

HIGH COURT OF PUNJAB & HARYANA

**BENCH : HON'BLE MR. JUSTICE SURESHWAR THAKUR, HON'BLE MR.
JUSTICE LALIT BATRA**

Date of Decision: April 18, 2024

CWP-11641-2020 and CWP-7952-2021

STATE BANK OF INDIA ...PETITIONER

VERSUS

DISTRICT MAGISTRATE, LUDHIANA AND ORS. ...RESPONDENTS

Legislation and Rules:

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), Sections 13(2), 13(3A), 13(4),

14, 26-D

Security Interest Enforcement Rules, 2002, Rules 8 and 9

Subject: Challenges to the orders of the District Magistrate, Ludhiana, denying assistance for taking over possession of secured assets under Section 14 of the SARFAESI Act, on grounds of non-compliance with procedural requirements under Section 13(3A).

Headnotes:

Procedural Background & Facts – Multiple writ petitions filed by State Bank of India challenging the refusal of the District Magistrate, Ludhiana to assist

in taking possession of secured assets under SARFAESI Act due to alleged procedural non-compliance by the Bank [Paras 1-17, 18-30].

Key Legal Issue – Whether the requirement to communicate the rejection of objections by the borrower under Section 13(3A) of the SARFAESI Act within fifteen days is mandatory or directory [Para 41].

Court’s Analysis – Held that the provisions of Section 13(3A) are directory and not mandatory. Delay in responding beyond the 15-day period does not invalidate the actions taken under Section 13(4) unless it results in prejudice to the borrower. Emphasis on expeditious processing under SARFAESI to prevent undue delay in debt recovery [Paras 33-54].

Rulings on District Magistrate’s Role – Section 14 is an executory provision; the District Magistrate does not have adjudicatory powers regarding the merits of the bank’s application under SARFAESI. His role is limited to providing assistance in taking possession of secured assets [Paras 35, 50-60].

Final Decision – Writ petitions allowed. Impugned orders quashed. District Magistrate directed to assist the petitioner-Bank in taking possession of the secured assets [Paras 59-61].

Referred Cases:

- Nippo Foods vs State of Punjab, 2014 (8) R.C.R.(Civil) 2962
- M/s. Clarity Gold Private Ltd vs State Bank of India, 2011 (13) RCR Civil 422
- M/s Kannu Aditya India Ltd. Vs. State Bank of India, W.P.(C) No. 11540 of 2018
- ITC Ltd. Vs. Blue Coast Hotels Ltd., (2018) 15 SCC 99

Representing Advocates:

Ms. Madhu Dalal for the petitioner

Mr. Maninder Singh, Sr. DAG, Punjab, and Mr. Harsh Chopra for the respondents

**** **SURESHWAR**

THAKUR , J.

1. Since both the writ petition(s) (supra), involve common questions of facts and law, thus, they are amenable to be decided through a common verdict.
2. Be that as it may, the facts of both the writ petition(s) (supra) are yet required to be separately delineated.

Facts of CWP-11641-2020

3. That respondent No. 3-company became granted various credit facilities, thus by the lending institution concerned, but against various secured assets. On account of non-adherence to financial discipline by respondent No. 3, thus the apposite debt was on 30.12.2014, hence classified as Non Performing Assets.
4. The petitioner Bank issued notice on 30.07.2016 under Section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter called as the 'SARFAESI Act') thereby calling upon respondent No. 3 and its directors and guarantors to discharge in full its financial borrowings but within 60 days from the date of the notice (Annexure P1A).
5. That respondent No. 3 filed theretos its objections under Section 13 (3A) of SARFAESI Act. The said objections were duly considered but became rejected by the petitioner-Bank, through an order drawn thereons on 13.10.2016 (Annexure P-3).
6. That notice under Section 13 (4) of the SARFAESI Act read with Rules 8 and 9 of the Security Interest Enforcement Rules, 2002 was issued and the Bank took symbolic possession of the mortgaged properties.
7. Thereafter, the erstwhile State Bank of Bikaner and Jaipur merged with the State Bank of India. After merger, the petitioner-State Bank of India again issued possession notice under Section 13 (4) of the SARFAESI Act.
8. The petitioner-Bank made application under Section 14 of the SARFAESI Act, on 10.01.2018, wherebys the respondent No. 1 District Magistrate, Ludhiana, was requested to provide assistance for the taking over of possession of the secured assets, as, described in the application.

