DEBTS RECOVERY TRIBUNAL – 1, KOLKATA

JEEVANSUDHA BLDG. 9TH FLOOR, 42/C, J.L. NEHRU ROAD, KOLKATA – 700071

BEFORE SHRI AMBUJA MOHAN DAS, PRESIDING OFFICER

SA 219 of 2024

1., AKIN INDIA PRIVATE LIMITED (PAN No.AACCA8240R), a company incorporated under the provisions of the Companies Act, 1956 having its office at 128/1/1, Hazra Road, Kolkata - 700 026.

2. MANGI LAL PARAKH, (PAN No. AFYPP0193G), son of Shri Gokul Chand Parakh, residing at 128/25, Hazra Road, Kolkata - 700 026.

3. PARKAASH PARAKH, (PAN No. AHIPP8470C), son of Shri Mangi Lal Parakh, residing at 128/25, Hazra Road, Kolkata - 700 026.

4. DIPTI PARAKH, (PAN No. ALPPB2956G), wife of Shri Parkaash Parakh, residing at 128/25, Hazra Road, Kolkata - 700 026.

.............Applicants

-VERSUS-

1. CENTRAL BANK OF INDIA, (IFSC No.CBIN0280103) carrying out its functions in accordance with the Banking Regulations Act, 1949 having its office at Bhowanipur Branch, 86, S.P. Mukherjee Road, Kolkata - 700 026.

2. THE AUTHORISED OFFICER, Central Bank of India, carrying out its statutory functions from Bhowanipur Branch, 86, S.P. Mukherjee Road, Kolkata- 700 026.

..........Respondent

For Applicants : Mr. Nimish Mishra and
Mr. Debjit Mukherjee, Ld. Counsels.

For Respondents: Mr. Debasish Chakraborty and
Ms. Sharmistha Pal, Ld. Counsels

J U D G M E N T

Delivered on 27th July 2026

1. Sarfaesi Applicants have filed application u/s 17(1) of the Sarfaesi Act registered as SA/219/2024 challenging measures of respondent Bank particularly notice under Section 13(2) of the SARFAESI Act ,2002 dated 20.04.2021, notice issued under Section 13(4) of the SARFAESI Act of 2002 dated 27.01.2022 and order dated 14.06.2024 passed by the District Magistrate, Howrah under Section 14 of the SARFAESI Act with prayer for interim order.

2. Respondent Bank has filed objection to SA contending that section 13(2) notice dated 20.04.2021 has been withdrawn by bank by issuing fresh section 13(2) notice dated 16.08.2021 which has been sent to address of the defendant no.1 company by speed post. The said 13(2) notice has returned back with

the remark 'left'. Respondent bank thereafter made publication of the said 13(2) notice in the newspapers.

3. Authorised officer of the defendant bank took possession on 27.01.2022 the mortgaged property as per Rule 8(1) and 8(2) of the Security Interest Enforcement Rules, 2002.

4. Respondent bank applied for order under Section 14(1) of the SARFAESI Act, 2002 before the District Magistrate, Howrah accompanied by an Affidavit containing clauses (i) to (ix) in the said Affidavit as required under the provisions of Section 14(1)(b) of the SARFAESI Act,2002. Respondent Bank has annexed copy of Demand Notice dated 16/08/2021, copy of postal receipts annexed as Annexure 'A' and copy of publication of Demand Notice has annexed vide Annexure 'B'. The Respondents have enclosed herewith the copy of 9(nine) point Affidavit as Annexure 'H'.

5. Applicant has annexed copy of Demand Notice dated 20.04.2021, Possession Notice dated 27.01.2022 and order dated 14.06.2024 passed by the District Magistrate, Howrah under Section 14 of the SARFAESI Act in the SA.

6. Sarfaesi Applicant has filed IA/1716/2024 challenging order dated

14.06.2024 passed by the Learned District Magistrate, Howrah, Demand Notice dated 20.04.2021 and classification of account as NPA on 31/03/2021 alleging exorbitant rate of interest and details of amount not mentioned in the Demand Notice in contravening of Section 13(3) of the Sarfaesi Act.

