ORDER SHEET

DEBTS RECOVERY TRIBUNAL, SILIGURI

SA/40/2020

DNB Food Processing Pvt. Ltd. & Anr — Applicants

Vs

Punjab National Bank — Respondents

Date of Order	Order with Signature	Office action with date and dated signature of parties when necessary.

Item No.37 **Order No.70**

24.08.2026

Present :-

Counsel for the Applicants : Mr. P. Pal and Ms. Lipi Mahanayak.

Counsel for the Respondent : Mr. P. Joarder along with Law Officer, Mr. Varun Shakya.

Judgment is passed in SA/40/2020 and a copy of the Judgment is kept on record.

Let the judgment be uploaded on website of the Tribunal and the Registry is directed to serve/send copy of this judgment to the parties free of cost.

Record be consigned to the record room along with the judgment.

(RAKESH PATI TIWARI)
Presiding Officer
DRT-Siliguri

IN THE DEBTS RECOVERY TRIBUNAL, SILIGURI

S.A. No.40/2020

1. DNB Food Processing Pvt. Ltd., having its registered office at 20, Nandalal Basu Sarani, College Para, Siliguri, District- Darjeeling-734001.
2. Debabrata Dutta, residing at Das Colony, Maligaon, Gate No. 3, District- Kamrup, Guwahati-781011.

…….Applicants

Vs.

1. Authorised Officer, Punjab National Bank (Erstwhile United Bank of India), Stressed Assets Management Branch, Siliguri, United Bank of India Building, 2nd Floor, Hill Cart Road, Siliguri, District- Darjeeling, West Bengal-734001.
2. United Bank of India, Jalpaiguri Branch, Thana Road, Post and District-Jalpaiguri, Pin-735101.

……..……Respondents

Counsel for the applicants : Mr. P. Pal and Ms. Lipi Mahanayak.

Counsel for the respondents : Mr. P. Joarder.

PRESIDING OFFICER: RAKESH PATI TIWARI

Date of Judgment -24.08.2026

J U D G M E N T

1. Instant SA was filed 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), by the applicants for setting aside the e-auction sale notice dated 21.02.2020 for the e-auction sale scheduled on 23.03.2020.
2. The case of the Applicants in short is that the Applicant No. 1, a private company incorporated under the Companies Act, 1956 and was incorporated in the year 2007-08 for manufacturing and producing processed food products and beverages, and Applicant No. 2, being its promoter-director, established a food processing unit at Sarkar Para, Kukurjan, Raiganj, Jalpaiguri. That, upon scrutiny of the project, the competent authority of the Respondent Bank sanctioned a Cash Credit facility of Rs.55 lakhs and a Term Loan facility of Rs.100 lakhs, the sanction letter being forwarded on 15.03.2008. That, during completion of the project, Applicant No. 1 allegedly incurred additional expenditure on construction and fixed assets, approximately Rs.70.40 lakhs towards alteration and

modification of the construction as directed by the EPO Department, as against the estimated cost of Rs.35 lakhs, besides maintaining substantial seasonal inventory of raw materials, which resulted in shortage of working capital. That, about five months after commencement of commercial production, the alleged terrorist attack at Guwahati and other parts of North-East India adversely affected the market of Applicant No. 1 and caused financial difficulties, whereupon, by letter dated 29.01.2009, the Applicants requested the Bank to reschedule/restructure the credit facilities. That the competent authority of the Bank thereafter agreed to reschedule the facilities and, under cover of letter dated 11.12.2009, sanctioned the restructured facilities comprising Term Loan of Rs.100 lakhs, WCTL of Rs.22.81 lakhs, FITL of Rs.22.89 lakhs and Cash Credit of Rs.55 lakhs, repayable on the basis of the existing securities. That, however, Applicant No. 1 continued to suffer from financial difficulties, shortage of working capital and enhanced interest burden and was ultimately compelled to temporarily close down the unit. That, despite such circumstances, the Applicants remained in contact with the Bank and sought its cooperation for revival of the business, but the Bank issued a purported notice dated 15.02.2011 under Section 13(2) of the SARFAESI Act alleging classification of the account as NPA on 31.12.2010, which classification and the amount claimed therein are disputed by the Applicants as false, incorrect and inflated. That the Applicants further contend that the Bank illegally clubbed the alleged claims arising out of the four loan accounts and sought to enforce all the secured assets for recovery of a consolidated claim, although the different facilities were allegedly secured by different securities. That, after issuance of the said notice, the Applicants negotiated with the Bank and, upon the Bank declining further working capital, arranged financial partners, pursuant to which Applicant No. 1, by letter dated 11.04.2011, requested permission to open a separate current account for infusion of funds and operation of the business, which proposal was accepted by the Bank, but the Bank thereafter unilaterally adjusted the entire amount of Rs.10 lakhs deposited in such current account towards the alleged loan dues. That, despite such adjustment, the Applicants restarted the business and repaid approximately Rs.25 lakhs on different occasions, besides adjustment of a collateral fixed deposit of Rs.5 lakhs. That, thereafter, by letter dated 26.09.2011, the Bank itself instructed Applicant No. 1 to deposit Rs.17,74,690/- towards the Term Loan account and

