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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.09.2026

Pronounced on : 30.09.2026

CORAM

THE HONOURABLE MR JUSTICE ABDUL QUDDHOSE
AND
THE HONOURABLE MR.JUSTICE R.RAJESH VIVEKANANTHAN

WA No. 3585 of 2023 and CMP Nos.29397 of 2023 & 14687 of 2025

Case QR

CNR:{HCMA012196362023}

Indian Overseas Bank
Asset Recovery Management Branch,
Represented by its Chief Manager

Appellant(s)

Vs

1. The Assistant Commissioner Of
Central Excise And Service Tax
Salem I Division, No. 21 Theerthamali
Arcade Veerapandiyar Nagar, Salem
636 004

2.Hi-Tech Minerals Industries Covai
Pvt.Ltd (In Liquidation)
Represented by its official Liquidator
High court, Corporate Bhawan (UTI
building) 2nd Floor No. 24 Rajaji Salai,
Chennai 01

3.The Sub Registrar
Omalur Salem District Tamil Nadu

4.M/s. SKM Animal Feeds And Foods
India Private Limited,
Rep by Managing Director,

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Dr.M.Chandra Sekar
R4 IS IMPLEADED, VIDE ORDER OF COURT DATED 17/04/2024 MADE IN CMP.NO.2650 OF 2024 IN WA.NO.3585 OF 2023 (RMDJ AND MSQJ)

Respondent(s)

PRAYER

To set aside the order dated 5.9.2023 passed in WP. No. 15014 of 2022.

For Appellant(s): Mr.M.L.Ganesh

For Respondent(s): Mr.K.Umesh Rao,
Senior Standing Counsel For R1
Ms.B.Ambili,
Deputy Official Liquidator for R2
Mr.K.Maheshwaran,
Additional Government Pleader for R3
Mr.Sharath Chandran for R4

JUDGMENT

(Judgment of the Court was made by Abdul Quddhose J.)

The primary issue that arises for consideration in this writ appeal is when a sale certificate is issued by the Authorised Officer of the appellant/bank as per the provisions of the SARFAESI Act and its Rules disclosing the known encumbrances over the property, whether the appellant/bank has the legal right to demand the registration department for the removal of the said encumbrances from the encumbrance certificate for the subject property without settling the dues payable under those encumbrances.

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2.Apart from the primary issue to be adjudicated by us, there are other ancillary issues to be adjudicated in this writ appeal. Those ancillary issues are as follows:

a)Whether the appellant/bank has now become *functus officio* after the issuance of the sale certificate in favour of the fourth respondent and after registration of the same with the registration department and whether a writ petition filed by the appellant/bank is maintainable?

b)Whether Section 26E of the SARFAESI Act, Section 31-B of the Recovery of Debts and Bankruptcy Act read with Section 35 of the SARFAESI Act grants priority to the secured creditors over government dues, taxes, cesses and other statutory claims?

c)Whether the statutory first charge contemplated under Section 11E of the Central Excise Act (now repealed) which is *pari materia* with Section 142 A of the Customs Act is subject to the priority of the secured creditor under the Recovery of Debts and Bankruptcy Act, 1993 and the SARFAESI Act, 2002?

d)Whether the impugned order of the learned Single Judge is contrary to the law laid down in the following decisions:

i)UTI Bank Limited vs. Deputy Commissioner of Central Excise reported in AIR 2007 Mad 118 (Full Bench decision of the Madras High Court);

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ii)Punjab National Bank vs. Union of India reported in (2022) 7 SCC 260 (decision of the Hon'ble Supreme Court);

iii)Dena Bank vs. Bhikhabhai Prabhudas Parekh reported in 2000 (5) SCC 694 (Supreme Court) and

iv)Assistant Commissioner of Customs (Bonds) v. M/s.Annam Steels Pvt. Ltd rendered in W.A. No.3249 of 2019, dated 27.06.2022 (Division Bench of this Court)

3.Only if this Court decides to favour the appellant/bank in the primary issue, referred to supra, the adjudication by us over the ancillary issues will have a bearing on the final result in this writ appeal. On the other hand, if we hold that when the sale certificate discloses the known encumbrances, the question of removal of those encumbrances from the encumbrance certificate maintained by the registration department without settling the dues of the said encumbrances is untenable, the adjudication of the ancillary issues by us will be only of academic interest which will not have any bearing on the final result in this writ appeal. Anyway, in this writ appeal, we will comprehensively deal with all the issues that arise for consideration and adjudicate the same, whether they are of consequence to the final result or not since the same has been raised by the respective counsels in this writ appeal.

