2023:DHC:5750

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

\+ **W.P.(C) 17417/2022 & CM APPL 55452/2022**

Between: -

DIAMOND ENTERTAINMENT TECHNOLOGIES
PVT. LTD.
THROUGH ITS DIRECTOR
R/O B-47, GREATER KAILASH,
PART- I, NEW DELHI-110048 .....PETITIONER NO.1

SPG PROPERTIES PVT. LTD.
THROUGH ITS DIRECTOR
R/O B-47, GREATER KAILASH,
G/F & B/F, NEW DELHI-110048 .....PETITIONER NO.2

L B ELECTRONICS LIMITED
THROUGH ITS DIRECTOR
R/O B-47, GREATER KAILASH
PART-I, NEW DELHI-110048 .....PETITIONER NO.3

KAWALJIT KAUR OBEROI
D/O DHARSHAN SINGH BHASIN
R/O B-47, GREATER KAILASH
PART-I, NEW DELH-110048 .....PETITIONER NO.4

INDERJIT SINGH OBEROI
S/O S. RAJA SINGH
R/O B-47, GREATER KAILASH

PART-I, NEW DELHI–110048 .....PETITIONER NO.5

OBEROI CARS PVT. LTD.
THROUGH ITS DIRECTOR
R/O C-12, SECTOR-1, NOIDA,
U.P. 201301 .....PETITIONER NO.6

(Through: Mr. Praveen Kumar and Mr. Nitesh Tiwari, Advocates)

VERSUS

RELIGARE FINVEST LIMITED
THROUGH ITS AUTHORIZED OFFICER
MR. LOKESH KUMAR MITTAL
R/O P-14, 45/90, P-BLOCK,
FIRST FLOOR, CONNAUGHT PLACE,
NEW DELHI-110001

CORPORATE OFFICE AT:
SALCON RASVILAS,
5TH FLOOR, DISTRICT CENTRE,
SAKET, NEW DELHI-110017 …….RESPONDENT

(Through: Mr. Sanjeev Singh, Ms. Ridhi Pahuja and Ms. Taniya Bansal, Advocates)

% Pronounced on: 14.08.2023

J U D G M E N T

1. The petitioners in the instant writ petition seek to challenge the order dated 02.12.2022 passed by the learned Chief Metropolitan Magistrate (CMM), South East District, Saket District Court in MCA No.521/2021 under Section 14 of the Securitisation and

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter as 'SARFAESI Act').

2. Learned counsel appearing on behalf of the petitioners submits that the impugned order is an abuse of the process of law, at the instance of respondent which is a Non-Banking Financial Corporation (hereinafter as 'NBFC') engaged in providing financial assistance to the public at large. According to him, there was already a stay operating with respect to the mortgaged property *i.e., B-47, Greater Kailash Part-1, New Delhi-110048* in Civil Suit (OS) 280/2021. He also submits that the said stay was continued from time to time and was very much in existence on the date of passing of the order on 02.12.2022. He further submits that the impugned order is passed on an application for extension of the earlier order dated 06.12.2021, which is in direct contravention of the mandate of Section 14 of the SARFAESI Act.

3. Learned counsel for the petitioners submits that, in all fairness, the respondent, while filing an application before the concerned CMM, ought to have disclosed the correct facts as were obtained on the date of filing of the application alongwith the requisite affidavit as required under first proviso of sub-Section (1) of Section 14 of the SARFAESI Act. He also submits that the timeline prescribed under second and third proviso of Section 14(1) of the SARFAESI Act is also breached in the instant case.

4. According to him, if an application is filed before the Magistrate under Section 14(1) of the SARFAESI Act, the Magistrate has to record his satisfaction on the contents of the affidavit and has to

pass an appropriate order for the purpose of taking possession of the secured assets within a period of 30 days from the date of the application. He, therefore, states that in any case, if no order is passed by the learned CMM within a period of 30 days for the reasons beyond his control, he may pass the order, after recording reasons in writing, within such further period but the same should not exceed beyond 60 days in aggregate.

5. Learned counsel for the petitioners also submits that in the instant case, the respondent earlier filed an application before learned CMM on 01.12.2021 which was disposed of in terms of order dated 06.12.2021. Once that application was disposed of, the concerned CMM had become *functus officio*. He could not have passed further orders on the said application for extension in the absence of there being specific affidavit with respect to the disclosure required under first proviso of Section 14(1) of the SARFAESI Act. He further states that since the application filed by the respondent was disposed of by the learned CMM on 06.12.2021, therefore, the disposed of application cannot be revived on the pretext of extension of the order.

6. According to him, the respondent should have filed second application and if such an application is filed, the disclosure as required under the first proviso to Section 14(1) of the SARFAESI Act, was supposed to be made by the respondent. The same would have taken care of the interest of the borrower ensuring that no prejudice is caused to the borrower, as at the stage of Section 14 of the SARFAESI Act, the borrower is not supposed to be heard by the learned CMM. Since the proceedings under Section 14 of the

SARFAESI Act are carried out at the instance of the respondent and in the absence of the borrower, the requirement under the law has to be followed in its letter and spirit.

7. Learned counsel for the petitioners also submits that in the instant case, the borrower, while challenging the action of the respondent, filed an application under Section 17 of the SARFAESI Act before the DRT. The said application came to be dismissed *vide* order dated 10.01.2022 by the said DRT for being premature.

8. He then submits that the petitioners do not have any remedy for redressal of their genuine grievance and therefore, this court in exercise of power under Article 226 of the Constitution of India must interfere to ensure that the borrower does not suffer on account of illegal action of the respondent.

9. According to him, in the instant case, once the respondent itself has resorted to the remedy under Section 13(4) of the SARFAESI Act, therefore, at a later stage, the respondent cannot directly invoke Section 14 of the SARFAESI Act after withdrawing the notice as per Section 13 of the Act, while taking away the accrued right in favour of the petitioners. He also submits that such an action of the respondent, takes away the right of resorting to Section 17 proceedings against the respondent at the instance of the petitioners.

10. Learned counsel has also placed reliance on the decision in the case of ***Standard Chartered Bank v. V. Noble Kumar & Ors.***[1]**,** to submit that the requirement of filing of the affidavit has certain

[1] (2013) 9 SCC 620

sanctity in law and if the affidavit is not filed in accordance with the mandate of law, the same violates the statutory principle enshrined in the SARFAESI Act. He also submits that not only the rule of law settled in the case of ***Noble Kumar (supra)*** but even the subsequent decision in the case of ***M/s Hindon Forge Pvt. Ltd. v. The State of Uttar Pradesh***[2] recognised the principle that the remedy under Section 17 of the SARFAESI Act would only be available once the proceedings under Section 13(4) of the Act are resorted to. He, therefore, submits that in the instant case, such a stage had earlier arrived, however, by circumventing the said procedure, the right accrued in favour of the petitioners has been taken away.

11. The submissions made by learned counsel for the petitioners are vehemently opposed by learned counsel for the respondent. He submits that the instant writ petition is not maintainable in view of the law laid down by the Hon'ble Supreme Court in various decisions. According to him, the petitioners have to wait till measures under Section 13(4) or Section 14 of the SARFAESI Act are taken by the respondent. The SARFAESI Act is a complete Code in itself and there is adequate remedy available to deal with the grievances raised by the borrower.

12. Learned counsel for the respondent further submits that there is no bar under Section 13 of the SARFAESI Act to file an application for extension of the earlier order passed under Section 14 of the SARFAESI Act. If the impugned order dated 02.12.2022 is perused, the same would indicate that the learned CMM has categorically

[2] (2019) 2 SCC 198

recorded that there was a petition filed by the borrower before this court. Since the said petition came to be dismissed, therefore, the earlier order of appointment of the Receiver dated 06.12.2021 deserves to be extended. Accordingly, on payment of additional fees of Rs.15,000/- to the court Receiver, the learned CMM extended the earlier order dated 06.12.2021 and while doing so, the learned CMM has maintained all other conditions of the said order. According to learned counsel, if at all the petitioners have to raise any grievance, it can only be raised against the order dated 06.12.2021 and in no case, the order of extension dated 02.12.2022 can be challenged without assailing the order dated 06.12.2021.

