

TSA no.286 of 2023

**Debts Recovery Tribunal-I, Delhi**  
**4<sup>th</sup> floor, Jeevan Tara Building,**  
**Parliament Street, New Delhi**  
**Presiding Officer: Shri Govind Ballabh Sharma**

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Shri Krishna Gupta  
486, Patparganj Industrial Area,  
Delhi-110092

...Applicant

Versus

Capital First Limited  
11, Prem Dohil Sadan,  
Rajendra Place,  
New Delhi-110008.

IDFC First Bank Ltd.  
11, Prem Dohil Sadan,  
Rajendra Place,  
New Delhi-110008.

Mrs. Uma Aggarwal,  
W/o Mr. Rajesh Aggarwal  
31, Near Yojna Vihar,  
Savita Vihar, East Delhi-110092.

Mrs. Anita Aggarwal,  
W/o Mr. Devender Kumar Aggarwal  
31, Near Yojna Vihar,  
Savita Vihar, East Delhi-110092.

....Respondents

Present:

For the Applicant : Sh. Arvind Sharma,  
Advocate.  
For the Respondent FI : Sh. Rakesh Singh,  
Advocate.  
For the auction purchasers : Sh. Samarendra Kumar,  
Advocate.

**Date of Reserve: 03.06.2026**

**Pronouncement: 02.07.2026**

**FINAL ORDER**

The present securitization application has been moved  
on behalf of the applicant praying therein to set aside the sale

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of the property in question i.e. A-70, Nirman Vihar, Delhi-110092 as null and void and declare that the said sale is contrary to the provisions of SARFAESI Act and the rules under the Security Enforcement Rules and thus the sale is void-ab-initio, illegal, arbitrary and thereby be pleased to quash/set aside the same; award the costs of litigation and also the application fee which has been paid by the applicants herein in favour of the applicants and against the respondent no.1 and 2.

2. It has been submitted on behalf of the applicant that the applicant is the registered owner of the property in question and the property in question was mortgaged with respondent no.1 with respect to the loan agreements number 1498271, 1559372, 1559399, 2392291 and 1532392. It has further been submitted that the loan was availed by Amit Gupta, son of the applicant and M/s V.S. Matrix Pvt. Ltd. and P.D. Industries. It has further been submitted that due to some default in the accounts, vide letter dated 21.03.2018 the respondent no.1 recalled the loan and claimed the outstanding amount of Rs.7,62,62,562.89. It has further been submitted that since clause 18 of the loan agreement contain arbitration clause, the respondent no.1 invoked the provisions of Section 9 of the Arbitration and Conciliation Act and approached the Hon'ble High Court of Delhi in OMP (I) (COMM) 151/2018 and obtained status-quo order w.r.t. the aforesaid property in

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question. It has further been submitted that as is apparent from the order dated 09.04.2018 the total amount as on the said date claimed by the respondent no.1 was Rs.5,63,62,450.46. It has further been submitted that the respondent no.1 again preferred second petition being OMP (1) (COMM) 206/2018 w.r.t. one of the loan and claimed an amount of Rs.1,99,00,112.43 as outstanding. It has further been submitted that thereafter owing to there being arbitration clause, the respondent no.1 appointed Sh. Anukul Raj as the Sole Arbitrator to adjudicate the disputes between the parties and it is necessary to bring to the notice of this Tribunal that before the invocation of arbitration clause the respondent no.1 vide letter dated 06.06.2018 had issued notice under Section 13 (2) of the SARFAESI Act. It has further been submitted that said notice under Section 13 (2) was followed by notice under Section 13 (4) and thereafter under Section 14 of the SARFAESI Act the respondent no.1 under the orders of Learned ACMM took the physical possession of the said property in question. It has further been submitted that the respondent no.1 thereafter on 05.11.2018 issued notice for sale of the property in question thereby fixing the reserve price of Rs.8,15,00,000/- for auction to be conducted on 10.12.2018. It has further been submitted that since the property could not be sold on 10.12.2018 in terms of sale notice dated 05.11.2018, thereafter respondent no.1 again

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issued sale notice dated 11.12.2018 for the auction sale to be conducted on 28.12.2018 at a reserve price of Rs.7,25,35,000/-, however, the proceedings before the Learned Arbitrator went on uninterrupted. It has further been submitted that in the arbitration proceedings the respondent no.1 herein had sought the award for a sum of Rs.7,62,62,562.89 as on 21.03.2018. It has further been submitted that it is relevant to point out to this Tribunal that in the arbitration proceedings the applicant herein duly appeared and filed statement of defence/reply and contested the same. It has further been submitted that despite the pendency of the arbitration proceeding, respondent no.1 neither informed that it has got merged with IDFC and became IDFC First Bank Ltd. nor did it inform that the property in question was sold or put to sale at any point of time. It has further been submitted that vide mail dated 13.02.2019 sent at 6.17 p.m. on behalf of the applicant herein, the Arbitrator was informed about the amalgamation of the respondent no.1 company. It has further been submitted that it is only on 12.03.2019 that the respondent no.1 filed the amendment application, wherein it was disclosed for the first time that the respondent no.1/company has been amalgamated to respondent no.2 company and that the property in question was sold. It has further been submitted that it is relevant to bring to the notice of this Tribunal that the property in