4.The learned Single Judge, under the impugned order dated 05.09.2023 passed in W.P.No.15014 of 2022 dismissed the writ petition filed by the

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appellant/bank seeking for a mandamus to direct the first respondent to remove the attachment effected on 03.12.2014 as mentioned in the encumbrance certificate with the office of the third respondent in respect of the secured property belonging to the second respondent so as to enable the appellant/bank to register the sale certificate/sale deed in favour of the auction purchaser (fourth respondent) by giving the following reasons:

a) When the auction purchaser is aware of the encumbrances, they have to necessarily discharge the encumbrances;

b) The caveat emptor principle was applied for rendering the finding that the auction purchaser having been made aware of the encumbrances, it is its obligation to discharge the encumbrances;

c) The appellant/bank filed the writ petition so as to protect the interest of a third party (fourth respondent), which has purchased the property, knowing fully well about the encumbrances;

d) Once the appellant/bank has auctioned the property and has issued the sale certificate in favour of the fourth respondent under Rule 9, sub-rules (6) to (10) of the Security Interest (Enforcement) Rules, 2002 by mentioning the list of known encumbrances, then such a sale certificate is not a sale certificate issued free of all encumbrances;

e) Only after lifting the attachment favouring the first respondent, necessary entries can be made in the encumbrance certificate to remove the encumbrances from the encumbrance certificate for the subject property;

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f) The secured creditors have no right to cause infringement of the rights of the other non-secured creditors and statutory creditors when the sale certificate discloses the names of those non-secured creditors and statutory creditors;

g) The adherence of the Security Interest (Enforcement) Rules, 2002 scrupulously is of paramount importance in order to protect the other encumbrances and any violation by the secured creditors would disentitle them seeking the relief of direction to remove the encumbrances from the encumbrance certificate for the subject property;

h) The writ petition filed by the appellant/bank is premature and the encumbrances sought to be removed by the appellant cannot be directed to be removed since such removal would result in misguiding the public at large.

5.Mr.M.L.Ganesh, learned counsel for the appellant/bank would submit as follows:

[A]The attachment by the first respondent is subsequent to the mortgage created by the second respondent/borrower with the appellant/bank and is also subsequent to the initiation of SARFAESI proceedings against the second respondent by the appellant/bank;

[B]The impugned order of the learned Single Judge defeats the statutory priority conferred upon the secured creditors under

[a]Section 35 and 26E of the SARFAESI Act;

[b] Section 31B of the Recovery of Debts and Bankruptcy Act;

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[c] Section 142A of the Customs Act and

[d] Section 11E of the Central Excise Act.

[C]The learned Single Judge failed to follow the following the binding decisions rendered by this Court as well as by the Hon'ble Supreme Court:

i)UTI Bank Ltd. v. Deputy Commissioner of Central Excise reported in AIR 2007 Mad 118 (Full Bench decision of this Court);

ii)Punjab National Bank v. Union of India reported in (2022) 7 SCC 260 Supreme Court decision);

iii)Dena Bank v. Bhikhabhai Prabhudas Parekh reported in 2000 (5) SCC 694 (Supreme Court decision);

iv)Assistant Commissioner of Customs (Bonds) v. M/s.Annam Steels Pvt. Ltd rendered in W.A. No.3249 of 2019, dated 27.06.2022 (Division Bench of this Court)

[D]Learned Single Judge had erred in ignoring Section 13(7) of the SARFAESI Act, which prescribes the order of appropriation of the sale proceeds.

6.Mr.Sharath Chandran, learned counsel for the fourth respondent/auction purchaser, who is sailing with the learned counsel for the appellant, in addition to the submissions made by the learned counsel for the appellant would submit as follows:

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a)The sale certificate has been registered in favour of the fourth respondent by the office of the third respondent on 23.06.2022 and therefore, the contention of the first respondent that the writ petition filed by the appellant is premature is untenable;

b)The contention of the first respondent that the removal of the encumbrance entry made by the first respondent can only be achieved by a writ of certiorari is misconceived. In support of his said contention, he relied upon the following authorities:

i)M/s.HDFC Bank Limited vs. The Sub Registrar and others rendered in W.P. (MD) No.1855 of 2024 dated 24.06.2025;

ii)Indian Bank v. CTO rendered in W.P. No.31572 of 2022 dated (Division Bench of this Court)

iii)Kotak Mahindra Bank v. Sub Registrar rendered in W.P. No.30293 of 2023 (First Bench of this Court)

c) As a matter of principle, certiorari lies against the record and an entry in an encumbrance certificate is not a record;

d) Rule 9 (9) of the Security Interest (Enforcement) Rules, 2002 makes it clear that the authorised officer of the bank shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in Rule 9(7) and therefore, the duty of the appellant/bank still subsists enabling it to maintain the instant appeal;

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e) The auction purchaser need not file an independent appeal and can support the appellant/bank on one or more grounds to seek for setting aside the impugned order passed by the learned Single Judge;

f) The auction sale notice dated 09.03.2022 issued by the appellant/bank under Rule 9 (8) of the Security Interest (Enforcement) Rules, 2002 makes it clear that the appellant's/bank's dues have priority over the statutory dues and hence the contention of the first respondent will amount to estoppel against law. The estoppel against law principle would also apply in equal force to the contention of the first respondent that the encumbrance cannot be removed since the appellant/bank has admitted the same and since the fourth respondent is aware of the known encumbrances;

g)The property was brought to auction through the sale notice dated 09.03.2022. The confirmation of sale was made on 04.04.2022 and the sale certificate under Rule 9(8) was issued on 23.06.2022. Since all the aforesaid actions took place only after the insertion of Section 26-E of the SARFAESI Act, Section 26-E is applicable to the case of the fourth respondent.

