(2020) 05 DRT CK 0005

In the Debts Recovery Tribunal

Case No : Securitisation Application No. 16 Of 2020

M/s Varshini Grain Processing Industry And Ors.	APPELLANT
Vs	
Authorised Officer, IDBI Bank Limited And Anr.	RESPONDENT

Date of Decision : 18-05-2020

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13(1), 13(2), 13(3A), 13(4), 14
Security Interest (Enforcement) Rules, 2002 — Rule 4(2A), 6(2), 8(1), 8(2), 8(5), 8(6), 8(7), 9(1)
Debts Recovery Tribunal (Procedure) Rules, 1993 — Rule 2(c) 16

Citation : (2020) 05 DRT CK 0005

Hon'ble Judges : Dr. N.V Badarinath, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. The applicants have assailed the Sale Notice dated 12.12.2019 issued by the 1st respondent, inter alia, contending that the same is not in conformity with the provisions of the SARFAESI Act and the Rules made thereunder and as such, the same is liable to be set aside and prayed the Tribunal to set aside the impugned Sale Notice dated 12.12.2019.

2.1 The gist of the case of the applicants is that the 2nd applicant is the husband of 3rd applicant and the 2nd applicant for his Sole Proprietorship Concern M/s Varshini Grain Processing Industry had availed Term Loan of Rs.2,75,00,000/- and Cash Credit Limit of Rs.2,50,000/- and 3rd applicant for her Sole Proprietary concern M/s Shree Nidhi Hitech Food Industries had availed Term Loan of Rs.2.45 crores and Cash Credit Limit of Rs.1.85 crores for their business purposes, by offering the schedule mentioned property as security for due repayment of loan availed, besides hypothecation of movable plant and machinery. The appellants were prompt in repaying the credit facilities and the facilities were enhanced periodically. However, due to natural calamities caused by Thane cyclone, the entire stock of both the paddy and rice was destroyed due to which applicants were unable to carry on their business, which resulted in huge loss and severe financial crunch. Despite all these setbacks, the applicants managed to pay installments without any default and have regularized the account.

2.2 It is stated that in view of default, first respondent bank filed OAs 271 of 2017 and 268 of 2017 for recovery of the alleged dues in a sum of Rs.5,37,94,592.92p as on 20.03.2017 and Rs.4,29,44,762.89p as on 20.03.2017 respectively together with future interest along with other reliefs. The above OAs were decreed in favour of first respondent bank on 04.12.2019. During the pendency of OA and subsequently also the applicants were negotiating with first respondent bank for one time settlement and had remitted a sum of Rs.21 lakhs, which was received by the bank.

2.3 It is stated that, the first respondent bank, without any notice to the applicants, the first respondent bank had issued a Public Notice for E-Auction Sale of immovable and movable secured assets fixing the E-Auction sale on 22.01.2020, thereby violating the provisions of SARFAESI Act and Rules, made thereunder.

2.4 It is stated that first respondent bank did not consider the payments made by them and also did not afford an opportunity to the applicants for one time settlement and that the first respondent had deliberately initiated proceedings under SARFAESI Act against the applicants and has also now brought the property of applicants for sale. The first respondent bank having received the installments paid by the applicants, failed to give due credit of the same and despite regular payments, declared the loan accounts as NPA, thereby violating the RBI norms while declaring the account as NPA.

2.5 It is stated that first respondent bank has not followed the procedure as laid down under SARFAESI Act, in as much as, the first respondent bank failed to issue either the demand notice under Section 13(2) or the possession notice under Section 13(4) of the Act to the applicants. The said notices were also not published in two leading newspapers as prescribed under the Act. In the absence of compliance of the said procedures, the issuance of sale notice dated 11.12.2019 fixing the E-Auction on 22.01.2020 is null and void and the same is illegal.

2.6 It is stated that the first respondent bank has fixed the value of the property according to their whims and fancies and had fixed the upset price based on such imaginative value, which is impermissible and illegal. The value fixed by the respondent bank is far below the market price. The applicants being owners of the schedule property will be put to huge loss, if the property is auctioned in public. The interest charged by the respondent bank is usurious, excessive and is not in accordance with the terms agreed upon between the parties.

