



**AXIS BANK v. SBS ORGANICS PVT. LTD & ANR [SC]**

**Civil Appeal No. 4379 of 2016**

**(Arising out of SLP (C) No. 13861/2015)**

**HELD THAT:** Borrower has appealed Order under SARFAESI ACT before DRAT and has deposited 50% of the contended sum. The appeal further withdrawn by the borrower and appealed for refund of deposit amount. The Bank contended it cannot be refunded. The Hon'ble Court held that the demand of the borrower is legal and tenable and the amount deposited will be returned to the borrower.

**BRIEF FACTS:**

1. An appeal under Section 18 of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'SARFAESI Act') before the Debt Recovery Appellate Tribunal (hereinafter referred to as 'DRAT') can be entertained only if the borrower deposits fifty per cent of the amount in terms of the order passed by the Debt Recovery Tribunal (hereinafter referred to as 'DRT') under Section 17 of the Act or fifty per cent of the amount due from the borrower as claimed by the secured creditor, whichever is less.

The Appellate Tribunal may reduce the amount to twenty five per cent.

**Section 18 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 : Appeal to Appellate Tribunal**

(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal<sup>1</sup> under section 17, may prefer an appeal along with such fee, as

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*may be prescribed] to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.*

*Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:*

*Provided further 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: Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred to in the second proviso.*

*(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder.*

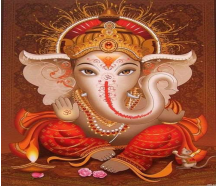
- 2. What is the fate of such deposit on the disposal of the appeal is the question arising for consideration in this case.*
- 3. The first respondent, being a borrower and aggrieved by the steps taken by the secured creditor, filed Securitisation Application No. 152 of 2010 before the Debt Recovery Tribunal, Ahmedabad.*
- 4. Though, initially an interim relief was granted, the same was vacated by order dated 20.01.2011. Therefore, the first respondent moved the Debt Recovery Appellate Tribunal, Mumbai under Section 18 of the SARFAESI Act.*

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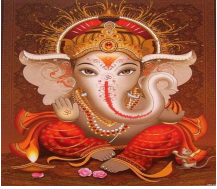
5. *In terms of the proviso under Section 18, the first respondent made a deposit of Rs.50 lakhs before the Appellate Tribunal.*
6. *During the pendency of the appeal before the DRAT, Securitisation Application itself came to be finally disposed of before the Debt Recovery Tribunal at Ahmedabad, setting aside the sale.*
7. *Realising that the appeal did not survive thereafter, the first respondent sought permission to withdraw the same and also for refund of the deposit of Rs. 50 lakhs.*
8. *Permission was granted, however, making it subject to the disposal of the appeal.*
9. *As the appeal itself was being withdrawn, the first respondent moved the High Court of Gujarat at Ahmedabad by way of Writ Petition (Special Civil Application), aggrieved by the observation that the withdrawal would be subject to the result of the appeal.*
10. *The same was disposed of by order dated 05.03.2015 by the learned Single Judge, setting aside the said condition and permitting the first respondent herein to withdraw the amount unconditionally.*
11. *Aggrieved, the appellant-Bank filed an intra-Court appeal. That appeal was dismissed by order dated 01.04.2015 by a Division Bench, and thus aggrieved, the Bank has come up in appeal before the Supreme Court.*

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## **12. DECISION & OBSERVATIONS OF THE APEX COURT**

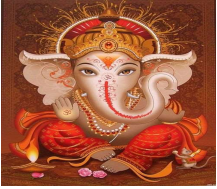
- i) Any person aggrieved by the order of the DRT under Section 17 of the SARFAESI Act, is entitled to prefer an appeal along with the prescribed fee within the permitted period of 30 days.*
- ii) For 'preferring' an appeal, a fee is prescribed, whereas for the Tribunal to 'entertain' the appeal, the aggrieved person has to make a deposit of fifty per cent(50%) of the amount of debt due from him as claimed by the secured creditors or determined by the DRT, whichever is less.*
- iii) This amount can, at the discretion of the Tribunal, in appropriate cases, for recorded reasons, be reduced to twenty- five per cent(25%) of the debt.*
- iv) In the case before us, the first respondent had in fact sought withdrawal of the appeal, since the appellant had already proceeded against the secured assets by the time the appeal came up for consideration on merits. There is neither any order of appropriation during the pendency of the appeal nor any attachment on the pre- deposit.*
- v) Therefore, the deposit made by the first respondent is liable to be returned to the first respondent.*
- vi) Though for different reasons as well, we endorse the view taken by the High Court.*
- vii) Thus, there is no merit in the appeal. It is accordingly dismissed.*

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viii) We make it clear that the dismissal of the appeal is without prejudice to the liberty available to the appellant to take appropriate steps under Section 13(10) of the SARFAESI Act read with Rule 11 of the Security Interest (Enforcement) Rules, 2002.

### **SECTION 13(10) OF SARFAESI ACT, 2002 - ENFORCEMENT OF SECURITY INTEREST**

*Where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the Debts Recovery Tribunal having jurisdiction or a competent court, as the case may be, for recovery of the balance amount from the borrower.*

### **SECTION 11 IN THE SECURITY INTEREST (ENFORCEMENT) RULES, 2002**

*11. Procedure for Recovery of shortfall of secured debt.—*

*(1) An application for recovery of balance amount by any secured creditor pursuant to sub-section (10) of section 13 of the Ordinance shall be presented to the Debt Recovery Tribunal in the form annexed as Appendix VI to these rules by the authorised officer or his agent or by a duly authorised legal practitioner, to the Registrar of the Bench within whose jurisdiction his case falls or shall be sent by registered post addressed to the Registrar of Debts Recovery Tribunal.*

*(2) The provisions of the Debts Recovery Tribunal (Procedure) Rules, 1993 made under Recovery of Debts Due to Banks and Financial institutions Act, 1993 (51 of 1993), shall mutatis mutandis apply to any application filed by under sub-rule (1).*

*(3) An application under sub-rule (1) shall be accompanied with fee as provided in rule 7 of the Debts Recovery Tribunal (Procedure) Rules, 1993.*

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In **Union Bank of India v. Rajat Infrastructure Private Limited**[1], the Supreme Court held that the Debt Recovery Appellate Tribunal ('**DRAT**') cannot entertain an appeal without a pre-deposit being made under Section 18 of the SARFAESI Act. However, the DRAT can reduce the pre-deposit amount upto 25% from the required 50% of the total debt due from it with the DRAT.

**CONCLUSION:** the bench also observed that the scheme and purpose of the concerned Act is different from that of other statutes like Income- Tax Act, 1961, The Central Excise Act, 1944, etc. as those Acts providing preconditions. It is also observed that the appeal under section 18 of the Act is permissible only against the order passed by the Tribunal under section 17 of the Act. And section 17 provides for limited scope for enquiry to the steps taken under section 13 (4) against the secured assets. The pre- condition of deposit of the amount for considering the appeal on merits is not a secured asset. Also bench found that the same amount is not bailment with the bank as provided under section 148 of the Indian Contract Act, 1872. Thus, this bench decided to return the deposit made by the borrower, back to him. Thus, there was no merit in appeal and as such it was dismissed.

**DISCLAIMER:** the case law presented here is only for sharing information and knowledge with the readers. The views are personal ,shall not be taken as professional advice. In case of necessity do consult with professionals for more clarity and understanding on subject matter.

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