ORDER SHEET

DEBTS RECOVERY TRIBUNAL, SILIGURI

SA/87/2026

Mr. Harprit Singh — Applicants

Vs

Edelweiss Asset Reconstruction Company Ltd. — Respondents

Date of Order	Order with Signature	Office action with date and dated signature of parties when necessary.

Item No.33 **Order No.**

05.10.2026

Present :-

Counsel for the Applicants : Ms. Lipi Mahanayak, physical mode.

Counsel for the Respondent F.I. : Ms. Chaitali Acharjee, virtual mode.

Counsel for the interveners : Mr. Dipankar Saha and Ms. Shakshi Agarwal on behalf of Mr. Amit Saha.

Judgment is passed in SA/87/2026 and a copy of the Judgment is kept on record.

Let the judgment be uploaded on website of the Tribunal and the Registry is directed to serve/send copy of this judgment to the parties free of cost.

Record be consigned to the record room along with the judgment.

(RAKESH PATI TIWARI)
Presiding Officer
DRT-Siliguri

IN THE DEBTS RECOVERY TRIBUNAL, SILIGURI

S.A. No.87/2026

1. MR. HARPRIT SINGH, Resident of Ward No. 40, Bhola Chowhan Road, Haiderpara, Siliguri Municipal Corporation, Jalpaiguri, Siliguri, West Bengal – 734001. Also at M/S S N Enterprise T/603, Ward No.40, 11, Hakim Para, Siliguri, West Bengal-734001. Also At, R.S. Plot No.573, Khatian No.701/7, Mouza — Dabgram, Sheet No.08, J.L. No.2, Pargana Baikunthapur, P.S. Bhaktinagar, District Jalpaiguri, Siliguri Municipal Corporation, Ward No.40, West Bengal 734001.
2. MRS. CHARANJIT KAUR, resident of Ward No. 40, Bhola Chowhan Road, Haiderpara, Siliguri Municipal Corporation, Jalpaiguri, Siliguri, West Bengal - 734001. Also at R.S. Plot No.573, Khatian No.701/7, Mouza — Dabgram, Sheet No.08, J.L. No.2, Pargana Baikunthapur, P.S. Bhaktinagar, District Jalpaiguri, Siliguri Municipal Corporation, Ward No.40, West Bengal 734001.

…….Applicants

Vs.

1. EDELWEISS ASSET RECONSTRUCTION COMPANY LIMITED, Acting in its capacity as Trustee of EARC TRUST SC 484 through its Authorized Officer Mr. Santosh Kumar Biswas having its registered office at Edelweiss House, 1st Floor, Off CST Road, Kalina, Mumbai 400098.

……..……Respondent

Counsel for the applicants : Mr. P. Pal and Ms. Lipi Mahanayak.

Counsel for the respondent : Ms. Chaitali Acharjee.

Counsel for the intervener (Shree Maruti Mangal) : Mr. Amit Saha.

Counsel for the intervener (Smt. Dipa Majumder) : Mr. Dipankar Saha.

PRESIDING OFFICER: RAKESH PATI TIWARI

Date of Judgment -05.10.2026

J U D G M E N T

1. Hearing has been made by the Tribunal on five different I.A's bearing nos. 667/2026, 801/2026, 802/2026, 811/2026, 812/2026 & the SA and the order is being passed on all the IA's and the SA but first of all the order is being passed on SA.
2. SA has been filed by the applicants under section 17(1) of The Securitization And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as SARFAESI Act) for setting aside the order dated 13.02.2026 passed by the Ld. Chief Judicial Magistrate Jalpaiguri.
3. Case of the applicants in short is that the applicants have approached Edelweiss Asset Reconstruction Company Limited, acting as Trustee of EARC Trust SC 484, for availing a

