IN THE DEBT RECOVERY APPELLATE TRIBUNAL AT CHENNAI

Dated the 7th day of July, 2026

PRESENT: HON'BLE MR. JUSTICE G. CHANDRASEKHARAN CHAIRPERSON

RA(SA) 57/2023

(arising out of SA No.470/2022 on the file of DRT-III, Chennai)

Between

The Authorised Officer,
Punjab National Bank
Circle Sastra Centre, Chennai,
No.769, Second Floor, Spencer Plaza,
Anna Salai, Chennai 600 002.

.....Appellant Bank

And

1. Mr. V. Shankar,
   S/o Mr. Velayudhasengunthar,
   Flat D, Dals and Moor Court,
   No.17B, Plot No.32,
   Third Seaward Road,
   Valmiki Nagar,
   Thiruvanmiyur, Chennai 41.

2. Mrs. S. Lalitha,
   W/o Mr. V.Shankar,
   G3, Sree Apartments,
   No.8, 2nd Street, Kennedy Nagar,
   Anakaputhur, Chennai 600 070.

3. M/s Sathvika,
   Rep. by its Proprietor,
   Mrs. N. Lalitha Rani,
   Plot No.33, Ganesh Nagar (Extn.)
   Kattur (Post),
   Trichy 620 019.

4. Mr. P. Murali,*
   S/o Ponnurangam,
   No.59, Fourth Street,
   Padmanabha Nagar,
   Adyar, Chennai 600 020.

   (*amended as per the order dated
   1.8.2025 in IA 903/2025)

....Respondents

Counsel for Appellant Bank	:	M/s M.L. Ganesh
Counsel for Respondents 1 & 2	:	Senior Counsel Shri S.R. Rajagopal for M/s Antony L.X. Selvam
Counsel for Respondent No.3	:	None
Counsel for Respondent No.4	:	Mr. G. Sanjeevi

ORDER

1. Respondents 1 and 2 filed SA No.470/2022 on the file of DRT-III, Chennai to quash and set aside the proceedings initiated by the appellant bank under Section 13(4) of the SARFAESI Act, i.e., impugned Sale Notice dated 2.11.2022, including the sale of secured asset scheduled on 22.11.2022 with a further prayer to restore possession of the secured asset. Learned Presiding Officer allowed the SARFAESI Application, primarily on the ground

that appellant bank failed to establish that debt is a legally enforceable debt and it can proceed against the guarantors for recovery of debt on the basis of the mortgage executed by the guarantors, though the Tribunal held that appellant bank followed the procedure, as warranted under the law while issuing the impugned sale notice. Aggrieved against this order, this appeal is filed by the appellant bank/first respondent bank before the Tribunal, under Section 18 of the SARFAESI Act.

2. The case of the respondents before the Tribunal in brief is that, first respondent is the owner of Item No.1 and the second respondent is the owner of Item No.2, as detailed in the SARFAESI Application. Respondents 1 and 2 stood as guarantors for the repayment of loan borrowed by the 3rd respondent and the mortgaged their properties in favour of the Punjab National Bank, the appellant herein. 3rd respondent and the Assistant General Manager of the appellant bank, Mr. Shane Sylvester Rozario transferred the unused funds to various other loan accounts. A sum of Rs.7.50 crores was mis-appropriated from the 3rd respondent's account by the bank official. Police compliant was given and only when CBI started enquiring the matter, this mis-appropriation came to the knowledge of the respondents 1 and 2. Respondents 1 and 2 stood as guarantors and offered their properties as secured assets only for the lawful business of the 3rd

respondent. Mis-appropriation and fraud committed by the borrower and the bank official would discharge respondents 1 and 2. However, appellant bank proceeded to issue notice of sale and thus SA was filed.

3. This case of the respondents 1 and 2 is denied by the appellant bank, stating that respondents 1 and 2 stood as guarantors for the loan liability of the third respondents and that they also stood as guarantors for the loan liability of M/s Sai MPR Traders. They offered their properties as security for the loan and created mortgage by deposit of title documents. First respondent availed credit facilities from Central Bank of India, as Director of M/s Spik & Span Constructions and Services Pvt. Limited. Other Directors are close Associates of respondents 1 and 2. Respondents 1 and 2 are not only guarantors but are also actively involved in the business operations with other Associates. First respondent is not a first time defaulter. On the default committed by the third respondent, account was classified as NPA and SARFAESI measures were initiated. It is not in dispute that third respondent availed loan facilities and respondents 1 and 2 stood as guarantors by offering their properties, as secured asset. Even if the bank officials committed fraud, liability of the guarantors is not discharged.

