

(2018) 05 CAL CK 0192

Calcutta High Court

Case No: C.O. No. 839 of 2018

Jay Jagannath Castings Private
Limited & Anr.

APPELLANT

Vs

Uco Bank & Ors.

RESPONDENT

Date of Decision: May 15, 2018**Acts Referred:**

- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 - Section 13(2), 18

Hon'ble Judges: SABYASACHI BHATTACHARYYA, J**Bench:** Single Bench**Advocate:** Rohit Das, Aniruddha Bhattacharya, Sailesh Mishra**Final Decision:** Disposed Of

Judgement

The borrowers have preferred this revisional application against orders of the Debts Recovery Appellate Tribunal, Kolkata dated July 01, 2017 and

April 02, 2018, whereby the present petitioners were directed to deposit Rs.1.23 crores as the deposit contemplated in Section 18 of the Securitisation

and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act"). The

grievance of the petitioners is that the appellate tribunal did not give due credit to the deposits made by the petitioners, subsequent to the claim being

raised, while calculating such amount of deposit.

The petitioners also argue that although the present claim was raised on the basis of a subsequent notice under Section 13(2) of the SARFAESI Act,

the deposits made by the petitioners on the basis of a previous notice, prior to such current notice, ought also to have been considered while calculating

the actual deposit to be put in by the petitioners. The petitioners rely on several judgements, as recorded in a previous order dated May 02, 2018,

which are as follows:

(i) PARSN Medical Plants Private Limited & Anr. Vs. Indian Bank & Ors., reported at (2011) 15 SCC 253.

(ii) Indian Bank Asset. Recovery Management Branch rep. by its Authorised Officer and Chief Manager S. Arulselvan and Indian Bank vs.

Hamosons Apparels Private Ltd. rep. by its managing partner Mr. Abdul Razaq Osman and the Debts Recovery Appellate Tribunal, reported at

MANU/TN/1325/2008.

(iii) Gopal Ji Gupta vs. Debts Recovery Appellate Tribunal & Ors., reported at AIR 2013 All 175 and

(iv) Poonam Manshani Vs. J and K Bank Ltd. and Anr., reported at AIR 2010 Delhi 28 (D.B.) As observed in the order passed on May 02, 2018 the

judgment of the Supreme Court had not decided any ratio on the relevant issue and the judgment of the Madras High Court was, in the view of this

court, obiter as far as the present issue is concerned. However, the judgments rendered by the Allahabad High Court and the Delhi High Court have

direct bearing on the present issue and lay down the proposition that prior payments/recovered amounts ought to be gone into while construing the pre-

deposit as contemplated in Section 18 of the SARFAESI Act.

Learned counsel for the opposite parties argues, while controverting the petitioners' contention, that the present claim was raised entirely on the

subsequent notice under Section 13(2) of the SARFAESI Act dated January 30, 2013 and only such claim ought to be the basis of calculating the pre-

deposit amount. It is further submitted that all prior deposits were given adjustment to, and the assets in question were declared to be performing

assets. Hence, learned counsel submits, such payments, previous to the current notice, ought not to be considered at all for the present purpose.

It is further pointed out by learned counsel for the opposite parties that it was categorically recorded in the order passed by the appellate tribunal dated

July 01, 2017 that it was conceded on behalf of the present petitioners that the present petitioners, who were appellants therein, were ready to deposit

Rs.1.23 crores in instalments. It is pointed out that the said amount has been directed at present to be deposited by the petitioners. In view of such admission, it is argued that the petitioners cannot now resile from that and seek further adjustment with the pre-deposit amount.

Learned counsel for the opposite parties fairly concedes that if the petitioners have actually deposited some amount subsequent to the last notice under

Section 13(2) of the SARFAESI Act dated January 30, 2013, such amount ought to be given credit to and adjusted from the pre-deposit amount.

However, it is controverted on facts that any such amount was actually deposited by the petitioners. Upon hearing both sides and considering

materials on records, it is evident that the amount of Rs.1.23 crores was admitted on behalf of the present petitioners to be the pre-deposit amount on

July 01, 2017.

However, it cannot be denied that if any further amounts were deposited by the petitioners subsequent to such date, that is July 01, 2017, to meet up

the claim of the opposite party no. 1 bank in part, such amounts have to be adjusted from the sum of Rs.1.23 crores to arrive at the actual due pre-

deposit amount. The admission recorded in the order dated July 01, 2017 was not set in stone and was only relevant up to that date. Subsequent

deposits by the petitioners definitely have to be adjusted from the said amount for arriving at the pre-deposit figure.

As such, a fresh calculation of the pre-deposit amount is necessary for such adjustment of any subsequent amount, if at all deposited by the

petitioners, by the appellate tribunal. Accordingly, C.O. No. 839 of 2018 is disposed of on contest by setting aside the impugned orders and directing

the Debts Recovery Appellate Tribunal at Kolkata to re-calculate the predeposit amounts to be put in by the petitioners pursuant to Section 18 of the

SARFAESI Act in connection with Appeal Tender No. 13 of 2017 pending before the said Tribunal.

Such calculations have to be done upon giving due credit to deposits made by the petitioners subsequent to July 01, 2017, if any. The appellate tribunal

is requested to complete such exercise and pass a reasoned order upon giving adjustments, if any, within one month from the date of communication

of this order to the said tribunal. There will be no order as to costs. Liberty is given to the parties to communicate this order to the appellate tribunal.

Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of all requisite formalities.