Fair Order

IN THE DEBTS RECOVERY TRIBUNAL AT MADURAI
DATED THIS 14TH DAY OF OCTOBER 2026
PRESENT: SEEMA SINHA
[PR. DISTRICT & SESSIONS JUDGE - Retd]
PRESIDING OFFICER

SA No. 381/2015

1. E.M. Vaikundasamy (Died)
S/o Muthuswamy Nadar
1/14A Forest Road
Vikundasamy Ginning Factory Compound
Theni

2. V. Vasantha Devi
W/o E.M. Vaikundasamy Nadar
1/14A Forest Road
Vikundasamy Ginning Factory Compound
Theni

3. M.V. Muthukannapiran
S/o Vaikundasamy
1/14A Forest Road
Vikundasamy Ginning Factory Compound
Theni

4. R. Dhamodhran, S/o Ratnam Nadar
19 HTR Naidu Street, Tuticorin

5. D. Nandhanilaa, D/o R. Dhamodharan
176A, Thiruthangal Road
Sivakasi, Virudhunagar District

6. D. Dhevi Vaisnavee, D/o Dhamodharan
176A, Thiruthangal Road
Sivakasi, Virudhunagar District

7. D. Lakshanaa Muthaaram
D/o Dhamodharan
176A, Thiruthangal Road

Sivakasi, Virudhunagar District ..... **Applicants**

Vs

1. The Authorised Officer
M/s Phoenix ARC Pvt. Ltd.
7th Fooor, Dani Corporate Bank
158, CST Road, Kallona, Santacruz (E)
Mumbai – 400 098

2. M/s Phoenix ARC Pvt. Ltd.
7th Fooor, Dani Corporate Bank
158, CST Road, Kallona, Santacruz (E)
Mumbai – 400 098 represented y its
Managing Director

3. Karur Vysya Bank, represented by its
Branch Manager, Kollam Branch, Kollam

4. M/s M.M. Nagalingam Nadar Sons
Administrative Office, Naagatheena
Residency Road, Asramom, Kollam – 691 002
Represented by its Managing Partner
N.D. Muthia Rajasabhai

5. N.D. Muthia Rajasabhai (Died)
Managing Partner, M/s M.M. Nagalingam
Nadar Sons, Administrative Office
Naagatheena, Residency Road, Asramom
Kollam – 691 002

6. D.M. Nagalingam Selvakumar
Partner, M/s M.M. Nagalingam Nadar Sons
Residency Road, Asramom
Kollam – 691 002

7. D.M. Sankaralingam Roopkumar, Partner
M/s M.M. Nagalingam Nadar Sons
Administrative Office, Naagatheena
Residency Road, Asramom,
Kollam – 691 002

8. M/s M.M. Nagalingam Nadar Sons
Administrative Office, Naagatheena
Residency Road, Asramom

Kollam – 691 002

9. D. Gangeswari Ammal (Died)
W/o Late Durairaj Nadar
Nagalinga Vilasom Bunglow
Chinnakkada, Andamukkom, Kollam

10. Kabeer, S/o Mohammed Kunju
MC 543/XV, Odayil Purayidom
Asramathu Cherry, Kollam

11. Ummaah Selvakumar, Partner
M/s M.M. Nagaingam Nadar Sons, Admistrative
Office, Naagatheena Residency Road
Asramom, Kollam – 691 002

12. Ponmalr Roopkumar, Managing Partner
M/s M.M. Nagaingam Nadar Sons, Admistrative
Office, Naagatheena Residency Road
Asramom, Kollam – 691 002

13. S. Mohammed Jaffer Khan, 14A
North Muslim Street, Uthamapalayam
Theni District, Tamil Nadu

14. S. Mohammed Fareed Khan, 14A
North Muslim Street, Uthamapalayam
Theni District, Tamil Nadu

15. Global Poly Bags Industries (P) Ltd.
500, Perali Road, Virudhnagar
Tamil Nadru – 626 601

16. N.D. Kanagasabai, Flat A3A
Pragathi Apartment, 13, Lock Street
Kotturpuram, Chennai – 600 085

17. K. Chandrakala @ Baby, W/o Kanagavel
11, Vallabhai Road, Chokkikulam
Madurai – 625 002

18. B. Vanitha Baskaran, Kasi Clinic
Near Super Medical, Palani Road
Dindigul

19. Dr. V. Chitambara Vignesh
15, Tuvee Puram, 9th Street
Tuticorin – 3

20. Dinesh, C/o Dr. V. Chitambara Vignesh
15, Tuvee Puram, 9th Street
Tuticorin – 3

21. Aparna Mahesh, W/o Mahesh
101/Swati, 34, Kandelwal Layout
Evershine Nagar, Behind Movietime
Malad (West) Mumbai – 400 064 …… **Defendants**

Appearance of Advocates:
M/s M. Saravanan ---- Counsel for the Applicants
Mr. R. Pandivel ---- Counsel for the 1st & 2nd Defendant Bank
M/s P.Ponmurugesapandian ----- Counsel for the Defendant - 18 & Defendant -19
D-3 to D-6, D-8, D-10 to D-14 set ex-parte on 11.07.2017, D-7 & D-15 set ex-parte on 03.04.2018 and D-16, D-17 & D-20 set ex-parte on 07.08.2018

This Application was heard in the presence of Counsel for the Applicant and Counsel for the Defendant Financial Institutions (D-1 & D-2) and (D-18 & D -19) in the aforesaid case and upon hearing the arguments of both sides Counsels and having stood over for consideration till this day, this Tribunal delivered the following:

ORDER

1. This Application has been filed under Section 17(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 with a prayer to set aside the Possession

Notice dated 11.08.2015 issued by the Defendant 1st Bank under section 13(4) of the SARFAESI Act, 2002.

2. The brief averments of the Application filed by the Applicant are as follows:-

FACTS OF THE CASE

A. Originally, the 4th Respondent, M/s. Nagalingam Nadar Sons, and the 8th Respondent, M/s. M.M. Nagalingam Nadar Company, Asramam, Kollam, were carrying on the business of coconut oil and Palmolive oil.

B. For the development of their business, the aforesaid partnership firms approached the 3rd Respondent, Karur Vysya Bank, Kollam Branch, for financial assistance. Accordingly, the 3rd Respondent sanctioned a loan facility of Rs.2,74,25,000/- to M/s. M.M. Nagalingam Nadar Sons on 11.05.1998. Likewise, M/s. Nagalingam Nadar Company was sanctioned a financial facility of Rs.14,30,00,000/- pursuant to the sanction letter dated 09.06.2000.

C. To secure the aforesaid loan facilities, certain Respondents Nos.5 to 7 and 9 to 14 deposited the title deeds of their properties situated in Kerala and Tamil Nadu and created equitable mortgages in favour of the 3rd Respondent.

D. The Applicants Nos.1 to 4 also stood as guarantors for the aforesaid loan facilities availed by the 4th and 8th Respondents and created equitable mortgages by depositing the title deeds of their immovable properties situated at Theni and Tuticorin. The Applicants had furnished the guarantees as close relatives of the principal borrowers, though they had no connection with the business carried on by them.

E. Initially, the business was stated to be progressing well. Subsequently, around the year 2000, due to recession in the international market and the alleged reluctance of the 3rd Respondent Bank to release the overdraft facilities, the principal borrowers suffered heavy losses and their business deteriorated. Consequently, the loan accounts became irregular and were classified as Non-Performing Assets by the 3rd Respondent Bank.

F. Thereafter, the 3rd Respondent Bank initiated recovery proceedings before the Debts Recovery Tribunal, Ernakulam, in O.A. No.441 of 2003 seeking recovery of Rs.23,47,48,906.51/- with interest at 15% per annum with quarterly rests from the defendants therein, jointly and severally, by sale of the 'A' to 'M' Schedule properties, including movable and immovable properties situated at Kollam, Theni and Tuticorin.

G. In the said proceedings, the 2nd Respondent therein filed a written statement claiming set-off on the ground that the principal borrowers had suffered losses due to the alleged sudden stoppage of credit facilities. The learned Presiding Officer of the Debts Recovery Tribunal, Ernakulam, subsequently passed an ex parte final order dated 11.01.2005, permitting the Bank to recover Rs.23,47,48,906.51/- with future interest till realization.

