DEBTS RECOVERY TRIBUNAL, JAIPUR

ADDITIONAL CHARGE DRT LUCKNOW

PRESIDING OFFICER: SH. VIMAL GUPTA

SA No.- 858/2022

1. Smt. Sandhya Singh Wife of Shri Anand Mohan Singh, Resident ofB-170, B -Block, Near Adarsh Public School, Sector-52, NOIDA, Gautambudh Nagar-201301.
2. Ajit Tyagi Son of Shri Sanjeev Tyagi, Resident of D-13, Sector-52, NOIDA, Gautambudh Nagar-201301.

.....Applicants

Versus

1. Punjab National Banis Office at CRCLE SHASTRA, East Delhi, Mayur Vihar, Phase-II, Pocket-E, Delhi-110081 Through its Authorized Officer.
2. Smt. Rashmi Jindal w/o Shri Rajesh Jindal, R/o G-28, Sector-27, Near Kailash Hospital Noida-201301.

.....Respondent

Present: -

Sh. Prashant Kumar Ld., Counsel for the Applicant

Sh., Nitesh Kumar Tripathi Ld., Counsel for the Respondent Bank

Sh. Karan Pratap Singh along with Sh. Shivansh Shukla BH of Ld., Counsel for the Auction Purchaser

Court of the Presiding Officer
Debts Recovery Tribunal, Lucknow

(Final Order)
(30.09.2026)

1. Counsel for the Applicant has filed this SA and submitted that the instant Application arises out against an arbitrary, illegal, perverse and unjustified recovery proceeding initiated by the respondent bank in exercise of its power conferred under the Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the respondent bank has adopted the de hors procedure contrary to the procedure prescribed under the security Interest Enforcement Rules 2002.
2. That the M/s Suaj Exim Private Limited, which is incorporated under the provisions of Companies Act, initially Sunil Kumar Gupta and Ajay Kathoria was directors of aforesaid Company and later on Ajay Kathoria. Photocopy of certificate of incorporation is being annexed as ANNEXURE No. SA -1 to this Securitization Application.
3. That the Applicant No. 2 also inducted as director in the W/s Suaj Private after resignation of existing directors as well as shareholder of the W/s Suaj Exim Private Limited
4. That the W/s Suaj Exim Private Limited approached to the Respondent Bank for Sanction of credit facilities to run the business activities.
5. That file Respondent Bank the credit facility of Rs. 475.00 lacs as CC -MSME PLUS vide sanction letter dated 19.07.2019 to the M/s Suaj Exim Private Limited. Photocopy of sanction letter dated

19.072019 is being annexed as ANNEXURE No. SA -2 to this Securitization Application.

6. That the said credit facility of Rs. 475.00 lacs as CC -MSME PLUS sanctioned on 19.07.2019 to M/S Suaj Exim Private Limited was renewed after 12 months from the sanction.
7. That the Applicant No. 1 is the guarantor as well as mortgagor of M/s Suaj Exim Private Limited in the credit facility availed from the Respondent Bank as well as shareholder of the M/s Suaj Exim Private Limited.
8. That the Applicant No. I the aforesaid credit facility by mortgage of collateral security i.e. House situated at D-9, Sector-52, NOIDA, Gautambudh Nagar.
9. That it is well known fact that entire world is suffered from COY'ID-19 effect and entire economy is collapsed including in India and Govt. of India also vigilant about these and implemented schemes to all sector.
10. That the Respondent bank sanctioned the COVD-19 package on 30.04.2020 and but against the terms and conditions of the sanction letter dated 30.04.2020 and 04.06.2020. Photocopy of sanction letter dated 30.04.2020 and 04.06.2020 are being annexed as No. sa-3 SA-4 to this Securitization Application.
11. That the Hon’ble Court also issued the directions to the state government from taking coercive steps against the public due to COVID-19 but even than Bank shows his supremacy over and above from die orders of Hon'ble Courts.

