DEBTS RECOVERY TRIBUNAL-I, CHANDIGARH

SA No. 313 of 2023
M/s Hotel Himalaya Snow and another
Versus
The Kangra Central Co-operative Bank Limited and another

Dated: 22.04.2026
Item No. (Supplementary -1)

Argued by: Mr. K.P.S. Dhillon and Ms.Neha Arora, Counsel for the Applicants.
Mr. Yogesh Jain, Counsel for Respondent Bank along with Mr. Sohan Singh, Branch Manager.

M/s Hotel Himalaya Snow and another (Applicants) have filed this Securitization Application under Section 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), against The Kangra Central Co-operative Bank Limited and another (Respondents).

2. Admittedly, v*ide* sanction letter dated 11.03.2019, the Kangra Central Co-operative Bank Limited had sanctioned the Term Loan of Rs. 3967.78 lacs to M/s Hotel Himalaya Snow, Manali. To secure the same, Applicant No. 2 had created security interest in respect of the following property:-

> *Agricultural land measuring 01-99-93 hectares, comprised of 01-59-43 hectares in Khasra No.253 situated at Mohal Burua, Phati Burua Kothi Manali Tehsil Manali District Kullu and 00-40-50 hectares in Khasra No.273, 272 at Mohal Burua Phati Gurua Kothi Manali Tehsil Manali District Kullu.*

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3. The father of the Applicant No. 2, namely Puran Chand and mother Satya Devi were the guarantors.

4. Applicants did not make the repayment of the loan as per the repayment schedule and on 31.03.2021, the Bank declared the account NPA. On 18.10.2022, Bank issued the notice under Section 13(2) of the SARFAESI Act, demanding a sum of Rs. 36,55,87,119/- due as on 18.10.2022. On 19.12.2022, Applicants filed the objections under Section 13(3A) of the SARFAESI Act. *Vide* reply dated 03.01.2023, Bank rejected the objections filed by the Applicants. On 10.04.2023, Bank issued the possession notice under Section 13(4) of the SARFAESI Act. Bank also applied to the DM under Section 14 of the SARFAESI Act, who allowed the application for taking the possession. Ultimately, on 04.10.2023, Bank took the possession of the secured asset. Earlier, Bank had got the audit of the account of the Applicants done. The Statutory Auditor in his report, dated 15.12.2020 (Annexure R-2), observed as under:-

> *"This is case of Fraud done by the Borrower and the matter should be reported to the controlling and appropriate authorities and investigations should be made about the end use of the funds and the amount should be recalled back from the borrower as there is no other collateral security available with the Bank."*

5. Again, in the Long Form Audit Report (LFAR) of the Bank, for the year ended on 31.03.2020 (Annexure R-3), it was observed as under:-

> *"This is case of Fraud done by the Borrower and the matter should be reported to the controlling and appropriate authorities and investigations should be made about the end use of the funds and the amount should be recalled back from the borrower as there is no other collateral security available with the Bank."*

6. Admittedly, on 22.04.2022, Applicants filed CWP No. 2514 of 2022 in the Hon'ble Himachal Pradesh High Court, which *vide* order dated 10.05.2022 disposed of the same with the following observations:-

> *Xxxx*
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> *3. As observed above, the prayer being innocuous is allowed and respondent-Bank is directed to consider and decide the representation of the petitioner, Annexure P-7 within a period of two weeks from today by passing a speaking/reason order, after affording an opportunity of hearing to the petitioner. Ordered accordingly.*
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> *4. It is expected that respondent-Bank shall not take any coercive action against the petitioner till the final disposal of the representation. It is made clear that the instant order is being passed in the peculiar facts and circumstances of the case and shall not be treated as a precedent in future. In the meanwhile, petitioner shall ensure that he shall not cause any depreciation to the value of the property.*
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> *5. In view of this, the instant petition is disposed of. The pending application(s), if any, are also disposed of.*

7. As per the order of the Hon'ble High Court, the Managing Director of the Bank heard the Applicants and *vide* order dated 10.06.2022 rejected their representation, with the observations that the petitioner has not utilized the loan amount on the projects, for which it

had been sanctioned/released. The Managing Director observed that the claim made by the petitioner in his representation; his statement recorded on dated 24.05.2022 and the valuation report submitted by him in the Hon'ble High Court were not found genuine. Applicant has not carried out construction work for many years and abandoned the project midway incomplete. The Managing Director also observed that the Applicants had been given Covid relief as per the guidelines. Applicants were also granted moratorium for six months. The Managing Director also observed that the concession in interest could not be extended to the petitioner as he was not regular in making the repayments. Accordingly, the Managing Director, *vide* order dated 10.06.2022, disposed of the representation of the Applicants.

