DEBTS RECOVERY TRIBUNAL 1, KOLKATA

Order Sheet (continuation)		
Case No. SA/240/2019	MOHANLAL MUKHERJEE Vs. EDELWEISS ASSET CONSTRUCTION COMPANY LTD.	
Date of the Order		Office action with date and dated Signature of Parties when necessary
20/04/2026	Ld. Counsels Mr. Biswaroop Mukherjee and Mr. Tanmoy Kar appear for Sarfaesi Applicant. Ld. Counsels Mr. Sayak Ranjan Ganguly and Ms. Chaitali Acharjee appear for Respondent ARC. Respondent Bank has challenged maintainability of SA in which Applicant has challenged Demand Notice dated 24/05/2019 and Possession Notice dated 06/09/2019. In the SA Applicant has challenged the assignment agreement of loan by L & T Financial Services to Edelweiss Asset Construction Company ltd. as the Assignment Agreement has not been registered u/s 17 of Registration Act. At the time of hearing Ld. Counsel for the Applicant refers to section 28 of the Registration Act,1908 and relied several authorities which are mentioned in the order dated 16/03/2026 when the case was heard. Ld. Counsel for Respondent ARC has challenged maintainability of the SA on the ground that Applicant has challenged Demand Notice dated 24/05/2019 in the SA but Demand Notice dated 20/04/2022 has been issued in suppression of Demand Notice dated 24/05/2019. Respondent ARC has annexed Demand Notice dated 20/04/2022. Edelweiss Asset Construction Company ltd. has not issued any Possession Notice u/s 13(4) of the Sarfaesi Act pursuant to the Demand Notice dated 20/04/2022 for taking possession of the property. Sarfaesi Applicant has challenged Demand Notice dated 24/05/2019 and submitted objection to the Demand Notice dated	

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05/08/2019 and has enclosed order in Arbitration Case No. ARB/L & T /28/2019/17 dated 18/07/2019 and possession notice dated 04/09/2019 which was issued by L & T HOUSING FINANCE LTD. pursuant to the Demand Notice dated 24/05/2019.

It appears from the Demand Notice dated 20/04/2022 which was filed by Edelweiss Asset Construction Company ltd. in their affidavit in opposition stating that L & T HOUSING FINANCE LTD assigned the loan to Edelweiss Asset Construction Company ltd.as per section 5 of the Sarfaesi Act.

Ld. Advocate for the Applicant argued that assignment of loan has to be registered u/s 17 and 28 of the Registration Act.

Section 17 of the Registration Act speaks of Documents of which registration is compulsory.

Section 17 of the Registration Act speaks as follows:

17. Documents of which registration is compulsory. — (1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely: —

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt

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	or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and (d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent; 1 [(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:] Provided that the 2 [State Government] may, by order published in the 3 [Official Gazette], exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees. [(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 (48 of 2001) and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.] (2) Nothing in clauses (b) and (c) of sub-section (1) applies to— (i) any composition deed; or (ii) any instrument relating to shares in a joint stock Company, notwithstanding that the assets of such Company consist in whole	

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	or in part of immovable property; or (iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or (iv) any endorsement upon or transfer of any debenture issued by any such Company; or (v) 1 [any document other than the documents specified in sub-section (1A)] not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or (vi) any decree or order of a Court 2 [except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding]; or (vii) any grant of immovable property by 3 [Government]; or (viii) any instrument of partition made by a Revenue-Officer; or (ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or (x) any order granting a loan under the Agriculturists, Loans Act, 1884, or instrument for securing the repayment of a loan made	

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	under that Act; or 4 [(xa) any order made under the Charitable Endowments Act, 1890 (6 of 1890), vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or] (xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or (xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-Officer. 5 [Explanation. —A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.] (3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered." Section 18 of the Registration Act speaks as follows: "18. Documents of which registration is optional. —Any of the following documents may be registered under this Act, namely: — (a) Instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest,	

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	whether vested or contingent, of a value less then one hundred rupees, to or in immovable property; (b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; (c) leases of immovable property for any term not exceeding one year, and leases exempted under section 17; 6 [(cc) instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;] (d) instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in movable property; (e) wills; and (f) all other documents not required by section 17 to be registered." Section 28 of the Registration Act speaks as follows: "28. Place for registering documents relating to land.—Save as in this Part otherwise provided, every document mentioned in section 17, sub-section (1), clauses (a), (b), (c) 3 [, (d) and (e), section 17, sub-section (2), insofar as such document affects immovable property,] and section 18, clauses (a), (b) 1 [(c) and (cc),] shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is	

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situate."

