DEBTS RECOVERY TRIBUNAL-III, CHANDIGARH

PRESIDED OVER: SH. MRIDULESH KUMAR SINGH

SECURITIZATION APPLICATION NO.307/2023

Date of Institution: 06.12.2023
Date of Decision: 15.06.2026

Mrs. Rashi Sharma W/o Sh. Sandeep Kumar, R/o House No.1697/11, Ward No.13, Adarsh Nagar, Naya Gaon, Near Suraj Complex, Mohali-160103 (Punjab)

--Applicant

Versus

1. Aadhar Housing Finance Ltd., incorporated under the Companies Act, 1956, having its Registered Office at 2nd Floor, No.3, Jvt Towers, 8th A Main Road, Sampangi Rama Nagar, Hudson Circle, Bengaluru and Branch Office at 2nd Floor, S.S.N Towers, S.C.O. No.23, Near Corporation Bank, Ambala-Zirakpur Road, Zirakpur, District Mohali-140603 through its Authorised Officer, Mr. Vikas Nain
2. The Chief Judicial Magistrate, SAS Nagar, Mohali (Punjab)
3. Ms. Diya Sharma, Advocate appointed as Receiver, Old Chamber No.68, District & Session Courts Complex, SAS Nagar, Mohali (Punjab)

--Respondents

Argued by: Sh. Diwan Sharma, Advocate for Applicant
Sh. K.P.S. Dhillon, Advocate for Respondent No.1
Respondent Nos.2 & 3 already ex parte vide order dated 13.02.2024

FINAL ORDER

(1) This Securitization Application was filed under Section 17(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the Act' for brevity) to set aside order dated 21.10.2023 passed by Ld. Chief Judicial Magistrate, SAS Nagar, Mohali being hasty, illegal and passed in a mechanical way and against the guidelines issued by Reserve Bank of India and consequently, the notice dated 02.12.2023 issued by Receiver is also liable to be quashed, notice dated 11.04.2023 issued under Section 13(2) of the Act and

possession notice dated 23.06.2023 issued under Section 13(4) of the Act for taking physical possession of the residential house of the applicant may kindly be set aside/quashed.

(2) It was stated in the application that applicant had availed financial assistance from respondent No.1; that respondent No.1 has been notified vide notification dated 18.12.2015 by Ministry of Finance, Department of Financial Services, Govt. of India as per its latest balance sheet to be treated as a Financial Institution for the purpose of the said sub clause of Act; that since the National Housing Bank is wholly owned by the Reserve Bank of India, therefore guidelines issued by RBI issued from time to time are binding on the respondent, which is registered with National Housing Bank; that respondent No.1 is Non-Banking Financial Institution and vide notification dated 27.08.2018, respondent No.1 having assets worth Rs.100 crores and above, shall be entitled for enforcement of security interest debts of Rs.20 Lacs and above, as financial institutions for the purpose of the said Act. Therefore, the action being taken by respondent No.1 under the Act is not maintainable as in the present matter loan amount is below Rs.20 Lacs; that respondent No.1 had sanctioned a Housing Loan/Non-Housing Loan Credit Facilities vide Loan Agreement dated 31.08.2016 for Rs.15,99,349/- and additional Housing Loan vide Loan Agreement dated 18.08.2021 for Rs.1,50,000/- against security of property measuring 00 Kanal 02 Marla, situated at Village Karoran, Tehsil-Kharar, District Mohali bearing vasika No.1990 dated 06.09.2016 property owned by Mrs. Rashi Sharma; that applicant has been paying the EMIs regularly without any default; that applicant had to handover the original title deeds of the property to the respondent No.1 and any process required to create mortgage would have to be completed prior to disbursal of the loan; that applicant never received any notice from the respondent No.1 regarding default in payment of any EMIs; that all of sudden on 02.12.2023, Ms. Diya Sharma, Advocate pasted a notice dated 02.12.2023 on the outer wall of the subject property to take possession of the secured asset i.e., all that piece and parcel of the property mentioned above in her capacity as a Receiver appointed by Hon’ble Court of Sh. Anish Goyal, Chief Judicial Magistrate, Mohali vide order dated 21.10.2023 passed in CRM No.1520/2023

