* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

\+ **W.P.(C) 3796/2022**

Between: -

ICICI BANK LIMITED,
THROUGH ITS AUTHORISED REPRESENTATIVE
MR. RAHUL SINGH
SHAL TOWER, 3RD FLOOR
PLOT NO.23 NEW ROHTAK ROAD,
NEW DELHI- 110005

..... PETITIONER

(Through: Mr. Sanjiv Sen, Senior Advocate with Mr. Sumit Goel, Ms. Sreeparna Basak, Ms. Anjali Singh, Ms. Pratyusha Priyadarshini and Mr. Jayant Bajaj, Advocates.)

AND

THE DEPUTY GENERAL MANAGER,
NORTHERN REGIONAL OFFICE
MR. M. A. SHINOD
SECURITIES AND EXCHANGE BOARD OF INDIA
NBCC COMPLEX, OFFICE TOWER-1,
8TH FLOOR, PLATE B, EAST KIDWAI NAGAR,
NEW DELHI - 110023

..... RESPONDENT NO.1

SECURITIES AND EXCHANGE BOARD OF INDIA
THROUGH ITS CHAIRMAN

SEBI BHAVAN, PLOT NO. C-4A,
"G" BLOCK, BANDRA KURLA COMPLEX,
BANDRA (E), MUMBAI 400051

..... RESPONDENT NO.2

MR. DEEPAK GOEL
S/O MADAN LAL GOEL
THE PALM SPRINGS, VILLA NO.-7,
GOLF COURSE ROAD, SECTOR-54
GURGAON HARYANA- 122001

ALSO AT, VILLA NO-TPV-G-GV-GV 07,
THE PALM SPRINGS, SEC-54,
SITUATED IN REVENUE ESTATE OF VILLAGE WAZIRABAD,
TEHSIL & DISTRICT GURGAON, HARYANA- 122002

ALSO AT GOEL INVESTMENTS AND SECURITIES,
UNIT NO-554 AND 555 5th FLOOR
TOWER-B-2, SPAZE TECH PARK SOHNA ROAD, SEC-49
GURGAON, HARYANA- 122001

.....RESPONDENT NO.3

MRS. RUCHIKA GOEL
W/O MR. DEEPAK GOEL
GV 07, THE PALM SPRINGS
GOLF COURSE ROAD, SECTOR 54
HARYANA GURGAON-122001

ALSO AT, VILLA NO-TPV-G-GV-GV 07,
THE PALM SPRINGS, SEC-54,
SITUATED IN REVENUE ESTATE OF VILLAGE WAZIRABAD,
TEHSIL AND DISTRICT GURGAON, HARYANA- 122002

.....RESPONDENT NO.4

(Through: Mr. Arunabh Choudhury, Senior Advocate with Mr. Ashish Agarwal, Ms. Astha Kaushal and Mr. Aniruddha Mahadevan Sethi, Advocates for SEBI.
Mr. Gajinder Kumar, Advocate)

% Pronounced on: 21.07.2023

J U D G M E N T

1. The instant petition seeks for the declaration of the orders passed by the Whole Time Members of the Securities and Exchange Board of India (hereinafter '**SEBI**') dated 29.05.2018 and 14.12.2018 as not applicable to the petitioner bank and that those orders do not prevent the petitioner bank from proceeding further under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter '**SARFAESI Act**, **2002**') to sell the mortgaged property being TPV-G-GV-07, The Palm Springs, Village Wazirabad, Sector 54, Gurgaon 122002 (hereinafter '**mortgaged property**').

2. The petitioner bank also prays for directions to respondent nos.1 and 2 not to take any further actions pursuant to the impugned e-mails dated 29.01.2021 and 18.03.2021 and not to thwart the petitioner bank in any manner with respect to selling of the mortgaged property. Alternatively, directions have also been sought to declare that the petitioner bank has the first charge over the mortgaged property with the further direction to allow it to auction the mortgaged property in accordance with the provisions of the SARFAESI Act, 2002.

3. The facts of the case show that the petitioner bank is a private company incorporated under the Companies Act, 1956 and a Banking Company as defined under Section 5 of the Banking Regulation Act, 1949.

4. Respondent no.1 is the Deputy General Manager of the Northern Regional Office of respondent no.2-SEBI which is the regulatory body of the Securities and Commodities market in India, established in accordance with the Securities and Exchange Board of India Act, 1992 (hereinafter '**SEBI Act**, **1992**').

5. Respondent nos.3 and 4 i.e., Mr. Deepak Goel and Mrs. Ruchika Goel, respectively, are the borrowers of the petitioner bank and had availed a home loan facility from the petitioner bank amounting to Rs.6,03,99,231/- *vide* facility agreement dated 22.09.2017, mortgaging the property in question. The home loan in question was disbursed by the petitioner bank to respondent nos.3 and 4 from its Green Park Branch, New Delhi.

6. On 22.09.2017 a Deed of Guarantee was executed by respondent nos.3 and 4 and they had created security interest in respect of the property in favour of the petitioner bank, while depositing with the petitioner bank the original title document of the said mortgaged property including the Sale Deed dated 22.04.2013. The petitioner bank had duly registered the said mortgaged property with the Central Registry of Securitisation Assets Reconstruction and Security Interest of India (hereinafter '**CERSAI**') on 17.10.2017.

7. It appears that in the year 2017, SEBI started an investigation against F6 Commodities Private Limited of which respondent nos.3 and 4 were directors. The investigation was initiated after receiving e-mails dated 27.07.2017 and 03.08.2017 from the National Stock Exchange.

8. On 29.05.2018 an *ex-parte* interim order was passed by the Whole Time Member of SEBI in the exercise of power under Section 19 read with Sections 11(1), 11(4), 11B and 11D of the SEBI Act, 1992, read with Regulation 35 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (hereinafter '**Regulations, 2008**') whereby, the following directions were issued:

> *"27. In view of the above, I, in exercise of powers conferred upon me by virtue of section 19 read with sections 11 (1), 11 (4), 11B and 11D of the SEBI Act, 1992, Regulation 35 of Securities And Exchange Board of India (Intermediaries) Regulations, 2008,*

way of this ex parte - ad- interim order, hereby issue the following directions:

a. F6 Finserve Private Limited, F6 Commodities Private Limited, Mr. Pankaj Goel, Mr. Parveen Sharma, Mr. Meenu Goel, Mr. Sanjay Anand, Ms. Kavita Anand, Ms. Asha Sharma, Mr. Deepak Goel and Ms. Ruchika Goel are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities, either directly or indirectly, or being associated with the securities market in any manner whatsoever, till further directions:

b. The aforesaid entities and persons shall cease and desist from undertaking any activity in the securities market, directly or indirectly, in any manner whatsoever till further directions;

c. The aforesaid entities and persons are directed to provide a full inventory of all their assets, whether movable or immovable, or any interest or investment or charge In any of such assets, including details of all their bank accounts, demat accounts and mutual fund investments immediately but not later than 5 working days from the date of receipt of these directions.

d. The aforesaid entities and persons are directed not to dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge in any of such assets excluding money lying in bank accounts except with the prior permission of SEBI.

e. Till further directions in this regard, the assets of these entitles shall be utilized only for the purpose of payment of money and/or delivery of securities, as the case may be, to the clients/Investors under the supervision of the concerned stock exchange(s).

f. The depositories are directed to ensure that no debits are made in the demat accounts, held jointly or severally, of the aforesaid entitles and persons except for the purpose mentioned In sub-para (e) after confirmation from the concerned stock exchange in this regard.

g. Registrar and transfer Agents are also directed to ensure that the securities (including mutual fund units) in physical form, held jointly or severally, by the aforesaid entitles and persons are not transferred/redeemed except for the purpose mentioned in sub-para (e) after confirmation from the concerned stock exchange in this regard.

h. The banks are directed to ensure that no debits are made in the bank accounts held jointly or severally by F6 Finserve Private Limited, F6 Commodities Private Limited, Mr. Pankaj Goel, and Mr. Meenu Goel, except for the purpose of payment of money to the clients/investors under the written confirmation of the concerned stock exchange(s).

i. The above directions are without prejudice to the right of SEBI to take any other action that may be initiated in respect of aforesaid entities/persons."

9. Essentially, the effect of the directions in the order dated 29.05.2018 was to restrain the noticees including respondent nos.3 and 4 from accessing the securities market and prohibiting them from buying/selling or otherwise dealing in securities either directly or indirectly or being associated with the securities market, whatsoever, till further directions.

10. It is also to be noted that the noticees were directed not to dispose of or alienate any assets whether moveable or immovable, or any interest or investment or change in any of such assets excluding money lying in bank accounts except with the prior permission of SEBI.

11. It is seen that based on further inspection etc., a confirmatory order dated 14.12.2018 was passed by a Whole Time Member of respondent no.2 under Section 11(4), 11B and 11D of the SEBI Act, 1992, read with Regulation 35 of the Regulations, 2008 confirming the *ex-parte* interim order dated 29.05.2018 against the 10 persons including respondent nos.3 and 4 until further orders.

12. In the meantime, the petitioner bank noted that respondent nos.3 and 4 defaulted in repayment of the loan availed by them from the petitioner bank and accordingly, the account in question was classified by the petitioner bank as a Non-Performing Asset on 30.09.2019.

13. The petitioner bank thereafter, issued a demand notice dated 22.11.2019 under Section 13(2) of the SARFAESI Act, 2002 calling upon respondent nos.3 and 4 and the guarantor to repay the

outstanding amount. Respondent nos.3 and 4 failed to repay the outstanding amount which was Rs. 6,08,72,618/- as of 22.11.2019.

14. Therefore, the petitioner bank took over the symbolic possession of the mortgaged property on 16.03.2020 under Section 13(4) of the SARFAESI Act, 2002. The petitioner bank thereafter filed an application before the concerned District Magistrate under Section 14 of the SARFAESI Act, 2002 for taking over the physical possession which came to be allowed on 15.09.2020. Accordingly, the physical possession of the mortgaged property was taken and a possession notice dated 14.10.2020 was issued, informing respondent no.3 and 4 and the general public that the petitioner bank had taken physical possession of the mortgaged property in the exercise of powers conferred under Section 13(4) of the SARFAESI Act, 2002.

15. A pre-sale notice dated 14.10.2020 was also issued by the petitioner bank, requesting respondent nos.3 and 4 to clear the outstanding dues, failing which the petitioner bank would be constrained to sell the mortgaged property to realise the outstanding dues. The petitioner bank thereafter, on 16.10.2020 issued a notice published in two local newspapers cautioning the public not to deal with the subject property and that dealing with the same would be subject to the charge of the petitioner bank. On 19.12.2020, the petitioner bank published the notice for auction sale of the mortgaged property at a reserved price of Rs. 8,67,20,000/-. On the same day i.e., 19.12.2020 the petitioner bank sent a sale notice to respondent nos.3 and 4 and the guarantor along with a vacation notice to vacate the moveable articles in/on the property within 15 days.

16. It is thereafter, on 29.01.2021 one of the impugned e-mails was received by the petitioner bank from respondent no.1, informing the

petitioner bank that *vide* orders dated 29.05.2018 and 14.12.2018 passed by the Whole Time Member of SEBI (hereinafter '**said Orders**'), respondent nos.3 and 4 were restrained from disposing of or alienating any assets without prior permission of respondent no.2. The petitioner bank was accordingly directed to ensure compliance of the said Orders passed by the Whole Time Member of SEBI on behalf of SEBI against 10 entities which included respondent nos.3 and 4.

17. On 04.02.2021, the petitioner bank replied to the e-mail dated 29.01.2021 stating *inter alia* that the petitioner bank, being a secured creditor, had issued a notice for public auction on 19.12.2020 and since the borrowers had created a mortgage with respect to the said property in favour of the petitioner bank, therefore, the communication dated 29.01.2021 will not detain the petitioner bank from proceeding further.

18. Paragraph nos.6 to 8 of the reply dated 04.02.2021 read as under:

> *"6. That in pursuance to the provisions under SARFAESI Act, 2002 the Bank being a secured creditor had issued a notice for public auction Sale on 19th December 2020 and the auction Sale of the said property being Villa No. TPV-G-GV-O?, The Palm Springs, Village Wazirabad, Sector 54, Gurgaon 122002 is scheduled to be held on 02nd February 2021 at reserve price of Rs.86720000/-.*
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> *7. The Bank state that the borrowers had created a mortgage in respect of the said property in favor of the Bank for securing due repayment of the dues payable under the Home Loan facility. The Bank therefore state that It has the first and exclusive charge in respect of the said property being Villa No. TPV-G-GV-07, The Palm Springs, Village Wazirabad, Sector 54, Gurgaon 122002 and hence the Bank being a valid charge holder/ mortgagee is having paramount charge and is entitled to exercise its statutory right of enforcement of security interest created In the said property for recovery of its dues.*
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> *8. In view of the above circumstances and the fact that the ICICI Bank Ltd. is not among the 10 entities named in the order dt. 29th May 2018, the Bank is entitled to enforce its security interest*

> *and proceed further with the auction of the properly being Villa No. TPVG- GV-07. The Palm Springs, Village Wazirabad, Sector 54, Gurgaon 122002. However, post adjustment of dues the Bank shall intimate regarding surplus (if any) from the auction sale proceeds to your good office for further direction. We believe and as per our understanding, the Bank can proceed further as per the provisions of the SARFAESI Act, 2002 and prior permission Is not required. Kindly confirm on our understanding."*

19. On 18.03.2021, respondent no.1 replied to the petitioner bank's e-mail dated 04.02.2021 and *inter alia* stated that the orders dated 29.05.2018 and 14.12.2018 partake the character of orders '*in rem*' and bind all constituents dealing with the broker or his assets/liabilities till the completion of investigation/forensic audit and thereafter, the petitioner bank has filed the instant writ petition. However, during the pendency of the instant writ petition, the final order dated 09.06.2022 has been passed by SEBI under Section 11(4), 11B and 11D of the SEBI Act, 1992.

20. Mr. Sanjiv Sen, learned senior counsel appearing on behalf of the petitioner, assisted by Mr. Sumit Goel, Ms. Sreeparna Basak, Ms. Anjali Singh and Mr. Jayant Bajaj, submitted that the right of a secured creditor to realise secured debt has priority over all other debts. After placing specific reliance on the *non-obstante* clause of Section 26E of the SARFAESI Act, 2002 read with Section 31B of the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter '**RDB Act, 1993**'), it was argued by the learned senior counsel that Section 26E would prevail over Section 28A of SEBI Act, 1992.

21. The learned senior counsel further submitted that by virtue of Sections 35 and 37 of the SARFAESI Act, 2002 the provisions of SARFAESI Act, 2002 would override the inconsistent provisions contained in SEBI Act, 1992.

22. After taking this court through Chapter IV-A of the SARFAESI Act, 2002, which has been inserted w.e.f. 24.01.2020, it is submitted by the learned senior counsel, that priority has been given to secured creditor over all other dues including Government dues in terms of Section 26E of the SARFAESI Act, 2002, and for this prioritisation to take place, a mandatory registration of security interest is required.

23. It is further argued that in light of the insertion of Section 31B in the RDB Act, 1993, the priority of secured creditors has also been inserted w.e.f. from 01.09.2016, and that would mean that the legislature's intent was to assign the priority to the secured creditor despite there being provisions under the SEBI Act, 1992.

24. It is also submitted that the orders passed under Section 11(1), 11(4), 11B and 11D of the SEBI Act, 1992 are not *in rem* and the impugned directions of SEBI are contrary to the basic intent of the SARFAESI Act, 2002.

