

INDIA JURIS

Section 13 (3a) of Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act 2002 "Sarfaesi" Mandatory, Not Directory: Supreme Court of India

The Supreme Court has held on 19th march 2018 in the matter ITC LIMITED VERSUS BLUE COAST HOTELS LTD. & ORS. that in recovering secured property from Non-Performing Assets (NPAs), a secured creditor is bound to consider representations, if any, made by the debtor under Section 13(3A), after the initiation of proceedings under Section 13 of the SARFAESI Act. However, this mandate can also be *constructively satisfied*.

The Court was hearing an Appeal filed by ITC Ltd. against an order passed by the Bombay High Court, whereby a star luxury hotel property purchased in a public auction by ITC was set aside in favor of the debtor, Blue Coast Hotels Ltd. The Creditor in the dispute was the Industrial Financial Corporation of India (IFCI).

The Blue Coast Hotel had entered into a loan agreement with IFCI in 2010. Property mortgaged as part of the loan agreement included the entire hotel property as well as adjoining agricultural land, which was intended for villa development. On default in loan payments, the debtor was classified as an NPA. The creditor eventually initiated recovery proceedings by sending a notice under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI) Act, in March 2013. Section 13(3A) enables debtors/borrowers to make a representation or raise objections after notice is issued to them by creditors under Section 13 (2) of the Act. As per the provision, the creditor is expected to consider the representation and give a reasoned reply thereto.

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Supreme Court mandates prior sanction to prosecute officers under SC/ST (Prevention of Atrocities) Act, 1989

In a significant judgment on 20th March 2018 in the matter Dr. Subhash Kashinath Mahajan Versus The State Of Maharashtra, the Supreme Court has introduced safeguards to prevent misuse of the SC/ST (Prevention of Atrocities) Act, 1989 against officers who deal with the complaints under the Act in their official capacity. It has held that prior sanction of appointing authority is required for prosecuting officers for acts done by them

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with respect to SC/ST (Prevention of Atrocities) Act 1989 in their official capacity.

Accordingly, the honourable Supreme Court held and directed that in absence of any other independent offence calling for arrest, in respect of offences under the Atrocities Act, no arrest may be effected, if an accused person is a public servant, without written permission of the appointing authority and if such a person is not a public servant, 86 Bar & Bench (www.barandbench.com) without written permission of the Senior Superintendent of Police of the District.

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