

IN THE DEBTS RECOVERY TRIBUNAL-II, BANGALORE

Dated this 30th Day of June 2026

PRESENT: SHRI T. RAJESH
Hon'ble Presiding Officer

S.A. No. 202 of 2025

M/s. Siddiqui Infrastructure
(Partnership Firm)
Rep. by its Managing Partner,
Sri. Shafiq R A Siddiqui,
No.355, 7th Cross, C Layout,
Bannimantap,
Mysuru -570015.

... Applicant

Versus

The Authorized Officer,
SARM Branch,
Canara Bank,
Mysuru -570001.

---Respondent

Ld. Counsels on record / appeared :-

Counsel for Applicants	:-	R. Ashok Kumar
Counsel for Respondent	:-	Lakshmi K Varadaraj

: - O R D E R - :

1. The order passed by the Ld. Magistrate in Crl. Misc. No.194 of 2025 invoking the power under section 14 of the "Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 herein after

been referred to as the SARFAESI Act or in short the Act is under challenge in this Securitization Application.

2. The applicant contends as follows- The applicant is a borrower who is into the business of under taking Civil Engineering Contract with Government projects and had availed financial assistance in the forms of Over Draft Facility besides GECLS and a vehicle loan for an amount of Rs.45,00,000/- which stood sanctioned against the security of schedule properties. It is also contends that due to the onset of Covid-19 lot of bills were kept pending by the government for the projects already executed by the firm resulting the applicant failing to service the principal and interest on time.

3. In the case in hand the applicant is not disputing the fact that it is a borrower from the respondent bank. The applicant have no serious dispute as to the defaults committed by them. However the applicant further contended that the respondent claiming to have issued a demand notice dated 23.01.2025 followed by the symbolic possession notice had obtained the impugned order. It is also admitted that a sale notice issued by the respondent stood challenged in SA.195 of 2025.

4. Hence the case in hand the applicant is impugning the measures by the respondent leading to the procurement of section 14 order on the ground that

the same is obtained without proper service of demand notice and possession notice.

5. In the grounds to the SA the applicant is reiterating their contention as to the alleged non compliance of rule 3 of the Security Interest (Enforcement) Rules in respect of service of demand notice as well as alleged non compliance of rule 8(1) and 8(2) of said rules as far as possession notice is concerned and also as to the failure of the Bank to get the security interest registered with Central Registry.

6. Along with the SA, the applicant produced the following documents.

- i) Copy of the order passed by the Ld. magistrate in Crl. Misc.194 of 2025 dated 05.06.2025
- ii) Copy of sale notice dated 09.06.2025
- iii) Copy of Memo evidencing deposit of Rs.13,00,000/-.
- iv) Partnership deed dated 22.07.2020.
- v) Authorization letter.

7. The respondent filed their statement of objection contending as follows. The application is not maintainable either in law or on facts. It is also stated that the applicant had availed various financial facilities to the tune of Rs.75,50,000/- which were sanctioned as the applicant executed necessary documents and created mortgage over the schedule properties. It is also stated

that since the applicant committed persistent defaults, the account was classified as NPA on 22.01.2025.

8. It is also the case of the respondent that they had issued the demand notice dated 23.01.2025 which according to the respondent had been sent through registered post, affixed and published as required by rule 3. Even as the applicant failed in repayment the possession notice dated 08.04.2025 was issued which was also issued, published and affixed as required by statute.

9. The respondent had further stated that even as the borrower failed in repayment the respondent approached the Ld. Magistrate and procured the order sought to be challenged. The issuance of sale notice dated 09.06.2025 and the applicants claim as to the payment of Rs.13,00,000/- is also admitted by the respondent. Along with the objection the respondent had produced the following documents.

1. Paper publication of demand notice.
2. Paper publication and photographs in respect of possession notice.
3. Statement of accounts.

10. Apart from the above the respondent had issued para-wise rebuttal of statement of facts as put forth in the SA and as the basis of same, the respondent seeks for dismissal of the SA.

11. Heard the Ld. counsels for both sides. The only issue that is to be gone into and decided in this matter is as to the legality of measures leading to the procurement of section 14 order from the Ld. Magistrate.
12. The applicant is not having any dispute as to the creation of security interest in lieu of the financial assistance availed by them and also no dispute as to the fact that there were defaults in the account.
13. The main contention put forth by the applicant is as to the alleged non service of demand notice and possession notice. This contention is tried to be refuted by producing the paper publication of the demand notice. In the statement objections the respondent though stated to have issued the demand notice through registered post and claimed to have made affixture no proof as to the dispatch of demand notice through registered post is produced. No proof as to affixture of the demand notice is also produced.
14. Rule 3 of Security Interest (Enforcement) Rules state.

