IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
CIRCUIT BENCH AT JALPAIGURI

PRESENT :

THE HON'BLE JUSTICE SHAMPA SARKAR

WPA No. 656 of 2019

AKHIL BANDHU SAHA

vs.

UNION OF INDIA AND OTHERS

For the Petitioner	:	Mr. Arnab Sengupta Mr. Dhiraj Lakhotia Ms. Meghanna Joshi Ms. Mita Mitra
For the CBI	:	Mr. Sudipto Kumar Mazumder, Ld. DSGI Mr. Ajoy Kumar Singhania Mr. Saptak Sarkar
For the SBI	:	Mr. Milindo Paul Mr. Deborshi Dhar
Hearing concluded on	:	11.12.2025
Judgment delivered on	:	24.12.2025
Judgment uploaded on	:	24.12.2025

SHAMPA SARKAR, J.

1. This writ petition was filed for a direction upon the Central Bureau of Investigation (CBI) to investigate into the allegations made by of the petitioner against the banks officials in a time bound manner

as per the directions, passed in the order dated May 16, 2017, passed in WPA No. 26566(W) of 2014.

2. Further prayer was that the High Court should monitor the investigation. The petitioner claimed to be a well established businessman and an athlete. Allegedly, he was running various companies, including the Vivekananda Retreat for Swimming and Sports, and a cattle farm which spread over 22.5 bighas of land. He had houses and landed properties and was also the proprietor of M/s East India Chemical Products and M/s East India Trading Company.

3. The petitioner availed of loans from the State Bank of India, Ektiasal Branch, sometime in 1995 and claimed to have repaid the same in full. The petitioner categorically contended that, he was never a defaulter in making timely payments of the dues. In fact, the petitioner had no dues as on December 11, 2003. The petitioner sought to rely upon some bank statements in this regard. On the other hand, he alleged that he had fixed deposits to the tune of approximately Rs. 10,25,000, three recurring deposits of Rs. 10 lakhs and Rs. 8 lakhs in the savings account of the said bank.

4. The petitioner claims to have been dispossessed from his property on December 11, 2003. His house was ransacked. All his properties, both movable and immovable, including domestic articles, clothes, stock and cattle were taken away by some persons, pretending to be CBI officers. They were accompanied by local goons and musclemen of the bank. It was alleged that, they kidnapped the

petitioner and kept him under custody of some armed men. Initially, the petitioner fled to Kolkata, to avoid proceedings which those persons were planning to illegally lodge against him. He returned to Siliguri after sometime. On return, he found that the respondent bank had taken over his properties.

5. The background leading to the filing of this application bears significance. In January, 2004, a writ Petition being WPA No. 1384 of 2004, was filed by the petitioner against the bank authorities and against some of the officials of the bank in their personal capacity. The allegations were that, the bank connived with one Atul Jhawar as also with the police authorities, and had taken over the properties of the petitioner. Interim reliefs were also prayed for. The writ petition was dismissed for default. The bank had taken a stand before the writ court that, the properties were taken over to satisfy the dues accrued from the unpaid loan along with the interest component, by invoking the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act').

6. In the said writ petition, the petitioner had specifically stated that he had approached the Inspector General of Police, North Bengal with allegations against the bank authorities when the bank authorities had ransacked the house of the petitioner and taken away his properties under the garb of taking action under the SARFAESI Act. It was also the case of the petitioner that, on the basis of the

complaint, an FIR was registered and investigation had proceeded. However, the said investigation did not lead to any fruitful result. The petitioner did not take steps for restoration of the writ petition. Thereafter, three other writ petitions were filed by the petitioner and those were disposed of with liberty to the petitioner to take steps before the appropriate forum.

7. The petitioner again filed WP No. 26566(W) of 2014, for the following reliefs:-

> "…
>
> *a)* *Issue a writ of and/or in the nature of Mandamus commanding respondent authorities to make an arrangement for the petitioner so that he can maintain his daily livelihood in any old age home or any other place in West Bengal.*
>
> *b)* *Issue a writ of and /or in the nature of Mandamus commanding* central authorities to make an arrangement *for the petitioner so that he can go before the Supreme Court to fight his case.*
>
> *c)* *Issue a writ in the nature of Certiorari commanding the respondents and/or their men, agents and subordinates in transmit all relevant records pertaining to this case before this Hon'ble Court so that conscionable justice may be done after going through the same;*
>
> *d)* *Pass appropriate direction(s) /order(s);*
>
> *e)* *Rule NISI in terms of prayers (a), (b), (c) and (d) above;*
>
> *f)* *To direct the independent agency i.e. CBI may inquire in this questioned matter regarding illegal activities taken by respondent bank and enquiry should be conducted under the observation of the Hon'ble High Court;*
>
> *g)* *Any other further order or orders, direction or directions as Your Lordship may deem fit and proper"*

8. *WP No. 24736(W) of 2014,* was filed for further reliefs. Both the writ petitions were disposed of by an order dated May 16, 2017, by a learned Single Judge, directing the Central Bureau of Investigation

(CBI) to undertake an investigation. The enquiry by the CBI had been restricted to the following points :-

> *"i) Pursuant to a proposal for settlement of dues at Rs.11,00,000/-, by way of a Pay Order in favour of SBI, Ekliyasal Branch was made to the bank but subsequently such pay order was cancelled by the purchaser, one Mr. Jhawar. The learned Judge found that the pay order did not mention the name of the purchaser but instead mentioned the name of the petitioner.*
>
> *ii) The learned judge was of the view that there appears to be some „mischievous conduct" on the part of the Indusind Bank and Mr. Jhawar, the proposed purchaser. The learned Judge was also of the view that this aspect of the matter has not been enquired into by the Regional Director, RBI, who was appointed as the enquiry officer.*
>
> *iii) The Deed of Sale showed that one Mr. Laxman Chhetri, as Executant Attorney of the petitioner, executed a deed in favour of one Sri Kusum Barua of Indus Club, Siliguri. The order notes the contention of the petitioner that this deed of sale is a manufactured document.*
>
> *iv) The document (the deed of sale) obtained by the S.B.I. and enclosed in the affidavit-in-opposition of the S.B.I. reveals that the photograph of the petitioner has been affixed without any signature across the photograph.*
>
> *v) The signature of one Kusum Barua appears on the deed of sale.*
>
> *vi) The learned judge was of the view that on account of the factors concerning the deed of sale, there appears to be a "prima facie case of fraud being practiced by these persons in dealing with the property of some other…." and that the matter hence is required to be enquired thoroughly.*
>
> *vii) An outsider namely, Jhuma Chhetri appears in the Deed No. 8780 of 2013 allegedly executed the deed of sale in favour of Kusum Barua and registered the same on 20th October, 2013.*
>
> *viii) The letter bearing no. SARB/03/36/ 92/2014-15 dated 8th May, 2014 from SBI written to the petitioner is not a genuine document of the Bank and hence, this aspect is also required to be enquired into."*

9. Alleging that the CBI did not proceed with the investigation at all, the petitioner filed CPAN No. 456 of 2018. The contempt application was disposed of by an order dated June 15 2018, directing the CBI to conclude the investigation as expeditiously as possible.

10. The petitioner alleged that even thereafter, the CBI did not make any endeavour to conclude the investigation. Such non action gave rise to the filing of a writ petition before the Hon'ble Apex Court under Article 32 of the Constitution of India. The writ petition was dismissed and the Apex Court granted liberty to the petitioner to approach the High Court.

11. Consequently, the present writ petition bearing No.WPA/656/2019 was filed. Directions for affidavits were given on the first day, when the matter was taken up. The learned Judge recorded that the facts did not call for any urgent interim order. Thereafter, the writ petition was dismissed for default on November 7, 2019. The same was restored on December 06, 2019.

12. The CBI filed a closure report before the Special Court at Siliguri. A report was also filed before this court to bring on record the result of the investigation and what transpired during such investigation.

13. Upon perusal of the report filed by the CBI, a learned Single Judge found that the report of the CBI was not in consonance with the directions in the order dated May 16, 2017. By order dated January 27, 2021, the CBI was asked to file a further report before this court, upon taking into account the unresolved issues and the directions of the High Court in the order dated May 16, 2017. The report was, prima facie, found to be deficient and did not shed sufficient light on the aspects which has been pointed out by the learned Judge.

