



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN ITS CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11132 OF 2025

Arrow Business Development Consultants Pvt. Ltd.

...Petitioner

Versus

1. Union Bank of India

2. Neha Punit Agarwal,

Insolvency Professional & Company Secretary

3. Ravindra Chaudhari

...Respondents

Mr. G.S.Hegde (Senior Advocate) a/w. Ms. P.M.Bhansali, Mr. Arafat Siddique and Ms. Juhi Pandey, Advocates for the Petitioner

Ms. Mable Soans of M/s. Mable & Associates, Advocate for Respondent No.1- Bank

Mr. Shirang Katneshwarkar, Advocate for Respondent No. 2 – Resolution Professional

Mr. Gajendra Rajput a/w. Mr. Shubham Kahite

Mr. Naushad Engineer (Senior Advocate) – Amicus Curiae a/w. Mr. Sharad Bansal and Mr. Yohann Limathwalla

**CORAM : R.I. CHAGLA AND
FARHAN P. DUBASH, JJ.**

**RESERVED ON : 24th NOVEMBER 2025
PRONOUNCED ON : 10th DECEMBER 2025**

JUDGMENT (Per Farhan P. Dubash, J)

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1. The issue before this Court relates to an interplay between the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**SARFAESI Act**) and Insolvency and Bankruptcy Code, 2016 (**IBC**). On the one hand, the bank and successful auction purchaser seek possession of the secured asset in furtherance of the sale certificate issued under the SARFAESI Rules, whilst, on the other, the Borrower contends that due to the prior imposition of interim

moratorium under Section 96 of the IBC, possession cannot be handed over to them. In this background, the interesting question that needs to be determined in the present Writ Petition is whether, post amendment to Section 13(8) of the SARFAESI Act, the Borrowers' **ownership** right in the secured asset, also stands extinguished, upon issuance of the sale notice under Rule 8(6) of the SARFAESI Rules?

2. The present Writ Petition has been filed by a successful auction purchaser, seeking a writ from this Court directing the Bank to hand over physical possession of a residential flat bearing no. 201 and situated on the 2nd floor of the El Castillo building located at Plot No. 23/B & 23/C in Sector- 6 on Palm Beach Road, Nerul West, Thane, Navi Mumbai - 400 706 (**secured asset**) to it notwithstanding the lodging of an application for personal insolvency under Section 94 of the IBC by its *erstwhile* owners, alleging that their rights stood extinguished on the date of publication of the auction notice by the Bank.

3. The successful auction purchaser (Petitioner) and the Bank (Respondent) were the original parties to the present Writ Petition. The interests of both parties were aligned inasmuch as, they sought implementation of the measures taken under the SARFAESI Act, to the exclusion of the provisions of the IBC. In these circumstances, this Court requested Mr. Naushad Engineer, Senior Advocate for assistance and appointed him as Amicus Curae in the matter. Subsequently, upon hearing him, we directed the

Petitioner to implead the Resolution Professional **(RP)** representing Ms. Vandana Choudhari, and also Mr. Ravindra Choudhari as party Respondents to the present Writ Petition, in their capacity as the Guarantors and Co-Owners of the secured asset, which has since been done and they have been added as party Respondent Nos. 2 and 3 herein.

A] FACTUAL OVERVIEW

4. In order to properly appreciate and adjudicate the disputes raised in the present Writ Petition, it is necessary to consider the below-mentioned events and the corresponding dates on which they took place:

4(a) Certain financial facilities were provided by Respondent No.1/Bank to Vandana Chaudhari and Ravindra Chaudhari **(Borrowers)**. The Borrowers are the owners of the secured asset which was mortgaged by them, as security for the said facility availed from Respondent No. 1/Bank.

4(b) On 16th April 2023, on account of defaults stated to have been committed by the Borrowers, their accounts were classified as a non-performing asset by Respondent No.1/Bank.

4(c) On 24th April 2023, Respondent No.1/Bank issued a notice of demand under Section 13(2) of the SARFAESI Act *interalia* calling upon the Borrowers to make payment of a sum of Rs. 49,33,11,763.61/-.

4(d) On 1st September 2023, Respondent No.1/Bank obtained symbolic possession of the secured asset under Section 13(4) of the SARFAESI Act.

4(e) On 11th November 2024, an order came to be passed by the Chief Judicial Magistrate, Thane, *interalia* allowing the application filed Respondent No. 1/Bank under Section 14 of the SARFAESI Act and providing assistance to Respondent No.1 in taking physical possession of the secured asset.

4(f) On 9th May 2025, Respondent No.1/Bank issued a auction sale notice (**sale notice**) as per Appendix IV-A read with Rule 8(6) of the Security Interest (Enforcement) Rules, 2002 (**SARFAESI Rules**) in respect of the secured asset.

4(g) On 30th May 2025, an auction of the secured asset was conducted by Respondent No.1/Bank whereat, the Petitioner was declared as the successful auction purchaser for its bid of Rs. 9,12,25,000/-.

4(h) In accordance with the provisions of the SARFAESI Act, the Petitioner proceeded to make payment of the entire auction bid/amount to the Respondent No. 1/Bank on the following dates:

- (i) 30th May 2025 – Rs. 91,12,500/-
- (ii) 31st May 2025 – Rs. 1,37,00,000/-
- (iii) 18th June 2025* – Rs. 95,00,000/-
- (iv) 19th June 2025* – Rs. 95,00,000/-
- (v) 19th June 2025* – Rs. 1,50,00,000/-
- (vi) 19th June 2025* – Rs. 1,50,00,000/-
- (vii) 20th June 2025* – Rs. 1,86,00,250/-
- (viii) 20th June 2025* – Rs. 9,12,250/-

4(i) On 9th June 2025, an application was preferred by Vandana Chaudhari under Section 94 of the IBC before the NCLT, Mumbai (**Personal Insolvency Application**) and accordingly, an interim-moratorium under Section 96 of the IBC came into effect.