13. Learned counsel also explains the order dated 06.12.2021 to indicate that an appropriate application under Section 14 of the SARFAESI Act was filed by the respondent alongwith necessary affidavit as required under the law. He also states that the notice under Section 13(4) of the SARFAESI Act dated 22.09.2021 was withdrawn before this court in W.P.(C) 13043/2021. According to him, without resorting to the provisions of Section 13(4) of the SARFAESI Act, the respondent is well within its jurisdiction to invoke Section 14 of the SARFAESI Act. He, therefore, states that the submissions made by learned counsel for the petitioners that a right was created once Section 13(4) notice was given, has no substance. According to him, the notice under Section 13(4) of the SARFAESI Act is not a right in favour of the borrower but the same is one of the measures under Section 13 of the SARFAESI Act. It is up to the concerned secured creditor to decide as to whether Section 13(4) recourse has to be taken or Section 14 of the SARFAESI Act

will have to be invoked.

14. Learned counsel for the respondent has placed reliance on the decisions of the Hon'ble Supreme Court in the cases of ***Mardia Chemicals Ltd. and Ors. v. Union of India and Ors.***[3]***, United Bank of India v. Satyawati Tondon & Ors.***[4]***, V. Noble Kumar (supra), M/s Hindon Forge Pvt. Ltd. (supra), Authorized Officer, State Bank of Travancore and Anr. v. Mathew K.C.***[5]***, C. Bright v. District Collector and Ors.***[6]***, M/s Phoenix ARC Private Limited v. Vishwa Bharati Vidya Mandir & Ors.***[7] ***Varimadugu Obi Reddy v. B. Sreenivasalu and Ors.***[8]***, South Indian Bank Ltd. and Ors. v. Naveen Mathew Philip and Anr.***[9]**.** He has further placed reliance on the decisions of this court in the cases of ***M/s M. Sons Gems N Jewellery v. Reserve Bank Of India & Ors.***[10]***, Dhanesh Gupta and Ors. v. Reserve Bank of India & Anr.***[11]***, Madhu Bhandari v. Piramal Capital & Housing Finance Ltd. through its Authorized Representative Having its Branch Office and Ors.***[12]***, Ashima Goyal v. Reserve Bank of India and Ors.***[13] and ***Vanya Jain v. Ambit Finvest Pvt. Ltd.***[14] and the order of the Division Bench of this court against the order dated 28.03.2023, passed in LPA No. 458/2023 titled as ***Ashima Goyal v. Reserve Bank of India*** decided on 23.05.2023.

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[3] (2004) 4 SCC 311
[4] (2010) 8 SCC 110
[5] (2018) 3 SCC 85
[6] (2021) 2 SCC 392
[7] (2022) SCC OnLine 44
[8] 2022 SCC OnLine SC 1593
[9] (2023) SCC OnLine SC 435
[10] 2022:DHC:4289-DB
[11] 2023 SCC OnLine Del. 90
[12] 2023 SCC OnLine Del 1186
[13] 2023:DHC:2371
[14] 2023:DHC:5265

15. In addition, learned counsel for the respondent also states that in the instant case, if the proceedings are carefully perused, the same would indicate that the primary ground relied upon by the petitioners appears to be based on the order of *status-quo* in Civil Suit (OS) 280/2021. He, therefore, states that in terms of order dated 09.01.2023, this court directed the parties to seek appropriate clarification from the concerned court, where the civil suit was pending. He, then states that *vide* order dated 13.01.2023, it has come on record that the concerned court has already clarified the position that there is no interim order *qua* the respondent. He has referred to the order dated 13.01.2023 passed by this court in Civil Suit (OS) 280/2021 to clarify the aforesaid position. He has placed on record a copy of order dated 19.07.2023 passed by the sole Arbitrator, wherein according to him, almost similar arguments were found to be unsustainable.

16. I have heard learned counsel for the parties and have perused the record.

17. The facts of the case indicate that on 10.01.2012, the respondent sanctioned loan of Rs.10 crores against the property in question. The said loan account was restructured and supplementary agreement was executed along with fresh payment schedule on 27.01.2014. It appears that one Mrs. Surjeet Kaur, sister of one of the Directors of the petitioner no.1-company, filed a suit for partition against some of the defendants (one of the petitioners) before this court, which was registered as Civil Suit (OS) 280/2021. *Vide* order dated 07.06.2021, an order of *status-quo* was passed directing the parties to maintain *status-quo* in respect of the title possession of the suit property till the

next date of hearing. On account of default in the repayment, the account was classified as non-performing asset (NPA) on 30.06.2021.

18. On 12.07.2021, the respondent being a secured creditor, demanded the outstanding balance of Rs.5,72,24,893.47/- along with interest and charges accruing to the loan account after 02.07.2021 under Section 13(2) of the SARFAESI Act. On 12.09.2021, reply was sent by the petitioners raising several objections under Section 13(3A) of the SARFAESI Act. On 22.09.2021, constructive possession of the mortgaged property was taken by the respondent in terms of Section 13(4) of the SARFAESI Act read with Rule 8 (1) & (2) of the Security Interest Enforcement Rules, 2002.

19. The petitioners filed a writ petition being W.P. (C) 13043/2021, challenging the notices of the respondent under Sections 13(2) and 13(4) of the SARFAESI Act. On 18.11.2021, learned counsel who appeared on behalf of the respondent in W.P.(C) 13043/2021 stated that the respondent withdrew the notice dated 22.09.2021 and will take such further action under the SARFAESI Act as it may be legally entitled to. This court directed that in the event, if the respondent takes further proceedings against the petitioners, it would be open for them to challenge the same in accordance with law. Accordingly, the petition was disposed of.

20. On 01.12.2021 *(Annexure R-8)*, an application was filed under Section 14 of the SARFAESI Act before the learned CMM along with necessary affidavit. On 06.12.2021, the learned CMM passed the order *(Annexure P-10)* allowing the said application, while appointing the Receiver to take over the possession of the mortgaged property. The

petitioners filed a Securitization Application before the DRT which was registered as no. 423/2021. *Vide* order dated 10.01.2022, the DRT dismissed the said Securitization Application as the same was found to be premature as possession was not lost, neither constructive nor physical, therefore, it was held to be not maintainable.

21. It is to be noted that on 25.11.2022, an application on behalf of respondent was filed for extension of the term of Receiver appointed by the learned CMM in terms of the order dated 06.12.2021 for taking and forwarding the physical possession of the secured assets, i.e. property in dispute. The said application came to be allowed *vide* order dated 02.12.2022. It is also to be noted that *vide* order dated 13.01.2023, this court in Civil Suit (OS) no. 280/2021 specifically clarified that there was no order restraining the respondent from initiating proceedings in accordance with law.

22. In view of the aforesaid, it is discernible that on the date of passing of the order by learned CMM i.e., 06.12.2021 when the Receiver was appointed, there was no action pending under Section 13(4) of the SARFAESI Act as the same was already withdrawn in terms of the order passed by this court in W.P.(C) 13043/2021.

23. A perusal of the order dated 18.11.2021 in W.P.(C)13043/2021 clearly shows that the respondent was granted liberty to take such further action under the SARFAESI Act as may be entitled to in law.