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question was is a costly property. It has further been submitted that the applicant herein was already in touch with a buyer who was willing to offer Rs.7.50 crores and this was already brought to the notice of the officials of respondent no.1, in fact the son of the applicant namely Mr. Amit Gupta had met officers namely Mr. Jaideep, Mr. Amrit Pal Singh and Mr. Mohit with the said offer and had paid the pay order of Rs.1,00,00,000/- dated 10.01.2019 of the interested buyer who was ready and willing to purchase the property in question for an amount of Rs.7.50 crores. It has further been submitted that the said pay order was also taken and retained by the said officials, however, later on the said pay order was returned to the buyer and since February there was complete dark as to whether the property has been actually sold or not. It has further been submitted that during personal visits it was only orally informed the property has been sold but no information whatsoever was ever provided either to the applicant or to her son. It has further been submitted that being constraint the applicant also issued a letter dated 14.02.2019 seeking information as to whether the property has been sold or not. It has further been submitted that the amendment application filed before the Arbitrator that the property in question has been sold and a sale certificate dated 02.02.2019 was issued and this fact has been brought to the notice of the applicant for the first time by the respondent no.1

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through application seeking amendment before the Ld. Arbitrator. It has further been submitted that it is pertinent to state herein that at no point of time any auction notice was ever issued in compliance of Rule 8 and 9 of the Security Enforcement Rules. It has further been submitted that the compliance of Rule 8 and 9 is mandatory before effecting any sale and no notice whatsoever either for public sale or for private treaty for effecting the sale was ever sent to the applicant herein. It has further been submitted that both the parties were contesting before the Learned Arbitrator and even from the proceedings of the Ld. Arbitrator it is apparent that the respondent no.1 never informed of any purported sale or sale notice w.r.t. the property in question. It has further been submitted that there was already a buyer available with the applicant who was ready and willing to pay Rs.7.50 crores for the property in question and to demonstrate the bonafide pay order of Rs.1.00 crore was also handed over to the respondent No.1. It has further been submitted that from the amendment application it has now been revealed that the property was sold for an amount of Rs.6,54,00,000/- i.e. much less than Rs.7.50 crores. It has further been submitted that the purported 30 days' notice of sale dated 05.11.2018 has been claimed by the respondent no.1 to have issued to the applicant herein and on perusal of the postal receipt, it is apparent that the respondent no.1 had posted the same on

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14.11.2018. It has further been submitted that firstly the said notice of sale was never received by the applicant and secondly without prejudice to the aforesaid and foregoing it is stated that even the mandatory period of 30 days, as apparent, was not given in terms of Rule 8 & 9 of the Securitisation Enforcement Rules, as the date of sale as per the respondents was 10.12.2018 and the 30 days' notice was dispatched only on 14.11.2018. Hence, the said notice in all stretch of interpretation was is bad in law. It has further been submitted that from the documents provided by the bank, it has become apparent that even the second 15 days' notice dated 11.12.2018 for auction sale on 28.12.2018 was posted on 12.12.2018. It has further been submitted that when the first 30 days' notice (notice dated 05.11.2018) itself was unsustainable in law, the question of second notice being 15 days' notice itself becomes illegal, moreover, even this notice never provided 15 days' time period as the same was dispatched on 12.12.2018 for sale on 28.12.2018. It has further been submitted that the respondent no.2 thereafter again issued 15 days' notice dated 11.01.2019 for sale by private treaty on 29.01.2019, however, the said notice, as apparent from the postal receipt, was dispatched on 22.01.2019 by the respondent no.2. It has further been submitted that it is crystal clear that the 15 days' time period if reckoned from even 22.01.2019 for auction date on

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29.01.2019 was not complete and once the 30 days' notice i.e. notice dated 05.11.2018 was illegal and unsustainable as 30 days' time period was not given, no second notice or notices of 15 days could have been issued and even if these 15 days' notices never fulfilled the 15 days' time period. It has further been submitted that the respondent bank has entered into Memorandum of Understanding with respondent no.3 and 4 on 01.02.2019 for an amount of Rs.6,53,00,000/-, firstly after expiry of 29.01.2019 for sale or MOU on 01.02.2019, no notice whatsoever was ever issued. Secondly if the Memorandum of Understanding is perused, it is apparent that on 27.01.2019 and on 28.01.2019 an amount to the tune of Rs.1.00 crore was already accepted by the respondent bank i.e. even prior to the expiry of 29.01.2019 [the date fixed for sale by private treaty as per notice dated 11.01.2019 (dispatched on 22.01.2019)]. It has further been submitted that the respondent no.2/ bank on 02.02.2019 issued the sale certificate in favour of respondent no.3 and 4 w.r.t. the property in question for amount of Rs.6,54,00,000/-. It has further been submitted that it is pertinent to state that the respondent no.1 vide its letter dated 22.10.2018 had rejected the offer of OTS and the sale of the property for an amount of Rs.7,25,00,000/-, however, the respondent bank has sold the property illegally at a lesser amount. It has further been submitted that the aforesaid notices are in clear violation of

