DEBTS RECOVERY TRIBUNAL No.2, MUMBAI

PRESIDING OFFICER: HARISH KUMAR KAUSHIK

SECURITISATION APPLICATION NO.387 OF 2025

Date of Institution: 31.07.2025
Date of Decision: 16.07.2026

Mr Ishwar Manik B/20, Blue Sea Apartments, Juhu Tara Road, Juhu, Mumbai 400049 ... Applicant

Versus

1. Samman Capital Limited (formerly known as Indiabulls Housing Finance Limited) having corporate office at first floor, Tower 3A, DLF Corporate Greens, Sector 74A, Gurgaon, Narsinghpur, Haryana – 122 004

2. Mr Jagdishchandra Mansukhani, 3rd Floor, Aadhya Building, Jai Hind CHS Ltd., Plot No.43, N.S. Road No.10, Vile Parle (W), Mumbai 400056

3. India SME Asset Reconstructions Company Ltd. Having its registered office at The Ruby, 11th Floor, North-West Wing, Plot No.29, Senapati Bapat Marg, Dadar (W), Mumbai 400028 ...Respondents

APPEARANCES

For the Applicant	:	Mr Atul Singh i/b Ms Sanskriti Yagnik - Advocate
For Respondent Nos.1 and 3	:	Mr G.R. Kinkhabwala, Ms Megha Gupta, Ms Anushree Talekar, Ms Lavanita Chityala, Ms Shreya Gupte i/b M/s. Hedgehog & Fox LLP – Advocates
For Respondent No.2	:	Mr Rishabh Shah a/w Ms Mitika Agarwal- Advocates

Final Order

(1) The present Securitisation Application No.387 of 2025 is filed under Section 17 of the SARFARSI Act challenging the measures taken by the Respondent No.1 under the provisions of the SARFAESI Act, 2002 by the Applicant, challenging the action of Respondent No.1 in declining to proceed with the proposed sale of the secured asset in his favour and in completing the sale process through another purchaser.

Factual matrix of the case:

(2) The Respondent No.2, being the owner of 3rd to 5th floor of the building known as Aadhya situated at 10th N.A. Road, JVPD, Juhu, Mumbai 400056 **(for short, the said mortgaged property')** had mortgaged the said property with Respondent No.1 against certain financial facilities sanctioned and

disbursed by Respondent No.1 to the Respondent No.2.

(3) The Applicant claims that he had submitted the highest and best offer for purchase of the secured asset, had acted bona fide throughout the negotiations and had altered his position by arranging substantial funds for completion of the transaction. According to the Applicant, Respondent No.1 acted arbitrarily and unfairly in refusing to complete the transaction in his favour and thereafter proceeded to conclude the sale with Purchaser i.e. Rameshchandra Mansukhani.

(4) The Applicant has, therefore, challenged the communication dated 16.06.2025 issued by Respondent No.1 and the consequential actions taken pursuant thereto. The Applicant has further prayed for a direction that the sale be confirmed in his favour or, in the alternative, that the entire process of sale through private treaty be set aside and Respondent No.1 be directed to undertake a fresh and transparent sale process.

(5) Respondent Nos.1 and 3 have opposed the Application by filing a detailed Affidavit in Reply contending that the Applicant never acquired any enforceable legal right in respect of the secured asset. It is submitted that mere submission of an offer did not create any concluded contract between the parties and that the Applicant repeatedly failed

to comply with the essential conditions governing the proposed transaction. It is further submitted that the secured creditor acted strictly in accordance with the provisions of the SARFAESI Act, 2002 and the Security Interest (Enforcement) Rules, 2002 while completing the sale by private treaty.

(6) Respondent No.1 had advanced financial assistance to the borrowers against mortgage of the immovable property comprising the 3rd, 4th and 5th Floors of the building known as "Aadhya", situated at Jai Hind Co-operative Housing Society Ltd., N.S. Road No.10, Vile Parle (West), Mumbai.

(7) Upon default in repayment of the secured debt, Respondent No.1 initiated measures under the provisions of the SARFAESI Act, 2002 by issuing Demand Notice under Section 13(2), followed by measures under Section 13(4) and proceedings under Section 14 of the Act. Earlier attempts made by the secured creditor to realise the secured asset through public auction did not culminate in sale.

(8) During the pendency of the recovery proceedings, the borrowers sought repeated opportunities to discharge the outstanding liability and thereafter proposed that the secured asset be sold through a purchaser arranged by them. In that context, the present Applicant, Ishwar Manik, came to be introduced as the proposed purchaser.

