DEBTS RECOVERY TRIBUNAL, JAIPUR
PRESIDING OFFICER: SH. VIMAL GUPTA

SA No.- 235/2019

1. **M/s Gandhar Rock Tech**, Bhagat Chauraha, Beawar, District Ajmer (Rajasthan) through Proprietor, Mr. Renu Kumar Jain S/o Shri Ratan Lal Jain.
2. **Mrs. Sunder Bai Jain** W/o Shri Champa Lal Jain, R/o House No. 5, Vinod Nagar, Beawar, District Ajmer, Rajasthan.

.........Applicant

Versus

PHOENIX ARC PRIVATE LIMITED (Acting as Trustee of Phoenix Trust FY22-21) Company Registered under Companies Act, 1956 having its Registered Office At 3rd Floor, Wallace Towers (earlier known as Shiv Building), 139/140/B/1, Crossing of Sahar Road and Western Express Highway, Vile Parle East, Mumbai, Maharashtra – 400057.

........Respondent

Present: -

Sh. Ram Naresh Vijay, Counsel for the Applicant

Ms. Usha Singh, Counsel for the Respondent Bank/FI

(Final Order)

(12.08.2026)

1. Counsel for the Applicant has filed this SA Application and submitted that in or about August, 2015, Applicants, desirous of financial assistance, approached the Respondent company for availing a loan of Rs. 5 Crore.
2. It is submitted that through Sanction Letter dated 21.10.2015, Loan amount of Rs. 4,50,00,000/- was approved by the Respondent company and sanction letter with respect to the same was issued. Out of the total

approved loan amount of Rs. 4.5 Crore, an amount of Rs. 4,41,47,428/- was disbursed by the Respondents to various Banks on behalf of the Applicants and a sum or Rs. 8,52,572/- was deducted by Respondents towards processing fee.

3. It is submitted that pursuant to the Sanction Letter, Loan Agreement dated 21.10.2015 and Addendum Agreement dated 15.01.2018 was executed by and between the parties. Relevant details of the Loan Agreement dated 21.10.2015 are as follows:

Particulars of the Loan	
Loan Amount (Rs.	4,50,00,000/-
Rate of Interest	13%
EMI (Rs.)	6,71,898/-
Tenure	120 Months
First Installment Date	08.12.2015
End Installment Date	07.11.2025

4. It is submitted that against the sanctioned loan of Rs. 4,50,00,000/-, as security, deposited with the Respondents title deed for the property admeasuring 998 Square Yards situated at Khasra No. 2148 (more than 9000 sq. yds.), Udaipur Road, Near Chungi Chowki Bypass, Beawar, Ajmer, Rajasthan (hereinafter referred to as the "Mortgaged Property"). Memorandum of deposit of Title Deed was executed by and between parties, with respect to aforesaid property.
5. It is submitted that from 08.12.2015 to 02.02.2019, Applicants in furtherance of the terms and conditions recorded under the Loan Agreement dated 21.10.2015, regularly deposited EMI's and paid a total sum of Rs. 2,24,84,821.50. Regular EMI deposits made by the Applicants and deposit of a huge sum of Rs. 2,24,84,821.50 against the loan amount of 4.5 crore conclusively establish the bonafides of the Applicants.
6. It is submitted that on 06.11.2018, Respondent Company, illegally, arbitrarily, unjustly and in breach of the statutory guidelines issued by RBI, classified Applicants account as a Non-Performing Assets (NPA).

Before classifying the account as NPA, Applicants were neither informed nor provided any details with respect to the same by the Respondents. Even no opportunity of hearing was given before classification of account as NPA.

