IN THE DEBTS RECOVERY TRIBUNAL, SILIGURI

S.A. No.111/2025

1. SOMA RUDRA, Sole Proprietor of a proprietorship concern, M/s. Rudra Automobiles, having its office at New Town, Rabindra Nagar, P.O. Cooch Behar, District - Cooch Behar, PIN 736101.
2. SUDIP RUDRA, son of Late Samarendra Nath Rudra, Ward No. 12, Chhatguriahati, New Town, Rabindra Nagar, P.O. Cooch Behar, District - Cooch Behar, PIN 736101.

…….Applicants

Vs.

1. STATE BANK OF INDIA, Stressed Assets Recovery Branch, Siliguri, First Floor, Homeland Business Centre, 3rd Mile, Sevoke Road, Siliguri - 734008.
2. THE AUTHORISED OFFICER, State Bank of India, Stressed Assets Recovery Branch, Siliguri, First Road, Homeland Business Center, 3rd Mile, Sevoke Road, Siliguri - 734008.
3. SRI ACHINTA GHOSH, S/o Alok Kumar Ghosh, resident of Nibedita Sarani Bye Lane, Coochbehar, Newtown Rabindra Nagar, Coochbehar, West Bengal -736101.
4. SRI PRADIP KUMAR ROY, S/o Badal Chandra Roy, resident of 102, Nibedita Sarani Bye Lane, Near Ananda Marg School, Ward No. 12, Coochbehar, West Bengal -736101.
5. SRI ANKAN GHOSH, S/o Alok Kumar Ghosh, residing of Rabindranagar, Nibedita Sarani Bye Lane, Newtown, Coochbehar, Ward No. 12, Coochbehar, West Bengal -736101.
6. SMT. ANKITA DUTTA, W/o Kanak Datta, resident of Nehru Nagar, Guriyahati, Coochbehar, West Bengal-736101.
7. SMT. BIJAYA DEY, D/o Madan Mohan Dey, resident of Ashram Road, Coochbehar, West Bengal-736101.

……..……Respondents

Counsel for the applicants : Mr. Arik Banerjee and Mr. Joyjit Dutta.

Counsel for the respondents : Ms. Puja Bhupal and Ms. Sakshi Agarwal.

PRESIDING OFFICER: RAKESH PATI TIWARI

Date of Judgment -02.09.2026

J U D G M E N T

1. This is an application under section 17(1) of The Securitization And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as SARFAESI Act), filed by the applicants for setting aside the sale notice dated 09.06.2025 and for the other relief.
2. Case of the applicants in short is that the Applicant No. 1, M/s. Rudra Automobiles, is a sole proprietorship concern engaged in the business of trading in automobile products

and repair and maintenance of various special-purpose machinery and vehicles and is a registered Micro, Small and Medium Enterprise (MSME), having commenced its business on 01.09.2016 and obtained MSME registration on 08.03.2019. That Applicant No. 1 availed a Cash Credit facility of Rs.24.50 lakhs from the State Bank of India for augmentation of its business, which facility fell within the SME/MSME segment and was sanctioned by way of Letter of Arrangement dated 30.05.2019. The said credit facility was secured by loan-cum-hypothecation of the assets and stocks-in-trade of the Applicant No. 1 and was further supported by a guarantee furnished by Applicant No. 2 and mortgage of immovable property measuring approximately 1 Cottah 15 Dhur situated at Mouza Chhat, Guriahati. According to the Applicants, during the initial period of operation of the Cash Credit account, the account was regularly conducted and the sanctioned limit was not exceeded; however, owing to the outbreak of the COVID-19 pandemic and the consequent substantial decline in demand for automobile parts and allied products, the business suffered severe financial setbacks, resulting in reduction of revenue and accumulation of outstanding dues, due to which the Cash Credit account allegedly became irregular. The Applicants contend that the Bank thereafter classified the account as NPA on 30.04.2021 without issuing any prior notice or affording any opportunity to the Applicants and subsequently issued a demand notice dated 15.06.2021 under Section 13(2) of the SARFAESI Act, 2002, demanding a sum of Rs.27,93,700/- along with applicable interest and charges. Thereafter, the Bank is stated to have issued a possession notice dated 04.09.2021 under Section 13(4) of the SARFAESI Act read with the relevant provisions of the Security Interest (Enforcement) Rules, 2002. The Applicants further contend that, notwithstanding the initiation of recovery proceedings, they were always willing and desirous of settling the outstanding dues and had made several proposals for One Time Settlement (OTS), including letters dated 05.03.2023, 25.03.2023 and 02.04.2023, wherein a repayment schedule was proposed and the Applicants offered to deposit 10% of the proposed settlement amount; according to them, a sum of Rs.2,25,000/- was also remitted to the Bank pursuant to the settlement proposal. The Applicants further rely upon substantial payments allegedly made towards the loan account, stated to be to the extent of Rs.14,70,000/-, as evidence of their bona fide intention to discharge the Bank's dues. It is also stated that the Applicants had informed the Bank regarding repayment of another credit facility in the nature of a gold loan

standing in the name of Soma Rudra, including a payment of Rs.1,98,820/- made on 04.08.2021, in support of their contention that they had no intention to evade their financial obligations. The Applicants further rely upon a communication issued by the Bank dated 07.10.2022, whereby the Bank itself sought information as to whether Applicant No. 1 was an MSME unit within the meaning of the relevant Gazette Notification and advised the Applicants to obtain Udyam Registration so as to avail the benefits available to MSME units. The Applicants allege that the Bank failed to follow the applicable guidelines issued by the Reserve Bank of India concerning identification of stress in MSME accounts, classification under the Special Mention Account (SMA) categories, constitution of the appropriate committee, formulation of a Corrective Action Plan and consideration of restructuring, rectification or other measures for revival and rehabilitation of the stressed MSME unit before resorting to coercive recovery measures under the SARFAESI Act. It is specifically contended that the Bank did not undertake the prescribed process for revival and rehabilitation of the MSME enterprise and did not afford the Applicants the opportunity of having their stressed account examined in accordance with the applicable MSME framework. The Applicants also challenge the correctness of the NPA classification on the ground that there was allegedly no continuous default for a period of 90 days in servicing the principal or interest and have sought production and examination of the relevant statement of account to demonstrate the alleged absence of the requisite continuous default. The Applicants further contend that the demand notice issued under Section 13(2) did not contain adequate particulars or a proper and detailed break-up of the amount allegedly due and payable. They also allege non-compliance with the statutory requirements relating to the possession notice, contending that the notice was neither properly affixed at a conspicuous place of the secured property nor duly published in two leading newspapers, including one vernacular and one English newspaper, as required under the applicable provisions. Similar objections have been raised in respect of the subsequent sale proceedings, with the Applicants contending that the sale notice issued under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 was not published in accordance with the mandatory requirements of law. The Applicants further rely upon an earlier proceeding under Section 14 of the SARFAESI Act initiated by the Bank before the learned District Magistrate, Cooch Behar, and contend that the order passed therein was subsequently set aside on 01.02.2023 in view of alleged non-

compliance with the statutory requirements, particularly the manner in which police assistance for taking possession had been directed. The Applicants challenge the said sale notice dated 09.06.2025, inter alia, on the ground of considerable and unexplained delay between the earlier possession proceedings initiated in 2021 and the issuance of the sale notice in 2025, contending that the Bank could not revive or continue the proceedings after such an inordinate lapse without due compliance with the statutory requirements. It is further alleged that the description of the property contained in the sale notice is inconsistent with the description of the property mentioned in the Letter of Arrangement/security documents and that the property sought to be brought to sale is not the same property which was validly mortgaged to secure the credit facility. The applicants have also questioned the valuation of the secured asset, alleging that the reserve price of Rs.27.34 lakhs is substantially below the prevailing market value and the Government valuation of the property, which according to them is approximately Rs.45 lakhs, and have consequently alleged that the proposed sale would result in serious prejudice and loss to the Applicants. The Applicants accordingly seek, inter alia, setting aside of the impugned demand notice, possession notice and sale notice, restraint upon the Bank from proceeding with the proposed sale of the secured property, and such other consequential reliefs as may be deemed fit and proper in the facts and circumstances of the case.

