

**IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE**

**FEA 5 OF 2025
IA NO. GA 1 OF 2025**

**M/S LORDS POLYMER (I) PRIVATE LIMITED
VS
THE ADDITIONAL DIRECTORATE OF ENFORCEMENT,
DIRECTORATE OF ENFORCEMENT (FEMA) SOUTHERN REGIONAL**

**FEA 6 OF 2025
IA NO. GA 1 OF 2025**

**AMIT SAHA
VS
THE ADDITIONAL DIRECTORATE OF ENFORCEMENT,
DIRECTORATE OF ENFORCEMENT (FEMA) SOUTHERN REGIONAL**

**BEFORE:
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
AND
THE HON'BLE JUSTICE UDAY KUMAR**

For the Appellant : Mr. Nilotpal Chowdhury, Ld. Adv.
Ms. Pallavi Roy, Ld. Adv.

For the Respondent : Mr. Arijit Chakrabarti, Ld. Adv.
Mr. Debsoumya Basak, Ld. Adv.
Ms. Swati Singh, Ld. Adv.

Hearing concluded on : 02.12.2025

Judgment on : 15.01.2026

Uday Kumar, J:-

1. At the threshold, these statutory appeals preferred by M/s Lords Polymer (I) Private Limited (hereinafter 'the Appellant Company') and Mr.

Amit Saha (the director) under Section 35 of the Foreign Exchange Management Act, 1999 (hereinafter 'FEMA'), compels us to revisit the fundamental equilibrium between the State's prerogative to secure revenue and the citizen's right to an effective appellate remedy. The *lis* before us is not merely a dispute over a numerical figure; it is a challenge to an exercise of discretion that, while adhering to the letter of the law, arguably violates its spirit by demanding the "impossible."

2. The central grievance articulated by the appellants is directed against the interlocutory order dated 23.04.2025 passed by the Learned Appellate Tribunal (SAFEMA/FEMA). The pivot upon which this controversy turns is whether a factual recording of "indigent financial circumstances" by a Tribunal can logically coexist with a direction to deposit a "staggering" sum of Rs. 2.20 Crore as a condition precedent to being heard.

FACTUAL ANTECEDENTS AND THE GENESIS OF THE IMPASSE

3. The appellant-Company was formerly engaged in the export of iron ore fines, is embroiled in proceedings rooted in shipments dating back to 2008. The Adjudicating Authority (AA) reached a finding that the appellant failed to repatriate export proceeds totalling approximately Rs.21.70 Crore, alleging a contravention of Sections 7 and 8 of FEMA. This culminated in the imposition of a massive penalty of Rs.22,00,00,000/- (Rupees Twenty-Two Crore).
4. Seeking appellate recourse, the appellant moved the Learned Tribunal for a total waiver of pre-deposit under the Second Proviso to Section

19(1) of FEMA. To substantiate the plea of "undue hardship," the appellants placed on record uncontroverted evidence: the Company is a defunct entity, its bank accounts are classified as Non-Performing Assets (NPA), and it possesses no liquid assets to satisfy a demand of this magnitude.

THE SUBSTANTIAL QUESTION OF LAW

5. Having heard the learned counsel for the parties at length, we find that the following substantial question of law arises for our determination:

"Whether the Appellate Tribunal, after having factually arrived at a finding of 'undue hardship' and 'poor financial condition,' committed a jurisdictional error by treating the 10% limit in the Third Proviso to Section 19(1) of FEMA as a mandatory minimum deposit, thereby rendering the statutory right of appeal illusory and the order perverse?"

SUBMISSIONS OF THE PARTIES

6. Mr. Nilotpall Chowdhury, Learned Counsel for the appellants, mounted a two-pronged attack on the impugned order. He contended that the decision is hit by a "vice of internal contradiction"—once the Tribunal accepted the "poor financial condition" as a fact, the demand for Rs.2.20 Crore became a demand for an impossibility. He invoked the maxim *Impossibilia Nulla Obligatio Est* (the law compels no one to do that which is impossible), arguing that demanding such a sum from an indigent litigant effectively shuts the doors of justice.

