2026:DHC:7306-DB

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Order reserved on: 24.08.2026***
Order pronounced on: 01.09.2026
Order uploaded on: 01.09.2026

\# **CNR No. DLHC010271852026**

\+ FAO(OS) (COMM) 157/2026 and CM APPL. 40223/2026

M/S AXIS FINANCE LTD .....Appellant

Through: Ms. Bhairavi S. N., Mr. Gaurav Nair, Ms. Nishtha Kumar, Ms. Veera Mathai, Mr. Shrom Sethi, Mr. Varun Agarwal, Ms. Adwitiya Ray and Ms. Kashish Bhushan, Advs.

versus

RISHAB MAGO & ORS. .....Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

ANIL KSHETARPAL, J.:

1. Through the present Appeal filed under Section 37(1)(b) of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as the 'A&C Act'], read with Section 13 of the Commercial Courts Act, 2015, the Appellant assails the correctness of the Order dated 28.04.2026 [hereinafter referred to as the 'Impugned Order'] passed by the learned Single Judge in O.M.P.(I)(COMM.) No.184/2026, whereby the application filed by the Appellant under Section 9 of the A&C Act came to be dismissed.

2. The Appellant had approached the learned Single Judge seeking interim measures for securing its outstanding dues of Rs.3,03,71,992/- pending commencement of arbitral proceedings. The learned Single Judge, however, declined to grant any interim protection, principally on the ground that the subject matter of the arbitration already stood secured by the mortgage created over the property furnished as security under the loan facilities.

3. Before proceeding further, it may be noted that the Respondents have also instituted proceedings before the Debts Recovery Tribunal [hereinafter referred to as the 'DRT'] in relation to the measures initiated by the Appellant under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [hereinafter referred to as the 'SARFAESI Act']. The said proceedings are pending. The question which consequently arises for consideration is whether, in the facts and circumstances of the present case, the Appellant ought to be granted further interim protection under Section 9 of the A&C Act for securing the outstanding amount, notwithstanding the remedy of filing application before the DRT for securing the due amount.

4. The facts, insofar as relevant for adjudication of the present Appeal, may briefly be noticed.

5. The Appellant, a Non-Banking Financial Company, extended two separate credit facilities to the Respondents under two Mortgage Loan Agreements, both dated 01.09.2023 [hereinafter collectively referred to as the 'Agreements']. Under the first Agreement, a credit

facility of Rs.1,64,64,000/- was extended under Loan Account No. 0456AHA00007294, while under the second Agreement, a credit facility of Rs.1,21,72,838/- was extended under Loan Account No. 0456MMA00010841. The two facilities, accordingly, aggregated to Rs.2,86,36,838/-. Both Agreements contain arbitration clauses.

6. As security for the aforesaid facilities, the Respondents created a mortgage by deposit of title deeds in respect of property bearing House No.543, Shivalik Enclave Ext. 5, Village Sante Majra, Hadbast No.186, Tehsil Kharar, District SAS Nagar, Mohali, Punjab-140301 [hereinafter referred to as the 'Mortgaged Property']. The mortgage was recorded through Memorandums of Entry dated 28.09.2023.

7. The Respondents thereafter allegedly committed defaults in repayment of the monthly instalments. In terms of the Agreements, such failure constituted an Event of Default and entitled the Appellant to take steps for recovery of the amounts due and enforcement of the security. The Loan Accounts were consequently classified as Non-Performing Assets with effect from 03.08.2025. The Respondents were intimated of such classification through letters dated 07.08.2025.

8. In view of the continued default, the Appellant initiated proceedings under the SARFAESI Act and issued a notice dated 30.09.2025 under Section 13(2) thereof, demanding an amount of Rs.2,82,26,538/- under the two Loan Accounts.

9. As the outstanding dues remained unpaid, the Appellant thereafter issued a notice dated 03.11.2025 under Section 13(4) of the SARFAESI Act for taking symbolic possession of the Mortgaged

Property. When the Appellant proceeded further with the recovery process, the Respondents approached the DRT by filing S.A. No.42 of 2026. The DRT, *vide* order dated 22.01.2026, directed the parties to maintain *status quo* till the next date of hearing.

10. In view of the challenge raised by the Respondents to the SARFAESI proceedings, the Appellant recalled the notices issued under the SARFAESI Act and relinquished the symbolic possession taken pursuant thereto. The Respondents, however, did not pursue S.A. No.42 of 2026, which consequently came to be dismissed for non-prosecution on 26.02.2026.

11. The Appellant thereafter reinitiated the statutory process and issued a fresh notice dated 11.03.2026 under Section 13(4) of the SARFAESI Act in respect of the Mortgaged Property. The said proceedings were again questioned before the DRT by Respondent No.1 by filing M.A. No.44 of 2026 in the earlier proceedings. The said proceedings before the DRT are stated to be pending.

12. Meanwhile, as on 13.04.2026, the outstanding amount payable by the Respondents under the two Loan Accounts had risen to Rs.3,03,71,992/-, apart from further interest.

13. The Appellant claims that the realisable value of the Mortgaged Property may not be sufficient to satisfy the entire outstanding liability. It accordingly relied upon certain other assets stated to belong to the Respondents, including two vehicles, stated to be valued at approximately Rs.10 lakhs and Rs.50 lakhs respectively, as well as certain bank accounts. The Appellant apprehended that such assets

may be alienated or encumbered, thereby prejudicing its ability to recover the amount which may ultimately be awarded in arbitration.

