IN THE DEBTS RECOVERY TRIBUNAL, DEHRADUN

(2nd Floor, Paras Tower, Saharanpur Road, Mazra, Dehradun, Uttarkahand-248171)
(Jurisdiction- Uttarakhand& Part of Western Uttar Pradesh)

S.A. No.134 of 2023
M/s Dhanveer Food Products & Ors. Vs. Punjab National Bank & Anr.

DATED THIS THE 17th DAY OF SEPTEMBER, 2026
HON'BLE PRESIDING OFFICER: SH. UMESH KUMAR SHARMA

Between:

M/s Dhanvir Food Products through its Partner, Mukhtiar Singh, Head Office at Village Daharia, Near Camaradey School, Haldwani, District Nainital, Uttarakhand (PAN NO.AAHFD8832C)

.....Applicant

Versus

1. The Authorized Officer, Punjab National Bank, Branch Office- Circle SASTRA Centre, Ucha Pull, Haldwani, Uttarakhand 263139.

2. M/s Ashirwad Agro Industries, Address 1193, Mauza Oden Malan, Sirsaganj Road, Mainpuri-205001 through its Proprietor Pradeep Bansal, S/o Rajendra Prasad Bansal.

.....Respondents

Sh. M. K. Sherwani, Ld. Counsel for Applicant
Sh. Varesh Mittal, Ld. Counsel for Respondent Bank
Ld. Counsel for Auction Purchaser

JUDGMENT

(Date of Decision: 17.09.2026)

1. The Applicant has filed this instant Securitization Application on 24.03.2023 to quash/set aside the sale notice dated 13.01.2023, to quash/set aside sale conducted on 07.02.2023 in pursuance to sale notice dated 12.01.2023 and consequential actions in pursuance of the sale notice dated 12.01.2023 and also to quash the sale certificate.

2. The Facts of the case are as under:

I. That no valid sale notice has been served upon the Applicant.

II. The Bank sent the publication of the impugned sale notice dated 12.01.2023 in the name of the Applicant no.1 on 19.01.2023 vide

India Post bearing tracking ID EV612170290IN, and the same was delivered upon the Applicant No.1 on 25.01.2023.

III. That the Bank has not served any valid sale notice upon the Applicants, the paper publication has only been sent by the Bank which was delivered upon the Applicant on 25.01.2023. The publication of the impugned sale notice cannot be treated as a valid sale notice since it is not as per Appendix IV-A of The Security Interest (Enforcement) Rules, 2002 as such the impugned sale notice is not tenable in the eyes of law.

IV. That no prior 15 days sale notice has been served upon the Applicants.

V. That the Applicant is a Partnership concern 'M/s Dhanvir Food Products'. The Applicant took financial assistance from the Respondent Bank for doing business. The respondent bank had wrongly classified the account of the Applicant as Non- Performing Asset, and that too without giving a notice in this behalf upon the Applicants despite the law that the Bank is bound to serve notices and reminders upon the borrowers, guarantors and mortgagors.

VI. The Respondent Bank issued the sale notice dated 12.01.2023, published on 13.01.2023 Financial Express Newspaper. The sale notice dated 12.01.2023 has not been served upon the Applicant. It is further submitted that only the paper publication dated 13.01.2023 of the sale notice dated 12.01.2023 has been sent to the Applicant, and that too the said paper publication was sent on 19.01.2023 which got delivered upon the Applicant on 25.01.2023. As the publication of the sale notice the sale was scheduled on 07.02.2023, which means that the sale has been conducted by the Bank on 13th day from the service of the paper publication of the sale notice dated 12.01.2023. The Respondent Bank failed to give 15 days clear notice to the Applicants before putting the properties of the Applicants on auction.

VII. That no valuation report is prepared by the Respondent Bank sold the property in continuation of valuation report which was prepared at the

time of sanction of the loan. The property of the Applicant has been sold at throw away prices by the Bank.

VIII. That the Respondent Bank has proceeded against the Applicant without complying the rules as provided under Rule 3(4), Rule 8(5), Rule 8(6) Rule 8(7), Rule 6(1), 6(2) and Rule 9 of the Security Interest (Enforcement) Rules, 2002.

IX. The applicants filed the earlier SA bearing no. 208 of 2022, i.e., Dhanveer Food Products Vs Punjab National Bank, and challenged the physical possession as well earlier sale notice alongwith the entire consequential action taken by the respondent bank. This Tribunal was dismiss the SA No. 208 of 2022 that the Applicants didn't deposited the money amounting to Rs.2.00Crores as directed by this Tribunal by means of order dated 07.10.2022. (Annexure No. SA-5). It is submitted that as the SA no 208 of 2022 was not heard on merits as such the Applicant is filing Application for Recall/Review of the order dated 12.12.2022 in SA No. 208 of 2022 before this Tribunal so as to request with this Tribunal to hear and decide the SA No. 208 of 2022 on merits. By means of the SA No. 208 of 2022 the Applicant assailed the ex-parte order dated 23.07.2022 passed by Learned District Magistrate. Nainital.

X. The Applicant is filing the present Securitisation Application against the impugned sale notice dated 12.01.2023 issued by the Respondent Bank against the Applicants and the entire recovery proceeding initiated by authorities of respondent under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 are void ab initio, in the eyes of law.

3. The Respondent Bank has filed reply by diary No.5254 dated 27.08.2024 and submitted as under:

a) That by the present SA, applicant challenged sale notice dated 10.01.2023, but applicant has filed the present SA on 13.03.2023. It means after 62 days from sale notice, but the prescribed period for filing

SA is 45 days from the action of bank. It is further stated that bank has sold the immovable property, Plant and machinery and the applicant has not challenged the sale. Due to that reason the present SA is time barred.

b) The action of the bank was within four corners of law. It is also wrong to say that no valid sale notice has been served upon the applicant. It is mentioned here that bank has issued sale notice dated 10.01.2023, sent to applicant through post, affixed on the spot and published in two newspapers. It is further stated that according to apex court, the applicant has lost its rights of redemption. Sale notice or publication of sale notice in newspaper both are same thing and its mean just informed the person concerned and general public. If bank has sent a newspaper in which the sale notice was published, to applicant, through post, than what is the harm in this way. Notice and publication in newspapers both are just for the information.

c) It is wrong to say that the bank had wrongly declared the account of applicant as NPA. It is mentioned here that no prior notice is required before NPA, because it is moral as well as legal duty of borrower to keep his account regular. Beside this it is mentioned here that after NPA when bank has started SARFAESI action, than bank has served each and every mandatory notice to all the concerned parties.

d) It is mentioned here the bank has issued sale notice dated 10.01.2023 which was published in two newspapers namely Hindustan (Hindi) & Financial Express (English). It is wrong to say that the sale notice dated 10.01.2023 has not being served upon the applicant. If for the sake of arguments, we can presumed that bank has sent the publication i.e. newspapers to the applicant through post, it means the bank has full filled its duty because publication of sale notice in newspapers is just copy of sale notice. The bank has published the sale notice in the newspapers, due to that reason the applicant has no right to say that the bank has not served the sale notice to the applicant.