7. He further argued that the Tribunal misconstrued the Third Proviso of Section 19(1), erroneously treating a "statutory cap" (designed to protect appellants) as a "statutory floor" or mandatory minimum.
8. Mr. Arijit Chakrabarti, Learned Counsel for the respondent, forcefully defended the impugned order. He submitted that the Right to Appeal is a statutory creation, not a fundamental one, and is thus subject to legislative conditions.
9. He further argued that the Tribunal exercised significant leniency by waiving 90% of the penalty and emphasized that the Second Proviso mandates the Tribunal to "safeguard the realization of penalty." A total waiver, in his view, would invite frivolous litigation and compromise Revenue interests. Therefore, the 10% deposit is a reasonable "stake in the outcomes" of the appeal.

STATUTORY ARCHITECTURE AND JUDICIAL EXEGESIS

10. The resolution of this controversy necessitates a forensic examination of Section 19(1) of the Foreign Exchange Management Act (FEMA), 1999. The statute creates a tiered structure for pre-deposits, intended to balance Revenue interests with the rights of the aggrieved. The Second Proviso of this section acts as a "remedial valve," granting the Tribunal the power to "dispense with such deposit" if it is of the opinion that the requirement would cause "undue hardship." This power to dispense is an absolute discretionary power to waive, contingent upon the

Tribunal's satisfaction regarding the appellant's hardship. It provides as follows-

"Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of the penalty amount shall cause undue hardship to the person aggrieved, it may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty."

11. The expression "undue hardship" is not merely "hardship," but a burden "out of proportion to the nature of the requirement itself" (*Bank of Baroda vs. Appellate Tribunal* [121 (2005) DLT 424]). For an NPA-declared entity with no liquid assets, a multi-million-rupee deposit is, *prima facie*, an undue hardship. As the Hon'ble Supreme Court cautioned in *Monotosh Saha vs. Special Director, ED* [(2008) 12 SCC 359], the Tribunal must ensure that the remedy of appeal is not rendered "illusory." If a condition for appeal is impossible to fulfil, the right to appeal is effectively snatched away.

12. Third Proviso of section 19 (1) limits the deposit amount: *"...such person shall not be required to deposit more than ten per cent of the penalty amount."* This sets the maximum demand.

ANALYSIS AND FINDINGS: THE VICE OF INTERNAL CONTRADICTION

13. Applying these principles, we find that the impugned order suffers from a profound logical fallacy. By acknowledging "poor financial condition" while simultaneously demanding Rs.2.20 Crore from an NPA-classified entity, the Tribunal "took away with the left hand what it gave with the

right." By treating the 10% ceiling as a mandatory minimum despite a finding of hardship, the Tribunal failed to exercise its jurisdiction meaningfully.

- 14.** We are of the firm opinion that when a Tribunal finds an appellant is indigent, it must explore the "Middle Path." Safeguarding Revenue does not always necessitate a liquid cash deposit. The Second Proviso allows the Tribunal to impose "such conditions as it may deem fit," which includes alternative securities like Indemnity Bonds or Corporate Guarantees. These mechanisms secure the interest of the State without choking the Appellant's access to justice.

CONCLUSION AND OPERATIVE DIRECTIONS

- 15.** In view of the above discussions, we find that the substantial question of law is answered in the affirmative, in favor of the appellant. Accordingly, the appeals (F.E.A. 5 of 2025 and F.E.A 6 of 2025) are partially allowed with the following directions:

- i. The direction of pre-deposit of Rs.2,20,00,000/- imposed vide the impugned order dated 23.04.2025, is hereby set aside.
- ii. To demonstrate *bona fides*, the Appellant Company shall deposit Rs.2,00,000/- (Rupees Two Lakhs)) and Mr. Amit Saha (Appellant No. 2) shall deposit Rs.50,000/- (Rupees Fifty Thousand) before the Tribunal within six weeks.
- iii. Upon compliance with the above, the statutory requirement under Section 19(1) of FEMA shall be treated as fully complied

with. The main appeal and the dismissal order dated 28.08.2025 shall stand disposed.

- iv. The Tribunal shall proceed to hear the main Appeal on its merits expeditiously.
- v. GA 1 of 2025 is also disposed of accordingly.
- vi. There shall be no order as to costs.

16. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

I AGREE

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)