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20.03.2026
Ct. No.07
J.Das

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 6609 of 2026

Prospect Pharmaceuticals Pvt. Ltd. and Anr.
Vs
Union of India and Ors.

Mr. Gourab Das
Mr. Uttam Kr. Bhatacharyay
...For the petitioners

1. The grievance of the petitioner is directed against a notice issued under the provision of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI).
2. Briefly, the petitioner had entered into a loan agreement in respect of immovable properties purchased by the petitioner. It is admitted by the petitioner that an advance of Rs.3.95 crores had been paid by the respondent no.5 finance company.
3. In view of the admitted defaults which have transpired subsequent to the grant of loan, the respondent no.5 finance company had initiated proceeding under the SARFAESI. The grievance of the petitioner is also directed against a sale notice dated 12 February 2026. It is submitted on behalf of the petitioner that the price of the secured assets has been grossly undervalued.

4. In view of the statutory alternative efficacious remedy available under the provisions of the SARFAESI Act, there is no question of entertaining this writ petition. It is now well settled that any such action which transpires during the course of the sale is to be adjudicated before the Debts Recovery Tribunal (DRT). In *Dimension Realtors Private Limited and Another vs. The District Magistrate, North 24 Parganas and Others 2015 SCC OnLine Cal 7463* it has been held as follows:

> *(i) The process under Section 14 of the Act is non-adjudicatory and administrative in nature. The appropriate magistrate has to ascertain whether the nine aspects referred to in the first proviso to Section 14(1) of the Act are covered by the declaration furnished in the affidavit filed by the authorised officer of the secured creditor. The magistrate cannot make any inquiry into the truth of the contents of the affidavit. The magistrate is not called upon to issue any notice to any person who is likely to be affected by any order passed or action taken under such provision. The magistrate should act promptly and ensure such assistance as may be proportionate to the requirement, but only upon checking that all nine clauses of the proviso are covered in the affidavit.*
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> *(ii) A petition under Article 226 of the Constitution against anything done or not done under Section 14 of the Act is maintainable; but such a petition should, ordinarily, not be received to be assessed on merits if filed by a person, other than the secured creditor, who claims to be affected or likely to be affected thereby. As a corollary, a petition under Article 226 of the Constitution can be entertained on merits against an order passed or any act done under Section 14 of the Act, if the complaint pertains to the lack of jurisdiction (primarily, on territorial considerations) or when the absurdity of that which is complained against is demonstrable. A further corollary would be that a secured creditor may maintain a petition under Article 226 of the Constitution on merits if the complaint is of lack of, or the inadequacy of, the assistance rendered under Section 14 of the Act.*
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> *(iii) Neither any order nor any assistance provided under Section 14 of the Act may be challenged by a borrower or any other person*

aggrieved thereby before any court or tribunal; but such person (other than a secured creditor) may apply under Section 17 of the Act in respect of the grievance by citing the secured creditor approaching a magistrate under Section 14 of the Act as a step taken in respect of a measure under Section 13(4) of the Act.

(iv) Any overt step taken by a secured creditor to actuate any of the measures under Section 13(4) of the Act would give rise to an immediate cause of action to a person who may be aggrieved thereby. Such aggrieved person may apply under Section 17 of the Act upon being aware of the overt step taken by the secured creditor, without having to wait for the completion of the relevant measure by the secured creditor. As to the nature of any order that may be passed on such application, whether immediately or otherwise, would depend on the facts of a particular case viewed in the context of the ultimate object of the Act to facilitate the access of the secured creditors to the secured assets without waiting for the completion of a process of adjudication. In assessing the desirability of passing an order, the tribunal will defer to the statutory command in Section 34 of the Act that "no injunction shall be granted by any … authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act" to ascertain whether the act complained of is within the entitlement of the secured creditor "in pursuance of any power conferred by or under this Act."

(v) Any person aggrieved by any measure taken by a secured creditor (where the commencement of the taking of the measure is upon an overt step being taken by the secured creditor in such direction after the Section 13(3A) stage is completed) may obtain, and be granted, if entitled on facts, the reliefs of repossession or restitution or damages by the appropriate tribunal without there being a distinction, in such regard, between a borrower as defined in the Act and other persons aggrieved who may apply under Section 17 thereof.

5. In view of the statutory alternative remedy available under the Act there is no scope of entertaining this writ petition. WPA 6609 of 2026 stands dismissed.

6. Liberty is granted to the petitioner to avail of its statutory alternative remedy in accordance with

law. It is clarified that all points are left open to be adjudicated upon by the Tribunal.

(Ravi Krishan Kapur, J.)