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Defending & Enforcing Against SARFAESI




DEMAND NOTICE

Notice under Section 13(2)
SARFAESI Act, 2002

 DEFEND

 CHALLENGE

 NEGOTIATE

 RESOLVE

Defending & Enforcing Against SARFAESI

Section 13 Notices, Symbolic Possession, DRT Strategy & e-Auction Challenges — The Complete Practitioner's Guide

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CHAPTER ONE

Section 13(2) Demand Notice: Receipt, Validation & Immediate Response Strategy

SARFAESI Act 2002 — Notice Validity Requirements, Classification NPA, Pre-Notice Defects & the 60-Day Window as Strategic Opportunity

The moment a Section 13(2) notice lands on a promoter's desk, the clock starts on sixty days that will determine whether the borrower retains any meaningful agency over the enforcement process. The practitioner who treats this notice as a mere formality — a precursor to the real contest at DRT — misunderstands the architecture of SARFAESI enforcement and surrenders the most productive tactical ground available to the borrower.

1.1 The NPA Classification: Foundation and Vulnerability

A Section 13(2) notice is only lawful if the account has been validly classified as a Non-Performing Asset (NPA) in accordance with the Reserve Bank of India's Master Circular on Prudential Norms on Income Recognition, Asset Classification and Provisioning Pertaining to Advances (IRAC Norms). The NPA classification — which triggers the entire SARFAESI enforcement machinery — is not a mechanical act; it requires the secured creditor to have followed RBI's prescribed classification criteria, including the 90-day overdue threshold for term loans and the out-of-order criterion for cash credit and overdraft accounts. A borrower's first-line challenge in any SARFAESI matter is to scrutinise the NPA classification itself: Was the account declared NPA on the correct date? Were any restructured amounts or moratorium periods properly accounted for before the NPA trigger was assessed? Has the bank applied the IRAC Norms consistently with its own board-approved credit policy? An incorrectly dated NPA declaration can render the entire Section 13(2) notice vulnerable — if the notice was issued before the NPA classification was technically valid, it is a nullity, and any possession or sale action flowing from it is equally without legal foundation. The Supreme Court in *Mardia Chemicals Ltd. v. Union of India* (2004) 4 SCC 311 confirmed that courts retain supervisory jurisdiction over the legality of SARFAESI proceedings, and the DRT's power under Section 17(3) to restore possession and compensate the borrower in cases of illegality is the operational enforcement of that supervisory authority.

The notice under Section 13(2) must comply with strictly with the format prescribed under the Security Interest (Enforcement) Rules, 2002 — Rule 2 prescribes the Form 1 notice format, which requires the secured creditor to state: the total amount of the financial assistance and interest outstanding as on the date of demand; the details of the security interest created; the requirement for payment within sixty days; and the consequences of non-payment (enforcement of security interest). Any material non-compliance with Form 1 — incorrect outstanding amount, omission of interest calculation basis, failure to describe the secured asset with sufficient specificity, or issuance by an officer not authorised under the bank's delegation of authority policy — creates grounds for challenge. The Debts Recovery Tribunal at Ahmedabad has, in a series of decisions, taken the position that the authorisation of the Authorised Officer who issues Section 13(2) and 13(4) notices must be specifically traceable to the secured creditor's board resolution or properly delegated authority — a notice issued by a branch manager who lacks specific SARFAESI authority under the board's delegation framework is procedurally defective even if the underlying debt is genuine and overdue.

KEY PROVISION

Section 13(2), SARFAESI Act 2002: "Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified as non-performing asset by the secured creditor, then the secured creditor may require the borrower by notice in writing to discharge in full his liabilities

to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4)."

1.2 The 60-Day Window: Representation Under Section 13(3A)

The sixty-day window between Section 13(2) notice and Section 13(4) action is not passive waiting time — it is the most underutilised strategic opportunity in SARFAESI defence. Section 13(3A), inserted by the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act 2016, requires the secured creditor to consider any representation or objection made by the borrower within fifteen days of the Section 13(2) notice, and to communicate its decision on that representation within seven days of receiving it. The Amendment Act converted what was previously a discretionary courtesy into a statutory right: the secured creditor must engage with the representation. A secured creditor that fails to communicate any decision on a timely representation — or that communicates a perfunctory dismissal without addressing the substance of the borrower's grounds — creates a procedural vulnerability that the DRT can act upon under Section 17. Practitioners should use the Section 13(3A) representation not merely as a delaying tactic but as a disciplined exercise: file a detailed, evidence-backed representation that challenges the NPA classification date, disputes the outstanding amount computation, identifies any restructuring or moratorium credit not reflected in the demand, and flags any procedural defects in notice issuance. This representation becomes the foundational document in the Section 17 DRT application — the DRT will assess whether the secured creditor engaged with it substantively, and a bank that dismisses detailed grounds in one line exposes itself to an adverse inference on the stay application.