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e) The demand notice has been issued by the bank on 17.05.2018 and possession notice dated 24.08.2018 & 28.08.2018. After that the bank has issued sale notice dated 12.07.2021 and 09.09.2020, but no bid has been received in those auction sale. bank again issued sale notice dated 10.01.2023 and the bank has sent the sale notice dated 10.01.2023 to applicants through post affixed on the spot an also published in two newspaper Hindustan and Financial express. (Annexure R-7). Property has been sold at the amount on Rs.554.68Lacs and Rs.145.22 Lacs total Rs.699.90Lacs. The sale certificate has been issued in favour of Auction Purchaser. (R-7).

f) The Respondent Bank has again filed an application dated 13.05.2026 and submitted that the Bank has classified the account as NPA on 05.05.2018 and sale notice dated 10.01.2023. (Anneuxre-6)

g) The physical possession of the property and plant and machinery has taken on 30.05.2022 and prepared inventory and panchnama.

4. The Auction Purchaser has filed reply by diary No.1805 dated 18.03.2026 and stated as under:

1) That the present SA in not maintainable as the applicant has filed by delay and further the applicant has failed to point out any illegality in the action of the respondent bank. The property has already been sold to the Respondent No.2/ Auction Purchaser.

2) The Applicant has failed to comply order passed by the Tribunal and further O.A. and RC has already passed against the applicant. The applicant conduct has shown the applicant does not want to pay the debt of the Secured Creditor and the property ought to continue to remain with the Auction Purchaser.

3) That the sale notice dated 12.01.2023 has been issued strictly in pursuance of the Recovery Certificate bearing No.204/2019. The said sale notice is therefore a consequence of execution of proceedings

realization of Recovery Certificate and sale notice has not been issued pursuant to any proceedings under SARFAESI Act. Therefore the provisions of procedure contemplated under the said Act are wholly inapplicable in the facts and circumstance of the present matter.

4) That the property was sold at a throwaway price is wholly incorrect and stated that the valuation report was duly prepared prior to the auction on the basis of which the reserve price was fixed at Rs.692.90Lacs. The Respondent No.2 has participated in the auction and successfully a sum of Rs.6,99,90,000/- which is above reserve price and it is a settled law that once a person emerges as successful bidder in sale stands confirmed through issuance of sale certificate, the auction cannot be set aside unless it is demonstrated that the auction process was vitiated fraud or any material illegality. The SA is grossly barred by limitation deserve no consideration.

5) The Respondent No.2 further submitted document vide diary No.2988 dated 11.05.2026. It is submitted that the Respondent No. 2 has incurred huge expenditure for making the unit operational.

6) That the Respondent No.2 has incurred substantial and bona fide expenditure towards the revival, modernization, and sustained operation of the flour mill project. A significant portion of this expenditure pertains to the acquisition of the flour mill for a consideration of approximately INR 6.99 Crores, followed by payment of requisite stamp duty of INR 35 lakhs for completion of the title documentation. DOCUMENT NO.- 1

7) In addition to the aforesaid, the Respondent No. 2 has incurred substantial and significant expenditure towards the restoration, upgradation, and strengthening of the power infrastructure, which was indispensable for rendering the unit operational. In this regard, the Respondent No. 2 has cleared the outstanding electricity dues of the borrower. M/s Dhanvir Foods Products, by making a payment of

approximately INR 13.47 lakhs to UPCL, and is further required to deposit an additional sum of approximately INR 22.60 lakhs with UPCL. It is further submitted that, over and above the aforesaid payments, the Respondent No. 2 has also incurred considerable additional costs towards securing a fresh electricity connection, amounting to approximately INR 2 lakhs, as well as for the installation of essential infrastructure, including a transformer and a weighbridge, at a cost of approximately INR2.36 lakhs and INR 7.08 lakhs respectively. The aforesaid expenditures collectively demonstrate the substantial financial outlay undertaken by the Respondent No. 2, which was imperative for reviving and operationalizing the unit Copy of i) bill of previous outstanding dues of INR 13,47,637.70/- lakhs, ii) expense of new connection of INR 2,00,000/-, iii) deposit of INR 22,60,825/- with UPCL and iv) invoice of transformer installation of INR 2,36,000/- and v) invoice of weighbridge of INR 7,08,000/-. DOCUMENT NO.- 2.

8) That the Respondent No. 2 has also undertaken substantial measures towards the adoption of renewable energy by investing in a solar power setup for the project. An amount of approximately INR 1,20,62,800/- has been incurred towards the purchase, erection, and commissioning of th Solar Power Plant. (DOCUMENT NO.-3)

9) That the Respondent No. 2 has further incurred substantial expenditure towards procurement and installation of critical electrical equipment necessary for revival and efficient functioning of the plant. These include acquisition and installation of motor control panels (both big and small), a vacuum circuit breaker (VCB) panel of 11 KV capacity, power factor panel, copper and GI earthing systems, along with allied gear and service charges, etc. for a total consideration of approximately INR 13.39 lakhs. (DOCUMENT NO. 4)

10) That the Respondent No. 2 has incurred huge capital expenditures for the procurement of industrial machinery and essential infrastructure. The Respondent No.2 has made a payment of INR 16,81,500/- for the

supply of a custom-fabricated drive panel and high-capacity 3-phase AC drives, known as ACVFD Panels. Internationally, the applicant completed the import of specialized automated packaging machinery/setup from China, with an assessable value of INR13,88,078.66/- and a resulting customs duty payment of INR 384,984/-. Furthermore, an automatic dampening and water dosing system was imported from Germany at an assessable value of INR 984,680/- involving a further statutory duty of INR 273,101/. DOCUMENT NO. 5.

11) That the Respondent No. 2 has spent for over INR 46,80,264.76/- on plant and machinery from a period from 20.04.2023 to 01.09.2025 for setting up of parts of plants and machinery ranging from acquisition and installation of air compressor, air dryer, intensive scourer BKB IS, Aspirator Battakh AS-1, Atta Chakki Machine, 10/5/2 HP Motors, Filter Bags, Solenoid Valves, Machinery scrap, Flour Mill Rolls, Cast Iron Weights, Magnetic Destoner, Larva Destroyer, GYRO Screen, Vibro Shifter, etc.(DOCUMENT NO.- 6)

12) Therefore, any adverse order at this stage would cause grave prejudice to the substantial efforts, time, and financial resources expended by Respondent No.2.

5. Heard Ld. Counsel for Applicant, Respondent Bank and Auction Purchaser.

6. Firstly, respondent bank and auction purchaser have raised a point of limitation and auction purchaser has submitted a judgment passed by Hon'ble High Court of Orissa at Cuttack W.P.(C) No. 8100 of 2018 B.M. The Urban Co-operative Bank Ltd. Cuttack Vs Registrar, Debts Recovery Tribunal & Another decided on 12.05.2021, Another judgment The Authorised Officer, Indian Bank Vs K. J. George & Ors 2020 Supreme (Ker) 927 in support of his version.

7. In Urban Co-operative Bank Ltd. (supra), after publication of the sale notice the property was put to public auction on 28th December 2018. The

bank fetched the highest bid and successful bidder deposited 25% of bid price on 28th December 2018.

