IN THE DEBTS RECOVERY TRIBUNAL II, KARNATAKA AT BENGALURU

Dated this 30th Day of January, 2026

Present: Sri. T. RAJESH
Presiding Officer

SA.No.131/2023

BETWEEN:

M/s. Housing Development Finance Corporation Ltd,
A Company incorporated under the companies Act, 1956,
Having its office at:
H.D.F.C. House, No. 51,
Kasturba Road, Bengaluru 560 001.
Represented by its
Deputy Manager, Credit Risk Management (Legal),
Sri. Shridhar Chinni. **...APPLICANT**

AND:

1. M/s. Edelweiss Asset Reconstruction Company Limited,
EARC Trust Sc 439,
Having its registered office at:
Edelweiss House, Off. CST Road,
Kalina, Mumbai 400 098.

Also having office at:
Krishna Arcade, Bet. 11th and 12th Cross,
Margosa Mian Road, Malleshwaram,
Bengaluru 560 003.

Represented by its Authorised representative.

2. M/s. Aswani Properties,
A registered partnership firm having its office at:
No. 50/7, 2nd and 3rd floor,
16th Main, 39th Cross,
Jayanagar 4th 'T' Block,
Bengaluru 560 041.

Represented by its Managing partner and Authorised Signatory Mr. C. Anand Reddy.

3. Mr.C. Anand Reddy,
Son of Mr. Chinnaswamy Reddy,
Aged about 47 years.

Residing at:
No. 82, Sri Ananda Nilaya Royal Hermitage,
5th Cross, Bannerghatta Road, Gottigere,
Bengaluru 560 083.

Also at:
No. 49, Govinda Shetty Palya,
Near Venkateshwara Darshini Hotel,
Bengaluru 560 100.

Also at:
Aswani properties India Pvt. Ltd.
50/7, 3rd Floor, 16th Main,
39th Cross, 4th 'T' Block, Jayanagar,
Bengaluru 560 041.

4. Sri. Venkata Ramana Asula,
Son of Mr. Ventataiah Asula,
Aged about 65 years.

Residing at:
Plot No. 1101, Bhagat Singh Nagar Phase 2,
Near Sri Krishna Temple, JNTU Kukatpally,
Hyderabad 500 085, Telangana.

Also at:
Aswani properties India Pvt. Ltd.
50/7, 3rd Floor, 16th Main,
39th Cross, 4th 'T' Block, Jayanagar,
Bengaluru 560 041.

5. Smt. Asula Bhanu Saraswathi,
Major.

Residing at:
Plot No. 1101, Bhagat Singh Nagar Phase 2,
Near Sri Krishna Temple, JNTU Kukatpally,
Hyderabad 500 085, Telangana.

Also at:
Aswani properties India Pvt. Ltd.
50/7, 3rd Floor, 16th Main,

39th Cross, 4th 'T' Block, Jayanagar,
Bengaluru 560 041.

6. Smt. Pratima Anand Reddy,
Major.

Residing at:
No. 82, Sri Ananda Nilaya Royal Hermitage,
5th Cross, Bannerghatta Road, Gottigere,
Bengaluru 560 083.

Also at:
Aswani properties India Pvt. Ltd.
50/7, 3rd Floor, 16th Main,
39th Cross, 4th 'T' Block, Jayanagar,
Bengaluru 560 041.

7. Sri. Vinayak Sadananda Tamse,
Major.

Residing at:
Plot No. 1101, Bhagat Singh Nagar Phase 2,
Near Sri Krishna Temple, JNTU Kukatpally,
Hyderabad 500 085, Telangana.

Also at:
Aswani properties India Pvt. Ltd.
50/7, 3rd Floor, 16th Main,
39th Cross, 4th 'T' Block, Jayanagar,
Bengaluru 560 041.

8. Aswani properties India Pvt Ltd.
A company incorporated under the companies Act, 1956,
Having its registered office at:
50/7, 3rd Floor, 16th Main,
39th Cross, 4th 'T' Block, Jayanagar,
Bengaluru 560 041.
Represented by its Managing Director.

