2026:DHC:9102

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

Date of decision: 06th OCTOBER, 2026

IN THE MATTER OF:

\# **CNR No. DLHC010113352026**

\+ **ARB.P. 500/2026**

TATA CAPITAL HOUSING FINANCE LIMITED .....Petitioner

Through: Ms. Taniya Bansal, Advocate.

versus

TARUN KUMAR & ORS. .....Respondents

Through: Mr. M Sufian Siddiqui, Mr. Rakesh Bhugra, Mr. Niyazuddin, Mr. Mazhar Ahmed and Mr. Md. Saif, Advocates.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The present Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as *"the A&C Act"*), seeking the appointment of an independent sole arbitrator.

2. Shorn of unnecessary details, the facts leading to the filing of the present Petition are as under:

3. The Petitioner, Tata Capital Housing Finance Limited (TCHFL), is a Housing Finance Company registered and regulated by the Reserve Bank of India (RBI), inter alia engaged in the business of granting housing financial assistance and facilities. Respondent No. 1 and Respondent No. 2 are individual borrowers, and Respondent No. 3 is a business entity acting through Respondent No. 1.

4. It is stated the year 2016, the Respondents approached the Petitioner bank seeking financial assistance by way of a Home Loan / Loan Against Property facility. Based on the representations and assurances made by the Respondents regarding their creditworthiness and repayment capacity, the Petitioner sanctioned a loan facility to the tune of ₹1,51,50,000/- (Rupees One Crore Fifty-One Lakh Fifty Thousand only) vide Sanction Letter dated 29.09.2016 under Loan Account No. 9752394.

5. Pursuant to the sanction, the parties executed a formal Home Loan Agreement containing the agreed terms and conditions governing the facility. The loan was repayable in Equated Monthly Instalments (EMIs) due on the 9th day of each calendar month over a total tenure of 180 months, carrying a floating interest rate of 10.00% per annum.

6. To secure the repayment of the aforesaid facility, Respondent No. 1 created an equitable mortgage in favour of the Petitioner by depositing the original title deeds in respect of the immovable property being *Freehold Built-Up Entire First Floor (without roof/terrace rights) of Plot No. 3 in Block B-4, measuring 272 sq. yards, situated in Village Basai Darapur Colony (Rajouri Garden), New Delhi – 110027, together with 1/4th stilt car parking and common amenities.*

6. It is stated that subsequent to the disbursement, the Respondents availed a repayment moratorium during April–May 2020 and August 2020 pursuant to regulatory guidelines issued during the pandemic. Consequently, the loan account was restructured, and the total principal outstanding was revised to ₹1,54,88,674/-.

7. Following the initial compliance with the restructured terms, the Respondents failed to adhere to the financial discipline and defaulted on their regular EMI obligations. On account of continuous defaults, the

account of the Respondents was classified as a Non-Performing Asset (NPA) on 10.05.2025 in accordance with the prudential norms of the Reserve Bank of India.

8. On 12.05.2025, the Petitioner issued a Demand Notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), calling upon the Respondents to liquidate the aggregate outstanding liability of ₹1,20,95,229/- within 60 days from the date of receipt.

9. Between June 2025 and December 2025, the Respondents made intermittent partial payments toward the debt, including a sum of ₹1,52,000/- deposited on 27.02.2026. However, the Respondents failed to clear the entire overdue amount or regularise the account.

10. The loan agreement entered into between the parties embodies an arbitration clause under Clause 12.11, which provides that any dispute or difference arising out of or in connection with the loan facility shall be referred to arbitration to be held at Chennai, Delhi, or Mumbai under the provisions of the A&C Act.

11. Owing to the unresolved defaults, the Petitioner issued a formal statutory notice under Section 21 of the A&C Act on 08.01.2026, invoking the arbitration clause and calling upon the Respondents to either pay the outstanding amount of ₹1,18,76,586/- (as standing on 07.01.2026) or give concurrence for the constitution of an Arbitral Tribunal under the DIAC rules within 30 days.

12. The Respondents issued a reply dated 09.02.2026 contesting the Section 21 notice, disputing the quantum demanded, and declining to give consent for the proposed appointment of an arbitrator. It is stated that as of

11.03.2026, the total outstanding balance recoverable from the Respondents stood at ₹1,15,42,853.90/-.

13. Left with no alternative, the Petitioner instituted the present petition under Section 11(6) of the A&C Act.

14. A specific objection has been raised by the Learned Counsel for the Respondent that the arbitration clause in the loan agreement is not a valid clause and lacks mutuality. To buttress the said argument, reliance has been placed on the judgment of the Division Bench of this Court in Tata Capital Housing Finance Ltd. v. Shri Chand Construction & Apartment (P) Ltd., **2021 SCC OnLine Del 5091.** It is stated by the Respondent that the arbitration clause in invalid to the extent that it only gives one party, i.e. the Petitioner to terminate the arbitration proceedings upon the Petitioner coming within the purview of the SARFAESI Act, 2002.

