



SARFAESI

Can Borrowers Avoid Pre-Deposit in SARFAESI Appeals? Calcutta High Court Settles the Debate

Introduction In a significant pronouncement on the scope of appellate remedies under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act"), the High Court at Calcutta, per Justice Om Narayan Rai, delivered its judgment on 20 May 2026 in Jainco Projects (India) Ltd. v. UCO Bank and Ors. [...]

AUTHOR Abdullah Qureshi, Arpan Anand

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Introduction

In a significant pronouncement on the scope of appellate remedies under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“SARFAESI Act”), the High Court at Calcutta, per Justice Om Narayan Rai, delivered its judgment on 20 May 2026 in *Jainco Projects (India) Ltd. v. UCO Bank and Ors.* The Court reaffirmed the mandatory nature of the pre-deposit requirement under Section 18 of the SARFAESI Act and clarified that borrowers cannot circumvent this statutory obligation merely because the appeal arises from an interlocutory order concerning a One Time Settlement (OTS) proposal. The decision reinforces the legislative objective of balancing borrowers’ rights with the need for expeditious debt recovery and provides much-needed clarity on the distinction between procedural and substantive orders passed by Debt Recovery Tribunals.

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Factual Background

The petitioner, Jainco Projects (India) Ltd., had availed various credit facilities from UCO Bank. Upon default in repayment, the loan account was classified as a Non-Performing Asset (NPA), following which the bank initiated recovery proceedings under the SARFAESI Act.

Aggrieved by the measures adopted by the secured creditor, the petitioner approached the Debt Recovery Tribunal (DRT), Kolkata, by filing a Securitisation Application. During the pendency of the proceedings, the petitioner filed two interlocutory applications. While one application challenged an auction sale notice, the second sought directions compelling the bank to implement its One Time Settlement (OTS) scheme and grant the benefits allegedly available under an internal circular issued by the bank.

The DRT disposed of the application relating to the OTS proposal by observing that settlement negotiations and OTS schemes are matters to be decided between the borrower and the bank, and that the Tribunal could not compel the bank to grant such relief. Consequently, the application was rejected.

The petitioner challenged this order before the Debts Recovery Appellate Tribunal (DRAT). Simultaneously, it sought complete waiver of the statutory pre-deposit mandated under Section 18(1) of the SARFAESI Act. The DRAT declined the request and directed the petitioner to deposit fifty per cent of the debt amount, quantified at approximately ₹4.95 crore. Challenging this direction, the petitioner invoked the supervisory jurisdiction of the Calcutta High Court under Article 227 of the Constitution of India.

Contentions of the Parties

The petitioner contended that the order passed by the DRT was merely procedural in nature and did not determine any substantive rights or liabilities. Therefore, according to the petitioner, the mandatory pre-deposit requirement under Section 18 of the SARFAESI Act ought not to apply.

Reliance was placed on the decision of the Supreme Court in *Sunshine Builders and Developers v. HDFC Bank Ltd.*, wherein the Court had observed that the expression “any order” under Section 18 should not be interpreted so broadly as to require pre-deposit for every interlocutory or procedural order passed by the DRT. The petitioner argued that the rejection of its request relating to the OTS scheme was analogous to a procedural order and therefore exempt from the pre-deposit requirement.

On the other hand, UCO Bank contended that the petitioner was seeking a substantive alteration of its financial liability through implementation of the OTS scheme. The rejection of such a request directly affected the rights and obligations of the parties and could not be characterised as a procedural determination. The bank further submitted that the law regarding pre-deposit was well settled and that the statutory requirement could not be entirely waived.

The respondents also relied upon subsequent judicial developments following *Sunshine Builders*, including decisions recognising that orders affecting substantive rights, even if passed at an interlocutory stage, attract the mandatory pre-deposit requirement prescribed under Section 18.

The Court's Analysis

The High Court undertook a detailed examination of Section 18 of the SARFAESI Act and the judicial precedents governing the provision. The Court observed that the central issue was whether the DRT's refusal to direct implementation of an OTS scheme could be categorised as a mere procedural order.