The borrower filed fifth writ petition, the Hon'ble court after providing opportunity to borrower for deposition of amount partly Rs.24,00,000/- (Rupees Twenty-Four Lacs only) by order dated 06.12.2018 upto 28.12.2018 disposed of the said writ petition, due to failure in total compliance Hon'ble court again provided time upto 30th Jan 2019 but borrowers failed. The borrower filed an application for revival of writ petition i.e. W.P.(C) 1601 of 2013, which was dismissed. Again filed sixth writ petition, which was dismissed as withdrawn on 13th May 2019. Separately, the surety for the loan filed Writ Petition (C) No. 1069 of 2019, dismissed on 24th Jan. 2019. Despite the above numerous failed attempts at stalling the recovery proceedings by the same surety, decided to approach DRT U/s. 17(1) of SARFAESI Act along with condonation of delay on account of her illness, which was allowed by DRT by order dated 09.04.2019. Hence writ petition was filed by the secured creditor against the order of DRT again, Hon'ble High Court allowed the said writ petition.

8. In case of Authorised Officer, Indian Bank (supra), the borrowers have challenged auction notice in relation to auction sale dated 20.11.2010, sale did not take place. The secured creditor again issued fresh sale notice dated 11.02.2011 and sale of secured asset took place on 14.03.2011. After that writ petition was dismissed on 20.12.2011 without prejudice to the rights of the petitioners.

The borrowers had approached DRT. In previous writ petition, the issuance of sale notice dated 11.02.2011 was not in question before Hon'ble High Court as the sale notice dated 11.02.2011 was received to borrowers on 19.02.2011 during pendency of writ petition dismissed on 20.12.2011 and auction took place on 14.03.2011. The Tribunal has passed order that the SA is maintainable and cannot be said barred by limitation, even though auction dated 14.03.2011 was challenged on 03.02.2012.

The Hon'ble Court has laid down that W.P.(C) No. 38409 of 2010 (previous writ petition) and the Securitization Application No. 165 of 2012 were totally different, as both these proceedings were based on different cause of action. The Hon'ble Court has mentioned in the order that the Securitization Application came to be filed by borrowers much beyond the prescribed period of 45 days and precisely on 03.02.2012. The Hon'ble Court has also laid down that nothing prohibited the petitioners in that writ petition (respondent No. 1 & 2 herein) to bring to the notice of this Court subsequent development in the matter. Learned Debts Recovery Tribunal committed an error by putting blame regarding non-disclosure of this fact on the petitioners herein.

9. In the case in hand, the auction sale notice dated 12.01.2023 was published in newspaper on 13.01.2023 and sent to applicants on 19.01.2023 bearing tracking ID EV 612170290IN, which was delivered on 25.01.2023 as per version of applicant. The applicant has also alleged that paper publication has only been sent.

The respondent bank has stated that the applicant has challenged sale notice dated 10.01.2023 and also stated that it is wrong to say that no valid sale notice has been served upon the applicant. The respondent bank has also stated that if the bank has sent a newspaper in which the sale notice was published, to applicant through post, then what is the harm in this way. Notice and publication in newspapers both are just for information.

10. The auction sale notice in question was issued for auction sale dated 07.02.2023. As per applicant, the auction sale notice was issued on 12.01.2023 and the respondent bank has stated that the auction sale notice was issued on 10.01.2023 also submitted on record as Annexure R-6. The date of notice at the end of publication is mentioned 12.01.2023 submitted by respondent bank as Annexure R-6 photocopy of publication also with application dated 13.05.2026 submitted by diary No.3092.

11. The applicant has submitted photocopy of envelope with EMS speed post ID EV612170290IN in the name of applicant with bank stamp as Annexure-2 and tracking report, in which date of dispatch is mentioned 22.01.2023 and date of delivery is mentioned 25.01.2023 with photocopy of newspaper dated 13.01.2023 Financial Express as Annexure-1. On the other hand, the respondent bank has submitted postal receipt dated 14.01.2023 ID RLARV834188731IN in the name of applicant, which is submitted by pasted on G.D. courier receipt in the name of applicant. The respondent bank has also submitted some other receipts of courier in the same manner dated 11.01.2023 in the name of partners/ mortgagors mentioned in the sale notice, ID of postal receipts is started from the word "EV" dated 14.01.2023. No any proof of service of sale notice on borrowers/mortgagors has been submitted by respondent bank on record. Again submitted additional version and stated that a boy of hired courier service received notices from the bank and issued courier receipts and after post submitted postal receipt with courier receipt but submitted postal receipts pasted on courier receipts. Firstly bank has submitted objection on 27.08.2024 by diary no.5254 and additional version is submitted on 13.05.2026 by diary no.3092. But respondent bank has not succeed to rebut the version of applicant about date of service of auction sale notice on borrowers/mortgagors including applicant and as per applicant auction notice was served on applicant on 25.01.2023.

12. The auction sale notice was issued by respondent bank on 10.01.2023, even though date is mentioned below publication in Newspapers 12.01.2023 for auction sale dated 07.02.2023 and this petition has been filed by applicant on 24.03.2023 i.e. within 45 days from the date of auction sale in question, with the prayer for setting aside auction sale dated 07.02.2023 with auction sale notice dated 12.01.2023. It is also pertinent to mention here that the respondent bank in application dated 13.05.2026 submitted by diary No.3092 specifically stated that the applicant has sought relief for quashing/ setting aside the impugned sale

conducted on 07.02.2023 in pursuance of the impunged sale notice dated 12.01.2023.

13. In the light of above discussions, the principles submitted by auction purchaser are not helpful to the respondents in relation to point of limitation as the Securitization Application has been filed by the applicant within 45 days from the date of auction. Hence the securitization application is maintainable and not come in the perview of beyond limitation.

14. A point of issuance of recovery certificate has also been raised by the respondent bank and auction purchaser but the property in question has not been sold in Recovery certificate proceedings. Hence this point has no relevance.

15. The respondent bank and auction purchaser have raised a point of non-compliance of order passed by this Tribunal in S.A. No. 208/2022 dated 07.10.2022 on the part of applicant in relation to deposition of Rs.2.00 (two) crores. If the applicants of S.A. No. 208/2022 were failed in compliance of the said order. The applicant has also clearly mentioned in the Securitization Application that earlier S.A. No. 208 of 2022 Dhanveer Food Products Vs Punjab National Bank has been filed by challenging physical possession as well as earlier auction sale notice, which was dismissed due to non-compliance of order dated 07.10.2022 about deposition of amount of Rs.2.00 crores (Rupees Two Crores only).

In the said situation, other party like a financial institution may not be entitled to take action in contravention of law, compliance of which is mandatory. In this case the respondent bank had already taken physical possession of mortgaged / hypothecated assets on 30.05.2022, as per Annexure-R-12 of application dated 13.05.2026 diary No. 3092 submitted by respondent bank.

The Hon'ble Supreme Court in Civil Appeal No.1606 of 2026 M.R. Vasumathi Vs The Authorised Officer & Ors has laid down that as a logical

sequitur, the contention that the guarantor did not evince adequate interest in repayment does not advance the case of the secured creditor, for a process vitiated by statutory non-compliance cannot otherwise be sanctified on such considerations.

16. The applicant has approached this Tribunal and alleged that the respondent bank has conducted auction sale in question on 13th day from the date of service of sale notice on applicant as photocopy of publication not copy of original sale notice and without complying Rules 3(4), 8(5), 8(6), 8(7), 6(1), 6(2) and Rule 9 of the Security Interest (Enforcement) Rules 2002..

