Debts Recovery Tribunal-I, Delhi
4th floor, Jeevan Tara Building,
Parliament Street, New Delhi

Presiding Officer: Shri Govind Ballabh Sharma

T.A. no.398 of 2023

HDFC Bank Ltd.
Department for Special Operations
5th Floor, Ansal Classique Tower
Plot No.1, J Block, Community Centre
Rajouri Garden,
New Delhi-110027 Applicant

Versus

1. M/s Gautam Techagro India Pvt.Ltd.
Registered Office:
357, Tarun Enclave
Pitampura, Delhi-110034

2. Mr. Shashi Bhushan Sethi
Director/Guarantor/Mortgagor
278, Tarun Enclave
Pitampura, Delhi-110034

3. Mr. Chandan Sethi
Director/Guarantor/Mortgagor
278, Tarun Enclave
Pitampura, Delhi-110034

4. Mr. Gian Chand
(Guarantor / Mortgagor)
278, Tarun Enclave
Pitampura, Delhi-110034

5. Mrs. Chanchal Sethi w/o Gian Chand
(Guarantor/Mortgagor)
278, Tarun Enclave
Pitampura, Delhi -110034

6. Mr. Satnam Arora
(Guarantor/Mortgagor)
252, Tarun Enclave
Pitampura, Delhi -110034

Sd/-

7. Mr. Vikram Puri (Guarantor)
10/5, Jai Dev Park
East Punjabi Bagh
New Delhi-110026

8. Ms. Amita Puri (Guarantor)
10/5, Jai Dev Park
East Punjabi Bagh
New Delhi-110026 Defendants

Present: Sh.Ronnie S. Barara, Counsel for applicant bank
Mr. Pallav Saxen, Ld. Ld. Counsel along with
Sh.Ankit Rana, Ld. Counsel for defendant no.7 & 8.

Date of Reserve: 04.06.2026
Date of Pronouncement: 10.07.2026

FINAL ORDER

This original application has been filed by the applicant bank on 18.07.2018 through Mr.Anirudh Bhargav, Authorized representative of the applicant bank, under Section 19 including Section 19(5-B) of Recovery of Debts Due to Banks and Financial Institution Act 1993 Read with Rule 12(8) of the Debt Recovery Tribunal (Procedure) Rules, 1993 and Provisions and Principles Enunciated under Order XII, Rule-6 of the Civil Procedure Code 1908 seeking order against the defendants for recovery of a sum of Rs.56,07,73,454.10 (Rupees Fifty Six Crore Seven Lacs Seventy Three Thousand Four Hundred Fifty Four & paisa Ten only) as on 23.06.2018 along with pendentelite and future interest @18.00% per annum from 23.06.2018 till the date of realization along with costs.

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2. The brief facts of the case are that defendant no.1 being Private Limited Company of defendants no.2 and 3 as directors and defendants no.4 to 8 for the business of milling and exporting / importing of rice, flour, pulses etc. from applicant bank availed various credit facilities. It has been submitted on behalf of the applicant bank that defendants no.4 to 8 stood as guarantor/mortgagor of their properties to credit facilities availed by defendant no.1 and the applicant bank sanctioned initially to defendant no.1 credit facility of PCL/PCFC Post & Pre-shipment limit of Rs.500.00 lacs on 25.06.2012 @11.55% interest plus L+400 bps in Foreign Currency for working capital requirement as per Board Resolution authorizing defendant no.2 to 3 for execution of security documents. In addition, another partnership concerns of defendant no.1 and 2 namely Gautam Overseas availed separate credit facilities from the Applicant Bank also provided Corporate Guarantee to secure the credit facilities availed by defendant no.1 and on the request of Gautam Overseas vide letter dated 29.04.2013, credit facilities availed were transferred into credit limits of defendant no.1. It has further been submitted that on the request of defendant no.1 based on Board Resolutions, applicant bank sanctioned / enhanced / Renewed the various financial credit facilities for Rs.4000 lacs on 03.07.2013, further lastly enhanced to Rs.5500 lacs as Cash Credit limit and

Sd/-

Rs.147.50 lacs as PSR limit on 29.06.2017. It has further been submitted that the applicant bank renewed the limits and accordingly the defendants no.2 & 3 executed various security documents for credit facilities availed by defendant no.1 from time to time. It has further been submitted that in order to avail the credit facilities by defendant no.1 through defendants no.2 and 3 executed personal guarantee, Master facility Agreement and Master facility Agreement governing Foreign Exchange Contracts, Letter of Hypothecation of raw materials – both present & future, Stocks, Book Debts, goods – furnished and semi-finished, movable plant & machinery, vehicles etc., Irrevocable Power of Attorney, Demand Promissory Note, Letter of Continuity, Undertaking cum Indemnity, Demand Promissory Note for USD 909000 all dated between 27.06.2012 to 30.06.2017. Further, defendants no.2 to 5 also executed Letter of Continuing Guarantee availed by defendant no.1 on various dates between 27.06.2012 and 30.06.2017.

3. It has also been submitted on behalf of the applicant bank that in order to secure the credit facilities, the defendants no.4 and 5 created mortgage of properties consisting entire basement, ground floor, mezzanine floor built on Plot No.357, Tarun Enclave, Pitampura, Delhi on 27.06.2012 & First Floor, Second and Third Floor of property on 20.10.2015 and Plot No.276, Tarun Enclave, Pitampura, Delhi respectively in favor

Sd-

of the applicant bank by depositing the title deeds of property to create mortgage and executed Declaration-cum-Indemnity bond and Memorandum of Entry was drawn by applicant bank on 27.06.2012. It has further been submitted that the defendant no.6 also deposited title documents of Plot No.252, Tarun Enclave, Pitampura, Delhi with the applicant bank to create equitable mortgage and executed Declaration-cum-Indemnity dated 26.09.2012 & 20.10.2015 and further the Defendant no.5 also deposited title documents of Property No.245, Dera Ghazi Khan, Tarun Enclave, Pitampura, Delhi on 20.10.2015 and accordingly the applicant bank recorded Memorandum for Creation of Mortgage by delivery of title deeds. It has further been submitted that in order to secure additional credit facilities to defendant no.1, the defendant no.7 & 8 also deposited title documents of their joint properties being Property No.56, Block C, Pocket 9, Sector-7, Rohini, Delhi and Property No.13, Block C, Pocket 9, Sector-7, Rohini, Delhi and in addition, the defendant no.8 also deposited the title documents of property bearing no.24 (except ground floor), Block E, Pocket 2, Sector-7, Rohini, Delhi with intention to create equitable mortgage thereon and also executed Declaration-cum-Indemnity dated 21.08.2014 and then on 30.09.2014 for all the six deeds of indemnities executed by defendant no.4 to 8 with applicant bank.

Sd/-

4. It has further been submitted on behalf of the applicant bank that the defendant no.2 deposited title documents of Industrial land measuring 2.83 acre, part of Gata/Khasra No.251, Khata No.00025, Village Mundiya Khurd, Tehsil Bilaspur, Rampur, UP on 20.10.2015 and applicant bank created Memorandum recording Past Transaction for creation of Mortgage and as per last letter of sanction dated 29.6.2017 issued by the applicant bank, beside prime security of hypothecation of first & exclusive charge on current assets, 5 properties were held as collateral security i.e. (i) Property No.278, Tarun Enclave, Pitampura, Delhi, (ii) H.No.357 (basement & GF), Tarun Enclave, Pitampura, Delhi, (iii) H.No.357 (FF, SF & Third floor), Tarun Enclave, Pitampura, Delhi, (iv) Property/Gate/Khasra No.251, Village Mundiya Khurd, land measuring 2.83 acre, and (v) H.No.245, Tarun Enclave, Pitampura, Delhi. It has further been submitted that after availing the aforesaid loan facilities and timely sanction of credit facilities including disbursement of credit facilities in strict adherence to the terms and conditions of loan agreement, the defendants failed to comply with sanction terms and the account maintained by the defendant no.1 defaulted in submitting stock statement since March 2018 and the applicant bank during inspection found that defendants have disposed off/siphoned off the stocks hypothecated

Sd-

without any permission. It has further been submitted that the defendants have also failed to comply with prudential norms and guidelines issued by RBI from time to time and committed defaults in repayment of debt resultantly the account became irregular. Thereafter, the applicant Bank issued recall notice dated 23.06.2018 withdrawing the credit facilities but defendants failed to regularize the account and as per Annual Return before Registrar of Companies, the defendants in their Balance Sheet as of 31.03.2017 showing unconditionally admitting owing Rs.5500 lacs towards the applicant bank as secured loans, which is sufficient to pass Recovery Certificate. It has further been submitted that the estimated value of mortgaged properties is not sufficient to recover total dues and defendant no.2, 3, and 5 to 8 have shareholdings in various companies i.e. Shashi Foods (India) Pvt. Ltd., Puri Realtors Pvt. Ltd., Shehanshah Shares & Stocks Pvt. Ltd. and P.P. Resorts Pvt. Ltd. including other personal assets, hence the applicant bank has approached this Tribunal for recovery of their dues.

