

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP No. 14283 of 2017 (O&M)  
Date of decision: 29.11.2017

**Anil Kapoor**

**.. Petitioner**

**v.**

**ING Vysya Bank and others**

**.. Respondents**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL  
HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Ferry Sofat, Advocate for the petitioner.  
Mr. ADS Sukhija, Advocate for respondent No. 1.  
Mr. Raj Paul Kansal, Advocate for respondents No. 2 and 3.  
Mr. C. S. Pasricha, Mr. Aalok Jagga  
& Mr. Pankaj Gupta, Advocates.

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Rajesh Bindal J.

1. The petitioner has filed the present petition praying for setting aside order dated 12.5.2017, vide which SA No. 243 of 2017 filed by the petitioner was dismissed by Debts Recovery Tribunal-III, Chandigarh (for short, 'the Tribunal') on account of non-appearance of counsel for the applicant (petitioner herein). Further prayer has been made for setting aside order dated 24.6.2017 passed by the Tribunal, vide which the application for restoration of the SA, which was dismissed in default, was dismissed as not maintainable opining that the applicant, if so desires, can file appeal against the order dated 12.5.2017. Challenge in the SA filed by the

petitioner before the Tribunal was to the action taken by respondent No. 1 under Section 13(4) of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (hereinafter described as 'the SARFAESI Act').

2. Learned counsel for the petitioner submitted that the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter described as 'the DRT Act') was enacted in the year 1993, which came into force on 27.8.1993. The SARFAESI Act was enacted in the year 2002, which came into force w.e.f. 17.12.2002. Prior to that, there was Ordinance, which was promulgated on 21.6.2002. Section 17 of the SARFAESI Act initially used the words "Right to Appeal" giving liberty to any person aggrieved by any action taken under Section 13(4) of the SARFAESI Act to file appeal before the Tribunal. The aforesaid provision came up for consideration before Hon'ble the Supreme Court in Mardia Chemicals Ltd. and others v. Union of India and others, (2004) 4 SCC 311, where it was opined that the proceedings being original in nature, these cannot be termed as appeal. The judgment was delivered on 8.4.2004. Immediately thereafter, amendment was carried out in Section 17(1) of the SARFAESI Act, vide Act No. 30 of 2004 on 11.11.2004, however, with retrospective effect from 21.6.2002, whereby the words "may prefer an appeal" were replaced with words "may make an application". As the title of the Section was not amended at that time, which still used the words "Right to Appeal", amendment was carried out vide Act No. 44 of 2016, w.e.f. 1.9.2016. The word "application" was substituted in Section 17 of the SARFAESI Act only vide amendment carried out by Act No. 30 of 2004 and Act No. 44 of 2016.

3. The Debts Recovery Tribunal (Procedure) Rules, 1993 (for short, 'the 1993 Rules'), which define “application”, initially meant an application filed under Section 19 of the DRT Act, but with amendment carried out vide notification dated 21.1.2003, it was made inclusive of application filed under Section 31-A and an appeal filed under Section 30 (1) of the DRT Act. Section 30-A was added in the DRT Act vide Amendment Act No. 1 of 2000 w.e.f. 17.1.2000 providing for an appeal to the Tribunal against any order passed by the Recovery Officer under Section 30 of the DRT Act. Section 31-A of the DRT Act was also added vide same amendment. Replacement of the word “application” from “appeal” in Section 17 of the SARFAESI Act is later in time. As procedure provided for under the DRT Act is to be followed for decision of application under Section 17 of the SARFAESI Act, that would necessarily mean that any application filed under Section 17 of the SARFAESI Act is also to be read as an application, which can be dismissed in default and restored.

4. While referring to Section 22(2)(f) of the DRT Act, it was submitted that even power to dismiss in default any application is also drawn from that section. If power to dismiss an application in default can be exercised, then consequently the power for restoration, as contained in Section 22(2)(g) of the DRT Act shall also be available with the Tribunal, otherwise even an application cannot be dismissed in default.

