**DEBTS RECOVERY TRIBUNAL – 1, KOLKATA**
**JEEVANSUDHA BLDG. 9TH FLOOR, 42/C, J.L. NEHRU ROAD, KOLKATA – 700071**

**BEFORE SHRI AMBUJA MOHAN DAS, PRESIDING OFFICER**

**SA 398 of 2025**

1. M/s. Baba Kailashpati Agro Processing Pvt. Ltd., having registered office at TC Road, Sarada Polley, Tarakeswar, Dist.- Hooghly – 712410 and place of business at Dakshin Rasulpur within P.S.- Arambagh, Dist- Hooghly, Pin- 712413.

2. Sri Mantu Behari Samanta, residing at Vill & P.O.- Muktapur, Tarakeswar, Hooghly, West Bengal – 712401.

3. Sri Subrata Kumar Paul, Vill- Nutangram, PO- Jamdara, Sub Division – Chandannagore, Hooghly – 712410 and s/o Biswanath Paul, Nischintapur, Uttarpara, Paschim Gopinathpur, Dhaniakhali, Hooghly -712410.

4. Smt. Mita Paul, Vill- Nischintapur, PO- Jamdara, Sub Division – Chandannagore, Hooghly – 712410.

5. Smt. Mousumi Samanta, Vill & PO- Muktapur, Tarakeswar, Hooghly – 712410.

6. Shri Sumit Paul, Vill – Nischintapur, PO- Jamdara, Hooghly, West Bengal – 712410.

..........Applicant

And

1. Punjab National Bank, having its office at 23E, Rai MC Lahiri Bahadur Street, Serampore, Hooghly – 712201.

2. Authorised Officer, Punjab National Bank, having its office at 23E, Rai MC Lahiri

Bahadur Street, Serampore, Hooghly – 712201.

3. M/s. Shibram Agro Cold Storage Pvt. Ltd. C/o Narayan Bhattacharjee, Kabley, Dakshin Rasulpur, Arambagh, Dist.-Hooghly, Pin 712413

........Defendants

For Applicants : Mr. Prabal Kr. Mukherjee Ld. Sr. Counsel and Mr. Samrat Mukherjee, Ld. Counsels.

For Respondents: Mr. Subhankar Nag, Mr. Debasish Karmakar, Ms. Poetry Dutta and Ms. Anindita Das Ld. Counsels

For Auction Purchaser Mr. Nimish Mishra Ld. Counsel

**J U D G M E N T**

Delivered on 28th July 2026

1. Sarfaesi Applicants have filed application u/s 17(1) of the Sarfaesi Act which is registered as SA/398/2025 contending that Defendant Bank has revised Credit Facilities on 19/03/2024 and annexed letter of sanctioned dated 19/03/2024 vide Annexure ‘A’.

2. That the applicant was accorded sanction regarding renewal of credit facilities for an

overall limit of Rs.2216.33 lac. The renewal of working capital limit for Rs.800 lac was made for season 2024 for the purpose of on lending. Cash credit limit of Rs. 58 lac was renewed for maintenance of unit and the WCTL limit of Rs. 224 lac, term loan I & II for a limit of Rs. 355 lac and 266 lacs respectively were reviewed. Bank guarantee for Rs.20.00 lac was also renewed and the GECL at the run-down balance for Rs. 513.33 lac was also renewed. The details of the terms of renewal of credit facilities are provided in the said letter of sanction dated 19/03/2024 which has annexed as Annexure 'A'.

3. The Sarfaesi Applicant has contended that defendant bank classified the account as NPA on 21/06/2024 demanding of Rs. 23,78,25,302.06/- as per Demand Notice u/s 13(2) which is annexed vide letter 'B'.

4. Sarfaesi Applicants have contended that company availed credit facilities from the Respondent bank for their business of account of different loan portfolio and paid interest to the bank from time-to-time upto 2023 and the accounts of the borrower company was lastly renewed on 19/03/2024.

5. It is further contended that the cash credit of Rs. 800 lac was renewed to meet financial assistance to the farmer and the payment tenure was 12 months. The said cash credit limit was for a period of 1 year and based on necessary RBI guidelines and prudential norms regarding agricultural advances.

