

MANU/WB/2351/2019

IN THE HIGH COURT OF CALCUTTA

C.O. No. 1916 of 2019

Decided On: 11.09.2019

Appellants: **Ramsay Exim and Technology Private Limited and Ors.**
Vs.

Respondent: **ICICI Bank Limited and Ors.**

Hon'ble Judges/Coram:

Sabyasachi Bhattacharyya, J.

Counsels:

For Appellant/Petitioner/Plaintiff: Arijit Bardhan and Sutapa Mitra

For Respondents/Defendant: Avishek Guha and Tinni Joarder

JUDGMENT

Sabyasachi Bhattacharyya, J.

1. The instant application under Article 227 of the Constitution of India arises against an order passed by the Kolkata Debts Recovery Tribunal - I. The application has been entertained in view of lack of availability of the regular appellate forum. It is submitted on behalf of the petitioners that the appellate tribunal would not be sitting prior to the end of the oncoming Puja vacation and as such, in consonance with the principle of ubi jus ibi remedium, the instant application has been entertained.

2. By the impugned order dated April 18, 2019, the tribunal allowed an objection of the respondent as to the present petitioners having erroneously filed a single application under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act"), thereby clubbing challenges to three different notices, to save court fee. Upon upholding such objection, the tribunal disposed of the said application of the petitioners with a direction to file fresh SARFAESI application.

3. The question which falls for consideration in the instant revisional application is, whether separate notices under Section 13(4) of the SARFAESI Act, pertaining to different secured assets for a single debt, can be challenged in a single application under Section 17 of the said Act.

4. Learned counsel for the petitioners argues that, since Section 17 of the SARFAESI Act contemplates an application against measures to recover secured debts and gives the right to any person, including the borrower, aggrieved by any of the measures referred to in sub-section (4) of Section 13, to approach the tribunal, a single application was maintainable in view of the secured debt being a single one.

5. Placing reliance on Section 13 of the SARFAESI Act, learned counsel for the petitioners argues that the same contemplated enforcement of security interest.

6. Sub-section (4) of Section 13, it is argued, is attracted when the borrower fails to discharge his liability in full within the period specified in sub-section (2). Sub-section (2), on the other hand, contemplates a default by a borrower who is under a liability to a secured creditor under a security agreement, in repayment of secured

debt or any installment thereof.

7. As such, it is argued by the petitioners that Section 17 of the SARFAESI Act is tied up with the debt and not the secured assets.

8. On the other hand, learned counsel for the opposite parties submits that, even if there is a single debt, if the secured assets are several, several applications have to be filed by the petitioner in the tribunals respectively having jurisdiction in respect of such assets.

9. In support of his argument, learned counsel for the opposite parties places reliance on Section 14 of the SARFAESI Act, which provides for the possession of any secured asset to be taken by the secured creditor with the assistance of a Chief Metropolitan Magistrate or District Magistrate, to be provided on an application by the secured creditor. It is argued that, if the assets lie in different jurisdictions, it would be unnecessary multiplicity for the secured creditor to approach several Magistrates having territorial jurisdiction in respect of the said different assets, for getting such possession, pursuant to the notice(s) under Section 13(4) of the said Act.

10. It is further argued that the jurisdiction of the tribunal cannot depend on the debt but relates to the territorial jurisdiction relating to the secured assets.

11. The provisions referred to by counsel for the respective parties are set out hereinbelow:

"SARFAESI Act:-

13. Enforcement of security interest. - (1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any installment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

Provided that-

(i) the requirement of classification of secured debt as non-performing asset under this sub-section shall not apply to a borrower who has raised funds through issue of debt securities; and

(ii) in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provide under this section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee;

(3) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the

borrower.

(3A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within fifteen days of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower:

Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A.

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:-

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole, of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security or the debt;

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

(5) Any payment made by any person referred to in clause (d) of sub-section (4) to the secured creditor shall give such person a valid discharge as if he has made payment to the borrower.