9. Mr. Sunil Kumar,
Son of Mr. B. Rama Reddy,
Aged about 35 years.

10. Mr. B. Rama Reddy,
Son of Late Bodappa Reddy.
Aged about 38 years.

11. Mr. Nagaraj,
Son of Mr. B. Rama Reddy,
Aged about 38 years.

Respondents No. 9 to 11 residing at:
No. 49, Govinda Shetty Palya,
Near Venkaateshwara Darshini Hotel,
Bengaluru 560 100.

12. Mr. M Sridhar,
Son of Late K.H. Muniswamy Reddy,
Aged about 51 years.
Residing at No. 64, 1st Cross, 1st Mian,
B.T.M. 2nd stage,
Bengaluru 560 076.

13. Mr. Suresh K. Kotian,
Son of Mr. K Kotian,
Aged about 37 years.

14. Mrs. Tripthi,
Wife of Mr. Suresh k Kotian.
Major.

Respondents No. 13 & 14 residing at:
Flat No. A/6/007, Aswani Aaeesha,
Sy. No. 23 & Sy. No. 25/2, Doddanagamangala Village,
Begur Hobli, Bengaluru South Taluk, Bengaluru.

15. Ms. S Swetha,
Daughter of Mr. R. Subramanyam.
Aged about 37 years,
Residing at:
Flat No. A/5/ 105, Aswani Aaeesha,
Sy. No. 23 & Sy. No. 25/2, Doddanagamangala Village,
Begur Hobli, Bengaluru South Taluk, Bengaluru.

16. Mr. Krishnakant Mishra,
Son of Mr. Rajendra Mishra,
Aged about 30 years.
Residing at:
Flat No. A/5/009, Aswani Aaeesha,
Sy.No. 23 & Sy. No. 25/2, Doddanagamangala Village,

Begur Hobli, Bengaluru South Taluk, Bengaluru.

17. Mr. Markanday Kumar Mishra,
Son of Mr. Tarkeshwar Mishra.
Aged about 36 years.

18. Mrs. Jayshree Mishra,
Wife of Mr. Markanday Kumar Mishra,
Major.

Respondents No. 17 and 18 residing at:
Flat No. A/5/306. Aswani Aaeesha,
Sy. No. 23 & Sy. No. 25/2, Doddanagamangala Village,
Begur Hobli, Bengaluru South Taluk, Bengaluru.

19. Mr. Ashish Kumar,
Son of Mr. Gauri Shankar Prasad,
Aged about 37 years.

20. Mrs. Sandhya Kumari,
Wife of Mr. Ashish Kumar,
Aged about 32 years.

Respondents No. 19 and 20 residing at:
Flat No. A/10/003, Aswani Aaeesha,
Sy. No. 23 & Sy. No. 25/2, Doddanagamangala Village,
Begur Hobli, Bengaluru South Taluk, Bengaluru.

21. M/s. Asset reconstruction company
(India) Ltd.
A company incorporated under the
Companies Act, 1956,
Having its registered office at:
The Ruby, 10th Floor 29, Senapati Bapat
Marg,
Dadar (West), Mumbai- 400 028. **...RESPONDENTS**

<u>Counsel on record/appeared for:</u>

Applicant	: M/s. Vruksha Law Chambers
Respondent No.1	: M/s. Shettar and Associates
Respondent No. 2 to 12	: Exparte
Respondent No. 13 to 18	: Parvathy R Nair
Respondent No. 21	: Prutha Bharathi

FINAL ORDER

1. This Securitization Application in short the SA if filed u/s 17 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, herein referred to as 'SARFEASI ACT' or 'The ACT' as the case be with a prayer to set aside the order procured by the 1st respondent u/s 14 of the Act.
2. The applicant claims to be a leading Housing Finance Company is impugning the measures contending that the measures continued by the 1st respondent claiming to have got assigned the Debt from M/s. India Bulls Housing Finance Ltd (IHFL). It is contended by the applicant that the respondents No. 13 to 20 had availed a financial assistance from the applicant for the purchase of schedule property to be developed by the 2nd respondent who has already secured the property with Reliance Home Finance and India Bulls Housing Finance. It is also contented by the applicant that the said firms has issued No-objections certificate for creation of transaction, which the applicant claim is a mortgage and that the loan amounts were disbursed to the designated escrow account of the 2nd respondent which the applicant claims was under the exclusive control of India Bulls Housing Finance; the Assignor from whom the 1st respondent got the debt assigned.
3. The applicant had also put forth the contention that in respect of one of the apartments, the entire sale consideration has been remitted to the escrow account, and hence there is no justification is including the said apartment in the proceedings. It is also stated by the applicant

that clue to the failure of the 2nd respondent the allottees had completed the construction.