6. It is further contended by the Applicant after renewal of sanction dated 19/03/2024 renew for further renewal should have been made after one year but before lapse of one year defendant bank classified the account as Non-Performing Asset which is bad in law.

7. It is also contended by the Applicant the GECL extension was covered by extension of charge over current and future asset of the company and was covered under guarantee coverage from NCGTC. The GECL extension and bank guarantee were not secured by mortgaged properties.

8. Applicants have also challenged claim of Rs. 23,78,25,302.06/- as on 30/06/2024 and created security interest in favour of the bank in respect of cold storage land and building.

9. It is also contended by the Applicants that potatoes stored in the Cold Storage were damaged and the Applicant Company was

called upon by West Bengal Cold Storage Licensing and Regulatory Act 1966. The Applicants were constrained to obtain loan because the company was paying damages claimed by all concerned hirers from the rental income of the company. It is contended by the Applicants that classification of account as NPA by Bank is without application of mind. Applicant submitted representation dated 02/09/2024 to the Demand notice dated 10/07/2024 and Defendant Bank replied to the representation vide letter dated 12/09/2024 making evasive denial to the objection.

10. It is contended by the Applicant that Defendant Bank has not replied why the accounts of the applicant became NPA within a period of three month from the date of renewal.

11. It is contended by the Applicant that 90 days credit discontinuity in the accounts is not applicable in the applicant's case Cash as Credit facilities of Rs. 800 lac is to be treated as agricultural advance which cannot be classified as NPA before one year.

On the above grounds Applicants prayed for setting aside classification of account as NPA, demand Notice dated 10/07/2024 and Possession Notice dated 04/02/2025 and declaration that the measures taken by the Bank bad in law and injunction until disposal of the SA.

12. Defendant Bank has filed affidavit in opposition in III Volumes annexing all the documents. Bank has annexed all the sanctioned letter including sanctioned letter of revised Credit Facilities on 19/03/2024 which is last sanctioned letter. Defendants have pleaded that classification of account as NPA and Demand Notice dated 10/07/2024 was made due to default by Applicants.

13. It is pleaded by the Defendant Bank that in communication from the Director of Agricultural Marketing, West Bengal annexed at page-51 to 53 of the SA, it is found that the Applicants have not properly maintained the Cold Storage as a result the stocks of OTA potatoes preserved on the Third Floor Chamber no.2 and Chamber no.3 of the Cold Storage have been mostly deteriorated and for that reason the Director of Agricultural of Marketing directed the Applicants to release the potatoes immediately. It is alleged by the Defendant Bank that the stocks of potatoes were damaged due to misutilization of money by the Applicants.

14. On the basis of the symbolic possession of the Cold Storage unit, defendant bank issued notice under Rule. 8(6) of the Security Interest Enforcement Rules, 2002 on 14th July, 2025 thereby scheduling the date of e-auction on 25th September 2025. Before issuing the said sale notice the defendants have also obtained the Valuation of the Cold Storage Land and building as well as the plant, machineries, fittings and fixtures, equipment's, accessories as well as the current fixed movable assets through approved valuer. The said sale notice was also published in the newspapers on 19th August, 2025 and sale notice dated 14.07.2025 along with the Postal Receipts and Track Reports are annexed with this opposition. There is no challenge to sale on non-compliance of statutory rules or valuation. Defendant Bank has prayed for dismissal of SA.

15. Applicants have filed IA/2652/2025 challenging Sale Notice dated 19/08/2025 for e-auction on 25/09/2025 on the ground of classification of account as NPA not in accordance with RBI Prudential Norms and invalid Demand Notice.

16. Defendant Bank has filed affidavit in opposition contending the actions of the bank

valid and enclosed Sale Certificate, Valuation Report etc.

17. Applicants have filed IA/141/2026 challenging order of ld. C.J.M. Hooghly dated 09/12/2025 on the same ground of NPA and Demand Notice. In this IA Applicants have taken MSME ground but on final hearing ground of MSME has been abandoned by Senior Counsel for the Applicant.