*Note: The remainder of the six tranches of payment from sr. nos. (iii) to (viii) in paragraph 4(h) above were made by the Petitioner and received by Respondent No.1/Bank after the imposition of the interim-moratorium on 9th June 2025.

4(j) On 20th June 2025, Respondent No. 1/Bank issued a sale certificate as per Appendix V read with Rule 9(6) of the SARFAESI Rules.

4(k) Being aggrieved by the above, the Borrowers filed an application under Section 17 of the SARFAESI Act before the DRT, Mumbai (**Securitisation Application**) impugning the sale process carried out by Respondent No. 1/Bank by contending that the same was contrary to the provisions of the IBC.

4(l) On 30th July 2025, the DRT passed an order disposing of the Securitisation Application by holding as follows:

“Since there is moratorium and the matter is before Hon'ble NCLT, Mumbai, therefore, there is no need for any order to be passed by this forum. Accordingly, I.A. No.2267 of 2025 stands disposed of.”

4(m) Being aggrieved with the inaction on the part of Respondent No. 1/Bank in handing over possession of the secured asset to the Petitioner despite the issuance of the sale certificate in its favour, the present Writ Petition has been filed.

B] SUBMISSIONS OF THE PETITIONER

5. Mr. Hegde, learned Senior Advocate appearing on behalf of the Petitioner contends that the Borrowers have ceased to be the owners of the secured asset and it is the Petitioner who is now the owner of the secured asset. He argues that the Borrowers' right, title and interest in the secured asset was extinguished on the day on which the auction notice was issued and at any rate, on the day on which the auction was held and confirmed in favour of the Petitioner. Therefore, he contends that the interim-moratorium which got triggered after the confirmation of the auction sale in favour of the Petitioner does not preclude Respondent No. 1/Bank from handing over possession of the secured asset to his client. He further asserts that having obtained the sale certificate from Respondent No. 1/Bank, the Petitioner has a vested right in the secured asset.

6. Mr. Hegde seeks to make out a distinction between a *moratorium* under Section 14 vis-à-vis an *interim-moratorium* under Section 96 of the IBC by contending that whilst any action under the SARFAESI Act would be covered under the former, it would stand excluded under the latter by relying on the specific inclusion in Section 14(1)(c) thereof. He further contends that whilst execution proceedings would be covered under Section 14 moratorium, the same would not be included in the Section 96 interim-

moratorium. Accordingly, he urges this Court to harmoniously construe and interpret both provisions of the IBC.

7. Mr. Hegde places strenuous reliance on the decision of the Supreme Court in ***Celir LLP v. Bafna Motors (Mumbai) (P) Ltd.***¹ to contend that after issuance of the sale notice dated 9th May 2025, under Rule 8(6) of the SARFAESI Rules, the Borrowers lost their right to redeem the mortgage under Section 13(8) of the SARFAESI Act (*as amended on 1st September 2016*). He submits that the Borrowers have also not challenged the auction sale conducted by Respondent No.1/Bank in favour of his client. He therefore contends that under the IBC, the Respondent No.2/RP cannot claim a better or a higher right on the secured asset, than that, available to the Borrower under the SARFAESI Act and once the Borrower lost the right to redeem the mortgage of the secured asset, the RP cannot claim any (such) rights in respect thereof. He then contends that since only one co-owner, viz. Ms. Vandana Choudhari had filed the Personal Insolvency Application and not her husband, Mr. Ravindra Choudhari, the RP cannot deal with his 50% undivided share in the secured asset.

8. Without prejudice to the aforesaid submissions, he points out that even if the proceedings under the IBC were to take its course, the RP would ultimately sell the secured asset and the sale proceeds would be distributed amongst all the (secured and/or

¹ (2024) 2 SCC 1

unsecured) creditors. Hence, in the present case, since the sale has already taken place, the same should not be set aside and if this Court were not to accept his arguments, the sale proceeds deposited by his client with Respondent No.1/Bank could be directed to be handed over and used by the RP for this purpose. Lastly, (and again, without prejudice to his earlier submissions) Mr. Hegde submits that if this Court were not inclined to grant the reliefs sought in the present Writ Petition, then the monies deposited by the Petitioner with Respondent No.1/Bank should be refunded to his clients, with interest.

C] SUBMISSIONS OF RESPONDENT NO. 1/BANK

9. Ms. Mable Soans, learned Counsel appearing on behalf of Respondent No. 1/Bank supports the submissions made by Mr. Hegde in support of the reliefs sought in the present Writ Petition. She contends that the steps taken by her client under the SARFAESI Act are required to be protected and enforced by this Court. She states that the Bank is a secured creditor and is entitled to enforce its security to realise the outstanding amounts due and payable by the Borrowers, who she asserts, are not entitled to the benefit of the interim-moratorium under the IBC. She is at pains to point out the timing of the Personal Insolvency Application filed by (*one of*) the Borrowers and she submits that this was dishonestly done only to frustrate the claims of the Respondent No.1/Bank and upon realisation of the fact that possession of the secured asset was about to be taken by the Bank and handed over to the successful auction purchaser. She

therefore submits that this Court ought not to permit such injustice to be done to the Bank, especially when there is public money at stake.

