IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2018

CORAM

THE HON'BLE MR.JUSTICE S.MANI KUMAR
&
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.7185 of 2018
and
W.M.P.Nos.8921, 8922 & 9478 of 2018

1. M/s.SLO Industries Limited
Rep. by its Managing Director,
Mr.Anil Kumar Ojha
447/265, 2nd Floor,
Poonamallee High Road,
Aminjikarai, Chennai - 600 029.

2. Mr.Anil Kumar Ojha, Managing Director
M/s.SLO Industries Limited
447/265, 2nd Floor, Poonamallee High Road,
Aminjikarai, Chennai - 600 029.

3. Mr.Arun Sharma,

4. M/s.Aran Steels Private Ltd
Rep. by its Director,
Mr.Anil Kumar Ojha,
447/265, Poonamallee High Road,
Aminjikarai, Chennai - 600 029. ... Petitioners

Vs.

1. Debt Recovery Appellate Tribunal, Chennai
Rep. by its Registrar,
4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai, Chennai - 600 008.

2. Debts Recovery Tribunal - I, Chennai
Rep. by its Registrar,
No.770-A, Spencer Towers
Anna Salai, Chennai - 600 002.

3. The Authorised Officer,
Corporation Bank,
Chennai-Mid Corporate Branch

Kelly's Corner, No.12, Ormes Road,
P.B.No.113, Kilpauk,
Chennai - 600 010.

4. Corporation Bank,
Chennai-Mid Corporate Branch,
Kelly's Corner, No.12, Ormes Road,
P.B.No.113, Kilpauk,
Chennai - 600 010. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st Respondent Appellate Tribunal made in its order dated 15.03.2018 in AIR (SA) 99/2018, quash the same insofar as it directs the petitioners to make a pre-deposit of Rs.70 crores in two equal installments and consequently direct the 1st respondent / DRAT to hear the petitioners in the appeal, without a pre-deposit.

For Petitioners : Mr.Manojmenon
For Menon Karthick

For R1 & R2 : Mr.Sivabalan

For R3 & R4 : Mr.S.Sethuraman
Senior Counsel

O R D E R

This Writ Petition has been filed, to call for the records of the 1st Respondent Appellate Tribunal made in its order dated 15.03.2018 in AIR (SA) 99/2018 and to quash the same, insofar as the Appellate Tribunal directing the petitioners to make a pre-deposit of Rs.70 crores in two equal installments, and consequently to direct the 1st respondent / DRAT to hear the petitioner's appeal, without insisting on the pre-deposit amount.

2. The brief facts of the case are that the 1st petitioner herein, namely, M/s.SLO Industries Limited, is an ISO 9001-2015 certified Iron and Steel Manufacturing and Trading company, incorporated under the Companies Act, 1956 and it has its factory at No.67/1, 2A & 2B, G.N.T Road, Chinnambedu Village, Ponneri Taluk, Tiruvallur District. The 2nd petitioner herein, is the Managing Director of the 1st petitioner company and the 3rd petitioner herein, is the director of the 1st petitioner company, and the 4th petitioner herein, is a separate company, incorporated under the Companies Act, 1956. Petitioners 2 to 4, are also the guarantors for the facilities availed by the 1st petitioner company.

3. The claim of the petitioners is that the 1st petitioner company availed finance facility from the Corporation Bank, the 4th respondent herein. A notice dated 14.07.2016 was issued to the petitioner company by the respondent bank, under Section 13 (2) of the SARFAESI Act, 2002, contending that the 1st petitioner's account had become NPA (Non Performing Asset) from 30.05.2016. The petitioners would contend that prior to 14.07.2016, at no point of time, the 4th respondent bank sent any notice to the 1st petitioner that his account has become NPA. That apart, the petitioners would contend that there had been several correspondence, exchanged between the 1st petitioner and 4th respondent, prior to 14.07.2016, and in none of these correspondence, the 4th respondent had stated that the 1st petitioner's account had been classified as NPA as on 30.05.2016. The petitioners would also contend that the classification of account as NPA, is not in accordance with the provisions of law and the guidelines issued by the Reserve Bank of India.

