



 **Prakhar Galaw***

Legal Decision Affecting Bankers

Appellant(s) : Indian Overseas Bank

Vs.

Respondent(s) : RCM Infrastructure Ltd. and Anr.

Court : Supreme Court

Bench Strength : 2

**Bench : L. Nageshwar Rao, J
B. R Gavai, J**

Citation : 2022 Scconline SC 634

Relevant Provision of Law

1. Section 13 (2), (4) & 14 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 hereinafter referred to as SARFAESI and rule 8 and 9 of Security Interest (Enforcement) Rules, 2002.
2. Section 10 of the Insolvency and Bankruptcy Code, 2016.
3. Section 238 of the Insolvency and Bankruptcy Code, 2016.
4. Section 65 of the Insolvency and Bankruptcy Code, 2016.

Brief Facts of the Case

1. The appellant bank granted some credit facilities to the respondent corporate debtor. The corporate debtor continuously defaulted the

repayment of installment due towards his loan account consequent to which his account was classified as Non-Performing Asset (NPA) on 13th June 2016 as per the NPA classification norms of the Reserve Bank of India.

2. The appellant bank was then served a demand notice under Section 13 (2) of the SARFAESI Act to the respondent but the same was not complied by the respondent. Aggrieved by the non-compliance of the demand notice the appellant enforced his security interest and took symbolic possession of the mortgaged properties of the respondent under Section 13 (4) SARFAESI Act read with Rule 8 of Security Enforcement rules, 2002 and an e-auction notice came to be issued on 27th September 2018 by the appellant bank to recover the loan amount availed by the corporate debtor.
3. The corporate debtor then preferred a corporate insolvency resolution application under Section 10 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as IBC) on **22 September 2018**. Meanwhile the appellant bank did not receive any bids in the first e-auction held on 6th November 2018. In the second e-auction held on 12th December 2018 three bidders were successful and jointly offered to purchase the property for Rs. 32.92 crore. The successful bidders deposited 25% of the bid amount i.e

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Rs. 8.23 crore including the earnest money deposit and the appellant directed the auction purchaser to deposit the remaining 75% of the amount by 28th December 2018. But the auction purchaser could not arrange the remaining 75% of the bid amount and sought some extension from the appellant. The appellant considering the representation of the auction purchaser gave three month extension up till 8th March 2019 to the auction purchaser as per Rule 9(4)(a) of Security Interest Enforcement Rules, 2002.

4. That, the learned NCLT Hyderabad vide its order dated 03rd January 2019 admitted the application filed by the ex-promoter of respondent company and declared a moratorium under Section 14 of the IBC and appointed an Interim Resolution Professional (hereinafter referred to as IRP) to take over all the asset and business affairs of the corporate debtor. The appellant bank filed its remaining claim of 75% i.e Rs. 24.69 crore with the IRP as the same was the unrealized bid amount, which was allowed by the IRP. The appellant bank submitted its revised claim on 11th March 2019 and informed the IRP about the confirmation of sale of the securitized asset. The corporate debtor filed an interim application to set aside the sale of the mortgaged property in favour of auction purchaser as the same being barred by Section 14 read with Section 238 of the IBC, 2016 and to injunct the appellant bank from the further security realization.
5. The NCLT Hyderabad vide its order dated 15th July 2020 allowed the application of the corporate debtor and quashed the sale of the property. The said orders of the NCLT were challenged in NCLAT which was also rejected by the tribunal on 26th March 2021 being aggrieved by the same appellant had then preferred an appeal before the Supreme Court.

Legal Issues before the Supreme Court

Whether sale certificate issued in favour of the auction purchaser on partial payment of bid amount gives an undisputed title to the auction purchaser with respect to the property being auctioned as per the security interest enforcement rules, 2002 is legal. Given the fact that till the payment of final bid amount by the auction purchaser, an application for voluntary corporate insolvency resolution was filed by the corporate debtor which was admitted prior to the payment of the final bid amount and moratorium was declared to that effect.

