

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.03.2019

Delivered on : 11.04.2019

CORAM :

THE HON'BLE MRS.VIJAYA K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.1492 of 2017 and C.R.P.(PD).No.792 of 2019,
 W.P.Nos.12777 of 2017, 14257 of 2018,
 17121 of 2014, 17725 of 2017, 23369 of 2017,
 24962 of 2017, 25817 of 2017, 30072 & 30073 of 2017,
 33456 of 2017, 33972 of 2018, 7511 of 2014,
 and C.M.P.No.6991 of 2017 and 5195 & 5198 of 2019,
 W.M.P.No.13633 of 2017, 16847 of 2018,
 M.P.No.1 of 2014,
 W.M.P.No.19222 of 2017, 24464 of 2017, 26338 of 2017,
 27250, 27251, 30771, 30772 of 2017, 36946 of 2017,
 39450 of 2018, M.P.No.1 of 2014.

C.R.P.(NPD).No.1492 of 2017:

Sree Jeya Soundharam Textile Mills Pvt. Ltd.,
 rep by its Managing Director,
 Perungudi Village, Sivagangai.

... Petitioner

Vs.

1.Canara Bank,
 rep by its Manager
 P.N.Road Branch, Tirupur.

2.The Authorized Officer,
 Canara Bank,
 P.N.Road, Branch, Tirupur.

3.S.Ramesh

4.R.Radha

5.M/s.Nandhini Tex,
rep by its Partner,
New No.20 (Old No.23),
K.V.R.Layout, Elementary School 3rd Street,
Karuvampalayam, Tirupur.

6.M/s.A.R.Fashion,
rep by its Partner,
New No.20 (Old No.23),
K.V.R.Layout, Elementary School 3rd Street,
Karuvampalayam, Tirupur.

7.M.Ganesh ... Respondents

Petition filed under Section 227 of the Constitution of India against the order dated 14.03.2017 made in I.A.No.1012 of 2014 in AIR(SA).No.589 of 2013 on the file of the Debt Recovery Appellate Tribunal, Chennai.

For Petitioner : Mr.Mukunth
for M/s.Sarvabhauman Associates

For Respondents : Mr.Raghunathan
for M/s.T.S.Gopalan (R1)

Mr.A.Thiagarajan (R7)

R2 to R6 - no appearance

C.R.P.(PD).No.792 of 2019:

The Kumbakonam Mutual Benefit Fund Ltd.,
rep by its Assistant General Manager/
Authorized Signatory,
No.145, T.S.R.Big Street,
Kumbakonam. ... Petitioner

Vs.

1.M/s.Indian Bank,
rep by its Manager,
West Mambalam Branch,
No.76/51, Arya Gowda Road,
West Mambalam, Chennai - 600 033.

2.The Authorized Officer/
Assistant General Manager,
M/s.Indian Bank,
West Mambalam Branch,
No.76/51, Arya Gowda Road,
West Mambalam, Chennai - 600 033.

3.D.Srinivasan

4.S.Subashini

5.Guru Baba Parama Brahma Peetam Trust,
Andezhath, Nattika, Talikulam,
Thirssur, Kerala. ... Respondents

Petition filed under Article 227 of the Constitution of India against
the order passed by the Debt Recovery Appellate Tribunal, Chennai in
I.A.No.906 of 2018 in AIR (SA).No.496 of 2018 dated 05.12.2018.

For Petitioner : Mr.C.S.K.Sathish

For Respondents : Mr.Jayesh B.Dolia (R1 & R2)

W.P.No.12777 of 2017:

P.Kanakaraj

... Petitioner

Vs.

1.The Registrar,
The Debt Recovery Appellate Tribunal,
Chennai.

2.The Authorized Officer,
Syndicate Bank,
Hosur Branch, Tank Street,
Hosur, Krishnagiri District.

3.K.Nagaraj

4.Tamil Nadu Mercantile Bank Ltd.,
Hosur Branch,
Krishnagiri District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus to call for the records in I.A.No.416 of 2014 in AIR.No.1070 of 2012 dated 18.04.2017 on the file of the 1st respondent and quash the same as illegal, irregular and consequently direct the Registry of the Debt Recovery Appellate Tribunal, Chennai to number the appeal and place the appeal before the Chairperson for adjudication on merits.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.P.Sreenivasalu (R2)

R1 - Tribunal

R3 & R4 - not ready in notice

W.P.No.14257 of 2018:

Kavita Prahaladaka

... Petitioner

Vs.

1.The Authorized Officer,
State Bank of India,
Thousand Lights Branch,
No.37B, First Floor, Whites Road,
Chennai - 600 014.

2.Chennai Jute Company,
rep by its Managing Partner Anil Kumar Agarwal
No.6, Ramanan Road,
Elephant Gate, Chennai - 600 079.

3.Anil Kumar Agarwal

4.Manju Agarwal

5.Surai Agarwal

6.Akash Deep Agarwal

7.Savita Agarwal

8.The Debt Recovery Appellate Tribunal
rep by its Registrar,
4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai, Chennai - 600 008.

9.Harish Karthik.R
(R9 impleaded vide order dated 05.10.2018)

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus to call for the records in respect of the impugned order dated 12.04.2018 made in AIR(SA).No.390 of 2016 by the 8th respondent, the DRAT, Chennai and quash the same and direct the 8th respondent, the DRAT, Chennai to waive the conditional deposit by the petitioner.

For Petitioner : Mr.K.V.Bhashyam Chari

For Respondents : Mr.S.Mohan (R1)

Mr.R.Munusamy (R9)

R2 to R8 - no appearance

W.P.No.17121 of 2014:

1.P.Mageshkumar

2.Asha Karthikeyan

... Petitioners

Vs.

1.The Chief Manager/Authorized Officer,
Dena Bank, George Town Branch,
No.340, Mint Street, Chennai - 600 079.

2.The Registrar,
Debt Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai, Chennai - 600 008.

... Respondents

(R1 - cause title amended vide order dated 10.01.2019)

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorari to call for the records pertaining to the order dated 11.06.2014 made in RA(SA).No.165 of 2012 in SA.No.119 of 2008 on the file of the 2nd respondent and to quash the same.

For Petitioners : Mr.K.J.Parthasarathy

For Respondents : Mr.G.R.Lakshmanan (R1)

R2 - Tribunal

W.P.No.17725 of 2017:

1.Vasantha

2.K.Thillai Rajan

3.K.Durga Priya

4.K.Vivekanandan

... Petitioners

Vs.

1.The Manager,
Bharath Overseas Bank Limited,
Now Indian Overseas Bank,
Besant Nagar Branch,
Chennai - 600 090.

2.M/s.Klinch Electronics,
rep by its Proprietrix Radha Shankar
No.101, Royapettah High Road,
Chennai - 600 004.

3.M.Bhaskar

4.The Registrar,
Debt Recovery Appellate Tribunal,
55, Ethiraj Salai, Chennai - 600 008.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorari to call for the records relating to the impugned order dated 16.06.2017 made in AIR.No.76 of 2015 & AIR.No.77 of

2015 (O.A.No.320 of 1997 on the file of the DRT - I, Chennai) passed by the DRAT, Chennai and to quash the same as not valid and proper and violative of all the principles of natural justice.

For Petitioners : Mrs.V.Srimathi
for Mr.E.Rajesh

For Respondents : Mr.F.B.Benjamin George (R1)
R4 - Tribunal
R2 & R3 - not ready in notice

W.P.No.23369 of 2017:

L.Pranav
rep valid Power of Attorney Holder
Usha Lakshminarayanan ... Petitioner

Vs.

1.The Debt Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office,
55, Ethiraj Salai, Chennai - 600 008.

2.Dena Bank,
Nungambakkam Branch,
No.105, M.G.Road,
Chennai - 600 034
rep by its Branch Manager

3.J.Lakshminarayanan

4.M/s.Agri Development Finance (TamilNadu) Ltd.,
No.105/106, G.Road,
Nungambakkam, Chennai - 600 034.

5.M/s.Capsein Bio Lab Ltd.,
114 & 115, Karunagaracherry Village,
Madurantakam Taluk,
Kancheepuram District.

6.E.G.Jagannath

7.M.S.Chandramouli

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus to call for the records culminating in the order in AIR No.16 of 2017 dated 02.08.2017 passed by the 1st respondent and to quash the same and direct the 1st respondent to waive the pre-deposit under Section 21 of the Recovery of Debts Due to Bank and Financial Institutions Act, 1993.

For Petitioner : Mr.K.Gowtham Kumar

For Respondents : Mr.G.R.Lakshmanan (R2)

R3 to R7 - not ready in notice

R1 - Tribunal

W.P.No.24962 of 2017:

S.Ganesh

... Petitioner

Vs.

1.Indian Bank,
Park Town Branch, Chennai - 600 003.

2.M/s.Parkway Travels Tours Pvt. Ltd.

3.R.G.Mohammed Hussain सत्यमेव जयते

4.Ashraq Ahmed

5.Asrar Ahmed

6.Aijaz Ahmed

7.Canara Bank,
Mount Road Branch,
Chennai rep by its Manager

8.Debt Recovery Appellate Tribunal,
4th Floor, 55, Ethiraj Salai,
Chennai - 600 008.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus to call for the records in I.A.No.1139 of 2017 in AIR.No.552 of 2015 on the file of the DRAT, Chennai dated 26.07.2017 and to quash the same and direct the 8th respondent to number the appeal without any pre-deposit.

For Petitioner : Mr.G.R.Lakshmanan
 For Respondents : Mr.T.Nityanandam
 for M/s.Anand, Samy & Dhruva (R1)
 R2 to R7 - not ready in notice

W.P.No.25817 of 2017:

A.Narayanasamy ... Petitioner

Vs.

1.The Registrar,
 Debt Recovery Appellate Tribunal,
 Chennai.

2.India Bulls Housing Finance Ltd.,
 rep by its Authorized Officer,
 Apex Chambers, First Floor,
 20, Thiagaraya Road,
 T.Nagar, Chennai - 600 017,
 also at M-62 & 63, First Floor,
 Connaught Place, New Delhi - 100 001.

3.S.Ganapathy Subramaniam ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus to call for the records in I.A.No.1179 of 2017 in AIR(SA).No.389 of 2017 dated 31.08.2017 on the file of the 1st respondent and to quash the same and direct the 1st respondent to

number the appeal and place it before the Appellate Authority for hearing the appeal on merits.

For Petitioner : Mr.M.Himavanth

For Respondents : Mr.Saikrishnan
for M/s.Sai Bharath & Ilan (R2)

R1 - Tribunal

R3 - not ready in notice

W.P.Nos.30072 & 30073 of 2017:

1.M.Chandra Rao

2.Vaithegi ... Petitioners in W.P.Nos.30072 &
30073 of 2017

Vs.

1.Debt Recovery Appellate Tribunal,
rep by its Registrar,
4th Floor, Indian Bank Circle Office,
No.55, Ethiraj Salai, Chennai - 600 008.

2.The Authorized Officer,
Central Bank of India,
No.48, 49, Montieth Road,
Egmore, Chennai - 600 008. ... Respondents in W.P.Nos.30072 &
30073 of 2017

Petitions filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus to call for the records in AIR(SA).Nos.330 & 329 of 2015 dated 08.05.2017 on the file of the DRAT, Chennai and to quash the same and direct the DRAT, Chennai to restore the appeals in AIR(SA).Nos.330 & 329 of 2015 and dispose of the same in accordance with law.

For Petitioner : Mr.K.A.Ramakrishnan
(in both W.Ps)

For Respondents : Mr.M.L.Ganesh (R2)
(in both W.Ps) R1 - Tribunal

W.P.No.33456 of 2017:

M/s.Goyal MG Gases Private Limited,
No.53, Friends Colony (East),
New Delhi - 110 065
rep by the Authorized Signatory
Aneesh Haridas

... Petitioner

Vs.

1.The Registrar,
Debt Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office Building,
No.55, Ethiraj Salai, Chennai - 600 008.

2.Indian Bank,
No.26, Ethiraj Salai,
Fagun Chambers, Chennai - 600 105,
rep by its Manager

3.M/s.Wind Power Limited (Under Liquidation),
(24, Luz Avenue, Mylapore, Chennai - 4),
rep by the Official Liquidator,
Hon'ble High Court of Madras, Chennai,
Chennai - 600 001.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of mandamus to direct the 1st respondent Tribunal to regularly number and hear the appeal AIR No.545 of 2017 filed by the petitioner without insisting on any pre-deposit.

For Petitioner : Mr.B.Raviraja

For Respondents : Mr.Jayesh B.Dolia (R2)

R1 - no appearance

Mr.M.Damodharan (R3)

W.P.No.33972 of 2018:

The Oriental Insurance Co. Ltd.,
 having its Head Office at
 Oriental House, P.B.No.7037,
 A25/27, Asaf Ali Road, New Delhi - 110 001
 Division Office,
 Division No.10, Oriental House, 3rd Floor,
 No.7, Tata Road, Churchgate,
 Mumbai - 400 020
 through its duly Authorized Officer
 R.Ramamoorthy

.... Petitioner

Vs.

1.Andhra Bank,
 Chennai Main Branch,
 Wavoo Mansion, No.48/39, Rajaji Salai,
 Chennai - 600 001.

2.M/s.Paramount Airways Pvt. Ltd.,
 Alexander Square, C Wing, II Floor,
 No.35, Sardar Patel Road, Guindy,
 Chennai - 600 032.

3.M.Thiagarajan

4.Lakshmi Murugesan

5.Official Liquidator,
 High Court of Madras, Chennai - 600 104.

6.The Debt Recovery Appellate Tribunal,
 4th Floor, Indian Bank Circle Office Building,
 55, Ethiraj Salai,
 Chennai - 600 008.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus to call for the records in respect of the order dated 29.11.2018 in R.A.No.131 of 2014 against

O.A.No.150 of 2011 passed by the 6th respondent, quash the same and to direct the 6th respondent to waive the pre-deposit to be made for hearing the appeal filed by the petitioner namely R.A.No.131 of 2014 and M.A.No.134 of 2014 against O.A.No.150 of 2011.

For Petitioner : Mr.M.V.Swaroop

For Respondents : Mr.T.Nityanandam
for M/s.Anand, Samy & Dhruwa (R1)
R5 - no appearance
R2 to R4 - not ready in notice

W.P.No.7511 of 2014:

S.Sanjeev Kumar ... Petitioner

Vs.

1.The Registrar,
Debt Recovery Appellate Tribunal,
4th Floor, Indian Bank Circle Office Building,
55, Ethiraj Salai, Chennai.

2.Indian Overseas Bank,
57, 1st Main Road,
West CIT Branch, Chennai - 35.

3.Sangeetha

4.Corporation Bank,
Whites Road Branch, Chennai - 14.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorarified mandamus to call for the records of the 1st respondent culminating in order dated 12.02.2014 in AIR.No.260 of 2013 (I.A.No.484 of 2012 in O.A.No.246 of 2007 on the file of the DRT - II, Chennai) and quash the same and consequently, waive the pre-deposit of 75% of the claim under Section 21 of the RDDBFI Act.