H. The 3rd Respondent Bank also filed O.A. No.97 of 2004 before the Debts Recovery Tribunal, Ernakulam, seeking recovery of Rs.4,81,69,726.70/- with future interest from the defendants therein, jointly and severally, by sale of the 'A' to 'H' Schedule properties. An ex parte final order was passed therein on 11.01.2005, permitting recovery of the said amount with future interest till realization.

I. Pursuant to the aforesaid orders, the 3rd Respondent Bank obtained Debt Recovery Certificates and approached the Recovery Officer,

Debts Recovery Tribunal, Ernakulam, for recovery of the amounts by sale of the secured properties, and auctions were fixed.

J. In the meantime, the principal borrowers approached the 3rd Respondent Bank for a One Time Settlement. The Bank initially agreed to settle the dues for Rs.11 crores, out of which the principal borrowers remitted Rs.3.22 crores. However, the said settlement lapsed due to non-payment of the balance amount.

K. Thereafter, the principal borrowers again approached the 3rd Respondent Bank for settlement, and the Bank agreed to a One Time Settlement of Rs.13.21 crores, to be completed on or before 31.03.2011. According to the Applicants, pursuant to the said settlement arrangement, the auction proceedings were to be postponed.

L. While the matter was pending for settlement, the principal borrowers approached Kotak Mahindra Bank Ltd. for financial assistance to discharge the One Time Settlement amount. According to the Applicants, the 2nd Respondent, Phoenix ARC (P) Ltd., a subsidiary of Kotak Mahindra Bank Ltd., agreed to provide financial assistance of Rs.13.21 crores to the principal borrowers, subject to the furnishing of a corporate guarantee. Accordingly, the 15th Respondent, M/s. Global Polybags Industries (P) Ltd., Virudhunagar, executed a corporate guarantee in favour of the 2nd Respondent pursuant to a resolution of its Board of Directors dated 30.05.2011.

M. According to the Applicants, the financial assistance of Rs.13.21 crores provided by the 2nd Respondent was utilized by the principal borrowers to settle the dues of the 3rd Respondent Bank. The Applicants contend that, upon receipt of the settlement amount, the earlier loan transaction between the 3rd Respondent Bank and the principal borrowers, together with the guarantees connected therewith, stood discharged.

N. The Applicants allege that, despite the aforesaid settlement, the 2nd and 3rd Respondents subsequently treated the transaction as an assignment of the loan for Rs.13.21 crores and relied upon an alleged assignment deed dated 30.05.2011. According to the Applicants, the transaction was in substance a fresh private financial arrangement between the principal borrowers and the 2nd Respondent and not an assignment falling within Section 5 of the SARFAESI Act.

O. The Applicants further allege that the 3rd Respondent Bank released the title deeds relating to the properties of the principal borrowers and filed a memo before the Debts Recovery Tribunal, Ernakulam, regarding the release of the said properties. According to the Applicants, the properties of the principal borrowers were thereby released from the security, whereas the properties belonging to the Applicants situated in Tamil Nadu continued to be proceeded against.

P. The Applicants further contend that the plant and machinery and building of the principal borrowers, which had been offered as collateral security, were subsequently removed or demolished, thereby diminishing the security available to the guarantors. According to the Applicants, such conduct impaired their rights as guarantors under Sections 139 and 141 of the Indian Contract Act.

Q. Subsequently, the 2nd Respondent filed applications before the Debts Recovery Tribunal, Ernakulam, seeking substitution of the 2nd Respondent in the place of the 3rd Respondent on the strength of the alleged assignment agreement. The Applicants contend that, although one of the substitution applications was allowed on 14.08.2014 based upon the alleged no-objection given on behalf of the Respondents, the Applicants had not authorized the counsel to give such consent. The Applicants state that they have filed

proceedings challenging the said substitution and that the same are pending.

R. While the substitution proceedings were pending, the 1st and 2nd Respondents issued notices dated 29.11.2012 under Section 13(2) of the SARFAESI Act to the principal borrowers and the 15th Respondent, claiming Rs.44,96,74,970/- pursuant to the Recovery Certificate in DRC No.1901 in O.A. No.441 of 2003. Another notice dated 29.11.2012 was also issued claiming Rs.9,17,69,915/- pursuant to the Recovery Certificate in DRC No.1903 in O.A. No.97 of 2004.

S. The principal borrowers, through their counsel, issued a reply dated 04.02.2013 disputing the liability and contending that the 1st and 2nd Respondents had no authority to invoke the SARFAESI Act. According to the Applicants, the principal borrowers had already obtained private financial assistance of Rs.13.21 crores, settled the dues of the 3rd Respondent Bank and thereafter created fresh security in favour of the 2nd Respondent.

T. The Applicants contend that the alleged assignment was not a valid assignment under Section 5 of the SARFAESI Act. According to them, if the transaction were genuinely an assignment between the 3rd Respondent Bank and the 2nd Respondent, there would have been no occasion for the principal borrowers to obtain fresh private financial assistance or for the 15th Respondent to furnish a corporate guarantee.

U. The Applicants further contend that substantial properties of the principal borrowers, including properties situated at Kollam, were available as security for the financial assistance allegedly extended by the 2nd Respondent. According to the Applicants, instead of proceeding against the principal borrowers and the 15th

Respondent, the Respondents proceeded against the properties belonging to the Applicants.

V. Thereafter, the 1st and 2nd Respondents approached the District Magistrates, Theni and Tuticorin, under Section 14 of the SARFAESI Act seeking physical possession of the Applicants' properties. The District Magistrate, Theni, issued notice to the Applicants and directed them to appear on 20.04.2015. The Applicants filed their objections raising, inter alia, the issues relating to the alleged assignment, substitution and applicability of the SARFAESI Act.

W. During the pendency of the proceedings before the District Magistrate, the 1st Respondent issued a Possession Notice dated 11.08.2015 under Section 13(4) of the SARFAESI Act and affixed the same on the walls of the residential buildings of the Applicants, claiming to have taken symbolic possession of their properties.

X. The Applicants contend that the impugned Possession Notice dated 11.08.2015 is illegal and without authority of law, as the properties mentioned therein do not constitute valid security interest enforceable by the Respondents under the SARFAESI Act.

Y. The Applicants further contend that, if physical possession is taken pursuant to the impugned Possession Notice, they will suffer irreparable hardship and loss. Hence, the Applicants have approached this Tribunal under Section 17(1) of the SARFAESI Act challenging the measures initiated by the Respondents.

GROUNDS:

a) The impugned possession notice dated 11.08.2015 issued by the Respondent No. 1 by invoking Section 13(4) of the **SARFAESI** Act is illegal and without any authority of law, since the properties mentioned in the notice do not come within the purview of a "security

interest" as provided under the SARFAESI Act. Hence, the impugned possession notice is liable to be quashed.

b) The so-called assignment does not come under Section 5 of the **SARFAESI** Act; therefore, Respondent No. 1 and Respondent No. 2 (**Phoenix ARC (P) Ltd.**) cannot enforce the provisions of the SARFAESI Act. Originally, Phoenix ARC (P) Ltd. provided private financial assistance of Rs. 13.21 crores to the principal borrowers to settle a One-Time Settlement with Respondent No. 3 (**Karur Vysya Bank**) upon private negotiation. Consequently, it asked for a corporate guarantee from the principal borrowers, prompting the principal borrowers to arrange Respondent No. 15 as a corporate guarantor for the private financial assistance provided by Phoenix ARC Ltd. If this were truly an assignment as envisaged under the provisions of the SARFAESI Act, it would be purely a transaction between Karur Vysya Bank and Phoenix ARC Ltd., with no role played by the borrowers. The corporate guarantee adduced by the principal borrowers for the private financial assistance given by Phoenix ARC (P) Ltd. clearly establishes that the transaction is purely a private loan between the principal borrowers and Phoenix ARC (P) Ltd., and not an assignment between Karur Vysya Bank and Phoenix ARC Ltd.

c) Respondent No. 1 and Respondent No. 2 herein have no authority to proceed under the provisions of the **SARFAESI** Act, given that Phoenix ARC (P) Ltd. advanced private financial assistance of Rs. 13.21 crores to the principal borrowers. The principal borrowers in turn settled the same with the creditor, Karur Vysya Bank. The bank received the money, filed a memo before the Hon'ble Debt Recovery Tribunal withdrawing the Recovery Certificate issued in both cases, and requested the release of the principal borrowers' title deeds. Upon receiving them, the principal borrowers handed over the original title deeds of their immovable properties to Respondent No.

