

M/S.Omkara Assets Reconstruction ... vs Eci Infra Tower Company Private Limited on 20 December, 2022

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (INS.) No. 35 / 2022
(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)
(Arising out of the 'Order' dated 23.12.2021 in IA No. 124 of 2021 in
CP(IB) No. 673 / 7 / HDB / 2019, passed by the 'Adjudicating
Authority', ('National Company Law Tribunal',
Hyderabad Bench - I, Hyderabad)

In the matter of:

M/s. Omkara Assets Reconstruction Pvt. Ltd.
Reg. Office at: No. 9, M.P. Nagar,
First Street, Kongu Nagar Extn.
Tirupur,
Coimbatore - 641607 (TN)

..... Appellant /
1st Respondent

v.

1. ECI Infra Towers Company Pvt. Ltd.

Represented by

Ms. G. Kalpana, Resolution Professional,
Plot No. A-12 & A-13, Panchavati Township,
Manikonda, Hyderabad - 500089 (TS)

..... 1st Respondent /
Resolution Professional

2. Srinivasa Ediffice Private Limited

40-9/1 - 18A, Vasavya Nagar,
Besides Vasavya Mahila Mandali,
Vijaywada - 520010 (AP)

..... 2nd Respondent /
2nd Respondent

Present:

For Appellant

: Mr. Joseph Augustine, Advocate

For Respondent No.1

: Mr. S. Chidambaram and
Ms. G. Kalpana, Advocates

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JUDGMENT

(Virtual Mode) Justice M. Venugopal, Member (Judicial):

Preliminary:

Company Appeal (AT) (CH) (INS.) No. 35 of 2022:

The 'Appellant' / 1st Respondent ('M/s. Omkara Assets Reconstruction Private Limited'), has focussed the instant Comp. App (AT) (CH) (INS.) No. 35 of 2022, before this 'Tribunal', as an 'Aggrieved Person', on being dissatisfied with the 'impugned order' dated 23.12.2021, in IA No. 124 of 2021 in CP(IB) No. 673 / 7 / HDB / 2019, (Filed under Sections 18, 23, 25 & 60 (5) of the Insolvency and Bankruptcy Code, 2016, passed by the 'Adjudicating Authority', ('National Company Law Tribunal', Hyderabad Bench - I, Hyderabad).

2. The 'Adjudicating Authority', ('National Company Law Tribunal', Hyderabad Bench - I, Hyderabad), while passing the 'impugned order' dated 23.12.2021 in IA No. 124 of 2021 in CP(IB) No. 673 / 7 / HDB / 2019, among other things, at Paragraphs 27 to 36, had observed the following:

27. 'Therefore, when once the violation being unequivocal and apparent, the Respondents cannot be allowed to escape from the legal consequences of violation of order of moratorium, more so on a plea that the respondents merely performed a consequential act Comp. App (AT) (CH) (INS.) No. 35 of 2022 of registration of sale certificate issued in favour of the 2 nd Respondent...

28. Be that as it may, we are also unable to appreciate the submission of Ld. Senior Counsel for R-1 that registration of sale certificate in this case is only formality and not mandatory legal requirement, In fact, the ruling in re, B. Arvind Kumar vs Govt. of India & Ors in Civil Appeal No. 3540 of 2002 reported in (2007) 5 SCC 745, relied upon by the respondents it is held that, 'When a property is sold by public auction in pursuance of an order of the court and the bid is accepted and the sale is confirmed by the court in favour of the purchaser, the sale becomes absolute and the title vests in the purchaser. A sale certificate is issued to the purchaser only when the sale becomes absolute. The sale certificate is merely the evidence of such title. It is well settled that when an auction purchaser derives title on confirmation of sale in his favour, and a sale certificate is issued evidencing such sale and title, no further deed of transfer from the court is contemplated or required.

In this case, the sale certificate itself was registered, though such a sale certificate issued by a court or an officer authorized by the court, does not require registration. Section 17(2)(xii) of the Registration Act, 1908 specifically provides that a certificate of sale granted to any purchaser of any property sold by a public auction by a civil or revenue officer does not fall under the category of non-testamentary documents which require registration under sub-section (b) and (c) of section 17(1) of the said Act. We therefore hold that the High Court committed a serious error in holding that the sale certificate did not convey any right, title or interest to plaintiff's father for want of a registered deed of transfer."

29. Moreover, Hon'ble Supreme Court of India in re, Suraj Lamp and Industries Private Ltd vs State of Haryana & Anr. Reported in (2012) 1 SCC 656, supra, held, Comp. App (AT) (CH) (INS.) No. 35 of

2022 ``immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of `GPA sales' or `SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of Section 53-A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales."

30. That apart a full Bench of High Court of Madras in re, R. Thiagarajan Vs The Inspector General of Registration, Santhome and Ors., held that,

13. ``Section 17 (1) of the Registration Act, 1908, speaks about the documents of which the registration is compulsory. Section 17(2) of the Registration Act, speaks about the exemption for registering the document. As per Section 17(2)(xii) of the Act, any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer is exempted from registration.

14. The Sale Certificate is not a compulsorily registrable document, if the property is sold by public auction by a Civil or Revenue Officer. In the judgment reported in 2007 (5) SCC 745 [cited supra] the Hon'ble Supreme Court held that a certificate of sale granted to any purchaser of any property sold by public auction by a Civil or Revenue Officer does not fall under the category of non-testamentary documents which require registration under sub- Sections (b) and (c) of Section 17(1) of the said Act. Comp. App (AT) (CH) (INS.) No. 35 of 2022

15. In the judgement reported in 2013(5) CTC 337 [P.M. Associates, Udthagamandalam v. IFCI Limited, Chennai and others] , the Division Bench of this Court held as follows:-

" 30. In the judgment reported in (2007) 5 Supreme Court Cases 745 [B.Arvind Kumar Vs. Govt. of India and others], it is clear that when a property is sold by public auction in pursuance of an order of the Court and bid is accepted and the sale is confirmed by the Court in favour of the purchaser, the sale becomes absolute and the title vests in the purchaser. The Sale Certificate is issued to the purchaser only when the sale becomes absolute, further, it is clear that the Sale Certificate is merely an evidence of such title. It is also well settled that when an auction purchaser derives title on confirmation of sale in his favour, the Sale Certificate is issued evidencing such sale and title, no further deed of transfer from the Court is contemplated or required. So far as the registration of the Sale Certificate is concerned, under Section 17(2)(xii) of the Registration Act, the Sale Certificate issued by a Civil or Revenue Officer does not fall under the category of non-testamentary documents which requires registration under sub-Section 17(1)(b) and (c) of the said Act. In the case on

hand, the Sale Certificate was issued by the Authorised Officer, the second respondent. That being the case, the auction purchaser derives title on confirmation of sale in their favour and the Sale Certificate was issued evidencing such sale and title. In respect of the registration of the Sale Certificate issued by the second respondent, since the second respondent is not a Civil or Revenue Officer, the registration of the Sale Certificate is not exempted under Section 17(2)(xii) of the Registration Act. Therefore, we are of the view that though the auction purchaser derived title on confirmation of sale in their favour and a Sale Certificate was issued by the Authorised Officer, evidencing such sale and title, no further deed of transfer is required. In view of the judgment reported in (2007) 5 Supreme Court Cases 745 and the provisions of 17(2)(xii) of the Registration Act, the Sale Certificate issued by the second respondent/Authorised Officer requires registration."

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17. As per Article 18 of the Stamp Act, the purchaser of any property sold by a public auction by a Civil or Revenue Officer or Collector or other Revenue Officer, is liable to pay the stamp duty on the consideration mentioned in the Sale Certificate. The Hon'ble Supreme Court in the judgment reported in 2007 (5) SCC 745 [cited supra] and the Division Bench of this Court in the judgment reported in 2013(5) CTC 337 [cited supra] held that the Authorized Officer of the bank cannot be equated with the Civil or Revenue Officer. Therefore, the sale made by the Authorized Officer is liable for stamp duty under Article 23 and not under Article 18 of the Stamp Act.

22. The Sale Certificate issued by the Authorised Officer of the bank cannot be agnated with the Sale Certificate issued by a Civil or Revenue Court. The nomenclature given to the document issued by the Authorized Officer would be irrelevant for exemption from payment of stamp duty and the same will not be covered under Article 18-C Schedule 1 of the Stamp Act.

23. If proper stamp duty is not paid for the said Sale Certificate and registered as required under law, then it is only a still born child and does not confer any right to the petitioner whatsoever. When the Sale Certificate is not properly stamped and registered, it is a void document and no right would vest upon the petitioner based on the same. As per Section 47-A of the Stamp Act, if the Registering Authority has reason to believe that the market value of the property, which is the subject matter of conveyance, has not been truly set-forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the market value of the said property and the proper duty payable thereon.

24. As already stated, the Sale Certificate issued by the Authorized Officer of the bank requires registration as well as stamp duty under Article 18-C read with Article 23 of Schedule 1 of the Stamp Act." Comp. App (AT) (CH) (INS.) No. 35 of 2022

31. Admittedly, the sale in question is not by a Civil Court or a Revenue Officer but by the Authorized Officer appointed by 1st Respondent under the provisions of SARFAESI Act. As already stated above, a Full Bench of High Court of Madras, supra, held that the Sale Certificate issued by

the Authorized Officer of the bank requires registration as well as stamp duty under Article 18-C read with Article 23 of Schedule 1 of the Stamp Act. So much so, the sale certificate issued by the Authorized Officer, unless registered, the sale cannot be said to be absolute and legally enforceable. Here we once again profitably quote the ruling of Hon'ble Supreme Court of India in re, Suraj Lamps, supra, wherein it was held that ``immovable property can be legally and lawfully transferred / conveyed only by a registered deed of conveyance.

Therefore, non-registration of the sale certificate in this case renders the transfer of title in favour of the 2 nd Respondent null and void.

32. Now adverting to the plea of the Respondents that the property has been acquired in good faith by the 2nd Respondent as such the 2nd respondent is protected under Section 44 of the I & B Code, which is as follows:-

44: Provided that an order under this section shall not -

(a) affect any interest in property which was acquired from a person other than the corporate debtor or any interest derived from such interest and was acquired in good faith and for value;

(b) require a person, who received a benefit from the preferential transaction in good faith and for value to pay a sum to the liquidator or the resolution professional.

Explanation-II. - A person shall be deemed to have sufficient information or opportunity to avail such information if a public announcement regarding the corporate insolvency resolution process has been made under section 13".

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33. When the respondents consciously violated the moratorium order and thereby crippled the corporate insolvency resolution process the plea that the 2nd Respondent derived interest in good faith lacks bona fides hence unacceptable. That apart, except placing reliance on the Section, no material worth has been placed before us in support of the plea of the good faith. We therefore, reject the said plea of the 2nd respondent.

34. We, therefore, having held that the sale certificate has been registered in clear violation of the order of moratorium and on registration of the same only the sale certificate has attained legal enforceability, we hereby declare that the said sale certificate is void and unenforceable under law, consequently, the 2nd Respondent cannot claim / derive any right, title or interest in respect of the property covered by the said sale certificate.

35. In so far as the possession of the subject property is concerned, though 1st Respondent claimed that it had obtained possession of the subject property by invoking the provisions of SARFAESI Act, the 1st Respondent under its letter dated 11.01.2021, requested the Corporate Debtor to deliver the

possession of the property covered by the sale certificate to the auction purchaser, contending that the said property has been sold to R-2. Thus, it is evident that only symbolic possession of the subject property was obtained by 1 st Respondent under the provisions of SARFAESI Act and the physical possession of the same remained with the Corporate Debtor at least till 11.01.2021. None of the Respondents filed any record to show that pursuant to the letter dated 11.01.2021, the Corporate Debtor handed over the physical possession of the subject property to the Purchaser / Respondent No.2. Therefore, under the circumstances the subject property since belongs to the Corporate Debtor, the Corporate Debtor is in possession of the property, we direct the Resolution Professional to take physical possession and manage the subject property, in terms or order passed by the Adjudicating Authority in CP No. 673 / 7 / HDB / 2019 dated Comp. App (AT) (CH) (INS.) No. 35 of 2022 18.01.2021 and continue the CIRP, We further direct the Respondents herein to fully co-operate with the Resolution Professional and in completing the CIRP proceedings.

