DEBTS RECOVERY TRIBUNAL-III, CHANDIGARH

PRESIDED OVER: SH. MRIDULESH KUMAR SINGH

SECURITIZATION APPLICATION NO.41/2018

Date of Institution: 07.03.2018
Date of Decision: 14.10.2026

1. M/s S.S. Diamonds Tools, having its works at Barwala Road, Village Saidpura, Dera Bassi, District Mohali through its partner Sh. Anuj Goel.
2. Sh. Anuj Goel S/o Late. Sh. Shanti Sarup Goel, R/o H.No.1009, Sector 19-B, 2nd Floor, Chandigarh
3. Smt. Navita Goel (since deceased) through her legal heirs:
   (i) Sh. Anuj Goel S/o Late. Sh. Shanti Sarup Goel, R/o H.No.1009, Sector 19-B, 2nd Floor, Chandigarh
   (ii) Ms. Ishita Goel D/o Sh. Anuj Goel, R/o H.No.1009, Sector 19-B, 2nd Floor, Chandigarh
4. Smt. Savita Goel (since deceased) through her legal heirs:
   (i) Sh. Anuj Goel S/o Late. Sh. Shanti Sarup Goel, R/o H.No.1009, Sector 19-B, 2nd Floor, Chandigarh
   (ii) Smt. Reena Garg W/o Sh. Ravinder Mohan Garg, R/o B-40 & 42, Neb Valley, Sainik Farms, New Delhi
   (iii) Sh. Yogesh Goyal S/o Late. Sh. Shanti Sarup Goel, R/o Flat No.501, Tower No.6, Motiaz Royal City, Zirakpur
5. Goel Marbels Private Limited through its Director Sh. Anuj Goel, Raipur Khurd, Near Airport Chowk, Ambala Highway, Chandigarh

--Applicants

Versus

1. Capital First Ltd. (now IDFC Bank Ltd.) Tower 2-A and 2-B, 10th Floor, Senapati Bapat Marg, Lower Parel West, Mumbai and also at SCO No.47, Sector 26, Madhya Marg, Chandigarh through its Authorised Officer
2. Smt. Neelam Goel W/o Sh. Sanjeev Raj Goel, R/o House No.85, NAC, Shivalik Enclave, Manimajra, Chandigarh

3. Smt. Yashvati W/o Sh. Gopal Krishan Hooda, R/o House No.21, Sector 8, Panchkula
4. Smt. Priyanka W/o Sh. Nipun Hooda, R/o House No.21, Sector 8, Panchkula
5. Smt. Richa Gupta W/o Sh. Yogesh Gupta, R/o House No. 122, Bank Colony, Pipli Wala Town, Manimajra, UT, Chandigarh

--Respondents

Argued by: Sh. Rahul Garg, Advocate for Applicants
Sh. Satinder Pal Singh, Advocate proxy for Sh. Aditya Grover for Respondent No.1
Respondent Nos. 2 to 5 already ex parte vide order dated 16.03.2026

FINAL ORDER

(1) Original Securitization Application was filed under Section 17(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the Act' for brevity) to set aside demand notice under Section 13(2) of the Act dated 08.09.2017, possession notice under Section 13(4) of the Act dated 27.01.2018 and restrain the bank from creating 3rd party rights upon the properties in question and if created direct the bank to place on record the sale certificate.

(2) During the pendency of SA, property in question has been sold out and thereafter, applicants after obtaining permission of the Tribunal filed the Amended SA to set aside sale certificate dated 30.08.2019 and all proceedings of sale, effected by respondent No.1 and further prayed to quash the same and restore the property back to the applicants in interest of justice as well as to declare the entire action of the respondent No.1 initiated under the Act to be illegal and also claimed the reliefs earlier prayed in the Original SA.

