

(2024) 12 BOM CK 0047
In the Bombay High Court
Case No : Writ Petition No. 18982 Of 2024

M/s. Shrinath Cotfab & Ors

APPELLANT

Vs

Authorised Officer, Canara Bank & Ors

RESPONDENT

Date of Decision : 19-12-2024

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13(2), 13(4), 17, 18, 18(1)

Citation : (2024) 12 BOM CK 0047

Hon'ble Judges : A.S. Chandurkar, J; Rajesh S. Patil, J

Bench : Division Bench

Advocate : Vineet Naik, Sumeet Kothari, Gajendra A. Rajput, Shubham Kahite

Final Decision : Dismissed

Judgement

A.S.Chandurkar, J

1. The challenge raised in this writ petition is to the order dated 2nd December 2024 passed by the Debts Recovery Appellate Tribunal – DRAT on the application made by the petitioners for waiver of 25% of the amount of pre-deposit under Section 18(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the Act of 2002). The DRAT by the impugned order directed the petitioners to deposit an amount of Rs.24 crores in three instalments on the premise that the outstanding dues on the date of filing the appeal were Rs.48,87,37,359.31.

2. Mr. Vineet Naik, learned Senior Advocate for the petitioners submits that since the petitioners were merely challenging the sale of the secured asset, it was only the amount at which the sale was effected that was required to be taken into consideration for the purposes of determining the amount of pre-deposit. The bid for an amount of Rs.2,97,00,000/- had been accepted as noted by the Debts Recovery Tribunal - DRT. Referring to the auction notice dated 9th August 2024, it was pointed out that the reserve price for the subject property was

Rs.2,96,00,000/-. This figure also could have been taken into consideration while determining the amount of pre-deposit. The DRAT however took into consideration the entire amount due and payable. He referred to paragraph 34 of the judgment of Supreme Court in Sidha Neelkanth Paper Industries Private Limited & Anr. vs. Prudent ARC Limited & Ors., 2023 SCC OnLine SC 12 and submitted that the petitioners were not challenging any measures taken under Section 13(4) of the Act of 2002. Hence, the figure of Rs.2,97,00,000/- ought to be taken into consideration for determining the amount of pre-deposit under Section 18(1) of the Act of 2002. The DRAT failed to consider this aspect thereby causing prejudice to the petitioners. It was thus submitted that the impugned order was liable to be set aside.

3. Mr. Gajendra Rajput, the learned counsel for the respondent no.1 supported the order and submitted that a Sale Certificate is yet to be issued to be auction purchaser. The auction was conducted and the bid for an amount of Rs.2,97,00,000/- was accepted. 25% of the amount was deposited by the auction purchaser. He too relied on the decision in Sidha Neelkanth Paper Industries Private Limited & Anr. (supra) and submitted that there was no reason to interfere in exercise of writ jurisdiction.

4. Having heard the learned counsel for the parties, we find that there is no reason to interfere with the impugned order. In the Securitization Application filed by the petitioners, they have challenged the action taken under Section 13(4) of the Act of 2002. In those proceedings, the petitioners filed Interim Application No. 2121 of 2024 with the following prayers :-

A) The defendant No 1 & 2 and its Agents, Officials, Representatives or any persons acting on behalf of the defendants may kindly be restrained from holding the Auction Sale of the said properties on 31/08/2024 in furtherance of the Auction Sale notice dated 09/08/2024 or if postponed on any other date and not to confirm the Auction sale and not take any action in furtherance of the same.

B) The Defendant No 1 & 2 their Agents, Officials, Representatives or any persons acting on behalf of the Defendant No 1 & 2 may kindly be restrained from creating any third party interest in respect of the said properties mentioned in Para No.2 of this application and not to part with the possession of the said properties by dispossessing the Applicants from the said properties.