5. Notice under Section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 dated 19.09.2018 was issued to the defendants to pay the outstanding amount along with future interest and the Hon'ble DRAT, Delhi vide order dated

Sd-

19.11.2018 appointed Court Commissioner in M.A. 433/2018 for taking physical possession of three properties i.e. 357, A Block, Tarun Enclave, Pitampura Delhi (Basement, Ground Floor, Mezzanine Floor, First Floor, Second Floor and Third Floor) and Property No.278, Tarun Enclave, Pitampura, Delhi and Property No.245, Tarun Enclave, Pitampura, Delhi and the possession of the same were handed over to the Authorized Officer of Applicant Bank. Thereafter, the applicant Bank issued possession notice dated 10.12.2018 for taking physical possession of secured assets under Rule 8 (1) of SARFAESI Rules 2002 and as per order in I.A.No.271/2019 dated 20.08.2020, Ld. Tribunal granted permission to sell the mortgaged properties by virtue of invoking the provisions under SARFAESI Act, the applicant bank successfully auctioned the four mortgaged properties on 23.11.2020 for total amount of Rs.2489.00 lacs and accordingly Sale Certificates were issued to the auction purchasers of properties.

6. Notices of this O.A. were issued to the defendants and despite of proper service, the defendants no.1 to 6 have chosen to absent from the proceedings. As per order dated 07.08.2020, the defendant no.1 to 6 have been proceeded ex-parte as they have not appeared before the Tribunal and even written statement, evidence and affidavit of assets have not

Sd-

been filed by the defendants. However, the defendants no.7 & 8 filed Misc. Application being M.A.No.54/2025 on 02.06.2025 under Section 25 and 19 (25) of the RDDBFI Act 1993 for setting aside ex-parte order dated 07.08.2020 and vide order dated 03.09.2025, this Tribunal allowed the application of defendants no.7 & 8 along with written statement and rejoinder.

7. The defendant no.7 & 8 have filed their joint written statement/reply dated 15.02.2019 denied the allegations and submitted that the applicant bank has sanctioned credit facilities of Rs.5997.50 lacs on 25.07.2014 against hypothecation of stocks & book debts and two properties belonging to respondent no.4 & 5 and added 3 new properties were introduced belonging to respondent no.7 & 8 who became guarantors being the owner of mortgaged properties. Later on, while renewing Cash Credit limit by applicant bank on 03.12.2015, sanctioned credit facilities worth Rs.5647.50 lacs against stock & book debts and continuance of two properties of defendant no.4 & 5 as collateral securities. Further, the applicant bank has sanctioned/renewed credit facilities of Rs.5647.50 lacs on 29.09.2016 and on 29.06.2017 against hypothecation of stocks & book debts by continuing guarantee and collateral as per letter dated 03.12.2015. It has further been submitted that the defendants no.7 & 8 were discharged

Sd-

as guarantors by returning property documents of their property and three new properties were brought as collateral security which is evident from sanction letter dated 03.12.2015 recording PG of directors, 100% shareholders and collateral owners. It has further been submitted that combined value of stocks and book debts of borrower were Rs.6982.68 lacs in March 2018 and officials of applicant bank played along with borrower negligently and malafidely and impaired the eventual remedy of answering defendants and thus discharged to the extent of security lost. It has further been submitted that the applicant bank officials promised that guarantee was merely formality and never be invoked due to which they given guarantee and bank cannot initiate proceedings against them as were discharged later. Further, applicant bank through common default notice on June 2018 informed the defendants and never informed about the default / non-compliance of borrower as bank renewed the credit facility without ensuring proper security and initiated wrongly proceedings without application of mind. It has further been submitted that the answering defendants being discharged guarantors mortgaged their two properties out of 3 properties with DHFL and availed loan of Rs.5.00 crores on 28.09.2017 after release from the applicant bank. It has further been submitted that the applicant bank issued loan recall notice on 23.06.2018 falsely made

Sd-

averments that personal guarantees of answering respondents stood invoked whereas they are discharged guarantors which was replied on 12.07.2018 by denying their liability.

8. In rebuttal, the applicant bank has vehemently denied the allegations of defendant no.7 & 8 and submitted that defendants cannot be allowed to rely in terms of provisions of Section 19 (10-B) of Recovery of Debt & Bankruptcy Act 1993 and in defiance of statutory provisions of Section 19 (10-A) of RDAB Act 1993. It has further been submitted that these defendants failed to produce any documentary evidence to substantiate their claim about release of their guarantee along with mortgaged properties. It has further been submitted that the personal guarantee is continuing and cannot be revoked unilaterally by the defendants as there is no change in the nature of facility being offered evidently from various sanctions. It has further been submitted that the defendants also not complied with the order dated 08.08.2018 and not filed affidavit of assets, concealed material facts and trying to mislead by levelling false and frivolous allegations against the applicant bank. It has further been submitted that the defendants being guarantors cannot dilute their net worth, create charge in favour of any other FI in violation of guarantee deeds which is in continuous in nature. It has further been

Sd-

submitted that as the borrowers failed to deposit stock statements, credit facilities were recalled in compliance of various financial documents/agreements and invocation of guarantees and the guarantees covers all subsequent transactions and having specifically waived Sections 130 to 139 of Indian Contract Act 1872. Therefore, on the basis of documents executed between the parties, defendants are jointly and severally liable to pay the outstanding amounts along with interest.

9. The tenant of the basement and ground floor of mortgaged property no.357, M/s N.S.Retail India Private Limited moved various applications before the Hon'ble DRAT for direction for reopening of sealed property for inspection of stocks by Canara Bank, from whom loan availed by them, to initiate appropriate action against Authorized Officer having entered the sealed premises and Impleadment in the appeal which were dismissed on 17.01.2019. Another I.A. no.439/2019 was filed by tenant for release of grocery items lying in the premises and Hon'ble DRT III Delhi vide order dated 19.3.2019 order for release of grocery goods to the applicant by Local Commissioner as per inventory prepared by the Ld. Receiver who took the possession of the property against submission of Indemnity Bond for the sum of Rs.40.00 lacs with one Surety Bond of insolvent surety with Ld. Registrar

Sd/-

on or before 25.3.2019, extended up to 6.5.2019. Another I.A. no.952/2019 was filed by the said applicant for release from submission of Indemnity Bond with one surety bond of Solvent Surety.

