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

+ **W.P.(C) 12468/2018 & CM APPL. 48383/2018**

SHAGUN SALES INC.

..... Petitioner

Through Ms Deeps Sharma, Mr Kunal Nalh,
Mr Shekha Goyal, Advocates.

versus

CANARA BANK

..... Respondent

Through Mr A.K. Sharma, Advocate for Bank.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **03.12.2018**

1. The petitioner has filed the present petition impugning an order dated 20.10.2018 passed by the ACMM under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The petitioner also impugns the notice dated 12.03.2018 issued under Section 13 (2) of the SARFAESI Act and subsequent notices dated 02.06.2018 and 08.06.2018 issued under Section 13(4) of the SARFAESI Act. The petitioner also prays that the receiver appointed pursuant to the orders dated 20.10.2018 passed by the ACMM be restrained from taking physical possession of the secured asset, or any other coercive action.
2. It is the petitioner's case that the petitioner's account was not an NPA and, therefore, the proceedings instituted by the respondent bank under the SARFAESI Act are without jurisdiction. The petitioner had filed an appeal before the Debt Recovery Tribunal-I (DRT) being S A No. 256/2018, *inter*

alia, impugning the notice issued under Section 13 (2) of the SARFAESI Act as well as the notice dated 02.06.2018 issued under Section 13 (4) of the SARFAESI Act. The petitioner had also challenged the auction notice dated 20.08.2018. The DRT rejected the aforesaid application on the ground that it was beyond the period of limitation (45 days) as provided under Section 17 (1) of the SARFAESI Act.

3. The petitioner preferred an appeal against the DRT's order dated 26.09.2018 and the same is currently pending before the Debt Recovery Appellate Tribunal (DRAT). The petitioner is also aggrieved as the said appeal has not been entertained.
4. The petitioner's appeal before the DRAT has not been entertained as the petitioner has failed to comply with the condition of making the necessary pre-deposit. According to the petitioner, it was required to make a pre-deposit of a sum of ₹50 lakhs but the petitioner has been able to deposit only a sum of ₹20 lakhs so far. The petitioner has filed an undertaking before this Court affirming that the petitioner shall deposit a further sum of ₹30 lakhs within four weeks from the date of the order of this Court (i.e. 20.11.2018).
5. In view of the above, this Court considers it apposite to direct that the DRAT consider the petitioner's appeal on merits subject to the petitioner's depositing the aforesaid sum of ₹30 lakhs as undertaken by the petitioner.
6. It is pointed out that the petitioner had not challenged the order dated 20.10.2018 passed by the learned ACMM as the petitioner had already moved the DRT against the possession notice under section 13(4) of the SARFAESI Act issued earlier as well as the auction notice dated 20.08.2018. Plainly, if the petitioner succeeds in its challenge to the notice

under Section 13 (2) or Section 13 (4) of the SARFAESI Act, the order dated 20.10.2018 passed by the learned ACMM would also be liable to be set aside.

7. In this regard, it would be open for the petitioner to file an appropriate amendment application before the DRAT or the DRT (if the matter is remanded to DRT). The present petition is disposed of in the above terms.
8. This Court is informed that the petitioner's appeal is now listed before DRAT on 14.01.2019. The learned counsel appearing for the petitioner states that she is travelling overseas and would return to the country only around 17.01.2019. In view of the above, it will be open for the petitioner to seek an adjournment of the hearing scheduled before the DRAT on 14.01.2019 to any subsequent date convenient to the DRAT. Subject to the petitioner depositing the sum of ₹30 lakhs as undertaken, no coercive steps shall be taken till such date. It is clarified that no further adjournment will be sought by either party.
9. The petitioner is at liberty to move the DRAT for further interim relief. The DRAT shall consider the same on its own merits uninfluenced by the orders passed by this Court.
10. It is clarified that this Court has not expressed any opinion on the merits of the contentions advanced by the petitioner.
11. Order *dasti*.

VIBHU BAKHRU, J

DECEMBER 03, 2018

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