3. The respondents filed their written objection stating inter-alia that the application is barred by the principle of waiver, estoppels and acquiescence. Further, the applicants have no locus-standi to file the instant application. According to the Respondent Bank, the Applicants have principally challenged the sale proceedings stated to have been scheduled on 17.07.2025, however, the said sale did not ultimately materialise and, therefore, according to the Bank, no surviving or subsisting cause of action remains in favour of the Applicants so as to maintain the present S.A. It is specifically contended that the Applicants are habitual litigants and that the present proceedings constitute a second round of litigation before this Tribunal in respect of the same or substantially similar grievances, as the Applicants had earlier instituted S.A. No.13 of 2023, in which the Respondent Bank had already filed its written objection, but the Applicants subsequently failed to appear and the said S.A. was dismissed for non-prosecution on 10.04.2024. The Respondent Bank has, therefore, alleged that the Applicants are attempting to reagitate

issues which were either known to them at the relevant time or could and ought to have been raised earlier. The Respondent Bank states that Applicant No.1, being the proprietor of M/s Rudra Automobiles, approached the State Bank of India, Khagrabari ADB Branch, for sanction of a Cash Credit facility for the purpose of carrying on her business and that a Cash Credit facility of Rs.24,50,000/- was sanctioned on 02.05.2019 through Account No.38442402934, upon the terms and conditions contained in the relevant loan and security documents. The Bank further states that, apart from the aforesaid account, the Applicants had availed several other credit facilities, including Cash Credit Account No.30563552877 in the name of M/s Sabita Automobile, of which Applicant No.2 was the proprietor and Applicant No.1 was the guarantor, besides Term Loan Account No.39234515303, FITL Account No.39235560172, COVID-19 FITL Account No.39604286496, Housing Loan Account No.34818905602 and Car Loan Account No.37445763554. The Bank's case is that these accounts are separate facilities and that the Applicants have deliberately sought to club the transactions and statements relating to different loan accounts in order to create confusion and to dilute or defeat the Bank's claim in respect of the secured debt which is the subject matter of the present proceedings. The Bank further states that, pursuant to the COVID-19 regulatory package of the Reserve Bank of India, accumulated interest in the relevant Cash Credit account was converted into a Funded Interest Term Loan of Rs.2,27,790.68/- under Account No.39608212555. It is the specific case of the Respondent Bank that the Applicants failed to maintain financial discipline and did not regularise the relevant loan account despite repeated demands, reminders, personal visits and telephonic requests made by the Branch Manager for payment of the overdue amount. Consequently, in accordance with the applicable RBI norms and guidelines, the concerned account was classified as a Non-Performing Asset (NPA) on 30.04.2021. Thereafter, the Authorized Officer of the Respondent Bank issued a demand notice dated 15.06.2021 under Section 13(2) of the SARFAESI Act, 2002, calling upon the Applicants to discharge the outstanding liability, which, in respect of Cash Credit Account No.38442402934, was stated to be Rs.27,93,700/- together with applicable interest and other charges. According to the Bank, despite service of the demand notice, the Applicants neither discharged the outstanding liability within the statutory period nor submitted any representation or objection under Section 13(3-A) of the SARFAESI Act. Upon failure of the Applicants to

comply with the demand, the Authorized Officer thereafter issued the requisite possession notice dated 04.09.2021 under Section 13(4) of the SARFAESI Act and took symbolic possession of the secured asset. The Bank states that the possession notice was duly served upon Applicant No.2, who acknowledged the same, and was also affixed on the secured property in his presence. The possession notice was thereafter published in two newspapers, namely, “Aajkal” in Bengali and “The Telegraph” in English, both on 06.09.2021. The Bank has specifically disputed the Applicants’ contention regarding the alleged MSME status of M/s Rudra Automobiles and states that the Applicants failed to establish, by producing authenticated and verifiable material at the relevant stage, that the concerned borrowing unit was entitled to the benefits or procedural safeguards applicable to MSME borrowers. In this connection, the Respondent Bank has placed reliance upon the judgment/order dated 17.06.2025 passed by the Hon’ble High Court at Calcutta, Circuit Bench at Jalpaiguri, in W.P.A. No.1172/2025, wherein, according to the Bank, the Applicants’ plea relating to MSME status and the alleged non-compliance with MSME-related requirements was considered and the writ petition was dismissed. The Bank relies upon the observations made therein that the borrower had sufficient opportunity during the SARFAESI proceedings or before the Debts Recovery Tribunal to assert its alleged MSME status but had failed to raise such plea at the appropriate stage, and that the borrower could not seek to invoke such status belatedly when the recovery proceedings had reached an advanced stage. The Bank further states that the Applicants themselves admitted the default and receipt of the Section 13(2) notice and also acknowledged that, owing to reduced revenue generation, substantial amounts remained outstanding and the Cash Credit account could not be maintained within the sanctioned limit. The Bank has also pointed out that the Applicants have annexed more than one Section 13(2) notice under the same annexure number, although one of the notices pertains to Housing Loan Account No.34818905602, which is a separate account and is not the subject matter of challenge in the present S.A., according to the Bank, such presentation of documents relating to different accounts is intended to create confusion regarding the actual subject matter of the present proceedings. The Bank has similarly disputed the relevance of the statements of account and payments relied upon by the Applicants, stating that several such documents relate to separate loan accounts and cannot be utilised to demonstrate discharge or regularisation of the liability forming the subject matter of the present

SARFAESI proceedings. The Bank also refers to a proposal made by the Applicants on 02.04.2023 for settlement of the Car Loan and Housing Loan accounts for a sum of Rs.22,52,000/-, against which the Applicants allegedly deposited Rs.2,25,000/- by Demand Draft, according to the Bank, the proposed settlement did not materialise and the deposited amount was consequently returned. The Respondent Bank has further denied the allegations made by the Applicants regarding the legality of the NPA classification and has submitted that mere completion of 90 days' default is not to be treated as the sole consideration in isolation for classification of an account as NPA, the classification having been made in accordance with the applicable RBI norms. With regard to the sale proceedings, the Bank states that the statutory requirements for conducting the sale, including issuance of notice under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002, had been duly complied with, although the proposed sale did not ultimately materialise. The Bank consequently contends that the Applicants cannot derive any advantage from the non-materialisation of the scheduled sale so as to challenge the entire recovery proceedings or seek to invalidate the earlier measures validly taken under Sections 13(2) and 13(4) of the SARFAESI Act. The Respondent Bank has also referred to the subsequent proceedings before the Hon'ble High Court against the order dated 17.06.2025 and submits that the Applicants have continued to pursue litigation in an attempt to stall the recovery process. That the Applicants failed to raise their alleged MSME plea or other objections at the appropriate stage. That the earlier S.A. filed by them had already been dismissed for non-prosecution and that the present proceedings, particularly in view of the non-materialisation of the sale scheduled on 17.07.2025, do not disclose any sustainable cause of action.