7. It is submitted that following the illegal classification of Applicants account as a NPA, Respondent in an arbitrary and malafide manner proceeded to issue the Demand Notice dated 15.11.2018 under Section 13(2) of the SARFAESI Act, 2002, *inter alia*, to the effect that:
   a) *You the Addressee(s) were irregular in making the payments and with effect from August, 2018, you, the Addressee(s) completely stopped paying the EMIs"*
   b) *" HFCL was constrained to classify your account/ loan facility as Non-Performing Assets (NPA) on 06.11.2018, in accordance with the directives/ guidelines issued by the Reserve Bank of India."*
   c) *"HFCL calls upon you, the Addressee(s)under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to discharge your outstanding liability as on 15.11.2018."*
8. It is submitted that Applicants were directed to discharge their alleged total outstanding liability of Rs. 4,08,58,157.27/- due as on 15.11.2018 along with interest and other charges within sixty (60) days. Applicants were further directed to pay the future interest at the contractual rate on the aforesaid amount together with incidental expenses, cost, charges etc. payable as on the date of the actual payment. Details of the outstanding amount as per Demand Notice dated 15.11.2018 was as follows:

Loan Number		Customer Name
HCFUDULAP0000050073		GANDHAR ROCK TECH
S. NO.	Particulars	Amount (in INR)
1.	Principal O/s	3,69,49,952.00
2.	Foreclosure Charges @ 2% on O/s Principal	7,38,999.04
3.	Applicable Taxes on foreclosure charges @18%	1,33,019.83

4.	Interest on Termination	1,04,178.00
5.	Late Payment Charges	1,161,964.40
6.	Cheques/ECS bouncing charges	51,330.00
7.	Overdue EMI	27,18,714.00
8.	TDS Recoverable	0.00
	Net Receivable	**4,08,58,157.27**

9. It is submitted that from a perusal of the aforesaid details, it is patently clear that the Respondent has illegally levied huge amounts of penal interest, illegal charges and has also capitalized the same besides debiting the higher rates of interest than agreed, various illegal charges, costs, etc. in the accounts. Whereas it is a settled principle of law in view of the law laid down by the Hon'ble Supreme Court in Central Bank of India versus Ravindra, 2002 (1) SCC 367 that the penal interest cannot be charged without there being a specific agreement with respect to the same and even if there existed an agreement to that effect, then also penal interest could only be levied once for the entire period of default and such penal interest cannot be capitalized. In the present matter, the Respondents have not only charged a higher rate of interest than what was agreed between the parties, as per its whims and fancies but has also levied unfair/ huge amount of penal interest, various illegal charges which were against the public policy of India only with a view to inflate the liability of the Applicants.
10. It is submitted that it is a settled principle of law that in a contract entered into between parties who are not equal in bargaining power one-sided, unfair, unreasonable, unconscionable terms of a contract favoring the superior/ stronger party amount to an unconscionable bargain and are against public policy and void under Section 23 of the Indian Contract Act, 1872. (Central Inland Water Transport Corporation Limited and Ors.v. Brojo Nath Ganguly and Ors., (1986) 3 SCC 156). In view of the aforesaid, it is respectfully submitted that clauses/ terms in the Loan Agreement that allow for levy of penal interest are

unconscionable terms and are void under Section 23 of the Indian Contract Act, 1872 and as such no penal interest can be levied upon the Applicants.

11.It is respectfully submitted that the Applicants account has been wrongly classified as NPA by the Respondent, on 06.11.2018, inasmuch as it is a settled proposition of Law that the account could be classified as NPA only in the next financial quarter after account remained irregular/overdrawn or continuous monthly three installments were not paid in a complete financial quarter, however in the present matter, the account has been classified as NPA in the same financial quarter whereas the installments were duly paid by the Applicants upto the month of September, 2019. As such, classification of Applicants account as NPA was completely wrong, illegal and in contravention of RBI guidelines/ norms issued qua the same, therefore the Demand Notice is liable to quashed and set aside on this ground alone.

