Ramsay Exim And Technology Private Limited And Others Vs ICICI Bank Limited And Another

Court: Calcutta High Court

Date of Decision: Sept. 11, 2019

Acts Referred: Securitization And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 â€" Section 2(1)(i), 2(1)(zf), 2(1)(ha), 2(g), 3(1), 13, 13(2), 13(4), 14, 17, 17(1), 17(1A), 17(1A)(a), 17(1A)(b, 17(1A)(c) 19(1)
Transfer Of Property Act, 1882 â€" Section 31, 65A, 69, 69A
Banking Regulation Act, 1949 â€" Section 9, 13(2), 13(4)
Companies Act, 1956 â€" Section 529(1), 529A
Security Interest (Enforcement) Rules, 2002 â€" Rule 13(2)
Constitution Of India, 1950 â€" Article 227

Hon'ble Judges: Sabyasachi Bhattacharyya, J

Bench: Single Bench

Advocate: Arijit Bardhan, Sutapa Mitra, Avishek Guha, Tinni Joarder

Final Decision: Allowed

Judgement

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 Ã¢â‚¬" 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 Ã¢â‚¬Å“the SARFAESI ActÃ¢â‚¬), 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:

Ã¢â‚¬Å“SARFAESI Act:-

13. Enforcement of security interest. Ã¢â‚¬" (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 instalment 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 Ã¢â‚¬

(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 f 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 workmenÊ¹s 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 workmenÊ¹s dues in accordance with the

provisions of section 529A of the Companies Act, 1956 (1 of 1956) and in case such workmenÊ¹ s dues cannot be ascertained, the liquidator shall

intimate the estimated amount of workmenÊ¹ 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:

Ã, Provided also that in case the secured creditor deposits the estimated amount of workmenÊ¹s dues, such creditor shall be liable to pay the balance of

the workmenÊ¹s 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 workmenÊ¹s dues, if any.

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

(a) Êºrecord dateÊº 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) Êºamount outstandingÊº 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 measured specifies 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 himÃ¢â‚¬¬

(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 thatÃ¢â‚¬¬

(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,Ã¢â,¬

(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.

Ã¢â,¬Â¦. Ã¢â,¬Â¦. Ã¢â,¬Â¦. Ã¢â,¬Â¦.

17. Application against measures to recover secured debts. Ã¢â,¬" (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.Ã¢â,¬"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 Ã¢â,¬

(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 l3 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.Ã¢â‚¬‹

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, Ã¢â‚¬Å“to the Debts Recovery Tribunal having jurisdiction in the matterÃ¢â‚¬

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 Ã¢â‚¬

(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 Ã¢â‚¬Å“security interestÃ¢â‚¬, 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 Ã¢â‚¬Å“secured debtÃ¢â‚¬ to be a debt which is secured by any security interest. Thus, the definitions of Ã¢â‚¬Å“secured debtÃ¢â‚¬ and

Ã¢â‚¬Å“security interestÃ¢â‚¬â€‹ 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 Ã¢â‚¬Å“debtÃ¢â‚¬ as provided in Section 2(1)(ha) which commences with the expression that

Ã¢â‚¬Å“debtÃ¢â‚¬ 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 Ã¢â‚¬Å“the DRT ActÃ¢â‚¬) 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 Ã¢â‚¬Å“debtÃ¢â‚¬â€‹ as provided in Section 2(g) of the DRT Act, which is as follows:

Ã¢â‚¬Å“2(g) Ã¢â‚¬Å“debtÃ¢â‚¬ 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;Ã¢â‚¬â€‹

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. Ã¢â‚¬Å“.....

whether secured or unsecured, ... Ã¢â‚¬â€‹.

22. As such, the Ã¢â‚¬Å“debtÃ¢â‚¬ 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 Ã¢â‚¬Å“debtÃ¢â‚¬â€‹ from the fetter of assets.

23. Again, probing into the meaning of Ã¢â‚¬Å“Debts Recovery TribunalÃ¢â‚¬, 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:

Ã¢â‚¬Å“19. Application to the Tribunal. Ã¢â‚¬" (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 therefor.Ã¢â‚¬‹

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 pos-t 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

Ã¢â‚¬Å“the RulesÃ¢â‚¬â€‹).

34. Rule 13(2) provides for the amount of fee payable for an application under sub- section (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 borrowerÃ¢â‚¬â„¢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

borrowersÃ¢â‚¬â„¢ choice, as provided in Section 17(1A) of the SARFAESI Act, putting in a single fee pertaining to the deb-tin-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 Ã¢â‚¬" 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.