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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) No. 14066/2018 & CM APP No. 54867/2018 (for status quo)

M/S. SIDHA NEELKANTH PAPER INDUSTRIES PVT. LTD. & ANR. ..... Petitioner

Through: Mr.Muneesh Malhotra, Mr.Achin Mittal, Ms.Manpreet Kaur, Advocates.

versus

ANDHRA BANK & ORS. ..... Respondents

Through: None.

**CORAM:**
**HON'BLE MS. JUSTICE JYOTI SINGH**
**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

**O R D E R**

**% 26.12.2018**

**CM APP No. 54868/2018 (for exemption)**

Allowed, subject to all just exceptions. This application is accordingly disposed of.

**W.P.(C) No. 14066/2018**

1. Challenge in the present writ petition is to the order dated 20.12.2018 passed by the Debt Recovery Appellate Tribunal, ('DRAT') Delhi, whereby the appeal filed by the petitioner herein was not entertained for failure to comply with the requirement of pre-deposit of 50% of the due amount before the DRAT. Challenge in the appeal therein was to the auction dated 05.12.2018. It is the case of the petitioner that the total amount due and payable by the petitioner was Rs.16.61 crores, whereas through the auction sale, the respondents have realized an amount of Rs.12.80 crores, which is

far above the 50% pre-deposit. The contention of the learned counsel of the petitioner is that once the substantial amount has been received by the bank pursuant to the auction conducted, the requirement of pre-deposit in terms of Section 18 of the SARFAESI Act stands satisfied, as substantial part of the loan amount has already been realized by the Bank. The contention of the learned counsel for the petitioner, therefore, is that the condition of pre-deposit in these circumstances, over and above the sale price received by the Bank will in fact lead to an undue enrichment in the hands of the Bank, when the substantial amount of the loan stands liquidated by virtue of the auction.

2. We find that the total demanded amount was Rs.16.61 crores and Rs.12.80 crores has been received by the Bank through auction. Therefore, the direction of the DRAT for deposit of 50% of the amount due, would be wholly unjustified.

3. Proviso to Section 18 of the SARFAESI Act bars entertaining an appeal unless the borrower deposits 50% of the amount of debt claimed by the secured creditors or determined by the Debt Recovery Tribunal, whichever is less. However, it cannot be disputed, that once a substantial amount is realised by the Bank through auction which is more than 50% of the debt, the purpose of the proviso stands satisfied.

4. We are supported in our view by the judgment of the Division Bench of this court in ***Srishti Arogyadham Pvt. Ltd. v. Punjab National Bank and Anr.*** in ***W.P.(C) 12299/2018*** dated 27.11.2018. The Division Bench of this court in the said judgment, relying upon several judgments of the Supreme

Court and the High Courts came to the conclusion that a pre-deposit in these circumstances will be wholly unjustified. The relevant paras of the judgment are extracted herein below:

> "*9. Mr. Mehra, learned Senior Counsel appearing for the petitioner submits that the DRAT fell in error in rejecting the MA filed by the petitioner for waiver of pre-deposit as according to him, the issue is no more res integra as the Supreme Court in Civil Appeal No. 2074-2078/2011 in Persn Medicinal Plants Pvt. Ltd. & Anr. v. Indian Bank (supra) decided on February 25, 2011, dealing with the question of pre-deposit under Section 18 of the SARFAESI Act allowed Indian Bank to appropriate the amount which is already with the Bank, as a condition precedent for hearing of the appeal filed by the appellant therein.*
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> *16. On a perusal of the second proviso to Section 18, it is clear that the same pre-supposes two eventualities; (i) that debt is due from the petitioner as claimed by the respondent No. 1 Bank or; (ii) debt has been determined by the Debt Recovery Tribunal, and the same is liable to be paid / recovered on the date when the appeal is entertained by the DRAT. In either of the eventualities 50% of the amount of debt need to be made as pre-deposit. We may state here that the Supreme Court in Narayan Chandra Ghosh vs. UCO Bank reported as (2011) 4 SCC 548, has inter alia held that the requirement of pre-deposit is a mandatory provision and need to be complied with. There cannot be any dispute on the said proposition and the same is binding upon this Court. In the said case, the argument of the petitioner therein was, that the debt has not been determined by the DRT. The Supreme Court rejected the plea by holding, if the debt has not been determined by the DRT, the borrower is liable to pay 50% of the debt*

*due from him as claimed by the secured creditors. The facts being at variance, as there is no amount due from the borrower i.e. petitioner herein when more than due amount has already been realized by the Bank the judgment has no applicability.*

