IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.148

IA/573(AHM)2022 in CP(IB) 177 of 2020

Proceedings under Section 60(5) r.w Rule 11 of NCLT, 2016

IN THE MATTER OF:

Raj Radhe Finance Ltd ....**Applicant**
V/s
Dilipkumar Natvarlal Jagad IRP For Superdrawn Wire Industries Pvt Ltd & Anr ....**Respondent**

Order delivered on ..07/12/2022

Coram:

Dr. Madan B. Gosavi, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

SD/-	SD/-
KAUSHALENDRA KUMAR SINGH	**DR. MADAN B GOSAVI**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1

IA 573 of 2022 IN CP(IB) No. 177 of 2020

(An application under section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with rule 11 of NCLT, Rules, 2016)

Raj Radhe Finance Limited
Having a registered office at;
47, Shyamai Row House 3/B,
Near Shyamal Cross Roads,
Ahmedabad-3800 015, Gujarat

....Applicant

Versus

1. **Mr. Dilipkumar Natvarlal Jagad**,
Interim Resolution Professional for
M/s Superdrawn Wire Industries Private Limited,
Having an address at: 803/804, Ashok Heights,
Opp. Saraswati Aprtment, Old Nagardas
X Road, Gundavali, Andheri-East, Mumbai,
Maharashtra-400 069, India

....Respondent No. 1

2. **Mr. Dinesh Gopal Mundada,**
Resolution Professional for
M/s. Superdrawn wire Industries Private Limited
Having an address at, 406, Fortune House,
Sr. No. 6, H. No. 1/10, Baner-Electricity
Pashan Link Bill Road, Pune,
Maharashtra-411 045, India

....Respondent No. 2

In the matter of ;

(An Application under section 7 of the Insolvency and Bankruptcy Code, 2016)

M/s Teco Industries

....Financial Creditor

Versus

M/s Superdrawn Wire Industries Pvt. Limited

... Corporate Debtor

Order pronounced on: 07.12.2022

Coaram: Dr. MADAN B. GOSAVI, MEMBER (J)
KAUSHALENDRA KUMAR SINGH, MEMBER ((T)

Appearance:

For the Applicant: Mr. Jaimin Dave, Advocate along with Mr. Priyank Dave, Advocate.
For the RP/ IRP:- Mr. Yash Jariwala, Advocate
RP in Person: Mr. Dinesh Gopal Mundada.

ORDER

1. The instant application is filed by M/s Raj Radhe Finance Limited-the Applicant under section 60 (5) of the Insolvency and Bankruptcy Code, 2016 ['**IB Code**'] read with Rule 11 of the National Company Law Tribunal Rules, 2016 ['**NCLT Rules**'] for direction to Respondent No. 2 to admit the entire claim of Rs. 9,95,58,833/- and for the direction to consider the Applicant as a secured financial creditor in view of the fact that the Applicant is having hypothecation charge over the plant and machinery and other movable Assets of the Corporate Debtor.

2. The averments made by the Applicant are summarized as under;

(i) The Applicant is a Company incorporated under the provisions of the Companies Act, 1956 and is registered as a Non-Banking Financial Company ['**NBFC**'] with the Reserve Bank of India under section 45-IA of the Reserve Bank of India Act, 1934.

(ii) The Applicant acquired the debt of the Corporate Debtor from the State Bank of India vide Assignment Agreement bearing No. 0949 dated 28.01.2022 registered at SRO Gondal. Therefore, the Applicant stepped into the shoes of the State Bank of India from the said Assignment date.

(iii) Further that the CIRP of the Corporate Debtor was initiated as per the order dated 16.03.2022 in CP (IB) No. 177 of 2020. Thereafter, the applicant filed its claim before respondent no. 1, IRP of the Corporate Debtor for an amount of Rs. 9,95,58,833/-. However, respondent no. 1 had arbitrarily rejected the claim of a substantial amount and admitted partially an amount of Rs. 3,34,55,019/- only, that too considered the applicant as an unsecured financial creditor instead of a secured financial creditor.

(iv) In the context, it has been submitted that as per the assignment agreement dated 28.01.2022 outstanding amount as on cut off date of 31.12.2021 has been stated to be 11,24,55,324/- which does not include the interest and additional expenses charges of recovery fee since NPA date.

