

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 01.11.2023

+ **W.P.(C) 2550/2020 and CM APPL. 8896/2020**

IDFC FIRST BANK LIMITED Petitioner

versus

UNION OF INDIA AND ORS. Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Sanjeev Singh and Ms Ridhi Pahuja,
Advocates.

For the Respondents : Mr Vivek Goyal, SPG and Mr Mimansak
Bhardwaj, GP, Mr Gokul Sharma, Mr Shivam
Singh and Ms Aneeta Goyal, Advocates for
R-1 & 2.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning an order dated 20.06.2019 (hereafter '**the impugned order**') passed by the learned Debts Recovery Tribunal III, Delhi whereby, the petitioner's application under Section 13(10) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter '**the SARFAESI Act**') read with Rule 11

of the Security Interest (Enforcement) Rules, 2002 (hereafter '**the SIE Rules**') for the recovery of balance amount of ₹6,92,551.63 along with interest, was rejected on the ground that the same was less than ₹10,00,000 and was therefore, not within the pecuniary jurisdiction of the learned Debts Recovery Tribunal - III.

2. The principal question to be addressed is whether the Debts Recovery Tribunal has the jurisdiction to entertain a claim for less than ₹10,00,000/- under Section 13(10) of the SARFAESI Act.

Facts in Brief

3. The petitioner entered into a Loan Agreement on 30.12.2015 bearing Loan Account No. 4938084 for an amount of ₹23,00,000 with respondent no.1 and 2. Thereafter, respondent no.1 and 2 created security interest in respect of the built up property captioned 1/16953, First Floor, Khasra No. 270, Village Skidarpur, Abadu Babarpur Road, Shivaji Park, ILAQA, Shahadra, Delhi (hereafter '**the Property**') to secure the Loan and accordingly, deposited original title deeds for the same to the petitioner.

4. It is the case of the petitioner that respondent no.1 and 2 were unable to comply with their repayment obligations and therefore, the loan amount was classified as Non-Performing Asset (NPA).

5. Admittedly, on 27.06.2017, the petitioner issued a demand notice to respondent no.1 and 2 calling upon them to discharge their liability

of ₹24,71,141.85 along with interest and other charges within a period of 60 days from the said date.

6. Subsequently, the petitioner filed an application under Section 14 of the SARFAESI Act as a secured creditor, before the learned District Court, Karkardooma, Delhi. On 09.02.2018, the learned District Court appointed one Sh. Praveen Kumar Chauhan as a receiver to take the possession of the Property on behalf of the petitioner.

7. Thereafter, the petitioner sold the Property for an amount of ₹21,38,000/- and issued a sale certificate dated 15.09.2018 to the successful purchaser.

8. It is submitted on behalf of the petitioner that after adjusting the sale proceeds recovered from the loan amount, an amount of ₹6,92,551.63 remained outstanding. Therefore, the petitioner filed an application under Section 13(10) of the SARFAESI Act read with Rule 11 of the Rules titled *IDFC First Bank Ltd. v. Deepak Yadav and Anr.* in *O.A. Dy. No. 406/2019*, before the learned Debts Recovery Tribunal - III.

9. The Registrar, Debts Recovery Tribunal-III dismissed the petitioner's application, by the impugned order.

Submissions on behalf of the parties

10. It is submitted on behalf of the petitioner that the pecuniary limit under Section 1(4) of the Recovery of Debts and Bankruptcy Act, 1993

(hereafter ‘the RDB Act’) is inapplicable for recovery of balance amount by the secured creditor under Section 13(10) of the SARFAESI Act read with Rule 11 of the SIE Rules. It is contended that an application under Section 13(10) of the SARFAESI Act is not an application under the RDB Act and therefore, the provisions of the RDB Act are not applicable. The said application is required to be independently adjudicated under the SARFAESI Act and in accordance with the SIE Rules. It is submitted that there is no provision in the SARFAESI Act that corresponds to Section 1(4) of the RDB Act and limits the amount to be claimed by a bank or a financial institution to ₹10,00,000.