being an application under Section 14 of the Act filed by the Authorised Officer of respondent No.1; that perusal of the above said CRM reveals that respondent No.1 has alleged that the accounts of the applicant were classified as NPA on 10.04.2023 and notice under Section 13(2) of the Act dated 11.04.2023 was issued but the said notice was never served upon applicant at any point of time as per Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as 'Rules' for brevity); that from the above said CRM, it further reveals that possession notice was issued on 23.06.2023 and allegedly published in two newspapers i.e., one in English language and other vernacular language on 28.06.2023 but the applicant was unaware of any such notice, however the above said notices were came into the knowledge of applicant now along with the above said CRM on 02.09.2023; that without any notice to the applicant, the learned CJM has passed the impugned order dated 21.10.2023 and appointed Ms. Diya Sharma, as a Receiver to take over the physical possession of the subject property and hand over the same to the Authorised Officer of respondent No.1; that consequently, Ms. Diya Sharma pasted a notice dated 02.12.2023 on the subject property for taking physical possession of the same on 16.12.2023, which is totally in violation of the Act and Rules; that the proceedings initiated by respondent No.1 under the Act against applicant are not in accordance with law. Therefore, it was prayed that the present SA may kindly be allowed.

(3) Reply filed by Respondent No.1.

(4) It was stated in the reply that respondent No.1 is a Financial Institution and an approved company to take action under the provisions of the Act; applicant had availed credit facilities from respondent No.1; that installments of principle remained overdue for a period of more than 90 days in respect of Term Loan account(s) of the applicant/borrower and consequent upon the default committed by applicant in repayment schedule, loan accounts were classified as NPA on 10.04.2023; that thereafter, respondent No.1 had issued notice under Section 13(2) of the Act dated 11.04.2023 demanding the outstanding loan amount through registered post on 20.04.2023 on the address given by applicant/borrower to the respondent No.1 at the time of execution of loan agreement(s); that the said demand notice was also

pasted on the outer door/conspicuous part of the property mortgaged as secured asset with the respondent No.1 on 11.04.2023 situated at Village Karoran, Tehsil-Kharar, District Mohali bearing vasika No.1992 dated 06.09.2016 owned by Mrs. Rashi Sharma; that the said notice was also got published in two daily newspapers on 21.04.2023 i.e., in Business Standard (English) and Punjabi Tribune (Vernacular); that proper procedure and Rules prescribed for the same have been complied with at the time of serving the same; that demand notice clearly reflects the outstanding amount in both the loan accounts of the SA applicant and further bifurcation of outstanding amounts against each loan account; that thereafter, respondent No.1 had issued possession notice under Section 13(4) of the Act dated 23.06.2023, which was served through registered post on applicant/borrower on 03.07.2023; that the said notice was also pasted on the outer door/conspicuous part of the property mortgaged as secured asset with respondent No.1 on 23.06.2023 and photographs were also taken; that the said notice was also got published in leading newspapers as per Rules i.e. one in Business Standard (English) and one in Punjabi Tribune (Vernacular) on 28.06.2023; that applicant was fully aware about the SARFAESI proceedings and instead of making the due payment, applicant has filed the present SA to stall the recovery proceedings and avoid paying the due amount to respondent No.1; that applicant is liable to pay an amount of Rs.21,52,056.62p as on 14.12.2023; that applicant has altogether remained irregular in payment of the loan amount to respondent No.1; that applicant is intentionally and willingly not paying due amount to the respondent No.1, therefore respondent No.1 was not left with any other alternative except to initiate SARFAESI proceedings to realize the loan amount; that each and every payment, which has been made by the applicant has been duly accounted for in the statement of account maintained by respondent No.1 in the ordinary course of business; that respondent No.1 had legally taken all the measures as per the provisions of the Act and Rules; that secured asset was duly registered with Central Registry and respondent No.1 has first charge over the secured asset and as such is entitled to exercise the rights of the enforcement of securities under Chapter III, as per Section 26-D of the Act; that thereafter, respondent No.1

had moved an application under Section 14 of the Act before CJM, SAS Nagar, Mohali for taking over the physical possession of the secured asset; that Ld. CJM, SAS Nagar, Mohali vide its order dated 21.10.2023 had allowed the application and thereafter, notice to take possession of the secured asset was issued by the Receiver; that all the SARFAESI proceedings initiated by respondent No.1 against applicant is in accordance with law. Therefore, it was prayed that the present SA may kindly be dismissed.

(5) After service of notices upon respondents, none was appeared on behalf of respondent Nos. 2 & 3 and no reply to SA was filed on behalf of them. Therefore, respondent Nos. 2 & 3 were proceeded against ex parte vide order dated 13.02.2025.

(6) Replication filed by applicant to the reply filed by respondent No. 1, wherein the contents of SA were reiterated and that of the reply to the SA were denied.