12. That in terms of Section 35-A of the 1949 Act, the RBI is empowered to issue directions to the Banks in public interest, or in the of banking policy; or to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositor or in a manner prejudicial to the interest of the banking company; or to secure the proper management of any banking company generally.

13. That the combined reading of Section 21 and 35-A of the Banking Regulation Act, 1949. and keeping in view the ratio laid down by the Hon'ble Supreme Court, now it has been clear that the RBI has been authorized to issue direction of master circular to the Banks to regulating the business supplements and in the public interest and every such circular issued by the RBI has statutory force and thus, it can be termed as law in force.

14. That the Applicant No. 1 was received the impugned demand notice dated II 11.07.2022 from Respondent Bank for of alleged outstanding dues of Rs. as on 10.07.2022. Photocopy of demand notice dated 11.07.2022 is annexed ANNEXURE No. SAS to this Application.

15. That the Respondent Bank himself admitted in the alleged demand notice 11.07.2022 that the account of Respondent Bank was classified as NPA on 30.06.2022 but even than Bank charged the interest after classification of NPA. Therefore, it necessary to point out here that the respondent bank has to comply with the mandate of law as provided under 13(2) of Act 2002. For the sake

of convenience of section 13(2) of the Act 2002 is being reproduced below —

16. Section 13 in The Securitization and Reconstruction of Financial Assets and enforcement of Security Interest Act, 2002 Enforcement of security interest. –

such creditor in accordance with the provisions of this Act. ...(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or my instalment thereof, and his account in respect Of such debt is classified by the secured creditor as on- performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub- section (4)……..

17. That the respondent bank has charged illegal and exorbitant rate of interest in the loan amount which is against the policy and norms of the bank and guidelines issued by Reserve Bank of India.

18. That the Respondent Bank illegally classified the account as NPA on 30.06.2022 without following free guidelines of Reserve Bank of India which are Contrary to the mandate of 90 days to declare any account as NPA.

19. That it is also relevant to submit that the Hon'ble Apex Court, while upholding the constitutional validity of SARFAESI Act, 2002 in Case of Mardia Chemicals Limited; had also considered of

definition of Non-Performing Assets as provided under section 2 clause (I) sub-clause (o) which an account as non performing which remain out of order for a period of more than 180 days after considering circular dated 30.08.2001 issued by Reserve Bank of India but in the present case following die guidelines, the respondent bank has classified the loan account as within 90 days. The Hon'ble Apex Court held it to be a reasonable time after which bank & financial institution may exercise its power for realization of their dues. Thus the respondent's action is in complete violation of mandate by Hon'ble Apex Court in respect of classifying the loan accounts as Non-Performing Asset.

20. That the Applicants to the Respondent Bank that the bank can enforce the right against collateral security without initiating the recovery proceedings against the primary security of the borrower company but with the connivance of Mr. Sunil Kumar Gupta Bank not hence Applicants reserve his rights before appropriate form in accordance with law.

21. That it is admitted case of Respondent Bank that bank not issued any notice in respect of primary security of the borrower company and directly proceed against the collateral.

22. That it is also relevant to submit that the Respondent Bank initiated the against the belonging to the Applicant No. 2 without having any security interest according to rule 2(zb) and (zf) of security interest enforcement rule, 2002 of Securitization and Reconstruction of Financial assets and Enforcement of Security Interest Act, 2002 and valid mortgage.

23. That the Securitization and Reconstruction of Financial assets and Enforcement of Security Interest Act, 2002 specifically provided: that initiation of the proceeding under the said Act against the Borrower can be initiated on the basis of Agreement' but no permission to mortgage obtained by the bank.

24. That it is also relevant to submit that as per section 58 (O of Transfer of 1881, which define mortgage by deposit of Title Deed, which is also termed as equitable mortgage. Under Transfer of Property Act, 1881 mortgage of deposit of title deed is a form of mortgage in which there is transfer of interest in specific immovable property for the purposes of securing payment of money advance or to be advance by way of loan. In the present case no equitable mortgage has been created by Applicant in favour of Respondent Bank can be under SAR-FEASI Act, 2002 against the Applicant No. 2.

