IN THE DEBTS RECOVERY TRIBUNAL-II, BANGALORE

Dated this 27th Day of August, 2026

PRESENT: SHRI T. RAJESH
Hon'ble Presiding Officer

S.A. No. 243 of 2025

BETWEEN:
M/s. Amba Bhavani Associates
No.507, 1st Floor, 9th Main
BSK 2nd Stage, Bangalore,
Rep. by its Managing Partners
Mr. Fakeer Nagappa Savanoor
And
Mr. Babu N Yeligar
Rep. by their GPA Holder
Sri. Srivatsava J **. . . Applicant**

AND:
1. The Manager & Authorised officer
Sri. Guru Raghavendra Sahakara Bank Niyamitha
No.15, Subbarama Chetty Road,
Basavanagudi, Bangalore – 560004

2. The Administarator
Sri. Guru Raghavendra Sahakara Bank Niyamitha
No.15, Subbarama Chetty Road,
Basavanagudi, Bangalore – 560004

3. Shri. Shreyas Sheregar
S/o. Sheshaiah Sheregar
Aged major,
R/at.No.84, 2nd Cross Road,
Near GKW Layout, Vijayanagar,
Bengaluru-560040 **. . . Respondents**

Ld. Counsels on record / appeared :-

Counsel for Applicant :- Sri. Ravi Shankar K
Counsel for Respondent No.1&2 :- Sri. Vikram Unni Rajagopal
Counsel for the Respondent No.3 :- Sri. Balaram M L

: - O R D E R - :

1. This Securitisation Application is originally filed challenging the sale notice dated 10.03.2025, stood amended as the sale had gone through by incorporating a prayer to set aside the sale certificate issued in favour of the additional respondent No.3, who is impleaded subsequently.

2. The case of the applicant is as follows: The applicants are the absolute owners of the converted land which stood changed from original agricultural to non-agricultural. According to the applicant there is no ambiguity as the property is identified as Sy.No.113. It is also contended by the applicant that, a loan was sought from the respondent bank with an intention of developing the land and loan was sanctioned for construction and infrastructure and development activities including the residential commercial and industrial projects. It is also admitted by the applicant that, a credit facility of Rs.7,00,00,000/- has been sanctioned and in pursuant to the execution of agreement an amount of Rs.2,50,00,000/- above has been released, which according to the applicant is reflected in the Encumbrance Certificate and charged over the property in Survey number to a extent of 12A/20GS and Sy.No.112 measures 7A and 0.4 GS. It is admitted that, at the time of execution of the mortgage, the petitioner pledged seven properties as security to the respondent bank in exchange for financial assistance provided. The applicant contends that, the equitable mortgage is a type of mortgage wherein the borrower provides

the letter with the titles of the documents of the land, without actually transferring the legal ownership of the properties.

3. It is further contended by the applicant that, the subsequent of release of partial amount of Rs.2,50,00,000/-, the applicant had commenced development works on the properties and utilizing the funds, whereas the 2nd portion of the loan was sanctioned for to complete the development work, the same was not disbursed, which according to the applicant is due to misappropriation and mismanagement of public funds in particular with disbursement of loans in the 2nd respondent institution. It is further contended that, due to the large-scale irregularities and fraudulent transaction occurred within the 2nd respondent bank, lead to imposition of an order under sec.13(5) of the RBI Act. It is also stated that, the administrator had been appointed by the Central Registrar of Co-operation Societies as per provisions of Karnataka Co-operative Societies Act, to oversee the administration of the bank.