36. Learned Counsel for R-1 also contended that as the Applicant has efficacious alternative remedy to approach Debt Recovery Tribunal in terms of Section 17 (1) of SARFAESI Act, as such the Application before this Tribunal is not maintainable. This plea is strongly resisted by the Learned Counsel for the Applicant contending, inter-alia, that since Respondents proceeded in violation of the order of moratorium granted by this Tribunal, the remedy lies for the Applicant only before this Tribunal and not before the Debt Recovery Tribunal. Having examined the rival submissions it is to be stated that , no doubt Section 17 (1) of the SARFAESI Act provides for a remedy to any person who is aggrieved by the measure initiated by the Authorized Officer to challenge the same before the Debt Recovery Tribunal having jurisdiction. In so far as the case on hand is concerned , it is not the case of the Applicant that in violation of the provisions of the SARFAESI Act the Respondents have registered the sale certificate. In fact, precisely it is the case of the Applicant that in violation of order of moratorium granted by this Tribunal in terms of Section 14 (1) of IBC, the Respondent No.1 registered the sale certificate in favour of Respondent No.2. Therefore, sustainability of the said plea can only be examined in the light of provisions of IB Code and not under the SARFAESI Act. We therefore hold that the plea of the Learned Senior Counsel for 1st Respondent that the Applicant has alternative remedy before the Debt Recovery Tribunal, as such this Application is not maintainable before this Tribunal, is devoid of any force. We therefore, accordingly reject the same." and `disposed of' the `Interlocutory Application', by allowing it. Comp. App (AT) (CH) (INS.) No. 35 of 2022 Factual scenario:

3. According to the Learned Counsel for the Appellant / 1st Respondent (`M/s. Omkara Assets Reconstruction Private Limited'), the `Original Lender' (`United Bank of India'), had filed OA No. 598 of 2018, before the `Debt Recovery Tribunal - I, Hyderabad, against the 1st Respondent, and on 22.11.2018, prior to the `Moratorium', the `United Bank of India' (`Original Lender'), had assigned the `Debt', payable by the `1st Respondent', in favour of the `Appellant', along with the `Underlying Securities', including exclusive charge on all the `Fixed Assets' and the `Current Assets' of the `1st Respondent'. Pursuant to the said `Assignment', the `Appellant', stepped into the shoes of `UBI' (the `Original Lender') and became entitled to recover the dues and enforce the `Securities'.

4. On behalf of the `Appellant, it is projected that the `Loan', granted by the `United Bank of India' (now, assigned to Omkara, ARC, was secured with other `Securities', by way of `Equitable Mortgage', of the undermentioned properties:

(a) Land measuring 11 Acres and 37 Guntas vide Survey Nos. (1) 334A, (2) 3/1A (3) 3/1B, (4) 5, situated in Kaveli Village, Kohir Mandal, Medak District, Andhra Pradesh, the said property is owned by Mr. K. Vijay, who vide unregistered `Lease Comp. App (AT) (CH) (INS.) No. 35 of 2022 Agreement', dated 14th November, 2007, leased out the property to M/s. ECI Infra Tower Company Pvt. Ltd., Corporate Debtor for a period of 15 years. Furthermore, the Lease Agreements, specifically includes an assurances from the Lessee / Corporate Debtor by Clause No. 7 that the premises shall be used for the purpose of Company's Manufacturing Unit only and that the `Lease Period', was coming to an end on 31.10.2022.

(b) Land admeasuring 10 Acres and 27 Guntas vide Survey Nos.

332A, 33A, 8B, 8A, 7, situated in Kaveli Village, Kohir Mandal, Medak District, Andhra Pradesh, the said property is owned by Mr. K. Venkat Phani, who vide unregistered lease agreement dated 14th November, 2007, leased out the property to M/s. ECI Infra Tower Company Pvt. Ltd., Corporate Debtor for a period of 15 years. The Lease Agreements specifically includes an assurances from the Lessee / Corporate Debtor by clause No.7, that the premises shall be used for the purpose of Company's manufacturing unit only. Further, the `Lease Period', was coming to a close on 31.10.2022.

5. It is represented on behalf of the Appellant, that the aforesaid properties, were `mortgaged', in favour of the `United Bank of India' (together with the `Debt' and `Underlying Securities, since assigned to `Omkara, ARC') by Mr. K. Vijay and Mr. K. Venkatphani in their individual capacity.

6. The Learned Counsel for the Appellant point out that the aforesaid properties, were leased out to the `Corporate Debtor', by an `Unregistered Comp. App (AT) (CH) (INS.) No. 35 of 2022 Lease Agreements', that too, for the specific purpose of `Company's Manufacturing Unit' only, and was expired on 31.10.2022 and these `Unregistered Lease Agreements', do not convey any `Right', `Title' to the `Corporate Debtor', to `sell' or `alienate' the same.

7. On behalf of the Appellant, it is brought to the notice of this `Tribunal', that on 04.04.2019, the `Appellant', had issued a `Demand Notice', as per `Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2022' (`SARFAESI Act') to the `1st Respondent' and the `Mortgagor', and `Guarantors', calling upon the `1st Respondent', to discharge its liabilities, within 60 days from the date of notice.

8. It comes to be known that on 01.08.2019, the `Appellant', had issued a `Possession Notice', intimating the `1st Respondent' and the `Public' in general, in regard to the `Possession of the Properties' of the `1st Respondent' was taken. Added further, the `Appellant', based on the `Assignment Agreement', got itself impleaded, an `Applicant; in OA No.598 of 2018 and that the

`Debts Recovery Tribunal', was pleased to `allow' the OA and passed a `Judgment' and `Decree', in favour of the `Appellant', on 05.02.2020. Therefore, the `Order' of the `Debts Recovery Tribunal', has become `Final', and no one can `Assail', the `Secured Assets' of the `Appellant' (including the `1st Respondent'). Comp. App (AT) (CH) (INS.) No. 35 of 2022

9. According to the Appellant, the `1st Respondent', had not filed an `Appeal', against the `Order' of the `Debts Recovery Tribunal', and on 29.09.2020, a reminder `Letter', was issued by the `Appellant', to the `1st Respondent', intimating that it had waited for a long time, anticipating the submission of a `concrete plan', but, there was no response from the `1st Respondent'. As such, the `Appellant', had made `endeavours' for an `Auction', of the `Mortgaged Property', but the same could not materialise.

10. The Learned Counsel for the Appellant submits that, from and out of the three `Proposals' under `Private Treaty Arrangement', received on 18.11.2020, the `Appellant', had selected the `2nd Respondent', as it offered the `Highest Bid Sum' of Rs.9,00,00,000/-, after undertaking customary due diligence on the `Assets', of the `1st Respondent'.

11. The Learned Counsel for the Appellant, adverts to the fact that the `Valuation of the Property', was obtained from the `two IBBI Registered Valuers', and the `Average Value', was determined at Rs.9.79 Crores and after some negotiations that took place between the `Appellant' and the `2nd Respondent', the 2nd Respondent agreed to pay a sum of Rs.9,75,00,000/- and accordingly a `Letter' was issued. As a matter of fact, the `Appellant', had affirmed the `Sale of the Properties', in favour Comp. App (AT) (CH) (INS.) No. 35 of 2022 of the `2nd Respondent', and a request was made to the 2nd Respondent, to pay the `purchase consideration', within 30 days.

12. It transpires that the 2nd Respondent on 31.12.2020 (in response to the `Confirmation of Sale', by the `Appellant'), had deposited a sum of Rs.3 Crores only and requested the `Appellant', to give 15 days, for paying the `Outstanding Sum' of Rs.6.75 Crores, which was agreed by the `Appellant', as per provisions of the `SARFAESI Act, 2002', and the `Rules', made thereunder.

13. The 2nd Respondent had paid the remaining amount of Rs.6.75 Crores only on 07.01.2021 and the `Appellant', had issued a `Sale Certificate' on 20.01.2021. In fact, the `Registration' of the `Property', was carried out in the name of the 2nd Respondent on 04.03.2021 and the `Title', in respect of the `Property', stood transferred and vested with the `Purchaser' / `2nd Respondent', before the `Admission of the Corporate Insolvency Resolution Process' on 18.01.2021. Also that, the `Registration of Sale Certificate', is mere procedural aspect, which further evidences the `recording of documents', with the `Recognised Officer'.

14. In fact, the `Appellant' / `One of the Secured Financial Creditors', had undertaken the `Transaction' in `Good Faith'. Moreover, the `maximizing the Value of the Assets of the 1st Respondent', will not apply Comp. App (AT) (CH) (INS.) No. 35 of 2022 to the facts of the instant case, when the `Appellant', is the `exclusive Charge Holder of the Assets', that were sold in terms of the provisions of the SARFAESI Act. That apart, the `1st Respondent', has a remedy under Section 17 of the SARFAESI Act, 2002, only to `Assail' the `Auction'. Appellant's Submissions:

15. The Learned Counsel for the Appellant contends that the 'Adjudicating Authority', ('National Company Law Tribunal', Hyderabad Bench - I, Hyderabad) in the 'impugned order' dated 23.12.2021, in IA No. 124 of 2021 in CP(IB) No. 673 / 7 / HDB / 2019, had declared that the 'Sale Certificate', is 'Void' and 'Unenforceable', under 'Law', and consequently, the '2nd Respondent', cannot 'Claim' / 'Derive', any 'Right', 'Title' or 'Interest', in respect of the 'Property', covered by the said 'Sale Certificate', and therefore, the 'impugned order' is an 'incorrect' one, which needs to be set aside, in the instant 'Appeal', by this 'Tribunal'.

16. The Learned Counsel for the Appellant points out that the 'Adjudicating Authority', had failed to apply its mind, to the fact that the 'Appellant', is not a 'Party' to the 'Company Petition', and was shown as '1st Respondent', only in the 'Application', filed by the 'Resolution Professional'. Furthermore, in the instant case, the 'Parties', are governed Comp. App (AT) (CH) (INS.) No. 35 of 2022 by the 'SARFAESI Act, 2002', and RDBFI Act, 1993, and in reality, the sale was completed, on 07.01.2021.

17. The Learned Counsel for the Appellant comes out with a plea that on the date of Pronouncement of the 'Order', by the 'Adjudicating Authority' (NCLT), there was no proceeding pending before the 'Debt Recovery Tribunal', and that the 'execution proceedings', in pursuance of the 'Order' of the 'Debt Recovery Tribunal - I', cannot be considered as 'pending proceeding'.

18. The Learned Counsel for the Appellant submits that the 'Banks', cannot 'charge interest on interest', for 'Accounts', that sought 'Moratorium Relief', during 'Pandemic period', and a 'Sum' so collected, must be 'Refunded', in the 'next Instalment' of the 'Loan Account'.

19. The Learned Counsel for the Appellant contends that the 'Adjudicating Authority', had failed to appreciate that 'Loan Account' of the 'Corporate Debtor', was declared as 'Non Performing Asset', on 30.06.2016, and the 'Demand Notice', was issued on 20.07.2016 and again classified as 'Non Performing Asset' on 31.12.2016. Besides these, the 'Balance Confirmation Letters' dated 20.02.2016 and 02.01.2017, were duly acknowledged by the 'Corporate Debtor', and in short, none of the proceedings, took place during the 'Moratorium Period'. Comp. App (AT) (CH) (INS.) No. 35 of 2022

20. The Learned Counsel for the Appellant, advances an argument that the 'Company Petition', was filed by the 'Bank of India', for its Recovery' against the 'Corporate Debtor', only in the Year 2019, but, the Original Application was filed by the 'Appellant' in the Year 2018, and both are separate 'Proceedings', no one had the knowledge about their respective Proceedings'.

21. The Learned Counsel for the Appellant submits that the 'Finding' of the 'Adjudicating Authority' that the 'Issuance of Sale Certificate', is in 'Violation' of its 'Order', is 'incorrect', 'invalid' and 'suffers from non application' of 'mind'.

22. The Learned Counsel for the Appellant brings it to the notice of this 'Tribunal' that the '1st Respondent' / 'M/s. ECI Infra Towers Company Pvt. Ltd.', is the 'Corporate Guarantor' of 'ECI Engineering & Construction Company Ltd.', and that the 1 st Respondent / M/s. ECI Infra Towers

Company Pvt. Ltd., does not own even a sq. inch in the `Properties mortgaged with the United Bank of India', which was later assigned to the `Appellant'.

23. The Learned Counsel for the Appellant contends that the `Bank of India', had filed OA No. 236 of 2019, (a) for `recovery' of a sum Rs.213,14,25,167.86, before the `Debt Recovery Tribunal', and (b) even Comp. App (AT) (CH) (INS.) No. 35 of 2022 if this Original Application is allowed, the `Bank of India', cannot touch the `Immovable Properties', mortgaged with the `United Bank of India' by Mr. Vijay Kaza and Mr. Kaza Venkata Phani, who are `Guarantors' of the M/s. ECI Infra Towers Company Private Limited.

24. The Learned Counsel for the Appellant, brings it to the notice of this `Tribunal', there is no `Second Charge' at all, to and in favour of `Bank of India', and that the `Bank of India', has no `Locus standi', to question the same.

25. Moreover, it is contended on behalf of the Appellant, if the `Value' is `Low', the `Aggrieved Persons', are the `Guarantors' of `M/s. ECI Infra Towers Company Private Limited', Viz. `Mr. Vijay Kaza and Mr. Kaza Venkata Phani', and that they have not `challenged' the same. Therefore, a `plea', is taken on the side of the `Appellant' that `neither the Corporate Guarantor' Viz. `M/s. ECI Infra Towers Company Private Limited' nor `Bank of India', have `any right in the properties' i.e. `Corporate Guarantor', does not own it and the `Bank of India', is not the `Mortgagee', and this was completely ignored by the `Adjudicating Authority'.

26. The Learned Counsel for the Appellant takes a plea that the `Appellant', is secured by way of `Hypothecation of Movables', and that Comp. App (AT) (CH) (INS.) No. 35 of 2022 of `Equitable Mortgage', over the `Scheduled Properties', and is entitled to proceed against the same, in respect of the `Recovery' of the `Debt'. Therefore, it is the submission of the Appellant that on the `date of passing of the `Order' dated 18.01.2021, by the `Adjudicating Authority', (`Tribunal') in CP (IB) No. 673 / 7 / HDB/2019, the Original Application was already allowed.

