IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 24 OF 2024

Saraswat Co. op. Bank Ltd. … Petitioner

V/s.

National Flank Industries Ltd. & Ors. … Respondents

WITH
INTERIM APPLICATION NO. 14645 OF 2024
IN
WRIT PETITION NO. 24 OF 2024

Siyaram Packaging Pvt. Ltd. … Applicant

In the matter between

Saraswat Co. op. Bank Ltd. … Petitioner

V/s.

National Flank Industries Ltd. & Ors. … Respondents

Mr. Nikhil Sakhardande, Senior Counsel, with Mr. Ashish Venugopal, i/b, Mr. Vivek Phadke, for Petitioner.

Mr. Rishabh Shah, with Mr. Vikas Pandey, for Respondent No. 1.

Dr. Veerendra Tulzapurkar, Senior Counsel, i/b, Mr. Mandar Soman & Mr Hardik Joshi, for the Intervenors.

CORAM : R.I. CHAGLA AND FARHAN P. DUBASH, JJ.

DATE : 15th SEPTEMBER 2025

ORDER :

1. By this Writ Petition, the Petitioner is seeking the quashing and setting aside of the impugned orders dated 29th June, 2010 and 17th February, 2023

passed by the Debt Recovery Tribunal (DRT) and Debt Recovery Appellate Tribunal (DRAT) respectively.

2. The Petitioner is a Multi State Cooperative Bank and secured creditor. The Respondents are the borrowers, guarantors and mortgagors.

3. The Petitioner had issued a demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act") on 30th December, 2005 calling upon the Respondents to pay the demanded amount. Since, the Respondents failed to comply with the demand notice, the Petitioner took measures under Section 13(4) of the SARFAESI Act.

4. The Respondents filed Securitisation Application No. 33 of 2006 before the DRT-2 Mumbai.

5. The DRT-2 Mumbai allowed the Securitisation Application on 29th June, 2010.

6. The Petitioner being aggrieved by the impugned order of the DRT dated 29th June, 2010 filed Appeal No. 188 of 2010 before the DRAT.

7. The DRAT by the order dated 17th February 2023 upheld the order of the DRT.

8. The Petitioner thereafter filed the present Writ Petition impugning the

orders of DRT & DRAT.

9. Mr. Nikhil Sakhardande learned Senior Counsel appearing for the Petitioner has referred to the impugned order passed by the DRAT dated 17th February, 2023 which upholds the order of the DRT dated 29th June, 2010 which has also been impugned in the present Writ Petition. He has submitted that the DRAT inspite of agreeing with the submission of the learned Counsel for the Petitioner/Appellant therein that no adjudication of the amount due is necessary for proceedings under the SARFAESI Act, has upheld the order of the DRT by precisely adjudicating the amount due in the notice under Section 13(2) of the SARFAESI Act.

10. Mr. Sakhardande has submitted that the DRAT has in paragraph 6 of the impugned order found that the learned Presiding Officer of the DRT has not adjudicated the correctness of the amount for the purpose of determining as to what exactly is the amount due and payable to the creditors. However, in the next sentence, the DRAT has held that the adjudication was only for the purpose of ascertaining the correctness of the demand. He has submitted that there is no difference between adjudicating the correctness of the amount and ascertaining the correctness of the demand. He has submitted that the only requirement under Section 13(3) of the SARFAESI Act is for the notice under Section 13(2) to give details of the amount payable by the borrower and the charges on the assets to secure the creditor in the event of

non-payment of the debts by the borrower.

11. Mr. Sakhardande has referred to the contents of the notice issued under Section 13(2) of the SARFAESI Act. He has in particular referred to the schedules thereto. He has submitted that the details under each of the heads of facilities which includes rate of interest and outstandings inclusive of interest as on the date of demand has been provided. He has submitted that this meets with the requirements of Section 13(3) of the SARFAESI Act.

12. Mr. Sakhardande has further submitted that in each of these schedules, the particulars of the assets in respect of which charges have been created by the borrower have been specifically mentioned.

13. Mr. Sakhardande has submitted that the DRAT has erroneously relied upon the Judgment of the Gujarat High Court in **Punjab National Bank Vs Mithilanchal Industries Pvt Ltd & Ors**[1]. He has referred to the notice issued under Section 13(2) of the SARFAESI Act in that case. He has submitted that in that case the notice issued under Section 13(2) had only mentioned that the entire amount was due to the bank as on 30th November 2014 with further interest and cost with effect from 1st December 2014 at the contractual rate until payment in full within sixty days from the date of the notice. He submitted that in paragraph 30 of the said Judgment, the Gujarat High Court has after referring to Section 13(3) and Section 13(3A) held that

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unless the borrower has the details of the amounts due and payable by the secured creditor and being demanded as such under notice under sub-Section (2) of Section 13, the borrower could not be in a position to make any representation or raise any objection. Further, it is held that it is only when the amounts under the different heads are provided to the borrower that it could raise objection under any of the heads where the borrower finds that the amount quantified is not correct. Without there being any details mentioned in the notice, the very purpose of Sub-section (3A) would be lost to a large extent. He has submitted that in the present case the details have been given under each of the heads of the credit facilities extended by the Petitioner-Bank to the Respondents-Borrowers. Thus, the reliance upon the Judgment of the Gujarat High Court is misplaced.