2.7 In the grounds of the application, it is sated that the demand notice and possession notice in respect of Schedule B property were neither served nor published as contemplated under Rule 8(1) and 8(2) of the SIE Rules. The sale notice issued by the first respondent is incorrect in as much as the first respondent has not complied with the mandatory requirements under Rule 8(6) and Rule 6(2) of SIE Rules, as 30 days' notice contemplated therein was not served upon the applicant. It is stated that there are discrepancies and differences in the description of Item No.3 and 4 of schedule property as the same differs in the publication notice from the original hypothecation agreement. It is stated that the first respondent has not obtained valuation from an approved valuer as contemplated under the Rules. First respondent did not follow the procedure while issuing the sale notice and Rule 8(5) and 8(7) are violated. It is stated that first respondent ought to have issued two different sale notices for the loans availed by the applicants. However, the first respondent had issued a single publication of E-auction sale notice in respect of two loans availed by applicants, under different head, which is wrong. Thus contending, Ld. Counsel prayed the Tribunal to set aside the sale notice dated 12.12.2019 with costs.

3. In support of his case, Ld. Counsel for the applicants filed the following document:

(i) Paper Publication of sale notice dated 12.12.2019 in 'The Hindu' dated 14.12.2019

4.1 The first respondent bank in its counter denied all the averments and allegations as false except those that are specifically admitted therein. It is stated that second and third applicants approached the first respondent bank and availed a sum of Rs.650 lakhs in respect of M/s Sree Nidhi Hitech Food Industries and Rs.304.56 lakhs in respect of M/s Varshini Grain Processing Industry on 15.06.2015 and 23.02.2012 respectively and the respective borrowers have executed the loan documents to confirm their liability to repay the same. Second and third applicants have voluntarily offered to secure the above said facilities by mortgaging their respective immovable and movable properties by executing necessary loan and security documents in favour of applicant bank.

4.2 It is stated that the applicants failed to adhere to the terms of the loan and consequently defaulted in its repayment. Hence, the account of the applicants were classified as NPA on 30.10.2016 and 31.03.2012 respectively in accordance with the guidelines of RBI. It is stated that since the applicant failed and neglected to repay the loan amount, the first respondent bank through its Authorised Officer had issued a demand notices on 03.04.2017 calling upon the borrowers to pay the outstanding dues of Rs.4,29,44,762.89p and Rs.5,37,94,592.92p respectively as on 20.03.2017, together with future interest and costs. The borrowers sent letters on various dates raising objections to the demand notice issued by the first respondent, which notices were suitably replied by the respondent bank after considering all the objections raised by the borrowers in pursuance to the demand notices.

4.3 It is stated that as the applicants failed to meet the demand, the respondent bank was constrained to take symbolic possession of the schedule mentioned properties by issuing Possession Notices dated 21.07.2017. The possession notices were sent to the borrowers through registered post and the same were received and acknowledged by the borrowers. The possession notices were also affixed and published in two leading newspapers as required under the SARFAESI Act and Rules. Thus, the respondent bank complied the mandatory rule 8(1) and 8(2) of the Security Interest (Enforcement) Rules, 2002, while issuing the possession notices.

4.4 It is stated that earlier the first respondent bank had issued E-auction sale notice dated 05.10.2017 fixing the sale on 17.11.2017, in respect of the immovable property mentioned as Item No.5 of the impugned sale notice. Since there was no bid, no auction was conducted pursuant to the said notice. Meanwhile, the first respondent bank had also filed OAs 268 of 2017 and 271 of 2017 before this Tribunal against the applicants. The respondent bank has offered OTS on 31.12.2018 under SKBY Scheme approved by the Board of Directors of the respondent, which was accepted by the applicants on 31.12.2018. However, the applicants have not complied with the terms and condition of OTS. They have paid a sum of Rs.29,91,000/- in four installments till 31.03.2019 to the respondent under the OTS. Since the applicants failed to honor the terms of OTS, the respondent bank had revoked the said acceptance of OTS vide letter dated 15.05.2019. Pursuant to the orders passed by the District Magistrate, Puducherry in Section 14 application, the respondent bank had taken physical possession of the properties described in the impugned sale notice dated 04.09.2019 and 27.09.2019. The panchnama and inventory drawn by the Authorised Officer at the time of taking physical possession of the properties were duly forwarded to the applicants vide letter dated 15.10.2019. Meanwhile, final orders were passed in both the OAs on 04.12.2019 allowing the OAs and the claim of the applicant bank stands proved. Even after the final order, no payment was received by the respondent from the applicant.