loan facility against property for the purpose of development of land/house construction and had offered one Charanjit Kaur as guarantor. According to the applicant, a loan facility of Rs.20,54,677/- was sanctioned, against which he claims to have already paid approximately Rs.13,00,000/-. It is, however, alleged that despite such sanction, the respondent never furnished the applicant with a formal copy of the sanction letter, loan agreement or other relevant loan documents, and consequently the applicant seeks production of the same for proper adjudication of the dispute. The applicant further states that the loan was duly secured by creation of an equitable mortgage by deposit of title deeds in respect of his immovable property, the value of which, according to him, is substantially higher than the alleged outstanding liability. It is pleaded that the applicant initially maintained the loan account regularly, but due to business losses, illness and financial difficulties, the account subsequently became irregular and he could not maintain the repayment schedule. The applicant asserts that such default was neither wilful nor deliberate, but was occasioned by circumstances beyond his control, and that he had apprised the respondent of his financial difficulties and sought cooperation. The applicant further alleges that the respondent did not furnish him with any regular or complete statement of account and that he was, therefore, unaware of the precise amount allegedly due and payable. According to the applicant, he subsequently received notice dated 13.02.2026 demanding a sum of Rs.31,09,627.58/- and requiring him to vacate and hand over peaceful possession of the mortgaged property pursuant to the proceedings under Section 14 of the SARFAESI Act. The applicant disputes the said outstanding amount as highly exaggerated and misconceived and contends that substantial payments had already been made towards the loan account. He further challenges the alleged NPA classification of the account as on 30.06.2021 and questions the authority and competence of the concerned Authorised Officer to classify the account and initiate measures under the SARFAESI Act. It is also the case of the applicant that the proceedings are barred by limitation and that the respondent has failed to furnish the complete particulars and computation of the alleged dues, including the principal, interest and other charges. The applicant further alleges that penal interest has been charged on a compounded basis in violation of the applicable RBI guidelines. In addition, the applicant alleges non-compliance with the mandatory requirements of the Security Interest (Enforcement) Rules, 2002, particularly Rule 8(1) and Rule 8(2), including failure to duly serve the possession notice upon the borrower/guarantor and failure to publish the

possession notice in the newspapers within the prescribed period. It is also alleged that the respondent has not properly disclosed the valuation of the secured asset, the reserve price or other material particulars relating to the proposed enforcement and sale of the mortgaged property. Accordingly, the applicant seeks appropriate orders restraining the respondent from taking further coercive measures under the SARFAESI Act and for setting aside/quashing of the impugned proceedings and consequential measures in respect of the mortgaged property.

4. Respondent has filed its written objection stating therein that the loan facility in question was originally sanctioned by M/s. Magma Housing Finance Limited, presently known as Poonawalla Housing Finance Limited, in favour of the Applicants under a Loan Against Property facility for a sum of Rs.20,54,677/- vide sanction dated 31.03.2018, against which the Applicants created an equitable mortgage over the secured asset by deposit of the original title deeds. According to the Respondent, by an Assignment Agreement dated 27.03.2023, the entire financial asset, together with all rights, title, interest, security interest, mortgage, remedies and privileges of the Original Lender, was assigned in favour of the Respondent acting as Trustee of EARC Trust SC 484, whereby the Respondent stepped into the shoes of the Original Lender and became entitled to recover the outstanding dues and enforce the security interest. It is the Respondent's case that the Applicants persistently defaulted in repayment of the loan and that the loan account was consequently classified as NPA on 30.06.2021. Thereafter, the Respondent issued a Demand Notice dated 05.09.2023 under Section 13(2) of the SARFAESI Act demanding payment of Rs.31,09,627.58/- along with further interest and charges, which, according to the Respondent, was duly served upon the Applicants and also published in newspapers. As the Applicants failed to discharge the liability, the Respondent proceeded under Section 13(4) and took symbolic possession of the secured asset on 25.06.2024, followed by service and publication of the possession notice. The Respondent further states that an application under Section 14 of the SARFAESI Act, accompanied by the requisite affidavit, was filed before the Ld. Chief Judicial Magistrate, Jalpaiguri, who, after considering the materials on record, passed an order dated 13.02.2026 in Misc. Case No. 210 of 2025 authorising the taking of physical possession of the secured asset, pursuant to which physical possession was taken and inventory and panchanama were prepared. The Respondent denies the allegations of illegality, limitation, want of notice, improper calculation of dues or violation of the SARFAESI Act and the Security Interest

(Enforcement) Rules, 2002, and maintains that all statutory requirements were duly complied with. It further contends that the Securitisation Application is not maintainable on account of alleged non-joinder of the Authorized Officer, misjoinder of the Learned Chief Judicial Magistrate as a party, and the Applicants' alleged suppression of material facts and their acquiescence in the loan transaction and default. The Respondent disputes the Applicants' claim regarding payment of Rs.13,00,000/-, denial of receipt of the sanction letter and loan agreement, and their reliance upon alleged financial hardship, business losses or personal circumstances, asserting that such pleas do not extinguish or suspend the contractual liability or the statutory right of the Secured Creditor to enforce the security. The Respondent accordingly maintains that the entire recovery proceedings, from classification of the account as NPA, issuance of the demand notice, taking of symbolic possession and subsequent proceedings under Section 14, were undertaken lawfully and in accordance with the SARFAESI Act and the Rules, and that the Securitisation Application is liable to be dismissed.

