

IFCI Factors Ltd. v. Patil Construction and Infrastructure Pvt. Ltd. & Ors.

IFCI Factors Ltd.

...Appellant

Patil Construction and Infrastructure Pvt. Ltd. & Ors.

...Respondent

Case No: Appeal No. 84/2022

Date of Judgement: 14/11/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Rameshwar Totala along with Mr Ashwin Poojari, Advocate.

For Respondent: Mr Anoop Patil along with Uroosa Shaikh and Mr Diptendu Bose, Advocate.

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Facts

This order is passed by the Debts Recovery Appellate Tribunal (DRAT), Mumbai in an appeal filed by IFCI Factors Ltd. (Appellant) against the order dated 19/02/2022 of the Debts Recovery Tribunal (DRT), Aurangabad in Securitisation Application (S.A.) No. 124/2021. The Appellant had sanctioned a corporate loan of ₹14.70 crores to the 1st Respondent (Patil Construction and Infrastructure Pvt. Ltd.) on 24/07/2015, secured by a mortgage over the 2nd Respondent's property and a personal guarantee by the 3rd Respondent. The 1st Respondent

defaulted in repayment, and the account was classified as a non-performing asset (NPA). The Appellant issued a recall notice on 16/10/2019 demanding ₹2,56,26,899/- and a demand notice under Section 13(2) of the SARFAESI Act on 24/12/2019 demanding ₹3,98,95,531/-. The Respondents filed S.A. No. 124/2021 before the DRT seeking to restrain the Appellant from proceeding with the SARFAESI measures. The Appellant issued a sale notice on 27/10/2021 for a public auction on 29/11/2021. The Respondents filed an interim application seeking a stay on the auction sale. On 24/11/2021, the Respondents' counsel emailed the DRT with the Appellant's letter dated 16/10/2019 demanding ₹2,56,26,899/-, arguing that it attracted the embargo under Section 31(j) of the SARFAESI Act (dues less than 20% of the principal amount). The DRT cancelled the auction sale on 25/11/2021, observing that the demand notice under Section 13(2) appeared to be hit by Section 31(j) based on the 16/10/2019 letter. Vide the impugned order dated 19/02/2022, the DRT allowed the S.A. and imposed a cost of ₹10,000/- on the Appellant, holding that the demand under Section 13(2) referred to the 16/10/2019 letter and was thus covered by Section 31(j).

Arguments by the Parties

The Appellant argued that the DRT erred in relying on the 16/10/2019 letter, which was only informational and did not form part of the SARFAESI action. The Appellant contended that the demand notice under Section 13(2) was for ₹3,98,95,531/-, which the Respondents had acknowledged and sought a one-time settlement for. The Respondents contended that the DRT's order was correct, as the 16/10/2019 letter showed the outstanding liability as ₹2,56,26,899/-, which could not have swelled to ₹3,98,95,531/- within a short period, attracting Section 31(j).

Court's Elaborate Opinions

Applicability of Section 31(j)

The DRAT observed that the Respondents did not raise a challenge under Section 31(j) in the S.A. or the amended S.A. The DRT granted relief

solely based on its finding regarding Section 31(j), without examining the other grounds raised in the S.A. The DRAT held that the DRT erred in disposing of the S.A. based on a preliminary finding without there being a pleading regarding Section 31(j) in the S.A. Interpreting Section 31(j), the DRAT held that SARFAESI action can be initiated only if the liability exceeds 20% of the loan amount, including principal, interest, and other dues as per the secured creditor's books of account. In this case, the sanctioned loan was ₹14.70 crores, and the Respondents admittedly had not discharged 80% of the outstanding amount. Hence, they could not take refuge under Section 31(j). The DRAT held that the 16/10/2019 letter could not be considered a demand notice under Section 13(2), as it was not issued by the authorized officer and did not claim to be a demand notice under the SARFAESI Act. The DRAT noted that the Respondents had categorically admitted the liability of ₹3,98,95,531/- demanded under Section 13(2) and had even sought a one-time settlement for ₹3.44 crores, without challenging the demand amount. Relying on decisions of the Kerala High Court, the DRAT held that the DRT's interpretation of Section 31(j) was erroneous.

Conclusion

The DRAT allowed the appeal, set aside the impugned DRT order dated 19/02/2022, and restored S.A. No. 124/2021 to the DRT for disposal in accordance with law, as the DRT had not examined the other challenges raised by the Respondents in the S.A.

Sections and Laws Referred

Section 13(2) of the SARFAESI Act – Issuance of demand notice by the secured creditor.

Section 13(4) of the SARFAESI Act – Taking possession of the secured assets.

Section 13(9) of the SARFAESI Act – Definition of “amount outstanding” as including principal, interest, and other dues payable by the borrower.

Section 17(1) of the SARFAESI Act – Provision for making an application to the DRT for challenging the measures taken by the secured creditor under the Act.

Section 31(j) of the SARFAESI Act – Exemption from the provisions of the Act in cases where the amount due is less than 20% of the principal amount and interest thereon.

Cases Cited

Writ Petition No. 26222/2016 and Writ Appeal No. 1552/2019 – Decisions of the Kerala High Court regarding the application of Section 31(j) of the SARFAESI Act, cited by the Appellant.