IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 5157 OF 2026

Rozina Firoz Hajiani & Ors. … Petitioners

Versus

Union of India,
through Ministry of Corporate Affairs & Ors. … Respondents

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Mr. Siddharth Samantaray a/w Mr. Harsh Ramesh Gutka and Mr. Aayush Kothari i/by Mr. Harsh Ramesh Gutka for the Petitioners.
Mr. Charles Dsouza a/w Adv. Rupak, Mr. Anup Khaitan, Ms. Akshita Rathudi and Adv. Niomi Harshad Vakani for Respondent No.2-Bank.
Ms. Kruti Bhavsar a/w Mr. Pratik Barot and Mr. Angel Pandey for Respondent Nos.3 to 7.
Mr. Vikash Anand, Bank Officer, present.

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CORAM : MANISH PITALE AND
SHREERAM V. SHIRSAT, JJ.

DATE : 18th MARCH 2026

ORDER (Per Manish Pitale, J.) :

. A disturbing trend is noticed by this writ Court as to the manner in which chronic defaulters are taking resort to the provisions of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as ‘the IBC’ for short) to frustrate secured creditors and auction purchasers from proceeding, in accordance with law, under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as ‘the Securitisation Act’ for short).

2. In a number of such matters, it is found that the borrowers/ guarantors act as fence sitters and do not take any steps when the secured creditors proceed under Section 13(2) of the Securitisation Act and take further consequential steps, till the culmination of the process and auction purchasers coming into the picture. At the stage when the auction sale has been conducted and the auction purchaser has come into the picture, in a few instances, even after the sale certificate is issued, when physical possession of the secured asset is about to be handed over to the auction purchaser, the original borrowers/guarantors initiate collusive proceedings under Section 94 or Section 95 of the IBC, claiming triggering of moratorium under Section 96 thereof, the moment such proceedings are filed before the National Company Law Tribunal (NCLT). As a consequence, all steps taken under the provisions of the Securitisation Act, suddenly come to a standstill and such borrowers/guarantors, who are defaulters, wear a cloak of immunity under the garb of moratorium triggered under Section 96 of the IBC. In such a situation, the secured creditor and/or the auction purchaser are required to approach the NCLT and thereafter, the proceedings reach the National Company Law Appellate Tribunal (NCLAT) and then the Supreme Court, till which time the auction purchaser is completely frustrated, despite having parted with consideration in terms of the bid amount.

3. The manner in which such borrowers/guarantors and chronic defaulters are using the provisions of the IBC, shows that

the objects of the both the IBC as well as the Securitisation Act are frustrated. This has the tendency of adversely affecting the economy, financial health and business environment in the country. In such situations, the writ Court cannot remain a mute spectator, when misuse of legal provisions demonstrates failure of justice. The present petition, although it arises from an interim order of the Debts Recovery Tribunal-I, Mumbai (DRT), is one such example of gross facts manifesting the attitude and approach adopted by the respondent Nos.3 to 7 i.e. the borrowers and guarantors to ensure that the legal process is frustrated.

4. In pursuance of issuance of notice for final disposal by order dated 23rd February 2026, respondent No.2-bank appeared through counsel and respondent Nos.3 to 7 i.e. the borrowers and guarantors, also appeared through counsel. The learned counsel for the respondents did not ask for time to file reply affidavits, as the entire material and record was already filed with the writ petition. Respondent No.1-Union of India being a formal party, service of notice is dispensed with. The petition is finally heard at this stage itself, with the consent of the learned counsel for the petitioners as well as the learned counsel representing the respondent No.2-bank and respondent Nos.3 to 7 (borrowers and guarantors).

5. Before adverting to the rival submissions, it would be necessary to refer to the chronology of events leading to filing of the writ petition, which would also indicate as to why this Court

was inclined to entertain the writ petition directly against the impugned order of the DRT.

6. The respondent No.2-Union Bank of India i.e. the secured creditor had extended credit facility of Rs.5 crores, subsequently enhanced to Rs.6.25 crores, to the respondent No.3-borrower, in respect of which the immovable property at Flat No.1, Ground Floor, Building No.27/E, Mazgaon Terrace Co-op. Housing Society Limited, near Sales Tax Office, Mazgaon Nesbit Road, Mazgaon, Mumbai, was mortgaged and it was the secured asset. The respondent-borrowers defaulted in repayment of the amounts and on 7th March 2017, respondent No.2-bank issued notice under Section 13(2) of the Securitisation Act, calling upon the respondents-borrowers to pay Rs.6,96,16,488.23 with further contractual interest. As required by law, the notice was duly served upon the respondents-borrowers as well as the guarantors. Thereupon, the respondent No.2-bank proceeded under Section 13(4) of the Securitisation Act and eventually, on 14th August 2018, it filed an application under Section 14 of the Securitisation Act before the Chief Judicial Magistrate, Esplanade Court, Mumbai, for taking physical possession of the secured asset. Respondent No.3-borrower offered to pay Rs.3.30 crores towards full and final settlement of the loan account. This was the first One Time Settlement (OTS) proposed by the respondent No.3-borrower. Thereafter, on 25th November 2019, the respondent No.3-borrower reiterated the said proposal stating that the offer

amount of Rs.3.30 crores would be paid by 31st March 2020. This was the second OTS proposal from the respondent No.3-borrower.

