DEBTS RECOVERY TRIBUNAL No.1, MUMBAI

ORDER
In
INTERLOCUTORY APPLICATION NO. 2063 OF 2025
In
SECURITISATION APPLICATION NO. 21 OF 2023
(Delivered on 30.06.2026)

MS BALAJI PRECISION TUBES INDIA PVT LTD ... Applicants

Versus

CANARA BANK ... Respondent

Advocate Gaurang Khinkhabwala a/w Adv. Sunil Humbre for the Applicants.

Advocate Aniruddha Lad i/b KLT Law Associates for the Applicants in I.A. No. 2063/25.

Advocate Rishabh Shah a/w Adv. Vaishali Bhilare a/w Adv. Somesh Talla for the Respondent no. 1.

ORDER

1. The SA is filed by applicants challenging the measure initiated by R1/bank under the SARFAESI Act, to stay all further proceedings pursuant to sale notice dated 11.08.2025, the auction conducted on 29.08.2025 and also to restrain the court commissioner from further proceeding in the matter. R1/bank and R2/auction purchaser resist the application and request to dismiss the same.

2. Facts leading to the case, in brief are as follows

As per the sanction letter dated 09.11.2015, renewed sanction letter dated 08.02.2016, 17.01.2017 and 26.11.2018, term loan of Rs.8.03 crores, and BWC limit of Rs.1.79 crores was granted to applicant no. 1 by the erstwhile bank which had got merged with R1 on 04.04.2020. The premises herein which is stated to include an extent, which is stated to be agricultural land was mortgaged as security for the said loan.

3. The loans on getting declared as NPA on 29.01.2020, R1 initiated notice under Section 13(2) SARFAESI Act which was later on withdrawn and a fresh notice under Section 13(2) dated 10.08.2022 was issued. Proceedings then were initiated under Section 13(4) and 08 notices for e-auction were also initiated. The said eight auction had failed for want of bids. The present auction which is the ninth one had terminated in R2 being the successful auction purchaser.

4. R1/bank as per order dated 29.08.2025 was permitted to receive the balance sale consideration as per order of the Tribunal dated 29.08.2025, restraining issuance of sale certificate till disposal of I.A. No.1685 of 2025 filed by applicants. Now the matter is directed to be urgently disposed off by Hon'ble High Court on the application by auction purchaser.

5. The Applicants contend that, the measures initiated by R1 are defective, and are to be set aside due to the following points. The notice under Section 13(2) is defective, and declaration of the account as NPA was not proper. It is further urged by applicants that, R1 had not complied with Section

13(3A), 13(4) SARFAESI Act. R1 had not released the sanctioned amount in time, R1 had refused to grant the benefit of MSME Scheme to applicants, and the sale notice was not served on them. It is further alleged that there is no valid mortgage, the proceedings are now being initiated against agricultural land and that there is no proper valuation of the subject property.

6. R1/bank contends that, the contention of the Applicants that, the release of the amount was delayed is baseless. The loan account on getting irregular, was declared NPA on 29.01.2020. The initial demand notice issued on 09.06.2020 was recalled, and then another notice dated 10.08.2022 was issued under Section 13(2), and the objections to the said notice were replied to by R1 on 20.10.2022. The symbolic possession was effected in accordance with rules. Eight auctions intended by R1, from 23.01.2023 to 13.12.2024 had failed for want of bids. The requests of the Applicants for restructuring being not viable was rejected, and the settlement proposals given by the Applicants, being on the lower side, also had to be rejected. All measures and steps taken by R1 in the proceedings herein are in accordance with the procedure and rules, and so the contentions of Applicants are only to be dismissed.

7. R2, the auction purchaser contends that, he is a bonafide purchaser of the premises in the e-auction effected by R1 on 29.08.2025. The entire amount of the auction price as Rs.5,27,00,000/- (Rupees Five crores twenty seven lakhs only) is also deposited, and owing to the stay order passed by this

Tribunal, the sale is not confirmed and sale certificate is not being issued to him. So to avoid further monetary loss and blockage of business for the auction purchaser, the stay, passed by this Tribunal on the confirmation and issuance of sale certificate is to be vacated.

8. Heard all sides.

9. The only points that arise for consideration are:-

1) Whether the auction notice dated 11.08.2025 and auction conducted on 29.08.2025 are to be set aside?
2) Whether the R1/bank had proceeded in the matter in violation to the rules in any manner?
3) Whether applicants have a valid cause of action to sue?
4) Relief and costs?

