DEBTS RECOVERY TRIBUNAL No.1, MUMBAI

ORDER
In
INTERLOCUTORY APPLICATION NO. 2713 OF 2025
In
SECURITISATION APPLICATION NO. 65 OF 2024
(Delivered on 15.05.2026)

MS. KONSHILA INFRASTRACTURE PVT. LTD. ... Applicant/s

Versus

PEGASUS ASSETS RECONSTRUCTION PVT. LTD. ... Respondent

Advocate Siddharth Samantaray a/w Adv. Harish Kumar i/b Adv. Manoj Harit for the Applicant.

Advocate Rishikesh Chindarkar for the Respondent No.1.

Advocate Urmila Jha for the Auction Purchaser.

ORDER

1. By way of this present petition applicants seek for the following reliefs:-

a) To quash and set aside the auction sale notice dated 04.12.2025 scheduling auction on 23.12.2025 and to stay its operation and implementation and execution.

b) Restrain R1 and R2 from conducting auction sale of the premises herein, on 04.12.2025 or anytime thereafter.

2. Before entering into a discussion of the matter the background of the case shall be looked into. Perusal of records

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show that the original lender as Abhyudaya Co-op Bank Ltd had granted a loan of Rs.9 Crores on 03.10.2013 to the applicant no. 1, on applicant no. 2 and 3 executing a deed of simple mortgage for the premises herein. On the loan getting declared NPA on 30.11.2015, SARFAESI measures were initiated by the original lender on 30.01.2016 and the loan was assigned to the present R1 on 30.06.2017, which fact was intimated to the applicants. R1 then had filed OA 629/22 and issued a notice under Section 13(2) on 30.08.2021. Symbolic possession was taken by R1 on 11.11.2021 which also was intimated to the applicants.

3. R1 then issued a sale notice scheduling e-auction on 16.03.2024. The present SA is filed by applicants challenging the said sale notice dated 15.02.2024. On 02.05.2024 applicants approached R1 for an amicable settlement offering Rs.13 Crores which was accepted by R1 on 24.05.2024. The applicants alongwith other borrowers executed a consent terms with R1 in OA on 07.06.2024 and on that basis a recovery certificate was also issued by this Tribunal.

4. Applicants had failed to comply with the consent terms and the order of this Tribunal to pay a sum of Rs.17.50 Crores at 15% interest under the term loan facility. The said judgment in OA is not challenged in any manner. Then R1 issued a sale notice on 04.12.2025 scheduling an auction on 23.12.2025.

5. The auction was confirmed in favour of R8 and R9 in the present petition and sale certificate in their favour is seen registered on 01.01.2026. At this stage the applicants have come faith with the present petition to set aside the auction and sale notice dt.23.12.2025.

6. No contentions or objections are offered by other respondents.

7. The applicants by way of this petition contend that the demand notice dated 30.08.2021 is defective and hence is unlawful, the premises as the subject property is agricultural land, the auction sale notice dated 04.12.2025 is irregular as it does not mention the pending litigation and does not contain the detailed terms and conditions of auction sale, clear 30 days notice is not given for conducting the sale, the sale was conducted in violation of Security Interest Enforcement (herein referred as SIE) Rule 8(5) and that the property was undervalued.

8. R1/bank contends that once debt and security stand admitted, material irregularity should be brought out in the enforcement process to warrant setting aside the sale notice. The plea of premises being agricultural land is to be proved by the borrower. Mere entry in revenue records is not sufficient. No material prejudice is substantiated by applicants due to alleged non compliance of SIE, rules, alleged undervaluation, or as to how such issues violate measures

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under Section 13(4) and have caused prejudice to the applicants.

9. R1 again contends that on default of consent terms, the secured creditor is entitled to enforce security. No fraud or collusion is clearly alleged or proved by the applicants. The contention offered by the applicants are technical, belated and are not substantiated in any manner. So the petition is only to be dismissed with costs.

10. The auction purchasers as R8 and R9 contend that, the status quo order passed in respect of the auctioned property should be vacated. The said interim protection is causing grave injury to R8 and R9 who are bonafide third party purchasers for value. The order passed in this case is to be vacated allowing the auction purchasers to enjoy the premises herein.

