

02.07.2025
Item Nos
AD 2 & 3
Saswata

WPA 3564 of 2025
CFM Asset Reconstruction Pvt. Ltd.
versus
Assistant Commissioner, CGST & C.EX, Durgapur-I
Division & Ors.
with
WPA 26115 of 2024
Ma Chandi Durga Ispat Ltd. & Anr.
versus
Union of India & Ors.

Mr. Jishnu Chowdhury, Sr. Adv.
Ms. Aasia Hasan
Ms. Sakshi Tiwari

...For the petitioner
in WPA 3564 of 2025

Ms. Manasi Mukherjee
Mr. Tapan Bhanja
Mr. Bijitesh Mukherjee

...For the CGST authorities

Mr. Joydeep Banerjee
Ms. Sharmila Deb

...For the State

Mr. Arijit Chakraborty
Mr. Bankim Pal

...For the respondent nos. 5 & 6
in WPA 3564 of 2025

Mr. Sayantan Bose
Ms. Manisha Das
Ms. Neha Mishra

....for the ADDA

1. By consent of the parties both the writ petitions are taken up together for consideration.
2. The writ petition being WPA 3564 of 2025 has been filed by the CFM Asset Reconstruction Pvt. Ltd. (hereinafter referred to as the “secured creditor”) while the writ petition being WPA 26115 of 2024 has been filed by private parties, amongst whom the petitioner no.1 in such petition appear to be the principal borrower who claims to be a lessee in respect of certain properties which form subject matter of the writ petition which has also been secured by way of mortgage with the secured creditor.

3. The secured creditor claims to be registered with the Reserve Bank of India under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the “SARFAESI Act”) and also claims to be engaged in the business of acquiring non-performing assets from banks/financial institutions. The respondent no. 5 in the second writ petition being WPA 3564 of 2025 is the principal borrower, and is also the petitioner no.1 in WPA 26115 of 2024.

4. It is the case of the secured creditor that in usual course of business dealings and transactions, the respondent nos. 5 and 6 had approached the IDBI Bank Limited (hereinafter referred to as the “assignor bank no.1”) for sanction of credit facilities in its favour. The said assignor bank no.1 has granted financial assistance towards working capital with a cash credit limit of Rs.1000 lakhs, subject to the terms and conditions in respect of the sanction letter dated 13th March, 2009. The sanction of such credit facilities were subsequently renewed on 24th August, 2010 with a sub-limit of Rs. 100 lakhs for LC/BG, on certain terms and conditions and as morefully indicated in such letter. The assignor bank no.1 in order to secure credit facilities sanctioned by it had issued a letter of intent dated 24th August, 2010. Records would reveal that the respondent no.5, the principal borrower had since approached the State Bank of India (hereinafter referred to as the “assignor bank no.2”) and had availed and enjoyed certain credit facilities. In course thereof, the respondent nos. 5 and 6, in the second writ petition, *inter alia*, executed

and entered into certain number of documents for the purpose of availing loan facilities.

5. Records would further reveal that in order to secure repayment of the credit facilities sanctioned by the assignor bank no. 1, the assignor bank no. 1 had issued a letter dated 4th February, 2010 ceding pari-pasu charge in favour of the assignor bank no. 2. The principal borrower had since made available a no-objection certificate dated 2nd March, 2010 issued by the assignor bank no. 2 in terms whereof, the assignor bank no. 2 agreed to cede charge on pari-pasu basis in favour of the assignor bank no. 1.

6. The principal borrower in terms of the memorandum of deposit of title deed dated 6th December, 2010 deposited the original 'Indenture of Lease' dated 23rd August, 2002 in respect of all that piece and parcel of land measuring about 8.20 acre (approx. 25 bighas) along with factory shed/office/Plant & machinery and other installations lying and situated at Kanjilal Avenue, Durgapur- 713210 leased for the period of 60 years w.e.f. 1st January, 2002 to 31st December, 2016 (in short the "subject property").

7. Subsequently, the principal borrower having failed to make payment of its obligation as stipulated with the assignor bank no. 1, the accounts of the principal borrower was declared to be a non-performing asset on 29th June 2012 in the books of the assignor bank no. 1 and on 19th September 2012 in the books of the assignor bank no. 2 in accordance with the guidelines of the Reserve Bank of India.

8. Since, the principal borrower despite being afforded with repeated opportunities, failed to make repayment and

comply with its obligations, the secured creditor had issued a statutory notice on 30th December 2020 under Section 13(2) of the SARFAESI Act to the respondent no 5 along with other mortgagors / guarantors demanding repayment of credit facilities.

9. In the interregnum, however, the secured creditor having acquired the exposure of the principal borrower from the assignor bank no. 2 in terms of its deed of assignment dated 31st March 2023 vide letter dated 4th April 2023 intimated the principal borrower of such acquisition. It is the case of the secured creditor that the assignor bank no.2 had created the charge on the secured asset on 23rd March 2009 and it was later modified and the secured creditor created its security interest with the Central registry (hereinafter referred to as “CERSAI”) which was registered on 28th July 2017. Since then, although attempts were made by the secured creditor to take over possession by invoking the provisions of the SARFAESI Act, the secured creditor could not do so.

10. In September 2024 it came to the knowledge of the secured creditor that the Principal Commissioner, CGST by invoking the provisions of Section 79(1)(d) of the CGST Act, 2017 (hereinafter referred to as the “said Act”) has attached the secured asset of the secured creditor, for recovery of Government dues. Challenging the aforesaid action, the secured creditor has approached this Court.

