

DRAT, ALLAHABAD

Justice R. D. Khare Chairperson

Bank of Baroda Vs. M/s Kashyap Motors India Pvt. Ltd. & Ors.

Appeal Dy. No. 457/2021

12.10.2022

Sarfaesi Act - Company under liquidation and moratorium is declared - Bank has no right to proceed against the assets of the company under the SARFAESI Act - Guarantor had right to challenge the same by filing an S.A.

Present: Shri Atul Dayal, Senior Advocate assisted by Shri Maneesh Mehrotra, counsel for the appellant-Bank, Shri S. K. Gupta, counsel for the respondent no. 2,

Heard the learned counsels for the parties.

Learned counsel for the appellant contends that the moot question involved in the present appeal is that when the liquidation proceedings were going on and the company was under control of the liquidator, the Director of the Company-respondents no. 2 had no right to challenge the proceedings of the Bank by filing the present S.A. under section 17 of the SARFAESI Act.

Learned counsel for the respondent submits that once the company goes under liquidation and moratorium is declared, the Bank has no right to proceed against the assets of the company under the SARFAESI Act. In the present case, the company was under liquidation and moratorium was declared, yet the appellant-Bank has proceeded under the SARFAESI Act against the assets of the company, therefore, the respondent no. 2 being a guarantor had right to the challenge the same by filing the present S.A. before the Tribunal below, which was allowed and the proceedings of the Bank were set aside. Hence, the present appeal may be dismissed as not maintainable.

Considering the fact that the company was under liquidation and moratorium was declared, I am of the view that the appellant-Bank could not proceed under the SARFAESI Act against the assets of the company. Therefore, the present appeal is dismissed as not maintainable. No order as to cost.

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