24. The petitioners, no doubt, were given liberty to challenge the same as and when such an action is taken. However, the respondent was legally entitled to proceed as per law. For the sake of clarity, the

order dated 18.11.2021 passed by this court in W.P.(C)13043/2021 read as under:-

> *"1. The Petitioners have filed this petition under Article 226 of the Constitution of India challenging the proceedings taken by the respondent- Religare Finvest Ltd under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest act,2002 ["SARFAESI Act"], in respect of the petitioner's property (B-47, Greater Kailash Part-I New Delhi-110048) ["the property"]. In particular, the petitioners seek setting aside of the notice under Section 13 (2) of the SARFAESI Act issued by the respondent on 12.07.2021, and the notice under Section 13(4) of the SARFAESI Act dated 22.09.2021, by which the respondent took symbolic possession of the property.*
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> *2. At the very outset, Mr. Sanjeev Singh, learned counsel for the respondent who appears on advance notice, states that the respondent withdraws the notice dated 22.09.2021, and will take such further actions under the SARFAESI Act, as it may be entitled to in law.*
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> *3. Mr. Praveen Kumar Sharma, learned counsel for the petitioners, submits that against the notice dated 12.07.2021, the petitioners have filed objections under Section 13(3A) of the SARFAESI Act on 12.09.2021. According to him, the objections have not been properly disposed of although the respondent has issued a communication dated 24.09.2021 purporting to reject the same. As the respondent is withdrawing notice dated 22.09.2021, I do not see any reason to entertain the present writ petition at this stage. In the event the respondent takes further proceedings against the petitioners, it will be open to them to challenge the same in accordance with law.*
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> *4. The writ petition, along with pending application, stands disposed of in these terms."*

25. Legally speaking, once the notice dated 22.09.2021 was withdrawn, the right, if any, accrued in favour of the petitioners to take up proceedings under Section 17 of the SARFAESI Act, stands extinguished. The petitioners, therefore, cannot have any possible objection against the respondent for withdrawing notice dated

22.09.2021 and for proceeding under Section 14 of the SARFAESI Act.

26. The action of the respondent is in conformity with the decision of the Hon'ble Supreme Court in the cases of ***Noble Kumar (supra)*** and ***M/s Hindon Forge Pvt. Ltd. (supra).*** It would be up to the secured creditor to decide as to whether the secured creditor would resort to Section 13(4) measure or would straightforwardly adopt measures as per Section 14 of the SARFAESI Act. The borrower or the guarantor, as the case may be, apparently does not have any say to suggest any particular mode or manner in which the recourse can be taken by the secured creditor under the provisions of the SARFAESI Act.

27. The said position is reiterated in paragraph nos. 27 and 28 of ***Noble Kumar (supra),*** which reads as under:-

> *27. The "appeal" under Section 17 is available to the borrower against any measure taken under Section 13(4). Taking possession of the secured asset is only one of the measures that can be taken by the secured creditor. Depending upon the nature of the secured asset and the terms and conditions of the security agreement, measures other than taking the possession of the secured asset are possible under Section 13(4). Alienating the asset either by lease or sale, etc. and appointing a person to manage the secured asset are some of those possible measures. On the other hand, Section 14 authorises the Magistrate only to take possession of the property and forward the asset along with the connected documents to the borrower.* ***Therefore, the borrower is always entitled to prefer an "appeal" under Section 17 after the possession of the secured asset is handed over to the secured creditor.*** *Section 13(4)(a) declares that the secured creditor may take possession of the secured assets. It does not specify whether such a possession is to be obtained directly by the secured creditor or by resorting to the procedure under Section 14.* ***We are of the opinion that by whatever manner the secured creditor obtains possession either through the process contemplated under Section 14 or without resorting to such a***

process obtaining of the possession of a secured asset is always a measure against which a remedy under Section 17 is available.

28. It can be noticed from the language of the proviso to Section 13(3-A) and the language of Section 17 that an "appeal" under ***Section 17 is available to the borrower only after losing possession of the secured asset. The employment of the words "aggrieved by … taken by the secured creditor" (emphasis supplied) in Section 17(1) clearly indicates the appeal under Section 17 is available to the borrower only after losing possession of the property. To set at naught any doubt regarding the interpretation of Section 17, the proviso to sub-section (3-A) of Section 13 makes it explicitly clear that either the reasons indicated for rejection of the objections of the borrower or the likely action of the secured creditor shall not confer any right under Section 17.***

[Emphasis supplied]

28. In paragraph nos. 26 and 29 of ***M/s Hindon Forge Pvt. Ltd. (supra),*** the Hon'ble Supreme Court held as under:-

26. Section 19, which is strongly relied upon by Shri Ranjit Kumar, also makes it clear that compensation is receivable under Section 19 only when possession of secured assets is not in accordance with the provision of this Act and Rules made thereunder [That this is the general scheme of the Act is also clear from Section 17(2) which states that the Debts Recovery Tribunal, when an application is filed before it, shall consider whether any of the measures referred to in Section 13(4) taken by the secured creditor are in accordance with the provisions of the Act and the Rules made thereunder.] . The scheme of Section 13(4) read with Rule 8(1) therefore makes it clear that the delivery of a possession notice together with affixation on the property and publication is one mode of taking "possession" under Section 13(4). This being the case, it is clear that Section 13(6) kicks in as soon as this is done as the expression used in Section 13(6) is "after taking possession". Also, it is clear that Rules 8(5) to 8(8) also kick in as soon as "possession" is taken under Rules 8(1) and 8(2). The statutory scheme, therefore, in the present case, is that once possession is taken under Rules 8(1) and 8(2) read with Section 13(4)(a), Section 17 gets attracted, ***as this is one of the measures referred to in Section 13(4) that has been taken by the secured creditor under Chapter III.***

29. Equally fallacious is the argument that Section 13(4) must be read in the light of Sections 14 and 15. There is no doubt

> *whatsoever that under Section 14(1), the Magistrate takes possession of the asset and "forwards" such asset to the secured creditor. Equally, under Section 15 there is no doubt that the management of the business of a borrower must actually be taken over.* ***These are separate and distinct modes of exercise of powers by a secured creditor under the Act.*** *Whereas Sections 14 and 15 have to be read by themselves, Section 13(4)(a), as has been held by us, has to be read with Rule 8, and this being the case, this argument must also be rejected.*
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> *[Emphasis supplied]*

29. It is, thus, seen that if measures under Section 13(4) of the SARFAESI Act were taken up by the respondent and at a later stage having withdrawn the said measures, the respondent intends to move to measures under Section 14 of the SARFAESI Act, there is no restraint under the law. Such a restraint cannot be read under the provisions of Section 13(4) or Section 14 of the SARFAESI Act as the same would amount to rewriting the statute.

30. The Hon'ble Supreme Court in the case of ***Kotak Mahindra Bank Ltd. v. A. Balakrishnan***[15]**,** has held that when the language of a statutory provision is plain and unambiguous, it is not permissible for the Court to add or subtract words to a statute or read something into it which is not there. A similar view has been affirmed by the Hon'ble Supreme Court in the cases of ***Padma Sundara Rao v. State of Tamil Nadu***[16], ***Bijay Kumar Singh v. Amit Kumar Chamariya***[17]**,** and ***Saregama India Limited v. Next Radio Limited and Ors.***[18]**.**

31. The decision of the Hon'ble Supreme Court in the case of ***Noble Kumar (supra)*** also clarifies that the likeliness of an action under

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[15] (2022) 9 SCC 186
[16] (2002) 3 SCC 533
[17] (2019) 10 SCC 660
[18] (2022) 1 SCC 701

SARFAESI Act would not be a sufficient cause to challenge the initiation of recovery proceedings before the DRT, rather the challenge is sustainable in the eyes of law only when the borrower loses the possession of the secured asset.

32. Admittedly, the objection was raised by the petitioners in W.P.(C) 13043/2021 that without deciding objections under Section 13(3A) of the SARFAESI Act, the recourse under Section 13(4) of the Act was taken. Despite such objections, this court allowed the respondent to withdraw the notice dated 22.09.2021, granting liberty to the petitioners to challenge the same in accordance with law at an appropriate stage. This would not mean that this court must entertain a writ petition at an intermittent stage between Section 14 and Section 17 of the SARFAESI Act. The petitioners attempt to emphasise that before Section 13(4) measures are taken, the remedy under Section 17 of the SARFAESI Act cannot be availed and therefore, at this stage itself, the writ petition should be entertained. Such an argument is bereft of any merit and the same is totally misconceived and unacceptable.

