



October 2023

## The Supreme Court holds that the right of redemption of mortgage stands extinguished upon the publication of the auction notice by the secured creditor in terms of Section 13(8) of the SARFAESI Act.

The Supreme Court in its recent judgement *Celir LLP Vs. Bafna Motors (Mumbai) Pvt. Ltd. and others*<sup>1</sup>, has held that in terms of Section 13(8) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“**SARFAESI Act**”), the right of the borrower to redeem the secured asset stands extinguished upon issuance of the notice for public auction and the same will prevail over the right of the mortgagor to redeem the mortgage under the Transfer of Property Act, 1882 (“**TOPA**”).

### Brief Facts

Bafna Motors (Mumbai) Pvt. Ltd. (“**Borrower**”) availed lease rental discounting credit facility from Union Bank of India (“**Bank**”) to the tune of INR 100,00,00,000 (Indian Rupees one hundred crore). In order to secure the loan, certain immovable property (“**Secured Asset**”) was mortgaged in favour of the Bank. The Borrower defaulted in repaying the loan and was classified as non-performing asset. Consequently, the Bank took steps under the SARFAESI Act to realise the Secured Asset. The Bank issued an auction sale notice on June 14, 2023 to sell the Secured Asset at a reserve price of INR 105,00,00,000 (Indian Rupees one hundred five crore). Celir LLP (“**Auction Purchaser**”) submitted a bid for Rs. 105,5,00,000 (Indian Rupees one hundred five crore five lakh) and emerged as the successful bidder.

The Bank issued a sale confirmation letter on June 30, 2023 to the Auction Purchaser; and thereafter the Auction Purchaser also deposited the bid amount with the Bank. Before the sale certificate could be issued, the Borrower filed an application before Debts Recovery Tribunal – I, Mumbai (“**DRT**”) for redemption of mortgage over the Secured Asset for INR 123,83,00,000 (Indian Rupees one hundred twenty three crore eighty three lakh), which was higher than the bid amount of the Auction Purchaser. During the pendency of the application before the DRT, the Borrower filed a writ petition before the Bombay High Court apprehending that the application before the DRT may be dismissed; and stating that the Borrower is willing to pay INR 129,00,00,000 (Indian Rupees one hundred twenty nine crore) to the Bank towards redemption of the mortgage. The Bombay High Court allowed the writ petition *vide* order dated August 17, 2023 and permitted the Borrower to redeem the mortgage over the Secured Asset by paying the said sum, on or before August 31, 2023. The Bombay High Court further directed the Bank to refund the entire bid amount to the Auction Purchaser upon payment of the agreed amount by the Borrower. Against the said order, the Auction Purchaser preferred an appeal before the Supreme Court.

<sup>1</sup> Civil Appeal Nos. 5542 – 5543 of 2023 dated September 21, 2023.

## Decision of the Supreme Court

The primary contention of the Auction Purchaser was that the auction proceedings under SARFAESI Act attained finality since the entire consideration has been paid by the Auction Purchaser; the sale in favour of the Auction Purchaser has been confirmed by the Bank; and that in terms of Section 13(8) of the SARFAESI Act, the right of redemption of mortgage expired upon issuance of auction notice by the Bank. It was further submitted that the Bombay High Court erred in exercising writ jurisdiction when the Borrower had already availed the remedy before the DRT.

The Borrower contended even a sale under the SARFAESI Act will be governed by Section 60 of the TOPA read with Section 17 of the Registration Act, 1908 (“**Registration Act**”), which preserves the right of a mortgagor to redeem the mortgage until the mortgaged property is transferred to a third party under a registered conveyance deed. Reliance was placed on the judgement of the Supreme Court in *Mathew Varghese v. M. Amritha Kumar*<sup>2</sup> and judgement of the Telangana High Court in *Concern Readymix, rep. by its proprietor, Smt. Y. Sunitha v. Authorised Officer, Corporation Bank*<sup>3</sup>, an appeal against which was dismissed by the Supreme Court<sup>4</sup>. The Borrower further contended that in compliance with the Bombay High Court’s order, the amounts have been paid; the Bank had issued no-objection certificate on August 28, 2023; and subsequently, third party rights have been created on the Secured Asset.