27. The Learned Counsel for the Appellant adverts to the following details and the same is given below in a Tabular Form:

Three Expressions of Interest were received for sale of 25.09.2020 property under private treaty. Wherein, 2nd Respondent was selected as the H1 Bidder who submitted offer for Rs.9.00 Crores Confirmation of sale with a revised final offer of Rs.9.75 30.11.2020 Crores to pay within 30 days As per the time extension, entire amount was paid by the 2nd 07.01.2021 Respondent Handing over possession of the asset 11.01.2021 Order was passed by this Hon'ble NCLT for the admission of 18.01.2021 Corporate Debtor into CIRP Issuance of Sale Certificate with bonafide intention to 20.01.2021 Respondent no. 2 Public announcement issued by IRP for the submission of 22.01.2021 Claim (as clearly admitted by IRP in para no. 4 of the counter) Registration of sale certificate issued with respect to the 04.03.2021 property

28. The Learned Counsel for the Appellant urges before this 'Tribunal', the 'Appellant' was not a 'Party', in the 'Proceedings', initiated by the 'Bank of India', against the '1st Respondent' / M/s. ECI Infra Towers Company Private Limited' in CP (IB) No. 673 / 7 / HDB / Comp. App (AT) (CH) (INS.) No. 35 of 2022 2019 and further that the 'knowledge', can be imputed by the 'Resolution Professional', only on 22.01.2021.

29. According to the 'Appellant', in the instant case, the possession was handed over to the 2nd Respondent on 11.01.2021 itself, as per the 'Confirmation of Sale', on 30.11.2020, and that the 'Issue of Sale Certificate', is only a 'Formality', as per 'Order' dated 23.08.2013 in WP Nos. 1937 and 4088 of 2012, passed by the Hon'ble Division Bench of Madras High Court.

30. Proceeding further, the Learned Counsel for the Appellant points out that an 'Auction Purchaser', derives 'Title', on 'Confirmation of Sale', in its favour, and that the 'Issuance of Sale Certificate', is only an 'evidence', to 'establish', that the 'Sale' was 'affirmed', in its favour, conveying the 'Title'.

31. The Learned Counsel for the Appellant, in regard to 'Movable Properties' i.e. 'Plant and Machinery', along with 'Immovable Properties', were delivered to the 'Purchaser', on 11.01.2021 itself.

32. The Learned Counsel for the Appellant cites the 'Judgment' of this 'Tribunal' dated 26.03.2021 in Comp. App (AT) (INS) No. 736 of 2020, wherein, at Paragraph 25, it is observed as under:

Comp. App (AT) (CH) (INS.) No. 35 of 2022

25. ``Other contention of the Appellant is that the sale of the assets of the Corporate Applicant sold through e-auction on 12.12.2019 and the sale was confirmed on 13.12.2018 and 25% of the sale proceeds was paid by the Auction Purchaser. Therefore, the sale was initiated and was in continuation prior to commencement of CIRP i.e., on 03.01.2019. We are of the view that mere receiving of 25% of the sale proceeds does not conclude the sale unless the full amount is paid prior to imposition of moratorium. It is on record that balance 75% of the amount was paid on 08.03.2019 i.e., after imposition of moratorium. Further, it is on record that assets are still in the name of the Corporate Debtor in the revenue records.

Therefore, it is evident that as on the date of moratorium, the assets belong to the Corporate Debtor. We are not inclined to accept the submission of the learned Counsel for the Appellant that 25% of the sale proceeds were received thereby the sale was confirmed prior to imposition of moratorium. Admittedly, as on the date of commencement of CIRP, the sale was not complete and the total sale price was not paid to the Auction Purchaser. Further, it is also on record that the Appellant filed its total claim before the IRP on 21.01.2019 after commencement of CIRP. Thus, it explicitly shows that the sale was not concluded." and contends that the 'Sale' will be concluded, once the entire 'Sum', is paid by an 'Auction Purchaser', and in this case, the 'Whole Sum' of Rs.9.75 Crores was paid on 30.11.2020.

33. The Learned Counsel for the Appellant forcefully contends that the 'Bank of India', has no 'Locus', to 'Stake' a 'Claim' of 'any Iota of Right' in the 'Properties' of 'Mr. Vijay Kaza and Mr. Kaza Venkata Phani', who were the 'Guarantors' of the '1st Respondent / 'M/s. ECI Comp. App (AT) (CH) (INS.) No. 35 of 2022 Infra Towers Company Pvt. Ltd.' i.e. 'Bank of India', is neither a 'Mortgagee' nor having any 'Charge', on these 'Properties'.

34. It is represented on behalf of the 'Appellant' that the '1st Respondent' / 'M/s. ECI Infra Towers Company Pvt. Ltd.', for whom the 'Guarantee', was given has no 'Right' in the 'Properties', in question, which were sold in 'Auction', to the '2nd Respondent', therefore, a contention is advanced on behalf of the 'Appellant', that the 'Interim Resolution Professional', appointed by the 'National Company Law Tribunal', cannot have 'any right' to 'assail' the 'assignment', made by the 'United Bank of India', in favour of the 'Appellant', whose sold the property in 'Auction', to the '2nd Respondent', by adhering to the 'Procedures', meticulously.

35. Yet another submission of the 'Appellant' is that, even if the 'Sale Certificate', was issued on 20.01.2021, followed up with the 'Registration' of the same on 04.03.2021, the 'Interim Resolution Professional', cannot question the same, as the 'Bank of India', is not the 'Mortgagee', and the '1st Respondent / 'M/s. ECI Infra Towers Company Pvt. Ltd.', is not the 'Owner' of the 'Properties' in question and both of them, do not have 'Semblance of Right', in the 'Properties'.

36. The other stand of the Appellant is that, even presuming without admitting that they have the 'Right' in the 'Properties' (which is not) even Comp. App (AT) (CH) (INS.) No. 35 of 2022 then, they cannot 'challenge' the same, as the 'Sale' was completed on 07.01.2021 itself, based on the 'Sale Confirmation', made on 30.11.2020 and further that the 'Issue of Sale Certificate', on 20.01.2021 and the 'Registration' of the same on 04.03.2021, are mere 'formalities'.

37. While summing up, the Learned Counsel for the Appellant submits that with an 'ulterior motive', the 'Resolution Professional', had filed IA No. 124 of 2021 in CP (IB) No. 673 / 7 / HDB / 2019, seeking to set aside the 'Sale Certificate' dated 20.01.2021, issued by the 'Appellant' / '1st Respondent' ('Financial Creditor') to the '2nd Respondent' in CP (IB) No. 673 / 7 / HDB / 2019, whereas the 'Financial Creditor' is 'Bank of India', and in fact, the 'Appellant' / '1st Respondent' has nothing to do with that 'Proceedings', and therefore the 'Appellant', prays for 'setting aside' the 'impugned order' dated 23.12.2021 in No. 124 of 2021 in CP (IB) No. 673 / 7 / HDB / 2019, passed by the 'Adjudicating Authority', ('National Company Law Tribunal', Hyderabad Bench - I, Hyderabad), and to 'allow', the instant 'Appeal', in the interest of 'Justice'.

Contentions of the 1st Respondent:

38. On behalf of the 1st Respondent, it is projected that the plea of the 'Appellant' that an 'Order' of 'Moratorium', passed under Section 14 of Comp. App (AT) (CH) (INS.) No. 35 of 2022 the I & B Code, 2016, supersedes the 'Debt Recovery Tribunal' proceedings, and in the Judgment of this 'Tribunal', in Comp. (AT) INS 549 of 2018 dated 17.09.2018, between Babulal Vardhariraj Gujar v.

Veer Gujar Aluminium Industries Pvt. Ltd., wherein, at Para No. 3, it is held as under:

3. ``However, the initiation of Corporate Insolvency Resolution Process cannot be annulled merely on the ground of pendency of a Petition under Section 19 of 'The Recovery of Debts due to Banks and Financial Institutions Act, 1993'. In fact in terms of Section 14 of I & B Code all such pending proceedings cannot proceed during the period of Moratorium."

39. It is the version of the 1st Respondent that in the instant case on hand, the 'Sale', is by a 'Private Treaty', and not by 'Public Auction', and further that the 'Sale', by an 'Authorised Officer', based on a 'Private Treaty', between the 'Appellant' and the '2nd Respondent', needs 'Compulsory Registration', as well as 'Payment of Stamp Duty', under Article 18-C, read with Article 23 of the Schedule I of the Stamp Act, 1899.

40. According to the 1st Respondent, only 'Sale' under Section 17 (2)

(xii) of the Registration Act, a 'Sale Certificate', issued by the 'Civil' or 'Revenue Officer', does not fall under the category of non-testamentary documents which requires registration and that in the present case, 'Sale Certificate', is issued by an 'Authorised Officer'.

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41. Besides the above, as per 'Article 18 of the Indian Stamp Act, 1899', a 'Property', sold by a 'Public Auction', by a 'Civil Servant' or a 'Collector' or a 'Revenue Officer', is liable to pay a 'Stamp Duty', on the consideration mentioned in the 'Sale Certificate'.

42. It is the stand of the 1st Respondent that a 'Sale', by an 'Authorised Officer', attracts 'Stamp Duty', under 'Article 23 of the Indian Stamp Act, 1899 and added further, if proper 'Stamp Duty', is not paid on the 'Sale Certificate' and the same is 'Registered', it is considered as a 'still born child' and does not 'Confer' any 'Right', on the 'Buyer', whatsoever.

43. It is projected by the Learned Practising Company Secretary for the 1st Respondent that in the instant case, the 'Property' was under the control of the 'Corporate Debtor' on 18.01.2021, and the 2nd Respondent, on 11.01.2021, had addressed a letter, on the subject of 'Handover of Possession of Property', to 'Srinivasa Edifice Private Limited', wherein it was mentioned as under:

``We would like to bring to your notice that we have sold the below-mentioned properties to Srinivasa Edifice Private Limited.

Property No. 1 : All that piece of land admeasuring 11 acres and 37 guntas (57,717 sq. yds.) in Sy. No. 334 / A, 3 / 1A, 3 / 1B, 5 at Vill & GP : Kaveli, Kohir (Mandal), Medak District. Property No. 2 : All that piece of land admeasuring 10 acres and 27 guntas

(49,247 sq. yds.) in Sy. No. 332 / A, 333 / A, 7, Comp. App (AT) (CH) (INS.) No. 35 of 2022 8B, 8A at Village & Gram Panchayat Kaveli, Kohir (Mandal), Medak District.

Any Construction made thereupon, plant & machinery and stock (Details mentioned in Annexure 1) We have received the entire consideration by 7th January 2020 therefore requesting you to handover the possession of the properties to the buyer at the earliest."

44. According to the 1st Respondent, a comparison of the 'Sale Certificate', produced by the 'Appellant', in its 'Counter', before the 'Adjudicating Authority', vis-à-vis, the 'Sale Certificate', submitted to the 'Sub-Registrar', for the 'Registration' and 'Sale Certificate', given to the 'Resolution Professional', by the 'Appellant', shows that the 'Sale Certificate', obviously is a fabrication and that the signatures of the 'Authorised Officer', is not the same. Moreover, there was a correction, duly initialled in the 'Description of the Property', which was not to be found in all the three, and that, 'handwritten correction of 51227 sq. yds. was seen, only in two of the Sale Agreements and not all the three'. Also that, the 'Appellant's Seal' in 'all the three are placed in different places and is different with each other, and this 'proves', that the 'Sale Certificate' is fabricated'. Therefore, the 'Plea' of the 1 st Respondent is that, the 'Appellant', along with Ex-Promoters are in 'Conspiracy', 'Collusion', 'Deception' and 'Defrauded' the other 'Stakeholders', in the 'Corporate Insolvency Resolution Process Proceedings'. Comp. App (AT) (CH) (INS.) No. 35 of 2022

45. On behalf of the 1st Respondent, it is submitted that as per Rule 7 (2) of the SARFAESI Act, 2022, unless, 'Certificate of Sale' is issued, the 'Sale', shall not become 'absolute', in the instant case, for the 'Plant and Machinery', under Rule 7 (2) of 'Security Interest' (Enforcement) Rules, 2022, 'Sale Certificate' in 'Appendix - III, has to be issued, which is not done.

Citations:

46. On behalf of the 1st Respondent, a reliance is placed on the Order dated 05.08.2019 of the Full Bench of the Hon'ble High Court of Madras, in Dr. R. Thiagarajan v. Inspector General of Registration & two Ors., reported in (2019) SCC Online Mad. 9085, wherein at Paragraphs 21 to 23, it is observed as under:

21. ``In the unreported judgment of this Court dated 21.08.2017 <http://www.judis.nic.in> W.P.(MD) No.3989 of 2017 made in W.A.(MD) No.3 of 2017 [cited supra], the Division Bench of this Court held that the Authorised Officer appointed by the bank in the proceedings initiated under SARFAESI Act, is not a Civil or Revenue Court, Collector or Revenue Officer and he is an officer of the bank, which lend money to the borrowers, acts as an Authorized Officer, only for the purpose of bringing the property for sale. In other words, such officers merely replace the secured creditors.

