Case Citation: (2026) ibclaw.in 392 DRT

Exh-15

IN THE DEBTS RECOVERY TRIBUNAL-II AT AHMEDABAD
Present: Pankaj Kumar Upadhyay, Presiding Officer

SECURITIZATION APPLICATION No.496 OF 2025

Date of Institution :26/06/2025
Date of Judgment :12/05/2026

Shri Prakashchandra Nandlalji Jain
Plot No.58, Unn Nagar,
Surat-Navsari Main Road,
Nr. Unn Industrial Area,
BRST Station, Surat, Unn,
Gujarat – 394210 .....Applicant

Versus

1. The Authorized Officer
Edelweiss Asset Reconstruction
Co. Ltd.,
Edelweiss House,
Off C.S.T. Road, Kalina,
Mumbai – 400 098

2. Authorised Officer,
Asset Reconstruction Company
(India) Ltd.,
610, 6th Floor, Sun Square,
Nr. Hotel Nest, Off C.G. Road,
Navrangpura,
Ahmedabad-380009 ..... Respondents

Present :

Ld. Counsel for the Applicant : Mr. Mohit Gupta

Ld. Counsel for Respondent No.1 : Mr. A. S. Panesar

Ld. Counsel for Respondent No.2- ARCIL : Mr. Hemang M. Shah

JUDGMENT

1. The Applicant has filed the present Securitization Application (hereinafter referred as SA) against the Respondents on 26/06/2025 seeking to quash and set

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aside the entire action/measures initiated by Respondent No.2 – ARCIL under Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (hereinafter referred as "SARFAESI Act") against the Applicant and **immovable property being Flat No.302 on the 3rd Floor, admeasuring 200 Sq.Mtrs. Super Built-up Area and 122.82 Sq.Mtrs. Built up Area, along with undivided share admeasuring 53.659 Sq.Mtrs. in the land of "Pratham Apartment-B", situate at Revenue Survey No.70/2, T.P.S. No.4 (Umara-South), F.P. No.65/A, admeasuring 1672.86 Sq.Mtrs. of Village :Umara, TalukaSurat City (Now Majura), Dist. Surat** (hereinafter referred to as "the disputed property" or "property in question").

2. It is the case of the Applicant that the Applicant is a successful auction purchaser of the property in question which has been purchased by him under public auction held by Respondent No.1 on 28/05/2024 pursuant to the auction sale notice dated 07/05/2024. The Applicant has paid the total sale consideration of Rs.40,60,000/- in accordance with the terms and conditions of the auction notice. Thereafter Respondent No.1 has issued Sale Certificate in favour of the Applicant and the Sale Certificate is registered before Sub-Registrar, Surat-1, City, Athva on 27/09/2024. The Applicant was also handed over physical possession of the property in question on 27/09/2024.

3. It is further the case of the Applicant that on 20/04/2025 Respondent No.2 came to the property in question with the Court Commissioner and their recovery persons for taking physical possession of the property in question. The Applicant informed Respondent No.2 that he has purchased the property in open auction conducted by

Respondent No.1 under SARFAESI Act, but Respondent No.2 threatened the Applicant that if the Applicant did not hand over possession of the property, Respondent No.2 will call the police and thus, Respondent took forcible possession of the property in question from the Applicant. Hence, the entire action of Respondent No.2 is arbitrary and illegal and violative of the provisions of SARFAESI Act and Rules framed thereunder and it deserves to be quashed and set aside.

4. Respondent No.1 ARC has filed its reply to the SA vide Ex.R/8 and supported the Applicant. It has contended therein that Respondent No.2 is claiming to be a secured creditor and has initiated actions under the provisions of SARFAESI Act and has illegally taken over physical possession of the property in question from the Applicant. It has further contended that the dispute involved in the present matter pertains to security interest over the property in question between two Asset Reconstruction Companies. Relying on the provisions of Section 11 of SARFAESI Act, Respondent No.1 submitted that the dispute between two Banks or financial institutions or Asset Reconstruction Companies is required to be settled by conciliation or arbitration as provided in the Arbitration and Conciliation Act, 1996. It has also contended that the alleged rights claimed by Respondent No.2 over the property in question are not only arising out of a fraudulent transaction but are also directly hit by Section 48 of the Transfer of Property Act. Therefore, Respondent No.1 has prayed to set aside the actions taken by Respondent No.2 under SARFAESI Act and to restore possession of the property in question to the Applicant.

