सत्यमेव जयते

IN THE DEBTS RECOVERY TRIBUNAL AT COIMBATORE

DATED THIS 04th DAY OF JULY, 2026

PRESENT: SRI N. SOMASUNDAAR, B.A., B.L.
PRESIDING OFFICER

M.A. No. 37 of 2026
IN
S.A. No. 1011 of 2025

Between

1. Mr. N. Gunasekaran,
S/o. (Late) K.R.Natarajan,
6/12, 1st Street, C.H.B Colony,
Triuchengode – 637211.

2. Mrs. G. Selvi,
W/o. N. Gunasekaran,
6/12, 1st Street, C.H.B Colony,
Triuchengode – 637211. ...... Petitioners

And

M/s. Kotak Mahindra Bank,
No. 27BKC, C37, G Block,
Bandra Kurla Complex, Bandra (E),
Mumbai-400051. ...... Respondent

This Miscellaneous Application (for short - "MA") having been heard on various dates on 01.06.2026, 16.06.2026, 03.07.2026 and finally on this day in the presence of Ld. Counsels Mr.Surya Teja SS Nalla and Mr.Cibiraj Gunasekaran appearing for the Petitioners, Ld. Counsel Mr.S.Aravind appearing for the Respondent Bank and Mr.A.Sathish Kumar, Authorised Officer of the Respondent Bank and the Tribunal upon considering the averments made by the petitioners in their affidavit accompanying the MA, reply statement to the MA filed by the respondent bank and the oral submissions made by either side proceeds to pass the following:

O R D E R

This Miscellaneous Application (for short - "MA") is filed on 05.02.2026 under Section 17 of SARFAESI Act read with section 19(25) of RDB Act seeking the following reliefs namely:

a) to reopen S.A. No. 1011/2025 disposed of on 20.01.2026;

b) to direct the Respondent Bank to forthwith execute and register the Mortgage Discharge Receipt in respect of the secured asset as assured and recorded by this Hon'ble Tribunal;

c) to stay all further proceedings pursuant to the Advocate Commissioner's notice dated 01.02.2026 proposing possession on 11.02.2026;

d) to grant reasonable time to the Applicants to remit the balance OTS amount of Rs.2.27 Crores upon registration of the discharge receipt; and

e) pass such further or other orders as this Hon'ble Tribunal may deem fit in the interest of justice.

2. The affiants of the affidavit accompanying the MA have affirmed inter-alia as hereunder:

"2. We state that we had filed S.A. No.1011/2025 challenging the order dated 06.06.2023 in Crl.M.P. No.5015/2022 passed by the Ld. Chief Judicial Magistrate, Namakkal under Section 14 of the SARFAESI Act. The said S.A. came to be disposed of by this Hon'ble Tribunal on 20.01.2026, recording in extenso the submissions, assurances, and reciprocal undertakings of both parties.

3. We further state that this Hon'ble Tribunal was pleased to record that an One Time Settlement (OTS) had been arrived at between the Applicants and the Respondent Bank for a total sum of Rs.3.27 Crores, out of which Rs.1.00 Crore had already been remitted on 30.12.2025 and appropriated, and the balance Rs.2.27 Crores was agreed to be paid on or before 30.01.2026.

4. We further state that crucially, this Hon'ble Tribunal also recorded the specific submission of the Applicants that they had received the original title deed of the vacant land on 19.01.2026 and had pleaded *with the Bank to execute and register the Mortgage Discharge Receipt without loss of time, since the Applicants were in the process of mobilising the balance OTS funds from third-party financiers, for which the registered discharge was an indispensable pre-condition.*

5. *We further state that equally crucial is the categorical assurance given by the Authorised Officer of the Respondent Bank before this Hon'ble Tribunal that the Bank would execute and register the mortgage discharge receipt within a day or two, at the cost of the Applicants, to enable them to raise funds and honour the OTS undertaking. This assurance forms part and parcel of the judicial record and is embedded in the final order.*

6. *We further state that acting on the faith of the solemn assurance recorded by this Hon'ble Tribunal, the Applicants proceeded with concrete arrangements to mobilise the balance OTS amount. However, in a shocking and wholly unjustified turn of events, the Respondent Bank has failed to execute and register the discharge receipt till date.*

7. *We further state that the very foundation upon which this Hon'ble Tribunal disposed of the S.A. was the reciprocal performance of obligations — (i) Bank to register the discharge receipt immediately so that the Applicants could raise funds; and (ii) Applicants to pay Rs.2.27 Crores on or before 30.01.2026. The Bank's failure has rendered the Applicants' performance impossible.*

8. *We further state that the Applicants were and are ready and willing to honour the OTS. However, without a registered discharge receipt, no financier is willing to advance monies, as the encumbrance continues to reflect in public records. The Applicants are thus placed in a position of legal impossibility created solely by the Respondent Bank's breach of its undertaking to this Hon'ble Tribunal.*

9. *In the interregnum, to the Applicants' utter shock, the Advocate Commissioner appointed pursuant to the Section 14 order has issued a notice dated 01.02.2026 proposing to take physical possession on 11.02.2026.*

10. *We further state that this action is nothing short of an abuse of process. Having secured disposal of the S.A. on the strength of its assurance to register the discharge receipt within two days, the Bank cannot now take advantage of its own default and seek to dispossess the Applicants.*

11. *We further state that it is a settled principle that no party can be permitted to take advantage of its own wrong. The Respondent Bank's conduct squarely attracts this doctrine. The Bank's omission has directly prevented compliance by the Applicants within the timeline recorded by this Hon'ble Tribunal.*

12. We further state that this Hon'ble Tribunal retains ample jurisdiction to recall, reopen, or modify its order when the order itself has been rendered unworkable due to non-compliance of an undertaking recorded therein.

13. We further state that unless this Hon'ble Tribunal intervenes, grave and irreparable prejudice will be caused to the Applicants, who have already paid Rs.1 Crore and have demonstrated utmost bona fides.

14. We further state that the balance of convenience lies entirely in favour of reopening the S.A., as the Applicants only seek an opportunity to perform their part of the settlement upon the Bank performing its recorded obligation.

15. We further state that this is a fit case where the inherent powers of this Hon'ble Tribunal ought to be exercised to secure the ends of justice and to prevent abuse of process."