25. That it is pertinent to mention here that the Respondent Bank have no right to accept the mortgage of the properties in question in favour of any Bank or Financial Institution according to transfer of property act, 1881.

26. That the Applicant NO. 2 to see the pasted sale notice 30.10.2022 on 02.11.2022 for conducting the sale on 08.012.2022 without service of mandatory notice under rule 8(6) and without of valuation report under rule 8(5) of SARFAESI ACT, 2002. Photocopy of the sale notice dated 30.10.2022 is being annexed as ANNEXURE No. SA-6 to this Securitization Application.

27. That, it is evident from the sale notice dated 30.10.2022 that said sale notice is not according to the Appendix – IV A of amendment dated 17.10.2019, hence entire actions are void ab initio.

28. That the security interest enforcement rules, 2002 of the Securitization and Reconstruction of Financial Assets and Enforcement of Interest Act, 2002 are provided for specific procedure for sale of immovable properties.

29. That the Applicants to receive the sale notice dated 26. 06.2023 for conducting the auction on 17.07.2023 complying the provisions of Appendix IV-A of the Security Interest (Enforcement) Rules, 2002 of the Securitization and Reconstruction 11 of Financial assets and Enforcement of Security Interest Act, 2002. of the sale notice 26.06.2023 being annexed as ANNEXURE No. - to this Amendment Application.

30. That the Respondent fixed the reserve price of immovable property including construction of residential flats without obtaining the valuation report under rule 8(5) of the Security Interest (Enforcement) Rules, 2002 of the Securitization and Reconstruction of Financial assets and Enforcement of Security Interest Act, 2002 and fixed fee auction on 17.07.2023.

31. That the Security (Enforcement) Rules 2002 of Securitization and Reconstruction of Financial assets and Enforcement of Security Interest Act, 2002, which specifically provided under Rule 8 (5) :

(5) Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorized officer shall obtain valuation of the property from the approved value and in consultation with secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured assets by any of the following methods: -

a) By obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying such assets; or

b) by inviting tenders from the public; or

c) by holding public auction; or by private treaty

32. That Respondent Bank not published the sale notice for conducting the auction on 17.07.2023 in immovable assets which are to the rule 8(5), 8(6) and 8(7) of the interest enforcement rules, of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

33. That the Respondent for conducting the auction on 5.27 17.07.2023 in the gross violation of the sale notice as contemplated according to the rule 8(6) of the Interest (Enforcement) Rules, 2002 of the Securitization and Reconstruction of Financial assets and Enforcement of Security Interest Act, 2002 hence liable to be set aside in toto.

34. That, it is further reiterated that the intention of the legislature for obtaining valuation before effecting sale is to prevent the monetary loss at behest of the secured creditor but

the Respondent Bank has in sheer defiance with intention to sell the property at a throw away price and to cause irreparable loss to the Applicant acting against the rule of law. Moreover, Rule 8(5) of the Security Interest (Enforcement) Rules, 2002 is reproduced here under which Petitioner has been demanding protection of his rights.

35. That, it is also relevant to submit that statute a mandatory condition every secured to obtain sale price" of the secured assets, which requires application of mind from the authorities concern while approving and accepting the valuation report of valuer and thereafter fixing reserve, as failure to do so may cause substantial injury to borrower/ guarantor and that would amount to material irregularity and ultimately vitiate subsequent In the present case respondent bank has sold out properties at throw away price which shows arbitrary and illegal exercise of power entrusted to them under SARFEASI Act, 2002

36. That it is also relevant to submit that Rule 8 (5) and Rule (6) and Rule 9 are the provision relating to sale of immovable and for every fresh auction same procedure has to be adopted afresh which means before putting immovable property for auction fresh valuation report prior to sale notice has be obtained in term of mandate of Rule 8 (5) and thereafter mandatory sale notice under Rule 8 (6) has to be served upon the borrower and it cannot be presumed or assumed that earlier valuation or notice will be sufficient to proceed with the subsequent sale.

