



Debt, Security and the DRT: SARFAESI Enforcement and Borrower Defence

Section 13 to Section 18-enforcement steps, DRT challenges, and
defence checklists for banks and borrowers

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Preface

Secured lending in India runs on a dual track. Banks and financial institutions may still sue for recovery before the Debts Recovery Tribunal, yet the everyday pressure point for most borrowers and guarantors is the non-court enforcement path under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Once an account is classified as a non-performing asset, a sixty-day demand notice can open the door to possession, management takeover, and auction—often before any judicial officer has examined the underlying debt or the quality of the security documents.

This handbook is written for advocates who appear on both sides of that process, for in-house counsel who must keep enforcement files audit-ready, and for senior students who need a working map rather than a survey of doctrine. It follows the statutory sequence from demand notice through representation, possession (direct and through the Magistrate), sale, the Section 17 application, and the Section 18 appeal, and it places those steps against parallel recovery applications, the insolvency moratorium, and guarantor exposure.

The emphasis is practical. Checklists, a Section 17 pleading frame, valuation cross-examination points, and an auction-purchaser note are included so that the reader can move from the page to the file. The law is stated as it stands for courtroom use; where High Courts diverge, the handbook flags the split and points the writer toward the retrieval set that will supply the governing authorities for the forum in hand.

01

Mapping the Battlefield: How SARFAESI Sits Beside Court Recovery

Who may enforce, what counts as security interest, and where the DRT fits

Two tracks of bank recovery

Indian bank recovery runs on two parallel tracks. Under Chapter III of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), a secured creditor may enforce a security interest **without the intervention of court or tribunal**, provided every step conforms to the Act and Rules. Separately, the Recovery of Debts and Bankruptcy Act lets banks and financial institutions file recovery applications before the Debts Recovery Tribunal (DRT) for adjudication and a recovery certificate. The tracks are complementary, not mutually exclusive; later chapters address sequencing when both run together.

Purpose of SARFAESI and non-intervened enforcement

Supreme Court, 2022

Reiterates that SARFAESI empowers financial institutions to manage NPAs by taking possession of securities and selling them without court intervention, subject to the statutory scheme of Sections 13 and 14.

LawWorld ID: LAWWORLD 2022 SC 0233

Nature and limits of the creditor's enforcement power

Supreme Court, 2014

Section 13 confers a free hand to enforce without court intervention, but only in accordance with the Act; the creditor acts as trustee of the secured asset and cannot deal with it arbitrarily.

LawWorld ID: LAWWORLD 2014 SC 0229

The policy choice is speed and cost. Parliament displaced the older need for court leave under the Transfer of Property Act so that non-performing assets could be resolved without prolonged suits. That freedom is not a blank cheque. Actions must match the Act and Rules, and wrongful measures under Section 13(4) are open to **instant recourse** before the DRT under Section 17-the borrower's designed remedy, not an afterthought.

Object and scheme - borrower's remedial right

Supreme Court, 2018

From the Statements of Objects and Reasons and *Mardia Chemicals*, the Court stresses that non-intervened enforcement is balanced by DRT scrutiny under Section 17; the borrower

need not wait for sale once a Section 13(4) measure is taken.
LawWorld ID: LAWWORLD 2018 SC 111

Who may enforce, and over what

secured creditor

A bank, financial institution, or other entity recognised under the Act in whose favour a security interest is created; enforcement rights under Chapter III belong to this person (or authorised officers), not to unsecured lenders.

borrower

The person who is under a liability to a secured creditor under a security agreement, including where relevant a guarantor or other obligor against whom the security interest is enforced.

security interest

Any right, title or interest of any kind upon property created in favour of a secured creditor, including mortgage, charge, hypothecation and assignment-other than those excluded by the Act. Property subject to it is a secured asset.

default

Failure by the borrower to repay the secured debt or any instalment thereof under the security agreement; together with classification of the account as a non-performing asset (where required), it is the statutory trigger for a demand under Section 13.

Equitable mortgage as enforceable security interest

Supreme Court, 2013

Deposit of title deeds created a security interest under s.2(zf) over secured assets under s.2(zc) in favour of the bank as secured creditor under s.2(zd); such interest may be enforced under s.13 without court intervention.

LawWorld ID: LAWWORLD 2013 SC 1010

THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - Section 13

Chapter III centres on enforcement of security interest. Any security interest created in favour of a secured creditor may be enforced without court or tribunal intervention, in accordance with the Act. Where a borrower under a security agreement defaults and the account is classified as a non-performing asset (subject to stated exceptions), the creditor may demand full discharge within sixty days and, on failure, take measures to recover the secured debt-including possession and sale of secured assets-strictly as the Act and Rules allow.

Override, exclusions, and this handbook's stance

Where SARFAESI is inconsistent with any other law, it prevails. It also operates in addition to, and not in derogation of, specified recovery and related statutes. The practical result is a **complete code** for enforcement and sale of secured assets: borrower

and liquidator grievances travel through the DRT and appellate tribunal path, not through parallel control of the sale by ordinary civil or company courts.

Sections 35 and 37 - override and cumulative operation

Supreme Court, 2019

Section 35 gives overriding effect over inconsistent law; Section 37 states the Act is in addition to, and not in derogation of, specified enactments and other law in force, so SARFAESI provisions operate cumulatively where there is no inconsistency.

LawWorld ID: LAWWORLD 2019 SC 0962

SARFAESI as complete code for sale of secured assets

Supreme Court, 2015

SARFAESI is a complete code for enforcement and sale; Sections 17 and 18 supply exclusive statutory remedies before DRT and DRAT, without importing company-court control over the sale beyond what the Act itself incorporates.

LawWorld ID: LAWWORLD 2015 SC 1251

The Act does not apply to every asset. Section 31 carves out limited categories; the exclusion most often litigated is **security interest created in agricultural land**. Whether land is agricultural is a question of fact-revenue entries are not conclusive; actual use and the parties' intention at creation of the security matter. Other Section 31 carve-outs exist but are narrow. Detailed possession, sale, and Section 17 procedure follow in later chapters.

NOTE

Agricultural land - high-level only

Section 31(i) keeps genuine agricultural land outside non-judicial SARFAESI enforcement. Mere plantation labels or revenue classification do not decide the point; proof of actual agricultural use at the time the security was created is what counts. Fact-finding belongs in the DRT, not in abstract writ argument.

Scope of s.31(i) - agricultural land exemption

Supreme Court, 2018

Section 31(i) protects agricultural land held for agricultural purposes from drastic non-judicial enforcement; commercial hotel property with incidental greenery was not agricultural on the totality of facts.

LawWorld ID: LAWWORLD 2018 SC 0355

This handbook takes a **side-by-side** stance. For banks and authorised officers, it maps compliance so enforcement survives scrutiny. For borrowers and guarantors, it maps defences and evidence so wrongful measures can be checked at the DRT. Every later chapter is written so both desks can use the same map of the battlefield.

02

From Default to Demand: NPA Classification and the Section 13(2) Notice

Trigger conditions, contents, service, and the sixty-day clock

Preconditions: liability, default, and NPA classification

Section 13(2) does not open on a bare arrears letter. The secured creditor must first hold an enforceable **security interest** created under a security agreement, the borrower must be in **default** in repayment of a secured debt or any instalment, and-ordinarily-the account must have been classified as a **non-performing asset** before the demand is issued. Only a person who is the secured creditor may issue the notice; a demand signed in the name of a distinct group entity is no notice at all.

non-performing asset

An account classified as non-performing in accordance with the directions or guidelines issued by the Reserve Bank of India (or other applicable regulator) for the class of secured creditor concerned; classification is the ordinary statutory gate before a Section 13(2) demand.

NPA classification as a Section 13(2) obligation

LAWWORLD 2015 SC 0157

Section 13(2) imposes an additional obligation on the secured creditor to classify the borrower's account as NPA before acting; the later Section 13(3A) mechanism then lets the borrower challenge that classification and the proposed enforcement.

Default, NPA, notice, then measures

LAWWORLD 2011 SC 0219

On default and NPA classification, the secured creditor may-after the prescribed notice and consideration of any representation-take Section 13(4) measures, including possession.

Only the secured creditor may issue the demand

LAWWORLD 2019 KAR 0613

A Section 13(2) notice issued and signed in the name of a distinct entity that is not the admitted secured creditor is invalid at the root and is not cured by a later clarification.

NOTE

NPA as the ordinary gate

NPA classification is the ordinary Section 13(2) precondition (**2015 SC / 2011 SC**). Any statutory exception must be verified from the current Act text and the creditor's category-do not assume a carve-out from practice lore.

Alive claims and prior NPAs

LAWWORLD 2017 SC 0946

SARFAESI supplies a procedural remedy for existing secured debts that are alive when the Act (or the relevant notification) applies; prior NPA status does not by itself bar a compliant Section 13 process once the lender is a secured creditor.

What the notice must demand and the sixty-day clock

The Section 13(2) notice must state the **amount payable** by the borrower and give particulars of the **secured assets** intended to be enforced. It must call upon the borrower to discharge the liabilities in full within **sixty days** from the date of the notice. Until that window closes without full payment, the creditor cannot move to any measure under Section 13(4).

Mandatory sixty-day notice with amount and assets

LAWWORLD 2004 SC 0498

It is incumbent on the secured creditor to serve a sixty-day notice containing details of the amounts payable and the secured assets before taking any Section 13(4) measure.

Wrong outstanding figures and loose asset descriptions are not clerical niceties. A clear mismatch between the mortgaged extent on the bank's own security documents and the extent recited in the demand goes to validity of the notice chain that follows.

Misdescription of mortgaged area

LAWWORLD 2024 KAR 0611

Where the Section 13(2) notice described the entire larger parcel though only a smaller extent was mortgaged, the mismatch with the Memorandum of Entry could not be brushed aside; correct particulars of the secured asset are mandatory.

Service and proof-of-service practice

Service of the Section 13(2) notice in the manner contemplated by the Act and the Security Interest (Enforcement) Rules is **mandatory** . Infraction in issuance or service vitiates the downstream action. The creditor should retain the full postal or delivery trail-despatch proof, acknowledgements, returned covers with endorsements, and any affixation or publication record used for the demand stage-so that service can be proved if disputed.

Mandatory service under Section 13(2)

LAWWORLD 2022 KAR 0740

Service of notice as envisaged under Section 13(2) and the Enforcement Rules is mandatory; any infraction in issuance and publication vitiates the action, though disputed facts of service are for the DRT under Section 17.

As a matter of practice, serve **every** borrower, co-borrower, and guarantor against whose person or asset enforcement is intended. Leaving a co-obligant off the demand invites a later challenge that no valid notice ran against that person or that person's security. Dual or overlapping demands for the same debt without a clear supersession trail create confusion on which sixty-day clock governs.

Common bank errors at the demand stage

Error	Why it matters	Practical fix
Notice not by the secured creditor	Goes to the root; not a curable misnomer	Match signatory and letterhead to the charge-holder on record
Wrong outstanding figure	Demand must state the amount payable	Reconcile ledger, reverse unapplied credits, annex breakup
Defective asset description	Mismatch with mortgage extent undermines the notice	Copy schedule from security documents; state exact extent
Notice to only some co-borrowers/guarantors	Unserved obligants challenge the process against them	Serve all persons and assets intended for enforcement
Stale or dual notices	Ambiguity on the governing sixty-day window	One clean demand; withdraw or supersede earlier notices in writing

Section 13(2) demand - close-of-window audit

- ☐ Security agreement and registration support the debt and the asset named
- ☐ Default event is documented on the account trail
- ☐ NPA classification record pre-dates the demand (or a verified statutory exception applies)
- ☐ Issuer is the secured creditor-not a sister entity
- ☐ Amount payable is stated with a defensible breakup
- ☐ Secured-asset schedule matches title and mortgage documents
- ☐ All borrowers, co-borrowers, and guarantors intended for enforcement are addressees
- ☐ Service proof is complete and filed
- ☐ Sixty-day period is diarised; no Section 13(4) step before it expires

This chapter ends when the sixty-day demand window closes. What the borrower may then represent, and what the creditor may then do with the asset, are the subjects of the chapters that follow.

03

The Borrower's First Reply: Representation under Section 13(3A)

Duty to consider, reasoned disposal, and what the proviso shuts out

The statutory right and the bank's duty

representation under Section 13(3A)

A written reply by the borrower to a Section 13(2) notice that raises objections to the demand, the debt, the NPA classification, the security interest, or the proposed enforcement, which the secured creditor must consider and, if rejecting, answer with reasons within fifteen days of receipt.

THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - Section s.13

(3A) If, on receipt of the notice under sub-section (2), the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within fifteen days of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower: Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts Recovery Tribunal under section 17 or the Court of District Judge under section 17A.

Once the Section 13(2) notice is served, the borrower may reply. The secured creditor **shall** consider that representation and, if it is not acceptable or tenable, must communicate reasons within **fifteen days** of receipt. The duty is mandatory, not directory. It is an integral part of the lender's obligation to act fairly and reasonably before measures under Section 13(4) begin.

LAWWORLD 2018 SC 0355

Supreme Court, 2018

Section 13(3A) read with Rule 3A is mandatory: the creditor shall consider the representation and communicate reasons within fifteen days. On the facts, repeated negotiation and extensions cured the absence of a formal written reply, and equitable relief was declined because of the debtor's persistent default.

LawWorld ID: LAWWORLD 2018 SC 0355

LAWWORLD 2015 SC 0157

Supreme Court, 2015

Under Section 13(3A) the creditor must consider objections objectively and, on rejection, communicate reasons within fifteen days. This mechanism gives the borrower a reasonable opportunity to challenge NPA classification and proposed enforcement.

LawWorld ID: LAWWORLD 2015 SC 0157

LAWWORLD 2006 KAR 0310

High Court of Karnataka, 2006

Non-compliance with Section 13(3A) vitiates subsequent action under Sections 13(4) and 14. If no reasons are communicated, the borrower may presume the objection was accepted as tenable.

LawWorld ID: LAWWORLD 2006 KAR 0310

What the proviso shuts out

The proviso to Section 13(3A)-echoed in the Explanation to Section 17-is deliberate. Communication of reasons, or of the creditor's likely next step, **does not** by itself entitle the borrower to file under Section 17. The DRT door opens only when a measure under Section 13(4) is taken. Borrowers who rush to the Tribunal on the reasons letter alone face a maintainability bar.

WARNING

Do not treat the reasons letter as a Section 17 trigger

A well-drafted reasons reply is not a possession notice and is not a sale notice. Filing Section 17 solely against the 13(3A) communication invites dismissal at the threshold.

Meaningful representation versus bare denial

A useful representation is **asset-specific and document-backed**: wrong outstanding figure with a reconciliation; disputed NPA date with account extracts; defective description of the mortgaged parcel; notice not served on a co-borrower or guarantor; security already released or never created. A bare "I deny liability" or a late letter invented after measures have begun rarely helps.

LAWWORLD 2007 SC 0851

Supreme Court, 2007

Where the bank's affidavit showed no representation was received and the only letter of the claimed date referred to telephonic talks, not the Section 13(2) notice, the alleged representation was treated as an afterthought to exploit the post-Mardia duty. No payment and no timely rejoinder sealed the point.

LawWorld ID: LAWWORLD 2007 SC 0851

- **Borrower side:** send the representation by acknowledged mode; keep proof of receipt; pin each objection to a document or asset.
- **Bank side:** diary the date of receipt; prepare a consideration note that engages each point; despatch reasoned rejection within fifteen days; retain proof of service.

Record-keeping that survives DRT scrutiny

When Section 17 later tests the process, the Tribunal asks whether a representation was received and whether reasons were applied and communicated. The Section 14 affidavit itself requires the authorised officer to affirm that objections were considered and reasons communicated. Thin files invite adverse inference; complete files close the ground.

Bank file on Section 13(3A)

- ☐ Date-stamped inward of the borrower's representation (or a noting that none was received within the window)
- ☐ Internal consideration note addressing each objection with reference to ledger, security documents, and NPA papers
- ☐ Reasons letter within fifteen days of receipt, served with proof
- ☐ Authorisation of the officer who signed the reply
- ☐ Cross-reference ready for the Section 14 affidavit clause on consideration of objections

TIP

Fairness is the standard

LAWWORLD 2004 SC 0498 underscores that drastic recovery powers carry a corresponding duty of fairness and good faith. A mechanical one-line rejection of a detailed representation is the classic non-consideration ground that later succeeds under Section 17.

LAWWORLD 2004 SC 0498

Supreme Court, 2004

Even with speedier NPA recovery powers, lenders must act fairly and in good faith. Borrowers may raise defences based on bank deficiencies; the duty to consider and communicate reasons for rejecting objections is part of that fairness standard.

LawWorld ID: LAWWORLD 2004 SC 0498



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04

Taking the Asset: Possession and Other Measures under Section 13(4)

Symbolic and physical possession, management takeover, and transfer rights

The Section 13(4) menu after the demand window

When the borrower does not discharge the liability in full within the period fixed in the Section 13(2) notice, the secured creditor may adopt one or more recovery measures under Section 13(4). The statute does not force a single path. The authorised officer may take possession of the secured assets, take over management of the business of the borrower relating to the secured assets, appoint any person to manage the secured assets so taken, or require a third party who owes money to the borrower to pay that money to the creditor instead. Primary practice turns on possession under clause (a), because that step unlocks transfer and sale.

THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - Section 13

In case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:- (a) take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset; (b) take over the management of the business of the borrower relating to the secured assets... Any transfer of secured asset after taking possession thereof or take over of management under sub-section (4), by the secured creditor or by the manager on behalf of the secured creditor shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset.

Scope of measures under Section 13(4)

LAWWORLD 2017 SC 1138

Measures under Section 13(4) commence with any action in clauses (a) to (d) and are not complete unless the entire procedure in the Enforcement Rules applicable to the chosen path is complied with. Possession, management takeover, appointment of a manager and third-party recovery are all statutory measures on that menu.

*Clause (a) is dual-purpose. It authorises taking possession **and** carries the right to transfer the asset by lease, assignment or sale to realise the debt. After possession or management takeover, a transfer by the creditor or its manager vests in the transferee the rights that the owner could have transferred. Clauses (b) to (d) matter when the asset*

is a going concern, when day-to-day control is needed, or when receivables sit with third parties. Banks still most often start with possession.

Constructive (symbolic) possession under the Enforcement Rules

constructive possession

Also called symbolic possession: the authorised officer takes possession of immovable secured assets by serving and affixing a possession notice in the prescribed form and publishing it in newspapers under Rule 8(1) and 8(2), without necessarily removing the occupant or changing locks on that day.

For immovable secured assets, Rule 8 of the Security Interest (Enforcement) Rules, 2002 supplies the manner of taking possession. Under Rule 8(1) and 8(2), the authorised officer shall take or cause to be taken possession by delivering and affixing a possession notice in the Appendix IV format and by publishing that notice in two leading newspapers, one in the vernacular. From that stage the asset is liable to be sold, the borrower is interdicted from dealing with it, and the later sale machinery is attracted. The possession notice is distinct from any later notice of sale.

Meaning of possession under Section 13(4)(a) and Rule 8

LAWWORLD 2018 SC 111

Section 13(4)(a) must be read with Rule 8. Constructive possession under Rule 8(1)-(2) and actual possession under Rule 8(3) are both measures under Section 13(4) that can be examined in Section 17 proceedings.

Symbolic possession is a recognised legal device

LAWWORLD 2018 SC 0355

The Act contains nothing rendering symbolic possession illegal; it is a recognised legal device. A creditor who holds only constructive or symbolic possession may still proceed toward realisation and, where needed, later seek actual physical possession.

Possession notice distinct from sale notice

LAWWORLD 2017 SC 0339

Possession notice must be given under Rule 8(1) read with Rule 8(2). A separate notice of intention of sale is required under Rule 9(1) read with Rule 8(6). The two steps must not be collapsed.

Bank-side possession-notice essentials

- ☐ Confirm sixty days from a valid Section 13(2) notice have expired without full discharge
- ☐ Use Appendix IV format for the possession notice
- ☐ Serve the notice on the borrower and affix it on the secured asset
- ☐ Publish in two leading newspapers, one vernacular, covering the area of the asset
- ☐ Preserve proof of service, affixation photographs or panchnama, and full newspaper cuttings

- Record the authorised officer's appointment and authority on the file

Physical possession and other clause (a) consequences

physical possession

Actual possession of the secured asset-entry, inventory, and control on the ground-contemplated under Rule 8(3) as an alternative mode when possession is 'actually taken', as distinct from constructive possession by notice and publication alone.

Rule 8(3), using the language of possession 'actually taken', contemplates physical possession as an alternative mode. Physical possession may follow symbolic possession when the creditor needs vacant control for valuation, protection of the asset, or delivery to a purchaser. How the creditor obtains physical entry-including any later request for Magistrate assistance-is addressed in the next chapter. For present purposes it is enough that clause (a) covers both modes and that either mode carries the statutory right to transfer by lease, assignment or sale.

WARNING

Do not treat symbolic possession as a non-event

Once the Rule 8(1)-(2) notice is served, affixed and published, the asset is under a Section 13(4) measure. The borrower cannot deal with it freely. Waiting for locks to change before treating the step as serious is a common and costly error on both sides of the file.

Management takeover under clause (b) and appointment of a manager under clause (c) are used less often but remain available where the secured asset is bound up with a running business. Clause (d) lets the creditor intercept monies owed to the borrower by third parties. Nothing in the menu requires the creditor to exhaust one measure before another; the statute expressly allows one or more measures.

Possession is a measure that opens the DRT door

Whatever the mode-constructive possession by notice and publication, or actual physical possession-taking possession under Section 13(4)(a) is a 'measure' within the meaning of the Act. The borrower or any person aggrieved may challenge that measure before the Debts Recovery Tribunal under Section 17. The same is true of management takeover and the other clause (b)-(d) steps. Communication of reasons under Section 13(3A), by contrast, is not itself such a measure.

Possession attracts Section 17 by whatever manner obtained

LAWWORLD 2013 SC 0853

The remedy under Section 17 is available against any measure taken under Section 13(4). Taking possession of the secured asset is one such measure. Section 13(4)(a) does not distinguish between possession obtained directly or through other lawful aid; by whatever manner possession is obtained, Section 17 lies.

TIP

Practice pointer

Bank counsel should treat the possession-notice paper trail as the first exhibit the DRT will test. Borrower counsel should diary the date of affixation and publication at once—those dates fix when the measure crystallised, even if physical dispossession comes later. Maintainability tests and pleading strategy belong to the Section 17 chapters; the point here is only that possession, once taken in either form, is already inside the statutory challenge net.

The next chapter turns to Magistrate assistance when physical possession cannot be secured peacefully. Sale procedure under the Enforcement Rules follows after that. Neither topic changes the core holding of this chapter: after the demand window closes, Section 13(4) hands the creditor a defined menu, possession under clause (a) is effected first constructively and then if needed physically, and every such measure is open to DRT scrutiny.



05

Calling in the Magistrate: Section 14 Assistance for Possession

CMM/DM role, affidavit requirements, and limits of judicial review at that gate

When and why the creditor calls in the Magistrate

Once the secured creditor is entitled to take measures under Section 13(4), it may either take possession through its authorised officer or seek the State's coercive machinery. Section 14 is that machinery. The creditor need not first attempt and fail at self-help possession; resort to the Chief Metropolitan Magistrate (CMM) or District Magistrate (DM) is an **alternative route**, not a residual one.

Standard Chartered Bank line on Section 14 as alternative route

LAWWORLD 2013 SC 0853

The scheme of Sections 13 and 14 does not require an unsuccessful prior attempt under Section 13(4) before approaching the Magistrate; Section 14 is an alternative where the creditor seeks the State's coercive power.

In practice, banks invoke Section 14 where physical resistance is expected, where tenants or third parties occupy the asset, or where police aid and a panchnama will later fortify the possession record. Symbolic or constructive possession already taken does not bar a later Section 14 application for actual possession-including after sale, so long as the creditor retains the right to deliver vacant possession.

Symbolic possession and continued locus under Section 14

LAWWORLD 2018 SC 0355

Symbolic possession is lawful; a secured creditor who retains the right to take actual possession remains competent to invoke Section 14 even after auction.

Section 14 assistance

The written request by a secured creditor to the CMM or DM to take possession of secured assets and related documents and forward them to the creditor, using such force as may be necessary-purely in aid of the creditor's Section 13(4) rights.

The affidavit gate and the Magistrate's ministerial role

THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - Section s.14

On a written request, the CMM/DM shall take possession of the secured asset and

documents and forward them to the secured creditor. The application must be accompanied by an affidavit of the authorised officer declaring, among other particulars: the aggregate financial assistance and total claim; the borrower's security interest; that the account was classified NPA; service of the Section 13(2) notice and expiry of sixty days without full repayment; that the borrower has made no repayment despite notice so the officer is entitled to possession under Section 13(4) read with Section 14; and that the Act and Rules have been complied with. On receipt, the Magistrate shall, after satisfying the contents of the affidavit, pass suitable orders within thirty days, extendable with recorded reasons to a maximum of sixty days in aggregate. Under Section 14(1A) a subordinate officer may be authorised to take and forward possession; under Section 14(2) the Magistrate may take or cause to be taken necessary steps and use necessary force. Section 14(3) protects acts done in pursuance of the section from being called in question in any court or before any authority.