10. Heard the arguments of the parties and perused the records thoroughly.

11. It has been argued on behalf of the defendants no.7 and 8 that the applicant bank is seeking to fasten liability upon defendants no.7 and 8 on the basis of an alleged security arrangement of July, 2014, despite the fact that the subsequent documents of the applicant bank shows that defendants no.7 and 8 were taken out of the security structure in December, 2015. It has further been argued that it is the case of the applicant bank that defendants no.7 and 8 were inducted as a security and mortgage owners under the sanction dated 25.07.2014 with the following properties given as collateral i.e. (a) Property bearing No.13 from bottom to top floor with its roof rights upto sky, and area measuring 60 Sq. mtrs, in Block and Pocket C-9, situated at Sector 7, Rohini, Delhi, 85; (b) Property bearing No. 56 with all roof rights, land area measuring 60 Sq mtrs, Block C; Pocket 9, Rohini, Delhi-85; and (c) Entire Basement Floor, 1st Floor, 2nd Floor and 3rd Floor, with all roof rights, part of Built up property no.24, Block

Sd-

E, Pocket 2, Rohini, Delhi, however, the documents of the applicant bank itself shows that their properties were thereafter released and substituted by fresh collaterals under the sanction dated 03.12.2015. It has further been argued that subsequent sanctions letter dated 29.09.2016 and 29.06.2017 continued the security and collateral arrangement of 03.12.2015, and did not revive or continue the earlier 2014 security of defendants no.7 and 8. It has further been argued that the applicant bank cannot approbate and reprobate at the same time and it cannot rely on the 2015, 2016 and 2017 sanction letters for its claim against the borrower, and simultaneously travel back to the 2014 guarantee for fastening liability on defendants no.7 and 8, when the very security package under which they were allegedly inducted, had been substituted by the Bank itself. It has further been argued that consequently, the captioned Original Application deserves to be dismissed qua defendants no.7 and 8, and no recovery certificate, attachment, sale, or coercive process can be sustained against them or their properties. It has further been argued that on 25.07.2014 the applicant bank has sanctioned credit facilities of Rs.59,97,50,000 and two properties of defendants no. 4 and 5 were continued. It has further been argued that three properties of defendant nos.7 and 8 were allegedly introduced as collateral and the case of the applicant bank is that

Sd-

defendants no.7 and 8 became personal guarantors only because they were collateral owners. It has further been argued that this document of the applicant bank does not make defendants no.7 and 8 borrowers, directors, shareholders or beneficiaryes. It has further been argued that on 21.08.2014 declaration cum Indemnity and Memorandum of Entry were allegedly executed qua the Rohini properties of defendants no.7 and 8 and on 30.09.2014 deeds of indemnity were allegedly executed by various mortgagors, including defendants no.7 and 8. It has further been argued that the applicant bank has not produced any comparable fresh documents from Defendants No. 7 and 8. It has further been argued that on 17.08.2015 principal borrower allegedly requested renewal of the cash credit limit and on 03.12.2015 applicant bank allegedly renewed facilities of Rs.56,47,50,000 and a bare perusal of the documents evinces that the properties of defendants no.7 and 8 were returned, defendants no.7 and 8 stood discharged, and three new collaterals were brought in. It has further been argued that on 20.10.2015 onwards fresh security documents were allegedly taken for substituted properties belonging to other defendants, including fresh declaration, and title documents and no fresh documents were ever taken from defendants no.7 and 8. It has further been argued that on 29.09.2016 the case of the applicant bank

Sd/-

is that it renewed facilities of Rs.56,47,50,000 and continued the guarantee and collateral mentioned in the letter dated 03.12.2015. It has further been argued that on 29.06.2017 it is the case of the applicant bank that it again renewed/ sanctioned facilities of Rs.56,47,00,000 and the guarantee and collateral mentioned in the sanction dated 03.12.2015 were continued and defendant nos. 7 and 8 were not brought back into the security structure. It has further been argued on 30.06.2017 amended agreement and allied documents were executed after the 2017 renewal and again, no fresh guarantee, confirmation or mortgage document was taken from defendants no.7 and 8. It has further been argued that on 29.09.2016 defendants no.7 and 8, being discharged guarantors, availed loan facility of Rs.5.00 crores from DHFL and mortgaged two of the released properties. It has further been argued that on 23.06.2018 applicant bank allegedly issued recall notice and purported to invoke personal guarantees of all defendants, including defendants no.7 and 8. It has further been argued that without prejudice, the recall notice is ineffective qua defendants no.7 and 8 as they had already stood discharged under the 2015 arrangement. It has further been argued that on 07.08.2020 the defendant nos.7 and 8 were proceeded ex parte and on 21.10.2023 final ex parte order/decree was passed for Rs.56.07 crore with 18

Sd-

percent simple interest from 23.06.2018. It has further been argued that on 03.09.2025 that this Tribunal allowed the application of defendant nos.7 and 8, treated the matter as review/ restoration, and set aside the ex parte position/ final order qua defendant nos.7 and 8 for hearing on merits. It has further been argued that the defendants no.7 and 8 were collateral owners and not borrowers or beneficiaries and the record of the applicant bank shows that the borrower was M/s Gautam Tech Agro India Pvt. Ltd.; and Defendants No.7 and 8 were neither directors, nor shareholders, nor beneficiaries of the facilities. It has further been argued that the applicant bank that their role was confined to collateral ownership, and even that role began only under the sanction dated 25.07.2014. It has further been argued that the perusal of documents as annexed by the applicant bank evinces that prior to 25.07.2014, the facilities in the year 2012 and 2013 were secured by other defendants and their properties. It has further been argued that the case of the applicant bank is that defendants no.7 and 8 entered the transaction only when their three properties were introduced as collateral, therefore, only inference that can be drawn is that the personal guarantee of defendants no.7 and 8 was, therefore, collateral linked and cannot be severed from the factual release and substitution of that collateral in 2015. It has further been argued that the

Sd/-

25.07.2014 sanction marks only a limited induction and the sanction dated 25.07.2014 filed by the applicant bank is the only foundation for the alleged liability of defendant nos.7 and 8 and it alleges that three properties of defendants no.7 and 8 were introduced as collateral in the year 2014 and it does not show that defendants no.7 and 8 were business borrowers or had received any consideration from the borrower. It has further been argued that once the aforementioned collateral dated 25.07.2014 is treated as the point of induction, the applicant bank has also to accept the legal consequence of the 2015 substitution, because the very security package on which the alleged guarantee rests was altered and novated by the subsequent sanctions by the applicant bank. It has further been argued that the sanction letter dated 03.12.2015 shows discharge, substitution and novation and the sanction dated 03.12.2015 renewed the facilities and restructured the live security package. It has further been argued that the property documents of defendants no.7 and 8 were returned, they were discharged as guarantors, and three fresh collaterals were brought in place of the earlier security. It has further been argued that the documents filed by the applicant bank corroborate this position and the applicant bank places on record fresh declaration, mortgage and title documents relating to other properties and other defendants. It has further been

Sd-

argued that the applicant bank does not place any fresh guarantee, confirmation, continuing acknowledgment, or mortgage document from defendants no.7 and 8 after 03.12.2015. It has further been argued that the present case is not a case where a bank merely released one item of security while reserving all other rights against a guarantor and it is a case where the applicant bank substituted the security architecture itself, accepted fresh collaterals, and moved forward on that footing for the next two renewals and the renewals dated 29.09.2016 and 29.06.2017 further corroborates the aforementioned position against the applicant bank. It has further been argued that after the sanction letter dated 03.12.2015, the applicant bank again renewed the facilities on 29.09.2016 and 29.06.2017 and both these renewals continued the guarantee and collateral arrangement mentioned in the sanction letter dated 03.12.2015. It has further been argued that if defendants no.7 and 8 were intended to remain live guarantors, the applicant bank would have either specifically continued them in the 2016 and 2017 sanctions, or obtained fresh guarantees/confirmations from them and the applicant bank cannot now, after default, selectively revive the 2014 guarantee while relying on 2015, 2016 and 2017 documents for its claim against the borrower. It has further been argued that return of original title

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documents and CIBIL reports further corroborate that there was no continuity of guarantee qua defendants no.7 and 8. It has further been argued that the return of the original title documents of the properties of defendant nos.7 and 8 is a material circumstance which further negates the case of the applicant bank. It has further been argued that if defendants no.7 and 8 were intended to continue as live mortgagors or guarantors, there was no occasion for the applicant bank to return the original title documents pertaining to their properties. It has further been argued that the return of original title documents was not a routine or ministerial act and the same was a conscious act of the applicant bank, flowing from the substitution of the earlier security structure under the sanction dated 03.12.2015. It has further been argued that the said act is wholly inconsistent with the present stand of the applicant bank that defendant nos.7 and 8 continued to remain liable under the earlier alleged arrangement of 25.07.2014. It has further been argued that the subsequent conduct of the parties also corroborates the aforesaid position the defendant nos.7 and 8, after being discharged and after receiving back their original title documents, dealt with the released properties and availed independent credit facilities against the same and such subsequent dealings could not have taken place had the applicant bank retained or asserted any subsisting mortgage

