

The cornerstone for invoking the SARFAESI Act is the creation of a “security interest” in favour of a “secured creditor”. As the Borrower/ Defaulter had not mortgaged its property to the Corporation, no security interest is created within the meaning of the SARFAESI Act

The **Supreme Court** in the case of **North Eastern Development Finance Corporation vs L. Doulo Builders and Suppliers**, had ruled that the cornerstone for invoking the SARFAESI Act is the creation of a “security interest” in favour of a “secured creditor”. Finding that the Borrower/ Defaulter had mortgaged its property to the Council, not to the Corporation, the Court clarified that the Corporation’s only recourse was the deed of guarantee provided by the Council.

As no property was mortgaged by the Defaulter Company in favour of the Corporation, no security interest was created within the meaning of the SARFAESI Act, and therefore, the Court held that the Corporation was not a “secured creditor”.

Since there is no security agreement in the present case by which a security interest has been created in favour of a secured creditor, the Court held that the SARFAESI Act was erroneously invoked by the North Eastern Development Finance Corporation, and hence, there is no question of relegating the Defaulter Company to the Debt Recovery Tribunal under Section 17 of the SARFAESI Act.

The Court observed that Article 371A of the Constitution contains special provisions for Nagaland, stating that no Act of Parliament concerning “ownership and transfer of land and its resources” shall apply to the State unless the Nagaland Legislative Assembly so decides by a resolution. Further, the SARFAESI Act was formally implemented in Nagaland only with effect from 10th December 2021, through a notification. Since the recovery actions were initiated long before this date, the invocation of the SARFEASI Act was premature and invalid.

Accordingly, the Court concluded that the High Court was correct in interdicting the Corporation’s actions as being without jurisdiction. Thus, the appeal was dismissed, leaving the Corporation free to pursue other legal remedies against the Company or the Council in accordance with the law.