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Supreme Court Clarifies Applicability of SARFAESI Remedies for a Secured Creditor who Acquires an NPA from a Non-notified NBFC

11 September 2026

In *Kotak Mahindra Bank Limited v Trupti Sanjay Mehta and Others*, 2026 INSC 943 (*Kotak Mahindra*), the Hon'ble Supreme Court of India considered whether a bank as defined under Section 2(1)(c) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) could invoke the provisions of the SARFAESI Act to recover a secured debt acquired from an entity which was not covered under the ambit of the SARFAESI Act at the time of disbursement of the loan.

The Court passed a common judgment and order in a group of three appeals involving Kotak Mahindra Bank Limited (KMBL). KMBL had acquired certain loan accounts from City Financial Consumer Finance Limited (CFCFL), an NBFC which was not notified as a "financial institution" under Section 2(1)(m) of the SARFAESI Act at the time it disbursed the relevant loans and obtained the associated security interests.

The borrowers challenged KMBL's recourse to SARFAESI measures on the ground that the original loan could not be treated as a "secured debt" under Section 2(1)(ze) of the SARFAESI Act, since CFCFL was not then a notified financial institution. The Supreme Court rejected this contention and held that when a bank to which the SARFAESI Act is applicable acquires a live, non-performing secured loan account from an entity which is not notified as a "financial institution" under the SARFAESI Act, the acquisition "immediately clothes" that loan account with the attributes of a secured debt under the Act.

Factual Matrix

The appeals concerned three separate loan accounts extended by CFCFL in 2009 which were later acquired by KMBL as NPAs. At the time of disbursement of the loan, CFCFL was an NBFC but was not a "financial institution" notified under Section 2(1)(m)(iv) of the SARFAESI Act. CFCFL was notified as a "financial institution" only on 27 August 2018, long after KMBL had acquired the relevant loan accounts and initiated proceedings under SARFAESI Act for recovery of the security interests against the respective borrowers.

Contentions of the Borrowers

The borrowers argued that KMBL, as assignee of CFCFL, could not exercise rights that CFCFL itself did not possess under the SARFAESI Act. Their submission was founded on the definitions of "borrower", "financial assistance", "secured creditor", "security interest" and "secured debt" under the SARFAESI Act.

According to the borrowers, considering that CFCFL was not a notified "financial institution" under Section 2(1)(m) at the time the loans were disbursed, it was not a "secured creditor" under Section 2(1)(zd) of the SARFAESI Act. Consequently, the borrowers had not received "financial assistance" from a bank or financial institution within the meaning of Section 2(1)(k) of the SARFAESI Act, and the security created in favour of CFCFL did not qualify as a "security interest" in terms of Section 2(1)(zf) of the SARFAESI Act, enforceable under Chapter III of the SARFAESI Act.

The borrowers further contended that assignment of the loan accounts could transfer only such rights as were held by the assignor. Therefore, although KMBL was itself a bank covered by the SARFAESI Act, it could not use the Act to enforce a debt that did not fall under the definition of "debt" at the time of disbursement of the loan.

Contentions of KMBL and RBI

KMBL submitted that the debts and underlying securities were assets of CFCFL and were validly transferable. The relevant loan documents authorised assignment, and the assignee was entitled to exercise the rights available to the lender in respect of the assigned debt and security.

KMBL relied on the definition of "debt" under Section 2(1)(ha) of the SARFAESI Act, which includes assigned liabilities, and contended that the Act does not require that the assignor of a debt is a "financial institution" under the SARFAESI Act. KMBL argued that once the debt and security were assigned to KMBL, which was a bank and "secured creditor" within the meaning of the Act, KMBL was entitled to enforce the security interest and avail SARFAESI remedies.

The Reserve Bank of India (RBI), which was impleaded as a respondent before the Bombay High Court in one of the three cases, also placed its submissions before the Supreme Court. The RBI referred to its Circular dated 13 July 2005, issued under Sections 21 and 35A of the Banking Regulation Act, 1949, which regulates the purchase and sale of NPAs and seeks to develop a healthy secondary market for distressed assets. RBI submitted that a restrictive interpretation would prevent banks from effectively enforcing security interests attached to acquired NPAs and would undermine the regulatory objective of facilitating NPA resolution.

RBI further submitted that assignment does not alter the borrower's underlying repayment obligation or otherwise prejudice the borrower's contractual rights. It contended that an assignee bank should not be precluded from invoking SARFAESI remedies merely because the original lender was not covered by the Act at the time of disbursement.

