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

**WRIT PETITION NO. 4948 OF 2013
WITH
CIVIL APPLICATION NO. 2079 OF 2016
AND
CIVIL APPLICATION NO.2345 OF 2014
IN
WRIT PETITION NO.4948 OF 2013**

JM Financial Asset Reconstruction]
Company Pvt. Ltd. a company incorporated]
under the provisions of the Companies Act,1956,]
and registered as a securitization and]
reconstruction company under Section 3 of]
Securitization and Reconstruction of Financial]
Assets and Enforcement of Security Interest Act,]
2002, having its registered office at 7, Cnergy]
25 Appasaheb Marathe Marg, Prabhadevi,]
Mumbai – 400 025 acting in its capacity as a]
Trustee of the JMFARC-BOI Textile 2013-Trust]
through its Authorized Representative Mr Sanjay] ...Petitioner

VS

1. **State of Maharashtra, through Chief**]
Secretary, State of Maharashtra having]
its office at Madam Cama Marg, Hutatma]
Rajguru Chowk, Mantralaya, Mumbai]
400032]
- 2 **Ministry of Energy & Labour Department**]
State of Maharashtra, having its office at]
Madam Cama Marg, Hutatma Rajguru]
Chowk, Mantralaya, Mumbai 400 032]
- 3 **Collector & District Magistrate Kolhapur**]
having its office at the Office of the Collector]
District Kolhapur, State of Maharashtra]

- State of Maharashtra and having its]
registered office at 17-E Shivparvati]
Nagale Park, Kolhapur 416 003]
- 4 **Maruti Cotex Ltd.**]
a company incorporated under the]
Companies Act, 1 of 1956, having its]
office at Plot T-17, Kagal-Hathkanangale]
Lane, Five Star MIDC, Post Talandge,]
Taluka Hathkanangale, District Kolhapur]
416 603, State of Maharashtra]...Respondents.

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Mr. S.U. Kamdar, Sr. counsel along with Mr O.A. Das for the
Petitioner & for Applicant.

Ms Sushma Bhende, AGP for Respondent Nos.1 to 3.

Mr Sanjay Jain a/w Mr Nishant Sasidharan, Mr Vasim Shaikh & Mr
Atul Jain i/b M/s Pravin Mehta & Mithi & Co. for Respondent No.4.

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**CORAM : S. C. DHARMADHIKARI &
B.P.COLABAWALLA, JJ.**

**Reserved on : 7th September, 2016
Pronounced on : 25th October, 2016.**

JUDGMENT [Per B. P. Colabawalla J]:

1. By this Writ Petition under Article 226 of the Constitution
of India, the Petitioner had originally challenged the notification
dated 11th June, 2014 issued by Respondent No.2 under the

provisions of the *Maharashtra Relief Undertakings (Special Provisions) Act, 1958*, [formerly known as the *Bombay Relief Undertakings (Special Provisions) Act, 1958*] (for short **“BRU Act”**). This notification was valid for a period of one year from the date of its issuance. It has thereafter been brought on record that subsequent notifications have also been issued and the notification that is currently in force is dated 18th June, 2016. This notification is valid for a period of one year commencing from 18th June, 2016 till 17th June, 2017 (both days inclusive). Under this notification, Respondent No.4 is referred to therein as a '**Relief Undertaking**' and all of its rights, privileges, obligations or liabilities (except those obligations or liabilities as specified therein) accrued or incurred before 18th June, 2016, and any remedy for the enforcement thereof, shall be suspended and all proceedings relating thereto pending before any Court, Tribunal, Officer or Authority shall be stayed, provided Respondent No.4 (the said Relief Undertaking) adopts all necessary reforms mandatorily as decided by the State Government during the said period.

2. When this matter was taken up on 11th June, 2013, a Division Bench of this Court had observed that the effect of these notifications issued under the provisions of the BRU Act, qua the

provisions of the *Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002* (for short the **“SARFAESI Act”**) would require consideration. In these circumstances, it was ordered that the Collector and District Magistrate (Respondent No.3) shall not insist upon the Petitioner, handing over possession of the properties, but at the same time the Petitioner shall maintain status-quo in respect thereof. It was further clarified that the Petitioner was at liberty to proceed with the auction of the property of which possession was taken, but shall not finalize the same until further orders of this Court. Thereafter, on 12 August, 2014, rule was issued in this Writ Petition and the ad-interim relief granted on 11th June, 2013 was continued as interim relief pending the hearing and final disposal of the Petition. The hearing of this Writ Petition was also expedited. It is in these circumstances, this Writ Petition has come up before us for hearing and final disposal.

3. We must at the outset note that though the main relief in the Writ Petition is to challenge the notifications issued by Respondent No.2 under the provisions of the BRU Act, Mr Kamdar, learned Sr. Counsel appearing on behalf of the Petitioner, has given up that challenge and has addressed us only on the issue whether the

provisions of the SARFAESI Act, and more particularly section 13 thereof, override the provisions of the BRU Act. In short, it was the contention of the Petitioner that notwithstanding the notifications issued under the provisions of the BRU Act, the Petitioner, being an Asset Reconstruction Company ("**ARC**") as defined under the provisions of the SARFAESI Act, is entitled to take recourse to the provisions thereof in accordance with law and proceed to sell its secured asset and recover its dues.

4. Before we deal with the contentions which have been raised for our consideration, it would be necessary to set out some few facts. They are as follows:-

- (a) The Petitioner is a Securitization and Reconstruction Company (now an ARC) registered under section 3 of the SARFAESI Act. Respondent No.1 is the State of Maharashtra and Respondent No.2 is the Ministry of Energy and Labour Department who has issued the impugned Notifications, the latest of them being dated 18th June, 2016. Respondent No.3 is the Collector and District Magistrate, Kolhapur. Respondent No.4 is a Company incorporated under the provisions of the

Companies Act, 1956 and inter alia carrying on the business in textile manufacturing and export thereof. Respondent No.4 had originally taken financial assistance and was the borrower of Bank of India as well as other banks in the consortium. Thereafter, the debt, (alongwith the underlying security interest) owed by Respondent No.4 to Bank of India, was assigned in favour of the Petitioner. In these circumstances, the Petitioner is before us. Any reference to the Petitioner hereinafter, shall mean JM Financial Asset Reconstruction Co. Pvt. Ltd. and/or Bank of India, as the case may be.

- (b) It is the case of the Petitioner that under a loan sanctioned to Respondent No.4, the Petitioner from time to time lent and advanced large amounts of money not only through itself but also on behalf of consortium Banks. Respondent No.4 set up their factory and was carrying on business of manufacturing and export of textile material and garments from the advances made by the Petitioner and other consortium banks.

- (c) In view of the fact that various defaults were committed

by Respondent No.4 in servicing the loans and advances granted to it, the Petitioner declared the account of Respondent No.4 as a non-performing asset. Thereafter, in or about 2nd May 2012, the Petitioner has for and on behalf of itself as well as other consortium banks issued a notice under section 13(2) of the SARFAESI Act calling upon Respondent No.4 to pay an amount of Rs.264,74,22,000/- to the Petitioner and other consortium banks.

- (d) As Respondent No.4 did not discharge its liability, the Petitioner issued a possession notice dated 5th November, 2012 under section 13(4) of the SARFAESI Act and thereafter went to take possession of the property mentioned in the said notice. Since Respondent No.4 refused to handover actual physical possession of the property, symbolic possession was taken. Thereafter, the Petitioner moved an application before Respondent No.3 herein under section 14 of the SARFAESI Act requesting Respondent No.3 to take actual physical possession of the said property. Accordingly, Respondent No.3 passed an order on 11th March, 2013 directing that physical

possession of the said property and which was secured as a mortgage in favour of the Petitioner and other consortium banks, be handed over by Respondent No.4. Accordingly, and pursuant to the aforesaid order, physical forcible possession of the said property was taken by the Respondent No.3 and handed over to the Petitioner on 29th April, 2013. The Petitioner has been in actual physical possession of the mortgage property since 29th April, 2013.

(e) Thereafter, the Petitioner issued an advertisement of E-Auction on 19th May, 2013 publishing the date of auction as 20th June, 2013 of all the assets of Respondent No.4 of which possession had been taken by the Petitioner in exercise of the powers conferred under the provisions of the SARFAESI Act. The reserve price fixed in the said E-Auction was Rs.246 crores and the EMD was fixed at Rs.24.60 crores.