4.5 It is stated that on 21.10.2019, the respondent bank issued notice of sale giving 30 days time to applicants in respect of all properties mentioned in the impugned sale notice. The respondent bank had also obtained valuation report from the approved valuer, based on which only the respondent bank had fixed the reserve price in the sale notice. The respondent bank had issued public notice for E-Auction sale for both movable and immovable secured assets of the applicants on 12.12.2019 and on the same date, the notice of sale was also affixed on the respective properties as described in the schedule. In respect of Item Nos.1 to 4, these properties were given as securities for both the loan accounts. In respect of Item No.5, the same is secured only in respect of the facilities availed by M/s Sree Nidhi Hitech Food Industries, Proprietorship concern of the third applicant, however, the said firm is not made party in the present SA.

4.6 It is stated that as per the valuation report obtained from the approved valuer, the upset price was fixed at Rs.7.50 crores. The Authorised officer had issued the public notice on 14.12.2019 in English daily 'The Hindu' and Tamil daily 'Dinamani' fixing the auction on 22.01.2020. It is stated that challenging the said notice, the present application has been filed by the applicants without any valid grounds. However, in the said auction the Authorised Officer has not received any bids in respect of the properties mentioned in Item No.1 to 4. In respect of Item No.5, the respondent had received two bids and the respondent bank had accepted the highest bid amount of Rs.9,15,00,000/- received from one Dr. R. Vijaya Nirmala, Puducherry. The respondent had received 25% of the bid amount and had given time till 06.02.2020 to pay the balance 75% of the bid amount. The respondent had also issued confirmation of the same to the said auction purchaser on 22.01.2020 itself.

4.7 It is stated that the grounds raised in the application are mere repetitions and that there are no merits in the application. It is incorrect to state that the respondent had failed to issue the demand notice and possession notice to the applicants. The respondent had strictly followed the procedures as contemplated under the Act and Rules. It is also incorrect to state that the value fixed by the respondent is far below the existing market value. It is stated that after serving possession notice under Section 13(4), the same was published as contemplated under Rule 8(2). In respect of movable properties (Item No.3 and 4), the respondent had duly drawn Panchnama and inventory and the same were forwarded to the applicants on 15.10.2019. In compliance of Rule 8(6), 30 days notice was issued on 21.01.2019 itself. The respondent had duly complied with Rule 8(5) and 8(7) and as such the allegation of non-compliance is imaginary and baseless. Thus contending, Ld. Counsel prayed the Tribunal to dismiss the application with costs.

4.8 Ld. Counsel for the first respondent bank filed the following documents in support of his case.

(i) Demand Notice issued by the Respondent Bank to the third Applicant along with Acknowledgement card dated 03.04.2017

(ii) Demand Notice issued by the Respondent Bank to the third Applicant along with Acknowledgement card dated 03.04.2017

(iii) Reply Notice under Sec. 13(3A) of the SARFAESI Act by the respondent to the applicants dated 07.06.2017

(iv) Letter to the applicants by the respondent dated 19.06.2017

(v) Letter to the applicants by the respondent dated 04.07.2017

(vi) Possession Notice issued by the Respondent Bank to the first and second Applicant along with Acknowledgement card in respect of Item No.I, II and V of the schedule Property dated 21.07.2017

(vii) Possession Notice issued by the Respondent Bank to the third Applicant along with Acknowledgement card in respect of Item No.I and II of the schedule Property dated 21.07.2017

(viii) Proof of affixture of the Possession Notice dated 21.07.2017

(ix) Paper Publication for Possession Notice published in The New India Express and Dinamani dated 27.07.2017

(x) E-Auction notice in respect of Item No.5 of the Schedule Property dated 06.10.2017

(xi) OTS offer Letter issued by the respondent to the applicants dated 31.12.2018

(xii) Letter of Approval for OTS given by the respondent to the applicant dated 11.01.2019

(xiii) Revoking the offer of OTS by the respondent to the applicant dated 15.05.2019

(xiv) Order passed by the District Magistrate in No.1803 Sec. 14 of SARFAESI Act filed by the respondent dated 18.07.2019.