7. On 26th November 2019, the aforesaid Magistrate allowed the application under Section 14 of the Securitisation Act, for taking physical possession of the secured asset. Thereafter, the respondent No.3-borrower approached the respondent No.2-bank, giving series of OTS proposals between 2nd December 2019 to 11th October 2021, increasing the offers from Rs.3.5 crores to Rs.4.40 crores. In the 8th such offer of OTS given on 11th October 2021, the respondent No.3-borrower proposed to pay an amount of Rs.4.40 crores to the respondent No.2-bank on or before 30th September 2022. Thereafter, 9th OTS was proposed by the respondent No.3-borrower to the respondent No.2-bank on 18th February 2022, this time offering to pay Rs.4.85 crores towards full and final settlement of the loan account. Despite making the aforesaid 9 proposals of OTS, the respondent No.3-borrower failed to make good the said offers and on 9th November 2022, the respondent No.2-bank took symbolic possession of the secured asset. The respondent No.3-borrower did not challenge the said measure of symbolic possession taken by respondent No.2-bank.

8. On 25th January 2023, the respondent No.2-bank scheduled the first auction of the secured asset. It failed due to want of bids. Thereafter, on 23rd February 2023, the second auction was scheduled, which also failed for want of bids and similarly, third

auction was scheduled on 28th March 2023, which also failed because of want of bids.

9. In this backdrop, on 31st May 2023, the respondent No.3-borrower proposed the 10th OTS, offering to pay Rs.4.40 crores within six months to finally settle the loan account. On 17th July 2023, the respondent No.2-bank sanctioned the OTS, asking the respondent No.3-borrower to finally settle the outstanding loan account by making payment of Rs.4.90 crores, subject to terms and conditions. The schedule of payment in the said sanctioned OTS provided for upfront payment of Rs.50 lakhs, thereafter payment of further Rs.50 lakhs, upon the OTS being conveyed. Thereafter, respondent No.3-borrower was required to pay Rs.1 crore each within three months, four months and five months, of the approval of OTS being conveyed and finally to pay Rs.90 lakhs within six months of the approval of the OTS being conveyed, totaling to the aforesaid amount of Rs.4.90 crores.

10. The respondent No.3-borrower did not make payments as per the sanctioned OTS. In such circumstances, the respondent No.2-bank sent four reminders between 6th October 2023 and 9th January 2024, but to no avail. Eventually, on 2nd May 2024, the respondent No.2-Bank revoked the OTS approval letter/ sanction. Thereafter, the respondent No.2-bank scheduled auctions on further six occasions between 14th March 2024 and 29th October 2024, but the said scheduled auctions failed because of want of bids. On every occasion, the respondent Nos.3 to 7 were served

notice of the scheduled auctions, as required by law. This is evident from the number of OTS proposals submitted by the respondent Nos.3 to 7.

11. On 25th November 2024, the respondent No.2-bank scheduled the 10th auction of the secured asset on 13th December 2024. It is at this stage that on 12th December 2024, the respondent No.3-borrower, for the first time, approached the DRT by filing Securitisation Application No. 215 of 2024, challenging the said 10th auction and the notice issued under Section 13(2) of the Securitisation Act dated 7th March 2017. The securitisation application was filed more than seven years after the notice dated 7th March 2017 was issued by the respondent No.2-bank.

12. The auction was conducted as per schedule on 13th December 2024 and the petitioners were declared successful bidders and their highest bid of Rs.2,48,50,000 was accepted. On 24th December 2024, a sale certificate was issued in respect of the secured asset in favour of the petitioners as successful purchasers and it was registered on 26th December 2024.

13. At this stage, during the pendency of the said securitisation application before the DRT, respondent No.7 filed Company Petition No. 391 of 2025 under Section 94 of the IBC before the NCLT, Mumbai, thereby initiating the insolvency resolution process. Immediately thereafter, an interim application was moved in the pending securitisation application before the DRT, relying

upon the said application of respondent No.7 filed under Section 94 of the IBC, claiming that the moment the said application was filed, interim moratorium as provided under Section 96 of the IBC had been triggered. On this basis, on 21st January 2025, the DRT held that in view of Section 96 of the IBC, there is moratorium and accordingly, the interim application was dismissed as infructuous. In other words, the respondent Nos.3 to 7-borrowers and guarantors, taking shelter of the moratorium under Section 96 of the IBC, successfully stalled further proceedings, despite the sale certificate issued in favour of the petitioners/auction purchasers.

