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Court of the Presiding Officer
Debts Recovery Tribunal, Lucknow

DEBTS RECOVERY TRIBUNAL, LUCKNOW

PRESIDING OFFICER: SH. VIMAL GUPTA

SA No.- 212/2018

1. **M/s Ace Fab Overseas,** Plot No.28/01/05, 28/01/06 Site IV, Sahibabad, Ghaziabad.
2. **Mr. Ajay Singh**, Resident of: A-324, Surya Nagar, Ghaziabad.
3. **Mrs. Anjana Singh,** Resident of: A-324, Surya Nagar, Ghaziabad.

.....Applicants

Versus

1. **UNION BANK OF INDIA, Earlier Corporation Bank**, C-50, Preet Vihar, Delhi, Through its Authorized Officer / Chief Manager.
2. **DRMS VENTURES LLP,** through its partners Mr. Mukesh Kumar Agarwal, 59, Ashirwad Apartment, Plot No. 74, IP Extension, Patparganj, New Delhi, 110092.

.....Respondents

Present: -

Sh. D. K. Pathak and Sh. Harsh Chopra, Ld. Counsels for the Applicant

Sh. Samendra Kumar Singh, Ld. Counsel for the Respondent Bank

Sh. Dhananjay Kumar Singh along with Sh. Sumit Agarwal, Counsel for the Respondent No. 2

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Court of the Presiding Officer
Debts Recovery Tribunal, Lucknow

(Final Order)

(30.09.2026)

1. By this order, I shall proceed to dispose of the captioned SA. The parties have filed their respective pleadings and written submissions also alongwith case laws upon which they have sought to place reliance.

Succinctly stated, the applicants have contended as follows:

2. Counsel for the Applicant submitted that applicant No. 1, a partnership firm constituted under the Indian Partnership Act, was granted an Over Draft Limit of Rs.100 Lacs and a Term Loan of Rs.800 Lacs by the Respondent Bank; that the Applicant Nos. 2 and 3 are the partners of the Applicant No. 1 firm, and that the said financial assistances stood secured by a mortgage created in favour of the Respondent Bank over the immovable property being the Three Star Hotel built on property bearing nos. 28/01/05 and 28/01/06, Industrial Area, Site IV, Sahibabad, Ghaziabad.
3. It is submitted that Applicant No.1 was maintaining its Over Draft Limit and Term Loan regularly and properly with the Respondent Bank in the normal and ordinary course of banking business and in accordance with banking policy and norms; that there was no dispute whatsoever, inter se, the applicants and Respondent Bank; the loan facilities were at all material times running regular; the accounts of the Applicants were never classified as Non Performing Asset by the Respondent Bank in terms of the guidelines issued by the Reserve Bank of India.
4. It is submitted that the Applicants, having approached the Respondent Bank and sought the statement of account, which were never furnished by the respondent bank.
5. It is submitted that Respondent Bank had initially initiated measures under the SARFAESI Act against the Applicants.

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6. It is submitted that the said measures were assailed by the Applicants under Section 17(1) of the Act vide S.A. No. 372 of 2017 titled as M/s. Ace Fab Overseas Vs. Corporation Bank, and that the said Securitisation Application came to be allowed by this Tribunal vide judgment dated 09.02.2018.
7. It is submitted that the Respondent Bank thereafter preferred an appeal before the Hon'ble Debts Recovery Appellate Tribunal, Allahabad under Section 18 of the SARFAESI Act vide Appeal No. 22/2018 titled Corporation Bank Vs. Ace Fab Overseas, and that the said appeal was dismissed as withdrawn on 31.05.2018.
8. It is submitted that the respondent bank withdrew the action taken by it including the notice dated 23.02.2017, 22.01.2018 and 16.05.2018 issued under Section 13(4) of the Act which was served by affixation on 18.05.2018.
9. It is submitted that the Respondent Bank could not have withdrawn the earlier notices and issued a fresh possession notice through one and the same notice, inasmuch as it was mandatory upon the Bank to first withdraw the earlier possession notice and only thereafter to affix a fresh notice, and that the action of the Bank is accordingly in utter violation of the law laid down by the Hon'ble Apex Court in **Transcore Vs. Union of India**.
10. It is submitted that the Respondent Bank pasted the possession notice on the secured assets on 18.05.2018, thereafter published the possession notice on 21.05.2018, and only post-lunch on 21.05.2018 caused the possession notice personally served upon the Applicants. The said sequence tantamount to a violation of Rules 8(1) and Rule 8(2) of the Security Interest (Enforcement) Rules, 2002, since it was mandatory upon the Bank first to personally serve the possession notice and only thereafter to cause paper publication of the same.
11. It is submitted that the Respondent Bank has in the present matter reversed the statutory process and has thereby violated Rule 8(1) and Rule 8(2).

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12. It is submitted that the Respondent Bank did not adopt the measures envisaged in the Security Interest (Enforcement) Rules, 2002 while proceeding under Section 13(4) of the Act, inasmuch as Rule 8(2) provides for publication of the possession notice in two widely circulated local daily newspapers, one in English and other in vernacular, having sufficient circulation in the locality, and the said requirement was not complied with by the Respondent Bank in its letter and spirit.

13. It is submitted that Rule 8(1) of the Security Interest (Enforcement) Rules, 2002 requires the authorized officer, where the secured asset is an immovable property, to take or cause to be taken possession by delivering a possession notice prepared as nearly as possible in Appendix-IV to the said Rules to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property, and that Rule 8(2) requires that the possession notice referred to in sub-rule (1) shall also be published, as soon as possible but in any case not later than seven days from the date of taking possession, in two leading newspapers, one in vernacular language having sufficient circulation in that locality, by the authorized officer.

14. It is accordingly submitted that the Respondent Bank has failed to comply with Rule 8(1) and Rule 8(2) of the said Rules.

15. It is submitted that the Respondent Bank thereafter proposed to auction the secured assets vide Sale Notice dated 19.05.2018 served on 23.05.2018 for an auction scheduled on 21.06.2018; and that the Bank has thereby failed to serve a clear thirty days sale notice upon the Applicants as mandated by Rule 8(6) and Rule 9(1) of the Security Interest (Enforcement) Rules, 2002.

16. It is submitted that Respondent Bank violated Rule 8(5) of the Security Interest (Enforcement) Rules, 2002 inasmuch as it failed to obtain valuation reports from a valuer empaneled with the respondent bank and holding license under Section 34AB of Wealth Tax Act, 1957; authorized officer of the Bank fixed the Reserve

Price at Rs. 14,88,06,000/- whereas the fair market value of the property is in excess of Rs. 40 Crores.

17. It is submitted that the Respondent Bank violated Rule 8(7) of the Security Interest (Enforcement) Rules, 2002 inasmuch as it failed to paste a copy of the Sale Notice on the secured asset.

18. It is submitted that the Respondent Bank failed to disclose the correct description of the property in the sale notice and has thereby violated Rule 8(6)(f) of the Security Interest (Enforcement) Rules, 2002, inasmuch as the property in question is a Three Star Hotel and the Bank has deliberately concealed the essential description of the property.

19. It is submitted that the Respondent Bank has violated Rule 9(3) of the Security Interest (Enforcement) Rules, 2002; the Respondent Bank has failed to serve a redemption notice before causing paper publication of the auction notice dated 28.06.2025 in respect of the auction published for 30.07.2025.

20. It is submitted that the Respondent Bank violated Rule 8(6) and Rule 9(1) of the Security Interest (Enforcement) Rules, 2002 inasmuch as it failed to serve the auction notice upon the Applicants as per the prescribed modes which is mandatory.

21. It is submitted that the Respondent Bank failed to cause the paper publication of the auction notice in the manner prescribed by Appendix IVA and in leading newspapers having wide circulation in the vicinity where the property is situated.

22. It is submitted that the Respondent Bank opted to auction the property at a throw away price, inasmuch as the actual value of the property is approximately Rs. 80 Crores whereas the Bank has proposed to auction the same for Rs. 17.33 Crores.

23. It is submitted that the Respondent Bank mentioned a wrong outstanding of Rs. 9,39,27,943.50/- in the auction notice published on 28.06.2025, inasmuch as out of the alleged demand of Rs. 9,39,27,943.50/- the Applicants have already deposited a sum of

Rs.8,07,91,351/- with the Bank after the issuance of the demand notice under Section 13(2) of the SARFAESI Act.

24. It is submitted that the Respondent Bank concealed from the auction notice the fact that the Hon'ble DRAT, Delhi has restrained the Bank from taking physical possession of the property in question, whereas Rule 8(7) of the Security Interest (Enforcement) Rules, 2002 makes it mandatory upon the Bank to disclose the encumbrance qua the property scheduled for auction.

25. It is submitted that the Respondent Bank acted in contravention of law inasmuch as a Recovery Certificate has been issued by the DRT, Delhi, and once the property stands attached by a competent forum or court the same cannot be attached again unless and until the earlier attachment is lifted; since execution proceedings stand initiated under the Recovery of Debts and Bankruptcy Act, the proceedings under the SARFAESI Act are liable to be kept in abeyance as the property has since become *custodia legis*.

26. It is submitted that the ex parte order passed by the ADM, Ghaziabad dated 29.01.2025 is bad in law inasmuch as the ADM, Ghaziabad has directed the officials of the Bank to take physical possession of the secured assets with the help of the Deputy Commissioner of Police, Ghaziabad, which is not in consonance with the ratio laid down in Durga Travellers and Ors. Vs. DRT Lucknow, the Deputy Commissioner of Police, Ghaziabad not being functionally subordinate to the ADM, Ghaziabad; the ex parte order passed by the ADM, Ghaziabad dated 29.01.2025 is further defective inasmuch as the Respondent Bank failed to file its application along with an affidavit containing the nine ingredients prescribed in law as per the proviso to Section 14(1) of SARFAESI Act, 2002.

27. It is submitted that Respondent Bank thereby acted in contravention of the judgment of the Hon'ble Apex Court in **Standard Chartered Bank Vs. V. Noble Kumar**; the Respondent Bank has issued a Sale Certificate in pursuance of the illegal auction

of the property held on 30.07.2025, the said Sale Certificate being dated 12.08.2025; the Respondent Bank has illegally issued the said Sale Certificate without obtaining the permission of this Hon'ble Tribunal.

28. It is submitted that the Authorized Officer of the Respondent Bank had itself not declared the account as a Non Performing Asset before initiating action under the SARFAESI Act, that the action of the Respondent Bank is on that count illegal and arbitrary, and that the entire SARFAESI action is liable to be quashed on this ground alone.

29. It is submitted that the Respondent Bank did not comply with Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 read with Rule 8(1) of the Security Interest (Enforcement) Rules, 2002, and that the Securitisation proceedings are consequently illegal, arbitrary and liable to be set aside and quashed.

30. It is submitted that the Authorized Officer of the Respondent Bank has violated the directions issued by the Hon'ble Apex Court in several cases, including in the case of M/s Mardia Chemicals (supra) that they are under an obligation to act honestly, reasonably and fairly; the entire recovery proceedings initiated by the Authorized Officer of the Respondent Bank, inclusive of the Possession Notice and auction of the property dated 30.07.2025 are illegal, unjust, perverse, unfair, unauthorized and arbitrary.

31. On the basis of the aforesaid contentions raised and articulated by the applicants, they have made a prayer for quashing of proceedings under Section 13(4) of the Act alongwith possession notice dated 18.05.2018; restrain the respondent bank from initiating or continuing any proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 in furtherance of the said Possession Notice dated 18.05.2018; to restrain the Respondent Bank from transferring or alienating the secured assets; to quash the entire proceedings

initiated by the Respondent Bank against the Applicants under the said Act and its Rules and to grant status quo ante in favour of the Applicants; to quash the auction notice published by the Respondent Bank on 28.06.2025 in respect of the auction scheduled on 30.07.2025; to quash the exparte order passed by the ADM, Ghaziabad under Section 14 of the Act dated 29.01.2025; to quash the Sale Certificate dated 12.08.2025 issued by the Respondent Bank in favour of the Respondent No.2; and to award the costs of the proceedings to the Applicants as against the Respondents.

Per contra, the respondent bank in its reply has made the following submissions:

32. Counsel for the Respondent Bank submitted that Securitisation Application been filed on frivolous and flimsy grounds merely to mislead this Hon'ble Tribunal and to derail and defeat the recovery proceedings initiated by the Respondent Bank.