3. The Respondent Bank in its Reply Statement filed on 09.02.2026 denied the contentions raised by the Petitioners in their Re-open petition in M.A.No.37/2026 as false, frivolous, vexatious and unsustainable in law and facts stating inter alia that the Petitioners filed the present S.A.No.1011/2025 before this Tribunal suppressing the factum of their filing of T.S.A.No.130/2023 before Ld. DRT-I, Mumbai on 11.09.2023 and upon initiating multiple proceedings in violation of the legal doctrines and settled principles without withdrawing the earlier T.S.A.No.130/2023 despite making promise to do so before this Tribunal on 09.10.2025; that the Applicants' allegation that their non-adherence of the timelines of *30.01.2026* for payment of the balance sum of Rs.2,27,00,000/- was due to non-release of the open land is purely an afterthought as nowhere in the undertaking it is mentioned about the release of open land and that the balance amount was to be mobilized through sale of open land; that on the applicants' refusal to hand over the peaceful possession of the application mentioned mortgaged property to the Authorised Officer of the Respondent Bank on 31.01.2026, a fresh possession intimation notice dated 01.02.2026 was issued fixing the possession date as 11.02.2026; that the Officials of the Respondent Bank as a matter of indulgence, released the open land, despite there being nothing mentioned about the same in the undertaking submitted by the Applicant and had shared on 20.01.2026 the draft for Partial Discharge Receipt along with KYC of the Officer who was going to execute the discharge of the Vacant Land on 20.01.2026 but the Applicants did not make any arrangements in the concerned SRO; that the Authorised Officer through email dated 21.01.2026 reminded the Applicants that the draft for Partial Discharge Receipt along with KYC of the Officer who is going to execute the discharge of the Vacant Land on 20.01.2026 at concerned SRO were shared on 20.01.2026 itself and expected the cooperation of the Applicants in this regard despite which the Applicants had not taken any action till date on the execution and registration of the Partial Discharge Receipt with respect to the vacant land after receiving the Original Title Deeds on 19.01.2026 and the draft document and KYC as above mentioned to make arrangements in concerned SRO on 20.01.2026 ; that the reasons now stated by the applicants for not making the balance OTS amount of Rs.2.27 crores on or before 30.01.2026 upon attributing it to their non-selling of the vacant land on or before 30.01.2026 was not a part of the Undertaking Affidavit filed by the Applicants on 24.12.2025 and it is purely an afterthought; that the Respondent Bank obeyed the order dated 20.01.2026 passed by this Hon'ble Tribunal and prepared the partial discharge receipt draft which was shared to 1st Applicant and their Counsel along with KYC of the Officer who is going to execute and register the said discharge receipt on 20.01.2026 itself despite which there was no response from Applicants till 5:30 PM on 21.01.2026 regarding arrangements at concerned SRO for said discharge receipt registration as regards which the Authorised Officer reminded the Applicants through email on 21.01.2026 itself; that the Respondent Bank was ready to execute and register the above said discharge receipt for vacant land, however the Applicants who had not made any arrangements for said registration filed this present Miscellaneous Application to trick this Hon'ble Tribunal from escaping the remittance of the legitimate dues to the Respondent Bank; that since the Applicants have refused to hand over the peaceful possession of the application mentioned mortgaged property to the Authorised Officer of Respondent Bank on 31.01.2026 during his visit to the property and thus breached the terms of the Undertaking Affidavit filed by the Applicants on 24.12.2025 and the order passed by this Hon'ble Tribunal on 20.01.2026, a fresh possession intimation notice dated 01.02.2026 was issued by the Advocate Commissioner appointed by Hon'ble CJM at Namakkal in CRL.M.P. No.5015/2022 by fixing possession date to be 11.02.2026; that if this Miscellaneous Petition is allowed it would be a great damage to the Respondent Bank which is struggling to get its legitimate dues from the wilful defaulters and deceptive persons; that the Applicants having entered into settlement during July 2025 not only failed to get the OTS concluded by scheduled date of October 2025, but even failed to honour the same and close the loans by November 2025 which was then extended to December 2025 and finally to January 2026; and that by not making the payment of balance amount of Rs.227.00 lakhs by 30.01.2026, the OTS was rendered invalid disentitling the applicants to any further reliefs. Hence, the respondent bank prayed to dismiss *in limine* the Re-open petition filed in M.A. No.37 of 2026.

4. On a conspectus of the proceeding sheets of the present SA it is discernible that the MA which was filed on 05.02.2026 was got registered on 06.02.2026 and listed before the Bench on 09.02.2026 and was posted on 17.03.2026 for enquiry pursuant to the Respondent Bank's filing of reply to it on 09.02.2026 upon serving copy thereof to the Ld. Counsel for the Petitioners. On 17.03.2026 the above MA which was listed as item No.194 among 224 cases published in the cause-list stood reposted to 06.04.2026 on which date it stood reposted to 14.05.2026 as item No.46 among 203 cases published in cause-list. On 14.05.2026 only cases upto item No.35 could be effectively heard and this matter stood reposted to 22.06.2026. On the Respondent Bank's moving of an emergent and advance hearing petitions in IA Nos.2257/2026 & 2258/2026, the matter was taken up on 01.06.2026 on which date after hearing the parties for sometime, the MA stood reposted to 11.06.2026 observing thus:

> *"Ld. Counsel Mr.S.B.Vijay Balu appearing for the Petitioner/Applicant, Ld. Counsel Mr.S.Aravind appearing for the Respondent Bank and Mr.Satheesh Kumar, Authorised Officer of the Respondent Bank through VC present.*
>
> *IA No.2257/2026& IA No.2258/2026 which are respectively Urgent Hearing Application and Advance Hearing Application, stands Allowed*
>
> *MA 37/2026 Re-open petition has been taken up.*
>
> *The Authorised Officer of the Respondent bank would submit that in pursuance of and compliance of their undertaking made before this Tribunal in the proceedings dated 20.01.2026, an e.mail communication was sent to the Applicants to their registered e.mail ID on 21.01.2026 itself expressing their readiness to come*

forward for registration of mortgage discharge receipt and required the Applicant to make necessary arrangement for the same despite which the Applicant did not arrange for registration and filed this MA 37/2026 to trick this Tribunal and escape from their liability of remitting the legitimate dues to the Respondent Bank.

The Respondent Bank is directed to furnish the copy of e.mail serving copy thereof on the other side and the applicants are required to come on an affidavit with regard to the e.mail so sent by the Respondent Bank by next date.

At request of both sides, posted on 11.06.2026 under the caption 'for disposal'.

PO"

5. On 11.6.2026, there was no regular sitting of the Tribunal due to urgent administrative works except hearing emergent matters and the present MA thus stood reposted to 16.06.2026 by which time the respondent bank has filed their e-mail communications dated 20.01.2026 and 21.01.2026 and the petitioners had filed affidavit dated 15.06.2026 setting out therein as hereunder:

"1. We are the 1st and 2nd Applicants herein. We are filing this Additional Affidavit to place the true and complete sequence of events before this Hon'ble Tribunal and to clarify the factual position relating to the implementation of the settlement recorded before this Hon'ble Tribunal.

2. At the outset, we respectfully submit that, without prejudice to the substantial grounds and legal contentions raised by us in S.A. No.1011 of 2025 and M.A. No.37 of 2026, and notwithstanding the issues arising out of the measures adopted by the Respondent Bank which are the subject matter of adjudication before this Hon'ble Tribunal, we have throughout acted bona fide and have consistently made sincere efforts to amicably resolve the dispute and implement the settlement arrived at between the parties. We have, at every stage, preferred settlement over litigation and have made substantial payments and sincere efforts to redeem the mortgaged properties and bring the transaction to an amicable conclusion, while expressly reserving all our rights and contentions in the present proceedings.

3. The Respondent Bank sanctioned a One Time Settlement for a total sum of Rs.4,50,00,000/- on 17.07.2025. Acting upon the said settlement and in furtherance of our commitment to honour the same, we paid a sum of Rs.50,00,000/- on 17.06.2025 towards the OTS amount.

4. Thereafter, we paid a further sum of Rs.1,00,00,000/- on 01.11.2025 towards the said settlement, thereby further demonstrating our sustained commitment to discharge the liability.

