
(2020) 10 DRT CK 0021

In the Debts Recovery Tribunal

Case No : Securitisation Application No. 232 Of 2016

M/s.Vishnutek Engineering Pvt. Ltd. And Anr.

APPELLANT

Vs

Authorised Officer, ASREC (India) Limited And Ors.

RESPONDENT

Date of Decision : 12-10-2020

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 3, 5(2), 7(3), 8, 9, 13, 13(2), 13(3), 13(3-A), 13(4), 13(8), 17
Security Interest (Enforcement) Rules, 2002 — Rule 3, 3(1), 5, 8, 8(2), 8(5), 8(6), 8(7), 8(8), 9, 9(1)

Citation : (2020) 10 DRT CK 0021

Hon'ble Judges : Duppala Vasudeva Rao, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. This SA is filed by the Applicants with a prayer (a) to declare that the Reserve Price fixed in Sale Notice dt: 01.08.2016 is illegal and contrary to Law (b) to declare that the Sale Notice dt: 01.08.2016 is void ab-natio as the Respondents 1 and 2 measurably failed to observe the mandatory provisions 13 (2) & (4) and Rules 8 & 9 of Securitisation Act (c) to declare that the outstanding dues i.e. Rs.7,14,45,950.03/- shown in the Sale Notice dt: 01.08.2016 is incorrect (d) to declare that the OTS arrangement is still in force (e) to set aside all the proceedings done in pursuance of the Sale Notice dt: 01.08.2016, and restore the Possession of the property to the Applicants.

2. According the facts of the case, the 1st Applicant is a Private Limited Company carried on business of Trading, Sale, Service of Spare parts, Sales of Construction, Earth Moving and Material handling Machineries and Equipments and their Lubricants and for its business purpose availed Credit Facilities from 3rd Respondent Bank to an extent of Rs.500 Lakhs and the 2nd Applicant is a Partnership Firm carried on business of Sale of Maruthi Genuine Spares and for its business purpose availed Rs. 100 Lakhs financial facility from the 3rd

Respondent Bank. The 1st Applicant also stood as a Guarantor for the financial facilities sanctioned to the 2nd Applicant. Applicants further submitted that the Applicants mortgaged 06 properties in favour of the 3rd Respondent Bank as collateral securities and Securitisation Application is confined to the schedule mentioned property only, which was sold on 07.09.2016 under Impugned Sale Notice dt: 01.08.2016. It is submitted that, the Applicants business had run well up to 2008, however, the Applicants could not recover their monies from the market, consequently the 1st Applicant's account turned in to NPA on 25.12.2008, as well as the 2nd Applicant's account also turned in to NPA on 01.07.2010. Applicants further submitted that the 3rd Respondent/Andhra Bank started recovery proceedings against the Applicants by initiating proceedings under RDDB Act, as well as SARFAESI Act and the Applicants approached the 3rd Respondent Bank for settlement under OTS, since as per the norms of the Reserve Bank of India the Applicants accounts are entitled for One Time settlement (OTS) and the 3rd Respondent Bank also accepted the OTS Proposal and ultimately the Applicants as well as 3rd Respondent Bank agreed for settlement for an amount of Rs.6.40 Crores to settle both the accounts of the Applicants vide its Letter dt: 30.09.2013, Lr. No.1729/45/90. It is submitted that, the Applicants in pursuance of the settlement under OTS paid an amount of Rs. 1 Crore immediately and the 3rd Respondent Bank had given time for the payment of balance amount of Rs.5.40 Crores up to 19.12-2013. It is submitted that, to discharge the balance amount of Rs.5.40 Crores the Applicants, approached the Respondents 1 and 2 (Company registered as a Securitisation and Asset Reconstruction Company in accordance with Section 3 of the SARFAESI Act, 2002,) and entered into an Agreement with the Respondents 1 & 2 to finance the OTS Settlement i.e. an amount of Rs.5.40 Crores and also requested the 3rd Respondent Bank to assign their Debts to the Respondents 1 & 2 along with Securities. It is submitted that, in terms of the above settlement, the 3rd Respondent Bank after taking its dues, executed Assignment Deed dt: 16.12.2013 in favour of Respondents 1 & 2 and in terms of the said Assignment the 3rd Respondent Bank transferred the Loans and Securities in favour of the Respondents, 1 & 2, since the 3rd Respondent Bank recovered all its dues, the 3rd Respondent Bank closed the loan accounts of the Applicants with it. Applicants further submitted that the Respondents 1 & 2 without issuing any Demand Notice as mandated u/s 13(2) of SARFAESI Act, and without issuing any Possession Notice as mandated u/s 13 (4) of SARFAESI Act, straight away sold the schedule mentioned property for a very low price which is totally illegal contrary to the mandatory provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and rules made there under and against the Law laid down by the Honourable Supreme Court of India. The Applicants further submitted that the Respondents 1 & 2 sold the schedule mentioned property according to its whims and fancies, by reducing the reserve price drastically from Rs.660 Lakhs to Rs.300 Lakhs, the details are given below for the consideration of the Honourable Tribunal:

- a. first Sale notice was issued on 20.02.2015 by that time the Reserve Price is fixed at Rs.660 Lakhs
- b. Second Sale notice was issued on 28.01.2016 by that time the Reserve Price is fixed at Rs.375 Lakhs
- c. Third Sale notice was issued on 01.08.2016 by that time the Reserve Price is fixed at Rs.300 Lakhs

It is submitted that, Rule 8(6) mandates that admit sale notice shall be published in two leading news papers having sufficient circulation in the locality, however, in this case the Respondents 1 & 2 had given a publication in Business Standard (English) and Andhra Prabha (Telugu). The Business Standard English News Paper absolutely has no circulation in Vijayawada city and Andhra Prabha Telugu daily also no enough circulation in Vijayawada, thus the Respondents 1 & 2 violated the Rule 8(6) of Security Interest (Enforcement) Rules 2002. It is submitted that, the Reserve Bank of India mandated that Sale must be conducted by e-auction. However, in this case the Respondents 1 & 2 failed to follow the mandate of the Reserve Bank of India, hence, the sale is invalid and collusive. It is submitted that, the Respondents 1 & 2 ignored the procedure as contemplated under Rule 8 (7) & (8) of Security Interest (Enforcement) Rules 2002. Applicants further submitted that the 3rd Respondent Andhra Bank added as pro- forma party, hence, there is no claim or allegation against the 3rd Respondent and the Respondents 1 & 2 is not acting fairly which is required under The Principles of Natural Justice, and not following the statutory mandatory provisions as contemplated under Securitisation Reconstruction of Financial Assets and Enforcement of Security Interest Act and rules made there under. In the ground of appeal, applicant submitted that the Respondents 1 & 2 never issued any Demand Notice in writing to the Applicants as mandated u/s 13(2) of the SARFAESI Act, r/w Rule 3 of Security Interest (Enforcement) Rules 2002 and further submitted that the Respondents 1 & 2 never issued any Possession Notice to the Applicants as mandated u/s 13(4) of the SARFAESI Act, r/w 8 of Security Interest (Enforcement) Rules 2002. Applicants further submitted that the Respondents 1 & 2 failed to obtain valuation of property from an approved Valuer as mandated under Rule 8, 5 of Security Interest (Enforcement) Rules 2002 and further submitted that the Respondents 1 & 2 without giving public notice in two leading News papers having sufficient circulation in the locality sold the property contrary to the Rule 8 (6) of the Security Interest (Enforcement) Rules 2002. Applicants further submitted that the sale by e-auction is mandated by the Reserve Bank of India, however, in this case the Respondents 1 & 2 violated the Reserve Bank Guidelines and conducted the sale. Applicants further submitted that the Respondents 1 & 2 did not follow Rule 8(7) & (8) of Security Interest (Enforcement) Rules 2002 and the calculation of rate of interest nowhere mentioned in the Sale Notice as such sale notice is un-sustainable as per the Law laid down by the Supreme Court. Applicants submitted that being aggrieved by the actions the Respondents 1 & 2

filed the present appeal and prayed (a) to declare that the Reserve Price fixed in Sale Notice dt: 01.08.2016 is illegal and contrary to Law (b) to declare that the Sale Notice dt: 01.08.2016 is void ab-natio as the Respondents 1 and 2 measurably failed to observe the mandatory provisions 13 (2) & (4) and Rules 8 & 9 of Securitisation Act (c) to declare that the outstanding dues i.e. Rs.7,14,45,950.03/- shown in the Sale Notice dt: 01.08.2016 is incorrect (d) to declare that the OTS arrangement is still in force (e) to set aside all the proceedings done in pursuance of the Sale Notice dt: 01.08.2016, and restore the Possession of the property to the Applicants. Along with SA appeal applicants filed list of documents viz. Sale Notices dt: 20.02.2015; 28.01.2016 & 01.08.2016.