The Division Bench further observed that at best the Authorized Officer can not be termed as Civil or Revenue Court, Collector or Revenue Officer. Observing so, the Division Bench held that notice issued under Section 47-A of the Indian Stamp Act, claiming stamp duty on the market value of the property is proper. Comp. App (AT) (CH) (INS.) No. 35 of 2022

22. The Sale Certificate issued by the Authorised Officer of the bank cannot be agnated with the Sale Certificate issued by a Civil or Revenue Court. The nomenclature given to the document issued by the Authorized Officer would be irrelevant for exemption from payment of stamp duty and the same will not be covered under Article 18-C Schedule 1 of the Stamp Act. Therefore, the Sale Certificate _____ <http://www.judis.nic.in> W.P.(MD) No.3989 of 2017 issued by one who is neither Civil or Revenue Officer would not fall under Section 17(2)(xii) of the Registration Act and the Sale Certificate issued by the Authorized Officer is liable for stamp duty on the market value as per Article 18-C read with Article 23 of Schedule 1 of the Stamp Act.

23. If proper stamp duty is not paid for the said Sale Certificate and registered as required under law, then it is only a still born child and does not confer any right to the petitioner whatsoever. When the Sale Certificate is not properly stamped and registered, it is a void document and no right would vest upon the petitioner based on the same. As per Section 47-A of the Stamp Act, if the Registering Authority has reason to believe that the market value of the property, which is the subject matter of conveyance, has not been truly set-forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the market value of the said property and the proper duty payable thereon."

47. Further, on behalf of the 1st Respondent, the Order of the Hon'ble Division Bench of the High Court of Madras dated 23.08.2013, between P.M. Associates, Udthagamandalam v. IFCI Limited, Chennai & two Ors., wherein, at Paragraph 30, it is observed as under:

" 30. In the judgment reported in (2007) 5 Supreme Court Cases 745 [B.Arvind Kumar Vs. Govt. of India and others], it is clear that when a property is sold by public auction in pursuance of an order of the Court and bid is accepted and the sale is confirmed Comp. App (AT) (CH) (INS.) No. 35 of 2022 by the Court in favour of the purchaser, the sale becomes absolute and the title vests in the purchaser. The Sale Certificate is issued to the purchaser only when the sale becomes absolute, further, it is clear that the Sale Certificate is merely an evidence of such title. It is also well settled that when an auction purchaser derives title on confirmation of sale in his favour, the Sale Certificate is issued evidencing such sale and title, no further deed of transfer from the Court is contemplated or required. So far as the registration of the Sale Certificate is concerned, under Section 17(2)(xii) of the Registration Act, the Sale Certificate issued by a Civil or Revenue Officer does not fall under the category of non-testamentary documents which requires registration under sub-Section 17(1)(b) and (c) of the said Act. In the case on hand, the Sale Certificate was issued by the Authorised Officer, the second respondent. That being the case, the auction purchaser derives title on confirmation of sale in their favour and the Sale Certificate was issued evidencing such sale and title. In respect of the registration of the Sale

Certificate issued by the second respondent, since the second respondent is not a Civil or Revenue Officer, the registration of the Sale Certificate is not exempted under Section 17(2)(xii) of the Registration Act. Therefore, we are of the view that though the auction purchaser derived title on confirmation of sale in their favour and a Sale Certificate was issued by the Authorised Officer, evidencing such sale and title, no further deed of transfer is required. In view of the judgment reported in (2007) 5 Supreme Court Cases 745 and the provisions of 17(2)(xii) of the Registration Act, the Sale Certificate issued by the second respondent/Authorised Officer requires registration."

17. As per Article 18 of the Stamp Act, the purchaser of any property sold by a public auction by a Civil or Revenue Officer or Collector or other Revenue Officer, is liable to pay the stamp duty on the consideration mentioned in the Sale Certificate. The Hon'ble Supreme Court in the judgment reported in 2007 (5) SCC 745 [cited supra] and the Division Bench of this Court in the judgment reported in 2013(5) CTC 337 [cited supra] held that the Authorized Officer of the bank cannot be equated with the Civil or Revenue Comp. App (AT) (CH) (INS.) No. 35 of 2022 Officer. Therefore, the sale made by the Authorized Officer is liable for stamp duty under Article 23 and not under Article 18 of the Stamp Act.

22. The Sale Certificate issued by the Authorised Officer of the bank cannot be agnated with the Sale Certificate issued by a Civil or Revenue Court. The nomenclature given to the document issued by the Authorized Officer would be irrelevant for exemption from payment of stamp duty and the same will not be covered under Article 18-C Schedule 1 of the Stamp Act.

23. If proper stamp duty is not paid for the said Sale Certificate and registered as required under law, then it is only a still born child and does not confer any right to the petitioner whatsoever. When the Sale Certificate is not properly stamped and registered, it is a void document and no right would vest upon the petitioner based on the same. As per Section 47-A of the Stamp Act, if the Registering Authority has reason to believe that the market value of the property, which is the subject matter of conveyance, has not been truly set-forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the market value of the said property and the proper duty payable thereon.

24. As already stated, the Sale Certificate issued by the Authorized Officer of the bank requires registration as well as stamp duty under Article 18-C read with Article 23 of Schedule 1 of the Stamp Act."

48. The Learned PCS for the 1st Respondent, adverts to the decision in P.M. Associates v. IFCI Limited, reported in (2014) 2 Law Weekly at Page 323, wherein, at Paragraph 8, it is observed as under:

``(iv) (2010) 8 Supreme Court Cases 383 [Meghmala and others Vs. G.Narasimha Reddy and others] wherein the Hon'ble Supreme Court held as follows in Paragraph No. 34:

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34. ``An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Suppression of a material document would also amount to a fraud on the court. (Vide S.P. Changalvaraya Naidu V. Jagannath, (1994) 1 SCC 1; Gowrishankar V. Joshi Amba Shankar Family Trust, (1996) 3 SCC 310: AIR 1996 SC 2202; Ram Chandra Singh V. Savitri Devi, (2003) 8 SCC 319; Roshan Deen V. Preeti Lal, (2002) 1 SCC 100: 2002 SC (L&S) 97: AIR 2002 SC 33; Ram Preeti Yadav V. U.P. Board of High School & Intermediate Education, (2003) 8 SCC 311: AIR 2003 SC 4628; and Ashok Leyland Ltd. Vs. State of Tamil Nadu, (2004) 3 SCC 1 : AIR 2004 SC 2836). "

49. The Learned PCS for the 1st Respondents seeks in aid of the decision of the Hon'ble Supreme Court of India in Suraj Lamp And Industries Pvt. Ltd. v. State of Haryana (2012 1 SCC - 656), wherein at Paragraph 24, it is observed as under:

24. ``We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of `GPA sales' or `SA/GPA/WILL transfers' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immoveable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of section 53A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Comp. App (AT) (CH) (INS.) No. 35 of 2022 Records. What is stated above will apply not only to deeds of conveyance in regard to freehold property but also to transfer of leasehold property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/WILL transactions known as GPA sales." (Emphasis Supplied)

50. It is represented on behalf of the 1st Respondent that `Wilful Violation' of the `Court' order is a `nullity' and `illegal' one and in this connection, the Learned PCS, refers to the decision of the Hon'ble Supreme Court of India in Delhi Development Authority v. Skipper Construction Company (P) Ltd. (1996) 4 SCC at Page 622, wherein, it is observed as follows:

17. ``The principle that a contemnor ought not to be permitted to enjoy and/or keep the fruits of his contempt is well-settled. In Mohd. Idris v. R.J. Babuji [1985 (1)

S.C.R.598], this Court held clearly that undergoing the punishment for contempt does not mean that the Court is not entitled to give appropriate directions for remedying and rectifying the things done in violation of its Orders.

The petitioners therein had given an undertaking to the Bombay High Court. They acted in breach of it. A learned Single Judge held them guilty of contempt and imposed a sentence of one month's imprisonment. In addition thereto, the learned Single Judge made appropriate directions to remedy the breach of undertaking. It was contended before this Court that the learned Judge was not justified in giving the aforesaid directions to in addition to punishing the petitioners for contempt of court. The argument was rejected holding that "the Single Judge was quite right in giving appropriate directions to close the breach [of undertaking]".

(Emphasis supplied) Comp. App (AT) (CH) (INS.) No. 35 of 2022

18. The above principle has been applied even in the case of violation of orders of injunction issued by Civil Courts. In *Clarke v. Chadburn* [1985 (1) All.E.R. 211], Sir Robert Megarry V-C observed:

"I need not cite authority for the proposition that it is of high importance that orders of the court should be obeyed. Willful disobedience to an order of the court is punishable as a contempt of court, and I feel no doubt that such disobedience may properly be described as being illegal. If by such disobedience the persons enjoined claim that they have validly effected some change in the rights and liabilities of others, I cannot see why it should be said that although they are liable to penalties for contempt of court for doing what they did, nevertheless those acts were validly done. Of course, if an act is done, it is not undone merely by pointing out that it was done in breach in law. If a meeting is held in breach of an injunction, it cannot be said that the meeting has not been held. But the legal consequences of what has been done in breach of the law may plainly be very much affected by the illegality. It seems to me on principle that those who defy a prohibition ought not to be able to claim that the fruits of their defiance are good, and not tainted by the illegality that produced them."

(Emphasis Supplied)

51. The Learned PCS for the 1st Respondent cites the decision of the Hon'ble Supreme Court of India in *Tayabhai M. Bagasarwalla & Another v. Hind Rubber Industries Pvt. Ltd. & Others* (1997) 3 SCC at Page 443, wherein, at Paragraph 28, it is observed as under:

28. ``..... these orders have to be obeyed and their violation can be punished even after the question of jurisdiction is decided against the plaintiff provided the violation is committed before the decision of the court on the question of Jurisdiction." Comp. App (AT) (CH) (INS.) No. 35 of 2022

52. The Learned PCS for the 1st Respondent points out the decision of the Hon'ble Supreme Court of India in *Styabrata Biswas v. Kalyan Kumar Kisku* (1994) 2 SCC at Page 266, wherein, at Paragraph

23, it is observed as under:

23. ``..... Any act done in the teeth of the order of status quo is clearly illegal. All actions including the grant of sublease are clearly illegal." (Emphasis Supplied)

53. On behalf of the 1st Respondent, a reference is made to the decision of the Hon'ble Supreme Court of India in Keshrimal Jivji Shah & Anr. V. Bank of Maharashtra, reported in 2004 SCC Online Bom 368, wherein at Paragraphs 26 and 27, it is observed as under:

26. ``We cannot accept Shri Naphade's contention that observations of the Supreme Court in the case of Surjeet Singh should be read as restricted to proceedings under Order 22, Rule 10 of Civil Procedure Code and the same cannot be extended to defiance of injunction order issued under Order 39, Rule 1 of Civil Procedure Code. Once the issue is placed on the pedestal of public policy and the very faith of litigants in Rule of law and administration of justice, then it is not possible to make the distinction or bifurcation suggested by Shri Naphade. It would mean that consequences of nullifying such transaction not being provided by the Statute, it would not lose its legal efficacy even if it is in utter disregard to or in violation of or breach of prohibitory order or order of injunction issued by a Court of law. It would mean that parties can breach and violate Court orders openly and with impunity and neither they nor the beneficiaries suffer any consequences. It is time that we recognise the principle that transfer of immovable property in violation of an order of injunction or prohibition issued by Court of law, confers no right, Comp. App (AT) (CH) (INS.) No. 35 of 2022 title or interest in the transferee, as it is no transfer at all. The transferee cannot be allowed to reap advantage or benefit from such transfer merely because he is not party to the proceedings in which order of injunction or other prohibitory direction or restraint came to be issued. It is enough that the transferor is a party and the order was in force. These two conditions being satisfied, the transfer must not be upheld. If this course is not adopted then the tendency to flout orders of Courts which is increasing day by day can never be curbed. The Court exercises its powers on the foundation of respect and regard for its authority by litigating public. People would loose faith and respect completely if the Court does not curb and prevent this tendency. The note of caution of the Supreme Court must be consistently at the back of everybody's mind. Therefore, Shri Naphade is not right in the distinction which he is trying to make.

(Emphasis Supplied)

27. Equally untenable is the contention of Shri Naphade that an order of injunction will bind only the transferor in this case. It is his submission that the said order does not bind the world at large. He submits that ownership rights are neither taken away nor restricted in any manner by order of injunction or other preventive directions. He submits that the transfer in favour of his client was thus neither invalid nor illegal, leave alone null and void. For the reasons already recorded above, we find it difficult to accept this contention of Shri Naphade. Decision of the Supreme Court in the

case of *Krishan Kumar Narula v. State of Jammu and Kashmir*, has no application. There, the Supreme Court was distinguishing an order of stay from an order of injunction. The distinction was made in the context of consequences upon breach and violation of such orders. It is in that context that the Supreme Court observed that the order of stay is qua a Court, whereas an order of injunction reaches and touches a party to the lis. These observations cannot be applied when it is noticed that during the pendency of an order of injunction, immovable property, which is subject matter of restraint or injunction, is transferred. When this course is admittedly adopted, then there is no choice but to declare the Comp. App (AT) (CH) (INS.) No. 35 of 2022 transaction as illegal. There is no question of then deciding the nature and effect of the order of injunction."

54. The Learned PCS for the 1st Respondent relies on the Full Bench Decision of the Hon'ble High Court of Madras in *Century Flour Mills Limited v. S. Suppiah & Ors.* 1975 SCC Online Mad. at Page 73, wherein at Paragraph 8, it is observed as under:

8. `` In our opinion, the inherent powers of this court under Section 151 C.P.C. are wide and are not subject to any limitation.