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*19. We are conscious of the fact that the amount of pre-deposit has to be made in DRAT and not in the Bank. But still when no amount is due from the petitioner whether the pre-deposit can still be insisted upon. The argument can be made that the condition of pre-deposit is to discourage frivolous litigation which if permitted, would defeat the very purpose of the enactment of early settlement of the disputes. The argument is appealing but the same shall not hold good in the facts of the case with which we are concerned. Otherwise, the provision of appeal for persons / entities like the petitioner, shall become otiose / illusory. In fact, the insistence of pre-deposit shall be inequitable in the facts. Nothing precludes DRAT while deciding the appeal, if it finds that the appeal filed by the petitioner is frivolous, to impose such cost as deemed fit, to be recovered from the excess amount already lying deposited with the Bank.*

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*24. Mr. Mehra in support of his submission has relied upon the judgment of the Allahabad High Court in the case of Akash Ganga Airlines Ltd. v. Debt Recovery Appellate Tribunal, Allahabad, 2015 SCC OnLine All 8084, wherein the facts are identical to the facts of this case and the Court by noting the position of law as referred to above has allowed the petition and directed the DRAT to reconsider the application of waiver of the petitioner therein by setting aside the earlier order of the DRAT insisting on the pre-deposit. We concur with* *the view taken by the Allahabad High Court and a similar view as also taken by the Division Bench of Punjab and Haryana High Court in S.R. Forging Limited v. UCO Bank, 2013 SCC OnLine P&H 3902, wherein it was held as under:*

> *"Challenge in the present petition is to the orders passed by the Debts Recovery Appellate Tribunal Delhi (for short the 'Tribunal') dated 30.4.2012 (Annexure P-14) and dated 13.7.2012 (Annexure P-15), whereby the appeal filed by the petitioners-herein was not entertained for failure to comply with the requirement of law i.e. the deposit of 50% of the due amount before entertainment of the appeal.*
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> *Challenge in the appeal was to the sale proceedings whereby a bid of Rs. 17.75 crores as against the reserved price of Rs. 17.17 crores was received in respect of the property of the petitioners herein. It is the case of the petitioners that the total amount due and payable by the petitioners was Rs. 18.24 crores. Once, the substantial amount has been received by the Bank in pursuance of the auction conducted, the requirement of pre-deposit in terms of the proviso to Section 18 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short the 'Act') stands satisfied as the substantial loan amount has already been received by the Bank. The condition of pre-deposit in these circumstances, over and above the sale price received by the Bank, will in fact lead to undue enrichment in the hands of the Bank when substantial amount to the loan amount stands liquidated by virtue of the auction.*
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> *At this stage, we find that out of total due amount of Rs. 18.24 crores, Rs. 17.75 crores have been received by the Bank in a public auction. Therefore, the deposit of 50% of the amount due prior to sale from the petitioner would be wholly unjustified. The proviso to Section 18 of the Act restricts the*

> *entertainment of the appeal unless the borrower deposits 50% of the amount of the debt claimed by the secured creditors. Once Rs. 17.75 crores have been received by the secured creditors, that is more than 50% of the debt due from the petitioners, the purpose of the proviso stands satisfied.*
> *Consequently, we set aside the orders dated 30.4.2012 and 13.7.2012 passed by the Tribunal and direct the Tribunal to decide the appeal on merits.*
> *Disposed of."*
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> ***
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> *27. ... Accordingly, we set aside the order dated October 18, 2018 and direct the DRAT to hear the appeal on merits in accordance with law.*"

5. In view of above, we set aside the order dated 20.12.2018 passed by the DRAT, to the extent that it requires a pre-deposit of 50% to be paid by the petitioner before his appeal is heard.

6. We, therefore, direct the DRAT to hear the appeal of the petitioner without insisting on pre-deposit of 50% as a pre-condition to hearing the appeal.

7. Learned counsel for the petitioner further contends a status quo order may be passed with respect to property bearing no. 170, Deepali, Pitampura, New Delhi-110034, inasmuch as he apprehends that the auction- purchaser may make irreversible changes to the property including the razing down of the construction.

8. In our view, the apprehensions of the learned counsel for the petitioner are unfounded and the relief of status quo is, therefore, declined,

at this stage.

9. However, liberty is granted to the petitioner to approach the Court in future, if the need so arises.

10. The writ petition stands disposed of in the above terms.

*Dasti*.

**JYOTI SINGH**
**(VACATION JUDGE)**

**ANUP JAIRAM BHAMBHANI**
**(VACATION JUDGE)**

**DECEMBER 26, 2018**
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