5. Respondent No.2 has filed its reply to SA vide Ex.R/7 stating therein that the Applicant is not a bona fide

purchaser of the property in question. The Applicant had purchased the property after ascertaining the mortgage entry of Respondent No.2. It is only an assumption of the Applicant that Respondent No.2 had acted in high-handed and arbitrary manner. Respondent No.2 has acquired the disputed property under Assignment Agreement. Though the Applicant is not a borrower, mortgagor or guarantor of the property in question, it is a security for Respondent No.2 for the financial assistance that was availed by Vikesh Jyantilal Mandviwala and the secure asset can be sold by Respondent No.2 in view of default committed by borrower Vikesh Jyantilal Mandviwala. It has further contended that Respondent No.1 has issued a public advertisement for sale of the property in question on 07/05/2024 and fixed the auction on 28/05/2024. Thus, the sale was held by Respondent No.1 within 20/21 days from the date of publication of the Sale Notice which is violative of Rule 9(1) of Security Interest Rules. Therefore, the sale of the property conducted by Respondent No.2 is illegal and cannot be legalized. The Applicant has not placed the impugned order dated 28/03/2025 passed u/s. 14 by Ld. CJM, Surat. It was the responsibility and duty of the Applicant to secure certified copy of the impugned order u/s. 14 to place the same on record of present proceedings. In absence of the impugned order u/s. 14, this Tribunal would not have an opportunity to examine alleged material irregularity or illegality while exercising powers u/s. 17 of SARFAESI Act. It has also contended that pursuant to the order passed by Ld. CJM, Surat u/s. 14, the Applicant had voluntarily handed over the possession of the property in question to Respondent No.2. Therefore, Respondent No.2 has prayed to dismiss the present SA.

6. I have heard arguments of Ld. Counsels for both the parties and perused the pleadings and evidences led by the parties on the record of this Tribunal. The Applicant has filed his Written Arguments vide Ex.A/10, Respondent No.1 has submitted its Written Submissions vide Exh.R/12 and Respondent No.2 has filed its Written Submissions vide Ex.R/11. Moreover, the parties have also relied on certain judgments in support of their respective submissions, which shall be referred at appropriate stage in this Judgment hereinafter.

7. Based upon the pleadings, evidences andarguments as placed by ld. Counsels for the parties on record of this Tribunal, the following issues are framed for complete and effective adjudication of above SA:

Issues:

(1) Whether the Applicant deserves to be protected against action taken by Respondent No.2 under SARFAESI Act?

(2) Whether the Applicant is responsible to investigate title of the property in question before purchasing it in public auction conducted by Respondent No.1?

(3) Whether the dispute involved in the present case is required to be resolved by Respondent Nos.1 & 2 by way of arbitration as provided u/s 11 of SARFAESI Act?

(4) To what relief, if any, Applicant is entitled?

Issue No.1: Protection to Auction Purchaser:

8. The Applicant has produced a copy of Registered Sale Certificate dated 27/09/2024 issued by Respondent No.1

in his favour at page 15-47 along with SA. Respondent No.1 has stated in para 3 of its Reply Exh.R/08 as under:

"3. Before dealing with parawise averments of the SA, it is submitted that the Applicant is a successful auction purchaser of the property in question which has been purchased by the Applicant under the public auction held by the Respondent No.1 on 28th May 2024 under the provisions of the Securitization Act. It is submitted that upon payment of the sale price by the Applicant, the Respondent No.1 has also handed over the possession of the property in question and also executed Registered Sale Certificate dated 27/09/2024 in favour of the Applicant which has been produced by the Applicant at Annexure-A of the present SA."

9. In view of above reply of Respondent No.1, it becomes evident that the secured creditor conducted the auction strictly in exercise of powers under the provisions of the SARFAESI Act and the Security Interest (Enforcement) Rules, 2002. The Applicant-auction purchaser participated in the public auction pursuant to a duly published sale notice, deposited the bid amount within the prescribed timelines, and a Sale Certificate thereafter came to be issued. The auction purchaser, being a bona fide purchaser for value, acquires valuable rights in the secured asset, which cannot be lightly interfered with except upon proof of fraud, collusion, or material illegality going to the root of the auction process. The Hon'ble Supreme Court has consistently held that sanctity, certainty, and finality of public auctions conducted by banks and financial institutions deserve judicial protection in order to maintain confidence of intending bidders in recovery proceedings.