For Petitioner : Mr.Guberan
for M/s.Rank Associates

For Respondents : Mr.F.B.Benjamin George (R2)
Mr.S.Sethuraman (R4)

R1 - Tribunal

R3 - no appearance

COMMON ORDER

**THE HON'BLE CHIEF JUSTICE
AND
M.DURAIWAMY, J.**

The issue involved in all these matters is “whether a person, who is neither a borrower nor a guarantor, is liable to make the pre-deposit for preferring an appeal under Section 18 of the SARFAESI Act or under Section 21 of the Recovery of Debts and Bankruptcy Act, 1993?”

2.It is not in dispute that as per Section 18 of the SARFAESI Act a borrower or a guarantor is liable to make a pre-deposit of 50% of the amount of debt due from him as claimed by the secured creditor or as determined by the Debts Recovery Tribunal, whichever is less, for entertaining an appeal before the Debt Recovery Appellate Tribunal, as against the order passed by the Debts Recovery Tribunal under Section 17 of the SARFAESI Act, provided, the Appellate Tribunal may, for the reasons to

be recorded in writing, reduce the amount to not less than 25% of debt due from the borrower as claimed by the secured creditor or as determined by the Debts Recovery Tribunal.

3.As per Section 21 of the Recovery of Debts and Bankruptcy Act, 1993, when an appeal is preferred by any person, from whom the debt is due to a Bank or a Financial Institution or a consortium of Banks or Financial Institutions, such appeal shall not be entertained by the Debt Recovery Appellate Tribunal, unless such person has deposited, with the Appellate Tribunal, 50% of the amount of debt so due from whom as determined by the Tribunal under Section 19 of the Recovery of Debts and Bankruptcy Act. The Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to be deposited by such amount which shall not be less than 25% of the amount of such debt so due to be deposited under Section 21 of the Act. Prior to 01.09.2016, the Appellate Tribunal was given powers to waive or reduce the pre-deposit amount. With effect from 01.09.2016, the said provision was amended by giving powers to the Appellate Tribunal to reduce the amount to be deposited which shall not be less than 25% of the amount due from the borrower or the guarantor.

4. Since the issue involved in all the above Writ Petitions and the Civil Revision Petitions relates to pre-deposit, it would be appropriate to extract the following Sections from the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (in short “SARFAESI” Act) and Recovery of Debts and Bankruptcy Act, 1993:

(i) Section 18 of the “SARFAESI” Act:

Appeal to Appellate Tribunal -

(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal alongwith 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:

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.

(ii) Section 2 (1)(f) of the SARFAESI Act:

"borrower" means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a [asset reconstruction company] consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance;

(iii) Section 2(1)(zf) of the SARFAESI Act defines Security Interest as follows:

"security interest" means right, title and interest of any kind, other than those specified in Section 31, upon property created in favour of any secured creditor and includes -

(i) any mortgage, charge, hypothecation, assignment or any right, title or interest of any kind, on tangible asset, retained by the secured creditor as an owner of the property, given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of the asset or an obligation incurred or credit provided to enable the borrower to acquire the tangible asset; or

(ii) such right, title or interest in any intangible asset or assignment or licence of such intangible asset which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred or any credit provided to enable the borrower to acquire the intangible asset or licence of intangible asset.

(iv) Section 21 of the Recovery of Debts and Bankruptcy Act, 1993:

21. Deposit of amount of debt due, on filing appeal.—

Where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal fifty per cent of the amount of debt so due from him as determined by the Tribunal under section 19:

Provided that the Appellate Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited by such amount which shall not be less than twenty-five per cent of the amount of such debt so due to be deposited under this section.

(v) Section 2(g) of the Recovery of Debts and Bankruptcy Act, 1993 defines Debt as follows:

“debt” means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions

during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil Court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application and includes any liability towards debt securities which remains unpaid in full or part after notice of ninety days served upon the borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of debt securities.

5. The learned counsel appearing for the respective petitioners submitted that as per the provisions of Section 18 of the SARFAESI Act and Section 21 of the Recovery of Debts and Bankruptcy Act, it is only the borrower or the guarantor who should make the pre-deposit for preferring an appeal against the order passed by the Debts Recovery Tribunal under Section 17 of the SARFAESI Act or under Section 19 of the Recovery of Debts and Bankruptcy Act. The learned counsel appearing for the petitioners submitted that the petitioners are neither borrowers nor guarantors, therefore, they are not liable to make any pre-deposit, either under SARFAESI Act or under the Recovery of Debts and Bankruptcy Act, for preferring an appeal before the Debt Recovery Appellate Tribunal.

5.1.The learned counsel appearing for the respective petitioners relied upon the 2nd proviso to Section 18 of the SARFAESI Act, wherein it has been stated that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal, 50% of the amount of debt due from him and as per the 3rd proviso, the said amount may be reduced to not less than 25% of debt referred to in the 2nd proviso.

5.2.As per Section 21 of the Recovery of Debts and Bankruptcy Act, if an appeal is preferred by any person from whom the amount is due to the Bank or the Financial Institution, he should make the pre-deposit.

5.3.From the above, it is clear that the borrower or the guarantor should make the pre-deposit for preferring an appeal before the Debt Recovery Appellate Tribunal as against the order passed by the Debts Recovery Tribunal either under Section 18 of the SARFAESI Act or under Section 21 of the Recovery of Debts and Bankruptcy Act.

6.The learned counsel appearing for the respective petitioners submitted that since the provisions of Section 18 of the SARFAESI Act and Section 21 of the Recovery of Debts and Bankruptcy Act do not speak about

a 3rd party for making a pre-deposit, they are not liable to make any pre-deposit for preferring an appeal.

6.1. The learned counsel appearing for the respective petitioners, in support of their contention, relied upon the following judgments:

(i)(2013) 15 Supreme Court Cases 341 [Standard Chartered Bank Vs. Dharminder Bhohi and others] wherein the Hon'ble Supreme Court held as follows:

“... ”

33. Section 19 of the RDB Act, occurring in Chapter IV of the Act, deals with procedure of tribunals. Sub-section (25) of Section 19 reads as follows: -

“19.(25) The Tribunal may 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.”

The aforesaid provision makes it quite clear that the tribunal has been given power under the statute to pass such other orders and give such directions to give effect to its orders or to prevent abuse of its process or to secure the ends of justice. Thus, the Tribunal is required to function within the statutory parameters. The Tribunal does not have any inherent powers and it is limpid that Section 19(25) confers limited powers.”

(ii)(2012) 5 Supreme Court Cases 265 [C.N.Ramappa Gowda vs. C.C.Chandregowda (dead) by LRs. and another] wherein the Apex Court held as follows:

“...

26.It is only when the court for recorded reasons is fully satisfied that there is no fact which needs to be proved at the instance of the plaintiff in view of the deemed admission by the defendant, the court can conveniently pass a judgment and decree against the defendant who has not filed the written statement. But, if the plaint itself indicates that there are disputed questions of fact involved in the case arising from the plaint itself giving rise to two versions, it would not be safe for the court to record an ex parte judgment without directing the plaintiff to prove the facts so as to settle the factual controversy. In that event, the ex parte judgment although may appear to have decided the suit expeditiously, it ultimately gives rise to several layers of appeal after appeal which ultimately compounds the delay in finally disposing of the suit giving rise to multiplicity of proceedings which hardly promotes the cause of speedy trial.

27.However, if the court is clearly of the view that the plaintiff's case even without any evidence is prima facie unimpeachable and the defendant's approach is clearly a dilatory tactic to delay the passing of a decree, it would be justified in appropriate cases to pass even an uncontested decree. What would be the nature of such a case ultimately will have to be left to the wisdom and just exercise of

discretion by the trial Court who is seized of the trial of the suit.”

(iii)2014 (1) D.R.T.C. 320 (Knt.) [Bani Kaur Bedi & another cs.

HDFC Bank Ltd., Bangalore] wherein the Division Bench of Karnataka High Court held as follows:

“...

8. Upon a plain reading of the above provisions, it is clear that the forum of Appellate Tribunal is open to access by any person aggrieved by any order made by the DRT under Sec.17 and such aggrieved parties are broadly divided into two categories by the first proviso, viz., borrower and person other than the borrower. However, the second proviso clearly states that no such Appeal shall be entertained until the borrower has deposited with the 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. This provision clearly goes to show the legislative intention of ensuring deposit of the amount as prescribed, before entertaining the Appeal and the phrase “debt due from him” clearly refers to debt as claimed by the secured creditors or determined by the DRT, whichever is less. If the contentions of the Petitioners were accepted, it would amount to entertaining the Appeal, contrary to the express statutory provisions, before the required amount being deposited with the Tribunal. The status of the party

approaching the Tribunal with an Appeal could not be decided on the basis of his contentions in the Appeal in the face of clear statutory provision providing for deposit on the basis of the amount of debt due from him “as claimed by the secured creditors or determined by the DRT”. It is not the case of the petitioners that the amount is not claimed by the secured creditors from them.”

(iv) 2016 SCC Online Del 654 [Loveleen Kaur & Anr. Vs. ICICI Bank Ltd., & Ors.] wherein the Division Bench of Delhi High Court held as follows:

“...
11.

For example, in the instance case, if the gift deed by Smt. Shakuntla Devi in favour of her son precedes the sale-deed executed by her in favour of the petitioners, upon the fact that the gift deed is registered, would be proof of the fact that the petitioners cannot claim to be bona-fide purchasers for valuable consideration of the second floor, for the reason they were negligent in not carrying out a title search in the records of the Sub-Registrar.”

(v) 2017 SCC Online Bom 6944 [M/s. Anchor Electricals Pvt. Ltd., Vs. Canara Bank & Anr.] wherein the Division Bench of Bombay High Court held as follows:

“1. This Petition can be disposed of in terms of the

order passed by Division Bench of this Court on 18th April, 2015. Admittedly, Petitioner is a third party and is neither a borrower nor a guarantor and has tendered an appeal against the order passed by the DRT. While entertaining the appeal, the DRAT has directed the Petitioner to deposit an amount of Rs.1 crore. Petitioner states that in view of section 18 of SARFAESI Act and Rule 13 of the Rules, since the Petitioner is neither a borrower nor a guarantor, there is no obligation on him to deposit 50% of the amount as claimed by the Bank or minimum 25% of the amount as may be directed by DRAT.

2. Prima facie, submissions made by the Petitioner appear to be acceptable. It is also not a matter of controversy that appeal tendered by the Petitioner is pending for consideration before DRAT. By virtue of the order passed by this Court dated 18th April, 2015, DRAT was directed to proceed with the appeal and decide the same in accordance with the provisions of law expeditiously. The learned Counsel for the Petitioner states that appeal has not yet been decided and it is still pending.”

(vi) Unreported judgment made by the **Division Bench of Delhi High Court** dated **12.12.2018 in W.P.(C).No.4237 of 2018 [Indiabulls Housing Finance Ltd., Vs. Vaibhav Jhawar and ors.]** wherein the Division Bench held as follows:

“...

10. According to him a similar view has been taken by

the Supreme Court in the case titled as Narayan Chandra Ghosh v. UCO Bank & Ors. Civil Appeal No. 2681 of 2011. Similarly, in a decision of this Court in Sanjeev Sikka and Anr. vs. Reserve Bank of India and Ors. W.P.(C) No. 312/2018, this Court has held that the Appellate Tribunal can hear appeals against an order of DRT only upon compliance of requirement of pre-deposit. According to him, in view of the above, any aggrieved person is liable to make pre-deposit before an appeal is heard by the DRAT, as a precondition, under Section 18 of the SARFAESI Act.

11. He submitted, various other High Courts including High Court of Madras and Gujarat have time and again interpreted Section 18 with respect to the pre-deposit to be made by third parties. He relied on the judgments of the High Court of Madras titled as K. Kalpana v. The Authorised Officer, State Bank of India and Ors W.P. No. 21560/2014, P. Murugan V. The Registrar, Debts Recovery Appellate Tribunal and Ors. W.P. No. 28528/2014. He submitted, in a similar judgment titled Biren Harish Vakharia v. State Bank of India Special Civil Application No. 15547/2011, the Division Bench of High Court of Gujarat held that third parties are liable to make pre-deposit before the Appellate Tribunal for an appeal against an order of DRT.

...

18. On a reading of the aforesaid definition of "borrower", the same would include a guarantor as well but not a person other than borrower/guarantor. The only interpretation given to second proviso to Section 18(1) shall

be that if a person other than borrower/guarantor files an appeal before the Arbitral Tribunal then the stipulation of the pre-deposit of 50% (or 25%) of the amount of debt due from him as claimed by the secured creditors or determined by the DRT shall not be insisted upon. This is the only interpretation, which can be given to second proviso to Section 18(1) read with Section 2(f) of the SARFAESI Act.

...

25. In *C.I.T., Madras v. T. Sundram Iyengar (P) Ltd.*, reported in 1976 (1) SCC 77, the Supreme Court held that, if the language of the statute is clear and unambiguous and if two interpretations are not reasonably possible, it would be wrong to discard the plain meaning of the words used, in order to meet a possible injustice.

26. If the words are precise and unambiguous, then it should be accepted, as declaring the express intention of the legislature. In *Ku. Sonia Bhatia v. State of U.P.*, and others reported in 1981 (2) SCC 585 : AIR 1981 SC 1274, the Supreme Court held that a legislature does not waste words, without any intention and every word that is used by the legislature must be given its due import and significance.

27. It is a well settled law of interpretation that "when the words of the statute are clear, plain or unambiguous, ie., they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences. In this regard, reference is made to the decision of the Apex Court in *Nelson Motis v. Union of India* reported in AIR 1992 SC 1981.

...

36. Having noted the position of law, we must hold that there is no ambiguity in the provisions of Section 18 of the SARFAESI Act. The provisions of Section 18 of the SARFAESI Act, are determinative of the fact that the legislature intended that it is only the borrower and the guarantor, who should be under obligation to make the pre-deposit. The same is clear on a literal and grammatical meaning of the words "borrower" and "any person aggrieved" as found mentioned in Section 18 and 2(f) of the Act. There is no inconsistency within the provision of Section 18(1) of the Act.

...

40. Insofar as the reliance placed by Mr. Mata on the judgment of the Madras High Court in the case of K. Kalpana (supra) is concerned, there the petitioner was the owner of the property, which was mortgaged with the respondent No.1 Bank. The SA filed by the petitioner was dismissed by the DRT-III, Chennai. In an appeal before the DRAT, the appeal was not entertained because the petitioner therein had failed to make pre-deposit. It was contended on behalf of the petitioner therein that the petitioner is neither the borrower nor the guarantor and therefore, there is no necessity for filing any waiver application before the DRAT. The High Court relied upon the judgment of the Supreme Court in Narayan Chandra Ghosh (supra). The High Court considered Section 18(1), which inter-alia contemplates that any person aggrieved by the order passed by the DRT may file an appeal before the DRAT, there should be compliance of pre-deposit

as contemplated in the said Section. A perusal of the judgment would reveal that the High Court has not considered the effect of the second proviso to Section 18(1) of the SARFAESI Act, which according to us shall be a relevant provision to interpret the substantive portion of Section 18(1) as well. The said judgment is per incuriam.”