2 as security for the amounts so advanced, via a mortgage by deposit of title deeds. Hence, it is abundantly clear that the above transaction is purely a financial arrangement between the principal borrowers and Respondent No. 2.

d) The so-called assignment agreement is nothing but a concoction to swindle the applicants' properties and safeguard the properties of the principal borrowers, born out of a conspiracy between the principal borrowers and Respondents No. 2 and 3. If the assignment agreement were true, there would be no necessity for Karur Vysya Bank to release the original title deeds to the principal borrowers, who in turn executed a memorandum of deposit of title deeds in favor of Respondent No. 2 in terms of their private financial assistance. Furthermore, there would be no necessity for the creditor, Karur Vysya Bank, to file a memo withdrawing the Recovery Certificate. All of these events transpired without the knowledge or information of the applicants to this application.

e) The 2nd Respondent (**Phoenix ARC (P) Ltd.**) and the 3rd Respondent (**Karur Vysya Bank**) colluded by obtaining the signature of the Managing Partner of Respondents 4 and 8, falsely portraying the transaction as a loan assignment worth Rs. 13,21,00,000/- (Rupees Thirteen Crores Twenty-One Lakhs only). In reality, the entire dues of Respondents 4 and 8 to Karur Vysya Bank had already been settled as stated above, and the creditor Karur Vysya Bank fraudulently executed the assignment deed dated 30.05.2011 along with the earlier guarantee granted by the applicants in favor of Respondent No. 2. However, the earlier guarantee provided by the applicants stood discharged by the novation of a new contract between Respondents No. 2, 3, the principal borrowers, and Respondent No. 15 by operation of Section 139 of the **Contract Act**.

f) With a view to swindle the guarantors, Karur Vysya Bank mala fide assigned only the properties of the guarantors situated in Tamil Nadu while clandestinely omitting the properties of the principal borrowers and releasing their original title deeds. This demonstrates clear collusion between Respondent No. 2, Respondent No. 3, and the principal borrowers. The assignment agreement executed by Respondent No. 3 in favor of Respondent No. 2 became invalid and illegal upon the fulfillment of the One-Time Settlement offer by the principal borrowers. The moment the creditor bank filed a memo before the Hon'ble Debt Recovery Tribunal, Ernakulam, withdrawing the Recovery Certificate, the entire loan transaction between Karur Vysya Bank and the principal borrowers came to an end, and all security interests created therein stood discharged. Hence, the assignment deed is invalid in the eyes of the law and is an utter violation of Section 5 of the **SARFAESI** Act. Therefore, all proceedings initiated under Section 13(2) and 13(4) of the SARFAESI Act by Respondents No. 1 and 2 on the strength of this illegal assignment are null and void.

g) The plant, machinery, and building worth more than Rs. 2 crores—given as collateral security by the principal borrowers for availing loan facilities from Respondent No. 3—were taken into possession by Respondents 1, 2, and 3. However, no plant and machinery currently exist in the factory. The creditor bank colluded with the principal borrowers, allowing them to demolish the building and remove the machinery for obvious reasons. Because of this negligent and mala fide conduct on the part of the banker and the principal borrowers, the burden on the guarantors has accumulated, thereby impairing the guarantors' rights against the creditor's security interest as provided under Section 141 of the **Contract Act**. Therefore, the guarantors' liability stands discharged under Section 139 of the Contract Act.

h) Respondents No. 1 and 2 can enforce their claim of Rs. 13.21 crores only against the principal borrowers and the sole corporate guarantor, Respondent No. 15 (**M/s. Global Polybags Industries (P) Ltd.**), but not against the applicants and their immovable properties, given the discharge of the guarantee liability upon the fulfillment of the One-Time Settlement offer by the principal borrowers with the creditor, Karur Vysya Bank.

i) There was a novation of contract, and as there is no privity of contract between the applicants herein and Phoenix ARC (P) Ltd., Phoenix ARC—being a stranger to the original contract—cannot act against the applicants. Karur Vysya Bank released the mortgaged property of the principal borrower, which materially varied the terms of the contract. Once the mortgaged property of the principal borrower was released from mortgage, the applicants/guarantors could no longer be held liable under the terms of the guarantee. Therefore, on account of the novation of the contract and the material variation of its terms, the applicants are not liable to pay any amount either to Karur Vysya Bank or to Phoenix ARC (P) Ltd., and their liabilities are fully absolved.

j) The first and second respondents ought not to have issued the notice under Section 13(2) of the **SARFAESI** Act claiming amounts of Rs. 44,96,74,970.00 and Rs. 9,17,69,915.00 on the basis of decisions rendered in O.A. No. 441 of 2003 and O.A. No. 97 of 2004, especially after the principal borrowers settled the claim with the creditor bank for Rs. 13.21 Crores.

k) The house property measuring 49.5 cents in Kollam, belonging to Mrs. D. Gangeswari Ammal (mother of the principal borrower), was also subjected to an equitable mortgage by deposit of title deeds with Respondent No. 2 for the financial assistance used to settle the Karur Vysya Bank loan amount of Rs. 13.21 crores. The present market

value of this property is approximately Rs. 9 crores. Similarly, other securities provided by the principal borrowers—measuring 1 acre 52.062 cents at Asramam Village, Kollam, and another property measuring 27 cents in S.No. 8778, etc., Asramam Village, Kollam—are worth about Rs. 15 crores. These properties are situated in prime localities and would fetch more than Rs. 20 crores, which is more than sufficient to settle the private financial assistance provided by Respondent No. 2 to the principal borrowers. However, without taking any steps to realize their financial assistance from the principal borrowers or their sole corporate guarantor (Respondent No. 15), the respondents illegally proceeded to realize it through the sale of the applicants' properties, which do not fall within the purview of a security interest under the **SARFAESI** Act. This clearly exposes the conspiracy between the principal borrowers and Respondent Nos. 1 to 3.

Description of Immovable Properties

Possession Notice - I

All the piece and parcel of land bearing Survey No. S.No. 223 and S. No. 224/1 (adm. 101 cents + 22.50 cents belonging to Mr. V. Muthukannapiran). S. No. 225/1 (adm. 140 cents belonging to Mr. Vasantha Devi and S. No. 225/2 (adm.141 cents belonging to Mr. E.M. Vaikundasamy) situated at D.No. 1/4A. Forest Road, Nearby K.R.R. Nagar, Allinagaram Village Municipality, Theni totally admeasuring 404.5 cents, and bounded as under:

North by	:	Road & Residential Plots
South	:	Building & Residential Plots
East	:	Residential Plots
West	:	Road

Along with all super structures and constructions thereon

Possession Notice - II

Property owned by Mrs. M. Jegadeeswari, Mr. M. Damodaran & Mrs. M. Navitha:

Land & Residential building at S. No. 1127/1B9B, 1127/1B10 & 1127/1B11, Municipal Ward No. 15, Block No. 7, Door No. 19H & 19D, T.R. Naidu Street, Tuticorin Town admeasuring 15.52 cents and bounded as follows:

North	:	Railway compund wall
South	:	T.R. Naidu Street
East	:	Mr. Shanmuga Nadar House property
West	:	Mr. Leelavathy Ammal Huse Property & Compound Wall

Documents filed by the Applicants:

Sl.No.	Date	Documents particulars
1.	14.03.2011	Letter of the Assistant General Manager of the Defendant No. 3 Bank
2.	30.05.2011	Guarantee deed of Global Polybags Industries (P) Ltd. With board resolution
3.	30.05.2011	Assignment agreement
4.	30.06.2011	Letter of the Defendant No. 3
5	29.11.2012	Notice issued under Section 13(2) of the SARFEASI Act by the Defendant No. 1
6.	04.02.2013	Reply to Section 13(2) Notice
7.	26.11.2014	Authorization deed executed by Mrs. Gangeswariammal
8.	27.03.2015	Notice issued by the District Collector, Theni District
9.	07.05.2015	Objection petition sent to the Theni District Collector by the Applicants
10.	11.08.2015	Impugned Possession Notice affixed under Section 13(4) of the SARFEASI Act by the Defendant No. 1
11.	25.09.2015	Postal Receipts

