

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
INTERIM APPLICATION NO. (L) 2161 OF 2026
IN
COMMERCIAL ARBITRATION PETITION NO. 447 OF 2024

Aditya Birla Capital Ltd. ...Applicant

In the matter of:

Aditya Birla Finance Ltd. ...Petitioner

Versus

Ma Durga Hardware Stores & Ors. ...Respondents

Mr. Chetan Kapadia, Senior Counsel, a/w. Mr. Mohit Arora, Mr. Vishal Maheshwari and Ms. Kamini Pansare i/b. VM Legal for the Applicant.

Mr. Biswadeep Chakravarty for the Respondent.

Mr. Deepak S. Bhalerao, Second Assistant to Court Receiver.

CORAM : ARIF S. DOCTOR, J.

DATE : 27th March 2026

P.C.

1. The Applicant has by way of the present Interim Application, sought the following reliefs:

“i. The Hon'ble Court be pleased to direct the Court Receiver, High Court, Bombay, to hand-over physical possession of the 4th (fourth) floor, 5th (fifth) floor, and the Covered Terrace of the Mortgaged Property - 4, to the Authorized Officer of the Applicant appointed under the SARFAESI Act and be permitted to sell the same along with remaining three floors under relevant provisions of SARFAESI Act read with SARFAESI Rules 2002;

ii. The Hon'ble Court be pleased to discharge Court Receiver, High Court, Bombay, without passing of accounts and direct the Applicants to carry out the sale referred prayer (i) above on such terms and conditions as this Hon'ble Court may deem appropriate.”

2. Mr. Kapadia, the Learned Senior Counsel appearing on behalf of the Applicant, at the outset submits that the present Interim Application has been filed on account of the changed circumstances which have occurred after the passing of the Order dated 1st April, 2025, by which this Court constituted an Arbitral Tribunal and referred the disputes and differences between the Applicant and Respondent No. 1 to arbitration.

3. Mr Kapadia, however, pointed out that while referring the disputes and

differences to arbitration, this Court had in the said order dated 1st April 2025, directed as follows, viz.

“10. This matter now stands relegated to the arbitrator appointed hereby, the reliefs granted till now hereby shall abide by the outcome of the arbitral proceedings. Parties shall proceed to seek instructions from the arbitral tribunal appointed hereby on how to proceed further. The properties that are in possession of the Court Receiver shall continue to remain in the possession of the Court Receiver, pending conclusion of the arbitral proceedings.”

4. Mr. Kapadia then submitted that the Applicant had, on 10th October 2025, issued a Notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“**SARFAESI Act**”), to Respondent No. 1 in respect of the fourth and fifth floors with a covered terrace of the mortgaged property, i.e., the very property in respect of which this Court had appointed the Court Receiver at the instance of the Applicant. He pointed out that the Respondent had not responded to the Securitisation Notice within the statutory period of 60 days, thus, as per the

provisions of the SARFEASI Act, the Applicant was entitled to take possession of the fourth and fifth floors, covered terrace of mortgaged property, and take necessary action to recover the outstanding loan amount of approximately Rs. 21,77,03,553.45/- as of 10th December 2025.

5. Mr. Kapadia submitted that on a reading of the Order dated 1st April 2025, it was seen that this Court had directed that the properties in the possession of the Court Receiver shall remain in its possession till the conclusion of the arbitral proceedings. He, however, pointed out that this direction did not preclude the Applicant from pursuing any remedies available to a secured creditor under the SARFAESI Act or other provisions of law. He submitted that the Applicant had done precisely that.
6. Mr. Kapadia then submitted that the Applicant had no choice but to move this Court for discharge of the Court Receiver as it was settled that since the Court Receiver had been appointed by this Court, it was only this Court which could discharge the Court Receiver. In support

of his contention, he placed reliance upon the decisions of *Hiralal Patniv. Loonkaram Sethiya and Ors*,¹ *Shakti International Private Limited v. Excel Metal Processors Private Limited*² and *Industrial Credit and Investment Corporation of India Limited v. Patheja Brothers Forgings and Stamping Limited*³.

7. Mr. Kapadia thus submitted that the Applicant had filed the present Interim Application since the relief which was sought for by the Applicant could only be granted by this Court. He reiterated that the direction in paragraph 10 of the Order dated 1st April 2025 did not affect the maintainability of the present Interim Application because the Arbitral Tribunal was not empowered to discharge the Court Receiver, nor did it prevent the Applicant from pursuing other legal remedies.

8. Mr. Kapadia then placed reliance upon the decision in *Magnum Steels*

¹ 1961 (1) SCR 868.

² 2017 SCC OnLine Bom 321.

³ 2000 SCC OnLine Bom 128.

