

Haldiram Incorporation Pvt Ltd vs Amrit Hatcheries Pvt Ltd on 14 February, 2022

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,

PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No. 449 of 2020

IN THE MATTER OF:

Punjab National Bank
18A, Mezzanine Floor,
Brabourne road,
Kolkata - 700001

...Appellant

Vs.

1.Amrit Hatcheries Pvt. Ltd.
Through its Liquidator Shri. Bijay Murmuria
Sumedha Solutions Pvt. Ltd.
6A, Geetanjali Apartment,
8B, Middleton Street,
Kolkata - 700 071

...Respondent No.1

2.Harish Baghla,
Director/Promoter, Amrit Hatcheries Pvt. Ltd.
(Corporate Debtor)
6, Ashoka Road, Alipore,
Jaisalmer Building, Kolkata - 700 027

...Respondent No.2

3.Haldiram Incorporation Pvt. Ltd
P2, CIT Road,
Scheme VIIM,
Kolkata - 700 054

...Respondent No.3

4.Skylark Feeds Pvt. Ltd.
Village Khera Khemawati
Tahsil Safidon, District Jind,
Haryana - 126 112

...Respondent No.4

Present:

For Appellant:

Mr. Ankur Mittal, and Ms. Meera Murali, Advocates.

Company Appeal (AT) (Ins) No.449 of 2020 with
Company Appeal (AT) (Ins) No.504 of 2020 with
Company Appeal (AT) (Ins) No.746 of 2020

For Respondents: Mr. Bijay Murmuria (Liquidator), Ms. Jinelle G, Mr. Anuj Singh and Mr. Anand Verma, Advocates for R1.
Mr. Jayant Kumar Mehta, Sr. Advocate with Ms. Nirmalya Dasgupta, Mr. Shwetaank Nigam and Mr. Ashish Choudhury, Advocates for R-2.
Mr. Krishnendu Datta, Sr. Advocate with Mr. Abhay Gupta, Advocate for R-3.
Mr. Saurabh Kalia and Mr. Aaryan Sharma, Advocates for R-4.

With

Company Appeal (AT) (Ins.) No. 504 of 2020

IN THE MATTER OF:

Haldiram Incorporation Pvt. Ltd
P2, CIT Road,
Scheme VIIM,
Kolkata - 700 054

...Appellant

Vs.

1. Amrit Hatcheries Pvt. Ltd.
Through its Liquidator Shri. Bijay Murmuria
Sumedha Solutions Pvt. Ltd.
6A, Geetanjali Apartment,
8B, Middleton Street,
Kolkata - 700 071

...Respondent No.1

2. Harish Baghla,
Director/Promoter, Amrit Hatcheries Pvt. Ltd.
(Corporate Debtor)
6, Ashoka Road, Alipore,
Jaisalmer Building, Kolkata - 700 027

...Respondent No.2

3. Punjab National Bank
18A, Mezzanine Floor,
Brabourne road,
Kolkata - 700001

...Respondent No.3

Present:

For Appellant:

Mr. Krishnendu Datta, Sr. Advocate with Mr. Abhay Gupta and Ms. Mehak Khurana, Advocates.

Company Appeal (AT) (Ins) No.449 of 2020 with
Company Appeal (AT) (Ins) No.504 of 2020 with
Company Appeal (AT) (Ins) No.746 of 2020

For Respondents: Mr. Jayant Kumar Mehta, Sr. Advocate with Ms. Nirmalya Dasgupta, Mr. Shwetaank Nigam, Mr. Ashish Choudhury and Mr. Dhruv Surana, Advocates for R-2.

Mr. Anuj Singh, Mr. Anand Verma, Mr. Bijay
Murmuria(Liquidator), Advocates for R-1.
Ms. Meera Murali, Ms. Chitranshi and Mr. Ankur Mittal,
Advocates for R-3.

With

Company Appeal (AT) (Ins.) No. 746 of 2020

IN THE MATTER OF:
Arun Kumar Gupta
Resolution Professional
P15 Bentinck Street,
Kolkata - 700 001

....App

Vs.

Amrit Hatcheries Pvt. Ltd.
Through its Liquidator Shri. Bijay Murmuria
Sumedha Solutions Pvt. Ltd.
6A, Geetanjali Apartment,
8B, Middleton Street,
Kolkata - 700 071

...Resp

Present:

For Appellant:

For Respondents:

Mr. Arik Banerjee, Mr. Arun Kumar Gupta
(person) and Mr. Abhishek Parmar, Advocates
Mr. Bijay Murmuria (Liquidator), Mr. Anu
Mr. Anand Verma, Advocates for R-1.

Company Appeal (AT) (Ins) No.449 of 2020 with
Company Appeal (AT) (Ins) No.504 of 2020 with
Company Appeal (AT) (Ins) No.746 of 2020

J U D G M E N T

DR. ASHOK KUMAR MISRHA, TECHNICAL MEMBER In order to bring clarity of facts and law including its analysis and arriving at a logical 'Judgment', it is thought prudent to divide the drafting of judgment in the following heads: -

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Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 A. Introduction

1. All these appeals have been filed by the 'Appellants' under Section 61 of the 'Insolvency and Bankruptcy Code, 2016' (in short 'Code') against the impugned order dated 25.02.2020 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Kolkata Bench, Kolkata in CA(IB) No. 1402/KB/2019 and CA(IB) No. 1635/KB/2019 in CP(IB) No. 803/KB/2018.

2. Since 'CA(AT) (Ins) No. 449 of 2020' & 'CA(AT) (Ins) No.504 of 2020' have sought the relief basically to quash and set aside the impugned order dated 25.02.2020 of the Adjudicating Authority and 'CA(AT) (Ins) No. 746 of 2020' has sought the relief for stay the operation of the said impugned order till disposal of present appeal and order be passed for appointing the Appellant as 'Liquidator of Corporate Debtor' (CD) and expunge the observations made in paragraph 37 of the impugned order etc. So, it was thought fit and proper, all appeals are to be heard together and disposed off by a 'common judgment'. Accordingly, we are proceedings in the matter. B. Facts of the case:-

3. The brief facts of the case are that an 'Operational Creditor' (OC) viz. Mangturam Noranglal filed the application under section 9 of the Code against the CD - Amrit Hatcheries Pvt. Ltd. The 'Corporate Insolvency Resolution Process' (CIRP) was initiated on 20.08.2019 and Mr. Khetan Mukhija was appointed as 'Interim Resolution Professional' (IRP). However, the 'Committee of Creditors' (CoC) in its first CoC meeting held on 17.09.2019 replaced IRP with 'Resolution Professional' (RP) Mr. Arun Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 Kumar Gupta. The Adjudicating Authority confirmed the appointed of the RP vide its order dated 14.10.2019. As far as voting share is concerned 83% voting share rest with 'Punjab National Bank' (PNB) and 17% rest with HDFC bank based on their claim (appearing at page no.66 of the Appeal paper Book in CA(AT) (Ins) No. 449 of 2020. The PNB has advanced various credit facility to the CD and the CD has mortgaged two sets of properties to the PNB, the properties so mortgaged are called 'Howrah

Property' & 'Bankura Property'.

4. The description of both the properties are given hereunder: -

Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020

5. Chronology of events in respect of both properties are given hereunder:

Property in Howrah sold to Haldiram Incorporation Pvt. Ltd SL. Particulars Date

1. CIRP commencement date 20.08.2019

2. CoC replaced IRP with RP - Mr. 17.09.2019 Arun Kumar Gupta in the 1st CoC meeting

3. E-Auction sale notice issued by PNB 15.06.2019 for sale of Howrah Property (reserve Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 price Rs.11.20 Crore) - Page 141-142 of the Appeal Paper Book

4. DRT passed interim order, that the 05.07.2019 fate of the sale will be determined subject to the outcome of the SA (page 171 of the Appeal Paper Book)

5. E-Auction date - declaration of 06.07.2019 highest bidder for Howrah Property from 12:30PM M/s. Haldiram Incorporation Pvt. to 01:30PM Ltd., amount of bid Rs.5.09 Crore against Reserve Price of Rs 11.20 cr

- page 173 of the Appeal Paper Book

6. Confirmation of sale issued by PNB 09.07.2019 page 174 of the Appeal Paper Book

7. Last Tranche of Payment made by 16.08.2019 M/s. Haldiram Incorporation Limited

- page 25 of the Appeal Paper book Para XIV

8. Sale certificate under Rule 9(6) of the 19.08.2019 Security Interest Enforcement Act, 2002 was issued by the authorized of Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 the PNB- page 175 of the Appeal Paper Book

9. CIRP commencement date 20.08.2019

10. Date of 1st CoC meeting 17.09.2019
11. Date of handing over possession of 26.09.2019 Howrah Property by RP
12. Date of 2nd CoC meeting 16.10.2019
13. Date of filing CA No. 1402 of 2019 21.10.2019
14. Date of NCLT Order directing the RP 29.10.2019 to defend DRT proceedings
15. Date of dismissal of DRT Proceedings 26.11.2019 for non-prosecution as RP didn't appear before the DRT in spite of NCLT direction. With the observation by the DRT Proceeding Officer that SA No. 152 of 2019 is dismissed for want of prosecution since no one is present for the Applicant without considering any merit or demerit of Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 the case- page 277 of the Appeal Paper Book Property in Bankura Sold to Skylark Feed Pvt. Ltd.

SL. Particulars Date

1. E-Auction sale notice issued by PNB 20.07.2019 for sale of Bankura Property (Reserve Price Rs.9.86 Crore)
2. IA No.894 of 2019 praying stay of 16.08.2019 operation of the sale notice filed. The DRT heard the same. PNB candidly submitted that the sale process is subject to the outcome of the SA- page 172 of the Appeal Paper book
3. E-Auction date - declaration of 17.08.2019 highest bidder for Bankuru Property of M/s. Skylark Feed Pvt., Ltd
4. Declaration of Skylark Feed Pvt. Ltd 17.08.2019 as highest Bidder Highest Bid amount of Rs. 9.91 Crore Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020
5. Confirmation of sale issued by PNB 19.08.2019 page 177 of the Appeal Paper Book
6. CIRP commencement date 20.08.2019
7. 3rd Tranche/Last of Payment received 03.09.2019
8. Sale certificate under Rule 9(6) of the 03.09.2019 Security Interest Enforcement Act, 2002 was issued by the authorized of the PNB- page 26- para XVII of the Appeal Paper Book

09. The RP didn't appear before the DRT 26.11.2019 and accordingly, DRT dismissed SA for want of prosecution without considering any merit or demerit of the case.

6. It is the case of the PNB that 'sale certificate' in respect of 'Howrah Property' has already been issued on 19.08.2019 prior to 'CIRP commencement' on 20.08.2019, the RP had no jurisdiction to take back the possession of the 'Howrah Property' so sold. While in case of 'Bankura Property', the confirmation of sale was made on 19.08.2019 prior to CIRP commencement on 20.08.2019 so RP / Adjudicating Authority has no jurisdiction to deal with the property although final payment yet to be received on CIRP commencement Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 date.. In the 2nd CoC meeting held on 16.10.2019 (appearing at Annexure -D page 92 of the Appeal paper Book in CA(AT) (Ins) No. 746 of 2020) at PNB, Asset Management Recovery Branch, Kolkata, the IRP informed that he has taken possession of the manufacturing unit at Howrah on 03.09.2019. The PNB informed the IRP vide their email dated 23.09.2019 that they have sold the property vide e-auction dated 15.06.2019 and received sale consideration vide 16.08.2019 and provided to IRP the followings documents (i) sale confirmation letter dated 09.07.2019 issued by PNB (ii) Statement of Bank account for receiving sale proceedings and (iii) TDS Certificate. The IRP handed over the possession on the said Howrah Property to PNB on 26.09.2019. However, IRP didn't hand over physical possession of the 11 trunks, standing inside the said Howrah Unit and the said trucks are still under the possession of the IRP/RP.

7. It is also revealed from the 2nd CoC meeting that IRP has not taken possession of Bankura Property from PNB as PNB reported to it that it has sold the property and entire sale proceedings have been received by the PNB prior to 20.08.2019. For brevity and clarity, the 2nd meeting of CoC is depicted below:

Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 C. Observation of the Adjudicating

Authority: -

8. The Adjudicating Authority vide its elaborate order with analysis has passed in an unambiguous term that both 'Bankura Property' and 'Howrah Property' are the assets of the CD and has directed the 'Liquidator' to take possession of both 'Howrah Property' and 'Bankura Property' from so-called purchasers and include the same in the Liquidation estate. For brevity and clarity, we are reproducing paras 36, 37, 39, 41, 43 & 44 of the impugned order:

Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 "36. In respect of Howrah Property, since the R1 was obliged not to conclude the sale as per the undertaking dated 16.08.2019 before the DRT, the issuance of sale certificate and alleged handing over of possession of the Howrah Property to R2 become illegal because as on the date of declaration of the moratorium the said undertaking was in force. Moreover, the said sale certificate also was not engrossed on stamp paper and no evidence was led in to prove that the Howrah property was handed over to R2 as attempted to prove on the side of R1. Taking into account the overall factual scenario, and the fact that the possession of the property has not been granted in favour of R3 before the date of declaration of moratorium and since no evidence was led in other than sale certificate to prove that possession was handed over to the R2 and that issuance of sale certificate in favour of R2 being found illegal and issuance of sale certificate in favour of R3 was subsequent to the date of declaration of moratorium, we are of the view Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 that Bankura Property as well as Howrah Property are the assets of the CD and that R2 and R3 has not obtained any legal ownership or title as claimed by them. In short, R2 and R3 have no right to retain the properties and the property belongs to the CD.