(f) After all this, Respondent No.4 approached Respondent Nos.1 and 2 and got a Notification issued by the State Government under the provisions of sections 3 and 4 of

the BRU Act. This Notification was dated 24th May, 2013 and was to be valid for a period of one year. Because of the aforesaid Notification, Respondent No.3 issued a letter dated 6th June, 2013 to the Petitioner inter alia informing the Petitioner that since the aforesaid Notification had been issued under the provisions of the BRU Act, possession of the secured assets taken by the Petitioner on 29th April, 2013 must be returned back to Respondent No.4 within a period of two days from the date of issuance of the said letter. This letter is also impugned in this Writ Petition.

- (g) In reply to the aforesaid letter, the Petitioner by its letter dated 7th June, 2013 requested Respondent No.3 thirty days' time for taking further course of action. It is the case of the Petitioner that till the date of filing of the present Petition, there has been no further communication received from the Office of Respondent No.3. Accordingly, to challenge the original Notification issued on 24th May, 2013 as well as the letter issued by Respondent No.3 dated 6th June 2013, this Writ Petition was filed. Thereafter, the Notification issued under the

BRU Act and which was to remain valid for a period of one year, has been extended from time to time by issuance of fresh Notifications under the provisions of the BRU Act, the latest Notification being issued on 18th June, 2016 and which is valid till 17th June, 2017. Being aggrieved by this action, the Petitioner is before us in our extraordinary equitable and discretionary jurisdiction under Article 226 of the Constitution of India.

5. In this factual backdrop, Mr Kamdar, learned Sr. Counsel appearing on behalf of the Petitioner, submitted that initially, the Legislature, finding that banks and financial institutions were suffering considerable difficulties in recovering their loans and advances due to the fact that the procedure existing then for recovery was extremely time consuming and burdensome, and the debts due to banks and financial institutions blocked a significant portion of their funds in unproductive assets, the *Recovery Of Debts Due To Banks And Financial Institutions Act, 1993* was enacted. Under this Act, exclusive jurisdiction was conferred upon the Debt Recovery Tribunal (“**DRT**”) [constituted under the said Act] for adjudicating the debts due to the banks and financial institutions. Mr Kamdar submitted that thereafter the Legislature found that the

financial sector, being one of the key drivers in India's efforts to achieve success in rapidly developing its economy, did not have a level playing field as compared to other participants in the financial markets of the world. The Legislature felt that notwithstanding the RDDB Act, our existing legal framework had not kept pace with the changing commercial practices and financial sector reforms, which resulted in delays in recovery of defaulting loans. It is in these circumstances the Legislature thereafter enacted the SARFAESI Act. He submitted that under the SARFEASI Act, the framework was such that banks and financial institutions in whose favour a security was created, could invoke the provisions of the Act and enforce their security without the intervention of the Court. He submitted that this being a special legislation and enacted for a greater public purpose (which was to recover dues of banks and financial institutions), was given primacy.

6. In this regard, Mr. Kamdar brought to our attention several provisions of the SARFAESI Act. He submitted that Section 34 of the SARFAESI Act stipulated that no Civil Court would have jurisdiction to entertain any suit or proceedings of any matter which the DRT or the DRAT is empowered by the said Act to determine, and no injunction could be granted by any Court or other authority in

respect of any action taken or to be taken in pursuance of any powers conferred by or under this Act or under the RDDB Act. He, thereafter submitted that Section 35 stipulates that the provisions of the SARFAESI Act would override other laws and would 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. He thereafter invited our attention to Section 37 of the Act which provides that the provisions of the SARFAESI Act or the rules made thereunder are in addition and not in derogation of the Companies Act, 1956; Securities Contract (Regulation) Act, 1956; the Securities and Exchange Board of India Act, 1992; the RDDB Act; and any other law for the time being in force. He submitted that what is important to note is that the BRU Act was not one of the enactments listed in Section 37 to be in addition to and not in derogation of the SARFAESI Act.

7. In contrast, Mr. Kamdar submitted that the BRU Act was an enactment to make temporary provisions for industrial relations and other matters to enable the State Government to conduct or to provide loans, guarantee or financial assistance for the conduct of certain industrial undertakings as a measure of preventing unemployment or unemployment relief. He submitted that Section 4

of BRU Act *inter alia* stipulated that notwithstanding any law, usage, custom, contract, instrument, decree, order, award, submission, settlement, standing order or other provision whatsoever, the State Government, by notification in the *official gazette*, could direct that in relation to any relief undertaking and in respect of the period for which the relief undertaking continues as such under sub-section (2) of Section 3, any right, privilege, obligation or liability accrued or incurred before the undertaking was declared as a relief undertaking, and any remedy for the enforcement thereof shall be suspended and all proceedings relating thereto pending before any Court, Tribunal, Officer or Authority shall be stayed.

8. Mr. Kamdar submitted that in the facts of the present case, a notification (and renewed from time to time) as contemplated under Section 4(1)(a)(iv) was issued by the State Government declaring Respondent No.4 as a relief undertaking. He submitted that by virtue of this notification, it was the contention of Respondent No.4 that the proceedings under the SARFAESI Act could not continue as there was a complete bar as set out in the said Section read with said notification. He submitted that this provision was directly inconsistent with the provisions of the SARFAESI Act and more particularly Section 13 thereof which *inter alia* empowers the

secured creditor to take action under the said Act and enforce its security without the intervention of the Court. Placing strong reliance on Section 35 of the SARFAESI Act, Mr Kamdar submitted that the SARFAESI Act, being a special and a later Legislation enacted for the purpose of ensuring that the security created in favour of banks and financial institutions are enforced without any hindrance, that the Legislature thought it fit to declare that the provisions of the SARFAESI Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument by virtue of any such law. He submitted that Section 4 and the notification issued thereunder were clearly inconsistent with the rights of the secured creditor to enforce its security under Section 13 of the SARFAESI Act, and therefore, notwithstanding Section 4 of the BRU Act and the notification issued thereunder, the secured creditor, under the provisions of the SARFAESI Act, could take all steps to enforce its security.

9. To support this argument, Mr Kamdar submitted that this issue was no longer res-integra and was covered by a decision of the Supreme Court in the case of **Madras Petrochem Ltd. & Anr. Vs.**

Board of Industrial & Financial Reconstruction & Ors.¹ He submitted that what came up for consideration before the Supreme Court was whether the provisions of the SARFAESI Act would override the provisions of the *Sick Industrial Companies (Special Provisions) Act, 1985* (“**SICA, 1985**”). He submitted that just as in the case of the BRU Act, where all proceedings are stayed against the company in whose favour a notification has been issued under Section 4, Section 22 of SICA, 1985 also provided for stay of all proceedings against the sick industrial company that had preferred a reference before the Board of Industrial and Financial Reconstruction (“BIFR”). He submitted that the Supreme Court after analyzing the law on the subject came to the conclusion that the provisions of Section 22 of SICA, 1985 were inconsistent with the provisions of the SARFAESI Act, and therefore held that notwithstanding the fact that a reference of a sick industrial company was pending before the BIFR, the secured creditor could take recourse to the provisions of the SARFAESI Act and enforce its security against the sick industrial company. On the same parity of reasoning, Mr Kamdar submitted that we hold that the provisions of the SARFAESI Act override the provisions of the BRU Act and consequently, the letter dated 6th June, 2013, issued by Respondent

1 (2016) 4 SCC 1

No.3 be quashed and set aside.

10. On the other hand, Mr Jain learned counsel appearing on behalf of Respondent No.4 submitted that there was no inconsistency between the provisions of the SARFAESI Act and the BRU Act so as to hold that the provisions of the SARFAESI Act would override the provisions of the BRU Act. He submitted that the BRU Act was an act to make temporary provisions for industrial relations and other matters to enable the State Government to conduct or to provide a loan, guarantee or financial assistance for the conduct of certain industrial undertakings as a measure of preventing unemployment or of unemployment relief. He submitted that the Statement of Objects and Reasons of this Act would indicate that this Act was promulgated in order to mitigate hardship that may be caused to the workers who are rendered jobless by closure of the undertaking.

11. In contrast he submitted that the SARFAESI Act was brought into force to regulate securitisation and reconstruction of financial assets and enforcement of security interest. This enactment was brought into force to ensure that banks and financial institutions in whose favour a security interest was created, could enforce their security without the intervention of the Court and realise their dues.