(v) It is nowhere mentioned in the Assignment Agreement dated 28.01.2022 that the assignee has no right to charge interest or penal interest from the NPA date. It can be construed that in case the Assignor (the State Bank of India) receives any recoveries from the NPA Accounts assigned to the assignee then the assignee shall have the right over such recovered amount. Hence, the outstanding amount mentioned under Schedule- 1 of the said Assignment did not include the interest component as well as the other expenses, costs and charges. Therefore, the outstanding amount of debt of the Corporate Debtor has been mentioned as Rs. 11,24,55,324/- of the principal amount plus interest till the date of payment and incidental expenses, charges of recovery fee since NPA date.

(vi) The Applicant before the date of admission of the CIRP application had received an offer from the prospective buyers-M/s ASEL Financial Services Limited to purchase the mortgaged secured assets of the Corporate Debtor. In view thereof, on 19.02.2022, the applicant issued a sale notice under Rule 8 (8) of the Security Interest (Enforcement) Rules, 2002. The Corporate Debtor had also granted the consent vide letter dated 23.02.2022 to the sale of the mortgaged secured assets of the Corporate Person. The applicant accepted the offer of the prospective buyers-M/s ASEL Financial Services Limited on 25.02.2022 in view of payment of Rs. 8,39,00,000/- as a sale consideration. Thereafter, the Applicant handed over the physical possession of the Mortgaged Property on 26.02.2022 and on 28.02.2022 issued a sale certificate in favour of M/s ASEL Finance Services Limited [‘**ASEL**’] which was acknowledged by the aforesaid purchaser on 04.03.2022. Thereby, an amount, Rs. 9,10,31,268/- including interest was outstanding even after receiving the sale consideration. But, the said outstanding amount was not included with the penal interest and other charges**.**

(vii) The Corporate Debtor was admitted in the Corporate Insolvency Resolution Process [‘**CIRP’**] vide order dated 16.03.2022 in CP (IB) No. 177 of 2020 and Respondent No. 1 was appointed as an Interim Resolution Professional. Form- A was published by the IRP on 19.03.2022 for submission of claim by the creditors. The applicant, on 01.04.2022 filed its claim of Rs. 9,95,58,833/- through email, and on 04.04.2022 Respondent No. 1 sought supporting documents and clarification with respect to the receipt of Rs. 8,39,00,000/- for the sale of secured mortgaged property of the Corporate Debtor. Further, Respondent No. 1 vide email dated 08.04.2022 threatened the Applicant to initiate action under section 19 and /or Section 70 of the IB Code. The Applicant on the same day supplied the requisite documents through email to Respondent No. 1 and objected to the email dated 08.04.2022 of Respondent No. 1 with respect to the threatening to initiate the proceedings under section 19 and/ or section 70 of the IB Code.

(viii) Respondent No. 1 arbitrarily partially rejected the claim of the applicant on the ground that the Applicant has no right to receive interest prior to the cut-off date i.e., 31.12.2021 and provisionally admitted an amount of Rs. 3,24,55,019/ as an unsecured debt. Respondent No. 1 further sought reversal of an amount of Rs. 8,39,00,000/-, the amount received for the sale of the mortgaged property. The Applicant provided a detailed explanation to Respondent No.1 for the calculation of interest from the NPA date as per the Income recognition norms of the Reserve Bank of India.

(ix) Respondent No. 1 had also filed two bogus applications under section 19 of the IB Code as well as Section 429 of the Companies Act, 2013 read with Regulation 30 of the IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016 [‘**CIRP Regulations**’] to recover the sale amount of Rs. 8,39,00,000/- which has already been rejected by this Adjudicating Authority vide order dated 01.06.2022 in IA 462 of 2022.

(x) Thereafter, an application bearing No. 488 of 2022 in CP (IB) No. 177 of 2020 came to be filed by the Committee of Creditors for replacement of the IRP, i.e., Respondent No. 1. This Adjudicating Authority was pleased to allow the said application and Respondent No. 2 was appointed as a Resolution professional. Even after the replacement of the IRP, the grievances of the Applicant have not been resolved. Respondent No.2 is not admitting the entire claim of the Applicant and also not considering the claim of the Applicant as a Secured Debt.

3. Respondent No. 1 filed the reply to the present application and made the submission (s) before this Adjudicating Authority which is summarized as under;

(i) The present application is not maintainable and ought to be refused on the ground of the deficient court fees paid by the Applicant. The present application is filed under section 60 (5) of the IB Code read with Rule 11 of NCLT Rules. Both the aforesaid provisions should be selected when the application was filed through e-filing. In the process, while selecting Section 60 (5) of the IB Code and Rule 11 NCLT Rules as the provisions under which this application is filed, the court fee is displayed automatically Rs. 2,000/- by the e-filing portal. But, the Applicant has paid an amount of Rs. 1,000/- only. Rule 23 of the NCLT Rules stipulates that every petition, application, caveat, interlocutory application, document, and appeal shall be presented in triplicate by the appellant or petitioner or respondent as the case may be, in person or by his duly authorized representative or by an advocate duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.

