IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE :-
THE HON'BLE JUSTICE SHAMPA SARKAR
&
THE HON'BLE JUSTICE AJAY KUMAR GUPTA

F.M.A 161 OF 2026
With
CAN 1 of 2026

Piramal Capital & Housing
Finance Limited & Ors.
vs.
Golam Sabir & Ors.

For the Appellants	: Ms. Soni Ojha, Adv. Ms. S.B. Chatterjee, Adv.
For the Respondent Nos. 1 & 2	: Mr. Proshit Deb, Adv. Ms. Sucheta Mitra, Adv.
Judgment reserved on	: 23.03.2026
Judgment pronounced on	: 09.04.2026
Judgment uploaded on	: 09.04.2026.

Shampa Sarkar, J.

1. The appeal arises out of a judgment and order dated December 24, 2025 passed by a learned Single Judge in WPA No. 14007 of 2025. The learned Judge held that, as the claim of the Financial Institution/appellants was below Rs. 20 lakhs, as would be evident from the notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act'), the

appellants could not undertake any action under the SARFAESI Act, being hit by the threshold limit set forth in the notification dated February 12, 2021.

2. Ms. Ojha, learned Advocate for the appellants submitted that the appellant No.1 belonged to a special category, being a company registered under the National Housing Bank Act, 1987 (hereinafter referred to as the NHB Act). The NHB Act was specially enacted for Housing Finance Companies (HFC). Therefore, the notification of 2021 would not be applicable to HFCs. The learned Judge failed to consider the said aspect and also failed to appreciate the fact that, separate set of notifications were issued by the Central Government, (Ministry of Finance) under the provisions of the NHB Act, which were exclusively applicable to HFCs. The appellants would fall within the definition of any other institution under Section 2(1)(m)(iv) of the SARFAESI Act. The appellants belonged to a special genre of companies created under and regulated by a special enactment. Thus, the appellant No.1 could not be treated as a Non-Banking Financial Company. The provisions of the SARFAESI Act and the notifications framed thereunder, which were applicable to NBFCs would not be applicable to the appellants. The NHB Act did not postulate the applicability of Chapter III-B read with Section 45-I (f) of the Reserve Bank of India Act, 1934 (hereinafter referred to the RBI Act). Therefore, HFCs could not be deemed to have been included under the umbrella of NBFCs. For this reason the minimum pecuniary threshold of 20 lakhs in order to initiate SARFAESI proceeding would not be applicable to the appellants.

3. According to Ms. Ojha, the Central Government had issued a separate set of notifications for HFCs. Thus, those notifications which were issued by

the Ministry of Finance with regard to NBFCs as defined under clause (f) of Section 45-I of the RBI Act, would not be applicable to HFCs registered under Section 29A of the NHB Act.

4. She also raised the question of maintainability of the writ petition in view of the fact that an alternative efficacious remedy was available before the Debts Recovery Tribunal. Reliance was placed on the decision of the Madhya Pradesh High Court in the matter of ***Virendra Rathore and Others vs. Tehsildar Distt. Mandsaur and Others.*** Reported in ***2024 SCC OnLine MP 3427*** in support of the contention that the Madhya Pradesh High Court had held that a notification issued by the Central Government, Ministry of Finance on the applicability of the SARFAESI Act on NBFCs, shall not be applicable in respect of HFCs, but only in the context of NBFCs so defined under Chapter III-B of the RBI Act. An HFC was entitled under the law to take recourse to the SARFAESI Act for recovery of loans and borrowings irrespective of the fact that the claim was below the threshold of 20 lakhs.

