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

Judgment reserved on: 13.05.2026
Judgment pronounced on: 08 .09.2026

\+ **W.P.(C) 10860/2017**

JAISHREE INDUSTRIES LTD. .....Petitioner

Through: Mr. Ravinder Sethi, Sr. Adv. with Mr. Rajiv Kumar Ghawna, Mr. Ashish Kumar, Mr. Vikalp Chandela, Advs.

versus

DELHI DEVLOPMENT AUTHORITY AND ANR.

....Respondents

Through: Mr. Sanjay Katyal (Standing Counsel for DDA) with Mr Nitish kumar Danda, Advs. for R-1.
Mr. Brijesh k Tamber, Mr. Chanchala Kumari, Mr. Prateek Kushwaha, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

1. By way of this writ petition, the petitioner has approached this Court seeking directions against the respondent No. 1 along with the respondent No. 2, to execute conveyance deeds with respect to plots

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Signing Date:08.09.2026 18:43

bearing Nos. 43, 44, 45, and 46 situated at block No. A-1, WHS, Kirti Nagar, New Delhi, and direction against the respondent No. 2 to pay all the penalties and levies which are to be imposed by respondent No. 1 at the time of execution of the said conveyance deeds or in the alternative seeking refund of the auction amount paid by the petitioner along with interest and other incidental charges. The prayers of the petition read as under:

> *"a) issue writ, order or direction in the nature of writ of mandamus whereby directing the respondent no.l DDA to execute conveyance deeds together with respondent no.2 in respect of plots bearing plot no.43 (admeasuring 250 sq. yards.), plot no.44 (admeasuring 250 sq. yards.), plot no. 45 (admeasuring 250 sq. yards.) and plot no.46 (admeasuring 250 sq. yards) situated at block no. A-1, WHS, Kirti Nagar, New Delhi-110015 in favour of the petitioner; and*
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> *b) direct the respondent no.2 to pay all the penalties and levies including the unearned increased charges, composition charges etc. proposed to be levied by DDA at the time of execution of conveyance deeds in favour of the petitioner in respect of the plots bearing plot no.43 (admeasuring 250 sq. yards.), plot no.44 (admeasuring 250 sq. yards.), plot no. 45 (admeasuring 250 sq. yards.) and plot no.46 (admeasuring 250 sq. yards) situated at block no. A-1, WHS, Kirti Nagar, New Delhi-110015 for the transfer effected by respondent no.2 bank in favour of petitioner ; and*

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Signing Date:08.09.2026
18:43

In the alternative

c) issue order or direction whereby directing the respondent no.2 bank to refund the auction amount of Rs.8.01 crore, paid by the petitioner towards the purchase of the aforesaid plots, in the auction held on 28.12.2009, along with interest @ 18% per annum and also direct respondent no.2 to pay other incidental charges including stamp duty, registration charges etc. to the tune of Rs.74,07,000/-. ...”

FACTUAL BACKGROUND AS PER THE PETITIONER

2. The petitioner namely, Jaishree Industries Ltd. is a private limited company having its registered office at D-12, Rajouri Garden, New Delhi-110027 and undertaking the business of production and selling of granite and other stones used for building and construction purposes.

3. The respondent No. 2 i.e., Indian Bank, is a financial institution also having its registered office at Richmond Circle, Bangalore and its Zonal Office at UGF, World Trade Centre, New Delhi.

4. In 1989, respondent No. 2 Bank in continuation of its financial activities extended a loan facility to M/s Saket India Ltd. ***(“Saket India”)*** upon mortgage of industrial plots situated at Block No. A-1, WHS, Kirti Nagar, New Delhi- 110015 and bearing Nos. 43 (admeasuring 250 Sq. yards.), 44 (admeasuring 250 Sq. yards.), 45 (admeasuring 250 Sq. yards.) and 46 (admeasuring 250 Sq. Yards) ***(“Subject Properties”).***

5. The subject properties were allotted in the name of M/s Saket Tiles Pvt. Ltd. (subsidiary of M/s Saket India Ltd.) ***(“Saket Tiles”)*** by the

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Signing Date:08.09.2026
18:43

respondent No. 1 namely, Delhi Development Authority ***("DDA"),*** which was the principal lessor of the Subject Properties.

6. On default by Saket India, proceedings were initiated by the respondent No. 2 Bank under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest ***("SARFAESI")*** Act, 2002, which culminated in auctioning of the Subject Properties by auction dated 28.12.2009.

7. The petitioner participated in the aforesaid auction and purchased the Subject Properties for a sum of Rs. 8.01 crores.

8. The entire auction amount extending to Rs. 8.01 crores were duly paid by the petitioner to the respondent No. 2 Bank by March 2010 and sale certificates were also duly issued in favour of the petitioner.

9. On the basis of the sale certificates issued by the respondent No. 2 Bank (duly registered with sub-registrar on 25.10.2013), the petitioner applied to DDA for conversion of the Subject Properties from leasehold to freehold.

10. In response to the said request of the petitioner, DDA informed that as per the policy of DDA, unearned increase ***("UEI")*** of 50% of the value of plot is payable by the lessee or the beneficiary. An explanation was also sought to explain the relationship between Saket India and the Saket Tiles because as per the records of DDA, the Subject Properties were allotted to Saket Tiles.

11. Pursuant thereto, the petitioner addressed letters dated 31.07.2010 and 03.06.2011 to the respondent No. 2 Bank, requesting payment of the UEI of Rs. 2.25 crores but to no avail.

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Signing Date:08.09.2026
18:43

12. Meanwhile, DDA *vide* its letter dated 28.07.2011 requested the petitioner to submit multiple documents namely, complete documents regarding sale, consent to pay UEI, details of the shareholding patterns of Saket Tiles up to the date of mortgage of the property to the respondent No. 2 Bank, and also a request letter for mutation in favour of the petitioner.

13. Since, these documents were not available with the petitioner, it requested the respondent No. 2 Bank to provide the same and also requested DDA for extension of time to deposit the requisite documents.

14. Subsequently, the requisite documents were submitted to DDA *vide* letter dated 19.09.2014.

15. In response to the same, DDA addressed multiple letters informing the petitioner that the Subject Properties were allotted to Saket Tiles via an open auction through its 4 shareholders and accordingly lease was executed on 12.06.1984 in the shareholders' favour. Subsequently, mortgage permission was granted *vide* letter dated 05.10.1990 in favour of respondent No. 2 Bank.

16. However, the name of Saket India (as it existed in the sale certificate) did not appear in records of DDA and consequently DDA asked the petitioner to submit Saket India's details.

17. The petitioner again requested documents from the respondent No. 2 Bank, in response to which copies of mortgage documents by Saket Tiles were provided to the petitioner. The said documents however were found deficient and the authorized representative of the petitioner

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Signing Date:08.09.2026 18:43

was given a hearing by Asst. Director (Industrial), DDA, wherein the petitioner explained the entire factual position.

18. The petitioner again addressed a communication to DDA dated 26.05.2015, wherein execution of conveyance deeds and extension of time for construction was sought.

19. DDA again *vide* letter dated 21.04.2016 sought documentary proof *qua* the date of possession of the Subject Properties and the proof from Registrar of Companies establishing the fact that Saket Tiles is a subsidiary of Saket India.

20. Thereafter, the petitioner actively took steps to seek the requisite clarification from respondent No. 2 Bank that DDA required *qua* the status of Saket India. However, the respondent No. 2 Bank failed to provide any document.

21. The petitioner was compelled to raise a demand against the respondent No. 2 Bank *vide* letter dated 31.07.2017, either to make available the requisite documents or to refund the auction amount with up-to-date interest and incidental charges.

22. The petitioner's request to respondent No. 2 Bank for clearance of various dues with respect to the Subject Properties was not acceded to. Consequently, the petitioner despite being a *bona fide* auction purchaser has been deprived from enjoyment of the Subject Properties to its fullest extent. Hence, the present writ petition.

