

INFOLEX CONSULTANTS

LEGAL INSIGHTS:
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RECENT IMPORTANT LEGAL DEVELOPMENT

| SARFAESI

BANK CAN INVOKE SARFAESI FOR LOANS ACQUIRED FROM NBFC NOT COVERED UNDER THE ACT

In the case titled as **‘Kotak Mahindra Bank Limited v. Trupti Sanjay Mehta & Ors.’** [Civil Appeal No. 8531 of 2015] [2026 INSC 943] [2026 LiveLaw (SC) 886], it was held by the Hon’ble Supreme Court of India, that a bank to which the SARFAESI Act, 2002 applies can invoke its provisions for recovery of a secured non-performing loan acquired from an NBFC which was not a notified “financial institution” under Section 2(1)(m) when the loan was originally created. The Court held that once such a loan account is acquired by an eligible bank, the account assumes the statutory attributes of a “secured debt” under the SARFAESI Act. The Court rejected the argument that the original status of the lending NBFC permanently determines whether SARFAESI remedies are available. It relied upon the purposive interpretation adopted in *M.D. Frozen Foods Exports Pvt. Ltd. v. Hero Fincorp Ltd.* and *Indiabulls Housing Finance Ltd. v. Deccan Chronicle Holdings Ltd.* Accordingly, the Supreme

Court set aside the Bombay High Court’s contrary view and allowed Kotak Mahindra Bank to proceed under the SARFAESI framework, while restoring the borrowers’ securitisation application before the DRT for consideration of their remaining issues.

SARFAESI PROCEEDINGS CAN CONTINUE DESPITE EARLIER DRT DECREE FOR THE SAME DEBT

In the case titled as **‘K.K. Praveen v. JM Financial Asset Reconstruction Company Pvt. Ltd. & Ors.’** [2026 LiveLaw (SC) 932], it was held by the Hon’ble Supreme Court of India, comprising Justice B.V. Nagarathna and Justice R. Mahadevan, as: The Supreme Court held that proceedings under the SARFAESI Act, 2002 can be invoked even where an ex-parte decree has already been passed by the Debts Recovery Tribunal (DRT) concerning the same debt. The petitioner contended that the earlier decree attracted the principles of *res judicata* and *transit in rem judicatam*, thereby preventing initiation of further proceedings on the same cause of action. The Court, however, relied upon Section 35 of the SARFAESI Act, which gives the Act

overriding effect over other laws or instruments having effect by virtue of law, where there is any inconsistency. Accordingly, the Court held that the provisions of the SARFAESI Act would prevail and dismissed the challenge to proceedings initiated under Sections 13(2), 13(4) and 14 of the SARFAESI Act.

POLICE DIRECTED TO RESTORE BANK'S POSSESSION OF MORTGAGED PROPERTY FORCIBLY TAKEN BY BORROWERS

In the case titled as '**Indusind Bank Limited v. State of Rajasthan & Ors.**' [2026 LiveLaw (Raj) 386], the Court directed the police authorities to take all possible measures to restore possession of a mortgaged property to the bank after the borrowers had allegedly taken possession of it by force. The bank had initiated proceedings under **Section 14 of the SARFAESI Act, 2002** after the borrowers' accounts were classified as Non-Performing Assets (NPAs). Pursuant to the proceedings, directions had been issued for taking possession of the mortgaged property. However, the respondents allegedly used force to regain possession, resulting in

registration of an FIR. The Court noted that despite the passage of considerable time, effective steps had not been taken by the police. Relying upon the coordinate Bench decision in *Atma Ram Bishnoi & Another v. District Collector & Others*, the Court directed the concerned police authorities to undertake all possible measures to restore possession of the mortgaged property to the bank within six weeks.

SUPREME COURT DISMISSES CHALLENGE TO ARC'S SARFAESI PROCEEDINGS WITHOUT DECIDING WHETHER ARCS ARE BANKING COMPANIES

In the case titled as '**K.K. Praveen v. J.M. Financial Asset Reconstruction Company & Ors.**' [Writ Petition (Civil) No. 1091/2026] [2026 LLBiz (SC) 307], The Hon'ble Supreme Court dismissed a writ petition challenging recovery proceedings initiated by an Asset Reconstruction Company (ARC) under the SARFAESI Act, 2002. The petitioner contended that ARCs are not "banking companies" and therefore cannot invoke the SARFAESI Act or the Recovery of Debts and Bankruptcy Act, 1993. He further argued that an earlier ex-

parte decree passed by the DRT, Ernakulam had merged the cause of action into the decree and consequently barred subsequent SARFAESI proceedings. The Bench of Justice B.V. Nagarathna and Justice R. Mahadevan rejected the latter contention by relying upon Section 35 of the SARFAESI Act, which gives the Act overriding effect over inconsistent laws. Importantly, the Court did not adjudicate whether ARCs qualify as banking companies or whether the RDB Act and SARFAESI Act can otherwise be applied to ARCs. Other issues concerning MSME restructuring and simultaneous proceedings under SARFAESI, RDB Act and IBC were also left undecided.

