(2020) 10 DRT CK 0027

In the Debts Recovery Tribunal

Case No : Securitisation Application No. 109 Of 2019

Solid (India) Ltd. And Ors. APPELLANT

Vs

Authorised Officer, Bank Of Baroda RESPONDENT

Date of Decision : 05-10-2020

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 — Section 13(2), 13(4), 14, 19
Security Interest (Enforcement) Rules, 2002 — Rule 8(1), 6, 8, 8(5), 8(6), 8(7)
Constitution of India, 1950 — Article 32, 226

Citation : (2020) 10 DRT CK 0027

Hon'ble Judges : Vinay Goel, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. This order of mine will dispose of S.A. 109 of 2019 filed by five applicants, applicant no. 1 is the Limited Company whereas applicant no.2,3,4 & 5 are its Directors and stood guarantors in their individual capacity. Although, applicants have failed to plead entire facts in detail regarding quantum of credit facilities sanctioned and availed by the applicants from respondent bank and security interest created by the applicants in favour of respondent bank upon specific property. But to adjudicate this matter this Tribunal deemed fit to give such details from the material available on record. As gathered from the records applicant borrower Company started its Financial dealings since April 2007 and from time to time got enhanced and obtained fresh credit facility from the Bank and ultimately vide sanction letter dated 18.06.2011 bank reviewed its earlier facilities and also reduced Term Loan from Rs.136.93 Lacs to Rs.83.95 Lacs and Cash Credit Limit of Rs.100.00 Lacs against stocks and book debts, packing -cum-SBP/FBD for 90 days was enhanced from Rs.500.00 Lac to Rs.750.00 Lac and a Bank Guarantee to the tune of Rs. 50.00 Lacs was also granted and also a Forward Contract Limited was sanctioned to the tune of Rs.25.00 Lacs for 12 months. Thus in toto, total fund base and non fund base facility of Rs.1008.95

Lacs were granted to borrower Company and thereafter, at the request of applicant no.1 Fund Interest Term Loan facility of Rs.601.00 Lac was also sanctioned in March, 2013 for which defendant no.1 Company through its authorized person executed various loan documents at relevant time and defendant no.1 Company mortgaged its three properties and executed mortgaged deed on 13.04.2009, 11.07.2011 and 27.12.2013 regarding extension of equitable mortgage for three properties. Applicant No. 1 committed default and failed to observe the financial discipline and ultimately Bank declared the account NPA on 31.12.2013 and issued demand notice under section 13(2) of the SARFAESI Act, 2002 on 06.01.2014.

2. Against the said process the applicants filed one SA No. 60/2014 which was allowed by this Tribunal in favour of the applicants, thereafter Bank issued fresh demand notice dated 05.03.2016 and when Bank took further measure under the SARFAESI Act, 2002 applicants preferred SA No. 117/2016, which was dismissed by this Tribunal on 12.02.2018, against the order dated 12.02.2018 applicants preferred one Review Application No. 02/2018 which pending adjudication.

3. In the meantime, Bank took symbolic possession on 03.04.2018 and also issued sale notice dated 29.05.2018. Aggrieved with the same, applicants preferred one S.A. No. 71/2018 and in the meantime, the Bank filed application under section 19 of the Act for Recovery of Rs. 1024.67 Lac on 11.02.2015 as O.A. No.76/2015. During the pendency of the S.A. No. 71/2018 and O.A. No. 76/2015 on 19.11.2018 both the parties have compromised out of court and made statement before this Tribunal and S.A. No. 71/2018 was disposed of on 19.11.2018 whereas O.A. No.76/2015 was decided upon consent and compromise vide order dated 30.11.2018.

As per compromise between the parties applicants agreed to pay amount as on date of NPA @12% simple interest and further agreed to pay entire dues on or before 31.03.2019 and further applicants submitted their no objection for appropriation of amount of Rs. 2.00 Crores lying in no lien account and further agreed to pay Rs. 3.00 crore on or before 31.12.2018 and further Rs. 3.00 Crore on or before 31.01.2019 and balance dues on or before 31.03.2019.

4. It is also agreed between the parties that in the event of single default, applicants would be liable to pay amount claimed in the OA. On such terms Recovery Certificate was issued in favour of the respondent bank. Admittedly, applicants could not pay the amount and Bank initiated process under the Securitization Act for recovery of its dues for one property and Ld Recovery Officer proceeded under The Recovery of Debts and Bankruptcy Act, 1993 against two properties.

5. The applicants have preferred this S.A. to challenge the process of the Bank qua one property only i.e. Plot No. 500 Phase-4, Vatva Industrial Area. The Bank auctioned the property on 12.03.2019 on the strength of sale notice dated 22.02.2019 and applicants have come with plea that there is non compliance of

Rule 8(5), 8(6) and 8(7) of the Security Interest (Enforcement) Rule, 2002. Prior to approaching this Tribunal, applicants preferred two Special Civil Application before the Hon`ble Gujarat High Court bearing no. 3904/2019 and 4664/2019 but same were unconditionally withdrawn from the Hon`ble High Court on 11.03.2019. Thereafter, applicants have filed this S.A. before this Tribunal on 13.05.2019.

6. Respondent Bank filed its reply and submitted that applicants have not come to this Tribunal with clean hands and have concealed the material facts and created third party interest in the properties in some of the properties mortgaged with the Bank. The Bank also disclosed about Civil Suit No. 670/2019 filed by Dwarkesh Corporation against the applicant no. 1 & Bank pending in Civil Court Ahmedabad, Commercial Civil Suit No. 8/2019 filed by Pravin Bhai Purshottam Bhai Vaddarya and another against applicant and Bank, Civil Suit No. 12/2018 filed by one Himanshu JayaritiLal Chopra against the applicant no. 1. One Miscellaneous Application No. 25/2019 filed before this Tribunal and disposed of by this Tribunal on 13.05.2019. The third party objections filed by Plaintiffs of Civil Suit No. 670/2019, Commercial Civil Suit No. 08/2019 and Civil Suit No. 12/2018 before Ld Recovery Officer in R.P. No. 683/2018 claiming their rights on the basis of agreement to sale dated 21.03.2014 in favour of Plaintiff of Civil Suit No. 670/2019, Agreement to sale dated 31.01.2015 and registered agreement dated 03.09.2014 in favour of Plaintiff of Commercial Civil Suit No.08/2019 and Registered Agreement to Sale dated 28.08.2014 in favour of Plaintiff of Civil Suit No. 12/2018, respectively.

7. Applicants filed rejoinder. Both the parties submitted their written arguments. I have not narrated such facts in detail as the written arguments filed by both the parties have been reproduced in verbatim by this Tribunal to avoid repetition.

8. In support of their oral arguments Ld. Counsel for parties submitted their written submission which are reproduced as under:

Applicant's written arguments in reference to the order dated 04.09.2020 of this Hoteble Tribunal with the liberty to submit further Written Arguments as Respondent Bank has served the copy of the reply, affirmed on 04.09.2020 on 12.09.2020 to the Applicants through their Advocate, by way of a What app message in the form of a PDF file

At the outset, the Applicants are submitting herewith a short submission in reference to comply the direction given to the parties by this Hon'ble Tribunal vide its order dated 04.09,2020, however, the Applicants reserve their right to file a detailed rejoinder-affidavit and also a further written arguments as the Respondent Bank with its malafide intention and oblique motive only, without leave of this Hon'ble Tribunal, submitted an affidavit in reply to this Honible Tribunal and served a copy of the said reply by way of a Whatsapp message to Advocate of the Applicants on 12.09.2020. It is more pertinent to mention that from the day one respondent bank sought various adjournments on the ground for filing its reply and at one occasion it was submitted and mentioned by the respondent Bank that it does not want to file a reply, instead straightaway it will argue the matter

I, Hasmukh V. Doclia, aged-adult, residing at Ahmedabad, being the applicant no. 2, and being the Authorized Representative of the applicant No.1 company, has perused the record of the aforesaid Securitisation Application and posted with all the relevant facts and circumstances of the same and therefore, being competent to file the written submissions / arguments before this Hon'ble Tribunal, beg to file the present Written Submissions/Arguments on behalf of the Applicants on oath and solemn affirmation as under

1) 1 say that the applicants have filed the above referred application the entire high handed, arbitrary and illegal measures initiated by the respondent bank under the colorable exercise of powers under the SARAFAESI Act, 2002, against the applicants including the impugned sale notice dated 22.02.2019 and thereby conducted the auction on 12.03.2019 for the property, i.e., All that immovable propertycomprising of lease hold and bearing Plot No.500, admeasuring about 3554 sq. mtrs along with factory shed and other civil construction admeasuring in aggregate about 882 sq. mfrs. (wit covered / margin construction, parking shed erc) standing / constructed thereon, situated in Phase IV of Vatva Industrial Area/Estate or GIDC, consisting of Revenue Survey No. 357/P & 359/P with in village limit of Ramol, Taluka Dascroi, within the Registration 80b-District Ahmedabad-5, (Narol) and Dist. Ahmedabad and the same is bounded as shown in beside column:

On the East by State highway, On the West by : GIDC Road,

On the North by : Plot No. 501, Or the South by: GIDC Road

(herein after "property in question" for the sake of brevity).

2) I further say that the entire action or the respondent bank is arbitrary and illegal and in flagrant violation or the provisions of the SARFAESI Act, & Rules made there under and hence deserves to be quashed and set aside.

3) I say that the impugned sale notice [PAGE NO. 23-A OF THE SA.] and issued by the Respondent is bad in law as the same doesn't disclose the mandatory requirement as required under the Rule 8(5), 8(6) and 8(7) and 9 of Security Interest Enforcement Rules, 2002, and even the description of the property as sated in the impugned sale notice [PAGE NO. 23-A OF THE SA.) is completely mismatching with the possession notice dated 11.02.2019 1 PAGE NO. 23 OF THE SA) issued by the Respondent Bank under the Rule 8(1) of the Act.

