BEFORE THE DEBTS RECOVERY APPELLATE TRIBUNAL, AT: MUMBAI

Present: Justice Vivek Bharti Sharma, Chairperson

I.A. No. 557/2026
In
Regular Appeal Diary No. 1605/2026

Between

Animesh Mishra & Anr. … Appellant/s

V/s.

Punjab National Bank & Ors. …Respondent/s

-: Order dated: 05/10/2026: -

1. Present as under:

Ms. Sanjana Ghogare, Counsel for Applicants.

Ms. Savita Nangare along with Ms. Disha Shah i/b M/s. Law Focus, Counsel for Respondent No. 1/Bank.

Mr. Mohit S., Counsel for Respondent Nos. 2 & 3.

2. The Learned Counsel for Respondent No. 1, Ms. Savita Nangre, would submit that she has got instructions to appear on behalf of Respondent No. 1/Bank. She places her Vakalatnama with reply to the Waiver Application that is taken on record.

3. The Learned Counsel for Respondent Nos. 2 & 3, Mr. Mohit, would submit that he has got instructions to appear on behalf of Respondent Nos. 2 & 3. He places his Vakalatnama that is taken on record.

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4. The Learned Counsel for the Applicant/Borrower would submit that the Hon'ble High Court vide its order dated 28.09.2026 passed in Writ Petition No. 12753/2026 has directed this Appellate Tribunal to take up the Waiver Application I.A. No. 557/2026 and application which is at Diary No. 1694/2026 for seeking the stay of the impugned order.

The Learned Counsel for the Applicant/Borrower would submit that before this Appellate Tribunal could hear and decide application, for interim relief Diary No. 1694/2026, the Waiver Application I.A. No. 557/2026 has to be heard and decided.

5. Heard on I.A No. 557/2026.

6. The Learned Counsel for the Applicant/Borrower, Ms. Sanjana Ghogare, would submit that the amount on which the 50 % has to be deposited as pre-condition for the appeal of the Applicant/Borrower to be registered and entertained under section 18 of the SARFAESI Act is Rs. 1,66,26,000/- as stated in the notice under section 13 (4) of the SARFAESI Act, served by Respondent No. 1/Bank to the Applicant/Borrower.

The Learned Counsel for the Applicant/Borrower would further submit that the demand notice was defective as there was no bifurcation of the principal amount and the interest separately ; that , this notice was not sent to the mortgagor ; that , the sale notice is also

defective and no redemption notice was served upon the Applicant/Borrower.

7. The Counsel for the Respondent No. 1/Bank would controvert the submission made by the Appellant/Borrower.

The Counsel for the Respondent would submit that the grounds submitted and stated in the application for waiver as per third proviso of the section 18 of the SARFAESI Act are manufactured and convocated ; that , though it is stated in the application that the Applicant/Borrower is a housewife, however, she has filed the income tax return which says that she is the proprietor of some business wherefrom she is earning an annual income of Rs. 30,00,000/- approximately ; that , the other grounds submitted by the Applicant/Borrower that the notice under section 18 (4) is defective, there is no bifurcation, and the same was not served upon the mortgagor are the matter of merits which has to be heard and decided at the time of the final disposal of appeal and not at the stage of decision of the application for the waiver as per third proviso to the section 18 of the SARFAESI Act.

She would further submit that a long period of five years has been spent and the Respondent No. 1/Bank is still fighting to take the physical possession of the property notwithstanding with the fact that a huge amount is due from the Applicant/Borrower ; that , the Applicant/Borrower has been filing frivolous appeal repeatedly to avoid the repayment of the dues against the loan taken up by him from Respondent No. 1/Bank.

She would further submit that the Ld. Tribunal has specifically dealt with the issues concerning limitation, the original challenge to the unsuccessful auction, subsequent successful auction, the sale certificate and only then dismiss the Securitisation Application No. 280/2022 of the Applicant/Borrower ; that , the Applicant/Borrower does not have any prima facie case at all ; that , the Applicant/Borrower was classified as Non-performing Asset on 15th November, 2018. Thereafter, the Respondent Bank issued a Demand Notice dated 13th March 2019 under section 13 (2) of the SARFAESI Act, calling upon the Applicant to pay an amount of Rs. 1,14,41,874.81/- as on 31th January 2019, along with further interest till the date of payment. The said outstanding, together with further interest and other applicable charges, has increased and an amount of approximately Rs. 1.95 crore is presently outstanding and payable by the Applicant.