3. Written arguments had been filed by the applicants and is on the same lines as that of the SA averments and further submitted that there is

Violations under section 13 of SARFAESI Act:

It is an admitted fact by the Respondent that the 1st Respondent did not issue any notice as contemplated u/s 13(2) of SARFAESI Act, and further pleaded that, the 1st Respondent relayed on the 13 (2) notice dt: 11.05.2009 which was issued by the 3rd Respondent/Andhra Bank, which is impermissible under Law. As the ASREC Company cannot step in to the shoes of Nationalized Bank, the ASREC shall take fresh steps to proceed under Securitisation Act, in view of the Guidelines issued by RBI its Notification No. DNBS.2/CGM/CSM) - 2003 Dt. 23-04-2003. In this connection the Memorandum of Understanding and Assignment Agreement dt. 16-12-2013 executed by 3rd Respondent in favour of 2nd Respondent are the vital documents.

Violated the conditions in the agreement:

1st Document is the Memorandum of Understanding (filed along with this written argument) which is entered by all the parties herein in the nature of Tri Party Agreement (Page No.55, 56 and 57) and it is submitted that, after issuing the 13 (2) notice this Applicant and the Respondents 1 to 3 had entered into a Memorandum of Understanding dt: 16.12.2013, and in terms of the Memorandum of Understanding the 3rd Respondent Bank agreed to settle the account under OTS Settlement for an amount of Rs.6.40 Crores vide Lr. No. 1729/45/90 dt: 30.09.2013 in pursuance of the settlement this Applicant/Borrower paid an amount of Rs.1 Crore to the 3rd Respondent Bank, and for the payment of balance amount of Rs.5.40 Crores, this Applicant/Borrower approached the Respondents No. 1 and 2, i.e. ASREC, which is agreed to clear the balance amount of Rs.5.40 Crores on the terms and conditions. Further Page 2 of the Memorandum of Understanding says:

i. That the ASREC shall pay the balance OTS amount of Rs.5.40 Crores (Rupees Five Crore Forty Lakhs Only) on behalf of the Borrowers to the Bank on or before 19.12.2013.

ii. That on receipt of the full OTS amount the Banks shall assign the financial assets of the borrowers along with the all its right, title, claim and interest together with all underlying security interest in favour of ASREC by executing the Assignment Agreement. The cost of the assignment agreement shall be borne by ASREC/Borrowers.

iii. That the terms and conditions/provisions of Assignment Agreement to be executed shall be binding on the parties and Bank shall cease to have any right or responsibility to recover the dues from the parties hereto after the assignment agreement is executed in favour of ASREC.

iv. That the information shared by the parties hereto shall be treated as confidential by the parties and the same shall not be disclosed to anybody unless required by statutory/regulatory authorities. However before disclosure of the information by the Party (receiving party) prior written approval of the other party (disclosing party) shall be obtained.

v. Any dispute of difference arising out of this agreement shall be subject to the jurisdiction of the Courts situated at Hyderabad, A.P. and governed in accordance with the laws of India'.

Therefore, it is important to note that as per the clause 3 of the Agreement as referred above that the Assigner Andhra Bank ceased all its rights and responsibilities to recover the dues from the parties Applicant/Borrowers after the Assignment Agreement is executed in favour of ASREC which clearly shows that the 3rd Respondent Bank closed all its recovery proceedings against this Applicant, hence, the Demand notice dt: 11.05.2009 issued by the 3rd Respondent Bank has been ceased on the execution of Memorandum of Understanding and Assignment Agreement in favour of Respondents No. 1 & 2. The 2nd Document is the Assignment Agreement (filed along with this written Argument) Page Nos. 59 to 109. It is submitted that, at Page No. 69 it is mentioned as "One Time Settlement (OTS) Amount means an amount of Rs.6,40,00,000/- (Rupees Six Crores Forty Lakhs Only), being the aggregate settlement consideration for the Loans agreed between the Assignor and the Borrowers to be paid as per the sanction terms defined in the Assignors Letter No. 1729/45/90 dt: 30.09.2013".

"Consideration for this Agreement means an amount of Rs.5,40,00,000/- (Rupees Five Crores Forty Lakhs Only), being the aggregate consideration for the assignment of Loans".

Section 13 (3) Says:- It is submitted that, Section 13 (3) states that the notice under Section 13 (2) shall give details of the amount payable by the borrower as also the details of the secured assets.

"In this case the Assignment Agreement clearly says that the consideration for this agreement means an amount of Rs.5,40,00,000/- being the aggregate consideration for the assignment of loan".

Therefore, the claim of the 3rd Respondent Bank at the time of issuing Demand Notice u/s 13(2) is definitely and totally different then claim raised by the 1st Respondent after taking the loans under Assignment Agreement. Therefore, the 1st Respondent cannot base its claim on the notice dt.11-5-2009 issued by the 3rd Respondent Bank.

Violated the RBI Guidelines:

Reserve Bank Guidelines and Directions says about the Securitization Companies and Reconstruction Companies (Notification No. DNBS.2/CGM(CSM) - 2003 Dt. 23-04-2003):

As per the guidelines that Fresh declaration of NPA is required by the Securitisation Company i.e., 2nd Respondent after date of acquisition of ownership.

Para vi of the Guidelines says "Non-performing Asset" (NPA) means an asset in respect of which;

a. Interest or principal (or installment thereof) is overdue for a period of 180 days or more from the date of acquisition or the due date as per contract between the borrower and the originator, which ever is later.

Re-Scheduling of Debts by the ever Securitisation Company mandatory in terms of Rule 3 (1) of Guidelines which says:-

(3) Rescheduling of Debts

(i) Every Securitisation Company or Reconstruction Company shall frame a policy, duly approved by the Board of Directors, laying down the broad parameters for rescheduling of debts due from borrowers;

(5) Settlement of dues payable by the borrower

(i) Every Securitisation Company or Reconstruction Company shall frame a policy duly approved by the Board of Directors laying down the broad parameters for settlement of debts due from borrowers;

(ii) The policy may, interalia, cover aspects such as cut-off date, formula for computation of realizable amount and settlement of account, payment terms and conditions, and borrower's capability to pay the amount settled;

(iii) Where the settlement does not envisage payment of the entire amount agreed upon in one installment, the proposals should be in line with and supported by an acceptable business plan, projected earnings and cash flows of the borrower;

(iv) The proposal should not materially affect the asset liability management of the Securitisation Company or Reconstruction Company or the commitments given to investors;

(v) The Board of Directors may delegate powers to a committee comprising any director and/or any functionaries of the company for taking decisions on proposals for settlement of dues;

(vi) Deviation from the policy should be made only with the approval of the Board of Directors.

(6) Plan for realization

(i) Every Securitisation Company or Reconstruction Company may, within the planning period, formulate a plan for realisation of assets, which may provide for one or more of the following measures:

(a) Rescheduling of payment of debts payable by the borrower;

(b) Enforcement of security interest in accordance with the provisions of the Act;

(c) Settlement of dues payable by the borrower;

(d) Change in or take over of the management, or sale or lease of the whole or part of business of borrower after formulation of necessary guidelines in this behalf by the Bank as stated in paragraph 7(2) herein above.

(ii) Securitisation Company or Reconstruction Company shall formulate the policy for realisation of financial assets under which the period for realisation shall not exceed five years from the date of acquisition of the financial asset concerned.

(iii) The Board of Directors of the Securitisation Company or Reconstruction Company may increase the period for realisation of financial assets so that the total period for realisation shall not exceed eight years from the date of acquisition of financial assets concerned.

(iv) The Board of Directors of the Securitisation Company or Reconstruction Company shall specify the steps that will be taken by the Securitisation Company or Reconstruction Company to realise the financial assets within the time frame referred to in clause (ii) or (iii) as the case may be.

(v) The Qualified Institutional Buyers shall be entitled to invoke the provisions of Section 7(3) of the Act only at the end of such extended period, if the period for realisation is extended under clause (iii)].

12. Asset Classification

(1) Classification

(i) Every Securitisation Company or Reconstruction Company shall, after taking into account the degree of well-defined credit weaknesses and extent of dependence on collateral security for realisation, classify the assets [held in its own books] into the following categories, namely:

a. Standard assets

b. Non-Performing Assets.

(ii) The Non-Performing Assets shall be classified further as

a. 'Sub-standard asset' for a period not exceeding twelve months from the date it was classified as non-performing asset;

b. 'Doubtful asset' if the asset remains a sub-standard asset for a period exceeding twelve months;

(c) 'Loss asset' if (A) the asset is non-performing for a period exceeding 36 months; (B) the asset is adversely affected by a potential threat of non-recoverability due to either erosion in the value of security or non-availability of security; (C) the asset has been identified as loss asset by the Securitization company or Reconstruction company or its internal or external auditor; or (D) the financial asset including Security Receipts is not realized within the total time frame specified in the plan for realization formulated by the Securitization company or Reconstruction company under Paragraph. 7 (6) (ii) or 7 (6) (iii) and the Securitization company or Reconstruction company or the trust concerned continues to hold those assets]

(iii) Assets acquired by the Securitisation Company or Reconstruction Company for the purpose of asset reconstruction may be treated as standard assets during the planning period, if any.