4. The 1st petitioner company, to the demand notice dated 14.07.2016 sent by the respondent bank as per Section 13(2) of the SARFAESI Act 2002, sent a detailed reply on 19.08.2016 in terms of Section 13(3A) of the SARFAESI Act 2002. When the said reply was under consideration, there was negotiation between the 1st petitioner and the 4rd respondent. The 3rd respondent, on 17.12.2016, issued another demand notice under Section 13(2) of the SARFAESI Act 2002, for Rs.240,03,62,820.86 and interest thereon, and in default threatened to exercise its right under SARFAESI Act 2002 and to proceed against the secured assets.

5. To the second demand notice dated 17.12.2016, the 1st petitioner company sent a detailed reply on 13.02.2017 in terms of Section 13(3A) of the SARFAESI Act 2002, reiterating its contentions for restructuring the outstanding amount and pointed out several illegalities of the 4th respondent from 2014 onwards. But, the 4th respondent rejected the 1st petitioner's objection on 24.02.2017. Thereafter, the 3rd respondent issued a possession notice on 20.03.2017/21.03.2017 and also taken symbolic possession of the secured assets. In the meanwhile, on 17.11.2016, the 4th respondent filed Original Application in O.A.No.105 of 2017 (presently T.A.No.01 of 2017 on the file of DRT-I, Chennai) under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993.

6. The petitioners would contend that challenging the action taken by the respondent bank, on 30.03.2017, they filed Securitisation Application in S.A.No.30 of 2017 under Section 17 of the SARFAESI Act 2002, before the 2nd respondent herein, to set aside the demand notice dated 17.12.2016 issued under

Section 13(2) of the SARFAESI Act 2002, and to declare the possession notice dated 20.03.2017/21.03.2017 issued under Section 13(4) of the SARFAESI Act 2002, as invalid, illegal and non-est, and consequently, to restore the possession of the schedule properties of the respective applicants.

7. The petitioners would also contend that since the 4th respondent had already issued notice on 14.07.2016 under Section 13(2) of the SARFEASI Act 2002, and thereafter, on 17.11.2016, filed O.A.No.105 of 2017, the subsequent notice on 17.12.2016 issued under Section 13(2) of the SARFAESI Act 2002, is invalid and unsustainable

8. The petitioners would further contend that the 2nd respondent Tribunal (DRT-I), after hearing the Securitisation Application.No.30 of 2017, granted an interim order on 07.04.2017. Thereafter, during the course of the hearing on 15.11.2017, the petitioner, relied on the Judgment of the Hon'ble Supreme Court in Transcore case reported in (2008) 1 SCC 125, and raised a preliminary issue that, once notice under SARFAESI Act 2002 is issued and then if any O.A. under the RDB Act is filed, then no measures under the SARFAESI Act 2002, can be initiated by the secured creditor.

9. Furthermore, the petitioners would contend that after hearing the matter on various dates, on 18.01.2018, DRT-I, passed an order regarding the maintainability of the relief sought for, as regards the challenge to the notice issued under Section 13(2) of the SARFAESI Act 2002. The contention of the petitioners herein is that when this issue was not even argued or objected to, or disputed by the 3rd and 4th respondents herein, an order came to be passed on 18.01.2018 by DRT-I, without dealing with the issue.

10. Being aggrieved, the petitioners have filed an Appeal in AIR.(SA).No.99 of 2018 before the DRAT, Chennai, under Section 18 of the SARFAESI Act 2002, to set aside the order dated 18.01.2018 passed in S.A.No.30 of 2017 and consequently, to direct DRT-I to hear S.A.No.30 of 2017, without restricting to only challenge post issuance of notice under Section 13(4) of the SARFAESI Act 2002.