D] SUBMISSIONS OF RESPONDENT NO. 2

10. Mr. Shrirang Katneshwarkar, learned Counsel appears on behalf of Respondent No.2 viz. Resolution Professional **(RP)** representing Vandana Choudhari and submits that the interim-moratorium has admittedly come into effect on 9th June 2025 on the filing of the Personal Insolvency Application. He relies on Section 96 of the IBC and submits that w.e.f. that date, as contemplated therein, any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and the creditors are not permitted to even initiate any legal action or proceedings in respect of any debt. He therefore contends that Respondent No.1/Bank could neither have accepted any payment towards the balance auction bid/amount from the Petitioner nor issued the sale certificate on 20th June 2025 after full payment was received by them. In any event, he states that Respondent No. 1/Bank is prevented from adopting any measures/proceedings to take forcible possession of the secured asset from his client and thereafter, hand over possession to the Petitioner and therefore, the DRT has correctly passed the order dated 30th July 2025.

11. He also invites the attention of this Court to a letter dated 4th June 2025 addressed by Respondent No. 1/Bank wherein, it has been categorically recorded that

during the meeting held between the parties on 19th May 2025, the Borrowers were informed that for withdrawing the e-Auction of the secured asset, they needed to deposit a sum of Rs. 15,00,00,000/- being its fair market value, for release of security. He relies on paragraph 5.28 of the Securitization Application No. 363 of 2025² filed by the Borrowers in which a reference to this assertion has been made by his client and relying thereupon, he submits that *ex-facie*, it is evident that the secured asset has been sold to the Petitioner at a gross undervaluation of Rs. 9,12,25,000/- by Respondent No.1/Bank in the auction held on 30th May 2025. He submits that besides this ground, several other grounds have also been taken in the said Securitization Application filed in the DRT-III, Mumbai for challenging the actions of Respondent No. 1/Bank under the SARFAESI Act including *interalia* the auction and sale of the secured asset in favour of the Petitioner, which is still pending adjudication. He therefore submits that no reliefs ought to be granted in the present Writ Petition.

E] SUBMISSIONS OF RESPONDENT NO. 3

12. Mr. Gajendra Rajput appears on behalf of Respondent No.3 viz. Ravindra Chaudhari and reiterates the submissions made by the RP and opposes the reliefs sought in the present Writ Petition.

² Exhibit B to the present Writ Petition at page 36

F] SUBMISSIONS OF THE AMICUS CURIAE

13. We have also heard Mr. Naushad Engineer, learned Senior Advocate (**Amicus Curiae**). He has meticulously taken us through the events that have transpired between the parties leading to the passing of the order dated 30th July 2025 by the DRT. He has aptly summarised the issue as thus – If the Borrowers have lost their ownership rights in the secured asset upon issuance of the sale notice dated 9th May 2025, under Rule 8(6) of the SARFAESI Rules, the interim-moratorium which followed on 9th June 2025 on the filing of the Personal Insolvency Application would be inconsequential insofar as the secured asset is concerned. However, in the event that this Court determines and holds that the mere issuance of the said sale notice does not extinguish the ownership right of the Borrowers in the secured asset, the interim-moratorium would preclude Respondent No.1/Bank from taking any steps in furtherance of enforcement of its security interest under the SARFAESI Act in respect of the secured asset, including *interalia*, accepting payment of the balance auction bid/amount and the issuance of the sale certificate in favour of the Petitioner. In these premises, the Petitioner would not be entitled to any orders from this Court directing Respondent No. 1/Bank to take physical possession of the secured asset from the Borrowers and/or hand over the same to them.

14. To assist the Court, the learned Amicus has taken us through the scheme of the IBC and in particular the provisions relating to a moratorium/interim-moratorium under Sections 14 and 96 respectively, of the IBC. Relying on the decision of the Supreme Court in ***Dilip B. Jiwrajka v. Union of India***³, he submits that the interim-moratorium under Section 96 is much wider than that under Section 14 inasmuch as, the former is in respect of a ‘*debt*’ as opposed to the (corporate) ‘*debtor*’ who is sought to be insulated from the institution or continuation of legal actions or proceedings in respect of the debt.

15. The learned Amicus has also taken us through the relevant provisions of the SARFAESI Act, both ‘*Pre*’ and ‘*Post*’ the 2016 Amendment to Section 13(8) thereof and also to the relevant SARFAESI Rules. He relies on the judgment of the Supreme Court in ***Indian Overseas Bank v. RCM Infrastructure Ltd.***⁴, and clarifies that ownership of immovable property stands transferred only upon the issuance of the sale certificate and the 2016 Amendment to Section 13(8) of the SARFAESI Act does not alter this position since the *equity of redemption* is only a facet of rights that constitutes ownership. In support, he invites our attention to the decision of the Supreme Court in ***Narayan Deorao Javle v. Krishna***⁵. He submits that the SARFAESI Act and SARFAESI Rules also reveal

³ (2024) 5 SCC 435

⁴ (2022) 8 SCC 516

⁵ (2021) 17 SCC 626

that the mere loss of redemption does not ipso facto result in loss of ownership and to that effect, relies on the judgments of the Supreme Court in ***Paramjeet Singh Patheja v. ICDS Ltd.***⁶ and ***Hindon Forge (P) Ltd. v. State of U.P.***⁷.

16. The learned Amicus concludes that if the sale certificate is not issued prior to the interim-moratorium coming into effect, the auction purchaser cannot be said to be the owner of the secured asset and he relies on the decision of the Supreme Court in ***Indian Overseas Bank v. RCM Infrastructure Ltd.***⁸ and that of the Delhi High Court in ***Sanjay Dhingra v. IDBI Bank Ltd.***⁹ to corroborate his said conclusion.