8. With this background, I come to the Securitization Application filed by the Applicants.

9. Applicants, in the SA, have alleged that it is an MSME unit (MSME Certificate is Annexure A-1). In the year 2017, he was allured and sanctioned the Term Loan of Rs. 65.15 crores, which has been disbursed in the following manner:-

Date	Amount
20.06.2017	Rs. 7,87,50,000/-
11.07.2019	Rs. 16,00,00,000/-
22.07.2019	Rs. 27,87,50,000/-
Total	**Rs. 27,87,50,000/-**

10. It is alleged that there was delay on the part of the Bank in disbursing the loan. The project remained under financial crunch. Though, the sanctioned loan was Rs. 65.15 crores, yet, the said

amount was not disbursed. On account of delay in disbursement, the project cost got escalated due to price hike of building material. It is alleged that the substantial amount had already been infused by the Applicants. However, the Bank was adamant not to make further disbursement without any basis. It is alleged that the value of the property is much more. The account was regular till 29.02.2020. Despite that no Covid relief, including GECL was pro*vide*d to the Applicants. It is stated that as per RBI circulars, no loan account could be decaled NPA till 31.08.2020. Further, Applicants were never served with any notice, intimating the default. It was never communicated to the Applicants as to when the 90 days' period of default commenced and when concluded and nature of default. The Bank declared the account NPA without waiting for the expiry of 90 days. It is alleged that the declaration of the account as NPA was contrary to RBI guidelines. Applicants state that on 19.12.2022, they had filed objections, wherein it was reiterated that Applicant No. 1 is an MSME unit and thus requires helping hand (Annexure A-2). Applicants state that the reason of default was purely beyond their control and due to Covid situation. However, the Bank without application of mind, *vide* vague reply dated 03.01.2023, rejected the objections. It is alleged that as per the orders of the Hon'ble Supreme Court, the authorized officer was incumbent to dispose of the objections by applying application of mind. Further, the Bank issued the possession notice on 10.04.2023. It is stated that Puran Chand had died on 31.01.2023. However, the possession notice was also issued to Puran Chand (the death certificate is Annexure A-15). On 04.10.2023,

Bank took the physical possession of the secured asset as per the order obtained by it from DM under Section 14 of the SARFAESI Act.

11. Applicants, *inter alia*, alleged that the declaration of the account as NPA is contrary to the RBI guidelines, dated 01.04.2023, which specifically state that the account cannot be declared NPA on account of temporary default. Again, para No. 4.2.5 of the RBI circular states that even if the account has been declared NPA, it may be upgraded as standard asset if entire arrears of interest and principal are paid by the borrower. Further, no notice was served upon the Applicants before declaring the account NPA. Applicants fall within the definition of MSME. Bank did not follow the RBI guidelines, dated 17.03.2016 regarding framework for revival in respect of MSME units. The Bank did not constitute any committee for revival of the unit of the Applicants. The case of the Applicants was never placed before the said committee for consideration. The Bank was bound to follow the RBI guidelines as held by the Hon'ble Supreme Court in '*Central Bank of India versus Ravindra'* as well as in the case of '*Sardar Associates versus Punjab and Sind Bank'*. Accordingly, the action of the Bank in declaring the account NPA is illegal, *null and void*. It is alleged that the secured asset is agricultural land and is thus exempt from the provisions of Section 31(i) of the SARFAESI Act. The Bank did not dispose of the objections by applying due application of mind. The notices were not issued by the authorized officer. Further, the Bank has charged penal interest, which could not be done as per the judgment in '*Central Bank of India versus Ravindra'* case. Again, there was no proper CERSAI

registration. Further, the overdue amount is less than 20% of the total amount due and as per Section 31(j) of the SARFAESI Act, the Bank cannot take the SARFAESI action. The notice under Section 13(2) was not served properly. The mortgage was not validly created. No separate notices were served upon the Applicants with acknowledgement due. There was no 90 days' default. Applicants prayed that the Bank be directed to place on record the compliance of notice under Section 13(2) alongwith acknowledgment due; direct the Bank to place on record the possession notice, proof of service and acknowledgment due, photographs e*vide*ncing affixation, newspaper publications; direct the Bank to place on record the order passed by the DM under Section 14 of the SARFAESI Act; direct the Bank to restore the possession to the Applicants; direct the Bank to declassify the loan account as NPA by upgrading the account from NPA category; direct the Bank to place on record the name and designation of the person who signed the notice under Section 13(2); direct the Bank to place on record the valuation report; summon the original record in the case and the present SA be allowed. In substance, Applicants prayed that the whole of the SARFAESI action be set aside.