4. The applicants have filed their rejoinder of written objection of the Bank stating therein that the SARFAESI measures initiated by the respondent Bank, including the demand notice, possession notice and subsequent sale proceedings, are illegal, arbitrary and liable to be set aside on account of material violations of the SARFAESI Act, 2002 and the Security Interest (Enforcement) Rules, 2002. Principally, the applicants contend that the e-auction sale notices dated 22.09.2025 in respect of the two mortgaged residential properties were issued without affording the mandatory statutory period contemplated under Rules 8(6), 8(7) and 9(1), read with Section 13(8) of the Act, as the notices were served upon the applicants only on 25.09.2025 and the proposed newspaper publication

was fixed for 29.09.2025, thereby allegedly depriving the applicants of the statutory opportunity to redeem the secured assets before the auction fixed on 21.10.2025. It is further alleged that a subsequent sale notice dated 24.09.2025 was issued without withdrawing the earlier notices and contained material discrepancies regarding the outstanding amounts, dates of calculation, reserve prices and EMD, besides omitting the date of publication and the EMD/reserve price particulars in respect of one property, rendering the sale process vitiated. The applicants further allege non-compliance with Rule 8(5) regarding valuation by an approved valuer, non-affixation of the sale notices on the conspicuous part of the secured properties as required under Rule 8(7), and discrepancies between the property descriptions and the loan/sanction documents. The applicants dispute the Bank's alleged compliance with service and affixation requirements concerning the possession notice and assert that the photographs and documents relied upon by the Bank do not establish proper service or affixation on the subject properties. They further contend that, despite the Tribunal's orders dated 17.10.2025 and 05.12.2025 making the sale subject to the outcome of the S.A. and interlocutory applications, the applicants subsequently came to know that the properties had already been sold and sale certificates dated 06.11.2025 had been issued in favour of auction purchasers, whose complete particulars and addresses were not supplied to the applicants, and therefore seek their impleadment for effective adjudication. Thereafter, notices dated 15.12.2025 were issued pursuant to the Section 14 order requiring the applicants to vacate, against which I.A. No. 866 of 2025 was filed and an interim order dated 23.12.2025 was passed restraining the Bank from taking physical possession.

5. Ld. Counsels of the applicants, auction purchaser and the respondent bank have been heard on SA and I.A. No. 664/2025.

6. Applicants have admitted that the applicant no. 1 had obtained credit facilities for augmentation of business in the form of cash credit facility to the extent of Rs. 24.50 lakhs from the respondent bank vide sanction letter dated 30.05.2019 and the applicant no. 2 stood as guarantor by mortgaging of a property measuring 1 Cottah 15 dhur under mouza- Chhat, Guriahati.

7. SA was filed by the applicants challenging the sale notice dated 09.06.2025 and the sale scheduled on dated 17.07.2025 but the sale did not materialize due to paucity of bidders as it reflects from the order dated 31.07.2025.

8. Settled position of law is that even if the limitation is counted from the issuance of sale notice which did not materialize, the other measures which have been challenged in the SA are required to be decided on merit because issuance of sale notice for the sale of the secured asset is not an independent act but culminates only from the outcome of the statutory notices so issued earlier and therefor in the chain of action any illegality having taken place at any point should render the entire process to be invalid being not in accordance with the due process of law.

9. **First plea** of the applicants in the SA is that loan was sanctioned for MSME but while classifying the loan account NPA the guidelines of RBI for dealing with stressed account of MSME has not been followed by the bank.

10. Ld. Counsel of the applicants argued that in the guidelines of RBI with respect to the MSME clause 4:6 of 2017 Micro Small & Medium Enterprises Direction of the framework is for revival and rehabilitation of MSMEs but the bank did not follow the salient features of the system of revival of the applicants business which is a MSME.

11. On this point written objection of the bank is under para no. 25 wherein although it has not been disclosed by the respondent bank that whether before classifying the loan account of the applicants NPA it was placed before the FRR committee (Committee for Revival and Rehabilitation) set up under guidelines from the Ministry of MSME and the Reserve Bank of India rather the bank has heavily relied upon over the case of **M/s Sabita Automobiles vs Union of India & Ors (WPA No. 1172/2025, decided on dated 17.06.2025)** wherein Hon'ble the Calcutta High Court has held that at a belated stage of proceedings when it has reached to the final stage of e-auction, the plea of the borrower is not maintainable in view of the judgment of Hon'ble Supreme Court passed in case of **M/s Pro knits vs Board of Directors of Canara Bank {(2024 INSC 565:2024 (10) SCC 292)}.** It is pertinent to mention that M/s Savita Automobiles is the sister concern of Rudra Automobiles and by Savita Automobiles Writ was preferred before the Hon'ble Court.

12. In case of **Pro Knits (Supra)** Hon'ble the Supreme Court has held that duty is cast upon the MSME also to be vigilant enough to follow the process laid down under the said Framework and bring to the notice of the concerned Banks by prevailing authenticated and verifiable documents/materials to show its illegibility to get the benefit of the said framework. Relevant paragraphs of the judgment are extracted here-in-below:

"13. In view of the above, it is absolutely clear that the Instructions for the Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises as notified by the Central Government vide the Notification dated 29th May, 2015 in exercise of the powers conferred under Section 9 of the MSMED Act, as revised by the RBI Notification dated 17th March, 2016, and the Master Directions i.e. the Reserve Bank of India (Lending to Micro, Small and Medium Enterprises Sector) Directions, 2016, issued by the Reserve Bank of India in exercise of the powers conferred by Section 21 and 35(A) of the Banking Regulation Act, having statutory force, are binding to all Scheduled Commercial Banks, licensed to operate in India by the Reserve Bank of India, as stated in the said Directions. It cannot be gainsaid that the Banking Regulation Act 1949 basically seeks to regulate banking business and mandates a statutory comprehensive and formal structure of banking regulation and supervision in India. Section 21 and Section 35A of the said Act empower the Reserve Bank of India to frame the policy and give directions to the banking companies in relation to the advances to be followed by the banking companies. Such directions have got to be read as supplement to the provisions of the Banking Regulation Act and accordingly are required to be construed as having statutory force and mandatory.

