IN THE DEBTS RECOVERY TRIBUNAL AT COIMBATORE

DATED THIS 18th DAY OF SEPTEMBER, 2026

PRESENT: SRI N.SOMASUNDAAR, B.A., B.L.,
PRESIDING OFFICER

S.A. No.288 of 2021

BETWEEN

A.LOGANAYAKI,
Wife of S.Arumugam,
Plot No.13, LIC Nagar,
Moolapalayam,
Erode - 638 002. .... Applicant

-Vs-

1. THE AUTHORISED OFFICER,
Canara Bank,
Sholavandan Branch,
Valayalkara Street,
Madurai – 624 214. .... 1st Respondent

2. Mr.K.KATHIRVEL,
S/o. P.Kuppanna Gounder,
F2, Green Palace Apartment,
B-52, Bharathiyar Street,
Subramania Nagar,
Salem – 636 005.

3. Mrs.R.SAROJA,
W/o. J.V.Ravikumar,
S-4, Green Palace Apartment,
B-52, Bharathy Street,
Subramania Nagar,
Salem – 636 005.

4. Mr.S.SENTHIL,
S/o. R.Sengottaiyan,
28, Padmavthi Nagar,
Maadhavaram Milk colony,
Maadhavaram,
Thiruvallur District – 600 051.

5. Mr.R.THIYAGARAJ,
S/o.Ramasamy,
475, Oddapatty, Keezhur,
Thalavaipatti Post Attur Taluk,
Salem – 636 109.

6. Mr.CHI.SHANMUGAM,
S/o.Chinna Gounder,
165, Vadakku Kadu, Thirumangalam,
Thiruchengode Tk,
Namakkal - 637302.

7. Mrs.T.PREMAVATHI,
W/o. S.Senthil,
T-4, Green Palace Apartment,
52, Bharathy Street,
Subramania Nagar, Salem – 636 005.

8. Mr.Dr.S.P.KANDASAMY,
S/o. Palanivel,
1452, Kambar Street, Subramania Nagar,
Jagir Ammapalayam, Suramangalam,
Salem – 636 005.

9. Mrs.KAMALAM JOTHIKRISHNAN,
W/o. R.Jothikrishnan,
20/1, Sannathi Street,
Subramania Nagar,
Salem – 636 005. ..... Respondents - 2 to 9

[Amended as per order dated 06.03.2025 in I.A.No.4145 of 2025]

This Securitisation Application having been heard on 11.09.2026, 15.09.2026 & finally on 18.09.2026 in the presence of Ld. Counsel Ms.G.V.Bharathy representing Adv.Mr.V.Sathish appearing for the Applicant, Ld. Counsel Mr.C.Deepak appearing for the 1st Respondent through VC, Ld. Counsel Mr.S.Suresh appearing for the Respondents 3, 5, 7 to 9/Auction purchasers through VC and the Respondents 2, 4, & 6 having been set ex-parte due to their non-appearance, the Tribunal upon consideration and appreciation of the pleadings, evidence and written submissions proceeds to pass the following:

O R D E R

This Securitisation Application (for short – 'SA') seeks to set aside the E-Auction Sale Notice dated 08.03.2021 including the E-Auction Sale held on 26.03.2021 at 12.30 pm to 1.30 pm; to pass such or other order as this Tribunal may deem fit and proper in the circumstances of the case; and to pay the cost of entire proceedings.

2. ***The factual matrix averred by the applicant in the SA are these:***

2.1 That the Respondent-Bank has sanctioned the Education Loan to the Applicant's daughter Ms.A.Sowndharya Deepaa for pursuing Post Graduation degree abroad for which her husband Mr.S.Arumugam and her daughter Ms.A.Sowndharya Deepaa are the borrowers and Ms.S.Kanakavalli, Ms.S.Deivanai and the Applicant are Guarantors being the owners of the SA schedule mentioned property; that the above said loan has been sanctioned to the Applicant's daughter based on income source of her husband and SA schedule mentioned property of Applicant and her family members; that the Respondent Bank had informed the Applicant and her family members that the Equated Monthly Installments (EMI) would start from one year after completion of study or after joining the job; that the Applicant's daughter who completed her M.B.A. Course could not pursue her M.P.A. course (Master of Personal Accounting) due to financial issue, was not able to complete her course on time and could not join the job; that the Applicant's husband could not run properly his business (i.e. cinema theatre) which is the only source of income of their family due to various internal issues that arose between family members and on selling the theatre due to financial crisis, there is no source of income to their family; and that without considering the above worst situation of the Applicant, the Respondent Bank has declared the Applicant loan account as Non-Performing Asset without

following the RBI Guidelines and initiated the actions under SARFAESI Act as against the Applicant claiming the entire amount without properly issuing the notice under section 13 (2) and 13 (4) of the said Act.

2.2 That the Applicant came to know that the Respondent Bank officials had upon misusing their powers issued the Impugned E-Auction Sale Notice dated 08.03.2021 for harassing the Applicant and compelling to sell the SA schedule mentioned property at low cost; that the Respondent Bank has not revealed the necessary and complete particulars in the E-Auction Sale Notice dated 08.03.2021 which is issued in violation of the Rules and Regulations laid down by the Reserve Bank of India and Securitization Act; that the Respondent Bank has not given proper credit of the amounts paid by the Applicant into the loan account and not enclosed the statement of accounts along with the statutory notices to prove the Applicant's default and Respondent Bank's claim; that after issuance of the notices under section 13 (2) and 13 (4) of the said Act, the Applicant has made the payments amounting to Rs.8,00,000/- on 02.03.2021 towards their loan account which was not credited to properly; that the Respondent has failed to affix the E-Auction Sale Notice dated 08.03.2021 on a conspicuous part of the schedule of property, which is violative of sub-rule (7) of Rule 8 of the said Rules and failed to publish the E-Auction Sale Notice dated 08.03.2021 in two leading daily newspapers one in English and another in the vernacular language having sufficient circulation in that locality; that the E-Auction Sale notice dated 08.03.2021 violates the provisions found in the sub rule (5) of Rule 8 of the said Rule which enunciates that before effecting E-Auction Sale of the property the Authorised Officer shall obtain Valuation Report of the concerned property from the Approved Valuer and in consultation with the Secured Creditor fix the upset price of the property and may sell the whole or any part of such immovable

property; that the secured asset which is worth more than Rs.3.00 Crores has been put for sale at low price without any justification without considering the life of the Applicant's family; that the Applicant though had approached the Respondent Bank requesting to allow her to make payment of outstanding amount under One Time settlement scheme within a period of 3 months, the Respondent-Bank had been silent and kept the Applicant's OTS proposal without any consideration; and that in the meantime the Applicant's husband had heart problem and undergone major surgery and unexpectedly her son also died in the last year due to which the Applicant and their family members could not follow up with the Respondent Bank in respect of their OTS proposal.

2.3 That the schedule of property not only belongs to the Applicant but also to her other sisters who would be affected by sale of it; that the Applicant and their family members approached the Respondent and paid a sum of Rs.8,00,000/- on 02.03.2021 as initial payment for OTS proposal and required time to pay the remaining amount along with the request not to proceed with the legal proceedings as against them and their property under said Act and Rules; that however to the great shock and surprise of the Applicant and their family members, the Respondent had issued the E Auction Sale Notice dated 08.03.2021 and sold the property under E Auction on 26.03.2021 without following the said Act and Rules without sufficient number of participants in the E- Auction by selling it for a low price to their already fixed known persons who is a previous Employee of the Respondent Bank; that the Applicant had approached the Respondent Bank requesting to furnish the details of the E-auction which was failed to be given; and that the Applicant and her family members who are ready and willing to redeem the SA schedule mentioned property have approached this Tribunal by filing this application.

2.4 That the grounds urged in the SA pointing out the illegalities attached to the impugned sale notice dated 08.03.2021 and auction sale held on 26.03.2021 are on the lines that the auction sale held is illegal, arbitrary, violative of principles of natural justice and Rule 8 of Security Interest (Enforcement) Rules in having failed to affix the e-auction sale notice dated 08.03.2021 on conspicuous part of schedule mentioned property and in view of failure to publish said e-auction sale notice in 2 leading newspapers having sufficient circulation in that locality; that the e-auction sale notice is violative of sub-rule (5) of Rule 8 which mandates fixation of upset price and provides for sale of whole or part of such immovable property upon obtaining its valuation from an approved valuer and fixing upset price in consultation with the applicant; that the secured asset is worth more than Rs.3.00 Crores which is more than the reserve price; that the Respondent Bank sold the schedule mentioned properties to already fixed known person who is previous employee of the Respondent Bank which clearly shows its intention to sell the said property for their personal gain at low price without any proper justification; that the e-auction notice dated 08.03.2021 issued by Respondent Bank without properly issuing the demand notice and possession notice, by not affixing possession notice on outer door or conspicuous place of property and by failing to publish possession notice in two leading newspapers having sufficient circulation is violative of Rule 8; that the respondent is trying to misuse the power vested with them under the Act and by suppressing the original facts, the schedule mentioned property is brought for a distress sale; and that the entire proceedings being pursued by the Respondent Bank is illegal, unjust, arbitrary and not in accordance with the Rules, hence the said SA.

3. **The 1st Respondent Bank in its Reply Statement had averred *inter-alia*-**

3.1 That one Sowndharya Deepaa has availed two educational loans with her father Arumugam as the co-obligant and the applicant A.Loganayaki along with Kanakavalli and Deivanai as the Guarantors who executed Memorandum of Deposit of Title Deeds registered as Doc. Nos.1773/2007 dated 15.03.2007 and 1122/2009 dated 05.03.2009 pursuant to producing the original title deeds as the security for the above loans; that the borrower having received such amounts failed to repay the same in accordance with the agreement executed by her in view of which the said loan account was classified as Non Performing Asset followed by the bank's issuance of a notice under Section 13 (2) of SARFAESI Act to the applicant on 05.07.2019; and that either the borrower or the applicant had not sent any reply for the above 13(2) demand notice and had not shown any progress in the repayment of the loan amounts due to which the Respondent Bank was constrained to proceed further by issuing possession notice dated 24.10.2019 which was duly served upon them followed by its issuance of sale notices dated 15.12.2020, 25.01.2021 including the present one dated 08.03.2021.

3.2 That the repayment of loan was to commence from 12 months after completion of course or 6 months from the date of securing a job by the borrower whichever is earlier; that the borrower having agreed to the terms of contract, the Borrower or Guarantors are liable to repay the loan availed or guaranteed; that a sum of Rs.6,25,000/- was paid by way of cash directly in loan account No.1019651016735 on 02.03.2021 in Canara Bank, Solar Branch, Erode and another sum of Rs.1,75,000/- was directly transferred to loan Account No.1019651023634 on 02.03.2021 in Canara Bank, Solar Branch, Erode which sum were appropriated towards the loan accounts; that the Respondent has effected paper

publication of E-Auction Sale Notice in Tamil Daily – "Dina Thanthi" on 09.03.2021 and English daily "The TIMES OF INDIA" on 09.03.2021; that the Respondent has obtained valuation report on 22.10.2020 (within 6 months) for the sale notice dated 08.03.2021; that the there is no OTS proposal and further the applicant cannot claim OTS as a right; that totally 8 persons have purchased the property and the applicant cannot assume that there is violation because one person is the retired employee of the Bank; that the sale certificate was registered on 23.04.2021 as Doc. No.3175/2021 before the Sub-Registrar, Suramangalam; that the procedures under the SARFEASI Act is duly complied with; that the Government does not provide any subsidy in the present case being one for foreign studies; that the loan was declared NPA on 23.05.2018 in respect of account No. 1019651016735 and another loan was declared NPA on 08.05.2019 in respect of account No. 1019651023634; that the date of NPA and all other details were mentioned in the Demand Notice dated 05.07.2019 and the date of demand notice was mentioned in the possession notice issued under section 13(4) dated 24.10.2019 and the same was duly served upon; that the Respondent has affixed the possession notice dated 24.10.2019 in conspicuous part of the property and effected its paper publication in Tamil Daily "Thina Thandi" and English daily "The TIMES OF INDIA" on 26.10.2019; and that there being no merit in the SA, the same is liable to be dismissed with exemplary costs.

4. **The Respondents 3, 5 and 7 to 9/Auction Purchasers in their Reply Statement had averred *inter-alia* -**

4.1 That on going through the SA filed by the Applicant they have come to know about the availment of educational loan by the Applicant from the 1st Respondent Bank mortgaging her immovable property situated at Salem District as security for due repayment of the said credit facilities; that the Applicant committed default in

repayment of the credit facilities to the 1st Respondent Bank consequent upon which the 1st Respondent Bank had classified the loan account as NPA and initiated proceedings under the SARFAESI Act upon issuance of section 13(2) Demand Notice and section 13(4) Possession Notice thereby taking symbolic possession of the SA schedule mentioned property; that thereafter the said property was brought for sale by the 1st Respondent Bank through public auction upon issuance of Sale Notice dated 08.03.2021 fixing the E-Auction Sale on 26.03.2021; that on seeing the Sale Notice paper publication, these Respondents participated in the Auction Sale conducted by the 1st Respondent on 26.03.2021 by following the terms and conditions and were declared as successful bidder in the Auction Sale; that these Respondents paid the remaining sale price as per the terms and conditions of the Auction Sale Notice within the time schedule permitted by the 1st Respondent Bank due to which the Sale Certificate was issued in their favour and came to be registered with the concerned Sub-Registrar Office; that the 1st Respondent Bank had followed all the procedures contemplated under the SARFAESI Act and handed over the physical possession of the property to these Respondents; that the entire Auction Sale proceedings were completed in all aspects and the Applicant had lost her right to redemption of the property once the sale notice has been published by the 1st Respondent bank in terms of Section 13(8); that these Respondents being bonafide purchasers for valuable consideration under public auction conducted by the 1st Respondent Bank have to be duly protected; and that the SA which is devoid of merits is liable to be dismissed.

5. The respondents 2 to 9 though entered appearance through the Ld. Counsel Ms.Josephine Nirupama on 04.08.2021 by filing their vakalat, reply statement has come to be filed only by respondents 3, 5, 7, 8 & 9 and the respondents 2, 4 & 6 having not

been represented during the course of arguments, came to be set ex-parte on 18.9.2026.

6. Ms.Bharathy, Ld. Counsel for the applicant would submit that the secured asset worth Rs.3.00 Crores have come to be sold for Rs.2,03,60,000/- by fixing reserve price at Rs.2,03,50,000/- which is an abysmally low price in comparison to its then prevalent market value for realizing its secured debt of a meager sum of Rs.59,05,291.50/- payable towards the education loan of the applicant's daughter. The sale was bad not merely on the ground of undervaluation but for the reason of it having been fraudulently held in collusion with the other respondents of whom the 2nd respondent is an ex-employee of the 1st respondent bank itself which exposes to light the fraud and collusion *interse* the 1st respondent and the other respondents. The sale conducted and concluded was clearly ill-intentioned and ill-motivated one which came to be illegally held in the year 2021 when the country was engulfed by COVID-19 pandemic. Ld. Counsel contended that the applicant and her other sisters who are all senior citizens above 75 years have been thrown to streets mercilessly during the pendency of this SA and their residential building which was their only shelter was demolished and removed as debris. Ld. Counsel submitted that while Rule 8 (6) mandates publication of sale notice in two leading newspapers having wide circulation in the locality of the secured asset, the one published in English newspaper namely "The Times of India" has not any wide circulation or publication in Salem area where the secured property is situated when the respondent bank had a duty to have it in published in a leading newspaper like **'The Hindu'** English daily whose circulation is found to be wider in that area as per the letter since issued by the said newspaper publishers to the applicant. In view of the above illegalities, the SA is sought to be allowed by setting aside the auction held in pursuance of the impugned sale notice and by

restoring back the possession of secured asset to the applicant, an aged senior citizen who is present before this Tribunal seeking equity and justice.

7. Mr.Deepak, Ld. Counsel for 1st Respondent Bank would submit that while he has got all sympathies for the applicant who is an aged senior citizen, at the same time she is not entitled to any benevolent consideration of this Tribunal having failed to repay the education loan aggregating to Rs.55,51,969/- as on their assuming of symbolic possession of secured asset on 24.10.2019, which became payable pursuant to classification of concerned loan accounts as NPA on account of default in repayment of dues by the borrowers. Ld. Counsel contended that the Section 13 (2) demand Notice and Section 13 (4) possession notice have been duly served on the borrowers despite which they had no representation, objection or grievance as against the same. The secured asset have been brought for sale on 3 occasions, came to be knocked down in auction sale only on the 3rd occasion in pursuance of the impugned sale notice and such sale having been held by fixing proper reserve price pursuant to obtention of proper valuation of an approved valuer in consultation with secured creditor, cannot be found fault with merely for the reason of one among the 8 purchasers having been a retired employee of the bank. There is no bar or embargo for participation of a retired employee in an auction sale of the secured creditor bank and that by itself would not render such sale vitiated by holding it to be a sale conducted illegally or by fraud and collusion. The fact that the 1st Respondent Bank brought the property for sale fixing reserve price at Rs.2.03 Crores would demonstrate the fairness on their part in not attempting to sell the same for a value somewhere nearer to the secured debt of Rs.59.05 Lakhs as on 02.03.2021. Ld. Counsel contended that the sale notice having been duly served, affixed and published in the manner envisaged under the Rules, and the 1st respondent's

publication of the same in 'The Times of India' English daily cannot be flawed as it is a leading newspaper with wide circulation in Salem area. It was further submitted that the letter now filed by applicant to show as if "The Hindu" English daily is having a circulation of 1.10 Lakhs is one pertaining to the year 2026 and cannot be received in evidence to demonstrate its such circulation in the year 2019 and 2021 when the possession notice and sale notice came to be published respectively. Ld. Counsel assertively submitted that the surplus sale proceeds are lying for the applicant and concerned borrowers to receive and derive benefit therefrom which the applicant is adamantly not coming forward to receive despite they having been time and again requested by the 1st respondent bank and the applicant's such an act had only caused great hardships both to the 1st Respondent Bank and to other respondents who are bonafide purchasers in a lawfully conducted auction sale.

8. Mr.Suresh, Ld. Counsel for the Respondents 3, 5, 7 to 9 would submit that a valuable purchase price of Rs.2,03,60,000/- having been deposited with 1st Respondent Bank as early on 21.04.2021, sale certificate dated 23.4.2021 came to be registered in their favor vide Doc.No.3175/2021 at SRO, Suramangalam despite which they are put to great hardships in dealing with their SA schedule mentioned property due to the pendency of this SA since the year 2021 and the one filed by another borrower/co-owner of the property namely Ms.Kanagavalli which was pending before Ld. DRT Madurai in SA 198/2024 and came to be dismissed for non-prosecution today. The applicant who has lost her right of redemption on the date of publication of impugned sale notice dated 08.03.2021, in the absence of any illegality or legal infirmity in the conduction of sale, is not entitled for any relief as prayed and the SA is only liable to be dismissed with costs would be his final submission.