Where in violation of a stay order or injunction against a party, something has been done in disobedience, it will be the duty of the court as a policy to set the wrong right and not allow the perpetuation of the wrong doing. In our view, the inherent power will not only be available in such a case, but it is bound to be exercised in that manner in the interests of justice. Even apart from Section 151, we should observe that as a matter of judicial policy, the court should guard against itself being stultified in circumstances like this by holding that it is powerless to undo a wrong done in disobedience of the court's orders. But in this case it is not necessary to so to that extent as we hold that the power is available under Section 151. C.P.C." (Emphasis Supplied)

55. The Learned PCS for the 1st Respondent falls back upon the decision of the Hon'ble Supreme Court of India in *Sujit Pal v. Prabir Kumar Sun & Ors.* (1995) 6 SCC at Page 50, wherein, at Paragraphs 9 and 11, it is observed as under:

9. `` In a case like the present one where the 'restoring things to their former condition is the only remedy' the Court, in our opinion, has to take steps for the purpose in the exercise of its Comp. App (AT) (CH) (INS.) No. 35 of 2022 inherent power. In *Bhagat Singh v. Dewan Jagbir Sawhney*, AIR 1941 Cal 670, it has been observed by Lord Williams J. that the Code is not exhaustive; there are cases which are not provided for in it, and the High Court must not fold its hands and allow injustice to be done. Further, it has been observed by his Lordship that the law cannot make express provisions against all inconveniences, and that the Court had, therefore, in many cases where the circumstances warranted it, and the necessities of the case required it, acted upon the assumption of the possession of an inherent power to act *ex debito justitiae* and to do that real and substantial justice for the administration of which it alone exists.

(Emphasis supplied)

11. Thus it is apparent from the said observation of the Supreme Court that no technicality can prevent the Court from doing justice in exercise of its inherent power. Order 39, Rule 2A lays down a punitive measure for the purpose of compelling a party to comply with the order of injunction. The process as contemplated by the said provision may or may not be ultimately effective but, in any event, the procedure laid down in Order 39, Rule 2A is incapable of granting an immediate relief to a party who has been forcibly dispossessed in violation of an order of injunction. We do not think that in such a case the Court is powerless to grant relief to the aggrieved party in exercise of its inherent power. The very object for which Order 39, Rule 2A has been enacted will be fulfilled by the grant of a temporary mandatory injunction and restoration of possession of the aggrieved party. The inherent power of the Court as recognised in Section 151 of the Code is in addition to the power conferred on the Court under the provisions of the Code. All that the Court is concerned is to prevent abuse of the process of Court and to do justice by immediately intervening under circumstances which require such intervention by the Court."

56. While rounding up, the Learned PCS, appearing for the 1st Respondent, submits that the 'Application', filed under I & B Code, 2016, Comp. App (AT) (CH) (INS.) No. 35 of 2022 came to be admitted on 18.01.2021, and that the 'Sale Certificate', was issued on 20.01.2021, and that the 'Land', was 'Registered' only on 04.03.2021, which cannot be effected, due to an 'Imposition of Moratorium', as per Section 14 of the I & B Code, 2016, which clearly prohibits 'any action to 'Foreclose', 'Recover' or 'Enforce', as detailed vide Paragraph 5.1 of the 'Order' dated 18.01.2021 in CP No. 673 / 7 / HDB/2019, passed by the 'Adjudicating Authority'('NCLT', Bench - I, Hyderabad), between Bank of India, Mumbai (Branch Office at :

Hyderabad Large Corporate Branch, Hyderabad) v. M/s. ECI Infra Towers Company Pvt. Ltd., Hyderabad, Telangana (vide Page 159 of the Appellant's Appeal Paper Book - Diary No. 35 dated 13.01.2022).

Hon'ble Supreme Court's Decisions:

57. This 'Tribunal', points out the decision of the Hon'ble Supreme Court of India in B. Arvind Kumar v. Government of India & Ors., dated 28.05.2007 (vide Civil Appeal No. 3540 of 2002), reported in (2007) 5 SCC at Page 745, wherein at Paragraph 10, it is observed as under:

Re : Point (ii)

10. ``The plaintiff has produced the original registered sale certificate dated 29.8.1941 executed by the Official Receiver, Civil Station, Bangalore. The said deed certifies that Bhowrilal (father of plaintiff) was the highest bidder at an auction sale held on 22.8.1941, in respect of the right, title, interest of the insolvent Comp. App (AT) (CH) (INS.) No. 35 of 2022 Anraj Sankla, namely the leasehold right in the property described in the schedule to the certificate (suit property), that his bid of Rs.8,350 was accepted and the sale was confirmed by the District Judge, Civil and Military Station, Bangalore on 25.8.1941. The sale certificate declared Bhowrilal to be

the owner of the leasehold right in respect of the suit property. When a property is sold by public auction in pursuance of an order of the court and the bid is accepted and the sale is confirmed by the court in favour of the purchaser, the sale becomes absolute and the title vests in the purchaser. A sale certificate is issued to the purchaser only when the sale becomes absolute. The sale certificate is merely the evidence of such title. It is well settled that when an auction purchaser derives title on confirmation of sale in his favour, and a sale certificate is issued evidencing such sale and title, no further deed of transfer from the court is contemplated or required. In this case, the sale certificate itself was registered, though such a sale certificate issued by a court or an officer authorized by the court, does not require registration. Section 17(2)(xii) of the Registration Act, 1908 specifically provides that a certificate of sale granted to any purchaser of any property sold by a public auction by a civil or revenue officer does not fall under the category of non testamentary documents which require registration under sub-

section (b) and (c) of section 17(1) of the said Act. We therefore hold that the High Court committed a serious error in holding that the sale certificate did not convey any right, title or interest to plaintiff's father for want of a registered deed of transfer."

58. This `Tribunal, aptly points out the Judgment of the Hon'ble Supreme Court of India dated 20.08.2019 in Shakeena & Anr. V. Bank of India & Ors. (vide Civil Appeal Nos. 8097 - 8098 of 2009), wherein, at paragraphs 24 to 30, it is observed as under:

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24. ``After cogitating over the factual matrix and perusing the relevant records, it is seen that the ground of challenge considered by the High Court at the behest of the appellants in the impugned judgment, in our opinion, has become unavailable. In that, the matter proceeded before the High Court for setting aside the entire auction process on the premise that the sale certificate was yet to be registered in favour of the highest bidder (respondent No.3);

and the appellants had made (unsuccessful) attempts to exercise their right of redemption by offering the outstanding dues to the respondent bank. It was argued by the appellants that only upon registration of the sale certificate, the right of the borrower to redeem the mortgage would get extinguished and obliterated.

25. Indisputably, after the disposal of the writ appeals by the Division Bench of the High Court vide impugned judgment on 10th August, 2007, the auction purchaser (respondent No.3) got the sale certificate registered on 18th September, 2007 and then transferred the property by a registered sale deed on 5th October, 2007 to third party. It is not the case of the appellants that some interim injunction prohibiting respondent No.3 from registering the sale certificate or transferring the suit property, was operating against him after the decision of the Division Bench of High Court. In fact, the impugned judgment was not even carried in appeal before this Court by the appellants until

then. The special leave petitions came to be filed only on 13th October, 2007 and order of status quo was passed by this Court on 23rd November, 2007. In other words, there has been a paradigm shift in the rights of the parties upon registration of the sale certificate on 18th September, 2007 and also because of the registered sale deed in favour of third party on 5th October, 2007. The contention pursued before the High Court by the appellants, therefore, has now become unavailable.

26. Be it noted that the appellants had allowed the action taken by the respondent bank under Section 13(4) of the 2002 Act, to become final consequent to the order of the DRT rejecting challenge thereto due to non-compliance of the conditional order. Even the subsequent application for restoration of the DRT Comp. App (AT) (CH) (INS.) No. 35 of 2022 proceedings came to be rejected. The appellants then filed the subject Writ Petition (C) Nos.634-635 of 2006 on 19 th January, 2006, by which date the auction had already concluded including the sale certificate was issued in favour of the highest bidder on 6th January, 2006. Moreover, the principal assertion of the appellants before the High Court was that they were wanting to exercise their right of redemption of mortgage, but due to fortuitous situation and the inappropriate stand taken by the respondent bank were prevented from doing so. No other plea was pursued by the appellants in support of the reliefs claimed by them before the High Court, as can be discerned from the three points formulated in paragraph No.8 of the impugned judgment (reproduced in paragraph No.16 hereinabove). The appellants cannot be permitted to assail the auction process on any other count.

27. Reverting to the stand taken by the appellants that they had attempted to exercise their right of redemption by depositing an aggregate sum of Rupees Twenty Five Lacs on 30 th December, 2005 and 4th January, 2006, in the account of the father of appellant No.2 followed by issuing cheque(s) in the aggregate sum of Rs.25,21,446/- (Rupees Twenty Five Lacs Twenty One Thousand Four Hundred Forty Six Only), on 2nd January, 2006; and once again offering the amount by demand drafts in the sum of Rs.25,06,250/- (Rupees Twenty Five Lacs Six Thousand Two Hundred Fifty Only), on 18th January, 2006. This stand though attractive at the first blush, will have to be stated to be rejected. On the other hand, we find substance in the stand taken by the respondent bank that none of the above was a valid tender so as to extricate or discharge the appellants from their obligation to deposit the outstanding dues payable by them before the specified date. In that, the amount was allegedly deposited by them in the account of the father of appellant No.2 and not in their loan accounts as such. Unless the amount was transferred/deposited in the loan accounts of the appellants in relation to which the mortgage operated, it would not be a valid tender for paying the outstanding dues. Similarly, on the second occasion the appellants attempted to pay in the form of cheque(s) issued on 2nd January, Comp. App (AT) (CH) (INS.) No. 35 of 2022 2006. However, as per the terms and conditions for grant of loan payment by cheque(s) was not permissible. Thus, the respondent bank was not obliged to accept the amount in the form of cheque(s). The respondent bank, therefore, justly declined to accept the cheque(s), not being a valid tender. Even the third attempt made by the appellants was to offer demand drafts drawn in favour of or in the name of the Authorised Officer of the respondent bank and not in the name of the bank or authorising the bank to appropriate it towards the subject loan accounts. Hence, these demand drafts were rightly not accepted as a valid tender.

28. Notably, the appellants took no steps, whatsoever, to pay the outstanding dues to the respondent bank by way of a valid tender nor moved any formal application before the High Court after filing of the writ petitions on 19 January, 2006, to permit them to deposit the requisite amount either in the concerned loan accounts or in the court. That was not done even until the disposal of the writ petitions by the Single Judge or during the pendency of the writ appeals before the Division Bench and until the disposal thereof vide the impugned judgment. We must also notice the stand taken by the respondent bank that even the legal notice sent by the appellants to the respondent bank, in no way expresses unambiguous commitment of the appellants to exercise their right of redemption. Suffice it to observe that the appellants, for reasons best known to them, have not chosen to deposit the amount in the loan accounts or attempted to seek permission of the Court to deposit the same in Court from 19th January, 2006 immediately after filing of writ petitions or for that matter until the registration of the sale certificate on 18th September, 2007. In this backdrop, it is not possible to countenance the stand of the appellants that they had made a valid tender to the respondent bank or that the respondent bank had mischievously or malafide rejected their offer to defeat their rights, to redeem the mortgage before registration of the sale certificate on 18th September, 2007.

29. A fortiori, it must follow that the appellants have failed to exercise their right of redemption in the manner known to law, Comp. App (AT) (CH) (INS.) No. 35 of 2022 muchless until the registration of the sale certificate on 18th September, 2007. In that view of the matter no relief can be granted to the appellants, assuming that the appellants are right in contending that as per the applicable provision at the relevant time (unamended Section 13(8) of the 2002 Act), they could have exercised their right of redemption until the registration of the sale certificate - which, indisputably, has already happened on 18th September, 2007. Therefore, it is not possible to countenance the plea of the appellants to reopen the entire auction process. This is moreso because, the narrative of the appellants that they had made a valid tender towards the subject loan accounts before registration of the sale certificate, has been found to be tenuous. Thus understood, their right of redemption in any case stood obliterated on 18th September, 2007. Further, the amended Section 13(8) of the 2002 Act which has come into force w.e.f. 1st September, 2016, will now stare at the face of the appellants. As per the amended provision, stringent condition has been stipulated that the tender of dues to the secured creditor together with all costs, charges and expenses incurred by him shall be at any time before the "date of publication of notice" for public auction or inviting quotations or tender from public or private deed for transfer by way of lease assessment or sale of the secured assets. That event happened before the institution of the subject writ petitions by the appellants.

30. Having said thus, in the peculiar facts of the present case, we do not deem it necessary to dilate further on the argument that registration of the sale certificate in relation to the auction conducted under the 2002 Act is essential. Similarly, it is not necessary to examine other grounds urged by the appellants, in light of our conclusion that the appellants have failed to make a valid and legal tender to the respondent bank before the issue of sale certificate on 6th January, 2006, muchless registration thereof on 18th September, 2007."

