OCD 10

ORDER SHEET
AP-COM/870/2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

UNION BANK OF INDIA AND ANR
VS
INDIAN BANK AND ANR

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 9th December, 2025.

Appearance:
Mr. Ranjit Chowdhury, Adv.
Ms. Sampoorna Saha, Adv.
. . .for the petitioners.

Mr. Shiv Mangal Singh, Adv.
. . .for the Indian Bank.

The Court:

1. This is an application for appointment of an Arbitrator to resolve the disputes arising between the petitioners and the Indian Bank with regard to the same secured asset which were mortgaged to both the banks by two borrowers. It is submitted by Mr. Chowdhury that one Mr. Munna Yadav being a sole proprietor of a proprietorship concern was extended a cash credit of Rs.48 lakhs vide sanction letter dated July 12, 2022, for availing and/or enjoying the credit facility. Several documents were executed and mortgage by deposition of title deed being deed No.6781 of 2021 dated June 24, 2022, was created.

2. Such mortgage was in respect of a flat measuring about 1030 Sq. Ft. on the second floor along with one car parking space measuring about 120 Sq. Ft. on the ground floor of the building situated at 81A, R/K/Chatterjee Road, P.O. & P.S. Kasba, Kolkata 700042, with the petitioner no.1. On July 14, 2022, the petitioner no.1 duly registered such mortgaged property with the Central Registry of Securitization Assets Reconstruction and Security Interest of India (hereinafter referred to as 'CERSAI') in terms of Section 23 of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act (SARFAESI). The petitioner no.1 contends that the borrower executed a debit balance confirmation letter in favour of the petitioner no.1 by which the borrower unconditionally acknowledged the liability of his proprietorship concern to the tune of Rs.48,48,547.54p as on August 2, 2023. As the borrower was not in a position to repay and conform to the terms and conditions of repayment as per the agreements, the loan account was declared an NPA on September 19, 2023.
3. Subsequently, the account of the borrower was duly transferred to the Assets Recovery Section at Kolkata. It is alleged that in spite of several notices, the borrower failed and neglected to pay the dues to the petitioner no.1 or any part thereof in spite of having knowledge regarding NPA of his account. A notice was issued under Section 13(2) of the SARFAESI Act, 2002 to the borrower, demanding a sum of Rs.48,34,459.54p including interest as on September 19, 2023.

4. A total sum due to the petitioner no.1 was approximately Rs.60,20,059.79p as on July 31, 2025. The petitioner no.1 filed an application under Section 19(1) of the Recovery of Debts and Bankruptcy Act, 1993 before the learned Debts Recovery Tribunal – 1, Kolkata, inter alia, claiming for a certificate for the said sum. Petitioner no.2 came to know that the respondents had put the same mortgaged property for sale/auction on September 17, 2025 by fixing the reserve price for an amount of Rs.49,96,000.00. Immediately after having such information, the petitioner no.2 informed the respondents that the petitioners had a prior claim. The mortgage in favour of the petitioner No. 1 was a prior one. Request was made for withdrawal of the sale notice. The respondents did not reply.

5. The petitioners have approached this Court by filing this application on the basis of Section 11 of the SARFAESI Act which states as follows:-

> "11. Resolution of Dispute:
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> Where any dispute relating to securitization or reconstruction or non-payment of any amount due including Interest arises amongst any of the parties, namely, the bank or financial Institution, or securitization company or reconstruction company or qualified Institutional buyer, such dispute shall be settled by conciliation or arbitration as provided in the arbitration and conciliation act, 1996, (26 of 1996), as if the parties to the dispute by consented in writing determination of

such dispute by conciliation or arbitration and the provisions of that act shall apply accordingly."

6. The said provision requires resolution of dispute by arbitration or conciliation under the Arbitration and Conciliation Act, 1996. In the event disputes arise with regard to securitization or reconstruction or non-payment of any due including interest arising therefrom between the parties, namely, the bank or the financial institution or the securitization company or the reconstruction company or the qualified institutional buyer, the same shall be resolved by arbitration.
7. The section also provides for conciliation. When the withdrawal of the sale notice was claimed by the petitioners, the respondents did not take any initiative to resolve the dispute by conciliation. Thus, finding no other alternative, the petitioners have approached this Court for appointment of an Arbitrator.
8. In order to attract Section 11 of the SARFAESI Act, the dispute must be between the bank or the financial institution or the asset reconstruction company or qualified buyer and secondly, the disputes must relate to securitization or reconstruction or non-payment of any amount due including interest.
9. Mr. Singh learned advocate for the respondents submits that the respondents have also taken steps against the same property. An NPA was declared in respect of loan account of another borrower, namely, one Mr. Debkanti Chandra. Further, the respondents are in physical

possession of the property and the property was put up for sale in terms of the provision of the SARFAESI Act.