9. Respondent No. 3 filed its objections to the said application. The Bank submitted its reply dated 28.03.2018 to respondent No. 1 against the objections made by respondent No. 3.
10. Respondent No. 1 through the impugned order (Annexure P-10) dismissed the application as became preferred under Section 14 of the SARFAESI Act, by the lending institution concerned.
11. The petitioner-Bank filed CWP-23399 of 2018 before this Court which was dismissed as withdrawn vide order dated 14.09.2018 with liberty to avail alternative remedies as available to it in accordance with law.
12. The petitioner-Bank got security interest registered with the Central Registry under Section 26-D of the SARFAESI Act. Subsequently, a 2nd application under Section 14 of the SARFAESI Act was moved by the Bank before respondent No. 1.
13. Respondent No. 1 through an order drawn on 12.04.2019 (Annexure P-15) again rejected the apposite application of the petitioner-Bank.
14. Thereafter, the Bank issued fresh notice under Section 13 (4) of the SARFAESI Act, through registered post, which became pasted on the premises concerned. Moreover, the said notice was also published in newspapers but the above notices, were so respectively pasted and published but only after withdrawal being made of all the earlier notices.
15. Subsequently, a fresh application cast under Section 14 of the SARFAESI Act, was preferred by the lending institution concerned before the District Magistrate concerned.
16. However, through an order drawn thereons on 30.12.2019 (Annexure P-18), the respondent No. 1, rather rejected the said application, on the ground that the Bank has not complied with the provisions of Section 13 (3-A) of the SARFAESI Act, inasmuch as, the order rejecting the borrower's objections becoming not been passed within 15 days from the date of receipt of representation or objection, as made, by the borrower, to the notice issued to it by the lending institution, thus under Section 13(2) of the SARFAESI Act.
17. The drawing of the orders (supra) (Annexures P-10, P-15 and P-18) has caused pain to the petitioner-Bank, and, has led it to institute thereagainst the instant writ petition.

Facts of CWP-7952-2021

18. Respondent No. 2 – Company through the State Bank of India SME Branch, Ludhiana had been sanctioned various credit limits, thus by the lending institution concerned, but against various secured assets. On account of non-

adherence to financial discipline by respondent No.2, thus the apposite debt was on 22.10.2014 hence classified as Non Performing Assets.

19. The petitioner Bank issued on 16.06.2016 notice under Section 13 (2) of the 'SARFAESI Act', thus calling upon respondent No.2 to discharge in full its financial borrowings within 60 days from the date of notice (Annexure P-1).
20. That respondent No. 2-Company filed thereto its objections under Section 13 (3A) of the SARFAESI Act on 12.08.2016. The said objections, were duly considered and rejected by petitioner-Bank through order drawn thereons on 29.08.2016.
21. It is averred in para No. 5 of the paper book that prior to issuance of notice under Section 13 (2) of the SARFAESI Act, the Bank vide letter dated 16.02.2016 had conveyed to respondent No. 2, that its request for restructuring of loan is approved by the bank on terms and conditions as mentioned therein. However, despite repeated communications being made to the respondents No. 2 and 3, they never came forward for execution of documents.
22. It has been further averred that thereafter respondent No. 2 submitted an OTS letter dated 06.08.2016 to the bank offering to pay Rs. 1 crore as full and final payment against an outstanding amount of Rs. 35,47,22,222/- as on 13.05.2016. However, the said letter was rejected and duly conveyed to respondents No. 2 and 3 by the Bank vide letter dated 17.08.2016 (Annexure P-9).
23. That notice under Section 13 (4) of the SARFAESI Act was issued on 13.04.2017 and the Bank took symbolic possession of the mortgaged properties.
24. Thereafter, respondent No. 2 – Company instituted a civil suit against the petitioner-Bank. However, the same was dismissed by the learned Civil Court vide order dated 19.01.2017, and, appeal thereagainst was also rejected by the Court of learned Additional District Judge, Ludhiana.
25. The petitioner-Bank made 1st application under Section 14 of the SARFAESI Act. However, the said application was rejected by respondent No. 1-District Magistrate, Ludhiana, on account of passing of stay order in the civil suit by one Jagdeep Singh Behl, who claimed to be tenant in the disputed premises.
26. Thereafter, the said civil suit filed by Jagdeep Singh Behl was dismissed vide order dated 30.07.2018. Resultantly, the petitionerBank instituted 2nd application under Section 14 of the SARFAESI Act. Respondent No. 2- Company filed representations before respondent No. 1 against the

