

IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT KOLKATA

Appeal No. 31 of 2022
(Arising out of I.A. 3018 of 2021 in S.A. 560 of 2021 in DRT-III, Kolkata)

**HON'BLE MR. JUSTICE ANIL KUMAR SRIVASTAVA
CHAIRPERSON**

Kotak Mahindra Bank Limited a banking company registered under the Companies Act, 1956 having its registered office at 27-BKC, Plot No. C-27, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051 and a branch office, inter alia, at 6th Floor, 12-BKC, Plot No. C-12, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051.

... Appellant

-Versus-

1. Camellia Educare Trust, Registered office at 13, Dum Dum Road, Kolkata - 700 074, and Corporate Office at Trust House, 32 A, C.R. Avenue, Kolkata - 700 012;
2. Nilratan Datta (Trustee), residing at CL - 89, Salt Lake City, Sector - II, Kolkata - 700 091;
3. Niloy Datta (Trustee), residing at CL 89, Salt Lake City, Sector - II, Kolkata - 700 091;
4. Tapasi Datta (Trustee), residing at CL 89, Salt Lake City, Sector II, Kolkata - 700 091;
5. Executive Vice President, Kotak Mahindra Bank Limited, having office at 27-BKC, Plot No. C-27 "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051 and its Kolkata Office at Block C, 7th Floor, Apeejay House, 15, Park Street, P.S. Park Street, Kolkata - 700 016;
6. The Authorised Signatory, Kotak Mahindra Bank Limited, having office at 27-BKC, Plot No. C-27 "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051 and its Kolkata Office at Block C, 7th Floor, Apeejay House, 15, Park Street, P.S. Park Street, Kolkata - 700 016.
7. Jitendra Lohia, having office at 2/7, Sarat Bose Road, Vasundhara Building, 2nd Floor, Kolkata - 700 001.

... Respondents

Counsel for Appellants ... Mr. Pratik Ghose
Mr. Abhishek Roy Chowdhury

Counsel for Respondents ... Mr. Arindam Banerjee
Ms. Priyanka Kundu

JUDGMENT : 24th February, 2026

THE APPELLATE TRIBUNAL:

- 1.** Instant appeal has been preferred against the order and Judgment dated 9.11.2021 passed by the Learned DRT-III, Kolkata in I.A. 3018 of 2021 arising out of S.A. 560 of 2021 whereby the Learned DRT allowed the I.A. and directed the parties to maintain status quo with a further direction to withdraw the impugned notice published on 28.10.2021.
- 2.** Appellants are the opposite party in the S.A. 560 of 2021 filed by the Respondents under Section 17 of the SARFAESI Act.
- 3.** Respondents herein filed a Securitization Application under Section 17 of the SARFAESI Act, 2002 (hereinafter referred to as the 'Act') challenging the Notice under Section 13 (4) read with Section 15 of the Act dated 22.10.2021 and also Notice of taking over management of business of Respondents as published in 'Times of India' dated 28.10.2021 with relief for restraining the Appellants from taking over management. It is alleged that the Respondents are a Charitable Trust running an Educational Institution in the name and title of Camellia College & Engineering and Technology. The suit and proceedings against Charitable Trust are governed by Section 92 of the C.P.C. Appellants, in order to take over the Management of the Institution, has to prove that the Board of Trustees has committed serious irregularities in the management of the Trust before seeking change in the appointment of Administrator. Running of the

College does not come within business of the Charitable Trust. Business of the college was not mortgaged or hypothecated or any charge was created in favour of the Bank. About 1100 students are enrolled in the Academic Session for the courses in the College. Admission process is also continuing. Goodwill of the College will suffer adversely if the Administrator will take over charge of the business of the College.

4. Term Loan of Rs.8.50 crore was sanctioned by the Appellants on 5.11.2012. Separate loans were also given to other organization under the name and style of Multiple Educational and Manpower Development Trust and Camellia Educare Services. Respondents have already paid an amount of Rs.30.00 crore. Appellants have not filed any reply to the S.A.

