IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

CRP.NO.2187/2020 & CMP.No.13798/2020

1.M/s.Sri International rep.by its
Partner Mr.N.Ramalingam
No.6/A, Gayathri Nagar
1st Street, Palayakkadu North
Uthukuli Road, Tirupur 641501.

2.Mr.N.Ramalingam
3.Mrs.R.Valarmathi
4.Mrs.R.Arukkani .. Petitioners

Versus

The Authorized Officer
Central Bank of India
No.2, Court Street
Tirupur 641 601. .. Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 19.10.2020 passed in IA.No.276 of 2020 in AIR.SA.No.105 of 2020 on the file of the Debts Recovery Appellate Tribunal, Chennai.

For Petitioners: Mr.Balamurali for Mr.R.Kaandeepan

For Respondent : Mr.M.L.Ganesh Standing counsel

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]
[Through Video Conferencing]

(1) By consent, the Civil Revision Petition is taken up for final disposal and is disposed of by this order.
(2) Mr.M.L.Ganesh, learned Standing counsel accepts notice on behalf of respondent.
(3) The 1st petitioner is a Partnership Firm and the other petitioners are partners and the Firm was doing various type of hosiery knitted business and also exporting the same to

foreign countries. The 1st petitioner had availed PC&CC Loan facility from the respondent-Bank in the year 2017 and they were prompt in repaying the dues and due to vagaries of business, they were unable to service the debts. The accounts of the 1st petitioner-Firm were declared as ''Non Performing Assets'' and the respondents-Bank had issued a Notice dated 10.02.2020 under Section 13 [2] of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [in short ''SARFAESI Act''], demanding a sum of Rs.3,89,31,614/- as on 10.02.2020. The 1st petitioner also made an attempt by making an offer of One Time Settlement and it was not considered and thereafter, Possession Notice came to be issued on 31.07.2020. The petitioners made a challenge by filing SA.No.263 of 2020 and pending disposal of the same, took out IA.No.1026 of 2020 praying for stay of further proceedings. The Debts Recovery Tribunal at Coimbatore, had entertained the said Appeal and while passing the interim order dated 07.09.2020, has taken note of the order passed by this Court, not to confirm the sale till 08.09.2020 and further taking note of the submission made by their counsel that the applicants are also willing to deposit a substantiate amount payable towards loan, directed them to deposit a sum of Rs.2 Crores in favour of the respondent-Bank within a period of four weeks from the date of the order dated 07.09.2020 and till the receipt of the same, directed the respondent-Bank, not to confirm the sale of the property and further directed impleadment of the auction purchaser.

(4)The petitioners challenged the conditional order by filing CRP [PD].No.1800 of 2020 on the file of this Court and a Division Bench of this Court, vide final order dated 01.10.2020, has granted liberty to the revision petitioners to file an Appeal before the Debts Recovery Appellate Tribunal at Chennai [in short ''DRAT''] within a period of three weeks from the date of receipt of a copy of the said order and as and when it is filed, the DRAT shall number it and hear it on merits and till such time, status quo on the date of final disposal of CRP.No.1800 of 2020 on 01.10.2020, was directed to be maintained and also taken note of the fact that auction has already taken place and the successful bidder has also deposited 25% of the bid amount. the revision petitioners herein, pursuant to the liberty granted, filed an Appeal before DRAT and filed an application under Section 18[1] of the SARFAESI Act to waive the entire 50% of the pre-deposit amount for filing the Appeal.

(5)The DRAT, vide interim order dated 19.10.2020, has modified the order and directed the revision petitioners herein to deposit a sum of Rs.1.50 Crores in two equal instalments and the first instalment of Rs.75 Lakhs to be paid on or before

07.11.2020 and the second instalment of Rs.75 Lakhs, was directed to be deposit within a period of four weeks with a default clause and challenging the legality of the same, the present Civil Revision Petition is filed.

(6)The learned counsel for the petitioners on instructions, would submit that the first instalment of Rs.75 Lakhs had already been paid and in the light of the fact that the sale had already taken place and that the respondent-Bank has also realised by way of sale consideration more than the amount due and payable by the petitioners, prays for suitable modification.

(7) Per contra, Mr.M.L.Ganesh, learned Standing counsel appearing for the respondent-Bank would submit that the entire items of secured immovable assets had been sold for a sum of Rs.4.94 Crores and odd and the sale has also been confirmed in favour of the auction purchaser and in the light of the interim order in operation, further proceedings could not take place and he would further add that since DRAT has exercised the discretion in a fair and proper manner, the scope of the judicial review of this Court in exercise of its jurisdiction under Article 227 of the Constitution of India, is very limited and prays for dismissal of this Civil Revision Petition with cost.

(8)This Court has considered the rival submissions and also perused the materials placed before it.

