IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 159 of 2020
In R/SPECIAL CIVIL APPLICATION NO. 19920 of 2019
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2020
In R/LETTERS PATENT APPEAL NO. 159 of 2020
With
R/LETTERS PATENT APPEAL NO. 160 of 2020
In SPECIAL CIVIL APPLICATION NO. 19918 of 2019
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2020
In R/LETTERS PATENT APPEAL NO. 160 of 2020
In SPECIAL CIVIL APPLICATION NO. 19918 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH Sd/-

and
HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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PUNJAB NATIONAL BANK
Versus
M/S MITHILANCHAL INDUSTRIES PVT. LTD.

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Appearance:
MR KM PARIKH with MR KULDEEP K ADESARA(9222) for the Appellant(s)No. 1
MR KM PARIKH(575) for the Appellant(s) No. 1
MR RS SANJANWALA, SENIOR ADVOCATE with MR SANDIP C BHATT(6324) for the Respondent(s) No. 1,2,3,4,5 for the Respondent(s) No. 6

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CORAM: **HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH**
and
HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI

Date : 17/08/2020

CAV COMMON JUDGMENT

(PER : HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH)

1. We would like to begin by the saying that the biggest problem that confronts the judiciary today is, pendency of cases. The present matter before us, certainly adds to the problem and is a classic example of how such cases contribute to the judicial system getting over-burdened. What could have been done 3 years ago by issuance of a fresh notice by merely adding a few words to satisfy the requirement laid down by law, has been delayed unnecessarily and contested in a manner that has left us bewildered. This mindset of Governmental agencies/ undertakings such as the appellant bank, a nationalised Bank before us, to engage in such frivolous, vexatious and impractical litigation demonstrates the gross indifference of the administration towards litigative diligence.

2. The present litigation initiated by the appellant Bank, right from the inception has resulted only in loss of the time of the various judicial forums that have been approached by the appellant Bank and is also a drain on the public exchequer. What perplexes us most, is that in such financial matters, the objective is quick recovery and lowering the possibility of losses. However, by engaging in the present litigation, the attitude adopted by the appellant Bank and its officers has borne results that are against the interests of the Bank and a matter that could have been laid to rest by rational thinking has been unnecessarily dragged for 3 years. When such litigation reaches our doorsteps, we feel exasperated by the inaction or rather the wrongful action and by the policy of blindly engaging in litigation before various judicial forums as entities such as the appellant Bank before us are expected to exercise finer sense and sensibility in their litigation policy, as compared to an individual litigant.

3. The Punjab National Bank (hereinafter referred to as 'the Secured Creditor') has preferred these two Letters

Patent Appeals under Clause 15 of the Letters Patent assailing the correctness of the judgment and order dated 14.11.2019 passed by the learned Single Judge in two connected Special Civil Application Nos.19918 of 2019 and 19920 of 2019 whereby the learned Single Judge dismissed both the writ petitions by a common judgment.

4. As both the appeals have more or less similar facts and identical legal issues, except that the Borrowers in the two cases are different, the same are taken up together just as before the learned Single Judge. The respondent companies are the Borrowers of the appellant Bank-the Secured Creditor and had taken credit facilities as also term loans against securities which included hypothecation of plant and machinery, stock and book debts, mortgage of factory land and building and other immovable properties belonging to the promoters. These loans were taken some time in the year 2010 to 2013. We are not going into the facts as they are more or less admitted insofar as the borrowings are concerned and furnishing of the securities. There is also reference to certain correspondence regarding an issue

relating to rate of interest. This is also apparent from the judgment of the learned Single Judge.

5. At some stage, the Borrowers defaulted in repayment of the loans, as a result of which the Secured Creditor classified the accounts of the Borrowers as Non Performing Accounts. Subsequently, the Secured Creditor issued demand notice dated 29.12.2014 under Section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act"). The Borrowers submitted objections/representation under Section 13(3A) of the SARFAESI Act against the notice under Section 13(2). However, the objection/representation of the Borrowers were not found to be satisfactory. Accordingly the Secured Creditor called upon the Borrowers to deliver possession under Section 13(4) of the SARFAESI Act. Further the Secured Creditor applied under Section 14 of the SARFAESI Act which was favourably decided.

6. In the meantime, the Borrowers approached the Debt Recovery Tribunal by way of Securitization Application

registered as Securitisation Application Nos.47 and 48 of 2015 under Section 17 of the SARFAESI Act assailing the notice under Section 13(2), 13(4) and the action taken under Section 14 on various grounds. These applications were responded by the Secured Creditor and pleadings were exchanged.

7. The Debt Recovery Tribunal vide judgment and order dated 22.06.2017 set aside the demand notice under Section 13(2) of the SARFAESI Act and all consequential proceedings and further directed the Secured Creditor to restore the possession with the liberty to proceed afresh in accordance to law. The finding of the Tribunal was that the notice was not in accordance with the statutory provision provided in Section 13(3) of the SARFAESI Act as it did not contain the details of the amount due and also the correct details of the secured assets. It would be worthwhile to quote paragraphs 9 and 17 to 19 of the Tribunal's judgment which read as follows:-