(ii) The State Bank of India had declared the account of the Corporate Debtor as an NPA and initiated proceedings under the SARFAESI Act, 2002 to take physical possession of the properties of the Corporate Debtor. The said proceedings were challenged by the Corporate Debtor before the Ld. DRT- Ahmedabad whereby the DRT had directed vide its order dated 31.07.2021 to the State Bank of India not to take physical possession of the property without giving seven-day notice to the Corporate Debtor to avail an efficacious remedy. This fact has been suppressed by the applicant from this Adjudicating Authority which has a substantial impact on the claim of the Applicant.

(iii) The State Bank of India published an e-auction notice dated 25.10.2021 for the e-auctioning of several nonperforming loan Accounts ("NPA's or financial assets") including the loan account of the Corporate Debtor, under the provisions of the SARFAESI Act, 2002. The applicant emerged as the successful bidder as per the terms of the e-auction and the Assignment was executed between the SBI and the Applicant on 28.01.2022. As per the terms of the e-auction notice dated 25.10.2021, the e-auction was in terms of the Bank Policy on the sale of Financial Assets, in line with the regulatory guidelines. Therefore, the e-auction was only for the sale of "financial Assets" not for the sale of immovable or immovable properties.

(iv) The Assignment Agreement was executed by and between the State Bank of India and the Applicant wherein the Applicant paid the stamp duty on the loan portfolio only but not paid the stamp duty on the transfer of the properties along with building, plant and machinery.

(v) The Applicant transferred the property in the name of ASEL without following the procedure prescribed under the SARFAESI Act, 2002. The applicant is an NBFC hence it is not entitled to enter into any arrangement for transferring the properties to any third person without following the prescribed procedure.

(vi) The process of selling out the mortgaged property of the Corporate Debtor raised doubt that the property was sold out by the Applicant to defraud the other creditors of the Corporate Debtor as the CIRP application was admitted by this Adjudicating Authority on 16.03.2022 and consideration was received from the

ASEL on 15.03.2022. This Adjudicating Authority was pleased to reserve its order in the captioned Company Petition on 16.02.2022 and subsequently, the order of admission came to be pronounced by this Adjudicating Authority on 16.03.2022. The Conduct of the Applicant raises suspicions and calls for a detailed inquiry and investigation into the nature of the transaction entered into by it so as to ensure that the same was not done with the intention to defraud the other creditors of the Corporate Debtor.

(vii) The applicant has fraudulently and in stark violation of the moratorium issued under section 14 of the IB Code executed a sale deed on 12.04.2022 of the mortgaged property in favour of ASEL and a sale deed came to be registered with the Superintendent of Stamp and Inspector General of Registration (Gujarat) on 10.06.2022 during the period of moratorium. However, the CIRP application came to be admitted by this Adjudicating Authority on 16.03.2022. Hence the applicant has violated the provision of the moratorium and committed an offence under section 74 of the IB Code.

(viii) After the admission of the Application on 16.03.2022, the Applicant filed a claim of Rs. 9,95,58,833/- including the alleged interest along with alleged security interest over assets including land and building and plant and machinery of the Corporate Debtor by way of an Assignment of original debt by the State bank of India. The Respondent (s) was seeking supporting documents and in a particular specifically enquired about the credit of Rs. 8,39,00,000/-. However, despite the repeated request, the Applicant has not provided the relevant documents in order to substantiate its claim.

(ix) For ascertaining the actual claim as alleged by the Respondent in this application the aforesaid transaction is required to be scrutinized by way of a forensic audit in order to ascertain the legality and validity of the transactions. Moreover, the outstanding amount as of the cut-off date, i.e., 31.12.2021 and the principal amount mentioned in the notice under section 13(2) of the SARFAESI Act have a substantial difference. The assignment agreement abundantly makes it clear in the definition of the word "cut-off" date that all economic benefits pertaining to the loans including all realization and recoveries if any made on and after the said date shall be for the benefit of the State Bank of India, and not for the Applicant. Hence, at no imagination, it can be construed that the Applicant shall have any right to charge interest and /or penal interest from the NPA date.