9. **Going by the pleadings, evidence and rival submissions of either parties, the following points emerge for consideration**:

1. Whether the statutory notices issued under Section 13 (2) and Section 13 (4) are lawful, valid and proper?

2. Whether the auction sale is held in violation of the Rules 8 (5) of the Security Interest (Enforcement) Rules?

3. Whether the impugned auction sale is held in violation of Rule 8(6) and 8(7) of the Security Interest (Enforcement) Rules?

4. Whether the auction sale is bad and liable to be set aside for violation of the mandatory legal requirements of sub-rules (3) & (4) of Rule 9 of the Security Interest (Enforcement) Rules?

5. Whether the impugned auction sale is vitiated by fraud and collusion inter-se the 1st Respondent Bank the other Respondents/Auction Purchasers as contended by the Applicant?

6. To what reliefs, the parties are entitled?

DELIBERATION, DISCUSSION AND DECISION

10. **Point No.1:** ***Whether the statutory notices issued under Section 13 (2) and Section 13 (4) are lawful, valid and proper?***

10.1 The Applicant had in her pleadings in SA and the Written Arguments filed on 13.08.2026 specifically alleged that the Demand Notice dated 05.07.2019 has not been properly served on her. The Possession Notice dated 24.10.2019 is stated to be illegal, arbitrary and violative of the relevant Rules since the photographs relied by 1st Respondent as to the proof of its affixture do not disclose the date and time of such affixture and "The Times of India" English daily dated 26.10.2019 produced by 1st Respondent in respect of such Possession Notice is of Coimbatore Edition which is approximately 165 to 170 kms distance by road from Salem and is not a newspaper published in the locality of the secured asset meeting out the legal requirements of Rule 8 (1) & Rule 8 (2).

10.2 The 1st Respondent Bank had in its typed set of papers filed vide Diary No.1506/2026 enclosed the postal acknowledgements dated 08.07.2019 evidencing service of Demand Notice dated 05.07.2019 on all the borrowers including the Applicant who herself had averred elsewhere in the SA to have made payments amounting to Rs.8.00 lakhs on 02.03.2021 after issuance of the notice under section 13 (2) of the Act and had produced along with the SA book, the copy of said Demand Notice served on her and two sisters Ms.Deivanai and Ms.Kanagavalli. The Demand Notice is found to have been issued setting out the details of credit facilities availed by the borrowers, secured asset sought to be enforced, the turning out of two Educational Loans as NPA as per RBI guidelines and demanding repayment of secured debt with interests thereon within 60 days therefrom adverting therein to sub-sections (8) & (13) of Section 13 of SARFAESI Act and the proposed actions and measures to be taken as against the secured asset in terms of sub-section (4) of section 13 in the event of failure to pay Rs.53,40,828.00 which was the secured debt payable at the time of issuance of such notice. The Applicant has no case or contention in the SA to have issued any objection, reply or representation to the claim made in the Demand Notice dated 05.07.2019 which is found to have been a proper and valid notice issued only in accordance with law and therefore the allegation made to the contrary is only to be brushed aside.

10.3 The Applicant's other allegation made as regard the illegality attached to the Possession Notice dated 24.10.2019 received the further consideration of this Tribunal. The 1st Respondent Bank had filed the copies of postal acknowledgement cards dated 28.10.2019 of the borrowers including the Applicant along with the paper publication of possession notice effected in Dina Thanthi, Salem Edition and The Times of India, Coimbatore Edition and photograph of affixture of a notice which is illegible without the

date of such notice with its bank officials standing before such affixture in the secured asset. The Applicant has no quarrel or qualms as to the 1st Respondent's affixture of a notice on the conspicuous part of secured asset though it was pointed out to be illegible and bearing not the date and time of such affixture. The publication of Possession Notice dated 24.10.2019 in the Times of India, English daily was alleged to be done in violation of Rule 8 (2) it having been so done in a newspaper not having sufficient circulation in the said locality.

10.4 The Tribunal does not find favour with the Applicant's such allegation which is since made as against the Possession Notice dated 24.10.2019 for more than one reasons. The Applicant and all other borrowers though came to be served with the said Possession Notice, had not chosen to challenge the same in terms of section 17 of the Act within 45 days from the 1st Respondent's assuming of symbolic possession of such secured asset. It cannot be now challenged at this distance of time as this Tribunal is reminded of the judgment of the Hon'ble Apex Court rendered in the case of ***Bank of Baroda and Anr. v. Parasadilal Tursiram Sheetgrah Pvt. Ltd. and Ors.*** (AIROnline 2022 SC 1250) wherein the DRT order dismissing the Application under S.17 of the Act for the reason of filing of it beyond the statutory period of 45 days came to be upheld by observing therein that according to S.17(1), the period of 45 days is mandated to commence from the date on which a measure of S.13(4) has been adopted as the reason for providing such a time limit of 45 days for filing an application under S.17 can be easily inferred from the purpose and object of enactment and in ***Transcore v. Union of India and anr.,*** it came to be held that the SARFAESI Act is enacted for quick enforcement of the security.

10.5 The Division Bench of the Hon'ble High Court of Madras in its judgment rendered in the case titled ***Velar Engineering Works Pvt. Ltd. vs. The Authorised Officer/Chief Manager, Indian***

Bank and Ors. reported in MANU/TN/5046/2019 had held that the possession notices issued on 04.03.2009 and 09.03.2009 should have been challenged within 45 days from the date of its issuance and even if a challenge was made to the said Possession Notices in the SA filed on 18.06.2009 challenging Sale Notice, the said challenge against Possession Notice is barred by limitation. That being the settled legal position, the illegalities and infirmities now pointed out by the Applicant in the present SA to the symbolic possession notice dated 24.10.2019 is rendered purely academic and would be of no legal consequence in so far as the challenge to the Sale Notice dated 08.03.2021 and auction sale held on 26.03.2021 eventually is concerned, more-so in the light of the present SA seeking relief as against the sale notice and consequential measures alone and not the symbolic possession notice dated 24.10.2019.

10.6 This Tribunal in view of the emphatic submission made by the Ld. Counsel for the Applicant concerning symbolic Possession Notice dated 24.10.2019 incidentally delves at a brief analysis as to whether there is any illegality as to its service, affixture and publication. The symbolic possession notice dated 24.10.2019 which stood duly served on all the Borrowers including the Applicant in Appendix – IV format inviting the attention of amended section 13 (8) of the Act appears to be a valid, lawful notice in consonance with Rule 8 (1) as far as the delivery of such notice is concerned and the copy of photograph produced by the 1st Respondent Bank depicts affixture of a notice on a conspicuous part of the secured asset which is not disputed by the Applicant except on the fact that it is illegible and does not bear the date and time. The publication of possession notice dated 24.10.2019 effected in 'The Times of India' English Daily though came to be contended to have been published in Coimbatore Edition not having wide circulation in the locality in which the secured asset is

situated, the learned counsel for the 1st Respondent Bank did submit that the said daily is a leading reputed newspaper having Coimbatore Edition only and is widely circulated in Salem in which the secured asset is situated. The Applicant would produce letters dated 17.08.2026 and 24.08.2026 got issued by The Hindu, English Daily, of which letter dated 24.08.2026 proves its circulation particulars per day during 2021 to be to the tune of 75,000 copies which also is a English newspaper publication having its Coimbatore Edition only and not having its publishing office at Salem.

10.7 The judgment of the Division Bench of Hon'ble High Court of Madras rendered in the case of ***"K.Kailasam v. The Authorised Officer, Canara Bank and another"*** reproduced elsewhere on the Applicant side is a judgment which deliberated about the need to publish Sale Notice in a newspaper having wide circulation in the locality of secured asset to maximize participation of bidders in auction sale and to benefit the borrowers from and out of such sale as the highest price which such auction sale would eventually fetch would reduce the liability of the borrowers to that extent. The ratio and dicta of said judgment cannot be strictly applied to the case of a Possession Notice to be published in terms of Rule 8 (2) since such publication is to be done in two newspapers one in vernacular language having **"sufficient circulation**" and not **"wide circulation"** in the locality as required to be done in the case of auction sale notice under the amended Rule 8 (6). While attempting to understand the purport and purpose for which such a requirement is prescribed by law, the Tribunal endeavored to understand the meaning for the word/expression 'sufficient', 'wide' and 'circulation'. The Hon'ble High Court of Punjab in the case titled ***Benarsi Das Saraf and Ors. vs. Dalmia Dadri Cement Ltd. and Anr.,*** reported in MANU/PH/0076/1959 : AIR 1959 P&H 232 defined the word 'sufficient' as follows:-

> *"22. The word "sufficient" means "adequate", "enough", "as much as may be necessary to answer the purpose intended." It embraces no more than, that which provides a plenitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from reasonable standard of practical and cautious men."*

The word/expression 'circulation' used in the said Rule would mean to signify that the said newspaper is circulated or has movement in that locality. The Tribunal did find that the plain meaning given to the word 'wide' in Webster's Collegiate Thesaurus does include the words 'extensive', 'expansive', 'broad' and so on.

10.8 The Times of India, English Daily which has its presence in this country from a long long time is certainly a leading newspaper which may or may not have wide circulation in a given locality due to the nature and extent of its readership in that area for different reasons. The photographs of affixture of Possession Notice with illegible date thereon and publication of it in newspapers not having wide circulation if it may have to be held so, still may not be sustainable grounds for challenge by the Applicant in the given case who had been duly served with said Notice as regards the 1st Respondent's assuming of symbolic possession as she could not contend to have suffered any prejudice for the reason of less circulation of paper publication of said possession notice cautioning the public in general not to deal with her and the secured asset taken possession of by the secured creditor / 1st Respondent Bank. The Tribunal is inclined to hold so respectfully relying on the Full Bench judgment of the Hon'ble Apex Court rendered in the case of ***M/s. L and T Housing Finance Ltd. v. M/s. Trishul Developers and anr.*** reported in AIROnline 2020 SC 788 wherein it is observed held as hereunder:

> *"19. In the facts and circumstances, <u>when the action has been taken by the competent authority as per the procedure prescribed by law and the person affected has a knowledge leaving no ambiguity or confusion in initiating proceedings under the provisions of the SARFAESI Act by the secured creditor, in our considered view, such action taken thereof cannot be held to be bad in law merely on raising a trivial objection which has no legs to stand unless the</u>*

> *person is able to show any substantial prejudice being caused on account of the procedural lapse as prescribed under the Act or the Rules framed thereunder still with a caveat that it always depends upon the facts of each case to decipher the nature of the procedural lapse being complained of and the resultant prejudiced if any, being caused and there cannot be a straitjacket formula which can be uniformly followed in all the transactions."*
>
> *(emphasis mine)*

10.9 The Point No.1 is thus answered in favour of the Respondents and against the Applicant upon returning a finding as to the 1st Respondent's sufficient and substantial compliance of the legal requirements of sub-sections (2) & (4) of Section 13 read with sub-rule (1) & (2) of Rule 8 of the Security Interest (Enforcement) Rules which cannot be called in question in the present SA at this distance of time.

11. **Point No.2:** ***Whether the auction sale is held in violation of the Rules 8 (5) of the Security Interest (Enforcement) Rules?***

11.1 The Ld. Counsel for the Applicant would vehemently argue that the secured asset admeasuring 4320 Sq. Ft. of land with building comprising of ground floor and 1st floor situated in the prime area in Survey No.5/1 (which as per subdivision is comprised in 5/1B1A2A1A, TS No.22 Ward No.N Block No.22) at Sannathi street (Panchayat Road) in Bodinaickenpatti Village in Salem Taluk as shown in the photographs and location map attached to the valuation report dated 22.10.2020 of the approved valuer of 1st Respondent Bank by mentioning its market value to be Rs.2,26,29,000/- had been sold for Rs.2,03,60,000/- as against the Reserve price of Rs.2,03,50,000/- in favour of 8 persons including Ex-employee of Respondent Bank namely Mr.Kathirvel (2nd respondent) which is demonstrative of the fraudulent and collusive nature of auction sale so held by the 1st Respondent to the persons of its vested interest to deprive the applicant who is aged 75 years and her two aged sisters of their valuable property of worth more than Rs.300 Lakhs at the relevant time. Ld. Counsel submitted that the conduction of auction sale of the secured asset comprising of around 10 cents of land with residential building worth Rs.300 Lakhs was not warranted since sale of portion of it by itself would have sufficed for discharging of the

outstanding dues of two educational loans aggregating to Rs.59,05,291.50/- as on the date of such sale.

11.2 On the side of the applicant it was urged to appreciate that the valuation report dated 22.10.2020 obtained by the 1st Respondent Bank is an incorrect and invalid one, it not divulging the real market value of the property which prior to issuance of the impugned sale notice dated 08.03.2021 was around Rs.3,16,73,000/- as demonstrated to this Tribunal by the applicant by enclosing along with its 2nd additional typed set of documents dated 04.09.2026 vide Diary No.11524/2026, a valuation report dated 27.01.2021 stated to have been issued by Er.R.Setkumar. Ld. Counsel for the applicant urged to consider and appreciate that the auction sale held based on an incorrect valuation dated 22.10.2020 setting out the then market value to be Rs.2,26,29,000/- as against its actual market value of Rs.3,16,73,000/- as assessed by the applicant's Engineer and by publishing the sale notice in the The Times of India, English daily not having wide circulation in the locality and by not affixing sale notice in the conspicuous part of secured asset are the factors which resulted in failure of earlier auctions for its proper market value from which the undervaluation of secured asset and violation of Rule 8 (5) could be readily inferred. The knocking down of secured asset in pursuance of the impugned sale notice dated 08.03.2021 for just Rs.10,000/- over and above the reserve price of Rs.2,03,50,000/- in favour of the 2nd respondent who is the ex-employee of the 1st respondent bank is also evidential of the illegal conduction of auction sale in pursuance of an incorrect valuation, would be her further submission.

11.3 The Ld. Counsel for the applicant took this Tribunal through Memorandum of Deposit of title deeds dated 30.12.2020 bearing Document No.8313/2020 SRO Suramangalam in respect of 8640 Sq. Ft. of land in SF. No.5/1B1A2A1A of Bodinaickenpatti Village pertaining to property situated in Subramanya Nagar street in the vicinity of secured asset as also the encumbrance certificate pertaining to the said property to show that the market value of said land measuring 8640 Sq. Ft. in the same survey field and area was Rs.6.00 Crore by offering security of which and some other properties, its title holder namely Ms.Premalatha

have availed Rs.13.50 Crores by depositing her title deeds with M/s.RBL Bank Ltd.

11.4 Advertence was also made by the Ld. Counsel for the applicant to yet another Supplemental Memorandum of Deposit of Title Deeds dated 22.09.2021 bearing Document No.6261/2021, SRO Suramangalam in respect of 1980 Sq. Ft. of land in SF. No.5/1B1A2A1A of Bodinaickenpatti Village pertaining to property situated in Subramanya Nagar, Nakkeerar street in the vicinity of secured asset as also the encumbrance certificate pertaining to the said property to show that the market value of said lands measuring 1980 Sq. Ft. in the same survey field and area was Rs.3.00 Crores by offering security of which and some other properties, its title holders namely Ranganathan and another have availed Rs.6.30 Crores by depositing their respective title deeds with Bank of India. The said MODTs got executed by the RBL Bank Ltd., and Bank of India in the year 2020 and 2021 is demonstrative of the fact that the 1st Respondent has knocked down the secured asset worth Rs.3.00 Crores at Rs.2,03,60,000/- which is just Rs.10,000/- over and above the reserve price set out in the impugned sale notice and the said auction sale held for an abysmally low price on a gross undervaluation of the secured asset is liable to set aside it having been so done in negation of Rule 8 (5) on an improper and illegal valuation, would be the further emphatic submission on the side of applicant.

11.5. To succor strength for her such submissions, the Ld. Counsel for the applicant placed her respectful reliance on the following judgments :

(i.) The Hon'ble Supreme Court in ***J. Rajiv Subramaniyan and another vs. Pandiyas and others*** reported in MANU/SC/0207/2014 have held thus:

> *"17. It must be emphasized that generally proceedings under the SARFAESI Act, 2002 against the borrowers are initiated only when the borrower is in dire-straits. The provisions of the SARFAESI Act, 2002 and the Rules, 2002 have been enacted to ensure that the secured asset is not sold for a song. It is expected that all the banks and financial institutions which resort to the extreme measures under the SARFAESI Act, 2002 for sale of the secured assets to ensure, that such sale of the asset provides maximum benefit to the borrower by the sale of such asset. Therefore, the secured creditors are expected to take bona fide measures to ensure that there is maximum yield from such secured*

assets for the borrowers. In the present case, Mr.Dhruv Mehta has pointed out that sale consideration is only Rs.10,000/- over the reserve price whereas the property was worth much more. It is not necessary for us to go into this question as, in our opinion, the sale is null and void being in violation of the provision of Section 13 of the SARFAESI Act, 2002 and Rules 8 and 9 of the Rules, 2002."

(ii) The Division Bench of Hon'ble High Court of Orissa in ***'Swastik Agency and Ors. v. State Bank of India and Ors.'***, reported in 2009 SCC OnLine Ori 3 : AIR 2009 Ori 147 : MANU/OR/0010/2009, have held thus :

"VALUATION AND RESERVE PRICE:

17. The word 'value' means intrinsic worth or cost or price for sale of a thing/property (vide Union of India v. Bombay Tyre International Ltd. (1984) 1 SCC 467 : (AIR 1984 SC 420) and Gurbachan Singh v. Shivalak Rubber Industries, AIR 1996 SC 3057).

18. In State of U.P. v. Shiv Charan Sharma, AIR 1981 SC 1722, the Supreme Court explained the meaning of "reserve price" explaining that the price with which the public auction starts and the auction bidders are not permitted to give bids below the said price, i.e. the minimum bid at auction.

19. In Anil Kumar Srivastava v. State of U.P., AIR 2004 SC 4299, the Hon'ble Apex Court considered the scope of fixing the reserve price and placing reliance on its earlier judgment in Duncans Industries Ltd. v. State of U.P., AIR 2000 SC 355, explained that reserve price limits the authority of the auctioneer. The concept of the reserve price is not synonymous with valuation of the property. These two terms operate in different spheres. An invitation to tender is not an offer. It is an attempt to ascertain whether an offer can be obtained with a margin. The valuation is a question of fact, it should be fixed on relevant material. The difference between the 'valuation' and 'reserve price' is that, fixation of an upset price may be an indication of the probable price which the property may fetch from the point of view of intending bidders. Fixation of the reserve price does not preclude the claimant from adducing proof that the land had been sold for a low price.

