DEBTS RECOVERY TRIBUNAL No.2, MUMBAI

PRESIDING OFFICER: HARISH KUMAR KAUSHIK

SECURITISATION APPLICATION NO.219 OF 2025

Date of Institution: 18.12.2023
Date of Decision: 31.07.2026

1. M/s D Corp Agro Foods Private Limited, having its registered office at Plot No.60D and F, 2nd Floor, Dulbha Prasad, Sadanand Mohan Jadhav Marg, Naigaon Road No.2, Morbaug, Dadar (East), Mumbai - 400 014, and also at Gut Nos.376 and 374, Village Palsai, Taluka Wada, District Palghar
2. Mr Gajanan Ramakant Desai, Director of Applicant No.1, residing at Plot No.60D and F, 2nd Floor, Dulbha Prasad, Sadanand Mohan Jadhav Marg, Naigaon Road No.2, Morbaug, Dadar (East), Mumbai - 400 014.
3. Mr Durgesh Gajanan Desai, Director of M/s D Corp Agro Foods Private Limited, Mumbai.
4. Mrs Udita Gajanan Desai, Director/guarantor of M/s D Corp

Agro Foods Private Limited, Mumbai. ... Applicants

Versus

Bank of Baroda, Chandavarkar Road Branch, 309, Chandavarkar Road (C.R.), Mumbai - 400 019, through its Authorised Officer. ...Respondent

APPEARANCES

For the Applicants	:	Mr. Ajit Kocharekar – Advocate
For Respondent	:	Ms Vinaya Chavan i/b Mrs Rathina Marvaraman - Advocate

Final Order

(1) The present Securitisation Application No.219 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 in respect of Flat Nos.F-3 and F-4 situated in the building known as "Dulaba Prasad", S.M. Jadhav Marg, Dadar (East), Mumbai. The Applicants have mainly challenged the Order dated 07.11.2023 passed by the Ld. Chief Metropolitan Magistrate, Mumbai under Section 14 of the SARFAESI Act. The Applicants have also

questioned the auction notices issued in July 2023 and May 2026.

Factual matrix of the case:

(2) That Applicant No.1 is the borrower company and Applicant Nos.2 to 4 are the guarantors. Applicant No.2 is also the owner and mortgagor of the aforesaid flats. The Respondent Bank is the secured creditor. The mortgage, default, issuance of the Demand Notice dated 11.03.2022 and handing over of vacant possession of the flats on 30.04.2026 are not in dispute. The controversy relates to the legality of the measures adopted by the Respondent Bank.

(3) The Applicants have questioned the measures mainly on the ground that their reply dated 05.05.2022 was not considered in terms of Section 13(3A) of the SARFAESI Act, that the Respondent Bank suppressed the said reply and the Order dated 27.08.2019 passed by the Hon'ble High Court of Bombay while filing the proceedings under Section 14, that the Order of the Hon'ble High Court restrained the Defendants Nos 1 to 7 in the said writ petition from creating any third party rights or interest in respect of the tenements that are in their possession and that the auction notices were based upon grossly undervalued reserve prices.

(4) That during the pendency of the proceedings, an application under Section 95 of the Insolvency and Bankruptcy Code, 2016 was filed against Applicant No.2 by another creditor. The Applicants thereafter invoked the interim moratorium under Section 96 and sought to question the validity of the auction scheduled on 24.06.2026. The Respondent Bank has stated on affidavit that the auction did not culminate in any sale and stood cancelled.

(5) The Hon'ble High Court of Bombay, by Order dated 27.03.2026 passed in Writ Petition No.10869 of 2025, upheld the direction regarding statutory pre-deposit, granted time to hand over vacant possession of the said residential flats till 30.04.2026 and directed expeditious disposal of S.A. Nos.219 and 267 of 2025.

(6) In the year 2017, the Respondent Bank sanctioned various credit facilities in favour of Applicant No.1. The original sanction was approximately Rs.10.45 Crore. To secure the facilities, a registered mortgage without possession was created on 04.01.2018 over, inter alia, Flat Nos.F-3 and F-4 at Dulbha Prasad, Dadar (East), Mumbai.