37. Coming to the relief prayed for in CA(IB) No.1635/KB/2019, it appears to us that RP was not due diligent enough in implementing the provisions of the Code and Regulations. Instead of obeying the directions what the RP asked for is to keep the order of this AA dated 29.10.2019 until the CA(IB) No. 1402/KB/2019 is disposed of. RP filed this CA on 28.11.2019. CA(IB) No. 1402/KB/2019 was filed by the R4 on 14.10.2019 alleging collusion of RP with R1 aiding handing over possession of the properties in dispute in favour of the auction purchasers. It is in the said CA the directions were issued on 29.10.2019 to the RP explaining in detail what action was expected from him. He was specifically asked to take steps to safeguard the properties of CD by Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 approaching the DRT. The RP having stepped in the shoes of CD, he would have prosecuted the case before the DRT. But unfortunately, none of the sides of the CD/Applicant in SA appears when the said case was taken up on 26.11.2019 before the DRT and Ld. DRT dismissed the SA for want of prosecution. Similarly, as regards the Bankura Property, it was in the possession of the R1 as on the date of declaration

of moratorium. That property ought not to have been permitted to be transferred to the purchaser. So RP himself who was duty bound to safeguard the property did not take as much care as was expected at least from a prudent man. However, we are not going deep into the circumstances behind the handing over possession of the disputed property by R1, in the case in hand. The Application is liable to be allowed by directing the RP to recover possession back from the auction purchasers and to be listed as liquidation assets and to have valuation of the properties in accordance with provisions of Code, and Regulations.

Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020

39. CA(IB) No.1617/KB/2019 is an application filed by the RP under Section 19 and 70 of the Code alleging non-cooperation from the directors of the suspended board of CD. Since, the CIRP period expired on 15.02.2020 has not been extended and RP prays for passing an order of Liquidation for want of resolution plan, we are closing the CA without entering into merits of the allegations leveled by the RP as against the directors. This application also requires no further consideration. Accordingly, it is liable to be dismissed.

41. In view of the above said legal position of law and circumstances and that no resolution plan was obtained by the RP within the period of 180 days and the CoC has not decided for extension of CIRP period, we have no other alternative than to pass an order requiring the CD to be liquidated in the manner as laid down in Chapter

- III of the Code.

43. The Application bearing CA(IB) No. 1635/KB/2019 is hereby allowed by directing the Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 Liquidator to take possession of Howrah Property from R2 and Bankura Property from R3 and include the same in the liquidation assets. The Liquidator is at liberty to appoint valuers for valuing the said properties in accordance with the provisions of the Code and Regulations.

Consequently, CA(IB) No. 1402/KB/2019 is disposed of.

44.R1(PNB) is hereby directed to refund the bid amount to R2 and R3 within 15 days from the receipt of this order."

D. Submissions by the parties

9. C.A(AT) (Ins) No. 449 of 2020 Submissions of the Appellant:-

i. The Appellant - PNB has submitted that the 'sale certificate' was issued by the Bank to the 'Purchaser' under Rule 9(6) of the 'Securitization and Reconstruction of Financial Assets and

Enforcement of Security Interest Act, 2002' (SARFAESI) on 19.08.2019 while CIRP has commenced on 20.08.2019. Hence, the sale is in order. The bank has also stated that an auction purchase gets title on confirmation of sale in his favour and a 'sale certificate' is issued evidencing such sale and title, Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 no further deed of transfer from the court is contemplated or required. It has also stated that the right to redemption available to the CD under Section 13(8) of SARFAESI Act (Amended) stood expired under Section 13(8) on publication of sale notice on 15.06.2019 in case of Howrah Property. The CD has done nothing to exercise its right of redemption in accordance with SARFAESI Act. The Application filed before the Adjudicating Authority / DRT are a mere afterthought with a mala fide intention to stall the process. ii. It has also stated that non-registration / belated registration of 'sale certificate' has no bearing on sale under the SARFAESI Act or the CIRP of CD. It has also stated that the Borrower /CD has voluntarily not exercised its right of redemption has missed the bus. The Appellant/ Bank has also submitted that the requirement of registration under a sale under 'Transfer of Property Act' is nowhere required under the provisions of SARFAESI Act and no further deed of transfer from the court is contemplated. The requirement of payment of stamp duty is not relevant for ascertaining when a sale is confirmed under SARFAESI Act and Rules. It has also stated that the sale certificates are admissible even without engrossing stamp paper and even plain paper is suffice. The bank has also submitted that the CoC has not misguided the RP regarding sale of properties and even if sale certificate has been transferred on 09.08.2019 while CIRP commenced on 20.08.2019. There is no effect on the auction sale. It has also stated that no reliefs whatsoever have been sought qua the Bankura Property by the Respondent No.2, as such the Adjudicating Authority should not have gone into the sale issue of Bankura Property. The bank Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 has also mentioned in its 'written submissions' which is undated but received in this Tribunal vide Diary No.50109 dated 14.12.2021/ Diary No.32211 dated 14.12.2021, 'para f' has depicted below:

"para f. As for the submission of behalf of R4, inter alia seeking to withdraw from the transaction, it is most humbly submitted that the sale in favour of R4 stands completed and title stands transferred to the R4 as on date and the sale cannot be set aside under Section 60(5) of the Code. Thus, no opportunity can be provided to R4 to exit the transaction and there is no question whatsoever, of any refund of the sale consideration, interest or any other expenses, by the Bank."

10. Submission of the Respondent No.4 i. It is stated by the R4 - Skylark Feeds Pvt. Ltd., that it has purchased the Bankura Property as a bona fide purchaser without notice of impending proceedings. They have purchased the property through e-auction held by the Appellant bank. The e- auction was conducted on 17.08.2019 and it was declared as the highest bidder on the same day vide letter dated 17.08.2019 issued by the Appellant bank and it got sale confirmation letter on 19.08.2019 and sale certificate issued by the Appellant bank to Respondent No.4 for Bankura Property on 03.09.2019 from the bank. It is also settled position of law that the rights of an auction purchaser in the property purchased by it cannot be extinguished except in case where the said purchase can Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 be assailed on grounds of fraud or collusion and in the

present case nothing has been provided on record that any fraud or collusion has been committed. It is not concerned with the affairs of the CD or the Appellant Bank and therefore, the fraud or collusion does not arise. It has purchased the property based on its own commercial and economic /financial viability. It has availed credit facility from HDFC bank at a very high interest for paying sale consideration and the money is lying with the Appellant bank and simultaneously the Liquidator is approaching it for taking back the possession of the said property. It is incurring cost in the form of interest being paid to the said bank for borrowed funds and its investments is yielding no returns. It has incurred Rs.134.85 lakh till 31.07.2020. As a result of all this, its own units may become 'Non -Performing Assets' (NPA) as added to cost, the outspread of Covid-19 pandemic. They are unable to furnish to property to HDFC bank and as a result, they have stopped funding to its other units. If it has to hand over the property to the Liquidator back, then in that case it is to be refunded entire sale consideration alongwith interest and other incidental expenses spent on the upkeep Bankura Property from the Appellant /PNB.

11. Submission of the Respondent No.2 i. The various submissions made by the Ex-Director/Promoter of the Respondent No.2 are as under:

Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 ii. He has stated that auction sale proceedings are not final under the SARFAESI Act, unless the SA of the borrower is decided under Section 17 of the SARFAESI Act. The DRT passed an order dated 05.07.2019 that the fate of sale will be subject to outcome of the SA (appearing at page 171 of Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 the Appeal Paper book).

For brevity and clarity, the same is depicted below:

iii. The Adjudicating Authority has directed to RP to take appropriate steps in SA No. 152/2019 (appearing at page 251 of the Appeal paper book):

"None other than the RP appears. Ld. RP submits that as per his information possession of the disputed assets Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 of the Applicant in this application is with the buyer as per a proceeding before the Debts Recovery Tribunal filed by the PNB, one of the Financial Creditor in the CoC. Copy has been served upon the erstwhile IRP. However, no copy has been served to the present RP. RP prays time to file reply. In the meanwhile, RP is to take immediate steps so as to get back possession of the property if it was not sold prior to the declaration of moratorium in this case. He is directed to do the needful to safeguard the property of the Cd and take appropriate steps in SA No. 152 of 2019 before the DRT-1 Kolkata and file its report whether the property was disposed of by the PNB during moratorium or not."

iv. The RP didn't appear before the DRT and the SA was dismissed for non-

prosecution on 26.11.2019 (appearing at page no. 277 of the Appeal Paper Book):

"Respondent has filed the supplementary affidavit and bring on record status of proceedings pending before NCLT. No one is present for the SARFAESI Applicant. In view of the affidavit filed by the Respondent nothing will survive so far SARFAESI action is concerned. In view of the RP appointment . S.A no. 152 of 2019 is Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 dismissed for want of prosecution since no one is present for the Applicant without considering any merit or demerit of the case. File be consigned to record room."

v. On 20.08.2019, the date of CIRP of declaration of moratorium, the SA of the CD/ borrower was pending and as such no sale could have been finalized in view of order dated 05.07.2019 passed by the DRT and no right or title vest with auction purchase / R3 in respect of the property. vi. He has also raised that physical possession of the property on 26.09.2019 should not have been handed over to the Appellant/Bank during moratorium period. The sale certificate dated 19.08.2019 is ante dated and illegal as no sale certificate was served to the RP by the Appellant / PNB when documents regarding the sale of property were provided. Reference may be made to the Minutes of 2nd CoC, Item No4. & 5 has depicted below:

(appearing at page 47 & 48 agenda of the reply affidavit on behalf of R2). Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 vii. As far as Bankura Property is concerned, no sale of property was concluded as on 20.08.2019 when CIRP commenced. Last trench of payment was made on 03.09.2019 post CIRP. The DRT passed an order dated 16.08.2020 recording undertaking of the Appellant Bank that sale process is subject to Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 outcome of SA (appearing at 172 of the Appeal paper Book). For brevity and clarity, DRT order dated 16.08.2019 has depicted below:

"I.A No. 894 of 2019 was moved by the Applicant, which was affirmed by the authorised signatory of the Applicant, Ravindra Narayan Singh, praying inter alia stay of the operation of the sale notice dated 27.07.2019. Since, the Ld. Counsel appeared on behalf of the respondent bank, no formal notice need be issued by the Registry. Ld. Counsel for the Respondents candidly submitted that sale process is subject to outcome of the SA. In view of the submission, parties are directed to complete pleadings in the main S.A. as well as IAs by the next date of hearing. It is expected that copy of the pleadings shall be exchanged by the parties at least two days before the next date of hearing.

List the matter on 11.09.2019 for further order."

viii. The RP was also directed to take appropriate steps in SA No. 152/2019 and the said SA was dismissed for non-prosecution on 26.11.2019. Now the stage has come, when the R4 - Skylark feed Pvt. Ltd., are seeking to exit from the transactions and are claiming refund of the bid amount in respect of the property.

Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020

12. Submissions of the Appellant:-

i. The Appellant is the auction purchaser for property situated at Howrah. He has stated that an auction sale was conducted on 06.07.2019 for Howrah Property and it was declared highest bidder on 06.07.2019 and 09.07.2019 under SARFAESI Rules, the PNB has issued sale confirmation notice in its favour. It has paid the entire amount by 16.08.2019 to the PNB. However, sale certificate was issued to the Appellant on August, 2019 under SARFAESI Rules while CIRP commenced on 20.08.2019. It is a matter of record that the Promoter /Ex-Management of the CD sought a declaration that the sale of Howrah Property under the provisions of SARFAESI Act and Rules be made subject to outcome of SA No. 152/2019 filed before the DRT Kolkata and sought injunction against issuance of sale certificate. The Adjudicating Authority directed the RP to get back the possession of Howrah property, if it was not sold prior to declaration of moratorium. However, RP had no occasion to take back the property which has already sold prior to initiation of CIRP (a day earlier).

ii. It has also stated that it has a bona fide auction purchaser and it has paid entire consideration before commencement of CIRP and sale certificate issued prior to commencement of CIRP. Hence, no title remained with CD. He has also stated that on the day of commencement of CIRP, Howrah Property was not the assets of the CD. Hence, the Adjudicating Authority has no jurisdiction to bypass the provisions Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 of statutory appeals, the deal with the effect of sale carried out under the provisions of SARFAESI Act.

iii. Even if DRT dismissed the SA on 26.11.2019 for want of prosecution the sale which was made subject to outcome of the SA remain unaffected in view of the dismissal of SA.

iv. The Adjudicating Authority observing that the 'sale certificate' is not being engrossed on stamp paper to draw an inference that the sale is not completed and is erroneous. The stamp paid or not paid is the requirement of Stamp Act and not under the SARFAESI Act. Even the subsequent delivery of possession from the authorized officer to the auction purchaser is immaterial. The property was out of possession of CD. Hence, the order of the Adjudicating Authority requires to be set aside.

