BEFORE THE DEBTS RECOVERY APPELLATE TRIBUNAL, AT: MUMBAI

Present: Justice Vivek Bharti Sharma, Chairperson

Regular Appeal No. 51/2023

Between

Manojkumar Sureshchand Lunkad & Ors. … Appellant/s

V/s.

Punjab National Bank & Ors. …Respondent/s

-: Order dated: 23/07/2026: -

Present:

Ms Gaurang Kinkhabwala along with Sonali Jain, and Ms. Anushree Talekar Advocate for Appellants.

Ms. Sudha Koloti, Advocate for Respondent Nos. 1 and 2/Bank.

Mr Kushal Sawant, i/b Mr Puneet Gogad, Advocate for Respondent Nos. 3, 4 and 5/ Auction Purchasers.

2. This judgment shall dispose of the Appeal No. 51/2023 filed by the Appellants/Borrowers with prayer to set aside and quash the impugned order dated 10.05.2023 passed by the Ld. DRT, Pune in Securitisation Application No. 136/2020.

By the impugned order, the Learned Presiding Officer, DRT-Pune has dismissed the Securitisation Application No. 136/2020 of the Appellants/Borrowers and directed the Appellants/Borrowers to hand over vacant peaceful possession of the property i.e. B-402, situated at 4th Floor, along with terrace and car parking No. 364, CTS

No. 3225, S. No. 587, Hyde Park, Market Yard, Pune.

The brief facts for the disposal of this Appeal are that :

(i) The Appellant Nos. 2 and 3 had taken credit facility for a sum of ₹3.00 crores on 18.03.2016 and Appellant Nos. 1 and 2 stood as mortgagor and guarantor for this credit facility ; that, the Appellant Nos. 1 and 2 had mortgaged the secured asset i.e. Flat No. 402, 4th Floor, Wing No. B along with terrace and open car parking situated (*though contested by Appellants*) at Hyde Park as stated in the pleadings ; that, the Appellants/Borrowers failed to maintain the account as per terms of the sanction, therefore, the account of Appellant No. 3 was classified as non-performing asset (*NPA*) on 10.12.2018 ; that, SARFAESI action was initiated by issuing the Demand Notice dated 13.12.2018 ; that, the symbolic possession of the secured asset was taken on 25.03.2019 ; that, on 30.03.2019, the Appellant Nos. 1 & 2 executed Supplementary Agreement to pay the dues within 60 days, however, they defaulted ; that, Hon'ble Magistrate vide its order dated 24.12.2019 passed the order to take the physical possession of the secured asset ; that, thereafter the Respondent No. 1 issued the Sale Notice of the secured asset thrice and finally on 08.10.2020 which was published on 10.10.2020 and auction was successful on the bid of ₹2,35,51,000/- by Respondent Nos. 3, 4 and 5 on 10.11.2020.

(ii) Aggrieved from the actions of the Respondent Nos. 1 and 2/

Bank, the Appellants/Borrowers filed Securitisation Application No. 136/2020 seeking relief to declare action of the Auction Sale of the secured asset null and void and to restrain the Respondent Nos. 1 and 2/ Bank to take the possession of the property on 26.02.2021, *inter alia*.

3. Heard the Learned Counsel for the respective parties.

4. **Arguments of the Appellants/Borrowers.**

Learned Counsel for the Appellants/Borrowers would submit that the impugned order the dated 10.05.2023 is bad in the eyes of law as the Learned Lower Tribunal failed to give finding and reason ; that, the Learned Lower Tribunal has erred in observing in paragraph No. 24 of the impugned judgment that the Sale Notice dated 08.10.2020 (*published on 10.10.2020*) has set out correct description of the property i.e. including the terrace and car parking also ; that, in the report of the valuer of the secured asset dated 12.06.2020 it was stated that the inspection was done on 23.03.2020, however, the Lower Tribunal observed that it was done on 18.03.2020 ; that, the Lower Tribunal changed the date of the valuation report on the basis of assumptions and presumptions, therefore, impugned judgment of the Lower Tribunal is liable to be set aside.

The Learned Counsel for the Appellants/Borrowers would further submit that in the valuation report, it was specifically stated that the property inspected for valuation was locked then how could the same be inspected for the correct valuation for the purpose of the auction ; that, the valuation was not done correctly as no valuation of the terrace and car parking was done, therefore, the auction did not get the best price as mandated under the law to the disadvantage of the Appellants/Borrowers ; that, in the sanction letter, the security asset mentioned is the property Flat No.402, Hyde Park, B Tower with carpet area of 1748 sq.ft., therefore, the Sale Notice dated 08.10.2020 contained terrace and car parking also is incorrect, hence, liable to be set aside ; that, the reserved price fixed in the Sale Notice dated 08.10.2020 of ₹2.35 crores is on the lower side and incorrect as did not includ the valuation of terrace and car parking and at the same time, this is much below the valuation done at the time of sanctioning of the credit loan facility, when it was valued at ₹4,27,42,000/-.