14. Thus, the closure report which was filed by the CBI on September 21, 2020 was taken note of by the High Court, and it was recorded that summons should not be issued to the petitioner, to appear before the Court. This writ petition continued for various days before different Benches. The petitioner filed several connected applications, thereby, gradually expanding the scope of the writ petition. The petitioner was also allowed to seek assistance of learned advocate engaged by the High Court Legal Services Committee.

15. The learned Deputy Solicitor General of India submitted before the Court on April 10, 2023 that, the investigation by the CBI had concluded and a report had been filed before the jurisdictional court at Siliguri, in *R.C. Case no.7 of 2017*. The petitioner had filed a *narazi* petition in the proceeding. Thus, the remedy of the petitioner would lie before the learned jurisdictional court.

16. In view of the above submission, a Co-ordinate Bench directed a competent officer of the CBI to file an affidavit with supporting documents to disclose the status of the case. The bank authority was also directed to file an affidavit with supporting documents to show reconciliation of the loan accounts of the petitioner.

17. By an order dated October 03, 2023, a learned Single Judge directed the CBI to produce copies of those documents which were relied upon, to ascertain the price of the property. The petitioner's case was that, the bank had undervalued the properties, when steps were taken under the SARFAESI Act.

18. The CBI was given further time to file an affidavit. After the affidavit was filed by the Deputy Superintendent of CBI, opportunity was given to the petitioner to file exceptions. It is also pertinent to note that, various advocates engaged from the legal aid and privately engaged by the petitioner time and again, appeared in support of this writ petition. The writ petition had been pending since 2019 and several orders were passed by various Benches. The inconsistent submissions made by the learned advocates who had been engaged time and again by the petitioner, led to the passing of several orders. Such orders were in the nature of directions upon the respondents to file reports.

19. By an order dated June 12, 2024, this Bench had disposed of two applications which were filed by the petitioner. CAN/3/2023 was an application for a direction upon the Bank to produce the statement of accounts with regard to the petitioner's deposits with the bank from the period between 1997 and 2023. The other prayer was for a day to day hearing of the petition.

20. CAN/2/2022 was an application for a direction upon the state authorities to release some of the properties of the petitioner which were allegedly taken over by the State Bank of India. This Court disposed of both the applications, *inter alia,* holding that the issues with regard to the loans granted to the petitioner and alleged appropriation of the property of the petitioner would be decided at the final hearing of the writ petition itself and the issues raised in those

applications would be subject to the final decision in the writ petition.

The ordering portions are quoted below :-

*"**In Re: CAN 3 of 2023***

1…….

2. Thus, instead of hearing the application in piecemeal, it would be proper that the writ petition should be disposed of upon considering the objections raised by the respondents to writ petition which is pending.

3. The issue relating to the first prayer against the bank in the application, seems to have been answered by the bank in their affidavit-n-opposition. The writ petition is fixed for hearing. Thus, the second prayer is infructuous. The third prayer for sustenance is not permissible in the facts and circumstances of this case as it cannot be pinpointedly decided by this court whether the respondents are responsible for the alleged destitute situation of the petitioner. Unless the writ petition is disposed of, the liability cannot be imposed upon the respondents to compensate the petitioner. Cost can be imposed only if the respondents are found to have seriously wronged the petitioner.

In Re: CAN 2 of 2023

"5. This is an application for directions upon the State authorities for release of certain property of the petitioner which were allegedly taken over by the State Bank of India. The intervention of the Chief Secretary, Government of West Bengal, the Director General of Police as also CBI is sought for. The petitioner prays for assistance for recovery of his property. Further prayers with regard to release of personal belongings of the petitioner and other landed property as also articles lying in the locker of the bank have been made.

6. The bank contends that three loans had been given to the petitioner. All the three loan accounts had been declared NPA. With regard to one of the loan accounts, the property was sold by the bank and after appropriating the amount due, the remaining amount was returned to the petitioner. The non-mortgaged property was handed over to the petitioner.

7. It is also submitted that the movable articles in the property sold, were returned to the petitioner in the presence of a receiver. With regard to the second loan account it is submitted that the petitioner himself had sold off the mortgaged lands. With regard to the third loan account, a civil suit was filed by the bank and it is submitted that the suit had been decreed. These issues shall be adjudicated at the final hearing of the writ petition.

8. The prayers in this application are also intrinsically linked with the contentions of the petitioner in the main writ petition and without adjudication of the writ petition, orders cannot be passed in this application.

9. The learned advocate for the Central Bureau of Investigation submits that investigation was made as directed by the court and it was found that the property was not sold at any lower value. The application is *disposed of as all the issues raised are subject to the final decision in the writ petition."*

21. Thereafter, the Bench continued to hear the main matter. CAN/4/2024 was filed by the petitioner for various other reliefs and for release of the properties of the petitioner situated under Sonarpur Rajpur Municipality in Kolkata, Hyderpara and Shaudangi Farm House, Tea Garden, play garden etc. The prayers are quoted below :-

"a) Issue necessary orders to the respondents for complying with the directions of this court for the purpose of proper adjudication of this case or in the alternative fixing of dates for hearing of this petition.

b) Issue necessary order and/or direction for hearing this matter preferably on a day to day basis for disposal of this instant writ petition.

c) Issue necessary order and/or direction for assignment of a senior advocate to represent the petitioner in this case and for appointment of a senior advocate as amicus curiae to assist this Court, in the interest of justice and equity.

d) Such further or order or orders be made and/or directions be given as would afford complete relief to your petitioner.

e) Hon'ble High Court for disobeying the order deliberately and thereby interfering with the administration of justice.

f) Then necessary order may be kindly be passed to send him to prison.

g) To make the Rules absolute.

h) The questioned property schedule of SonarpurRajpur Municipality House, Ward No. 25, Holding No. 125, Dhamaitala, School Kolkata 700151 Lane, and with Haiderpara land house 11.5 cottah Sahudangi land / house / factory 22.5 Bigha 430 kathas total land 441.5 cottahs and Sahu riverside vested land approx 85 Bigha (presently Atul Jhawar & another's tea garden) playground with farm house 7 Bigha should be released from the Chairman, State Bank of India, officers of the bank who illegally ransacked, dacoited, looted, taken possession of the questioned property and that property should be handed over to the applicant / defendant within 7 days from the date of filing and with order of this application.

i) The Chief Secretary Govt. of India and with Chief Secretary Govt. of West Bengal, and with Director General of Police and Central Investigation of Bureau (CBI) and local police authority may be assistance directed to to recover give the quashed property from the Chairman, State Bank of India, Officers of the bank who illegally ransacked, dacoited and looted without any reason, possessed the *property in which the applicant/ defendant is the sole & absolute owner.*

j) To direct the respondent authorities to release my question landed property which market value Rs. 50,00,00,000/-(Fifty Crores] to RS.60,00,00,000/- [Sixty Cores) for the year 2022 not less than Rs.100 crores and also to hand over all materials and articles which are lying in my locker bearing Locker No. 10 in my 3 (three) recurring account more than Rs. 6 (six) lacs with interest and Savings Account more than 7 Lacs with interest and also to disburse my money which are lying in my account viz. fixed deposit Rs.10,25,000/- (Ten Lacs Twenty Five Thousand) with interest Saving Account amounting to approx. 7,00,000/- [Seven Lacs) Rs. + Rs. 10,25,000/- [Ten Lacs twenty five Thousand) minimum + interest 18%.

k) Compromise proposal cash money deposited Rs. 11,20,000/-[Eleven Lakhs Twenty Thousand] with defamation to State Bank of India in the year 2008.

1) To direct the respondent authorities to release my question movable & immovable properties and also personal belonging, clothes, bedding, pillow, utensils running business materials, ornaments, gold, silver, animal, machinery, building, factory/factory shed, raw materials, finished goods, cash amount, Indira Bikash Patra, Kishan Bikash Patra, car, auto van, auto rickshaw, cycle van, cycle rickshaw, bicycle, motor bike, racing bike, scooter, moped, Sunny and etc. has been sold to any other person, third party.

m) To direct the respondent authorities to release my question, even though all properties, movable and immovable personal belongs including books of accounts were seized, ransacked, dacoited, looted on 11.12.2003, along with other properties, movable and immovable, neither the value of Stock nor Book Valued, the structure.

n) To appoint two competent advocate from the Legal Aid Service Authority Committee, two interpreter, and with 2 (two) senior advocates to appear as amices curiae (Court of Friend) /Adalat Bandhab on behalf of your defendant before my Lordship.

o) That the proceedings should be submitted both photographs and by a still video recording in a compact disc illustrating the present position. That stringent steps be taken against the Chairman, State Bank of India and Director of CBI with all concerned officers as well as the accused persons connected in this case.

p) Such further and other or orders as your Honour may deem fit and proper."

