



SARFAESI

Writ or Tribunal? The SARFAESI Crossroads for Auction Purchasers

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Introduction

A secured creditor's right to enforce security interests under the **Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002** ("SARFAESI Act") is well-established in Indian jurisprudence. However, questions frequently arise as to the appropriate forum available to an aggrieved auction purchaser when the enforcement process goes awry.

The Punjab and Haryana High Court, in its recent decision in *Devi Hospitality Pvt. Ltd. v. Punjab National Bank & Anr.*, has authoritatively settled this question. The Court reaffirmed that the **Debt Recovery Tribunal ("DRT")** under Section 17(1) of the SARFAESI Act is the exclusive and efficacious forum for redressal of such grievances, to the exclusion of writ jurisdiction under Article 226 of the Constitution of India.

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Background and Facts

In pursuance of a sale notice dated 30 January 2020, the petitioner **Devi Hospitality Pvt. Ltd.**, a private limited company, participated in an e-auction conducted by Punjab National Bank ("PNB") on 6 March 2020. The petitioner emerged as the highest bidder at Rs. 4,25,00,000/- and was declared the successful bidder. An auto-generated email from MSTC-ecommerce, bearing the subject line "Sale Confirmation Letter", was issued on the same date.

Despite being declared the successful bidder, the petitioner raised serious concerns regarding **material deficiencies** in the auto-generated communication, namely:

- The absence of a full property description
- Missing Khasra numbers
- Missing title deed particulars
- The Bank's IFSC code and account number not provided

Notwithstanding these deficiencies, the petitioner duly deposited 25% of the bid amount, i.e., Rs. 1,07,00,000/-, within the stipulated period.

The petitioner made repeated requests to the Bank for complete property and payment details. The petitioner also sought a **90-day extension** for depositing the balance consideration, citing annual account closing and the economic disruption caused by the COVID-19 pandemic.

The Bank directed the petitioner to deposit the balance 75% by 21 March 2020. A formal "Sale Confirmation Letter" purportedly dated 11 March 2020 was, however, communicated to the petitioner only on 30 March 2020 — well after the prescribed payment deadline had lapsed.

The petitioner further pointed out that **three materially different versions** of the said letter were produced at different points in time, raising grave doubts as to their authenticity. An FIR bearing No. 58, dated 23 April 2025, was subsequently registered against the Bank officials for alleged fabrication of documents.

By letter dated 12 June 2020, PNB **cancelled the auction sale and forfeited the entire deposit** of Rs. 1,07,00,000/- on the ground that the petitioner had failed to deposit the balance sale consideration. The petitioner filed a civil writ petition before the

Contentions of the Parties

Petitioner

The petitioner advanced the following key contentions:

- The auto-generated email of 6 March 2020 did not satisfy the requirements of a valid “Sale Confirmation Letter” under **Rule 9(2) of the Security Interest (Enforcement) Rules, 2002**, as it was devoid of essential particulars.
- The formal letter dated 11 March 2020 was communicated only on 30 March 2020 — after the 15-day payment window had already expired — thereby precluding the petitioner from making timely payment.
- The forfeiture of an earnest money deposit does not constitute a “measure” under **Section 13(4)** of the SARFAESI Act, and therefore the remedy under Section 17(1) before the DRT was inapplicable, rendering the writ petition maintainable.

Respondent Bank

PNB countered with the following arguments:

- The sale confirmation had been duly conveyed to the petitioner on the date of the auction itself, and the petitioner’s own subsequent emails demonstrated awareness of the full property details, including the Khasra and Wasika numbers.
- The petitioner’s objections were **hyper-technical pretexts** designed to delay payment, as evidenced by the petitioner’s request for a 90-day extension.
- The cancellation and forfeiture were effected strictly in accordance with **Rule 9(5) of the Rules of 2002**, which expressly mandates forfeiture upon default by the highest bidder.
- There was an inordinate delay of over two years in filing the writ petition, during which period the value of the property had appreciated to over Rs. 30 crores.
- The Bank relied upon the Supreme Court’s decision in *Agarwal Tracom Pvt. Ltd. v. Punjab National Bank & Ors.*, (2018) 1 SCC 626, in support of its jurisdictional objection.

Case Laws Relied Upon

The Bank placed primary reliance on ***Agarwal Tracom Pvt. Ltd. v. Punjab National Bank & Ors.*, (2018) 1 SCC 626**, wherein the Supreme Court of India categorically held that the forfeiture of an auction purchaser’s deposit under Rule 9(5) of the Rules of 2002 constitutes an integral part of the measures taken by the secured creditor under Section 13(4) of the SARFAESI Act.

The Apex Court further held that the expression “*any of the measures referred to in Section 13(4)*” in Section 17(1) is of wide import and encompasses all actions taken under the Rules in relation to the measures specified in Section 13(4). Consequently, the remedy of an aggrieved auction purchaser lies **exclusively before the jurisdictional DRT** under Section 17(1), and not by way of a writ petition under Article 226.

The Court also noted the observations of the Supreme Court in ***United Bank of India v. Satyawati Tondon & Ors.*, (2010) 8 SCC 110**, wherein it was cautioned that High Courts ought ordinarily not to entertain writ petitions where an effective alternative statutory remedy is available, particularly in matters concerning the recovery of dues of banks and financial institutions.

The SARFAESI Act, being a **self-contained code**, provides a comprehensive and expeditious mechanism for redressal of grievances through the DRT and the Debts Recovery Appellate Tribunal.

Court’s Analysis and Decision

The Division Bench, comprising **Chief Justice Sheel Nagu and Justice Sanjiv Berry**, declined to adjudicate upon the disputed questions of fact — including whether a proper Sale Confirmation Letter was issued and whether the Bank had acted fraudulently — finding that such contentions were not amenable to resolution in the exercise of writ jurisdiction under Article 226.

The Court observed that the present case was factually identical to *Agarwal Tracom* (supra), wherein the Supreme Court had unequivocally held that **forfeiture of an auction deposit is a measure under Section 13(4)**, challengeable only before the DRT.

The Court disposed of the writ petition without commenting on the merits and **relegated the petitioner to approach the jurisdictional DRT** under Section 17(1) of the SARFAESI Act. Significantly, as a measure of equitable relief, the Court directed that if the petitioner files such an application within 45 days from the date of the order along with a copy thereof, the DRT shall consider and decide the matter on its merits without dismissing it on grounds of limitation alone.

Conclusion

This judgment serves as an important reminder for **auction purchasers, borrowers, and other persons aggrieved** by actions taken under the SARFAESI Act: the DRT is the designated and exclusive forum for challenging such measures, including the forfeiture of deposits.

Invoking the extraordinary writ jurisdiction of the High Court, without first exhausting statutory remedies, is unlikely to succeed and may result in significant delays and procedural complications.

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