IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16679 OF 2025

Sanjeev Divekar ….Petitioner

V/s.

Pegasus Assets Reconstruction
Company Limited & Ors. … Respondents

Mr. Karl Tamboly a/w Ms. Vinodini Srimivasan a/w Mr. Samit Shukla a/w Mr. Siddharth Shah a/w Mr. Mustafa Nulwala i/b Trilegal for the Petitioner.

Mr. Shadab Jan a/w Mr. Mayank Samuel a/w Mr. Neelanshu Roy i/b Sirius Legal for the Respondent No. 1.

CORAM : R.I. CHAGLA AND
FARHAN P. DUBASH, JJ.

DATE : 9th DECEMBER 2025

ORDER:

1. Rule. Rule made returnable forthwith. Heard by consent of parties.

2. By this Writ Petition, the Petitioner is impugning the orders dated 25th July 2025 and 25th June 2025 passed by the Debt Recovery

Appellate Tribunal (**"DRAT"**) in Misc. Appeal No. 830 of 2025 and has sought for setting aside of the same.

3. By the 1st impugned order of the DRAT dated 25th June, 2025, the DRAT has directed the Petitioner, despite observing that the Petitioner is neither a borrower nor guarantor, to deposit 25% of the amount demanded by the Respondent No. 1 in order to meet the requirement under Section 18(1) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**"SARFAESI Act"**) for entertaining the appeal. By the 2nd impugned order of DRAT dated 25th July, 2025, the Misc. Appeal No. 830 of 2025 has been dismissed for non compliance of the 1st impugned order dated 25th June, 2025.

4. The facts briefly stated are as under:

(i) The Petitioner is a developer/seller who had entered into an Agreement for Sale with Respondent Nos. 2 and 3 i.e. purchasers for sale of Flat No. 701 in "Sea Palace", Navi Mumbai ("subject flat") on 06th September 2014. It is pertinent to note that prior to the Agreement for Sale, PNB Housing Finance Limited had sanctioned a housing loan of Rs. 3,27,00,000/- to Respondent Nos. 2 and 3 (borrowers).

(ii) The Respondent Nos. 2 and 3 had sought from the Petitioner execution of an NOC in PNB Housing Finance Ltd's standard form permitting Respondent Nos. 2 and 3 to mortgage the subject flat on 18th September 2014.

(iii) The Petitioner by a letter dated 20th November 2017 addressed to Respondent Nos. 2 and 3 stated that the subject flat had been erroneously sold and did not have status of an approved residential unit and the Petitioner was ready and willing to allot Flat No. 601 in lieu thereof.

(iv) The Petitioner refunded the entire amount received from the Respondent Nos. 2 and 3, along with additional sums to cover financing costs, i.e. a total refund of Rs. 4,50,00,000/- between 1st February 2018 to 11th June 2018.

(v) By a Deed of Assignment dated 30th September 2022, PNB Housing Finance Ltd claims to have assigned all rights in the loan account of Respondent Nos. 2 and 3 to Respondent No. 1- M/s. Pegasus Assets Reconstruction Pvt. Ltd.

(vi) Respondent No. 1 obtained an *ex parte* order from the Chief Judicial Magistrate, Thane under Section 14 of the SARFAESI Act on 02nd August 2023.

(vii) The Petitioner filed Transferred Securitisation Application No.

150 of 2023 under Section 17 of the SARFAESI Act before the DRT-1, Mumbai on 15th September 2023.

(viii) An order dated 23rd November 2023 came to be passed by the DRT recording the statement made by the Respondent No. 1 *inter alia* that the secured creditor "has deferred taking physical possession" of the subject flat.

(ix) The Petitioner filed an Interim Application No. 821 of 2025 in the Securitisation Application on 3rd May 2025 seeking an urgent stay on possession being taken in view of notice having been issued by the Commissioner appointed in the said order dated 2nd August 2023 under Section 14 of the SARFAESI Act for taking possession of the subject flat on 7th May, 2025.

(x) An order came to be passed by the DRT on 06th May 2025 granting interim protection to the Petitioner with a condition that possession (which Respondent No. 1 intended to take on 7th May 2025) shall stand deferred provided that the Petitioner deposited a sum of Rs. 1,20,00,000/- with Respondent No. 1 by 11:00 am on 7th May 2025 i.e. within a day.

(xi) The Petitioner filed Miscellaneous Appeal No. 830 of 2025 before the DRAT challenging the order dated 6th May 2025, on 25th May 2025.

(xii) The DRAT by impugned order 1 dated 25th June, 2025 declined to fully waive the pre-deposit and directed the Petitioner to make a partial pre-deposit totaling approximately Rs.1,50,47,743/-.