4) I say that the respondent bank is required to be restrained from confirming the sale in favour of the highest bidder, if at all it was successful in pursuant to the sale notice dated 22.02.2019. It is further submitted that Officer of Respondent bank and interested parties, during the pendency of the present securitisation application and the Sub-judice of auction, the Respondent Bank

has proceeded further and entered in to conveyance deed with auction purchaser, i.e., Raj Enterprise, without informing to the applicants, and without leave of this Hon'ble Tribunal. I further say that the Respondent Bank has deliberately sought adjournments in present securitisation application for filing its reply and also suppressed the material fact and misled this Hon'ble Tribunal. The alleged successful auction purchaser - Raj Enterprise, has during the pendency of the present securitisation application and pendency of a writ petition bearing No. SCA/3069/2020, has divided the property in question, i.e., the auctioned property in to two parts and sold out the part property to Dhwani Polymer India Pvt. Ltd, so, the impugned sale notice dated 22.02.2019 and the subsequent auction sale of the property by the Respondent bank and the further sale by the auction purchaser to the third party is required to he quashed and set-aside forthwith in the interest of justice.

5) I say that though as per the SARFAESI Act, 2002. a 30 days notice is mandatory as per the sub-rule 6 of Rule 8, however, the respondent bank has issued the impugned sale notice dated 22.02.2019 and the Auction date was mentioned as 12.03.2019, meaning thereby, the respondent has given only 18 days time period instead of a notice of 30 days for sale of the immovable properties. So, there is a severe violation of the SARAFAEIS Act, 2002 and this ground alone the present Securitisation Application is required to be allowed.

6) 1 say that so far the Limitation is concerned, the present securitisation application is well within the limitation prescribed under the SARFAESI Act, 2002 as the certificate of sale [PAGE NO. 23 OF THE SA] is dated 23.03.2019 AND therefore also, the securitisation application is well within the limitation prescribed under the Securitization Act, 2002.

7) 1 say that with the consent of all parties, including Bank this Hon'ble tribunal has passed a final order with the consent of all parties wherein this Hon'ble tribunal has mentioned all past events between the parties. With the consent Hon'ble tribunal had granted time in his judgment in O.A No.76/2015 dated:30/11/2018 by holding that and in case they failed to pay ENTIRE amount by 31.03.2019, they would be liable to pay amount as demanded in O.A along with interest granted supra." Applicant has successfully deposited with Respondent Bank in view of order and was in process of paying further amount as per installments but Officers of Respondent bank in connivance with other interested parties had without compliance with the order or this Hon'ble tribunal has proceeded further and had given public auction notice dated 22.02.2019 and the auction sale was taken place on 12.03.2019 without waiting till 31.03.2019 as agreed with Consent Judgment. Just on this ground sale notice as well as auction conducted by Respondent Bank are required to be quashed and set-aside irrespective of provision or various acts and powers or bank under various laws. It is important to note here that when the respondent bank itself has taken possession of Applicants Plot No.5181500 and 625 and valuation of all three property is much more than the dues of the respondent bank.

8) 1 say that thereafter, the applicants have also approached the lion file High Court of Gujarat, wherein in one petition, the applicants have challenged the order passed by the Ld. District Magistrate, and in another Special Civil Application, it was prayed that the present property in question may be released and instead of that the other two properties may kindly be sold out. However, both the Special Civil Application bearing No. 3904 of 2019 and Special Civil Application No, 4664 of 2019 were withdrawn by the applicants and the same were dismissed as withdrawn unconditionally on 11.03.2019.

9) I say that on the basis of the said judgment dated 30.11.2018 passed by this Hon'ble Tribunal in OA No. 76 of 2015 [PAGE NOS. 51 TO 88 OF SA], a recovery certificate was issued and accordingly, the Recovery Proceeding No. 685 of 2018 was initiated before the Ld. Recovery Officer and the Ld. Recovery Officer had issued a demand notice dated 04.02.2019, also pass an order of attachment of the properties including the property in question on 12.03.2019 and from onwards the property in question alongwith other properties are under the attachment of the Ld. Recovery Officer, in terms of the said judgment and recovery certificate and therefore, also the respondent bank should not be permitted to proceed further under the provisions of the SARFAESI Act, 2002.

10) I say that the property in question bearing Plot No.500, Phase-1V, G1DC, Varvai Ahmedabad is a lease property. Applicant No. us a lessee [PAGE NOS. 89 TO 105 OF SA] and not the owner of the property in question. Such lease Ld created prior to the mortgage with Respondent Bank and hence Rule of Nemo dat quod non ha bet is applicable here, meaning thereby a person who does not own property, cannot confer it on another except with the true owner's authority. Class- I lease is a detrimental lease under Section.111 of the Transfer of Property Act and as per the precedent established by the Hoteble Supreme Court in the cases of Harshad Govardhan Sondagar Ws. international Assets Reconstruction Company Limited and Others, (2014) 6 SCC 1.

11) I say that the applicants have requested to provide the derails or the budder list with name (mid address, amount deposit & for the property in question and movables as well, copy of the sale certificate, if sale confirmed, statement of accounts, etc., vide letters dated 04.04.2019, 22.04.2019 and 07.05.2019 [PAGE NOS. 106 TO 113 OF THE SA], however, the said letters are still unanswered.

12) I say that that the respondent Bank has not taken the permission under clause 2(R) as vide letter INDVAT/ADV/ dated 29,06.201 (the year is incomplete) (PAGE NO, 114 OF THE SAL however, the date is 29.06.2011 of the Respondent, which was addressed to the Regional Manager(GIDC), Ahmedabad.

13) I say that the respondent bank had issued the sale notice dated 22.02,2019 and put the properly in question for sale on 12.03.2019, which is also not legal, valid and tenable in the eye of law as the respondent bank fails to comply the mandatory Rule 8(5), (6) and (7) of Security Interest Enforcement Rules, 2002 and hence also the same is required to be quashed and set aside by this Hon'ble

Tribunal.

14) I say that the respondent bank is not having valid, lawful and subsisting and enforceable security interest over the property in question and therefore, the respondent bank had no authority and powers to take any action under the SARFAESI Act, 2002.

15) I say that the aforesaid circumstances the Hon'ble DRT is prayed to intervene, in the interest or justice by quashing and setting aside the impugned sale notice dated 22.02.2019 issued by the Respondent Bank and the sale, if any, on 12.032019.

16) I say that as per respondent bank's sanction fetter dated 21.06.2011, letter dated 12.11.2014 and statement of account, the veracity of the interest charged by the bank is reflecting, wherein it is dealt, shows that how the bank had charged the excess interest in the account and therefore, the classification of the account of applicant as NPA, done by the bank is not in consonance with their own sanction letter and/or letter dated 12.11.2014 and hence, the account of the applicant cannot be treated as NPA.

17) I say that since after issuance of notice under section 13(2) of the Act, 2002, the applicant had made the huge payment and cleared all the outstanding/ overdue amount in the various credit facilities without admitting the amount of notice under section 13(2) of the Act, 2002, as per the clause no. 4.2.5 or the RBI. Guidelines, if the borrower make the payment after classification or account as NPA and cleared the overdue amount, than that account should not be treated as NPA and it is standard account. Clause no. 4.2.5 of RBI Guidelines is reproduced herein under for ready reference.

"4.2.5 UPGRADAT1ON OF LOAN ACCOUNTS CLASSIRED AS NPAS"

IF ARREARS OF INTEREST AND PRINCIPAL ARE PAID BY THE BORROWER IN THE CASE OF LOAN ACCOUNTS CLASSIFIED AS NPAS, THE ACCOUNT SHOULD NO LONGER BE TREATED AS NONPERFORMING AND MAY BE CLASSIFIED AS 'STANDARD' ACCOUNTS. WITH REGARD TO UPGRADATION OF A RESTRUCTURED/ RESCHEDULED ACCOUNT WHICH IS CLASSIFIED AS NPA CONTENTS OF PARAGRAPHS 12.2 AND 15.2 IN THE PART B OF THIS CIRCULAR WILL BE APPLICABLE"

18) I say that even if it is believed that the bank had rightly classified the account as NPA, it cannot be treated as NPA in view of the guidelines frame by the Reserve Bank of India as stated herein above, so, the subsequent measures taken by the respondent bank are certainly null and void.

19) I say that in the applicant No.1 Company, there are six directors and therefore (a copy of the Company master data is enclosed for an instant reference), the respondent bank was required to issue the notice under section 13(2) of the Act, 2002 to all the directors, however, the respondent bank had not issued the any notice including the notice under section 13(2) of the SARFAESI

Act, 2002. to Shri Vashrambhai Dodia and faintish Dhirajlal Dodia and therefore, also the action taken by the bank under the provision of the SARFAES1 Act, 2002 is required to be quashed and set aside by holding that the respondent bank is not entitled to charge an exorbitant interest, comes to Rs.1,15,12,937/- as per terms and conditions of the sanction letter dated 18.06.2011 and even as per respondent bank's letter dated 12.11.2014, hence, the respondent bank is not entitled to charge the interest for an amount of Rs.77,29,738/- (as stated in SA no.60 of 2014) and the classification of NPA done by the bank is not as per the guidelines of RBI and since, the respondent bank had not issued the notice under section 13(2) of the Act, 2002 to all the directors, all the measures taken by the respondent Bank automatically goes off being null and void.

20) I say that being aggrieved and dissatisfied with such measures of the respondent Bank, the applicants had preferred Securitisation Application bearing no. 60 of 2014 before the Hon'ble DRT-1, Ahmedabad and the same was allowed by the Hon'ble Tribunal and the impugned measures of the respondent Bank were quashed and set aside. That thereafter, the respondent Bank issued a fresh 13(2) notice dated 05.03.2016 under the SARFAESI Act, 2002 and the applicants had filed a securitization application raising the contentions and objections against the said notice issued under the Sec 13(2) of the S4RFAESI Act, 2002 bearing No. 117 of 2016, however, the Hon'ble Tribunal had rejected the said securitization application on 12.02.2018. Since, there being some apparent error, the applicant company preferred a review application hearing no.02 of 2018 against the impugned order passed by the Hon'ble Tribunal dated 12.02.2018 and the same is pending for an adjudication, and hence also the measures taken by the respondent bank are completely illegal, bad in law and devoid of merit and hence, alone this ground alone the present securitisation application is required to be allowed in the interest of justice.