25. Learned senior counsel appearing on behalf of the petitioner has taken this court through various provisions of the SARFAESI Act, 2002, the SEBI Act, 1992 and the RDB Act, 1993. He has also placed reliance on various decisions in the cases of ***Bank of Baroda v. State of Gujarat and Ors.***[1]***, Kalupur Commercial Co-operative Bank Ltd v. State of Gujarat***[2]***, The Assistant Commissioner (CT)***, ***Anna Salai-III Assessment Circle v. The Indian Overseas Bank and Ors.***[3]***, Bank of Baroda v. Commissioner of Sales Tax***, ***Indore and Ors.***[4]***, Bhanu Ram and Ors. v. HBN Daries and Allied Ltd.***[5]***, Principal***

[1] MANU/GJ/188512019.
[2] 2019 SCC Online Guj 1892.
[3] MANU/TN/3743/2016.
[4] MANU/MP/0331/2018.
[5] MANU/ND/7107/2019.

Commissioner of Income Tax v. Monnet Ispat and Energy Ltd.[6]***, State of M.P. & Anr. v. State Bank of Indore & Ors.***[7]***, Solidaire India Ltd. v. Fairgrowth Financial Services Ltd.***[8]***, Sahara India Real Estate Corporation Limited & Ors. v. Securities and Exchange Board of India***[9]*, ***Franklin Templeton Trustee Services Private Limited & Ors. v. Amruta Garg & Ors.***[10]***, Shewpunjanrai Indrasanrai Ltd. v. The Collector of Customs and Ors.***[11]***, Punjab National Bank v. Union of India and Others***[12]***, Bank of Baroda v. The Deputy Director***[13]***, Maharaja Pratap Udai Nath Shahi Deo v. Sara Lal Durga Prasad Nath Shahi Deo & Ors.***[14]***, Pegasus Assets Reconstruction Private Limited v. M/s Haryana Concast Limited and Anr.***[15]***, Authorized Officer*, *State Bank of Travancore & Anr. v. Mathew K.C.***[16]***, Union of India v. SICOM Ltd. & Anr.***[17]***, Jalgaon Janta Sahakari Bank Ltd. & Anr. v. Joint Commissioner***[18]***, Deputy Director Directorate of Enforcement Delhi v. Axis Bank & Ors***[19]***, Authorized Officer*, *Indian Bank v. D. Visalakshi & Anr***[20] and ***Kotak Mahindra Bank Limited v. Girnar Corrugators Pvt. Ltd. & Ors***[21]**.**

26. Learned senior counsel Mr. Arunabh Choudhury assisted by Mr. Ashish Agarwal, Ms. Astha Kaushal and Mr. Aniruddha Mahadevan appearing on behalf of respondent nos.1 and 2 while relying on his counter affidavit stated that the three orders viz. interim

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[6] (2018) 18 SCC 786.
[7] (2002) 10 SCC 441.
[8] (2001) 1 SCC 1.
[9] (2013) 1 SCC 1.
[10] MANU/SC/0430/2021.
[11] AIR 1958 SC 845.
[12] 2022 SCC OnLine 227.
[13] FPA-PMLA-2115/MUM/2017.
[14] MANU/BH/021111948.
[15] (2016) 4 SCC 47.
[16] (2018) 3 SCC 85.
[17] (2009) 2 SCC 121.
[18] W.P.(C) 2935 of 2018.
[19] 2019 SCC OnLine Del 7854.
[20] (2019) 20 SCC 47.
[21] 2023 SCC OnLime SC 15.

order, confirmatory order and the final order have attained finality. These orders have not been challenged. He stated that the interim order and confirmatory order, are placed on record by the petitioner, however, the final order dated 09.06.2022 has not been placed on record by the petitioner. Respondent nos.1 and 2 have placed on record a copy of the final order dated 09.06.2022 as Annexure-R1.

27. He, therefore, contended that the three orders are not only operating against the noticees but are operating against any person who is claiming through the noticees and in the instant case, through respondent nos.3 and 4 in particular. According to learned senior counsel, the effect of the three orders is an injunction operating *qua* the properties owned by the noticees.

28. According to him, directions have been issued under the special jurisdiction conferred under the provisions of the SEBI Act, 1992 for protecting the interests of the investors in the securities market and not for any personal claims of SEBI.

29. He also submitted that the provisions of the SEBI Act, 1992 would prevail over the provisions of the SARFAESI Act, 2002 and the provisions of the RDB Act, 1993. According to him, it is only the provisions in any other Act, inconsistent to the provisions under the SARFAESI Act, 2002, that will have no application. However, in the instant case, according to him, there is no inconsistency between the provisions of the SARFAESI Act, 2002 and the SEBI Act, 1992 and both Acts can operate in their respective sphere in order to achieve the special purpose for which they have been enacted.

30. While elaborating his submission, he has indicated the legislative intent of the SEBI Act, 1992 which is pre-eminently a

social welfare legislation seeking protection of interests of a common man who are small investors.

31. He submitted that the provisions under Section 37 of the SARFAESI Act, 2002 clearly provide the space for the provisions of the SEBI Act, 1992 to operate as it specifically provides that the provisions of the SARFAESI Act, 2002 or the rules made thereunder, are in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the SEBI Act, 1992 (15 of 1992), the RDB Act, 1993 (51 of 1993) or any other law for the time being in force.

32. He, therefore, stated that the provisions of the four Acts mentioned in Section 37 of the SARFAESI Act, 2002 are specifically saved and therefore, the argument advanced by learned counsel appearing on behalf of petitioner is not acceptable.

33. It is further contended by the learned senior counsel for respondent nos.1 and 2 that the SEBI Act, 1992 would become redundant if, in exercise of the powers conferred by the statute, SEBI could not be presumed to have powers to direct banks from preventing the alienation of property. No regulation and investigation could take place if such powers are not imputed to SEBI. The power to direct banks to prevent alienation of money from the bank accounts or in other words, prevent the debits from the bank accounts, is incidental and necessary for the regulatory framework to operate in the manner in which the legislature so envisioned it. It is, therefore, clear that SEBI has a power to issue directions to banks in general, and to the petitioner bank in particular.

34. Precisely, learned counsel tried to establish that the Parliament's intent is clear under Section 37 of the SARFAESI Act, 2002 to mean

that the provisions of the SEBI Act, 1992 will not be covered by the *non-obstante* clause contained in Section 35 or that in Chapter IV-A of the SARFAESI Act, 2002 i.e. Section 26D and Section 26E thereof.

35. He has placed reliance in relation thereto on various decisions in the cases of ***Mathew Varghese v. M. Amritha Kumar and Ors.***[22]***, KSL & Industries Ltd. v. Arihant Threads Ltd.***[23]***, Madras Petrochem Ltd. v. Board for Industrial & Financial Reconstruction &Ors.***[24]***, Pioneer Urban Land & Infrastructure Ltd. v. Union of India***[25]***, Securities and Exchange Board of India v. Ajay Agrawal***[26]***, Vidya Drolia v. Durga Trading Corporation***[27]***, Jay Engineering Works Ltd. v. Industry Facilitation Council***[28]***, P.C. Joshi v. State of UP***[29]***, Ramdev Food Products Pvt. Ltd. v. Arvindbhai Rambhai Patel & Ors.***[30]***, A.G. Varadarajulu v. State of Tamil Nadu***[31]***, Central Bank of India v. State of Kerala***[32]***, Imperia Structures Ltd. v. Anil Patni***[33]***, State of Punjab v. Gurdev Singh***[34]***, KSL & Industries Ltd. v. Arihant Threads Ltd.***[35]***, Industrial Finance Corporation of India v. Allied International Products Ltd. and Others***[36] and ***Davies and Another v. Powell Duffryn Associated Collieries Limited***[37]***.***

36. Learned senior counsel appearing on behalf of respondent nos.1 and 2 in addition to his submissions on the merits of the case has also

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[22] 2014 (5) SCC 610.
[23] (2015) 1 SCC 166.
[24] (2016) 4 SCC 1.
[25] (2019) 8 SCC 416.
[26] (2010) 3 SCC 765.
[27] (2021) 2 SCC 1.
[28] (2006) 8 SCC 677.
[29] 1961 (2) SCR 63.
[30] (2006) 8 SCC 726.
[31] (1998) 4 SCC 231.
[32] (2009) 4 SCC 94.
[33] (2020) 10 SCC 783.
[34] (1991) 4 SCC 1.
[35] (2008) 9 SCC 763.
[36] (1997) 2 Comp LJ 195 (Del).
[37] [1942] A.C. 601.

raised a preliminary objection with respect to the maintainability of the instant writ petition on the ground of the availability of efficacious alternative remedy under Section 15T of the SEBI Act, 1992. He submitted that the said Orders which are sought to be declared as not applicable to the petitioner bank, are appealable under Section 15T of the SEBI Act, 1992 before the Securities Appellate Tribunal (hereinafter '**SAT**') and according to him, any order passed by the SAT is appealable under Section 15Z of the SEBI Act, 1992 before the Hon'ble Supreme Court.

37. To support his submissions, he has placed reliance on various decisions in the cases of ***Thansingh Nathmal & Ors. v. Superintendent of Taxes***, ***Dhubri & Ors.***[38]***, Raj Kumar Shivhare v. Asstt. Director***, ***Directorate of Enforcement & Anr.***[39]***, Nivedita Sharma v. Cellular Operators Assn of India***[40]***, State of Maharashtra &Ors. v. Greatship (India) Ltd.***[41]***, State of Punjab &Ors. v. Gurdev Singh***,[42] ***Kuber Floritech Ltd. v. Securities & Exchange Board of India***[43] and ***Balvir Singh v. Securities & Exchange Board of India***[44]**.**

38. Learned senior counsel appearing on behalf of the petitioner in response to the submissions with respect to the maintainability of the instant writ petition submitted that the petitioner bank is not aggrieved by the said Orders as they do not apply to the petitioner bank. He also submitted that the petitioner is aggrieved by the impugned e-mails/communications dated 29.01.2021 (P-43) and 18.03.2021 (P-44), by which SEBI directed the petitioner bank to comply with the orders dated 29.05.2018 and 14.12.2018 and not to proceed against the

[38] AIR 1964 SC 1419.
[39] (2010) 4 SCC 772
[40] (2011) 14 SCC 337
[41] 2022 SCC Online SC 1262, para. 13-18.
[42] (1991) 4 SCC 1.
[43] Writ Petition (c) No. 11426/2022, Order dated 02.09.2022, Delhi High Court.
[44] Writ Petition (c) No. 13322/2022, Order dated 15.09.2022, Delhi High Court.

mortgaged property under Section 13 of the SARFAESI Act, 2002 without prior permission of the SEBI.

39. According to him, the impugned e-mails are without jurisdiction and the petitioner is no way concerned with the investors and is not a party to the same. The petitioner is only concerned with the realization of their debt while liquidating the mortgaged property. He unequivocally stated that the mortgaged property did not have any encumbrance when it was mortgaged to the bank and an appeal under Section 15T of the SEBI Act, 1992 would not be an effective and efficacious remedy.

40. He has also placed reliance on various decisions in the cases of ***National Securities Depository Ltd. v. SEBI***[45]***, HB Stockholdings Limited v. Securities and Exchange Board of India***[46]***, Radha Krishan Industries***, ***State of H.P.***[47]***, Jashbhai Motibhai v. Roshan Kumar***, ***Haji Bashir Ahmed & Ors.***[48]***, Ramprasad Somani v. Chairman***, ***SEBI***[49]***, Kuntesh Gupta v. Hindu Kanya Mahavidyalaya***[50]***, Whirlpool Corpn. v. Registrar of Trade Marks***[51]***, Ram & Shyam Co. v. State of Haryana***[52]***, State of H.P. v. Gujarat Ambuja Cement Ltd.***[53] and ***CIT v. Chhabil Dass Agarwal***.[54]

41. Since respondent nos.1 and 2 have raised an objection with respect to the maintainability of the instant writ petition, therefore, the same is required to be considered as a preliminary issue.

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[45] (2017) 5 SCC 517.
[46] 2012 SCC OnLine SAT 71.
[47] (2021) 6 SCC 771.
[48] (1976) 1 SCC 671.
[49] 2002 SCC OnLine SAT 34.
[50] (1987) 4 SCC 525.
[51] (1998) 8 SCC 1, p. 9.
[52] (1985) 3 SCC 267.
[53] (2005) 6 SCC 499.
[54] (2014) 1 SCC 603.

42. In the present case, in order to decide upon the issue of maintainability of the present petition, there are certain ancillary and incidental issues that need to be decided. These relate to the powers vested with SEBI under the SEBI Act, 1992, the ambit and scope of the said Orders, and the nature of the impugned emails.

43. The first issue that the court must then decide is whether SEBI has the requisite legal power vested in it to direct the petitioner bank.

44. Undisputedly in this case, the said Orders have been passed by SEBI, however, the petitioner bank has chosen not to assail those orders, but instead challenges the impugned communications. Respondent nos.1 and 2's preliminary objection to the same is responded to by the petitioner bank by arguing that SEBI does not have the jurisdiction to direct the petitioner bank, that is, a bank unregistered with SEBI. Assuming arguendo that SEBI does have jurisdiction, the petitioner bank contends that the said Orders do not prevent them from auctioning the mortgaged property, it is, therefore, the impugned emails that infringe their rights and not the said Orders.

45. In ***Sahara India Real Estate Corporation Limited*** *(supra)*, the Hon'ble Supreme Court expounded upon the nature of powers conferred upon SEBI. It made the following observations, which were later reiterated in subsequent decisions of the Apex Court. In paragraph no.108, it has been observed as under:

> *"118. SEBI, I have already indicated, has a duty under Section 11A of the SEBI Act to protect the interests of investors in securities either listed or which are required to be listed under the law or intended to be listed. Under Section 11B, SEBI has the power to issue appropriate directions in the interests of investors in securities and securities market* ***to any person who is associated with securities market.****"*
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> *[Emphasis supplied]*

46. Hon'ble the Chief Justice of India J.S. Khehar, in their separate concurring opinion made material observations having bearing on the present matter. They are liberally reproduced as under:

> *"221.*
>
> *...*
>
> *"[T]he amendment of the SEBI Act in 2002 is of utmost relevance. The relevant part of the statement of objects and reasons of the amendment of the SEBI Act in 2002 is being reproduced below:*
>
> *xxx*
>
> *2. Recently many shortcomings in the legal provisions of the Securities and Exchange Board of India Act, 1992 have been noticed, particularly with respect to inspection, investigation and enforcement. Currently, the SEBI can call for information, undertake inspections, conduct enquiries and audits of stock exchanges, mutual funds, intermediaries, issue directions, initiate prosecution, order suspension or cancellation of registration. Penalties can also be imposed in case of violation of the provisions of the Act or the rules or the regulations. However, the SEBI has no jurisdiction to prohibit issue of securities or preventing siphoning of funds or assets stripping by any company. While the SEBI can call for information from intermediaries, it cannot call for information from any bank and other authority or board or corporation established or constituted by or under any Central, State or Provincial Act. The SEBI cannot retain books of accounts, documents, etc., in its custody. Under the existing provisions contained in the Securities and Exchange Board of India Act, 1992, the SEBI cannot issue commissions for the examination of witnesses or documents. Further, the SEBI has pointed out that existing penalties are too low and do not serve as effective deterrents. At present, Under Section 209A of the Companies Act, 1956, the SEBI can conduct inspection of listed companies only for violations of the provisions contained in sections referred to in Section 55A of that Act but it cannot conduct inspection of any listed public company for violation of the SEBI Act or rules or regulations made thereunder.*
>
> *3. In addition, growing importance of the securities markets in the economy has placed new demands upon the SEBI in terms of organization structure and institutional capacity. A need was therefore felt to remove these shortcomings by strengthening the mechanisms available to the SEBI for investigation and enforcement so that it is better equipped to investigate and enforce against market malpractices.*
>
> *4. In view of the above, the Securities and Exchange Board of India (Amendment) Ordinance, 2002 (6 of 2002) was promulgated on the*

29th October, 2002 to amend the Securities and Exchange Board of India Act, 1992.