<u>SUBMISSIONS ON BEHALF OF THE PETITIONER</u>

23. At the outset, Mr. Sethi, learned senior counsel for the petitioner, states that the issue arising in the present petition stands squarely covered by a catena of judicial pronouncements of the Hon'ble Supreme Court and

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SRIVASTAVA
Signing Date:08.09.2026
18:43

this Court. Reliance is placed on the Order dated 15.09.2023 of Hon'ble Madras High Court in the case titled *Indian Bank v. The Sub Registrar*[1], *Monoflex India (P) Ltd. v. CIT*[2], *Kalyani (India) (P) Ltd. v. Punjab National Bank*[3], *Rajesh Gems and Jewels Pvt. Ltd. v. India Overseas Bank*[4], *DDA v. Corporation Bank*[5], *Capital Hotel v. Delhi Development Authority*[6], and *Royal Star Trading Co. v. IFCI Ltd.*[7]

24. He also submits that the respondent No. 2 Bank has blatantly failed to convey a marketable title and has conducted the auction dated 28.12.2009 by withholding the knowledge of material facts/defects in the title of the Subject Properties. The Subject Properties stood in the name of Saket Tiles and not Saket India, and this fact was known to the respondent No. 2, but not disclosed. This non-disclosure is in violation of Section 13(4) of the SARFAESI Act, proviso to Rule 8(6), and 8(7)(a) of the Security interest (enforcement) rules, 2002 ***("2002 rules")***.

25. Rule 9(9) of the 2002 rules casts a duty to deliver the property free from all sorts of encumbrances. Reliance is also placed on Rule 9(10) and *S.K. Bakshi (Supra).*

26. Also, when the sale notice, auction notice and terms and conditions of the auction are completely silent on liability of the purchaser to pay UEI, the same cannot be imposed on the purchaser (petitioner).

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[1] W.P. No. 10594/2023, Madras High Court.
[2] 2003 SCC OnLine Del 760.
[3] 2023 SCC OnLine Del 8563.
[4] 2017 SCC OnLine 10679.
[5] 2025 SCC OnLine SC 2071.
[6] W.P. (C) 1513/1999, Delhi High Court.
[7] 2014 SCC OnLine Del 4671.

27. The failure of the respondent No. 2 bank to furnish documentation for proving the relationship of Saket India and Saket Tiles has rendered the statutory vesting of title under Section 13(6) of the SARFAESI Act, illusory, as it provides that all rights in or in relation to the asset transferred will vest in the transferee as if the transfer has been made by the owner.

28. The Secured Creditor (respondent No. 2 bank) is required to act in a fiduciary capacity but the respondent No. 2 Bank by retaining Rs. 8.01 Crores for over 16 years while failing to perfect the title of the auction purchaser has breached its fiduciary obligation. Reliance is placed on Section 13(7) and 35 of the SARFAESI Act, and the judgment of *Mathew Varghese v. M. Amritha Kumar*[8], *J. Rajiv Subramaniyan v. Pandiyas*[9].

29. It is also stated that the statutory obligations of disclosure, due diligence, and delivery of the asset free from encumbrances, cast upon the Secured Creditor (respondent No. 2 Bank) are not displaced by the terms of the Contract i.e., "as is where is and as is what is" clause.

30. The permission granted by DDA *vide* letter dated 05.10.1990 itself represented, recorded and acknowledged the corporate relationship between Saket India and Saket Tiles.

31. The concept of *Caveat Venditor* superseding the requirement of *Caveat Emptor*, and now the "as is where is and as is what is" based Clauses is now well known. Reliance is placed on decision of Hon'ble Allahabad

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[8] (2014) 5 SCC 610.
[9] (2014) 5 SCC 651.

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Signing Date:08.09.2026
18:43

High Court in *Rekha Sahu v. UCO Bank*[10], and of Hon'ble High Court of Telangana and Andhra Pradesh in *Mandava Krishna Chaitanya v. UCO Bank*[11]

32. Section 55(1)(a) of the Transfer of Property Act, 1882, imposes a duty upon the seller to disclose to the buyer any material facts/defects in the property or in the seller's title that are within the knowledge of seller but not buyer. Section 55 declares such non-disclosure as fraudulent. Reliance is also placed on the judgment of a Coordinate Bench of this Court in the case of *Capital Hotel (Supra).*

33. The respondent No. 2 Bank was very well aware of the factual situation that the Subject Properties stood in the name of Saket Tiles and not in the name of Saket India, Clause 7 of the lease deed prohibited transfer without DDA's permission and DDA would demand proof of relationship and also impose UEI before executing conveyance. These substantial complexities are material facts/defects and the reliance on "as is where is" clause cannot protect the respondent No. 2 bank from its duty of disclosure. Reliance is placed on *Haryana Financial Corpn. v. Rajesh Gupta*[12], *Royal Star Trading Co. (Supra)* and *Llovegeet Dhuria v. State Bank of India*[13].

34. The liability *qua* payment of UEI cannot be fastened upon the petitioner as the Public Notice dated 28.12.2009, the Sale Notice dated 25.11.2009, the terms and conditions of auction, and the Sale Certificate do not contain stipulation to the effect that the auction

[10] 2013 SCC OnLine All 13203.
[11] 2018 SCC OnLine Hyd 196.
[12] (2010) 1 SCC 655.
[13] 2022 SCC OnLine P&H 2363.

Signed By:ANSH SRIVASTAVA
Signing Date:08.09.2026 18:43

purchaser (petitioner) would be liable for payment of UEI or any other levy. Reliance is placed on a decision of Coordinate Bench of this Court in *Monoflex India (Supra)* and *Sujan Singh Oberoi v. CIT*[14].

35. *Qua* the alternative prayer of refund of the auction amount of Rs. 8.01 crores with 18% interest and other charges, it is stated that the failure of the respondent No. 2 bank to disclose the material facts/defects and to transfer a marketable title, annuls the transaction itself. In this backdrop, the continued retention constitutes unjust enrichment for respondent No. 2. Reliance is placed on *Capital Hotel (Supra), Jaswant Rai v. Abnash Kaur*[15]*, Coporation Bank (Supra), and M/s Kalyani (India) Pvt. Ltd. (Supra).*

<u>Maintainability of the Petition</u>

36. Mr. Sethi, learned senior counsel, submits that the present petition is maintainable before this Court exercising writ jurisdiction because the respondent No. 2 Bank has acted in violation of the provisions of SARFAESI Act.

37. Remedy stipulated under Section 17 of the SARFAESI Act is available only to the "borrower" and not to auction purchasers aggrieved by failure of secured creditors to pass on a perfect title.

38. The Debt Recovery Tribunal in any case will not have the relevant competent jurisdiction to adjudicate and decide the issue of payment of UEI which is also a principal issue under consideration in the present petition. Reliance is placed on *S.K. Bakshi v. Punjab National Bank*[16] to

[14] 2003 SCC OnLine Del 1273.
[15] 1973 SCC OnLine Del 212.
[16] 2022 SCC OnLine J&K 1075.

Signed By:ANSH SRIVASTAVA
Signing Date:08.09.2026
18:43

state that the Hon'ble Jammu and Kashmir High Court has held that the auction purchaser's grievance arising after sale is a post-sale failure of delivery and not a section 13(4) measure to attract application of Section 17.

39. Reliance is also placed on *Llovegeet Dhuria (Supra)* and *Mandava Krishna Chaitanya (Supra).*

40. *Qua* the objection of delay and laches, it is stated that there is no delay on its part as the petitioner soon after the DDA issued a letter demanding UEI and within 6 months of refusal of DDA to execute conveyance deeds by letter dated 13.06.2017, the petitioner preferred the present petition on 04.12.2017.

41. The petitioner has always been actively seeking the necessary information sought for resolving the controversy with DDA, any sort of delay, is only attributable to the respondent No. 2 bank as firstly the issuance of sale certificate was delayed and later the information regarding the nexus of Saket India and Saket Tiles was not provided in time.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 1

42. At the outset, Mr. Katyal, learned standing counsel for DDA states that the preset petition in addition to lacking a cause of action is also barred by delay and latches.