13. Submission of the Respondent No.3 i. The R3/PNB has also filed a separate appeal CA(AT) (Ins) No. 449/2020 challenging the same impugned order. The bank has reiterated that in a statutory auction sale under SARFAESI Act/Rules title transfer to auction purchaser upon confirmation of sale. It has also reiterated right of redemption available to CD under Section 13(8) SARFAESI Act (Amended) stood expired under Section 13(8) on publication of sale notice. The sale subject to the outcome of SA at DRT is of no basis as the same was dismissed even on the ground on non-prosecution. The Adjudicating Authority has no jurisdiction to interfere with or set aside statutory sale proceedings under the SARFAESI Act. It has again reiterated that Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 requirement of payment of stamp duty is not relevant or ascertaining whether a sale is confirmed under the SARFAESI Act / Rules or not.

14. Submission of the Respondent No.2/ Ex-Director/Promoter i. It has reiterated by the Respondent No.2 / Ex-Director/Promoter that auction sale proceedings are not final under the SARFAESI Act unless the SA of the borrower is decided under Section 17 of SARFAESI Act. The DRT passed an order dated 05.07.2019 that the fate of sale will be subject to outcome of the SA. The Adjudicating Authority has directed the RP to take appropriate steps in SA No. 152 of 2019 but RP failed to appearing before the DRT and the SA was dismissed for non-prosecution only on 26.11.2019. Hence, no right or title vest with the Appellant in respect of the property. The sale certificate is liable for stamp duty on the market value as per provision of Article 18-C R/w Article 23 of Schedule- 1 of the Stamp Act.

ii. The RP has illegally handed over actual physical possession of the property on 26.09.2019 to the Appellant during moratorium period. The CD remained the owner of the property as on the date of the declaration of moratorium, no sale could have been finalized during the pendency of SA and as such Howrah Property was an asset of the CD.

Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020

15. C.A(AT) (Ins) No. 746 of 2020 i. Here the Appellant is the RP of the CD and CD itself is the Respondent. The RP is aggrieved of the observation made in the impugned order. He himself has stated that on 20.08.2019 the commencement of CIRP Mr. Khetan Mukhija was appointed as IRP and the IRP was replaced in the first CoC meeting held on 17.09.2019 and the Appellant was appointed RP. The Adjudicating Authority confirmed the same vide its order 14.10.2019. He has stated that in the 2nd CoC meeting held on 16.10.2019 that the said two factories at Howrah and Bankura have been sold by PNB under SARFAESI Act. The DRT was ceased of the issue during the course of hearing on 29.10.2019 based on information provided by PNB, the Appellant has submitted before the Adjudicating Authority, that such assets are in the possession of the 3rd party who were the present buyer of the said property. The Adjudicating Authority directed to take immediate steps to take back possession of property, if it was not sold prior to declaration of moratorium of CD and to take appropriate action before the DRT. ii. The Appellant has also submitted that both PNB and 'Suspended Board of Directors' were requested to give details in respect of the said factory land and date on which such sale was made. Nobody provided the input

regarding the current status before DRT Kolkata. Hence, the Appellant could not attend hearing on 26.11.2019 before the DRT which dismissed because of non-prosecution and the Appellant came to know about it through an email from PNB dated 29.11.2019. Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 iii. The Appellant has filed CA No. 1635 of 2019 provided the status of sale of two factories which has provided by PNB. The Appellant has acted as per the legal advice given to him.

iv. The Appellant despite being eligible under the provisions of Liquidation Process Regulations 2016 was not appointed as Liquidator and there is a violation of principal of natural justice.

E. Analysis of law laid down on the subject issue involved & facts of the case leading to judgment:

16. We have carefully gone through the pleadings of the submissions made during the course of hearing by Ld. Sr. Counsels /Counsels for the parties and have carefully considered the order passed by the Adjudicating Authority and have the following observations: -

i. The proposition of law as laid down on the subject issues involved and cited by the parties are enumerated hereunder for ready reference:- A. Dr. R. Thiagarajan Vs. Inspector General of Registration & Ors. (full Bench of Hon'ble High Court of Madras (2019) SCC Online Mad. 9085 @para 21-23 "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 Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 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 cannot 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.

22. The Sale Certificate issued by the Authorised Officer of the bank cannot be granted 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 Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 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.

Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 B. Ram Murthy Pyara Lal Vs. Central bank of India & Ors. 2010 (120) DRJ 437 (DB) decided by Hon'ble Delhi High Court @ para "We have already reproduced the provisions of Section 13(8) and Section 17 sub sections (2) to (4) above. Section 13 sub section (8) in plain language provides that no steps with regard to the transfer or sale of secured assets can take place if dues of the secured creditors together with cost charges and expenses incurred are tendered to the secured creditor at any time before the date fixed for sale/transfer. However, sub sections (2) to (4) of Section 17 provide that the DRT in the proceedings under Section 17 has the right to declare whether the action of the secured creditor taken under Section 13(4) is or is not in accordance with the provisions of the SARFAESI Act. In case, the DRT comes to the conclusion that the action taken by the secured creditor is not in accordance with the provisions of the SARFAESI Act and the rules framed thereunder, then, by virtue of sub section (3), DRT can declare the actions taken pursuant to Section 13(4) as invalid and pass necessary orders including of cancellation of the auction sale proceedings and restoring the Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 possession of the secured asset to the borrower. Thus, a conjoint reading of the provisions of Section 13(8) on one hand and sub sections (2) to (4) of Section 17 on the other hand, bring out the position that although the right of redemption is to be ordinarily exercised before the date fixed for sale of transfer, however, even if the auction sale proceedings take place but in case the borrower succeeds in the S.A. under Section 17, the auction sale proceedings can be cancelled and since fresh auction sale may have to be conducted the right of redemption can again be exercised at that stage when a fresh date will be fixed for sale/transfer.

There is a vital difference in this legal position and the legal position which emerges under the provisions of Order 21 of the CPC. Whereas under relevant rules and sub rules of Order 21 of CPC, and as interpreted by the Supreme Court, even if a decree is set aside a bonafide purchaser for value at an auction sale proceedings gets a complete title in case he purchases the property without any notice of any dispute or claims with respect to the auctioned property, however under the SARFAESI Act, the DRT has complete powers under the provisions of sub sections (2) to Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company

Appeal (AT) (Ins) No.746 of 2020 (4) of Section 17 to set aside the auction sale and restore back the possession of the secured asset to the borrower. Clearly, therefore, the auction sale proceedings are not final under the SARFAESI Act unless the S.A. of the borrower under Section 17 is decided. A purchaser at an auction sale cannot claim title merely because the auction sale proceedings for concluded in his favour and a necessary sale certificate issued as the same as per sub- sections (2) to (4) of Section 17 is subject to final decision on an S.A filed under Section 17. However, auction sale and steps under Section 13(4) can continue unless the applicant in the S.A. under Section 17 takes appropriate interim orders.

C. P.M.Associates Vs. IFCI (2014 -2 L.W.323) para 30 "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 Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 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 Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 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.

41.Since the auction conducted by the second respondent was confirmed in favour of the petitioner/auction purchaser and Sale Certificate was also issued by the Authorised Officer, the petitioner/auction purchaser is entitled to get the Sale Certificate registered in their favour."

D. Nitin Garg Vs. State Bank of India & Ors. (Company Appeal (AT) (Ins) No. 930 of 2020- para 24-25 "24. In view of the admitted facts of this case and further in view of the Judgement of the Hon'ble Supreme Court reported in the case of 'B. Arvind Kumar vs. Govt. of India and Others' reported in 2007 Volume 5 Supreme Court Cases 745 (Supra), wherein, the Hon'ble Supreme Court has held when a property is sold by public auction Company Appeal (AT) (Ins) No.449 of 2020 with

Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 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 become 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 evidence of such title.

25. 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. Further, it does not required registration under Section 17(2) (xii) of the Registration Act."

E.

B.Arvind Kumar Vs. Govt. of India

(2007) 5 SCC 745 para 12

" 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 Anraj Sankla, namely the leasehold right in the property Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 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 Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 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."

F. P.M.Associates Vs. IFCI (2014 -2 L.W.323) para 30, 31 & 34 "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 Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 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 Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 the Registration Act, the Sale Certificate issued by the second respondent/Authorised Officer requires registration.

31. In the judgment reported in AIR 2008 Madras 108 [K.Chidambara Manickam Vs.. Shakeena and others], the Division Bench of this Court held that the right of redemption provided to the borrower under Section 60 of the Transfer of Property Act will be available to the borrower before it is foreclosed or estate is sold and on the issuance of the Sale Certificate to the auction purchaser, the sale becomes complete, vesting the right in the property in favour of auction purchaser. In the case on hand, there is no dispute that the auction was confirmed in favour of the auction purchaser and Sale Certificate was also issued in their favour. Thus, the sale became complete and the right in the property vests in favour of the auction purchaser. Since the third respondent/borrower failed to exercise his right of redemption before sale of the property and also in view of the provisions of Section 13(8) of the SARFAESI Act, the borrower/third respondent cannot now (i.e.) after the completion of the sale in favour of the petitioner seek to redeem the property, that too, without the intervention of a Competent Court or Tribunal.

Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020

34. Therefore, it is clear that an auction purchaser derives title on confirmation of sale in his favour and the issuance of Sale Certificate is only an evidence to prove that the sale was confirmed in his favour conveying the title. Therefore, in the case on hand, by issuance of Sale Certificate on 16.09.2011, it is clearly proved that sale was confirmed in favour of the petitioner/auction purchaser. To prove that the sale was confirmed in their favour, the Sale Certificate dated 16.09.2011 was issued. Therefore, after the confirmation of the sale in favour of the petitioner/auction purchaser, the second respondent Authorised Officer have no authority to cancel the sale on his own. The

power of cancelling the sale vests only with the Competent Court/Forum and definitely not with the Authorised Officer. If the Authorised Officer cancels the Sale Certificate on his own, no case will reach finality at any point of time. Therefore, from the above it is clear that the second respondent Authorised Officer has no jurisdiction to cancel the Sale Certificate. The order dated 08.02.2012 was passed by the second respondent when he has no jurisdiction to pass such an order. Therefore, such an act of the second respondent should not be allowed to stand."

Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 G. Raj Kumar Dey & Ors. Vs. Tarapada Dey & Ors. -

(1987) 4 SCC 398 para 8 " para 8- It was urged before us that an award affecting the immovable properties which was not registered and which was made outside the court could not form the basis of an award and an unregistered award, in other words could not form the basis of the award. We are unable to accept that position. There is no dispute to the proposition that an award affecting immovable properties as in the instant case should be registered. It is therefore, not necessary to discuss in detail the ratio of A the decision of the Full Bench of the Andhra Pradesh High Court in M. Venkataratnam v. M. Chelamayya, A.I.R. 1967 Andhra Pradesh In the aforesaid view of the matter the judgment and order of the High Court cannot be sustained and are set aside. The appeal is allowed and the order of the Sub-

Registrar, Arambagh dated 24th of June, 1985 is restored. In the facts and circumstances of the case, however, the parties are directed to pay and bear their own costs."

Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 H. Madhukar Nivrutti Vs. Pramila Bai Chandulal (2019) SCC Online SC 1026 Operation of the doctrine of lis pendens: Section 52 T.P. Act

14. The third question as regards the sale transactions in favour of the present appellants (the subsequent purchasers) need not detain us longer, except to correct an error on the part of High Court where it is observed that such sale deeds are to be treated as illegal.

14.1. The suit in question was filed on 26.08.1968. So far the sale transaction in favour of the defendant Nos. 4 & 5 (the appellant Nos. 1 & 2 herein), in relation to 25 acres of land out of the suit property, is concerned, the same was effected by way a sale deed registered only on 10.07.1978 i.e., nearly 10 years after filing of the suit. So far, the sale transaction in favour of the defendant No. 6 (the appellant No. 3 herein), in relation to other 25 acres of land out of the suit property, is concerned, though it is suggested that there had been an agreement (dated 08.05.1968) in his favour before filing of the suit but then, admittedly, the sale transaction was affected by way of a sale deed registered only on 18.09.1968, that had also been after filing of the suit. The suggestion about Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 wants of knowledge of the subsequent purchasers about the transaction of the vendors with the plaintiffs and about the pendency of the suit has been considered and rejected by the High Court and even by the subordinate Court after due appreciation of evidence on record; and we are unable to find any infirmity in these findings. Both the sale

transactions in favour of the present appellants, purporting to transfer the suit property in part, having been affected after filing of the suit, are directly hit by the doctrine of lis pendens, as embodied in Section 52 of the Transfer of Property Act, 1882 that reads as under: -

"52. Transfer of property pending suit relating thereto. ---- During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceedings which is not collusive and in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceedings so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 Explanation.---- For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceedings has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force." 14.2. In the case of Guruswamy Nada (supra), this Court has held as under: -

"13. Normally, as a public policy once a suit has been filed pertaining to any subject-matter of the property, in order to put an end to such kind of litigation, the principle of lis pendens has been evolved so that the litigation may finally terminate without intervention of a third party. This is because of public policy otherwise no litigation will come to an end. Therefore, in order to discourage that same subject-matter of property being subjected to subsequent sale to a third person, this kind of transaction is to be checked. Otherwise, litigation will never come to an end." 14.3. The aforesaid observations in no way lead to the proposition that any transaction on being hit by Section 52 *ibid.*, is illegal or void Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 *ab initio*, as assumed by the High Court. In Sarvinder Singh (supra), as relied upon by the High Court, the subsequent purchasers sought to come on record as defendants and in that context, this Court referred to Section 52 of the T.P. Act and pointed out that alienation in their favour would be hit by the doctrine of lis pendens. The said decision is not an authority on the point that every alienation during the pendency of the suit is to be declared illegal or void. The effect of doctrine of lis pendens is not to annul all the transfers effected by the parties to a suit but only to render them subservient to the rights of the parties under the decree or order which may be made in that suit.