14. In this situation, the petitioners (auction purchasers) as well as respondent No.2-bank (secured creditor) had no option but to file intervention applications in the said petition filed by respondent No.7 under Section 94 of the IBC before the NCLT. In their intervention applications they pressed for exclusion of the secured asset, so that further steps could be taken in pursuance of the sale certificate issued in favour of the petitioners. On 2nd September 2025, the NCLT decided the intervention applications of the petitioners (auction purchasers) and respondent No.2-bank (secured creditor), holding that the secured asset stood excluded from the property of the personal guarantor (respondent No.7) prior to commencement of moratorium under Section 96 of the IBC. It was specifically held that the secured asset shall not form part of the estate of the personal guarantor (respondent No.7).

15. On 6th October 2025, the sale deed was registered in favour of the petitioners. On 13th October 2025, the respondent Nos.3 to 7 i.e. the borrowers and guarantors filed Interim Application No. 2207 of 2025 before the DRT, seeking stay of further proceedings and taking of physical possession of the secured asset, again claiming that moratorium under Section 96 of the IBC was triggered, as a creditor had now filed an application under Section 95 of the IBC before the NCLT at Guwahati, to initiate insolvency resolution process. It was submitted that since such an application was now filed on 6th October 2025, there was another round of moratorium and the DRT ought not to proceed. On 14th October 2025, the DRT adjourned hearing on the said interim application and it is claimed that the respondent No.2-bank was orally directed to defer possession till the next date. The next date was fixed on 29th October 2025. In the meanwhile, the respondent No.7 had approached the NCLAT by filing Company Appeal No. 1644 of 2025, to challenge the order of the NCLT, Mumbai, dated 2nd September 2025, whereby the secured asset had been excluded from the moratorium. On 30th October 2025, the NCLAT dismissed the appeal, thereby upholding the order of the NCLT.

16. The proceedings before the DRT were adjourned for a couple of dates and then Interim Application No. 2207 of 2025 in Securitisation Application No. 215 of 2024 came up for consideration on 26th November 2025. On this day, the DRT passed the impugned order, simply stating that further proceedings

by the respondent No.2-bank can be initiated only after disposal of the Interim Application No. 2207 of 2025. In other words, the DRT took into consideration the assertion made in the said interim application about moratorium having been triggered due to the application under Section 95 of the IBC being filed on 6th October 2025 and the entire process of putting the petitioners into physical possession in pursuance of registration of the sale certificate, came to a halt. But, the respondent Nos.3 to 7 did not stop at this, an application for recalling the order dated 30th October 2025 was filed before the NCLAT, whereby the appeal of respondent No.7 had been dismissed. The said application was also dismissed on 4th February 2026 by the NCLAT. The respondent No.7 moved the Supreme Court by filing Civil Appeal (D) No.70784 of 2025, to challenge the said order of NCLAT dated 30th October 2025. On 26th February 2026, the Supreme Court also dismissed the appeal, thereby confirming the orders passed by the NCLT as well as the NCLAT, excluding the secured asset from moratorium. Thereafter, the proceedings before the DRT have been adjourned from time to time and in this backdrop, the petitioners have been constrained to file the present writ petition.

17. Mr. Siddharth Samantaray, learned counsel for the petitioners (auction purchasers) submitted that the respondent Nos.3 to 7 i.e. the borrowers and guarantors, by adopting the tactic of ensuring that proceeding after proceeding are initiated

before the NCLT under the provisions of the IBC, are frustrating and thwarting the process of law, thereby depriving the petitioners of their rightful claim of taking physical possession of the secured asset. It was submitted that the respondent Nos.3 to 7 did not take any steps with regard to notice under Section 13(2) of Securitisation Act issued by the respondent No.2-bank as far back as on 7th March 2017 and approached the DRT more than 7 years later by filing Securitisation Application No. 215 of 2024. It was submitted that when it became obvious to respondent Nos.3 to 7 that they would not be able to secure any interim relief, a deliberate tactic was adopted, whereby respondent No.7 first filed an application under Section 94 of the IBC before the NCLT, Mumbai to trigger moratorium. The petitioners as well as respondent No.2-bank had to struggle for a period of nine months before the NCLT to ensure that the secured asset was excluded from the moratorium. Respondent Nos.3 to 7 did not stop at this and moved before the NCLAT and then before the Supreme Court. Eventually, the Supreme Court passed its order on 26th February 2026, confirming the order of the NCLT. This paved the way for the petitioners to take physical possession of the secured asset in respect of which sale certificate was already registered in their favour.