14. As transpiring from the said Instructions/Directions, the entire exercise as contained in the "Framework for Revival and Rehabilitation of MSMEs" is required to be carried out by the banking companies before the accounts of MSMEs turn into Non-Performing Asset. It is true that the security interest created in favour of any Bank or secured creditor may be enforced by such creditor in accordance with the provisions contained in Chapter-III of the SRAFAESI Act and that as per Section 35 of the SARFAESI Act, the provisions of the said Act have the effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument

having effect by virtue of any such law. However, pertinently the whole process of enforcement of security interest as contained in Chapter-III of the SRAFAESI Act, could be initiated only when the borrower makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, in view of Section 13(2) of the said Act.

15. What is contemplated in the "Framework for Revival and Rehabilitation of MSMEs" contained in the Instructions/ Directions stated hereinabove, is required to be followed prior to the classification of the borrower's account, (in the instant case MSMEs loan account), as Non-Performing Assets. The said Instructions contained in the Notification dated 29.05.2015 as part of measures taken for facilitating the promotion and development of MSMEs issued by the Central Government in exercise of powers conferred under Section 9 of the MSMED Act, followed by the Directions issued by the RBI in exercise of the powers conferred under Section 21 and 35A of the Banking Regulation Act, the Banking companies though may be 'secured creditors' as per the definition contained in Section 2(zd) of the SARFAESI Act, are bound to follow the same, before classifying the loan account of MSME as NPA.

16. We may hasten to add that under the "Framework for Revival and Rehabilitation of MSMEs", the banks or creditors are required to identify the incipient stress in the account of the Micro, Small and Medium Enterprises, before their accounts turn into non-performing assets, by creating three sub-categories under the "Special Mention Account" Category, however, while creating such sub-categories, the Banks must have some authenticated and verifiable material with them as produced by the concerned MSME to show that loan account is of a Micro, Small and Medium Enterprise, classified and registered as such under the MSMED Act. The said Framework also enables the Micro, Small or Medium Enterprise to voluntarily initiate the proceedings under the said Framework, by filing an application along with the affidavit of an authorized person. Therefore, the stage of identification of incipient stress

in the loan account of MSMEs and categorization under the Special Mention Account category, before the loan account of MSME turns into NPA is a very crucial stage, and therefore it would be incumbent on the part of the concerned MSME also to produce authenticated and verifiable documents/material for substantiating its claim of being MSME, before its account is classified as NPA. If that is not done, and once the account is classified as NPA, the banks i.e. secured creditors would be entitled to take the recourse to Chapter-III of the SRAFAESI Act for the enforcement of the security interest.

17. It is also pertinent to note that sufficient safeguards have been provided under the said Chapter for safeguarding the interest of the Defaulters-Borrowers for giving them opportunities to discharge their debt. However, if at the stage of classification of the loan account of the borrower as NPA, the borrower does not bring to the notice of the concerned bank/creditor that it is a Micro, Small or Medium Enterprise under the MSMED Act and if such an Enterprise allows the entire process for enforcement of security interest under the SARFAESI Act to be over, or it having challenged such action of the concerned bank/creditor in the court of law/tribunal and having failed, such an Enterprise could not be permitted to misuse the process of law for thwarting the actions taken under the SARFAESI Act by raising the plea of being an MSME at a belated stage. Suffice it to say, when it is mandatory or obligatory on the part of the Banks to follow the Instructions/Directions issued by the Central Government and the Reserve Bank of India with regard to the Framework for Revival and Rehabilitation of MSMEs, it would be equally incumbent on the part of the concerned MSMEs to be vigilant enough to follow the process laid down under the said Framework, and bring to the notice of the concerned Banks, by producing authenticated and verifiable documents/material to show its eligibility to get the benefit of the said Framework."

13. On the basis of the principles laid down in the judgment of the Pro Knits (Supra) Hon'ble Calcutta High Court held in the case of Applicants in Savita Automobiles (Supra) that the petitioner was not entitles to the benefit of MSME Scheme.

14. Referring the judgments of Pro knits (supra) Hon'ble the Supreme Court has held in case of **Shri Shri Swami Samarth Construction & Finance Solution & Anr vs the Board of Directors of NKGSB Co-operative Bank Ltd. & Ors (2025 INSC 908)** Hon'ble the Supreme Court has held that even upon receipt of the Demand Notice, if such borrower in its response under section 13(3A) of the SARFAESI Act, asserts that it an MSME and claims the benefit of the Framework citing reasons supported by and affidavit the lending bank/secured creditor would then be mandatorily bound to look into such claim keeping further action under the SARFAESI Act abeyance and should the claim be found to be worthy of acceptance within the Framework to act in terms of thereof for securing revival and rehabilitation of the defaulting borrower.

15. It is not the case of the applicants that they had ever approached the secured creditor for securing the revival & rehabilitation under the Framework being MSME, even after receipt of 13(2) notice.

16. Thus the applicants plea before this Tribunal for revival and rehabilitation under the Framework is not maintainable and accordingly, rejected.

17. **Next plea** of the applicant is that there has not been continuous default for a period og 90 days either in serving the principal or the interest for which the account has been classified NPA.

18. Above Plea has been taken by the applicants in paragraph no. 6.24 of the SA and the same has been answered under para no. 26 of the written objection as under:

> *"26. That with reference to statement made in paragraph No. 6.24 to 6.26 the Defendant Bank submits that the contentions regarding the 13(2) Notice and possession notice have already been replied by the Defendant Bank in point No 17 & 18 of this objection and is not repeated for the sake of brevity. However, it is humbly submitted by the Defendant Bank that only 90 days default is not the sole criteria to make account NPA and further it is also submitted by the Defendant Bank that all the requirement for conducting sale including Notice under Rule 8(6) has*

been already complied with however the said sale could not be materialise, hence needs no reply."

19. Thus answer of the bank is that 30 days default is not the only criteria to declare the account NPA but it has not been specifically pleaded that on which ground the loan account of the applicant no. 1 has been classified NPA. The 13(2) notice dated 15.06.2021 issued by the secured creditor is annexed with the written objection of the respondent bank as Annexure-B from which it transpires that consequence to the default committed by the borrower in repayment of principal debt and interest thereon loan account of the borrower has been classified NPA on dated 30.04.2021. Relevant paragraph no. 4 of the 13(2) notice is extracted here-in-below:

"4. You have also acknowledged subsistence of the liability in respect of the aforesaid credit facilities by executing confirmation of balances and revival letters and other documents from time to time. The operation of and conduct of the above said financial assistance / credit facilities have become irregular and the debt has been classified as Non-Performing Assets (NPA) on 30.04.2021 in accordance with the directives/guidelines relating to asset classifications issued by the Reserve Bank of India consequent to the default committed by you in repayment of principal debt and interest thereon."