5. Mr. Proshit Deb, learned Advocate for the writ petitioner submitted that, the appellant No. 1 was an NBFC. It did not have the jurisdiction or the authority to institute SARFAESI proceedings as a secured creditor, as the claim was below 20 lakhs. He relied on the notification issued on February 12, 2021 to contend that, NBFCs were allowed to resort to the machinery under the SARFAESI Act for recovery of loans only when the minimum debt was Rs. 20 lakhs or more. He urged that the HFCs were a sub-species of the larger category of NBFCs and therefore, were categorised as an NBFC by the Reserve Bank of India in various notifications and Master Circulars. He further urged

that, HFCs were covered under the larger umbrella of NBFC and therefore, the notifications applicable with respect to the pecuniary threshold to institute SARFAESI proceedings by NBFCs would also apply with all force to HFCs. Reference was made to the Press Release by the RBI dated August 13, 2019, the Master Direction on HFCs and NBFCs for the year 2021 and the RBI's list dated September 14, 2023 containing names of NBFCs in the Upper Layer (NBFC-UL) under Scale Based Regulations for NBFCs. He demonstrated that the name of the appellant no. 1 figured at serial no. 6 under the category of non-debt taking HFC. Further reliance was placed on a similar list of the RBI dated January 16, 2025. The list contained the names of NBFCs registered with the RBI as on September 30, 2025.

6. Thus, it was contended by Mr. Deb that pursuant to the Press Release of the Reserve Bank of India and the Circulars and directions issued by the RBI, HFCs would be treated as a category of NBFC for regulatory purposes. By notification dated February 24, 2020, NBFCs were entitled to invoke the provisions of the SARFAESI Act for secured debts of Rs. 50 lakhs and above. By a notification of February 12, 2021, the threshold was reduced to Rs. 20 lakhs.

7. According to Mr. Deb, HFCs being a sub-category or a substrata of NBFCs, would be entitled to invoke the provisions of the SARFAESI Act if the secured debt was of Rs. 20 lakhs and above. The notifications of February 24, 2020 and February 12, 2021 restrained an NBFC, as defined under clause (f) of 45-I of the RBI Act having assets worth Rs. 100 crores and above, from invoking proceedings under the said Act, unless the secured debt was Rs. 20

lakhs or above. He referred to the Master Direction and Clauses 2.1 and 4.1.17 thereof, in support of the contention that an HFC would fall within the definition of an NBFC, whose financial assets in the business of providing finance for housing constituted at least 60% of its total assets. Housing finance would mean providing finance as per clauses (a) and (k) of paragraph 4.1.1.6 of the said Master Direction. Similar provisions of the Reserve Bank of India's latest circular/direction dated November 28, 2025 were also relied upon. Reliance was further placed on the Master Circular of January 5, 2022, to buttress such argument. The decision of the Himachal Pradesh High Court in ***Gupta Hardware Store and Ors. vs. Union of India and Ors.*** decided in ***CWP No. 8566 of 2024*** was referred to. The Hon'ble Court held that the notifications of February 21, 2020 and February 12, 2021 would apply to NBFCs and financial institutions, including HFCs.

8. Ms. Ojha countered such argument of Mr. Deb, inter alia, stating that at present, the appellant no. 1 is a financial institution, but at the time of issuance of the notice under Section 13(2) it continued to be an HFC and retained its special category and uniqueness as an HFC. The earlier notifications/circulars and directions of RBI, would not be applicable.

9. Heard the learned Advocates for the parties. The appellant No. 1 claimed to be an HFC registered under the Act, 1987. It claimed to be covered by the definition of "other institution" within the meaning of sub-clause (iv) of clause (m) of sub-section 1 of Section 2 of the SARFAESI Act. The respondent nos. 1 and 2 were the borrowers and they had availed of financial assistance for purchase of a house. Equitable mortgage was created as a security and a sum

of Rs. 12,70,000/- and a further sum of Rs. 50,800/- towards insurance premium had been sanctioned. The loan was sanctioned on a floating rate of interest which was variable from time to time. Initially, the loan was repayable in 180 equal monthly instalments of Rs. 17,368/-. The allegation was that the borrower committed default in repayment of the loan and as a consequence whereof, the loan was classified as a non performing asset (NPA) on September 3, 2024 as per the RBI guidelines.