h)Section 31-B of the RDB Act, 1993 applies to SARFAESI sale. Section 2(l)(la) of the RDB Act, which defines 'secured creditor' makes it clear that the secured creditor under RDB Act shall have the same meaning as assigned to it under the SARFAESI Act. In support of the said contention, he relied upon the judgment of the Division Bench of the Gujarat High Court in the case of

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***Kalupur Commercial Co-operative Bank* v. *State of Gujarat*, reported in 2019 SCC Online Guj 1892 reported in (2019) 156 SCC 168;**

i)The stand taken by the first respondent that the appellant/bank will have priority only in cases where they have already initiated proceedings under the RDB Act by filing an Original Application against the second respondent and will have priority under the SARFAESI Act is unsustainable. In support of his contention that Section 31-B of the RDB Act also applies to the SARFAESI sale, he also relied upon the following judgments:

i)Assistant Commissioner (CT) v. Indian Overseas Bank reported in AIR 2017 Mad 67 (Full Bench);

ii)The Division Bench judgment of the Madras High Court in the case of Indian Overseas Bank v. Sub Registrar, Tuticorin Keelur, Tuticorin District (W.P. No.14618 of 2018 dated 18.12.2018);

iii)Kotak Mahindra Bank v. Sub Registrar (W.P. No.30293 of 2023 (Division Bench judgment of the Madras High Court;

iv)Aachi Masala Foods Pvt. Ltd. v. Edelwiss Assets Reconstruction Co. Ltd. Reported in 2020 SCC Online Mad 2017;

v)Tamil Nadu Co-operative Marketing Federation Ltd. v. Asset Reconstruction Co. (India) Ltd. Reported in 2020 (3) CTC 141;

vi)Assistant Commissioner of Customs (Bonds) v.Annam Steels Private Limited reported in 2022 (5) MLJ 337.

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j)Section 82 of the GST Act, 2017 will not yield to Section 26-E of SARFAESI Act and Section 31-B of the RDB Act, 1993. In support of the said contention, he relied upon the Division Bench judgment of the Andhra Pradesh High Court in the case of ***State Bank of India v. Deputy Commercial Tax Officer*** **reported in 2023 SCC OnLine TS 2302;**

k)The auction purchaser/fourth respondent is not liable to pay the dues of the known encumbrances. The mandamus can be issued to remove the attachment which is reflected in the encumbrance certificate. In support of his contention, he relied upon the following authorities:

i)M/s.HDFC Bank Limited vs. The Sub Registrar and others rendered in W.P. (MD) No.1855 of 2024 dated 24.06.2025;

ii)Indian Bank v. CTO rendered in W.P. No.31572 of 2022 dated (Division Bench of this Court)

iii)Kotak Mahindra Bank v. Sub Registrar rendered in W.P. No.30293 of 2023 (First Bench of this Court)

l)The attachment reflected in the encumbrance certificate is different from the encumbrance, referred to in the SARFAESI Rules. An order of attachment does not create an encumbrance. When Section 142-A of the Customs Act makes it clear that the first charge of the Customs Department is subject to the rights of the secured creditor under the SARFAESI Act, the only remedy for the first respondent is to proceed against the sale proceeds if any available with the appellant/bank, after adjustment of its dues. In support of the said contention, he

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relies upon the Division Bench judgment of the Bombay High Court in ***Bhushan Ramesh Bramgankar v. State of Maharashtra reported in 2024 SCC OnLine Bom 1215***.

7.Mr.K.Umesh Rao, learned Senior Standing Counsel for the first respondent would submit as follows:

a) The alleged cause of action for filing the writ petition by the appellant/bank does not subsist any more since during the pendency of the writ appeal, the sale certificate issued in favour of the fourth respondent has been registered by the office of the third respondent which has also been recorded in this Court's order dated 29.11.2024;

b) The writ of mandamus is not maintainable as the appellant/bank is seeking for the quashing of a particular attachment entry reflected in the encumbrance certificate for the subject property and the appellant/bank ought to have filed a writ of certiorarified mandamus;

c) The appellant/bank, after the issuance of the sale certificate and after the registration of the same with the office of the third respondent, has now become functus officio and therefore, the writ petition as well as this writ appeal are not maintainable;

d) The appellant/bank and the auction purchaser are estopped from asking for removal of the encumbrance reflected in the encumbrance certificate for the subject property as the e-auction notice as well as the statutory form as prescribed

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under Appendix V of the SARFAESI Rules makes it clear that the property was sold by the authorised officer of the appellant/bank only with the known encumbrances. The fourth respondent, knowing fully well about the encumbrances, cannot now seek for removal of the encumbrances, without settling the dues payable under the known encumbrances;

e) The procedure for selling a secured asset as enshrined under Rule 9 (7) of the Security Interest (Enforcement) Rules, 2002 makes it clear that the fourth respondent will have to discharge the dues payable towards the known encumbrances as disclosed in the sale certificate and only after discharge of the same, the property sold to the fourth respondent will become free of all the encumbrances;

f) Section 26 E of the SARFAESI Act is only prospective in nature. Since the mortgage created by the second respondent in favour of the appellant/bank is of the year 2007, Section 26 E of the SARFAESI Act does not get attracted as it came into force only in the year 2020;

g) The attachment by the first respondent was in the year 2014 under the powers enshrined under Section 11 E of the Central Excise Act. As of the year 2014, when the first respondent had encumbered the property, Section 26 E of the SARFAESI Act was not in operation and therefore, Section 26 E of the SARFAESI Act has no applicability to the facts and circumstances of this case. In support of his contention that Section 26 E of the SARFAESI Act is only prospective in nature, he relied upon the judgment of the Hon'ble Supreme Court