In other words, its effect is only to make the decree passed in the suit binding on the transferee, i.e., the subsequent purchaser. Nevertheless, the transfer remains valid subject, of course, to the result of the suit. In the case of A. Nawab John (supra), this Court has explained the law in this regard, and we may usefully reiterate the same with reference to the following:-

"18. It is settled legal position that the effect of Section 52 is not to render transfers effected during the pendency of a suit by a party to the suit void; but only to render such transfers subservient to the rights of the parties to such suit, as may be, eventually, Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 determined in the suit. In other words, the transfer remains valid subject, of course, to the result of the suit. The pendent lite purchaser would be entitled to or suffer the same legal rights and obligations of his vendor as may be eventually determined by the court." 14.4. Hence, the effect of Section 52 *ibid.*, for the purpose of the present case would only be that the said sale transactions in favour of the appellants shall have no adverse effect on the rights of the plaintiffs and shall remain subject to the final outcome of the suit in question. However, the High Court, while holding that the said transactions were hit by *lis pendens*, has proceeded to observe further that the sale deeds so made in favour of the present appellants were illegal. These further observations by the High Court cannot be approved for the reasons foregoing."

I. Transcore Vs. UOI (2008) 1 SCC 125 para 73-74 "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 interest in nor Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 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 Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 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 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 Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 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 Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 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 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."

Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 J. Embassy Property Vs. State of Karnataka (2019) SCC Online SC 1542 para 37 "From a combined reading of Subsection (4) and Subsection (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 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 crystallised 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.)"

Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 K. Kumararaja Paper Mills Pvt. Ltd. Vs. Tamil Nadu, Principal Revenue Control Officer Cum Inspector General of Registration, 2012 (1) (CTC) 315 @ para 12 "On a reading of the above paragraphs, it could be easily inferred that only if the sale certificate issued by the Revenue officer in respect of the property conveyed by them for the purpose of deriving income from taxes, duties and other sources for the payment of the nation's expenses, it needs no compulsory registration. So far as the sale certificate issued by the Authorised Officer of the Government Corporation, such as SIPCOT is concerned, the same cannot be equated with the sale certificate issued by the revenue officers. Moreover, the function of the SIPCOT is purely entrepreneur in nature. For the purpose of collecting the loan due, the property was sold in the auction. Therefore, the sale certificate issued by the Authorised Officer of the Government Corporation, such as SIPCOT cannot be exempted from the Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins)

No.746 of 2020 registration. In fact, this Court, in the judgment relied upon by the learned counsel for the appellant in 2010(4) CTC 802 (supra), has held as follows:

"14.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..."

Therefore, I do not find any infirmity in the order passed by the respondents based on the value of the plant and machinery sold in the sale note dated 07.06.2002."

Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 L. Cenney Hotels Pvt. Ltd Through its Managing Director vs. State of Tamil Nadu represented by Inspector General of Registration 2010 (4) CTC 802 @para 14 "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 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 Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 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."

M. The Official Liquidator, High Court of Madras, 2010 (2) CTC 113 @para 56-59 "There is one more crucial issue. Section 17(2)(xii) refers only to 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. Chidambara Manickam or in any other decision. The only case where this question was 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 Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 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 Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 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 *Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020* doubtful, if an Official Liquidator 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 Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 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."

N. Mathew Varghese Vs. M Amritha Kumar & Ors. (2014) 5 SCC 610 @para 38-39 "38. On a reading of the above paragraphs, we are able to discern the ratio to the effect that a mere conferment of

power to sell without intervention of the court in the mortgage deed by itself will not deprive the mortgagor of his right to redemption, that the extinction of the right of redemption has to be subsequent to the deed conferring such power, that the right of redemption is not extinguished at the expiry of the period, that the equity of redemption is not extinguished by mere contract for sale and that Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 the mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by a registered deed. The ratio is also to the effect that the power to sell should not be exercised unless and until notice in writing requiring payment of the principal money has been served on the mortgagor. The above proposition of law of course was laid down by this Court in Narandas Karsondas while construing section 60 of the tp act. But as rightly contended by Mr Shyam Divan, we fail to note any distinction to be drawn while applying the abovesaid principles, even in respect of the sale of secured assets created by way of a secured interest in favour of the secured creditor under the provisions of the Sarfaesi Act, read along with the relevant Rules. We say so, inasmuch as, we find that even while setting out the principles in respect of the redemption of a mortgage by applying section 60 of the tp act, this Court has envisaged the situation where such mortgage deed providing for resorting to the sale of the mortgage property without the intervention of the Court. Keeping the said situation in mind, it was held that the right of redemption will not get extinguished merely Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 at the expiry of the period mentioned in the mortgage deed. It was also stated that the equity of redemption is not extinguished by mere contract for sale and the most important and vital principle stated was that the mortgagor's right to redeem will survive until there has been completion of sale by the mortgagee by a registered deed. The completion of sale, it is stated, can be held to be so unless and until notice in writing requiring payment of the principal money has been served on the mortgagor. Therefore, it was held that until the sale is complete by registration of sale, the mortgagor does not lose the right of redemption. It was also made clear that it was erroneous to suggest that the mortgagee would be acting as the agent of the mortgagor in selling the property.

39. When we apply the above principles stated with reference to section 60 of the tp act in respect of a secured interest in a secured asset in favour of the secured creditor under the provisions of the Sarfaesi Act and the relevant Rules applicable, under Section 13(1), a free hand is given to a secured creditor to resort to a sale without the intervention of the court or tribunal. However, under Section 13(8), it is Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 clearly stipulated that the mortgagor i.e the borrower, who is otherwise called as a debtor, retains his full right to redeem the property by tendering all the dues to the secured creditor at any time before the date fixed for sale or transfer. Under sub-section (8) of Section 13, as noted earlier, the secured asset should not be sold or transferred by the secured creditor when such tender is made by the borrower at the last moment before the sale or transfer. The said sub- section also states that no further step should be taken by the secured creditor for transfer or sale of that secured asset. We find no reason to state that the principles laid down with reference to section 60 of the tp act, which is general in nature in respect of all mortgages, can have no application in respect of a secured interest in a secured asset created in favour of a secured creditor, as all the above stated principles apply on all fours in respect of a transaction as between the debtor and secured creditor under the provisions of the Sarfaesi Act." O.

Union of India & ors. Vs. Major General Madan Lal Yadav (1996) SCC 127 @ para 28 Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 "Even if narrow interpretation is plausible, on the facts in this case, we have no hesitation to conclude that the trial began on February 25, 1987 on which date the Court-martial assembled, considered the charge and the prosecution undertook to produce the respondent who was found escaped from the open detention, before the Court. It is an admitted position that GCM assembled on February 25, 1987. On consideration of the charge, the proceedings were adjourned from day to day till the respondent appeared on March 2, 1987. It is obvious that the respondent had avoided trial to see that the trial would not get commenced. Under the scheme of the Act and the Rules, presence of the accused is a pre-condition for commencement of trial. In his absence and until his presence was secured, it became difficult, may impossible, to proceed with the trial of the respondent- accused. In this behalf, the maxim *nullus commodum capere potest de injuria sua propria*- meaning no man can take advantage of his own wrong - squarely stands Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 in the way of avoidance by the respondent and he is estopped to plead bar of limitation contained in Section 123 [2]. In Broom's Legal Maximum [10th Edn.] at page 191 it is stated "it is a maxim of law, recognized and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognized in Courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure. The reasonableness of the rule being manifest, we proceed at once to show its application by reference to decided cases. It was noted therein that a man shall not take advantage of his own wrong to gain the favourable interpretation of the law. In support thereof, the author has placed reliance on another maxim *frustra legis auxilium quorrit qui in legem committit*. He relies on *Perry v. Fitzhowe* [8 Q.B. 757]. At page 192, it is stated that if a man be bound to appear on a certain day, and before that day the obligee put him in prison, the bond is void. Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 At page 193, it is stated that "it is moreover a sound principle that he who prevents a thing from being done shall not avail himself of the non-

performance he has occasioned". At page 195, it is further stated that "a wrong doer ought not to be permitted to make a profit out of his own wrong". At page 199 it is observed that "the rule applies to the extent of undoing the advantage gained where that can be done and not to the extent of taking away a right previously possessed".

P. Dr. Raghubir Saran Vs. State of Bihar and Anr. (1964) 2 SCR 336 @ para 6-7 "What is the scope of this inherent power ? Can it be invoked in a case where the judgment has become final to expunge the remarks made therein ? By expunging remarks what does the appellate Court do ? Substantially it strikes out a part of the judgment. Sometimes the part struck out may be an integral part of the judgment, that is to say, the conclusion may not flow in the absence of the part deleted. On some occasions remarks made by a Court on the credibility of a witness, however exaggerated they Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 may be, may be the sole reason for not believing that witness. There may also be other occasions when the remarks may be so irrelevant that they may not have any direct impact on the judgment, but such instances will be very rare. Whatever may be the

decree of impact, the result of expunging remarks from a judgment is that it derogates from its finality. There is no provision in the Code of Criminal Procedure which enables an appellate Court in a case where the order of a lower Court has become final between the State and the accused to modify the said order by deleting or striking out some of the observations found therein. Does s. 561 A of the said Code confer such a power ? The conflicting views on this question are reflected in some of the judgments cited at the Bar. Sulaiman j. in Panchanan Banerji v. Upendra Nath Bhattwarji (3), holds that s. 561A of the Code of Criminal Procedure, which was added in 1923, confers such a power and (1) A. 1. R. 1945 P. C. 18, 22.

(2) (1945) 47 Bom. L. R. 634. (P.C.) (3) (1926) 1. L. R. 49 All, 254, 256.

Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 he does not see any reason why such an inherent power should not comprise a power to order a deletion of passages which are either irrelevant or inadmissible and which adversely affect the character of persons before the Court. Tek Chand J. In the matter of Daly (1), also concedes such a power to an appellate Court. Beaumont C. J. in Rogers, P. J. v. Shrinivas Gopal (2), remarks tersely that no Court can claim inherent power to alter the judgment of another Court. Dhavle J. in Bhutnath Khawas v. Dasrathi Das (3), agrees with Beaumont C.J. in holding that no Court can claim inherent power to alter the judgment of another Court. The Madras High Court in In re Public Prosecutor (4), holds that an appellate Court has power to expunge remarks in a judgment in a suitable case. The Full Bench of the Bombay High Court in State v. Nilkanth Shripad (5), posed the question thus : "The important question that arises is whether a superior Court has inherent power to alter the record, as it were, by changing or altering a judgment which has already been delivered and has become final as far as that particular Court is concerned", and expressed its view as follows :

Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 "A judgment of a lower Court may be wrong; it may even be perverse The proper way of attack that judgment is by bringing it under the scrutiny of the superior Court and getting the judgment of the lower Court judicially corrected..... ..

In our opinion, the inherent power that the High Court possesses is, in proper cases, even though no appeal or revision may be preferred to this Court to judicially correct the observations of the lower Court by pointing out that the observations made by the Magistrate were not justified or were without any foundation or were wholly wrong or improper."

With respect, I agree with the conclusion arrived (1) (1927) 1. L. R. 9 Lah, 269, 275.

(2) I. L.R. 1940 Bom. 415, 418, (3) A. 1. R, 1941 Pat. 544. (4) A.I.R. 1944 Mad, 614.

(5) I.L.R. 1954 Bom 148,157, 160.

Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 at by the Bombay High Court. This judgment, if I may say so with respect, reconciles the doctrine of finality of a judgment and the necessity to give relief in an appropriate case to a person who is not a party to a proceeding, if uncharitable, unmerited and irrelevant remarks are made against him without any foundation whatsoever. The other decisions taking the contrary view infringe the fundamental principle of jurisprudence that a judgment made by a Court, however inferior it may be in the hierarchy, is final and it can only be modified in the manner prescribed by the law governing such procedure. All the learned judges construing the scope of s. 561 A of the Code of Criminal Procedure have agreed on one question namely, to preserve the independence of judicial officers so that they may express their views without fear or favour. The observations made by some of the Judges are apposite in this context. Tek Chand J. observed in In the matter of Daly (1) :

"It is of the utmost importance to the administration of Justice that Courts should be allowed to perform their Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 functions freely and fearlessly and without undue interference by this Court."