43. By way of present petition, the petitioner has raised highly disputed questions of fact which cannot be adjudicated by a Court in its exercise of writ jurisdiction.

44. It is also stated that DDA *vide* letter dated 28.07.2011 has already sought certain relevant documents, which have not been furnished to

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SRIVASTAVA
Signing Date:08.09.2026
18:43

DDA, rather the petitioner has been continuously seeking extension of time for submission of these documents.

45. The petitioner was duly intimated *vide* letters dated 30.07.2014 and 16.09.2014 by DDA to submit documents for mutation and upon submission of the same, it was communicated to the petitioner that the Subject Properties were allotted to Saket Tiles through an open auction. The Subject Properties were sold for the dues of Saket India but as per records of DDA, it was Saket Tiles, which was the original lessee.

46. The respondent No. 1 repeatedly sought proof of relationship between Saket India and Saket Tiles, which was not provided.

47. He also states that in view of this failure of the petitioner to submit requisite documents, the conveyance deeds cannot be executed in favour of the petitioner i.e., relief in terms of prayer 'A' cannot be granted.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 2

48. Mr. Tamber, learned counsel for the respondent No. 2, submits that the present petition is barred by presence of alternate equally efficacious remedy as the jurisdiction to entertain the present dispute lies with Debts Recovery Tribunal ***("DRT")*** under Section 17 of the SARFAESI Act and not with this Court under its writ jurisdiction. Reliance to bolster this submission is placed on *Agarwal Tracom (P) Ltd. v. Punjab National Bank*[17], *United Bank of India v. Satyawati Tondon*[18], *CIT v. Chhabil Dass Agarwal*[19], *Phoenix ARC (P) Ltd. v. Vishwa Bharati*

[17] (2018) 1 SCC 626.
[18] (2010) 8 SCC 110.
[19] (2014) 1 SCC 603.

Vidya Mandir[20], *Varimadugu Obi Reddy v. B. Sreenivasulu*.[21], *Celir LLP v. Bafna Motors (Mumbai) (P) Ltd*.[22], and *P. Mohaideen Abdul Khathar and Anr. v The Chief Manager Bank of Baroda and Ors.*[23]

49. At the threshold itself, the prayer 'A' is not maintainable against the respondent No. 2 Bank and if the petitioner is willing to seek refund of the sale consideration, then the same must be sought by way of seeking cancellation of sale certificate before the DRT.

50. The leasehold Subject Properties were mortgaged by Saket Tiles for securing the credit facilities extended to Saket India. Saket Tiles was a group company of Saket India and the Subject Properties were mortgaged after permission of DDA.

51. When account of Saket India turned a non-performing asset, proceedings under SARFAESI Act were initiated and consequently a notice of intended auction sale of the Subject Properties dated 25.11.2009 was issued, which clearly specified the offer of selling the properties on "as is where is and as is what is" basis and also mentioned that Subject Properties are owned in the name of Saket Tiles. The auction was conducted and sale certificates were accordingly issued in pursuance of the said notice.

52. The issued sale certificates were not collected by the petitioner due to its inability to arrange funds for its registration. Thereafter, fresh sale certificates were issued on 23.03.2012, 20.11.2012 and finally on 19.08.2013, they were registered.

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[20] (2022) 5 SCC 345.
[21] (2023) 2 SCC 168.
[22] 2023 SCC OnLine SC 1209.
[23] judgment dated 21.12.2022 in W.P. (MD) No. 2116/2021, Madras High Court.

Signed By:ANSH SRIVASTAVA
Signing Date:08.09.2026
18:43

53. The petitioner has participated in the auction process of its own volition after conducting independent due diligence and checking all the relevant documents including the perpetual lease deed. Thus, the petitioner had knowledge of all the relevant clauses of the perpetual lease deed including the one providing for imposition of UEI.

54. He also submits that the Subject Properties were sold by the respondent No. 2 Bank in enforcement of its security interest and clearly on “as is where is and as is what is” basis, and the respondent No. 2 Bank cannot be compelled to pay any charges.

55. It is also stated that the respondent No. 2 Bank has no objection to refund the auction amount but the sale certificate needs to be cancelled by way of appropriate proceedings before the appropriate forum and the same cannot be sought in the present writ petition. The petitioner has sought inconsistent reliefs in the present petition.

56. Reliance is placed on a decision of Hon’ble Madras High Court titled *P. Mohaideen Abdul Khatar (Supra)* to state that the relief of refund of auction amount was denied by the High Court holding that auction purchaser falls within the expression “any person aggrieved” under Section 17(1).

57. In this backdrop, directions must be given to the petitioner to approach DRT in accordance with law.

ANALYSIS AND FINDINGS

58. I have heard the learned counsels for the parties and perused the documents placed on record. Even though there is an alternative prayer for refund of the auction amount, Mr. Sethi, learned senior counsel, has only pressed and argued prayer ‘A’ and ‘B’ and does not press prayer ‘C’.

Signed By:ANSH SRIVASTAVA
Signing Date:08.09.2026
18:43

MAINTAINABILITY OF THE PETITION

Delay and Laches

59. At the outset, Mr. Tamber, learned counsel for the respondent No. 2, submits that the present petition is liable to be dismissed for the reason of being barred by delay and laches on the ground of inordinate delay in preferring the present petition.

60. He submits that the sale of the Subject Properties concluded in the year 2010, thereafter the petitioner approached DDA for execution of conveyance deeds and the said request was rejected. It was from this time the petitioner was aware of the position of the Subject Properties and the same is also evident from a letter dated 31.07.2010 addressed by petitioner to the respondent No. 2. The letter dated 31.07.2010 is important and reads as under:

Date: 31/07/2010

The Deputy General Manager,
Indian Bank, (Circle Office),
Richmond Circle,
Raheja Tower,
Bangalore.
Kind Attn: Mr. Hegde Ji (DGM, Richmond Circle, Indian Bank).

Ref: *Registration of agreement to sell. (Saket Tiles Pvt. Ltd., Plot Nos. 43, 44, 45 and 46 situated at Block A-1, WHS, Kirti Nagar, New Delhi).*

Dear Sir,

In above said reference we would like to draw your kind attention that above said properties we purchased in auction held

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Signing Date:08.09.2026
18:43

on 28.12.2009 at your circle office, New Delhi. As now we had already paid entire amount to you, please make arrangement to Register Agreement to Sell and General Power of Attorney as these documents are in trend in Delhi Development Authority's properties, as lease hold properties can not be sold without paying unearned increase and according to DDA this unearned increase is around 2.25 Crores and has to be paid by the beneficiary i.e. seller of the property.

As per the terms of "permission to mortgage" accorded by DDA vide letter No. 9 (8)/LSB (I)/85/4528 dated 05/10/1990 as aforesaid:-

" In the event of sale or for closure of the mortgage or charged property, the lessor (President of India) shall be entitled to claim and recover fifty per cent of the unearned increase in the value of the industrial plot as aforesaid and the amount of the Lessor's share of the said unearned increase shall be the first charge, having priority over the said mortgage or charge, the decision of the Lessor in respect of the market value of the said industrial plot shall be final and binding on all the parties concerned, provided that the Lessor shall have the pre-emptive rights to purchase the mortgage or unearned increase as aforesaid."

Also, we have been informed by DDA that as an alternative Bank officials may execute an agreement to sell (which will be got registered at our cost) and based on it, we shall be able to get the

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Signing Date:08.09.2026
18:43

property converted into freehold property and we undertake to bear the cost of same.

In view of above, we request you to please issue the Agreement to sell in our favour.

Thanks and Regards,

For JAISHREE GRANITES PRIVATE LIMITED

Shyam Sunder Maheshwari

Director

Enclosure: *Above mentioned DDA letter No. 9 (8)/LSB (I)/85/4528 dated 05/10/1990 is enclosed.*

Copy to: *Mr. P. N. Swarup (Chief Manager) Circle Office, UGF, WTC, Babar Road, New Delhi-110001."*

61. In this backdrop, since, the petitioner was aware of the issue of imposition of UEI, it should have approached the Court of Law promptly and without any inordinate delay.