22. By an order dated February 7, 2025, this Bench observed that the prayers in the connected application were extraneous to the prayers and issues which were raised in the writ petition. It was specifically noted that, the petitioner could not enhance the scope of

the writ petition by incorporating prayers which were not supported by pleadings. The order is quoted below :-

> *"The prayers in the said application are extraneous to the main writ petition. The prayers in the writ petition are quoted below:-*
>
> *"a) A Writ and/or in the nature Mandamus do issue calling upon the Central Bureau of Investigation to investigate into the matters as directed by the order dated 16th May, 2017 passed by the Hon'ble Justice Shivakant Prasad in W.P. No.26566(W) in a time bound manner which may be fixed by His Hon'ble Court;*
>
> *b) A Wirt and/or in the nature of Mandamus do issue is to ensure that this Hon'ble Court monitors the investigation which is being carried out by the Central Bureau of Investigation in compliance of the order dated 16th May, 2017 passed by this Hon'ble Court in W.P. No.26566(W) of 2014;*
>
> *c) A Wirt and/or in the nature of Certiorari do issue calling upon the respondents to transmit all the records of this case before this Hon'ble Court so that conscionable justice may be made;*
>
> *d) Rule NISI in respect of the above prayers;*
>
> *e) Rule be made absolute if no cause and/or sufficient cause is shown;*
>
> *f) An interim order may be passed directing the Central Bureau of Investigation to investigate into the matters as directed by the order dated 16th May, 2017 passed by the Hon'ble Justice Shivakant Prasad in W.P. No.26566(W) in a time bound manner which may be fixed by His Hon'ble Court;*
>
> *g) An interim order may be passed directing to ensure that this Hon'ble Court monitors the investigation which is being carried out by the Central Bureau of Investigation in compliance of the order dated 16th May, 2017 passed by this Hon'ble Court in W.P. No.26566(W) of 2014; h) Ad interim order in terms of the above prayers;*
>
> *i) Costs and/or incidentals to this proceeding may be directed to be paid by the respondents herein;*
>
> *j) Any other order or orders, direction or directions be passed as Your Lordship may deem fit and proper;"*
>
> *Under such circumstances, the prayers are not considered. The issues raised in the writ petition shall be taken up, heard and decided. The petitioner cannot enhance the scope of the writ petition by incorporating prayers which are not supported by pleading."*

23. This Bench had marked the matter heard-in-part, in view of the substantial hearings which were held at the Circuit Bench at Jalpaiguri and at the request of the parties.

24. In the above background, this court proceeds to deal with the issues involved in the writ petition.

25. The crux of the argument of various learned advocates who represented the petitioner were that, the petitioner had endured financial and personal hardships for a very long time. He was a whistle blower against many anti-social elements who were engaged in illegal activities, including forgers, printers of counterfeit currency and terrorists. As a responsible and law abiding citizen, the petitioner promptly reported such activities to the Inspector General of Police, North Bengal. Thereafter, the anti-social elements came to know about the petitioner's role as a whistle blower and started to harass the petitioner, pretending to be officials from the CBI. Those persons forcibly evicted the petitioner from the house. The officers of SBI, Ektiasal Branch, in collusion with such persons, police authorities and one Mr. Jhawar had illegally taken away all his properties, under the pretext of initiation of proceedings under the SARFEASI Act.

26. It was submitted that, the loan had been repaid at various stages on and from 1997 to 2003. Receipts and documents to that effect were sought to be produced before the Court, which formed part of the paper book filed in this proceeding. Against the alleged illegal activities of the Bank, WP No.1384(W) of 2004 was filed and an interim

order was passed by appointing an advocate as a Special Officer. Certain interim reliefs were granted. However, the writ petition was dismissed for default. The bank submitted that SARFAESI proceeding had been initiated and all steps complained of had been taken against the petitioner's properties which were mortgaged to the bank, towards satisfaction and discharge of the loans. However, the writ court directed some goods to be returned to the petitioner. This order remained unchallenged, and thus attained finality.

27. It was contended by the learned advocates that, if the closure report of the CBI was perused, it would be evident that the same did not take into consideration relevant documents. The agency did not arrive at specific findings on the questions formulated by the learned Single Judge in WP No.26566 of 2014, by order dated May 16, 2017. Thus, it was prayed that, the report of the CBI should be rejected and reinvestigation should be directed on the points which were already formulated by a learned Single Judge in the earlier rounds of litigation.

28. It was submitted that notices under the SARFAESI Act had never been served upon the petitioner. The loan was repaid and the debt was cleared. The secured assets were wrongfully disposed of. The bank had proceeded to sell the secured assets, by undervaluing them. No valuation had been made of the mortgaged properties, prior to the sale. One of the properties was sold to Mr. Jhawar, who had agreed to purchase the property directly from the petitioner. Mr. Jhawar had also issued a pay order, but later cancelled the same. That, Mr.

Jhawar collusively purchased the properties from the bank in a clandestine manner, at a lower price, thereby depriving the petitioner of the residual amount which would be refunded to the petitioner, after the sale of the mortgaged properties were concluded. The market value of the property would be much higher than what was advertised by the bank. Had the property been sold upon proper valuation, and to a genuine buyer, the sale proceeds would exceed the dues of the bank.

29. It was urged that, the learned Single Judge who passed the order dated May 16, 2017 also found some fraudulent activity with regard to the signature and photographs on the deed of sale (*Bikroy Kobala*). One Lakshman Chettri, as a constituted attorney of Akhil Bandhu Saha (petitioner), had executed a deed in favour of Sri Kusum Barua. The learned Single Judge had at first directed that the Regional Director of the Reserve Bank of India must hold an enquiry into the matter, upon *prima facie,* finding that there were irregularities in the actions of the bank. The Reserve Bank of India expressed inability to enquire into the matter in view of the nature of allegations. Thereafter the matter was relegated to the CBI.

30. It was contended that, the CBI did not take into account the alleged 'mischief' either in the *Bikroy Kobala* by which a sale was made in favour of one Jhuma Chhetri through Lakshman Chettri (constituted attorney of the petitioner) and also the mischief committed by the bank in selling the property to Mr. Jhawar who was the

petitioner’s chosen buyer. These are the sum and substance of the petitioner’s contentions before this court.

31. The bank filed an affidavit-in-opposition through its Manager, Stressed Assets Recovery Branch and alleged that the writ petition was not maintainable and that all the actions taken by the bank were legal and statutorily permissible under the SARFAESI Act.

32. The SBI, Ektiasal Branch sanctioned credit facilities in the name of the petitioner's concern, viz, M/s. East India Trading Company, the tune of Rs.5,00,000/- (Rupees Five Lakhs) only against STDR valued at Rs.50,090/ (Rupees Fifty Thousand Ninety) and Rs. 17,000/- (Rupees Seventeen Thousand) only as collateral security against creation of equitable mortgage of 17 properties of the petitioner, situated at Hyderpara, Siliguri. Similarly, Other credit facilities sanctioned by the bank in favour of M/s. East India Chemical Products' were as follows:-

> i. “….
> ii. Cash credit to the tune of 3 lakhs;
> iii. Clean medium loan to the tune of 1 lakh 95 thousand and:
> iv. Medium term loan for Rs.95,000/- (Rupees Ninety-Five Thousand) against STDR of Rs.1,000,00/- (Rupees One Lakh) only as collateral security and by creating equitable mortgage in respect of 30 Cottahs of land at Dabgram in the district of Jalpaiguri.
> v. Other credit facilities were also sanctioned by the bank to another concern of the petitioner, namely East India Trading Company and a personal vehicle loan was also advanced to the petitioner.”

33. The petitioner was also sanctioned a loan of Rs. 40,000/- for purchasing a motor cycle bearing No. WB-74B 9082. The petitioner

availed of further loan to purchase a two wheeler. The loans as mentioned hereinabove, were disbursed through the following loan account numbers viz.

> vi. M/s. East India Trading Company' loan account no. 10364378803;
>
> vii. M/s. East India Chemical Products' loan account no.
>
> 1. Medium Term Loan - Rs.95,000- 01552071878
> 2. Clean Medium-Term Loan – Rs. 1,95,000 – 0155207187800
> 3. Cash Credit – Rs. 3,00,000/- - 01650071878
>
> (Later all the accounts were merged into one account being No. 10364378734)
>
> iii Sri. Akhil Bandhu Saha availed Two Wheeler Loans vide account No. 01562071637 which was eventually allotted a new account no. being 10364378870.”