21) I say that the respondent Bank has taken the symbolic possession of the property in question on 03.04.2018 under Secion 13(4) and the respondent had issued two sale notice, i.e., one notice for the two other properties dated 29.05.2018 and had kept the auction of the property in question as described in para 5.1(1) of the SA, on 22.06.2018 deliberately since for the other properties the Respondent Bank do not have the prospective buyer whereas for the property in question presently, was having a prospective buyer. Though there was a specific objections raised by the applicants on 19.05.2018, the respondent bank did not reply the same and sustained a crematorium silence. However, being aggrieved and dissatisfied with the measures of the respondent Bank, the applicants had preferred Securitisation Application bearing no.71 of 2018 before the Hon`ble DRT-1, Ahmedabad, however, the said securitization application came to be disposed of on 19.11.2018 by the Hon`ble Tribunal as the applicants do not want to proceed further with the said securitization application. The valuation of the property in question (PAGE NO. 32 TO 35 OF THE SA] was valued and the Market Value : Rs. 10,45,37,700/-, Realizable value Rs. 9,40,83,930/- distress value as Rs.7,31,76,390/- valued on 30.05.2018. I say

that the said valuation was carried out by the Respondent Bank itself through its valuer and the height is that the Respondent Bank has not disclosed the name of the valuer as the name of the copy of the valuation report, which was supplied by the respondent Bank has covered the name of the valuer (PAGE NO.32 OF THE SA). Meaning thereby, though the valuation of the property in question was more than Rs. 10.00 Crore and the same has been sold out on a throwaway price of Rs.7.11 Crore below the distress value, and on this ground atone the present securitisation application is required to be allowed.

22) I say that the applicants, being alleged guarantors / mortgagors had approached the respondent hank for an amicable settlement under OTS vide letter dated 09.08.2018 [PAGE NOS. 36 TO 48 OF SA] however, the same was not considered by the bank and proceeded further under section 14 of the Act, 2002 and obtained the order on 16.10.2018 from the Ld. District magistrate, Ahmedabad and also taken the physical possession or the property in question, and thrown out the applicants from the property in question.

23) I say that on one hand the bank had proceeded further under the provisions of the SARFAESI Act, 2002 and on the other hand also proceeded further under the provisions of RDB Act, 1993 in the Original Application No. 76/2015. The said OA came to be allowed by this Hon`ble Tribunal vide order dated 30.11.2018 and debt was determined by this Hon`ble Tribunal against the defendants, including the applicants also and held that the bank is entitled to recover for an amount of Rs.10.24,67000.00 with further interest @13.25% per annum and therefore. now bank cannot be proceed further under the provisions of the SARFAESI Act, 2002, once the debt is determined by this Hon`ble Tribunal and hence also the present securitisation application is required to be allowed by this Horrible Tribunal in the interest of justice.

I, with folded hands pray this Hon`ble Tribunal that in vide of the above, the Securitisation Application No. 109 of 2019 may kindly be allowed and to quash and set aside the impugned sale notice dated 22,02.2019 and the sale taken place on 12.03.2019 by way of an e-auction forthwith in the interest of justice allowing all the other reliefs as prayed in para-6 of the said Securitisation Application, please.

WRITTEN ARGUMENTS ON BEHALF OF THE RESPONDENT

1. That the SA filed by the Defendant on 13.05.2019 being barred by law of limitation as per apparent admission of the Applicants in para no. 4 of the S.A.

2. That the present application is not maintainable as there are material concealment in SA as under:

I CONCEALMENT OF CONSENT ORDER PASSED IN SA NO. 71/18 dated 19.11.2018 which is annexed with Reply to SA as ANNEX URE R/1 at page no. 17. This order was passed with consent of both the parties and this order is final, binding and non-appealable being consent order.

II CREATION OF ILLEGAL THIRD PARTY INTEREST IN MORTGAGED PROPERTIES THEREBY COMMITTING CHEATING AND FRAUD WITH THE RESPONDENT BANK: It is undisputed that security interest was created by way of mortgage of Plot no. 500, 518 and 625, Vatva, Ahmedabad in favour of the Respondent Bank for the credit facilities availed by the Applicant no.1 which has also passed the test of law in SA no, 71/18 which was decided vide order dated 19.11.2018 as well as in O.A. no. 76/2015 which was decided vide order dated 30.11.2018. It appears that the Applicants have illegally and in gross violation of law have created third party interest in collusion with such third parties and part away with the possession of plot no. 518 and 625, Vatva, Ahmedabad committing cheating and causing wrongful loss to the Respondent Bank which deserves to the dealt with iron hand in accordance with law. It is relevant to mentioned here that in RC no. 685/2018, when plot no, 625 and 518, Vatwa Ind, Area, Ahmedabad were put to auction vide order dated 25.3.2019 [page no. 78 in SA] objections were filed by such third party objectors claiming third party interest created in their favour by Applicants and transfer of physical possession of mortgaged properties to them which was void and illegal. Such claims of third party objectors were never denied by the Applicants which is also matter of record. Further, Pravinbhai Parsottambhai Vaddariya and Butalal Visabhai Bharwad have filed Commercial Civil Suit no. 8/2019 against M/s Solid (India) Limited and Bank of Baroda alleging that M/s Solid (India) Limited has executed agreement of sale in 2014 which was subsequently followed by lease agreement in 2015 and they alleged to be in possession of Plot no. 625, Varva, Ahmedabad. Same party had also filed TPO in RC no. 685/18 alleging same contentions which is also matter of record. It is humbly submitted that record of RC no. 685/2018 may also be summon to check the dishonest conduct of the Applicants which deserves to be dealt with iron hand as per law.

III CONCEALMENT OF DEFAULTS IN PAYMENTS AS PER CONSENT ORDER: Vide Judgment dated 30.11.2018 passed by the Hon`ble Debts Recovery Tributral-I, Ahmedabad in O.A. no. 76 or 2015 which is annexed in the SA at page no. 51 to 66, Applicant no. 1 to 5 have committed default in payment or Rs3 Crores before 31.12.2018 and further default in payment of further Rs 3 Crores before 31.01.2019. Accordingly Respondent Bank has proceeded further as per law.

IV UNCONDITIONAL DISMISSAL OF SCA NO. 3904/19 AND 4664/19 AS WITHDRAWN: No liberty was granted to the Applicants to file SA and SCA no. 3904/19 and 4664/19 were unconditionally dismissed as withdrawn. Plot no. 500, Varvo, Ahmedabad was put to auction schedule on 12.03.2019 in accordance with law vide auction notice dated 22.02.2019 under SARFALSI Act. Auction was successful and Sale Certificate dated 29.3.2019 was issued which is at page no. 224 in SA. Said auction notice was challenged by the Applicants by filing SCA no.4664/19. Copy of SCA no. 3904/19 and 4664/19 along with Respondent's reply are annexed as ANNOCURE R/2 with Reply at page no. 18 to 111. Said SCA 's were unconditionally withdrawn by the Applicants as apparent from order sheer which are at page no. 49 and 50 in the SA. Accordingly, no liberty was sought or granted to the Applicants to challenged said auction before the Hon`ble DRT or before the Hon`ble High Court in future which is matter or record. Accordingly, as SCA no, 3904/19 and 4664/19 were dismissed as withdrawn unconditionally, the Applicant don't have the liberty to challenged said auction before the Hon`ble D.R.T. in present SA which is not maintainable in view of order passed in SCA no.3904/19 and 4664/19 which are matter of record.

IV CONTENTS, INTERIM RELIEF AND MAIN RELIEF IN SA ARE DEFECTIVE, DISHONEST, INFRUCTUOUS AND IN CONFLICT WITH LAW: Neither Sale certificate is challenged nor auction purchaser is made a party accordingly this SA is infructuous as the Petitioners are well aware about the Sale and sale certificate is also placed on record by them at page no. 22A in SA. Further, SA is a frivolous Application wherein at this belated stage, Applicants are claiming that Respondent Bank is not having valid, lawful and subsisting and enforceable security interest over the property in question as stated in ground D at page no. 11 in SA. Further under ground F & G, false and misleading hypothetical defects in the mortgaged property are projected in gross violation of law. It is matter of record that mortgage created in favour of the Respondent bank has already passed the test of law and order passed in OA no. 76/15 is part of SA at page no. 51 to 66. The Applicants have failed to come forward to repay the balance outstanding even at this belated stage and raising self serving contradictory grounds which are not maintainable and are in conflict with actual facts and settled law in this case.

3. That grounds A, B, C, D, E, F, G, H I, J, K, L, M and N raised by the Applicants under paragraphs 5.13 on page no. 11 to 14 in the present S.A. are false, misleading and not acceptable under the law being devoid of any merit. From the grounds taken, present conduct of the Applicants is apparent which is absolutely unreasonable. Grounds are factually incorrect and apparently in contravention of law. Allegation against the security interest created in favour of the Respondent Bank, sale notice dated 22.2.2019 and auction held on 12.03.2019 are false, misleading and devoid of any merit. There is no non-compliance or violation or any rules on the part of respondent including Rule 8(5), 8(6) and 8(7) or the security interest enforcement rules 2002 as alleged by the Applicants. Even otherwise SARFAESI action upto 19.11.2018 has passed the test of law as per order passed in SA no. 71/18 which includes action up to 1st auction of 30 days which was failed as no bidder participated. Copy of Notice of sale dated 25.5.2018 for auction schedule on 22.5.20218 along with paper publication in Economics Times and Sandesh dated 15.5.2018 and postal receipts of dispatch date 15.5.2018 {which has passed the fest of law in SA nu. 71/16 decided on 19.112018} are Jointly annexed as ANNEXEIRE R/3 at page no. 112 to 115 in the Reply to SA. Copy of (i) Notice of sale dated 22.2.2019 sent to Applicants, (ii) Relevant pages of newspapers namely Economics Times and sandesh dated 22.2.2019 being proof of paper publication, (iii) photographs of affixation dated 22.2.2019, (iv) Postal receipt of dispatch dated 22.2.2019 to Applicants, (v) Valuation Reports dated 12.2.19, 14.2.19 and 16.2.19, (vi) Letter dated

26.3.2019 granting extension to M/s Raj Enterprise are jointly annexed in the Reply to SA as ANNEXURE R/4 at page no. 116 to 160.