33. The averment made by the petitioners to adjudicate the proposed action to be taken by the respondent does not hold water in the light of the concerned provisions in the SARFAESI Act as well the ratio laid down in various judicial pronouncements. In the case of ***Pegasus Assets Reconstruction Private Limited v. Haryana Concast Limited and Another***[19]**,** the Hon'ble Supreme Court while reconciling the conflicting opinions from different High Courts and clarifying the position of law regarding an appropriate authority to wield any control

[19] (2016) 4 SCC 47

in respect of sale of secured assets by a secured creditor, has held as under:

> *30. Since we have held earlier in favour of views of the Delhi High Court, it is not necessary to burden this judgment with the case law which supports that view and have been noted by the High Court.* ***We are in agreement with the submissions advanced on behalf of respondent Kotak Mahindra Bank as well as Respondent 2 that there is no lacuna or ambiguity in the SARFAESI Act to warrant reading something more into it. For the purpose it has been enacted, it is a complete code and the earlier judgments rendered in the context of the SFC Act or the RDB Act vis-à-vis the Companies Act, cannot be held applicable on all fours to the SARFAESI Act. There is nothing lacking in the Act so as to borrow anything from the Companies Act till the stage the secured assets are sold by the secured creditors in accordance with the provisions in the SARFAESI Act and the Rules.*** *At the post-sale stage, the rights of the persons or parties having any stake in the sale proceeds are also taken care of by sub-section (9) of Section 13 and its five provisos (not numbered). It is significant that as per sub-section (9) a sort of consensus is required amongst the secured creditors, if they are more than one, for the exercise of rights available under sub-section (4). If the borrower is a company in liquidation, the sale proceeds have to be distributed in accordance with the provisions of Section 529-A of the Companies Act; even where the company is being wound up after coming into force of the SARFAESI Act, if the secured creditor of such company opts to stand out of the winding-up proceedings, it is entitled to retain the sale proceeds of its secured assets after depositing the workmen's dues with the liquidator in accordance with the provisions of Section 529-A of the Company Act. The third proviso is also meant to work out the provisions of Section 529-A of the Companies Act, in case the workmen's dues cannot be ascertained, by relying upon communication of estimate of such dues by the liquidator to the secured creditor, who has to deposit the amount of such estimated dues with the liquidator and then it can retain the sale proceeds of the secured assets. The other two provisos also are in aid of the liquidator to discharge his duties and obligations arising under Section 529-A of the Companies Act. Thus, it is evident that the required provisions of the Companies Act have been incorporated in the SARFAESI Act for harmonising this Act with the Companies Act in respect of dues of workmen and their protection under Section 529-A of the Companies Act. In view of such exercise already done by the legislature, there is no plausible reason as to take recourse to any provisions of the Companies Act and permit*

> *interference in the proceedings under the SARFAESI Act either by the Company Judge or the liquidator. As noted earlier, the Official Liquidator as a representative of the borrower company under winding up has to be associated, not for supplying any omission in the SARFAESI Act but because of express provisions therein as well as in the Rules. Hence, the exercise of harmonising that this Court had to undertake in the context of the SFC Act or the RDB Act is no longer warranted in respect of the SARFAESI Act vis-à-vis the Companies Act.*
>
> *[Emphasis supplied]*

34. The proceedings under the SARFAESI Act will have to be expedited to ensure that the secured creditor gets his money back without there being any unnecessary court intervention. The Hon'ble Supreme Court in the case of ***Satyawati Tondon (supra),*** while extensively considering the scheme of the SARFAESI Act, discouraged entertainability of a writ petition in view of alternate statutory remedy available. The relevant paragraphs are reproduced as under:

> *42. There is another reason why the impugned order should be set aside. If Respondent 1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression "any person" used in Section 17(1) is of wide import. It takes within its fold, not only the borrower but also the guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective.*
>
> *43. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this Rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc.*

> *the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.*
>
> *44. While expressing the aforesaid view, we are conscious that the powers conferred upon the High Court under Article 226 of the Constitution to issue to any person or authority, including in appropriate cases, any Government, directions, orders or writs including the five prerogative writs for the enforcement of any of the rights conferred by Part III or for any other purpose are very wide and there is no express limitation on exercise of that power but, at the same time, we cannot be oblivious of the rules of self-imposed restraint evolved by this Court, which every High Court is bound to keep in view while exercising power under Article 226 of the Constitution.*
>
> *45. It is true that the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, but it is difficult to fathom any reason why the High Court should entertain a petition filed under Article 226 of the Constitution and pass interim order ignoring the fact that the petitioner can avail effective alternative remedy by filing application, appeal, revision, etc. and the particular legislation contains a detailed mechanism for redressal of his grievance.*

35. While discussing about the maintainability and entertainability of writ petitions against the proceedings under the SARFAESI Act, the Hon'ble Supreme Court in the case of ***M/s Phoenix ARC Private Limited (supra)*** has held as under:

> *18. Even otherwise, it is required to be noted that a writ petition against the private financial institution — ARC — the appellant herein under Article 226 of the Constitution of India against the proposed action/actions under Section 13(4) of the SARFAESI Act can be said to be not maintainable. In the present case, the ARC proposed to take action/actions under the SARFAESI Act to recover the borrowed amount as a secured creditor. The ARC as such cannot be said to be performing public functions which are normally expected to be performed by the State authorities. During the course of a commercial transaction and under the*

> *contract, the bank/ARC lent the money to the borrowers herein and therefore the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed by the State authorities.* ***If proceedings are initiated under the SARFAESI Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the SARFAESI Act and no writ petition would lie and/or is maintainable and/or entertainable.*** *Therefore, decisions of this Court in Praga Tools Corpn. and Ramesh Ahluwalia relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers.*
>
> *[Emphasis supplied]*

36. A similar view has been taken by the Hon'ble Supreme Court in the case of ***South Indian Bank Ltd. and Others vs Naveen Mathew Philip and Another***[20]**,** whereby, while stating the objects and reasons of the SARFAESI Act, the court has strictly discouraged any circumvention by the writ courts as against the prescribed statutory provisions. The relevant paragraphs are reproduced hereinunder:

> *15. The object and reasons behind the Act 54 of 2002 are very clear as observed by this Court in Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311. While it facilitates a faster and smoother mode of recovery sans any interference from the Court, it does provide a fair mechanism in the form of the Tribunal being manned by a legally trained mind. The Tribunal is clothed with a wide range of powers to set aside an illegal order, and thereafter, grant consequential reliefs, including re-possession and payment of compensation and costs. Section 17(1) of the SARFAESI Act gives an expansive meaning to the expression "any person", who could approach the Tribunal.*
>
> *16. Approaching the High Court for the consideration of an offer by the borrower is also frowned upon by this Court. A writ of mandamus is a prerogative writ. In the absence of any legal right, the Court cannot exercise the said power. More circumspection is required in a financial transaction, particularly when one of the parties would not come within the purview of Article 12 of the Constitution of India.* ***When a statute prescribes a particular mode, an attempt to circumvent shall not be encouraged by a writ court. A litigant cannot avoid the non-***

[20] 2023 SCC OnLine SC 435

> ***compliance of approaching the Tribunal which requires the prescription of fees and use the constitutional remedy as an alternative.***
>
> *[Emphasis supplied]*

37. The learned counsel on behalf of the petitioners while relying on the decision in the case of ***Federal Bank Ltd. v. Sagar Thomas and Others,***[21] seeks to emphasize upon the maintainability of the instant writ petition under Article 226 of the Constitution of India *qua* the respondent which is a Non-Banking Financial Corporation (NBFC). It is the case of the petitioners that the petition is maintainable as the respondent-NBFC is discharging public functions and hence, amenable to the writ jurisdiction of this court.

38. It is to be noted that in the case of ***Sagar Thomas (supra)***, the Hon'ble Supreme Court while rejecting the claim of a private banking company to be falling in the category of instrumentality of State under Article 12 of the Constitution, has held that a private body or a person may be amenable to the writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligation which may be of public nature, casting positive obligation upon it. It was further discussed that any business or commercial activity, may be banking, manufacturing units or such other kinds of businesses which generate resources, employment, production and results into circulation of money are undoubtedly impacting the economy of the country in general. However, these activities cannot be termed to be falling in the category of discharging public functions.