10. The Hon'ble Apex Court in **Celir LLP V/s. Ms. Sumati Prasad Bafna and others in Contempt Petition (C) Nos.158-159 of 2024 in Civil Appeal Nos.5542-5543 of 2023** has held as under:

> *"Any sale by auction or other public procurement methods once already confirmed or concluded ought not to be set-aside or interfered with lightly except on grounds that go to the core of such sale process, such as either being collusive and fraudulent. Mere irregularity or deviation from a rule that does not have any fundamental procedural error does not take away the foundation of authority for such a proceeding in such cases, courts, in particular, should be mindful to refrain entertaining any ground for challenging an auction which either could have been taken earlier before the sale was conducted and confirmed or where no substantial injury has been caused on account of such irregularity."*

11. Thus, the Apex Court observed that the SARFAESI Act is a special legislation intended for expeditious recovery of public money and the rights accrued in favour of a successful auction purchaser deserve protection.

12. It is equally well settled that once an auction sale is confirmed and the sale certificate is issued in favour of the auction purchaser, the secured creditor and the borrower cannot subsequently nullify the sale through private arrangements or belated settlements, save and except where the auction itself is vitiated by fraud or patent statutory violation. In ***Janak Raj v. Gurdial Singh*, AIR 1967 SC 608,** the Hon'ble Supreme Court held that a stranger auction purchaser should not suffer

on account of disputes between the decree-holder and judgment-debtor after confirmation of sale. Similar principles have been reiterated in ***Gurjoginder Singh v. Jaswant Kaur*, (1994) 2 SCC 368 and *Padanathil Ruqmini Amma v. P.K. Abdulla*, (1996) 7 SCC 668,** wherein the Supreme Court emphasized that the rights of an auction purchaser attain finality upon confirmation of sale and ought not to be unsettled except for compelling reasons such as fraud or material irregularity causing substantial injury

13. In the present case, no material has been placed on record to establish fraud, collusion, suppression of material facts, or violation of mandatory statutory provisions sufficient to invalidate the auction sale. Mere claim of charge over the property in question by Respondent No.2 on the basis of alleged mortgage cannot defeat the accrued rights of a bona fide auction purchaser after completion of the sale process in accordance with law. As discussed hereinabove, the conflicting claim of mortgage by Respondent No.1 with Respondent No.2 cannot be entertained by this Tribunal in the SA filed by the auction purchaser. It is an inter-se dispute between two ARCs, which can be resolved through arbitration as provided u/s 11 of the SARFAESI Act.

14. The object of the SARFAESI Act would stand frustrated if successful bidders in public auctions are left exposed to uncertainty even after confirmation of sale. Judicial interference in concluded auctions must therefore remain minimal, as repeated reopening of auctions would erode public confidence, reduce bidder participation, and ultimately diminish realization of value for secured assets. The sanctity of bank auctions is an essential component of the recovery mechanism contemplated under the

SARFAESI Act and deserves full protection unless the sale is shown to be fundamentally illegal or fraudulent. Accordingly, this Tribunal finds that the auction purchaser's rights are liable to be protected and any challenge to the auction sale in this case by way of actions of Respondent No.2 is liable to be rejected. **Issue No.1 is accordingly answered in affirmative.**

Issue No.2: Responsibility of Auction Purchaser to Investigate Title

15. Both Respondent Nos.1 & 2 have narrated details and chain of title to establish their security interest over the disputed property, in their Reply to SA vide Exh.R/08 & R/07. However, Ld. Counsel for Respondent No.2 has stated in **"Submission No.6" of his written submissions filed at Exh.R/11** as under:

> *"At this juncture, it would be prudent to state that present opponent No.2 is not required to challenge the sale deed executed by opponent No.1 in favour of the Applicant because it is the applicant who has been duped by opponent No.1....."*

16. Thus, it is admitted that Respondent No.2 has not chosen to challenge the registered Sale Certificate issued by Respondent No.1 in favour of the Applicant herein and hence, the entire sale process conducted by Respondent No.1 in favour of the Applicant is not the subject matter of challenge by Respondent No.2 in the present SA. If the sale by Respondent No.1 to the Applicant is not under challenge, Respondent No.2 could not have proceeded to take away possession of the property in question from the Applicant under SARFAESI Act again.