33. It is submitted that the Applicants were duly and validly served with the statutory Demand Notice dated 01.10.2016 under Section 13(2) of the SARFAESI Act, 2002 demanding a sum of Rs.9,39,27,943.50/- as the outstanding balance as on 01.10.2016, and that the issue of valid service of the said Section 13(2) notice stands conclusively settled, having been sustained and upheld by this Tribunal vide order dated 09.02.2018 in the earlier round of litigation in Securitisation Application No. 372/2017, so that the Applicants are barred by the principles of res judicata from re-agitating the same.

34. It is submitted that the Respondent Bank never received any representation or objection from the Applicants qua the Demand Notice dated 01.10.2016 issued under Section 13(2) of the SARFAESI Act; consequent to the non-payment of the statutory dues, the Bank on 18.05.2018 lawfully issued a fresh Possession

Notice in respect of the secured asset comprising the Land and Building at Plot Nos. 28/01/05 and 28/01/06, admeasuring 1816.25 sq. metres, situated at Industrial Area Site-IV, Sahibabad, U.P., which notice was served upon the Applicants by Registered Post on 18.05.2018, affixed at a conspicuous part of the property, and published in both the Hindi and English editions of the Business Standard newspaper on 21.05.2018, in absolute compliance with Rules 8(1) and 8(2) of the Security Interest (Enforcement) Rules, 2002, the factum of which stands explicitly admitted by the Applicants at paragraph 5.7 of their own application.

35. It is submitted that the Applicants' sole grievance is hyper-technical and centers on the Bank's right to withdraw its previous statutory notices, whereas it is well settled that a secured creditor acts entirely within its legal rights in withdrawing an un-adjudicated notice and issuing a fresh one, as held by the Hon'ble Chhattisgarh High Court in M/s Dauji Farms Limited & Ors. v. Dena Bank & Anr., wherein it was held that there is no statutory bar or prohibition under Chapter III of the SARFAESI Act against issuing a subsequent notice under Section 13(2) where the primary notice was not taken to its logical conclusion, such a step inflicting no civil consequence or prejudice upon the borrower but conversely affording an extra opportunity to show cause, thereby attracting the theory of "useless formality" against procedural challenges; the said position accords with the mandate of the Hon'ble Supreme Court in L&T Housing Finance Limited v. Trishul Developers & Ors., (2020) 10 SCC 659, wherein it was held that valid enforcement actions cannot be stalled or vitiated on trivial, hyper-technical objections unless the aggrieved person establishes substantial and deep-rooted prejudice caused by the procedural lapse, and that since the Applicants have wholly failed to explain, demonstrate or substantiate any structural prejudice caused to them by the withdrawal and subsequent fresh issuance of the statutory notices, their objection is liable to be summarily dismissed.

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36. It is submitted that the brief facts giving rise to the present dispute are that Applicant No. 1, a partnership firm acting through its partners who are also the Guarantors and Mortgagors (Applicant Nos. 2 and 3), approached the Respondent Bank seeking credit facilities to part-finance the project cost of setting up a 3-star hotel on the secured asset, comprising a Term Loan Facility of Rs. 800 Lakhs alongside an Overdraft Facility of Rs. 100 Lakhs to meet working capital requirements, which requests were acceded to by the Respondent Bank vide Sanction Letter / Credit Sanction Intimation dated 24.04.2014.

37. It is submitted that under the binding terms of the said credit contract the Applicants explicitly agreed to repay the credit facilities along with a floating rate of interest pegged at 15.85% per annum (Base Rate plus 5.60%) compounded monthly for the Term Loan and 14.85% per annum (Base Rate plus 4.60%) compounded monthly for the Overdraft Facility, with the further strict covenant that any default in the timely repayment of the equated monthly installments on their respective due dates would attract additional penal interest at the rate of 2% per annum over and above the normal rate of interest, recoverable independently by the Bank.

38. It is submitted that owing to the Applicants' persistent failure to maintain requisite financial discipline and to adhere to the contractually agreed repayment schedules, the loan accounts of Applicant No. 1 degenerated and were classified as a Non-Performing Asset on 28.09.2016 in strict accordance with the asset classification and prudential norms mandated by the Reserve Bank of India, which material default constrained the Respondent Bank to invoke its statutory remedies and to issue the formal Demand Notice dated 01.10.2016 under Section 13(2) of the SARFAESI Act, 2002 calling upon the Applicants to liquidate their entire outstanding liabilities.

39. It is submitted that it accorded all requisite credit facilities and extended complete operational cooperation to ensure the smooth

functioning of Applicant No. 1's business, whereas the Applicants flagrantly breached their reciprocal financial and contractual covenants, not only failing to liquidate their outstanding statutory dues but systematically violating their core operational commitments by intentionally failing to route business sale proceeds through their designated accounts with the Respondent Bank, withholding the submission of essential financial data, and refusing to provide mandatory reconciliations of stock and debtors statements necessary to verify the genuineness of the book debts.

40. It is submitted that the Applicants instead deliberately and maliciously siphoned off public funds and diverted their business revenues through alternative banking channels by incorporating a separate entity in blatant contravention of the Master Directions and prudential guidelines issued by the Reserve Bank of India, thereby directly causing the credit asset to degenerate into a non-performing status solely through their own fraudulent financial misconduct and willful defaults.

41. It is submitted that although the account of Applicant No. 1 had been irregular on earlier occasions and every such request for regularisation was considered and acceded to, the same could not be acceded to on this occasion as there were no business activities of Applicant No. 1 and as the book debts, periodical stock statements and balance sheets were not submitted, and that the classification of the account as a Non-Performing Asset on 28.09.2016 was made strictly in accordance with the prudential norms of the Reserve Bank of India governing non-performing assets and "out of order" status, which norms have been set out in extenso in the Reply.

42. It is submitted that it is an admitted position that the Applicants had initially filed Securitisation Application No. 372/2017 before this Hon'ble Tribunal challenging the Section 13(2) Demand Notice dated 01.10.2016 and the symbolic Possession Notice dated 23.02.2017 on various grounds including the validity of the NPA classification dated 28.09.2016.

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43. It is submitted that this Hon'ble Tribunal vide its order dated 09.02.2018 partly allowed the said application by setting aside only the possession notice dated 23.02.2017 while granting express liberty to the Respondent Bank to proceed afresh under the SARFAESI Act, 2002, the said order having left the Demand Notice dated 01.10.2016 and the underlying NPA classification dated 28.09.2016 entirely undisturbed, so that the Applicants are legally estopped under the principles of res judicata from re-agitating either the NPA classification or the validity of the Demand Notice in these subsequent proceedings.

44. It is submitted that pursuant to which the Bank lawfully issued the fresh Possession Notice dated 18.05.2018; the Applicants' hyper-technical objection disputing the statutory publication of the said Possession Notice on the pretext that Business Standard is not a widely circulated newspaper is completely meritless, the Hon'ble DRAT, New Delhi in Choudhary Ventures Pvt. Ltd. v. Indiabulls Housing Finance Ltd. (Appeal No. 387/2023) having explicitly held that Business Standard is a premier financial journal that cannot be treated as inferior or lacking wide circulation for the purposes of statutory compliance under the Security Interest (Enforcement) Rules, 2002.

45. It is submitted that it duly conducted the statutory valuation of the secured asset in strict compliance with Rule 8(5) of the Security Interest (Enforcement) Rules, 2002 contemporaneously at every relevant stage of proceeding with the sale of the asset, and that the comprehensive valuation reports demonstrating the objective assessment of the property's market value have already been placed on record before this Hon'ble Tribunal along with the Bank's detailed Reply to the un-amended Securitisation Application as well as its Written Reply to the Interim Relief application.

46. It is submitted that it duly served the Applicants with the statutory Auction Sale Notice dated 16.06.2025 by post on 18.06.2025, alongside effecting valid publication in two leading newspapers,

namely Punjab Kesari (Hindi) and Financial Express (English), on 28.06.2025 scheduling the public auction for 30.07.2025, and simultaneously pasting and affixing the said notice at a conspicuous part of the secured asset, in absolute compliance with Rules 8(6) and 9(1) of the Security Interest (Enforcement) Rules, 2002.

47. It is submitted that the allegation of undue haste in putting the property to auction is vehemently denied.

48. It is submitted that the Applicants having been consistently afforded multiple opportunities to liquidate their liabilities including under their own solemn written undertaking dated 22.04.2025 which they consciously failed to honour, and the Applicants having explicitly admitted at paragraph 2 of their Interim Relief application that they gained clear knowledge of the scheduled auction sale through the newspaper publications on 28.06.2025 and chose to waive their right of redemption under Section 13(8) of the SARFAESI Act, notwithstanding that they were additionally served with a formal Redemption Notice dated 10.12.2024.

49. It is submitted that the factum of the auction sale was fully within the knowledge of the Applicants, as conclusively evidenced by their own action of placing the publication of the Auction Sale Notice as Annexure A-1 to their Interim Relief application, thereby rendering any plea of a procedural lapse or lack of notice entirely vexatious and legally untenable.

50. It is submitted that the secured and mortgaged property was successfully auctioned by the Bank on 30.07.2025 to the highest bidder, M/s DRMS Ventures LLP, situated at 59 Ashirwad Apartment, Plot No. 74, IP Extension, Patparganj, New Delhi 110092, for an amount of Rs. 17,34,00,000.00, the payments having been received by way of RTGS No. IDIBS2025073046730933 dated 30.07.2025 for Rs. 1,73,30,000/-, UTR No. HDFCR52025073196212394 dated 31.07.2025 for Rs. 2,60,00,000/-, TDS Challan No. AM04503332 dated 11.08.2025 for Rs. 17,34,000/-, and UTR No. HDFCR52025081250183522 dated

12.08.2025 for Rs.12,83,16,000/-, aggregating to Rs.17,34,00,000/-.

51. It is submitted that the Applicants' plea of wrong description of the property is incorrect, inasmuch as the property was secured as *Industrial Land and Building at Plot Nos. 28/01/05 and 28/01/06, admeasuring 1816.25 sq. metres, situated at Industrial Area Site-IV, Sahibabad, U.P.,* and it came to the knowledge of the Respondent Bank only vide letter dated 04.08.2025 that UPSIDC had vide its letter dated 23.06.2007 agreed to convert the land from Industrial to Commercial subject to certain conditions to be fulfilled within 30 days, which conditions were not complied with by the Applicants.

52. It is submitted that the communication dated 23.06.2007 issued by the Uttar Pradesh State Industrial Development Corporation, on which the Applicants' contention rests, was no more than an in-principle administrative approval strictly conditional upon the fulfilment of reciprocal obligations by the Applicants within a mandatory period of 30 days.

53. It is submitted that it is an admitted position that the Applicants failed to satisfy those stipulated conditions within the designated time frame as a result of which no fresh commercial lease deed was ever executed or registered by UPSIDC, and that a mere conditional offer or in-principle administrative approval does not vest any absolute or altered legal right in the subject property unless the conditions precedent are fully satisfied and a formal registered instrument reflects such change; in the absence of a newly executed and registered commercial lease deed, the parent lease deed characterizing the asset as an Industrial property remained valid, operational and legally binding on all parties, so that when the borrower defaulted and the secured creditor proceeded to auction the property under the SARFAESI Act, 2002 the Bank was legally bound to describe and value the asset in accordance with its subsisting registered title profile, which was exclusively industrial, and that a property cannot be valued on a speculative or hypothetical

commercial use that never legally materialized due to the Applicants' own omissions and lapses, rendering the plea of misdescription and undervaluation entirely devoid of merit and legally untenable.

54. It is submitted that the order dated 01.09.2025 passed by the ADM, Ghaziabad, which was passed in continuation of the order dated 29.01.2025 in terms of the judgment of the Hon'ble Allahabad High Court, Judicature at Lucknow, in Durga Travelers & Ors. v. DRT Lucknow, has not been implemented in view of subsequent developments and orders passed, and now needs to be adjudicated as being infructuous.