12.It is submitted that on 13.02.2018, Loan Recall Notice was sent by the Respondent company to the Applicants, inter alia, to the effect that :

a) *"The Addressee(s)were irregular in making payments and with effect from October, 2018, you, the Addressee(s) completely stopped paying the EMIs."*

b) *"Such deplorable conduct on the part of each of you, the Addressee(s) constitutes fundamental breach of contract."*

c) *"HFCL is constrained to recall entire loan amount advanced to you, the Addressee(s) under the Financial Facility and thus, HFCL terminates the Loan Agreement dated 21.10.2015 and Addendum Agreement dated 15.01.2016 with immediate effect."*

13.Applicants were directed to pay a sum of Rs. 4,07,87,577.68/- as on 06.02.2019, along with applicable interest and other charges till the actual date of payment within seven (7) days from the receipt of the Recall Notice. Details of the alleged outstanding amount due as on 06.02.2019 as per the Notice dated 13.02.2018: -

(Details of Outstanding Amount as on 06.02.2019)		
Loan Number		Customer Name
HCFUDULAP0000050073		GANDHAR ROCK TECH
S. NO.	Particulars	Amount (in INR)

1.	Principal O/s	3,64,75,515.00
2.	Foreclosure Charges @ 2% on O/s Principal	7,29,510.30
3.	Applicable Taxes on foreclosure charges @18%	1,31,311.85
4.	Interest on Termination	4,11,362.00
5.	Late Payment Charges	3,11,890.53
6.	Cheques/ECS bouncing charges	86,730.00
7.	Overdue EMI	26,41,258.00
8.	TDS Recoverable	0.00
	Net Receivable	**4,07,87,577.68**

14.It is submitted that from the aforesaid Recall Notice dated 13.02.2019, it is quite clear that the Respondent has charged and debited various illegal charges in the subject loan account so as to inflate the liability of Applicant.

15.It is respectfully submitted that by virtue of issuance of the aforesaid Recall Notice dated 13.02.2019, the Demand Notice dated 15.11.2018 has lost its force and the same has become infructuous. Therefore, the Respondent is not entitled to proceed further on the basis of such infructuous demand notice dated 15.11.2018. Therefore, on this ground alone the entire proceedings have vitiated and liable to be quashed and set aside.

16.It is submitted that the Respondent company exercised their rights under Section 13(4) of the SARFAESI Act and filed a petition under Section 14 of the SARFAESI Act, before the learned District (Ajmer), to take possession of the Mortgaged Property.

17.It is submitted that on 22.02.2019, Order was passed by the Learned District Magistrate, Ajmer in the matter titled "Hero Fin Corp Limited

v. M/s Gandhar Rock Tech and Others", directing the Respondent company to take possession of the Mortgaged Property.

18. It is submitted that with a view to amicably resolve the dispute between the two parties, the Applicants, via email dated 27.03.2019, agreed to pay a sum of Rs. 2,90,00,000/- to the Respondent company as One Time Settlement (OTS).

19. It is submitted that pursuant to the Applicants email dated 27.03.2019 and various meetings held between the two parties, a Settlement Deed was executed by and between the Applicants and the Respondent company on 30.03.2019. Relevant details of the said Deed are as follows:

	On or before	Amount
Installment I	31.03.2019	Rs. 20 Lac
Installment II	25.04.2019	Rs. 10 Lac
Installment III	25.05.2019	Rs. 10 Lac
Installment IV	29.06.2019	Rs. 250 Lac
	Total	Rs. 290 Lac

20. It is submitted that since the buyer of the Applicants withdrew himself from the deal, therefore the Applicants could pay only Rs. 33.50 Lakh to the Respondent Company towards aforesaid settlement, however, the balance amount could not be paid due to the said reason.

21. It is submitted that a civil suit was filed by the Applicants against possession of the Mortgaged Property by the Respondent company. However, the was dismissed under Order 7 Rule 11 C.P.C. on the ground of jurisdiction, since the Hon'ble D.R.T. alone has jurisdiction in the SARFAESI matters.