4. In the above premises, the applicant admits that, the respondent had issued a demand notice, demanding a sum of Rs.7,00,00,000/- which is not in conformity with the original disbursal amount of Rs.2,50,00,000/- after the and sudden demand of Rs.7,00,00,000/- by the bank, the applicant had sought for a clarification for which the respondent had issued a communication letter dated 03.08.2022. Hence, according to the applicant the demand made by the respondent is inflated as the remaining loan amount of Rs.4,50,00,000/- was never disbursed. The applicant further

alleges that, despite the request of the applicant, the loan documents were not provided to the applicant. It is also contended that, without heading to the request of the applicant, the bank had issued a possession notice dated 08.09.2024. It is also contended by the applicant that they had been making repeated representation to resolve the issue and for getting the copies of the documents, which does not invoke any positive response.

5. In respect of the measures, it is the case of the applicant that, the respondent failed in following the mandate of S.13 of the act and had proceeded with the enforcement act. The impugned sale notice is also challenged by the applicant is stating that, the sale notice is illegal and in violation of applicant's right. The applicant is also claiming that, in pursuant to the orders of the Hon'ble High Court wherein the sale notice was under challenged, the applicant had remitted an amount of Rs.1,00,00,000/- and a further amount of Rs.2,94,00,000/- was later remitted totaling an amount of Rs.3,94,00,000/-. The applicant further pointed out that, as per the bank's transaction reflected that, the total amount is disbursed is Rs.6,80,00,000/- whereas the demand notice, it is claimed as Rs.7,00,00,000/- was disbursed to the applicant. Hence, these proceedings are challenging contending that, inflated demands are made and the person who issued demand notice is not competent to issue the same and also that the demand notice is issued demanding the amount of Rs.7,00,00,000/- against the released amount of Rs.2,50,00,000/- which itself will vitiate the entire proceedings, including the issuance of sale notice and sale

certificate. Along with the SA, the applicant had produced the following documents:

(i) Document No.1: Copy of E.C

(ii) Document No.2: Copy of notice dated 13.06.2023

(iii) Document No.3: Copy of notice dated 03.08.2023

(iv) Document No.4: Copy of possession notice

(v) Document No.5: Copy of notice dated 20.12.2024

(vi) Document No.6: Copy of reply dated 20.12.2024

(vii) Document No.7: Copy of representation

(viii) Document No.8: Copy of sale notice dated 10.03.2025

(ix) Document No.9 & 9(a): Copy of interim order passed by Hon'ble High Court in W P No. 9661/2025

6. The respondent Nos. 1 and 2 have filed their objections contending that, the right of redemption available for the applicant is already lost by the publication of sale notice. The contention of the respondent that, out of sanctioned amount of Rs.7,00,00,000/- only Rs.2.5 Crores alone was disbursed is also denied by the respondent. The respondent contending that, the once the loan was sanctioned, the said amount was disbursed to the current account maintained by the borrower. Hence, according to the respondent even though an amount of Rs.8,00,00,000/- was sanctioned, an amount of Rs.7,00,00,000/- was disbursed on various dates ranging from 08.07.2019 to 24.12.2019. It is also contended that, after the disbursement of the amount, the respondent has withdrawn and the utilize

the fund on various occasions. It is also stated that in the year 2022, the bank had issued five separate letters relating the five mortgage loans demanding the repayment of due amount as on that date, to which the applicant had responded by submitting the One Time Settlement offers. Even as no repayments were forthcoming despite the initiation of measures, the sale notice dated 10.03.2025 was issued which was preceded by issuance of demand notice on 13.06.2023 and possession notice on 21.07.2025. The sale notice dated 10.03.2025 is also published on 11.03.2025. It is also admitted that, the applicant had already approached the Hon'ble High Court, wherein the Hon'ble High Court has directed the applicant to deposit an amount of Rs.3.94 lakhs which they remitted on 22.04.2025 and 02.06.2025 and the Writ Petition came to be disposed of giving liberty to approach this Tribunal extending the Interim protection within two weeks as directed by the Hon'ble High Court. The bank also points out that, only after waiting for two weeks' time the bank had proceeded further and instructed the successful bidder to remit the balance amount and accordingly the builder had remitted the balance amount of Rs.6,63,36,700/- on 26.06.2025. It is also stated that, the said amount was appropriated to the loan account and despite the said adjustments an aggregated amount of Rs.7,84,22,951/- is also due in the account, for which proceedings were initiated before the RCS court. Apart from the above the respondent had given parawise rebuttals to the contentions taken by the applicant. Along with the objections, the respondent Nos.1 and 2 have produced the following documents:

i. Copy of the all-inclusive directions (AID) dated 10.01.2020 imposed by RBI

ii. Copy of the order dated 18.05.2020 by the Registrar of Co-operative societies

iii. Copy of het order dated 10.11.2020 by the Registrar of Co-operative societies

iv. Copy of the Government order dated 10.01.2025

v. Copy of the simple mortgage deed dated 08.07.2019

vi. Copy of the simple mortgage deed dated 08.07.2019

vii. Copy of the memorandum of equitable mortgage by deposit of title deeds dated 24.02.2020

viii. Copy of the memorandum of equitable mortgage by deposit of title deeds dated 24.02.2020

ix. Copy of the memorandum of equitable mortgage by deposit of title deeds dated 24.02.2020

x. Copy of the Section 13(2) notice dated 13.06.2023

xi. Copy of the Section 13(4) notice dated 27.01.2025

xii. Copy of the paper publication in Indian Express and Kannada Prabha dated 31.01.2025

xiii. Copy of the sale notice dated 10.03.2025

xiv. Copy of the paper publication in Indian Express and Kannada Prabha dated 11.03.2025

xv. Copy of Bid Final Report dated 15.04.2025

xvi. Copy of confirmation letter dated 15.04.2025 issued in favour of the successful bidder

xvii. Copy of the order dated 10.06.2025 passed in WP.No.9667/2025

xviii. Copy of the sale certificate dated 26.06.2025

xix. Copy of letter dated 26.06.2025 issued by the bank to the Senior Sub-Registrar, Kolar

xx. Copies of discharge deeds dated 26.06.2025

xxi. Copy of the registered sale certificate dated 26.06.2025

xxii. Copy of the loan statments

xxiii. Copy of the statement of accounts in CA 100300001381

xxiv. Copy of the letter bearing Ref No.SGR/SK/986/2022-23 dated 23.08.2022 along with translated copy

xxv. Copy of the letter bearing Ref No.SGR/SK/994/2022-23 dated 24.08.2022 along with translated copy

xxvi. Copy of the letter bearing Ref No.SGR/SK/994/2022-23 dated 24.08.2022 along with translated copy

xxvii. Copy of the letter bearing Ref No.SGR/SK/994/2022-23 dated 24.08.2022

xxviii. Copy of the letter dated 05.09.2022 along with the vising care. Along with translated copy

xxix. Copy of the reply bearing Ref.No.SGR/SJ/1478/LN7/2022 dated 12.10.2022 issued by the respondent bank

xxx. Copy of the letter bearing Ref No.SGR/SK/1179/LN7/2022-23 dated 15.09.2022 along with translated copy

xxxi. Copy of the letter bearing Re.No.SGR/SK/1188/2022-23 dated 16.09.2022 along with translated copy

xxxii. Copy of the letter bearing Ref.SGR/SK/1211/LN7/2022-23 dated 17.09.2022 along with translated copy

xxxiii. Copy of letter bearing Ref No.SGR/SK/1256/LN7/2022-23 dated 20.09.2022 along with translated copy

xxxiv. Copy of the objection dated 31.07.2023 sent by the applicant

xxxv. Copy of the reply dated 03.08.2023 issued by the respondent bank

xxxvi. 102200001618 loan documents

xxxvii. 102200001619 loan documents

xxxviii. 102200001620 loan documents

xxxix. 102200001669 loan documents

xl. CERSAI registration

7. Respondent No.3 had filed the objections, contending that the application is not maintainable and has become infructuous, since the subject property had already been sold in the e-auction conducted on 15.04.2025, the sale certificate was issued and registered on 26.06.2025 and 05.07.2025. It is also stated that, the physical possession of the property was handed over to him. It was contended that the applicant was aware of the sale and the subsequent development activities, but approached the Tribunal belatedly. The 3rd respondent further points out that the applicant had failed to comply with the direction of the Hon'ble High Court in W.P.No.9661/2025 dated 10.06.2025, whereby the applicant

was directed to approach this Tribunal within two weeks, failing which the interim protection would cease to operate.