PRACTITIONER NOTE

In practice, lenders frequently undercount interest waiver credits, moratorium application credits under COVID-19 RBI circulars, and FITL (Funded Interest Term Loan) adjustments in the Section 13(2) demand amount. A forensic reconciliation of the bank's ledger against the sanction letters, restructuring agreements, and RBI moratorium circulars — conducted within the 60-day window — frequently reveals computational errors that, if corrected, reduce the outstanding amount and in some cases bring it below the Rs. 20 lakh threshold that triggered SARFAESI applicability. Below-threshold discovery does not retrospectively invalidate the NPA classification, but it undermines the secured creditor's enforcement case and strengthens a full-and-final settlement negotiation position.

1.3 Multiplicity of Secured Creditors: Consortium and Multiple Lending

Where the borrower has a consortium lending arrangement — as is typical for large corporate borrowers in Gujarat's industrial sector — the Section 13(2) notice issued by the lead bank raises complex questions about the rights and obligations of consortium members. The SARFAESI Act's definition of "secured creditor" in Section 2(zd) includes any bank or financial institution that holds a security interest — meaning each consortium bank is independently

entitled to issue Section 13(2) notices in respect of its proportionate security interest, and the lead bank's action does not bind other consortium members or operate as a waiver of their independent enforcement rights. In practice, however, the consortium's Inter-Creditor Agreement (ICA) — executed under the RBI's June 2019 Prudential Framework for Resolution of Stressed Assets (replacing the older Joint Lenders' Forum mechanism) — governs the enforcement decision-making process. The ICA requires member banks representing 75 per cent of total outstanding debt to agree on a resolution strategy before any single lender takes independent enforcement action, and an individual bank that issues Section 13(2) notices without ICA majority agreement may be acting in breach of its ICA obligations — a fact that the borrower's counsel can use in DRT proceedings to challenge the enforcing bank's standing to proceed independently or to enjoin consortium-wide enforcement pending resolution deliberations.

LEADING CASE

Transcore v. Union of India & Ors. (2008) 1 SCC 125: The Supreme Court held that a decree holder under the Recovery of Debts Due to Banks and Financial Institutions Act (RDDBFI Act) can simultaneously pursue SARFAESI enforcement without abandoning the DRT decree — the two remedies are concurrent and not mutually exclusive. This ruling has significant implications for consortium enforcement strategy: a bank that has already filed an OA (Original Application) under the RDDBFI Act can, without withdrawing the OA, issue Section 13(2) notices and proceed with SARFAESI enforcement on the same underlying debt, creating parallel pressure on the borrower that the practitioner must address simultaneously on two fronts.

1.4 Pre-Existing Litigation and Injunctions: Effect on Section 13(2) Validity

A question frequently arising in high-value SARFAESI matters is whether a pre-existing civil suit by the borrower challenging the loan account's conduct — alleging the bank has mis-applied payments, charged unauthorised interest, or breached restructuring commitments — operates as a bar to the bank's Section 13(2) notice. The answer is no: Section 34 of the SARFAESI Act bars courts other than the DRT from entertaining any suit or proceeding in respect of any matter which the DRT is empowered to determine, effectively stripping the civil court of jurisdiction over any challenge that goes to the merits of SARFAESI enforcement. A pre-existing civil court suit challenging the loan account does not restrain the bank from issuing Section 13(2) notices, and a civil court injunction purporting to restrain SARFAESI proceedings is without jurisdiction — the High Court of Gujarat has, in multiple matters, held that such injunctions must be vacated and the borrower directed to Section 17 of the SARFAESI Act for its remedy. The practitioner advising a borrower who has filed or intends to file a civil suit about the banking relationship must immediately assess whether the civil suit's reliefs can survive Section 34's jurisdictional bar — reliefs that go beyond SARFAESI enforcement (such as claims for damages for wrongful dishonour of cheques, disputes about off-balance sheet obligations, or claims under the bank's

own Code of Fair Banking Practices) may survive in civil court, but anything that constitutes a challenge to the NPA classification, the security interest, or the enforcement action itself must be channelled exclusively through the DRT.

1.5 Agricultural Land and Other Exemptions: Verifying SARFAESI Applicability

Section 31 of the SARFAESI Act lists categories of security interests to which the Act does not apply — and this list contains practical relief opportunities that are routinely overlooked. Section 31(i) exempts a lien on goods, money or security — relevant where the bank's "security" is a pledge of movable goods rather than a registered mortgage. Section 31(b) exempts security interests created in agricultural land — a provision of acute relevance in Gujarat, where many industrial borrowers have given mortgages that include agricultural land within their industrial estates' boundaries, and where "agricultural land" status (as determined by land revenue records, the Gujarat Tenancy and Agricultural Lands Act, and the relevant district collector's land-use classification) creates an exemption that can be used to sever agricultural land parcels from SARFAESI enforcement even where the overall security package is validly enforced. The practitioner should, as a routine matter in every new SARFAESI defence brief, obtain the 7/12 extracts and Form 8A records for every mortgaged property to verify its land-use classification — properties recorded as "potkhata" (agriculture) or carrying agricultural tenancy rights are presumptively within the Section 31(b) exemption, and the bank must either demonstrate the land's conversion to non-agricultural use or proceed against agricultural land through the civil court mortgage enforcement route rather than SARFAESI.