application for taking physical possession. The said representations were duly replied by the Bank.

27. Since respondent No. 1 did not take any action thereons. Accordingly, the Bank filed CWP No. 11385-2020 before this Court which was allowed vide order dated 07.08.2020, and, a direction was made to respondent No. 1 to provide assistance to the petitioner-Bank for its taking physical possession of the secured assets.
28. Thereafter, CM No. 7908-CWP of 2020 was filed by respondent No. 2 – Company in the writ petition (supra), thus seeking the recalling of the order dated 07.08.2020, on the ground that the application of the petitioner-Bank as became made under Section 14 of the SARFAESI Act, rather was declined by respondent No. 1 vide order dated 22.01.2020 (Annexure P-21), thus when CWP (supra) was subjudice before this Court.
29. Vide order dated 15.01.2021, the order made by this Court on 07.08.2020 was recalled and the petitioner-Bank sought permission to withdraw the writ petition with liberty to challenge the order dated 22.01.2020 (Annexure P-21) before the appropriate authority.

30. The drawing of Annexure P-21 by respondent No. 1, whereby the application filed by the petitioner-Bank under Section 14 of the SARFAESI Act, thus has been rejected, has caused pain to the petitioner-Bank and it has led to institute thereagainst the instant writ petition.

Submissions of the learned counsel for the petitioner(s). 31. The provisions of Section 13 (3-A) of the SARFAESI Act are directory and it is not obligatory on part of the secured creditor to under Section 13 (3-A) of the SARFAESI Act, rather within 15 days from the preferment of the apposite objections, thus respond to the said objections, as became submitted by the borrower. However, reiteratedly the contemplated therein period of 15 days, thus for the secured creditor responding to the borrowers' objection/representation, but from the date of receipt of such objections, rather are submitted to be not mandatory but are submitted to be directory.

32. In support of her arguments, the learned counsel for the petitioner-Bank has placed reliance, upon, a judgement passed by this Court in case titled as **Nippo Foods vs State of Punjab and others, reported in 2014 (8) R.C.R.(Civil) 2962**, relevant para no. 8 whereof, is extracted hereinafter.

“8. In respect of the second argument that the reasons were not communicated within 7 days, suffice is to state that the petitioner has not suffered any prejudice for not communicating the reasons within 7 days. In

fact, a reading of Section 13(3A) would show that such period is only directory. No penal consequences are contemplated by the aforesaid statutory provisions. Therefore, in the absence of any prejudice and the fact that such provision is only directory, we do not find any merit in the argument raised.”

33. Further, reliance has been placed on a judgment made by the Hon'ble Bombay High Court in case titled as **M/s. Clarity Gold Private Ltd and Another versus State Bank of India and Others**, reported in 2011 (13) RCR Civil 422. The relevant paragraphs No. 12 and 13 thereof are extracted hereinafter.

12 The requirement that the secured creditor must communicate reasons to the borrower for the rejection of the objection is undoubtedly mandatory because the whole object and purpose of subsection (3A) is to enable the borrower to have some recourse upon a notice being issued under Section 13(2). However, the failure of the secured creditor to deal with the representation within a period of one week does not render the disposal of the representation invalid. The secured creditor must of course deal with the representation on an expeditious basis particularly since under Section 13 a borrower, after receipt of a notice under sub-section (2) is restrained from transferring the secured assets without the prior written consent of the secured creditor.