Rs.7,33,000/- towards the WCTL account for upgrading the account to the standard asset category, and the Applicants therefore contend that the earlier notice dated 15.02.2011 became infructuous and unenforceable. That, it is further stated that the Bank issued a further purported notice dated 27.03.2012 under Section 13(4) of the SARFAESI Act demanding possession of the secured properties, which, according to the Applicants, was illegal and void ab initio. That, by letter dated 18.05.2012, the Applicants sought permission to operate through the current account and proposed transfer of 10% of every deposit towards regularisation of the loan accounts. That thereafter the Bank issued a purported possession notice dated 19.05.2012 in respect of two immovable properties, namely the factory premises of Applicant No. 1 at Sarkar Para, Kukurjan, Jalpaiguri and the residential flat of Applicant No. 2 at Siliguri, but the Applicants allege that the notice was affixed only at the residential flat and not at the factory premises and was not duly published in the newspapers within the prescribed period. That, after raising objection to the alleged illegal symbolic possession, the Applicants were permitted to continue transactions through the current account upon depositing Rs.15 lakhs in the Cash Credit account, and the Bank allegedly started deducting 10% of every deposit and adjusting the same against the loan accounts. That the Applicants further deposited Rs.5 lakhs, and, according to them, taking into account the deposit of Rs.20 lakhs and the amounts adjusted by deduction of 10% from the deposits, an aggregate amount of Rs.45 lakhs was further repaid to the Bank. That, by letter dated 30.05.2012, the Applicants requested extension of the repayment period of the Term Loan, and thereafter, upon being directed to submit a rehabilitation proposal, Applicant No. 1, by letter dated 21.09.2012, informed the Bank that a rehabilitation proposal would be submitted after completion of the audit for the financial year 2011-12 and subsequently submitted such proposal under cover of letter dated 23.11.2012. That however, by letter dated 24.11.2012, the Bank allegedly demanded approximately Rs.80 lakhs as outstanding dues of interest and instalments in three loan accounts and as a pre-condition for consideration of the rehabilitation proposal, which demand is alleged to be arbitrary and contrary to the earlier arrangement; that the Applicants submitted the necessary Board Resolution by letter dated 03.01.2013 and continued to seek information regarding the fate of the rehabilitation proposal, but on the same date, i.e., 03.01.2013, came to know from newspaper publication that the Bank had

proposed to sell the factory, shed, plant and machinery, raw and finished products for Rs.130 lakhs and the residential flat of Applicant No. 2 for Rs.55 lakhs for recovery of the alleged dues of Rs.2,26,38,148/-; that the Applicants consequently approached the then DRT-II, Kolkata under Section 17(1) of the SARFAESI Act by filing S.A. No.58 of 2013, wherein, pursuant to the interim orders dated 22.01.2013 and 29.01.2013, they deposited an aggregate amount of Rs.45 lakhs; that the said proceeding was subsequently transferred to DRT, Siliguri and renumbered as TSA No.21 of 2017, and during the pendency thereof, the Applicants continued settlement negotiations with the Bank and submitted further proposals; that, according to the Applicants, the Bank thereafter took physical possession of the residential flat of Applicant No. 2 on 07.08.2018 illegally and arbitrarily, without complying with the mandatory procedure under Rule 8 of the Security Interest (Enforcement) Rules, 2002, and during such process the Bank's representatives allegedly misbehaved with the family members of Applicant No. 2, prevented removal of personal belongings, ornaments, cash, documents and furniture and obtained signatures on blank documents; that, after restoration of TSA No.21 of 2017, the Tribunal, by order dated 05.09.2018, permitted the Applicants to submit a fresh enhanced settlement proposal and restrained coercive action for the stipulated period, whereupon the Applicants submitted a settlement proposal dated 20.09.2018 and deposited Rs.10 lakhs; that, by settlement letter dated 28.12.2018, the Bank agreed to settle the loan account of Applicant No. 1 for Rs.95 lakhs and another loan account of Applicant No. 2 in the name of his proprietorship concern, G.D. Enterprise, for Rs.35 lakhs, subject to stipulated terms, and the Applicants thereafter deposited Rs.11 lakhs under the settlement arrangement, but were allegedly not granted sufficient time to arrange the balance amount from investors and financiers; that the Applicants again sought extension by letter dated 10.02.2020 and, by representation dated 21.02.2020, requested the Bank to refrain from taking further steps for sale of the properties, but thereafter came to know from the newspaper publication in the Business Standard dated 21.02.2020 that the residential flat of Applicant No. 2 had been put up for e-auction, allegedly without service of any statutory notice under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 or notice under Rule 9 and in violation of their right of redemption under Section 13(8) of the SARFAESI Act; that the reserve price of Rs.57.95 lakhs fixed for the residential flat is alleged to be

much below its realisable market value and that valuable movable articles were lying inside the flat; that the Bank sought to recover an alleged sum of Rs.2,26,38,148/- without properly accounting for the substantial payments, deposits and settlement amounts made by the Applicants; that the Applicants further allege that, after the Bank had taken possession of the factory premises, valuable plant and machinery were damaged, removed or stolen, causing deterioration in the value of the asset and affecting their efforts to arrange funds; and that, on the aforesaid allegations, the Applicants have challenged the entire SARFAESI measures, particularly the e-auction sale notice dated 21.02.2020, as illegal, arbitrary and contrary to the mandatory provisions of the SARFAESI Act, 2002 and the Security Interest (Enforcement) Rules, 2002, and have sought appropriate reliefs for setting aside the impugned sale process and consequential measures.