5. Subsequently, proceedings were conducted before this Hon'ble Tribunal, and an undertaking was recorded on 24.12.2025. Under the said arrangement, we agreed to pay a further sum of Rs.1,00,00,000/- on or before 30.12.2025, and a *fresh One Time Settlement was arrived at for a revised total sum of Rs.3,27,00,000/-.*

6. We respectfully submit that we fully and promptly honoured the undertaking recorded before this Hon'ble Tribunal and paid the said sum of Rs.1,00,00,000/- within the stipulated period, thereby acting in complete good faith and demonstrating our readiness and willingness to honour every commitment made before this Hon'ble Tribunal.

7. We respectfully submit that under the same arrangement, the Respondent Bank had agreed to immediately release the title deeds relating to one of the vacant land properties so as to enable us to mobilise the balance settlement amount through third-party financial arrangements.

8. We respectfully submit that the said vacant land documents were, however, released only on 19.01.2026 — after considerable delay. At the time of release of the documents, we were informed that the Mortgage Discharge Receipt would be completed within a short period thereafter, so as to enable us to complete the financial arrangements required for payment of the balance settlement amount.

9. The Respondent Bank has placed reliance upon emails stated to have been issued on 20.01.2026 and 21.01.2026 and has contended that we failed to take any steps thereafter. The said contention is factually incorrect and does not present the true position.

10. We do not dispute that such emails may have been sent by the Respondent Bank on 20.01.2026 and 21.01.2026. However, we respectfully submit that we were not aware of the said communications and came to know of the same only when reference was made to them during the proceedings before this Hon'ble Tribunal on 09.02.2026.

11. We respectfully submit that the mere issuance of emails does not amount to practical completion of the settlement obligations undertaken by the Respondent Bank before this Hon'ble Tribunal. What was required was timely, active, and effective cooperation in completing the execution and registration of the Mortgage Discharge Receipt so as to enable us to mobilise the balance settlement amount through third-party financial assistance.

12. We respectfully submit that the issue before this Hon'ble Tribunal is not whether emails were sent on 20.01.2026 and 21.01.2026. The real and substantive issue is whether the settlement recorded before this Hon'ble Tribunal was effectively and practically implemented by both parties in a bona fide manner, and whether the practical completion of the discharge process was achieved within the timeframe required to enable us to mobilise the balance amount.

13. We respectfully submit that after the release of the vacant land documents on 19.01.2026, we did not remain inactive. On the contrary, we were actively and continuously pursuing the implementation of the settlement and completion of the Mortgage Discharge formalities through the concerned officials of the Respondent Bank. We were under the bona fide impression that the discharge process would be completed within a short time so as to enable us to mobilise the balance settlement amount.

14. We respectfully submit that we were in regular communication with the officials of the Respondent Bank, including Mr.Balamurugan, Recovery Manager, Salem, who was coordinating the matter on behalf of the Bank. We were informed that the execution and completion of the Mortgage Discharge formalities would be attended to through another concerned official, namely Mr.Vimal, who was the person in charge of executing the discharge. We remained in continuous communication with the concerned officials of the Respondent Bank, including Mr. Balamurugan, Recovery Manager, Salem, and Mr. Vimal, who was dealing with the discharge process, and requested that the formalities be completed at the earliest so as to enable us to mobilise the balance settlement amount. However, we were given reasons such as their unavailability and other administrative reasons for the delay in the completion of the process.

15. We respectfully submit that simultaneously, we were making active arrangements to mobilise funds for payment of the balance settlement amount. In furtherance of such efforts, we identified a prospective financier and took concrete steps to facilitate completion of the transaction.

16. We respectfully submit that on 31.01.2026, we facilitated a direct meeting between the said prospective financier and the Authorised Officer of the Respondent Bank at our residential house, for the specific purpose of clarifying the status of the settlement arrangement and the security documents."

6. This Tribunal had after hearing the parties for sometime on 16.06.2026 posted the matter on 03.07.2026 for concluding arguments in the re-open petition. It is to be pointed out here that the copy of order of Hon'ble High Court of Madras dated 26.03.2026 passed in C.R.P. No.1088 of 2026 directing this Tribunal to take up MA 37/2026 in S.A. No.1011/2025 and decide the same on merits and in accordance with law within a period of two months from the date of receipt of copy of this order came to be received by the Registry on 24.06.2026. The copy of such order filed by respondent bank on 05.05.2026 into the Registry and the one stated to have been filed by the applicant on 13.05.2026 along with I.A.No.2065/2026 (Diary No.2350/2026) have not been brought to the notice of the Ld. Registrar or this Tribunal specifically to strictly reckon with timelines thereunder nor was I.A.No.2065/2026 (Diary No.2350/2026) Stay petition specifically got listed, mentioned and moved on the side of the petitioners. On 03.07.2026, on the

Court Officer's pointing out of a memo dated 05.05.2026 which has reached the case bundle, this Tribunal on learning about the time-bound direction which started running from 05.05.2026 and ending on 05.07.2026 listed this matter as 1st item on 04.07.2026 and heard the arguments advanced by the Ld. Counsels appearing on either side. **The Tribunal directs the Registry to issue notice to the Bar and place it in its notice board requiring the memos enclosing copy of Hon'ble High Court direction matters to be brought to the notice of Ld. Registrar, got initialed and placed before the Tribunal for being apprised of the running of such timelines for listing of such matters on day to day basis and thereby avoid hearing of such matters on the eleventh hour.**

7. The Ld. Counsel for the Petitioners emphatically contended that the respondent bank having breached their undertaking and promise of executing and registering mortgage discharge receipt in a day or two from 20.01.2026 when the SA was got disposed in pursuance of the Undertaking affidavit dated 24.12.2025 filed by them, such compromise final order is liable to be re-opened and heard on merits of the contentions raised in the SA by permitting the Petitioners to urge the illegality committed by the respondent bank in securing the impugned order. Ld. counsel would submit that even now the petitioners are willing to pay the balance OTS amount if a reasonable time would be granted to them as sought for in the re-open petition and pleaded for a direction to the bank to receive Rs.25.00 lakhs which has since been mobilized by them. Ld. Counsel submitted that though the title deeds of the property agreed to be released was delivered to the petitioners on 19.01.2026 and final order came to be passed based on the

mutual undertakings and reciprocal promises of the respondent bank to execute and register the mortgage discharge receipt in a day or two with the help of which the petitioners were to arrange and mobilize the balance OTS amount of Rs.2.27 crores payable on or before 30.01.2026, the officials of respondent bank did not render any co-operation and failed to perform their part of obligation of executing and registering mortgage discharge receipt notwithstanding the petitioners' repeated request made to their officials viz. Mr.Balamurugan and Mr.Vimal in that regard. Stating so, the learned counsel placed reliance on the judgment of Hon'ble Apex Court rendered in the case of "*Navratan Lal Sharma v. Radha Mohan Sharma and Ors.*" reported in 2024 INSC 970 : MANU/SC/1327/2024, which readeth thus:

> *"12. The law on the issue is summarised in Pushpa Devi Bhagat v. Rajinder Singh MANU/SC/3016/2006 : 2006:INSC:411 : (2006) 5 SCC 566. In this case, the Court also took note of Section 96(3) of the Code of Civil Procedure5 and the deletion of Order 43, Rule 1(m) of the Code of Civil Procedure by way of an amendment in 1976, as well as Order 23, Rule 3A. The consequence of these is that an appeal against a consent decree and an order recording (or refusing to record) a compromise is not maintainable, nor can a fresh suit be filed for setting aside such decree. Hence, the only remedy available to the aggrieved party is to approach the court that recorded the compromise under the proviso to Order 23, Rule 3. The Court held:*
>
> > "17. The position that emerges from the *amended provisions of Order 23 can be summed up thus:*
> >
> > *(i) No appeal is maintainable against a consent decree having regard to the specific bar contained in Section 96(3) Code of Civil Procedure.*
> >
> > *(ii) No appeal is maintainable against the order of the court recording the compromise (or refusing to record a compromise) in view of the deletion of Clause (m) of Rule 1 Order 43.*
> >
> > *(iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3-A.*
> >
> > *(iv) A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule 3 Order 23.*
> >
> > *Therefore, the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court*

which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made..."