10. The appellant no. 1 issued a demand notice dated September 16, 2024 under Section 13(2) of the SARFAESI Act. In spite of service of the notice, the borrowers neither repaid the loan nor made any representations. On April 22, 2025, the borrowers raised objections in respect of the notice under Section 13(2) of the SARFAESI Act. The appellants replied to the same. Thereafter, the borrowers filed an application under Article 226 of the Constitution of India, challenging the notice dated September 16, 2024, issued by the appellant no. 1.

11. In the writ petition the authority of the appellant no. 1 to invoke the provisions of the SARFAESI Act was challenged on the ground that, the notification dated February 24, 2020, which was amended by the notification dated February 12, 2021 by the Ministry of Finance would be applicable, insofar as, the minimum threshold to initiate SARFAESI proceedings was concerned. The claim of the appellant no. 1 was being less than Rs. 20 lakhs, as such the notice under section 13(2) of the said Act, was bad in law. The borrowers relied upon the Master Circular of January 5, 2022 and the Press Release of the RBI dated September 14, 2022.

12. The appellants specifically contended that, an HFC was a special category of institution registered under the NHB Act. The regulations and the notifications governing an NBFC, as defined either under the SARFAESI Act, or under RBI Act would not govern HFCs. HFCs were unique in their procedure for establishment, composition and their nature of business. The power to invoke the SARFAESI Act would not be governed by the Circulars applicable to NBFC. HFCs had the authority to invoke SARFAESI proceedings even if the debt due was below the threshold of 20 lakhs.

13. The learned Single Judge considered the facts of the case and the submissions of the respective parties with regard to the maintainability of the writ petition. His Lordship held that when a litigant had a statutory remedy available to him as an alternative or an efficacious remedy for ventilating his grievances, a writ court would be slow to entertain a writ petition. However, in the case in hand, the issue was not with regard to a challenge to the action taken under the SARFAESI Act simpliciter, but the issue was with regard to the jurisdiction of the appellants to initiate proceedings under the SARFAESI Act. The issue of jurisdiction of the appellants over the subject matter of the writ petition went to the very root and as such, the writ petition was maintainable.

14. The decisions of ***State of U.P vs. Mohammad Nooh*** reported in ***1958 SCR 595*** and ***Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Others*** reported in ***(1998) 8 SCC 1*** are referred to. These decisions had carved out the exceptions as to when the existence of an alternative remedy would not be a bar to entertaining a writ petition, namely, a) where the writ petition was for enforcement of any fundamental right; b) where

there were violations of principles of natural justice' c) where the order or the proceeding was wholly without jurisdiction; and d) where the vires of an Act was under challenge.

15. Hence, we agree with the findings of the learned Single Judge that, when the question of jurisdiction of the appellant no. 1 to proceed under the SARFAESI Act had been raised, the same being a pure question of law, the question of self-imposed restriction by the writ court, requiring the borrowers to approach the Debts Recovery Tribunal did not arise. Lack of subject matter jurisdiction went to the very root of authority of the appellant no. 1 to proceed under the SARFAESI Act. The allegation was that, the appellant no. 1 acted in excess of jurisdiction under the law and in such a situation, an alternative and efficacious remedy would not be a bar. The writ petition was filed alleging wrongful exercise of power by the HFC. It is trite that, when questions of jurisdiction in respect of any action by a statutory authority are raised or when pure questions of law arise with regard to the existence and exercise of power by a statutory authority, alternative remedy is not a bar to entertaining the writ petition. The writ court has the jurisdiction to address such issue and amend the wrong.