Points 1 to 3.

10. The issue raised applicants that, the premises being an agricultural land cannot be proceeded against, shall be considered. There is no specific pleading in the SA regarding that issue. But it is seen that, the respondent had not proceeded against the said extent which are now claimed as agricultural land by the applicants. The secured asset as is now claimed by R1 does not include, any extent, stating as an agricultural land.

11. As is stated above, the contention of premises being an agricultural land, is not specifically stated in the pleadings by applicants. R4, Ms Anandi Prabhad, who is stated to be the

owner of the property, stated to be agricultural land, has no case that her premises is a secured asset and that R1 should be restrained from proceeding against it. As R1 is now not proceeding against any such extent claimed as agricultural property by applicants, the said contention of applicants need not be considered. So the said aspect does not arise for consideration as there is no case for R1 that, among the property intended to be proceeded against, the extent stated to be agricultural land is included and is being proceeded against, by way of recovery.

12. It is next contended by applicants that the notice under Section 13(2) SARFAESI Act is defective, vague and is bereft of the details as specified under Section 13(3). The reply sent by applicants to the notices under Section 13(2) though received by R1 is not responded by R1. Though R1 contends that the objection by applicants is responded to, no material is placed to show the same. Further, R1 had issued a demand notice dated 09.06.2020, and possession was taken on 28.05.2021. On applicants preferring SA 305/22, the said notice was recalled by R1 as per letter dated 04.08.2022, but nothing is offered by R1 to show that possession was handed back to the applicants. So according to applicants, the notice u/s 13 (2) cannot be accepted on any ground.

13. It is to be noted that, applicants have no proven case that, the debt over the secured assets was, entirely cleared by them after issuance of the first demand notice. On withdrawal of the first demand notice by the creditor, the liability was still

subsisting. So the secured creditor cannot be expected to give a declaration that, the secured premises are handed back, in view of the debt subsisting on the said secured asset. The symbolic possession under Section 13(4) taken on the first demand notice, on the formal withdrawal of the said demand notice, renders the preceding possession measures void and legally abandoned. It cannot be said that, the creditor was bound to issue a declaration of withdrawal of the action taken, as the debt was still subsisting at the time of the withdrawal of the notice.

14. It is only basic knowledge that, the bank cannot proceed on a withdrawn demand notice, on the continued default by the applicants, on the existing loan. The first possession is essentially suspended by the fresh proceedings. There is no mandate to publish a termination of possession. This is more so, as the debt due was still subsisting, even after withdrawal of the first demand notice. Bank is only required to publish a fresh symbolic possession notice under R8(1) of SARFAESI Rules.

15. The applicants have not produced any relevant provision mandating the secured creditor to publish notice for handing back the premises, especially when, the debt was still outstanding in the loan account. So the contention of applicants that, there is no compliance of Section 13(4) by R1, cannot be accepted. On the withdrawal of a demand notice for a subsisting loan, for which demand notice is seen issued again, R1 is not expected to give a publication of the termination of possession on

the secured premises.

16. It is seen that, the applicants are now challenging the demand notice dated 10.08.2020, and the alleged lack of response by R1, to the objections raised to the said notice by applicants. It is the admitted case of applicants that, they had filed SA 305/2022 alleging the very same contentions raised herein. The explanation given by the applicant is that, the said matter pending before DRT Poona, is intended to be withdrawn. But till date, the said withdrawal is not seen effected by applicants. Now the very same issues, cannot again be agitated in this present case, before this forum.

17. Perusal of the roznama of SA 305/22 shows that, after filing the same, applicants have not pursued the matter. So now the present application filed, raising the very same averments cannot be entertained.

18. So the act of applicants in presenting the very same issue before two different forums as DRT Poona and before this forum as DRT I, shows that, the contention of R1 that applicants are attempting forum hunting cannot be ignored. The attempts at settlements and requests for restructuring of loan after the receipt of notice under Section 13(2), show that the applicants had waived their right and were intent on forum hunting which cannot be permitted in any manner. The act of the applicants in remaining passive, after filing SA 305/2022, without taking any steps to proceed with the allegations raised therein, and their present stand that, the said SA 305/22 is intended to be

withdrawn, show that there is conscious waiver of their right to challenge the same.

19. The pendency of SA 305/22 before DRT Poona regarding this matter which is stated to be intended to be withdrawn, shows that, the applicants are now estopped from raising the challenges to the notice under Section 13(2) SARFAESI Act, in this case again.