13. In the present case, the Appellant has alleged fraud by the Respondents in his recall application, which he bears the burden to prove. The Explanation to Order 23, Rule 3 clearly states that void and voidable agreements under the Contract Act shall not be deemed to be lawful. By alleging fraud in his recall application, the Appellant is effectively impugning the legality of the compromise as proving the same would render the agreement voidable under the Contract Act.7 When the court disposes of a proceeding pursuant to a compromise Under Order 23, Rule 3, it bears the duty to examine this issue and be satisfied that the agreement or compromise is lawful. The proviso explicitly obligates the court that entertains the petition of compromise to determine this issue, and as per the law laid down by this Court in Banwari Lal (supra), this issue can be agitated by way of a recall application even after the compromise decree has been passed.

14. ....

15. ....

16. It is also relevant that para 4 of the compromise deed dated 18.05.2022 recognises the Appellant's right to file for restoration of appeal in case of non-compliance. Further, para 7 stipulates that the compromise will be considered void in case of non- payment. Reading these clauses together, it is clear that the compromise deed itself recognises the parties' right to approach the court to question its validity in certain circumstances. These clauses are in line with the public policy consideration of access to justice reflected in Section 28 of the Contract Act that stipulates that agreements which restrain a party from enforcing his rights through legal remedies are void."

8. The Ld. Counsel for the petitioners submitted that this Tribunal is not powerless in terms of the *proviso* to O.XXIII R.3 of CPC r/w. S.17(7) of the SARFAESI Act and S.19(25) of RDB Act to re-open the consensual order and decide on the question of non-performance of the obligation by the respondent bank and its officials which has rendered the otherwise compromise / consensus final order dated 20.01.2026 unworkable. The failure on the part of respondent bank to execute and register mortgage

discharge receipt in a day or two ignoring the persistent demands for their such performance made by petitioners had been the sole reason for the petitioners' inability to mobilize funds from financiers or prospective purchasers, for the reason of which itself the final order is necessarily to be re-opened by the Tribunal to pass such other suitable further orders in the matter, would be his further submission.

9. Mr. Aravind, Ld. Counsel for the Respondent Bank would submit that the falsity of the petitioners' allegations stood demonstrated to the Tribunal pursuant to their filing of a memo dated 16.06.2026 enclosing therewith the *e-mail* communications dated 20.01.2026 and 21.01.2026 to the petitioners' official email ID informing them about their readiness to execute partial discharge receipt in respect of the vacant land in S.F.No.138 14A, T.S.L.R. No.29, Ward C, Block 4, Municipal Ward No.3, Dr. Ambedkar Nagar, Kailasampalayam, Tiruchengode Town and Taluk, Namakkal District, upon asking the petitioners to confirm the date and time to their Kotak staff Mr. Vimal Manickandan to come and sign the same. Taking this Tribunal through *e-mails* sent by Respondent Bank, it was assertively argued that the petitioners were shared the draft discharge receipt and KYC documents to make arrangements for registration and execution of discharge receipt with respect to vacant land property on 20.01.2026 itself. Ld. Counsel pointed out to the reply *e-mail* sent by the 1st petitioner Mr.Gunasekaran on 09.02.2026 enclosing a Token for the partial discharge of vacant land by Kotak which is demonstrative of their callousness and lethargy in getting it registered belatedly notwithstanding the respondent bank's communication of their readiness for executing such receipt on 20.01.2026 i.e., on the date of

passing of order itself upon sharing the draft receipt and KYC documents for making necessary arrangement for execution and registration of the discharge receipt. There is no *iota* of truth in the allegation made as regards the non co-operation of their Officials viz. Mr.Balamurugan and Mr.Vimal Manickandan in performing their part of obligation and the final order dated 20.01.2026 being a consensus final order which came to be passed as sought for by the petitioners themselves in their undertaking affidavit dated 24.12.2025, such an order cannot be sought to be re-opened by way of the present MA, was the further submission on the side of the Respondent Bank.

10. The Ld. Counsel for the petitioners in reply to the respondent's mentioning about their issuance of *e-mail* communications dated 20.01.2026 and 21.01.2026 proceeded to submit that the receipt of such *e-mails* by the petitioners on both the dates were not disputed or denied as could be seen from para 12 of their affidavit dated 15.06.2026/16.06.2026 excerpted supra, the real and substantive issue being whether the settlement recorded before this Tribunal was effectively and practically implemented by both parties in a *bonafide* manner and whether the partial discharge / completion of the process was achieved within the timeframe to enable the petitioners to mobilize the balance amount. Stating so, Ld. Counsel would submit that after release of documents on 19.01.2026 the petitioners did not remain inactive but were pursuing with the concerned officials for completing the execution of mortgage discharge receipt so as to enable them to mobilize the balance amount through third party assistance which could not be done only due to their unavailability and other administrative reasons for the delay then stated by the respondent bank. Learned counsel would as well submit that they

opened and saw the email only on 09.02.2026 after the reference about it came to be made before this Tribunal.

11. Before proceeding to delve at and decide on the factual and legal submissions since made on either side as regards the legality and otherwise of a re-open petition in an already disposed SA, the Tribunal deems it fit, just and proper to reproduce the relevant provisions of the SARFAESI Act, RDB Act and CPC hereunder:

I. The Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 :

> *"S.17(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder."*
>
> *[Inserted by Act No. 44 of 2016.]*

II. The Recovery Of Debts and Bankruptcy Act :

S.19. Application to the Tribunal. ***[Substituted by Act 1 of 2000, Section 9, for Section 19 (w.r.e.f. 17.1.2000).]***

> *"(20A) Where it is proved to the satisfaction of the Tribunal that the claim of the applicant has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties or where the defendant has repaid or agreed to repay the claim of the applicant, the Tribunal shall pass orders recording such agreement, compromise or satisfaction of the claim."*
>
> *[Inserted by Act No. 1 OF 2013]*
>
> *(25) The Tribunal may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.] [Substituted by Act No. 44 of 2016.]*

S22. Procedure and powers of the Tribunal and the Appellate Tribunal.

> ***"22.*** *(1) The Tribunal and the Appellate Tribunal shall not be bound the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Tribunal and the Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings."*

***22.** (2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:—*

(e) reviewing its decisions;

III. Code of Civil Procedure:

ORDER XXIII - Withdrawal and Adjustment of Suits

"1. …………
2. ……….

3. Where the Court is satisfied,—

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of suit or part of a claim, It may, on such terms as it thinks fit grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim."