(vii) Unreported judgment of the *Division Bench of this Court* dated **03.02.2015** made in **W.P.No.31904 of 2014 [Mohd. Ismail Haroon Vs. The Debts Recovery Appellate Tribunal and Anr.]** wherein the Division Bench held as follows:

“...
5. The Learned Counsel for the Petitioner urges before this Court that the Debts Recovery Appellate Tribunal should have assigned valid reasons as to why the Petitioner's I.A.No.607 of 2014 seeking waiver of pre-conditional deposit should not be allowed for preferring the Appeal against an order of the Debts Recovery Tribunal when he is neither a borrower nor a guarantor of the loan.

...
29. It is to be noted that under Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, when an Appeal is preferred by any person, he is required to deposit 75% of the due amount to the Bank or Financial Institutions for the appeal to be registered. Indeed, the Right of Appeal being a vested right could not be taken

away by the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. However, for ordering waiver of pre-deposit, sufficient/special reasons/ necessary materials ought to be placed before the Appellate Tribunal. The discretion contemplated under Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act cannot be exercised as a matter of routine or in a causal fashion. The power to waive the deposit would by implication also include the power to extend the time for deposit. Of course, the relaxation power is given to the Appellate Tribunal for reasons to be recorded in writing provided 'Good Cause' or 'Sufficient Cause' or special reasons are shown to waive or reduce the amount to be deposited under Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, in the considered opinion of this Court.

30. It is to be borne in mind that the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 was promulgated with a avowed object of providing expeditious adjudication and recovery of public dues with a view to serve public/societal interest. Also that, Section 21 of the Act is similar to the provision of Sales Tax and Income Tax. Therefore, there is no unfairness or capriciousness in Section 21 of the Act, as opined by this Court.”

(viii) 2014 (4) CTC 647 [Dr. Zubaida Begum and another Vs. The Manager, Indian Bank, Guindy Branch, Chennai and others] wherein the

Division Bench of this Court held as follows:

“...

7.The proposition laid down by the Calcutta High Court in the judgment cited supra is squarely applicable to the facts of the instant case, as in this case also no amount was admittedly adjudged to be due from the Petitioners herein to the Bank under Section 19 of the Act and therefore, the condition imposed on the Petitioners herein by the Debts Recovery Appellate Tribunal to file an Application for waiver is an onerous one. We also find from the above judgment that a Petition for waiver of pre-deposit was filed for the purpose of entertaining the Appeal, which itself was found to be bad in law by the above judgment. The Calcutta High Court, therefore, finally set aside the Orders passed by the Appellate Tribunal and gave a direction to proceed with the Appeal. In this case, the Petitioners herein stand in a better footing as they did not file a Waiver Application for the purpose of entertaining the propose Appeal, which in our considered opinion is wholly unsustainable. Hence, the impugned Order dated 16.12.2013 in AIR No. 823/2013 passed by the Debts Recovery Appellate Tribunal is illegal and unsustainable both in law and on fact and the same is liable to be set aside.

(ix)2015 SCC Online Mad 13195 [M/s.St. Mary's Kalmane & Arekal Estates, A Registered Partnership Firm represented by Mr.Avinash Prabhu, Partner, Niduvale Post, Via Javali, Chikmagalur District - 577

122 Vs. 1.The Debt Recovery Appellate Tribunal, 4th Floor, Indian Bank Circle Office, 55, Ethiraj Salai, Chennai - 600 008 and 7 others] wherein the Division Bench of this Court held as follows:

“...

10.Mr. Srinath Sridevan, learned counsel appearing for the petitioner submits that the petitioner, being third party and no amount of debt is due from him, is not liable to make any pre-deposit of amount of debt due on filing appeal under the provisions of Section 21 of the Act, 1993. It is further contended that the waiver application is maintainable only in the event when the appeal is preferred by the person from whom the amount of debt is due to the bank. Indisputably, no amount is due from the petitioner firm to the Bank or any financial institution and as such, the direction to file waiver application and memorandum of valuation is unsustainable in the eye of law.

11.On the other hand, Mr. E. Omprakash, learned counsel appearing for the second respondent Bank submits that there is no cavil that no amount of debt is due from the petitioner firm. However, the petitioner is required to make application, seeking waiver of pre-deposit as prescribed under Section 21 of the Act, 1993. The petitioner can seek full waiver on the ground that since no amount of debt is due from him to the bank, the petitioner is not liable to make pre-deposit. It is lastly urged that the issue in respect of condition to pre-deposit under Section 21 of the Act, 1993 can be decided in waiver application. What the Appellate

Tribunal has directed is to make waiver application only and not a direction to make deposit as condition precedent to entertain the appeal.

12. We have heard the learned counsel for the parties and examined the pleadings and documents annexed thereto.

13. Indisputably, the purported appeal was preferred under the provisions of Section 20 of the Act, 1993. There is no quarrel on the maintainability of the appeal under Section 20, *ibid*. Section 21 prescribes for pre-deposit of amount of debt due on filing appeal. In this regard, it is beneficial to extract the said provision as under:

“21. Deposit of amount of debt due, on filing appeal
Where an appeal is preferred by any person from whom the amount of debt is due to a bank or a financial institution or a consortium of banks or financial institutions, such appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate Tribunal seventy five per cent of the amount of debt so due from him as determined by the Tribunal under Section 19;

Provided that the Appellate Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this Section.”

14. On a bare perusal of the aforestated provision, it is luculent that pre-deposit is mandated only in a case where the appeal is preferred by a person from whom the amount of debt is due to a bank or the concerned financial institution. It is eloquent that no appeal filed at the instance of a person

from whom the amount of debt is due is entertainable, unless 75% of the total amount due is deposited with the Appellate Tribunal. However, the Appellate Tribunal is empowered to consider the application for waiver or reduction of the amount to be deposited under the said section.

...

16.A reading of the provisions of Section 21, which is plain and unambiguous, makes it clear that pre-deposit is mandated only in case of an appeal preferred by a person from whom the amount of debt is due. It is a salutary principle of interpretation of law that a provision of law must be understood in its plain meaning and the effect should be given to each and every word employed therein.”

(x)An unreported judgment of the Division Bench of Delhi High Court made in W.P.(C).No.11766 of 2016 [Manju Devi & Ors. Vs. M/s.R.B.L. Bank Ltd. & Ors.] dated 01.02.2017, wherein the Division Bench held as follows:

“...

12. The short question involved in this writ petition is, whether the appellants before the Debt Recovery Appellate Tribunal, Delhi, who are neither borrowers, nor guarantors and have not pledged or mortgaged any property to the Respondent Bank can be called upon to deposit a percentage of the loan amount claimed and/or adjudicated against the borrower as the condition precedent for entertaining their

appeal under Section 18 of the Securitization Act.

13. In the context of the question of whether a third party, who is not a borrower within the meaning of Section 2(f) of the Securitization Act, is required to make a pre-deposit as a pre-condition for having his appeal heard, it would be pertinent to refer to the following provisions of the Securitisation Act:-

"2(1)(f) "borrower" means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitization company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance;

17. Right to appeal (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 authorized officer under this Chapter, [may make an application alongwith 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.] [Explanation : for the removal of doubts,

it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.] (2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management of the business to the borrower or restoration of possession of the secured assets to the borrower, it may by order, declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditors as invalid and restore the possession of the secured assets to the borrower or restore the management of the business to the borrower, as the case may be, and pass such order as it may consider appropriate and necessary in relation to

any of the recourse taken by the secured creditors under sub- section (4) of section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub- section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt. (5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

PROVIDED that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section(1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any party to the application may make any application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal

and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal. (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 and the rules made thereunder.] 17A.

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 alongwith 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:

[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. "

...

16. The Second proviso reads that no appeal is to be entertained unless the borrower has deposited with the Appellate Tribunal 50% of the amount of debt due from him, as claimed by the secured creditors or as determined by the Debts Recovery Tribunal, whichever is less. The second proviso relates to the appeal of a borrower, for a third party, who has not obtained any finance from a Bank or a financial institution is under no obligation to pay.

17. The second proviso reads that no appeal is to be entertained, unless the borrower has deposited with Appellate Tribunal 50% of the debt due from him. If the proviso is to be read literally to mean that no appeal, be it of a borrower or a third person, is to be entertained unless the borrower has deposited 50% of the amount of debt due from him, appeals by third persons would in effect and substance, be rendered nugatory for a third person, who would never be able to get his appeal entertained.

18. Significantly, in this case each of the appellants have been directed to pay 50%, which means that the total deposit would far exceed the amount due and payable by Ajay Kumar Gupta."

(xi)(1976) 17 GLR 353 [Mohanlal Mojilal Javeri Vs. Income Tax Officer and Ors.] wherein the Division Bench of Gujarat High Court held as follows:

“...

4. The decision of D.A. Desai, J., in *Sales Tax Officer v. Rajratna Naranbhai Mills Co.* is now reported in (1974) 44 Comp. Cas. 65 and the view that he took was that the word due implies or conveys different meanings in the juxtaposition in which it is used in the two parts of the same clause. The word due in the first part of the clause must mean outstanding at the relevant date. When it occurs in the expression having become due in the later part of the clause, it means that the event which brought the debt into existence occurred and also it became payable, meaning thereby that its payment could have been enforced against the company, within twelve months before the relevant date, that is, the date of the order of binding up. Three specific conditions are prescribed in the clause and all the three must co-exist and be satisfied in respect of any particular debt for which priority is claimed the three conditions are: (1) debt of the kind mentioned in the clause must be outstanding on the relevant date; (2) the debt must have become due, in the sense that it must have been incurred at anytime within twelve months next before the relevant date, and (3) the debt must have become payable at any time within twelve months next before the relevant date. The main challenge on behalf of the taxation authorities, both Sales-Tax and

Income-Tax authorities, is to this interpretation, placed by Mr. Justice D.A. Desai, J. in the words date and due and payable the question that we have to ask ourselves is whether the splitting up of the words due and payable occurring in the phrase due and payable towards the end of Section 530(1)(a) is in accordance with the legal principles laid down by several decisions of the different courts.

...

9. That this is the only way to interpret the words due and payable is borne out by the decision of the Supreme Court in *Union of India v. Raman Iron Foundry*. In that case Bhagwati, J., delivering the judgment of the Supreme Court observed in the context of the phrase recovery of sums due and said-

Now a sum would be due to the purchaser when there is an existing obligation to pay it in praesenti. It would be profitable in this connection to refer to the concept of a debt, for a sum due is the same thing as a debt due the classical definition of debt is to be found in *Webb v. Stenlon* (1883) 11 QBD 518 where Lindley, L.J., said.... A debt is a sum of money which is now payable or will become payable in the future by reason of a present obligation. There must be debitum in praesenti; solvendum may be in praesenti or in futuro-that is immaterial. There must be an existing obligation to pay a sum of money now or in future.

Then the passage from the decision of the Supreme Court of California in *People v. Arguelh* (supra) which we have set out hereinabove as approved by the Supreme Court in *Kesoram industries v. Commissioner of wealth-tax* (supra) was cited and after citing that passage, Bhagwati, J., has observed-

This passage indicates that when there is an obligation to pay a sum of money at a future date, it is a debt owing but when the obligation is to pay a sum of money in praesenti it is a debt due. A sum due would, therefore, mean a sum for which there is an existing obligation to pay in praesenti, or in other words, which is presently payable.

It is in this context that we have to consider the schemes of the Income-Tax Act and the Sales-Tax Act to ascertain when Income-Tax under the Indian Income-Tax Act or Sales-Tax under the scheme of the Central Sales Tax Act or the State Sales-Tax Act can be said to be due in the sense we have now explained, that is, in the sense of a sum of money payable in praesenti or to put it in the words of the Supreme Court, a sum for which there is an existing obligation to pay a sum of money presently which in other words, is presently payable.”

(xii)2015 (1) CHN (CAL) 498 [Bhutoria Dealers Pvt. Ltd. Vs.

Allahabad Bank and Ors.] wherein the Calcutta High Court held as follows:

“...

10. In an unreported judgment rendered in case of *Sutapa Chatterjee & another v. UCO Bank & Rs*; reported in

(C.O.4051 of 2012) decided on March 12, 2013, the Co-ordinate Bench took note of the description in the first column embodied in Rule 8(2) of the Appellate Tribunal Procedural Rules and held that since no amount of debt is adjudicated to be due from a person appealing against an interlocutory order of the Tribunal, the fees prescribed in Rule 8(2) is not applicable in the followings:

“If there is a practice in vogue in the appellate tribunal of requiring pre-deposits to be made in terms of Section 21 of the Act in case of appeals filed by persons who have not been adjudged to be indebted to a bank or the like, it may owe its birth to an erroneous description in the first column of the chart that forms a part of Rule 8(2) of the Debts Recovery Appellate Tribunal (Procedure) Rules, 1994. Sub-rule (2) of Rule 8 quantifies the amounts of fee payable in respect of appeals under Section 20 of the Act. The chart in the sub-rule has to columns entitled “Amount of debt due” and “Amount of fees payable”. The more appropriate description of the first column would have been “Amount of debt claimed to be due or amount of debt due” rather than what appears now. It is elementary, however, that the rules prescribed by a subordinate legislation cannot be in excess or in derogation of the statute under which it is made. For one, if the power to make the rules is delegated by the legislature to the executive, the rules need to conform to the statute. More fundamentally, neither the rules made under a statute nor the authority to make the rules can impinge on

any right conferred by the relevant statute. Section 36 of the said Act of 1993 empowered the Central Government to make rules “to carry out the provisions of this Act”. The specific areas enumerated in Section 36(2) include “the form in which an appeal may be filed before the Appellate Tribunal under Section 20 and the fees payable in respect of such appeal” under clause (d) of the sub-section. In specifying the fees payable for filing appeals under Section 20 of the Act, the Central Government could not have implied in Rule 8(2) of the said Rules that only an appeal from a final order (or a partial final order in the sense of the order finally dealing with a part of the claim) may be maintained as the erroneous heading of the first column of the chart forming a part thereof now suggests.

In the present case, the appeal sought to be preferred by the petitioners was against an order of the relevant Debts Recovery Tribunal disallowing the petitioners' plea for cross-examining the bank's witness. As at the time of referring the appeal, no amount of debt was adjudged to be due from the petitioners or either of them to the bank under Section 19 of the Act. In neither petitioner being a person from whom any amount of debt was determined by the relevant Debts Recovery Tribunal to be due under Section 19 of the Act, the Appellate Tribunal could not have imposed the onerous condition of the appellants or either of them being required to make a pre-deposit for the proposed appeal to be entertained.””

(xiii)(2014) Cal LT 460 [Satish Tiwari and another Vs. The Authorized Officer] wherein the Calcutta High Court held as follows:

“...

In the light of the reasons given in Sajeda Khatoon and since the right of appeal is a precious right which is conferred by statute, the opportunity to exercise the right must not be curtailed by any judicial or quasi-judicial pronouncement unless the curtailment is in the statute itself. If any person aggrieved by an order of the Debts Recovery Tribunal passed under Section 17 of the Act of 2002 is permitted to carry an appeal from any order and only a class or sub-set of such persons - namely, the borrowers, including the guarantors - are singled out for the pre-deposit as a condition precedent to the appeal being received, the onerous condition should not attach to other classes of persons who have been permitted to prefer appeals under the relevant provision.