(xv) Photos for taking Physical Possession

(xvi) Notice issued by Respondent Bank under rule 4(2A) of Security Interest (Enforcement) Rules, 2002 in respect of Item No.3 of the Schedule Property dated 15.10.2019

(xvii) Notice issued by Respondent Bank under rule 4(2A) of Security Interest (Enforcement) Rules, 2002 in respect of Item No.4 of the Schedule Property dated 15.10.2019

(xviii) Valuation Report in respect of Item No.V of the Schedule Property dated 14.10.2019

(xix) Copy of the order in O.A.No.268 of 2017 passed by the Hon'ble DRT-III, Chennai dated 04.12.2019

(xx) Copy of the order in O.A.No.268 of 2017 passed by the Hon'ble DRT-III, Chennai dated 04.12.2019

(xxi) Notice of Sale issued by the respondent to the third applicant along with acknowledgement card dated 21.10.2019

(xxii) Notice of Sale issued by the respondent to the first and second applicants along with acknowledgement card dated 21.10.2019

(xxiii) Notice of Sale issued by the respondent to the applicant in respect of Item No.III of the Schedule Property dated 21.10.2019

(xxiv) Notice of Sale issued by the respondent to the applicant in respect of Item No.IV of the Schedule Property dated 21.10.2019

(xxv) Proof of affixture of the Sale Notice in respect of Item No.I, II and IV of the schedule Property dated 12.12.2019

(xxvi) Paper Publication for Sale Notice published in The Hindu and Dinamani dated 14.12.2019 (xxv) Proceedings of Auction Sale dated 22.01.2020

(xxvi) Confirmation of Sale issued by the respondent to the Auction Purchaser dated 22.01.2020

Additional typed set of documents filed by the first respondent:

(i) E-Auction of Properties - IBA Portal

(ii) Proof of E-Auction Sale Notice published in the respondent Web-Site

(iii) Email communication between the respondent and web supporter for hosting the bid documents in the respondent web site

(iv) Valuation Report in respect of Item No.1of the schedule property dated 11.11.2019 (v) Valuation Report in respect of Item No.2 of the schedule property dated 11.11.2019 (vi) Valuation Report in respect of Item No.3 of the schedule property dated 01.10.2019 (vii) Valuation Report in respect of Item No.4 of the schedule property dated 01.10.2019.

5.1 The second respondent, Auction purchaser filed counter stating therein that in furtherance of E-Auction public notice dated 12.12.2019, this respondent submitted her bid and deposited a sum of Rs.75 lakhs on 20.01.2020 towards EMD for participating in E-Auction scheduled to be held on 22.01.2020 in respect of the property bearing door No.39, Karamanikuppam Road also known as Point Care Street, Puducherry viz. Item No.5 of the application schedule mentioned property. The second respondent's bid of Rs.9,15,00,000/- was declared as the Highest Bid by the first respondent bank in the e-auction sale held on 22.01.2020 in respect of the aforesaid property. Consequent to the same, the second respondent herein remitted a sum of Rs.1,53,75,000/- with the first respondent on 22.01.2020, thereby complying with the conditions of the E-auction to deposit 25% of the bid amount i.e., Rs.2,28,75,000/- (inclusive of EMD already remitted).

5.2 It is stated that the aforesaid property was sold much above the reserve price of Rs.7,50,00,000/- and the Government Guideline Rate of Rs.1,300/- per sq. ft. which works to Rs.2,34,00,000/- (18,000 sq. ft * Rs.1,300). The second respondent had mobilized the balance sale consideration of Rs.6,86,25,000/- from personal savings, bank and personal loans, the second respondent is ready to remit the same with the first respondent herein. But the pendency of the present application had prevented this respondent from doing so. It is stated that the second respondent is not privy to the proceedings under the SARFAESI Act initiated by the first respondent as against the applicants herein and hence cannot have a say on the allegations made in the application so far to the same. Thus submitting, second respondent prayed for dismissing the above OA, in so far as Item No.5 of the schedule mentioned property is concerned.

6. In the light of the aforesaid contest, the Tribunal framed the following points

for consideration:

Whether the measures impugned in this application is not in conformity with the mandatory provisions of the SARFAESI Act and the Rules made thereunder? If so, can the same be set aside?

Heard both sides and perused the record.

7. Point:

Whether the measures impugned in this application is not in conformity with the mandatory provisions of the SARFAESI Act and the Rules made thereunder? If so, can the same be set aside?

7.1 At the outset, it is to be stated that while the secured creditor has been given the right to enforce the security interest without the intervention of the Court or Tribunal, the secured creditor while enforcing the same shall invariably comply the provisions of the SARFAESI Act, and the Rules made thereunder, lest, the Tribunal can set aside the measure if the measure is found to be not inconformity with the provisions of the Act and the rules made thereunder.