16. In the decision of ***M/S Godrej Sara Lee Ltd. vs. The Excise and Taxation Officer cum-Assessing Authority & Ors.*** reported in ***2023 SCC OnLine SC 95,*** it was held that an alternative remedy would not stand in the way when questions of jurisdiction or pure questions of law which went to the very root of exercise of power by a concerned authority had been raised. Admittedly, in this case, there are no disputed questions of fact, but only a

question of law as to whether the appellant no. 1 could invoke the SARFAESI Act when the claim was below the threshold of 20 lakhs. Reference is made to the decisions of ***State of U.P and Others vs. Indian Hume Pipe Co. Ltd.*** reported in ***(1977) 2 SCC 724*** and ***Union of India and Another vs. State of Haryana and Another*** reported in ***(2000) 10 SCC 482.*** The learned Single Judge did not err in holding that the writ petition was maintainable.

17. Now, adverting to the issues which fell for consideration before the learned Judge, we find that the learned Judge relied on the Press Release dated August 13, 2019 which recorded that the Finance No. 2 Act, 2019 had amended the NHB Act, conferring certain powers with regard to regulation of HFCs, to the RBI. The RBI pursuant thereof, brought within its fold all HFCs, and directed that those HFCs would thenceforth be treated as one of the categories of NBFCs. The RBI also directed that the HFCs would comply with the directions and instructions issued by NHB till such time the RBI issued a revised framework for the HFCs. The relevant portions of the August 13, 2019, Press Release are quoted below :-

> *" August 13, 2019*
>
> *Transfer of Regulation of Housing Finance Companies (HFCS) to Reserve Bank of India*
>
> *The Finance (No.2) Act, 2019(23 of 2019) has amended the National Housing Bank Act, 1987 conferring certain powers for regulation of Housing Finance Companies (HFCs) with Reserve Bank of India. The Central Government has since issued notification appointing August 09, 2019 as the date on which the relevant part of that Act, namely, Part VIl of Chapter VI shall come into effect.*
>
> *HFCs will henceforth be treated as one of the categories of Non-Banking Financial Companies (NBCs) for regulatory purposes. Reserve Bank will carry out a review of the extant regulatory framework applicable to the FCs and come out with revised regulations in due course. In the meantime, HFCs shall continue to comply with the directions and instructions issued by the National Housing Bank (NHB) till the Reserve Bank issues a revised*

framework. NHB will continue to carry out supervision of HFCs and HFCs will continue to submit various returns to NHB as hitherto. The grievance redressal mechanism with regard to HFCs will also continue to be with the NHB.
A housing finance institution, which is a company, desirous of making an application for registration under sub-section 2 of section 29A of the National Housing Bank Act, 1987(as amended by Act 23 of 2019) may approach the Department of Non-Banking Regulation, Reserve Bank of India.
Any clarification in this regard can be obtained over email or from
The Chief General Manager
Department of Non-banking Regulation (DNBR)
Reserve Bank of India
2nd floor, Centre 1, World Trade Centre
Cuffe Parade, Colaba
Mumbai- 400005

Yogesh Dayal
Chief General Manager"

18. Pursuant to the Press Release, RBI issued a revised framework in 2021. The directions of 2021 were called the Non-Banking Financial Company – Housing Finance Company (Reserve Bank Directions) 2021. Apart from Chapter XII of the said directions, all other directions were made applicable to HFCs registered under Section 29-A of the NHB Act, Clause 4.1.17 of which is quoted below :-

*"**4.1.17**. "Housing finance company" shall mean a company incorporated under the Companies Act, 2013 that fulfils the following conditions :*

a. It is an NBFC whose financial assets, in the business of providing finance for housing, constitute at least 60% of its total assets (netted off by intangible assets). Housing finance for this purpose shall mean providing finance as stated at clauses (a) and (k) to Paragraph 4.1.16.

b. Out of the total assets (netted off by intangible assets), not less than 50% should be by way of housing finance for individuals as stated at clauses (a) to (e) of Paragraph 4.1.16."

19. The definition clearly states that an HFC was an NBFC, whose financial assets in the business of providing housing loan constituted at least 60% of its total assets.