62. *Qua* this submission, It is stated by Mr. Sethi, learned senior counsel, that the DDA after the date of the letter as reproduced above has refused to act upon the suggestions made earlier and has consistently demanded documents from the respondent No. 2 Bank pertaining to the corporate relationship between Saket India and Saket Tiles.

63. The law relating to delay and laches has been explained by the Hon'ble Supreme Court in the case of ***Mrinmoy Maity v. Chhanda Koley***[24] and the relevant paragraphs of the same read as under:

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[24] (2024) 15 SCC 215.

Signed By:ANSH SRIVASTAVA
Signing Date:08.09.2026
18:43

"9. Having heard rival contentions raised and on perusal of the facts obtained in the present case, we are of the considered view that the writ petitioner ought to have been non-suited or in other words the writ petition ought to have been dismissed on the ground of delay and laches itself. An applicant who approaches the court belatedly or in other words sleeps over his rights for a considerable period of time, wakes up from his deep slumber ought not to be granted the extraordinary relief by the writ courts. This Court time and again has held that delay defeats equity. Delay or laches is one of the factors which should be borne in mind by the High Court while exercising discretionary powers under Article 226 of the Constitution of India. In a given case, the High Court may refuse to invoke its extraordinary powers if laxity on the part of the applicant to assert his right has allowed the cause of action to drift away and attempts are made subsequently to rekindle the lapsed cause of action.

10. The discretion to be exercised would be with care and caution. If the delay which has occasioned in approaching the writ court is explained which would appeal to the conscience of the court, in such circumstances it cannot be gainsaid by the contesting party that for all times to come the delay is not to be condoned. There may be myriad circumstances which gives rise to the invoking of the extraordinary jurisdiction and it all depends on facts and

Signed By:ANSH SRIVASTAVA
Signing Date:08.09.2026 18:43

circumstances of each case, same cannot be described in a straitjacket formula with mathematical precision. The ultimate discretion to be exercised by the writ court depends upon the facts that it has to travel or the terrain in which the facts have travelled.

11. For filing of a writ petition, there is no doubt that no fixed period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is invoked, it has to be seen as to whether within a reasonable time same has been invoked and even submitting of memorials would not revive the dead cause of action or resurrect the cause of action which has had a natural death. In such circumstances on the ground of delay and laches alone, the appeal ought to be dismissed or the applicant ought to be non-suited. If it is found that the writ petitioner is guilty of delay and laches, the High Court ought to dismiss the petition on that sole ground itself, inasmuch as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong. It is true that there cannot be any waiver of fundamental right but while exercising discretionary jurisdiction under Article 226, the High Court will have to necessarily take into consideration the delay and laches on the part of the applicant in approaching a writ court.

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Signed By:ANSH SRIVASTAVA
Signing Date:08.09.2026 18:43

14. Reiterating the aspect of delay and laches would disentitle the discretionary relief being granted, this Court in Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu [Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu, (2014) 4 SCC 108 : (2014) 1 SCC (L&S) 38] has held: (SCC p. 117, para 16)

> *"16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten*

Signed By:ANSH SRIVASTAVA
Signing Date:08.09.2026
18:43

the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis."

64. From a conspectus of the aforesaid, it is clear that the Courts while exercising its extraordinary writ jurisdiction are required to keep in mind the delay and laches, if any, on part of the petitioner in approaching the Court seeking constitutional remedy. In case of inordinate and unexplainable delays attributable to the petitioner, the Court is not bound to entertain the case of the petitioner. However, when the delay is sufficiently explained to the satisfaction of Court, then the Court must exercise this extraordinary jurisdiction as it concerns the rights of a person.

65. In this backdrop, I am unable to agree with the argument of the respondent No. 2. In the present case, the dispute with regards to the status of original lessee and the corporate nexus between Saket India and Saket Tiles was itself in question. The petitioner was fully conscious of this issue, was exercising its rights and was continuously requesting the respondent No. 2 Bank to provide the document explaining the relation between the Saket India and Saket Tiles in order to satisfy the queries of the DDA. There has been a series of communication between the petitioner and DDA, which to my mind, sufficiently explains the case of the petitioner that there is no inordinate and unexplainable delay.

66. After a series of communication exchanged between the petitioner and DDA, the petitioner received a letter from DDA dated 21.04.2016

Signed By:ANSH SRIVASTAVA
Signing Date:08.09.2026
18:43

which raised further requirement of documents regarding date of possession and corporate relationship between Saket India and Saket Tiles. The same requirement was further reiterated by DDA *vide* letter dated 13.06.2017. The communications dated 21.04.2016 and 13.06.2017 addressed by DDA to the petitioner are relevant and read as under:

"DELHI DEVELOPMENT AUTHORITY
LAND SALES BRANCH (INDUSTRIAL)

A-Block, Vikas Sadan, INA,
New Delhi-110023.

No. F.9(8)85/LSB(I)/DDA/ 884 *Dated: 21/4/16*

To,
M/s. Jaishree Industries Limited,
D-12, Rajouri Garden, Ring Road,
New Delhi-110027.

Sub.: Regarding Plot No. A-1/43, A-1/44, A-1/45 & A-1/46, Kirti Nagar WHS, New Delhi-110015.....
Sir(s),

With reference to your extension of time and mutation request dated 12.3.2015 on the above cited subject. In this connection, I am directed to inform you to submit the followings:

1. Date of possession of the premises referred to above from Indian Bank with documentary evidences.

2. The submission dated 6.1.2015 made by Indian Bank that M/s. Saket Tiles Pvt. Ltd., a subsidiary Company of M/s. Saket India Ltd. needs to be ascertained from the Registrar of Companies.

Signed By:ANSH SRIVASTAVA
Signing Date:08.09.2026
18:43

You are therefore requested to submit the above said documents within 15 days from the issue of this letter so that your extension of time and mutation request can be processed further.

Asstt. Director (Indl.)"

Reminder

"DELHI DEVELOPMENT AUTHORITY
LAND SALES BRANCH (INDUSTRIAL)

No. F. 9(8)85/LSB(I)/DDA/ 3400 Dated:- 13/06/17

To

M/s Jaishree Industries Limited,
D-12, Rajouri Garden, Ring Road,
New Delhi-110027.

Sub: Regarding Plot No. A-1/43,A-1/44,A-1/45 & A-1/46 WHS Kirti Nagar, New Delhi.
Sir,

Kindly refer to this office letter dated 21.04.2016 vide which you were requested to submit the following documents:
1. Date of possession of the premises referred to above from Indian Bank with documentary evidences.

2. The submission dated 06.01.2015 made by Indian Bank that M/s Saket Tiles Pvt. Ltd., a subsidiary Company of M/s Saket India Ltd. needs to be ascertained from the Registrar of Companies.

The requisite information is still awaited. Therefore, you are once again requested to submit the same so that your request for extension of time and mutation can be processed further.

Signed By:ANSH SRIVASTAVA
Signing Date:08.09.2026
18:43

Yours faithfully
Asstt. Director (Indl.)"