55. It is submitted that it had also filed Original Application No. 558/18 before the Ld. DRT-II, New Delhi to recover an amount of Rs. 10,22,27,536.47/- inclusive of interest debited up to 30.04.2017 excluding incidental charges, which Original Application was allowed vide order dated 25.02.2021; during the pendency of the Original Application the Applicants approached the Bank for restructuring of the facility, which request was considered and sanctioned by credit sanction intimation dated 29.03.2019 whereby both the facilities were revived with an additional facility, namely a Funded Interest Term Loan of Rs. 444.12 Lacs representing the uncharged interest for the period from the classification of the account as NPA till 31.01.2019, subject to the condition precedent that in the event of failure to comply with the contractual obligations the account shall be treated to be in default from the earlier date as per IRAC norms; after issuance of the Recovery Certificate for an amount of Rs.10,22,27,536.47 along with interest at 12% simple from the date of filing of the OA, that is 11.05.2017, till realisation in full, the Applicants approached the Bank on 16.11.2021 with a request for holding on operation, which was sanctioned on 31.12.2021 with an 80% cut back for six months up to May 2022 to enable the account to come out of stress and be upgraded, and that out of Rs. 224.45 Lacs the borrower deposited only Rs .89.39 Lacs after retaining their 20% share, consequent whereto the holding on

operation facility stood automatically withdrawn and the Bank proceeded with its recovery measures.

56. It is submitted that on 22.06.2022 the Applicants again requested a further period of holding on operation, which was sanctioned on 22.08.2022 with an 80% cut back for a further six months with the intention of bringing Applicant No. 1 out of stress and upgrading the account, but that no amount whatsoever was deposited by the borrower under the extended six month period, consequent whereto the Bank proceeded with its recovery measures, the said ad hoc arrangement having been temporary and the recovery rights being deemed to continue in the event of default; the argument that the enforcement and subsequent auction sale under the SARFAESI Act, 2002 are bad in law by reason of a subsisting stay or interim protection order in the parallel proceedings under the RDB Act, 1993 is fundamentally flawed and legally untenable, the remedies available to a secured creditor under the SARFAESI Act and the RDB Act being independent, complementary and distinct from one another, and a secured creditor being fully entitled to initiate and pursue actions under the SARFAESI Act for the enforcement of its security interest notwithstanding the pendency of Appeal No. 165/2022 or any interim administrative status under the RDB Act; the statutory schemes of both legislations operate in different fields, the RDB Act providing a mechanism for the adjudication and recovery of debts through a Tribunal certificate while the SARFAESI Act empowers the secured creditor to realize its securities without the immediate intervention of courts or tribunals, so that an interim order or status quo directive granted within the procedural confines of an Appeal under the RDB Act cannot automatically jump statutory tracks to paralyses or restrict the Bank's enforcement rights under Section 13(4) of the SARFAESI Act.

57. It is submitted that unless an express and specific injunction is granted by a competent forum under Section 17 of the SARFAESI

Act itself the Bank's statutory right to seize and sell the secured asset remains entirely unfettered, the Hon'ble DRAT, New Delhi vide its order dated 11.02.2025 having clarified the position; the Applicants cannot therefore seek shelter under any interim mechanism or stay related to the RDB Act to challenge the validity of the SARFAESI auction sale and possession measures, the causes of action under the two statutes being completely separate, and the Bank's action in proceeding with the sale of the industrial asset despite the parallel RDB proceedings being perfectly valid, completely lawful and immune to collateral challenges of this nature.

58. It is submitted that the present Securitisation Application is barred by limitation regarding the reliefs added vide the orders dated 31.10.2025 and 09.06.2026, the same not having been sought within the mandatory 45-day statutory period, the Law of Limitation being a statute of repose under which a claim is lost by the lapse of time where an aggrieved person neglects or refuses to seek redress timely, and it being admitted that the sale notice dated 16.06.2025 was served on the Applicants yet they failed to file the amended Securitisation Application within the statutory 45 days; the Interlocutory Application filed on 23.02.2026 seeking to challenge the Sale Certificate dated 12.08.2025 issued in favour of Respondent No. 2 is also heavily time-barred, the Applicants having been fully aware of the said Sale Certificate during the proceedings dated 18.09.2025 in TRC No. 1411/2022, so that both amendments to the Securitisation Application are strictly barred by limitation under Section 17 of the SARFAESI Act and are liable to be dismissed on this sole ground.

59. It is submitted that the Applicants failed to file any affidavit in support of the amended Securitisation Application and merely inserted one or two pages in the main Securitisation Application, which procedure is alien to law, and that it being settled law that pleadings unsupported by an affidavit cannot be read, the present Securitisation Application is liable to be dismissed.

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60. It is submitted that the Applicants have admitted the factum of the loan, its disbursement and the default in payment of the stipulated amount, and have therefore failed to raise any triable issue or to demonstrate any deficiency in the enforcement measures initiated by the Respondent Bank, so that the present Securitisation Application is liable to be dismissed; in view of the above circumstances this Hon'ble Tribunal may be pleased to dismiss the present Securitisation Application with exemplary cost and to allow the Respondent Bank to proceed with the enforcement measures in order to recover its dues.

Counsel for the Applicant filed rejoinder to the reply filed by the Respondent Bank:

61. The applicants rebutted the defence raised by the respondent bank vide their reply by filing a rejoinder wherein it was, inter alia, contended that the possession notice dated 18.05.2018 was served upon the Applicants on 21.05.2018 and published on 21.05.2018, whereas the Bank had pasted the notice under Rule 9(1) as early as on 19.05.2018.

62. It is submitted that the law is very clear that before complying with Rule 8(1) and Rule 8(2), the Bank cannot proceed with the auction notice, and that in the present case the Bank has issued notice under Rule 9(1) without complying with Rule 8(1) and Rule 8(2); the Bank has withdrawn the possession notices dated 23.02.2017, 22.01.2018 and 16.05.2018 vide the possession notice affixed on 18.05.2018 and has also taken symbolic possession on 18.05.2018, whereas the Bank cannot withdraw and issue a possession notice vide the same notice.

63. It is submitted that it being mandatory on the part of the Bank first to withdraw the possession notice and only thereafter to affix a fresh notice. Moreover, it is submitted that it is a settled preposition

of law that pasting of a possession notice tantamount to attachment of the property, and that lifting of attachment and fresh attachment cannot be done vide the same notice, and therefore the possession notice pasted on 18.05.2018 is defective and in violation of Rule 8(1).

64. It is submitted that the Respondent Bank has made the paper-publication of the possession notice only in one newspaper, namely "Business Standard", in two editions, English and Hindi.

65. Further, it is submitted that it was mandatory upon the Respondent Bank to make paper-publication in two widely circulated newspapers, one of them in a vernacular language, whereas in the present case the possession notice has been published only in the one newspaper "Business Standard"; as per the Valuation Reports annexed by the Bank with its reply, the Valuation Reports have been issued by R.K. Associates and Satguru Valuers on 06.09.2024 and 09.09.2024, whereas the auction has been conducted on 30.07.2025, that is, after a lapse of more than ten months.

66. Further, it is submitted that it is a settled principle of law that after an interval of six months the value of the property is increased or changed, and that in the present case the valuation was done in September 2024 while the sale was done in the month of July 2025.

67. Accordingly, it is submitted that the Respondent Bank ought to have got the property valued from its approved valuer prior to the said sale but did not do so, and that it can therefore be said that the property has been sold by the Bank without getting the property valued from its valuer prior to sale, which is a violation of Rule 8(5) of the Rules, 2002; the Bank has violated Rule 8(6) of the Rules, 2002 inasmuch as the Bank has failed to serve a redemption notice of thirty days prior to the issuance of the auction notice.

68. Further, it is submitted that the alleged notice issued by the Bank dated 10.12.2024 demands Rs.9,39,27,943.50 vide demand notice dated 01.10.2016, whereas admittedly the Applicants have deposited

an amount of approximately Rs.8.15 Crores after the issuance of the notice dated 01.10.2016.

69. Accordingly, it is submitted that the Bank has taken away the right of the Applicants to redeem the property provided under Section 13(8) of the Act; the Authorized Officer has failed to paste the auction notice on the conspicuous part of the secured asset and that the Bank has thereby violated Rule 8(7) of the Rules, 2002. Further, reliance is placed on the judgment of the Hon'ble Apex Court in M.R. Vasumathi vs. The Authorized Officer, wherein it has been held that: **"The object of proceedings under the SARFAESI Act is not the mere culmination of sale in a mechanical manner, but the lawful realization of secured asset through a process that is fair, transparent and strictly compliant with the prescribed rules. In the present case, the non-adherence to the timeline that the SARFAESI Rules contemplate constitutes a material irregularity going to the root of the matter. The mere factum that the sale stood confirmed cannot, therefore, foreclose judicial scrutiny.";** the Authorized Officer has failed to serve the auction notice upon the Applicants and has thereby violated Rule 9(1) of the Rules, 2002, and that the Bank has failed to adduce any evidence qua service of the auction notice upon the Applicants.

70. Further, reliance is placed on the judgment of the Hon'ble Apex Court in Mathew Varghese vs. M. Amritha Kumar, wherein it has been held that it is mandatory upon the secured creditor to serve the auction notice upon the borrowers, failing which the entire auction proceedings are void ab initio; the Bank, vide the auction notice published on 28.06.2025, conducted the auction on a Reserve Price of Rs.17.33 Crores, whereby the auction was confirmed in favour of the sole bidder for Rs.17.34 Crores.

71. Further, it is submitted that to the utter surprise of the Applicants, the Bank has itself mentioned the value of the property on the following instances:

Documents	**Valuation**
Sanction Letter dated 24.04.2014	Rs.19.97 Crores as per Bank's valuation
Original Application No.558/2017 filed by the Bank before DRT-II, New Delhi	Rs.19.97 Crores in the year 2017 at the time of filing of the O.A.
Bank's Restructuring Proposal dated 29.03.2019	Rs.23.85 Crores vide Bank's valuation dated 26.11.2018
Bank's letter dated 22.08.2022	Rs.23.79 Crores as per valuation dated 10.08.2021 of Sahu & Associates, and Rs.23.48 Crores as per valuation dated 12.08.2021 of Mr. Gautam Akhauri

72. The Bank has conducted the auction for Rs.17.34 Crores, which is a throw away price, whereas the present market value of the property is approximately Rs.80 Crores, and that the Bank has conducted an illegal auction merely to benefit the sole bidder. Moreover, reliance is placed on the judgment of the Hon'ble Apex Court in Ram Kishun vs. State of U.P., wherein it has been held that: **"17. In view of the above, it is evident that there must be an application of mind by the authority concerned while approving/accepting the report of the approved valuer and fixing the reserve price, as the failure to do so may cause substantial injury to the borrower/ guarantor and that would amount to material irregularity and ultimately vitiate the subsequent proceedings.";** the Bank has mentioned in the auction

notice that "All that part and parcel of leasehold bearing Industrial Plot No.28/01/05 & 28/01/06 situated at Industrial Area site IV, Sahibabad Distt. Ghaziabad, UP admeasuring 1816.25 Sq Mtr....", whereas in actual fact the industrial plots were initially allotted by UPSIDC in favour of Applicant No.1 and the land use was subsequently changed for commercial activity, that is, a three-star hotel, in the year 2009, and the commercial plots with the construction raised over the same were mortgaged with the Bank in the year 2014; the Bank has itself mentioned in Original Application No.558/2017 filed before DRT-II, New Delhi that the secured properties are "Commercial Land and Building at Plot No.28/01/05 & 28/01/06, situated at Industrial Area Site-IV, Sahibabad U.P." that the Bank in its Restructuring Proposal dated 29.03.2019 admitted the property in question to be commercial, having mentioned "Security EMG of commercial land at Plot No 28/01/05-06 situated at Industrial Area Site IV Sahibabad Ghaziabad U. P." that the Bank has mentioned in its letter dated 22.08.2022 "Collateral Security EM of commercial land at Plot No.28/01/05-06 situated at Industrial Area, site IV, Sahibabad Dist: Ghaziabad UP...." and that as per the Recovery Certificate and judgment passed by the Hon'ble DRT-II, New Delhi it reads "Commercial Land and Building at Plot No.28/01/05 & 28/01/06 admeasuring 1816.25 Sq Mtrs..."; as per the CERSAI report the Bank has got the charge registered for the property as "Type of Asset Commercial", and that as per the Bank's own valuation filed with its reply it has been mentioned "Its operational Banquet hall cum hotel located in ...." and "Industrial area used as commercial after obtaining CLU....".

73. Accordingly, it is submitted that the Bank has admitted the factum and has even got the charge registered with CERSAI as commercial property, that the property in question is a running three-star hotel cum banquet hall as stated by the Bank's own valuers in their respective valuation reports, that the property in question has massive construction of over more than three lakh square feet, and

that the Bank has failed to mention the correct description of the property in the auction notice; the Bank has mentioned a wrong secured debt in the paper-publication of the auction notice, having mentioned "Dues to be recovered from Borrower/ Guarantor (Rs.) 9,39,27,943.50 as on 01.10.2016 with further interest, expenses and other charges thereon.", whereas it is an admitted fact that the Applicants have deposited approximately Rs.8.15 Crores after the issuance of the demand notice.