The bank does not insist that the petitioners herein are borrowers within the definition of the word in the Act of 2002. The bank says that the situation should be somewhat different for a non-party to the proceedings before the Debts Recovery Tribunal seeking to prefer an appeal from an order passed under Section 17 of the Act of 2002 and a person who had invoked Section 17 of the Act of 2002 in the first place and carries an appeal from the order passed thereon. There does not appear to be any charter to make the distinction between the classes of persons other than borrowers for the purpose of interpreting the relevant proviso to Section 18 of

the Act of 2002. The only distinction that the statute makes is between borrowers and other classes of appellants. Borrowers, including guarantors, are required to make the pre-deposit; the other classes of appellants are not required to do so.”

(xiv)2012 SCC Online Cal 9797 [Sajeda Khatoon Vs. Bank of India & Ors.] wherein the Calcutta High Court held as follows:

“Any person, not being a borrower, if could maintain an appeal without pre-deposit as contemplated under Section 21 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter be referred to as DRT Act 1993) is the issue to be decided in this application.

Before the appellate Tribunal, the petitioner contended that having regard to the nature of the impugned order passed by the learned Presiding Officer, Debt Recovery Tribunal and the status of the petitioner, there may not be any liability and hence no requirement to make any pre-deposit under Section 21 of the DRT Act, 1993.”

(xv)2011 (2) Bank Journal 621 [Surat Nagrik Sahakari Bank Ltd., Vs. Shetrunjay Co-operative Housing Society Ltd., and others] wherein the Gujarat High Court held as follows:

“...

20. As per amended Act 30 of 2004, Section 18 of the

Act, 2002 and Rule 13 of the Rules, 2002, amended with effect from 2-2-2007 read as under:

Section 18 of the Act, 2002 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 an 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 then 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".

Rule 13 of Security Interest Enforcement Rules, 2002 provides for applications and appeals under Sections 17 and 18 of the Act. Rule 13 reads as under:

"13. Fees for applications and appeals under sections 17 and 18 of the Act - (1) Every application under sub-section (1) of section 17 or an appeal to the Appellate Tribunal under sub-section (1) of section 18 shall be accompanied by a fee provided in the sub-rule (2) and such fee may be remitted through a crossed demand draft drawn on a bank or Indian Postal Order in favour of the Registrar of the tribunal or the Court as the case may be, payable at the place where the Tribunal or the Court is situated.

(2) The amount of fee payable shall be as follows:

No.	Nature of Application	Amount of fee payable
1.	Application to a Debt Recovery Tribunal under sub-section (1) of section 17 against any of the measures referred to in sub-section (4) of section 13	
(a)	Where the applicant is a borrower Rs.500 for every Rs.1 lakh and the amount of debt due is less or part thereof than Rs.10 lakhs	Rs.500 for every Rs.1 lac or part thereof
(b)	Where the applicant is a borrower and the amount of debt due is Rs.10 lacs and above	Rs.500 +Rs.250 for every Rs.1 lakh thereof or part thereof in excess of Rs.10 lacs subject to a maximum of Rs.100000

(c)	Where the applicant is an aggrieved party other than the borrower and where the amount of debt due is less than Rs.10 lakhs	Rs.125 for every Rs.1 lakh or part thereof
(d)	Where the applicant is an aggrieved party other than the borrower and where the amount of debt due is excess of Rs.10 lakhs and above	Rs.1250 + Rs.125 for every Rs.1 lakh or part thereof in subject to Rs.10 lakhs subject to a maximum of Rs.50,000/-
(e)	Any other application by any person	Rs.200
2.	Appeal to the Appellate Authority against any order passed by the Debts Recovery Tribunal under Section 17	Same fees as provided at clauses (a) to (e) of serial number of the rule

21. That after the decision of the Apex Court in the case of *Mardia Chemicals (supra)*, the Legislature amended sub-section (1) of Section 17 by adding a proviso and explanation, a remedy is provided to a person, including a borrower, who is aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by secured creditor for making an application along with prescribed fees within the prescribed time limit. Thus, erstwhile Section 17 which was held onerous, nugatory and illusory, came to be rectified and requirement of deposit at initial stage of filing application under Section 17 of the Act was done away. Therefore, the remedy and access available to an aggrieved person, including the borrower against measure undertaken by the secured creditor under Section 13(4) of the Act came

to be simplified by removing requirement of deposit of 75% of the debt amount.

22. That later on in the decision of Transcore (supra) the Apex Court in the context of challenge to Section 19(1) (as amended in 2004) of R.D.D.B. Act, 1993 held that N.P.A. Act, 2002 is an additional remedy to DRT Act, 1993 and they together constitute one remedy. That in the above Act, charging of fees for application under Section 17(1) of the N.P.A. Act was also held as valid. However, Rule 13 of the Rules, 2002 came to be inserted with effect from 02.02.2007.

31. That sub-rule (2) of Rule 13 provides for amount of fees payable on nature of application and in second column categories of the application as a borrower and the applicant as an aggrieved party other than the borrower are mentioned in clauses (a), (b), (c) and (d) and fees to be paid accordingly. It also provides application viz. any other application by any person and the above prescription of fees is mutatis mutandis applicable in case of appeal also under section 18 of the Act. Considering the provisions of sections 13, 14 and 15 of the Act, 2002 and law laid down by the Apex Court in Mardia Chemicals (supra) and Ashok Saw Mill (supra), an aggrieved person can be any person other than the borrower, as defined under Section 2(f) of the Act, 2002. If a person who is not a borrower as defined under Section 2(f) is aggrieved by any measure by secured creditor under Section 13(4) or subsequent stage of section 13(4) measure of the Act, such a person can file appeal under section 17 of the Act and further

appeal to the Appellate Tribunal under Section 18 of the Act. Subsection (1) of Section 18 refers to an aggrieved person and confers a limited right to file an appeal subject to the period of limitation and payment of prescribed fees. Therefore, even if the deposit is returned on allowing the appeal, to burden or saddle an aggrieved person other than borrower with fifty percent of the amount of debt due as claimed by secured creditor or determined by DRT cannot be a purpose of the proviso and the Legislature could not have intended or envisaged such a situation and this court cannot introduce such a concept of pre-deposit in case of a person other than the borrower. Had the intention of the Legislature to include an aggrieved person other than borrower, the word "borrower" in second proviso would have been "any person aggrieved" as found in sub-section (1) of section 18 of the Act. But, while making provisions for appeal, the Legislature has thought it fit to provide at least two different types / classes of appellants and also provided fee structure accordingly as found in rule 13 of the Rules. Therefore, provision of pre-deposit of 50% as provided in second proviso or discretion as found in third proviso by the Appellate Tribunal to reduce such an amount to not less than twenty five percent of debt referred to in second proviso cannot be made applicable to an aggrieved person other than the borrower who is affected directly or indirectly by an order under Section 17 of the Act."

(xvi)ILR 2018 (2) Kerala 1027 [Jegdev P.K. Vs. Indian Bank and

Ors.] wherein the Kerala High Court held as follows:

“...

Since both the borrowers and persons other than borrowers are permitted to prefer appeals challenging the orders under Section 17 of the Act, the second proviso to the sub-section (1) of the Section 18 can have application only to the appeals preferred by the borrowers, for, otherwise, the provision contained therein, which casts an obligation on the borrowers to make the pre-deposit, would be a condition which is impossible of performance, as far as others are concerned. The view taken by the Appellate Tribunal that it applies to third parties who are related to the borrowers is unsustainable as the provisions contained in the Act as also its scheme do not warrant such a view.”

7. Countering the submissions made by the learned counsel appearing for the petitioners, the learned counsel appearing for respective respondents submitted that if the petitioners, who are 3rd parties and the persons who had purchased the property from the borrower or the guarantor after the mortgage, knowing fully well about the existing mortgage, should not be allowed to prefer an appeal against the order passed by the Debts Recovery Tribunal as against the borrower or the guarantor without making the pre-deposit as contemplated under Section 18

of the SARFAESI Act or Section 21 of the Recovery of Debts and Bankruptcy Act. The learned counsel also submitted that there is every possibility that the borrowers and guarantors, setting up 3rd parties to file an appeal on their behalf as against the order passed by the Debts Recovery Tribunal without making the pre-deposit. Further, the learned counsel submitted that if the mortgage is prior to the date of purchase made by the 3rd party or the date on which the right accrued on the 3rd party, the said 3rd parties should make the pre-deposit as contemplated under the respective Acts.

7.1. The learned counsel appearing for the respective respondents, in support of their contention, relied upon the following judgments:

(i) Unreported judgment of the *Apex Court* dated **18.03.2011** made in *Civil Appeal No.2682 of 2011 [Narayan Chandra Ghosh Vs. UCO Bank & Ors.]* wherein the Hon'ble Supreme Court held as follows:

“...
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We have no hesitation in holding that deposit under the second proviso to Section 18(1) of the Act being a condition precedent for preferring an appeal under the said Section, the Appellate Tribunal had erred in law in entertaining the appeal without directing the appellant to comply with the said mandatory requirement.”

(ii)2013 (6) CTC 234 [State of Haryana & others Vs. Navir Singh

and other] wherein the Hon'ble Supreme Court held as follows:

“...

14. Mortgage *inter alia* means transfer of interest in the specific immovable property for the purpose of securing the money advanced by way of loan. Section 17(1)(c) of the Registration Act provides that a non-testamentary instrument which acknowledges the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extension of any such right, title or interest, requires compulsory registration. Mortgage by deposit of title-deeds in terms of Section 58(f) of the Transfer of Property Act surely acknowledges the receipt and transfer of interest and, therefore, one may contend that its registration is compulsory. However, Section 59 of the Transfer of Property Act mandates that every mortgage other than a mortgage by deposit of title-deeds can be effected only by a registered instrument. In the face of it, in our opinion, when the debtor deposits with the creditor title-deeds of the property for the purpose of security, it becomes mortgage in terms of Section 58(f) of the Transfer of Property Act and no registered instrument is required under Section 59 thereof as in other classes of mortgage. The essence of mortgage by deposit of title-deeds is handing over by a borrower to the creditor title-deeds of immovable property with the intention that those documents shall constitute security, enabling the creditor to recover the money lent.

After the deposit of the title-deeds the creditor and borrower may record the transaction in a memorandum but such a memorandum would not be an instrument of mortgage. A memorandum reducing other terms and conditions with regard to the deposit in the form of a document, however, shall require registration under Section 17(1)(c) of the Registration Act, but in a case in which such a document does not incorporate any term and condition, it is merely evidential and does not require registration.”

(iii)(2010) 6 Supreme Court Cases 193 [Eureka Forbes Limited Vs. Allahabad Bank and others] wherein the Apex Court held as follows:

“...

2. While pressing into service the definition of the word “debt” appearing in Section 2(g) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short “the Recovery Act”), it is vehemently contended before us that the Debts Recovery Tribunal (for short “the Tribunal”) lacks inherent jurisdiction to entertain and decide the claim of the Bank against the appellant. The appellant was neither a borrower nor was there any kind of privity of contract between the two. As such, money claimed from them was not a “debt” and, therefore, rigours of the recovery procedure under the provisions of the Recovery Act could not be enforced against the appellant. This is a submission which, at the first blush, appears to be sound and acceptable. But, once it is examined in some depth and following the settled

canons of law, one has to arrive only at a conclusion that the contention is without any substance and merit.

...

47. The next question of law, that we are called upon to consider, is the ambit and scope of the provisions of Section 2(g) of the Recovery Act, on which the entire case of the parties hinges. We have already noticed that the appellant has argued with great vehemence that, there was no privity of contract and they were not covered under the definition of "debt", and as such, recovery proceedings could not be initiated, much less, recovery could be effected from them under the provisions of the Act.

48. Section 2(g) of the Recovery Act reads as under:

"2. (g) 'debt' means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application;"

49. The Recovery Act of 1993 was enacted primarily for the reasons that the banks and financial institutions should be able to recover their dues without unnecessary delay, so as to avoid any adverse consequences in relation to the public

funds. The Statement of Objects and Reasons of this Act clearly states that banks and financial institutions at present, experience considerable difficulties in recovering loans and enforcements of securities charged with them. The existing procedure for recovery of dues of the Bank and the financial institutions block significant portion of their funds in unproductive assets, the value of which deteriorates with the passage of time. Introduction of similar procedure was suggested by the Tiwari Committee. The Act provided for the establishment of the Tribunals and Appellate Tribunals and modes for expeditious recovery of dues to the banks and financial institutions.

50. In this background, let us read the language of Section 2(g) of the Recovery Act. The plain reading of the section suggests that the legislature has used a general expression in contradistinction to specific, restricted or limited expression. This obviously means that, the legislature intended to give wider meaning to the provisions. Larger area of jurisdiction was intended to be covered under this provision so as to ensure attainment of the legislative object i.e. expeditious recovery and providing provisions for taking such measures which would prevent the wastage of securities available with the banks and financial institutions.

51. We may notice some of the general expressions used by the framers of law in this provision:

- (a) *any liability*;
- (b) claim as due from *any person*;

- (c) during the course of *any business activity* undertaken by the bank;
- (d) where secured or unsecured;
- (e) and lastly legally recoverable.

52. All the above expressions used in the definition clause clearly suggest that, the expression “debt” has to be given general and wider meaning; just to illustrate, the word “any liability” as opposed to the word “determined liability” or “definite liability” or “any person” in contrast to “from the debtor”. The expression “any person” shows that the framers do not wish to restrict the same in its ambit or application. The legislature has not intended to restrict to the relationship of a creditor or debtor alone. General terms, therefore, have been used by the legislature to give the provision a wider and liberal meaning. These are generic or general terms. Therefore, it will be difficult for the Court, even on cumulative reading of the provision, to hold that the expression should be given a narrower or restricted meaning. What will be more in consonance with the purpose and object of the Act is to give this expression a general meaning on its plain language rather than apply unnecessary emphasis or narrow the scope and interpretation of these provisions, as they are likely to frustrate the very object of the Act.

(iv)2011 (4) SCC 548 [Narayana Chandra Ghosh Vs. UCO Bank and

Ors.] wherein the Hon'ble Supreme Court held as follows:

“...

8. Section 18(1) of the Act confers a statutory right on a person aggrieved by any order made by the Debts Recovery Tribunal under Section 17 of the Act to prefer an appeal to the Appellate Tribunal. However, the right conferred under Section 18(1) is subject to the condition laid down in the second proviso thereto. The second proviso postulates 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. However, under the third proviso to the sub-section, the Appellate Tribunal has the power to reduce the amount, for the reasons to be recorded in writing, to not less than twenty-five per cent of the debt, referred to in the second proviso. Thus, there is an absolute bar to entertainment of an appeal under Section 18 of the Act unless the condition precedent, as stipulated, is fulfilled. Unless the borrower makes, with the Appellate Tribunal, a pre-deposit of fifty per cent of the debt due from him or determined, an appeal under the said provision cannot be entertained by the Appellate Tribunal. The language of the said proviso is clear and admits of no ambiguity. It is well-settled that when a Statute confers a right of appeal, while granting the right, the Legislature can impose conditions for

the exercise of such right, so long as the conditions are not so onerous as to amount to unreasonable restrictions, rendering the right almost illusory. Bearing in mind the object of the Act, the conditions hedged in the said proviso cannot be said to be onerous. Thus, we hold that the requirement of pre-deposit under sub-section (1) of Section 18 of the Act is mandatory and there is no reason whatsoever for not giving full effect to the provisions contained in Section 18 of the Act. In that view of the matter, no court, much less the Appellate Tribunal, a creature of the Act itself, can refuse to give full effect to the provisions of the Statute. We have no hesitation in holding that deposit under the second proviso to Section 18(1) of the Act being a condition precedent for preferring an appeal under the said Section, the Appellate Tribunal had erred in law in entertaining the appeal without directing the appellant to comply with the said mandatory requirement.

