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

\+ W.P.(C) 4344/2024 & CM APPL. 17824/2024

GOLDEN NETSOFT PVT LTD ..... Petitioner

Through: Mr. P.C. Sen, Senior Advocate with Mr. Anuj Jain, Mr. Nikhil Bhalla, Mr. Kashif Athar and Mr. Faraz Mirza, Advocates

versus

HDFC BANK LTD AND ORS ..... Respondent

Through: Mr. Rajeev Mehra, Senior Advocate with Mr. Ateev Mathur, Ms. Jagriti Ahuja and Mr. Vijay Dutt, Advocates for R-1

% Date of Decision: 21st March, 2024

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

CM APPL. 17825/2024 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

W.P.(C) 4344/2024 & CM APPL. 17824/2024

1. The present writ petition has been filed under Article 226 of the Constitution of India impugning the order dated 29th February, 2024 ('impugned order') passed by the Debts Recovery Appellate Tribunal, New

Delhi ('DRAT') in I.A. No. 139/2024 in Misc. Appeal No. 49/2024 titled as ***Golden Netsoft Pvt. Ltd. Vs. HDFC Bank Ltd. & Ors.*** to the extent of the directions for deposit of a sum of Rs. 6 Crores as pre-deposit under Section 18(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act' or 'Act of 2002').

2. Learned senior counsel for the Petitioner states that the DRAT on incorrect interpretation of second proviso of Section 18 of the Act of 2002 has erroneously considered Rs. 14.06 Crores as the basis for calculating the pre-deposit amount. He states that in fact the relevant amount for consideration should have been Rs. 6.26 Crores in terms of the notice dated 11th December, 2015 issued under Section 13(2) of the Act of 2002.

2.1. He states that since on the date of filing of SA No. 183/2023, the measures taken by Respondent No. 1 Bank under Sections 13(2) and 13(4) of the Act of 2002 were challenged, the amount of Rs. 6.26 Crores mentioned as 'debt due' in the notice dated 11th December, 2015 alone could have been considered.

2.2. He states that though the auction notice dated 16th January, 2024 stood issued after the dismissal of the interim stay by DRT-II, however, the auction was yet to be conducted as on the date of passing of the impugned order.

2.3. He states that DRAT failed to take into consideration the amount of Rs. 2.45 Crores, which already stands deposited with the Respondent No. 1 Bank after the issuance of the notice under Section 13(2) of the Act of 2002. He states that the Petitioner is entitled to seek adjustment of the said amount towards the pre-deposit.

2.4. He states that the DRAT failed to exercise its discretion of reducing the pre-deposit from 50% to 25% despite taking note of the precarious financial condition of the Petitioner. He states that the Petitioner is left with no source of income after the physical possession of the mortgage property has been taken over by the Respondent No. 1-Bank. He states that no reasons have been recorded by DRAT for not exercising its discretion for relaxing the mandatory requirement of pre-deposit of 50% to 25%.

3. In reply, learned senior counsel for the Respondent No. 1 Bank, who appears on advance notice, states that in the sale notice dated 19th May, 2023, the Respondent No. 1-Bank has raised a demand of Rs. 14,06,26,413/- Crores on the Petitioner. He states that this was the amount due and payable as on 21st October, 2022 and the said demand was raised after duly adjusting the amounts which stood recovered from the Petitioner. He states that therefore, the plea of adjustment of an amount of Rs. 2.45 crores towards pre-deposit is without any merit.

3.1. He states that the Petitioner cannot refer or rely on the amount of Rs. 6.26 Crores raised in the earlier notice dated 11th December, 2015, as the Petitioner is liable to secure the liability inclusive of interest amount at this stage of the proceedings. He states that therefore, determination of liability has to be as per the 'debt due' as on date. In this regard, he relies upon the judgment of the Supreme Court of India in ***Sidha Neelkanth Paper Industries Private Limited vs. Prudent ARC Limited***[1].