20. It has not been denied by the respondent in its written objection that there was no continuous default for a period of 90 days either in serving the principal or the interest but there case is that it is not the only criteria rather on other grounds also loan account can be classified NPA. It is pertinent to mention that notification of Reserve Bank of India bearing No. RBI/DOR/2025-26/164, DOR.STR.REC.83/21.04.048/2025-26 dated 28.11.2026 (updated as on July 01, 2026) with respect to classification of NPA runs as under:

"***C. Classification as non-performing asset***

42. A bank shall classify a loan or an advance as NPA if any of the following conditions is satisfied:

(1) interest and / or instalment of principal remains overdue for a period of more than 90 days in respect of a term loan;

(2) the account remains 'out of order' in respect of an Overdraft / Cash Credit (OD/CC);

(3) a working capital borrowal account where irregular drawings are permitted in the account for a continuous period of 90 days even though the unit may be working or the borrower's financial position is satisfactory;

(4) the bill remains overdue for a period of more than 90 days in the case of bills purchased and discounted;

(5) an account where the regular / ad hoc credit limits have not been reviewed / renewed within 180 days from the due date / date of ad hoc sanction;

(6) the instalment of principal or interest thereon remains overdue for two crop seasons for short duration crops;

(7) the instalment of principal or interest thereon remains overdue for one crop season for long duration crops;

(8) the amount of liquidity facility remains outstanding for more than 90 days, in respect of a securitisation transaction undertaken in terms of the Reserve Bank of India (Commercial Banks – Securitisation Transactions) Directions, 2025;

(9) in respect of derivative transactions, the overdue receivables representing positive mark-to-market value of a derivative contract, remain unpaid for a period of 90 days from the specified due date for payment. Provided that in cases where the contract provides for settlement of the current mark-to-market value of a derivative contract before its maturity, only the current credit exposure (not the potential future exposure) shall be classified as a non-performing asset after an overdue period of 90 days; Provided further that in cases where a bank partially or fully terminates the derivative contract before maturity, at their discretion, based on preference of the clients to reduce the notional exposure of the hedging derivative contract, and the bank permitted payment in instalments of the crystallized Mark to Market (MTM) of such derivative contracts (including Forex Forward Contracts), the receivable

shall be classified as nonperforming asset: (i) if the amount becomes overdue for 90 days from the date of partial / full termination of the derivative contract; or (ii) if the amount becomes overdue for 90 days from the due date of payment of subsequent instalments.

(10) a credit card account where the minimum amount due, as mentioned in the statement, is not paid fully within 90 days from the payment due date mentioned in the statement."

21. Now question arises that whether classification of loan account NPA can be scrutinized by the DRT?

22. It is pertinent to mention that for proceeding under the provisions of the SARFAESI Act, secured debt and the classification of the loan account NPA is the condition precedent in view of Section 13(1) & (2) of the SARFAESI Act. In case of **Punjab National Bank vs M/s Mithilanchal Industries Pvt. Ltd. (2020 SCC Online Guj 3441)** Hon'ble the Gujrat High Court had framed a point that whether while deciding the application u/s 17 of the SARFAESI Act, the DRT could test the validity of the notice u/s 13(2) and also the procedure prescribed under sub-section (3A) of section 13 of the SARFAESI Act and the Hon'ble High Court answered it para no. 42 & 43 of the judgment as under:

"42. In order to test action/recourse under sub- section (4) of Section 13 of the SARFAESI Act in an application under Section 17, the Debts Recovery Tribunal has to examine that whether the necessary foundation or the pre-requisites of taking action under Section 13(4) has been fulfilled or not. Where there is a failure or non- compliance, the Tribunal has no other option but to hold that the action/recourse under sub-section (4) is invalid and illegal.

43. The action/recourse under sub-section (4) of Section 13 is consequential to the borrower failing to discharge his liability in full within the period specified in sub-section (2), which speaks of secured creditor requiring the borrower by notice in writing to discharge in full his liabilities within 60 days from the date of notice failing which the secured creditor would be entitled to exercise all or any of the rights under sub-section (4). The requirements of the notice under sub-section (2) is provided under sub-section (3) which clearly mandates that the notice referred to in sub-

section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor. If these details are not provided which are mandatory in nature or which casts a mandate upon the secured creditor to provide such details, the notice would be bad in law, which we have already held above."

23. Thus the DRT has got jurisdiction to go into the merit of classifying the loan account NPA and from the discussion made here-in-above it is crystal clear that wrongly and probably mistakenly loan account of the applicants has been classified NPA because the respondent bank has accepted the plea of the applicants that there was no continuous default for a period of 90 days either in serving the principal or the interest but the bank had taken a plea that it is not the only criteria for classifying a loan account NPA, which is correct, but in the 13(2) notice of the instant matter clearly it is mentioned that consequent to the default committed by the borrower in repayment of principal debt and interest thereon loan account has been classified NPA on 30.04.2021.It is not mentioned in 13(2) notice that due to non-financial reason loan account has been classified NPA.

24. In this view of the matter classifying the loan account NPA is bad in the eye of law and accordingly, this issue is decided against the respondent bank in favour of the applicants.

25. **Next plea** of the applicant is that demand notice does not bear the necessary particulars of debt and does not give a detailed break-up of the claim.

26. Written objection of the bank on this point has been given under para no. 26 of the written objection where instead of specific pleading it has been mentioned that this point has been replied by the respondent bank in point no. 17 & 18 of the objection. If para no. 17 & 18 of the written objection of the bank is perused, it transpires that no specific pleading is there with respect to the plea taken by the applicants that detailed breakup of the claim amount has not been given. In para no. 17 & 18 of the written objection of the bank a simple pleading has been made that when the borrower did not give any head to repay the dues amount loan account was classified NPA as per the guidelines of RBI and consequently 13(2) notice has been issued.

27. From the conjoint reading of sub-section (2) & (3) of section 13 of the SARFAESI Act it reflects that in case of default in repayment of secured debt or any instalment thereof and account is classified Non-Performing Asset, then the secured creditor may give notice to the borrower in writing to discharge in full his liabilities to the secured creditor within 60

days from the notice and the such notice (13(2) notice) shall give **details of amount payable by the borrower** and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.

28. From perusal of the 13(2) notice of the instant matter (page no. 33 to 33 of the SA) it transpires that notice has been issued on dated 15.06.2021 to repay a sum of Rs. 27,93,700/- as on 09.06.2021 with further interest and incidental expenses, costs but separately the principal outstanding, interest amount, rate of interest, incidental expenses amount and costs is not mentioned in the notice. Even under the Schedule-A of the 13(2) notice (running page no. 33 of the SA) any details is not mentioned and only the total amount of Rs. 27,93,700/- is mentioned. Another 13(2) notice has been annexed with the S.A. by the applicants (running page no. 34 to 36 of the SA) for demand of Rs. 16,97,101/- with interest as on 22.07.2021 but there is no any details of the amount.

29. Hon'ble the Calcutta High Court has held in case of **Madhu Sudan Ghosh and Anr Vs. Bank of Baroda & Ors. [W.P. No. 7883(w) of 2009 (Decided on 30.07.2010**] that if 13(2) notice is not issued as per the provision of sub-section (3) of section 13 of the SARFAESI Act, it is a serious infirmity which vitiates the entire procedure. Relevant paragraph of the judgment (supra) runs as under:

> *"8.From a plain reading of the aforesaid provisions it will appear from sub-Section 3 of Section 13 of the Act that the notice to be issued by the secured creditor under Section 13(2) of the Act shall give details of the amount payable by the borrower on the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower. Unfortunately while serving notice under Section 13(2) dated 03.03.2006 no details of the amount payable by the borrower has been supplied to the borrowers. Only a total amount of Rs. 3,16,824/- was demanded inclusive of interest up to 30.11.2005 (Annexure - B to the affidavit-in-opposition) which does not indicate the amount paid by instalments by the borrower in details showing progressive total of debit and credit balance resulting therein the total demand of Rs. 3,16,824/-. This is a serious infirmity in issuing statutory notice under Section 13(2) of the SRFAESI Act, 2002 which vitiates the entire procedure adopted for*

realisation of non- performing assets by auction sale of the mortgaged property."