3.1 It is submitted by the learned counsel for the appellant bank that appellant has produced all the necessary documents to show service of demand notice, possession notice and the sale notice, affixture of sale notice and its publication. Respondents 1 and 2 had not sent any reply/objections to the demand notice issued and the possession notice was not challenged by them. Item No.2 of the property was sold in favour of one Mr. P. Murali. However, he was not impleaded as a respondent before the Tribunal below. Only in this appeal, he is impleaded as a respondent.

3.2 Learned Presiding Officer had not considered the documents produced by the appellant bank before the Tribunal, especially, loan documents and the accounts statement to show transfer of money from the account of the third respondent to the account of the respondents 1 and 2. There are also transfers to other accounts of the close Associates of respondents 1 and 2. First respondent is a partner of M/s Kabila Enterprises and the amounts had been transferred to M/s Kabila Enterprises also. Learned Presiding Officer observed that there is no bidder in pursuance of the sale held as per the sale notice dated 2.11.2022, however, it is clearly stated in the counter that Item No.2 was sold in favour of one Mr. P. Murali. When borrowal, execution of guarantee documents and MODT are not denied and when learned Presiding officer found that the measures taken by the appellant bank were in accordance with law, allowing the SA on the ground that fraud had been committed by bank official, therefore, the debt is not a legally enforceable debt and measures taken under the SARFAESI Act are wrong, cannot be sustained. Even if a criminal compliant was given against the bank official, that will not exonerate the liability and the responsibility of the guarantors, viz., respondents 1 and 2. Liability of the borrower and the guarantors is co-extensive with the borrower under Section 128 of the Indian Contract Act.

3.3 The guarantee agreement fastens liability on the guarantor, even in case of any infirmity or illegality. Clause 16 of the guarantee agreement stipulates that, "Guarantee is enforceable against the guarantors irrespective of the fact whether the contract between the borrower and the bank is enforceable at law or not". Learned Presiding Officer, without considering the documents produced and the defence taken, wrongly allowed the SARFAESI Application and thus, he prayed for setting aside the order and allow the appeal. In support of his submission, he relied on the following decisions.

a) Decision of Hon'ble High Court of Kerala in re, **Canara Bank Vs. Gokuldas Shenoy and others reported in MANU/KE/0084/1988**

b) Decision of Hon'ble High Court of Madras in re, **D. Vijayaraghavan Vs. Indian bank reported in MANU/TN/5185/2011.**

4. In reply, learned Senior Counsel Shri S.R. Rajagopal appearing for respondents 1 and 2 submitted that Section 2(ze) of SARFAESI Act defines what is 'secured asset' and Section 2(g) of RDB Act defines what is 'debt'.

5. To enforce debt against the secured asset, the debt must be a legally recoverable debt. Here, in this case, due to the fraud and mis-appropriation committed by the bank official of the appellant bank, loan amounts were not properly released to the 3rd respondent. On the other hand, loan amount was diverted to various accounts to settle other loan accounts and to facilitate mis-appropriation of funds at the instance of bank official and the borrower. Therefore, criminal complaint was given and CBI has investigated the case and filed final report. In the criminal case, there is no iota of any allegation that respondents 1 and 2 were forming part of the conspiracy to the mis-appropriation of the funds by the bank official and the borrower. They were not even examined as witnesses. In fact, they are victims of fraud committed by the bank official. For the wrong committed by the bank official and the borrower, respondents 1 and 2, who are the guarantors, cannot be made liable by

sale of their properties. It is further submitted that Tribunal passed an order of *status quo* on 6.12.2022. However, balance sale consideration was paid on 8.12.2022. The issue of fraud committed by the 3rd respondent along with bank official involved in this case can be decided only by a competent court and not by DRT or DRAT.