The Learned Counsel for the Appellants/Borrowers would further submit that as per the Sale Notice, the Earnest Money Deposit (*EMD*) was to be made on or before 08.11.2020, however, the same was made on 09.11.2020, therefore, it clearly indicates that the Respondent No.1 and 2/Bank were allied with Respondent Nos.3, 4 and 5 to auction this secured asset at lower price designedly.

The Learned Counsel for the Appellants/Borrowers would further submit that the auction sale on 10.11.2020 is bad in the eyes of law for the reason that it is in violation of the mandatory provisions under Rule 8 (6) and Rule 9 (1) of the Security Interest (Enforcement) Rules 2002 ; that, the Rule 8 (6) of the Security Interest (Enforcement) Rules 2002 mandates the Banks to give thirty days' notice to the borrower to redeem the property.

5. **Arguments of the Respondent Nos. 1 and 2/Bank**

The Learned Counsel for the Respondent No.1 and 2/Bank would submit that the Appellants/Borrowers have not challenged any of the Auction Notice including the last Auction Notice published on 10.10.2020 ; that, the Appellants/Borrowers have neither challenged Demand Notice dated 13.12.2018, therefore, same cannot be raised here, hence, the appeal is not maintainable ; that, no reply to the Demand Notice was made by the Appellants/Borrowers ; that, after the taking over symbolic possession on 25.03.2019, the Appellants/Borrowers entered a Supplementary Agreement dated 30.03.2019 with Bank wherein they had admitted their liability and ensured to pay the entire dues within 60 days, but failed ; that, the Appellants/Borrowers have not challenged the Sale Notice dated 08.10.2020, therefore, the Appellants/Borrowers are estopped from challenging the subsequent auction in Securitisation Application and this Appeal.

The Learned Counsel for Respondent No.1 and 2/Bank would further submit that there is neither any specific challenge to the measures taken by the Respondent Bank under SARFAESI Act nor any challenge to the District Magistrate's order ; that, even the challenge to Sale Notice dated 08.10.2020 was after the auction was already conducted ; that, there was no specific pleading of challenging the Auction Notice, therefore, no relief can be granted to the Appellants/Borrowers in this Appeal.

The Learned Counsel for the Respondent Nos. 1 and 2/Bank would further submit that the Auction Notice was issued to the Appellants/Borrowers also, but they made no objection thereto, notwithstanding the fact that the reserve price was mentioned thereon ; that, in fact the Borrowers again approached the Respondent No.1 Bank with One Time Settlement (*OTS*) proposal on 07.11.2020 but did not raise any objection to the description of the property and valuation thereof and this argument is being made only at this stage of Appeal ; that, the Respondent Bank had placed record of the some of the sale transactions during the period of 2018 to December, 2020 of the comparable properties and the same was between the range of ₹2.21 crores to ₹2.25 crores ; that, the secured property was auctioned three times, however, there was no bid on the first two occasions thereafter the secured asset was sold in auction at the competitive rates prevalent at that time in third occasion.

She would further submit that as per Section 10 of the General Clauses Act, 1897 if a prescribed deadline falls on a Sunday or public holidays when the office is closed, and the action contemplated cannot be taken on that date, then the same can be completed on very next date when the office or court reopens ; that, 08.11.2020 was a Sunday that is to say, a public holiday therefore the EMD could not be deposited through RTGS from Bank on that date. Therefore, it was deposited on 09.11.2020. Hence, it cannot be said that the EMD was not deposited on or before due date.

6. **Arguments of the Respondent Nos. 3, 4 and 5**

The Learned Counsel for Respondent No.3, 4 and 5 would submit that bare perusal of the Securitization Application would show that there is no challenge to contest the Notice under Section 13 (2) of the SARFAESI Act, therefore, in the absence of pleading challenge, no relief can be granted and the appeal cannot be allowed ; that, the Appellants/Borrowers did not reply the Demand Notice and even after the Sale Notice, the

OTS letter dated 07.11.2020 was sent by the Appellants/Borrowers whereby admitted the debt in default.