11. Heard all parties herein.

12. The applicants now contend that the demand notice dated 30.08.2021 is unlawful and should be set aside. It does not state the bifurcation and R1 cannot issue a demand notice for the loan account maintained in the account books of the original lender/assignor of debt to R1, as Abhyudaya Co-op Bank Ltd.

13. It is to be noted that, applicants have not responded to the notice under Section 13(2) issued by both the institutions. After receipt of the notice dated 30.08.2021 issued by R1, and

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after filing present SA, the applicant, is seen to have approached R1 on 02.05.2024 for an amicable settlement. At that time, the applicants are seen to have made an offer of Rs.13 Crores for the outstanding dues of Rs.20.78 Crores, which offer is seen to have been accepted by R1 on 24.05.2024.

14. Without filing any grievance to either of the notices under Section 13(2) SARFAESI Act, the applicants had attempted to settled the matter with R1, i.e. after the initiation of measures by R1 under the SARFAESI Act. So now, after the completion of sale and issuance of sale certificate, the applicants cannot be allowed to turn round and raise grievance against the notice under Section 13(2), against which they never, had any grievance at any point of i.e from the time of settlement and entering into consent terms.

15. So the contentions of R1 that, the grievance for applicants against NPA, lack of bifurcation in notice under Section 13(2), the absence of name and designation of authorised officer in the notice, must be stated to have been waived by them, has to be accepted by the Tribunal.

16. It is next contended by applicants that, the documents and revenue records state the subject property is an agricultural land. So according to applicants the bar under Section 31(1) of SARFAESI Act applies and no action of enforcement can be made against the subject property.

17. Apart from revenue entry and photograph, nothing

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else is offered by applicants to show that, the premises is agricultural land. The photographs do not show the existence of any agricultural activity, but show only vacant, grass grown extent. It is contended by applicants that, since the possession was with R1, no agriculture operations could be effected there. But apart from revenue records nothing is offered to show that agricultural operations were conducted there, prior to possession by R1.

18. No reliable material is offered to show that, at the time when the premises were offered by way of mortgage, it was used as an agricultural land and active cultivation was being effected there.

19. The Hon'ble Supreme Court in ITC Ltd Vs Blue Coast Hotels Ltd (2018) 15 SCC 99, and in Indian Bank v. K. Pappireddiyar (2018) 18 SCC 252, has held as follows. Mere statement in the revenue records, that the secured property is agricultural land, is not sufficient to attract Section 31(i) of SARFAESI Act. It is further specified in the said decisions that the properties should be actually used as agricultural land at the time when the security interest was created.

20. In the dictum in Blue Coast Hotels case, it is further directed that since no security interest can be created in respect of agricultural lands, and yet it was so created, goes to show that, the parties did not treat the land as agricultural land, and that, the debtor offered the land as security on that basis. The fact that the debtor had created a security interest

was indicative of the position that the parties did not treat the land as agricultural land.

21. It is the burden of borrowers to bring out that the property herein was actually used as agricultural land and agricultural activities were going on in the said land at the time of creation of mortgage. So the contentions now offered by applicants that, the premises were agricultural land, cannot be accepted, as no reliable material apart from revenue records are produced by applicants.

22. It is contended by applicants that the sale notice dated 04.12.2025 does not mention the details of pending litigation. There is no case for applicants that they themselves or anyone else in whom they are interested had taken part in the auction on the basis of said notice. The successful auction purchasers as R8 and R9 have no case of being led into any deceit by non mentioning of the ligation.

23. The reliance placed by applicants in the ruling of Viney Kumar Sharma Vs The Improvement Trust and another, is not applicable to the facts of the present case. There, the sale was not under SARFAESI measures and the auction purchaser had expressed grievance on the absence of disclosure of pending litigation. Here in this case, the auction purchasers have no complaints on that aspect, and so the facts in the present case are different from the decision stated above. So the said ground raised by applicants is not acceptable.