(9)A perusal of the interim application filed by the revision petitioners pending disposal of the Appeal before DRAT at Chennai would disclose that the revision petitioners/applicants therein prayed for complete waiver of the amount and the learned counsel for the petitioners has also placed reliance upon the decision rendered by a Division Bench in 2019 [3] CTC 497 Sree Jeya Soundharam Textile Mills Private Limited and Others V. Canara Bank and Others]. It is relevant to extract the directions pertain to making a pre-deposit for preferring an Appeal before DRAT:-

22.For the reasons stated above, we decide the issue with regard to making of pre-deposit for preferring an appeal before the Debt Recovery Appellate Tribunal as follows:

> 22.For the reasons stated above, we decide the issue with regard to making of pre-deposit for preferring an appeal before the Debt Recovery Appellate Tribunal as follows:
>
> (i) The borrowers and guarantors are liable to make pre-deposit as per the provisions of Section 18 of the SARFAESI Act or under Section 21 of the Recovery of Debts and Bankruptcy Act, 1993 for preferring an appeal before the Debt Recovery Appellate Tribunal.

(ii) The 3rd parties, who had purchased the property prior to the date of mortgage or derived/accrued title or right or tenancy right over the property prior to the date of mortgage, are not liable to make any pre-deposit for preferring an appeal before the Debt Recovery Appellate Tribunal, provided that they establish before the Debt Recovery Appellate Tribunal that they derived/accrued title or right or tenancy right over the property prior to the date of mortgage and that the property was mortgaged with the Bank without their knowledge. If such 3rd parties file applications for waiver and if they establish that they have purchased the property or that they derived/accrued title, right or tenancy right prior to the date of mortgage and the property was mortgaged with the Bank without their knowledge, the Debt Recovery Appellate Tribunal shall give a finding with regard to the same and give exemption to such 3rd parties from making pre-deposit.

(iii)The 3rd parties who had purchased the property either after the date of mortgage or derived/accrued title or right or tenancy right in respect of the property in question or after the initiation of SARFAESI proceedings are liable to make the pre-deposit and they should be treated on par with the borrower and the guarantor as per the provisions of both the Acts for the purpose of making pre-deposit.

(iv)The Debt Recovery Appellate Tribunal shall consider the waiver applications filed by the 3rd parties, on merits and in accordance with law, following the principles laid down in this judgment and pass appropriate speaking orders giving findings with regard to the rights of the 3rd parties.

(v)The secured creditors viz., the Banks and Financial Institutions or a Consortium or Group of Banks and Financial Institutions are not liable to make any pre-deposit for preferring an appeal before the Debt Recovery Appellate Tribunal.

(vi)The auction purchaser is not liable to make any pre-deposit while preferring an appeal to the Debt Recovery Appellate Tribunal as against the order passed by the Debts

Recovery Tribunal.

(vii) The appellant who has filed an appeal before the Debt Recovery Appellate Tribunal as against the Interlocutory order passed by the Debts Recovery Tribunal, is not liable to make the pre-deposit if the liability is not determined by the Debts Recovery Tribunal in the interlocutory order.

(viii) In any other category other than the categories mentioned above, the Debt Recovery Appellate Tribunal shall decide the waiver application as per the principles laid down in this judgment.''

(10) Though the revision petitioners pray for complete waiver, in the light of Section 18 of the SARFAESI Act, complete waiver is not possible. It is also a well settled position of law that Statute is plain and clear and it should be interpreted as it is and as such, complete waiver sought for by the petitioners, in the considered opinion of the Court, cannot be granted.

(11) Admittedly, four items of secured immovable assets have been sold for Rs.4.94 Crores and odd and the balance amount of around Rs.40 Lakhs is available with the respondent-bank. It is also the submission of the learned counsel for the petitioners, on instructions that the first instalment of Rs.75 Lakhs, as ordered by DRAT, Chennai, in the impugned order, has also been paid and the balance amount of Rs.75 Lakhs is yet to be paid.

(12) In the light of the fact that after satisfaction of the dues, a sum of Rs.40 Lakhs is still available at the hands of the respondent-Bank. This Court reduces the second instalment of Rs.75 Lakhs to Rs.35 Lakhs and the revision petitioners are directed to deposit a sum of Rs.35,00,000/- [Rupees Thirty Five Lakhs only] by way of second instalment with the Registrar, DRAT, Chennai, within a period of two weeks from the date of receipt of a copy of this order/uploading of this order in the website, failing which, the modified order passed herein, would stand automatically vacated without any reference to this Court and in the event of compliance of the order, nothing would remain for further adjudication in A.I.R.SA.No.105 of 2020 pending on the file of DRAT, Chennai, for the reason that the said Appeal has been preferred against the interim order, which came to be modified by this order passed in this Civil Revision Petition.

(13) The petitioners herein shall file a Memo, immediately on compliance of the modified order passed by this Court today in this Civil Revision Petition, before DRT at Coimbatore and upon receipt of such Memo from the petitioners herein, the DRT, Coimbatore, shall accord priority and dispose of SA.No.263 of 2020 as expeditiously as possible, preferably

within a period of three weeks thereafter.

(14) It is also open to the respondent-Bank to accept the balance sale consideration from the auction purchaser and however it is made clear that till the disposal of SA.No.263 of 2020, by DRT, Coimbatore, no further steps should take place.

(15) The Civil Revision Petition stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP

To

1.The Registrar,
The Debts Recovery-Appellate Tribunal,
Chennai.

2.The Debt Recovery Tribunal,
Coimbatore.

3.The Authorized Officer
Central Bank of India
No.2, Court Street
Tirupur 641 601.

CRP.No.2187/2020

EV(CO)
CB(18/01/2021)