Chagla C. J. in State v. Nilkanth Shripad observed :

"It is very necessary, in order to maintain the independence of the judiciary, that every Magistrate, however junior, should feel that he can fearlessly give expression to his own opinion in the judgment which he delivers. If our Magistrates feel that they cannot frankly and fearlessly deal with matters that come before them and that the High Court is likely to interfere with their opinions, the independence of the judiciary might be seriously undermined."

I entirely agree with the remarks. I reiterate that every judicial officer must be free to express his mind (1927) 1 T.R. 9 Lab, 269, 275.

(2) I.L.R. 1954 Bom. 148, 157, 160, in the matter of the appreciation of evidence before him. The phraseology used by a particular judge depends upon his inherent reaction to falsehood, his comparative command of the English language and his felicity of expression. There is nothing more deleterious to the discharge of judicial Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 functions than to create in the mind of a judge that he should conform to a particular pattern which may, or may not be, to the liking of the appellate Court. Sometimes he may overstep the mark. When public interests conflict, the lesser should yield to the larger one. An unmerited and undeserved insult to a witness may have to be tolerated in the general interests of preserving the independence of the judiciary. Even so, a duty is cast upon the judicial officer not to deflect himself from the even course of justice by making disparaging and undeserving remarks on persons that appear before him as witnesses or otherwise. Moderation in expression lends dignity to his office and imparts greater respect for judiciary. But occasions do arise when a particular judge, without any justification, may cast aspersions on a witness or any other person not before him affecting the character of such

witness or person. Such remarks may affect the reputation or even the career of such person. In my experience I find such cases are very rare. But if it happens, I agree with the Full Bench of the Bombay High Court that the appellate Court in a suitable case may judicially correct the observations of the lower Court by pointing out that the observations made by Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 that Court were not justified or were without any foundation were wholly wrong or improper. This can be done under its inherent power preserved under s. 561-A of the Code of Criminal Procedure. But that power must be exercised only in exceptional cases where the interest of the Party concerned would irrevocably suffer. From the aforesaid discussion the following principles emerge : (1) A judgment of a criminal Court is final ; it can be set aside or modified only in the manner prescribed by law. (2) Every judge, whatever may be his rank in the hierarchy, must have an unrestricted right to express his views in any matter before him without fear or favour. (3) There is a correlative and self-imposed duty in a judge not to make irrelevant remarks or observations without any foundation, especially in the case of witnesses or parties not before him, affecting their character or reputation. (4) An appellate Court has jurisdiction to judicially correct such remarks, but it will do so only in exceptional cases where such remarks would cause irrevocable harm to a witness or a party not before it."

Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 ii. The entire case is having around the issue whether 'Howrah Property' and 'Bankura Property' were the properties of the CD on the date of commencement of CIRP proceedings. As also whether there is transfer of secured assets. iii. It is a settled law that the Code is a complete Code and provides all remedy within the boundary of the Code. Section 238 of the Code provides as under:

"Section 238: Provisions of this Code to override other laws. The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

This reflects these provisions of this Code override other laws. iv. In order to bring brevity and clarity on the subject, we are reproducing the provisions of certain Acts for the requirement of Transfer of Property during sale/auction sale. Section 17 of SARFAESI Act has depicted below:

"[Section 17: Application against measures to recover secured debts.]

17. (1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, 2 [may make an application along with such 8 fee, as may be prescribed,] to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken: 3 [Provided that different fees may be prescribed for making the Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 application by the borrower and the person other

than the borrower.] [Explanation.--For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section (1) of section 17.] 5 [(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction-- (a) the cause of action, wholly or in part, arises; (b) where the secured asset is located; or (c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.] 6 [(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder. [(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in subsection (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 secured assets to the borrower or other aggrieved person, it may, by order,-- (a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and (c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-

section (4) of section 13.] (4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

[(4A) Where-- (i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,--

Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020

(a) has expired or stood determined; or

(b) is contrary to section 65A of the Transfer of Property Act, 1882 (4 of 1882); or (c) is contrary to terms of mortgage; or (d) is created after the issuance of notice of default and demand by the Bank under subsection (2) of section 13 of the Act; and (ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.] (5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application: Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any part to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal. (7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made there under.]"

Section 47 A of the Stamp Act, 1899 has depicted below:

"Section 47 in The Indian Stamp Act, 1899

47. Power of payer to stamp bills and promissory notes received by him unstamped.--When any bill of exchange [or promissory note] chargeable [with a duty not exceeding ten naye paise] is presented for payment unstamped, the person to whom it is so presented, may affix thereto the necessary adhesive stamp, and, upon cancelling the same in manner hereinbefore provided, may pay the sum payable upon such bill [or note], and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as aforesaid, and such bill [or note] shall, so far as respects the duty, be deemed good and valid: Provided that nothing herein contained shall relieve any person from any penalty or proceeding to which he may be liable in relation to such bill [or note]. Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 Section 17(2) of the Registration Act 1908 has depicted below: Section 17(2) - Nothing in clauses (b) and (c) of sub-section (1) applies to--

(i) any composition deed; or

(ii) any instrument relating to shares in a joint stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or

(iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(iv) any endorsement upon or transfer of any debenture issued by any such Company; or

(v) [any document other than the documents specified in sub-section (1A)] not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 executed, create, declare, assign, limit or extinguish any such right, title or interest; or

(vi) any decree or order of a Court [except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding]; or

(vii) any grant of immovable property by [Government]; or

(viii) any instrument of partition made by a Revenue-Officer; or (ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871 (26 of 1871), or the Land Improvement Loans Act, 1883 (19 of 1883); or trument for securing the repayment of a loan made under that Act; or 1 [(xa) any order made under the Charitable Endowments Act, 1890 (6 of 1890), vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or]

(xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-Officer. [Explanation.--A document purporting or operating to effect a contract for the sale of Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT)

(Ins) No.746 of 2020 immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.]"

Article 18 and 23 of Schedule 1 to the Stamp Act, 1899 has enumerated below:

"18. Instruments other than bills and notes executed out of India.--(1) Every instrument chargeable with duty executed only out of 2 [India], and not being a bill of exchange or promissory note, may be stamped within three months after it has been first received in 2 [India].

(2) Where any such instrument cannot, with reference to the description of stamp prescribed therefore, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, who shall stamp the same, in such manner as the 1 [State Government] may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for

23. Instruments reserving interest. --Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with duty higher than that Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 with which it would have been chargeable had not mention of interest been made therein."

Section 60 of the Transfer and Property Act,1882 has enumerated below:

"Section 60 in The Transfer of Property Act, 1882

60. Right of mortgagor to redeem.--At any time after the principal money has become 1[due], the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee

(a) to deliver [to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee], (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgement in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

Provided that the right conferred by this section has not been extinguished by act of the parties or by [decree] of a Court. The Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins)

No.746 of 2020 right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption. Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money. Redemption of portion of mortgaged property.--Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except [only] where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor."

Section 14 of the Code has depicted below:

"Section 14- Moratorium

14. (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:--

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, Company Appeal (AT) (Ins)

No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 clearances or a similar grant or right during the moratorium period;] (2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

[(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.] [(3) The provisions of sub-section (1) shall not apply to -- 3 [(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;] (b) a surety in a contract of guarantee to a corporate debtor.] (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process: Provided that where at any time during the corporate Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be." From the perusal of the above provisions, it is abundantly clear that certain compliances are necessary to affect the 'sale'. Be it registration/ payment of stamp duty/compliances of the provisions of the specific law etc. Furthermore, on a concurrent reading the provisions of Section 14 R/w section 238 of the Code, it is very much clear that the provisions of the Code shall have affect notwithstanding anything in consistent therewith. Section 14 provides Moratorium of certain Act which includes transferring, encumbering alienating or disposing off any of the assets of the Corporate Debtor.

v. What we observe in the present case that DRT has dismissed the petition not on merit but due to non-prosecution on 26.11.2019 and the other thing is that the fate of the sale was subject to the outcome of the SA as adjudicated by the DRT -III Kolkata orders dated 05.07.2019 & 16.08.2019, so the sale certificate is without any registration and payment of stamp duty and in violation of commitment at DRT. Generally all the above citations reveal one thing clearly that payment of stamp duty and registration is must which has also not been done in respect of both 'Howrah Property' and 'Bankura Property'. So, even on legal consideration the Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 order passed by the Adjudicating Authority on 25.02.2020 as depicted below in para 43 & 44 of the impugned order seems withstand the scrutiny of law :

43. The Application bearing CA(IB) No. 1635/KB/2019 is hereby allowed by directing the Liquidator to take possession of Howrah Property from R2 and Bankura Property from R3 and include the same in the liquidation assets. The Liquidator is at liberty to appoint valuers for valuing the said properties in accordance with the provisions of the Code and Regulations. Consequently, CA(IB) No. 1402/KB/2019 is disposed of.

44.R1(PNB) is hereby directed to refund the bid amount to R2 and R3 within 15 days from the receipt of this order."

vi. The CIRP commenced on 20.08.2019 and moratorium declared. vii. The RP has conducted its 8th meeting of CoC held on 14.02.2020 and informed the CoC that only one 'Prospective Resolution Applicant' came forward but he didn't submit any Resolution Plan and asked the CoC for approving the extension of CIRP but the representative of the Financial Creditors informed the RP that they have to obtain necessary approval from their appropriate authority for voting on the item and meeting be convened next week. The RP reconvened the adjourned Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 meeting but the representatives of the Financial Creditors stated that they didn't have any mandate or approval as yet from their appropriate authority on how to vote on Resolution Plan and finally no voting could take place on any item for voting during the meeting including extension of CIRP and so he didn't seek any extension from the Adjudicating Authority under Section 12 of the Code. viii. The Adjudicating Authority has also observed (at para 42- page 89 of the Appeal paper book) that RP showed his unwillingness to continue as a 'Liquidator'. As per the impugned order at page 65, the RP himself was present on the date of hearing. The Adjudicating Authority has also observed at para 41 that no Resolution Plan was obtained by the RP within the period of 180 days and the CoC has not decided for extension of CIRP period, we have no other alternative but to pass an order requiring the CD to be Liquidated in the manner as laid down Chapter - III of the Code and has passed accordingly the Liquidation order (appearing para 42 of the impugned order).

ix. In case of Sale certificate in respect of Howrah Property was issued on 19.08.2019 and CIRP commenced on 20.08.2019. Auction sale proceedings under the SARFAESI Act are not final unless the SA of the borrower/CD is decided under Section 17 of SARFAESI Act. The DRT order dated 05.07.2019 already made the sale subject to the outcome of relevant SA and the SA was dismissed by the DRT not on merit but on non-prosecution.

x. The 2nd CoC (appearing at page 92-101 of the Appeal Paper Book in case of CA(AT) (Ins) No. 746 of 2020) reflects that in para of 10 of the 2nd CoC at page 93 Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 that the IRP informed the CoC that RP has taken physical possession of manufacturing unit at Howrah on 03.09.2019 whereas PNB vide their email dated 23.09.2019 informed the IRP that the said unit of the CD had been sold by them. So PNB informed the IRP /RP after the commencement of the CIRP. Apart from this the PNB has submitted that the IRP in the 2nd CoC meeting held on 16.10.2019, the following documents only (i) Sale Confirmation Letter by PNB to Haldiram Corporation Pvt Limited (ii) the statement of Bank account (iii) the TDS Challan dated 16.08.2019. However, the alleged sale certificate dated 19.08.2019 was not shared in the 2nd CoC meeting which happened approx. two months after the issue of sale certificate this is a grey area. xi. Whereas in case of Bankura Property, the Appellant/PNB in CA(AT) (Ins) No. 449 of 2020 has given an undertaking that sale process is subject to outcome of SA as reflects from DRT Order sheet dated 16.08.2019 (appearing at page 172 of the Appeal Paper Book of CA(AT) (Ins) No. 449 of 2020) and the sale certificate was issued on 03.09.2019 i.e after commencement on CIRP (appearing at page

No. 178 of CA(AT) (Ins) No. 449 of 2020).

17. In view of the aforesaid facts and circumstances of the case including the law laid down, this Tribunal does not find any infirmity in the impugned order and resultantly uphold the impugned order dated 25.02.2020 of the 'Adjudicating Authority'. Consequently, all the three Appeals fail and they are dismissed. Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 Interim order, if any, passed by this Tribunal stands vacated. Pending Application, if any, stands disposed of. No order as costs.

[Justice M.Venugopal] Member (Judicial) (Dr. Ashok Kumar Mishra) Member (Technical) For the reasons recorded separately, I disagree with the Judgment authored by Hon'ble Dr. A.K. Mishra, Member (Technical), and assented by Hon'ble Mr. Justice M. Venugopal, Member (Judicial).

(V.P. Singh) Member (Technical) 14th February, 2022 New Delhi Raushan.K Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 [Per; V. P. Singh, Member (T)]

1. I have had the opportunity to go through the judgement authored by brother Hon'ble Member Technical, Dr A K Mishra. Still, I fail to persuade myself with the findings of brother Member Dr Mishra. Therefore, I wish to record my dissent with utmost humility and honour to my brother Dr Mishra. Since Dr Mishra had narrated facts in detail, there is no need to repeat the same. Analysis with the chronology of events

2. Before the commencement of insolvency commencement date, i.e. August 20 2019, the Appellant Bank had conducted the sale of two properties belonging to the corporate debtor under the provisions of the SARFAESI Act (for the sake of brevity, the two sets of properties are now referred to as "Howrah Property"

and the "Bunkura Property").