30. Although 13(2) notice of the instant matter is not in accordance with the provisions of the SARFAESI Act but it is not the case of the applicants that if the details of the dues amount would have been mentioned in the 13(2) notice, he was ready to deposit the amount and thus there has not been caused any prejudice to the applicants and accordingly the issue is decided.

31. **Another plea** of the applicants is that the possession notice issue under section 13(4) of the SARFAESI Act was not affixed upon the conspicuous part of the property and it was not published in two leading newspapers, one in vernacular and one in English of the locality.

32. This plea has been raised by the applicants under para no. 6(25) of the SA which has been annexed in para no. 26 of the written objection of the bank that the point of 13(4) notice has been answered in para no. 17 & 18 of the written objection. If para no. 17 & 18 of the written objection is perused, it is found that nowhere it is mentioned in para no. 17 & 18 of the written objection that 13(4) notice was affixed upon conspicuous part of the mortgaged property and it was published in two newspapers including one in vernacular language newspaper.

33. However, in para no. 19 of the written objection of the bank it is mentioned that notice was duly affixed on the conspicuous part of the property and duly published in vernacular language "Ajkal" (Bengali) and also in English newspaper "Telegraph" on dated 06.09.2021 and copies of the affixation and publication have been filed as Annexure-C (running page no. 27,28,29 & 30 of the written objection).

34. From perusal of the photocopy of affixation it transpires that neither the date nor the place is reflecting in the photocopy and whatever has been affixed is not legible that whether it is affixation proof of sale notice or the 13(4) notice dated 04.09.2021.

35. In case of **Nampally Kishan Vs. Telengana Grameena Bank & Anr (Appeal No.134 of 2018 decided on 12.10.2023)** Hon'ble DRAT Kolkata has held that affixation date must be visible. Relevant paragraph of the judgment (supra) is extracted here-in-below:

"12. In the appeal as well as before the DRT an effort is made by the Bank to show that the notice was affixed on a conspicuous part of the schedule property to make the compliance of Rule 8 (7). But the

photographs annexed with the affidavit would show that no date is shown on which date the notice was affixed on the conspicuous part of the schedule property. Even in the list of documents filed by the Bank before this Appellate Tribunal and annexed at Serial No. 5 and 8 no date is mentioned regarding affixation of the Possession Notice or affixation of sale notice on the conspicuous part of the schedule property. Accordingly, It could not be accepted that compliance of Rule 8 (7) of the Rules was made by the Bank. On this count alone SARFAESI Application, under Section 17 of the Act, deserves to be allowed."

36. Proof of publication in newspaper (running page no. 29 & 30) are also not legible but page no. 31 is legible from which it transpires that on 06.09.2021, possession notice dated 04.09.2021 was published which is found in accordance with the provisions of the SARFAESI Act and the rules framed thereunder and accordingly thus issue is decided.

37. **Last plea** of the applicants in the SA is that after four years of issuance of possession notice in the year 2021, sale notice has been issued by the secured creditor.

38. Although there is no any specific pleading of the respondent bank on this point rather their plea in paragraph no. 28 of the written objection of the SA is that as the sale did not materialize due to paucity of bidder and thus needs no reply but this Tribunal opines that on all the points raised in S.A. specific pleading should have been made by the Ld. Counsel of the respondent bank. However any limitation is not prescribed for issuance of sale notice after proceeding under the SARFAESI Act by issuing 13(4) notice and section 36 of the SARFAESI Act prescribes that no secured creditor shall be entitled to take all or any of the measures under sub-section (4) of Section 13 unless his claim in respect of the financial asset is made within the period of limitation prescribed under the Limitation Act, 1963 and it is not the case of the applicant that the claim of the secured creditor was time barred.

39. Thus the issue raised by the applicants is not maintainable in the eye of law and accordingly rejected.

40. In view of the aforesaid discussion on all the issues raised by the applicants in the S.A, this Tribunal comes to the conclusion that some of the irregularities have been found which do not go to the root of the matter but classifying the loan account NPA has been

found bad which is the condition precedent for proceeding under the SARFAESI Act and as such on this score alone S.A. of the applicants is fit to be allowed.

ORDER ON I.A. NO. 664/2025

41. Instant I.A. has been filed by the applicants challenging the e-auction sale notices dated 22.09.2025 and 24.09.2025 for selling the two properties.

42. Case of the applicants in the I.A. in short is that e-action sale notices are full of discrepancies and the SARFAESI proceeding has been initiated in violation of MSME guidelines dated 17.03.2016. That first property mentioned in one of the sale notices is measuring 1 Cottah, 15 Dhurs, situated at mouza -Chhat, Guriahati and this property was purchased by the applicant no. 2 through deed of sale dated 21.05.2007. That the account became NPA on 30.04.2021 and thereafter 13(2) notice was issued for Rs.27,93,720/- followed by possession notice dated 04.09.2021.

43. Further case of the applicants in para no. 7 of the I.A. is that such sum became due for which account was declared NPA on 04.07.2021 and a sum of Rs. 16,97,101/- was claimed to be due by way of demand notice dated 07.06.2021 followed by possession notice issued u/s 13(4) of the SARFAESI Act.

44. Further case of the applicants in the I.A. is that on dated 05.03.2023 an OTS proposal was made by the applicants for a sum of Rs. 17.50/- lakhs but it was not accepted by the bank and a further claim of Rs. 2.55 lakhs was made. In the meantime more than Rs. 14.70 lakhs was paid by the applicants. That the applicants were not provided the benefit of MSME and the bank did not restructure the loan account as per RBI guidelines and subsequently two sale notices have been issued on 09.06.2025 for e-auction dated 19.07.2025.

45. Further case of the applicants is that on 22.09.2025 again e-auction sale notice has been issued for selling the two properties on 21.10.2025 without obtaining any valuation of the two properties from any approved valuer in view of Rule 8(5) of the SARFAESI Rules and the property description does not match with the dale notices and the sanction letter.

46. Copy of the sale notice dated 22.09.2025 and 24.09.2025 have been annexed with the I.A. with a further plea that the reserve price for 2 Cottah 10 Dhur is Rs. 28,38,300/- and the reserve price for 01 Cottah 15 Dhur property is Rs. 27.00 Lakhs.

47. Further case of the applicants is that again on 24th Sept. 2025 another e-auction sale notice has been served to the applicants with respect to the property of M/s Rudra

Automobiles wherein proprietor Ms. Soma Rudra is the borrower and the property is 01 Cottach 15 Dhurs and such notice is for the recovery of Rs. 55,91,931/- and reserve price of the property is Rs. 55,38,000/-.

48. Further case of the applicants is that with respect to the loan account of Sudip Rudra notice was issued for recovery of sum of Rs. 27,08,872/- for which reserve price has been fixed Rs. 38,35,000/- for the e-auction scheduled on 21.10.2025. Further case of the applicants is that two sale notices have been issued for selling the same two properties and thus both the sale notices are bad in law.

