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

Presiding Officer: Shri Govind Ballabh Sharma

SA no.140 OF 2025

Shri Gireesh Chand Garg
S/o Late Shri Harish Chand Garg
R/o 343 Railway Road Bajaria
Gaziabad, Uttar Pradesh.

....Applicants

Versus

1. Punjab National Bank
(the then Oriental Bank of Commerce)
2nd floor, Vikrant Tower,
Rajendra Palace New Delhi-110008

2. Harshita Designer Floors Pvt Ltd
Through Director Jagdish Chander Chugh
Regd. Address:- Shop No.73, Ground Floor,
Plot 30, Vardhman Market, Plaza Road
Pitampura, Delhi.

....Respondents

Present:

For the Applicants	: Sh. Harsh Chopra, Advocate.
For the Respondent bank	: Sh. Krishna Kumar Sharma, Advocate.
For the auction purchasers	: Sh. A.K. Sharma, Advocate.

Date of reserve: 12.06.2026.
Date of Pronouncement: 24.07.2026.

FINAL ORDER

The present Securitization application has been moved on behalf of the securitization applicant praying therein to restrain the respondent bank from transferring/alienating/creating third party interest in the secured assets and also prayed to set aside

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the entire actions of the respondent bank under the SARFAESI Act, 2002 qua the properties in question.

2. It has been submitted on behalf of the applicant that the present securitisation application has been preferred against the illegal and arbitrary actions of the respondent bank in pursuing coercive measures under Section 13 (4) of the SARFAESI Act, 2002 in terms of which the bank acting in arbitrary manner has published an auction notice in newspaper on dated 06.03.2025 whereby the auction was scheduled on 28.03.2025. It has further been submitted that the applicant stood as one of the guarantors for the credit facility availed by the principal borrower M. P Associates. It has further been submitted that the applicant has mortgaged the properties (a) Shop No.3 (Ground Floor without roof rights) 343 Railway Road Bajaria, Ghaziabad U. P., (b) Shop No.4 (Ground Floor without roof rights) 343 Railway Road Bajaria, Ghaziabad U. P. and (c) Shop No.9 (Ground Floor without roof rights) 343 Railway Road Bajaria, Ghaziabad U. P. It has further been submitted that the respondent bank made publication of the auction notice dated 06.03.2025 in newspaper "Financial Express" on 06.03.2025 whereby the auction was scheduled on 28.03.2025. It has further been submitted that the respondent bank has failed to serve redemption notice upon the applicant; that the bank has acted in contravention to the judgment passed by Hon'ble Apex Court in the case of Celir Llp vs Bafna Motors (Mumbai) Pvt. Ltd. It has further been

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submitted that the respondent bank has failed to serve fifteen days clear notice for sale upon the applicant and violated Rule 9 (1) of Security Interest (Enforcement) Rules 2002. It has also been submitted that respondent bank is rushing to auction the suit property at throw away price as the reserve price is much less than the fair market value of the property and the bank has failed to obtain the valuation of the property the bank has violated Rule 8 (5) of SI Rules 2002. It has further been submitted that the auction notice published by bank on 06.03.2025 is not as per Appendix IVA; that the Hon'ble Apex Court in the case of Hindon Forge Pvt Ltd Vs. State of U. P has held that it is mandatory to issue/ publish auction notice as per Appendix IVA. It has further been submitted that the respondent bank has failed to paste the auction notice on the outer door of the secured asset qua auction scheduled on 28.03.2025. It has further been submitted that the bank acting in an arbitrary manner is rushing to take the physical possession of the secured asset in pursuance to the order passed by ADM Ghaziabad dated 11.02.2019. It has further been submitted that the respondent bank has violated Rule 8 (1) of Security Interest (Enforcement) Rules 2002 as the bank has failed to serve possession notice upon the applicant. It has also been submitted that the bank has failed to paste possession notice on the outer door of the secured assets. It has further been submitted that the respondent bank has violated Rule 8 (2) of Security Interest (Enforcement) Rules

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2002 as the bank has failed to make paper-publication of possession notice in two newspapers one in a vernacular language. It has further been submitted that in the present case the bank has made paper-publication in one newspaper "Business Standard" in English and Hindi notice edition. It has further been submitted that the respondent bank has failed to serve demand notice u/s 13 (2) upon the applicant and the respondent bank has violated Rule 3(4) of Security Interest (Enforcement) Rules 2002. It has further been submitted that the applicant extracted 13 (2) from the application filed by bank before DM Ghaziabad; wherein the demand notice was issued on dated 18.3.2015. It has further been submitted that the bank has violated Section 13(2) as the

demand notice issued u/s 13(2) is dated 18.3.2015 whereby it is mentioned that the applicant is directed to pay the alleged dues within sixty days from the date of notice i.e. 18.3.2015 and on the contrary the possession notice has been published on 08.04.2015 i.e. 21st day. It has further been submitted that the bank has failed to give 60 days' time as per 13 (2) to repay the dues and the bank has violated Section 13 (2) of SARFAESI Act. It has further been submitted that the auction notice published on dated 06.03.2025, order passed by ADM Ghaziabad dated 11.02.2019 and possession notice published on dated 08.04.2015 are all based on 13 (2) dated 01.01.2015 whereas demand notice dated 18.3.2015 has been issued by bank and it