3. The Respondent Bank has filed the written objection stating therein that the present Securitisation Application is not maintainable in law or on facts and is barred by limitation as well as by the principles of waiver, acquiescence and estoppel, the Applicants having approached the Tribunal only to delay and defeat recovery of the secured debt. It is submitted by the respondent bank that the applicants had availed credit facilities from the Respondent Bank in the year 2007 aggregating to Rs.155 lakhs, but failed and neglected to maintain the loan accounts in accordance with the terms of sanction despite repeated requests and demands, as a result whereof the loan accounts were classified as NPA on 31.12.2010 in accordance with the RBI norms. That the Applicant No.1 had earlier, by letter dated 29.01.2009, requested for rescheduling/restructuring of the credit facilities and the Bank had duly considered and restructured the facilities, thereby extending cooperation to the Applicants, but the Applicants nevertheless failed to regularise the accounts. That the Authorized Officer thereafter issued the Demand Notice dated 15.02.2011 under Section 13(2) of the SARFAESI Act, demanding a sum of Rs.2,26,38,148/- as on 31.12.2010 together with further interest and charges, but the Applicants deliberately failed to discharge their liability. That, upon failure of the Applicants to comply with the statutory demand, the Bank issued further notice under Section 13(4) of the SARFAESI Act on 27.03.2012 and thereafter took symbolic possession of the secured assets on 19.05.2012 after duly serving the possession notice upon the

Applicants by Speed Post, publishing the same in two newspapers and affixing copies thereof on conspicuous parts of the mortgaged properties, and the Bank specifically denies the allegation that the factory premises of Applicant No.1 was excluded from such process or that the requirements of Rule 8 of the Security Interest (Enforcement) Rules, 2002 were violated. That the applicants had, from time to time, sought cooperation from the Bank for repayment and settlement and had also requested permission to open a separate current account for depositing funds proposed to be infused by financial partners and for carrying on business, which request was accepted by the Bank. That, after taking symbolic possession, the Bank initiated steps for sale of the factory and residential flat, but such sale proceedings were restrained by the then DRT-II, Kolkata on the basis of assurances and representations made by the Applicants, and the subsequent proceedings were transferred to DRT, Siliguri and renumbered as TSA No.21 of 2017 and TOA No.636 of 2017. That, while the applicants repeatedly represented that they intended to settle the accounts, they failed to honour their assurances and commitments, and the Bank obtained necessary permission from the Ld. District Magistrate, Darjeeling and lawfully took physical possession of the secured assets, namely the residential flat and garage, on 07.08.2018 by preparing a Panchnama and Inventory in the presence of Applicant No.2, who was physically present at the relevant time. That, after dismissal of the earlier proceeding and subsequent restoration proceedings, the Tribunal directed the Applicants to submit a fresh settlement proposal along with 15% upfront money, but the proposal was rejected by the competent authority of the Bank and the Applicants continued to seek extension of time, including by letter dated 12.02.2020. That, upon refusal of further extension, the Authorized Officer published the e-auction sale notice dated 21.02.2020 in accordance with the provisions of the SARFAESI Act and the Rules framed thereunder, whereupon the applicants again filed the present S.A. and obtained interim protection on the basis of their assurance to settle the account for Rs.95 lakhs, but again failed to comply with the terms. That the Bank had also filed O.A. No.555 of 2015 for issuance of Recovery Certificate for Rs.2,59,03,645/- as on 15.11.2015 along with further reliefs, and during the pendency thereof the Applicants submitted a proposal for compromise settlement on 12.10.2018, pursuant to which the Bank accepted a compromise settlement on 28.12.2018 for Rs.130 lakhs if paid on or before 31.03.2019 or

Rs.135 lakhs if paid on or before 31.07.2019, but the said compromise settlement failed and stood cancelled due to the Applicants' failure to adhere to its terms. That, by order dated 23.03.2020, the Tribunal granted the Applicants one last opportunity to deposit Rs.95 lakhs along with the agreed interest for the delayed period within four weeks, while permitting the Bank to conduct the e-auction but not to confirm the sale subject to such payment, and, despite subsequent opportunities and applications seeking further time, the Applicants failed to comply. That, by order dated 16.12.2020, the Applicants were directed to pay Rs.50 lakhs by 31.12.2020, failing which the Bank was permitted to confirm the sale, but the Demand Draft of Rs.10 lakhs tendered by the Applicants was not encashed and the cheque for Rs.29 lakhs was dishonoured on 16.01.2021 with the endorsement “Funds Insufficient”. That the applicants again assured the Tribunal on 23.02.2021 that the entire payment would be made on or before 31.03.2021 due to the difficulties caused by the Covid-19 pandemic, but again failed to make payment. That the Bank thereafter published another e-auction sale notice dated 19.11.2021 for auction of the residential flat on 17.12.2021, but the applicants once again obtained protective orders by making assurances of settlement which, according to the Bank, were not honoured. That the Bank alleges that the conduct of the Applicants throughout demonstrates repeated default, delay and failure to honour their commitments, while also alleging diversion of funds and intentional non-payment despite having the capacity to repay. Further submission of the bank is that as on 28.02.2022 the outstanding dues in the four loan accounts of Applicant No.1, namely DNB Food Processing Pvt. Ltd., stood at Rs.1,70,51,567.11, Rs.56,34,094.37, Rs.37,97,557.02 and Rs.27,04,755/- respectively, aggregating to more than Rs.2.90 crores, besides further outstanding liabilities in the accounts of M/s G.D. Enterprises maintained by Applicant No.2 at the Bank's Guwahati Branch. That with regard to the household goods and articles lying inside the residential flat, the Bank asserts that an Inventory was prepared at the time of taking physical possession on 07.08.2018 and that the goods are still lying in the secured asset, for which the Bank seeks appropriate directions permitting the applicants to remove the same, failing which the Bank seeks liberty to sell the goods and adjust the net sale proceeds towards the loan account and in the aforesaid circumstances, the Respondent Bank maintains that the loan accounts were rightly classified as NPA, all measures under the

SARFAESI Act were undertaken strictly in accordance with law, the applicants have repeatedly used settlement proposals and assurances only to obtain protection and delay recovery, and since the Bank is dealing with public money and the secured debt remains unpaid, the present S.A. and the reliefs claimed therein are liable to be dismissed.