13 We are in respectful agreement with the judgment of the Gujarat High Court which holds that every prescription of a period within which an act has to be done does not constitute a prescription of a period of limitation, a failure of compliance with which would render the action invalid. The object of subsection (3A) is to provide an expeditious method for the disposal of objections in order to ensure that the action of the secured creditor is not held up for an unduly long period of time. The period of one week that is prescribed in subsection (3A) is clearly directory. That apart, the Petitioners have not established that any prejudice was caused to them by the delay on the part of the Bank in responding to the representation submitted to the notice under Section 13(2). That submission must therefore fail.”

34. Reliance in this regard has also been placed on a judgment made by the Hon'ble Delhi High Court in case titled as **'M/s Kannu Aditya India Ltd. Vs. State Bank of India to which W.P.(C) No. 11540 of 2018** became assigned. The relevant paragraphs no. 23 to 25 thereof are extracted hereinafter.

“ 23. In the present case the requirement that the secured creditor considered the objection/representation of the borrower as mandatory but the requirement that he communicates its conclusion within fifteen days cannot be held to be so. It is difficult to accept that the Parliament intended a secured creditor to forfeit its right to enforce its security interest on account of failure to respond to the representation or objection of a borrower within the stipulated period of fifteen days.

24. In view of the above, the petitioners contention that the SBI is precluded from taking any action under Section 13(4) of the SARFAESI Act since it had not communicated its decision to the petitioners representation within a period of fifteen days from receipt of such representation, is unmerited.

*25. This Court is also of the view that no interference with the proceedings under the SARFAESI Act are warranted at this stage. In *Authorized Officer, State Bank of Travancore and Another v. Mathew K. C.*: (2018) 3 SCC 85, the Supreme Court considered the contention that borrower had no option but to prefer a writ petition against an order passed under Section 13(3A) of the SARFAESI Act, in absence of a right to appeal under Section 17 of the said Act. In this context, the Supreme Court held as under:-*

".....The legislative scheme, in order to expedite the recovery proceedings, does not envisage grievance redressal procedure at this stage, by virtue of the explanation added to Section 17 of the Act, by Amendment Act 30 of 2004, as follows :-

"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."

35. The learned counsel for the petitioner further submits, that Section 14 of the SARFAESI Act, does not confer any adjudicatory power on the District Magistrate. The District Magistrate under Section 14 of SARFAESI Act, is not a Court of law with powers to adjudicate any application under the said Act. Moreover, Section 14 of the SARFAESI Act is only an executory provision and is not an adjudicatory provision. The District Magistrate has no power to adjudicate on the merits of the application. In support of her arguments, the learned counsel for the petitioner places reliance upon judgments rendered

by the Hon'ble Apex Court in cases titled as '**M/s. R.D. Jain and Co versus Capital First Ltd.**' (AIR 2022 SC 4820); '**Balakrishna Rama Tarle (D) through LRS versus Phoenix Arc Private Limited**' (AIR 2022 SC 4756) ; '**Standard Chartered Bank versus V Noble Kumar**' (2013) 9 SCC 620; and judgment rendered by this Court in case titled as '**Asset Reconstruction Company India Limited versus State of Haryana**' 2018 (1) PLR 473.

36. The learned counsel for the petitioner also submits that no opportunity of hearing/ notice is required to be given to the borrower. The reply/written statement/objections filed by the borrower, either before the District Magistrate or before the Hon'ble High Court in the present petition(s), cannot be gone into. The only remedy available to the borrower is to challenge the apposite order through availing the remedy as contemplated under Section 17 of the SARFAESI Act.

Submissions of the learned counsel for the respondents-Company.

37. Though there is a mandatory requirement, under Section 13 (3A) of the SARFAESI Act, thus for the apposite objections becoming mandatorily replied within 15 days from the date of their receipt, but in the instant case, the said mandatory compliance to the said statutory provision rather has not been done by the petitioner-Bank.

38. In support of his arguments, the learned counsel for the respondents-Company places reliance upon a judgment made by the Hon'ble Apex Court in case titled as '**ITC Ltd. Vs. Blue Coast Hotels Ltd. and others**' reported in (2018) 15 SCC 99, whereby he contends that the provisions (supra) are mandatory in nature. The relevant paragraphs No. 28, 29 and 30, as occur in the verdict (supra) are extracted hereinafter.

