

The background features a stylized illustration of a blue bank building with a white sign that says 'BANK'. In the foreground, there are several green money bags with the Indian Rupee symbol (₹) on them, and a large pink piggy bank also with the Rupee symbol. Two business people in suits are standing in the middle ground, one holding a briefcase. The overall scene is set against a light blue sky with white clouds.

BANK

**Delhi High Court provides relief to ARCs dealing with underlying securities for debts acquired under SARFAESI**

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## Delhi High Court provides relief to ARCs dealing with underlying securities for debts acquired under SARFAESI

In *UV Asset Reconstruction Company Ltd. v. Union of India*, the Delhi High Court has ruled that an Asset Reconstruction Company (“**ARC**”) acquiring a non-performing asset from a bank shall be deemed to be the lender and shall acquire all the rights of the bank. The Court held that absence of procedure in the Depositories Act, 1996 or SEBI (Depositories and Participant) Regulations 2018 concerning substitution of name of a new pledgee for the erstwhile pledgee could not be a reason for the Depository to refuse such substitution.

### Facts:

- Burnpur Cement Limited (“**BCL**”) had availed term loans from a consortium led by State Bank of India (“**SBI**”). As security, equity shares of BCL were pledged with SBI under a Pledge Agreement.
  - There was a specific clause in the Pledge Agreement that in the event of non-repayment of the facility by BCL, SBI would be entitled to be registered as beneficial owners of the pledged shares with a right to sell them.
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- As BCL did not repay the term loans in accordance with the terms of the facility, SBI declared the account as a Non-Performing Asset (“**NPA**”). The NPA with all underlying securities, both movable and immovable was acquired by UVARCL under a Debt Assignment Agreement executed between SBI as the assignor and UVARCL as assignee, in accordance with Section 5 of the SARFAESI.
  - When UVARCL approached the depository established under the National Securities Depositories Limited (“**NSDL**” or “**Depository**”) for substitution of its name in the records, the Depository directed UVARCL to submit an indemnity bond together with requisite forms after getting the signatures of the original pledgee i.e. SBI.
  - UVARCL also paid certain depository system charges, but the Depository refused to substitute UVARCL as the pledgee and informed UVARCL that objections to the substitution had been received from one of the pledgers in respect of certain pledged accounts.
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## Decision:

- The Court held that where a financial asset has been acquired by an ARC, such ARC shall be deemed to be the lender and all the rights of the lender shall vest in the ARC.
  - Under the SARFAESI, all contracts, deeds, agreements, instruments etc. subsisting at the time of acquisition by the ARC which relate to the financial asset and are in favour of the bank, shall, after the acquisition of the financial asset be of full force and effect qua the ARC and could be enforced fully by the ARC in place of the bank.
  - SARFAESI envisages transfer of assets by original lenders to ARCs and prescribes that the buyer of NPAs would be treated as lenders for all purposes.
  - Once established that UVARCL had purchased the NPA account along with all underlying assets including the pledged shares, UVARCL was the new pledgee of the BCL shares. UVARCL's right to deal with those pledged shares was absolute and therefore required to be recognised by all third parties including the NSDL.
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- There was no justification for NSDL to deny UVARCL's request for substitution merely because the Depositories Act, 1996 or the SEBI (Depositories and Participant) Regulations 2018 did not lay down a procedure for making such substitution. NSDL could not have refused to incorporate changes in the ownership of the pledged shares, which already stood vested with UVARCL.
  - The Pledgors who had not repaid the loan in the first place, had agreed in the Pledge Agreement that SBI could sell the pledged shares to a third party. Therefore, any objection by a Pledgor to the substitution was misconceived.

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