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Rajasthan HC : Assignment under section 5 SARFAESI survives even if NPA tag quashed, guarantors can’t reopen decade-old ARC deal.

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The Rajasthan High Court (Jodhpur Bench) delivered what is probably the final nail in a decade long coffin of litigation around a palatial hotel in Jaisalmer. In S.B. Civil Writ Petition No. 1240 of 2024 (Harendra Singh Rathore & Ors. v. State Bank of India & Ors.) Justice Rekha Borana refused to stay or undo a 2014 assignment of a ? 25 crore debt by SBI to Alchemist Assets Reconstruction Co., holding that the invalidation of the NPA tag by a tribunal six years ago dented only enforcement action under section 13 of the SARFAESI Act and not the bank's earlier sale of the loan under section 5. The order is a textbook lesson on res judicata, the independent life of an assignment deed, and the thin locus a guarantor has to challenge intercreditor transfers.

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Facts that refused to die

Hotel Gaudavan Pvt. Ltd. (HG) borrowed ? 24 crore in January 2008; a corporate guarantee shield was provided by its four director shareholders, all members of the Rathore family. When cashflow dried up the account was restructured, then classified as NPA, and finally put on the block by SBI in March 2014. Alchemist ARC picked up the entire debt, served the statutory notices under section 13(2) and section 13(4) of the SARFAESI Act, moved the NCLT under section 7 of the Insolvency and Bankruptcy Code, got an IRP appointed and saw a resolution plan approved, all while the borrowers kept knocking on every possible judicial door.

Forum hopping that achieved little

The borrowers' first big win came in May 2015 when DRT Jaipur held the original NPA classification illegal and set aside the possession notice. But the victory proved pyrrhic: DRAT dismissed the ARC's appeal yet the Delhi High Court, while maintaining status quo on the property, allowed the ARC to issue a fresh section 13(2) notice. Meanwhile NCLT New Delhi (31 March 2017) upheld the assignment, NCLAT (29 October 2018) agreed, and the Supreme Court dismissed two special leave petitions (23 October 2017; 2019). Civil suits, criminal FIRs and a protest petition followed, but the ownership of the debt never returned to the hotel company.

Prayers that pushed the envelope

In the present writ the guarantors asked the High Court to declare the 2014 assignment void ab initio, restore the company's title over the hotel, quash the 2022 DRT recovery order and the 2024 demand notice, and even hand the file to a CBI/SIT for a criminal probe. Their counsel argued that once the DRT had held the NPA itself to be bad, every offspring of that NPA, including the sale to the ARC, was stillborn. They also invoked alleged violation of RBI prudential norms and fraud in the deed.

Defence that stuck

SBI and Alchemist ARC led with a simple chart: the identical plea had been raised and rejected at least six times before fora ranging from the district judge to the Supreme Court. Relying on the apex court ruling in ICICI Bank v. Official Liquidator of APS Star Industries (2010) 10 SCC 1 they submitted that a debt is an asset in the hands of a bank; section 5 of the SARFAESI Act empowers it to transfer that asset without asking the borrower's leave and without waiting for an NPA badge. The validity of the assignment, they stressed, is separate from the validity of the later enforcement steps under section 13. They also questioned the maintainability of the writ, pointing to pending alternative remedies before DRT and DRAT.

Analysis: why the court said 'no'

Justice Borana found that the petitioners were attempting to relitigate an issue that had travelled right up to the Supreme Court and had uniformly been decided against them. The judge held that section 13(2) and section 13(4) require an NPA declaration, but section 5 does not; therefore the DRT's 2015 order striking down the NPA hit only the possession proceedings, not the prior sale deed. Following APS Star Industries she reiterated that the moment a bank transfers a debt together with the underlying security the borrower becomes the assignee's debtor; the correctness of the internal NPA tag is irrelevant to that transfer. The court also noted that the Delhi High Court had already granted liberty to the ARC to issue a fresh notice, and the Supreme Court had directed that IBC proceedings "will continue unimpeded." On the criminal investigation plea the judge recorded that two FIRs had been closed or quashed and a protest petition was still pending, so no fresh writ direction was called for. Finally, the recovery order and notice could be challenged in the statutory hierarchy of DRT and DRAT; a writ would not normally interfere where an alternative efficacious remedy exists.

Concluding paragraph

The gavel that dismissed the Writ Petition is therefore a clarion call to every borrower that a bank's right to sell its loan is not tethered to the fate of its NPA label. Once the debt has been assigned, successive forum including the highest court will guard the finality of that contract. For lenders and asset reconstruction companies the message is reassuring, Section 5 of the SARFAESI Act gives them an independent key to unlock bad assets, and that key is not dulled even if Section 13 enforcement hits a judicial roadblock.

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