He submitted that the two Acts, namely, the SARFAESI Act and the BRU Act operate in totally different fields and are enacted to achieve totally different objects. According to Mr Jain, therefore, there was no question of any inconsistency between the provisions of the SARFAESI Act on the one hand and the BRU Act on the other.

12. Relying upon Article 246 of the Constitution of India, Mr Jain submitted that Parliament had the exclusive power to make laws with respect to any matters enumerated in List I in the Seventh Schedule to the Constitution (“the Union List”). Similarly, the Legislature of any State had the exclusive power to make laws for such States or any part thereof for any of the matters enumerated in List II in the Seventh Schedule of the Constitution (“the State List”). He submitted that over and above these two Lists, Parliament as well as the Legislature of any State also had the power to make laws with respect to any of the matters enumerated in List III in Seventh Schedule of the Constitution (“the Concurrent List”). He submitted that Article 254 provides for any repugnancy in the laws made by Parliament and the laws made by the Legislature of a State. He submitted that if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an

existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void. He submitted that Clause (2) of Article 254 stipulates that where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State. Looking to the provisions of Article 246 and 254 of the Constitution of India, Mr Jain submitted that the question of repugnancy would arise only in relation to any entry in the Concurrent List. He submitted that in the facts of the present case, the SARFAESI Act has been enacted by virtue of entry 45 in the Union List whereas the BRU Act is enacted by the State Government under the State List. This being the case, there was no question of repugnancy between the provisions of the BRU Act and the provisions of the SARFAESI Act.

13. Mr. Jain then submitted that under Section 4(1)(a)(iv) of the BRU Act, any right, privilege, obligation or liability accrued or incurred before the undertaking was declared a relief undertaking, and any remedy for the enforcement thereof shall be suspended, and all proceedings relating thereto pending before any court, tribunal, officer or authority shall be stayed. He submitted that this suspension is not indefinite but for a limited period as set out in Section 3(2) of the BRU Act. According to Mr Jain, the notification issued under the provisions of the BRU Act was valid for period of 12 months from the date of its issuance and could be renewed from time to time so that the total period in the aggregate did not exceed 15 years. He submitted that the suspension of the obligations and/or liabilities of the 'Relief Undertaking' as contemplated under the provisions of BRU Act being temporary in nature, there was no question of holding that there was any inconsistency between the provisions of the SARFAESI Act and that of the BRU Act.

14. In support of his arguments, Mr Jain relied upon the following judgments:-

(i) Binod Mills Co. Pvt. Ltd. Ujjain (M.P.) Vs Suresh Chandra Mahaveer Prasad Mantri, Bombay.²

² (1987) 3 SCC 99

(ii) Doburg Lager Breweries Pvt. Ltd. Vs. Dhariwal Bottle Trading Co. & Anr.³

(iii) Vishal N Kalsaria Vs. Bank of India & Ors.⁴

(iv) Security Association of India Vs. Union of India and Ors.⁵ and

(v) Modern Syndex (I) Ltd. Vs. Debts Recovery Tribunal, Jaipur & Ors.⁶

15. We have heard the learned Advocates at length and perused the papers and proceedings in the Writ Petition along with the annexures thereto. Before we deal with the rival contentions, it would be necessary to understand the purpose for which both the enactments, namely the SARFAESI Act and the BRU Act, were brought into force. The statements of object and reasons of the SARFAESI Act indicate that the financial sector, being one of the key drivers in India's efforts to achieve success in rapidly developing its economy, did not have a level playing field as compared to other participants in the financial markets of the world. There was no legal provision for facilitating securitisation of financial assets of banks and financial institutions, and unlike international banks, the banks and financial institutions in India did not have the power to take possession of securities and sell them. The Legislature felt that our

3 (1986) 2 SCC 382

4 (2016) 3 SCC 762

5 (2014) 12 SCC 65

6 AIR 2001 Rajasthan 170

existing legal framework had not kept pace with the changing commercial practices and financial sector reforms, which resulted in delays in recovery of defaulting loans. This in turn had the effect of mounting levels of non-performing assets of banks and financial institutions. In order to bring the Indian Banking Sector on par with International Standards, the Government set up two Narasimhan Committees and the Andhyarujina Committee for the purposes of examining banking sector reforms. These Committees inter alia suggested enactment of a new legislation for securitization and empowering banks and financial institutions to take possession of the securities and to sell them without the intervention of the Court. Accepting these recommendations, the SARFAESI Act was brought into force with w.r.e.f. 21-06-2002. There have been several amendments to the SARFAESI Act, the latest being an amendment of 2016 that received the assent of the President on 12 August, 2016 and was published in the Official Gazette dated 16 August, 2016. It is called the *Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016*. The preamble of this amending Act indicates that the same was intended to further amend the SARFAESI Act, the RDDB Act, the Indian Stamp Act, 1899 and the Depository Act, 1996 and for matters connected therewith or incidental thereto.

16. Section 2 of the SARFAESI Act is the definitions clause and *inter alia* stipulates that in this Act, unless the context otherwise requires, “secured asset” means the property on which a security interest is created [Section 2(zc)]. In turn, “secured debt” is defined to mean a debt secured by any security interest [section 2(ze)]. Thereafter, “security interest” has been defined in Section 2(zf) and reads as under:-

“(zf) “security interest” means right, title or interest of any kind, other than those specified in Section 31, upon property created in favour of any secured creditor and includes—

- (i) any mortgage, charge, hypothecation, assignment or any right, title or interest of any kind, on tangible asset, retained by the secured creditor as an owner of the property, given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of the asset or an obligation incurred or credit provided to enable the borrower to acquire the tangible asset; or**
- (ii) such right, title or interest in any intangible asset or assignment or licence of such intangible asset which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred or any credit provided to enable the borrower to acquire the intangible asset or licence of intangible asset;”**

17. Section 13 of the SARFAESI Act provides for enforcement of security interest. Insofar as the same is relevant for our purpose, the same is reproduced hereunder:-

“13. Enforcement of security interest.—(1) Notwithstanding anything contained in Section 69 or Section 69-A of the Transfer of

Property Act, 1882 (4 of 1882), any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.

(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4).

Provided that—

- (i) the requirement of classification of secured debt as non-performing asset under this sub-section shall not apply to a borrower who has raised funds through issue of debt securities; and**
- (ii) in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee;**

(3) The notice referred to in sub-section (2) shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower.

(3-A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate ²[within fifteen days] of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower:

Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to

the Debts Recovery Tribunal under Section 17 or the Court of District Judge under Section 17-A.

(4) In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:—

(a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

(b) take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;]

(c) appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;

(d) require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

(5)

(5A)

(5B)

(5C)

(6)

(7)

(8)

(9)

- (10)
- (11)
- (12)
- (13)"

18. As can be seen from the above reproduction, Section 13(1) provides for a secured creditor to enforce its security interest without the intervention of the Court or Tribunal in accordance with the provisions of the SARFAESI Act. Section 13(2) contemplates a notice being issued to the borrower and stipulates that where any borrower makes any default in repayment of the secured debt or any installment thereof, and such debt is classified by the secured creditor as a non-performing asset, then the secured creditor can call upon the borrower to discharge his liability within 60 days from the date of the notice, failing which the secured creditor is entitled to exercise all or any of the rights under Section 13(4). Section 13(4) stipulates that in case the borrower fails to discharge his liability in full within the time period specified under Section 13(2), then, the secured creditor can take recourse to any one or more measures set out in the said sub-section. One of the measures that the secured creditor can take to enforce its security is to take possession of the secured asset and thereafter transfer the same by way of lease, assignment or sale. These rights that have been granted to the

secured creditor under Section 13 to ensure that the secured creditor can enforce its security without having to come to Court or institute any legal proceedings in respect thereof.

19. Thereafter comes Section 14 which *inter alia* empowers the Chief Metropolitan Magistrate or the District Magistrate to assist the secured creditor in taking possession of the secured asset. This section *inter alia* stipulates that where possession of any secured asset is required to be taken by the secured creditor or if any secured asset is required to be sold or transferred by the secured creditor under the provisions of the SARFAESI Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any secured asset or other documents relating thereto maybe situated or found, to take possession thereof and forward it to the secured creditor.

20. Section 17 of the SARFAESI Act provides for a remedy to the borrower or any other aggrieved person to approach the DRT and challenge any of the measures taken by the secured creditor in terms of Section 13(4) of the SARFAESI Act. Another provision that must be noted is Section 26-E which provides for priority to secured

creditors and *inter alia* stipulates that notwithstanding anything contained in any other law for the time being in force, after registration of the security interest as provided in the said Act, 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. The explanation to the said Section clarifies that on or after the commencement of the *Insolvency and Bankruptcy Code, 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.

