***THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA**
**AND**
***THE HON'BLE JUSTICE GADI PRAVEEN KUMAR**

**+ WRIT PETITION Nos.25486 AND 35956 OF 2025**

% 03-07-2026

**W.P.No.25486 of 2025:**

# Union Bank of India, SAM Branch,
Hyderabad, rep. by its Authorised Officer

.....Petitioner

AND

vs.

$ Mr.Bandla Ganesh Babu and Four Others

... Respondents

**W.P.No.35956 of 2025:**

# Mr. Bandla Ganesh Babu and Three Others

.....Petitioners

AND

vs.

$ The Debts Recovery Appellate Tribunal,
Kolkata and Two Others

... Respondents

!Counsel for the Petitioners: Mr. S.Ravi, learned Senior Counsel representing Mr. K. Aroah, learned counsel appearing for the petitioners in WP.No.35956 of 2025 and the respondent Nos.1 to 4/guarantors in W.P.No.25486 of 2025

^Counsel for Respondents: Mr. Mayur Reddy, learned Senior Counsel representing Mr. Kanduri Koushik, learned counsel appearing for the respondent No.2 in W.P.No.35956 of 2025 and the respondent No.5 in W.P.No.25486 of 2025.

^Counsel for Respondents: Mr. B. S. Prasad, learned Senior Counsel representing M/s. Pearl Law Associates for the respondent No.3 in W.P.No.35956 of 2025 and the petitioner in W.P.No.25486 of 2025.

<Gist :

>Head Note :

? Cases referred

1. (2021) 9 SCC 321
2. SBI v. Ramakrishnan; (2018) 17 SCC 394
3. (2008) 1 SCC 125
4. (2019) 2 SCC 198
5. (2018) 17 SCC 394
6. 2020 SCC OnLine NCLAT 957
7. (2008) 9 SCC 299

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA
AND
THE HON'BLE JUSTICE GADI PRAVEEN KUMAR**

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**DATE OF COMMON ORDER: 03.07.2026**

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Mr. S.Ravi, learned Senior Counsel representing Mr. K. Aroah, learned counsel appearing for the petitioners in WP.No.35956 of 2025 and the respondent Nos.1 to 4/guarantors in W.P.No.25486 of 2025.

Mr. Mayur Reddy, learned Senior Counsel representing Mr. Kanduri Koushik, learned counsel appearing for the respondent No.2 in W.P.No.35956 of 2025 and the respondent No.5 in W.P.No.25486 of 2025.

Mr. B. S. Prasad, learned Senior Counsel representing M/s. Pearl Law Associates for the respondent No.3 in W.P.No.35956 of 2025 and the petitioner in W.P.No.25486 of 2025.

**COMMON ORDER:** (Per Hon'ble Justice Moushumi Bhattacharya)

1. W.P.No.25486 of 2025 is filed challenging the order passed by the Debts Recovery Tribunal-II, Hyderabad ('DRT') on 08.08.2025 in S.A.No.300 of 2022. W.P.No.35956 of 2025 challenges the order dated 14.11.2025 in Appeal No.101 of 2025 passed by the Debts Recovery Appellate Tribunal, Kolkata ('DRAT').

2. The Union Bank of India has filed W.P.No.25486 of 2025, challenging the order passed by the DRT dated 08.08.2025. The respondent Nos.1 to 4 are the guarantors and the impleaded respondent No.5 is the auction purchaser in the said Writ Petition.

3. The guarantors have filed W.P.No.35956 of 2025 challenging the order passed by the DRAT dated 14.11.2025. The Union Bank of India is the respondent No.3 and the auction purchaser is the respondent No.2 in the said Writ Petition.

4. Both sets of Writ Petitions pray for a Writ of Certiorari to set aside the orders passed by DRT and the DRAT on the dates mentioned above. The parties are referred to as per their nomenclature in the loan transaction.