5. It is now proposed to replace the Ordinance by a Bill, with, inter alia, the following features

(a) increasing the number of members of the SEBI from six (including Chairman) to nine (including Chairman);

(b) conferring power upon the Board, for,

(i) calling for information and record from any bank or other authority or Board or corporation established or constituted by or under any Central, State or Provincial Act in respect of any transaction in securities which are under investigation or inquiry by the Board;

(ii) passing an order for reasons to be recorded in writing, in the interest of investors or securities market, either pending investigation or enquiry or on completion of such investigation or inquiry for taking any of the following measures, namely, to-

(A) suspend the trading of any security in a recognized stock exchange;

(B) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;

(C) suspend any office-bearer of any stock exchange or self-regulatory organization from holding such position;

(D) impound and retain the proceeds or securities in respect of any transaction which is under investigation;

(E) attach, after passing of an order on an application made for approval by the Judicial Magistrate of the first-class having jurisdiction, for a period not exceeding one month, one or more bank account or accounts of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder;

(F) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation;

(iii) regulating or prohibiting for the protection of investors, issue of prospectus, offer document or advertisement soliciting money for issue of securities;

(iv) directing any person to investigate the affairs of intermediary or person associated with the securities market and to search and seize books, registers, other documents and records considered

> ***necessary for the purposes of the investigation, with the prior approval of a Magistrate of the first class.***
>
> ***(v) passing an order requiring any person who has violated or is likely to violate, any provision of the SEBI Act or any rules or regulations made thereunder to cease and desist for committing any causing such violation;***
>
> *(c) prohibiting manipulative and deceptive devices, insider trading, fraudulent and manipulative trade practices, market manipulation and substantial acquisition of securities and control;*
>
> *(d) crediting sums realized by way of penalties to the Consolidated Fund of India;*
>
> *…"*
>
> *[Emphasis supplied]*

47. In ***Sunil Krishnan Khaitan*** *(supra)*, the Hon'ble Supreme Court in paragraph no.81, made the following observation:

> *"…Section 11(1), while broadly defining the functions of the Board, states that it is the duty of the Board to protect interest of investors in securities and to promote the development of, and regulate the securities market by such measures as it thinks fit. Section 11-B, which deals with the power of the Board to give directions, states that the Board, after making or causing an inquiry, may issue directions if it is satisfied* ***that it is necessary in the interest of the investors, or orderly development of the securities market; to prevent the affairs of any intermediary or other persons referred to in Section 12 from conducting affairs in a manner detrimental to the interest of the investors or to secure proper management of such intermediary or persons****. Section 11(2)(h) provides that the Board is entitled to take measures for regulating substantial acquisition of shares and takeover of companies. Regulation 44 states that the Board while issuing directions, has to keep in mind the interest of the securities market and its role as a protector of interest of investors. We will read the word "or" between the expression "in the interest of securities market or protection of investors" as "and". The Board, therefore, when it decides to exercise its power under Regulation 44 and issues directions under the said Regulation has to keep the two facets in mind, namely, (i) interest of the securities market; and (ii) protection of interest of the investors…"*
>
> *[Emphasis supplied]*

48. After the decision of the Hon'ble Supreme Court in ***Sahara India Real Estate Corporation Limited*** *(supra)*, the SEBI Act, 1992 was again amended through the Securities Laws (Amendment) Act,

2014. The material sections of the amending Act are reproduced as under:

> *"...*
>
> *2. In section 11 of the Securities and Exchange Board of India Act, 1992 (hereafter in this Chapter referred to as the principal Act),—*
>
> *(i) in sub-section (2),-—*
>
> *(a) for clause (ia), the following clause shall be substituted, namely:—*
>
> *''(ia) calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;'';*
>
> *(b) after clause (ia), the following clause shall be inserted and shall be deemed to have been inserted with effect from the 6th day of March, 1998, namely:—*
>
> *''(ib) calling for information from, or furnishing information to, other authorities, whether in India or outside India, having functions similar to those of the Board, in the matters relating to the prevention or detection of violations in respect of securities laws, subject to the provisions of other laws for the time being in force in this regard:*
>
> *Provided that the Board, for the purpose of furnishing any information to any authority outside India, may enter into an arrangement or agreement or understanding with such authority with the prior approval of the Central Government;'';*
>
> *(ii) after sub-section (4), the following sub-section shall be inserted, namely:—*
>
> *''(5) The amount disgorged, pursuant to a direction issued, under section 11B of this Act or section 12A of the Securities Contracts (Regulation) Act, 1956 or section 19 of the Depositories Act, 1996, as the case may be, shall be credited to the Investor Protection and Education Fund established by the Board and such amount shall be utilised by the Board in accordance with the regulations made under this Act.''.*
>
> *...*
>
> *4. In section 11B of the principal Act, the following Explanation shall be inserted, namely:—*

''Explanation.—For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.''."

49. As on date, Section 11 of the SEBI Act, 1992, which provides for the functions of SEBI, reads as under:

11. Functions of Board.—(1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

(2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for—

(a) regulating the business in stock exchanges and any other securities markets;

(b) registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with securities markets in any manner;

(ba) registering and regulating the working of the depositories, participants, custodians of securities, foreign institutional investors, credit rating agencies and such other intermediaries as the Board may, by notification, specify in this behalf;

(c) registering and regulating the working of venture capital funds and collective investment schemes], including mutual funds;

(d) promoting and regulating self-regulatory organisations;

(e) prohibiting fraudulent and unfair trade practices relating to securities markets;

(f) promoting investors' education and training of intermediaries of securities markets;

(g) prohibiting insider trading in securities;

(h) regulating substantial acquisition of shares and take-over of companies;

(i) calling for information from, undertaking inspection, conduct inquiries and audits of the stock exchanges, mutual funds, other

persons associated with the securities market intermediaries and self-regulatory organisations in the securities market;

(ia) calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;

(ib) calling for information from, or furnishing information to, other authorities, whether in India or outside India, having functions similar to those of the Board, in the matters relating to the prevention or detection of violations in respect of securities laws, subject to the provisions of other laws for the time being in force in this regard:

Provided that the Board, for the purpose of furnishing any information to any authority outside India, may enter into an arrangement or agreement or understanding with such authority with the prior approval of the Central Government;

(j) performing such functions and exercising such powers under the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), as may be delegated to it by the Central Government;

(k) levying fees or other charges for carrying out the purposes of this section;

(l) conducting research for the above purposes;

(la) calling from or furnishing to any such agencies, as may be specified by the Board, such information as may be considered necessary by it for the efficient discharge of its functions;]

(m) performing such other functions as may be prescribed.

(2A) Without prejudice to the provisions contained in sub-section (2), the Board may take measures to undertake inspection of any book, or register, or other document or record of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market.

(3) Notwithstanding anything contained in any other law for the time being in force while exercising the powers under 9 [clause (i) or clause (ia) of sub-section (2) or sub-section (2A)], the Board shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:—

(i) the discovery and production of books of account and other documents, at such place and such time as may be specified by the Board;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) inspection of any books, registers and other documents of any person referred to in section 12, at any place;

(iv) inspection of any book, or register, or other document or record of the company referred to in sub-section (2A);

(v) issuing commissions for the examination of witnesses or documents.] 1 [(4) Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:—

(a) suspend the trading of any security in a recognised stock exchange;

(b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;

(c) suspend any office-bearer of any stock exchange or self-regulatory organisation from holding such position;

(d) impound and retain the proceeds or securities in respect of any transaction which is under investigation; attach, for a period not exceeding ninety days, bank accounts or other property of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

Provided that the Board shall, within ninety days of the said attachment, obtain confirmation of the said attachment from the Special Court, established under section 26A, having jurisdiction and on such confirmation, such attachment shall continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of section 28A shall apply:

Provided further that only property, bank account or accounts or any transaction entered therein, so far as if related to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached.

(f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation;

Provided that the Board may, without prejudice to the provisions contained in sub-section (2) or sub-section (2A), take any of the measures specified in clause (d) or clause (e) or clause (f), in respect of any listed public company or a public company (not being intermediaries referred to in section (2) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market:

Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned.] 3 [(4A) Without prejudice to the provisions contained in sub-sections (1), (2), (2A), (3) and (4), section 11B and section

15-I, the Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.

(5) The amount disgorged, pursuant to a direction issued, under section 11B of this Act or section 12A of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or section 19 of the Depositories Act, 1996 (22 of 1996), or under a settlement made under section 15JB or section 23JA of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or section 19-IA of the Depositories Act, 1996 (22 of 1996) as the case may be, shall be credited to the Investor Protection and Education Fund established by the Board and such amount shall be utilised by the Board in accordance with the regulations made under this Act.

50. The SEBI Act, 1992 through Section 11B(1)(iii)(a) accords power to SEBI to direct any person or class of persons referred to in Section 12 of the SEBI Act, 1992 or persons associated with the securities market. The section is reproduced as under:

"11B. Power to issue directions and a levy penalty.— (1) Save as otherwise provided in section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary—

(i) in the interest of investors, or orderly development of securities market; or

(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interests of investors or securities market; or

(iii) to secure the proper management of any such intermediary or person, it may issue such directions,—

(a) to any person or class of persons referred to in section 12, or associated with the securities market; or

(b) to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market."

[Emphasis supplied]

51. Similarly, Regulation 35 of the Regulations, 2008 accords powers to SEBI to issue directions in order to secure the interest of investors. It reads as under:

"35. Without prejudice to any order under the securities laws and the directions, guidelines and circulars as may be issued thereunder including an order under Chapter V of these regulations the Board may in the interest of the securities market, in the interest of the investors or for the purpose of securing the proper management of any intermediary, issue, necessary direction including but not limited to any or all of the following -

(a) directing the intermediary or other persons associated with securities market to refund any money or securities collected from the investors under any scheme or otherwise, with or without interest;

(b) directing the intermediary or other persons associated with securities market not to access the capital market or not to deal in securities for a particular period or not to associate with any intermediary or with any capital market related activity;

(c) directing the recognised stock exchange concerned not to permit trading in the securities or units issued by a mutual fund or collective investment scheme;

(d) directing the recognised stock exchange concerned to suspend trading in the securities or units issued by a mutual fund or collective investment scheme;

(e) any other direction which the Board may deem fit and proper in the circumstances of the case:

Provided that before issuing any directions the Board shall give a reasonable opportunity of being heard to the persons concerned:

Provided further that if the circumstances warrant any interim direction is required to be passed immediately, the Board shall give a reasonable opportunity of hearing to the persons concerned after passing the direction, without any undue delay.

[Emphasis supplied]

52. An intermediary is then defined under Regulation 2(1)(g) of the Regulations, 2008 in the following words:

> *"(g) "intermediary" means a person mentioned in clauses (b) and (ba) of sub-section (2) of section 11* ***and sub-section (1) and (1A) of section 12 of the Act*** *and includes an asset management company in relation to the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, a clearing member of a clearing corporation or clearing house, foreign portfolio investors and a trading member of a derivative segment or currency derivatives segment of a stock exchange but does not include foreign venture capital investor, mutual fund, collective investment scheme and venture capital fund;"*
>
> *[Emphasis supplied]*

53. Section 12 of the SEBI Act, 1992 provides for Registration of stock brokers, sub-brokers, share transfer agents, etc., it reads as under:

> ***12. Registration of stock-brokers, sub-brokers, share transfer agents, etc.—(1) No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the made under this Act:***
>
> *Provided that a person buying or selling securities or otherwise dealing with the securities market as a stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application:*
>
> *Provided further that any certificate of registration, obtained immediately before the commencement of the Securities Laws (Amendment) Act, 1995, shall be deemed to have been obtained from the Board in accordance with the regulations providing for such registration.*

> *(1A) No depository, participant, custodian of securities, foreign institutional investor, credit rating agency, or any other intermediary associated with the securities market as the Board may by notification in this behalf specify, shall buy or sell or deal in securities except under and in accordance with the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act:*
>
> *...*
>
> *[Emphasis supplied]*

54. Securities and Exchange Board of India (Bankers to an Issue) Regulations, 1994 in Regulation 2(aa) defines 'banker to an issue' and in Regulation 2(e) defines a 'scheduled bank', which read as under:

> *"2(1)*
>
> *...*
>
> *(aa) "banker to an issue" means a scheduled bank carrying on all or any of the following activities, namely :—*
>
> *(i) acceptance of application and application monies;*
>
> *(ii) acceptance of allotment or call monies;*
>
> *(iii) refund of application monies;*
>
> *(iv) payment of dividend or interest warrants;"*
>
> *…*
>
> *"(e) "scheduled bank" means a bank included in the Second Schedule of the Reserve Bank of India Act, 1934 (2 of 1934)"*

55. The Second Schedule of the Reserve Bank of India Act, 1934 then provides for ICICI Bank Ltd. i.e., the petitioner bank.

56. The question that then arises before this court is—whether the persons or class of persons referred to in Section 12 can be made subject to the powers under Section 11B prior to the registration as provided for under Section 12 of the SEBI Act, 1992. In other words, do the persons or classes of persons referred to in Section 12 necessarily have to be registered with SEBI in order to be subject to its powers under Section 11B.

57. The precise wording of the provision under Section 11B(1)(iii)(a) may be scrutinised. It states "any person or class of persons referred to in Section 12" as opposed to "any person or class of persons registered under Section 12". The expressions “registered with the board” or “registered as an intermediary” are liberally used by the legislature under Chapter VIA of the SEBI Act, 1992 as also may be seen under Section 11AA of the SEBI Act, 1992.

58. On the other side, Regulations, 2008 under Regulation 2(1)(g) define “intermediary”, and reference the persons under Section 12 in a manner similar to the manner in which it is referred under Section 11B(1)(iii)(a). It reads as under:

> *“2(1)(g) “intermediary” means a person mentioned in clauses (b) and (ba) of sub-section (2) of section 11* ***and sub-section (1) and (1A) of section 12 of the Act*** *and includes an asset management company in relation to the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, a clearing member of a clearing corporation or clearing house foreign portfolio investors and a trading member of a derivative segment or currency derivatives segment of a stock exchange but does not include foreign venture capital investor, mutual fund, collective investment scheme and venture capital fund;”*
>
> *[Emphasis supplied]*

59. It can thus be seen that the SEBI Act, 1992 and the Regulations framed under it, employ references to the entities listed under Section 12 in two ways, first is by referring to them post the registration, and the second is a reference to the persons or class of persons *in simpliciter* i.e., without the qualification of registration under Section 12 of the SEBI Act, 1992.

60. It is also of importance to consider that the exhaustive list provided under Section 12 is not repeated in any part of the SEBI Act, 1992. It thus gives credence to the point that if a provision under the SEBI Act, 1992, intends to refer to the persons or class of persons

enumerated under Section 12 with the qualification of registration, words to that effect, must be provided for, in the provision making the reference to the Section.

61. There is thus only one plain meaning that can be given to Section 11B(1)(iii)(a), it being, that persons or class of persons referred to in Section 12, are referred irrespective of the registration under Section 12. In other words, in order for Section 11B(1)(iii)(a) to be attracted, one may only need to fall in the person or class of persons referred to in Section 12 irrespective of their registration with SEBI.

62. It may be true that this construction, casts the web of powers that SEBI enjoys, to a larger degree than the other narrower construction would have. But merely on the basis of the consequences, this court cannot limit the plain meaning of a text.

63. In this regard, GP Singh's Principles of Statutory Interpretation 15th Ed., pp. 38-39 notes as under:

> *"When the words of a statute are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences.*[55] *The rule stated by Tindal C.J. in Sussex Peerage's case is in the following form:*
>
> > *"If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the lawgiver."* [56]
>
> *The rule is also stated in another form:*

[55] *Nelson Motis v UOI*, AIR 1992 SC 1981, p 1984; *Gurudevdata VKSSS Maryadit v State of Maharashtra*, AIR 2001 SC 1980, p 1991; *State of Jharkhand v Govind Singh*, AIR 2005 SC 294, p 296; *Nathi Devi v Radha Devi Gupta*, AIR 2005 SC 648, p 659.
[56] *Sussex Peerage case*, (1844) 11 Cl & F 85, p 143.