8. Considered and perused the record.

9. Section 18 of the SARFAESI Act says that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal 50 % of the amount of the debt due from him, as claimed by the secured creditor or determined by DRAT whichever is less.

It further says that for the reason stated in writing, the Appellate Tribunal may reduce the amount but not less than 25 % of the debt due as stated above in the forgoing para.

Although the Counsel for the Respondent No. 1/Bank would

submit that now the debt due from the Applicant/Borrower is Rs. 2,03,48,426.20/- *(Exhibit-B)*. She would further submit that this should be accepted as debt due as this is admissible evidence under *"Bankers' Book Evidence Act ".*

However, in para 7 of the reply of Respondent No. 1/Bank to the waiver application, it is stated that the debt due with interest has increased to Rs. 1,95,00,000/-.

Therefore, the Applicant/Borrower is to deposit 50 % of this amount as pre-condition for their appeal to be registered and entertained as per section 18 of the SARFAESI Act.

10. The Learned Counsel for Applicant/Borrower has submitted that the Applicant/Borrower does not have the financial capacity to pay this amount but the income tax return filed with the waiver application belies this submission of the Applicant/Borrower.

11. Keeping consideration into all the facts and laws discussed above, this Appellate Tribunal is of considered view that the ends of justice would be served if the amount of the mandatory pre-deposit is reduced to 45 % as per third proviso of section 18 of the SARFAESI Act. This 45 % has to be deposited on Rs. 1,95,00,000/- , the amount of debt due to Respondent No. 1/Bank which comes to the amount of Rs. 87,75,000/-.

12. The Hon'ble High Court of Bombay, in its judgment dated 28.09.2026, Writ Petition No. 12753/2026, filed by the Applicant/Borrower has observed in para 8 that it is submitted that

the amount of Rs. 60,00,000/- is lying deposited in the DRAT in other appeals filed by Applicant/Borrower.

13. The Counsel for the Applicant/Borrower would submit that in para 10 of the Waiver Application I.A. No. 557/2026, it is specifically stated that Misc. Appeal No. 3/2024 was filed by Applicant/Borrower in which the amount of Rs. 60,00,000/- *(Rs. 35,00,000/- on 02.03.2023 and balance Rs. 25,00,000/- on 17.03.2023)* was deposited as mandatory pre-deposit under section 18 of that appeal and the same is still lying in the Appellate Tribunal.

14. In view of the above observation made by the Hon'ble High Court in Writ Petition No. 12753/2026 dated 12.09.2026, this amount of Rs. 60,00,000/- is appropriated as mandatory pre-deposit under section 18.

15. In view of the submissions made by the parties above, this Appellate Tribunal is of the considered opinion that the ends of justice would be served if the mandatory pre-deposit in accordance with section 18 of the SARFAESI Act be waived to the extent of 45% under the third proviso to the section. Accordingly, 45% of the amount of ₹1,95,00,000/- works out to ₹87,75,000/-. Since an amount of ₹60,00,000/- has already been deposited by the Applicant/Borrower and is lying with this Appellate Tribunal, after giving due credit for the said amount, this Appellate Tribunal directs the Applicants/Borrowers to deposit the balance amount of

₹27,75,000/- on or before 4:30 p.m. on 12.10.2026.

16. **The Registry is directed to verify the record of Misc. Appeal No. 3/2024 and submit a report confirming the deposit of ₹60,00,000/- therein.**

17. With this observation, the I.A. No. 557/2026 is disposed of.

The Respondent Bank is at liberty to file a reply to the grounds of the Appeal and stay application with an advance copy to the other sides.

On deposit of the amount, the Registry is directed to register this appeal and interlocutory application, if otherwise in order under the rules.

The amount shall be deposited in the form of a Demand Draft with the Registrar of this Appellate Tribunal.