8. The 3rd respondent also submitted that he is a bona fide auction purchaser who, after inspecting the property and making necessary enquiries regarding the SARFAESI proceedings, participated in the e-auction and whose bid was accepted. He contended that the auction was conducted transparently and in accordance with law. After obtaining the property, he had made substantial investments, stated to be more than ₹10 crores, towards the purchase price, stamp duty, registration, legal expenses and development of the property, including land filling, construction of a compound wall and preparation of the land for cultivation. It was therefore contended that any interference with the concluded sale would cause serious prejudice and irreparable loss to him.

9. The 3rd respondent further alleged that the applicant had not acted in bona fides, particularly in view of the alleged failure to pay the EMIs despite the directions of the Hon'ble High Court. It was contended that the applicant had not disclosed the delay in approaching the Tribunal and is therefore not entitled to discretionary or equitable relief. In view of the concluded sale, registration, delivery of possession and the substantial investment made by him, the 3rd respondent prayed that the S.A. be dismissed with exemplary costs.

10. Heard the submissions of the Ld. Counsel for the applicant and respondents and perused the availed records.

11. The following issues arise for the consideration in this matter.

i. Whether the measures initiated and continued by the respondent Nos.1 and 2 leading to the conduct of the sale and issuance of the sale certificate are legally valid?

ii. Whether the SA is filed along with the petition to condone the delay of 61 days is entertainable by this Tribunal?

Issue No. i:

12. The first and foremost contention taken by the applicant is disputing the disbursement of the entire credit facility, which according to the applicant, the respondent bank had sanctioned to the tune of Rs.7,00,00,000/-. The applicant contends that, despite the sanction of an amount of Rs.7,00,00,000/- only an amount of Rs.2,50,00,000/- is disbursed and hence on that ground the applicant contends that, the initiation of measures on the basis of a credit facility claimed to have been disbursed to the tune of Rs.7,00,00,000/- is not maintainable. In rebutting the said contention, the respondent had contended that, even though an amount of Rs.8,00,00,000/- has been sanctioned, an amount of Rs.7,00,00,000 had been disbursed in five lots of Rs.1.5 Crores; Rs.1.00 Crore, Rs.2.00 Crore, Rs.1.5 Crore, Rs.1.00 Crore each disbursed on 08.07.2019, 08.07.2019, 25.07.2019, 04.09.2019 and 24.12.2019 respectively. In respect of the same, the respondent further contends that, the amounts so disbursed were properly credited to the current account of the applicant and in support of the same, the statement of current account

of the applicant is produced along with the objections. The respective credits as claimed to have been made in the current account of the amount sanctioned and disbursed is reflected therein, which leads to the conclusion that, the contention of the applicant that, only an amount of Rs.2.5 Crores is disbursed cannot be accepted. Even otherwise, the loan documents admittedly signed by the applicant evidences the sanctioning of Rs.7,00,00,000/- and no scrap of paper is forthcoming from the side of the applicant to prove that the disbursement was limited to only Rs.2.5 Crores.

13. Apart from contending as to the amount disbursed the applicant is having no dispute as to the execution of loan documents and creation of security interest by way of mortgage. In Paragraph No.13 the applicant themselves are admitting the receipt of demand notice as according to the applicant the petitioner got shocked and surprise to receive a notice from the respondent under S.13(2) of the act. The above admission made in the SA leads this Tribunal to find that there is proper service of demand notice even though no evidence proving the compliance of Rule 3 is forthcoming along with the objections filed by the respondent.