20. In view of the above, it is evident that there must be application of mind by the authority concerned while approving/accepting the report of the approved valuer and fixing the reserve price, as the failure to do so may cause substantial injury to the borrower/guarantor and that would amount to material irregularity and ultimately vitiate the subsequent proceedings. DECISION TO SELL WHOLE OR PART OF THE SECURED ASSETS:

21. In Ambati Narasaya v. M. Subba Rao, AIR 1990 SC 119, the Apex Court dealt with a case where in execution of a money decree for Rs. 2,400/- the land was sold for Rs. 17,000/-. The Apex Court set aside the sale observing as under:

"……Out of 10 acres, the Court could have conveniently demarcated a portion and sold it. Unfortunately, no such attempt was made and it was not even thought of. The Court has blindfold sold the entire property. This is an usual feature which we have noticed in most of the execution cases. We must deprecate this tendency. There is a duty cast upon the Court to sell only such property or a portion thereof as necessary to satisfy the decree…."

22. While deciding the said case a very heavy reliance had been placed by the Supreme Court on its earlier judgment in Takkaseela Pedda Subba Reddi v. Pujari Padmavathamma, AIR 1977 SC 1789.

23. In S. Mariyappa (dead) by LRs v. Siddappa, (2005) 10 SCC 235, the Hon'ble Supreme Court held that it is duty of the Executing Court to consider whether sale of only a part of the property would be sufficient to meet the decretal amount and in case such a decision is not taken, the sale deserves to be set aside. While deciding the said case, reference has been made to its earlier judgment in Ambati Narasaya (AIR 1990 SC 119) (supra).

24. In Desh Bandhu Gupta v. N.L. Anand and Rajinder Singh, (1994) 1 SCC 131 : (1993 AIR SCW 3458) the Hon'ble Apex Court held that in an auction sale and in execution of the Civil Court's decree, the Court has to apply its mind to the need for furnishing the relevant material particulars in the sale proclamation and the records must indicate that there has been application of judicial mind and principle of natural justice had been complied with. The Court further held as under: "The estimate of the value of the property is a material fact to enable the purchaser to know its value. It must be verified as accurately and fairly as possible so that the intending bidders are not misled or to prevent them from offering inadequate price of to enable them to make a decision of offering adequate price."

25. While deciding the said case, the Apex Court had placed reliance upon its earlier judgment in Gajadhar Prasad v. Babu Bhakta Ratan, AIR 1973 SC 2593, wherein it had been held that the estimated value of the property to be sold, must not accept merely the ipse dixit of one side and a fair valuation has to be made. More so, the judgment-debtor is to be given a reasonable opportunity in regard to the valuation of the property sought to be sold, in absence thereof the sale would suffer from material irregularity where the judgment-debtor suffers substantial injury by the sale.

26. Similar view has been reiterated by the Hon'ble Apex Court in S.S. Dayananda v. K.S. Nagesh Rao, (1997) 4 SCC 451 and D.S. Chohan v. State Bank of Patiala, (1997) 10 SCC 65

27. In Gajraj Jain v. State of Bihar, (2004) 7 SCC 151: (AIR 2004 SC 3392) the Apex Court held that before putting the assets for sale the Financial Corporation must ascertain the market value of the property, assets should be sold on itemized basis or as a whole, whichever found to be more profitable, and bidders should know the details of the assets or itemized value. Property is to be sold for obtaining the market price and not merely for recovering the dues of the Corporation or any other subsequent charge-holder. In such a case auction is to be held to obtain the best possible price for the mortgaged assets and the best possible

price must, in the context, mean the fair market price. The authority, while assessing the fair market price, must act in accordance with the statutory rules and cannot be permitted to act unreasonably. The reasonableness is to be tested against the dominant consideration to secure the best price.

28. Thus, in view of the above, it is evident that law requires a proper valuation report, its acceptance by the authority concerned by application, of mind and then fixing the reserve price accordingly and accept the auction bid taking into consideration that there was no possibility of collusion of the bidders. The authority is duty bound to decide as to whether sale of part of the property would meet the outstanding demand. Valuation is a question of fact and valuation of the property is required to be determined fairly and reasonably."

11.6. Mr.Deepak, Ld. Counsel for the 1st Respondent Bank would submit that only pursuant to obtention of valuation report dated 22.10.2020 from its approved valuer the reserve price came to be fixed at Rs.2,03,50,000/- as set out in the impugned sale notice dated 08.03.2021. The failure of the earlier sale notices dated 15.12.2020 and 25.01.2021 which proclaimed for sale the secured asset by setting out its Reserve price as Rs.2,26,00,000/- and Rs.2,03,50,000/- respectively with no bidders or takers even for such a reserve price by itself should be demonstrative of the fact that the 1st respondent has not indulged in any sort of undervaluation of the secured asset to sell it to the 2nd respondent Mr.Kathirvel who was retired employee of the said bank as alleged by the applicant going by the further fact that the said property was purchased by 7 others apart from the said retired employee. The valuation found in the MODTs relied by the applicant by itself would not be demonstrative of the real market value and the auction sale knocked down in favour of Respondents 2 to 9 including an Ex-employee could not be held to be illegal since the applicant could not point out any legal provision or judgment which inhibits or prohibits the ex-employee from participating in an auction sale, would be the further submission on the side of 1st Respondent Bank.

11.7 On a conspectus of the documents filed by the applicant and 1st respondent, the Tribunal is disposed to think and is persuaded to hold eventually that the secured asset comprising of a land measuring 4320 Sq. Ft. which is near or about 9.91 Cents with two residential units together admeasuring 2805 Sq. Ft. of which one is comprising of ground floor and 1st floor admitted to be situated in a prime locality in Sannathi

Street (Panchayat road) as per the location map and photographs of said property annexed to the valuation report dated 22.10.2020 given by the 1st respondent's approved valuer itself ought to have a market value of around Rs.300 Lakhs as claimed by the applicant which unlike in other cases is not an empty, bald allegation made on the borrower side but has come to be substantiated by the applicant by making available two contemporaneous documents as set out hereunder:

> *(i). Memorandum of Deposit of Title deeds dated 30.12.2020 got executed by M/s.RBL Bank Ltd to advance credit facilities to the tune of Rs.13.50 Crores to one Premalatha who had deposited her title deed relating to 8640 Sq. Ft. of land in SF No.5/1B1A2A1A in Subramanian Nagar street in Bodinaickenpatti Village which is situated in the vicinity of the secured asset in Sannathi street (Panchayat road) in Subramanian Nagar in same survey field and village as shown in the location map of the 1st respondent's valuation report of approved valuer, whose market value as on the date of her creation of EM is shown to be Rs.6.00 Crores in the EC produced by applicant; and*
>
> *(ii) Supplemental Memorandum of Deposit of Title deeds dated 22.09.2021 got executed by Bank of India from one Ranganathan and Renuga to advance credit facilities to the tune of Rs.6.30 Crores to M/s.Annanmar Constructions, a partnership firm represented by said Ranganathan and Renuga pursuant to their depositing of the title deeds relating to 1980 Sq. Ft. of land in SF No.5/1B1A2A1A in Subramanian Nagar Nakkeerar street in Bodinaickenpatti Village which is situated in the vicinity of the secured asset in Sannathi street (Panchayat road) in Subramanian Nagar in same survey field and village as shown in the location map of the 1st respondent's valuation report of approved valuer, whose market value as on the date of their creation of EM is shown to be Rs.3.00 Crores in the EC produced by applicant.*

The Tribunal unhesistantly holds so, without even giving credence to the valuation report dated 27.01.2021 produced on the side of the applicant along with her 2nd additional typed set of documents filed on 04.09.2026 which though sets out itself to be one issued by Er.R.Setkumar of M/s.SRN Associates, Erode stated to be a Registered Valuer of Wealth Tax and Income Tax, Government of India, CCIT, Coimbatore; approved valuer of State Bank of India for SARFAESI Act matters; and panel advocate of few other nationalized banks and others, by divulging therein the market value of secured assets to be Rs.3,16,73,000/- (which is inclusive of the value of building and amenities assessed at Rs.10,01,000/-), as accepting of such reports from the side of borrower

after falling of the hammer in an e-auction sale would tend to unsettle the otherwise lawfully held auction sales by obtaining and producing valuation reports for any higher value than the one knocked down in auction sale.

11.8 The Tribunal which is conscious of the factum as to failure of the two earlier sale notices dated 15.12.2020 and 25.01.2021 brought about by the 1st respondent in close proximity with its reserve price being Rs.2,26,00,000/- and 2,03,50,000/- respectively with no takers for it even for such a value, cannot at the same time be unmindful of the fact that the auction sale has come to proclaimed during pandemic times when the secured creditor cannot expect maximum participation of bidders to fetch its best sale price possible as in the case of ordinary, normal circumstances although there was no legal bar or rub for secured creditor then to realize its secured debt by enforcing its Security Interest over the secured asset. The positive rather direct evidence produced by the applicant in the nature of two Memorandum of Deposit of Title Deeds demonstrating the market value of 8640 Sq. Ft. of land in the same survey field in the vicinity of secured asset to be Rs.6.00 Crores and that of 1980 Sq. Ft. in the same survey field and vicinity of secured asset to be Rs.3.00 Crores probablises the applicant's claim of its market value of her 4320 Sq. Ft. of land and residential building at the time of impugned auction sale on 26.03.2021 to be somewhere nearer to Rs.3.00 Crores as claimed by herself as against Rs.3.16 Crores approximately set out in the valuation report dated 27.01.2021 produced by her contending it to be one obtained prior to sale which is not taken into consideration by the Tribunal for reason alluded supra. The Tribunal, in view of its observations recorded as afore and the findings returned by it to the other points that fell for consideration in this order, decides the Point No.2 in the affirmative and in favour of the applicant upon holding the auction sale to be one vitiated on the ground of undervaluation of secured asset as well.

12. **Point No.3:** ***Whether the impugned auction sale is held in violation of Rule 8(6) and 8(7) of the Security Interest (Enforcement) Rules?***

12.1 Ms.Bharathy, Ld. Counsel for the Applicant would assertively contend that while sub-rules (6) & (7) of Rule 8 of the Security Interest (Enforcement) Rules mandates publishing of sale notice in two leading newspapers including one in vernacular language having **wide circulation in the locality** as also affixture of such notice on conspicuous part of the immovable property, the 1st Respondent had not got the sale notice published in such a widely circulated leading newspaper in the locality in which the secured asset is situated and had not affixed the impugned sale notice on conspicuous part of immovable property. Stating so, the Ld. Counsel took this Tribunal through the letter got issued by **The Times of India** newspaper, in which the sale notice dated 08.03.2021 came to be published on 09.03.2021 in respect of auction sale on 26.03.2021 as also the purported photograph of affixture of such sale notice on the secured asset which is illegible. The two letters obtained and produced by 1st Respondent Bank from **The Times of India** office of which one letter is dated 17.08.2026 and the other letter is undated are respectively to the effect of such newspaper having Coimbatore Edition with circulation catering to the regions including Salem Region during 2019 and 2021 and setting out the rates for such publication which are effective till 31.03.2027, not divulging anywhere as to what is the exact circulation of such newspaper as a whole and in respect of Salem region in particular, would be her further submission.

12.2 The Ld. Counsel for the applicant thereupon took this Tribunal through the additional typed set of papers filed vide Diary No.11524/2026 which includes the letter dated 24.08.2026 issued by **'The Hindu'** English newspaper which is evidential of the fact that the said newspaper published from Coimbatore had a circulation of about 75,000 copies per day during January 2021 to June 2021 covering the areas of Coimbatore, The Nilgiris, Tirupur, Erode, Salem, Namakkal and Dharmapuri Districts. Adverting to the said letter, it was assertively argued on the side of the Applicant, that the 1st Respondent Bank had by publishing its Sale Notice in **'The Times of India',** English Daily having not any significant or noteworthy circulation to qualify it to be one having wide circulation in the locality in which the secured asset is

situated and by not publishing the impugned sale notice in a widely circulated newspaper like **'The Hindu'** at the relevant time and upon not affixing the said notice on the conspicuous part of the secured asset, had not attracted more bidders and the auction sale had thus not resulted in maximum participation of prospective bidders in the auction sale leading to knocking down of the secured asset worth more than Rs.3.00 Crores at that time for a song for just Rs.10,000/- over and above the Reserve price of Rs.2,03,50,000/- to the respondents 2 to 9 including the ex-employee of 1st Respondent Bank which is demonstrative of the fraud and collusion *inter-se* the Respondents.

12.3 To succor strength for her such submissions, Ld. Counsel for the applicant placed her respectful reliance on the Division Bench judgment of Hon'ble High Court of Madras rendered in the case titled ***"K.Kailasam v. The Authorised Officer of Canara Bank and another"*** reported in MANU/TN/2848/2015, which readeth thus:

> *"33. The property is situated about 50 kms away from Coimbatore. The auction was conducted only at Coimbatore. The petitioner has taken up a specific contention that the auction notice was not published in Perundurai, where the property is situated. The Division Bench also recorded a factual finding that the Authorised Officer miserably failed to prove by way of documentary evidence that the sale notice was published in Perundurai. The pleadings proceed as if the sale notice was published on the Notice Board of the Bank at Coimbatore. The publication of notice on the Notice Board of the Bank would not amount to a valid publication within the meaning of Rule 8.*
>
> *34. .....*
>
> *35. The requirement with regard to publication of auction notice in at least two newspapers was included in the statute for a larger purpose. In case there is wide publication, auction sale would attract bidders in large numbers and competitive offers. The Bank would be in a position to realize maximum amount by way of sale of secured asset. It would also relieve the borrower of his obligation to clear the loan amount. In case the property is sold at a lesser price on account of failure to give wide publicity and the absence of bidders, the borrower would be liable to pay the remaining amount notwithstanding the sale of his property. The approach of the Bank in a matter of this nature must be to advertise the proposed sale in a wide manner to attract more number of bidders and to secure the best price. In case there is a balance after sale and satisfying the amount due to the Bank, it would help the borrower also. Therefore, the notification of the sale as provided under Rule 8 and giving sufficient time to the bidders to inspect the property and submit bids would serve the interest of the Bank as well as the borrower.*
>
> *36. The provision relating to recovery proceeding is akin to that of a proceeding under Section 29 of the State Financial Corporations Act, 1951 which authorises the financial corporation to take possession of the assets of the defaulting company or business concern. The concept of best possible price is considered to be the dominant consideration for*

the sale under Section 29 of the State Financial Corporations Act, 1951, and as held by the Supreme Court in Gajraj Jain v. State of Bihar MANU/SC/0476/2004 : (2004) 7 SCC 151, if publicity and maximum participation is to be attained, then the bidders should know the details of the assets and in the absence of the proper mechanism, the auction sale becomes only a pretence. The Supreme Court time and again underlined the need for publicity to ensure maximum participation of bidders which in turn requires that a fair and practical time to be given to the purchasers for the purpose of effective participation in the sale. (emphasis mine)

37. The need to secure best price in public auction was emphasized by the Supreme Court in Chairman and Managing Director, SIPCOT v. Contromix (P) Ltd., MANU/SC/0313/1995 : (1995) 4 SCC 595. The relevant paragraph reads as follows:--

> *"12. In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold. This can be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer. Public auction after adequate publicity ensures participation of every person who is interested in purchasing the property and generally secures the best price. But many times it may not be possible to secure the best price by public auction when the bidders join together so as to depress the bid or the nature of the property to be sold is such that suitable bid may not be received at public auction. In that event, the other suitable mode for selling of property can be by inviting tenders. In order to ensure that such sale by calling tenders does not escape attention of an intending participant, it is essential that every endeavour should be made to give wide publicity so as to get the maximum price."*

42. The petitioner very clearly demonstrated that the auction sale was in violation of Rules 8 and 9(1) and the said contention was accepted by DRAT by giving reasons. When it is made out that the auction was conducted in utter violation of the mandatory provisions of the Statute, the DRAT is bound to set aside the sale. When the invalidity goes to the root of the matter, technicality has no say. We are therefore of the view that the DRAT was not correct in dismissing the appeal in spite of its finding that the sale was conducted in utter violation of the statutory rules. The petitioner is therefore entitled to succeed."

12.4 Mr.Deepak, Ld. Counsel for the 1st Respondent Bank would submit that while **'The Times of India'** is undoubtedly a leading English Daily having wide circulation in the area of secured asset, the letter dated 17.08.2026 issued by **'The Hindu',** English Daily relied on the side of applicant setting out its circulation per day to be 1.10 Lakh copies is for the coverage area of 9 cities including Salem and pertaining to the year 2026 mentioning therein the rates per square centimeter for publication of notices in Coimbatore edition. According to the 1st Respondent Bank,

the said letter dated 17.08.2026 issued by **'The Hindu'** office does not advance in any manner the case and contentions of the applicant as to the said English newspaper enjoying wide circulation in the locality of secured asset at the relevant time being 08.03.2021 i.e., the date of impugned sale notice. Adverting to the Letter dated 17.08.2026 issued by **'The Times of India',** Ld. Counsel would submit that 'The Times of India', Coimbatore Edition has wide circulation covering the regions of Coimbatore, Tirupur, Erode, The Niligiris, Namakkal and Salem. Pointing out to yet another letter dated 24.08.2026 issued by **'The Hindu'** office relied on the side of the applicant to demonstrate circulation of the said newspaper to be 75,000 copies per day, it was assertively submitted on the side of 1st Respondent Bank that such circulation caters to the Districts of Coimbatore, Tirupur, Erode, The Niligiris, Namakkal, Dharmapuri and Salem which could not be pressed into service to contend that the said newspaper has wide circulation in Salem area itself.

12.5 On the side of 1st Respondent Bank it was urged to consider and appreciate that the expression **"having wide circulation in the locality"** provided in *proviso* to sub-rule (6) of Rule 8 need not necessarily mean to signify that such newspaper should be published in the same place as that of the secured asset as even **'The Hindu'**, English Daily which is proclaimed by the Applicant to be the leading newspaper having wide circulation in the locality is stated in the letter dated 17.08.2026 filed by the applicant herself to have been published from Coimbatore only and not from Salem which is the locality in which the secured asset is situated. Ld. Counsel submitted that despite their strenuous efforts, **The Times of India** office had not made available to them the circulation datas for the relevant period and that itself need not deter or detain this Tribunal from holding it to be a leading newspaper having wide circulation in the Salem area.