4. It is further case of the applicant that their earnest efforts to apprise the 1st respondent of their claim does not yield any result as their communication in that regard remain unattended by the 1st respondent.
5. The 1st respondent though filed detailed statement of objections, had taken a contention that this Tribunal have no jurisdiction to entertain a dispute of this nature as the dispute cannot be adjudicated u/s 17 of the Act. Hence the preliminary objection was heard.
6. The Ld. Counsel for the 1st respondent place reliance on the decision of the Apex Court "Bank of India Vs. Sri. Nangli Rice Mills Pvt Ltd & others (2025) SCC Online SC 1229" contending that this Tribunal cannot adjudicate the dispute as the parties to be left the matter to be resolved through the mechanism provided under the statute.
7. The Hon'ble Apex Court in above decision had after interpreting section 11 of the Act has held in Para 122, 123 & 124 as follows:-

"122. While there is no doubt that the present case involves two banks, and that both banks may be said to be CPSEs, however the nature of the dispute between them by no stretch of imagination could be said to one pertaining to a commercial contract entered into between them. Rather, the dispute between them arises out of two separate agreements, that were executed by them with the borrower company herein, independent of each other. We are at a loss to understand, how the Respondent bank could have ignored the aforesaid clause 3.3 of the AMRCD Memorandum and asserted that the dispute between it and the Appellant bank ought to be resolved under the framework of the said memorandum.

123. Secondly, the dispute resolution mechanism envisaged Under

Section 11 of the SARFAESI Act has been statutorily provided and mandated. The dispute also pertains one between two banks in connection with the right of one of the banks for enforcement of a common security interest given to them by the borrower. Where such enforcement of security interest, by either bank is sought to be undertaken in terms of the SARFAESI Act, the statutory arbitration provided Under Section 11 of the SARFAESI Act would immediately be attracted, as soon as there is a dispute in respect to the same with another bank, financial institution, ARC etc, as enumerated in the said provision. Section 11 of the SARFAESI Act, statutorily empowers such parties mentioned therein, to seek resolution of their dispute by way of arbitration, and their right cannot be curtailed or confined to any executive guideline or memorandum, particularly when such memorandum makes no mention of the SARFAESI Act or disputes generally covered thereunder. In such circumstances, the aforesaid AMRCD Memorandum, can by no extent supplant the statutorily prescribed provision of Section 11 of the SARFAESI Act, which empowers the parties enumerated thereunder to opt for ad hoc arbitration for resolution of disputes specified therein.

G. FINAL CONCLUSION

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."*

8. Hence going by the above settled position, the only question that is to be gone into is whether the lis of this matter falls with in the ambit of section 11 of the Act which pertain to the right and entitlement of secured creditors interse and not that of the borrowers liability. The only question involved in this SA is as to the entitlement of the 1st respondent to initiate and continue the measures against the so claimed right of the applicant and hence the scope of enquiry is only limited the question whether the security created in favour of the assignor of 1st defendant have preminance over the security stated to have created in favour of the applicant, which very well come within the realm of section 11 of the Act. Hence on consideration of the above

this Tribunal is of the view that this SA is not maintainable.

9. Therefore,

I. S.A 131 of 2023 stands disposed of.

II. The parties will be at liberty to initiate Arbitration u/s 11 of the Act and it will be open for the applicant to put forth the contention that they were diligently prosecuting this matter from 15.05.2023 when the SA was filed in their endeavor to meet the issue as to limitation, is any.

III. Interim order, if any granted and subsisting till this day stands vacated.

IV. Pending I.A's if any are all disposed of in terms of this Order.

V. In the facts and circumstances of the case there will no-orders as to cost.

VI. Issue copy to all parties concerned.

[Dictated to the Stenographer (AJ), transcribed by her, corrected and signed and pronounced by me in the Open Court, this the 30th Day of January, 2026].

Sd/-
(T. RAJESH)
PRESIDING OFFICER