(7) I have heard arguments advanced by Sh. Diwan Sharma, Advocate for Applicant and Sh. K.P.S. Dhillon, Advocate for Respondent No.1 and gone through the record carefully. None was present on behalf of respondent Nos. 2 & 3 for advancing arguments.

(8) Sh. Diwan Sharma, Advocate argued that loan accounts of applicant were classified as NPA on 10.04.2023 in violation of Section 2(1)(O) of the Act. It was further argued that it was mandatory on the part of the respondent No.1 to classify the accounts as sub-standard, doubtful or loss and intimate the same to the applicant before issuing the notice under Section 13(2) of the Act. It was further argued that it is settled law that before classifying the account as NPA, it is the essential requirement that the bank should provide an opportunity to the borrower for settlement of the controversy/doubts regarding classification of the accounts as NPA. It was further argued that before classifying the accounts as NPA on 10.04.2023, respondent No.1 had never issued any prior notice to applicant. Therefore, classification of loan accounts as NPA is illegal.

(9) *Per contra*, Sh. K.P.S. Dhillon, Advocate argued that the accounts of applicant were classified as NPA in strict compliance of Rules and there is no illegality in it. It was further argued that there is no requirement under any law to issue advance notice to borrowers and

guarantors regarding the classification of accounts as NPA.

(10) Sh. Diwan Sharma, Advocate placed reliance upon the judgment passed by the **Division Bench of Hon'ble High Court of Punjab and Haryana at Chandigarh** in **CWP No.6306/2007** titled as **Bhupinder Singh Vs. State Bank of Patiala and Others,** wherein it was observed as under:

"In our opinion, in the instant case the respondent bank has classified the account of the applicant as NPA without any specific order to that effect without application of mind. It is only when the account of the borrower became sub-standard, doubtful or total loss, then the account of a borrower becomes classifiable as Non-Performing Asset and it is only then the Act came into operation. Clause (o) of sub-section (1) of section 2 of the Act defines Non-Performing Asset which means an asset or account of a borrower which has been classified by the Bank as sub-standard, doubtful or loss asset. In the instant case the respondent bank in spite of the direction, has not placed on record the account of the borrower where the same was classified by the Manager of the respondent bank as sub-standard, doubtful or loss asset. Merely, on the basis of the aforesaid list, in our opinion it cannot be held that the account of the petitioner was declared as NPA legally."

(11) Sh. Diwan Sharma, Advocate further placed reliance upon the judgment passed by **Hon'ble Jharkhand High Court** in the matter **M/s Stan Commodities Pvt. Ltd. Vs. Punjab and Sind Bank, 2009 AIR JHAR 14** in which Hon'ble High Court has observed as under:

"28. In view of the provisions of the guidelines of the RBI, the petitioner was entitled to be informed and any doubt or dispute was to be settled between the creditor and the borrower through any specific internal channel within one month from the date on which the account would have been classified as NPA. Even if there was no internal channel to settle such dispute/doubt, the petitioner was entitled to be informed and to get an opportunity to explain or represent against the intended classification of his account as NPA.

29. The provision of the guidelines providing for some specific internal channel for settling the doubt in asset classification is akin to the requirement of the *principals of natural justice, which according to the* ***Supreme Court*** *in* ***Smt. Menka Gandhi Vs. Union of India (AIR 1978 SC 597)****, must be read and followed even if, the provision is silent to that regard. The respondent being a Public Sector Bank are expected to follow the just, fair/prescribed procedure to meet the requirement of law and Article 14 of the Constitution of India."*

(12) Admittedly, applicant was not informed before classifying her accounts as NPA and no opportunity of settlement of the controversy/doubts regarding classification of the assets were given. Therefore, the accounts of NPA classification cannot be said to be justified in light of above case laws cited by learned counsel for applicant.

(13) In the instant case the respondent No.1 has not placed on record any evidence where the accounts of the borrower were classified by the Manager of the respondent No. 1 as sub-standard, doubtful or loss asset. Therefore, in my opinion it cannot be said that the accounts of the applicant were classified as NPA legally in light of above case laws cited by learned counsel for applicant.