12.6 In reply to the allegation made by the Applicant as to the affixture of sale notice on secured asset being illegible, the Ld. Counsel for 1st Respondent Bank pleaded to hold such affixture of impugned sale notice to be one done in sufficient and substantial compliance of the requirement of sub rule (7) of Rule 8 and merely because the said sale

notice affixed on the secured asset is illegible due to passage of time for the reason of it having been so affixed in March 2021 before 5½ years, it is but natural that the copies of such affixture would tend to become illegible. The undisputed fact remaining the 1st Respondent's due affixture of sale notice on the secured asset, the Applicant could not be heard to contend to have suffered any prejudice on account of such affixture turning out to be illegible after efflux of so many years, would be the further submission of the Ld. Counsel for 1st Respondent Bank.

12.7. The Tribunal negatived the claim made by applicant as regards the illegalities attributed to 1st respondent's publication of possession notice dated 24.10.2019 in The Times of India, English daily of Coimbatore edition not having sufficient circulation in the locality of secured asset despite emphatic submissions made by the applicant side on the lines of it having been got published from Coimbatore which is situated at a distance of around 165 kms to 170 kms from the secured asset at Salem as also the legal infirmities pointed out to the 1st respondent's non affixture of such possession notice on the conspicuous part of secured asset without its date and time for a different reason elaborated at length in the paras 10.6 to 10.8 *supra*. It however proceeds to hold the 1st respondent's publication of impugned sale notice dated 08.03.2021 in the very same newspaper namely The Times of India, Coimbatore edition to be one not demonstrated by the 1st respondent bank to be a publication having **wide circulation in the locality** of secured asset since the applicant which contended The Hindu, English daily of Coimbatore edition to be a publication enjoying wide circulation in the locality had demonstrated it by producing two letters got issued by said publishing house dated 17.08.2026 and 24.08.2026 which shows its circulation to be 75,000 copies per day to its coverage area including Salem between January and June 2021 and its circulation to have got escalated to 1.10 Lakhs per day during the year 2026.

12.8 The Ld. Counsel for 1st respondent would while claiming The Times of India to be a leading English daily, admit their inability to obtain and produce the circulation datas, details or figures relating to the period of its effectuation of impugned sale notice dated 08.03.2021 by stating further that all pressures and influences exercised by the rank and file of

1st respondent bank did not receive the expected response of The Times of India office with regard to the particulars sought for in respect of its circulation during the relevant time. While the 1st respondent could obtain and produce two letters from The Times of India of which one is dated 17.08.2026 and the other one is undated setting out the SARFAESI special rates for SARFAESI statutory notices of its Coimbatore edition covering the area of six districts including Salem, why the said office would not divulge the circulation datas to a nationalized bank like Canara Bank which is giving it good business by effecting publication of all statutory notices in the said newspaper is beyond any comprehension of this Tribunal and rather persuades it to hold that the said newspaper which despite being a leading newspaper having its presence across the country does or may not enjoy readership or wide circulation of its newspaper of Coimbatore edition as that of The Hindu, English daily of Coimbatore edition having coverage in Salem area and shown to have a circulation of around 75,000 copies per day during publication of impugned auction sale notice. The 1st respondent bank which had in para 45 of its elaborate written arguments dated 17.08.2026 required the applicant to produce circulation figures, readership survey or publisher's certificate for the newspaper namely The Hindu claimed to have wide circulation, would not discharge its onus/burden of proof required of it and would rather expect the Tribunal to assume and presume as to The Times of India, English daily of Coimbatore edition having wide circulation in Salem region even in the absence of its demonstration of the said crucial fact when it is seriously contested, disputed and doubted on the side of the applicant.

12.9 Unlike the expression **"sufficient circulation in the locality"** provided in Rule 8 (2) in respect of a possession notice which remains unamended till now, the expression **"sufficient circulation in the locality"** provided in the *proviso* to Rule 8 (6) in respect for notice for sale have been replaced by the expression **"wide circulation in the locality"** with effect from 18.10.2018 with the avowed object of maximizing participation of bidders. Where the secured creditor like that of the 1st respondent in the given SA fails to demonstrate its publication of sale notice in leading newspaper having wide circulation in the locality

that too on and after the borrower's demonstration of the factum of the other newspaper enjoying wider circulation in a given locality, the Tribunal would be disposed to think and hold the issue of wide circulation of newspaper as against the secured creditor and it thus proceeds to return its finding as to the impugned sale notice not meeting out the legal requirement of wide circulation in the locality of secured asset as envisaged in the *proviso* to the amended Rule 8 (6) of the Security Interest (Enforcement) Rules to sustain the auction sale held eventually in the eye of law.

12.10 Having answered the issue of the legality or otherwise of the publication of impugned sale notice as afore, the Tribunal proceeds to decide the issue of affixture of the impugned sale notice dated 08.03.2021 on the conspicuous part of secured asset which is stated by the applicant in her pleadings and the course of arguments to have not been affixed at all therein in utter violation of Rule 8 (7). The photos showing the affixture of such sale notice in running page Nos.84 & 85 of the 1st typed set of papers filed by 1st respondent bank on 16.03.2026 is again illegible and does not contain its date and time as contended by the Ld. Counsel for applicant. The affixture so made on the outer compound wall of the secured asset is a one page notice as could be visibly seen and however appears to be in consonance with the e-auction sale notice that is provided in running page No.69 of the 1st typed set of documents produced by 1st respondent bank on 16.03.2026 which is in Appendix IV-A format requiring the detailed terms and conditions of sale to be referred to by all concerned in the link provided therein. The Tribunal very strainfully and mindfully arrives at such a conclusion in its pursuit to arrive at the truth from the available documents, though the 1st respondent could have by producing the available color photographs or clear copies of affixture photos readily and easily dispelled the said doubts from the minds of everyone including the applicant who definitely alleges as to its non-affixture in her pleadings and during their course of arguments.

12.11. The Tribunal therefore restricts its finding as to the impugned sale notice dated 08.03.2021 falling short of the legal requirement of the *proviso* to Rule 8 (6) mandating publication of sale notice in a leading

newspaper having wide circulation in the locality of secured asset due to failure of 1st respondent in adducing acceptable evidence as to The Times of India, English daily of Coimbatore edition enjoying wide circulation in Salem region during the relevant time.

13. **Point Nos.4 & 5:**

(i) Whether the auction sale is bad and liable to be set aside for violation of the mandatory legal requirements of sub-rules (3) & (4) of Rule 9 of the Security Interest (Enforcement) Rules?:

(ii) Whether the impugned auction sale is vitiated by fraud and collusion inter-se the 1st Respondent Bank and the other Respondents/Auction Purchasers as contended by the Applicant?

13.1 Ms.Bharathy, Ld. Counsel for the Applicant would submit that the SA came to be filed seeking to set aside e-auction sale notice dated 08.03.2021 and the e-auction sale held on 26.03.2021 by specifically contending inter-alia that the auction sale conducted by 1st respondent on 26.03.2021 is illegal, arbitrary and in violation of Rule 8 of Security Interest (Enforcement) Rules and upon mentioning therein that the entire proceedings is unjust and not in accordance with said Rules. Stating so, Ld. Counsel took this Tribunal through the sale confirmation letter dated 29.03.2021 issued by the 1st Respondent Bank and the cheques bearing dated 31.03.2021 and the deposit receipts standing in the names of 6 auction purchasers as also the sale certificate dated 23.04.2021 Document No.3175/2021 filed by the 1st Respondent Bank to drive home her contentions that the sale held on 26.03.2021 is illegal and in violation of sub-rules (3) & (4) of Rule 9 of Security Interest (Enforcement) Rules as the sale confirmation letter dated 29.03.2021 is to the effect of requiring the Respondents 2 to 9 to remit the balance of sale consideration on or before 30.04.2021 which is beyond the period of 15 days provided under the relevant rules as also the terms and conditions of the impugned sale notice dated 08.03.2021. Ld. Counsel adverted to sub-clause (j) of Clause 7 titled "Other terms and conditions" of the impugned sale notice dated 08.03.2021 which readeth thus:

> "*The successful bidder shall deposit 25% of the sale price (inclusive of EMD already paid), immediately on declaring him/her as the successful bidder and the balance within 15 days from the date of confirmation of sale by the secured creditor. If the successful bidder fails to pay the sale price, the deposit made by him shall be forfeited by the Authorised Officer without any notice and property shall forthwith be put up for sale again.*"

13.2 The Ld. Counsel for applicant took this Tribunal through the sale certificate dated 23.04.2021 filed by the 1st Respondent Bank which is to the effect of the initial bid amount of 25% including EMD having been paid on 31.03.2021 by the Respondents 2, 3, 4, 5, 6, 7, 8 & 9 by way of cheques dated 31.03.2021 and pointedly argued that while Rule 9 (3) requires payment of initial bid amount on the date of sale or on any next working day and not anytime later, the tendering of cheques dated 31.03.2021 by Respondents 2 to 9 for its encashment on the said date or any subsequent dates in respect of auction sale held on 26.03.2021 was certainly not on the date of auction or on the next working day as 29.03.2021 and 30.03.2021 are the two working days in between the date of sale (i.e., 26.03.2021) and the date of issuance of cheques by respondents 2 to 9 (i.e., 31.03.2021). The manner in which the balance sale amount has been received beyond 15 days of the date of auction or confirmation of sale also has no lawful excuse or justification and is in clear violation of Rule 9 (3) and Rule 9 (4) as it is nobody's case that the sale period beyond 15 days came to be extended by an agreement in writing between the secured creditor bank of 1st respondent and the Respondents 2 to 9 Auction purchasers, would be the further submission on the side of applicant for seeking the auction sale held on 26.03.2021 to be set aside.

13.3. Mr.Deepak, Ld. counsel for the 1st Respondent would submit that the applicant could not demonstrate any prejudice on the 1st Respondent's issuance of sale confirmation letter dated 29.03.2021 and receipt of 25% of the bid amount on 31.03.2021 or the balance 75% bid amount on anytime later, the receipt of which by 1st Respondent Bank is by itself demonstrative of the fact that the sale consideration be it 25% of the bid amount and 75% balance amount has come to be so received from the Auction Purchasers within the statutory period of 3 months so provided to them under Rule 9 (4). The Ld. Counsel submitted that the applicant having lost the right of redemption of the secured asset on and from the date of publication of sale notice and having not availed themselves of such right till the sale is confirmed on 29.03.2021, the 1st respondent's receipt of 25% initial bid amount including EMD on 31.03.2021 by way of cheques issued by the Auction

Purchasers/Respondents 2 to 9 cannot be flawed or found fault with in the absence of the applicant's demonstration of having suffered any prejudice on that score. Ld. Counsel placed his respectful reliance on the Apex Court judgment in ***'Celir LLP v. Bafna Motors (Mumbai) Pvt. Ltd.',*** reported in CDJ 2023 (SC) 866 : MANU/SC/1042/2023, which readeth thus:

> *"105. We summarise our final conclusion as under:*
>
> *(i) The High Court was not justified in exercising its writ jurisdiction Under Article 226 of the Constitution more particularly when the borrowers had already availed the alternative remedy available to them Under Section 17 of the SARFAESI Act.*
>
> *(ii) The confirmation of sale by the Bank Under Rule 9(2) of the Rules of 2002 invests the successful auction purchaser with a vested right to obtain a certificate of sale of the immovable property in form given in appendix (V) to the Rules i.e., in accordance with Rule 9(6) of the SARFAESI.*
>
> *(iii) In accordance with the unamended Section 13(8) of the SARFAESI Act, the right of the borrower to redeem the secured asset was available till the sale or transfer of such secured asset. In other words, the borrower's right of redemption did not stand terminated on the date of the auction sale of the secured asset itself and remained alive till the transfer was completed in favour of the auction purchaser, by registration of the sale certificate and delivery of possession of the secured asset. However, the amended provisions of Section 13(8) of the SARFAESI Act, make it clear that the right of the borrower to redeem the secured asset stands extinguished thereunder on the very date of publication of the notice for public auction Under Rule 9(1) of the Rules of 2002. In effect, the right of redemption available to the borrower under the present statutory regime is drastically curtailed and would be available only till the date of publication of the notice Under Rule 9(1) of the Rules of 2002 and not till the completion of the sale or transfer of the secured asset in favour of the auction purchaser."*

13.4 On the side of applicant it was assertively argued that the 1st respondent despite this Tribunal directing them and providing enough and more time to produce the auction bid form; minutes of sale proceedings; account statements to show the payment of sale price and so on, had deliberately rather purposely in a manner showing scant respect to its directions refrained from producing such documents only for the reason that the respondents 2 to 9 in whose name the sale certificate dated 23.04.2021 came to be eventually executed and registered have not participated in the auction sale and are not the joint-

bidders alongside its ex-employee 2nd respondent as is now projected by the respondents 3, 5, 7 to 9 by producing a bid form having not any authentication of the 1st Respondent Bank or the auction sale service providers. Ld. Counsel added that the sale certificate issued in pursuance of the illegal sale held on 26.03.2021 in favour of Respondents 2 to 9 including its ex-employee is demonstrative of the fraudulent and collusive nature of such sale vitiating the entire sale process. Ld. Counsel also submitted that unless the sale terms and conditions or the provisions of Act and Rules provide for execution of sale certificate in favour of any other nominees of purchasers or persons other than the bidder(s) who participated in the auction sale, the 1st respondent's execution of sale certificate dated 23.04.2021 in favour of respondents 2 to 9 is bad in law and the said act being a consequential action done in pursuance of an illegal auction sale needs to be set aside. By way of buttressing her such contentions, Ld. Counsel for applicant relied upon the following judgments of Hon'ble High court of Madras:

(i). The case titled ***Hemalatha Ranganathan v. The Authorised Officer, Indian Bank*** reported in MANU/TN/1104/2012, wherein it is held thus:

> *"21. The conditions of auction, more particularly, clause 23 provides that no time extension for making payment after the stipulated period will be granted nor shall the successful bidder be allowed to make part payments.*
>
> *22. Clause 40 of the auction notification provides that on confirmation of sale by the Bank and upon payment of the full amount of purchase price, the Authorised Officer will execute the Sale Certificate in favour of the auction purchaser on payment of stamp duty, which shall be borne by him.*
>
> *23. The sale notification does not contain any provision permitting the Authorised Officer to issue the order of confirmation in favour of a person other than the successful bidder. The term "purchaser" would mean only a person in whose name the auction was confirmed originally and not a person who appears subsequently, as the nominee of the successful bidder.*
>
> *24. The sale is Governed by the provisions of the SARFAESI Act and the Rules made thereunder.*
>
> *(a) Rule 9(2) of the Security Interest (Enforcement) Rules 2002 provides that the sale shall be confirmed in favour of the purchaser, who has offered the highest sale price in his bid and shall be subject to confirmation by the secured creditor.*
>
> *(b) Rule 9(3) provides that the purchaser shall immediately deposit 25% of the amount of the sale price with the Authorised Officer conducting the sale and in default of such deposit, the property shall forthwith be sold again.*
>
> *(c) Rule 9(4) provides that the balance amount of purchase price payable shall be paid by the purchaser on or before the fifteenth day of confirmation*

of sale of the immovable property or such extended period as may be agreed upon in writing between the parties.

(d) Rule 9(5) gives authority to the Bank to forfeit 25% of the amount in case balance 75% is not deposited within the stipulated period.

(e) Rule 9(6) gives power to the Authorised Officer to issue sale certificate indicating the sale of the immovable property in favour of the purchaser as per the form given in Appendix V to the Rules.

(f) Rule 9(9) provides that the Authorised Officer shall deliver the property to the purchaser free from encumbrances.

25. The provisions quoted above clearly gives an indication that the Authorised Officer has no power to issue the order of confirmation or Sale Certificate in favour of the nominee of auction purchaser.

26 The sale in question was confirmed in favour of Thiru.S.Manisekaran notwithstanding the fact that he was not a bidder. As per the terms of auction and the order of confirmation, Thiru S.Manisekaran was bound to pay 75% of the amount on or before 22 January 2011. The Authorised Officer very clearly stated in the letter of confirmation that in case the balance bid amount of 75% is not deposited on or before 22 January 2011, 25% of the bid amount already deposited will be forfeited without further notice. Therefore, it is clear that the Authorised Officer has not reserved any right to extend the time limit for deposit of balance 75% of the bid amount. Even though the order of confirmation was given in favour of Thiru S.Manisekaran on 7 January 2011 and he was directed to pay the balance amount by 22 January 2011, the fact remains that the amount was deposited only on 11 June 2012 and that too after identifying a person to purchase the property.

27. It is therefore, evident that 75% of the bid amount expected to be paid on or before 22 January 2011 was paid after a period of about one year and five months, in utter violation of the provisions of SARFAESI Act and the Security Interest (Enforcement) Rules, the mandatory conditions of the auction notification and the letter of confirmation.

41. We make the position clear that the Authorised Officer has no authority to accept the request from the highest bidder to issue the Sale Certificate in favour of a third party. The sale should be confirmed in the name of the highest bidder and not in the name of his nominee. The privity of contract would only be between the successful bidder and the Bank. The Sale Certificate should be issued only in the name of the successful bidder in whose favour the letter of confirmation was issued. The question of further sale of the property would arise only after registration of the Sale Certificate by the Bank in the name of the successful bidder. The purchaser from the successful bidder cum Sale Certificate holder must necessarily pay Stamp duty for registration. In short, the Authorised Officer has no authority to recognise a person as the nominee of the successful bidder".

(ii). The case titled ***The Authorised Officer, Indian Bank v. M/s. Tetrahedron Ltd and Ors*** reported in MANU/TN/2163/2012, wherein it is held thus:

"22. The question as to whether it is open to the Bank to issue Sale Certificate in the name of the nominee of the auction purchaser came up for consideration before a Division Bench of this Court in Hemalatha Ranganathan v. The Authorised Officer, Indian Bank, Egmore, Chennai,

MANU/TN/1104/2012 : 2012 (5) CTC 1 (DB). The very same Indian Bank was the secured creditor in the said matter. The Division Bench found that the Authorised Officer in collusion with the auction purchaser transferred the property and registered the Sale Certificate in the name of the nominee of successful bidder.

23. The judgment in Hemalatha Ranganathan v. The Authorised Officer, Indian Bank, Egmore, Chennai, MANU/TN/1104/2012 : 2012 (5) CTC 1 (DB), was taken up before the Supreme Court. The Supreme Court directed the Bank to conduct the enquiry in accordance with the direction of the Division Bench and submit a report before the High Court. We are informed that pursuant to the said direction Thiru P. Arivanandam, General Manager, Indian Bank conducted an enquiry in the matter. The General Manager has given a clear finding that the SARFAESI Act and the SARFAESI Rules do not permit sale confirmation in favour of a nominee of the auction purchaser and therefore, the action of the Authorised Officer in confirming the sale in favour of the nominee of the auction bidder was not in order. While submitting a report to this Court, the Chairman and Managing Director of Indian Bank fairly stated that there have been deviations from the procedure/guidelines of the Bank and the sale has been conducted with certain infirmities. The Chairman further stated that the infirmities and lapses that occurred are deeply regretted and the Bank assures that the efforts for recovery would be adhered only in accordance with statutory provisions of SARFAESI Act and the Rules framed thereunder.