(x) Respondent No. 1 has also denied that the Applicant is secured by way of hypothecation over the plant and machinery and the movable assets of the Corporate Debtor which secures the total outstanding amount of debt. However, the assets of the Corporate Debtor were mortgaged with the State Bank of India and as of the Insolvency commencement date the Applicant has not registered a charge whatsoever on any assets of the Corporate Debtor hence the Applicant cannot be said to be a secured creditor. Respondent No. 1 has also denied that the claim of the Applicant has been partially rejected as the Applicant has no right to receive interest prior to the cut-off date.

(xi) Despite the repeated requests, the Applicant has deliberately withheld the vital documents having a substantial impact on its claim not only from the Interim Resolution Professional/ Resolution Professional but also from this Adjudicating Authority. Furthermore, the Applicant has provided an imaginary calculation of the amount of debt which has not been supported by any documents.

4. The Applicant filed its rejoinder to the reply of the Respondent No. 1 and made the submission before this Authority Authority which is summarized as under;

(i) That the contention of the Respondent No.1 with respect to inadequate fee is baseless on the ground that the registry has not raised any objection with respect to a fee as alleged to be deficient by the Respondent No.1. The present application is filed under section 60 (5) of the IB Code read with rule 11 of the NCLT Rules, 2016. The fee is payable only with respect to the main provisions under which the application is filed.

(ii) The order dated 31.07.2021 passed by the Ld. DRT, Ahmedabad has no bearing in the present application which was passed at the Securitization Application of the Corporate Debtor. The Corporate Debtor vide letter dated 23.02.2022 itself had given consent for the sale of the mortgaged properties being plot/ Shed No. 1401/1, Survey/ Door/ Patta/ Khata No. 216 (P), 217 (P), 218 (P), 248 (P) and 249 (P) admeasuring 17416.31 square meters plot area and 895.79 sq. meters a built-up area at GIDC, Kerala Industrial Estate, Bavla, Ahmedabad [hereinafter referred to as '**Mortgaged Property**']. Moreover, the SBI has made a statement before the Ld. DRT- Ahmedabad that they will not take possession of the properties for the notice already issued by Mamlatdar and give seven days' intimation to the Corporate Debtor. However, the notice issued by the Mamlatdar was with respect to the other properties which are in the name of the personal guarantor but not with respect to the aforesaid properties.

(iii) The Applicant has taken the assignment from the State Bank of India including all rights, titles, and interest in financial documents relating to the debt along with all collateral security and underlying securities and pledge created to secure the debt and/ or Guarantee issued by the personal guarantors. Hence, it can not be said that the Applicant has acquired the assignment with respect to financial assets only.

(iv) The stamp duty paid on the said assignment is adequate and the competent authority has accepted the documents and stamp duty paid for registering the same. The contention of Respondent No. 1 that the sale of the Mortgaged Properties was not conducted as per the provisions of the SARFAESI Act, 2002. Respondent No. 1 for reversal of the sale consideration of the Mortgaged Property had filed an application bearing No. 462 of 2022 which was rejected by this Tribunal vide order dated 01.06.2022. Moreover, the question of the procedure of selling out the Mortgaged Properties has not been raised before any forum by the Respondent. The consideration of the sale of mortgaged properties was received much prior to the sell certificate. It is clearly mentioned in the sale certificate dated 28.02.2022 that the applicant has received the entire payment. The claim an amount of Rs. 9,95,58,833/- is filed by the Applicant to respondent No. 2 after deducting the sale consideration for mortgaged properties, i.e. 8,39,00,000/-

(v) The claim was filed by the Applicant on 01.04.2022 and the Respondent vide email dated 04.04.2022 sought supporting documents and an explanation for the amount received of Rs. 8,39,00,000/- for the Mortgaged properties as well as valuation of plant and machinery. The respondent provisionally admitted a claim of Rs. 3,24,65,019/- as an unsecured debt despite the fact that the debt of the Applicant is secured by way of hypothecation over the plant and machinery and the movable assets of the Corporate Debtor. The Respondent cannot reject the claim merely on the basis of doubt and suspicions more particularly when the transaction is done in accordance with SARFAESI Act, 2002.

(vi) As per the Assignment Agreement dated 28.01.2022, the Applicant had acquired the debts of the Corporate Debtor from the State bank of India for valuable consideration. As on 31.12.2021 i.e., the cut-off date of the said agreement, the outstanding debt of the Corporate Debtor stood at Rs. 11,24,55,324/-a principal amount. The applicant is entitled to interest on the principal amount and incidental expenses, and costs charges after deducting the recoveries since the NPA date till the payment of the outstanding amount.