(3) It was stated in the application that applicant No.1 had availed 03 different loans from respondent No.1 i.e., (i) Loan against property of Rs.1.80 Crores, which was sanctioned on 21.01.2015 and applicants have already paid Rs.56,93,600 towards instalments, (ii) Loan against property of Rs.75 Lacs, which was

sanctioned on 04.12.2015 and applicants have already paid Rs.15,25,312/- towards instalments and (iii) Another Loan for Rs.1.95 Crores, which was sanctioned on 03.02.2015 and applicants have already paid Rs.59,33,106/- towards instalments; that in spite of the fact that regular instalments were being paid by the applicants, still the loan amounts were not being reduced, purely on account of the fact that the rate of interest, which was being charged by respondent No.1 was steadily increased day by day, due to which the entire amount deposited by applicants got adjusted against the interest; that applicants had been repeatedly requesting the respondent No.1 that it should give clarification, as to what and on what basis the rate of interest has been charged on the higher side from time to time and how rate of interest has increased, especially when the base rate of interest has decreased all over the economy; that when no response was given by respondent No.1, the loan account of the applicants were classified as NPA by respondent No.1 although the said act of respondent No.1 was completely in contravention of the guidelines issued by Reserve Bank of India; that respondent No.1 had issued notice under Section 13(2) of the Act dated 08.09.2017 claiming an amount of Rs.4,73,63,211.94p due as on 11.08.2017; that in the said notice, two loan accounts of Rs.1.95 Crores & Rs.1.80 Crores were shown to have been classified as NPA on 31.05.2017 & 31.07.2017 respectively, whereas third loan account was not classified as NPA as per the own notice of the respondent No.1 and precisely, therefore no date of NPA was found mentioned in the said notice and rate of interest was stated to have been from 12.75% to 13% without any reason as to why different rate of interest is being charged in single loan account and why such higher rates were being charged; that the said demand notice was issued by respondent No.1 in complete contravention of Rule 3 of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as ‘Rules’ for brevity); that the said notice was made available to the applicants only when the same was pasted on the mortgaged property; that normal mode of service was not effected upon the applicants for the reasons best known to the respondent No.1, which

makes the entire action illegal; that on 06.11.2017, applicants submitted a representation, requesting the respondent No.1 that applicants are ready to regularize the loan accounts, provided the respondent No.1 would reconcile the loan accounts and remove the illegal penal interest and excessive charges, arbitrary imposed in the accounts; that similarly, on the same day i.e., 06.11.2017 applicants also submitted representation under Section 13(3-A) of the Act to the Authorised Officer of respondent No.1, which was duly received by the respondent No.1 through their Chandigarh office without any objection, which is apparent from a bare perusal of the objections itself; that in the said objections, applicants raised various issues including the fact that FI had not validly classified the loan accounts as NPA and in one of the account, the bank is not even mentioned the date of NPA; that there is no dispute regarding the factum of service and receipt of the objections by respondent No.1 but respondent No.1 has never replied to the said objections and issued possession notice dated 27.01.2018 vide which the bank had taken physical possession of the property, which is open plot measuring 2 Kanal 2 Marla situated at Chandigarh Ambala Highway, Village Pabhat, Hadbast No.234, Zirakpur, Tehsil Derabassi, District Mohali; that the said possession notice came to the knowledge of the applicants only when recently the applicants visited the property mortgaged with the bank, to find that the notice has been pasted on the said property; that during the pendency of the present SA, applicants came to know that the bank has sold the property without even informing the applicants and without issuing or serving any notice under Rule 8(6) of the Rules and the applicants saw certain people entering into the property but no documents were provided nor any concrete information was given to the applicants regarding the sale of the property; that having no document to confirm the apprehension, on 02.08.2019, IA No.594/2019 was filed by the applicants seeking direction to the bank to place on record the sale certificate in consequent sale notice issued for the property in question and set aside the same; that thereafter, applicants from certain sources, has been able to lay hands on sale certificate

dated 30.08.2019, according to which the property had been sold to Smt. Neelam Goel W/o Sh. Sanjeev Raj Goel, Smt. Yashwati W/o Sh. Gopal Krishan Hooda, Smt. Priyanka W/o Sh. Nipun Hooda and Smt. Richa Gupta W/o Sh. Yogesh Gupta; that all the actions taken by respondent No.1 under the Act is completely illegal and in contravention to the provisions of the Act and Rules. Therefore, it was prayed that present SA may kindly be allowed.