24. In the subject case, the Santhome property was sold and ultimately Sale Certificate was issued in the name of the nominee of the auction purchaser. The Gummudipoondi property was sold subsequently. Even though the auction purchaser failed to pay the balance amount, no early action was taken to forfeit the deposit and to conduct a fresh auction. The Bank Officers are dealing with public money. They should be vigilant to protect the interest of the Bank. The borrowers are not having access to records and as such they are in darkness as to what has transpired between the auction purchaser and the Bank. The Bank and the bidders are bound by the terms and conditions of the auction Notification. In case the Notification does not contain a provision for extension of time to deposit the balance amount and is covered by a clause regarding forfeiture, immediate action should be taken to forfeit the amount, on failure to deposit the balance amount.

25. Most recently, the Supreme Court in Ram Kishun & others v. State of U.P. & others, 2012 (5) Scale 673, observed that the Authorised Officers of the Banks should not behave like property dealers and dispose of the secured assets in any unreasonable or arbitrary manner in flagrant violation of the statutory provisions."

(iii). The case titled ***E.Sathyaseelan v. The Recovery Officer and Ors*** reported in MANU/TN/1825/2018, wherein it is held thus:

"31. The Authorised Officer has committed one more illegality by issuing the sale certificate in the name of Mrs. V. Padmavathy, who was not a bidder at all. The fact that Thiru S. Manisekaran paid a sum of Rs.1,20,00,000/- on 11 June 2012 accompanied by a letter nominating Mrs. V. Padmavathy to receive the Sale Certificate in her name, indicates that the payment was

made by none other than Mrs. V. Padmavathy. This clearly proves the undue interest shown by the Authorised Officer.

38. The transfer of property to the third party purchaser was made under Section 13(6) of the SARFAESI Act. The Authorised Officer made a false statement before the Chief Metropolitan Magistrate that the property was sold to Thiru S. Manisekaran, without divulging the fact that he was not a bidder. The property, after taking possession, was given to a total stranger to the auction proceedings. While considering the correctness of the order passed by the Chief Metropolitan Magistrate in the present case, these basic facts must necessarily be taken note of.

41. We make the position clear that the Authorised Officer has no authority to accept the request from the highest bidder to issue the Sale Certificate in favour of a third party. The sale should be confirmed in the name of the highest bidder and not in the name of his nominee. The privity of contract would only be between the successful bidder and the Bank. The sale certificate should be issued only in the name of the successful bidder in whose favour the letter of confirmation was issued. The question of further sale of the property would arise only after registration of the sale certificate by the Bank in the name of the successful bidder. The purchaser from the successful bidder cum sale certificate holder must necessarily pay stamp duty for registration. In short, the Authorised Officer has no authority to recognise a person as the nominee of the successful bidder."

13.5 Mr.Deepak, Ld. Counsel for 1st Respondent Bank would submit that the concerned branch though was advised to trace out and make available the documents as directed to be produced by this Tribunal, the same could not be filed well within the time sought for and obtained by the Tribunal from the Hon'ble High Court of Madras for passing of its final order since the transaction related to the year 2021 and the applicant having not specifically urged such contention in her SA, the 1st Respondent was not obligated to preserve such documents and file the same on any later date for consideration and appreciation by this Tribunal. Ld. Counsel submitted that all 8 respondents participated in the bid and had remitted the sale proceeds on 31.03.2021, 19.04.2021 and 20.04.2021 as set out in the sale certificate which by itself is a conclusive proof of the fact that the Sale Certificate is so issued by 1st respondent in favour of the bidders alone and not to their nominees as came to be alleged in vain pursuits on the side of the applicant. Even assuming respondents 2 to 9 are not joint bidders, there is no legal bar for executing the Sale Certificate in favour of such respondents should any of them be nominees of the sole bidder more so when execution of such sale certificate in favour of more than one person could not be demonstrated as one which caused any sort of prejudice to the applicant

in anyway, would be the further submission of Ld. Counsel for 1st Respondent.

13.6 The Tribunal is now required to delve at and determine whether the SA is bereft of pleadings as to the auction sale having been held in violation of the provisions of SARFAESI Act and Rules as assertively argued by the Ld. Counsel for 1st respondent bank to detain it from deciding on the legality or otherwise since argued on the side of applicant in reference to 1st respondent's violation of sub-rules of (3) & (4) of Rule 9 of the Security Interest (Enforcement) Rules in the absence of any ground urging about Rule 9 violation as the violation alleged therein is stated to be a faint-hearted one made in respect of Rule 8 alone. Ld. Counsel for the 1st respondent bank also vehemently argued that it would not be open to the applicant and is rather impermissible in law to seek to hold the impugned auction sale to be one conducted fraudulently and collusively *inter se* the 1st respondent and respondents 2 to 9 auction purchasers in the absence of a specific, definite pleading and proof in the SA as originally framed and filed in terms of Order 6 Rule 4 CPC and proceeded with his submission that the action of 1st respondent is otherwise also saved in terms of Order 6 Rule 6 CPC.

13.7 Before proceeding to decide on the said issue, it would be profitable to cull out and reproduce the relevant provisions of SARFAESI Act and Rules, RDB Act, Second Schedule to the Income Tax Act and the Code of Civil Procedure and they are excerpted hereunder:

SARFAESI ACT

17. Application against measures to recover secured debts.—

(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter,1[may make an application along with such fee, as may be prescribed, to the Debts Recovery Tribunal having jurisdiction in the matter within forty five days from the date on which such measure had been taken:

[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.]

[Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.]

(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction—

(a) the cause of action, wholly or in part, arises;

(b) where the secured asset is located; or

(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.]

(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,—

(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.]

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse

to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.

SECURITY INTEREST (ENFORCEMENT) RULES

9. Time of sale, Issue of sale certificate and delivery of possession, etc.-

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

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

(2) The sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid or tender or quotation or offer to the authorised officer and shall be subject to confirmation by the secured creditor:

Provided that no sale under this rule shall be confirmed, if the amount offered by sale price is less than the reserve price, specified under sub-rule (5) of [rule 8]:

Provided further that if the authorised officer fails to obtain a price higher than the reserve price, he may, with the consent of the borrower and the secured creditor effect the sale at such price.

(3) On every sale of immovable property, the purchaser shall immediately, i.e. on the same day or not later than next working day, as the case may be, pay a deposit of twenty five per cent. of the amount of the sale price, which is inclusive of earnest money deposited, if any, to the authorized officer conducting the sale and in default of such deposit, the property shall be sold again;

(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three month.

(5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited to the secured creditor and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold."

THE RECOVERY OF DEBTS AND BANKRUPTCY ACT, 1993

Section 29. *The provisions of the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate*

Proceedings) Rules, 1962, as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of debt due under this Act instead of to the Income-tax:

Provided that any reference under the said provisions and the rules to the "assessee" shall be construed as a reference to the defendant under this Act."

SECOND SCHEDULE TO INCOME TAX ACT

Deposit by purchaser and resale in default.

Rule 57. *(1) On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per cent on the amount of his purchase money, to the officer conducting the sale; and, in default of such deposit, the property shall forthwith be resold.*

(2) The full amount of purchase money payable shall be paid by the purchaser to the Tax Recovery Officer on or before the fifteenth day from the date of the sale of the property.

Procedure in default of payment.

Rule 58. *In default of payment within the period mentioned in the preceding rule, the deposit may, if the Tax Recovery Officer thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be resold, and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.*

CODE OF CIVIL PROCEDURE

Order VI PLEADINGS GENERALLY

Rule 4. Particulars to be given where necessary. *- In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.*

Rule 5. (Omitted)

Rule 6. Condition precedent. *- Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.*

Order XXI Execution of Decrees and Orders

Rule 84. Deposit by purchaser and re-sale on default. *- (1) On every sale of immovable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per cent, on the amount of his purchase-money to the officer or other person conducting*

the sale, and in default of such deposit, the property shall forthwith be re-sold.

(2) Where the decree-holder is the purchaser and is entitled to set-off the purchase-money under rule 72, the Court may dispense with the requirements of this rule.

Rule 85. Time for payment in full of purchase-money. *- The full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property:*

Provided, that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72.

HIGH COURT AMENDMENT (MADRAS) : Substitute the following for the existing rule:

Rule 85. Time for payment in full of purchase money and of stamp for certificate of sale. *- The full amount of purchase-money payable and the general stamp for the certificate under Rule 94 or the amount required for such stamp, shall be deposited into Court by the purchaser before the Court closes on the fifteenth day from the sale of the property:*

Provided that in calculating the amount of purchase money to be so deposited, the purchaser, shall have the advantage of any set-off to which he may be entitled under Rule 72.

Rule 86. Procedure in default of payment. *- In default of payment within the period mentioned in the last preceding rule, the deposit may, if the Court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.*

Rule 87. Notification on re-sale. *- Every re-sale of immovable, property, in default of payment of the purchase money within the period allowed for such payment, shall be made after the issue of fresh proclamation in the manner and for the period hereinbefore prescribed for the sale.*

13.8 As pointed out by the Ld. Counsel for applicant and rightly, the applicant had in her grounds (b), (h), (p) & (q) of the SA urged as hereunder:

(b) The Auction Sale hold on E-Auction Sale on 26.03.2021 at 12.30 p.m. to 01.30 p.m., is illegal, arbitrary and totally violative of Principal of Natural Justice and also violate of Rule 8 of the Security Interest (Enforcement) Rules, 2002 herein after called as the said Rule.

(h) Without following the procedures and without sufficient number of participants in the E-Auction, the 1st Respondent sold the schedule of properties to the already fixed known persons, who is the Previous Employee of the 1st Respondent-Bank at a low price. It clearly shows the

intention of the 1st respondent was to sell the schedule of property for their personal gain at low price without any proper justification.

(p) The 1st Respondent just to threaten the applicants is trying to misuse the power vested with them under the said act and suppressing original facts, the schedule of property is bringing for a distrust sale.

(q) The entire proceedings being pursued by the 1st Respondent-Bank is illegal, unjust and not in accordance with the said rule and further the same is totally arbitrary hence is unsustainable in law and facts.

With such specific grounds urged in the SA, the applicant had sought to set aside the e-auction sale notice dated 08.03.2021 including the e-auction sale held on 26.03.2021 at 12.30 pm to 1.30 pm besides seeking to pass such or other order as this Tribunal may deem fit and proper in the circumstances of the case.

13.9 The specific pleadings adverted to supra more particularly the ones averred in grounds (h), (p) & (q) makes out the applicant's definitive case and contentions as to the respondent bank without following the procedures and Rules and without sufficient number of participants in the e-auction by misusing the power vested with it under the Act brought the schedule mentioned property for a distress sale and sold it to the already fixed known person who is the previous employee of the respondent bank at a low price with a clear intention of selling the same for their personal gain at low price without any proper justification rendering the entire proceedings to be illegal, unjust and one pursued not in accordance with the Rule and is totally arbitrary and unsustainable in law and facts. The said grounds cumulatively and unambiguously made out the required pleadings for attributing the elements of fraud and collusion on the part of 1st respondent bank and 2nd respondent auction purchaser who is admittedly the ex-employee of said bank, meeting out the ingredients of Order 6 Rule 4 CPC with only the expressions "fraud" and "collusion" missing therein. It is the elements and attributes of fraud and collusion which is required to be specifically mentioned by way of pleadings and it is not the requirement of law to use the said words verbatim similar and the documents adduced by the 1st respondent and deliberated in the following paras are demonstrative and evidential of the fraud and collusion so pleaded on the

side of applicant. The 1st respondent is not entitled to the benefits of Order 6 Rule 6 CPC as urged by his Ld. Counsel as the case on hand is not directly or indirectly one falling under the said Rule.

13.10. On a cursory rolling of the eyes on the sale confirmation dated 29.03.2021, cheques issued by the respondents 2 to 9 on 31.03.2021, deposit receipts taken and kept in the names of the purported auction purchasers bearing the dates between 31.03.2021 and 28.04.2021 and the sale certificate 23.04.2021, the following facts emerge to fore:

(i) The 10% EMD to the tune of Rs.20,35,000/- has been made by 2nd respondent Mr.Kathirvel, who is admitted to be ex-employee of 1st respondent bank.

(ii) The sale confirmation letter dated 29.03.2021 is issued by 1st respondent in favour of 2nd respondent Mr.Kathirvel and 7 others (*without mentioning the names of said 7 persons*) alleging therein to have already received 25% initial bid amount including EMD and by granting time upto 30.04.2021 for paying the balance 75% bid amount, which runs counter and contra to sub-clause (j) of Clause 7 titled **Other terms and conditions** in the impugned sale notice dated 08.03.2021 and sub-rules (3) & (4) of Rule 9 of the Security Interest (Enforcement) Rules in as much as the sale notice terms and provision of law provides for payment of 25% initial bid amount including EMD on the date of sale/auction or on the next working day and the remaining 75% bid amount within 15 days from the date of confirmation of sale meaning thereby that the initial 25% bid amount should have been paid latest by 29.03.2021 which was the next working day to the date of auction (i.e., 26.03.2021) and the balance 75% bid amount ought to have been paid by 13.04.2021 which is 15 days from the date of confirmation of sale. The 1st respondent had unilaterally, arbitrarily, illegally, unjustly and without the approval of secured creditor bank granted 32 days time for payment of the balance 75% amount at the 1st instance itself without even the 2nd respondent auction purchaser asking for such extended period or even before entering of any agreement in writing between the auction purchasers and secured creditor bank in terms of Rule 9 (4).

(iii) The copies of cheques dated 31.03.2021 issued by respondents 2 to 9 demonstrates the falsity of statement made in sale confirmation letter dated 29.03.2021 which is to the effect of the 1st respondent bank admitting to have already received 25% initial bid amount before issuance of such letter when the cheques issued bears the dates (i.e.,) 31.03.2021 and could be a valid tender and encashment of 25% initial bid amount only on 31.03.2021 or any subsequent date when it came to be enchased or paid on presentment of such cheque. In any event the cheque dated 31.03.2021 which would not be a valid and lawful tender of 25% initial bid amount until the said date, would not be a payment of such mandatory amount required to be paid by auction purchaser on the date of sale/auction or any next working day as set out in Rule 9 (3) and the said payment of 25% initial bid amount having been recorded to be done by 2nd respondent and the other 7 respondents on 31.03.2021 in the sale certificate dated 23.04.2021, are payments made on the 3rd working day of the date of sale and 2nd working day from the date of confirmation of sale which by itself render the auction sale held on 26.03.2021 *non est*, illegal and void requiring the secured creditor to bring the property for sale again.

(iv) The sale certificate dated 23.04.2021 divulges the fact that 10% EMD amounting to Rs.20,35,000/- came to be so paid to the 1st respondent bank only by 2nd respondent Mr.Kathirvel on 25.03.2021 by way of cheque and not by any of the other 7 respondents which probablises the case and contention of the applicant as to the 1st respondent bank selling the schedule mentioned property without sufficient participants to an identified bidder who is a previous employee of the bank for low price to make personal gain.

(v) The sale certificate dated 23.04.2021 reveals and confirms the payment of 25% bid amount including EMD to have been made by respondents 2 to 9 on 31.03.2021 which is the third working day from date of sale i.e., 26.03.2021 or 2nd working day from the date of sale confirmation letter being 29.03.2021 which is in violation of Rule 9 (3).

(vi) The Sale certificate dated 23.04.2021 is also evidential of the balance 75% amount having been paid on 19.04.2021 and 20.04.2021

by way of cheques issued by respondents 2 to 9 as the case may be which is 6 or 7 days after expiry of 15 days period for making of such payment as specifically provided in sub-clause (j) of Clause 7 titled **Other terms and conditions** in impugned sale notice dated 08.03.2021 and the legal requirement of Rule 9(4), the default in payment of which should have entailed in forfeiture of 25% initial amount should it be deposited with the 1st respondent bank on the same day of sale and in any case not later than next working day as the case may be entitling the purchaser for effecting payment of balance within 15 days of confirmation of sale or any extended period as may be agreed upon in writing between the purchaser and secured creditor not exceeding 3 months.

(vii) The Deposit receipts bearing dates 31.03.2021 to 28.04.2021 aggregating to Rs.1,41,44,038.50 with its maturity period being for one year therefrom with interest at 0% taken and kept in the names of 6 respondents namely Kathirvel, Shanmugam Chinna Gounder, Premavathy, Thiyagaraj Ramasamy and Senthil, are now alleged to be the surplus of sale proceeds payable to the applicant and other co-owners of secured asset. Such a submission coming forth from a nationalized bank like Canara Bank being beyond the comprehension of the Tribunal as to its factual and legal basis including the ones followed by the bankers in their ordinary, normal banking law and practice, was sought to be clarified by the Ld. Counsel for 1st respondent bank as to how the alleged auction amount purportedly paid by the auction purchasers came to be deposited and kept in the names of auction purchasers themselves without transferring it to the savings bank account of the concerned borrowers including the applicant or without retaining it in the auction sale account of the bank, office account of the bank or suspense account of the bank as the case may be, for which he had no convincing explanation, justification or lawful excuse.

(viii) The deposit receipt taken and kept on 31.03.2021 itself in the name of Mr.Kathirvel to the tune of Rs.40,34,017.30/- when the sale held on 26.03.2021 is rendered *non est* for his non-payment of 25% initial bid amount on the date of sale or next working day being 29.03.2021 is incomprehendible and inexplicable.

Thus the documents produced by the 1st respondent by itself are demonstrative and evidential of the illegalities and legal infirmities looming large at the auction sale held on 26.03.2021 in pursuance of the sale notice dated 08.03.2021 which is already found and held to be illegal for violation of the legal requirements of Rule 8 in bringing the secured asset for sale. Merely the non-mentioning of violation of Rule 9 in the grounds of SA would not be sufficient for the 1st respondent to contend that the applicant could not be allowed to canvass for the violation of Rule 9 (3) and 9 (4) of the Security Interest (Enforcement) Rules as there is enough pleadings in the SA as to the 1st respondent's holding of auction sale without following the procedures and rules for selling the property to the already fixed person of the respondent bank who is its ex-employee for low price and for making personal gain out of sale of such secured asset at a distress sale by misusing the powers vested under the Act. It is otherwise also a trite law that a wrong mentioning of a provision of law or a non mentioning of a specific provision of law is neither crucial nor fatal if there are enough pleadings and here in this SA, the applicant has specifically urged in the ground seeking to hold the entire sale proceedings pursued with by the respondent bank not in accordance with rules to be illegal, unjust, arbitrary and unsustainable in law and on facts.