20. Certain parameters were framed under the said directions. The Master Circular of the Reserve Bank of India dated January 5, 2022, specified under clause 1.1(a) that NBFCs would mean Non-Banking Financial Companies registered under the RBI which also included housing finance companies registered under Section 29A of the NHB Act. The relevant portion is quoted below :-

> "a. NBFCs means the Non-Banking Financial Companies registered with the Reserve Bank of India, which shall also include Housing Finance Company (HFC) registered under Section 29A of the National Housing Bank Act, 1987."

21. Thus, His Lordship relied on the Master Direction of 2021 and the Master Circular of 2022 to hold that the definition of NBFC was inclusive and HFCs were also within the umbrella of NBFC. It was a sub-set within the set of NBFCs. By a further direction or clarification in the form of a List, the Reserve Bank of India included 15 NBFCs in its list of Upper Layer under Scale Based Regulation. The list provided as follows :-

Sl. No.	**Name of the NBFC**	**Category of the NBFC**
1.	LIC Housing Finance Limited	Deposit taking HFC
2.	Bajaj Finance Limited	Deposit taking BNFC-ICC
3.	Shriram Finance Limited (formerly Shriram Transport Finance Company Limited)	Deposit taking NBFC-ICC.
4.	Tata Sons Private Limited	Core Investment Company (CIC).
5.	L & T Finance Limited	Non-deposit taking NBFC-ICC.
6.	Piramal Capital & Housing Finance Limited	Non-deposit taking HFC.
7.	Cholamandalam Investment and	Non-deposit taking NBFC-ICC.

	Finance Company Limited	
8.	Indiabulls Housing Finance Limited	Non-deposit taking HFC
9.	Mahindra & Mahindra Financial Services Limited	Deposit taking NBFC-ICC
10	Tata Capital Financial Services Limited	Non-deposit taking NBFC-ICC
11	PNB Housing Finance Limited	Deposit taking HFC
12	HDB Financial Services Limited	Non-deposit taking NBFC-ICC
13	Aditya Birla Finance Limited	Non-deposit taking NBFC-ICC
14	Muthoot Finance Limited	Non-deposit taking NBFC-ICC
15	Bajaj Housing Finance Ltd.	Non-deposit taking HFC

22. The appellant no. 1 appeared at serial no. 6 and had been identified under the category of NBFC, as a non-deposit taking HFC. Similarly, in the list of January 16, 2025, the name of ***Piramal Capital and Housing Finance Limited*** appears at serial No. 10 which is quoted below :-

Sl. No.	Name of the NBFC	Category of the NBFC
1	LIC Housing Finance Limited	Deposit taking HFC
2	Bajaj Finance Limited	Deposit taking NBFC-ICC
3	Shriram Finance Limited	Deposit taking NBFC-ICC
4	Tata Sons Private Limited	Core Investment Company
5	Cholamandalam Investment and Finance Company Limited	Non-deposit taking NBFC-ICC
6	L&T Finance Limited (Formerly known as L&T Finance Holdings Limited)	Non-deposit taking NBFC-ICC
7	Mahindra & Mahindra Financial Services Limited	Deposit taking NBFC-ICC
8	Aditya Birla Finance Limited	Non-deposit taking NBFC-ICC
9	Tata Capital Limited	Non-deposit taking NBFC-ICC
10	Piramal Capital & Housing Finance Limited	Non-deposit taking HFC
11	PNB Housing Finance Limited	Deposit taking HFC
12	HDB Financial Services Limited	Non-deposit taking NBFC-ICC
13	Sammaan Capital Limited (Formerly known as Indiabulls Housing Finance Limited)	Non-deposit taking NBFC-ICC
14	Muthoot Finance Limited	Non-deposit taking NBFC-ICC
15	Bajaj Housing Finance Limited	Non-deposit taking HFC