49. Further case of the applicants is that the sale notices were not affixed as per Rule 8(6) of the rules and thus sale notices have been issued in violation of the SARFAESI Act and the rules and as such required to be quashed.

50. Apart from the formal objections Respondent Bank's main objection is that the applicants have most conveniently clubbed another account which is not under challenge in the main S.A. filed by the applicants. Their case is that being proprietor of Rudra Automobiles applicant No. 1 applied to the respondent bank "Khagrabari ADB Branch" for grant of cash credit loan facility on 02.05.2019 for the purpose of her business and accordingly cash credit loan facility of Rs. 24,50,000/- was sanctioned by the bank through account no. 38442402934 in which applicant no. 2 stood as guarantor. Apart from the above cash credit loan, through account no. 30563552879 was also sanctioned in the name of M/s Sabita Automobiles whose proprietor is applicant no. 2 which was guaranteed by the applicant no. 1 and Term Loan account no. 39234515303, FITL A/c No. 39235560172, FITL Covid-19 Loan Account No. 39604286496, Housing loan account no. 34818905602 and car loan account no. 37445763554 were also sanctioned. But the applicants have tried to mislead the Tribunal by clubbing separate loan accounts.

51. Respondent's further objection is that it is false to say that valuation was not obtained and photocopy of the valuation report has been annexed as Annexure-C. Respondent Bank has clearly denied that two different notices were issued with different amount and the further pleading is that sale notice dated 22.09.2025 was served through post and was also affixed at the conspicuous part of the property and it was published in two newspapers and proof of posting, pasting and publication have been annexed as Annexure-D. In the written objection it has been disclosed by the respondent bank that through e-auction property has already been sold and the entire sale amount has been

realized and sale certificate has also been issued and copy of sale certificate has been annexed (Annexure-E).

52. As the property was sold in e-auction to the auction purchaser and sale certificate was also issued and thus on the application of the applicants name of the auction purchasers have been impleaded in the S.A. as respondent nos. 3 to 7.

53. Though auction purchasers put their appearance in this matter through their advocate but did not file any objection of the S.A. or I.A. No. 664/2025.

54. Claim of the applicants on the ground of being MSME has already been adjudicated and their claim has also been adjudicated by the Hon'ble Calcutta High Court in case of **M/s Sabita Automobiles (Supra)** as the applicants had preferred a writ petition challenging the SARFAESI measures initiated by the secured creditor. Thus this issue is not required to be adjudicated again while decided the instant I.A.

55. So far the plea of the applicants with respect to the OTS is concerned, settled principle of law is that it cannot be claimed as a matter of right. In case of **The Bijnor Urban Cooperative Bank Limited Bijnor & others vs Meenal Agarwal and others {(2021) SCC online SC 1255)}** Hon'ble the Supreme Court held that no borrower as a matter of right pray for a grant for the benefit of OTS.

56. **First plea** of the applicants in the I.A. is that without obtaining any valuation report e-auction sale notice was issued for the sale of two properties scheduled on dated 21.10.2025 which is the clear violation of Rule 8(5) of the Rules 2002.

57. In its objection bank has pleaded that it is false to say that no valuation was obtained and in support of the claim valuation report has been annexed with the written objection of the I.A. (Annexure-C running page no. 27 to 32 of the written objection of I.A).

58. Rule 8(5) of the Security Interest (Enforcement) Rules 2002 prescribes that before effecting sale of the immovable property, the authorised officer shall obtain valuation, of the property from the approved valuer and in consultation with the secured creditor fix the reserve price of the property.

59. From perusal of the valuation report of the instant matter (Annexure-C running page no. 27 to 32 of the written objection of I.A.) it transpires that total market value of the land and building was Rs. 30,38,000/- and the realizable value was Rs. 27,34,000/- and the distress sale value was Rs. 24,30,400/- and the date of the valuation is 03.03.2025. This valuation report is with respect to 1 Kottha 15 dhur of land along with ground plus one

stored (G+1) residential building. One another valuation report (page no. 33 to 38) is also annexed with the written objection of the I.A. which is with respect to Bastu land measuring 2.50 Katha and its distress sale value is Rs. 22,70,000/-.

60. Thus there is no force in the pleading of the applicants that before e-auction sale of the secured asset any valuation report was not obtained by the secured creditor.

61. **Second plea** of the applicants in the I.A. is that property description of sale notice does not match with the sanction letter.

62. On this point objection of the bank is that applicant have clubbed another accounts which was not under challenge in the main SA and thus applicants have tried to mislead the Tribunal.

63. From perusal of the S.A. of the applicants it transpires that it was filed challenging the possession notice dated 04.09.2021 (Annexure-D of S.A. running page no. 37) which was with respect to outstanding dues of Rs. 27,93,700/- wherein description of mortgaged property is " all that piece and parcel of landed property measuring about 1 Katha 15 dhur under mouza-Chhat, Guriahati, J.L. No. 129, Deed No. I-1423 dated 21.05.2007, page no. 76 to 83, volume No. 30, Hal Khatian No. 382/1 corresponding to LR Khatian No. 920, R.S. Dag No. 199, corresponding to LR Dag No. 388, Thak No. 913, Touzi No. 6, P.S. Kotwal, District- Coochbehar, Butted and bounded by North- Land of Maya Ghosh, South- Land of Subrata Paul & Others, East- Land of Bhuben Chakraborty, West- Goli path." At page No. 16 of the S.A. under the schedule property as mentioned is as under :

"All that piece and parcel of a property measuring 1 Cottah 15 Dhur under mauza- Chhathat, Guriahati".

64. The 13(2) notice dated 27.07.2021 which is attached with the S.A. (Annexure-C page no. 34) is with respect to loan account no. 34818905602 (HBL) for Rs. 16,37,101/- and the property description is under:

> *"Equitable mortgage of the property Land, Title Deed i2097/15 dated 25/03/2015 Dist.-Cooch Behar, P.S.- Kotwali, Mouja-Chhat Guriahati, Thak no.913, J.L no-129, Touji No-2076/1921, R.S Khatian no-118 corresponding to L.R. Khatian No.-1470, 1471 & 1472, R.S. Dag No.199 corresponding to L.R. Dag No.-388, ward no.12, holding No.8691/2 Classification of Land is bastu, and land measuring 2Katha 10Dhur in the name of Shri Sudip Rudra & Smt. Soma Rudra.*

Bounded By:-

North:- Municipal Road

East: Shantanu Kar,

South:-Land of Sudip Rudra,

West:- Ganesh Ghosh."

Another 13(2) notice dated 15.06.2021 is with respect to loan account no. 38442402934(CC) for Rs. 27,93,700/- wherein description of the property is as under:

"All that piece and parcel of landed property measuring about 1 Katha 15 Dhur under Mouza- Chhat Guriahati, J.L. No.- 129, Deed No. I-1423 dated 21.05.2007, Page No. 76 to 83, Volume No. 30, Hal Khatian No. 382/1, Corresponding to L.R Khatian No. 920, R.S. Dag No. -199 Corresponding to L.R. Dag No. 388, Thak No. 913, Touzi No. 6, P.S. Kotwali, District - Cooch Behar.