20. It is also conceded by applicants that, repeated requests for restructuring of the loan were made, which had not fruitified. It is also conceded by them that, repeated attempts at settlement were also made, the last one being made on 12.03.2026 as per the OTS letter furnished by them. The said OTS is seen rejected by R1.

21. There is no established case for applicants that, any amount was paid by them, towards the subsisting loan account after receipt of the demand notice dated 10.08.2020. The availing of loan, and the existence of dues to the secured creditor since 2020, do not stand denied in any manner. As according to R1, the settlement proposals offered by applicants, were rejected, as the amount offered by way of settlement was on the lower side.

22. After expressing desire to settle the matter and after making requests for restructuring of the loan, the applicants cannot turn round and raise a contention that, the demand notice is bad in law. Apart from offering settlement and requesting restructuring, the applicants have not shown their bonafides in

any manner, by making a payment, of at least a portion of the outstanding amount.

23. It is seen that, there were 08 auctions intended earlier. The applicants now state that, the said auctions were objected to by them, the petition filed for stay of the same were disposed off for want of bids, and were closed. It is not clear as to what had prevented the applicants from pursuing their case, or as stated above, to bring out their bonafides, by remitting atleast a portion of the outstanding balance, and then urge for stay of auction.

24. So, the applicants are seen to have waived their right to challenge the allegedly defective demand notice, and the alleged lack of reply by R1 to their objections. The inertia on their side in pursuing the SA 305/22 filed on the very same issues and the repeated attempts at settlement speak volumes on their waiver of challenging the said issues. So now they cannot be allowed to turn back, and voice their allegations on the very same issues again, in the present SA.

25. Another contention urged by applicants is that, R1 ought to have avoided the declaration of NPA, as recurring deposit of the applicants, aggregating to Rs.86,20,751/- was with R1 as on 31.10.2019. There was another sum of Rs.7,00,000/-, deposited in the cash credit account of applicants. An amount of Rs.93,20,751/- was available with R1. But despite requests by applicants, to adjust the said amount towards the loan account, R1, had not done the same. After adjusting Rs.65,05,000/- in the loan, R1 created a new recurring deposit, for the balance amount

and the said new recurring deposit was also, adjusted towards the repayment of principal amount of the loan.

26. So as per the contentions of the applicants, the declaration of NPA had occurred, solely because R1 had refused to comply with their direction, for the amount held in custody of R1. According to applicants, had R1 complied with their direction for adjustment of the said amount towards the loan, the declaration of NPA would not have been there.

27. Perusal of the records and statement produced by R1 shows that, the amount as is claimed by applicants, is adjusted on 31.10.2019. It is seen that, applicants were having two loan accounts and the sum of Rs.86,20,750.84/- which is the amount of recurring deposit and Rs.92,339.91/- which is the interest earned on the said amount is seen adjusted on 31.10.2019.

28. The contentions of the applicants appear to be that, had R1 been diligent to intimate them, about the loan account being classified as NPA, they would have prevented such on occurrence. It is the further contention of applicants that, R1 could have easily avoided or delayed the account being declared as NPA.

29. It is to be noted that, NPA classification is an automated objective of financial status, triggered by the EMI remaining overdue, for more than ninety days. Being a mechanical process, based on payment history, the general stand adopted by courts is that, there is no requirement of giving the

borrowers a prior opportunity to be heard, before declaration of NPA. But the banks are obligated to take action, once the account is flagged. The banks are mandated to notify the borrower, only at that time, and not before. Banks are only required to inform that, the account has been classified as NPA. So the contentions of applicants regarding wrongful classification of the account as NPA cannot be accepted.

30. Applicants next contend that, there was deliberate non-release, and delayed payment of the sanctioned amount. According to the applicants, out of the loan of Rs.3.60 crores sanctioned as per sanction letter dated 17.01.2017, they were allowed to withdraw, only a sum of Rs.1.50 crores. This restriction which went upto 26.11.2018, hampered the day to day expenses of the running of the factory. The balance amount of Rs.2.10 crores, was held on by R1, without any valid reason. This holding back, as is now contended by applicants, had caused a serious setback, to the running of the business by R1.

31. Perusal of the sanction letter dated 17.01.2017, shows that, for the financial year 2016-17, the permitted cash credit limit is Rs.1.50 crores, and the full cash credit limit of Rs.3.60 crores from 2017-18 onwards, shall be permitted, on compliance of terms and conditions stipulated in sanction letter. It is further stated in the sanction letter that, out of the total secured overdraft limit, the release of the balance amount of Rs.210.00 lakhs, shall be done after conversion of the plot offered as security, into non agricultural land, or on providing alternate security with

sufficient value, to cover minimum 50% of the sanctioned secured overdraft limits.