28. Moreover, this provision provides for communication of the reasons for not accepting the representation/objection and the requirement to furnish reasons for the same. A provision which requires reasons to be furnished must be considered as mandatory. Such a provision is an integral part of the duty to act fairly and reasonably and not fancifully. We are not prepared in such circumstances to interpret the silence of the Parliament in not providing for any consequence for non-compliance with a duty to furnish reasons. The provision must nonetheless be treated as 'mandatory'. We agree with the view of this Court in this regard in Mardia Chemicals Ltd.

v. Union of India, Transcore v. Union of India and Keshavlal Khemchand & Sons (P) Ltd. v. Union of India. We also approve of the view of several High Courts in this regard.

29. *It was submitted on behalf of the creditor that the conduct of the debtor does not warrant an interference in this case. However, we are of the view that the construction of the Act should not be affected by the facts of a particular case. For, indeed, where the remedy invoked is a discretionary remedy, the Court may deny relief if the circumstances so warrant.*

30. *In the present case, it is a fact that the creditor has not replied to the debtor's representation, and thus appears to be in breach of Section 13 (3A), but the following attendant circumstances are important:*

(i) *On 26.03.2013, the creditor issued a notice under Section 13(2) to the debtor to discharge his liabilities within 60 days. On 27.05.2013 the debtor made a representation to the creditor containing a proposal for reschedulement (which was the same as the one made as far back as on 22.08.2012) and reserving the right to file a reply.*

(ii) *On 07.06.2013, the debtor again sent a proposal for extension of time for repayment, repeating its proposal dated 27.05.2013.*

(iii) *On 20.06.2013, the creditor issued the notice of possession under Section 13(4). The taking over of possession was purely symbolic. We are informed that the debtor is in possession of the hotel till date and is running its business without any noteworthy repayment.*

(iv) *On the next day 21.06.2013, the debtor wrote a letter to the creditor seeking extension of time and enclosed six cheques for upfront payment of Rs.33.16 crores without making any reference to the notice of taking over of possession. The cheques were dishonoured.*

(v) *On 04.09.2013, the creditor published a Notice of Sale by Public Auction in the newspaper fixing the date of auction as 09.10.2013 at a reserve price of Rs. 403 crores.*

(vi) *Following this the debtor sent a letter to the creditor on 19.09.2013 undertaking that it will repay all outstanding installments by 31.12.2013 and that the sale of assets be deferred up to the said date. The debtor further stated that it shall not proceed further in respect of their Securitization Application before the DRT.*

(vii) *On 08.10.2013, the creditor deferred the sale by issuing a public notice while considering the debtor's proposal.*

(viii) On 29.10.2013, the creditor granted an opportunity to the debtor to clear the debt as stated in the debtor's letter dated 03.10.2013 wherein it sent forth another proposal for extension of time for repayment stating that it will repay a principal installment of the corporate loan of a total of Rs. 89 crores by 31.12.2013. However, the creditor only extended the time for repayment by 15-20 days.

(ix) On 25.11.2013, "A Letter of Undertaking" was given by the debtor accepting the schedule given by the creditor on 29.10.2013 and also acknowledging the right of the creditor to sell the assets in case of default as per the above mentioned schedule.

(x) The creditor wrote to the debtor on 08.01.2014 informing the debtor that due to the default in repayment, the creditor is proceeding with steps to recover the dues and accordingly rejected the debtor's request letter dated 30.12.2013 seeking further time to repay the outstanding dues..."

39. That since an OTS (in CWP-7952-2021) is pending before the DRT, thereby till the decision on the said motion is made by the DRT concerned, thereupto the lending institution concerned rather was not leveraged to move an application under Section 14 of the SARFAESI Act, for therebys the District Magistrate concerned, purveying assistance to the lending institution concerned, rather to assume physical possession of the secured assets concerned.

Analysis of the submissions of the learned counsel for the parties.

40. On analyzing the above made submissions addressed before this Court by the learned counsel for the petitioner, and, by the learned counsel for the respondents, this Court deems it fit, that the hereafter substantial question of law is required to be formulated, and, is also required to be answered.