3. The sale of Howrah Property was conducted on July 6, 2019, and the highest bidder was declared on the same day. Under Rule 9 (2) of the SARFAESI Rules, vide Letter dated July 9, 2019, confirmation of sale notice was issued to the auction purchaser. Entire payments by the auction purchaser were duly made by August 16, 2019. The Authorised Officer issued the sale certificate under Rule 9 (6) under the SARFAESI Rules on August 19, 2019, i.e. before the commencement of the Corporate Insolvency Resolution Process. Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020

4. The sale of Bankura Property was conducted on August 17, 2019, under Rule 9 (2) of the SARFAESI Rules, i.e. before the commencement of the Corporate Insolvency Resolution Process, vide Letter dated August 19 2019, confirmation of sale was issued to the auction purchaser.

5. The Appellant Bank took Possession of Bankura Property under Sections 13 (4) & 14 of the SARFAESI Act, read with Rule 8 (3) of the SARFAESI Rules on July 25 2019.

6. CA (IB) No. 1402 of 2019 was filed by the promoter and ex-management of the corporate debtor before the Adjudicating Authority seeking a declaration that the sale of Howrah Property under the SARFAESI Act and SARFAESI Rules be made subject to the outcome of SA No. 152/2019 filed before DRT Kolkata and further, seeking an injunction against the issuance of sale certificate, and for seeking setting aside of the confirmation of sale and sale certificate. Further for seeking direction against the RP to take back the Possession of the Howrah property from respondent auction purchaser.

7. The Adjudicating Authority vide the interim Order dated October 29, 2019, directed the RP to get back the Possession of Howrah property if it was not sold before the declaration of the Moratorium.

Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020

8. Since the sale of Howrah property was already confirmed on July 9 2019, and the sale certificate evidencing the title had already been issued on August 19 2019, i.e. before the imposition of Moratorium under section 14 of the IB Code on August 20 2019. Thus the Resolution Professional had no authority to take back the Possession of the property already sold.

9. Even the NCLT had no authority to direct RP, under Section 60 (5) of the IBC, to deal with an immovable property sold under the provisions of the SARFAESI Act before the commencement of CIRP. As such, the application ought to have been dismissed outrightly as not maintainable and without jurisdiction.

10. The Resolution Professional filed this application before the Adjudicating Authority seeking direction to keep in abeyance of the interim Order dated October 29, 2019, in CA 1402 of 2019, until the disposal of the CA.

11. Vide impugned Order dated February 25, 2020, the Adjudicating Authority while inter alia disposing of CA (IB) No. 1402 of 2019 and CA (IB) No. 1635 of 2019 held that "the auction purchaser's had not acquired legal ownership title to the Howrah property or the Bunkura property on the date of imposition of the Moratorium and further held that the issuance of sale certificate is illegal."

12. The Appellant challenges the impugned Order on the ground that; Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020

a) Section 60 (5) of IBC confers no power or jurisdiction to NCLT to deal with the sale certificate that has taken place under the provisions of the SARFAESI Act before the commencement of the Insolvency Resolution Process.

b) The remedy for any party agreed by the conduct of sale, sale confirmation, issuance of sale certificate before commencement of CIRP lies with the DRT under Section 17 of the SARFAESI Act.

c) The sole reason the NCLT concludes that the sale was not completed was based on a reference to order dated July 5 2019, and August 16, 2019, passed by the DRT in SA No. 152 of 2019. However, the said Order merely record that 'the sale shall be subject to the outcome of the said securitisation application'. In any case, the said SA No. 152 of 2019 was dismissed on November 26, 2019, for want of prosecution. Therefore, nothing turns around on the basis of the aforesaid Order and the reference made by the NCLT to the said Order to conclude that the sale was not complete or concluded.

d) The Appellant contends that the learned NCLT wrongly referred to non-availability of date of delivery of Possession to the auction purchaser. Although the scheme of the SARFAESI Act, including Sections 13 (4), 14, read with Rule 8 (1) and Rule 8 (3) of the Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 SARFAESI Rules, the authorised officer takes Possession of the subject property before putting it up for auction itself, i.e. the properties out of Possession of the corporate debtor. The authorised officer has either the symbolic Possession or the actual Possession, as the case may be, at the time of putting the property on auction. Therefore, the subsequent delivery of Possession from the authorised officer to the auction purchaser is immaterial for the purposes of ascertaining whether the auction sale concluded or not.

e) However, the imposition of the Moratorium under Section 14 of the code does not, by any stretch of the imagination, obliterate the proceedings/actions that have already taken place before the commencement of insolvency proceedings. For example, the instant case sale of Howrah and Bankura property under the statutory provisions of the SARFAESI Act and SARFAESI Rules had already taken place before the insolvency commencement date.

13. Chronology of events about Howrah property is given below in the form of a chart for ready reference;

List of Dates Chronology of events about Howrah property Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 January 10 2015 Possession of property was taken under Rule 8 (1) under SARFAESI Act, read with SARFAESI Rules.

February 11 2019 Sale notice under Rule 8 (6) of SARFAESI Rules issued by the Bank.

June 15 2019 Sale notice dated June 15 2019, under Rule 8 (6) of SARFAESI Rules again issued by the Appellant Bank to CD for Howrah property.

Publication of an auction sale notice under Rule 9 (1). However, no attempt has been made to exercise the right of redemption under Section 13 (8) of the SARFAESI Act.

July 5 2019 DRT issued a direction in SA 152 of 2019 that the "fate of sale would be subject to the outcome of SA."

July 6 2019 Auction sale conducted by the Bank.

Respondent No. 3 declares the highest bidder.

July 9 2019 Since 25% amount was deposited by auction purchaser as per Rule 9 (3), a letter dated confirming sale in its favour under Rule 9 (2). Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 August 16 2019 One hundred per cent payment was made by Respondent No. 3 under Rule 9 (4) of SARFAESI Rules.

August 19 2019 Sale certificate issued by a bank to Respondent No. 3 under Rule 9 (6) SARFAESI Rules.

August 20 2019 Insolvency commencement date-

moratorium imposed.

14. Based on the chronology of events about Howrah property, it is clear that sale proceedings of Howrah property were concluded on August 19 2019, i.e. before the commencement of CIRP. The title is transferred before the commencement of the Moratorium on August 20 2020. Thus, there could be no question of such a sale being set aside by the Adjudicating Authority/NCLT under Section 60 (5) of the Code.

15. The learned Counsel for the Appellant adverted to the observations of the Hon'ble Supreme Court in paragraph 12 in case of B. Arvind Kumar v. Govt. of India, reported in (2007) 5 SCC 745) wherein it is observed that;

"12. 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 the plaintiff) was the highest bidder at an auction sale held Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 on 22-8-1941, in respect of the right, title, interest of the insolvent Anraj Sankla, namely, the leasehold right in the property described in the schedule to the certificate (suit property), that his bid of Rs 8350 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 authorised 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-sections (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 Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 convey any right, title or interest to plaintiff's father for want of a registered deed of transfer."

(emphasis in bold supplied)

16. The Appellants counsel further placed reliance on the judgement of Hon'ble Supreme Court in the case of Shakeena v. Bank of India, reported in 2019 SCC OnLine SC 1059 wherein it is observed that;

"35. A fortiori, it must follow that the appellants have failed to exercise their right of redemption in the manner known to law, muchless until the registration of the sale certificate on September 18, 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 September 18, 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 September 18, 2007. Further, the amended Section 13(8) of the 2002 Act which has come into force w.e.f. September 1, 2016, will now stare at the face of the appellants. As per the amended provision, stringent Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 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.

36. 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 January 6, 2006, much less registration thereof on September 18, 2007."

(emphasis in bold supplied)

17. The learned Counsel for the respondent placed reliance on the judgement of Hon'ble Supreme Court in the case of Mathew Varghese v. M. Amritha Kumar reported in (2014) 5 SCC 610.

"53. We, therefore, hold that unless and until a clear 30 days' notice is given to the borrower, no sale or transfer can be resorted to by a secured creditor. In the event of any such sale properly notified after giving 30 days' clear notice to the borrower did not take place as scheduled for reasons which cannot be solely Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 attributable to the borrower, the secured creditor cannot effect the sale or transfer of the secured asset on any subsequent date by relying upon the notification issued earlier. In other words, once the sale does not take place pursuant to a notice issued under Rules 8 and 9, read along with Section 13(8) for which the entire blame cannot be thrown on the borrower, it is imperative that for effecting the sale, the procedure prescribed above will have to be followed afresh, as the notice issued earlier would lapse. In that respect, the only other provision to be noted is sub-rule (8) of Rule 8 as per which sale by any method other than public auction or public tender can be on such terms as may be settled between the parties in writing. As far as sub-rule (8) is concerned, the parties referred to can only relate to the secured creditor and the borrower. It is, therefore, imperative that for the sale to be effected under Section 13(8), . The procedure prescribed under Rule 8 read along with Rule 9(1) has to be necessarily followed, inasmuch as that is the prescription of the law for effecting the sale as has been explained in detail by us in the earlier paragraphs by referring to Sections 13(1), 13(8) and 37, read along with Section 29 and Rule 15. In our considered view any other construction will be doing violence to the provisions of the SARFAESI Act, in particular Sections 13(1) and (8) of the said Act."

18. It is pertinent to mention that the judgement Mathew Varghese case is distinguishable as it does not apply to the facts of the present case. As the same deals with Section 13 (8) of the SARFAESI Act before Amendment in 2016. By Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 the Amendment to

Section 13(8), the legislature has made the provision much stricter and limited the rights to redemption only until the publication of sale notice.

19. The fundamental basis and crux of the Mathew Varghese judgment are that the borrower's right of redemption, a statutorily protected right, must not be lost. However, the same does not apply to the present case as the borrower has voluntarily not exercised its right of redemption despite having multiple opportunities since 2018. It is also important to point out that Mathew Varghese's judgment relies upon the *Narandas Karsondas vs S A Kamtam* reported in (1977) 3 SCC 247, which relates to Transfer of Property Act and not SARFAESI Act.

20. Admittedly, as held by the Hon'ble Supreme Court in a catena of judgements, the SARFAESI Act is a complete code in itself. Section 35 has an overriding effect on anything inconsistent in addition to that contained in any other law for the time being in force. Thus, the registration requirement as may be required under the sale on the transfer of property act is nowhere required under the provisions of the SARFAESI Act.

21. Further, this Appellate Tribunal, while deciding Company Appeal (AT) (insolvency) No. 930 2020 Nitin Garg vs State Bank of India, date of decision August 12, 2021, has already decided that;

Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 "25. It is well settled that when an auction purchaser derives title and confirmation of sale in its favour and a sale certificate is issued evidencing such sale and title, no further date of transfer from the court is contemplated are required. Further, it does not required registration under section 17 (2) (xii) of the registration act."

22. It is pertinent to mention that the Adjudicating Authority/NCLT has itself held that the sale proceedings for Howrah Property were concluded on August 19, 2019, i.e. before the commencement of CIRP (paragraph 31 of the Impugned Order). Therefore, once the NCLT has concluded that the sale is completed, it cannot set aside a sale.

23. Therefore, admittedly, the title of Howrah Property stood transferred before the commencement of Moratorium, i.e. on August 20, 2020, and there could be no question of such a sale being set aside by the NCLT under Section 60 (5) the Code.

24. It is also important to point out that the Adjudicating Authority/NCLT has failed to consider the amended provision of the SARFAESI Act Section 13 (8). The amended Act provided that the right of redemption expires on publication of sale notice, i.e.in, the instant case on June 15, 2019. Therefore, the right of redemption available to the borrower has not been exercised by the Corporate Debtor/Respondent No. 2 borrower. Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020

25. Under the amended provision, such right of redemption only arises if the borrower tenders all dues, costs, charges and expenses to the creditor at any time before the date of publication of the notice for the public auction. Thus, the Amendment has imposed a more stringent condition

compared to the older provision, which the Hon'ble Supreme Court has duly recognised in the case of Shakeena (supra).

26. Admittedly, in the present case, Possession of the property was taken far back in February 2018, and an auction sale notice was issued in February 2019 and after that on June 15, 2019, which fructified into the sale of the Howrah property. Pertinently, no attempt was made by Respondent No. 2 to exercise its right of redemption under the SARFAESI Act. The applications were filed before the NCLT/DRT are a mere afterthought with the mala fide intent to stall the process, and Respondent No. 2 has no locus whatsoever.

27. The learned senior Counsel for the respondent raised the issue about the non-registration of the sale certificate.

28. Respondent No.2 has placed reliance on Ram Murthy Pyara Lal & Ors vs Central Bank of India Ors., reported in 2010 (120) DRJ 437 (DB) to state those auction sale proceedings are not final under the SARFAESI Act unless SA of the borrower before DRT is decided. It is argued that the reliance placed is misplaced and misconceived, and a part of the judgment is being read in isolation to Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 mislead this Tribunal. However, at the very outset, the decision in Rama Murthy does not apply to the facts of this case as it does not deal with the Amended Section 13(8) of the SARFAESI Act. (Section 13(8) before its Amendment in 2016). Moreover, the judgment deals with the right of redemption available to the borrower and in no manner questions or halts the continuation and conclusion of a sale under the SARFAESI Act.