22. It is submitted that a Notice dated 12.07.2019, cancelling the Settlement Deed dated 30.03.2019, was sent by the Respondents to the Applicants and furthermore directing the Applicants to pay a total sum of Rs. 3,99,97,415.13/- within three (3) days of receipt of notice.

23. It is submitted that the Respondent issued Possession Notice dated 23.07.2019, under Rule 8(1) of Security Interest (Enforcement) Rules, 2002, and took over physical possession of the subject property.

24. It is respectfully submitted that in the Possession Notice dated 23.07.2019 the Respondent had deliberately and willfully with an intention to cheat and usurp the Applicants property given incorrect/ wrong description of the mortgaged property, inasmuch as only 998 Sq. Yds. out of the total land admeasuring more than 3 Bigha (more than 9,000 Sq. Yds.) of Khasra No. 2148 was mortgaged with the Respondent, however, the Respondent had maliciously given inaccurate and misleading description recording the entire Khasra No. 2148 instead of the mortgaged 998 Sq. Yds. In view of the aforesaid, on this ground alone, the Possession Notice dated 23.07.2019 is liable to be quashed and set aside.
25. It is further submitted that the Respondent, in contravention of the mandatory conditions laid down by Rule 4(2) of the Security Interest (Enforcement) Rules, 2002, failed to prepare an inventory and panchnama while taking physical possession of the subject property on the spot. Moreover, the said Panchnama and inventory have not been served upon the Applicants therefore, on these grounds also the possession notice dated 23.07.2019 is liable to be quashed and set aside.
26. It is submitted that a Sale Notice dated 09.08.20 sent by the Respondent company to the Petitioner, informing that, the Respondent Company, in exercise of the power conferred by Rule 8 of the Security Interest (Enforcement) Rules, 2002, is selling the Mortgaged Property on "As is where basis" by holding a public e-auction on 13.09.2019.
27. It is respectfully submitted that the Sale Notice 09.08.2020 contains numerous defects and statutory deficiencies, more particularly:
    a) Respondents in contravention of the mandatory requirements/ conditions stipulated under Rule 8(2) and 8(6) of the Security Interest (Enforcement) Rules, 2002 failed to publish the Possession Notice dated 23.07.2019 and Sale Notice dated 09.08.20 in two (2) leading newspapers of the Ajmer District and the Possession Notice dated 23.07.2019 and Sale Notice dated 09.08.20 are liable to be quashed and set aside on this ground alone. *(Paras Jain vs. Authorized Officer, Indian Overseas Bank, High Court of Rajasthan D.B. Spl. Appl. Writ No. 34/2019, decided on 31 July, 2019)*

b) Sale Notice is dated 09.08.20, whereas, the said date is incorrect since, the year 2020 is yet to come. Therefore, on this ground alone the Sale Notice is liable to be quashed and set aside

c) It is respectfully submitted that in the Sale Notice dated 09.08.2020, Respondents have given incorrect and misleading description of the subject property and have stated regarding the whole of the Khasra No. 2148 whereas, only 998 Sq. Yds. commercial converted land comprised of Khasra No. 2148 was mortgaged with the Respondent, however, the Respondent has given description of the entire Khasra No. 2148 which is admeasuring more than 3 Bigha (more than 9000 Sq. Yds.). As such, the Respondent Bank has tried to mislead the public at large by stating wrong description of the subject property in the Sale Notice.

d) Unsigned Sale Notice has been served on the Applicants and the same has no legal validity, recognition or enforceability.

e) Applicants had made payment of Rs. 33.50 Lakh after settlement, however, despite this, the same amount of the Demand Notice has been stated in the subject Sale Notice, which is incorrect, wrong and illegal.

f) The undivided property proposed to be auctioned has not been divided by meets and bounds and as such property cannot be auctioned by the Respondents without first carrying out proper demarcation/ division by meets and bounds.

g) In view of the aforesaid defects and statutory lapses/ deficiencies Sale Notice dated 09.08.20 is liable to be quashed and set aside.