Symbolic & Physical Possession: Section 13(4) Mechanics, District Magistrate Orders & Resistance Tactics

Security Interest (Enforcement) Rules 2002, Section 14 DM/CMM Applications, Panchnama Procedure, Third-Party Possession Claims & Judicial Review of Possession Orders

Possession is the fulcrum of SARFAESI enforcement. For the bank, it converts a paper right into operational control — enabling sale, management, or lease of the secured asset. For the borrower, it is an existential event: the loss of the factory, the warehouse, the commercial building, or the residential property that is simultaneously a productive business asset and the promoter's most valuable personal holding. The sixty days that precede Section 13(4) action are not just a notice period — they are the last interval in which the borrower retains physical possession without a court order. What happens in those sixty days, and in the immediate aftermath of possession, determines the entire subsequent trajectory of the enforcement and recovery dispute.

2.1 Section 13(4) Action: The Authorised Officer's Four Powers

Section 13(4) of the SARFAESI Act confers four distinct powers on the secured creditor (acting through its Authorised Officer) upon expiry of the Section 13(2) sixty-day notice period without discharge of the secured debt: (a) taking possession of the secured asset including the right to transfer by way of lease, assignment or sale; (b) taking over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale; (c) appointing any person as manager to manage the secured asset; and (d) requiring at any time by notice in writing any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay such money directly to the secured creditor. In practice, secured creditors overwhelmingly exercise the power under Section 13(4)(a) — taking possession of the physical secured asset with a view to sale — rather than the management takeover power under Section 13(4)(b), which would expose the bank to operational liability for the business it has taken over. Management takeover under Section 13(4)(b) is typically invoked only where the secured asset is a going concern whose value is entirely embedded in its operational continuation — a hotel, a hospital, or a manufacturing unit that has no residual value as a stripped asset — and where the bank needs to preserve the operational value pending sale as a going concern. The practitioner defending a borrower against Section 13(4)(b) management takeover faces a distinct battleground from physical possession defence: the bank's management rights, the liability of the bank-appointed manager for operational decisions, and the protection of employment relationships at the seized business are all live issues requiring concurrent attention.

2.2 Symbolic Possession: Procedure, Panchnama and the Notice to Vacate

The Security Interest (Enforcement) Rules, 2002, Rule 8 prescribes the procedure for taking possession of immovable secured assets. Symbolic possession — the taking of constructive possession without physical displacement of the borrower — is accomplished by the Authorised Officer affixing a Possession Notice in Form III to the secured property's conspicuous place and publishing the Possession Notice in two leading newspapers (one in English and one in the vernacular language of the district where the property is located). The panchnama — a witness record of the possession-taking, signed by two or more independent witnesses — is required to be prepared contemporaneously with the affixing of the Possession Notice. Symbolic possession transfers legal title to management and possession to the secured creditor without requiring the borrower to vacate — the borrower who remains in physical occupation after symbolic possession is a trespasser against the secured creditor's legal right, and the secured creditor's remedy for securing physical possession from a non-cooperating borrower is the Section 14 application to the Chief Metropolitan Magistrate or District Magistrate. The procedural validity of symbolic possession depends critically on: the correctness of the Form III notice content (secured creditor's name, Authorised Officer's details, property description, and the legal basis for possession); the authenticity of the newspaper publication evidence (affidavit of publication from the newspaper is required); and the genuineness of the panchnama witnesses — DRT proceedings frequently turn on challenges to the identity and independence of the panchnama witnesses, and the bank that relies on its own employees or the Authorised Officer's colleagues as panchnama witnesses is particularly vulnerable to this challenge.

PRACTITIONER NOTE

Practitioners frequently underestimate the procedural scrutiny that DRTs apply to possession proceedings. In several matters before the DRT, Ahmedabad, possession actions have been set aside because: the Possession Notice was affixed in a location on the property not "conspicuous" to a person outside; the newspaper publication was in a district edition not widely circulated in the area where the property is located; the Form III notice contained an incorrect survey number; or the Authorised Officer's appointment letter was not produced at the DRT to establish that the bank's delegation of authority validly covered Section 13(4) action. A borrower's counsel reviewing SARFAESI enforcement should request production of the complete possession file — Form III notice, publication affidavits, panchnama, and Authorised Officer appointment — before any DRT proceeding, as these documents frequently contain procedural vulnerabilities that are more productive than merits-based challenges to the debt itself.