(4) Reply filed by Respondent No.1.

(5) It was stated in the reply that Amended SA is wholly misconceived, untenable in law and liable to be dismissed at the threshold; that applicants have introduced new and inconsistent averments at a highly belated stage, which is impermissible in law and contrary to settled principles governing amendment of pleadings; that amendments have fundamentally altered the nature, scope and character of the original SA by introducing the new grounds and pleas, which were never part of the original pleadings; that such amendments are impermissible as they change the very foundation of the case; that the applicants have grossly misused the process of law and has deliberately prolonged the proceedings by filing numerous interlocutory applications with the sole intent of causing delay and obstructing the expeditious adjudication of the matter; that applicants have sought to challenge the Sale Certificate dated 29.08.2019 in an inordinate and unexplained delay of seven years, which is grossly beyond the prescribed period of limitation despite having knowledge of the sale of the property in the year 2019 without prejudice, even otherwise the applicants had knowledge thereof at the time of filing of the said IA; that applicants withdrew IA No. 318/2021 with the liberty to amend the original SA, however, liberty to amend does not act as natural waiver to the statutory limitation period of 45 days prescribed under Section 17 of the Act; that applicants were well aware about the steps taken by the respondent No.1 including the issuance of sale certificate dated 29.08.2019 and despite such knowledge, choose to remain silent for an inordinate period of seven years; that respondent No.1 had proceeded under the Act as per settled canons of law

for recovery of its legitimate dues, which in fact happens to be a public money; that applicants had availed three different finance facilities and admittedly, there was a default in the payment of the dues under the said loan facilities; that prior to initiation of proceedings for recovery as per the process of law no dispute in respect of any amount claimed and the overdues thereof has been raised by the applicants at any stage; that amount as has been received by respondent No.1 had been duly credited into the account statements and have been duly reflected in the same; that it is not the case of the applicants that any amount, which has been paid or in any entry thereof is in any manner wrong; that it is further not the case of the applicants that the accounts have not been adjusted in terms of the applicable rate of interest; that loan accounts of applicants were classified as NPA strictly in accordance with law; that notice under Section 13(2) of the Act was issued as per Rules and there is no illegality in it; that third loan account in respect of which the applicants had raised an issue regarding the date of NPA was an addendum to the earlier loan accounts; that the same being linked loan accounts, the account became NPA; that without prejudice to the same, it is further submitted that as per the prevalent guidelines, once any loan account becomes an NPA, then all the other accounts being maintained by the defaulter with the financial institution shall automatically contained the status of NPA; that different loan agreements having being executed at different periods of time may be between same parties can have different rates of interest; that the objections so raised by applicants to the notice under Section 13(2) of the Act has been duly replied by respondent No.1; that all the issues raised have been duly considered by the Authorised Officer; that the sale notice was also duly served upon applicants through registered post and also published in two leading newspapers as per the Rules; that respondent No.1 has duly followed the legitimate procedure specified under the applicable laws; that in the entire matter, applicants after years together of the sale has woken up to challenge the same by amending the SA and even in the Amended SA has failed to point out the alleged illegality expect stating in general that the

SARFAESI Rules have not been followed; that by simple/mechanical averments the onus of the applicants to prove their case cannot be shifted upon the bank to prove the case of the applicants. Therefore, it was prayed that present SA may kindly be dismissed.

(6) After service of notices upon respondent Nos. 2 to 5, they appeared through counsel but later on, avoided to participate in the proceedings and never appeared, therefore respondent Nos. 2 to 5 were proceeded against ex parte vide order dated 16.03.2026.

(7) Replication was filed by applicants to the reply filed by respondent No.1, wherein the contents of SA were reiterated and that of the reply to the SA were denied.

