



August 2022

## **45 DAYS' TIME LIMIT FOR FILING AN APPLICATION UNDER SECTION 17 OF THE SARFAESI ACT IS MEANT FOR QUICK ENFORCEMENT OF SECURITY**

On August 11, 2022, a two-judge bench of the Hon'ble Supreme Court in the case of *Bank of Baroda vs Parasaadilal Tursiram Sheetgrah Pvt. Ltd.* has observed that the time limit of 45 (forty-five) days prescribed under Section 17 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("Act") is provided for quick enforcement of the security.

### **Brief Facts & Procedural History**

1. Parasaadilal Tursiram Sheetgrah Pvt. Ltd ("**Company**") had availed certain credit facilities from Bank of Baroda ("**Bank**") for which the directors of the Company gave personal guarantees along with an equitable mortgage of immovable property ("**Secured Asset**"). As the Company defaulted in repayment of the loan, the Bank issued notice under Section 13(2) of the Act demanding an amount of INR. 2,34,15,456/- (Indian Rupees two crores thirty four lakh fifteen thousand four hundred fifty six) from the Company and its directors for recovery amounts from the Company and/or the directors. Subsequently the Bank obtained constructive possession of the Secured Asset under Section 13(4) of the Act.
2. Owing to non-payment of its dues, the Bank proceeded to auction the Secured Asset to the highest bidder and issued a sale certificate. The Company along with its directors filed an application under Section 17 of the Act ("**Securitisation Application**") before the Debts Recovery Tribunal ("**DRT**"), which was dismissed on the grounds of limitation. In a peculiar fashion, the DRT also entertained and allowed a review of its order, when one of the legal heirs of a deceased director claimed that no notice had been issued to him.
3. The order in review was challenged before the Debts Recovery Appellate Tribunal ("**DRAT**"). The DRAT allowed the appeal so filed by stating that the DRT, by reviewing its order, has committed such a grave error which is apparent on the face of record. Being aggrieved, the Company filed a Writ Petition before the Allahabad High Court ("**High Court**") challenging the order passed by the DRAT. The High Court proceeded to grant an interim order staying the DRAT's order and allowed the DRT to proceed with the Securitisation Application.
4. Aggrieved by the aforesaid, the Bank approached the Supreme Court by preferring a Special Leave Petition challenging the interim order passed by the High Court.

### **Issues**

Whether the High Court was justified in passing an interim order that stayed the order passed by DRAT and directed the DRT to proceed with adjudication of the Securitisation Application?

## Analysis and Findings of the Supreme Court

The Hon'ble Supreme Court after appreciating the submissions advanced by the parties and having regard to settled law, held as follows:

1. The Supreme Court upheld the observations made by the DRAT wherein it stated that the DRT had passed its order after detailed consideration and there was no justifiable ground for invoking a review jurisdiction.
2. The Supreme Court further relied on *Transcore v. Union of India and Anr.*<sup>1</sup> wherein it was held that the "SARFAESI Act is enacted for quick enforcement of the security". It further observed that proceedings where a secured asset is brought to sale subsequent to which third-party rights are created even after a decade, is rather unfortunate.
3. The Supreme Court allowed the appeal by setting aside the interim order passed by the High Court and stated that the High Court was not justified in staying the operation of the order of the DRAT.

## JSA Comment

By way of the present judgment, the Supreme Court has upheld the very essence of the SARFAESI Act which is to ensure the quick enforcement of security. This judgment should alter the approach resorted to by DRTs, who must now refrain from entertaining hopelessly time barred applications filed under Section 17 of the Act. This approach would only result in achieving the objects of the Act i.e., realisation of security interest thereby improving recovery.

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<sup>1</sup> (2008) 1 SCC 125

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