37. That to the best of the knowledge of the deponent no valuation of the property has been obtained by the Respondent Bank prior to issuance of sale notice as incumbent ever secured creditor under Rule 8 (5) of the Security Interest Enforcement Rules, 2002.

38. That the came to know on 02.11.2022 after the impugned sale notice dated 30.10.2022 that Bank proceeded for auction with taking the symbolic as well without proper service upon the Applicants and the Respondent Bank had not served the possession notice in accordance with law and also not followed the mandatory provisions as specified under the Rule 8 of the Sale of immovable secured assets Rules 2002. The procedure reproduced below Rule 8. Sale of immovable secured assets. –

Where the secured asset is an immovable property, the authorized officer shall or cause to taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property.

The possession notices as 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.

39. That all the provisions of Rule 8 have been violated by the Respondent Bank and also failed to comply with the mandatory

provisions of 8(1) & 8(2) of the Rules and therefore, the entire actions on the part of the Respondent Bank is illegal and bad in law.

40. That all the provisions of Rule 8 have been violated by the Respondent Bank and also to comply with the mandatory provisions of 8(1) of the Rules and therefore, the entire actions on the part of the Respondent Bank is illegal and bad in law.

41. That it is also relevant to submit that Hon'ble Court in ease of 5.36 5.37 Karnataka State Financial Corporation Vs. N. Narasimahaiah (2008 (5) SCC 176), is as follows "Right to property, although no longer a fundamental right, is still a constitutional right. It is also human right. In the absence of any provision either expressly or by necessary implication, depriving a person therefrom, the Court shall not construe a provision leaning in favour of such deprivation. " "In a case Where a Court has to weigh between a right of recovery and protection of a right, it would also lean in favour of the person who is going to be deprived therefrom. It would not be the other way round.

42. That in the present case respondent bank has deprived the applicant from its proper5,' that too without following the due process of law. The Hon'ble Apex Court though has categorically held that right to recovery can only be made after following the procedure and action in violation to provision of statue is not permissible as it can adversely affect the

constitutional right of die person guaranteed under Constitution of India.

43. That all the action taken by the Respondent No. I under the SARFEASI Act, 2002 is not only contrary to the rules laid down under the act but it also defeats the very spirit and essence of the Judgment of Hon'ble Apex Court of India. The Respondents are under the statutory duty to act fairly without any prejudice at the time of enforcing the security interest.

44. That the Authorities of the Respondent Bank have acted in arbitrary, mechanical and illegal manner against the Applicants while exercising its power under the SARFEASI Act, 2002.

45. That the Hon'ble Apex Court is also of the consistent view that some of provisions of the SARFEASI Act, 2002 is a bit harsh on the borrower but the tender owes duty to act fairly md in good faith. Possessing more drastic power calls for exercise of higher degree of good faith and fair play. borrower cannot be left remediless in case they have been wronged against or subject to unfair treatment violating the terms and conditions of contract. They can always in defense on the part of bank and financial institution.

46. That the Hon'ble Superior Courts of India held in several Judgments that public money should be recovered and recovery should be made expeditiously but it does not mean that the financial institutions which are concerned only with recovery of their loans, may be permitted to behave like property dealers and be permitted further to dispose of the security assets in any

unreasonable or arbitrary manner in flagrant violation of the statutory provisions.

47. That it is also settled preposition of the law that if initial action is not in consonance with law, the subsequent would not sanctify the same. In such a situation, legal maxim "Sublato fundamento credit opus" is applicable, meaning thereby in case a foundation is removed the superstructure falls. In the instant case the mortgage of the property in has been found to be void hence the bank cannot proceed further in matter.