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Rule 8 & 9 of the Security Enforcement Rules and contrary to the law settled in this regard by the Hon'ble Supreme Court in the case of Mathew Varghese, thus the sale of the property in question in favour of respondent no.3 and 4 from all corners is bad in law and thus deserves to be set aside. That the sale effected by the respondent No.1 without any notice or publication or notice to the applicant is null and void being contrary to the law settled in this regard by the Hon'ble Supreme Court in the case of Mathew Varghese. Besides, even in the amendment application the sale certificate has not been produced or filed before the Ld. Arbitrator. It has further been submitted that even the name of the buyer has not been disclosed and the applicants seek the liberty of this Tribunal to implead the buyer in the instant proceedings and is not in a position to implead as there is no details provided by the respondent no.1. It has further been submitted that this Tribunal may take judicial notice of the fact that arbitration proceeding is also a legal proceeding being quasi-judicial in nature carried out under the provisions of Arbitration and Conciliation Act. It has further been submitted that both the amalgamation as well as the sale of the property in question was deliberately concealed both from the Arbitrator as well as the applicant herein by the respondent no.1. It has further been submitted that the respondent no.1 could have easily intimated the applicant before the Ld. Arbitrator in the

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proceedings or could have served the notice of the sale if any, however, the same has not been done and thus this itself demonstrate that no notice of sale in compliance of Rule 8 and 9 of the Security Enforcement Rules and in compliance of guidelines of Hon'ble Apex Court was ever issued. It has further been submitted that the right to property is a well-established legal right under Article 300 A of the Constitution of India and this right has been well established and upheld by the Hon'ble Apex Court in its various rulings, furthermore, it is the right of the applicant that the property is auctioned at the highest market price and in the instant case it is not clear as to how the property was sold. It has further been submitted that there is no publication or notice of sale issued to the applicant as explained herein above and the property has been sold at the rate even less than the rate which was offered by the interested buyer i.e. Rs.7.50 crores and even as on date the buyer is interested to purchase the property for an amount of more than Rs.7 crores. It has further been submitted that this was well within the knowledge of the officers of respondent no.1, but the applicant has all apprehensions that the property in question has been sold behind the back of the applicant without following the due process of law for extraneous reasons. It has further been submitted that property in question was sold came to the light on 12.03.2019 when the respondent no.1 filed the amendment application

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before the Ld. Arbitrator, hence the instant application is well within the period of limitation. It has further been submitted that the sale of the property is illegal, contrary to SARFAESI Act, contrary to law settled in this regard by the Hon'ble Supreme Court and is an under-sale on extraneous reasons and thus merits to be set aside and be re-auctioned / re-sold at a better price in the market, furthermore the this Tribunal can also within its powers resale the same by inter-se bidding between the purported buyer and the intended buyer who is willing to purchase the property for the amount more than Rs.7 crores. Accordingly, it has been requested to allow the present securitization application.

3. On the other hand, it has been objected on behalf of the respondent FI and submitted that the respondent is a body incorporated under the provisions of the Indian Companies Act, 1913 and registered with Reserve Bank of India as scheduled Seal of Cath Commercial Bank and carrying on the banking business under the Banking 105 Regulations Act, 1949. It has further been submitted that IDFC FIRST Bank erstwhile capital first limited (amalgamated with IDFC Bank limited and presently known as IDFC FIRST BANK) is a "Bank" as defined under Section 2(d) of the Recovery of Debts Due to Banks Financial Institutions Act, 1993, is having its registered office at KRM Tower, 7th Floor, No.1, Harrington Road, Chetpet, Chennai-600031. It has further been

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submitted that in the month of August 2013, September-2013 and September 2014, Mr. Amit Gupta, Mr. Rajiv Mohan, Ms. Jyoti Gupta, M/S PP Industries, M/S VS Matrix & Ms Krishna Gupta (Applicant herein), approached and requested the respondent bank for grant of financial assistance in the nature of loan facility under the category of Mortgage Loan Agreement (Five Agreements) (Loan account No. 1498271, 1559372, 1559399, 2392291 & 1532392) of Rs.2,28,16,347.00, Rs.1,35,20,792.00, Rs.1,35,20,793.00, Rs.1,10,50,000.00 & Rs.2,18,42,068.00 against the property bearing No. A-70, BLOCK-A, NIRMAN VIHAR, NEW DELHI-110092. It has further been submitted that keeping in view of the request of the applicants herein and valuation of the property and deeming the information supplied to be true and correct, the respondent bank issued an offer letter to the applicants herein and the same was duly accepted by the applicants herein. It has further been submitted that once accepted by the Applicants herein, the respondent bank sanctioned the loan amounts of Rs.2,28,16,347.00, Rs.1,35,20,792.00, Rs.1,35,20,793.00, Rs.1,10,50,000.00 & Rs.2,18,42,068.00 and disbursed the same under four loan accounts no. 1498271, 1559372, 1559399, 2392291 & 1532392. It has further been submitted thereafter Mortgage Loan Agreements were executed by the Applicants herein dated 31.08.2013, 23.09.2013 & 05.09.2014. It has further