11. According to the learned counsel for the petitioner, Section 13(10) of the SARFAESI Act read with Rule 11 of the SEI Rules, lays down its own format under Appendix VI for the recovery of balance, which is different from the procedure provided under Rule 4 of the Recovery of Debts (Procedure) Rules, 1993.

12. It is also submitted on behalf of the petitioner that Section 34 of the SARFAESI Act bars the jurisdiction of civil courts from entertaining any suit or proceedings in respect of any matter that the learned Debts Recovery Tribunal is empowered to adjudicate under the SARFAESI Act, thereby, empowering only the learned Debts Recovery Tribunal to entertain its application.

13. The learned counsel for the petitioner relied on the decision in the case of *State Bank of Patiala v. Mukesh Jain & Anr.: (2017) 1*

SCC 53 and on the strength of the said decision stated that the Debts Recovery Tribunal constituted under the RDB Act has jurisdiction to entertain an appeal as per Section 17 of the SARFAESI Act even if the amount being claimed is less than ₹10,00,000.

14. Next, the learned counsel for the petitioner submitted that an application under Section 19 of the RDB Act can only be filed by financial institutions covered by Section 2(h) of the RDB Act, which in turn renders financial institutions covered under Section 2(1)(m) of the SARFAESI Act remediless thereby, defeating the object of the SARFAESI Act.

15. The learned counsel for respondent no.2 submitted that the present petition ought to be rejected as the petitioner has an equally efficacious alternate remedy. He referred to the decision in *United Bank of India v. Satyawati Tandon & Ors.: (2010) 8 SCC 110*, and submitted that the Supreme Court has held that the RDB Act as well as the SARFAESI Act has statutory remedies available to an applicant and that he need not appeal to the High Court under Article 226 of the Constitution for the same.

16. It is submitted on behalf of respondent no.2 that as per Gazette Notification dated 06.09.2018 of the Ministry of Finance (Department of Financial Services), the provisions of the RDB Act shall not apply where the amount of debt due to any bank or financial institution or to a consortium of banks or financial institutions is less than ₹20,00,000.

17. Lastly, it was submitted on behalf of respondent no.2 that Section 13(10) of the SARFAESI Act lays down that if any amount is left due even after selling the secured assets, the same will be recoverable, but that does not mean that the application for recovery shall be maintainable under the SARFAESI Act as the recovery of the balance amount falls under the provisions of the RDB Act.

Reasons and Conclusion

18. The learned Registrar, Debts Recovery Tribunal-III had reasoned that since the Debts Recovery Tribunal (Procedure) Rules, 1993 apply *mutatis mutandis* to an application filed under Rule 11(1) of the SIE Rules, the provisions of the RDB Act would apply. However, since the provisions of the RDB Act are not applicable where debts due to the bank or the financial institution is less than ₹20,00,000/-, and the petitioner's claim was below the said limit, the learned Debts Recovery Tribunal-III did not have the jurisdiction to entertain the application under the RDB Act.

19. At the outset, it is relevant to refer to Section 1(4) of the RDB Act, which reads as under:

“1(4) Save as otherwise provided, the provisions of this Code shall not apply where the amount of debt due to any bank or financial institution or to a consortium of banks or financial institutions is less than ten lakh rupees or such other amount, being not less than one lakh rupees, as the Central Government may, by notification, specify.”

20. In terms of Sub-section (4) of Section 1 of the RDB Act, the provisions of the RDB Act are not be applicable where the amount of debt due to any bank or financial institution or to a consortium of banks or financial institution, is less than ₹10,00,000/- or such other amount as the Central Government may specify. The said threshold of ₹10,00,000/- has since been increased to ₹20,00,000/- by virtue of the Notification [S.O. 4312 (E)] dated 06.09.2018 issued by the Ministry of Finance (Department of Financial Services).