> *"When a language is plain and unambiguous and admits of only one meaning no question of construction of a statute arises, for the Act speaks for itself."*[57]

The results of the construction are then not a matter for the court, even though they may be strange or surprising, unreasonable or unjust or oppressive. "Again and again", said Viscount Simonds LC, "this Board has insisted that in construing enacted words we are not concerned with the policy involved or with the results, injurious or otherwise, which may follow from giving effect to the language used".[58] *As said by Gajendragadkar J:*

If the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act."[59]

64. On similar footing, Craies on Legislation, 9th Ed., describes construction according to plain meaning as the cardinal rule. On page 611, paragraph no.17.1.1 the rule is described in the following words:

> *"**The traditional rule***
>
> *The cardinal rule for the construction of legislation is that it should be construed according to the intention expressed in the language used. So the function of the court is to interpret legislation "according to the intent of them that made it"*[60] *and that intent is to be deduced from the language used.*[61]
>
> *Ideally, as stated above, the words of the legislation will be precise and unambigoius and wherever they are they are the best and only true means ofdeclaring the intention of the legislature. As Tindal C.J. said in Warburton v. Loveland*[62]*—*
>
> > ***"Where the language of an Act is clear and explicit, we must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the legislature."***"
>
> *[Emphasis supplied]*

65. On consequences of clear language, page 613, paragraph no.17.1.4 of Craies on Legislation *(supra)* the following is stated:

---

[57] *State of Uttar Pradesh v Vijay Anand Maharaj*, AIR 1963 SC 946, p 950 : (1963) 1 SCR 1 (Subbarao, J).
[58] *Emperor v Benoarilal Sarma*, AIR 1945 PC 48, p 53.
[59] *Kanailal Sur v Paramnidhi Sadhu Khan*, AIR 1957 SC 907, p 910 : (1958) SCR 360.
[60] 4 Co. Isnt. 330.
[61] *Capper v. Baldwin* [1965] 2 QB 53, 61 per Lord Parker CJ.
[62] (1832) 2 D. & Cl. (HL) 480, 489.

> *"The principal effect of the cardinal rule, subject to the restrictions and modifications explored below, is that a court is bound to give effect to clear legislative language even if the consequences in the instant case are such that the legislature did not contemplate and would not have countenanced. As Jervis C.J. said in Abley v Dale*[63]*—*
>
> > *"If the precise words used are plain and unambiguous, we are bound to construe them in their ordinary sense, even though it does lead to an absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure, but we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning."*

66. Indeed it is the case, that this traditional rule has now become subject to the qualification that absurd results must be avoided, but the present case does not fall under the exceptions to the said rule. We are thus left with the plain meaning of the provision.

67. This court is therefore of the opinion that Section 11B(1)(iii)(a) of the SEBI Act, 1992 allows for directions to be given to persons or class of persons referred to in Section 12 of the SEBI Act, 1992 irrespective of the persons or class of persons being registered with SEBI.

68. Broad powers are given to SEBI under Section 11B of the SEBI Act, 1992 and Regulation 35(e) of the Regulations, 2008. While Regulation 35(e) does not explicitly provide against whom directions can be passed under this Regulation. It can undeniably be passed against entities mentioned under Regulation 35 itself, including intermediaries and persons associated with the securities market.

69. Section 11B of the SEBI Act, 1992, explicitly provides that directions can be issued to any person or classes of persons referred to in Section 12 or persons associated with the securities market

[63] (1850) 20 LJCP 33, 35.

70. Indeed the power to direct a bank is necessary for the proper functioning of SEBI. Such powers are incidental to ensuring that the purpose of the investigation or enquiry conducted by SEBI actually fructifies. But for this power, an individual may, without more, dissipate its assets.

71. The person or entity who acquires or collects assets through questionable means, may, as soon as they are informed of investigations or enquiries being initiated against them, liquidate and transfer their assets in a form and place where they are beyond the reach of SEBI. It would be unwise to construct the provisions of the SEBI Act, 1992 and the Regulations framed thereunder, in a manner that the aforesaid effect is reached.

72. However, it is worthwhile to note that the powers so conferred upon SEBI under the SEBI Act, 1992 need to be exercised in a manner such that they do not come in conflict with, or curtail the effect of, other laws. Meaning thereby, that the exercise of power by SEBI, which is conferred upon it by the SEBI Act, 1992 remain a legal and legitimate exercise of power only, and insofar as, it does not breach the mandate of other laws.

73. In the facts of the instant case, SEBI does have the power to direct the petitioner bank, however, that power must be exercised with due caution. It must not be exercised so as to curtail the effect of other laws.

74. From the above analysis, it can be concluded that SEBI is possessed with powers under the SEBI Act, 1992 to direct the petitioner bank in specific, and banks in general, regardless of them being registered with SEBI.

75. Having decided on competency, it must now be examined whether the said Orders prevent the petitioner bank from alienating the mortgaged property of respondent no.3 and 4.

76. In order to better appreciate the tenor of the said Orders, their material parts are reproduced as under. The relevant portion of the Order dated 29.05.2018 passed by the Whole Time Member of SEBI reads as under:

> *"...*
>
> *27. In view of the above, I, in exercise of powers conferred upon me by virtue of section 19 read with sections 11 (1), 11 (4), 11B and 11D of the SEBI Act, 1992, Regulation 35 of Securities And Exchange Board of India (Intermediaries) Regulations, 2008, by way of this ex parte - ad- interim order, hereby issue the following directions:*
>
> > *a. F6 Finserve Private Limited, F6 Commodities Private Limited, Mr. Pankaj Goel, Mr. Parveen Sharma, Mr. Meenu Goel, Mr. Sanjay Anand, Ms. Kavita Anand, Ms. Asha Sharma, Mr. Deepak Goel and Ms. Ruchika Goel are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities, either directly or indirectly, or being associated with the securities market in any manner whatsoever, till further directions:*
> >
> > *b. The aforesaid entities and persons shall cease and desist from undertaking any activity in the securities market, directly or indirectly, in any manner whatsoever till further directions;*
> >
> > *c. The aforesaid entities and persons are directed to provide a full inventory of all their assets, whether movable or immovable, or any interest or investment or charge in any of such assets, including details of all their bank accounts, demat accounts and mutual fund investments immediately but not later than 5 working days from the date of receipt of these directions.*
> >
> > *d. The aforesaid entities and persons are directed not to dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge in any of such assets excluding money lying in bank accounts except with the prior permission of SEBI.*

e. Till further directions in this regard, the assets of these entities shall be utilized only for the purpose of payment of money and/or delivery of securities, as the case may be, to the clients/Investors under the supervision of the concerned stock exchange(s).

f. The depositories are directed to ensure that no debits are made in the demat accounts, held jointly or severally, of the aforesaid entitles and persons except for the purpose mentioned in sub-para (e) after confirmation from the concerned stock exchange in this regard.

g. Registrar and transfer Agents are also directed to ensure that the securities (including mutual fund units) in physical form, held jointly or severally, by the aforesaid entitles and persons are not transferred/redeemed except for the purpose mentioned in sub-para (e) after confirmation from the concerned stock exchange in this regard.

h. The banks are directed to ensure that no debits are made in the bank accounts held jointly or severally by F6 Finserve Private Limited, F6 Commodities Private Limited, Mr. Pankaj Goel, and Mr. Meenu Goel, except for the purpose of payment of money to the clients/investors under the written confirmation of the concerned stock exchange(s).

i. The above directions are without prejudice to the right of SEBI total any other action that may be initiated in respect of aforesaid entities/persons.

28. As noted above, during the inspection it has been observed that F6 had misused the securities and funds of its clients to the benefit of a few specific clients. In my view it is essential that the role of such clients is examined in detail in the ongoing inquiry examination by SEBI.

29. The findings recorded in the order are based on the prime facie examination of facts and prima facie violation of law.

30. This order shall come into force with immediate effect. A copy of this order shall be forwarded to all the Stock Exchanges, the relevant banks, Registrar and Transfer Agents and the Depositories to ensure that the directions given above are strictly complied with.

…"

77. The material part of the confirmatory order dated 14.12.2018 passed by Whole Time Member of SEBI, reads as under:

"…

***Order**:*

26. Considering the above, I, in exercise of the powers conferred upon me under Section 19 of the SEBI Act, read with Sections 11(1), 11(4) and IID thereof, hereby confirm that the directions issued vide ad interim ex parte order dated May 29, 2018 as against the Noticees mentioned above, shall continue until further orders.

27. In the matter of Amrapali Aadya Trading & Investment Pvt. Ltd. decided on October 31, 2018 wherein similar circumstances existed, to protect the interest of clients/investors it was directed that a separate demat count and separate interest bearing bank account shall be opened wherein the securities and funds belonging to the Noticee therein would be transferred. The in extant matter, the interim order dated May 29, 2018 directed the depositories, Registrar and Transfer Agents and banks that no debits/transfer is made from the accounts of the Noticees. I, therefore, direct as under:

a. Since the claim value is higher at NSE, NSE Defaulters Committee shall, as expeditiously as possible, open and operate a dedicated demat account where all the securities lying in the demat account of F6 Finserve shall be transferred.

b. The NSE Defaulters Committee shall open and operate a dedicated interest bearing bank account with a Nationalized Bank where all the funds lying in various bank accounts held in the name of F6 Finserve, Mr. Pankaj Goel and Ms. Meenu Goel, shall be transferred.

c. The MXY's Defaulters Committee shall open and operate a dedicated interest bearing bank account with a Nationalized Bank where all the funds lying in various bank accounts held in the name of F6 Commodities shall be transferred.

28. This order is without prejudice to any enforcement action that SEBI may deem necessary against the Noticees pursuant to the investigation in the matter. This order shall continue to be in force till further directions.

…"

78. It may be seen that there are three species of directions that are issued by SEBI in its order dated 29.05.2018, which were later confirmed by the order dated 14.12.2018. The first are directions that are issued to specific persons and entities. In this are included the directions found in paragraph nos.27(a)-(d). The second species relate to directions issued to persons and entities connected with the securities market them being depositories, registrars and transfer

agents. This includes the directions in paragraph nos.27(f) and (g). Third category relate to directions issued to persons and entities that are neither necessarily part of the investigation, nor compulsorily connected with the securities market. This includes directions in paragraph nos.27(e) and (h) and 30.

79. *Ex facie* it may be seen that the petitioner bank is not a registrar to an issue or a share transfer agent, however it may be briefly examined whether the petitioner bank is a 'depository', and therefore falls under the second species of directions. The word 'depository' has not been defined under the SEBI Act, 1992, however, Section 2(2) of the SEBI Act, 1992 provides that words and expressions that remain undefined under the SEBI Act, 1992 shall borrow their meanings from the Securities Contracts (Regulations) Act, 1956 or the Depositories Act, 1996. Section 2(2) of the SEBI Act, 1992 is reproduced as under:

> *"(2) Words and expressions used and not defined in this Act but defined in the Securities Contracts (Regulation) Act, 1956 (42 of 1956) or the Depositories Act, 1996 (22 of 1996) shall have the meanings respectively assigned to them in that Act."*

80. The definition of a 'depository' is not to be found in the Securities Contracts (Regulation) Act, 1956, however, the Depositories Act, 1996 in Section 2(e) defines the same. It reads as under:

> *"2…*
>
> *(e) "depository" means a company formed and registered under the Companies Act, 1956 (1 of 1956) and which has been granted a certificate of registration under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992)"*

81. It is the case of the petitioner bank that it is not registered with the SEBI, therefore, it does not fall under the second species of

directions. It must now be examined whether the petitioner bank could be included under the third category.

82. A perusal of paragraph no.27(e) of the order dated 29.05.2018 would reveal that a general direction is given that the assets of the entities are to be utilized only for the purpose of payment and/or delivery of securities to the clients/investors under the supervision of the concerned stock exchanges.

83. Similarly, paragraph no.27(h) of the order dated 29.05.2018 gives an explicit instruction to banks to ensure that no debit is made from the bank accounts of respondent nos.3 and 4, save and except cases for the payment of money to clients/investors with a written confirmation of the stock exchange.

84. It is certainly the case that the petitioner bank falls under the category of a "bank", therefore directions contained in paragraph no. 27(e) read with paragraph no.30; and in paragraph no.27(h) do apply to the petitioner bank.

85. However, it is of significance to note the true import of the directions. A careful scrutiny of the directions contained in paragraph nos.27(e) and (h), and paragraph no.30, reveal that they do not prevent the petitioner bank from alienating the assets of respondent no.3 and 4, including the mortgaged property.

86. The direction contained in paragraph no.27(e) puts a restriction upon the assets of the "entities" from being alienated. These "entities" are distinct from "persons", a word which finds mention in the directions contained in paragraph nos.27(b)-(d) and (f)-(g).

87. Notably, this classification between "persons" and "entities" stems from the direction contained in paragraph no.27(a), this

paragraph enlists certain companies namely F6 Finserve Pvt. Ltd. and F6 Commodities Pvt. Ltd. as well as certain individuals, including respondent nos.3 and 4. The companies, in subsequent paragraphs have been referred to as "entities" while the individuals are termed as "persons".

88. The mortgaged property undoubtedly belongs to respondent nos.3 and 4, who are individuals or "persons" as opposed to "entities". It is therefore the case that the directions contained in paragraph no.27(e) do not prevent the assets of respondent no.3 and 4, including the mortgaged property, from being alienated.

89. Reading the directions in paragraph no.27(e) with paragraph no.30 also offers no assistance to the respondents. The direction contained in paragraph no.30 merely stipulates that the order dated 29.05.2018 is to be communicated to certain entities and persons in order to ensure compliance with the directions in the preceding paragraphs. Thus, paragraph no.30, does not order anything not already ordered, nor does it direct anything not already directed in the preceding directions.

90. Even if paragraph no.30 is to apply to the petitioner bank, it would only amount to a direction to ensure compliance. The petitioner bank, insofar as its compliance is concerned, is only asked to do or forebear from doing what has been stated in the applicable preceding paragraphs. There is nothing in the directions contained in the preceding paragraphs that prevent the petitioner bank from alienating the assets of respondent nos.3 and 4, including the mortgaged property.

91. Further, in terms of the directions contained in paragraph no.27(h), it can be seen that it orders the relevant banks to prevent

debits being made in the accounts of the persons and entities so mentioned in the paragraph. It therefore has no relevance or application to the mortgaged property of respondent nos.3 and 4.

92. The confirmatory order dated 14.12.2018, in addition to confirming the *ex parte* interim order dated 29.05.2018, in paragraph no.27, directs the NSE Defaulters Committee to open and operate a dedicated demat account where all the securities lying in the demat account of F6 Finserve shall be transferred.

93. It further directs the NSE Defaulters Committee to open and operate a dedicated interest bearing bank account with a Nationalized Bank where all the funds lying in the various bank accounts held in the name of F6 Finserve, Mr. Pankaj Goel and Ms. Meenu Goel shall be transferred.

94. Similarly, MCX's Defaulter's committee was directed to open and operate a dedicated demat account where all the securities lying in the demat accounts of F6 Commodities shall be transferred, and also open a dedicated interest bearing bank account with a Nationalized Bank, in which all the funds lying in the various bank accounts held in the name of F6 Commodities shall be transferred.

95. It is, therefore, clear that the confirmatory order dated 29.05.2018, also does not contain a direction that prevents the petitioner bank from auctioning the mortgaged property.