11. The petitioners would further contend that they have filed I.A.No.234 of 2018 in AIR.(SA).No.99 of 2018 seeking for complete waiver of pre-deposit, on the ground that there was violation of principles of natural justice, that they were not given opportunity of hearing on the aforesaid issue. On 15.03.2018, DRAT, Chennai, refused to consider the prayer, in the Waiver Application and postponed the same, for a decision, at the time of final hearing, and directed the petitioners to

make a pre-deposit of Rs.70 Crores in two equal installments, first, within 4 weeks of the said order and the second within 4 weeks thereof. Challenging the order dated 15.03.2018 in I.A.No.234 of 2018 in AIR.(SA).No.99 of 2018, the present Writ Petition has been filed by the petitioners.

12. The 3rd respondent, the authorised officer, has filed a detailed counter to the contentions raised in the affidavit filed in support of the Writ Petition, refuting the claim and the grounds, on which the present Writ Petition has been filed. The respondents 3 and 4 would submit that the 1st petitioner company had been enjoying the credit facilities from the year 2003 onwards, by extending the limits granted by the bank periodically and from time to time. During the year 2013, the aggregate credit facilities extended by the bank to the petitioners was Rs.195.00 crores, which included Cash Credit limit of Rs.130.00 Crores and Letter of Credit facility to Rs.65.00 crores. The 1st petitioner company as well as the borrower and guarantors had offered factory, land and building and several other properties as security. However, when their accounts became a Non Performing Assets as on 30.05.2016, the bank initiated action under SARFAESI Act 2002 and issued a notice dated 17.12.2016 under Section 13(2) of the SARFAESI Act 2002, calling upon the petitioners to pay a sum of Rs.240,03,62,830.86. Since the petitioners failed to make the said due amount, the respondent bank has taken possession of the securities by issuing notice under Section 13(4), on 20.03.2017.

13. The respondents 3 and 4 would also submit that the petitioners challenged the notice issued under Section 13(2) and Section 13(4) of the SARFAESI Act 2002, before DRT-I in S.A.No.30 of 2017. When the question of maintainability was raised by the Registry with regard to the relief sought for against the notice under Section 13(2) of the SARFAESI Act 2002, by order dated 05.04.2017, DRT-I has directed the Registry to number SA.SR.No.1860/20, leaving the issue of maintainability open. Thereafter, when the hearing took place on 07.04.2017, the proceeding of DRT-I, as recorded is as follows: "I.A.No.222 of 2017" - it is a petition filed for grant of stay of the notices impugned in S.A.No.30 of 2017".

14. Before the Tribunal, the respondent bank have stated that they have no intention to take actual possession of the schedule mentioned items 5 and 6, and sought time for filing counter. Thereafter, several adjournments were granted, and after 6 months of securing an interim order, the petitioners commenced their arguments again, on the maintainability of proceedings under SARFAESI Act 2002. By order dated 18.01.2018, DRT-I held that S.A.No.30 of 2017 filed by the petitioner, insofar as it relates to the relief claimed, for setting aside

the demand notice dated 17.12.2016 issued under 13(2) of the SARFAESI Act 2002, S.A.No.30 of 2017, is not maintainable.

15. Challenging the order dated 18.01.2018, the petitioners have filed AIR.(SA).No.99 of 2018 under Section 18 of the SARFAESI Act, before the DRAT, Chennai. In the said proceedings, I.A.No.234 of 2018 has been filed for waiver of pre deposit of 50% of the amount due. By order dated 15.03.2018, DRAT, Chennai, has directed the petitioners to deposit a sum of Rs.70 Crores. Challenging the said order of DRAT, the present Writ Petition has been filed by the petitioners.

16. Heard the learned counsel for the petitioners and the learned counsel for the respondents, and perused the materials available on record.

17. The point to be decided in this Writ Petition is to whether the order passed by the DRAT, Chennai, in I.A.No.234 of 2018 dated 15.03.2018, directing the petitioners to pay a pre-deposit amount of Rs.70 crores, is sustainable or not.