21. It is relevant to note that Sub-section (4) of Section 1 of the RDB Act as originally enacted, did not include the opening words, “*save as otherwise provided*”. These words were added by virtue of Section 249 read with the Fifth Schedule of the Insolvency and Bankruptcy Code, 2016 (hereafter ‘**IBC**’).

22. Undisputedly, an Original Application under Section 19 of the RDB Act by a bank or a financial institution or a consortium of banks or financial institutions, cannot be instituted in respect of debts due, which are less than ₹20,00,000/-.

23. It is the petitioner’s case that its application for the recovery of a sum of ₹6,92,551.63/- was not under the RDB Act, but under the provisions of Section 13(10) of the SARFAESI Act. Therefore, the provisions of the RDB Act, including Section 1 of the RDB Act, are inapplicable. Section 13(10) of the SARFAESI Act expressly enables a secured creditor to file an application for a recovery of the balance

amount from a borrower, if its claims are not fully satisfied from the sale proceeds of secured assets. According to the petitioner, Section 13(10) of SARFAESI Act is a separate code, independent of the RDB Act, for the recovery of amounts due to the secured creditors that remains outstanding after the proceeds of the secured assets are appropriated.

24. Section 13(10) of the SARFAESI Act is set out below:

“13(10) Where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the Debts Recovery Tribunal having jurisdiction or a competent court, as the case may be, for recovery of the balance amount from the borrower.”

25. Rule 11 of the SIE Rules sets out the procedure for making an application under Section 13(10) of the SARFAESI Act. The said Rule is set out below:

“11. Procedure for Recovery of shortfall of secured debt.- (1) An application for recovery of balance amount by any secured creditor pursuant to sub-section (10) of section 13 of the Act shall be presented to the Debts Recovery Tribunal in the form annexed as Appendix VI to these rules by the authorised officer or his agent or by a duly authorised legal practitioner, to the Registrar of the Bench within whose jurisdiction his case falls or shall be sent by registered post addressed to the Registrar of Debts Recovery Tribunal.

(2) The provisions of the Debts Recovery Tribunal (Procedure) Rules, 1993 made under Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of

1993), shall *mutatis mutandis* apply to any application filed by under sub-rule (1).

(3) An application under sub-rule (1) shall be accompanied with fee as provided in rule 7 of the Debts Recovery Tribunal (Procedure) Rules, 1993.”

26. It is also relevant to refer to Section 31 of the SARFAESI Act, which expressly provides the circumstances where the provisions of the SARFAESI Act would not apply. In terms of Clause (h) of Section 31 of the SARFAESI Act, it would not apply where, any security interest is in respect of any financial asset of ₹1,00,000/- or less. Clause (h) of Section 31 of the SARFAESI Act is reproduced below:

“31. Provisions of this Act not to apply in certain cases.–

The provisions of this Act shall not apply to –

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(h) any security interest for securing repayment of any financial asset not exceeding one lakh rupees;”

27. Thus, the principal question to be addressed is whether the Debts Recovery Tribunal constituted under the RDB Act, exercises any original jurisdiction for the recovery of debts under the SARFAESI Act.

28. Section 3 of the RDB Act provides for establishment of Debts Recovery Tribunal for exercising jurisdiction, powers and authority conferred under the RDB Act. Section 3 of the RDB Act as originally enacted is set out below:

“3. Establishment of Tribunal.—(1) The Central Government shall, by notification, establish one or more Tribunals, to be known as the Debts Recovery Tribunal, to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act.

(2) The Central Government shall also specify, in the notification referred to in sub-section (1), the areas within which the Tribunal may exercise jurisdiction for entertaining and deciding the applications filed before it.”

29. Section 17 of the RDB Act sets out the jurisdiction of the Debts Recovery Tribunal and the Debts Recovery Appellate Tribunal. Section 17 of the RDB Act as originally enacted is reproduced below:

“17. Jurisdiction, powers and authority of Tribunals.—

(1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial institutions for recovery of debts due to such banks and financial institutions.

