BEFORE THE DEBTS RECOVERY APPELLATE TRIBUNAL, AT: MUMBAI

Present: Justice Vivek Bharti Sharma, Chairperson

M.A. No. 32/2026 (Withdrawal of Pre-deposit)
In
(Misc. Appeal No. 172/2024-Dismissed)

Between

Adison Granito Pvt. Ltd. & Ors. … Appellant/s

V/s.

Bank of Baroda & Ors. …Respondent/s

Mr. Rajesh Nagory, i/b Ms. Sanjana Ghogare, Advocate for Appellants.
Ms. Merlyn Vasudeo Nee Monteiro along with Ms. Asma Batatawala, i/b Mrs. Rathina Maravarman, Advocate for Respondent Nos. 1 to 3.

-: Order dated: 12/05/2026: -

1. Heard on M.A. No. 32/2026 for withdrawal of pre-deposit filed by the Applicants/Appellants.

2. By way of the present M.A. No. 32/2026, the Applicants/Appellants have prayed for permission to withdraw the pre-deposit amount of ₹21 Crores, along with accrued interest deposited under Section 18 of the SARFAESI Act.

3. The Learned Counsel for the Applicants/Appellants would submit that the Applicants/Appellants had deposited an amount of ₹21 Crores as mandatory pre-deposit under Section 18 of the SARFAESI Act in Misc. Appeal No. 172/2024. He would further submit that the Applicants/Appellants have withdrawn Misc. Appeal No. 172/2024 on 28.04.2026, therefore, the mandatory pre-deposit amount deposited as per Section 18 of the SARFAESI Act along with accrued interest may be

permitted to be withdrawn by the Applicants/Appellants.

4. At this stage, the Learned Counsel for Respondent No.3 filed Vakalatnama on behalf of Respondent No.3, which is taken on record. She would vehemently oppose the Miscellaneous Application on the ground that the Applicants/Appellants have committed fraud upon the Respondent Bank for which the Respondent Bank is taking legal action before the appropriate forum, therefore, no order be passed at this stage and the present application be kept pending.

5. Per contra, the Learned Counsel for the Applicants/Appellants would submit that the Respondent Bank has no locus or right to oppose the withdrawal of the mandatory pre-deposit amount as per Section 18 of the SARFAESI Act after disposal of the Appeal. He would rely upon the judgment of the Hon'ble Supreme Court of India in *Axis Bank V/s SBS Organics Pvt. Ltd. & Anr (2016) 12 SCC 18*. The Learned Counsel for the Applicants/Appellants would further rely upon the judgment of the Hon'ble Supreme Court in *Kut Energy Pvt. Ltd. & Ors. V/s Authorised Officer, Punjab National Bank, Large Corporate Branch, Ludhian & Ors.*

6. Considered the submissions advanced by the Learned Counsel for both sides and perused the records.

7. The Hon'ble Supreme Court in *Axis Bank (Supra)* observed in following para as under:

> *"21. The appeal under Section 18 of the Act is permissible only against the order passed by DRT under Section 17 of the Act. Under Section 17, the scope of enquiry is limited to the steps taken under Section 13(4) against the secured assets. The partial deposit before DRAT as a precondition for considering the appeal on merits in terms of Section 18 of the Act, is not a*

secured asset. It is not a secured debt either, since the borrower or the aggrieved person has not created any security interest on such pre-deposit in favour of the secured creditor. If that be so, on disposal of the appeal, either on merits or on withdrawal, or on being rendered infructuous, in case, the appellant makes a prayer for refund of the pre-deposit, the same has to be allowed and the pre-deposit has to be returned to the appellant, unless the Appellate Tribunal, on the request of the secured creditor but with the consent of the depositors, had already appropriated the pre-deposit towards the liability of the borrower, or with the consent, had adjusted the amount towards the dues, or if there be any attachment on the pre-deposit in any proceedings under Section 13(10) of the Act read with Rule 11 of the Security Interest (Enforcement) Rules, 2002, or if there be any attachment in any other proceedings known to law.

22. We are also unable to agree with the contention that the Bank has a lien on the pre-deposit made under Section 18 of the SARFAESI Act in terms of Section 171 of the Contract Act, 1872. Section 171 of the Contract Act, 1872 on general lien, is in a different context:

> *"171.* ***General lien of bankers, factors, wharfingers, attorneys and policy-brokers.***— *Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect."*

23……..

24. In the case before us, the first respondent had in fact sought withdrawal of the appeal since the appellant had already proceeded against the secured assets by the time the appeal came up for consideration on merits. There is

neither any order of appropriation during the pendency of the appeal nor any attachment on the pre-deposit. Therefore, the deposit made by the first respondent is liable to be returned to the first respondent."

8. The Hon'ble Supreme Court in *Kut Energy Pvt. Ltd. & Ors (Supra)* observed as follows.

"12. Going by the law laid down by this Court in Axis Bank the "secured creditor" would be entitled to proceed only against the "secured assets" mentioned in the notice under Section 13(2) of the SARFAESI Act. In that case, the deposit was made to maintain an appeal before the DRAT and it was specifically held that the amount representing such deposit was neither a "secured asset" nor a "secured debt" which could be proceeded against and that the appellant before DRAT was entitled to refund of the amount so deposited. The submission that the bank had general lien over such deposit in terms of Section 171 of the Contract Act, 1872 was rejected as the money was not with the bank but with the DRAT. In the instant case also, the money was expressly to be treated to be with the Registry of the High Court.

13. On the strength of the law laid down by this Court in Axis Bank, in our view, the appellants are entitled to withdraw the sum deposited by them in terms of said order dated 11-10-2017. Their entitlement having been established, the claim of the appellants cannot be negated by any direction that the money may continue to be in deposit with the Bank."

9. It would be pertinent to observe that it is not the case of the Respondent/Bank that they have any order in their favour for attachment of this per-deposit as per Section 18 of the SARFAESI Act.

10. In view of the above discussion and the above judgement of the Hon'ble Supreme Court, the M.A. No. 32/2026 deserves to be allowed and accordingly stands allowed.

11. The Registry is directed to refund the pre-deposit amount of ₹21 Crores along with accrued interest, if any, to the Applicants/Appellants in accordance with law.

Sd/-
Chairperson

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