Analysis of M.D. Frozen Foods and Indiabulls

The Supreme Court relied on its earlier decisions in *M.D. Frozen Foods Exports Private Limited and Others v Hero Fincorp Limited,* (2017) 16 SCC 741, (*M.D. Frozen Foods*) and *Indiabulls Housing Finance Limited v Deccan Chronicle Holdings Limited and Others,* (2018) 14 SCC 783 (*Indiabulls*), both of which addressed the applicability of the SARFAESI Act to loan transactions originating with entities that were not covered by the Act when the relevant financial assistance was extended. Although neither decision concerned a straightforward assignment of a loan account by a non-notified NBFC to a bank, they established the principle that the availability of SARFAESI remedies is not determined solely by the regulatory status of the original lender at the time of disbursement. Rather, the Supreme Court focused on whether the debt remained live and enforceable when it came to be held by an entity entitled to invoke the SARFAESI Act.

In *M.D. Frozen Foods*, the lender was an NBFC that was notified as a financial institution under Section 2(1)(m)(iv) after the relevant loan documents had been executed and the account had become an NPA. The Supreme Court held that the SARFAESI Act applied to all debts that were *"owing and live"* when the Act became applicable to the lender. The Supreme Court characterised the Act as providing an expeditious procedural mechanism for enforcement of existing security interests, rather than creating a new substantive obligation.

In *Indiabulls*, the original lender was an NBFC that was not covered by the SARFAESI Act when it advanced the loans. It subsequently amalgamated with Indiabulls Housing Finance Limited, which was a notified financial institution. The Supreme Court held that the successor entity could invoke the SARFAESI Act. On amalgamation, the loans, securities and other financial assets vested in the transferee, and the borrowers became borrowers of the transferee as if the financial assistance had been granted by it.

Observations of the Supreme Court in Kotak Mahindra

The Supreme Court acknowledged that the factual background in *Kotak Mahindra*, *M.D. Frozen Foods* and *Indiabulls* were different as. in *MD Frozen Foods* and *Indiabulls* the lender itself later entered the SARFAESI framework, either by notification or amalgamation. In the present case, the debt alone entered the SARFAESI framework when the loan account was acquired by KMBL, which was a bank for the purposes of Section 2(1)(c) of the SARFAESI Act.

However, the Supreme Court held that this distinction did not warrant a different result. The core issue was whether a loan account or debt that was outside the SARFAESI framework at the time of disbursement of the loan could subsequently become subject to the recovery mechanism under the SARFAESI Act.

Relying on *M.D. Frozen Foods* and *Indiabulls*, the Supreme Court held that once a claim is "live and owing", SARFAESI remedies are available to an institution holding that loan account. Accordingly, where a bank already subject to the SARFAESI Act acquires a non-performing secured loan account from an entity outside the SARFAESI framework, the acquired account immediately acquires the attributes of a "secured debt" under the Act.

The Supreme Court held that there was no material distinction between: (a) a loan account becoming subject to the SARFAESI Act because the original lender is subsequently notified; (b) a loan account becoming subject to the Act because the original lender merges into a SARFAESI-covered entity; and (c) a loan account becoming subject to the Act because it is assigned to a bank already covered by the Act.

In each case, the SARFAESI Act becomes available as a recovery mechanism once the debt is held by an eligible institution.

The Supreme Court rejected the borrowers' attempt to narrowly construe the definitions of "financial institution" and "secured debt". The Court held that the purposive interpretation adopted in *M.D. Frozen Foods* and *Indiabulls* foreclosed an argument that a borrower could permanently remain beyond the SARFAESI regime merely because the original lender was not a notified financial institution or that the loan was not a "debt" at the time of disbursement. The Supreme Court also noted that the borrowers' interpretation would create an unwarranted distinction between borrowers based solely on the regulatory status of the original lender. Such an outcome would permit borrowers of non-notified NBFCs to resist SARFAESI enforcement even after their loans had been acquired by a bank, thereby frustrating the object of the SARFAESI Act.

Comments

The decision strengthens the framework for the transfer and recovery of distressed secured assets. It confirms that a bank may acquire an NPA from a non-notified NBFC and thereafter enforce the underlying security interest under the SARFAESI Act, provided the statutory requirements for such enforcement are satisfied.

The judgment is especially significant for the secondary market in stressed assets. Prior to this ruling, a bank acquiring a secured debt from a non-notified NBFC faced the risk that it could be confined to ordinary civil remedies notwithstanding its own status as a SARFAESI-covered bank. The Supreme Court has now removed that uncertainty.

The judgment also clarifies that the relevant inquiry is not whether the original lender could have invoked the SARFAESI Act when the loan was disbursed; rather, the inquiry is whether the debt is live, secured and held by an entity which is entitled to invoke the Act when recovery measures are initiated.

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