17. The respondent bank in reply stated that bank has issued sale notice dated 10.01.2023, sent to applicant through post, affixed on the spot and published in two newspapers. Sale notice or publication of sale notice in newspaper both are same things and just informed the person concerned and general public. If bank has sent a newspaper in which the sale notice was published, what is the harm to applicant. And also stated that the applicant has lost its right of redemption.

The respondent bank has also stated that previously, auction sale notice has issued on 12.07.2021 and 09.09.2020 but no bid has been received and the auction sale notice in question has been issued on 10.01.2023. The property has been sold at the amount of Rs.554.68 lacs and Rs.145.22 lacs total Rs.699.90 lacs. The sale certificate has already been issued, the respondent bank has taken physical possession of property in question on 30.05.2022.

18. The auction purchaser has filed objections also and stated that the Respondent No.1 Bank sold the mortgaged property i.e. entire part and parcel of the land & building along with plant and machineries of M/s Dhanveer Food Products to Respondent No.2 auction purchaser through its proprietorship concern M/s Ashirwad Agro Industries vide Sale Certificate(s) dated 23.03.2023.

Again stated that the Respondent No.2 is absolute owner and possessor of the said property and has also invested substantial amount of financial resources so as to replace the plant & machinery and other miscellaneous equipment, which were not working as on 23.03.2023.

19. The auction purchaser has relied on principle laid down by Hon'ble Supreme Court in CELIR LLP v Bafna Motors (Mumbai) Pvt. Ltd. in relation to right of redemption.

The auction purchaser has also relied on the Hon'ble Apex Court judgment in K. Kumara Gupta v Sri Markandaya, dated 18th Feb. 2022 in relation to ground for setting aside auction sale and judgment passed by Hon'ble Supreme Court in M. Rajendran & ors v M/s KPK Oils and Proteins India Pvt. Ltd. & Ors 2025 IN SC 1137.

20. The auction purchaser has also mentioned in objections in para 18 as under;

> "It is settled principle of law as laid down by Hon'ble Apex Court in a catena of judgments that once the person emerges as highest bidder in auction and even the sale deed / sale certificate is executed, unless and until it was found that there was any illegality in holding the public auction and / or auction/sale was vitiated by any fraud or collusion, it is not open to set aside the auction or sale in favour of a highest bidder on the basis of some representations made by third parties, who did not even participate in the auction proceedings and did not make any offer".

21. In civil Appeal no. 791-792 of 2022 K. Kumara Gupta v Sri Markendaya & Sri Omkareswara Swamy Temple & Ors decided on Feb. 18, 2022 the property in question was sold in 1998 and in the said auction sale 45 people participated. The person challenged the auction sale did not even participate in public auction.

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A Division Bench of Hon'ble High Court had set aside the auction sale after a period of approximately twenty years from the date of conducting the public auction and the sale that too at the instance of a person, who never participated in the auction. Subsequently to the completion of public auction and the sale deed has been executed in favour of the highest bidder stated that he is ready and willing to pay a higher amount than the highest bid amount.

The Hon'ble Supreme Court has laid down that Once the appellant was found to be the highest bidder in a public auction in which 45 persons had participated and thereafter when the sale was confirmed in his favour and even the sale deed was executed, unless and until it was found that there was any material irregularity and/or illegality in holding the public auction and/or auction/sale was vitiated by any fraud or collusion, it is not open to set aside the auction or sale in favour of a highest bidder on the basis of some representations made by third parties, who did not even participate in the auction proceedings, otherwise, the object and purpose of holding the public auction and the sanctity of public auction will be frustrated.

Again held that Unless there is concrete material and it is established that there was any fraud and/or collusion or the land in question was sold at a throw away price, the sale pursuant to the public auction cannot be set aside at the instance of strangers to the auction proceeding. The sale pursuant to the public auction can be set aside in an eventuality where it is found on the basis of material on record that the property had been sold away at a throw away price and/or on a wholly inadequate consideration because of the fraud and/or collusion and/or after any material irregularity and/or illegality is found in conducting/holding the public auction.

22. As the auction purchaser has relied on the principle laid down by Hon'ble Supreme Court in K. Kumara Gupta's case (supra), the auction sale can be set aside in case of material irregularity or illegality and there is no controversy in relation to the above principle.

In K. Kumara Gupta's case (supra), the petitioner was stranger, not participated in auction, only offered higher amount after completion of auction sale and Hon'ble High Court has ordered for re-auction on the basis of said offer. But in the case in hand, the applicant is not stranger. The applicant is the borrower and entitled to challenge the auction sale under sub-section (1) of Section 17 SARFAESI Act on the basis of any illegality or irregularity including fraud or collusion as held in the above noted case and other principles laid down by Hon'ble Supreme Court in protection of borrowers/mortgagor including provisions of SARFAESI Act and Rules, 2002.

23. As per sub-section (2) of Section 17 of SARFAESI Act, the Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of S.13 taken by the secured creditor for enforcement of security are in accordance with the provisions of the SARFAESI Act and Rules made there under

> *As per sub-section (3) of Section 17 of SARFAESI Act, 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 SARFAESI Act and the rules made thereunder, and requires restoration of the management or restoration of possession, of the secured assets to the borrower, by order, 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.*

It is clear from the above, that the Tribunal is duty bound to consider the Securitization Application of the applicant/borrower in the light of provisions of SARFAESI Act & Rules with principles laid down by Hon'ble Debt Recovery Appellate Tribunal, Hon'ble High Courts and Hon'ble Supreme Court.

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24. The applicant has raised the point of non-compliance of Rule 6(1) and 6(2), Rule 8(5), 8(6) and Rule 9 of SARFAESI Rules, 2002.

Rule 6 says in relation to sale of movable secured assets as under:

> *Sub-rule(1) The authorized officer may sell the movable secured assets taken possession under sub-rule (1) of rule 4 in one or more lots by adopting any of the following methods to secure maximum sale price for the assets, to be so sold-(a)obtaining quotations from parties dealing in the secured assets or otherwise interested in buying such assets; or(b)inviting tenders from the public; or(c)[holding public auction including through e-auction mode; or] [Substituted by Notification No. G.S.R. 1046 (E), dated 3.11.2016 (w.e.f. 20.9.2002).](d)by private treaty.*
>
> *Sub-rule (2) The authorized officer shall serve to the borrower a notice of thirty days for sale of the movable secured assets, under sub-rule (1): [Provided that if the sale of such secured assets is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in the Form given in Appendix II-A to be published in two leading news papers, including one in vernacular language having wide circulation in the locality.]*

Rule 8 and 9 of SARFAESI Rules, 2002 says in relation to sale of immovable secured assets as under:-

Rule 8(5) says: *Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property;*

Rule 8(6) says: the authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5):

> *[Provided that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in the Form given in Appendix IV-A to*

be published in two leading newspapers including one in vernacular language having wide circulation in the locality.]

Rule 9(1) says: *(1) No sale of immovable property under these rules, in first instance shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) of rule 8 or notice of sale has been served to the borrower:*

Provided further that if sale of immovable property by any one of the methods specified by sub rule (5) of rule 8 fails and sale is required to be conducted again, the authorized officer shall serve, affix and publish notice of sale of not less than fifteen days to the borrower, for any subsequent sale.