28.It is respectfully submitted that the Respondents in collusion and connivance with the prospective buyers had made an attempt to cheat the Applicants and sell the Mortgaged property for a paltry sum, in blatant disregard of its actual market valuation and the same is conclusively established from the following facts:

A) At the time of sanction of loan, in 2015, the value of the subject property was assessed as approximately Rs. 6.50 Crore by the Respondents themselves.

B) Present market value of the subject property is approximately Rs. 9,98,00,000/- since, the subject property is situated at main National Highway No. 8.

C) Despite the aforesaid facts and incontrovertible market valuation the Respondents have fixed a paltry reserve price of Rs. 2.75 crore for the auction, with a view to cheat and cause irreparable damage and loss to the Applicants and to secure unjust gain for the prospective buyers.

D) In view of the aforesaid, taking into consideration the illegal actions/ conduct of the Respondents, more particularly the illegal fixing of the reserve sale price far below the actual market valuation of the property, the entire proposed auction dated 13.09.2019 is liable to quashed and set aside.

29. It is respectfully submitted that the Respondent Company has failed to furnish any documentary proof to the Applicants to establish their eligibility, authorization and competence to proceed under the provisions of the SARFAESI Act, and, in absence thereof, the Respondent Company is not entitled to proceed under the provisions of the SARFAESI Act and the actions taken therein under are liable to be quashed and aside.

30. It is respectfully submitted that the Sale Notice dated 09.08.2020 has been issued by Mr. Dinesh Sharma, however, nothing has been disclosed/ provided by the Respondent Company to the Applicants to establish that Mr. Dinesh Sharma was authorized officer in terms of section 13(12) read with Rule 2(a) an of the SARFAESI Act and Rules and was competent to act on their behalf. In view of the aforesaid, the Sale Notice 09.08.20 is liable to be quashed and set aside.

31. It is submitted that the Applicants have made payment of huge amount towards repayment of the subject loan account which is also sufficient to prove the bona fides of the Applicants.

32. It is submitted that in view of the aforesaid facts, circumstances and principles of law, it is conclusively established that the Respondent Company has completely failed to comply with the mandatory requirements, conditions and the procedure laid down under the SARFESI Act and Rules and had illegally issued defective Demand Notice dated 15.11.2018, Possession Notice dated 23.07.2019 and Sale Notice dated 09.08.20. As such, the entire proceedings are vitiated and are liable to be quashed and set aside with heavy cost of Rs. 5,00,000 in favour of the Applicants.

33.It is respectfully submitted that the Applicant is an established and notable contractor and dues of approximately Rs. 6.00 crore are recoverable and expected by the Applicants from its debtors, within the next six (6) months. The Applicant is trying very hard to recover the said dues from its debtors so that the legitimate outstanding dues of the Respondent Company may be fully satisfied. It is submitted that the Applicants intention is bonafide and they always want to pay the dues of the Respondent Company and they are in need of only six months' time to repay the dues.

34.Counsel for the Respondent Bank/FI has filed written submissions on behalf of the phoenix ARC Pvt Ltd.

35.It is submitted that the Applicants has filed the present Application u/s 17 of SARFAESI Act, 2002 for quashing the notice dated 15/11/2018 U/s 13(2) of SARFAESI Act, 2002, Possession notice dated 23.07 .2019 and Sale Notice dated 09.08.2020 for auction on 13.09.2019 and also sought directions against the Respondent Bank/ Assignor not to proceed further in any manner in respect of the secured asset i.e property admeasuring 998 square yards situated at Khasra No. 2148, Udaipur road, Near Chungi Chowki Byepass, Beawar, Ajmer, Rajasthan-305901 (hereinafter referred as "Mortgaged Property"). The Application was filed by making, alleging and setting out the sundry and false statement, allegations, wrong contentions, submission and averment. It is important to mention that there is no merit in the entire Application.