14. In respect of the possession notice also, the respondent had produced the proof of dispatched possession notice and the paper publication of the same. Even otherwise, the applicant is not disputing the procedure that is followed by the respondent in leading to the issuance of impugned possession notice. In the absence of the any challenge as to the procedure followed by the respondent and in view of the production of proof as to the

paper publication of the possession notice, this Tribunal is of the view that, the respondent procedure leading to the issuance of possession notice is in accordance with statue.

15. Now in respect as to the question is arises as to the legality of the issuance of sale notice, the main contention put forth by the applicant in the SA is the alleged lack of transparency in the action of the respondent as the loan documents were suppressed despite repeated request from the applicants side, even assuming the said contention be correct, this Tribunal is of the view that, the said contention will not ipso facto of entitle the applicant to challenge the measures, which the respondent had issued and continued in accordance with statute. If the applicant is having any grievance as to the non-disclosure of loan documents, it is them to take appropriate steps before the appropriate authority and by no stretch of imagination same can be a defense against the SARFAESI measures especially in the absence of any challenge as to the entitlement of the respondent to initiate the measures and continue the same. Even after the amendment of the SA incorporating the prayer by including the challenge as to the issuance of sale certificate no averment is forthcoming from the side of the applicant. Apart from point out the fact that the applicant had duly complied with the direction of the Hon'ble High Court and the Hon'ble High Court has granted an Interim protection to which even continued despite the disposal of the Writ Petion, no specific plea is taken in the SA. The above contention has been refuted by the respondent contending that,

as no restraining order has been served on the respondent, despite the expiry of the time granted by the Hon'ble High Court, the respondent had proceeded to continue the sale process already halted by the interim order of the Hon'ble High Court. Apart from the above contention nothing is forthcoming from the side of the applicant even to suggest that the applicant had procured an interim order within the extended time granted by Hon'ble High Court and produced the same before the respondent. In the absence of any restrained order, this Tribunal cannot find any fault with the respondent action in continuing the sale. The fact that the applicant had deposited the substantial portion of the liability will not alter the situation as it is well settled the right of redemption of the applicant is already lost by publication of the sale notice.

16. In respect of the procedure followed by the respondent in issuance of the sale notice the respondent had produced the proof of service of the sale notice and also the publication and affixture of the sale notice. In absence of any challenge as to the procedures in issuance of the sale notice, this Tribunal is not weighing anything about the absence of proof as to affixture and service of sale notice.

17. The discussions as held above, leads to this Tribunal to find Issue No. I in favour of the respondent.

Issue No.ii:

18. In deciding this issue though no contention as to the power of this Tribunal to condone the delay is taken up by both the parties, this Tribunal

is going into in the said issue as the issue of limitation being a mixed question of law and facts and which will go the route of the case.

19. In considering as to whether there is any exclusion as to the applicability of Limitation Act a reference to section 17 of the Act is appropriate

17. 2 [Application against measures to recover secured debts].—(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter,1 [may make an application along with such fee, as may be prescribed,] to the Debts Recovery Tribunal having jurisdiction in the matter within forty five days from the date on which such measure had been taken:

[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.]

[Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.]

[(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction—

(a) the cause of action, wholly or in part, arises;

(b) where the secured asset is located; or

(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.]

[(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

[(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,—

(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and (b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and (c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.] (4 If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

[(4A) Where—

(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,— (a) has expired or stood determined; or

(b) is contrary to section 65A of the Transfer of Property Act, 1882 (4 of 1882); or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under subsection (2) of section 13 of the Act; and

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.]

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any part to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application

pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

(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.]