5. Heard the learned counsel of the Applicant and the Respondent (s) and perused the material on record. It is noted that the Applicant acquired the debt from the SBI vide Assignment Agreement dated 28.01.2022. The SBI had initiated the proceeding against the Corporate Debtor under section 13(2) of the SARFAESI Act, 2002, and issued a notice under Section 13(2) on 10.05.2019 for Rs. 11,87,78,137.16 as on 09.05.2019. By virtue of the assignment of debt by the SBI to the Applicant, it is entitled to all the rights as the SBI was entitled to recover from the Corporate Debtor or take action against the Corporate Debtor for recovery of the outstanding amount.

6. The main dispute in this application is whether the Applicant is entitled to claim the interest and penal charges and other charges before the cut-off date i.e., 31.12.2021 or not? and whether the applicant shall be treated as a secured financial creditor or not ?

7. On perusal of the Assignment Agreement dated 28.01.2022 (para 2.1.2 and para 2.1.3) it is noted that the Applicant is entitled to all its right, title, interest in the financial document, all agreements, deeds, and documents related thereto and collateral and security interest of the Corporate Debtor or guarantee provided for securing the debt. For ready reference, we reproduce the aforesaid para hereunder:-

> *"2.1.2 The Assignor hereby further assigns in favour of the Assignee, all rights, title and interest in the financial documents, all agreements, deeds and documents related thereto and all collateral and underlying security interest and / or pledges created to secure, and / or guarantees issued in respect of, the payment of the loans, which the Assignor is entitled to. The Assignee shall have the right to enforce such Security interest, pledges and / or guarantee and appropriate the amounts realized therefrom towards the repayment of the loans and to exercise all other rights of the Assignor in relation to such Security Interests, pledges and/ or guarantees. The Assignor shall transfer/ deliver or cause to be transferred/ delivered or hold for and on behalf of the Assignee, all such original documents, deeds and/or hold for and on behalf of the Assignee, all such original documents, deeds and/ or writings including but not limited to the financial Documents, and produce the same promptly upon any request by the Assignee.*
>
> *2.1.3 The Assignor hereby agree with the Assignee, that it shall execute all documents as may be necessary or required under Applicable Law for the purpose of perfecting the Assignee's right, title and interest in the Loan, and the Financing Documents, and/ or any underlying Security Interests, pledge/ or Guarantees as the case may be, unto and to the use of the Assignee in manner aforesaid, and do all acts, deeds and things as may be necessary in this regards, at the costs of the Assignee".*

8. It is also noted that Schedule-I of the said agreement (para 5) clearly shows that the Applicant is entitled to the recovery of an outstanding amount plus interest thereon till the date of payment and incidental expenses, costs, charges and after deducting the recoveries since the NPA date. The aforesaid paras (5) of Schedule-I of the Assignment Agreement Dated 28.01.2022 are reproduced hereunder;

	Outstanding amount (Principal o/s + interest as on cut-off date 31.12.2021	*Amount in Rs.*	
		Type	*Principal O/s as on date*
		CC	*5,77,18,631.47*
		CL	*69,91,562.00*
		TL	*4,77,45,131.00*
		Plus interest thereon till the date of payment and incidental expenses, costs, charges less recoveries since the NPA date.	

Hence the contention of Respondent No. 1 that Applicant is not entitled to claim interest after the cut-off date does not sustain in the light of the aforesaid para of the Assignment Agreement.

9. On perusal of the e-challan annexed as Annexure-C (pages No. 24 and 25), it is noted that the Applicant has paid the stamp duty for the registration of the Assignment Agreement which has been duly accepted by the concerned Registrar (Department of Superintendent of Stamp and Inspector General of Registration, the office at Gondal) and adequacy of stamp duty is also

concluded from the facts that all the pages of the Assignment Agreement bearing with the stamp of Registrar.