4. That the conduct of the Applicant no. 1 to 5 is apparently dishonest and they have no intention to cooperate with the Respondent or to abide by the law. The present S.A. filed by the Applicants no.1 to 5 is the gross abuse of process of law.

5. It is also submitted that the only purpose of filing present application is to delay the Recovery action initiated by the Bank.

6. That the present application filed by the Applicants is the gross abuse of process of law and has been filed without any COLISV of action or without any default on the part of Respondent. All allegations leveled against Respondent and ground taken in the application are baseless. false, fabricated and Augments of the imagination of the Applicants. The application, therefore, deserves to be dismissed with heavy compensatory costs, not only to compensate the Respondent Bank but also to curb the tendency of the Applicants to raise false and frivolous issues.

7. Concealment and suppression of material facts by the Applicants and filing false Affidavit in support thereof is also deserves to be dealt with iron hand in accordance with law. Sanctity of Affidavit filed before the Hon`ble Tribunal shall deserves to be protected and Applicants may be penalized and punished for filing false Affidavit.

8. That the Applicants have not approached the Hon`ble Tribunal with clean hand and fraud and cheating committed by the Applicants by creating illegal third party interest deserves to be dealt with iron hand as per law, It is the settle law that the courts of law were held to be for imparting justice between the parties and, thus, one who comes to the court, must come with clean hands. It was further held that a person who's case is based on falsehood, has no right to approach the court and could be summarily thrown out at any stage of the litigation.

9. It is most humbly prayed that in view of the facts and circumstances narrated above, the false and frivolous application filed by the Applicants may be dismissed with heavy costs as same is based on falsehood in the interest of justice and fair trial.

9. I have heard the Ld. Counsel for the parties and also considered the written submissions and documents on record. I would like to reproduce orders dated 22.09.2020 and 24.09.2020. Same are reproduced as under:

22.09.2020

The hearing is conducted through virtual mode amid COD-19 restrictions.

Mr.Sunil Blicivsar, Ld. Counsel appeared for the Applicant

Mr. Rhasicar shormo, Ld, Counsel appeared for the Respondent Bank

During the course of arguments, it has been alleged by the Ld. Counsel for the Respondent Bank that Applicant has created third party interest in the mortgaged property by entering into a Registered Agreement to Sale.

When this Tribunal put specific query to the Ld Counsel for the Applicant, whether Applicant has ever created any third party interest in any of the mortgaged properties, Ld. Counsel for the Applicant categorically denied any such transactions and he further submitted that Applicant has not created any third party interest and all the secured assets are intact as on date or the mortgage and are unencumbered and allegations of the bank are false.

At this stage, Ld Counsel for the Applicant Bank submitted that before Hon'ble High Court, there are some proceedings which carries averments regarding third party interest and some third party have also filed objections before the Ld, Recovery Officer as third party objectors claiming their respective rights on the basis of Registered Agreement of Sale or otherwise.

For fair adjudication of this case, I feel fair to direct the Ld. Counsel for the bank to place on record relevant material within two days, with a copy to the Applicant and Applicant may file its response to such material.

He further submitted at bar that he has already paid the cost. Case is adjourned to 24.09.2020 for further proceedings.

24.09.2020

The hearing has been conducted through virtual hearing due to pandemic COVID-19 restrictions.

Shri Bhaskar Sharma Ld. Counsel for applicant

Shri Sunil Bhaysar Ld. Counsel for respondent bank.

The Ld. Counsel for respondent has filed one purshis and applicant has filed response to that purshis. At the query of this Tribunal to Ld. Counsel for applicant to the effect that whether the applicants have created any third party interest in the properties mortgaged with the bank. Ld. Counsel for applicants submitted that they have not created any third party interest in the properties mortgaged with the bank Whereas Ld. Counsel for respondent bank submitted that they have created third party interest in two properties and the third party has filed objection before the Ld. Recovery Officer and one set of the objections has been declined up holding the mortgagee rights to respondent bank.

He further submitted that even the third party has deposited amount of Rs. 2.5 Cr with the Ld. Recovery Officer.

This Tribunal put specific query to Ld. Counsel for applicant, whether applicants have created any third party interest in any of the mortgaged properties. In response, Ld. Counsel for applicants submitted that they have not created any third party interest for which they have filed this Securftisation Application.

He further submitted that with other properties, applicants are not concerned and that they have filed this Securitisation Application for this one property only auctioned on 12.3.2019.

Both the patties further submitted that they have already submitted the written submissions and the case may be decided on the busts of so submitted written submissions.

I have heard the Ld Counsel for the parties. Hearing is concluded. The case is reserved for pronouncement of judgement on or before 5.10.2020 and it would appear in the cause list, if this Tribunal opts to deliver judgement prior to date fixed

Having heard the Ld. Counsel for the parties and after considering documents on records, following points are required to be adjudicated:

1) Whether the applicants have any right to approach this Tribunal upon commission of default in terms of earlier settlement if so on what terms.

2) Whether creation of third party interest in the some mortgaged properties and their nondisclosure in Securitization Application tent amount s to material concealment or not.

3) Whether the concealment, by Act and conduct would disentitle applicants to be heard on merits.

4) What will be the effect of the delay filing of the Securitization Application after withdrawal of proceedings from Hon'ble High Court.

5) Whether in Securitisation Application filed after sale of property, Auction purchaser is a necessary party or in the absence or without impleading the Auction Purchaser, applicants can get effective relief qua sale.

6) Whether applicants are entitled to relief claimed on the various objections raised in the Securitization Application, or not.

10. It is a case where applicants admitted their liability in the Original Application 76 of 2015 filed under Act 1993, now The Recovery of Debts and Bankruptcy Act, 1993 and also admitted their liability in Securitisation Application 71/2018. I would like to reproduce relevant portion of orders passed in Original Application 76/2015 and Securitisation Application 71/2018.

19.11.2018 OA 76/2015

Shrf Hardik Shah Ld. Counsel for Applicant.

Mr.Ritesh Patadia, Ld. Counsel for defendants alongwith defendant no.2 & 3 in person.

Ld. Counsel for the parties submitted that parties have compromised out of court and defendants are ready to pay entire dues of the bank with interest @12%

simple from the date of NPA within 31.3.19 and ft is further submitted that defendants have no objection if Original Application may be disposed-off with default clause that in case defendants failed to pay the entire dues of the bank with cost and simple interest they would be liable to pay interest as claimed in the Original Application with interest and cost. The defendants further submitted that defendants have no objection if amount of Rs. 2 crores lying with the bank in no lien account may be appropriated towards recovery of admitted amount. Further defendants undertake to pay Rs. 3 crores on before 31.12.18 and Rs. 3 crores on or before 31.1.19 and thereafter entire dues of the bank with simple interest on or before 31.3.19. It is further submitted that in the event of single default defendants would be liable to pay amount claimed in the Original Application alongwith interest as claimed in the Original Application. Both the parties disclosed amount of NPA, dare of NPA, expenses incurred by the bank after NPA and recoveries made after NPA as under:

Date of NPA: 31.12.2013

Amount due in all the four accounts on the dare of NPA: 10,49,81,945/-(Ten Crores Forty Nine Lakhs Eighty One Thousand Nine Hundred Forty five only).

Expenses incurred after NPA: Rs.5,00,000/- (rounded off).

Recovery after NPA:2,25,00,000/-

Ld. Counsel for the defendants alongwfth defendant no.2 & 3 in person for themselves and on behalf of defendant no.1 submitted that they have special instructions from other defendants also to admit liability, creation of security interest and claim of the bank as raised in this Original Application. They further submitted that defendants would pay the dues of the bank in terms of the settlement made out of court and in case of default; they would be liable to pay the amount mentioned in this Original Application along with costs and expenses. They further submitted that they have no objection if the Recovery Certificate may be issued in terms of settlement made and statement made at bar today.

Counsel for the bank submitted that bank has no objection if defendants pay the dues of the bank as per scheduled disclosed today and on commission of default, they would be liable to pay the amount as claimed in this Original Application along with pendentelite and further interest and coats.

The parties have submitted that they have no objection if the matter is decided on the basis of statement of parties.

1 have heard the Ld. Counsel for the parties, as the defendants have admitted the claim of the bank and have agreed to pay the dues of the bank in terms of settlement disclosed today by the parties, as parties have compromised the matter and there is no dispute as to Than transactions, creation of security interest and liability, so 1 feel judicious to reserve this case for pronouncement of judgement on 30.11.18 on admission of the parties.

19.11.2018 SA 71/Z018

Mr.Ritesh Patadia, Ld. Counsel for Applicant..

Shri Hardik Shah Ld. Counsel for Respondent.

Counsels for the applicants have filed one purshis and submitted that applicants of this Securitisation Application have already admitted their liability in Original Application no.76/15 and in terms of statement made in the Original Application, applicants do not want to proceed with this Securitisation Application. They further submitted that in the event of single default bank would be able to proceed further co the Demand Notice and possession notice already issued and would be able to proceed further on the order obtained under section 14 of Securitization Act. He Further submitted that applicants waive their all objection and grounds taken in this Securitisation Application. Counsel for the bank submitted that he has no objection if Secyritisation Application may be disposed-off without prejudice to the rights of the bank to proceed further on the process already initiated in the event of default. I have heard the Ld. Counsels for the parties. This Securitisation Application is disposed-off. Parties would be bound by statement made on their behalf of their respective counsels. & ink may be restrained from taking physical possession till commission of default. Let copies be supplied as per rules.