(9) The Applicant claims that he submitted his offer for purchase of the secured asset and negotiated with Respondent No.1 for completion of the transaction. According to him, the consideration offered by him was substantially higher than the reserve price fixed by Respondent No.1 and, therefore, Respondent No.1 ought to have accepted his proposal.

(10) The record further reveals that during the course of the proceedings, applications came to be moved before this Tribunal seeking deferment of the proposed sale on the basis of the offer allegedly made by the Applicant. By order dated 28.03.2025 passed in I.A. No.821 of 2025 in the connected matter, this Tribunal declined to stay or defer the sale after recording that although the proposed consideration was higher than the reserve price, the Applicant was not ready to deposit the earnest money as required and that merely on the oral statement made on behalf of the Applicant, it would not be appropriate to defer the sale proceedings, particularly when the secured creditor was likely to lose the proposed purchaser. The said application accordingly came to be dismissed.

(11) Respondent No.1 has further pleaded that although higher offers were referred to by the Applicant, the proposals did not satisfy the essential financial conditions governing the transaction. According to

Respondent No.1, only part of the earnest money was tendered with an assurance that the balance would be deposited subsequently. Respondent No.1 has further stated that it had indicated its willingness to consider a compliant proposal if the requisite earnest money was deposited; however, the Applicant failed to fulfil the said requirement.

(12) Thereafter, Respondent No.1 proceeded to complete the sale through private treaty in favour of Purchaser i.e. Rameshchandra Mansukhani. Consent Terms dated 31.03.2025 came to be executed between Respondent No.1 and Purchaser i.e. Rameshchandra Mansukhani and a Letter of Confirmation of even date was issued recording receipt of 25% of the sale consideration and stipulating the terms governing payment of the balance consideration.

(13) Aggrieved by the subsequent communication dated 16.06.2025 whereby Respondent No.1 declined to proceed with the Applicant's proposal and maintained its decision to complete the transaction with Purchaser i.e. Rameshchandra Mansukhani, the present Securitisation Application has been filed under Section 17 of the SARFAESI Act, 2002.

(14) It is the Applicant's case that Respondent No.1 acted arbitrarily in refusing to complete the sale in his favour despite his offer being higher than the consideration accepted from Purchaser i.e.

Rameshchandra Mansukhani. According to the Applicant, Respondent No.1 was under an obligation to consider the higher offer and ought not to have proceeded with the private treaty in favour of Purchaser i.e. Rameshchandra Mansukhani.

(15) Respondent Nos.1 and 3 have denied the aforesaid allegations and have contended that no concluded contract ever came into existence between the Applicant and the secured creditor. It is further contended that the Applicant remained merely a prospective purchaser and never acquired any enforceable statutory or contractual right in respect of the secured asset. Consequently, according to Respondent Nos.1 and 3, the Applicant cannot seek to compel the secured creditor to execute the sale in his favour through proceedings under Section 17 of the SARFAESI Act, 2002.

Case of the Applicant:

(16) The Applicant has filed the present Securitisation Application under Section 17 of the SARFAESI Act, 2002 challenging the communication dated 16.06.2025 issued by Respondent No.1 and the consequential decision whereby Respondent No.1 declined to proceed with the proposed sale of the secured asset in favour of the Applicant.

(17) That he had submitted a bona fide offer for purchase of the secured asset, which was substantially higher than the reserve price as well as the consideration ultimately accepted by Respondent No.1 from Purchaser i.e. Rameshchandra Mansukhani. According to the Applicant, Respondent No.1 was under a legal obligation to consider the highest available offer so as to maximise the value of the secured asset and protect the interest of all stakeholders.

(18) That despite his readiness and willingness to purchase the secured asset, Respondent No.1 arbitrarily proceeded with Purchaser i.e. Rameshchandra Mansukhani and illegally excluded the Applicant from the sale process. According to the Applicant, such action is contrary to the principles governing sale of secured assets under the SARFAESI Act, 2002 and has resulted in substantial financial loss.

(19) That Respondent No.1 acted unfairly in rejecting the Applicant's proposal despite the fact that the Applicant had arranged funds and had expressed his willingness to complete the transaction. According to the Applicant, Respondent No.1 ought to have accepted the higher consideration instead of completing the transaction for a substantially lesser amount.

