

**Misc Case No. - 83 of 2026**

**Order dt. -07.03.2026**

Today, the date is fixed for hearing, production and verification of original documents.

Ld. Advocate for the creditor along with the authorized officer of the creditor are present.

Original documents are produced and after verification, the same is returned to the authorized officer.

Authorized officer has filed an affidavit. Let the same be kept with the record.

Now the matter is taken up for passing order.

The genesis of the present order is the petition filed by the creditor u/s. 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (herein after referred to as SARFAESI Act), which has since been amended vide the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 (12/08/2016) for taking possession of the secured assets described as first schedule :-

*“All that part and parcel of one self-contained residential flat being Flat No. 1B, on the first floor of the East-South-West side measuring a super built-up area, more or less 1373 sq. ft. consisting of 3 (three) bedrooms, 1(one) kitchen, 1(one) dining, 1(one) drawing, 2 (two) toilets and 1(one) balcony and one covered car parking place on the ground floor at the south-east side of the said ground floor plus four storied building together with the undivided proportionate share and land including common amenities belonging to the said building as well as belonging to the said premises No. 82/0C, Ballygunge Place, police station – Gariahat, Kolkata – 700019, within the limits of ward No. 68, Borough No. VIII, vide Assessee No. 11-068-04-0610-8 of the Kolkata Municipal Corporation under the jurisdiction of Additional District Sub Register at Alipore, District – South 24 Parganas, including all easement rights and all rights of ingress, are the “said flat & covered car parking space” hereby sold, transferred by the vendor to the purchaser of the deed and flat owner Ms. Nivedita Sen, registered in Book No.I, CD volume No. 3, page from 3385 to 3398 being No. 01036 for the year 2012 at the Office of the Additional District Sub-Registrar, Amta, District – Howrah, West Bengal and a corrigendum declaration of boundary registered in Book No. I, CD volume No. 1605-2017, page from 167323 to 167354 being No. 160506205 for the year 2017 at the Office of the Additional District Sub-Registrar, Alipore, District – South 24*

*Parganas, West Bengal. The property stands in the name of Ms. Nivedita Sen, S/o, Late Muktalal Sen Sharma.*

*The property is butted and bounded by:*

*On the north – by premises No. 82/7A, Ballygunge Place;*

*On the south – by 20'-0" wide KMC Road;*

*On the east – partly by premises No. 82/9D, Ballygunge Place and partly by 20'-0" wide KMC Road;*

*On the west – by premises No. 82/9A, Ballygunge Place”.*

Brief contents of application are as under :-

The creditor has granted to borrowers financial assistance in the nature of working capita against immovable properties (schedule property) of total ₹1,50,00,000/- vide sanction letter dated 11.12.2023 (Rs. 1,30,00,000/- as working capital and Rs. 20,00,000/- vide Cash Credit Loan) and loan agreement dated 11.12.2023. As against the aforesaid financial assistance, borrowers have created security interest over above referred secured asset in favour of the creditor. The secured asset is situated within territorial jurisdiction of this court. Till the date of filing of this application, applicant is holding a valid and subsisting security interest over secured asset. In pursuance to grant of financial assistance and creating of security interest over secured asset, various documents are executed by borrowers in favour of the creditor. In due course, borrowers have committed default in repayment of the financial assistance. Thus, the account of the borrowers have been classified as “*Non Performing Asset*” with effect from 29.08.2025.

In sequel, demand notice u/s. 13(2) of the SARFAESI Act dt. 08.10.2025 was issued to the borrowers at their last known addresses and the same has been sent to the borrowers through registered post as appears from postal track reports filed.

It has been further averred that the borrowers had raised no objection to the demand notice u/s. 13(2) of the SARFAESI Act. The borrowers have failed to make the payment despite lapse of stipulated period.

It has been further averred that the notice u/s. 13(4) of the SARFAESI Act on 16.12.2025 has been pasted on the secured assets. The notice u/s. 13(4) of the SARFAESI Act was also duly published in two newspapers “Financial Express” (English) & “Aajkaal”(Bengali) on 21.12.2025.

In catena of judgments, Hon'ble Supreme Court and Hon'ble Bombay High Court have settled the position of law that no notice is required to be issued to borrowers and guarantor when application u/s. 14 of SARFAESI Act is filed. Thus, no notice was issued by this court to the borrowers.

Ld. Advocate for the creditor undertook that there is no stay by any competent court or forum in favour of the borrowers in respect of the secured assets. It has also been affirmed that the property is in possession of the borrowers/guarantors and not in favour of any lessee (*under any valid or invalid or doubtful lease*) or any other person.