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[21] 2003 (10) SCC 733

39. A concurring view was taken by this court in the case of ***M/s Rajpur Hydro Power Ltd. and Ors. v. M/s PTC India Financial Services Ltd.***[22]**,** wherein it was held that the petitioners are not entitled to invoke Article 226 of the Indian Constitution against the respondent NBFC as the term 'authority' cannot be given such a wide meaning so as to take in its ambit, the respondent NBFC when the petitioners have not been successful to demonstrate the nature of public function being discharged by it. In lieu of the same, the petitioners ought to have exhausted the alternate efficacious remedy available to them, as contemplated in the case of ***Mardia Chemicals (supra)***.

40. While striking a distinction between public law vis-à-vis private law obligations of the public authorities, the Hon'ble Supreme Court in the case of ***K.K. Saksena v. International Commission on Irrigation and Drainage***[23]**,** has opined as below:

> *43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is "State" within the meaning of Article 12 of the Constitution, admittedly a writ petition under Article 226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights. There are catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the administrative law. The reason is obvious.* ***A private law is that part of a legal system which is a part of common law that involves relationships between individuals, such as law of contract or torts. Therefore, even if writ petition would be maintainable against an authority, which is "State" under Article 12 of the Constitution, before issuing any writ, particularly writ of mandamus, the Court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law.***
>
> *[Emphasis supplied]*

[22] (2017) SCC OnLine Del 8277
[23] (2015) 4 SCC 670

41. It is, thus, clear that in the instant case, the respondent by virtue of being an NBFC, which is not satisfactorily shown by the petitioners to be involved in discharging public functions, would not fall in the classification of 'instrumentality' or 'agency' of State or 'any other authority' discharging public functions. It is, therefore, concluded that the doors for exercising writ jurisdiction cannot be opened for the petitioners within the narrow scope of judicial review under Article 226 of the Constitution of India *qua* the NBFC and their action under the provisions of the SARFAESI Act.

42. A pragmatic analysis of the nature of transaction between the parties in the instant case would suggest that the petitioners had established a privity with the respondent *vide* loan agreement with an intention to reap monetary benefits. The said transaction does not involve any public element rather it seems to be a private affair between the two private parties based upon monetary consideration. It is, therefore, inappropriate for the petitioners to seek a public law remedy under Article 226 of the Constitution in pursuance of a private transaction between the two parties which does not have any ramifications for the public at large.

43. This court in the case of ***Vanya Jain (supra)*** has considered the statement of objects and reasons of SARFAESI Act and various pronouncements of the Hon'ble Supreme Court including the case of ***Mardia Chemicals (supra)***, ***M/s Hindon Forge Pvt. Ltd. (supra)*** and ***M/s Phoenix ARC Private Limited (supra)*** etc. and has held that at the stage of Section 13(3A) of the SARFAESI Act, when the remedy is available to raise objection, if a writ petition is entertained, the same would be a disservice to the will of the legislature. This court has held

that if the representation under Section 13(3A) of the SARFAESI Act, is made, the borrower will have to wait till measures under Section 13(4) of the SARFAESI Act are taken by the bank to avail the remedy under Section 17 of the SARFAESI Act. In the interregnum, the scope for interference in writ jurisdiction is not warranted. The relevant paragraphs of the decision in the case of ***Vanya Jain (supra)*** are reproduced as under:

> *"21. The Hon'ble Supreme Court in M/s. Hindon Forge Pvt. Ltd. & Anr. vs. State of Uttar Pradesh while discussing the Amending Act of 2004 and its effect upon the scheme of the SARFAESI Act, explained the rationale for disallowing a borrower from preferring an application to the DRT against assailing the steps taken by a secured creditor under Section 13(2) and 13(3A) of the SARFAESI Act. In paragraph no.10, the Hon'ble Supreme Court observed as under:*
>
> > *"10. A reading of section 13 would make it clear that where a default in repayment of a secured debt or any instalment thereof is made by a borrower, the secured creditor may require the borrower, by notice in writing, to discharge in full his liabilities to the secured creditor within 60 days from the date of notice. It is only when the borrower fails to do so that the secured creditor may have recourse to the provisions contained in section 13(4) of the Act.* ***Section 13(3-A) was inserted by the 2004 Amendment Act, pursuant to Mardia Chemicals (supra), making it clear that if on receipt of the notice under section 13(2), the borrower makes a representation or raises an objection, the secured creditor is to consider such representation or objection and give reasons for non-acceptance. The proviso to section 13(3-A) makes it clear that this would not confer upon the borrower any right to prefer an application to the Debts Recovery Tribunal under section 17 as at this stage no action has yet been taken under section 13(4)."***
>
> ***
>
> *37. It is of importance to consider that the judgement of the Hon'ble Supreme Court in the case of Phoenix ARC (supra), was in the context of actions taken by a secured creditor under Section 14, from which appeal lies under Section 17 of the SARFAESI Act. In other words, the Hon'ble Supreme Court exhorted that ordinarily writ petitions ought not to be entertained that assail*

actions taken under Section 14, which expressly allow judicial intervention in the form of an appeal under Section 17 of the SARFAESI Act.

38. This court is of the opinion that the judgement of Phoenix ARC (supra), in relation to the abuse of the process of law, applies with greater rigour against actions taken under provisions of law which are merely aimed at initiating proceedings, and are at a stage at which the Act concerned itself does not allow an appeal. Key distinctions between the stages from which appeals or applications can be preferred to challenge a decision of a creditor, needs to be appreciated. In this context, this court may beneficially refer to another pronouncement of the Hon'ble Supreme Court in the case of ***Authorized office, State Bank of Travancore v. Mathew K.C.*** *The material part of the judgement reads as under:*

> *"6. …The writ petition was filed in undue haste in March 2015 immediately after disposal of objections under Section 13(3-A).* ***The legislative scheme, in order to expedite the recovery proceedings, does not envisage grievance redressal procedure at this stage, by virtue of the explanation added to Section 17 of the Act, by Amendment Act 30 of 2004, as follows:***
>
> ***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."*
>
> *7. The Section 13(4) notice along with possession notice under Rule 8 was issued on 21-4-2015****.*** ***The remedy under Section 17 of the SARFAESI Act was now available to the respondent if aggrieved****…"*

39. This court is therefore of the opinion that in the instant case, the respondents, by issuing the demand notice under Section 13(2) of the SARFAESI Act have merely attempted to comply with the statutory requirements, that enable them to proceed under the statutory framework of the SARFAESI Act. ***The stage of Section 13(3A) has been expressly made non-appealable by virtue of the proviso to Section 13(3A) and the explanation to Section 17(1). It would thus be a disservice to the will of the legislature, if this***

> ***court through the means of the present writ petition, circumvents the statutory process. The petitioner in order to assail the actions of the respondents has to await the stage of Section 13(4), and thereafter approach the DRT to agitate its concerns.*** *The present petition is therefore found to be premature.*
>
> *[Emphasis supplied]*

44. It is, thus, seen that for the same reasons the interference in the interregnum i.e., between the order passed by the learned CMM as per Section 14 of the SARFAESI Act and the measures being taken under Section 13(4) of the SARFAESI Act, the interference is not warranted.

45. The main thrust of the petitioners that in the absence of any adjudicatory mechanism to ventilate their grievance before the possession of the secured interest is taken over either symbolically or physically, a legal void is created which needs to be redressed on the anvils of necessary judicial intervention under writ jurisdiction, is not correct. The remedy, in any case, would lie under Section 17, once the measures under Section 13(4) or Section 14 of the SARFAESI Act are taken.

46. With the changing paradigm of financial landscape and burgeoning commercial transactions between borrowers and financial institutions, the rule of law laid down over the years have tend to succinctly shape and refine the contours of recovery proceedings under the SARFAESI Act. While the abovementioned pronouncements vividly discuss the significant facets involved in the process of striking a balance between the interests of contesting parties through the Act, a closer scrutiny of the ratio in such decisions echoes a coherence with the original legislative intent of non-interference of

the writ courts in the matters where an efficacious remedy is available in ordinary circumstances under the Act.