(2) Asset Reconstruction : Renegotiated / Rescheduled assets

(i) Where the terms of agreement regarding interest and /or principal relating to standard asset have been renegotiated or rescheduled by a Securitisation Company or Reconstruction Company (other wise than during planning period) the asset concerned shall be classified as sub-standard asset with effect from the date of renegotiation / reschedulement or continue to remain as a doubtful asset as the case be.

(ii) The asset may be upgraded as a standard asset only after satisfactory performance for a period of twelve months as per the renegotiated / rescheduled terms.

(3) Provisioning requirements

Every Securitisation Company or Reconstruction Company shall make provision against Non Performing Assets, as under: -

Asset Category

Provision Required

Sub-standard A general provision of 10% of the outstanding;

Assets

Doubtful

(i) 100% provision to the extent the asset is not covered by the estimated realizable value of security;

Assets

(ii) In addition to item (i) above, 50% of the remaining outstanding.

Loss Assets

The entire asset shall be written off. (If, for any reason, the asset is retained in the books, 100% thereof shall be provided for).

Therefore, applicants submitted that in view of the above guidelines issued by the Reserve Bank of India in respect of the Business of the Securitisation Companies and Reconstruction Companies clearly mandates that Respondents 1 and 2 being a Securitisation and Reconstruction Company cannot base its recovery proceedings on the notice dt.11-05-2009 issued by the 3rd Respondent/ Andhra Bank it further mandates that there shall be a Fresh Classification of account as NPA from the date of acquisition of loan and assets.

Violated the Notification No. DNBR.(PD).CC.No.03/SCRC/26.03.00/2015-16

Clause 7(vi) says SCs/RCs are not permitted to acquire any non performing financial assets from their sponsor banks on a bilateral basis, whatever may be the consideration. However, they may participate in auctions of NPA by their sponsor banks provided such an auction is conducted in a transparent manner, on arms length basis, at prices determined by the market factors.

However, in this case no auction has been conducted by the Andhra Bank, which is a sponsor bank having stake of 26% in ASREC (I) Limited.

That the ASREC (I) Limited acquired the Vishnutec Account under an Agreement, on the request of Vishnutec (Applicant) by funding Rs.4.90 Crores to it, to clear the balance due to the Andhra Bank and thereafter, a fresh contract has been started between ASREC (I) Limited and M/s. Vishnutec engineering Pvt., Ltd.,

That under the SARFAESI Act, Section 13 (2) is a condition precedent to proceed further under Section 13 (4) of the SARFAESI Act,.

In this case, since there is no notice issued under section 13 (2) by the Respondents No. 1 and 2, the Applicant lost its valuable right to give representation under Section 13 (3-A) which is mandatory those are:

- i. The Applicant/Borrower has no occasion to know what is the exact debt due.
- ii. The Applicant/Borrower has no occasion to question the legality in classifying his account as NPA.
- iii. The Applicant/Borrower has no occasion to know what is the rate of interest calculated whether it is agreed or excessive.
- iv. The Applicant could not raise the objection in terms of the guidelines of

Reserve Bank of India dt.23-04-2003.

Therefore, all the proceedings initiated by the 1st Respondent is vitiated because of non issuance of Demand Notice as required under Section 13(2) of SARFAESI Act,.

The Honourable High Court of Calcutta says about the importance of Section 13 (2) Notice in the case: M/s. Hotel Payel and another Vs. Central Bank of India AIR 2011 CALCUTTA 54: The Honourable Calcutta High Court held that "the purpose of notice under Section 13 (2) is to give the borrowers a chance to discharge in full his liabilities to the Secured Creditor within 60 days from the date of the notice and thus to avoid steps against him under Section 13 (4) of the Act,."

The High Court further held that there is no statutory prohibition against issuing more than one notice u/s 13(2) of SARFAESI Act,. The Calcutta High Court further observed that in Para 11 of the Judgment a fresh notice can never be for the same liability of the Borrower, it is bound to change with each passing day.

Therefore, it is very clear that the 1st Respondent shall issue a fresh notice under Section 13 (2) demanding the specifying outstanding amount with interest thereon.

The Honourable Supreme Court also made it clear in the case M/s. Transcore Vs. Union of India that the Notice under Section 13 (2) is not a mere show-cause notice, it is notice demand constitutes a serious action to be taken by the Secured Creditor under SARFAESI Act.

In the facts and circumstances as stated above it can be concluded that there is no borrower and creditor relationship between the Applicant and 3rd Respondent, after execution of Assignment deed dt. 16-12-2013, therefore, a fresh notice under Section 13 (2) of SARFAESI Act, must be issued by the Respondent No. 1 before proceeding further under Section 13 (4) of the SARFAESI Act,.

Therefore, the Sale Notice dt.01-08-2016 and all further proceedings in pursuance of the said sale notice is void ab-nation and liable to be set aside.

Violated the RULE 8 (2). (6) (5) of Securitisation Rules:

It is submitted that, Rule 8 (2) (6) mandates that the Possession notice as well as sale notice shall be published in two leading news papers having sufficient circulation in the locality.

In this case admittedly Possession Notice as well as Sale notices were published in Andhra Prabha Telugu Daily as well as Business Standard in English News Paper.

The above referred two news papers circulation is very low in Visakhapatnam. In fact its circulation is below hundred per day, therefore, the publication made in these two papers, is quite contrary to the mandate contained in Rule 8 (2) and

(6). Almost all Banks/Secured Creditors even for recovery of petty sums like Rs.10 Lakhs or Rs.15 Lakhs making publication of sale notices in Eenadu and Hindu which are leading news papers having sufficient circulation in the locality, whereas, in this case even the recovery of dues are in Crores, the Respondents No. 1 and 2 made a publication in Andhra Prabha and Business Standard which in fact have no minimum circulation in the entire Visakhapatnam City. The Respondent ASREC is a private Limited Company colluded with the intending Purchaser and making publications in a papers which have no minimum circulation, and selling the properties for through away prices. Rule 8(5) mandates that before effecting sale the Authorised Officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor.

In this case the Respondent No. 1 did not obtain any valuation report before effecting sale. therefore, the fixation of reserve price is illegal and the sale is liable to be cancelled. Keeping in view of the above, the Applicant prayed the Tribunal to allow the present Sa appeal.

4. Addi. Written arguments had been filed by the applicants and submitted that the Reserve Bank of India Circular dt: 19.03.2014 Ref: RBI/2013-2014/523 DNBS (PD) CC. No. 37/SCRC/26.03.001/2013-2014. This Guidelines debarred the Securitization Companies/Reconstruction Companies to acquire any NPA from the Sponsor Banks. Admittedly the Andhra Bank is a Sponsor Bank of ASREC (India) Limited. That clause 2 of the above said Guidelines reads as: A. SC/RCS are not permitted to acquire any non performing financial asset from their sponsor banks on a bilateral basis, whatever may be the consideration. However, they may participate in auctions of non-performing assets by their sponsor banks provided such an auction is conducted in a transparent manner, on arms length basis, at prices determined by the market factors. It is submitted that, again the Reserve Bank of India issued the same Guidelines on 01-07-2015 Ref No. RBI/2015-16/94 DNBR. (PD). cc. No. 03/SCRC/26.03.001/2015-16. The Para 14 of the said circular reads as: (vi) SCs/RCS are not permitted to acquire any non performing financial asset from their sponsor banks on a bilateral basis, whatever may be the consideration. However, they may participate in auctions of NPA by their sponsor banks provided such an auction is conducted in a transparent manner, on arms length basis, at prices determined by the market factors. It is submitted that, again the Reserve Bank of India issued the same Guidelines on 06-12-2019 Ref No. RBI/2019-20/110 DOR. NBFC (ARC) CC. No. 8/26.03.001/2019-20. The Para 2 (A) of Circular DNBS (PD) CC. No. 37/SCRC/26.03.001/2013-2014 dated March 19, 2014 circular reads as: 2. On a review, it has been decided that Asset Reconstruction Companies (ARCs) shall not acquire financial assets from the following on a bilateral basis, whatever may be the consideration:

(i) a bank/financial institution which is the sponsor of the ARC;

(ii) a bank/financial institution which is either a lender to the ARC or a subscriber

to the fund, if any, raised by the ARC for its operations;

(iii) an entity in the group to which the ARC belongs.

However, they may participate in auctions of the financial assets provided such auctions are conducted in a transparent manner, on arm's length basis and the prices are determined by market forces.

It is submitted that, the Reserve Bank issued further guidelines to the Banks/ Financial Institutions on sale of financial assets to the Securitization Company/ Reconstruction Company. In the said guidelines Para 4 states about the procedure for the sale of financial assets to SC/RC including valuation and pricing aspects which reads as : (b) Banks/Fis, which propose to sell to SC/RC their financial assets should ensure that the sale is conducted in a prudent manner in accordance with a policy approved by the Board. The Board shall lay down policies and guidelines covering, inter alia,

(i) Financial assets to be sold;

(ii) Norms and procedure for sale of such financial assets;

(iii) Valuation procedure to be followed to ensure that the realizable value of financial assets is reasonably estimated;

(iv) Delegation of powers of various functionaries for taking decision on the sale of the financial assets; etc.