11. It is the question as to whether upon commission of default, applicants have right to approach this Tribunal under Securitisation Act for subsequent steps. After giving my thoughtful consideration, my answer would be in positive but with rider that applicants would not be able to challenge validity of Securitisation Process up till the date of admission of loan and liability and process challenged under earlier Securitisation Application.

12. In this case, applicants agreed to pay entire dues of the bank and on or before 31.3.2019 in different phases and admittedly applicants even after appropriation of amount of Rs. 2 Cr. Lying in the No-lien account did not pay balance amount as per agreed schedule. Once there was default, the bank became entitled to proceed further under the Securitisation Process already initiated as agreed between the parties and upon their initiation of Securitisation Application process, the applicants would have right to challenge only subsequent process, i.e. process from Rule 8(5) of Security Enforcement Rules, 2002 onwards, but for that applicants should have approached this Tribunal with clean hands.

13. In this case, the vital issue which requires its adjudication first is whether there is concealment of material facts or applicants have not come to this Tribunal with clean hands or disposal of some of the secured assets or creation of third party interest in some of the secured assets would be a material fact required to be disclosed under Securitisation Application itself or not.

14. Before proceeding further, I would like to reproduce details of three

properties lying mortgaged with the bank to secure various credit facilities availed by the applicant No. 1 upon personal guarantee of remaining applicants and upon security of following assets i.e. three properties and hypothecation of plant and machineries. Property NO. 1, 2, & 3.

SCHEDULES OF THE PROPERTY

SCHEDULE-I

1. Plot no 518, with freehold factory shed arid other civil 'constrction on the said plot situated in phase IV of Vatva, Industrial area/estate of GIDC, consisting of revenue Survey no 357/p & 359/p within village limits of Ramol, Taluka-dascroi, Narol, Ahmedabad,

2. Plot no 625, with freehold factory shed and other civil constrction on the said plot situated in phase IV of Vatva, Industrial area/ estate of GIDC, consisting or revenue survey no 401/p within village limits of Ramol, Taluka-dascroi, Narol, Ahmedabad,

SCHEDULE-II

3. Plot No 500, with freehold factory shed and other civil construction on the said plot situated in phase IV of vatva Industrial area/ estate or GIDC, consisting of revenue survey no 357/p & 359/p within village limits of Ramol, Taluka-dascroi, Narol, A..hmedabad,

2. All Plant and machinery duly hypothceated with the bank.

15. The applicants have filed this Securitisation Application only for one property, whereas bank has initiated process in Securitisation Act for all the properties. It is a matter apart that bank is/was also pursuing its remedy under The Recovery of Debts and Bankruptcy Act, 1993, before Ld. Recovery Officer. Need not to mention that bank has every right to pursue its recovery under Act 2002 and Act 1993 simultaneously, We can bank upon judgement of Hon'ble Supreme Court in Transcore case

16. The records produced by the bank reflects that applicants created third party interest in two properties even prior to the admission of loan and liability on 19.11.2018 as they entered into agreement to sale dated 21.05.2014 and 31.1.2015, 3.9.2014 and 28.8.2014 for two properties about which third parties filed objections before Ld. Recovery Officer.

17. At this stage, I would like to reproduce compromise proposal submitted by the applicants to the bank.

To, Date: 09/09/2018

The Asst. General Manager, Bank of Baroda,

Recovery Branch, Nr. Law Garden Ahmedabad

I Mr. Hasmukh Dodia; Director Solid India Ltd having address at: Plot No. 300, Phase IV, GIDC, Vatva, Ahmedabad most respectfully submit asunder:

1. That as per the discussion had with you, and as per the talks and request, we would like to submit the OTS proposal

2. That you are very well aware of the financial loss that the firm had to suffer due to situation beyond Control and loss suffered due to foreign transactions.

3. That however from best sources, friends and relatives we have tried to arrange funds to bring an amicable solution to long legal battle and bring an amicable solution.

4. That we are ready and willing to pay Rs.11,60,00,00/- (Eleven crores Sixty lacs only) towards full and final settlement,

5. That, we request to release the property mentioned in schedule -I, below on payment of Rs.8,00,00,000/- (Eight Crores Only), and remaining properties mentioned in schedule-II may be released on payment or total dues

6. That the, payment as mentioned above in Para-4 shall be made as under:

? Rs.2,00,00,000/-	upfront with	this proposal,
? Rs.2,00,00,000/-	on or before	2842018,
? Rs,4,00,00,000/-	on or before	31-1-2019,

Remaining amount on or before 28th February 2019

7. However, it is bring to your knowledge that upfront 2,00,00,000/- should be kept in NO Lien account and on approval of the said proposal only the said should be duly appropriated and in case of non acceptance, the said amount shall be refunded directly in the accounts of the pencil making payment.

8. That on payment or Rs.8 Crores the properties mentioned in Schedule-I as the said payment is being made by third bank shall release party in the interest of Borrower and on payment of remaining amount bank shall release properties mentioned in Schedule-II and shall provide "NO DUE CERTIFICATE" In regards to the same.

9. That we also undertake to ray interest on reducing balance after 30-9-2018 of approval on the remaining amount on monthly basis,

10. That we shall withdrawall the litigations filed against the bank on acceptance of the said proposal. That after payment of aforesaid amount your Mod,: shall also withdraw all the proceedings if any filed against us before any forum/court qua the recovery of alleged dues in question by filling respective consent harms, etc.

11. That you are requested to accept the said proposal and on firm the same at the earliest. The original cheques of Rs.2,00,00,000/- is enclosed herewith.

12. That acceptance of the said proposal shall bring an Amicable solution of the said account and Recovers' in the interest of equity),

13. That if the said OTS letter could nor accepted/materialized for one or another reason, it shall not be used in any way for the benefit of the bank in any litigation or suits filed by or against the bank.

SCHEDULES OF THE PROPERTY

SCHEDULE-1

1. Plot no 518, with freehold factory shed and other civil 'constrction on the, said plot situated in phase IV of Vatva, industrial area/estate of GIDC, consisting or revenue survey no 357/p & 359/p within village limits of Ramol, Taluka-dascroi, Narol, Ahmedabad.

2. Plot no 625, with freehold factory shed and other civil constrction on the said plot situated in phase IV of Vatva, Industrial area/ estate or GIDC, consisting of revenue survey no 401/p within village limits of Ramol, Taluka-dascroi, Narol, Ahmedabad.

SCHEDULE-11

3. Plot No 500, with freehold factory shed and other civil construction on the said plot situated in phase IV of Vatva Industrial area/ estate of GIDC, consisting of revenue survey no 357/p & 359/p within village limits of Ramol, Taluka-dascroi, Narol, A...hmedabad.

2. All Plant and machinery duly hypothecated with the bank.

Thanking you,

M/s Solid India Ltd

Hasmukh Dodia

Director

Enclosed herewith:

Cheque No. 000172 of BOB, Vatwa Br

Cheque No. 000171 of 808, Vatwa Br.

Cheque No. 000744 or Kotak Mahiridra bank

Cheque No. 000745 of Kotak Mahindra bank.

Mr. Hasmukh V Dodia 27.09,2018

Director (Solid India Ltd)

Plot No. 500, Phase IV

GIDC,VATVA

Ahmedabad.

382445

Dear Sir,

RE Your OTS Proposal, M/s Solid India Ltd.

We refer to your compromise proposal dated 09.08.2018. We like to inform you that our higher authority has approved the compromise sanction in your account by accepting Rs.13.50 Crs (against your offer of Rs.11.60 Crs) in full and final settlement in your account subject to following terms and conditions:

1. Rs.2.00 Crs Kept under no lien account will he appropriated immediately on conveying the sanction.

2. Rs.3.00 Crs. On or before 2.9.09.2018.

3. Rs. 4.00 Crs. On or before 28.12.2018.

4. Rs.4.50 Crs. On or before 28.02.2018

5. Interest @12% p.a. simple to be recovered w.e.f 01.10,2018 on balance compromise amount.

6. The Sanction will be remain valid upto 31.3.2019.

7. You have to give an unconditional undertaking while accepting the sanction or compromise that you will withdraw all the legal/other cases at various forum (known/not known to the bank) against the bank or its any official and you will not file any claim against the bank,

8. All the relief/concession given under subject compromise shall be withdrawn and entire contractual dues shall become payable by you, if you fail to honour any of the terms and conditions of the compromise whether fully or partially. The decision of the Bank in this regard shall be conclusive and binding on you,

9. Any default in compliance of 'any of the terms and conditions stipulated herein above will be treated as default and which will result in termination of sanction automatically and bank will proceed to recover the dues through appropriate kgal/recovery action without any notice to you. Any amount deposited till the time will be adjusted towards the dues and shall not be refunded.

10. No due certificate may be issued only after receipt of full OTS amount along with interest us per agreed terms and branch may mow application before Debts Recovery Tribunal for recording satisfaction or Decree under OTS.

11. Consent terms to be filled in the respective Debts Recovery Tribunal incorporating therein a condition that entire dues as per the OA's shall become payable by you.

12. Bank will release the properties after receipt or full compromise amount.

13. If you have not accepted the compromise sanction within 15 days from the dote of sanction or not deposited the amount as per schedule the sanction will be terminated automatically and bank will proceed to recover the dues through appropriate legal/recovery action without any notice to you. Any amount deposited till the time will be adjusted towards the dues and shall not be refunded.

14. Please accept and acknowledge the same.

Yours Faithfully,

(KC. Sharma)

Asst. General Manager

18. In the aforementioned compromise proposals, there is no reference of any agreement to sell or third party interest or money transaction on the basis of which the applicants tried to transfer rights in the two mortgaged properties. Even there is no reference of any such transaction in the Original Application 76 of 2015 or Securitisation Application 71 of 2018. Although in the subsequent pleadings of this case, it is alleged that some of the purchasers were present in the court on the date of 19.11.2018. To my opinion, presence of any such persons would not be construed as disclosure of alleged rights of the said person in the mortgaged properties.