25. It is clear from the above rules 6 and 8 that the movable and immovable properties shall be sold by separate auction sale notices. In relation to movable secured assets, as per proviso of sub-rule (2) of Rule 6, SARFAESI Rules, 2002, the secured creditor shall cause a public notice in the form given in Appendix II-A and in relation to immovable secured assets, as per proviso of sub-rule (6) of Rule 8, SARFAESI Rules, 2002, the secured creditor shall cause a public notice in the form given in Appendix IV-A.

If the intention of the legislature was that, the auction sale of movable and immovable secured assets shall be conducted by one auction sale notice, in that case, there was no need to enact separate rules, Rule 6 and 8 and format Appendix-II-A & IV-A respectively for issuance and publication of auction sale notice in relation to movable and immovable secured assets. The intention of legislature is clear that the auction sale notice in relation to movable and immovable secured assets shall be issued separately, not to be sold by one notice.

26. In the case in hand, the respondent bank has issued single notice for sale of plant and machinery and immovable secured assets by mentioning the value of plant & machinery Rs.145.22 lakhs and value of IP is Rs.547.68

lakhs. The term 'IP' has shown the word 'immovable property', otherwise there was no need to mention term 'IP' with word 'commercial' as mentioned in auction sale notice, 'commercial IP' in relation to landed property. It is also pertinent to mention here that nothing has been mentioned about construction in auction sale notice specifically mentioned word 'khet' denotes 'agriculture land' even though property in question is commercial. The auction sale notice has issued under Rule 8(6) of SARFAESI Rules not under Rule 6 of SARFAESI Rules, 2002. The respondent bank has acted against the intention of legislature in relation to auction sale in question and the auction sale in question is not sustainable on this ground only.

27. The applicant has raised the point of valuation specifically and stated that no valuation report is prepared by the respondent bank and the property has been sold at throw away price in absence of compliance of Rule 8(5) of SARFAESI Rules.

The respondent bank has stated in reply/objections that it is wrong to say that before auction, the bank has not obtained the valuation report and sold the property at throw away price, also stated that bank has obtained fresh valuation report before auction. But nothing has been submitted on record in support of version stated in objection and in rebuttal of the version of applicant. Even though the respondent bank was duty bound to submit the said fresh valuation report in compliance of Rules 6(1) and 8(5) of SARFAESI Rules, 2002 as the respondent bank was duty bound as per Rule 6(1) of Rules 2002, to secure maximum sale price and as per Rule 8(5), the authorised officer was duty bound to obtain valuation of property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property. But nothing has been submitted on record in compliance of Rules 6(1) and 8(5) of SARFAESI Rules, 2002.

28. It is also pertinent to mention here that nothing has been shown about construction on the 'commercial IP' even though the property in question

was of mill as per version of auction purchaser and the respondent bank had taken physical possession on 30.05.2022 as per Annexure R-12 of application dated 13.05.2026 submitted after more than one & half year from the date of filing objections dated 27.08.2024, a long list of items has been submitted. The physical possession had been taken by Ld. Authorized Officer with the help of recovery agents in absence of applicant representative as nothing mentioned about the same in the inventory. No any order u/s 14 of SARFAESI Act has been submitted on record by respondent bank.

The auction purchaser has also stated in reply/ objections that the valuation report was duly prepared and only after that the minimum reserve price was fixed as INR 692.90 Lakhs and the auction purchaser had bid a sum of INR 6,99,90,000/-.

29. The Hon'ble Debts Recovery Appellate Tribunal, Allahabad has held in Regular Appeal no. 15/2022 UCO Bank Vs M/s Asha Oil Industries & Anr. decided on 14.05.2025 that the plant & machinery along with other items were sold after 1.4 years from the date of valuation whereas the valuation of property is valid only for six months, which violates Rule 8(5) of the Rules, 2002. In the said case property was auction in the year 2020.

30. The Hon'ble Supreme Court in Mathew Varghese Vs. M. Armitha Kumar & Ors Civil Appeal No.(s) 1927 -1929 of 2014 decided on 10.02.2014 has laid down as under:

Para-26: "When it comes to the question of realizing the dues by bringing the property entrusted with the secured Creditor for sale to realize money advanced without approaching any court or Tribunal, the Secured Creditor as a Trustee cannot deal with the said property in any manner it likes and can be disposed of only in the manner prescribed in the SARFASI Act. Therefore, the creditor should ensure that the borrower was clearly put on notice of the date and time by which either the sale or transfer will be effected in order to provide the required opportunity to the borrower to take all possible steps for retrieving his property or at least ensure that in

the process of sale the secured asset derives the maximum benefit and the secured creditor or anyone on its behalf is not allowed to exploit the situation of the borrower by virtue of the proceedings initiated under the SARFEASI Act. More so, secured creditor is given a free hand to resort to sale of the property without approaching the court or Tribunal".

Again in Para-39 has considered principle laid down in Ram Kishun & Ors. Vs. State of Uttar Pradesh & Ors.(2012)II SCC 51

Para 13 of the said judgement is as under:

13. Undoubtedly, public money should be recovered and recovery should be made expeditiously. But it does not mean that the financial institutions which are concerned only with the recovery of their loans, may be permitted to behave like property dealers and be permitted further to dispose of the secured assets in any unreasonable or arbitrary manner in flagrant violation of the statutory provisions.

31. As the respondent bank has failed to prove that the respondent bank has complied Rules 6(1) and 8(5) of SARFAESI Rules, 2002 in relation to valuation and fixation of reserve price as nothing has been submitted on record on the part of respondent bank and auction purchaser has stated that the minimum reserve price was fixed. Eventhough applicant has stated specifically that no valuation report is prepared by the respondent bank and the property has been sold at throw away price by the bank. In the light of above discussions, principles laid down by Hon'ble Debts Recovery Appellate Tribunal, Allahabad and Hon'ble Supreme Court, the auction sale in question is not sustainable on the basis of circumstances of this case and material available on record on this point alone.

32. The respondent bank has issued auction sale notice on 10.01.2023 for 07.02.2023 as per respondent bank and published on 13.01.2023 by mentioning at the end of publication date of sale notice 12.01.2023. The photocopy of the publication was served on the applicant on 25.01.2023 as per version of applicant and nothing submitted by respondent bank to

rebut the said version of the applicant. The auction sale in question has taken place within 13 days from the date of service of sale notice on applicant as alleged by applicant.

The respondent bank has stated that the auction sale notice was issued on 10.01.2023 and received by a boy of courier service hired by the bank on 11.01.2023 by providing receipts of courier and after that, the courier boy has submitted the postal receipts with courier receipts submitted as Annexure-6 of application dated 13.05.2024. Even though previously in objection dated 27.08.2024 the respondent bank has stated that the bank has issued sale notice dated 12.07.2021 and 09.09.2020 but bank has not received any bid. Again stated that bank has again issued sale notice dated 10.01.2023, sent on 14.01.2023 to applicants through post, affixed on spot and also published in two newspapers.

There are two version of respondent bank in relation to service of auction sale notice.

It is also surprising in this case, the respondent bank has submitted auction sale notice dated 10.01.2023 with objections dated 27.08.2024 diary No.5254 of two pages and at last mentioned as under:

"You are hereby called upon to pay the outstanding dues amounting to Rs.15,78,58,447.91ps (Rupees Fifteen Crores Seventy-Eight Lacs Fifty-Eight Thousand Four Hundred Forty-Seven and Paisa Ninety-One only) as mentioned in the above notices with upto date interest and costs incurred by the undersigned while taking possession of the said assets and thereafter for preservation of the same within 10 days from the date of current sale notice and get release of the aforesaid assets from the undersigned. In case you fail to pay the aforesaid within the said period, the undersigned may be constrained to sell aforesaid assets for amazing the dues and take other measure as deemed fit as per the provisions of the aforesaid Act and Rules.

