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

<u>WRIT PETITION NO. 6530 OF 2022</u>

1. Mr. Anil s/o Shantaram Sangtani,
aged about 44 years, Occ. Business
and Proprietor of M/s. Shubham General & Gifts Centre,
R/o Lease Hold Nazul Plot No. 143 & 144,
Khamla Sindhi Colony, Corporation House No. 3085,
Ward No. 75, Mouza – Khamla, Nagpur,
Maharashtra – 440025.

2. Mr. Dinesh Shantaram Sangtani,
aged about 42 years, Occ. Business
and Proprietor of M/s. Shubham Garments,
R/o Lease Hold Nazul Plot No. 143 & 144,
Khamla Sindhi Colony, Corporation House No. 3085,
Ward No. 75, Mouza – Khamla, Nagpur,
Maharashtra – 440025.

3. Mr. Manoj Shantaram Sangtani,
aged about 49 years, Occ. Business
and Proprietor of M/s. Shubham Metal,
R/o Row House No.4, Poonam Vihar,
Swaylambi Nagar, Mouza – Bhamti,
NMC House No. 4197/Rh – 4,
Ward No. 75, Nagpur, Maharashtra – 440022.

4. Mr. Suresh Shantaram Sangtani,
aged about 54 years, Occ. Business
and Proprietor of M/s. Shubham Textile,
R/o Lease Hold Nazul Plot No. 143 & 144,
Khamla Sindhi Colony, Corporation House No. 3085,
Ward No. 75, Mouza – Khamla, Nagpur,
Maharashtra – 440025.

5. Mrs. Bharti Manoj Sangtani,
aged about 52 years, Occ. Business,
R/o Row House No.4, Poonam Vihar,
Swaylambi Nagar, Mouza – Bhamti,
Nagpur – 440022.

6. Mrs. Dilpi Anil Sangtani,
aged about 39 years, Occ. Business,
R/o Lease Hold Nazul Plot No. 143 & 144,
Khamla Sindhi Colony, Corporation House No. 3085,
Ward No. 75, Mouza – Khamla, Nagpur,

Maharashtra – 440025.

7. Mrs. Sadhana Suresh Sangtani,
aged about 52 years, Occ. Business,
R/o Lease Hold Nazul Plot No. 143 & 144,
Khamla Sindhi Colony, Corporation House No. 3085,
Ward No. 75, Mouza – Khamla, Nagpur,
Maharashtra – 440025.

8. Mrs. Hema Dinesh Sangtani,
aged about 43 years, Occ. Business,
R/o Lease Hold Nazul Plot No. 143 & 144,
Khamla Sindhi Colony, Corporation House No. 3085,
Ward No. 75, Mouza – Khamla, Nagpur,
Maharashtra – 440025.

9. Mrs. Kaushalya Shantaram Sangtani,
aged about 75 years, Occ. Homemaker,
R/o Lease Hold Nazul Plot No. 143 & 144,
Khamla Sindhi Colony, Corporation House No. 3085,
Ward No. 75, Mouza – Khamla, Nagpur,
Maharashtra – 440025.

Petitioner Nos. 2 to 9 are acting through
Special Power of Attorney i.e. petitioner No.1.

PETITIONERS

.....VERSUS.....

Tata Capital Financial Services Limited,
through its Authorized Officer,
Having Branch Office at Tata Capital
Financial Services Limited,
4^{th} Floor, Narang Tower, Opp. ICICI Bank,
Civil Lines, Palmn Road, Nagpur – 440001.

RESPONDENT

Shri R.L. Khapre, Senior Advocate with Shri A.J. Garge, Advocate for the petitioners.
Shri M. Anilkumar, Advocate for the respondent.

CORAM : A. S. CHANDURKAR AND ANIL L. PANSARE, JJ.

ARGUMENTS WERE HEARD ON : DECEMBER 22, 2022

JUDGMENT IS PRONOUNCED ON : JANUARY 11, 2023

JUDGMENT :(PER : A.S. CHANDURKAR, J.)

In view of notice for final disposal issued earlier, we have heard the learned Counsel for the parties at length.