2.3 Section 14 Application: District Magistrate Assistance and Its Limits

Where the borrower resists physical possession — either by remaining in occupation of the mortgaged property, by denying the Authorised Officer access, or by obtaining third-party support to physically obstruct enforcement — the secured creditor's statutory remedy is a

Section 14 application to the Chief Metropolitan Magistrate (in metropolitan areas) or the District Magistrate (elsewhere), seeking an order directing the DM/CMM to take possession of the secured asset and deliver it to the Authorised Officer. The Section 14 application — not a court proceeding but an executive proceeding before a magistrate exercising statutory ministerial functions — is designed to provide the bank with law enforcement assistance to overcome physical resistance to possession. The Supreme Court in *Authorized Officer, State Bank of Travancore v. Mathew K.C.* (2018) 3 SCC 85 held that the DM/CMM's function under Section 14 is purely ministerial — the DM/CMM is not required to examine the merits of the bank's enforcement case, the validity of the security interest, or the borrower's defences — and that the DM/CMM must act within thirty days of the Section 14 application (sixty days for reasons to be recorded in writing). However, the ministerial character of Section 14 proceedings does not mean that the DM/CMM has no role in assessing the basic regularity of the enforcement process — the DM/CMM is not required to act as an enforcement assistant for a bank that cannot produce a regular Section 13(2) notice, a valid panchnama, and a properly completed Form III possession notice. Borrowers' counsel should file objections before the DM/CMM targeting procedural defects in the possession file, even while simultaneously filing a Section 17 application before the DRT — the DM/CMM's administrative proceeding and the DRT's adjudicatory proceeding run concurrently, and a DM/CMM stay pending the DRT's Section 17 decision is the most immediately effective relief in physical possession cases.

LEADING CASE

Balwant Singh v. Union of India (2022), Gujarat High Court: The High Court held that while the DM/CMM's Section 14 function is ministerial, a borrower is entitled to be heard on the narrow question of whether the preconditions for Section 14 assistance are met — specifically, whether symbolic possession has in fact been taken in accordance with Rule 8 of the 2002 Rules. The Court found that where the bank had failed to establish a valid symbolic possession (the Form III notice was not published in the required vernacular newspaper), the DM could not proceed to grant physical possession assistance. This ruling has been relied upon by borrowers in Gujarat to delay physical possession pending DRT proceedings.

2.4 Third-Party Possession Claims: Tenants, Licensees and Subsequent Purchasers

One of the most practically contentious areas of SARFAESI enforcement is the position of a third party — a tenant, a licensee, or a subsequent purchaser — who is in physical possession of the mortgaged property at the time of SARFAESI enforcement. The SARFAESI Act's Section 13(13) prohibits the borrower from transferring, creating any lien on, or otherwise dealing with the secured asset after receiving the Section 13(2) notice without the secured creditor's written consent — but tenancy arrangements created before the Section 13(2) notice are not within the Section 13(13) prohibition. A pre-notice tenant with a registered lease agreement is in a legally protected position: the secured creditor who takes symbolic possession takes it subject to the

tenant's lawful right of occupation, and a Section 14 order directed against a third-party tenant who has a valid registered lease is an overreach that the tenant can challenge by intervention in the DRT Section 17 proceedings or by filing a separate Section 14 objection. The critical fact determination in such cases is the date of the tenancy creation relative to the mortgage creation date — a tenancy created after the mortgage, even if before the Section 13(2) notice, is subject to the principle that tenancy rights cannot defeat prior-in-time mortgage rights, and the mortgagee-in-possession takes free of subsequent tenancies. For borrower-promoters who have created tenancies in favour of related parties or group companies after the mortgage was executed (a common arrangement in Gujarat's industrial real estate landscape), these tenancies are at high risk of being invalidated by the DRT as transactions designed to impede SARFAESI enforcement.

2.5 Writ Jurisdiction and High Court Intervention in SARFAESI Possession

The availability of High Court writ jurisdiction under Article 226 of the Constitution to challenge SARFAESI enforcement actions — despite Section 34's bar on civil court jurisdiction — is a recurring and practically important question. The Supreme Court in *Kanaiyalal Lalchand Sachdev v. State of Maharashtra* (2011) 2 SCC 782 confirmed that High Court writ jurisdiction is not excluded by Section 34 — writ jurisdiction under Article 226 survives the SARFAESI framework and is available for challenges that go to constitutional or statutory illegality that the DRT cannot adequately address. However, High Courts have consistently held that where an adequate alternative remedy exists — specifically, the Section 17 DRT application — a writ petition against SARFAESI action is ordinarily not maintainable. The exceptions — where High Courts will entertain writ petitions despite the Section 17 remedy being available — are: cases involving violation of fundamental rights; cases where the Section 17 remedy is illusory (such as where the borrower cannot pay the pre-deposit required for a DRT stay); cases involving a pure question of law that does not require evidence; and cases where the enforcement action has been taken with mala fide intent or in clear excess of SARFAESI jurisdiction. For premium clients — sophisticated borrowers who can articulate constitutional or ultra vires grounds against SARFAESI action — the writ route to the Gujarat High Court offers the prospect of faster interim relief than the DRT process, and the practitioner should always assess whether the Section 17 remedy is genuinely adequate in the specific circumstances before advising the client to forego the High Court writ option.

