



REAL ESTATE

SARFAESI

When a Loan Takeover Triggers Statutory Arbitration: A Critical Analysis of the Bombay High Court's Decision in Aditya Birla Housing Finance Ltd. v. Axis Bank Ltd.

The interface between the Arbitration and Conciliation Act, 1996 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 frequently presents complex jurisdictional questions, particularly when competing claims over secured assets arise in the context of loan takeover transactions. The judgment of the Bombay High Court in Aditya Birla Housing [...]

AUTHOR Abdullah Qureshi, Rahul Sundaram

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The interface between the Arbitration and Conciliation Act, 1996 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 frequently presents complex jurisdictional questions, particularly when competing claims over secured assets arise in the context of loan takeover transactions. The judgment of the Bombay High Court in *Aditya Birla Housing Finance Ltd. v. Axis Bank Ltd. and Ors.*, Commercial Arbitration Application No. 95 of 2026, decided by Justice Sandeep V. Marne on 6 May 2026, addresses a seminal issue concerning the permissibility of statutory arbitration under Section 11 of the SARFAESI Act between an existing secured creditor and a financial institution that is prevented from attaining the status of a secured creditor over the same property.

The applicant, Aditya Birla Housing Finance Ltd., is a financial institution engaged in housing finance. Respondent No. 1, Axis Bank Ltd., is a banking company. Respondents Nos. 2 to 5 comprise a corporate borrower incorporated under the Companies Act, 1956, and its directors. The borrowers had initially availed cash credit and overdraft facilities from Axis Bank. On 17 July 2023, they approached Aditya Birla seeking credit facilities of Rs. 4,70,05,000/- to take over the existing Axis Bank facilities. Aditya Birla sanctioned the loan against the proposed mortgage of a property in South West Delhi, which was already encumbered in favour of Axis Bank. On 4 September 2023, the parties executed a loan agreement containing an arbitration clause, and on 12 September 2023, the borrowers executed an irrevocable Power of Attorney empowering Aditya Birla to collect title documents from Axis Bank. Aditya Birla disbursed Rs. 1,13,30,147/- directly into the borrowers' accounts with Axis Bank to close the existing facilities, and a debit freeze on the overdraft account was implemented on 13 September 2023. Despite this, Axis Bank refused to hand over the title deeds. Subsequently, on 8 February 2024, the borrowers' accounts with Aditya Birla were classified as NPAs. Unbeknownst to Aditya Birla, the borrowers requested Axis Bank to lift the debit freeze on 26 February 2024, which Axis Bank did on 7 March 2024, allowing the borrowers to resume drawing from the overdraft. Axis Bank ultimately refused to release the title deeds, claiming Rs. 88,90,126/- remained outstanding. Aditya Birla filed a Section 9 petition seeking interim measures, resulting in the deposit of title deeds with the Court registry. By judgment dated 19 January 2026, the Section 9 petition was decided, leaving open the question of arbitrability between Aditya Birla and Axis Bank. Axis Bank denied any contractual or statutory arbitration agreement, prompting the present Section 11 application.

The applicant contended that the dispute squarely fell within Section 11 of the SARFAESI Act, as it concerned non-payment of amounts due between a bank and a financial institution. It was argued that the plain language of Section 11 does not restrict the remedy to existing secured creditors, and that the Supreme Court's judgment in *Bank of India v. Sri Nangli Rice Mills Private Limited* supported a broad interpretation encompassing disputes triggered by borrower default. Reliance was also placed on the Calcutta High Court decision in *Reliance Commercial Finance Limited v. Axis Bank Limited*, wherein a similar loan takeover was held to attract Section 11 arbitration. The applicant emphasized that Axis Bank's refusal to release title deeds prevented it from creating a mortgage, and that the dispute inherently concerned rights over the same property.