18. At this point in time, respondent Nos.3 to 7 caused an application under Section 95 of the IBC to be filed before the NCLT at far away Guwahati, to claim that moratorium was once

again triggered. It was submitted that a bare perusal of the deed of guarantee and the alleged notices issued by the said creditor, demonstrate the falsity of the case of the respondent Nos.3 to 7. Yet, the DRT has relied upon such a moratorium and the entire process is brought to a standstill. It was submitted that such nefarious design of borrowers/guarantors ought not to succeed and this Court in writ jurisdiction must take remedial action, as there would be complete failure of justice if the respondent Nos.3 to 7 are permitted to succeed in their design. It was submitted that the petitioners will be forced to undertake another round of litigation before the NCLT, Guwahati, which respondent Nos.3 to 7 may take right upto the Supreme Court. Thereafter, another collusive application could be filed before the NCLT under the provisions of the IBC, thereby completely frustrating the process of law. On this basis, it was contended that this Court may set aside the impugned order dated 26th November 2025 and direct that there would be no impediment in the physical possession of the secured asset being handed over to the petitioners.

19. Mr. Charles Dsouza, learned counsel appearing for respondent No.2-bank (secured creditor) supported the contentions raised on behalf of the petitioners (auction purchasers). He submitted that chronic defaulters like the respondent Nos.3 to 7 have started adopting such tactics of misusing the provisions of the IBC to frustrate the process of law, as a consequence of which legitimate steps taken under the

Securitisation Act, are being frustrated. It was submitted that in the present case, as required by law, at every step, the respondent Nos.3 to 7 had served notices. The notice under Section 13(2) of Securitisation Act was dated 7th March 2017, which was duly served and yet, no steps were taken by respondent Nos.3 to 7. As a matter of fact, a number of OTS proposals were submitted, thereby indicating that the said respondents had waived their right of objecting to the notice issued under Section 13(2) of the Securitisation Act. Even after the 10th proposal of OTS was sanctioned, the said respondents did not come forward to abide by their obligations. Notice was served upon the said respondents on every occasion the auction was scheduled. After 9 auctions failed due to want of bids, the 10th auction succeeded when the petitioners were found to be the highest bidders. Their bid was accepted. The sale certificate was issued, which was registered and yet, the respondent No.2-bank has not been able to put the petitioners in possession, only because of the aforesaid repeated collusive steps taken by the said respondents by misusing the provisions of the IBC. It was submitted that such design of the respondents-borrowers and guarantors ought not to be allowed to succeed and this Court exercising writ jurisdiction must intervene in the interest of justice.

20. Reliance was placed on the judgment of the Supreme Court in the case of *Arce Polymers Private Limited vs. Alphine Pharmaceuticals Private Limited & Ors.,* **(2022) 2 SCC 221**, to

impress upon this Court that the respondent Nos. 3 to 7 had intentionally relinquished their claim and this was a clear case of waiver, in the light of the fact that the securitisation application itself was filed more than 7 years after notice under Section 13(2) of the Securitisation Act was served. It was submitted that this Court may pass appropriate orders in the light of the said position of law.

21. On the other hand, Ms. Kruti Bhavsar, learned counsel appearing for respondent Nos.3 to 7 i.e. the borrowers and guarantors, submitted that the DRT had proceeded in accordance with law. Moratorium was indeed triggered on 6th October 2025, due to filing of the said application under Section 95 of the IBC before the NCLT at Guwahati by a creditor. The said action had been taken in accordance with law. It was submitted that the securitisation application is still pending consideration before the DRT and in such a situation, it cannot be said that the DRT committed an error in preventing handing over of physical possession to the petitioners. It was submitted that the respondent Nos.3 to 7 are entitled to press their prayer for interim relief and also the final relief claimed in the securitisation application. The said respondents are entitled to an opportunity to make out their case. It is submitted that therefore, no case is made out for interference.

22. It was submitted that in any case, the present writ petition ought not to be entertained, as the petitioners have an alternative

remedy of approaching the DRAT. In such a situation, the writ petition deserves to be dismissed.

23. We have considered the rival submissions in the backdrop and chronology of events stated in detail hereinabove. We have made a detailed reference to the events leading upto filing of the present petition, as we are of the opinion that the writ Court cannot turn a blind-eye and remain aloof when the admitted sequence of events does bring out a design on the part of a set of parties before the Court, to somehow frustrate the legal process and to prevent the other parties from proceeding in accordance with law.