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is settled law that once a fresh demand notice is issued the demand notice issued earlier has lost its sanctity in law. It has further been submitted that any action/ measure taken by bank on the demand notice which has lost its sanctity is bad in eyes of law. It has further been submitted that the respondent bank has violated Section 13 (3) as the bank has mentioned wrong debt in the demand notice issued u/s 13 (2). It has further been submitted that the action of the respondent bank is arbitrary, vindictive as well as contrary to the provisions as laid down by the Hon'ble Supreme Court in the matter of M/s Mardia Chemicals Ltd V/s Union of India & Others. It has further been submitted that the bank officials with their recovery agents have several times visited the premises applicants and the recovery agents are making undue pressure on applicants and trying to harass them by making use of absurd language, whereby there is no right to the recovery agents to visit the premises of the applicants. It has further been submitted that the applicants several times moved to bank to settle the matter amicably and the bank charged exorbitant rate of interest in the account of the applicants, but the bank acting in vindictive manner called upon to clear the entire outstanding in the account. It has further been submitted that the respondent bank is claiming exaggerated amount claimed in the impugned notice issued u/s 13 (2) as it has obviously debited and claimed and capitalized penal interest from time to time even to the extent of more than

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two over percent per annum and above with monthly rest and has also charged varying exorbitant usurious and debited from time to time are deliberately suppressed by the respondent bank which were not agreed to by the applicants. It has further been submitted that the respondent bank has sought to charge/debit interest and penal interest on such capitalized penal interest which is prohibited in law as per Apex Court. It has further been submitted that the bank while taking the benefit of dominant position, the statutory protection available to the bank has claimed such amount and is pressing for the recovery of same illegally. It has further been submitted that the Reserve Bank of India has issued guidelines / directions to all the banks to reschedule and reconstruct the non performing accounts before taking any hard step under the SARFAESI Act against the borrowers. It has further been submitted that the NPA should be reconsidered and rescheduled due to great recession throughout the world. The same has not been reconsidered /rescheduled by the respondent bank in the present case. It has further been submitted that in view of the provisions of the guidelines of RBI, the petitioner was entitled to be informed and any doubt or dispute was to be settled between the creditor and the borrower through any specific internal within one month from the date on which the account would have been classified as NPA, even if there was no internal channel to settle such dispute/ doubt, the petitioner was entitled to be informed and to get an opportunity

Sd-to explain or represent against the intended classification of his account as NPA. It has further been submitted that natural justice, which according to the Supreme Court in Smt. Maneka Gandhi V/s Union of India & Anr must be read and followed even if the provision is silent in that regard. It has further been submitted that the respondent being a public sector bank are expected to follow just, fair/ prescribed procedure to meet the requirement of law and Article 14 of the Constitution of India. It has further been submitted that the documents and any of not the respondent bank has provided the applicants with complete loan the security documents. It has further been submitted that the respondent bank has kept blank papers signed by applicants and bank has been in malpractice of unilaterally creating the security in concern. It has further been submitted that it is necessary and germane to bring on to the record before this Tribunal the details pertaining contractual terms and understanding and circumstances arising thereto between the applicants and the bank as the same are integral part of cause of action allegedly claimed by the respondent bank and the respondent bank may be directed to file the same before this Hon'ble tribunal. It has further been submitted that the bank has violated Section 26D of SARFAESI Act as the bank has failed to get the charge registered with CERSAI. It has further been submitted that the applicants are therefore sorely aggrieved by the illegal and high handed actions of the bank in forging

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manipulating documents, unilaterally altering terms loan, repeatedly facts and misrepresenting of refusing to explain the calculations of its massively inflated claims despite repeated expressions of the applicants willingness to amicably settle the matter by liquidating some other property, even as the applicants were requesting the bank for meetings to work out how to clear the legitimate dues, the respondent bank has taken the extreme step to take the physical possession of the secured assets and also intended to auction the secured assets. Accordingly, it has been requested to allow the present application.

3. On the other hand, it has been objected on behalf of the respondent bank and submitted that the securitisation application is wholly misconceived, barred by gross delay and laches, and is a clear attempt by the applicant (a guarantor) to obstruct the lawful recovery proceedings that were initiated more than ten years ago. It has further been submitted that the present SA is barred by the principles of res judicata because the applicant had previously availed of the remedy under Section 17 of the SARFAESI Act by filing SA/530/2015 before the Ld. DRT, Lucknow, challenging the very same measures that are now sought to be re-agitated before this Tribunal, which SA/530/2015 dated 17.08.2015 and the same was dismissed for non- prosecution by the Ld. DRT, Lucknow dated 09.08.2017, by the SA Applicant's own inaction and conduct. It has further been

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submitted that the SARFAESI Act stipulates a limitation period of 45 days under Section 17(1) for challenging measures taken under Section 13(4), and the measures in question were taken in 2015 and 2019 respectively and the SA filed in April, 2025 is, therefore, plainly and patently barred by limitation, and no application for condonation of delay, let alone any sufficient cause whatsoever, has been placed on record by the applicant. It has further been submitted that all measures taken by the Bank under the SARFAESI Act, 2002 were in strict compliance with the provisions of the Act and the Security Interest (Enforcement) Rules, 2002 and the auction conducted on 28.03.2025 was transparent, competitive and legally valid. It has further been submitted that the successful auction purchaser (respondent no.2) has already deposited the entire sale consideration of Rs.1,27,04,000/- by 07.04.2025 and the rights of the bona fide auction purchaser have crystallised and cannot be disturbed at this stage. It has further been submitted that the original application No.486/2015 filed by the erstwhile OBC Bank was decreed in favour of the Bank on 30.05.2018 by the Ld. Debts Recovery Tribunal-III, Delhi, against the principal borrower M/s M.P. Associates and all guarantors including the applicant (defendant No. 3 therein) and the decree has attained finality. It has further been submitted that the demand notice u/s 13 (2) was issued on 01.01.2015 to the principal borrower and all guarantors (including the applicant) demanding