Sd-

over the said properties. It has further been argued that the CIBIL reports of defendants no.7 and 8 also corroborate that there was no continuity of guarantee qua defendants no.7 and 8 in relation to the credit facilities of M/s Gautam Tech Agro India Pvt. Ltd and the said reports do not reflect any continuing guarantee, suit filed status, willful default status, or subsisting credit exposure of defendant nos.7 and 8 in relation to the alleged dues forming subject matter of the captioned original application. It has further been argued that the absence of such reporting is material and if defendants no.7 and 8 were in fact continuing guarantors for the alleged exposure of more than Rs.56 crore, the applicant bank would have treated and reported them as such in the ordinary course. It has further been argued that the CIBIL reports, therefore, fortify the case of defendant nos.7 and 8 that after the sanction dated 03.12.2015, they were no longer treated as part of the live security or guarantee structure of the borrower. It has further been argued that the applicant bank, while filing the present Original Application, did not candidly disclose that the original title documents of defendants no.7 and 8 had been returned, that substituted collaterals were accepted, that no fresh guarantee, confirmation, acknowledgment or mortgage document was ever obtained from defendant nos.7 and 8 after 03.12.2015, and that defendants no.7 and 8 were not reflected

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as continuing guarantors in the credit reporting framework qua the alleged liability under the present OA. It has further been argued that the applicant bank cannot first return the original title documents, accept substituted securities, renew the facilities twice on the basis of the substituted security structure, refrain from taking any fresh document from defendant nos.7 and 8, not reflect any continuing guarantee-liability qua them in the CIBIL records, and thereafter seek to resurrect the alleged 2014 guarantee after default and such a course is impermissible in law and is barred by the principles of discharge, estoppel, suppression of material facts, and approbate and reprobate. It has further been argued that the claim raised by the applicant bank qua defendant nos.7 and 8 is malafide, founded upon suppression of material facts, and supported by misleading statements on oath. It has further been argued that the applicant bank has not merely raised an untenable claim against defendant nos.7 and 8, but has done so in a manner which is ex facie malafide and predicated upon selective disclosure of documents. It has further been argued that the applicant bank was fully aware that defendants no.7 and 8 were inducted only under the alleged security arrangement of 25.07.2014, that the said arrangement was thereafter substituted under the sanction dated 03.12.2015, that their original title documents had been returned, and that

Sd/-

no fresh guarantee, confirmation, acknowledgment or mortgage document was ever obtained from them after 03.12.2015. It has further been argued that despite being in possession of its own sanction letters, renewal documents, substituted security documents and internal records, the applicant bank chose to file and prosecute the captioned Original Application against defendants no.7 and 8 as if they continued to remain guarantors/mortgagors and such a stand is contrary to the applicant bank's own documents and is intended to create an artificial and misleading cause of action against defendants no.7 and 8. It has further been argued that the applicant bank, having verified and supported its claim on oath, was under a solemn obligation to make a full, fair and candid disclosure of all material facts. It has further been argued that the concealment of the 2015 discharge/ novation, the return of original title documents, the acceptance of fresh collaterals, the absence of any subsequent guarantee or acknowledgment from defendant nos.7 and 8, and the absence of any continuity of guarantee qua defendant nos.7 and 8 in the credit reporting framework, constitutes suppression of material facts going to the root of the claim. It has further been argued that false or misleading pleadings on oath are not a mere pleading irregularity and the same strike at the sanctity of adjudicatory proceedings and amount to an abuse of the

Sd/-

process of this Tribunal. It has further been argued that the applicant bank and its concerned officials, having raised a claim contrary to their own records and having suppressed material facts while verifying the pleadings on oath, are liable to be proceeded against in accordance with law for perjury and for having interfered with the due administration of justice before this Tribunal. Ld. counsel for the defendant no.7 and 8 has relied upon the judgement of "Union Bank of India v. Chairperson, Debt Recovery Appellate Tribunal" 2011 SCC online All 2161, "Central Bank of India v. Systems & Software and Ors., MANU/DE/0388/2003", "The Indian Bank, Madras v. S. Krishnaswamy and Ors. MANU/TN/0022/1990", "Satish Chandra Jain v. National Small Industries Corporation Ltd. and Ors" MANU/SC/0893/2001, "State of Maharashtra v. Dr. M.N. Kaul" AIR 1967 SC 1634, "Syndicate Bank Channaveerappa Baleri and Ors" MANU/SC/2032/2006, "Central Bank of India v. Ravindra and Ors" (2002) 1 SCC 367, "Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra), (2020) 7 SCC 366, "S.P. Chengalvaraya Naidu v. Jagannath" (1994) 1 SCC 1, "Hillcrest Realty Sdn. Bhd. v. Hotel Queen Road Pvt. Ltd" 2009 SCC online Del 4336, "Dalip Singh v. State of Uttar Pradesh" (2010) 2 SCC 114, "Sanjay Kumar Vs. State of Bihar and Ors" MANU/SC/0074/2014. It has further been argued that in view of the facts, documents and submissions stated hereinabove it

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is most respectfully prayed that this Tribunal may kindly be pleased to dismiss the OA qua defendants no.7 and 8; and hold that no recovery certificate, attachment, sale proclamation, or coercive recovery process can be sustained against defendants no.7 and 8 or their properties.

12. On the other hand, it has been argued on behalf of the applicant bank that this original application has been filed by the applicant bank, on 18.07.2018, through Shri Anirudh Bharghav, Senior Manager, of the applicant bank, under Section 19 of the Recovery of Debts Due to Banks and Financial Institution Act, 1993 against the defendants for recovery of a sum of Rs.56,07,73,454.10/-from the defendants, jointly and severally along with contractual interest pendente lite & future interest w.e.f. 02.07.2018 with monthly rests along with penal interest @18% per annum and costs of the original application. It has further been argued that a brief perusal of the facts of present case is necessary for the adjudication of the present case which are mentioned as: that the defendant no.1, i.e. M/s Gautam Techagro India Pvt. Ltd. is engaged in the business of milling and exporting/importing of rice, flour, pulses etc. with defendants no.2 & 3 as its directors/guarantors/mortgagor, defendant no.4 to 6 as its guarantor and mortgagors and defendants No.7 & 8 as its guarantors. It has further been

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argued that the defendant no.1 company through defendant no.2 and 3 approached the applicant bank and submitted a duly filled up application form for credit facilities on 22.05.2012 and represented that defendant no.1 company is a credit worthy entity and would be in position to repay the facilities availed. It has further been argued that on basis of the representations made by the defendants in the request letter and application form, the applicant bank sanctioned the credit facilities vide a sanction letter dated 25.06.2012 and the aforesaid facilities were guaranteed by execution of personal guarantees and various other documents. It has further been argued that vide request letter dated 29.04.2013, issued by the defendant no.1 company, a request was made to the applicant bank to renew the existing credit facilities and to transfer the credit limit of M/s Gautam Overseas to the account of the defendant no.1 company i.e. M/s Gautam Techagro India Pvt. Ltd. It has further been argued that the defendant no.1 company through defendant no.2, vide request letter dated 28.06.2013, again approached the applicant bank inter-alia requested for sanctioning of WCDL facility to the tune of Rs.2500 Lakh. It has further been argued that believing in and on the basis of the representations made by the defendants, the applicant bank sanctioned a combined limit of Rs.4000 Lakhs which limit includes the CC Limit of Rs.3500 Lakh

Sd-

transferred from M/s Gautam Overseas (a partnership firm of the defendant no.2 and 3) and existing PCL/PSL limit of Rs.500 Lakh to the defendant no.1 Company. It has further been argued that the details of the facilities sanctioned are more particularly described in sanction letter dated 28.06.2013 and the aforesaid facilities were guaranteed by execution of personal guarantees and various other documents. It has further been argued that the defendant no.1 company through defendant no.2, vide request letter dated 23.01.2014, again approached the applicant bank for renewal cum enhancement of the credit facilities and the applicant bank renewed and further enhanced the credit facilities vide sanction letter dated 23.01.2014, for the period of twelve (12) months subject to the renewal and execution of certain financial documents and the aforesaid facilities were guaranteed by execution of personal guarantees and various other documents. It has further been argued that the defendant no.1 company through defendant no.2, vide request letter dated 01.06.2014 again approached the applicant bank for renewal of the credit facilities and again, vide request letter dated 15.06.2014, the defendant no.1 company approached the applicant bank for enhancement of the credit facility by Rs.1850 Lakh. It has further been argued that believing in and on the basis of the representations made by the defendants, the applicant bank renewed and further