7. It is alleged by the applicants that the purported signatory to the notice had acted without jurisdiction as per Rule 2(a) of the Security Interest (Enforcement) Rules, 2002.

8. It is also alleged by the applicants that issuance of Possession Notice is in complete derogation of the provision of Sarfaesi Act 2002. Ld. Advocate for the Applicant has contended that Demand Notice dated 16/08/2021 was not received by the Applicants. Possession Notice dated 27/01/2022 is bad in law. It is also contended by the Applicant that Possession Notice dated 27/01/2022 has not been served upon all the Applicants and the said notice has not been affixed on the conspicuous part of the property which is clear violation of Rule 8(1) of the SARFAESI Rules. The possession notice has not been published in any newspaper as contemplated under Rule 8(2) of the SARFAESI Rules, hence, the possession taken by the defendant bank by issuance of the purported

possession notice dated 27.01.2022 is bad in law and prayed to quash the order of Ld. D.M. Howrah dated 14/06/2024 and interim stay until disposal of the IA

9. Respondent Bank has filed objection to IA/1716 of 2024 denying allegations made by the Applicant. It is pleaded by the Respondent Bank in the objection that demand Notice u/s 13 (2) dated 20.04.2021 has been withdrawn by the bank by issuing a fresh 13(2) notice dated 16.08.2021 which has been sent to the address of the defendant no.1 company by speed post. The said 13(2) notice has returned back with the remark 'left'. The bank thereafter has made publication of the said 13(2) notice in the newspapers.

10. Respondent Bank has annexed Sanctioned Letter dated 19/02/2013, Demand Notice dated 16/08/2021 and copy of postal receipts and copy of paper publication of Demand Notice in English as well as in Bengali, statement of account, copy of application u/s 14 before the ld. Magistrate and copy of nine-point affidavit.

11. Respondent Bank also filed supplementary affidavit on 19/12/2024 annexing affixation of demand notice by filing photograph of affixation of Demand Notice

which bank could not file in their opposition to IA/1716 of 2024. At the time of hearing Ld. Advocate for the Applicant submitted that supplementary affidavit enclosing affixation of notice is afterthought.

12. The SA and IAs were heard on 24/06/2026 and judgment was reserved. IA/1716 of 2024 was heard on 08/10/2024 on that date Respondent Bank was directed to wait for order of this Tribunal before taking possession of the property on the order of the Ld. District Magistrate, Howrah dated 14/06/2024 and the said order has been continuing till now.

13. Challenge of the Applicant is that no Demand notice dated 16/08/2021 has been served upon the Applicants. There is no details of amount payable in the Demand Notice dated 20/04/2021.

14. Respondent Bank has annexed demand notice dated 16/08/2021 to Mangi Lal Parakh, Director of M/s Akin India Private Limited, Parkaash Parakh and Guarantor Ms. Dipti Parakh but Respondent Bank has not issued Demand Notice to Applicant no. 1 company M/s Akin India Private Limited. It is pleaded by the Applicants that no Demand Notice has been served to the Applicants.

15. Defendant Bank has filed postal receipts and return of letters with endorsement "addressee left". Thereafter Respondent Bank has published Demand Notice in Bengali and English newspapers dated 25/11/2021. In the Supplementary Affidavit Defendant Bank has filed copy of affixation of Demand Notice on the conspicuous part of the property.

16. Rule 3 of The Security Interest (Enforcement) Rules, 2002 provides procedure of service of Demand Notice. Rule 3(1) speaks that 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.

Rule 3 proviso speaks 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."