> *"9. Respondent bank issued demand notice dated 29.12.2014 under Section 13(2) of SARFAESI Act 2002 for an amount of Rs.6,44,18,748/- outstanding*

in Cash Credit Limit, an amount of Rs.36,12,391/- outstanding in Term Loan-I Account and an amount of Rs.77,38,309/- outstanding in Term Loan-II Account. Thus respondent Bank has claimed a total amount of Rs.7,57,69,448/- outstanding as on 30.11.2014. As per Demand Notice, account has been classified as Non-Performing Asset on 27th December, 2014 as per guidelines issued by Reserve Bank of India. Respondent bank has placed on record copy of account pertaining to each account. As per Demand Notice, the contractual rate of interest is claimed from 01.12.2014 until payment in full is made within a period of 60 days. However, Demand Notice is silent regarding rate of interest charged in each of the accounts. The Demand Notice only mention regarding facility advanced, limit sanctioned and balance outstanding as on 30.11.2014. However, rate of interest charged in the Cash Credit account from 01.01.2014 to 30.06.2014 is 14.5% p.a. with monthly rests. The rate of interest charged from 1st July, 2014 to 30th November, 2014 is 13.75% p.a. with monthly rests. Applicants have placed on record copy of sanction letter dated 4th February, 2013 wherein interest agreed by the applicants by acceptance of sanction letter for Cash Credit limit is base rate plus 4.25% subject to change from time to time as per RBI/HO guidelines and credit risk rating. Applicants have also agreed to pay penal interest @ 2% p.a. Authorized Officer is bound to give full details of amount to recovered and secured asset as per mandatory provision of Section 13(3) of the SARFAESI Act 2002. Respondent bank is not entitled to compound penal interest. However conduct of account reveals that penal interest is also charged from time to time and compounded on monthly basis contrary to guidelines issued by Reserve Bank of India and law laid down by Hon'ble Apex Court in case of Central Bank of India versus Ravindra and others.

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17. Therefore, in view of aforesaid facts and law applicable thereon, there is no necessity to give details regarding bifurcation of interest, etc. in the Demand Notice. However, Authorized Officer is bound to give the details of the amount payable by the borrower as well as details of secured asset. The details include loan sanctioned or disbursed to the borrower, rate of interest charged and amount outstanding as on date mentioned in the Demand Notice. In the present case, the Authorized Officer has given only amount sanctioned and payable by the borrower. He has not provided rate of interest at which the amount has been claimed prior to 01.12.2014. The respondent Bank has charged penal interest and capitalized the same time and again on monthly basis. Authorized Officer was having opportunity to explain the details while deciding objection of the applicant and to assure applicants that amount inflated due to compounding penal interest will be excluded. But he has failed to avail opportunity to justify his action on the objection raised by the applicant. The details of secured asset are not as per mortgage deed no.489 dated 07.02.2013. Therefore, Authorized Officer has failed to comply mandatory provision of Section 13(3) of the SARFAESI Act 2002. Therefore, Demand Notice dated 2912.2014 is not sustainable at law and same is hereby quashed and set aside.

18. Since Demand Notice has been set aside as above, further action of respondent Bank consequent upon Demand Notice dated 29th December, 2014 is also quashed and set aside. It is settled legal proposition that if initial action is not in consonance with law, the subsequent proceedings would not sanctify the same. In such a fact situation, the legal maxim 'sublato fundamento credit opus' is applicable, meaning thereby in case a foundation is removed, the superstructure automatically falls.

19. Therefore, in view of aforesaid observation of mine, Securitization Application is allowed with no order as to costs. Respondent Bank is directed to restore the possession of the property in question. Respondent Bank is at liberty to proceed afresh under the provisions of SARFAESI Act 2002 in accordance with law. However respondent bank shall before taking action under provision of SARFAESI Act 2002 qua flat No.5B-502, Brij Ratan Apartment, Parle Point Surat shall get rectification of mortgage deed no.489 dated 07.02.2013."

8. Further, according to the Secured Creditor, an application was moved before the Debt Recovery Tribunal for granting stay of the operation of the judgment and order dated 22.06.2017 upon which the Debt Recovery Tribunal is said to have orally stayed the operation of the judgment for 4 weeks. In the meantime, according to the appellant Secured Creditor, the Borrowers re-entered into their properties but at a later stage, the Borrowers stated before the Debt Recovery Tribunal that the possession was still with the Secured Creditor.

9. The Secured Creditor preferred two appeals before the Debt Recovery Appellate Tribunal on 18.07.2017 registered as Securitisation Appeal Nos. 130 and 131 of 2017. The Secured Creditor in the meantime had filed an application

for contempt before the Debt Recovery Tribunal registered as Misc. Application No.44 of 2017 in Securitisation Application No.47 of 2015. During its pendency, the Secured Creditor preferred Special Civil Application No.14741 of 2017 before this Court. In the said petition, the proceedings before the Debt Recovery Tribunal and the Debt Recovery Appellate Tribunal were stayed by this Court vide order dated 08.08.2017. Later on, vide order dated 24.06.2019, the learned Single Judge disposed of Special Civil Application No.14741 of 2017 with a direction to the Debt Recovery Appellate Tribunal to proceed to decide the Securitization Appeal on or before 31.10.2019 and in the meantime, the contempt proceedings before the Debt Recovery Tribunal would remain stayed.

10. The Debt Recovery Appellate Tribunal, Mumbai, vide judgment and order dated 23.08.2019 dismissed both the appeals of the Secured Creditor. The findings recorded by the Appellate Tribunal and the observations made are recorded in paragraph 4 of the judgment in Appeal No.130 of 2017. It is relevant to state here that similar observations

are recorded in paragraph 4 of the judgment in Appeal No.131 of 2017. The Appellate Tribunal made observations against the Bank in paragraph 4 of its judgments, as such, the same is reproduced below:

> *"4. When the Tribunal below specifically recorded a finding that Bank has not followed Section 13(3) of the SARFAESI Act, the Legal Department of the Bank, before recommending to file Appeal, should have examined the notice dated 29.12.2014 with reference to provisions of SARFAESI Act. If the appellant has issued a fresh 13(2) notice immediately after the disposal of the S.A. rectifying the mistake, by this time other steps could have been completed and the Bank might have realized money by this time."*

11. Aggrieved by the judgment of the Debt Recovery Appellate Tribunal, the Secured Creditor preferred two Special Civil Application Nos.19920 and 19918 of 2019. The learned Single Judge vide common judgment and order dated 14.11.2019 dismissed both these Special Civil Applications, confirming the orders of the Debt Recovery Tribunal and the Debt Recovery Appellate Tribunal. The finding as recorded by the learned Single Judge in paragraph 7.2 is reproduced below :

> *"7.2 The necessity to give the details of the amount becomes more important because even though the*

agreements were entered into and may be that the respondent borrower was aware of the rate of interest the respondent borrower was aware of the rate of interest that was needed to be charged, the terms and conditions of the agreements make it abundantly clear that the rate of interest that the base rate are subject to change by the bank from time to time and the revised rate of interest shall accordingly be charged from time to time in the said account. These stands would obviously make it incumbent upon the bank while issuing notice under Section 13(2) of the Act to give details of the amount payable under a notice under Section 13(2). The Tribunal while considering the issue at hand has relied on a few decisions."

