# IN THE DEBTS RECOVERY TRIBUNAL – I AT CHENNAI

Dated this 3rd Day of August, 2026

## PRESENT: SHRI A.S.JAYACHANDRA
## Presiding Officer

**S.A. No.9 of 2026**

**Between**

**M/s. Hotel Mass Private Limited,**
Represented by its Chairman and Managing Director
Mr. T. Thiagarajan S/o. Thillaigovindan,
Nos.152 and 154 Maraimalai Adigal Salai,
Orleanpet,
Puducherry – 605 001. **. . . Applicant**

**And**

1. **Indian Overseas Bank,**
Orleanpet Branch, Pondicherry,
Regional Office (0821)
ECR, 100 Feet Road,
Jansi Nagar Corner,
Pondicherry – 605 004.

2. **Mrs. Santhi Subramanian,**
Wife of Dr. M. A. S. Subramanian,
Selvanayagam Illam,
No.83, 2nd Cross, Vasan Nagar,
Lawspet, Puducherry – 605 008.

3. **Mrs. S. Sundar**
S/o. Dr. M. A. S. Subramanian,
Selvanayagam Illam,
No.83, 2nd Cross, Vasan Nagar,
Lawspet, Puducherry – 605 008.

4. **Mrs. Suganthi Prabhakar,**
W/o. Prabhakar,
Door No. D2, 3rd Floor, No.47, Sharaon Chateau,
Lawspet Main Road,
(Opp. Lawspet SBI)
Pudupet, Puducherry – 605 005.

5. **M/s. Veepee Estates and Hotels Private Limited**
No.16, ECR, Cuddalore Main Road,
Kirumampakkam,
Puducherry – 607 402. **.... Respondents**

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| **Ld. Counsel for the Applicant** | : | M/s. R. Sreedhar, Revathi Sreedhar, R.Vinoth, M.Jeeva, R.Renuka Devi. |
| **Ld. Counsel for the Respondent** | : | Shri. P.V. Muralidhar. & PM. Surendar |

**: - O R D E R - :**

*This adjudicates the application filed under Section 17 of the SARFAESI Act challenging the orders of the Ld. CJM, Puducherry dated 20.06.2025 in C.M.P. No. 1427/2025. The amount of debt involved is Rs.144,01,69,648/-.*

**<u>Genesis of the case</u>**:

1. The applicant company herein is neither the borrower nor the guarantor.

2. Shorn off the unnecessary details (which will be discussed in brief at the relevant context), the applicant is a 3rd party and an agreement holder of certain property. The applicant has filed original suit before the Ld. III Additional District Judge, Puducherry in O.S. No.33/2025 along with four others against 10 defendants including the respondent No.1 herein.
3. The registry had raised certain objections pointing out that the SA is barred under limitation having been filed beyond the period of 45 days as provided under Section 17(1) of the SARFAESI Act. The impugned order is dated 20.06.2025 and the SA is filed on 20.03.2026. The matter was listed for hearing on the maintainability. Keeping open the question of maintainability, SA was numbered and the matter was heard sans the counter as the question of law is involved. Notices to the defendants other than the bank are dispensed in the peculiar circumstances. Heard the Ld. Counsel on either side.

**<u>Submissions of the Applicant:</u>**

4. The Ld. Counsel for the applicant urges that;
    a. That the applicant company is represented by its chairman and managing director.
    b. The property involved originally belonged to late M.A. Shanmugam - who agreed to sell the property in favour of the company and the consideration was the additional

shares to be allotted. The agreement was not in writing, but oral made on 01.03.1983. The company allotted 12810 equity shares of Rs.100/- each towards consideration and form no. 2 was filed. Certain family members of late Shanmugam were also given shares.

c. The sale deed is not executed for which the original suit is filed.
d. Shares of the original owner and his wife were transferred to Dr.M.A.S.Subramanian without the consent of the legal heirs of the widow of the original owner. This M.A.S.Subramanian also acknowledged the property as belonging to the company. The said M.A.S.Subramanian assumed full control of the company affairs (dates not forthcoming).
e. There was no specific time frame for executing the sale deed by the late M.A.Shanmugham, as per the oral agreement and he expired on 06.08.1984.
f. In the year 2013, the minority share holders of the company came to know that the property is already sold along with other lands under a registered sale deed in favour of M/s. Vee Pee Estates and Hotels Private Limited (**D5 herein**). The sale deed is registered on 01.04.2013 vide Document No.1844/2013.

g. Allegations are that without a valid mortgage 1st defendant bank sanctioned Rs.45 crores and disbursed.

h. The mortgage by way of Deposit of Title Deeds in favour of the bank was executed on dated 04.04.2013.