36.It is submitted that during the pendency of the captioned SA, the erstwhile Respondent/Hero Fincorp Ltd. (HFCL) had assigned its debts due and payable by the Applicant/ Borrower and its guarantors along with the underlying securities to the Respondent i.e., Phoenix ARC Pvt. Ltd. vide Assignment Agreement dated 30.12.2021 and by virtue thereof the Respondent Phoenix ARC stepped into the shoes of Hero Fincorp Ltd. It is further submitted that the name of Phoenix ARC Pvt. Ltd. was substituted vide order dated 02/12/2022 by this Hon'ble Tribunal.

37.It is submitted that the Applicant had availed the loan facility for an amount of Rs. 4,50,00,000 /- and had secured the loan account by mortgaging the subject property with the initial Respondent HFCL by depositing the title deeds and failed to maintain financial discipline.

(Said facts are undisputed) Consequently, the loan account of the Applicant was declared as a Non-Performing Asset (NPA) on 06.11.2015.

38. Thereafter a demand notice u/ s 13 (2) of the SARFAESI Act, 2002 dated 15.11.2018 was issued to the borrower/ Coborrowers /Guarantors/ Mortgagors. Since the parties failed to pay the amount in terms of the said demand notice, the HFCL proceeded to take physical possession of the subject property which was allowed by the Ld. District Magistrate u/s 14 of SARFAESI Act, 2002 vide order dated 22.02.2019 passed in the matter titled Hero Fincorp Ltd. v. M/ s. Gandhar Rock Tech & Ors. whereby HFCL was directed to take possession of the mortgaged property. The HFCL also issued notice dated 23.07.2019 u/s 13(4) of SARFAESI Act, 2002 and accordingly, actual physical possession of the subject property was taken by HFCL on 23.07.2019.

39. It is submitted that vide Sale Notice dated 09.08.2019, the subject property was then put to auction sale proposed to be conducted on 13.09.2019. However, the Applicant filed the captioned S.A before this Hon'ble Tribunal inter alia seeking quashing of the demand notice, possession notice and sale notice dated 09.08.2019 as well as the proposed auction scheduled to be conducted on 13.09.2019. Thereafter, since no bid was received therefore, the auction dated 13.09.2019 became infructuous.

40. It is submitted that the notice of S.A was issued upon the Respondent vide order dated 09.09.2019 by this Hon'ble Tribunal and the counsel for the Respondent/HFCL appeared before this Hon'ble Tribunal on 12.09.2019 and apprised that no bid for the auction scheduled on 13.09.2019 was received and sought time to file its reply.

41. It is further submitted that this Hon'ble Tribunal vide its order dated 12.09.2019 directed status quo to be maintained with respect to the subject property and time was also granted to the Respondent FI to file its reply to the captioned SA and further directed Respondent FI to give 15 days' advance notice before taking any action regarding the subject property.

42. It is submitted that the Respondent filed its reply on 16.10.2019 to the Securitization Application by raising certain preliminary objections with the request to dismiss the Application as not maintainable. It is

important to mention that there is no merit in the entire Securitization Application filed by the Applicants.

43.It is submitted that in due compliance of the order dated 12.09.2019 by giving 15 days' advance notice to the Applicant, another Sale Notice dated 30.10.2019 was issued by the Respondent FI fixing the next date for auction as 25.11.2019. The mischievous Applicant again filed IA No. 1644 / 19 against the said sale notice dated 30 .10.2019 seeking directions against the Respondent FI for willful disobedience and contempt of the order dated 12. 09.2019. Another IA No. 1645 / 19 for stay of the Sale Notice dated 30.10.2019 was filed by the Applicant. Thereafter, this Hon'ble Tribunal vide order dated 22.11.2019 stayed the auction dated 30.10.2019 till further orders.