11. Mr. Chowdhury, learned Senior Advocate appearing for the secured creditor has drawn the attention of this Court to the provision of Section 26E of the SARFAESI Act and would submit that having regard to the provision

contained therein, the secured creditor has priority on all other creditors including statutory creditors. According to him the aforesaid provision having been inserted vide notification dated 26th December 2019, i.e., subsequent to the said Act being notified, the provisions of Section 26E of the SARFAESI Act shall prevail.

12. It is further submitted that if the legislature confers the later enactment with a non obstante clause, it is the subsequent / later enactment which is to prevail. In support of his contention, Mr. Chowdhury has placed reliance on a judgment delivered by the Hon'ble Supreme Court in the case of **Kotak Mahindra Bank Limited., v., Girnar Corrugators Private Limited & Ors.** reported in **(2023) 3 SCC 2010**. On the same issue he has also placed reliance on a judgment delivered by the High Court of Gujarat at Ahmedabad in the case of **Central Bank of India, v., State of Gujarat & Ors., (neutral citation : C/SCA/13768/2023)**. On the issue of the authority of the secured creditor to invoke Section 14 of the SARFAESI Act without issuance of a notice under Section 13(4) of the SARFAESI Act, he has placed reliance on a judgment of the Hon'ble Supreme Court delivered in the case of **Standard Chartered Bank., v. V.Noble Kumar & Ors.** reported in **(2013) 9 SCC 620**.

13. *Per contra*, Ms. Mukherjee, learned advocate appearing for the CGST authorities submits that in the instant case since the secured creditor despite issuing notice under Section 13(2) of the SARFAESI Act could not take possession and since, there were statutory dues payable to the CGST authorities, the CGST authorities had

attached the property in question. According to her, there is no irregularity in this regard. The attachment has been made in accordance with law. She submits that the CGST authorities are entitled to recover the dues in accordance with the provisions of the said Act.

14. Mr. Chakraborty, learned advocate appears for the principal borrower, who is also the petitioner no.1 in WPA 26115 of 2024. According to him the steps taken by the CGST authorities are not in accordance with law. The attachment order is not sustainable. He, however, does not deny the fact that there are legitimate dues payable by the principal borrower both to the CGST authority as also to the secured creditor.

15. Having heard the learned advocates appearing for the respective parties and considering the materials on record, I find that the secured creditor claims to have a priority over the secured asset in terms of the provisions of the Section 26E of the SARFAESI Act. I also notice that admittedly in this case, the secured creditor did not take over possession of the subject property. Having regard thereto, I do not find any irregularity on the part of the CGST authorities in proceeding to attach the subject property in question. Although, diverse issues have been raised by Mr. Chakraborty with regard to the compliance of statutory provision relating to attachment of the property in question, however, taking into consideration the fact that there are huge outstandings, which are also admitted by Mr. Chakraborty, both on account of CGST as also to the secured creditor, though the extent thereof is not admitted, I am of the view that at this stage, having regard

to the provision contained in Section 26E of the SARFAESI Act, it would be prudent to permit the secured creditor to deal with the secured asset. The issue as to whether the secured creditor has a priority *vis-à-vis* the statutory dues of the CGST authorities is no longer *res integra*. The Hon'ble Supreme Court in the case of **Kotak Mahindra Bank Limited (supra)** in paragraph 30 thereof has clarified the said position. To morefully appreciate the same the relevant paragraph is extracted hereinbelow:-

“30. At this stage, it is required to be noted that Section 26-E of the SARFAESI Act which is inserted in 2016 is also having a non obstante clause. Even as per the submission on behalf of respondent no.1, two enactments have competing non obstante provision and nothing repugnant, then the non obstante clause of the subsequent statute would prevail over the earlier enactments. As per the settled position of law, if the legislature confers the later enactment with a non obstante clause, it means the legislature wanted the subsequent /later to prevail. Thus, a “priority” conferred/provided under Section 26-E of the SARFAESI Act would prevail over the recovery mechanism of the MSMED Act. The aforesaid is to be considered along with the fact that under the provisions of the MSMED Act, more particularly Sections 15 to 23, no “priority” is provided with respect to the dues under the MSMED Act, like Section 26E of the SARFAESI Act.”

16. I also find that the Hon'ble High Court of Gujarat while relying on the aforesaid judgment has allowed the contention of Central Bank of India in the judgment delivered in the case of **Central Bank of India (supra)**.

17. Having regard to the aforesaid, I am of the view that at this stage it would be futile to direct the secured creditor to approach the Magistrate under the provision of the SARFAESI Act to recover the possession of the subject property since the possession has already been taken over by the CGST authority. In view thereof, and taking into consideration the scope and ambit of Section 26-E of the

SARFAESI Act I direct the CGST authorities to make over possession of the secured asset unto and in favour of the secured creditor within a week from the date of receipt of server copy of the order. It is made clear that the aforesaid order has been passed without prejudice to the rights of the petitioners in WPA 26115 of 2024 and the other pending legal proceedings. The secured creditor shall, while taking over possession, make an inventory of the assets. Such inventory shall be carried out in presence of the principal borrower and / or its representatives upon prior notice. The secured creditor shall be entitled to proceed against the **secured** asset in accordance with the provisions of the SARFAESI Act for the purpose of enforcing its security interest.

18. The right of the CGST authorities to recover its dues would, however, be subject to the interest of the secured creditor, and the secured creditor would be required to provide for and share accounts in respect of any transactions initiated by the secured creditor in furtherance of enforcing its rights under the provisions of SARFAESI Act with the CGST authorities.

19. With the above direction and observations, both the above writ petitions are disposed of.

20. All parties shall act on the basis of the server copy of this order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)