It was submitted by the Ld. Advocate for the creditor that after insertion of Section 17(4A) SARFAESI Act which provides that Hon'ble Debt Recovery Tribunal has powers to decide the claims of tenancy or leasehold rights over a secured asset, Chief Judicial Magistrate has no jurisdiction to go into the question as to who is presently in physical possession of the property in question. I do concede with this contention of the Ld. Advocate for the creditor and reliance may be placed on the judgment passed by **the Hon'ble High Court of Delhi in Cholamandalam Investment and Finance Company Limited V/s. Rajeev Chawla & Anr. dt. 22/10/2021.**

It is requirement of Section 14 of SARFAESI Act that authorized officer of applicant financial institute has to file affidavit containing therein facts mentioned in Section 14(1)(b)(i) to 14(1)(b)(ix) of the SARFAESI Act. Accordingly, authorized officer had filed the affidavit. In addition to affidavit, copies of certain documents were also filed with the petition.

On the date of hearing, authorized officer has also tendered original documents before this Court, for verification with copies on record. Such documents are loan sanction order, loan agreement, title deed of mortgage property, notice given u/s. 13(2) of SARFAESI Act to the borrowers, proof of delivery of notice and paper publication u/s. 13(4) of SARFAESI Act, etc.

I have perused the same and those are in conformity with the facts affirmed in the affidavit by the authorized representative of the creditor as required by the first proviso to Section 14(1) of SARFAESI Act.

From the petition as well as the affidavit submitted as per requirement of the SARFAESI Act the property (*secured asset*) is an immovable properties described as above.

The description is same in security agreement and the title documents submitted by the borrowers. It is also within territorial jurisdiction of this court. It is stated to be in the name of borrowers. The original title documents in respect of said property are with the creditor thereby creating an equitable mortgage. The amount due is less than twenty percent of the principal amount and interest as per clause (j) and the property is not the one hit by other clauses of Section 31 of SARFAESI Act.

Sixty-days' notice given u/s. 13(2) of SARFAESI Act has been seen, giving details of outstanding amount and details of secured asset, along with postal documents and the newspaper publication u/s. 13(4) of SARFAESI Act. The creditor has stated that the borrowers have failed to repay the outstanding amount in full.

As all such requirements being fulfilled, it becomes mandatory for the undersigned being the Chief Judicial Magistrate under whom the property is situated to order taking possession of the assets mortgaged with the creditor and the documents related thereto, and forward the same to the secured creditor. As per Section 14 of the SARFAESI Act, the court may take or cause to be taken such steps as use of cause to be used such force as may be necessary.

Hence based on the above facts and circumstances and upon satisfaction as to the fulfillment of the statutory requirements, and being satisfied with the nine-points affidavit, the

application filed u/s. 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*herein after referred to as SARFAESI Act*), which has since been amended vide the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 is allowed.

On relying the judgment dt. 06/11/2019 passed by **the Hon'ble Bombay High Court in case of Mr. Subir Chakravarty & Anr. V/s. Kotak Mahindra Bank Ltd. & Anr. delivered in Writ Petition (L) No. 28480 of 2019**, an officer subordinate to this court has to be appointed to take possession of the secured assets.

Hence it is

### **ORDERED**

that the seal bailiff of this court is hereby appointed as court commissioner to take possession of the secured assets situated as mentioned above.

- Appointed commissioner shall give possession notice to the authorized officer of the secured creditor and the borrowers, to be served personally/speed post at least seven days in advance. A copy of such seven-days' advance notice shall also be affixed on the main door or other conspicuous part of the said property. A copy of this order be also affixed along with such notice.
- After expiry of the notice, the seal bailiff shall take possession of the aforesaid property and handover it to the aforesaid authorized officer namely **Ismat Jahan** of creditor under proper receipts to that effect. The entire proceedings shall be photographed or video-recorded as per the demand of the situation.
- The court commissioner to take such steps and use such force including breaking open the lock or any hurdle thereof by taking assistance of police if required at the expenses of the applicant and if any articles/documents found in the secured asset, then deliver its possession to the authorized officer of the creditor after preparing list of articles and making inventory. Photographs be also taken as proof of the same. Copies of the inventory shall be handed over to the borrowers if present at the site under acknowledgment and also to the authorized officer of the creditor.
- The court appointed commissioner shall exercise all due care and caution and not to violate the orders of any court of forum relating to the aforesaid property.
- The creditor shall furnish all necessary details to the receiver and would extend full co-operation for the purpose of execution of this order.
- The O/c of the concerned PS is also directed to provide police assistance to the court appointed commissioner to ensure smooth execution of this order.
- The seal bailiff of this court shall file his report along with

photographs/video, CD, documents if any, inventory prepared if any, etc, within two months from the date of this order.

- For removal of doubts, it is made clear that objections/applications, if any, may be preferred by any borrowers, guarantor, mortgagor, lessee or any other aggrieved person before the Debt Recovery Tribunal having jurisdiction, as per the amended provisions of section 17 of SARFAESI Act.
- Issue writ of commission accordingly on payment of ₹10,000/- (Rupees Ten Thousand Only). The said amount shall be deposited with the cashier attached to this establishment under non-refundable head.
- All miscellaneous and incidental expenses shall be borne by the creditor.

A copy of this order be given to the creditor and Seal Bailiff of this court.

To 07.05.2026 for E/R of writ of delivery of possession.

S/d-  
CJM, Alipore