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# NEWSLETTER

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## **JUDGEMENTS**

### **1. Kotak Mahindra Bank Pvt. Limited vs. Ambuj A. Kasliwal**

**Entire waiver of pre-deposit for filing appeal before DRAT under Section 21 of the Recovery of Debts and Bankruptcy Act, 1993 is impermissible – Supreme Court of India**

The Brief Facts of the case are that the Appellant is before present Court assailing the order whereby the High Court has permitted Respondents No. 1 and 2 to prosecute the appeal before the Debts Recovery Appellate Tribunal ('DRAT') without pre-deposit of a portion of the debt determined to be due, as provided under Section 21 of the Recovery of Debts and Bankruptcy Act, 1993 ('RDBA Act'). The Appellant/Bank claiming to be aggrieved by the said order is before present Court in the instant appeal.

Section 21 of the Recovery of Debts and Bankruptcy Act, 1993 employs the phrase "appeal shall not be entertained" indicates that it injuncts the Appellate Tribunal from entertaining an appeal by a person from whom the amount of debt is due to the Bank, unless such person has deposited with the Appellate Tribunal, fifty percent of the amount of debt so due from him as determined by the Tribunal under Section 19 of the Act. The proviso to the said Section, however, grants the discretion to the Appellate Tribunal to reduce the amount to be deposited, for reasons to be recorded in writing, but such reduction

shall not be less than twenty-five per cent of the amount of such debt which is due. Hence, the pendulum of discretion to waive pre-deposit is allowed to swing between fifty per cent and twenty-five per cent of the debt due and not below twenty-five per cent, much less not towards total waiver. It is in that background, keeping in perspective the said provision, the DRAT has in the instant case ordered deposit of fifty per cent of the amount.

The Respondents No.1 and 2 while seeking waiver of the deposit have essentially projected the case to indicate that, the recovery certificate ordered by the DRT is for the sum of Rs.145 Crores with interest at 9% per annum and the amount realised by the Bank from the compensation amount payable to Respondent No. 3 is itself a sum of Rs.152,81,07,159 and as such, there is no debt due. Aforesaid being the position, merely because the amount of Rs.152,81,07,159/ was received by the respondent bank before passing of the final judgment, and not thereafter, would make no difference while considering the aspect of pre-deposit that the debtor, or the guarantor would have to deposit in terms of Section 21 of the Act. Thus, when prima facie, it was taken note by the DRAT that, further amount was due and the pre-deposit was ordered, without finding fault with such conclusion the High Court was not justified in setting aside the orders passed by the DRAT.

Therefore, in the facts and circumstances, when further amount is due and payable in discharge of the decree/recovery certificate issued by the DRT in favour of the Appellant/Bank, the High Court does not have the power to waive the pre-deposit in its entirety, nor can it exercise discretion which is against the mandatory requirement of the statutory provision as contained in Section 21 of Act. In all cases, fifty per cent of the decretal

amount i.e. the debt due is to be deposited before the DRAT as a mandatory requirement, but in appropriate cases for reasons to be recorded the deposit of at least twenty-five per cent of the debt due would be permissible, but not entire waiver. Therefore, any waiver of pre-deposit to the entire extent would be against the statutory provisions and, therefore, not sustainable in law.

Link:

[https://main.sci.gov.in/supremecourt/2019/30172/30172\\_2019\\_31\\_1501\\_26209\\_Judgement\\_16-Feb-2021.pdf](https://main.sci.gov.in/supremecourt/2019/30172/30172_2019_31_1501_26209_Judgement_16-Feb-2021.pdf)

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