74. Further, it is submitted that the Rule is very clear on this aspect inasmuch as it says that the Bank has to mention the secured debt for recovery of which the property is to be sold; the auction conducted by the Bank is illegal as the date of EMD and the date of auction are the same, and that as per the reply filed by the Bank the EMD of Rs.1,73,30,000/- has been deposited on the date of auction itself, that is, on 30.07.2025 at 12:13:55; the Bank, acting in a vindictive manner, has failed to mention the encumbrance in the auction notice, and in particular has failed to mention the interim order passed by the Hon'ble DRAT, Delhi.

75. Further, it is submitted that the Bank has failed to mention the encumbrance in the auction notice qua the dues of UPSIDC, which have been arbitrarily alleged to have been paid by the Bank vide Demand Draft dated 03.09.2025. Moreover, it is submitted that the Bank was well aware since the year 2014 qua the dues of UPSIDC, the said dues being pending since the inception, and that the Bank has itself admitted the same in the Restructuring Proposal dated 29.03.2019, wherein it is recorded: ***"3.10 The branch shall ensure that the UPSIDC charges/dues of Rs.288.67 Lakhs shall be paid by borrower in one Bullet payment in the month of March-2019 (i.e. on or before 31/03/2019) by their partners capital without fail. (As assessed by TEV consultant)";*** the account of the Applicants was restructured on 29.03.2019, whereby the credit facilities were revived and the charge was modified in CERSAI on 31.05.2019, and that the Bank therefore cannot initiate any SARFAESI measure or

action based on the SARFAESI notices, that is, the demand notice dated 01.10.2016 and the possession notice pasted on 18.05.2018.

76. Further, it is submitted that the account having been restructured, the credit facilities having been revived and the charge in CERSAI having been modified, the Bank under no theorem of law can act on the basis of notices issued prior to 29.03.2019, and that it is a settled preposition of law that after the restructuring of an account the Bank has to issue a fresh demand notice under Section 13(2); in the present case the demand notice was issued by the Recovery Officer, DRT-II, New Delhi on 31.08.2021, and that the issuance of a demand notice under the Income Tax Schedule tantamounts to attachment of the property.

77. Further, it is submitted that once the property has been attached by a competent forum, the Bank cannot proceed to auction the property under the SARFAESI Act without the permission of the competent forum; the Bank has itself stated in the Restructuring Proposal dated 29.03.2019 at clause 3.10 that the branch shall ensure that the UPSIDC charges and dues of Rs.288.67 Lakhs shall be paid by the borrower in one bullet payment in the month of March 2019, that is, on or before 31.03.2019, by their partners' capital without fail, as assessed by the TEV consultant.

78. Further, it is submitted that since the inception, that is, the year 2014, and thereafter upon the restructuring of the loan account in 2019, the Bank has acknowledged the dues of UPSIDC; as per the terms and conditions of the alleged auction notice, it is stipulated at clause 27 that: **"27. The entire sale consideration shall be exclusively available for appropriation towards dues to the Bank and it is exclusive of encumbrance of all statutory dues, maintenance charges and other dues/charges if any, shall be settled by the proposed purchaser out of his own sources.";** the statutory dues have to be borne by the auction purchaser, whereas in the present case the Bank has played a fraud with the Applicants inasmuch as after appropriating the alleged loan outstanding, the

Bank has itself paid the dues of UPSIDC vide Demand Draft dated 03.09.2025.

The respondent no. 2, the auction purchaser, also filed reply to the Securitisation Application and contended as follows:

79. Counsel for the Respondent No. 2 submitted that the allegations contained in the reply of respondent no. 2 were disputed and denied.

80. It is submitted that property in question is a three-star hotel built on the commercial plot bearing No.28/01/05-06, Sahibabad Industrial Area, Ghaziabad, having massive construction of more than three lakh square feet, as categorically admitted by the Bank in its Sanction Letter, whereas DRMS Ventures LLP has purchased industrial plots without any construction as per the auction notice published by the Bank dated 28.06.2025.

81. Further, it is submitted that the Bank has specifically stated in the Sanction Letter dated 24.04.2014 that the nature of the property is commercial and that the construction of the three-star hotel was thereon, as per the said Sanction Letter dated 24.04.2014; DRMS Ventures LLP, being a single bidder, has got the sale confirmed in its favour for Rs. 17.34 Crores in respect of a property having a market value of approximately Rs.50 Crores, the Bank having itself mentioned in its Sanction Letter dated 24.04.2014 that as per the Valuation Report the valuation is Rs.2517.46 Lacs vide valuation dated 19.11.2012; the date of auction and the date of EMD were the same.

82. It is submitted that the Para 4 of the Counter Affidavit of respondent no.2 is specifically denied and that DRMS Ventures LLP, through its partner Dr. Mukesh Agarwal, was well aware of the pendency of the S.A.

83. It is submitted that Respondent No. 2 was a party before the Hon'ble High Court and must be well aware of the order passed by the Hon'ble Court.

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84. Further, it is submitted that the word used, namely that the Applicants "unlawfully continue with the possession", is nothing but judicial indiscipline, and that deposing such kind of statements on affidavit is a mockery of the procedure of law; DRMS Ventures LLP, through its partner Dr. Mukesh Agarwal, was well aware of the factum of the proceedings, the nature of the property, the price of the property, and the stay of possession granted by the Hon'ble DRAT, Delhi.

85. It is submitted that Respondent No. 2 was a single bidder who has deposited the EMD on the date of auction itself, that is, on 30.07.2025.

86. Further, it is submitted that this signifies the connivance of Respondent No. 2 with the Bank, as the Bank has conducted the auction of the property for a song merely to dent the Applicants; four lawyers have entered appearance on the part of Respondent No. 2 before this Hon'ble Tribunal.

87. Further, it is submitted that the affidavit of service qua the service of the S.A. is on the record of the file; Respondent No. 2 has itself admitted in the said paragraph that a hotel is running on the property, whereas to the utter surprise of the Applicants the Union Bank of India has conducted the auction of industrial plots.

88. Accordingly, it is submitted that Respondent No. 2, along with the Bank, has played a foul game with the Applicants.

The applicants have, in addition to the aforesaid pleadings, filed supplementary affidavit dated 05.06.2026, wherein they have deposed as follows:

89. Counsel for the Applicant submitted that the Respondent Bank has deliberately filed a single page and incomplete copy of the CERSAI report with its reply, whereas as per the actual CERSAI report the Type of Asset is Commercial.

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90. Further, it is submitted that the Bank has stated in its reply that the nature of the property is Industrial, whereas the charge created with CERSAI is Commercial; as per the Sanction Letter dated 24.04.2014 the Bank has specifically mentioned, firstly, that there is an "EMG/First charge on commercial Land at Plot No. 28/01/05-06 situated at Industrial Area, Site IV, Industrial Area, Site-IV, Industrial Area Sahibabad (U.P) valued at Rs.1997.88 Lacs and construction of 3 star Hotel thereon with structural and finishing work estimated at Rs.519.58 Lacs", and secondly, that the "Total Value is Rs.2517.46 Lakhs as per Valuation Report dated 19.11.2012"; the Bank has specifically stated in the Sanction Letter dated 24.04.2014 that the nature of the property is Commercial and that the construction of a three-star hotel was thereon, as per the said Sanction Letter dated 24.04.2014.

91. Further, it is submitted that the Bank has mentioned that as per the Valuation Report the valuation is Rs.2517.46 Lacs vide valuation dated 19.11.2012; the Bank, acting in a vindictive manner, has stated in the auction notice that the nature of the property is Industrial and has failed to mention any construction on the same, and that the Bank has thereby mentioned the wrong details of the property in the auction notice.

92. Further, it is submitted that the Bank has auctioned the property for Rs.17.34 Crores in July 2025, whereas as per the Bank's own Sanction Letter dated 24.04.2014 the value of the property was Rs.25.17 Crores as per the Valuation Report dated 19.11.2012; the Bank has filed an Original Application before DRT-II, New Delhi bearing O.A. No.558 of 2017, Corporation Bank vs. Ace Fab Overseas, and has mentioned in the memo that the security is "Commercial Land and Building at Plot No.28/01/05 & 28/01/06 situated at Industrial Area Site-IV Sahibabad U. P."; the order passed by the Hon'ble DRT-II, New Delhi in O.A. No.558/2017 dated 23.05.2017 has specifically mentioned "Commercial Land and Building at Plot No.28/01/05 & 28/01/06 admeasuring 1816.25 Sq

meter situated at Industrial Area Site-IV Sahibabad UP"; judgment and Recovery Certificate issued by the Hon'ble Presiding Officer, DRT-II, New Delhi in O.A. No.558/2017 has specifically mentioned "Commercial Land and Building at Plot No.28/01/05 & 28/01/06 admeasuring 1816.25 Sq meter situated at Industrial Area Site-IV Sahibabad UP"; the letter issued by the Respondent Bank dated 22.08.2022 states specifically "Collateral Security EM of commercial land at Plot no 28/01/05-06 situated at Industrial Area, site IV, Sahibabad, Ghaziabad having Market Value Rs.2379 Lacs and Rs.2348 Lacs" as per the Bank's valuers; the Applicant has deposited Rs.8,33,69,463/- after the issuance of the demand notice under Section 13(2), and that the Bank, acting in a vindictive manner, has mentioned the wrong debt due in the auction notice published by it. As regards Annexure A-1, being the CERSAI Asset Based Search Report downloaded on 03.06.2026, the report records the Asset Category as Immovable and the Type of Asset as Commercial in respect of Plot No.28/1/05-06, Sahibabad, District Ghaziabad, Uttar Pradesh, with the charge holder shown as Union Bank of India (Corporation Bank), Preet Vihar, and the borrower shown as the partnership firm Ace Fab Overseas.

93. Further, the report records the security interest as an Equitable Mortgage created in the Bank on 05.05.2014 and registered on the CERSAI portal on 08.11.2014, with a modification carried out on 31.05.2019 and registered on 11.06.2019, and the Satisfaction Status shown as "Not Satisfied", the Total Secured Amount being shown as Rs. 9,00,00,000.00 in the original view and Rs. 13,44,12,000.00 in the current view; As regards Annexure A-2, being the Credit Sanction Intimation of Corporation Bank, Preet Vihar Branch, dated 24.04.2014, the same records the term loan facility of Rs. 800.00 Lakhs, the purpose whereof is stated to be "To Part finance the project cost for setting up of 3 Star Hotel at Plot No. 28/1/5-6, Site-IV Industrial area Sahibabad (Uttar Pradesh) At an estimated project cost of Rs.1180.59 Lakhs", and records the security as "EMG/First

charge on commercial Land at Plot No. 28/01/05-06 situated at Industrial Area, site-IV, Industrial area Sahibabda (U.P.) valued at Rs. 1997.88 Lakhs and construction of 3 star Hotel thereon with structural and finishing work estimated at Rs.519.58 Lakhs", together with hypothecation of plant and machinery and other assets to be acquired out of Bank finance; As regards Annexures A-3, A-4 and A-5, being respectively the Bank's Original Application No.558 of 2017 before DRT-II, New Delhi, the order dated 23.05.2017 passed therein, and the judgment and Recovery Certificate issued therein, each of them describes the secured asset as "Commercial Land and Building" at Plot Nos.28/01/05 and 28/01/06, Industrial Area, Site-IV, Sahibabad, and as regards Annexure A-6, being the Bank's letter dated 22.08.2022, the same describes the collateral security as "commercial land" and records the market value at Rs.2379 Lacs and Rs.2348 Lacs as per the Bank's own valuers.

The applicants have filed their written submissions wherein the following contentions have been raised by them:

94. Counsel for the Applicant submitted that the possession notice dated 18.05.2018 was served upon the Applicants on 21.05.2018 and published on 21.05.2018, whereas the Bank had pasted the notice under Rule 9(1) as early as on 19.05.2018.