18. Defendant Bank has filed supplementary affidavit on 19/06/2026 regarding CERSAI registration. Applicants have also filed affidavit in reply to SA & IA/2652/2025 on 25/09/2025 challenging Sale Notice dated 19/06/2025. On that day this Tribunal observed that there is no ground for stay of sale.

19. At the time of hearing on 06/02/2026 Ld. Senior counsel for the Applicant first time raised objection that the Demand Notice Bank has not given details of the loan account. He also raised objection to nine point affidavit which the authorized officer filed before the Magistrate.

20. Ld. Counsel for the Bank has submitted that Bank has sold property as a unit including plant and machinery which are permanent fixture and be treated as immoveable property.

21. Ld. Counsel for Bank has relied on the judgment of Hon'ble Bombay High Court in Phoenix Arc Private Limited vs. The State of Maharashtra wherein at paragraph 18 Hon'ble Bombay High Court held that:

18. Section 14 does not contemplate the following: -
(i) Any notice to be given to either Borrower or a Third Party,
(ii) Borrower or a Third Party to file any reply to the application,
(iii) Borrower/Third Party to be heard,
(iv) Adjudication as to the legality or validity of the mortgage.
(v) Adjudication as to the quantum of the debt claimed by the secured creditor.

vi)Adjudication of any issues such as limitation, etc.

22. Ld. Counsel for Bank has relied upon the judgment of the Hon'ble Supreme Court in the matter of Standard Chartered Bank v. V. Noble Kumar and Others. wherein at paragraph 24 and 25 Hon'ble Supreme Court held that:

24. An analysis of the nine sub-clauses of the proviso which deal with the information that is required to be furnished in the affidavit filed by the secured creditor indicates in substance that:
24.1 (i) there was a loan transaction under which a borrower is liable to repay the loan amount with interest,
24.2 (ii) there is a security interest created in a secured asset belonging to the borrower,
24.3 (iii) that the borrower committed default in the repayment,
24.4 (iv) that a notice contemplated under Section 13(2) was in fact issued,

24.5 (v) in spite of such a notice, the borrower did not make the repayment,
24.6 (vi) the objections of the borrower had in fact been considered and rejected,
22.7 (vii) the reasons for such rejection had been communicated to the borrower, etc.
25. The satisfaction of the Magistrate contemplated under the second proviso to Section 14(1) necessarily requires the Magistrate to examine the factual correctness of the assertions made in such an affidavit but not the legal niceties of the transaction. It is only after recording of his satisfaction the Magistrate can pass appropriate orders regarding taking of possession of the secured asset.

23. Ld. Counsel for Bank has also relied upon the judgment of the Rajasthan High Court – Jaipur in C.T.O. vs Sadulshahar Krai Vikrai Sahakari wherein at paragraph 31 Hon'ble High Court held that:

"31. If a comprehensive reading is done of all the relevant provisions, then what goes to show that the whole factory premises including the plant, machinery, land and building were given on lease. A lease of entire establishment was necessary for beneficial enjoyment of rights under the lease. If from the lease, plant and machinery is excluded, the land could not have been used for any purposes designed to be fulfilled by lease. The machinery and plant embedded to earth to give it a character of immovable property for beneficial use of land facilitated the lease otherwise, the lessee would not take the premises on lease and land could only be used if the plant and machinery was attached to earth. Thus, according to the definition of "plant and machinery" as contained in General Clauses Act, makes it an immovable property.”

24. Ld. Advocate for Auction Purchaser has supported the argument of Ld. Advocate for Respondent Bank and relied upon the authority of the Hon’ble Supreme Court in General Manager, Sri Siddeshwara Cooperative Bank ltd. & Ors. vs. Ikbal & Ors. wherein Hon’ble Supreme Court at paragraph 19 held that :

“19. There is no doubt that Rule 9(1) is mandatory but this provision is definitely for the benefit of the borrower. Similarly, Rule 9(3) and Rule 9(4) are for the benefit of the secured creditor (or in any case for the benefit of the borrower). It is settled position in law that even if a provision is mandatory, it can always be waived by a party (or parties) for whose benefit such provision has been made. The provision in Rule 9(1) being for the benefit of the borrower and the provisions contained in Rule 9(3) and Rule 9(4) being for the benefit of the secured creditor (or for that matter for the benefit of the borrower), the secured creditor and the borrower can lawfully waive their right. These provisions neither expressly nor contextually indicate otherwise. Obviously, the question whether there is waiver or not depends on facts of each case and no hard and fast rule can be laid down in this regard."

