

Bombay High Court Upholds Arbitration Despite Simultaneous SARFAESI Proceedings

Authors: *Vasanth Rajasekaran and Harshvardhan Korada*

Introduction

In *Tata Capital Ltd. v. Priyanka Communications (India) Pvt. Ltd.*¹, the Bombay High Court addressed a critical issue regarding the interplay between arbitration clauses and statutory remedies available under special laws such as the SARFAESI Act and the Recovery of Debts Due to Banks and Financial Institutions Act ("**RDDB Act**"). The High Court reaffirmed that the initiation of statutory proceedings under these laws does not automatically invalidate an arbitration agreement, unless expressly prohibited by the statute.

The case involved a financial dispute between Tata Capital Ltd. ("**the Applicant**") and Priyanka Communications (India) Pvt. Ltd. ("**Respondent No. 1**"), who had availed various loan facilities from the Applicant. The dispute centered on whether the arbitration clause in a 2019 Sanction Letter between the parties remained valid despite the ongoing statutory remedies initiated by Tata Capital under the SARFAESI Act.

Facts

In 2015, Respondent No. 1, Priyanka Communications, secured multiple loan facilities from Tata Capital to meet its working capital requirements. A Working Capital Demand Loan (WCDL) of INR 30 crores was granted in 2017, secured by personal guarantees from Respondents 2 and 3, the directors of Respondent No. 1. Over the years, the loan was renewed several times, with Tata Capital leading a consortium of other lenders.

In 2019, an additional loan facility of INR 5.6 crores was sanctioned through a new Sanction Letter, which included an arbitration clause stating that any dispute arising from the agreement would be resolved through arbitration in Mumbai. The Respondents defaulted on their repayment obligations, leading Tata Capital to initiate SARFAESI proceedings, while simultaneously invoking the arbitration clause for the recovery of the INR 5.6 crore facility.

Legal Issues Raised

1. Arbitrability and Statutory Remedies

The key issue was whether arbitration could proceed concurrently with statutory remedies under the SARFAESI and RDDB Acts. The Respondents argued that once statutory remedies were invoked under these Acts, the dispute became non-arbitrable, as the jurisdiction of the Debt Recovery Tribunal (DRT) under the RDDB Act was exclusive for debt recovery matters.

The Respondents further submitted that by filing a summary suit and invoking SARFAESI proceedings, Tata Capital had effectively waived its right to arbitration. They argued that

¹ *Tata Capital Ltd. v. Priyanka Communications (India) Pvt. Ltd.*, 2024:BHC-OS:16394.

Tata Capital was pursuing inconsistent remedies by initiating both statutory proceedings and arbitration simultaneously, which should preclude the arbitral process.

2. Scope of High Court's inquiry under Section 11 of the Arbitration Act

The High Court also had to consider the limited scope of its powers under Section 11 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") which only allows Courts to examine the existence of a valid arbitration agreement. Tata Capital maintained that the arbitration clause in the 2019 Sanction Letter remained intact and that the High Court's role was restricted to confirming the validity of this agreement, without delving into the merits of non-arbitrability.

High Court's Findings

1. Arbitrability and Statutory Remedies

The Bombay High Court upheld the well-settled principle that financial institutions are permitted to pursue simultaneous remedies under both the Arbitration Act and the SARFAESI Act. Citing the Supreme Court's judgments in *M.D. Frozen Foods Exports Pvt. Ltd. v. Hero Fincorp Ltd.*² and *Indiabulls Housing Finance Ltd. v. Deccan Chronicle Holdings Ltd.*³, the High Court clarified that arbitration can proceed concurrently with SARFAESI proceedings. The High Court reasoned that unless the statutory remedies under SARFAESI were fully exhausted, the arbitration clause remains valid and operative.

2. Non-Arbitrability under RDDB Act

The Respondents' argument that debt recovery fell exclusively within the jurisdiction of the DRT under the RDDB Act was dismissed. The High Court held that Tata Capital, as a Non-Banking Financial Company (NBFC), was not entitled to initiate proceedings under the RDDB Act before the DRT. Thus, the non-arbitrability objection raised by the Respondents, based on the RDDB Act, did not apply to Tata Capital's claims. The High Court also observed that the debt recovery dispute, which arose from the 2019 Sanction Letter, was distinct from the larger consortium debt and thus could be arbitrated.

3. Waiver of Arbitration

Addressing the Respondents' contention that Tata Capital had waived its right to arbitration by filing a Summary Suit and SARFAESI proceedings, the High Court rejected this argument. The High Court emphasised that the claims pursued in arbitration were distinct from those in the summary suit, which related to a different loan facility. The High Court noted that no formal waiver had been recorded, and filing parallel proceedings did not automatically constitute a waiver of the arbitration clause.

4. Scope of High Court's Inquiry under Section 11

The High Court reaffirmed that under Section 11 of the Arbitration Act, its role is limited to determining whether a valid arbitration agreement exists. Citing the Supreme Court's

² (2017) 16 SCC 41.

³ (2018) 14 SCC 783.

decision in ***Vidya Drolia v. Durga Trading Corporation***⁴, the High Court emphasised that issues of non-arbitrability, particularly those related to statutory remedies, should be determined by the arbitral tribunal itself unless it is manifestly evident that the dispute is non-arbitrable. Given that there was no conflict between the arbitration agreement and statutory provisions, the High Court upheld the arbitration clause and appointed an arbitrator to adjudicate the matter.

Comment

The judgment provides important clarification on the arbitrability of disputes involving statutory remedies under the SARFAESI and RDDB Acts, setting a precedent for financial institutions to pursue parallel remedies without undermining the validity of arbitration agreements. It also reinforces the principle that merely invoking statutory remedies does not constitute a waiver of arbitration rights, ensuring that arbitration remains a viable mechanism for dispute resolution in the financial sector. This judgment also underlines the limited scope of judicial inquiry under Section 11 of the Arbitration Act, reinforcing that arbitrators are best placed to resolve issues of non-arbitrability.

Contact

For any query, help or assistance, please reach out at info@trinitychambers.in or visit us at www.trinitychambers.in.

Authors

	
Vasanth Rajasekaran Founder & Head vasanth@trinitychambers.in	Harshvardhan Korada Counsel harshvardhan@trinitychambers.in

⁴ (2021) 2 SCC 1.