(5A) Where the sale of an immovable property, for which a reserve price has been specified, has been postponed for want of a bid of an amount not less

than such reserve price, it shall be lawful for any officer of the secured creditor, if so authorised by the secured creditor in this behalf, to bid for the immovable property on behalf of the secured creditor at any subsequent sale.

(5B) Where the secured creditor, referred to in sub-section (5A), is declared to be the purchaser of the immovable property at any subsequent sale, the amount of the purchase price shall be adjusted towards the amount of the claim of the secured creditor for which the auction of enforcement of security interest is taken by the secured creditor, under sub-section (4) of section 13.

(5C) The provisions of section 9 of the Banking Regulation Act, 1949 (10 of 1949) shall, as far as may be, apply to the immovable property acquired by secured creditor under sub-section (5A).

(6) Any transfer of secured asset after taking possession thereof or take over of management under sub-section (4), by the secured creditor or by the manager on behalf of the secured creditors shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset.

(7) Where any action has been taken against a borrower under the provisions of sub-section (4), all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the absence of any contract to the contrary, be held by him in trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests.

(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,-

(i) the secured assets shall not be transferred by way of lease, assignment or sale by the secured creditor; and

(ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.

(9) Subject to the provisions of the Insolvency and Bankruptcy Code, 2016, in the case of financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to sub-section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than sixty per cent in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors:

Provided that in the case of a company in liquidation, the amount

realised from the sale of secured assets shall be distributed in accordance with the provisions of section 529A of the Companies Act, 1956 (1 of 1956):

Provided further that in the case of a company being wound up on or after the commencement of this Act, the secured creditor of such company, who opts to realise his security instead of relinquishing his security and proving his debt under proviso to sub-section (1) of section 529 of the Companies Act, 1956 (1 of 1956), may retain the sale proceeds of his secured assets after depositing the workmen's dues with the liquidator in accordance with the provisions of section 529A of that Act:

Provided also that the liquidator referred to in the second proviso shall intimate the secured creditors the workmen's dues in accordance with the provisions of section 529A of the Companies Act, 1956 (1 of 1956) and in case such workmen's dues cannot be ascertained, the liquidator shall intimate the estimated amount of workmen's dues under that section to the secured creditor and in such case the secured creditor may retain the sale proceeds of the secured assets after depositing the amount of such estimated dues with the liquidator:

Provided also that in case the secured creditor deposits the estimated amount of workmen's dues, such creditor shall be liable to pay the balance of the workmen's dues or entitled to receive the excess amount, if any, deposited by the secured creditor with the liquidator:

Provided also that the secured creditor shall furnish an undertaking to the liquidator to pay the balance of the workmen's dues, if any.

Explanation.- For the purposes of this sub-section,-

(a) "record date" means the date agreed upon by the secured creditors representing not less than sixty per cent in value of the amount outstanding on such date;

(b) "amount outstanding" shall include principal, interest and any other dues payable by the borrower to the secured creditor in respect of secured asset as per the books of account of the secured creditor.

(10) Where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the Debts Recovery Tribunal having jurisdiction or a competent court, as the case may be, for recovery of the balance amount from the borrower.

(11) Without prejudice to the rights conferred on the secured creditor under or by this section, secured creditor shall be entitled to proceed against the guarantors or sell the pledged assets without first taking any of the measures specified in clause (a) to (d) of sub-section (4) in relation to the secured assets under this Act.

(12) The rights of a secured creditor under this Act may be exercised by one or more of his officers authorised in this behalf in such manner as may be prescribed.

(13) No borrower shall, after receipt of notice referred to in sub-section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor.

14. Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset. - (1) Where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him-

(a) take possession of such asset and documents relating thereto;
and

(b) forward such assets and documents to the secured creditor:

Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that-

(i) the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;

(ii) the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;

(iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above;

(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;

(v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;

(vi) affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;

(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such

objection or representation had been communicated to the borrower;

(viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the Authorised Officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of section 13 read with section 14 of the principal Act;

(ix) that the provisions of this Act and the rules made thereunder had been complied with:

Provided further that on receipt of the affidavit from the Authorised Officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets within a period of thirty days from the date of application:

Provided also that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.

Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case may be, on the date of commencement of this Act.

(1A) The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him,-

(i) to take possession of such assets and documents relating thereto; and

(ii) to forward such assets and documents to the secured creditor.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate any officer authorised by the Chief Metropolitan Magistrate or District Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

.....

17. Application against measures to recover secured debts. - (1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, may make an application along with such fee, as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the

matter within forty-five days from the date on which such measures had been taken:

Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.

Explanation.-For the removal of doubts it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under sub-section (1) of section 17.

(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction-

- (a) the cause of action, wholly or in part, arises,
- (b) where the secured asset is located; or
- (c) the branch or any other office of a bank or financial institution is maintain an account in which debt claimed is outstanding for the time being.

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,-

- (a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and;
- (b) restore the possession of the secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and
- (c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

(4A) Where-

(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,-

(a) has expired or stood determined; or

(b) is contrary to section 65A of the Transfer of Property Act, 1882 (4 of 1882); or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under sub-section (2) of section 13 of the Act; and

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any party to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder."

12. However, in order to decide the question involved, a comprehensive perspective has to be adopted in order to appreciate the scheme of the SARFAESI Act, in so far as it relates to the maintainability of a single application under Section 17 of the said Act for a single debt, despite there being several secured assets. Some ancillary

provisions are also to be looked into for the said purpose.

13. Section 17(1) of the SARFAESI Act provides that any person, including the borrower, aggrieved by any of the measures referred to in Section 13(4), may make an application along with such fee, as may be prescribed, "to the Debts Recovery Tribunal having jurisdiction in the matter" within the time as specified therein.

14. Sub-section (1A) provides that an application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction-

(a) the cause of action, wholly or in part, arises;

(b) where the secured assets is located; or

(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt is claimed is outstanding for the time being.

15. The Debts Recovery Tribunal, upon an examination of the facts and circumstances and evidence produced by the parties, has the power to set at naught such measures under Section 13(4). It may also hold that such measures were taken in accordance with law, which shall entitle the secured creditor to take recourse to the measures to recover his secured debt.

16. Section 13, on the other hand, as per its caption, pertains to enforcement of security interest. The measures taken thereunder all relate to the recovery of the secured debt, as is evident both from sub-section (2) and sub-section (4), inter alia, of Section 13. The possession of the secured assets being taken over is a consequence of such recourse, but the measures are resorted to for the recovery of the debt.

17. The expression "security interest", used in the caption of Section 13 of the SARFAESI Act, has been defined in Section 2(1)(zf) of the said Act as right, title or interest of any kind, other than those specified in Section 31, upon property created in favour of any secured creditor and includes several interests, like mortgage, charge, other right title or interest in any intangible asset, etc., as provide therein.

18. Section 2(1)(ze) defines "secured debt" to be a debt which is secured by any security interest. Thus, the definitions of "secured debt" and "security interest" are circular between themselves and lead us nowhere in so far as the present purpose is concerned.

19. For such purpose, we have to look into the definition of "debt" as provided in Section 2(1)(ha) which commences with the expression that "debt" shall have the meaning assigned to it in clause (g) of Section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as "the DRT Act") and also includes unpaid portion of purchased price of any tangible asset, any right title or interest on intangible asset and the like.

20. This leads us on to the definition of "debt" as provided in Section 2(g) of the DRT Act, which is as follows:

"2(g) "debt" means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or

unsecured, or assigned, or whether payable under a decree or order of any civil Court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application and includes any liability towards debt securities which remains unpaid in full or part after notice of ninety days served upon the borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of debt securities or;"

21. The said definition indicates that debt means any liability (inclusive of interest) which is claimed as due from any person by a bank etc. "..... whether secured or unsecured,.....".

