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

\+ W.P.(C) 2785/2025 and CM APPLs. 13197-98/2025

ANIL KUMAR SHARMA .....Petitioner

Through: Mr Kirti Uppal, Sr. Advocate with Mr Sidharth Chopra, Mr Aditya Raj and Mr Vineet Chadha, Advocates.

versus

ADITYA BIRLA FINANCE LIMITED & ANR. .....Respondents

Through: Ms Ojasvi Sharma, Advocate for R1.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

O R D E R

% **05.03.2025**

1. The petitioner has filed the present petition impugning an order dated 12.02.2025 (hereafter *the impugned order*) passed by the learned Debts Recovery Appellate Tribunal (hereafter *DRAT*), whereby the learned DRAT has declined to entertain the petition for want of compliance with the mandatory requirement of pre-deposit in terms of Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter *SARFAESI Act*). The impugned order indicates that on the said date, the learned counsel appearing for the appellant had requested for time to make the pre-deposit. The said request was acceded to and the learned DRAT had listed the appellant's appeal (Misc. Appeal No. 23 of 2025 arising out of SA No. 420 of 2024) for

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hearing on 04.03.2025. This court is informed that the learned Presiding Officer was not available on 04.03.2025, and therefore, the hearing is now adjourned to 04.04.2025.

2. The question whether the requirements of pre-deposit are mandatory and non-derogable is no longer *res integra*. In ***Narayan Chandra Ghosh v. UCO Bank and Others (2011) 4 SCC 548***, the Supreme Court has held as under:

> "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."

3. In a subsequent decision in ***Kotak Mahindra Bank Pvt. Limited v. Ambuj A. Kasliwal & Ors.: (2021) 3 SCC 549***, the Supreme Court had reiterated the aforesaid view in the context of Section 21 of the Recovery of

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Debts and Bankruptcy Act, 1993. The relevant extract of the said decision is set out below:

> "13. A perusal of the provision which employs the phrase "appeal shall not be entertained" indicates that it injuncts the Appellate Tribunal from entertaining an appeal by a person from whom the amount of debt is due to the Bank, unless such person has deposited with the Appellate Tribunal, fifty percent of the amount of debt so due from him as determined by the Tribunal under Section 19 of the Act."

4. Mr Uppal, the learned senior counsel appearing for the petitioner submits that urgent interim relief is required to be granted in this case as the petitioner's property has been auctioned and the auction purchaser has fixed sheets on the boundary of the property, which indicates that the auction purchaser intends to demolish the property and reconstruct the same. He submits that the principal challenge to the proceedings initiated under the SARFAESI Act, are premised on the basis that they are violative of principles of natural justice as none of the notices (either under Section 13(2) of the SARFAESI Act or Section 13(4) of the SARFAESI Act) were communicated to the petitioner as he was in the judicial custody. He submits that the petitioner would deposit 25% of the amount as claimed, but would require that his appeal be heard expeditiously.

5. In view of the above, we direct that if the petitioner deposits the minimum amount as required by the third proviso to Section 18(1) of the SARFAESI Act, the petitioner would be at liberty to file an application before the learned DRAT for an expeditious disposal of his application for interim relief. Needless to state, if such an application is made, the same would be considered by the learned DRAT.

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6. The petition is disposed of in the aforesaid terms. Pending applications shall also stand closed.

VIBHU BAKHRU, J

TEJAS KARIA, J

MARCH 5, 2025/tr

Click here to check corrigendum, if any

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