67. Since, the respondent No. 2 did not provide the required necessary documents, the petitioner *vide* letter dated 31.07.2017 was constrained to seek refund of the money. The letter dated 31.07.2017 is relevant and reads as under:

*"**JAISHREE INDUSTRIES LIMITED***
Formerly Jaishree Granites (P) Ltd.
AN ISO 9001 : 2008 COMPANY
Exporter, Mines Owner & Processors of all
Colours of Granite Slabs & Tiles
D-12, RAJOURI GARDEN, (RING ROAD) NEW
DELHI- 110027

To, *Dated: 31.07.2017*
The Authorized Officer
Indian Bank
A/c Saketh India Limited
Circle Office, UGF, WTC
Babar Road, New Delhi – 110001.
Ref:- Plot No. A-1/43, A-1/44, A-1/45 and WHS, Kirti Nagar, New Delhi.
Sir,

The aforesaid plots were purchased by the applicant company in an open auction carried out by Indian Bank on 28.5.2009. The aforesaid plots were auctioned by the bank against the loan facility made available to M/s Saket India Ltd. During the course of seeking to have the conveyance deed executated in favour of the applicant company from DDA it transpired that the plots were actually alloted to M/s Saket Tiles Pvt. Ltd. In order to execute the conveyance deed in favaour of applicant company various documents were sought by

Signed By:ANSH SRIVASTAVA
Signing Date:08.09.2026
18:43

the DDA and majority of which have not been made available to the applicant company by the bank. The last demand of this series by DDA was vide letter dated 21.4.2016 wherein the DDA had asked the applicant company to submit the followings:-

1. *Date of possession of the premises referred above from Indian Bank with documentary evidences.*
2. *The submission dated 6.1.2015 made by Indian Bank that M/s Saket Tiles Pvt. Ltd., a subsidiary Company of M/s Saket India Ltd. Needs to be ascertained from the Registrar of Companies.*

Despite repeated reminders you failed to make available the aforesaid documents as a result DDA has refused to execute conveyance deed in respect of the aforesaid plots in favour of the applicant company. As you have failed to convey a clear title in respect of the aforesaid plots to the applicant company and neither you are in a position to provide a clear title in respect of the aforesaid plots in favour of the applicant company.

Therefore you have become liable in law to not only refund the amount deposited with you with interest as also damages sustained by us. Therefore, you are requested to please furnish the requisite information relating to the requisitions made by DDA & in particular about the date of possession with documents thereof as also all the records with the Bank establishing M/s Saket Tiles Pvt. Ltd. to be a subsidiary of M/s Saket India Ltd.. and in failure thereof please refund the auction amount of Rs. 8.01 crores along with interest @ 18% per annum w.e.f. 28.5.2009, till the date of payment alongwith other incidental expenses incurred by the applicant company.

This is for your information and necessary action.

Thanking you,
For JAISHREE INDUSTRIES LTD.”

Signed By:ANSH
SRIVASTAVA
Signing Date:08.09.2026
18:43

Managing Director

68. For the aforesaid reasons, the petitioner cannot be said to be sleeping over its rights so as to be disentitle it for relief from this Court exercising writ jurisdiction.

Alternate efficacious remedy

69. Another preliminary objection raised against the maintainability of the present petition is the availability of an alternative efficacious remedy with the petitioner under Section 17 of the SARFAESI Act.

70. This objection, to my mind, is unfounded and has been only fleetingly raised. The factual matrix of the present case, the relief claimed by way of present petition against DDA in Prayer 'A' and the relief claimed against the respondent No. 2 Bank in Prayer 'B' are intertwined in such a way that the disputes need to be comprehensively adjudicated for final and proper disposal of the controversy.

71. Alternate remedy by way of Section 17 of SARFAESI before the DRT could not possibly resolve/satisfy the dispute between the parties, which is of complex nature involving issues concerning not only the petitioner and the respondent No. 2 bank but also the respondent No. 1/DDA. The DRT cannot exercise its jurisdiction or issue directions against the respondent No. 1/DDA with respect to which there is prayer 'A' in the present petition seeking namely direction against the respondent No. 1/DDA to execute conveyance deeds together with respondent No. 2 in respect of subject properties in favour of the petitioner.

Signed By:ANSH SRIVASTAVA
Signing Date:08.09.2026
18:43

72. Thus, keeping in view the complexity of the matter, the intertwined nature of the relief claimed and the need of proper and final disposal, the objection based on alternative efficacious remedy regarding maintainability of the present petition is rejected.

LIABILITY OF RESPONDENT NO.2 BANK

73. The entire case of the petitioner is premised on three-fold arguments:

i. The respondent No. 2 Bank despite being fully aware of the fact that the lease was in favour of Saket Tiles, failed to disclose the same.

ii. No document pertaining to the sale like public notice, sale notice, terms and conditions of auction, sale certificate, provided for any stipulation as to the liability of the petitioner to pay/discharge the liability *qua* charges or other levies imposed like UEI. In absence of any such stipulation, such liability cannot be fastened upon the petitioner.

iii. The respondent No. 2 Bank has continuously retained the entire auction money without perfecting the title/ conveying a marketable title in favour of the petitioner, by relying on the “as is where is and as is what is” clause and now cannot absolve itself from the liability of failure to disclose material fact/defect which has vitiated the entire auction.

74. *Per Contra*, the main argument of the respondent No. 2 Bank *qua* its liability to pay UEI and other charges is that the Subject properties were sold in enforcement of its security interest clearly with an express stipulation attached to it, that the same is being sold on an “as is where is and as is what is” basis. The petitioner having participated in the

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Signing Date:08.09.2026
18:43

auction procedure of its own volition with full knowledge, now cannot dispute the same and take a contrary stand in stating that the bank is under obligation to discharge the liabilities not assumed by it.

75. The respondent No. 2 Bank also vehemently opposes the contention of the petitioner that the description of the property was not disclosed prior to the auction. It is stated that the petitioner has conducted due diligence and checked all relevant documents including the lease deed. Hence, all the relevant terms, conditions and clauses were within its knowledge. The notice of intended sale dated 25.11.2009 issued under Rule 6(2) and 8(6) of the 2002 Rules is important and reads as under:

"INDIAN BANK

Circle Office, UGF, World Trade Centre, Babar Road,

New Delhi-110001

PUBLICATION SALE NOTICE

Notice of intended sale under Rule 6 (2) & 8 (6) of the Security Interest (Enforcement) Rules, 2002 under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

1. M/s Saketh India Ltd. (a) Regd. Office 11/12, Plot No. 2, Phase No. 2, Sector-2, Nerul, New Mumbai-400708 (b) Head Office No. 113, 1st Main Road, Seshadripuram, Bangalore-560020.

2. Sri S.L. Sharma, S/o Devakinandana Sharma, Chairman, M/s Saketh India Ltd. No. 69, Saketh, Meerut, Uttar Pradesh.

3. Sri R.L. Sharma, S/o Late Devakinandana Sharma, Managing Director, M/s Saketh India Ltd. No. 892, 38th Cross, 4th T Block,

Signed By:ANSH SRIVASTAVA
Signing Date:08.09.2026
18:43

Jayanagar, Bangalore-560041.

4. Sri K.S. Rao, S/o Sri K.V. Krishna Rao, Executive Director, M/s Saketh India Ltd. No. 2968, 16th Cross, Krishna Rajendra Road, Banashankari, II Stage, Bangalore-580070.

5. Sri Pramod Kumar Kaushik, Executive Director, M/s Saketh India Ltd., since deceased represented by his legal heirs who have been brought into Suit Records.

i. Smt. Nirmala Devi, W/o Late Pramod Kumar Kaushik.
ii. Sri Nutal, S/o Late Pramod Kumar Kaushik.
iii. Sri Gaurav, S/o Late Pramod Kumar Kaushik.
All residing at No. 131, Sector 6-A, Faridabad, Haryana.

6. Sri C.B. Vishwanathan, S/o Late C.V. Balappa, Director, M/s Saketh India Ltd., No. 9-85, Lakshminagar Colony, Kothapet, Ranga Reddy Dist., A.P.

7. M/s Saketh Marble Udyog Ltd., (Owned by M/s Saketh India Ltd.) No. 466/377, Borowar Village, Makrana, Nagour-Dt., Rajasthan.

8. Mrs. Saketh Tiles Pvt. Ltd. (Owned by M/s Saketh India Ltd.) No. 45/46, Block No. A-1, Kirthi Nagar, W.H.S. New Delhi 110015.

Sub: Loan account M/s Saketh India Ltd. with Indian Bank, Richmond Circle branch, Bangalore.