Therefore, in view of the above discussions it is very clear that the sponsor Bank Andhra Bank as well as ASREC Company totally violated the mandatory guidelines issued by the Reserve Bank of India time to time, namely the AREC (India) Limited being a Securitization Company cannot be permitted to acquire any Non Performing Asset from their sponsor Bank on bilateral basis, what ever may be the consideration. However, the ASREC (India) Limited shall participate in auctions of Non Performing Assets by their sponsor Bank.

However, in this case the Non Performing Asset was sold by the sponsor Bank i.e., Andhra Bank to its Securitization Company under Tri-Party Agreement, contrary to the mandate issued by the Reserve Bank of India. Therefore, when the said transaction is void ab-natio all further proceeding basing on such sale is illegal as no valid title has been passed from Andhra Bank ASREC (India) Limited. Therefore, all further proceedings in pursuance of such sale is illegal invalid and void ab-natio.

5. Reply has been filed by the 1st respondent financial institution denying the SA averments and further submitted that the application is time barred as the same is not filed within the limitation prescribed under section 17 of Securitisation Act 2002 and therefore the same is liable for dismissal at the thresh-hold itself and further submitted that the present application is not maintainable on any ground as the same is infructuous at this stage after completion of sale and issue of sale certificate confirming the sale and also a Registered sale deed executed in favour

of the auction purchaser and also the property was delivered to him on 26.09.2016. 1st respondent financial institution further submitted that the 3rd respondent already filed OA against the applicants herein for recovery of their lawful debt and also initiated proceedings under SARFAESI Act, 2002 but the allegation that the applicants approached the 3rd respondent bank for settlement of their accounts under OTS and that as per the norms of Reserve Bank of India, the applicants accounts are entitled for One Time Settlement (OTS) and that the 3rd respondent bank also accepted the OTS proposal and ultimately the applicants as well as the 3rd respondent bank agreed for settlement for an amount of Rs.6.40 crores to settle both the accounts of the applicants may be true but the applicants failed to adhere to the terms of the compromise. Even according to the applicants version that they have paid Rs. 1 crore immediately and the 3rd respondent bank had given time for payment of balance amount of Rs.5.40 crores on or before 19.12.2013, evidently they have not paid the said balance amount and failed to honour the commitment made by them before the 3rd respondent. 1st respondent financial institution further submitted that the deed of assignment was executed in between 3rd respondent and the respondents 1 & 2 under the provisions of Securitization Act, 2002 as the applicants miserably failed to liquidate their liability even under OTS granted to them by the 3rd respondent. 1st respondent financial institution further submitted that the reserve price fixed for the scheduled property in the 1st sale notice dated 22.02.2015 is Rs.6.60 crores and as no bidders came forward to participate in the bid the same was cancelled and the 2nd sale notice dated 23.09.2015 was issued in which the reserve price was mentioned as Rs.5.30 crores. Even to the second sale notice also no bidders participated in the bid and therefore the same was also cancelled and subsequently 3rd sale notice dated 24.11.2015 was issued in which the reserve price was mentioned as Rs.4.25 crores for which no bidders participated. Again 4th sale notice dated 28.01.2016 was issued in which the reserve price was mentioned as Rs.3.75 crores for which no bidders participated. Ultimately the 5th sale notice dated 01.08.2016 was issued fixing the reserve price as Rs.3.00 crores for which the bidders participated and also inter-se bidding was conducted which finally concluded at Rs.3.45 crores. It is submitted that the respondents 1 & 2 have meticulously and carefully conducted the bid in all the aforesaid auction proceedings and they put all the efforts to fetch a good price for the property sold in auction. At no point of time the applicants made any effort to bring the prospective purchasers to purchase the property in the auction for a price which is more than Rs.3.45 crores. However, the applicants did not mention about the sale notices issued on 23.09.2015 and 24.11.2015. Copies of the above sale notices with acknowledgments, returned postal covers and paper publication of each sale notice are filed herewith for kind perusal. In fact applicant and the guarantor were served with notice of the dates of the auction but they did not turn up. 1st respondent financial institution therefore submitted that 1st respondent financial institution had followed the entire procedure laid down under SARFAESI Act, 2002 and therefore prayed to dismiss the present SA appeal.

6. Adoption Memo dt: 16.01.2017 has been filed by the 2nd respondent financial institution adopting the reply given by 1st respondent financial institution.

7. Addi. Reply has been filed by the 1st & 2nd respondent financial institution submitted that 1st & 2nd respondent financial institution strictly followed the provisions of SARFAESI Act, 2002 and therefore no malafides can be attributed to them by applicants and as the sale conducted is in conformity of SARFAESI Act, 2002 and therefore applicants are not entitled for any relief as sought in the Neat Copy filed in the present SA 232/2016.

8. Memo dt: 30.09.2019 is filed by the 1st & 2nd respondent financial institution and filed a copy of Registered Sale Certificate bearing No.5056/2016 dt: 26.09.2016 executed by Chief Manager and Authorised Officer of 1st & 2nd respondent financial institution in favour of 4th respondent auction purchaser viz. Sri Ratna Prabhu Vallurupalli S/o Sri Prabhu Prasad and after receipt of the sale price of Rs.3,45,00,000/- handed over the delivery and possession of the schedule property to him on the same day.

9. Written submission has been filed by the 1st & 2nd respondent financial institution and submitted that present application is not maintainable and has the present SA appeal has become infructuous at this stage after completion of sale and issue of sale certificate confirming the sale and also a Registered Sale Certificate having been executed in favour of the auction purchaser and possession of the property having been delivered to him on 26.09.2016. It is also submitted that out of the sum of Rs.6.40 crores payable as per OTS to Defendant No.3 Andhra Bank, Applicants paid Rs.1 crore and 3rd Respondent Andhra Bank had given time for payment of the balance amount of Rs.5.40 crores on or before 19.12.2013 which could not be paid by the Applicants and thus failed to honor the commitment made by them before the 3rd Respondent Bank. In those circumstances the Respondents 1 and 2 herein paid the sum of Rs.540 lakhs to 3rd Respondent Andhra Bank and they assigned the debt with underlying securities as per the Registered Assignment Agreement dated 16.12.2013 and thus Respondents 1 and 2 proceeded as per the provisions contained in the SARFAESI Act, 2002 and continued further proceedings under the said Act which is in conformity with the provisions of the SARFAESI Act, 2002. Before paying the amount by Respondents 1 and 2 to Andhra Bank, a Memorandum of Understanding (MOU) Tripartite was entered into on 16.12.2013 between the applicant and 1st & 2nd respondent financial institution and Andhra Bank whereby it was agreed that on payment of the balance amount as per OTS the Andhra Bank would assign the debt along with securities to the Respondents 1 & 2 and it is also agreed by the applicant that the terms and conditions/provisions of assignment agreement shall be binding on the parties to MOU. In spite of the same the applicant in this SA wantonly raised several contentions which are totally untenable under law and their attempt is to keep the litigation alive on one pretext or the other when the property was already sold away 3 1/2 years back and issued Sale Certificate followed by Registered Sale Certificate dated

26.09.2016 executed in favour of the auction purchaser (copy of the Registered Certificate is already filed with a Memo dated 30.09.2019). 1st & 2nd respondent financial further submitted that the several allegations made in the present SA 232/2016 were already raised in the earlier SA 115/2009 which was dismissed on merits by this Tribunal as per the detailed order dated 06.07.2010 which has become final. A copy of the said order is filed herewith for the perusal of this Tribunal. It is submitted that the Bank took constructive possession of the property on 01.08.2009 and issued notice to the borrowers and also made publications in two leading daily newspapers and as could be seen from the sale cum auction notice published by the respondents 1 and 2 in Telugu newspaper dated 01.08.2016 at page No.114 of list of documents filed by the respondents along with reply it was recited that the Authorized Officer took possession of the schedule properties on 08.02.2013 as per the possession notice dated 13.02.2013 which was published in two leading newspapers one in vernacular and further submitted that the property was published for sale on four occasions for which Sale Notices were issued to the borrower and the guarantors. In the said Sale Notices the fact of taking physical possession of the property on 08.02.2013 and giving possession notice on 13.02.2013 was mentioned. The notices were received by the borrower but those sent to the guarantors were deliberately returned. No reply was given to the said notices. Thus the fact mentioned therein including giving possession notice u/s 13(4) remained uncontroverted. Therefore 1st & 2nd respondent financial institution submitted that there is no truth in the allegation made by the applicants in the present SA that possession notice was not issued and further submitted that another SA278/2016 was also filed and dismissed on 20.04.2017 and thereupon, the matter was carried by the Applicants to the Honourable Debts Recovery Appellate Tribunal at Kolkata by filing appeal No.209/2017/188 and the same was also dismissed on merits by addressing every contention made by the Applicants before the Appellate Tribunal. Copies of the Orders dated 20.04.2014 of the ORT and order dated 08.02.2019 of the Appellate Tribunal are filed herewith for the perusal of this Tribunal. 1st & 2nd respondent financial institution further submitted that Writ Petition No.2670/2019 was also filed by the Applicants herein and the same was also dismissed on merits as per the Order dated 04.06.2019 of the Honourable High Court of Andhra Pradesh at Amaravathi. A copy of the said order is filed herewith for kind perusal. The Applicants also filed Petition for Special Leave to Appeal (C) No.15782/2019 against respondents 1 and 2 herein and the Honourable Supreme Court after hearing both parties even though was not inclined to interfere in this Special Leave Petition but however in the light of submissions made by the Counsel for the Petitioner they acceded to the request as made that the Respondents Nos. 1 and 2 shall maintain status quo as of today with regard to the four remaining properties mentioned in the Record of Proceedings of the Honourable Supreme Court which are yet to be sold I auctioned for a period of four week from the date of order to enable the petitioner to pay off all the dues after due adjustments of the consideration already recovered by the Respondents by way of sale of other properties with a