Additional Documents filed on the side of the Applicants

Sl.No.	Date	Documents particulars

1.	19.01.2014	Writ Petion in W.P.(C) No. 2173 of 2014 filed by Smt. D. Gangeswari Ammal and Kabeer before the Hon'ble High Court of Kerala Ernakulam
2.	21.04.2014	Counter Affidavit filed by the Authorised Officer, Phoenix ARC (P) Ltd., along with Index

2nd Additional Typed Set of Papers filed on the side of the Applicants

Sl.No.	Date	Documents particulars
1.	04.01.2014	Affidavit filed by D.M. Snakaralingam Roopkumar in O.A. No. 441 of 2003
2.	04.01.2014	Affidavit filed by D.M. Snakaralingam Roopkumar in O.A. No. 97 of 2004

JUDICIAL AUTHORITIES RELIED UPON

i. The Applicants rely upon Kothari Industrial Corporation Ltd. v. Kotak Mahindra Bank Ltd. & Anr., II (2007) BC 26 (DRAT/DRT), wherein the validity of the assignment relied upon by the assignee was treated as an issue requiring consideration and adjudication.

ii. The Applicants also rely upon A. Varalakshmi v. The Chief Manager, Punjab National Bank, Asset Recovery Management Branch & Anr., reported in 2012-3-L.W. 661, in support of the proposition that a sale by private treaty under Rule 8(8) of the Security Interest (Enforcement) Rules, 2002, requires the terms to be settled between the parties in writing.

iii. The Applicants further rely upon B.N. Kirpal, N. Santosh Hegde and P. Venkatrama Reddi, reported in AIR 2003 Supreme Court 623, as relied upon by the Applicants, in support of the proposition that a subsequent agreement may amount to novation of contract resulting in discharge of the guarantee.

iv. The Applicants also rely upon R.Y. Narayanan v. Bank of Madurai Ltd., Oppanakara Street, Coimbatore & Anr., reported in the Madras Law Journal Reports, for the proposition that the creditor is required to preserve the security available against the principal debtor so that the surety may avail the benefit of such security.

3. On the other hand, the Defendant bank appeared and filed Vakalath, Reply Statement along with written argument, type set and additional type set of papers wherein it has been submitted that the allegations contained in the Securitisation Application, except those specifically admitted herein, are false, incorrect and therefore denied. The Defendant Bank submits as follows:-

- ✓ One M/s. Nagalingam Nadar Sons & One M/s. Nagalingam Nadar Company has approached the Karur Vysya Bank for availing loan in the year 1998 & 2000. Karur Vysya Bank has also sanctioned the loan. The defaulters have also availed the loan. The applicants are the guarantors cum mortgagors among the other defaulters. It is pertinent to note that the applicants themselves have also admitted the same in 5th Para of their Sarfaesi Application under the heading 'Facts of the Case'.
- ✓ Since the defaulters have not repaid the loan; Karur Vysya Bank has filed OA.414/03 & OA.97/04 on the file of DRT, Ernakulum for the recovery of loan amount. DRT Ernakulum has allowed both the OAs and it were decreed on 11.01.05 and two separate final orders have been passed and consequently two separate Debt Recovery Certificates in DRC.1901/05 & DRC.1903/05 were issued. Now DRC is transferred to DRT-Ernakulam-II and renumbered as TRC.304/16 & TRC.305/16 respectively.

• Vide Page 4-39 of 1st Addl typeset of Phoenix ARC for final order in OA. 441/03

• Vide Page 75-103 of 1st Addl typeset of Phoenix ARC for final order in OA.97/04

• Vide Page 40-71 of 1st Addl typeset of Phoenix ARC for DRC.No. 1901/05

• Vide Page 104-128 of 1st Addl typeset of Phoenix ARC for DRC.No. 1903/05

• Vide Page 74 of 1st Addl typeset of Phoenix ARC for status of TRC.No. 304/16

• Vide Page 135 of 1st Addl typeset of Phoenix ARC for status of TRC No. 305/16

✓ The said fact was categorically admitted by the applicants in their Sarfaesi Application in Para 9 & 12 to 15 under the heading 'Facts of the Case'.

✓ Recovery Officer also proceeded with his Recovery Proceedings and issued demand notice to all the defaulters. It is pertinent to note that the applicants have not sent any reply for the demand notice issued by Recovery Officer. Recovery Officer also brought the property for sale and issued sale proclamation on 06.01.11. It is pertinent to note that the applicants have not preferred any appeal against the sale proclamation issued by Recovery Officer.

✓ At that time; borrowers have approached for One Time Settlement (OTS) with Karur Vysya Bank. Despite sanction of the OTS, borrowers have not complied with the OTS offer and thereby the OTS stands cancelled automatically as per the terms of the OTS - Vide OTS sanction letter of Karur Vysya Bank which is enclosed in Page 32 & 33 of applicants' main typeset. The said fact was categorically

admitted by the applicants in Para 17 of the Sarfaesi Application under the heading 'Facts of the Case'.

- ✓ Subsequently Karur Vysya Bank has assigned its entire debt & securities to Phoenix ARC Vide assignment deed dt. 30.05.11 which was enclosed by the applicants in their typeset Page Nos. 41 to 70 as well as enclosed by the Phoenix ARC in its main typeset in Page Nos. 1 to 64. In pursuant of the said assignment agreement, the assignee namely the Phoenix ARC steps into shoes of the Karur Vysya Bank. Further on such assignment, all the rights of Karur Vysya Bank vested with the Phoenix ARC relating to the loans & its security interest & financial assets. Thus the defaulters have to repay the entire loan amount due to the assignee Phoenix ARC. Karur Vysya Bank has informed the said assignment to the borrower/defaulters through its letter dt. 30.06.11 - Vide Page 71 of applicants' main typeset. Further Phoenix ARC has also informed the said assignment to all the defaulters.

- ✓ Subsequently borrowers approached the Phoenix ARC for OTS through their letter dt. 10.10.11. Since the borrowers have not paid the OTS amount as offered by them; Phoenix ARC sent a notice dt. 16.08.12 to the defaulters stating interalia to pay the entire amount as per DRC.

- ✓ In the meantime Phoenix ARC filed a substitution petitions in IA.2855/12 in OA.441/03 and another substitution petition in IA.2854/12 in OA.97/04 to substitute the name of the Phoenix ARC in the place of Karur Vysya Bank on the foot of the assignment agreement dt. 30.05.11 and the same were allowed on 13.08.14. It is pertinent to note that the defaulters have expressed their 'No objection' in allowing the substitution petition. Further in the order passed by the Hon'ble DRT, Ernakulum also it has been specifically stated that 'the defendants have 'no objection' for allowing the

Substitution Petition' - Vide Page 72-73 of the 1st Additional typeset of Phoenix ARC for order passed in IA.2855/12 in OA.No. 441/03. On substitution; the recovery proceedings were proceeded by the Recovery Officer on behalf Phoenix ARC being the Certificate holder.

- ✓ Against the above said order passed in IA.No. 2855/12 in OA.No. 441/03 allowing the substitution petition; the applicants have filed a review petition. Likewise against the above said order passed in IA.2854/12 in OA.No. 97/04 allowing the substitution petition; the applicants have filed another review petition in RP.No. 2098/15. It is pertinent to note that the said substitution petitions were allowed in the month of August 2014; whereas review petitions were filed only in the month of July 2015 which is nearly after 1 year. It is pertinent to note that both review petitions were dismissed on merits. It is pertinent to note that the applicants have not preferred any appeal against the order passed in the Review Petitions; thereby the order passed in the substitution petitions become final.

- ✓ Subsequently applicants have filed IA.730/15 in OA.441/03 to condone the delay of approximately 10 years in filing set-aside petition along with a petition in IA.735/15 to set-aside the decree. Both the said petitions were dismissed on merits on 18.01.18.

- ✓ Likewise applicants have filed IA.720/15 in OA.97/04 to condone the delay of approximately 10 years in filing set-aside petition along with a petition in IA.721/15 to set-aside the decree. Both the said petitions were dismissed on merits on 18.01.18 - Vide Page 129 to 134 of the 1st Additional typeset of Phoenix ARC for copy of the order. It is pertinent to note that the applicants have not preferred any appeal against the order passed in the above IAs and thereby the decree become final. It is pertinent to note that the applicants have not preferred any appeal against the final order passed in the OAs and thereby the decree become final.

