

Debts Recovery Appellate Tribunal Empowered to Condone Delay under Section 18(1) of the SARFAESI Act, 2002- An Analysis of Supreme Court of India's decision in *Baleshwar Dayal Jaiswal vs Bank of India*¹

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Introduction

Hon'ble Division Bench of the Supreme Court comprising of Their Lordships Jagdish Singh Khekar and Adarsh Kumar Goel JJ dealt with a very important and an interesting question of law in this batch of appeals³. The question was whether the DRAT as constituted under the SARFAESI has the power to condone delay in filing of the appeal. Section 18(1) of the SARFAESI Act empowers the DRAT to hear appeals but does not speak about the power of delay condonation by the DRAT. Whereas the DRAT as constituted under the RDDB Act, 1993 does have the power to condone delay and has been explicitly been provided for.⁴ DRAT is empowered to hear matters under both RDDB Act and the SARFAESI Act but only the RDDB Act expressly provides for delay condonation powers and not SARFAESI. Hence adjudication of this question whether the DRAT has power of delay condonation under the SARFAESI Act had to be decided upon.

Issue Involved

The question of law that was dealt with in this batch of appeals was-

“Whether the Appellate Tribunal under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 (SARFAESI Act) has the power to condone delay in filing an appeal under section 18(1) of the said Act.”

¹ [2015] 192 Comp Cas 74 (SC)

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³ Civil Appeals Nos. 5924 to 5927 of 2015. This was an appeal from judgment and order dated 5th September 2011 of Madhya Pradesh high Court in Writ Petition No. 8864 of 2011.

⁴ Section 20 of the RDDB Act.

Analysis of the Relevant Provisions of the Law

Before we analyze the reasoning of the court in the light of the arguments that were forwarded and subsequent interpretation of law, it is necessary to present the relevant sections from the SARFAESI Act, 2002, RDDB Act, 1993 and the Limitation Act, 1963 that were considered in this case.

(a) Section 18 of the SARFAESI Act, 2002

A bare perusal of the above mentioned Section 18(2) yields the following conclusions:-

- Autonomy to Prefer an Appeal-That any person aggrieved by any order made by the Debt Recovery Tribunal may prefer an appeal alongwith such fees prescribed to the Appellate Tribunal.
- Prescribing Different Fees for Appeals Preferred-That the Appellate Tribunal has power to prescribe different fees for filing an appeal by the borrower or by the person other than the borrower for the purposes of this section. In other words the quantum of the filing fees is entirely discretionary
- Condition of Mandatory Pre-Deposit-That in order to prefer an appeal, the borrower has to deposit with the Appellate Tribunal fifty percent of the amount of debt due from him as claimed by the secured creditors or determined by the Debt Recovery Tribunal. Whichever amount is less shall be deposited. The Appellate tribunal is further empowered to reduce the amount to not less than twenty five percent of the debt referred.⁵

⁵ In Bank of India vs Registrar, Debt Recovery Appellate Tribunal, Chennai (2011 SCC OnLine AP 82), the Honourable Andhra Pradesh High Court held that a plain reading of Section 18(1) clearly postulates that unless and until the borrower deposits 50% of the amount, the Tribunal cannot pass any interim orders, but can nonetheless grant interim direction or interim stay subject to depositing of not less than 25% of the amounts due and payable.