95. Further, it is submitted that the law is very clear that before complying with Rule 8(1) and Rule 8(2) the Bank cannot proceed with the auction notice, and that in the present case the Bank has issued notice under Rule 9(1) without complying with Rule 8(1) and Rule 8(2). Reliance in this behalf is placed on the judgment of the Hon'ble High Court of Madras in Bharath Post Graduate College vs. Indiabulls Housing Finance Ltd.; the Bank has withdrawn the possession notices dated 23.02.2017, 22.01.2018 and 16.05.2018

vide the possession notice affixed on 18.05.2018 and has also taken symbolic possession on 18.05.2018, whereas the Bank cannot withdraw and issue a possession notice vide the same notice, it being mandatory on the part of the Bank first to withdraw the possession notice and only thereafter to affix a fresh notice.

96. Moreover, it is submitted that it is a settled preposition of law that pasting of a possession notice tantamount to attachment of the property, and that lifting of attachment and fresh attachment cannot be done vide the same notice, and therefore the possession notice pasted on 18.05.2018 is defective and in violation of Rule 8(1); the Respondent Bank has made the paper-publication of the possession notice only in one newspaper, namely "Business Standard", in two editions, English and Hindi.

97. Further, it is submitted that it was mandatory upon the Respondent Bank to make paper-publication in two widely circulated newspapers, one of them in a vernacular language, whereas in the present case the possession notice has been published only in the one newspaper "Business Standard"; as per the Valuation Reports annexed by the Bank with its reply, the Valuation Reports have been issued by R.K. Associates and Satguru Valuers on 06.09.2024 and 09.09.2024, whereas the auction has been conducted on 30.07.2025, that is, after a lapse of more than ten months.

98. Further, it is submitted that it is a settled principle of law that after an interval of six months the value of the property is increased or changed, and that in the present case the valuation was done in September 2024 while the sale was done in the month of July 2025.

99. Accordingly, it is submitted that the Respondent Bank ought to have got the property valued from its approved valuer prior to the said sale but did not do so, and that the property has therefore been sold by the Bank without getting the property valued from its

valuer prior to sale, which is a violation of Rule 8(5) of the Rules, 2002. Reliance in this behalf is placed on the judgment of the Hon'ble DRAT, Allahabad in Regular Appeal No.27/2020, Mukesh Kumar vs. The Authorized Officer, Bank of Baroda; the Bank has violated Rule 8(6) of the Rules, 2002 inasmuch as the Bank has failed to serve a redemption notice of thirty days prior to the issuance of the auction notice.

100. Further, it is submitted that the alleged notice issued by the Bank dated 10.12.2024 demands Rs. 9,39,27,943.50 vide demand notice dated 01.10.2016, whereas admittedly the Applicants have deposited an amount of approximately Rs. 8.15 Crores after the issuance of the notice dated 01.10.2016.

101. Accordingly, it is submitted that the Bank has taken away the right of the Applicants to redeem the property provided under Section 13(8) of the Act; the Authorized Officer has failed to paste the auction notice on the conspicuous part of the secured asset and that the Bank has thereby violated Rule 8(7) of the Rules, 2002. Further, reliance is placed on the judgment of the Hon'ble Apex Court in M.R. Vasumathi vs. The Authorized Officer, Civil Appeal No.1606 of 2026, wherein it has been held that: **"The object of proceedings under the SARFAESI Act is not the mere culmination of sale in a mechanical manner, but the lawful realization of secured asset through a process that is fair, transparent and strictly compliant with the prescribed rules. In the present case, the non-adherence to the timeline that the SARFAESI Rules contemplate constitutes a material irregularity going to the root of the matter. The mere factum that the sale stood confirmed cannot, therefore, foreclose judicial scrutiny."**; the Authorized Officer has failed to serve the auction notice upon the Applicants, and that the Bank has failed to file the postal receipt qua service of the auction notice.

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102. Further, it is submitted that the Tracking Report filed along with the reply has been returned back to the sender and that the addressee pin code shown therein is 226001 of Lucknow, whereas the borrower and the mortgaged property are at Ghaziabad.

103. Accordingly, it is submitted that the Authorized Officer has violated Rule 9(1) of the Rules, 2002 and that the Bank has failed to adduce evidence qua service of the auction notice upon the Applicants; the Hon'ble Apex Court in Mathew Varghese vs. M. Amritha Kumar, Civil Appeal Nos.1927-1929 of 2014, has held that it is mandatory upon the secured creditor to serve the auction notice upon the borrowers, failing which the entire auction proceedings are void ab initio; the Bank, vide the auction notice published on 28.06.2025, conducted the auction on a Reserve Price of Rs.17.33 Crores, whereby the auction was confirmed in favour of the sole bidder for Rs.17.34 Crores.

104. Further, it is submitted that to the utter surprise of the Applicants the Bank has itself mentioned the value of the property on the following instances:

Documents	**Valuation**
Sanction Letter dated 24.04.2014	Rs.19.97 Crores as per Bank's valuation
Bank filed Original Application No.558/2017 before DRT-II, New Delhi	Rs.19.97 Crores in the year 2017 at the time of filing of the O.A.
Bank's Restructuring Proposal dated 29.03.2019	Rs.23.85 Crores vide Bank's valuation dated 26.11.2018

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Bank's letter dated 22.08.2022	Rs.23.79 Crores as per valuation dated 10.08.2021 of Sahu & Associates, and Rs.23.48 Crores as per valuation dated 12.08.2021 of Mr. Gautam Akhauri

105. The Bank has conducted the auction for Rs.17.34 Crores, which is a throw away price, whereas the present market value of the property is approximately Rs.80 Crores, and that the Bank has conducted an illegal auction merely to benefit the sole bidder. Moreover, reliance is placed on the judgment of the Hon'ble Apex Court in Ram Kishun vs. State of U.P., wherein it has been held that: **"17. In view of the above, it is evident that there must be an application of mind by the authority concerned while approving/accepting the report of the approved valuer and fixing the reserve price, as the failure to do so may cause substantial injury to the borrower/ guarantor and that would amount to material irregularity and ultimately vitiate the subsequent proceedings.";** the Bank has mentioned in the auction notice that "All that part and parcel of leasehold bearing Industrial Plot No.28/01/05 & 28/01/06 situated at Industrial Area site IV, Sahibabad Distt. Ghaziabad, UP admeasuring 1816.25 Sq Mtr....", whereas in actual fact the industrial plots were initially allotted by UPSIDC in favour of Applicant No.1, the land use was subsequently changed for commercial activity, that is, a three-star hotel, in the year 2009, and the commercial plots with the construction raised over the same were mortgaged with the Bank in the year 2014; the Bank has itself mentioned in Original Application No.558/2017 filed before DRT-II, New Delhi that the secured properties are

"Commercial Land and Building at Plot No.28/01/05 & 28/01/06, situated at Industrial Area Site-IV, Sahibabad U.P."; that the Bank in its Restructuring Proposal dated 29.03.2019 admitted the property in question to be commercial, having mentioned "Security EMG of commercial land at Plot No 28/01/05-06 situated at Industrial Area Site IV Sahibabad Ghaziabad U. P."; that the Bank has mentioned in its letter dated 22.08.2022 "Collateral Security EM of commercial land at Plot No.28/01/05-06 situated at Industrial Area, site IV, Sahibabad Dist: Ghaziabad UP...."; and that as per the Recovery Certificate and judgment passed by the Hon'ble DRT-II, New Delhi it reads "Commercial Land and Building at Plot No.28/01/05 & 28/01/06 admeasuring 1816.25 Sq Mtrs..."; as per the CERSAI report the Bank has got the charge registered for the property as "Type of Asset Commercial", and that as per the Bank's own valuation filed with its reply it has been mentioned "Its operational Banquet hall cum hotel located in ...." and "Industrial area used as commercial after obtaining CLU....".

106. Accordingly, it is submitted that the Bank has admitted the factum and has even got the charge registered with CERSAI as commercial property, that the property in question is a running three-star hotel cum banquet hall as stated by the Bank's own valuers in their respective valuation reports, that the property in question has massive construction of over more than three lakh square feet, and that the Bank has failed to mention the correct description of the property in the auction notice. Reliance in this behalf is placed on the judgment of the Hon'ble High Court of Orissa in Swastik Agency vs. State Bank of India; the Bank has mentioned a wrong secured debt in the paper-publication of the auction notice, having mentioned "Dues to be recovered from Borrower/ Guarantor (Rs. 9,39,27,943.50 as on 01.10.2016 with further interest, expenses and other charges thereon.", whereas it is an

admitted fact that the Applicants have deposited approximately Rs.8.15 Crores after the issuance of the demand notice.

107. Further, it is submitted that the Rule is very clear on this aspect inasmuch as it says that the Bank has to mention the secured debt for recovery of which the property is to be sold; the auction conducted by the Bank is illegal as the date of EMD and the date of auction are the same, and that as per the reply filed by the Bank the EMD of Rs.1,73,30,000/- has been deposited on the date of auction itself, that is, on 30.07.2025 at 12:13:55; the Bank, acting in a vindictive manner, has failed to mention the encumbrance in the auction notice, and in particular has failed to mention the interim order passed by the Hon'ble DRAT, Delhi.

108. Further, it is submitted that the Bank has failed to mention the encumbrance in the auction notice qua the dues of UPSIDC, which have been arbitrarily alleged to have been paid by the Bank vide Demand Draft dated 03.09.2025.

109. Moreover, it is submitted that the Bank was well aware since the year 2014 qua the dues of UPSIDC, the said dues being pending since the inception, and that the Bank has itself admitted the same in the Restructuring Proposal dated 29.03.2019, wherein it is recorded: ***"3.10 The branch shall ensure that the UPSIDC charges/dues of Rs.288.67 Lakhs shall be paid by borrower in one Bullet payment in the month of March-2019 (i.e. on or before 31/03/2019) by their partners capital without fail. (As assessed by TEV consultant)";*** the account of the Applicants was restructured on 29.03.2019, whereby the credit facilities were revived and the charge was modified in CERSAI on 31.05.2019, and that the Bank therefore cannot initiate any SARFAESI measure or action based on the SARFAESI notices, that is, the demand notice dated 01.10.2016 and the possession notice pasted on 18.05.2018.

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110. Further, it is submitted that the account having been restructured, the credit facilities having been revived and the charge in CERSAI having been modified, the Bank under no theorem of law can act on the basis of notices issued prior to 29.03.2019, and that it is a settled preposition of law that after the restructuring of an account the Bank has to issue a fresh demand notice under Section 13(2); in the present case the demand notice was issued by the Recovery Officer, DRT-II, New Delhi on 31.08.2021, and that the issuance of a demand notice under the Income Tax Schedule tantamount to attachment of the property.

111. Further, it is submitted that once the property has been attached by a competent forum, the Bank cannot proceed to auction the property under the SARFAESI Act without the permission of the competent forum; the Bank has itself stated in the Restructuring Proposal dated 29.03.2019 at clause 3.10 that the branch shall ensure that the UPSIDC charges and dues of Rs.288.67 Lakhs shall be paid by the borrower in one bullet payment in the month of March 2019, that is, on or before 31.03.2019, by their partners' capital without fail, as assessed by the TEV consultant.

112. Further, it is submitted that since the inception, that is, the year 2014, and thereafter upon the restructuring of the loan account in 2019, the Bank has acknowledged the dues of UPSIDC; as per the terms and conditions of the alleged auction notice, it is stipulated at clause 27 that: **"27. The entire sale consideration shall be exclusively available for appropriation towards dues to the Bank and it is exclusive of encumbrance of all statutory dues, maintenance charges and other dues/charges if any, shall be settled by the proposed purchaser out of his own sources.";** it was specifically stated that the statutory dues have to be borne by the auction purchaser, whereas in the present case the Bank has played a fraud with the Applicants inasmuch as after appropriating the

alleged loan outstanding, the Bank has itself paid the dues of UPSIDC vide Demand Draft dated 03.09.2025.

The respondent bank has filed their written submissions wherein they have argued as follows:

113. Applicant No.1 is a partnership firm acting through its partners, Applicant Nos.2 and 3, who are also the Guarantors and Mortgagors herein, and that Applicant No.1 approached the Respondent Bank for financial assistance to part-finance the setting up of a three-star hotel on leased industrial land, being Plot Nos.28/01/05 and 28/01/06 situated at Industrial Area Site-IV, Sahibabad, Uttar Pradesh, measuring 1,816.25 sq. mtrs.