19. It was the duty of the applicants to disclose all such facts in the Securitisation Application itself as bank put the property on auction for recovery of entire amount for which all the three properties are lying mortgaged. Although, bank put only one property on sale under Securitisation Act but bank nowhere relinquished its rights to proceed against two other properties under Securitisation Act to recover its dues, because bank gave demand notice to invoke security interest upon all the properties. Further, initiation of process of sale by Ld. Recovery Officer would not disentitle bank to proceed under Securitisation Act. The applicants in a clandestine manner have tried to delude the matter by saying that they have approached this Tribunal for relief against only one property.

20. The explanation so given is not suffice to meet the requirement of law. The applicants despite various litigations pending in the Civil Court, objections filed before Ld. Recovery Officer and impleadment application filed before Hon'ble High Court by third party objectors have failed to disclose such facts before this Tribunal at first instance in the Securitisation Application. So, it can be said that applicants have not come to this Tribunal with clean hands and have committed fraud with the bank as well as this Tribunal. At this stage, I would like to rely upon judgement as under of Hon'ble Supreme Court in SCA 17005 of 2006 decided on 09.07.2008 in K.D. Sharma Vs Steel Authority of India Ltd. The judgement is reproduced as under:

Judgement of Shri K.D. Sharma V/s Steel Authority of India in civil, Appeal NO.

4270 OF 2008

1. We can rely on the judgment of Hon'ble Supreme Court in the case of R. v. Kensington Income Tax Commissioners, (1917) 1 KB 486 : 86 LJ KB 257 : 116 LT 136 in the following words:

"[I]t has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts- it says facts, not law. He must not misstate the law if he can help it; the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it the Court will set aside any action which it has taken on the faith of the imperfect statement".

In Kensington Income Tax Commissioner, Viscount Reading, C.J. observed:

"Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the applicant was not candid and did not fairly state the facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived.

Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that this Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit".

The Hon'ble Supreme Court has further observed in the case of K.D.Sharma Vs, Steel Authorities of India Ltd, & Ors (2008) INSC 1065 (9 July 2008) to deal with such incidents strictly, so truly speaking applicant is riot entitled to any reliefs on this count only.

14. The learned counsel for the appellant alleged that fraud had been committed by the respondents on the appellant as well as on the Court. Only on that ground, the impugned action of SAIL granting contract in favour of respondent No.2 deserves to be set aside. According to the counsel, Ramesh, Chairman and Managing Director of Rithwik Projects, in whose favour the appellant had issued Power of Attorney, had taken side of respondent No.2. The Power of Attorney was, therefore, later on withdrawn by the appellant and yet he was allowed to be represented for the appellant before SAIL as also before the High Court and 'so called' compromise and settlement was arrived at. He was not authorized to do

so 1 against the interest of the appellant and on his representation, the High Court could not have disposed of Miscellaneous Cases.

15. It is well settled that "fraud avoids all judicial acts, ecclesiastical or temporal" proclaimed Chief Justice Edward Coke of England before about three centuries. Reference was made by the counsel to a leading decision of this Court in S.P. Chengalvaraya Naidu (Dead) by Lrs. V. Jagannath (Dead) by Lrs. & Ors., (1994) 1 SCC 1 wherein quoting the above observations, this Court held that a judgment/decree obtained by fraud has to be treated as a nullity by every Court.

16. Reference was also made to a recent decision of this Court in A.V. Papayya Sastry & Ors. V. Govt. of A.P. & Ors., (2007) 4 SCC 221. Considering English and Indian cases, one of us (C.K. Thakker, J.) stated:

"It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a 1 nullity and non est in the eye of law. Such a judgment, decree or order -by the first Court or by the final Court- has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings".

17. The Court defined fraud as an act of deliberate deception with the design of securing something by taking unfair advantage of another. In fraud one gains at the loss and cost of another. Even the most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam.

18. So far as the proposition of law is concerned, there can be no two opinions. The learned counsel for the respondents also did not dispute the principles laid down in the above decisions as also in several other judgments. They, however, stated that on the facts and in the circumstances of the case, the ratio laid down in the above cases has no application.

19. As already adverted to earlier, according to SAIL, pursuant to the order passed by the High Court in Review and after dismissal of Special Leave Petitions by this Court, it issued notices to the parties including the present appellant. Respondent No.2 remained present for negotiation. The appellant received the notice but intimated SAIL that Ramesh of Rithwik Projects would remain present on his behalf. At no point of time, the appellant had made any grievance against Ramesh nor he had informed SAIL that he had withdrawn Power of Attorney issued earlier in favour of Ramesh. It, therefore, cannot be said that the appellant was deceived or cheated, either by SAIL or by anyone else.

20. The argument of the learned counsel for the appellant of violation of principles of natural justice and fair play also has no force. When notice was issued by SAIL to the appellant and he had informed SAIL by a written communication that Ramesh would remain present as his representative, it does not lie in the mouth of the appellant that SAIL had acted in breach of natural

justice.

21. SAIL in its written submissions contended that the appeal filed by the appellant is liable to be dismissed on account of suppression of material facts and deliberate misrepresentation by him. An impression was sought to be created by the appellant, submitted the counsel, that the appellant could not complete the work given to him and was assigned to respondent No.2. It is clear that after tender notice No. 4 was cancelled, albeit illegally as held by the High Court and by this Court, tender notice No. 5 was issued. The bid of the appellant was accepted and contract was given to him. It was for 2002-05 i.e. for three years. The appellant was allowed to complete the said period and the contract had not been terminated or abruptly discontinued during the said period. It was over in 2005 by efflux of time. What was done by SAIL was to implement the order of High Court in connection with tender notice No. 4 which was not acted upon. In that process, parties were called for negotiations, offer of respondent No.2 was accepted and work was given to him. It is, therefore, not correct to say that the appellant had suffered. The appellant wanted to continue the work even though the period of tender notice No. 5 was over and he had taken the benefit thereunder. The appellant had no right or reason to make grievance so far as tender notice No. 4 was concerned. Hence, the appellant is not entitled to any relief.

22. We find considerable force in the argument of the learned counsel. From the record, it is clear that tender notice No.4 was wrongly ignored and no process thereunder was undertaken by SAIL. What was granted to the appellant was a contract under tender notice No.5. The appellant was working under tender notice No.5. Meanwhile, the review of respondent No.2 against tender notice No.4 was allowed and after the order passed by this Court dismissing Special Leave Petitions, SAIL implemented the said order, bid of respondent No.2 was accepted and contract was given to him. To us, SAIL is right in urging that the appellant cannot insist that even under the contract under tender notice No.5, he should be allowed to continue the work. We, therefore, see no substance in the argument of the learned counsel for the appellant and the contention is rejected.

23. The learned counsel for SAIL is also right in urging that the appellant has not approached the Court with clean hands by disclosing all facts. An impression is sought to be created as if no notice was ever given to him nor he was informed about the consideration of cases of eligible and qualified bidders in pursuance of the order passed by the High Court in Review and confirmed by this Court. The true facts, however, were just contrary to what was sought to be placed before the Court. A notice was issued by SAIL to the appellant, he received the notice, intimated in writing to SAIL that he had authorized Ramesh of Rithwick Projects to appear on his behalf. Ramesh duly appeared at the time of consideration of bids, bid of respondent No.2 was found to be lowest and was accepted and contract was given to him (under tender notice No.4). The said contract had nothing to do with tender notice No.5 and contract thereunder which had been

given to the appellant herein and he had completed the work. Thus, it is clear that the appellant had not placed all the facts before the Court clearly, candidly and frankly.

24. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.

25. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of R. v. Kensington Income Tax Commissioners, (1917) 1 KB 486 : 86 LJ KB 257 : 116 LT 136 in the following words:

"[I]t has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts- it says facts, not law. He must not misstate the law if he can help it; the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it the Court will set aside any action which it has taken on the faith of the imperfect statement".

(emphasis supplied)

26. A prerogative remedy is not a matter of course. While exercising extraordinary power a Writ Court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the Court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the Court, the Court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating "We will not listen to your application because of what you have done". The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it.

27. In Kensington Income Tax Commissioner, Viscount Reading, C.J. observed:

"Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the applicant was not candid and did not fairly state the facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that this Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit".

(emphasis supplied)

28. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play `hide and seek' or to `pick and choose' the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of Writ Courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because, "the Court knows law but not facts".

29. If the primary object as highlighted in Kensington Income Tax Commissioners is kept in mind, an applicant who does not come with candid facts and 'clean breast' cannot hold a writ of the Court with `soiled hands'. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, maneuvering or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the Court, the Court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the Court does not reject the petition on that ground, the Court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of Court for abusing the process of the Court.

30. Let us consider some important decisions on the point:

31. In State of Haryana v. Karnal Distillery, (1977) 2 SCC 431, almost an agreed order was passed by the Court that on expiry of the licence for manufacturing of liquor on September 6, 1976, the distillery would cease to manufacture liquor under the licence issued in its favour. Then, the Company filed a petition in the High Court for renewal of licence for manufacture of liquor for 1976-77, and the Court granted stay of dispossession. In appeal, the Supreme Court set aside the order granting stay of dispossession on the ground that the petitioner-Company in filing the petition in the High Court had misled it and started the proceedings

for oblique and ulterior motive.

32. In Vijay Kumar v. State of Haryana, (1983) 3 SCC 333, it was the case of the petitioners that the provisional admissions granted to them were not cancelled and they were continuing their studies as post-graduate students in Medical College on the relevant date. On the basis of that statement, they obtained an order of status quo. The Supreme Court ordered inquiry and the District Judge was asked to submit his report whether the provisional admissions granted to the petitioners were continued till October 1, 1982 or were cancelled. The report revealed that to the knowledge of the petitioners their provisional admissions were cancelled long before October 1, 1982 and thus, the petitioners had made false representation to the Court and obtained a favourable order.