5. Section 37 of the SARFAESI Act was referred to argue that the provisions of the SARFAESI Act or the rules framed thereunder are in addition to, and not in derogation of the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992 and the DRT Act or any other law for the time

being in force. As there is no provision in the SARFAESI Act for dismissing any application in default, such a power could not be exercised.

6. The judgment of Hon'ble Allahabad High Court in M/s Jyoti Extraction Private Limited and another v. State of U. P. and others, 2013 (12) RCR (Civil) 919 was referred to, where the opinion expressed was that power of restoration of an application dismissed in default is available with the Tribunal.

7. The judgment of Hon'ble the Supreme Court in Industrial Credit and Investment Corporation of India Ltd. v. Grapco Industries Ltd. and others, (1999) 4 SCC 710 has been referred to, where Section 22(1) and (2) of the DRT Act came up for consideration with reference to an issue whether the Tribunal had the power to grant ex-parte interim stay. The question posed was answered in positive. Reference was also made to the judgment of a Division Bench of this Court in M/s Sri Vishnu Steels v. Union of India and another, 2017(1) PLR 1, wherein this court opined that power to allow an application for amendment of the pleadings is maintainable before the Tribunal. In the aforesaid case, application was filed under Section 17 of the SARFAESI Act.

8. While referring to the scheme of the SARFAESI Act, learned counsel submitted that against any action taken by the secured creditor under Section 13(4) of the SARFAESI Act, application can be filed before the Tribunal under Section 17 of the SARFAESI Act, which has to be accompanied by such fee, as may be prescribed. Section 17(7) of the SARFAESI Act provides that the Tribunal can dispose of the application in accordance with the provisions of the DRT Act and the rules framed thereunder. Section 22 of the DRT Act provides for procedure and powers

of the Tribunal and the Appellate Tribunal. Section 22(1) of the DRT Act provides that the Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (for short, 'CPC'), but shall be guided by the principles of natural justice, subject to other provisions of the DRT Act and the rules. Sections 22(2) (f), (g) and (h) of the DRT Act are relevant, which enable the Tribunal to dismiss any application in default or decide the same ex-parte. Power has also been conferred for setting aside the order of dismissal of any application in default or set aside any order passed ex-parte.

9. The term 'application', as noticed in Section 22(2)(f) and (g) of the DRT Act, would mean an application under Section 19 or under Section 31-A and includes an 'appeal' filed under Section 30(1) of the DRT Act, in terms of Rule 2(c) of the 1993 Rules. As any application filed under Section 17 of the SARFAESI Act is not mentioned, hence, power of restoration will not be available.

10. Section 19(25) of the DRT Act was referred to, which provides for power of the Tribunal to make such orders and give such directions, as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

11. It was further argued that in many cases, especially where value of the security available with the bank is less than the amount recoverable, the bank at the very first instance invokes the provisions of the SARFAESI Act without filing any application under Section 19 of the DRT Act. The borrower or any other person in terms of Section 17 of the SARFAESI Act has been given right to challenge that action before the Tribunal. All the issues sought to be raised by the parties are to be decided in those

proceedings only, hence, the provisions of the CPC, especially, as have been referred in Section 22(2) of the DRT Act would apply and in fact, the principles thereof are being applied. However, it is only that the applications are being dismissed in default, but restoration applications are not being entertained by the Tribunal opining that there is no such power.

12. The Tribunal has opined that the application under Section 17 of the SARFAESI Act having been decided may not be on merits and only dismissed in default, appeal under Section 18 of the SARFAESI Act would be maintainable. The remedy in such cases would be quite onerous, as before filing any appeal, 50% of the amount in dispute has to be deposited by the appellant as a pre-condition, though it can be reduced to 25%, but that too for specific reasons to be recorded.

