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Legal Insights: Secured Transactions

RECENT IMPORTANT LEGAL DEVELOPMENT

1. **SARFAESI ACT DOES NOT MANDATE SECURED CREDITOR TO APPROACH DM FOR TAKING PHYSICAL POSSESSION.**

In the case titled as ***UCO Bank v. M/s Asha Oil Industries & Ors.*** [Writ Petition 31051 / 2025], it was held by the Hon'ble High Court of Madhya Pradesh as:

26. Therefore, it is clear that for taking possession of the secured asset, only recourse available to the petitioner/ Bank is to file an application under Section 14 of the SARFAESI Act before CJM/ DM is contrary to the language of Section 14 of the SARFAESI Act itself. As discussed above Section 14 of the SARFAESI Act comes into play when "assistance" is required to the authorized officer (for the secured creditor) for taking possession of the secured asset.

2. **PRE DEPOSIT FOR FILING SARFAESI APPEAL, MUST BE PAID TO TRIBUNAL, AND NOT TO LENDING BANK.**

In the case titled as ***The Authorized Officer & Chief Manager, Kerala Gramin Bank v. Prajith Builders & Developers Private Limited & Ors.*** [Writ Petition 31051 / 2025], it was held by the Hon'ble High Court of Madhya Pradesh as:

19. This Court in M/s. Suwique Traders [2025 (4) KHC SN 30], while considering the question of mandatory pre-deposit to be made before the DRAT under Section 18 of the SARFAESI Act, held thus:

"19. In view of the provisions under Section 18(1) of the SARFAESI Act and the law laid down by the Apex Court in Narayan Chandra Ghosh [(2011) 4 SCC 548] there is an absolute bar to the entertainment of an appeal under Section 18 unless the condition precedent, as stipulated in the second proviso to Section 18(1), is fulfilled. As held by the Apex Court, the requirement of pre-deposit under the second proviso to Section 18(1) is

mandatory, and the Debts Recovery Appellate Tribunal, which is a creature of the statute, cannot refuse to give full effect to the provisions of Section 18(1). In view of the provisions contained in the second and third provisos to Section 18(1), a complete waiver of pre-deposit is beyond the provisions of Section 18(1). In an appeal filed under Section 18, which is accompanied by an application for waiver of pre-deposit, invoking the provisions under the third proviso to Section 18(1), the Appellate Tribunal can, for reasons to be recorded in writing, reduce the pre-deposit to not less than twenty five per cent of the debt referred to in the second proviso to Section 18(1).

3. **BORROWER'S RIGHTS TO REDEEM SECURED ASSETS ENDS WITH PUBLICATION OF AUCTION NOTICE.**

In the case titled as ***Gogi Motor Store v. Citizens Cooperative Bank Ltd. & Anr.*** [Writ Petition (C) 2274 / 2025], it was held by the Hon'ble High Court of Jammu & Kashmir and Laddakh as:

24. The point involved in the petition is no more res integra and is settled by Hon'ble Supreme Court in M. Rajendran and Ors. Vs. M/s KPK Oils and Proteins India Pvt. Ltd. And Ors.; 2025 SCC Online SC 2036, a locus classicus on the subject wherein, Hon'ble Supreme Court in an unequivocal words, while interpreting the object underlying Section 13 (8) of the SARFAESI Act held as follows:-

"To put it simply, as per sub-section (8) of Section 13 of the SARFAESI Act, a borrower can tender the amount of due to the secured creditor along with all costs, charges and expenses, at any time, before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty, as the case may be. […]"

4. **RESCHEDULING PAYMENTS UNDER ONE TIME SETTLEMENT (OTS) SCHEME AMOUNTS TO RE-WRITING CONTRACT, HIGH COURTS CANNOT DO IT.**

In the case titled as ***South Indian Bank Limited & Anr. v. Rahim H.K. & Anr.*** [WA No. 2425 / 2025], it was held by the Hon'ble High Court of Jammu & Kashmir and Laddakh as:

22. that no writ of mandamus can be issued by the High Court in exercise of the powers under Article 226 of the Constitution of India directing a financial institution/bank to positively grant the benefit of One Time Settlement (OTS) to a borrower; the grant of benefit under OTS is always subject to eligibility criteria mentioned under OTS scheme and guidelines issued from time to time. Such a decision should be left to the commercial wisdom of the bank, whose amount is involved, and it is always to be presumed that a financial institution/bank shall take a prudent decision whether to grant a benefit or not under the OTS scheme. Therefore, the High Court materially erred and exceeded in its jurisdiction in issuing a writ of mandamus directing the bank to positively consider/grant the benefit of OTS to the borrower. […]

[Refer more to proceeding paragraph; SC Judgment cited in it]