34. Mr. Milindo Paul and Mr. Deborshi Dhar, learned advocates for the respondent bank submitted that the bank was constrained to declare the account as a non performing asset and issued a notice under Section 13(2) of the SARFAESI Act. Thereafter, the bank took over possession of mortgaged property at Hyderpara on December 13, 2003. The petitioner filed a writ petition bearing No. WP 1384(W) of 2004, challenging the steps taken by the bank. The writ petition was dismissed with liberty to the petitioner to approach the appropriate forum. The petitioner also filed several contempt applications and the petitioner alleged that, although the bank was directed to return the house hold articles, it did not do so. The contempt applications were disposed of with the direction upon the petitioner to go to the bank and collect the goods. A Special Officer was appointed. The report of

the Special Officer dated September 12, 2005, which was duly signed by both the parties indicated that the non-mortgaged goods were returned to the petitioner. On 15.06.2007 possession notice under 13 (4) of SARFAESI Act 2002 in connection with the mortgaged land of East India Chemical Products (proprietor Akhil Bandhu Saha) was issued by SBI. And later in the year 2007 Sale notice was published and sale of the property of the petitioner was conducted

35. A contempt application being CPAN No. 1800 of 2025 was filed, alleging violation of the orders of the High Court. The petitioner was permitted by the Court to withdraw the same and file afresh. A contempt application was again filed being CPAN 763 of 2007. By an order dated December 19, 2007, the Inspector General of Police, North Bengal Range was directed to enquire into the matter and file a detailed report before the Court. The Chief Manager, State Bank of India, Jalpaiguri was also directed to look into the matter and file a report. Pursuant to such directions, the bank filed a report, wherein the bank claimed that the goods were already returned.

36. Under such circumstance, by order dated January 8, 2008, the contempt application was dismissed on the ground that no case for drawing up a contempt proceeding had been made out by the petitioner. The Court, however, clarified that the dismissal of the application would not stand in the petitioner's way, if the petitioner wanted to take steps before the appropriate forum in accordance with

law. No steps were taken by the petitioner before the Debts Recovery Tribunal. No civil suit was filed for a cancellation of the *Bikroy Kobala*.

37. In the meantime, the bank issued a sale notice in respect of the secured assets in relation to the loan account in the name of M/s East India Trading Company. The sale notice was challenged in WP No. 3624(W) of 2007. By an order dated July 04, 2008, the writ petition was dismissed on the ground that, the petitioner had already been granted liberty to approach the appropriate forum. Against the said order, MAT 736 of 2008 was preferred. The Hon'ble Division Bench dismissed the appeal with a direction that the remedy of the petitioner would be before the appropriate forum under the SARFAESI Act. The petitioner did not avail of the remedy under the SARFAESI Act and filed a writ petition bearing WP No. 17585 (W) of 2010 along with CAN 973 of 2010 on the self same facts, *inter alia,* for return of the non mortgaged goods, return of locker keys, permission to operate the locker, and return of the excess amount that had been received upon sale of the mortgaged property, upon adjusting the outstanding dues against the loan account of M/s East India Trading Company.

38. The writ petition bearing No. WP 17585(W) of 2010 was disposed of by the Court observing that all non-mortgaged properties had been returned by the bank authorities to the petitioner, pursuant to the order passed in the earlier writ petition.

39. The petitioner filed two appeals FMA 998 of 2012 and FMA 903 of 2013. The appeals were disposed of with a direction upon an officer

not below the rank of Deputy General Manager of the Reserve Bank of India to enquire into the disputes. By an order dated May 16, 2017, two writ petitions were disposed of with a direction upon the CBI to conduct an enquiry. The records revealed that the bank had also sent a letter of compromise with regard to the outstanding dues, which were payable six years prior to institution of the writ petitions. The bank alleged that, during the pendency of the hypothecation, the petitioner had illegally sold various mortgaged properties. Despite, several opportunities, the petitioner did not avail of his remedy before the Debts Recovery Tribunal, under the provisions of SARFAESI Act.

40. Another affidavit-in-opposition was filed by the bank, pursuant to the order of a coordinate Bench on April 10, 2023, disclosing the reconciliation statement. In paragraph 17 of the said affidavit, the bank narrated the account wise status and the action taken against the petitioner under the SARFAESI Act. The relevant paragraphs thereof are quoted below:-

> *"Account wise status of SARFAESI action initiated against the Borrower are as follows:-*
>
> *i) M/s East India Trading Co. Prop: Sri Akhil Bandhu Saha, Limit: Rs. 5.00 lacs. Date of sanction : 08.07.2000. Activity: Retail Sale of Acid, Mobile etc. A/C No. 10364378803,*
>
> *Security: Mortgage of 2(two) plots of land measuring 2 kathas, Deed No. I-5338 of 1997 + land measuring 4 Kathas, Deed No. I-2359 of 1999 situated at Hyderpara, Siliguri. The Account became irregular and defunct since 30.06.2002 (NPA DATE). SARFAESI Notice under 13 (2): dt 07.01.2003. Enforcement Agency: M/s. Shelter Solutions. The Date of Possession: 13/12/2003. Sale Notice Published on 31/07/2008. Sold on 1/9/09 Rs. 13.10 lacs. Purchased by Atul Kumar Jhawar. Closed the account by Rs. 980630.00 and residual amount Rs. 329370 credited to East India Chemical Product.*

ii) *<u>M/S East India Chemical Products</u>, Prop: Sri Akhil Bandhu Saha, Limit: I) Medium Term Loan Rs. 0.95 lacs (A/c No. 01552071878) II) Clean Medium-Term Loan Rs. 1.95 lacs (A/c No. 0155207187800) III) Cash Credit Rs. 3.00 lacs (A/C No.01650071878)*

Total Rs. 5.90 lacs

Date of sanction: 30.05.2001,

Activity: Manufacturing of Acid, Lubricants etc.

The above three loan accounts merged into A/C No. 10364378734

Security: 30 Kathas of Land at Nawapara, Sahudangi, Police Station-

Bhaktinagar, District: Jalpaiguri vide Deed No. I-1411.

The account turned to NPA on 27.12.2002 and now totally defunct.

Bank has initiated action under SARFAESI Act, 2002, and issued notice under 13(2) on 07.01.2003 demanding dues of Rs 568793.21 plus interest in the account M/s East India Chemical Product. The borrower has not paid any amount. Bank has taken possession of the secured property situated at Debagram, Nowapara, PS Bhaktinagar, District Jalpaiguri covered under deed no 1411 of 2001. Possession notice under 13 (4) was served on 15.06.2007, Panchnama and inventory prepared and post possession information sent of Officer in charge Bhaktinagar Police Station on 15.06.2007. Copy of notice along with Panchnama and Inventory provided to CBI office on 24/01 /2018 vide letter no SARB/11/20/ 1353.

It is pertinent to mention here that verification of latest search report of 1411 of 2001, the bank secured assets mortgage vide deed no authorities came to know that the said property was sold by Sri Akhil Bandhu Saha on 28. 10.2013 vide deed no 8780 of 2013 to Kusum Barua. The Bank authorities already advised the fact to enquiry official of Reserve Bank of India vide our letter no SARB/07/20/740/2013-14 dated 16.02.2014. Further Shri Chandrajit Sahoo, Dy General Manager, RBI, Kolkata has submitted the detailed report to Hon'ble Kolkata High court through exhibit no 19. The bank authorities once again appointed their empanelled lawyer Smt. Neeta Das for further discreet enquiry of the mortgaged property and observe that Shri Akhil Bandhu Saha had mortgaged the property to secure the bank loan but fraudulently sold the property. Shri Akhil Bandhu Saha neither informed the bank regarding the sale nor the sale proceeds had been deposited to the account.