21. Three other provisions of which we must make a note of are Sections 34, 35 and 37 of the SARFAESI Act. Section 34 stipulates that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a DRT or DRAT is empowered by or under this Act to determine, and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the RDDB Act. Section 35 stipulates that the provisions of the SARFAESI Act are to override the provisions of

other laws and reads thus:-

“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.”

22. This Section stipulates that the provisions of the SARFAESI 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. Section 37 provides that the provisions of the SARFAESI Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956; the Securities Contracts (Regulation) Act, 1956; the Securities and Exchange Board of India, Act, 1992; the RDDB Act; or any other law for the time being in force. We must at once note over there that the BRU Act is not one of the enactments listed in Section 37 that is in addition to and not in derogation of the SARFAESI Act. Even the words *“or any other law for the time being in force”* have been interpreted by the Supreme Court in the case of **Madras Petrochem Ltd.**¹, wherein the Supreme Court has held that if a liberal meaning is given to the said expression, Section 35 of the SARFAESI Act would become completely otiose as all other laws would then be in addition to and not in derogation of the SARFAESI

¹ (2016) 4 SCC 1

Act. The Supreme Court opined that obviously this could not have been the parliamentary intendment, and hence, by limiting the scope of the expression "*or any other law for the time being in force*" contained in Section 37, held that this expression will have to mean any other laws having relation to the securities markets only, as the RDDB Act is the only other special law, apart from the SARFAESI Act, dealing with recovery of debts due to banks and financial institutions.

23. When all these provisions are read together and as a whole, what becomes abundantly clear is that the SARFAESI Act has been brought into force to ensure that banks and financial institutions are able to enforce their security interest and realise their dues with minimum interference and hindrance. In fact, by virtue of section 26-E, the dues of the secured creditor have even been given priority over all dues including Government dues, subject to the stipulations and exceptions contained therein. One can hardly dispute that the SARFAESI Act has been enacted in larger public interest to ensure that banks and financial institutions, who hold monies of the public and are the key drivers in the economic progress of the country, are able to recover their debts and outstandings as quickly as possible, and with minimum interference.

24. On the other hand, the statements of object and reasons of the BRU Act would show that the same was enacted in order to mitigate the hardship that may be caused to the workers who may be thrown out of employment by the closure of the undertaking. In such circumstances, the Government may take over such undertakings either on lease or may run them as a measure of employment relief. In such a case, the Government may have to fix revised terms of employment of the workers or make other changes which may not be in consonance with the existing labour laws or any agreements or awards applicable to the undertaking. It may be necessary even to exempt the undertaking from certain legal provisions. It is for this reason that the BRU Act was brought into force. Section 2(2) defines a “relief undertaking” to mean an industrial undertaking in respect of which a declaration under section 3 is in force. Section 3 deals with the declaration of the relief undertaking and reads as under:-

“3. (1) If at any time it appears to the State Government necessary to do so, the State Government may, by notification in the *Official Gazette*, declare that an industrial undertaking specified in the notification whether started, acquired or otherwise taken over by the State Government, and carried on or proposed to be carried on by itself or under its authority, or to which any loan, guarantee or other financial assistance has been provided by the State Government shall, with effect from the date specified for the purpose in the notification, be conducted to serve as a measure of preventing unemployment

or of unemployment relief and the undertaking shall accordingly be deemed to be a relief undertaking for the purposes of this Act.

(2) A notification under sub-section (1) shall have effect for such period not exceeding twelve months as may be specified in the notification; but it shall be renewable by like notifications from time to time for further periods not exceeding twelve months at a time, so however that all the periods in the aggregate do not exceed fifteen years."

25. Thereafter comes Section 4 which deals with the power to prescribe industrial relations and other facilities temporarily for a relief undertaking. Section 4 of the BRU Act reads thus:-

"4. (1) Notwithstanding any law, usage, custom, contract, instrument, decree, order, award, submission, settlement, standing order or other provision whatsoever, the State Government may, by notification in the *official Gazettee*, direct that -

(a) in relation to any relief undertaking and in respect of the period for which the relief undertaking continues as such under sub-section (2) of section 3 -

(i) all or any of the laws in the Schedule to this Act or any provisions thereof shall not apply (and such relief undertaking shall be exempt therefrom), or shall, if so directed by the State Government, be applied with such modifications (which do not however affect the policy of the said laws) as may be specified in the notification;

(ii) all or any of the agreements, settlements, awards or standing orders made under any of the laws in the Schedule to this Act, which may be applicable to the undertaking immediately before it was acquired or taken over by the State Government or before any loan, guarantee or other financial assistance was

- provided to it by, or with the approval of, the State Government, for being run as a relief undertaking, shall be suspended in operation or shall, if so directed by the State Government, be applied with such modifications as may be specified in the notification;
- (iii) rights, privileges, obligations and liabilities shall be determined and be enforceable in accordance with clauses (i) and (ii) and the notification ;
 - (iv) any right, privilege, obligation or liability accrued or incurred before the undertaking was declared a relief undertaking and any remedy for the enforcement thereof shall be suspended and all proceedings relative thereto pending before any court, tribunal, officer or authority shall be stayed ;
- (b) the right, privilege, obligation or liability referred to in clause (a)(iv) shall, on the notification ceasing to have force, revive and be enforceable and the proceedings referred to therein shall be continued :

Provided that in computing the period of limitation for the enforcement of such right, privilege, obligation or liability, the period during which it was suspended under clause (a)(iv) shall be excluded notwithstanding anything contained in any law for the time being in force.

(2) A notification under sub-section (1) shall have effect from such date not being earlier than the date referred to in sub-section (1) of section 3, as may be specified therein, and the provisions of section 21 of the Bombay General Clauses Act, 1904, shall apply to the power to issue such notification."

(emphasis supplied)

26. What can be seen from the aforesaid provisions is that under Section 3, if at any time it appears necessary to the State Government to do so, it may by notification in the Official Gazette declare that an undertaking specified in the notification shall, with

effect from the date specified for the purpose in the notification, be deemed to be a relief undertaking for the purpose of the BRU Act. Section 4 *inter alia* stipulates that notwithstanding any law, usage, custom, contract instrument, decree, order, award, submission, settlement, standing order, or any other provisions whatsoever, the State Government may by notification in the Official Gazette direct that in relation to any relief undertaking [in respect of which it continues as such under the provisions of Section 3(2)], any right, privilege, obligation or liability agreed or incurred before the undertaking was declared a relief undertaking and remedy for the enforcement thereof shall be suspended, and all proceedings relating thereto pending before any court, tribunal, officer or authority shall be stayed.

27. In the facts of the present case, the notification which is in force at present is the notification dated 18th June, 2016. For ready reference, the said notification is reproduced hereunder:

“INDUSTRIES, ENERGY AND LABOUR DEPARTMENT
Madam Cama Marg, Hutatma Rajguru Chowk,
Mantralaya, Mumbai 400 032, dated the 18 June, 2016.

NOTIFICATION

MAHARASHTRA RELIEF UNDERTAKINGS (SPECIAL PROVISIONS) ACT.

No. BRU. 1615/CR.57/15/Ind. 10. - In exercise of the powers conferred by

sub-section (1) of section 3 and sub-clause (iv) of clause (a) of sub-section (1) of section 4 of the Maharashtra Relief Undertakings (Special Provisions) Act (XCVI of 1958), the Government of Maharashtra hereby -

- (a) declares that, the industrial undertaking called the Messers Maruti Cotex Limited, Plot No.T-17, Kagal Hatkanangale, Five Star M.I.D.C., Post-Talandge, Taluka – Hatkanangale, District – Kolhapur – 416 216, having its registered office a 17-E, Shiv Parvati, Nagala Park, Kolhapur 416 003 (hereinafter referred to as “the said relief undertaking”), to which financial assistance under the Package Scheme of Incentives - 2001 of Rs.2,84,19,991 (Rupees Two Crores Eighty Four Lakhs, Nineteen Thousand, Nine Hundred Ninety One only) has been provided by the Government of Maharashtra through Chief Engineer (Electricity), Public Works Department, Mumbai, as electricity duty exemption, shall, for a period of One Year commencing on the 18th June 2016 and ending on the 17th June, 2017 (both days inclusive), be conducted to serve as a measure of preventing unemployment; and
- (b) directs that, in relation to the said relief undertaking and in respect of the said period of One Year commencing on the 18th June, 2016 and ending on the 17th June, 2017 (both days inclusive), for which the said relief undertaking continues as such, **any rights, privileges, obligations or liabilities** except the obligations or liabilities incurred in favour of workmen of the said relief undertaking, the dues of the Employees, State Insurance Corporation and any liabilities incurred under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), the Maharashtra Land Revenue Code, 1966 (Mah. XLI of 1966), the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 (Mah. XVI of 1975) and the Maharashtra Value Added Tax Act, 2002 (Mah. IX of 2005), **accrued or incurred before the 18th June, 2016 and any remedy for the enforcement thereof shall be suspended and all proceedings relating thereto pending before any court, tribunal officer or authority shall be stayed**, provided that the said relief undertaking adopts all necessary reforms mandatorily as decided by the State Government during the relief undertaking period.