12. Noticeably the above SA was filed on 08.10.2025 and listed before the Bench on 09.10.2025 on which date itself the respondent bank had filed its Reply Statement and documents and advanced arguments in part whereupon the matter stood reposted to 22.10.2025 for conclusion of arguments. On 22.10.2025, the matter stood reposted to 23.12.2025 but however, came to be advanced and taken up on 22.12.2025 and stood reposted to 23.12.2025 and 24.12.2025 at the request of the applicants. On 24.12.2025, the petitioners filed an Undertaking affidavit of even date agreeing *inter alia* to repay the secured debt as hereunder:

"2. We submit that the Applicants and the Respondent Bank have mutually agreed to settle the total remainder of the outstanding under OTS Scheme, which was agreed to for Rs.4,50,00,000/- in June, 2025, which was withdrawn by the bank in Aug 2025, of which already Rs.1,50,00,000/- has been paid in July and November. Now we have arrived for another OTS settlement for Rs.3,27,00,000/- as on 23.12.2025 and the tranches of payment will be as follows:

- *The first part payment of Rs.1,00,00,000/- (Rupees One Crore Only) shall be paid on or before 30.12.2025;*

- *The remaining and final settlement payment of Rs.2,27,00,000/- (Rupees Two Crores Twenty Seven Lakhs only) shall be paid on or before 30.01.2026.*

3. We hereby unconditionally and irrecovably undertake that in the event of failure to make payment of even one of the above-mentioned payment tranches within the stipulated time as stated supra, the Applicants shall voluntarily handover peaceful possession of the secured asset to the Respondent Bank without insisting on any further notice or order from this Hon'ble Tribunal.

4. We pray that this Hon'ble Tribunal may pass this as an order so that after committing to all the above terms, neither the Respondent bank nor the Applicants would not go back on their offer, and also not take ny further action for taking physical possession or issuing a sale notice till compliance as mentioned above.

5. We further undertake that, based on the above settlement and terms agreed, the present S.A.No.1011 of 2025 shall be disposed of accordingly;

6. We submit that unless this Hon'ble Tribunal grants an order of interim stay, we will be put to great loss and hardship. The Respondent will not be put to any loss or hardship if the interim stay is granted in our favour."

13. The SA then stood reposted to 31.12.2025 directing the Respondent Bank to defer its further SARFAESIA measures and actions till then for enabling it to seek and obtain the concurrence of their higher authorities by the said time for releasing of title deed of vacant land should the applicant demonstrate their bonafides of honouring their undertaking of depositing Rs.1,00,00,000/- by 30.12.2025. On the petitioners' remittance of Rs.1,00,00,000/- on 30.12.2025, the Respondent Bank sought time for getting concurrence of higher authorities for release of title deeds and the petitioners' undertaking affidavit dated 24.12.2025 being acceptable to the bank were thus received on board. The SA was taken up for hearing on 20.01.2026 in which after hearing submissions of both sides and upon treating the undertaking affidavit dated 24.12.2025 as a part and parcel of the order, a consensus final order came to be passed as hereunder:

"Heard submissions of Ld. Counsel Mr.Cibiraj appearing for the Applicants, Applicants appearing in person and Mr.Sathish Kumar, Authorised Officer of the Respondent Bank.

2. This SA is filed challenging the order dated 06.06.2023 passed in Crl.M.P.No.5015/2022 by Ld. CJM, Namakkal.

3. Ld. Counsel for the Applicants would submit that OTS arrangement has since been reached between the Applicants and Respondent Bank on the previous day for a sum of Rs.3.27 crores of which Rs.1.00 crore already remitted on 30.12.2025 has been appropriated towards part payment and the remaining final settlement of Rs.2.27 crores inclusive of interest would be paid on or before 30.01.2026.

4. Ld. Counsel for the Applicants admitted to have received the Title Deed in respect of the vacant land on the previous day and pleaded to the Respondent Bank to execute and register mortgage discharge receipt without any loss of time so as to enable the Applicants to mobilize the remaining settlement amount of Rs.2.27 crores from the other financiers to honour their undertaking of paying it on or before 30.01.2026.

5. Mr.Sathish Kumar, Authorised Officer of the Respondent Bank assures and agrees to execute and register the mortgage discharge receipt in a day or two at the cost and expenses of the Applicants who shall make necessary arrangement for completing registration of it and pleaded to record in the final order as to the undertaking and promise made by Applicants in their Undertaking Affidavit dated 24.12.2025 to surrender and handover the secured asset to the Respondent Bank without it having to assume forcible possession of the secured asset in terms of the SARFAESI Act.

6. Ld. Counsel for the Applicants, on instructions from his clients who are his parents, reaffirmed that the OTS amount would however be settled in full on or before 30.01.2026 without any default and on their failing to do so, the vacant possession of secured asset would be peacefully surrendered without constraining the Respondent Bank to take physical possession of it by any means. Stating so, Ld. Counsel for the Applicants consented for the disposal of the SA in terms of the undertaking affidavit.

7. Recording the submissions and undertakings as afore, the SA stands disposed of leaving it open to the Respondent Bank to proceed with its SARFAESIA measures and actions from the stage it stands today should the Applicants fail to honour their promise and commitment as undertook by them in their undertaking affidavit which forms a part and parcel of this order. Connected IAs stand closed. No order as to costs.

PO"

It is pertinent to mention here that the Tribunal in view of section 17(7) of SARFAFESI Act r/w. S.19(20–A) of RBI Act proceeded to record agreement / compromise arrived at by and between the petitioners and respondent bank and disposed of the SA as consented to by the petitioners themselves in their Undertaking affidavit.

14. Axiomatically the consensus final order dated 20.01.2026 being one which has come to be passed recording the agreement/compromise arrived at between the secured creditor bank and borrower with regard to adjustment or settlement of their liability as per OTS settlement reached by and between them on earlier occasion and reaffirmed on 19.01.2026, cannot be sought to be re-opened to re-agitate the same on merits of the contentions urged in the SA for more than one reason as adumbrated hereunder:

i. The Undertaking affidavit dated 24.12.2025 filed by the Petitioners is their promise and agreement to pay the secured debt in tune with the OTS settlement amount arrived at earlier and agreed upon by the Respondent Bank subsequently which requires payment of the balance OTS amount of Rs.2.27 Crores by 30.01.2026.

ii. The Petitioners had in pursuance of such agreement and compromise got released title deeds of a vacant land at Thiruchencode from the Respondent Bank on 19.01.2026 in part performance of such obligation by the Respondent Bank.

iii. The final order having come to be passed on 20.01.2026 pursuant to the Undertaking affidavit of the petitioners and the consent given by them therein for disposal of the SA without seeking liberty to raise or urge any contentions raised in the SA certainly estops them from seeking reopening of the SA which got disposed on a compromise or consensual final order in terms of S.19(20-A) of RDB Act r/w. S.17(7) of the SARFAESI Act.

iv. The Tribunal having become *functus officio* on its pronouncement of the final order dated 20.01.2026 based on such compromise and agreement, as per S.22(1) of RDB Act it is not bound by the Code of Civil Procedure to invoke Order XXIII Rule 3 of CPC when the RDB Act itself has got a special provision in S.19(20-A) to pass final orders recording the compromise or agreement arrived at between the parties on adjustment of secured debt.

v. The judgment of Hon'ble Apex Court referred to supra and relied by the petitioners being one on Order XXIII Rule 3 of CPC where the compromise terms categorically provided a specific clause for restoration of the Appeal on failure of its terms, would not be squarely, directly or indirectly applicable to the present case which is decided in terms of the provisions of SARFAESI Act r/w. the provisions of RDB Act and Rules which is a self-contained code by itself to deal with expeditious recovery of dues of Banks and FIs by enforcement of its security interest as expeditiously as possible to avoid mismatch of value of assets with that of mounting NPAs derailing the economy.