- (b) Section 36 of the SARFAESI Act, 2002—Section 36 of the SARFAESI provides that a secured creditor in order to be entitled to take all or any of the measures under Section 13(4) of the SARFAESI Act, has to make his claim in respect of the financial asset within the prescribed period of limitation.⁶
- (c) Section 20(3) of Recovery of Debts Due to Banks and Financial Institutions Act, 1993- Section 20(3) of the RDDB Act, 1993 provides that every appeal to the DRAT has to be filed within 45 days from date on which a copy of the order is made or deemed to have been made by the Tribunal is received by the person aggrieved. This section provides a further proviso wherein the Appellate Tribunal may entertain an appeal after the expiry of the period of 45 days and if it is satisfied that there was sufficient cause for not filing in that period. Hence DRAT as constituted under the RDDB, 1993 has been granted power of delay condonation.
- (d) Section 24 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993-This section states that the provisions of the Limitation Act, 1963 as far as practicable apply to an application made to the Tribunal.
- (e) Section 29(2) of Limitation Act, 1963- There are two conditions that have to be satisfied in order to apply Section 29(2) of the Limitation Act. First, the period of limitation has to be prescribed for the application under a special or a local law.⁷ Second the said period of limitation must be different from the period presented therefor by the Schedule of the Limitation Act.⁸ It is only if both these conditions are satisfied that the provisions of Section 3 of the Limitation Act will apply as if such period were prescribed therefor in the said Schedule, and it is only then that for the purpose of determining the period of limitation prescribed for the

⁶ In *Sreedharan vs Indian Bank*, 2011 (2) BJ 485 it was held by the Honourable Kerala High Court held that from a combined reading of Section 36 of the SARFAESI Act and the definition clauses of the terms 'debt' and 'financial asset' along with the relevant article of the Limitation Act prescribing the period of limitation for realization of a decree, it could be safely concluded that the Limitation Act prescribing the period of limitation prescribed under Section 36 of the SARFAESI Act in the case of recovery of a decree debt, could only be computed from the date of the decree and not from the date of declaring the loan as "NPA" [See- Dr.R.G. Chaturvedi, *Law & Practice of Securitisation*, 1070(6th Ed., 2015)]

⁷R Mitra, *Commentaries on the Limitation Act*, 539 (8th Ed, 2013)

⁸ Ibid

application by the special or local law, the provisions of Sections 4 to 24 (both inclusive) of the Limitation Act will be made applicable.⁹

Critical Analysis of the Reasoning of the Court

The court followed a very systematic approach and the first point that was considered by the Hon'ble Court was the applicability of Section 20(3) of the RDDB Act to the disposal of an appeal by the DRAT under Section 18(2) of the SARFAESI Act. In other words, the court gave a careful thought to the question whether the power of delay condonation as was granted to the DRAT as constituted under the RDDB Act was available to DRATs constituted under the SARFAESI Act.

In order to do so, the court had to first consider the question whether provisions of the RDDB Act could be made applicable to SARFAESI with respect to disposal of appeals. The court answered in affirmative and held that a bare perusal of Section 18(2) makes it clear that the DRAT under the SARFAESI Act has to dispose of an appeal in accordance with the provision of the RDDB Act. It is important to know as to on what basis the court reached such a conclusion.

The Court reached this conclusion on the basis of sub section (2) of Section 18 of the SARFAESI Act. At this stage it will be appropriate to reproduce the said sub section:-

*(2) Save as otherwise provided in this Act, the **Appellate Tribunal shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and rules made thereunder.** (emphasis supplied by author)*

On the basis of the abovementioned Section 18(2) of the SARFESI, the Court reached the conclusion that the provisions of the RDDB Act stand incorporated in the SARFAESI Act for disposal of an appeal.

⁹ S. Raringsui Tanghkul vs S. Yangmaso. AIR 1963 Manipur 17 at p.19; Dev Chovata vs Ganesh Mahadeo Deshpande., AIR 1970 Bom, 412 at p.413; 1970 Mah L.J. 736 : 72 Bom LR 469; Radheshyam Mohanlal Kaitan vs Maharashtra Revenue Tribunal AIR 1970 Bom 138 (See- R Mitra, *Commentaries on the Limitation Act*, 539 (8th Ed, 2013)

After answering the question as to whether provisions of the RDB Act could be made applicable to the SARFAESI in affirmative, the court further got a substantial legal foundation for answering the question whether DRAT as constituted under SARFAESI had delay condonation powers. With respect to this, the court said as follows:-

“...we are unable to discern any reason as to why the SARFAESI Appellate Tribunal cannot entertain an appeal beyond the prescribed period even on being satisfied that there is sufficient cause for not filing such appeal within that period.”