Vacant Land measuring about 30 Khatta Khatiyan no 86/1, plot no 100 at mouza Dabgram, JL no 2, Touzi no, Sheet no 21, PS	*21 Khatta*	*Sold by Akhil Bandhu Saha on 28/10/2013 vide deed no 8780 of 2013 to Kusum Barua (search report from wbregistration.gov.in)*

Bhaktinagar, Dist: Jalpaiguri.		
Vacant land measuring about 30 kathas Khatiyan no 86/1, plot no. 114 at mouza Dabgram, JL no 2, Touzi no, Sheet no 21, PS Bhaktinagar, Dist: Jalpaiguri,	*9 Khatta (15 Dec)*	*Sold by Akhil Bandhu Saha on 27/08/2012 vide deed no 7689 of 2012 to Shiv Kumar Agarwal & Nirmal Chakroborty (search report from wbregistration. gov.in)*

The outstandingbalance of the laon account M/s East India Trading Co, Prop. Shri Akhil Bandhu Saha, M/s East India Chemical Products and Motorcycle loan of Akhil Bandhu Saha are as under :

	Name of account	*Book outstanding*	*Innterest and other charges calculated upto 30.04.2023*	*Total dues as on 30.04.2023*
1	*M/s East India Trading Co, Prop. Shri Akhil Bandhu Saha*	*Nil*	*Nil*	*Nil*
2	*M/s East India Chemical Products*	*528083.42*	*5889661.52*	*64,17,744.94*
3	*Motorcycle loan of Akhil Bandhu Saha*	*36043.67*	*521480.66*	*5,57,524.33*

41. The account statements in support of such averments have been annexed at pages 13 to 27 of the affidavit filed by the bank on June 06, 2023. The specific case of the bank was that the loan accounts were closed and the dues were paid.

42. The Bank further stated as follows :-

> "***With regard to the first loan****: Bank sold the mortgaged property in auction, realised its debts and credited the residue amount into the account of Akhil Bandhu Saha. The account became debt free. Details mentioned in the* ***supplementary affidavit being S 1132 affirmed on 06.06.2023****.*
>
> ***With regard to the second loan:*** *Since Akhil Bandu Saha sold the mortgaged property through his Attorney holder, Bank instituted a Money Suit being Money Suit No. 33 of 2004 for recovery of Rs. 5,68,793.21. The said suit was decreed on 15.07.2015 if favour of*

the bank. Bank could not trace out the judgement and decree. However, the fact of institution of the said suit is also mentioned in the order dated 17.04.2012 passed in W.P. NO. 20360 (W) OF 2007.

With regard to the third loan: *Bank instituted a Money Suit being Money Suit No. 12 of 2003 for recovery of Rs. 38,354. The said suit was decreed on 18.01.2006 if favour of the bank. A copy of the decree has been provided by a supplementary affidavit being S-602 affirmed on 23.12.2024 by the bank.*

The petitioner also initiated a criminal case being Bhaktinagar Police Station Case No. 4191 of 2004 dated 15.11.2004 under Sections 380, 384, 426, 462, 120B, 420, 506 and 403 of the Indian Penal Code against such persons but the police submitted a report in final form praying for closure of the case on the ground of "mistake of law". This finds mention in order dated 17.04.2012 passed in 29020 (W) OF 2008.

There were certain dues which were written off by the bank and as such all the accounts were closed."

43. Mr. Paul and Mr. Dhar, specifically contended that the CBI filed various affidavits pursuant to the orders of the Court and a comprehensive affidavit-in-opposition was filed on September 26, 2024. The grievance of the petitioner that unknown officials of SBI, Ektiasal branch had entered into a criminal conspiracy with other unknown anti-social elements since 2002 and illegally looted and sold the properties of the petitioner had been taken into consideration during the investigation.

44. An FIR was registered as per the direction of the High Court vide CBI, ACB, Kolkata Case No. RC 0102017A0037 on December 26, 2017. Upon completion of the investigation, the CBI filed a closure report before the learned Special Judge, CBI at Siliguri on September 21, 2020 and also sent a note to the SBI, indicating that the bank could take appropriate action against the petitioner, in accordance with law, for sale of mortgaged properties. Reliance was placed on the

affidavit filed by the CBI, at pages 67 to 68 thereof. The CBI had categorically found that, the allegations of criminal conspiracy against bank were false and frivolous.

45. The petitioner filed a *narazi* petition and a supplementary *narazi* petition to the closure report. Upon the High Court being informed of the closure report, by an order dated January 27, 2021, the CBI was directed to clarify on certain points by another coordinate Bench.

46. The CBI filed a comprehensive report in the form of an affidavit and all the points were clarified by the CBI. The extent of the jurisdiction of the CBI, was strictly with regard to the allegation of commission of the offence of criminal conspiracy by the bank. Reference was made to pages 8 to 19 of the report. By an order dated April 10, 2023, the High Court once again directed an appropriate officer of the CBI to file an affidavit disclosing the supporting documents collected during the investigation, to justify its finding. An affidavit was filed by the CBI and it was specifically stated that the bank had adopted due process of law while conducting the auction sale and while taking recourse to the SARFAESI proceedings.

47. The SBI has also filed a supplementary affidavit disclosing the valuation report prepared by an approved government valuer. The valuation of the mortgaged property was done before conducting the auction sale.

48. The learned DSG appeared for the CBI and submitted that, the CBI had filed reports, affidavits and an affidavit-of-compliance. It was

stated in the affidavit-of-compliance that RC No. 0102017A0037 was registered on December 26, 2017 in ACB, CBI as per the direction of the Hon'ble High Court at Calcutta in WP No. 26566(W) of 2014.

49. During investigation it was found that the property was sold by the bank at the market value, as per the valuation report of one Mr. P.K. Saha, Government Approved Valuer, (Ministry of Finance), who was enlisted in the approved panel of LIC, HFL and Banks.

50. In the report dated January 21, 2021, the CBI categorically mentioned the issues involved and what came to light during the course of investigation. The relevant paragraphs are quoted below: -

i. That, Investigation revealed that Akhil Bandhu Saha was the proprietor of two firms namely M/s East India Trading Company and M/s East India Chemical Products.

ii. Since the year 1995 both firms were initially availing the cash limit from the State Bank of India Ektiasal Branch, Siliguri. Initially a sum of Rs 25000/- Cash Credit Limits were sanctioned to M/s East India Products and M/s East India Trading Company by the Bank.

iii. State Bank of India. Ektiasal Branch also sanctioned and disbursed the loan of Rs 40000/- on 30/ 10/98 for purchasing of Royal Enfield Motor Cycle for promotion of the business of aforesaid firms to Shri Akhil Bandhu Saha.

iv. It is further evident that due to good performance of the party the loan amount was enhanced time to time. Subsequently, Bank increased the loan amount lastly on 11/7/2000 the loan amount of Rs 5.00 lakh for the business of M/S East India Trading Company.

v. This loan was sanctioned by the Bank against hypothecate of goods along with valuable securities. The securities were fixed deposit of Rs 125900/-, Recurring deposit of Rs 1000/ per month for 36 months and land measuring 7 kathas, 3 chhataks of Budha Mandir Road, Hyderpara.

vi. Similarly, on 30/5/2001 Rs 5.90 lakhs was sanctioned to M/s East India Chemical Products. In this loan of Rs 5.90 lakhs, Rs 1.95 lakhs was clean Medium terms loan for construction of the factory shed, Rs 0.95 lakhs was Medium Term loan for acquisition of machinery and Rs 3.00 lakhs for meeting day to day expenses of the project. In respect to the loan sanctioned of Rs 5.90 lakhs, Bank had taken security as under:

Sl. No.	*Nature of facility*	*Limit in Rs.*	*Security*
1	*Cash Credit (special*	*3.00 laksh*	*Primary security of stocks of raw materials,*

	Hypothecation)		*consumables, finished goods and book debts valued at Rs. 4.00 lakhs.*
2	*Clean Medium Term Loan*	*1.95 laksh*	*Equitable mortgage of 1.5 bighas of land and factory shed thereon at Naupara, Sahudangi, Fulbari, Dist. Jalpaiguri owned by Akhil Bandhu Saha valued at Rs. 5.10 laksh*
3	*Medium Term loan*	*0.95 lakhs*	*Hypothecation of plant and machinery valued at Rs. 1.30 lakhs pledge of STDR for Rs. 1.00 lakhs.*

vii. *Since 2001, the loan accounts of M/s East India Chemical Product and M/s East India Trading Company became irregular ar the Petitioner informed the Bank through his letter dated 4.3.2002 that due to the problem of family and his unit workers, there could be no production done for month of September, but it will be regularized soon but he did not make any effort to regularize the installment of outstanding loan.*

viii. *State Bank of India sent letters to Akhil Bandhu Saha one after the other from 18/5/2002 to 11/11/2002, and advice to the petitioner and requested him to repay the outstanding loan*

ix. *That Shri Akhil Bandhu Saha was informed through letter No. 22/39 dated 18/5/2002 that his firm M/s East India Chemical product outstanding loan in cash credit A/c was Rs 327102.17, in Term loan Rs 307137.75.*