23. His Lordship rightly held that, based on the classification of an HFC in the Master Circular, the directions and the Press Release of the RBI read with the definition of NBFC under Section 45-I (f) of the RBI, the appellant no. 1 was an NBFC. Section 45-I (f) defines a Non-Banking Financial Company as a financial institution, which is a company. The relevant definition is quoted below :-

> ***"45-I.*** *********
>
> *(f) "non-banking financial company" means –*
>
> *(i) a financial institution which is a company;*
> *(ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner;*
> *(iii) such other non-banking institution or class of such institutions, as the Bank may, with the previous approval of the Central Government and by notification in the Official Gazette, specify."*

24. The notification issued by the Central Government on June 17, 2021 specified that a Housing Finance Company registered under sub-section 5 of Section 29A of the NHB Act, 1987 was a financial institution for the purpose of the said Act i.e. the SARFAESI Act. Thus, HFCs were brought within the fold of NBFC as a financial institution by the notification of the Ministry of Finance dated June 17, 2021. The relevant portion is quoted below :-

> *"NOTIFICATION*
> *New Delhi, the 17th June, 2021*
> ***S.O. 2405(E).****— In exercise of the powers conferred by sub-clause (iv) of clause (m) of sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), and in supersession of the notifications of the Government of India, Ministry of Finance numbers S.O.1282 (E), dated the 10th November, 2003, S.O. 1083 (E) dated 16th March, 2006, S.O. 2757 dated 19th September, 2007, S.O. 1516(E) dated 23rd June, 2010, S.O. 3466 (E) dated 18th December, 2015, and S.O.404(E) dated 22nd January, 2018, except as respects things done or omitted to be done before such supersession, the Central Government hereby specifies such housing financial companies registered under sub-section*

> *(5) of section 29A of the National Housing Bank Act, 1987 (53 of 1987), having assets worth rupees one hundred crore and above, as financial institutions for the purposes of the said Act."*

25. Under the RBI Act, a NBFC, as has already been discussed hereinabove, includes a financial institution, which is a company. The notification of June 17, 2021 read with the definition of Non-Banking Financial Company under Section 45-I(f) of the RBI Act establishes the fact that the Central Government had specified that HFCs registered under sub-section (5) of Section 29A of the NHB Act, 1987 having assets worth Rs. 100 crores and above would be a financial institution for the purpose of the SARFAESI Act. Section 2(1)(m)(iv) of the SARFAESI ACT defines a financial institution as hereunder. Section 2(1)(m)(iv) is quoted below:-

> *"**2.(1).(m)** "financial institution" means---*
> *(iv) any other institution or non-banking financial company as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934), which the Central Government may, by notification, specify as financial institution for the purposes of this Act;"*

26. A combined reading of Section 2(1)(m)(iv) of the SARFAESI Act, the notification of June 27 of 2021 and Section 45-I(f) of the RBI Act clearly indicates that HFCs were brought under the fold of NBFC. His Lordship rightly appreciated that the amendment of August 29, 2023, which was relied upon by Ms. Ojha had been repealed and replaced by the Master Direction of October 19 , 2023, being the Master Direction /Reserve Bank of India (Non-Banking Financial Company – Scale Based Regulations) Directions, 2023. Regulation 2 thereof, provided that the regulatory structure of Non-Banking Financial Companies would be in four layers based on size. Regulation 2.3 clearly

specified that the middle layer included Housing Finance Companies as NBFCs. Regulation 4 which related to the applicability of the directions also specifically pertained to Housing Finance Companies. Regulation 4.3.6, provided that, all such HFCs were bound by the Master Direction-Non-Banking Financial Company – Housing Finance Company (Reserve Bank) Directions, 2021 as amended from time to time. HFCs were a category of NBFCs as would be apparent from the Press Release and thereafter the Master Directions of 2021. Regulation 2.3 and 4.3.6 are quoted below:-