15. Per contra, the Petitioner, on the other hand, has relied on the judgment of the Apex Court in M.D. Frozen Foods Exports (P) Ltd. v. Hero Fincorp Ltd., **(2017) 16 SCC 741** to submit that the law laid down in Shree Chand Constructions (supra) is *per incurium* in light of the above judgment, for the fact that arbitration proceedings are adjudicatory in nature while SARFAESI proceedings are enforcement in nature. Further, the remedy under SARFAESI is in addition to the remedy of arbitration, and the two can operate simultaneously.

16. It is submitted by the learned counsel for the Petitioner that in Shree Chand Constructions (supra), this Court while observing that the invocation of the SARFAESI Act would result in splitting of claims or cause of action between two forums, is not correct and does not correctly appreciate the ratio laid down in M.D. Frozen (supra).

17. Another substantial contention of the learned Counsel for the Petitioner is that Clause 12.11(b) cannot be read in isolation to defeat the substantive arbitration agreement contained in Clause 12.11(a). It is contended that even though the Petitioner is entitled to invoke remedies under the SARFAESI Act and has also issued notice under Section 13(2) of the SARFAESI Act, no further measures under the Act have been taken as on date.

18. Conclusively, it is the case of the Petitioner that even if it is presumed that Clause 12.11(a) of the Act is unilateral in nature, the said provision is severable and cannot by itself invalidate the substantive agreement and mutual intent of the parties to arbitrate under Clause 12.11(a). Reliance has been placed on Hindustan Construction Co. Ltd. v. Bihar Rajya Pul Nirman Nigam Ltd., **(2026) 3 SCC 264**.

19. Be that as it may, as a Section 11 Court, this Court would first limit itself to examining whether an arbitration clause exists between the parties to resolve their disputes.

20. Clause 12.11 of the Loan Agreement is reproduced hereunder:

> *"**12.11 Dispute Resolution***
> *a) If any dispute, difference or claim arises between the parties hereto in connection with this Agreement or the Security hereof or the validity, interpretation, implementation or alleged breach of this Agreement or anything done or omitted to be done pursuant to this Agreement or otherwise in relation to the Security hereof, the parties shall attempt in the first instance to resolve the same through negotiation/conciliation. If the dispute is not resolved through negotiation/conciliation within thirty days after commencement of discussions or such longer period as the parties agree to in writing, then the same shall be settled by arbitration to be held at*

Chennai/Delhi/Mumbai in accordance with the Arbitration and Conciliation Act 1996, or any statutory amendments thereof and shall be referred to a person to be appointed by TCHFL. In the event of death, refusal, neglect, inability, or incapability of the person so appointed to act as an Arbitrator, TCHFL may appoint a new arbitrator. The award of the arbitrator shall be final and binding on all parties concerned.

b) Notwithstanding anything contained hereinabove, in the event due to any change in the legal status of TCHFL or due to any change or amendment in law or notification being issued by the Central Government or otherwise, TCHFL comes under the purview of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act") or the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (the "DRT Act"), which enables TCHFL to enforce the security under the SARFAESI Act or proceed to recover dues from the Borrower under the SARFAESI Act and/or the DRT Act, the arbitration provisions hereinbefore contained shall, at the option of TCHFL, cease to have any effect and if arbitration proceedings are commenced but no award is made, then at the option of TCHFL such proceedings shall stand terminated and the mandate of the arbitrator shall come to an end from the date when such law or its change/amendment or the notification, becomes effective or the date when TCHFL exercises its option of terminating the mandate of arbitrator, as the case may be. Provided that neither a change in the legal status of TCHFL nor a change/amendment in law or issuance of notification as referred to in this sub paragraph above, will result in invalidating an existing award passed by an Arbitrator pursuant to the provisions of this Agreement.

c) The Borrower's liability hereunder shall not be affected, terminated or prejudiced by the death,





insolvency or any incapacity of the Borrower, but such liability shall continue in full force and effect and shall be binding on the Borrower's successors as provided in the title and as the case may be. ”

21. A perusal of the said clause, specifically Clause 12.11(a), demonstrates that both the parties have the power to invoke the arbitration clause and refer their disputes to arbitration. Clause 12.11(b) stipulates that, in case the Petitioner comes within the purview of SARFAESI, the arbitration proceedings, at the option of the Petitioner, can be terminated. It is the specific contention of the Respondent that, in light of the lack of mutuality between the parties with respect to the termination of arbitration proceedings, the arbitration clause becomes void.

22. In the opinion of this Court, both parties had agreed to resort to arbitration as the mode of adjudication of disputes between the parties. The question as to who can terminate the arbitration is a question that would be covered by the provisions of the A & C Act and not by the agreement between the parties.

