

Recovery of Debts and Bankruptcy Act, 1993, Section 31B – Apart from the fact that Section 31B of the RDB Act is a later enactment, the language of the said provision also clearly indicates the intention of the Parliament to give precedence even over the Government dues notwithstanding anything to the contrary in any other law – RDB, Act S. 31-B , SARFAESI S. 37

SARFAESI Act, Section 37

Held, We are sure of one thing that there exists no repugnancy in the two legislations. The intention of the Parliament could not be said to nullify the State enactment providing the first charge on the property. The legislations have been made by the Central Government and the State respectively under Entries I and II of the Schedule and not of the Concurrent List. The amendment made by the Parliament is to give priority to the secured creditors vis-a-vis the State dues without speaking about the first charge. This aspect was duly considered by the Supreme Court in the case of Central Bank of India (supra). The amended provision, i.e. Section 26E of the SARFAESI Act and Section 31B of the RDB Act, would have been different as indicated by the Apex Court in the case of Central Bank of India (supra).

Futher held,

35. While it is true that the Bank has taken over the possession of the assets of the defaulter under the SARFAESI Act and not under the RDB Act, Section 31B of the RDB Act, being a substantive provision giving priority to the “secured creditors”, the same will be applicable irrespective of the procedure through which the recovery is sought to be made. This is particularly because Section 2(la) of the RDB Act defines the phrase “secured creditors” to have the same meaning as assigned to it under the SARFAESI Act. Moreover, Section 37 of the SARFAESI Act clearly provides that the provisions of the SARFAESI Act shall be in addition to, and not in derogation of inter-alia the RDB Act. As such, the SARFAESI Act was enacted only with the intention of allowing faster recovery of debts to the secured creditors without intervention of the court. This is apparent from the Statement of Objects and Reasons of the SARFAESI Act. Thus, an interpretation that, while the secured creditors will have priority in case they proceed under the RDB Act they will not have such priority if they proceed under the SARFAESI Act, will lead to an absurd situation and, in fact, would frustrate the object of the SARFAESI Act which is to enable fast recovery to the secured creditors.

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