> 2.3 Middle Layer The Middle Layer shall consist of (a) all deposit taking NBFCs (NBFCs-D), irrespective of asset size, (b) non-deposit taking NBFCs with asset size of ₹1,000 crore and above and (c) NBFCs undertaking the following activities (i) Standalone Primary Dealer (SPD), (ii) Infrastructure Debt Fund-Non-Banking Financial Company (IDF-NBFC), (iii) Core Investment Company (CIC), (iv) Housing Finance Company (HFC) and (v) Non-Banking Financial Company-Infrastructure Finance Company (NBFC-IFC).
> * * *
> * * *
> 4.3.6 HFC - Master Direction – Non-Banking Financial Company – Housing Finance Company (Reserve Bank) Directions, 2021, as amended from time to time.

27.

28. The decision of the Madhya Pradesh High Court in ***Virendra Rathore*** (supra) was rightly distinguished by the learned Judge. It had been observed in the decision that, there were no notifications which indicated either an express or implied intention of the Central Government to bring Housing Finance Companies within the fold of NBFCs. The relevant paragraphs of the said decision are quoted below :-

> *"**29**. That it was further contention of the petitioner that the notifications of 2021 & 2022 have applied the pecuniary threshold to all the NBFCs as a generic class, across the board and therefore specific mention of any*

company or for that matter of respondent HFC (SRG Finance) was never needed. Since the minimum pecuniary threshold was being determined and prescribed for all NBFCs across the plane, therefore it would automatically cover Respondent HFC as well. This contention of the petitioner is taken forward only to be rejected. As already stated supra, the HFIs/HFCs being a ***special genre*** *of FIs/companies, created and regulated by special enactment of NHB Act, the same cannot be compartmentalised.*

In the bogie of NBFCs, more so when NHB Act does not u/s 29-A postulate the applicability of Chapter HI-B r/w Section 45(I)(f) of the RBI Act. Therefore HFIs/HFCs like the respondent cannot impliedly be deemed to have been included under the umbrella of NBFCs, till and until such an intention is express and explicit under the NHB Act or the notifications issued under it. For this reason, therefore the minimum pecuniary threshold of 20 lakhs shall not apply to HFIs/HFCs as contended by the petitioner as prescribed in case of the NBFCs.

30*. For yet another reason the contention of the petitioner is liable to be rejected. That being issuance of separate series of notifications by the very same department, very same arm of the Central Government (Ministry of Finance), as would be explicated infra for the HFCs/HFIs. HFCs/HFIs are governed holistically by Section 29- A of the NHB Act, the notifications that have been issued qua them specifically shall regulate applicability of SARFAESI to them and not other notifications issued generically for NBFCs. Bare glance at various notifications issued for HFCs/HFIs from time to time by the Central Government also shows that earlier HFCs were being mentioned specifically to be treated as FIs under Section 2(I)(m)(iv) of SARFAESL Otherwise there was never any occasion or necessity for the Central Government to have come up with a distinct bee line of notifications for HFCs/HFIs. The fact that notifications are issued separately with a separate list of enumerated HFCs/HFIs by the Central Government is indicative of the regime that HFCs/HFIs stand in an altogether different steel silo then the NBFCs. Ergo therefore the contentions of the respondent deserves acceptance that HFCs/HFIs are an entirely different special class, which are covered under the phrase 'any other institution' adumbrated under Section 2(1)(m)(iv) of SARFAESI Act and can't be classed with other NBFCs."*

29. In the case in hand, the borrowers brought on record the notification of September 14, 2023 and also the master circulars and directions, which would indicate that, HFCs had been classified as NBFCs, being sub-categorised as a non-deposit taking HFC.