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been submitted that on the request of Applicants herein, the respondent bank disbursed the amount of Rs.2,28,16,347.00, Rs.1,35,20,792.00, Rs.1,35,20,793.00, Rs.1,10,50,000.00 & Rs.2,18,42,068.00 on 04.09.2013, 25.09.2013, 29.09.2013 & 08.09.2014 against the said property to the Applicants herein. It has further been submitted that applicants herein also created a mortgage in respect of the property bearing No.A-70, BLOCK-A, NIRMAN VIHAR, NEW DELHI-110092, against which the loans were sanctioned to them and the applicants herein also executed a Declaration, Demand Promissory Note and an irrevocable power of attorney (with power to sell) in favour of Respondent bank. It has further been submitted that applicant herein undertook to repay the said loan along with interest (Floating Rate of Interest) respectively and the interest rate agreed is 11.90% & 12.50%, (subject to variation in case of rates on interest changing during the repayment term). It has further been submitted that the applicants herein agreed to repay the loan in 172, 171 & 180 equated monthly instalments each in terms of the repayment schedules along with interest respectively. It has further been submitted that it has further been submitted applicants herein agreed to strictly adhere to the repayment schedules. It has further been submitted that applicant's agreement number maintained by the respondent bank is 1498271, 1559372, 1559399, 1392291 & 2392292 and executed the following documents in favor of

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the Respondent bank on 31.08.2013, 23.09.2013 & 05.09.2014:- a) mortgage loan agreement: by virtue of this agreement applicants herein agreed and undertook to repay the loan amount of Rs.2,28,16,347.00, Rs.1,35,20,792.00, Rs.1,35,20,793.00, Rs.1,10,50,000.00 & Rs.2,18,42,068.00 along with interest in terms of the agreement (under the floating scheme) per annum in minimum monthly repayment instalment in terms of the repayment schedule. It has further been submitted that applicants herein agreed that the interest rate agreed would be under the variable scheme and the borrower & co-borrowers of the respondent bank would pay interest in terms of the rates prevailing at the tenure of the agreement, borrower & co borrowers of the respondent bank further agreed that in case any instalment is delayed the borrower & co borrowers of the respondent bank would be liable to pay an additional interest or such other rate as per the rules of the respondent bank in force from time to time and also entitled to take possession of the Mortgaged Property from the borrower/occupant of the property and can also sell the said property to any other party on such terms and conditions as the respondent bank may deem fit to recover the outstanding. (b) DECLARATION: Declaring that the property in question has not any other been mortgaged by applicants herein institution/bank/NBFC/person and the said property is free from all the encumbrances and also an

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undertaking from the applicants that they would regularly pay the taxes as and when demanded and keep the title of the property marketable all throughout the tenure of the loan. It has further been submitted that it was also declared that they have also not received any acquisition notice from the concerned authority. c) DEMAND PROMISSORY NOTE: Promising that the Applicants will pay the amount financed for value received together with interest at the rate sanctioned per annum with rests or such other rates respondent bank may specify from time to time. d) IRREVOCABLE POWER OF ATTORNEY (with power to sell): Authorizing the respondent bank to take over the possession of the mortgaged immovable property No. A-70, BLOCK-A, NIRMAN VIHAR, NEW DELHI-110092 and sell the same to appropriate the dues in the event of default by the Applicants herein. It has further been submitted that pursuant to the said receipt of the financial assistance in the nature of loan facility, the applicant herein failed to adhere to the financial discipline of the repayment of the loan facility either towards principle of interest or charges thereon. It has further been submitted that several cheques till date issued by the applicant for the repayment were dishonored/ returned back unpaid with remarks "Refer to Drawer/ Insufficient Funds". It has further been submitted that applicants were served with reminders to pay the amount which is due towards as a result of the return of the cheques

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which were presented for realization of the instalments amount. It has further been submitted that persistent requests were made by the officials of the respondent bank to the applicant to abide by the terms of the agreement entered between the parties, they were also told that the time was the essence of the contract, to which the applicant have been promising from time to time but had failed to honour the commitments. It has further been submitted that the applicant herein has defaulted in repayment of many monthly instalments which were due, thereafter notice was issued u/s 13(2) of SARFAESI Act on 06.06.2018 demanding total amount of Rs.7,82,90,431.81 due as on 06.06.2018. Thereafter property was sold and after selling the property the applicants are liable to pay a sum of Rs.2,13,73,475/- (Rupees Two Crores Thirteen Lakhs Seventy Three Thousand Four Hundred Seventy Five Only) as on April-2019, payable by the Applicants herein towards the five Loan Accounts No's 1498271, 1559372, 1559399, 1392291 & 2392292 after the sale of the mortgaged property i.e. No. A-70, BLOCK-A, NIRMAN VIHAR, NEW DELHI-110092. It has further been submitted that as per the accounts maintained by the respondent bank, applicants herein (Jointly & Severally) are liable to pay a sum of Rs.2,13,73,475/-charges as on April-2019 which are loss on sale date after the sale of the mortgaged property. It has further been submitted that the