G] ANALYSIS OF SARFAESI ACT & SARFAESI RULES

17. We have heard all the parties and with their able assistance, perused the record. In order to properly appreciate and then adjudicate the issues that are subject matter of the present Writ Petition, it would be beneficial to consider the relevant provisions of the SARFAESI Act and the SARFAESI Rules and the statutory framework provided for enforcement of security interest thereunder which is summarised below:

⁶ (2006) 13 SCC 322

⁷ (2019) 2 SCC 198

⁸ (2022) 8 SCC 516

⁹ 2024 SCC OnLine Del 4521

- 17.1 Under Section 13(1), a secured creditor is entitled to enforce its security interest sans any intervention of a court / tribunal, in accordance with the provisions of the SARFAESI Act;
- 17.2 Under Section 13(2), upon a Borrower defaulting in its repayment obligations and its account being declared as non-performing asset (**NPA**), a secured creditor issues a notice of demand calling upon the Borrower to discharge its liabilities within a period of 60 days;
- 17.3 Under Section 13(3-A), a secured creditor is mandatorily required to consider any representation or objection raised by a Borrower. In the event such representation or objection is not acceptable to the secured creditor, then the secured creditor is required to communicate its reasons for non-acceptance to the Borrower;
- 17.4 Under Section 13(4) in the event a Borrower fails to discharge its liabilities within the period specified in Section 13(2), then a secured creditor could *interalia* take possession of the secured asset and/or take over management of the business of the Borrower;

17.5 Under Section 13(8), where the dues payable to the secured creditor are tendered by a Borrower before the date of publication of notice for sale, either by way of public auction, inviting quotations, tender or private treaty, then the secured asset cannot be transferred by the secured creditor. This Section was amended in 2016. For the sake of ready reference, the unamended as also the amended provisions of Section 13(8) are set out below:

Pre-2016 Amendment	Post-2016 Amendment
<i>"13(8) - If the dues of the secured creditor together with all costs, charges and expenses incurred by him are tendered to the secured creditor at any time before the date fixed for sale or transfer, the secured asset shall not be sold or transferred by the secured creditor, and no further step shall be taken by him for transfer or sale of that secured asset."</i>	<i>"13(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> <i>(i) the secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and</i> <i>(ii) in case, any step has been taken by the secured creditor for transfer by way</i>

	<i>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."</i>
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17.6 Under Rule 8(1), a secured creditor can take actual or symbolic possession of the secured asset by delivering a possession notice as per Appendix IV, and by affixing a copy of the same at a conspicuous place on the secured asset. The possession notice is also required to be published in two newspapers, with one being in the vernacular language, having sufficient circulation in the locality of the secured asset;

17.7 Under Rule 8(3), in the event actual possession of the secured asset is taken by a secured creditor, then the secured creditor is required to take as much care of the property as an owner of ordinary prudence would;

- 17.8 Under Rule 8(5), prior to effecting sale of the secured asset, a secured creditor is required to obtain valuation of the secured asset from an approved valuer;
- 17.9 Under Rule 8(6), the authorised officer of a secured creditor is required to serve a notice of 30 days for sale of the secured asset upon the Borrower;
- 17.10 Under Rule 9(1), no sale of the secured asset can take place before the expiry of 30 days from the date on which the public notice of sale is published. The proviso to Rule 9(1) states that if the sale of the secured asset fails and is required to be conducted again, then a secured creditor is once again required to publish a notice of sale of not less than 15 days for any subsequent sale;
- 17.11 Under Rule 9(3), on the sale of a secured asset, the successful purchaser is required to deposit 25% off the sale price (inclusive of earnest money deposit) on the same day or no later than the next working day;

17.12 Under Rule 9(4), the balance sale price payable is required to be paid by the successful purchaser to the secured creditor, on or before 15 days of confirmation of sale, which period is extendable up to a maximum period of 3 months;

17.13 Under Rule 9(6), upon all payments being made by the successful purchaser, the secured creditor is required to issue a sale certificate in the form provided in Appendix V to the SARFAESI Rules in favour of such successful purchaser.

H] TRANSFER OF OWNERSHIP OF SECURED ASSET – WHEN COMPLETE?

18. It is well settled that in case of a sale governed by Section 13(8) of the SARFAESI Act and Rules 8 and 9 of the SARFAESI Rules, the transfer of ownership of the secured asset is complete, only upon the issuance of the sale certificate and not at any time prior to that. This is reiterated by the Supreme Court in ***Indian Overseas Bank*** (supra) where the Court held as follows:

“32. It is further to be noted that the present case arises out of a statutory sale. The sale would be governed by Rules 8 and 9 of the said Rules. The sale would be complete only when the auction-purchaser makes the entire payment and the authorised officer, exercising the power of sale, shall issue a certificate of sale of the property in favour of the purchaser in the form given in Appendix V to the said Rules.

33. In *Shakeena v. Bank of India* [*Shakeena v. Bank of India* (2021) 12 SCC 761], which was a case arising out of SARFAESI Act, this Court has held that the sale certificate issued in favour of Respondent 3 did not require registration and that the sale process was complete on issuance of the sale certificate. The same has been followed by this Court in *S. Karthik v. N. Subhash Chand Jain*, (2022) 10 SCC 641].