12. It is thereafter that the present two appeals have been preferred.

13. We have heard Mr. K.M.Parikh, learned Senior Counsel with Mr. Kuldeep Adesara, learned counsel for the appellant Secured Creditor and Mr. R.S.Sanjanwala, learned Senior Counsel assisted by Mr. Sandip Bhatt, learned counsel for respondent Nos.1 to 5. Both the learned counsel for the parties have agreed that the appeals may be finally heard at the stage of admission itself and as such we have given a very patient hearing to the learned counsel for the parties.

14. Right from the stage of Section 13(2) of the SARFAESI Act and from the stage of opportunity to the Borrowers to

file their reply, the Borrowers had specifically stated that the notice under Section 13(2) was defective and invalid as it was not in compliance to the statutory provisions contained in Section 13(3) of the SARFAESI Act. It did not contain the details of the amount payable by the Borrowers as also the details of the secured assets. The Secured Creditor thought it otherwise that the details of the amount payable by the Borrowers mentioned in Section 13(3) of the SARFAESI Act only requires the Secured Creditor to mention one single figure of the total outstanding amount without giving any break up or details of the amount payable in the form of the principal amount outstanding, interest payable on it for different periods whether at flat or floating rates, any penal interest, the amount of costs etc. or any other amount under any other head which would be chargeable from the Borrowers. Even with respect to the details of the secured assets, the Secured Creditor did not care or deem it proper to correct it.

15. The Debt Recovery Tribunal, the Debt Recovery Appellate Tribunal and the learned Single Judge of this

Court concurrently and consistently based upon bare perusal of Section 13(3) of the SARFAESI Act as also the law on the point held against the Secured Creditor. The Secured Creditor instead of correcting its mistake as had been pointed out by the Tribunal, the Appellate Tribunal and the learned Single Judge, has now filed the present appeals and has sought to canvass that it was not necessary for the Secured Creditor to provide the breakup of the outstanding amount and mention of one single figure would be due compliance of the provisions under Section 13(3) of the SARFAESI Act. Further, according to the appellant, Secured Creditor, the details of secured asset are also correct.

16. Mr. Parikh, the learned Senior Counsel made elaborate submissions on the point beginning from the enforcement of the SARFAESI Act, the object and purpose of bringing out the said legislation, the scheme of the Act. After referring to the complete scheme of the Act, the submission of Mr. Parikh, the learned Senior Counsel is that the only requirement under Section 13(3) of the SARFAESI Act is of providing the amount payable by the borrower and the

details of the secured assets intended to be enforced. There is no other mandatory requirement to be incorporated in a notice under Section 13(3).

17. It was next submitted by Mr. Parikh that under Section 17 of the SARFAESI Act, the Debt Recovery Tribunal could not test the correctness or validity of a notice under Section 13(2) of the SARFAESI Act. According to Mr. Parikh, it is only after an order under Section 13(4) or 14 of the SARFAESI Act is passed that Section 17 comes into play and the Tribunal could only examine the validity of the action taken under Section 13(4) or Section 14 of the SARFAESI Act. According to Mr. Parikh, the Tribunal exceeded its power vested under Section 17 and as such the impugned order passed by the Tribunal as affirmed by the Appellate Tribunal and the learned Single Judge are untenable in law and requires to be set aside.

18. Although Mr. Parikh in his written submission has given detailed arguments running into 15 pages, but the substance of the arguments is only what is recorded above.

Further reliance is placed upon the following decisions by the learned Senior Counsel Mr. Parikh :

(i) **ITC Limited vs. Blue Coast Hotels Limited and others,** reported in **(2018) 15 SCC 99.**

(ii) **Vasu P. Shetty vs. M/s. Hotel Vandana Palace and others,** reported in **(2014) 5 SCC 660.**

(iii) **Tirupati Storage and Allied Private Limited vs. The United Commercial Bank, Kolkata,** reported in **2012 (4) PLJR 748.**

(iv) **Maradia Chemicals Limited vs. Union of India and others,** reported in **(2004) 4 SCC 311.**

(v) **United Bank of India vs. Satyawati Tondon and others,** reported in **(2010) 8 SCC 110.**

(vi) **Authorized Officer, Indian Overseas Bank and others vs. Ashok Saw Mill,** reported in **(2009) 8 SCC 366.**

(vii) **Kanaiyalal Lalchand Sachdev vs. State of Maharashtra,** reported in **(2011) 2 SCC 782.**

With reference to various case-laws detailed herein above, having gone through each of them we may say with respect

that they have no application in the facts and circumstances of the present case and the legal issues relevant for the present proceedings.

19. Mr. Parikh in his written submission has also referred to in detail regarding the One Time Settlement

offered, the possession having been taken by the Secured Creditor after the order under Section 14 of the SARFAESI Act was passed, thereafter the Borrowers having re-entered into possession and thereby committing contempt for which separate proceedings were being initiated and about the ownership of one of the properties mortgaged. In our considered opinion, all these facts are not relevant for deciding the present controversy and they pale into insignificance and become irrelevant once the Debt Recovery Tribunal's order for setting aside the notice under Section 13(2) of the SARFAESI Act and further directing the Secured Creditor to restore the possession of the property to the Borrowers having remained unaltered by the Appellate Tribunal and the learned Single Judge.