vi. While section 37 of SARAFESI Act makes the provisions of the said Act and Rules thereunder to be one in addition to and not in derogation of RDB Act or any other law for the time being in force, Section 35 of SARFAESI Act gives its provisions an overriding effect over the provisions of any other law which are inconsistent therewith. This leads the Tribunal to an infallible conclusion the applicability of Order XXIII Rule 3 of CPC would have to be excluded by operation of S.17(7) of SARFAESI Act which requires the Tribunal to adhere to the provisions of RDB Act and Rules for disposal of an application made under sub section (1) of S.17 meaning thereby that S.19(20-A) of the RDB Act r/w. S.22(1) of RDB Act excludes the Tribunal from rigors of CPC, it being not bound to adhere to it.

vii. The Tribunal respectfully reminisces the judgment of the Hon'ble Apex Court rendered in the case titled ***'Nahar Industrial Enterprises Ltd., and others vs. Hongkong & Shangai Banking corporation and others'*** reported in 2009(2) DRTC 273 which is an enunciation of law on the point that the Tribunal is not bound to adhere to the provisions of the Code of Civil Procedure and Evidence Act while disposing of an application before it, wherein it is further held that the Tribunal not possessed of all attributes of a Civil Court is not required to conduct a full fledged trial as in the case of a civil suit and the provisions of Code of Civil Procedure and Evidence Act need not be gone into in a proceedings before the DRT. The relevant passage of said judgment readeth thus:

> *"100. A provision in the Code which is benevolent in character and sub serve the social justice doctrine in a situation of that nature has been applied, but the same, in our opinion, by itself would not make a Tribunal a civil court. No reason has been assigned as to why a Tribunal has been considered to be a civil court for the purpose of Section 25 of the Act. The court appears to have proceeded on the basis that an appeal before the High Court shall lie in terms of Section 173 of the Motor Vehicles Act, 1988 from an Award passed by the Tribunal, thus showing that it is a part of the hierarchy of the civil court. Motor Accident Claims Tribunal, thus, is a court subordinate to the High*

Court. No appeal against the judgment of the Debt Recovery Tribunal lies before the High Court unlike under the Motor Vehicles Act, 1988. The two Tribunals are differently structured and have been established to serve totally different purposes.

101. If the Tribunal was to be treated to be a civil court, the debtor or even a third party must have an independent right to approach it without having to wait for the Bank or Financial Institution to approach it first. The continuance of its counter-claim is entirely dependant on the continuance of the applications filed by the Bank. Before it no declaratory relief can be sought for by the debtor. It is true that claim for damages would be maintainable but the same have been provided by way of extending the right of counter-claim.

102. Debt Recovery Tribunal cannot pass a decree. It can issue only recovery certificates. [See Sections 19(2) and 19(22) of the Act].

104. Concededly in the proceeding before the Debt Recovery Tribunal detailed examination; cross-examinations, provisions of the Evidence Act as also application of other provisions of the Code of Civil Procedure like interrogatories, discoveries of documents and admission need not be gone into. Taking recourse to such proceedings would be an exception. Entire focus of the proceedings before the Debt Recovery Tribunal centers round the legally recoverable dues of the bank.

105. Should we adopt the principle of purposive interpretation so as to hold that the DRT would be a Civil Court? We have noticed hereinbefore that Civil Courts are created under different Acts. They have their own hierarchy. They necessarily are subordinate to the High Court. The appeals from their judgment will lie before a superior court. The High Court is entitled to exercise its power of revision as also superintendence over the said courts.

106. For the aforementioned purpose, we must bear in mind the distinction between two types of courts, viz., civil courts and the courts trying disputes of civil nature. Only because a court or a tribunal is entitled to determine an issue involving civil nature, the same by itself would not lead to the conclusion that it is a civil court. For the said purpose, as noticed hereinbefore, a legal fiction is required to be created before it would have all attributes of a civil court. The Tribunal could have been treated to be a civil court provided it could pass a decree and it had all the attributes of a civil court including undertaking of a full-fledged trial in terms of the provisions of the Code of Civil Procedure and/or the Evidence Act."

15. The factual and legal position being as afore, the Tribunal proceeds to hold that the reasons alluded by the Petitioners seeking for reopening of an already disposed SA in pursuance of a consensus final order smacks of malafides since their allegation as to the officials of the Respondent Bank not cooperating with the Petitioners by not coming forward for execution and

registration of mortgage discharge receipt in respect of the vacant land at Tiruchencode which was got released on 19.01.2026, was demonstrated to be a 'blatant lie' in view of the *e.mail* communications dated 20.1.2026 and 21.01.2026 sent by Respondent Bank to the petitioners' official *e.mail* ID requesting them to extend cooperation in the matter in executing and registering mortgage discharge receipt by sharing draft discharge receipt and KYC documents of its officials. The factum of receipt of such *e.mails* dated 20.01.2026 and 21.01.2026 have been conveniently suppressed and concealed before this Tribunal in the affidavit accompanying M.A. No.37 of 2026 as also in the affidavit filed before the Hon'ble High of Judicature of Madras in C.R.P. No.1088 of 2026 by canvassing a false case and contention as if the Respondent Bank officials never came forward for execution and registration of the mortgage discharge receipt till they executed it on 10.02.2026.

16. The Petitioners cannot expect this Tribunal to overlook the consensus final order dated 20.01.2026 wherein the Respondent Bank's submission requiring the Petitioners to make necessary arrangement for completing registration of mortgage discharge receipt in a day or two at their costs and expenses came to be recorded. The Petitioners who would in the open Tribunal today allege in thin air as to the 1st petitioner's waiting in the Registrar's Office along with his scribe to put token for such registration, could not demonstrate to the satisfaction of the conscience of the Tribunal as to his making or taking any token anytime before 09.02.2026 on which date alone the petitioners would send a reply mail to the Respondent Bank intimating about the token taken by them for registration of mortgage

discharge receipt on 10.02.2026. After mentioning about the email communication dated 20.01.2026 sent by respondent in its Reply Statement dated 09.02.2026 and furnishing of such *e.mail* copies in the proceedings dated 16.06.2026, the petitioners would in their affidavit dated 15.6.2026 admit to have received such *e.mail* communications dated 20.01.2026 and 21.01.2026 for the first time. Not stopping there, the Ld. Counsel for the Petitioners would further submit that they have opened and seen their *e.mails* only on 09.02.2026 for the reason of which they were not aware of the Respondent Bank's expression of their readiness and willingness to execute mortgage discharge receipt on 20.01.2026 and 21.01.2026 itself. Such a submission came to be made too late in the day to cover up their allegations made otherwise as regards the Respondent's non extension of cooperation for execution and registration of mortgage discharge receipt in a day or two.

17. The present MA seeking reopening of the SA for recalling its final order could have been entertained if and only if had such an order been secured by either of parties playing fraud on each other or upon this Tribunal since any echelons of judiciary including quasi-judicial authorities like this Tribunal would not be rendered powerless to recall an order obtained by playing or perpetrating fraud. The petitioners have not any case or contention with respect to fraud perpetrated by the Respondent Bank for securing the consensual final order which came to be so obtained by the Petitioners themselves on their own accord and volition in pursuance of their filing of an Undertaking affidavit agreeing *inter alia* to handover or surrender vacant possession of the secured asset on their failure to pay the balance OTS amount of Rs.2.27 Crores on or before 30.01.2026. Such a consensus /

compromise final order to which this Tribunal has accorded a stamp of approval and proceeded to pass the final order sought for in terms of S.17(7) of SARFAESI r/w. 19(20-A) of RDB Act cannot be set at naught or sought to be reopened to agitate on merits or otherwise when the Petitioners themselves chose to give up their contentions or illegalities raised in the SA by not seeking leave of the Tribunal or reserving its rights to contest the case on merits on the failure of the Respondent to perform their part of contract, obligation or promise.