47. A similar view was adopted by the Hon'ble Supreme Court in the case of ***Radha Krishnan Industries vs State of Himachal Pradesh***[24]**,** whereby, after considering a series of earlier pronouncements, the exceptions to the rule of alternate remedy were enumerated in the following words:

> *27.3. Exceptions to the rule of alternate remedy arise where:* ***(a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged****.*
>
> *27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.*
>
> *27.5.* ***When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion."***
>
> *[Emphasis supplied]*

48. In the case of ***Madhu Bhandari vs Piramal Capital and Housing Finance Ltd. and Ors.***[25]**,** wherein the petitioner was assailing the order of the learned CMM who appointed a Receiver to take over the possession of the property of the petitioner, this court has held as under:

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[24] (2021) 6 SCC 771
[25] 2023/DHC/001447

> *"7. The Hon'ble Supreme Court thereafter in various other pronouncements including the decision in the cases of* ***Indian Overseas Bank v. M/S. Ashok Saw Mill, Agarwal Tracom Pvt. Ltd. v. Punjab National Bank*** *and* ***United Bank of India v. Satyawati Tondon, Kanaiyalal Lalchand Sachdev & Ors. V. State of Maharashtra & Ors.,*** *has clearly held that ordinarily the High Court should not entertain a petition under Article 226 of the Constitution, if an effective remedy is available to the aggrieved person and that rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of bank and financial institutions.*

49. In the case of ***Ashima Goyal vs Reserve Bank of India & Anr.,*** LPA No. 458 of 2023 arising out of the judgment dated 28.03.2023 in the case of ***Ashima Goyal (supra)*** whereby, this court was of the considered view that the remedy against action taken under Section 13(4) or Section 14 of the SARFAESI Act would ultimately lie before the DRT and the petition under Article 226 of the Constitution is not maintainable, the Division Bench of this court, while affirming the stand taken by this court, has held as under:

> *2. The facts of the case reveal that the Appellant herein applied for a term loan to the tune of Rs.4,60,00,000/- which was sanctioned on 18.09.2019. The account of the Appellant was declared as Non-Performing Asset (NPA) on 16.06.2021 and thereafter, the proceedings were initiated under Section 14 of the SARFAESI Act against the Appellant. The Appellant, after being aggrieved by the proceedings initiated by Respondent No.2, preferred an appeal bearing SA No.119/2022 under Section 17 of the SARFAESI Act before the Debt Recovery Tribunal (DRT). The DRT-III, Delhi dismissed the said appeal vide Order dated 14.09.2022. It is stated that after suffering a dismissal from the DRT, the Appellant approached Respondent No.2 with One Time Settlement (OTS) proposal and at the same time also preferred a writ petition being W.P.(C) 14779/2023 praying for issuance of a direction to Respondent No.2 to close the Appellant's loan account under OTS proposal. This Court directed the Respondents to consider the OTS proposal of the Appellant. However, the same was not considered by the Respondents. The Appellant, thereafter, again filed a second writ petition being W.P.(C) 3953/2023 praying for the following reliefs:*

"(i) direct respondent no. 1 in exercise of its power U/S 45 (JA) of the Reserve Bank of India Act, 1934 to require respondent no. 2 to adhere to NPA norms applicable to MSME loan account, before deciding non-performing assets (NPA) in face of its Covid-19 pandemic directives and regulatory package directed to be drawn in accordance with Hon'ble Apex Court judgment circulated vide its circular dated 07.04.2021 (Annexure-G);

(ii) Set-aside/quash respondent no.2's order dated 16.06.2021 (Annexure-I) being non-speaking nonreasoned and in violation, disregard to respondent no.1's directives applicable to MSMEs sector;

(iii) direct respondent no. 2 to draw One Time Settlement in respect to petitioner loan account by enabling petitioner to deposit the same considering petitioner's property valued to be substantially & significantly much more than amount recoverable by respondent no.2 and payable by petitioner in its loan account;

(iv) set-aside/quash respondent no. 2's order dated 10.03.2023 (Annexure-P) delivered on 15.03.2023 as nonspeaking, non-reasoned made without considering the petitioner's representation alongwith directing respondent no. 2 to produce statement of account pertaining to petitioner a MSME term loan account No. XOHEELD00003123193 taken aid for passing said order dated 16.06.2021;

(v) set-aside/quash respondent no. 2's order (Auction Order) dated 11.03.2023 (Annexure-Q) delivered on 15.03.2023 as non-speaking, non-reasoned made without considering the petitioner's representation."

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4. The learned Single Judge, after placing reliance upon the United Bank of India V. Satyawati Tandon and Ors., (2010) 8 SCC 110 as well as Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir, (2022) 5 SCC 345, has arrived at a conclusion that the Appellant is having a remedy of approaching the Debt Recovery Tribunal (DRT).

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7. The issue raised in the present case regarding applicability of circular issued by Reserve Bank of India can certainly be raised before the DRT and, therefore, this Court is of the opinion that the Appellant is having equally efficacious alternate remedy to approach DRT. The learned Single Judge was justified in dismissing the writ petition with liberty to the Appellant to approach the Debt Recovery Tribunal (DRT). This Court does not

find any reason to interfere with the Judgment passed by the learned Single Judge.

50. The petitioners also contend that in an application for extension of the earlier order, the learned CMM did not have any authority to pass any order of extending the earlier order dated 06.12.2021. For the sake of clarity, the order dated 06.12.2021 reads as under:-

"AR has been examined today. Documents seen, perused and returned.

This is an application moved by the applicant under Section. 14(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (in short SARFAESI Act,2002), seeking assistance of this court in taking physical possession of the mortgaged property i.e. All that piece and parcel of immovable property being plot no, 47 Block no. B, in the residential colony known as Greater Kailash - 1, New Delhi within the limits of Delhi Municipal Corporation in the Revenue Estate of Village Yakutupur in the union territory of Delhi and Bounded as under : North : Plot no. B/4S, South : plot no. 8i49, East : Service Road, West : Road.

Original loan documents, title deeds in respect of the mortgaged asset along with the notices and other documents as per the statement of the AR of the Applicant recorded today produced by AR of the applicant. The same are seen verified and returned to the AR of the applicant.

Submissions heard.

In my considered opinion, as and when an application, is moved by the secured creditor seeking assistance of the. court to take the physical possession of the secured assets in terms of Section 14 of SARFAESI Act, the court i.e. CMM is mandatorily required to provide the requisite assistance to the secured creditor in taking possession of the secured asset, subject of course to the compliance of provisions of Section 14 proviso (i) to (ix) of the SARFAESI Act by the secured creditor. In the case in : hand, the applicant has filed an affidavit in strict compliance with proviso (i) to (ix) of the SARFAESI Act detailing the outstanding liability of the borrowers/guarantors towards the applicant to the extent of Rs.6,07,29,816,06/- as on 29.11.2021 and as to the service of notice in terms of Section 13(2) of the SARFAESI Act, 2002 upon the borrower and noncompliance of the demand by the borrower despite expiry of the prescribed Period and classification of the

aforesaid loan account as NPA w.e.f X1 .12.2021 . The applicant has produced the original sale deed which is Ex.P-3, wherein the details of the mortgaged asset have been specifically mentioned in schedule. As already observed herein above the aforesaid documents have been seen by the court and have been returned to the AR of the Applicant.

Therefore, having verified the averments of the affidavit from the original documents, this court to proceeds to appoint the Receiver for taking possession of the aforesaid mortgaged asset and handing over of the same to the AR of the applicant.

Advocate Raju Kumar Gupta, Enrollment No. D/0024!2007, Mobile No. 09810865371, email ID : shakshlstar@oqnail.com Office at : Chamber no. 348, Western Wings, Tis Hazari Court, Delhi 110054 is thus appointed as official receiver to take possession of the secured asset ,i.e. "All that piece and parcel of immovable property being plot no.47 Block no. B, in : the residential colony known as Greater Kailash - 1, New Delhi within the limits of Delhi Municipal Corporation iri the Revenue Estate of Village Yakutupur in the union territory of Delhi and Bounded as under : North : Plot no. B/45, South: Plot no. B/49, East : Service Road, West : Road", with the requisite police assistance, if required.