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respondent bank issued demand notice under section 13(2) of SARFAESI Act on 06.06.2018 demanding total amount of Rs.7,82,90,431.81 due as on 06.06.2018 and the said demand notice dated 06.06.2018 was server to all the applicant herein and publication of the same was made on 06.07.2018 in News Paper (Both Hindi and English Editions). It has further been submitted that there were no reply/objections raised to the said demand notice. It has further been submitted that despite the service of above said notices through publication the applicants failed to discharge their liability and the respondent bank had no other option left other than approaching the CMM for exercising its powers under section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 for appointment of a receiver for taking physical possession of the said secured assets bearing address ". No. A-70, BLOCK-A, NIRMAN VIHAR, NEW DELHI-110092." and forwarding/handing over the possession to the respondent bank. It has further been submitted that pursuant of filing the Section 14 application by the respondent bank, the receiver was appointed by the Ld. CMM Sh. Shivali Sharma, Karkardooma District Court on 19.09.2018 to which the Receiver handed over the possession to the bank on 22.10.2018. It has further been submitted that the respondent no.1/bank published the notice of possession under the rule 8 (1) of the immovable property in the newspaper Hindi and

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English dated 24.10.2018 and on 22.10.2018 also intimated to the applicants by way of speed post. It has further been submitted that Mr. Amit Gupta (one of the borrowers) had approached the respondent bank with one-time settlement offer vide letter dated 01.10.2019 the respondent bank on 23.10.2019 rejected the one-time settlement offer as the terms proposed were not acceptable to the bank, thereafter no one approached the respondent bank for settlement of dues of the respondent bank. It has further been submitted that respondent bank put the mortgaged property in public auction and the notice of the sale published in the newspaper i.e. in Indian Express and Jansatta dated 06.11.2018 & 07.11.2019 respectively and also informed the applicants herein by way of speed post the auction failed due to want of appropriate bids. It has further been submitted that having left with no other option the respondent bank had put out another Auction and published the notice in Indian Express and Jansatta dated 11.12.2018 & informed the applicant herein by way of speed post. It has further been submitted that the said auction failed due to want of appropriate bids and having left with no other option the respondent bank had moved for Private Treaty and published the notice in business standards dated 15.01.2019 & informed Applicant herein by way of speed post. It has further been submitted that the property was sold through Private Treaty to Uma Aggarwal

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W/o Rajesh Aggarwal and Ms. Anita Aggarwal on 01.02.2019 by the memorandum of Comp understanding between the IDFC bank and Uma Aggarwal W/o Rajesh 2105 Aggarwal and Ms. Anita Aggarwal. It has further been submitted that respondent bank after selling of the mortgaged property in private treaty to Uma Aggarwal W/o Rajesh Aggarwal and Ms. Anita Aggarwal issued the sale certificate under rule 9 (6) of security interest enforcement rules on 02.02.2019 after duly receiving the sale price of Rs.6,50,00,000/- in full and handed over the property. It has further been submitted that despite knowledge of the sale of the property the applicant did not approach to this Tribunal earlier and now approached the Tribunal without clean hand and the present SA is liable to be dismissed in toto. It has further been submitted that this SA filed by the applicant bank is barred by law of limitation therefore not liable to entertained by the Tribunal. It has further been submitted that the respondent no.1/bank most respectfully submits that there are no issues which would entitle the applicant to get any relief as all the measures taken by the respondent bank are in accordance with the procedure and the present SA is liable to be dismissed with exemplary costs. It has further been submitted that the present application filed by the applicant is only to cause undue loss to the respondent no.1/bank. It has further been submitted that applicant has not approach with clean hand and

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concealed the material facts from this Tribunal and also not disclosed the buyer name of the property in question which was sold according to the applicant and the present S.A. merits to be dismissed on this ground alone. It has further been submitted that the grounds taken in the securitization appeal filed by the applicant are not maintainable and are also not covered under the provisions of the Act. The said S.A. merits to be dismissed on this ground alone. It has further been submitted that respondent bank most respectfully submits that there are no issues which would entitle the applicant to grant of any relief as all the measures taken by the answering respondent bank are in accordance with the Procedure and the Present SA is liable to be dismissed with exemplary Costs.

4. It has also been objected on behalf of the auction purchaser that the present Securitisation Application is not maintainable as the same has been filed on frivolous ground just to mislead this Tribunal. It has further been submitted that at the outset, the respondents no.3 & 4 denied each and every allegation in the amended securitization application which besides contrary to the facts of the case, also amount to an attempt to change the vary cause of action of Original Securitisation Application in the garb of additional pleadings as well as tweaking with the original cause of action. It has further been submitted that none of the facts as stated in the

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amended Securitisation Application be deemed to be admitted till the same are specifically acknowledged by the respondents. It has further been submitted that admittedly Security applicant is the registered owner and mortgage the property in question i.e. A-70, Block-A, Nirman Vihar, Delhi-92 in five loan agreements having loan account No. 1498271, 1559372, 1559399, 239229 1 & 1532392 of Rs.2,28,16,347.00, Rs.1,35,20,792.00, Rs.1,735, 20,793.00 and 1,10,50,000.00 & Rs.2,18,42,068.00 and the aforesaid loan agreements were executed in favour of respondent FI on 31.08.2013, 23.09.2013 & 05.09.2014. It has further been submitted that consequent to the default, account of Security Applicant classified as NPA as per prudential norms of RBI on 01.05.2018 and respondent FI issued the Demand Notice U/s 13 (2) of the Act dated 06.06.2018 for an amount of Rs.7,82,90,431.81 the due as on 06.06.2018. It has further been submitted that the said demand notice was served as per Rule 3 of SIER, 2002 including publication upon the security applicant, but the security applicant neither raised the objections nor liquidate the dues of the respondent FI. It has further been submitted that consequent to the non-payment of dues, respondent FI filed an application under Section 14 of the Act, whereby Ld. CMM vide its order dated 19.09.2018 appointed a receiver who took the possession of Secured assets and handover the possession to the respondent FI on