5.1 Certain pleas raised in the appeal like transfer of money from one account to another in paragraph 13 of appeal book, is without any foundational basis before the DRT. This plea is not supported by any evidence. There must be lawful consideration, as required under Section 23 of the Indian Contract Act for enforcing a debt. There is no lawful consideration involved in this case. Thus, he submitted that learned Presiding Officer rightly found that debt is not legally enforceable and allowed the SA. In support of his submissions, he pressed into service the following decisions.

a) Decision of Hon'ble Supreme Court of India , in re, **Eureka Forbes Limited Vs. Allahabad Bank and others reported in (2010) 6 SCC 193.**
b) Decision of Hon'ble High Court of Delhi in re**, Oriental Bank of Commerce Vs. Sri Mohan Gupta reported in 1996 SCC Online Del 202**
c) Decision of Hon'ble High Court of Gujarat, in re, **Bank of India Vs. Ramniklal Kapadia reported in 1996 SCC Online Guj 129**
d) Order of this Tribunal passed in RA 162/2012 dated 23.7.2025

e) Common order of this Tribunal dated 8.10.2025 passed in RA 20/2023, RA 21/2023, RA 22/2023 and RA 23/2023.

6. Learned Counsel for the auction purchaser, i.e., respondent No.4 adopted the submission of the learned counsel for the appellant bank and further submitted that auction purchaser has invested huge amount in buying the property and sale certificate is not issued and the possession is still not delivered.

7. In reply, Learned counsel for the appellant bank submitted that documents produced now had been produced before DRT and were not considered by the learned Presiding Officer.

8. I have considered the rival submissions and perused the records.

9. We have seen that respondents 1 and 2 filed SARFAESI Application to set aside the Sale Notice dated 2.11.2022, scheduling the sale on 22.11.2022, primarily on the ground that the borrower in connivance with the bank official had fraudulently transferred the loan amounts to various other accounts, without using for the purpose, for which, the loan was sanctioned. When the fraud was committed by the borrower and the bank officials, without the knowledge of the guarantors, respondents 1 and 2 as guarantors cannot be made liable for the payment of the loan amount and

thus initiation of proceedings under the SARFAESI Act for the sale of the property is illegal.

10. In the grounds of the SARFAESI Application it was stated that,

a) The very classification of the account as NPA is invalid;
b) Transfer of loan amount to other accounts for the benefit the borrower runs contrary to the terms of guarantee and that it would discharge the applicants i.e., respondents 1 and 2 herein from the guarantee and the mortgage;
c) Authorised Officer ought to have caused publication after expiry of 30 days from the date of Notice under Rule 8(6) of SIE Rules, 2002;

10.1 Except these grounds, no other ground was raised.

11. It is a settled proposition of law that the Hon'ble Supreme Court of India in re**, M. Rajendran and others Vs. M/s KPK Oils and Proteins India Pvt. Ltd and others in Civil Appeal No.12174/2025** that, there is no requirement for issuing a separate notice under Rule 8(6) and 9(1) of SIE Rules 2002 and notices under the above rules can be issued simultaneously. Therefore, the ground raised that notice ought to have been issued after expiry of 30 days from the notice given under Rule 8(6) is untenable.

12. Classification of account as NPA happens by operation of law, if the account is not serviced for a period of 90 days. It is not the case of respondents 1 and 2 that borrower and the respondents paid the loan to the bank and account was serviced properly. On the default committed by the borrower, the account was classified as NPA on 10.12.2018. Therefore, that cannot be questioned by respondents 1 and 2.

13. Appellant has produced documents in the form of typed set of papers in S.No.1 to S.No.31, in support of the case of the appellant bank with regard to sanction of loan, its disbursement, execution of guarantee agreement and MODT document executed by respondents 1 and 2 for the loan liability, Section 13(2) Demand Notice issued, Section 13(4) Possession Notice and the Sale Notice issued. Appellant bank has also filed proof of service of demand notice, possession notice, sale notice, affixture and publication of possession and sale notices. Valuation Report of the secured asset is also produced. Statement of Account of the borrower, M/s Sathvika, represented by its Proprietrix Mrs. N. Lalitha Rani, M/s Moonmars Housing Pvt. Ltd and M/s Kabila Enterprises and Agreement of Guarantee executed by respondents 1 and 2 along with Mr. S. Kabilan for the loan liability of M/s Sai MPR Traders have also been produced. In this appeal, appellant filed IA No.1578/2025 to receive additional documents and that