Ltd and Ors v. Asset Reconstruction Company (India) Ltd. and Anr.⁴

to submit that it was trite law that proceedings for adjudication and enforcement could run parallelly. He also submitted that it was well settled that once measures were initiated under the provisions of Sections 13(2) and 13(4) of the SARFAESI Act, a secured creditor's interest effectively attaches to the property, thereby precluding a Civil Court from permitting attachment and sale of the same property in execution of a money decree. He also placed reliance upon the decision of this Court in the case of ***(Caparo Financial Solutions Ltd.) Robin Karamchandani v. Jem and Associates & Ors.***⁵ to point out that since the Applicant had filed the present Interim Application in furtherance of the Applicant's statutory rights under the SARFAESI Act, this Court must assist the Applicant in doing so.

9. Mr Kapadia, therefore, submitted that the Applicant had invoked the correct and only remedy available under law by filing the present

⁴ 2024 SCC OnLine Del 2791.

⁵ [Bombay High Court] Order Dated 24th April 2023 in Interim Application (L) No. 4188 of 2023.

Application. He submitted that the Respondent was reading the Order dated 1st April 2025 like a statute, overlooking the fact that if subsequent events warranted an order to be modified, the Court under Section 9 was empowered to do so. He thus submitted that the Interim Application be allowed, by which the Applicant would be in a position to obtain maximum value from the secured asset. He submitted that this Court may, while doing so, pass such an order protecting the interests of the Respondent.

10. *Per Contra*, Mr. Chakravarty, Learned Counsel appearing on behalf of the Respondent at the outset, did not dispute the fact that the Court Receiver could only be discharged by this Court. He, however, submitted that as a matter of propriety, since this Court had, in the Order dated 1st April, 2025, while appointing the Arbitral Tribunal, specifically noted that the parties shall abide by the outcome of the Arbitral proceedings and had continued the appointment of the Court Receiver on that basis. He thus submitted that it was only in the fitness of things that the Applicant first move the Learned Arbitrator in the

Section 17 Application to test the merits of the Applicant's claim under Section 17 and, thereafter, if the Applicant were to succeed, possibly file the present Application.

11. Learned Counsel submitted that the Applicant had not only failed to do so but had, since the passing of the Order dated 1st April 2025, taken no steps whatsoever to have the Section 17 Application heard before the Learned Arbitrator. He therefore submitted that the present Application ought not to be allowed, as the same would prejudice the Respondent gravely since it was the Respondent's specific case in arbitration that no monies had been disbursed by the Applicant to the Respondent. He thus submitted that the present Interim Application be dismissed and the Applicant be directed to first approach the Learned Arbitrator for a decision on the Applicant's Section 17 Application.
12. Having heard Learned Counsel for the parties and having noted the submissions made, I find that the present Interim Application would have to be allowed.

13. It is not in dispute that the Applicant has in its capacity as a secured creditor taken steps to realise its security under the provisions of the SARFAESI Act. Crucially, it is an admitted position before me that the notice issued by the Applicant under Section 13(2) has not even been responded to by the Respondent, let alone disputed or challenged in the manner provided for under the provisions of the SARFAESI Act. Thus, the Respondent has admittedly not taken any steps to resist the enforcement by the Applicant of the Applicant's security interest despite having such recourse under the provisions of the SARFAESI Act.

14. Furthermore, there is also no dispute that proceedings under the SARFAESI Act and in arbitration are independent of each other and can proceed in parallel. This is precisely what the Applicant has done. This Court has, in the case of *Caparo Financial Solutions Ltd.*, specifically held as follows, viz.

“16. ..“considering that the subject mortgaged property is in the custody of this Court, it is for this Court to assist the Applicant

in taking possession of the secured asset...The mortgage debt would require to be satisfied first.”

15. Additionally, Respondent No. 1's submission that enforcement must await adjudication is plainly untenable since both legal proceedings proceed in parallel as held in ***Magnum Steels Ltd and Ors v. Asset Reconstruction Company (India) Ltd and Anr.*** Also, it cannot be lost sight of that the Court Receiver was appointed at the instance of the Applicant and therefore it would be wholly inequitable for the Respondent to use the Order of appointment of the Court Receiver as a shield to resist enforcement proceedings under the provisions of the SARFAESI Act, more so when the Respondent has admittedly neither challenged nor questioned the enforcement proceedings taken by the Applicant under the SARFAESI Act.

16. Given the statement made by the Learned Counsel for the Applicant, that the Court may, if inclined to allow the Application, do so on such terms as it deems fit to secure the interests of the Respondent, in my view, there is no impediment in allowing the Application since,

admittedly, the Arbitral Tribunal cannot grant the Applicant the reliefs that are sought for in this Interim Application.

17. Hence, in light of the above, I pass the following Order:

- a. The Interim Application is allowed in terms of prayer clauses ‘i’ and ‘ii’ subject to the Applicant undertaking to bring back all such amounts realised for the sale of the mortgaged property in the event the Applicant fails in Arbitration;
- b. Let such an undertaking be filed in this Court within a period of one week from the date on which a copy of this Order is uploaded;

18. Learned counsel for the Respondent prays for and is granted a period of four weeks’ stay of this Order from the date the order is uploaded.

[ARIF S. DOCTOR, J.]