The property is butted and bounded by:

North-Land of Maya Ghosh

East-Land of Bhuben Chakraborty

South- Land of Subrata paul & others

West-Goli Path"

65. If sale notice dated 09.06.2025 is seen which was the immediate cause of action to file the S.A. and which is annexed at page No, 61 of the S.A. it transpires that the property which was put under sale is as under:

"Vacant Residential Plot and land measuring 02 Katha 10 Dhurs, under Mouza: Chhat Guriahati, Thak No. 913, JL No.129, Touji No. 2076/1921, R.S. Khatian No.118 corresponding to L.R. Khatian No.1470, 1471 & 1472, R.S. Plot No-199, corresponding L.R Plot No-338, under Cooch Behar Municipality, P.S Kotwali, Dist-Cooch Behar, registered in the joint name of Sri Sudip Rudra & Smt. Soma Rudra vide Sale Deed No-I-2097 dated 25.03.2015.

The Property is butted & bounded by (As per Registered Sale Agreement)

North: Municipal Road,

South-Land of Sudip Rudra,

East: Shantunu Kar,

West - Ganesh Ghosh"

Another sale notice dated 09.06.2025 annexed with the S.A. at page no. 59 & 60 of the SA wherein property details is as under:

"All that piece & parcel of landed property measuring about 1 Katha 15 Dhur & thereon building structure under Mouza- Chhat Guriahati, J.L. No.- 129, Deed No. I-1423 dated 21.05.2007, Page No. 76 to 83, Volume No. 30, Hal Khatian No. 382/21, Corresponding to L.R Khatian No. 830, R.S. Dag No. -199 Corresponding to L.R. Dag No. 388, Thak No. 913, Touzi No. 6, P.S. Kotwali, District - Cooch Behar.

The property is butted and bounded by:
North- Chitta Biswas
South-Subrata Pal
East- Bhuben Chakraborty
West-Anjali Pal"

66. Now let us see the Annexure-B of S.A. (Letter of Arrangement) wherein at running page no. 23 description of the immovable property is mentioned as under:

"DEED NO I 1423 RABINDRANAGAR, CHHAT GURIAHAT JL NO 129, PLOT NO 388.LR KHATIAN NO 920 WARD NO 12 COOCHBEHAR
Total area: 1140 Square feet
Name of the Village: COOCHBEHAR
Name of the Village District: Koch Bihar
State: West Bengal."

67. Thus from perusal of the S.A., sanction of loan, 13(2) notices, 13(4) notice and the sale notice dated 09.06.2025 it transpires that although under schedule of the S.A. 1 Cottah, 15 dhur property is mentioned and letter of arrangement is also of the same property but the 13(2) notice of two property have been annexed, out of which one is for the same 01 Kottah 15 dhur property but the another 13(2) notice dated 27.07.2021 is for another property obtained through Title Deed No. 2097/15 dated 25.03.2015 and the sale notices issued with respect to both the properties have been annexed at running page no. 59,60 & 61 & 62.

68. So far the I.A. is concerned, sale notices with respect to both the properties issued on dated 22.09.2025 and 24.09.2025 have been challenged. Sale notice dated 22.09.2025 is

with respect to 1 Kottha 15 dhur land which was acquired by the applicants through deed no. I-1423 dated 21.05.2007 and the sale notice dated 24.09.2025 is with respect to second property also measuring 2 kottha 10 Dhur acquired through deed No. I-2097 dated 25.03.2015.

69. Instant S.A. was filed only for the first property i.e. all that piece and parcel of landed property measuring about all that piece and parcel of landed property measuring about 1 Katha 15 dhur under mouza-Chhat, Guriahati, J.L. No. 129, Deed No. I-1423 dated 21.05.2007, page no. 76 to 83, volume No. 30, Hal Khatian No. 382/1 corresponding to LR Khatian No. 920, R.S. Dag No. 199, corresponding to LR Dag No. 388, Thak No. 913, Touzi No. 6, P.S. Kotwal, District- Coochbehar, but it appear that with an intention to complicate the issue some notices of the other property which was 2 Katha 10 dhur, acquired through Deed No. i2097 dated 25.03.2015 has also been filed accordingly argument was also made that some of the notices were not matching with the sanction letter although no any S.A. was filed with respect to the second property.

70. Settled position of law is that if a party does not come before a Court/tribunal with clean hand, any relief can not be granted to it. Hon'ble the Supreme Court has held in case of **Kishore Samrite Vs. State of U.P. & Ors {(AIR 2012 SC (SUPP) 699}** as under :-

> *"(i) Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the Courts, initiated proceedings without full disclosure of facts and came to the courts with 'unclean hands'. Courts have held that such litigants are neither entitled to be heard on the merits of the case nor entitled to any relief.*
>
> *(ii) The people, who approach the Court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.*
>
> *(iii) The obligation to approach the Court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.*
>
> *(iv) Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings.*
>
> *Materialism, opportunism and malicious intent have over-shadowed the old ethos of litigative values for small gains.*
>
> *(v) A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.*
>
> *(vi) The Court must ensure that its process is not abused and in order to prevent abuse of the process the court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the Court would be duty bound to impose heavy costs.*

> *(vii) Wherever a public interest is invoked, the Court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.*
>
> *(vii) The Court, especially the Supreme Court, has to maintain strictest vigilance over the abuse of the process of court and ordinarily meddlesome bystanders should not be granted "visa". Many societal pollutants create new problems of unredressed grievances and the Court should endure to take cases where the justice of the lis well-justifies it."*

71. The Hon'ble Supreme Court has further held in the aforesaid judgment (supra) that the party must state sufficient factual details and litigant must approach the court with clean hand. Relevant paragraph Nos. 32 & 33 of the judgment runs as under :-

> *"32. With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.*
>
> *33. The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make "full and true disclosure of facts".*

72. **Last plea** of the applicants is that the sale notice was not affixed at the conspicuous part of the property.

73. Pleading of the respondent bank is that it was affixed at the conspicuous part of the property and at the same time it was served and published in two newspapers also including vernacular language newspaper.

74. Individual service of sale notice and its publication is not under challenge and as such not required to be adjudicated and so far affixation of sale notice is concerned, respondent bank has annexed the proof of affixation with its written objection of the I.A. (running page no. 48 & 49) though the same is not legible.

75. From perusal of the sale certificates (Annexure-E of the written objection of the I.A.) it transpires that both the properties of sale notice dated 24.09.2025 have already been sold.

76. In view of the discussions made here-in-above in foregoing paragraphs this Tribunal comes to the conclusion although classifying of the loan account NPA has not been found proper but as the applicants have not approached this Tribunal with clean hand and tried to mislead the Tribunal and thus in view of the settled principle of law, they are not entitled to get any relief and accordingly, S.A. and I.A. No. 664/2025 are hereby **dismissed** and the interim order **stands vacated**.

77. No order as to cost.

78. Registry is directed to send/serve copy of this order upon both the parties free of cost.

79. Order be uploaded in the website of the Tribunal.

80. Let the record be consigned to the Record Room.

The judgment is signed and pronounced in the open Tribunal on 2nd day of September, 2026.

(RAKESH PATI TIWARI)
Presiding Officer
DRT, Siliguri.