41. Whether the provisions encapsulated in Section 13 (3-A) of the SARFAESI Act, provisions whereof are extracted hereinafter, wherein there is a statutory duty cast upon the lending institution concerned to respond to the objections concerned, thus within 15 days from the date of their receipt/preferment, thus are mandatory or directory.

13. Enforcement of security interest.—(1) Notwithstanding anything contained in section 69 or section 69A 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 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—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

(i) 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.]

(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.

[(3A) 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 17A.]

Analysis of the contention (supra) of the learned counsel for the respondent-Company based on the verdict passed in case ITC Ltd.(supra) by the Hon'ble Apex Court.

42. A reading of the above extracted paragraphs, though also discloses that irrespective of the above apposite declaration being made by the Hon'ble Apex Court, that the apposite statutory provisions, thus are mandatory in nature, yet the Hon'ble Apex Court further concluded, that the writ remedy, thus for undoing the said breach rather is a discretionary remedy, and, that the writ Court becomes empowered to deny relief to the borrower, if the circumstances so warrant. Therefore, when in paragraph No. 30, it was concluded that despite the creditor not replying to the debtors representation and thereby breach being caused to the provisions of Section 13 (3-A) of the SARFAESI Act, but yet the attendant circumstances appertaining to the said case, which are embodied in paragraphs 30.1 to 30.10, also became borne in mind by the Hon'ble Apex Court, thus to conclude that the conduct of the debtor, did not warrant any interference in the case (supra), and the Hon'ble Apex Court made speakings therein, that the debtor had been merely seeking time, and, did not intend to repay the loan as promised to be paid on several occasions.
43. In the said case despite the fact that there was no reply by the lending institution concerned, to the debtor's representation thereby yet the Hon'ble Apex Court despite concluding that the apposite statutory provisions are mandatory in nature, but it proceeded to conclude that the relief claimed by the borrower for undoing the said breach is a discretionary remedy, and, for the reasons enclosed in paragraphs (supra), it ultimately declared that the said discretionary relief is not to be granted to the debtor. Therefore, if the Hon'ble Apex Court laid much emphasis on the debtors conduct and also declared that the relief claimed by the debtor for undoing the breach thus is discretionary in nature. Resultantly the makings therein of the above pre-eminent parameter, by the Hon'ble Apex Court, thus therebys the breach as caused to the mandatory provision (supra), rather ex facie became eclipsed or became inconsequential. As such, the effect of the conclusions made by the Hon'ble Apex Court, that the coinage 'shall' occurring in the apposite provision, thus has a mandatory overtone, rather is to be read in light of the further observation(s) (supra) as made therein.
44. Furthermore, when in the said case despite their being no reply to the debtors representation, reiteratedly the writ discretionary remedy became declined to the debtor, whereas, in the instant case(s), there has been a minimal delay rather in the lending institution(s) responding to the debtors representation(s), therebys the said minimal delay is not to be *stricto sensu* construed to be *ipso*

facto making a blatant transgression to the mandatory statutory provision concerned. 45. The reason being that, as stated in paragraphs (*supra*) occurring in the verdict (*supra*) made by the Hon'ble Apex Court, the construing of the coinage 'shall' occurring, in the statutory provision (*supra*), thus as mandatory in nature, rather has been spelt therein to only entail a necessity upon the lending institution to furnish reasons. However, since in the verdict (*supra*) no reply to the debtors representation was made, thus yet reiteratedly the Hon'ble Apex Court declining the discretionary remedy to the borrower and resting the said refusal on the errant conduct of the borrower in the said case, whereas, in the instant case(s), there are evident well made reasons for rejecting the debtors representation(s).

46. Moreover, when the order(s) rejecting the debtors representation(s)/objection(s) are well informed orders and/or not cryptically recorded, therefore, when therebys the mandatoriness assigned to the coinage 'shall' occurring therein, has been in terms of the paragraph No.28 of the verdict (*supra*), thus complied with.

47. Resultantly also therebys the delay beyond 15 days in the secured creditor, responding to the debtors concerned, cannot be concluded to be either absolutely or in toto breaching the mandate as enclosed in Section 13(3-A) of the SARFAESI Act, especially when therebys no evident prejudice has accrued to the borrower.