(14) Sh. Diwan Sharma, Advocate further argued that respondent No.1 is Non-Banking Financial Company, which is entitled for enforcement of security interest in secured debts of Rs.20 Lacs and above. It was further argued that vide notification dated 17.06.2021, respondent No.1 being registered with National Housing Bank under National Housing Bank Act, 1987 having asset worth Rs.100 Crores and above was specified as Financial Institution for the purpose of the Act. It was further argued that respondent No.1 being Financial Institution was not entitled for enforcement of security interest in secured debt of below Rs.20 Lacs w.e.f. 12.02.2021. It was further argued that since the amount claimed by respondent No.1 under Section 13(2) of the Act was below of Rs.20 Lacs. Therefore, entire action taken under the Act was bad in law and liable to be quashed.

(15) *Per contra*, Sh. K.P.S. Dhillon, Advocate argued that the relevant gazette notification is not applicable to applicant, which is Housing Finance Limited. It was further argued that respondent No.1 is a Financial Institution and an approved company to take action

under the provisions of the Act. Therefore, the averment of applicant that respondent No.1 has no right to take actions under the Act in the present loan accounts is false and without any basis.

(16) Sh. Diwan Sharma, Advocate placed reliance upon the judgment passed by **Hon'ble Supreme Court of India** in the case titled as **Central Bank of India Vs. Ravindra 2002 (1) SCC 367 and Sardar Associates Vs. Punjab and Sind Bank 2009 (8) SCC 257**, in which it was held that the guidelines issued by the Reserve Bank of India in terms of Section 21 and Section 35-A of the Banking Regulation Act, 1949 are binding and mandatory.

(17) Notification referred above by learned counsel for applicant was not disputed by respondent No.1. It was also not disputed that the guidelines issued by Reserve Bank of India as well as other Institutions are not binding upon respondent No.1.

(18) Sh. Diwan Sharma, Advocate further placed reliance upon the judgment passed by **Hon'ble Calcutta High Court** in the case titled as **Golam Sabir and Another Vs. Piramal Capital and Housing Finance Limited and Others decided on 24.12.2025** in which it was held that HFCs classified as NBFCs under RBI framework are bound by Rs.20-Lakh threshold notification and SARFAESI proceedings for secured debt below threshold held without jurisdiction. It was further observed in the above said case as under:

"C. --------------------- NBFCs entitled to invoke SARFAESI Act only where secured debt is Rs.20 Lacs or above-Respondent-HFC specifically classified as NBFC by RBI-Demand in notice under S. 13(2) being Rs.13,86,974.82-Below prescribed threshold-Action under SARFAESI Act without jurisdiction and liable to be set aside-Creditor free to pursue other remedies available in law."

(19) In the present matter also, demand notice under Section 13(2) of the Act dated 11.04.2023 demanding an outstanding amount of Rs.17,87,530/- is less than 20 Lacs. Therefore, as discussed above respondent No.1 is not entitled to invoke SARFAESI proceedings against applicant and the same are in contraventions of the Act, Rules as well as notification issued by RBI.

(20) Sh. Diwan Sharma, Advocate further argued that notice under Section 13(2) of the Act dated 11.04.2023 was not served upon applicant as per Rule 3 of the Rules. Therefore, right to file objections under Section 13(3-A) of the Act was snatched by respondent No.1 from applicant.

(21) *Per Contra*, Sh. K.P.S. Dhillon, Advocate argued that respondent No.1 had duly posted the notice issued under Section 13(2) of the Act through registered post as per Rule 3 of the Rules. It was further argued that the said notice was also pasted upon the mortgaged property and was also published in two newspapers. Therefore, contention of the applicant that respondent No.1 had violated her right of raising objections under section 13(3-A) of the Act is wrong, incorrect and not maintainable.

(22) Copy of notice under Section 13(2) of the Act dated 11.04.2023 and receipts of registered post as well as tracking reports were annexed along with reply to SA as Annexure R-3 (Colly). Copy of photographs of affixation as well as publication in two newspapers were also filed along with it.

(23) In light of above factual position, it is established that notice under Section 13(2) of the Act was issued and served upon applicant in light of Rules.

(24) Sh. Diwan Sharma, Advocate further argued that possession notice dated 23.06.2023 under Section 13(4) of the Act issued by respondent No.1 has not been served upon applicant as per Rule 8 of the Rules. It was further argued that the said notice was neither published in leading newspapers nor it was served through electronic mode.

(25) *Per contra*, Sh. K.P.S. Dhillon, Advocate argued that possession notice dated 23.06.2023 (Annexure R-4 (Colly)) was issued and served strictly in accordance with law. It was further argued that possession notice was also pasted on the secured asset and the said notice was also published in two leading newspapers. Copies of the same are annexed along with Annexure R-4(Colly).

