THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION No.11432 of 2018

ORDER: (*Per* Hon'ble Sri Justice T. Amarnath Goud)

The prayer of the petitioners in this case reads as under:

> " For the reasons stated in the accompanying affidavit the Petitioners pray that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Certiorari, calling for records relating to Order dated 08.03.2018 made in Appeal No.226/2017/87 on the file of the Debt Recovery Appellate Tribunal, at Kolkata and quash the same as arbitrary, illegal and without jurisdiction and consequently order for refund of amount of Rs.3.09 Crores paid by the Petitioners as pre-deposit amount as per Section 18(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, at the time of filing Appeal before the Debt Recovery Appellate Tribunal, Kolkata, pass such further order of orders as this Hon'ble court may deems fit and proper in the circumstances of the case."

2. The case of the petitioners is that they had availed two separate loans i.e., (i) Rs.3.95 crores on 05.11.2004 and (ii) Rs.5 crores on 06.03.2006 from Syndicate Bank. Later, the Bank clubbed the two loans and converted them into one term loan. The Bank, without the consent of the petitioners, granted another term loan of Rs.5 crores on 10.05.2008 for appropriating the interest on the clubbed loan account. As the petitioners have defaulted in payment of the loan amount, the loan account was treated as Non-Performing Asset (NPA). The petitioners approached the Bank for rephasement of the loan account and deposited a sum of Rs.50 lakhs on 10.11.2011. The Bank, despite receiving the said amount, issued possession notice dated 05.11.2012. Challenging the possession notice dated 05.11.2012, the petitioners filed S.A.No.47 of 2017 (Old S.A.No.473/2012) on the file of the Debts

Recovery Tribunal-I, Hyderabad (for short, the Tribunal), but the same was dismissed by order of the Tribunal dated 23.09.2017.

3. Be that as it may, the Bank lodged Crl.M.P.No.910 of 2017 before the Chief Metropolitan Magistrate, Cyberabad, and the said Magistrate issued a warrant dated 27.10.2017 for taking possession of the secured assets. Challenging the said order, the petitioners filed S.A.No.1479 of 2017 before the Tribunal and the Tribunal while considering I.A.No.3493 of 2017, passed an order on 07.12.2017, granting interim stay on the condition of petitioners depositing a sum of Rs.10 crores in two instalments with a default clause. Aggrieved by the conditions imposed in the said order, the petitioners filed Appeal No.226/2017/87 on the file of the Debts Recovery Appellate Tribunal at Kolkata (for short, the Appellate Tribunal) and made a pre-deposit amount of Rs.3.09 crores before it. The Appellate Tribunal while granting interim order dated 21.12.2017, directed the petitioners to deposit another sum of Rs.2 crores. The petitioners deposited the same and complied with the order of the Appellate Tribunal. Thus, the petitioners have paid in all Rs.5.09 crores. The Appellate Tribunal by order dated 03.08.2018 allowed the appeal in part by modifying the order of the Tribunal by directing the Bank to appropriate Rs.5.09 crores including pre-deposit amount of Rs.3.09 crores. Challenging the order of the Appellate Tribunal in directing the Bank to appropriate the pre-deposit amount of Rs.3.09 crores, the petitioners filed the present writ petition seeking to refund the pre-deposit amount of Rs.3.09 crores to them.

4. Sri N.Vasudeva Reddy, learned counsel for the petitioners, relied on a judgment of the Supreme Court in **Axis Bank V/s SBS Organics (P) Ltd.**[1] and contended that as the partial deposit made before the Appellate Authority under Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the SARFAESI Act) is neither a secured asset nor a secured debt, the secured debtor will not have a lien over it and the said pre-deposit amount has to be refunded to the petitioners.

5. It is necessary to refer to Section 17 of The Recovery of Debts and Bankruptcy Act, 1993, which deals with jurisdiction, powers and authority of Tribunals and it reads as under:

> "**17. Jurisdiction, powers and authority of Tribunals.—**
>
> (1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions.
>
> (1A) ...
>
> (2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act."

6. It is necessary to refer to Section 18 of the SARFAESI Act and it reads as under:

> "**18. Appeal to Appellate Tribunal:-** (1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal along with such fee, as may be prescribed to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal:

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[1] (2016) 12 SCC 18

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."

7. The Supreme Court in **Axis Bank**'s case (1 supra), held that 'the partial deposit before the Appellate Tribunal as a precondition for considering the appeal on merits in terms of Section 18 of the Act, is not a secured asset. It is not a secured debt either, since the borrower or the aggrieved person has not created any security interest on such pre-deposit in favour of the secured creditor. If that be so, on disposal of the appeal, either on merits or on withdrawal, or on being rendered infructuous, in case, the appellant makes a prayer for refund of the pre-deposit, the same has to be allowed and the pre-deposit has to be returned to the appellant, unless the Appellate Tribunal, on the request of the secured creditor but with the consent of the depositors, had already appropriated the pre-deposit towards the liability of the borrower, or with the consent, had adjusted the amount towards the dues, or if there be any attachment on the pre-deposit in any proceedings under Section 13(1) of the Act read with Rule 11 of the Security

Interest (Enforcement) Rules, 2002, or if there be any attachment in any other proceedings known to law'.

8. The order of the Appellate Tribunal in directing its Registry to remit the pre-deposit amount of Rs.3-09 crores to the Bank is not permissible under law. It is clear that there is no provision enabling the Appellate Tribunal for transferring the pre-deposit amount in favour of the bank. No lien has been created on the said amount and there was no obligation for the Appellate Tribunal to issue the said direction. Under Section 18 of the SARFAESI Act, the pre-deposit pertains to the deposit of the amounts with the Tribunal and not to repay the Bank. The petitioners have not given any consent to the Appellate Tribunal for transfer of pre-deposit amount to the Bank, moreover, made submissions to refund the same to them. Since the aforestated direction is unwarranted, the same is liable to be set aside and this writ petition is liable to be allowed.

9. The writ petition is accordingly allowed. The pre-deposit amount lying with the Debts Recovery Appellate Tribunal at Kolkata, shall be refunded to the petitioners within a period of two weeks from the date of receipt of a copy of this order. That being said, we find no error in the order of the Appellate Tribunal in so far as it reduced the amount to be deposited by the petitioners from Rs.10 crore to Rs.5.09 crore. The total dues as per the Section 13(2) demand notice stood at Rs.16,33,93,785/- as on 22.7.2011 with interest thereon from that date. Considering the said figure,

the sum of Rs.5.09 crore directed to be deposited as a condition precedent for enjoying the benefit of the stay granted cannot be said to be unduly harsh or onerous. The petitioners necessarily have to make good the shortfall upon refund of the amount in terms of this order, failing which the stay granted in their favour shall stand vacated. The petitioners shall comply with the order of the Tribunal dated 07.12.2017 passed in I.A.No.3493 of 2017 in S.A.No.1479 of 2017 within a period of two weeks from the date of receipt of the refund. The Tribunal shall decide S.A.No.1479 of 2017 as expeditiously as possible, preferably within a period of two months from the date of receipt of a copy of this order. It is needless to observe that the both sides shall cooperate with the proceedings before the Tribunal. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

SANJAY KUMAR, J

T.AMARNATH GOUD, J

Date: 28.08.2018
TJMR