24. The object of the IBC is to ensure that insolvency resolution of corporate persons and individuals is undertaken in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interest of all stake holders. The IBC emphasizes upon an effective legal framework for the timely resolution of insolvency and bankruptcy, so that an opportunity is made available for revival of the debtor to support development of credit markets and to encourage entrepreneurship, with liquidation being the last resort. The whole purpose of enactment of IBC is for improving the ease of doing business, facilitating more investments, leading to higher economic growth and development in the country.

25. We find that the manner in which the defaulting borrowers and guarantors have been taking recourse to the provisions of the

IBC, particularly Sections 94, 95 and 96 thereof, shows that such strategies are frustrating the very object of the IBC, apart from paralyzing the whole process of lawful steps taken by secured creditors in respect of secured assets under the provisions of the Securitisation Act. As noted hereinabove, chronic defaulters of loan and financial facilities, when facing the heat of proceedings initiated by secured creditors reaching culmination, scamper to file proceedings under Sections 94 and 95 of the IBC in a collusive manner, so as to claim that the moment such proceedings are initiated, moratorium is triggered under Section 96 thereof, as a result of which further lawful proceedings are stayed. The filing of such proceedings under the IBC is only with the object of frustrating the legal process and it has nothing to do with the object with which the IBC was enacted.

26. In the present case, the undisputed facts show that upon the respondent Nos.3 to 7 i.e. borrowers and guarantors defaulting, the respondent No.2-bank (secured creditor) issued notice under Section 13(2) of the Securitisation Act, as far back as on 7th March 2017. Despite being served, the respondents-borrowers and guarantors did not take any steps in respect of the said notice. As the matter proceeded and the competent Magistrate passed order under Section 14 of the Securitisation Act, for the respondent No.2-bank to take possession of the secured asset, respondent No.3-borrower simply offered OTS proposals, without any follow up action. We find substance in the contention raised on behalf of

the petitioners as well as respondent No.2-bank that by not objecting to the notice under Section 13(2) of the Securitisation Act and instead offering OTS proposals after proposals, the respondent No.3-borrower waived and intentionally relinquished its right to object to the action undertaken by the secured creditor i.e. respondent No.2-bank. Even when symbolic possession of the secured asset was taken and auctions were scheduled, all that the respondent No.3-borrower did was to make further offers for OTS. As many as nine offers were made and no follow up action was taken by the respondents-borrowers and guarantors.

27. On 17th July 2023, the respondent No.2-bank sanctioned the 10th OTS proposal, calling upon the respondents-borrowers and guarantors to make payment of Rs.4.90 crores in a schedule specified in the sanctioned letter. No step was taken in that regard by the respondents-borrowers and guarantors and after several reminders, the respondent No.2-bank, on 2nd May 2024, revoked the letter sanctioning the OTS.

28. It is in this backdrop that when the respondent No.2-bank on 25th November 2024 issued the 10th auction notice, scheduling the auction for 13th December 2024 that the respondents-borrowers and guarantors, for the first time approached the DRT on 12th December 2024 by filing Securitisation Application No. 215 of 2024. This was more than seven years after the notice dated 7th March 2017 served by respondent No.2-bank on the respondents-borrowers and guarantors under Section 13(2) of the

Securitisation Act. The respondents-borrowers and guarantors chose to approach the DRT for the first time after making 10 OTS proposals and after the secured asset was put to auction 10 times by the respondent No.2-bank.

29. In this backdrop, the auction dated 13th December 2024 was conducted in which the petitioners were the successful bidders. They deposited the entire consideration amount. On 24th December 2024, sale certificate was issued in favour of the petitioners, which was registered on 26th December 2024 and the petitioners were to be put in physical possession.

30. It is at this stage that the respondent No.7, claiming to be the personal guarantor, filed the said application under Section 94 of the IBC on 24th December 2024 and claimed that moratorium stood immediately triggered under Section 96 of the IBC. A perusal of Section 96 of the IBC shows that under sub-Section (1) (a), an interim moratorium commences on the date the application under Sections 94 and 95 of the IBC is filed and that such moratorium would operate in relation to all debts. In view of the said fact brought to the notice of DRT, by an order dated 21st January 2025, the DRT refused to proceed and observed that there was a moratorium. The petitioners as well as the respondent No.2-bank were constrained to approach the NCLT, by filing intervention applications. It took nine months for the intervention applications to be considered and disposed of. In its order dated 2nd September 2025, while holding that the secured asset stood

excluded from the moratorium, the NCLT observed as follows :