(2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act.”

30. In terms of Section 179 of the IBC, the Debts Recovery Tribunal is also the Adjudicating Authority for individuals and firms. Thus, to clothe the Debts Recovery Tribunal with the jurisdiction to adjudicate insolvency of individuals and firms, Section 249 of the IBC amended certain provisions of the RDB Act as set out in the Fifth Schedule to the IBC. This included amendment to Sub-section (4) of Section 1 of the RDB Act by introducing the opening words “*save as otherwise*

provided”. The import of the said words was to carve out an exception to the clause regarding the pecuniary jurisdiction of the Debts Recovery Tribunal. Thus, to the extent that the Debts Recovery Tribunal is expressly conferred jurisdiction, it would exercise the same notwithstanding, the pecuniary threshold specified under Sub-section (4) to Section 1 of the RDB Act.

31. Sections 3 and 17 of the RDB Act were also amended by introducing Sub-section (1A) in Section 3 and Sub-sections (1A) and (2A) in Section 17 of the RDB Act. Sections 3 and 17 of the RDB Act as amended by Section 249 of the IBC are set out below:

“3. Establishment of Tribunal.—(1) The Central Government shall, by notification, establish one or more Tribunals, to be known as the Debts Recovery Tribunal, to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act.

(1A) The Central Government shall by notification establish such number of Debts Recovery Tribunals and its benches as it may consider necessary, to exercise the jurisdiction, powers and authority of the Adjudicating Authority conferred on such Tribunal by or under the Insolvency and Bankruptcy Code, 2016.

(2) The Central Government shall also specify, in the notification referred to in sub-section (1), the areas within which the Tribunal may exercise jurisdiction for entertaining and deciding the applications filed before it.”

“17. Jurisdiction, powers and authority of Tribunals.—

(1) A Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain and decide applications from the banks and financial

institutions for recovery of debts due to such banks and financial institutions.

(1A) Without prejudice to sub-section (1),—

(a) the Tribunal shall exercise, on and from the date to be appointed by the Central Government, the jurisdiction, powers and authority to entertain and decide applications under Part III of Insolvency and Bankruptcy Code, 2016 (31 of 2016).

(b) the Tribunal shall have circuit sittings in all district headquarters.

(2) An Appellate Tribunal shall exercise, on and from the appointed day, the jurisdiction, powers and authority to entertain appeals against any order made, or deemed to have been made, by a Tribunal under this Act.

(2A) Without prejudice to sub-section (2), the Appellate Tribunal shall exercise, on and from the date to be appointed by the Central Government, the jurisdiction, powers and authority to entertain appeals against the order made by the Adjudicating Authority under Part III of the Insolvency and Bankruptcy Code, 2016 (31 of 2016).”

32. The SARFAESI Act also provides the Debts Recovery Tribunal with the appellate jurisdiction to decide applications against any measures taken by the secured creditors under the SARFAESI Act for the enforcement of security interest. Sub-section (1) of Section 17 of the SARFAESI Act enables any person aggrieved by the measures referred to in Section 13(4) of the RDB Act to make an application to the Debts Recovery Tribunal having jurisdiction in the matter. Sub-section (1A) of Section 17 of the SARFAESI Act provides that an application under Sub-section (1) of Section 17 of the SARFAESI Act would be filed before the Debts Recovery Tribunal within the local

limits of the jurisdiction where, cause of action wholly, or in part, arises; where the secured asset is located; or the branch or any other office of the bank or financial institution is maintaining an account in respect of which the outstanding debt is claimed. Sub-section (7) of Section 17 also expressly provides that the Debts Recovery Tribunal shall, as far as may be, dispose of the application under Section 17(1) of the SARFAESI Act in accordance with the provisions of the RDB Act and the Rules made thereunder. The aforementioned sub-sections of Section 17 are reproduced below:

“17. Application against measures to recover secured debts.—(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application along with such fee, as may be prescribed, to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken:

Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.

Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.

(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction—

(a) the cause of action, wholly or in part, arises;

(b) where the secured asset is located; or

(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.

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(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.”

33. Section 18 of the SARFAESI Act provides for a remedy of an appeal to any person aggrieved by an order made by the Debts Recovery Tribunal under Section 17 of the SARFAESI Act. In terms of Sub-section (2) of Section 18 of the SARFAESI Act, the Appellate Tribunal is required to dispose of the appeal in accordance with the RDB Act. Section 2(1)(a) of the SARFAESI Act defines the “Appellate Tribunal” to mean a Debts Recovery Appellate Tribunal established under Section 8(1) of the RDB Act. Section 18 of the SARFAESI Act is set out below:

“18. Appeal to Appellate Tribunal.—(1) Any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal along with such fee, as may be prescribed to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.

Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:

Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate

Tribunal fifty per cent. of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred to in the second proviso.

(2) Save as otherwise provided in this Act, the Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder.”

34. It is apparent from the above that the legislature has enacted express provisions for deciding such matters, which the legislature intended the Debts Recovery Tribunal to decide. The key question to be examined is whether there are any provisions in the SARFAESI Act which confer jurisdiction to the Debts Recovery Tribunal to decide an original claim under the SARFAESI Act, independent of the provisions of the RDB Act.

35. Undeniably, the nature of the application under Section 13(10) of the SARFAESI Act is that of an original action for the recovery of an amount payable by the borrower to the secured creditor. An application under Section 13(10) of the SARFAESI Act is not an action for enforcement of a security interest in respect of a financial asset. The nature of the said application is precisely that of the original action, which is covered under the RDB Act. However, the SARFAESI Act does not contain any express provisions, that stipulates which Debts

Recovery Tribunal has the jurisdiction to decide any original claim as to the outstanding amount that remains after the secured creditor has enforced the security interest. This is in contradistinction to the provisions of Section 249 of the IBC by virtue of which certain provisions of the RDB Act were amended to expressly confer jurisdiction on the Debts Recovery Tribunals to exercise jurisdiction, powers and authority of an Adjudicating Authority conferred under the provisions of the IBC.

36. Sub-section (10) of Section 13 of the SARFAESI Act merely enables the secured creditor to file an application to the Debts Recovery Tribunal having jurisdiction or to a competent court, as the case may be, for recovery of the balance due to a borrower if the outstanding debt is not satisfied by the sale proceeds of the secured assets. The plain language of Sub-section (10) of Section 13 of the SARFAESI Act indicates that such an application is required to be made in the form and manner as prescribed. Rule 11 of the SIE Rules stipulates that the said application is required to be made in the form annexed in Appendix VI to the SIE Rules to the Registrar of the Bench within whose jurisdiction the case falls. In terms of the SIE Rules, the said application can also be sent by registered post addressed to the Registrar of Debts Recovery Tribunal. In terms of sub-rule (2) of Rule 11 of the SIE Rules, the provisions of the Debts Recovery Tribunal (Procedure) Rules, 1993 would apply *mutatis mutandis* to the said application. In terms of Sub-rule (3), of Rule 11 of the SEI Rules, the application is also required to

be accompanied by fee as provided under Rule 7 of the Debts Recovery Tribunal (Procedure) Rules, 1993.

37. As stated at the outset, the only question to be addressed is whether the pecuniary jurisdiction of a Debts Recovery Tribunal under the RDB Act would also apply for an application made under Section 13(10) of the SARFAESI Act.

