## ORDER SHEET

# DEBTS RECOVERY TRIBUNAL, SILIGURI

## SA/159/2024

ICICI Home Finance Company Ltd. — Applicants
Vs
Indian Overseas Bank — Respondents

| Date of Order | Order with Signature | Office action with date and dated signature of parties when necessary. |
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Item No.38 **Order No.**

27.08.2026

Present :-

Counsel for the Applicant : Mr. Sagnik Bhowmick, virtual mode.

Counsel for the Respondents : None.

Judgment is passed in SA/159/2024 and a copy of the Judgment is kept on record.

Let the judgment be uploaded on website of the Tribunal and the Registry is directed to serve/send copy of this judgment to the parties free of cost.

Record be consigned to the record room along with the judgment.

**(RAKESH PATI TIWARI)**
Presiding Officer
DRT-Siliguri

# IN THE DEBTS RECOVERY TRIBUNAL, SILIGURI

## S.A. No.159/2024

1. ICICI HOME FINANCE COMPANY LTD. 2nd Floor Merchant Square, Swaraswati Rice Mill Compound, Sevoke Road, 2nd Mile, Siliguri, Dist: Darjeeling, PIN -734001.

…….Applicant

Vs.

1. THE AUTHORIZED OFFICER, INDIAN OVERSEAS BANK, 1st & 2nd Floor, Ojas Mall, Station Feeder Road, Siliguri District Darjeeling, West Bengal-734005 Email: Siligurirm@Iobnet.Co.In.
2. THE BRANCH MANAGER, INDIAN OVERSEAS BANK, Kanki Branch, New Market. P.O. Kanki, Dist: Uttar Dinajpur, Pin:733209, West Bengal Email: Iob2494@Iob.In.
3. SRI ASHTO KUMAR MANDAL Son Of Bharat Mondal, Nandujhar, Nando Nando, District - Uttar Dinajpur, Pin: 733208, West Bengal. Pan: CNKPM9708G.
4. SRI BESTO MANDAL Son Of Bharat Mondal, Nandujhar, Nando Nando, District - Uttar Dinajpur, Pin: 733208, West Bengal. PAN: FUGPM4196A.
5. SMT. BABY THAKUR SARKAR Wife Of Sri Sanjit Sarkar Islampur, Collegepara, Near Omkar Mandir, P.O. & P.S. Islampur, District - Uttar Dinajpur, Pin: 733202, West Bengal PAN: LFSPS4749J.

……..……Respondents

Counsel for the applicant : Mr. Sagnik Bhowmick
Counsel for the respondents No.1 & 2 : Mr. P. Joarder
Counsel for the respondents No.3,4 & 5 : None

**PRESIDING OFFICER: RAKESH PATI TIWARI**
**Date of Judgment - 27.08.2026**

## J U D G M E N T

1. This is an application under section 17(1) of The Securitization And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as SARFAESI Act), filed by the applicants for setting aside the E-auction sale notice dated 10.08.2024 for the e-auction sale scheduled on 18.09.2024.
2. Case of the applicants in short is that the is that the applicant, ICICI Home Finance Company Ltd. sanctioned a Home Loan facility of Rs.29,00,000/- to defendant Nos.3 and 4, namely Sri Ashto Kumar Mandal and Sri Besto Kumar Mandal, respectively, for the purpose of purchasing the subject property from defendant No.5, Smt. Baby Thakur Sarkar. Before sanctioning and disbursing the loan, the applicant HFC states that it conducted a detailed title investigation and legal scrutiny of the property proposed to be mortgaged,