13. The proceedings initiated by the bank under Section 13 of the SARFAESI Act are for expeditious recovery of the defaulted amount of loan. The section further provides that if such an application has been filed, the same has to be decided within a period of 60 days in terms of Section 17 (5) of the SARFAESI Act. The period is extendable for the reasons to be recorded in writing upto four months. In case, there is no power for restoration of an application dismissed in default, that will delay the process, as any of the party may have to prefer appeal and in fact, during the process, the relief itself may be rendered infructuous.

14. Section 17(3) and (4) of the SARFAESI Act provides the kind of orders, which can be passed by the Tribunal. It does not talk of dismissal of any application in default, hence, it has to be decided on merits only. Rule 5-A of the 1993 Rules has been referred to, which enables any party before the Tribunal to file review of an order passed by it on the grounds

specified. Once an application for review of the order can be filed, there is no reason for depriving any party to file application for restoration of the application, which has been dismissed in default. In a review, the matter had been decided on merits after hearing the parties, whereas in case of dismissed in default, it is merely in the absence of counsel or party. In the process of restoration of an application dismissed in default, interpretation should be more liberal, as this is only providing remedy to a party and not the relief. Sufficiency of reasons for restoration are to be examined by the Tribunal in every case independently.

15. The judgment of Hon'ble the Supreme Court in Rajeev Hitendra Pathak and others v. Achyut Kashinath Karekar and another, 2011(4) PLR 274 was referred to, where Hon'ble the Supreme Court, while dealing with the provisions of the Consumer Protection Act, 1986, opined that the State Commission or the District Forum did not have the power to set aside their own ex-parte orders or review the orders passed by them in the absence of any enabling provision.

16. As the litigation in hand is not adversarial and only legal issue is involved, we have noticed all the arguments raised by the counsels and not attributing those to any of the party. Even other counsels have also been heard. All the counsels ably assisted the Court.

17. The issue involved in the present petition is as to:

“Whether the Debts Recovery Tribunal has power to dismiss an application, filed under Section 17(1) of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002, in default and further as to whether an application for restoration of application dismissed in default,

is maintainable ?

18. As per the scheme of the SARFAESI Act, Section 13 thereof provides that wherever any borrower makes default in repayment of secured debt or any instalment thereof, and his account in respect of such debt has been classified as non-performing asset, the secured creditor is entitled to require the borrower by notice in writing to discharge the debt within 60 days from the date of notice. On failure, the secured creditor is entitled to take action under sub-section (4) thereof. The borrower is entitled to make representation or file objections to such notice, which are to be dealt with and decided assigning reasons. Under sub-section (4), the secured creditor is entitled to take either possession or management of the secured assets.

19. Under Section 17 of the SARFAESI Act, as it originally stood prior to its amendment vide Act No. 30 of 2004, any person aggrieved by any of the measures, referred to in Section 13(4) of the SARFAESI Act taken by the secured creditor was entitled to file appeal before the Tribunal. Sub-section (2) thereof provided that such an appeal was not to be entertained unless the borrower had deposited 75% of the amount claimed in the notice under Section 13(2) of the SARFAESI Act. However, the Tribunal was given power to reduce or waive off the amount for reasons to be recorded in writing. The appeal so filed before the Tribunal was to be disposed of in accordance with the provisions of the DRT Act and the rules framed thereunder.

20. The aforesaid provision came up for consideration before Hon'ble the Supreme Court in Mardia Chemicals Ltd. and others' case (supra), wherein Section 17(2) of the SARFAESI Act, which required pre-deposit for entertainment of appeal was held to be *ultra vires* and

proceedings under Section 17 of the SARFAESI Act were held to be in the nature of original proceedings, like a civil suit and not appellate in nature.