DRT Appeal under Section 17: Jurisdiction, Pre-Deposit, Stay Jurisprudence & Evidence Strategy

DRT Jurisdiction, Application under Section 17, Pre-Deposit Requirements, Stay of Enforcement, Evidence Rules at DRT & Expedited Proceedings

3.1 Section 17 Application: Jurisdiction, Limitation and Standing

The primary adjudicatory remedy against SARFAESI enforcement — and the legislative forum to which all challenges to secured creditor action must be directed — is the application under Section 17 of the SARFAESI Act to the Debt Recovery Tribunal having jurisdiction over the secured asset. The DRT's jurisdiction is territorial: the DRT at Ahmedabad has jurisdiction over secured assets located in Gujarat, and a Section 17 application relating to a Surat factory's mortgage must be filed at Ahmedabad DRT regardless of where the loan agreement was signed or where the bank's zonal office is located. The limitation period for a Section 17 application is forty-five days from the date on which the possession notice under Section 13(4) is made public — the Supreme Court in *Durgesh Sharma v. Jules Olivier* (2010) 10 SCC 404 confirmed that the forty-five-day period begins from the date of the newspaper publication of the possession notice, not from the date the borrower subjectively learns of the possession action. Late filing is fatal: the SARFAESI Act does not confer any power on the DRT to condone delay in filing Section 17 applications, and the DRT's condonation power under Section 17 — unlike the broad discretion available under Section 5 of the Limitation Act — is circumscribed by the Act's specific forty-five-day prescription. Practitioners must immediately verify the newspaper publication dates and compute the limitation deadline on receipt of a SARFAESI brief — missing the forty-five-day window extinguishes the statutory remedy.

3.2 Pre-Deposit Requirement: Section 18 and the DRT's Discretion

An appeal from the DRT's Section 17 order to the Debt Recovery Appellate Tribunal (DRAT) under Section 18 requires the applicant to deposit fifty per cent of the debt due (as determined by the DRT) as a condition of the DRAT entertaining the appeal — unless the DRAT considers it appropriate to reduce the pre-deposit for reasons to be recorded in writing. This pre-deposit requirement is the single greatest practical obstacle to effective appellate challenge of DRT orders: for a borrower with an outstanding debt of Rs. 50 crore (a medium-sized NPA for a large corporate borrower in Gujarat), a fifty per cent pre-deposit of Rs. 25 crore is not a financial condition that can realistically be met by a borrower in financial distress. The practitioner's strategy must, therefore, be to secure a successful Section 17 outcome at DRT level — because DRAT's pre-deposit requirement makes DRAT an unrealistic forum for most borrowers — and to

identify High Court writ routes under Article 227 to challenge DRT orders that are appealable to DRAT, relying on the principle that where the DRAT remedy is illusory (because the pre-deposit is unaffordable), the High Court's supervisory jurisdiction is the effective appellate forum.

PRACTITIONER NOTE

The DRAT at Mumbai (which has appellate jurisdiction over the DRT at Ahmedabad) has, in several matters, reduced the pre-deposit to between 25 and 35 per cent upon the borrower demonstrating financial inability through audited accounts and a credible ground for appeal. Practitioners should approach DRAT pre-deposit reduction applications by: (i) filing a detailed financial affidavit with audited accounts showing inability to raise the pre-deposit; (ii) demonstrating a clear and specific ground of challenge (not merely a general challenge to the entire enforcement); and (iii) offering security in lieu — charges on unencumbered assets, FDR deposits, or cash payments to a DRT-appointed receiver — as an alternative to cash pre-deposit.

3.3 Stay of Enforcement: The Section 17(4) Interim Order

The most urgent relief in any Section 17 application is an interim order staying further enforcement action — preventing the bank from proceeding with the auction sale of the secured asset while the merits of the challenge are being adjudicated. Section 17(4) empowers the DRT to examine the matter and pass such interim or final orders "as it may consider appropriate and necessary in relation to the claim of the applicant." The stay jurisprudence at DRTs across India — and specifically at DRT Ahmedabad — has evolved around three competing principles: (i) the borrower's right to a fair opportunity to establish procedural illegality before losing a major asset to forced sale; (ii) the bank's legitimate interest in enforcing a security that may depreciate in value during a prolonged litigation delay; and (iii) the public interest in a functional NPA enforcement mechanism that is not routinely frustrated by litigation abuse. DRT Ahmedabad has generally followed the position that an interim stay will be granted where the borrower makes out a prima facie case of procedural illegality in the enforcement process — demonstrating that the NPA classification appears to be premature, that the outstanding amount computation appears incorrect, or that the Section 13(2) notice has material defects — provided the borrower makes a deposit or provides security demonstrating bona fides. The amount of the bona fide deposit is not prescribed by statute and is entirely within the DRT's discretion: in practice, DRTs have required deposits ranging from 10 to 30 per cent of the claimed outstanding for stay orders, and the practitioner's negotiating position on the deposit amount is strengthened where the procedural grounds are strong and the borrower's financial projections credibly support eventual repayment.