5. Both Writ Petitions are disposed of by this Common Order since they involve the same parties.

6. Learned Senior Counsel appearing for the Union Bank of India, the guarantors and the auction purchaser sought to advance arguments in W.P.No.25486 of 2025. We hence propose to deal with the merits of the controversy involved in the order passed by DRT dated 08.08.2025. This order forms the basis of the second order passed by the DRAT dated 14.11.2025.

7. The auction purchaser challenged the order of the DRT dated 08.08.2025 which resulted in the DRAT's order dated 14.11.2025. By the said order, the DRAT refused to vacate the interim order passed by it on 30.10.2025 (as prayed for by the auction purchaser) and listed the Appeal for hearing on 01.12.2025. The guarantors have challenged the DRAT's order by way of W.P.No.35956 of 2025.

8. The dates relevant to the adjudication of the Writ Petitions are as follows:

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| 30.04.2017 | The respondents' Accounts were classified as Non-Performing Assets (NPA). |
| 29.01.2018 | The Bank issued a Demand Notice to the Guarantors under section 13(2) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act'). |
| 17.09.2019 | The concerned Company (of which the respondents are guarantors) was admitted into the Corporate Insolvency Resolution Process ('CIRP') and a moratorium was imposed |

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| | thereafter. An Interim Resolution Professional ('IRP') was appointed by the National Company Law Tribunal, Hyderabad Bench ('NCLT'). |
| 24.10.2020 | The CIRP came to an end. |
| 09.10.2019 | The Bank issued a Possession Notice under section 13(4) of the SARFAESI Act. |
| March, 2020 | The Bank accepted a One-Time Settlement ('OTS'). |
| 02.06.2021 | The OTS was cancelled. |
| 23.11.2021 | The Bank issued a Demand Notice to the guarantors under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019. |
| 15.12.2021 | The guarantors' challenge to the Possession Notice was dismissed by this Court in W.P.No.33851 of 2021. |
| 23.03.2022 | The Bank filed O.A.No.209 of 2022 before the DRT for recovery of a total debt of Rs.1,25,44,61,601.24 paise. |
| 2022 | The guarantors filed S.A.No.300 of 2022 before the DRT challenging the Possession Notice dated 09.10.2019 and the Sale Certificate issued in pursuance of E-Auction sale of the Schedule-II property. |
| 26.09.2022 | Auction Notice was issued by the Bank for the sale of three secured assets of the borrower Company. |
| 20.10.2022 | The secured asset (as mentioned in the Possession Notice) was auctioned, pursuant to Auction Notice dated 26.09.2020. |
| 28.10.2022 | Sale Certificates were issued, one of which was registered in favour of the auction purchaser/the respondent No.5 in W.P.No.25486 of 2025. |
| 08.08.2025 | DRT passed the impugned order in the |

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| | guarantors' S.A. (No.300 of 2022) in favour of the guarantors by directing the Bank to refund the auction amount along with interest @6% per annum to the auction purchaser and directed the auction purchaser to hand over physical possession of the property to the guarantors.<br><br>The auction purchaser challenged the DRT's order dated 08.08.2025 before the DRAT. |
| 04.09.2025 | The DRAT granted stay of the operative part of the order of DRT dated 08.08.2025. |
| 30.10.2025 | The DRAT granted an interim order in favour of the auction purchaser. |
| 14.11.2025 | The DRAT refused to continue the interim order dated 31.10.2025 on the undertaking given by the auction purchaser that it would not create any third-party interest and would not claim any interest over the secured asset in case it loses the Appeal. |

9. The issue for consideration is whether the DRT erred in granting relief to the guarantors by allowing S.A.No.300 of 2022 filed by them and setting aside the Possession Notice dated 09.10.2019, the Auction Sale held on 20.10.2022 and the Sale Certificate issued in favour of the auction purchaser on 28.10.2022. By the impugned order, the DRT also directed the Bank to refund the entire sale consideration to the auction purchaser along with simple interest at 6% per annum and directed the auction purchaser to hand over physical possession of the schedule property to the guarantors within a specified timeframe.