(26) Possession notice was required to be served through personal service, through pasting and through publication in two leading newspapers. It is also required that possession notice be also served through electronic mode of service in addition to the modes prescribed

under sub-rule (1) and sub-rule (2) of Rule 8 of the Rules.

(27) Respondent No.1 had not disclosed regarding service of possession notice through electronic mode in the pleadings nor argued during the course of arguments.

(28) Photographs of pasting (Annexure R-4 (Colly) shows that a photocopy of one notice has been affixed on the wall and two persons are standing beside the said wall. Date and description of the notice is not clear as well as it is not clear that the said wall is conspicuous place of property in question.

(29) Neither any receipts of registered post nor tracking reports in respect of the same were filed along with reply to SA to ascertain that the said notice was either sent through registered post or not and also served upon applicant or not, in light of the Rules.

(30) Copies of newspapers i.e., Business Standard (English) and Punjabi Tribune (Punjabi) both dated 28.06.2023 were annexed along with Annexure R-4(Colly).

(31) In light of above factual position, it is established that notice under Section 13(4) of the Act was issued but not proved served upon applicant either through personal service or through pasting or through electronic mode in light of the Rules.

(32) Sh. Diwan Sharma, Advocate further argued that Receiver has not followed the directions issued by Learned CJM, Mohali as per order dated 21.10.2023, whereby Receiver was directed to give 15 days prior notice to the Authorised Officer of the secured creditor and borrowers/ guarantors. It was further argued that Receiver was also directed to serve notice of dispossession 15 days prior before taking over possession by affixing the same at conspicuous place of the property and photographs of that place will be taken including display of notice but the Receiver has affixed the copy of notice on the immovable property and might have been taken the photographs but the first direction to serve the notice to Authorised Officer as well as to the borrower has not been adhered to by the Receiver. Therefore, the proceedings to take over the physical possession of the subject property by the Receiver without serving notice to the borrower in person is in violation of the order passed by Learned CJM.

(33) *Per contra*, Sh. K.P.S. Dhillon, Advocate argued that in the SARFAESI Act there is no provision to issue notice of 15 days to the borrowers before taking physical possession of the mortgaged property and in fact, notice was duly issued by Court Receiver of 15 days to the borrower as well as to the Authorised Officer. It was further argued that the said notice was duly served as well as affixed on the secured asset as per directions. Therefore, Court Receiver has not violated the order passed by Chief Judicial Magistrate.

(34) It is correct that there is no provision under the law to issue 15 days prior notice before taking the physical possession of the mortgaged property but in the present case Court Receiver was acting and doing the duty in compliance of order dated 21.10.2023 passed by learned CJM, therefore he was duty bound to comply that order in *letter and spirit*. Court Receiver cannot escape from its lawful duty to provide 15 days advance notice. Court Receiver was required to issue 15 days advance notice to the secured creditor as well as borrowers/guarantors and was required to serve the notice by affixation 15 days prior at the conspicuous place of the immovable property.

(35) Copy of order passed by Learned CJM, Mohali dated 21.10.2023 is on record as Annexure A-4. Photocopy of postal receipts and tracking reports along with photograph of pasting was also on record filed by respondent No.1 vide diary no. 6664. From perusal of tracking reports, it shows that the said notice was not served to all borrowers as per directions of learned CJM.

(36) As discussed above, Court Receiver was duty bound to comply with the order of CJM in *letter and spirit* and it was required on the part of Court Receiver to give 15 days prior notice to Authorised Officer of the secured creditor and the borrowers/guarantors before the date of actual physical possession but the order was not complied with by the Court Receiver and notice dated 01.04.2026 issued in compliance of order under Section 14 of the Act was also illegal due to non-compliance of the directions of the Court.

(37) No other point was argued/pressed.

(38) After considering all facts, circumstances as well as after perusal of record and as discussed above, it clearly shows that accounts of applicant were classified as NPA illegally and service of notice under Section 13(4) of

the Act was also not proved served as well as, as per notification issued by Reserve Bank of India, respondent No.1 has no authority to initiate SARFAESI proceedings against applicant as discussed above.

(39) Therefore, all proceedings initiated by the respondent No.1 under the Act are hereby quashed and **SA is allowed.** It is made clear that respondent No. 1 may initiate fresh proceedings under the Act as per law.

Record be consigned to record room after due compliance.

Date: 15.06.2026

Pronounced by me in the open Tribunal.

(MRIDULESH KUMAR SINGH)
Presiding Officer,
DRT-III, Chandigarh