(7) Thereafter, by Order dated 27.08.2019 passed in Notice of Motion No.242 of 2012 in Suit No.4 of 2012, the Hon'ble High Court restrained Defendant Nos.1 to 7 therein from creating any third party rights or interests in respect of the tenements in

their possession. Applicant No.2 herein was Defendant No.2 in the said Suit. The Respondent Bank was not a party to those proceedings.

(8) The credit facilities were reviewed or restructured on 26.03.2021. Upon default, the account of Applicant No.1 was classified as Non-Performing Asset on 28.02.2022. The Respondent Bank thereafter issued Demand Notice dated 11.03.2022 under Section 13(2) of the SARFAESI Act, 2002 calling upon the Applicants to pay an amount of Rs.9,54,37,829.39 within the statutory period.

(9) The Applicant No.2 relies upon a reply dated 05.05.2022 addressed to the Respondent Bank. By the said reply, Applicant No.2 referred to the title dispute and the Order dated 27.08.2019 passed by the Hon'ble High Court and requested the Respondent Bank not to enforce its security against Flat Nos.F-3 and F-4. The receipt of the said reply is disputed by the Respondent Bank.

(10) The Respondent Bank thereafter initiated proceedings under Section 14 before the Ld. Chief Metropolitan Magistrate, Mumbai on 18.08.2022. During the pendency of the said proceedings, Applicant No.2 filed an application and placed the reply dated 05.05.2022 and the Order dated 27.08.2019 before the Ld. CMM. By Order dated 07.11.2023, the Ld. CMM rejected the said application upon holding that the borrower had no

locus to intervene in proceedings under Section 14 of the SARFAESI Act, 2002. The application of the Respondent Bank was allowed and a Court Commissioner was appointed for taking possession of the secured assets.

(11) That in July 2023, the Respondent Bank issued an auction notice fixing reserve price of Rs.1.51 Crore for Flat No.F-3 and Rs.1.71 Crore for Flat No.F-4, however, said auction notice did not culminate in a sale.

(12) The present Securitisation Application was filed on 18.12.2023 as Diary No.2468 of 2023 and was subsequently numbered as S.A. No.219 of 2025. Interim Application No.2683 of 2023 was dismissed by this Tribunal on 23.05.2025. The Hon'ble DRAT thereafter directed pre-deposit of 30 per cent by Order dated 25.06.2025. The appeal did not proceed on account of non-compliance with the pre-deposit direction.

(13) The Applicants challenged the said orders before the Hon'ble High Court and by Order dated 27.03.2026, the Writ Petition was dismissed. However, considering the residential use of the flats, time was granted till 30.04.2026 to hand over vacant and peaceful possession subject to an undertaking. The possession of both flats was accordingly handed over to the Respondent Bank on 30.04.2026.

(14) That on 08.05.2026, the Respondent Bank issued a fresh auction notice fixing reserve price of Rs.1.22 Crore for Flat No.F-3 and Rs.1.50 Crore for Flat No.F-4. The auction was scheduled on 24.06.2026.

(15) That meanwhile, a creditor other than the Respondent Bank filed petition under Section 95 of the IBC against Applicant No.2 on 09.06.2026. By Order dated 12.06.2026, the Hon'ble NCLT appointed a Resolution Professional and recorded commencement of the interim moratorium under Section 96 from the date of filing.

(16) The Applicants initially proceeded on the assumption that an auction had been successfully conducted on 24.06.2026. However, the Respondent Bank has categorically stated in its subsequent affidavit that the auction did not culminate in any sale and stood cancelled. No sale certificate or other document evidencing a concluded sale of the flats has been placed on record.

Case of the Applicants:

(17) The Applicants have contended that the Demand Notice dated 11.03.2022 and all subsequent measures are vitiated on account of non-compliance with Section 13(3A) of the SARFAESI Act. According to the Applicants, the reply dated 05.05.2022 was submitted to the Respondent Bank

but no reasons for non-acceptance thereof were ever communicated.

(18) That the Authorised Officers of the Respondent Bank made incorrect statements before the Ld. CMM that no representation had been received and that no stay or restraint order existed. According to the Applicants, the reply dated 05.05.2022 and the Order dated 27.08.2019 passed by the Hon'ble High Court were within the knowledge of the Respondent Bank and were deliberately suppressed.