96. Lastly, the final order dated 09.06.2022 brought on record by respondent nos.1 and 2 also does not contain a specific direction that prevents the petitioner bank from auctioning the mortgaged property.

97. It is therefore seen, that there is no explicit direction to the effect that the assets mortgaged by respondent nos.3 and 4

individually, cannot be disposed of by the petitioner bank to realise the debt owed to it by respondent nos.3 and 4.

98. From the above analysis, it can be concluded that though the said Orders apply to the petitioner bank, and SEBI possesses the requisite legal power to direct the petitioner bank, the precise and specific wording of the directions is not of such a nature that the petitioner bank is prevented from alienating the assets of respondent no.3 and 4, including the mortgaged property.

99. Having come to this conclusion, it is unnecessary to consider whether the said Orders operate *in rem* or *in personam*. A finding on the nature of the said Orders cannot modify or alter the content of the direction. The said Orders do contain directions that are applicable to the petitioner bank, and SEBI has powers vested in it by law, however, the precise wording of the directions contained within them, does not contain an order that prevents the petitioner bank from dealing with the property of respondent nos.3 and 4 which is mortgaged to it, and realising it, in accordance with law.

100. That being the case, this courts finds it unwarranted to decide upon the academic issue whether orders passed under Sections 11(4), 11B and 11D of the SEBI Act, 1992 and Regulation 35 of the Regulations, 2008 operate *in rem* or *in personam*.

101. This court must now consider the issue relating to the impugned e-mails, including the nature of the impugned emails.

102. In ***National Securities Depository Ltd.*** *(supra)* while dealing with the aspect related to the nature of quasi-judicial orders, the Hon'ble Supreme Court cited with approval ***Shivji Nathubhai v.***

Union of India & Ors.[64]**,** in which after setting out Lord Justice Atkin's passage in ***Province of Bombay v. Khushaldas S. Advani***[65]**,** the Apex Court had held the following three, as requisites, that need to be fulfilled, in order for an administrative act to be characterised as quasi-judicial—(i) there must be legal authority; (ii) this authority must be to determine questions affecting the rights of subjects; and (iii) there must be a duty to act judicially.

103. Further, in ***HB Stockholdings Limited*** *(supra)*, the nature and meaning of an "order" was expounded upon. It was ruled that an order is primarily a decision which has the effect of a command, whether called by such name or not, and is distinguishable from an advice or request, by the nature of the consequence that may flow from the non-implementation of the same. Furthermore, it was held that in order to ascertain whether a communication or decision amounts to an order, its substance and not its form has to be seen. If a particular direction, request or observation is binding and has penal consequences for its violation, the same will have to be treated as an order.

104. The material part of the e-mail dated 29.01.2021 reads as under:

> *"3. It has been brought to the notice of SEBI that ICICI bank vide public notice dated December 19, 2020 ICICI bank (through its branch office Plot no. 23, 3rd Floor, Shahi Tower, new Rohtak Road, Karolbagh, new delhi-110005) is conducting online auction of the Property which is held in the name of Mr. Deepak Goel and Mrs. Ruchika Goel situated at Villa No. TV-G-GV-07, The palm springs, Village Wazirabad, Sector 54, Gurgaon-1220002 (Haryana) 7136.93 sq.ft (enclosed)*
>
> *4. It is informed that, as per para no. 27 (d) of the Order dated May 29, 2018, SEBI passed one of following direction against the persons/entities mentioned above:*
>
> *"…The aforesaid entities and persons are directed not to dispose of or alienate any assets, whether movable or immovable, or any*

[64] (1960) 2 SCR 775.
[65] (1950) SCR 621.

interest or investment or charge in any of such assets excluding money lying in bank accounts except with the prior permission of SEBI..."

5. Vide email dated 29.05.2018 and 14.12.2018 the Copy of the order was also sent to ICICI bank. For reference the copy of the orders is being enclosed herewith. ***Considering the above directions are in place you are advised to ensure compliance of SEBI orders****."*

[Emphasis supplied]

105. The material part of the e-mail dated 18.03.2021 reads as follows:

"With reference to trailing mail it is informed that the interim orders issued by SEBI invokes powers under sections 11(1), 11(4), 11B and I1D of the SEBI Act, 1992 ***partakes the character of 'an order in rem' and binds all constituents dealing with the broker or his assets/liabilities till the compliance of investigation/forensic audit. Such interim freezing orders cannot be stated to be binding only on the person/entity which has contravened the provisions of securities laws but also binds other constituents in the market such as banks, Companies, intermediaries etc. who have dealings with the subject assets of the Stock broker or entered into transactions with the said broker or its clients.***

In view of the above, the steps taken by ICICI bank for sale of the property when a proper Prohibitory Order by SEBI is in place, without seeking prior permission of the SEBI is not considered appropriate.

You are therefore advised to ensure compliance of SEBI orders dated May 29, 2018 and December 14, 2018 and not to initiate any action which is in violation of the said orders*."*

[Emphasis supplied]

106. Applying the ruling of ***Stockholdings Limited*** *(supra)*, the present impugned e-mails are to be distinguished from orders. The three conditions as stated in ***Shivji Nathubhai*** *(supra)*, which are to be fulfilled, in order for the impugned e-mails to be deemed quasi-judicial orders, are also not fulfilled. The impugned e-mails are neither by an authority that is to determine questions affective the rights of subjects nor was respondent no.1 under a duty to act judicially when he had sent the impugned e-mails.

107. The impugned e-mails are thus communicative in nature.

108. The e-mail dated 29.01.2021 informs the petitioner bank of the existence of the said Orders, cites paragraph no.27(d) of the order dated 29.05.2018 and advises the petitioner bank to comply with the same. The e-mail dated 18.03.2021 declares that the said Orders operate *in rem*, they are applicable to the petitioner bank, the act of the petitioner bank wanting to auction the mortgaged property is "inappropriate", and that the petitioner bank is to comply with the directions in the said Orders.

109. Though not properly framed, the emails, in effect, communicate that the said Orders contain directions, including the direction in paragraph no.27(d) of the order dated 29.05.2018, which is applicable to the petitioner bank as the said Orders operate *in rem*, and the petitioner bank, is therefore, prevented from auctioning the mortgaged property. This court believes this to be faulty reasoning.

110. As had been explained in the preceding paragraphs, the order dated 29.05.2018, in exclusion to the direction in paragraph no.27(e), contains specific directions to specific entities and persons. The direction in paragraph no.27(e) as well, relates to the assets of the entities and not of the individuals. The assets of respondent nos.3 and 4 therefore fell outside the scope of the direction contained in paragraph no.27(e).

111. A finding that the said Orders operate *in rem*, cannot change the material terms of the direction. They cannot make the direction applicable to persons to whom it is not applicable. For instance, it cannot be the case, that a direction that requires a person '*x*' to do or to omit from doing a particular act, when found to be *in rem*, requires the rest of the world, including persons and entities not specifically

directed as also those completely unconnected with the proceedings, to ensure that '*x*' actually does or forebears from doing that particular act. The reasoning contained in the impugned emails is thus erroneous.

112. Therefore, the said e-mails, expand the scope of the said Orders, and are inconsistent with it.

113. From the abovementioned analysis, it can be concluded that the impugned emails were erroneous and wholly without jurisdiction.

114. This court must now holistically examine the issue of maintainability in light of the above reached conclusions on the ancillary and incidental issues.

115. In ***Thansingh Nathmal*** *(supra)*, it was held by the Hon'ble Supreme Court that despite the wording of Article 226 of the Constitution of India being broad, there must be certain self-imposed limitations on this discretionary relief, and they must be of a nature, that would disallow Article 226 being treated as an alternative remedy. Conversely then, in the presence of an existing legal machinery for the resolution of a dispute or for the granting of relief so prayed in an Article 226 petition, the writ jurisdiction of a High Court should not be exercised.

116. Further in ***Nivedita Sharma*** (*supra)*, the Apex Court, while approving ***Thansingh*** *(supra)* held that if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance, a relief under Article 226 of the Constitution shall not lie.

117. In ***Greatship (India) Ltd.*** *(supra)*, again the Hon'ble Supreme Court set aside the order of the High Court on the grounds that the

High Court had erred in entertaining a writ petition under Article 226 of the Constitution of India against an assessment order passed by the Assessing Officer under the Maharashtra Value Added Tax Act, 2002 and the Central Sales Tax Act, 1956, bypassing the statutory remedies.

118. The Hon'ble Supreme Court in ***Gurdev Singh*** *(supra)*, while relying upon Prof. Wade on Administrative Law, 6th Ed., page no. 352, stated as under:

> *"9. Apropos to the principle. Prof. Wade states: "the principle must be equally true where the 'brand' of invalidity" is plainly visible; for there also the order can effectively be resisted in law only by obtaining the decision of the court. Prof Wade sums up these principles:*
>
> *"The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is in reality, valid. It follows that an order may be void for one purpose and valid for another; and that it may be void against one person but valid against another."*

119. In ***Kuber Floritech Ltd.*** *(supra)* and ***Balvir Singh*** *(supra)*, this court, on the grounds that an alternate efficacious remedy within the statute is available, dismissed writ petitions wherein orders passed by SEBI were under challenge.

120. In ***Raj Kumar Shivhare*** *(supra)* the Apex Court ruled that the Hon'ble High Court patently erred in allowing a writ petition in exercise of powers under Article 226 of the Constitution of India even when the petitioner had failed to demonstrate as to why the alternative statutory remedy in the form of an appeal under Section 35 of the Foreign Exchange Management Act, 1999 is not efficacious.

121. Further, ***Kuntesh Gupta*** *(supra)* and ***Whirlpool Corporation*** *(supra)*, have been relied on; the said cases exhort that in cases where the impugned order/action is wholly without jurisdiction and in cases where the principles of natural justice have not been followed, the existence of an alternate remedy shall not act as a bar for the invocation of a High Court's powers under Article 226. The material part of ***Whirlpool Corporation*** *(supra)* is reproduced as under:

> *"**14.** The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution This power can be exercised by the High Court not only for issuing writs in the nature of Habeas Corpus, Mandamus, prohibition, Qua Warranto and Certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".*
>
> ***15.** Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction.* ***But the alternative remedy has been consistently held by this court not to operate as a bar in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.***
>
> *...*
>
> ***20.** Much water has since flown beneath the bridge, but there has been no corrosive effect on these decisions which though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a Writ Petition under Article 226 of the Constitution,* ***in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the Writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation****."*
>
> *[Emphasis supplied]*

122. In a recent pronouncement of the Hon'ble Supreme Court in the case of ***Godrej Sara Lee Ltd. v. Excise & Taxation Officer***.[66], while elaborating upon the distinction between maintainability and entertainability of a petition, the Hon'ble Supreme Court clarified that the doctrine of alternate remedy belongs to the sphere of entertainability. There is thus, not an absolute bar that is placed upon the powers of the High Court.

123. The Hon'ble Supreme Court further gave a finding that in cases where the dispute is purely legal, and does not involve disputed questions of fact but only questions of law, then the same should be decided by the High Court instead of dismissing the writ petition on the grounds of alternate remedy. The material part of the judgement in ***Godrej Sara Lee Ltd.*** *(supra)* is reproduced as under:

> *"Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by Article 226 of the Constitution having come across certain orders passed by the high courts holding writ petitions as "not maintainable"* ***merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself****. Profitable reference in this regard may be made to Article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner****, yet, the mere fact that the petitioner before the high court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the high courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not.*** *One of the self-imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the high courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy*

[66] 2023 SCC OnLine SC 95.

*is available**. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the high court under Article 226 has not pursued, would not oust the jurisdiction of the high court and render a writ petition "not maintainable". In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the high courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a high court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.***

*8. That apart, we may also usefully refer to the decisions of this Court reported in (1977) 2 SCC 724 (State of Uttar Pradesh v. Indian Hume Pipe Co. Ltd.) and (2000) 10 SCC 482 (Union of India v. State of Haryana). What appears on a plain reading of the former decision is that whether a certain item falls within an entry in a sales tax statute, raises a pure question of law and if investigation into facts is unnecessary, the high court could entertain a writ petition in its discretion even though the alternative remedy was not availed of; and, **unless exercise of discretion is shown to be unreasonable or perverse, this Court would not interfere.** In the latter decision, this Court found the issue raised by the appellant to be pristinely legal requiring determination by the high court without putting the appellant through the mill of statutory appeals in the hierarchy. **What follows from the said decisions is that where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the high court instead of dismissing the writ petition on the ground of an alternative remedy being available."***

[Emphasis supplied]

124. From the conspectus of authorities set out above, the position of law that emerges is that normally a High Court may not entertain a writ petition in which the reliefs prayed for, can be claimed from an alternate forum; however, this self-imposed rule is of convenience and a High Court may, in an appropriate circumstance, choose to entertain a writ petition despite there being an alternative remedy available to the petitioner.

125. This court must now consider the judgements relied upon by the learned senior counsel relating to the nature of appeals under the SEBI Act, 1992.

126. In ***National Securities Depository Ltd*** *(supra)*, the Hon'ble Supreme Court decided upon the issue—whether an administrative circular that is issued by SEBI under Section 11(1) of the SEBI Act, 1992 can be the subject-matter of an appeal under Section 15T. While ruling on the nature of appeals, it was held that Section 15T envisages appeals by persons aggrieved not only by an order of SEBI made under the SEBI Act, 1992, Rules or Regulations, but by orders made by an adjudicating officer under the Act. Under Section 15I, SEBI can appoint an officer not below the rank of a Division Chief to be an adjudicating officer to hold an inquiry, give a hearing to the person concerned and thereafter impose a penalty, all of which points to only quasi-judicial functions being exercised by such officers.

127. After having considered a catena of pronouncements by the Hon'ble Supreme Court, it was held that administrative orders such as circulars referable to Section 11(1) of the SEBI Act, 1992 are outside the appellate jurisdiction of the Tribunal. Paragraph no.25 of the judgement is reproduced as under:

> *"It may be stated that both Rules made Under Section 29 as well as Regulations made Under Section 30 have to be placed before Parliament Under Section 31 of the Act. It is clear on a conspectus of the authorities that it is orders referable to Sections 11(4), 11(b), 11(d), 12(3) and 15-I of the Act, being quasi-judicial orders, and quasi judicial orders made under the Rules and Regulations that are the subject matter of appeal Under Section 15T. Administrative orders such as circulars issued under the present case referable to Section 11(1) of the Act are obviously outside the appellate jurisdiction of the Tribunal for the reasons given by us above. Civil Appeal No. 186 of 2007 is, therefore, allowed and the preliminary objection taken before the Securities Appellate Tribunal is sustained. The judgment of the Securities Appellate Tribunal is, accordingly, set aside."*

128. Further, in ***HB Stockholdings Limited*** *(supra)* on the issue of maintainability of an appeal, it was held that in order to ascertain whether a communication or decision amounts to an order within the meaning of Section 15T, its substance and not its form has to be seen. If a particular direction, request or observation is binding and has penal consequences for its violation, the same will have to be treated as an order.

129. Subsequently, ***Radha Krishan Industries***, ***State of H.P.*** *(supra)*, ***Jashbhai Motibhai*** *(supra)*, ***Ramprasad Somani*** *(supra)*, detail out the exceptions to the rule of alternate remedy and the importance of a legal infringement for having a *locus standi*.

130. It is pertinent to mention an important finding in ***Ramprasad Somani*** *(supra)*, it being that the meaning of the words "person aggrieved" as they appear in Section 15T of the SEBI Act, 1992 are nowhere defined and must be construed in the context in which they appear, and they are to be determined whilst considering whether the rights of a person, who is aggravating his concern, has been infringed.

131. Considering the findings reached by this court in the preceding paragraphs, this court is of the opinion that the said Orders are legally

not challenged by the petitioner bank. The petitioner bank cannot be said to be aggrieved by the said Orders, as they do not prevent the petitioner bank from auctioning the mortgaged property of respondent nos.3 and 4.