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Rs.5,31,25,466/- and again a separate 13 (2) notice dated 18.03.2015 was issued to co-guarantor Mr. Parveen Nayyar only in respect of another property and is irrelevant to the present SA. It has further been submitted that the 13 (2) demand notice was issued to Sh. Praveen Nayyar being the Guarantor for the Schedule Property vide Property bearing No. 304, C.P. First and Second Floor with roof right, Block A, Sector 49, Faridabad only and the sale certificate has also been issued by the Respondent No. 1 (erstwhile OBC Bank) in favour of Sh. Hanuman Prashad S/o Sh. Mool Chand. It has further been submitted that the symbolic possession u/s 13 (4) was taken on 06.04.2015 (after expiry of 60 days from the 13 (2) notice dated 01.01.2015) and possession notice was published in two leading newspapers (Business Standard - English & Hindi) on 08.04.2015. It has further been submitted that the physical possession was obtained vide order dated 11.02.2019 passed by the ADM, Ghaziabad u/s 14 of the SARFAESI Act. It has further been submitted that after the decree in OA No.486/2015, the bank proceeded with sale. It has further been submitted that the multiple auctions were unsuccessful, even on 19.09.2024 was also unsuccessful and fresh auction notice was published on 06.03.2025 in Financial Express, giving more than 15 clear days' notice and the e-auction was successfully conducted on 28.03.2025 and M/s Himanshita Designer Floors Pvt. Ltd. was the Highest bidder in the bid. Moreover, M/s Himanshita

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Designer Floors Pvt. Ltd. has also deposited the total bidding amount with the Respondent No.1 due to the stay passed by this Tribunal on 11.04.2025, the sale certificate could not be issued in their favour. It has further been submitted that M/s Himanshita Designer Floors Pvt. Ltd. (Respondent No.2) was declared highest bidder and paid the full amount by 07.04.2025 and the respondent bank issued three separate sale intimation letters, all dated 28.03.2025, formally communicating the acceptance of the auction purchaser's bids as per the conditions mentioned therein. It has further been submitted that the present SA was filed only on 04.04.2025 (after the auction was concluded and substantial payment already received), purely with a view to delay the matter and prejudice the rights of the auction purchaser. It has further been submitted that the applicants are having no right, title or interest in the aforesaid property and are relying upon the litigation in between them which is nothing but fabricated, manipulated and misconceived and the present S.A. has been filed by the applicants just to prejudice the mind of this Tribunal and to cheat the respondent no.1, if they can and the S.A. is liable to be dismissed forthwith. It has further been submitted that the present SA has been filed by the applicant in connivance with the defaulter debtors therefore the same is liable to be dismissed. It has further been submitted that the auction notice dated 06.03.2025 (published 06.03.2025) was issued after full compliance with Rules 8 and 9

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of the security Interest (Enforcement) Rules, 2002. It has further been submitted that the bank has every right to proceed with sale after the account became NPA, 13 (2) demand notice dated 01.01.2015 was issued, and decree was passed in OA no.486/2015. It has also been submitted that the reserve prise were fixed after proper valuation and the properties were sold at a price higher than the reserve price in a transparent e-auction. It has further been submitted that the auction notice was published in the prescribed format and submitted that the respondent bank has complied with all procedural requirements including pasting of auction notice at conspicuous place of the property. It has further been submitted that the ADM order dated 11.02.2019 is valid and was passed after due process as per Section 14 of the SARFAESI Act, hence, the respondent no.1/bank is fully entitled to proceed with sale. It has further been submitted 13 (2) notice was issued on 01.01.2015 and 13(4) was issued on 08.04.2015 i.e. after 60 day's and the applicant had knowledge of the proceedings since 2015. It has further been submitted that the objection raised after more than 10 years is barred by res-judicata and the respondent bank has complied with procedural requirements prior to auctioning the property in questions. Accordingly, it has been requested to dismiss the present securitization application.

4. Ld. counsel for the auction purchaser has also objected and submitted that the Securitisation Application is wholly

misconceived, barred by gross delay and laches, and is a clear attempt by the Applicant (guarantor) to obstruct the lawful recovery proceedings that were initiated more than ten years ago. It has further been submitted that the present SA is barred by the principles of res-judicata because the applicant had previously availed of the remedy under Section 17 of the SARFAESI Act by filing SA/530/2015 before the Ld. DRT, Lucknow, challenging the very same measures that are now sought to be re-agitated before this Tribunal, which SA/530/2015 dated 17.08.2015 and the same was dismissed for non- prosecution by the Ld. DRT, Lucknow dated 09.08.2017, by the SA applicant's own inaction and conduct. It has further been submitted that the SARFAESI Act stipulates a limitation period of 45 days under Section 17(1) for challenging measures taken under Section 13(4), and the measures in question were taken in 2015 and 2019 respectively and the SA filed in April, 2025 is, therefore, plainly and patently barred by limitation, and no application for condonation of delay. It has further been submitted that all measures taken by the Bank under the SARFAESI Act, 2002 were in strict compliance with the provisions of the Act and the Security Interest (Enforcement) Rules, 2002 and the auction conducted on 28.03.2025 was transparent, competitive and legally valid and the successful auction purchaser (respondent no.2) has already deposited the entire sale consideration of Rs.1,27,04,000/- by 07.04.2025. It has