Section 5(1a) of the Sarfaesi Act provides as follows:

"5**. Acquisition of rights or interest in financial assets.—(**1) Notwithstanding anything contained in any agreement or any other law for the time being in force, any 2 [asset reconstruction company] may acquire financial assets of any bank or financial institution—

(a)by issuing a debenture or bond or any other security in the nature of debenture, for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them"

So, as per Section 5(1a) of the Sarfaesi Act and Section 18 of the Registration Act Assignment Agreement is not mandatorily required to be registered. Ld. Advocate for the Applicant has relied decision of Hon'ble Supreme Court in Saraswati Industrial Syndicate Ltd. vs. Commissioner of Income Tax and the said judgment is relating to amalgamation of two companies. Hon'ble Supreme Court has upheld the view of Bombay High Court and held that:

"The High Court's view that on amalgamation there is no complete destruction of corporate personality of the transferor company instead there is a blending of the corporate personality of one with another corporate body and it continues as such with the other is not sustainable in law. The true effect and character of the amalgamation largely depends on the terms of the scheme of merger. But there cannot be any doubt that when two companies amalgamate and merge into one the transferor

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company loses its entity as it ceases to have its business. However, their respective rights or liabilities are determined under the scheme of amalgamation but the corporate entity of the transferor company ceases to exist with effect from the date the amalgamation is made effective."

This decision is not applicable to this case as there is no merger, it is an assignment of loan by which the creditor assigned loan and liability to the assignee and assignee steps into shoes of assigner.

The Hon'ble Supreme Court in ITC Ltd. vs. Blue Coast Hotels Ltd. & Ors. held that creditor has to give reply to the representation of the borrower submitted after Demand Notice. This decision is good in its factual aspects but in this case when fresh Demand Notice is issued, Borrower/Applicant has to make representation to the said Demand Notice. Assignee is not required to give reply to any objection to the Demand Notice which is superseded by subsequent Demand Notice. Judgment of Hon'ble Guwahati High Court is similar to the issue which is discussed above.

Ld. Counsel for the Applicant has relied upon the authority of Hon'ble Calcutta High Court in Asset Reconstruction Company(I) Ltd. vs. Kanoria Jute & Industries ltd.. In this case Assignment Agreement was not placed and for which Hon'ble Calcutta High Court held that ARCIL cannot have any right under the Act. But this decision is not applicable in this case as the assignee has filed assignment agreement in IA/288/2024.

Ld. Counsel for Respondent ARC has relied decision of

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Hon'ble High Court of Chhattisgarh in Dauji Farms Ltd.& ors vs. Dena Bank & ors.in which Hon'ble High Court has held that:

"Thus, it is held that there is no bar or prohibition to issue second notice under Section 13(2) of the SARFAESI Act, if the first notice issued under Section 13(2) of the SARFAESI Act has not been given effect to."

Ld. Counsel for Respondent ARC has relied decision of Hon'ble Punjab and Haryana High Court in Rita Machines (India) Ltd. vs. Debts Recovery Appellate Tribunal and Ors. in which Hon'ble High Court held that:

"assignment is actually taken place by the bank under Section 13(4) of the said Act as there is no other provision for the said assignment"

Ld. Counsel for the Applicant submits that he has right to challenge assignment. Applicant /Borrower can challenge assignment agreement but not in the SA which is filed on the basis of Demand Notice and Possession Notice which has been suppressed by another Demand Notice. Applicant can challenge measures in the subsequent Demand Notice after issuance of possession Notice.

Hence, this SA challenging Demand Notice dated 20/05/2019 and Possession Notice dated 06/09/2019 are not maintainable. Hence it is ordered as follows:

ORDER

i) In SA/240 of 2019 is dismissed as infructuous.

ii) pending IAs, if any are also disposed of.

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	iii) Applicant has right to challenge any measures by assignee ARC on the basis of subsequent Demand Notice. (Ambuja Mohan Das) Presiding Officer	