(19) That the Order dated 27.08.2019 prohibited Applicant No.2 from creating third party rights and, according to them, also prevented him from parting with possession or being dispossessed. It is contended that the Respondent Bank ought to have approached the Hon'ble High Court for leave or amendment of the said Order before seeking possession under Section 14 of the SARFAESI Act, 2002.

(20) That the rejection of borrower's application by the Ld. CMM has also been questioned. According to the Applicants, even if the jurisdiction of the Ld. CMM under Section 14 was limited, the Ld. CMM could not disregard an existing order of the Hon'ble High Court.

(21) That in support of the allegations of suppression and fraud, the Applicants have relied upon **K.D.**

Sharma Vs. Steel Authority of India Limited *(2008) 12 SCC 481* and **Kesharimal Jivji Shah and Anr Vs. Bank of Maharashtra** *2004 (3) MHLJ 893* & *(2004) SCC Online Bom 368*. Reliance has also been placed upon **Vishal N. Kalsaria Vs. Bank of India** *(2016) 3 SCC 762* and Order of the Hon'ble High Court of Bombay passed in *Notice of Motion (L) No. 2384 of 2018 in Suit No. 461 of 2010* in case of **Edit II Productions Vs. Standard Chartered Bank**. The other case laws cited by the respective parties in support of their rival contentions have also been considered

(22) That the values stated at the time of creation of mortgage were approximately Rs.2.22 Crore for Flat No.F-3 and Rs.2.67 Crore for Flat No.F-4, whereas the reserve prices fixed in 2023 and 2026 were substantially lower. It is further alleged that the pending Suit and the Order of the Hon'ble High Court were not disclosed to the prospective purchasers.

(23) That the Applicants have admitted handing over possession on 30.04.2026. However, it is submitted that neither the Hon'ble DRAT nor the Hon'ble High Court adjudicated the merits and, therefore, compliance with the Order of the Hon'ble High Court cannot validate an otherwise illegal measure.

(24) That the Applicants have lastly relied upon the proceedings under Sections 95 and 96 of the IBC, 2016 and have contended that the interim

moratorium commenced from 09.06.2026. On the assumption that an auction had been conducted on 24.06.2026, they submitted that the auction and consequential steps were void.

<u>Case of the Respondent:</u>

(25) The Respondent Bank has opposed the Securitisation Application by relying upon the sanction of facilities, execution of security documents, admitted default by the Applicant, classification of the account as NPA and failure of the Applicants to pay the amount as per Demand Notice. It is submitted that the mortgage dated 04.01.2018 is valid, subsisting and prior to the Order dated 27.08.2019.

(26) That the Respondent Bank has denied receipt of the alleged reply dated 05.05.2022 and has pointed out that the copy produced by the Applicants does not bear any acknowledgment. It is further submitted that the Applicants have failed to establish any prejudice capable of invalidating the subsequent measures.

(27) That the allegation of suppression has been denied. According to the Respondent Bank, the Order dated 27.08.2019 neither bound the Bank nor restrained enforcement of the mortgage. It is also submitted that the Applicants themselves placed the said Order and the alleged reply before the Ld. CMM and, therefore, the Ld. CMM was not misled.

(28) That the Respondent Bank has supported the finding of the Ld. CMM regarding the limited nature of the jurisdiction under Section 14 of the SARFAESI Act, 2002. The impugned order records that, during the proceedings before the Ld. CMM, the Bank had specifically relied upon the order dated 03.08.2022 of Hon'ble High Court of Bombay in **Phoenix ARC Private Limited v. State of Maharashtra** *in WP No. 9749 of 2021*.

(29) That the Order of the Hon'ble High Court merely restrained Applicant No.2 from creating fresh third party rights. Enforcement of a mortgage created prior to the said Order does not amount to creation of a new right by Applicant No.2.

(30) That the Respondent Bank has also relied upon the subsequent conduct of the Applicants in seeking time from the Hon'ble High Court, filing an undertaking and handing over vacant possession on 30.04.2026. According to the Respondent Bank, the reliefs seeking restraint or restoration have become infructuous.

(31) That the Respondent Bank in respect of valuation has relied upon the reports of approved valuers. For Flat No.F-3, the market value, realisable value and distress value have been stated as Rs.1,35,57,500/-, Rs.1,22,01,750/- and Rs.1,08,46,000/- respectively. For Flat No.F-4, the corresponding values have been stated as

Rs.1,67,03,125/-, Rs.1,50,32,812/- and Rs.1,33,62,500/- respectively. According to the Respondent Bank, the reserve prices fixed in May 2026 substantially corresponded to the realisable values.