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further been submitted that the rights of the bona fide auction purchaser have crystallised and cannot be disturbed at this stage. It has further been submitted that the Original Application No.486/2015 filed by the erstwhile OBC Bank was decreed in favour of the Bank on 30.05.2018 before Ld. Debts Recovery Tribunal-III, Delhi, against the principal borrower M/s M.P. Associates and all guarantors including the Applicant (defendant No. 3 therein) and the decree has attained finality. It has further been submitted that the demand notice u/s 13 (2) was issued on 01.01.2015 to the principal borrower and all guarantors (including the applicant) demanding Rs.5,31,25,466/- and again a separate 13(2) notice dated 18.03.2015 was issued to co-guarantor Ms. Parveen Nayyar only in respect of another property and is irrelevant to the present SA and the 13 (2) notice was issued to Sh. Praveen Nayyar being the Guarantor for the Schedule Property vide Property bearing No. 304, C.P. First and Second Floor with roof right, Block A, Sector 49, Faridabad only and the sale certificate has also been issued by the respondent no. 1 (erstwhile OBC Bank) in favour of Sh. Hanuman Prashad S/o Sh. Mool Chand. It has further been submitted that the symbolic possession u/s 13 (4) was taken on 06.04.2015 (after expiry of 60 days from the 13 (2) notice dated 01.01.2015) and possession notice was published in two leading newspapers (Business Standard - English & Hindi) on 08.04.2015. It has further been submitted that the physical possession was

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obtained vide order dated 11.02.2019 passed by the ADM, Ghaziabad u/s 14 of the SARFAESI Act. It has further been submitted that the decree in OA No. 486/2015, the Bank proceeded with sale and multiple auctions were unsuccessful, even on 19.09.2024 was also unsuccessful. It has further been submitted that the fresh auction notice was published on 06.03.2025 in Financial Express, giving more than 15 clear days' notice and the e-auction was successfully conducted on 28.03.2025 and M/s Himanshita Designer Floors Pvt. Ltd. was the Highest bidder in the bid, moreover, M/s Himanshita Designer Floors Pvt. Ltd. has also deposited the total bidding amount with the respondent no. 1 due to the stay passed by this Tribunal on 11.04.2025, the sale certificate could not be issued in their favour. It has further been submitted that M/s Himanshita Designer Floors Pvt. Ltd. (respondent no. 2) was declared highest bidder and paid the full amount by 07.04.2025 and the respondent bank issued three separate sale intimation letters, all dated 28.03.2025, formally communicating the acceptance of the auction purchaser's bids as per the conditions mentioned therein. It has further been submitted that the present SA was filed only on 04.04.2025 (after the auction was concluded and substantial payment already received), purely with a view to delay the matter and prejudice the rights of the auction purchaser. It has further been submitted that the applicants have no right, title or interest in the aforesaid property

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and are relying upon the litigation in between them which is nothing but fabricated, manipulated and misconceived and the present S.A. has been filed by the applicants just to prejudice the mind of this Tribunal and to cheat the respondent no. 1, if they can. It has further been submitted that the S.A. has been filed after completion of auction (28.03.2025), payment of entire sale consideration (07.04.2025), and issuance of Sale Certificates, and is therefore an abuse of process of law. It has further been submitted that the applicant, being merely a guarantor/mortgagor, has no enforceable right to reopen concluded SARFAESI proceedings at this belated stage and the borrower M/s M.P. Associates availed credit facilities from the predecessor of respondent no.1, and the applicant stood as guarantor, creating mortgage over the subject properties. It has further been submitted that the respondent bank initiated SARFAESI proceedings vide demand notice under Section 13(2) on 01.01.2015 and Symbolic possession was taken under Section 13(4) on 06.04.2015 and symbolic possession u/s 13(4) was taken on 06.04.2015 (after expiry of 60 days from the 13(2) notice dated 01.01.2015) and possession notice was published in two leading newspapers (Business Standard English & Hindi) on 08.04.2015 and all measures attained finality long ago. It has further been submitted that after taking possession, the respondent bank issued auction notice dated 06.03.2025, fixing auction on 28.03.2025, strictly complying with Rules 8 & 9 and

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the respondent no.2 (auction purchaser) participated in lawful e-auction and was declared highest bidder on 28.03.2025 thereafter respondent no.2 deposited 25% on 29.03.2025 and 100% consideration (1,27,04,000/-) on 07.04.2025. It has further been submitted that upon full payment, statutory right under Rule 9(6) accrued in favour of the Auction Purchaser for issuance of Sale Certificate and it is an admitted position that Sale Certificates were issued, though wrongfully withheld. It has further been submitted that the present S.A. is filed on 02.04.2025 i.e after completion of auction, acceptance of bid, substantial compliance of sale terms and therefore present S.A is post-sale litigation intended to defeat vested rights of a bona fide purchaser. It has further been submitted that on 11.04.2025, this Tribunal passed an order directing the respondent bank to maintain status quo in respect of the subject properties without impleading auction purchaser is violation of Principle of Natural Justice of respondent no.02 and have caused grave prejudice and the auction purchaser, despite paying entire consideration, has no possession or title documents or beneficial use of property. It has further been submitted that the applicant has deliberately not served the copy of pleadings and repeatedly delayed the proceedings before this Tribunal and misused the interim order dated 11.04.2025 to retain unlawful advantage therefore this S.A. is a classic abuse of SARFAESI remedy to stall recovery after losing rights. It has further been submitted that it