Again submitted auction sale notice dated 10.01.2023 as Annexure R-6 of three pages with application dated 13.05.2026 submitted by diary no. 3092. Nothing mentioned like above, only terms and conditions of E-auction sale are mentioned with details of property. The above situation has shown that it is not clear what notice has been issued by the respondent bank as two different auction sale notices submitted on record. One submitted with objection dated 27.08.2024 and other submitted with application dated 15.05.2026 by respondent bank i.e. the respondent bank/auctioneer itself is not clear, 'what notice was issued'.

33. It is admitted to the respondent bank that previously, the respondent bank has issued auction sale notice on 12.07.2021 and auction sale notice in question has been issued on 10.01.2023 for auction sale dated 07.02.2023 as stated by respondent bank i.e. after more than one & half year. As per respondent bank, the auction sale notice in relation to auction sale in question was issued a 15 days notice but the auction has been conducted on 13th day from the date of service on applicant.

The Hon'ble Supreme Court has held in Civil Appeal No.(S) 1927–1929 of 2014 Mathew Varghese Vs M. Amritha Kumar & ors decided on 10.02.2014 as under:

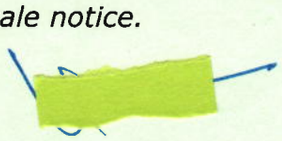
> *Rules 15 of Income Tax Rules 1962, does not in any way conflict with either Rules 8 or 9 of The security Interest(Enforcements) Rules, 2002 or Section 13 of the SARFAESI Act, in particular Sub Section (1) or Sub Section (8) of the SARFAESI Act. Therefore, to that extent there is no difficulty in applying Rule 15. As far as Sub Rule (2) is concerned, the same is clear to the effect that a sale of immovable property once adjourned under Sub Rule (1) for a longer period than one calender month, a fresh proclamation of sale should be made unless the defaulter consents to waive it. The said sub rule also does not conflict with any of the provisions of the SARFAESI Act, in particular Section 13 or Rules 8 & 9. In fact there is no provision relating to grant of adjournment or issuance of fresh proclamation for effecting the sale after the earlier date of sale was not adhered to in the SARFAESI Act. In such circumstances*

going by the prescription contained in Section 37 of the SARFAESI Act, as we have reached a conclusion that he provisions contained in Section 29 of the RDDB Act will be in addition to and not in derogation of the provisions of the SARFAESI Act, the provisions contained in Rule 15, which is applicable by virtue of the stipulation contained in Section 29 of the RDDB Act, whatever stated in sub Rule (2) of the Rule 15 of Income Tax Rules, 1962 should be followed in a situation where a notice of sale notified as per Rules 8 and 9 (1) of the Securitization Trust Rules, read alongwith Section 13(8) gets postponed.

As per principle laid down by Hon'ble Supreme Court, a sale of immovable property once adjourned under sub-rule (1) of Rule 9, SARFAESI Rules, for a longer period than one calendar month, a fresh proclamation of sale should be made unless the defaulters consents to waive it. In the case in hand the auction sale notice in question was issued after one and half year. The auction sale in question is not sustainable in the light of above principle laid down by Hon'ble Supreme Court.

The Hon'ble Debts Recovery Appellate Tribunal, Allahabad in Regular Appeal no. 188 of 2018 Syndicate Bank & ors Vs R.N. Kamboj & ors decided on 07.03.2024 has laid down as under:

Service of 15 days' auction sale notice is a statutory requirement and service of the same is a substantial right of the borrowers. Any deviation from this provision is a substantial procedural irregularity, which cannot be said to be of minor nature. Such statutory requirement is required to be strictly followed by the Bank and cannot be ignored on the ground that no prejudice was caused to the borrowers. The Bank cannot take the advantage of the situation that the borrowers have never intended to redeem the property nor have deposited any amount. Thus, the Bank has failed to serve 15 days' sale notice before auction of the property and the Tribunal below has rightly set aside the sale and consequential proceedings initiated pursuant to the said auction sale notice.



The Hon'ble Supreme Court in Siddeshwara Co-operative Bank Ltd. Vs Ikbal (2013) 10 SCC 83 has held that there is no doubt that Rule 9(1) is mandatory but this provision is definitely for the benefit of the borrower.

The above principle has been considered by Hon'ble Supreme Court in M.R. Vasumathi Vs The Authorised Officer & Ors Civil Appeal no. 1606 of 2026 decided on June 9, 2026

The Hon'ble Supreme Court in Civil Appeal No. 3865 of 2014 Rajiv Subramaniyan & Anr Vs. M/s Pandiyas & Ors. [(2014) 5 SCC 651] has held that any sale effected without complying Rules 8 and 9(1) of the Rules, 2002 would be unconstitutional and, therefore, null and void.

34. The Hon'ble Supreme Court in M.R. Vasumathi (Supra) has also held that the mere factum that the sale stood confirmed, cannot, therefore, foreclose judicial scrutiny. The Hon'ble court has also held that the object of proceedings under the SARFAESI Act is not the mere culmination of a sale in a mechanical manner, but the lawful realization of the secured asset through a process that is fair, transparent and strictly complied with the prescribed Rules.

35. The respondent bank has not complied Rule 9(1) of SARFAESI Rules, 2002 in relation to issuance of auction sale notice in question and in the light of conduct adopted by respondent bank in relation to auction sale in question and principles laid down by Hon'ble Debts Recovery Appellate Tribunal and Hon'ble Supreme Court the auction sale in question is liable to be set aside only on the basis of illegality committed by respondent bank in relation to issuance of auction sale notice in question.

36. The respondent bank has stated in application dated 13.05.2026 that the bank had sent e-mail dated 08.02.2023 to auction purchaser for deposition of 25% amount, after deposition of 25% the auction purchaser written a letter dated 18.02.2023 for extension of time to deposit 75% amount. Bank has granted time till 23.03.2025. Auction purchaser has deposited remaining 75% amount till 23.03.2023 and after received the

entire amount the bank has issued sale certificate dated 23.03.2023. The bank has submitted letter dated 18.02.2023 of auction purchaser as Annexure R/15.

37. In relation to extension of time for repayment of auction money sub-rule(4) of Rule 9 SARFAESI Rules, 2002 says as under:-

> Sub-rule (4) of Rule 9: The balance amount of purchase price payable shall be paid by the purchaser to the authorized officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period [as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months.

It is clear from the above rule that the purchaser and the secured creditor may be agreed upon in writing but nothing has submitted on record about the same on the part of respondent bank, whether agreed for extension or not, only purchaser request letter is submitted. As per Rule 9(4) of SARFAESI Rules, 2002, the extension could not have been unilateral.