- ✓ Since the defaulters have not repaid the loan to Phoenix ARC; Phoenix ARC has issued two separate demand notices dt. 29.11.12, for each account, to all the defaulters - Vide Page 65 to 85 of Phoenix ARC main typeset for demand notices & Postal receipts. On receipt of the demand notices the borrowers have sent a reply dt. 04.02.13 to Phoenix ARC - Vide Page 86 to 89 of Phoenix ARC main typeset. For which Phoenix ARC has sent counter reply dt. 18.02.13 - Vide Page 90 to 98 of Phoenix ARC main typeset. Since the defaulters have admitted & acknowledged the receipt of demand notice they have sent reply. Despite receipt of demand notices, the defaulters have not repaid the loan. So the Phoenix ARC has issued separate possession notices for each of the secured assets. Two separate possession notices dt. 11.08.15 pertaining to the applicants' properties are alone under challenge. So Phoenix ARC is producing the possession notices & Paper publications pertaining to the applicants' properties which alone are the subject matter of this Sarfaesi Application. The respective defaulters have made endorsement in the possession notices by acknowledging the receipt of possession notices - Vide Page 109 & 113 of Phoenix ARC main typeset for possession notices. The said possession notices which were under challenge is duly published on 14.08.15 in English daily 'The New Indian Express' - Madurai edition which is circulated in the southern region of Tamil Nadu including Tirunelveli & Theni District, where the properties mentioned in the possession notices are located. The said possession notices which were under challenge is duly published on 14.08.15 in Tamil daily 'Dinamani' - Both in Tirunelveli & Madurai editions which is circulated in the Tirunelveli & Theni Districts respectively, where the properties mentioned in the possession notices are located.

    - The Paper Publication in English is enclosed in the main typeset of Phoenix ARC in Page 117.

- The Tamil Paper Publication published in Tirunelveli Edition is enclosed in the main typeset of Phoenix ARC in Page 118.
- The Paper Publication in English (e-copy) & Paper Publication in Tamil (Both in Madurai & Tirunelveli Edition) are enclosed in the 1st Additional typeset of Phoenix ARC in Page 1 to 3.
- The Possession notices which were under challenge were affixed on 11.08.15 in the conspicuous part of the properties mentioned in the impugned possession notices.

✓ It is pertinent to note that the applicants have categorically admitted the affixture of the possession notices in Para 41 of their Sarfaesi Application under the heading 'Facts of the case'. It is well settled law that the admitted facts need not to be proved.

✓ The assignment agreement cannot be challenged before this Hon'ble Tribunal. As per Section 17 (1) of the Sarfaesi Act; any person aggrieved by any measures referred in Section 13(4) taken by the authorized officer alone can be challenged before this Hon'ble Tribunal. Section 13(4) deals with issuance of possession notice & sale notice. Debt was assigned from Karur Vysya Bank to Phoenix ARC is under Section 5 of the Sarfaesi Act. So assignment of debt under Section 5 of the Sarfaesi Act is not a measure to be challenged under Section 17(1) of the Sarfaesi Act. It is pertinent to note that the debt was assigned through registered assignment agreement in the year 2011; but this Sarfaesi Application was filed only in the year 2015 which is after the lapse of 4 ½ years; which is an after thought. It is pertinent to note that even in the Sarfaesi Application under the heading 'Limitation' applicants have stated that the Sarfaesi Application is within the limitation period only on the foot of the Possession notice dt. 11.08.15. It is pertinent to note that the challenge with regard to the assignment agreement is not mentioned

under the heading 'Limitation' in the Sarfaesi Application. Even though the relief to declare the assignment agreement as 'null & void' is not maintainable; it is hopelessly barred by limitation also. It is pertinent to note that Phoenix ARC filed a substitution petition in IA.2855/12 in OA.441/03 and another substitution petition in IA.2854/12 in OA.97/04; to substitute the name of the Phoenix ARC in the place of Karur Vysya Bank on the foot of the assignment agreement dt. 30.05.11 and the same was allowed on 13.08.14. It is pertinent to note that the defaulters have expressed their 'No Objection' in allowing the Substitution Petitions. Further in the order passed by the Hon'ble DRT, Ernakulum also it has been specifically stated that 'the defendants have 'no objection' for allowing the Substitution Petition' - Vide Page 72 & 73 of the 1st Additional typeset of Phoenix ARC for order passed in Substitution petition in IA.2855/12 in OA.441/03. When the defendants in the OA including the applicants herein have expressed their 'no objection' to substitute the name of the Phoenix ARC in the place of Karur Vysya Bank; now they cannot challenge the same by way of Sarfaesi Application and they are estopped from challenging it.

- ✓ Against the above said order passed in IA.2855/12 in OA.441/03 allowing the substitution petition; the applicants have filed a review petition. Likewise against the above said order passed in IA.2854/12 in OA.97/04 allowing the substitution petition; the applicants have filed a review petition in RP.No. 2098/15. It is pertinent to note that both Review Petitions were dismissed on merits. It is pertinent to note that the applicants have not preferred any appeal against the order passed in the Review Petitions; thereby the order passed in the substitution petitions become final. It is pertinent to note that the applicants have not sent any reply to the demand notice issued by the Phoenix ARC under Sarfaesi Act. It goes without saying that the applicants are accepting the assignment agreement and so now they

are estopped from challenging it. Under these circumstances the applicants cannot challenge the assignment agreement by way of Sarfaesi Application and they are estopped from challenging it. Assignment agreement has been accepted & confirmed by Hon'ble DRT Ernakulum (Which is the coordinate Bench of DRT) while allowing the substitution petition. While so the applicants cannot be allowed to go behind the order of substitution & to raise unnecessary objections at this belated stage before this Hon'ble DRT Madurai (Which is also a coordinate Bench of DRT) and that the relief to declare the Assignment agreement as null & void is hit by Principles of 'Res Judicata' & 'Doctrine of Finality'. Merely because the applicants have lost their case before DRT Ernakulum now they cannot sought for the said relief before this Hon'ble Tribunal, by way of Sarfaesi Application. In other words the applicants cannot use the Sarfaesi Application as a tool or pathway for challenging the assignment agreement and it is nothing but an abuse of process of law. So the prayer to declare the assignment agreement as illegal & void-ab-initio is not maintainable and the said relief has to be rejected.

- ✓ These reliefs sought for by the applicants are also not maintainable. Already decree has been passed against the applicants and their properties by way of final order in OA.441/03 & OA.97/04 by determining the liabilities of the defaulters including the applicants and by determining security interest over the mortgage properties including the properties mortgaged by the applicants - Vide Page 4 to 39 of the 1st Additional typeset of Phoenix ARC for final order in OA.441/03 and Vide Page 75 to 103 of the 1st Additional typeset of Phoenix ARC for final order in OA.97/04. It is pertinent to note that the applicants have filed IA.730/15 in OA.441/03 to condone the delay of approximately 10 years in filing set-aside petition along with a petition in IA.735/15 to set-aside the decree. Both the said

petitions were dismissed on merits on 18.01.18. Likewise applicants have also filed IA.720/15 in OA.97/04 to condone the delay of approximately 10 years in filing set-aside petition along with a petition in IA.721/15 to set-aside the decree. Both the said petitions were dismissed on merits on 18.01.18 - Vide Page 129 to 134 of the 1st Additional typeset of Phoenix ARC for copy of the order. It is pertinent to note that the applicants have not preferred any appeal against the order passed in the above IAs and thereby the decree become final. It is pertinent to note that the applicants have not preferred any appeal against the final order passed in the OAs and thereby decree become final. When the decree become final; it goes without saying that the liability of the applicants and security interest over their properties are determined. When the liability of the applicants & security over their properties were determined by way of decree passed by the coordinate bench of DRT, which have already become final; again another coordinate bench of DRT namely this Hon'ble Tribunal cannot say that there is no liability & there is no security interest. These types of prayers/reliefs cannot be sought under Sarfaesi Application and it is an abuse of process of law and it is hit by Principles of 'Res Judicata' & 'Doctrine of Finality'. So there are security interest over the applicants' properties and that the applicants are liable to pay the loan amount and that the phoenix ARC is entitled to recover it and that the Phoenix ARC is not liable to release the original title deeds and that the Phoenix ARC cannot release the original title deeds. So theses prayers are not maintainable and the said reliefs have to be rejected on the ground that it is beyond the scope of Section 17 of Sarfaesi Act.