20. On the other hand, Mr. Sanjanwala, the learned Senior Counsel for the Borrowers submitted that the orders passed by the Tribunal, the Appellate Tribunal and the learned Single Judge are just, valid and proper. They are in accordance to the statutory provisions of Section 13 and its sub-sections of the SARFAESI Act. It is also submitted that

there was no other view possible except the view taken by the learned Single Judge, the Tribunal and the Appellate Tribunal.

21. Mr. Sanjanwala further submitted that the Debt Recovery Tribunal had given opportunity to the Secured Creditor to issue fresh notice in accordance to law as far back as in June, 2017, but the Secured Creditor taking a stringent stand which is untenable in law has been dragging the Borrowers into unnecessary litigation right upto this Court. This being the fourth round, it does not at all appear to be a logical and reasonable action on the part of a nationalized bank, the Secured Creditor.

22. Shri Sanjanwala further submitted that the Secured Creditor has lost almost three years litigating before different forums to defend its notice which is at the face of it invalid. According to him, it is the Secured Creditor alone which can answer this question but since the Borrowers have been successful in all the three innings, these appeals which themselves have limited scope, deserve to be

dismissed with costs.

23. Mr. Sanjanwala has placed reliance not only on the judgments which have been relied upon by the learned Single Judge but has placed reliance upon the **judgment of this Court dated 17.01.2019 passed in Special Civil Application No.690 of 2019 between Priyesh Agro Industries and others vs. Union Bank of India and others**. Mr. Sanjanwala has further placed reliance upon the **order passed by a Division Bench of this Court dated 19.02.2019 passed in Letters Patent Appeal No.422 of 2019** preferred against the judgment of the learned Single Judge dated 17.01.2019, which was allowed to be withdrawn by the appellant.

24. In view of the background and the facts and circumstances of the case as recorded above, there are two points for consideration. Firstly the interpretation of the words **"details of the amount payable by the borrower and the secured assets intended to be enforced"** mentioned in sub-section (3) of Section 13 of the SARFAESI

Act and secondly whether the Debt Recovery Tribunal under Section 17 of the SARFAESI Act could test the validity of notice under Section 13(2) of the SARFAESI Act.

FIRST POINT : DETAILS TO BE MENTIONED [SECTION 13(3)]

25. The notice dated 29.12.2014 under Section 13(2) issued by the appellant bank is reproduced below:

"Date : 29 December 2014

By Regd. AD

To,

1	*M/s. Mithilanchal Industries Pvt. Ltd., Plot No.503, Road No.4, GIDC, Sachin, Surat-394230.*
2	*Ms/. Mithilanchal Industries Pvt. Ltd., Plot No.7311/1, Road No.75B, GIDC, Sachin, Surat-394230.*
3	*M/s. Mithilanchal Industries Pvt. Ltd. 2nd Floor, Plot No.C-46/47, City Industrial Estate, Near Swaminarayan Temple, Udhna, Surat-394510.*

Dear Sir,

NOTICE U/S 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI).

Reg : Credit facilities availed by M/s Mithilanchal Industries Pvt. Ltd. our branch Office : Surat-Main.

You, M/s. Mithilanchal Industries Pvt. Ltd. has availed the following credit facilities.

S. No.	*Facility*	*Limit (Rs.In lacs)*	*Balance O/s as on 30.11.2014*
1	*Cash Credit*	*Rs.600.00*	*Rs.6,44,18,748.00*
2	*T/L 1*	*Rs. 89.36*	*Rs. 36,12,391.00*
3	*T/L 2*	*Rs. 90.41*	*Rs. 77,38,309.00*
	Total	*Rs.779.77*	*Rs.7,57,69,448.00*

Due to default in payment of installment/interest/principal debt, the account has been classified as Non Performing Asset on 27.12.2014 as per Reserve Bank of India guidelines.

In the circumstances, we are unable to permit continuation of the above facilities granted. We, therefore, hereby recall the above facilities.

The amount due to the Bank as on 30.;11.2014 is ***Rs.7,57,69,448.00 (rupees Seven Crore Fifty Seven Lac Sixty Nine Thousand Four Hundred Forty Eight only)*** *with further interest and cost with effective from 01.12.2014 until payment in full (hereinafter referred to as "Secured Debt").*

To secure the outstanding under the above said facilities, you have, inter alia, created security interest in respect of the following properties / assets:

S.No.	*Facility*	*Security*
1	*Cash Credit*	*Hypothecation of Stocks & Book Debts and entire Current assets of the Company*
2	*T/L*	*Hypothecation of Entire Plant and Machinery*

Collateral:

1 Factory Land and Building situated at Plot No.7311/1, Near Road No.8 and 73/B, GIDC, Sachin, Surat Owned by M/s. Telstar Enterprise)

2 Flat No.5B/502, Brij Ratan Apartment, Near Hotel Gateway, Parle Point, Surat (owned by Sh Vivekanand D. Jha & Smt. Vibha Vivekanand Jha)

We hereby serve upon you notice under Section 13(2) of SARFAESI Act 2002 and call upon you to pay the entire amount due to the Bank as on 30.11.2014 ***Rs.7,57,69,448.00 (rupees Seven Crore Fifty Seven Lac Sixty Nine Thousand Four Hundred Forty Eight only)*** *with further interest and cost with effect from 01.12.2014 at the contracted rate until payment in full within 60 days (sixty days) from the date of this notice. In default, besides exercising other rights of the Bank as available under Law, the Bank is intending to exercise any or all of the powers as provided under section 13(4) of the* ***Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the Act").***