114. Further, it is submitted that consequent to the said request the Respondent Bank sanctioned, vide Credit Sanction Intimation dated 24.04.2014, a Term Loan Facility of Rs.800 Lakhs for project financing and an Overdraft Facility of Rs.100 Lakhs for working capital requirements; the Applicants agreed to repay the credit facilities along with a floating rate of interest compounded monthly, the term loan carrying interest at 15.85% per annum, being Base Rate plus 5.60%, and the overdraft carrying interest at 14.85% per annum, being Base Rate plus 4.60%, and that the terms stipulated that any default in the timely payment of Equated Monthly Instalments would attract penal interest at 2% per annum over and above the normal rate of interest, recoverable separately; the Applicants failed to maintain the requisite financial discipline, resulting in the account of Applicant No.1 being classified as a Non-Performing Asset on 28.09.2016, in strict accordance with the prudential norms prescribed by the Reserve Bank of India; consequent to the alleged defaults the Respondent Bank issued a Demand Notice dated 01.10.2016 under Section 13(2) of the SARFAESI Act, 2002 demanding a sum of Rs.9,39,27,943.50 along

with future interest, costs and expenses, and that the Respondent Bank thereafter issued a Possession Notice dated 23.02.2017 under Section 13(4) of the said Act; the Respondent Bank additionally instituted recovery proceedings by filing Original Application No.558/2018 before the Learned DRT-II, New Delhi, seeking recovery of a sum of Rs.10,22,27,536.47, inclusive of interest debited up to 30.04.2017 but excluding incidental charges, and that the said Original Application was subsequently allowed by the Learned Tribunal vide its judgment and order dated 25.02.2021; during the pendency of the said Original Application the Applicants approached the Respondent Bank with a proposal for restructuring the credit facilities, that the Respondent Bank accepted the request and sanctioned a restructuring package vide Credit Sanction Intimation dated 29.03.2019, and that under the said package both existing credit facilities were revived alongside the sanction of a new and additional facility, being a Funded Interest Term Loan of Rs.444.12 Lakhs representing the uncharged interest accrued from the initial date of NPA classification up to 31.01.2019.

115. Further, it is submitted that the restructuring was subject to the explicit condition precedent that in the event of any failure by the Applicants to comply with their restructured contractual obligations, the account would instantly be treated as in default from its original and retrospective date of default, in accordance with the Income Recognition and Asset Classification norms of the Reserve Bank of India; following the issuance of the Recovery Certificate for a sum of Rs.10,22,27,536.47 along with simple interest at 12% per annum from the date of filing of the Original Application, that is 11.05.2017, until full realisation, the Applicants repeatedly approached the Respondent Bank for temporary relief through ad-hoc arrangements; as regards the first "holding-on" operation sanctioned on 31.12.2021, the Respondent Bank, consequent to the Applicants' request dated 16.11.2021, sanctioned a temporary holding-on operation for a period of six months valid up to May

2022, permitting operations with an 80% cut-back mechanism intended to alleviate financial stress and upgrade the account, whereas out of a total demand of Rs.224.45 Lakhs the Applicants deposited only Rs.89.39 Lakhs after retaining their 20% share, and that due to this material breach of terms the said facility stood automatically withdrawn and the Bank resumed its recovery measures; as regards the second "holding-on" operation sanctioned on 22.08.2022, upon a subsequent request by the Applicants dated 22.06.2022 the Respondent Bank conditionally extended the holding-on facility for a further period of six months under an identical 80% cut-back mechanism, the primary objective remaining to pull Applicant No.1 out of financial distress and facilitate upgradation of the account, and that despite the extension the Applicants failed to deposit any amount whatsoever during the extended six-month period.

116. Accordingly, it is submitted that since these ad-hoc arrangements were explicitly temporary and safely preserved the Bank's recovery rights in the event of a default, the Respondent Bank legitimately proceeded with its formal recovery measures; the Applicants initially challenged the Demand Notice dated 01.10.2016 and the symbolic Possession Notice dated 23.02.2017 by filing S.A. No.372/2017, which this Learned Tribunal allowed vide order dated 09.02.2018 by setting aside the said possession notice while expressly preserving the validity of the Demand Notice and the NPA classification dated 28.09.2016, with liberty to proceed afresh.

117. Further, it is submitted that consequent to the said order the Respondent Bank lawfully issued a fresh Possession Notice dated 18.05.2018 for the secured asset, comprising land and building at Plot Nos.28/01/05 and 28/01/06 measuring 1,816.25 sq. meters, Industrial Area Site-IV, Sahibabad, Uttar Pradesh, which was strictly served via Registered Post, affixed at a conspicuous part of the property and published in both the Hindi and English editions of the Business Standard newspaper on 21.05.2018, in absolute

compliance with Rules 8(1) and 8(2) of the Security Interest (Enforcement) Rules, 2002, which is said to be a factum explicitly admitted by the Applicants at paragraph 5.7 of their application and substantiated by proof of service; the Applicants' sole objection centres on the Bank's right to withdraw un-adjudicated notices so as to reset the procedural timeline, whereas this practice is a well-settled proposition of law and carries no statutory bar under Chapter III of the SARFAESI Act, 2002, as upheld by the Hon'ble Chhattisgarh High Court in M/s Dauji Farms Limited & Ors. v. Dena Bank & Anr., which applied the theory of "useless formality" against such procedural challenges, and as held by the Hon'ble Supreme Court of India in L&T Housing Finance Limited v. Trishul Developers & Ors., (2020) 10 SCC 659, that valid enforcement actions cannot be stalled on hyper-technical objections unless deep-rooted structural prejudice is proven.

118. Accordingly, it is submitted that since the Applicants have completely failed to demonstrate any substantial prejudice caused to them by the resetting of the timeline, their objections lack legal foundation and the application is liable to be summarily dismissed; the Applicants have raised a hyper-technical objection asserting that the publication of the Possession Notice dated 18.05.2018 in the English and Hindi editions of the Business Standard fails to satisfy the requirement of "two newspapers" under Rule 8(2) of the Security Interest (Enforcement) Rules, 2002, whereas this contention is legally untenable and directly refuted by settled judicial precedents. Further, it is submitted that the Hon'ble DRAT, Allahabad in Axis Bank v. Pratima Mohley explicitly held that separate language editions, such as Hindi and English, of a newspaper published under the same masthead constitute distinct and independent publications for the purpose of serving legal notices, thereby fully satisfying the statutory mandate for dual newspaper publication including the vernacular requirement, and that this principle was reinforced by the Hon'ble DRAT, Allahabad in Authorized Officer, Indiabulls

Commercial Credit Ltd. v. M/s D.B. Footwear & Ors., which specifically adjudicated upon the publication of a possession notice in the English and Hindi editions of the Business Standard and ruled that they are distinct newspapers under Rule 8(2), a similar view having been taken by the Hon'ble DRAT, Allahabad in IDFC Bank Ltd. v. Radha Traders & Ors.; both language editions of the Business Standard operate as entirely separate entities, maintaining independent printing schedules, localized circulation footprints and distinct registration metrics with the Registrar of Newspapers for India, which completely strips the Applicants' objection of any legal merit and renders it liable to be rejected; the Applicants' objection asserting that the valuation reports dated 06.09.2014 and 09.09.2014 are ten months old relative to the auction date and thus violate Rule 8(5) of the Security Interest (Enforcement) Rules, 2002 is untenable and countered by established jurisprudence.

119. Further, it is submitted that the Hon'ble DRAT, Kolkata in Abhyidaya Farms Pvt. Ltd. v. Kanaka Mahalakshmi Agro Industries and Ors. explicitly ruled that Rule 8(5) does not prescribe a rigid expiration timeline for valuations, validating a report obtained within a reasonable time prior to sale, particularly where the borrower fails to submit a contradictory valuation from an approved valuer, and that this principle is supported by the Hon'ble Karnataka High Court in M/s Soumya Engineering v. The Chief Manager, Indian Bank, which held that Rule 8(5) does not contemplate or mandate procuring a fresh valuation report for each subsequent sale notice, accepting a valuation that was over a year old; while the Hon'ble DRAT, Kolkata in M/s H.M. Construction & Agency v. Indian Overseas Bank highlighted that a valuation must be comprehensive of all components to be sound, the overall valuation procedure adopted by the Respondent Bank remains entirely accurate and robust, and that this procedural sanity satisfies the legal benchmarks applied by the Hon'ble Hyderabad High Court in K. Naga Lakshmi v. Chairman and Managing Director, Andhra Bank,

which observed that where a valuation is fair, rational and unchallenged by alternative documentary proof, the reserve price fixation cannot be disrupted.

120. Accordingly, it is submitted that inasmuch as the valuations are mathematically and structurally sound, and given that the Applicants never exercised their right to furnish a counter-valuation report to demonstrate any actual devaluation or structural prejudice, their objection deserves to be summarily dismissed; the Applicants' objection challenging the Sale Notice dated 10.12.2024 and invoking Section 13(8) of the SARFAESI Act, 2002 is untenable and legally barred, especially since the Applicants have already explicitly admitted the validity and receipt of the said notice in an Interim Application filed before the Hon'ble DRAT, New Delhi in Regular Appeal No.165/2022.

121. Further, it is submitted that this objection is directly refuted by the judgment of the Hon'ble Supreme Court of India in M. Rajendran v. M/s KPK Oils and Proteins India Pvt. Ltd. & Ors., which settled the law regarding the composition of auction notices under Rules 8(6), 8(7) and 9(1) of the Security Interest (Enforcement) Rules, 2002, the Hon'ble Apex Court having explicitly ruled that the statutory framework does not contemplate or mandate separate and distinct individual notices for public auction and personal intimation but instead prescribes a single composite "Notice of Sale", and having clarified that the mandatory thirty-day statutory embargo stipulated under Rule 9(1) is strictly calculated from the date of issuance of this composite notice, reckoned from whichever action occurs later between the public newspaper publication and personal service upon the borrower.

122. Accordingly, it is submitted that inasmuch as the Respondent Bank has executed this composite notice in adherence to the statutory timelines, and given the Applicants' binding prior judicial admission before the Hon'ble DRAT, New Delhi, their contradictory objection is liable to be summarily dismissed; the

Applicants' allegation that the Respondent Bank failed to affix the auction notice on a conspicuous part of the secured asset is completely refuted by the documentary evidence on record, inasmuch as the Bank has placed on record all comprehensive service and compliance reports qua the Sale Notice dated 16.06.2015.

123. Further, it is submitted that this objection is legally unsustainable under the settled principles governing execution and auction sales, as enunciated by the Hon'ble Allahabad High Court in Ram Krishna Kapoor & Ors. v. Purshottam Das Poddar & Ors. under the analogous principles of Order XXI Rule 90 of the Code of Civil Procedure, that a party seeking to set aside an auction sale must conclusively prove the dual existence of both a material irregularity or fraud and a substantial consequential injury resulting directly therefrom.

124. Accordingly, it is submitted that since the Respondent Bank has furnished unimpeachable documentary proof of procedural compliance and the Applicants have failed to demonstrate any structural prejudice or substantial injury, their objection is liable to be summarily dismissed; the Applicants' belated challenge to the valuation of the property conducted by the Respondent Bank prior to the auction sale is legally unsustainable and barred by the doctrine of waiver, since the Bank duly served a Notice of Redemption dated 10.12.2024 post-valuation, which the Applicants completely failed to object to or challenge at that material point in time. Further, it is submitted that this position is supported by the judgment of the Hon'ble Hyderabad High Court in K. Naga Lakshmi v. Chairman and Managing Director, Andhra Bank, which ruled that where a borrower is afforded a clear statutory opportunity to object to the valuation under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 but fails to do so, they cannot subsequently challenge the fixation of the reserve price; the Applicants' bad faith is evident from the fact that they approached the Bank in May 2025 seeking

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redemption and executed a formal payment undertaking which they subsequently failed to honour, and that while the judgment of the Hon'ble Madras High Court in Om Sakthi Sekar v. V. Sukumar & Ors. recognises judicial discretion to order a limited remand for re-examining valuations to assess differential amounts under exceptional circumstances, it explicitly clarifies that such an exercise must never disturb the finality of a confirmed auction sale or prejudge the accrued rights of the bona fide auction purchaser.

125. Accordingly, it is submitted that inasmuch as the Applicants have consistently defaulted on their own redemption undertakings and failed to raise any timely documented objections during the statutory notice period, their post-sale valuation challenge is liable to be summarily dismissed; the Applicants' objection alleging a misdescription and consequential undervaluation of the secured asset on the ground that the land is commercial rather than industrial is legally untenable and factually refuted.