5. **PROVISIONS OF SC/ST ACT CANT BE USED TO PREVENT BANK FROM ENFORCING SECURITY INTEREST.**

In the case titled as ***Axis Bank Limited v. National Commission for Schedules Tribes & Ors.*** [WP (C) No. 16123 / 2025], it was held by the Hon'ble High Court of New Delhi as:

20. A coordinate Bench of this Court in.1 , by placing reliance on judgment rendered by the Supreme Court in State of Uttar Pradesh and Ors. Vs Jasvir Singh and Ors. & State Bank of India and Anr. v. National Commission for Scheduled Castes and Anr (2011) 4 SCC 288 has observed as under –

"4. It is apparent from the above that although, the Commission has the powers to summon and enforce the attendance of any person from any part of India and examining him on oath, the said powers are for the specific purpose of enquiring into a complaint or

for taking evidence. Thus, the Commission needs to be circumspect while exercising those powers and ensure that the same are used only for the purpose of performing their functions.[…] [+Refer to judgment more ; SC Judgment mentioned]

6. **LIMITATIONS ARE TO BE CALCULATED FROM THE DATE OF LAST ACTION AGAINST WHICH AGGRIEVED PARTY APPROACHED DRT U/S 17.**

In the case titled as ***Vimla Kashyap & Ors. v. Union of India & Ors.*** [WP (C) No. 3953 / 2025], it was held by the Hon'ble High Court of Uttar Pradesh as:

9. […] the issue with regard to the steps permitted to be taken under The Recovery of Debts and Bankruptcy Act as well as the SARFAESI Act came up for consideration before the Hon'ble Supreme Court in the case of Mardia Chemicals Ltd. and others vs Union of India and others: (2004) 4 SCC 311, wherein the Hon'ble Supreme Court after noticing the scheme of the Act recorded as under:

"48. The next safeguard available to a secured borrower within the framework of the Act is to approach the Debts Recovery Tribunal under Section 17 of the Act. Such a right accrues only after measures are taken under sub-section (4) of Section 13 of the Act. […]

7. **DRT CANNOT REJECT CONSOLIDATED PLEA FILED BY TENANT UNDER SARFAESI ACT.**

In the case titled as ***Moideem Koya & Ors. v. Pegasus Assets Reconstruction Co. Pvt. Ltd. & Ans.*** [OP (DRT) No. 287 / 2024], it was held by the Hon'ble High Court of Kerala as:

7. Furthermore, the DRT's rejection of a consolidated application contradicts the legislative intent behind SARFAESI, which seeks expeditious resolution of disputes. Requiring each tenant to file a separate application would lead to repetitive pleadings, conflicting interim orders, and unnecessary delays— outcomes that defeat the purpose of *a summary adjudication mechanism under Section 17. Procedural rules should be interpreted to facilitate dispute resolution while ensuring timely and diligent pursuit of legal remedies. Procedural law is not to be tyrant but a servant, not an obstruction but an aid to justice.*

8. COURTS MUST NOT INTERFERE UNDER WRIT JURISDICTIONS, WHEN ALTERNATE REMEDIES ARE AVAILABLE.

In the case titled as ***Naseem Ahmad Khan v. ICICI Home Finance & Ors.*** [Civil Writ Petition No. 11013 / 2023], it was held by the Hon'ble High Court of Rajasthan, at Jaipur as:

9. The Supreme Court in the case of ***PHR Invent Education Society Vs. UCO Bank and Ors.*** *reported in (2024) 6 SCC 579 reiterating the decision in case Satyawati Tandon held:-*

[…] 38. It has however been clarified that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance.

39. Undisputedly, the present case would not come under any of the exceptions as carved out by this Court in Chhabil Dass Agarwal.

40. We are therefore of the considered view that the High Court has grossly erred in entertaining and allowing the petition under Article 226 of the Constitution.

9. **PROCEEDINGS UNDER SARFAESI ACT AND RDDB ACT ARE COMPLIMENTARY, CAN CONTINUE PARALLELLY.**

In the case titled as ***Magnum Steels Limited & Ors. v. Assets Reconstruction Company (India) Limited & Anr.*** [WP (C) No. 5278 / 2024] [2024 DMC 2952 DB], it was held by the Hon'ble High Court of Delhi as:

5.5. Subsequently, in M.D. Frozen Foods Exports Pvt. Ltd. [2017 16 SCC 741] (supra) the Supreme Court after considering the aforesaid judgments, yet again reiterated that the RDDB Act and SARFAESI Act are thus, complimentary to each other and it is not case of election of remedy. The Court held that in view of the provision of Section 37 of the SARFAESI Act, the application of the said Act will be in addition to and not in derogation of the RDDB Act.