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in ***Punjab & Sind Bank vs. The State of Punjab and others reported in (2023) 15 SCR 903;***

h) In addition to the aforesaid submission that Section 26 E of the SARFAESI Act does not apply to the facts and circumstances of the present case is concerned, no documentary evidence has been placed on record by the appellant/bank to prove that the security interest has been registered with CERSAI and hence, Section 26 E of the SARFAESI Act does not get attracted;

i) Since Section 26 E of the SARFAESI Act is only prospective in nature, Section 26 E of the SARFAESI Act and Section 31 B of the RDB Act have no bearing on the adjudication of this dispute;

j) The provisions of the Central Excise Act namely, section 11 E is not applicable when Chapter IV-A of the SARFAESI Act came into force, the sale notice, e-auction and sale confirmation took place;

k) The attachment and the encumbrance are not different. The argument made by the fourth respondent's counsel that attachment and encumbrance are different amounts to fraud and totally misconceived. He drew the attention of this Court to the following authorities:

i) ***National Textile Corporation and others v. State of Maharashtra and others reported in 1977 3 SCC 4;***

*ii)****AI Champdany Industries Limited v. The Official Liquidator and others reported in (2009) 4 SCC 486;***

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l)He relied upon Section 100 of the Transfer of Property Act, 1882 which defines "charges", to support his contention that there is no difference between encumbrance and attachment.

Discussion:

8.Before analysing the issues for consideration in this writ appeal, it would be better if we point out the undisputed facts in order to appreciate better the reasons given by us for arriving at the conclusion in this writ appeal. The following are the undisputed facts:

a) The sale notice as well as the sale certificate issued by the authorised officer of the appellant/bank disclose the known encumbrances over the subject property which includes the encumbrance created in favour of the first respondent/department;

b) Neither the appellant/bank nor the fourth respondent have discharged the dues payable to the first respondent as reflected in the encumbrance certificate for the subject property;

c) The first respondent had purchased the property through an auction conducted by the authorised officer of the appellant/bank, knowing fully well about the known encumbrances which includes the encumbrance created in favour of the first respondent;

d) Even prior to the filing of the writ petition, the sale certificate issued in favour of the fourth respondent, which discloses the known encumbrances and

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which includes the encumbrance in favour of the first respondent department, has also been registered by the office of the third respondent;

e) The terms and conditions of the sale as finalised by the authorised officer of the appellant/bank disclose that there are known encumbrances over the subject property which includes the encumbrance of the first respondent. The terms and conditions of the sale have made it clear that the property is being sold on "as is where is", "as is what is" and "whatever there is" basis. It has also been made clear that the purchaser has to clear the statutory liability if any and the appellant/bank assumes no responsibility in this regard. The terms and conditions of sale also stipulate that it is for the purchaser to make their own independent enquiries at their own costs before participating in the auction.

9.As indicated in the opening part of our order, the primary issue to be decided by us in this writ appeal is that when the sale certificate is issued by the authorised officer of the appellant/bank as per the provisions of the SARFAESI Act and its rules disclosing the known encumbrances of the property, whether the appellant/bank has a legal right to demand the registration department for the removal of the said encumbrances from the encumbrance certificate for the subject property without settling the dues payable to the respective creditors under those encumbrances.

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10.The sale notice issued under Appendix IV-A and sale certificate issued under Appendix V read with Rule 9(7) of the Security Interest (Enforcement Rules), 2002 is based on the principle of caveat venditor (let the seller beware), which is opposite to caveat emptor (buyer beware). Under the principle of caveat venditor, banks and secured creditors have a positive statutory and legal obligation to fully ascertain, disclose and clear any known encumbrances or material defects relating to the property before issuing the sale certificate. In other words, the bank/secured creditors cannot hide any encumbrance over the property known to them and an existing encumbrance will have to be disclosed in the sale notice as well as in the sale certificate in order to put the auction purchaser on notice about the known encumbrances over the property. The caveat emptor principle also comes into play and the auction purchaser must also be equally vigilant in knowing about the encumbrances subject to which they will be able to purchase the property. Ignorance of the mandatory requirement to comply with the SARFAESI Rules, more particularly, Rule 9(7) will not excuse the auction purchaser from depositing the amount payable towards the dues of the known encumbrances.