10. Having considered the provisions of Section 11 of the SARFAESI Act, and the decision of the Hon'ble Apex Court in the matter of *Bank of India versus Sri Nangli Rice Mills Private Limited and Others* reported in *(2025) 9 SCC 225*, this Court is of the prima facie, view, that the prayer of the petitioners should be allowed and the an Arbitrator should be appointed to resolve the disputes between the parties. All issues and objections, including the question of jurisdiction and arbitrability shall be decided by the learned Arbitrator.

11. This order shall not preclude the parties from re-conciliating if they wish to do so. The conclusion of the Hon'ble Apex Court in the said decision was as follows:-

> "**G. Final conclusion**
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> 127. We summarise our final conclusion as under:
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> 127.1. Section 11 of the SARFAESI Act deals with resolution of disputes relating to securitisation, reconstruction or non-payment of any amount due between the bank or financial institution or asset reconstruction company or qualified buyer.
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> 127.2. In order to attract the provision of Section 11 of the SARFAESI Act, twin conditions have to be fulfilled being; first, the dispute must be between any bank or financial institution or asset reconstruction company or qualified buyer and secondly, the dispute must relate to securitisation or reconstruction or non-payment of

any amount due including interest. Where the aforesaid two conditions are found to be prima facie satisfied, there DRT will have no jurisdiction and the proper recourse would only be through Section 11 of the SARFAESI Act read with the 1996 Act.

127.3. The expression "non-payment of any amount due, including interest" used in Section 11 of the SARFAESI Act is of wide import and would include a various range of scenarios of "disputes" connected to unpaid amounts including those arising due to third-party defaults, such as indirect defaults of the borrowers.

127.4. Any dispute between two banks, financial institutions, asset reconstruction companies or qualified buyers, etc. where the jural relation between the two is of a lender and borrower, then Section 11 of the SARFAESI Act will have no application whatsoever. The use of the phrase "any person" in the definition of "borrower" in Section 2(f) of the SARFAESI Act, makes it abundantly clear that even a bank, financial Institution or asset reconstruction company or qualified buyer can be considered a borrower, if they receive financial assistance from a bank or financial institution, etc. by providing or creating a security interest. Thus, a lender-turned-borrower would also fall within the scope of a "borrower" under the SARFAESI Act and shall be governed by the same statutory framework as any ordinary borrower.

127.5. Section 11 of the SARFAESI Act provides for a statutory arbitration for any dispute mentioned therein between any of the parties enumerated thereunder. There is no need for an explicit written agreement to arbitrate between such parties in order to attract Section 11 of the SARFAESI Act. The said provision creates a legal fiction as regards the existence of an arbitration agreement notwithstanding whether such agreement exists or not in actuality.

127.6. Section 11 of the SARFAES! Act is mandatory in nature. The use of the word "shall" therein, the mandate of the said provision cannot be bypassed or subverted by the parties by seeking recourse elsewhere.

128. Thus, for all the foregoing reasons, we have reached the conclusion that there is no infirmity in the impugned order passed by the High Court, directing the appellant and the respondent Banks to resolve their dispute by way of arbitration in terms of Section 11 of the SARFAESI Act.

129. In the result, the present appeal fails and is hereby dismissed. The parties shall bear their own costs. Pending application(s), if any, shall also stand disposed of.

130. The Registry is directed to circulate one copy each of this judgment to all the High Courts and all the Benches of DRTs and DRATS, respectively."

12. Section 11 provides for a statutory arbitration. The dispute here is between the two secured creditors, i.e., which creditor will have a prior claim over the mortgaged property. Section 11 of the SARFAESI Act is mandatory as held by the Hon'ble Apex Court. The provision cannot be

bypassed or subverted by the parties, by seeking recourse to any other proceeding.

13. Under such circumstances, the Court appoints Mr. Ranjan Bachawat, learned Senior Advocate, as the Arbitrator, to arbitrate upon the dispute between the parties. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.

14. The learned Arbitrator shall fix his own remuneration as per the Schedule of the Arbitration and Conciliation Act.

15. AP-COM/870/2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)

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