(20) That pursuant to the correspondence exchanged between the parties, he submitted demand drafts aggregating to ₹9,37,50,000/- towards earnest money, which were accepted and retained by Respondent No.1. It is submitted that acceptance of the said amount coupled with the subsequent correspondence clearly demonstrates that the parties had progressed beyond a mere offer and that Respondent No.1 was not justified in refusing to complete the transaction in favour of the Applicant

(21) That the Applicant has also challenged the communication dated 16.06.2025 on the ground that the reasons assigned therein are arbitrary, unreasonable and contrary to the material placed on record.

(22) On the aforesaid grounds, the Applicant has prayed for setting aside the impugned communication, for a direction to Respondent No.1 to complete the sale in his favour and, in the alternative, for setting aside the entire private treaty sale and directing Respondent No.1 to undertake a fresh sale process.

<u>Case of Respondent Nos.1 and 3:</u>

(23) Respondent Nos.1 and 3 have opposed the Application by filing a detailed Affidavit in Reply. It is submitted that the present Securitisation Application itself is misconceived as the Applicant never acquired any enforceable statutory or

contractual right in respect of the secured asset. According to the Respondents, the Applicant was merely a prospective purchaser whose proposal never culminated into a concluded contract.

(24) That mere submission of a higher offer does not cast a statutory obligation upon the secured creditor to compulsorily sell the secured asset in favour of such offeror. It is contended that the proposals submitted on behalf of the Applicant were not accompanied by compliance with the essential financial conditions governing the proposed transaction and, therefore, the Applicant cannot assert any vested right merely on the basis of the consideration mentioned in his proposal.

(25) That while considering the earlier proceedings, this Tribunal had already declined to interfere with the proposed sale by observing that although a higher offer had been indicated, the Applicant was not ready to deposit the earnest money as required and, therefore, no case was made out for staying or deferring the sale proceedings. Respondent Nos.1 and 3 have relied upon the said order as well as the subsequent conduct of the Applicant to contend that the present Application is devoid of merit.

(26) That they acted strictly in accordance with the provisions of the SARFAESI Act, 2002 and the Security Interest (Enforcement) Rules, 2002 while proceeding with the sale by private treaty. It is

contended that the purchaser (Rameshchandra Mansukhani) complied with the conditions stipulated by Respondent No.1 and accordingly the sale process was taken forward. Respondent Nos.1 and 3 have therefore prayed for dismissal of the present Securitisation Application.

<u>Findings & Analysis:</u>

(27) It is pertinent to note that the Applicant has prayed for setting aside the impugned communication, for a direction to Respondent No.1 to complete the sale of the said properties in his favour and, in the alternative, for setting aside the entire private treaty sale, however, the Applicant for the reasons known to him has not impleaded the purchaser i.e. Rameshchandra Mansukhani of the impugned sale as a necessary party in the case which may cause prejudice to the said purchaser as he is deprived of being given an opportunity of hearing which is against the principle of natural justice.

(28) The principal objection raised by Respondent No.1 is that the present Securitisation Application itself is not maintainable. According to Respondent No.1, the Applicant is neither the borrower, guarantor nor mortgagor and has no right, title or interest in the secured asset. It is submitted that the Applicant merely participated in negotiations for purchase of the secured asset and, therefore,

cannot invoke the jurisdiction of this Tribunal under Section 17 of the SARFAESI Act, 2002.

(29) The submission deserves considerable acceptance. Section 17 of the SARFAESI Act, 2002 enables any person aggrieved by the measures contemplated under Section 13(4) to approach the Debts Recovery Tribunal. However, the expression "any person" cannot be read in isolation. The person invoking the jurisdiction of the Tribunal must establish that the measures adopted by the secured creditor have resulted in infringement of a legally enforceable right vested in him. Mere dissatisfaction with the commercial decision of the secured creditor or mere participation in negotiations for purchase of the secured asset does not confer the status of a "person aggrieved" within the meaning of Section 17 of the SARFAESI Act, 2002.

(30) In the present case, the Applicant admittedly is neither the borrower nor the guarantor nor the mortgagor. He does not claim any independent right, title or interest in the secured asset. His entire claim is founded upon negotiations undertaken with Respondent No.1 for purchase of the secured asset and the correspondence exchanged in that regard. Such negotiations, by themselves, do not create any statutory or proprietary right in the secured asset.

(31) The Applicant has relied upon the correspondence exchanged since the year 2019, the acceptance of certain amounts by Respondent No.1, the subsequent deposit of demand drafts aggregating to ₹9.375 crores and the communications dated 22.04.2025 to contend that he had acquired enforceable rights in respect of the proposed transaction. However, a careful reading of the very documents relied upon by the Applicant demonstrates that the proposal remained expressly contingent upon the exercise of the contractual Right of First Refusal in favour of Rameshchandra Mansukhani. Even the communication dated 22.04.2025 makes it abundantly clear that the transaction had not attained finality and was subject to fulfilment of the stipulated conditions.