Contentions of the Appellant and Respondents

1. The counsel appearing for the appellant contended that the voluntary insolvency resolution application filed by the corporate debtor was malafide as per Section 65 of the IBC, 2016 and was filed just to derail the securitization proceedings initiated by the appellant bank. The counsel appearing on behalf of the appellant bank submitted that the respondent debtor had filed an appeal under Section 17 of the SARFAESI Act, 2002 which was dismissed and the respondents were directed to deposit an amount Rs. 12 crore subject to which the sale of the mortgaged property would be stayed temporarily. The respondent did not deposit the said amount, but preferred an application under Section 10 of the IBC just to derail the securitization proceedings initiated by the bank and the ground of malafide proceedings under Section 65 of the IBC, 2016 was not considered by the NCLT. It was also contended that the NCLT had ordered to liquidate the corporate debtor thus, the moratorium ceased to subsist and secured creditor were allowed to realise their security interest. It was also contended that the bar created under Section 14 (1)(c) of the IBC, 2016 is prospective in nature and cannot undo

the actions which have already been completed under the SARFAESI Act, 2002.

2. The counsel appearing on behalf of the auction purchaser contended that the corporate debtor had indulged into forum shopping with malicious intent. And the auction purchasers were bonafide purchaser and his possession should not be disturbed. And as per Section 13 (8) of the SARFAESI Act, 2002 the corporate debtor has lost his right to redemption on issuance of public notice for auction. The counsel also contended that the corporate debtor and IRP maliciously not impleaded the auction purchaser in the proceedings initiated by the corporate debtor.
3. The counsel appearing for the corporate debtor opposed the submissions made by the counsel appearing for the bank and auction purchaser on the ground that the mortgaged property cannot be conveyed merely on partial payment of bid amount and confirmation of sale in favour of the auction purchaser was illegal. He contended that the title would pass only on payment of full consideration. It was also contended that upon approval of resolution plan under Section 31 (1) of the IBC, 2016 all debts get legally altered and gets novated into a new contract. The obligations under the old contract gets dissolved/novated. The same would be applicable in the instant facts and circumstances, the mortgage created in favour of the bank would get converted into a security interest for the bank. It was also contended that once the IRP proceedings are started it would have an overriding effect on all the proceedings including the proceedings initiated under the SARFAESI Act, 2002 as per Section 14(1)(c) read with Section 238 of the IBC, 2016. It was also contended from the respondents that the appellant have themselves submitted to the proceedings of the IBC, 2016 by filing claims with

the IRP. So, the appellant cannot use multiple forums to recover their due amount.

Observations and Decision

1. The Supreme Court observed that once the moratorium under Section 14 of the IBC, 2016 is invoked all the actions to foreclose, recover or enforce any security interest are prohibited including actions taken under the SARFAESI Act, 2002.
2. The Supreme Court observed that the IBC is complete code in itself and has an overriding effect on the all other acts. The same has been held in numerous landmark cases.
3. The Supreme Court observed that the appellant have contended that the sale in question was complete on 13th December 2018 and the voluntary insolvency petition was admitted on 03rd January 2019 by the NCLT would not affect the sale. It was also contended that merely because a part payment was received after the admission of the insolvency petition it would not affect the sale. The Supreme Court held that the sale in question was statutory sale as per Rule 8 and 9 of the Security Interest Enforcement Rules, 2002 and as per the said rule the sale is only completed after the full payment of the due amount, which was done on 8th March 2019 much after the admission of the insolvency petition filed by the corporate debtor and declaration of moratorium. Accordingly, the contention of the appellant does not hold ground.
4. The Supreme Court also observed and held that the ground as regards to the malafide proceedings under Section 65 of the IBC, 2016 was devoid of any merit and substance and thus, required no interference of this Court on that ground alone.