namely, land measuring 2.75 decimals together with a 1200 sq. ft. single-storied pucca residential building standing thereon, forming part of R.S. Plot No.1975 corresponding to L.R. Plot No.1940, R.S. Khatian No.240 corresponding to L.R. Khatian No.6273 and New L.R. Khatian No.6975, J.L. No.59, Touji No.7, Pargana Surjapur, situated at Mouza Islampur, under Islampur Municipality Ward No.08, P.S. Islampur, District Uttar Dinajpur. Thereafter, defendant Nos.3 and 4 executed the requisite loan and security documents and the borrowers also executed a Memorandum of Deposit of Title Deeds by depositing the original Sale Deed bearing No.I-09204 of 2022, registered with the A.D.S.R., Islampur, whereby the property purchased from defendant No.5 was mortgaged in favour of the applicant HFC. According to the applicants, the said mortgage was created under Section 58(f) of the Transfer of Property Act, 1882, and the applicant HFC acquired the first charge over the mortgaged property. The applicant further states that its security interest was duly registered with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI). It is the further case of the applicants that defendant Nos.3 and 4 subsequently committed defaults in repayment of the loan and their loan accounts bearing Nos. LHSGI00001495677 and LHSGI00001495676 were classified as Non-Performing Assets on 03.10.2023. Consequently, the applicant HFC initiated measures under the SARFAESI Act, 2002 and issued a demand notice dated 13.10.2023 under Section 13(2) of the said Act, demanding a sum of Rs.31,10,084.36/- as outstanding on 12.10.2023. The said notice was served upon the borrowers and was also published in “The Echo of India” and “Arthik Lipi” on 27.10.2023. Upon expiry of the statutory period, the applicant HFC proceeded further in accordance with law and issued a Possession Notice dated 17.01.2024 under Rule 8(1) and (2) of the Security Interest (Enforcement) Rules, 2002 and took symbolic possession of the secured property. The said Possession Notice was also published in the aforesaid newspapers on 20.01.2024. The applicants allege that, notwithstanding the applicant HFC’s prior mortgage and its possession over the secured asset, defendant No.1, Indian Overseas Bank, subsequently asserted an independent claim over the same property. According to the applicants, defendant No.1 served a notice dated 09.04.2024 alleging that it had sanctioned a Loan Against Property facility on or about 23.09.2022 to defendant No.5, Smt. Baby Thakur Sarkar, through its Kanki Branch, and claiming that the property offered as security by defendant No.5 was the very same property

which had subsequently been purchased by defendant Nos.3 and 4 and mortgaged in favour of the applicant HFC. The applicants further rely upon the distinction in the description of the property, pointing out that the notice issued by defendant No.1 refers to land measuring 5 decimals, whereas the property covered by Sale Deed No.I-09204 of 2022 and mortgaged in favour of the applicant HFC consists of only 2.75 decimals together with a 1200 sq. ft. building. On such basis, the applicants contend that the property claimed by defendant No.1 cannot, without proper proof and identification, be treated as identical to the secured asset mortgaged in favour of the applicant HFC. The applicants further allege that defendant No.1 thereafter proceeded with SARFAESI measures and an e-auction notice was published on 10.08.2024 proposing sale of the property on 18.09.2024, despite the applicant HFC having already asserted its security interest and having taken symbolic possession of the property. According to the applicants, such proposed auction is illegal, arbitrary and prejudicial to their rights and security interest, particularly as the property sought to be sold is allegedly already subject to the applicant HFC's mortgage and possession. The applicants further state that the substantial amounts remain outstanding under their two loan accounts, namely Rs.1,20,790.18/- in Loan Account No.LHSGI00001495677 and Rs.33,88,695.18/- in Loan Account No.LHSGI00001495676, calculated up to 12.09.2024. It is further contended that substantial public money is involved in the housing finance transaction and that permitting the auction to proceed would cause irreparable financial prejudice to the applicant HFC.

3. The respondents No.1 & 2 filed their written objection stating inter-alia that the present application under Section 17(1) of the SARFAESI Act, 2002 is not maintainable, is barred by limitation, and is hit by the principles of waiver, acquiescence and estoppel. Plea of the respondent bank is that the Defendant No. 5, Smt. Baby Thakur Sarkar, availed a credit facility of Rs. 11.00 lakh from Defendant No. 2 on 23.09.2022 and, as security, created an equitable mortgage over 5 decimals of land together with a 798 sq. ft. one-storied building by depositing the original title deed, thereby creating the first and prior charge in favour of the Respondent Bank, which was duly registered with CERSAI on the same date. Subsequently, Defendant Nos. 3 and 4 allegedly obtained a mortgage over 2.75 decimals out of the already mortgaged property in favour of the Applicant, pursuant to an illegal transfer by Defendant No. 5, and the Applicant failed to

conduct proper title investigation before creating its alleged charge. Upon default, the loan account was classified as NPA on 22.07.2023, followed by issuance of notice under Section 13(2) on 05.08.2023 and symbolic possession of the secured asset on 06.01.2024, with all requisite measures being taken in accordance with the SARFAESI Act and Rules. The Respondent further submits that the auction sale notice dated 08.08.2024 was issued for recovery of the secured debt, but the auction fixed for 18.09.2024 could not be concluded for want of bidders, rendering the Applicant's challenge to the said notice infructuous. The Applicant has no locus standi, charge or enforceable right over the subject property, whereas the Respondent Bank has the first charge by virtue of its prior mortgage. Accordingly, the Respondent denies the allegations and grounds raised in the application and prays that the application under Section 17(1) be dismissed in limine, with no relief being granted to the Applicant. In view of the above, the answering respondents pray for the dismissal of the instant SARFAESI application.