(8) I have heard arguments advanced by Sh. Rahul Garg, Advocate for Applicants and Sh. Satinderpal Singh, Advocate proxy for Sh. Aditya Grover, Advocate for Respondent No.1 and gone through the record carefully. None was present on behalf of respondent Nos. 2 to 5 for advancement of arguments.

(9) Sh. Satinderpal Singh, Advocate argued that before going into the merits of the case, it may be decided that whether the Amended SA is within the limitation period or not.

(10) It is established law that whenever a point of limitation is raised by the opposite party in any case then it must be decided first without going into merits of the case.

(11) Sh. Satinderpal Singh, Advocate argued that Amended SA is barred by limitation as the property had been auctioned on 26.07.2019 whereas, the applicants have filed the Amended SA on 27.02.2026 online and on 02.03.2026 with Registry. It was further argued that applicants had already filed SA in the year 2018 and during the pendency of the SA the mortgaged property had been sold. However, the applicants did not challenge the auction within the period of limitation, therefore the SA should be dismissed on the ground of limitation only.

(12) *Per contra*, Sh. Rahul Garg, Advocate argued that contention of respondent No.1 that the challenge to the sale certificate dated 30.08.2019 is barred by limitation is not only legally untenable but also a flagrant attempt to mislead this Tribunal and take advantage of

its own wrongs; that respondent No.1 has deliberately suppressed the sequence of events to create a fallacious narrative of delay on the part of the applicants; that original SA was filed by applicants on 07.03.2018 well within the period of limitation, challenging the measures initiated by respondent No.1 under the Act; that during the pendency of the said SA, respondent No.1 in a clandestine and illegal manner, proceeded to auction the subject property through a private treaty on 23.07.2019 without serving any notice whatsoever upon the applicants in gross violation of the mandatory provisions of the Rules; that applicants, upon gaining knowledge of the purported sale, acted with due diligence without any delay filed IA No. 532/2019 on 22.08.2019, even before the issuance of Sale Certificate dated 30.08.2019, with a specific prayer to direct the respondent No.1 to disclose the name and particulars of the auction purchaser; that despite a specific direction from this Tribunal, respondent No.1 concealed the details of auction purchaser and sought numerous adjournments to file its reply to IA No.532/2019; that the said details were finally provided to the applicants only in the year 2021; that the period of limitation, if any, was held in abeyance due to the fraudulent concealment of material facts by the respondent No.1 and Section 17 of the Limitation Act is squarely attracted; that immediately upon receiving the said details in the year 2021, applicants without wasting any time filed IA No.318/2021 for impleading the Auction Purchaser; that amendment to the SA is a continuation of the proceedings that were initiated in 2019 itself; that applicants withdraw the IA No. 318/2021 on 16.02.2026 with liberty to file an application for amendment of the SA; that the said liberty was granted by this Tribunal in its wisdom, being fully seized of the matter and its history; that subsequent order dated 23.03.2026, allowing the amendment, confirms that the challenge was maintainable; that therefore, the question of the amendment being barred by limitation does not arise as the amendment relates back to the date of the filing of the application, which sought to challenge the sale i.e., IA No.532/2019. Therefore, the Amended SA is well within the limitation period.

(13) It reveals from record that applicants had filed IA No.443/2026 for amendment of SA in order to challenge the sale certificate dated 30.08.2019 and all proceedings thereafter by the respondent No.1. No reply to this IA was filed by respondent No.1 despite sufficient opportunity provided for filing reply to this IA, therefore opportunity to file reply to this IA by respondent No.1 was closed vide order dated 23.03.2026 and after hearing the arguments as well as after perusal of record, the said IA No. 443/2026 was allowed vide order dated 23.03.2026 and Amended SA was taken on record.

(14) It is admitted fact between both the parties that no Appeal against the said order was filed by respondent No.1. Therefore, it appears that the said order had attained finality.

