

DEBTS RECOVERY TRIBUNAL-III, CHANDIGARH

PRESIDED OVER: SH. MRIDULESH KUMAR SINGH

SECURITIZATION APPLICATION NO.149/2024

Date of Institution: 07.02.2024

Date of Decision: 03.03.2026

1. M/s MGM Infra Development Solution Pvt. Ltd., a company incorporated under the provisions of the Companies Act having its registered office at House No. 74, Ward No.7, Akali Gurudwara, Road Kharar through its Director/Authorised Signatory Sh. Gurpreet Singh
2. Sh. Manmohan Singh S/o Sh. Hansa Singh R/o House No. 74, Ward No.7, Gurudwara Road, Kharar, District Mohali
3. Smt. Rajwant Kaur W/o Sh. Manmohan Singh, R/o House No. 74, Ward No.7, Gurudwara Road, Kharar, District Mohali
4. Sh. Parminder Kumar, S/o Sh. Ratti Ram R/o House No.11, Street No.1, Malhotra Colony, Roopnagar
5. Smt. Kamlesh Rani W/o Sh. Ratti Ram R/o House No.11, Street No.1, Malhotra Colony, Roopnagar

--Applicants

Versus

1. Bank of Maharashtra, Zonal Office SCO 88-89, Sector 17 C, Chandigarh 16007 through its Authorised Officer
2. Sh. Virender Singh S/o Sh. Shamsheer Singh R/o 320, Block G, SBS Nagar, Pakhowal Road, Ludhiana
3. Smt. Geetanjali W/o Sh. Varinder Singh R/o 320, Block G, SBS Nagar, Pakhowal Road, Ludhiana

--Respondents

Argued by: Sh. C.S. Pasricha, Advocate for Applicant No.1

None for Applicant Nos. 2 to 5

Sh. Munish Yadav, Advocate for Respondent No.1

Sh. Amit Rishi, Advocate for Respondent
Nos. 2 & 3

FINAL ORDER

(1) This Securitization Application was filed under Section 17 (1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the Act' for brevity) to declare the classification of loan account as NPA illegal, to set aside demand notice under Section 13(2) of the Act dated 14.11.2018, notice under Section 13(4) of the Act dated 22.04.2019 and sale notice dated 22.08.2019 being contrary and issued in violation of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as 'Rules' for brevity).

(2) It was stated in the application that applicants were sanctioned Term Loan of Rs. 880 Lacs by respondent No.1 and also a CC limit of Rs. 75 Lacs vide sanction letter dated 29.08.2014 and 31.08.2015 respectively; that Term Loan was stated to be secured against plant and machinery and was collaterally secured against immovable property i.e., residential house in the name of Sh. Manmohan Singh situated at Ward No.8 Gurudwara Road, Kharar and also by residential plot No. 450-F measuring 450 sq. yds. in the name of Sh. Manmohan Singh and Smt. Rajwant Kaur situated at Village Sunet Abadi known as Shaheed Bhagat Singh Nagar, Ludhiana; that CC limit was stated to be secured against hypothecation of stocks and book debts and the immovable property aforesaid; that the loans were secured against personal guarantees of Sh. Gurpreet Singh, Sh. Manpreet Singh, Sh. Manmohan Singh and Smt. Rajwant Kaur; that applicant No.1 is a MSME Unit; that there was no default of whatsoever and the accounts were being maintained as per the terms and conditions of the sanction; that to provide the relief to the MSMEs, the RBI came out with Circular dated 07.02.2018 which was aim to grant "Relief for MSME Borrowers registered under Goods and Services Tax (GST)", wherein thrust was made that the account of MSMEs were not to classified as standard asset in the books of banks and NBFCs with the conditions that the

account should be registered under GST Regime, exposure being less than Rs. 25 Crore as on 31.01.2018 and the account should be standard as on 31.08.2017; that accounts of the applicants were entitled to the said relief as the accounts were standard as on 31.08.2017; that to the utter shock and surprise of the applicants and to the utter dismay to the said Circulars issued by RBI supra, respondent No.1 while violating the said Circulars classified the accounts of the applicants as NPA on 01.07.2018; that vide letter dated 22.02.2018 respondent No.1 informed applicants that there are overdues in the loan accounts and the account is in NPA category; that in the said letter nowhere respondent No.1 has mentioned the date of NPA though it is mentioned that "This account is in NPA Category"; that on 21.03.2018, the applicants protested to the bank and while referring to the circulars issued by RBI called upon respondent No.1 to set at rest the illegal declaration of the account as NPA in view of the circulars issued by RBI; that without giving any consideration to the request of the applicants, on 14.05.2018 the respondent No.1 threatened and coerced the applicants by asking to pay the overdues in the accounts; that thereafter, on several times applicants requested the respondent No.1 to extend the relief as contemplated by the Circulars and was requested not to proceed with coercive and harsh measures under the Act; that however, respondent No.1 was more interested in proceeding with coercive steps instead of providing the requisite relief under the RBI circulars aforesaid, which are binding in nature and are having statutory flavour; that despite the fact that classification of loan accounts as NPA itself is violative of the RBI Circulars, respondent No.1 proceeded further to issue notice under Section 13(2) of the Act on 14.11.2018, in which date of classification of loan accounts as NPA on 01.07.2018 was mentioned; that applicants moved representation under Section 13(3-A) of the Act dated 17.03.2019 and requested for withdrawal of the notice under Section 13(2) of the Act; that thereafter, respondent No.1 issued possession notice under Section 13(4) of the Act