i. The minority Share holders approached the Ld. NCLT in TCP No.157/2016. By an order dated 03.10.2017 the Ld. NCLT recognized the possession of the property by the applicant company and appointed an independent auditor to conduct the audit.

j. This was challenged by Dr.M.A.S.Subramanian and his family members in company appeal No.12/2018 before the Hon'ble NCLAT which held that the document registered in favour of 5th respondent is not binding on the company.

k. This order was challenged by Dr.M.A.S.Subramanian and others in C.A. No.9197/2018 which was withdrawn upon the demise of Dr. M.A.S. Subramanian.

l. However, there was a compromise dated 23.02.2022 recorded in T.C.T. No. 157/2016 and one T.Thiagarajan (signatory to the SA) is appointed as the Chairman and Managing Director.

m. The bank had filed review application 2/2018 before the Ld. NCLAT seeking review of the order dated 12.07.2018 which was dismissed.

n. This order is challenged by the bank before the Hon'ble Supreme Court of India.

o. On 16.02.2023 the bank filed a complaint with CBI making certain allegations and an FIR is registered on 17.02.2023.

p. The Hon'ble Supreme Court of India while adjudicating the litigation filed by the bank had by an order dated 07.01.2025 gave the following verdict;

*"It is well settled that an agreement for sale in respect of an immovable property does not transfer title in Section 54 of the Transfer of Property Act, 1882, an agreement for sale does not create any interest in the property. The only mode by which an immovable property worth more than Rs. 100/- (Rupees one hundred) can be sold is by a sale deed duly registered in accordance with the Indian Registration Act, 1908.*

*In this case, the NCLAT has recorded a finding that late Shri. M. A. Shanmugam who was the owner of the property subject matter of these appeals has agreed to sell the property to the company against the transfer of shares of the company in his favour. The NCLAT has recorded a finding that the company was in possession by way of part performance of the contract. Based on the said finding, the sale deed dated 31st October, 2011 purportedly executed by the legal representatives of late Shri. M.A.Shanmugam has been held as not binding on the company. So long as the original owner has not sold the property by execution of a registered sale deed, he continued to be the legal owner of the property. Admittedly, he had no executed a sale deed in favour of the company. Therefore, the NCLAT in its limited jurisdiction could not have held that the sale deed dated 31st October, 2011 was not binding on the company as the company was in possession by way of part performance of the contract.*

*There is nothing placed on record to show that the company filed a suit for specific performance for enforcing the*

*agreement made by late Shri M.A.Shanmugam. In the circumstances, we set aside the declaration granted by the NCLAT under the impugned judgment in the following terms:*
*"we declare that the sale deed dated 31.10.2011 executed by original Respondents 2 to 6 in favour of original Respondent No.7 as not binding on the Respondent No. 1 company."*
*While doing so, we make it clear that we have made no adjudication on the ownership rights claimed by the different parties pursuant to the sale deed dated 31st October, 2011 and the rights claimed by respondent No. 10 – company as well as by the appellant. Their remedies to seek declaration and / or to enforce their rights are kept open". (Arising out of Dy.No.38616 of 2018 – Found from Page Nos.253 to 257 of the SA)."*

q. Consequent to the orders of the Hon'ble Supreme Court of India, the applicant company filed O.S. No.33/2025 for specific relief against the heirs of late Dr.M.A.Subramanian based on the oral agreement. The interim injunction application filed by the company in Civil Suit is dismissed on 28.08.2025.

r. The impugned order dated 20.06.2025 was passed by the Ld. CJM at the instance of the bank under Section 14 of the SARFAESI Act. The same was asked to be reviewed by these Applicants and their application for recalling the impugned order dismissed by the Ld. CJM on 06.02.2026. (Mentioned as 06.02.2025 in Para-34 of the SA) in MP No.1/2025 filed in the CMP No.1427 of 2025. However, the 1st respondent bank has already taken the physical possession of the property. The bank had also filed a writ petition seeking police protection. Without prejudice to the contentions now the company challenges the order dated 20.06.2025 passed by the Ld. CJM on the grounds that the bank had acted upon the mortgage of the property of which title is under cloud. The security cannot be enforced since the title was defective and the account itself is classified as fraud and CBI is investigating. The orders of Ld. NCLT & NCLAT have recognized the possessory rights of the applicant company. The Hon'ble Supreme Court of India did not adjudicate the ownership rights. Since, the matter is sub-judice before the Civil Court, the order of the Ld. CJM is obtained under suppression of facts.

