

Appeal No.40 of 2024 -DRAT-Kolkata

**IN THE DEBTS RECOVERY APPELLATE TRIBUNAL AT
KOLKATA**

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

Appeal No. 40 of 2024
(Arising out of S.A. No. 244 of 2022 in DRT-Visakhapatnam)

1. The Authorized Officer, State Bank of India, Stressed Assets Recovery Branch State Bank of India, Administrative Office, Balaji Nagar, Siripuram Junction, Visakhapatnam -530003.

....Appellant

-Versus-

1. M/s. Sree Lakshmi Silks, Shop No. 142, 1 Floor, Sri Lal Bahudur Sastry Wholesale Cloth Market, Vijayawada Municipal Corporation, Vijayawada 520001.
2. SRI. MOPIDEVI VENKATA HARINATH, H. No. 8-122, Near Bus Stop, Nizampatnam, Guntur.
3. MEDA VENKATA RAJENDRA PRASAD, H. No. 1-3-23/4/2A, Cement Road, Vidyadarapuram, Vijayawada - 520001.

....Respondents

4. BELLAPU SUBBA REDDY, C-8, NB.K.R.I.S.T. Quarters, Gudali, Vidya Nagar, Nellore.

5. THUPILI RAVEENDRA BABU, #10-12, Flat No. 310, Greenwoods Apartment, Ballam Vari Street, Prasadampadu, Vijayawada.

.....Proforma Respondents

Counsel for Appellants Mr. S. Pal Chowdhury

Counsel for Respondents None

JUDGMENT : 13th March, 2026

THE APPELLATE TRIBUNAL :

Matter is taken up in the revised list. Heard the Learned Counsel for the Appellant. Despite due service, none appears for the Respondents.

2. I have heard the Learned Counsel for the Appellant and perused the records.

3. Instant Appeal is preferred against a judgment and order dated 27th July 2023 passed by Learned DRT Visakhapatnam allowing the S.A. No. 244 of 2022 on the point of fixation of reserve price.

4. As per the pleadings of the parties, the Respondent No. 1, 2 and 3 namely M/s Sree Laxmi Silks, No. 2. Sri Mopidevi Venkata Harinath and No. 3 Meda Venkata Rajendra Prasad preferred a Securitisation Application under Section 17 of the SARFAESI Act, 2002 for setting aside the Possession Notice dated 16.10.2017 and also to set aside the e-auction Notice dated 20th April, 2022 for auction of the secured assets on 31.05.2022. It is stated that the Respondent No. 1 is a partnership firm and the borrower of a loan taken from the Bank. Respondent Nos. 2 and 3 are the guarantors for the loan. Loan account was classified as NPA. Certain requests for O.T.S. were also made. In the meantime, Covid 19 Pandemic occurred. Bank proceeded under the SARFAESI Act by issuing a Possession Notice dated 16.10.2017 bearing a reference of Demand Notice dated 31st July, 2017. Demand Notice was never served upon the borrowers. OTS proposal could not be fructified. Payments were made by the Securitisation Applicants. The Account was wrongly classified as NPA. Possession Notice was not

served upon the Securitisation Applicants and was not published in accordance with law. There is no mention about the redemption. There is violation of Rule 8(6) of the Security Interest (Enforcement) Rules, 2002. Valuation report was not obtained before the issuance of e-auction Sale Notice.

5. Opposition filed before the DRT by the Bank stating that all the steps in accordance with law are taken by the Bank. Account was rightly classified as NPA. Notice was issued on 20.08.2017. Valuation Report was duly obtained before the date of the auction which was conducted on 31.05.2022. It was a third auction. Prior to it, Notice under Section 13(2) of the SARFAESI Act, 2002 was issued on 31.07.2017 which was duly served. Possession Notice was issued on 16.10.2017. Notice under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 was issued on 22.04.2019 and Rule 9(1) and 8(6) of the Rules for different dates i.e. 30th November, 2019, 02.03.2020 01.02.2021 and 02.03.2022 for e-auction Sale Notice dated 22.10.2019, 07.02.2020, 28.09.2020. 26.03.2021 and 21.04.2022 All the Notices were duly served, published and affixed. Valuation Report was duly obtained.

6. Learned DRT recorded a finding that the S.A. was filed on 20th May, 2022 and the Demand Notice was issued on 31.07.2017. Possession Notice was issued on 16.10.2017, published on 22.10.2017. Accordingly, on the point of Demand Notice and Possession Notice, the Securitisation Application was time barred.

7. Learned DRT further held that on the point of e-auction dated 21.04.2022, S.A. is time barred. For the sale notice dated 28.09.2020 also the S.A. is time barred. It is further recorded that the Bank has complied with all the provisions in issuance of service, publication and affixation of the notices as required under the law.

8. All these findings are not challenged by the borrower. No appeal is filed by the borrower against the impugned judgment. Accordingly, as far as these findings against the borrowers are concerned, they attained a finality.

9. Learned DRT incorporated a finding that the reserve price of the e-auction sale conducted 21.04.2022 was fixed below the distress value. Accordingly, the fixation of the reserve price was against the law. Accordingly, Learned DRT set aside the sale and the sale certificate.