The details of the secured assets intended to be enforced by the Bank, in the event of non-payment of secured debt by you are as under:

1 ***Hypothecation of Stocks & Book Debts and entire Current assets of Company***

2 Factory Land and Building situated at Plot No.7311/1, Near Road No.8 and 73/B, GIDC, Sachin, Surat Owned by M/s. Telstar Enterprise)

2 Flat No.5B/502, Brij Ratan Apartment, Near Hotel Gateway, Parle Point, Surat (owned by Sh

Vivekanand D. Jha & Smt. Vibha Vivekanand Jha)

Please take notice that in terms of section 13(13) of the said Act, you shall not, after receipt of this notice, transfer by way of sale, lease or otherwise (other than in the ordinary course of business) any of the secured assets above referred to, without prior written consent of the Bank. You are also put on notice that any contravention of this statutory injunction / restraint, as provide4d under the said Act, is an offence.

If for any reason, the secured assets are sold or leased out in the ordinary course of business, the sale proceeds or income realized shall be deposited / remitted with/to the Bank. You will have to render proper account of such realization/income.

**We reserve our rights to enforce other secured assets*

Please comply with this demand under this notice and avoid all unpleasantness. In case of non-compliance, further needful action will be restored to, holding you liable for all costs and consequences.

This notice is issued without prejudice to the bank taking legal action before DRT/Court, as the case may be.

Yours faithfully
For Punjab National Bank
Sd/-
Mayur Sheth
Chief Manager

(With addresses)

c.c. 1 Shri Suman Kumar Dilip Kumar Jha
385, Sapna Nagar, Amamboli-2
Amboli, Taluka-Kamrej
Surat.

2 Shri Mayur Dipakbhai Mistry
156, Ranchhodji Park-2
Katargam
Surat.

3

Shri Vivekanand D. Jha 902, Subham Apartment-1, Near Sargam Shopping Center, Parle Point, Surat-395007	*Shri Vivekanand D. Jha Flat No.5B/502, Brij Ratan Apartment, Near Hotel Gateway, Parle Point, Surat-395007.*

4

Smt. Vibha Vivekanand Jha 902, Subham Apartment-1, Near Sargam Shopping Center, Parle Point, Surat-395007	*Smt. Vibha Vivekanand Jha Flat No.5B/502, Brij Ratan Apartment, Near Hotel Gateway, Parle Point, Surat-395007.*

5 *M/s. Telstar Enterprise Office – Plot No.7311/1 Road No.73/B, GIDC, Sachin Surat."*

26. A perusal of the said notice only mentions aggregate amount, but does not give the details of the outstanding amount payable by the Borrower. It does not conform to Section 13(3) of the SARFAESI Act, which provision is reproduced here under:

> *"13(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."*

27. The Borrowers – respondents preferred representation / objection dated 02.03.2015 under Section 13(3A) of SARFAESI Act requiring the Secured Creditor to withdraw the notice and to issue a fresh notice in conformity with sub-section (3). The Secured Creditor apparently did not find the representation / objections to be acceptable and accordingly communicated to the Borrowers.

28. The words used in Section 13(3) of the SARFAESI Act are *"details of the amount payable by the borrower as also the details of the secured assets intended to be enforced by the Secured Creditor."* So, the notice under Section 13(2) of the SARFAESI Act has to necessarily contain the details on the above two counts.

29. Insofar as the first part is concerned i.e. regarding the amount payable by the borrowers, if the intention of the Legislature was only to provide the total outstanding amount or the aggregate amount outstanding and payable by the borrowers, the language would have been different. It

would not have been necessary to incorporate Sub-Section (3) in Section 13 of the SARFAESI Act. In Sub-Section (2) of Section 13 of the SARFAESI Act, it is also mentioned that the Secured Creditor may require the borrower by notice in writing to discharge in full his liabilities to the Secured Creditor. The said liabilities would be mentioned in view of the provisions of Sub-Section (2) itself. But, consciously, Sub-Section (3) was incorporated so as to ensure that the details of the amount payable are provided in the notice. Such details would include the relevant calculations made by the Bank under different heads which had become due and payable at the end of the borrower.

30. There is another reason for incorporating Sub-Section (3). Sub-Section 3(A) gives right to the borrower to make a representation or raise an objection against the notice under Sub-Section (2). Unless the borrower has the details of the amounts found due and payable by the Secured Creditor and being demanded as such under a notice under Sub-Section (2), the borrower would not be in a position to make any representation or raise any objection. It is only when

the amounts under different heads are provided to the borrower that it could raise objection under any of the heads where the borrower finds that the amount quantified is not correct. Without there being any details mentioned in the notice, the very purpose of Sub-Section 3(A) would also be lost to a large extent.

31. From a perusal of the material on record and as also discussed not only by the Tribunal but also the learned Single Judge there was an issue raised earlier and pending between the parties regarding the rate of interest at which the Secured Creditor was calculating. According to the borrower, the rate of interest was higher as was being applied by the Secured Creditor than what actually it could claim under the agreement. The learned Single Judge had referred to such facts in paragraphs 5.1 to 6.1 of the judgment. The learned Single Judge had also placed reliance upon the view taken by the Patna High Court as also the High Court of Calcutta while interpreting the provisions of Sub-Sections (2) and (3) of Section 13 of the SARFAESI Act.

32. For all the reasons recorded above, the first argument canvassed before us being devoid of any merits is accordingly rejected.