By order in the name of the Governor of Maharashtra,

SANJAY DEGAONKAR,
Deputy Secretary to Government.”

(emphasis supplied)

28. This notification *inter alia* stipulates that it shall be valid

for a period of one year commencing from 18th June, 2016 till 17th June, 2017 and directs that in relation to Respondent No.4 (the relief undertaking) any rights, privileges, obligations or liabilities (except the obligations or liabilities mentioned therein) accrued or incurred before 18th June, 2016, and any remedy for the enforcement thereof shall be suspended, and all proceedings relating thereto pending before any court, tribunal, officer or authority shall be stayed.

29. Therefore, on a plain reading of the provisions of BRU Act read with the notification issued thereunder (as reproduced above), what becomes clear is that all liabilities and obligations of Respondent No.4 stand suspended. This would include the liability that Respondent No.4 has to the Petitioner. The effect of this would be that by virtue of the provisions of Sections 3 and 4 of the BRU Act read with notification issued thereunder, the Petitioner (ARC) would be restrained from exercising its rights against Respondent No.4 under the provisions of the SARFAESI Act (and more particularly under Section 13 thereof), which entitle the secured creditor (in the present case an ARC) to enforce its security interest without the intervention of the Court. This being the case, the provisions of Sections 3 and 4 of the BRU Act, read with the notification issued thereunder, would be clearly be a fetter on the secured creditor from

exercising its statutory rights under section 13 of the SARFAESI Act. In other words, by virtue of the provisions of Sections 3 and 4 of the BRU Act read with the notification issued thereunder, the secured creditor is restrained from exercising its statutory rights under the provisions of the SARFAESI Act. To this extent, clearly there is an overlap between the provisions of BRU Act and the provisions of the SARFAESI Act. However, section 35 of the SARFAESI Act clearly mandates that the provisions of the SARFAESI 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. This being the position and considering the mandate laid down in Section 35 of the SARFAESI Act and which is a subsequent law enacted by Parliament, it would have to be held that the provisions of the SARFAESI Act would have effect notwithstanding the provisions of the BRU Act and any notification issued thereunder, insofar as it restrains the secured creditor from enforcing its security interest against the relief undertaking in whose favour a notification has been issued.

30. In the view that we have taken, we are supported by a decision of the Supreme Court in the case of **Madras Petrochem**

Ltd.¹ The issue involved before the Supreme Court was on the play between the provisions of SICA, 1985 and the SARFAESI Act. The Supreme Court, after noting all the relevant provisions of the SARFAESI Act and SICA, 1985 along with their objects and reasons, held as follows:

“36. A conspectus of the aforesaid decisions shows that the Sick Industrial Companies (Special Provisions) Act, 1985 prevails in all situations where there are earlier enactments with non obstante clauses similar to the Sick Industrial Companies (Special Provisions) Act, 1985. Where there are later enactments with similar non obstante clauses, the Sick Industrial Companies (Special Provisions) Act, 1985 has been held to prevail only in a situation where the reach of the non obstante clause in the later Act is limited—such as in the case of the Arbitration and Conciliation Act, 1996—or in the case of the later Act expressly yielding to the Sick Industrial Companies (Special Provisions) Act, 1985, as in the case of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Where such is not the case, as in the case of Special Courts Act, 1992, it is the Special Courts Act, 1992 which was held to prevail over the Sick Industrial Companies (Special Provisions) Act, 1985.

37. We have now to undertake an analysis of the Acts in question. The first thing to be noticed is the difference between Section 37 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Section 34 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Section 37 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 does not include the Sick Industrial Companies (Special Provisions) Act, 1985 unlike Section 34(2) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Section 37 of the Securities and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 states that the said Act shall be in addition to and not in derogation of four Acts, namely, the Companies Act, the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992 and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. It is clear that the first

three Acts deal with securities generally and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 deals with recovery of debts due to banks and financial institutions. Interestingly, Section 41 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 makes amendments in three Acts—the Companies Act, the Securities Contracts (Regulation) Act, 1956, and the Sick Industrial Companies (Special Provisions) Act, 1985. It is of great significance that only the first two Acts are included in Section 37 and not the third i.e. the Sick Industrial Companies (Special Provisions) Act, 1985. This is for the obvious reason that the framers of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 intended that the Sick Industrial Companies (Special Provisions) Act, 1985 be covered by the non obstante clause contained in Section 35, and not by the exception thereto carved out by Section 37. Further, whereas the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 is expressly mentioned in Section 37, the Sick Industrial Companies (Special Provisions) Act, 1985 is not, making the above position further clear. And this is in stark contrast, as has been stated above, to Section 34(2) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, which expressly included the Sick Industrial Companies (Special Provisions) Act, 1985. The new legislative scheme qua recovery of debts contained in the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 has, therefore, to be given precedence over the Sick Industrial Companies (Special Provisions) Act, 1985, unlike the old scheme for recovery of debts contained in the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

38. *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 sub-section (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)”.*

39. *This is what then brings us to the doctrine of harmonious construction, which is one of the paramount doctrines that is applied in interpreting all statutes. Since neither Section 35 nor Section 37 of the Securitisation and Reconstruction of Financial Assets and*

Enforcement of Security Interest Act, 2002 is subject to the other, we think it is necessary to interpret the expression “or any other law for the time being in force” in Section 37. If a literal meaning is given to the said expression, Section 35 will become completely otiose as all other laws will then be in addition to and not in derogation of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Obviously this could not have been the parliamentary intendment, after providing in Section 35 that the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 will prevail over all other laws that are inconsistent therewith. A middle ground has, therefore, necessarily to be taken. According to us, the two apparently conflicting sections can best be harmonised by giving meaning to both. This can only be done by limiting the scope of the expression “or any other law for the time being in force” contained in Section 37. This expression will, therefore, have to be held to mean other laws having relation to the securities market only, as the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 is the only other special law, apart from the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, dealing with recovery of debts due to banks and financial institutions. On this interpretation also, the Sick Industrial Companies (Special Provisions) Act, 1985 will not be included for the obvious reason that its primary objective is to rehabilitate sick industrial companies and not to deal with the securities market.

44. It will, thus, be seen that notwithstanding the non obstante clauses in Sections 22(1) and (4), read with Section 32, Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 will have to give way to the measures taken under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, more particularly referred to in Section 13 of the said Act, and that this being the case, the sale notices issued both in 2003 and 2013 could continue without in any manner being thwarted by Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985.

57. The resultant position may be stated thus:

- 1. Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 will continue to apply in the case of*

unsecured creditors seeking to recover their debts from a sick industrial company. This is for the reason that the Sick Industrial Companies (Special Provisions) Act, 1985 overrides the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

2. Where a secured creditor of a sick industrial company seeks to recover its debt in the manner provided by Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, such secured creditor may realise such secured debt under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, notwithstanding the provisions of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985.

3. In a situation where there are more than one secured creditor of a sick industrial company or it has been jointly financed by secured creditors, and at least 60% of such secured creditors in value of the amount outstanding as on a record date do not agree upon exercise of the right to realise their security under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 will continue to have full play.

4. Where, under Section 13(9) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, in the case of a sick industrial company having more than one secured creditor or being jointly financed by secured creditors representing 60% or more in value of the amount outstanding as on a record date wish to exercise their rights to enforce their security under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985, being inconsistent with the exercise of such rights, will have no play.

5. Where secured creditors representing not less than 75% in value of the amount outstanding against financial assistance decide to enforce their security under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, any reference pending under the Sick Industrial Companies (Special Provisions) Act, 1985 cannot be proceeded with further—the proceedings under the

Sick Industrial Companies (Special Provisions) Act, 1985 will abate.”

