

GAHC010192372025



undefined

**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : CRP(IO)/387/2025**

AJIT RAJBONGSHI  
S/O LATE ANNA RAM RAJBONGSHI, R/O NO. 2, MATHGURIA, HOUSE NO.  
75, P.O. AND P.S.- NOONMATI, DIST- KAMRUP (M), ASSAM-781021

VERSUS

THE CHIEF MANAGER, CENTRAL BANK OF INDIA AND 2 ORS  
GROUND FLOOR, G.S. ROAD, BHANGAGARH, GUWAHATI, DIST- KAMRUP  
(M), ASSAM-781005

2:THE AUTHORISED OFFICER  
CENTRAL BANK OF INDIA  
GROUND FLOOR  
G.S. ROAD  
BHANGAGARH  
GUWAHATI  
DIST- KAMRUP (M)  
ASSAM-781005

3:BHARGAV DEKA  
S/O SRI PODMONATH DEKA  
FLAT NO. 1 D  
NABODAY APARTMENT  
CHINAKI PATH  
ZOO ROAD  
GUWAHATI-781024  
KAMRUP (M)  
P.S.- GEETA NAGAR  
ASSA

**Advocate for the Petitioner : MR. A GANGULY, MR. A DHANUKA**

**Advocate for the Respondent : SC, CENTRAL BANK OF INDIA,**

**BEFORE  
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

**ORDER**

**Date : 10.09.2025**

Heard learned counsel Mr. A. Ganguly for the petitioner. Also heard learned counsel Mr. S. Chanda for the respondents No. 1 and 2.

2. The petitioner is aggrieved by the order dated 24.07.2025 passed by the learned Debts Recovery Appellate Tribunal (DRAT), Kolkata in connection with I.A. No. 438/2024 arising out of Appeal Dy. No. 765/2024.

3. The I.A. before the DRAT, Kolkata was filed for waiver from making pre-deposit as required under Section 18 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, for short).

4. Learned counsel for the respondents No. 1 and 2 has laid stress stating that it is mandatory to make a pre-deposit of 50% and the order was correctly passed by the learned Tribunal and the order requires no interference.

5. Learned counsel for the appellant has relied on the decision of the Bombay High Court in connection with *M/S. Sterlite Technologies Ltd. Vs. Union of India and Others* reported in (2012) 113 AIC 636 wherein it has been held that :-

*“6. Section 21 provides that where an appeal is preferred by any person from whom an amount of debt is due to a Bank or a financial institution or a consortium, the appeal shall not be entertained by the Appellate Tribunal unless such person has deposited with the Appellate*

*Tribunal seventy five per cent of the amount of debt so due from him as determined by the Tribunal u/s 19. Under the proviso to Section 21, the Appellate Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under the section. The mandate of the statute is that ordinarily an Appellant before the Appellate Tribunal must deposit 75% of the amount of the debt due as determined by the Tribunal u/s 19. Parliament, however, has in its wisdom conferred a wholesome power upon the Appellate Tribunal to reduce the amount to be deposited under the section. The exercise of that power is a judicial power which is further structured by the requirement that reasons have to be recorded in writing for reducing the amount to be deposited to less than 75% of the debt as determined by the Tribunal. The Appellate Tribunal has proceeded in the present case on an erroneous conception as to its own jurisdiction. The Learned Chairperson has observed that at this stage it is not possible to make any comment on the impugned judgment and order of the Tribunal. Now, at the stage when it considers an application for dispensing with the condition of deposit, the Appellate Tribunal is not expected to render a final finding on the merits of the contentions urged in regard to the judgment of the Tribunal. That has to await the final determination of the appeal. But, it is a well settled principle of law that even at that stage, the question as to whether a prima facie case has been made out has to be evaluated by the Appellate Tribunal. For the limited purpose of considering whether a dispensation should be granted, the Appellate Tribunal has necessarily to evaluate as to whether a prima facie case is made out and the reasons which are to be formulated have to be confined only to that determination. If the proposition which has been laid down by the DRAT were to be accepted as good law that would mean that a litigant who does not plead financial hardship is disabled from urging that the requirement of predeposit should be reduced or waived within the parameters laid down by the statute. That is not reflective of the legal position. In considering as to whether a waiver should be granted, both the elements of a prima facie case and the question of financial hardship would have to be considered by the Appellate Tribunal. Where as in the present case, the Appellant does not plead financial hardship that is a relevant consideration which has to be taken into consideration and placed in the balance by the Appellate Tribunal. But that is not dispositive of the jurisdiction of the Appellate Tribunal. The Appellate Tribunal in its appellate jurisdiction is required to evaluate as to whether a prima facie case has been made out for the grant of waiver. Hence, with respect, we are unable to subscribe to the position as set out in paragraph 20 of the judgment of the DRAT quoted above.”*

\*\*\*\*\*

\*\*\*\*\*

\*\*\*\*\*

*“8. Since the DRAT has not considered the application for waiver in terms of the legal position as elaborated in the previous paragraph of this judgment, which is consistent with the provisions of Section 21, we set aside the impugned order of the Appellate Tribunal and restore the application for waiver of deposit to the file of the Appellate Tribunal for a decision afresh. On the request of the Fourth Respondent, we expedite the disposal of the application and would request the Appellate Tribunal to endeavour a disposal preferably within a period of two months.”*

6. Learned counsel for the petitioner has drawn the attention of this Court to the second and third proviso of Section 18 of SARFAESI Act.
7. It appears that the impugned order may be stayed, at least, till the next date of listing.
8. Petitioner to take steps to issue notice to respondent No. 3 through registered post with A/D, returnable within four weeks.
9. As the learned counsel for respondents No. 1 and 2 has appeared and accepted notice, no formal notice is required to be issued.
10. Extra copies of the petition to be furnished to the respondents.
11. Meanwhile, further proceeding of Appeal Diary No. 765/2024 pending before the learned DRAT, Kolkata is stayed till the next date of listing.
12. List accordingly.

**JUDGE**

**Comparing Assistant**