M/s Saketh India Ltd., availed facilities from Indian Bank, Richmond Circle Branch, Bangalore. The repayment of which are secured by mortgage of schedule mentioned properties

Signed By:ANSH SRIVASTAVA
Signing Date:08.09.2026
18:43

hereinafter referred to as "the properties". M/s Saketh India Ltd. failed to pay the outstanding to the bank. Therefore, a Demand Notice dated 12.05.2005 under Sec. 13 (2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (for short called as "The Act") was issued by the undersigned calling upon M/s Saketh India Ltd. and others liable to the Bank to pay the amount due to the tune of Rs. 3,96,65,38,560.76 (Rupees Three Hundred Ninety Six Crores Sixty Five Lakhs Thirty Eight Thousand Five Hundred Sixty and Paise Seventy Six only (as on 31.03.2005) with further interest and other charges thereon.

M/s Saketh India Ltd. failed to make payment despite Demand Notice and therefore, the undersigned took possession of the schedule mentioned properties under the Act on 24.09.2005 after complying with all legal formalities.

The sale is intended to be conducted by way of Tender cum Auction Method. Sealed Tenders are invited from public. The Tender/bid Form with all the applicable terms and conditions can be had from the undersigned at Indian Bank, Circle Office, New Delhi against written request. The last date for submitting tenders/bids complying with all necessary terms along with EMD to the undersigned in the above mentioned address is 28.12.2009 upto 11:00 a.m. The tenders shall be opened on 25.12.09 at 11:30 a.m. at the same address. Inspection of scheduled properties by the intending tenderers can be done at their

Signed By:ANSH SRIVASTAVA
Signing Date:08.09.2026
18:43

expense.

In the case of immovable properties, the sale shall be conferred on the person making highest offer/tender/bid. 25% of the sale price shall be paid immediately on the date of sale by way of DD/BPO and the balance price shall be paid within 15 days of confirmation of sale by the Bank, which can be extended in writing from time to time, on request from the purchaser, at the discretion of the Bank.

The undersigned reserves the right to accept or reject the tender/bid/offer without assigning any reason therefor.

The sale is on "As is where is and As is What is" basis Bidding for individual plot is also permitted.'

This Notice is without prejudice to any other remedy available to the Bank and without prejudice to Bank's right to proceed with the proceedings pending. If any, before DRT/RO of DRT/DRAT/Court and proceed with the execution of order/decree obtained/to be obtained.

SCHEDULE

Detailed description of the Mortgaged Assets Item-wise.

All that part and parcel of the property bearing Plot No. 43, 44, 45 and 46 situated at Block No. A-1, WHS, Kirti Nagar, New Delhi owned by the subsidiary of the Company, M/s Saket Tiles Pvt. Ltd. The extent of land is 1000 Sq. Yds and bounded on the East by Road, West by other property, North by other property and South by Road.

Reserve Price: Rs. 600.00 lakhs EMD: Rs. 50.00 lakhs

Signed By:ANSH SRIVASTAVA
Signing Date:08.09.2026
18:43

Place: New Delhi *Authorised Officer*

Date: 25.11.2009

Statesman dt. 25.11.09"

76. A perusal of the aforesaid notice of intended sale dated 25.11.2009, clearly shows that the the properties in question were sold on "as is where is and as is what is" basis. The other important aspect in this notice reproduced hereinabove, is the clear declaration that the Subject Properties are owned by a subsidiary of Saket India namely M/s Saket Tiles Ltd.

77. Even though *prima facie* the argument of respondent No. 2 Bank seems attractive that the petitioner should have verified and acted with due diligence *qua* the title documents and should have been aware of the liability to pay unearned increase in accordance with the relevant clause of the perpetual lease deed, a closer scrutiny of the argument shows that the same needs to be tested on the touchstone of relationship between "as is where is" stipulation and SARFAESI proceedings.

78. At this stage, I find it pertinent to discuss the position of law *qua* "as is where is and as is what is" read together with the SARFAESI Act, which has been explained by the Hon'ble Division Bench of this Court in its recent judgment in the case of ***Bank of Maharashtra v. Jai Kumar Bansal***[25], wherein this Court while allowing an appeal and setting aside the judgment of Commercial Court holding the bank liable

[25] 2026 SCC OnLine Del 667.

Signed By:ANSH SRIVASTAVA
Signing Date:08.09.2026
18:43

to pay dues, discussed the law relating to "as is where is and as is what is" clause in the following words:

> *"10. To adjudicate this controversy, it is necessary to examine the interplay between the "as is" nature of SARFAESI auctions and the statutory obligations of a secured creditor. The legal position governing auction sales of secured assets is well-settled. While such a transfer is prima facie one where the buyer takes the property in its existing condition,* ***the protection afforded to the seller by an "as is where is" clause is not absolute.***
>
> *11. Under Section 55(1)(a) of the Transfer of Property Act, 1882, a seller is bound to disclose to the buyer any material defect in the property or in the seller's title thereto of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover. Within the specific framework of the SARFAESI Rules, Rule 8(6)(a) and (f) of the Security Interest (Enforcement) Rules, 2002, mandates that the authorized officer shall serve a notice of sale to the borrower containing, inter alia, the description of the immovable property and "any other thing which the authorised officer considers it material for a purchaser to know in order to judge the nature and value of the property."*
>
> *12. The jurisprudence on this point, notably the decision of the Allahabad High Court in Rekha Sahu v. UCO Bank[1], clarifies that although a SARFAESI sale is on an "as is"*

Signed By:ANSH SRIVASTAVA
Signing Date:08.09.2026
18:43

basis, the authorized officer is not absolved of the duty to disclose known encumbrances. The Court held that the immunity provided by "as is where is" terms cannot be used to shield the non-disclosure of material facts that are within the Bank's knowledge. Similarly, the Supreme Court in Punjab National Bank v. Mithilanchal Industries Pvt. Ltd.[2] and more recently in Delhi Development Authority v. Corporation Bank[3] has emphasized that a secured creditor must act with transparency. In the Delhi Development Authority case, the Supreme Court held that the non-disclosure of the DDA's 'unearned increase' charge - a statutory claim, violated the requirement to inform bidders of material encumbrances, leading to the quashing of the auction.

13. However, the force of these precedents must be weighed against the specific facts and contractual stipulations of the present case. The efficacy of an "as is" clause depends on whether the seller acted bona fide or actively concealed facts. In Kalyani (India) Pvt. Ltd. v. Punjab National Bank[4], this Court observed that while a seller cannot "shed away" responsibilities through active concealment, the purchaser is equally bound by the terms of the notice if they are clear and unambiguous.

14. In the present Appeal, the Appellant Bank has demonstrated a consistent and transparent disclosure of the sale terms. The public notice dated 28.11.2018 contained an

Signed By:ANSH SRIVASTAVA
Signing Date:08.09.2026
18:43

explicit and wide-ranging indemnity clause. Specifically, Clause 12 of the said notice warned:

> *"...if any dues or penalty or any charges are due/levied on the property by any authority then it will also be borne by the purchaser in addition to sale price."*
>
> *...*

17. Furthermore, the Respondent's reliance on Rule 9(10) of the SARFAESI Rules is misplaced. Rule 9(10) requires the sale certificate to mention whether the property is sold free from encumbrances. ***The Sale Certificates issued on 29.12.2018 explicitly stated they were on an "as is where is" and "what is where is" basis and free from encumbrances known to the Bank.*** *The Respondent accepted these certificates unconditionally and took physical possession on 01.01.2019 without any protest or reservation regarding the title or pending dues.*

18. The principle of caveat emptor (buyer beware) finds strong application here. The dues claimed by UPSIDA (a public authority) were matters of public record and pertained to the leasehold nature of the property. A simple inquiry with UPSIDA, as the lessor, would have revealed the status of the dues. By signing the acceptance and the sale certificate, the Respondent entered a binding contract to assume all "unknown" liabilities. As held in Royal Star Trading Co. *v.* IFCI Ltd.[6]*, an auction purchaser cannot*

Signed By:ANSH SRIVASTAVA
Signing Date:08.09.2026
18:43

renege on a confirmed bid or seek modifications to the price (by way of reimbursement of dues) simply because of a subsequent discovery of liabilities that they had already contractually agreed to bear.