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22.10.2018, thereafter, respondent FI complied the provisions of Rule 8 (1) and (2) by sending the same by post on 25.10.2018 and publication in the newspaper apart from affixation on the date of possession. It has further been submitted that the security applicant who denied the knowledge of enforcement proceedings in its entire securitisation application cannot deny the knowledge of taking physical possession on 22.10.2018. It has further been submitted that the security applicant who himself file the securitisation application having address in the affidavit as 486, Patparganj Industrial Area, delhi-110092 where all the notices were sent and as per general clauses "27. *Meaning of service by post. Where any central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression 'serve or either of the expressions 'give' or 'send' or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. The Apex Court in K.D. SHARMA v. SAIL MANU/SC/3371/2008: (2008)12 SCC 481, while dealing with power and duty of the writ court held that where petitioner makes false statement or conceals*

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material facts or misleads the court, the court may dismiss the writ petition at the threshold without considering the merits of the claim and that the court would be failing in its duty if it does not reject the petition on the said ground. It has further been submitted that the Apex Court further held that petitioner in such a case is also required to be dealt with for contempt of court for abusing the process of court. It has further been submitted that the security applicant who was aware about the enforcement proceeding approached the respondent FI with an offer letter dated 01.10.2018 by offering an amount of Rs.7.25 Cr towards full and final settlement, which was rejected by the respondent FI vide letter dated 23.10.2018, whereby respondent FI narrated the facts regarding till date steps taken under SARFAESI proceedings. It has further been submitted that the security applicant who failed to liquidate the dues, respondent FI put the property for auction two times and thereafter issued the auction notice dated 11.01.2019 by way of sale under private treaty under sub Rule d of Rule 8 (5) & Rule (8) of SIER, 2002 and the same was sold on 29.01.2019 to respondent no.3 & 4 for total sale consideration of Rs.6.54 crores. It has further been submitted that on receipt of entire sale consideration, respondent FI issued a sale certificate dated 02.02.2019 in favour of respondent no. 3 & 4 which was further registered vide documents no. 780 in Book No. 1 Volume No. 1509 at

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Page No. 111-117 on 13.02.2019 with Sub-Registrar VIIIA, New Delhi, thereafter respondent no. 3 & 4 get the site plan approved from the concerned corporation and after demolish the old structure, constructed Stilt, Ground, First, Second and third Floor, out of which three floors, ground, second and third floors has already been sold to three different persons. It has further been submitted that the securitisation application and amendments carried out by the SA applicant are not only beyond limitation but also without any cause of action. It has further been submitted that under the garb of amended securitisation application, the security applicant tried to curtail the rights of auction purchasers who purchase the property & constructed four floors and also sold three floors out of the same, hence the present securitisation applications is devoid of cause of action as the same has come to be filed on 05.04.2019 without any delay application against the sale conducted on 01.02.2019 vide auction notice dated 11.01.20. It has further been submitted that Hon'ble DRAT Chennai, in the matter of Union Bank of India vs Binoy A.S & Ors hold as *"12. On a scrutiny of the material, I am of the considered view that issuance of Sale Certificate cannot be taken as a measure for challenging action of Bank for calculating period of limitation as indicated in Section 17 of the Act"*. admittedly security applicant has challenged the sale of property in question and not challenge any sale notices. It has further

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been submitted that as the sale or sale certificate is not an independent measures, hence, any securitization application filed without challenging the specific sale notices is nullity and not maintainable, hence liable to be dismissed, so, measures indicated above are to take possession for the purpose of sale to realize debt. It has further been submitted that taking possession is an independent step and conducting sale is also an independent step. It has further been submitted that if these two steps are challenged and Tribunal ultimately set aside that action, bank has to take fresh steps, after conducting sale, issuance of sale certificate or its registrations are only consequential steps, and they are not independent in nature. It has further been submitted that only if the sale is concluded and confirmed, then, question of issuance of Sale Certificate would arise, then, on what ground a Sale Certificate can be challenged is a million-dollar question. As seen from pleadings of securitisation application, entire challenge is as to the manner in which sale is conducted. It has further been submitted that if pleadings are taken into consideration, the grievance of 1st respondent is for not following the procedure of fixing valuation and not giving proclamation of sale by marking correct boundaries, etc. It has further been submitted that as already referred to above, Issuance of Sale Certificate and its Registration is only a follow up action of sale conducted, which is a primary action, whether 1st respondent