10. Learned Senior Counsel appearing for the Bank submits that the impugned order is contrary to the provisions of the SARFAESI Act including sections 13(4) and 17 thereof read with The Security Interest (Enforcement) Rules, 2002 ('2002 Rules'). Senior Counsel further submits that the DRT had no jurisdiction to direct delivery of the secured asset to the guarantors under section 13(4) of the SARFAESI Act as its jurisdiction is confined and circumscribed to only examine the measures and rules made thereunder alone and that it has wrongly exercised the jurisdiction of the NCLT. It is also submitted that the impugned order is hit by the principle of *res judicata* in light of the dismissal of W.P.No.33851 of 2021.

11. Learned Senior Counsel appearing for the guarantors submits that the provisions of The Insolvency and Bankruptcy Code, 2016 (IBC) is relevant to the present adjudication and that it was within the jurisdiction of the DRT to examine those provisions for the effective adjudication of the disputes between the parties. He further submits that the Bank ought to have proceeded under the IBC, as opposed to the SARFAESI Act, after the initiation of the CIRP under the provisions of the IBC. Counsel submits that the IBC is a special enactment which came into force subsequent to the SARFAESI Act and prevails over the latter.

12. Learned Senior Counsel appearing for the auction purchaser submits that the mere issuance of the Demand Notice dated 23.11.2021 under Rule 7(1) of The Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 ('2019 Rules'), does not amount to e-filing of an application under section 95 of the IBC. It is also submitted that the DRT granted reliefs that were not prayed for by the guarantors, including declaring the Possession Notice as void. Counsel further submits that the sanctity of a public auction must be protected and cannot be set aside solely on the basis of alleged procedural irregularities.

13. The issue which falls for consideration is whether the order dated 08.08.2025 passed by the DRT calls for interference. The said order was passed on the Securitisation Application filed by the respondents/guarantors. The second impugned order of the DRAT dated 14.11.2025 was passed on an Appeal filed by the Auction Purchaser against the DRT order dated 08.08.2025.

14. The personal guarantors are ex-Promoters/Directors of the corporate debtor, M/s.Parameswara Poultry Farm Pvt. Ltd. Proceedings under the IBC were initiated against the corporate debtor by one of the operational creditors *vide* an order dated

17.09.2021 in CP No.105/9/HPB/2019 passed by the NCLT. The OTS as agreed by the Bank and the guarantors on 13.11.2019 could not materialize and was finally cancelled on 02.06.2021. The Bank, thereafter, proceeded to auction the property. The auction notice was issued on 26.09.2022 and property was auctioned on 20.10.2022. The respondent No.5, as the highest bidder, made full payment of the bidding price and the Bank accordingly issued a sale certificate in favour of the respondent No.5/auction purchaser.

15. The argument of the guarantors before the DRT was that the IBC, as per section 238 therein, would have an overriding effect over all laws including the SARFAESI Act and that the NCLT is the appropriate Adjudicating Authority for corporate persons and personal guarantors as per section 60 of the IBC. Hence, the proceedings initiated by the Bank against the secured asset under the SARFAESI Act are *void ab initio* and are liable to be set aside.

16. The Bank argued that securitisation measures were initiated *vide* a Demand Notice dated 28.01.2018 for an amount of Rs.91,01,25,967/- along with interest pursuant to the account of the Corporate Debtor becoming Non-Performing Asset (NPA) on 30.04.2017. A Possession Notice was served on the guarantors on 06.07.2019 following the procedure under the 2002 Rules. The

Bank obtained physical possession of the property on 03.03.2022 following the direction of this Court in W.P.No.33851 of 2021 and auction sale was initiated on various dates. The property was finally auctioned on 20.10.2022 in favour of the auction purchaser for Rs.8,50,76,750/-. The auction purchaser paid the full amount for the property within the prescribed time and the Bank issued a sale certificate in favour of the auction purchaser.