(15) In light of above facts and circumstances, it appears that the Amended SA was already taken on record by this Tribunal after perusal of record and evidence on record, therefore the argument raised by learned counsel for respondent No.1 at this stage has no relevance/merits.

(16) Sh. Rahul Garg, Advocate further argued that in view Clause 4.2.7 of Master Circular dated 1st October, 2021 in respect of Prudential Norms of Income recognition Asset Classification and provisioning pertaining to advances, loan accounts have to be classified as NPA borrower-wise and not facility-wise, which have statutory flavor and binding upon the Banks and FIs, the accounts of the borrower has to be classified as NPA "borrower-wise" and not "account-wise", but the respondent No.1 has classified the accounts of the applicants as NPA "account-wise" i.e., two loan accounts of Rs.1.95 Crores & Rs.1.80 Crores were classified as NPA on 31.05.2017 & 31.07.2017 respectively, whereas third loan account was not classified as NPA as per the own notice of the respondent No.1, therefore no date of NPA was found mentioned in the notice under Section 13(2) of the Act. It was further argued that as such, the said classification is in contravention of the Guidelines of Reserve Bank of India in respect of **Prudential Norms of Assets Classification contained in Master Circular dated 01.10.2021**.

(17) *Per Contra*, Sh. Satinderpal Singh, Advocate argued that loan accounts of applicants were classified as NPA strictly in accordance with law and there is no illegality in it.

(18) It is admitted fact that Circulars issued by Reserve Bank of India are binding upon the Banks/FIs.

(19) **Hon'ble Supreme Court of India** titled as **Central Bank of India Vs. Ravindra 2002 (1) SCC 367 and Sardar Associates Vs. Punjab and Sind Bank 2009 (8) SCC 257**, in which it was held that the guidelines issued by the Reserve Bank of India in terms of Section 21 and Section 35-A of the Banking Regulation Act, 1949 are binding and mandatory.

(20) In the considered opinion of this Tribunal, respondent No.1 has classified the accounts as NPA without following the Guidelines issued by Reserve Bank of India. Each and every loan account of the borrower was not classified as NPA on the one and the same date but on different dates. Except it, in the present matter, no date of NPA regarding the third loan account was mentioned in the notice under Section 13(2) of the Act, which means the said loan account was not classified as NPA but reference of the said loan account was duly mentioned in the notice. Therefore, the said action was illegal and against the provisions of the Act as well as in contravention of the guidelines issued by Reserve Bank of India itself.

(21) Sh. Rahul Garg, Advocate further argued that respondent No.1 has issued notice under Section 13(2) of the Act dated 08.09.2017 (Annexure A-4 to the Amended SA) and applicants had moved representation under Section 13(3-A) of the Act on 06.11.2017 (Annexure A-6 to the Amended SA), which was duly served upon respondent No.1. It was further argued that after receiving the same, respondent No.1 had replied to the said objections vide its reply dated 14.11.2017, which were decided by an Advocate and not by an Authorised Officer of the Respondent No.1 as per Rules.

(22) Sh. Satinderpal Singh, Advocate argued that respondent No.1 has duly replied to the objections raised by applicants under Section 13(3-A) of the Act by its reply dated 14.11.2017 and copy of the same is annexed as Annexure R-5 to reply to main SA. It was further

argued that it was not denied by applicants that the said reply was not received by applicants.

(23) Copy of objections raised by applicants under Section 13(3-A) of the Act dated 08.09.2017 is annexed as Annexure A-4 to the Amended SA and copy of reply to the said objections by respondent No.1 dated 14.11.2017 is annexed as Annexure R-5 to the reply to main SA.

(24) It reveals from the said reply that the same was decided by an Advocate Sh. R.L. Motwani and not by the Authorised Officer of Respondent No.1 as per Section 13(3-A) of the Act.

(25) **Section 13(3-A) of the Act** is provided as under:

"If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate (within fifteen days)(Inserted by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 (30 of 2004), Section 8 (w.e.f. 11.11.2004)) of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower."