Axis Bank, represented by Senior Advocate, vehemently opposed the application. It was contended that the applicant had taken inconsistent stands, having treated Axis Bank as a third party in the Section 9 proceedings. Axis Bank argued that Section 11 of the SARFAESI Act applies only to disputes inter se between secured creditors, and since Aditya Birla admittedly did not have a created security interest, it could not invoke any SARFAESI provision, including Section 11. Reliance was placed on the Supreme Court judgment in *North Eastern Development Finance Corporation Ltd. (NEDFI) v. L. Doulo Builders and Suppliers Co. P. Ltd.* to assert that secured creditor status is a condition precedent. Axis Bank further submitted that the statutory arbitration mechanism is confined to competing secured creditors concerning priority of claims, and that no enforceable claim capable of arbitration existed between the parties. The borrowers, , also opposed the application, questioning the applicant's mortgage rights.

The Court framed the central issue as whether Section 11 of the SARFAESI Act permits arbitration between an existing secured creditor and a financial institution prevented from becoming a secured creditor over the same property, and whether the dispute related to non-payment of amounts due within the meaning of the provision. The Court distinguished the NEDFI judgment, noting it addressed enforcement of security under Sections 13 and 14, not the distinct question of arbitration under Section 11. Analysing *Bank of India v. Sri Nangli Rice Mills* in depth, the Court held that paragraphs 69 to 71 thereof, which discuss disputes between secured creditors, were context-specific to DRT jurisdiction and did not exhaustively restrict Section 11 to existing secured creditors. The Court emphasized paragraph 82 of the Supreme Court judgment, which used the permissive "likely" concerning priority disputes, indicating other dispute categories could arise. Paragraphs 85 and 87 were relied upon to demonstrate the broad phrasing of "non-payment of any amount due including interest," covering scenarios triggered by third-party borrower defaults. Crucially, paragraph 89 was cited for the proposition that Section 11 applies even when the underlying

charge falls outside the Act's enforcement ambit under Section 31(b), provided the dispute concerns inter-creditor rights.

The Court reasoned that giving a narrow interpretation to Section 11 would frustrate its legislative object of ensuring that creditor squabbles do not impede recovery proceedings. In the peculiar facts before it, Axis Bank's refusal to part with title deeds had directly prevented the applicant from creating its mortgage, rendering the dispute one concerning rights over the same property against which both had disbursed loans to the same borrowers. The Court held that the dispute was intrinsically linked to the borrowers' non-payment and the consequent competing claims, attracting Section 11. It further held that the applicant's description of Axis Bank as a third party in Section 9 proceedings did not preclude a statutory reference, as interim measures against third parties are permissible, and the present application raised a distinct legal issue.

Accordingly, the Court allowed the application and appointed Hon'ble Smt. Justice Anuja Prabhudessai, Former Judge of the Bombay High Court, as the Sole Arbitrator to adjudicate the disputes between all parties. The Court directed that while contractual arbitration would govern the applicant-borrower disputes, statutory arbitration under Section 11 of the SARFAESI Act would govern the applicant-Axis Bank disputes, with both sets of disputes to be decided by the same Arbitral Tribunal. The Arbitrator was requested to forward the statutory disclosure statement within two weeks, and parties were directed to appear before her for procedural directions. The Arbitrator's fees were to be governed by the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018, to be borne equally by the parties subject to the final award. All merits-based contentions were expressly kept open. The operative part of the judgment was stayed for six weeks qua Axis Bank alone.

This judgment marks a significant judicial contribution to the understanding of Section 11 of the SARFAESI Act, clarifying that the statutory arbitration mechanism is not the exclusive preserve of existing secured creditors but extends to financial institutions whose ability to create security is obstructed by the conduct of another creditor. By permitting a unified arbitration encompassing both contractual and statutory claims, the Court has facilitated a pragmatic resolution mechanism that aligns with the SARFAESI Act's overarching objective of expeditious debt recovery without inter-creditor litigation derailing the process.

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