4. The applicants have filed their rejoinder stating therein that the present application under Section 17(1) of the SARFAESI Act, 2002 is maintainable and is neither barred by limitation nor by the principles of waiver, acquiescence or estoppel, and has not been filed for the purpose of delaying or defeating recovery of the Bank's alleged dues. According to the Applicants the classification of the accounts as NPA on 31.12.2010, contending that such classification was illegal and contrary to the applicable RBI guidelines, with the consequence that all subsequent actions, including the proceedings initiated under the SARFAESI Act, 2002 and the notices issued thereunder, are illegal and de hors the statutory provisions. That the Applicants deny that the Bank duly complied with the statutory requirements while taking symbolic possession and specifically contend that the Bank has failed to produce any document evidencing affixation of the purported possession notice upon the property of Applicant No.1 situated at Sarkar Para, Kukurjan, Jalpaiguri or publication of such possession notice in the newspapers. That the Applicants had deposited substantial amounts with the Bank even after issuance of the purported demand notice under Section 13(2) and deny that they intentionally withheld payment or adopted delaying tactics. That the Bank has failed to produce documentary evidence establishing compliance with Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 and, according to the Applicants, the Bank itself has referred in the Written Objection to a purported "Rule 8(1) of the SARFAESI Act", which, according to them, demonstrates lack of awareness of the mandatory statutory provision required to be followed while taking symbolic possession. That the Applicants reiterate that substantial amounts were deposited with the Bank and the relevant documents have already been disclosed in the S.A., thereby demonstrating their bona fide intention to repay, while the Bank has failed to properly deal with the specific allegations concerning non-compliance with the mandatory provisions while taking physical possession of the secured property. That the Applicants deny having deliberately failed to honour any settlement arrangement or having filed interlocutory applications on false, fabricated or manufactured grounds merely to delay

recovery or obtain protective orders, and further deny that they are wilful defaulters, contending that no proceedings for declaring them as wilful defaulters were ever initiated by the Bank in accordance with the applicable RBI procedure and that the allegation of wilful default was introduced for the first time in the Written Objection without any earlier factual or legal basis. That, with regard to the household goods and other articles lying inside the residential flat, the Applicants contend that the Bank has admittedly retained such articles since 2018 despite the same not being secured assets and that the Applicants are consequently entitled to adequate compensation, restoration of physical possession of the flat and appropriate consequential reliefs, and the Bank cannot seek a direction upon the Applicants to remove such articles or seek liberty to sell them under the SARFAESI Act. That the Applicants dispute the different outstanding amounts claimed by the Bank in the various loan accounts on the ground that no duly certified statement of account has been produced and seek production of certified statements for proper adjudication, while reiterating that the loan account of M/s. G.D. Enterprises is not the subject matter of the present S.A. and cannot be taken into consideration. That the Bank has also made a vague reference to certain orders of the Hon'ble Supreme Court without disclosing the relevant citations, thereby depriving the Applicants of an effective opportunity to deal with the same. That the Applicants further contend that the Written Objection contains mechanical, repetitive and evasive statements instead of a proper traverse of the factual and legal issues raised in the S.A. and is itself devoid of merit.

5. Heard Ld. Counsels of both the parties and perused the record of instant SA as well as I.A. No. 9 of 2023. Perused the record of instant S.A. & I.A. and also the record of T.S.A. No. 21/2017.

6. Although the instant SA has been filed in the year 2020 but basically it is a continuation of S.A. No. 58/2013, which was filed before DRT-II Kolkata and after transfer of the case to DRT Siliguri occasioned due to establishment of DRT at Siliguri, it was renumbered as T.S.A. No. 21/2017. It is pertinent to mention that the aforesaid T.S.A No. 21/2017 was filed challenging the sale notice and its publication in the newspaper on dated 03.0.2013 which did not materialize due to paucity of bidder but even then T.S.A. was pending till 27.11.2019 and lastly it was dismissed on that day due to non-appearance of the applicant.

7. It further transpires that earlier T.S.A. No. 21/2017 was dismissed due to non-prosecution on dated 05.02.2018 against which M.A. No. 37/2018 was filed wherein borrower had shown interest to settle the loan account along with deposit of upfront amount and after hearing to both the parties S.A. was restored subject to the condition to file fresh enhanced settlement proposal alongwith 15% of the dues amount as on the date of passing of order i.e. 05.09.2018 and as per order dated 14.09.2018 outstanding dues was Rs. 2.86 Crore. On subsequent dates it is mentioned that the matter was under settlement but lastly applicant remained absent on two consecutive dates and thus again the T.S.A. No. 21/2017 was dismissed on dated 27.11.2019.