BANK CAN INVOKE SARFAESI FOR LOANS ACQUIRED FROM INSTITUTIONS NOT COVERED BY THE ACT

In the case titled as ‘**Kotak Mahindra Bank Limited v. Trupti Sanjay Mehta & Ors.**’ [Civil Appeal No. 8531 of 2015] [2026 LLBiz (SC) 294], it was held by the Hon’ble Supreme Court of India, that a bank which is covered by the SARFAESI Act, 2002 can invoke the Act for recovery of a secured loan acquired from an institution

which was not covered by SARFAESI when the loan was originally granted. The Bench of Justice Sanjay Kumar and Justice Sanjeev Sachdeva held that once a non-performing secured loan account is acquired by an institution to which SARFAESI applies, the loan acquires the attributes of a “secured debt” within the meaning of the Act.

The Court relied upon its earlier decisions in *M.D. Frozen Foods Exports Pvt. Ltd. v. Hero Fincorp Ltd.* and *Indiabulls Housing Finance Ltd. v. Deccan Chronicle Holdings Ltd.* The fact that the original lender subsequently became notified under SARFAESI, or was outside its ambit when the loan was created, does not prevent the acquiring bank from exercising statutory recovery measures.

The Court accordingly upheld the applicability of SARFAESI to such acquired loan accounts, subject to determination of other factual and legal issues in the individual proceedings.

| RDB Act

CPC NOTICE NOT APPLICABLE TO DRT AUCTION PROCEEDINGS AFTER TRANSFER OF EXECUTION

In the case titled as ‘**Sheela Gehlot v. Mohini Hardayal Singh & Ors.**’ [*Civil Appeal No. 182 of 2016*] [2026 LLBiz (SC) 275], the Supreme Court upheld an auction sale conducted by the Recovery Officer of the DRT and held that Order XXI Rule 22 of the CPC did not govern the execution proceedings after their transfer from the civil court to the DRT. The Court explained that, upon transfer, recovery proceedings were governed by Section 29 of the Recovery of Debts and Bankruptcy Act, 1993, read with the Second Schedule to the Income Tax Act, 1961. Consequently, the applicable requirement was the notice contemplated under Rule 2 of the Second Schedule, rather than the CPC notice. Although no Rule 2 notice had been served upon the legal representatives, the Court found that they were aware of the execution and auction proceedings and had participated before the DRT. The Court also held that the residential-property exemption under Section 60(1)(ccc) CPC is personal to the judgment-debtor and does not automatically extend to legal representatives. The High Court’s order was accordingly set aside and the auction sale upheld.

| RBI Recovery Guidelines

RBI RECOVERY GUIDELINES MUST BE EFFECTIVELY FOLLOWED BY BANKS AND NBFCs

In the case titled as ‘**Hari Dutta Sharma v. State of U.P. & Ors.**’ [*Diary No. 10925 of 2026*] [2026 LLBiz (SC) 308], it was held by the Hon’ble Supreme Court of India, as: The Court held that a financier’s contractual right to repossess a financed vehicle cannot be exercised through force, stealth or in disregard of the procedural safeguards prescribed under the loan agreement and RBI Guidelines. The Court found that the repossession of the appellant’s commercial vehicle at around 1 a.m., without the stipulated seven-day notice and through a manner alleged to involve breaking the steering lock, violated the applicable RBI recovery framework and the contractual terms. It further held that contractual clauses granting a financier unilateral discretion to dispense with procedural safeguards could not override the requirements of fairness and lawful recovery. The Court observed that RBI’s recovery-related Guidelines, Master Circulars and Clarifications must be genuinely implemented by NBFCs and Scheduled Commercial Banks. The High Court’s order was quashed, and the financier

was directed to close the loan accounts, refund ₹4.50 lakh with 6% annual interest, and pay ₹10 lakh compensation and ₹50,000 costs.

| Commercial Disputes

DEVELOPMENT AGREEMENT RELATING TO PROPERTY CAN CONSTITUTE A COMMERCIAL EXPLOITATION

In the case titled as ‘**Aloke Satnaliwala v. Nirmala Devi Fatehpuria & Ors.**’ [APOT/137/2026] [2026 LLBiz HC (Cal) 210], it was held by the Hon’ble Calcutta High Court, that a dispute arising from a development agreement concerning immovable property can constitute a “commercial dispute” under Section 2(1)(c)(vii) of the Commercial Courts Act, 2015, where the agreement contemplates commercial exploitation of the property.