12. In reply to the Securitization Application, Bank has denied the case of the Applicants. It is alleged that the Applicant has concealed material facts. Further, Applicants did not utilize the loan amount for the purpose, for which it had been granted to them. It is alleged that despite the lapse of four years, Applicants have not raised any construction at all. Applicants did not furnish utilization of funds

taken by them from the Bank. Again, in the case of Hotel Lake Palace, a fraud has been perpetuated by Applicant No. 2. It is alleged that in both the loan accounts, as on 28.11.2023, a sum of Rs. 5688.72 lacs was due. It is alleged that Applicants do not want to repay the loan. The funds raised by the Applicants from the Bank have been diversified by transferring the money to Punjab and Sind Bank, Ner Chowk Branch and the funds were not utilized for raising construction of hotel. In fact, funds were mis-utilized by the Applicants and diverted to other party. Applicants also did not obtain the requisite permission from the competent authority for raising construction of hotel. No permission was obtained from Tourism Department, Himachal Pradesh as well as from Environment Department or such other regulatory authorities. In fact, Applicant No. 2 had no experience of running the hotel. Applicant No. 2 was engaged in the business of supplying curtains and mattresses. Applicant No. 2 has diverted the funds to his another account maintained with Punjab and Sind Bank. In fact, hefty transfers were made to the said account. It has been denied that it is an MSME unit. It is alleged that the account was categorized NPA earlier and Applicant had got registration of the project as MSME unit in 2022. Again, Bank has rightly declared the account NPA. Applicants were duly served with notice under Section 13(2). Applicants had filed the objections, which were rejected by the Bank. Applicants have not disclosed in the SA that earlier they had filed CWP No. 2514 of 2022 before the Hon'ble Himachal Pradesh High Court. Again, an inquiry was conducted under Section 69(2) of the HP Cooperative Act, 1968, by Additional RCS, H.P. It is alleged

that the Applicants never informed the Bank that Puran Chand had died. It is denied that the secured asset is agricultural land. Further, there was proper CERSAI registration. It has been denied that the overdue amount is less than 20% of the total amount due. In fact, it is alleged that it is a fraud case. Applicants, in connivance with the Bank officials, have played fraud with the Bank. Accordingly, it is submitted that there is no merit in the present SA and the same be dismissed.

13. I have heard Mr.KPS Dhillon, counsel for the Applicants and Mr.Yogesh Jain, Counsel for the Respondent Bank.

14. Mr.Dhillon, counsel for the Applicants has submitted that the whole of the SARFAESI action taken by the Bank is illegal, *null and void*. Applicant No. 1 is an MSME unit. However, the Bank did not place the case of the Applicants before the MSME committee. Again, on 10.04.2023, the Bank had issued the possession notice under Section 13(4) to Puran Chand. In fact, Puran Chand had already died on 31.01.2023. The notice to a dead person is nullity in law. Mr.Dhillon submitted that the law is well settled that where the notice under Section 13(4) has been served to a dead person, the whole of the SARFAESI action has to be set aside. Mr.Dhillon further submitted that Applicants had also filed SA No. 316 of 2023, titled as M/s Hotel Lake Palace and another versus The Kangra Central Co-operative Bank Limited and another, which was disposed of by this Tribunal, *vide* order dated 19.09.2024, on the ground that the Bank has failed to prove the service of notice under Section 13(4) of the SARFAESI Act.

The present case stands on the same footing. Winding up his arguments, Mr.Dhillon submitted that the SA be allowed and the SARFAESI action initiated by the Bank be set aside.

15. *Per contra*, Mr.Jain, counsel for the Respondent Bank has submitted that this is false and frivolous SA. Applicants have concealed material facts from this Tribunal. Applicants had earlier filed CWP No. 2514 of 2022 before the Hon'ble Himachal Pradesh, which directed the Managing Director of the Bank to consider the representation of the Applicants. As per the order of the Hon'ble High Court, Managing Director of the Bank had considered the representation of the applicant and *vide* order dated 10.06.2022, dismissed the same. Mr.Jain submitted that Applicants did not utilize the funds, for the purpose for which they were granted to them. In fact, Applicant No. 2 siphoned off all the funds and transferred the same to his another Bank account maintained with Punjab and Sind Bank. As per the terms and conditions of the loan, Applicants had to be disbursed the loan in installments. However, the Applicants, in connivance with the Bank officials, got transferred whole of the sum of Rs. 16 crores in one go. Mr.Jain further submitted that earlier the Applicant was not registered as MSME unit. It was only when the account was declared NPA, it got registered as MSME in the year 2022. Further, Applicants have not utilized the money as per the terms and conditions of the loan. In these circumstances, the question of the case of Applicants, being put up before MSME committee did not arise. Further, it cannot be said that the secured asset is agricultural

land as the security interest was created to establish a hotel. Again, there is proper CERSAI. Mr.Jain submitted that the Applicants never intimated the Bank that Puran Chand has died. The notices sent to the Applicants and all guarantors were not received back and were duly served upon them. Accordingly, it is submitted that there is no merit in the present SA and the same be dismissed.