x. *That, as per letter No. 154/2002 dated 11.11.2002 outstanding loan of East India Chemical product was Rs 639380.42 (intt charged upto June 02) and East India Trading Company was Rs 585873.79 (intt charged upto June 02).*

xi. *He was also informed if the lone fails Bank will initiate legal action against him for recovery of the dues.*

xii. *That the Bank also served legal notice to Akhil Bandhu Saha through its empanelled advocates. By these notices he was informed about the outstanding loan amount on their firms M/s East India Chemical Products and East India Trading Company. He was advised to repay the outstanding loan amount within time, otherwise appropriate legal action will be taken against him and Bank will sell hypothecate goods etc.*

xiii. *That the Petitioner Akhil Bandhu Saha did not start work did not make any effort to repay the outstanding loan. Thereafter, the loan accounts of Akhil Bandhu Saha proprietorship M/s East India Chemical Products and M/s East India Trading Company were declared as Non performing assets by the Bank. As per Bank procedure regular loan accounts of both firms were closed and outstanding amount of loan Rs 528083.42 of M/s East India Chemical Products and outstanding amnount of loan Rs 585873,79 O 1V/S East India Trading company were transferred to proestea. Bill account on 25/ 1/2003 and 22/ 1/2003. Further for recovery of loan amount Bank took action against both firms under*

SARFAESI Act and issued Notice on 7/1/2003 to M/s East India Chemical Product and on 2/6/03 to M/s East India Trading Company.

xiv. *That Shri Akhil Bandhu Saha did not pay such amount inspite of this notice. Thereafter SBI Bank duly took over possession of immovable property situated at Hyderpara, Siliguri. mortgaged against the loan of M/s East India Trading Co. on 13.12.2003 under the provision of Sub Section 4 of section 13 of the Act 2002.*

xv. *That Shri Akhil Bandhu Saha filed one writ petition being W.P. No. 1384(W) of 2004 before the Hon'ble High Court, challenging the steps taken by the Bank and prayed for several relief. The said Writ Petition was dismissed by the Hon'ble High Court on 21.9.2004.*

xvi. *Thereafter, a sale notice of the property was published in leading newspapers, by the Bank. Shri Akhil Bandhu Saha filed again Writ Petition against the sale notice vide W.P.No. 3624(W) of 2007 before the Hon'ble High Court. The said Writ Petition was also dismissed by the Hon'ble Court on 4.7.2008.*

xvii. *That in the month of April. 2008, Akhil Bandhu Saha approached the State Bank of India for settlement of loan dues, and both Bank and Akhil Bandhu Saha agreed to settle the loan dues at Rs 11.00 lakhs on certain conditions. Shri Akhil Bandhu Dana had some understanding with one Atul Kumar Jhawar, who agreed that he will repay the loan amount of Akhil Bandhu Saba and subsequently, Akhil Bandhu Saha will transfer his 7 kathas and 3 chittak land in favour of Atul Kumar Jhawar. This land was mortgaged against the loan of M/s East India Trading.*

xviii. *That Shri Atul Kumar Jhawar got one pay order issue for Rs 1120000/- fromn Induslnd Bank Siliguri for the payment of the Bank loan.*

xix. *That the matter between Akhil Bandhu Saha and Atul Kumar Jhawar did not materialized.*

xx. *That after this, on 25.6.2008, Atul Kumar Jhawar cancelled the pay order from The IndusInd Bank Siliguri. Similarly, compromise proposal for settlement of loan between Bank and Akhil Bandhu Saha was also not materialized.*

xxi. *That a sale notice of the property was published in leading newspapers, by the Bank. Shri Akhil Bandhu Saha again a Writ Petition against the sale notice vide W.P.No. 3624(W) of 2007 before the Hon'ble High Court. The said Writ Petition was also dismissed by the Hon'ble Court on 4.7.2008.*

xxii. *That, again a sale notice was published on 31.7.2008 and the property was sold in auction at a Rs 13,10,000/- on 1.9.2009. At that time, Rs 980630. 12 was outstanding in the loan of M/s East India Trading Co. After adjustment of sale amount of Rs lo,10,000/- the excess amount of Rs 3,29,370/- was transferred to the account of M/s East India Chemical products. By this the account of M/s East India Trading Co became debt free*

xxiii. *That, after following all procedure, bank had taken possession of 30 kathas of land situated at Debgram on 15.6.2007 under the provisions of 13(4) of Act 2002. This land was mortgaged against the loan of M/s East India Chemical Products. The information was communicated to Akhil Bandhu Saha by Bank on 19.6.2007, On 15.6.2007 possession notice was aleo published by the Bank. Akhil Bandhu Saha filed a writ petition being W.P. No. 20360(W) of 2007 in the Hon'ble High Court Calcutta, challenging such publication of possession notice and prayed for several relief.*

xxiv. That Thereafter Bank duly published a Sale Notice on 1.9.2007 in daily newspaper. The Hon'ble High Court though initially passed an interim order in aforesaid petition of Akhil Bandhu Saha, but the Hon'ble High Court was subsequently refused to extend such interim order on 28.9.2007.

xxv. That Shri Akhil Bandhu Saha also challenged this order. The YDivision Bench of the Hon'ble Court was, inter alia, pleased to dismiss the said appeal on 5.10.2007. Investigation reveals that outstanding loan amount on M/s East India Chemical was Rs 14,250,48.42 including interest upto 30.8.2011. This outstanding amount comes after adjusting the STDR, excess amount left from the sale proceeding of the land, mortgage in against the loan of M/s East India Trading Co.

xxvi. That Shri Akhil Bandhu Saha had mortgaged 30 kathas of land to secure the Bank loan, but fraudulently sold the property Dy 1ssuing a power of attorney in favour of one Lakshman Chhetri empowering himn to sale 30 kathas of land. Akhil Bandhu Sana neither informed the Bank and nor the sale proceeds had been deposited to the account.

xxvii. That a Bank locker bearing No. 10 was allotted to Akhil Bandhu Saha in State Bank of India Ektiasal Branch on 26/7/2001. The said Locker is still in the name of Akhil Bandhu Saha. He had paid the rent of the locker only upto 2/4/2004. After this he did not pay rent. After migration of State Bank of India Branch to CBS platform, the locker number has been changed from Locker No. 10 to 655.

xxviii. That Shri Akhil Bandhu Saha did not even repay the outstanding loan of Motorcycle to the Bank. The outstanding loan of Motorcycle was Rs 3929 17.39 (Including interest) on 30.9.2019, for recovery of Motorcycle loan Bank has filed Money Title Suit No. 12/2003 filing date 15.5.2004, the mater is still pending in court. Further the outstanding balance of the loan account M/s East India Chemical Product is Rs 5887706.66 (Including interest) as on 30.9.2019, for recovery of said loan Bank has filed Title Suit No. 33/2004 on 15.5.2004, and same is still pending in court.

xxix. That during investigation of the case, it came into light that the petitioner Shri Akhil Bandhu Saha had taken loan from State Bank of India, Ektiasal Branch, Siliguri in the name of M/s East India Trading Company and M/s East India Chemical Products and a two wheeler loan, Out of these three loans one loan due against M/s East India Trading Company was settled by auctioning the mortgaged property. The other loans are still due.

xxx. That CBI concluded the investigation by sending Self Contained Note to Bank to take appropriate action against Shri Akhil Bandhu Saha by accordance with law and advised the bank to look into the matter how a mortgaged land property could be sold by the petitioner and take appropriate action as per department rules & regulations. CBI has filed its closure report before the Learned Special Court ,CBI at Siliguri on 21.9.2020. the said learned court has issued summons upon the Petitioners on 12.12.2020 and requiring the Petitioners before that Court on 26.02.2021.

51. It was urged that, the closure report was filed before the learned Special Judge, CBI at Siliguri on September 21, 2020 based on the above findings and the learned Court issued summons upon the

petitioner on December 12, 2020 requiring the petitioner to appear before the Court on February 26, 2021. Another report was filed by the CBI on March 17, 2021 pursuant to the direction of the High Court in this writ petition seeking clarification on certain issues. The points for clarification and the reply of the CBI are quoted below for convenience:-

"The clarification on the points raised by the Hon'ble High Court are as under:

i. Pursuant to a proposal for settlement of dues at Rs. 11,00,000/ -, a Pay Order in favour of SBI, Ekliyasal Branch was made to the bank but subsequently such pay order was cancelled by the purchaser, one Mr. Jhawar. The learned Judge found that the pay order did not mention the name of the petitioner.