23. It is no longer *res integra* that a Section 11 Court only needs to limit itself to seeing whether there exists an arbitration clause in the agreement. As long as the same is answered in the affirmative, all other issues can be left open for the Arbitral Tribunal to adjudicate upon, until and unless the claim is ex facie deadwood.

24. Facts as disclosed reveal that the Petitioner issued a Demand Notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), calling upon the Respondents to liquidate the aggregate outstanding liability of ₹1,20,95,229/-. Be that as it may, the same would not act as a hindrance

for the parties to resort to arbitration proceedings in light of the law laid down in M.D. Frozen (supra). The Apex Court in M.D. Frozen Foods Exports (P) Ltd. v. Hero Fincorp Ltd., **(2017) 16 SCC 741,** has observed as under:

> *"**27.** On the Sarfaesi Act being brought into force seeking to recover debts against security interest, a question was raised whether parallel proceedings could go on under the RDDB Act and the Sarfaesi Act. This issue was clearly answered in favour of such simultaneous proceedings in Transcore v. Union of India [Transcore v. Union of India, (2008) 1 SCC 125 : (2008) 1 SCC (Civ) 116] . A later judgment in Mathew Varghese v. M. Amritha Kumar [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254] also discussed this issue in the following terms: (Mathew Varghese case [Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254] , SCC pp. 640-41, paras 45-46)*
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> > *"45. A close reading of Section 37 shows that the provisions of the Sarfaesi Act or the Rules framed thereunder will be in addition to the provisions of the RDDB Act. Section 35 of the Sarfaesi Act states that the provisions of the Sarfaesi Act will have overriding effect notwithstanding anything inconsistent contained in any other law for the time being in force. Therefore, reading Sections 35 and 37 together, it will have to be held that in the event of any of the provisions of the RDDB Act not being inconsistent with the provisions of the Sarfaesi Act, the application of both the Acts, namely, the Sarfaesi Act and the RDDB Act, would be complementary to each other. In this context reliance can be placed upon the decision in Transcore v. Union of India [Transcore v. Union of India, (2008) 1 SCC 125 : (2008) 1 SCC (Civ) 116] . In para 64 it is stated as under after referring to Section 37 of the Sarfaesi Act: (SCC p. 162)*

'64. ... According to American Jurisprudence, 2d, Vol. 25, p. 652, if in truth there is only one remedy, then the doctrine of election does not apply. In the present case, as stated above, the NPA Act is an additional remedy to the DRT Act. Together they constitute one remedy and, therefore, the doctrine of election does not apply. Even according to Snell's Principles of Equity (31st Edn., p. 119), the doctrine of election of remedies is applicable only when there are two or more co-existent remedies available to the litigants at the time of election which are repugnant and inconsistent. In any event, there is no repugnancy nor inconsistency between the two remedies, therefore, the doctrine of election has no application.'

46. A reading of Section 37 discloses that the application of the Sarfaesi Act will be in addition to and not in derogation of the provisions of the RDDB Act. In other words, it will not in any way nullify or annul or impair the effect of the provisions of the RDDB Act. We are also fortified by our above statement of law as the heading of the said section also makes the position clear that application of other laws is not barred. The effect of Section 37 would, therefore, be that in addition to the provisions contained under the Sarfaesi Act, in respect of proceedings initiated under the said Act, it will be in order for a party to fall back upon the provisions of the other Acts mentioned in Section 37, namely, the Companies Act, 1956; the Securities Contracts (Regulation) Act, 1956; the Securities and Exchange Board of India Act, 1992; the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, or any other law for the time being in force."

(emphasis in original)

28. *These observations, thus, leave no manner of doubt and the issue is no more res integra, especially keeping in mind the provisions of Sections 35 and 37 of the Sarfaesi Act, which read as under:*

*"**35. The provisions of this Act to override other laws**.—The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.*

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***37. Application of other laws not barred**.—The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 1956 (1 of 1956), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) or any other law for the time being in force."*

***29.** The aforesaid two Acts are, thus, complementary to each other and it is not a case of election of remedy.*

***30.** The only twist in the present case is that, instead of the recovery process under the RDDB Act, we are concerned with an arbitration proceeding. It is trite to say that arbitration is an alternative to the civil proceedings. In fact, when a question was raised as to whether the matters which came within the scope and jurisdiction of the Debt Recovery Tribunal under the RDDB Act, could still be referred to arbitration when both parties have incorporated such a clause, the answer was given in the affirmative. [HDFC Bank Ltd. v. Satpal Singh Bakshi, 2012 SCC OnLine Del 4815 : (2013) 134 DRJ 566] That being the position, the appellants can hardly be permitted to contend that the initiation of arbitration proceedings would, in any manner, prejudice their rights to seek relief under the Sarfaesi Act.*

