

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8258 OF 2016

(Arising out of SLP(C) No.34859 of 2014)

KUMAR ALUMINIUM LTD .....APPELLANT

VERSUS

ASSET RECONSTRUCTION COMPANY  
INDIA LTD AND ANR .....RESPONDENTSJ U D G M E N TKurian, J.

Leave granted.

The appellant is aggrieved by the impugned judgment dated 19.8.2014 passed by the High Court of Delhi in Writ Petition (Civil) No.3896 of 2013.

As per the impugned judgment, the High Court declined to interfere with the order passed by the Debt Recovery Appellate Tribunal, Delhi (for short, the 'DRAT'). The DRAT had turned down the prayer of the appellant for refund of the amount deposited in compliance of the requirement of the second proviso to section 18(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, for maintaining an appeal.

This Court has considered a similar issue in the case of Axis Bank vs. SBS Organics Private Limited &

Anr., in Civil Appeal No.4379 of 2016 and held as under :

"22. The Appeal under section 18 of the Act is permissible only against the order passed by the 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 the DRAT as a pre-condition 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."

Accordingly, we dispose of this appeal, set aside the impugned judgment of the High Court as well as the order of the DRAT impugned before the High Court and

remit the matter to DRAT for consideration afresh.

Liberty is given to all parties to raise all contentions available to them before the DRAT which may pass fresh orders in accordance with law.

The parties before this Court shall appear before the Debt Recovery Appellate Tribunal, Delhi, on 3.10.2016.

.....J  
[KURIAN JOSEPH]

.....J  
[ROHINTON FALI NARIMAN]

NEW DELHI;  
AUGUST 23, 2016.



JUDGMENT