The Court went one step further and said that even if power of condonation of delay by virtue of Section 29(2) of the Limitation Act was held not to be applicable, the proviso to section 20(3) of the RDDB Act would be applicable by virtue of Section 18(2) of the SARFAESI Act anyway. Further, with regards to power of delay condonation, the court made an extremely crucial observation:-

“Unless the scheme of the statute expressly excludes the power of condonation, there is no reason to deny such power to an Appellate Tribunal when the statutory scheme so warrants.”

Hence the court held that the Appellate Tribunal under the SARFAESI Act has the power to condone the delay in filing an appeal before it by virtue of Section 18(2) of the SARFAESI Act and proviso to Section 20(3) of the RDDB Act. In the light of this ratio, the court felt the necessity to cite *Transcore vs Union of India*¹⁰ wherein it was held by the Supreme Court that the RDDB Act and the SARFAESI are complimentary to each other.

¹⁰ See [2007] 135 Comp Cas 1 (SC); [2008] 1 SCC 125

Conflicting Views of the High Courts on DRAT's Power of Delay Condonation Clarified

After holding that the DRAT has power of delay condonation under Section 18(2) of the SARFAESI Act, the court sought to clarify conflicting views taken by High Courts at the judicatures of Madhya Pradesh, Madras, Andhra Pradesh and Bombay on DRAT's power of delay condonation under Section 18(2) of the SARFAESI.

The Madhya Pradesh High Court held¹¹ that the power of condonation of delay stood excluded by the principle of interpretation that if a later statute has provided for shorter period of limitation without express provision for condonation, it could be implied that there was no power of condonation.¹² The Madhya Pradesh High Court, made the following additional observations:-

- (a) That the Limitation Act was made applicable to a Tribunal under Section 24 of the RDDB Act, but there was no similar provision with respect to the Appellate Tribunal and hence DRAT under SARFAESI did not have any power to condone delay.¹³
- (b) That the object of the SARFAESI Act was to ensure speedy recovery of the dues and quicker resolution of disputes arising out of action taken for recovery of such dues. Hence, the DRAT under SARFAESI should not be granted power of delay condonation.

The Supreme Court found the abovementioned approach of the High Court erroneous, incorrect interpretation of the principle¹⁴ on which the abovementioned conclusion was

¹¹ *Seth Banshidhar Media Rice Mills Pvt Ltd vs State Bank of India* [AIR 2011 MP 205]

¹² The Hon'ble Madhya Pradesh High Court reached this view on the basis of *Principles of Statutory Interpretation* by Justice G.P. Singh, 12th Edition, 2010 Page 310.

¹³ To further justify this observation, the Hon'ble Madhya Pradesh High Court placed reliance upon the following judgments:-

(a) *Gopal Sardar vs Karuna Sardar* [2004] 4 SCC 252

(b) *Fairgrowth Investments Ltd vs Custodian* [2004] 122 Comp Cas 683 (SC); [2004] 11 SCC 472

¹⁴ *Supra* 11

reached. The principle on the basis of which the Madhya Pradesh High Court took such a view was:-

“When an amending Act alters the language of the principal statute, the alteration must be taken to have been made deliberately.”

Interpreting the abovementioned principle, the Supreme Court further criticized the view taken by the Madhya Pradesh High Court by saying that the change intended in the SARFAESI Act has to be seen from the statute and not from beyond it. The Court declared the legislative intent behind providing a time frame of 30 days for preferring appeal under Section 18 of the SARFAESI and 45 days under Section 20 of the RDDB Act as deliberate. At the same time, the Court further observed that merely because there was an absence of an express provision condoning delay in Section 18(2), it could not be read as excluding the power of condonation. Hence, the Madhya Pradesh High Court judgment was overruled.¹⁵

In the light of the abovementioned Madhya Pradesh High Court judgment and its subsequent overruling, the Hon'ble Supreme Court concurred with the views as taken by the Madras, Andhra Pradesh and Bombay High Courts. At this juncture, the Court preferred to particularly mention the judgment of the Andhra Pradesh High Court in *Smt Sajida Begum vs State Bank of India*¹⁶ which was based on Section 29(2) of the Limitation Act, 1963.