The Court distinguished the facts of the present case from those considered by the Supreme Court in *Sunshine Builders and Developers*. In that case, the observations of the Supreme Court concerned orders refusing impleadment of parties and condonation of delay, issues primarily procedural in character. By contrast, the petitioner in the present matter sought a direction compelling the bank to implement a settlement scheme that would effectively reduce or alter its debt liability.

According to the Court, a direction requiring a bank to implement an OTS scheme would have a direct bearing on the financial obligations of the borrower and the recoverable dues of the secured creditor. Such a determination affects the substantive rights of the parties and cannot be equated with routine procedural orders regulating the conduct of proceedings.

The Court emphasised that the DRT's rejection of the petitioner's request did not merely concern case management or procedural administration. Instead, it involved adjudication of a substantive claim relating to the borrower's liability and entitlement to settlement benefits. Consequently, the order possessed a substantive character and fell within the ambit of orders attracting the statutory pre-deposit requirement.

The High Court further relied upon the Supreme Court's decisions in *Narayan Chandra Ghosh v. UCO Bank* and *Union Bank of India v. Rajat Infrastructure (P) Ltd.*, which unequivocally held that Section 18 imposes a mandatory condition precedent for maintaining an appeal before the DRAT. The statutory language creates an absolute bar against entertaining an appeal unless the borrower deposits fifty per cent of the debt due, subject only to the Appellate Tribunal's discretion to reduce the amount to twenty-five per cent for recorded reasons.

The Court reiterated that neither the DRAT nor the High Court possesses the authority to completely dispense with the statutory requirement where the legislature has expressly mandated pre-deposit as a condition for invoking the appellate jurisdiction.

The Decision

The High Court dismissed the petition and upheld the order passed by the Debts Recovery Appellate Tribunal.

It held that the DRT's refusal to direct implementation of the OTS scheme constituted a substantive determination affecting the borrower's financial liability and therefore could not be regarded as a procedural order. Consequently, the petitioner was required to comply with the mandatory pre-deposit requirement under Section 18 of the SARFAESI Act before its appeal could be entertained by the DRAT.

Finding no jurisdictional error or perversity in the impugned order, the Court declined to interfere and reaffirmed the statutory framework governing appeals under the SARFAESI Act.

Significance

The judgment is significant for several reasons. First, it clarifies the distinction between procedural and substantive orders for the purpose of Section 18 of the SARFAESI Act. While certain purely procedural orders may raise questions regarding the applicability of the pre-deposit requirement, orders affecting debt liability, settlement rights, or substantive financial obligations will ordinarily attract the statutory mandate.

Secondly, the decision strengthens the principle that appellate remedies under the SARFAESI Act are conditional rights rather than absolute entitlements. The legislature consciously introduced the pre-deposit requirement to discourage frivolous litigation and ensure that debt recovery proceedings are not indefinitely delayed through successive appeals.

Thirdly, the ruling provides important guidance in disputes involving One Time Settlement schemes. Borrowers frequently seek judicial intervention to compel banks to grant settlement benefits. The judgment clarifies that such claims concern substantive rights and, therefore, any appeal arising from their adjudication must comply with the statutory pre-deposit mechanism.

Finally, the decision reaffirms judicial restraint in matters of economic legislation and debt recovery. By insisting upon strict compliance with the statutory framework, the Court has reinforced the legislative objective of maintaining financial discipline while preserving a structured appellate process for aggrieved borrowers.

As banking litigation and SARFAESI disputes continue to increase, Jainco Projects (India) Ltd. v. UCO Bank is likely to serve as an important precedent governing the maintainability of appeals and the mandatory nature of pre-deposit requirements under the SARFAESI regime.

Conclusion

The decision in Jainco Projects (India) Ltd. v. UCO Bank reinforces that the right of appeal under Section 18 of the SARFAESI Act is subject to strict statutory conditions. By distinguishing between procedural and substantive orders, the Calcutta High Court has provided valuable guidance for borrowers and financial institutions alike, ensuring that the objective of speedy debt recovery is not defeated through procedural challenges.

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