> *"18. At the outset, it is pertinent to note that the proceedings under the SARFAESI Act, 2002 and the issuance of a sale certificate pursuant to a concluded e-auction, are governed by a separate legal framework and are intended to enable financial creditors to enforce their security interest. In present case, the sale was completed prior to the filing of the insolvency petition under Section 94 of the Code and the sale certificate had already been issued before the moratorium under Section 96 could take effect.*
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> *19. With respect to the Petitioner contention regarding the invocation of the moratorium under Section 96 upon filing the Petition, it is well settled that such moratorium applies prospectively and does not have the effect of invalidating or reversing actions or transactions lawfully completed prior to its commencement. In the present case, the sale of the Secured Asset was concluded and the rights of the Auction Purchasers were crystallized on 24.12.2024, before the moratorium period came into effect.*
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> *20. Accordingly, the right of redemption of the Personal Guarantor in relation to Secured Asset stood extinguished on 28.11.2024 much prior to commencement of moratorium u/s 96 of the Code. In view of aforesaid decision, we are of considered view that the auction asset stands excluded from the property of Personal Guarantor prior to commencement of moratorium. Accordingly, the interveners i.e. Auction Purchasers and Secured Creditor shall have right to proceed further for registration of the Sale Certificate and the auctioned assets shall not form part of the estate of personal guarantor. In terms of this, Intervention Petition 81 of 2025 and Intervention Petition 82 of 2025 are disposed of."*

31. The respondent No.7 did not stop at this and challenged the order of the NCLT before the NCLAT by filing Company Appeal No. 1644 of 2025. The appeal was eventually dismissed on 30th October 2025. The respondent No.7 then filed an application for recall of the said order and the said application was dismissed on

4th February 2026. Respondent No.7 then approached the Supreme Court by filing a Civil Appeal. On 26th February 2026, the Supreme Court dismissed the appeal, thereby confirming the order dated 2nd September 2025 passed by the NCLT, holding that the secured asset stood excluded from the moratorium.

32. Although, the right of a party to take recourse to legal remedies cannot be denied, but the said sequence of events clearly demonstrates that the respondents-borrowers/guarantors instead of making any sincere attempt of repaying the debt, left no stone unturned to ensure that somehow the steps being taken by the respondent No.2-bank as the secured creditor and the petitioners as the auction purchasers, were repeatedly frustrated.

33. The next event, demonstrating the tactics adopted by the respondents-borrowers and guarantors, came in the form of an application being filed on 6th October 2025 before the NCLT, Guwahati. This application has been purportedly filed by a creditor. As a writ Court we have considered the document on record and we find force in the contention of the petitioners and the respondent No.2-bank that this proceeding was a collusive proceeding initiated at the behest of respondent Nos.3 to 7 i.e. the borrowers and guarantors, to further frustrate the legal process being undertaken by the respondent No.2-bank, as the secured creditor, and the petitioners, as auction purchasers.

34. Before we go into the nature of documents relied upon by respondent Nos.3 to 7, to claim that moratorium was once again

triggered on 6th October 2025, with the said application under Section 95 of the IBC being filed by the creditor before the NCLT at Guwahati, it would be appropriate to examine whether the very claim of triggering of such moratorium could be said to be sustainable. The NCLT at Mumbai had already rendered the aforesaid categorical findings in the above quoted paragraphs 18, 19 and 20 in the order dated 2nd September 2025, holding that since the sale of the secured asset was concluded and the rights of the auction purchasers i.e. the petitioners herein had crystallized on 24th December 2024, the moratorium could not affect the aforesaid sale of the secured asset. It is significant to remember that the NCLT at Mumbai gave such positive findings and held that the secured asset and its sale stood excluded from moratorium when the application of respondent No.7 was filed under Section 94 of the IBC on 24th December 2024. Despite such proximity in point of time with the conclusion of sale, it was held that the filing of the said application did not trigger a moratorium in respect of the sale of the secured asset in favour of the petitioners.

35. Even according to respondent Nos.3 to 7, the aforesaid application under Section 95 of the IBC has been filed, much later on 6th October 2025 by the creditor at NCLT, Guwahati and therefore, in the face of the aforesaid findings rendered by NCLT, Mumbai, that stood confirmed before the NCLAT as well as the Supreme Court, the respondent Nos.3 to 7 i.e. the borrowers and the guarantors could not claim a blanket protection from 6th

October 2025 onwards. The petitioners and respondent No.2-bank will be forced to approach the NCLT at Guwahati, relying on the findings already rendered by the NCLT, Mumbai. The process will take its own time, with further rounds of appeals. The respondent Nos.3 to 7 will have succeeded in their design to again paralyze the entire process and tire out the petitioners and the respondent No.2-bank. The DRT completely failed to appreciate this aspect of the matter, while directing in the impugned order that further proceedings by the respondent No.2-bank could be initiated only after disposal of the Interim Application bearing No. 2207 of 2025, thereby effectively halting further process, despite the sale certificate having been registered in favour of the petitioners.