25. Ld. Advocate for Auction Purchaser has argued that this judgment is applicable to this case on the context that Applicants in IA/2652/2025 have not pleaded that the plant and machinery are not secured assets so by not pleading in the SA Ld. Senior Counsel cannot raise this issue at the time of hearing. This decision of the Hon'ble Supreme Court on waiver applies to the pleadings of the applicants that there is no security interest of plant and machinery in the Demand Notice as well as Sale Notice. Ld. Advocate for the Auction Purchaser has relied upon the authority of the Hon'ble Supreme Court in Basu P. Shetty vs Hotel Vandana Palace & ors. at paragraph 16 Hon'ble Supreme Court has held that:

"16. This Court, after interpreting the provisions of Rule 9, returned a categorical opinion that the said provision is mandatory in nature. It was further held that even though this Rule is mandatory, that provision is for the benefit of the borrower. The Court held that it is a settled position in law that even if a provision is mandatory, it can always be waived by a party (or parties) for whose benefit such provision has been made. The provision in Rule 9(1) being for the benefit of the borrower and the provisions contained in Rule 9(3) and Rule 9(4) being for the benefit of the secured creditor (or for the benefit of the borrower), the secured creditor and the borrower can lawfully waive their rights. These provisions neither expressly nor contextually indicate otherwise. Obviously, the question whether there is waiver or not depends on the facts of each case and no hard and fast rule can be laid down in this regard."

26. Ld. Senior Counsel for the Applicants has submitted that Sale Notice and Demand Notice speaks of land and building. Sale Certificate speaks of sale of land and cold storage.

27. On perusal of revival sanction letter dated 19/03/2024 which speaks of primary security equitable land and cold storage standing in the name of Baba Kailashpati Agro Processing Pvt ltd. in respect of Term Loan 1 of Rs. 355.00 lakh and Term Loan 2 Rs. 246 lakhs exclusively charge on all other moveable assets of the company. Sanction letter also speaks of collateral security hypothecation of debts and moveable assets in respect of Cash Credit for maintenance for

Term Loan-1 and 2 and WCTL and Bank Guarantee that special condition mentioned at paragraph 9.

28. Demand Notice dated 10/07/2024 speaks of equitable mortgage land and cold storage building with exclusive all other moveable assets of the Company, hypothecation of third-party stock stored in the Cold Storage.

29. Contention of the Ld. Senior Counsel for the Applicants that plant and machinery are not secured assets was not raised by the Applicants in their representation dated 02/09/2024 wherein Applicants admitted that Cash Credit Facilities for maintenance of Rs. 58 lakh limit was valid for 12 months from the rental income of Cold Storage unit remains primary security.

30. It is pleaded by the Applicants in the representation that lender sanctioned Term Loan of Rs. 355 lakh and Rs. 246 lakhs for the Cold Storage covered under deed no. 060202129 dated 15/12/2016 and 0602449 dated 23/02/2017 under Term Loan 1 and 2.

31. The Applicants have specifically objected in their representation about plant and machinery not secured assets. Applicants have filed IA/2652/2025 challenging Sale Notice

dated 19/08/2025 wherein NPA and Demand Notice was challenged but not challenged the plant and machinery as not secured assets.

32. It is categorically submitted by Ld. Counsel for the Bank that in the Sale Certificate it is mentioned that Cold Storage is sold as unit including plant and machinery which are permanent fixture in the Cold storage building. When the Applicants had not challenged the security interest in respect of plant and machinery in their representation as well as in IA/2652/2025 they cannot challenge subsequently as per judgment of Hon'ble Supreme Court in General Manager, Sri Siddeshwara Cooperative Bank ltd. & Ors. vs. Ikbal & Ors.