application was allowed after hearing both parties. Additional documents filed are as follows:

a) Agreement of Guarantee dated 22.3.2018
b) Statement of Accounts of M/s Rasi Peripherals for the period 2.7.2016 to 5.11.2025
c) Statement of Accounts of M/s Kabila Enterprises for the period from 29.1.2016 to 6.1.2020
d) Letter of Authority given by M/s Lalitha Rani to Mr. Sundarajan
e) Statement of Accounts of M/s Sathivika and Lalitha Rani N for the period 3.6.2016 to 15.10.2025.

14. From the material produced, appellant bank is able to prove that appellant had taken measures under the SARFAESI Act, by following the provisions of the SARFAESI Act and the Rules made thereunder, starting from issuance of demand notice, possession notice and the sale notice and sold the property. It is also to be borne in mind that except the grounds as detailed above, no ground was raised in the SARFAESI application, touching upon the sale notice and the sale of the property. Learned Presiding Officer had also found that appellant followed the procedure as warranted under law, while issuing the impugned sale notice. Therefore, it is clearly established

that sale notice issued and the sale held was performed by the appellant by following the procedure, as warranted under the SARFAESI Act and the rules made thereunder. Thus, this finding of the Tribunal needs no interference.

15. Learned Presiding Officer after finding that the bank had taken measures to sell the property by following the procedure, proceeded to hold that bank had miserably failed to establish that debt involved in this case is a legally enforceable debt. The reasons are, as follows:

a) Bank has not explained for exclusion of respondents 1 and 2 and in the compliant given to the Police and aver that guarantors have no role to play in the fraudulent collusive transactions.

b) When respondents 1 and 2 have no role in the collusive fraudulent transaction, how can they be proceeded under the SARFAESI Act?

c) Bank has not produced any evidence or documents that respondents 1 and 2 can be fastened with the collusive and fraudulent debt born out of the transaction conducted by the principal borrower and permitted by the then Branch Manager with an intention to defraud.

d) Guarantors did not have any role to play either in the disbursal of the loan amount or its utilization.

e) Thus, the debt is not a legally enforceable debt.

16. In the light of the finding of the learned Presiding Officer, the question now looms large is that, in view of the fraud committed by the principal borrower and the bank official, can the guarantors be discharged from the loan liability?

17. Learned Counsel for the appellant bank relied on the decision of Hon'ble High Court of Kerala, in re, **Canara Bank Vs. Gokuldas Shenoy and others reported in MANU/KE/0084/198**8 for the proposition that liability of the surety is co-extensive with that of the principal borrower unless it is otherwise provided by the Contract. Decision of Hon'ble High Court of Madras in re, **D. Vijayaraghavan Vs. Indian bank reported in MANU/TN/5185/2011** is also relied for the same proposition.

18. Ld. Counsel for the appellant bank submitted that creditor is empowered to proceed against the guarantors before proceeding against the principal debtor. Merely because the borrower in connivance with the bank official committed fraud in dealing with the loan amount, guarantors cannot be

exonerated from their liability to pay the loan amount in the event of default committed by the borrower. Default has been committed by the borrower in this case. But, irrespective of the fraud committed by the borrower and the bank official, liability of the guarantor still subsists, therefore, bank can take measures under the SARFAESI Act against the guarantors.

19. As against this submission, learned Senior Counsel for respondents 1 and 2 relied on the decision of Hon'ble Supreme Court of India in re, **Eureka Forbes Limited Vs. Allahabad Bank and others reported in (2010) 6 SCC 193** for the proposition that in matters involving criminal offences like theft, mis-appropriation, fraud, cheating, etc. it is the Civil Court that has jurisdiction and DRT or DRAT has no jurisdiction to decide the issue. In paragraph 68, it is observed as follows:

> "68. We may state another illustration to demonstrate the case where the Tribunal may not have jurisdiction. Some persons commit a theft in the Bank and take away the money and/or the goods hypothecated to the Bank or the goods in the custody of the Bank. Upon Bank's lodging a first information report (FIR) to the police, those persons are traced, arrested and tried in accordance with law for theft. In such a case, the Tribunal may not have jurisdiction to

entertain and decide an application for recovery of money or value of goods in terms of Section 17 of the Recovery Act."