36. In this backdrop, a perusal of the documents relied upon by the respondents-borrowers and guarantors, as also the creditor, who filed the application under Section 95 of the IBC before the NCLT at Guwahati, show that the purported deed of guarantee executed again by respondent No.7, is only signed by her. There are no signatures of witnesses. It is not a registered deed of guarantee, merely bearing stamp of a Notary Public and the document also does not show details of the register of the Notary Public. It is also significant to note that all letters addressed to respondent No.7 as the personal guarantor by the aforesaid creditor, who filed the application under Section 95 of the IBC before the NCLT, Guwahati, merely bear the signature of the

authorized signatory and all have been purportedly served by hand. This raises a strong suspicion about the documents having been created to somehow file an application at NCLT, Guwahati, to then claim triggering of moratorium. Even the receipt showing payment of necessary fees before the NCLT, Guwahati on 6th October 2025, is of a bank at Borivali (West), Mumbai in Maharashtra. This further creates suspicion about the collusive nature of the proceedings initiated at NCLT, Guwahati, so that Interim Application No. 2207 of 2025 could be filed in the pending Securitisation Application No. 215 of 2024 on 13th October 2025, to paralyze further steps regarding physical possession being handed over to the petitioners.

37. In such a situation, we find that the DRT ought not to have passed the impugned order and that such an order indicates the jurisdictional error committed by the DRT, apart from the fact that such an order results in frustrating the legal process undertaken as per the provisions of the Securitisation Act and it results in failure of justice. As a consequence, this Court has entertained this writ petition to consider whether the borrowers and guarantors, like the respondent Nos.3 to 7, herein can be allowed to misuse provisions of the IBC, that have been enacted with a specific object and in a creating situation that not only frustrates proceedings undertaken lawfully as per the Securitisation Act, but essentially acts against the very object of the IBC.

38. It is also significant to note that the respondent Nos.3 to 7,

despite being put to notice at every stage, right from 7th March 2017, when the notice under Section 13(2) of the Securitisation Act was issued by the respondent No.2-bank, to the number of occasions when auctions were scheduled, chose to remain fence sitters. In fact, by offering OTS proposals for as many as ten times, without taking any concrete steps in that regard, the said respondents gave an impression that they had chosen not to raise any objection to the notice issued under Section 13(2) of the Securitisation Act, as also the action of the respondent No.2-bank in taking symbolic possession of the secured asset and further scheduling auctions for sale of the secured asset. After more than seven years of the notice issued under Section 13(2) of the Securitisation Act and after more than five years of the competent Magistrate allowing the application of the respondent No.2-bank to take physical possession of the secured asset, for the first time on 12th December 2024, the respondent Nos.3 to 7 i.e. the borrowers and the guarantors chose to approach the DRT by filing Securitisation Application No. 215 of 2024. Instead of pressing for interim relief in the said proceeding, respondent No.7 i.e. the personal guarantor filed the said application under Section 94 of the IBC before the NCLT at Mumbai on 24th December 2024, claiming the triggering of the moratorium. The subsequent events have been already noted hereinabove.

39. In this backdrop, we find substance in the reliance placed on behalf of the petitioners and respondent No.2-bank on the

judgment of the Supreme Court in the case of *Arce Polymers Private Limited vs. Alphine Pharmaceuticals Private Limited & Ors.* (supra). In the said judgment, the Supreme Court referred to and relied upon its earlier judgment in the case of *ITC Ltd. vs. Blue Coast Hotels Ltd.*, (2018) 15 SCC 99 and observed as follows:

> *"14. Paras 31 and 32 of the decision in ITC Ltd.vs. Blue Coast Hotels Ltd., record as under :*
>
> > *"31. From the above, it is clear that the creditor was induced by the debtor not to take auction against them through assurances and promises. The creditor appeared to have entered into negotiations for the settlement of the dues and even accepted cheques in repayment much after the notice [Dated 26-3-2013] under Section 13(2) and after the debtor's letter of representation [Dated 27-5-2013]. Many opportunities were granted by the creditor to the debtor to repay the debt which were all met by proposals for extension of time. Eventually, the debtor even executed "A Letter of Undertaking [On 25-11-2013]" acknowledging the right of IFCI to sell the assets in the case of default.*
> >
> > *32. In these circumstances, we have no doubt that the failure to furnish a reply to the representation is not of much significance since we are satisfied that the creditor has undoubtedly considered the representation and the proposal for repayment made therein and has in fact granted sufficient opportunity and time to the debtor to repay the debt without any avail. Therefore, in the fact and circumstances of this case, we are of the view that the debtor is not entitled to the discretionary relief under Article 226 of the Constitution which is indeed an equitable relief."*
>
> *15. We would like to elaborate on the aforesaid principle as the dictum, as declared in ITC Ltd. vs. Blue Coast Hotels Ltd., will equally apply to proceedings before the Debts*

Recovery Tribunal and the Appellate Tribunal under the SARFAESI Act. The principle applied is that of waiver and estoppel.