**Contentions of Defendant No.1 Bank**:-

5. On the other hand the Ld. Counsel for the bank submits that the title of the property cannot be looked into by the Tribunal and the matter is pending before the Ld. Civil Court as admitted by the applicant. Since, the possession is already taken by the bank; the present lis would be otiose and serves no purpose. Further, it is argued that no element of adjudication is involved before the Ld. CJM under Section 14 of the SARFAESI Act. The applicant who had explored all the legal formalities cannot be said to have no knowledge of the proceedings before the Ld.CJM. The applicant company had not approached this Tribunal in time. It is also submitted that the applicant had wherewithal and the legal knowledge that there cannot be any recalling of the orders by the

Ld.CJM had filed the MP to recall the order dated 20.06.2025, now impugned only to circumvent the delay and filed M.P.1/2025 in C.M.P.No.1427/2025 which was correctly dismissed. Thus, the present petition under Section 17 of the SARFAESI Act is highly barred under limitation. Therefore, the Ld. Counsel for the bank prays for dismissing the SA.

**Points for Determination**:-

6. In the context of the rival submissions noted above, and after perusal of the record, the following points arise for determination in the present SA.

    a. Whether the SA is barred under limitation?
    b. Whether the DRT under Section 17 of the SARFAESI Act could adjudicate the title of the property usurping the jurisdiction of Civil Court in the guise of adjudicating the legality, validity and correctness of the orders of the CJM passed under Section 14 of the SARFAESI Act at the instance of the mere oral agreement holder sans legal title?

7. **Answers to the points A**:

    i. No doubt the impugned order is dated 20.06.2025. Petition is filed belatedly that is beyond the statutory period of 45 days as provided under Section 17 of the Act. However, the Ld. Counsel for the applicant submits that an application to recall the same was filed in M.P.No.1/2025 before the Ld. CJM. From the list of documents filed along with the SA at S. No. 36 of index shows that M.P. No.1/2025 filed before the Ld. CJM enclosed an affidavit dated 28.07.2025. The company thus was very much in knowledge about the orders passed by the Ld. CJM. Section 17 of the SARFEASI Act provides for an appeal to the DRT by any aggrieved person to be filed within 45 days against the measures from the date of such measure

ii. It is relevant to note that the company has been knocking the doors of various legal fora including the signatory to the present SA right from the year 2015. The company petition was filed in 6/2015 with T.C.P. No. 157/2016 regarding the alienation of the property despite the oral agreement as now being agitated. Thereafter, the matter also reached up to the Hon'ble Supreme Court of India, which this Tribunal has noted above. In the context of the applicant being a juridical person cannot be said to have pursued the matter before the very Ld. CJM with bonafide mistake by filing an application to recall its order, despite there being a legal provision to challenge the same before the DRT. Therefore, this Tribunal is of the opinion that the applicant who had spent time in pursuing the remedy before the other forum cannot be said to have prosecuted the matter in good faith. Therefore, the explanation offered by the applicant that the time spent prosecuting the matter before the Ld. CJM be ignored cannot be accepted. The company is a legal entity having the support of the legal team which agitated its rights before all the fora except the DRT.

iii. It is also admitted that the company has lost the possession of the property and the bank had taken the physical possession of the property on 04.02.2022 itself. The same is not disputed by the Applicant. The SA is filed after having lost the possession belatedly.

iv. The prayer to set aside the impugned order and to restore the possession cannot be entertained in the petition filed which is barred under limitation.

8. **<u>Answers to point B</u>**:

i. It is admitted by the very applicant that it had approached the Ld. III Additional ADJ at Puducherry in O. S. No.33/2025 and had sought for specific performance against D1 to D8 and further a perpetual injunction against the bank. It is not disputed that the original suit is pending.

ii. It is clear that the title of the applicant company to the schedule property is still to be adjudicated and the same is sub-judice before the competent Civil Court. This Tribunal cannot lose sight of the locus of the Applicant who is a mere agreement holder and the ruling of the Hon'ble Supreme Court in **Suraj Lamp Industries Vs. State of Harayana 2012(1) SCC 656**, which holds that the mere agreement to sell cannot be equated with title. It is also common prudence that contract of Sale does not itself create any interest or charge over the property unless a valid sale deed is executed – **Somnath Vs. Ravindra Kumar – CA No.4484/2025 SC 31.03.2025**. It is held that only after registration, the transfer of title would take place. Thus the Applicant Company cannot be called to have acquired any title to the property for which the measures are already obtained.

iii. That the applicant company admittedly had lost the physical possession of the property. The property is already sold under the sale notice issued by the bank as submitted by the Ld. Counsel for the bank. Thus, the interest of 3rd party / auction purchaser is also created over the property by the bank. Such a purchaser is not a party before this Tribunal. Any order by this Tribunal would obliterate not only the legal process, but the vested interest of the purchaser also.