The Division Bench of Justice Debangsu Basak and Justice Aryak Dutt observed that a development agreement, by its very nature, involves trade or commerce in relation to the concerned immovable property. Accordingly, the requirement of the property being used for trade or commerce under the Act was found satisfied.

The Court further considered whether the pending suit should be transferred to the Commercial Division under Section 15 of the Act or whether the plaint should be returned under Order VII Rule 10 CPC. Relying upon the applicable Commercial Courts Practice Directions and the decision in *Laxmi Polyfab Pvt. Ltd. v. Eden Realty Ventures Pvt. Ltd.*, the Court permitted the appellant to take return of the plaint and present it before the appropriate Commercial Court.

| MSMED Act

75% PRE-DEPOSIT UNDER MSMED ACT CANNOT BE BYPASSED THROUGH EXECUTION OBJECTIONS

In the case titled as ‘**Atlantis Agritech Private Limited v. M/s Kendriya Bhandar & Anr.**’ [Civil Revision Petition No. 1947 of 2026] [2026 LLBiz HC (Tel) 70], it was held by the Hon’ble Telangana High Court, that an award debtor cannot use an application under Section 47 CPC to avoid the mandatory requirement of depositing 75% of the awarded amount under Section 19 of the MSMED Act, 2006.

The Division Bench of Justice Moushumi Bhattacharya and Justice Renuka Yara held that proceedings under Section 47 CPC, through which a judgment debtor seeks to resist execution, are comparable to a challenge to the award and therefore cannot be treated as independent of the statutory pre-deposit requirement. The mere filing of a Section 47 application cannot automatically stay or obstruct execution proceedings, including disclosure of assets under Order XXI Rule 41(2) CPC. The Court also held that disclosure of assets through percentages or margins, without specifying the actual amounts receivable, was insufficient.

Kendriya Bhandar was accordingly directed to file a fresh affidavit disclosing specific receivables from ongoing and completed projects across India within three weeks.

| IBC

UNCRYSTALLIZED CONTRACTUAL DAMAGES CANNOT BE TREATED AS OPERATIONAL DEBT UNDER IBC

In the case titled as ‘**Srinivasa Reddy Velagala v. Sravanthi Infratech Pvt. Ltd.**’ [2026 *LiveLaw* (SC) 793], it was held by the Hon’ble Supreme Court of India, that claims

for damages arising from breach of contract, whether liquidated or unliquidated, cannot constitute “operational debt” under the Insolvency and Bankruptcy Code, 2016, unless such claims have been assessed and crystallized through adjudication by a competent court or appropriate dispute-resolution forum.

The Bench of Justice J.B. Pardiwala and Justice Manoj Misra observed that the NCLT and NCLAT are not forums for determining disputed contractual damages. Accordingly, claims towards suspension, idling and demobilisation charges arising from an EPC contract could not form the basis of proceedings under Section 9 IBC where they had neither been adjudicated nor crystallized. The Court further held that insolvency proceedings cannot be used to revive time-barred claims. Mere continuation of a contract or repeated legal notices does not extend limitation in the absence of a written acknowledgment of liability. Since the claims had arisen in 2011–12 and insolvency proceedings were initiated only in 2018, the Section 9 application was held barred by limitation.

ARTICLES ON LEGISLATIVE ANALYSIS

(Please click on the article you need to read)

- 1. Laws Governing Financial Rebounds in India**

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ARTICLES ON IMPORTANT INDUSTRIAL DEVELOPMENT

(Please click on the article you need to read)

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- 2. Rising Construction Costs Put Real Estate Sector Under Pressure**
- 3. Legal Risks in India's Expanding Specialty Chemicals Industry**
- 4. GST-Led Demand and Cost Pressures Reshape India's Auto Industry**
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- 6. E-Commerce Rules 2026 Strengthens Consumer Protection**

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