48. That there is another settled preposition of the law applicable in instant SA based on the legal maxim "Expressio unius est exclusion alterus", meaning thereby that if a statue provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner and following other course is not permissible.

49. That the Hon’ble Apex Court of India in its numerous judgments has held that " once a power has been entrusted by invoking the provisions of a statute, the same shall be in the way it is to be done and not otherwise." The principal behind this rule is that if die action is not with the statutory rules and procedure then the provisions of the statute become redundant and become meaningless.

50. That it is further that this Hon'ble Tribunal statutory power under Section 17 (3) of die SARFEASI Act, 2002 to quash the entire Securitization proceedings and also restore the possession of the secured assets after examining the facts and

circumstances of the case and the evidence produce by the parties that measure taken by the secured creditor are not in consonance with the statutory provision of the Act and Rules made there under.

51. That entire proceeding, initiated by authorities of Respondents under SARFEASI Act, 2002 are void ab initio, in the eyes of law by any reason and occasion and justification and in flagrant violation of the law of the land.

52. That being aggrieved and having been left with no other equally efficacious legal remedy, the Applicant prefers this instant Applicant 5.47 5.48 5.49 5.50 before this Hon'ble Tribunal, being the statutory remedy provided under Section 17 of the SARFEASI Act, 2002

53. That Applicant have been advised to submit that any party to the contact while deriving any right or authority there from has to ascertain itself beforehand as to whether it has complied with its contractual obligations in letter and spirit lest its actions be axed down by institutions by law for the purpose.

54. That the Hon'ble Superior Courts of the India held in several judgments the undoubtedly, public money should be recovered and should made expeditiously. But it does not mean that the financial institutions which are concerned only with the recovery of their loans, may be permitted to behave like property dealers and be permitted further to dispose of the secured assets in any unreasonable or arbitrary manner in flagrant violation of statutory provisions.

55. That it is also settled preposition of law that if initial action is not in consonance with law, the subsequent would not sanctify' same, in such a fact situation, the legal maxim "sublato fundamento credit opus" is applicable in case a foundation is removed, the superstructure falls.

56. That it is another settled preposition of law based on the legal maxim “Expressio unius est exclusion alterus" is applicable, meaning thereby that if a statue provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner and following other course is not permissible.

57. That the Hon'ble Supreme Court of India held in the case of Badrinath Vs. State of Tamil Nadu & Ors. That once the basis of a is gone, all consequential acts, actions orders would fall to ground automatically and this principal of consequential order which is applicable to judicial and quasi-judicial proceedings is applicable to administrative orders.

58. That the Hon'ble Apex Court of India in its numerous judgments has held that "once a power has been entrusted by invoking the provisions of a statute, the same shall exercise in the way it is to be done and not otherwise." The principal behind this rule is that if the action is not corroborated with the statutory rules and procedure then the provisions of the statute become redundant and meaningless.

59. That it is further being relevant to submit here that under Section 38 (2) Of the SARFAESI Act, 2002 the power

conferred to the secured creditor shall exercise in accordance with under Security Interest (Enforcement) Rules, 2002, the secured creditor cannot act at their whims and fancies while exercising the power entrusted to them under SARFAESI Act, 2002.

60. That it is further being advise to submit here that this Hon'ble Tribunal has statutory power under section 17 (3) of the SARFEASI Act, 2002 to quash the entire Securitization proceeding and also restore die possession of the secured assets after examining the facts and Circumstances of die case and the evidence produce by the parties that measure taken by the creditor are not in consonance with the statutory provision of the Act and Rules made there under.

61. That all the action taking by the Respondent Bank under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is not only contrary to rules laid down under the act but it also defeats the very spirit and essence of the judgment of Hon'ble Apex Court of India. The respondent is under the statutory duty to act fairly without any prejudice at the time of enforcing the security interest.