2. The facts relevant for considering the challenge as raised to the orders dated 26/9/2022 and 30/9/2022 by the Debts Recovery Appellate Tribunal, Mumbai (DRAT) are that the petitioners have borrowed an amount of Rs.3,48,50,000/- from the respondent – creditor. The loan account became a non-performing asset on 3/10/2020 and the amount due and payable on that date was Rs.4,00,53,642.10/-. The creditor initiated steps for recovery of the amount due by issuing notice under Section 13(2) of the Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 (for short "the Act of 2002") on 21/5/2021. According to the creditor, it has taken possession of the mortgaged property belonging to the petitioners some time in May – 2021. The application filed by the creditor under Section 14 of the Act of 2002 was decided on 16/4/2022 and directions were issued to take over physical possession of the secured assets. Being aggrieved by the measures taken by the creditor under Section 13(4) of the Act of 2002, the petitioners preferred Securitisation Application No. 26/2022 under Section 17 of the Act of 2002. The petitioners also filed an application for interim relief therein. The petitioners filed an affidavit before the Debts Recovery Tribunal and stated that an amount of

Rs.10,00,000/- would be paid by 31/5/2022, further amount of Rs.10,00,000/- would be paid by 30/6/2022, further amount of Rs.10,00,000/- would be paid by 31/7/2022 and balance amount of Rs.60,00,000/- would be paid by 31/8/2022. After considering the reply filed by the creditor, the Debts Recovery Tribunal, Nagpur (DRT) passed an order on 6/5/2022. The learned Presiding Officer permitted such deposit in the light of the undertaking given by the petitioners and directed *status quo* to be maintained with regard to the mortgaged property with a further direction that in case of any default of the payments to be made, the order of *status quo* would stand automatically vacated. It appears that payment of Rs.10,00,000/- each to be made monthly could not be complied with by the petitioners and they sought extension of time to make such payments. An application in that regard was moved. The learned Presiding Officer, Debts Recovery Tribunal dismissed the same on 1/9/2022. Being aggrieved by the said order, the petitioners approached the DRAT challenging that order. They moved an application for grant of interim relief. The learned Chairman, DRAT on 26/9/2022 in exercise of jurisdiction under the third proviso to Section 18(1) of the Act of 2002 directed the petitioners to deposit total amount of Rs.1,00,000,00/- as pre-deposit. It was noted that in that regard, the petitioners had deposited Rs.10,00,000/- on the date of the order and further amount of Rs.10,00,000/- was undertaken to be deposited on or before 28/9/2022. The balance amount of Rs.80,00,000/- was directed to be deposited within a period of six weeks in two equal installments; first installment of Rs.40,00,000/- by 19/10/2022 and second installment to be deposited before 9/11/2022. On 30/9/2022 as the requisite amounts were deposited the matter was posted on 20/10/2022 for further compliance. Being aggrieved by the direction to deposit an amount of Rs.1,00,000,00/- by way of pre-deposit, the orders dated 26/9/2022 and 30/9/2022 have been challenged in the present Writ Petition.

3. Shri R.L. Khapre, learned Senior Advocate for the petitioners submitted that the DRAT was not justified in directing deposit of an amount of Rs.1,00,000,00/- while exercising jurisdiction under Section 18(1) of the Act of 2002. Referring to the provisions of Section 18(1) of the Act of 2002, it was submitted that as per the second proviso thereto, no appeal was liable to be entertained unless the borrower had deposited with the DRAT 50% of the amount of debt due from him as claimed by the secured creditor or determined by the Debts Recovery Tribunal, whichever was less. In the present case, it was urged that the Debts Recovery Tribunal had merely directed to deposit an amount of Rs.1,00,000,00/- in installments. Since the aforesaid amount was the amount determined by the Debts Recovery Tribunal, it was not permissible for the DRAT while entertaining an appeal against such order

to direct amount of Rs.1,00,000,00/- as pre-deposit. The petitioners had merely sought extension of time to deposit the balance amount of Rs.20,00,000/- in two equal installments and the time was refused to be extended by the Debts Recovery Tribunal by its order dated 1/9/2022. Since this order refusing to extend the time to make payment of Rs.20,00,000/- was under challenge, pre-deposit could have been directed only in the context of Rs.20,00,000/- and not any higher amount. By considering the amount of debt due from the petitioners for the purposes of directing them to deposit an amount of Rs.1,00,000,00/- under the second proviso to Section 18(1) of the Act of 2002, the purpose of filing the appeal stood frustrated. Since the petitioners were aggrieved only by the order refusing to extend time to pay the amount of Rs.20,00,000/-, there was no justification in directing them to deposit an amount of Rs.1,00,000,00/- as pre-deposit. By adopting such approach, the purpose of filing the appeal stood defeated. The remedy of preferring an appeal could not be treated to be illusory in such manner. To substantiate his contentions, the learned Senior Advocate placed reliance on the decisions in i) *Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited And Others [(2018) 11 SCC 722];* ii) *Fine Platinum (India) Limited and Another Vs. IndusInd Bank Limited, a Banking Company registered under the Companies Act, 1956 and Others [(2016) 197 Comp Cas 358];* iii) *Vaseem Iqbal Kapadia Vs. Union of*

India [(2015) 323 ELT 353]; iv) *State of Maharashtra Vs. Mishrilal Tarachand Lodha and others [AIR 1964 SC 457];* and v) *Hansraj and Sons Vs. State of Jammu and Kashmir and others [AIR 2002 SC 2692].* It was prayed that the order passed by the DRAT be set aside and the amount of pre-deposit be re-determined in the light of the order impugned in the appeal.