32. The contention of R1 that, the release of the secured overdraft limit, was subject to the compliance of the aforesaid direction in the sanction letter is not effectively seen resisted by the applicants. As the plot offered as security was not converted into non agricultural land, it was not taken up as security. The Ld. counsel for the applicants at the time of arguments had stated that another property was offered by them as security, to R1. So on furnishing the security as per the terms of the sanction letter, the amount is seen released to applicants.

33. The contention of R1 that, the plot offered was not converted into non agricultural land, is not denied by applicants. On the other hand, applicants at the time of arguments conceded that another property was furnished as security. As per the terms of the sanction letter, the disbursement of Rs.210.00 lakhs could be possible, only on furnishing additional security, on getting the valuation report, legal opinion and search report of the said additional property, and by forwarding the details to Regional office.

34. As additional property is admitted to be furnished by applicants, the release of the amount of Rs.210 Lakhs could be made only after the compliance of the aforesaid terms in the sanction letter. So the contention of applicants that, there was any deliberate delay on the part of R1, in disbursing the sum of Rs.210 lakhs cannot be accepted.

35. It is next contended by applicants that, they are not given the benefit of MSME Scheme by R1. According to the applicants, R1 should have mandatorily followed the special treatment fixed for such units by the guidelines issued by RBI. Such an approach was not at all adopted by R1; despite the requests made by applicants, by letters dated 05.05.2020 and 12.08.2020 to R1.

36. The applicants contend that, the various letters sent to R1, and the various meetings with concerned officers of R1, turned out to be in vain, as R1 never showed any interest in applying the MSME scheme, nor in effecting restructuring of the loan. On 06.05.2021, R1 by letter just issued a casual reply stating that, the applicants are not eligible for the MSME scheme as the same is not viable.

37. R1 contends that, the applicants were to approach R1 for benefit under the MSME scheme, prior to declaration of NPA. As per letter dated 29.03.2019, Applicant no. 1 had informed the Bank that the applicants were unable to pay the EMIs and requested to consider the restructuring of the loan. There was no mention of any MSME scheme, and no affidavit as provided under the MSME scheme was furnished by applicants.

38. It is to be noted that, mere letters to the bank are not sufficient to claim benefits, such as special restructuring and other facilities, under the MSME scheme. An official registration of the enterprise is necessary which should be submitted along

with the loan application. A simple letter will not pass bank audits or RBI guidelines, and standard banking application procedures are to be followed. The Hon'ble Apex Court mandates that, the MSME status must be claimed by submitting necessary details.

39. There is no material offered by applicants, to show that their application was made to the bank, in the aforesaid manner. Letters and emails requesting granting of MSME benefit are not sufficient. The mandatory procedure to invoke the said protection is, to properly and proactively invoke the framework. The correct legal procedure for the MSME unit, is to respond to the bank's demand notice, by formally asserting its MSME status, through an application supported by an affidavit. The bank is obliged to pause the recovery and consider restructuring, only at that time.

40. On the face of the denial by R1 of receiving any affidavit from the applicants in compliance with MSME requirements, it was incumbent on the applicants to bring out that such affidavits were furnished by them before declaration of the account as NPA. The applicants have furnished e-mails alongwith their additional written arguments. But perusal of the same does not show that they relate to the compliance as required under the MSME Scheme.

41. The Hon'ble Apex Court in Pro Knits Vs Board of Directors of Canara Bank and in Shri Shri Swami Samarth Construction and Finance solutions, had clarified that, MSME

framework does not automatically shield borrowers from bank recovery or SARFAESI actions. The spirit of both the aforestated dictums is that, the borrower in such cases, must file application, alongwith affidavit of an authorised person, to the secured creditor, claiming benefit of the MSME scheme.

42. The dictum laid down in Shri Shri Swami Samarth Construction and Finance Solution and another Vs Board of Directors of NKGSB Co-op Bank Ltd and others, clarifies that the borrower in the response under Section 13(3A)of the SARFAESI Act is to assert that it is a MSME unit, citing reasons supported by an affidavit. In such a situation, the secured creditor would mandatorily be, bound to look into such a claim keeping further action under the SARFAESI Act in abeyance.