24. It is next contended by applicants that, the auction sale, though was a second sale, was conducted by issuing only 15 days notice. A clear 30 day notice was not given for the first sale which was challenged by the applicants as per I.A. No. 533/24. But the said IA was disposed off for want of bids.

25. According to the applicant the second sale should be taken as the first sale notice, as the said first sale notice had not given a clear 30 days time. This contention cannot be accepted. If a said fails for reasons for lack of bidders the lender is not required to wait another full 30 days to re-auction the property. In such cases the reduced 15 day notice period satisfies the statutory mandate.

26. It is next contended by applicants that, the valuation report is not produced by R1 despite the objection raised by applicants to that effect. So an adverse inference is to be drawn against R1. According to applicants, they have produced a valuation certificate which would show that the auction was conducted in gross undervaluation.

27. The valuation report produced by applicants is subsequent to the auction and its confirmation. So the value stated therein cannot be taken as the existing value at the time of auction. The applicants could have presented a valuation report which is showing a higher value than the price fixed for auction by R1, by proceeding a valuation report of that particular/period.

28. On a consideration of the entire matter as a whole it is seen that, the applicants had been conspicuously silent on the consent terms executed between the parties. The settlement letters offered by the applicant and approval letters issued by R1 are not mentioned by applicants. The contention of R1, that applicants had only attempted to suppress the actual facts in this proceedings cannot be ignored.

29. It is pertinent to note that, the applicants had approached R1 for settlement on 02.05.2024, which is much after the issuance of the sale notice for the 1st auction, scheduled on 16.03.2024. No such complaints against measures under Section 13(2), lack of insufficient notice for auction on 16.03.2024, are seem raised by applicants.

30. It is seen that, R1 had delayed the recovery of the dues, by granting a time of nearly 08 months, to applicants, to settle the matter. Without complying to the terms of settlement offered and accepted, the applicants are now complaining against the initiation of measures under the SARFAESI Act. The conduct of the applicants in not raising them, but expressing willingness for settlement amounts to waiver..

31. The spirit of the judgment of The Hon'ble Apex Court in Arce Polymers (P) Ltd Vs Alphine Pharmaceuticals (P) Ltd (2022) 2 SCC 221 is that, when the facts of the case perspicuously reflected disingenuous conduct on the part of borrower to gain indulgence, the unfulfilled assurances, and promises and their unwillingness to pay, show that the

borrower has waived his objections and that he is estopped from challenging, violation of provisions of SARFAESI Act, subsequently.

32. The Hon'ble DRAT in Central Bank of India Vs. Upendra Pravinbhai Patel & Anr., DRAT Mumbai Appeal No. 96/15 has held that due to the borrowers voluntary act of offering to settle the dues in a time bound manner and then failing to comply with it, the borrower is estopped from raising any challenge to the SARFAESI measures including sale.

33. Further as stated above, applicants had suppressed the aspects of consent terms, entered into between the parties, which is a material fact in this case. So this act itself disentitles the applicants from getting any relief in this matter.

34. A sale notice cannot be set aside except in exceptional cases. As sale certificate is issued in favour of R8 and R9 applicants have lost their title to the property. Unless and until material irregularity or illegality is brought out in the conduct of auction, the confirmed sale cannot be set aside. After accepting the SARFAESI measures, and after offering settlement for such SARFAESI measures, thereby waiving the objections to the said measures, applicants now cannot turn round and seek to set aside the sale, on grounds which now appear to be trivial, that too on the face of lack of objection by them till now. So the contentions of applicants cannot be entertained and hence have to be dismissed.

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35. The petition is disposed off as follows:-

a) The request to quash and set aside the auction sale conducted is dismissed.

b) The question of restoration of possession to the applicants, award of compensation, shall be decided at the time of final hearing of the matter.

c) R2 and R3 shall not create third party rights or encumber the premises herein till the disposal of the SA.

36. Parties to suffer costs.

(Dictated to my Stenographer, transcribed by her corrected and signed by me and pronounced in open forum on 15.05.2026)

Presiding Officer
Debts Recovery Tribunal,
Mumbai-I
(Sreekala Suresh)

Date: 15.05.2026