48. Be that as it may, additionally since alike the conduct of the borrower in case titled as **ITC Ltd. Vs. Blue Coast Hotels Ltd. (*supra*)**, the conduct of the borrower(s) in the instant case(s), sparks an inference that they are employing dilatory tactics so as to evade the liquidation of borrowings to the financial institution concerned. Resultantly when therebys they appear to be destroying the holistic purpose of the statutory provisions enclosed in the SARFAESI Act, thus to expeditiously beget bad debt remediation. Resultantly therebys this Court also does not deem it fit to accord the discretionary relief to the borrower's concerned.

49. Furthermore, when in the said case the Hon'ble Apex Court did not consider the provisions of Section 17 of the SARFAESI Act whereunders a statutory remedy is purveyed to the borrower, in the event of breach being caused to the apposite mandatory statutory provision, to thus recourse the said statutory remedy.

50. Moreover, when therebys there was a complete disempowerment in the District Magistrate concerned, to make an adjudication upon the said

objection, given the District Magistrate concerned being only an executory functionary, and, not being an adjudicatory forum, whereas, the adjudicatory forum for redressing the grievance of the borrower availed upon breach being caused to the statutory provisions concerned, was through a statutory appeal being raised under Section 17 of the SARFAESI Act, thus before the Appellate Authority concerned.

Further analysis by this Court.

51. For the reasons to be assigned hereinafter, this Court is of the view, that the lending institution concerned, is not under any mandatory statutory obligation, to respond to the relevant objections, rather within 15 days from the receipt of such representation or objection, unless therebys demonstrable grave prejudice is caused to the objector and/or the said statutory mandatory obligation is restricted only to the objectors representation(s), being decided rather through a well informed non cryptic order, besides the breach, if any, caused to the said mandatory provision thus may be undone but only upon evidence surging forth, thus suggestive that there is no errant conduct on the part of the borrower in ensuring the maintenance of financial discipline.
52. Consequently, the said provision in the above context is not mandatory in nature rather is directory in nature. In sequel, the omission to communicate the relevant decision to the objector, thus within 15 days from the receipt of such representation(s) or objections, does not cause any causality, to the application(s) moved by the petitioner-Bank, under Section 14 of the SARFAESI Act before the District Magistrate nor the District Magistrate was required to dismiss the said application(s), especially when he is only contemplated to be an executing functionary, and, is not empowered to make any adjudication on the said application(s). Predominantly when as in the instant case(s), apart from the above argument, no ground became raised either before the District Magistrate concerned or before this Court, thus devolving upon the factum, that the apposite statutory ingredients carried in Section 14 of the SARFAESI Act, thus evidently became breached.
53. Be that as it may, this Court also for the reasons assigned hereafter, concludes that since the remedy to challenge the rejection of the apposite objections by the lending institution, thus on the ground that it was not communicated within 15 days, but was communicated rather within 21 days (in **CWP-11641-2020**), and within 49 days (in **CWP-7952-2021**), thus from the date of receipt of the said communications, is not through the said agitation being laid before the District Magistrate, but is through an appeal thereagainst

becoming filed under Section 17 of the SARFAESI Act, thus before the Appellate Authority concerned.