14. Mr. Sakhardande has also submitted that from a reading of the impugned order passed by the DRT, it is apparent that the DRT has carried out adjudication of the amounts demanded in the notice under Section 13(2) of the SARFAESI Act. He has submitted that this is apparent from the tabular form set out in paragraph 5 A to D of the impugned order of the DRT. He has submitted that the excess demand of each of the banks is itself from the Securitisation Application which has been filed by the Respondents.

15. Mr. Sakhardande has submitted that the adjudication of the amounts demanded under Section 13(2) notice is required to be gone into only in the

Original Application (OA) and not in proceedings under the SARFAESI Act. This has also been held by the DRAT in the impugned order finding agreement with the learned Counsel for the Petitioner bank herein that no adjudication of the amount due is necessary for proceedings under the SARFAESI Act.

16. Mr. Sakhardande has submitted that in so far as the second issue decided viz. non-service of the demand notice under Section 13(2) of the SARFAESI Act on all the borrowers, being in a violation of Rule 3(4) of the Security Interest (Enforcement) Rules, 2002, this issue is an issue which should have been decided in favour of the Petitioner-Bank. He has submitted that there is no violation of the said Rule, considering that the demand notice issued under Section 13(2) of the SARFAESI Act had been marked to the borrowers apart from Respondent No. 1 to whom it was issued. He has submitted that apart from the demand notice having been marked to the remaining borrowers, the remaining borrowers have been requested to pay the amounts mentioned in the notice in terms of the guarantees executed by them.

17. Mr. Sakhardande has also referred to the second demand notice issued under Section 13(2) of the SARFAESI Act, a few days after the first demand notice to the Respondent Nos. 2 to 7 who are the guarantors in respect of the facilities extended to Respondent No. 1. He has submitted that the demand

notices under Section 13(2) have thus been issued to all the borrowers/guarantors and inspite of which the DRAT has held that the first demand notice was only issued to the 1st Respondent and the second demand notice was issued only to the 7th Respondent firm and its partners.

18. Mr. Sakhardande has accordingly submitted that the findings in the impugned orders on both issues viz. non-compliance with mandatory provision of sub-Section (3) of Section 13 of the SARFAESI Act and of Rule 3(4) of the Rules are unsustainable. He has submitted that the demand notices have been validly issued and the impugned orders passed by DRT and DRAT require to be set aside.

19. Dr. Veerendra Tulzapurkar, learned Senior Counsel appearing for the intervenor, has supported the submissions of the Mr. Sakhardande for the Petitioner-Bank. The intervenor claims to be lessee of the subject property. He has submitted that it is evident from the impugned order passed by the DRT that the Respondents herein had sought an adjudication of the demand notices issued under Section 13(2) of the SARFAESI Act and had questioned the demands raised in the said demand notices. He has submitted that the DRT in the impugned order has adjudicated the amounts due. The impugned order of the DRT has been upheld by the DRAT inspite of the DRAT being in agreement with the Counsel for the Appellant/Petitioner-Bank that no adjudication of the amounts due is necessary for proceedings under the

SARFAESI Act. He has referred to the various paragraphs in which the DRT has carried out the exercise of adjudication of the amounts due. He has submitted that the impugned orders of the DRT and DRAT are flawed and accordingly require to be set aside.

20. Mr. Rishabh Shah, learned Counsel appearing for the Respondent No.1, has submitted that the impugned orders record concurrent findings and accordingly, are not required to be disturbed by this Court in exercise of writ jurisdiction. He has submitted that the demand notices issued under Section 13(2) of the SARFAESI Act have been found to be bereft of details to be provided as mandated by sub-Section (3) of Section 13 of the SARFAESI Act. He has submitted that the DRT in the impugned order has given several instances of the lack of details in the demand notices, which details are contemplated by the said provision. He has referred to the findings in the DRT order from which it is evident that bank has not classified the period and rate of unapplied interest considering that the account of the Respondents had become NPA on different dates. Further, the principal amount and interest amount should have been separately given as well as the period of applying the rate of interest. The demand notices issued under Section 13(2) of the SARFAESI Act are thus in violation of sub-Section 3 of Section 13 of the SARFAESI Act.

21. Mr. Shah has submitted that the DRAT in the impugned order has

correctly relied upon the Judgment of the Gujarat High Court in *Punjab National Bank Vs Mithilanchal Industries Pvt Ltd & Ors* (supra). He has submitted that the details of the demand are to be clearly set out in the demand notices issued under Section 13(2) of the SARFAESI Act and which would include the particulars of the amounts due under different heads.