10. It is also noted that the Corporate Debtor was admitted in CIRP on 16.03.2022 however the mortgaged property bearing no. property situated at Plot/Shed No. 1401/1, Survey/Door/Patta/Khata No. 216(P), 217(P), 218(P), 248(P) and 249 (P) admeasuring 17416.31 sq. Mtrs (Plot Area) and 895.79 (Build up Area as per approved plan), GIDC, Kerala Industrial Estate, Taluka Balva, District Ahmedabad were sold out to the ASEL and the date of issuance of the sale certificate i.e., 28.02.2022 under Rule 9 (6) of the Security Interest (Enforcement) Rules 2002 ['**Enforcement Rules**'] wherein applicant acknowledged the receipt of Rs. 8,39,00,000/- a full consideration and handed over the Mortgaged Property to ASEL. Moreover, this Adjudicating Authority vide order dated 01.06.2022 in IA 462 of 2022 rejected the application of the IRP which was filed by the Respondent for reversal of the sale consideration amount of Mortgaged Property on the ground that the sale was completed prior to the initiation of the CIRP against the Corporate Debtor and this Adjudicating Authority does not have jurisdiction to question the such transaction. It is not a disputed question that the Respondent has not challenged/ raised the question for the sale of the aforesaid properties before any Forum.

11. The question that whether the sale deed dated 12.04.2022 which was registered on 10.06.2022 shall be considered a breach of the moratorium imposed by this Adjudicating Authority vide order dated 16.03.2022 or not? Rules 9 (3), (4) & (6) of the

Enforcement Rules clearly state that the sale is confirmed when the payment term is complied with by the Purchaser. For ready reference, we reproduce the relevant paras of Security Enforcement Rules hereunder;

> **"9. Time of sale, Issue of Sale Certificate and delivery of possession, etc**.......
>
> XXXX
>
> (3) *On every sale of immovable property, the purchaser shall immediately, i.e. on the same day or not later than next working day, as the case may be, pay a deposit of twenty five per cent. of the amount of the sale price, which is inclusive of earnest money deposited, if any, to the authorised officer conducting the sale and in default of such deposit, the property shall be sold again.*
>
> *(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period [as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months].*
>
> *XXX*
>
> *(6) On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorised officer exercising the power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the Form given in Appendix V to these rules.*
>
> XXXXX'

The Hon'ble Supreme Court in the matter of Indian "***Overseas Bank Versus RCM Infrastructure and Another" (2022) 8 Supreme court cases 516: 2022 SCC Online SC 634*** *has stated that the sale is completed when the auction purchaser makes the entire payment and sale certificate is issued in favour of* *auction purchase. Relevant paras of the said judgments are as reproduced hereunder;*

> *"32. It is further to be noted that present case arise out of a statutory sale. The sale would be governed by Rule 8 and 9 of the said Rules. The sale would be complete only when the auction-purchaser makes the entire payment and the authorized 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 of the said Rule."*

12. In view of the above, it is clear that the sale of the mortgaged property had been confirmed on the date of issuance of the sale certificate i.e., 28.02.2022 issued by the Authorized officer of Applicant Company under section 9 (6) of the Enforcement Rules. The registration of the sale deed after the imposition of the moratorium is immaterial. Hence, it cannot be said that the Applicant had violated the provisions of the moratorium imposed by this Adjudicating Authority.

13. The contention of Respondent No.1 that the Applicant has imposed unbiased interest and calculated the wrong interest on the principal amount is not well founded. As per the notice issued by the State Bank on 10.05.2019 under section 13 (2) of the SARFAESI Act, 2002 (Schedule- A, at page 59 of the application it is mentioned that the contractual rate of interest is MCLR+5.10% and it also mentioned that penal charge is @2% simple rate. Note 1. of the aforesaid Schedule states that MCLR was @ 8.55% with monthly rest w.e.f 10.12.2018, thereafter changed to 8.50% with monthly rest w.e.f 10.04.2019 by the Bank. In the computation

sheet annexed with the application at page 107, the applicant had charged the rate of interest @ 13.65% and penal interest @ 2% and, a legal charge @ Rs. 3,00,000/-.

14. In view of the above, we are of the considered view that the sale of immovable properties has not been conducted in violation of the moratorium imposed by this Adjudicating Authority and the interest amount appeared to have been calculated by the Applicant as per the contractual rate of interest which resolution professional will have to verify. The debt of the Applicant is a secured debt by virtue of the Assignment Agreement dated 28.01.2022 which has been duly registered by SRO Gondal and the Applicant has paid, an amount of RS. 29,350/ and Rs. 1,40,000/- towards registration charge. Hence, we are of the considered view that the amount of the Applicant must be considered as secured debt and the claim of the applicant is required to be reconsidered by the Resolution Professional. Hence, we direct Respondent No.2 to reconsider the claim of the Applicant and admit the debt of the Applicant as a Secured Debt.

15. Accordingly, this present Application is allowed and disposed of.

SD/-
Kaushalendra Kumar Singh
Member (Technical)

SD/-
Dr. Madan B. Gosavi
Member (Judicial)

Ramashish