13.11. The 1st respondent's other submission as to respondents 2 to 9 having been joint bidders in the impugned auction sale has not been demonstrated by the secured creditor bank by production of the bid form, e-auction sale proceedings and other documents directed to be produced by the Tribunal in its proceedings dated 21.08.2026, 01.09.2026, 02.09.2026 and 11.09.2026 despite it observing in one of its such proceedings as to it having to draw adverse inference for its such non production. The submission made by Ld. Counsel for the 1st respondent as to its non-traceability despite their strenuous efforts made and their non-requirement to preserve such documents due to lack of such pleadings by the applicant in her SA did not impress this Tribunal since the SA have come to be filed on 12.04.2021 even before issuance of sale certificate dated 23.04.2021 upon alleging various illegalities in conduction of sale without following the procedures and rules and

without participation of sufficient bidders rendering the entire sale process illegal and liable to be set aside.

13.12. "**Fraud and collusion**" alleged by the applicant in very many words as stated *supra* stood proved by the 1st respondent's act of issuing sale confirmation letter dated 29.03.2021 falsely stating therein to have received 25% bid amount when the cheques came to be issued for such sum only on 31.03.2021 on the 3rd working day of date of sale and 2nd working day of confirmation of sale; granting 32 days time as against 15 days time set out in sale notice dated 08.03.2021 for payment of remaining 75% bid amount, receiving of balance 75% amount after 6 or 7 days from the expiry of 15 days period in the absence of any extension of said period by an agreement in writing between the secured creditor and the auction purchasers in negation of sub-rules (3) & (4) of Rule 9; execution of sale certificate in favour of 8 auction purchasers when sale confirmation letter was given only in the name of 2nd respondent Mr.Kathirvel, ex-employee of the bank; and keeping of surplus sale proceeds in the nature of deposit receipts taken in the name of auction purchasers themselves for 0% interest are very many instances of the benevolence shown by 1st respondent bank to its ex-employee Mr.Kathirvel (2nd respondent) may be by treating him as an "exceptional employee" of the bank deserving its flouting of all tenets of law. Pertinently the 1st respondent would not show the same benevolence to the applicant who admittedly have remitted Rs.8.00 Lakhs on 02.03.2021 after which he ought not to have shown undue hurry in bringing for sale of the secured asset within just 6 days from receiving and crediting such payment in both the loan accounts, although there is no bar or impediment for enforcing its security interest even during Corona times. The unappreciable conduct of 1st respondent in selling the property to its ex-employee and 7 others in the backdrop of illegalities found and held in the foregoing paras is only demonstrative of the fact that the conduction of auction sale by 1st respondent could not be held to blemish less since the fraud and collusion writs large and cannot be brushed aside.

13.13. The Tribunal takes judicial notice of the fact that the 1st respondent in its other cases pending consideration before this Tribunal

had not shown any undue consideration towards the auction purchasers who had failed to remit either the 25% bid amount on date of sale and in any case by next working day or the 75% bid amount by granting 32 days time as against sale notice terms and condition and provisions law contained in Rule 9 (3) and 9 (4). It proceeds to hold the auction sale held on 26.03.2021 to be *non est*, illegal and invalid for non-payment of the initial bid amount by the auction purchasers on the date of sale or the next working day and for the reason of the 1st respondent's extending the period of 15 days for payment of balance 75% as against the terms of sale notice and the statutory rules provided in SARFAESI Act inhibiting such extension of time in the absence of agreement in writing between secured creditor and purchasers. The Tribunal ineluctably holds so finding the provisions contained in Rule 9 (3) & (4) of Security Interest (Enforcement) Rules requiring strict adherence to by authorized officer under SARFAESI Act, Rule 57 & 58 of the Second Schedule of Income Tax Act requiring stringent adherence to by the Recovery Officer in terms of Section 29 of RDB Act and Rules 84 to 85 under Order 21 of CPC requiring sincere adherence to by a Civil Court executing the decree to be analogous provisions mandating depositing of initial bid amount immediately after effectuation of sale and depositing of the balance bid amount within 15 days therefrom, failure of which entails in forfeiture of the initial amounts so deposited. The said provisions are held to be mandatory giving no room either to the Authorized Officer of a secured creditor bank, Recovery Officer of DRT or the Civil Court as the case may be to be rendered otiose as it stood fortified by the following judgments of the Hon'ble Supreme Court of India:

(i) In the case titled ***"M.R. Vasumathi Vs. The Authorized Officer and Ors."*** reported in MANU/SC/0623/2026 : 2026 INSC 633 : Law Finder (SC) 3854 : 2026 AIR Supreme Court 3133, which is a judgment elucidating the lack of power, authority and jurisdiction for an Authorised Officer of secured creditor bank to extend the period for payment of initial bid and balance bid amount under the scheme of SARFAESI Act, it is held thus:

"24. As a prefatory note, it is observed that the validity of an auction conducted under the statutory regime is not to be tested on equitable considerations but strictly on the ground whether the mandate of the statute and the rules has been breached or not. The SARFAESI Rules being subordinate legislation, bind the secured creditor as well as the auction purchaser with equal rigour.

I. COMPLIANCE WITH RULE 9: A STATUTORY SINE QUA NON

26. As a sequitur to the aforementioned legal provisions, the auction purchaser is mandated to immediately deposit 25% of the sale price (inclusive of earnest money) on the date of sale; and in default of such deposit, the property shall forthwith be resold. Further, the balance of purchase price is required to be paid within the fifteenth day of confirmation of sale or within such written agreed extended time, failing which the deposit shall stand forfeited. Also, in such a case, the purchaser would forfeit all his claims either to the property or to any part of the sum for which such property may subsequently be sold.

29. The factual position, as is borne out from the extant record, is not in serious dispute - i) auction sale was conducted on 11.03.2010; ii) auction purchaser was declared successful on the said date; iii) 25% of the bid amount was deposited on 10.03.2010/11.03.2010 vide a demand draft of Rs. 9,00,000/-, prepared on 10.03.2010; and iv) two further demand drafts of Rs. 6,80,000/- and Rs. 36,95,125/- were furnished on 11.03.2010.

30. However, the balance 75% of the bid amount was admittedly paid only on 31.03.2010. The lingering lis is as to whether this subsequent deposit satisfies Rule 9(4). The outer time limit of fifteen days expired on 26.03.2010, as reflected in the communication issued by the secured creditor dated 11.03.2010, which may be reproduced here for the convenience of reference:

> *4. Please note that you have to pay the balance sale price within 15 days of Confirmation of Sale ie., today. In case of your failure to pay as said above, the entire bid amount paid by you shall be forfeited by the Authorised Officer without any notice and the sale will be cancelled.*

31. The payment of the remaining 75%, on 31.03.2010 is, therefore, ex facie beyond the statutory period. In view of the above, the contention of the auction purchaser that the sale stood confirmed only on 11.03.2010 is untenable.

32. The following passage from IDBI Bank Ltd. v. Ramswaroop Daliya MANU/SC/1117/2024 lends credence to the proposition:

> *13. Notwithstanding the above, the provisions of sub-Rules (4) and (5) of Rule 9 of the Rules, if read together in conjunction, would reveal that it is only for the default in payment of the balance auction amount within the period mentioned that the property could be resold and that the period of 15 days stipulated therein for the deposit of the balance sale amount may be extended, as may be agreed upon in writing. It means that first there has to be a default on part of the auction purchaser to invite cancellation of the auction and*

second, that the period of deposit stipulated therein is not absolute rather extendable with the agreement of the parties.

(emphasis ours)

33. Furthermore, the contention advanced on behalf of the secured creditor by its learned Counsel that any deviation in the timeline of payment stood regularised by a valid exercise of power of extension or waiver is equally unbacked by any demonstrable material. Nothing is borne out of the record to demonstrate that there was any prayer for extension of time made by the auction purchaser at any time prior to 31.03.2010 or that any written agreement extending the time was entered into by and between the secured creditor and the auction purchaser.

34. The aforesaid legal position leads us to the examination of the consequence of non-compliance with the statutorily ordained timeline, in the absence of any record of written agreement between the secured creditor and the auction purchaser in the present factual matrix.

II. CONSEQUENCE OF NON-COMPLIANCE

35. The DRT, the DRAT and the High Court appear to have proceeded on a broader premise of consideration of delay, conduct of the borrower, and the perceived equities in favour of the auction purchaser. Equally, it is true that the record bears out that no concrete steps were ultimately taken by the Appellant, who is the daughter of the deceased guarantor, to liquidate the outstanding dues and that earlier attempts at settlement did not come to fruition. However, in our considered opinion, the failure to repay without being informed of an extension being granted to the auction purchaser, by itself, cannot validate proceedings that are otherwise vitiated in law.

36. While it is trite that the rights of an auction purchaser and the sanctity of a confirmed sale ordinarily merit due protection, such protection is by no means absolute. It must yield where the very process engendering the sale is demonstrated to be legally infirm or to be incongruous with the statutory framework. The object of proceedings under the SARFAESI Act is not the mere culmination of a sale in a mechanical manner, but the lawful realisation of the secured asset through a process that is fair, transparent and strictly compliant with the prescribed rules. In the present case, the non-adherence to the timeline that the SARFAESI Rules contemplate constitutes a material irregularity going to the root of the matter. The mere factum that the sale stood confirmed cannot, therefore, foreclose judicial scrutiny."

(ii) In the case titled ***"Union Bank of India v. Rajat Infrastructure Pvt Ltd."*** reported in: MANU/SC/1077/2023, which is a judgment elucidating the lack of power, authority and jurisdiction even to the Hon'ble Supreme Court to extend the period provided in terms of Rule 9(4) under Article 142 of the Constitution of India, it is held thus :

"7. As discernible from the afore-stated Sub-rule (4) of Rule 9, the balance amount of purchase price payable by the purchaser to the authorized Officer has to be paid on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months. Sub-rule (5) thereof states that in default of payment within the period mentioned in Sub-rule (4), the deposit shall be forfeited to the secured creditor and the property shall be resold, and that defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold. As per Sub-rule (6) thereof, on the confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorized Officer exercising the power of sale would issue a certificate of sale of the immovable property in favour of the purchaser in the form prescribed under the Rules.

8. Now, it is well settled proposition of law that when a statute requires a particular thing to be done in a particular manner, it must be done in that manner or not at all, and other methods of performance are necessarily forbidden.

17. The submission of the learned Senior Advocate Mr. Dushyant Dave for the Applicant that this Court should treat the deposits made by the Applicant on 22.07.2022 and on 26.08.2022 as due compliance of the order dated 12.05.2020, extending the time limit by exercising the inherent powers of the Supreme Court Under Article 142 of the Constitution of India or exercising the powers conferred on the court Under Section 148 of the Code of Civil Procedure, cannot be accepted in view of the statutory provision contained in Rule 9 of the said Rules. As per the Sub-rule (4) of Rule 9, the balance amount of purchase price payable has to be paid by the purchaser to the authorized officer on or before the fifteenth day of the confirmation of sale or such extended period as may be agreed upon in writing between the purchaser and the secured creditor, in any case not extending three months. Even if by liberal construction of the said sub rule, and in view of the orders passed by this Court from time to time in the successive applications filed by the Applicant, it is presumed that the time to deposit the balance amount with interest had stood extended two months after February, 2022, i.e., upto 30.04.2022, no further extension of time as such was granted by the Court nor was it permissible to extend under the said statutory provision contained in Rule 9 of the said rules. It cannot be gainsaid that the court in exercise of powers Under Article 142 cannot ignore any substantive statutory provision dealing with the subject. The plenary powers of the Supreme Court Under Article 142 are inherent in nature and are complementary to those powers which are specifically conferred on the court by various statutes. These powers though are of a very wide amplitude to do complete justice between the parties, cannot be used to supplant the substantive law applicable to the case or to the cause under consideration of the court. As observed by this Court in Supreme Court Bar Association v. Union of India and Anr. MANU/SC/0291/1998 : (1998) 4 SCC 409, Article 142 even with the width of its amplitude cannot be used to build a new edifice where none existed earlier, by ignoring the express

> *statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly. Even Section 148 of Code of Civil Procedure does not permit the court to extend the time limit beyond thirty days of the time limit fixed by the court earlier."*
>
> *(emphasis mine)*

(iii) In *the case titled* ***"C.N. Paramsivam and Ors. vs. Sunrise Plaza Tr. Partner and Ors"*** reported in *MANU/SC/0084/2013:* AIR 2013 SC 2941: 2013 INSC 22, which is a judgment elucidating the lack of power, authority and jurisdiction for a Recovery Officer of Debts Recovery Tribunal to extend the period of 15 days for payment of sale amount under the scheme of RDB Act, it is held thus*:*

> *"15. That brings us to the question whether Section 29 of the RDDB Act do not apply the Income Tax Rules in the Second Schedule of the Income Tax Act to the recovery proceedings under RDDB Act with full force and that the expression 'as far as possible' appearing in Section 29 vests the Recovery Officer with discretion to apply the said Rules depending upon the fact situation of each case. Section 29 of the RDDB Act 29 is as under:*
>
> > *29. Application of certain provisions of Income-tax Act.- The provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time shall, as far as possible, apply with necessary modifications as if the said provisions and the rules referred to the amount of debt due under this Act instead of to the Income-tax:*
> >
> > *Provided that any reference under the said provisions and the rules to the "Assessee" shall be construed as a reference to the Defendant under this Act.*
>
> *16. A bare reading of the above leaves no manner of doubt that the rules under Income Tax Act were applicable only "as far as possible" and with the modification as if the said provisions and the rules referred to the amount of debt due under the RDDB Act instead of the Income Tax Act. The question is whether the said two expressions render the provisions of Rule 57 directory no matter the same is couched in a language that is manifestly mandatory in nature.*
>
> *21. Applying the above principles to the case at hand Section 29 of the RDDB Act incorporates the provisions of the Rules found in the Second Schedule to the Income Tax Act for purposes of realisation of the dues by the Recovery Officer under the RDDB Act. The expressions "as far as possible" and "with necessary modifications" appearing in Section 29 have been used to take care of situations where certain provisions under the Income Tax Rules may have no application on account of the scheme under the RDDB Act being different from that of the Income Tax Act or the Rules framed thereunder. The provisions of the Rules, it is manifest, from a careful reading of Section 29 are attracted only in so far as the same deal with recovery of debts under the Act with the modification that the 'amount of debt' referred to in the Rules is deemed to be one under the RDDB Act. That modification was*

intended to make the position explicit and to avoid any confusion in the application of the Income Tax Rules to the recovery of debts under the RDDB Act, which confusion could arise from a literal application of the Rules to recoveries under the said Act. Proviso to Section 29 further makes it clear that any reference "to the Assessee" under the provisions of the Income Tax Act and the Rules shall be construed as a reference to the Defendant under the RDDB Act. It is noteworthy that the Income Tax Rules make provisions that do not strictly deal with recovery of debts under the Act, Such of the rules cannot possibly apply to recovery of debts under the RDDB Act. For instance Rules 86 and 87 under the Income Tax Act do not have any application to the provisions of the RDDB Act, while Rules 57 and 58 of the said Rules in the Second Schedule deal with the process of recovery of the amount due and present no difficulty in enforcing them for recoveries under the RDDB Act. Suffice it to say that the use of the words "as far as possible" in Section 29 of RDDB Act simply indicate that the provisions of the Income Tax Rules are applicable except such of them as do not have any role to play in the matter of recovery of debts recoverable under the RDDB Act. The argument that the use of the words "as far as possible" in Section 29 is meant to give discretion to the Recovery Officer to apply the said Rules or not to apply the same in specific fact situations has not impressed us and is accordingly rejected.

27. There is nothing in the provisions of Section 29 of RDDB Act or the scheme of the rules under the Income Tax Act to suggest that a discretion wider than what is explained above was meant to be conferred upon the Recovery Officer Under Section 29 of the RDDB Act or Rule 57 of the Income Tax Rules which reads as under:

> *57. (1) On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per cent on the amount of his purchase money, to the officer conducting the sale; and, in default of such deposit, the property shall forthwith be resold.*
>
> *(2) The full amount of purchase money payable shall be paid by the purchaser to the Tax Recovery Officer on or before the fifteenth day from the date of the sale of the property.*

28. It is clear from a plain reading of the above that the provision is mandatory in character. The use of the word "shall" is both textually and contextually indicative of the making of the deposit of the amount being a mandatory requirement. The provisions of Rules 57 and 58 of the Income Tax Rules, have their equivalent in Order XXI Rules 84, 85 & 86 of the Code of Civil Procedure which are pari materia in language, sweep and effect and have been held to be mandatory by this Court in Manilal Mohanlal Shah and Ors. v. Sardar Sayed Ahmed Sayed Mahmed and Anr. (MANU/SC/0005/1954 : AIR 1954 SC 349) in the following words:

> *8. The provision regarding the deposit of 25 per cent, by the purchaser other than the decree-holder is mandatory as the language of the rule suggests. The full amount of the purchase-money must be paid within fifteen days from the date of the sale but the decree-holder is entitled to the advantage of a set-off. The provision for payment is, however, mandatory... (Rule 85). If the payment is not made within the period of fifteen days, the Court has the discretion to forfeit the deposit, and there the discretion*

> *ends but the obligation of the Court to re-sell the property is imperative. A further consequence of non-payment is that the defaulting purchaser forfeits all claim to the property (Rule 86)...*

> *9....These provisions leave no doubt that unless the deposit and the payment are made as required by the mandatory provisions of the rules, there is no sale in the eye of law in favour of the defaulting purchaser and no right to own and possess the property accrues to him.*
>
> *XX XX XX XX*
>
> *11. Having examined the language of the relevant rules and the judicial decisions bearing upon the subject we are of opinion that the provisions of the rules requiring the deposit of 25 per cent. of the purchase-money immediately on the person being declared as a purchaser and the payment of the balance within 15 days of the sale are mandatory and upon noncompliance with these provisions there is no sale at all. The rules do not contemplate that there can be any sale in favour of a purchaser without depositing 25 per cent. of the purchase-money in the first instance and the balance within 15 days. When there is no sale within the contemplation of these rules, there can be no question of material irregularity in the conduct of the sale. Non-payment of the price on the part of the defaulting purchaser renders the sale proceedings as a complete nullity. The very fact that the Court is bound to resell the property in the event of a default shows that the previous proceedings for sale are completely wiped out as if they do not exist in the eye of law. We hold, therefore, that in the circumstances of the present case there was no sale and the purchasers acquired no rights at all.*

29. Relying in Manilal Mohanlal's case (supra) Rules 84, 85 and 86 of Order XXI were also held to be mandatory in Sardara Singh (Dead) by L.Rs. and Anr. v. Sardara Singh (Dead) and Ors. MANU/SC/0488/1990 : (1990) 4 SCC 90.