11.The sale certificate issued by the authorised officer of the appellant/ bank in favour of the fourth respondent disclosing the known encumbrances which includes the encumbrance of the first respondent is reproduced hereunder:

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SALE CERTIFICATE
APPENDIX V [Rule 9(6)]
(For immovable property)

Whereas, The undersigned Shri R Balu, S/o. Shri P. Ramiah, (Roll No.34976, Mobile No.9443128021) being the Authorised Officer of Indian Overseas Bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and in exercise of powers conferred under Section 13 read with Rule 8 & 9 of the Security Interest (Enforcement) Rules, 2002 sold on behalf of Indian Overseas Bank in favour of **M/s SKM Animal Feeds and Foods (India) Private Limited**, (CIN: U01533TZ1981001076, PAN No AACCS9493E, GST No 33AACCS9493E1Z6), having its Registered Officeat S.F. No 613, Chavadipalayam Road,Nanjaiuthukuli Post, Modakurichi TK, Erode District, Tamil Nadu, PIN - 638104 represented by its Managing Director Dr M Chandrasekar, S/o Shri SKM. Maeilanandhan, (PAN No ACWPC2733N, AADHAAR No. 3991 9663 4637), residing at No.123 Gandhiji Street-2, Karur Bye Pass Road, Kollampalayam, Erode, Tamil Nadu - 638002,the immovable property shown in the Schedule below secured in favour of the Indian Overseas Bank by **M/s. HI-Tech Mineral Industries(Covai) Private Ltd.**,(under liquidation) (CIN No. U27104TZ2003P7C010556) having its Registered Office at Swathi Courts, 112-B, Kattoor Street, Coimbatore-641 037, towards the financial facility viz. Cash Credit, Term loan etc.offered by Indian Overseas Bank.

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issued original sale certificate

SKM ANIMAL FEEDS AND FOODS (INDIA) PRIVATE LIMITED.

M. Chandrasekar.

Dr.M. CHANDRASEKAR
MANAGING DIRECTOR

कृते इण्डियन ओवरसीज बैंक
For Indian Overseas Bank

अधिकृत अधिकारी Authorised Officer

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The scheduled property was registered as Doc.No.566/2004 dated: 30.09.2003 at Omalur, SRO and MOD 3389/2007 dated 25.05.2007 at Omalur SRO.

The undersigned acknowledge the receipt in full of Rs.39,20,30,110/-(Rupees Thirty Nine Crore Twenty Lakh Thirty Thousand One Hundred Ten only) towards sale consideration and a sum of Rs.39,20,310/-(Rupees Thirty Nine Lakh Twenty Thousand Three Hundred Ten only) towards Income Tax under Section 194 IA since remitted vide tax paid Challan Serial No.50526 dated 22.06.2022 and handed over the delivery and possession of the Scheduled property. The sale of the Scheduled property was made free from all encumbrances known to the Secured Creditor except listed below on deposit of the money demanded by the undersigned.

SCHEDULE OF THE IMMOVABLE PROPERTY

SCHEDULE-I

DESCRIPTION OF THE MOVABLE/IMMOVABLE PROPERTIES

Property Belonging toM/s. Hi-Tech Mineral Industries (Coval) Pvt. Ltd.

[Under Liquidation]
(Property ID:IOBA15510003)

Item No. I.LAND.

In Salem District, OmalurTaluk,ChellapillaiKuttai Village, in S.F.No. 40/2B measuring 0.23 acres, S.F.No. 40/3B measuring 0.69 acres, S.F.No. 40/2D measuring 0.73 acres, S.F.No. 41/1A measuring 0.64 acres, S.F.No. 41/1B measuring 0.70 acres, S.F.No. 41/1C measuring 1.33 acres, S.F.No. 41/2A measuring 0.94 acres, S.F.No. 41/2B measuring 0.82 acres, S.F.No. 41/2C measuring 1.25 acres, S.F.No. 41/2D measuring 1.27 acres, S.F.No. 41/2E measuring 1.99 acres, S.F.No. 44/1 measuring 2.00 acres, S.F.No. 171/1A measuring 1.22 acres, S.F.No 197/2,3 measuring 2.05 acres, S.F.No 197/4 measuring 2.48 acres, S.F.No. 198 Full measuring 4.56 acres(Sub Divided into 198/1A, 198/1B, 198/1C, 198/1D, 198/1E, 198/1F, 198/1G, 198/1H, 198/1I, 198/2A, 198/2B, 198/3A, 198/3B, 198/4, 198/5, 198/6, 198/7, 198/8, 198/9, 198/10, 198/11,198/12, 198/13 measuring 4.56 acres), in KottaGounden Patti Village, in S.F.Nos. 46, 48/1, 48/2, 49/1, 49/2, 49/3, 50/1, 50/2, 51/1 & 51/3 measuring 23.12 acres thus totaling to 46.02 acres together.

Item No. II- BUILDING.

All the Buildings constructed on the factory premises of M/s. Hi-Tech Mineral Industries (Coval) Pvt. Ltd. situated at ChellapillaiKuttai Village and KottaGounden Patti Village, OmalurTaluk, Salem.

Known Encumbrance if any:

1. Commercial Tax Department, Omalur for Rs 1,14,23,179/-
2. Central Excise and Service Tax, Salem Division for Rs30,24,15,487/-
3. TNEB has claimed a sum of Rs 10,35,65,898/- for power consumption to the company

For Indian Overseas Bank

Date: 23.06.2022
Place: Coimbatore

Authorised Officer,
Indian Overseas Bank

Received original sale certificate.

SKM ANIMAL FEEDS AND FOODS (INDIA) PRIVATE LIMITED.