132. The argument of the learned counsel for respondent nos.1 and 2—that the doctrine of alternative remedy applies in the present case, is therefore found to be misplaced. The petitioner bank cannot challenge an order which it is not aggrieved by. The entire edifice of the petitioner bank's case rests upon the said Orders not preventing them from realising their debts by auctioning the mortgaged property. The petitioner bank, therefore, impugned the e-mails dated 29.01.2021 and 18.03.2921 and not the said Orders.

133. The cases of ***Nivedita Sharma*** *(supra),* ***Thansingh Nathmal*** *(supra)* and ***State of Maharashtra*** *(supra)* are of, therefore, no help to respondents nos.1 and 2, as the said cases have application only in cases where there is, in fact, an alternative remedy that is available to a petitioner. The reliance of respondent nos.1 and 2, on the approval of Prof. Wade's words in ***Gurdev Singh*** *(supra)* is correct, they are again reproduced hereunder:

> *"The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances…"*

134. In the present circumstances, this court is of the opinion that the petitioner bank is the right person seeking the right remedy in the right proceedings. The judgments delivered by this court in ***Kuber Floritech Ltd*** *(supra)* and ***Balvir Singh*** *(supra),* are simply not applicable in the instant case as what was assailed in the abovementioned judgements were orders, moreover the court had

found the concerned orders to be appealable under Section 15T of the SEBI Act, 1992.

135. Further, ***Raj Kumar Shivhare*** *(supra)*, is inapplicable as the present case has a different factual matrix than the judgement cited. The petitioner bank has been successful in convincing this court as to why the statutory appeal is not available to them.

136. From the above analysis, it can be concluded that the petitioner bank has not committed an error by choosing not to impugn the said Orders. The petitioner bank assailing the e-mails/communications dated 29.01.2021 and 18.03.2021 and not impugning the said Orders, while the said Orders remain standing, does not prevent this court from finding the present petition to be maintainable.

137. It must also be seen that the e-mail dated 29.05.2018 was sent by respondent no.1, after being agitated by the petitioner bank's public notice for the auction of the mortgaged property. The communications, though couching themselves under the garb of the said Orders, in effect direct the petitioner bank to not proceed with the auction of the mortgaged property. The statutory right of the petitioner bank guaranteed by the SARFAESI Act, 2002, is thus thwarted by the impugned e-mails. There is sufficient obstacle caused to the petitioner bank by their financial interest being compromised. An email from the Deputy General Manager of SEBI i.e., respondent no.1, that unfairly prevents the petitioner bank from exercising its legal rights, is sufficient cause to approach this writ court.

138. This court is, therefore of the considered opinion that since the impugned e-mails/communications were erroneous and wholly without jurisdiction; and the said Orders do not prevent the petitioner

bank from auctioning the mortgaged property, the present writ petition is maintainable.

139. This court must now decide the issue, which was argued at length before this court, whether SEBI in exercise of powers conferred under the SEBI Act, 1992 could prevent the petitioner bank from proceeding under the SARFAESI Act, 2002.

140. In ***Madras Petrochem Ltd.*** *(supra)*, the Hon'ble Supreme Court decided upon the inter-play between the SARFAESI Act, 2002, RDB Act, 1993 and the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter '**SICA Act**, **1985**'). The foundational question decided by the Hon'ble Supreme Court was—whether SICA Act, 1985 prevails over SARFAESI Act, 2002. The issue arose on the interpretation of Section 37, specifically the expression "any other law for the time being in force" in light of the *non-obstante* clause under Section 35.

141. The Hon'ble Supreme Court in paragraph no.13 of the said judgment recognised the differing aspects dealt with by the different statutes involved in the dispute, which is reproduced as under:

> *"13. It is important at this stage to refer to the genesis of these three legislations. Each of them deals with different aspects of recovery of debts due to banks and financial institutions. Two of them refer to creditors' interests and how best to deal with recovery of outstanding loans and advances made by them on the one hand, whereas the Sick Industrial Companies (Special Provisions) Act, 1985, on the other hand, deals with certain debtors which are sick industrial companies (i.e. companies running industries named in the schedule to the Industries (Development and Regulation) Act, 1951) and whether such "debtors" having become "sick", are to be rehabilitated. The question, therefore, is whether the public interest in recovering debts due to banks and financial institutions is to give way to the public interest in rehabilitation of sick industrial companies, regard being had to the present economic scenario in the country, as reflected in Parliamentary Legislation."*

142. After emphasising the purpose for which the SARFAESI Act, 2002 came into force, and harmoniously interpreting Section 35 and Section 37 of the SARFAESI Act, 2002, the Apex Court came to the conclusion that the scope of the expression "any other law for the time being in force" in Section 37 needs to be limited so as to exclude the SICA Act, 1985.

143. The case of ***KSL & Industries Ltd. v. Arihant Threads Ltd.***[67] arose by way of a reference made by a two-judge Bench of the Hon'ble Supreme Court wherein Hon'ble Justice C.K. Thakker and Hon'ble Justice Atlamas Kabir had had a difference of opinion on the interpretation of Section 35 of the RDB Act, 1993. Hon'ble Justice S.A. Bobde authoring for the three-judge Bench resolved the conflict between the SICA Act, 1985 and the RDB Act, 1993 by giving a finding in favour of the SICA Act, 1985. Paragraph nos.37-41 of the judgment are reproduced as under:

> ***"37. Sub-section (2) was added to Section 34 of the RDDB Act w.e.f. 17.01.2000 by Act No. 1 of 2000. There is no doubt that when an Act provides, as here, that its provisions shall be in addition to and not in derogation of another law or laws, it means that the Legislature intends that such an enactment shall co-exist along with the other Acts. It is clearly not the intention of the Legislature, in such a case, to annul or detract from the provisions of other laws. The term "in derogation of" means "in abrogation or repeal of." The Black's Law Dictionary sets forth the following meaning for "derogation":***
>
> *The partial repeal or abrogation of a law by a later act that limits its scope or impairs its utility and force.*
>
> ***It is clear that Sub-section (1) contains a non-obstante clause, which gives the overriding effect to the RDDB Act. Sub-section (2) acts in the nature of an exception to such an overriding effect. It states that this overriding effect is in relation to certain laws and that the RDDB Act shall be in addition to and not in abrogation of, such laws. The SICA is undoubtedly one such law.***
>
> ***38. The effect of Sub-section (2) must necessarily be to preserve the powers of the authorities under the SICA and save***

[67] (2008) 9 SCC 763

proceedings from being overridden by the later Act i.e. the RDDB Act.

39. We, thus, find a harmonious scheme in relation to the proceedings for reconstruction of the company under the SICA, which includes the reconstruction of debts and even the sale or lease of the sick company's properties for the purpose, which may or may not be a part of the security executed by the sick company in favour of a bank or a financial institution on the one hand, and the provisions of the RDDB Act, which deal with recovery of debts due to banks or financial institutions, if necessary by enforcing the security charged with the bank or financial institution, on the other.

40. There is no doubt that both are special laws. SICA is a special law, which deals with the reconstruction of sick companies and matters incidental thereto, though it is general as regards other matters such as recovery of debts. The RDDB Act is also a special law, which deals with the recovery of money due to banks or financial institutions, through a special procedure, though it may be general as regards other matters such as the reconstruction of sick companies which it does not even specifically deal with. Thus, the purpose of the two laws is different.

41. Parliament must be deemed to have had knowledge of the earlier law i.e., SICA, enacted in 1985, while enacting the RDDB Act, 1993. It is with a view to prevent a clash of procedure, and the possibility of contradictory orders in regard to the same entity and its properties, and in particular, to preserve the steps already taken for reconstruction of a sick company in relation to the properties of such sick company, which may be charged as security with the banks or financial institutions, that Parliament has specifically enacted Sub-section (2). The SICA had been enacted in respect of specified and limited companies i.e., those which owned industrial undertakings specified in the schedule to the IDR Act, as mentioned earlier, whereas the RDDB Act deals with all persons, who may have taken a loan from a bank or a financial institution in cash or otherwise, whether secured or unsecured etc."

[Emphasis supplied]

144. The judgement of ***KSL Industries Ltd.*** *(supra)* is, however, distinguishable. As was noted in paragraph no.35 of ***Madras Petrochem Ltd.*** *(supra)*, the *non-obstante* clause contained in Section 34(1) of the RDB Act, 1993 explicitly provides for a carve out, and makes itself subject to Section 34(2). This is not the case with the *non-obstante* clause contained in Section 35 of the SARFAESI Act, 2002. This is an important distinction between the provisions of the RDDB

Act, 1993 and the SARFAESI Act, 2002 as it affects the scope of the *non-obstante* clause, and the effect it shall have. In order to better appreciate the difference, the provisions are reproduced.

145. Section 34 of the RDB Act, 1993 is reproduced as under:

> *"34. Act to have over-riding effect.—**(1) Save as provided under sub-section (2)**, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.*
>
> *(2) The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Industrial Finance Corporation Act, 1948 (15 of 1948), the State Financial Corporations Act, 1951 (63 of 1951), the Unit Trust of India Act, 1963 (52 of 1963), the Industrial Reconstruction Bank of India Act, 1984 (62 of 1984) [the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) and the Small Industries Development Bank of India Act, 1989 (39 of 1989)."*
>
> *[Emphasis supplied]*

146. Sections 35 and 37 of the SARFAESI Act, 2002 read as under:

> *"**35. The provisions of this Act to override other laws.—The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.**"*
>
> *"**37. Application of other laws not barred**.—The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force."*
>
> *[Emphasis supplied]*

147. The important finding made by the Hon'ble Supreme Court in paragraph no.35 of ***Madras Petrochem Ltd.*** *(supra)* relating to the ambit and scope of the non-obstante clauses contained in the SARFAESI Act, 2002 and the RDB Act, 1993 reads as under:

> *"35.* ***Another interesting pointer to the same conclusion is the fact that Section 35 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is not made subject to Section 37 of the said Act. This statutory scheme is at complete variance with the statutory scheme contained in Section 34 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 in which Subsection (1) of Section 34 containing the non obstante clause is expressly made subject to Sub-section (2) (containing the Sick Industrial Companies (Special Provisions) Act, 1985) by the expression "save as provided Under Sub-section (2)".*"
>
> *[Emphasis supplied]*

148. It can thus be seen that the effect of the *non-obstante* provision of the RDB Act, 1993 is expressly curtailed by the rider provided in the Section itself, it being the carve out for sub-section (2). This saving for sub-section (2) is done in a manner, such that the effect of the *non-obstante* clause is curtailed. Sub-section (2) is then interpreted in light of the curtailed non-obstante clause. In other words, while interpreting sub-section (2) i.e., the non-derogation provision, the non-obstante clause contained in Section 34(1) has no application. This is not the case under the SARFAESI Act, 2002. The non-obstante clause contained in Section 35 of the SARFAESI Act, 2002 is not made subject to Section 37. Section 37 of the SARFAESI Act, 2002 must then be construed in light of the unfettered *non-obstante* clause under Section 35.

149. In ***Mathew Varghese*** *(supra),* the Hon'ble Supreme Court had an occasion to consider the meaning of the expression "not in derogation of" in Section 37 of the SARFAESI Act, 2002 and the effect it shall have. In paragraph no.43, the Hon'ble Supreme Court stated as under:

> *"43. A reading of Section 37 discloses that the application of SARFAESI Act will be in addition to and not in derogation of the provisions of the RDDB Act. In other words, it will not in any way nullify or annul or impair the effect of the provisions of the RDDB Act.* ***We are also fortified by our above statement of law as the***

> ***HEADING of the said Section also makes the position clear that application of other laws are not barred. The effect of Section 37 would, therefore, be that in addition to the provisions contained under the SARFAESI Act, in respect of proceedings initiated under the said Act, it will be in order for a party to fall back upon the provisions of the other Acts mentioned in Section 37, namely, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992, the Recovery of Debts Due to Banks and Finances Institutions Act, 1993, or any other law for the time being in force…"***
>
> *[Emphasis supplied]*

150. Recently, the Hon'ble Supreme Court in the case of ***Authorised Officer State Bank of India v. C. Natarajan & Anr.***[68]**,** made significant findings relating to the interplay between Section 35 and Section 37 of the SARFAESI Act, 2002. The material portion of paragraph no.23 of the said decision reads as under:

> *"**23. That apart, significantly, section 35 of the SARFAESI Act mandates that the provisions thereof would have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any other instrument having effect by virtue of any such law. At the same time, section 37 of the SARFAESI Act postulates that provisions thereof or the rules made thereunder shall be in addition to and not in derogation of the enumerated enactments or any other law for the time being in force. <u>What is of importance is that the non-obstante clause in section 35 of the SARFAESI Act is not subject to section 37 thereof; however, a plain reading of the latter provision would suggest that rights, liabilities, obligations, remedies, etc. created/imposed/provided by the SARFAESI Act and the Rules are preserved, irrespective of what is provided in the stated enactments or any other law for the time being in force</u>.** The regime under the SARFAESI Act is altogether different and sections 35 and 37 are intended to extend a cover to the secured creditor if it abides by the governing law, which cannot be subject to any other provision of a general law like the Contract Act. Since section 35 overrides other laws in the same or related field and having regard to the scheme of the SARFAESI Act and the dominant purpose sought to be achieved, as noted above, none can and should be allowed to take the auctions conducted thereunder lightly. No court ought to countenance a bidder entering and exiting the process at his sweet will without any real intent to take it to fruition. The provisions of the SARFAESI Act as well as the Rules are to be interpreted positively and purposefully in the context of a given case to give meaning to sub-rule (5) of rule*

[68] 2023 SCC OnLine SC 510.

> *Besides, we have no hesitation to hold that in case of any seeming conflict or inconsistency between the general law, i.e., the Contract Act and the special law, i.e., the SARFAESI Act, it is the latter that would prevail."*
>
> *[Emphasis supplied]*

151. The judgement of the House of Lords in the case of ***Davies** (supra)*, upon which reliance was placed by the learned counsel for respondent nos.1 and 2 must now be carefully considered. The issue in the cited case is not completely applicable to the present case, however, the reasoning may still be noted. The general question framed by Lord Macmillan was:

> *"...whether in assessing the damages payable under the Fatal Accidents Acts, 1846 to 1908, to any dependant of the deceased, there must be taken into account any benefit which that dependant may receive by participating in damages under the Law Reform (Miscellaneous Provisions) Act, 1934.*

152. The provision under the Law Reform (Miscellaneous Provisions) Act, 1934, which to some degree is similar to Section 37 of the SARFAESI Act, 2002 reads as under:

> *"The rights conferred by this Act for the benefit of the states of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by the Fatal Accidents Acts, 1846 to 1908"*

153. On the interpretation of the above-mentioned provision, Lord Russel noted as follows:

> *"It was sought to extract some special meaning from the dual phrase "shall be in addition to and not in derogation of." This, it was said, was not idly tautological, but intentionally cumulative; and the words "not in derogation of" involved a direction that there was to be no taking away or deduction from or diminution of the damages obtainable under the Fatal Accidents Acts. For myself I can see no sufficient ground for reading this subtle hidden meaning into the subsection. I agree with the Court of Appeal that the words "and not in derogation of" merely emphasise what has been already said, that the rights conferred by one Act are additional to the rights conferred by the other Acts, and are to that extent tautological."*

154. If the aforesaid dicta is applied, then the rights conferred under the SARFAESI Act, 2002 are to be found in addition to the rights conferred under the SEBI Act, 1992. However, in ***Davies*** *(supra)*, the two statutes with which their Lordships concerned themselves were intricately connected. In the present dispute, difficulty would arise in ascertaining how a bank wanting to realise its debts under the process of SARFAESI Act, 2002 could take the aid of the SEBI Act, 1992. This difficulty may not arise when the question relates to the interplay between the RDB Act, 1993 and the SARFAESI Act, 1992. Indeed in such a scenario the rights conferred by SARFAESI Act, 1992 can be termed as being in addition to the rights under the RDB Act, 1993.