For compliance of this order, the Receiver is directed to act as per the following terms:-

1. The Receiver shall give possession notice to the authorised. Officer of secured creditor and borrowers 03 weeks in advance within one month from today and possession notice shall also be affixed upon the main door or other conspicuous portion of aforesaid property. The Receiver shall take coloured photograph of aforesaid immovable property showing display of possession notice..;

2. The Receiver shall be empowered to remove all kind of obstructions including locks, doors, etc. If required, for taking possession of said property and in that eventuality, he Shall prepare an inventory of items kept inside the property and hand over one list duly signed by witnesses and receiver to the borrower(s), if present at the site and another copy be submitted in the Court alongwith report. Broken locks shall be kept in a sealed cloth pullanda and deposited with applicant; 3. The entire proceedings of taking over possession of secured asset shall be photographed and video graphed;

3. The entire proceedings of taking over possession of secured asset shall be photographed and video graphed;

4. The Receiver would ensure that there is no, stay order from any Court in respect of aforesaid property before executing this order;

5. The Receiver shall forward all the assets (movable as well as immovable property) to the applicant through its authorized representative after taking over passion of the assets.

6. SHO concerned shall provide police aid to the Receiver for compliance of directions passed by this Court;

7, AII miscellaneous expenses for complying with aforesaid directions would be borne by applicant;

8. After concluding the entire proceedings, the Receiver would submit his report and coloured photographs alongwith CD / memory card of the videography in the Court within three months of this order.

The fee of receiver is fixed at Rs.65,000/- (Rupees Sixty Five Thousand Only) to be paid to Receiver by applicant within three weeks from today. TDS, if any, shall not be included in the Receiver's Fee.

The applicant would furnish all necessary details of aforesaid property and borrowers to the receiver within 07 days of this order and would extend full co-operation for executing this order,

Finally; it is also emphasized that objection if any by whomsoever concerned shall not be entertained by this Court and should be made before the Debt Recovery Tribunal as this Court is only required to provide assistance to secured creditors (Financial institutions) to obtain possession 9f secured assets in accordance with. law and is not supposed to adjudicate upon any issue on merits.

A copy of this order be given dasti to counsel for applicant.

Application stands disposed of accordingly File be consigned to record room after receiving Receiver's Report."

51. The aforesaid order was passed on a properly constituted application supported by requisite application. Neither the aforesaid order is under challenge nor have the petitioners submitted that there was any fundamental error in passing the said order.

52. The Hon'ble Supreme Court in the case of ***C. Bright (supra),*** has considered the aspect whether the time limit prescribed under Section 13 of the SARFAESI Act is mandatory or directory in nature. Paragraph no.21 of the said judgment reads as under:-

> *21. The Act was enacted to provide a machinery for empowering banks and financial institutions, so that they may have the power to take possession of secured assets and to sell them. The DRT Act was first enacted to streamline the recovery of public dues but the proceedings under the said Act have not given desirous results. Therefore, the Act in question was enacted. This Court in Mardia Chemicals, Travancore and Hindon Forge (P) Ltd. has held that the purpose of the Act pertains to the speedy recovery of dues, by banks and financial institutions.* ***The true intention of the legislature is a determining factor herein. Keeping the objective of the Act in mind, the time-limit to take action by the District Magistrate has been fixed to impress upon the authority to take possession of the secured assets. However, inability to take possession within time-limit does not render the District Magistrate functus officio.*** *The secured creditor has no control over the District Magistrate who is exercising jurisdiction under Section 14 of the Act for public good to facilitate recovery of public dues. Therefore, Section 14 of the Act is not to be interpreted literally without considering the object and purpose of the Act. If any other interpretation is placed upon the language of Section 14, it would be contrary to the purpose of the Act. The time-limit is to instil a confidence in creditors that the District Magistrate will make an attempt to deliver possession as well as to impose a duty on the District Magistrate to make an earnest effort to comply with the mandate of the statute to deliver the possession within 30 days and for reasons to be recorded within 60 days. In this light, the remedy under Section 14 of the Act is not rendered redundant if the District Magistrate is unable to handover the possession. The District Magistrate will still be enjoined upon, the duty to facilitate delivery of possession at the earliest.*
>
> *[Emphasis supplied]*

53. The application for extension of the order dated 06.12.2021 was filed and the reasons stated in the said application read as under:-

> "***APPLICATION FOR AND ON BEHALF OF THE APPLICANT- RELIGARE FINVEST LIMITED SEEKING***

EXTENSION OF TERM OF RECEIVER APPOINTED BY THIS HON'BLE COURT VIDE ORDER DATED 06.12.2021 FOR TAKING AND FORWARDING THE PHYSICAL POSSESSION OF SECURED ASSET I.E. PROPERTY BEING: "ALL PIECES AND PARCEL OF IMMOVABLE PROPERTY BUILT ON PLOT NO. 47 BLOCK NO. 'B' IN THE RESIDENTIAL COLONY KNOWN AS GREATER KAILASH- 1. WITHIN THE LIMITS OF MUNICIPAL CORPORATION REVENUE ESTATE OF VILLAGE YAKUTUPUR IN THE UNION TERRITORY OF DELHI

MOST RESPECTFULLY SHOWETH*:*

1. *That the Applicant Company herein i.e., Religare Finvest Limited is a Company registered under the Companies Act 1956, having its registered office at 1407, 14th Floor Chiranjiv Tower, 43 Nehru Place New Delhi-110019. The operations of the Applicant Company are subject to Reserve Bank of India's guidelines and regulations. The Applicant Company is inter-alia engaged in the business of financing apart from other portfolios/activities*

2. *That on behalf of the Applicant Bank/Secured Creditor, the present application seeking extension of term of receiver appointed by this Hon'ble Court for taking the possession of the secured asset i.e. Property being; All pieces and parcel of immovable property built on plot no 47 block no. 'B' in the residential colony known as Greater Kailash-I within the limits of Municipal Corporation Revenue Estate of Village Yakutupur in The Union Territory Of Delhi is being signed by Sh. Arun Mohan Sharma, who is the Authorized Officer of the Applicant Company who is authorized to file, sign, verify, institute and follow up the legal proceedings and actions under this petition and further in SARFAESI Act, 2002 on behalf of the Applicant and also take possession of the secured asset and do all other acts as provided in section 13 (4) and other provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Security Interest (Enforcement) Rules, 2002. Copy Board Resolution in favour of authorized officer is annexed herewith and marked as* ***ANNEXURE A-1.***

3. *That the Applicant has filed an application under Section 14 of the SARFAESI Act, 2002 before this Hon'ble Court for taking possession of the aforesaid Secured Asset and the same has been allowed vide order dated 06.12.2021. The Hon'ble Court was pleased to appoint Sh. Raju Kumar Gupta, Advocate, Enrollment No. D/0024/2007 (Mobile No.09810865371) as receiver for taking possession of the above-mentioned secured asset with direction to submit his report within three months from the date of*

order. Copy of order dated 06.12.2021 is annexed herewith and marked as ***ANNEXURE A-2.***

4. *That thereafter, the respondent filed a Petition under Section 9 and Section 11 of the Arbitration & Conciliation Act, 1996 before the Hon'ble High Court of Delhi, seeking appointment of an Arbitrator and interim stay qua the Applicant Fl from proceeding with the measures under SARFAESI Act, 2002. The Hon'ble Court, vide order dated 11.01.2022 directed the Applicant herein to hold its hand till the next date and thereafter, the said interim directions continued vide subsequent orders. Copy of order dated 11.01.2022 passed by the Hon'ble High Court is annexed herewith and marked as* ***ANNEXURE A-3.***