59. In the Judgment of the Hon'ble Supreme Court of India in Kanaiyalal Lalchand Sachdev & Ors. V. State of Maharashtra & Ors. Comp. App (AT) (CH) (INS.) No. 35 of 2022 dated 07.02.2011,

wherein, at Paragraphs 18 to 20, it is observed as under:

18. ``The 2002 Rules, enacted under sub-section (1) and clause (b) of subsection (2) of Section 38 read with sub-sections (4), (10) and (12) of Section 13 of the Act, set down the procedure for enforcing a security interest. Rule 4 of the 2002 Rules deals with the possession of movable assets, whereas Rule 8 deals with the possession of immoveable assets. It is manifest that Rule 4 has no application to the facts of the instant case, as contended by the learned counsel for the State.

19. In *Authorised Officer, Indian Overseas Bank & Anr. Vs. Ashok Saw Mill*, the main question which fell for determination was whether the DRT would have jurisdiction to consider and adjudicate post Section 13(4) events or whether its scope in terms of Section 17 of the Act will be confined to the stage contemplated under Section 13(4) of the Act? On an examination of the provisions contained in Chapter III of the Act, in particular Sections 13 and 17, this Court, held as under:

"35. In order to prevent misuse of such wide powers and to prevent prejudice being caused to a borrower on account of an error on the part of the banks or financial institutions, certain checks and balances have been introduced in Section 17 which allow any person, including the borrower, aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor, to make an application to the DRT having jurisdiction in the matter within 45 days from the date of such measures having taken for the reliefs indicated in sub-section (3) thereof.

36. The intention of the legislature is, therefore, clear that while the banks and financial institutions have been vested with stringent powers for recovery of their dues, safeguards have also been provided for rectifying any error or wrongful use of such powers by vesting the DRT with authority after Comp. App (AT) (CH) (INS.) No. 35 of 2022 conducting an adjudication into the matter to declare any such action invalid and also to restore possession even though possession may have been made over to the transferee.

.....

39. We are unable to agree with or accept the submissions made on behalf of the appellants that the DRT had no jurisdiction to interfere with the action taken by the secured creditor after the stage contemplated under Section 13(4) of the Act. On the other hand, the law is otherwise and it contemplates that the action taken by a secured creditor in terms of Section 13(4) is open to scrutiny and cannot only be set aside but even the status quo ante can be restored by the DRT."

(Emphasis supplied by us)

20. We are in respectful agreement with the above enunciation of law on the point. It is manifest that an action under Section 14 of the Act constitutes an action taken after the stage of Section 13(4), and therefore, the same would fall within the ambit of Section 17(1) of the Act. Thus, the Act itself

contemplates an efficacious remedy for the borrower or any person affected by an action under Section 13(4) of the Act, by providing for an appeal before the DRT."

60. In the decision of the Hon'ble Supreme Court of India in *Transcore v. Union of India*, reported in (2008) 1 SCC at Page 125, wherein, at Paragraphs 73 and 74, it is observed as under:

``The word possession is a relative concept. It is not an absolute concept. The dichotomy between symbolic and physical possession does not find place in the Act. As stated above, there is a conceptual distinction between securities by which the creditor obtains ownership of or interest in the property concerned (mortgages) and securities where the creditor obtains neither an ownership nor possession of the property but the property is appropriated to the satisfaction of the debt (charges). Basically, the NPA Act deals with the former type of securities under which the secured creditor, namely, the bank/FI obtains interest in the property concerned. It is for this reason that the NPA Act ousts the intervention of the courts/ tribunals.

Keeping the above conceptual aspect in mind, we find that Section 13(4) of the NPA Act proceeds on the basis that the borrower, who is under a liability, has failed to discharge his liability within the period prescribed under Section 13(2), which enables the secured creditor to take recourse to one of the measures, namely, taking possession of the secured assets including the right to transfer by way of lease, assignment or sale for realizing the secured assets. Section 13(4-A) refers to the word "possession" simpliciter. There is no dichotomy in sub-section (4-A) as pleaded on behalf of the borrowers. Under Rule 8 of the 2002 Rules, the authorised officer is empowered to take possession by delivering the possession notice prepared as nearly as possible in Appendix IV to the 2002 Rules. That notice is required to be affixed on the property. Rule 8 deals with sale of immovable secured assets. Appendix IV prescribes the form of possession notice. It inter alia states that notice is given to the borrower who has failed to repay the amount informing him and the public that the bank/FI has taken possession of the property under Section 13(4) read with Rule 9 of the 2002 Rules. Rule 9 relates to time of sale, issue of sale certificate and delivery of possession. Rule 9(6) states that on confirmation of sale, if the terms of payment are complied with, the authorised officer shall issue a sale certificate in favour of the purchaser in the form given in Appendix V to the 2002 Rules. Rule 9(9) states that the authorised officer shall deliver the property to the buyer free from all encumbrances known to the secured creditor or not known to the secured creditor. (emphasis supplied). Section 14 of the NPA Act states that where the possession of any secured asset is required to be taken by the secured creditor or if any of the secured asset is required to be sold or transferred, the secured creditor may, for the purpose of taking possession, request in writing to the Comp. App (AT) (CH) (INS.) No. 35 of 2022 District Magistrate to take possession thereof. Section 17(1) of NPA Act refers to right of appeal. Section 17(3) states that if the DRT as an appellate authority after examining the facts and circumstances of the case comes to the

conclusion that any of the measures under Section 13(4) taken by the secured creditor are not in accordance with the provisions of the Act, it may by order declare that the recourse taken to any one or more measures is invalid, and consequently, restore possession to the borrower and can also restore management of the business of the borrower. Therefore, the scheme of Section 13(4) read with Section 17(3) shows that if the borrower is dispossessed, not in accordance with the provisions of the Act, then the DRT is entitled to put the clock back by restoring the status quo ante. Therefore, it cannot be said that if possession is taken before confirmation of sale, the rights of the borrower to get the dispute adjudicated upon is defeated by the authorised officer taking possession. As stated above, the NPA Act provides for recovery of possession by non-adjudicatory process, therefore, to say that the rights of the borrower would be defeated without adjudication would be erroneous. Rule 8, undoubtedly, refers to sale of immovable secured asset. However, Rule 8(4) indicates that where possession is taken by the authorised officer before issuance of sale certificate under Rule 9, the authorised officer shall take steps for preservation and protection of secured assets till they are sold or otherwise disposed of. Under Section 13(8), if the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the creditor before the date fixed for sale or transfer, the asset shall not be sold or transferred. The costs, charges and expenses referred to in Section 13(8) will include costs, charges and expenses which the authorised officer incurs for preserving and protecting the secured assets till they are sold or disposed of in terms of Rule 8(4). Thus, Rule 8 deals with the stage anterior to the issuance of sale certificate and delivery of possession under Rule 9. Till the time of issuance of sale certificate, the authorised officer is like a court receiver under Order XL Rule 1 CPC. The court receiver can take symbolic possession and in appropriate cases where the court receiver finds that a third party interest is likely to be created Comp. App (AT) (CH) (INS.) No. 35 of 2022 overnight, he can take actual possession even prior to the decree. The authorized officer under Rule 8 has greater powers than even a court receiver as security interest in the property is already created in favour of the Banks/FIs. That interest needs to be protected. Therefore, Rule 8 provides that till issuance of the sale certificate under Rule 9, the authorized officer shall take such steps as he deems fit to preserve the secured asset. It is well settled that third party interests are created overnight and in very many cases those third parties take up the defence of being a bona fide purchaser for value without notice. It is these types of disputes which are sought to be avoided by Rule 8 read with Rule 9 of the 2002 Rules. In the circumstances, the drawing of dichotomy between symbolic and actual possession does not find place in the scheme of the NPA Act read with the 2002 Rules."

61. In the decision of the Hon'ble Supreme Court of India in Embassy Property v. State of Karnataka (2019) SCC Online SC 1542, wherein, at Paragraph 37, it is observed as under:

37. ``From a combined reading of Sub-section (4) and Sub-section (2) of Section 60 with Section 179, it is clear that none of them hold the key to the question as to

whether NCLT would have jurisdiction over a decision taken by the government under the provisions of MMDR Act, 1957 and the Rules issued thereunder.

The only provision which can probably throw light on this question would be Subsection (5) of Section 60, as it speaks about the jurisdiction of the NCLT. Clause (c) of Subsection (5) of Section 60 is very broad in its sweep, in that it speaks about any question of law or fact, arising out of or in relation to insolvency resolution. But a decision taken by the government or a statutory authority in relation to a matter which is in the realm of public law, cannot, by any stretch of imagination, be brought within the fold of the phrase "arising out of or in relation to the insolvency resolution"

appearing in Clause (c) of Subsection (5). Let us take for instance a case where a corporate debtor had suffered an order at the hands Comp. App (AT) (CH) (INS.) No. 35 of 2022 of the Income Tax Appellate Tribunal, at the time of initiation of CIRP. If Section 60(5)(c) of IBC is interpreted to include all questions of law or facts under the sky, an Interim Resolution Professional/Resolution Professional will then claim a right to challenge the order of the Income Tax Appellate Tribunal before the NCLT, instead of moving a statutory appeal under Section 260A of the Income Tax Act, 1961. Therefore the jurisdiction of the NCLT delineated in Section 60(5) cannot be stretched so far as to bring absurd results. (It will be a different matter, if proceedings under statutes like Income Tax Act had attained finality, fastening a liability upon the corporate debtor, since, in such cases, the dues payable to the Government would come within the meaning of the expression "operational debt" under Section 5(21), making the Government an "operational creditor" in terms of Section 5(20). The moment the dues to the Government are crystalised and what remains is only payment, the claim of the Government will have to be adjudicated and paid only in a manner prescribed in the resolution plan as approved by the Adjudicating Authority, namely the NCLT.)"

62. In the decision of Hon'ble Supreme Court of India in Eureka Forbes Limited v. Allahabad Bank and Ors., reported in 2010 (6) SCC, wherein, at Paragraphs 76 to 78, it is observed as under:

76. ``The legislative object of expeditious recovery of all public dues and due protection of security available with the Bank to ensure pre-payments of debts cannot be achieved when the officers/officials of the Bank act in such a callous manner. There is a public duty upon all such officers/officials to act fairly, transparently and with sense of responsibility to ensure recovery of public dues. Even, an inaction on the part of the public servant can lead to a failure of public duty and can jeopardize the interest of the State or its instrumentality.

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77. In our considered opinion, the scheme of the Recovery Act and language of its various provisions imposes an obligation upon the Banks to ensure a proper and expeditious recovery of its dues. In the

present case, there is certainly ex facie failure of statutory obligation on the part of the Bank and its officers/officials. In the entire record before us, there is no explanation much less any reasonable explanation as to why effective steps were not taken and why the interest of the Bank was permitted to be jeopardized.

78. The concept of public accountability and performance is applicable to the present case as well. These are instrumentalities of the State and thus all administrative norms and principles of fair performance are applicable to them with equal force as they are to the Government department, if not with a greater rigor. The well established precepts of public trust and public accountability are fully applicable to the functions which emerge from the public servants or even the persons holding public office. In the case of *State of Bihar v. Subhash Singh* [(1997) 4 SCC 430], this Court, in exercise of the powers of judicial review stated that, the doctrine of full faith and credit applies to the acts done by officers in the hierarchy of the State. They have to faithfully discharge their duties to elongate public purpose." Hon'ble High Court's Decisions:

63. In the decision of the Hon'ble High Court of Madras in *Re, The Official Liquidator*, High Court of Madras, 2010 (2) CTC 113, whereby and whereunder, at Paragraphs 56 to 59, it is observed as under:

56. ``There is one more crucial issue. Section 17 (2) (xii) refers only a Certificate of Sale granted to the purchaser of a property in public auction by a Civil or Revenue Officer. Section 89 (4) uses the term ``Revenue Officer" alone. The question as to who is a Civil or Revenue Officer, did not fall for consideration either in the decision of the Division Bench in *K. Chidambaram Manickam* or in any other decision. The only case where this question was Comp. App (AT) (CH) (INS.) No. 35 of 2022 considered, was in *Shanti Devi L. Singh*. But in that case, the Supreme Court was concerned with a sale made by the Tax Recovery Officer of the Income Tax Department. Since the Tax Recovery Officer was collecting the revenue due to the Government, by selling the property of the Assessee in public auction, the Supreme Court extended the meaning of the term ``Civil or Revenue Officer" to a Tax Recovery Officer in *Shanti Devi L. Singh* case. If a person selling a property in public auction is not a ``Civil or Revenue Officer", the sale made by him will not fall under Section 17 (2) (xii). If he is not a ``Revenue Officer", it will not also fall under Section 89 (4).

57. The term ``Revenue Officer" is defined in ``Advanced Law Lexicon by P. Ramanatha Iyer" as ``an Officer employed in or about the business of any branch of the public revenue". This definition was culled out from the Explanation to Section 125 of the Indian Evidence Act, 1872. In *Sheopatsingh vs. Harishchandra* {AIR 1958 Rajasthan 324}, it was held that the term ``Revenue Officer" will include such Officers of the Income Tax, Sales Tax and Irrigation Department. Again in *Gopi Parshad vs. State of Punjab* {AIR 1957 Pun. 45}, it was held that the expression revenues means ``the income of the nation derived from its taxes, duties or other sources, for the payment of the nations expenses".

It is a term generally used in referring to income of a Government or governmental sub division and as so used means all the public moneys which the State collects and receives from whatever source and in whatever manner. In *Kishore Chandra Deo Bhanj vs. Raghunath Misra* {AIR 1959 SC 589}, the Village Accountants were also held to be Revenue Officers.