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can be allowed to challenge the consequential action, without challenging primary action, the answer would be in negative, in other words, this consequential action has no independent status, therefore, it cannot be challenged without challenging the primary action namely taking of possession which was on 22.10.2018 or sale of property which was on 02.09.2019, for both these reliefs, the prescribed time expired as on the date of filing of SA. It has further been submitted that as already referred to above, the grounds urged in Securitisation Application are grounds challenging the sale certificate, but not any specific Sale notices or measures, which is a principal action needs to be challenged, moreover the present securitization application has not been filed within the prescribed time limit. It has further been submitted that respondent no.3 & 4 is a bonafide purchaser who has duly paid the entire sale consideration in compliance of Rule 9 (2) to (5) of SIER, 2002 and under the garb of Securitisation Application, the Security Applicant tried to curtail the rights of auction purchasers who purchase the property & constructed four floors and also sold three floors out of the same. It has further been submitted that as transpired from the records, the auction notices were duly published and affixed in compliance of mandate of rule 8 (6) and rule 9 (1) of SIER, 2002 as stated, respondent FI also obtained valuation of subject property before issuing of said auction notices and as

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has already been noted, the demand notice has duly been served upon the Security Applicant. It has further been submitted that consequent to the non-payment of dues, respondent FI filed an application under Section 14 of the Act, whereby Ld. CMM vide its order dated 19.09.2018 appointed a receiver who took the possession of Secured assets and handover the possession to the respondent Institution on 22.10.2018. It has further been submitted that the Security applicant who denied the knowledge of enforcement proceedings in its entire securitisation application cannot denied the knowledge of taking physical possession on 22.10.2018, therefore, all the action of respondent FI are within four Corners of the Act. It has further been submitted that the S. Applicant herein filed the present application on false and flimsy ground to derail the present recovery measures initiated by Respondent Institution and curtail the legal rights of answering respondent no.3 & 4. Ld. counsel for the auction purchaser has relied upon the judgement of Hon'ble Apex Court in the matter of "Arce polymers P Ltd vs Alphine Pharmaceuticals P Ltd", Hon'ble High Court of Bombay in "Deepika Paresh Thakkar vs. Gruh Finance Ltd". & Ors. 2015, "Kailasam P Versus The Karnataka Bank Ltd" passed by Hon'ble High Court of Karanataka Writ petition no. 11273 of 2024, "Guda Leelavati Vs Indian Bank and Ors" passed by Debts Recovery Tribunal, Visakhapatam,

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MANU/DR/0165/2025, order dated 26.07.2019 in the matter of Central Bank of India, Asset Recovery Branch Vs. Respondent: The Registrar, DRAT and Ors passed by High Court of Madras, W.P. No.10053 of 2019 W.W.P. Nos. 10628, 10629 and 15968 of 2019, Order dated 22.07.2024 in the matter of "Usha Kumari VS State Bank of India and Ors" passed by High Court of Patna, C.W.J.C. no.10310 of 2019, Order dated 30.04.2014 in matter of "IFCI Limited VS Om Shivay Real Estate Private Limited" passed by High Court of Delhi, W.P. (C) no.3060 of 2012 and CM 6792 of 2012 and Hon'ble Apex Court in the Matter of CELIR LLP vs Sumati Pd. Bafna.

5. In order to prove its case, the securitization applicant has filed his evidence way of affidavit of Shri Krishna Gupta who has proved the documents as Affidavit in Evidence and exhibited the documents, Copy of the amended application dated 12.03.2019 filed before the Sole Arbitrator exhibited as Ex. AW1/1, Order dated 09.04.2018 of the Hon'ble High Court of Delhi as Ex. AW1/2, Order dated 07.05.2018 as Ex. AW1/3, Notice issued under Section 13(2) as Ex. AW1/4, Sale notice dated 05.11.2018 as Ex. AW/5, Sale notice dated 11.12.2018 as Ex. AW1/6, Arbitration petition filed by the respondent no.1 as Ex. AW1/7(Colly), the proceedings of the arbitration dated 16.11.2018, 18.12.2018, 17.01.2019, 04.02.2019 and 14.02.2019 as Ex.AW1/8, Copy of mail dated 13.02.2019 as

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Ex.AW1/9, Copy of mail dated 12.03.2019 of the respondent no.1 through its counsel as Ex.AW1/10, Notice dated 05.11.2018 together with postal receipts as Ex. AW1/11(Colly), Notice dated 11.12.2018 together with postal receipts as Ex. AW1/12(Colly), Notice dated 11.01.2019 for sale by private treaty on 29.01.2019 together with postal receipt as Ex. AW1/13, MOU dated 01.02.2019 as Ex. AW1/14 and Sale certificate dated 02.02.2019 and letter dated 23.10.2018 as Ex.AW1/15.

6. In order to prove its case, the respondent no.1 bank has filed its evidence by way of affidavit of Ashutosh Sharma, authorized officer of M/s IDFC First Bank Ltd, who has proved the documents as Affidavit in Evidence and exhibited the documents, Letter of authorization as Ex.RW1/1, Loan agreement as Ex.RW1/2(Colly), Demand notice under Section 13(2) as Ex.RW1/3(colly), possession notice under the Rule 8(1) as Ex. RW1/4(colly), OTS offer vide letter dated 01.10.2019 as Ex.RW1/5, Sale notice as Ex. RW1/6 (colly), sale notice dated 15.01.2019 as Ex. RW1/7(colly), Sale certificate under Rule 9 (6) of security interest enforcement rules as Ex. RW1/8 and MOU executed between the bank and auction purchaser as Ex. RW1/9.