17. The auction purchaser argued that issuance of a notice under the provisions of the IBC would not prohibit an auction under the SARFAESI Act against secured assets belonging to the personal guarantors. The primary case of the auction purchaser is that the entire sale consideration was paid within the prescribed time; and the sale certificate in respect of the property was issued accordingly.

18. The DRT, after considering the contentions of the parties before it i.e., the guarantors, the Bank and the auction purchaser, found the possession notice dated 09.10.2019, auction sale dated 20.10.2022 and all the SARFAESI measures subsequent to the issuance of Demand Notice dated 23.11.2021 to be *void ab initio* since the proceedings against the Corporate Debtor and guarantors would lie before the NCLT. The DRT held that the entire sale process was invalidated upon the foundational action being *void*.

The DRT accordingly allowed the Securitisation Application by setting aside the Possession Notice and directed the Bank to refund the entire sale consideration to the auction purchaser along with interest. The auction purchaser was also directed to hand over the physical possession of the property to the guarantors within a specific time frame.

19. The issue before us, as culled out from the arguments made on behalf of the Bank, the guarantors and the auction purchaser, is whether the action taken by the Bank for possession, auction and sale of the secured asset under the SARFAESI Act is sustainable despite the Bank issuing a Demand Notice to the guarantors under Rule 7(1) of the IBC Rules 2019? In other words, whether recovery proceedings against the personal guarantors can be maintained under the SARFAESI Act where Corporate Insolvency Resolution Process (CIRP) has been initiated against the Corporate Debtor and is pending before the NCLT?

20. The Bank says – Yes, i.e., action for recovery under the SARFAESI Act can be pursued against the guarantors independent of the CIRP. The guarantors say otherwise. According to the guarantors, once the Bank issued a notice under the IBC to the

guarantors, any further proceedings against them would be governed by the provisions of the IBC and adjudicated by the NCLT.

21. The entire argument of the guarantors in these Writ Petitions is that the Demand Notice issued by the Bank on 23.11.2021 under Rule 7 of The Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019 ('IBC Rules, 2019') would trigger the provisions of the IBC, 2016 and consequently the benefit of interim moratorium as envisaged under section 96 of the IBC.

22. The provisions referred to above should be placed in context of the undisputed facts of this case.

23. Rule 7 of the IBC Rules, 2019 provides for an application by a creditor in the prescribed form under section 123(1) of the IBC which falls under Chapter IV (Part II) - Bankruptcy Order for Individuals and Partnership Firms.

24. In the present case, section 95 of the IBC would be relevant since it contemplates an application for initiation of the Insolvency Resolution Process by a creditor. Therefore, the Interim Moratorium can only be ordered upon an application being filed under section 95 by a creditor to the Adjudicating Authority (the National Company Law Tribunal ('NCLT') for initiating an Insolvency Resolution Process under

section 95(1). Interim moratorium operates as a stay of any legal action pending in respect of any debt and puts an embargo on the creditors of the debtor not to initiate any legal action in respect of any debt.

25. In the present case, it is undisputed that the Bank sent only a Demand Notice in the prescribed Form-B under Rule 7(1) of the IBC Rules, 2019, and did not proceed further in terms of filing an application under section 95 of the IBC which is a *sine qua non* for the interim moratorium under section 96(1) to commence in relation to a debtor (guarantors in this case).

26. The Scheme of the IBC makes it clear that the CIRP initiated by a financial creditor only commences from the date of admission of the application under section 95 of the IBC, by the Adjudicating Authority upon the occurrence of the default. The contrast in the language of section 7 and section 8 of the IBC is pertinent to this case. Section 7 provides for a financial creditor to initiate CIRP upon filing of an application against the corporate debtor before the Adjudicating Authority upon the occurrence of a default. On the other hand, section 8 provides for an operational creditor, upon the occurrence of default, to deliver a Demand Notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor.

27. Hence, it is clear that section 7 does not contemplate delivery of any Demand Notice by the financial creditor to the debtor for the purpose of initiation of CIRP. The initiation of the CIRP against personal guarantors by a financial creditor commences only upon admission of an application under section 95 of the IBC.