5. Applicants have accepted the advancement of House Building Loan of Rs. 20,54,677/- by the original lending institution i.e. Magma Housing Finance Limited (Later on became Poonawala Housing Finance Limited) and it is also admitted that the security interest was created by depositing the title deed with respect to the land mentioned in the title deed. But there case is that the applicants have already deposited almost Rs. 13,00,000/- in the loan account and later on due to some unfortunate events in the business in the year 2023, they could not make payment regular payments in the loan account.

6. **First plea** of the applicants is that full details of the amount payable by the borrower including the principal, the interest portion has not been provided in the order dated 13.02.2026.

7. The above plea has been raised by the applicants in their para no. 5(XIII) which has been replied by the respondent in para no. 6 of the written objection but any specific reply has not been given by the respondent on this plea and it has only been pleaded that Rs. 31,09,627.58 was the outstanding amount as on 05.09.2023.

8. As per section 14 of the SARFAESI Act, there is no such mandate of the SARFAESI Act that the full details of the amount payable including the interest has to be provided to the borrower while passing any order u/s 14 of the SARFAESI Act regarding assistance in taking physical possession of the property.

9. In case of **Standard Chartered Bank & Ors Vs. V. Noble Kumar & Ors [(2013) 10 S.C.R 762]** the Hon'ble Supreme Court has held that while passing order u/s 14 of the SARFAESI Act what points are required to be taken into consideration .Relevant portion of the order runs as under:

> *"24. An analysis of the nine sub-clauses of the proviso which deal with the information that is required to be furnished in the affidavit filed by the secured creditor indicates in substance that:*
>
> *24.1 (i) there was a loan transaction under which a borrower is liable to repay the loan amount with interest,*
> *24.2 (ii) there is a security interest created in a secured asset belonging to the borrower,*
> *24.3 (iii) that the borrower committed default in the repayment,*
> *24.4 (iv) that a notice under Section contemplated 13(2) was in fact issued,*
> *24.5 (v) in spite of such a notice, the borrower did not make the repayment,*
> *24.6 (vi) the objections of the borrower had in fact been considered and rejected,*
> *24.7 (vii) the reasons for such rejection had been communicated to the borrower, etc."*

10. Recently in case of **Equitas Small Finance Bank Ltd. Vs State of M.P. [I (2024) BC 307]** Hon'ble the Madhya Pradesh High Court has issued the guidelines for the DM/ADM/CJM for deciding the application u/s 14 of the SARFAESI Act:

i. *"the aggregate amount of financial assistance granted and the total claim of the Bank as on the date of filing the application;*
ii. *the borrower has created security interest over various properties and that the Bank or Financial Institution is holding a valid and subsisting security interest over such properties and the claim of the Bank or Financial Institution is within the limitation period;*
iii. *the borrower has created security interest over various properties, giving the details of the properties referred to in sub-clause (ii) above.*
iv. *the borrower has committed default in repayment of the financial assistance granted, aggregating the specified amount;*

v. *consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a nonperforming asset;*

vi. *affirming that the period of sixty days notice as required by the provisions of sub-section (2) of section 13, demanding payment of the defaulted financial assistance has been served on the borrower;*

vii. *the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower."*

11. In this view of the matter this issue is decided against the applicants.

12. **Next plea** of the applicants is that the impugned order dated 13.03.2026 is barred by the limitation Act.

13. But specifically it has not been pleaded that why the order dated 13.02.2026 is barred by the law of limitation. Moreover from perusal of the record it transpires that the loan account of the borrower has been classified NPA on dated 30.06.2021 and the 13(2) notice has been issued on dated 05.09.2023 and the 13(4) notice on dated 25.06.2024 and thus there is no question that the proceeding is barred by limitation.

14. **Third plea** of the applicants is that rule 8(1) & 8(2) of the security interest (Enforcement) Rules 2002 has not been complied with.