Relevant para No. 59 of the judgment is reproduced hereunder:

“59. We may like to observe that proceedings under Section 17 of the Act, in fact, are not appellate proceedings. It seems to be a misnomer. In fact it is the initial action which is brought before a forum as prescribed under the Act, raising grievance against the action or measures taken by one of the parties to the contract. It is the stage of initial proceedings like filing a suit in civil court. As a matter of fact proceedings under Section 17 of the Act are in lieu of a civil suit which remedy is ordinarily available but for the bar under Section 34 of the Act in the present case. We may refer to a decision of this Court in *Ganga Bai v. Vijay Kumar*, (1974) 2 SCC 393 where in respect of original and appellate proceedings a distinction has been drawn as follows: (SCC p. 397, para 15)

“There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring a suit of civil nature and unless the suit is barred by statute one may, at one's eril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous to claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite.

The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute.”

21. The aforesaid judgment was delivered on 8.4.2004. Subsequent thereto, Section 17(1) of the SARFAESI Act was amended vide Act No. 30 of 2004, with retrospective effect from 21.6.2002. The words “may prefer an appeal” were replaced with words “may make an application along with such fee as may be prescribed”. Sub-sections (2) and (3) of Section 17 of the SARFAESI Act were also substituted vide same Amendment Act w.e.f. 11.11.2004. The provision regarding pre-deposit was deleted. As a consequence of the aforesaid amendment, the proceedings before the Tribunal under Section 17 of the SARFAESI Act had taken the shape of original proceedings. As title of Section 17 thereof had not been amended, it still mentioned the words “Right to Appeal”, amendment was carried out vide Act No. 44 of 2016, w.e.f. 1.9.2016, and the words “Right to Appeal” were replaced with words “Application against measures to recover secured debts”. Vide same amendment, sub-section (4-A), (5), (6) and (7) were also added. Sub-section (7) provides that the Tribunal shall, as far as may be, dispose of the application filed under Section 17 of the SARFAESI Act in accordance with the provisions of the DRT Act and the rules framed thereunder. The same is extracted below:

**“17. Application against measures to recover secured debts.-**

(1) Any person (including borrower) aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by

the secured creditor or his authorised officer under this chapter, (may make an application along with such fee, as may be prescribed,) to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken:

Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.

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

22. Section 22 of the DRT Act deals with procedure and power of the Tribunal. Section 22(1) of the DRT Act provides that the Tribunal shall not be bound by the procedure laid down in CPC, but shall be guided by the principles of natural justice. Sub-section (2) thereof provides that the Tribunal shall, for the purpose of discharging its functions under the Act, has same power as are vested in the Civil Court under CPC while trying a civil suit with reference to--

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;

- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or deciding it *ex parte*;
- (g) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*; and
- (h) any other matter which may be prescribed.

Out of the aforesaid provisions, powers as conferred under Section 22 (2) (f) and (g) are relevant, which talk of dismissing an application for default or deciding it *ex-parte* and setting aside any order of dismissal of any application for default or any order passed by it *ex-parte*.

Section 22 of the DRT Act is extracted below:

**“22. Procedure and powers of the Tribunal and the Appellate Tribunal.-** (1) The Tribunal and the Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in

respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or deciding it *ex parte*;
- (g) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*;
- (h) any other matter which may be prescribed.”

23. The term “application” has been defined in Section 2(b) of the DRT Act to mean application under Section 19. Rule 2(c) of the 1993 Rules also defines “application”. Here the meaning to the term “application” assigned in the DRT Act has been expanded further to include even application filed under Section 31-A and an appeal filed under Section 30 (1), in addition to application under Section 19 of the DRT Act. The aforesaid rule was amended vide notification dated 21.1.2003, while including application filed under Section 31-A and appeal filed under Section 30(1) of the DRT Act. By that time, Section 17 of the SARFAESI Act had not been amended, as amendment therein was carried out vide Act

No. 30 of 2004.