62. That the authorities of respondent bank have acted in arbitrary, mechanical and illegal manner against the Applicant while exercising its power under the Securitization and of Financial Assets and Enforcement of Security Interest Act, 2002.

63. That entire recovery proceeding initiated by authorities Of respondent under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 are void ab initio, in the eyes of law by any reason, occasion and justification and in flagrant violation of the law of land.

64. That being aggrieved, and having been left with no other equally efficacious legal remedy, the Applicant prefers this instant Securitizations Application before the Hon'ble Tribunal, being the statutory under section 17 of the SARFEASI Act, 2002.

65. The applicants are challenging the actions of the Respondent Bank under the SARFAESI Act, 2002, alleging severe violations of statutory procedure and the principles of natural justice. Specifically, the bank failed to properly serve mandatory notices under Sections 13(2) and 13(4) of the Act. Furthermore, the bank failed to serve or affix the possession notice as mandated by Rules 8(1) and 8(2) of the Security Interest (Enforcement) Rules, 2002, and failed to issue or serve a valid sale notice in compliance with the rules prior to conducting the auction.

66. Additionally, the bank acted arbitrarily and to the applicant’s detriment by failing to properly exercise its statutory powers and neglecting to initiate action against the primary assets of the borrower company. The bank also breached the mandatory rules of the Security Interest (Enforcement) Rules, 2002 by failing to obtain a valuation report under Rule 8(5) and failing to comply

with the procedural safeguards under Rules 8(5), 8(6), 8(7), and 9 regarding notice service and the conduct of public auctions.

67. The applicants pray that the Hon'ble Tribunal be pleased to set aside and quash the impugned demand notice dated 11.07.2022 issued under Section 13(2) of the SARFAESI Act, 2002, as well as the impugned possession notice issued by Respondent No. 1.

68. The applicants further request the setting aside of all impugned sale notices, specifically including the sale notice dated 30.10.2022 and the sale notice dated 26.06.2023 for the auction scheduled on 17.07.2023. Consequently, the Tribunal is requested to quash all consequential actions taken by the Respondent Bank in pursuance or furtherance of the illegal demand notice.

69. Finally, the applicants pray for an award covering the entire costs of these legal proceedings, along with compensation for the illegal manner adopted by the Respondent Bank to realize its outstanding dues, as well as any other additional relief that the Hon'ble Tribunal may deem fit and proper under the circumstances of the case.

70. Counsel for the Respondent Bank has filed reply and submitted that the applicant has given the letter dated 17.05.2023, 23.05.2023 and 30.05.2023 to release mortgage property for only the payment of Rs.4.35 Crores which was the Reserve Price/Base Price. The applicant has never shown the bonafide intention to the entire dues as on date as well all cost

and in order to release the publication of sale notice as section 13(8) of the SARFAESI Act,2002.

71. That the total dues of the Bank are more than Rs.6.50 Crores against the borrowers/applicants. It is settled law that only after the payment of entire dues with all cost and the secured asset can be only after the publication of Sale notice as 13(8) of the SARFAESI Act, 2002.

72. That the Respondent Bank has the sale notice on 26.6.2023 and the Auction was held on 17.012023 and therefore their prayer to release the property is not sustainable and same is liable to be by the Hon'ble Tribunal.

73. That the application to the property was filed on 20.07.2023 which was after the publication which place on 26.062023 as well as after the Auction sale held on 17.07.2023 which is not permissible under the provision of the SARFAESI the application to release property is liable to with heavy and exemplary cost.

74. That the Respondent Bank has the Sale Certificate on 01.08.2023 in favour Auction Purchase in compliance of Rule 9(3) and 9(4) of the SARFAESI Act,2002. Therefore, the mortgage cannot for the same.