SECOND POINT : SCOPE OF SECTION 17 OF THE SARFAESI ACT:-

33. At first we proceed to deal with the scheme as envisaged in Section 17 of the SARFAESI Act. Under sub-section (1) of Section 17 any person aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor can prefer an appeal (application) to the Debts Recovery Tribunal within 45 days from the date on which such measures had been taken. Under sub-section (2) of Section 17, the Tribunal is bound to consider whether any of the measures referred to under sub-section (4) of Section 13 taken by the secured creditors are in accordance with the provisions of the Act. Under sub-section (3) of Section 17, after examining the facts and circumstances of the case, and evidence produced by the

parties, if the Tribunal comes to the conclusion that any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor are not in accordance with the provisions of the Act and the rules, and require restoration of the management of the business or restoration of possession of the secured assets to the borrower, it may declare such action as invalid and restore possession of the secured assets to the borrower or restore the management of the business to the borrower, as the case may be. As a necessary corollary, sub-section (4) of Section 17 provides that if the Tribunal declares that the recourse taken by the secured creditor under sub-section (4) of Section 13 was in accordance with the provisions of the Act and the rules made thereunder, then, notwithstanding anything contained in the Act or any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of Section 13 to recover his secured debt.

34. On a plain reading of Section 17, it is seen that the Tribunal has wide powers to restore possession in favour of

the borrower, if such action taken under sub-section (4) of Section 13 is declared invalid. Even where the property is sold or dealt with, pending hearing of the application under Section 17, the Tribunal is not rendered powerless to restore possession in favour of the borrower, if such action taken under sub-section (4) of Section 13 is declared invalid. In such an eventuality, sub-section (3) of Section 17 gives ample powers to the Tribunal to direct restoration of the possession or restoration of management, as the case may be or to pass such other order, as it may consider proper and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of Section 13.

35. We may refer to and rely upon the judgment of the Supreme court in **Transcore vs. Union of India and another** reported in **(2006) 5 CTC 753**. In Transcore, the main question, which fell for consideration of the Supreme Court, was whether the withdrawal of an O.A in terms of the first proviso to Section 19(1) of the Recovery of Debts due to Banks and Financial Institutions Act, is a condition

precedent to taking recourse to the Securitisation Act. In the context of this question, the Court examined the scheme of the Securitisation Act, and it was observed:

> *"13. ... The NPA Act is inspired by the provisions of the State Financial Corporations Act,1951 (SFC Act), in particular Sections 29 and 31 thereof. The NPA Act proceeds on the basis that the liability of the borrower to repay has crystallized; that the debt has become due and that on account of delay the account of the borrower has become sub-standard and non-performing. The object of the DRT Act as well as the NPA Act is recovery of debt by non-adjudicatory process...*
>
> *22. ... On reading Section 13(2), which is the heart of the controversy in the present case,one finds that if a borrower, who is under a liability to a secured creditor, makes any default in repayment of secured debt and his account in respect of such debt is classified as non-performing asset then the secured creditor may require the borrower by notice in writing to discharge his liabilities within sixty days from the date of the notice failing which the secured creditor shall be entitled to exercise all or any of the rights given in Section 13(4). Reading Section 13(2) it is clear that the said sub-section proceeds on the basis that the borrower is already under a liability and further that, his account in the books of the bank or FI is classified as sub-standard, doubtful or loss. The NPA Act comes into force only when both these conditions are satisfied. Section 13(2) proceeds on the basis that the debt has become due. It proceeds on the basis that the account of the borrower in the books of bank/FI, which is an asset of the bank/FI, has become non-performing. Therefore, there is no scope of any dispute regarding the liability. There is a difference between accrual of liability, determination of liability and liquidation of liability...*

23. ...The point to be noted is that the scheme of the NPA Act does not deal with the disputes between the secured creditors and the borrower. On the contrary, the NPA Act deals with the rights of the secured creditors inter se. The reason is that the NPA Act proceeds on the basis that the liability of the borrower has crystallized and that his account is classified as non-performing asset in the hands of the bank/FI...

24. ...However, under Section 17(2), the DRT is required to consider whether any of the measures referred to in Section 13(4) taken by the secured creditor for enforcement of security are in accordance with the provisions of the NPA Act and the Rules made thereunder. If the DRT, after examining the facts and circumstances of the case and the evidence produced by the parties, comes to the conclusion that any of the measures taken under Section 13(4) are not in accordance with the NPA Act, it shall direct the secured creditor to restore the possession/management to the borrower (vide Section 17(3) of NPA Act). On the other hand, after the DRT declares that the recourse taken by the secured creditor under Section 13(4) is in accordance with the provisions of the NPA Act then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to any one or more of the measures specified under Section 13(4) to recover his secured debt."

36. In **Misons Leather Ltd. vs. Canara Bank, Chennai, (2007) 3 LW 500 : 2007(4) MLJ 245**, the constitutional validity of the amended Section 17 was challenged before a Division Bench of the Madras High Court on the ground that the remedy of filing application under Section 17 of the

Act which is declared to be in the nature of the suit by the Supreme Court is totally taken away by the amendment and in any event, the remedy is only an empty formality and does not protect the rights of the borrowers, mortgagors and guarantors. Repelling this contention, the Division Bench observed:

> *"10. We are afraid that the contention is totally misconceived. The provisions of Section17(1) of the Act provides remedy for the borrower/guarantor/mortgagor to challenge the action of the Bank under Section 13(4) of the Act before the Debt Recovery Tribunal. The Debt Recovery Tribunal is required to decide whether the action of the Bank/Financial institutions, under Section 13(4) is in accordance with the provisions of the Act and the rules framed thereunder. It is open to the borrower/ guarantor /mortgagor to demonstrate before the Debt Recovery Tribunal that resort to Section 13 of the Act is not permissible bylaw. In a given case, the claim of the Bank/Financial Institutions may be barred by limitation or there may be cases, where the adjustment of the amount paid is not reflected in the notice or the calculation of interest may not be in accordance with the contract between the parties. Needless to say that all such grounds, which render the action of the Bank/Financial Institutions illegal can be raised in the proceedings under Section 17 of the Act before the Debt Recovery Tribunal.*
>
> *11. Learned Additional Solicitor General and the learned counsel appearing for banks and financial institutions fairly stated that all the objections which can be legally raised in the reply to the notice under Section 13(2) of the Act can also be raised in the proceedings under Section 17(1) of the Act. It would be for the Debt Recovery Tribunal to decide in each case*

whether the action of the bank is in accordance with the provisions of the Act and is legally sustainable."