Sd/-

enhanced the credit facilities vide sanction letter dated 25.07.2014 for the period of twelve (12) months subject to the renewal and execution of certain financial documents. It has further been argued that the defendant no.1 company through defendant no.2, vide request letter dated 17.08.2015, again approached the applicant bank for renewal of the credit facilities and on the basis of the representations made by the defendants, the applicant bank renewed and further enhanced the credit facilities vide Sanction Letter dated 03.12.2015, for the period of twelve (12) months subject to the renewal and execution of certain financial documents and the aforesaid facilities were also guaranteed by execution of personal guarantees and various other documents. It has further been argued that the defendant no.1 company, vide request letter dated 11.06.2016, again approached the applicant bank for renewal of the existing credit facilities at the same level and on the basis of the representations made by the defendants, the applicant bank renewed the existing credit facilities vide sanction letter dated 29.09.2016 on the same terms and conditions as mentioned in the aforesaid sanction letter dated 03.12.2015 and the aforesaid facilities were also guaranteed by execution of personal guarantees and various other documents. It has further been argued that the defendant no.1 company through its directors, vide request letters dated

Sd/-

05.06.2017 and 15.06.2017, again approached the applicant bank for renewal cum enhancement of the credit facilities and on the basis of the representations made by the defendants, the applicant bank renewed and further enhanced the credit facilities as detailed in the table below vide Sanction Letter dated 29.06.2017 subject to the renewal and execution of certain financial documents. It has further been argued that in sheer violation of the Loan Agreements including Letters of Hypothecation, the defendant no.1 has failed to deposit the stock statements since March, 2018 despite the various requests and reminders and on inspection by the applicant bank, it was found that there is no stock available as on date and the defendants have malafidely and fraudulently have diverted or disposed of all the hypothecated stocks to cause harmful loss to the applicant bank by diluting the security for repayment of the loan. It has further been argued that pursuant to such persistent defaults in failing to comply with the terms contained in the MFA and supplementary agreement, the applicant bank had no option but to recall the facilities sanctioned to the defendant no. 1 Company. Having availed the credit facilities and further failed to comply with the terms and conditions contained for such availment, the Applicant Bank recalled and withdraw the credit facilities offered to the defendant no.1 company and issued a Loan Recall Notice dated

Sd/-

23.06.2018 calling upon the defendants to pay the entire outstanding amount of Rs.55,47,42,740.10 as on 22.06.2018 and the Loan Recall Notice was sent through speed post, courier and the official e-mail ids i.e. shashi@gautamtechagro.com, info@gautamtechagro.com of the defendant company as mentioned in various letter heads of the defendant no.1 company, hence, the applicant bank was constrained to file the present original application. It has further been argued that the applicant bank filed an interim application being IA/271/2019 inter alia seeking permission to auction the secured assets i.e. "(i) Immovable property bearing No. 357, Block A, Tarun Enclave, Pitampura, New Delhi (Basement, Ground Floor, Mezzanine Floor, First Floor, Second Floor and Third Floor), (ii) Immovable Property bearing No. 278, Tarun Enclave, Pitam Pura, New Delhi, (iii) Immovable Property bearing No. 245, Tarun Enclave, Pitampura, New Delhi (iv) Immovable mortgaged property being Industrial Plot, admeasuring 2.83 Acres, Part of Gata/Khasra No. 251, Khata No. 00025, situated at village Mandiya Khurda, Tehsil Bilaspur, Rampur, U.P". It has further been argued that above-mentioned IA/271/2019 was pressed by applicant bank qua above mentioned mortgaged properties mentioned at (i) to (iii) only. It has further been argued that vide order dated 20.08.2020, this Tribunal was pleased to allow the IA/271/2019

Sd-

qua above mentioned properties no. (i) to (iii) and permitted the applicant bank to auction the said mortgaged properties by invoking the provisions under the SARFAESI Act, 2002, in pursuance of which the applicant bank issued an auction notice dated 11.10.2020 by virtue of which the above-mentioned mortgaged properties no. (i) to (iii) were auctioned on 23.11.2020 on "as is where is, as is what is, whatever is there, is and without recourse basis". It has further been argued that pursuant to the successful auction and receipt of the auction amounts, the applicant bank issued Sale Certificates to the respective auction purchasers and an affidavit in this regard was duly filed by the applicant bank before this Tribunal vide diary no. 3959 dated 07.08.2021. It has further been argued that in lieu of the aforesaid auction, the applicant recovered a sum of Rs.24,89,00,000/- as sale proceeds, therefore, as on date i.e. 31.07.2021 the total amount outstanding due and recoverable by the applicant bank stood at Rs.65,69,68,884.15/- which is duly summarized in calculation sheet for the period 31.08.2018 to 31.07.2021 as per the records maintained by the applicant bank and the same has also been filed by the applicant bank vide above-mentioned affidavit filed vide diary no. 3959 dated 07.08.2021. It has further been argued that in affidavit filed vide diary no.3959 dated 07.08.2021, the applicant bank is now entitled to recover

Sd-

a sum of Rs.65,69,68,884.15/- as on 31.07.2021, from the defendants, jointly and severally, along with contractual interest pendente lite & future interest w.e.f. 01.08.2021 with monthly rests along with penal interest and costs of the Original Application. It has further been argued that since none appeared on behalf of other defendants and defendant no.2, 7 & 8 also stopped appearing before this Tribunal after 15.02.2019, either in person or through their counsels, therefore, this Tribunal vide order dated 07.08.2020 was pleased to proceed ex-parte against all defendants being defendants no.1 to 8. It has further been argued that to prove its case, the applicant bank has also lead its evidence by filling the affidavit of AW1 Mr. Anirudh Bhargav, Senior Manager, of the applicant bank who has exhibited the documents which includes Board Resolution dated 24.07.2017 as Exh.AW-1/1, Application Form for credit facilities as Ex. AW- 1/2, Board Resolution of Defendant No. 1 dated 25.06.2012 as Exh.AW-1/3, Board Resolution (Foreign Exchange and other related transactions) dated 25.06.2012 as Exh.AW-1/4, Original Sanction Letter dated 25.06.2012 as Exh.AW-1/5, Master Facility Agreement dated 27.06.2012 as Exh.AW-1/6, Master Agreement Governing Foreign Exchange Contracts dated 27.06.2012 as Exh.AW-1/7, Letter of Hypothecation of Stocks and Book Debts dated 27.06.2012 as Exh.AW-1/8, Power of

Sd/-

Attorney for Book Debts dated 27.06.2012 as Exh.AW-1/9, Demand Promissory Note dated 27.06.2012 as Exh.AW-1/10, Letter of Continuity for Demand Promissory Note dated 27.06.2012 as Exh.AW-1/11, Demand Promissory Note dated 27.06.2012 as Exh.AW-1/12, Letter of Continuity for Demand Promissory Note dated 27.06.2012 as Exh.AW-1/13, Letter of Continuing Guarantee dated 27.06.2012 as Exh.AW-1/14, Declaration-cum-Indemnity dated 27.06.2012 as Exh.AW-1/15, MOE dated 27.06.2012 as Exh.AW-1/16, Authority Letter by Gautam Overseas (Partnership) dated 27.06.2012 as Exh.AW-1/17, Undertaking dated 27.06.2012 as Exh.AW-18, Debit Authorization Letter dated 27.06.2012 as Exh.AW-1/19, Letter of Continuing Guarantee dated 26.09.2012 by the Defendant No. 6 as Exh.AW-1/20, Letter of Hypothecation of Stocks and Book Debts dated 19.09.2012 as Exh.AW-1/21, Undertaking cum Indemnity dated 27.06.2012 as Exh.AW-1/22, Declaration-cum-Indemnity dated 26.09.2012 as Exh.AW-1/23, (MOE) dated 26.09.2012 as Exh.AW-1/24, request letter dated 29.04.2013 as Exh.AW-1/25, request letter dated 28.06.2013 as Exh.AW-1/26, Sanction Letter dated 28.06.2013 as Exh.AW-1/27, Board Resolution dated 28.06.2013 as Exh.AW-1/28, Supplementary Agreement dated 03.07.2013 as Exh.AW-1/29, Supplementary Letter of Hypothecation of Stocks and Book Debts dated 03.07.2013 as Exh.AW-1/30, Power of Attorney