Reply - Investigation has revealed that there was an oral agreement between Shri Jhawar and Shri Akhil Bandhu Saha that a sum of Rs. 11.20 lakhs will be paid to the bank (SBI), with a condition that the Bank will release that property to Shri Akhil Bandhu Saha and thereafter, Shri Saha will transfer the property in favour of Shri Jhawar. The said pay order was prepared from Induslnd Bank, Siliguri by Shri Jhawar. Shri Akhil Bandhu Saha took one photocopy of the same which he claimed would be paid towards loan outstanding to the Bank. Actually, after preparation of the pay order when Shri Jhawar did not get any assurance from the Bank as to when the land will be released, as a consequence of which he got the pay order cancelled from IndusInd Bank, Siliguri Branch.

ii. The Learned judge was of the view that there appears to be some mischievous conduct on the part of the Indusind Bank and Mr. Jhawar, the proposed purchaser. The learned Judge was also of the view that this aspect of the matter has not been enquired into by the Regional Director, RBI, who Was appointed as enquiry officer.

Reply: - Investigation has revealed that the land was purchased by one Sh. Atul Kumar Jhawar on 01/09/2008 through auction conducted by Bank. It transpired that earlier during February, 2008, one land broker came to the office of Shri Jhawar and gave him a proposal for purchase of land measuring 7 Kathas situated at Haider para, Siliguri. Thereafter, Mr. Jhawar visited that bank and came to know that there was a liability on that piece of land for Rs. 11.20 lakhs. There was an oral agreement between Shri Jhawar and Shri Akhil Bandhu Saha that a sum of Rs. 11.20 lakhs will be paid to the bank with a condition that Bank will release that property to Shri Akhil Bandhu Saha and thereafter Shri Saha will transfer the property in favour of Shri Jhawar. Later on, the Pay Order No. 010123 of Rs. 11.20 lakh was prepared on 09/04/2008 from IndusInd Bank, by debiting the A/c No. – 200004953894,of M/s Regal Enterprises. Authorized signatory of said account was Shri Atul Kumar Jhawar. Shri Saha took one photocopy of the same which he claimed would be paid by him towards loan amount to the Bank. Actually, after preparation of the pay order, when Shri Jhawar did not get any assurance from the bank as to when the land *will be released, he got that pay order cancelled on 25/06/2O08 from IndusInd Bank, Siliguri Branch. Investigation has so far did not reveal any mischievous conduct on the part of the IndusInd Bank and Mr. Jhawar in this particular instance.*

iii. *The Deed of Sale showed that one Mr. Laxman Chhetri, as Executant Attorney of the petitioner, executed a deed in favour of one Sri Kusum Barua of Indus Club, Siliguri. The order notes the contention of the petitioner that this deed of sale is a manufactured document.*

Reply: - Investigation has revealed that out of the 30 kathas of land which was mortgaged to the bank as collateral security, 21 kathas of land was sold by Shri Akhil Bandhu Saha. The said property was sold on the strength of a power of attorney given by the petitioner Sh. Akhil Bandhu Saha to one Shri Laxman Chetri. The land was purchased by one Shri Kusum Barua on 28/ 10/2013. The said land was situated at Mouza Dakgram under the Gram Panchayat area under Baikunthapur, Distt. - Jalpaiguri, West Bengal. The deed of sale is genuine and not a manufactured document.

iv. *The document (the deed of sale) obtained by the S.B.I. reveals that the photograph of the petitioner has been affixed without any signature across the photograph.*

Reply: - This is a matter of record.

v. *The signature of one Kusum Barua appears on the deed of sale.*

Reply: - Investigation has revealed that on 03/04/2009, Shri Akhil Bandhu Saha executed a Power of Attorney pertaining to 30 katha land in favour of Shri Laxman Chhetri to sale and dispose the aforesaid property. In the Power of Attorney, Akhil Bandhu Saha also mentioned that after selling the aforesaid property/ land, whatever amount of money Laxman Chhetri will receive, that amount/money has to be given to Akhil Bandhu Saha. Shri Sombu Subba, S/o- Late D.B. Subba of Jalpaiguri was the witness of the said Power of Attorney. Shri Laxman Chhetri had sold 21 katha of land to Shri Kusum Barua on 28/10/2013 under deed of sale No. 8780/2013. Remaining 9 katha land was sold to Shri Shiv Kumar Agarwal and Nirmal Chakroborty under deed of Sale No. 7698/2012 on 27/09/2012.

Investigation further revealed that Shri Kusum Barua sold the said 21 katha land on 28/10/2014, to Smt. Vandana Tyagi. w/o- Jogindra Singh Tyagi, Smt. Anuj Tyagi, w/o- Narendra Tyagi, Arbind Kumar Sah, S/o- Babu Lal Sah, Arun Kumar Sah, S/o- Babu Lal Sah, Sunil Kumar Prasad, S/o Chandeshwar Prasad, Mukesh Prasad, S/o- Chandesh Prasad, Shriram Prasad, S/o- Chathi Lal Prasad. Shri Shiv Kumar Agarwal, Nirmal Chakraborty sold their 9 katha land to Smt. Nisha Choudhary on 11.12.2012 under deed of sale No. 9517/ 12. As such, Shri Akhil Bandhu Saha sold the mortgaged property without informing the bank.

vi. *The Learned Judge was of the view that on account of the factors concerning the deed of sale, there appears to be a "prima facie case of fraud being practiced by these persons in dealing with the property of some other..." and that the matter hence is required to be enquired thoroughly.*

Reply: - Investigation has revealed that 30 kathas of land which was mortgaged to the bank as collateral security by the petitioner Shri Akhil Bandhu Saha against the loan taken in the name of M/s East India Chemical Products was sold by Shri Akhil Bandhu Saha fraudulently and without informing the bank. The said property was sold on the *strength of a Power of Attorney given by the petitioner Akhil Bandhu Saha to one Shri Laxman Chetri. The land was purchased by one Shri Kusum Barua on 28/ 10/2013. The said land was situated at Mouza Dakgram under the Gram Panchayat area under Baikunthapur, Distt. - Jalpaiguri, West Bengal. In this regard, the petitioner Akhil Bandhu Saha neither informed the Bank and nor the sale proceeds had been deposited in the loan account to adjust his outstanding dues.*

vii. *An outsider namely, Jhuma Chhetri appears in the Deed No. 8780 of 2013 allegedly executed the deed of sale in favour of Kusum Barua and registered the same on 20th October, 2013.*

Reply: - Investigation has revealed that 30 kathas of land which was mortgaged to the bank as collateral security was sold by Shri Akhil Bandhu Saha fraudulently. The said property was sold on the strength of a Power of Attorney given by the petitioner Akhil Bandhu Saha to one Shri Laxman Chetri. The land was purchased by one Shri Kusum Barua on 28/10/2013. The said land was situated at Mouza Dakgram under the Gram Panchayat area under Baikunthapur, Distt. - Jalpaiguri, West Bengal. The petitioner Akhil Bandhu Saha neither informed the Bank, nor the sale proceeds had been deposited to the account. It is pertinent to mention here that the person, namely, Jhuma Chetri has no relation with Deed No. 8780 of 2013, and nothing is available in the name of Jhuma Chhetri in bank records.

viii. *The letter bearing No. SARB/03/36/92 /2014-15 dated 8th May, 2014 from SBI written to the petitioner is not a genuine document of the Bank and hence, this aspect is also required to be enquired into.*

Reply: -Investigation has revealed that during 2014, Shri Soonam Wonden Bhutia was Asstt. General Manager of SBI. SARB. He stated about the details of facilities sanctioned to the Proprietary units of Akhil Bandhu Saha and two wheeler loans. Shri Soonam Wonden Bhutia confirmed that the letter informed the Bank, nor the sale proceeds had been deposited to the account. It is pertinent to mention here that Jhuma Chetri has no relation with the person, namely, Deed No. 8780 of 2013, and nothing is available in the name of Jhuma Chhetri in bank records.

ix. *The letter bearing No. SARB/03/36/92/ 2014-15 dated 8th May, 2014 from SBI written to the petitioner is not a genuine document of the Bank and hence, this aspect is also required to be enquired into.*

Reply: -Investigation has revealed that during 2014, Shri Soonam Wonden Bhutia was Asstt. General Manager of SBI, SARB. He stated about the details of facilities sanctioned to the Proprietary units of Akhil Bandhu Saha and two wheeler loans. Shri Soonam Wonden Bhutia confirmed that the letter No. SARB/08/36/92/20 14-15 dated 8th May, 2014 sent to Akhil Bandhu Saha was issued by him under his signature. He stated that in compliance of the letter of RBI bearing No. DBS (KOL) No. 1440/03. 15.042/2013-14 dated 30/04/2014, he had intimated Akhil Bandhu Saha, proprietor of the firms about the outstanding loan amount through aforesaid letter. As on 08/05/2014 Outstanding were as follows:

1. *East India Trading Co.: Nil (Account closed) (Legal expenses debited to East India Chemical Product Account).*
2. *East India Chemical Product:- Principal 1192826.21 (Intt. Upto 31/01/2014)*

   Legal and other expenses:- Rs. 40,000/- (Upto Jan 08) + 850000 (approx.)