16. I have considered the rival contentions.

17. I have already given the chronology of events in the opening part of the order. The disbursement of the loan by the Bank to the Applicants is admitted. The service of notice under Section 13(2) to the Applicants is also admitted. However, I am of the considered view that the Applicants are guilty of concealment of facts. In the whole of SA, there is not a whisper that the Applicants had earlier approached the Hon'ble High Court by filing CWP No. 2514 of 2022, which *vide* order dated 10.05.2022, directed the Managing Director of the Bank to consider the representation of the Applicants. I am of the considered view that there is major concealment on the part of the Applicants. Again, Applicants did not disclose that the Managing Director of the Bank had heard them and passed the order against them. It cannot be said that Applicant is an MSME unit. Applicants had got it registered as MSME in the year 2022. The account had been declared NPA on 31.03.2021. Accordingly, the question to place the case before the MSME committee did not arise. The loan was also granted for construction of a hotel. In these circumstances, it cannot be said that the secured asset is agricultural land.

18. The only question which survives for consideration is, 'Whether there is any violation of the provisions of law, on the basis of which the SARFAESI action is liable to be set aside ?

19. Mr.Dhillon vehemently argued that this case stands on the same footing as the connected case of Hotel Lake Palace, in respect of which this Tribunal has already allowed that SA *vide* order dated 19.09.2024, on the ground that the Bank had failed to prove on the record the service of notice under Section 13(4) upon the Applicants. Further, the notice under Section 13(4) was served on a dead person. However, I am of the considered view that the present SA does not stand on the same footing as the case of Hotel Lake Palace. In Hotel Lake Palace, the Bank had not taken the physical possession. Bank had issued the notice under Section 13(4) to Puran Chand, who had already died and in these circumstances this Tribunal set aside the notice under Section 13(4). In the present case, Bank has taken the physical possession of the secured asset.

20. Hon'ble Punjab and Haryana High Court in case of '*Bank of India versus State of Punjab and others*', CWP No. 2019 of 2021 (O&M), decided on 28.04.2022 held that it is permissible for a secured creditor to directly approach the District Magistrate without complying with procedure under Rule 8(1) of the rules framed under the Act. In these circumstances, even if the Bank had not served the notice under Rule 8(1) of the Rules to the legal heirs of deceased Puran Chand, it could directly take the possession on the basis of the

orders of District Magistrate. In these circumstances, the non-service of notice under Rule 8(1) of the Rules is of no consequence.

21. Applicant claims to be a MSME unit. He has placed on the record a copy of Udhyam Certificate (Annexure A-1). As per the certificate, the date of commencement of the transaction/business is 19.12.2022. However, the account was declared NPA on 31.03.2021. Accordingly, it cannot be said that the Applicant is a MSME unit when the account was declared NPA. Further, in these circumstances, the Bank was not under obligation to place the case before the designated committee.

22. I am of the considered view that there is also no force that the secured asset is agricultural land. Applicants had raised the loan for running a hotel on the secured asset. In these circumstances, he cannot be heard to say that the secured asset is agricultural land. Bank has produced on the record CERSAI registration. Accordingly, this ground is also not available to the Applicants. The Bank is claiming the whole of the amount on the ground that the Applicants have played fraud with it. In these circumstances, it cannot be said that only less than 20% of the amount is due.

23. Be that as it may, a perusal of the record would show that the Applicants are interested only in prolonging the recovery by the Bank by indulging in litigation. Earlier, they had approached the Hon'ble High Court and filed a writ petition on the ground that the Bank should consider their representation. The Bank had considered their representation and decided it. Applicants had given the assurance to

make the payment. However, they did not make the payment. There is thus, no merit in the present SA and the same is hereby **dismissed**.

24. All the pending IAs, if any, are also stand disposed of accordingly.

Registrar is directed to send a copy of this order to all the parties, as per rule. File be consigned to record room after due compliance.

(A S Narang)
Presiding Officer
DRT-I, Chandigarh

Pronounced in open court
Dated: 22.04.2026