33. Dismissing the petition, this Court observed:

"But for the misrepresentation this Court would never have passed the said order. By reason of such conduct they have disentitled themselves from getting any relief or assistance from this Court and the Special Leave Petitions are liable to be dismissed".

34. Deprecating the reprehensible conduct of the petitioners as well as of their counsel, the Court stated;

"Before parting with the case, however, we cannot help observing that the conduct or behaviour of the two petitioners as well as their counsel (Dr. A.K. Kapoor who happens to be a medico-legal consultant practising in Courts) is most reprehensible and deserves to be deprecated. The District Judge's report in that behalf is eloquent and most revealing as it points out how the two petitioners and their counsel, (who also gave evidence in support of the petitioner's case before the District Judge) have indulged in telling lies and making reckless allegation of fabrication and manipulation of records against the College Authorities and how in fact the boot is on their leg. It is a sad commentary on the scruples of these three young gentlemen who are on the threshold of their carriers. In fact, at one stage we were inclined to refer the District Judge's report both to the Medical Council as well as the Bar Council for appropriate action but we refrained from doing so as the petitioners' counsel both on behalf of his clients as well as on his own behalf tendered unqualified apology and sought mercy from the Court. We, however, part with the case with a heavy heart expressing our strong disapproval of their conduct and behaviour..."

(emphasis supplied)

35. In Welcom Hotel v. State of A.P., (1983) 4 SCC 575, certain hoteliers filed a petition in this Court under Article 32 of the Constitution challenging the maximum price of foodstuffs fixed by the Government contending that it was uneconomical and obtained ex parte stay order. The price, however, was fixed as per the agreement between the petitioners and the Government but the said fact

was suppressed.

36. Describing the fact as material, the Court said:

"Petitioners who have behaved in this manner are not entitled to any consideration at the hands of the Court".

37. In Agricultural & Process Food Products v. Oswal Agro Furnae, (1996) 4 SCC 297, the petitioner filed a petition in the High Court of Punjab and Haryana which was pending. Suppressing that fact, it filed another petition in the High Court of Delhi and obtained an order in its favour. Observing that the petitioner was guilty of suppression of 'very important fact', this Court set aside the order of the High Court.

38. In State of Punjab v. Sarav Preet, (2002) 9 SCC 601, A obtained relief from the High Court on her assertion that a test in a particular subject was not conducted by the State. In an appeal by the State, it was stated that not only the requisite test was conducted but the petitioner appeared in the said test and failed. Observing that the petitioner was under an obligation to disclose the said fact before the High Court, this Court dismissed the petition.

39. In Union of India v. Muneesh Suneja, (2001) 3 SCC 92, the detenu challenged an order of detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1973 (COFEPOSA) by filing a petition in the High Court of Delhi which was withdrawn. Then he filed a similar petition in the High Court of Punjab & Haryana wherein he did not disclose the fact as to filing of the earlier petition and withdrawal thereof and obtained relief. In an appeal by the Union of India against the order of the High Court, this Court observed that non-disclosure of the fact of filing a similar petition and withdrawal thereof was indeed fatal to the subsequent petition.

40. A special reference may be made to a decision of this Court in All India Sate Bank Officers Federation v. Union of India, 1990 Supp SCC 336. In that case, promotion policy of the Bank was challenged by the Federation by filing a petition in this Court under Article 32 of the Constitution. It was supported by an affidavit and the contents were affirmed by the President of the Federation to be true to his 'personal knowledge'. It was stated: "The petitioners have not filed any other similar writ petition in this Honourable Court or any other High Court".

41. In the counter-affidavit filed on behalf of the Bank, however, it was asserted that the statement was `false'. The Federation had filed a writ petition in the High Court of Andhra Pradesh which was admitted but interim stay was refused. Another petition was also filed in the High Court of Karnataka. It was further pointed out that Promotion Policy was implemented and 58 officers were promoted who were not made parties to the petition.

42. In affidavit-in-rejoinder, once again, the stand taken by the petitioner was sought to be justified. It was stated: "The deponent had no knowledge of the writ petition filed before the High Court of Andhra Pradesh, hence as soon as it came

to his knowledge the same has been withdrawn. Secondly, the petitioners even today do not know the names of all such 58 candidates who have been promoted/ favored". It was contended on behalf of the Bank that even that statement was false. Not only the petitioner Federation was aware of the names of all the 58 officers who had been promoted to the higher post, but they had been joined as party-respondents in the writ petition filed in the Karnataka High Court, seeking stay of promotion of those respondents. It was, therefore, submitted that the petitioner had not come with clean hands and the petition should be dismissed on that ground alone.

43. 'Strongly disapproving' the explanation put forth by the petitioner and describing the tactics adopted by the Federation as 'abuse of process of court', this Court observed:

"There is no doubt left in our minds that the petitioner has not only suppressed material facts in the petition but has also tried to abuse judicial process.

. . .

Apart from misstatements in the affidavits filed before this Court, the petitioner Federation has clearly resorted to tactics which can only be described as abuse of the process of court. The simultaneous filing of writ petitions in various High Courts on the same issue though purportedly on behalf of different associations of the Officers of the Bank, is a practice which has to be discouraged. Sri Sachhar and Sri Ramamurthy wished to pinpoint the necessity and importance of petitions being filed by different associations in order to discharge satisfactorily their responsibilities towards their respective members. We are not quite able to appreciate such necessity where there is no diversity but only a commonness of interest. All that they had to do was to join forces and demonstrate their unity by filing a petition in a Single Court. It seems the object here in filing different petitions in different Courts was a totally different and not very laudable one".

(emphasis supplied)

44. 'Deeply grieved' by the situation and adversely commenting on the conduct and behaviour of the responsible officers of a Premier Bank of the country, the Court observed;

"We have set out the facts in this case at some length and passed a detailed order because we are deeply grieved to come across such conduct on the part of an association, which claims to represent high placed officers of a premier bank of this country. One expects such officers to fight their battles fairly and squarely and not to stoop low to gain, what can only be, temporary victories by keeping away material facts from the court. It is common knowledge that, of late, statements are being made in petitions and affidavits recklessly and without proper verification not to speak of dishonest and deliberate misstatements. We, therefore, take this opportunity to record our strong and emphatic disapproval of the conduct of the petitioners in this ease and hope that this will be a lesson to the present petitioner as well as to other litigants and that at least in future people will act more truthfully and with a greater sense of responsibility.

(emphasis supplied)

45. Yet in another case in Vijay Syal & Anr. v. State of Punjab & Ors., (2003) 9 SCC 401; this Court stated;

"In order to sustain and maintain sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered as a place where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by adopting recourse to make misrepresentation and is concealing material facts it does so at its risk and cost. Such party must be ready to take consequences that follow on account of its own making. At times lenient or liberal or generous treatment by courts in dealing with such matters are either mistaken or lightly taken instead of learning proper lesson. Hence there is a compelling need to take serious view in such matters to ensure expected purity and grace in the administration of justice".

46. In the case on hand, the appellant has not come forward with all the facts. He has chosen to state facts in the manner suited to him by giving an impression to the Writ Court that an instrumentality of State (SAIL) has not followed doctrine of natural justice and fundamental principles of fair procedure. This is not proper. Hence, on that ground alone, the appellant cannot claim equitable relief. But we have also considered the merits of the case and even on merits, we are convinced that no case has been made out by him to interfere with the action of SAIL, or the order passed by the High Court.

47. For the foregoing reasons, the appeal deserves to be dismissed and is accordingly dismissed with costs.

21. The applicants mortgaged their properties to secure the loan obtained by applicant NO.1 and committed default. The bank initiated proceedings under The Recovery of Debts and Bankruptcy Act, 1993 And SARFAESI Act, 2002 simultaneously. The applicants appeared in the said matters but failed to disclose alleged transaction committed by them in respect of mortgaged properties with third persons. Thus intentions of applicants can be gathered since beginning

22. The applicants cannot be allowed to deplete value and utility of secured assets to the detriment of secured creditor. The applicants cannot be allowed to wash Off their hands by saying that they have come to this Tribunal only for one property.

23. The applicants were required to disclose all facts in an honest and transparent manner in the pleading at first instance. The nondisclosure of all such material facts would ten amount to commission of fraud with the justice administration system and they have left with no right to be heard on merits in

the light of judgement of Hon'ble Supreme Court quoted above.

24. It is worthwhile to mention here that although applicant admitted loan and liability in previous litigation, but the tenor of language used in the Securitization Application reflects otherwise. Despite earlier admission of loan, liability and their respective status as borrower and guarantors and validity of security interest at the time of compromise, applicants showed their hesitance to admit loan transaction and their status as guarantors and mortgagors in effective and clear words in this present Securitization Application.

25. Once applicants in the earlier Securitization Application and Original Application admitted loan and liability, in this Securitization Application filed after commission of default applicants cannot be allowed to challenge and question validity of quality of security interest.

27. Upon auction, valuable rights have been accrued in favour' of the Auction Purchaser and in the absence of Auction Purchaser, applicants would not be able to get any effective relief and which would be detrimental to the rights of the Auction Purchaser, particularly, when applicants were well aware about auction of the property on the date of filing of Securitization Application.

28. Earlier also bank put the property on auction and for second auction there was no need to issue 30 days' notice, so on that account also applicants have no case in their favour.

29. The applicants have no right to agitate anything against orders passed by Ld. Dist. Magistrate under section 14 of SARFAES1 Act, 2002, as earlier application challenged such orders before Hon'ble High Court and withdrew their petitions unconditionally. The Hon'ble High Court passed following order on 11.03.2019 in R/SCA No. 3904 of 2019 and R/SCA No. 4664 of 2019.

CORAM: HONOURABLE MS. JUSTICE BELA M. TRIVEDI

Date; 11/03/2019

ORAL order

Learned advocate Mr. Hardik B, Shah for the petitioners under the instructions of the petitions seeks permission to withdraw the present petition unconditionally. The learned advocates for the respondents have no objection against the withdrawal.