Sd/-

for Book Debts dated 03.07.2013 as Exh.AW-1/31, Demand Promissory Note dated 03.07.2013 as Exh.AW-1/32, Letter of Continuity for Demand Promissory Note dated 03.07.2013 as Exh.AW-1/33, Supplementary Letter of Continuing Guarantee dated 03.07.2013 as Exh.AW-1/34, Declaration-cum-Indemnity dated 03.07.2013 as Exh.AW-1/35, (MOE) dated 03.07.2013 as Exh.AW-1/36, Memorandum relating to charge over fixed deposits/ cash deposits dated 03.07.2013 as Exh.AW-1/37, Undertaking cum Indemnity dated 11.05.2013 as Exh.AW-1/38, request letter dated 23.01.2014 as Exh.AW-1/39, Sanction Letter dated 23.01.2014 as Exh.AW-1/40, Board Resolution dated 23.01.2014 as Exh.AW-1/41, Supplementary Agreement dated 24.01.2014 (for enhancement of overall facility limit) as Exh.AW-1/42, Supplementary Letter of Hypothecation of Stocks and Book Debts dated 24.01.2014 as Exh.AW-1/43, Power of Attorney for Book Debts dated 24.01.2014 as Exh.AW-1/44, Letter of Continuity for Demand Promissory Note dated 24.01.2014 as Exh.AW-1/45(Colly.), Supplementary Letter of Continuing Guarantee dated 24.01.2014 as Exh.AW-1/46, Declaration-cum-Indemnity dated 27.01.2014 as Exh.AW-1/47, (MOE) dated 27.01.2014 as Exh.AW-1/48, Deed of Indemnity dated 24.01.2014 as Exh.AW-1/49, RBI Declaration Letter dated 27.01.2014 as Exh.AW-1/50, request letter dated 01.06.2014 as Exh.AW-

Sd/-

1/51, request letter dated 15.06.2014 as Exh.AW-1/52, Sanction Letter dated 25.07.2014 as Exh.AW-1/53, original Board Resolutions both dated 25.07.2014 as Exh.AW-1/54(Colly.), supplementary Agreement dated 30.07.2014 (for enhancement of overall facility limit) as Exh.AW-1/55, Supplementary Letter of Hypothecation of Stocks and Book Debts dated 30.07.2014 as Exh.AW-1/56, Power of Attorney for Book Debts dated 30.07.2014 as Exh.AW-1/57, Demand Promissory Note dated 30.07.2014 as Exh.AW-1/58, Letter of Continuity for Demand Promissory Note dated 30.07.2014 as Exh.AW-1/59, Supplementary Letter of Continuing Guarantee dated 30.07.2014 as Exh.AW-1/60, Declaration-cum-Indemnity dated 30.07.2014 executed by the Defendant Nos.4, 5 and 6 as Exh.AW-1/61, (MOE) dated 30.07.2014 as Exh.AW-1/62, title deeds of the immovable property being property No.357 (Owned by Mr. Gian Chand) as Exh.AW-1/63(A) to Exh.AW-1/63(C), and title deeds of the immovable property being Property No.278 (Owned by Mrs. Chanchal Sethi) as Exh.AW-1/63(D) to Exh.AW-1/63(R), Declaration-cum-Indemnity dated 21.08.2014 executed by the Defendants No.7 and 8 as Exh.AW-1/64, (MOE) dated 21.08.2014 as Exh.AW-1/65, Six Deed of Indemnities all dated 30.09.2014 executed by the Defendant Nos.4, 5, 6, 7 and 8 as Exh.AW-1/66(Colly.), request letter dated 17.08.2015 as Exh.AW-1/67, Sanction Letter dated

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03.12.2015 as Exh.AW-1/68, Declaration-cum-Indemnity dated 20.10.2015 executed by the Defendants No.4 and 5 as Exh.AW-1/69, (MOE) dated 20.10.2015 executed by the Defendant Nos. 4 and 5 as Exh.AW-1/70, title deeds of immovable properties being first, second and third floor of property No. 357, Tarun Enclave, Pitam Pura, New Delhi (Owned by Mr. Gian Chand), Property No. 245, situated in layout plan of Dera Ghazi Khan, Tarun Enclave, Pitam Pura, New Delhi (Owned by Mrs. Chanchal Sethi) as Exh.AW-1/71(A), Exh.AW-1/71(B), Exh.AW-1/71(D) to Exh.AW-1/71(Z), Exh.AW-1/71(Z)(i) to Exh.AW-1/71(Z)(iv), Declaration-cum-Indemnity dated 20.10.2015 executed by the Defendant No. 2 as Exh.AW-1/72, (MOE) dated 20.10.2015 as Exh.AW-1/73, title deeds of the immovable property being Land area measuring 2.83 acre, part of Gata/Khasra No. 251, Khata No.00025, situated at village Mundiya Khurd, Tehsil Bilaspur, Rampur, U.P as Exh.AW-1/74 (A) to Exh.AW-1/74 (D), undertaking dated 09.09.2015 as Exh.AW-1/75, request letter dated 11.06.2016 as Exh.AW-1/76, Sanction Letter dated 29.09.2016 as Exh.AW-1/77, undertaking dated 29.09.2016 as Exh.AW-1/78, request letters dated 05.06.2017 and 15.06.2017 as Exh.AW-1/79(Colly.), Sanction Letter dated 29.06.2017 as Exh.AW-1/80, Amended Agreement dated 30.06.2017 as Exh.AW-1/81, Demand Promissory Note dated

Sd/-

30.06.2017 as Exh.AW-1/82, Demand Promissory Note dated 06.04.2017 as Exh.AW-1/83, Letter of Continuing Security for Demand Promissory Note dated 06.04.2017 as Exh.AW-1/84, undertaking dated 30.06.2017 as Exh.AW-1/85, letter dated 30.06.2017 as Exh.AW-1/86, stock statements for the period May, 2017 to March, 2018 as Exh.AW-1/87, Loan Recall Notice dated 23.06.2018 along with postal receipts; courier receipt, E-mail printout and tracking reports as Exh.AW-1/88(Colly.), Statement of account along with the Certificate under the Bankers Book of Evidence Act as Exh.AW-1/89(Colly.), Balance Sheet and Annual Returns for the year ended 31 March, 2017 as Exh.AW-1/90(Colly.), Latest original Valuation Reports of the mortgaged properties as Exh.AW-1/91(Colly.). It has further been argued that factum of completion of exhibition of documents on behalf of applicant bank is also recorded in the order dated 14.09.2020 and 15.09.2020 passed by this Tribunal in captioned OA. It has further been argued that the defendant no.1, 3 to 6 have not appeared before this Tribunal despite service of notice as well as copy of OA upon them, meaning thereby they have admitted the liability towards applicant bank in respect of the credit facilities mention in the present OA, moreover, the execution of documents has also not been denied by the defendants, therefore the present OA is entitled to be allowed. It has further been argued that the

Sd-

defendant no.2, 7 and 8 have also not contested the present OA, therefore, the present OA is entitled to be allowed against all the defendants.