44.It is submitted that the Applicant who is seeking continuous stay on the sale of the subject property without any valid and cogent reasons and has been unnecessarily and with a malafide delaying the recovery proceedings against itself. It is admitted fact that the Applicant has availed the loan facilities from HFCL and failed to repay the same. Consequently, his account was declared as NPA due to which HFCL had initiated SARFAESI proceedings and the Ld. District Magistrate, Ajmer after finding merits in the case of the HFCL, had directed the actual physical possession of the subject property to be taken by HFCL on 23.07.2019. It is pertinent to mention here that while taking the physical possession of the mortgaged property, an inventory dated 23 / 07/2019 was duly prepared by the Assignor in presence of two panch.

45.It is submitted that the Applicants have admitted the availment of loan facility in para no. 2 of S.A, execution of security documents in favor of the Assignor in Para no. 4 of S.A, creation of equitable mortgaged of the subject property in Para no. 5 of S.A, acknowledge the receipt of demand notice dt. 15/ 11/2018 u/s 13(2) in para no.8 of S.A, and repayment liability of the loan is also admitted by the Applicants in the S.A. It is pertinent to mention here that proceedings u/ s 14, physical possession and auction are also not been disputed by the Applicants. Hence, nothing survives to adjudicate in the application u/ s 17 of SARFAESI Act and the same is liable to be dismissed.

46.The Applicants have taken certain illegal plea in the S.A by submitting that the classification of Applicants account as NPA was neither informed not provided in advance by the Respondent. However, it is submitted that the loan account of the Applicants was classified in terms of RBI rules and guidelines. Moreover, the Applicants were aware that they were neglected the terms and conditions of loan agreement and defaulted in paying regular EMIs. It is further submitted that the demand notice dated 15.11.2018 u/s 13(2) of the Act was duly served upon the parties wherein the date of NPA is duly mentioned. However, the Applicants neither raised any objection to the said demand notice nor comply with the directions mentioned therein.

47. It is submitted that the Applicants are taking alleged reference of interest charged by the Respondent and also relying upon the judgment passed by the Hon'ble Supreme Court in CBI vs Ravindra 2002 (1) SCC. However, said judgment is not applicable in the present case as the interest is being charged by the Respondent in terms of admitted loan agreement executed by the parties in favour of the Respondent.

48. The Applicant also taken plea of section 23 of the Indian Contract Act, 1872 and alleging that the loan agreement that allow for levy of penal interest are unconscionable and are void. However, it is submitted that the alleged plea of the Applicants does not survive m the present proceedings due to the clear bar of civil court jurisdiction as prescribed under section 34 and 35 of SARFAESI Act, 2002 as the alleged plea of the Applicants is not at all maintainable because the interest charges by the Respondent FI is in terms of agreed contract. Further, alleged plea can be taken by way of civil proceedings and in terms of Section 9 of CPC which interalia says as under:

> **9. Courts to try all civil suits unless barred** - The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

49. It is submitted that the Applicants have also admitted outstanding liabilities by entering into OTS with the Assignor FI. However, the same could not adhered by the Applicants. Consequently, the OTS was revoked and the Respondent proceeded further under SARFAESI to recover the debt due upon the Applicants. It is further submitted that part payment of outstanding loan amount under the SARFAESI Act, 2002 does not absolve the borrower from liability or the consequences of default. The Hon'ble NCLAT in **Milind Kashiram Jadhav vs. State Bank of India on 25.04.2024 held that Part payment, even if accepted**

by the Bank or lender, does not stop the enforcement action if full does not cleared within the prescribed period. The said view of the Hon'ble NCLAT was upheld by the Hon'ble Supreme Court of India in the same matter bearing Civil Appeal no. 7990/2024 on 02/08/2024.