4. Learned counsels of the applicant and learned counsel of the respondents No.1 & 2 have already been heard and perused the record.

5. The instant S.A. has been filed by the applicant (ICICI Home Finance Company Ltd.) against other bank (Indian Overseas Bank) & other respondents under section 17 of the SARFAESI Act challenging the e-auction sale notice dated 10.08.2024 for the e-auction sale scheduled on 18.09.2024.

6. At the outset the question arises that whether any bank and financial institution can file an application under section 17 of the SARFAESI Act against the other bank or financial institution where the dispute relates to securitization of financial assets or reconstruction of assets or non-payment of any amount due and/or interest thereon. Section 11 of the SARFAESI Act prescribes that where any dispute relating to securitization or reconstruction or non-payment of any amount due including interest arises amongst any of the parties, the bank, or financial institution, or assets reconstruction company, or qualified buyers, such dispute shall be settled by conciliation or arbitration as provided in the Arbitration and Conciliation Act, 1996 (26 of 1996), as if the parties to the dispute have consented in writing for determination of such dispute by conciliation or arbitration and the provisions of that Act shall apply accordingly.

7. In case of **Bank of India vs M/S Sri Nangli Rice Mills Pvt. Ltd [2025 INSC 765 (Civil Appeal No. 7110 of 2025 decided on 23.05.2025)]**, the Hon'ble Supreme Court has held that where the dispute between the banks is fundamentally related to "non-payment any amount due including interest" which may be triggered by the actions of a borrower, Section 11 of the SARFAESI Act would apply.

8. Relevant paragraphs of the aforesaid judgment of the Hon'ble Supreme Court are extracted here-in-below :-

> 81.For illustration, a borrower may owe a certain amount to Bank A and another amount to Bank B, after both of these banks have hypothecated the borrower's property. If the borrower defaults and fails to repay these loans, a dispute may arise between Bank A and Bank B regarding their respective claims over the borrower's mortgaged assets. This dispute is inherently and intrinsically linked to the borrower's "non-payment of any amount due including interest", which the borrower was obligated to pay under the terms of their respective loan agreements with the banks.
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> 82.Thus, it follows that where the dispute between the banks is fundamentally related to the "non-payment of any amount due including interest", which may be triggered by the actions of a borrower, Section 11 of the SARFAESI Act would apply. Consequently such, disputes being those which fall squarely within the ambit of the said provision, would mandate the resolution of such disputes through the mechanisms of conciliation or arbitration as provided under the Act, 1996. This interpretation aligns with both the language, the legislative intent behind Section 11 and the avowed object and spirit of the SARFAESI Act.
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> 89.We have already clarified that a dispute relating to the "non-payment of any amount due, including interest" may arise following a default in loan repayment by a common borrower. Such default can indirectly lead to a conflict between two banks that have extended loans to the same borrower. This type of dispute falls within the ambit of Section 11 of the SARFAESI Act, as it involves competing claims over the recovery of dues. Hence, Section 11 of the SARFAESI Act does include borrowed loan amount under the "non- payment of any amount due including interest". However, when a lender assumes the role of a borrower, the legal relationship between the parties undergoes a shift. In such circumstances, the entity that typically extends credit now becomes obligated to fulfil the borrowed amount as per the contractual arrangements between the bank and the lender-turned-borrower. This changes the traditional lender-borrower relationship, requiring the lender-turned-borrower to adhere to the same obligations that may in the usual circumstances apply to any other borrower.
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> 106. We are of the considered view that there is a "deemed agreement" between the parties specified in Section 11 of the SARFAESI Act, insofar as the dispute relates to the matters so mentioned and is between the parties so specified thereunder. Thus, there is no need for an explicit written agreement between the parties. Section 11 of the SARFAESI Act creates a legal fiction by using the word "as if," which presumes the existence of an arbitration

agreement among the designated parties, namely a bank or financial institution or asset reconstruction company or qualified buyer. This provision negates the requirement for a formal written arbitration agreement, as it assumes consent for arbitration or conciliation concerning disputes related to securitization, reconstruction, or non-payment of amount due, including interest. The term "as if" must be given a meaningful effect, whereby the parties are to be treated as if they had willingly provided written consent. Consequently, the legal presumption under Section 11 of the SARFAESI Act exists independently of a formal arbitration agreement.