34. Undisputedly, in the present case, the balance amount has been accepted by the appellant Bank on 8-3-2019. **The sale under the statutory scheme as contemplated under Rules 8 and 9 of the said Rules would stand completed only on 8-3-2019. Admittedly, this date falls much after 3-1-2019 i.e. on which date CIRP commenced and moratorium was ordered. As such, we are unable to accept the argument on behalf of the appellant Bank that the sale was complete upon receipt of the part-payment.”** (emphasis supplied)

19. Upon careful consideration of the relevant provisions, we find that the 2016 Amendment to Section 13(8) of the SARFAESI does not alter this regime since a plain reading thereof would reveal that its effect is only to extinguish the right of redemption of the Borrower, upon the publication of the sale notice and not the entire ownership right of the Borrower in the secured asset. During the unamended Section 13(8) regime, the loss of the right of redemption was coterminous with the loss of ownership (this position was aligned with Section 60 of the Transfer of Property Act, 1882). However, post the amendment to Section 13(8), the extinguishment of the right of redemption has been

advanced to the stage when the secured creditor publishes the notice for sale. Therefore, the amendment has only altered the date on which the right of redemption is lost/extinguished and it does not alter the position that the sale is only completed upon issuance of sale certificate, in accordance with Rule 9(6) of the SARFAESI Rules.

20. Our said finding is fortified by the fact that the equity of redemption is only a facet or one of the bouquet of rights that constitute ownership, which position is also reiterated by the Supreme Court in *Narayan Deorao Javle* (supra) which holds that: “19. [T]he equity of redemption is a right which is subsidiary to the right of ownership. Such right is not over and above the right of ownership purchased by the plaintiff.” Ownership, on the other hand, is a bundle of rights such as, the right to exclusive enjoyment, destruction, alteration, redemption. In *Black’s Law Dictionary, 12th Edition*, ownership has been defined to mean “the bundle of rights allowing one to use, manage, and enjoy property, including the right to convey to others ownership implies the right to possess a thing, regardless of any actual or constructive control. Ownership rights are general, permanent, and heritable.” Therefore, on losing merely the right of redemption, a Borrower does not automatically lose ownership rights over the secured asset. The ownership right is ultimately lost only upon issuance of sale certificate in accordance with Rule 9(6) of the SARFAESI Rules.

21. Our said finding is also buttressed by a careful analysis of the provisions of the SARFAESI Act and SARFAESI Rules which demonstrate that the loss of the right of redemption does not *ipso facto* result in loss of ownership. These include:

21.1 Section 13(5-A) which stipulates that where a sale of the secured asset is postponed for want of a bid higher than the reserve price, it shall be lawful for the secured creditor to bid for such secured asset at any subsequent sale. Thus, the fact that a secured creditor is permitted to partake in a subsequent sale itself demonstrates that the Borrower has not lost ownership of the secured asset merely upon the publication of the sale notice (and the consequent extinguishment of the right of redemption);

21.2 Section 13(6) which provides that any transfer of secured asset by the secured creditor shall vest in the transferee all rights in the secured asset so transferred as if the transfer had been made by the owner of such secured asset. This deeming fiction viz. according the status of an owner to a secured creditor by virtue of Section 13(6) shows that, the secured creditor is an owner albeit for the limited purpose of transfer as envisaged in Section 13(6). In ***Paramjeet Singh Patheja*** (supra) the Supreme Court held that: “28. [I]t is settled by decisions of this Court that the words ‘as if’ in fact show the distinction between

two things and such words are used for a limited purpose. They further show that a legal fiction must be limited to the purpose for which it was created". Therefore, the use of the words "as if" indicates a deeming fiction and the transfer is not by the secured creditor as owner but as if it is the owner of the secured asset.

21.3 In ***Hindon Forge*** (*supra*), the Supreme Court held that the secured creditor, after taking possession of the secured asset, does not become the owner of the secured asset. The Hon'ble Supreme Court held thus: "39. [S]ection 13(6) of the SARFAESI Act makes it clear that a different intention is so expressed by the Act, as any transfer of a secured asset after taking possession thereof, shall vest in the transferee all rights in the secured asset so transferred as if the transfer had been made by the owner of such secured asset. It is clear, therefore, that statutorily, under Section 13(6), though only the lesser right of taking possession, constructive or physical, has taken place, yet the secured creditor may, by lease, sale or assignment, vest in the lessee or purchaser all rights in the secured asset as if the transfer had been made by the original owner of such secured asset. This aspect of the matter does not appear to have been noticed in

*the aforesaid judgment. **The ultimate conclusion in the said judgment is, however, correct as a secured creditor remains a secured creditor even after possession is taken over as the fiction contained in Section 13(6) does not convert the secured creditor into the owner of the asset, but merely vests complete title in the transferee of the asset once transfer takes place in accordance with Rules 8 and 9 of the 2002 Rules.*** (emphasis supplied)

21.4 Section 13(7) which provides that when the secured creditor transfers the secured asset and the sale proceeds are more than the dues owed to it, the secured creditor is mandatorily required to handover the excess to the Borrower. The payment of the excess sale proceeds to the Borrower is because the Borrower is the owner of the secured asset. Had it been the case that the secured creditor was the owner of the secured asset post the publication of the notice under Section 13(8) of the SARFAESI Act, then there would have been no requirement for the secured creditor to handover the excess sale proceeds to the Borrower.

21.5 Second proviso to Rule 9(2) provides that if the secured creditor fails to obtain a price higher than the reserve price, then in such a

scenario the secured creditor can effect the sale at such price by obtaining the consent of the Borrower. This is because, merely upon publication of the notice under Section 13(8) of the SARFAESI Act, the Borrower does not cease to be the owner of the secured asset.

22. Thus, as set out above, the position of law, even post the 2016 Amendment to Section 13(8) of the SARFAESI Act continues to be that the transfer of ownership in the secured asset takes effect only upon the issuance of sale certificate and not at any time, prior thereto. Moreover, as per the statutory framework of the SARFAESI Act, only if the terms of payment have been complied with, can the secured creditor proceed to issue a sale certificate in favour of the successful purchaser. Therefore, in the event of there being any legal embargo which prevents the secured creditor from accepting the payment from the successful purchaser, then, what follows is that, the sale certificate cannot be issued by the secured creditor. Consequently, the sale does not stand completed in favour of the successful purchaser.