24. Section 30(1) of the DRT Act provides that any person aggrieved by an order passed by the Recovery Officer under the Act can prefer an appeal to the Tribunal, whereas Section 31-A of the DRT Act provides that where any decree or order has been passed by any court before commencement of the Recovery of Debts Due to Banks and Financial Institutions (Amendment) Act, 2000 (w.e.f. 17.1.2000) and the same has not yet been executed, then the decree holder can apply to the Tribunal to pass an order for recovery of the amount.

25. As has already been referred to above, Section 13 of the SARFAESI Act provides ample power to the secured creditor to take over possession of the secured assets or even take over the management. Remedy against that action has been provided in Section 17 thereof. Such an application can be filed within a period of 45 days from the date on which such measure is taken. In terms of Section 17(5) of the SARFAESI Act, such an application has to be decided as expeditiously as possible and preferably within a period of 60 days from the date of filing. However, the period can be extended for reasons to be recorded in writing but not exceeding four months.

26. The aforesaid provisions clearly establish that remedy is to be availed of by the person aggrieved expeditiously and even the Tribunal has also been mandated to dispose of the same at the earliest. In such situation, if it is presumed that the Tribunal has been conferred with power to dismiss an application in default for any good reason with no power to restore the same and only remedy being appeal to the Appellate Tribunal, the remedy will be totally illusory. While filing appeal before the Appellate Tribunal

under Section 18 of the SARFAESI Act against an order passed under Section 17 thereof, pre-condition of deposit of 50% of the debt due from him has to be complied with, otherwise the appeal is not to be entertained. The amount can be reduced only to the extent of 25%, that too for reasons to be recorded in writing. Prior to the amendment carried out vide Act No. 30 of 2004 in Section 18 of the SARFAESI Act, there was no pre-condition for deposit of any amount before entertainment of appeal, when such an appeal was maintainable against an order passed under Section 17 of the SARFAESI Act. Apparent reason therefor was that Section 17, as existed prior to the amendment, provided for an appeal against action under Section 13(4) of the SARFAESI Act with a pre-condition of deposit of 75% of the amount claimed in the notice under Section 13(2) with power to the Tribunal to waive off or reduce the same. As after amendment, after the judgment of Hon'ble the Supreme Court in Mardia Chemicals Ltd. and others' case (supra), proceedings under Section 17 of the SARFAESI Act were held to be original in nature and not appellate, the condition of pre-deposit was deleted and it was added in Section 18 thereof, which provided for appeal. Meaning thereby, in case an application under Section 17(1) of the SARFAESI Act is dismissed in default and the only remedy available, as suggested by the Tribunal, is appeal to the Appellate Tribunal, without there being any adjudication on merits, the aggrieved person will have to deposit 50% of the amount of debts due. Not only this, in the process, the matter may be delayed and even the relief prayed for may be rendered infructuous.

27. At the time of hearing, no provision was referred to by any of the counsel, which confers powers on the Tribunal to dismiss the application filed under Section 17 of the SARFAESI Act in default, in case

the argument is that the term “application” used therein should be read with reference to the meaning assigned in Rule 2(c) of the 1993 Rules. If for the purpose of dismissal of an application under Section 17(1) of the SARFAESI Act, the power under Section 22(2)(f) of the DRT Act can be exercised, then remedy as provided under sub-section (2)(g) will also be available. In fact, that would be the harmonious construction.

28. In fact, when the DRT Act was enacted, primarily there was application under Section 19 thereof which could be filed by any bank or financial institution for recovery of debts from any person. Subsequently, there had been number of amendments.

29. It is a case in which the provisions of the DRT Act have been adopted to be followed as procedure for disposal of application filed under Section 17 of the SARFAESI Act in accordance with the provisions of the DRT Act and the rules framed thereunder, in case anything otherwise is not provided under the SARFAESI Act. With reference to the procedure to be adopted for disposal of application under Section 17 of the SARFAESI Act, no procedure has been provided therein. Section 22 of the DRT Act provides for procedure and power of the Tribunal and the Appellate Tribunal. The contention that application under Section 17 of the SARFAESI Act having not been mentioned either in Section 2(b) of the DRT Act or Rule 2(c) of the 1993 Rules, no application for restoration of such an application dismissed in default is maintainable, will be totally misconceived.

