

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

**FEA 12 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)**

**FEA 13 OF 2025
IA NO. GA 1 OF 2025**

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

**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. These two appeals, preferred under Section 35 of the Foreign Exchange Management Act, 1999 (hereinafter referred to as 'FEMA'), are directed against the common Final Order dated 28.08.2025 passed by the Appellate Tribunal under SAFEMA, New Delhi. The seminal grievance of the appellants is that the Learned Tribunal non-suited them by dismissing their substantive appeals *in limine* on the solitary ground of non-compliance with a pre-deposit condition. The appellants contend that such an approach, amidst a pleaded case of "undue hardship," has effectively rendered their statutory right of appeal illusory.

FACTUAL MATRIX

2. The litigation originated from an Order-in-Original dated 15.09.2020, wherein the Adjudicating Authority imposed an aggregate penalty of Rs. 22,00,00,000/- on the Appellant Company and Rs. 2,20,00,000/- on its Director for alleged contraventions of Sections 7 and 8 of FEMA, read with the Foreign Exchange Management (Export of Goods and Services) Regulations, 2000.
3. Seeking statutory redress, the appellants moved the Learned Appellate Tribunal. By an interim order dated 23.04.2025, the Tribunal, invoking the second proviso to Section 19(1) of FEMA, directed the appellants to deposit 10% of the penalty amount as a condition for entertaining the appeal. Upon the expiry of the stipulated period, the appellants failed to remit the said sum. Consequently, on 28.08.2025, the Learned Tribunal—noting that the appellants had "ceased communication" with

their counsel and in the absence of any protective order from a superior forum—dismissed the appeals for non-compliance with the pre-deposit requirements.

QUESTION FOR DETERMINATION

4. The singular question that falls for our adjudication is:

“Whether the Ld. Tribunal was legally justified in dismissing the appeals for non-compliance with the 10% pre-deposit condition, or whether such a dismissal, in the face of a specific plea of financial incapacity and a communication gap with counsel, offends the principles of natural justice and the right to a forum.”

ARGUMENTS OF THE PARTIES

5. Mr. Nilotpal Chowdhury, Learned Counsel for the Appellants argued that the Tribunal adopted a mechanical approach, failing to apply the ratio of *Monotosh Saha V. Special Director, ED*. It was contended that a 10% deposit—exceeding Rs. 2.2 Crores—was mathematically impossible given the company’s distressed financial health. It was further submitted that a litigant should not be deprived of their right to be heard on merits due to a temporary breakdown in communication with their legal representative.
6. Mr. Arijit Chakrabarti, Learned Counsel for the Respondent (ED) supported the impugned order, emphasizing that the Tribunal had already exercised its discretion by waiving 90% of the penalty. It was argued that the appellants displayed a lack of diligence, and the Tribunal was well within its jurisdiction to enforce the mandate of Section 19.

7. To adjudicate this dispute, we turn to the statutory architecture of Section 19(1) of FEMA. While the first proviso mandates a deposit of the penalty, the legislature provided a critical "safety valve" in the second proviso, empowering the Tribunal to dispense with such deposit if it would cause "undue hardship." It provides that:

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

8. In *Monotosh Saha V. Special Director*, ED [2008 (229) ELT 492 SC], the Hon'ble Supreme Court held that "undue hardship" is a jurisdictional fact involving two components: the financial burden on the appellant and the *prima facie* merits of the case. If a demand has "no legs to stand on," forcing even a fractional pre-deposit becomes an act of oppression. We find that the Tribunal, while reducing the deposit to 10%, failed to examine whether this sum remained "disproportionate to the requirement" in light of the appellants' claimed insolvency, as cautioned in *Benara Valves Ltd. V. Commissioner of Central Excise* [2006 (13) SCC 347].
9. Furthermore, the dismissal was precipitated by the counsel's statement that he was no longer in communication with his clients. We reiterate the principle in *Rafiq V. Munshilal* [1981 (2) SCC 788]—a litigant should not suffer for the lapses or communication gaps of their legal representative. A substantive appeal involving significant stakes should not be interred on a technicality without a merit-based hearing. When a

party alleges that their very existence as a "going concern" is at stake, the Tribunal must ensure that the "remedy" does not become more burdensome than the "injury."

10. In our view, the Learned Tribunal failed to balance the mandate of Section 19(1) with the "undue hardship" doctrine. When a party alleges that their very existence as a "going concern" is at stake, the Tribunal must look beyond mere non-payment and examine if the 10% condition had effectively rendered the statutory right of appeal illusory.

11. We are equally cognizant of the need to "safeguard the realization of penalty" as required by the proviso. The Revenue's interest cannot be jeopardized by indefinite delays. However, a dismissal on technicalities in a matter involving such high stakes—without a hearing on merits—is a result that this Court finds difficult to sustain.

CONCLUSION

12. The right of appeal is a substantive statutory right. While the Revenue's interest in safeguarding the penalty is legitimate, the doors of justice cannot be bolted solely due to a temporary liquidity crisis. Considering the substantial questions of law involved, we find that a further modification of the pre-deposit threshold is necessary to prevent a miscarriage of justice and to ensure that the appellants are not rendered remediless.

FINAL ORDER

13. Accordingly, the appeals (FEA 12 of 2025 and FEA 13 of 2025) are disposed of with the following directions:

- (i) The common Final Order dated 28.08.2025 is hereby set aside, and the appeals are restored to the file of the Ld. Appellate Tribunal.
- (ii) The condition of pre-deposit is modified to a fixed sum of Rs. 2,00,000/- (Rupees Two Lakhs only) for the Appellant Company and Rs. 50,000/- (Rupees Fifty Thousand only) for the Appellant Director. The said amounts shall be deposited within four weeks from the date of receipt of this judgment.
- (iii) Upon compliance, the Learned Tribunal shall hear the appeals on merits and dispose of the same expeditiously.
- (iv) Failure to comply within the stipulated time shall result in the automatic revival of the impugned dismissal order.
- (v) There shall be no order as to costs.
- (vi) G.A 1 of 2025 disposed of accordingly.
- (vii) Urgent photostat certified copy of this order, if applied for, be furnished to the parties.

I AGREE

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)