17. Relying on para 8 (pg No.22 of SA) of Sale Certificate issued by Respondent No.1 in favour of the auction purchaser, Ld. Counsel for Respondent No.2 stated that the auction purchaser had not undertaken due diligence with reference to various liabilities, taxes, dues, litigations, etc. Therefore, it implies that he had ascertained the mutation entries in city survey records of the immovable property. In spite of said search and finding that there were no mutation entries with respect to sale of property by Pratham Builders to Dinesh R. Gangwani and Santosh D. Gangwani and others, the auction purchaser proceeded to purchase the property in auction and hence, the sale is liable to be quashed and set aside.

18. The contention that the auction purchaser ought to have independently conducted an exhaustive inquiry into the title of the secured asset before participating in the auction cannot be accepted in the facts of the present case. A public auction conducted by a secured creditor under the provisions of the SARFAESI Act carries with it a legitimate representation that the secured creditor possesses authority to enforce the security interest and convey the interest available in the secured asset. An auction purchaser participating in such statutory auction proceedings is entitled to proceed on the basis of the disclosures made in the sale notice and the records produced by the secured creditor. The law does not cast an onerous burden upon a bona fide auction purchaser to undertake roving and speculative inquiries beyond the material disclosed by the bank / financial institution in the auction process.

19. The Hon'ble Supreme Court has repeatedly emphasized that a bona fide auction purchaser in a court sale or

statutory sale stands on a different footing from a private purchaser in a negotiated transaction. In ***Janak Raj v. Gurdial Singh*, AIR 1967 SC 608**, the Hon'ble Supreme Court held that the rights of a stranger auction purchaser deserve protection and such purchaser should not suffer because of disputes inter se between the parties to the proceedings. The principle underlying the said judgment is that sanctity and finality of public auctions must be preserved so as to maintain confidence of intending bidders in judicial and statutory sale processes.

20. In ***Valji Khimji and Company v. Official Liquidator of Hindustan Nitro Product (Gujarat) Ltd.*, (2008) 9 SCC 299,** the Hon'ble Supreme Court emphasized that certainty of title and protection to auction purchasers are necessary to ensure participation in public auctions. If auction purchasers are exposed to endless disputes concerning title despite there being no suppression or fraud attributable to them, no prudent bidder would participate in auctions conducted by banks and tribunals.

21. The auction purchaser in the present matter cannot be imputed with knowledge of alleged defects or disputes concerning title which were neither disclosed in the auction notice nor otherwise apparent from the records made available by the secured creditor. The secured creditor, having invoked statutory powers for enforcement of security interest, bears responsibility for disclosure of material particulars relating to the secured asset. In absence of evidence establishing collusion, fraud, or prior knowledge of alleged defects on the part of the auction purchaser, the sale cannot be invalidated on the ground that the purchaser failed to conduct further investigation regarding title.

22. It is also a settled principle that a purchaser in an auction conducted under statutory authority acquires such rights as are represented and conveyed through the sale certificate issued by the competent authority. The auction purchaser is not expected to adjudicate competing title claims or investigate historical disputes beyond the scope of the auction proceedings. To impose such obligation would undermine the efficacy of recovery proceedings under the SARFAESI Act and defeat the very object of expeditious realization of secured assets.

23. This Tribunal therefore holds that the auction purchaser, being a bona fide purchaser for value in a statutory auction conducted by the secured creditor, cannot be non-suited or deprived of rights merely on the allegation that independent title verification was not undertaken by him prior to participation in the auction. In the absence of proof of fraud, collusion, or conscious notice of any fatal defect in title, the rights accrued in favour of the auction purchaser deserve protection in law. **Accordingly, Issue No.2 is answered in negative.**

Issue No.3: Applicability Of Section 11 Of SARFAESI Act :