8. It also transpires that it was not the first occasion when the settlement plea was taken by the applicants rather on dated 22.01.2013 also on the ground of settlement sale was put on hold by the predecessor of this Tribunal but the applicants did not comply the order of the Tribunal passed on dated 22.01.2013 and as such restraint order was vacated by the Tribunal on dated 18.01.2016. S.A. applicant was not appearing after transfer of this matter to DRT Siliguri and as such S.A. was dismissed due to non-prosecution on dated 05.02.2018.

9. After second dismissal of T.S.A. No. 21/2017, instant S.A. No. 40/2020 has been filed by the applicants challenging the e-auction sale notice dated 21.02.2020 but this time also sale did not materialize due to paucity of bidder.

10. In the instant S.A. applicant has pleaded (paragraph no. XXX & XXXI of the SA) that although the bank had issued a settlement letter on dated 28.12.2018 agreeing to settle one loan account of applicant no. 1 for Rs. 95.00 lakhs and another of applicant no. 2 for Rs. 35 lakhs but they did not make payment of settlement amount and instead thereof, they wrote one letter to the bank on dated 10.02.2020 to give some time or extend the period of payment of settlement amount but the bank refused to extend the same.

11. It also transpires from the order dated 23.03.2020 that after filing of the instant SA Tribunal had given one another opportunity to the borrower to settle the matter with the respondent bank and direction was given to deposit Rs. 95.00 lakh as agreed upon in December 2018 along with agreed interest till the date for the delayed period.

12. It further transpires that I.A No. 212/2020 was filed on dated 23.04.2020 by the applicants for grant of 3 months time to deposit the settlement amount but due to outbreak of Covid-

19, matter was adjourned but status-quo order was passed on dated 23.04.2020 which was extended on subsequent date and on 16.12.2020 again applicants shown their willingness and the Tribunal ordered to deposit Rs. 50.00 lakhs by December 2020 with condition that in case of failure to deposit the same sale would be confirmed.

13. It further transpires that on dated 06.01.2021 I.A. No. 407/2020 was filed by the applicant for issuing direction to the respondent bank to accept the settlement amount within 30 days and during the course of hearing on I.A. on dated 23.02.2021 Ld. Counsel of the applicant undertook to make final payment on or before 31.03.2021.

14. It further transpires that on dated 07.12.2021, I.A. No. 537/2021 was filed by the applicant for setting aside the sale notice published in newspaper on dated 19.11.2021 and the sale scheduled on dated 17.12.2021 and after hearing to the parties bank was restrained from taking any further steps in the event of receiving any bid with respect to the sale notice.

15. It further transpires that I.A. NO. 102/2022 was filed on dated 24.02.2022 by the applicants for setting aside the sale notice dated 26.01.2022 and the sale scheduled on dated 15.02.2022 and as per order dated 25.02.2022, the respondent bank had received the bid to sell the property for Rs.60,50,000/- and 25% of the bid amount was also deposited but later on bid amount was refunded to the proposed auction purchaser as it reflects from the order dated 27.04.2022.

16. It further transpires that another I.A. bearing no. 313/2026 was filed by the applicant on dated 19.03.2026 challenging the sale notice dated 25.02.2026 and the sale scheduled on dated 17.03.2026 but the I.A. was disposed of as infructuous as the sale did not take place due to paucity of bidder.

17. In its written objection respondent bank has pleaded that apart from the instant S.A., O.A. No. 55/2015 was also filed by the bank for recovery of Rs. 2,59,03,645/- in which settlement took place for an amount of Rs. 130.00 lakhs, if paid by the applicant till 31.03.2019 and Rs. 135.00 lakhs if paid by 31.07.2019 but the said settlement dated 28.12.2018 failed due to non-payment of the settlement amount. Copy of the settlement dated 28.12.2018 has also been filed which is available with the record.

18. During the course of the hearing Ld. Counsel of the applicant placed reliance upon a judgment of Hon'ble Gujrat High Court passed in case of **Aditya Birla Finance Ltd. vs**

Mangesh Champaklal Gandhi & Ors (R/Letters Patent Appeal No. 224 of 2020, decided on dated 28.06.2024) wherein it has been held as under:

> *"78. For the reasoning given above and the discussion made by the learned Single Judge in setting aside the order passed by the Debts Recovery Appellate Tribunal, we are of the considered opinion that the DRAT has erred in setting aside the order passed by the DRT, only on the ground of limitation, holding that DRT had no jurisdiction to entertain NEUTRAL CITATION C/LPA/224/2020 CAV JUDGMENT DATED: 28/06/2024 undefined the application under Section 17(1). We are in complete agreement with the view taken by the learned Single Judge that the Appellate Tribunal has to decide the appeal by examining the merits of the order passed by the DRT for allowing the application under Section 17(1)."*

19. On the basis of aforesaid judgment **(supra)** Ld. Counsel of the applicant argued that although challenging the sale notices only the earlier TSA No. 21/2017 and the present S.A. were filed but even then the other SARFAESI measures challenged in the S.A. are required to be decided on merit.

20. It is pertinent to mention here that the SARFAESI Act 2002 was enacted by the Parliament with an aim and object to facilitate securitization of Financial assets keeping in view of the slow pace of recovery of defaulting loans and increase of NPA accounts. This Act enables the Banks and F.I.s to realize long term assets and improve recovery by exercising their powers to take possession/management of securities and to sell them and reduce the NPA accounts and as per the Act if the aggrieved person including the borrower has any grievance against the SARFAESI measures taken by the secured creditor within 45 days of the such measures S.A. can be filed before the DRT having jurisdiction in the matter and within 60 days of the presentation of the applicant, it has to be disposed of. So far the instant matter is concerned it is being dragged since 2013 when the S.A. No. 58/2013 was filed by the applicants and since then this matter is being lingered on one ground to other.