20. On the basis of this observation, it is submitted by learned Senior Counsel for the respondents 1 and 2 that fraudulent transaction and mis-appropriation of the funds from the loan account of the borrower is evident, therefore, Tribunal has no jurisdiction to decide this case. Learned Senior Counsel also relied on the decision of the Hon'ble High Court of Delhi in re, **Oriental Bank of Commerce Vs. Sri Mohan Gupta reported in 1996 SCC Online Del 202** and the decision of Hon'ble High Court of Gujarat in re **Bank of India Vs. Ramniklal Kapadia reported in 1996 SCC Online Guj 129** for the proposition that when there is allegation of forgery, falsification of records and embezzlement of the amounts, no recovery process can be initiated against the appellant. The order of this Tribunal dated 23.7.2025 passed in RA 162/2012 and the Common order dated 8.10.2025 passed in RA 20/2023, RA 21/2023, RA 22/2023 and RA 23/2023 are also relied by the learned senior counsel for the same proposition.

21. In the typed set of papers produced before the Tribunal below, respondents 1 and 2 produced copies of four FIRs, as detailed below.

a) FIR No.RC MA1 2019 A 0023 dated 27.12.2019 against the 2nd respondent.
b) FIR No.RC MA 1 2019 A 0019 dated 27.12.2019
c) FIR No.RC MA 1 2019 A 0021 dated 27.12.2019 and
d) FIR No.RC MA 1 2019 A 0022 dated 27.12.2019

22. We are concerned with the FIR filed in FIR RC MA 1 2019A 0023 against the 2nd respondent. The gist of the allegation against the accused viz., Mrs. S. Lalitha Rani and Shri Shane Sylvester Rozario, the then Branch Head and Assistant General Manager, Punjab Natinal Bank, Mylapore Branch, Chennai are that, “the third respondent availed Cash Credit Facility of Rs.8.75 crores and Term Loan Facility of Rs.20.00 Lakhs on 1.6.2016 for trading of Mobiles, Computers and Electronics. However, 3rd respondent was not doing the business operations as per norms and was not routing the sale proceeds through the loan account as per the terms of the loan. Loan account was serviced through remittances from other accounts. The loan amount was diverted for other purposes than for which it was sanctioned in contravention of the conditions of the loan sanctioned. The borrower had also concealed and failed to submit the periodic reports pertaining to business turn over, stocks statement, book debts, stocks in trade and annual audited balance sheet, etc. Proceeds were transferred from cash credit account to current account and vice versa frequently.

Borrowers siphoned off and diverted the funds for other purposes and also failed to keep the stocks hypothecated to the bank and caused loss of Rs.9,37,66,773.56p. The Branch Manager sanctioned the loan in conspiracy hatched with the borrower and failed in implementing the rules and procedures of the bank".

23. True it is, that there is nothing said about the guarantors in this compliant. Even in other three complaints, the aforesaid Manager was shown as accused. But, it is not known whether investigation was completed and final report was filed, trial held and criminal proceeding reached a legal conclusion. No material is produced by both. FIR Report is not an encyclopedia. It sets law in motion. Only during the course of investigation, involvement of any other accused would be found out and they will also be prosecuted along with the accursed shown in the FIR. There is no exclusion of respondents 1 and 2 in the FIR stating that guarantors have no role to play in the fraudulent transactions. Contrary to the allegation made in the FIR, learned Presiding Officer gave a finding that bank has specifically pleaded in the complaint that guarantors have no role to play in the collusive fraudulent transaction.

24. It is pleaded in the counter and written submission filed by the appellant bank in the SA before the DRT that respondents 1 and 2 were not only acting as guarantors but also actively involved in the business operations of the borrower with other Associates. From the account of the borrower, monies had been transferred to M/s Rasi Peripherals, M/s Moonmars Housing Pvt. Ltd and M/s Kabila Enterprises. In M/s Kabila Entraprises, the first respondent is one of the partners along with Mr. R. Panneer Ramachandran. Money from the borrower's account had been routed through the above mentioned three Concerns.

