

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1552 of 2026

IN THE MATTER OF:

The Cosmos Co-Operative Bank Ltd.

...Appellant

Versus

Sonal Udayan Velvan & Anr.

...Respondents

Present:

For Appellant : Mr. Ramchandra Madan, Mr. Tushar Nigam & Mr. Himanshu Yadav, Advocates

For Respondents : Mr. Mrinal Harsh Vardhan, Ms. Rituparna Patra, Mr. Abhinav Mishra & Ms. Saalina Mirza, Advocates for R-1

O R D E R
(Hybrid Mode)

21.08.2026 Heard Shri Ramchandra Madan, Learned Counsel appearing for the Appellant, and perused the records.

2. Learned Counsel for the Appellant submits that the factual matrix with regard to the appeal is in terms that the Appellant had sectioned various credit facilities aggregating to Rs. 3.80 crores to the principal borrower, i.e., M/s V.K. Plast LAM Pvt. Ltd. and the facilities were secured by mortgaged of immovable property of Respondent No. 1 (Personal Guarantor) and he also executed personal guarantees.

3. It is further submitted that, upon persistent defaults committed by the principal borrower, the loan account of the principal borrower was classified as a Non-Performing Assets (NPA), thereby entitling the Appellant to initiate recovery proceedings under the relevant provisions of the SARFASEI Act, 2002.

4. It is further submitted that, in this regard, a notice under Section 13(2) of the SARFASEI Act was issued to the borrower as well as to the guarantor, to discharge their outstanding liabilities. Upon failure of the borrowers to comply with

the same proceedings under Section 13(4) of the SARFAESI Act were initiated, and symbolic possession was taken on 28.12.2023.

5. It is further submitted that, on 04.05.2024, the Learned Additional Senior Civil Judge appointed a Court Commissioner and directed taking of possession of the mortgaged property under the relevant provisions of the SARFAESI Act. In the meantime, on 11.07.2024, the CD was admitted into the Corporate Insolvency Resolution Process (CIRP) vide order dated 11.07.2024 passed by the Learned Adjudicating Authority under Section 9 of the Code.

6. It is further submitted that the Guarantor/Respondent No. 1 had instituted Securitization Application No. 275 of 2024, challenging the SARFAESI proceedings initiated against him; however, no stay was granted therein.

7. It is further submitted that, in the aforesaid background, the first application was filed by the Respondent No. 1/Guarantor under Section 94 of the Code, apparently with the purpose of stalling the proceeding under the SARFAESI Act, on 20.09.2024, merely two days before the Appellant was scheduled to take physical possession of the secured assets. However, the same was dismissed by the Learned Adjudicating Authority vide order dated 04.10.2024, without granting any liberty to the Respondent/Guarantor.

8. It is further submitted that, on 31.08.2025, the e-auction sale notice was issued, fixing 17.09.2025 as the date for auction of the mortgaged property under the relevant provisions of the SARFAESI Act and the e-auction was conducted in accordance with law, and the mortgaged property was sold to Hetalben Sanjaybhai Prajapati for Rs.2,08,00,000/- on 17.09.2025.

9. It is further submitted that, solely for the purpose of stalling the recovery proceedings initiated under the SARFAESI Act, another application was moved by the Respondent/Guarantor under Section 94 of the Code being

C.P.(IB)/433(AHM)2025, alleging the same grounds on which the earlier application moved by the Respondent/Guarantor was dismissed by the Learned Adjudicating Authority. However, this time, despite strong objections raised by the Learned Counsel for the Appellant under Section 94 of the Code application filed by the Respondent was allowed.

10. It is vehemently submitted that it was evident on the face of the record that the only purpose with which the application under Section 94 of the Code has been moved by the Respondent/Guarantor is to stall the recovery process initiated under the relevant provision of the SARFASEI Act and by no stretch of imagination, it may be pursued that the intention of the Respondent/Guarantor was to resolve itself.

11. It is further submitted that the instant case is the glaring example of the misuse of Section 94 of the Code, therefore, keeping in view the sequence of events occurred with regard to the process initiated by the Appellant under the relevant provisions of the SARFASEI Act, it may reasonably be inferred that the only intention of the Respondent/Guarantor was to stall the recovery proceedings initiated under the SARFASEI Act. Accordingly, the impugned order passed by the Learned Adjudicating Authority is stated.

12. We have considered the facts and circumstances of the case and find that the earlier application was moved by the Respondent/Personal Guarantor when the SARFASEI proceedings were initiated against him and the notice under Section 13(2) of the SARFASEI Act was issued and symbolic possession was also taken on 28.12.2023.

13. We also notice that the first application filed by the Respondent/Guarantor under Section 94 of the Code, being C.P.(IB) No.293(AHM)2024, was dismissed without granting any liberty to the Respondent/Guarantor.

14. We also notice that an e-auction sale notice with regard to the auction of the mortgaged property was issued on 31.08.2025 and the e-auction was successfully conducted on 17.09.2025, and it is thereafter when the e-auction has been conducted successfully and the highest bid was received of Rs.2,08,00,000/- the Respondent /Guarantor chooses to file another application under Section 94 of the Code being C.P.(IB)/433(AHM)2025, which has been allowed.

15. We are prima facie of the view that there is force in the submissions made by Learned Counsel for the Appellant.

16. Let notice be issued to the Respondent. Requisites and steps be taken within three working days from today.

17. It is provided that, till the next date of listing the operation of the impugned order shall remain stayed.

18. List this appeal on **23.09.2026**, under the caption 'After Notice'.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

KS/MR