The Magistrate's inquiry stops at verifying that the affidavit covers the statutory particulars. There is no trial of borrower objections, tenancy claims, fraud allegations, or the quantum of debt. The function is **purely ministerial** -the Magistrate must "immediately move into action" once formalities are met.

Ministerial character of CMM/DM powers under Section 14

LAWWORLD 2022 SC 0976

After steps under Sections 13(2) and 13(4), the Magistrate verifies compliance with the proviso to Section 14(1) and, if satisfied, must promptly take and forward possession. Section 14 involves no adjudicatory process on borrower or third-party disputes; aggrieved persons are relegated to Section 17.

Section 14 as sui generis administrative process

LAWWORLD 2019 SC 0962

Proceedings under Section 14 are essentially administrative or executive: the authority exercises the State's coercive power, checks statutory compliances and affidavit assertions, and does not determine inter se rights or issues such as fraud.

Timelines and non-adjudicatory duty under Section 14

LAWWORLD 2022 SC 0761

On a compliant application with the prescribed affidavit, the CMM/DM must immediately act, take possession and forward assets and documents within 30 days (maximum 60). Action through subordinates or an advocate commissioner under Section 14(1A) remains ministerial.

WARNING

No review, stay, or humanitarian adjournment

Once the Section 14 order is passed, the Magistrate becomes **functus officio**. The statute confers no power to recall, review, stay, or vary the order, or to grant the borrower time to repay on sympathetic grounds.

DM becomes functus officio after Section 14 order

LAWWORLD 2022 KAR 106

After directing possession, the District Magistrate's statutory work ceases; there is no power to stay proceedings or impose repayment conditions, and the office cannot assume the role of a judicial forum.

Authorised-officer affidavit pack (Section 14 first proviso)

- ☐ Aggregate financial assistance granted and total amount claimed as on the application date
- ☐ Borrower's security interest over the assets described
- ☐ Account classified as NPA (where classification is required)
- ☐ Section 13(2) notice served; sixty days expired without full discharge
- ☐ Declaration of entitlement to possession under Section 13(4) read with Section 14
- ☐ Affirmation that the Act and the Enforcement Rules have been complied with
- ☐ Authorisation of the deponent as authorised officer; asset location within the Magistrate's jurisdiction

Force, delegation, and statutory protection

Section 14(2) expressly allows the CMM or DM to take, or **cause to be taken**, such steps and use such force as may be necessary. That language supports directing a subordinate officer-and, under Section 14(1A), formal authorisation of a subordinate-to execute possession and forward the asset.

Delegation under Section 14(2)

LAWWORLD 2012 KAR 0226

Sub-section (2) permits the CMM/DM to cause steps to be taken by another officer; the powers are purely executory and delegation for securing compliance is lawful.

Acts of the CMM, DM, or any officer authorised by them, done in pursuance of Section 14, enjoy the shield of Section 14(3): they shall not be called in question in any court or before any authority. The Magistrate does not decide rights of parties; he only assists and protects the taking of possession.

Assistance only; Section 14(3) protection; remedy under Section 17

LAWWORLD 2006 KAR 1126

The CMM/DM does not decide rights; he acts on the creditor's request to take possession and make assets over. The act under Section 14(1), protected by Section 14(3), cannot be questioned in court; the aggrieved person's remedy is to challenge the Section 13 measures.

Where grievances go: DRT under Section 17, not civil court

Section 14 assistance is **in aid of** Section 13(4). Possession obtained through the Magistrate is still a "measure" taken after the Section 13(4) stage. Challenges by the borrower, guarantor, or any person aggrieved therefore travel to the Debts Recovery

Tribunal under Section 17-not by a suit attacking the Magistrate's order, and not by treating the Magistrate as a court whose order can be collaterally reopened.

Section 17 is the remedy against Section 14 action

LAWWORLD 2015 KAR 0914

Action under Section 14 follows the Section 13(4) stage and falls within Section 17(1). For a borrower, guarantor, or person (other than in the special tenant category) claiming rights in the property, the DRT appeal is the alternate and efficacious remedy.

Purpose of SARFAESI and the CMM/DM follow-up duty

LAWWORLD 2022 SC 0233

The Act empowers institutions to take possession and sell securities without court intervention. Where possession is sought through the CMM/DM, a written application and affidavit satisfaction trigger an immediate duty to pass orders and ensure possession and forwarding of assets.

TIP

Practitioner sequence

Bank side: complete Section 13(2)/13(3A) record decide self-help or Section 14 file affidavit-complete application in the correct jurisdiction press the 30/60-day clock secure panchnama and handover. Borrower side: do not waste the limitation window on a civil suit or a writ against the Magistrate's ministerial order; prepare the Section 17 challenge to the underlying measures and the resulting possession.

Section 14 possession path

1. Section 13(4) entitlement arises after unremedied default post Section 13(2)
2. Authorised officer affirms the statutory affidavit and files written request before CMM/DM of the asset's location
3. Magistrate verifies affidavit particulars only-no adjudication of borrower disputes
4. Order for possession within 30 days (max 60 with recorded reasons); subordinate may be authorised under Section 14(1A)
5. Possession taken with necessary force; assets and documents forwarded to the secured creditor
6. Any grievance against the measure or possession is carried to the DRT under Section 17

06

From Possession to Auction: Sale Procedure under the Enforcement Rules

Valuation, reserve price, notices, public auction, and confirmation

Valuation, reserve price, and modes of sale

Once possession is taken, sale of the secured asset is itself a Section 13(4) measure. The Supreme Court has held that such measures commence with any action under clauses (a) to (d) and end only when the full procedure in Rules 8 and 9 is completed; incomplete compliance leaves the measure unfinished and vulnerable.

Scope of Section 13(4) measures and Rules 8-9

LAWWORLD 2017 SC 1138

Measures under Section 13(4) end with Rule 9; the entire Rules 8 and 9 procedure must be fully complied with before the measure is complete. Rule 9(5) authorises forfeiture of the auction purchaser's deposit and resale on default.

reserve price

The minimum price fixed by the authorised officer, after obtaining valuation from an approved valuer and in consultation with the secured creditor, below which the secured asset ordinarily cannot be sold at auction or by tender.

Rule 4 governs movable assets; Rule 8 governs immovable assets. Before selling immovable property, the authorised officer must obtain a **fresh valuation** from an approved valuer and fix the reserve price in consultation with the secured creditor. Modes under Rule 8(5) include obtaining quotations, inviting tenders from the public, holding public auction, and-by written terms with the purchaser-any other method. Public auction and public tender are the default routes in practice.

Distinct fields of Rules 4 and 8

LAWWORLD 2011 SC 0219

Rule 4 applies to movable assets; Rule 8 applies to immovable assets. Mixing the two regimes is a procedural error.

Rule 8(5) valuation and reserve price mandatory

LAWWORLD 2011 KAR 1142

Sub-rule (5) of Rule 8 is mandatory: fresh approved valuation, reserve price fixed in consultation with the creditor, then public notice under sub-rule (6) with a clear thirty-day window.

WARNING

Undervaluation and bundling

Reserve price fixed on wrong land-use assumptions, ignored guidance value, or successive unexplained reductions invites challenge. Selling more asset than needed to clear the debt, or bundling distinct parcels to depress bidding, also attracts scrutiny-the creditor must aim at the best reasonably obtainable price, not a fire-sale figure.

Auction quashed for undervaluation

LAWWORLD 2011 KAR 0231

Valuations treating converted non-agricultural land as agricultural, and ignoring higher guidance value, produced a reserve far below real worth; sale notice and auction were quashed.

Best price and extent of sale

LAWWORLD 2012 SC 0550

Institutions cannot behave like property dealers. Proper valuation, reserve-price fixation, fair auction, and consideration whether sale of only part would meet the demand are legal obligations.

Thirty-day notices and publicity

*Possession notice under Rule 8(1)-(2) is **not** the sale notice. A separate notice of intended sale must go to the borrower under Rule 8(6) read with Rule 9(1), stating the proposed date of sale and giving a clear thirty days. Where sale is by public tender or public auction, the proviso to Rule 8(6) also requires public notice in two leading newspapers, one in the vernacular of the locality, again with thirty days from publication to sale.*

Possession notice distinct from sale notice

LAWWORLD 2017 SC 0339

Possession notice and sale notice are separate. For tender or auction under Rule 8(5)(b)-(c), public notice in two leading newspapers is mandatory; it is not required if sale is by private quotations under the other mode.

Section 13(8) redemption and thirty-day notice

LAWWORLD 2014 SC 0229

The borrower may redeem at any time before the date fixed for sale or transfer. Clear individual and public thirty-day notice of the exact date and time is mandatory; sale without it violates Section 13(8) and Article 300A.

Sale without thirty-day compliance null and void

LAWWORLD 2014 SC 0476

Compliance with Rule 8(5)-(6) and Rule 9 is mandatory. Absent valid waiver, breach renders the auction null and void.

Sale without Rules 8 and 9 compliance void

LAWWORLD 2014 SC 0333

The creditor holds the asset as trustee and may dispose of it only as prescribed. Sale without clear notice of date and time, denying the chance to tender dues and maximise recovery, is a constitutional violation and null.

TIP

Inadequate publicity checklist

Check: (1) two newspapers, one truly vernacular for the locality; (2) thirty clear days from each relevant publication to the sale date; (3) contents identifying the asset, reserve price, dues, and inspection particulars; (4) service proof of the individual borrower notice.

*Staggered or truncated publications fail **the Karnataka ruling on Rule 8**.*

Auction, payment, confirmation, and cancellation

At public auction the authorised officer conducts bidding above the reserve. Sale below reserve without a lawful, recorded justification is a classic ground of attack. On acceptance of the highest bid, Rule 9 governs the payment schedule, issuance of the sale certificate, and delivery of possession. Default by the purchaser attracts forfeiture of deposit and resale under Rule 9(5).

Typical immovable-asset sale sequence

- 1. Obtain fresh valuation from an approved valuer*
- 2. Fix reserve price in consultation with the secured creditor*
- 3. Serve individual thirty-day sale notice on the borrower (Rule 8(6)/9(1))*
- 4. Publish public notice in two leading newspapers, one vernacular (proviso to Rule 8(6))*
- 5. Conduct public auction or open tenders on the notified date-no sale below reserve without recorded basis*
- 6. Collect deposit and balance per Rule 9 schedule; on default, forfeit and resell under Rule 9(5)*
- 7. Issue sale certificate and deliver possession only after full compliance*

No post-auction private sale under Rule 8(8)

LAWWORLD 2025 KAR 0227

Rule 8(8) (sale by a method other than public auction or tender) can be invoked only before the matter reaches Rule 9(2)-(3). After a public auction fails for bidder default, the creditor cannot regularise a negotiated sale to the second-highest bidder under Rule 8(8).

Valuation and reserve on record sustain sale

LAWWORLD 2016 SC 1141

Where an approved valuer's report, a consulted reserve price, and a sale above reserve are proved, the auction cannot be struck down for want of Rule 8(5) compliance.

WARNING

Sale during a pending stay

If the DRT or DRAT has stayed further measures or the sale specifically, proceeding to auction or confirmation is a direct breach. Even without a formal stay, once a Section 17 challenge is live, banks should verify the order-sheet before knocking down the bid-confirmation obtained in the teeth of an operative restraint is routinely undone.

Recurring challenge points at the sale stage

- ☐ **Undervaluation** - stale report, wrong land use, ignored guidance value, or unexplained reserve cuts
- ☐ **Inadequate publicity** - missing vernacular paper, short of thirty days, defective asset description
- ☐ **Sale below reserve** - knock-down under reserve without recorded creditor approval and reasons
- ☐ **Bundled assets** - dissimilar parcels sold as one lot to chill competition or avoid part-sale analysis
- ☐ **Pending stay** - auction or confirmation despite DRT/DRAT restraint on measures or sale
- ☐ **Wrong mode after failed auction** - private negotiation with under-bidder after Rule 9 has been engaged

Deeper technique for cross-examining valuers and the authorised officer, and the protections available to a bona fide auction purchaser, are reserved for the later practice chapters. For present purposes, treat Rules 8 and 9 as a closed procedural chain: break any mandatory link-valuation, reserve, notice, publicity, or payment-and the sale is open to being declared void in the Section 17 forum.