He would further submit that in the absence of their pleadings in Securitization Application, no relief can be granted in Appeal that the allegations in the pleadings are in general and not specific and there is no particular mention that the visit of the secured asset property was not made by the valuer and it was not correctly valued ; that, the ground of the Appeal on the point that the mortgage was only of the flat and not of the terrace and car parking, is misplaced as the sale deed of the flat i.e. secured asset clearly shows both of these two are part of secured asset.

He would also further submit that the allegation of the payment of the EMD after expiry of 08.11.2020 was not made in the pleadings before the Lower Tribunal, therefore, the same cannot be raised in the Appeal ; that, even otherwise date 08.11.2020 was a public holiday on account of Sunday and the EMD was paid on very next date i.e. 09.11.2020, hence, it was right deposit of the EMD as per Auction Notice dated 08.10.2020.

He would further submit that as per Section 10 of the General Clauses Act, 1897 if any act is to be done on certain day or within prescribed period and if the said day or period is expiring on a holiday and then the said act can be done on very next date when the office or court reopens, the EMD was made on Monday i.e. on 09.11.2020, hence, EMD was made within time prescribed in notice.

7. Learned Counsel for the Appellants/Borrowers relied upon the following judgments in support of their arguments as under:

(i) M. R. Vasumathi v/s Authorized Officer & Ors., (2026) ibclaw.in 429 SC.

(ii) M. Rajendran & Ors. v/s KPK Oils and Protiens India Pvt. Ltd. & Ors., MANU/SC/1299/2025.

(iii) Punjab National Bank v/s Mithilanchal Industries Pvt. Ltd. 2020 SCC OnLine Guj. 3441.

(iv) Saraswat Co-operative Bank Ltd. v/s National Flank Industries Ltd., WP No. 24 of 2024, Bombay High Court.

(v) Mardia Chemicals Ltd & Ors v/s Union of India & Ors. (2004) 4 SCC 311.

(vi) Mathew Varghese v/s M Amritha Kumar & Ors. (2014) 5 SCC 610.

(vii) IDFC First Bank Ltd v/s Tristar Cars Pvt. Ltd. & Ors. MANU/DM/0018/2019.

(viii) Manojkumar Surajchand Lunkad & Ors. v/s The Authorised Officer, Punjab National Bank & Ors., SLP (Civil) No. 5217/2023.

8. Learned Counsel for the Respondent Nos. 1 and 2/Bank also relied upon the following judgments in support of his argument as under:

(i) Arce Polymers Pvt. Ltd. v/s M/s Alpine Pharmaceuticals Pvt. Ltd. & Ors. (2022) 2 SCC 221.

(ii) Sea Poly Plast India Pvt. Ltd. & Ors. v/s Union of India & Ors. 2012 (2) Mh. L.J. 690.

(iii) HDFC Bank Ltd. v/s Kenwood Marketing Inc. & Ors (2025) ibclaw.in 111 SC.

(iv) Jawajee Nagnatham v/s Revenue Divisional Officer, Adilabad, A.P

& Ors. (1994) 4 SCC 595.

(v) Pahwa Buildtech Pvt. Ltd. v/s Jagmohan Singh Arora & Ors. (2022) 3 HCC (Del)482.

(vi) Eskays Construction Pvt. Ltd. v/s Soma Papers & Industries Ltd. MANU/MH/2562/2016.

(vii) M/s Solithro Pvt. Ltd. v/s The Debt Recovery Tribunal-I rep. by its Registrar at Hyderabad & Ors. 2018 SCC OnLine Hyd 188.

(viii) L & T Housing Finance Ltd. v/s Trishul Developers & Ors. MANU/SC/0793/2020.

(ix) State Bank of India v/s Hon'ble Debts Recovery Appellate Tribunal & Ors. 2010 DHC:681-DB.

(x) M/s Trojan & Co. v/s RM. N. N. Nagappa Chettiar AIR 1953 SC 235.

(xi) National Textile Corporation Ltd. v/s Nareshkumar Badrikumar Jagad & Ors. MANU/SC/1028/2011.

(xii) Canara Bank v/s Amarender Reddy & Ors. MANU/SC/0271/2017.

(xiii) Vinayak Steels Ltd. v/s Om Vishnu Pipes Pvt. Ltd & Ors MANU/TL/0452/2023.

(xiv) M. Rajendran & Ors. v/s KPK Oils and Protiens India Pvt. Ltd. & Ors., MANU/SC/1299/2025.

9. Learned Counsel for the Respondent Nos. 3, 4 and 5 also relief upon the following judgments in support of their argument as under:

(i) Lucky Footwear Components & Ors. v/s the Authorised Officer, India Bank & Ors MANU/TN/4842/2025.