58. Similarly, the term "Civil Officer" is defined in "Advanced Law Lexicon by P.Ramanatha Iyer" as "any Officer holding appointment under the Government except in the Military or Naval Service, whether the duties are Executive or Judicial or in the highest or the lowest departments". The term "Civil Officer" has to be understood only in the context of "civilians" as opposed to persons in Military Service. It is doubtful, if an Official Liquidator Comp. App (AT) (CH) (INS.) No. 35 of 2022 can be equated to a Civil Officer or a Revenue Officer, so as to make the certificate of sale issued by him come within the purview of Section 17(2)(xii) of the Registration Act, 1908. I do not think that an Official Liquidator can be considered to be a "Revenue Officer" within the meaning of Section 89(4) since he is not collecting revenue for the Government. Even assuming for the sake of argument that he can be equated, Article 18 under Schedule-I of the Indian Stamp Act makes a certificate of sale issued by a Revenue Officer also liable to stamp duty. The term "Revenue Officer" appearing both in Article 18 under Schedule-I of the Indian Stamp Act and also in sections 17(2)(xii) and 89(4) of the Registration Act, are to be given the same meaning and to be construed to indicate the same person.

59. Therefore, the only conclusion that one can draw by a combined reading of the provisions of the Transfer of Property Act, 1882, the Indian Stamp Act, 1899 and the Registration Act, 1908 is that by whatever name the instrument is called (whether certificate of sale or Sale Deed), the instrument is chargeable with stamp duty, under Article 18 read with Article 23 of Schedule I to the Stamp Act. While the Official Liquidator can leave the choice to the auction purchaser to choose the title to or the nomenclature of the document, neither he nor the purchaser has any choice with regard to the liability to pay stamp duty."

64. In the decision of Hon'ble High Court of Madras in *Cenney Hotels Pvt. Ltd., through its Managing Director v. State of Tamilnadu*, represented by Inspector General of Registration, reported in (2010) 4, Current Tamilnadu Cases, at Page 802, wherein at Paragraph 14, it is observed as under:

14. ``A reading of the above judgment would reveal that the purchaser of a property by sale through Civil or Revenue Court has no disadvantage because of lack of registration in view of the fact Comp. App (AT) (CH) (INS.) No. 35 of 2022 that under Section 17 (2) (xii) of the Registration Act, Certificate of Sale is not a compulsory registrable document and consequently, the transfer of title in his favour will not be vitiated by non-

registration. But so far as the certificate issued by the Authorised Officer is concerned, it cannot be equated with the certificate issued by the Revenue or Civil Court. As contended by the Learned Counsel for the Petitioner, the nomenclature given to the document issued by the Authorised Officer may not be relevant for giving exemption from paying the stamp duty since the Sale Certificate

issued by the Authorised Officer will not be covered by Article 18 of Schedule I of the Stamp Act. In my considered opinion, the judgment delivered by this Court in *In Re, The Official Liquidator*, High Court, Madras, 2010 (2) CTC 113 by considering the earlier judgments, has set forth the correct position of law. In view of the above, I do not find any infirmity in the order passed by the 1st Respondent."

65. In the decision of the Hon'ble High Court of Madras in *M/s. Kathikkal Tea Plantations*, rep. by its Managing Director N. Thiruneelakandan, *Melur, Nilgiris v. State Bank of India*, rep. by its Chief Manager, V.M. Palaniswamy, *Nilgiris & Anr.*, reported in 2009 (4) Law Weekly at Page 395, wherein, it is observed and held that 'once the Sale Certificate', was issued and the 'Money', was 'Recovered', the purpose is over, and therefore, it cannot be 'termed' as a 'Secured Creditor', and the 'Property', cannot be 'Secured Debt'. Further, it was observed that, the 'Banks', are entitled, to take 'Possession', under Section 14 (2) of the SARFAESI Act and the 'Issuance of Sale Certificate', is not a 'Bar', to take 'physical possession'.

Comp. App (AT) (CH) (INS.) No. 35 of 2022 Principle of Lis Pendens:

66. The Principle of Lis Pendens under Section 52 of the Transfer of Property Act, 1882, 'applies', not only, to the 'Private Transfers inter vivos', but also to the 'Court Sales', as per decision in *Sayar Bai v. Yashoda Bai & Ors.*, reported in AIR 1983 Raj. 161'.

67. It is pointed out that a subsequent 'Transferee', even though, he has obtained the 'Transfer', without 'Notice' of 'Original Contract', cannot set up against the 'Plaintiff' - 'Agreement Holder', any 'Right', defeating the 'Rule of Lis Pendens', which is founded upon 'Public Policy', as per decision in *P. Lakshmi Ammal v. S. Lakshmi & Ors.*, AIR 1991 Mad.

137.

68. When the 'Doctrine of Lis Pendens', is attracted, the 'Transferee', cannot take the 'Plea' of 'Good Faith', to avoid 'applicability of rule', as per decision *Balwinderjit Kaur v. Financial Commissioner*, AIR 1987 P & H 189.

69. Section 52 of Transfer of Property Act, 1882, creates only a 'right', to be 'enforced', to be 'avoid', a 'Transfer', made 'pendente lite'. Section 54 of the Transfer of Property Act, 1882 :

70. It is pointed out that 'No Sale', can be 'effected', without a 'registered instrument', where the 'Consideration', is more than Rs. 100/-, Comp. App (AT) (CH) (INS.) No. 35 of 2022 as per decision in *Jyotish Deka & Ors. v. On the death of Gajendra Deka, his Legal Heirs*, AIR 2015 Gau. 142.

71. It is to be remembered that a 'Sale' of a 'tangible immovable property' of 'value' of 'more than Rs. 100/- and upwards' or 'intangible thing', requires 'Registration', as per decision *M.E. Moolla & Sons Ltd., v Official Assignee*, Rangoon, AIR 1936, Privy Council 230. The Registration Act, 1908:

72. Section 17 of the Registration Act, 1908, furnishes a long 'List of Instruments', for which, 'Registration', is 'compulsory', and Clause (b) of sub-section 1 (prohibits that the 'Non-Testamentary Instruments'), which purport to 'operate', to 'create', 'declare', 'assign', 'limit' or 'extinguish', whether in 'present' or in 'future', any 'right', 'title' or 'interest', whether 'vested' or 'contingent value of Rs. 100/-' and 'upwards' to or in 'immovable property', must be 'Registered'.

73. No wonder, a 'Registered Document', has more 'Probative Value', than an 'Unregistered' one, as per decision 'AIR 2014 SC 1356'.

74. For an 'efficient', 'facile' and a 'smooth functioning' of the 'system', 'Registration Act, 1908', imposes, certain 'Duties' and 'Obligations', upon a 'State Government'.

Comp. App (AT) (CH) (INS.) No. 35 of 2022 Civil Post:

75. A 'Civil Post', means a 'Post', not connected with 'Defence', outside the 'regular Civil Services', as per decision of the Hon'ble Supreme Court of India, in 'State of Assam & Ors. v Shri Kanak Chandra Dutta', AIR 1967 SC 884, 886.

Civil Officer:

76. According to Ramanatha Aiyar, The Law Lexicon 5th Edition, a 'Civil Officer', is defined as 'Any Officer, holding under the 'Government', except in 'Military' of 'Naval Service', whether the 'Duties', are 'Executive' or 'Judicial' or in the 'Highest' or 'Lowest Departments'.

Revenue Officer:

77. In the decision in Sheopat Singh v Harish Chandra & Anr., AIR 1958 Raj., it is observed and held that the term, 'Revenue Officer', will include such 'Offices of Income Tax'.

78. In Gopi Parshad v State of Punjab, AIR 1957 P & H 45, it is held that the expression, 'the Revenue', means the 'Income of Nation', derived from its 'Taxes', 'Duties' or the 'other Sources', for the 'payment of Nation's Expenses'.

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79. In the decision Apambi Kabuini v Chief Commissioner, AIR 1965 Mani. at Pages 3 & 8, it is held that the 'Chief Commissioner' or 'Administrator', as he is called in the 'Act', has the 'Right of Review', and he is included, within the term 'Revenue Officer', in Section 96 of the 'Act'.

80. The expression, 'Revenue Officer' in Section 89 of the 'Registration Act', includes 'Tax Revenue Officer', as per decision of the Hon'ble Supreme Court of India in Shanti Devi Lal Singh v. Tax Recovery Officer, AIR 1991 SC 1880.

Charge:

81. A 'Charge', is an 'Encumbrance', a 'Right' vested in 'one Person', to 'look to the proceeds of another's Property', for 'satisfaction of a Debt due', which may be through an 'Agreement of Law', as opined by this 'Tribunal'.

Confirmation of Sale:

82. A 'Confirmation of Sale', by a 'Secured Creditor', under subrule 6 of Rule 9 of 'Security Interest Enforcement Rules, 2002', is necessary for 'Finalising a Sale'.

Moratorium:

83. The 'Moratorium', comes into 'operative play', when an 'Application' / 'Petition', under Section, 7, 9 and 10 of the I & B Code, Comp. App (AT) (CH) (INS.) No. 35 of 2022 2016, gets 'Accepted', and continues, till the end of 'Insolvency and Resolution Process'. As a result of the 'start of Process of Insolvency', a 'Moratorium' is imposed, it has an effect of protecting the 'Assets' of a 'Debtor', who is under 'Insolvency'.

84. Under the I & B Code, 2016, the 'Proceedings' under 'SARFAESI Act, 2002', may come within the ambit of 'Moratorium' only, if the 'relief' sought, is in respect of the 'Properties' of the 'Corporate Debtor', in the considered opinion of this 'Tribunal'.

85. Once, the 'Moratorium', is set in 'motion', the 'Petitioner's Right', shall get 'protected'. As a 'logical corollary', the 'Assets' of a 'Corporate Financial Debtor', is ought not to be 'Liquidated', until the 'Corporate Insolvency Resolution Process', is 'completed'. Evaluation:

86. Before the Adjudicating Authority' ('NCLT', Hyderabad Bench-I, Hyderabad), the '1st Respondent / Petitioner / Resolution Professional had preferred an IA No. 124 of 2021 in CP (IB) No. 673 / 7 / HDB /2019, wherein, it was averred that the 'Appellant' / '1st Respondent', is one of the 'Financial Creditors' of the 'Corporate Debtor' (the 'Debt' of the 'Corporate Debtor', having been assigned by one of the 'Secured Creditors' of the 'Corporate Debtor', Viz. United Bank of India). The '2nd Respondent', was mentioned as the 'Purchaser' of the 'Properties' of the Comp. App (AT) (CH) (INS.) No. 35 of 2022 'Corporate Debtor', in a 'Private Treaty', from the 'Appellant' / '1st Respondent'.

87. According to the '1st Respondent' / 'Resolution Professional', in the course of discharging the 'Duties', as an 'Interim Resolution Professional', to take into custody and control of the Assets of the 'Corporate Debtor', had visited the 'Plant' location of the 'Corporate Debtor', situated at Kaveli Village, Sangareddy District ('Formerly Medak'), and found the 'Boards', displaying the name of M/s. Srinivasa Edifice Private Limited (2nd Respondent) and the Security Person, deployed over there, had not allowed the 'Interim Resolution Professional', to visit the 'Plant' and asked him to speak with the concerned Authority over Phone and furnish the Contact Number.

88. It comes to be known that the 'Interim Resolution Professional', had contacted the concerned authority, over Phone, i.e., Mr. Shitanshu, from the 'Appellant' / the 'Financial Creditor', and he informed the 'Interim Resolution Professional', that the 'Plant', was already sold to the 2nd Respondent / M/s. Srinivasa Edifice Pvt. Ltd. However, the 'Security Persons', still gave the name and Contact Number of the 'Appellant'/'1 st Respondent', as the concerned 'Authority'.

89. According to the 1st Respondent / Resolution Professional, the 'Financial Creditor' (the 'Appellant'), was requested to provide details Comp. App (AT) (CH) (INS.) No. 35 of 2022 Viz., (a) the date of 'Sale Notice' (b) 'Auction Notice' and (c) 'Name of the Successful Bidder' (d) 'Bid Amount' and also the (e) 'Valuation Reports' of the 'Independent Third Party Valuers', appointed by the 'Financial Creditor' (the 'Appellant'), etc. through an email, but, was not in receipt of the same.

90. The grievance of the 1st Respondent / Petitioner / Resolution Professional, before the 'Adjudicating Authority', in IA No. 124 of 2021 in CP (IB) No. 673 / 7 / HDB /2019, is that he had made a request to the 'Financial Creditor' ('Appellant'), to furnish the Private Treaty Agreement Copy, but, was not provided, but was given, only the 'Offer Letter', furnished by the 2nd Respondent, for 'Purchase', under Private Treaty' dated 18.11.2020.

91. Added further, the 'Appellant' / 'Financial Creditor', without issuing the 'Sale Notice', even once and not called for the 'Bids', in an 'Open Auction', but entered into a 'Private Treaty', and limited the purview of maximising the 'Value of the Assets of the Corporate Debtor', thereby 'deprived' the other 'Creditors' of the 'Corporate Debtor', to recover their 'Dues'.