(26) It was specifically mentioned in the above said provision that the objections were to be decided by the secured creditor i.e. respondent bank but in the present matter the same were decided by an Advocate. Therefore, reply to the objections is *non-est* in the eyes of law and vitiates all subsequent proceedings.

(27) Sh. Rahul Garg, Advocate further argued that notice under Section 13(4) of the Act dated 27.01.2018 was issued by respondent No.1 but the same was not served upon applicants as per Rules. It was further argued that respondent No.1 had already taken physical possession of the secured asset on the same date i.e., 27.01.2018 without service of notice upon applicants as per Rules, which is in violation of the Act.

(28) *Per contra,* Sh. Satinderpal Singh, Advocate argued that possession notice dated 27.01.2018 (Annexure R-8 to reply to main SA) was issued and

served strictly in accordance with law. It was further argued that possession notice was also pasted on the secured asset and copy of the same is annexed as Annexure R-9 to reply to main SA. It was further argued that possession notice was published in two leading newspapers, which are annexed as Annexures R-12 to reply to main SA.

(29) As per provisions of law, possession notice was required to be served through personal service, through pasting and through publication in two leading newspapers. It is also required that possession notice be also served through electronic mode of service in addition to the modes prescribed under sub-rule (1) and sub-rule (2) of Rule 8 of the Rules.

(30) Respondent No.1 had not disclosed regarding service of possession notice through electronic mode either in the pleadings or during the course of arguments. Photographs of pasting (Annexure R-9 to reply to main SA) shows that a photocopy of one notice has been affixed on the wall and two persons are standing beside the wall but date and description of the notice is not clear as well as it is not clear that the said wall is of the property in question or not.

(31) It reveals from record that only receipts of registered posts were filed in respect of notice under Section 13(4) of the Act but no track consignment record filed by respondent No.1 to show that the notice in question which was allegedly sent by respondent No.1 was ever received by the applicants and concerned. Track consignment record is available w.e.f. January, 2013 and as per reply filed by respondent No.1, notice in question was sent in year 2018. Gone are the days when sending of registered post itself used to be enough for drawing the presumption of service against the addressee. There is hardly any scope for the same in view of the availability of the track consignment record. Track consignment record should have been produced to bring home the fact that the notice was duly served upon the applicants and concerned and that not being the position, this Tribunal refuses to draw presumption of service. There is no other type of personal service of the said notice upon the applicants and other concerned, which was either pleaded or proved.

(32) Copies of publication of the newspapers i.e., one in English (name of newspaper is not mentioned clearly in the copy) and other in Vernacular (Rozana Spokesman) both dated 30.01.2018 are annexed as Annexure R-12 to reply to main SA. No name of newspaper in English Language was shown, which can show that the said newspaper is leading newspaper or not.

(33) In light of above factual position, it is established that notice under Section 13(4) of the Act was issued but not proved served upon applicants either through personal service or through pasting or through publication or through electronic mode in light of Rules and it further proves that respondent No.1 has taken symbolic possession of the secured asset without serving the said notice as per Rules, therefore the possession of the secured asset is liable to be restored.

(34) Sh. Rahul Garg, Advocate further argued that the mortgaged property had been illegally sold by respondent No.1 on 23.07.2019; that respondent No.1 has annexed two separate and distinct notices as Annexure R-1; that on page Nos.26 to 28 of Annexure R-1 contains notice dated 08.07.2019 through which the respondent No.1 had intimated the applicants that the property would be sold through private Treaty on 23.07.2019; that on page Nos.31 to 33 of Annexure R-1 contains the publication of the auction notice and by way of the said publication, the general public had been intimated that the mortgaged property would be sold through public auction on 26.07.2019; that firstly the sale/auction is bad in law as the sale notice dated 08.07.2019 has not been served to the applicants; that applicants had already shared their latest addresses and e-mail vide mail dated 17.02.2018 (Annexure A-8A of the Amended SA) which had also been duly received by the bank; that neither the sale notice had been served to the applicants on the latest addresses mentioned in letter dated 17.02.2018 nor the same had been shared through e-mail; that sale notice dated 08.07.2019 and newspaper publication dated 09.07.2019 are contrary to each other and both the notices not only speak about different dates of auction but also the mode in which auction is to be conducted is different as sale notice