condition that in the event the Petitioner fails to pay the amount as undertaken the Respondents will be free to take appropriate steps on expiry of the aforesaid period in accordance with law. 1st & 2nd respondent financial institution further submitted that the counsel for the Respondents assured that the Petitioner will be informed about the latest outstanding dues by the beginning of 29.07.2019. The SLP was accordingly disposed off. A copy of the record of proceedings of the Honourable Supreme is also filed herewith for perusal of Tribunal. It is submitted that the schedule of the property for which the SA 115/2009 and SA 278/2016 may be different from that of the property for which the present SA 232/2016 is filed but the contentions in all the SAs are one and the same and these contentions were answered by this Tribunal and Honourable Appellate Tribunal and the Honourable High Court of Andhra Pradesh point wise. 1st & 2nd respondent financial institution further submitted that the 3rd respondent Andhra Bank issued demand notice u/s 13(2) dated 12.05.2009 and thereafter possession of the property was taken on 08.02.2013 and possession notice dated 13.02.2013 u/s 13(4) was issued to the borrowers / guarantors and publication of the same was made in news papers on 13.02.2013. The property was also got valued by approved Valuer on 31.08.2015 and the notice of sale was also published in the two leading newspapers as mandated by the provisions contained in the SARFAESI Act and thus every provision of law was complied by 1st & 2nd respondent financial institution before bringing the property to sale. Insofar as the circular issued by the Reserve Bank dated 01.07.2015 to Securitization Company and Reconstruction Companies is concerned that is issued for the guidance of those companies and the same has nothing to do with the recovery of the amount from the Applicant in this case. It is submitted that the above SA lacks bonafides and the same is liable for dismissal and therefore prayed to dismiss the present SA appeal.

10. 1st & 2nd respondent financial institution filed reply to Addi. Written arguments filed by applicants and is on the same lines of reply and written arguments filed by the 1st & 2nd respondent financial institution and further submitted that the property in question was sold away in auction conducted long ago on 01.08.2016 and therefore ultimately the affected party in this SA will be auction purchaser. Except addition the auction purchaser as a party no steps were taken by the applicants to serve notice of the SA on the auction purchaser either before impleading their name as 4th respondent or subsequently. Therefore, for this default on the part of the applicants the present SA is liable to be dismissed.

11. The point for consideration is whether the applicants are entitled for (a) declaration of the Reserve Price fixed in Sale Notice dt: 01.08.2016 is illegal and contrary to Law (b) declaring the Sale Notice dt: 01.08.2016 as void ab-natio as the Respondents 1 and 2 measurably failed to observe the mandatory provisions 13 (2) & (4) and Rules 8 & 9 of Securitisation Act (c) declaring the outstanding dues i.e. Rs.7,14,45,950.03/- shown in the Sale Notice dt: 01.08.2016 is incorrect (d) declaring the OTS arrangement is still in force (e) setting aside all

the proceedings done in pursuance of the Sale Notice dt: 01.08.2016, and restore the Possession of the property to the Applicants as prayed for or not.

12. Heard both sides. Ld Counsel for applicants submitted that 1st Applicant is a Private Limited Company availed Credit Facilities from 3rd Respondent Bank to an extent of Rs.500 Lakhs and the 2nd Applicant is a Partnership Firm availed Rs.100 Lakhs financial facility from the 3rd Respondent Bank and the 1st Applicant also stood as a Guarantor for the financial facilities sanctioned to the 2nd Applicant. Ld Counsel for applicants further submitted that Applicants mortgaged 06 properties in favour of the 3rd Respondent Bank as collateral securities and Securitisation Application is confined to the schedule mentioned property only, which was sold on 07.09.2016 under Impugned Sale Notice dt: 01.08.2016. Ld Counsel for applicants further submitted that the 1st Applicant's account turned into NPA on 25.12.2008, as well as the 2nd Applicant's account also turned in to NPA on 01.07.2010. Ld Counsel for applicants further submitted that the 3rd Respondent/ Andhra Bank started recovery proceedings against the Applicants by initiating proceedings under RDDB Act as well as SARFAESI Act and the Applicants approached the 3rd Respondent Bank for settlement under OTS and 3rd Respondent Bank agreed for settlement for an amount of Rs.6.40 Crores to settle both the accounts of the Applicants vide its Letter dt: 30.09.2013, Lr. No. 1729/45/90. Ld Counsel for applicants further submitted that the Applicants in pursuance of the settlement under OTS paid an amount of Rs.1 Crore immediately and the 3rd Respondent Bank had given time for the payment of balance amount of Rs.5.40 Crores up to 19.12.2013 and to discharge the balance amount of Rs. 5.40 Crores the Applicants, approached the Respondents 1 & 2 (Company registered as a Securitisation and Asset Reconstruction Company in accordance with Section 3 of the SARFAESI Act, 2002,) and entered into an Agreement with the Respondents 1 & 2 to finance the OTS Settlement i.e. an amount of Rs.5.40 Crores and also requested the 3rd Respondent Bank to assign their Debts to the Respondents 1 & 2 along with Securities. Ld Counsel for applicants further submitted that in terms of the above settlement, the 3rd Respondent Bank after taking its dues, executed Assignment Deed dt: 16.12.2013 in favour of Respondents 1 & 2 and in terms of the said Assignment the 3rd Respondent Bank transferred the Loans and Securities in favour of the Respondents 1 & 2, since the 3rd Respondent Bank recovered all its dues, the 3rd Respondent Bank closed the loan accounts of the Applicants with it. The contention of the applicant is that the Respondents 1 & 2 without issuing any Demand Notice as mandated u/s 13(2) of SARFAESI Act and without issuing any Possession Notice as mandated u/s 13 (4) of SARFAESI Act straight away sell the schedule mentioned property for a very low price which is totally illegal contrary to the mandatory provisions of SARFAESI Act, and Enforcement of Security Interest Act, 2002 and therefore contended that the respondents 1 & 2 colluded with auction purchaser and sold the schedule property at throw away price. Applicants further contended that the Respondents 1 & 2 did not follow Rule 8(7) & (8) of Security Interest (Enforcement) Rules 2002. Now, it this is to be decided

whether respondents 1 & 2 followed the procedure laid down under SARFAESI Act, 2002 or not.

13. Admittedly, the 1st Applicant is a Private Limited Company availed Credit Facilities from 3rd Respondent Bank to an extent of Rs.500 Lakhs and the 2nd Applicant is a Partnership Firm availed Rs.100 Lakhs financial facility from the 3rd Respondent Bank and the 1st Applicant also stood as a Guarantor for the financial facilities sanctioned to the 2nd Applicant and applicants further submitted that the Applicants mortgaged 06 properties in favour of the 3rd Respondent Bank as collateral securities and defaulted in repayment of loan account as such the 1st Applicant's account turned into NPA on 25.12.2008 as well as the 2nd Applicant's account also turned in to NPA on 01.07.2010 as such the 3rd Respondent/Andhra Bank started recovery proceedings against the Applicants by initiating proceedings under RDDB Act, as well as SARFAESI Act, 2002. The main contention of the applicants is that the respondents 1 & 2 without issuing any Demand Notice as mandated u/s 13(2) of SARFAESI Act and without issuing any Possession Notice as mandated u/s 13 (4) of SARFAESI Act, the respondents 1 & 2 has no right to proceed under SARFAESI Act, 2002 basing on the previous notices issued by 3rd respondent/ Andhra Bank and sold the schedule mentioned property for a very low price which is totally illegal contrary to the mandatory provisions of SARFAESI Act, and Enforcement of Security Interest Act, 2002. Admittedly, 3rd respondent/ Andhra Bank declared the loan accounts of NPA and thereafter OTS was settled for Rs.6.40 crores for both loan accounts of applicants vide Lr. No. 1729/45/90 dt: 30.09.2013 and in pursuance of the settlement, applicants paid an amount of Rs. 1 crore to the 3rd Respondent/ Andhra Bank and for the payment of balance amount of Rs.5.40 Crores, Applicants/Borrowers approached the Respondents No. 1 & 2, i.e. ASREC, which is agreed to clear the balance amount of Rs.5.40 crores on certain terms and conditions. Admittedly, 3rd respondent/Andhra Bank after taking its dues, executed Assignment Deed dt: 16.12.2013 in favour of Respondents 1 & 2 and in terms of the said Assignment the 3rd Respondent Bank transferred the Loans and Securities in favour of the Respondents 1 & 2 and since the 3rd Respondent Bank recovered all its dues, the 3rd Respondent Bank closed the loan accounts of the Applicants with it. Now the main contention of the applicants is that the respondents 1 & 2 without issuing any Demand Notice as mandated u/s 13(2) of SARFAESI Act and without issuing any Possession Notice as mandated u/s 13 (4) of SARFAESI Act, the respondents 1 & 2 has no right to proceed under SARFAESI Act, 2002 basing on the previous notices issued by 3rd respondent/ Andhra Bank and sell the schedule mentioned property for a very low price which is totally illegal contrary to the mandatory provisions of SARFAESI Act, and Enforcement of Security Interest Act, 2002. Admittedly, 3rd respondent/Andhra Bank issued u/s 13(2) demand notice on 11.05.2009. The contention of the applicants is that respondents 1 & 2 proceeded further basing on previous u/s 13(2) demand notice dt: 11.05.2009 issued by 3rd respondent/Andhra Bank. Therefore the contention of the applicants is that respondent 1 & 2 violated the guidelines of