43. Apart from the e-mails now produced at the time of written arguments, no records are offered by applicant to show that, such formal application accompanied by affidavit as required under the scheme, had been furnished to R1, either prior to NPA declaration, or in response to notice under Section 13(2). So this contention that the bank has not considered the request for MSME benefits, cannot be accepted, in obedience to the aforestated dictums by the Hon'ble Apex Court.

44. Applicants next contend that, the mortgage is defective in this case. No stamp duty is paid nor any proof has been produced by R1, alongwith the affidavit dated 11.09.2025; even though, the confirmation of deposit of title deeds dated 17.02.2016 is produced by R1. The said confirmation of deposit of

title deeds is neither registered nor stamped.

45. According to the applicants, as per the notification dated 01.04.2013 introduced to the Registration Act 1908, it was made compulsory in the State of Maharashtra that, all equitable mortgages are compulsorily to be registered. Neither of the deeds now relied on by R1, are properly stamped nor registered as required under Section 17(1)(f) of Indian Registration Act. So according to the applicants, R1 cannot be allowed to proceed on the basis of the unregistered and unstamped records.

46. The Maharashtra State Amendment to the Registration Act introduces Section 89 (B) and Section 89 (C), which made the filing of a notice of intimation, mandatory for all mortgages by deposit of title deeds by way of equitable mortgages. Under these rules, the legal burden falls on the borrower. It is for the borrower/ mortgagor to submit the mandatory notice of intimation to the Sub-registrar, under whose jurisdiction the property is located, within 30 days of the mortgage.

47. There is no averment or record to show that, the applicants have initiated this step which is mandated on them. Without any material to show that, they have complied with this duty, they cannot rely on the contention that there is no proper mortgage. The applicants are expected to establish their case on the basis of materials relied on by them, and not on the weakness if any, on the side of the opposite side. So the contention of applicants that, the mortgage is not enforceable cannot be entertained.

48. The applicants now have raised a ground that, the valuation fixed for the premises is not proper. It is to be noted that, at the time of sanctioning of the loan i.e. on 17.01.2017 they had accepted the valuation report by the respondent bank. The valuation reports that are now offered by R1, and the copy are seen furnished to the Ld. counsel for the applicants also. The applicants have not substantiated the reason to reject the said valuation reports, which are seen furnished by Govt. approved valuers.

49. It is to be noted that, the premises which were put up for auction could be sold off only on the ninth auction. So it is only natural that, the reduction in value will be there, for failure in obtaining bids for the earlier eight intended auctions.

50. Now the auction had succeeded at the ninth attempt, the applicants, who themselves have attempted settlements and sought for restructuring of their loan, have come forth with petition to set aside the auction, falling hack on the earlier issues, which must be taken to have waived by them, by their repeated offers for settlements.

51. Mere filing petition to stay a proceeding and then remaining passive without urging the objections to the sale notice at that time, waiting to bring the said objections, on the successful completion of auction process, must be stated to be a mere dilatory tactics on the side of applicants. Perusal of the roznama in SA 305/2022, shows that, apart from filing the same, no positive action is seen adopted by the applicants on the

repeated posting dates of the case. The Ld. DRT Poona had noted that, no one was present when the case was repeatedly posted on the different dates.

52. It is to be noted that, no valid grounds which go to the root of the matter warranting setting aside the sale are alleged or substantiated by applicants in the conduct of auction in this case. In such a situation, a concluded auction at the ninth attempt wherein the auction purchaser had paid up the entire consideration, cannot be simply set aside on trivial grounds.

53. Considering the entire matter it is seen that, no satisfactory grounds are made out, to set aside the notice dated 11.08.2025 or the auction conducted on 29.08.2025 in favour of the auction purchaser herein. The applicants have not substantiated a valid cause of action and hence the contentions raised by applicants are only to be dismissed.

54. From the above discussion it is held that the restraint by the order of this Tribunal passed, against confirmation of auction and issuance of sale certificate, to R2 the auction purchaser, is lifted. R1 shall proceed to confirm the sale and issue sale certificate to R2 herein. These points are found against the Applicant.

55. <u>Point no. 4.</u>

So the petition as S.A. No.21 of 2023 is disposed off as follows:

56. The petition as S.A. No.21 of 2023 stands dismissed.

57. The order dt.29.08.2025 restraining the issuance of the sale certificate to R2/ Auction Purchaser is lifted as the sale conducted stands confirmed.

58. Parties to suffer costs.

(Dictated to my Stenographer, transcribed by her corrected and signed by me and pronounced in open forum on 30.06.2026)

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

Date: 30.06.2026