(32) That the proceedings under IBC, 2016 were initiated by another creditor and that the Bank was not a party thereto. However, the Respondent Bank has also specifically stated that the auction scheduled on 24.06.2026 did not culminate in any sale and stood cancelled. It has accordingly prayed for dismissal of the Securitisation Application.

(33) Heard Ld. Advocates for the parties. Perused the material placed on record.

(34) The first contention of the Applicants relates to alleged non-compliance with Section 13(3A) of the SARFAESI Act, 2002. According to the Applicants, the reply dated 05.05.2022 was submitted to the Respondent Bank but was neither considered nor answered. The Respondent Bank has specifically disputed receipt of the said reply.

(35) Section 13(3A) of the SARFAESI Act, 2002 undoubtedly casts an obligation upon the secured creditor to consider a representation or objection received from the borrower and to communicate reasons where the same is not acceptable. However, the obligation arises upon receipt of the representation by the secured creditor. Therefore,

the foundational fact of receipt is required to be established by the person alleging non-compliance.

(36) That a perusal of the copy of the reply dated 05.05.2022 placed on record reveals that the same does not bear any acknowledgment of the Respondent Bank. No postal receipt, delivery report, inward acknowledgment, email transmission record or any other document evidencing delivery has been produced. The fact that the said reply was subsequently placed before the Ld. CMM through Exhibit 9 establishes that the Applicants relied upon the document, but does not establish that the Respondent Bank had received it on 05.05.2022.

(37) That in the absence of proof of receipt, this Tribunal is unable to hold that the Respondent Bank failed to discharge its obligation under Section 13(3A) of the SARFAESI Act, 2002. The contention, therefore, cannot be accepted.

(38) The main contention thereafter relates to the effect of the Order dated 27.08.2019 passed by the Hon'ble High Court. The operative portion of the said Order restrains Defendant Nos.1 to 7 in Suit No.4 of 2012 from creating third party rights or interests in respect of the tenements in their possession. The Respondent Bank was not a party to the said Suit. The Order does not declare the mortgage invalid, does not restrain the Respondent

Bank from enforcing its security interest and does not prohibit proceedings under the SARFAESI Act, 2002.

(39) That significantly, the mortgage in favour of the Respondent Bank was registered on 04.01.2018, much prior to the relevant Order dated 27.08.2019. Therefore, the security interest had already been created before the restraint came into existence. The subsequent enforcement of such pre-existing mortgage by the secured creditor cannot be equated with creation of a fresh third party right by Applicant No.2 in breach of the Order of the Hon'ble High Court.

(40) That the reliance upon Edit II Productions does not advance the case of the Applicants. The principle concerning property in custodia legis or under the control of a Court would apply where the property has been placed under such control by an operative judicial order. In the present case, no Court Receiver was appointed over Flat Nos.F-3 and F-4 and the flats were not placed in the custody of the Hon'ble High Court. Similarly, **Vishal N. Kalsaria** [*2016 3 SCC 762*] concerned protection asserted by a tenant and does not apply to the possession of an owner-mortgagor against enforcement of his own mortgage.

(41) That the general proposition relied upon from **K.D. Sharma and Kesharimal Jivji Shah** [*2008 12 SCC*

481] that fraud and material suppression vitiate judicial proceedings cannot be disputed. However, application of the said principle depends upon proof of fraud or material suppression in the facts of the case. The mere use of the expressions "fraud", "false affidavit" or "suppression" cannot dispense with such proof.

(42) That the Applicants have alleged that the Respondent Bank made an incorrect declaration before the Ld. CMM that no representation had been received and that no stay or restraint order existed. As already observed, receipt of the reply dated 05.05.2022 has not been established. Further, in the Order dated 27.08.2019, the respondent bank was not a party in requisite proceedings, so it did not restrain the Respondent Bank or stay the SARFAESI proceedings. Therefore, on the basis of the material placed on record, the declarations cannot be held to be false.