RBI and Directions regarding the Securitization Companies and Reconstruction Companies Notification No. DNBS.2/CGM(CSM) - 2003 dated 23.04.2003. Admittedly, Memorandum of Understanding (MOU) Tripartite was entered into on 16.12.2013 between all the parties for settlement of both loan accounts under OTS for Rs.6.40 crores vide Letter No. 1729/45/90 dt: 30.09.2013 and the Applicants in pursuance of the settlement under OTS paid an amount of Rs.1 crore immediately to the 3rd Respondent/Andhra Bank and to discharge the balance amount of Rs.5.40 Crores the Applicants, approached the Respondents 1 & 2. As per Clause 3 of the Agreement, the Assigner Andhra Bank ceased all its rights and responsibilities to recover the dues from the parties Applicant/Borrowers. Therefore, the contention of the applicants is that after the Assignment Agreement is executed in favour of ASREC, the 3rd Respondent Bank closed all its recovery proceedings against Applicants and hence the Demand notice dt: 11.05.2009 issued by the 3rd Respondent Bank has been ceased on the execution of Memorandum of Understanding and Assignment Agreement in favour of Respondents No. 1 & 2. Further, the contention of the applicants is that in the the Assignment Agreement filed along with this written Argument at Page Nos. 59 to 109, and at Page No. 69 it is mentioned as "One Time Settlement (OTS) Amount means an amount of Rs.6,40,00,000/- being the aggregate settlement consideration for the Loans agreed between the Assignor and the Borrowers to be paid as per the sanction terms defined in the Assignors Letter No. 1729/45/90 dt: 30.09.2013 and therefore, consideration for this Agreement means an amount of Rs.5,40,00,000/- being the aggregate consideration for the assignment of Loans. Further, the contention of the applicants is that Section 13 (3) says that "the notice under Section 13 (2) shall give details of the amount payable by the borrower as also the details of the secured assets". It is submitted by the Ld Counsel for applicants that in the case on hand, the "Assignment Agreement clearly says that the consideration for this agreement means an amount of Rs.5,40,00,000/- being the aggregate consideration for the assignment of loan" and therefore, the claim of the 3rd Respondent/Andhra Bank at the time of issuing Demand Notice u/s 13(2) is definitely and totally different then claim raised by the 1st Respondent after taking the loans under Assignment Agreement. It is submitted by the Ld Counsel for applicants that the 1st Respondent cannot base its claim on the previous demand notice dt: 11.05.2009 issued by the 3rd Respondent/Andhra Bank. Further, as per RBI guidelines and Directions about the Securitization Companies and Reconstruction Companies Notification No. DNBS.2/CGM(CSM)-2003 dated 23.04.2003, fresh declaration of NPA is required by the Securitisation Company i.e. 2nd Respondent herein after date of acquisition of ownership. It is admitted fact that applicants approached the 3rd Respondent/ Andhra Bank for settlement under OTS and the 3rd Respondent Bank also accepted the OTS proposal for an amount of Rs.6.40 crores to settle both the accounts of the applicants vide its Letter No.1729/45/90 dt: 30.09.2013 and the applicants in pursuance of the settlement under OTS paid an amount of Rs.1 crore immediately and the 3rd Respondent/Andhra Bank and to discharge the balance amount of Rs.5.40 crores the Applicants, approached

the Respondents 1 & 2 and entered into an Agreement with the Respondents 1 & 2 to finance the OTS Settlement i.e. an amount of Rs.5.40 Crores and also requested the 3rd Respondent Bank to assign their Debts to the Respondents 1 & 2 along with Securities. Further, in terms of the above settlement, the 3rd Respondent Bank after taking its dues, executed Assignment Deed dt: 16.12.2013 in favour of Respondents 1 & 2 and in terms of the said Assignment the 3rd Respondent Bank transferred the Loans and Securities in favour of the Respondents 1 & 2, since the 3rd Respondent Bank recovered all its dues, the 3rd Respondent Bank closed the loan accounts of the Applicants with it. Therefore, the Ld Counsel for applicants argued that the ASREC (respondents 1 & 2) shall take fresh steps to proceed under Securitisation Act, in view of the Guidelines issued by RBI its Notification No. DNBS.2/CGM/CSM) - 2003 dated 23.04.2003 and as per the RBI guidelines fresh declaration of NPA is required by the Securitisation Company i.e. 1st & 2nd Respondent after date of acquisition of ownership. Therefore, it is contended by the Ld Counsel for applicants that without classifying both loan accounts as NPA afresh and 1st & 2nd Respondent cannot proceed further under SARFAESI Act, 2002 as per RBI its Notification No. DNBS.2/CGM/CSM - 2003 dated 23.04.2003. It is further argued by the Ld Counsel for applicants that since, respondents 1 & 2 proceeded further under SARFAESI Act, 2002 on the basis of previous u/s 13(2) demand notice dt: 11.05.2009 issued by 3rd respondent, applicants herein lost their valuable right to represent vide u/s 13(3a) of SARFAESI Act, 2002 and therefore, applicants has lost their valuable opportunity to represent vide u/s 13(3a) of SARFAESI Act, 2002 which is mandatory under SARFAESI Act, 2002. Therefore, the Ld Counsel for applicants submitted that respondents 1 & 2 has to declare both the loan accounts as NPA afresh and in this case on hand respondents 1 & 2 proceeded under SARFAESI Act, 2002 on the basis of previous u/s 13(2) demand notice dt: 11.05.2009 issued by 3rd respondent/ Andhra Bank which is illegal not maintainable under law. The present applicants filed SA 115/2009 with a prayer to declare the impugned notices issued u/s 13(2) dt: 12.05.2009 and u/s 13(4) dt: 02.08.2009 of SARFAESI Act, 2002 as null and void against 3rd respondent/ Andhra Bank herein and the same was dismissed on merits by this Tribunal on 06.07.2010 and this Tribunal categorically held that applicants failed to establish that 3rd respondent/ Andhra Bank proceeded under SARFAESI Act, 2020 illegally and therefore on merits this Tribunal dismissed the above SA 115/2009 on 06.07.2010. Therefore, it is crystal clear that notices u/s 13(2) dt: 12.05.2009 and u/s 13(4) dt: 02.08.2009 of SARFAESI Act, 2002 are validly issued. The above judgment is prior to execution of assignment agreement dt: 16.12.2013 in between applicants herein and 3rd respondent/ Andhra Bank and respondents 1 & 2 herein. Further, applicants filed SA 278/2016 before this Tribunal with a prayer to declare the applicants account not classified as NPA as per guidelines of RBI and therefore respondents 1 & 2 cannot proceed under SARFAESI Act, 2002 and declare the u/s 13(4) possession notice dt: 20.10.2016 as void ab-natio. However, this Tribunal dismissed the above SA 278/2016 on merits on 20.04.2017 and in the Order/ judgment this Tribunal elaborately discussed the