16. Waiver is an intentional relinquishment of a known right. Waiver applies when a party knows the material facts and is cognizant of the legal rights in that matter, and yet for some consideration consciously abandons the existing legal right, advantage, benefit, claim or privilege. Waiver can be contractual or by express conduct in consideration of some compromise. However, a statutory right may also be waived by implied conduct, like, by wanting to take a chance of a favourable decision. The fact that the other side has acted on it, is sufficient consideration.

17. It is correct that waiver being an intentional relinquishment is not to be inferred by mere failure to take auction, but the present case is of repeated positive acts post the notices under Sections 13(2) and (4) of the SARFAESI Act. Not only did the borrower not question or object to the auction of the Bank, but it by express and deliberate conduct had asked the Bank to compromise its position and alter the contractual terms. The borrower wrote repeated request letters for restructuring of loans, which prayers were considered by the Bank by giving indulgence, time and opportunities. The borrower, aware and conscious of its rights, chose to abandon the statutory claim and took its chance and even procured favourable decisions. Even if we are to assume that the borrower did not waive the remedy, its conduct had put the Bank in a position where they have lost time, and suffered on account of delay and laches, which aspects are material. Auction on the subject property was delayed by more than a year as at the behest of the borrower, the Bank gave them a long rope to regularise the account. To ignore the conduct of the borrower would not be reasonable to the Bank once third-party rights have been created. In this background, the principle of equitable estoppel as a rule of evidence bars the borrower from complaining of violation."

40. We find that the said position of law inures to the benefit of the petitioners and the position taken by respondent No.2-bank in

the present petition, as the respondent Nos.3 to 7 herein also kept on giving OTS proposals and never challenged the actions taken by respondent No.2-bank under the provisions of the Securitisation Act. Instead, after filing the securitisation application in December 2024 before the DRT, the said respondents have been seeking to avoid the inevitable by triggering the process under the IBC and thereby, thwarting the logical completion of the steps taken in accordance with law by the respondent No.2-bank under the provisions of the Securitisation Act. The DRT has failed to advert to the said aspect of the matter. Instead of taking up the securitisation application for consideration, the DRT has simply held its hands, in the light of the gross misuse of the said provisions of the IBC by respondent Nos.3 to 7.

41. In such a situation, this Court exercising writ jurisdiction finds it necessary to pass an appropriate order, as it is found that refraining from passing such an order would lead to the said acts of respondent Nos.3 to 7 being condoned, resulting in perpetuation of the failure of justice.

42. As a matter of fact, the DRT should have taken note of the sequence of events, particularly the order dated 2nd September 2025 passed by the NCLT, Mumbai, excluding the secured asset from moratorium. But, the DRT in the impugned order dated 22nd November 2025 chose to pass only a one line order, restraining the respondent No.2-bank to take any further steps till disposal of

the Interim Application No. 2207 of 2025 in the pending securitisation application.

43. Unless this Court exercising writ jurisdiction takes note of such manifest misuse of the provisions of law and passes an order to set right the obvious wrong, the tendency of such parties like respondent Nos. 3 to 7 to misuse provisions of law and to browbeat subordinate tribunals like the DRT will continue. It is in such peculiar circumstances and extreme set of facts as brought to the notice of this Court in this case, that writ jurisdiction is required to be exercised in the interest of justice.

44. In view of the above, the writ petition is allowed. The impugned order dated 26th November 2025 of the DRT passed in Interim Application No.2207 of 2025 in Securitisation Application No. 215 of 2024 is set aside. Consequently, it is held that the respondent No.2-bank need not await disposal of Interim Application No. 2207 of 2025 for taking further steps in pursuance of the auction sale and registration of sale certificate issued in favour of the petitioners. The Court Commissioner shall proceed in accordance with law, in terms of the order passed by the competent Magistrate under Section 14 of the Securitisation Act, to take consequential steps in the matter.

45. Considering the conduct of respondent Nos.3 to 7 in leaving no stone unturned to paralyze the whole process before the DRT and in shying away from arguing its case on merits in the securitisation application, the DRT is directed to take up the

securitisation application itself for consideration on merits. The respondent No.2-bank shall file its reply in the securitisation application, if not already filed, and the DRT shall ensure that the pleadings in the securitisation application are completed at the earliest and in any case, within four weeks. Thereupon, the DRT shall take up the securitisation application for consideration, hearing and finally dispose of the same, as expeditiously as possible and in any case, on or before 15th May 2026. The DRT shall decide the securitisation application on its own merits, strictly in accordance with law.

46. The writ petition is disposed of in above terms. Pending applications, if any, also stand disposed of.

(SHREERAM V. SHIRSAT, J.) (MANISH PITALE, J.)