22. Mr. Shah has further submitted that the finding on non-compliance of Rule 3(4) of the Security Interest (Enforcement) Rules, 2002 has also been correctly arrived at. He has submitted that the first demand notice dated 30th December 2005 had been issued to Respondent No. 1. The copies have only been marked to the other borrowers/guarantors viz. Respondent Nos. 2 to 7. He has submitted that thus the demand notice was not directed against Respondent Nos. 2 to 7 to pay the dues. He has submitted that there is a mere reference after the marking of copies to Respondent Nos. 2 to 7 that they are requested to make payment of the amounts mentioned in the notice in terms of the guarantees executed by them.

23. Mr. Shah has further submitted that the second demand notice issued on 2nd January 2006 has been addressed to Respondent Nos. 2 to 7 without addressing the demand notice to the 1st Respondent. He has submitted that the definition of the term “borrower” under Section 2(1)(f) of the SARFAESI Act includes a mortgagor or a guarantor. Hence, the Petitioner bank should have issued the demand notices to all the borrowers which includes the

guarantors.

24. Mr. Shah has accordingly submitted that the present Writ Petition ought to be dismissed. The flawed demand notices were issued way back on 30th December 2005 and 2nd January 2006. He has submitted that in any event, the Securitisation Application filed by the Respondents is being adjudicated upon by the DRT and where the issue of the demand having been correctly raised or not will be decided.

25. Having considered the submissions, it appears from a perusal of the first demand notice dated 30th December 2005, which has been addressed to Respondent No. 1 that the details which are contemplated under sub-Section (3) of Section 13 of the SARFAESI Act have not been provided. The accounts of the Respondents with the concerned banks have been declared as NPA on separate dates and there is no clarification of the period and date of unapplied interest in the demand notices which would contemplate details under the said provision. There is no mention of the principal amounts in Schedule A to Schedule D of the first demand notice and the period of interest applied to the principal amounts. These details were to be mandatorily provided.

26. The second demand notice follows from the first demand notice and though the assets which have been charged to secure the amounts due in respect of the facilities advanced by the Petitioner-Bank have been

mentioned, it was necessary for the second demand notice also to provide the details as to the amounts due for which the security has been created.

27. The DRAT in impugned order has in paragraph 6 arrived at the finding that there is violation of sub-Section 3 of Section 13 of the SARFAESI Act in the demand notices issued by the Petitioner herein. We find merit in the finding of the DRAT that the learned Presiding Officer has not adjudicated the correctness of the amount for the purpose of determining as to what exactly is the amount due and payable to the creditors. The DRT has only carried out adjudication for the purpose of ascertaining the correctness as of the demand.

28. The Petitioner has contended that the DRT has carried out an exercise of adjudication of the amounts due which cannot be done in the proceedings under the SARFAESI Act. This contention in our view is misconceived. There is no adjudication of the amounts due by the DRT. The DRAT has also recorded that they are in agreement with the Counsel for the Appellant therein that no adjudication of the amount due is necessary for the proceedings under the SARFAESI Act.

29. We are of the considered view that the demand notices issued under Section 13(2) SARFAESI Act are in violation of Section 13(3) of the SARFAESI Act by virtue of not providing details as contemplated under the said provision. The Judgment of the Gujarat High Court in *Punjab National*

Bank Vs Mithilanchal Industries Pvt Ltd & Ors (supra) has held that unless the borrower has details of the amounts found due and payable by the secured creditor and being demanded as such in the notice issued under sub-Section (2) of Section 13, the borrowers would not be in a position to raise any objection. This judgment has been followed by the Division Bench of this Court in **HDFC Bank Limited Vs. Kenwood Marketing Inc. through its proprietor Rajan Mehrotra & Ors.**[2] Thus, it was necessary for Petitioner herein to have provided the details as contemplated under Section 13(3) of the SARFAESI Act. These details were required to be provided in order for the Respondents-borrowers to raise an objection under the various heads particularly when the borrowers had found that the amount quantified was not correct.

30. The second issue is with regard to the service of the demand notices not having been effected on all the Respondents who are borrowers/guarantors. We find that this issue has also been correctly decided in the impugned orders. The first demand notice dated 30th December 2005 has only been issued to the 1st Respondent. The CC of the first demand notice has only been marked to the remaining Respondents. There is a requirement under Rule 3(4) of the Security Interest (Enforcement) Rule, 2002 to raise a demand on all the borrowers in the notice issued under Section 13(2). Further, after marking CC to the remaining Respondents who are the

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guarantors/borrowers they were requested to make payment of the amount due in the demand notice in terms of guarantee executed by them. Thus, the first demand notice had not been issued in compliance with Rule 3(4) of the Rules. Further, the second demand notice has also been issued only to the 7th Respondent firm and its partners and not to the 1st Respondent. This is also in violation of the said Rule.

31. Accordingly, the present Writ Petition having no merit is required to be dismissed. We clarify that the Petitioner-Bank is at liberty to issue a fresh notice in compliance with Section 13(3) of the SARFAESI Act read with Rule 3(4) of the Rules to the Respondents-borrowers/guarantors.

32. Having found that both the aforementioned issues have been correctly decided by the DRT and DRAT, the present Writ Petition is dismissed. The Interim Application taken out therein does not survive and is also disposed of. There shall be no order as to costs.

(FARHAN P. DUBASH, J.) **(R.I. CHAGLA J.)**