(ii) C.F. Angadi v/s Y. S. Hirannayya MANU/ SC /0562/1971.

(iii) Pandhari v/s State of Maharashtra & Ors. MANU/MH/1468/2001.

(iv) Akela Lalitha v/s Konda Hanumantha Rao & Ors. MANU/SC/0929/2022.

(v) Bank of Maharashtra v/s M/s Kamdar Plastic & Ors DRAT-Mumbai in Misc. Appeal (D) No. 381/2026

10. Considered. Perused the records and went through the judgments cited by the Learned Counsels.

11. The Appellate Tribunal does not find any force of the argument of the Appellants that the Sale Notice was incorrect since the mortgage property did not cover the terrace and car parking. The careful perusal of the Sale Deed of the secured asset flat, it is clear that the Sale Deed included the terrace as well as the car parking area also, therefore, the aforesaid argument of the Learned Counsel for the Appellants that the Sale Notice was incorrect is without any basis.

12. There is no force in the submission of the Learned Counsel for the Appellants on the point that the property was sold on lower price as it could have fetched approximately ₹4.00 crores because there is no pleading in the Securitisation Application. Rather, the Appellants themselves have stated in the Securitisation Application that on 07.11.2020, the Appellants had approached the Respondent Bank for OTS and allegedly paid ₹41.50 lakhs for this reason also there is no force in argument that auction was bad for not in conformity with Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002. There is no plea in Securitisation Application that at the same time they had raised of the objection about the wrong assessment of the valuation in the Sale Notice dated 08.10.2020. Therefore, in view of this Appellate Tribunal, this argument is afterthought which cannot be considered at this stage.

13. The argument of the Learned Counsel on the point that the valuer in fact did not visit the property on 23.03.2020 because on that

day there was a lockdown due to the spread of the pandemic of Covid. The Learned Counsel at bar would agree that the official lockdown started only on 24.03.2020. There is no force in the argument of the Learned Counsel that during lockdown period in the month of June, 2020, the valuation report could not have been filed because the work in Banking Sector and essential services was going on during that period.

14. Another argument of the Learned Counsel for the Appellants submitted that the EMD of 10% was to be deposited on 08.11.2020, however, the same was made on 09.11.2020, therefore, the auction sale is vitiated. This Appellate Tribunal does not find any force in this argument for the reason that, admittedly, 08.11.2020 was public holiday on account of Sunday.

Section 10 of the General Clauses Act, 1897 is as under :

> "**10. Computation of time.—**(1) Where, by any [Central Act] or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:
>
> Provided that nothing in this section shall apply to any act or proceeding to which the 6 Indian Limitation Act, 1877 (15 of 1877), applies."

In view of Section 10 of the General Clauses Act, 1897, the EMD could have been deposited on 09.11.2020 and it was made on 09.11.2020 indeed. Therefore, in the considered view of this Appellate

Tribunal there is no illegality on this point to vitiate the auction. Moreover, the notice itself also says that the same could have been deposited before the auction date.

15. On the point of the date of inspection of the secured asset property, this Appellate Tribunal is of the view that there is no allegation in the pleadings in the Securitisation Application that no inspection of secured asset property was done either on 23.03.2020 or any other date. Therefore, the argument is on this point is nothing but after thought argument.

16. This Appellate Tribunal does not find any force in the argument of the Appellants that the property was sold at throwaway price as on the time of sanction of the loan the valuation of property was much more and it was sold paltry amount of ₹2,35,51,000/-. It is admitted fact that prior to the present auction sale on 10.11.2020, the property was put for auction twice, which was never challenged by the Appellants, twice but no bid was received, therefore, the reserve price was bound to be lower in order to recover the amount due and payable by the Appellants.

17. This Appellate Tribunal does not find any force in argument that mortgage did not include the car parking as the car parking and terrace are stated to be part of this secured asset in the Sale Deed in favour of the Appellants.

18 In view of the facts of the case and law discussed above, this Tribunal does not find any illegality, irregularity or infirmity in the impugned judgment dated 10.05.2023 passed by Learned Presiding Officer, DRT-Pune in Securitisation Application No. 136/2020.

Accordingly, the Regular Appeal No. 51/2023 Manojkumar Sureshchand Lunkad & Ors. v/s Punjab National Bank & Ors. is disallowed. All pending applications, if any, in Appeal No. 51/2023 stand disposed of. No order as to costs.

Sd/-
Chairperson

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