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07

Why Writs Usually Fail: Exclusive Scrutiny and the Bar on Parallel Forums

Section 34, efficacious alternative remedy, and residual constitutional space

The statutory channel: Section 34 and Section 17

Once a secured creditor takes a measure under Section 13(4), the statute does not leave the borrower free to choose a forum. Parliament built a closed channel: the Debts Recovery Tribunal examines the measure under Section 17, and civil courts stay out.

THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - Section 34

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

Section 34 bar

The twofold ouster that (i) strips civil courts of jurisdiction over matters the DRT or DRAT can determine under SARFAESI, and (ii) forbids injunctions against action taken or to be taken under SARFAESI or the DRT Act.

The Supreme Court has read the bar as covering actions taken or to be taken under the Act, not only post-measure disputes. The debtor's remedy is the Section 17 application before the DRT-not a civil suit for declaration or injunction. Section 35 gives the Act overriding effect over inconsistent law, including the ordinary civil jurisdiction under Section 9 of the CPC.

Section 34 bars civil suits challenging Section 13 measures

LAWWORLD 2016 SC 1111

Section 34 expressly bars civil-court jurisdiction over matters the DRT/DRAT can determine and bars injunctions against SARFAESI action; proceedings under Section 13 cannot be challenged in civil court-the remedy is Section 17.

Measures under s.13(4) go only to DRT/DRAT

LAWWORLD 2013 SC 1010

Any person aggrieved by a Section 13(4) measure has a statutory right under Sections 17 and 18; by Section 34 no civil court may entertain a suit in respect of any such matter, and

Section 35 overrides inconsistent laws including s.9 CPC.

Breadth of the bar and the narrow fraud exception

LAWWORLD 2004 SC 0498

The bar extends to matters the Tribunal can take cognizance of even before a Section 13(4) measure. A civil suit survives only in a very limited English-mortgage-type pocket-e.g. where the creditor's action is alleged to be fraudulent or the claim is so absurd as to need no probe.

WARNING

Possession is inside the net

Disputes over possession-whether taken by the creditor directly under Section 13(4)(a) or with Magistrate assistance under Section 14-are grievances against a Section 13(4) measure. They travel to the DRT under Section 17. Collateral attack on the Magistrate's order in ordinary civil court is barred.

High Courts have applied the same discipline to Company Courts and to post-auction suits: once measures culminate in sale, the borrower or any aggrieved person must pursue Section 17, not a bare injunction suit. The Company Court cannot interdict Sections 13(4) and 14 proceedings.

Post-auction grievance must go to DRT

LAWWORLD 2024 KAR 0767

Where Section 13 measures culminate in auction sale, any grievance must be pursued under Section 17; Section 34 read with Section 35 bars civil suits including bare injunction suits.

Company Court equally barred

LAWWORLD 2013 KAR 1224

Section 34 bars all civil courts including the Company Court; Section 35 overrides even s.446(2) of the Companies Act. Interference would defeat SARFAESI's object of court-free enforcement.

Why writ petitions usually fail

SARFAESI is treated as a complete code. Section 17 lets the Tribunal examine facts, evidence and circumstances, declare a Section 13(4) measure invalid, and restore possession or management. Because that remedy is efficacious and wide, High Courts ordinarily decline Article 226 petitions that simply re-package the same challenge.

Complete code and the normal rule against writs

LAWWORLD 2018 SC 0115

SARFAESI provides expeditious recovery with remedies under Sections 17 and 18. A writ under Article 226 ought not to be entertained when effective alternate remedies exist, save well-defined exceptions such as total violation of natural justice. Bald pleadings filed in haste to stall recovery do not qualify.

Wide standing under Section 17 reinforces the writ bar

LAWWORLD 2017 SC 1138

Section 17 covers "any person (including borrower)" aggrieved by Section 13(4) or 14 action. High Courts should ordinarily refuse writs where this alternative exists, especially in bank-dues recovery; exhaustion is discretionary but the rule is firm.

Writ not maintainable when Section 17 is open

LAWWORLD 2022 KAR 0740

The Tribunal's power to invalidate measures and restore possession makes Section 17 efficacious. Entertaining a writ on sympathetic grounds and setting aside an auction was error; all grounds could have been urged before the DRT.

The same restraint applies after the DRT has decided on merits and a sale certificate has issued: the path is the statutory appeal under Section 18, not a fresh writ.

Post-DRT and post-sale-certificate writs refused

LAWWORLD 2025 KAR 0320

Challenge to DRT orders rejecting a securitisation application, especially after sale certificate, should not be entertained under Article 226 when Section 18 appeal is available. Bank-dues matters mandate self-imposed restraint.

Residual constitutional space

The writ bar is a rule of self-restraint, not an ouster of judicial review. Residual space remains, but it is narrow and must be pleaded with precision-not as a second chance on merits.

- **Patent lack of jurisdiction** - e.g. action against an asset claimed to fall wholly outside the Act's reach, where the threshold jurisdictional bar is plain on the face of the record.
- **Threshold natural-justice failure** - total denial of hearing at a stage the statute itself requires, not a quarrel over the quality of reasons the creditor gave.
- **Wholly illusory tribunal process** - where the statutory forum is shown to be unavailable or ineffective in the concrete case, not merely inconvenient or slower than desired.

Exceptional heads for Article 226/227

LAWWORLD 2014 KAR 0219

Writ jurisdiction despite appellate remedy is reserved for exceptional cases: fundamental rights, violation of natural justice, proceedings wholly without jurisdiction, vires challenge, or arbitrary statutory violation.

Jurisdictional bar under Section 31 may justify writ

LAWWORLD 2021 KAR 0128

Where the grievance is lack of jurisdiction because of the agricultural-land bar in Section 31(i) and implicates Article 300A, relegating the party to Section 17 may not be a sound

exercise of discretion; applicability of the Act can be decided first in writ.

TIP

Do not plead the residual space as a merits appeal

Bald assertions, sympathetic hardship, or a desire to avoid pre-deposit on appeal do not open Article 226. If the case is really about defective notice, valuation, or sale process, file under Section 17. Chapters 8 and 9 take up maintainability and winning grounds before the Tribunal.

Forum discipline before filing

- ☐ *Confirm a Section 13(4) measure (or possession via Section 14) has occurred or is imminent-Section 17 is the primary path.*
- ☐ *Rule out civil suit or bare injunction; Section 34 will defeat it outside the narrow fraud/absurd-claim pocket.*
- ☐ *Before a writ, ask whether the plea is truly jurisdictional or natural-justice at the threshold-or only a merits dispute the DRT can try.*
- ☐ *If DRT has already decided, check Section 18 appeal first; writ after sale certificate faces heightened restraint.*
- ☐ *Never treat writ court as a parallel fact-finding forum on valuation, service, or auction irregularities.*



08

The Core Remedy: Section 17 Application before the DRT

Who may apply, when the clock starts, jurisdiction, limitation, and interim relief

Standing: Borrower and Any Person Aggrieved

person aggrieved (Section 17)

Any person, including the borrower, who is affected by a measure taken by the secured creditor under Section 13(4) (or by possession obtained with Magistrate assistance under Section 14) in respect of a secured asset. The expression is of wide import and is not confined to the principal debtor.

*Section 17 is the core remedy against SARFAESI enforcement. It is not limited to the named borrower. The Supreme Court has held that the phrase "**any person (including borrower)**" is of wide import and covers guarantors and other persons who claim an interest in, or are affected by action against, the secured asset-including subsequent transferees and third parties whose rights are touched by possession or sale.*

J. Rajiv Subramaniyan / s.17 'any person' ruling

LAWWORLD 2013 SC 1010

Section 17 confers a right on any person (including borrower) aggrieved by measures under Section 13(4); 'any person' includes the guarantor and others who claim interest in the secured assets, so they may invoke the DRT irrespective of parallel civil-court questions.

Authority on wide standing under Section 17

LAWWORLD 2017 SC 1138

Reaffirms that Section 17 reaches borrowers, guarantors and any person affected by action under Section 13(4) or Section 14, and that the statutory DRT/DRAT path is the ordinary forum.

Standing is not unlimited. An auction purchaser who merely seeks refund of earnest money, without challenging a Section 13(4) measure as a person affected by that measure, is not an "aggrieved person" under Section 17(1). Counsel must plead how the applicant is affected by the impugned measure, not a free-standing money claim dressed as a SARFAESI appeal.

Auction purchaser EMD claim outside Section 17

LAWWORLD 2013 KAR 1231

Purchaser seeking refund of EMD is neither guarantor nor person affected by Section 13(4) measures in the Section 17 sense; the Section 34 bar does not force such a refund suit into the SARFAESI forum.

TIP

Plead the interest

Name the security document, the asset, and the precise measure (possession notice, physical possession, sale notice, or Section 14-aided dispossession). Guarantors and subsequent transferees should annex the guarantee, transfer deed, or title chain that shows why they are aggrieved.

When the Clock Starts: Maintainability after Constructive Possession

*A Section 17 application becomes maintainable once the secured creditor takes a **measure** under Section 13(4). For immovable assets, affixation and publication of the possession notice under the Enforcement Rules amount to constructive or symbolic possession. The applicant need **not** wait for physical dispossession, completion of sale, or confirmation of auction. Once the Section 13(4) step and the Rule 8 possession notice are out, the statutory remedy is open.*

Maintainability at possession-notice (symbolic) stage

LAWWORLD 2018 SC 111

Earlier authorities on symbolic versus physical possession do not require the borrower to wait for physical dispossession. Symbolic possession under Rule 8 is a lawful SARFAESI device, and a Section 17(1) application is maintainable at the stage of the possession notice under Rule 8(1)-(2).

Complete code once Section 13(4) and Rule 8 notice issue

LAWWORLD 2018 SC 0115

SARFAESI is a complete code; after notice under Section 13(4) and possession notice under Rule 8, the ordinary remedy is under Sections 17 and 18, not a rushed writ.

Possession obtained with Magistrate assistance under Section 14 is likewise inside the Section 17 net. Grievances against the resulting dispossession travel to the DRT as a challenge to the measure, not by collateral attack on the Magistrate's order in ordinary civil court.

Section 14 orders amenable to Section 17

LAWWORLD 2019 KAR 012

An order under Section 14(1) is challengeable under Section 17; 'any person' covers a person aggrieved by measures under Section 13(4) or by a Section 14 order, and the statutory path (including Section 18) is the proper course.

Territorial Jurisdiction, Limitation and Fees

Territorial jurisdiction is governed by **Section 17(1A)**. The application lies before the Debts Recovery Tribunal within whose jurisdiction the secured asset against which the measure is taken is situated. Where measures touch assets in more than one Tribunal's local limits, file where the asset under challenge is located, and plead the asset schedule with survey numbers, municipal identifiers, and district so jurisdiction is clear on the face of the paper.

- **Limitation:** File within the prescribed period from the date the impugned measure is taken (commonly reckoned from the possession notice or the Section 13(4) step under challenge). Do not wait for sale if possession is already under attack.
- **Fees:** Pay the Tribunal fee as per the applicable DRT fee schedule on the amount of debt claimed or the relief valued as the rules require; deficit fee invites office objections and delay on interim prayers.
- **Parties:** Implead the secured creditor (authorised officer), and where sale is imminent or concluded, the auction purchaser if already identified.

WARNING

Do not sleep on the possession notice

Constructive possession starts the maintainability clock. A strategy of "wait for physical lock-and-key or auction" risks limitation fights and weakens the case for urgent stay of sale.

Scope of Inquiry, Interim Protection, and the True Section 17 Path

Under **Section 17(2)-(3)**, the Tribunal examines whether the secured creditor's measures comply with the Act and the Enforcement Rules. If the measures are found wanting, the Tribunal may set them aside and restore possession or grant consequential relief as the provision allows. The inquiry is statutory and evidence-based: notices, service proof, possession papers, valuation and sale record. It is not a full civil trial on the underlying loan account, nor a residual writ substitute.

interim protection (Section 17)

Tribunal-ordered restraint-typically stay of further measures, status quo on possession, or deferment of sale-granted on the Section 17 application pending final disposal, so that the challenge is not rendered infructuous by auction or third-party transfer.

Interim protection against further measures or sale should be prayed in the Section 17 application itself: stay of sale, status quo on possession, and production of the bank's enforcement record. Support the prayer with the possession or sale notice, proof of urgency, and a concise prima facie defect. Final reliefs-setting aside measures and restoration-must also be framed under Section 17(3), not as freestanding equitable orders.