3. *Two wheeler Loan – Principal Rs. 174817 (Intt. Upto 21/01/2014)*
   Legal and other expenses - Rs. 120000/
   Total - RS. 298417/ -
4. *Locker: Rs. 10500 plus Rs. 3568/- for break open charge – Rs. 14068/-"*

52. Another report was filed by the CBI sometime in June 2023, pursuant to the order of the another Bench for clarification of further points. A comprehensive affidavit in opposition was later filed by the CBI on September 26, 2024. The clarifications on the points raised by the High Court were once again reiterated.

53. It was further revealed that one property was sold by the constituted attorney of the writ petitioner Lakshman Chhteri, which was duly registered and recorded in a document number 96, Book No.-IV, CD Volumn No-1, page No. 820-828 in the office of the District Sub Register, Jalpaiguri. In the registered power of attorney, it was clearly stated that the attorney had the power to transfer at such price the attorney deemed and proper. The documents were also annexed to the affidavit of compliance dated February 8, 2024.

54. The learned Deputy Solicitor General and Mr. Singhania submitted that upon filing of the closure report and various reports justifying the conclusion arrived at by the CBI, the writ petition has become infructuous. The grievance of the petitioner had been met. Moreover, proceedings were already pending before the learned Special Judge, CBI Court. The acceptance of the closure report as also the *narazi* petitions of the petitioner were pending adjudication. The orders passed by the learned Special Court had been annexed to the affidavit.

55. The records reveal that the petitioner appeared before the Special Court and prayed for adjournments on the ground that the instant proceeding was pending before the High Court.

56. Reliance was placed on the decision of my predecessor Judge in this writ petition, that, unless the CBI answered certain question, the closure report should not be acted upon. Pursuant to said direction, not only a report, but a further detailed affidavits had been filed.

57. The question is whether, the writ petition should be disposed of upon recording redressal of the grievances of the petitioner, by directing the petitioner to avail of the alternative remedy under law, or whether further investigation should be directed as prayed for by learned advocates who have appeared for the petitioner in course of the proceedings. In short, this court has been asked to probe deeper, in order to discover loopholes in the report of the CBI. However, apart from the factual allegations of dishonesty against the bank, no concrete instances have been pointed out showing violation of any law by the bank. The investigation revealed that the bank did not commit any criminal offence, triable by a criminal court. This court cannot delve into such issue any further, as it will prejudice the petitioner's *narazi* petition.

58. Admittedly, the writ petition was filed alleging non-action on the part of the CBI authorities in concluding the investigation in the manner directed by a coordinate Bench. Several orders were passed by the Court, directing the CBI to conclude the investigation and file

reports in the form of affidavits or otherwise, indicating the fate of investigation, by disclosing the material basis relied upon during investigation. The CBI found that the bank did not commit any criminal offence either in collusion with the persons to whom the mortgaged properties had been sold or in collusion with other anti-social elements, who had allegedly threatened the petitioner, ransacked his house and took over his properties, the investigation was concluded. Rather the bank has stated that the petitioner had sold the mortgaged properties. The bank has annexed documents with regard to the money suit, valuation of the properties and closure of accounts.

59. A coordinate Bench found that in the order dated May 16, 2017 passed by another learned Judge, there was, *prima facie*, reference to mischief having been committed by the bank. Her Ladyship was of the view that the report of the CBI was to be looked into against the backdrop of certain issues. Those issues were dealt with by the CBI, with specific replies in the subsequent report. The expression 'mischief', criminal conspiracy, cheating, unlawful assembly have very different connotations.

60. According to the CBI, the investigation revealed that, the bank officials acted under the provisions of the SARFAESI Act. The investigation in the RC case was concluded and clarificatory affidavits and reports were filed before this Court. Allegations of criminal conspiracy, cheating, unlawful acts etc. were found to be incorrect.

The case was registered under Sections 120B, 420, 467, 468 and 471 of the Indian Penal Code read with Sections 13(2) and 13(i)(d) of The Prevention of Corruption Act, 1988. 31 witnesses were interrogated. It is also a matter of record that, the petitioner filed various unsuccessful writ petitions and did not take advantage of the orders passed by the High Court, permitting the petitioner to approach the Debt Recovery Tribunal to ventilate his grievances with regard to the illegalities committed by the Bank.

61. According to the CBI, the allegations of non compliance of the provisions of the SARFAESI Act, were not within the domain of the investigation. Moreover, no foul play was found in the execution of the deeds of sale, which were registered document. In law, there is a presumption of correctness of such document, until and unless the sale deeds are cancelled by a civil court. The investigation revealed that, the allegations against the bank authorities were false. The documents relied upon by the CBI during the investigation had also been disclosed before the Court. The report in final form is pending acceptance before the learned jurisdictional criminal court. The petitioner had filed a *narazi* petition along with a supplementary *narazi*. The Special Court will decide whether to allow the *narazi* petition, and direct re-investigation or not.

62. This Court is satisfied with the clarifications given as to the compliance of the order of the coordinate Benches. The adjudication on the correctness of the report is not within the domain of this Court.

The writ Court can interfere with the investigation under very exceptional circumstances and the clarifications above do not reveal that the CBI had conducted the investigation in a careless and biased manner. The details put forward in the reports filed before the Court, indicate that the CBI was neither acting contrary to the duty vested upon it by law nor did the CBI transgress its jurisdiction in order to protect or support the bank authorities.

63. The proceedings before this Court was initiated for implementation of the order passed by the coordinate Bench on May 16, 2017 i.e. completion of the investigation on certain aspects. When the closure report was filed and a report was filed before this Court, the petitioner raised objections. A coordinate Bench directed a report in form of affidavit to be filed with clarifications on each of the issues.

64. The findings of the closure report were not set aside by the learned Judge. Her Ladyship had directed the Central Bureau of Investigation to file a further report in the form of an affidavit in the pending writ petition, with certain clarifications. Those clarifications had been filed. The ultimate decision with regard to acceptance of the report and/or issuing direction for reinvestigation, is vested with the learned Special Judge who will do so upon perusal of the closure report and the *narazi* petition, and after hearing the submissions of the CBI and the petitioner, on the basis of the records of the investigations.

65. The closure report indicates the facts in a nutshell, the facts which came into light during investigation, the list of documents relied upon, the list of witnesses examined etc. It is within the domain of the learned Special Judge to either accept the closure report or direct further investigation if the report is found either deficient or unsatisfactory. The petitioner has already exercised his right under the relevant provisions of law by protesting against the closure report. All the issues which have been repeatedly urged and on the basis of which, orders were passed by the High Court, are matters of record before the Special Court.

66. The petitioner has an alternative remedy before the learned Criminal Court. The disputed question of facts which have now come to light, are beyond the jurisdiction of the writ court.

67. In exercise of power of judicial review, the writ Court can only adjudicate whether the CBI performed its statutory duties as vested upon it by law and as per the direction of the Court. Unless there are errors apparent on the face of record and unless this court finds that the investigation was either deficient, biased or close minded, the writ court should not interfere with the closure report.

68. The scope of the writ petition cannot be expanded by the writ Court at this stage. None of the factual contentions of the respondents were effectively controverted by the petitioner.

69. The writ Court cannot be asked to deal with further grievances of the petitioner, which are afterthoughts. At this stage, this Court is not inclined to send the CBI for a further witch-hunt.

70. For the reasons discussed hereinabove, and under the circumstances, the writ petition is disposed of with liberty to the petitioner to seek his remedy before the learned Special Judge.

71. This order is restricted to the adjudication of the writ petition under Article 226 of the Constitution of India and the learned Special Judge should not be influenced by this order while deciding the pending issues.

72. There shall be, however, no order as to costs.

73. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Shampa Sarkar, J.)