dated 22.04.2019; that the said notice under Section 13(4) of the Act was not served upon the applicants in accordance with law; that factum thereof only came to the notice of the applicants, when the sale notice putting the alleged secured asset to auction came to be issued by the respondent No.1; that respondent No.1 immediately advertised the properties to auction vide sale notice dated 24.05.2019 for sale dated 24.06.2019; that no clear 30 days gap has been maintained by the respondent No.1 between the date of issuance of sale notice and the date of sale; that the said auction did not matured for want of bidders as learnt subsequently from respondent No.1; that thereafter, again respondent No.1 issued sale notice dated 22.08.2019 but for 15 days but the said sale was also not matured; that thereafter, respondent No.1 again issued sale notice dated 22.09.2019, which found published in the newspaper for the sale dated 23.10.2019; that the said notice was not served providing clear 30 days; that respondent No.1 has received bid for the said auction from respondent Nos. 3 & 4; that being aggrieved of the illegalities of the bank in violating the provisions of the Act and Rules, initially the applicants had approached the Hon'ble Punjab and Haryana High Court by filing CWP No. 30944/2019 however the same was withdrawn with liberty to file afresh as the notice under Section 13(2) of the Act was not impugned therein; that in view of the liberty granted by the Hon'ble High Court, the applicants filed CWP No. 33352/2019 impugning the auction notices dated 22.08.2019 and also 22.09.2019 and also the declaration of the accounts as NPA being violative of RBI guidelines; that the said writ petition came up for hearing before the Hon'ble High Court on 18.11.2019, on which date the Hon'ble Division Bench of the Hon'ble Punjab and Haryana High Court was pleased to restrain the respondent No.1 from taking any coercive steps pursuant to the notice under Section 13 of the Act as the declaration of the accounts as NPA was in dispute; that ultimately vide order dated 18.12.2023, the bunch matters including the writ petition preferred by applicants, came to be dismissed

by the Hon'ble High Court and the interim protection granted was ordered to be continued till further 20 days therefrom with liberty to the applicants/petitioners to avail the remedy in accordance with law and thereafter, the applicants approached before this Tribunal. It was further prayed that respondent No.1 has initiated SARFAESI proceedings in contravention of the provision of the Act. Therefore, it was prayed that the present SA may kindly be allowed.

(3) No reply to SA was filed by respondent No.1 and opportunity to file reply by respondent No.1 was closed vide order dated 25.10.2024.

(4) Reply filed by respondent Nos. 2 & 3.

(5) It was stated in the reply that respondent Nos. 2 & 3 have purchased the property way back in the year 2019 in due process of law after going through the sale notice published in the newspapers; that respondent Nos. 2 & 3 have purchased the property in dispute through public auction and have also deposited the entire sale consideration and sale certificate has also been issued in favour of respondent Nos. 2 & 3 on 17.02.2024 (Annexure R-2/A); that property in question was sold at prevailing market value and respondent Nos. 2 & 3 have purchased the property through e-auction; that the sale was also duly registered in the office of sub-Registrar, Ludhiana (West) on 15.03.2024 (Annexure R-2/B); that possession of the property has also been delivered to respondent Nos. 2 & 3 along with the original documents (Annexure R-2/C & D). Therefore, applicants are not entitled to claim any relief and the SA is liable to be dismissed with costs.

(6) No replication was filed by applicants to the reply filed by respondent Nos. 2 & 3.

(7) I have heard arguments advanced by Sh. C.S. Pasricha, Advocate for Applicant No.1, Sh. Munish Yadav, Advocate for Respondent No.1 and Sh. Amit Rishi, Advocate for Respondent Nos. 2 & 3 and gone through the record carefully. None was present on behalf of applicant Nos. 2 to 5.

(8) Sh. C.S. Pasricha, Advocate argued that loan accounts of applicants were classified as NPA illegally

on 01.07.2018 without referring the matter of applicants to the Designated Committee as the applicant No.1 is MSME Unit and Udyog Aadhaar Registration Certificate dated 08.02.2018 is annexed as Annexure A-3 to the SA.