dated 08.07.2019 mention the date of auction as 23.07.2019 and also mentions that property would be sold by way of private Treaty whereas newspaper publications dated 09.07.2019 mentions the date of auction as 26.07.2019 and also mentions that property would be sold by way of public auction. Therefore, the sale conducted by respondent No.1 is illegal.

(35) *Per contra*, Sh. Satinderpal Singh, Advocate argued that sale notice dated 08.07.2019 had been duly served to the borrowers as per Rules. It was further argued that sale notice along with postal receipts are annexed as Annexure R-1 to the reply and the said notice was also published in the leading newspapers as per Rules.

(36) It was asked by Tribunal to learned counsel for respondent No.1 that whether the mortgaged property had been sold through private treaty or by way of public auction, Sh. Satinderpal, Advocate confirmed that the property had been sold by way of public auction on 26.07.2019 but he failed to provide any explanation on issuance of sale notice dated 08.07.2019 by way of which property had been sold through private treaty on 23.07.2019 as per sale certificate dated 30.08.2019 and conceded by stating that he cannot say anything contrary to the record. It appears that respondent No.1 had been playing hide and seek and suppressed the correct and material facts from this Tribunal.

(37) It is admitted by learned counsel for respondent No.1 that no tracking reports regarding service of sale notice were annexed along with copy of receipts of registered posts.

(38) As discussed above, publications of the said sale notice is not legal because sale notice as well as publication of sale notice are contrary to each other.

(39) As per **Rule 8 of the Rules**, it is mandatory to serve sale notice by all three modes and the sale notice has to be served upon all borrowers, guarantors and mortgagors. Perusal of record shows that the sale notice was not served personally upon the applicants. Therefore, the service of sale notice is defective in light of Rule 8 of the Rules and is liable to be set aside.

(40) Sh. Rahul Garg, Advocate further argued that respondent No.1 has already received the payments of

auction much prior to the date of auction. It was further argued that first payment of Rs.20 Lacs had been received by respondent No.1 on 21.06.2019, which had been much prior to even issuance of sale notice dated 08.07.2019. It was further argued that next transaction of Rs.20 Lacs had been received by respondent No.1 on 10.07.2019 i.e., only 2 days after the issuance of sale notice dated 08.07.2019 and before the actual sale. It was further argued that said transactions proves that respondent No.1 had already sold the property to its own near and dear ones and issuance of sale notice dated 08.07.2019 and newspaper publication dated 09.07.2019 had only been an eye wash. It was further argued that the Authorised Officer of respondent No.1 in collusion and connivance with the auction purchasers i.e. respondent Nos.2 to 5 had already sold the immovable property in complete violation of applicable Rules and against the provisions of law.

(41) Sh. Satinder Pal Singh, Advocate submitted that he has nothing to say on the said argument of learned counsel for applicants because he cannot say anything contrary to the record.

(42) Sh. Satinder Pal Singh, Advocate neither accepted nor denied the above argument of Sh. Rahul Garg, Advocate.

(43) In light of above submissions of learned counsel for respondent No.1, it appears that silence is also an admission that respondent No.1 had already sold the property before issuance of sale notice to its near and dears without following the due process of law, which is an illegal act in the eyes of law. This Tribunal has never came across such type of illegality and collusiveness by any Bank/FI.

(44) Sh. Rahul Garg, Advocate further argued that the property had been auctioned on the throw away price and the market value of the property had been much higher than the reserve price of Rs.04 Crores. Sh. Rahul Garg, Advocate relied upon the valuation report (Annexure R-2 to Amended SA) annexed by respondent No.1 with its reply which stated that market value of the secured asset had been Rs.7,62,30,000/- and even the forced sale value was Rs.6,47,95,500/-. Thus, there had been no occasion with respondent No.1 to sell the

secured asset at a reserved price of Rs.4 Crores. It was further argued that the property has been sold on 23.07.2019 and respondent No.1 has fixed the reserve price of mortgaged property on the basis of valuation report dated 17.02.2018 which had been 16 months old.