5. It is further stated that notice dated 28.10.2021 could not be issued by the Authorised Signatory for the Bank involving the general public which may adversely affect the reputation of the College. Earlier C.S. No. 99 of 2018 was filed before the Hon'ble High Court at Calcutta under Section 92 of the C.P.C. which was dismissed. Order was challenged in Appeal No. A.P.O. 276 of 2018 before the Division Bench. This appeal was also dismissed. But the suit is pending for adjudication. According to the directive issued by the All India Council for Technical Education, there is a procedure for appointment of the management of the College.

6. Appellants herein although did not file any reply to the I.A. and S.A. but challenged the maintainability of the I.A.

It is submitted that an earlier S.A. 360 of 2017 was filed by the Appellant which was dismissed on 5.2.2021 and the Respondents were allowed to take action in accordance with law. Appellants, Secured Creditor, can take action under Section 13 (4) (b) of the Act to take over possession of the secured assets. Section 15 of the Act also empowers the Respondents for taking over the management.

7. It is further contented that the Secured Creditors are not disturbing the constitution of the Trust or functioning of the Trust. Only purpose of the Secured Creditor is to take over the business of the Trust in order to secure its security. Two receivers were appointed by the Tribunal but the Respondents are not co-operating with them. Application is liable to be dismissed.

8. Learned DRT after hearing the Learned Counsel for the parties recorded a finding that notice was issued under Section 13 (4)(b) read with Section 15 of the Act.

9. Learned DRT also held that earlier S.A. 360 of 2017 filed by the Respondents was dismissed. Respondents are Charitable Trust. Provisions of Section 15 of the Act covers the Companies and not the Trusts. Notices issued by the Appellants were under the SARFAESI Act, 2002. Hon'ble Calcutta High Court in the Petition under Section 92 of the C.P.C. held that no leave to institute suit under Section 92 C.P.C. was obtained. Further, the interest of the Appellants herein is duly protected under the O.A. proceedings. Accordingly, Learned DRT issued a mandatory direction to

withdraw the impugned notice dated 28th October, 2021 with a further direction to maintain status quo.

10. Learned Counsel for Appellants would submit that the impugned order is bad in law. Respondents have taken loan in the year 2012 which was classified as N.P.A. in the year 2015. Notices under SARFAESI Act were issued in 2016. S.A. 360 of 2017, challenging the notices, was filed by the Respondents which was dismissed on 5.02.2021. Subsequent thereto, notice was issued by the Bank for taking over the Management which was issued under Section 13 (4) (b) read with Section 15 of the Act which is challenged by the Appellants. The impugned notice is issued for securing interest of the Secured Creditor. It is submitted that Section 92 C.P.C. proceedings are different from the action initiated by the Bank under the Securitization Act. Trust is not covered under the definition of Section 15 of the Act. Business is being run by the Respondents and they are gaining benefit out of it. Appellants are entitled for taking over the Management as profits are being earned by the Respondents. It is further submitted that the business activity is duly admitted by the Respondents.

11. Per contra, Learned Counsel for Respondent opposed the prayer and submits that Learned DRT has rightly passed the impugned order. Appellants have not filed any written objection in the S.A. proceedings. Even till date, opposition to the S.A., filed under Section 17 of the Act, is not filed by the Appellants.

12. Learned Counsel for Respondent would submit that the business of the College was not mortgaged by the Respondents. It is submitted that the Management of the Institution is being run by a committee, constituted as per the directives of All India Council of Technical Education, which, if taken over by the Bank, would adversely affect the interest of the Respondent Educational Institution.

13. Learned Counsel for Respondent vehemently argued that Respondents are Educational Institution wherein huge number of students are pursuing their different courses. Duly constituted Management Committee is looking after the Management. If an Administrator is appointed in place of the Managing Committee it would jeopardize the Management of the Institution.

14. It is further submitted that the Appellants have already filed the O.A. proceedings, under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993, wherein Joint Commissioners are appointed. Appellants can recover their dues from the mortgaged property. Bank is trying to exercise colourable powers. In the Proceedings under Section 92 C.P.C. also, the Hon'ble High Court has not granted any such relief to the Appellants which now they are trying to obtain by taking over possession under the SARFAESI Act, 2002. The decision already taken by the Division Bench of the Hon'ble Calcutta High Court should cover the field. Bank is not entitled for taking over the management of educational institution rather the

Educational Institution cannot be shut down under the colourable exercise of powers by the Bank.