14. Since both Agreements contain arbitration clauses, the Appellant states that it is in the process of commencing arbitral proceedings for recovery of the outstanding dues. Pending commencement of arbitration, the Appellant approached this Court by filing O.M.P.(I)(COMM.) No.184/2026 under Section 9 of the A&C Act.

15. In the Section 9 Petition, the Appellant, *inter alia*, sought orders restraining the Respondents from alienating, transferring or creating third-party rights in respect of their assets, including the Mortgaged Property. The Appellant also sought disclosure of the Respondents' assets, particulars of their bank accounts and other financial information, as well as other protective measures, including appointment of a Receiver.

16. The learned Single Judge, *vide* the Impugned Order, dismissed the Section 9 Petition. The learned Single Judge proceeded on the basis that the parties had, at the inception of their relationship, secured the subject matter of the arbitration by creation of the mortgage over the Mortgaged Property and that the Appellant had not pleaded any requirement for additional protection, preservation or safeguarding of the Mortgaged Property. The learned Single Judge accordingly held that the subject matter of the arbitration already stood adequately secured and that no further interim protection was warranted.

17. Aggrieved by the aforesaid order, the Appellant has preferred

the present Appeal under Section 37(1)(b) of the A&C Act.

18. Heard learned counsel representing the Appellant at length and, with their able assistance, perused the record.

19. Learned counsel representing the Appellant submits that she is confining the relief sought in the present Appeal *qua* prayer (b), namely, restraining the Respondents from transferring, alienating or creating any third-party rights in respect of any of their assets/properties, including the Mortgaged Property.

20. Learned counsel representing the Appellant further submits that the learned Single Judge has proceeded on an erroneous understanding of the expression 'subject matter of the arbitration' and has treated the Mortgaged Property itself as the subject matter of the arbitration. It is submitted that the dispute between the parties concerns the outstanding amounts payable under the two Loan Agreements and that the Mortgaged Property is merely the security furnished for the said liability.

21. Learned counsel submits that the mere existence of a mortgage cannot, by itself, establish that the entire outstanding amount stands adequately secured. The outstanding liability, as on 13.04.2026, was Rs.3,03,71,992/-, whereas the Appellant had specifically pleaded before the learned Single Judge that the Mortgaged Property may not be sufficient to satisfy the entire outstanding dues.

22. It is further submitted that Section 9(1)(ii)(b) of the A&C Act expressly empowers the Court to pass an order for securing the

amount in dispute in the arbitration. According to learned counsel, the power under Section 9 is not confined to the security already created under the loan transaction and may extend to other unencumbered assets of the debtor where the circumstances warrant such protection.

23. At the outset, it may be noted that once a property is mortgaged, any subsequent transfer thereof does not affect the rights of the Mortgagee and remains subject to the existing mortgage. The rights of the Mortgagee, therefore, continue to have priority over any rights created in favour of a third party subsequent to the creation of the mortgage. Consequently, the apprehension expressed by the Appellant regarding creation of third-party rights in the Mortgaged Property, by itself, does not furnish sufficient ground for granting the relief sought.

24. It may further be noted that Section 9 of the A&C Act enables the Court to pass interim measures for protection and preservation of the subject matter of the Arbitration Agreement and for securing the amount in dispute in arbitration. The power under Section 9, however, is to be exercised having regard to the facts and circumstances of each case and the nature of the protection sought. In the present case, the Mortgaged Property has already been furnished as security for the amount in dispute in arbitration and the Appellant has also initiated proceedings under the SARFAESI Act for enforcement of the said security.

25. As regards the prayer for securing the amount in dispute in arbitration, the Appellant has stated that the outstanding amount is Rs.3,03,71,992/- as on 13.04.2026, apart from further interest. The

Appellant's principal contention is that the realisable value of the Mortgaged Property may not be sufficient to satisfy the entire outstanding amount and that the other assets of the Respondents ought, therefore, to be protected. However, the mere apprehension that the value of the secured property may ultimately prove insufficient, in the absence of any further material demonstrating an immediate necessity for protection under Section 9, cannot by itself justify the grant of the wide restraint sought by the Appellant in respect of all the assets of the Respondents.

26. Clause (b) of Section 9(1)(ii) of the A&C Act undoubtedly enables the Court to pass an order for securing the amount in dispute in arbitration. However, in the present case, arbitration has not yet been invoked by the Appellant. At the same time, proceedings initiated by the Respondents before the DRT in relation to the measures taken by the Appellant under the SARFAESI Act are pending. The Appellant is, therefore, not without a remedy for seeking appropriate protection in respect of the amount claimed by it. The Appellant can seek appropriate relief before the DRT in the pending proceedings. Permitting parallel proceedings before different forums for securing the same outstanding amount would not be appropriate.

27. It is also relevant that, apart from the two (02) vehicles and three (03) bank accounts, the Appellant has not disclosed any other assets of the Respondents against which protection is sought. It has also not been disclosed as to what amount is lying in the three bank accounts. The Appellant, in fact, seeks a direction requiring the Respondents to disclose their assets. In the facts of the present case,

such relief can more appropriately be sought before the DRT, where proceedings arising out of the enforcement measures taken by the Appellant under the SARFAESI Act are already pending.

28. In view of the aforesaid circumstances, particularly the existence of the Mortgaged Property as security, the pendency of proceedings before the DRT and the fact that the Appellant has not demonstrated sufficient circumstances warranting parallel interim protection under Section 9 of the A&C Act, this Court finds no ground to interfere with the Impugned Order passed by the learned Single Judge.

29. Accordingly, the present Appeal, along with the pending application, is dismissed.

ANIL KSHETARPAL, J.

AMIT MAHAJAN, J.

SEPTEMBER 01, 2026
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