9. The argument of learned counsel for the appellant that as the amount of debt due had not been determined by the Debts Recovery Tribunal, appeal could be entertained by the Appellate Tribunal without insisting on pre-deposit, is equally fallacious. Under the second proviso to sub-section (1) of Section 18 of the Act the amount of fifty per cent, which is required to be deposited by the borrower, is computed either with reference to the debt due from him as claimed by the secured creditors or as determined by the Debts Recovery Tribunal, whichever is less. Obviously, where the amount of debt is yet to be determined by the Debts

Recovery Tribunal, the borrower, while preferring appeal, would be liable to deposit fifty per cent of the debt due from him as claimed by the secured creditors. Therefore, the condition of pre-deposit being mandatory, a complete waiver of deposit by the appellant with the Appellate Tribunal, was beyond the provisions of the Act, as is evident from the second and third proviso to the said Section. At best, the Appellate Tribunal could have, after recording the reasons, reduced the amount of deposit of fifty per cent to an amount not less than twenty five per cent of the debt referred to in the second proviso. We are convinced that the order of the Appellate Tribunal, entertaining appellant's appeal without insisting on pre-deposit was clearly unsustainable and, therefore, the decision of the High Court in setting aside the same cannot be flawed."

(v) Unreported judgment of this Bench dated **07.09.2018** made in ***W.P.No.21560 of 2014 [K.Kalpna Vs. 1.The Authorized Officer, State Bank of India, SARB, No.43, Montith Road, Egmore, Chennai - 600 008 and 5 others]*** wherein we have held as follows:

"...

2. According to the petitioner, she is a third party said to be the owner of the property, which was mortgaged with the 1st respondent- bank.

3.1. It is the case of the petitioner that she purchased an extent of 2400 sq.ft. of land out of 4800 sq.ft. by a sale

deed dated 22.05.2004 from one Swarnalatha, Power of Attorney Holder of Vincent Selvasekar. The said Selvasekar had mortgaged the property with Tamil Nadu Thozhil Co-operative Bank Limited on 03.10.2003 by way of depositing title deeds and the said Swarnalatha had discharged the loan with the bank on 27.04.2004 and released the original title deeds. The said property was lying on the eastern side of the entire plot. Thereafter, Swarnalatha sold the remaining extent of 2400 sq.ft. to one Jayasri under the sale deed dated 05.05.2004.

3.2. Further, according to the petitioner, the respondent-bank pasted a possession notice dated 30.04.2011 on the compound wall of her property. Thereafter, the petitioner purchased the remaining extent from Jayasri on 27.05.2011. Thereafter, she filed a suit in O.S.No.89 of 2011 on the file of Sub Court, Tambaram, for declaration of her title. Subsequently, the bank issued a sale notice dated 15.07.2011 and the petitioner challenged the said notice by way of S.A.No.241 of 2011, which was closed by an order dated 18.08.2011. Thereafter, the respondent-bank issued the impugned possession notice dated 17.07.2012. Challenging the same, the petitioner has filed S.A.No.271 of 2012 before the Debts Recovery Tribunal-III, Chennai.

4. The Debts Recovery Tribunal-III, Chennai, by order dated 18.06.2013, dismissed the Securitisation Appeal finding that the petitioner has no right to challenge the measures taken by the secured creditor against the borrower for the reason that after the issuance of Section 13(2) notice and

without written consent of the secured creditor knowing fully well about the existence of the mortgage, the petitioner has purchased the property.

5.Challenging this order, the petitioner has filed an appeal in AIR (SA) No.520 of 2013 before the Debts Recovery Appellate Tribunal, Chennai. By order dated 16.01.2014, the Debts Recovery Appellate Tribunal, granted time to the petitioner to pay the requisite court fee and also filed all translated copies. Subsequently, at the request made by the learned counsel for the petitioner, by proceedings dated 03.03.2014, the Debts Recovery Appellate Tribunal granted time till 28.04.2014 to the petitioner to file the waiver application. Thereafter, the petitioner filed an application under section 18(1) of the SURFEASI Act read with Section 19(25) Recovery of Debts Due To Banks & Financial Institutions Act, 1993 to recall the order dated 03.03.2014 and hear the appeal in AIR (SA) No.520 of 2014 on merits.

6.The Debts Recovery Appellate Tribunal, by order dated 05.05.2014, returned the application as not maintainable in view of the fact that the petitioner had sought for time for filing the waiver application. Challenging this order, the petitioner has filed this writ petition.

7.The learned counsel appearing for the petitioner submitted the petitioner is neither a borrower nor a guarantor and therefore, there is no necessity for filing any waiver application before the Debts Recovery Appellate Tribunal.

8. On a reading of Section 18 of the SURFEASI Act, it is clear that any person aggrieved, by any order passed by the Debts Recovery Tribunal under section 17, may prefer an appeal alongwith such fee, as may be prescribed to the Appellate Tribunal within 30 days on depositing 50% of the amount of debt due from him, as claimed by the secured creditor or determined by the Debts Recovery Appellate Tribunal, whichever is less with the appellate tribunal. The 3rd proviso to section 18 says that for the reasons to be recorded in writing, the appellate tribunal may reduce the amount to not less than 25% of the debt referred to in the second proviso.

9. When the petitioner has challenged the order passed by the Debts Recovery Tribunal as per section 18 of the Act, it is mandatory on the part of the petitioner to pay the pre-deposit amount. If the petitioner seeks to apply the third proviso to section 18 for reduction of the pre-deposit amount to 25% , she has to file waiver application.

10. The ratio laid down in the judgment reported in 2011(4) SCC 548 [Narayan Chandra Ghosh v. UCO Bank and others] applies to the present case.

11. Since as per section 18 any person aggrieved over the order passed by the Debts Recovery Tribunal may file an appeal before the Debts Recovery Appellate Tribunal, there should be compliance of pre-deposit as contemplated in the said section.

12. In these circumstances, we do not find any reason to interfere with the order passed by the Debts Recovery

Appellate Tribunal . The Writ Petition is devoid of merits and the same is dismissed. The petitioner is granted one week time from the date of receipt of a copy of this order to file waiver application before the Debts Recovery Appellate Tribunal, Chennai.”

(vi) Unreported judgment of the *Division Bench of this Court dated 26.08.2016* made in *W.A.No.267 of 2012 [Axies India Workers' Union (Regd. No.CPT/952) rep by its Secretary, 3, Kambar Street, Gandhi Nagar, Sriperumbudur, Kancheepuram District Vs. 1.The Government of Tamil Nadu rep by its Principal Secretary to Govt., Labour & Employment Department, Fort St.George, Chennai - 600 009 and 3 others]* wherein the Division Bench held as follows:

“...

12. Even from a cursory look of the decision referred to supra the settled position is that a challenge cannot be made in respect of consequential order without challenging the basic order/statutory provision on the basis of which the concerned order is passed.”

(vii) Unreported judgment of this Bench *dated 26.09.2018* made in *W.P.No.25155 of 2018 [Tamil Nadu Cooperative Marketing Federation Ltd., rep by its Secretary, No.91, St.Marys Road, Chennai - 600 018 Vs. The Registrar, Debt Recovery Appellate Tribunal, Chennai and 20*

others] wherein we have held as follows:

“...

8. When the 2nd respondent has obtained a decree against the borrowers, the rights of the petitioner in intervening in the proceedings itself is questionable. The 2nd respondent is the secured creditor, who got every right to recover the outstanding amounts from the defaulting borrowers. Since the petitioner has filed an appeal before the Debt Recovery Appellate Tribunal, we are not giving any finding with regard to the rights of the petitioner.

9. So far as the properties mortgaged with the 2nd respondent are concerned, they have every right to proceed against the said properties. The pre-requisite condition for entertaining of appeal is that the appellant has to deposit 50% of the amount as determined by the Debts Recovery Tribunal or as claimed by the secured creditor whichever is less. The Appellate Tribunal has power to reduce the amount of deposit to not less than 25% for which reasons have to be recorded in writing. The requirement of pre-deposit under sub-section (1) of Section 18, is mandatory and there is no reason whatsoever for not giving full effect to the provisions contained in section 18 of the Act. The right to appeal is neither an absolute right nor an inherent of natural justice. The right to appeal is a statutory right and it can be circumscribed by the condition in its grant. The right of appeal is a creature of the statute. Without a statutory provision, creating such a right, persons aggrieved is not entitled to file an appeal. The legislature while granting right of appeal can impose conditions for

exercise of such right. In the absence of any special reasons, there powers to be no legal or constitutional impediment to the imposition of such conditions. Once an appeal under section 18 is filed, the applicant will have to comply with the order passed by the Debt Recovery Appellate Tribunal as regards the compliance to the pre-deposit condition.”

(viii) Unreported judgment of the *Division Bench of this Court* dated **03.02.2015** made in **W.P.No.31904 of 2014 [Mohd. Ismail Haroon Vs. The Debts Recovery Appellate Tribunal and Anr.]** wherein the Division Bench held as follows:

“... ”

27. That apart, this Court pertinently points out that 'Right to Appeal' is a statutory right and it can be circumscribed by the condition in the grant. After all, the purpose of Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act is obviously to ensure the deposit of 'Debt' due from the Appellant in case he prefers to file an Appeal against the order made or deemed to have been made by a Tribunal under the Act.

28. Moreover, the aim of Section 21 of the Act is to keep in balance the Right of Appeal, which is conferred upon a person who is affected by the order of the Tribunal directing the recovery of the 'Debt' due and at the same time to protect the Bank to have speedy recovery of the debt due

and moreso, to prevent the delay in effecting the recovery in question.

29.It is to be noted that under Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, when an Appeal is preferred by any person, he is required to deposit 75% of the due amount to the Bank or Financial Institutions for the appeal to be registered. Indeed, the Right of Appeal being a vested right could not be taken away by the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. However, for ordering waiver of pre-deposit, sufficient/special reasons/ necessary materials ought to be placed before the Appellate Tribunal. The discretion contemplated under Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act cannot be exercised as a matter of routine or in a casual fashion. The power to waive the deposit would by implication also include the power to extend the time for deposit. Of course, the relaxation power is given to the Appellate Tribunal for reasons to be recorded in writing provided 'Good Cause' or 'Sufficient Cause' or special reasons are shown to waive or reduce the amount to be deposited under Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, in the considered opinion of this Court.

30.It is to be borne in mind that the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 was promulgated with a avowed object of providing expeditious adjudication and recovery of public dues with a view to serve public/societal interest. Also that, Section 21 of the Act is

similar to the provision of Sales Tax and Income Tax. Therefore, there is no unfairness or capriciousness in Section 21 of the Act, as opined by this Court.

31. Be that as it may, as far as the present case is concerned, on the date of filing the Appeal No.1 of 2011 on the file of the Debts Recovery Tribunal III, Chennai, i.e., on 02.04.2012 a sum of Rs.69,11,905/- was due to be paid by the Petitioner. It appears that no amount was paid after the Borrowal. Undoubtedly, an 'Appeal' is a creation of statute. In fact, the 1st Respondent/Appellate Tribunal had passed a conditional order in I.A.No.607 of 2014 (in Waiver Application) on 01.10.2014, by directing the Petitioner to deposit a sum of Rs.34,55,953/- before it on or before 31.12.2014 failing which, the said Interlocutory Application would stand automatically dismissed. In fact, the 1st Respondent, while dismissing I.A.No.607 of 2014 on 01.10.2014, had observed that no grounds were made by the Petitioner either for reduction of pre-deposit to that of 25% of the amount due nor a complete waiver. Suffice it for this Court to point out that the 1st Respondent/Appellate Tribunal had considered the relevant facts and circumstances of the case and passed the impugned order in question. As such, there is no infirmity/irregularity or patent illegality in the conditional order passed in I.A.No.607 of 2014 dated 01.10.2014 by the 1st Respondent/Appellate Tribunal. Per contra, the said order is flawless. Consequently, the Writ Petition is devoid of merits.”

(ix) Unreported judgment of the *Division Bench of the Gujarat High Court* dated **18.10.2011** made in *Special Civil Application No.15547 of 2011 [Biren Harish Vakharia & 2 Vs. State Bank of India & 2]* wherein the Division Bench held as follows:

“...

5. Thus, the short question for consideration is whether the Appellate Tribunal has the jurisdiction to adjudicate the issue as to whether the appellant is a borrower or not at the stage of deciding application for waiver of pre-deposit so as to make the second and third proviso to Section 18 come into play. To put it differently whether an appeal can be entertained without a pre-deposit on a limited issue as to whether the appellant is a borrower or any other aggrieved person other than a borrower ?

6. We are afraid to accept this broad contention as canvassed by the learned counsel for the petitioners. The language of Section 18 is plain and unambiguous. Section 18 which provides for appeal to the Appellate Tribunal 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 an 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."

7. Section 18 Clause (1) of the Securitisation Act confers a statutory right on a person aggrieved by any order made by a DRT under Section 17 of the Act to prefer an appeal to the Appellate Tribunal. However, the right conferred under Section 18(1) is subject to the condition laid down in the second proviso thereto. The second proviso postulates that no appeal shall be entertained unless a 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 DRT, whichever is less. However, under the third proviso to the sub-section, the Appellate Tribunal has the power to reduce the amount, for the reasons to be recorded in writing, to not less than twenty-five per cent of the debt, referred to in the second proviso. Thus, there is an absolute bar to the entertainment of the

appeal under Section 18 of the Act unless the condition precedent, as stipulated, is fulfilled.

8. Any adjudication on the issue as to whether the appellant is a borrower within the meaning as defined under Section 2(f) of the Act at that stage will amount to entertaining an appeal ignoring or circumventing the mandatory nature of second and third proviso to Section 18. We are of the view with all humility at our command that this issue as to whether the appellant is a borrower or not and more particularly when it is a disputed question of fact raised before the tribunal and rejected cannot be gone into unless and until the appeal is entertained. While deciding an application of pre-deposit, this question cannot be determined in our humble view because it will have a far reaching effect and would render the entire object of the Act more particularly Section 18 illusory.

9. We are in complete agreement with the findings recorded by Appellate Tribunal in its impugned order dated 22.09.2011, wherein, the Appellate Tribunal has rightly observed that how far the Appellate Tribunal can go into this aspect at this stage.

10. We may quote with profit a ruling of the Hon'ble Supreme Court in the case of *Narayn Chandra Ghosh versus UCO Bank and others* reported in (2011) 4 SCC 548.