(32) Accordingly, this Tribunal is of the considered opinion that the Applicant has failed to establish that any legally enforceable right ever accrued in his favour so as to bring him within the expression "person aggrieved" occurring in Section 17 of the SARFAESI Act, 2002. The present Securitisation Application, therefore, is not maintainable at the instance of the Applicant.

(33) However, considering that elaborate submissions have been advanced on the merits of the controversy and extensive documentary evidence has been relied upon by both sides, this Tribunal

considers it appropriate to also examine the Applicant's contentions on merits.

(34) The main contention of the Applicant is that Respondent No.1 acted arbitrarily in declining to complete the transaction in his favour despite his offer being higher than the consideration ultimately accepted. The contention cannot be accepted.

(35) The record demonstrates that although the Applicant participated in negotiations over a considerable period, the proposed transaction never culminated into a concluded and unconditional contract. Mere submission of an offer, even if financially higher, does not by itself confer an enforceable legal right upon the offeror. A proposal remains an offer unless accepted unconditionally in accordance with the governing terms and conditions. In the present case, the material on record does not establish any unconditional acceptance of the Applicant's offer by Respondent No.1.

(36) The Applicant has also relied upon the deposit of demand drafts aggregating to ₹9.375 crores. Mere acceptance or retention of earnest money, however, cannot be viewed in isolation. The legal effect of such deposits has to be gathered from the accompanying correspondence. As already observed, the Bank's communication itself

recorded that the proposal remained subject to the contractual Right of First Refusal and other stipulated conditions. Consequently, the acceptance of the demand drafts did not result in a concluded contract or create any enforceable obligation upon Respondent No.1 to sell the secured asset to the Applicant.

(37) The Applicant has repeatedly emphasised that he had offered a consideration of Rs.37.50 Crores, which was higher than the consideration ultimately accepted by Respondent No.1. In the opinion of this Tribunal, the issue cannot be decided merely on the quantum of the offer. The secured creditor, while dealing with recovery of public money, is entitled to satisfy itself not only about the amount offered but also about the financial ability and certainty of the proposed purchaser to complete the transaction within the stipulated period.

(38) In the present case, during the course of final arguments, Ld. counsel appearing for Respondent No.1 specifically submitted that the Applicant was called upon to disclose the source from which the substantial balance sale consideration would be arranged and paid. Despite such query, no satisfactory explanation or supporting material was placed to demonstrating the Applicant's financial capacity to complete the transaction. The said averment was not countered by the Ld.

Counsel of the Applicant, thus, treated as admission on his part.

(39) Further, with respect to the purchaser, Ld. counsel for Respondent No.1 further submitted that the secured creditor was already acquainted with the financial standing and commercial credentials of Rameshchandra Mansukhani and was, therefore, in a position to assess the certainty of completion of the proposed transaction. In such circumstances, the decision of Respondent No.1 cannot be viewed merely from the perspective of the amount offered by the Applicant. The secured creditor was entitled to take into consideration the overall commercial viability and certainty of realization while deciding with whom the transaction could be successfully concluded.

(40) This Tribunal finds substance in the aforesaid submission. A secured creditor exercising its powers under the SARFAESI Act, 2002 is not required to act mechanically by accepting the numerically highest offer irrespective of the surrounding circumstances. Where the material on record indicates that the secured creditor has taken into account relevant commercial considerations, including the ability of the proposed purchaser to honour the financial commitments, such decision cannot be characterised as arbitrary, mala fide or violative of

the provisions of the SARFAESI Act, 2002 merely because another person had indicated a higher offer.

(41) The Applicant has failed to establish any violation of the mandatory provisions of the SARFAESI Act, 2002 or the Security Interest (Enforcement) Rules, 2002. Equally, no concluded contractual right in favour of the Applicant has been established. Consequently, even assuming that the present Application were maintainable, the Applicant has failed to make out any case for interference under Section 17 of the SARFAESI Act, 2002. Accordingly, the present Securitisation Application deserves to be dismissed.

ORDER

I. The Securitisation Application No.387 of 2025 is hereby dismissed.

II. All pending IAs, if any, stand disposed of accordingly.

III. No order as to costs.

Sd/-

(Harish Kumar Kaushik)
Presiding Officer,
DRT-2, Mumbai

Radhika