28. Further, the imposition of a moratorium under section 14 of the IBC against the corporate debtor (Parameshwara Poultry Farm Pvt. Ltd.) would not amount to an embargo on the petitioner Bank to enforce its security interest against the personal guarantors under the provisions of the SARFAESI Act. The scheme of the IBC makes it clear that section 14 under Chapter II (Part II) – 'Corporate Insolvency Resolution Process' - applies to a corporate debtor who has committed a default and against whom CIRP has been initiated before the Adjudicating Authority. Section 14(1) of the IBC provides that the Adjudicating Authority shall declare moratorium on the commencement date of the CIRP prohibiting certain actions taken against the corporate debtor including the institution of suits, continuation of pending suits/proceedings, execution of any judgment, or order in any Court of law. Section 14(1)(b) also bars the corporate debtor from transferring or alienating its assets.

29. Section 95(1) and 96(1) of the IBC falls under Chapter III (Part III) – 'Insolvency Resolution Process' - and contemplates an

interim moratorium pursuant to an application being filed by the creditor for CIRP against individuals where any legal proceedings are pending in respect of any debt. The legal proceeding shall be deemed to have been stayed and the creditors of the debtor shall not initiate legal action in respect of any debt.

30. In this connection, it is apposite to mention that the proceedings before the DRT or DRAT, which form the subject matter of the present Writ Petitions, could not have proceeded at all and would have been deemed to have been stayed under section 96(1)(b)(i), had the interim moratorium under section 96 (1) been triggered. Hence, it is also clear that the imposition of a moratorium under section 14 of the IBC against the corporate debtor is entirely under a different Chapter of the IBC which has no bearing on the interim moratorium under section 96(1) which relates to individuals including personal guarantors. Consequently, the fact that the corporate debtor (Parameshwara Poultry Farm Pvt. Ltd.) was under a moratorium under the IBC as on 08.08.2025 would not amount to an implied or express bar on the continuation of proceedings against the guarantors under the SARFAESI Act.

31. Moreover, the two sets of proceedings were initiated under two different statutes and against two different entities/individuals altogether. The IBC does not recognise any merging between these two

sets of proceedings unless the financial creditor has initiated insolvency/bankruptcy proceeding against the corporate debtor as well as the personal guarantors before different fora.

32. The argument of the guarantors with regard to a common and continuous cause of action emanating from the Possession Notice issued by the Bank to the corporate debtor (Parameshwara Poultry Farm Pvt. Ltd.) on 09.10.2019 is not found to be tenable in light of the above facts as well as the reasons stated below.

33. Section 60(1) under Chapter VI (Part II) of the IBC – 'Adjudicating Authority for Corporate Persons' - stipulates that the NCLT shall be the Adjudicating Authority for corporate persons including corporate debtors and personal guarantors having territorial jurisdiction over the place where the registered office of the corporate person is located.

34. Section 60(2) provides that an application relating to the insolvency resolution, liquidation or bankruptcy of a corporate guarantor or personal guarantor shall be filed before the same National Company Law Tribunal where the CIRP or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal.

35. Section 60(3) further provides that any insolvency resolution process or liquidation/bankruptcy proceeding of a corporate guarantor or personal guarantor pending before any Court or Tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process of the corporate debtor.

36. Section 60 and the sub-sections thereunder should be placed in context of the undisputed facts of the present case. As stated above, the Bank, while having issued a Demand Notice under Rule 7(1) of the IBC Rules, 2019 to the guarantors on 23.11.2021, chose not to proceed in terms of filing an application against the guarantors thereafter under the IBC, specifically under section 95(1) thereof.