7.2 Hon'ble Supreme Court of India, in re Mathew Varghese Vs. M. Amirtha Kumar and others 2014 (5) SCC P-610 (paragraph 24) held :

"that a free hand is given to the SECURED CREDITOR for the purpose of enforcing any security interest created in favour of SECURED CREDITOR, without the intervention of the Court or Tribunal. The only other relevant aspect contained in the said sub- section is that such enforcement should be in accordance with the provisions of this Act. A reading of Section 13(1), therefore, is clear to the effect that while on the one hand any SECURED CREDITOR may be entitled to enforce the SECURED ASSET created in its favour on its own without resorting to any court proceedings or approaching the Tribunal, such enforcement should be in conformity with the other provisions of the SARFAESI Act"

Therefore, there can be no quarrel that compliance of the above procedure is mandatory. Since it is the case of the applicant that the first respondent breached the procedure which is mandatory it is for the first respondent to establish compliance of the relevant provisions under SERFEASI Act, and the rules made thereunder.

7.3 According to the applicants, the sale notice impugned in this application is not sustainable, as the respondent breached the compliance of mandatory Rule 8(5), 8(6) and 8(7) of Security Interest (Enforcement) Rules, 2002. In addition, the applicants also pleaded that the mandatory Demand Notice in terms of Section 13(2) of SARFAESI Act also has not been served on the applicants.

7.4 Strongly, refuting the aforesaid contentions, Ld. Counsel for the first respondent filed the following documents and contended that the aforesaid pleas are unsustainable:

(i) Demand Notice issued by the Respondent Bank to the second applicant along with Acknowledgement card dated 03.04.2017.

(ii) Demand Notice issued by the Respondent Bank to the third applicant along with Acknowledgement card dated 03.04.2017

(iii) Reply Notice under Sec. 13(3A) of the SARFAESI Act by the respondent to the applicants dated 07.06.2017

(iv) Letter to the applicants by the respondent dated 19.06.2017

(v) Letter to the applicants by the respondent dated 04.07.2017

(vi) Possession Notice issued by the Respondent Bank to the first and second Applicant along with Acknowledgement card in respect of Item No.I, II and V of the schedule Property dated 21.07.2017

(vii) Possession Notice issued by the Respondent Bank to the third Applicant along with Acknowledgement card in respect of Item No.I and II of the schedule Property dated 21.07.2017

(viii) Proof of affixture of the Possession Notice dated 21.07.2017

(ix) Paper Publication for Possession Notice published in The New India Express and Dinamani dated 27.07.2017

(x) E-Auction notice in respect of Item No.5 of the Schedule Property dated 06.10.2017

(xi) Notice of Sale issued by the respondent to the third applicant along with acknowledgement card dated 21.10.2019

(xii) Notice of Sale issued by the respondent to the first and second applicants along with acknowledgement card dated 21.10.2019

(xiii) Notice of Sale issued by the respondent to the applicant in respect of Item No.III of the Schedule Property dated 21.10.2019

(xiv) Notice of Sale issued by the respondent to the applicant in respect of Item No.IV of the Schedule Property dated 21.10.2019

(xv) Proof of affixture of the Sale Notice in respect of Item No.I, II and IV of the schedule Property dated 12.12.2019

(xvi) Paper Publication for Sale Notice published in The Hindu and Dinamani dated 14.12.2019

(xv) Valuation Report in respect of Item No.1 of the schedule property dated 11.11.2019

(xvi) Valuation Report in respect of Item No.2 of the schedule property dated 11.11.2019

(xvii) Valuation Report in respect of Item No.3 of the schedule property dated 01.10.2019

(xviii) Valuation Report in respect of Item No.4 of the schedule property dated 01.10.2019

7.5 I have carefully examined the documents filed by the first respondent. The record discloses that the demand notice dated 03.04.2017 has been duly served, since the postal acknowledgments duly signed by the applicants 2 and 3 filed by the 1st respondent remain unquestioned by the applicant. That apart, the applicants also submitted a reply to the demand notice raising certain objections. Therefore, the contention that applicants were not served with the demand notice dated 03.04.2017 is liable to be rejected and accordingly, I reject the same.

7.6 In so far as the compliance of mandatory Rule 8(5), 8(6) and 8(7) of Security Interest Enforcement Rules are concerned, it is to be stated that the first respondent had obtained the possession of the subject property through the order of Ld. District Magistrate. The said measure of taking actual possession of the subject property remain un-challenged by the applicants.