20. It is relevant to note that whether the Debt Recovery Appellate Tribunal have got power to condone the delay in filing an Appeal under section 18 is no more *res integra.* In respect of section 18 it is to be noted that there is an express provision for condonation of delay. So far as section 17 is concerned, the statute is silent as to the application of said power. The wording of the statute also mandates the application to be filed "within 45 days" from the cause of action. By application of legal maxim "*expression unius est exclusion alterius*", it is to be understood and red as the Legislature had intentionally and consciously intended the application of Limitation Act to be excluded. The statute is enacted for the purpose of enabling financial institutions to securitize the Asset without intervention of the court. As far as section 17 is concerned it is evident that there is no express exclusion. However, the SARFAESI Act being a complete code by itself, the implied exclusion and clear mandate of a time limit of 45 days also throws light to the fact that the Securitization Application is to be filed "within 45 days". It is also relevant that a time limit is also fixed for disposal of a section 17 application.

21. The Hon'ble Supreme Court in **Mardia Chemical Vs. Union of India** (2004) 4 SCC 311had laid down the scope and ambit of section 17 of the Act and held as follows:-

"59. We may like to observe that proceedings under Section 17 of the Act, in fact, are not appellate proceedings. It seems to be a misnomer. In fact it is the initial action which is brought before a forum as prescribed under the Act, raising grievance against the action or measures taken by one of the parties to the contract. It is the stage of initial proceeding like filing a suit in civil court. As a matter of fact proceedings under Section 17 of the Act are in lieu of a civil suit which remedy is ordinarily available but for the bar under Section 34 of the Act in the present case. We may refer to a decision of this Court in Ganga Bai v. Vijay Kumar [(1974) 2 SCC 393] where in respect of original and appellate proceedings a distinction has been drawn as follows: (SCC p. 397, para 15) "There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring a suit of civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous to claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute."

22. Hence on the basis of above it is evident that the proceedings under section 17 is of the original nature and not that of an appeal. It is also to be noted that the section 17 came to be amended and by virtue of which

the remedy provided is that of an "Application". Hence by prescription of 45 clear days for filing the application and in the absence of enabling provision to condone the delay the Legislature intent is clear.

23. The Hon'ble High Court of Karnataka in **V. Shobha Vs. Asset Reconstruction Bank Company (India) Ltd and Ors.** (MANU/KA/3039/2025) which directly on the point where the Hon'ble Division Bench had held in affirmative as to the power of this Tribunal in entertaining an application to condone delay. However, in **Kailasam Vs. Karnataka Bank Ltd** (MANU/KA/0620/2025) another Division Bench of Hon'ble High Court of Karnataka had considered the issue in detail and held that the Tribunal does not possess the jurisdiction to entertain an application to condone the delay in filing Section 17 Application.

24. The above discussion narrows down the enquiry point to the question whether Kailasam Judgment (supra) or V. Shobha Judgment (supra)is binding on this Tribunal. To address this issue a reference to the **National Insurance Company Ltd Vs. Pranay Sethi and Ors.** (2017) 16 SCC 680 is necessary, wherein a larger Bench (Five Judge Bench) of the Hon'ble Supreme court had decided the issue as to the binding nature of conflicting decisions and held as follows:-

"19. In this regard, we may refer to a passage from Jaisri Sahu v. Rajdewan Dubey, 1961 KHC 325 : AIR 1962 SC 83 : 1961 KLT SN 18 : 1962 (2) SCR 558 : 1962 (1) MLJ (SC) 258: "11. Law will be bereft of all its utility if it should be thrown into a state of uncertainty by reason of conflicting decisions, and it is therefore