Section 17(3) controls restoration; residual DRT powers do not

LAWWORLD 2007 KAR 052

Section 17(7) allows the Tribunal to be guided by DRT Act procedure only where SARFAESI is silent. Where Section 17(3) specifically governs restoration of possession, the Tribunal cannot use general powers under the DRT Act to order redelivery pending the Section 17 case.

Section 17 challenge versus misconceived residual applications

A **true Section 17 application** attacks identified Section 13(4) (or Section 14-aided) measures and seeks statutory relief under Section 17(2)-(3). Misconceived filings invoke residual DRT procedure provisions-general interim powers or miscellaneous applications unmoored from Section 17-to obtain redelivery, indefinite stay, or a mini-trial on quantum without engaging the SARFAESI scheme. Those shortcuts fail when a specific Section 17 pathway exists. Frame every possession, sale, or restoration dispute as a Section 17 case with proper standing, limitation, and asset-linked jurisdiction.

Section 17 filing checklist

- ☐ Applicant is borrower, guarantor, or other person aggrieved with a pleaded interest in the asset
- ☐ Impugned measure identified (Rule 8 possession notice, physical possession, sale notice, or Section 14-aided step)
- ☐ Filed without waiting for physical dispossession or auction if constructive possession already taken
- ☐ Tribunal chosen under Section 17(1A) for the location of the secured asset
- ☐ Within limitation from the measure; fee paid as per schedule
- ☐ Interim prayers: stay of sale / status quo / production of record
- ☐ Final prayers under Section 17(3): set-aside and restoration-not residual DRT Act miscellany

09

Winning Grounds under Section 17: What Actually Succeeds

Defects in NPA trigger, notice, representation, possession, valuation, and sale

What the Tribunal actually decides

A Section 17 application is an original enquiry, not a narrow appeal. The Tribunal must examine whether measures under Section 13(4) conform to the Act and the Enforcement Rules, on facts and evidence produced by both sides. If they do not, it may declare the recourse invalid, restore possession or management, and give consequential directions-including undoing a completed sale where the process is bad.

Nature and scope of DRT enquiry under Section 17

High Court of Karnataka, 2022

Section 17 is an original proceeding: the DRT must test Section 13(4) measures against the Act and Rules, may examine evidence, and can restore possession. Applicability of Section 31, service of notices, and whether the entire property had to be sold are factual issues for the Tribunal.

LawWorld ID: LAWWORLD 2022 KAR 0740

Scope of DRT jurisdiction after Section 13(4)

Supreme Court, 2009

After the 2004 amendments, the DRT's jurisdiction is not confined to the initial taking of possession; it extends to post-13(4) events and the Tribunal may set aside transactions including sale when measures are non-compliant.

LawWorld ID: LAWWORLD 2009 SC 0796

THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - Section s.17

Any person (including the borrower) aggrieved by measures under Section 13(4) may apply to the DRT within forty-five days. After examining facts, circumstances and evidence, if the Tribunal finds the measures not in accordance with the Act and Rules, it may declare the recourse invalid, restore possession or management, and pass such other directions as necessary.

TIP

Evidence culture

Tribunals decide on documents, not rhetoric. Every ground below succeeds only when the borrower annexes the bank's own papers-facility agreements, NPA communication, notices, postal proofs, representation and reply, possession and sale notices, valuation reports-and points to a concrete mismatch.

Threshold and process defects

Enforceable security interest

A security interest created by a valid security agreement over identifiable assets, capable of enforcement under Chapter III-distinct from an unsecured claim or a charge that was never perfected or has been released.

Absence of enforceable security or debt

If there is no subsisting security interest, or the claimed debt is not traceable to the security agreement, Section 13 measures collapse at the root. What moves the Tribunal: the registered mortgage or hypothecation deed, memorandum of entry, charge registration extract, and a clear mismatch with the asset described in the notices. What fails: a bare plea of "no dues" or "fabricated documents" without producing statements of account, discharge letters, or title papers.

Flawed NPA classification

Classification as a non-performing asset is a statutory precondition to a valid Section 13(2) demand in the ordinary course. Evidence that works: bank statements showing the account was regular or only temporarily irregular on the classification date; internal classification notes obtained on disclosure; RBI-norm breach demonstrated from the bank's own ledger. Bare assertions that "NPA is illegal" without dates, figures, or the classification communication almost never succeed.

Fatal defects in the Section 13(2) notice or service

The demand notice must correctly identify the secured assets, the outstanding, and the persons liable, and must be duly served. A clear mismatch between the mortgaged extent and the extent described in the notice is a classic winning point. Service defects succeed when postal acknowledgments, returned covers, or address mismatches are on record-not when the borrower merely says "I never received it" while having replied on merits.

Misdescription of mortgaged area in Section 13(2) notice

High Court of Karnataka, 2024

Demand and possession notices described the entire 1 hectare 2012 sq.mts., though only 2012 sq.mts. stood mortgaged. The clear mismatch with the memorandum of entry could not be brushed aside; correct particulars of the secured asset are mandatory.

LawWorld ID: LAWWORLD 2024 KAR 0611

Invalid Section 13(2) notice - possession notices quashed

High Court of Karnataka, 2019

Once the Section 13(2) demand notice was held invalid, the consequential possession notices were quashed and set aside, restoring the DRT's protective order.

LawWorld ID: LAWWORLD 2019 KAR 0613

Non-consideration of the Section 13(3A) representation

The creditor must consider the borrower's representation and communicate reasons for non-acceptance. What succeeds: a detailed, asset-specific representation on record, contrasted with a mechanical one-line rejection, silence beyond the statutory window, or a reply that ignores the points raised. What fails: complaining about "non-application of mind" when the bank's reply engages each objection, or recycling the same points without new material.

Premature or non-compliant possession

Possession-symbolic or physical-before expiry of sixty days from a valid Section 13(2) notice, or without the Rule 8 affixation and publication steps, is a measure open to attack. Prove it with the notice date, the possession-notice date, newspaper cuttings, photographs of affixation, and inventory. A bare claim of "forcible possession" without contemporaneous proof rarely displaces a bank paper trail of constructive possession.

Valuation, sale irregularities, and Section 31

Valuation and reserve-price manipulation

Undervaluation and a manipulated reserve price are winning grounds when the borrower produces the bank's valuation reports, shows unjustified forced-sale discounts, stale valuation relative to the sale date, or a reserve fixed below the reported market value without recorded reasons. A second independent valuation helps. Mere assertion that the property is "worth much more," without comparables or a rebuttal report, is treated as a bargaining plea.

Sale-notice and auction irregularities

*Thirty-day sale-notice defects, inadequate publicity, sale below reserve, bundling of distinct assets without justification, and auction during a subsisting stay are process breaches the Tribunal can undo. **The Supreme Court** has confirmed that DRT power reaches post-possession events including sale. Evidence that works: the sale notice, publication proof, bid sheet, confirmation order, and stay order dates. What fails: attacking a confirmed sale only on hardship or adequacy of price after participating without protest.*

Section 31 exclusions

If the asset is agricultural land or otherwise falls outside the Act under Section 31, enforcement is without jurisdiction. This is a factual issue the DRT must decide on

revenue records, cultivation evidence, and the character of the land at the relevant time-not on a one-line label in the plaint. **Authority** treats Section 31 applicability as a matter for evidence before the Tribunal.

Ground	Evidence that typically moves the DRT	What usually fails
No security / no debt	Security deed, charge extract, asset mismatch	Bare "no dues" without accounts
Bad NPA	Ledger, classification note, RBI-norm breach	Slogan without dates or figures
Defective 13(2) / service	Wrong extent, wrong parties, returned covers	Denial after having replied on merits
13(3A) ignored	Detailed representation vs mechanical reply	Repetitive plea already answered
Premature possession	Notice vs possession dates; Rule 8 proof gaps	Oral "forcible" claim alone
Valuation / reserve	Twin reports, stale date, discount without reasons	"Property worth more" without report
Sale / auction defects	Short notice, below-reserve sale, stay breach	Price grievance after quiet participation
Section 31 exclusion	Revenue records, cultivation proof	Bare agricultural label

Before settling grounds in the Section 17 application

- ☐ Map each ground to a specific annexure (notice, report, postal proof, reply).
- ☐ Prefer bank-generated documents over self-serving affidavits.
- ☐ For asset description defects, place mortgage deed and notice side by side with highlighted extents.
- ☐ For 13(3A), annex the full representation and the bank's reply; mark ignored paragraphs.
- ☐ For possession timing, build a one-page chronology from 13(2) service to possession notice.
- ☐ For valuation, obtain both bank valuations and note who approved the reserve.
- ☐ For Section 31, file certified RTC / revenue extracts contemporaneous with the mortgage and the measure.
- ☐ Drop grounds you cannot evidence; weak fillers dilute strong process attacks.

WARNING

Do not plead what you cannot prove

Tribunals routinely discard omnibus challenges. A short application built on two documented process breaches outperforms a long narrative of hardship, settlement talks, and unparticularised fraud. Keep quantum disputes for accounts scrutiny only where they feed a notice or NPA defect.

10

Appeal to the DRAT and the Section 18 Pre-Deposit

Limitation, deposit quantum, waiver controversies, and scope of appellate review

Who may appeal and limitation

Any person aggrieved by an order of the Debts Recovery Tribunal under Section 17 may prefer an appeal to the Debts Recovery Appellate Tribunal under Section 18. The statutory window is **thirty days** from receipt of the DRT order. Section 5 of the Limitation Act is impliedly inapplicable to Section 18(1) appeals, so delay cannot be condoned on ordinary sufficient-cause grounds. The principle of Section 14 still applies: time spent bona fide in a wrong forum may be excluded.

Limitation Act s.14 - Applicability to SARFAESI s.18(1) appeals

Supreme Court, 2015

Section 5 and Section 29(2) are impliedly inapplicable to Section 18(1) appeals, but the Section 14 principle of excluding time spent bona fide in a wrong forum remains available.

LawWorld ID: LAWWORLD 2015 SC 0821

TIP

Writ-time exclusion

If the borrower first approached the High Court, seek an express direction that time spent in the writ be excluded when computing Section 18 limitation. Courts have granted such exclusion when liberty to appeal is reserved. Do not treat the writ as a substitute for the statutory appeal- *the Supreme Court insists on exhausting Section 18*.

Appeal to DRAT - exclusion of time spent in writ proceedings

High Court of Karnataka, 2025

While dismissing a writ, the Court reserved liberty to file a Section 18 appeal and directed exclusion of the writ period if the appeal was filed within thirty days of the order being uploaded.

LawWorld ID: LAWWORLD 2025 KAR 0320

Mandatory pre-deposit: quantum, credit and entertainment

Section 18 pre-deposit

The statutory condition that no appeal by the borrower shall be entertained unless the borrower deposits fifty per cent of the amount of debt due as claimed by the secured

creditor or as determined by the DRT, whichever is less, after giving credit for amounts already paid to the secured creditor or already deposited, reducible by the DRAT for recorded reasons to not less than twenty-five per cent.

The second and third provisos to Section 18 create an **absolute bar** to entertainment without pre-deposit. The figure is fifty per cent of the debt due-claimed by the secured creditor or determined by the DRT, **whichever is less** -after credit for amounts already paid to the creditor or already deposited. The DRAT may reduce the deposit for reasons recorded in writing, but **not below twenty-five per cent** . Neither the Tribunal nor a writ court can grant a complete waiver.

SARFAESI Act s.18 - mandatory pre-deposit; no complete waiver

Supreme Court, 2021

There is an absolute bar to entertainment of a Section 18 appeal without the prescribed pre-deposit. Courts and tribunals cannot grant full waiver; reduction is permitted only down to twenty-five per cent with recorded reasons.

LawWorld ID: LAWWORLD 2021 SC 0249

Pre-deposit is **debt-specific, not appeal-specific** . Where several appeals arise from the same debt, deposit made in one enures to the others; insisting on cumulative deposits would exceed the debt due and defeat legislative intent. The deposit is a condition of entertainment kept with the Tribunal-not a secured asset of the bank-and must be refunded on disposal, withdrawal, or the appeal becoming infructuous, unless the depositor has consented to appropriation or the sum is under attachment.

Pre-deposit is debt-specific, not appeal-specific

High Court of Karnataka, 2025

Section 18 pre-deposit links to the amount of debt due. Deposit in one of multiple appeals from the same debt satisfies the condition and enures to the benefit of the others.

LawWorld ID: LAWWORLD 2025 KAR 013

Nature, refund and absence of bank lien on pre-deposit

Supreme Court, 2016

The partial deposit is neither a secured asset nor a secured debt; no security interest arises in favour of the creditor. On disposal, withdrawal, or the appeal becoming infructuous, the pre-deposit must be returned unless appropriated with the depositor's consent or attached in other process.