25. As already stated, copies of accounts statement of M/s Sathvika, Mrs. N. Lalitha Rani, M/s Moonmars Housing Pvt. Ltd and M/s Kabila Enterprises are produced in the typed set. Copies of account statement of M/s Rasi Periphereals, M/s Kabila Enterprises, M/s Sathvika and Mrs. Lalitha Rani are produced as additional documents. Mrs. Lalitha Rani gave a Letter of Authority to Mr. Sundarrajan to deal with the account of the borrower. A copy of the said Letter of Authority is also produced. Copy of Account Opening Form is produced to show that first respondent and Mr. R. Panneer Ramachandran are partners of M/s Kabila Enterprises.

26. Perusal of the accounts statement shows that amounts had been transferred from the borrower's account to M/s Rasi Peripherals and M/s Kabila Enterprises, supporting the submission of the learned counsel for the appellant bank that amounts had been unauthorisedly transferred from the account of the borrower to these Concerns, obviously to diversify the loan amount and siphoning it off. Appellant bank sent a notice to the borrower and the guarantors on 12.3.2021 and specifically stated therein that the account has been classified as NPA on 10.12.2018. Scrutiny of the account showed the following events of default.

a) Diversion of Bank Funds

b) Total Net Means of Partner and Guarantors is Rs.5033.00 lakhs as per CRs dated 31.5.2016.

c) Siphoning Off, of Bank Funds.

27. It appears that no reply was sent to this Notice. From the consideration of the material produced, it is evident that loan amount sanctioned to the 3rd respondent had been used for different purposes than for the purpose of business operations, by diversifying the funds to various other accounts, obviously, for siphoning off the funds. Whether respondents 1 and 2 have any connection with the siphoning off the funds by fraudulent transfer,

has to be adjudicated by the Criminal Court. There is *prima facie* evidence available to show that loan amount had been transferred to M/s Kabila Enterprises, in which, the first respondent is a partner.

28. It is settled proposition of law that the liability of the guarantor is co-extensive with that of the principle borrower and that bank can proceed against the guarantors even prior to proceeding against the principal borrower. Principle borrower in this case is still liable. Disbursement of loan amount was not denied and the credit facilities availed by the borrower is not repaid by the borrower. Therefore, on the classification of the account as NPA, SA proceedings has d been initiated. It is pertinent to refer to the following decisions in this regard .

28.1 It is observed in re, **Chokalinga Chettiar Vs. Dandayuthapani Chettiar reported in LAWS(PVC)-1928-8-25** by the Hon'ble High Court of Madras that under Section 126 of the Indian Contract Act, liability of the surety is co-extensive with that of the principal debtor unless it is otherwise provided by the contract. A creditor can pursue his remedy concurrently against both the principal debtor and the surety to obtain the decree against both in the same suit.

28.2 In re **Bank of Bihar Ltd. Vs. Damodar Prasad & Another reported in 1969 AIR 297,** Hon'ble Supreme Court of India recorded the observations of Couch, C.J. and Melvell J. in re **Lachhman Joharirmal V. Bapu Khandu and Surety Tukaram Khandoji** *that " The court is of opinion that a creditor is not bound to exhaust his remedy against the principal debtor before suing the surety and that when a decree is obtained against a surety, it may be enforced in the same manner as a decree for any other debt".*

28.3 In re, **State Bank of India Vs. M/s Indexport Registered and Others reported in 1992 AIR 1740** Hon'ble Supreme Court of India quoted that "*Section 126 of Indian Contract Act provides that the liability of the surety is coextensive with that of the principal debtor, unless it is otherwise provided by the contract and that the guarantor alone could have been sued, without even suing the principal debtor, so long as the creditor satisfies the court that the principal debtor is in default. "*

28.4 In re, **Industrial Investment Bank of India Limited Vs. Biswanath Jhunjhunwala reported in (2009) 9 SCC 478**, Hon'ble Supreme Court of India reiterated the proposition that liability of the guarantor and the principal debtor is coextensive and not in alternative. While discussing the term 'coextensive' from the celebrated book Pollock & Mulla on Indian Contract and Specific Relief Act, it is recorded that *"A surety's liability to pay the debt is not removed by reason of the creditor's omission to sue the* *principal debtor. The creditor is not bound to exhaust his remedy against the principal before suing the surety, and a suit may be maintained against the surety though the principal has not been sued"*

29. Thus, it is clear from these legal propositions that the liability of the principal debtor and the surety is coextensive with that of each other and that surety can be sued for recovery of debt due from the principal debtor, even without suing the principal debtor.