13. Apparently, the applicant bank has initially sanctioned the loan facilities vide sanction letter dated 25.06.2012 and the aforesaid facilities were guaranteed by execution of personal guarantees and various other documents. Thereafter, the applicant bank sanctioned (vide sanction letter dated 28.06.2013) a combined limit of Rs.4000 Lakh which limit includes the CC Limit of Rs.3500 Lakh transferred from M/s Gautam Overseas (a partnership firm of the defendant no.2 and 3) and existing PCL/PSL limit of Rs.500 Lakh to the defendant no.1 Company. Further, at the request of the defendant company, the applicant bank again renewed and further enhanced the credit facilities vide sanction letter dated 23.01.2014 for the period of twelve (12) months subject to the renewal and execution of certain financial documents and the aforesaid facilities were guaranteed by execution of personal guarantees and various other documents. That the defendant no.1 company through defendant no.2, again approached the applicant bank for renewal of the credit facilities and enhancement of the credit facility by Rs.1850 Lakh and accordingly, the applicant bank renewed and further enhanced the credit facilities vide sanction letter dated 25.07.2014 for the

Sd-

period of twelve (12) months subject to the renewal and execution of certain financial documents. Further, at the request of the defendant no.1 company the applicant bank renewed and further enhanced the credit facilities vide Sanction Letter dated 03.12.2015, for the period of twelve (12) months and thereafter the defendant no.1 company (vide request letter dated 11.06.2016) again approached the applicant bank for renewal of the existing credit facilities and accordingly, the applicant bank renewed the existing credit facilities vide sanction letter dated 29.09.2016 on the same terms and conditions as mentioned in the aforesaid sanction letter dated 03.12.2015 and the aforesaid facilities were also guaranteed by execution of personal guarantees and various other documents. Record further reveals that at the request of the defendant no.1 company through its directors, vide request letters dated 05.06.2017 and 15.06.2017, again approached the applicant bank for renewal-cum- enhancement of the credit facilities and on the basis of the representations made by the defendants, the applicant bank renewed and further enhanced the credit facilities vide Sanction Letter dated 29.06.2017 subject to the renewal and execution of certain financial documents. Ld. Counsel for the defendants no.7 and 8 has raised the objection that on 25.07.2014 sanction marks only a limited induction and the sanction dated 25.07.2014 filed by the applicant bank is the

Sd/-

only foundation for the alleged liability of defendants no.7 and 8 and it alleges that three properties of defendants no.7 and 8 were introduced as collateral in the year 2014 and it does not show that the defendants no.7 and 8 were business borrowers or had received any consideration from the borrower. He further submitted that the aforesaid alleged guarantee of the defendants no.7 and 8 and the title documents of three properties situated at Rohini, Delhi (owned by the defendants no.7 and 8) were released by the applicant bank and the same is reflected in the subsequent sanction letters issued by the applicant bank because the name of these defendants no.7 and 8 were not mentioned in the subsequent sanction letters and accordingly, these defendants no.7 and 8 are not liable to pay the dues of the applicant bank, which were availed by the defendant no.1 company. On the other hand, it has been argued on behalf of the applicant bank that the guarantee deed of the defendants no.7 and 8 were continue and the same were never revoked at any time. On perusal of the records, it appears that initially in the year 2012 the loan facilities were availed by the defendant no.1 company against the mortgage of three properties i.e. consisting entire basement, ground floor, mezzanine floor built on Plot No.357, Tarun Enclave, Pitampura, Delhi and & First Floor, Second and Third Floor of property on 20.10.2015 and Plot No.276, Tarun Enclave, Pitampura, Delhi

Sd-

and at the request of the defendant no.1 company these loan facilities were renewed/enhanced from time to time and in this regard the applicant bank has issued various sanction letters since the year 2013 till the year 2017. Apparently, as per the case of the applicant bank that as per the renewal/enhancement sanction letter dated 25.07.2014 the defendants no.7 and 8 were introduced as guarantors and the mortgage of their properties i.e. (a) Property bearing No.13 from bottom to top floor with its roof rights upto sky, and area measuring 60 Sq. mtrs, in Block and Pocket C-9, situated at Sector 7, Rohini, Delhi, 85; (b) Property bearing No.56 with all roof rights, land area measuring 60 Sq mtrs, Block C; Pocket 9, Rohini, Delhi-85; and (c) Entire Basement Floor, 1st Floor, 2nd Floor and 3rd Floor, with all roof rights, part of Built up property no.24, Block E, Pocket 2, Rohini, Delhi were created in favor of the applicant bank and in this regard the defendants no.7 and 8 had executed the supplemental letter of continuing guarantee dated 30.07.2014 (Exhibit AW-1/60) and Creation of Mortgage by Delivery of Title Deeds dated 21.08.2014 (Exhibit AW-1/65). Further, on perusal of the documents filed by the applicant bank, it appears that the aforesaid loan facilities were further renewed/enhanced vide various separate sanction letters dated 03.12.2015, 29.09.2016 and 29.06.2017, but in these sanction letters the applicant bank has not included the name of these

Sd-

defendants no.7 and 8 as guarantors and even the properties of these defendants no.7 and 8 have also not been mentioned in the subsequent sanction letters dated 03.12.2015, 29.09.2016 and 29.06.2017 issued by the applicant bank. However, this Tribunal has failed to understand that when these loan facilities were renewed/enhanced on various dates vide sanction letters dated 03.12.2015, 29.09.2016 and 29.06.2017 after the renewal/enhancement of the aforesaid loan facilities vide alleged sanction letter dated 25.07.2014 then why the applicant bank has not mentioned the name of these defendants no.7 and 8 and the details of their properties in the subsequent sanction letters dated 03.12.2015, 29.09.2016 and 29.06.2017 issued by the applicant bank, which creates doubts about the continuance of their guarantees, that too, when the same loan facilities were renewed/enhanced vide sanction letter dated 25.07.2014 and even no consent in writing of these defendants no.7 and 8 were also obtained by the applicant bank while renewing the aforesaid loan facilities vide sanction letters dated 03.12.2015, 29.09.2016 and 29.06.2017. Further, on perusal of the records, it appears that in the sanction letter dated 03.12.2015 the name of the defendants no.7 and 8 and their properties i.e. (a) Property bearing No.13 from bottom to top floor with its roof rights upto sky, and area measuring 60 Sq. mtrs, in Block and Pocket C-9, situated at Sector 7, Rohini,

Sd/-

Delhi, 85; (b) Property bearing No. 56 with all roof rights, land area measuring 60 Sq mtrs, Block C; Pocket 9, Rohini, Delhi-85; and (c) Entire Basement Floor, 1st Floor, 2nd Floor and 3rd Floor, with all roof rights, part of Built up property no.24, Block E, Pocket 2, Rohini, Delhi were not mentioned in the said subsequent sanction letter dated 03.12.2015 and even three new properties i.e. (i) House no.357, (first floor, second floor and third floor) Tarun Enclave, Pitampura, Delhi-110034, (ii) Land area measuring 2.83 acre part of Gata/Khasra no.251, Khata no.25, situated at Village Mundiya Khurd, Tehsil Bilaspur, Rampur, U.P. and (iii) 245, Tarun Enclave, Pitampura, Delhi-110034 were mentioned in the said sanction letter dated 03.12.2015 and further in the subsequent sanction letters dated 03.12.2015, 29.09.2016 and 29.06.2017 the name of these defendants no.7 and 8 and their properties are not mentioned, which proves that the applicant bank has replaced the guarantee/properties i.e. (a) Property bearing No.13 from bottom to top floor with its roof rights upto sky, and area measuring 60 Sq. mtrs, in Block and Pocket C-9, situated at Sector 7, Rohini, Delhi, 85; (b) Property bearing No. 56 with all roof rights, land area measuring 60 Sq mtrs, Block C; Pocket 9, Rohini, Delhi-85; and (c) Entire Basement Floor, 1st Floor, 2nd Floor and 3rd Floor, with all roof rights, part of Built up property no.24, Block E, Pocket 2, Rohini, Delhi of these defendants no.7

Sd-

and 8 with three new properties i.e. (i) House no.357, (first floor, second floor and third floor) Tarun Enclave, Pitampura, Delhi-110034, (ii) Land area measuring 2.83 acre part of Gata/Khasra no.251, Khata no.25, situated at Village Mundiya Khurd, Tehsil Bilaspur, Rampur, U.P. and (iii) 245, Tarun Enclave, Pitampura, Delhi-110034. Further, the applicant bank has failed to file any documentary evidence to show that the applicant bank has obtained any fresh guarantee, confirmation, continuing acknowledgment, or mortgage documents from defendants no.7 and 8 after 25.07.2014 or at the renewal/enhancement of the loan facilities vide sanction letters dated 03.12.2015, 29.09.2016 and 29.06.2017. Further, these defendants no.7 and 8 were neither original guarantor nor their properties were induced at the initial stage of advancement of loan facilities to the borrower company in the year 2012-2013.