21. However, as the T.S.A. No. 21/2017 (S.A. No.58/2013) was not decided on merit and thus the principal of res-judicata would not apply and as such whatever points have been

raised in the S.A. and argued by the Ld. Counsel of the applicant during the course of hearing, has to be adjudicated on merit.

22. First plea raised by the Ld. Counsel of the applicants during the course of the hearing is that the respondent no. 1 illegally clubbed all the claims of four loan accounts in 13(2) notice dated 05.02.2011 although there was no mortgaged against WCTL & FITL loan accounts. This plea has been taken by the applicants in paragraph no. 6(X) of the S.A. which has been answered in paragraph no. 11 of the written objection of the bank in following manger:

> *"11.That with regard to paragraph (ix), (x), (xi), (xii) & (xiii) of the Application u/s 17(1) of the Act, the Defendant Bank vehemently disputes and denies all the allegations made in those paragraphs. The Applicants most deliberately and intentionally refrained themselves to repay the dues of the loan accounts. Thereafter the Applicants with intent to settle the loan accounts sent a proposal to the Defendant Bank but the Applicants time and again failed to pay the settle amount within stipulated time with his oblique motive. The Applicant thereafter requested to the Defendant Bank to open a separate Current account to enable the applicants to deposit the funds to be infused by the financial partners and run the business as well: as start repayment of the bank's dues from such accounts. The Defendant Bank considering the said proposal opened a current account and the applicants runs the business availed the funds from the financial partners. It is absolutely false and incorrect to say that the Defendant Bank acted arbitrary and unilateral."*

23. In the objection of the bank it has not been clearly answered that if there was any security against WCTL & FITL loan accounts or why without security these two loan accounts were also clubbed with other loan accounts.

24. It is pertinent to mention that without creation of any security agreement if any loan is sanctioned, the same can not be realized by proceeding under the SARFAESI Act. From perusal of the page no. 39 {13(2) notice} and 49C {13(4) notice} of the SA it transpires

that WCTL & FITL account have also been clubbed with cash credit and term loan account for which equitable mortgage was created.

25. In this view of the matter clubbing of two unsecured debts with secured debt in 13(2) & 13(4) notice is not proper and accordingly this issue is decided in favour of the applicants.

26. Second plea of the applicants raised in the S.A. is that without serving any possession notice physical possession of the residential flat was taken arbitrarily and illegally by the secured creditor and even failed and neglected to issue and publish the possession notice in compliance of Rule 8(1) & (2) of the Security Interest (Enforcement) Rules 2002.

27. The aforesaid plea has been raised by the applicants in paragraph no. 6 (XXVIII) of the S.A. and the same has been dealt with in paragraph no. 14 of the written objection in following manner:

> *"14.That with regard to statement made in the paragraph (xxiii) to (xxxi) of the S.A. filed by the Applicants, the Defendant Bank submits that after taking the symbolic possession the Authorized Officer of the Defendant Bank issued e-auction sale notice to sell the factory and to sale the residential flat of the Applicants, but the sale was restrained by the Ld. DRT-II, Kolkata on the basis of false assurance of the Applicant No. 2. During pendency of the SARFEASI application & Original Application, both applications were transferred to DRT, Siliguri and renumbered as TSA/21/2017 & TOA/636 of 2017. Thereafter the Applicant submits before the Ld. Tribunal that the Applicants sent settlement proposal to the Defendant Bank on 03.08.2018, but the Applicants intentionally did not/ had not submit any proposal for settlement.*
>
> *It is further submitted by the Defendants that the Authorized Officer of the Defendant Bank to recover the secured debt lawfully with the permission of the Ld. D.M., Darjeeling took physical possession of the property.*
>
> *It is submitted by the Defendant Bank that the Defendant Bank took Physical Possession of the subject secured assets/ mortgaged properties on 07.08.2018 preparing 'Panchnama' and 'Inventory'*

while the Applicant No. 2 was physically present at the relevant time. Thereafter the Applicant on false and manufactured grounds filed an application challenging the steps taken by the defendant bank and the Ld. Tribunal was pleased to dismiss the said SARFEASI Application.

After dismissal of the said application the Applicant again filed a Misc application for restoration of the said T.S.A and after hearing of the both parties the Ld. Tribunal directed to the Applicant to submits a fresh settlement proposal alongwith 15% upfront money accordingly the said proposal of settlement was rejected by the competent authority of the bank.

It is further submitted by the Defendant Bank that the Applicant No. 1 on various occasions failed to fulfill his assurance to settle the loan accounts and intentionally to drag the recovery proceeding time and again sent letters lastly on 12.02.2020 for extension of time for repayment. The Defendant Bank in the reply of the said letter/ representation refused to grant the time for repayment and proceeds as per the law to recover the secured debt by way of Auction Sale. The Authorized Officer of the Defendant Bank thereafter published E-auction sale notice dated 21.02.2020 as per the provision of the SARFEASI Act & Rules framed thereunder.