The Supreme Court, while rejecting the contentions of the Borrower clarified that under Section 13(8) of the SARFAESI Act as it stood prior to the amendment with effect from September 1, 2016, the borrower / mortgagor had a right to redeem the mortgage at any time prior to the secured creditor selling the mortgaged property to a third party under a registered instrument in terms of Section 60 of the TOPA read with Section 17 of the Registration Act. While Section 60 of the TOPA entitles a mortgagor to redeem the mortgage till the mortgaged property is transferred, the said right can be extinguished by act of parties. The Supreme Court held that failure on the part of the borrower to tender the due amount before the publication of auction notice under the SARFAESI Act, amounts to extinguishment of right to redeem the mortgage by its act. It was further held that in terms of the amended Section 13(8) of the SARFAESI Act effective from September 1, 2016, the right of the borrower to redeem the mortgage over the secured asset is extinguished upon publication of auction notice or notice inviting quotations / tender from public or upon entering into private treaty for transfer of secured assets by way of lease, assignment or sale under the SARFAESI Act. The Supreme Court further clarified that the SARFAESI Act being a special law, Section 13(8) of the SARFAESI Act, under which the right of redemption is available till the date of publication of notice for auction will prevail over the general right of redemption under Section 60 of the TOPA.

The Supreme Court allowed the appeal of the Auction Purchaser and confirmed the sale in its favour. While setting aside the Bombay High Court’s order, the Supreme Court reiterated that High Courts should not exercise extraordinary powers under writ jurisdiction to interfere with the proceedings under the SARFAESI Act when an alternate efficacious remedy is available under the SARFAESI Act.

## Conclusion

There were conflicting judgements of various High Courts regarding the interpretation of the right of redemption under Section 13(8) the SARFAESI Act. The High Courts of Telangana<sup>5</sup>, Punjab & Haryana<sup>6</sup> and Madras High Court<sup>7</sup> had held that the right of redemption of the mortgagor subsists till the property is transferred. Whereas Andhra

<sup>2</sup> 2014 5 SCC 610.

<sup>3</sup> 2018 SCC OnLine Hyd 783.

<sup>4</sup> SLP(C) D. No. 28967 of 2019.

<sup>5</sup> Concern Readymix, rep. by its proprietor, Smt. Y. Sunitha v. Authorised Officer, Corporation Bank (2018 SCC OnLine Hyd 783); and Judgement dated 17.8.2022 in W.P. No. 11435 of 2021 in Amme Srisailam v. Union Bank of India.

<sup>6</sup> Pal Alloys and Metal India Private Limited v. Allahabad Bank (2021 SCC OnLine P&H 2733).

<sup>7</sup> Sri International v. Central Bank of India, 2023 SCCOnLine Mad 2210

Pradesh High Court<sup>8</sup> had held that in terms of Section 13(8) of the SARFAESI Act, the right of redemption is extinguished upon issuance of auction notice. This judgement of the Andhra Pradesh High Court was subsequently followed by the High Court of Telangana<sup>9</sup>.

This judgement of the Supreme Court is significant since it settles the law on the issue by clarifying that right of redemption under Section 13(8) the SARFAESI Act is not subject to the general right of redemption under Section 60 of the TOPA; and that the right to redeem the mortgage gets extinguished once the auction sale notice issued in terms of the SARFAESI Act.

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<sup>8</sup> Sri Sai Annadhatha Polymers v. Canara Bank (2018 SCC OnLine Hyd 178)

<sup>9</sup> KVV Prasad Rai Gupta v. State Bank of India (2021 SCC OnLine TS 328).



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