

LEGAL UPDATES

SC UPHOLDS HC-ORDER REJECTING SUIT CHALLENGING SARFAESI PROCEEDINGS, GIVEN DRT'S EXCLUSIVE COMPETENCE

The Hon'ble Supreme Court brushed aside the appeal against the Hon'ble Madras High Court's order which rejected the suit filed by Corporate Debtor's Guarantor (the Appellant).

The Hon'ble Apex Court remarked that –

- (i) a Financial Creditor and Respondent had executed an assignment agreement after the Corporate Debtor's approved resolution plan was implemented, and the designated amount was paid to the Financial Creditor;
- (ii) Respondent then initiated proceedings against the Appellant under the SARFAESI Act and issued a possession notice under the Security Interest (Enforcement) Rules, 2002.

The Appellant argued that the aforementioned assignment agreement was fraudulent because upon repayment of the amount in accordance with the approved resolution plan, all claims of the Financial Creditor stand extinguished and the Respondent can make no claim for the same default. The Court however noted that when the suit is filed alleging "fraud," the bar under Section 34 of the Act shall not be applicable.

The Court further stated *"...by a clever drafting and using the words 'fraud'/'fraudulent' without any specific particulars with respect to the 'fraud', the...appellant...intends to get out of the bar under Section 34 of the SARFAESI Act and wants the suit to be maintainable. As per the settled preposition of law mere mentioning and using the word 'fraud'/'fraudulent' is not sufficient to satisfy the test of 'fraud'*

The Apex Court also concluded by stating that , *"...whether there shall be legally enforceable debt so far as the...appellant herein is concerned even after the approved resolution plan against the corporate debtor still there shall be the liability of the plaintiff and/or the assignee can be said to be secured creditor and/or whether any amount is due and payable by the*

plaintiff, are all questions which are required to be dealt with and considered by the DRT in the proceedings initiated under the SARFAESI Act.”, and declares that it will be possible for the appellant to begin the necessary actions before the DRT under Section 17 of the Act.