- ✓ Even after the final Order & DRC and Demand Notice & Sale proclamation by Recovery Officer; the defaulters have not repaid the loan. Since the account was assigned from KVB to Phoenix ARC after final order & DRC in OAs and after issuance of sale proclamation by

Recovery Officer; total dues payable mentioned in the sale proclamation is taken as due amount in the assignment agreement. Since the entire debt & security was assigned; the Phoenix ARC is entitled to recover the entire dues as mentioned in the assignment agreement with subsequent interest & cost. Since the defaulters have not repaid the loan; still the DRC & Recovery proceedings are pending - Vide Page 74 of 1st Addl typeset of Phoenix ARC for status of TRC.No. 304/16 in OA.441/03 downloaded from DRT Website - Vide Page 135 of 1st Addl typeset of Phoenix ARC for status of TRC No. 305/16 in OA.97/04 downloaded from DRT Website. Since the defaulters have not repaid the loan, despite the notice of proclamation by Recovery Officer and notice of assignment by Phoenix ARC & KVB; Phoenix ARC has issued demand notices under Sarfaesi Act on 29.11.12 - Vide Page 65 to 85 of Phoenix ARC main typeset for demand notices & Postal receipts. After receipt of the demand notice issued by Phoenix ARC under Sarfaesi Act, the Principal borrower alone have sent a reply notice dt. 04.02.13 through its counsel - Vide Page 86 to 89 of Phoenix ARC main typeset. For the said reply notice; Phoenix ARC has sent a counter reply dt. 18.02.13 to the counsel of the principal borrower - Vide Page 90 to 98 of Phoenix ARC main typeset. Even after demand notice; the defaulters have not repaid the loan, so the Phoenix ARC has issued separate possession notices for all mortgage properties. The said possession notices were duly served on the defaulters and the same was also duly published and the same was also duly affixed on the conspicuous part of the properties. Since the possession notices dt. 11.08.15 issued for the applicants' properties are alone under challenge; Phoenix ARC is producing the possession notices & Paper Publications with regard to applicants' properties alone; which is alone the subject matter of this Sarfaesi Application. The respective defaulters have made endorsement in the possession notices by acknowledging the receipt of receipt of possession notices.

Possession notices & Paper publications are enclosed in the typesets of Phoenix ARC. In Para 41 of the Sarfaesi Application, applicants themselves admitted the affixture of possession notice. Phoenix ARC has issued demand notices & possession notices only as per the provisions & procedures contemplated under Sarfaesi Act & Rules and there are no procedural irregularities at all on the part of Phoenix ARC in issuance of demand notices & possession notices. It is pertinent to note that the applicants have not pleaded & not alleged any procedural irregularities either with regard to service of demand notice & Possession notices or with regard to affixture & paper publication of possession notices. It goes without saying that they are admitting everything with regard to Sarfaesi proceedings. Even after issuance of demand notices & possession notices the defaulters including the applicants have not repaid the loan as on date. It is pertinent to note that the purchase consideration between the Assignor and Assignee and total dues payable are no way connected and not related to each other and it will no way affect the right of assignee to demand the total dues payable. At the request of certain mortgagors their properties were released from the right of mortgage on payment of money and that the said payments were adjusted towards the loan account. Even after adjusting & appropriating the amount received while releasing certain mortgage properties; the defaulters including the applicants are liable to pay several crores towards balance loan amount due to Phoenix ARC. So the SA has to be dismissed with exemplary cost.

- ✓ One of the contentions of the applicants is that Phoenix ARC has advance loan to the borrowers to settle the loan account at KVB and that the borrowers have settled the loan at KVB and further KVB has also filed a memo before DRT, Ernakulum for withdrawing the Recovery Certificates and also KVB requested the DRT to return the title deeds; but in the meantime KVB and Phoenix ARC fraudulently

entered into the assignment agreement. Contention of the applicants is absolutely false & totally misleading & highly unsustainable. Phoenix ARC never lent loan to the borrowers to settle their loan at Karur Vysya Bank. Whereas Karur Vysya Bank has assigned its entire debt & security to Phoenix ARC under registered assignment agreement dt. 30.05.11 under Section 5 of the Sarfaesi Act which is legally valid one. So the question of fraudulently entered into assignment agreement does not & will not arise at all. KVB never filed any memo at DRT, Ernakulum stating that the account was settled out of court and that the recovery certificates have to be withdrawn and never request the DRT to return all the title deeds. Account was not settled out of court. OTS granted by KVB was not complied with. So question of settlement out of court does not and will not arise. To prove their allegations applicants ought to have produced following documents; but they have not produced the same:

i) Receipt showing the payment of entire amount mentioned in the OTS sanction letter dt. 14.03.11

ii) Alleged Loan application submitted by borrowers to Phoenix ARC requesting to sanction new loan

iii) Alleged Loan Sanction letter of Phoenix ARC to the borrower

iv) Alleged Memo filed by KVB before DRT, Ernakulum stating that the account was settled out of court and that the recovery certificates have to be withdrawn and consequently requesting DRT to return the title deeds

- ✓ Non-production of those documents goes without saying that the allegations of the applicants are absolutely false & frivolous & misleading. So the contention of the applicants may not be considered and it has to be rejected.

- ✓ Another contention of the applicants is that since the new corporate guarantee was obtained from one Global Polybags Industries for the loan advanced by Phoenix ARC to the borrowers; the guarantee provided by the applicants were discharged by novation of new contract. Contention of the applicants is absolutely false & totally misleading & highly unsustainable. Phoenix ARC have never lend any loan to the borrowers. Whereas the KVB has assigned its entire debts & security to Phoenix ARC. It is pertinent to note that the borrowers they themselves have voluntarily introduce a new guarantor namely Global Polybags Industries to Phoenix ARC at the time of assignment and ask them to execute a guarantee agreement as a additional surety. In the resolution passed by the Global Polybags industries which was enclosed in Page 40 of applicants' typeset it is clearly mentioned that the debt was assigned to Phoenix ARC from KVB and further they conveyed their acceptance in the said resolution. It goes without saying that it is an assignment and not a new loan. Further it goes without saying that both the borrowers & the said guarantor Global Polybags industries are well aware that the account was assigned from KVB to Phoenix ARC and that there is no any such new loan as alleged by the applicants. It is also pertinent to note that in the guarantee agreement executed by Global Polybags Industries, it is clearly mentioned that dues of the borrower is determined based on the sale proclamation dt. 06.01.11 issued by DRT, Ernakulum - Vide Page 39 of Applicants' typeset for guarantee agreement. The amount due mentioned in Sale proclamation by Recovery Officer DRT and the amount due mentioned in the Assignment agreement and the amount due mentioned in the Guarantee agreement are one & the same amount. Hence it goes without saying that there is no new loan transaction and there is only as assignment of debt & security. Merely because additional guarantee was obtained, it does not mean that earlier guarantees will stands discharged. In the transaction of assignment

of debt & security there is no question of any novation of new contract and that the question of novation of new contract does not will not raise at all. Applicants have misconstrued the concept of assignment and concept of novation of contract. So the contention of the applicants may not be considered and it has to be rejected.

- ✓ Another contention of the applicants is that the liability of the guarantors is discharged as per Section 139 & 141 of Indian Contracts Act. Contention of the applicants is baseless & totally misleading & highly untenable & legally unsustainable. The liability of the Guarantor is defined under Section 128 of Indian Contract Act, which clearly states that 'The liability of the surety is co-extensive with that of the principal debtor'. It clearly shows that the guarantor is liable to pay the debt as much as the main borrower. In the eye of law, borrower & the guarantor are not different persons. They both are one & the same person and their liability is co-extensive. The liability of the guarantor will be discharged only when the entire loan was repaid. The guarantor remains liable for repayment of debt until the debt is fully paid. Even after repeated demands the principal borrowers herein has neither repaid the entire loan nor complied the OTS and discharged liabilities till date. Under such circumstances the applicants cannot allege that their liability was discharged or impaired, merely because certain mortgage properties were released. The applicants herein has not even take any single steps to make payment & to release their properties from the right of mortgage. Under the facts & circumstances of this case; the concept of Section 139 & 141 of Contract Act will not applicable. It is pertinent to note that in the guarantee agreements dt. 11.05.98 & 09.06.2K executed by the applicants in favour of Karur Vysya Bank, the applicants have categorically admitted & agreed that 'as between the bank and the guarantors they are debtors, jointly with the borrower and accordingly they shall not be entitled to claim the

benefit or legal consequence of any variation in the terms of the contract and to any of the rights conferred on a guarantor by Sections 133 & 134 & 135 & 139 & 141 of the Indian Contract Act'. Therefore the applicants have waived their right under Sections 133 & 134 & 135 & 139 & 141 of the Indian Contract Act. It is pertinent to note that the applicants has not contested both the OAs and thereby final order has been passed and the said final order was not been set-aside and becomes final and thereby they are bound by the deed of guarantee executed by them. It is pertinent to note that the applicants have not sent any reply to the demand notice issued by Phoenix ARC under Sarfaesi Act. So the contention of the applicants may not be considered and it has to be rejected.