7.7 In so far as the impugned sale notice dated 12.12.2019, which was published on 14.12.2019, is concerned, the first respondent had filed the valuation reports in respect of the properties covered by Items 1 to 4, which were obtained on 11.11.2019 and 01.10.2019 respectively. The sale intended under the impugned sale notice intended to be held on 22.01.2020. In terms of Rule 8(5) of Security Interest (Enforcement) Rules, 2002, it is mandatory for the Authorised Officer to obtain a valuation report of the secured asset intended to put on sale from the approved valuer and in consultation with the secured creditor, fix the reserve price. As can be seen from the reserve price fixed by the Authorised Officer in the impugned sale notice, the same was based on the valuation given by the approved valuer. Though the applicants have contended that the reserve price as fixed by the Authorised Officer is not in conformity with Rule 8 (5) of Security Interest (Enforcement) Rules, 2002, the applicants failed to specify what manner the Rule is violated. That apart, no report of any other competent approved valuer has been filed impeaching the valuation report filed by the 1st respondent. Therefore, in the absence any valid basis for the contentions put forth by the applicants as regards the reserve price arrived at by the authorized officer, the Tribunal, is not inclined to not accept the vague oral plea of the applicant that Rule 8(5) of Security Interest (Enforcement) Rules, 2002 has been breached by the first respondent.

7.8 Now coming to compliance of Rule 8(6) of Security Interest (Enforcement) Rules, 2002, undoubtedly, it is mandatory on the part of the first respondent, that the sale intended shall not be held without publishing the sale notice in two leading newspapers, one in vernacular language having sufficient circulation in the locality and also by affixing the same giving 30 days' time from the date of publication and also to serve the sale notice on the borrower giving 30 clear days of time. In terms of Rule 9(1) of Security Interest (Enforcement) Rules, 2002, no sale of the immovable property under these rules, in the first instance shall take place before expiry of 30 days from the date on which public notice of sale is published in newspapers and the borrower is served.

7.9. Refuting the contentions of the applicants that Rule 8(6) is violated, Ld. Counsel for the first respondent filed copy of the notices dated 21.10.2019 sent to the applicants along with the duly acknowledged postal acknowledgement cards, where under the applicants were put on notice that the subject properties will be put on sale after expiry of 30 days of the said notice. Ld. Counsel also filed copies of the publications of 'The Hindu' English Newspaper and 'Dinamani' Tamil Newspaper both dated 14.12.2019, containing the subject sale notice. A perusal of the contents of the publication discloses that the intended sale has been scheduled to be held on 22.01.2020. Therefore, the sale notice since published on 14.12.2019 in respect of the sale scheduled on 22.01.2020 compliance of Rule 9(1) of Security Interest (Enforcement) Rules, 2002, is unquestionable. Therefore, as both provisions of Rule 8(6) of S I E Rules since complied with by the 1st respondent, the socalled grievance of the applicants that Rule 8(6) read with Rule 9(1) of Security Interest (Enforcement) Rules, 2002, is not complied is liable to be rejected. Accordingly, the same is hereby rejected.

7.10 In so far as compliance of Rule 8(7) is concerned, Ld. Counsel for respondent filed photographs and contended that affixture can be found from the said photographs. Ld. Counsel for the applicants did not dispute the photographs and also the property that can be seen from the photographs. Hence compliance of Rule 8(7) of Security Interest (Enforcement) Rules, 2002 is also established.

7.11 The 2nd respondent, auction purchaser who has been impleaded during the pendency of the SA, filed her counter and stated that she has complied the terms and conditions of sale and the requirements of the SARFAESI Act as such the SA may be dismissed. The Tribunal already held that the measure impugned in this application is in conformity with the mandatory provisions of the SARFAESI Act and Rules made thereunder.

7.12 Therefore, in the light of my discussion as aforesaid, on careful consideration of the submissions made by both sides and on perusal of the records placed before the Tribunal, the Tribunal is fully satisfied that the measure initiated by the first respondent is inconformity with the mandatory provisions of SARFAESI Act and Rules made thereunder. As such interference in the impugned measure is unwarranted and uncalled for. The application is devoid of any merit or substance and therefore liable to be dismissed. Point is answered accordingly.

8. In the result, the SA is dismissed, however in the circumstances without costs.

9. Communicate a copy of the order to the parties concerned in terms of Rule 16 read with Rule 2(c) of DRT (Procedure) Rules, 1993.

(Dictated to PS, transcribed by her, corrected, signed and pronounced by me in Virtual Court, held through Video Conference on this 18th day of May, 2020)

