposited, they shall be invested in term deposits in the name of Registrar, DRAT, Mumbai, with Respondent bank, initially for 13 months, and thereafter to be renewed periodically.

17. 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 20.01.2025 for reporting compliance regarding the payment of the 1st instalment of pre-deposit.