In paragraph 8, Hon'ble Supreme Court held as under :

8. It is well-settled that when a Statute confers a right of appeal, while granting the right, the Legislature can impose conditions for the exercise of

such right, so long as the conditions are not so onerous as to amount to unreasonable restrictions, rendering the right almost illusory. Bearing in mind the object of the Act, the conditions hedged in the said proviso cannot be said to be onerous. Thus, we hold that the requirement of pre-deposit under sub-section (1) of Section 18 of the Act is mandatory and there is no reason whatsoever for not giving full effect to the provisions contained in Section 18 of the Act. In that view of the matter, no court, much less the Appellate Tribunal, a creature of the Act itself, can refuse to give full effect to the provisions of the Statute. We have no hesitation in holding that deposit under the second proviso to Section 18(1) of the Act being a condition precedent for preferring an appeal under the said Section, the Appellate Tribunal had erred in law in entertaining the appeal without directing the appellant to comply with the said mandatory requirement."

10.1 In paragraph 9, Hon'ble Supreme Court held as under :

'9.Therefore, the condition of pre-deposit being mandatory, a complete waiver of deposit by the appellant with the Appellate Tribunal, was beyond the provisions of the Act, as is evident from the second and third proviso to the said Section. At best, the Appellate Tribunal could have, after recording the reasons, reduced the amount of deposit of fifty per cent to an

amount not less than twenty five per cent of the debt referred to in the second proviso. We are convinced that the order of the Appellate Tribunal, entertaining appellant's appeal without insisting on pre-deposit was clearly unsustainable and, therefore, the decision of the High Court in setting aside the same cannot be flawed."

...

12. In the above view of the matter and for the reasons recorded in the judgment, we do not find any error must less an error of law said to have been committed by DRAT in passing the impugned order dated 22nd September, 2011 directing the petitioners to deposit the amount of Rs.5 crores (Rupees five crores) as against total amount of debit due to the tune of Rs.52 crores and odd by way of pre-deposit before entertaining the appeal warranting any interference at our hands in this petition. The petition is, therefore, rejected with no order as to costs."

(x)Unreported judgment of the *Division Bench of this Court* dated **23.01.2018** made in **W.P.No.16783 of 2017 [Karnataka Wire and Metal Corporation, rep by its Prop. Benjamin Thejesvi, 5th Mile, Hennur Road, Kalyam Nagar, Bangalore - 560 043 Vs. 1.Kempegowda and 7 others]** wherein the Division Bench held as follows:

"...

14. While dealing with similar Section under SARFAESI

Act, viz., Section 18 (1) of the SARFAESI Act, in a case reported in (2011) 4 SCC 548 {Narayan Chandra Ghosh ..vs.. UCO Bank}, the Hon'ble Supreme Court held that the provision of Section 18, more particularly, 2nd and 3rd proviso thereto, are mandatory in nature and Debt Recovery Appellate Tribunal has no power to grant full waiver of deposit. Relevant paragraphs of the above Judgment are extracted hereunder:-

7. Section 18(1) of the Act confers a statutory right on a person aggrieved by any order made by the Debts Recovery Tribunal under Section 17 of the Act to prefer an appeal to the Appellate Tribunal. However, the right conferred under Section 18(1) is subject to the condition laid down in the second proviso thereto. The second proviso postulates 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. However, under the third proviso to the subsection, the Appellate Tribunal has the power to reduce the amount, for the reasons to be recorded in writing, to not less than twenty-five per cent of the debt, referred to in the second proviso. Thus, there is an absolute bar to the entertainment of an appeal under Section 18 of the Act unless the condition precedent, as stipulated, is fulfilled. Unless the borrower makes, with the Appellate Tribunal, a pre-

deposit of fifty per cent of the debt due from him or determined, an appeal under the said provision cannot be entertained by the Appellate Tribunal. The language of the said proviso is clear and admits of no ambiguity.

8. It is well-settled that when a statute confers a right of appeal, while granting the right, the legislature can impose conditions for the exercise of such right, so long as the conditions are not so onerous as to amount to unreasonable restrictions, rendering the right almost illusory. Bearing in mind the object of the Act, the conditions hedged in the said proviso cannot be said to be onerous. Thus, we hold that the requirement of pre-deposit under sub-section (1) of Section 18 of the Act is mandatory and there is no reason whatsoever for not giving full effect to the provisions contained in Section 18 of the Act. In that view of the matter, no court, much less the Appellate Tribunal, a creature of the Act itself, can refuse to give full effect to the provisions of the statute. We have no hesitation in holding that deposit under the second proviso to Section 18(1) of the Act being a condition precedent for preferring an appeal under the said section, the Appellate Tribunal had erred in law in entertaining the appeal without directing the appellant to comply with the said mandatory requirement.

9. The argument of the learned counsel for the appellant that as the amount of debt due had not been determined by the Debts Recovery Tribunal, the appeal

could be entertained by the Appellate Tribunal without insisting on pre-deposit, is equally fallacious. Under the second proviso to sub-section (1) of Section 18 of the Act the amount of fifty per cent, which is required to be deposited by the borrower, is computed either with reference to the debt due from him as claimed by the secured creditors or as determined by the Debts Recovery Tribunal, whichever is less. Obviously, where the amount of debt is yet to be determined by the Debts Recovery Tribunal, the borrower, while preferring an appeal, would be liable to deposit fifty per cent of the debt due from him as claimed by the secured creditors. Therefore, the condition of pre-deposit being mandatory, a complete waiver of deposit by the appellant with the Appellate Tribunal, was beyond the provisions of the Act, as is evident from the second and third provisos to the said section. At best, the Appellate Tribunal could have, after recording the reasons, reduced the amount of deposit of fifty per cent to an amount not less than twenty-five per cent of the debt referred to in the second proviso. We are convinced that the order of the Appellate Tribunal, entertaining the appellant's appeal without insisting on pre-deposit was clearly unsustainable and, therefore, the decision of the High Court in setting aside the same cannot be flawed. (emphasis supplied)

15. In the light of the above decision by the Hon'ble Supreme Court, the impugned order dated 07.06.2017

directing the petitioner to deposit Rs.6,00,000/-, out of the presumed debt amount of Rs.20.73 lakhs, is justifiable.

16. When a similar argument was canvassed before the Hon'ble Division Bench of Bombay High Court, in the case of R.G.Dalpatrai and Co. ..vs.. Bank of Baroda, the same was emphatically repelled. Relevant paragraph reads thus:-

5. In our view, it will not be possible for us to interfere with the impugned order passed by the DRAT while exercising our writ jurisdiction under Article 226 of the Constitution of India. It is a well settled position in law that the amount which is received by the Bank in the sale of the immovable property cannot be adjusted in the application for waiver of pre-deposit, unless the sale is accepted and confirmed by the borrower. In the present case, Petitioner has challenged the said sale after taking out separate application. We are, therefore, not inclined to entertain this Petition. Petition is dismissed in limine.? (emphasis supplied)

17. Entire amount whether received by the bank or not and that there was no due, to the bank, as claimed by the petitioner, cannot be gone into, in this Writ Petition, filed under Article 226 of the Constitution of India. It would be appropriate for the petitioner to approach the Debt Recovery Appellate Tribunal and, to put forth all the facts on record and the contentions raised herein and agitate the same, before the Debt Recovery Appellate Tribunal. For the above said reasons, the order passed by the Debt Recovery Appellate Tribunal is sustained.

18. In the result, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. For making pre-deposit, four weeks time is granted from the date of receipt of a copy of the order.”

(xi)AIR 2008 Delhi 51 [Kamal Gupta Vs. Bank of India] wherein the Division Bench of Delhi High Court held as follows:

“...

13. However, Section 59A of the Transfer of Property Act 1882 reads as under:

59A. Reference to mortgagors and mortgagees to include persons deriving title from them: Unless otherwise expressly provided, references in this Chapter to mortgagors and mortgagees shall be deemed to include references to persons deriving title from them respectively.

14. The said section therefore clarifies that reference to mortgagor and mortgagee would include persons deriving title from them. A conjoint reading of the aforesaid provisions of the Contract Act, 1872, Transfer of Property Act, 1882 and the Act make it clear that the word 'borrower' as defined in Section 2(f) would mean the original borrower and after his death his legal representatives. The legal representatives to the extent they have inherited the estate from the deceased become a 'borrower' for the purpose of Section 2(f) of the Act. The legal representatives step into the shoes of the predecessor in title who had mortgaged the property (refer : Samarendra Nath Sinha and Anr. v. Krishna

Kumar Nag). The present case is not one of casus omissus but one where on interpretation of the relevant provisions the word 'borrower' as used in Section 2(f) and Section 13(2) would include not only the original mortgagor but also his legal representatives. There is no presumption of casus omissus and language permitting, Courts should avoid creating a casus omissus. [See: Ramesh Mehta v. Sanwal Chand Singhvi (supra)]”

8. Based on the submissions made by the learned counsel on either side, the 3rd parties, who have filed appeals either under Section 18 of the SARFAESI Act or under Section 21 of the Recovery of Debts and Bankruptcy Act, can be classified into two categories. The first category of 3rd parties are those, who had purchased the property and who derived/accrued title or right or tenancy right over the property in question prior to the date of mortgage in favour of the respondent - Bank. The second category of 3rd parties are those, who had purchased the property or derived/accrued title or right or tenancy right in the property in question after the date of mortgage in favour of the respondent - Bank. It cannot be disputed that the provisions of Section 18 of the SARFAESI Act and Section 21 of the Recovery of Debts and Bankruptcy Act do not exempt the 3rd parties from making the pre-deposit. In other words, there is no specific provision under the said

Acts exempting the 3rd parties from making the pre-deposit for preferring an appeal before the Debt Recovery Appellate Tribunal. If the borrower or the guarantor, who had mortgaged the properties as collateral security with the Bank and if they have filed an appeal as against the proceedings initiated against them before the Debt Recovery Appellate Tribunal, they should make the pre-deposit as contemplated under the said Acts. However, it is possible that a borrower or a guarantor, who had mortgaged his property with the Bank, in order to circumvent making pre-deposit as contemplated under the said provisions, can set up a 3rd party to file an appeal before the Debt Recovery Appellate Tribunal as against the order passed by the Debts Recovery Tribunal. If the contention of the petitioners is accepted in toto, the borrower or the guarantor will engage a 3rd party for filing an appeal to avoid making pre-deposit as contemplated under the Acts. If a 3rd party purchased the mortgaged property from the borrower or the guarantor knowing fully well about the mortgage made by them in favour of the Bank or the Financial Institutions, he cannot be treated on par with the person who had purchased the property or got title and right over the said property much prior to the date of mortgage. If the property in question was purchased by a 3rd party after the date of mortgage that would establish that the said alienation was made only to defraud the Bank

or the Financial Institution. In some cases, even after initiation of the proceedings under the SARFAESI Act and the Recovery of Debts and Bankruptcy Act, the 3rd parties had purchased the property from the borrower or the guarantor. We are of the view that no indulgence should be shown to such alienees in making the pre-deposit.

9. It is settled position that by making the pre-deposit before the Debt Recovery Appellate Tribunal, the appellant is not giving the said amount to the Bank or the Financial Institution towards the loan account. The pre-deposit made by the appellant is refundable and the appellant can always get refund of the amount after the disposal of the appeal. In spite of the said position, the petitioners, who are 3rd parties, are claiming total waiver of the pre-deposit.

10. The Court cannot lose sight of the fact that the Bank is a Trustee of public funds. It cannot compromise the public interest for benefiting private individuals. Those who take loans and avail financial facilities from the Bank are duty bound to repay the amount strictly in accordance with the terms of the contract. Any lapse in such matters has to be viewed seriously and the Bank is not only entitled, but also duty bound to recover the amount by adopting all legally permissible methods. The Parliament

enacted the Act because it was found that legal mechanism available till then was wholly insufficient for recovery of the outstanding dues of the Banks and Financial Institutions. It is also well settled that when a Statute confers a right of appeal, while granting the right, the Legislature can impose conditions for the exercise of such right, so long as the conditions are not so onerous as to amounting to unreasonable restrictions, rendering the right almost illusory.

11. Section 2(1)(f) of the SARFAESI Act defines “borrower”, which includes the guarantor. Therefore, it goes without saying that obligation creates on the person, who has availed loan from the Bank or the Financial Institution and the 2nd proviso to Section 18(1) of the SARFAESI Act to deposit 50% of the debt amount to avail the appeal remedy before the Appellate Tribunal also applies equally to the guarantor and no difference or distinction could be made between a debtor and a guarantor, while entertaining the appeal under Section 18(1) of the SARFAESI Act.

12. As per Section 59 of the Transfer of Property Act, the mortgagors and mortgagees include persons deriving title from them and unless otherwise expressly provided, the term, the mortgagors and mortgagees shall be deemed to include reference to persons deriving title from them

respectively. The said Section refers to mortgagors and mortgagees, which would include persons deriving title from them. From the conjoint reading of the Contract Act and the Transfer of Property Act, it is clear that the word “borrower” as defined in Section 2(1)(f) of the SARFAESI Act would mean the original borrower and after his death, his legal representatives. The legal representatives to the extent they have inherited the estate from the deceased who became a borrower for the purpose of Section 2(1)(f) of the Act. The legal representatives step into the shoes of the predecessor in title who had mortgaged the property. Therefore, the word “borrower” as used in Section 2(1)(f) and Section 13(2) would include, not only the original mortgagor, but also his legal representatives.

13. The SARFAESI Act and the Recovery of Debts and Bankruptcy Act were enacted primarily for the reason that the Banks and Financial Institutions should be able to recover their dues without unnecessary delay, so as to avoid any adverse consequences in relation to the public funds. The Statement of Objects and Reasons of this Act clearly states that the Banks and Financial Institutions at present experience considerable difficulties in recovering the loans and enforcements of securities charged with them.

The existing procedure for recovery of dues of the Banks and Financial Institutions block significant portion of their funds in unproductive assets, the value of which deteriorates with passage of time.

14. The definition of “debt” under Section 2(g) of the Recovery of Debts and Bankruptcy Act, would cover any liability secured or unsecured and thus the Debts Recovery Tribunal is entitled to entertain a prayer of a mortgagee for recovery of debt. The plain reading of Section 2(g) of the Act suggests that the Legislature has used a general expression in contradistinction to specific, restricted or limited expression. This obviously means that the Legislature intended to give wider meaning to the provisions. Larger area of jurisdiction was intended to be covered under this provision so as to ensure attainment of the Legislature object (i.e.) expeditious recovery and providing provisions for taking such measures which would prevent the wastage of securities available with the Banks and Financial Institutions.