I] DECISION IN INDIAN OVERSEAS BANK (SUPRA)

23. In this regard, the decision of the Supreme Court in *Indian Overseas Bank* (supra) is extremely instructive. In that case, the Apex Court was dealing with an issue concerning the interplay between the provisions of the SARFAESI Act and the IBC with

key facts that are near identical to the case at hand. For the sake of convenience and ready reference, they are set out below:

- 23(a) On 13th June 2016, the corporate debtor's account was declared as NPA by the secured creditor. Thereafter, a demand notice under Section 13(2) of the SARFAESI Act came to be issued by the secured creditor, who then proceeded to take symbolic possession of the secured asset under Section 13(4) of the SARFAESI Act;
- 23(b) On 27th September 2018, the 1st E-Auction Sale Notice came to be issued by the secured creditor. Subsequently, on 22nd October 2018, an application under Section 10 of the IBC came to be filed by the corporate debtor for initiation of corporate insolvency resolution process. On 6th November 2018, the first E-Auction was conducted by secured creditor but no bids were received;
- 23(c) As a result, on 27th November 2018, a second E-Auction Sale Notice came to be issued by the secured creditor and on 12th December 2018, the second E-Auction came to be conducted by secured creditor when the successful purchasers offered Rs. 32.92 crores;

23(d) Accordingly, on 13th December 2018, the secured creditor issued a confirmation of sale in favour of the successful purchasers who deposited 25% of the sale price;

23(e) However, on 3rd January 2019, an order came to be passed by the NCLT admitting the application under Section 10 of the IBC and subjecting the corporate debtor to Corporate Insolvency Resolution Process (**CIRP**). Consequently, a moratorium under Section 14 of the IBC was imposed on the corporate debtor;

23(f) Thereafter, on 8th March 2019, during the pendency of the CIRP and at a time when the moratorium was in force, the secured creditor accepted the balance 75% of the sale price from the successful purchaser.

24. Considering the aforesaid factual backdrop, the Supreme Court held that given that the sale under SARFAESI Act is a statutory sale, it is governed by the provisions of Rules 8 and 9 of the SARFAESI Rules. Therefore, it was held that the sale would only stand completed when the successful purchaser makes the entire payment to the secured creditor and resultantly, the sale certificate is issued by the secured creditor. As the balance payment was accepted by the secured creditor at a time when the moratorium was in force, the Supreme Court held that the sale could not be said to have

stood completed. For ease of reference, the relevant paragraphs of *Indian Overseas Bank* (supra) are reproduced hereunder:

*“32. It is further to be noted that the present case arises out of a statutory sale. The sale would be governed by Rules 8 and 9 of the said Rules. **The sale would be complete only when the auction-purchaser makes the entire payment and the authorised officer, exercising the power of sale, shall issue a certificate of sale of the property in favour of the purchaser in the form given in Appendix V to the said Rules.***

33. In Shakeena v. Bank of India, which was a case arising out of SARFAESI Act, this Court has held that the sale certificate issued in favour of Respondent 3 did not require registration and that the sale process was complete on issuance of the sale certificate. The same has been followed by this Court in S. Karthik.

*34. Undisputedly, in the present case, the balance amount has been accepted by the appellant Bank on 8-3-2019. **The sale under the statutory scheme as contemplated under Rules 8 and 9 of the said Rules would stand completed only on 8-3-2019. Admittedly, this date falls much after 3-1-2019 i.e. on which date CIRP commenced and moratorium was ordered. As such, we are unable to accept the argument on behalf of the appellant Bank that the sale was complete upon receipt of the part-payment.*** (emphasis supplied)

25. Thus, it is clear that only if the entire payment is made to the secured creditor, can the sale certificate be issued and if the sale certificate is not issued, prior to the coming into force of the moratorium, the sale is not complete. In the present case, barring the first two tranches of payment, the entire balance payment of six tranches of payment from sr. nos. (iii) to (viii) as set out in paragraph 4(h) above, were made by the

Petitioner and received by Respondent No.1/Bank after the imposition of the interim-moratorium on 9th June 2025 was in force.

J] EFFECT OF INTERIM-MORATORIUM

26. The effect of the interim-moratorium under Section 96 of the IBC has been set out by the Supreme Court in ***Dilip B. Jiwrajka*** (supra), which reads as under:

*“57. Section 96, as its marginal note indicates, deals with an ‘interim moratorium’. In terms of Section 96, the interim moratorium takes effect on the date of the application. In other words, the very submission of an application under Section 94 or Section 95 triggers the interim moratorium which then ceases to have effect on the date of the admission of the application (under Section 100). **The consequences which flow from an interim moratorium are specified in clause (b) of sub-section (1) of Section 96. The impact of the interim moratorium under Section 96 is that a legal action or proceeding pending in respect of any debt is deemed to have been stayed and the creditors or the debtors shall not initiate any legal action or proceedings in respect of any debt. The crucial words which are used both in clause (b)(i) and clause (b)(ii) of sub-section (1) of Section 96 are ‘in respect of any debt’. These words indicate that the interim moratorium which is intended to operate by the legislature is primarily in respect of a debt as opposed to a debtor. Clause (b) of sub-section (1) indicates that the purpose of the interim moratorium is to restrain the initiation or the continuation of legal action or proceedings against the debt.***

58. This must be contra-distinguished from the provisions for moratorium which are contained in Section 14 in relation to CIRP under Part II. Section 14(1)(a) provides that on the insolvency commencement date, the institution of suits or continuation of pending suits or proceedings against the corporate debtor, including proceedings in execution shall stand prohibited by an

order of the adjudicating authority. Clause (b) of sub-section (1) of Section 14 empowers the adjudicating authority to declare a moratorium restraining the transfer, encumbrance, alienation or disposal by the corporate debtor of any of its assets or any legal right or beneficial interest therein. Significantly, the moratorium under Section 14 operates on the order passed by an adjudicating authority. The purpose of the moratorium under Section 96 is protective. The object of the moratorium is to insulate the corporate debtor from the institution of legal actions or the continuation of legal actions or proceedings in respect of the debt."