18. The learned counsel for the petitioners would contend that when DRT-I has not considered the principles of natural justice, by affording an opportunity of hearing on the preliminary issues raised by the petitioners with regard to very maintainability of the notices issued under Section 13(2) and 13(4) of the SARFAESI Act 2002, dated 17.12.2016, 20.03.2017/21.03.2017, respectively, by the respondent bank and when DRT-I has passed an order, on an issue which was not argued, DRAT, Chennai, should not have insisted, the petitioners to make pre-deposit under Section 18 of the SARFAESI Act 2002, and ought to have given a complete waiver to entertain the appeal.

19. Learned counsel for the petitioners would also contend that DRT-I, without affording an opportunity to advance an argument on the issue of maintainability of the notice issued under Section 13(2) of the SARFAESI Act 2002, has passed an order, infringing the Constitutional right of the petitioners.

20. On the other hand, learned counsel for the respondent bank vehemently argued that in respect of the mandatory pre deposit under Section 18 of the SARFAESI Act 2002, wherein, the Act provides for 50% of deposit, before DRAT, Chennai, proper reasons were not adduced by the petitioners for seeking waiver. DRAT, Chennai, has imposed a pre deposit only Rs.70 crores, as against the amount due and payable is Rs.120 crores, which is 50% of the total due amount of Rs.240,03,62,830.86 crores. DRAT, Chennai, has already shown leniency on the petitioners which is sufficient. Hence, the order of the DRAT, Chennai, directing the

petitioners to comply with the condition of pre deposit to entertain the appeal, has to be sustained.

21. The main issue to be decided by this Court, is only with regard to the order passed by DRAT, Chennai, imposing Rs.70.00 crores, as pre-deposit, to entertain the appeal, filed under Section 18 of the SARFAESI Act 2002, whether sustainable or not?. Section 18 of the SARFAESI Act 2002, reads as under:

> "Any person aggrieved, by any order made by the Debts Recovery Tribunal under Section 17, may prefer an appeal along with such fee, as may be prescribed to an Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal. Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower: Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:
>
> Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent of debt referred to in the second proviso.
>
> (2) ....
>
> It is very clear from the above provision that it refers to any Order and the question of distinguishing that an order which is a nullity will not come within the purview of the provision is nothing but a fanciful imagination.

22. The above provision clearly recognises the right of a person, who is aggrieved by any order passed by DRT under Section 17, to prefer an appeal within 30 days from the date of order of the DRT. However, such appeal can be entertained, if only the borrower deposits with the Appellate Tribunal 50% of the amount of debt due from him, as claimed by the secured creditors or determined by the DRT, whichever is less. The proviso also confers powers on the Appellate Tribunal to reduce the amount, by recording reasons for such reduction, but, the same cannot be reduced below 25% of the debt amount due. Insofar as the present case is concerned, the challenge to an order passed by DRAT, Chennai, in an application filed by the petitioner, seeking complete waiver of pre-deposit is on the grounds of non-compliance of principles of natural justice, by

DRT, that without giving an opportunity to the petitioner on the preliminary issue raised by the petitioner on the maintainability of notice issued under Section 13(2) of the SARFAESI Act 2002, DRT-I has summarily rejected and dismissed the Securitisation Application filed by the petitioners.

23. Case laws have been relied on by the petitioners, to substantiate the nullity of the order passed by the DRAT. We have gone through the Judgments, those judgments referred to by the learned counsel for the respondents, pertain to the merits of the appeal to be decided by DRAT. Hence, at this point of time, it may not be appropriate for this Court to express anything on the merits of the appeal to be decided by DRAT.