22. As such, the "debt" contemplated in the DRT Act, which has been made applicable to the SARFAESI Act as well by virtue of Section 2(1)(ha) of the latter, contemplates both secured and unsecured debts, thereby releasing the expression "debt" from the fetter of assets.

23. Again, probing into the meaning of "Debts Recovery Tribunal", as defined in the SARFAESI Act, Section 2(1)(i) of the said Act defines it as the Tribunal established under sub-section (1) of Section 3 of the DRT Act.

24. Moving on to Section 3(1) of the DRT Act, it is found that the same provides for the establishment of Tribunal.

25. Section 17(1) of the DRT Act provides that a tribunal shall exercise the jurisdiction, powers and authority to entertain and decide applications from banks and financial institutions for recovery of debts due to such banks and financial institutions. Section 19(1) of the DRT Act, on the other hand, provides as follows:

"19. Application to the Tribunal. - (1) Where a bank or a financial institution has to recover any debt from any person, it may make an application to the Tribunal within the local limits of whose jurisdiction,-

(a) the branch or any other office of the bank or financial institution is maintaining an account in which debt claimed is outstanding, for the time being; or

(aa) the defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain; or

(c) the cause of action, wholly or in part, arises:

Provided that the bank or financial institution may, with the permission of the Debts Recovery Tribunal, on an application made by it, withdraw the application, whether made before or after the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 for the purpose of taking action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), if no such action had been taken earlier

under that Act:

Provided further that any application made under the first proviso for seeking permission from the Debts Recovery Tribunal to withdraw the application made under sub-section (1) shall be dealt with by it as expeditiously as possible and disposed of within thirty days from the date of such application:

Provided also that in case of Debts Recovery Tribunal refuses to grant permission for withdrawal of the application filed under this sub-section, it shall pass such orders after recording the reasons therefore."

26. A perusal of Section 19(1) of the DRT Act, in conjunction with Section 17(1A) of the SARFAESI Act, indicates that the primary consideration for ascertaining the jurisdiction of the tribunal is not restricted to the situs of the secured asset but is primarily based on the debt itself, be it with regard to the place where the cause of action, wholly or in part, arises or the branch or any other office of a bank or financial institution where it is maintaining an account in which the debt claimed is outstanding for the time being or (in the DRT Act) the defendant resides or works.

27. The only additional feature in sub-section (1A) of Section 17 of the SARFAESI Act is clause (b) thereof, which confers jurisdiction additionally on the Debts Recovery Tribunal where the secured asset is located.

28. However, clauses (a), (b) and (c) of sub-section (1A) are disjunctive and it is the option of the applicant in an application under Section 17 of the SARFAESI Act to choose any of the forums.

29. In such view of the matter, the location of the asset cannot be the sole determinant of the jurisdiction of the tribunal.

30. Moreover, Section 14 of the SARFAESI Act contemplates a situation post-adjudication under Section 17, in case of such an application being filed. such post facto action cannot be a determinant of the initial jurisdiction of the tribunal to entertain an application under Section 17 of the SARFAESI Act, which is attracted immediately after any measure under Section 13(4) is taken.

31. Even the measures under Section 13(4) relate to the debt and the security interest arising therefrom and cannot be determined on the basis of the assets, possession of which would come into play only in the event the borrower fails to pay the debt. Even enforcement under Section 14 has to await the adjudication under Section 17 of the SARFAESI Act, if an application is filed under the said provision. Hence, the territorial location of the assets is irrelevant for the purpose of deciding the jurisdiction of the tribunal. Jurisdiction of the tribunal, however, is a primary determinant for deciding as to whether the applicant under Section 17 has to approach different tribunals pursuant to different notices under Section 13(2) or Section 13(4) issued by the secured creditor in respect of such several assets, with several applications, or to file a single application under Section 17 in consonance with the debt-in-question, since the situs of action is tied up with the debt itself.

