

**BEFORE THE DEBTS RECOVERY**  
**APPELLATE TRIBUNAL, AT: MUMBAI**

**Present: Mr Justice Ashok Menon, Chairperson**

**M.A. No. 297/2017(WoD)**

**In**

**Appeal No. 86/2017**

**Between**

State Bank of India ... Appellant/s  
V/s.

M/s. P. K. Thakker Construction Pvt. Ltd. ... Respondent/s

Mr Sanjay Kelkar along with Mr Omkar Kelkar, Advocate for Appellant.

Mr Prashant Pandit, Advocate for Respondent.

**:- Order dated: 31/01/2023:-**

The Appellant State Bank of India is in appeal challenging the judgment and order dated 22/06/2016 in Original Application No. 147 of 1998 (O.A.) on the files of the Debts Recovery Tribunal-I, Ahmedabad (D.R.T) allowing the set-off and counter claim raised by the Respondent company against the bank.

2. The Misc. Application No. 297 of 2017 is filed under the provisions of section 21 of the Recovery of Debts and Bankruptcy Act, 1993 ('RDB Act', for short) seeking a waiver of pre-deposit stating that the appeal is filed by a bank which is neither a borrower nor a guarantor or a mortgagor from whom the amount of financial debt is due to a bank or a financial institution. Hence, this application for a waiver.

3. The Respondent company has vehemently opposed this

application and insists on directing the Appellant to deposit the mandatory amount as required under section 21 of the RDB Act.

4. The question that arises for consideration in this application is whether a person( the bank herein) who is neither a borrower nor a guarantor, is liable to make a pre-deposit for entertaining the Appeal under section 21 of the RDB Act ?

A reading of section 21 of the RDB Act would be fruitful in this context.

**“21. Deposit of amount debt due, on filing appeal.**

Where an appeal is preferred by any person from whom the amount of financial debt is due to a bank or 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, 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 the Section.”

5. The argument of Mr Sanjay Kelkar, the Ld. counsel appearing for the Appellant is that as per the provisions of section 21 of the RDB 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 D.R.T. under section 19 of the RDB Act. The Ld. counsel submits that the Appellant bank herein is neither a borrower nor a guarantor, and therefore, is not liable to make any pre-deposit under the provisions of the RDB Act for preferring an

appeal before this Appellate Tribunal.

6. Per contra, Mr Prashant Pandit, the Ld. counsel appearing for the Respondent submits that the section uses the words, 'any person', and hence, that would also include a bank which is preferring an appeal challenging the set-off and counter claim raised by the Respondent, and allowed by the D.R.T.

7. In order to interpret the purport of section 21 of the RDB Act which has been extracted above, it is also essential to understand the meaning of the word 'debt', used in the section.

Section 2 (g) of the RDB Act defines debt as follows:

“(g) “debt” means any liability (inclusive of interest) which is claimed as due from any person by a bank or financial institution or by any consortium of banks or financial institutions during the course of any business activity undertaken by the bank or other financial institution or the consortium under any law for the time being in force, in cash or otherwise, where the secured or unsecured, or assigned, or whether payable under a decree 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.”

8. Mr Sanjay Kelkar relies on a decision of the Hon'ble Supreme Court reported in *Arul Nadar vs. Authorised Officer, Land Reforms (1998) 7 SCC 157* to submit that the basic rules of interpretation of statutes are to give a literal construction or a plain

and ordinary meaning where the language of the statute is unambiguous. It is not necessary to examine the intent or object of the Act while interpreting its provisions. The learned counsel also relies on another decision of the Hon'ble Supreme Court reported in *Grasim Industries Ltd. Vs. Collector of Customs, Bombay (2002) 4 SCC 297* wherein it is held that where the language is clear, the intention of the legislature is to be gathered from the language used.

9. Coming to the statutory provisions with which we are concerned in this case, the words, 'appeal is preferred by any person', as pointed out cannot be read in isolation. A reading of the entire section would indicate that only when an appeal is preferred by any person from whom the amount of financial debt is due to a bank or financial institution, he needs to pay fifty per cent of the amount of debt so due from him as determined by the Tribunal under section 19. (Emphasis supplied)

10. In addition to that, reading the definition of the word 'debt' in section 2 (g) of the RDB Act would also indicate that it means a liability that is due from any person to a bank or financial institution. Similarly, section 19 of the RDB Act provides for a bank or financial institution to recover any debt from any person by filing an application to the Tribunal. The defendant cannot independently file an application under section 19 for the realisation of the amount due from the bank to him. It is only with the intention to avoid multiplicity of suits that the provision for entertaining set off and counter claim is made in the RDB Act, giving the jurisdiction to the Tribunal to consider such a claim

together with the claim raised by the bank or financial institution against the debtor. Any independent claim against a bank or financial institution has to be filed before a civil court, and not before the D.R.T.

11. The Division Bench of the Hon'ble High Court of Madras has in the decision, *SreeJeyaSoundharam Textile Mills Pvt. Ltd. &Ors. vs. Canara Bank &Ors. MANU/TN/1681/2019* held that the object of the enactment of the SARFAESI Act and the RDB Act was 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 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 and Appeal before the DRAT. When the banks and financial institutions have advanced loans to borrowers, there will not be any justification for asking the banks to make the pre-deposit for preferring an appeal before the DRAT. In such cases, the secured creditors viz., the banks and financial institutions are exempted from making the pre-deposit for preferring an appeal before the DRAT.

12. In view of the decisions cited above, I am of the considered view that a plain reading of the statute does not indicate payment of any pre-deposit by a bank or financial institution while preferring an appeal before the Appellate Tribunal under section 21 of the RDB Act. It is adequately clear that the provision for mandatory pre-deposit under section 18 of the SARFAESI Act as

also under section 21 of the RDB Act is made specifically for appeals preferred by the borrowers, guarantors or mortgagors and not by secured creditors or banks and financial institutions.

Misc. Application No. 297 of 2017 is, therefore, allowed and the Appellant is exempted from making any pre-deposit under section 21 of the RDB Act for entertaining this appeal.

Sd/-  
Chairperson

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