155. However, there is nothing in the opinion of Lord Russel that allows this court to construe the SEBI Act, 1992 as overriding as also preventing or thwarting the proceedings and actions by banks under the SARFAESI Act, 1992.

156. Similar is the opinion of the Lord Macmillan on the issue of the construction of the provision. The material part reads as under:

> *"On the interpretation of the provision which I have just quoted I find myself in agreement with the Lords Justices in the Court of Appeal and with all your Lordships. The rights conferred by the Law Reform Act for the benefit of the estates of deceased persons are the rights to maintain after the death of such deceased persons all causes of action vested in them. These rights are to be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by the Fatal Accidents Acts. This means, as I read the words, that on the death of a deceased person it shall be competent to maintain actions both under the Law Reform Act and under the Fatal Accidents Acts. The rights of action in the two cases are quite distinct and independent. Under the Law Reform Act the right of action is for the benefit of the deceased's estate. Under the Fatal Accidents Acts the right of action is for the benefit of the deceased's dependants. Inasmuch as the basis of both causes of action may be the same namely, negligence of a third party which has caused the D deceased's death- it was natural to provide that the rights of action should without prejudice the one to the other. It is quite a different thing a*

> *read the provision as meaning that, in assessing damages payable to dependants under the Fatal Accidents Acts, no account is to be taken of any benefit which the dependants may indirectly obtain from an award under the Law Reform Act through participation in the deceased's estate.*

157. It would be difficult to state, as a matter of general proposition, that the cause of action that leads to proceedings under the SARFAESI Act, 2002 and one that triggers actions under the SEBI Act, 1992 are the same. However, it can be safely stated that the rights of action are quite distinct and independent. They may further be applicable on the same set of assets. The issue that then arises is that whereas under ***Davies*** *(supra)*, the two distinct rights of actions, may be rarely, if at all that may be a possibility, come at variance with each other; under the present dispute, there is a serious possibility for the same. For example, if in the present case, there was a direction against the petitioner bank that they are not to act in manner such, that the assets of respondent nos.3 and 4 get alienated, the standing order may act as an obstacle to the petitioner bank realising its debt by liquidating the mortgaged property.

158. In such a scenario the issue becomes whether priority must be given to the general order of SEBI or the proceedings under the SARFAESI Act, 2002. In light of the unbridled *non-obstante* clause contained in Section 35 of the SARFAESI Act, 2002; which is not made subject to Section 37 of the SARFAESI Act, 2002, this court finds that the SEBI Act, 1992 must give way to the SARFAESI Act, 2002.

159. The reliance placed by learned counsel for respondent nos.1 and 2 on ***Bikram Chatterji*** *(supra)*, is misplaced primarily because— firstly, the case related to the Real Estate (Regulation and Development) Act, 2016, and the issue in the present case is different,

similarly facts of ***Bikram Chatterji*** *(supra)* are fundamentally different. In the present case, this court is concerned with the interpretation of a section containing a broadly worded non-obstante clause inserted through the means of an amendment, and the effect it shall have on Section 37 of the SARFAESI Act, 2002 which mentions and mandates the Act to not be in derogation of the SEBI Act, 1992. Secondly, the factual matrix in ***Bikram Chatterji*** *(supra)* evinces averments of fraud on the part of the banks, the same being absent in the present case.

160. The cases of ***Deputy Director Directorate of Enforcement Delhi*** *(supra)*, ***Bank of Baroda*** *(supra)*, ***Solidaire India Ltd.*** *(supra)* are again found inapplicable as in the present case a simpliciter conflict between two legislations having *non-obstante* clause is not present. This court is concerned with the interpretation of Section 37 of the SARFAESI Act, 2002 which mentions and mandates the Act to not be in derogation of the SEBI Act, 1992, and the subsequent harmonized interpretation that is required. ***SICOM Ltd.*** *(supra)* is again inapplicable as in the present case the rights and interests of SEBI over the mortgaged property cannot be termed as being that of an unsecured creditor, *in simpliciter*.

161. Further, the said decisions also need to be given weightage in light of the pronouncement of the Hon'ble Supreme Court in the case of ***Pegasus Assets Reconstruction P. Ltd.*** *(supra)*, further applied in ***Madras Petrochem Ltd.*** *(supra)*. In paragraph no.51 of ***Madras Petrochem Ltd.*** *(supra)* the Hon'ble Supreme Court explained the *ratio* of ***Pegasus Assets Reconstruction*** *(supra)* in the following words:

> *"51. A recent judgment of this Court in Pegasus Assets Reconstruction P. Ltd. v. Haryana Concast Limited and Anr. [(2019)*

Appeal No. 3646 of 2011), has held, agreeing with a judgment of the Delhi High Court, and disapproving a judgment of the Punjab and Haryana High Court, that a Company Court exercising jurisdiction under the Companies Act, has no control in respect of sale of a secured asset by a secured creditor in exercise of powers available to such creditor under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. ***Some of the observations made by this Court are interesting in that this Court has held that the Securitisation Act is a complete code in itself, and that earlier judgments rendered in the context of the State Financial Corporation Act, 1951 or the Recovery of Debts Due To Banks And Financial Institutions Act, 1993 cannot be held applicable to the Securitisation Act.*** *Further, the very incorporation of certain provisions of the Companies Act in the Securitisation Act themselves harmonise the latter Act with the Companies Act in respect of workers debts Under Section 529A of the Companies Act…"*

[Emphasis supplied]

162. In addition to the cases relied upon by the learned senior counsel being considered on merits, the Hon'ble Supreme Court's ruling also provides that decisions relating to statutes other than the SARFAESI Act, 2002, do not have much persuasive value.

163. This court is, therefore, of the considered opinion that Section 35 of the SARFAESI Act, 2002 is not subject to Section 37 of the SARFAESI Act, 2002. In such a case, the effect of the non-obstante clause cannot be curtailed.

164. In the present factual scenario, it must also be noticed that the two statutes operate in their respective spheres.

165. The material part of the statement of objects and reasons for the SARFAESI Act, 2002 reads as under:

"THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002

(Act No. 54 of 2002)

STATEMENT OF OBJECTS AND REASONS

> *The financial sector has been one of the key drivers in India's efforts to achieve success in rapidly developing its economy. While the banking industry in India is progressively complying with the international prudential norms and accounting practices, there are certain areas in which the banking and financial sector do not have a level playing field as compared to other participants in the financial markets in the world. There is no legal provision for facilitating securitisation of financial assets of banks and financial institutions. Further, unlike international banks, the banks and financial institutions in India do not have power to take possession of securities and sell them.* ***Our existing legal framework relating to commercial transactions has not kept pace with the changing commercial practices and financial sector reforms. This has resulted in slow pace of recovery of defaulting loans and mounting levels of nonperforming assets of banks and financial institutions…***
>
> *…These Committees, inter alia,* ***have suggested enactment of a new legislation for securitisation and empowering banks and financial institutions to take possession of the securities and to sell them without the intervention of the court."***
>
> *[Emphasis supplied]*

166. The object clause of the SEBI Act, 1992 reads as under:

> *"An Act to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected therewith or incidental thereto"*

167. It is thus seen that the two Acts operate in different spheres. While the SARFAESI Act, 2002 was enacted to allow the swift realisation of securities, that were registered by banks under the Act; the SEBI Act, 1992, on the other hand, manifests the intention of the Parliament to protect investors, and confers upon SEBI powers to regulate the securities market. In the process of regulating, SEBI can issue directions to, *inter alia*, persons, who are found conducting themselves or their business, contrary to the interest of the market.

168. As is in the present case, the action of the petitioner bank is wholly unconnected with the subject-matter of the said Orders. The petitioner bank is attempting to realise its secured asset, which is the mortgage made in favour of the petitioner bank, for the loan taken by

respondent nos.3 and 4. The mortgaged property, is neither a security in the context of the securities market nor is associated with such a security, and is also not specifically governed by the SEBI Act, 1992. There is, therefore, a functional aspect that needs to be considered in the present issue. SEBI and the said Orders function in a field different from the field in which the petitioner bank has taken their actions under the SARFAESI Act, 2002.

169. The scheme of the statutes would reveal that in the facts and circumstances similar to the present case, a carve can be made to allow banks to realise their security which they had registered through a statutorily prescribed process. Indeed in such a case, the operation of the SARFAESI Act, 2002 is the specific legislation which applies to a specified secured debt while the directions under the SEBI Act, 1992, which prevent the dissipation or alienation of assets, is the generalised law applicable to a broader set of assets.

170. Such harmonisation should be prioritised so as to prevent the two provisions coming in a direct conflict with each other. The said principle is further noted in GP Singh's Principles of Statutory Interpretation 15th Ed., p. 111:

> *"It has already been seen that a statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute. It is the duty of the courts to avoid "a head on clash" between two sections of the same Act and, "whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonise".*
>
> ...
>
> *It should not be lightly assumed that "Parliament had given with one hand what it took away with the other". The provisions of one section of a statute cannot be used to defeat those of another "unless it is impossible to effect reconciliation between them".*

same rule applies in regard to sub-sections of a section. In the words of Gajendragadkar, J:

> "***The two sub-sections must be read as parts of an integral whole and as being interdependent; an attempt should be made in construing them to reconcile them if it is reasonably possible to do so, and to avoid repugnancy***."[69]

As stated by Venkatarama Aiyar J,

> "***The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is what is known as the rule of harmonious construction***."[70]

That, effect should be given to both, is the very essence of the rule. Thus a construction that reduces one of the provisions to a "useless lumber" or "dead letter" is not harmonious construction. To harmonise is not to destroy. ***A familiar approach in all such cases is to find out which of the two apparently conflicting provisions is more general and which is more specific and to construe the more general one as to exclude the more specific. The question as to the relative nature of the provisions general or special has to be determined with reference to the area and extent of their application either generally or specially in particular situations.***"

[Emphasis supplied]

171. Indeed the intention of the legislature would get compromised if banks are disallowed from realising their security that they had registered following the statutory scheme. In this context Craies on Legislation, 9th Ed., at pp. 670-671 notes as under:

> *"The rule requiring that verba ita sunt intelligenda ut res magis valeat quam pereat requires that where possible the intention fo the legislature is not to to be treated as vain or left to operate in the air. The result is that if two constructions of a provision are possible on its face, and one would clearly advance the legislative purpose and the other would clearly ahieve little or nothing, the former is to be preferred."*

172. The provisions of the SARFAESI Act, 2002 must then be construed according to the legislative intent.

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[69] *Madanlal Fakirchand Dudhediya v. Shree Changdeo Sugar Mills Ltd.,* AIR 1962 SC 152.
[70] *Venkataramana Devaru v. State of Mysore,* AIR 1948 SC 255.

173. In order to determine the intent, it would be helpful to employ the mischief rule. A concise explanation of this rule is found in Bennion on Statutory Interpretation, 7th Ed., pp. 329-331.

> ***GENERAL***
>
> ***Section 10.1: Presumption that court to apply remedy provided for the 'mischief'***
>
> ***10.1*** *Parliament intends an enactment to remedy a particular mischief. It is presumed therefore that Parliament intends the court, in construing the enactment, to endeavour to apply the remedy provided by it in such a way as to suppress that mischief.*
>
> ***Comment***
>
> *The reason for passing an Act is almost invariably to change the existing law so as to remedy a perceived defect in it. That defect is the 'mischief to which the Act is directed. This chapter is concerned with the mischief and its remedy.*
>
> *...*
>
> ***THE MISCHIEF***
>
> ***Section 10.2: Meaning of the 'mischief'***
>
> ***10.2***
>
> *(1) The mischief that Parliament intends an enactment to remedy may be either a social mischief which is coupled with a legal mischief, or a purely legal mischief.*
>
> *(2) A social mischief is a factual situation, present or shortly expected, which Parliament desires to remedy. This may range from something obviously wrong (such as an outbreak of a particular type of antisocial behaviour) to the possibility of improving an already neutral or even beneficial state of affairs.*
>
> *(3) The legal mischief is a condition which constitutes a defect in the law, or is regarded by Parliament as constituting such a defect. The defect may consist of a failure to provide, to the fullest extent possible for no statute law, a remedy for a corresponding social mischief, or it may consist of a purely legal defect in the law without a corresponding social mischief.*
>
> ***Comment***
>
> *Parliament is taken to do nothing without a reason. Therefore there is a reason for the passing of every Act, and for every enactment within it.*

> *In almost all cases, the reason for passing an Act is to change the existing law. So the reason for an Act's passing must lie in some perceived defect in the existing law. If the existing law were not considered defective, Parliament would not need or want to change it. That defect is the 'mischief' to which the Act is directed."*

174. In the Indian context, the said rule has been adopted ever since the case of ***Bengal Immunity Co v. State of Bihar*** .[71] The mischief sought to be remedied has been adequately captured by the statement of objects and reasons of the SARFAESI Act, 2002. It is reemphasised below:

> ***"Our existing legal framework relating to commercial transactions has not kept pace with the changing commercial practices and financial sector reforms. This has resulted in slow pace of recovery of defaulting loans and mounting levels of nonperforming assets of banks and financial institutions…***
> *These Committees, inter alia,* ***have suggested enactment of a new legislation for securitisation and empowering banks and financial institutions to take possession of the securities and to sell them without the intervention of the court"***
>
> *[Emphasis supplied]*

175. Thus the mischief sought to be cured was the lack of a statutory mechanism that provided, and further allowed, banks to realise their security interests with minimum interference from courts. The SARFAESI Act, 2002 was thus enacted to provide a statutory framework that allows for swifter and prioritised recovery of the bank's secured debt. There is thus a clear intention to prioritise the bank's realisation of its security under the SARFAESI Act, 2002.

176. With this legislative intent in mind, the provisions of Section 37 and Section 35 need to be construed.

177. The bare text of Section 37 of the SARFAESI Act, 2002, when read superficially, can allow for two construction depending upon the importance given to different expressions. For clarity, Section 37 is again reproduced as under:

[71] AIR 1955 SC 661.

> *"**37. Application of other laws not barred**.—The provisions of this Act or the rules made thereunder **shall be in addition to**, **and not in derogation of**, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force."*
>
> *[Emphasis supplied]*

178. There are thus two aspects of the provision. First is that the Act "shall be in addition to" the second is that it must not be "in derogation of". Indeed they are adjoined by the conjunction 'and', and must be construed together. But a bare reading may allow both the constructions—those favouring the 'non-derogation' mandate or the ones supporting the 'in addition to' endorsement—to be considered as fair.

179. It is, at this stage, that the heading of the provision comes to the assistance of this court. It notes "Application of other laws not barred". A positive mandate is thus inherent in this heading. Conversely, there is an absence of a negative mandate. Meaning thereby, the provision allows for the SARFAESI Act, 2002 to take the aid of the enumerated statutes in order to fulfil its statutory purpose. The provision does not, in any manner, reduce the effect of the SARFAESI Act, 2002.