LawWorld ID: LAWWORLD 2016 SC 0431

WARNING

Non-deposit ends the appeal

Failure to make the directed deposit within the time fixed means the appeal is not entertained and is liable to rejection. Status as guarantor or co-obligant does not postpone the deposit when the creditor claims the debt from that party.

Scope of DRAT review and sale-concluded sequencing

On a properly entertained appeal, the DRAT may confirm, modify, or set aside the DRT order. That power reaches restoration of possession and the undoing of non-compliant measures, including sale, where the first Tribunal's findings on conformity with the Act and Rules cannot stand. The appeal is not a fresh trial of every Section 17 ground; it tests whether the DRT order is sustainable on the record.

When sale has already concluded before the appeal is heard, sequence relief with care: first secure entertainment by completing pre-deposit; next seek interim restraint on confirmation, transfer, or further dealing if still open; then press for setting aside and restoration on the merits. Implead the auction purchaser so any restoration order binds. A confirmed sale does not oust DRAT jurisdiction, but delay and third-party equities harden the practical onus on the appellant.

Section 18 filing checklist

- ☐ *Diary receipt date of the DRT order and compute the thirty-day limit*
- ☐ *If a prior writ was pursued, obtain express exclusion of that period under the Section 14 principle*
- ☐ *Compute debt due (claimed vs DRT-determined-take the lower) and subtract amounts already paid or deposited*
- ☐ *Move for reduction to not below 25% with recorded reasons if full 50% is oppressive; never seek full waiver*
- ☐ *Deposit within the time fixed; non-compliance ends entertainment*
- ☐ *Where multiple appeals share one debt, rely on the existing debt-specific deposit rather than paying again*
- ☐ *If sale has concluded, implead the purchaser and sequence stay, set-aside, and restoration prayers*

11

Running Two Tracks: SARFAESI Alongside a DRT Recovery Application

Complementary remedies, no forced election, and strategic sequencing

Complementary remedies, not alternatives

A secured creditor who has already filed a recovery application under Section 19 of the Recovery of Debts and Bankruptcy Act, or who has obtained orders on that application, may still invoke measures under Section 13 of the SARFAESI Act. The two tracks are not inconsistent alternatives. Adjudication of debt before the DRT and non-intervened enforcement against secured assets are cumulative tools for the same underlying right.

doctrine of election

The principle that a party faced with two truly inconsistent remedies must choose one and is bound by that choice. It does not apply where statutes confer complementary, cumulative remedies for the same debt.

Parallel SARFAESI measures after Section 19 order

High Court of Karnataka, 2022

Following Transcore, recourse to Section 13(4) remains open despite a Section 19 order. Remedies under the DRT Act and SARFAESI are complementary; the doctrine of election has no application.

LawWorld ID: LAWWORLD 2022 KAR 0740

SARFAESI as additional enforcement remedy

Supreme Court, 2017

RDDDB and SARFAESI remedies are complementary and form one cumulative remedy. Election, if any, is only among civil court, arbitral tribunal and DRT for adjudication; SARFAESI is additional enforcement and may run with arbitration.

LawWorld ID: LAWWORLD 2017 SC 0946

Sections 35 and 37 - addition, not derogation

Supreme Court, 2014

Read together, SARFAESI overrides only where inconsistent and otherwise operates in addition to, and not in derogation of, the RDDDB Act and other laws.

LawWorld ID: LAWWORLD 2014 SC 0229

The same logic holds where a civil suit is pending: mere filing or pendency does not bar Sections 13 and 14. Courts have likewise held that concurrent pursuit of DRT recovery

and other statutory routes does not amount to blowing hot and cold when the creditor enforces the same right in larger degree.

Pendency of suit no bar to Sections 13 and 14

High Court of Karnataka, 2006

No provision bars SARFAESI because a recovery suit is pending; the creditor must still comply with Section 13(3A).

LawWorld ID: LAWWORLD 2006 KAR 0310

Concurrent DRT recovery and winding up

Supreme Court, 2019

Doctrine of election inapplicable where the creditor is not choosing inconsistent rights but enforcing the same right more fully; DRT recovery and winding up may proceed together.

LawWorld ID: LAWWORLD 2019 SC 0145

Bank-side sequencing

On the bank side, dual-track work is about order and documentation, not about abandoning one forum. Use the OA to fix liability, implead guarantors, and obtain a recovery certificate for unsecured residue. Use SARFAESI to realise specific security without waiting for final OA disposal. Keep the outstanding figure, security description, and NPA record aligned across both files so that neither track is impeached by inconsistency.

Bank dual-track checklist

- ☐ Confirm security interest and registration before any Section 13(2) notice
- ☐ Align claim figures in the OA and the Section 13(2) demand
- ☐ Record that SARFAESI is pursued without prejudice to the pending OA
- ☐ After SARFAESI sale, appropriate proceeds and amend or reduce the OA claim
- ☐ Do not treat a Section 19 order as a bar to further Section 13(4) measures

TIP

Residue after sale

SARFAESI realises secured assets; the OA (and recovery certificate) remains the vehicle for any shortfall and for defendants or assets outside the security package. Sequence sale first where the asset is clean and marketable; press the OA where liability or guarantor coverage is contested.

Borrower-side coordination

When both tracks run, the borrower must split forums correctly. Challenges to Section 13(4) measures belong in a Section 17 application. Defences to the debt, limitation, or guarantee go in the OA written statement. Trying to restrain SARFAESI inside the OA through residual DRT procedure powers is misconceived.

Section 22 OA application cannot restrain SARFAESI

High Court of Karnataka, 2006

After Section 13 measures, the statutory safeguard is Section 17. An application under Section 22 of the DRT Act in the pending OA seeking to restrain SARFAESI steps is totally misconceived.

LawWorld ID: LAWWORLD 2006 KAR 0850

Borrower dual-track response

1. Map which acts are pure enforcement (possession, sale notice) versus pure adjudication (OA claim quantum)
2. File or amend Section 17 for every Section 13(4) measure; seek interim stay of sale there
3. Plead debt, limitation, and guarantee defences fully in the OA written statement
4. Keep a common evidence spine-facility docs, statements, notices, valuation-for both forums
5. Avoid arguing in writ or OA that the bank must elect only one statute

WARNING

No forced election against the bank

Borrowers often plead that the bank, having chosen the OA, is estopped from SARFAESI. That plea fails. Election does not bind the creditor to a single track. Spend pleading space on notice defects, NPA, valuation, and sale irregularities-not on a false election bar.

Coordinate reliefs so that success on Section 17 (set-aside of measures, restoration) is reflected in OA accounting, and any OA finding on the quantum of debt is used to cabin the SARFAESI demand. Dual tracks multiply paper; they do not multiply the debt.

12

When Insolvency Intervenes: IBC Moratorium and SARFAESI

Section 14 IBC freeze, secured creditor standing in CIRP, and exit after plan or liquidation

The Section 14 freeze on SARFAESI measures

Moratorium

The statutory freeze under Section 14 of the Insolvency and Bankruptcy Code that runs from the insolvency commencement date and prohibits, among other things, institution or continuation of proceedings against the corporate debtor and any action to foreclose, recover, or enforce a security interest in its property, including under SARFAESI.

Once the adjudicating authority admits a CIRP application, Section 14(1)(c) of the IBC imposes a complete prohibition on any action to foreclose, recover, or enforce a security interest against the corporate debtor's property. That bar expressly reaches measures under the SARFAESI Act. Pending Section 13(2) demands, Section 13(4) possession steps, Section 14 Magistrate assistance, and auction processes against the corporate debtor's assets must stop. Fresh institution is equally barred.

IBC moratorium bars continuation of SARFAESI

2022 SC 0587

Held that after CIRP commencement there is a complete prohibition under Section 14(1)(c) on enforcing security interest in the corporate debtor's property, including SARFAESI action; Section 238 gives the IBC overriding effect over inconsistent SARFAESI provisions, so the bank could not continue proceedings or realise security after the moratorium date.

LawWorld ID: LAWWORLD 2022 SC 0587

Purpose of the Section 14 moratorium

2022 SC 0867

Explains that the moratorium keeps the debtor's assets together, facilitates orderly CIRP, curtails parallel proceedings and conflicting outcomes, and allows the company to continue as a going concern; clauses (a)-(c) operate as a shield against pecuniary attacks.

LawWorld ID: LAWWORLD 2022 SC 0867

WARNING

No parallel realisation during CIRP

Do not complete a SARFAESI sale of corporate-debtor assets after the insolvency commencement date. Continuation after that date is void as against the estate. Channel recovery through the resolution professional and the committee of creditors instead.

Personal guarantors and third-party security

The moratorium protects only the corporate debtor and its estate. It does not extend to natural-person guarantors. Independent SARFAESI action against guarantor-furnished security may continue, because guarantor liability is co-extensive and Section 14 does not name personal guarantors. Third-party security that is not an asset of the corporate debtor likewise sits outside the freeze, subject to a valid security interest and compliant Section 13 process against the persons and assets concerned.

Moratorium does not cover personal guarantors

2018 SC 088

Section 14 refers only to the corporate debtor and its assets; on a plain reading the moratorium has no application to personal guarantors, so insolvency of the corporate debtor does not stay independent recovery, including SARFAESI, against them.

LawWorld ID: LAWWORLD 2018 SC 088

TIP

Bank sequencing

When CIRP freezes the principal's assets, audit whether guarantor or third-party parcels can still be enforced under SARFAESI without touching the corporate estate. Keep notices, possession, and sale papers strictly confined to those non-estate assets.

Standing in CIRP and revival after exit

Inside CIRP the secured creditor files its claim, sits on the committee of creditors, and votes on the resolution plan. Plan treatment of the security interest-relinquishment, assignment, or structured recovery-binds the creditor once the plan is approved. Questions whether any enforceable debt survives against a guarantor after plan approval, and whether an assignee qualifies as a secured creditor, belong before the DRT in a Section 13/17 contest, not in a civil suit.

Post-plan guarantor liability and DRT forum

2021 SC 1119

Discharge of the corporate debtor under an approved plan does not by itself make an assignment fraudulent; existence of enforceable debt against the guarantor and secured-creditor status of the assignee are matters for the DRT in SARFAESI proceedings under Sections 13 and 17.

LawWorld ID: LAWWORLD 2021 SC 1119

When the moratorium ends-on plan approval and implementation, or on liquidation-SARFAESI rights revive only to the extent the asset is not already bound by

plan treatment or liquidator realisation. If the plan leaves the security untouched or the creditor stands outside liquidation in respect of an unbound asset, enforcement may restart from the stage lawfully reached before the freeze, with fresh compliance where notices or valuations have gone stale.

Interplay checklist for counsel

- ☐ *Confirm insolvency commencement date and scope of the Section 14 order.*
- ☐ *Halt all Section 13/14 measures against corporate-debtor assets immediately.*
- ☐ *Segregate guarantor and third-party security still open to SARFAESI.*
- ☐ *File and update the claim with the resolution professional; track CoC voting rights.*
- ☐ *Read the approved plan for treatment of the security before any post-moratorium sale.*
- ☐ *If revival is open, re-validate valuation, sale notice, and limitation before restarting auction.*

13

Guarantors in the Cross-Hairs: Liability and Defences under SARFAESI

Direct action on guarantor security, notice, and available challenges

Direct action on guarantor security

guarantor

A person who furnishes a contract of guarantee or creates a security interest over own property to secure the borrower's liability; under SARFAESI the guarantor is often also a "borrower" for enforcement purposes when own assets stand charged.

Liability on a guarantee is **co-extensive** with that of the principal debtor. Once a valid **security interest** exists over assets furnished by the guarantor, the secured creditor may take Section 13 measures against those assets without first exhausting remedies against the principal borrower or the borrower's estate. The Supreme Court has held direct action under Sections 13(2), 13(4) and 14 against the guarantor legally unobjectionable.

Bank's right to proceed directly against guarantor

LAWWORLD 2010 SC 0787

Liability of guarantor is co-extensive; creditor need not first exhaust remedies against the borrower. Notices and Section 14 steps taken directly against the guarantor's mortgaged property were upheld; High Court restraint set aside.

Liability of guarantor - bank need not first proceed against borrower

LAWWORLD 2018 KAR 0425

Surety cannot insist that the bank exhaust remedies against the principal borrower or his property first; liability is immediate unless the contract provides otherwise.

WARNING

Security interest still required

Direct action is available only against **secured assets** created by the guarantor under a security agreement. Unsecured personal guarantee alone does not open Section 13 enforcement against the guarantor's other property.