(emphasis supplied)

27. Similarly, the Delhi High Court, in **Sanjay Dhingra** (supra), relied on **Indian Overseas Bank** (supra) and **Dilip B. Jiwrajka** (supra) and held that the words "*in relation to all the debts*" used in Section 96 of the IBC would apply to all debts of the guarantor, including the mortgaged property in question, which was the subject matter of proceedings under the SARFAESI Act; and the secured creditor could not have continued with the proceedings under the SARFAESI Act and could not have accepted the balance payment after the commencement of the interim-moratorium under Section 96 of the IBC. For ease of reference, the relevant paragraphs of **Sanjay Dhingra** (supra) are reproduced hereunder:

*"14. Section 96(1) provides that when an application is filed under Section 95, interim moratorium shall commence on the date of the application in relation to all the debts. Section 96(1) (b) provides that during the interim moratorium period, any legal action or proceedings pending in respect of any debt, shall be deemed to have been stayed. **It is pertinent to mention here that the word used in Section 96 of the IBC, 2016, is 'in relation to all the debts', meaning thereby, that the***

interim moratorium shall apply to all the debts of the petitioner, including the mortgage of the property in question, that had been mortgaged by the petitioner with the respondent-bank, as a personal guarantor, which are subject matter of the SARFAESI proceedings initiated by the respondent-bank. Thus, in terms of the law of the land, any legal action or proceeding pending in respect of any debt of the petitioner, shall be deemed to have been stayed, upon commencement of the interim moratorium in terms of Section 96 of IBC, 2016."

"16. Thus, in view of the aforesaid, it is manifest that the moratorium imposed under Section 96 of IBC, 2016, would apply to the security interest created by an individual, under the personal guarantee. Therefore, after commencement of the insolvency proceedings under the IBC, 2016, against the petitioner, in his capacity as a personal guarantor with respect to default of a loan account, the interim moratorium shall be applicable to all the debts, including the debt owed by the petitioner to the respondent-bank, in his capacity as a personal guarantor, for which property in question was mortgaged by the petitioner, against which SARFAESI proceedings have been initiated by the respondent-bank."

*"19. At this stage, reference may be made to the judgment of the Supreme Court in the case of Indian Overseas Bank v. RCM Infrastructure Limited². In the said case, sale proceedings had already been initiated by the bank under the provisions of the SARFAESI Act and part-payment had been received by the bank prior to the commencement of the proceedings under the IBC, 2016. Subsequently, after the commencement of the proceedings under the IBC, 2016, balance payment was also received by the bank. In the said case, the Supreme Court held in categorical terms that sale was not complete upon receipt of the part-payment, and the sale could be said to be completed only upon receipt of the balance payment, which was received after the commencement of the proceedings under the IBC, 2016. **Thus, the Supreme Court held that after the moratorium had come into place, the bank could not have continued with the proceedings under the SARFAESI Act and could not have accepted the balance payment after the commencement of the moratorium. Therefore, even in a case where the bank had already commenced the sale process, prior to the commencement of the proceedings under the IBC, 2016, the Supreme Court categorically held that in the absence of completion of sale prior to the moratorium, the bank***

could not have continued any further proceedings under the terms of the SARFAESI Act."

(emphasis supplied)

28. Therefore, applying the test in ***Indian Overseas Bank*** (supra), once the interim-moratorium under Section 96 of the SARFAESI Act is in force, a secured creditor cannot receive balance payment from the successful purchaser. Thus, if the interim-moratorium kicks in post confirmation of the sale but before the balance payment is made, the only outcome is that there is no transfer of ownership of the secured asset in favour of the successful purchaser. That being the case, if there is any legal embargo in completing the sale, the successful purchaser cannot claim any ownership rights. Moreover, the interim-moratorium under Section 96 of the SARFAESI Act is much wider than that under Section 14 thereof, which position is also borne out from the aforesaid decisions.

29. The *ratio* of ***Indian Overseas Bank*** (supra) is not affected by the decision of the Supreme Court in ***Celir LLP*** (supra), in which case, the Supreme Court held that the right of the borrower to redeem the secured asset stands extinguished, on the very date of publication of the notice for public auction, under Rule 9(1) of the SARFAESI Rules. The Supreme Court further held that the confirmation of the sale by a secured creditor under Rule 9(2) of the SARFAESI Rules invests the successful auction purchaser

with a vested right to obtain a sale certificate in accordance with Rule 9(6) of the SARFAESI Rules.

K] DECISION IN CELIR LLP (SUPRA)

30. To appreciate the ratio laid down in *Celir LLP* (supra), the following key facts therein are required to be noted:

30(a) The secured creditor had declared the account of the borrower as NPA, after which, the notice of demand under Section 13(2) of the SARFAESI Act came to be issued by secured creditor to the borrower and the secured creditor obtained symbolic possession of the secured asset under Section 13(4) of the SARFAESI Act.

30(b) Between April 2022 and June 2013, the secured creditor attempted 8 auctions, but all failed.