33. Ld. Senior Counsel for the Applicants has contended that Cash Credit Loan has been sanctioned by Defendant Bank for agricultural loan to farmers and relied paragraph 4.2.13 of Master Circular - Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances. Paragraph 4.2.13 of Master Circular speaks that:

"4.2.13 Agricultural advances i) A loan granted for short duration crops will be treated as NPA, if the instalment of principal or interest thereon remains overdue for two crop seasons. A loan granted for long duration crops will be treated as NPA, if the instalment of principal or interest thereon remains overdue for one crop season. For the purpose of these guidelines, “long duration” crops would be crops with crop season longer than one year and crops, which are not “long duration” crops, would be treated as “short duration” crops. The crop season for each crop, which means the period up to harvesting of the crops raised, would be as determined by the State Level Bankers’ Committee in each State. Depending upon the duration of crops raised by an agriculturist, the above NPA norms would also be made applicable to agricultural term loans availed of by him.

The above norms should be made applicable to all direct agricultural 10 DBOD-MC On IRAC Norms - 2014 advances as listed at items 1.1.1,1.1.2 1.1.3,1.1.4,1.1.5,1.1.6 and 1.2.1 1.2.2 and 1,2,3 of Master Circular on lending to Priority Sector. RPCD NO. Plan BC 9/04.09. 01/2008-2009 dated July 1,2008. An extract of the list of these items is furnished in the Annex - I. In respect of agricultural loans, other than those specified in the Annex - I and term loans given to non-agriculturists, identification of NPAs would be done on the same basis as non-agricultural advances, which, at present, is the 90 days delinquency norm."

34 In this case Cash Credit facilities of Rs. 800 lakhs given to the Applicant Company for On-lending to the farmers. These are not direct agricultural advances by bank to farmer so account of the Applicant has been classified as NPA after 90 days not after one year. Therefore, classification of account as NPA, Issuance of Demand Notice on 10/07/2024 and sale of cold storage as unit are valid. Order of Magistrate to take possession of the secured asset is held valid.

34. Hence it is ordered as follows:

<u>O R D E R</u>

i) SA/398/2025 is dismissed on contest against the Respondent Bank.

ii) IA/2652/2025 and IA/141/2026 are dismissed on contest against the Respondent Bank.

iii) Order of Magistrate dated 09/12/2025 and Sale Certificate dated 22/12/2025 are held valid.

iv) Interim order dated 06/02/2026 stands vacated.

Copy of the Judgment/Final Order be uploaded in the Tribunal's website.

File is consigned to the Record Room.

(Dictated to P.S., transcribed by her, corrected, signed and pronounced by me in the open Court on this the day 28th July, 2026.)

(Ambuja Mohan Das)

Presiding Officer

| Order Sheet (continuation) | | |
|---|---|---|
| Case NO. SA 398 of 2025 | | BABA KAILASHPATI AGRO PROCESS & ORS. -VS- PUNJAB NATIONAL BAN |
| Date of the Order | Order with Signature | |
| 28th July 2026 | For Applicants : Mr. Praba Ld. Sr. Counsel | |

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Mr. Sam
Counsels.
..............................................
..............for the Applicant

For Respondents: Mr. Sub

Mr. Deb
Ms. Poet
Ms. Anin
Counsels

...for the Respondent Bank

For Auction Purchaser Mr. Nim
Counsel

....... for the A

Matter was heard in open Court on 17/06/2026.

The detailed order in thirteen pages an

The gist of the order is as follows:

**Orde**

v) i) SA/398/2025 is dism against
vi) the Respondent Bank.
vii)
viii) ii) IA/2652/2025 and dismissed
ix) on contest against Bank.
x)
xi) iii) Order of Magistrate and
xii) Sale Certificate date held valid.
xiii)
xiv) iv)Interim order dated 0 vacated.

xv) Copy of the Judgme uploaded

xvi) in the Tribunal's websit

File is consigned to the Record Roo

(Dictated to P.S., transcribed by her,

and pronounced by me in the open Court on

July 2026)

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|---|---|
| | (Ambuja Mohan Das) |