92. According to the 1st Respondent / Resolution Professional, the 'Appellant' / 'Financial Creditor', was well aware of the 'Insolvency Petition', filed before the 'Adjudicating Authority', against the 'Corporate Comp. App (AT) (CH) (INS.) No. 35 of 2022 Debtor', and in a very clandestine manner, without obtaining a 'No Objection Certificate', from the subservient (2nd Charge Holder i.e., Bank of India) for the reasons best know to him, sold the 'Assets' of the 'Corporate Debtor', in a 'Private Treaty', and issued the 'Sale Certificate', during the 'Moratorium'.

93. The stand of the 1st Respondent / Resolution Professional is that the 'Appellant' / 1st Respondent / Financial Creditor, had issued a Sale Certificate on 20.01.2021. during the 'Moratorium Period', which is impermissible, as per Section 14 of the I & B Code, 2016.

94. That apart, the 'Sale Confirmation Letter', issued by the 'Appellant' / 1st Respondent / Financial Creditor', to and in favour of the 2nd Respondent dated 30.11.2021 and the 'Sale Certificate', issued on 20.01.2021, are invalid in the 'eye of Law'.

95. The categorical plea of the 1st Respondent / Petitioner / Resolution Professional is that, he is obligated to take custody and control of the 'Assets' of the 'Corporate Debtor' and further that the 'Adjudicating Authority' ('Tribunal'), can direct the 'Local Administration', to assist him, to take 'Control' and 'Custody' of the 'Assets' of the 'Corporate Debtor', considering the fact that the 'subject Assets', stand in the name of 'Corporate Debtor', as per 'Encumbrance Statement', issued

by the 'Registration Department' of 'Telangana'.

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96. In view of the above, before the 'Adjudicating Authority', the 1st Respondent / Resolution Professional, had prayed for, (a) passing of an 'Order' in 'Setting aside', the 'Sale Certificate', issued by the 'Appellant' / 'Financial Creditor', to and in favour of the '2nd Respondent', (b) to pass an 'Order', in directing the 'Respondents' in 'Interlocutory Application' No. 124 of 2021 therein, to handover the 'Properties' of the 'Corporate Debtor', including Company's entire fixed and current assets, including stocks and receivables, which include 'Plant and Machinery', on the lease hold land admeasuring Plant and Machinery on the lease hold land admeasuring Ac. 11.37 guntas in Sy. No. 334 / A, 3 / 1A, 3 / 1B, 5 and Ac. 10.27 guntas in Sy. No. 332 / A, 333/A, 7, 8B, 8A, are situated at Kaveli Village, Kohir Mandal, Sangareddy District (erstwhile Medak District) and (d) to pass an 'Order', in directing the 'Commissioner of Police', Sangareddy at Office of the 'Superintendent of Police', Sangareddy to provide necessary assistance to him and his team, to takeover the 'Control' and 'Custody' of the 'Properties' of the 'Corporate Debtor', etc.

97. It transpires that the 'Appellant' / '1st Respondent', had preferred OA No. 598 of 2018 (before the Debts Recovery Tribunal, Hyderabad, against the '1st Respondent' / 'M/s. ECI India Towers Company Pvt. Ltd.', Hyderabad, and three Ors. (as 'Defendants'), seeking 'Recovery of Comp. App (AT) (CH) (INS.) No. 35 of 2022 Sum of Rs.20,97,66,801.41 from the 'Defendants', with costs and future interest at 24% per annum with monthly rests from 20.08.2018, till the 'Date of Full Payment / Realisation', and for passing of an 'Order', in respect of the 'Sale' of the application 'Schedule Properties'. Later, the 'Bank', had assigned the 'Debt' of the 'Defendants', in favour of the 'Appellant', with 'Underlying Securities', and that the said 'ARC', was substituted as an 'Applicant', in the Original Application, to recover the 'Debt', from the 'Defendants'.

98. It is evident that the 'Debts Recovery Tribunal - I', Hyderabad, in OA No. 598 of 2018 on 05.02.2020, had allowed the Original Application with costs, by directing the 'Defendant Nos. 1 to 4', jointly and severally liable to pay the 'Appellant' / '1st Respondent' / 'Applicant', to pay a 'Sum' of Rs.20,97,66,801.41 with future 'Interest' at the rate of 14.85% 'Simple' from 20.08.2018, till the 'Date of Full Payment / Realisation'.

99. Also, in the 'Order' of the aforesaid 'OA No. 598 of 2018', the 'Debts Recovery Tribunal', had mentioned the 'Claim' of the 'Appellant'/'1st Respondent'/'Applicant', was 'Secured', by way of a 'Hypothecation of Movables', and by way of 'Equitable Mortgage', over the application 'Schedule Properties', and that the 'Appellant'/'1st Respondent'/Applicant', was 'entitled' to proceed against the same, towards the 'Recovery' of the 'Debt'. Further 'Appellant'/'Applicant', Comp. App (AT) (CH) (INS.) No. 35 of 2022 was entitled to, proceed against the 'Person' and 'Properties' of the 'Defendants', to 'Recover', the 'Debt'.

100. Before the 'Adjudicating Authority', ('National Company Law Tribunal', Hyderabad Bench - I, Hyderabad), the 'Bank of India', Mumbai, had filed CP (IB) No. 673 / 7 / HDB / 2019 (under Section 7 of the I & B Code read with Rule 4 of the I & B (AAA) Rules 2016, against the '1st

Respondent' / 'Corporate Guarantor', and the 'Adjudicating Authority', 'Admitted', the 'Application' on 18.01.2021 and 'Declared Moratorium', with effect from 18.01.2021, till the completion of 'Corporate Insolvency Resolution Process', or till the 'Resolution Plan', was approved under Sub-section 1 of Section 31 or till the passing of an 'Order', for 'Liquidation' of 'Corporate Debtor', under Section 33, whichever was earlier. Also, the 'Interim Resolution Professional', was 'appointed', by the 'Adjudicating Authority'.

101. To be noted that the 'subject Asset', over which the 'Security Interest', was created to and in favour of 'United Bank of India' (under SARFAESI Act, 2002), by the 'Borrower', was purportedly 'assigned', in favour of the 'Appellant' / '1st Respondent', through 'Assignment Deed', dated 04.04.2019.

102. The 'Appellant' / '1st Respondent', had caused a 'Notice', as per Section 13 (1) of the SARFAESI Act, 2002, requiring the 'Borrower', to Comp. App (AT) (CH) (INS.) No. 35 of 2022 wipe out the 'Liability', within the time prescribed therein and owing to the failure of the 'Borrower', in fulfilling the conditions of the 'Demand Notice', the 'Secured Asset', was taken possession by means of the 'Possession Notice' dated 27.09.2019 and subsequently, the 'Property', was sold, based on a 'Private Treaty', to the 2nd Respondent for a 'Monetary Consideration of Rs.9,75,00,000/-'.

103. As a matter of fact, the 'Sale', was affirmed on 20.01.2021, and was Registered on 04.03.2021 in the Office of the Sub-Registrar, Zaheerabad, Medak District, in favour of the '2nd Respondent'.

104. In this connection, this 'Tribunal', points out that based on the three 'Expression of Interest', received on 25.09.2020, for the 'Sale of Property', under 'Private Treaty', the '2nd Respondent' selected as 'H1 Bidder', who submitted an 'Offer' of 'Rs.9.00 Crores', and on 30.11.2020, the 'Confirmation of Sale', with a 'Revised Final Offer' of 'Rs.9.75 Crores, to pay within 30 days', was made and the entire Amount', as per the 'extension of time', was paid by the 2nd Respondent, on 07.01.2021 (the 'Balance Sum of Rs.6.75 Crores was paid by the 2nd Respondent). It is brought to the fore on 20.01.2021, the 'Appellant' / '1st Respondent', issued a 'Sale Certificate', in favour of the '2nd Respondent'.

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105. The 'Interim Resolution Professional' (appointed by the 'Adjudicating Authority', in CP (IB) No. 673 / 7 / HDB / 2019, on 18.01.2021), had issued a 'Public Notice of Moratorium', on 22.01.2021 and that the 'Appellant' / '1st Respondent', Registered the 'Sale Certificate' dated 20.01.2021, in favour of the '2nd Respondent'.

106. There is no second opinion of the fact that the 'Moratorium', declared by the 'Adjudicating Authority', ('National Company Law Tribunal', Hyderabad Bench - I, Hyderabad), was published on 22.01.2021, and later the 'Sale Certificate', dated 20.01.2021, in favour of the '2nd Respondent', was 'Registered' by the 'Appellant' / '1st Respondent', which is in 'Negation', of the ingredients of Section 14 (1)

(a) of the 'Code'. Therefore, the 'Plea', taken on behalf of the 'Appellant' / '1st Respondent', that the 'Registration' of 'Sale Certificate', is only a 'Ritualistic Formality', is not 'acceded to', by this 'Tribunal', especially, the 'Registration' of 'Sale Certificate', was made in 'breach of the Order of Moratorium', declared by the 'Adjudicating Authority', in the main Company Petition, on 18.01.2021.

107. As far as the present case is concerned, the 'Sale', by an 'Authorised Officer', pursuant to a 'Private Treaty', between the 'Appellant' / '1st Respondent' and the '2nd Respondent', is to be 'Compulsorily Registered', and also the 'Requisite Stamp Duty', is to be Comp. App (AT) (CH) (INS.) No. 35 of 2022 paid, in terms of 'Article 18C, read with Article 23 of Schedule I of the Stamp Act, 1899', as held by this 'Tribunal'. As such, the contra plea taken on behalf of the 'Appellant' / '1st Respondent', is 'unworthy of acceptance'.

108. In this connection, this 'Tribunal', relevantly points out that the 'Plea' of 'Good Faith', as per Section 44 of the I & B Code, 2016, is not available to the '2nd Respondent' (pertaining to the Acquiring of Property in question), because of the fact that, the 'Sale Certificate', in the instant case was 'Registered', 'violating' the clear 'Order' of 'Moratorium' in force (vide 'Order' dated 18.01.2021, passed by the 'Adjudicating Authority', 'National Company Law Tribunal', Hyderabad Bench - I, Hyderabad, in IA No. 124 of 2021 in CP(IB) No. 673 / 7 / HDB / 2019), the 'Sale Certificate' dated 20.01.2021, issued by the 'Appellant' / '1st Respondent', in favour of the '2nd Respondent' and the said 'Certificate', which got 'Registered', on 04.03.2021, are clearly 'non-est in Law' and further that the '2nd Respondent', cannot 'Stake', any 'Claim' / get any 'Advantage' / 'Title' / 'Interest' or 'Right', in regard to the Property, covered under the 'Sale Certificate' dated 20.01.2021.

109. Indeed, the Hon'ble Supreme Court of India in the Judgment in Duncans Industries Limited v A.J. Agrochem (vide Civil Appeal No.5120 of 2019) dated 04.10.2019, at Paragraph 28, had observed the following:

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28. ``..... Therefore, considering Section 238 of the IBC, which is a subsequent Act to the Tea Act, 1953, shall be applicable and the provisions of the IBC shall have an overriding effect over the Tea Act, 1953. Any other view would frustrate the object and purpose of the IBC. If the submission on behalf of the appellant that before initiation of proceedings under Section 9 of the IBC, the consent of the Central Government as provided under Section 16G(1)(c) of the Tea Act is to be obtained, in that case, the main object and purpose of the IBC, namely, to complete the "corporate insolvency resolution process" in a timebound manner, shall be frustrated.

The sum and substance of the above discussion would be that the provisions of the IBC would have an overriding effect over the Tea Act, 1953 and that no prior consent of the Central Government before initiation of the proceedings under Section 7 or Section 9 of the IBC would be required and even without such consent of the Central Government, the insolvency proceedings under Section 7

or Section 9 of the IBC initiated by the operational creditor shall be maintainable."

110. One cannot remain in 'Oblivion', as to the crystalline fact, that the 'Appellant' / '1st Respondent', had 'Registered' the 'Sale Certificate', to and in favour of the '2nd Respondent', in utter disregard to the 'Order' of 'Moratorium', declared by the 'Adjudicating Authority', in the main CP (IB) No. 673 / 7 / HDB / 2019 dated 18.01.2021. Viewed in that perspective, the 'availing of remedy', under 'Section 17 (1) of the SARFAESI Act, 2002', by the 'Aggrieved', before the 'Debts Recovery Tribunal - I', Hyderabad, is an 'Otiose' one and the same is 'Negatived', by this 'Tribunal', considering the fact that the provisions of 'I & B Code', 2016, 'overrides' the 'SARFAESI Act, 2002'.
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111. In view of the detailed discussions, this 'Tribunal', on a careful consideration of divergent contentions and also on going through the 'impugned order' dated 23.12.2021, in IA No. 124 of 2021 in CP (IB) No. 673 / 7 / HDB / 2019, passed by the 'Adjudicating Authority', ('National Company Law Tribunal', Hyderabad Bench - I, Hyderabad), comes to a clear cut conclusion that the same is free from 'legal infirmities'. Consequently, the 'Appeal' fails.

Disposition:

In fine, the instant Company Appeal (AT) (CH) (INS.) No. 35 of 2022 is dismissed.
No costs. The IA No. 68 of 2022 ('For Stay') is closed.

[Justice M. Venugopal] Member (Judicial) [Naresh Salecha] Member (Technical)
20/12/2022 SR / TM Comp. App (AT) (CH) (INS.) No. 35 of 2022