30(c) Ultimately, on 14th June 2023, the 9th auction sale notice came to be issued by the secured creditor which was successful and an offer of Rs. 105.05 Crores was offered by the successful purchaser on 27th June 2023 and on 30th June 2023, the secured creditor issued a confirmation of sale in favour of the successful purchaser.

30(d) On 1st July 2023, the successful purchaser deposited 25% of the sale price with the secured creditor. However, on 4th July 2023, the borrower filed a Securitisation Application under Section 17 of the SARFAESI Act before the DRT for redemption of its mortgage. Ultimately, on 27th July 2023, the secured creditor accepted the balance 75% of the sale price from the successful purchaser.

30(e) During pendency of the Securitisation Application (which was reserved for orders) the borrower filed a Writ Petition before this Court. On 17th August 2023, this Court passed an order allowing the said Writ Petition and permitted the Borrower to redeem the mortgage for an amount of Rs. 129 crores (with Rs. 25 crores deposited on the same day and balance Rs. 104 crores directed to be deposited by 31st August 2023).

31. In was in such a factual backdrop that the Supreme Court held that the amended provisions of Section 13(8) of the SARFAESI Act brought about a radical change, since the right of the borrower to redeem the secured asset stood extinguished on the very date of publication of the notice for sale. For ease of reference, the relevant paragraphs of **Celir LLP** (supra) are reproduced hereunder:

"110.2. The confirmation of sale by the Bank under Rule 9(2) of the 2002 Rules invests the successful auction-purchaser with a vested right to obtain a certificate of sale of the immovable property in the form given in Appendix V to the Rules i.e. in accordance with Rule 9(6) of the Security Interest (Enforcement) Rules, 2002.

110.3. In accordance with the unamended Section 13(8) of the SARFAESI Act, the right of the Borrower to redeem the secured asset was available till the sale or transfer of such secured asset. In other words, the Borrower's right of redemption did not stand terminated on the date of the auction-sale of the secured asset itself and remained alive till the transfer was completed in favour of the auction-purchaser, by registration of the sale certificate and delivery of possession of the secured asset. However, the amended provisions of Section 13(8) of the SARFAESI Act, make it clear that the right of the Borrower to redeem the secured asset stands extinguished thereunder on the very date of publication of the notice for public auction under Rule 9(1) of the 2002 Rules. In effect, the right of redemption available to the Borrower under the present statutory regime is drastically curtailed and would be available only till the date of publication of the notice under Rule 9(1) of the 2002 Rules and not till the completion of the sale or transfer of the secured asset in favour of the auction-purchaser.

110.4. The Bank after having confirmed the sale under Rule 9(2) of the 2002 Rules could not have withheld the sale certificate under Rule 9(6) of the 2002 Rules and entered into a private arrangement with a Borrower."

32. The vested right invested in the successful purchaser upon confirmation of sale is that he has a right to become the owner, upon making full payment of the sale price. The vested right of the successful purchaser is to insulate him from any claims from the world at large. However, such vested right is conditional upon the successful purchaser making full payment of the sale price. Pertinently, in ***Celir LLP*** (supra), the

Supreme Court was not dealing with any IBC implications at all. The issue *simpliciter* was, whether a borrower would be permitted to exercise its right of redemption, after publication of the notice for sale. It was in this backdrop, that the Supreme Court held that the borrower, whose right of redemption stood extinguished, could not impinge upon the successful purchasers' vested rights.

L] FINDINGS

33. Considering the analysis of the judicial precedents cited hereinabove to the facts at hand in the present Writ Petition, the position that emerges is summarised hereunder:

33(a) The transfer of ownership of the secured asset in case of a statutory sale under SARFAESI takes place upon the issuance of the sale certificate. The amendment to Section 13(8) does not alter this position. It merely advances the date of extinguishment of the right of redemption available to a borrower.

33(b) The loss of the right of redemption does not tantamount to the loss of ownership rights. In other words, the extinguishment of the right of redemption will not affect ownership rights in the secured asset.

33(c) The sale conducted under the provisions of the SARFAESI Act in the present case does not stand completed since, during the intervening period viz. from the date of confirmation of sale on 30th May 2025 till the issuance of sale certificate on 20th June 2025, the interim-moratorium imposed under Section 96 of the IBC on 9th June 2025, stayed all proceedings in respect of any debt of the borrowers.

33(d) In view of the imposition of the interim-moratorium under Section 96 of the IBC, payments of the balance six tranches from sr. nos. (iii) to (viii) as set out in paragraph 4(h) above could not have been accepted by Respondent No. 1/Bank from the Petitioner.

33(e) Resultantly, the Petitioner is not the owner of the secured asset and therefore, not entitled to possession of the same.

34. We are unable to take any countenance of the without prejudice submissions made by Mr. Hegde seeking refund of the entire auction bid/amount from Respondent No.1/Bank since no reliefs to that effect have been sought in the present Writ Petition. We leave this issue open, to be agitated and considered in appropriate proceedings, that his clients are free to initiate, if they so desire.

35. Before we conclude, we would like to express our sincere appreciation for the efforts of the learned Amicus, Mr. Naushad Engineer, Senior Advocate, and his colleagues, Mr. Sharad Bansal and Mr. Yohaann Limathwalla, for having appeared in this matter on multiple occasions and for the invaluable assistance rendered to this Court. But for their diligent and thoughtful contributions, we would not have been able to arrive at a just and satisfactory resolution of the issues before us in the present Writ Petition.

M] OPERATIVE ORDER

35. In the premises, we do not find any merit in the present Writ Petition, which is hereby disposed of, in terms of the following order:

- ORDER -

(a) The present Writ Petition is hereby dismissed with no order as to costs.

(FARHAN P. DUBASH, J.)

(R.I. CHAGLA J.)

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