29. Further, the judgment under para 11, 12 categorically states that there shall be no automatic stay on proceedings under Section 13 merely upon the filing of an SA under Section 17 of the SARFAESI Act. Moreover, the judgment in Mathew Varghese (supra) concludes simply that right of redemption will depend upon the outcome of Section 17 proceedings. If the borrowers succeed, the court may set aside the auction sale so conducted. Setting aside a sale by the DRT implies that the sale was concluded and thereafter required to be set aside. However, the judgment nowhere states that a sale under SARFAESI cannot be conducted and concluded even during the pendency of an SA.

However, above stated case of Mathew Varghese (supra) does not apply to the facts of the case because it does not deal with the amended provision of the Act. The Statutory provisions with Amendment is given below for ready reference.

30. Statutory Provisions Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 20021

13. Enforcement of security interest.--(1) Notwithstanding anything contained in Section 69 or Section 69-A of the Transfer of Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or Tribunal, by such creditor in accordance with the provisions of this Act.

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4):

[Provided that--

(i) the requirement of classification of secured debt as non-

performing asset under this sub-section shall not apply to a borrower who has raised funds through issue of debt securities; and

(ii) in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee;] (3) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non- payment of secured debts by the borrower.

[(3-A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate [within fifteen days] of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower:

Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under Section 17 or the Court of District Judge under Section 17-A.] (4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:--

Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020

(a) take Possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

[(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;]

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the Possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 (5) Any payment made by any person referred to in clause (d) of sub-section (4) to the secured creditor shall give such person a valid discharge as if he has made payment to the borrower. [(5-A) Where the sale of an immovable property, for which a reserve price has been specified, has been postponed for want of a bid of an amount not less than such reserve price, it shall be lawful for any officer of the secured creditor, if so authorised by the secured creditor in this behalf, to bid for the immovable property on behalf of the secured creditor at any subsequent sale. (5-B) Where the secured creditor, referred to in sub-section (5-A), is declared to be the purchaser of the immovable property at any subsequent sale, the amount of the purchase price shall be adjusted towards the amount of the claim of the secured creditor for which the auction of enforcement of security interest is taken by the secured creditor, under sub-section (4) of Section 13. (5-C) The provisions of Section 9 of the Banking Regulation Act, 1949 (10 of 1949) shall, as far as may be, apply to the immovable property acquired by secured creditor under sub-section (5-A).] (6) Any transfer of secured asset after taking Possession thereof or take over of management under sub-section (4), by the secured creditor or by the manager on behalf of the secured creditor shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset. Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 (7) Where any action has been taken against a borrower under the provisions of sub-section (4), all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the absence of any contract to the contrary, be held by him in trust, to be applied, firstly, in payment of such costs, charges and expenses and secondly, in discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests.

[(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of

notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,--

(i) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and

(ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.] Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 (9) [Subject to the provisions of the Insolvency and Bankruptcy Code, 2016, in the case of] financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to sub-section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than [sixty per cent] in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors:

Provided that in the case of a company in liquidation, the amount realised from the sale of secured assets shall be distributed in accordance with the provisions of Section 529-A of the Companies Act, 1956 (1 of 1956):

Provided further that in the case of a company being wound up on or after the commencement of this Act, the secured creditor of such company, who opts to realise his security instead of relinquishing his security and proving his debt under proviso to sub-section (1) of Section 529 of the Companies Act, 1956 (1 of 1956), may retain the sale proceeds of his secured assets after depositing the workmen's dues with the liquidator in accordance with the provisions of Section 529-A of that Act:

Provided also that liquidator referred to in the second proviso shall intimate the secured creditor the workmen's dues in accordance with the provisions of Section 529-A of the Companies Act, 1956 (1 of 1956) and in case such workmen's dues cannot be ascertained, the liquidator shall intimate the estimated amount or Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 workmen's dues under that section to the secured creditor and in such case the secured creditor may retain the sale proceeds of the secured assets after depositing the amount of such estimated dues with the liquidator:

Provided also that in case the secured creditor deposits the estimated amount of workmen's dues, such creditor shall be liable to pay the balance of the workmen's dues or entitled to receive the excess amount, if any, deposited by the secured creditor with the liquidator:

Provided also that the secured creditor shall furnish an undertaking to the liquidator to pay the balance of the workmen's dues, if any.

Explanation.--For the purposes of this sub-section,--

(a) "record date" means the date agreed upon by the secured creditors representing not less than [sixty per cent] in value of the amount outstanding on such date;

(b) "amount outstanding" shall include principal, interest and any other dues payable by the borrower to the secured creditor in respect of secured asset as per the books of account of the secured creditor.

(10) Where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the Debts Recovery Tribunal having jurisdiction or a Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 competent court, as the case may be, for recovery of the balance amount from the borrower.

(11) Without prejudice to the rights conferred on the secured creditor under or by this section, the secured creditor shall be entitled to proceed against the guarantors or sell the pledged assets without first taking any of the measures specified in clauses (a) to (d) of sub-section (4) in relating to the secured assets under this Act.

(12) The rights of a secured creditor under this Act may be exercised by one or more of his officers authorised in this behalf in such manner as may be prescribed.

(13) No borrower shall, after receipt of notice referred to in sub-

section (2), transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor.

Security Interest (Enforcement) Rules, 2002.

7. Issue of certificate of sale.--(1) Where movable secured assets is sold, sale price of each lot shall be paid as per the terms of the public notice or on the terms as may be settled between the parties, as the case may be, and in the event of default of payment, the movable secured assets shall be liable to be offered for sale again.

(2) On payment of sale price, the authorised officer shall issue a certificate of sale in the prescribed form as given in Appendix-III Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 to these rules specifying the movable secured assets sold, price paid and the name of the purchaser and thereafter

the sale shall become absolute. The certificate of sale so issued shall be prima facie evidence of title of the purchaser.

(3) Where the movable secured assets are those referred in sub- clauses (iii) to (v) of clause (1) of sub-section (1) of Section 2 of the [Act], the provisions contained in these rules and Rule 7 dealing with the sale of movable secured assets shall, mutatis mutandis, apply to such assets.

8. Sale of immovable secured assets.--(1) Where the secured asset is an immovable property, the authorised officer shall take or cause to be taken Possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property.

(2) [The possession notice as referred to in sub-rule (1) shall also be published, as soon as possible but in any case not later than seven days from the date of taking Possession, in two leading newspapers], one in vernacular language having sufficient circulation in that locality, by the authorised officer. [(2-A) All notices under these rules may also be served upon the borrower through electronic mode of service, in addition to the modes prescribed under sub-rule (1) and sub-rule (2) of Rule 8.] Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 (3) In the event of Possession of immovable property is actually taken by the authorised officer, such property shall be kept in his own custody or in the custody of any person authorised or appointed by him, who shall take as much care of the property in his custody as a owner of ordinary prudence would, under the similar circumstances, take of such property. (4) The authorised officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed of.

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

(a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or

(b) by inviting tenders from the public;

[(c) by holding public auction including through e-auction mode;

or]

(d) by private treaty.

[Provided that in case of sale of immovable property in the State of Jammu and Kashmir, the provisions of Jammu and Kashmir Company Appeal (AT) (Ins) No.449 of 2020 with Company

Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 Transfer of Property Act, 1977 shall apply to the person who acquires such property in the State.] (6) the authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub- rule (5):

[Provided that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in the Form given in Appendix IV-A to be published in two leading newspapers including one in vernacular language having wide circulation in the locality.] [(7) every notice of sale shall be affixed on the conspicuous part of the immovable property and the authorised officer shall upload the detailed terms and conditions of the sale, on the website of the secured creditor, which shall include;

(a) the description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;

(b) the secured debt for recovery of which the property is to be sold;

(c) reserve price of the immovable secured assets below which the property may not be sold;

Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020

(d) time and place of public auction or the time after which sale by any other mode shall be completed;

(e) deposit of earnest money as may be stipulated by the secured creditor;

(f) any other terms and conditions, which the authorised officer considers it necessary for a purchaser to know the nature and value of the property.] (8) Sale by any methods other than public auction or public tender, shall be on such terms as may be settled [between the secured creditor and the proposed purchaser in writing].

9. Time of sale, Issue of Sale Certificate and delivery of Possession, etc.--

[(1) No sale of immovable property under these rules, in first instance shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) of Rule 8 or notice of sale has been served to the borrower:

Provided further that if sale of immovable property by any one of the methods specified by sub-rule (5) of Rule 8 fails and sale is required to be conducted again, the authorised officer shall serve, affix and publish notice of sale of not less than fifteen days to the borrower, for any subsequent sale.] (2) The sale shall be confirmed in

favour of the purchaser who has offered the highest sale price in his bid or tender or quotation Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 or offer to the authorised officer and shall be subject to confirmation by the secured creditor:

Provided that no sale under this rule shall be confirmed, if the amount offered by sale price is less than the reserve price, specified under sub-rule (5) of [Rule 8]:

Provided further that if the authorised officer fails to obtain a price higher than the reserve price, he may, with the consent of the borrower and the secured creditor effect the sale at such price. [(3) On every sale of immovable property, the purchaser shall immediately, i.e. on the same day or not later than next working day, as the case may be, pay a deposit of twenty five per cent. of the amount of the sale price, which is inclusive of earnest money deposited, if any, to the authorised officer conducting the sale and in default of such deposit, the property shall be sold again.] (4) The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period [as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months]. (5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited [to the secured creditor] and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 or to any part of the sum for which it may be subsequently sold.

(6) On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorised officer exercising the power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the Form given in Appendix V to these rules.

(7) Where the immovable property sold is subject to any encumbrances, the authorised officer may, if he thinks fit, allow the purchaser to deposit with him the money required to discharge the encumbrances and any interest due thereon together with such additional amount that may be sufficient to meet the contingencies or further cost, expenses and interest as may be determined by him:

[Provided that if after meeting the cost of removing encumbrances and contingencies there is any surplus available out of the money deposited by the purchaser such surplus shall be paid to the purchaser within fifteen days from the date of finalisation of the sale.] (8) On such deposit of money for discharge of the encumbrances, the authorised officer [shall] issue or cause the purchaser to issue notices to the persons interested in or entitled to the money deposited with him and take steps to make the payment accordingly.

Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 (9) The authorised officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7) above. (10) The certificate of sale issued under sub-rule (6) shall specifically mention that whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not.

31. The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 Objects; 3. The amendments proposed in the Recovery of Debts due to Banks and Financial Institutions Act, 1993 inter alia, include (i) expeditious adjudication of recovery applications; (ii) electronic filing of recovery applications, documents and written statements; (iii) priority to secured creditors in repayment of debts; (iv) debenture trustees as financial institutions; (v) empowering the Central Government to provide for uniform procedural rules for conduct of proceedings in the Debts Recovery Tribunals and Appellate Tribunals.

4. The Bill also seeks to amend the Indian Stamp Act, 1899, so as to exempt assignment of loans in favour of asset reconstruction companies from stamp duty and the Depositories Act, 1996 for facilitating transfer of shares held in pledge or on conversion of debt into shares in favour of banks and financial institutions.

Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020

5. The Bill aims to improve ease of doing business and facilitate investment leading to higher economic growth and development.

6. The Bill seeks to achieve the above objectives by him."

11. Amendment of Section 13.-- In the principal Act, in Section 13,--

(i) in sub-section (2), the following proviso shall be inserted, namely--

"Provided that--

(i) the requirement of classification of secured debt as non-

performing asset under this sub-section shall not apply to a borrower who has raised funds through issue of debt securities; and

(ii) in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee;";

(iii) for sub-section (8), the following sub-section shall be substituted, namely--

"(8) Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 treaty for transfer by way of lease, assignment or sale of the secured assets,--

(i) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and

(ii) in case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this sub-section, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets."

32. The learned senior Counsel for the Appellant argued that symbolic Possession of the properties was taken by Appellant Bank much prior to the imposition of Moratorium. In any case, the date of delivery of Possession to the auction purchaser has no bearing on the statutory sale confirmed prior to the imposition of Moratorium. In para 32 of the Impugned Common Order, the learned Adjudicating Authority/NCLT has incorrectly held that sale of the property is affected when sale certificate is issued in favour of the purchaser and that vesting of all rights of the owner of the secured assets only comes into effect when there is the transfer of the asset after taking Possession of the property.

33. The AA/NCLT has stated that the above observation is indicated from reading the SARFAESI Act. The Learned AA/NCLT has further, in para 33, Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 observed that "the sale certificate itself amounts to transfer of title, provided Possession is given in favour of the purchaser.

34. However, SARFAESI Act provides no such requirement. The AA/ NCLT failed to consider that the Possession of the properties in question was taken under the provisions of Rule 8 of the SARFAESI Rules much prior to the imposition of Moratorium in January 2018. Rule 8 of SARFAESI Rules makes no distinction or differentiation on the basis of symbolic Possession or physical Possession of the property to be auctioned; as such, the event of symbolic Possession is of equal and similar significance as the event of physical Possession under the provisions of SARFAESI Act and the Rules.