M. Chandra Sekhar

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12. The sale of the property by the secured creditor under the SARFAESI Act as per the terms and conditions of sale on "as is where is", "as is what is" and "whatever there is" basis does not grant the secured creditor absolute protection or serve as a license to conceal the known liabilities or defects. Under Rules 8 & 9 of the Security Interest (Enforcement) Rules, 2002, the appellant/ bank must act in a transparent manner. The main purpose of the bank's obligation to disclose known encumbrances is to ensure transparency, fairness and a clear understanding of the property's legal status for the auction purchaser. It ensures that an auction purchaser knows what financial or legal claims exist over the property so that they can make an informed choice before participating in the auction;

13.In the instant case, the relevant rules, namely Rules 9 (6) to 9 (10) that are required to be considered for adjudicating this writ appeal are reproduced hereunder:

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

[(1)…….

(2)…….

(3)…….

(4)…….

(5)…….

(6)On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorized officer exercising

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the power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the Form given in Appendix V to these rules.

(7)Where the immovable property sold is subject to any encumbrances, the authorized officer may, if he thinks fit, allow the purchaser to deposit with him the money required to discharge the encumbrances and any interest due thereon together with such additional amount that may be sufficient to meet the contingencies or further cost, expenses and interest as may be determined by him.

(8)On such deposit of money for discharge of the encumbrances, the authorized officer may issue or cause the purchaser to issue notices to the persons interested in or entitled to the money deposited with him and take steps to make the payment accordingly.

(9)The authorized officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7) above.

(10)The certificate of sale issued under sub-rule (6) shall specifically mention that whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not.'

14.Rule 9(6) makes it clear that once the sale of an immovable property is confirmed by the secured creditor and the auction purchaser complies with all the terms of payment, the authorized bank officer must issue a formal Certificate of Sale in favor of the auction purchaser using the exact format provided in Appendix V of the Security Interest (Enforcement Rules).

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15.Rule 9 (7) deals with handling encumbrances over an immovable property that is being sold through an auction conducted by the authorised officer of the bank. If the sold property has existing encumbrances, the authorised officer allows the auction purchaser to deposit enough money with the bank (secured creditor) to clear those liabilities. The money deposited must cover the amount required to discharge the encumbrances, any interest due on them and extra funds to manage contingencies, legal costs, expenses or further interest calculated by the authorised officer. Therefore, it is clear that sale in favour of the successful auction purchaser is only subject to the known encumbrances as disclosed in the sale certificate.

16.Rule 9(7) of the Security Interest (Enforcement) Rules makes it clear that the successful auction purchaser will have to deposit the dues towards the known encumbrances reflected in the sale certificate.

17.Rule 9(8) of the Security Interest (Enforcement) Rules governs the handling and discharge of encumbrances when the immovable asset is sold by a bank or financial institution. On the deposit of money by the auction purchaser towards the discharge of encumbrances, the authorised officer of the bank must issue or cause the auction purchaser to issue notices to the persons interested in or entitled to the deposit money. The authorised officer is then required to take necessary steps to disburse the funds to the rightful claimants.

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18.Rule 9(9) of the Security Interest (Enforcement) Rules requires the authorised officer of the bank to deliver the sold immovable property to the auction purchaser free from any encumbrance known to the secured creditor, on deposit of money as specified in sub-rule (7).

19.Rule 9(10) of the Security Interest (Enforcement) Rules also makes it clear that the certificate of sale issued under Sub-rule (6) shall specifically mention whether the purchaser has purchased the immovable or secured asset free from any known encumbrance to the secured creditor or not.

20.Both the learned counsel for the appellant as well as the learned counsel for the fourth respondent, during the course of their respective arguments were primarily harping upon the priority of the appellant bank in securing its dues over that of the first respondent department by relying upon Section 11E of the repealed Central Excise Act, Section 142A of the Customs Act and the over riding powers given under the newly introduced Section 26E of the SARFAESI Act and the newly introduced Section 31B of the Recovery of Debts and Bankruptcy Act, read with Section 35 of the SARFAESI Act.

21.Even though the aforesaid sections grant priority to the secured creditors over government dues, taxes, cesses and other statutory claims, they do not stipulate that the registration department will have to remove the known

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encumbrances as reflected in the sale notice and the sale certificate issued in favour of the fourth respondent once a sale certificate is issued by the authorised officer of the bank disclosing the known encumbrances over the property. Admittedly, the fourth respondent has purchased the property knowing fully well about the encumbrance standing in favour of the first respondent department.

22.The appellant will have to first satisfy the requirements of Rules 9 (6) to 9 (10) of the Security Interest (Enforcement) Rules and only thereafter can they seek for the removal of the encumbrances reflected in the encumbrance certificate for the subject property after settling the dues payable towards those encumbrances. When it is an undisputed fact that the property was purchased by the fourth respondent in the auction conducted by the authorised officer of the appellant bank knowing fully well about the encumbrance standing in the name of the first respondent department, the question of directing the registration department to remove the encumbrance will not arise, as it would tantamount to violation of Rules 9 (6) to 9 (10) of the Security Interest (Enforcement) Rules.