14. Further, on perusal of the records, it appears that the applicant bank has filed the sanction letter dated 25.07.2014 alongwith supplemental letter of continuing guarantee dated 30.07.2014 and the Memorandum Recording Past Transactions of Creation of Mortgage by Delivery of Title Deeds dated 21.08.2014 duly signed by the defendants no.7 and 8 qua the properties in question owned by the defendants no.7 and 8. However, the applicant bank has not filed the title documents

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of the properties in question i.e. (a) Property bearing No.13 from bottom to top floor with its roof rights upto sky, and area measuring 60 Sq. mtrs, in Block and Pocket C-9, situated at Sector 7, Rohini, Delhi, 85; (b) Property bearing No. 56 with all roof rights, land area measuring 60 Sq mtrs, Block C; Pocket 9, Rohini, Delhi-85; and (c) Entire Basement Floor, 1st Floor, 2nd Floor and 3rd Floor, with all roof rights, part of Built up property no.24, Block E, Pocket 2, Rohini, Delhi) of the defendants no.7 and 8 with the supplemental letter of continuing guarantee dated 30.07.2014 vide which the alleged mortgage of the properties in question was created in favor of the applicant bank. In the present matter, the applicant bank has filed the supporting mortgage paperwork like the guarantee deed, undertaking, and the letter of deposit of title documents executed as per the sanction letter dated 25.07.2014, but the applicant bank has failed to physically file the primary title deeds of the properties in question (owned by the defendants no.7 and 8), which creates a severe evidentiary gap. That as per the Section 58 (f) of the Transfer of Property Act, 1882, an equitable mortgage (mortgage by deposit of title deeds) requires three essential ingredients to be legally valid i.e. existence of a Debt, Deposit of Original Title Deeds and Intent to Create a Security Interest. Apparently, the physical delivery of the original ownership documents of the property in question

Sd-

to the creditor (the bank) is the core physical act required and the delivery of photocopies, certified copies, or administrative letters does not create a valid mortgage unless the original title documents were genuinely lost prior and a rigorous legal process was followed and in the present case, the applicant bank has not filed any documentary evidences to prove that the original documents were genuinely lost, that too, when the defendants no.7 and 8 are claiming to have the original title documents of the properties in question. Further, under the Indian banking and property laws specifically Section 58 (f) of the Transfer of Property Act, 1882 an equitable mortgage is only legally created by the actual, physical deposit of original title deeds and the actual title deeds constitute the primary evidence required to prove the existence of the mortgage. Though, a "Letter of Deposit" or "Memorandum of Entry" is merely an administrative record stating that a deposit happened and if the applicant bank cannot produce the actual deeds referred to in that letter, it proves that the applicant bank has failed to prove the creation of a valid mortgage and since the mortgage qua the properties in question (properties of defendants no.7 and 8) fails, then the loan can be reclassified as an unsecured advance qua the properties in question. Further, if the bank loses, misplaces, or fails to legally establish that security documents due to its own negligence, the guarantor, as per

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Section 139 of the Transfer of Property Act, can make their case for discharge from their liability because the bank's negligence reduced the security available. Further, if the bank has the letter but not the title deeds, it can be presumed that the documents could have been signed in blank or that no actual transaction involving that properties took place. Further, the "Letter of Deposit" cannot substitute for primary evidence under Section 64 of the Indian Evidence Act. Further, in the absence of name/signature on the subsequent renewal/enhancement sanction letters, a guarantee cannot be presumed and the burden of proving that an individual is a guarantor rests on the banks/financial institution and without a signature on the current sanction letters or a specific Deeds of Guarantee, the bank cannot hold the person accountable for the newly renewed/enhanced loan facilities. Further, as per the renewal sanction letter dated 25.07.2014 the aforesaid loan facilities were renewed for a period of twelve months and the tenure of the same was valid upto 15.06.2015, but the said facilities were renewed only on 03.12.2015 i.e. after the period of 15.06.2015, which is also bad in law because the same was required to be renewed/enhanced within twelve months.

15. Keeping in view of the aforesaid facts and circumstances of the case, this Tribunal is of the affirmed view that the

Sd/-

applicant bank has failed to prove on record that the guarantee of the defendants no.7 and 8 were continue as per the sanction letter dated 25.07.2014, that too, when the names of the defendants no.7 and 8 and their properties in question were not included in the subsequent renewal/enhancement sanction letters dated 03.12.2015, 29.09.2016 and 29.06.2017 issued by the applicant bank after the issuance of aforesaid sanction letter dated 25.07.2014 qua the same loan facilities. Further, the applicant bank has also failed to prove on record that the properties in question i.e. (a) Property bearing No.13 from bottom to top floor with its roof rights upto sky, and area measuring 60 Sq. mtrs, in Block and Pocket C-9, situated at Sector 7, Rohini, Delhi, 85; (b) Property bearing No. 56 with all roof rights, land area measuring 60 Sq mtrs, Block C; Pocket 9, Rohini, Delhi-85; and (c) Entire Basement Floor, 1st Floor, 2nd Floor and 3rd Floor, with all roof rights, part of Built up property no.24, Block E, Pocket 2, Rohini, Delhi owned by the defendants no.7 and 8 were validly mortgaged with the applicant bank as per the renewal/enhancement sanction letter dated 25.07.2014. Thus, the defendants no.7 and 8 are liable to be discharged from the array of the parties of the present case and accordingly, the defendants no.7 and 8 stands discharged from the array of parties. However, the applicant bank is

Sd/-

entitled to recover its entire dues from the defendants no.1 to 6 as per law.

16. The applicant bank has fully corroborated the averments made in the O.A. Even otherwise the whole case of the applicant bank is based on the documents and the same have been duly approved against the defendants no.1 to 6 only.

17. The case filed by the applicant bank gone unrebutted and there is no question of disbelieving the case of the applicant bank and the applicant bank has proved its case beyond reasonable doubts only against the defendants no.1 to 6, however, no case has been made out in favor of the applicant bank against the defendants no.7 and 8.

18. In the light of the above discussions, the Original Application deserves to be allowed only against the defendants no.1 to 6.

ORDER

I, allow this OA and direct the defendants no.1 to 6 to pay to the applicant bank, jointly or severally, within a period of 30 days, a sum of Rs.56,07,73,454.10 (Rupees Fifty Six Crore Seven Lacs Seventy Three Thousand Four Hundred Fifty Four & paisa Ten only) (less the amount, if any, so received by the applicant bank after selling the mortgage properties) together with pendentelite and future interest @ 18.00% per annum from 23.06.2018 till the date of realization and costs; failing which the aforesaid amount shall be recovered from the sale of hypothecated stocks, goods, book debts including other current assets (As per Schedule B) and mortgaged property

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bearing land measuring 2.83 acre, part of Gata/Khasra No.251, Khata No.00025, Village Mundiya Khurd, Tehsil Bilaspur, Rampur, UP. In case of shortfall, the same shall be recovered from the sale of movable and immovable properties of the defendants no.1 to 6 and the shareholdings of the defendants no.1 to 6 in various companies. While disposing off the said Original Application, various I.A. filed by other parties in the matter also stands disposed off. It is also ordered that no case has been made out in favor of the applicant bank against the defendants no.7 and 8 and thus, these defendants no.7 and 8 are not liable to pay the dues of the applicant bank. Accordingly, the present Transfer/original application stands dismissed against the defendants no.7 and 8 and the defendants no.7 and 8 are hereby discharged/deleted from the array of parties in view of the observations made herein above.

(II) The amended recovery certificate be issued forthwith and be sent to the Recovery Officer, Debt Recovery Tribunal-I, Delhi.

(III) Parties are directed to appear before the Recovery Officer, DRT I, Delhi on 17.08.2026.

(IV) Copies of final order as well as Recovery Certificate be sent to all concerned free of cost.

Sd- 2026

(GOVIND BALLABH SHARMA)
PRESIDING OFFICER
DRT-I, DELHI

(Dictated and pronounced in open court)
Dated: 10.07.2026.