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

\+ W.P.(C) 10347/2018 & CM No. 40340/2018

M/S EZEE CONNECT TELECOM PRIVATE LTD.
AND ORS. ..... Petitioners

Through Mr.Rutwik Panda, Adv. with Ms.Nikhar Berry & Ms.Anshu Malik, Advs.

versus

PUNJAB NATIONAL BANK AND ORS. ..... Respondents

Through Mr.Hashmat Nabi, Adv. with Mr.Farah Naaz, Adv.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **28.09.2018**

1. The petitioners have filed the present petition, *inter alia*, impugning the notice dated 12.01.2018 (hereafter 'the impugned notice') issued by respondent bank under Sections 13 (2) and 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (hereafter "the SAFAESI Act"). By way of the impugned notice, the respondent bank has called upon the petitioners to pay ₹83,30,172.73/- with further interest within sixty days of the receipt of the impugned notice. The said demand has been made on account of default in payment of the dues by the petitioner.

2. The petitioners state that they have already paid 10% of the amount claimed to be outstanding by the respondent bank and had requested the

bank for a One Time Settlement (OTS) of the dues. The said request was been declined by a letter dated 20.08.2018 on the ground that the proposal submitted by the petitioners was bereft of any particulars inasmuch as petitioner no.1 had neither mentioned a specific amount that would be paid nor the time schedule for payment of settlement amount.

3. The petitioners claim that they sent several letters to the respondent bank but have not received any response thereto. The learned counsel appearing for the petitioners submits the respondent bank had not indicated any contours of the proposal that could be submitted. He contended that the petitioners had already expressed their willingness to enter into a OTS and the respondent bank, being a state under Article 12 of the Constitution of India, was bound to treat the petitioners fairly and in a non-discriminatory manner. Therefore, the respondent bank was bound to offer the same terms for an OTS as offered to other borrowers.

4. Insofar as the petitioners' challenge to the impugned notice under Section 13(2) and 13(4) of the SARFAESI Act is concerned, no orders can be passed in these proceedings. It is well settled that the action of the banks to proceed for enforcing security interest cannot be interdicted. Any grievance that the petitioners may have with regard to the impugned notice issued under Sections 13(2) and 13(4) of the SARFAESI Act is required to be agitated in an appeal before the Debt Recovery Tribunal (DRT) after the secured creditor has taken over possession of the security. (***Mardia Chemical Ltd. v. Union of India: (2004) 4 SCC 311, United Bank of India v. Satyawati Tondon and Others: (2010) 8 Supreme Court Cases 110 and Authorized Officer, State Bank of Travancore and Another v. Mathew***

K.C.: (2018) 3 Supreme Court Cases 85)

5. There is, however, merit in the petitioners' contention that the petitioners must be treated fairly; however, it is erroneous to suggest that the respondent bank is obliged to offer a OTS on the same terms, as may have been accepted in case of other defaulting borrowers. This is a commercial decision and the respondent bank is required to examine each case on its own facts keeping in mind the prospects of recovery and the value of security.

6. Insofar the petitioners' request that its proposal be considered, it is always open for the petitioners to approach the respondent bank by making a specific proposal indicating the amount offered by the petitioners as a One Time Settlement and the time schedule for making such payment.

7. The petition and the pending application are is disposed of with the aforesaid observations.

VIBHU BAKHRU, J

SEPTEMBER 28, 2018

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