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

% *Date of Decision: 18.08.2023*

\+ **W.P.(C) 10985/2023 & CM APPL. 42557/2023, 42558/2023, 42559/2023, 42560/2023 & 42561/2023**

RAJVEER SINGH & ANR. .....Petitioners

Through: Ms. Bharti B, Mr. Gautam & Mr. Karan, Advs.

versus

PNB HOUSING FINANCE LIMITED AND ANR. ..... Respondents

Through: Ms. R Pahuja, Adv.
Mr. Kaushik K. Mishra, Adv.
Ms. Nidhi Mohan Parashar & Mr. Anand C, Advs. for R2.

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 28.04.2023 passed by the Debts Recovery Appellate Tribunal (hereafter '**the DRAT**') in appeal no.123/2023 captioned ***Rajveer Singh & Anr. v. PNB Housing Finance Ltd. & Anr.***

2. In terms of the impugned order, the hearing of said appeal was deferred enabling the learned counsel for the appellants (petitioners herein) to take instructions regarding compliance with the requirement of pre-deposit.

3. The petitioners contend that there is no requirement for making further pre-deposit as the amount paid by the auction purchaser which

was accepted and adjusted by the respondent company (PNB Housing Finance Ltd.) exceeds the amount of debt as claimed by the respondent company. The petitioners have supported the aforesaid contention on the basis of the following facts which are reproduced below: -

Credit facility granted by Respondent FI to Petitioners in February/March 2013 was for	Rs. 5,25,34,999/-
Payments made by Petitioners till August, 2018 amount to	Rs. 4,83,00,000/-
Amount due as per notice dated 16/11/2015 under section 13(2) of the Act and as mentioned in Auction notice dated 26/12/2022	Rs. 5,13,94,665/- (an amount of Rs.5,13,94,665/- is inclusive of interest amount also)
Pursuant to Section 13(2) notice, between November 16, 2015 to August, 2018, the Petitioners had paid an amount of	Rs. 65,03,011/-
Reserve price as fixed by Respondent FI for the Subject Property as per sale notice dated 26/12/2022 is	Rs. 7,88,04,988/-
Subject property auctioned in favour of Respondent No.2 for	Rs.7,89,54,988/-

4. The learned counsel appearing for the respondents submits that the assumption that the amount recovered from the auction of the mortgaged property is required to be adjusted against the total amount due for the purposes of calculating the amount of pre-deposit, is erroneous.

5. The aforesaid issue is no longer *res integra*; it stands settled by the decision of the Supreme Court in ***Sidha Neelkanth Paper Industries & Anr. v. Prudent Arc Limited & Ors.; 2023 SCC OnLine SC 12.*** Paragraph 35 of the said decision reads as under:-

> "35. As observed hereinabove and as per the second proviso to Section 18 of the SARFAESI Act, it is the "**borrower**" who has preferred an appeal before the Appellate Tribunal and the "**borrower**" who shall have to deposit 50% of the amount of "debt due" from him. If the words used in the second proviso to Section 18 of the SARFAESI Act are "**borrower has to deposit**", it is not appreciable how the amount deposited by the auction purchaser on purchase of secured assets can be adjusted and/or appropriated towards the amount of pre-deposit, to be deposited by the borrower. It is the "**borrower**" who has to deposit the 50% of the amount of "debt due" from him. At the same time, if the borrower wants to appropriate and/or adjust the amount realised from sale of the secured assets deposited by the auction purchaser, the borrower has to accept the auction sale. In other words, the borrower can take the benefit of the amount received by the creditor in an auction sale only if he unequivocally accepts the sale. In a case where the borrower also challenges the auction sale and does not accept the same and also challenges the steps taken under Section 13(2)/13(4) of the SARFAESI Act with respect to secured assets, the borrower has to deposit 50% of the amount claimed by the secured creditor along with interest as per section 2(g) of the Act, 1993 and as per section 2(g), "debt" means any liability inclusive of interest which is claimed as due from any person."

6. In view of the above, the petitioners' contention that the amount paid by the auction purchaser is required to be adjusted against the debt due for the purpose of calculating the amount of pre deposit, cannot be sustained.

7. The learned counsel for the petitioner also articulated its grievance that the learned DRAT had not considered the question of reducing the amount of pre-deposit to 25% given the mitigating circumstances. We are of the view that this question does not arise for consideration in this petition as no specific prayer to the said effect was made before the learned DRAT.

8. In view of the above, the present petition is dismissed. It is, however, clarified that the same would no preclude the petitioner from moving an appropriate application seeking reduction of the amount of the pre-deposit from the 50% of the debt due to 25%. Needless to state that if any such application is moved by the petitioner, the same would be considered on its merits.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

AUGUST 18, 2023
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