(emphasis supplied)

31. As can be seen from the aforesaid decision, the Supreme Court has clearly come to a finding that Section 22 of SICA, 1985 and which provides for suspension of legal proceedings, will have to give way to section 13 of the SARFAESI Act. Incidentally, Section 22 provides that, where in respect of an industrial company, an inquiry under Section 16 is pending or any scheme referred to in Section 17 is under preparation or consideration or a sanctioned scheme is under implementation, or where an appeal under section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956, or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the appellate authority. The Supreme Court, whilst considering section 22, held that this provision of SICA, 1985, by virtue of Section 35 of the SARFAESI Act,

would have to give way to the measures taken by a secured creditor under section 13 of the SARFAESI Act. On the same parity of reasoning we have no hesitation in holding that the provisions of Sections 3 and 4 of the BRU Act read with the notification issued thereunder will have to give way to the measures taken, or to be taken, by the secured creditor under section 13 of SARFAESI Act. As stated earlier, the provisions of BRU Act have the effect of restraining the secured creditor from exercising its statutory rights under the provisions of Section 13 of the SARFAESI Act which suspend/stay the enforcement of its security interest. This would show that there is a clear inconsistency between the provisions of Section 13 of the SARFAESI Act (which enable the secured creditor to enforce its security interest without intervention of the Court) and the provisions of the BRU Act (which restrain the secured creditor from realising its dues by enforcing its security interest). In these circumstances and by virtue of the clear mandate of Section 35 of the SARFAESI Act, the provisions of Sections 3 and 4 of the BRU Act read with the notification issued thereunder, would have to give way to the provisions of the SARFAESI Act and more particularly Section 13 thereof, which inter alia deals with the right of the secured creditor to enforce its security interest.

32. Faced with this situation, Mr Jain sought to distinguish the judgment of the Supreme Court in case of **Madras Petrochem Ltd.**¹ on the ground that both the Acts, namely, SARFAESI Act and SICA, 1985 were enacted by Parliament by exercising power under the Union List to the 7th schedule of the Constitution. In the present case, the BRU Act has been enacted by the State Legislature by exercising its powers under the State List of 7th Schedule to the Constitution and which exclusively gives power to the State Legislature to enact laws with reference to the entries mentioned in the State List. He submitted that the question of inconsistency between two Acts, one made by the Parliament and the other made by the State Legislature, would arise only if the both the Acts were enacted under the same entry in the Concurrent List. In the present case, Mr. Jain submitted that the SARFAESI Act was enacted under Entry 45 of the Union List whereas the BRU Act was enacted under the State List. In these circumstances, he submitted that the Judgment of the **Madras Petrochem Ltd.**¹ is inapplicable in the facts and circumstances of the present case.

33. Firstly, we must note that the BRU Act is not enacted under any Entry in the State List but under Entry 23 of the

¹ (2016) 4 SCC 1

Concurrent List which deals with social security and social insurance; employment and unemployment. Be that as it may, it would be appropriate to refer to Articles 246 and 254 of the Constitution of India in this regard. Article 246(1) stipulates that notwithstanding anything in Article 246(2) and (3), Parliament has exclusive power to make laws with respect to any matters enumerated in List I ("the Union List"). Similarly, subject to clauses (1) and (2) of Article 246, the State Legislature has exclusive power to make laws for such State or any part thereof with respect to any matter enumerated in List II ("the State List"). Over and above this, Parliament, and subject to Article 246(1) the Legislature of any State, also has the power to make laws with respect to any of the matters enumerated in List III ("the Concurrent List"). The question of repugnancy is dealt with in Article 254 and inter alia stipulates that if any provision of a law made by the Legislature of the State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of Article 254(2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to

the extent of the repugnancy, be void. In this regard, it would be apposite to refer to a decision of the Supreme Court in the case of **Govt. of A.P. v. J.B. Educational Society**,⁷ wherein the Supreme Court has very succinctly set out as to how conflicts between laws made by Parliament and by the State Legislature have to be construed and/or resolved. Paragraphs 9 to 12 are very instructive in this regard and read thus:-

“9. Parliament has exclusive power to legislate with respect to any of the matters enumerated in List I, notwithstanding anything contained in clauses (2) and (3) of Article 246. The non obstante clause under Article 246(1) indicates the predominance or supremacy of the law made by the Union Legislature in the event of an overlap of the law made by Parliament with respect to a matter enumerated in List I and a law made by the State Legislature with respect to a matter enumerated in List II of the Seventh Schedule.

10. There is no doubt that both Parliament and the State Legislature are supreme in their respective assigned fields. It is the duty of the court to interpret the legislations made by Parliament and the State Legislature in such a manner as to avoid any conflict. However, if the conflict is unavoidable, and the two enactments are irreconcilable, then by the force of the non obstante clause in clause (1) of Article 246, the parliamentary legislation would prevail notwithstanding the exclusive power of the State Legislature to make a law with respect to a matter enumerated in the State List.

11. With respect to matters enumerated in List III (Concurrent List), both Parliament and the State Legislature have equal competence to legislate. Here again, the courts are charged with the duty of interpreting the enactments of Parliament and the State Legislature in such manner as to avoid a conflict. If the conflict becomes unavoidable, then Article 245 indicates the manner of resolution of such a conflict.

12. Thus, the question of repugnancy between the parliamentary

7 (2005) 3 SCC 212

legislation and the State legislation can arise in two ways. First, where the legislations, though enacted with respect to matters in their allotted sphere, overlap and conflict. Second, where the two legislations are with respect to matters in the Concurrent List and there is a conflict. In both the situations, parliamentary legislation will predominate, in the first, by virtue of the non obstante clause in Article 246(1), in the second, by reason of Article 254(1). Clause (2) of Article 254 deals with a situation where the State legislation having been reserved and having obtained President's assent, prevails in that State; this again is subject to the proviso that Parliament can again bring a legislation to override even such State legislation.”

(emphasis supplied)

34. Looking to what has been opined by the Supreme Court, it is now well settled that both Parliament and the State Legislature are supreme in their respective assigned fields. It is the duty of the Court to interpret the legislations made by Parliament and the Legislature of the State in such a manner so as to avoid any conflict. For this purpose both the enactments have to be read as a whole. The Court has to make every endeavor to ensure that both can stand together without there being any conflict. However, if the conflict is unavoidable and the two enactments or any provisions thereof are irreconcilable, then by the force of the non-obstante in clause (1) of Article 246, the Parliamentary Legislation would prevail notwithstanding the exclusive power of the State Legislature to make a law with respect to a matter enumerated in the State List. This would also apply when Parliament makes a law in respect of a matter

enumerated in the Union List and the State Legislature makes a law with respect to a matter enumerated in the Concurrent List.

35. The two enactments that are being considered by us are the SARFAESI Act and the BRU Act. Parliament has expressly stated that the provisions of the SARFAESI Act (and which is a later enactment to the BRU Act) shall have effect insofar as there is any inconsistency between the provisions of the SARFAESI Act and any other law for the time being in force. This stipulation does not mean that the provisions of BRU Act or for that matter any other law are repugnant to the provisions of the SARFAESI Act or are rendered unconstitutional. There can certainly be a situation where there may not be any repugnancy but one could still prevail over the other in the event of an overlap. In this regard, it would also be apposite to refer to a decision of the Supreme Court in the case of ***National Engineering Industries Ltd. v. Shri Kishan Bhageria***.⁸ Paragraphs 13 & 14 read thus:-

13. In Deep Chand v. State of U.P. [AIR 1959 SC 648 : 1959 Supp (2) SCR 8, p. 43] Subba Rao, J., as the learned Chief Justice then was, observed that the result of the authorities indicated was as follows:

“Nicholas in his Australian Constitution, 2nd Edn., p. 303, refers to three tests of inconsistency or repugnancy:

(1) There may be inconsistency in the actual terms of the

⁸ 1988 Supp SCC 82

competing statutes;

(2) Though there may be no direct conflict, a State law may be inoperative because the Commonwealth law, or the award of the Commonwealth Court, is intended to be a complete exhaustive code; and

(3) Even in the absence of intention, a conflict may arise when both State and Commonwealth seek to exercise their powers over the same subject-matter.”