32. The tribunal which has jurisdiction to take applications under Section 17 has to be the one which can entertain a challenge against measures to recover the secured debt, lending primacy to the debt and not the secured assets. As such, the secured creditor, at its option, may issue several notices under Section 13, sub-section (4) in

respect of several secured assets, but the applicant need not run to all such tribunals which have jurisdiction respectively over the location of such assets territorially, with separate applications under Section 17 of the SARFAESI Act, to ventilate its grievance in respect of a single debt.

33. The other argument of the opposite parties, as to the petitioners seeking to avoid the fees payable for an application under Section 17, rather goes against the opposite parties. The provision in this regard is Rule 13(2) of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as "the Rules").

34. Rule 13(2) provides for the amount of fee payable for an application under subsection (1) of Section 17 of the SARFAESI Act and gives a chart enumerating such fees. The relevant provisions in the said chart are found at serial nos. 1(a) and 1(b), both of which deal with a borrower's application under Section 17(1) of the SARFAESI Act. The sole determinant of the amount of fee payable is the amount of debt due from the borrower.

35. Serial number 1(a) of Rule 13(2) stipulates that where the applicant is a borrower and the amount of debt due is less than Rs. 10 lakhs, the amount of fee payable would be Rs. 500/- for every Rs. 1 lakh or part thereof.

36. Serial number 1(b) provides that where the applicant is a borrower and the amount of debt due is Rs. 10 lakh and above, the amount of fee payable would be Rs. 5,000 + Rs. 250 for every Rs. 1 lakh or part thereof in excess of Rs. 10 lakh, subject to a maximum of Rs. 1,00,000.

37. As such, even the fees payable with an application under Section 17 of the SARFAESI Act pertain to the amount due and not to the valuation of the assets.

38. Hence, in the present situation, if the argument of the opposite parties is to be accepted, the borrowers/petitioners have to file several different applications under Section 17(1) of the SARFAESI Act before the different tribunals respectively having territorial jurisdiction over the secured assets, for the same debt, each time paying the amount of fees specified for such debt, since there is no provision for segregation or apportionment of the fees payable within the scope of Rule 13(2) of the said Rules. The said proposition, ipso facto, is absurd, since for the same grievance, the applicant cannot be expected to deposit fees several times over.

39. Hence, the argument as to the petitioners avoiding fees returns as a boomerang against the opposite parties themselves inasmuch as the relevant provisions, as discussed above, indicate that the fees have to be put in on the basis of the debt alone.

40. Thus, it is obvious that, for a single debt, the borrowers have to file a single application under Section 17(1) in a tribunal having jurisdiction of the borrowers' choice, as provided in Section 17(1A) of the SARFAESI Act, putting in a single fee pertaining to the debt-in-question, in consonance with the chart provided under Rule 13(2) of the aforesaid Rules of 2002.

41. Accordingly, the petitioners are justified in arguing that the tribunal acted palpably without jurisdiction in disposing of S.A. No. 246 of 2017, filed by the petitioners under Section 17(1) of the SARFAESI Act, on the ground that three different notices were clubbed erroneously, and directing the petitioners to file a fresh SARFAESI application.

42. The several notices, be those under Section 13(2) or Section 13(4) of the

SARFAESI Act, pertain to the same debt and since the petitioners challenged measures taken under Section 13(4) in respect of a single debt, the cause of action of the said application is a composite bundle of facts, taking within its fold all the said three separate notices, since those emanate from the same single debt, permitting the petitioners to file a single application under Section 17(1) of the SARFAESI Act before a tribunal of their choice within the latitude provided under Section 17(1A) of the SARFAESI Act, which was precisely done by the petitioners in the present case.

43. Accordingly, C.O. No. 1916 of 2019 is allowed, thereby setting aside the impugned order passed by the Kolkata Debts Recovery Tribunal - I, dated April 18, 2019 in SA/246/2017 and directing the tribunal to dispose of the said application under Section 17 of the SARFAESI Act afresh, on merits, upon giving appropriate opportunity of hearing to both sides, in accordance with law.

44. There will be no order as to costs.

45. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

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