4. Shri M. Anilkumar, learned Advocate for the respondent – creditor opposed the aforesaid submissions. He submitted that the DRAT rightly interpreted the provisions of Section 18(1) of the Act of 2002 and directed deposit an amount of Rs.1,00,000,00/- as pre-deposit. The provisions of Section 18(1) of the Act of 2002 were considered. While adjudicating a similar challenge as raised by the petitioners herein the Division Bench of this Court in *Keystone Constructions Vs. State Bank of India And Ors. [2013 LawSuit(Bom) 1588]* has held that in absence of any determination of the amount due from the borrower, direction to deposit 50% of the amount of debt due from the borrower was justified. The petitioners having failed to abide by their undertaking to deposit an amount of Rs.1,00,000,00/- in installments, the DRAT was justified in passing the impugned order. There was no reason whatsoever to interfere with the same. In support of his submissions, the learned Counsel placed reliance on the decisions in i) *Narayana Farm Produce Pvt. Ltd. Nagpur*

And Others Vs. Bank of Maharashtra [2016(3) Mh.L.J. 114]; ii) *Vinay Container Services Pvt. Ltd. And Ors. Vs. Axis Bank [2010 LawSuit(Bom) 2002];* iii) *Union Bank of India Vs. Rajat Infrastructure Pvt. Ltd. & Ors. [2020 LawSuit(SC) 226];* iv) *M/s. Coverntry Springs And Engineering Company Ltd. Vs. M/s. Assets Reconstruction Company of India Ltd. (ARCIL), Mumbai [2019 LawSuit(Bom) 2033];* v) *Varimadugu Obi Reddy Vs. B. Sreenivasulu and Others [2022 DGLS(SC) 1511];* vi) *M/s. Chemflo Industries Pvt. Ltd. Vs. M/s. KMC Construction Ltd. and another [W.P. (C) No. 9562/2015* decided on *23/8/2022]* at the Orissa High Court; vii) *Keystone Constructions (supra);* viii) *Prestige Lights Ltd. Vs. State Bank of India [2007 LawSuit(SC) 929];* and ix) *Axis Bank Vs. SBS Organics Private Limited And Another [2016 LawSuit(SC) 370].* He therefore submitted that there was no reason to interfere with the impugned order.

5. Having heard the learned Counsel for the parties and having perused the orders impugned herein, we find that there is no reason whatsoever to interfere with the orders passed by the DRAT. The factual aspects are not in dispute. By the initial order dated 6/5/2022, the Debts Recovery Tribunal while entertaining an application seeking stay of the action that was to be taken pursuant to an order passed under Section 14 of the Act of 2002 considered the petitioners affidavit (Exh. 16) in which

it was stated that an amount of Rs.1,00,000,00/- would be paid within stipulated period which was by 31/8/2022. The amount of Rs.10,00,000/- was undertaken to be paid in three monthly installments each and balance amount by 31/8/2022. Since the petitioners paid the first installment of Rs.10,00,000/- and in the light of the undertaking given by them, the Debts Recovery Tribunal permitted the payments to be made as indicated and directed *status quo* to be maintained. This was conditional and on any default, the order of *status quo* was to be vacated. The petitioners sought extension of time to deposit the amount of Rs.20,00,000/- in two equal installments payable by 30/9/2022 and 31/10/2022. This application for extension of *status quo* on aforesaid counts came to be rejected by the Debts Recovery Tribunal on 1/9/2022. While challenging this order before the DRAT, the petitioners sought waiver of deposit under Section 18(1) of the Act of 2002. On 26/9/2022, the DRAT directed the petitioners to deposit an amount of Rs.1,00,000,00/- as pre-deposit by invoking the third proviso to Section 18(1) of the Act of 2002. This direction according to the petitioners runs counter to the provisions of the second proviso to Section 18(1) of the Act of 2002. It is urged that since the issue before the Debts Recovery Tribunal was the prayer for extension of time to deposit the amount of Rs.20,00,000/- and such request was refused, the amount "determined by the Debts Recovery Tribunal" was Rs.20,00,000/-. Hence, the DRAT ought to have directed 50% of such amount. We however find that a similar contention as raised by the petitioners was raised in *Keystone Constructions* (*supra)* and decided. The Division Bench while considering the provisions of Section 18(1) of the Act of 2002 dilated on the issue as to whether the Debts Recovery Tribunal while granting an interim relief conditionally upon deposit of an amount of money would result in the said amount to be debt due from a borrower for the purposes of the second proviso under Section 18(1) of the Act of 2002. It was held in clear terms that it is only when the Debts Recovery Tribunal in an interlocutory application determines *prima facie* the amount of debt due by the debtor would that amount constitute debt as determined by the Debts Recovery Tribunal for the purposes of the second proviso to Section 18(1) of the Act of 2002. In *Keystone Constructions (supra),* the Division Bench in paragraphs 24 and 25 has observed as under :