*19. The Commercial Court **failed to appreciate that the "as is" clause in the present case was supplemented by a specific warning regarding statutory dues.** The court below erroneously applied the standard of an absolute warranty of title, which does not exist in SARFAESI auctions unless specifically promised. In the absence of fraud or active misrepresentation, neither of which has been proved by the Respondent, the contractual terms must be enforced."*

(Emphasis Supplied)

79. From a perusal of the aforesaid judgment, it is clear that the auction seller is bound to disclose all the material facts as well as the defects in the property which is to be auctioned.

80. The clause "as is where is and as is what is" cannot be used as a shield to conceal the hidden charges which are in the knowledge of the auction seller. The judgment of ***Jai Kumar Bansal (Supra)*** also deals with most of the contentions raised by the petitioner in the present petition regarding statutory finality under Section 13(6) of the SARFAESI Act, application of Rule 9(10) of 2002 rules and the application of the principle of *caveat emptor*, the same is binding upon this Court.

81. With the aforesaid principle of law, I shall now deal with the factual matrix of the present case.

Signed By:ANSH SRIVASTAVA
Signing Date:08.09.2026
18:43

82. In the present case, admittedly, at the time of mortgage, the respondent No. 2 Bank was in possession of the title documents including the lease deed of the mortgagor. The respondent No. 2 Bank was fully conscious of the terms and conditions of the lease including the right of DDA to charge unearned increase, and that permission of DDA is required before dealing with the subject properties. The same is evident from the letter dated 05.10.1990 written by the DDA to Saket Tiles, permitting mortgage of the subject properties. It is on the basis of this letter that the subject properties were mortgaged to the respondent No. 2 Bank. The letter dated 05.10.1990 is reproduced as under:

Signed By:ANSH SRIVASTAVA
Signing Date:08.09.2026
18:43

2026:DHC:7673

(29)

DELHI DEVELOPMENT AUTHORITY
(LAND SALES BRANCH) INDUSTRIAL

No.F. 9 (8)/LSB(I)/85/4528 Dt. 5/10/90

To

M/s Saket Tiles (Pvt) Ltd
A I/43, Kirti Nagar WHS
New Delhi-15.

Sub: Permission to mortgage Industrial Plot No. 43 Block No. A I in Kirti Nagar WHS.

Dear Sir/Madam,

With reference to your letter dated 16-7-90 on the above noted subject, I am directed to say that under Clause II(4) (8) of the Perpetual Lease Deed executed with you on 12-6-89. Lt. Governor, Delhi is pleased to permit you to mortgage the industrial plot No. 43 Block No. A I situated at Kirti Nagar WHS with the Indian Bank Richmond Circle Bangalore for the purpose of raising loan for ~~the construction of an industrial building on the said plot and~~ for ~~purchase of machinery~~ working capital loan subject to the condition that in the mortgage deed, the following clause will be included:-

(working capital loan)

"In the event of sale or for closure of the Mortgage or charged property, the lessor (President of India) shall be entitled to claim and recover fifty per cent of the unearned increase in the value of the industrial plot as aforesaid and the amount of the Lessor's share of the said unearned increase shall be the first charge, having priority over the said mortgage or charge the decision of the Lessor in respect of the market value of the said industrial plot shall be final and binding on all the parties concerned, provided that the Lessor shall have the pre-emptive rights to purchase the mortgage or unearned increase as aforesaid".

2. Please note that the mortgage permission must be utilised within one year from the issue of this letter. In the event of your failure to utilise, the mortgage permission herein given will be treated as having lapsed.

3. Notice under section 26(1) and (2) of the Urban Land (Ceiling & Regulation), Act, 1976 have been received.

4. Permission under Section ~~27(2)~~ of the Urban Land (Ceiling & Regulation) Act, 1976 is hereby granted.

Yours faithfully,

[signature] 5/10/90.

DEPUTY DIRECTOR(INDUSTRIAL)
DELHI DEVELOPMENT AUTHORITY.

Signed By:ANSH SRIVASTAVA
Signing Date:08.09.2026
18:43

TRUE TYPED COPY

DELHI DEVELOPMENT AUTHORITY

(LAND SALES BRANCH) INDUSTRIAL

No. 9 (8)/LSB(I)/85/4528

Dt. 5/10/90

To,

M/s Saket Tiles (Pvt) Ltd.

A-I/43, Kirti Nagar WHS,

New Delhi-15.

Sub: Permission to mortgage Industrial Plot No. 43 Block No. A-I in Kirti Nagar WHS.

Dear Sir/Madam,

With reference to your letter dated 16-7-90 on the above noted subject, I am directed to say that under Clause II(4)(B) of the Perpetual Lease Deed executed with you on 12-6-89. Lt. Governor, Delhi is pleased to permit you to mortgage the industrial plot No. 43, Block No. A-I situated at Kirti Nagar WHS with the Indian Bank, Richmond Circle, Bangalore for the purpose of raising loan for t~~he construction of an industrial building on the said plot and for purchase of machinery~~ working capital loan subject to the condition that in the mortgage deed, the following clause will be included:-

"In the event of sale or for closure of the Mortgage or charged

Signed By:ANSH SRIVASTAVA
Signing Date:08.09.2026
18:43

property, the lessor (President of India) shall be entitled to claim and recover fifty per cent of the unearned increase in the value of the industrial plot as aforesaid and the amount of the Lessor's share of the said unearned increase shall be the first charge, having priority over the said mortgage or charge the decision of the Lessor in respect of the market value of the said industrial plot shall be final and binding on all the parties concerned, provided that the Lessor shall have the pre-emptive rights to purchase the mortgage or unearned increase as aforesaid".

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~~4. Permission under Section 27(2) of the Urban Land (Ceiling & Regulation) Act, 1976 is hereby granted.~~

Yours faithfully,

DEPUTY DIRECTOR (INDUSTRIAL)
DELHI DEVELOPMENT AUTHORITY.

Signed By:ANSH SRIVASTAVA
Signing Date:08.09.2026 18:43

83. To my mind, the said condition of the lease deed is a material condition having substantial bearing on the decision of the petitioner to participate in the auction and on the sale consideration of the Subject Properties, and accordingly the same was required to be brought to the notice of the petitioner by way of an express stipulation.

84. If the imposition UEI had been disclosed by the respondent No. 2 Bank in the auction notice, then the same would have resulted in price difference or a difference in the bid of the petitioner, as the petitioner would have factored that cost in its assessment of a reasonable bid.

85. However, there was no express stipulation in the intended sale notice as reproduced above, so as to clarify the position with respect to the encumbrances (UEI) upon the Subject Properties.

86. Even though the sale certificate contains a stipulation that the Subject Properties are being sold free from all known encumbrances, it cannot substantiate the case of the respondent No. 2 because as held above in ***Jai Kumar Bansal (supra),*** the presence/absence of such a clause in the sale certificate can only be used as a supplementary aspect to the requirement of disclosure.

87. Reliance is also well placed by the petitioner on the judgment of ***Monoflex India (Supra)*** relevant paragraphs of the same read as under:

> *"12. The petitioner has claimed in the petition that the terms of auction had clearly stated that the property was free from all encumbrances and there was no provision prescribed therein for payment of unearned increase. It is, thus, stated that in case the liability had to be put on the purchasers for unearned increase, there should have been a*

Signed By:ANSH SRIVASTAVA
Signing Date:08.09.2026
18:43

specific clause in the public auction. This is more so in view of the fact that even as per the terms and conditions of the perpetual sub-lease, the liability is not of the purchasers. It is further submitted that it is the duty of respondent No. 1 to have got the property mutated in faovur of the petitioner by clearing whatever dues, if any, payable to respondent No. 2.

15. In the counter affidavit filed by respondent No. 2 DDA, reliance has been placed on the terms and conditions of the perpetual sub-lease deed. It has, thus, been stated that the unearned increase is liable to be paid in terms of Clause 11(6) and even in such cases as the present case where the property is sold in pursuance to the attachment carried out by the tax authorities, there is no exemption from payment of unearned increase in view of Clause 11(7).

