

(2024) 07 DRAT CK 0022

Debts Recovery Appellate Tribunal, Mumbai Bench

Case No: I.A. No.237 Of 2022 (WoD) In Appeal on Diary No.467 Of 2022

Akar Creations Pvt. Ltd. & Ors

APPELLANT

Vs

Canara Bank

RESPONDENT

Date of Decision: July 12, 2024

Acts Referred:

- Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - Section 13(3), 18(1)

Hon'ble Judges: Ashok Menon, Chairperson

Bench: Single Bench

Advocate: Sanjana Ghogare, Raju Shinde, Tamil Selvi Laxman

Final Decision: Disposed Of

Judgement

Ashok Menon, Chairperson

1. The appellants are in appeal impugning the order dated 27.05.2022 in I.A. No.568/2022 in S.A. No.37/2020 (T.S.A. No.106/2023) on the files of Debts Recovery Tribunal-I, Mumbai filed by them seeking an interim relief of protection against the Sarfaesi measures initiated by the Respondent Bank for recovery of debts due under the provisions of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 ("SARFAESI Act", for short). The D.R.T. refused to grant any protection to the appellant and dismissed the application. Aggrieved by that, the appellants are in appeal.

2. To entertain the appeal, the appellants will have to first comply with the mandatory provision of making the pre-deposit under Sec. 18(1) of the SARFAESI Act. The 13(2) notice was issued demanding the sum of ₹22,29,54,813.55. There was no response to that and consequently, symbolic possession was taken in 2019 under Sec.13(4) and

an order under Sec. 14 was also obtained from the Ld. District Magistrate, Goa.

3. The appellants had filed the S.A. challenging the Sarfaesi measures on various grounds. It is contended that the classification of the account as NPA was not in accordance with the RBI guidelines. It is further contended that the demand notice under Sec. 13(2) does not give bifurcation of the principal and interest claimed as required under Section 13(3) of the SARFAESI Act. It is also contended that the nine-pointer affidavit is not considered by the Ld. District Magistrate, Goa in the order under Sec. 14 of the SARFAESI Act, and therefore, the entire SARFAESI measures need to be quashed.

4. The Ld. Counsel appearing for the respondent bank submits that as of 01.02.2024, the outstanding dues is ₹56,46,72,144.20 and that the appellants have not paid any amount towards that. It seems that multiple attempts to sell the property had failed and the sale notice was issued on 31.03.2022. The outstanding debt was

₹41,36,31,107.65. The appellants have not produced any documents to indicate their financial strain. The 1st and 2nd appellants are companies. The balance sheets are not forthcoming. The Income Tax Returns of the directors of the companies who are the rest of the Appellants are also not forthcoming. Hence, the appellants have not complied with the requirements of getting the mandatory pre-deposit reduced to the minimum of 25% exercising jurisdiction under the 3rd proviso to Section 18(1). The appellants are, therefore, directed to deposit the sum of ₹20 crores as pre-deposit for entertaining this appeal. The amount shall be paid in two instalments as stated hereunder.

Numbers of Instalments	Payment on or before
1st Instalment of ₹ 10 Crore	02.08.2024
2nd Instalment of ₹ 10 Crore	23.08.2024

5. 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.

6. 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.

7. As and when the said amount is deposited, it 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.

8. 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 on 05.08.2024 for reporting compliance regarding the payment of the 1st instalment.