50. It is submitted that as far as the alleged contention of the Applicants that by virtue of issuance of the loan recall notice dated 13.02.2019, the demand notice dated 15.11.2018 has lost its force and the same has become infructuous are wrong and baseless. However, it is submitted that a loan recall notice issued after a notice under Section 13(2) of the SARFAESI Act is often a step taken by the lender to accelerate recovery proceedings if the borrower fails to respond to the initial demand notice. While Section 13(2) requires the borrower to repay the full amount within 60 days, a loan recall is a separate action that formalizes the demand for immediate repayment and can precede the lender taking possession of secured assets under Section 13(4). This can be viewed as an escalation of the bank's recovery process. It is further submitted that admittedly the Applicants filed a suit against possession of the mortgaged property and the same was dismissed under order 7 rule 11 CPC.
51. The Applicants alleged in the S.A that the description of mortgaged property given incorrect/wrong in the measures taken under SARFAESI. However, it is submitted that the mortgaged property and its description has got mentioned several places and even in the agreement and lease deed attached with the reply to S.A also clarifies the area and description of the property.
52. It is submitted that as far as the contentions against the sale notice dated 09.08.2020 is concerned, the same has become infructuous. It is further submitted that the present S.A is liable to be dismissed on the ground that the S.A was filed assailing the sale notice dated 09.08.2020 has become infructuous as no bid was received against the subject property. Furthermore, challenging the earlier measures initiated by Respondent FI are barred by limitation as the same are not challenged despite receipt of the same.
53. It is submitted that the present S.A is liable to be dismissed on the ground of mis-joinder and non-joinder of necessary parties as the S.A was filed only through Renu Kumar Jain and Mortgagor Mrs. Sunder Bai

Jain and the other co-borrowers are not impleaded in the array of parties.

54. It is further submitted that the reliance passed by the Hon'ble Supreme Court of India in '**Industrial Investment Bank of India versus Biswanath Jhunjhunwala"(2009) 9 sec 478** whereby it was held that the liability of the guarantor and the principal debtors are co-extensive. Relevant portion of Para no. 30 of the Judgment read as under:

    "***30. The legal position as crystalized by a series of cases of this court is clear that the liabilities of the guarantor and principal debtor are co-extensive and not alternative***"

55. It is submitted that till 30.08.2025 a huge sum of Rs. 15,05,53,582.71 is due and outstanding to be paid by the Applicants which is evident from the statement of accounts.
56. It is submitted that in view of the above stated facts and circumstances, it is most humbly prayed that this Hon'ble Tribunal may be pleased to dismiss the present S.A subject to heavy cost.
57. Heard arguments and perused the record.
58. The Applicants have been agitating about the unreasonable clauses in the loan agreement but they have paid regular installments under the same loan agreement thus raising this objection in these proceedings as the same are hit by doctrine of estoppel & are not maintainable in these proceedings as the applicant has to show the illegality in action of respondent.
59. The objections raised in respect of wrong classification of account as NPA & issuance of demand notice on such classification are not sustainable.
60. The applicants entered into Settlement with respondent vide deed dated 30.03.2019 which shows that the applicant agreed that they took loan, defaulted. The doctrine of waiver comes into play as once you go for settlement one waives all objections and also seek rebate in payment of loan. Thus, the objection of wrong classification of NPA are waived by the applicants herein.
61. The objections to 13(4) proceedings also stood waived in view of settlement deed.
62. The sale has not taken place. The objections have been raised to the sale notice are mere technical in nature once the Applicants failed to make payment even under settlement, they cannot take objection on

the ground of valuation which has been appropriately done by the respondent but delaying the recovery of respondent cannot be permitted by the Tribunal when the applicant is trying to make such arguments which do not go to the root of the matter/action of respondent.

SA stands dismissed. Accordingly, all IAs stands disposed of.

File be consigned to record room.

Order be uploaded on web site.

(Vimal Gupta)
Presiding Officer
Debts Recovery Tribunal, Jaipur

Order signed & uploaded on 13.08.2026.