Notice to guarantors and Section 17 standing

Where the guarantor has created the security interest, the Section 13(2) demand must run against that person and correctly describe the secured asset. Omitting the guarantor, serving only the principal borrower, or misdescribing the mortgaged extent

are recurring defects. Guarantors aggrieved by Section 13(4) measures (including possession via Section 14) have standing as "any person" under Section 17-the same statutory channel as the borrower, not a civil suit.

Section 17 - "Any person" includes guarantors

LAWWORLD 2017 SC 1138

"Any person (including borrower)" is of wide import and covers guarantors and others affected by Section 13(4) or 14 measures; writ courts should ordinarily send parties to the DRT/DRAT.

Guarantor's remedy before DRT; civil court bar

LAWWORLD 2025 KAR 0946

A guarantor aggrieved by Section 13(4) measures has an efficacious remedy before the DRT; Section 34 bars civil/commercial court jurisdiction and injunctions against SARFAESI action.

Typical guarantor defences

- **Scope of guarantee** - whether the instrument covers the facility, renewals, and the quantum claimed; whether the bank was party to a true contract of guarantee.
- **Release or variation of security** - material variation of the principal contract or release of co-security without consent, where the guarantee or general law so provides.
- **Acknowledgment and limitation** - whether the claim is in time and whether any acknowledgment binds this guarantor.
- **Defective enforcement** - wrong outstanding, bad service, asset misdescription, premature possession, or sale-rule breaches aimed at the guarantor's asset.

Misdescription of mortgaged area in Section 13(2) notice

LAWWORLD 2024 KAR 0611

Clear mismatch between notice (entire larger area) and actual mortgaged extent could not be brushed aside; correct particulars of the secured asset are mandatory.

NOTE

Guarantor insolvency - summary only

Personal guarantor insolvency under the IBC can stay or restructure recovery against the guarantor's estate. Third-party security and natural-person guarantors remain distinct from the corporate debtor's moratorium (Chapter 12). Coordinate SARFAESI timelines with any admitted guarantor insolvency filing; do not assume the corporate moratorium automatically freezes guarantor assets.

Guarantor defence quick screen

- ☐ Is there a registered/enforceable security interest over this guarantor's asset?
- ☐ Was Section 13(2) served on the guarantor with correct asset description and dues?
- ☐ Does the guarantee cover the claimed facilities and amount?

- ☐ *Any release, novation, or material variation without consent?*
- ☐ *Limitation/acknowledgment issues specific to this guarantor?*
- ☐ *File Section 17 against the measure-do not sue in civil court.*



14

Bank-Side Compliance Checklist

File hygiene from sanction to sale confirmation

Why the file must prove every step

Section 13(1) gives the secured creditor a free hand to enforce without court intervention, but only **in accordance with the Act and Rules**. The creditor acts as trustee of the asset and cannot deal with it arbitrarily. [LAWWORLD 2014 SC 0229](#) Measures under Section 13(4) are incomplete unless Rules 8 and 9 are fully followed. [LAWWORLD 2017 SC 1138](#) Treat the checklist below as a pre-DRT audit: each item is a yes/no question; the second column is the document that must sit in the file.

Creditor's enforcement power and trustee duty

[LAWWORLD 2014 SC 0229](#)

Section 13(1) confers enforcement without court intervention only in accordance with the Act; the creditor must strictly conform to statutory safeguards and cannot deal with the asset whimsically.

Pre-enforcement: security, NPA, demand and reply

Sanction to close of Section 13(3A)

- ☐ **Security agreement on record?** - Facility letter, mortgage/charge deed, guarantee; CERSAI/ROC registration proof where applicable.
- ☐ **Default and NPA classification recorded?** - Internal NPA memo with classification date and outstanding break-up (principal, interest, charges).
- ☐ **Section 13(2) notice complete?** - Sixty-day demand stating amounts payable and describing secured assets. [LAWWORLD 2004 SC 0498](#)
- ☐ **Service proved on all borrowers/guarantors named?** - Acknowledgement, registered-post receipt, or affixation/publication proof under the Rules.
- ☐ **Section 13(3A) representation considered with application of mind?** - Internal consideration note dated within the statutory window.
- ☐ **Reasoned non-acceptance communicated?** - Written reply with brief reasons; non-compliance can vitiate later measures. [LAWWORLD 2018 SC 0355](#) [LAWWORLD 2006 KAR 0310](#)
- ☐ **Authorised officer appointed in writing?** - Board/delegation order under Section 13(12) naming the officer who will take measures.

WARNING

13(3A) is mandatory

Absence of a consideration note and reasoned reply is a classic DRT attack point. File both documents even when the representation is a bare denial.

Possession, Section 14, valuation and sale

Measures through confirmation and surplus

- ☐ **Sixty days expired without full discharge before any 13(4) measure?** - Diary note tying first possession step to notice service date.
- ☐ **Possession inventory prepared?** - Panchnama/inventory of movables and documents taken over.
- ☐ **Rule 8(1)-(2) possession notice affixed and published?** - Affixation photos/report plus newspaper cuttings (possession notice is distinct from sale notice). **LAWWORLD 2017 SC 0339**
- ☐ **Section 14 affidavit pack complete (if Magistrate route used)?** - Written application with statutory affidavit particulars; order and possession handing-over memo. **LAWWORLD 2022 SC 0761**
- ☐ **Two valuation reports obtained and reserve price approved?** - Valuer reports plus internal approval fixing reserve.
- ☐ **Rule 8(6)/9(1) thirty-day sale notice to borrower and public notice (if auction/tender)?** - Service proof and two-newspaper public notice where required.
- ☐ **Bid process and confirmation clean?** - Bid sheet, payment schedule compliance, sale confirmation order, sale certificate.
- ☐ **Sale proceeds appropriated and surplus returned?** - Appropriation statement under Section 13(7); payment proof of residue to the person entitled.

TIP

Audit discipline

Before each next step, a second officer should tick the prior row. A missing service proof or unsigned consideration note is cheaper to cure on the desk than under Section 17.

15

Borrower Toolkit: Evidence Checklist and Section 17 Pleading Template

What to gather, how to structure the application, and interim prayer set

Evidence checklist before you draft

A Section 17 application succeeds or fails on documents, not adjectives. Collect the paper trail in chronological order before you draft. Mark every gap-missing service proof, unsigned valuation, or a reply that never addresses your representation-because those gaps become grounds. Guarantors should gather the same set for the assets and notices that touch them.

Section 17 application

An original proceeding before the Debts Recovery Tribunal by any person (including the borrower) aggrieved by a measure under Section 13(4), seeking a declaration that the measure is not in accordance with the Act and Rules and consequential restoration or directions.

Borrower / guarantor evidence pack

- ☐ Facility letters, sanction terms, loan agreements, and all security / mortgage / hypothecation deeds
- ☐ Guarantee deeds and any variation, release, or acknowledgment letters (for guarantor applicants)
- ☐ Statements of account for the full claim period; highlight disputed entries and interest spikes
- ☐ NPA classification communication and any internal classification intimation received
- ☐ Section 13(2) demand notice(s)-all versions-and envelopes, postal receipts, acknowledgments, or refusal endorsements
- ☐ Proof of service defects: wrong address, incomplete co-borrower/guarantor set, stale dual notices
- ☐ Your Section 13(3A) representation and the bank's reasoned (or bare) reply with proof of date of receipt
- ☐ Possession notice under the Enforcement Rules; newspaper cuttings; photographs of affixation on the asset
- ☐ Section 14 application/order papers if Magistrate assistance was used
- ☐ Sale notice(s) under Rule 8(6)/9(1), public auction advertisements, and bid sheets if

available

- ☐ Valuation reports, reserve-price approval notes, and any second or earlier valuation
- ☐ Title documents, revenue extracts, and proof of Section 31-type character (e.g. agricultural use) where pleaded
- ☐ RTI replies, bank correspondence, OTS papers, and payment receipts reducing the claimed dues
- ☐ Photographs and inventory of movable assets taken at possession, if any

TIP

Annexure discipline

Number annexures A-1, A-2... in the same order as the chronology. Every figure and date in the pleading must match an annexure. Do not plead a service defect or undervaluation without the notice, postal paper, or valuation report attached.

Stage at which borrower can approach DRT

LAWWORLD 2018 SC 111

Constructive possession by delivery, affixation and publication of the possession notice under Rules 8(1) and 8(2) is itself a Section 13(4) measure. File at that stage; do not wait for physical dispossession or sale.

Plain-language Section 17 template

Use the structure below as a working skeleton. Replace every placeholder with case-specific names, amounts, dates, and asset descriptions. Map each ground to the taxonomy in Chapter 9 and pin it to an annexure. The Tribunal's enquiry is original and fact-driven: it examines whether measures under Section 13(4) accord with the Act and Rules on the evidence the parties produce.

Nature and scope of DRT enquiry under Section 17

LAWWORLD 2022 KAR 0740

Section 17 is not a narrow appeal. The DRT may examine facts, service, Section 31 applicability, and necessity of selling the whole asset, declare measures invalid, restore possession or management, and issue directions.

THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - Section 17

Any person (including borrower) aggrieved by any measure referred to in Section 13(4) may apply to the Debts Recovery Tribunal having jurisdiction within forty-five days of the measure, with the prescribed fee. Communication of reasons for rejecting a representation, or of likely action, does not by itself open this remedy. The Tribunal enquires whether the measures are in accordance with the Act and Rules and may restore possession or management and give consequential directions.

Caption, parties, and jurisdiction

1. **Forum and cause-title:** Before the Debts Recovery Tribunal at [place]. Securitisation

Application under Section 17 of the SARFAESI Act, 2002.

2. **Applicant(s):** Full name, status (borrower / co-borrower / guarantor / other aggrieved person), address for service.
3. **Respondent(s):** Secured creditor bank/FI, authorised officer by name and designation, and auction purchaser if sale is complete or imminent.
4. **Jurisdiction paragraph:** State that the secured asset is situated at [address/survey nos.] within this Tribunal's territorial limits under Section 17(1A), or that the measure was taken within those limits; give the date of the impugned measure and that the application is within forty-five days (or explain condonation if needed).
5. **Limitation and fee:** Plead the reckoning date (affixation/publication/possession/sale notice) and enclose fee as prescribed for borrower or non-borrower.

Chronology and grounds

Set out a dated chronology: sanction default/NPA Section 13(2) representation and reply possession notice or Section 14 valuation and sale notice any auction step. Then plead grounds under clear heads drawn from Chapter 9—for example: no enforceable security interest or debt; flawed NPA classification; fatal defects in the Section 13(2) notice or service; non-consideration or mechanical rejection of the Section 13(3A) representation; possession before expiry of sixty days or without Rule compliance; valuation and reserve-price manipulation; sale-notice and auction irregularities; Section 31 exclusion. Under each head, state the fact, the annexure, and the legal consequence. Avoid bare denials.

Interim and final prayers

Interim relief should freeze irreversible steps while the Tribunal examines legality. Final relief should track the Tribunal's restorative powers and the statutory right to compensation and costs where possession is held unlawful.

- **Interim:** Stay of sale/auction and confirmation; status quo on possession (symbolic and physical); restraint on further Section 13(4) measures; direction to produce complete loan, service, valuation, and sale records; short-date hearing.
- **Final:** Declare the impugned Section 13(4) measures (and consequential sale steps) invalid and set them aside; restore possession/management of the secured asset to the applicant; quash sale notice/auction/sale certificate as applicable; damages/compensation and costs where restoration is ordered; any other order the Tribunal deems fit.

THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002 - Section 19

If the Tribunal (or appellate forum), on a Section 17 application, holds that possession of secured assets by the secured creditor is not in accordance with the Act and Rules and directs return of the assets to the borrower or other aggrieved applicant, that person is entitled to such compensation and costs as the Tribunal or court determines.

WARNING

Case-specific figures only

Never copy sample rupee figures, survey numbers, or annexure lists from a precedent pleading. Wrong outstanding amounts or asset descriptions undermine credibility and can invite a maintainability attack. Every number in the prayer and chronology must be sourced from your evidence pack.

From papers to filing

1. Close the evidence checklist and index annexures chronologically.
2. Draft parties, jurisdiction, and limitation with the exact measure date.
3. Write chronology; tag each event to an annexure number.
4. Plead grounds under Chapter 9 heads-fact, annexure, consequence.
5. Frame interim prayers (stay of sale, status quo, production) and final prayers (set-aside, restoration, costs).
6. Verify fee, vakalatnama, and affidavit verifying pleadings and annexures.
7. File within forty-five days of the measure; move urgently for interim protection on the first listing.