18. The Respondent Bank in this case had filed its Reply Statement and documents on the very first date of listing of the SA for hearing on 09.10.2025 and advanced arguments on its side partly pursuant to which alone, the petitioner's proceeded to file their Undertaking affidavit on 24.12.2025 for inviting the consensus order dated 20.01.2026. The Petitioners who had withheld the facts and particulars with regard to Respondent Bank's issuance of *e.mail* communication dated 20.01.2026 and 21.01.2026 asking the petitioners for arranging forthwith execution of mortgage discharge receipt both before this Tribunal in M.A. No.37 of 2026 and before Hon'ble High Court of Madras in C.R.P. No.1088/2026 to secure an unfair advantage and order by falsely projecting and portraying the Respondent Bank to have committed breach of promise and Undertaking as to its registration of mortgage discharge receipt making it impossible for the Petitioners to mobilize money from the 3rd party financiers / purchasers, is not entitled to be heard on merits of the contentions raised in the MA or by reopening the SA to be heard on the merits of the contentions raised therein. The Tribunal holds so reminded of the judgment of the Hon'ble Apex Court

rendered in the case titled *S.P.Chengalvaraya Naidu v. Jagannath* reported in AIR 1994 SC 853: (1994) 1 SCC 1 *authored by His Lordship Justice Kuldip Singh as he then was* in the following lines:

> ***"5.*** *The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. <u>We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.</u>*
>
> ***6.*** *The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. <u>Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Ex. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.</u>"*
>
> *(emphasis supplied)*

19. The reliefs sought for in the MA as culled out and reproduced in the opening para of this Order are to the effect of seeking reopening of an already

disposed SA for obtaining a direction as against the respondent bank to forthwith execute and register the mortgage discharge receipt in respect of secured assets as assured and recorded in the final order, which has since been rendered 'infructuous' on the Respondent Bank's registration of such receipt on 10.02.2026 at concerned SRO pursuant to expression of their such readiness on the date of final order itself on 20.01.2026. The other relief sought for under clause 'c' is to stay all further proceedings pursuant to the Advocate Commissioner's notice dated 01.02.2026 proposing possession on 11.02.2026 which cannot be granted by this Tribunal in view of the compromise, consensual final order dated invited by the petitioners themselves upon undertaking to pay the balance OTS amount on or before 30.01.2026 and to handover or surrender vacant possession of the remaining residential property on their failure to pay so without constraining the Respondent Bank to take physical possession of it by any other means. The relief sought for in clause 'd' is on the lines of seeking grant of reasonable time to the petitioners to remit the balance OTS amount of Rs.2.27 crores upon registration of the discharge receipt. The mortgage discharge receipt having been concededly registered on 10.02.2026, the Petitioners by virtue of the MA filed on 05.02.2026 and the pendency of its disposal till this day could achieve enough and more time as may have been required by them to be granted by this Tribunal which it could not have been lawfully passed or granted in an already disposed matter. Still the Ld. Counsel for the Petitioners would during his submission contend as to the petitioners' arrangement since made for depositing Rs.25 Lakhs after a span of about six months when they were obligated to pay Rs.2.27 crores on or before

30.01.2026 towards balance OTS settlement amount. Ld. Counsel for Respondent Bank assertively submitted that the earlier OTS arrangement that stood reaffirmed and extended on 19.01.2026 upon granting time till 30.1.2026 stood expired as set out in the OTS letter itself and thus the OTS stood automatically expired and cancelled.

20. The request made by the Petitioners on the eve of disposal of MA without proving any bonafides of establishing their wherewithal or source of repayment is not acceptable to the respondent bank as it has contemplated its assuming of physical possession on 09.07.2026 pursuant to the order dated 05.06.2026 passed by the Hon'ble High Court of Madras in WP (Crl.) No.754/2026 directing Inspector of Police of Tiruchencode to assist the Adv. Commissioner appointed by the Ld. CJM Court, Namakkal in CMP.No.5015/2022 in taking and delivering possession of the secured asset to the Authorised Officer of the Respondent Bank.

21. The Tribunal within its powers, confines and authority cannot dictate the secured creditor bank to extend the time of OTS which has since expired and cannot order it to grant a fresh OTS. It being a creature of statute, the Tribunal is required to determine an application in terms of the provisions of the SARFAESI Act and Rules read with that of RDB Act wherever necessary and is not seized of any equitable jurisdiction or inherent powers to pass such orders. The Tribunal arrives at such a view fortified by the judgement of the Hon'ble Apex Court rendered in the following cases:

(i) In the case titled *Standard Chartered Bank v. Dharminder Bhohi and Ors.* reported in MANU/SC/1004/2013, it is held thus:

> *"26. Section 19 of the RDB Act, occurring in Chapter IV of the Act, deals with procedure of tribunals. Sub-section (25) of Section 19 reads as follows:*

> *(25) The Tribunal may make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.*

27. The aforesaid provision makes it quite clear that the tribunal has been given power under the statute to pass such other orders and give such directions to give effect to its orders or to prevent abuse of its process or to secure the ends of justice. Thus, the tribunal is required to function within the statutory parameters. The tribunal does not have any inherent powers and it is limpid that Section 19(25) confers limited powers. In this context, we may refer to a three-Judge Bench decision in Upper Doab Sugar Mills Ltd. v. Shahdara (Delhi) Saharanpur Light Rly. Co. Ltd. MANU/SC/0031/1962 : AIR 1963 SC 217 wherein it has been held that when the tribunal has not been conferred with the jurisdiction to direct for refund, it cannot do so. The said principle has been followed in Union of India v. Orient Paper and Industries Limited (2009) 16 SCC 286."

(ii) In the case titled *"The Bijnor Urban Cooperative Bank Limited, Bijnor and Ors. vs. Meenal Agarwal and Ors. v Meenal Agarwal"* reported in MANU/SC/1258/2021, it is held thus:

> *"11. The sum and substance of the aforesaid discussion would be that no writ of mandamus can be issued by the High Court in exercise of powers Under Article 226 of the Constitution of India, directing a financial institution/bank to positively grant the benefit of OTS to a borrower. The grant of benefit under the OTS is always subject to the eligibility criteria mentioned under the OTS Scheme and the guidelines issued from time to time. If the bank/financial institution is of the opinion that the loanee has the capacity to make the payment and/or that the bank/financial institution is able to recover the entire loan amount even by auctioning the mortgaged property/secured property, either from the loanee and/or guarantor, the bank would be justified in refusing to grant the benefit under the OTS Scheme. Ultimately, such a decision should be left to the commercial wisdom of the bank whose amount is involved and it is always to be presumed that the financial institution/bank shall take a prudent decision whether to grant the benefit or not under the OTS Scheme, having regard to the public interest involved and having regard to the factors which are narrated hereinabove."*
>
> *(emphasis supplied)*

22. The Learned Counsel for the Petitioners pleaded to this Tribunal to reopen the SA and grant reasonable time for payment of the balance OTS amount with reasonable interest as may be required by the Respondent Bank from 01.02.2026 on the agreed OTS settlement amount as the petitioners have now identified purchasers for selling their residential properties worth about Rs.12.00 crores which otherwise would be knocked down for sale by the Respondent Bank for a song. The Respondent Bank's Authorised Officer Mr. Sathish Kumar present before this Tribunal would confront this contention by stating that the residential property would be valued by the 'approved valuer' and put for sale to recover their present outstanding dues of Rs.4.91 crores which is the outstanding amount payable on the lapse of OTS settlement and added that it would be so done then only in accordance with law, about which the petitioners may not have any unnecessary apprehension at this point of time it being premature and preposterous.