37. Section 60, sub-sections (1), (2), and (3) contemplate the consolidation of parallel adjudications against the corporate debtor and its personal guarantors by centralizing the adjudication thereof before the Adjudicating Authority/NCLT. The effect of section 60 is thus, to discourage multiplication of proceedings and conflicting decisions in respect of the corporate debtor and its guarantors. However, the relevance of section 60 cannot be muscled into these facts in light of the admitted position of no application under section 95 of the IBC being filed by the Bank under the IBC against the guarantors. As on date, the only CIRP pending before the NCLT is against the corporate debtor (Parameshwara Poultry Farm Pvt. Ltd.).

There is no CIRP pending against the guarantors before any NCLT as on date. Consequently, there is no possibility of any parallel proceedings or any conflict of decisions in respect of the corporate debtor.

38. The discussion before the Supreme Court in *Lalit Kumar Jain v. Union of India*[1], was on the validity of the notification issued by the Ministry of Corporate Affairs on 15.11.2019, i.e., the IBC (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. The Supreme Court, after a detailed analysis of the relevant sections of the IBC, came to the conclusion that personal guarantors fall under a different category compared to other individuals and that THE initiation of separate processes in different fora against corporate entities and personal guarantors would be against the Legislative intent underlying the IBC. The Supreme Court concluded that the arrangement of the provisions of the IBC rationalise consolidation of the adjudication against the Corporate Debtors and the personal guarantors before the NCLT. Paragraph 125 of the Report however states that approval of a Resolution Plan would not *ipso facto* discharge a personal guarantor

[1] (2021) 9 SCC 321

(of a Corporate Debtor) of his/her liabilities under the contract of guarantee.

39. *Lalit Kumar Jain* (supra) does not assist the case of the guarantors since a unified adjudication process before the NCLT would only arise where the secured creditor has initiated a CIRP against the personal guarantor. Section 238 of the IBC, whereby the IBC has been given overriding powers over all other statutes, would also not come to the guarantors' aid since there is only one CIRP pending against the corporate debtor and not against the guarantors as on date. The issue of centralizing the adjudication against the Corporate Debtor and the personal guarantors would hence not arise.

40. Needless to say, the sanctity of a public auction must be protected at all times. The respondent No.5/Auction Purchaser before us claims to be irrevocably prejudiced by reason of the impugned order passed by the DRT on 08.08.2025 whereby the DRT set aside the public auction held on 20.10.2022 and the consequent Sale Certificate dated 28.10.2022 issued in favour of the respondent No.5. Sale of an immovable property/secured asset forms part of Rule 8 of The Security Interest (Enforcement) Rules, 2002. The notice of sale, issue of Sale Certificate and delivery of

possession of the secured immovable asset falls under Rule 9 of the 2002 Rules. Rules 8 and 9 stipulate a strict procedural sequence before an immovable property can be sold by way of public notice followed by confirmation of the sale in favour of the purchaser who has offered the highest bid price.

41. Rules 8 and 9 of the 2002 Rules contain several safeguards before an immovable property can be sold in favour of a purchaser. The safeguards are in the form of strict timelines with regard to issue of public notice, the amount of sale price offered in relation to the reserve price and the requirement of the purchaser putting in the deposit of 25% of the sale price and the balance amount within the prescribed timeframes. Rule 9(5) stipulates that the deposit put in by the purchaser shall be forfeited on occurrence of a default and the property shall be resold. Rule 9(6) stipulates that the secured creditor/Authorised Officer shall issue a certificate of sale of the immovable property in favour of the purchaser on confirmation of sale in the prescribed form.

42. Therefore, the sale certificate issued by the Bank to the auction purchaser in the present case presumes that the auction purchaser crossed all the statutory hurdles and satisfied the procedural requirements under the relevant Rules. It is undisputed

that the auction purchaser presently holds the Sale Certificate in respect of the secured asset/schedule property.