30. It is a case of legislation by incorporation, which is a common legislative device where the legislature, for the sake of convenience of drafting incorporates provisions from an existing statute by reference to that

statute instead of verbatim reproducing the provisions, which it desires to adopt in another statute. Reference can be made to the judgment of Hon'ble the Supreme Court in Bharat Coop. Bank (Mumbai) Ltd. v. Coop. Bank Employees Union, (2007) 4 SCC 685. In the case in hand, the procedure, as provided in the DRT Act, has been adopted for disposal of the application under the SARFAESI Act. Such a procedure has been provided in Section 22 of the DRT Act. Section 22(2) thereof provides for the matters in respect of which the Tribunal has been vested with same powers as are vested in civil court under CPC. Meaning thereby, for disposal of application filed under the SARFAESI Act before the Tribunal, the powers as enshrined in clauses (a) to (h) of Section 22(2) of the DRT Act will be available. Now to claim that for deciding application under Section 17 of the SARFAESI Act, the Tribunal will be vested with powers as contained in Section 22(2)(a) to (e) and (h) of the DRT Act, but not as provided in clauses (f) and (g) thereof is misconceived. In fact, all the powers as enshrined therein are meant to be exercised for disposal of application filed under the SARFAESI Act. The language of Section 22 of the DRT Act is general in nature as under that Act, it is not only the applications which are to be decided, there are other proceedings as well. The procedure so prescribed under the DRT Act has also been adopted to be followed for the purpose of disposal of appeals by the Appellate Tribunal under Section 18 of the SARFAESI Act.

31. The DRT Act was enacted in the year 1993, as amended from time to time. The SARFAESI Act was enacted in the year 2002, as amended from time to time. The DRT Act could possibly provide for the definitions with reference to the provisions of that Act and not in other law.

It is a special statute. The SARFAESI Act has adopted the procedure, as

provided in the DRT Act for disposal of application under Section 17(1). For that purpose, we need not to go to the definition, either as provided in Section 2(b) of the DRT Act or Rule 2(c) of the 1993 Rules. We only need to see Section 22(f) and (g) of the DRT Act, where the procedure and power of the Tribunal have been provided for disposal of the application, which would mean even an application filed under Section 17 of the SARFAESI Act.

32. A Single Bench of Allahabad High Court in M/s Jyoti Extraction Private Limited and another's case (supra) opined that application filed under Section 17(1) of the SARFAESI Act can be dismissed in default under Section 22(2)(f) of the DRT Act and the Tribunal is also vested with the power to set aside the order of dismissal of application in default in terms of sub-section (2)(g) thereof.

33. A Division Bench of this Court in M/s Sri Vishnu Steels' case (supra) opined that in case some subsequent proceedings have taken place after filing of securitisation application under Section 17(1) of the SARFAESI Act, the only remedy is not to file fresh application, but even application for amendment of the application earlier filed is also maintainable.

34. For the reasons mentioned above, the writ petition is allowed. The question is answered in positive. It is held that application for restoration of an application filed under Section 17(1) of the SARFAESI Act, which is dismissed in default, is maintainable for the Tribunal.

35. Order dated 12.5.2017 passed by the Tribunal is set aside and the matter is remitted back to the Tribunal to deal with the application for restoration in accordance with law.

36. The parties through their counsels are directed to appear before the Tribunal on 21.12.2017 for further proceedings.

(Rajesh Bindal)  
Judge

(Gurvinder Singh Gill)  
Judge

29.11.2017  
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|----------------------------|--------|
| Whether speaking/reasoned: | Yes/No |
| Whether reportable:        | Yes/No |