The Hon'ble Supreme Court has laid down in M.R. Vasumathi's case (Supra) that-- *even upon a cursory perusal of Rule 9 of the SARFAESI Rules that existed at the time of the impugned sale, it is clear that these provisions are neither ornamental nor directory; they are couched in mandatory terms and go to the root of the validity of the sale. A conjoint reading of the relevant sub-rules of Rule 9 underscore the mandatory character of these provisions, particularly accentuating the requirement of balance deposit under sub-rule (4), which is integral to the sanctity and credibility of the auction mechanism. Any deviation there from, absent legally sustainable justification, would render the process vitiated.*

38. In the case in hand, the balance 75% of bid amount was admittedly not paid within 15 days and there was no agreement about extension of period and no information has been sent by the respondent bank to

purchaser about extension of time in response of purchaser's letter dated 18.02.2023 as per record available on file. It has shown that the payment of the remaining 75% is, therefore, exfacie beyond the statutory period. The outer time limit of fifteen days expired on 23.02.2023 as per confirmation letter dated 08.02.2023 sent by respondent bank to auction purchaser.

The purchaser has not mentioned any time for extension in relation to repayment of 75% amount of bid in letter dated 18.02.2023, only stated "allow us later date for payment of balance amount". Nothing has been done on the part of respondent bank in relation to extension of time, hence not clear 'what time was provided' as per record available on file.

It is also pertinent to mention here that the respondent bank has not mentioned any version about the extension of time in objections dated 27.8.2024, firstly submitted the letter of purchaser on 13.05.2026 i.e. after more than one and half years from the date of objections submitted on record.

The auction purchaser through Mr. Pradeep Bansal has submitted a lengthy reply of 19 pages, who had sent letter dated 18.02.2023 as per respondent bank but nothing has been stated about letter dated 18.02.2023 or extension of time for repayment of auction money eventhough stated about preparation of valuation report and fixation of minimum reserve price in reply submitted on 18.03.2026 by diary No.1805.

This above situation tells something different in relation to extension of time and letter dated 18.02.2023 of purchaser.

39. The Hon'ble Supreme Court has held in IDBI Bank Ltd. Vs Ram Swaroop Daliya 2024 SCC Online SC 2878 as under:-

13. Notwithstanding the above, the provisions of sub-Rules (4) and (5) of Rule 9 of the Rules, if read together in conjunction, would reveal that it is

only for the default in payment of the balance auction amount within the period mentioned that the property could be resold and that the period of 15 days stipulated therein for the deposit of the balance sale amount may be extended, as may be agreed upon in writing. It means that first there has to be a default on part of the auction purchaser to invite cancellation of the auction and second, that the period of deposit stipulated therein is not absolute rather extendable with the agreement of the parties.

The whole of the situation has shown that it cannot be said that there was no collusion between the secured creditor and purchaser.

In absence of non-compliance with the statutory ordained timeline, in absence of any record of written agreement between the secured creditor and the auction purchaser in the present factual matrix, the deviation in the timeline of repayment of auction money is unbacked as per record available on file. The auction sale in question is not sustainable in the light of non-compliance of Rule 9(4) of SARFAESI Rules, 2002 which is mandatory.

40. The rights of an auction purchaser and the sanctity of a confirmed sale ordinarily merit due protection, such protection is by no means absolute. It must yield where the very process endangering the sale is demonstrated to be legally infirm or to be incongruous with the statutory framework.

41. Again, Ld. Counsel for the respondent bank has argued that the right of redemption has already been extinguished after publication of sale notice as per provisions of S. 13(8) of the SARFAESI Act. The auction purchaser has also argued the same and relied on Civil Appeal no. 5542-5543 of 2023 CELIR LLP Vs Bafna Motors (Mumbai) Pvt. Ltd. & Ors decided on September 21, 2023 and also argued that after this judgment, there is no opportunity of redemption to the borrowers/mortgagors as the right of redemption has already extinguished. The auction purchaser has also relied on the principle laid down by Hon'ble Supreme Court in M. Rajendran & Ors Vs M/s KPK oils & Proteins India Pvt. Ltd. & Ors Civil

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Appeal No. 12174 of 2025 decided on 22nd September 2025. Some important paras of judgment in M. Rajendran's case are mentioned here as under:

Para 106: *A borrower has no unfettered right to tender such amount of dues, as stipulated in Section 13(8), after the date of publication of notice for public auction or inviting quotations or tender from public or private treaty, as the case may be, because the restriction on the secured creditor, from transferring the secured asset, envisaged under clause(s) (i) and (ii) of the said provision, would only be attracted, if the dues are tendered prior to the publication of notice for public auction or- inviting quotations or tender from public or private treaty, as the case may be. Where the borrower tenders such dues after the publication of the notice stipulated in Section 13(8), the secured creditor is not bound to accept it, and can continue to proceed with the transfer of the secured asset, by way of lease, assignment or sale.*

Para 107: *Section 13 sub-section (8) of the SARFAESI Act must be read along with Rule(s) 8 and 9 of the SARFAESI Rules.*

Para 110: *As per Rule 8 sub-rule (6) of the SARFAESI Rules, before the transfer / sale of the immovable secured asset by the secured creditor, by any of the methods enumerated in Rule 8(5), the secured creditor is required to serve to the borrower a notice of thirty-days of the intended sale of such secured asset through any one of the methods specified in Rule 8(5). The Proviso appended to Rule 8(6) further stipulates that where the proposed sale of the secured asset is either by 'inviting tenders from the public' or by 'holding a public auction', then the secured creditor shall cause a public notice in two leading newspapers, in the manner and form specified therein. Rule 8 subrule (6) reads as under: -*

"8. Sale of immovable secured assets.-

(6) the authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under subrule (5)

Provided that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in the Form given in Appendix IV-A to be published in two leading newspapers including one in vernacular language having wide circulation in the locality."

Para 154: *The reason why we say, that Rule 8(6) of the SARFAESI Rules is the sole constituent provision stipulating the requirement of giving a notice of sale is because, ordinarily, when the secured asset given as security to the secured creditor is proposed to be sold off by it, the primary party that has a vested interest in knowing about such intention to sell, is the borrower. There can be no sale of a security interest of the borrower by the secured asset, by the secured creditor, without first, informing the borrower of its intention to sell the same. This is why, irrespective of what the mode of sale is in terms of Rule 8(5), be it by obtaining quotations or inviting tenders, or holding public auction or by private treaty, a notice of the intended sale of the secured asset by the secured creditor, by any of the aforesaid method, has to be mandatorily given to the borrower.*

Para 159: *The word "public notice" used in 9(1) cannot be singled out and construed devoid of its context. It has to be understood in conjunction with the expression "as referred to in the proviso to subrule (6) of Rule 8 or notice of sale has been served to the borrower".*

Para 164: *This Court in* ***Bafna Motors*** *(supra) never examined the interplay between the amended Section 13(8) of the SARFAESI Act with the SARFAESI Rules, more particularly, Rule 8(6), the Proviso thereto and Rule 9(1).*

Para 178: *The word "publication" used in Section 13(8) of the SARFAESI Act, has to be understood to mean and include the service, publication in newspaper, and the affixation and uploading of the "notice of sale", as may be required under the SARFAESI Rules. Wherever, the chosen mode of sale requires the secured creditor to effectuate the "notice of*

sale" in any or all of the aforesaid manner, as the case may be, the expiry of thirty-days as required under Rule 9(1) from the day when the secured creditor complies with the requirement of giving the notice of sale, as per the applicable rules, would be the date on which the secured creditor is said to have validly published the "notice of sale" and it would be this date on which the right of redemption of the borrower would stand extinguished.