43. We have carefully perused the impugned order of the DRT dated 08.08.2025.

44. In allowing the SA filed by the guarantor by the impugned order dated 08.08.2025, the DRT took into consideration the solitary act of the Bank in issuing the Demand Notice to the guarantors AS PER the IBC 2019 Rules. The DRT found that the Bank was a member of the Committee of Creditors in the CIRP pending against the Corporate Debtor in the NCLT and proceeded to conclude that all proceedings, including the proceedings against the personal guarantors of the Corporate Debtor, would lie before the NCLT. The view of the DRT was premised on the ground that the Bank after issuing the Demand Notice under the IBC 2019 Rules, should not have continued the proceedings under the SARFAESI Act over the assets belonging to the personal guarantors. The DRT concluded that the SARFAESI measures initiated by the Bank against the personal guarantors were hence without jurisdiction and *void ab initio*.

45. We cannot accept the findings of the DRT as reflected in the impugned order dated 08.08.2025 on several grounds. Our reasons

have substantially been stated in the foregoing paragraphs. We however deem it fit to reiterate that the DRT failed to appreciate that a Demand Notice under Rule 7(1) of the 2019 Rules would not, *ipso facto*, translate to filing of an application under section 95(1) of the IBC. Section 95(1) entails an 'Application' by the creditor for initiating an Insolvency Resolution Process under Chapter III of the IBC against individuals or a partnership firm. Chapter III falls under Part III of the IBC (Insolvency Resolution and Bankruptcy for Individuals and Partnership Firm). Without such an application under section 95(1) being FILED before the jurisdictional NCLT, there would consequently be no interim moratorium under section 96(1) of the IBC. In other words, the guarantors can only claim the benefit of an Interim Moratorium under section 96(1) subject to satisfaction of the condition precedent of the Bank/Secured Creditor filing an application for CIRP under section 95(1) of the IBC.

46. Admittedly, the Bank in the present case chose not to pursue the provisions under the IBC. Hence, no CIRP was initiated against the guarantors and consequently no proceedings were pending before NCLT against the guarantors on the date of the impugned order of the DRT. The DRT's entire basis for interfering with the Possession Notice, the auction sale and the Sale Certificate was

premised on the impermissibility of parallel proceedings under the SARFAESI Act and the IBC. Therefore, the basis of the relief granted to the guarantors collapses since there was admittedly only one CIRP pending against the Corporate Debtor (and not against the guarantors) as on the date of the impugned order.

47. The law makes a conscious demarcation between a Corporate Debtor and its personal guarantors in terms of initiation of Insolvency and Bankruptcy proceedings against each of them[2]. The IBC also clarifies that distinction by putting the relief of moratorium in relation to a Corporate Debtor and in relation to an individual/guarantor under distinct and separate chapters of the IBC (sections 14 and 96, respectively). Hence, there also cannot be any legal argument against a secured creditor proceeding against personal guarantors for realization of its dues under a different statute altogether i.e., the SARFAESI Act when there are no proceedings pending against the personal guarantors before the NCLT in respect of the same debt.

[2] SBI v. Ramakrishnan; (2018) 17 SCC 394

Decisions relied on by the Parties

48. The Supreme Court in *Transcore v. Union of India*[3] addressed the permissibility of pursuing two remedies simultaneously under Section 19(1) of the DRT Act, 1993, and the SARFAESI Act, 2002, and held that both were complementary remedies against the same debtor. In the present case, however, the Notice under Rule 7(1) of the IBC Rules 2019 and Section 13(4) of the SARFAESI Act, 2002, operate against the personal guarantors and the corporate debtor, respectively. The absence of insolvency proceedings against the guarantors on account of no application being filed under section 95 of the IBC, precludes the applicability of the principle of election of remedies, which was the crux in *Transcore*. *Transcore* also recognized that the Authorised Officer is empowered to take possession of the secured asset by following the procedure under Rule 8 of the 2002 Rules and auction/sell the secured asset.