15. Learned Counsel for Appellant would submit that Bank is exercising its statutory powers. Even the Special Officers, appointed by the Tribunal, are not being allowed to work by the Respondents.

16. Notice is issued under Section 13 (4) (b) read with Section 15 of the Act. Section 13 (4) (b) and Section 15 of the Act reads as under:

"Section 13(4) - In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:

(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset."

"Section 15. Manner and effect of take over of management. -

(1) When the management of business of a borrower is taken over by a [asset reconstruction company] under clause (a) of section 9 or, as the case may be, by a secured creditor under clause (b) of sub-section (4) of section 13], the secured creditor may, by publishing a notice in a newspaper published in English language and in a newspaper published in an Indian language in circulation in the place where the principal office of the borrower is situated, appoint as many persons as it thinks fit-

(a) in a case in which the borrower is a company as defined in the Companies Act, 1956 (1 of 1956), to be the directors of that borrower in accordance with the provisions of that Act; or

(b) in any other case, to be the administrator of the business of the borrower.

(2) On publication of a notice under sub-section (1), -

(a) in any case where the borrower is a company as defined in the Companies Act, 1956 (1 of 1956), all persons holding office as directors of the company and in any other case, all persons holding any office having power of superintendence, direction and control of the business of the borrower immediately before the publication of the notice under sub-section (1), shall be deemed to have vacated their offices as such;

(b) any contract of management between the borrower and any director or manager thereof holding office as such immediately before publication of the notice under sub-section (1), shall be deemed to be terminated;

(c) the directors or the administrators appointed under this section shall take such steps as may be necessary to take into their custody or under their control all the property, effects and actionable claims to which the business of the borrower is, or appears to be entitled and all the property and effects of the business of the borrower shall be deemed to be in the custody of the directors or administrators, as the case may be, as from the date of publication of the notice;

(d) the directors appointed under this section shall, for all purposes, be the directors of the company of the borrower and such directors or as the case may be, the administrators appointed under this section, shall alone be entitled to exercise all the powers of the directors or as the case may be, of the persons exercising powers of superintendence, direction and control of the business of the borrower whether such powers are derived from the memorandum or articles of association company of the borrower or from any other source whatsoever.

(3) Where the management of the business of a borrower, being a company as defined in the Companies Act, 1956 (1 of 1956), is taken over by the secured creditor, then, notwithstanding anything contained in the said Act or in the memorandum or articles of association of such borrower,

(a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;

(b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the secured creditor;

(c) no proceeding for the winding up of such company or for the appointment of a receiver in respect thereof shall lie in any Court, except with the consent of the secured creditor.

(4) Where the management of the business of a borrower had been taken over by the secured creditor, the secured creditor shall, on realisation of his debt in full, restore the management of the business of the borrower to him."

17. Bare perusal of the proviso to Section 13 (4)(b) of the Act reveals that the right to transfer by way of lease assignment or sale should be exercised only where the substantial part of the business of the Borrower is held as security for the debt.

18. At the very outset it is to be observed at this stage that the business of the Borrower was not mortgaged with the Appellants. In such situation, prima facie, case for taking over the Management of the Educational Institution, could not be established. No doubt, the Secured Creditor has been authorized by the Act to take recourse to the measures provided under Section 13 sub-section (4) of the Act to follow any of the measures to recover its secured debt, but at the same time the Secured Creditor has to follow the provisions of law.

19. As far as the issue of prima facie case is concerned, it has to be proved that the business of the Borrower was mortgaged with the Secured Creditor. But in the present case, neither such plea was taken by the Secured Creditor nor could be proved. Accordingly, on this count alone, the prayer for the same could not be allowed.

20. However, as far as merits of the matter are concerned, admittedly, the Respondents are an Educational Institution wherein a large number of students are pursuing their courses. Institution is being run through a Committee of Management constituted under the guidelines of AICTE. An Educational Institution has to run in accordance with the guidelines of AICTE because education plays a very vital role in the transformation of youth into future of the Nation. Educational Institutions are not to be shut down or their Management should not be taken over by any Institution if other resources are available for securing recovery of secured debt by the Secured Creditor.