(xiii) The impugned order 2 was passed by DRAT on 25th July 2025 rejecting the Miscellaneous Appeal in view of non-compliance of the impugned order 1.

5. Being aggrieved, the Petitioner has filed the present Petition.

6. Mr. Tamboly, learned Counsel appearing for the Petitioner has submitted that the Petitioner does not fall within the definition of 'borrower' under Section 2(1)(f) of the SARFAESI Act. He has submitted that the second proviso to Section 18(1) of the SARFAESI Act contemplates a pre-deposit by a 'borrower' as defined in Section 2(1)(f). It has also been observed by the DRAT in the impugned order 1 that the Petitioner is not a borrower or guarantor.

7. Mr. Tamboly has further submitted that there is no debt due from the Petitioner which is the additional requirement for pre-deposit under the second proviso to Section 18(1) of the SARFAESI Act.

8. Mr. Tamboly has submitted that the 1st impugned order of the DRAT has proceeded on the premise that the Petitioner cannot be considered to be a bonafide and genuine party to the proceedings initiated under the SARFAESI Act. Further, that the Petitioner had not exercised due care and diligence in the business transaction. The Petitioner had undertaken to pay money to Respondent No. 1 in the event Respondent Nos. 2 and 3 fail to make that payment of their debts due. The DRAT has thereafter taken note of the Petitioner having paid monies to these Respondents. This according to the DRAT would make the Petitioner liable for making the pre-deposit. He has submitted that there is no such requirement of pre-deposit as contemplated by the second proviso to Section 18(1) and that the DRAT is reading into this provision an additional requirement which is not there.

9. Mr. Tamboly has submitted that the issue of whether the second proviso to Section 18(1) would include any person other than a 'borrower' has been decided in two judgments of the Delhi High Court *viz.* ***Manju Devi & Ors Vs. M/s. R.B.L. Bank Ltd & Ors. 2017 SCC OnLine Del 6865*** and ***Indiabulls Housing Finance Ltd. Vs. Vaibhav Jhawar and others (2019) 7 Comp Cas-OL 460 : 2018 SCC OnLine Del 12853 : (2019) 256 DLT 65 (DB) : (2019) 149 CLA (SN) 4.*** In Manju Devi (supra), the Delhi High Court has held that Section 18 makes it absolutely clear that an appeal may be filed by

any person aggrieved, whether or not, he is a borrower within the meaning of Section 2(1)(f). This is evident from the first proviso to Section 18(1), which provides that different fees may be prescribed for appeals by the borrower or by a person other than the borrower. However, the second proviso reads that no appeal is to be entertained unless the 'borrower' has deposited with the Appellate Tribunal 50% of the amount of debt due from him, as claimed by the secured creditors or as determined by the Debts Recovery Tribunal, whichever is less. The second proviso relates to an appeal of a borrower, for a third party, who has not obtained any finance from a Bank or a financial institution is under no obligation to pay. If the proviso is to be read literally to mean that no appeal, either by a borrower or a third person, is to be entertained unless the borrower has deposited 50% of the amount due from him, appeals by third persons would in effect and substance, be rendered nugatory for a third person, and he would never be able to get his appeal entertained.

10. Further, in Indiabulls Housing Finance Ltd. (supra), it has been held that the only interpretation given to the second proviso to Section 18(1) shall be that if a person other than borrower/guarantor files an appeal before the Appellate Tribunal then the stipulation of pre-deposit of 50% (or 25%) of the amount of debt due from him as claimed by the secured creditors or

determined by the DRT shall not be insisted upon.

11. Mr. Tamboly has submitted that the aforesaid judgments have not been disturbed by the Supreme Court. Accordingly, he has submitted that the impugned orders of the DRAT are required to be set aside as the Petitioner not being a borrower/guarantor cannot be directed to make any pre-deposit under the second proviso to Section 18(1) of the SARFAESI Act for entertaining its Appeal.

12. Mr. Shadab Jan, learned Counsel appearing for the Respondent No. 1 has opposed the present Petition on the ground that the Petition is not maintainable as the subject matter of the proceedings before the DRT was in respect of the notice of possession which had been issued by the Respondent No. 1 and which notice of possession has been given effect to by Respondent No. 1 taking possession of the subject flat.

13. Mr. Shadab Jan has submitted that the SARFAESI Act provides for separate Applications under Section 17 to be preferred challenging the different measures taken by the Bank under the SARFAESI Act. He has submitted that the Section 13(8) notice issued by the Respondent Bank is to be separately challenged by the Petitioner under Section 17 of the SARFAESI

Act and cannot be the subject matter of the very same Securitisation Application filed by the Petitioner challenging the notice of possession which Application has become infructuous.