With respect to the applicability of Section 29(2) of the Limitation Act to Section 18(2) of the SARFAESI Act, the Supreme Court observed that Section 29(2) of the Limitation Act has no absolute application as the statute in question impliedly excludes applicability of the provisions of the Limitation Act to the extent that a different scheme is adopted. The Court further said that if no provision of the Limitation Act was expressly adopted, it would have been possible to hold that by virtue of section 29(2) power of condonation

¹⁵ Supra 10

¹⁶ AIR 2013 AP 24

was available. It was further inferred that exclusion of power of condonation of delay was well settled.¹⁷

Conclusion

This is certainly a welcome decision from the Hon'ble Supreme Court. Expressly providing DRAT under the RDDB Act power to condone delay and not granting the same to DRAT under SARFAESI did create certain apparent legislative inconsistency. Appellate Tribunals as constituted under the SARFAESI while entertaining appeals in the past under numerous Securitisation Applications must have certainly pondered upon this question. There can be many reasons for delay in preferring appeals and every delay need not be illegitimate. There can be legitimate reasons too. Hence in the light of justice, upholding that the DRAT under SARFAESI had the power to condone delay in entertaining appeals was certainly the right thing to be done.

The most important observations from this judgment are twofold. First being the basis on which the Supreme Court proceeded to hold the ratio in this judgment. The Supreme Court certainly did not add words or explanations on its own to the said section 18(2). It simply proceeded on the basis of what it already provided for. The legislature while providing under Section 18(2) that the Appellate Tribunal under SARFAESI shall as far as may be dispose of the appeal in accordance with the provisions of the RDDB Act certainly intended that both the statutes should complement each other and ensure speedy dispute resolution between borrowers and lenders.

Second, was overruling of the decision of the Hon'ble Madhya Pradesh High Court in *Seth Banshidhar Media Rice Mills P. Ltd vs State Bank of India*¹⁸. The Supreme Court's approach in overruling this decision on the basis of its interpretation of a principle of

¹⁷The said inference was made on the basis of the following case laws:-

- (a) Union of India vs Popular construction Co. [2001] 8 SCC 470
- (b) Chhattisgarh State Electricity Board vs Central Electricity Regulatory Commission [2001] 5 SCC 23
- (c) Commissioner of Customs and Central Excise vs Hongo India Pvt Ltd [2009] 315 ITR 449 (SC)
- (d) Gopal Sardar vs Karuna Sardar [2004] 4 SCC 252

¹⁸ AIR 2011 MP 205

legislative interpretation is certainly appreciated. The Supreme Court not only criticized the Madhya Pradesh High Court's decision which proceeded on the footing that if a later statute has provided for shorter period of limitation without express provision for condonation then it could be implied that there was no power for delay condonation but also provided its correct interpretation. It said that the change intended in the SARFAESI Act has to be seen from the statute and not from beyond it. In the light of this discussion it is necessary to quote Supreme Court's thoughts on correct interpretation of the said legislative principle:-

“The absence of an express provision for condonation of delay in filing of an appeal cannot be read as excluding the power of condonation. As already observed, the proviso to section 20(3) which provides for condonation of delay (45 days under the RDB Act) stands extended to disposal of appeal under the SARFAESI Act (to the extent that condonation is of delay beyond 30 days). There is no reason to exclude the proviso to Section 20(3) in dealing with an appeal under the SARFAESI Act.”(emphasis supplied)

The Supreme Court definitely followed a very balanced approach which upheld the power of delay condonation and at the same time overruled an unreasonable ratio. It chose to overlook the absence of certain words but at the same time did not venture beyond the scope and ambit of the said section 18(2). In simple words, it only clarified as to what was the true meaning and intention of the legislature while incorporating sub section (2) in the said Section 18 of the SARFAESI. This judgment will not only serve as a guiding principle for appellate tribunals across the country, but will also come to the defence of the Borrowers if the Appellate Tribunal acts unreasonable in the event of a legitimate delay in preferring an appeal.