The Defendant Bank further submits that the Applicants once again with the oblique motive and intention to delay the recovery proceeding filed SARFEASI Application challenging the Sale notice dated 21.02.2020 alongwith an Interim Application. On the basis of the assurance of the Applicants to settle the accounts at Rs. 95.00 Lacs, the Ld. Tribunal passed interim order in favour the Applicants but the Applicants once again failed to pay the settled amount in terms of section hence the same was cancelled."

28. In the aforesaid paragraph of the written objection, it is nowhere even whispered that 13(4) notice was served and published in compliance of Rule 8(1) & 8(2) of the Rules

2002. It is pertinent to mention that along with written objection any document has not been annexed to prove the individual service and publication of possession notice to the applicants.

29. In this view of the matter this Tribunal opines that the respondent bank failed to comply the Rule 8(1) & 8(2) of the Rules 2002 and accordingly this issue is also decided in favour of the applicants.

30. Respondent Banks main point of argument was that whenever respondent bank proceeded to recover the dues amount, the borrower assured to settle the loan account but they did not keep their words and even mislead to the Tribunal as well and thus applicants are wilful defendants. To substantial the aforesaid fact one approval of settlement letter dated 28.12.2018 has been filed which is available with the record and from perusal of the letter it transpires that settled anoint was Rs. 130.00 lakhs if paid within 31.03.2019 or Rs. 135.00 lakhs within 31.07.2019 out of Rs. 130.00 lakhs Rs. 95.00 lakhs was for G.D. Enterprise if paid within 31.03.2019 and Rs. 40.00 lakhs for G.D. Enterprise if paid within 31.07.2019.

31. Case of the respondent bank is that the applicants failed and neglected adhere to the term and condition of the said settlement and to make payment of the settled amount. This plea of non-compliance of the term of settlement has been raised in paragraph no. 16 of the written objection of the respondent bank which has been dealt with by the applicant in para no. 18 of the rejoinder in the following manner:

> *"18. With reference to the statements made in paragraph 16 of the said opposition I deny and dispute the allegations made therein save and except what are matters of record. It is denied that the order dated 16.12.2020 passed by the Learned Tribunal was not complied with in true spirit, as alleged or at all. It is denied that the applicants most deliberately or intentionally avoiding to pay the dues of the loan accounts, as alleged or at all. In response to the allegation regarding the household goods/articles lying in the said flat are concerned, I say that the defendants have admitted to retain such properties of the applicants illegally since 2018 for which the defendants should be directed to pay adequate compensation to*

the applicants. I further say that the taking over physical possession of the property itself was illegal and wrongful and as such the applicants are entitled for restoration of physical possession of the said flat in their favour. In such circumstances the defendants cannot pray for the order upon the applicants to remove those articles. I further say that in the said opposition the defendants cannot make any such irrelevant or extraneous prayers which are not subject matter of the instant SARFAESI application. I say that since those goods are not admittedly the secured assets of the defendant bank, the question of granting liberty to the defendant bank to sell those goods does not and cannot arise and more so such illegal prayer cannot be entertained and/or considered under the provisions of Section 17(1) the SARFAESI Act, 2002. I say that the defendants had quoted different amounts to be the outstanding in different loan accounts of the applicant no.1 but the defendants have failed and neglected to produce any statement of those accounts and as such there is no sanctity and/or authenticity of such alleged claim. I specifically deny such liability. I say that the defendant bank be directed to produce the duly certified statement of the loan accounts of the applicants for just and proper adjudication of the case. I further say that so far as the loan account of M/s. G.D Enterprises is concerned, the same is not the subject matter of the instant SARFAESI application and as such the same cannot be taken into consideration by this Learned Tribunal while adjudicating the instant SARFAESI application. I further say that the defendant bank has in most casual manner made reference to the orders of the Hon'ble Supreme Court without even disclosing the relevant citation. In such circumstances the applicants are unable to deal with such allegations and in the event the defendant bank relies upon any of the judgment of the Hon'ble Supreme Court, an opportunity be provided to the applicants to deal with the same."

Thus it transpires that everything has been mentioned in this para apart from the non-compliance of settlement dated 28.12.2018.

32. In case of **Arce Polymers Pvt. Ltd. Vs Alphine Pharmaceuticals Pvt. Ltd. & Ors [I(2022)BC 43 (SC)]** The Hon'ble Supreme Court has held that when an OTS proposal wss given by the debtor and it was accepted by the creditor and thereafter, the borrower fails to make the payment as agreed, he would be estopped from raising any challenges to the SARFAESI measures subsequently taken in consequence to this failure to abide by the OTS proposal.

33. In the instant matter also settlement proposal was given by the applicants to the respondent bank vide their letter dated 12.10.2018 and 05.12.2018 which was accepted by the creditor. Thus the SARFAESI measure taken by the secured creditor after the failure of settlement dated 28.12.2018, would not be permitted to challenge by the borrower and in the instant matter after failure of the settlement , sale notices were issued by the secured creditor but did not materialize due to paucity of bidders.

34. So far the non-compliance of the provisions of the SARFAESI Act and the rules framed thereunder with respect to the 13(2) notice and possession notice is concerned, they are related prior to the settlement dated 28.12.2018 and thus on those points applicants are entitled to get the relief.

ORDER ON I.A. NO. 9/2023

35. Instant I.A. has been filed by the applicant for compensation of Rs. 161.52 lakhs from the respondent bank and Rs. 5.00 lakhs towards cost along with interest @12% per annum.