24. While considering the issue in I.A. filed by the petitioners, seeking waiver of pre-deposit, under Section 18, especially the notice dated 14.07.2016 issued under Section 13 (2) of the SARFAESI Act 2002, the total amount due to the bank, as on 14.07.2016 was Rs.229,52,99,307.86. Bank has recovered only 15 crores from the petitioners, by way of sale of one of the properties of the petitioners. We have to consider as to whether, DRAT, Chennai, the Appellate forum, was right, in ordering pre deposit or not. Whether, DRAT, Chennai, is refined to go into merits of the appeal or not, while directing pre deposit.

25. On careful perusal of Section 18 of the SARFAESI Act 2005, it could be seen that the Act does not provide for a complete waiver and it only gives power to the Appellate Tribunal under the proviso to Section 18 to exercise its discretion to reduce the amount, not lesser than 25% of the amount due, as claimed by the secured creditors. As such, the amount claimed by the respondent bank is around Rs.229,52,99,307.86. DRAT while considering I.A. filed, seeking waiver of pre deposit under Section 18, has exercised such discretion and ordered the petitioners to make pre deposit of Rs.70 crores, giving time for paying the said amount in two equal installments.

26. Once the statute provides certain conditions, the same shall be followed strictly. In other words, what is not provided under the statute, cannot be claimed as a matter of right by anyone, and therefore, the claim of the petitioners herein, seeking 100% waiver, would certainly go contrary to the provision, Section 18 of the SARFAESI Act 2002. Even taking for granted that the grounds raised by the petitioners, as to whether the order passed by DRT, is sustainable or not, which can be tested before the DRAT, Chennai, by adhering to the condition to be complied with under Section 18, wherein, the appellant has to make a pre deposit of Rs.50% for entertaining

an appeal or an amount not less than 25% of the amount claimed or determined by the Tribunal, as the case may be.

27. It could be seen from the material on record that as against claim of Rs.240 crores, only 15 crores have been recovered by the bank. When the statute provides for pre-deposit of 50% of the amount, DRAT has rightly exercised its power under the proviso to Section 18 of the SARFAESI Act 2005, by reducing the amount from 50% to almost 25%, considering the huge amount due by the petitioners to the respondent bank. Taking into consideration of the overall circumstances, DRAT, Chennai, has decided to invoke the proviso to Section 18 of the SARFAESI Act 2005 to reduce the pre-deposit amount from 50% to 25%, by directing the petitioner to deposit a sum of Rs.70 crores. Order passed by DRAT, Chennai, directing the petitioners to deposit a sum of Rs.70 crores to entertain their appeal under Section 18, cannot be found fault with.

28. Since 15 crores has already been recovered towards the principle amount, as claimed under Section 13(2) of the Act, it would be appropriate to direct the petitioner to pay a sum of Rs.57 crores as pre-deposit in two equal installments. Accordingly, the petitioner is directed to pay the 1st installment within 8 weeks from the date of receipt of a copy of this order and the second installment to be paid within 8 weeks thereof.

29. Upon complying with such conditions of pre-deposit, DRAT, Chennai, is directed to entertain the appeal by taking the case on file and conclude the same within a period of 3 months from the date on which the second installment is paid by the petitioner.

30. In the light of the above discussions, we are of the view that the order passed by the DRAT cannot be interfered in entirely and accordingly, modified. Interim Stay granted on 10.04.2008, which is still in force, is vacated.

31. With the above directions, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar
   Debt Recovery Appellate Tribunal
   4th Floor, Indian Bank Circle Office,
   55, Ethiraj Salai, Chennai - 600 008.

2. The Registrar
   Debts Recovery Tribunal - I
   No.770-A, Spencer Towers
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4. The Corporation Bank,
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   Kelly's Corner, No.12, Ormes Road,
   P.B.No.113, Kilpauk,
   Chennai - 600 010.

+1cc to Mr.S.Sethuraman, Advocate, S.R.No.69744
+1cc to Mr.Manojmenon, Advocate, S.R.No.69896

W.P.No.7185 of 2018
and
W.M.P.Nos.8921, 8922 & 9478 of 2018

JP(CO)
CS/08/01/2019