30. Similarly in Balram, son of Bhasa Ram v. Ilam Singh and Ors. MANU/SC/0716/1996 : (1996) 5 SCC 705 this Court reiterated the legal position in the following words:

> *7...it was clearly held [in Manilal Mohanlal] that Rule 85 being mandatory, its non-compliance renders the sale proceedings a complete nullity requiring the executing court to proceed under Rule 86 and property has to be resold unless the judgment-debtor satisfies the decree by making the payment before the resale. The argument that the executing court has inherent power to extend time on the ground of its own mistake was also expressly rejected...*

31. We may also refer to the decisions of this Court in Rao Mahmood Ahmed Khan v. Sh. Ranbir Singh and Ors. MANU/SC/0437/1995 : (1995) 4 SCC 275, Gangabai Gopaldas Mohata v. Fulchand and Ors. MANU/SC/0425/1997 : (1997) 10 SCC 387, Himadri Coke and Petro Ltd. v. Soneko Developers (P) Ltd. and Ors. (2005) 12 SCC 364 and Shilpa Shares and Securities and Ors. v. The National Co-operative

Bank Ltd. and Ors. MANU/SC/7612/2007 : (2007) 12 SCC 165, wherein the same position has been taken.

32. In the light of the above we see no reason to hold that Rules 57 and 58 of the Income Tax Rules are anything but mandatory in nature, so that a breach of the requirements under those Rules will render the auction non-est in the eyes of law."

13.14 The Tribunal is reminded of yet another judgment of the Hon'ble Apex Court rendered in the case titled ***"Rakesh Birani (D) through L.Rs. vs. Prem Narain Sehgal and Ors."*** reported in (2018) (5) SCC : 543 : AIR 2018 Supreme Court 2068 : MANU/SC/0320/2018 which declares the law that the initial 25% bid amount including EMD is required to be paid as per R.9(3) on the same day of sale of immovable property or not later than the next working day and as per R.9(4) the balance amount of purchase price is to be paid to the authorized officer on or before the 15th day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the secured creditor and the auction purchaser. The relevant passage of said judgment is reproduced hereunder :

"3. The brief facts in the present case are that the auction of the property was held on 14th February 2013. The Appellant was the highest bidder. He offered a bid of Rs. 38.30 lakhs and deposited a sum of Rs. 3,80,500/- as earnest money on 1st February 2013. He further deposited 25% of the auction amount of Rs. 5.80/- lakhs on 15th February 2013 and remaining amount of Rs. 28,69,500/- on 13th March 2013. The auction purchaser claimed that he was intimated regarding confirmation of sale by the Authorised Officer of the secured creditor by letter dated 27th February 2013. As soon as he was intimated of the confirmation, he further deposited the 75% of the auction amount on 13th March 2013 within 15 days of confirmation of sale.

4. .....

5. The main question that arises for our consideration in the appeal is, from which date the period of fifteen days would start for making the deposit of remaining 75 percent; from the date of communication of confirmation of sale or from the date of the auction. The aforesaid dates are not in dispute. .....

6. The submission raised by learned Counsel appearing on behalf of the Appellant was that Rule 9(4) of the 2002 Rules provided that the amount has to be deposited only after confirmation. Rule 9(2) also contemplates confirmation of the bid. Learned Counsel has also taken us through Rule 9(5) so as to contend that in default of the payment within the period mentioned in Sub-rule (4), the deposit made shall be forfeited. The forfeiture is only to follow as consequence of non-deposit of 75 percent of amount after confirmation of sale. Learned Counsel has also relied upon the provisions of Rule 9(6) to submit that after confirmation of sale, in case, terms of sale have been complied with only then sale certificate is issued.

In this case, sale certificate has been issued by the owner in favour of the auction purchaser. Thus, the High Court has erred in law in interpreting the Rule 9 of the Rules of 2002 to mean that date of the auction is also the date of its confirmation.

7. On the other hand, learned Counsel appearing on behalf of the borrower-Respondent No. 1 contends that it is apparent from Rule 9(2) that there is confirmation of sale as soon as highest bid is accepted by the authorised officer, within fifteen days, the deposit of 75% of the amount is to be made, failing which the only course is the forfeiture of the remaining 25% of the amount that has been deposited and the property has to be resold.

8. In order to comprehend the rival submissions, it is necessary to ponder as to intendment of Rule 9 of the 2002 Rules which deals with the time of sale, issues of sale certificate and delivery of possession, etc. Public notice of sale is to be published in the newspaper and only after thirty days thereafter, the sale of immovable property can take place. Under Rule 9(2) of the 2002 Rules, the sale is required to be confirmed in favour of the purchaser who has offered the highest sale price to the authorised officer and shall be subject to confirmation by the secured creditor. The proviso makes it clear that sale under the said Rule would be confirmed if the amount offered and the whole price is not less than the reserved price as specified in Rule 9(5). It is apparent that Rule 9(1) does not deal with the confirmation by the authorised officer. It only provides confirmation by the secured creditor. Rule 9(3) makes it clear that on every sale of immovable property, the purchaser on the same day or not later than next working day, has to make a deposit of twenty-five percent of the amount of the sale price, which is inclusive of earnest money deposited if any. Rule 9(4) makes it clear that balance amount of the purchase price payable shall be paid by the purchaser to the authorized officer on or before the fifteenth day of "confirmation of sale of the immovable property" or such extended period as may be agreed upon in writing between the purchaser and the secured creditor. Thus, Rule 9(2) makes it clear that after confirmation by the secured creditor the amount has to be deposited. Rule 9(3) also makes it clear that period of fifteen days has to be computed from the date of confirmation.

In this case, confirmation has been made and communicated on 27th February 2013 and within fifteen days thereof i.e. on 13th March 2013, the amount of Seventy-five percent had been deposited. Thereafter, sale certificate has been issued Under Rule 9(6). Rule 9(5) also makes it clear that in default of payment within the period mentioned in Sub-rule 9(4), the deposit shall be forfeited. There cannot be any forfeiture of the amount of 25 percent in deposit until and unless the sale is confirmed by the secured creditor and there is a default of payment of 75 percent of the amount. The interpretation made by the High Court thus cannot be accepted.

9. If we read the provisions otherwise then we find even before the confirmation of sale within fifteen days, the amount would be forfeited by the authorised officer who may decide not to confirm the sale that would be a result not contemplated in Rule 9(2), 9(4) and 9(5) which fortify our conclusion that it is only after the confirmation is made Under Rule 9(4) that amount has to be deposited and on failure to deposit the amount, twenty-five percent amount has to be forfeited and property has to be resold.

> *The provisions of Rule 9(6) also fortifies our conclusion, inasmuch as it is the expression used that on confirmation of sale by the secured creditor and "if the term of payment has been complied with" sale certificate is issued otherwise the forfeiture takes place, this compliance has to be only after the confirmation of sale and not before it. Thus, various provisions of Rule 9 makes it clear that interpretation made by Debts Recovery Tribunal and Debts Recovery Appellate Tribunal and as affirmed by the High Court cannot be said to be correct."*

In the given case, the initial bid amount of 25% came to be paid only on 31.3.2021 by way of Cheques delivered bearing the dates 31.03.2021 which is the 3rd working day from the date of auction or sale being 26.03.2021. Similarly, the balance of 75% bid amount has come to be paid on 20.04.2021 which is beyond the 15 days time from the date of confirmation of sale being 29.03.2021, even in the absence of a written agreement between the secured creditor bank and the auction purchaser for extension of time not exceeding three months from 29.03.2021. The receipt of such amounts in violation of the strict timelines provided in sub-rules (3) and (4) of Rule 9 of the Security Interest (Enforcement) Rules renders the auction sale held *non est* in the eye of law and the sale certificate issued eventually also a nullity. The Tribunal's such view stood fortified by the judgment of Hon'ble Apex Court rendered in the case of ***M.R.Vasumathi*** reproduced *supra.*

13.15 The applicant despite specifically alleging in her SA as to the 1st respondent bank having knocked down the secured asset for a low sale price on gross undervaluation with an intention to sell the property for personal gain to its already fixed known person who is the previous employee of the respondent bank without with any proper justification by misusing the power vested with them and by violating the provisions of SARFAESI Act and Rules, which according to her Ld. Counsel is in all its manifestations is an auction sale conducted, confirmed and concluded fraudulently and collusively, the 2nd respondent who is the purported ex-employee of the Bank had not cared to file his pleadings even by way of written statement and remained ex-parte in the proceedings which only fortifies the applicant's such contentions and allegations made in all vehemence and vigor . The 1st respondent's non-production of joint bid forms with the signatures and KYC norms of respondents 2 to 9 and the records of proceedings of auction sale directed to be produced also raises the doubt in the mind of the Tribunal as to whether the respondents 3 to

9 were only nominees of 2nd respondent and not joint bidders entitled for a sale certificate in their joint names eventually in the light of the judgments of Hon'ble High Court of Madras relied by the applicant as to the disentitlement of such nominees to have sale certificate issued in their favour in the absence of specific terms in sale notice or provision of law permitting issuance of sale certificate to such persons. The sale confirmation letter dated 29.3.2021 belatedly produced by the 1st respondent bank also is bereft of the names of respondents 3 to 9 except the name of the 2nd respondent who is admittedly its ex-employee. The Tribunal is therefore persuaded to return its finding that the respondents 3 to 9 were not entitled for sale certificates in their joint names should they be just the nominees of the 2nd respondent and not joint bidders in the impugned auction sale.

13.16 In view of the afore stated factual and legal position, the Tribunal arrives at an infallible conclusion as to the auction held on 26.03.2021 to have been vitiated in view of the violation of Rule 9 (3) and Rule 9 (4) of the relevant Rules as also for the reason of fraud and collusion that writs large and stood demonstrated pursuant to the documents filed by the 1st respondent itself in the nature of sale confirmation letter dated 29.03.2021, copies of 8 cheques dated 31.03.2021 towards 25% initial bid amount, deposit receipts bearing dates between 31.03.2021 & 28.04.2021 taken in the names of auction purchasers not supported by any banking law and practice, provision of law or any binding legal precedents. The sale certificate dated 23.04.2021 registered as Document No.3175/2021 at SRO Sooramangalam which being a consequential, final step in conclusion of an illegal auction sale conducted on 26.03.2021 in pursuance of illegal sale notice dated 08.03.2021 is as well liable to be set aside, fortified by yet another judgment of Hon'ble Apex Court rendered in the case titled ***"State of Punjab v Davindar Pal Singh"*** reported MANU/SC/1476/2011: 2011:INSC:839 : (2011) 14 SCC 770, which readeth thus:

> *"107. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact situation, the legal maxim sublato fundamento cadit opus meaning thereby that foundation being removed,*

structure/work falls, comes into play and applies on all scores in the present case."

14. **Point 4: *To what other reliefs, parties are entitled?***

14.1 Mr.Suresh, Ld. Counsel for the respondents 3, 5, 7 to 9 would submit that the auction sale held in their favour is a lawful one and the auction purchasers having shelled out their hard earned money to the tune of Rs.2,03,60,000/- for purchase of secured asset which is Rs.10,000/- over and above the Reserve Price cannot be contended to be one so purchased by them in a fraudulent and collusive sale held by the 1st respondent merely for the reason of one among the 8 purchasers being an ex-employee who has not any clout or say in the impugned e-auction sale. Ld. Counsel submitted that the auction bid form filed on their side bearing the date i.e., 25.03.2021 sets out the names of all eight respondents as the prospective purchasers which by itself would suffice for this Tribunal to hold that the sale certificate eventually issued in favour of such 8 persons is lawful, valid and binding on everyone including the applicant who had lost her right of redemption on the date of publication being 09.03.2021 in leading newspapers namely 'Dhina Thanthi' and 'The Times of India', seeing which the auction purchasers participated in the auction sale. Stating so, the Ld. Counsel pleaded to dismiss the SA with costs.

14.2 Ms.Bharathi, Ld. Counsel for the applicant would submit that the residential building comprising of ground and first floor measuring 2805 Sq. Ft. constructed over the secured asset worth about Rs.9.00 Lakhs even as per the disputed valuation report given by the 1st respondent's approved valuer also have been mercilessly demolished and the applicant who is a senior citizen along with her aged sisters were thrown to streets to snatch away their valuable property and benefiting respondents 2 to 9 including the ex-employee of 1st respondent bank in pursuance of the fraudulent and collusive sale held between them. The applicant having been thrown out of the property pursuant to demolition of her residential building also requires to be compensated by the respondents 1 to 9 jointly and severally would be her further submission while seeking to set aside the impugned sale notice dated 08.03.2021, the sale held on

26.03.2021 and the 1st respondent's consequential act of execution and registration of sale certificate dated 23.04.2021.

14.3 Mr. Deepak, Ld. Counsel for 1st Respondent Bank would submit that the challenge made to Sale Notice and Auction sale based on bald, vague and evasive pleas and unfounded grounds after the applicant's losing of her right of redemption under amended Section 13(8) without even making any murmur or whisper as to the 1st respondent's violation of Rule 9 of the relevant rules would not be sufficient to hold the otherwise lawfully held auction sale on 26.03.2021 to be in any respects illegal and invalid and sought to dismiss the SA with costs upon submitting that Respondents 2 to 9 who are bonafide purchasers in an auction sale is free to deal with secured asset and their act or action of demolishing of building if any to put it for its potential user and enjoyment cannot be found fault with and no malice can be attributed to 1st Respondent on that score as well. Ld. Counsel submitted that there being no pleading in the SA as to the 1st Respondent having sold the property fraudulently, collusively or mercilessly, such pleas that are made only in thin air and during the course of oral submissions may not be considered by the Tribunal to hold the lawfully held auction sale to be otherwise.

14.4. Needless to say that it is idle rather futile attempt on the part of the secured creditor bank or auction purchaser to ask this Tribunal to shut its eyes to the pleadings made and evidences adduced by themselves on the premise that the Applicant had not urged the said ground in unambiguous terms, which submission did not find favour with the Tribunal. The Tribunal has a statutory duty to ascertain the legality or otherwise of the measures and actions of secured creditor even in the absence of any specific pleadings and is fortified in its such view by the weighty observation of Hon'ble High Court of Telangana and Andhra Pradesh in the case of ***Sri Sai Annadatha Polymers and Ors. v. The Canara Bank*** reported in MANU/AP/0341/2018, which readeth thus :

> *"Reference was made by the bank to case law in support of its contention that it had followed the due procedure. It is true that the petitioners did not make any specific allegation in their writ affidavit in*

relation to violation of the mandatory provisions of the Rules of 2002 and more particularly, Rules 8(6) and 9(1) thereof in the context of the amended Section 13(8) of the SARFAESI Act. However, when a scheduled bank seeks to exercise the extraordinary and far-reaching power vesting in it under the provisions of the SARFAESI Act and the Rules framed thereunder, it must necessarily abide by and obey the due procedure prescribed thereunder. This Court, being the sentinel on the qui vive, would be quick to react in the event a secured creditor, such as the bank, seeks to exercise such power in violation of the mandatory procedure. Be it noted that a secured creditor, by virtue of the powers created by and vesting in it under the SARFAESI Act, is empowered to dispense with the ordinary legal process of taking recourse to the competent civil Court for foreclosure and unilaterally bring the secured/mortgaged assets to sale by simply adhering to the procedure prescribed thereunder. In the event a secured creditor fails to follow such binding procedure, it would adversely impact the borrower's right to property under Article 300A of the Constitution. Therefore, notwithstanding the fact that the writ petitioners did not specifically raise a ground in this regard, this Court is entitled, nay, bound to examine as to whether the bank followed the due procedure while issuing the notices in question."

Palpably the Tribunal has a duty cast upon it under sub-section (4) and (3) of Section 17 of the SARFAESI Act to declare the recourse to any of the measures referred to in Section 13(4) to be in accordance with law or as invalid upon examining facts adumbrated and the evidence produced by parties.

14.5. The demolition of residential building by the respondents 2 to 9 pursuant to 1st respondent's assuming of its physical possession of secured asset in pursuance of order obtained from the jurisdictional CJM Court under Section 14 of SARFAESI Act and handing over of such possession to the other respondents, is an act and action taken by the 1st respondent in pursuance of the illegal auction sale held on 26.03.2021 which stood vitiated by the fraudulent and collusive nature of such sale elaborated elsewhere in this order. The applicant having challenged the sale notice dated 08.03.2021 and auction sale eventually held on 26.03.2021 in present SA, the undue hurry shown by the 1st respondent bank as also the respondents 2 to 9 in dispossessing the applicant aged 75 years and her 2 other aged sisters who all are senior citizens without awaiting the judgment in the present SA may be justified to an extent of the 1st respondent's entitlement or ordained statutory duty to take and handover physical possession of secured asset to its auction purchasers who had shelled out their monies towards purchase price had such

auction sale been a lawfully conducted, confirmed and concluded one, which is not the case here.