180. In this context, Bennion on Statutory Interpretation, 7th Ed., p. 444 notes as under:

> ***Section 16.7: Headings***
>
> ***16.7 <u>A heading is part of an Act. It may be considered in construing any provision of the Act, provided due account is taken of the fact that its function is merely to serve as a brief guide to the material it governs and that it may not be entirely accurate.</u>***
>
> ***Comment***

Headings are as much part of an Act as any other component and may be considered in construing any provision of it, despite dicta to the contrary in some older cases *(discussed below).*

*As discussed in CHAPTER 2, a variety of headings is used in Acts. Each section, Schedule, Chapter and Part has its own heading and italic headings are often placed above a group of sections or one or more paragraphs of a Schedule. Prior to 2001, sections had sidenotes or marginal notes placed in the margin, rather than a heading placed above, but the word heading' is used to cover them as well.**

The correct approach to the use of headings in interpretation was sum-marised by the House of Lords in R v. Montila:

> *"The question then is whether headings and sidenotes, although unamendable, can be considered in construing a provision in an Act of Parliament. Account must, of course, be taken of the fact that these components were included in the Bill not for debate but for ease of reference. This indicates that less weight can be attached to them than to the parts of the Act that are open for consideration and debate in Parliament. But it is another matter to be required by a rule of law to to disregard them altogether.* ***One cannot ignore the fact that the headings and is sidenotes are included on the face of the Bill throughout its passage through the olegislature. They are there for guidance.*** *They provide the context for an rexamination of those parts of the Bill that are open for debate. Subject, of course, to the fact that they are unamendable, they ought to be open to consideration as part of the enactment when it reaches the statute book."*

Where a heading differs from the material it describes, this puts the court ne inquiry, but it is most unlikely to be right to allow the plain meaning of the theres to be overridden purely by reason of a heading."

[Emphasis supplied]

181. Similarly, GP Singh's Principles of Statutory Interpretation, 15th Ed., pp. 129-130 notes as under:

> *"The view is now settled that the Headings or Titles prefixed to sections or group of sections can be referred to in construing an Act of the Legislature. But conflicting opinions have been expressed on the question as to what weight should be attached to the headings. A Heading, according to one view, "is to be regarded as giving the key to the interpretation of the clauses ranged under it, unless the wording is inconsistent with such interpretation;" and so the headings might be treated "as Preambles to the provisions following them". But according to the other view resort to "*

heading" can only be taken when the enacting words are ambiguous. So Lord Goddard CJ expressed himself as follows:

> *While, however, the court is entitled to look at the headings in an Act of Parliament to resolve any doubt they may have as to ambiguous words, the law is clear that those headings cannot be used to give a different effect to clear words in the section where there cannot be any doubt as to the ordinary meaning of the words.*[72]

Similarly, it was said by Patanjali Shastri J:

> *Nor can the title of a Chapter be legitimately used to restrict the plain terms of an enactment.*[73]

The Supreme Court has expressed itself as follows:

> *"It is well-settled that the headings prefixed to sections or entries (of a Tariff Schedule) cannot control the plain words of the provision; they cannot also be referred to for the purpose of construing the provision when the words used in the provision are clear and unambiguous; nor can they be used for cutting down the plain meaning of the words in the provision.* ***Only in the case of ambiguity or doubt the heading or sub-heading may be referred to as an aid in construing the provision but even in such a case it could not be used for cutting down the wide application of the clear words used in the provision.*** *"*[74]

After referring to the conflicting opinions relating to the use of headings or titles prefixed to sections or group of sections, Lahoti J expressed himself as follows:

> ***It is permissible to assign the heading or title of a section, a limited role to play in the construction of statutes. They may be taken as very broad and general indicators of the nature of the subject-matter dealt with thereunder. The heading or title may also be taken as a condensed name assigned to indicate collectively the characteristics of the subject matter dealt with by the enactment underneath; though the name would always be brief having its own limitations. In case of conflict between the plain language of the provision and the meaning of the heading or title, the heading or title would not control the meaning which is clearly and plainly discernible from the language of the provision thereunder****."*[75]
>
> *[Emphasis supplied]*

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[72] *R v. Surrey,* (1947) 2 All ER 276.
[73] *CIT v. Ahmedbhai Umarbhai,* AIR 1950 SC 134.
[74] *Frick India Ltd. v. UOI,* AIR 1990 SC 689.
[75] *Raichurmatham Prabhakar v. Rawatmal Dugar,* AIR 2004 SC 3625.

182. Thus the aid of the heading may be taken to clarify the doubt that an interpreter may have while construing a particular provision. In the present case, this court is merely referring to the heading to further substantiate the finding it has drawn independently. Thus the heading is being treated as buttressing the finding already reached by the court.

183. From the above analysis, it can be concluded that proceedings under the SARFAESI Act, 2002 are to be treated as a carve out, and therefore remain unaffected by, orders under the SEBI Act, 1992.

184. This court shall now delve into the aspect of the dispute related to the interpretation of Section 26E of the SARFAESI Act, 2002, Section 31B of the RDB Act, 1993 and Section 28A(3) of the SEBI Act, 1992.

185. At the outset, it may be noted that reliance on Section 28A(3) of the SEBI Act, 1992 is misplaced. The present dispute is not concerned with the recovery of amounts by a recovery officer. A bare reading of the provision, would make apparent its inapplicability in the present dispute. Section 28A(3) reads as under:

> *"(3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the Board under section 11B, shall have precedence over any other claim against such person."*

186. Further, Section 28A(1) reads as follows:

> *"28A. Recovery of amounts.—(1) If a person fails to pay the penalty imposed under this Act or fails to comply with any direction of the Board for refund of monies or fails to comply with a direction of disgorgement order issued under section 11B or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:—*
>
> *(a) attachment and sale of the person's movable property;*

> *(b) attachment of the person's bank accounts;*
>
> *(c) attachment and sale of the person's immovable property;*
>
> *(d) arrest of the person and his detention in prison;*
>
> *(e) appointing a receiver for the management of the person's movable and immovable properties, and for this purpose, the provisions of sections 220 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the said provisions and the rules made thereunder were the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961.*
>
> *...*"

187. It is for this reason also that ***M/s. Midfiled Industries Ltd.*** ***(****supra)*, has no application in the present dispute. In ***M/s. Midfiled Industries Ltd.*** *(supra)*, the High Court of Telangana adjudicated upon the issue—whether recovery proceedings under Section 28A of the SEBI Act, 1992 would have precedence over the SARFAESI Act, 2002. Importantly, in ***M/s. Midfiled Industries Ltd.*** *(supra)*, there was a recovery order passed against the concerned banks therein. In the present case, there is no such order. The said judgement in therefore distinguished.

188. In ***Commissioner of Sales Tax***, ***Indore*** *(supra)*, the High Court of Madhya Pradesh adjudicated upon the conflict between the Madhya Pradesh Value Added Tax Act, 2002 and the rights of the petitioner bank therein to realise its assets. The court came to the conclusion, with which this court is in agreement, that in light of Section 31 of the RDB Act being inserted through the Enforcement of Security Interest and Recovery of Debts and Loans and Miscellaneous Provisions Act and the Amendment Act, 2016 (hereinafter **'said Amendment'**), doubts regarding primacy between a secured debt and all other debts and government dues such as revenue, taxes, cesses and rates, are to

Central Government, State Government and local authorities, has been settled. The conclusion then reached by the court is that priority must be given to the secured debt.

189. Further, in ***Assistant Commissioner (CT)***, ***Anna Salai-III Assessment Circle*** *(supra)* a three-judge Bench decision, authored by Hon'ble the Chief Justice of the High Court of Madras Sanjay Kishan Kaul (as His Lordship then was), also came to the same conclusion that was reached in the case of ***Commissioner of Sales Tax***, ***Indore*** *(supra)*.

190. A judgement by the Division Bench of the High Court of Gujarat in ***Kalupur Commercial Co-operative Bank Ltd.*** *(supra)*, unlike ***The Indian Overseas Bank*** *(supra)* and ***Commissioner of Sales Tax*** *(supra)*, specifically deals with the issue contended by the respondent nos.1 and 2. It was argued by the learned counsel for the respondent nos.1 and 2 that insofar as the petitioner bank has not initiated any action under RDB Act, 1993, Section 31B of the said Act shall have no operation.

191. In ***Kalupur Commercial Co-operative Bank Ltd.*** *(supra)*, the High Court came to the conclusion that irrespective of the then petitioner bank taking action under the SARFAESI Act, 2002. Section 31B of the RDB Act, 1993 may still be in operation. The said conclusion was reached on the basis —firstly, because Section 31B of the RDB Act, 1993 is a substantive provision and the definition of "secured creditor" as per the RDB Act, 1993 Section 2(la) is the same as the one provided under SARFAESI Act, 2002; secondly, because the reason for the introduction of the said Amendment was to provide primacy to the rights of the secured creditors as is seen from the statement of objects and reasons of the SARFAESI Act, 2002 and the

RDB Act, 1993; thirdly, because by virtue of Section 37 of the SARFAESI Act, 2002 the RDB Act, 1993 and the SARFAESI Act, 2002 are to be read in addition to and not in derogation of each other.

192. The material part of the statements of objects and reasons of the RDB Act, 1993 reads as follows:

> *"THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993*
>
> *STATEMENT OF OBJECTS AND REASONS*
>
> *Banks and financial institutions at present experience considerable difficulties in recovering loans and enforcement of securities charged with them. The existing procedure for recovery of debts due to the banks and financial institutions has blocked a significant portion of their funds in unproductive assets, the value of which deteriorates with the passage of time…"*

193. Sections 31B of the RDB Act, 1993, read as under:

> *"31B. Priority to secured creditors- Notwithstanding anything contained in any other law for the time being in force, the rights of secured creditors to realise secured debts due and payable to them by sale of assets over which security interest is created, shall have priority and shall be paid in priority over all other debts and Government dues including revenues, taxes, cesses and rates due to the Central Government, State Government or local authority.*
>
> *Explanation.- For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code."*

194. Sections 26E of the SARFAESI Act, 2002 read as under:

> *"26E. Priority to secured creditors- Notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.*
>
> *Explanation.- For the purposes of this section, it is hereby clarified that on or after the commencement of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), in cases where insolvency or bankruptcy proceedings are pending in respect of secured assets of*

> *the borrower, priority to secured creditors in payment of debt shall be subject to the provisions of that Code."*

195. Section 32 of the SEBI Act, 1992 reads as under:

> *"32. Application of other laws not barred.—The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force."*

196. This court is in agreement with the decisions of ***Commissioner of Sales Tax***, ***Indore*** *(supra)*, and ***The Indian Overseas Bank*** *(supra)*, however, their *ratios* must be understood in the right perspective. The said two decisions deal with a conflict with taxing statutes, meaning thereby statutes not finding mention in Section 37 of the SARFAESI Act, 2002 or Section 34(2) of the RDB Act, 1993.

197. In the present case, however, the SEBI Act, 1992 has its express mention in Section 37 of the SARFAESI Act, 2002. The manner of interpreting a conflict between SARFAESI Act, 2002 or RDB Act, 1993 and a taxing statute not mentioned in the non-derogation provision, shall, therefore, be fundamentally different from the present case. However, the analysis in ***Kalupur Commercial Co-operative Bank Ltd.*** *(supra)*, on Section 31B of the RDB Act, 1993 being attracted regardless of the actions being initiated by a Bank under SARFAESI Act, is relevant.

198. This court is in agreement with the views expressed by the High Court of Gujarat that regardless of the proceedings or actions being initiated under the SARFAESI Act, 2002, recourse may be taken of the RDB Act, 1993, by virtue of Section 37 of the SARFAESI Act, 2002.

199. The subsequent consideration then relates to Section 26E of the SARFAESI Act, 2002. Section 26E provides that the debt due to any secured creditor shall be paid in priority over all other debts and all

revenues, taxes, cesses and other rates payable to the Central Governments or local authority.

200. The material part of the statement of objects and reasons of The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Bill, 2016 reads as under:

> *"The Recovery of Debts due to Banks and Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002,* ***were enacted for expeditious recovery of loans of banks and financial institutions. Presently, there are approximately seventy thousand cases pending in Debts Recovery Tribunals. Though the Recovery of Debts due to Banks and Financial Institutions Act provides for a period of 180 days for disposal of recovery applications, the cases are pending for many years due to various adjournments and prolonged hearings. In order to facilitate expeditious disposal of recovery applications, it has been decided to amend the said Acts and also to make consequential amendments in the Indian Stamp Act, 1899 and the Depositories Act, 1996.***
>
> *2. The amendments in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 are proposed to suit changing credit landscape and augment ease of doing business which, inter alia, include (i) registration of creation, modification and satisfaction of security interest by all secured creditors and provision for integration of registration systems under different laws relating to property rights with the Central Registry so as to create Central database of security interest on property rights; (ii) conferment of powers upon the Reserve Bank of India to regulate asset reconstruction companies in a changing business environment; (iii) exemption from stamp duty on assignment of loans by banks and financial institutions in favour of asset reconstruction companies; (iv) enabling non-institutional investors to invest in security receipts; (v) debenture trustees as secured creditors; (vi) specific timeline for taking possession of secured assets; and (vii) priority to secured creditors in repayment of debts."*
>
> *[Emphasis supplied]*

201. Furthermore, the notes on clauses related to Section 26E of the SARFAESI Act, 2002 inserted through the amending Act is as follows:

> *"Clause 17 seeks to insert a new Chapter IVA in the principal Act relating to Registration by Secured Creditors and other creditors*

consisting of sections 26B, 26C, 26D and 26E. Section 26B seeks to provide for extending the provision of registration to all lenders other than secured creditor for creation, modification or satisfaction of any security interest over any property of the borrower for the purpose of securing due repayment of any financial assistance granted by such creditor to the borrower.

It further provides that an authority or officer of the Central Government or any State Government or local authority, entrusted with the function of recovery of tax or other Government dues and for issuing any order for attachment of any property of any person liable to pay the tax or Government dues, shall file with the Central Registry such attachment order with particulars of the assesse and details of tax or other government dues from such date as may be notified by the Central Government. Section 26C seeks to provide that registration of security interest will be effective from the date and time of registration of transactions or filing of attachment orders with Central Registry and section 26D seeks to provide that secured creditor will be entitled to exercise right to enforce securities only if it is registered with Central Registry.

Section 26E seeks to provide for the priority of debts due to secured creditors over all others debts, revenues, taxes, cesses and rates payable to central Government, State Government or any other local authority*"*

[Emphasis supplied]

202. The statement of objects and purpose of the amending Act make it clear that the provisions of the SARFAESI Act, 2002 create a prioritization. It being that the debts of the secured creditor are to be prioritised over any dues to the government or any local authority.

203. The insertion of Section 26E was, therefore, for a broader purpose, it being to protect our banks from the force of the State machinery that had hitherto interfered with the rights of the banks to realise their dues. As the Hon'ble Law Minister noted in the statement of objects and reasons, the amendment of 2016 was proposed to suit the changing credit landscape and augment ease of doing business.

204. Section 26E of the SARFAESI Act, 2002 may not be squarely applicable in the present factual scenario, however it evinces the

continued intention of the legislature of prioritisation the secured debts owed to banks.

205. From the analysis above, it may be concluded that an interpretation of Section 35 and Section 37 of the SARFAESI Act, 2002 would reveal that the proceedings under the SARFAESI Act, 2002 are to be treated as a carve out to, and remain unaffected by, the orders passed under the SEBI Act, 1992.

206. On the facts of the present case, the said Orders do not prevent the petitioner bank from proceeding further under the SARFAESI Act, 2002 to auction its mortgaged property.

207. The conclusions reached by the court are summarized as under:

a. SEBI is found to be vested with the requisite legal power to direct banks.

b. The orders dated 29.05.2018 and 14.12.2018 passed by Whole Time Member of SEBI are applicable to the petitioner bank, they however do not prevent the petitioner bank from auctioning the mortgaged property being Villa No. TPV-G-GV-07, The Palm Springs, Village Wazirabad, Sector 54, Gurgaon 122002, under the provisions of the SARFAESI Act, 2002.

c. The impugned emails dated 29.01.2021 and 18.03.2021 are found to be erroneous and wholly without jurisdiction.

d. The proceedings under the SARFAESI Act, 2002 are to be treated as a carve out to, and remain unaffected by, the orders and directions passed under the SEBI Act,

208. The writ petition is disposed of in the above terms.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

JULY 21, 2023