NOTE

What this template does not do

Bank-side compliance sequencing is Chapter 14. How to cross-examine the valuer and authorised officer on methodology and reserve price is Chapter 16. Keep this pleading to facts, defects, and reliefs the DRT can grant on your documents.

16

Attacking Valuation: Cross-Examination Pointers for the Hearing

Method, comparables, forced-sale discount, and reserve-price decisions

Method, date, and ignored positives

At the Section 17 hearing, treat the bank valuer and the authorised officer as separate witnesses. Open on **methodology**. Ask whether the report used comparable sales, residual development, or income capitalisation, and force the witness to name the three nearest closed sales with dates, areas, and adjustments. If residual method was used for a ready built asset, demand why comparables were discarded.

forced-sale discount

A percentage reduction applied to estimated market value on the premise that a SARFAESI sale is a distressed disposal; it must be justified by evidence of market resistance, not applied as a routine haircut.

Next lock the **date of valuation** against the date of sale notice and auction. A stale report that ignores intervening guidance-value revisions or neighbourhood sales is vulnerable. Then test **positive features**: conversion orders, non-agricultural revenue entries, tenancy-free possession, road frontage, or rental income. Ignoring conversion and guidance value while treating land as agricultural has supported quashing of sale notices for undervaluation, because reserve price 'plays a vital role' and borrowers do not participate in its fixation.

LAWWORLD 2011 KAR 0231

High Court of Karnataka, 2011

Sale notice and auction quashed where valuations treated the asset as agricultural land, ignored conversion orders and higher guidance value, and fixed a reserve far below real value-reserve price plays a vital role and borrowers do not fix it.

LawWorld ID: LAWWORLD 2011 KAR 0231

Discounts, twin valuations, and the reserve-price trail

On **forced-sale discount**, require the percentage, the circular or market data supporting it, and whether the same discount was applied in the bank's earlier internal valuation. A mismatch between two bank valuations-higher for sanction or stock audit, lower for enforcement-must be explained document by document. Reserve price is distinct from valuation; Rule 8(5) requires an approved valuer's report and fixation of reserve before sale.

LAWWORLD 2016 SC 1141

Supreme Court, 2016

Sale sustained where approved valuer's report existed, reserve was fixed in consultation with the secured creditor, and the asset sold above reserve-compliance with Rules 5 and 8(5) on valuation and reserve was held established.

LawWorld ID: LAWWORLD 2016 SC 1141

LAWWORLD 2004 SC 0851

Supreme Court, 2004

Reserve price (upset price) is distinct from valuation; valuation is a question of fact; challenge fails if reserve was fixed on comparative sales and other relevant material.

LawWorld ID: LAWWORLD 2004 SC 0851

Close on the **paper trail** : who recommended the figure, which committee or officer approved it, and whether successive reductions after failed auctions were minuted with fresh market material. Progressive cuts without fresh valuation invite the inference of engineered undervaluation.

Cross-examination hit-list

- ☐ Name method; produce the three comparables with adjustments
- ☐ Valuation date vs sale-notice and auction dates
- ☐ Conversion, guidance value, income, and title positives omitted
- ☐ Forced-sale discount % and supporting circular or data
- ☐ Explain gap between sanction-time and enforcement valuations
- ☐ Identify recommender and approver of each reserve figure
- ☐ Minutes for every downward revision after failed sale

Borrower rebuttal and Tribunal-directed valuation

File a **rebuttal valuation** from an approved valuer before the hearing, annexing the same title and conversion papers the bank ignored, plus recent registered sales. Use it to frame questions, not as a freestanding substitute for cross-examination. Seek a Tribunal-directed fresh valuation when the bank's report is facially defective on method or date, twin bank figures cannot be reconciled, or reserve was fixed without the Rule 8(5) trail. Bare assertion of higher worth without documents rarely moves the Tribunal; specific ignored positives and an unexplained discount do.

TIP

Proof order

Mark the bank valuation, approval note, sale notices showing successive reserves, conversion/RTC extracts, and the rebuttal report as a single bundle. Put contradictions to the authorised officer first, then the valuer.

17

Note for the Auction Purchaser: Title, Challenges, and Protection

What the purchaser buys, pendency risk, and when the sale sticks

What title you buy

A SARFAESI auction confers title only after the secured creditor confirms the sale and you complete payment. On confirmation, title relates back to the date of sale; the sale certificate is ministerial proof, not the source of title. You take the asset free of the borrower's equity of redemption, but subject to prior third-party rights that the bank never cleared—tenancies, revenue charges, and attachments that survive enforcement.

bona fide auction purchaser

A stranger to the debt who bids at a public auction, pays full consideration without fraud or collusion with the bank or borrower, and obtains confirmation of sale.

LAWWORLD 2014 SC 0117

Supreme Court, 2014

Once an auction sale subject to confirmation is duly confirmed, the purchaser acquires vested rights that cannot be extinguished except in exceptional cases such as fraud or collusion; price escalation or equities between bank and borrower do not justify undoing the sale.

LawWorld ID: LAWWORLD 2014 SC 0117

Due diligence before you bid

Pre-bid checks

- ☐ Search DRT/DRAT cause lists and e-filing portals for pending Section 17 or Section 18 applications against the asset or borrower
- ☐ Obtain certified copy of any interim stay or status-quo order; do not bid if sale is stayed
- ☐ Inspect title deeds with the bank; note prior mortgages, attachments under revenue or civil process, and mutation status
- ☐ Physically verify occupation; recorded or long-standing tenancy may bind you after sale
- ☐ Check municipal/revenue dues, property tax arrears, and electricity/water charges that travel with the land
- ☐ Confirm reserve price, valuation date, and that the sale notice matches the asset you

inspected

WARNING

Pendency risk

A pending Section 17 does not automatically void the auction, but a later set-aside of measures can unravel an unconfirmed or collusive sale. Price the litigation risk into your bid or walk away.

Payment discipline under Rule 9

Deposit 25% of the bid (including earnest money) immediately on being declared successful. The balance 75% is payable on or before the fifteenth day of **confirmation of sale** by the secured creditor-not from the auction date. Default after confirmation invites forfeiture and resale. Seek written extension only if the Rules and the bank's confirmation letter allow it; oral assurances are worthless.

LAWWORLD 2018 SC 0340

Supreme Court, 2018

Under Rule 9, the fifteen-day period for the balance 75% runs from the date of confirmation of sale by the secured creditor, not from the date of auction; forfeiture before confirmation is inconsistent with the Rule scheme.

LawWorld ID: LAWWORLD 2018 SC 0340

When the sale sticks-and when it does not

After confirmation and full payment, a bona fide purchaser's interest is ordinarily protected even if the borrower's challenge later succeeds against the bank. Courts treat the stranger purchaser differently from a decree-holder purchaser. Exceptional grounds-fraud, collusion, or a sale held in teeth of a known stay-can still undo the sale. Mere inadequacy of price or a higher subsequent offer is not enough.

LAWWORLD 2022 SC 0990

Supreme Court, 2022

A bona fide third-party auction purchaser's interest continues to be protected; once a sale subject to confirmation is confirmed, rights cannot be extinguished except in exceptional cases such as fraud or collusion.

LawWorld ID: LAWWORLD 2022 SC 0990

LAWWORLD 2008 SC 0834

Supreme Court, 2008

Objections after confirmation should not ordinarily be entertained except on limited grounds like fraud; mere inadequacy of price or later higher offers do not justify setting aside a confirmed sale held after due publicity.

LawWorld ID: LAWWORLD 2008 SC 0834

Impleadment when the borrower attacks the sale

If the borrower files or pursues Section 17 after you have paid, insist on impleadment.

You have a direct interest in the sale certificate and title documents and are entitled to be heard before any order that affects your purchase. Oppose blanket stays that freeze mutation or possession without hearing you. Keep proof of full payment, confirmation letter, and sale certificate ready for the Tribunal.

LAWWORLD 2020 SC 0426

Supreme Court, 2020

An auction purchaser in whose favour a sale certificate has been issued has a direct interest in receiving title documents and is entitled to maintain proceedings to protect that interest.

LawWorld ID: LAWWORLD 2020 SC 0426

TIP

Practical close

Bid only after litigation and encumbrance checks; pay strictly to the Rule 9 clock; on confirmation, move fast for sale certificate, possession, and mutation. If challenged, get on record immediately-silence risks orders passed behind your back.

18

Synthesis, Practice Pointers, and the Road Ahead

Decision trees for both sides and emerging pressure points

Bank-side decision tree

The secured creditor's power under Section 13(1) is a free hand to enforce without court intervention, but only **in accordance with the Act and Rules** -the creditor acts as trustee of the asset and cannot deal with it arbitrarily. **2014 SC authority on s.13(1)** .

When to move, assist, or pause

1. **Issue Section 13(2)** only after default, live security interest, and NPA classification (or a statutory dispensation)-with correct outstanding, asset description, and service on all co-borrowers and guarantors.
2. **Consider Section 13(3A)** representation on the record and communicate reasoned non-acceptance before any Section 13(4) measure.
3. **Take possession** under Section 13(4) after the sixty-day window; use **Section 14** when physical resistance or third-party occupation makes authorised-officer possession impractical-affidavit complete, Magistrate's role ministerial.
4. **Pause for settlement or IBC** when a viable OTS is on the table, multi-creditor consent under Section 13(9) is missing, or a CIRP moratorium freezes measures against the corporate debtor's estate; revive only if the asset is free of plan treatment.

TIP

Non-negotiables (bank)

Proof of service of 13(2); reasoned 13(3A) reply; authorisation of the officer; valuation and reserve-price paper trail; Rule 8/9 sale notices and auction record. Missing any one of these is what Section 17 scrutiny typically turns on.

Borrower and guarantor decision tree

Section 17 is designed as **instant recourse** against wrongful Section 13(4) measures. The borrower need not wait for sale or prove actual dispossession once a measure-including constructive possession-has been taken. **2018 SC on remedial object** ; **2009 SC on DRT scope** .

When to represent, sue, stay, or appeal

1. **Represent under Section 13(3A)** within the demand window with asset-specific,

document-backed objections-not a bare denial.

2. **File Section 17** as soon as a Section 13(4) measure is taken (possession notice, physical possession, or Section 14-aided possession); guarantors and other persons aggrieved have standing on the same footing.
3. **Seek interim stay** of further measures or sale at the first listing, anchored to fatal notice defects, premature possession, or valuation/auction irregularity with annexed proof.
4. **Appeal to DRAT with pre-deposit** only when the DRT order is adverse on a winnable ground and the prescribed deposit (after credit for sums already paid) is commercially realistic; waiver space is narrow.

TIP

Non-negotiables (borrower/guarantor)

Preserve the 13(2) notice and service proof, the 13(3A) representation and bank reply, possession and sale notices, valuation reports, photographs of affixation, and account statements. Bare allegation without this paper fails.

Emerging pressure points and the road ahead

- **Digital service of notices** - electronic modes are increasingly used; banks must still prove actual receipt or authorised electronic delivery; borrowers should capture headers, bounce-backs, and portal logs.
- **E-auctions** - portal integrity, bid logs, and Rule 9 payment timelines (including written extensions within the outer limit) are the new cross-examination battleground.
- **Insolvency reforms** - moratorium still freezes measures against the corporate debtor's assets; guarantor and third-party security remain distinct; multi-creditor thresholds under Section 13(9) must be checked against CoC dynamics.
- **Forum discipline** - after repeated restatement of the writ bar, residual High Court space stays confined to patent want of jurisdiction, threshold natural-justice breach, or a wholly illusory tribunal process; possession and sale grievances belong in Section 17.

Practitioners on both sides should maintain a living file of binding Supreme Court restatements on Sections 13, 14 and 17, track Enforcement Rules amendments (especially sale and e-auction provisions), and refresh checklists whenever NPA, service, or IBC interface norms change. The scheme rewards strict conformity and punishes shortcut enforcement and unfocused defence alike. Discipline on precedent and rules is the only durable edge.

Disclaimer

This publication is for professional information and education only. It is not legal advice and does not create a lawyer-client relationship. Statutes, rules, and case law change; readers must verify the current text of the SARFAESI Act, the Security Interest (Enforcement) Rules, the Recovery of Debts and Bankruptcy Act, the Insolvency and Bankruptcy Code, and the latest binding decisions of the Supreme Court and the relevant High Court before acting. Templates and checklists are illustrative starting points

and must be adapted to the facts, the forum, and applicable limitation and pre-deposit requirements. LawWorld and the authors accept no liability for loss arising from reliance on this material without independent professional advice.

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