> *"24. Where the DRT merely makes the grant of an injunction conditional upon the deposit of a certain amount, that amount does not ipso facto constitue the debt due as determined by the DRT for the purpose of the second proviso to section 18(1). Each order of the DRT would have to be construed to ascertain whether the debt due was determined prima facie or otherwise. In the present case there was no determination of the debt due.*
>
> *25. In the circumstances, this is a case where the DRT had not determined even prima facie the debt due by the petitioner to the respondents. In that event, the amount claimed by the*

> *respondents would be the amount to be taken into consideration for the purpose of determining the amount to be deposited under the second and third provisos to section 18(1).”*

We find that the Division Bench in clear terms has held that in absence of even a *prima facie* determination by the Debts Recovery Tribunal of the amount of debt due for the purposes of pre-deposit under the second and third proviso to Section 18(1) of the Act of 2002, the amount claimed by the creditor would be the amount that has to be taken into consideration for such purposes. The aforesaid decision in our view is a complete answer to the contentions raised by the petitioners. We do not find any reason whatsoever to take a different view of the matter especially in the light of the fact that the provisions of Section 18 of the Act of 2002 has been held to be mandatory in nature in *Rajat Infrastructure Pvt. Ltd. & Ors. (supra).* Another Division Bench of this Court in *Vinay Container Services Pvt. Ltd. And Ors.* (*supra)* in paragraph 9 has held as under :

> *“9. The second proviso to section 18 postulates 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. The Appellate Tribunal has the power to reduce the amount, for reasons to be recorded in writing, to not less than twenty-five per cent of the debt referred to in the second proviso. Under the second proviso, the amount of fifty per cent which is*

required to be deposited by the borrower, is computed either with reference to (i) the amount of debt due from him as claimed by the secured creditors or (ii) the amount of debt due from him as determined by the Debts Recovery Tribunal. The lesser of the two amounts has to be deposited as a condition precedent to the appeal being entertained. In a situation where the amount of the debt is yet to be determined by the Debts Recovery Tribunal, obviously, the second limb can have no application. As already noted earlier, the scope of an appeal under section 17, where a measure has been adopted by the secured creditor under section 13(4) is the determination as to whether the measure has been adopted in accordance with the provisions of the Act and the rules. Where the amount of the debt is yet to be determined by the Tribunal and an appeal is preferred before the Appellate Tribunal by the borrower, the condition of pre-deposit would continue to apply by virtue of sub-section (1) of section 18. In such a situation, the borrower would be liable to deposit fifty per cent of the amount of debt due from him inasmuch as there is no determination at that stage by the Tribunal of the amount of the debt."

6. In the light of the aforesaid position that has been consistently followed by this Court, we do not find any reason to interfere with the orders passed by the DRAT. The judgments on which the learned Senior Advocate for the petitioners has sought to rely are based on general principles. Since we have relied upon the decisions considering and interpreting Section 18(1) of the Act of 2002, the decisions relied upon by the learned Senior Advocate do not assist the petitioners in that regard.

7. Hence for the aforesaid reasons, we do not find any merit in

the Writ Petition. It is accordingly dismissed leaving the parties to bear their own costs.

8. At this stage, the learned Counsel for the petitioners prays that the position as prevailing today be continued for a period of four weeks from today. This request is opposed by the learned Counsel for the creditor.

9. In the facts of the case, for a period of four weeks from today, the position as obtaining today shall be maintained.

(**ANIL L. PANSARE, J.**) (**A.S. CHANDURKAR, J.**)

Sumit