23.When the fourth respondent has not discharged the statutory dues payable to the first respondent as reflected in the encumbrance certificate, a direction cannot be issued by this Court to the registration department to remove the said encumbrance, as the fourth respondent had purchased the property

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knowing fully well about the said encumbrance. If the prayer sought for by the appellant in the writ petition, namely the removal of the encumbrance reflected in the encumbrance certificate is granted, it will indirectly amount to setting aside the disclosures made in the sale notice as well as the sale certificate about the known encumbrances, which includes the encumbrance in favour of the first respondent. What the appellant or the fourth respondent could not have legally achieved directly, namely to sell the property free of encumbrances, they are attempting to craftily achieve the said objective by filing the writ petition and this writ appeal which is not legally permissible.

24.The learned Single Judge, under the impugned order, has rightly dismissed the writ petition which is only in accordance with the SARFAESI Act and its Rules, more particularly, Rule 9 (6) to Rule 9 (10). The terms and conditions of sale as approved by the authorised officer of the appellant bank also stipulate that the auction sale conducted is only subject to the known encumbrances reflected in the sale notice as well as in the sale certificate. With eyes wide open, the fourth respondent had participated in the auction, knowing fully well about the known encumbrances, which includes the encumbrance in favour of the first respondent department and therefore, the question of removing the encumbrance of the first respondent from the encumbrance certificate does not arise at all as it is legally unsustainable.

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25.The learned counsel for the appellant as well as the learned counsel for the fourth respondent relied upon various decisions, which include the following judgments:

i)UTI Bank Limited vs. Deputy Commissioner of Central Excise (Full Bench decision of the Madras High Court);

ii)Punjab National Bank vs. Union of India (decision of the Hon'ble Supreme Court);

iii)Dena Bank vs. Bhikhabhai Prabhudas Parek (Supreme Court) and

iv)Assistant Commissioner of Customs (Bonds) vs. M/s.Annam Steels Private Limited (Division Bench Judgment of the Madras High Court)

in support of their contention that the dues of the secured creditors prevail over the dues of government departments (Crown debts). Though from the aforesaid decisions, it is clear that the appellant's/bank's dues rank ahead of the dues of the first respondent, the appellant and the fourth respondent will have to first satisfy us as to whether they have complied with Rules 9 (6) to 9 (10) of the Security Interest (Enforcement) Rules, which are mandatory. Only after discharging the known encumbrances as disclosed in the sale notice and the sale certificate, the appellant/bank and the fourth respondent can seek for a direction from this Court for removal of the known encumbrances as reflected in the encumbrance certificate issued by the third respondent's office.

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26.As observed earlier, the fourth respondent having failed to discharge the statutory dues of the first respondent and having purchased the property knowing fully well about the said encumbrance, the relief sought for in the writ petition for the removal of the encumbrance cannot be granted and the learned Single Judge of this Court has rightly refused to grant the said relief by dismissing the writ petition.

27.The question of estoppel against law against the first respondent does not arise in the instant case as claimed by the learned counsel for the fourth respondent during the course of his submissions, as the fourth respondent has not chosen to discharge the statutory dues of the first respondent as reflected in the encumbrance certificate and only after discharge of the said dues, the fourth respondent will be able to purchase the property free of the encumbrance standing in the name of the first respondent as per Rules 9 (6) to 9 (10) of the Security Interest (Enforcement) Rules. Therefore, there is no estoppel against law committed by the first respondent as claimed by the appellant and the fourth respondent in this writ appeal.

28.Therefore, the primary issue that arose for consideration in this writ appeal which was narrated in the opening paragraphs of this judgment is held against the appellant and the fourth respondent by holding that the direction as sought for in the writ petition, namely to direct the registration department to

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remove the encumbrance standing in favour of the first respondent, cannot be granted as it would tantamount to violation of the mandatory statutory procedure as prescribed under Rule 9 (6) to 9 (10) of the Security Interest (Enforcement) Rules. As indicated in the opening part of this judgment, the ancillary issues that arise for consideration in this writ appeal as recorded earlier have now become purely of academic interest though the answers given by us can be used as a precedent in the near future.

29.The law is now well settled by the various decisions placed on record before us that the registered secured creditors have priority over Central, State and local government dues, including taxes and revenues. Neither Sections 26E and 35 of the SARFAESI Act nor Section 31-B of the RDB Act overrides the applicability of Rule 9(6) to (10) of the Security Interest (Enforcement) Rules, 2002, which makes it obligatory for the secured creditors to disclose all known encumbrances and makes it obligatory for the successful auction purchaser to deposit the amount due and payable towards the known encumbrances. Section 26E of the SARFAESI Act explicitly states that after registering the security interest, a secured creditor's debt must be paid in priority over all other dues and all revenues, taxes, cesses and rates payable to the government, but it does not say that the mandatory rules namely, Rules 9(6) to 9(10) of the Security Interest (Enforcement) Rules need not be followed. The law is well settled by various

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decisions of the Constitutional Courts that the SARFAESI Rules have to be strictly followed and they are mandatory.

