<u>IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH : NAGPUR.</u>

<u>WRIT PETITION NO.7881/2019</u>

Tirupati Urban Cooperative Bank Ltd., 172, Shraddhanand Peth, South Ambazari Road, Nagpur, through it's Authorized Officer / Chief Executive Officer. ..<u>Petitioner</u>.

..Vs..

1. M/s. Shekhar Enterprises, through it's Proprietor Shri Shekhar Laxmanrao Khodke, R/o 1032, C.A. Road, Near Gandhibag Garden, Gandhibag, Nagpur and Jai Commercial Complex, Plot No.1294, Central Avenue, Nagpur.

2. Samad Khan S/o Samir Khan, aged about Major, Occ. Business, R/o Nargis Siyal Layout, Takli Feeder Road, Nelson Square, Nagpur.

3. Smt. Jayashree W/o Late Shri Pravin Khodke, aged about Major, Occ. Business, R/o Jai Commercial Complex, Plot No.1294, Central Avenue, Nagpur.

4. Utkarsha S/o Late Shri Pravin Khodke, aged about Major, Occ. Business, R/o Jai Commercial Complex, Plot No.1294, Central Avenue, Nagpur.

5. Krishnam S/o Late Shri Pravin Khodke, aged about Major, Occ. Business, R/o Jai Commercial Complex, Plot No.1294, Central Avenue, Nagpur.

6. Laxmanrao S/o Natthuji Khodke, aged about Major, Occ. Business, R/o

Jai Commercial Complex, Plot
No.1294, Central Avenue, Nagpur.

7. Gita W/o Vijay Peshne,
aged about Major, Occ. Business,
R/o Ramkrishna Nagar, Wardha
Road, Nagpur.

8. Shaligram S/o Balaji Farkase,
Proprietor of M/s. Siddhi Vinayak
Builders, aged about Major, Occ. Business,
R/o Plot No.12/B, Ganesh Nagar,
Shiv Nagar, Nagpur.

Respondent Nos.2 to 8 though their
constituted power of attorney holder
Shri Shekhar Laxmanrao Khodke,
aged about 49 Yrs., occ. Business,
R/o Jai Commercial Complex, Plot
No.1294, Central Avenue, Nagpur. ..Respondents.

Mr. P.D. Meghe, Advocate for the petitioner.
Mr. S.N. Fuladi, Advocate for the respondents.

CORAM :- SUNIL B. SHUKRE AND ANIL L. PANSARE, JJ.
DATED :- 15.12.2021.

ORAL JUDGMENT *(Per Sunil B. Shukre, J.)*

Heard. **Rule**. Rule made returnable forthwith. Heard finally by consent.

2. This petition questions the legality and correctness of the order dated 22nd August, 2019 thereby directing the respondents to deposit

the amount of Rs.10,00,000/- as a precondition for entertaining the appeal as provided under Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (for short "Securitisation Act").

3. Shri Meghe, learned counsel for the petitioner submits that the impugned order is bad in law as it does not take into consideration the limits specified in Section 18 of the Securitisation Act. According to him, the requirement of deposit of Rs.10,00,000/- by the respondents does not match with even 25% limit as fixed in Section 18 and, therefore, he submits that the impugned order must be quashed and set aside with suitable directions to respondent No.2.

4. Shri Fuladi, learned counsel for the respondents submits that the requirement of deposit of 50% or 25% of the amount, as the case may be, is in relation to the amount due and payable by the borrower and which is actually claimed by a creditor and in this case, the amount claimed by the creditor would have to be considered as the one which is reflected in the securitisation application. He submits that in this application, the amount claimed is of Rs.42,89,820/- which is already mentioned in the impugned order and out of this amount the respondents have already deposited Rs.21,00,000/-and

additionally, have been directed to deposit Rs.10,00,000/-, which amounts together more than fulfill the requirement of Section 18 of the Securitisation Act.

5. In order to appreciate the arguments properly, it would be necessary to consider the relevant provisions made in Section 18 which read as:-

> *"18. Appeal to Appellate Tribunal.*
>
> *(1) 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 the 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:*
>
> *……."*

6. The expression "*the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less*" is important. It indicates that the percentage of the deposit as a prerequisite for entertainment of appeal by the Appellate Court is to be determined by taking into

consideration the amount of debt due from the borrower and which amount is actually claimed by secured creditor or which amount is determined by the Debt Recovery Tribunal, whichever is less. In the present case, the securitisation application having been dismissed by the Debt Recovery Tribunal, there has been no different determination of the amount due from the borrower to the creditor, and, therefore, the amount due from the borrower which is claimed by the secured creditor would have to be considered as the amount which has been claimed in the securitisation application, which claim is of Rs.42,89,820/-. Even if we consider the amount that could be arrived at by charging interest on the original claim made in the securitisation application, which has been expressly specified just now, still the claim made in the securitisation application would be lesser than the amount which could be arrived at by charging interest on the amount so claimed. Therefore, ultimately, in the present case, it is only the amount which has been claimed in the securitisation application which would be determinative of the amount required to be deposited in terms of Section 18 in the present case. Viewed from this angle, we find that the respondents having deposited more than 50% of the amount as required in Section 18 and it is also been noted in the impugned order, we are of the opinion that no fault could be found with the impugned order and, therefore, this petition deserves to be dismissed.

7. However, in the interest of justice, it would be necessary that in a case like this the Debt Recovery Appellate Tribunal decides the appeal finally on it's own merits as expeditiously as possible. The petition is, therefore, **dismissed**. The DRAT is directed to decide the appeal No.52/2019, in accordance with law, as expeditiously as possible and preferably within six months from the date on which the DRAT, Mumbai becomes functional. Rule is discharged. No costs.

JUDGE **JUDGE**

Tambaskar.