3.2. He states that as per the impugned order dated 29th February, 2024, the first instalment of Rs. 2 Crores is due and payable today i.e., 21st March, 2024 and therefore, filing of this petition on the eve of the due date is not

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[1] (2023) SCC OnLine SC 12 (Paras 34 to 39)

bona fide. He states that the Petitioner waited out the entire period of three weeks granted by the DRAT for making the payment of the first instalment before filing the present writ petition.

4. We have heard the learned Senior Counsel for the parties and perused the record.

5. We may note at the outset that the Petitioner at paragraph '5' in aforementioned I.A. No. 139/2024 filed before DRAT has pleaded that as per the initial demand raised in the notice dated 11th December, 2015, the outstanding amount due and payable as on 31st January, 2024 is Rs. 12,47,12,523/-.

6. The Petitioner's submission that DRAT should have considered Rs. 6,26,68,605/- as the value of the 'debt due', under second proviso to Section 18 of the Act of 2002 and not Rs. 14,06,26,413/-, is misconceived in fact and law.

7. The Respondent No.1-Bank had raised a demand of Rs. 6,26,68,605/- in the notice dated 11th December, 2015 issued under Section 13(2) of the Act of 2002 and this was the amount due as on 30th November, 2015. The SA No. 183/2023 before the DRT was filed in May, 2023 and the interim application stood dismissed on 10th January, 2024.

8. The DRAT appears to have considered the demand of Rs. 14,06,26,413/-, as it stood on 21st October, 2022, raised by Respondent No.1-Bank in the sale notice dated 19th May, 2023 for the purpose of deciding the application under Section 18(1) of the Act of 2002. In view of the law settled by the Supreme Court of India in ***Sidha Neelkanth Paper Industries Private Limited*** (Supra), the Petitioner herein cannot exclude the amount payable towards interest on the amount of demand of Rs. 6.26 crores

set out in the initial notice dated 11th December, 2015, while considering the value of the 'debt due' under the proviso to Section 18 of the Act of 2002. The Supreme Court has categorically held that the expression 'debt due' means liability inclusive of interest amount as claimed by the Respondent No.1 Bank. The Petitioner's contentions are therefore, in the teeth of the statutory provision and the aforementioned judgment of the Supreme Court. The DRAT, therefore, committed no error in rejecting the contention of the Petitioner with respect to the notice dated 11th December, 2015. The DRAT has rightly considered the value of the outstanding demand recorded in the sale notice dated 19th May, 2023 for determining the value of 'debt due'.

9. With respect to the contention of the Petitioner that it is entitled to an adjustment of Rs. 2,45,80,403/- on account of the amount already lying deposited with Respondent No. 1-Bank; we take note of the submission of the Respondent No. 1-Bank that amounts received from the Petitioner after the year 2015 have been duly adjusted by the Bank while quantifying the demand of Rs. 14,06,26,413/- in the sale notice dated 19th May, 2023. We may note here that Respondent No.1 has not admitted to veracity of the figure of Rs. 2,45,80,403/- claimed by the Petitioner. The issue of the precise amount liable for adjustment is a disputed fact between the parties and cannot be adjudicated in these proceedings.

10. Further, we note that in any event, the DRAT has directed the Petitioner to deposit a sum of Rs. 6 Crores as against the debt due of Rs. 14,06,26,413/- of Respondent No. 1-Bank as it stood-on 21st October, 2022. The DRAT has therefore, certainly relaxed the condition of pre-deposit of 50% in favour of the Petitioner while excluding the interest liability for the period October, 2022 to February, 2024 and permitting deposit of Rs. 6

Crores as against the Bank's demand of Rs. 14 Crores. The direction of pre-deposit of Rs. 6 Crore is therefore evidently lower than 50% of the 'debt due' as on 29th February, 2024, in the present facts. The discretion of relaxation of pre-deposit from 50% to 25% rests with DRAT and we do not find any grounds to interfere in the said exercise of discretion.

11. In view of the aforesaid findings, the present petition along with the application is dismissed.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MARCH 21, 2024/*rhc*/MG