24. Ld. Counsel for Respondent No.1 submitted that Section 11 of the SARFAESI Act provides for resolution of disputes between Banks or Financial Institutions or Asset Reconstruction Companies and such dispute shall be settled by conciliation or arbitration as provided in the Arbitration & Conciliation Act, 1996. Hence, once Respondent No.1 having exercised its rights under the provisions of the SARFAESI Act and having taken physical possession of the property in question and sold the same under public auction to the Applicant and also handed over physical possession to the Applicant, Respondent No.2 could not have initiated actions against the very

same property under the provisions of SARFAESI Act on the strength of its alleged security interest and should have invoked the provisions of Section 11 of the SARFAESI Act. Hence, the measures initiated by Respondent No.2 under the provisions of SARFAESI Act, including taking of physical possession of the property in question are not maintainable and are required to be quashed and set aside and the possession of the property are required to be restored to the purchaser. In support of his submissions, he relied on the judgment of Hon'ble Supreme Court in the case of **Bank of India V/s. Sri Nangli Rice Mills Pvt. Ltd., reported in 2025 SCC OnLine SC 1229.**

25. Per contra, Ld. Counsel for Respondent No.2 submitted that the aforesaid decision rendered by the Hon'ble Supreme Court would not be applicable to the facts of the present case because the borrowers and creditors are completely independent of each other and there is no nexus between them. There is no common borrower in the present case. The said judgment would be applicable only when there is a common borrower between the creditors.

26. On perusal of pleadings and written submissions filed by Respondent Nos.1 & 2 vide Exh.R/12 and R/11 respectively, it transpires that both are Asset Reconstruction Companies and both the Companies have given details of their chain of title qua the property in question and both of them are claiming security interest over the property in question. Therefore, there is a conflict with regard to security interest between both Respondent Nos.1 & 2. This Tribunal is not inclined to dive into details of chain of title to decide security interest of the claimants over the property in question. However,

the fact remains that the Applicant herein is a bona fide purchaser for value, without notice and his possession is required to be protected against the action initiated by Respondent No.2 under SARFAESI Act as discussed hereinabove.

27. In view of the conflicting security interest of Respondent Nos.1 & 2, the following observations of the Hon'ble Supreme Court in **Bank of India V/s. Sri Nangli Rice Mills Pvt. Ltd. (Supra)** are relevant and the same are reproduced below:

> *"96. However, Section 11 of the SARFAESI Act, apart from stipulating that any dispute between a bank or financial institution or asset reconstruction company or qualified buyer shall be resolved by way of arbitration further uses the expression "as if the parties to the dispute have consented in writing for determination of such dispute by conciliation or arbitration", which is of vital significance. The legislature in its wisdom has not only prescribed and mandated the resolution of disputes covered under the said provision by way of arbitration, but by consciously using the aforesaid expression, has gone one step ahead by providing a deeming fiction whereby, an arbitration agreement is presumed to exists between the parties falling under the said provision for the resolution of any 'dispute' between them that is specified thereunder. Thus, Section 11 of the SARFAESI Act, creates a legal fiction as regards the existence of an arbitration agreement notwithstanding whether such agreement exists or not in actuality."*

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28. Looking to the dispute between two Asset Reconstruction Companies involved in the present case, this Tribunal is of the opinion that the dispute is required to be resolved between Respondent Nos.1 & 2 by arbitration and the Applicant herein cannot be allowed to suffer. **Issue No.3 is accordingly answered in affirmative.**

Issue No.4: Relief:

29. In view of aforesaid discussion, the present SA deserves to be allowed with the following final order:

O R D E R

- The present SA No.496/2025 is allowed.
- The order dated 05/03/2025 passed by Ld. CJM, Surat u/s 14 is hereby quashed and set aside.
- The action of taking physical possession of the property in question by Respondent No.2 from the Applicant on the strength of the aforesaid order dated 05/03/2025 is also hereby quashed and set aside.
- Respondent No.2 is directed to restore physical possession of the property in question to the Applicant within a period of fifteen days from today.
- Respondent Nos.1 & 2 shall be at liberty to refer their dispute regarding security interest over the property in question to arbitration as provided in Section 11 of the SARFAESI Act.
- Let copies be supplied as per rules.
- File be consigned to record.

Pronounced in the Open Tribunal on 12th May 2026.

(PANKAJ KUMAR UPADHYAY)
PRESIDING OFFICER
DRT-II, AHMEDABAD

Saloni

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