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

WRIT PETITION No.16511 of 2018

ORDER: (Per Hon'ble Sri Justice Sanjay Kumar)

The petitioner company is a borrower from the Andhra Bank, the first respondent herein. S.A.No.1303 of 2017 filed by it was dismissed by the Debts Recovery Tribunal-II, Hyderabad, *vide* order dated 08.09.2017. Aggrieved thereby, it preferred an appeal before the Debts Recovery Appellate Tribunal (*for brevity*, 'the Appellate Tribunal') at Kolkata. Therein, it filed Application No.550 of 2017 seeking waiver of the mandatory pre-deposit in terms of the second proviso to Section 18(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'). By order dated 16.02.2018, the Appellate Tribunal took note of the fact that the dues payable by the petitioner company in terms of the demand notice issued under Section 13(2) of the SARFAESI Act stood at Rs.2,41,18,904/- and the petitioner company claimed that it had paid Rs.53.00 lakhs, which would come to 22% of the outstanding dues. In the light of the offer made by the petitioner company that it would pay a further sum of Rs.7.25 lakhs, the Appellate Tribunal permitted the petitioner company to deposit the said sum of Rs.7.25 lakhs within a period of one week and to deposit a further 10% of the amount mentioned in the demand notice within four weeks thereafter. This, according to the Appellate Tribunal, would bring the amount deposited to 35% of the outstanding dues mentioned in the demand notice.

It appears that the petitioner company sought modification of the aforestated order dated 16.02.2018 but was unsuccessful as the Appellate

Tribunal rejected it *vide* order dated 10.04.2018. At that time, the Appellate Tribunal granted a week's time to the petitioner company to comply with the order dated 16.02.2018. However, the petitioner company failed to do so and thereupon, the Appellate Tribunal dismissed the appeal as not maintainable for want of pre-deposit, by order dated 20.04.2018. Aggrieved by the dismissal of its appeal, the petitioner company filed the present writ petition.

Having heard Sri C.Raghu, learned counsel for the petitioner company, and Smt.V.Dyumani, learned counsel for the Andhra Bank, we are of the opinion that no grounds are made out to interfere with the discretion exercised by the Appellate Tribunal in terms of the provisos to Section 18(1) of the SARFAESI Act. As per the second proviso thereto, the general rule is that no appeal shall be entertained unless the borrower deposits 50% of the amount of the debt due from him, as claimed by the secured creditor or determined by the Debts Recovery Tribunal, whichever is less. However, the third proviso vests the Appellate Tribunal with the discretion to reduce the amount to be deposited but not less than 25% of the debt, duly recording the reasons therefor in writing.

In the case on hand, the Appellate Tribunal exercised this discretion and reduced the pre-deposit amount from 50% to 35% of the outstanding dues. No valid grounds have been made out by the petitioner company to assail exercise of this discretion by the Appellate Tribunal. The Appellate Tribunal recorded reasons for reducing the pre-deposit amount to 35%. The discretion is therefore not shown to have been exercised injudiciously or arbitrarily.

At this stage, Sri C.Raghu, learned counsel, would state that given sufficient time, his client would make the pre-deposit as ordered by the

Appellate Tribunal so that the appeal filed by it could be restored to its file and heard on merits.

Accepting this plea and keeping in mind the fact that the petitioner company was non-suited on the ground of maintainability as it failed to make the pre-deposit, the writ petition is disposed of permitting the petitioner company to make the pre-deposit in terms of the order dated 16.02.2018 passed by the Appellate Tribunal in Application No.550 of 2017 in Tender No.176 of 2017/131 within two weeks from today, i.e., on or before 23.07.2018. In the event the petitioner company makes the pre-deposit within the said date, the order dated 20.04.2018 shall stand set aside and the Appellate Tribunal shall entertain the appeal and adjudicate the same on its own merits and in accordance with law.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

____
SANJAY KUMAR, J

____
T.AMARNATH GOUD, J

Dt: 09.07.2018.
IBL