17. In this case Respondent Bank has affixed Demand Notice and has filed copy of affixation of Demand Notice in the supplementary affidavit which was filed on 19/12/2024 with copy to the Applicant. and reflected in the order dated 19/12/2024. Applicant has not submitted any affidavit to the supplementary affidavit enclosing affixation of Demand Notice but at the time of hearing Ld. Advocate for the Applicant submitted that subsequent supplementary affidavit is an afterthought. As the Applicant has not challenged the supplementary affidavit, submission of said supplementary affidavit afterthought is not convincing and acceptable. Respondent Bank has proved service of Demand Notice by

affixation, publication and Demand Notice issued to the Applicants returned with endorsement “addressee left”. Therefore, Demand Notice dated 16/08/2021 has been served upon the Applicants as per Rule 3 of the Security Interest (Enforcement) Rules, 2002.

18. Applicant has challenged earlier Demand Notice dated 20/04/2021 that the said Demand Notice dues not disclose the details of the amount demanded by the Bank. After the said demand Notice, Respondent Bank has issued another Demand Notice dated 16/08/2021. Hence challenge of Demand Notice dated 20/04/2021 is redundant. In IA only challenge is that Demand Notice dated 16/08/2021 has not been served.

19. Applicant has challenged the order of the Ld. Magistrate dated 14/06/2024 alleging that when Demand Notice dated 16/08/2021 has not been served, order of Magistrate is not sustainable.

20. Perused Possession Notice dated 21/01/2022 which speaks of Demand Notice dated 16/08/2021. Order of Ld. Magistrate dated 14/06/2024 speaks Demand Notice dated 16/08/2021 and Possession Notice dated 21/01/2022. The said order of Ld. Magistrate

dated 14/06/2024 has been passed on the basis of affidavit of the Authorised Officer.

21. Ld. Advocate for the Applicant has pleaded in the SA that signatory to the Demand Notice has no jurisdiction as contemplated under Rule 2(a) of Security Interest (Enforcement) Rules, 2002.

22. Rule 2(a) of Security Interest (Enforcement) Rules, 2002 speaks "authorized officer" means an officer not less than a chief manager of a public sector bank or equivalent, as specified by the Board of Directors of Board of Trustees of the secured creditor or any other person or authority exercising powers of superintendence, direction and control of the business or affairs of the secured creditor, as the case may be, to exercise the rights of a secured creditor under the [Act] .

23. In the SA Applicant has challenged Demand Notice dated 20/04/2021 which is issued by the authorized officer of the Respondent Bank. After issuance of subsequent Demand Notice dated 16/08/2021, Demand Notice dated 20/04/2021 becomes redundant. Their only challenge is that Demand Notice dated 16/08/2021 was not served upon the Applicants. It is already proved that Demand Notice dated 16/08/2021 has been served in

accordance with law. The plea of want of jurisdiction of the Authorised Officer under Rule 2(a) of Security Interest (Enforcement) Rules, 2002 is not sustainable. Hence it is ordered as follows:

<u>O R D E R</u>

i) SA/219/2024 and IA/1716 of 2024 are dismissed on contest against the Respondent Bank.

ii) Interim order dated 08/10/2024 stands vacated.

Copy of the Judgment/Final Order be uploaded in the Tribunal's website.

File is consigned to the Record Room.

(Dictated to P.S., transcribed by her, corrected, signed and pronounced by me in the open Court on this the day 27th July, 2026.)

(Ambuja Mohan Das)

Presiding Officer

Order Sheet (continuation)		
Case NO. SA 219 of 2024	AKIN INDIA PRIVATE LIMITED -VS- Ce	
Date of the Order	Order with Signature	
27th July 2026	Ld. Advocate Mr. Nimish Mishra and Mr. Debjit Mukherjee appeared for the Sa Ld. Advocate Mr. Debasish Chakraborty Ms. Sharmistha Pal appeared for t Matter was heard in open Court on 24/06/2026. The detailed order in eight pages anr The gist of the order is as follows: **Order** i)SA/219/2024 and IA/1716 of 2024 a contest against the Respondent Bank. iii) ii)Interim order dated 08/ vacated. Copy of the Judgment/Final Order be Tribunal's website. File is consigned to the Record Room. (Dictated to P.S., transcribed by her, and pronounced by me in the open Court on July 2026) (Ambuja Mohan Das)	