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15. In the unreported judgment dated 07.09.2018 made by us in W.P.No.21560 of 2014, cited supra, it was the case of the petitioner therein that she purchased the land by a Deed of Sale dated 22.05.2004 from one Swarnalatha, Power of Attorney holder of one Vincent Selvasekar. The said

Selvasekar had mortgaged the property with the Bank on 03.10.2003 by way of deposit of Title Deeds. Subsequently, the Bank issued a Sale Notice dated 15.07.2011 and the petitioner challenged the said notice by way of an appeal in S.A.No.241 of 2011 before the Debts Recovery Tribunal, which was closed by an order dated 18.08.2011. Thereafter, the respondent - Bank issued the impugned possession notice dated 17.07.2012. Challenging the same, the petitioner filed an appeal in S.A.No.271 of 2012 before the Debts Recovery Tribunal - III, Chennai, which was dismissed by the Tribunal on 18.06.2013, finding that the petitioner has no right to challenge the measures taken by the secured creditor against the borrower for the reason that after the issuance of Section 13(2) notice and without written consent of the secured creditor, knowing fully well about the existence of the mortgage, the petitioner had purchased the property. Challenging the said order, the petitioner filed an appeal before the Debt Recovery Appellate Tribunal, wherein she was asked to make pre-deposit of 25% of the outstanding amount. When the petitioner had purchased the property after the date of mortgage and also after the issuance of Section 13(2) notice and without the written consent of the secured creditor, knowing fully well about the existence of the mortgage, we dismissed the Writ Petition finding that the petitioner is liable to make pre-deposit under Section 18 of the SARFAESI Act. In that case, it is clear that the petitioner had purchased the

property after the issuance of Section 13(2) notice. The conduct of the borrower and the petitioner therein was to prevent the Bank from realizing the loan amount. Having purchased the property after the initiation of the SARFAESI proceedings, the petitioner therein was not shown any indulgence in making the pre-deposit. If any indulgence is shown to such parties, the Banks and Financial Institutions cannot realize the loan amount which is a public money. The above facts in W.P.No.21560 of 2014 would establish that the borrower had sold the property to a 3rd party (the petitioner therein) after the issuance of Section 13(2) notice to defraud the Bank and the said 3rd party cannot be termed as a *bona fide* purchaser and shown any concession from making pre-deposit. In such circumstances, relying upon the judgment of the Hon'ble Supreme Court reported in **2011 (4) SCC 548 [Narayana Chandra Ghosh Vs. UCO Bank and Ors.]**, cited supra, we held that even though the petitioner therein is a 3rd party, is liable to make the pre-deposit.

16.If a party had purchased a property prior to the date of mortgage and if his property was mortgaged with the Bank without his knowledge and the proceedings initiated before the Debts Recovery Tribunal were also without his knowledge, in such cases, the original owner, who has got title and right over the property, may prefer an appeal before the Debt Recovery

Appellate Tribunal without making any pre-deposit. But, even in that case, the 3rd party, the owner of the property should establish before the Debt Recovery Appellate Tribunal that he became the owner of the property prior to the date of mortgage and his property has been mortgaged with the Bank without his knowledge. Without satisfying the Appellate Tribunal with regard to the ownership of the property, the said 3rd party cannot be permitted to prefer an appeal without making the pre-deposit. In other words, unless the purchase made by the 3rd party is prior to the date of mortgage and subsequently, his property has been mortgaged with the Bank, the other 3rd parties are liable to make the pre-deposit before the Debt Recovery Appellate Tribunal under Section 18 of the SARFAESI Act or Section 21 of the Recovery of Debts and Bankruptcy Act.

17. In the unreported judgment of the Delhi High Court made in W.P.(Civil)No.4237 of 2018 dated 12.12.2018, the Division Bench of the Delhi High Court observed that the only interpretation given to the 2nd proviso to Section 18(1) establish that if a person other than a borrower or guarantor files an appeal before the Appellate Tribunal, then the stipulation of pre-deposit of 50% (25%) of the amount due from him as

claimed by the secured creditor or determined by the Debts Recovery Tribunal shall not be insisted upon.

18. Since the Banks are dealing with the public money and who are also trustees of the public funds, any lapse in such matters have to be viewed seriously and the Bank is not only entitled, but also duty bound to recover the amount by adopting all legally permissible method. If a borrower or a guarantor sells his property to some 3rd party after mortgaging his property with the Bank, the said borrower or the guarantor or purchaser should not be shown any indulgence in any manner whatsoever. Therefore, we are of the view that though the 2nd proviso to Section 18(1) refers to the word "borrower", the words "any person aggrieved" mentioned in Section 18(1) of the SARFAESI Act would also include the 3rd parties who had purchased the property or derived/ accrued title or right or tenancy right after the date of mortgage. This aspect was not considered by the Division Bench of the Delhi High Court in the above referred judgment. Therefore, the 3rd parties, who had purchased the property after the date of mortgage, should also be treated on par with the borrower and the guarantor. We are not inclined to take a liberal view in granting exemption to all the 3rd parties, since there is every possibility of misusing the exemption from making the pre-deposit in toto to gain undue

advantage. In these circumstances, the ratio laid down by the Delhi High Court in W.P.(Civil)No.4237 of 2018 cannot be applied to all the cases.

19.The object of the enactment of the SARFAESI Act and the Recovery of Debts and Bankrupt Act, 1993 were for expeditious recovery of loans of Banks and Financial Institutions. That being the case, the secured creditors (i.e.) the Banks or Financial Institutions or any consortium or group of Banks or Financial Institutions, who are taking steps to recover the outstanding loan amount from the defaulting borrower or guarantor cannot be asked to make the pre-deposit for entertaining an appeal before the Debt Recovery Appellate Tribunal. When the Banks and Financial Institutions have advanced loans to the borrowers, there will not be any justification in asking the Banks to make the pre-deposit for preferring an appeal before the Debt Recovery Appellate Tribunal. In such case, the secured creditors viz., the Banks and Financial Institutions are exempted from making the pre-deposit for preferring an appeal before the Debt Recovery Appellate Tribunal.

W.P.No.33972 of 2018:

20.So far as W.P.No.33972 of 2018 is concerned, the Writ Petition has been filed by the Oriental Insurance Company Limited, challenging the

order passed by the Debt Recovery Appellate Tribunal, Chennai, directing them to make a pre-deposit of 25% of the debt amount. The 1st respondent - Bank filed O.A.No.150 of 2011 on the file of the Debts Recovery Tribunal - II, Chennai to recover a sum of Rs.52,77,42,564/- together with future interest and for other reliefs. The Insurance Company was made as the 4th defendant in the said O.A. for the reason that the Insurance Company indemnified the Bank in respect of the insurance subject for the loss sustained as a result of insurance peril upto the policy limit (i.e.) 95% of the credit limit. Pursuant to the sanction letter given by the Bank, the Insurance Company issued a Trade Credit Single Debtor Insurance Policy covering the subject matter of "Invoicing of Purchase of ATF and spares" for the period from 25.09.2008 to 24.09.2009 for a limit of Rs.29 crores with the insured percentage of 95% of credit limit. Subsequently, on 26.09.2008, the Insurance Company incorporated amendments clarifying that the subject matter to be read as "credit facility for purchase of Spares and ATF Fuel and Ancillary Services including lease/ rental charges". Under the Composite Agreement dated 23.09.2008, the borrower created charge on the fixed assets of the Company by hypothecating the fixed assets described as Item - I in the Schedule to the O.A. Under the said Agreement, they have also hypothecated all their present and future goods and merchandise and

vehicles existing and those to be purchased, described as Items - II & III in the Schedule to the O.A.

20.1. The petitioner - Insurance Company contended that the claim against the Insurance Company cannot be construed as “debt” under the Act and the relationship between the Bank and the Insurance Company are that of the “insured (Bank)” and the “insurer (Insurance Company)” and not that of “lender” and “borrower”. The Insurance Company contended that the O.A. filed under Section 19 of the Recovery of Debts and Bankruptcy Act is neither maintainable nor the Tribunal has got jurisdiction to entertain the O.A. against them. The petitioner - Insurance Company contended that neither they have borrowed any money from the 1st respondent - Bank nor they stood as guarantor for any alleged borrowing by the borrower/2nd respondent. The petitioner - Insurance Company also contended that there is no averment in the O.A. to the effect that the Insurance Company had neither borrowed money from the Bank nor they stood as guarantor for the loan availed by the 2nd respondent. According to the petitioner, there is no “debt” as defined in Section 2(g) of the Recovery of Debts and Bankruptcy Act. However, the Debts Recovery Tribunal, by order dated 08.08.2014, held that the Insurance Company is also liable to pay the loan amount to the Bank. While deciding so, the Debts Recovery Tribunal observed that the

borrower had purchased the insurance policies and confirmed the same with the Bank, therefore, the 1st respondent - Bank has every right to recover the insurance claim from the petitioner - Insurance Company for the dues of the 2nd respondent. Challenging the order passed by the Debts Recovery Tribunal - II, Chennai, the Insurance Company filed an appeal in R.A.No.131 of 2014.

20.2. Though the appeal was filed by the Insurance Company as early as in the year 2014, in the year 2018, the Bank raised an objection before the Debt Recovery Appellate Tribunal stating that the appeal has been entertained by the Debt Recovery Appellate Tribunal without making the pre-deposit by the Insurance Company. The Insurance Company made the submission before the Appellate Tribunal that they are not liable to make any pre-deposit for the reason that they are not a “borrower” or a “guarantor” and that the relationship between the Bank and the Insurance Company is only that of a “insured” and “insurer” respectively. The petitioner has raised an issue with regard to the maintainability of the O.A. before the Debts Recovery Tribunal stating that the Insurance Company cannot be made as a defendant in the O.A., which issue is pending before the Debt Recovery Appellate Tribunal in R.A.No.131 of 2014. The petitioner- Insurance Company having issued the policies to the 2nd respondent -

borrower, they cannot be called upon to make the pre-deposit. The petitioner - Insurance Company filed I.A.No.49 of 2018 for waiver of pre-deposit, in which application the Appellate Tribunal by order dated 29.11.2018, directed them to make the pre-deposit of Rs.12.5 crores, which is 25% of the debt amount.

20.3. Since the issue with regard to the maintainability of the O.A. is pending before the Appellate Tribunal in R.A.No.131 of 2014, we refrain from advertent to any finding with regard to the said issue. When the relationship between the Bank and the Insurance Company is only that of an “Insured” and “Insurer”, the petitioner - Insurance Company cannot be called upon to make the pre-deposit. In such view of the matter, the order passed by the Debt Recovery Appellate Tribunal, Chennai in I.A.No.49 of 2018 in R.A.No.131 of 2014 is liable to be set aside. Accordingly, the same is set aside. The Debt Recovery Appellate Tribunal is directed to decide the appeal in R.A.No.131 of 2014, on merits and in accordance with law, without insisting the Insurance Company to make the pre-deposit.

C.R.P.(PD).No.792 of 2019:

21. So far as C.R.P.(PD).No.792 of 2019 is concerned, the said Civil Revision Petition has been filed by the tenant viz., The Kumbakonam Mutual

Benefit Fund Limited, challenging the order passed in I.A.No.906 of 2018 in AIR(SA).No.496 of 2018 on the file of the Debt Recovery Appellate Tribunal, Chennai, directing them to make the pre-deposit of Rs.86 lakhs, which is 25% of the loan amount. In the Civil Revision Petition, the respondents 3 & 4 are the borrowers and the 5th respondent is the auction purchaser in whose favour the property was sold in the e-auction conducted on 25.01.2018.

21.1.It is the case of the petitioner that they entered into an unregistered Lease Agreement, dated 23.10.2014, with the respondents 3 & 4, however, they were not put in possession of the property pursuant to the same by the respondents 3 & 4. Thereafter, another Lease Agreement dated 18.05.2017 was entered into between the petitioner and the respondents 3 & 4 and they were put in possession of the property pursuant to the said Agreement. Therefore, from the above, it is clear that the unregistered Lease Agreement dated 23.10.2014 was not acted upon. Since the respondents 3 & 4 committed default in repaying the loan amount to the 1st respondent - Bank, they issued a demand notice dated 26.04.2017 under Section 13(2) of the SARFAESI Act. The property was mortgaged by them in favour of the 1st respondent on 27.03.2015 and subsequently, the 1st respondent also issued possession notice dated 15.09.2017 under Section 13(4) of the Act. While so, after the issuance of the Section 13(2) notice,

the petitioner and the respondents 3 & 4 entered into a Lease Agreement on 18.05.2017. Thereafter, the 1st respondent issued a notice dated 20.04.2018 calling upon the petitioner to vacate the property, since they entered into the Lease Agreement after the issuance of Section 13(2) notice. Thereafter, the petitioner challenged the notice dated 20.04.2018 before the Debts Recovery Tribunal - II, Chennai in S.A.(SR).No.6041 of 2018. The Debts Recovery Tribunal dismissed the appeal in S.A.(SR).No.6041 of 2018, against which, the petitioner preferred an appeal in AIR(SA).No.496 of 2018 before the Debt Recovery Appellate Tribunal, Chennai along with an application in I.A.No.906 of 2018 seeking for waiver of pre-deposit. However, the Appellate Tribunal, by order dated 05.12.2018, directed the petitioner to make a pre-deposit of Rs.86 lakhs, which is 25% of the amount claimed by the 1st respondent - Bank.

21.2.Since the petitioner entered into a Lease Agreement with the respondents 3 & 4 after the initiation of the SARFAESI proceedings, the petitioner can only be treated on par with the borrower and the guarantor. Knowing fully well about the issuance of Section 13(2) notice dated 26.04.2017, the petitioner and the respondents 3 & 4 entered into a Lease Agreement on 18.05.2017. In these circumstances, no indulgence can be shown to the petitioner - tenant in making the pre-deposit for preferring an

appeal before the Debt Recovery Appellate Tribunal. The Appellate Tribunal has rightly called upon the petitioner to make a pre-deposit of Rs.86 lakhs. We do not find any error or irregularity in the order passed by the Appellate Tribunal. The Civil Revision Petition is liable to be dismissed.

21.3. An auction purchaser cannot be brought within the fold of the borrower for the reason that the auction purchaser only bid in the auction and no amount is due from the auction purchaser towards the loan account. An auction purchaser under the SARFAESI Act or under the Recovery of Debts and Bankruptcy Act, cannot be made liable to make the pre-deposit. An auction purchaser of the secured properties in an auction sale held by the creditor - Bank in exercise of power under the SARFAESI Act or under the Recovery of Debts and Bankruptcy Act does not fall within the ambit of either of the proviso to Section 18 of the SARFAESI Act or under Section 21 of the Recovery of Debts and Bankruptcy Act. Hence, the provisions of Section 18 of the SARFAESI Act and Section 21 of the Recovery of Debts and Bankruptcy Act shall not apply to the auction purchaser for preferring an appeal as against the order passed by the Debts Recovery Tribunal. Therefore, the auction purchaser is exempted from making any pre-deposit for such purposes. The ordinary meaning of borrower is one who borrows, hence, the auction purchaser of the mortgaged property cannot be brought

within the meaning of borrower or debtor. As such, the auction purchaser of the mortgaged property are not liable to comply with pre-deposit, as required under Section 18 of the SARFAESI Act or under Section 21 of the Recovery of Debts and Bankruptcy Act

21.5.As per Section 18 of the SARFAESI Act, the appellant is required to deposit 50% of the amount due as claimed by the secured creditor or as determined by the Debts Recovery Tribunal. The words “whichever is less” have their own signification. If the Debts Recovery Tribunal's determination is less, the same shall prevail. Thus, there is mechanism of adjudication and that becomes the foundation of pre-deposit. That apart, the Appellate Tribunal has the power to reduce the amount to not less than 25% of the amount due.

21.6.Though the appeals are filed under Section 18 of the SARFAESI Act or under Section 20 of the Recovery of Debts and Bankruptcy Act as against the order passed by the Debts Recovery Tribunal, the liability of pre-deposit under Section 18 and Section 21 would attract only when an appeal is filed against an order determining the liability. In other words, it could be said that when a liability is determined by the Tribunal, the aggrieved party can invoke the jurisdiction either under Section 20 of 1993

Act or under Section 18 of the SARFAESI Act. Such party shall be subject to the conditions imposed under the said provisions of the Acts. Other than such an order, if appealed, the provisions under Section 18 of the SARFAESI Act and Section 21 of the 1993 Act are not attracted. Therefore, in respect of the appeals filed as against the Interlocutory orders, where liability is not determined, the appellants are not liable to make the pre-deposit.