- ✓ Another contention of the applicants is that the applicants are not at all parties to the loan transaction between Phoenix ARC & Principal borrowers, and there is no Privity of contract between Phoenix & the applicants, hence the Sarfaesi Proceedings initiated by Phoenix against the applicants is invalid. Contention of the applicants is absolutely false & totally misleading & highly unsustainable. Phoenix ARC has neither lent money to principal borrowers nor the Principal borrower borrowed any loan from Phoenix ARC. So the question of alleged loan transaction does not & will not arise at all. There is no any new loan transactions between the Phoenix ARC & Principal borrowers as alleged by the applicants. Whereas as stated earlier debt & security were assigned by KVB to Phoenix ARC. The applicants have not produced any documents to prove their allegations. Since the applicants have made allegations; burden lies on them to prove it. But they have not discharged their burden. It goes without saying that all the allegations put forth by the applicants are false & frivolous. Mere assigning of debt & security will not disturb the debtor-creditor relationship. When the assignment was entered into there will be one change that is 'to

whom the debtor is liable to repay the loan amount'. There will not be any changes with regard to the fundamental obligations of the debt. Through the assignment agreement the assignor namely KVB has assigned all its rights & title & interest in all agreements & deeds & documents & guarantees issued in respect of the repayment of loan to the assignee namely Phoenix ARC. Therefore the assignee Phoenix ARC has valid right to enforce the guarantee executed by the applicant in favour of KVB. Under such circumstances the applicants cannot allege that their liability was discharged or impaired. So the applicants are liable to pay the loan amount due to Phoenix ARC. So the contention of the applicants may not be considered and it has to be rejected.

- ✓ Another contention of the applicants is that phoenix has proceeded under Sarfaesi prior to allowing the substitution petition. Contention of the applicants is absolutely false & totally misleading & highly unsustainable. It is pertinent to note that at the moment when the debts & security are assigned to ARC and assignment agreement entered into between bank & ARC; ARC steps into the shoes of the bank. It is pertinent to note that in the assignment agreement itself debt amount & secured assets are determined. Phoenix ARC has substituted in the Original Application in order to pursue the DRC & recovery Proceedings at DRT. It legally unsustainable, that ARC will steps into the shoes of the bank only after substituting itself in the original application. It is not necessary that the Phoenix ARC has to wait to proceed under the Sarfaesi till substituting itself in the OA. Proceeding under Sarfaesi & Proceeding under DRC are two different concepts. As stated earlier at the moment when the debts & security are assigned to Phoenix ARC, they can very well proceed immediately under Sarfaesi.

Type set of Documents filed by the 1st and 2nd Defendants:

Sl. No.	Date	Description of Documents
1.	30.05.2011	Assignment Agreement entered into between the Respondents 2 and 3, registered as Doc. No. 11458/2011, on the file of the Sub-Registrar of Theni.
2.	29.11.2012	Copy of the Demand notice under Sec. 13(2) of the SARFAESI Act issued by the 1st Respondent to the Applicants and Respondents 4 to 15 (Ref: PHOENIX/RESL/2143/2012-13)
3.	-	Postal receipts.
4.	29.11.2012	Copy of the Demand notice under Sec. 13(2) of the SARFAESI Act issued by the 1st Respondent to the Applicants and Respondents 4 to 15. (Ref: PHOENIX/RESL/2144/2012-13)
5.	-	Postal receipts.
6.	04.02.2013	Objection sent by the 4th Respondent through their counsel to the Demand Notice sent by the First Respondent.
7.	18.02.2013	Reply sent by the 1st Respondent.
8.	23.09.2014	Letter sent by the 9th Respondent to the 2nd Respondent.
9.	30.09.2014	Letter sent by the 9th Respondent to the 2nd Respondent.
10.	20.10.2014	Letter sent by the 2nd Respondent to the 9th Respondent.
11.	31.10.2014	Letter sent by the 2nd Respondent to the 9th Respondent.
12.	26.11.2014	Letter of Authorization issued by the 9th Respondent.
13.	27.11.2014	Letter sent by the 2nd Respondent to the 9th Respondent.
14.	11.08.2015	Copy of Possession Notice issued by the 1st Respondent
15.	11.08.2015	Panchanama and inventory recorded by the 1st Respondent at the time of taking Possession of the property at Door No.19H, 19B, T.R.Naidu Street.
16.	11.08.2015	Copy of Possession Notice Issued by the 1st Respondent

Sl. No.	Date	Description of Documents
17.	11.08.2015	Panchanama and inventory recorded by the 1st Respondent at the time of taking Possession of the property at Door No.1/4A, Forest Road, K.R.R.Nagar, Theni
18.	14.08.2015	Paper publication of Possession Notice in one issue of English daily 'The New Indian Express'
19.	14.08.2015	Paper publication of Possession Notice in one issue of Tamil daily 'Dinamalar'

1st Additional Type set of Documents filed by the 1st and 2nd Defendants:

S.No.	Date	Documents
With regard to Sarfaesi Proceedings		
1	11.08.15	Possession notices published in English Daily "New Indian Express" in Madurai Edition on 14.08.15 E-Copy
2	11.08.15	Possession notices published in Tamil Daily "Dinamani" in Madurai Edition on 14.08.15
3	11.08.15	Possession notices published in Tamil Daily "Dinamani" in Tirunelveli Edition on 14.08.15
With regard to OA.441/03- Nagalingam Nadar Company		
4	11.01.05	Final order passed in OA.441/03
5	24.05.05	Copy of DRC.1901/05 issued in OA.441/03
6	13.08.14	Copy of order passed in Substitution petition in IA.2855/12 in OA.441/03
7	-	Present Status of DRC No. 1901/05 which is transferred & renumbered as TRC No.304/16 in OA.No.441/03 downloaded from DRT Website
With regard to OA.97/04- Nagalingam Nadar Sons		
8	11.01.05	Final order passed in OA.97/04
9	30.05.05	Copy of DRC. 1903/05 issued in OA.97/04

S.No.	Date	Documents
10	18.01.18	Copy of the order passed in Condone delay Petition in IA.720/15 & Set-aside Petition in IA.721/15 in OA.97/04
11	-	Present Status of DRC No. 1903/05 which is transferred & renumbered as TRC.No.305/16 in OA.97/04 downloaded from DRT Website

4. Reply Statement filed on behalf of the 18th and 19th Defendants:-

- It is submitted that the 18th Defendant is the daughter of Defendant No. 9 Smt. Gangeswariammal, she has nothing to do with the alleged loan.
- The 18th Defendant settled in Dindigul after marriage since 1965. She is not a party to any of the transaction between the applicants and other Defendants.
- It is submitted that the 18th Defendant not inherited or succeeded to any immovable or moveable properties from her deceased mother through her last will dated 12.03.1987 who is arrayed as a 9th Defendant herein. The 18th Defendant presence is not required for deciding the appeal on merits. The 18th Defendant has not also been bequeathed any property by late Smt. D. Gangeswariammal who is arrayed as 9th Defendant, what so ever.
- The applicants falsely impleaded 18th Defendant and 19th Defendant as a Defendant in this appeal without verifying the veracity of the facts and circumstances which is true. The 18th and 19th Defendants are legal heirs of the late Smt. D. Gangeswariammal who is arrayed as a 9th Defendant. Except this reason there is a no pecuniary benefit inherited by the 18th and 19th Defendants. The applicants impleaded 18th and 19th Defendants is only to prolong the case and to prevent auction of the properties.

TYPED SET OF PAPERS FILED BY THE 18TH AND 19TH DEFENDANTS.