Sd-is well settled that after auction is concluded and consideration amount is paid the rights of auction purchaser become absolute and protected and the Hon'ble Supreme Court of India in M. Rajendran & Ors. v. KPK Oils and Proteins India Pvt. Ltd. & Ors. (Civil Appeal No. 12174/2025) has authoritatively held that a borrower or mortgagor has no unfettered right to tender outstanding dues after the date of publication of the notice for public auction so as to compel the secured creditor to desist from proceeding with the sale. It has further been submitted that the Supreme Court held that the restriction on the secured creditor under Section 13(8) of the SARFAESI Act i.e., not to transfer the secured asset is triggered only if the dues are tendered prior to the publication of the auction notice, where the dues are not discharged before the publication of the auction notice, the secured creditor is not bound to accept them and may continue with the transfer and in the present case, not only was the auction notice published, but the auction was conducted to its conclusion, the entire sale consideration was received, and Sale Certificates were issued all before the SA Applicant/mortgagor even approached this Tribunal. It has further been submitted that the respondent no.2 (auction purchaser) is a company that participated in a public auction in good faith, completed all its obligations, and deposited the entire consideration of Rs. 1,27,04,000/- and it is now left holding a worthless piece of paper while an interim order of status quo keeps it away from

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its lawfully purchased properties. It has further been submitted that the financial loss is not merely theoretical and the opportunity cost of Rs.1,27,04,000/- blocked for over eleven months, the loss of commercial rental income from the three shops, and the erosion of the auction purchaser's ability to conduct its business based on the acquisition of these properties represent real, tangible, and continuing irreparable harm. It has further been submitted that this harm cannot be compensated by any order passed at a later stage; the loss already suffered cannot be undone. It has further been submitted that an auction notice was published in the Financial Express on 06.03.2025, the respondent bank notified the public auction of the subject properties under Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002 (hereinafter "the Rules"), with the reserve prices fixed at Rs.30,92,000/- for Shop No. 3 (measuring 19.926 sq. mtr.), Rs.31,79,000/- for Shop No.4 (measuring 20.438 sq. mtr.), and Rs.63,58,000/- for Shop No. 9 (measuring 40.876 sq. mtr.), all being Ground Floor shops (without Roof Rights) forming part of Property Old No. 312, Nagar Nigam, New No. 343, Railway Road, Bajaria, Ghaziabad. It has further been submitted that the auction was scheduled for 28.03.2025, thereby satisfying the mandatory 15-day notice period stipulated under the proviso to Rule 9(1) of the Rules. It has further been submitted that the reserve prices fixed at Rs.30,92,000/- for Shop No. 3 (measuring 19.926 sq. mtr.), Rs.31,79,000/- for Shop

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No.4 (measuring 20.438 sq. mtr.), and Rs.63,58,000/- for Shop No. 9 (measuring 40.876 sq. mtr.), all being Ground Floor shops (without Roof Rights) forming part of Property Old No. 312, Nagar Nigam, New No. 343, Railway Road, Bajaria, Ghaziabad is fair market value of the abovementioned property. Accordingly, it has been requested to dismiss the present application.

5. In rebuttal, Ld. counsel for the applicant has argued that the demand notice issued by bank dated 18.03.2015 directed borrower i.e. Sh. Parveen Nayyar to repay liabilities i.e. Rs.5,31,25,466/-. It has further been submitted that the demand notice says *"You are therefore, now required to discharge in full the bank's liabilities with upto date interest as per the details mentioned above within a period of 60 days from the date of notice failing which the bank shall take necessary action for enforcement of the secured assets to realize its dues. It has further been submitted in the event of your not discharging liability as set out hereinabove, the bank/ secured creditor may exercise any of the right conferred vide Section 13(4) of SARFAESI Act and while publishing the possession notice/auction notice, electronically or otherwise as required under the SARVAESI Act, the Bank/secured creditor may also publish your photograph. The details of secured assets intended to be enforced by the bank in the event of non-payment of the full liabilities as stated herein below are stated here under:-..."* It has also been submitted that the conduct of bank is writ at

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large as per the demand notice annexed as Annexure A-4 with the S.A the notice u/s 13(2) dated 18.03.2015 clearly says that the borrower i.e. Sh. Parveen Nayyar is called upon to pay the liabilities in full within 60 days from the date of notice i.e. on or before 18.05.2015 otherwise bank will enforce security interest over the secured assets. It has further been submitted that the bank has specifically mentioned all the four properties in the demand notice. It has further been submitted that the bank acting in a vindictive manner has taken measure u/s 13(4) qua the property/s on 06.04.2015 i.e. 20th day and the bank has violated section 13(2) of SARFAESI Act. It has further been submitted that as per the possession notice published by bank on 08.04.2015 the same has been issued based on 13(2) notice dated 01.01.2015, whereas the law is clear that in case subsequent demand notice is issued by secured creditor the earlier notice issued u/s 13(2) will lose its sanctity. It has further been submitted that as the bank has issued fresh demand notice on 16.03.2015 the earlier demand notice i.e. 01.01.2015 has lost its sanctity in law, therefore, the possession notice published by bank is illegal. It has further been submitted the possession notice has been published in one newspaper Business Standard in two editions and the bank has violated Rule 8(2) of Security Interest (Enforcement) Rules 2002. It has further been submitted that the bank has violated Section 26D of SARFAESI Act as the bank has failed to get the charge registered with