***31.** The discussion in the impugned order [M.D. Frozen Foods Exports (P) Ltd. v. Hero Fincrop Ltd., 2017 SCC OnLine Del 9190] refers to a judgment of*

the Full Bench of the Delhi High Court in HDFC Bank Ltd. v. Satpal Singh Bakshi [HDFC Bank Ltd. v. Satpal Singh Bakshi, 2012 SCC OnLine Del 4815 : (2013) 134 DRJ 566] opining that an arbitration is an alternative to the RDDB Act. In that context, the learned Single Judge [M.D. Frozen Foods Exports (P) Ltd. v. Hero Fincrop Ltd., 2017 SCC OnLine Del 9190] has rightly held that this Full Bench judgment [HDFC Bank Ltd. v. Satpal Singh Bakshi, 2012 SCC OnLine Del 4815 : (2013) 134 DRJ 566] does not, in any manner, help the appellants but, in fact, supports the case of the respondent. ***The jurisdiction of the civil court is barred for matters covered by the RDDB Act, but the parties still have freedom to choose a forum, alternate to, and in place of the regular courts or judicial system for deciding their inter se disputes. All disputes relating to the "right in personam" are arbitrable and, therefore, the choice is given to the parties to choose this alternative forum.*** *A claim of money by a bank or a financial institution cannot be treated as a "right in rem", which has an inherent public interest and would thus not be arbitrable.*

32. The aforesaid is not a case of election of remedies as was sought to be canvassed by the learned Senior Counsel for the appellants, since the alternatives are between a civil court, Arbitral Tribunal or a Debt Recovery Tribunal constituted under the RDDB Act. Insofar as that election is concerned, the mode of settlement of disputes to an Arbitral Tribunal has been elected. The provisions of the Sarfaesi Act are thus, a remedy in addition to the provisions of the Arbitration Act. *In Transcore v. Union of India [Transcore v. Union of India, (2008) 1 SCC 125 : (2008) 1 SCC (Civ) 116] it was clearly observed that the Sarfaesi Act was enacted to regulate securitisation and reconstruction of financial assets and enforcement of security interest and for matters connected therewith. Liquidation of secured interest through a more expeditious procedure is what has been*

envisaged under the Sarfaesi Act and the two Acts are cumulative remedies to the secured creditors.

33. Sarfaesi proceedings are in the nature of enforcement proceedings, while arbitration is an adjudicatory process. In the event that the secured assets are insufficient to satisfy the debts, the secured creditor can proceed against other assets in execution against the debtor, after determination of the pending outstanding amount by a competent forum.

34. *We are, thus, unequivocally of the view that the judgments of the Full Bench of the Orissa High Court in Sarthak Builders (P) Ltd. v. Orissa Rural Dev. Corpn. Ltd. [Sarthak Builders (P) Ltd. v. Orissa Rural Dev. Corpn. Ltd., 2014 SCC OnLine Ori 75 : AIR 2014 Ori 83] , the Full Bench of the Delhi High Court in HDFC Bank Ltd. v. Satpal Singh Bakshi [HDFC Bank Ltd. v. Satpal Singh Bakshi, 2012 SCC OnLine Del 4815 : (2013) 134 DRJ 566] and the Division Bench of the Allahabad High Court in Pradeep Kumar Gupta v. State of U.P. [Pradeep Kumar Gupta v. State of U.P., 2009 SCC OnLine All 877 : AIR 2010 All 3] lay down the correct proposition of law and the view expressed by the Andhra Pradesh High Court in Deccan Chronicles Holdings Ltd. v. Union of India [Deccan Chronicles Holdings Ltd. v. Union of India, 2014 SCC OnLine AP 104 : AIR 2014 AP 78] following the overruled decision of the Orissa High Court in Subhash Chandra Panda v. State of Orissa [Subhash Chandra Panda v. State of Orissa, 2008 SCC OnLine Ori 10 : AIR 2008 Ori 88] does not set forth the correct position in law.* ***Sarfaesi proceedings and arbitration proceedings, thus, can go hand in hand****."*

(emphasis supplied)

25. This Court has considered the ratio of the Division Bench of this Court in Shree Chand Constructions (supra), and is of the opinion that the

same is contrary to the law laid down by the Apex Court in M.D. Frozen (supra).

26. Since this Court is of the opinion that the Judgment of the Division Bench is contrary to the law laid down by the Apex Court in M.D. Frozen (supra), this Court deems it appropriate to place the matter before Hon'ble the Acting Chief Justice for constitution of an appropriate Bench to consider as to whether the Judgment of this Court in Shree Chand Constructions (supra) is *per incurium* in light of the decision in M.D. Frozen (supra) or not.

SUBRAMONIUM PRASAD, J

OCTOBER 06, 2026
VG