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118. The aforesaid is particularly relevant in the interpretation of Section 11 of the SARFAESI Act as the said provision by outlining a special provision for banks, financial institutions, ARCs etc., to invoke the remedy in case of dispute related to securitization, reconstruction or non-payment of any dues indicates the intention of the legislature to create a special mechanism for resolving such disputes. We are of the considered view that the usage of "shall" in the provision mandates the parties to adhere to the mentioned mechanism and restricts them from approaching any other forums. The parties cannot bypass or subvert it by seeking recourse elsewhere. If arbitration or conciliation is the prescribed route, then that prescribed route shall be followed.

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124. We summarize our final conclusion as under: -

(I) Section 11 of the SARFAESI Act deals with resolution of disputes relating to securitisation, reconstruction or non-payment of any amount due between the bank or financial institution or asset reconstruction company or qualified buyer.

(II) In order to attract the provision of Section 11 of the SARFAESI Act, twin conditions have to be fulfilled being; first, the dispute must be between any bank or financial institution or asset reconstruction company or qualified buyer and secondly, the dispute must relate to securitisation or reconstruction or non-payment of any amount due including interest. Where the aforesaid two conditions are found to be prima-facie satisfied, there the DRT will have no jurisdiction and the proper recourse would only be through Section 11 of the SARFAESI Act read with the Act, 1996.

(III) The expression "non-payment of any amount due, including interest" used in Section 11 of the SARFAESI Act is of wide import and would include a various range of scenarios of 'disputes' connected to unpaid amounts including those arising due to third-party defaults, such as indirect defaults of the borrowers.

(IV) Any dispute between two banks, financial institutions, asset reconstruction companies or qualified buyers etc., where the jural relation between the two is of a lender and borrower, then Section 11 of the SARFAESI Act will have no application whatsoever. The use of the phrase "any person" in the definition of 'borrower' in Section 2(f) of the SARFAESI Act, makes it abundantly clear that even a bank, financial institution or asset reconstruction company or qualified buyer can be considered a borrower, if they receive financial assistance from a bank or financial institution etc by providing or creating a security interest. Thus, a lender-turned-borrower would also fall

within the scope of a "borrower" under the SARFAESI Act and shall be governed by the same statutory framework as any ordinary borrower.

(V) Section 11 of the SARFAESI Act, provides for a statutory arbitration for any dispute mentioned therein between any of the parties enumerated thereunder. There is no need for an explicit written agreement to arbitrate between such parties in order to attract Section 11 of the SARFAESI Act. The said provision creates a legal fiction as regards the existence of an arbitration agreement notwithstanding whether such agreement exists or not in actuality.

(VI) Section 11 of the SARFAESI Act is mandatory in nature. The use of the word "shall" therein, the mandate of the said provision cannot be bypassed or subverted by the parties by seeking recourse elsewhere."

9. In the instant matter also the dispute in between the two banks which arose due to non-payment of amount including the interest by the borrower and as such clearly section 11 of the SARFAESI Act would apply and the matter is to be decided under the Arbitration and Conciliation Act, 1996.

10. In view of the discussions made here-in-above in the foregoing paragraphs the instant S.A. filed by the applicant is found devoid of any merit and accordingly **dismissed** and the parties are at liberty to approach the appropriate forum for deciding their matter under the Arbitration and Conciliation Act, 1996.

11. No order as to cost.

12. Registry is directed to send/serve copy of this order upon both the parties free of cost.

13. Order be uploaded in the website of the Tribunal.

14. Let the record be consigned to the Record Room.

The judgment is signed and pronounced in the open Tribunal on 27th day of August, 2026.

**(RAKESH PATI TIWARI)**
**Presiding Officer**
**DRT, Siliguri.**