15. In response thereof respondent has replied in para no. 6 of the written objection that symbolic possession notice dated 25.06.2024 was served upon the applicants and affixed to the door of the mortgaged property and published in Business Standard (English) and Aajkal (Bengali) on dated 27.06.2024 within 7 days of the notice and proof thereof has been annexed as Annexure-C. Possession notice dated 25.06.2024 was dispatched through the postal department on dated 26.06.2024 and it was published in two newspapers, including in one vernacular language, within 7 days of the notice and the notice was affixed also at the conspicuous part of the property.

16. Thus these issue is decided against the applicants.

17. As per section 14(1) of the SARFAESI Act when the possession of any secured asset is required to be taken by the secured creditor, the secured creditor may, for the purpose of taking possession or control of any such required asset, request in writing to the Chief Metropolitan Magistrate or the District Magistrate under whose jurisdiction such secured asset is situated. On receipt of the application with affidavit from the authorized

officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured asset.

18. From perusal of the impugned order it transpires that considering the materials on record impugned order has been passed which runs as under:

> *"Considering the materials on record, this Court finds it necessary to pass an order as prayed for, in favour of the applicant, for taking physical possession of the secured assets u/s 14 of SARFAESI Act as described in the Schedule A of the application."*

19. In case of **Balkrishna Rama Tarle Dead Thr LRS & Anr Vs. Phoenix ARC Private Limited & Ors (reported in (2022) SCC online SC 1299)**, the Hon'ble Supreme Court has held that the powers exercisable by CMM/DM under Section 14 of the SARFAESI Act are ministerial steps and once all the requirement u/s 14 of the SARFAESI Act are complied with, it is the duty of the CMM/DM to assist the secured creditor in obtaining physical possession as well as documents related thereto and to hand it over to the secured creditor.

20. In this view of the matter this Tribunal comes to the conclusion that the impugned order has been passed by the Ld. CJM Jalpaiguri in proper compliance of the SARFAESI Act and the rules framed thereunder and as such the SA has got no merit in the eye of law and accordingly, requires to be dismissed.

ORDER ON I.A. NO. 667/2026

21. Case of the applicants in the I.A. is that on dated 10.06.2026 physical possession of the entire three storied building, by evicting tenants has been forcibly taken over by the Bank officials. Further case of the applicants is that the Inventory and Panchnama and possession notices were required to be served by the respondent but it has not been complied with. Further case of the applicants is that although the physical possession of the three storied building has been taken over but in description of the property only the land measuring 4 cottah 10 Chittacks and 31 Sq. Ft. is mentioned. Plea of the applicants is that the entire process of taking over physical possession of the three storied house and evicting the existing tenants is completely illegal and without jurisdiction and thus respondent is liable to restore the physical possession of the property to the applicants.

22. Respondent has filed the composite written objection of SA and the instant I.A. and it has been denied that the notice of advocate commissioner was illegal or defective and it has

also been denied that the possession was taken forcibly on dated 10.06.2026 rather case of the respondent is that physical possession was taken peacefully by the advocate commissioner appointed by the Ld. CJM Jalpaiguri and the Inventory and Panchnama was prepared as per rule -4 of the Rules 2002 and it were duly served to the applicant no. 1 who was physically present on site at the time of taking of physical possession.

23. **Main plea** of the applicants in the I.A. is that although only land is mentioned in the CJM order and the dispossession notice dated 01.03.2026 but the physical possession of three storied building has been taken even after evicting the existing tenants.

24. On this point submission of the respondent is that description of the mortgaged property in the statutory notices matches verbatim the schedule of the registered title deed (title deed no. 419 of 2004) deposited by the borrowers to create the mortgage and as per Section 70 of the Transfer of Property Act 1882, a mortgage of land automatically encompasses any physical structure subsequently raised or standing thereon and there is no legal requirement to separately detail the floors, rooms or bricks of a building in schedule of the recovery notice when the underlying land is mortgaged.

25. The applicants themselves have filed the copy of deed of conveyance with the I.A. as Annexure-A, executed on dated 09.02.2004 and at that time it was only a piece of land and land use was converted from land to residential on dated 21.02.2005 and on dated 24.02.2005 map of the building was also approved (Annexure C & D of I.A. No. 667/2026).

26. Admittedly the housing loan was sanctioned on dated 31.03.2018 on equitable mortgage by depositing the title deed of the property and thus it seems that after taking housing loan from the original lending institution i.e. Magma Housing Finance Ltd. (Later on became Poonawala Housing Finance Ltd.) construction has been made by the applicants. Section 70 of the Transfer of Property Act 1882 states that if any addition or improvement is made to a mortgaged property after the date of the mortgage, the lender (mortgagor) is automatically entitled to that addition as part of their security, unless there is a specific agreement stating otherwise.