38. The petitioner contends that an application under Section 13(10) of the SARFAESI Act is not an application under the RDB Act and therefore, the pecuniary jurisdiction as notified under Section 1(4) of the RDB Act would be inapplicable in cases where an application is made under Section 13(10) of the SARFAESI Act. This contention is premised on the basis that the SARFAESI Act confers jurisdiction on the Debts Recovery Tribunal to decide an original application in accordance with the Debts Recovery Tribunal (Procedure) Rules, 1993, which are incorporated by way of a reference, by virtue of Rule 11 of the SIE Rules. And, this is without recourse to the RDB Act. Thus, according to the petitioner, neither Sub-section (4) of Section 1 of the RDB Act, which limits the jurisdiction of the Debts Recovery Tribunal nor, any other provisions of the RDB Act, are relevant. It is contended that the remedy under Section 13(10) of the SARFAESI Act is an independent remedy and read with Rule 11 of the SIE Rules, a complete code for the adjudication of its remaining claim.

39. We are unable to accept the aforesaid contention for several reasons.

40. First, the SARFAESI Act does not stipulate the Debts Recovery Tribunal, which would have the jurisdiction to adjudicate the application filed under Section 13(10) of the SARFAESI Act. Sub-section (1A) of Section 17 of the SARFAESI Act provides for the Debts Recovery Tribunal, which would exercise jurisdiction. However, the said provision is confined to considering the application made under Section 17(1) of the SARFAESI Act. Thus, for the purposes of ascertaining the jurisdiction, it would be necessary to refer to other provisions of the RDB Act.

41. Clearly, if it is necessary to refer to the RDB Act for the purposes of ascertaining the Debts Recovery Tribunal that would exercise jurisdiction in respect of an application made under Section 13(10) of the SARFAESI Act, there is no ground to disregard the limits of the pecuniary jurisdiction of the Debts Recovery Tribunal under the RDB Act.

42. Second, that the language of Section 13(10) of the SARFAESI Act also clearly indicates that it is an enabling provision, which enables the creditor to institute an action for the recovery of the balance amount if the debts due to a secured creditor are not fully satisfied from the proceeds of the secured assets. The secured creditor may make an

application to the Debts Recovery Tribunal exercising jurisdiction or to a court of competent jurisdiction. It is implicit that a remedy of making an application to a Debts Recovery Tribunal is available subject to the jurisdiction of the Debts Recovery Tribunal to decide the same, failing which the creditor is required to approach the court of competent jurisdiction.

43. It was contended on behalf of the petitioner that Section 31 of the SARFAESI Act enables the secured creditor to take steps under the SARFAESI Act for the recovery of a debt, which is in excess of ₹1,00,000/-. Thus, the said pecuniary threshold should also be read as determining the minimum threshold of debt for approaching the Debts Recovery Tribunal under Section 13(10) of the SARFAESI Act. Plainly, the same is unmerited. There is no ground to read the pecuniary threshold for taking measures under Section 13 of the SARFAESI Act for the enforcement of security interest, for determining the jurisdiction of the Debts Recovery Tribunal.

44. As noted hereinbefore, there is no provision in the RDB Act or the SARFAESI Act, that specifies the Debts Recovery Tribunal, to which an application is required to be made under Section 13(10) of the SARFAESI Act. Section 17(1A) of the SARFAESI Act, specifies the Debts Recovery Tribunal to which an application under Section 17(1) of the SARFAESI Act may be made; however, there is no such similar

provision for making an application under Section 13(10) of the SARFAESI Act.

45. A bank or a financial institution has recourse to the RDB Act for the recovery of debts due from a borrower. It is difficult to accept that whereas, an original action for an amount less than 20,00,000/- would be available under the SARFAESI Act before the Debts Recovery Tribunal constituted under Section 3 of the RDB Act, the Debts Recovery Tribunal would have no jurisdiction to entertain such a claim under the RDB Act.