7. In order to prove its case, the respondent no.3 and respondent no.4 (auction purchasers) have filed their evidence

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by way of affidavit of Mrs. Uma Aggarwal W/o Sh. Rajesh and Mrs. Anita Aggarwal W/o Sh. D.K. Aggarwal, who have proved the documents as Affidavit in Evidence and exhibited the documents Sale Certificate exhibited as Ex. RW-3/1 and Registered Sale Certificate as Ex. RW-3/2.

8. Heard the rival contentions of both the parties and perused the records thoroughly.

9. In the present matter, admittedly the borrower has availed the loan facilities from the respondent FI against the mortgage of the property in question. Apparently, there is default on the part of the borrower/mortgagor/guarantor in paying the dues of the respondent FI and till date the borrower/ mortgagor/guarantor have not paid the dues of the respondent bank. It has been argued on behalf of the applicants that the respondent FI has not followed the mandatory provisions while initiating the measures/actions under the SARFAESI Act, 2002 and the Security Interest (Enforcement) Rules, 2002 and the entire actions of the respondent FI qua the property in question is bad in law. On behalf of the respondent FI, it has been argued that the demand notice dated 06.06.2018 under section 13 (2), symbolic possession dated 22.10.2018 under section 13 (4) and the sale notice dated 11.01.2019 have been served upon all the borrowers/guarantors/mortgagors as per the Security Interest (Enforcement) Rules, 2002. On perusal of the records,

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it appears that admittedly the respondent FI had issued the demand notice dated 06.06.2018 u/s 13 (2) of SARFAESI Act 2002 and as per the service proof filed by the respondent FI the said demand notice was served upon all the borrowers/guarantors/mortgagors, but they have failed to file any reply/objection. Further, the symbolic possession notice dated 22.10.2018 under section 13 (4) of the SARFAESI Act, 2002 was also served upon the borrower/mortgagor/guarantor. Further, record reveals that the sale notice dated 11.01.2019 has also been served upon all the borrowers/guarantors/mortgagors as per the Security Interest (Enforcement) Rules, 2002. Apparently, the demand notice 06.06.2018 under section 13 (2) of the SARFAESI Act, 2002 was duly served upon the borrower/ guarantor/mortgagor and despite receiving the said demand notice the all the borrowers/guarantors/mortgagors have failed to pay the dues of the respondent FI and thus, this Tribunal is of the view that there was no illegality or irregularity on the part of the respondent FI in taking measures under the SARFAESI Act, 2002 including the aforesaid demand notice under section 13 (2), symbolic possession notice under section 13 (4) and the sale notice. Though, the applicant has also raised the objection that when the arbitration proceeding is pending, the respondent FI cannot proceed under the SARFAESI Act, 2002. However, this Tribunal is of the view that it is settled legal

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position that both the RDDB Act and the SARFAESI Act can be resorted to simultaneously and thus the arbitration proceedings are only an alternative to the RDDB Act and Section 37 of the SARFAESI Act, in fact, makes it clear that the provisions of the Act are in addition to and are not in derogation of any other law for the time being in force. Accordingly, the said objection is not sustainable and the same stands rejected.

10. Apparently, the demand notice under Section 13 (2) of SARFAESI Act have been duly issued and served upon the borrower/mortgagor/guarantor and the borrower has not cleared the dues of the respondent FI till date. That the respondent FI has issued the demand notice dated 06.06.2018 under Section 13 (2) of the SARFAESI Act, 2002 thereby calling upon the borrower/mortgagor/guarantor to pay the dues of the respondent FI within 60 days, but despite receiving the said demand notice the borrower/mortgagor/guarantor has failed to pay the dues of the respondent FI, which is public money, within 60 days, therefore, the respondent FI has proceeded further under the SARFAESI Act, 2002 and the Security Interest (Enforcement) Rules, 2002 to recover its dues. Admittedly, the borrower/mortgagor/ guarantor has not denied about the availment of the loan facilities from the respondent FI against the mortgage of the property in question. Further, till date the borrower/ guarantor/mortgagor

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have not come forward to pay the entire dues of the respondent FI and even they have not shown any bonafide to pay the dues of the respondent FI, which is public money, and these borrowers/mortgagors/guarantors cannot run away by raising such frivolous objections.

11. In view of the above facts and circumstances and SARFAESI Act and Security Interest (Enforcement) Rules, 2002 this Tribunal is of the affirmed view that the respondent FI has followed the mandatory procedures as laid down under the SARFAESI Act and Rules, while initiating measures for recovery of its dues, therefore, the SARFAESI Application is liable to be dismissed.

**(ORDER)**

The SARFAESI Application filed by the applicant stands dismissed alongwith pending applications, if any, and the respondent FI is at liberty to proceed further to recover its dues as per law. The present order be uploaded immediately on the website of this Tribunal.

Final Order/Judgement signed, sealed, dated and pronounced in the open court on this 02.07.2026.

Dictated & Corrected by me.

  
**(GOVIND BALLABH SHARMA)**  
**PRESIDING OFFICER,**  
**DRT-I, Delhi**