37. As can be seen from the Statement of Objects and Reasons of the Securitisation Act, the main purpose of the Securitisation Act, and in particular Section 13 thereof, is to enable and empower the secured creditors to take possession of their securities and to deal with them without the intervention of the Court. Therefore, in an application under Section 17, the Tribunal is concerned only with the validity of the acts of the secured creditor in taking possession of the securities and dealing with the same under Section 13. In our opinion, all such grounds, which would render the action of the bank/financial institution illegal, can be raised before the Tribunal in the proceedings under Section 17. It is for the Tribunal to decide in each case whether the action of the bank was in accordance with the provisions of the Act and legally sustainable. However, we hasten to add that while considering the question of validity of the action of the bank, it is not necessary for the Tribunal to adjudicate the exact amount due to the secured creditors. In other words, the purpose of an application

under Section 17 is not the determination of the quantum of claim *per se* as the Tribunal is concerned with the issue of the validity of the measures taken by the banks/financial institutions under Section 13(4).

38. The proviso to section 13(3A) of the SARFAESI Act specifically restricts the borrower from approaching the Debts Recovery Tribunal under Section 17 or the Court of District Judge under Section 17A of the SARFAESI Act at the stage of rejection of his objection / representation under Section 13(3A) of the SARFAESI Act. It clearly mentions that at the stage of communication, the borrower would not be conferred with any right to move either before the Debts Recovery Tribunal or the Court of District Judge. The use of the word at the stage of communication clearly indicates that at subsequent stage such challenge could be made to the communication by the Secured Creditor under Section 13(3A) of the SARFAESI Act. After the above stage, comes the stage of Section 13(4) where the secured creditor may take recourse to one or more of the measures mentioned in sub-clauses (a), (b), (c) and (d) in case the borrower fails to

discharge his liability in full within the period specified in sub-section (2) of Section 13 of the SARFAESI Act.

39. Upon recourse being taken under Section 13(4), Section 17 comes into play and gives right to any person, including the borrower aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorized officer. We are not concerned with the procedural part to be adopted under Section 17 of the SARFAESI Act, but the question is whether while deciding the application under Section 17 of the SARFAESI Act, the Debts Recovery Tribunal could test the validity of the notice under Section 13(2) and also the procedure prescribed under sub-section (3A) of Section 13 of the SARFAESI Act as canvassed by the learned counsel for the appellant Secured Creditor.

40. A reading of Section 13(4) of the SARFAESI Act gives power to the Secured Creditor to take recourse to one or more of the measures provided in Clauses (a) to (d) to recover his secured debt only where the borrower fails to

discharge his liability in full within the period specified in Sub-Section (2) thereof. Thus, there has to be a failure on the part of the borrower to comply with the terms mentioned in Sub-Section (2). Failure to comply with Sub-Section (2) would entail a prior duty/obligation on the part of the Secured Creditor to strictly comply with the terms mentioned therein, that is a valid notice. The notice would be valid only upon complying with the conditions of Sub-Section (3). Once the action taken at the stage of Section 13(4) of the SARFAESI Act is questioned under Section 17 thereof, then the first and foremost thing to be tested would be the valid action by the Secured Creditor under Sub-Section (2) of giving a valid notice and therefore, there is failure on the part of the borrower to discharge his liability. Now in the present case, if the liability itself is not validly communicated by the Secured Creditor, there could not be a failure on the part of the borrower. The Tribunal, therefore, would be well within its powers to test the validity of the notice under Section 13(2) of the SARFAESI Act.

FURTHER ANALYSIS ON BOTH THE POINTS:

41. The action / recourse taken under Section 13(4) by the Secured Creditor would be dependent upon its validity and legally justified action having been taken in the previous sub-sections i.e. sub-sections (1), (2), (3) and (3A). If the procedure prescribed or the requirement provided under the aforesaid sub-sections are not fulfilled by the secured creditor the action/recourse under sub-section (4) of Section 13 would fall. The recourse/action under Section 13(4) of the SARFAESI Act is based upon due compliance in accordance with law of the previous sub-sections of Section 13 of the SARFAESI Act. Whenever it is found that the Secured Creditor has not discharged its obligations strictly in accordance to the provisions of sub-sections, in particular the fulfillment of conditions under sub-section (3) and sub-section (3A), the action / recourse under sub-section (4) would fail and fall to the ground. The action / recourse under sub-section (4) stand on the pillars of the valid action under sub-sections (2), (3) and (3A). If any of those pillars is found to be shaky/defective, the

action/recourse under sub-section (4) must necessarily fall.

42. In order to test action/recourse under sub-section (4) of Section 13 of the SARFAESI Act in an application under Section 17, the Debts Recovery Tribunal has to examine that whether the necessary foundation or the pre-requisites of taking action under Section 13(4) has been fulfilled or not. Where there is a failure or non-compliance, the Tribunal has no other option but to hold that the action/recourse under sub-section (4) is invalid and illegal.

43. The action/recourse under sub-section (4) of Section 13 is consequential to the borrower failing to discharge his liability in full within the period specified in sub-section (2), which speaks of secured creditor requiring the borrower by notice in writing to discharge in full his liabilities within 60 days from the date of notice failing which the secured creditor would be entitled to exercise all or any of the rights under sub-section (4). The requirements of the notice under sub-section (2) is provided

under sub-section (3) which clearly mandates that 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. If these details are not provided which are mandatory in nature or which casts a mandate upon the secured creditor to provide such details, the notice would be bad in law, which we have already held above.