(9) *Per Contra*, Sh. Munish Yadav, Advocate argued that loan accounts of the applicants were classified as NPA on 01.07.2021 strictly in accordance with law.

(10) Copy of Sanction Letters dated 29.08.2014 and 31.08.2015 are annexed as Annexures A1 & A2 with the SA and copy of Udyog Aadhaar Registration Certificate is annexed as Annexure A-3 to the SA, which shows that applicant No.1 has got registered as MSME on 09.06.2009 i.e., earlier the date of sanction of loan.

(11) In light of above, it was mandatory on the part of respondent No.1 to refer the matter of applicants to Designated Committee before classification of loan accounts as NPA. Non-filing of reply by respondent No.1 appears that respondent No.1 has admitted the facts of the applicants mentioned in the SA. Therefore, classification of loan accounts as NPA is not legal as per law.

(12) Sh. C.S. Pasricha, Advocate further argued that after receiving the notice under Section 13(2) of the Act dated 14.11.2018, applicants have raised certain objections under Section 13(3-A) of the Act dated 17.03.2019 but respondent No.1 has not replied to the said objections.

(13) *Per Contra*, Sh. Munish Yadav, Advocate argued that respondent No.1 has not received the copy of representation moved by applicants under Section 13(3-A) of the Act, therefore respondent No.1 was unable to reply to the said objections.

(14) Copy of representation moved by applicants under Section 13(3-A) of the Act dated 17.03.2019 is annexed as Annexure A-16. In absence of any reply supported with affidavit, it cannot be accepted that the said representation was not sent or received by respondent No.1. Non-responding the representation under Section 13(3-A) of the Act further shows the illegality in the SARFAESI proceedings.

(15) Sh. C.S. Pasricha, Advocate further argued that notice under Section 13(4) of the Act dated 22.04.2019 was not served upon applicants as per Rules.

(16) *Per contra*, Sh. Munish Yadav, Advocate argued that notice under Section 13(4) of the Act dated 22.04.2019 was duly served upon applicants.

(17) Possession notice was required to be served through personal service, through pasting and through publication in two leading newspapers. It is also required that possession notice be also served through electronic mode of service in addition to the modes prescribed under sub-rule (1) and sub-rule (2) of Rule 8 of the Rules.

(18) Since reply to SA was not filed by respondent No.1 and even no documents were filed to prove that the notice under Section 13(4) of the Act was served in accordance with law, it cannot be assumed or presumed that the possession notice was issued as well served upon all concerned as per law.

(19) This Tribunal is unable to understand as to in what circumstances, respondent No.1 has not contested this SA.

(20) Sh. C.S. Pasricha, Advocate further argued that sale notice dated 22.09.2019 was not issued providing 30 days time as per Rules.

(21) *Per contra*, Sh. Munish Yadav, Advocate argued that sale notice dated 22.09.2019 was a subsequent sale notice, which was duly served upon applicants. It was further argued that earlier sale notice dated 24.05.2019 and 22.08.2019 were issued but the said sales were not matured due to lack of bidders.

(22) Since the present sale is not for the first sale, therefore there is no need to issue notice providing 30 days time as per Rules. There is no force in the argument of Sh. C.S. Pasricha, Advocate.

(23) Sh. Amit Rishi, Advocate argued that respondent Nos. 2 & 3 have purchased the property in good faith after payment of full consideration as per Rules. Therefore, the SA may be dismissed.

(24) *Per contra*, Sh. C.S. Pasricha, Advocate argued that since plinth of the building was found illegal

then the whole building constructed upon it shall go being illegal.

(25) In the considered opinion of this Tribunal when it was found that classification of loan accounts as NPA was illegal then rest proceeding initiated under the Act cannot be sustained and liable to be quashed.

(26) No other point was argued/pressed.

(27) After considering the above facts and circumstances as well as evidence on record, present SA is liable to be allowed.

(28) **SA is allowed.** SARFAESI proceedings initiated by the respondent No.1 is quashed since initiation, as loan accounts were classified as NPA wrongly and illegally. Respondent No.1 is directed to take back the physical possession of the mortgaged property from the auction purchasers and return to applicants within 30 days of this order. Respondent No. 1 is also directed to return the auction money of the auction purchasers with interest, which is prevalent on FD at present immediately. It is made clear that respondent may again initiate fresh SARFAESI proceedings strictly in accordance with law. **IA No. 434/2024 and all pending IAs are also disposed of accordingly.**

Record be consigned to record room after due compliance.

Date: 03.03.2026

Pronounced by me in the open Tribunal.

(MRIDULESH KUMAR SINGH)

**Presiding Officer,
DRT-III, Chandigarh**