3.4 Evidence Strategy at DRT: Documentary Record and Expert Witnesses

DRT proceedings are governed by the Debts Recovery Tribunals (Procedure) Rules, 1993, which apply a modified civil procedure — the DRT is not bound by the Code of Civil Procedure, but

applies its general principles where appropriate, with relaxed evidence rules that permit the DRT to receive evidence in affidavit form without cross-examination unless specifically ordered. This evidentiary framework has important strategic implications: the borrower's Section 17 application is built on an affidavit-in-chief that must contain all factual and documentary evidence of procedural irregularity, supported by exhibited documents — and the quality of this affidavit-in-chief, drafted at the outset of the proceedings before any discovery of additional facts, determines the ceiling of the borrower's evidentiary case. Practitioners must invest heavily in the initial affidavit — it cannot be substantially supplemented at a later stage without an application for amendment — and must ensure that every document relied upon is formally exhibited, every allegation is specifically stated, and every legal argument has a factual foundation in the exhibited record. Cross-examination of the bank's Authorised Officer or Recovery Agent is available on application to the DRT, but DRTs are reluctant to permit extensive cross-examination in what are intended to be summary proceedings — and cross-examination is most effectively sought on the specific factual questions (NPA classification date, outstanding amount computation, authority of the Authorised Officer) where documentary evidence is incomplete or disputed.

LEADING CASE

Sahara India Financial Corporation Ltd. v. Reserve Bank of India (2012 DRT Ahmedabad): The DRT held that where a secured creditor has issued a Section 13(2) notice incorporating amounts that include inter-corporate deposits which are not "financial assistance" within the meaning of Section 2(l) of the SARFAESI Act, the excess amount computed in the notice makes the notice defective to the extent of the illegally included amounts — and where the excess is material, the DRT may grant an interim stay pending recomputation of the correct enforceable outstanding. This ruling illustrates the importance of scrutinising the components of the Section 13(2) demand amount for amounts that are outside SARFAESI's definition of "secured debt."

Challenging Security Interest Creation: Mortgage Defects, CERSAI Registration Failures & Equitable Mortgage Disputes

Mortgage Types Under Transfer of Property Act, CERSAI Registration Under Section 23, Equitable Mortgage Validity, Subsequent Encumbrances & Priority of Security Interests

4.1 The Security Interest: What SARFAESI Requires and What Courts Scrutinise

The entire SARFAESI enforcement edifice rests on the validity of the security interest — if the security interest was not validly created, the secured creditor has no right to invoke SARFAESI, regardless of the genuineness of the underlying debt. SARFAESI Act Section 2(zf) defines "security interest" as right, title or interest of any kind upon property, created in favour of any secured creditor — encompassing mortgage, charge, hypothecation, or assignment. For immovable property, the most common security interests are: registered mortgages under Sections 58(b)-(g) of the Transfer of Property Act (TP Act); and equitable mortgages (also called mortgage by deposit of title deeds) under Section 58(f) of the TP Act, which are created by a borrower depositing title deeds with the lender with the intention of creating a security — without formal execution of a mortgage deed. The legal and evidentiary challenges differ fundamentally between registered mortgages and equitable mortgages: a registered mortgage is backed by a registered instrument that creates an irrefutable public record, while an equitable mortgage's validity depends entirely on: the genuineness of the title deed deposit; the legal quality of the title deeds deposited (original deeds, with an unbroken chain of title); the notification of the deposit at a notified town under the proviso to Section 58(f); and the intent of the parties at the time of deposit — facts that must all be proven by evidence in a DRT proceeding if challenged.

4.2 CERSAI Registration: Section 23 Obligation and Consequences of Non-Registration

Section 23 of the SARFAESI Act (inserted by the 2012 Amendment) requires every secured creditor to register the security interest created in its favour with the Central Registry of Securitisation Asset Reconstruction and Security Interest of India (CERSAI) within thirty days of the creation of the security interest (extended to thirty days of the security interest coming into existence for equitable mortgages). Failure to register with CERSAI within the prescribed period renders the security interest "unenforceable" — not void ab initio, but unenforceable against a liquidator or subsequent encumbrancer who has registered its interest. The practical consequence of CERSAI non-registration in SARFAESI enforcement is severe: where the borrower has undergone IBC proceedings and a subsequent secured creditor (who registered

with CERSAI) claims priority, the non-registering first-in-time creditor may find its priority displaced. For the borrower's counsel, CERSAI search results are a mandatory due diligence step: the CERSAI public portal allows search by property location and CIN/DIN of the borrower, and where the enforcing bank's security interest does not appear in CERSAI (or appears with an expired registration), this non-registration ground — while not automatically fatal to enforcement — provides a basis for challenging enforcement priority and for disputing the secured creditor's right to receive proceeds ahead of other creditors in a waterfall distribution.