(45) *Per contra*, Sh. Satinder Pal Singh, Advocate argued that respondent No.1 had fixed the reserve price of mortgaged property on the basis of valuation report dated 17.02.2018, which was obtained by respondent No.1 from an approved valuer. Therefore, there is no illegality in it.

(46) Valuation report dated 17.02.2018 Annexure R-2 is annexed by the respondent No.1 along with reply to Amended SA. This valuation report was obtained on 17.02.2018 whereas the sale was conducted on 23.07.2019, therefore this valuation report cannot be said in accordance with the Rules because the same was obtained approximately 16 months before the auction sale and it appears that the reserve price fixed on the basis of that valuation report is also cannot be said as legal and as per Rules as the Reserve price had been fixed much below than the market price as stated in the valuation report.

(47) Sh. Rahul Garg, Advocate further argued that on account of the blatantly illegal, high-handed, and arbitrary conduct of Respondent No.1 in wrongfully classifying the loan accounts as NPA on 31.05.2017 and subsequently dispossessing the applicants by taking illegal physical possession of the mortgaged property on 27.01.2018, the applicants were wrongfully deprived of the lawful use, commercial enjoyment and possession of their property for a long period of over eight years. It was forcefully submitted that as per the statutory scheme of Section 17(7) of the Act read with the principles of complete restitution, the bank cannot be permitted to premium its own illegalities by levying interest for the period during which the applicants were unlawfully kept out of possession. It was prayed that Respondent No.1 Bank be held disentitled from charging any interest on the loan facilities from 31.05.2017 till the actual restoration of physical possession to the applicants. It was further submitted that owing to the prolonged harassment, financial distress, and mental

agony suffered by the applicants over these eight years due to the clandestine sale and unlawful measures of Respondent No.1, exemplary compensation and costs to the tune of Rs. 10,00,000/- (Rupees Ten Lacs) be awarded against Respondent No. 1 Bank under Section 17 of the Act.

(48) No other point was argued/pressed.

(49) From the above facts, circumstances as well as evidence on record, it also shows that loan accounts of applicants were not classified as NPA in accordance with law, objections raised by applicants under Section 13(3-A) of the Act was not decided by respondent No.1 as per law, service of notice under Section 13(4) of the Act was not proved served as per law and sale conducted by respondent No.1 is bad in the eyes of law on the multiple grounds as discussed above, therefore the present SA is liable to be allowed.

(50) **SA is allowed.** All SARFAESI proceedings initiated by the respondent No.1 since classification of loan accounts as NPA and consequential proceedings including dispossession of the applicants and the sale conducted by respondent No.1 as well as sale certificate dated 30.08.2019 are hereby quashed.

(51) Respondent No.1 is directed to return the amount deposited by the Auction Purchasers within 30 days with interest at the rate of @4% from the date of deposit till the date of actual payment. It is made clear that if, respondent No.1 will not repay the total amount deposited by Auction Purchasers within 30 days then it will pay the said amount along with the interest @6.00% for the total period.

(52) Respondent No.1 is further directed to take back the physical possession of the mortgaged property from the auction purchasers and return to applicants within 30 days of this order. It is also made clear that if, respondent No.1 will fail to handover the physical possession to applicants within 30 days then it will pay Rs.10,000/- per day to applicants from 31st day till actual delivery of possession.

(53) It is also made clear that respondent No.1 may again initiate fresh SARFAESI proceedings according to law.

Record be consigned to record room after due compliance.

Date: 14.10.2026

Pronounced by me in the open Tribunal.

(MRIDULESH KUMAR SINGH)
Presiding Officer,
DRT-III, Chandigarh