10. Learned Counsel for the Appellant Bank would submit that the findings recorded by the Learned DRT are erroneous and against the records. Learned Counsel would submit that this was fourth e-auction sale wherein a valuation report was obtained from the approved valuer on 13.10.2021 wherein the market value was assessed at Rs. 1,22,40,000/, realizable value was Rs.1,10,16,000/- and the distress value was Rs.97,92,000/-. Learned Counsel would further submit that reserve price was fixed on the basis of the approval of an internal Committee of the Bank. In the meeting dated 18.04.2022, Committee recommended the reserve price at Rs.86 lacs. The e-auction sale conducted on 31.05.2022 for Rs.86,10,000/-. Learned Counsel would submit that the

reserve price was fixed in accordance with law. No plea was taken by the borrowers for fixing the reserve price below the distress value.

11. As has been observed in the earlier part of the judgment, all the issues raised by the borrowers were negated by the Learned DRT. S.A. was allowed merely on the ground of fixation of reserve price below the distress value. Admittedly the e-auction was conducted in the fourth round on 31st May, 2022. The Valuation Report of the approved valuer was obtained by the Bank on 13.10.2021 wherein the distress value was Rs.97,92,000/-. The Committee Officers of the Bank vide their report dated 18.04.2022 proposed the reserve price at Rs. 86 lacs.

12. Rule 8(5) of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as the 'Rules') provides that the Authorised Officer shall obtain the valuation of the property from an approved valuer before the sale and shall fix the reserve price in consultation with the secured creditor.

13. Valuation of the secured assets has to be made by the Authorised Officer before the date of sale. It has been held by the Hon'ble Apex Court in catena of judgments that more is the power given to an authority, more are the responsibilities of the authority. It means that when wide powers have been given to the Authorised Officer under the SARFAESI Act, then it also imposes certain duties upon the Authorised Officer. He cannot act arbitrarily. He has to follow the rules and the laws. No doubt, if a Borrower fails to repay

the loan taken by him from the financial institution or Bank, secured assets has to be auctioned and sold by the Bank through its Authorised Officer. But it does not mean that the Authorised Officer should auction the property without following the law. Law requires that there is a legal obligation on the part of the Authorised Officer that property be sold in such a manner that it may fetch the best price. This is the essential ingredient on which sale remains on the valuation report and fixing the reserve price. In case, proper valuation has not been made and the reserve price is fixed taking into consideration the inaccurate valuation report, the intending buyer may not come forward treating the property as not worth to be purchased by him. It means that a proper valuation of the secured asset should be made through an approved valuer by the Authorised Officer. The valuation should be made prior to the issuance of the auction notice wherein reserve price is fixed by the Authorised Officer. We can take judicial notice of the fact that prices of land or property are escalating and the Borrower has a legal right to get the appropriate value of his property to be auctioned by the Authorised Officer. If any negligence is caused or committed by the Authorised Officer in obtaining the valuation report before issuance of the auction notice, it may go against the interest of the Bank. Authorised Officer is also a public servant who has to perform his duties diligently with devotion. Any act or omission of the Authorised Officer, which is against the settled norms of diligence and devotion

to duty, would amount to misconduct on his part. Authorised Officer is also required to follow the law.

14. The Authorised officer in the impugned auction fixed the reserve price on the basis of the report of the Committee duly constituted by the secured creditor Bank. The Committee has taken into consideration the previous proposed auctions which could not be materialized and the reserve fixed thereon. Accordingly, reserve price was fixed by the Authorised officer.

15. In the present case, Authorised Officer duly consulted with the secured creditor. Committee of the Officers of the Bank in their report dated 18.04.2022 have given cogent reasons for reducing the reserve price below the distress value which was in accordance with law. It appears that the Learned DRT overlooked the provisions of Rule 8(5) of the Rules and also the report of the Committee comprising the officers of the Bank dated 18.04.2022. Learned DRT was persuaded by the fact that the Reserve price is fixed below the distress value but did not take any consideration to relevant provisions and the report. Accordingly, since the Learned DRT has allowed the S.A. merely on the ground of fixing of the reserve price below the distress value, we are of the considered view that the findings recorded by the Learned DRT are erroneous and cannot sustain. At this juncture also we may refer to the findings of the DRT wherein it was held that the S.A. itself is time barred. However, in totality of the circumstances, we do not find any

ground for allowing the S.A. Accordingly, Appeal deserves to be allowed.

ORDER

Appeal is allowed. Impugned judgment and order dated 27.07.2023 passed by Learned DRT Visakhapatnama in S.A. No. 244 of 2022 is set aside. Consequently, S.A. No. 244 of 2022 (***M/s. Sree Lakshmi Silks and others versus Authorised Officer State Bank of India and others***) stands dismissed.

No Order as to costs.

File be consigned to Record Room.

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

Order signed and pronounced by me in the open Court on this the 13th day of March, 2026.

(Anil Kumar Srivastava,J)
Chairperson

Dated 13th March, 2026
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