14. Quoting the aforesaid observations, this Court in Hoechst Pharmaceuticals Ltd. v. State of Bihar [1983] 4 SCC 45, 87 : 1983 SCC (Tax) 248] speaking through A.P. Sen, J. exhaustively dealt with the principles of repugnancy and observed that one of the occasions where inconsistency or repugnancy arose was when on the same subject-matter, one law would be repugnant to the other. Therefore, in order to raise a question of repugnancy two conditions must be fulfilled. The State law and the Union law must operate on the same field and one must be repugnant or inconsistent with the other. These are two conditions which are required to be fulfilled. These are cumulative conditions. Therefore, these laws must tread on the same field and they must be repugnant or inconsistent with each other. In our opinion, in this case there is a good deal of justification to hold that these laws, the Industrial Disputes Act and the Rajasthan Act tread on the same field and both laws deal with the rights of dismissed workman or employee. But these two laws are not inconsistent or repugnant to each other. The basic test of repugnancy is that if one prevails the other cannot prevail. That is not the position in this case. Learned counsel on behalf of the appellant, however, contended that in this case, there had been an application as indicated above under Section 28-A of the Rajasthan Act and which was dismissed on ground of limitation. Sree Shankar Ghosh tried to submit that there would be inconsistency or repugnancy between the two decisions, one given on limitation and the other if any relief is given under the Act. We are unable to accept this position, because the application under Section 28-A of the Rajasthan Act was dismissed not on merit but on limitation. There is a period of limitation provided under the Rajasthan Act of six months and it may be extended for reasonable cause. But there is no period of limitation as such provided under the Industrial Disputes Act. Therefore, that will be curtailment of the rights of the workmen or employees under the Industrial Disputes Act. In the situation Section 37 declares that law should not be construed to curtail any of the rights of the workmen. As Poet Tennyson observed — “freedom broadens from precedent to precedent” so also it is correct to state that social welfare and labour welfare broadens from legislation to

legislation in India. It will be a well settled principle of interpretation to proceed on that assumption and Section 37 of the Rajasthan Act must be so construed. Therefore in no way the Rajasthan Act could be construed to curtail the rights of the workman to seek any relief or to go in for an adjudication in case of the termination of the employment. If that is the position in view of the provisions 6 months' time in Section 28-A of the Rajasthan Act has to be ignored and that cannot have any binding effect inasmuch as it curtails the rights of the workman under the Industrial Disputes Act and that Act must prevail. In the premises, there is no conflict between the two Acts and there is no question of repugnancy.

(emphasis supplied)

36. In view of these authoritative pronouncements of the Supreme Court, we are unable to accept the submissions of Mr. Jain. There is yet another reason for rejecting the argument of Mr. Jain. If we were to accept the submission of Mr Jain it would effectively amount to re-writing the words of Section 35 of the SARFAESI Act. Section 35 of the SARFAESI Act clearly stipulates that the provisions thereof 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. What is important to note is that if we were to accept Mr Jain's contention, it would effectively mean that **“any other law”** referred to in Section 35 would only mean a Central Law enacted by the Parliament exercising its power under the Union List or the Concurrent List as more particularly set out in Article 246 of the Constitution. We see

no reason to limit the scope of the words “**any other law**” appearing in Section 35 to mean only a law passed by Parliament either under the Union List or the Concurrent List. In fact, if we were to do this, we would be doing grave injustice to the plain and unambiguous language of Section 35. We, therefore, have no hesitation in rejecting this argument of Mr Jain.

37. Having said this, what is left is to deal with the judgments cited by Mr Jain. The first judgment cited by Mr Jain is the decision of Supreme Court in the case of **Binod Mills Co. Pvt. Ltd. Ujjain (M.P.) Vs Suresh Chandra Mahaveer Prasad Mantri, Bombay.**² On a careful perusal of the said judgment, we fail to see how the same is applicable to the facts of the present case. The facts of that case would reveal that the Respondent therein filed a Summary Suit against the Appellant in the Bombay High Court on its original side. The Appellant before the Supreme Court did not contest the suit and the same was accordingly decreed. Thereafter, the Respondent got the decree transferred for execution to the District Judge, Ujjain (M.P.) and thereafter applied for execution of the decree. The Appellant before the Supreme Court thereafter resisted the execution by filing objections pleading that it was a relief undertaking under the

2 (1987) 3 SCC 99

provisions of the *Madhya Pradesh Sahayata Upkram (Vishesh Upbandh) Adhiniyam, 1978*, and that the decree could not, therefore, be executed against it in view of the bar contained under the provisions of the said Act. The Respondent admitted the Appellant to be a relief undertaking, but however, contended that the District Judge had no jurisdiction to entertain any objection to the execution of the decree validly passed by the Bombay High Court. This contention of the Respondent was upheld by the District Judge. Thereupon the Appellant filed a revision in the High Court which was also rejected confirming the order of the District Judge. It is, in these circumstances, that the Appellant approached the Supreme Court and the question of law framed by the Supreme Court was whether on a true construction of Section 5 of the Act, execution of the ex-parte decree obtained by the Respondent against the Appellant at Bombay can be instituted, commenced or proceeded with by the Respondent even though the Appellant's textile undertaking was admittedly a State Relief Undertaking under the Act. It is really this issue that was decided in the aforesaid decision as can be clearly seen from paragraphs 14, 22, and 23 to 26 of the said decision. In its decision, after construing the provisions of the said Act, the Supreme Court eventually held that if the contention of the Respondent was to be accepted (namely, that execution of its decree could proceed

notwithstanding the fact that the Appellant was declared a relief undertaking), it would render Section 5 of the said Madhya Pradesh Act a nullity and destroy the benefit conferred by that Section. The Supreme Court held that nobody questions the validity of the decree passed, but what is sought to be done is to suspend its animation for the period mentioned in the notification. In the case before the Supreme Court, there was no question of any inconsistency between the two Acts mentioned therein coupled with a provision similar or analogous to section 35 of the SARFAESI Act. We, therefore, find that the reliance placed on this decision is wholly misconceived and misplaced.

38. The next decision relied upon by Mr Jain is the decision of the Supreme Court in the case of **Doburg Lager Breweries Pvt. Ltd. Vs. Dhariwal Bottle Trading Co. & Anr.**³ Here we find that the issue involved before the Supreme Court was not of any inconsistency between the provisions of the BRU Act and that of any other law. The facts of this case would reveal that the Appellant before the Supreme Court was carrying on business and ran into financial difficulties. As a result of this, winding up proceedings were commenced against it. The 1st Respondent before the Supreme Court

3 (1986) 2 SCC 382

and which was the partnership firm, filed a Company Petition as a creditor, for winding up the Appellant Company. The Appellant Company was carrying on business in a backward area in the State of Maharashtra and had employed about 200 workers who would have been rendered jobless if the Company was wound up. The Appellant company had also borrowed about Rs.52.36 Lacs from SICOM. Taking into consideration the financial position of the Company and the consequences that were likely to ensue, the Government of Maharashtra took action under the BRU Act by declaring it as a relief undertaking and issued a notification to that effect. Once it was declared as a relief undertaking, the proceedings for winding up the Appellant filed by the 1st Respondent were also stayed by the Company Judge of the High Court. This order of the Company Judge was challenged before the Division Bench without any success and this order became final. Having failed in its attempt in winding up proceedings, Respondent No.1 filed a Writ Petition in the Bombay High Court challenging the notification issued by the Government of Maharashtra under the provisions of the BRU Act. This Writ Petition was allowed by the learned Single Judge and the notification was quashed on the ground that the notification issued under the Act did not fulfill the conditions prescribed under Section 3 of the Act, which was to give financial assistance to the sick unit under the Act, before

issuing such a notification. The appeal filed from this order to the Division Bench of the Bombay High Court was also dismissed. It is in these circumstances that the matter came before the Supreme Court. In these facts, the Supreme Court, after analyzing the provisions of the BRU Act held that the decision of the High Court to the effect that unless the loan is advanced by the State Government under the Act, no declaration could be made under Section 3 thereof, was wholly erroneous. Once again we fail to see how this Judgment is applicable to the facts and circumstances of the present case. Even in the case of **Doburg Lager Breweries Pvt. Ltd.**³ the issue before the Supreme Court was not one of inconsistency between the provisions of the BRU Act and that of any other law. We, therefore, find that the reliance placed on this decision is also wholly misconceived and misplaced.