22. For the reasons stated above, we decide the issue with regard to making of pre-deposit for preferring an appeal before the Debt Recovery Appellate Tribunal as follows:

(i) The borrowers and guarantors are liable to make pre-deposit as per the provisions of Section 18 of the SARFAESI Act or under Section 21 of the Recovery of Debts and Bankruptcy Act, 1993 for preferring an appeal before the Debt Recovery Appellate Tribunal.

(ii) The 3rd parties, who had purchased the property prior to the date of mortgage or derived/accrued title or right or tenancy right over the property prior to the date of mortgage, are not liable to make any pre-deposit for preferring an appeal before the Debt Recovery Appellate Tribunal, provided that they establish before the Debt Recovery Appellate Tribunal that they derived/accrued title or

right or tenancy right over the property prior to the date of mortgage and that the property was mortgaged with the Bank without their knowledge. If such 3rd parties file applications for waiver and if they establish that they have purchased the property or that they derived/accrued title, right or tenancy right prior to the date of mortgage and the property was mortgaged with the Bank without their knowledge, the Debt Recovery Appellate Tribunal shall give a finding with regard to the same and give exemption to such 3rd parties from making pre-deposit.

(iii) The 3rd parties who had purchased the property either after the date of mortgage or derived/accrued title or right or tenancy right in respect of the property in question or after the initiation of SARFAESI proceedings are liable to make the pre-deposit and they should be treated on par with the borrower and the guarantor as per the provisions of both the Acts for the purpose of making pre-deposit.

(iv) The Debt Recovery Appellate Tribunal shall consider the waiver applications filed by the 3rd parties, on merits and in accordance with law, following the principles laid down in this judgment and pass appropriate speaking orders giving findings with regard to the rights of the 3rd parties.

(v)The secured creditors viz., the Banks and Financial Institutions or a Consortium or Group of Banks and Financial Institutions are not liable to make any pre-deposit for preferring an appeal before the Debt Recovery Appellate Tribunal.

(vi)The auction purchaser is not liable to make any pre-deposit while preferring an appeal to the Debt Recovery Appellate Tribunal as against the order passed by the Debts Recovery Tribunal.

(vii)The appellant who has filed an appeal before the Debt Recovery Appellate Tribunal as against the Interlocutory order passed by the Debts Recovery Tribunal, is not liable to make the pre-deposit if the liability is not determined by the Debts Recovery Tribunal in the interlocutory order.

(viii)In any other category other than the categories mentioned above, the Debt Recovery Appellate Tribunal shall decide the waiver application as per the principles laid down in this judgment.

W.P.No.17121 of 2014:

23.In W.P.No.17121 of 2014, the petitioner has challenged the order dated 11.06.2014 whereby the Debt Recovery Appellate Tribunal granted time to the petitioner for filing an application for waiver of pre-deposit. In

view of the observations made in this judgment, the petitioner should file the waiver application before the Appellate Tribunal and on filing of the application, the Appellate Tribunal shall decide the same on merits, following the principles laid down in this judgment.

24. The Appellate Tribunal has power to reduce the amount of deposit to not less than 25% of debt, for which reasons have to be recorded in writing. In case the Tribunal does not reduce the amount of deposit, to some extent it is expected of the Tribunal to allow the appellant a reasonable time to make the deposit or the amount of deposit to the extent it has been reduced, as the case may be, and the appellant shall make the deposit as ordered within the time so allowed by the Tribunal and it is only after compliance with such order on the part of the appellant that the appeal can be entertained. If the amount is deposited as a pre-condition for availing the statutory remedy of appeal and the appeal is disposed of, the same has to be refunded as the Institution would hold it as in the Trust and therefore, cannot be a matter for claim by the petitioner.

25. Since the Debt Recovery Appellate Tribunal has not given any finding with regard to the rights of the 3rd parties as stated above, we are of the considered view that the impugned orders passed by the Debt Recovery

Appellate Tribunal in

- (i) I.A.No.416 of 2014 in AIR.No.1070 of 2012, dated 18.04.2017 (W.P.No.12777 of 2017);
- (ii) AIR (SA).No.390 of 2016, dated 12.04.2018 (W.P.No.14257 of 2018);
- (iii) I.A.No.143 of 2017 in AIR.No.76 of 2015 and AIR No.77 of 2015, dated 16.06.2017 (W.P.No.17725 of 2017);
- (iv) I.A.No.386 of 2017 in AIR.No.16 of 2017, dated 02.08.2017 (W.P.No.23369 of 2017);
- (v) I.A.No.1139 of 2017 in AIR.No.552 of 2015, dated 26.07.2017 (W.P.No.24962 of 2017);
- (vi) I.A.No.1179 of 2017 in AIR(SA).No.389 of 2017, dated 31.08.2017 (W.P.No.25817 of 2017);
- (vii) AIR(SA).No.330 of 2015 and AIR(SA).No.329 of 2015, dated 08.05.2017 (W.P.Nos.30072 & 30073 of 2017);
- (viii) AIR.No.260 of 2013, dated 12.02.2014 (W.P.No.7511 of 2014)
- (ix) I.A.No.1012 of 2014 in AIR (SA).No.589 of 2013, dated 14.03.2017 (C.R.P.(NPD).No.1492 of 2017);
- (x) I.A.No.1473 of 2017 in AIR.No.545 of 2017, dated 06.12.2017 (W.P.No.33456 of 2017)

are liable to be set aside. Accordingly, the same are set aside and the matters are remitted back to the Debt Recovery Appellate Tribunal,

Chennai for fresh consideration. The Debt Recovery Appellate Tribunal, Chennai is directed to decide the matters afresh, applying the principles laid down in this judgment, as expeditiously as possible, after giving due opportunity of hearing to the respective parties.

26. With the above observations,

(i) the Writ Petitions in W.P.No.12777 of 2017, W.P.No.14257 of 2018, W.P.No.17725 of 2017, W.P.No.23369 of 2017, W.P.No.24962 of 2017, W.P.No.25817 of 2017, W.P.Nos.30072 & 30073 of 2017, W.P.No.7511 of 2014 and the Civil Revision Petition in C.R.P.(NPD).No.1492 of 2017 are allowed.

(ii) the Writ Petition in W.P.No.33456 of 2017 is disposed of.

(iii) the Writ Petition filed by the Insurance Company in W.P.No.33972 of 2018 stands allowed.

(iv) the Writ Petition in W.P.No.17121 of 2014 is disposed of, giving liberty to the petitioner to file waiver application before the Debt Recovery Appellate Tribunal within a period of two weeks from the date of receipt of a copy of this judgment and on filing of the application, the Debt Recovery Appellate Tribunal shall decide the same, following the principles laid down in this judgment.

(v)the Civil Revision Petition filed by the alleged tenant in C.R.P.(PD).No.792 of 2019 stands dismissed.

No costs. Consequently, the connected miscellaneous petitions are closed.

Index : Yes
Internet : Yes
Speaking Order
va

(V.K.T., CJ.) (M.D., J.)
11.04.2019

To

1.The Registrar,
The Debt Recovery Appellate Tribunal,
Chennai.

2.The Authorized Officer,
Syndicate Bank,
Hosur Branch, Tank Street,
Hosur, Krishnagiri District.

3.Tamil Nadu Mercantile Bank Ltd.,
Hosur Branch, Krishnagiri District.

4.The Authorized Officer,
State Bank of India,
Thousand Lights Branch,
No.37B, First Floor, Whites Road,
Chennai - 600 014.

5.The Chief Manager/Authorized Officer,
Dena Bank, George Town Branch,
No.340, Mint Street, Chennai - 600 079.

6.The Manager,
Bharath Overseas Bank Limited,
Now Indian Overseas Bank,
Besant Nagar Branch,
Chennai - 600 090.

7.The Branch Manager
Dena Bank, Nungambakkam Branch,
No.105, M.G.Road,
Chennai - 600 034.

8.Indian Bank,
Park Town Branch, Chennai - 600 003.

9.The Manager,
Canara Bank,
Mount Road Branch, Chennai.

10.The Authorized Officer,
Central Bank of India,
No.48, 49, Montieth Road,
Egmore, Chennai - 600 008.

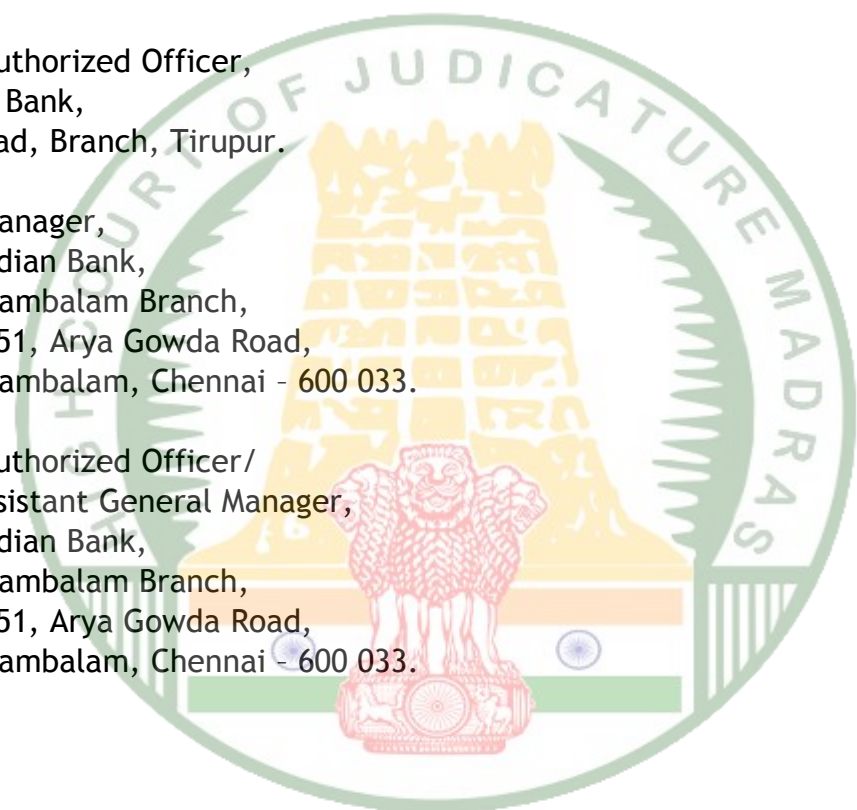
11.The Manager,
Indian Bank, No.26, Ethiraj Salai,
Fagun Chambers,
Chennai - 600 105.

12.Andhra Bank,
Chennai Main Branch,
Wavoo Mansion, No.48/39,
Rajaji Salai, Chennai - 600 001.

13.The Official Liquidator,
High Court of Madras,
Chennai - 600 104.

14.Indian Overseas Bank,
57, 1st Main Road,
West CIT Branch, Chennai - 35.

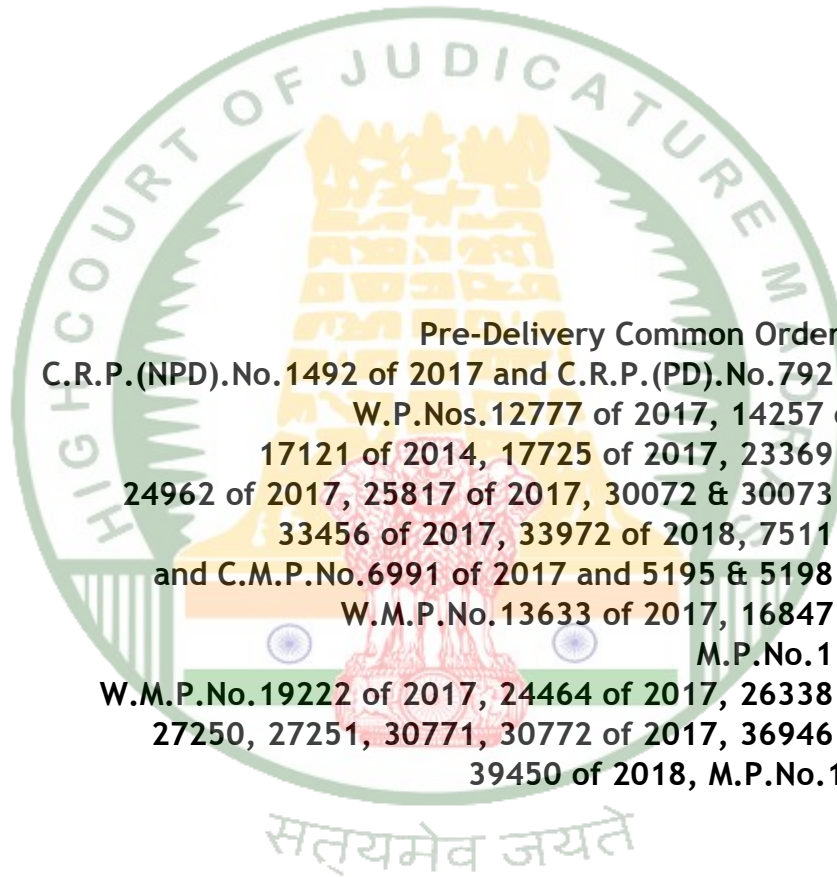
15. Corporation Bank,
Whites Road Branch, Chennai - 14.
16. The Manager
Canara Bank,
P.N.Road Branch, Tirupur.
17. The Authorized Officer,
Canara Bank,
P.N.Road, Branch, Tirupur.
18. The Manager,
M/s.Indian Bank,
West Mambalam Branch,
No.76/51, Arya Gowda Road,
West Mambalam, Chennai - 600 033.
19. The Authorized Officer/
Assistant General Manager,
M/s.Indian Bank,
West Mambalam Branch,
No.76/51, Arya Gowda Road,
West Mambalam, Chennai - 600 033.

The seal of the Madras High Court is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital of Ashoka in front of it. The text "HONOURABLE JUDICATURE MADRAS" is written in a green circle around the central image. Below the seal, the Sanskrit motto "सत्यमेव जयते" (Satyameva Jayate) is written in Devanagari script.

WEB COPY

THE HON'BLE CHIEF JUSTICE
AND
M. DURAISWAMY, J.

va



Pre-Delivery Common Order made in
C.R.P.(NPD).No.1492 of 2017 and C.R.P.(PD).No.792 of 2019,
W.P.Nos.12777 of 2017, 14257 of 2018,
17121 of 2014, 17725 of 2017, 23369 of 2017,
24962 of 2017, 25817 of 2017, 30072 & 30073 of 2017,
33456 of 2017, 33972 of 2018, 7511 of 2014,
and C.M.P.No.6991 of 2017 and 5195 & 5198 of 2019,
W.M.P.No.13633 of 2017, 16847 of 2018,
M.P.No.1 of 2014,
W.M.P.No.19222 of 2017, 24464 of 2017, 26338 of 2017,
27250, 27251, 30771, 30772 of 2017, 36946 of 2017,
39450 of 2018, M.P.No.1 of 2014

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11.04.2019