30. The Central Government specified in 2020 that NBFCs as defined in clause (f) of 45-I of the RBI Act having assets worth Rs. 100 crores and above would be entitled to enforce security interest if the secured debts were Rs. 50

lakhs and above, as a financial institution for the purpose of the said Act. This threshold of 50 lakhs was reduced to 20 lakhs by the amendment vide notification dated February 12, 2021. Both the notifications are quoted below :-

> *"NOTIFICATION*
> *New Delhi, the 24th February, 2020*
> *S.O. 856(E).- In exercise of the powers conferred by sub-clause (iv) of clause (m) of sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2022 (54 of 2002), and in supersession of the notifications of the Government of India, Ministry of Finance numbers S.O. 2641(E), dated 5th August, 2016, S.O. 4176(E) dated the 27th August, 2018, and S.O. 5391(E) dated 24th October, 2018, except as respects things done or omitted to be done before such supersession, the Central Government hereby specifies such non-banking financial companies as defined in clause (f0 of section 45-I of the Reserve Bank of India Act, 1934(2 of 1934), having assets worth rupees one hundred crore and above, which shall be entitled for enforcement of security interest in secured debts of rupees fifty lakh and above, as financial institutions for the purposes of the said Act."*
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> *"NOTIFICATION*
> *New Delhi, the 12th February, 2021*
> ***S.O. 652(E).**—In exercise of the powers conferred by sub-clause (iv) of clause (m) of subsection (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), the Central Government hereby makes the following amendment in the notification of the Government of India, Ministry of Finance (Department of Financial Services), number S.O. 856 (E), dated the 24th February, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 25th February, 2020, namely:—*
>
> *In the said notification, for the words, "rupees fifty lakh and above" the words "rupees twenty lakh and above" shall be substituted."*

31. The notifications were made applicable to financial institutions for the purpose of the SARFAESI Act. The notification of 17th June, 2021 specified that HFCs registered under sub-section 5 of Section 29A of the NHB Act, 1987 having assets worth Rs. 100 crores and above would be a financial institution for the purpose of the SARFAESI Act. Thus, a combined reading of the notification of February 24, 2020 and of June 17, 2021 would indicate that Central Government specified that such Non-Banking Financial Companies

which fell within the definition of Section 45-I (f) of the RBI Act being a financial institution, would be entitled to proceed under the SARFAESI Act to recover secured debt of Rs. 50 lakhs and above, which was later reduced to 20 lakhs upon granting the HFCs the status of a financial institution. The notification of June 17 also granted HFCs the status of financial institution for the purpose of the Act and moreover, as per Section 45-I financial institutions were companies falling within the definition of NBFC.

32. Under such circumstances, we do not have any hesitation to hold that the learned Single Judge rightly arrived at a finding that the notifications of February 24, 2020 and February 12, 2021 would be applicable in the case of the appellant no. 1. By the time the notice under Section 13(2) of the SARFAESI Act had been issued by the appellant no. 1, the appellant no. 1 was already under the umbrella and/or within the definition of the NBFC for the purpose of invocation of the provisions of the SARFAESI Act.

33. Thus, we agree with the conclusion arrived at by the learned Single Judge that once HFCs had been notified as financial institutions on June 17, 2021 and brought within the purview of the SARFAESI Act and upon being within the regulatory framework of the Reserve Bank of India, there was no reason to hold that an HFC would not be bound by the notification of February 24, 2020 as modified on February 12, 2021. The appellant no. 1 was clearly covered by the notifications and could not proceed under the SARFAESI Act in respect of the claim against the borrowers, which was below Rs. 20 lakhs.

34. However, His Lordship clarified that the decision would not preclude the appellant no. 1 from undertaking other step available in law to recover the

outstanding amount from the writ petitioner. Consequently, the order impugned does not call for interference.

35. Accordingly the appeal is dismissed. Connected application is also disposed of.

36. Urgent photostat certified copies of this judgment, if prayed for, be supplied to the parties upon fulfilment of requisite formalities.

(**Shampa Sarkar, J.**)

1. I agree.

(**Ajay Kumar Gupta, J.**)