27. Section 70 of the Transfer of Property Act 1882 runs as under :

“70. If, after the date of a mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession.

Illustrations.

(a.) A mortgages to B a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, B is entitled to the increase.

(b) A mortgages a certain plot of building land to B and afterwards erects a house on the plot. For the purposes of his -security, B is entitled to the house as well as the plot."

28. Thus although in all the statutory notices and the order of the Ld. CJM only the details of land is mentioned as per the title deed deposited by the borrowers, but the possession of three storied building can be taken as part of the security as per illustration (b) of Section 70 of the Transfer of Property Act 1882.

29. Under the aforesaid facts and circumstances discussed here-in-above and also considering the conclusion of the S.A. the instant I.A. has got no merit and accordingly requires to be rejected.

ORDER ON I.A. NOS. 801/2026, 802/2026 & 811/2026 & 812/2026

30. I.A. Nos. 801/2026 & 802/2026 have been filed by the intervener petitioner Smt. Dipa Majumder for her impleadment in the S.A. if required to release the essential/movables belonging to the petitioner as she was the tenant in the building since November 2024 and while taking physical possession of mortgaged property, tenanted rooms have also been sealed along with all the movable goods and personal belongings. Thus prayer has been made to direct the respondent F.I. to release her movables and personal belongings.

31. I.A. Nos. 811/2026 & 812/2026 have been filed by the intervener petitioner M/s Shree Maruti Mangal to implead the petition in the S.A. and to release the movable goods and items of the petitioner as it was tenant in the ground floor of the property since 2023 and it was using one godown premises of 2500 sq. ft. of the mortgaged property.

32. Applicants did not file any objection of the aforesaid I.A's and even during the course of hearing of I.A.s also it did not confirm that whether or not they were their tenants and they raised their objection on impleadment in the S.A. as they are not necessary party.

33. So far the respondent in concerned it has go no objection if the interveners or even the applicants removes their goods from the secured asset.

34. Applicants have themselves admitted in the I.A. No. 667/2026 that physical possession of the secured asset has been taken by evicting tenants and thus it is admitted fact that

there were some tenants in the mortgaged property. Even one of the intervener petitioner has filed proof of deposit of rent to the applicants till June 2023 and it has not been denied by the applicants.

35. In view of the above circumstances both the interveners i.e. Smt. Dipa majumdar and M/s Sri Maruti Mangal are the necessary parties for the limited purposes of release of their articles/movable from the mortgaged property and accordingly all the Four I.A.s are allowed without being impleaded in the S.A. because the same is being disposed of today itself along with these I.A's.

CONCLUSION

36. Under the aforesaid facts and circumstances discussed here-in-above in foregoing paragraphs, following order is passed:

i. SA filed by the applicants challenging the order of Ld. Chief Judicial Magistrate Jalpaiguri dated 13.02.2026 is **dismissed** on the ground of being devoid of any merit.

ii. Consequently IA No. 667/2026 filed by the applicants for restoring the physical possession of the mortgaged property is **rejected** as no merit has been found in it.

iii. I.A. No. 801/2026 & I.A. No. 802/2026 are **allowed** as the intervener petitioner Smt. Dipa Majumder has been found proper party for limited purposes to release of her essentials/movables from the tenanted rooms and direction is given to the respondent to release the essentials/movables within 2 weeks from today after giving prior notice to the intervener petitioner and the applicants and proper inventory of the essentials/movables released in favour of the intervener petitioner Smt. Dipa Majumder has to be prepared in presence of two independent witnesses.

iv. Similarly I.A. Nos. 811/2026 & 812/2026 filed by the intervener petitioner M/s Sri Maruti Mangal are **allowed** and direction is given to the respondent to return/release the essentials/movables within 2 weeks from today after giving prior notice to the intervener petitioner and the applicants and proper inventory of the essentials/movables released in

favour of the intervener petitioner M/s Sri Maruti Mangal has to be prepared in presence of two independent witnesses.

37. Registry is directed to send/serve copy of this order upon both the parties free of cost.

38. Order be uploaded in the website of the Tribunal.

39. Let the record be consigned to the Record Room.

The judgment is signed and pronounced in the open Tribunal on 5th day of October, 2026.

(RAKESH PATI TIWARI)
Presiding Officer
DRT, Siliguri.