49. The secured creditor being entitled to require discharge of liability in full was reiterated in *Hindon Forge (P) Ltd. v. State of U.P.*[4]. *Hindon Forge* also recognised that the secured creditor is entitled to pass on the entire interest in the property to the auction

[3] (2008) 1 SCC 125
[4] (2019) 2 SCC 198

purchaser. *SBI v. V.Ramakrishnan*[5] definitively held that SARFAESI proceedings against the guarantor can continue under the SARFAESI Act, despite a moratorium being imposed on the corporate guarantor. Notably, the Supreme Court held that the object of the IBC is not to allow personal guarantors to escape from an independent co-extensive liability to pay off the entire outstanding debt. *Punjab National Bank v. Vindhya Cereals Pvt. Ltd.*[6] reiterated that a financial creditor can simultaneously proceed under SARFAESI Act as well as IBC.

50. The decisions placed on behalf of the auction purchaser reinforce that a confirmed auction can only be interfered with on extremely limited grounds and that a party who challenges an action must show its *bona fides* by participating in the said auction and making a bid[7].

51. It may not be out of place to mention that the DRT granted reliefs to the Guarantors over and above what was prayed for in the SA.No.300 of 2022. The prayers in the S.A. included a declaration against the Sale Certificate and the Possession Notice issued by the Bank and further declarations with regard to E-Auction Notice and

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[5] (2018) 17 SCC 394
[6] 2020 SCC OnLine NCLAT 957
[7] *Valji Khimji and Co. v. Hindustan Nitro Product (Gujarat) Ltd. (Official Liquidator)*, (2008) 9 SCC 299

auction sale Notices published in newspapers. All six prayers in the S.A. were for declarations of various kinds. The only direction prayed for was for the Bank to furnish a true and fair view of the loan account from the sanction till date and to award costs of the application to the applicants/guarantors. The DRT, however, proceeded to pass the impugned directions including for refund of entire sale considerations along with interest to the Auction Purchaser and for the Auction Purchaser to hand over the physical possession of the Schedule Property to the guarantors.

52. The above reasons persuade us to hold that the DRT misdirected itself in coming to a factual finding of the Bank having initiated a CIRP against the personal guarantors when no such application had been filed as per section 95 of the IBC by the Bank as on the date of the impugned order. The directions given by the DRT in terms of setting aside the possession notice, the auction sale, and the sale certificate were premised on the aforesaid erroneous factual finding and are hence required to be set aside.

53. We accordingly find sufficient reasons to interfere with the impugned order passed by the DRT on 08.08.2025 and the directions contained therein by which the Possession Notice dated 09.10.2019, Public Auction Sale held on 20.10.2022 and the Sale

Certificate dated 28.10.2022 were set aside and consequential directions were passed on the Bank and the auction purchaser to refund the entire sale consideration along with interest @ 6% per annum and to hand over the physical possession of the Scheduled Property to the Borrowers, respectively.

54. The impugned order dated 08.08.2025 is accordingly set aside. Consequently, the order passed by the DRAT, in the appeal preferred by the auction purchaser, on 14.11.2025 becomes redundant. The guarantors have challenged the DRAT's order by way of the second Writ Petition. The impugned order dated 14.11.2025 reflects that the appeal was made returnable on a certain date. Needless to say, the appeal filed by the auction purchaser (from the DRT's order dated 08.08.2025) abide by our decision to set aside the DRT's order dated 08.08.2025.

55. We also deem it fit to hold that W.P.No.25486 of 2025 is maintainable despite the existence of an alternative statutory remedy under the SARFAESI Act in terms of filing an appeal before the DRAT. The issue of alternative remedy becomes academic in view of the DRT's order being taken up in appeal before the DRAT by the Auction Purchaser. As stated above, both the Writ Petitions

were heard together in view of the identity of the issues and the parties.

56. W.P.No.25486 of 2025 is accordingly allowed by setting aside the order dated 08.08.2025 in S.A.No.300 of 2022 passed by the Debts Recovery Tribunal-II, Hyderabad.

57. W.P.No.35956 of 2025 is disposed of in terms of the reasons given for allowing W.P.No.25486 of 2025.

**MOUSHUMI BHATTACHARYA, J**

**GADI PRAVEEN KUMAR, J**

Date: 03.07.2026
NDS/TJMR