IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8795 OF 2023

HDB Financial Services Ltd .. Petitioner

Versus

Union of India & Anr. .. Respondents

Mr.Padmakar Garad i/b S.G. Legal & Associates, *Advocate for the Petitioner.*

Ms.N.M. Mehra, *AGP for State.*

CORAM : B. P. COLABAWALLA &
M.M. SATHAYE, JJ.
DATE : JULY 20, 2023

P. C.

1. The above Writ Petition is filed by the Petitioner-Bank challenging the order dated 27th January, 2023 passed by the Debts Recovery Appellate Tribunal at Mumbai (for short "**the DRAT**") in I.A. No.16/2023 in Appeal on Diary No.1417/2022. The order impugned in the present Writ Petition is an order passed in an Application filed by Respondent No.2 (the Appellant before the DRAT) for Waiver of Pre-Deposit as contemplated under Section 18 of the SARFAESI Act, 2002.

2. The learned counsel appearing on behalf of the Petitioner submitted that it is now well settled that the DRAT cannot reduce the amount of deposit below 25% of the amount mentioned in the 13(2) notice along with interest as on the date of filing of the Appeal. He submitted that the amount due under the 13(2) notice (together with interest), on the date of the Appeal was approximately Rs.2.83 Crores and therefore at the highest the DRAT could have directed Respondent No.2 to deposit 25% of Rs.2.83 Crores which comes to approximately Rs.71 Lakhs. Instead the DRAT has directed Respondent No.2 to deposit only sum of Rs.30 Lakhs in 2 equal installments. The other grievance of the Petitioner-Bank is that by virtue of the impugned order, the DRAT has virtually accepted the contention of Respondent No.2 that the all the facilities granted by the Petitioner-Bank were not secured by a mortgage but only one facility was secured. He submitted that once these are the findings then nothing would really survive in the Appeal as the same is virtually decided by virtue of the impugned order.

3. We have heard the learned counsel appearing for the Petitioner-Bank at some length. As far as Petitioner-Bank's apprehension that by the impugned order the Appeal is virtually decided, we do not think that the said apprehension is really well founded. When an order is passed in a Pre-Deposit Application, the findings there in are only *prima facie* and do not bind the DRAT when it finally hears the matter. Be that as it may, to alleviate any apprehension on the part of the Petitioner-Bank, we make it clear that DRAT whilst hearing the Appeal finally shall decide the same on its own merits and in accordance with law uninfluenced by any observations made in the impugned order. Once this clarification is given, we find that the apprehension of the Petitioner-Bank is adequately redressed.

4. As far as the first argument canvassed by the Petitioner-Bank is concerned, namely, on the quantum of the pre-deposit, we do not find that any interference is called for in the order passed by the DRAT. The DRAT, after examining the facts, came to a *prima facie* opinion that only the facility of Rs.50 Lakhs was secured by the creation of a registered simple mortgage and all the facilities were not covered by the said mortgage. It is on this basis that the DRAT, after coming to a rough estimate that the amount due on this facility (of Rs.50 Lakhs) would be approximately Rs.75 Lakhs, it directed Respondent No.2 (the Appellant before the DRAT) to deposit a sum of Rs.30 Lakhs as a pre-deposit, in 2 equal installments. We also informed that this pre-deposit has in fact been made by Respondent No.2 *albeit* after obtaining an extension.

5. According to us the view taken by the DRAT does not in any way violate the provisions of Section 18 especially when it comes to a *prima facie* conclusion that only one of the facilities was secured by a mortgage. If we are to accept the same as correct (*albeit prima facie*), then the amount to be deposited as condition precedent for entertaining the Appeal under Section 18 falls within the parameters set out in the said Section. In other words the amount ordered to be deposited is less than 50% but above 25% as mandated by the said Section. In these circumstances, we find no reason to interfere with the impugned order.

6. The Writ Petition is accordingly dismissed. However, in the facts and circumstances of the case there shall be no order as to costs.

7. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[M.M. SATHAYE, J.] **[B. P. COLABAWALLA, J.]**

Utkarsh