126. Further, it is submitted that while the property was mortgaged as "Industrial Land and Building" at Plot Nos.28/01/05 and 28/01/06 measuring 1,816.25 sq. mtrs., Industrial Area Site-IV, Sahibabad, Uttar Pradesh, the Respondent Bank subsequently discovered via an administrative communication that the Uttar Pradesh State Industrial Development Corporation had merely issued a conditional, in-principle approval dated 23.06.2007 to convert the land use from industrial to commercial, and that because this conversion was strictly contingent upon the Applicants fulfilling specific reciprocal conditions within a mandatory thirty-day window, which the Applicants admittedly failed to execute, resulting in no fresh commercial lease deed ever being registered, the original parent industrial lease deed remained fully valid, operational and binding; the Respondent Bank was legally bound to value and sell the property based on its subsisting registered industrial title profile rather than a hypothetical and speculative commercial status that

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never legally materialised due to the Applicants' own defaults and omissions.

127. Moreover, it is submitted that the Applicants' reference to the contentions of the separate Original Application belongs to an independent sphere of recovery litigation that has no bearing on these SARFAESI enforcement proceedings, particularly since the Hon'ble DRAT, New Delhi is already actively seized of the Applicants' grievances under Regular Appeal No.165/2022 filed under Section 20 of the Recovery of Debts and Bankruptcy Act, 1993, thereby rendering this objection meritless and liable to be summarily dismissed; the Applicants' objection alleging the mention of an incorrect secured debt amount is meritless and directly contradicted by the record, inasmuch as the Respondent Bank has accurately stated the secured debt as Rs.9,39,27,943.50 as on 01.10.2016, along with further applicable interest, expenses and other charges due to the Union Bank of India, less any subsequent recoveries made thereafter.

128. Further, it is submitted that to demonstrate absolute transparency and mathematical precision the Respondent Bank has additionally placed on record a comprehensive and up-to-date calculation statement of outstanding dues computed in strict conformity with the final judgment and Recovery Certificate passed in the Original Application, thereby rendering the Applicants' objections legally untenable and liable to be summarily rejected; the Applicants' objection asserting that scheduling the last date for submission of the Earnest Money Deposit and the actual e-auction on the same calendar day constitutes a procedural irregularity is legally untenable and refuted.

129. Further, it is submitted that under the scheme of the SARFAESI Act, 2002 and the Security Interest (Enforcement) Rules, 2002 there is absolutely no statutory restriction or legal prohibition against keeping the last date for EMD submission and the date of the public auction on the same day, and that this same-day mechanism is a

globally accepted and lawful banking practice, a secured creditor being legally permitted, provided that the mandatory statutory notice period is fully completed, to schedule the EMD submission window to close a few hours before the online bidding commences on that very same day, such as closing EMD submissions at 11:00 AM and commencing live bidding at 2:00 PM, so as to optimise logistical efficiency and maximise participation.

130. Accordingly, it is submitted that inasmuch as the Respondent Bank has strictly adhered to the mandatory public notice timelines and this timing structure inflicts no structural prejudice or material injury upon the Applicants, their objection is liable to be summarily dismissed; the Applicants' objection alleging that the Respondent Bank failed to disclose the encumbrances on the secured asset prior to the auction is factually refuted and legally unsustainable, the Respondent Bank explicitly denying any omission or concealment, inasmuch as the statutory claim from the Uttar Pradesh State Industrial Development Corporation was only raised and received by the Bank after the public auction had already been successfully concluded.

131. Further, it is submitted that since a secured creditor is only statutorily mandated under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 to disclose encumbrances that are actively within its knowledge at the time of publishing the sale notice, any post-auction liability cannot retroactively vitiate the recovery process, and that the definitive proof verifying the exact timeline and receipt of this post-auction communication has been placed on record by the Bank.

132. Accordingly, it is submitted that because the Bank acted in perfect good faith based on the title profile known to it at the material time, the Applicants' objection is devoid of merit and liable to be summarily dismissed; the Applicants' objection asserting that the Respondent Bank cannot legally initiate or continue SARFAESI enforcement measures based on a Demand Notice and Possession

Notice issued prior to the restructuring of the account is legally untenable and raised solely to mislead this Learned Tribunal.

133. Further, it is submitted that a restructuring package represents a conditional concession rather than a novation or forgiveness of debt, meaning that upon the Applicants' material breach of the restructured terms the package stands revoked and the account retroactively reverts to its original Non-Performing Asset status, and that this operational mechanism was explicitly safeguarded by the strict condition precedent embedded within the Bank's Restructuring Sanction dated 29.03.2019, which mandated that all Reserve Bank of India prudential guidelines would apply mutatis mutandis, preserving the Bank's right to treat the account as in default from its original date; it is a well-settled principle of banking jurisprudence that a standard restructuring agreement modifies only the repayment timeline without extinguishing the original underlying loan contract, and thus a validly issued Section 13(2) Demand Notice or Section 13(4) Possession Notice remains legally alive and enforceable if the borrower defaults on the revised terms, this position being supported by the rationale applied by the Hon'ble Kerala High Court in P.H. Mohammed Ali v. Union Bank of India & Ors., which observed that intermediate settlement concessions or repayment restructuring arrangements do not automatically quash, invalidate or retroactively render unlawful the initial SARFAESI enforcement steps taken by a secured creditor. Accordingly, it is submitted that inasmuch as the Applicants failed to honour their restructured contractual obligations, the Respondent Bank acted entirely within its statutory rights by resuming recovery measures based on its subsisting notices; the Applicants' objection asserting that the Respondent Bank cannot legally initiate or execute SARFAESI enforcement actions without obtaining prior permission or clearance from the Recovery Officer is baseless and legally absurd.

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134. Further, it is submitted that under the express statutory mandate of Section 13(1) of the SARFAESI Act, 2002 any security interest created in favour of a secured creditor may be strictly enforced "without the intervention of the Court or Tribunal", thereby completely excluding the administrative or supervisory jurisdiction of a Recovery Officer during the currency of such measures, and that the Hon'ble Supreme Court of India has repeatedly emphasised that the primary legislative intent behind the SARFAESI framework is to provide an independent and parallel pathway for financial institutions to expeditiously recover non-performing assets outside the traditional delays of formal tribunal litigation; the entire recovery machinery under the said Act is driven exclusively by the Bank's designated Authorised Officer, who functions as an independent statutory authority empowered to issue demand notices, take symbolic or physical possession and conduct public auctions without being answerable to, or requiring approval from, a Recovery Officer, and that inasmuch as the concurrent invocation of SARFAESI measures alongside pending recovery certificate proceedings is perfectly permissible under the law, the Applicants' objection is devoid of merit and liable to be summarily dismissed; the present Securitisation Application is strictly barred by limitation under Section 17 of the SARFAESI Act, 2002 as regards the reliefs belatedly incorporated via the amendment orders dated 31.10.2025 and 09.06.2026, the Applicants having completely failed to challenge the underlying enforcement measures within the mandatory forty-five day statutory period.

135. Further, it is submitted that it is a settled proposition of law that the Limitation Act is a statute of repose designed to extinguish stale claims, and that if an aggrieved party neglects to seek timely redress their right to sue is lost by the lapse of time, and that admittedly the Sale Notice dated 16.06.2025 was successfully served upon the Applicants yet they deliberately failed to prefer any appropriate challenge within the designated forty-five day window; the

Interlocutory Application filed by the Applicants on 23.02.2026 seeking to challenge the Sale Certificate dated 12.08.2025 issued in favour of the Auction Purchaser, Respondent No.2, is also heavily time-barred, particularly since the record establishes that the Applicants had absolute and documented knowledge of the said Sale Certificate at least as early as the proceedings dated 18.09.2025 in TRC No.1411/2022.

136. Accordingly, it is submitted that because the strict forty-five day limitation under Section 17(1) is mandatory and cannot be routinely extended to accommodate such gross un-condoned delays, both subsequent amendments are legally non-est and the amended S.A. is liable to be summarily dismissed on this sole threshold ground; the Applicants have completely failed to file any supporting verification affidavit in validation of their amended Securitisation Application, choosing instead to merely insert one or two unsworn pages into the main body of the petition, which constitutes a highly irregular procedure entirely alien to established legal practice.

137. Further, it is submitted that it is a fundamental and settled principle of civil jurisprudence that any formal court pleadings or extensive factual amendments that are not explicitly accompanied and verified by a duly executed affidavit cannot be read, processed or relied upon as evidence by a court of law, and that inasmuch as the Applicants have bypassed this mandatory procedural requirement, rendering their amended pleadings legally non-est and incapable of judicial consideration, the present Securitisation Application suffers from an incurable threshold defect and is liable to be summarily dismissed on this ground alone; the statutory schemes of both legislations operate in different fields, in that while the RDB Act provides a mechanism for the adjudication and recovery of debts through a Tribunal certificate, the SARFAESI Act empowers the secured creditor to realize its securities without the immediate intervention of courts or tribunals.

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138. Further, it is submitted that consequently an interim order or a status quo directive granted within the procedural confines of an Appeal under the RDB Act cannot automatically jump statutory tracks so as to paralyses or restrict the Bank's enforcement rights under Section 13(4) of the SARFAESI Act, and that unless an express and specific injunction is granted by a competent forum under Section 17 of the SARFAESI Act itself, the Bank's statutory right to seize and sell the secured asset remains entirely unfettered.

139. Moreover, it is submitted that the Hon'ble DRAT, New Delhi vide its order dated 11.02.2025 clarifies the situation; the Applicants cannot seek shelter under any interim mechanisms or stays related to the RDB Act to challenge the validity of the SARFAESI auction sale and possession measures, the causes of action under the two statutes being completely separate. Further, it is submitted that the Bank's action in proceeding with the sale of the industrial asset, despite the parallel RDB proceedings, is perfectly valid, completely lawful and immune to collateral challenges of this nature, and that the plea set up by the Applicants regarding the applicability of the RDB stay to the SARFAESI action is entirely devoid of merit and stands rejected; a Rejoinder cannot be read as an absolute part of the primary pleadings and the Applicants are legally barred from introducing fresh contentions within their Rejoinder that were never initially pleaded in their main Securitisation Application.

140. Further, it is submitted that it is a well-settled principle of civil jurisprudence that a party cannot travel beyond their original pleadings, and that any new factual assertions or grounds raised at the replication stage must be completely disregarded by this Learned Tribunal.

141. Accordingly, it is submitted that because the Applicants cannot be permitted to surprise the defense or cure the foundational deficiencies of their main petition through subsequent filings, these new contentions must be excluded from judicial consideration, though the Respondent Bank respectfully seeks liberty to file

additional written arguments to comprehensively dismantle these belated assertions should the need arise.

I have carefully perused the pleadings of the parties as also their written submissions and have given my anxious consideration to the oral arguments advanced before me.

142. Before I proceed to return my findings on the issues at which the parties are at variance, I would refer to the scheme of Section 17 of SARFAESI Act, 2002. On a conjoint reading of sub-sections 1 to 4 of Section 17 of SARFAESI Act, 2002, this tribunal is required to examine the validity and correctness or otherwise of the entire recovery action taken by the secured creditor under the provisions of SARFAESI Act, 2002 on the basis of pleadings of the parties and the evidence led by them.

143. In case, it is found that the enforcement measures are violative of the provisions of the Act and Rules, this tribunal would be empowered to set aside the enforcement measures and pass orders for restoration of status quo ante while on the secured creditor succeeding to establish the validity of the recovery proceedings as also the enforcement measures, this Hon'ble Tribunal would proceed to declare their action to be in consonance with law.

144. It is also to be noted that the Hon'ble High Court of Judicature at Allahabad has in Kanika Swami Vs. State of Uttar Pradesh – MANU/UP/2703/2017 has categorically held that the burden of proof to establish compliance of all the mandatory provisions of the Act under Rules before the Debts Recovery Tribunal is upon the secured creditor and that if any of the requirements of the Act and the rules is not found to be complied by the Debts Recovery Tribunal, the action of the secured creditor fails against the borrower. I may also profitably refer to the dictum of Swastik Agency & Ors. Vs. State Bank of India – AIR 2009 Ori 147 (DB),

wherein it was held that the provisions of SARFAESI Act and Security Interest (Enforcement) Rules, 2002 are mandatory and no deviation therefrom is permissible as also the dictum of J. Rajiv Subramaniyam Vs. Pandiyas – (2014) 5 SCC 651, whereby it was propounded that a sale which was conducted in violation of Section 13 of SARFAESI Act, 2002 and Rules 8 & 9 of Security Interest (Enforcement) Rules is null and void.