desirable that in case of difference of opinion, the question should be authoritatively settled. It sometimes happens that an earlier decision given by a Bench is not brought to the notice of a Bench hearing the same question, and a contrary decision is given without reference to the earlier decision. The question has also been discussed as to the correct procedure to be followed when two such conflicting decisions are placed before a later Bench. The practice in the Patna High Court appears to be that in those cases, the earlier decision is followed and not the later. In England the practice is, as noticed in the judgment in Seshamma v. Venkata Narasimharao that the decision of a Court of appeal is considered as a general rule to be binding on it. There are exceptions to it, and one of them is thus stated in Halsbury's Laws of England, 3rd Edn., Vol. 22, para 1687, pp. 799-800: "The Court is not bound to follow a decision of its own if given per incuriam. A decision is given per incuriam when the Court has acted in ignorance of a previous decision of its own or of a Court of a co - ordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords. In the former case it must decide which decision to follow, and in the latter it is bound by the decision of the House of Lords." In Virayya v. Venkata Subbayya it has been held by the Andhra High Court that under the circumstances aforesaid the Bench is free to adopt that view which is in accordance with justice and legal principles after taking into consideration the views expressed in the two conflicting Benches, vide also the decision of the Nagpur High Court in Bilimoria v. Central Bank of India. The better course would be for the Bench hearing the case to refer the matter to a Full Bench in view of the conflicting authorities without taking upon itself to decide whether it should follow the one Bench decision or the other. We have no doubt that when such situations arise, the Bench hearing cases would refer the matter for the decision of a Full Court." 20. Though the

***aforesaid was articulated in the context of the High Court, yet this Court has been following the same as is revealed from the aforestated pronouncements including that of the Constitution Bench and, therefore, we entirely agree with the said view because it is the precise warrant of respecting a precedent which is the fundamental norm of judicial discipline*".**

Furthermore, in para 29 and 30 the Hon'ble Supreme Court held as

"29. We are compelled to state here that in Munna Lal Jain (supra), the three - Judge Bench should have been guided by the principle stated in Reshma Kumari which has concurred with the view expressed in Sarla Devi or in case of disagreement, it should have been well advised to refer the case to a Larger Bench. We say so, as we have already expressed the opinion that the dicta laid down in Reshma Kumari being earlier in point of time would be a binding precedent and not the decision in Rajesh". " 30. In this context, we may also refer to Sundeep Kumar Bafna v. State of Maharashtra and Another 2014 (16) SCC 623 which correctly lays down the principle that discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of Courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a Statute, rule or regulation, which was not brought to the notice of the Court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a coequal or Larger Bench. There can be no scintilla of doubt that an earlier decision of co - equal Bench binds the Bench of same strength. Though the judgment in Rajesh's case was delivered on a later date, it had not apprised itself of the law stated in Reshma Kumari (supra) but had been

guided by Santosh Devi (supra). We have no hesitation that it is not a binding precedent on the co - equal Bench".

25. In view of the above settled position this Tribunal is of the considered view that the judgment of the Hon'ble Division Bench in Kailasam's case (supra) which is passed on 28/2/2025 is to be followed as V. Shobha's (supra) case is passed on 16/9/2025. It is also to be noted that while deciding Shobha's case the Hon'ble Court had not considered the earlier decisions on the point by another Division Bench. In view of the law laid down by Apex Court in *"National Insurance Company Case (supra) this Tribunal is bound to follow the dictum laid down by the Division Bench of the Hon'ble High Court of Karnataka in Kailasam P Vs. The Karnataka Bank Ltd and Ors. (MANU/KA/620/2025)"* which laid down the preposition that the 45 days' time provided under section 17 of the Act is the mandatory time limit and this Tribunal cannot entertain an Application under section 17 beyond said period, after condoning the delay. Hence, in view of the above, this issue is also be decided against the applicant.

26. In view of the discussions as held above,

i. SA.No.243/2025 is dismissed.

ii. All pending IAs stand closed.

iii. The parties to bear their respective costs.

iv. Copy of this order be communicated to the parties concerned.

(Dictated to the Stenographer (PR), after her transcription and necessary corrections, signed and Order passed on this 27th day of August 2026)

Sd/-

(T. RAJESH)
PRESIDING OFFICER