10. **MSME ACT 'DUES' WILL NOT PREVAIL OVER THE PROVISIONS OF SARFAESI PROCEEDINGS.**

In the case titled as ***Kotak Mahindra Bank Limited v. Girnar Corrugators Private Limited & Ors.*** [Civil Appeal No. 6662 / 2022] [2022 LiveLaw (SC) 12], it was held by the Hon'ble Supreme Court of India as:

9. At this stage, the object and purpose of the enactment of SARFAESI Act is required to be considered. SARFAESI Act has been enacted to regulate securitization and reconstruction of financial assets and enforcement of security interest and to provide for a central debts of security interest created on property rights, and for matters connected therewith or incidental thereto. Therefore, SARFAESI Act has been enacted providing specific mechanism / provision for the financial assets and security interest. It is a special legislation for enforcement of security interest which is created in favour of the secured creditor – financial institution. Therefore, in absence of any specific provision for priority of the dues under MSMED Act, if the submission on behalf of respondent No.1 for the dues under MSMED Act would prevail over the SARFAESI Act, then in that case, *not only the object and purpose of special enactment / SARFAESI Act would be frustrated, even the later enactment by way of insertion of Section 26E of the SARFAESI Act would be frustrated.*

11. BANKS / NBFCS NOT OBLIGED TO INITIATE RESTRUCTURING PROCESS BEFORE CLASSIFYING MSME ACCOUNT AS NPA.

In the case titled as ***M/s A. Navinchandra Steels Pvt. Ltd. & Anr. v. Union of India & Ors.*** [WP No. 4620 / 2022] [2024 BHC OS 649 DB], it was held by the Hon'ble High Court of Bombay as:

9.b) It is submitted that the Petitioners cannot rely on the said Notification or any other Notification for restructuring, to thwart the entire process initiated under SARFAESI Act, 2002. He submitted that in the case of Oriental Bank of Commerce Vs. Sunder Lal Jain and Anr. (2008) 2 SCC 280), regarding guidelines issued by the RBI (about settlement), the Hon'ble Apex Court has already held that such guidelines are merely internal guidelines for the Banks which are executive instructions and have no statutory force. It is already held that these guidelines do not create any rights in favour of the borrowers.

12. SANCTION OF RESOLUTION PLAN U/S 31 OF IBC, DOES NOT DISCHARGE LIABILITY OF GUARANTOR TOWARDS LOAN.

In the case titled as ***Sanjay Sarin v. The Authorized Officer, Canara Bank & Ors.*** [WP (C) No. 2983 / 2022], it was held by the Hon'ble High Court of Delhi as:

5.3. Irrespective, the Petitioner, as a guarantor, is not discharged of its liability on account of sanction and approval of a resolution plan by the NCLT. For this, reliance is placed on the judgment of the Supreme Court in State Bank of India v. V. Ramakrishnan and Anr. [(2018) SCC OnLine SC 963], and Lalit Kumar Jain v. Union of India and Ors. [2021 SCC OnLine SC 396]

13. PENDENCY OF PROCEEDINGS BEFORE DRT UNDER RDDB ACT, SARFAESI ACT, NOT A BAR AGAINST INITIATION OF CIRP PROCEEDINGS.

In the case titled as ***Mr. Amar Vora v. City Union Bank Ltd. & Anr.*** [Company Appeal (AT) (CH) (Ins) 130 / 2022], it was held by the Hon'ble National Company Law Appellate Tribunal, Chennai Bench as:

9. In view of the above provision of law the financial Creditor/ Operational Creditor/Corporate Persons can file an application under Section 7 ,9 & 10 of the I & B Code, 2016 before the respective Adjudicating Authorities even though in respect of same any proceeding pending before other forums on the ground that the provisions of I & B Code, 2016 is overriding effect of other laws. In view of the aforesaid reasons the Appellant cannot take a stand that the proceedings are pending before DRT and PBPT and the application under Section 7 of the I & B Code, 2016 cannot be maintained does not merit. The application under Section 7 filed by the financial Creditor before the Adjudicating Authority is very well maintained. Accordingly, the point is answered against the Appellant.

14. BORROWERS CAN PREFER AN APPEAL BEFORE DRAT EVEN IF MORTGAGED PROPERTY BELONGS TO GUARANTOR.

In the case titled as ***Manik Mehta v. UCO Bank & Ors.*** [WP 227 / 7367 / 2011], it was held by the Hon'ble High Court of Chhattisgarh Bench as:

13. In United Bank of India v. Satyawati Tondon and Others (2010 8 SCC 110], the Supreme Court has held that the expression 'any person' used in Section 17 (1) is of wide import. It takes within its fold, not only the borrower but also the guarantor or any other person who may be affected by the action taken under Section 13 (4) or Section 14.

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