145. It is in the aforementioned view of the settled legal propositions relating to the examination and scrutiny of the action taken by a secured creditor under SARFAESI Act, 2002, that this Tribunal should proceed to determine the issues that have arisen between the parties.

146. On the contentious issues that have arisen, inter se, the parties, my findings are as follows:

(a) It is the contention of the applicants that the respondent no.1 violated the prescription of Rules 8(1) and 8(2) while issuing the symbolic possession notice dated 18.05.2018. It has been argued on behalf of the applicants that the earlier notices were not withdrawn before the issuance of fresh notice dated 18.05.2018. It is an admitted case that the applicants were personally served with the possession notice dated 18.05.2018 on 21.05.2018. The respondent no.1 has filed photographs on the basis of which it has been contended that the possession notice dated 18.05.2018 was affixed and pasted at the conspicuous part of the secured asset. I have perused the photographs. The photographs are such that it is not possible to comprehend as to whether affixation was carried out at the property in question or not. The photographs also does not display date and time at which the same were purportedly taken by the authorized officer. The possession notice was, however, published on 21.05.2018 in the newspapers being Business Standard, English and Hindi Editions. The property situated in Ghaziabad and Business Standard has good circulation amongst businessmen. Therefore, while holding that the

possession notice was served upon the applicants personally and validly by publication, I unhesitatingly hold that the bank has failed to establish proper service of the possession notice by affixation. The photographs relied upon by the bank do not establish the service of the possession notice by affixation. Thus, the possession notice dated 18.05.2018 which was required to be served by all the three prescribed modes i.e. personal service, affixation and publication has not been so served as per the prescription of law.

(b) Now coming to the sale of the secured asset, it is to be seen whether all the mandatory provisions have been duly complied by respondent no.1 or not.

(c) Interestingly, there are two notices both dated 10.12.2024 which were issued under Rule 8(6) of Security Interest (Enforcement) Rules, 2002. In one of the aforesaid notices, the date of notice under Rule 8(1) is mentioned as 23.02.2017 while in the other the date of notice under Rule 8(1) is mentioned as 18.05.2018. It does not stand to reason as to why two notices of the same date were issued by respondent no.1 for the sale of the same property and out of which one notice wrongly mentions the date of notice under Rule 8(1) as 23.02.2017. I have perused the postal receipts and two tracking reports filed by respondent no.1 which contended that notice under Rule 8(6) (supra) was duly served upon the applicants. The perusal of the two tracking reports unambiguously and unequivocally establish that the postal articles were delivered back to the addressor and not delivered to the addressee. Thus, the bank has failed to establish that notice under Rule 8(6) dated 10.12.2024 was duly personally served upon the applicants. Thereafter, the respondent no.1, without ensuring personal service of notice under Rule 8(6) dated 10.12.2024 proceeded to issue notice under Rule 9(1) dated 16.06.2025 which was published on 28.06.2025 in two newspapers namely Punjab Kesari (Hindi) and Financial Express

(English). The notices under Rule 8(6) and 9(1) are required to be served personally upon the borrowers, affixation at the conspicuous part of the secured asset and publication in two newspapers having wide circulation in the locality where the secured asset is situated. The secured asset is situated in Ghaziabad i.e. NCR wherein Punjab Kesari and financial express have good circulation. However, the bank has also placed on record the photographs showing that the notice dated 18.06.2025 was served by affixation at the property in question. I have perused the postal receipt as also the tracking reports on the basis of which respondent no.1 to have served the notice dated 10.12.2024 upon the applicants. Firstly, the tracking reports show the destination code as Lucknow whereas the applicants are all residents of Ghaziabad and secondly, the tracking reports show that the postal articles were returned back to the sender. I therefore conclude that the sale notices dated 10.12.2024 and/or 18.06.2025 were never served personally upon the applicants which is a cardinal and mandatory requirement of law. Axiomatically, I hold that the sale notices issued by respondent no.1 were not duly served upon the applicants as per the mandate and prescription of law. Personal service is mandatory as has been held in Desh Bandhu Gupta Vs. N.L. Anand – (1994) 1 SCC 131 and Mathew Varghese Vs. M. Amritha Kumar & Ors. – (2014) 5 SCC 610.

(d) The sale notice dated 18.06.2025 which was published on 28.06.2025 contains a statement that the property is in possession of respondent no.1 which is contrary to facts. Any false statement made in a statutory notice would render it illegal and void.

(e) The notice dated 18.06.2025 also does not disclose the encumbrances upon the secured asset.

(f) The bank has relied upon valuation reports dated 06.09.2024 and 07.09.2024 and claimed that it has duly complied with the mandate of Rule 8(5) of Security Interest (Enforcement) Rules,

2002. As per the valuation report dated 06.09.2024 the market value of the property is Rs.19.93 crore, net realizable value is Rs.16.93 crore and distress sale value is Rs.14.95 crore. The bottom of page 6 of the valuation report dated 06.09.2024 bears an endorsement by the branch manager of respondent no.1 who has stated that the fair and reasonable market value of the property is Rs.20.80 crore. Similarly, as per the valuation report dated 07.09.2024, the market value of the property is Rs.20.80 crore, realizable value is Rs.17.68 crore and distress sale value is Rs.14.65 crore. The valuation report dated 07.09.2024 also bears a similar endorsement by the branch manager of respondent no.1. The valuation reports do not establish that the valuers held license under Section 34AB of the Wealth Tax Act, 1957. First and foremost, when the branch manager of respondent no.1 had expressed his view that on the basis of the valuation reports, the market value of the property is Rs.20.80 crore, it is inexplicable as to why the reserve price was fixed at Rs.17.34 crore. There is neither any pleading nor any evidence which would suggest that the authorized officer of respondent no.1 consulted the secured creditor, which would function through its committees/sub-committees, proceeded to fix the reserve price. It is also pertinent that as per the sanction letter dated 24.04.2014, issued by the bank itself, which has been placed on record by the applicants vide supplementary affidavit, mentions the market value of the property as Rs.25,17,46,000/-. The general trend in the NCR, that too of commercial properties has been of a phenomenal appreciation in their value. It is highly irrational to suggest that a property the value of which was assessed as Rs.25.17 crore in 2012, got depreciated to less than Rs.20 crore after a span of 12 years. No explanation from respondent no.1 is forthcoming in this regard.

(g) The property, as per the applicants, is a commercial one and has a running three-star hotel, while the respondent no.1 claims that

the property is industrial. The contention of the respondent no.1 that the property is industrial is based upon the title documents which was deposited by the applicants with the bank for the purpose of creation of mortgage. It is customary that bank officials visit securities and secured assets from time to time. It is, therefore, impossible that the officials of respondent no.1 were unaware that the secured asset is a commercial running hotel, which meant that the property seized to be industrial and got converted into commercial. Such information is, in any event, available in public domain as an inquiry with Uttar Pradesh State Industrial Development Corporation would have disclosed to respondent no.1 that in principal approval to convert the land use from industrial to commercial was accorded on 23.06.2007. It appears that no due diligence or post-disbursement appraisals and follows ups including frequent visits to the subject property were made by the officials of respondent no.1 and the notice dated 16.06.2025 was issued without verifying the nature of the property. In any case, the assertion of respondent no.1in the sale notice dated 16.06.2025 that the property is industrial is also false which, by the said reason itself, renders it as untenable and void.

(h)Further, the valuation reports dated 06.09.2024 and 07.09.2024 which were obtained by respondent no.1, *inter alia*, state that the land use bank became commercial after CLU. Ther respondent no.1, thus, could not feign ignorance of such a vital fact while issuing sale notice dated 16.06.2025. Even the perusal of the record of CERSAI, which has been filed by the applicants alongwith their supplementary affidavit would should that the property is commercial.

(i) Another aspect of the matter is the sale notice dated 16.06.2025 does not accurately describe the property inasmuch as the area of the constructed portion, quality of construction, the use of the property as a three-star running hotel are all conspicuous by their absence. As per Rule 8(7)(a) of Security Interest (Enforcement)

Rules, 2002, the description of the immovable property be sold has to be comprehensive. This provision of law has been violated by the respondent no.1 without an iota of doubt. The law relating to misdescription of property is very well settled. In Varimadugu Obi Reddy Vs. B. Sreenivasulu & Ors. – (2023) 2 SCC 168, the Hon'ble Supreme Court held that a secured creditor is under an obligation to undertake exercise and cross check description of mortgaged property at stage when initial proceedings under Section 13(2) are initiated as also in later consequential proceedings. Profitable reliance can also be placed on Rajesh Gems & Jewels Pvt. Ltd. & Ors. Vs. Indian Overseas Bank 2017 SCC Online Del. 10679.

(j) Now coming to the question of the respondent no.1 confirming the sale, it is to be seen as to whether the auction was competitively conducted or not. It has been disclosed by respondent no.1 that respondent no.2, who offered a bid of Rs.17.35 crore, just a sum of Rs.1 lakh above the reserve price of Rs.17.34 crore, which means that there was no competitive bidding. The purpose of public auction is to ensure that a secured asset is sold and liquidated at its highest value so that the secured creditor as also the borrowers are not subjected to any prejudice. In the instant case, no effort whatsoever was firstly done to ensure competitive participation by multiple bidders but also complete non-application of mind by the secured creditor while confirming the sale under Rule 9(6) of the Security Interest (Enforcement) Rules, 2002. Reference may be made to judgment of Hon'ble Supreme Court in Divya Manufacturing Company Pvt. Ltd. vs. Union of India - MANU/SC/0427/2000.

(k) It appears that the subject property was indeed sold out for a song a miserably low price, way lesser than its market value. The auction may have been rigged as a three-star hotel running in Sahibabad Industrial Area, on being publicized for auction is expected to attract a large number of bidders while in the present

case there was only one bidder. The quai-judicial function conducted by an authorized officer/secured creditor under Rules 8(8) and 8(9) of the Security Interest (Enforcement) Rules, 2002 are to be discharged with due application of mind and with utmost circumspection. Such vital quasi-judicial functions cannot be discharged casually and arbitrarily. In this regard, I am supported by the dictum of Ram Kishun Vs. State of Uttar Pradesh – MANU/SC/0494/2012.

(l) Lastly, the applicants claim to have deposited a sum of Rs.8.15 crore after issuance of demand notice dated 01.10.2016 for a sum of Rs.9,39,27,943.50. The applicants, thus, contended that the amounts stated to be allegedly due from them as indicated in the impugned sale notice dated 10.12.2024 and 16.06.2025 is highly exaggerated and untenable. The respondent no.1 has not explained the computation of its dues after having received the aforesaid amount of Rs.8.15 crore after issuance of demand notice as also the manner of appropriation thereof. Rule 8(7)(b) of Security Interest (Enforcement) Rules, 2002, which obliges the secured creditor to accurately mention the secured debt as on date of issuance of sale notice has been also violated by respondent no.1.

147. In the CERSAI report and sanction letter, the type of asset is mentioned as "**Commercial**," whereas the property is described as "**Industrial**" in the demand notice, possession notice, auction notice and sale certificate.

148. As a sequitur to the aforesaid findings and reasonings, this tribunal holds that the enforcement measures taken recourse to by the respondent no.1 are illegal and void and accordingly quashed and set aside.

149. The possession notice dated 18.05.2018, sale notices dated 10.12.2024 and 16.06.2025, auction sale dated 30.07.2025, confirmation of sale, sale certificate are all quashed and set aside. However, the respondent no. 1 would be at liberty to initiation

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enforcement measures afresh subject to law of limitation as per Section 36 of SARFAESI Act, 2002. The amount received from the respondent no. 2 towards the sale price be refunded by respondent no. 1 along with interest thereon @ 6% per annum from the date of issuance of sale certificate till the date of payment. The respondent no. 1 shall also take steps to ensure that the TDS of 1% that was deposited by respondent no. 2 is duly refunded to respondent no. 2 within the same time period. The respondent no. 1 shall make the refund as aforesaid within a period of 15 days from the date of this order and shall file an affidavit of compliance.

150. The Securitisation Application is, thus, allowed in aforesaid terms, leaving the parties to bear their respective costs.

151. File be consigned to record room. Order be uploaded on the Tribunal's website.

(Vimal Gupta)
Presiding Officer
Debts Recovery Tribunal, Jaipur
Additional Charge, DRT, Lucknow

Digitally signed by VIMAL GUPTA
Date:Wed Sep 30 15:57:37 IST 2026

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