“ 3. Demand notice.

(1)The service of demand notice as referred to in sub-section (2) of section 13 of the Act shall be made by delivering [including hand delivery] [Inserted by Notification No. G.S.R. 1046 (E), dated 3.11.2016 (w.e.f. 20.9.2002).] or transmitting at the place where the borrower or his agent, empowered to accept the notice or documents on behalf of the borrower, actually and voluntarily resides or carries on business or personally works for gain, by registered post with acknowledgment due, addressed to the borrower or his agent empowered to accept the service or by Speed Post or by courier or by

any other means of transmission of documents like fax message or electronic mail service:

Provided that where authorized officer has reason to believe that the borrower or his agent is avoiding the service of the notice or that for any other reason, the service cannot be made as aforesaid, the service shall be effected by affixing a copy of the demand notice on the outer door or some other conspicuous part of the house or building in which the borrower or his agent ordinarily resides or carries on business or personally works for gain and also by publishing the contents of the demand notice in two leading newspapers, one in vernacular language, having sufficient circulation in that locality.

(2) Where the borrower is a body corporate, the demand notice shall be served on the registered office or any of the branches of such body corporate as specified under sub-rule (1).

(3) Any other notice in writing to be served on the borrower or his agent by authorized officer, shall be served in the same manner as provided in this rule.

(4) Where there are more than one borrower, the demand notice shall be served on each borrower.

[(5) The demand notice may invite attention of the borrower to provisions of sub-section (8) of section 13 of the Act, in respect of time available to the borrower, to redeem the secured assets.]

Going by the rules the service of notice through publication and affixture is not a substitute for taking out notice through registered post and the same is supplemental to issuance of demand notice through “registered post”. Hence it is evident that only after compliance of mandate of issuing notice through registered post, the respondent can resort to publication and affixture that too, in case it is apprehended that the borrower with or is evading the service.

15. In the present case the respondent had failed to produce any proof as to service through post, much less, any only proof as to the dispatch of demand notice is not forth coming. Apart from that there is no proof as to affixture is also produced along with the objection. There for in the absence of any proof as to compliance of rule 3 of the Rules, this Tribunal convinced that there is substantial force in the contention of the applicant that the measures are continued without compliance of rule 3 of the rules.

16. The applicant though taken a contention that there is non-compliance of rule 8(1) and 8(2) of the Rules, this Tribunal is not enticed to go into the issue as the issuance of symbolic possession notice and its legality have nothing to do with section 14 measures as it is settled law that the issuance of possession notice is not '*sine qua non*' for initiating measures under section 14 of the Act.

17. The applicant though had taken another contention that the respondent cannot initiate and continue the measures for want of registration with the Central registry as mandated u/s 26 D of the Act, the respondent failed to produce any proof as to the registration of security interest with the Central Registry.

18. 26 D of the Act stipulated as follows.

26D: Right of enforcement of securities.

Notwithstanding anything contained in any other law for the time being in force, from the date of commencement of the provisions of this Chapter, no

secured creditor shall be entitled to exercise the rights of enforcement of securities under Chapter III unless the security interest created in its favour by the borrower has been registered with the Central Registry.

In view of the failure of the respondent to produce the proof as to compliance of statutory mandate of registration of Security interest with the Central Registry, this Tribunal is of the view that the contention of applicant that the measures leading to the procurement of section 14 order is vitiated by want of registration u/s 26 D of the Act is to be accepted.

19. No other point is raised by both sides either in the pleadings or at the time of hearing.

20. Hence in view of the discussions as above and finding entered therein this Tribunal is of the considered opinion that the applicant is entitled to succeed in their challenge as to the measures leading to the procurement of section 14 order in Crl. Misc. 194 of 2025 from the Ld. Chief Judicial Magistrate Mysore.

21. In the result,

- 1) SA.202 of 2025 stands allowed.
- 2) The measures initiated and continued by the respondent leading to the procurement of Crl. Mis 194 of 2025 from the Chief Judicial Magistrate Mysuru is set aside as not in accordance with statute.

- 3) Respondent is direct to reinstate applicant back in possession, if the actual possession is taken pursuant to the order of the Ld. Magistrate.
- 4) It is will be open to the respondent to reinitiate the measures in accordance with law, if they are legally entitled to.
- 5) In the fact and circumstances of the case, no orders as to cost is passed.

(Dictated to PY directly on the Computer, after its transcription, corrected and pronounced by me in the open Court on this the 30th day of June, 2026)

**Sd/-
(T. RAJESH)
PRESIDING OFFICER**