30.Similarly, Section 31-B of the RDB Act only confers overriding powers on banks and financial institutions to realise their secured debts ahead of government dues. Both the aforesaid provisions do not override Rule 9 (6) to (10) of the Security Interest (Enforcement) Rules, 2002 as referred to supra. Neither the appellant nor the fourth respondent have failed to produce any legal authority before this Court to substantiate that Section 26E of SARFAESI Act, 2002 and Section 31-B of the RDB Act, 1993 overrides Rules 9(6) to 9(10) of the Security Interest (Enforcement) Rules, 2002.

31.The learned counsel for the appellant and the fourth respondent were only harping upon Section 26E of the SARFAESI Act 2002 and Section 31-B of the RDB Act, 1993 as well as Section 142-A of the Customs Act and Section 11-E of the repealed Central Excise Act and were only highlighting the primacy of a secured creditor to recover its dues ahead of Central, State and local government dues, including taxes and revenues.

32.The proposition that the secured creditor enjoys priority ahead of the dues payable towards government debts is well settled, but it is also well settled that Rule 9 (6) to (10) of the Security Interest (Enforcement) Rules, 2002 are

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mandatory and therefore, Rule 9(6) to (10) of the Security Interest (Enforcement) Rules, 2002 have to be strictly adhered to. Section 26E of the SARFAESI Act, 2002 and Section 31-B of the RDB Act, 1993 as well as Section 142-A of the Customs Act and Section 11-E of the repealed Central Excise Act have no bearing for the facts of the instant case as admittedly, the requirement of the fourth respondent to deposit the dues of the known encumbrances reflected in the encumbrance certificate which is mandatory as per Rule 9 (7) of the Security Interest (Enforcement) Rules, 2002 has not been complied with. Only thereafter, the question of issuance of a sale certificate disclosing nil encumbrance may arise.

33.When the fourth respondent has not deposited the dues of the first respondent as reflected in the encumbrance certificate for the subject property, the question of directing the third respondent to remove the encumbrance reflected in the encumbrance certificate does not arise. Section 26E of the SARFAESI Act 2002 and Section 31-B of the RDB Act, 1993 as well as Section 142-A of the Customs Act and Section 11-E of the repealed Central Excise Act cannot be interpreted in isolation without taking into consideration Rule 9, sub-rules (6) to (10) of the Security Interest (Enforcement) Rules, 2002 which are mandatory. The context and preamble of the provisions applicable to the facts of the case have to be examined to form the correct legal opinion.

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34.The learned Single Judge has rightly relied upon Rule 9 (6) to Rule (10) of the Security Interest (Enforcement) Rules, 2002 for dismissing the writ petition. We do not find any infirmity in the reasoning given by the learned Single Judge for dismissing the writ petition.

35.The appellant/bank will become functus officio only after the debt payable to the appellant/bank is fully recovered and the appellant's/bank's statutory right to hold or further enforce security against the remaining properties/assets of the borrower completely ceases.

36.In the case on hand, the appellant/bank has not recovered its entire dues and the legal proceedings initiated by them against the borrower has not ceased completely, as the proceedings initiated before the Debts Recovery Tribunal by the appellant/bank seeking recovery of the outstanding dues of the appellant/bank is still pending. Therefore, the contention of the first respondent that the appellant/bank has become functus officio and therefore not entitled to file the writ petition is untenable at this stage.

37.The encumbrance places a burden or claim on the property by operation of law or a court order which prevents the owner from selling, transferring or creating further mortgages or charges on the property. It appears directly on an encumbrance certificate issued by the Sub Registrar, giving notice to the public and potential buyer that the title is restricted. The attachment effected by the first respondent over the property, which is reflected in the encumbrance certificate issued by the third respondent prevents the owner from selling,

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transferring or creating further mortgages or charges on the property. By virtue of Section 100 of the Transfer of Property Act, the right of alienation/further encumbrances is also restricted in view of the attachment effected by the first respondent over the property. The attachment of the property by the first respondent satisfies the ingredients required for treating the said attachment as an encumbrance. Therefore, necessarily, the fourth respondent, having purchased the property knowing fully well about the encumbrances standing in the name of the first respondent, cannot escape its liablity to pay the dues of the first respondent as per the provisions of Rule 9(7) of the Security Interest (Enforcement) Rules. Therefore, the contention of the appellant/bank as well as the fourth respondent that the attachment effected by the first respondent for non-payment of its dues by the second respondent is not an encumbrance is rejected by us.

38.For the foregoing reasons, we do not find any merit in this writ appeal as there is no infirmity in the impugned order of the learned Single Judge. Accordingly, this writ appeal is dismissed. Consequently, connected CMPs are closed. No costs.

(ABDUL QUDDHOSE J.)(R.RAJESH VIVEKANANTHAN J.)
30-09-2026

vga
Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No

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To

1.The Assistant Commissioner Of
Central Excise And Service Tax
Salem I Division, No. 21 Theerthamali
Arcade Veerapandiyar Nagar, Salem
636 004

2.The Sub Registrar
Omalur Salem District Tamil Nadu

2026:MHC:4031

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Order QR

ABDUL QUDDHOSE J.
AND
R.RAJESH
VIVEKANANTHAN J.

vga

Pre-delivery judgment in
WA No. 3585 of 2023 and
CMP Nos.29397 of 2023
& 14687 of 2025

30-09-2026