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CERSAI. It has further been submitted that the bank has failed to serve redemption notice before making the paper-publication of auction notice dated 06.03.2025. It has further been submitted that the respondent bank has acted in contravention to the judgment passed by Hon'ble Apex Court in case of Celir LLP Vs. Bafna Motors. It has further been submitted that the Hon'ble DRAT Allahabad in case of Nitin Chandra Srivastava Vs. Bank of India has held that it is mandatory upon the respondent bank to issue redemption notice before publishing the auction notice. It has further been submitted that the Hon'ble DRAT Delhi in case of Chaudhary Ventures Pvt Ltd Vs. Indiabulls Housing Finance Ltd has held that it is mandatory upon the bank to issue notice to redeem the property before making paper-publication of the auction notice. It has further been submitted that the auction notice published by bank is defective as the auction notice published by the bank is not as per Appendix IVA. It has further been submitted that the respondent bank has acted in contravention to the judgment passed by Hon'ble Apex Court in case of Hindon Forge Pvt Ltd Vs. State of U. P. It has further been submitted that the respondent bank has violated Rule 8(6) and 9(1) of Security Interest (Enforcement) Rules 2002 as the bank has failed to serve clear fifteen days' notice to the applicants. It has also been submitted that the bank has acted in contravention to the Rule 8(6) and 9(1) of Security Interest (Enforcement) Rules 2002. It has further been submitted that

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the respondent bank has violated Rule 8(5) of Security Interest (Enforcement) Rules as the bank has failed to obtain valuation of the secured assets before putting it for auction. It has further been submitted that the respondent bank without obtaining valuation has opted to auction the secured assets. It has further been submitted that the respondent bank has acted in contravention to the judgment passed by Hon'ble Punjab & Haryana High Court in case of Skytone Electricals Vs Canara Bank. It has further been submitted that the respondent bank has violated Rule 8(7) of the Security Interest (Enforcement) Rules 2002 as the bank has failed to paste auction notice on the outer door of secured assets as envisaged under Rule 8(7) of Security Interest (Enforcement) Rules 2002. It has further been submitted that the respondent bank has mentioned wrong description of the secured assets in the paper-publication of auction notice. It has further been submitted that the respondent bank has fixed reserve price of the secured assets much less than the actual fair market value of the secured assets. It has further been submitted that the bank has opted to auction the secured assets at throw away price and the respondent bank has acted in contravention to the judgment of Apex Court in the case of Ram Kishun Vs State of U. P.

6. In order to prove its case, the applicant has filed its evidence by way of affidavit of Shri Gireesh Chand Garg, applicant who has proved the documents as Affidavit in

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Evidence, the auction notice published on 06.03.2026 exhibited as Ex AW1/1, order passed by ADM Ghaziabad dated 11.02.2019 exhibited as EX AW1/2, possession notice published in one newspaper Business Standard on 08.04.2015 exhibited as Ex AW1/3 and the demand notice issued u/s 13(2) dated 18.05.2015 is exhibited as Ex AW1/4.

7. In order to prove its case, the respondent no.1/ bank has filed its evidence by way of affidavit of Shri Adarsh Kumar, authorized representative of the respondent bank who has proved the documents as Affidavit in Evidence, Power of Attorney Holder as Ex. RW1/1, Registered Sale Certificate as Ex. RW1/2, notice issued under Section 13(2) of the SARFAESI Act dated 01.01.2015 as Ex.RW1/3, notice issued under Section 13(4) dated 06.04.2015 as Ex. RW1/4, copies of notice served upon borrower, guarantor/mortgagor before effecting sale of secured assets is exhibited as Ex. RW1/5, undertaking given by the guarantor for creating mortgage as Ex. RW1/6 and valuation report as Ex. RW1/7.

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

9. In the present matter, admittedly the borrower has availed the loan facilities from the respondent bank (the then Oriental Bank of Commerce) against the mortgage of the property in question and apparently, there was default on the

part of the borrower/mortgagor/guarantor in paying the dues of the respondent bank and till date the borrower/ mortgagor/guarantor have not paid the dues of the respondent bank. Ld. Counsel for the respondent bank has raised the objection that the present securitization is barred by limitation because the same has not been preferred within 45 days from the date of symbolic possession notice under section 13 (4) of the SARFAESI Act, 2002. Apparently, the cause of action starts when the "symbolic possession" is taken with the issuance of a notice under Section 13 (4) triggering the availability of remedy under Section 17 before the DRT. However, even if the borrower did not choose to approach the DRT when he was dispossessed, but instead does the same when auction notice is issued later in pursuance of the same, then he cannot be non-suited on the ground that 45 days from the first cause of action [i.e. taking over of symbolic possession Section 13(4)] have expired. However,the limitation can be started afresh everytime, whenever any new measure in the series is taken recourse to by the bank and 45 days have to be accordingly calculated from the last and latest measure and the cause of action continues till the various actions of the bank/FI get concluded finally and DRT can be approached at any stage against any measure. In this regard, the Hon'ble Supreme Court in the case of Arce polymers Private Limited vs versus M/s. Alphine Pharmaceuticals Private Limited

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and others [Civil Appeal no.7372 of 2021 (arising out of Special Leave Petition (Civil) no.5051 of 2020)] has held as under:

> *".....On the second question, reference was made to Section 17 (1) of the SARFAESI Act which deals with the right of appeal by a party aggrieved by the measures referred to in sub-section (4) to Section 13. Relying on the decision of this Court in Authorised Officer, Indian Overseas Bank and Another v. Ashok Saw Mill, it was held that the series of steps from the date of action by the secured creditor under Section 13 (2) of the SARFAESI Act up to the date of auction and sale confirmation can be challenged by the Borrower when it challenges the measures referred to in the sub-section (4) to Section 13 under Section 17 of the SARFAESI Act...."*

10. In the present matter, the present securitization application was filed on 02.04.2025, whereas the auction sale notice qua the property in question was issued on 05.03.2025 and thus the present securitization application was filed within 45 days from the date of auction sale notice dated 05.03.2025 in view of the aforesaid judgement of Hon'ble Supreme Court and accordingly, the aforesaid objection of the respondent bank is not sustainable and the said objection stands rejected.