54. The reason for making the said conclusion becomes banked upon.

- ¹⁹ The judgment(s) relied upon by the learned counsel for the petitioner making clear and candid underlinings that the said provision is merely directory in nature and is not mandatory. Therefore, when the apposite decision(s) became conveyed to the objector(s) not within fifteen days from the receipt of such representation(s) or objections but were communicated thereafter to the objector(s)/borrower(s), besides when there is no demonstrable evidence that thereby prejudice has ensued to the objector(s)/borrower(s). Resultantly thereby the apposite communication(s) if were not made rather by the Bank within fifteen of days from the receipt of such representation(s) or objections. Therefore, the communication of the apposite decisions to the objector respectively within 21 days (in **CWP-11641-2020**) and within 49 days (in **CWP-7952-2021**), does not at all render vitiated, the institution of an application cast under Section 14 of the SARFAESI Act, by the lending institution before the District Magistrate concerned.
- b) Secondly, if this Court concludes that the said provisions are contextually directory in nature. Consequently, when it has been declared in judgments (supra) that the statutory mechanism created under Section 14 of the SARFAESI Act, thus empowering the District Magistrate concerned, to purvey the asked for assistance(s) to the lending institution concerned, to assume physical possession of the secured assets, rather is only an executory mechanism for expeditiously remedying a bad debt. Resultantly the said limited jurisdiction conferred upon the District Magistrate concerned, was not required to be enlarged or expanded, into an appellate adjudicatory mechanism, as became untenably done by the District Magistrate concerned, through his rejecting the said application, after concluding that there is want of adherence to the statutory mandate enclosed in provision (supra), especially when even the said decision is completely outside the domain of the expostulations of law (supra), as made in the verdicts (supra).
- c) Thirdly, since the statutory mechanism whereby the objector could redress his grievances relating to the relevant breach in the manner (supra) becoming caused to the statutory provision (supra), is through its/his availing the remedy constituted under Section 17 of the SARFAESI Act. Therefore, the District Magistrate concerned was also thereby not required to be making

any adjudication on the objection (supra) raised before him against the providing of assistance to the lending institution concerned to assume physical possession of the secured assets. Contrarily, he was required to be purveying the said asked for assistance but irrespective of the objections raised by the debtor, availed rather on the mis-founded premise (supra).

d) Moreover, he was also required to relegate the objector(s) to the statutory remedy contemplated in Section 17 of the SARFAESI Act, for therebys the objector(s) propagating a premise, that there is a purported breach caused to the mandate enclosed in Section 13 (3-A) of the SARFAESI Act, thus on the ground that there is any purported non adherence to the mandate enclosed therein, relating to the apposite communication(s) being respectively made rather within 21 days (**CWP-11641-2020**) or within 49 days (**in CWP-7952-2021**), and the said not being made within the statutory prescribed period of 15 days.

55. Though the learned counsel for the objector/respondent (in **CWP-7952-2021**) has forcefully contended before this Court, that since the objector has thus raised before the DRT a plea, whereby it intends to challenge the orders made by the financial institution concerned, thus rejecting the apposite OTS proposal emanating from the creditor concerned. Therefore, though therebys it is further contended that till a decision on the said motion is made, thereupto the lending institution was not required to be moving an application under Section 14 of the SARFAESI Act before the Magistrate, rather also is a flimsy raised argument and is required to be rejected.

56. The reason for rejecting the said arguments, is founded on the premise, that the mere floating of an OTS proposal, by the creditor concerned, unless it is complied with under orders made by the DRT, or the entire sums of monies as offered thereunders to the borrowers concerned rather are liquidated, to the financial institution concerned. Resultantly when therebys the borrower may claim the employment visa-vis it/her/him, thus the principle of promissory estoppel or legitimate expectation. However, when evidently the entire sums embodied in the apposite offer made by the lending institution to the borrower, rather remains uncomplied with, thereupon, when neither the principle of legitimate expectation nor the equitable doctrine of promissory estoppel, thus is workable vis-a-vis the borrower concerned.

57. Resultantly therebys even if assumingly there is a subjudice challenge to the order made by the financial institution concerned, thus rejecting the OTS

proposal of the borrower, or if the said challenge is intended to be made, rather the said factum, does not either preclude nor pre-empts the petitioner-Bank to recourse the mandate of Section 14 of the SARFAESI Act.

58. Before parting, this Court has consistently noticed that the District Magistrates concerned are repeatedly breaching the mandate of law as enclosed in the instant verdict. Therefore, the Registry of this Court, under intimation to this Court is directed to purvey a copy of this verdict to all the District Magistrates, exercising jurisdiction as such under Section 14 of the SARFAESI Act, so that compliance to the verdict of even date is meted by all the District Magistrate concerned.

FINAL ORDER OF THIS COURT.

59. In aftermath, this Court finding merit in both the writ petition(s), thus they are with the observation(s) aforesaid, hence allowed, and, the impugned orders are quashed and set aside.
60. The District Magistrate concerned is directed to forthwith make an order for therebys assistance(s) being purveyed to the petitioner-Bank to assume physical possession over the secured assets concerned.
61. Since the main case(s) itself have been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

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