Sl. No.	Date	Particulars
1.	12.03.1987	Will executed by 9th Defendant

5. ***ON THE BASIS OF ABOVE PLEADINGSTHE POINT WHICH ARISES FOR CONSIDERATION IS:-***

WHETHER THE APPLICANT IS ENTITLED TO GET THE RELIEFS AS PRAYED FOR?

6. Having heard the parties and after going through the entire documents available on the records, this Tribunal find that there is no dispute that the Applicants had originally stood as guarantors and mortgagors for the credit facilities availed by the principal borrowers from Karur Vysya Bank.

6.1 The Applicants have filed the present Securitisation Application under Section 17(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act"), challenging the Possession Notices dated 11.08.2015 issued by the 1st Defendant/Authorised Officer of the 2nd Defendant, Phoenix ARC (P) Ltd., in respect of the properties belonging to the Applicants. The Applicants have also sought, inter alia, a declaration that the Assignment Agreement dated 30.05.2011 is illegal and void, that they have no subsisting liability towards the Defendants, and that no enforceable security interest subsists over their properties.

6.2 The case of the Applicants, in brief, is that the Applicants had stood as guarantors and mortgagors for the credit facilities availed by the

principal borrowers, namely M/s. Nagalingam Nadar Sons and M/s. M.M. Nagalingam Nadar Company, from the 3rd Defendant/Karur Vysya Bank. The 3rd Defendant had initiated O.A. Nos.441 of 2003 and 97 of 2004 before the Debts Recovery Tribunal, Ernakulam, and final orders dated 11.01.2005 were passed therein.

6.3 According to the Applicants, subsequently the principal borrowers negotiated One Time Settlement with the 3rd Defendant Bank for Rs.13.21 Crores and obtained financial assistance from Phoenix ARC (P) Ltd. for discharging the said amount. The Applicants contend that the transaction was a fresh financial arrangement and not an assignment of the existing debt under Section 5 of the SARFAESI Act. According to them, the creation of fresh Memoranda of Deposit of Title Deeds in favour of Phoenix ARC and the execution of a fresh corporate guarantee by M/s. Global Polybags Industries (P) Ltd. establish the existence of a fresh contract and consequently the discharge of the Applicants' earlier guarantee.

6.4 The Applicants further contend that the properties of the principal borrowers situated in Kerala were released, whereas the properties of the Applicants situated in Theni and Tuticorin continued to be proceeded against. According to the Applicants, such release of securities impaired their rights as guarantors under Sections 139 and 141 of the Indian Contract Act, 1872.

6.5 The Applicants also dispute the validity of the Assignment Agreement dated 30.05.2011 and contend that Phoenix ARC could not invoke the SARFAESI Act against their properties on the basis of the said assignment. They further contend that the proceedings initiated under Sections 13(2), 13(4) and 14 of the SARFAESI Act are consequently unsustainable.

6.6 On the other hand, the Defendants contend that the 3rd Defendant/Karur Vysya Bank had assigned the entire debt, financial assets, securities and guarantees in favour of Phoenix ARC under the

registered Assignment Agreement dated 30.05.2011. According to the Defendants (D1 & D2) i.e. Phoenix ARC consequently stepped into the shoes of the original secured creditor and became entitled to enforce the existing securities and guarantees.

6.7 The Defendants further replied that the substitution applications filed by Phoenix ARC before the Debts Recovery Tribunal, Ernakulam, were allowed, and that the Applicants' review petitions against the said orders were subsequently dismissed. It is therefore contended that the Applicants cannot once again challenge the assignment and substitution proceedings before this Tribunal.

6.8 The Defendants further submit that the final orders passed in O.A. No. 441 of 2003 and O.A. No. 97 of 2004 were never set aside. The applications filed by the Applicants for condonation of delay and setting aside the ex parte final orders were also dismissed on 18.01.2018 and, according to the Defendants, no further appeal was preferred.

6.9 More importantly, the issue regarding substitution of Phoenix ARC in place of Karur Vysya Bank was directly raised before the Debts Recovery Tribunal, Ernakulam. The Respondents have produced the orders passed in the substitution proceedings. It is their specific case that the substitution applications were allowed and that the subsequent review petitions filed by the Applicants were dismissed on merits.

6.10 The Applicants have not placed before this Tribunal any order setting aside the orders passed in the substitution proceedings. On the contrary, the materials placed on record indicate that the substitution orders were subjected to review and the review proceedings were dismissed.

6.11 Thus, the Applicants cannot, in the present proceedings, seek a fresh adjudication of the very same question of substitution and the validity of the assignment, particularly when the competent Tribunal before which

the original recovery proceedings were pending had already dealt with the substitution of Phoenix ARC and the subsequent challenge thereto was unsuccessful.

6.12 The Applicants have also alleged collusion and fraud between Karur Vysya Bank, Phoenix ARC and the principal borrowers. However, mere allegation of fraud or collusion, unsupported by cogent documentary evidence establishing such fraud, cannot by itself invalidate a registered Assignment Agreement or the subsequent recovery proceedings.

6.13 In view of above I find that the Applicant cannot challenge the Assignment Agreement dated 30.05.2011 and the substitution of phoenix ARC in the present proceedings under Section 17(1) of the SARFAESI Act. Further I find that the Applicant have not established that their liability as grantors stood discharged under Section 139 and 141 of the Indian Contract Act, 1872.

7. The bank has denied that applicant was regular in payment of loan amount rather it is stated by the Defendant Bank that when the applicant defaulted in repayment of EMI then the 1st Defendant Bank issued a Demand Notice dated 29.11.2012 under Section 13(2) of the SARFAESI Act for a sum of Rs.9,17,69,915/-**(Rupees nine crores seventeen lakhs sixty nine thousand nine hundred fifteen only)** to the borrower and the co-borrower by registered post. I perused the documents filed by the 1st Defendant Bank and I also find that, the Bank has produced a copy of the Demand Notice **(annexed at pages 65 to 73 of the Financial Institution typed set of papers)** along with the copy of speed post receipt as proof of service served on Applicants **(annexed at pages 74 & 75 of the Financial Institution typed set of papers).** Further, I find that the 4th Respondent through their counsel submitted an objection to the Demand Notice under Section 13(3-A) of the SARFAESI Act and I also find that the Defendant Financial Institution replied to the 4th Respondent's counsel within the prescribed time limit.

8. Thereafter, the 1st Defendant Financial Institution issued a Possession Notice vide dated 11.08.2015 under Section 13(4) of the SARFAESI Act for a sum of Rs.44,96,74,970/- **(Rupees forty four crores ninety six lakhs seventy four thousand nine hundred seventy only)**. And another Possession Notice dated 11.08.2015 under Section 13(4) of the SARFAESI Act for a sum of Rs. 54,14,44,885/- **(Rupees fifty four crores fourteen lakhs forty four thousand eight hundred eighty five only).** On perusal of the records, I find that the 1st Financial Institution has filed the copy of the Possession Notice along with Panchanama **(annexed at pages 109 to 116 of the Financial Institution typed set of papers)**, Further I find that the defaulters have made endorsement in the Possession Notices by acknowledging the receipt of the Possession Notice itself. **(annexed at pages 109 & 113 of the Financial Institution typed set of papers)**, and paper publications of the Possession Notice **(annexed at pages 117 & 118 of the Financial Institution typed set of papers).** Regarding affixer the Financial Institution not produced any material evidence that the Possession Notice dated 11.08.2015 has been affixed on the conspicuous part of the schedule mentioned properties. However, on perusal of records I find in the applicants pleading **para No. 41 of page No. 18**, the applicant itself admitted that the Respondent No. 1 affixed the Possession Notice dated 11.08.2015 on the wall of the residential buildings of the applicants. It is well settled law that the admitted facts need not to be proved.

9. In view of the above discussion, I find that the 1st Defendant Financial Institution has proceeded under the SARFAESI Act and Rules for recovery of the loan amount from the Applicants and he has followed the procedure prescribed under the SARFAESI Act and Rules.

10. Under the above facts and circumstances of the case, this Tribunal is of the considered view that Applicant has failed to prove his case.

In the result, **SA No. 381/2015 stands dismissed** with no costs.

(Dictated to KKN taken down, transcribed, typed by him, corrected and pronounced by me in the Open Court in this the 14th October, 2026).

Sd/-
(SEEMA SINHA)
PRESIDING OFFICER

Uploaded on 23.10.2026