11. It has been argued on behalf of the applicant that entire actions of the respondent bank initiated under the SARFAESI Act, 2002 are bad in law because the respondent bank has issued the two demand notices dated 01.01.2015 and 18.03.2015 under section 13 (2) of the SARFAESI Act, 2002. He further argued that the respondent bank has failed to serve the aforesaid demand notices dated 01.01.2015 and 18.03.2015 under section 13 (2) of the SARFAESI Act, 2002 upon all the borrowers/guarantors/ mortgagors through all modes as per the Security Interest (Enforcement) Rules, 2002. He further argued that without

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completing the mandatory period of 60 days as per the demand notice dated 18.03.2015 issued under section 13 (2) of the respondent bank has issued the symbolic possession notice dated 06.04.2015 under section 13 (4) of the SARFAEASI Act, 2002. He further argued that symbolic possession under Section 13 (4) dated 06.04.2015 was published only in one newspaper i.e. Business Standard English and Hindi edition on 06.04.2015 which is against the law as the same should have been published in two newspapers. He further argued that the respondent bank has also failed to serve the said sale notice dated 06.03.2025 upon all the borrowers/guarantors/mortgagors as per Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002. Accordingly, he has prayed for setting aside the entire actions of the respondent bank initiated under the SARFAESI Act, 2002. On the other hand, Ld. counsel for the respondent bank has argued that the respondent bank has taken all the measures under the SARFAESI Act and the notices under Sections 13 (2) and 13 (4) and sale notice have been served upon all the borrowers/guarantors/mortgagors through all modes as per the Security Interest (Enforcement) Rules, 2002. Accordingly, he has prayed for rejection of the interim prayer of the applicant.

12. Apparently, the respondent bank has issued separate demand notices dated 01.01.2015 under section 13 (2) of the SARFAESI Act, 2002 to M/s M.P. Associates, Mr. Gireesh Chand Garg, Mr. Saurabh Garg, Mr. Gaurav Garg and Mr. Maninder

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Singh Oberoi by post (Exhibit RW-1/3), but the respondent bank has failed to issue the said demand notice dated 01.01.2015 to Mr. Parveen Nayyar, who was also the guarantor/mortgagor. Admittedly, the respondent bank has issued a separate demand notice of different date i.e. 18.03.2015 under section 13 (2) of the SARFAESI Act, 2002 (Exhibit AW-1/4) to Mr. Parveen Nayyar, but the same was not served upon all the borrowers/guarantors/mortgagors (M/s M.P. Associates, Mr. Gireesh Chand Garg, Mr. Saurabh Garg, Mr. Gaurav Garg and Mr. Maninder Singh Oberoi). Thus, it is clear that the respondent bank has failed to serve the aforesaid demand notices dated 01.01.2015 and 18.03.2015 under section 13 (2) of the SARFAESI Act, 2002 upon all the borrowers/guarantors/ mortgagors meaning thereby there is non-compliance of the Rule 3 of the Security Interest (Enforcement) Rules, 2002 on the part of the respondent bank while issuing the demand notices under section 13 (2) of the SARFAESI Act, 2002. Thus, it is proved that the respondent bank has failed to serve the aforesaid demand notices dated 01.01.2015 and 18.03.2015 under section 13 (2) of the SARFAESI Act, 2002 upon all the borrowers/guarantors/mortgagors through all modes as per the Security Interest (Enforcement) Rules, 2002. The Rule 3 of the Security Interest (Enforcement) Rules, 2002 is reproduced herein below:

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Rule: 3

(1) The service of demand notice as referred to in sub-section (2) of section 13 of the [Act] shall be made by delivering [including hand delivery] or transmitting at the place where the borrower or his agent, empowered to accept the notice or documents on behalf of the borrower, actually and voluntarily resides or carries on business or personally works for gain, by registered post with acknowledgement due, addressed to the borrower or his agent empowered to accept the service or by Speed Post or by courier or by any other means of transmission of documents like fax message or electronic mail service:

Provided that where authorised officer has reason to believe that the borrower or his agent is avoiding the service of the notice or that for any other reason, the service can not be made as aforesaid, the service shall be effected by affixing a copy of the demand notice on the outer door or some other conspicuous part of the house or building in which the borrower or his agent ordinarily resides or carries on business or personally works for gain and also by publishing the contents of the demand notice in two leading newspapers, one in vernacular language, having sufficient circulation in that locality.

(2) Where the borrower is a body corporate, the demand notice shall be served on the registered office or any of the branches of such body corporate as specified under sub-rule (1).

(3) Any other notice in writing to be served on the borrower or his agent by authorised officer, shall be served in the same manner as provided in this rule.

(4) Where there are more than one borrower, the demand notice shall be served on each borrower.