C) The defendant No 1 & 2 and its Agents, Officials, Representatives or any persons acting on behalf of the said defendant may kindly be restrained from taking any further action under the Securitization Act against the properties as mentioned in para No 2 of this application.

5. By the order dated 18th October 2024, this Interim Application was rejected by the DRT. Being aggrieved, the petitioners filed an appeal under Section 18(1) of the Act of 2002 before the DRAT with the following prayers :-

a. The present appeal may kindly be allowed.

b. The order passed by the Hon'ble DRT, Pune below Interlocutory Application no. 2121/2024 (in Securitization Application no. 267/2024) dated October 18, 2024 may kindly be quashed and set aside.

c. The auction notice dated August 09, 2024 and paper publication of auction published in the newspaper dated 09/08/24 may kindly be quashed and set aside, being void illegal and devoid of any merits.

d. Order of status quo may kindly be passed in S.A. bearing No.267/2024 till its final disposal.

e. Any other just and equitable orders in the interest of justice may kindly be passed.

6. The DRAT while passing the impugned order proceeded on the premise that steps taken under Section 13(4) of the Act of 2002 were under challenge in the appeal. The Supreme Court in Sidha Neelkanth Paper Industries Private Limited & Anr. (supra) has held in paragraph 34 as under :-

34. As per Section 18 of the SARFAESI Act, any person aggrieved, by any order made by the DRT under section 17, may prefer an appeal within thirty days to an appellate Tribunal (DRAT) from the date of receipt of the order of DRT. Second proviso to section 18 provides that no appeal shall be entertained unless the "borrower" has deposited with the Appellate Tribunal fifty percent of the amount of "debt due" from him, as claimed by the secured creditors or determined by the DRT, whichever is less and only and only then, an appeal under Section 18 of the SARFAESI Act is permissible against the order passed by the DRT under Section 17 of the SARFAESI Act. Under Section 17, the scope of enquiry is limited to the steps taken under Section 13(4) against the secured assets. Therefore, whatever amount is mentioned in the notice under Section 13(2) of the SARFAESI Act, in case steps taken under Section 13(2)/13(4) against the secured assets are under challenge before the DRT will be the 'debt due' within the meaning of proviso to Section 18 of the SARFAESI Act. In case of challenge to the sale of the secured assets, the amount mentioned in the sale certificate will have to be considered while determining the amount of pre-deposit under Section 18 of the SARFAESI Act. However, in a case where both are under challenge, namely, steps taken under Section 13(4) against the secured assets and also the auction sale of the secured assets, in that case, the "debt due" shall mean any liability (inclusive of interest) which is claimed as due from any person, whichever is higher.

7. On the reading of the aforesaid paragraph, it becomes clear that if the sale of the secured asset is under challenge, the amount mentioned in the Sale Certificate will have to be considered. However, if the steps taken under Section 13(4) of the Act of 2002 are under challenge, the amount of 'debt due' is required to be considered. In the present case, there is no Sale Certificate issued in favour of the auction purchaser as of today. The auction purchaser has presently deposited 25% of the amount of bid. Only on the deposit of the entire consideration and confirmation of sale thereafter that a Sale Certificate would be

issued. Hence, till the sale is confirmed and a Sale Certificate is issued, there would be no occasion to consider the amount at which the bid has been accepted as the basis of determining the amount of pre-deposit under section 18(1) of the Act of 2002.

The matter can be viewed from another angle. Perusal of the grounds raised in the appeal would indicate that the same relate to grievances with regard to measures taken under Section 13(4) of the Act of 2002 such as inadequacy of the reserve price, defects in the auction notice and other similar grounds. Thus after considering the prayers made by the petitioners in the Interim Application as well as in the appeal, it is clear that what is under challenge are the measures taken under Section 13(4) of the Act of 2002.

8. Hence, for these reasons we do not find any fault with the order passed by the DRAT. The Writ Petition therefore stands dismissed. Needless to state that we have not considered the grounds raised before the DRAT on merits.