Reply filed by the Auction Purchaser is reproduced as below:-

75. The Respondent No. 2, Rashmi Jindal (hereinafter referred to as the "Answering Respondent"), is a law-abiding citizen and is the lawful auction purchaser of the secured asset sold through

a valid public auction conducted by the Respondent No. 1 Bank under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Interest Act, (hereinafter referred to as "SARFAESI Act:) and the Interest (Enforcement) Rules, 2002 (hereinafter referred to as "Rules 2002")

76. It is humbly submitted that no statement or averments in the present Reply, except those which are specifically admitted hereinafter may be deemed to have admitted by the Answering Respondent merely on account of non- traverse.

77. The present SA has been filed by the Borrowers seeking redemption of the mortgaged property, which was furnished as security for a credit facility of *475 lakhs sanctioned under CC MSME PLUS vide sanction letter dated 19.07.2019. Owing to persistent defaults in , repayment of principal and interest by the Borrowers, D. their loan account was classified as Non-Performing Asset (NPA) on 30.06.2022 in accordance with RBI guidelines.

78. The auction of the secured asset was initiated pursuant to the demand notice dated 11.07.2022 issued by the Respondent No.1 under Section 13(2) of the SARFAESI Act. The account of the borrower was classified as NPA on 30.06.2022 in accordance with RBI guidelines. Thereafter, the Respondent No. 1 also issued notice under Section 13(4) of the Act and initiated proceedings under Section 14 of the Act for taking possession.

79. The first sale notice was issued on 30.10.2022 with a reserve price of U.35 crores. The Answering Respondent participated in the online bidding process pursuant to the sale notice dated

26.06.2023 and was declared as the highest bidder for a bid amount of A Sale Intimation Letter and a Sale Confirmation Letter, both dated 17.07.2023, were issued by the Respondent No.1 to the Answering Respondent.

80. In accordance with the Sale Confirmation Letter the o Yr. of G. 4 Answering Respondent deposited 25% of the bid amount, amounting to on 18.07.2023 (including æ43.50 lakhs already deposited as ENID). Thereafter, the remaining balance amount of was deposited on 01.08.2023. TDS was deposited on 31.07.2023 and communicated to the Respondent No. 1.

81. Upon receipt of the full consideration amount, the Respondent No.1 issued a Sale Certificate dated 01.08.2023 in favour of the Answering Respondent. Thus, the auction process stood duly concluded upon H. o compliance with Rule 9(6) of the Security Interest (Enforcement) Rules, 2002.

82. After the completion of the sale process, the borrowers filed an interlocutory application seeking release of the mortgaged property, which was not maintainable in law. On 07.08.2023, this Hon'ble Tribunal recorded that mediation proceedings had failed and no interim order was passed restraining the Respondent No.l. However, on 21.08.2023, based on erroneous submissions made by the borrower, this Hon'ble Tribunal restrained the Respondent No. 1 from executing the sale deed, which prejudicially affects the concluded rights of the Answering Respondent.

83. The Answering Respondent was not impleaded as a party by the borrower either before this Hon'ble Tribunal or before the Hon'ble

High Court, despite the fact that the sale certificate had already been issued in Answering Respondent's favour. The auction purchaser is a necessary and proper party, and failure to implead her has led to serious miscarriage of justice. The Answering Respondent approached the Hon'ble DRAT, Allahabad in Appeal No. 1210 of 2023 against the order dated 21.08.2023. The Hon'ble DRAT vide its order dated 10.10.2023 granted liberty to the Answering Respondent to approach this Hon'ble Tribunal for appropriate relief.

84. The borrowers had not approached this Hon'ble Tribunal prior to the conclusion of the auction or prior to issuance of the sale certificate. Their rights, if any, stood extinguished in view of the amendment to Section 13(8) of the SARFAESI Act which limits the right of redemption up to the date of publication of the sale notice.

85. In view of the above facts, the Answering Respondent has validly acquired rights in the secured asset through a lawful and completed process of auction and has fully complied with the terms of sale. The proceedings initiated by the borrowers are devoid of merit and are intended to frustrate the concluded rights of the Answering Respondent.

