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

\+ W.P.(C) 9659/2017

M/S RASHI WEARS PVT LTD AND ORS ..... Petitioners

Through: Mr. Samrat Nigam with Mr. A.K. Singh, Advs.

versus

BANK OF BARODA ..... Respondent

Through: Mr. R.P. Agarwal and Ms. Sonali Rastogi, Advs.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% **15.02.2019**

1. The petitioner has preferred the instant writ petition to assail the order dated 16.08.2017 passed by the Debt Recovery Appellate Tribunal, Delhi (DRAT) in OA No.207/2017 in Appeal No.140/2017, arising out of S.A. No.13/2014 (Delhi-I).

2. By the impugned order, the DRAT has declined to grant waiver of the condition of pre-deposit of 50% of the amount of debt demanded by the respondent-bank in its notice issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act). The respondent-bank has initiated an Original Application for recovery of its debt before the DRT. The respondent-bank also issued notice under Section 13(2) of the SARFAESI Act dated 26.10.2012 to the petitioner demanding an amount of Rs.11,98,72,368.02. The demand notice called upon the borrowers to pay

the said amount + interest and/or charges w.e.f. 29.09.2012 within 60 days from the date of the notice. The case of the respondent is that no amount was paid by the borrowers in pursuance of the said notice.

3. The asset of the borrowers i.e. second floor of property No.C-758, New Friends Colony, New Delhi, was sold in auction in pursuance of the notice under Section 13(2) of the SARFAESI Act and the said property was purchased by the respondent-bank itself for Rs.4.82 crores. Mr. Nigam submits that, in addition, the respondent-bank has received a sum of Rs.2.30 crores in respect of the ECGC claim. Thus, after the issuance of the said demand notice, the respondent-bank has received and is liable to give credit for the amount of Rs.7.12 crores in the account of the borrowers. He submits that the said amount is liable to be, therefore, accounted for while determining the amount that the appellant may be called upon to deposit in terms of Section 18 of the SARFAESI Act.

4. He further submits that the Tribunal proceeded on the erroneous basis that since the sale of the aforesaid property itself is under challenge, and the position with regard to the amount for which the sale took place i.e. Rs.4.82 crores is nebulous, the said amount could not be treated as a part of the pre-deposit required under second proviso to Section 18 of the SARFAESI Act. He submits that this Court has taken a view in ***Srishti Arogyadham Pvt Ltd vs. Punjab National Bank & anr.***, W.P.(C) 12299/2018 decided on 27.11.2018 that, merely because the position with regard to the auction sale may be nebulous, is no reason not to give credit for the amount for which the sale has taken place for the purpose of second proviso to Section 18 of the SARFAESI Act.

5. Mr. Nigam further submits that, similarly, the amount of Rs.2.30

crores received in respect of the ECGC claim is also liable to be given credit by the DRAT while computing the amount of pre-deposit.

6. On the other hand, learned counsel for the respondent-bank submits that the amount realised in auction being a matter of adjudication, since the sale itself is in dispute, cannot be so adjusted. Similarly, the amount received in respect of the ECGC claim may also have to be returned, either in whole or in part, since the said amount has been received only under an insurance policy.

7. In the face of the judgment of the Division Bench in ***Srishti Arogyadham Pvt Ltd*** (supra), the reasoning adopted by the learned DRAT cannot be sustained. We, therefore, set aside the impugned order and remand the matter back to the DRAT. The DRAT shall re-hear the parties on the aspect of pre-deposit and shall pass a fresh order after taking into account the ratio of the decision of this Court in ***Srishti Arogyadham Pvt Ltd*** (supra), and such other decisions relied upon by counsels. Parties shall appear before the DRAT on 28.02.2019.

VIPIN SANGHI, J

A. K. CHAWLA, J

FEBRUARY 15, 2019

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