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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6082/2017 and CM Nos.25255/2017 & 25256/2017

ASHA RANI JINDAL & ANR. Petitioners

Through : Mr. Bhagat Singh, Advocate

Versus

STATE BANK OF INDIA Respondent

Through : Mr. S.N.Relan, Advocate

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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19.07.2017

1. The petitioners are aggrieved by the demand notice dated 23.1.2017 issued by the respondent bank under Section 13(2) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short '**the SARFAESI Act**'), orders dated 11.5.2017 & 16.5.2017 passed by the DRT-I in SA No. 97/2017 filed by them and the orders dated 25.5.2017 and 12.7.2017 passed by the DRAT in Appeal No. 241/2017 filed by the petitioners, which was dismissed for non-deposit of 25% of the amount of debt claimed by the respondent/Bank as a pre-deposit.

2. We may note that this is the second round of litigation initiated by the petitioners in the High Court. Prior hereto, aggrieved by the orders dated 11.5.2017 & 16.5.2017 passed by the DRT-I, Delhi in SA No. 97/2017, the petitioners had filed W.P.(C) No. 5230/2017. When the said petition was listed before this Court on 11.7.2017, we had enquired from learned counsel for the

petitioners as to whether they had assailed the impugned orders before the Appellate Authority, namely, the DRAT. Learned counsel for the petitioners had admitted that an appeal had been preferred against the aforesaid orders and vide order dated 25.5.2017, the learned DRAT had directed them to deposit at least 25% of the amount of debt claimed from them by the respondent/Bank.

3. In view of the fact that the statutory remedy of an appeal was available to the petitioners which they had invoked by approaching the DRAT, the aforesaid petition was disposed of without expressing any opinion on the merits of the case for the learned DRAT to take a decision in accordance with law. Pursuant thereto, the parties had appeared before the learned DRAT on 12.7.2017 on which date, noting the fact that the petitioners had failed to comply with the directions issued on 25.5.2017 by making a pre-deposit of at least 25% of the amount of debt, the said appeal was dismissed by the DRAT.

4. Today, learned counsel for the petitioners seeks to argue that the petitioners are well entitled to approach this Court to assail not only the orders dated 11.5.2017 and 16.5.2017 passed by the DRT-I, Delhi, subject matter of SA No. 97/2017 filed by them before the DRAT that has been dismissed on account of failure to pre-deposit 25% of the amount of debt but also, the demand notice dated 23.1.2017 issued by the respondent/Bank.

5. Learned counsel submits that the appeal filed by petitioners could not have been dismissed by the DRAT for not deposit of 25% of the debt as they are not defaulters in respect of the Home Loan account. He argues that the condition of pre-deposit is an extremely onerous one and the second proviso of Section 18(1) of the SARFAESI Act contemplates that an appeal can be

entertained by the DRAT if the borrower has deposited 50% of the amount of debt due as claimed by the secured creditors or determined by the DRT-I, whichever is less and the same covers the petitioners. He further states that the order dated 11.5.2017 passed by DRT-I, Delhi had erroneously recorded the submission of the counsel for the petitioners to the effect that they were ready to deposit the overdue amount in all the three accounts and then gone on to direct that in case they did so, the respondent/Bank would not take physical possession of the immovable property, which is a secured asset, whereas no such offer was made by the petitioners, who were only willing to deposit the overdue amount in respect of the home loan extended by the respondent/Bank to the tune of Rs. 67 lacs, as on 21.1.2017.

6. It is, however, not denied by the petitioners that apart from the home loan for a sum of Rs.67 lakhs extended by the respondent/Bank to the petitioners, the petitioner no.1, as the proprietor of Solitaire Lube Industries had obtained a cash credit limit of Rs.1 crore from the Bank and her husband, the petitioner no.2 as proprietor of Haryana Food Corporation (India) has obtained a cash credit limit of Rs.65 lacs from the bank and in September, 2015, both the said accounts were declared as NPAs.

7. Learned counsel for the respondent states that as on date, the outstanding amount in respect of the aforesaid two accounts comes to a sum of Rs.1.32 crores, plus interest. He clarifies that pursuant to the issuance of the Guidelines dated 1.7.2015 by the RBI regarding “Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances”, Clause 4.2.7 requires that all facilities granted by a bank to a borrower and

investment in all securities issued to the borrower shall have to be treated as NPA/NPI and not just the particular facility/investment or part thereof which has become irregular. It is thus stated that though the petitioners may not be defaulters in respect of the home loan account, admittedly, they are defaulters in respect of the other two cash credit limits extended to their respective firms and in view of the aforesaid Guidelines issued by the RBI, all the facilities granted to the petitioners have been collectively taken into consideration for treating their accounts as NPA's. He however fairly states that irrespective of the above position, having regard to the fact that the petitioners are aggrieved by the demand notice dated 23.1.2017 issued by the respondent/ Bank whereunder, the outstanding liabilities were quantified at Rs.65,47,439/- as on 21.1.2017, the petitioners are required to deposit only 25% of the said amount i.e Rs.17.5 lakh (approx) and after adjusting the three instalments of Rs. 63,000/- each deposited by them after the date of issuance of the said notice, the said amount would be reduced to Rs.15.25 lacs (approx.).

8. Learned counsel for the petitioners has been asked to state if the petitioners are still ready and willing to deposit Rs15 lakhs (approx) with the DRAT, and if they are, we shall direct restoration of the appeal before the DRAT for the same to be heard and decided on merits. At this, learned counsel for the petitioners reiterates his submission that the second proviso of Section 18(1) of the Securitisation Act provides that the amount liable to be deposited by the petitioners with the DRAT can even be 50% of the amount determined by the DRT which, has been so determined in terms of the order dated 11.5.2017 passed by the DRT.

9. We are not persuaded by the aforesaid arguments inasmuch as nowhere in para 6 of the order dated 11.5.2017, has the DRT determined the amount claimed by the respondent/Bank. Instead, the order only records the submission made by the petitioners about their willingness to deposit the overdue amount in all three accounts, which was not deposited.

10. As learned counsel for the petitioners states on instructions that his client is unwilling to make a pre-deposit of 25% of the amount demanded by the respondent No.1/Bank in terms of its notice dated 23.1.2017, we are not inclined to entertain the present petition by completely waiving the said condition. For counsel for the petitioners to urge that the petitioners are entitled to take all the pleas before us that they may have taken before the DRAT to assail the orders dated 11.5.2017 and 16.5.2017 passed by the DRT is not tenable particularly when they had elected to exercise their option of filing an appeal before the DRAT, which is a statutory remedy available to them in law. They cannot be permitted to bypass the appellate court in such a manner and invoke writ proceedings, particularly when no grounds for seeking judicial review have been made out.

11. The petition is accordingly dismissed in *limine*, along with the pending applications.

HIMA KOHLI, J

DEEPA SHARMA, J

JULY 19, 2017/mw/sr