5. *That however, upon the final disposal of the aforesaid Petitions under Sections 9 and 11 of the A&C Act, 1996, the Hon'ble High Court refused to grant any protection/directions under Section 9 of the A&C, 1996 vide order dated 14.10.2022 and further observed that the parties are at liberty to seek interim protection if the need be, by moving an appropriate application before the learned Arbitrator. It may be pertinent to mention that in fact, a review petition has been preferred by the Applicant herein, seeking review of the order dated 14.10.2022, allowing the application under Section-11 of the A&C Act, 1996, and the Arbitral Proceedings have also been stayed by the Hon'ble – High Court vide order dated 15.11.2022 passed in Review Petition No. 296 of 2022. True Copy of Order dated 14.10.2022 passed by the Hon'ble High Court is annexed herewith and marked as* ***ANNEXURE A-4.***

6. *That, thus, as on date there are no directions by any Court restraining the Applicant from taking possession of the Secured Asset. In view of aforesaid facts and circumstances. the present application is being preferred by the Applicant/ Secured Creditor seeking extension of term/mandate of Court Receiver for taking the physical possession of the secured asset bearing* ***All pieces and parcel of immovable property built on plot no. 47 block no. 'B' in the residential colony known as Greater Kailash-l, within the limits of Municipal Corporation Revenue Estate of Village Yakutupur in The Union Territory of Delhi.***

PRAYER

It is therefore, in view of aforesaid facts and circumstances, it is respectfully prayed that this Hon'ble Court may graciously be pleased to:

i. *Extend the term/mandate of receiver appointed by this Hon'ble Court vide order dated* ***06.12.2021*** *with the direction to take the possession of the secured asset.;* ***All pieces and parcel of immovable property built on plot no. 47 block no. 'B' in the residential colony known as Greater Kailash-l, within the limits of Municipal Corporation Revenue Estate of Village Yakutupur in The Union Territory Of Delhi*** *and forwarding the same to the secured creditor/Applicant/ Secured Creditor without effecting any service of prior notice or intimation upon the borrowers; AND/OR*

ii. *pass any other order as deem fit in view of aforesaid facts and circumstances to meet the end of justice.*

54. The order dated 02.12.2022 reads as under:-

"*Submissions heard. File perused*

Ld. counsel for applicant Bank has submitted that clue to petition filed by the Borrower before the Hon'ble High Court of Delhi. The same has now been disposed off. The copy of the Order has already been filed along with the application.

In view of the submissions of Ld. counsel for applicant Bank and for reasons stated in the application, the term of Court Receiver appointed vide Order dated 06.12.2021 extended w.e.f today. Applicant bank shall pay additional fees of Rs.l5,000 to Court Receiver. Rest of the conditions of Order dated 06.12.2021 shall remain same. This Order shall form addendum to Order dated 06.12.2021.

Application on stands disposed off- accordingly.

Copy of the Order be given Dasti.

File be consigned to Record Room."

55. This court does not find any substance in the argument made by the petitioners that along with the application, a fresh affidavit was required to be filed or a fresh application should have been moved. When the order was already passed on 06.12.2021, because of certain proceedings taken up by the petitioners, the same could not be implemented. No fault can be found in the approach of the respondent in filing the application for extension of the order dated 06.12.2021. If such a recourse is held to be not maintainable, the purpose of the

SARFAESI Act would again be defeated, as on one or the other pretext, the borrower would endeavour to linger on the proceedings to ensure that the possession is not taken within the stipulated time, so that the entire proceedings will have to be taken afresh, consequently delaying the recovery proceedings.

56. It is to be noted that a fair reading into the nature and mandate of Section 34 of the SARFAESI Act reveals that the statutory obligation is not in tandem with the contentions of the petitioners as it creates an uncontrived friction in directly approaching the High Court without giving due consideration to the remedies available in the Act.

57. The other contention raised by the petitioners that there was order of *status-quo* at the time of passing of the order by the learned CMM, also deserves to be rejected. On 13.01.2023, this court in CS (OS) 280/2021 has unequivocally clarified that there was no stay. The classification relates back to the date of passing of the order dated 07.06.2021. The said order reads as under:-

> *"1. The learned counsel for the defendant nos.1 and 3 points out that by an order dated 07.06.2021, this Court was pleased to pass an ad interim order directing the parties to maintain status quo in respect of the title and possession of the suit property till the next date of hearing, pending a final decision in the application, that is, I.A. 7475/2021.*
>
> *2. Thereafter, the plaintiff filed an application under Order I Rule 10 of the Code of Civil Procedure, 1908 (in short 'CPC') being I.A. no.17375/2021, seeking impleadment of the 'Religare Finvest Ltd.' (hereinafter referred to as "RFL") as the defendant no.5, and I.A. No.17376/2021 under Order XXXIX Rules 1 and 2 of the CPC seeking an ad interim stay against RFL.*
>
> *3. By the order dated 11.01.2022, the Court had passed the following order:*

"6. Interim orders to continue. It is expected that till the next date of hearing, the proposed defendant No.5/RFL shall hold its hands."

4. I.A. No.17375/2021 was heard by the predecessor Bench of this Court on 23.08.2022, and the judgment thereon has been pronounced on 19.10.2022, dismissing the said application.

5. The learned counsel for the defendants submits that, however, it has not been clarified as to whether RFL is still to hold its hands with respect to the Suit property. No direction has also been issued on I.A. No.17376/2021. He submits that the same position be clarified by this Court.

6. In my opinion, no such clarification is required. I.A. No.17376/2021 was premised on the impleadment of RFL as one of the defendants in the Suit. I.A. No.17375/2021, seeking impleadment of RFL, having been dismissed, automatically, there is nothing which survives in I.A. No.17376/2020 and the same should also have been dismissed.

7. In any event, the order dated 11.01.2022 was not an order of this Court restraining RFL from initiating or prosecuting proceedings in accordance with law.

8. For the purposes of completion of record, I.A. 17376/2021 shall stand dismissed in terms of the order dated 19.10.2021 of this Court.

CS(OS) 280/2021 & I.As. 7475/2021, 1463/2022

9. List the main suit and the other applications before the learned Joint Registrar (Judicial) on 1st March, 2023 i.e., the date already fixed."

58. The petitioners have also raised another argument that in terms of the order dated 11.01.2022 in IA no.17376/2021, there was order of restraining the respondent from taking over the possession through the Receiver. According to the petitioners, the said order was extended from time to time and continued up to 19.10.2022. It is to be noted that the application for extension of the order dated 06.12.2021 came to be filed on 25.11.2022 which was allowed *vide* impugned order dated 02.12.2022. It is undisputed that as on 02.12.2022, there is no

order operating against the respondent with respect to the mortgaged property in question. The stay order which the petitioners claimed to be operating on that date was order dated 07.06.2021. This court has already clarified that IA No.17376/2021 was premised on the impleadment of respondent as one of the defendants in the suit. Since IA No.17375/2021 seeking impleadment of the respondent has been dismissed, as a natural corollary, nothing survived in the said IA No. 17376/2021 and same should have also been dismissed. Also, the court has clarified that order dated 11.01.2022 was not an order in pursuance of the court restraining respondent from initiating or proceeding or prosecuting proceedings in accordance with law.

59. In any case, if the petitioners feel that there are irregularities or illegality in taking action against them, the remedy would lie under Section 17 of the SARFAESI Act. Under the facts of the present case, the petitioners cannot invoke Article 226 of the Constitution of India to frustrate the object of recovery proceedings.

60. At this juncture, this court cannot transgress into the domain of the legislature to fill the alleged legal void in the scheme of SARFAESI Act, which according to the petitioners, is rendering them remediless under the Act before the possession is taken over by the respondent. This court cannot create a fresh normative reality by interpreting the way as desired by the petitioners.

61. The scope of writ jurisdiction cannot be allowed to trounce the statutory obligation, on the stratagem of efficacious alternate remedy

62. In view of the aforesaid, this court does not find any substance in the instant writ petition and the same is accordingly dismissed,

alongwith the pending application. As already clarified, as and when the proceedings relating to possession are taken, the petitioners would be at liberty to seek the available statutory remedies in accordance with law.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

AUGUST 14, 2023
p'ma/MJ