14. Mr. Shadab Jan has without prejudice to the aforesaid submission, submitted that the Petitioner had granted an NOC which had permitted the Respondent Nos. 2 and 3 to mortgage the subject flat in favour of the Respondent No. 1 for the credit facility which had been granted by the Respondent No. 1 to the Respondent Nos. 2 and 3. He has submitted that by virtue of the NOC, the Respondent Nos. 2 and 3 could then mortgage the subject flat to the Respondent No. 1. He has submitted that accordingly the Petitioner would come within the definition of borrower under Section 2(1)(f) and the second proviso to Section 18(1) of the SARFAESI Act would be applicable to the Petitioner. He has accordingly submitted that, the present Petition is without any merit and that the DRAT was justified in directing the Petitioner to make the pre-deposit for entertaining the appeal. He has accordingly sought for dismissal of the present Petition.

15. Having considered the submissions, it is necessary to reproduce Section 18(1) of the SARFAESI Act which reads as:

> *18 (1) Any person aggrieved, by any order made by the Debts Recovery Tribunal [under section 17, may prefer an appeal along with such fee, as*

may be prescribed] to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.

[Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower:]

[Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent. of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less:

Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. of debt referred to in the second proviso.]

16. From the second proviso to Section 18(1) of the SARFAESI Act, it is evident that it is a 'borrower' as defined under Section 2(1)(f) who is to make the pre-deposit of 50% of the amount of debt due from him, as claimed by the secured creditors or as determined by the DRT, whichever is less for having his appeal entertained.

17. In the present case, the DRAT in the 1st impugned order dated 25th June 2025 had observed that the Petitioner is neither a borrower nor a guarantor. In that view of the matter, the Petitioner could not have been directed to make a pre-deposit of 25% of the amount demanded by the Respondent No. 1 from Respondent Nos. 2 and 3 (borrowers).

18. Further, the Petitioner by merely issuing an NOC on 18th September 2014 in the standard form of Respondent No. 1 permitting the

Respondent Nos. 2 and 3 to mortgage the subject flat in favour of Respondent No. 1, cannot be considered to be a 'mortgagor' when it was the Respondent Nos. 2 and 3 who had created the mortgage in favour of the Respondent No. 1. Accordingly, the Petitioner does not in any event fall within the definition of "borrower" under Section 2(1)(f) of the SARFAESI Act.

19. The DRAT has proceeded on an erroneous finding that the Petitioner can be directed to make a pre-deposit under the second proviso to Section 18(1) of the SARFAESI Act as it was neither a *bona fide* nor a genuine party to the proceedings initiated under the SARFAESI Act for recovery of loan due to the 1st Respondent institution. Further, that the Petitioner had not exercised due care and diligence to the business transaction and made payments to Respondent Nos. 2 and 3. This finding is despite the undertaking given to the Respondent No. 1 by the Petitioner to pay the money in case the Respondent Nos. 2 and 3 fails to pay the same. The DRAT is by arriving at such finding reading into the second proviso an additional requirement for pre-deposit which is not contemplated by the legislature.

20. We do not find any merit in the submission of Respondent

No.1 that the present Petition is not maintainable and/or that the proceedings before the DRT is infructuous. These submissions are best reserved to be urged before the DRAT upon the Petitioner's appeal being considered on merits.

21. We are accordingly of the considered view that the DRAT has in the impugned orders erred in directing the Petitioner to make the pre-deposit for entertaining the appeal. We accordingly allow the present Petition by the following order:

ORDER

i) We declare that the Petitioner not being a borrower, guarantor or mortgagor under loan account of Respondent Nos. 2 and 3, cannot be compelled to make deposit under Section 18 of the SARFAESI Act and is not liable to comply with pre-deposit requirement therewith.

ii) The impugned orders dated 25th July 2025 and 25th June 2025 passed by the DRAT in Misc. Appeal No. 830 of 2025 are quashed and set aside.

iii) The Misc. Appeal No. 830 of 2025 is restored to the file of DRAT and DRAT is directed to hear the Misc. Appeal No. 830 of 2025 on its own merits on or before 15th February 2026.

iv) All rights and contentions of the parties are kept open before the DRAT.

v) The Petitioner is at liberty to move the DRAT for interim relief.

vi) The Writ Petition is accordingly disposed of. There shall be no order as to costs.

(FARHAN P. DUBASH, J.) **(R.I. CHAGLA J.)**

JYOTI PRAKASH PAWAR

Digitally signed by JYOTI PRAKASH PAWAR
Date: 2025.12.10 20:10:49 +0530

Shubham G.
903. WP 16679-2025 dt. 09.12.2025