(43) That even otherwise, prior to passing of the Order dated 07.11.2023, Applicant No.2 had placed the reply dated 05.05.2022 and the Order dated 27.08.2019 before the Ld. CMM. The impugned Order expressly records the contentions raised by Applicant No.2. Thus, the Ld. CMM was aware of the very documents which are alleged to have been suppressed. In such circumstances, it cannot be held that the final Order under Section 14 was

obtained by keeping the Ld. CMM unaware of any material document.

(44) That the Ld. CMM rejected Borrower's application on the ground that the borrower had no locus to intervene in proceedings under Section 14 of the SARFAESI Act, 2002. The jurisdiction under Section 14 is limited to verification of the statutory requirements and rendering assistance to the secured creditor for obtaining possession. The remedy of the borrower to question the measures lies under Section 17 of the SARFAESI Act, 2002. The grievance of the Applicants has accordingly been examined on merits in the present proceedings. Therefore, rejection of Borrower's application does not, by itself, invalidate the Order dated 07.11.2023.

(45) That the Respondent Bank has contended that the Applicants are estopped from questioning possession after seeking time from the Hon'ble High Court and handing over the flats pursuant to an undertaking. This contention cannot be accepted in its absolute form because the Hon'ble High Court itself directed expeditious disposal of the pending Securitisation Applications. Compliance with the undertaking did not amount to abandonment of the statutory challenge. Nevertheless, upon independent examination, this Tribunal has not found any illegality in the Section 14 of the

SARFAESI Act, 2002 measure warranting restoration of possession.

(46) The next grievance relates to valuation and the auction notices. The Applicants have relied upon the values stated at the time of creation of the mortgage and the reduction in reserve price between the auction notices of 2023 and 2026. Reduction of reserve price or difference between two valuation figures may invite scrutiny, but the same does not, by itself, establish that the valuation adopted by the secured creditor was arbitrary, mala fide or contrary to the Security Interest (Enforcement) Rules, 2002.

(47) The Respondent Bank has placed on record the valuation figures for the year 2026. For Flat No.F-3, the market value is stated at Rs.1,35,57,500/-, the realisable value at Rs.1,22,01,750/- and the distress value at Rs.1,08,46,000/-. For Flat No.F-4, the corresponding figures are Rs.1,67,03,125/-, Rs.1,50,32,812/- and Rs.1,33,62,500/-. The reserve prices of Rs.1.22 Crore and Rs.1.50 Crore substantially correspond to the realisable values stated in the valuation reports.

(48) The allegation of undervaluation, therefore, remains unsupported by cogent material. Interference would be warranted where the valuation or sale process is shown to be contrary to the mandatory statutory requirements, arbitrary,

fraudulent or so grossly inadequate as to indicate deliberate sacrifice of the secured asset. No such material has been produced in the present case.

(49) The Applicants have also contended that the auction notices failed to disclose the pending Suit and the Order dated 27.08.2019. Any subsisting litigation or order which is material for an intending purchaser is required to be carefully considered by the secured creditor while making disclosures under Rule 8(6) of Security Interest (Enforcement) Rules, 2002. However, no concluded sale has taken place pursuant to either of the auction notices challenged in the present proceedings.

(50) The auction notice issued in July 2023 did not culminate in a sale. The Respondent Bank has also categorically stated on affidavit that the auction scheduled on 24.06.2026 did not culminate in a concluded sale and stood cancelled. No sale certificate, confirmation of sale, purchaser details or proof of receipt of consideration in respect of the flats has been placed on record. Therefore, the prayers seeking invalidation of an alleged sale or disclosure of the successful bidder have become infructuous.

(51) A declaration that a sale is void cannot be issued when the alleged sale itself has not been established. If any fresh measure is initiated, the

Respondent Bank would be required to ascertain and comply with the legal effect of any subsisting order under the IBC at that stage.

(52) In view of the above, this Tribunal is satisfied that the Applicants have failed to establish that the measures adopted by the Respondent Bank suffer from any illegality warranting interference under Section 17 of the SARFAESI Act, 2002. Accordingly, the Applicants have failed to make out any case for interference under Section 17 of the SARFAESI Act, 2002 and the present Securitisation Application deserves to be dismissed.

ORDER

I. The Securitisation Application No.219 of 2025 stands dismissed.

II. Pending IAs, if any, stand disposed of accordingly.

III. No order as to costs.

Sd/-

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

Radhika