matter and observed that there is no need to issue fresh notice u/s 13(2) of SARFAESI Act, 2002 and therefore on that ground applicants are not entitled to seek cancellation of sale held by the 1st respondent. Against the Order/judgment in SA 278/2016, applicants preferred Appeal No.209/2017/188 (arising out of SA 278/2016 in DRT Visakhapatnam). The said Appeal No.209/2017/188 was dismissed by the Hon'ble DRAT Kolkata on 08.02.2019 and observed that DRT Visakhapatnam has rightly dismissed the SA 278/2016 on merits. In its Order/judgment DRAT Kolkata observed that "the guidelines issued by Reserve Bank of India on 01.07.2014 demonstrate at Para 6.3 that financial assets may be sold to Reconstruction Company/ FI where the asset is NPA. Thus it is clear that the originator bank can only sell the financial assets after declaring the same as NPA and not before that. Thus, natural collorary is that the ASREC is not required to again classify the asset as NPA to issue fresh demand notice u/s 13(2) of the said Act. The assignee company has to proceed further from the stage it has taken over the proceedings". Therefore, it is clear from the Order I judgment of DRAT Kolkata that there is no need to declare the loan account as NPA and therefore there is no need to issued u/s 13(2) demand notice afresh and respondents 1 & 2 has to proceed further from the stage it has taken over the proceedings. Applicants preferred WP No. 2670/2019 before Hon'ble High Court of AP at Amaravathi challenging DRAT Kolkata Order/judgment in Appeal No. No.209/2017/188 (arising out of SA 278/2016 in DRT Visakhapatnam) dt: 08.02.2019. In the said WP No. 2670/2019 Hon'ble High Court of AP at Amaravathi elaborately observed that "in our considered view, R2 does not require to issue a fresh notice under section 13(2) because the previous lender who R2 succeeded and became lender under the deeming provision of Section 5(2) had already declared petitioner's account as NPA and issued a demand notice under section 13(2)". Further in the said WP No. 2670/2019 Hon'ble High Court of AP at Amaravathi observed that "by virtue of these intervening circumstances, it must be said that flame of loan existed between the petitioner and R3 might be doused, but such circumstances will not extinguish the liability of petitioner towards R2 under the novated contract. Similarly, the NPA classification and Section 13(2) notice earlier issued by R3 also will not be exterminated for the reason that while approving the OTS proposed by petitioner, R3 in its letter dt: 30.09.2013 put forth certain conditions. Condition No.3 is thus:

"3. If the approved compromise amount is not paid within the stipulated time or breach of any of the terms and conditions of the sanction, bank is at liberty to continue its further action under SARFAESI Act, 2002 (emphasis supplied) and the part payment made by under the compromise shall be treated as part recovery and will be appropriated as per the rules and principles laid down by the bank".

With the above observation, the WP No.2670/2019 was dismissed by Hon'ble High Court of AP at Amaravathi. So therefore, Hon'ble High Court of AP at Amaravathi upheld this Tribunal order/judgment in SA 278/2016 dt: 20.04.2017 which was upheld by Hon'ble DRAT Kolkata. Therefore, it is clear that there is no

need for respondents 1 & 2 to declare the loan account of the applicants as NPA afresh. Therefore, it is clear that respondents 1 & 2 can proceed further under SARFAESI Act, 2002 basing on the classification of loan account of the applicants as NPA by 3rd respondent/ Andhra Bank and can proceed further under SARFAESI Act, 2002 basing on u/s 13(2) demand notice & u/s 13(4) possession notice issued previously by 3rd respondent/ Andhra Bank. Therefore, keeping in view of the above, it is clear that respondents 1 & 2 can proceed under SARFAESI Act, 2002 basing on the actions initiated by 3rd respondent/ Applicant Bank. Therefore, the entire exercise taken by the applicants quoting RBI guidelines in the present SA is futile without challenging the Order/ judgment Hon'ble High Court of AP at Amaravathi before Hon'ble Supreme Court of India. Therefore, I am of the considered opinion that respondents 1 & 2 can proceed further under SARFAESI Act, 2002 basing on the actions initiated by 3rd respondent/ Applicant Bank. Now, this Tribunal has to verify whether the sale of schedule properties conducted on 07.09.2016 in pursuance to sale notice dt: 01.08.2016 is in accordance with law or not.

Admittedly, the property involved in this SA is different from the property involved in the previous SAs i.e., SA.115/2009 and SA.278/2016 and the respondent FI also admitted in its written arguments that the properties involved in the SA.115/2009 and SA.278/2016 are different from that of the property for which the present SA.232/2016 is filed. Therefore, it is crystal clear that the subject property is different from that of the property mentioned in SA.115/2009 and SA.278/2016. The SA.115/2009 was filed by Vishnutek Engineers Private Limited represented by its Managing Director Dr.Sajja Panduranga Prasad and Sri Yelamanchi Srirama Mouli, Mrs.Sajja Yoyajana Deepika and Mrs.Sajja Umadevi are the directors, challenging the notices under section 13(2) dt.12.5.2009, section 13(4) dt.2.8.2009 as null and void and unenforceable under the Act and that SA.115/2009 filed by the above applicants was dismissed and in that SA.115/2009 the applicants therein have not challenged the sale notice. The other SA.278/2016 was filed by M/s.Vishnutek Engineers Pvt Ltd., represented by its Managing Director Sri Sajja Panduranga Prasad to declare the applicant's accounts not classified as NPA as per the norms of RBI by respondent 1 and 2 and RI and 2 cannot proceed under SARFAESI Act and also declare the possession notice dt.20.10.2016 as void, ab-natlo as RI and R2 failed to observe the mandatory provisions 12(2) & (4) and rules 8(2) of the Act and to stay all further proceedings pursuant to possession notice dt.20.10.2016 issued under section 13(4) of SARFAESI Act. The said SA.278/2016 was also dismissed by this Tribunal on 20.4.2017 and in that SA also the applicants have not challenged the sale notice. Against the dismissal orders passed in SA.278/2016 the applicants have preferred an Appeal before the Hon'ble DRAT, Kolkata and the same was dismissed on 8.2.2019 and the applicants have also filed writ petition WP.No.2670/2019 before the Hon'ble High Court of Andhra Pradesh and the same was also dismissed by the Hon'ble High Court of AP. The applicants have also filed Special Leave Appeal before the Hon'ble Supreme Court of India and

the same was also disposed of. It can be seen now that the relief claimed in the above said SAs is only with regard to declaration of account as NPA and also to declare the possession notice dt.20.10.2016 as illegal and so there is a difference between the relief claimed by the applicants in SA.115/2009 and SA.278/2016 but so far as this SA.232/2016 is concerned, the prayer of this SA is that a) to declare that the reserve price fixed in sale notice dt.1.8.2016 is illegal and contrary to law, b) to declare the sale notice dt.1.8.2016 is void ab-natio as respondent 1 and 2 failed to observe the mandatory provisions 13(2) and (4) and rules 8 and 9 of SARFAESI Act, c) to declare that the outstanding dues i.e., Rs.7,14,45,950.03ps shown in the sale notice dt.1.8.2016 is incorrect, d) to declare that the OTS arrangement is still in force, e) to set aside all the proceedings done in pursuance of the sale notice dt.1.8.2016 and restore the possession of the property to the applicants etc.

So far as this SA.232/2016 is concerned, it is the case of the applicants that demand notice under section 13(2) and possession notice under 13(4) were not issued and that the assignment of debt by R3 to R1 and R2 is not in accordance with law, however they are valid and is confirmed by Hon'ble DRAT, Kolkata and also Hon'ble High Court and Hon'ble Supreme Court. So far as sale notices are concerned, the first sale notice was issued on 20.2.2015 fixing the reserve as Rs.6.60 crores and as no bidders came forward to participate in the bid the same was cancelled. The second sale notice dt.23.9.2015 was issued wherein reserve price was fixed at Rs.5.30 crores as per averments made in the reply by respondent and even to the second sale notice also no bidders participated in the bid and therefore the same was also cancelled and subsequently issued third sale notice dt.24.11.2015 which was issued by reducing the reserve price to Rs.4.25 crores for which also no bidders participated and again the respondent issued fourth sale notice dt.28.1.2016 putting the reserve price at Rs.3.75 crores for which no bidders participated and ultimately the fifth sale notice dt.1.8.2016 was issued fixing the reserve price at Rs.3 crores for which the bidders participated and also Inter-se bidding was conducted which finally concluded at Rs.3.45 crores. It is submitted that the respondent 1 and 2 have meticulously conducted the bid in all the aforesaid auction proceedings and they put all the efforts to fetch a good price for the property sold in auction. Now let us verify whether the respondent 1 and 2 have followed the procedures as laid down under SARFAESI Act in selling the property through sale notice dt.1.8.2016. As can be seen from the sale notice dt.20.2.2015 sent to the applicants and others, it is observed that under which provision of SARFAESI Act the respondent FI is going to sell the property is not mentioned and also issued another sale notice dt.17.3.2015 and also publication copies of notices not filed however copies of the postal acknowledgements were filed. Again the respondent FI also issued another sale notice dt.23.9.2015 and in this notice also it is not mentioned under which provision they are selling the property for which acknowledgement also filed. The respondent FI has also issued another sale notice dt.26.9.2015 and in that notice also the provision of law is not mentioned by the respondent FI and the same