44. In the present case, the borrower took an objection of non-compliance of sub-section (3), in his objection / representation given sub-section (3A), but despite the same the Bank – Secured Creditor in the present case rejected the objection instead of ensuring the compliance of sub-section (3). A perusal of the notice under sub-section (2) which is already reproduced above does not spell out the details of the amount payable by the borrower, but only mentions a lump sum aggregate amount. The dispute with regard to rate of interest being charged by the bank was pre-existing the stage of section 13, and therefore, when the borrower called upon the Secured Creditor to provide the details, as a fair and

reasonable Secured Creditor – the appellant Bank ought to have come out with such details, justification of such details would be a different aspect, but the Bank could not withhold the details. Even the details of the secured assets had not been correctly provided as recorded by the Tribunal, which finding has not been altered or upset at any subsequent stage. If the Bank withholds the details, as in the present case, then such action cannot be sustained.

45. The above discussion further strengthens the answers to both the questions. Firstly that whether the bank was required to spell out the details or not, the answer would be, `YES' and the Bank is required to furnish the details on its own and all the more when the borrower demands it. Secondly, whether under Section 17, the Tribunal could examine the validity of the notice under Section 13(2), the answer would again be `YES'. The Tribunal has to examine the validity and only based upon the validity of notice and validity of discharge of obligation of the secured creditor under sub-sections (2), (3) and (3A) that the Tribunal would hold that the action under sub-section (4) to be valid. In the

present case, such action having been held to be invalid and as the same is apparent from the record, no error could be found in the order of the Tribunal. The appellate Tribunal as also the learned Single Judge rightly dismissed the appeal and the writ petition filed by the Secured Creditor – the appellant Bank. Accordingly, the present appeals fail and are liable to be dismissed. It is ordered accordingly.

46. The present case, as highlighted by us in the paragraphs hereinabove, is a classic example how the judicial system is getting clogged with frivolous litigation. The facts and the circumstances that have led to the filing of the present appeal before us, leave us with no choice but to impose exemplary costs on the appellant Secured Creditor. The Hon'ble Supreme Court has stressed in a catena of matters that costs should be in real and compensatory terms and not merely symbolic. We are of the firm opinion that costs act as a deterrent to vexatious, frivolous, impractical and unnecessary litigation. The whole objective behind imposition of costs is that every litigant, especially big public sector entities, like the appellant bank, would have to think

twice before engaging in such litigation, as the one before us.

47. The appellant Secured Creditor ought to have at the first instance corrected its mistake by issuing a fresh notice providing the details of the amount payable by the Borrower as also correcting the details of the secured assets rather than continuing to challenge it repeatedly before every possible forum and wasting its time. The litigation is ultimately going to cause suffering to the appellant Bank i.e. Secured Creditor.

48. The Supreme Court in the case of **Dnyandeo Sabaji Naik and Others vs. Pradhya Prakash Khadekar and Others** reported in **(2017) 5 SCC 496** has frowned upon frivolous and groundless filings. We quote the relevant observations:

> *"13. This Court must view with disfavour any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt with firmly. A litigant who takes liberties with the truth or with the procedures of the Court should be left in no doubt about the consequences to follow. Others should not venture along the same path in the hope or on a misplaced expectation of judicial leniency. Exemplary costs are inevitable, and*

even necessary, in order to ensure that in litigation, as in the law which is practised in our country, there is no premium on the truth.

14. Courts across the legal system - this Court not being an exception – are choked with litigation. Frivolous and groundless filings constitute a serious menace to the administration of justice. They consume time and clog the infrastructure. Productive resources which should be deployed in the handling of genuine causes are dissipated in attending to cases filed only to benefit from delay, by prolonging dead issues and pursuing worthless causes. No litigant can have a vested interest in delay. Unfortunately, as the present case exemplifies, the process of dispensing justice is misused by the unscrupulous to the detriment of the legitimate. The present case is an illustration of how a simple issue has occupied the time of the courts and of how successive applications have been filed to prolong the inevitable. The person in whose favour the balance of justice lies has in the process been left in the lurch by repeated attempts to revive a stale issue. This tendency can be curbed only if courts across the system adopt an institutional approach which penalizes such behavior. Liberal access to justice does not mean access to chaos and indiscipline. A strong message must be conveyed that courts of justice will not be allowed to be disrupted by litigative strategies designed to profit from the delays of the law. Unless remedial action is taken by all courts here and now our society will breed a legal culture based on evasion instead of abidance. It is the duty of every court to firmly deal with such situations. The imposition of exemplary costs is a necessary instrument which has to be deployed to weed out, as well as to prevent the filing of frivolous cases. It is only then that the courts can set apart time to resolve genuine causes and answer the concerns of those who are in need of justice. Imposition of real time costs is also necessary to ensure that access to courts is available to citizens with genuine grievances. Otherwise, the doors would be shut to legitimate causes

simply by the weight of undeserving cases which flood the system. Such a situation cannot be allowed to come to pass. Hence it is not merely a matter of discretion but a duty and obligation cast upon all courts to ensure that the legal system is not exploited by those who use the forms of the law to defeat or delay justice. We commend all courts to deal with frivolous filings in the same manner."

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

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

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

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

business', which can, if faithfully implemented benefit litigants across the country."

50. We accordingly are of the view that this matter requires costs to be imposed upon the appellant Bank which we quantify at Rs.5.00 lakhs per appeal. The amount of costs to be deposited within one month from today with the Registrar General of this Court whereupon the same shall be transmitted to the Gujarat State Legal Service Authority. This amount is to be recovered from the Officers found responsible for carrying on this frivolous litigation.

Sd/-
(VIKRAM NATH, CJ)

Sd/-
(ASHUTOSH J. SHASTRI, J)

subbu/radhan/Vahid