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

% *Date of Decision: 17.07.2023*

+ **W.P.(C) 9408/2023**

SZF EXPORTS PVT. LTD. AND ANR. Petitioners
Through: Mr Sidharth Chopra, Advocate.

versus

PUNJAB NATIONAL BANK AND ANR. Respondents
Through: Mr Arun Shukla, Standing
Counsel with Mr Aamir Shaikh
and Mr Naman Shukla,
Advocates for R-1/PNB.
Mr Sangram Patnaik and Tarun
Gupta, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The petitioners have filed the present petition impugning an order dated 14.07.2023 passed by the Debts Recovery Appellate Tribunal, Delhi (hereafter '**the DRAT**') in Misc. Appeal No. 113/2023 captioned *SZF Exports Pvt. Ltd. & Anr. v. Punjab National Bank*. The petitioners had preferred the aforesaid appeal against an order dated 22.06.2023, passed by the Debts Recovery Tribunal (hereafter '**the DRT**') whereby, the DRT had expressed the *prima facie* view that there were no irregularities in the measures taken by the respondent bank under the Securitisation and Reconstruction of



Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter '**the SARFAESI Act**').

2. The DRT had further rejected the prayer of the petitioners for restraining the respondent bank / court receiver from taking possession of the property in question – Industrial Property, Land and Building situated at Plot No.511-512, Sector 8, IMT Manesar, Gurugram, Haryana, plot area 900 square meters (hereafter '**the property**'). The Ld. DRT had noted that there was no dispute that the petitioners had availed of the loan facilities and had defaulted in repaying the same.

3. The petitioners are, essentially, aggrieved by the auction of the property. According to the petitioners, the auction was not in conformity with Rule 9(1) of the SARFAESI Security Interest (Enforcement) Rules, 2002 (hereafter '**the Rules**'). It is the petitioners' case that the said Rule requires the auction purchaser to pay 25% of the auction price (inclusive of the earnest money deposited) within 24 hours of the auction. Rule 9(3) of the said Rules is set out below:

“9(3) On every sale of immovable property, the purchaser shall immediately, i.e. on the same day or not later than next working day, as the case may be, pay a deposit of twenty five per cent. of the amount of the sale price, which is inclusive of earnest money deposited, if any, to the authorized officer conducting the sale and in default of such deposit, the property shall be sold again;”

4. Learned counsel for the petitioners submits that the auction, in the present case, was conducted on 08.06.2023 and the auction



purchaser had not paid 25% of the auction price within 24 hours of the auction as the same was paid on 12.06.2023.

5. It is clear from the plain language of Rule 9(3) of the Rules that the time period within which 25% of the sale consideration is required to be paid, has to be reckoned from the sale of an immovable property. This is apparent from the opening words of Rule 9(3) of the Rules: *“on every sale of immovable property”*. In the present case, the auction was conducted online on 08.06.2023 on the portal of MSTC. Respondent no.2 (hereafter ‘**the auction purchaser**’) had participated in the bidding process and had offered an amount of ₹6,60,38,000/-, which was the highest bid.

6. The learned counsel appearing for respondent no.1 (hereafter ‘**PNB**’) states that the auction purchaser’s bid was not accepted on 08.06.2023 but on 09.06.2023. He stated that letter accepting the bid was not communicated to the auction purchaser on 08.06.2023 but on the next date, that is, 09.06.2023. He submits that a number of properties were auctioned on the same day and that the bidding continued till 05:00 p.m. and beyond on that date. He states that the concerned officials were required to examine the last bids received and then issue the confirmations. The same could not be done earlier than 09.06.2023 as the working hours of PNB are till 05:00 p.m.

7. He has handed over a copy of the letter dated 09.06.2023, which was communicated to the auction purchaser. In terms of the said letter, PNB had called upon the auction purchaser to deposit 25% of the sale consideration (inclusive of the earnest money deposited) not



later than 10.06.2023. He also stated that in case 10.06.2023 was a holiday, the payment could be made on the next working day. It is not disputed that 10.06.2023 and 11.06.2023 were holidays. Therefore, the auction purchaser was required to make the balance payment for discharging 25% of the consideration for the purchase of the property on the next day; which it, undisputedly, did.

8. In view of the above, we do not find any substance in the petitioners' contention that the auction process of the property was flawed.

9. Having stated the above, it is material to note that the impugned order passed by the DRAT declining to entertain the appeal filed by the petitioners, is not founded on merits but on the ground that the petitioners had not complied with the condition of making the necessary pre-deposit.

10. The learned counsel for the petitioners submits that the petitioners are ready and willing to make the deposit but had merely sought time to do so. He submits that the DRAT had erred in declining the petitioners' request to extend time for making the necessary deposit for maintaining the appeal.

11. We find no grounds to interfere with the impugned order. Concededly, the appeal preferred by the petitioners could not be entertained by the DRAT without them making the necessary pre-deposit. It is *trite law* that there is no right vested with the appellant to



be afforded additional time for making the deposit.

12. Concededly, the requisite pre-deposit was not made. Thus, in our view the petitioners' appeal was rightly rejected.

13. This Court is also informed that PNB has taken possession of the property in question.

14. No relief can be granted in this petition. The same is dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

JULY 17, 2023
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