In view or the above, the petition is dismissed as withdrawn unconditionally

Notice is discharged.

(BELA M, TRIVEDI. J)

30. The applicants withdrew their SCA No. 3904 of 2019 and 4664 of 2019 on 11.3.2019 that they have filed the present Securitization Application before this Tribunal on 13 5.2019. There is no explanation as to why applicants have not

come to this Tribunal within reasonable time. Applicants have failed to explain any reason for not coming to this Tribunal within 45 days from the date when respondent bank started its Securitization process again after commission of default as per compromise nor sought any condonation of delay. Although under normal circumstances, applicants have every right to challenge previous steps, at the time of corning to the Court, upon subsequent steps but for that the said person must explain the reasons for not coming to this Tribunal earlier. But in this case, said analogy would not be applicable and available to present applicants as applicants waived off their all rights qua previous process while entering into compromise in Securitization Application 71/2018 and Original Application 76/2015. So the applicants are not able to question any steps taken by the bank under provisions of Securitization Act up till 19.11.2018.

31. At this juncture, I would like to rely upon judgement of Hon'ble Gujarat High Court in SCA 11313 of 2018, In fact, in this present case, applicants without disclosing the creation of third party interest filed this Securitization Application for one property only. When this Tribunal enquired about other properties, after disclosure of true and correct facts by respondent bank, the applicants in a clandestine and astonishing manner have come with plea that they are not concerned about two other properties once the respondent bank provide credit facility to applicant No 1 on personal guarantee and applicants NO. 2 to 5 on collateral security of three properties. The applicants have no right to say that they have no concern with two other properties. It is out of place to mention that applicant NO. 2-5 are also the directors of applicant No. 1 and are managing the affairs of applicant NO.1. The five applicants have preferred this Securitization Application and bank filed Original Application against said five persons only. The applicants before this Tribunal are the only persons who are aware of all the steps and circumstances of loan transactions and status of mortgaged property and responsible for repayment of bank dues. So, it would be inappropriate on The part of applicants to allege that they are not concerned with two other mortgaged properties as disclosed on their behalf by their counsels during the course of hearing 24.09.2020. The applicants with view to delay the recovery of public money and with conscious mind to create hurdles, manipulated or created certain documents antedated or otherwise to create litigation, apprehending default in their loan account. At the cost of repetition, I would like to say that the applicants did not disclose alleged transactions up till 19.11.2018 to the bank or this Tribunal as there is no such reference in the compromise proposals reproduced above. Now applicants have come to this Tribunal taking some technical objections but applicants cannot be allowed to raise technical objections once they have failed to come to this Tribunal with clean hands and it is not out of place to mention that applicants were given reasonable and adequate opportunity to pay the dues of the bank. In Rafeeq Ahmed Vs State of UP, AIR 1999 Allahabad 272, Hon'ble High court of Allahabad held that "the persons who are not interested in repayment of loan must not be permitted to play with the procedure of law."

The present Securitization Application as filed with incomplete facts and attempt of applicants to hide real facts and play with the jugglery of words is nothing but an abuse to the process of law and such type of practice is liable to be dealt with iron hand.

So, I feel appropriate, just and proper to invoke the spirit of verdict given by the Hon'ble Chief Justice Mr. Vikram Nath and Hon'ble justice Mr. Ashutosh J. Shahstri of Hon'ble Gujarat High Court in SCA no, 11313 of 2018 in a matter pertaining to SARFAESI Act, 2002 itself. The relevant portion of said judgement is reproduced as under:

88. From the above discussion, it is apparent that the borrower has been taking all the measures somehow or the other to delay the proceedings for recovery by the Secured Creditor of the defaulted amount The proceedings under Section 13 of the 2002 Act and the order passed under section 14 thereof for taking possession has been challenged before this Court on technical grounds and even such technical grounds are not tenable in view of the material produced on record by the Secured Creditors, the respondent-Bank The borrowers - appellants have been enjoying ex-parte interim order dared 5th September, 2018 granted in their favour, The borrowers have been successful in not permitting the bank to proceed with the recovery and its valid dues as there is no objection with regard to the outstanding amount indicated in the demand notice.

89. The Supreme Court in the case of Dnyandeo Sabaji Naik and Others vs. Pradnya Prakash Khandekar and Others reported in (2017 5 SCC 496 has frowned upon frivolous and groundless Wings. We quote the relevant observations:

13. This Court must view with disfavour any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt with firmly. A litigant who takes liberties with the truth or with the procedures of the Court should be left in no doubt about the consequences to follow. Others should not venture along the same path in the hope or on a misplaced expectation of judicial leniency. Exemplary costs are inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practised in our country, there is no premium on the truth.

14. Courts across the legal system - this Court not being an exception - are choked with litigation. Frivolous and groundless filings constitute a serious menace to the administration of justice. They consume time and clog the infrastructure. Productive resources which should be deployed in the handling of genuine causes are dissipated in attending to cases filed only to benefit from delay, by prolonging dead issues and pursuing worthless causes. No litigant can have a vested interest in delay. Unfortunately, as the present case exemplifies, the process of dispensing justice is misused by the unscrupulous to the detriment of the legitimate. The present case is an illustration of how a simple issue has occupied the time of the courts and of how successive applications have been

filed to prolong the inevitable. The person in whose favour the balance of justice lies has in the process been left in the lurch by repeated attempts to revive a stale issue. This tendency can be curbed only if courts across the system adopt an institutional approach which penalizes such behavior. Liberal access to justice does not mean access to chaos and indiscipline. A strong message must be conveyed that courts of justice will not be allowed to be disrupted by litigative strategies designed to profit from the delays of the law. Unless remedial action is taken by all courts here and now our society will breed a legal culture based on evasion instead of abidance. It is the duty of every court to firmly deal with such situations. The imposition of exemplary costs is a necessary instrument which has to be deployed to weed out, as well as to prevent the filing of frivolous cases. It is only then that the courts can set apart time to resolve genuine causes and answer the concerns of those who are in need of justice. Imposition of real time costs is also necessary to ensure that access to courts is available to citizens with genuine grievances. Otherwise, the doors would be shut to legitimate causes simply by the weight of undeserving cases which flood the system. Such a situation cannot be allowed to come to pass. Hence it is not merely a matter of discretion but a duty and obligation cast upon all courts to ensure that the legal system is not exploited by those who use the forms of the law to defeat or delay justice. We commend all courts to deal with frivolous filings in the same manner.

In Union of India and others vs. Pirthwi Singh and others reported in (2018) 16 SCC 363, the Supreme court observed thus:

15. To make matters worse, in this appeal, the Union of India has engaged 10 lawyers, including an Additional Solicitor General and a Senior Advocate! This is as per the appearance slip submitted to the Registry of this Court. In other words, the Union of India has created a huge financial liability by engaging so many lawyers for an appeal whose fate can be easily imagined on the basis of existing orders of dismissal in similar cases. Yet the Union of India is increasing its liability and asking the taxpayers to bear an avoidable financial burden for the misadventure. Is any thought being given to this?

16. The real question is: When will the Rip Van Winkleism stop and Union of India wake up to its duties and responsibilities to the justice delivery system?

17. To say the least, this is an extremely unfortunate situation of unnecessary and avoidable burdening of this Court through frivolous litigation which calls for yet another reminder through the imposition of costs on the Union of India while dismissing this appeal. We hope that someday some sense, if not better sense, will prevail on the Union of India with regard to the formulation of a realistic and meaningful National Litigation Policy and what it calls 'ease of doing business', which can, if faithfully implemented benefit litigants across the country.

90. The facts and circumstances surrounding the present case, the contentions of the parties and the law on the issue, as discussed by us in the paragraphs hereinabove, indicate the impetuous attitude of the appellants before us. As we

have stated before, this is a typical instance of haw the judicial system is getting clogged with frivolous litigation. The Hon'ble Supreme Court has held in catena of cases that such frivolous and vexatious litigation must be discouraged by imposing exemplary costs or by adopting similar novel methods. The facts as they stand before us, leave us with no option, but to impose costs to the tune of Rs.10,00,000/- (Rupees Ten Lakhs only) on each of the appellants. We hope that the imposition of costs shall have a deterrent effect on all such litigants who have approached or attempt to approach the forums with such frivolous

For the reasons recorded above, the Letters Parent Appeals are dismissed with costs quantified at Rs,10,00,000/- (Rupees Ten Lakhs only) on each of the appellants. Consequently, the connected Civil Applications for stay and vacating interim relief stand disposed of.

(VIKRAM NATH, CJ)

In the present case also the applicants desperately made efforts to delay the recovery of public money, made concealment and once the bank put the entire facts on file instead of correcting themselves applicants came with plea that they are not concerned about other two properties.

The applicants compromised with the bank and sought time for repayment without disclosing alleged third party interest created in two properties mortgaged with the bunk.

The borrowers cannot be allowed to deplete value and utility of the securities created to secure due repayment of credit facilities created by the Financial Institution. Once they did so they should not harp on technical irregularities in the process and in this case, the applicants cleverly and in a clandestine manner tried to escapes disclosure and alleged third party interest created by then in favour of the third person and tried their level best to mislead this Tribunal by saying that they have filed this Securitization Application for only one property. The conduct of the applicants is liable to be snubbed, otherwise such type of litigation would create chaos in the justice administration system.

The conduct of the applicants warrants strict view and following foot prints and precedent set up by our own Hon'ble Gujarat High court in the case referred above, I feel fair to impose cost to the tune of Rs.10 Lakhs on each applicant i.e. (Rs. 50 Lakhs in toto) to be deposited with National Defence Fund, Account No. 11084239799, State Bank of India at New Delhi Main Branch (00691). In the back drop of the above, the Securitization Application is dismissed with cost.

At the time of final hearing, if there is any pending IA that also stands disposed off being not pressed. Securitization Application is disposed off finally. Let copies of this order be supplied to the parties as per rules.

Dictated arid pronounced in open court on 05.10.2020