13. Further, the respondent bank has issued three separate symbolic possession notice dated 06.04.2015 under section 13 (4) of the SARFAESI Act, 2002 addressed only to M/s M.P. Associates, but the same was not addressed to all the borrowers/guarantors/mortgagors meaning thereby, the respondent bank has failed to issue the aforesaid symbolic possession notice dated 06.04.2015 upon all the borrowers/guarantors/mortgagors, which is bad in law. Further, as per the proof of despatch (Exhibit RW-1/4) the aforesaid symbolic possession notice dated 06.04.2015 was sent by post

and publication in the newspapers, but the respondent bank has not filed the proof of affixation meaning thereby there is non-compliance of Rule 8 (1) of the Security Interest (Enforcement) Rules, 2002. Further, the aforesaid symbolic possession notice dated 06.04.2015 under Section 13 (4) was published only in one newspaper i.e. Business Standard in vernacular language (Hindi and English) on 06.04.2015, but as per Rule 8 (2) of the Security Interest (Enforcement) Rules, 2002 the same should have been published in two leading newspapers, which is also in clear violation of Rule 8 (2) of the Security Interest (Enforcement) Rules, 2002. Further, without completion of mandatory period of 60 days as per the demand notice dated 18.03.2015 issued under section 13 (2), the respondent bank has issued the symbolic possession notice dated 06.04.2015 under section 13 (4) of the SARFAEASI Act, 2002, which is also bad in law. Thus, it is proved that the respondent bank has failed to serve the aforesaid symbolic possession notice dated 06.04.2015 upon all the borrowers/guarantors/mortgagors through all modes as per the Security Interest (Enforcement) Rules, 2002. The relevant extracts of Rule 8 (1) and 8 (2) of the Security Interest (Enforcement) Rules, 2002 are reproduced herein below.

Rule 8 (1) of the Security Interest (Enforcement) Rules, 2002:

Where the secured asset is an immovable property, the authorised officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by *affixing the possession notice on the outer door or at such conspicuous place of the property.*

Rule 8 (2) of the Security

Interest (Enforcement) Rules, 2002:

The possession notice as referred to in sub-rule (1) shall also be published in two leading newspapers, one in vernacular language having sufficient circulation in that locality, by the authorised officer.

14. Further, Ld. Counsel for the applicant has raised the objection that the respondent bank has failed to serve the sale notice dated 06.03.2025 upon all the borrowers/guarantors/ mortgagors through all modes as per the Security interest (Enforcement) Rules, 2002. However, it has been argued on behalf of the respondent bank that they have served the aforesaid sale notice upon all the borrowers/guarantors/mortgagors through all modes as per the Security interest (Enforcement) Rules, 2002. However, on perusal of the records and documents [Exhibit RW-1/5 (colly)] filed by the respondent bank it appears that the respondent bank has filed the copies of the sale notice issued in the year 2015, but the respondent bank has failed to file the copy of the sale notice dated 06.03.2025 alongwith proof of service of the said sale notice, which is bad in law.

15. Further, the Hon'ble Supreme Court of India in the judgment of Rajiv Subramaniyam reported in [2014] 5 SCC page 651 and referred para 14 of the judgment has held as under:

",,,,As noticed above, this Court in Mathew Varghees case also examined Rules 8 and 9 of the Rules, 2002. On a detailed analysis of Rules 8 and 9(1), it has been held that any sale effected without complying with the same would be unconstitutional and, therefore, null and void."

16. In view of the above facts and circumstances and SARFAESI Act and Rules, this Tribunal is of the affirmed view that the respondent bank has not followed the mandatory procedures as laid down under the SARFAESI Act and Rules, while initiating the measures under the SARFAESI Act and as per Security Interest (Enforcement) Rules, 2002, therefore, the present SARFAESI Application is liable to be allowed and the demand notice dated 01.01.2015 under section 13 (2) of the SARFAESI Act, 2002, symbolic possession notice dated 06.04.2015 under section 13 (4) of the SARFAESI Act, 2002 and the sale notice dated 06.03.2025 qua the properties in question and all the subsequent actions of the respondent no.1 bank are liable to be set aside and quashed. Further, since the auction purchaser has invested the money by depositing the auction amount with the respondent bank and such money has been retained by the respondent bank since month of March, 2025, therefore, it would be appropriate to direct the respondent no.1 bank to return the auction money alongwith interest @ FDR from the date of deposit till the date of release of the payment and the respondent no.1 bank shall also restore back the physical possession of the properties in question to the securitization applicants immediately.

(ORDER)

The SARFAESI Application filed by the applicants is allowed and the demand notice dated 01.01.2015 under section 13 (2)

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of the SARFAESI Act, 2002, symbolic possession notice dated 06.04.2015 under section 13 (4) of the SARFAESI Act, 2002 and the sale notice dated 06.03.2025 qua the properties in question and all the subsequent actions of the respondent no.1 bank are hereby set aside and quashed. However, the respondent no.1 bank is free to take afresh action under the SARFAESI Act in accordance with law. The respondent 1 bank is hereby directed to return the auction money, so deposited by the auction purchaser, to the auction purchaser within 30 days from today alongwith interest @ FDR from the date of deposit till the date of release of the payment and the respondent no.1 bank shall also restore back the physical possession of the property in question to the securitization applicants immediately. Accordingly, the present securitization application alongwith pending applications, if any, stands disposed of. The present order be uploaded immediately on the website of this Tribunal.

Final Order signed, sealed, dated and pronounced in the open court on this 24.07.2026.

Dictated & Corrected by me.

Sd/-

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