36. Case of the applicants in short is that value of the factory, land, boundary wall, building, structure is at around 1.5 crore and since taking physical possession of the property the respondent Bank failed and neglected to take any step to protect the assets and as such secured asset has been destroyed. That as per the valuation report of the approved valuer of the respondent bank it is in dilapidated conditions and instruments of the laboratory as well as the office furniture, computers lying inside the office building are also missing and the valuation of building/structure is Rs.15,96,000/- and the realizable value of the building and land is Rs. 43,83,200/-. That the valuation of Tub well, deep boar, motor, hand pump has not been taken in consideration and the valuation of the eclectic fittings and furniture and fixture is also not considered.

37. On the other hand respondent has filed objection contending therein that the said Interim Application is wholly misconceived, not maintainable either in law or on facts and is liable to be dismissed in limine. The Respondent Bank has specifically contended that the application is barred by limitation and by the principles of waiver, acquiescence and estoppel and suffers from defects including absence of proper cause of action and non-joinder/misjoinder of necessary parties. Case of the Bank that the Applicants have filed the said I.A. with an oblique motive to delay and defeat the lawful recovery of the outstanding dues arising out of the financial facilities availed by them from the Bank. The Bank further contends that the allegations contained in the I.A. are false, manufactured, imaginary, vexatious and have been raised as an afterthought to mislead the Learned Tribunal and harass the Respondent Bank. The Respondent Bank has also taken a specific preliminary objection that the subject matter of I.A. No. 09 of 2023 is altogether different from the subject matter involved in the main S.A. No. 40 of 2020, inasmuch as the S.A. concerns one mortgaged property being a residential flat, whereas the present I.A. relates to another and different mortgaged property, namely the factory premises. Accordingly, the Bank contends that the present I.A. does not properly fall within the scope and jurisdiction of the proceedings under the SARFAESI Act, 2002. Save and except the facts specifically admitted in the Written Objection, all allegations and averments made by the Applicants have been categorically denied and disputed. Thus, the consistent case of the Respondent Bank is that the Applicants, despite being aware of the actual state of affairs, have deliberately suppressed material facts and instituted the Interim Application only to obstruct the recovery process and avoid repayment of the lawful outstanding dues, and therefore, the I.A. deserves to be dismissed with costs.

38. That, in reply to the Written Objection filed by the Respondent Bank, the Applicants filed their rejoinder stating therein that the allegations and contentions made therein are false, misleading, evasive and are specifically denied save and except those which are matters of record or are expressly admitted herein. The Applicants reiterate and reaffirm the statements and averments made in the Interim Application and submit that the Respondent Bank has failed to properly explain and justify the manner in which the secured assets, including the factory premises, plant, machinery and other articles, were dealt with during the period when the same remained under the possession and control of

the Bank. The Applicants submit that the attempt of the Respondent Bank to rely upon the alleged inventory and contemporaneous records does not by itself establish that the secured assets were properly preserved and maintained or that no loss, theft, removal or damage occurred during the period of possession. The Applicants further submit that the Bank cannot evade its responsibility by merely referring to the alleged defaults in the loan account or the repayment arrangements, since the present dispute concerns the manner in which the secured assets were handled after possession was taken by the Bank. It is submitted that once the Bank took control and possession of the secured assets, it was under a corresponding obligation to take reasonable and appropriate measures for their preservation and protection. The Applicants submit that the Written Objection of the IA does not effectively dislodge the material allegations raised in the Interim Application and that the Bank has failed to establish that the possession and custody of the secured assets were maintained with due care and responsibility.

39. Respondent bank has relied upon a report of the Ld. Advocate Mr. Tapas Paul/receiver (Exhibit-A) filed in connected OA case TOA No. 636/2017 where the Ld. Receiver had found on the date of report i.e. 26.10.2017 that the building and rooms were in dilapidated condition and only four broken machinery was found without any light or electric wiring and there were even no any rooms in the said building. Window of the other building was found broken and in the said premises also four-five machines were available. At the time of inspection Ld. Receiver had found that almost all the plant and machineries were found removed and for that one FIR was also lodged by the Chief Manager of the Bank.

40. In the instant matter, on the request of the applicant one Ld. Advocate was appointed by this Tribunal for inspection of the secured asset who has filed its report (Exhibit-B) on dated 06.02.2024 that there were door size holes on the wall and nothing was available there.

41. Question arises that when as per the Ld. Receivers report filed in OA case almost all the plant and machineries were removed till 26.10.2017 itself, then where is the question of availability of any plant or machinery in the year 2024. However, FIR was also lodged but result of the such FIR is not known.

42. It is pertinent to mention here that from perusal of the record of S.A. it has found that whenever any SARFAESI measures was initiated to sell the mortgaged/hypothecated

assets always applicant dragged the matter in the name of settlement and even after settling the loan account applicant did not honour the term of the settlement. In this view of the matter applicant is not entitled to get any compensation from the respondent.

CONCLUSION

43. Under the aforesaid discussions made in foregoing paragraphs the **SA** of the applicant is hereby **allowed** with liberty to the respondent bank to proceed a fresh in accordance with law to realize the dues amount from the borrower with the stage of issuance of fresh 13(2) notice but the **I.A. No. 09/2023** filed by the applicants has got no merit and accordingly, **rejected**.

44. Respondent bank is directed to restore the possession of the secured asset to the applicants within four weeks from today.

45. No order as to cost.

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

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

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

The judgment is signed and pronounced in the open Tribunal on 24th day of August, 2026.

(RAKESH PATI TIWARI)
Presiding Officer
DRT, Siliguri.