iv. In this context, the powers of this Tribunal to grant a relief under Section 17 of the SARFAESI Act in the matters where the title of the parties to the subject matter is in doubt / sub-judice / imperfect / questionable is to be understood from the point of law. Since, this Tribunal which is created for speedy recovery of debts is asked to decide the rights of the agreement holder.

v. The Hon'ble High Court of Bombay, Nagpur Bench in **Bank Of Baroda -Vs- Gopal Shriram Panda And Another in Civil Revision Application No.29/2011 decided on 25 March, 2021**, had clearly expounded the law as under:

*"27. In view of what we have discussed above, our considered opinion to the question as referred to is as under :-*

*Question :*

*"Whether the jurisdiction of a Civil Court to decide all the matters of civil nature, excluding those to be tried by the Debts Recovery Tribunal under Section 17 of the Securitisation Act, in relation to enforcement of security interest of a secured creditor, is barred by Section 34 of the Securitisation Act ?*

*The answer, looking to the nature of the question, in our view, is in parts :-*

*(A) Jurisdiction of the Debts Recovery Tribunal, to decide all matters relating to Sections 13 and 17 of the SARFAESI Act, is exclusive.*

*(B) In all cases, where the title to the property, in respect of which a 'security interest', has been created in favour of the Bank or Financial Institution, stands in the name of the borrower and/or guarantor, and the borrower has availed the financial assistance, it would be only the DRT which would have exclusive jurisdiction to try such matters, to the total exclusion of the Civil Court. Any pleas as raised by the borrowers or guarantors, vis-a-vis the security interest, will have to be determined by the DRT.*

*(C) The jurisdiction of the Civil Court to decide all the matters of civil nature, excluding those to be tried by the Debts Recovery Tribunal under Sections 13 and 17 of the SARFAESI Act, in*

*relation to enforcement of security interest of a secured creditor, is not barred by Section 34 of the SARFAESI Act.*

*(D) Where civil rights of persons other than the borrower(s) or guarantor (s) are involved, the Civil Court would have jurisdiction, that too, when it is prima facie apparent from the face of record that the relief claimed, is incapable of being decided by the DRT, under Section 17 of the DRT Act, 1993 read with Sections 13 and 17 of the CRA 29 of 2011.odt SARFAESI Act.*

*(E) Even in cases where the enforcement of a security interest involves issues as indicated in Mardia Chemicals (supra) of fraud as established within the parameters laid down in A. Ayyasamy (supra); a claim of discharge by a guarantor under Sections 133 and 135 of the Contract Act [Mardia Chemicals (supra)]; a claim of discharge by a guarantor under Sections 139, 142 and 143 of the Contract Act; Marshaling under Section 56 of the Transfer of property Act [J.P. Builders (supra)]; the Civil Court shall have jurisdiction.*

*(F) Examples as indicated in para 22.3, are illustrative of the Civil Court's jurisdiction.*

*(G) The principles laid down in para 33 (i) to (ix) of Sagar Pramod Deshmukh (supra) are in accordance with what we have discussed and held above."*

*vi.* In **Central Bank of India Vs Prabha Jain 2025 INSC 95** at para No.30, the Hon'ble Supreme Court of India had observed "*The aforesaid was looked into by a Division Bench of the Bombay High Court in Bank of Baroda v. Gopal Shriram Panda and Another, reported in (2021) SCC OnLine Bom 466 and the reasoning's assigned in our view are very commendable"*.

*vii.* In view of the above position of law, the reliefs sought in the present SA to restore the possession by setting aside the orders of the Ld. CJM is to be necessarily looked into from the view point of title to the property of the applicant company. This Tribunal has to decide the trappings of the title which is sub-judice before the competent Civil Court. The same cannot be usurped by this Tribunal while exercising powers under Section 17 of the Act in the guise of appeal at the instance of the stranger to the loan transaction who had lost the possession.

*viii.* For the aforesaid reasons, this Tribunal is of the opinion that the Tribunal would be overstepping its jurisdiction by entertaining the present SA and accordingly the following order:

**: -** O R D E R **- :**

SA 9 of 2026 stands dismissed.

The observations made if any in the course of this order shall not prejudice the contentions of the parties before the competent Civil Court.

The parties to bear their own costs.

A copy of this order be communicated as per the rules to the applicant and D1 only since notices to others are not ordered.

Sd/-

**(A.S.JAYACHANDRA)**
**PRESIDING OFFICER**
**DRT-I, CHENNAI**

(Dictated to Stenographer who typed in the system, corrected, signed and pronounced in open court on this 3rd Day of August, 2026)