14.6 On this Tribunal's returning of its finding as to the impugned sale notice dated 08.03.2021 suffering from illegality and legal infirmity rendering the auction sale held eventually on 26.03.2021 to be *non est,* illegal and invalid for violation of Rule 8 and Rule 9 legal mandates, the right of redemption which was alleged to have been lost on the date of publication of sale notice enured to the benefit of the applicant and her other 2 co-owners to be exercised by them till the bank's issuance of a fresh sale notice in terms of Rule 8 (6) & 9 (1) read with amended Section 13 (8) of SARFAESI Act and now that such a constitutional right rather a human right is still available to the applicant as per the judgments of Hon'ble Apex Court extracted out in the following paras, the 1st respondent bank as the secured creditor and the respondents 2 to 9 having been found to be auction purchasers of an illegal auction sale are bound to restore back vacant possession of the secured asset including the residential buildings comprising of ground floor and first floor of about 2805 Sq. Ft. which is valued by the applicant through her registered valuer's valuation report dated 27.01.2021 to be Rs.10.01 Lakhs, by the respondents 2 to 9 auction purchasers in their sale certificate dated 23.04.2021 to be Rs.15.00 Lakhs and by the 1st respondent bank in the valuation report dated 22.10.2020 of its approved valuer to be Rs.9.00 Lakhs. The demolition of such building having been done by the respondents 2 to 9 before even the 1st respondent bank would demonstrate the legality of its impugned sale notice and auction sale in the present SA, the Tribunal is not powerless to order *status quo ante* in the light of the judgment of Hon'ble Apex Court rendered in the case titled ***"Authorized Officer, Indian Overseas Bank and Ors. vs. Ashok Saw Mill"*** reported in MANU/SC/1219/2009, which readeth thus:

> *"24. We are unable to agree with or accept the submissions made on behalf of the appellants that the DRT had no jurisdiction to interfere with the action taken by the secured creditor after the stage contemplated under Section 13(4) of the Act. On the other hand, the law is otherwise and it contemplates that the action taken by a secured creditor in terms of Section 13(4) is open to scrutiny and cannot only be set aside but even the status quo ante can be restored by the DRT."*

14.7 The applicant having lost the physical possession of the secured asset in pursuance of an order passed by the jurisdictional CJM under section 14 of the SARFAESI Act and having not challenged her such loss of actual possession as also the 1st respondent's obtention of the impugned order by filing separate, appropriate Section 14 proceedings in her independent right, may not be entitled for the 1st respondent's handing over of physical possession of secured asset including the residential buildings valued at Rs.15.00 Lakhs which was in existence at the time of execution and registration of sale certificate dated 23.04.2021 by the 1st respondent to the rest of the respondents until the secured debt is repaid in full along with costs by the applicant in terms of amended Section 13 (8) of SARFAESI Act. Now that such right of redemption has enured to the benefit of applicant to be exercised by her anytime before publication of sale notice as ruled by Apex Court in ***"M.Rajendran and another v. M/s KPK Oils and Proteins India Private Ltd. and others***" and before confirmation of sale in terms of Rule 9 (2) as ruled by the said court in ***"Celir LLP Vs. Bafna Motors (Mumbai) Pvt. Ltd. and Ors",*** the 1st respondent bank and respondents 2 to 9 have the responsibility and statutory duty to restore back possession of secured asset including the residential building. The aforestated illegal, irresponsible rather unauthorized acts and actions of respondents 1 to 9 while the present SA is pending consideration of this Tribunal have resulted in the illegal demolition of residential buildings assessed at Rs.9.00 Lakhs by the 1st respondent and at Rs.15.00 Lakhs by all respondents which sum is jointly and severally liable to paid by respondents 1 to 9 by way of compensation to the applicant who had been physically dispossessed from the secured asset and thrown to streets. The Tribunal deems it just and expedient to order the said respondents to pay forthwith Rs.9.00 Lakhs as the least compensation due to their illegal act of demolition of residential building which has rendered the applicant and her 2 aged sisters homeless, roofless and shelterless and directs them to pay so by way of this order in exercise of powers conferred on it under Sections 17(7) and 19 of SARFAESI Act read with Section 19 (25) of RDB Act to sub-serve the ends of justice. The Tribunal orders so, fortified by the judgment of the Hon'ble High Court of

Kerala rendered in the case titled "***Mathai P.T. and Ors. vs. South Indian Bank Ltd. and Ors.***" reported in MANU/KE/0616/2015, wherein it is held thus:

> *"In Ext. P17 order of the DRAT that is impugned in the OP (DRT), the Appellate Tribunal finds that the DRT had no jurisdiction to pass Ext. P14 order inasmuch as the order was passed in excess of the jurisdiction conferred on the Presiding officer under Section 19 of the RDDBFI Act. The appellate tribunal finds that, in an OA filed by the bank, the presiding officer of the DRT was only to determine the debt and then leave it to the recovery officer to recover the money found due, in accordance with Section 25 of the said Act. Counsel for the petitioner would vehemently contend, and in my view rightly so, that the DRT was well within its powers to pass Ext. P14 order permitting a partial redemption of Item 12 property. Section 19(25) of the RDDBFI Act confers powers on the DRT to "make such orders and give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice". While there are a plethora of judgments that recognise the legal position that the powers of the DRT under the RDDBFI Act are wider than that of the CivilCourt(See: Industrial C. and I. Corporation v. Grapco Industries MANU/SC/0372/1999 : 1999 KHC 794 : 1999 (4) SCC 710 : 1999 (3) KLT SN 91 : 199(2) KLJ NOC 19 : 1999 ISJ (Banking) 567 : AIR 1999 SC 1975; ICICI Bank v. DRA Chennai MANU/TN/4261/2011 : 2012 KHC 2358: AIR 2012 Mad. 111), I note that division bench of the Gujarat High Court in Lalitkumar Jivabhai Thakkar v. SBP MANU/GJ/0419/2009 : 2010 KHC 6542 : AIR 2010 Guj. 4 interpreted the expression "ends of justice" used in Section 19(25) of the RDDBFI Act as meaning:*
>
> *"Not only justice to the parties but also to witnesses and others which may be inconvenienced. Tribunal is empowered to make such orders and give such directions, as may be necessary or expedient to give effect to the orders lawfully passed. Tribunal is also empowered to make such orders and issue such directions so as to secure the ends of justice. Tribunal is also empowered to make such orders and issue such directions so that the process of the tribunal be not abused."*

14.8 In the instant case, the Tribunal deemed it expedient and necessary and proceeded with its ordering payment of Rs.9.00 Lakhs as a just compensation by respondents 1 to 9 jointly and severally to the applicant so as to provide such or other further reliefs prayed for by the applicant and to which she is deemed entitled to so receive by way of

final order in the present SA as also to deter and dissuade the secured creditor and the auction purchasers of the respondents' sort from taking law unto their own hands and indulging in acts and actions not having the sanction or sanctity of the provisions of the SARFAESI Act and Rules.

14.9 The applicant, on this Tribunal's setting aside of the impugned sale notice, auction sale and the sale certificate issued eventually, could henceforth exercise her right of redemption embedded in amended Section 13(8) of SARFAESI Act until the 1st respondent's issuance, affixture, publication and uploading of fresh sale notice in accordance with law as ruled by the Hon'ble Apex Court in the case titled "***M.Rajendran and another v. M/s KPK Oils and Proteins India Private Ltd. and others"*** reported in CDJ 2025 (SC) 1452: MANU/SC/1299/2025 which is a judgment rendered recognizing the availability of right of redemption to be exercised by borrowers until the publication of sale notice is made in accordance with amended Section 13 (8) read with Rule 8 & 9 of the relevant rules, it reading thus:

> *"178. The word "publication" used in Section 13(8) of the SARFAESI Act, has to be understood to mean and include the service, publication in newspaper, and the affixation and uploading of the "notice of sale", as may be required under the SARFAESI Rules. Wherever, the chosen mode of sale requires the secured creditor to effectuate the "notice of sale" in any or all of the aforesaid manner, as the case may be, the expiry of thirty-days as required under Rule 9(1) from the day when the secured creditor complies with the requirement of giving the notice of sale, as per the applicable rules, would be the date on which the secured creditor is said to have validly published the "notice of sale" and it would be this date on which the right of redemption of the borrower would stand extinguished."*
>
> (emphasis mine)

14.10 The Hon'ble Apex Court in its yet another judgment rendered in the case titled ***Celir LLP v. Bafna Motors (Mumbai) Private Ltd"*** reported in CDJ 2023 (SC) 866: MANU/SC/1042/2023 recognized the vesting of indefeasible right on the auction purchasers only on confirmation of sale in terms of Rule 9 (2) of the relevant rules, it reading thus:

> *"105. We summarise our final conclusion as under:*
>
> *(i) The High Court was not justified in exercising its writ jurisdiction Under Article 226 of the Constitution more particularly when the borrowers had already availed the alternative remedy available to them Under Section 17 of the SARFAESI Act.*
>
> *(ii) The confirmation of sale by the Bank Under Rule 9(2) of the Rules of 2002 invests the successful auction purchaser with a vested right to obtain a certificate of sale of the immovable property in form given in appendix (V) to the Rules i.e., in accordance with Rule 9(6) of the SARFAESI."*

In the given case, the respondents 2 to 9 are not invested with a vested right to seek validation or sanctification of the sale certificate got executed and registered in their joint names as the factual and legal position deliberated *supra* persuaded this Tribunal to return its finding as to the respondents 1 to 9 having acted in aberration and violation of sub-rules (3) and (4) of Rule 9 of the Security Interest (Enforcement) Rules, rendering the certificate so issued in terms of Rule 9(6) as *non est,* illegal, invalid and ineffectual.

14.11 The Hon'ble Apex Court in the case titled ***"Ram Kishun and Ors. v. State of U.P. and Ors"*** reported in AIR 2012 SC 2288 which is a judgment rendered recognizing the right of property to be constitutional right and human right of the borrower required to be protected under Article 300A of Constitution of India held thus:

> *"Recovery of public dues:*
>
> *13. Undoubtedly, public money should be recovered and recovery should be made expeditiously. But it does not mean that the financial institutions which are concerned only with the recovery of their loans, may be permitted to behave like property dealers and be permitted further to dispose of the secured assets in any unreasonable or arbitrary manner in flagrant violation of the statutory provisions.*
>
> *14. A right to hold property is a constitutional right as well as a human right. A person cannot be deprived of his property except in accordance with the provisions of a statute. (Vide Lachhman Dass v. Jagat Ram [(2007) 10 SCC 448] and State of M.P. v. Narmada Bachao Andolan [(2011) 7 SCC 639 : (2011) 3 SCC (Civ) 875]) Thus, the condition precedent for taking away someone's property or disposing of the secured assets, is that the authority must ensure compliance with the statutory provisions.*
>
> *15. In case the property is disposed of by private treaty without adopting any other mode provided under the statutory rules, etc. there may be a possibility of collusion/fraud and even when public auction*

is held, the possibility of collusion among the bidders cannot be ruled out. In State of Orissa v. Harinarayan Jaiswal [(1972) 2 SCC 36 : AIR 1972 SC 1816] this Court held that a highest bidder in public auction cannot have a right to get the property or any privilege, unless the authority confirms the auction-sale, being fully satisfied that the property has fetched the appropriate price and there has been no collusion between the bidders.

16. In Haryana Financial Corpn. v. Jagdamba Oil Mills [(2002) 3 SCC 496 : AIR 2002 SC 834] this Court considered this aspect and while placing reliance upon its earlier judgment in SIPCOT v. Contromix (P) Ltd. [(1995) 4 SCC 595] held that : (SIPCOT case [(1995) 4 SCC 595] , SCC p. 601, para 12)

"12. In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold. This can be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer." (emphasis supplied)

17. Therefore, it becomes a legal obligation on the part of the authority that property be sold in such a manner that it may fetch the best price. Thus essential ingredients of such sale remain a correct valuation report and fixing the reserve price. In case proper valuation has not been made and the reserve price is fixed taking into consideration the inaccurate valuation report, the intending buyers may not come forward treating the property as not worth purchase by them, as a moneyed person or a big businessman may not like to involve himself in small sales/deals.

Valuation and reserve price:

18. The word "value" means intrinsic worth or cost or price for sale of a thing/property. (Vide Union of India v. Bombay Tyre International Ltd. [(1984) 1 SCC 467 : 1984 SCC (Tax) 17] and Gurbachan Singh v. Shivalak Rubber Industries [(1996) 2 SCC 626 : AIR 1996 SC 3057] .)

19. In State of U.P. v. Shiv Charan Sharma [1981 Supp SCC 85 : AIR 1981 SC 1722] this Court explained the meaning of "reserve price" explaining that it is the price with which the public auction starts and the auction bidders are not permitted to give bids below the said price i.e. the minimum bid at auction.

20. In Anil Kumar Srivastava v. State of U.P. [(2004) 8 SCC 671] this Court considered the scope of fixing the reserve price and placing reliance on its earlier judgment in Duncans Industries Ltd. v. State of U.P. [(2000) 1 SCC 633] , explained that reserve price limits the authority of the auctioneer. The concept of the reserve price is not synonymous with valuation of the property. These two terms operate in different spheres. An invitation to tender is not an offer. It is an attempt to ascertain whether an offer can be obtained with a margin. The valuation is a question of fact, it should be fixed on relevant material. The difference between the "valuation" and "reserve price" is that, fixation of an upset price may be an indication of the probable price which the property may fetch from the point of view of intending bidders. Fixation of the reserve price does not preclude the claimant from adducing proof that the land had been sold for a low price.

> *21. In Desh Bandhu Gupta v. N.L. Anand [(1994) 1 SCC 131] this Court held that in an auction-sale and in execution of the civil court's decree, the Court has to apply its mind to the need for furnishing the relevant material particulars in the sale proclamation and the records must indicate that there has been application of mind and principle of natural justice had been complied with. (See also Gajadhar Prasad v. Babu Bhakta Ratan [(1973) 2 SCC 629 : AIR 1973 SC 2593] , S.S. Dayananda v. K.S. Nagesh Rao [(1997) 4 SCC 451] , D.S. Chohan v. State Bank of Patiala [(1997) 10 SCC 65] and Gajraj Jain v. State of Bihar [(2004) 7 SCC 151] .)*
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> *22. In view of the above, it is evident that there must be an application of mind by the authority concerned while approving/accepting the report of the approved valuer and fixing the reserve price, as the failure to do so may cause substantial injury to the borrower/guarantor and that would amount to material irregularity and ultimately vitiate the subsequent proceedings."*

14.12 The Tribunal having returned its finding as to the sale notice dated 08.03.2021, auction sale held on 26.03.2021 and the sale certificate dated 23.04.2021 to be series of measures and actions suffering from illegality and legal infirmity besides being vitiated by fraud and collusion *inter se* the respondents, is reluctantly refraining from passing any further orders with regard to refund of auction purchase money paid by respondents 2 to 9 in favour of the 1st respondent bank which sum the secured creditor bank could not retain to its benefit having received the same in pursuance of an illegal auction sale and will have to restitute it to the persons entitled in accordance with law. It is not required to pass any positive direction or orders in a Section 17 application filed by an aggrieved borrower except setting aside the impugned sale notice, auction sale held thereto and the sale certificate issued consequently and ordering the respondents 1 to 9 jointly and severally to pay Rs.9.00 Lakhs as compensation in terms of Section 19 of SARFAESI Act within a fortnight from receipt of a copy of this order failing which the said sum is payable together with interest at 9% per annum from the date of dispossessing the applicant from the secured asset till realization, as payment as afore would alone be a just compensation if it may not be an adequate and appropriate compensation in consonance with the cost of construction of such building at the present prevalent rates.

15. **CONCLUSION**

Ergo, the Tribunal proceeds to allow the SA ordering as follows:

(i) The impugned sale notice dated 08.03.2021 and auction sale held on 26.03.2021 culminating in sale certificate dated 23.04.2021 registered as Document No.3175/2021 at SRO Suramangalam, are held to be illegal, invalid and are consequently set aside with directions to the Registry to intimate the cancellation of sale certificate by serving copy of this order to concerned SRO;

(ii) The respondents 1 to 9 are jointly and severally held liable to pay Rs.9.00 Lakhs as compensation to the applicant in terms of Section 19 of SARFAESI Act read with Section 17 (7) of SARFAESI Act and Section 19 (25) of RDB Act which sum shall be payable to the applicant by all the respondents jointly and severally within a fortnight from their receipt of the copy of this order failing which the said sum would be payable together with simple interest at 9% per annum from the date of applicant's dispossession from secured asset till realization;

(iii) Connected IAs if any stand closed; and

(iv) Considering the nature of case and the compensation ordered to be paid as afore, there is no further order as to the costs of present proceedings which the respective parties are to bear themselves.

16. Communicate copy of this order to both parties as provided in sub-rule (2) of R.11 of the Security Interest (Enforcement) Rules, 2002 r/w R.16 of the Debts Recovery Tribunal (Procedure) Rules, 1993 as amended from time to time.

Dictated to PA, directly typed on the Computer corrected and pronounced by me in the open Tribunal, this the 18th day of September, 2026.

Sd/-
[N. SOMASUNDAAR]
PRESIDING OFFICER

A P P E N D I X

Applicant's Documents

S.No.	Date	Description /Particulars of documents
1.	05.07.2019	Demand Notice
2.	24.10.2019	Possession Notice
3.	08.03.2021	Impugned E-Auction Sale Notice
4.	30.03.2021	Statement of Accounts.
5.	17.08.2026	Letter issued by 'THE HINDU' Newspaper, Salem
6.	27.01.2021	Valuation Report
7.	24.08.2026	Letter issued by "THE HINDU" Newspaper Salem Office
8.	30.08.2026	Encumbrance Certificate
9.	30.12.2020	Memorandum of Deposit of Title Deeds
10.	30.08.2026	Encumbrance Certificate
11.	22.09.2021	Memorandum of Deposit of Title Deeds

1st Respondent Bank's Documents

S.No.	Date	Description/Particulars of documents
1.	05.07.2019	Demand Notice under Section 13(2) of SARFAESI Act with Acknowledgement
2.	24.10.2019	Possession Notice issued Section 13(4) of SARFAESI Act with Acknowledgement
3.		Paper Publication of Possession Notice (2)
4.		Photos affixed for Possession Notice
5.	15.12.2020	E-Auction Sale Notice with Receipt and Paper Publication
6.	22.12.2020	Valuation Report
7.	25.01.2021	E-Auction Sale Notice with Receipt and Paper publication
8.	08.03.2021	E-Auction Sale Notice with Acknowledgement
9.		Paper publication of E-Auction Sale Notice(2)
10.		Photos affixing E-Auction Sale Notice
11.	23.04.2021	Sale Certificate in Doc.No.3175/2021.
12.	11.08.2026	Letter issued by 'The Times of India'
13.	17.08.2026	Letter issued by 'The Times of India'
14.	29.03.2021	Sale Confirmation
15.	31.03.2021	Cheques issued by the Auction Purchasers
16.		Deposit Receipts by the Auction Purchasers
17.		Statement of Accounts of Kathirvel
18.		Statement of Accounts of Borrowers

Respondents' 3, 5, 7 to 9 Documents

S.No.	Date	Description/Particulars of documents
1.	25.03.2021	Process compliance form
2.	15.09.2026	Current and Savings account statement of Kathirvel

Sd/-
PRESIDING OFFICER

IN THE DEBTS RECOVERY
TRIBUNAL, COIMBATORE

PRESENT: SRI N SOMASUNDAAR, B.A.; B.L.
PRESIDING OFFICER

Dated the 18th September 2026

S.A. No.288 of 2021

BETWEEN

A.LOGANAYAKI,
Wife of S.Arumugam,
Plot No.13, LIC Nagar,
Moolapalayam, Erode - 638 002.
..... Applicant

-Vs-

THE AUTHORISED OFFICER,
Canara Bank,
Sholavandan Branch,
Valayalkara Street,
Madurai – 624 214.

And 8 Others. ..... Respondents

FINAL ORDER