86. It is respectfully submitted that the Applicants are not entitled to any of the reliefs sought in the Securitization Application, and the same deserves to be dismissed with heavy costs, particularly when the rights of a third-party auction purchaser, who acted bona fide and has deposited the entire sale consideration, are now at stake.

87. The auction purchaser prayed that under the facts and circumstances as submitted in the present Reply, this Tribunal may be pleased to:

a) Dismiss the present Securitization Application No. 858 of 2022;

b) Uphold the validity of the auction sale conducted on 17.07.2023 and the Sale Certificate dated 01.08.2023 issued in favour of the Answering Respondent in accordance with Rule 9(6) of the Security Interest (Enforcement) Rules, 2002;

c)Direct the Respondent Bank to forthwith register the sale certificate/ execute the sale deed qua the secured assets Advocate by the Respondent Bank in favour of the Auction Purchaser; and pass such other orders as may be deemed fit.

88. **Heard arguments and perused the record.**

89. The notice under Section 13(2) was served to the applicant at the address i.e. B-17, Sector 52 Noida, Gautambudh Nagar, U.P.

90. The bank has stated that security interest was created of hypothecation of stocks and receivables, equitable mortgaged of residential land and building at D-9 Sector 52, Noida, then personal guarantees of Sunil Kumar Gupta , Sandhya Singh and Ajit Tyagi. Nothing is placed on record about hypothecation, stocks and receivables which was primary security available to the bank. The

Securitization Act gives the definition of the borrower stating that it includes borrowers, guarantors and mortgagors.

91. None of the notice under Section 13(2) filed along with reply or with the SA is addressed to the company and borrowers jointly, all notices are separately issued. Notice to the applicant has not been served rather, the notice under Section 13(2) on the address of the property which the applicant wanted to enforce.

92. No details of the hypothecated assets and receivables are given, annexed and placed on record.

93. The sale notice dated 26.06.2023 has been published in the newspaper in 25.06.2023 definitely that notice might have been given at least a day or two days prior. When notice is issued on 26.06.2023 there is no occasion that said notice got published in the newspaper on 25.06.2023.Thus, there is no publication of sale notice dated 26.06.2023, so sale is void.

94. Further, notice under Section 13(2) does not bifurcate the principle amount and interest because as per notice under Section 13(2) balance outstanding amount (principle +interest) as on 30.06.2022 is given.

95. Admittedly, the notice of possession has not been issued on the given address of the borrowers. The above stated ground of publication of sale notice dated 25.06.2023 when the notice never existed on this date is the sole ground to quash the proceedings of the bank.

96. The said valuation report placed on record is dated 13.10.2022 whereas the property allegedly has been put to auction vide notice dated 26.03.2023. The ***hon'ble DRAT, Allahabad passed a judgment in the matter Mukesh Kumar versus UCO Bank*** which says that the valuation report cannot be older than six months and the above grounds culminated into one thing that the proceeding initiated by the bank are beyond the statutory provisions of law. There is no explanation as to how a notice dated 26.06.2023 got published in the newspaper on 25.06.2023. No redemption notice exists for 30 days.

97. Counsel for the respondent bank submits that this was the 6th auction, therefore, when this was the 6th auction the bank should have been more conscious and authorized officer should have taken more care because he is answerable that how a notice dated 26.06.2023 was published in the newspaper on 25.06.2023.

98. In view of these things, the Securitization proceedings i.e. notice under Section 13(2), notice under Section 13(4), sale notice, sale, sale certificate all stand quashed and all the consequential proceedings are also quashed.

99. The respondent bank is directed to refund the amount to the Auction Purchaser with 8% interest. The cost of this entire litigation should not be burdened to the borrower and the bank will have to observe the same and they will be at liberty.

100. Accordingly, this Securitization Application stands allowed with parties to bear cost.

101. File be consigned to record, as per rules. Copy of order be uploaded on website.

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