Para 191: *Even otherwise, as held in **Narandas Karsondas** (supra) and **L.K. Trust** (supra), the right of redemption is not a contractual right, and rather a statutory right. Such right of redemption is generally governed by the TP Act, and subject to material modification or alteration by any overriding special law in this regard. Even under the SARFAESI Act, the right of redemption has been statutorily recognized and given effect to in Section 13(8) of the SARFAESI Act, albeit subject to conditions stipulated thereunder insofar as its exercise is concerned.*

42. It is clear that right of redemption is a paramount right of the borrower and cannot be deprived the borrower in any manner. There is no right/authority to the secured creditor to extinguish the opportunity of redemption in any circumstance and duty bound legally to provide opportunity to the borrowers to redeem the secured assets as per provisions of SARFAESI Act and Rules, 2002 in the light of principle laid down by Hon'ble Supreme Court.

43. In the case in hand, the respondent bank has issued auction sale notice on 10.01.2023 and published on 13.01.2023, sent on 14.01.2023 eventhough photocopy of publication has been served on applicant/borrower on 25.01.2023 and the auction was scheduled on 07.02.2023. The action taken by the bank in relation to auction sale in question in violation of SARFAESI Rules, 2002, as the property in question has been auctioned on 13th day from the date of knowledge/service on the applicant and also curtailed the right of redemption published before sending and service of auction sale notice as per version of the respondent

bank and nothing has been submitted on record about service of sale notice in rebuttal of the applicant version. The respondent bank was not entitled to extinguish the statutory right of redemption available to borrowers in the manner extinguished by the respondent bank. Hence the arguments advanced by Ld. counsel for respondent bank and auction purchaser in the light of principle laid down by Hon'ble Supreme Court in M. Rajendran's case has no worth and not tenable, liable to be rejected. Hence rejected.

44. The auction purchaser has submitted principle laid down by Hon'ble Supreme Court in V.S. Palamivel Vs P. Sri Ram Cs Liquidator in Civil Appeal No. 9059-9061 of 2022, decided on 28 August, 2024 as under:

> *Unless there are some serious flaws in the conduct of the auction as for example perpetration of a fraud/collusion, grave irregularities that go to the root of such an auction, courts must ordinarily refrain from setting them aside keeping in mind the domino effect such an order would have.*

The above principle has been considered by Hon'ble Supreme Court in Bafna's case (Supra) and laid down as under:

Para 218- *Any sale by auction or other public procurement methods once already confirmed or concluded ought not to be set aside or interfered with lightly except on grounds that go to the core of such sale process, such as either being collusive, fraudulent or vitiated by inadequate pricing or under bidding. Mere irregularities or deviation from a rule which does not have any fundamental procedure error does not take away the foundation of authority for such proceeding. In such cases, courts in particular should be mindful to refrain entertaining any ground for challenging an auction which either could have been taken earlier before the sale was conducted and confirmed or where no substantial injury has been caused on account of such irregularity.*

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On the basis of above principles Ld. Counsel for auction purchaser has argued that the auction cannot be setting aside in absence of substantial injury to the applicant.

In Mathew Varghese Vs M. Amritha Kumar & Ors decided on February, 10, 2014 the Hon'ble Supreme Court has laid down that

Para 34: *Merely because the provisions of the SARFAESI Act and the rules enable the secured creditor to take possession of such an immovable property belonging to the owner and also empowers to deal with it by way of sale or transfer for the purpose of realising the secured debt of the borrower, it does not mean that such wide power can be exercised arbitrarily or whimsically to the utter disadvantage of the borrower.*

In Civil Appeal No. 2545 of 2023, Authorised Officer, State Bank of India Vs C. Natrajan & Anr. decided on 10.04.2023, the Hon'ble Apex Court has held that- *"Law is well settled that a result flowing from a statutory provision is neither an evil and that court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. The statute must, of course, be given effect to whether a court likes the result or not. This is the state of law".*

After considering whole of the situation and principles laid down by Hon'ble Supreme Court, in the opinion of the Tribunal, procedure adopted by the secured creditor in auction sale in question, it cannot be accepted that substantial injury has not been caused to the applicant as discussed above in this judgment in detail. Hence the argument advanced by the Ld. Counsel for auction purchaser in relation to substantial injury has no force and liable to be rejected. Hence rejected.

45. The auction purchaser has stated in reply that the auction purchaser has invested an amount of approximately INR 3 Crores to INR 3.5 Crores towards replacement of obsolete and defunct machinery, procurement and installation of new equipment etc. Some documents have also been

submitted in support of the said version, but the said version cannot change the legal framework as held by Hon'ble Supreme Court in C. Natrajan's Case (Supra) and everyone is duty bound to act within the boundary/ limit of law and only on the basis of any investment on the part of auction purchaser, auction sale in question cannot be sustained by ignoring whole of the procedure adopted by secured creditor in relation to of auction sale in question.

46. In view of the discussions held in the preceding paragraphs of this judgment, the auction sale notice dated 10.01.2023/12.01.2023 as well as auction dated 07.02.2023 are set aside and subsequent actions thereof.

Consequently, the Securitization Application is allowed as under:

I. The auction purchaser is in possession of the property (Mill) in question and enjoying fruits of business of the property in question as admitted by the auction purchaser. So the auction purchaser is not entitled for amount of interest on the auction money as none can be entitled for double benefit eventhough in the light of circumstances of this case, if any damage or loss has been caused to the auction purchaser may be entitled for compensation from the auctioneer/ secured creditor by proving the same.

II. The respondent bank is directed to return the auction money to the auction purchaser within a period of 30 days from the date of this judgment and the auction purchaser shall surrender physical possession of the property in question within 30 days from the date of this judgement in favour of respondent bank.

III. The respondent bank shall provide details of amount due legally in genuine manner against the applicant borrower within a period of 15 days from the date of this judgment and the applicant shall repay the said amount within a period of 30 days from the date of receiving details of amount due against the borrower. After deposition/ repayment of the debt and discharging liability by the

IN THE DEBTS RECOVERY TRIBUNAL, DEHRADUN
(2nd Floor, Paras Tower, Saharanpur Road, Mazra, Dehradun, Uttarkahand-248171)
(Jurisdiction- Uttarakhand& Part of Western Uttar Pradesh)

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applicant borrower/mortgagors, the respondent bank shall hand over the possession of the secured assets to the applicant / borrower/ mortgagors within 15 days from the date of deposit.

IV. In case of non-payment of debt/ in absence of discharging liability for which applicant/ borrower/mortgagors/debt holders are legally duty bound to discharge, in that case, the respondent bank shall be entitled to recover by adopting legal recourse available to the respondent bank/ secured creditor/ certificate holder.

No order as to cost and the cost of litigation shall bear by the parties themselves in the light of circumstances of this case.

Interim order, if any, vacated. All interim applications, if any pending, are also disposed off accordingly.

Record be consigned after providing copy of this judgment to the parties in accordance with law.

If any party feels grievance by this Judgment may approach Hon'ble Debts Recovery Appellate Tribunal, Allahabad in appeal under Section 18 of the S.A.R.F.A.E.S.I. Act, 2002.

Dated: 17.09.2026

17.09.2026
(Umesh Kumar Sharma)
Presiding Officer
DRT, Dehradun