46. Third, that the provisions of the RDB Act, which are essential to the scheme of adjudication of the claim and the recovery of the amount, cannot be excluded. If the petitioner's contention is accepted that an application under Section 13(10) of the SARFAESI Act must be construed in isolation of the provisions of the RDB Act, the remedy of an appeal under Section 20 of the RDB Act would not be available. Neither the creditor nor the borrower, would have the right to file an appeal in respect of a determination of the amount due under Section 13(10) of the SARFAESI Act, the same having not been provided under the SARFAESI Act. A secured creditor, which has exhausted its security, and therefore, is unsecured in respect of its remaining claim, would be placed in a more advantageous position than a bank or a financial institution, which is also an unsecured creditor.

47. The second material aspect is the borrower's right to file a counter claim. Whereas, under Section 19(5)(1) of the RDB Act, a borrower against whom a claim is instituted under Section 19 of the RDB Act, is entitled to claim a set off in terms of Sub-section (6) of Section 19 of the RDB Act. The borrower is also entitled to file a counter claim under Sub-section (8) of Section 19 of the RDB Act. None of the said provisions would be applicable in case an application under Section 13(10) of the SARFAESI Act is considered.

48. It is also material to note that the RDB Act (then known as Recovery of Debts Due to Banks and Financial Institutions Act, 1993) was held to be unconstitutional by this Court in *Delhi High Court Bar Association & Anr. v. Union of India, Secty. Department of Economic Affairs: 1995 SCC OnLine Del 215* on various grounds including that the enactment did not enable a defendant to claim any set off or make any counter claim against a bank or a financial institution.

49. While the appeal against the said decision was pending before the Supreme Court, the RDB Act was amended to remove the lacunae by expressly enabling the debtor to claim a set off or raise a counter claim, in an original application filed by the bank/financial Institution under Section 19 of the RDB Act.

50. This Court is unable to accept that the legislative intent is to provide parallel regimes for the recovery of debts. The provisions of

Section 13(10) of the SARFAESI Act, thus, cannot be interpreted in the manner as contended on behalf of the petitioner.

51. In terms of Section 19(20) of the RDB Act, the Debts Recovery Tribunal is required to make a final order. Further, in terms of Section 19(21) of the RDB Act, the Debts Recovery Tribunal is required to forward the final order and the recovery certificate to the Recovery Officer. The debts as determined are to be recovered under Chapter V of the RDB Act. The SARFAESI Act has neither any provisions for the Debts Recovery Tribunal to issue a recovery certificate, nor any substantive or machinery provisions for the recovery of debts.

52. In *State Bank of Patiala v. Mukesh Jain and Anr.:* (2017) 1 SCC 53, the Supreme Court had considered the issue regarding the jurisdiction of the Debts Recovery Tribunal to entertain an application under Section 17(1) of the SARFAESI Act in a case where the amount recoverable from the respondent was less than ₹10,00,000/-, which was at the material time, the threshold value specified under Section 1(4) of the RDB Act. In the said case, the appellant bank had lent a sum of ₹8,00,000/- to respondent no.1 by way of a term loan against mortgage of its immovable property. Respondent no.1 defaulted in repayment of the said loan and the appellant bank issued a notice under Section 13(2) of the SARFAESI Act. Respondent no.1 filed a suit challenging the said proceedings initiated under the SARFAESI Act. The appellant bank had filed an application under Order VII Rule 11 of the CPC

questioning the jurisdiction of the court to entertain the suit in view of the provisions of Section 34 of the SARFAESI Act, which barred suits in respect of matters under the SARFAESI Act. The said application was rejected on the ground that the amount allegedly recoverable from respondent no.1 was less than ₹10,00,000/- and in terms of Section 1(4) of the RDB Act, would not apply. Thus, the Debts Recovery Tribunal would have no jurisdiction to entertain any application against the proceedings instituted by the appellant bank under the SARFAESI Act. In the aforesaid context, the Supreme Court considered the jurisdiction of the Debts Recovery Tribunal to entertain an application under Section 17(1) of the SARFAESI Act. The Supreme Court held that the Debts Recovery Tribunal exercises its appellate jurisdiction, where an action initiated under the provisions of Section 13 of the SARFAESI Act is challenged. The Supreme Court further observed that the threshold limit of ₹10,00,000/- under Section 1(4) of the RDB Act would be applicable to limit the original jurisdiction to the Debts Recovery Tribunal. The Supreme Court had also referred to the decision in *Mardia Chemicals Ltd. & Ors. v. Union of India and Ors.:* **2004 (4) SCC 311** and had observed that an aggrieved debtor could not be left without a remedy. The relevant extract of the said decision reads as under:

“20. In the aforesaid circumstances, the only remedy available to respondent no.1 debtor can be to approach the Tribunal under the provisions of the DRT Act read with the provisions of the Act. But, one would feel that as per Section 1(4) of the DRT Act, provisions of the DRT Act

would not apply where the amount of debt is less than Rs.10 lakh.

21. The aforesaid provision of Section 1(4) of the DRT Act must be read in a manner which would not adversely affect a debtor, who wants to have some remedy against an action initiated under the provisions of Section 13 of the Act.

22. The DRT Act mainly pertains to institution of proceedings by a bank for recovery of its debt when the debt is not less than Rs.10 lakh. If the debt is less than Rs.10 lakh, no suit can be filed by the creditor bank in the Tribunal under the provisions of the DRT Act. So, when the jurisdiction of the Tribunal has been referred to in Section 1(4) of the DRT Act, which limits the jurisdiction of the Tribunal to Rs.10 lakh, prima facie, the intention of the legislature is to limit the original jurisdiction of the Tribunal. If any claim is to be made before the Tribunal, the amount must be more than Rs.10 lakh and if the amount is less than Rs.10 lakh, the creditor bank will have to file a suit in a Civil Court. So, one can safely interpret the provisions of Section 1(4) of the DRT Act to the effect that it deals with original jurisdiction of the Tribunal under the provisions of the DRT Act.

23. In the instant case, we are concerned with the challenge to the proceedings initiated under Section 13 of the Act. There is a specific provision in the Act to the effect that the proceedings initiated under the Act cannot be challenged before a Civil Court because the Civil Court has no jurisdiction to entertain any matter arising under the Act and in that event, the concerned debtor has to approach the Tribunal under the provisions of Section 17 of the Act.

24. Thus, the Tribunal would be exercising its appellate jurisdiction when the action initiated under the provisions of Section 13 of the Act is challenged before the Tribunal.

There is a difference between the Tribunal's original jurisdiction under the provisions of the DRT Act and the appellate jurisdiction under the Act.

25. The issue with regard to availability of a forum for challenging the action under the provisions of the Act had been dealt with by this Court in the case of **Mardia Chemicals Ltd. (supra)**. This Court, in the said case, unequivocally held that the aggrieved debtor can never be without any remedy and we firmly believe that the legislature would normally not leave a person without any remedy when a harsh action against him is initiated under the provisions of the Act.

26. So as to know the appellate jurisdiction of the Tribunal, one has to look at the provisions of the Act as Section 17 of the Act specifically provides a right to the aggrieved debtor to challenge the validity of an action initiated under Section 13(4) of the Act before the Tribunal. Moreover, the Act was enacted in 2002 and the legislature is presumed to have knowledge about the provisions of Section 1(4) of the DRT Act. So harmonious reading of both the afore stated Sections would not be contrary to any of the legal provisions.”

53. The remedy under Section 13(10) of SARFAESI Act cannot be considered as a remedy independent of the RDB Act. An application under Section 13(10) of the SARFAESI Act is required to be made in a manner as prescribed – in the form annexed as Appendix VI to the SIE Rules – and is required to be accompanied with the requisite fee as prescribed under the Debts Recovery Tribunal (Procedure) Rules 1993. However, for all intents and purposes, this application is an Original Application under Section 19(1) of the RDB Act and is required to adjudicated as such.

54. In view of the above, the petition is dismissed. The pending application is disposed of.

55. The parties shall bear their own costs.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

NOVEMBER 01, 2023
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