was published in Telugu and English newspapers but in the paper publication the sale notice date was mentioned as 23.9.2020. Again the respondent FI issued sale notice dt.24.11.2015 it is mentioned as 30 days notice to the borrowers/guarantors for sale of secured assets under SARFAESI Act and the same was published in English and Telugu newspapers on 24.11.2015. The respondent FI also filed another sale notice for sale of secured assets was issued on 28.1.2016 and the same was published in English and Telugu newspapers. Again the sale notice dt.1.8.2016 was issued without mentioning the provision under law the respondent FI is going to sell the secured assets. Publication copies of the sale notice dt.1.8.2016 also filed. In pursuant to sale notice dt.1.8.2016 the respondent FI conducted sale with reserve price of Rs.300 crores on 7.9.2016. Admittedly, under the proposed sale notice dt.1.8.2016 sale was successfully conducted by respondent FI. Now it is to see whether the respondent FI has followed the procedure laid down under SARFAESI Act before conducting the sale or not. As can be seen from the notice dt.1.8.2016, nowhere the respondent FI it is confirmed that rule 8(6) notice was issued and served on the applicant by giving 30 days time so as to enable the applicant to redeem the property and thereafter issued rule 9(1) notice. It is also crystal clear from the documents filed by respondent FI that nowhere it is mentioned that the respondent FI has obtained fresh valuation before effecting each and every sale notice for conducting the sale and the documents filed by the respondent FI does not reflect that rule 8(6) notice was issued and valuation certificates were not obtained by the authorities before issuance of sale notices and therefore it is crystal clear that the respondent FI has not followed rule 8(6) and rule 8(5) of SARFAESI Act. The Division Bench of Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in WP No. 8155/2018 in between Sri Sai Annadhatha Polymers and another Vs Canara Bank, Madanapalle "Once the said legal position is ascertained, the statutory prescription contained in Rules 8 and 9 have also got to be examined as the said Rules prescribe as to the procedure to be followed by a secured creditor while resorting to a sale after the issuance of the proceedings under Sections 13(1) to (4) of the SARFAESI Act. Under Rule 9(1), it is prescribed that no sale of an immovable property under the rules should take place before the expiry of 30 days from the date on which the public notice of sale is published in the newspapers as referred to in the proviso to sub-rule (6) of Rule 8 or notice of sale has been served to the borrower. Sub-rule (6) of Rule 8 again states that the authorized officer should serve to the borrower a notice of 30 days for the sale of the immovable secured assets. Reading sub-rule (6) of Rule 8 and sub-rule (1) of Rule 9 together, the service of individual notice to the borrower, specifying clear 30 days time-gap for effecting any sale of immovable secured asset is a statutory mandate. It is also stipulated that no sale should be effected before the expiry of 30 days from the date on which the public notice of sale is published in the newspapers.

Therefore, the requirement under Rule 8(6) and Rule 9(1) contemplates a clear

30 days individual notice to the borrower and also a public notice by way of publication in the newspapers. In other words, while the publication in newspaper should provide for 30 days clear notice, since Rule 9(1) also states that such notice of sale is to be in accordance with the proviso to sub-rule (6) of Rule 8, 30 days clear notice to the borrower should also be ensured as stipulated under Rule 8(6) as well. Therefore, the use of the expression or in Rule 9(1) should be read as and as that alone would be in consonance with Section 13(8) of the SARFAESI Act".

"In the first place, as already stated by us, by virtue of the stipulation contained in Section 13(8) read along with Rules 8(6) and 9(1), the owner/borrower should have clear notice of 30 days before the date and time when the sale or transfer of the secured asset would be made, as that alone would enable the owner/borrower to take all efforts to retain his or her ownership by tendering the dues of the secured creditor before that date and time".

Therefore, Division Bench of Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh categorically observed that 30 days time period is to be maintained in between issuance of notice u/r 8(6) and paper publication u/r 9(1) so as to enable to borrower to redeem schedule property. But in this case on hand, no such notice is issued under rule 8(6) of SARFAESI rules and therefore it is crystal clear that respondent FI violated the rule 8(6) which is mandatory.

In so far as rule 8(5) of Security Interest (Enforcement) Rules and as per decision reported in 2018(2) ALD 543 (DB) of Hon'ble High Court of Judicature, Telangana and Andhra Pradesh at Hyderabad, it is mandatory on the part of the respondent FI to secure a fresh valuation from an approved valuer in terms of Rule 8(5) before issuing a fresh sale notice and for taking consideration of reserve price that were fixed in the earlier e-auction sale notice which came to naught illegal. It is mandatory for respondent FI to secure fresh valuation from an approved valuer in terms of rule 8(5) of rules before issuing a fresh sale notice. Section 13(4) of the SARFAESI Act empowers the bank being a secured creditor to take possession of the secured asset and sell it for realizing its dues. Rule 8 of the rules 2002 deals with sale of immovable secured assets by a secured creditor. The statutory scheme, as set out in section 13(4) of the Act and rule 8(4) and (5) of the rules, 2002 demonstrates that merely because power is vested in a secured creditor to realize its dues from a defaulting borrower by taking recourse to the measures provided under the SARFAESI Act, it does not dilute the fact that such a secured creditor owes a fiduciary duty to protect the interest of such borrower, while putting his properties to sale. It is also observed by the Hon'ble High Court that Rule 8(5) of the rules mandates that before effecting sale of the immovable property under rule 9(1) thereof, the authorized officer should obtain valuation of the property from an approved valuer and, in consultation with the secured creditor, fix its reserve price. The provision therefore requires that this step should be taken immediately before the

proposed sale. Rule 8 of the Rules 2002 deals with the sale of immovable secured assets by a secured creditor. Rule 8(4) and (5) of the Rules, 2002 are of relevance and are extracted hereunder:-

Rule 8(4) The authorised officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed of.

Rule 8(4) Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:-

- (a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or
- (b) by inviting tenders from the public;
- (c) by holding public auction; or
- (d) by private treaty.

The statutory scheme, set out supra, demonstrates that merely because power is vested in a secured creditor to realize its dues from a defaulting borrower by taking recourse to the measures provided under the SARFAESI Act, it does not dilute the fact that such a secured creditor owes a fiduciary duty to protect the interest of such borrower, while putting his properties to sale. Therefore it is crystal clear from the documents filed by the respondent FI no such valuation report were taken by the respondent FI before issuing of each and for every sale notice issued by respondent FI without mentioning provision of law and drastically reduced the reserve price from time to time without any basis for reducing the reserve price and without following procedure laid down under rule 8(5) of Security Interest (Enforcement) Rules and therefore the reserve price fixed by the respondent FI is also illegal and sale conducted in pursuance of sale notice dt.1.8.2016 is also illegal and the respondent FI has not followed the rule 8(5) and 8(6) of Security Interest (Enforcement) Rules. Therefore, I am of the considered opinion that the sale conducted by the respondent FI pursuant to sale notice dt.1.8.2016 and sale held on 7.9.2016 was illegal and is liable to be set aside. Moreover the respondent FI failed to fix the reserve price by observing rule 8(5) and reserve price was reduced by the respondent FI on his own whims and pleasure and they have not obtained fresh valuation report before issuing each and every notice. Therefore, I am of the considered opinion that the reserve price fixed pursuant to sale notice dt.1.8.2016 is illegal and bad under law. So far as the prayer 'c' is concerned, this Tribunal cannot declare that the outstanding dues i.e., Rs.7,14,45,950.03ps shown in the sale notice dt.1.8.2016 is incorrect and also this Tribunal cannot declare that the OTS arrangement is still in force.

So far as prayer to restore the possession of the property to the applicants is concerned, as per the memo dt.30.9.2019 filed by respondent FI, the respondent FI No.1 and 2 executed the sale certificate bearing No.5056/2016 dt.26.9.2016 (copy filed along with memo) in favour of respondent No.4 - auction purchaser - Sri Ratna Prabhu Vallurupalli and after receipt of sale price of Rs.3,45,00,000/- handed over the delivery and possession of the schedule property to him on the same day. No documents have been filed by respondent FI that they have taken physical possession of the property by invoking section 14 of SARFAESI Act. It is also not established by the respondent FI that physical possession was taken by following due process of law. The respondent FI filed several photos stating that notices were affixed on the schedule property it does not and cannot mean that the respondent FI has taken physical possession of the property by following due process of law. Therefore it can be said that the respondent FI had taken physical possession of property without following due process of law and therefore the applicants are entitled for redelivery of physical possession of the schedule mentioned property.

Therefore I am of the considered opinion that this SA deserves to be allowed by declaring that the Reserve Price fixed in sale notice dt.1.8.2016 is illegal and contrary to law and further declare that the sale notice dt.1.8.2016 is void ab-natio and the sale conducted on 7.9.2016 is liable to be set aside. The respondent FI No.1 and 2 is to be directed to redeliver the physical possession of the schedule mentioned property.

In the result, the SA.232/2016 is allowed by declaring that the Reserve Price fixed in sale notice dt.1.8.2016 as illegal and contrary to law and further declared that the sale notice dt.1.8.2016 is void ab- natio and the sale conducted on 7.9.2016 is hereby set aside. The respondent FI No.1 and 2 are hereby directed to re-deliver the physical possession of the schedule property to the applicant forthwith. However, the respondent FI No.1 and 2 are at liberty to take fresh action in accordance with law by following due process of law. Each party do bear their own costs.

[Dictated to PS. transcribed by him and corrected and pronounced by me in the open court on this 12th day of October, 2020]