21. In the present case Secured Creditor has every right to recover its dues in accordance with law by putting the SARFAESI Act in action. An application, under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993, is also pending wherein the Secured Creditor has prayed for issuance of Recovery Certificate. But the Proviso First of Section 13 (4) (b) of the Act imposes a specific bar upon taking over the management where the same is not mortgaged with the Secured Creditor.

22. Other issues such as the business activity being undertaken by the Respondents are not in dispute. It is also not in dispute that the Charitable Trust can run its own business. It is also not in dispute that the Secured Creditor has got every right to recover its dues. But as far as question of hardship is concerned, definitely it weighs in favour of the Respondents in comparison to the Appellants.

23. Proceedings, under Section 92 C.P.C., stand on a different footing than the steps, under Section 13 (4) of the Act, are to be taken by the Secured Creditor. The Hon'ble Calcutta High Court dismissed the proceedings under Section 92 C.P.C. on the ground that no leave was obtained. Accordingly, the Respondents cannot take any advantage of the order of the Hon'ble High Court passed in the suit filed under Section 92 C.P.C.

24. We have to further look into the balance of convenience as well as the comparative hardship. As far as comparative hardship is concerned, we have already observed that the Secured Creditor has options to recover its dues in accordance with law from the secured assets. Further future of a large number of students would be at stake which fact has to be considered for determining the comparative hardship. Further, as far as balance of convenience is concerned, that too lies in favour of the Respondents.

25. This is a case of an Educational Institution wherein firstly the business of the Educational Institution was not mortgaged. Secondly, the Secured Creditor has options to recover its dues by different modes. No doubt,

Section 13 (4)(b) of the Act provides for taking over the management but every case has to be decided on its own facts. This is not a simple case of taking over of Management of a Company or any other firm rather it relates to an Educational Institution. As observed earlier where a large number of students are pursuing their different courses, we cannot lose sight of the fact that their future would be at stake if the Management of the Institution would be handed over to a single person who too could not be said to be an expert in the field. Even Hon'ble Supreme Court in different matters of such specialized fields have observed that experts should only be involved in the activities of an institution because an expert has got the expertise to run a particular institution in a particular manner which is in the interest of its stakeholders. When a large number of students are pursuing their different courses, their future would be at stake if the Institution is taken over by an individual; but it does not mean that the Secured Creditor is precluded from realizing its dues. Still the Secured Creditor has a right to proceed to realise its dues in accordance with law by following the modes prescribed under the Act. Accordingly, I am of the considered view that balance of convenience also lies in favour of the Respondents.

26. However, Learned DRT passed a mandatory order for withdrawal of the notice dated 28.10.2021 issued by the Secured Creditor for taking over of the management; although that notice was issued in the year 2021 and now

we are in 2026. That notice itself has lost its importance and it becomes of academic nature only. However, since the mandatory direction which can only issued at the time of final hearing was issued at an interim stage has to be withdrawn. Accordingly, appeal is liable to be partly allowed.

27. S.A. is pending since 2021 before the Learned DRT-III, Kolkata. No Presiding Officer is posted in DRT-III, Kolkata since January, 2026. In such circumstances, S.A. being of 2021 I deem it proper to recall the S.A. 560 of 2021 from the file of DRT-III, Kolkata. Accordingly, S.A. 560 of 2021 is recalled from the file of DRT-III, Kolkata and is transferred to the file of DRT-II, Kolkata for disposal in accordance with law.

O R D E R

Appeal is partly allowed. Direction issued by the Learned DRT for withdrawal of the notice dated 28.10.2021 is set aside. Rest of the order is affirmed.

Since the S.A. is pending since 2021, Learned DRT-II, Kolkata is expected to decide the same as expeditiously as possible, subject to its own roster, in accordance with law.

Appellants herein should file reply to S.A. within two weeks with copy to Respondents, i.e. S.A. Applicant, who can file rejoinder in a week.

Matter be listed before DRT-II, Kolkata for hearing of S.A. on 23.3.2026.

File be consigned to Record room.

Copy of the Judgment/Final Order be uploaded in the Tribunal's Website.

Order signed, dated and pronounced in open Court.

(Anil Kumar Srivastava,J)
Chairperson

Dated: 24th February, 2026
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