39. The next judgment relied upon by Mr Jain was a decision of the Supreme Court in the case of **Vishal N Kalsaria Vs. Bank of India & Ors.**⁴ On a careful perusal of this decision, we find that the same is wholly inapplicable to the facts of the present case. The issue that was raised before the Supreme Court and decided, was whether the provisions of SARFAESI Act will override the provisions of the

3 (1986) 2 SCC 382

4 (2016) 3 SCC 762

Rent Control Act. The question before the Supreme Court was how can the rights of the “protected tenant” be preserved in cases where the debtor landlord secures a loan by offering the very same property as a security interest either to banks or financial institutions. After reviewing the law on the subject, the Supreme Court came to the conclusion that it was a settled position of law that once tenancy was created, a tenant could be evicted only after following due process of law as prescribed under the provisions of Rent Control Act. A tenant, who had not mortgaged its tenancy with the bank or financial institution, could not be arbitrarily evicted by using the provisions of SARFAESI Act as that would amount to stultifying the statutory rights vested in the tenants under the Rent Control Act. The Supreme Court *inter alia* held that pre-existing genuine tenants (prior to creation of the mortgage) could not be evicted by taking recourse to the provisions of the SARFAESI Act. The logic behind the same was quite simple. A tenant who had not mortgaged its tenancy rights with the bank and had absolutely no privity with the bank or the loan granted to the borrower (who happened to be the landlord of the property), could not be summarily evicted by taking recourse to the provisions of the SARFAESI Act and giving a complete go-by to the provisions of the Rent Control Act. If the mortgage was created after the tenancy and which tenancy was valid, then there was no question

of evicting that tenant under the provisions of the SARFAESI Act. What is important to note is that the Supreme Court *inter alia* held that if the leasehold right is created after the property has been mortgaged to the bank, the consent of the creditor had to be taken. This itself postulates that the SARFAESI Act did not destroy the pre-existing genuine rights of tenants that were in the property prior to the mortgage being created. Thus, in these circumstances, the Supreme Court held that the provisions of SARFAESI Act and more particularly Section 35 thereof cannot override the provisions of the Rent Control Legislation. The facts before us are totally different. In the facts of the present case, Respondent No.4 is the borrower of the Petitioner and this fact is undisputed. It is also undisputed that this very borrower has got a notification issued in its favour under the provisions of the BRU Act. It is the borrower's contention that by virtue of this notification, all its liabilities and obligations are suspended, and therefore, the secured creditor, namely the Petitioner, cannot exercise its rights under the provisions of SARFAESI Act and more particularly for enforcement of its security under Section 13 thereof. This would clearly show that there is a clear overlap between the provisions of the BRU Act read with the notification issued thereunder on the one hand and Section 13 of the SARFAESI Act on the other. Since, SARFAESI Act is an Act made by

the Parliament and much later than when the BRU Act was brought into force, coupled with the fact that Section 35 of the SARFAESI Act clearly stipulates that the provisions of SARFAESI Act would have effect notwithstanding anything inconsistent therewith in any other law for the time being in force, the provisions of Section 13 of SARFAESI Act would clearly prevail over the the provisions of BRU Act and the notification issued thereunder. In these circumstances, we find that the reliance placed by Mr Jain on the decision of the Supreme Court in case of **Vishal N Kalsaria Vs. Bank of India & Ors.**⁴ is also wholly misplaced.

40. The next judgment relied upon by Mr Jain is a decision of the Supreme Court in case of **Security Association of India Vs. Union of India and Ors.**⁵ This judgment too, we find is wholly inapplicable to the facts of the present case. What was being considered by the Supreme Court was the provisions of the *Private Security Agencies (Regulation) Act, 2005* (the Central Act made by the Parliament) and the *Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981* (State Act) enacted by the Government of Maharashtra. In the facts of that case

4 (2016) 3 SCC 762

5 (2014) 12 SCC 65

the validity of the State Act was challenged in light of the provisions to the Central Act which was brought into force much after the provisions of the State Act. It is, in these circumstances, that the observations made by the Supreme Court in the said decision have to be read and understood. In the facts before us, on the basis of the SARFAESI Act, the Petitioner has not contended and rightly so, that the provisions of the BRU Act are unconstitutional. The argument before us is simply that the provisions of the SARFAESI Act, by virtue of Section 35 thereof, shall have effect notwithstanding anything inconsistent therewith in the BRU Act. Meaning thereby, that the secured creditor can take recourse to Section 13 of the SARFAESI Act notwithstanding Sections 3 & 4 of BRU Act and the notification issued thereunder. In these circumstances, we find that even the reliance placed on this decision is wholly without any merit and has no application in the facts and circumstances of the present case.

41. The last decision relied upon by Mr Jain is of the Rajasthan High Court in the case of **Modern Syndex (I) Ltd. Vs. Debts Recovery Tribunal, Jaipur & Ors.**⁶ On a careful perusal of the aforesaid decision, we find that the Rajasthan High Court has held

⁶ AIR 2001 Rajasthan 170

that the provisions of the RDDB Act will not override the provisions of the Rajasthan Relief Undertakings (Special Provisions) Act, 1961 as well as the notification issued thereunder. We fail to see how this judgment would apply to the facts of the present case as in the present case, the issue involved is whether the provisions of the SARFAESI Act would prevail over the provisions of the BRU Act, rather than the provisions of the RDDB Act. In any event this judgment is not binding on us and would only have persuasive value. This being the case, and considering the ratio laid down by the Supreme Court in the case of **Madras Petrochem Ltd.**¹ we find that the reliance placed on this decision of the Rajasthan High Court also will not advance the case of Respondent No.4 any further.

42. In view of the forgoing discussion, we hold that the secured creditor, as defined under the provisions of SARFAESI Act can exercise its statutory rights under Section 13 thereof notwithstanding the fact that the borrower has got a notification issued in its favour under the provisions of BRU Act which suspends all its obligations and liabilities to secured creditor. Having held so, we also set aside the impugned letter dated 6th June, 2013 issued by Respondent No.3.

43. Rule is made absolute in the aforesaid terms. However, in the facts and circumstances of the case, there shall be no order as to costs.

44. In view of our detailed judgment, there is no need to pass any orders in the pending Civil Applications, and the same are disposed of accordingly.

(B.P.COLABAWALLA J.)

(S.C.DHARMADHIKARI J)

45. After this judgment was pronounced, to be fair to the advocate appearing for Respondent No.4, we record his oral request for continuing of an order passed by this Court, which order according to him, is in force from 11th June, 2013. The learned advocate for the Petitioner opposes this request.

46. On 11th June, 2013, this Court recorded that the Petitioner, in exercise of its powers under Section 13 of the SARFAESI Act took possession of the properties. Thereafter, this Notification and which we have declared to be not binding on the

Petitioner, came to be issued. In the meanwhile, on 6th June, 2013, the Collector and District Magistrate, Kolhapur (Respondent No.3) called upon the Petitioner to hand over possession of the properties. The Petitioner requested thirty days time to adopt appropriate proceedings. The order passed on 11th June, 2013 wrongly refers to Respondent No.4 as Petitioner. The Petitioner is an ARC and which would not ordinarily ask for any interim relief. However, it was forced to apply for interim reliefs as the property in question, the possession of which was with it in terms of the measures under the SARFAESI Act, was to be handed over or returned back to Respondent No.4. Accordingly, whilst granting interim reliefs in favour of the Petitioner, it was directed to maintain status-quo. However, it was permitted to proceed with the auction but not finalize the sale pursuant thereto, until further orders. This Court did not prevent Respondent No.4 from adopting proceedings either before this Court or the DRT under Section 17 of the SARFAESI Act. Now, the order passed by this Court records that the Collector and District Magistrate cannot insist on the Petitioner handing over the possession of the property in question to Respondent No.4.

47. We do not have any record of the further steps taken either by the Petitioner or by Respondent No.4 - Borrower. In these

circumstances, we do not see any purpose of continuing this order. We do not know whether the Petitioner before us has conducted the auction, finalized it, and is now keen to hand over the possession of the property to the successful bidder. Even if all this has been done, we do not know what steps the successful bidder or auction purchaser proposes to take. In these circumstances, and on some vague understanding of the parties, we cannot continue this ad-interim order. Rather, after the Petitioner has succeeded, there is no point in restraining it from exercising its rights under the SARFAESI Act. This is more so in the facts of the present case because Respondent No.4 - Borrower is indebted to the Petitioner and other consortium banks for more than Rs. 250 Crores (approximately), and has not taken any steps to clear the debts. The request is therefore refused.

(B. P. COLABAWALLA, J.) (S. C. DHARMADHIKARI, J.)