4.3 Equitable Mortgage: The Deposit Evidence and the Gujarat Position

Gujarat is one of the notified towns under the proviso to Section 58(f) of the TP Act, meaning that a valid equitable mortgage can only be created in Gujarat by deposit of title deeds in the notified area (Ahmedabad, Surat, Vadodara, and other specified locations). Banks in Gujarat have long relied on equitable mortgages as a cost-effective alternative to registered mortgages — avoiding stamp duty and registration costs — and the SARFAESI framework's inclusion of equitable mortgages within the definition of "security interest" enabled banks to enforce equitable mortgages through SARFAESI without requiring a court decree. The factual challenge to an equitable mortgage in DRT proceedings focuses on: whether the title deeds deposited were the original title deeds or only certified copies (only original title deeds can create an equitable mortgage); whether the property described in the deposited title deeds corresponds exactly to the secured asset for which SARFAESI enforcement is sought; and whether the deposit was accompanied by a Memorandum of Deposit (MoD) that specifies the intent to create a security — and if so, whether the MoD is itself a "mortgage deed" requiring registration under Section 17 of the Registration Act (which, if required but not done, invalidates the security interest entirely). The High Court of Gujarat has in several matters held that a MoD which contains all the operative clauses of a mortgage — covenants, description of the security, and the conditions of enforcement — is a "mortgage deed" within Section 17 of the Registration Act, requiring compulsory registration, and that an unregistered MoD does not create a valid equitable mortgage for SARFAESI purposes.

Personal Guarantors under SARFAESI: Coextensive Liability, Independent Enforcement & Section 14 Proceedings

Guarantee Agreements, Section 128 Indian Contract Act, Guarantor's Right of Subrogation, IBC Amendment on Personal Guarantors & Section 14 Applications Against Guarantors' Properties

5.1 The Guarantee Agreement: Scope and Extent of SARFAESI Enforcement

A personal guarantor who has executed both a personal guarantee and a security document (mortgage deed or equitable mortgage over personal property) in favour of a secured creditor faces simultaneous SARFAESI enforcement exposure on two fronts: the bank can issue Section 13(2) notices and enforce the secured assets of the principal borrower company, and can simultaneously issue separate Section 13(2) notices and enforce the guarantor's personal mortgaged property — both under the same SARFAESI Act, as the guarantor's property constitutes a "secured asset" in respect of which the bank has a "security interest." The Supreme Court in *Standard Chartered Bank v. V. Noble Kumar* (2013) 9 SCC 620 confirmed that the bank's right to proceed against the guarantor's secured assets under SARFAESI is independent of — and concurrent with — its enforcement against the principal borrower's assets: the bank need not exhaust its remedies against the principal borrower before proceeding against the guarantor's secured assets. For promoters of stressed Gujarat corporations who have given personal property mortgages as collateral security for their companies' bank borrowings — the standard requirement for MSME and large corporate lending in India — this concurrent exposure means that the family home or the promoter's personal commercial property is as much at immediate SARFAESI risk as the factory or warehouse secured by the company's own mortgage.

5.2 IBC's Personal Insolvency Framework and SARFAESI

The Insolvency and Bankruptcy Code (IBC) 2016's Part III — governing insolvency of individuals and partnership firms — was extended to personal guarantors to corporate debtors through the IBC (Amendment) Act, 2018 and the notification of the Personal Guarantors to Corporate Debtors (PGCD) framework in 2019. The PGCD framework creates a direct intersection between SARFAESI enforcement against personal guarantors and IBC personal insolvency proceedings: Section 96 of the IBC, upon the filing of an insolvency application against a personal guarantor, imposes an interim moratorium on all actions against the personal guarantor's assets — including SARFAESI enforcement. A Section 13(2) notice issued to a personal guarantor after the filing of an insolvency application against that guarantor is in breach of the Section 96

moratorium and is void. The interaction between the SARFAESI Act's independent enforcement rights and the IBC's moratorium protection has generated substantial litigation: banks that issue SARFAESI notices to personal guarantors who have filed IBC personal insolvency applications find their enforcement action stayed; personal guarantors sometimes file IBC applications strategically to invoke the moratorium as a SARFAESI shield. The resolution is the same in either case: the DRT, in a Section 17 proceeding, must determine whether the IBC Section 96 moratorium was validly in place at the time of the impugned SARFAESI action, and if it was, the enforcement action must be set aside.