30. With regard to the decision relied by learned senior counsel for respondents 1 and 2 in Oriental Bank of Commerce case referred supra, that when there is an element of fraudulent and collusive activity involved in a banking transaction, especially, loan transaction, only a Civil Court can decide the issue and not DRT or DRAT, on going through the said decision, it is found that bank officer was accused of forgery, falsification of records and opening of fictitious account. He took cheques, got them encashed and embezzled the amounts. He obtained loan for construction of house and also a car loan. He created equitable mortgage for securing the loan. Bank tried to recover the embezzled amount on the basis of the aforesaid mortgage. In the said background, Hon'ble High Court of Delhi held that the suit filed for recovery of embezzled and mis-appropriated amounts, cannot be said to be a transaction, arising under the business undertaken

by a bank with the employee. The legislation intended to expedite the recovery of loans and enforcement of securities charged with Banks and Financial Institutions given during the course of Banking business. Since embezzled and mis-appropriated account cannot come under the banking business, appeal filed by the bank officer was allowed.

31. The decision in Bank of India case is also on the same lines, wherein it is said that debt under Section 2(g) of RDB Act means that liability which is allegedly due from any person to bank during the course of any business activity undertaken by it in cash or otherwise, whether secured or unsecured or whether payable under a decree or an order of any civil court or otherwise and subsisting on and legally recoverable on the date of application is 'debt'. Thus, it was held that fraud committed by the employee of the bank to the tune of Rs.13,86,000/- cannot be considered as debt, therefore, it may not be recovered. This Tribunal has also taken a similar view in its orders referred supra.

32. In the case before hand, fraudulent transfer of the amount from the account of the borrower namely the 3rd respondent was done in connivance of the borrower and the bank official. Respondents 1 and 2 offered their property as security and created mortgage for the due

recovery of the loan amount sanctioned to the 3rd respondent. We have seen that the loan amount had been transferred from the 3rd respondent's account to M/s Rasi Peripherals and M/s Kabila Enterprises. In M/s Kabila Enterprises, first respondent is one of its partners. Therefore, fraudulent transfer of amount from the account of the 3rd respondent to other Concerns with the connivance of respondents 1 and 2 cannot be ruled out. In the decisions referred above, recovery proceedings had been initiated against the bank officials. On the other hand, recovery proceeding in this case had been initiated against the borrower and guarantors. There is no recovery proceeding initiated against the bank officials under the SARFAESI Act. Thus, this Tribunal finds that decisions relied by the learned senior counsel for respondents 1 and 2 are not useful for their case.

33. It is not in dispute that respondents 1 and 2 offered their property as security for the loan sanctioned to 3rd respondent and created mortgage. They are guarantors and guarantor's liability is co-extensive with that of the principal borrower. Therefore, this Tribunal finds that respondents 1 and 2 are legally liable to pay the debt / financial facility availed by the 3rd respondent.

34. Therefore, the finding of the learned Presiding Officer that debt is not a legally enforceable debt and that it cannot be enforced against respondents 1 and 2 is set aside. Consequently, SA No.470/2022 is dismissed and this appeal is allowed.

35. **In fine,** order of the Learned Presiding Officer, DRT-III, Chennai dated 26.5.2023, allowing SA No.470/2022 is set aside. Consequently SA No.470/2022 is dismissed and this Appeal, RA(SA) 57/2023 is allowed.

36. Parties are directed to bear their own costs.

37. Pending IAs, if any, stand closed.

[Dictated to PS (SN) transcribed by him, corrected, signed and pronounced by me in open court, This 7th July, 2026)

Sd/-
(JUSTICE G. CHANDRASEKHARAN)
CHAIRPERSON