As and when the said amounts are deposited, the same shall be invested in term deposits in the name of the Registrar, DRAT, Mumbai with any nationalised Bank, initially for 13 months, and thereafter to be renewed periodically.

18. **At this stage**, the Learned Counsel for the Applicant/Borrower would pray for Application Diary No. 1694/2026 for staying the order dated 31.08.2026 passed by the Ld. Presiding Officer, DRT-III, Mumbai.

19. The Learned Counsel for the Respondent No.1/Bank opposes

for grant for any stay on the ground that the Appeal is not yet registered due to non-payment of mandatory pre-deposit under section 18 of SARFAESI Act.

20. The Learned Counsel for the Respondent No.1/Bank relied upon the judgment dated 04.03.2026 in Writ Petition No. 15718/2025 in *Anil Kumar Pawar & Anr V/s The Authorised Officer, Union Bank of India & Ors*, the Hon'ble High Court of Bombay observed that after depositing the pre-deposit amount under section 18 of the SARFAESI Act within time, the matter be sent before the Ld. Registrar for registering the Appeal and Interlocutory Application. Only after registration, the I.A. for stay or appeal be heard and decided.

21. Considered and perused the record.

The relevant part of the judgment of the Hon'ble High Court of Bombay is reproduced here as under.

> "8. We find on perusal of the impugned order that it suffers from a serious procedural infirmity. The Application considered and decided in the impugned order dated 14th May 2025 was only the Application seeking waiver of pre-deposit under Section 18 of the Securitisation Act. The only prayer made on behalf of Respondent Nos. 2 and 3 before the DRAT was for such waiver on the basis of statements made in the said Application. While considering the said Application the DRAT discussed the rival submissions, made certain observations and thereupon found that the Respondent Nos.2 and 3 were required to deposit 40% of the amount due and that complete waiver from pre-deposit was not warranted. **Having reached the said conclusion the DRAT was expected to issue a positive direction to Respondent Nos.2 and 3 to deposit such 40% amount towards pre-deposit so that the Appeal could be registered and then take up the Application for interim relief and the Appeal for further consideration.** (emphasis supplied)
> 9. .....

> 10. We find that the aforesaid approach adopted by the DRAT suffers from serious procedural irregularity and infirmity. It appears that the DRAT proceeded on an assumption that the moment a pre-deposit direction was issued in an Application seeking waiver thereof, the interim relief would follow as a matter of course upon the amount so directed to be deposited, in fact being deposited by the Appellants (Respondent Nos.2 and 3 herein). We find that the approach of the DRAT is unsustainable."

22. In re *Anil Pawar Case (Supra)* the Hon'ble High Court has castigated the approach of DRAT of granting stay or interim relief before the registration of the appeal on deposit of mandatory pre-deposit under Section 18 of the SARFAESI Act for filing of the appeal.

It would be important to revisit Section 18 of the Act.

It reads:

> "**18. Appeal to Appellate Tribunal.—**(1) Any person aggrieved, by an order made by the Debts Recovery Tribunal [under section 17, may prefer an appeal alongwith such fee, as may be prescribed] to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal:
>
> Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower
>
> ***Provided further 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:***
>
> Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred to in the second proviso.
>
> (2)
>
> ……
> ……"

23. In view of the proviso to section 18 of the SARFAESI Act and observations of the Hon'ble High Court of Bombay in re "*Anil Kumar Pawar*" (*Supra*), this Appellate Tribunal is of the considered view that

an appeal and application for interim relief can only be heard and decided only after registration of appeal on mandatory pre-deposit under section 18 of the SARFAESI Act. That is to say that before registration of an appeal on deposit of an amount as per section 18 of the 'Act', no Appeal or any Interlocutory Application therein can be entertained. Hence, no interim stay can be granted at this stage before registration of the Appeal and the interim stay application after depositing the mandatory amount under section 18 of the SARFAESI Act.

24. If the deposit is made as stated in para 15 above on or before 4:30 pm on 12.10.2026, list the Appeal on 13.10.2026 for reporting compliance and hearing.

In the event of failure to deposit the said amount till 4:30 pm on 12.10.2026, the Appeal shall stand dismissed automatically without further reference to this Appellate Tribunal.

Sd/-
Chairperson
05.10.2026

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