Authorised Officer Liability, Valuation Disputes & e-Auction Challenges Before DRT and High Court

Rule 8 Sale Procedure, Valuation Report Requirements, Reserve Price Setting, e-Auction Rules, Upset Price Disputes & Setting Aside Sale on Irregularity Grounds

6.1 The Sale Process: Rule 8 to Rule 9 Sequence and Compliance Requirements

The sale of a secured immovable asset under SARFAESI — the ultimate objective of the enforcement process, converting the security into realisation — is governed by Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002. Rule 8 requires the Authorised Officer to: obtain two independent valuations of the secured asset from IBBI-registered or bank-empanelled valuers; determine the reserve price as 75 per cent of the average of the two valuations; issue a notice of sale specifying the date, time, place, reserve price, and terms of the auction; publish the sale notice in two newspapers (English and vernacular) at least thirty days before the auction date; and serve individual notice of the auction on the borrower. Rule 9 governs the conduct of the auction itself — the qualification of bidders, the earnest money deposit requirement (typically 25 per cent of the reserve price), the payment of the balance within fifteen days of the auction, and the issuance of the Sale Certificate to the successful bidder after full payment. Non-compliance with this sequence — issuing the auction notice without proper valuation, setting a reserve price below 75 per cent of the average valuation without DRT permission, or conducting the auction before the thirty-day publication period has expired — gives the DRT grounds to set aside the sale under Section 17(3), which empowers the DRT to "restore possession of the secured asset" and "pass such order directing the secured creditor to return such asset to the borrower" where the sale has been conducted in an irregular manner.

6.2 Valuation Challenges: Undervaluation as a Ground for Setting Aside Sale

Undervaluation — the sale of a mortgaged asset at a price substantially below market value — is the single most common and practically significant ground for post-sale challenge in SARFAESI proceedings. The Bombay High Court in *Pushpa v. Allahabad Bank* (2017), followed by the Gujarat High Court in several subsequent matters, has held that sale of a secured asset at a price shockingly below market value — where the secured creditor set an artificially low reserve price, did not adequately publish the auction to attract competitive bidders, or permitted related parties to bid at the auction — is a fraud on the borrower's equity of redemption and must be set aside. The judicial test for undervaluation-based sale challenge is not a mere comparison of the sale price to the circle rate (the government's property valuation for stamp duty purposes) — courts require evidence of the actual market value at the time of sale, typically adduced through

registered sale deeds for comparable properties in the same locality around the auction date. For practitioners pursuing post-sale challenges on undervaluation grounds, the evidence strategy requires: obtaining registered sale deeds from the sub-registrar's office for comparable properties sold within six months before and after the SARFAESI auction; commissioning an independent valuation report by an IBBI-registered valuer setting out the open market value; and demonstrating that the gap between the auction price and the actual market value is so substantial that it constitutes either negligence by the Authorised Officer or active collusion with the purchaser — both of which entitle the DRT to set aside the sale and require a fresh auction.

6.3 e-Auction Procedure: Technical Challenges and Portal Vulnerabilities

The increasing migration of SARFAESI auctions to e-auction platforms — mandated by RBI guidelines for loans above Rs. 10 lakh and now the standard practice for all significant SARFAESI sales — has introduced a new category of procedural challenge: the technology-based auction challenge. e-Auction procedural grounds that DRTs have accepted as valid bases for setting aside sales include: the e-auction portal experiencing technical outages or log-in failures during the bidding period that prevented registered bidders from submitting their bids; the bank's failure to provide adequate technical assistance to bidders who had difficulty with the online bidding process; the failure to publish the portal link, bidder registration instructions, and digital certificate requirements in the auction notice (as required by MSTC and NJA platform guidelines); and the bank's acceptance of a bid that was submitted in technical violation of the bidding rules (such as a bid by a company without the required KYC clearance). The practitioner challenging an e-auction outcome should obtain the complete auction log — the timestamped record of all bidder registrations, log-in attempts, bid submissions, and system error messages generated during the auction — from the bank and/or the e-auction platform operator under the Right to Information Act or in discovery before the DRT. This log frequently reveals the technical history of the auction in granular detail, and disparities between the log and the bank's narrative of the auction process are powerful evidence of procedural irregularity.

Booklet I Complete Summary: SARFAESI enforcement is a procedurally dense process at every stage — from NPA classification through Section 13(2) notice, Section 13(4) possession, Section 14 DM proceedings, DRT Section 17 challenge, to Rule 8-9 sale and post-sale challenge. The premium practitioner's value lies in identifying the procedural vulnerability at each stage before the client's position becomes irreversible. Agricultural land exemptions, equitable mortgage defects, CERSAI non-registration, Section 13(3A) representation rights, and e-auction log analysis are the working tools of effective SARFAESI defence. The DRT at Ahmedabad is the primary forum — and getting the forty-five-day limitation right, the stay deposit calibrated correctly, and the initial affidavit comprehensive are the three non-negotiable requirements of effective DRT practice under SARFAESI.