35. The learned senior Counsel for the Appellant adverted to the observation of the Hon'ble Supreme Court in paragraphs 73, and 74 in the case of Transcore v. UOI (2008) 1 SCC 125 wherein Hon'ble Supreme Court has observed that;

"73. 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 interest in 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, Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 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.

74. 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 realising 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 Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 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 District Magistrate to take Possession thereof. Section 17(1) of the NPA Act refers to the right of Appeal. Section 17(3) states that if 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 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 Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 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 40 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 overnight, he can take actual Possession even prior to the decree. The authorised 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 authorised Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 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 a place in the scheme of the NPA Act read with the 2002 Rules."

36. It is pertinent to mention that the AA/ NCLT had no jurisdiction under Section 60(5) to interfere or deal with the proceedings, including the sale confirmation and issuance of sale certificate already carried out before initiation of CIRP and the imposition of Moratorium. Section 60(5) of the IB Code does not confer any power or jurisdiction upon the AA/ NCLT to deal with a statutory sale that has taken place under the provisions of the SARFAESI Act before the commencement of the Insolvency Resolution Process.

37. The learned Counsel for the Appellant further adverted to observations of the Hon'ble Supreme Court in paragraph 30, 33, and 37 in the case of Embassy Property v. the State of Karnataka reported in (2020) 13 SCC 308, wherein it is held that;

"30. The NCLT is not even a civil court, which has jurisdiction by virtue of Section 9 of the Code of Civil Procedure to try all suits of a civil nature excepting suits, of which their cognisance is either Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 expressly or impliedly barred. Therefore NCLT can exercise only such powers within the contours of jurisdiction as prescribed by the statute, the law in respect of which it is called upon to administer. Hence, let us now see the jurisdiction and powers conferred upon NCLT.

33. Sub-section (4) of Section 60 of the IBC, 2016 states that the NCLT will have all the powers of the DRT as contemplated under Part III of the Code for the purposes of sub-section (2). Sub-section (2) deals with a situation where the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor of a corporate debtor is taken up, when CIRP or liquidation proceeding of such a corporate debtor is already pending before NCLT. The object of sub-section (2) is to group together (A) the CIRP or liquidation proceeding of a corporate debtor, and (B) the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor of the very same corporate debtor, so that a single forum may deal with both. This is to ensure that the CIRP of a corporate debtor and the insolvency resolution of the individual guarantors of the very same corporate debtor do not proceed on different tracks, before different fora, leading to conflict of interests, situations or decisions.

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 the MMDR Act, 1957 and the Rules issued thereunder. The only Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 provision which can probably throw light on this question would be sub-section (5) of Section 60, as it speaks about the jurisdiction of the NCLT. Clause (c) of sub-section (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 the imagination, be brought within the fold of the phrase "arising out of or in relation to the insolvency resolution"

appearing in clause (c) of sub-section (5). Let us take for instance a case where a corporate debtor had suffered an order at the hands of the Income Tax Appellate

Tribunal, at the time of initiation of CIRP. If Section 60(5)(c) of the 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 260-A 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 crystallised and what remains is only payment, the claim of the Government will have to Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 be adjudicated and paid only in a manner prescribed in the resolution plan as approved by the adjudicating authority, namely, the NCLT.]."

38. The Appellant counsel argues that the observations made by the learned AA/NCLT in para-42 of the impugned Order against the Appellant Bank are uncalled for and liable to be set aside. NCLT has wrongly observed that the CoC has misguided the IRP regarding the sale of properties. The sale of the properties in question and confirmation of sale in favour of the auction purchasers before CIRP was under the SARFAESI Act & Rules.

39. It is also important to note that Securitization Application No.152/2019 stood dismissed on 26.11.2019. Therefore, the ground of sale is subject to its outcome was not available on the date of Impugned Common Order.

40. Therefore, it is clear that the AA/NCLT wrongly concluded that the sale was not completed before the initiation of CIRP. Based on the orders dated 05.07.2019 and 16.08.2019 passed by the Ld. DRT Kolkata in IA 636/2019 & IA 894/2019 in SA No. 152/2019 the NCLT, in para 36, wherein it is observed that 'in respect of Howrah Property, the Appellant Bank was obliged to not conclude the sale as per undertaking dated 16.08.2019 before the DRT. The said Order merely records that the fate of the sale shall be subject to the outcome of SA No.152/2019 and does not operate as a stay on sale proceedings. It is reiterated that no stay whatsoever was ever granted on the sale of the property. Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 Further, the Order dated 16.08.2019 was passed in IA 894/2019, specifically pertaining only to Bankura property. Thus the observation of the NCLT in para 36 of the impugned Order (@pg 86 of Appeal) is incorrect.

41. Based on the above discussion, it is clear that the finding of the Adjudicating Authority about Howrah property is erroneous. Therefore, the Adjudicating Authority has erred in exercising its jurisdiction. It is also crystal clear that the sale of Howrah property was complete before the initiation of CIRP under the SARFAESI Act. A sale certificate was also issued before the initiation of CIRP. Further, no application was filed under Section 13 (8) of the SARFAESI Act for redemption.

Therefore the Adjudicating Authority was not authorised to direct the Resolution Professional to take back the Possession of IIIrd Party Assets in the exercise of powers under Section 60 (5) (c) of the Insolvency and Bankruptcy Code, 2016. However, the aggrieved party had the right to approach the Appropriate Forum/Authority under the applicable laws to challenge the Order passed under SARFAESI Act. Thus, the Adjudicating Authority/NCLT direction to RP to recover Possession back from the auction purchaser and the property to be added in the liquidation assets of the Corporate Debtor is unsustainable.

42. Chronology of events about "BANKURA PROPERTY"

DATE PARTICULARS Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 09.01.2018 Possession under R. 8(1) of SARFAESI Rules. Consolidated Possession letter issued by the Bank on 11.01.2018. 25.07.2019 Physical Possession taken by Appellant of Bankura Property on 25.07.2019 and publication in this regard made on 28.07.2019.

27.07.2019 Sale Notice dated 27.07.2019 under R. 8(6) issued by Bank to CD for Bankura property. Publication of e-auction sale notice under Rule 9(1) 17.08.2019 Auction Sale conducted by Bank. Respondent no. 4 was declared as Highest Bidder.

19.08.2019 SALE CONFIRMATION AND TITLE TRANSFER- Since the auction purchaser deposited 25% amount as per Rule 9(3), Letter dated 19.08.2019 was issued to Respondent No.4 confirming the sale in its favour under Rule 9(2). 20.08.2019 CIR Process commenced, and Moratorium imposed 03.09.2019 Sale Certificate issued by Appellant to Respondent No.4 under Rule 9(6), after balance payment received.

43. The chronology of events relating to Howrah and Bankura property events is compared, then come to our notice that proceeding up to the sale confirmation and title transfer of the properties were made by August 19 2019, the only difference for Howrah property is about payment of auction sale amount. It appears that for the Howrah property, 25% amount was deposited by the auction purchaser as per Rule 9 (3), and a sale confirmation letter was issued in its Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 favour under Rule 9 (2) of the SARFAESI Rules. After that, the auction purchaser made that 100% hundred per cent payment under Rule 9 (4) of the SARFAESI Rules on August 16 2019. The Bank finally issued a sale certificate to Respondent No. 3 under Rule 9 (6) on August 19 2019.

44. But for the Bankura property, 25% was deposited by the auction purchaser under Rule 9 (3) of SARFAESI Rules on August 19 2019. After that, a letter confirming the sale in its favour was issued under Rule 9 (2). After that, on September 3, 2019, a sale certificate was issued by the Appellant to Respondent No. 4 under Rule 9 (6) of the SARFAESI Rules after receiving the balance payment.

45. Thus, it is clear that both the properties' Sale confirmation Notices were issued on August 19 2019. However, the auction purchaser of Howrah property deposited 100 % hundred per cent

payment on August 19, 2019, and a sale certificate was issued in its favour on that day, i.e. before initiation of the Corporate Insolvency Process.

46. It is pertinent to mention that Rule 9 (3) of the SARFAESI Rules permits depositing 25% payment on sale confirmation. Further, Rule 9 (4) provides a maximum period for depositing 100 % hundred per cent amount within 15 days from the date of confirmation of sale. Still, this time is the extendable maximum Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 of up to 3 months. However, the appellant bank does not contend that auction money was not deposited in the prescribed time limit under the Rules'.

47. The highest bidder for Bankura Property was declared on 17.08.2019, and sale confirmation was issued on 19.08.2019, i.e. prior to commencement of insolvency (sale confirmation @pg 177 of the Appeal). [Impugned Order incorrectly notes the date of sale confirmation as 16.08.2019). Thus, in accordance with the settled position of law, as detailed hereinabove, the sale stood confirmed, and the title stood transferred prior to commencement of CIRP.

48. It is pertinent to note that no relief whatsoever has been sought qua the Bankura Property by Respondent No.2 before the NCLT. A perusal of CA (IB) No.1402 KB/2019 filed by Respondent No.2 before the NCLT categorically reveals that the relief sought qua the 'Howrah Property' only. (see pg. 232 Vol II of the Appeal).

49. This is more evident because the Auction Purchaser of Bankura Property, i.e. Respondent No.4, was not made a party to the proceedings before the AA/NCLT. (see pg 197-198- Memo of Parties). Further, even the Order dated 29.10.2019 passed by the AA/NCLT directing the RP to take back Possession, if not already sold, was pertaining to 'Howrah Property' only.

50. Further, even CA (IB) No. 1635/KB/ 2019 filed by the RP was qua Howrah Property only, and no relief was sought about Bankura property. As such, the Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 NCLT ought not to have gone into a statutory sale ,duly conducted under SARFAESI Act and set aside the same.

51. In any case, the SA was dismissed vide Order dated 26.11.2019. The condition of the sale was subject to the outcome of SA, either in Order dated 05.07.2019 or 16.08.2019, no longer existed. Thus in view of the fact that the sale stood confirmed before the imposition of the Moratorium, and title stood transferred in favour of Respondent No.4, there was no question of the sale being hit by Moratorium. Furthermore, even if the sale certificate was issued post commencement of CIRP, it is well established, as detailed above, that the title of the property stands transferred on sale confirmation, and the sale certificate is only evidence of title.

52. Effect of Moratorium under Section 14 of the IB Code would not scuttle statutory sale proceedings that have already taken place before initiation of the corporate insolvency resolution process. However, the imposition of Moratorium does not obliterate the proceedings/actions that

had already taken place before the commencement of insolvency proceedings, such as the sale of the properties herein, which was confirmed before the imposition of Moratorium.

53. Further, unlike S.14 of IB Code which prohibits institution and the continuance of the proceedings during the Moratorium, under Section 33 of I&B Code, the only restriction is regarding the institution of the suit or proceedings Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 by or against the Corporate Debtor, as such, there is no bar in continuing with SARFAESI action and take it to its logical conclusion.

54. Without prejudice, in any case, in view of the fact that liquidation has been ordered, the Moratorium under Section 14 ceases to operate. As a result, the Appellant Bank can always continue with the SARFAESI proceedings while invoking its right under Section 52 of IB Code. However, considering the present circumstances in all likelihood, there may be a substantial reduction of the bid amount compared to the amount for which the property has already been sold. Therefore, if the sale is set aside, it would defeat the objective of the IB Code, i.e. maximisation of the Corporate Debtor's assets.

55. Thus, no opportunity can be provided to Respondent No.4 to exit the transaction. There is no question whatsoever of any refund of the sale consideration, interest, or other expenses by the Bank.
Conclusion

56. Based on the above discussion, I'm of the view that (AT) (Ins) 449 of 2020 and connected CA(AT)(Ins) 504 of 2020 filed by auction purchaser for setting aside the same common Impugned Order dated 25.02.2020 deserves to be allowed and the common impugned Order dated February 25, 2020, passed in CA (IB)No. 1402/KB/2019 and CA (IB) No. 1635/KB/2019 in CP (IB) No. Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020 803/KB/2018 deserves to be set aside. Accordingly, further remarks against the RP, made in paragraph 42 of the impugned judgment, is expunged.

57. Further, Connected Appeal CP (IB) No 746 of 2020 seeking expunction of remarks against RP in Paragraph 37 of the impugned Order has become infructuous as the Impugned Order has been set aside. Hence, liable to be dismissed.

[Mr. V. P. Singh] Member (Technical) ORDER Based on the majority view judgment authored by Hon'ble Dr. A.K. Mishra, Member (Technical) shall prevail. Consequently, all the three Appeals are dismissed, interim order, if any passed by this Tribunal stands vacated pending application, if any, stands disposed of, no order as to cost.

[Justice M.Venugopal] Member (Judicial) (Dr. Ashok Kumar Mishra) Member (Technical) NEW DELHI February 14 2022 Company Appeal (AT) (Ins) No.449 of 2020 with Company Appeal (AT) (Ins) No.504 of 2020 with Company Appeal (AT) (Ins) No.746 of 2020