27. It is, thus, the contention of learned Counsel for respondent No. 1 that the liability towards unearned increase can be either of the petitioner or the DDA should recover the same from the original perpetual lessee, but respondent No. 1 cannot be burdened with this liability as it only stepped into the shoes of the original sub-lessee when it attached the property and issued the proclamation of sale.

37. In view of the aforesaid emerging facts, I am inclined to follow the path adopted in Sujan Singh Oberoi's case (supra). It would not make a difference that in the said case there was a specific provision for payment to be made

Signed By:ANSH SRIVASTAVA
Signing Date:08.09.2026
18:43

by the Vendor in case demanded by DDA. This is so since the absence of any stipulation to fix the liability on the purchasers in the auction notice would also result in a consequence where the liability cannot be fasten on the purchasers.

39. In view of the aforesaid, I consider it appropriate that respondent No. 1 shall deposit the amount of unearned increase of Rs. 6,12,852.04 with respondent No. 2 within a period of 6 weeks from today without prejudice to the rights of respondent No. 1 to impugn the same in accordance with law against respondent No. 2. Respondent No. 2 will also have a right to claim interest on the unearned increase from respondent No. 1, in case so advised, by initiating appropriate legal proceedings. The case of the purchasers will be processed by respondent No. 2 for issuance of NOC within a period of 2 weeks thereafter and on such NOC being submitted and formalities being completed, the sale certificate shall be registered by the Registering Authority within a maximum period of 1 month thereafter. The purchasers shall on registration of the sale certificate file the same with respondent No. 2 for mutation and complete the necessary formalities and respondent No. 2 shall mutate the property in the name of the purchasers within a maximum period of 1 month thereafter. Respondent No. 2 shall also issue NOC to the purchasers for sanction of building plans simultaneously on the mutation being carried

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Signing Date:08.09.2026
18:43

out in order to enable construction on the plot in question. In view of the fact that the matter has got delayed as a consequence of the differences between the two respondents, who are Government and Government Authority, the time period for completing construction in respect of the plot in question shall be extended for a period of 2 years from the date of grant of NOC for sanction of building plans."

88. In the present case, the judgment of ***Monoflex (Supra)*** is squarely applicable to the facts of the present case.

89. From the facts as narrated above, it is clear that:

A. The public notice, sale notice, terms and conditions of auction, and sale certificate did not indicate any hidden costs such as UEI for a perfect title.

B. In fact, the auction notice only stated that Saket Tiles is the owner of the Subject Properties (thereby clearly giving the impression that there were no conditions attached for use and absolute enjoyment of the Subject Properties)

C. The terms of the lease clearly mentioned that the lessee would be liable to pay UEI (once the respondent No. 2 stepped into the shoes of the lessee i.e., Saket Tiles, the liability to pay UEI was that of the respondent No. 2 Bank).

D. In any case, the petitioner cannot be burdened with the payment of UEI as the same would, in fact, result in altering of the bid amount by requiring the petitioner to pay at least 25% higher than the bid amount.

90. Additionally, the judgment of ***Jai Kumar Bansal (Supra),*** wherein the

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Signing Date:08.09.2026
18:43

Hon'ble Division Bench set aside the Commercial Court's judgment holding the Bank liable, is distinguishable on facts from the present case as in that case there was sufficient notice/specific warning regarding statutory dues/penalties/charges to the auction purchaser categorically stating that he will be liable to pay the same, which is not the case in the present factual matrix as no notice/warning exists. The relevant paragraphs of ***Jai Kumar Bansal (Supra)*** read as under:

> *"14. In the present Appeal, the Appellant Bank has demonstrated a consistent and transparent disclosure of the sale terms. The public notice dated 28.11.2018 contained an explicit and wide-ranging indemnity clause. Specifically, Clause 12 of the said notice warned:*
>
> > *"...<u>if any dues or penalty or any charges are due/levied on the property by any authority then it will also be borne by the purchaser in addition to sale price</u>."*
>
> *15. This was not a vague "as is" clause but a specific contractual allocation of risk regarding statutory dues. This condition was further reinforced in the Bank's communication dated 14.12.2018 (Letter of Acceptance), where <u>Clause 8 explicitly advised the Respondent that any charges or taxes pending on the property were to be borne by him.</u> The Respondent, having participated in a high-stakes auction with a bid of over Rs. 6.07 Crores is presumed to be a sophisticated commercial entity. Such a*

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Signing Date:08.09.2026
18:43

purchaser is expected to exercise due diligence commensurate with the value of the transaction."

91. The same is also required by virtue of a holistic reading of Section 13(6) of the SARFAESI Act as well as Rule 8(7)(a), 8(7)(f), 9(9) and Rule 9(10) of the 2002 Rules and the relevant provisions read as under:

"Section 13(6) of SARFAESI Act

13. Enforcement of security interest.— (1)…

…

(6) Any transfer of secured asset after taking possession thereof or take over of management under sub-section (4), by the secured creditor or by the manager on behalf of the secured creditor shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset.

Rule 8 (7) (a) and 8 (7) (f) of the 2002 Rules

8. Sale of immovable secured assets.—(1)…

…

(7) every notice of sale shall be affixed on the conspicuous part of the immovable property and the authorised officer shall upload the detailed terms and conditions of the sale, on the website of the secured creditor, which shall include;

(a) the description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;

…

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Signing Date:08.09.2026
18:43

(f) any other terms and conditions, which the Authorised officer considers it necessary for a purchaser to know the nature and value of the property.

Rule 9 (9) and 9 (10) of the 2002 Rules

9. Time of sale, Issue of Sale Certificate and delivery of possession, etc.— (1)…

…

(9) The authorised officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7) above.

(10) The certificate of sale issued under sub-rule (6) shall specifically mention that whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not."

92. A perusal of the aforesaid statutory scheme shows that once the property is sold in enforcement of a security interest under the SARFAESI Act, the same needs to be sold free of all encumbrances and any information regarding any encumbrance (even in the form of dues/charges) *qua* the property and in the knowledge of Secured Creditor (respondent No. 2) needs to be categorically brought to the notice of the auction purchaser (petitioner).

93. From the perusal of the factual matrix of the case, admittedly, the same has not been so done and there is no such absolute clause in the intended public sale notice which can, in effect, entail protection to the respondent No. 2 Bank (Secured Creditor).

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Signing Date:08.09.2026 18:43

94. In this view of the matter, I find it necessary to state that the argument of the respondent No. 2 Bank that it bears no liability to pay the dues/charges imposed by DDA by virtue of the "as is where is and as is what is" basis clause, cannot be countenanced and is liable to be rejected.

95. Moreover, the respondent No. 2 Bank cannot be allowed to unjustly enrich itself by failing to perfect the title of the property sold by way of auction to the auction purchaser.

96. I am inclined to follow the approach adopted by the learned Single judge in ***Monoflex (Supra),*** which was affirmed by the Hon'ble Division Bench in the LPA[26] filed against it.

97. In this view of the matter, when the liability *qua* UEI if not disclosed to the petitioner/auction purchaser, the same cannot be fastened upon the petitioner.

<u>CONCLUSION</u>

98. For the aforesaid reasons, and having found that the settled law does not absolve the respondent No. 2 Bank (auction seller) from its liability to pay the UEI. The writ petition is allowed and mandamus is issued with the following directions:

i. The respondent No. 1/DDA shall make a demand from the respondent No. 2 Bank towards the UEI to execute conveyance deeds in favour of the petitioner.

ii. The respondent No. 2 Bank shall make payment of the requisite amount within 4 weeks of the demand.

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[26] LPA No. 842/2003.

Signed By:ANSH SRIVASTAVA
Signing Date:08.09.2026
18:43

iii. Upon payment and completion of other formalities, the respondent No. 1/DDA along with the respondent No. 2 Bank shall execute conveyance deeds in favour of the petitioner within 4 weeks thereafter.

iv. The respondent No. 2 Bank is also at liberty to take appropriate legal actions in accordance with law.

99. Accordingly, the petition is disposed of with the aforesaid directions.

JASMEET SINGH, J

SEPTEMBER 08th, 2026/SS

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Signing Date:08.09.2026 18:43