23. The Tribunal within its confines of S.17(7) r/w. S.19(20-A) of RDB Act having passed a consensus final order based on the Undertaking affidavit filed by the petitioners themselves seeking disposal of their SA, cannot reopen the said SA it having become *functus officio* on passing and pronouncing of such order pursuant to the petitioners' conscious act of getting such a compromise final order by filing of an undertaking affidavit seeking disposal of the SA. The law is trite that any aggrieved person could waive and abandon his rights including the right to contest his statutory appeal or application. The Tribunal arrives at such a view fortified by the judgements of Hon'ble Apex Court rendered in the following cases :

(i) In "*State of Punjab Vs. Davinder Pal Singh Bhullar and Ors.* reported in MANU/SC/1476/2011, it is held thus:

> *"23. Waiver is an intentional relinquishment of a right. It involves conscious abandonment of an existing legal right, advantage, benefit, claim or privilege, which except for such a waiver, a party could have enjoyed. In fact, it is an agreement not to assert a right. There can be no waiver unless the person who is said to have waived, is fully informed as to his rights and with full knowledge about the same, he intentionally abandons them."*

(ii) In "*GM, Sri Siddeshwara Co-operative Bank Ltd. and Ors. vs. Ikbal and Ors."* reported in MANU/SC/0856/2013, it is held thus*:*

> *"23. There is no doubt that Rule 9(1) is mandatory but this provision is definitely for the benefit of the borrower. Similarly, Rule 9(3) and Rule 9(4) are for the benefit of the secured creditor (or in any case for the benefit of the borrower). It is settled position in law that even if a provision is mandatory, it can always be waived by a party (or parties) for whose benefit such provision has been made. The provision in Rule 9(1) being for the benefit of the borrower and the provisions contained in Rule 9(3) and Rule 9(4) being for the benefit of the secured creditor (or for that matter for the benefit of the borrower), the secured creditor and the borrower can lawfully waive their right. These provisions neither expressly nor contextually indicate otherwise. Obviously, the question whether there is waiver or not depends on facts of each case and no hard and fast rule can be laid down in this regard."*

24. S.22(2)(e) of RDB Act though permits the Tribunal for reviewing its own order, it could be so done only if there is any error apparent on the face of the record. Section 19 (25) of RDB Act read with Rule 18 of DRT (Procedure) Rules of course are enabling provisions of law to pass such order as may be necessary to give effect to its orders or "to prevent abuse of its process" to secure the ends of justice and such powers can be exercised only to give effect to its order and not to reopen an already disposed SA for fresh consideration or for directing the respondent to grant OTS or to stay its taking of possession of secured assets when the petitioners themselves have undertook in their affidavit to surrender or handover possession of such

assets on their failure to pay the balance OTS amount on or before 30.01.2026.

25. This Tribunal sees that the petitioners in the present case got sanctioned and extended an earlier OTS upto 30.01.2026 and got release of one title deed of vacant land from the Respondent Bank which would not have been so released to them should the law relating to right of redemption as set out in Section 60 of Transfer of Property Act was strictly applied to requiring the petitioners to pay entire balance money for seeking release of mortgage right over the property. The petitioners who availed the benefit of OTS and secured release of mortgage over one item of vacant land as early on 09.02.2026/10.02.206 in pursuance of the compromise final order dated 20.01.2026, the delay if any in getting it registered being attributable to the conduct of the petitioners themselves could not seek reopen of the SA for seeking direction of the Tribunal for extension of OTS or staying of the respondent's taking of possession of secured asset through the Ld. Adv. Commissioner appointed by the jurisdictional CJM court more-so when the Hon'ble High Court of Madras in WP (Crl.) No.754/2026 vide its order dated 05.06.2026 has directed the concerned Police to render assistance to the Ld. Adv. Commissioner to deliver possession of secured asset to the respondent bank.

26. The petitioner's who stood to benefit out of the compromise final order and OTS by seeking release of one item of title deed cannot advance any case or contention against the orders so obtained. The Tribunal holds such a view reminded of the judgment of Hon'ble Apex Court rendered in the case titled

Cauvery Coffee Traders, Mangalore Vs. Hornor Resources (Intern.) Company Ltd. reported in MANU/SC/1079/2011 which readeth thus :

> *"5. In R.N. Gosain v. Yashpal Dhir MANU/SC/0078/1993 : AIR 1993 SC 352, this Court has observed as under:*
>
> *Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage.*
>
> *26. A party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good not be applied in a manner as to violate the principles of right and good conscience."*
>
> *27. Thus, it is evident that the doctrine of election is based on the rule of estoppel- the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had."*

27. Before parting with this order, the Tribunal deems it apposite to reproduce the relevant passages of yet another judgment of Hon'ble High Court of Kerala rendered in the case titled *Ramalinga Iyer vs. the Chief Manager and Syndicate Bank* in O.P.(DRT) Nos. 123 & 124/2016 dated 10.02.2017 which readeth thus:

> *"4. The Tribunal, by a detailed order impugned in the original petitions, found the Tribunal to be functus officio insofar as the orders issued in the S.A.s having become final. This Court finds that the petitioners could not have moved for reopening of the S.A. in view of the specific undertaking made by the petitioner, as submitted by the learned Counsel before the Tribunal and reduced to writing in affidavits executed by the respective petitioners, filed before the Tribunal. The further prayer was for grant of three months' time, which also the Tribunal could not have considered since the Tribunal had finally disposed of the S.A's, that too, on the undertaking of the petitioners."*

28. Ergo the MA stands dismissed. Connected I.A.Nos.2065/2026 and 2814/2026 stand closed. No order as to costs.

[Dictated to my Steno directly on the computer, corrected and pronounced by me in the open Tribunal on this the 04^{h} day of July, 2026].

Sd/-

[N SOMASUNDAAR]
PRESIDING OFFICER

IN THE DEBTS RECOVERY
TRIBUNAL, COIMBATORE

PRESENT: SRI N SOMASUNDAAR, B.A.; B.L.
PRESIDING OFFICER

Dated the 04th July, 2026

M.A. No.37 of 2026
AND
SA No.1011 of 2025

Between

1. Mr. N. Gunasekaran,
S/o. (Late) K.R.Natarajan,
6/12, 1st Street, C.H.B Colony,
Triuchengode – 637211.

2. Mrs. G. Selvi,
W/o. N. Gunasekaran,
6/12, 1st Street, C.H.B Colony,
Triuchengode – 637211.

…… Petitioners

And

M/s. Kotak Mahindra Bank,
No. 27BKC, C37, G Block,
Bandra Kurla Complex, Bandra (E),
Mumbai - 400051.

…… Respondent

O R D E R