
THE SARFAESI ACT, 2002: DISTRICT MAGISTRATE'S POWERS UNDER SECTION 14 AND RIGHTS OF BORROWERS

I. INTRODUCTION

The **Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002** (the "SARFAESI Act") was enacted by Parliament to address the crippling problem of Non-Performing Assets (NPAs) plaguing Indian banks. Prior to its enactment, secured creditors were entirely dependent on civil courts and Debt Recovery Tribunals for enforcement of security interests a process so slow that NPAs had become a systemic threat to the banking sector. The Act empowers scheduled commercial banks and notified financial institutions to enforce their security interests extra-judicially, i.e., without court intervention, once a borrower defaults and the account is classified as an NPA under RBI's prudential norms. Its constitutional validity was upheld by the Supreme Court in *Mardia Chemicals Ltd. v. Union of India* [(2004) 4 SCC 311].

II. SALIENT FEATURE OF ACT AND SECTION 14

The enforcement mechanism under the Act operates sequentially. Under **Section 13(2)**, the secured creditor must issue a written demand notice to the borrower specifying the dues and the secured assets, allowing 60 days for repayment. Under **Section 13(3A)**, the borrower may raise objections within 15 days, to which the creditor must respond within one week. If the borrower fails to repay, **Section 13(4)** entitles the creditor to take possession of the secured assets, take over management of the business, appoint a manager, or call upon guarantors to pay.

Section 14 provides the physical enforcement mechanism. Where the secured creditor faces resistance in taking possession, it may apply in writing accompanied by a sworn affidavit to the **Chief Metropolitan Magistrate (CMM)** in metropolitan areas or to the **District Magistrate (DM)** in other areas, within whose jurisdiction the secured asset lies. The CMM/DM is then obligated to assist the secured creditor in taking physical possession of the asset and all related documents.

III. SCOPE OF DISTRICT MAGISTRATE'S POWERS UNDER SECTION 14

(a) Ministerial, Not Adjudicatory

The Supreme Court has definitively held that the power exercisable by the DM/CMM under Section 14 is a **purely ministerial act** it does not involve any quasi-judicial or adjudicatory function. The DM's role is confined to verifying that the procedural formalities in the affidavit filed by the secured creditor

have been satisfied, and upon being satisfied, to facilitate possession. The DM is **not required to adjudicate** disputes between the borrower and the secured creditor, or between any third party and the creditor. Any aggrieved party must raise objections exclusively before the Debt Recovery Tribunal under Section 17.

(b) Time-Bound Obligation

Section 14(1) mandates that the CMM/DM must pass an order within **30 days** of receiving the application. This period may be extended by a further 30 days if reasons are recorded in writing. Courts have consistently emphasised that time is of the essence under this special enactment and delay is not permissible.

(c) Delegation and Use of Force

The 2013 Amendment introduced **Section 14(1A)**, enabling the CMM/DM to authorise a subordinate officer or an Advocate Commissioner to assist in taking possession. **Section 14(2)** empowers the CMM/DM to use such force as is deemed necessary for the purpose. **Section 14(3)** provides absolute immunity no act done under Section 14 shall be questioned in any court or before any authority.

(d) ADM/ACMM and CJM Also Competent

The Supreme Court in *R.D. Jain and Co. v. Capital First Ltd.* (2022) held that Additional District Magistrates (ADMs) and Additional CMMs (ACMMs) are equally competent to exercise Section 14 powers. In non-metropolitan districts, **Chief Judicial Magistrates (CJMs)** have also been held competent (*Indian Bank v. D. Visalakshi*, 2019).

IV. RIGHTS OF BORROWERS UNDER THE SARFAESI ACT

(i) Right to 60-Day Notice [S.13(2)]: The borrower must receive a written demand notice specifying dues before any enforcement action. **(ii) Right to Raise Objections [S.13(3A)]:** The borrower may represent against the notice within 15 days; the creditor must communicate reasons for rejection within one week. **(iii) Right to Appeal Before DRT [S.17]:** Any aggrieved person may challenge enforcement measures before the Debt Recovery Tribunal within 45 days. The DRT has wide powers including restoring possession if enforcement is found invalid. **(iv) Further Appeal to DRAT [S.18]:** A second appellate tier before the Debt Recovery Appellate Tribunal is available. **(v) Right of Redemption [S.13(8)]:** The borrower may redeem the secured asset by tendering full dues before the publication of the auction notice, after which the right of redemption stands extinguished (*CELIR LLP v. Bafna Motors*, 2023). **(vi) Right to Surplus Proceeds:** Any amount realised beyond the outstanding dues must be refunded to the borrower.

V. LANDMARK CASE: *Mardia Chemicals Ltd. v. Union of India*

(2004) 4 SCC 311 | Supreme Court of India | Bench: CJ V.N. Khare, J. Brijesh Kumar, J. S.B. Sinha | Decided: 8th April 2004

Facts: Mardia Chemicals Ltd., a Gujarat-based manufacturer, had availed substantial loans from the Industrial Development Bank of India (IDBI) and other financial institutions. Upon default, the accounts were declared NPAs and IDBI issued a demand notice under Section 13 of the SARFAESI Ordinance, 2002, requiring repayment within 60 days. Mardia Chemicals, along with numerous other borrowers and industry bodies, filed Writ Petitions before the Supreme Court challenging the very constitutional validity of the SARFAESI Act, contending it granted unchecked powers to banks while denying borrowers any meaningful remedy.

Issues: (1) Whether the SARFAESI Act violates Articles 14, 19, and 300-A of the Constitution by conferring arbitrary powers on secured creditors?

(2) Whether Section 13 is constitutionally valid?

(3) Whether Section 17(2) mandating a pre-deposit of 75% of outstanding dues before a DRT application could be entertained is constitutionally valid?

Judgment & Ratio: The Supreme Court upheld the constitutional validity of the SARFAESI Act in its entirety, holding that the Act is a reasonable legislative measure in the public interest of reducing NPAs and strengthening the credit ecosystem. The Court reasoned that the enforcement of security interest by banks is a matter of public importance and does not per se violate Articles 19 or 300-A. Borrowers cannot claim an absolute right to retain property where they have voluntarily created a security interest. However, the Court struck down the **Section 17(2) pre-deposit requirement of 75%** as unconstitutional, holding it to be arbitrary and violative of Article 14. The Court held that such a condition, imposed as a pre-condition for access to the DRT, effectively shut the door of justice on most borrowers in financial distress, rendering the appellate remedy illusory. The provision was severed, and the rest of the Act was upheld.

Significance: This is the foundational constitutional precedent on the SARFAESI Act and remains the most cited judgment in all SARFAESI litigation. It simultaneously validated the Act's sweeping creditor powers and safeguarded the borrower's right of access to justice by removing the prohibitive pre-deposit condition. It established that while Parliament may grant banks extraordinary enforcement powers, such powers cannot be accompanied by procedural devices that effectively deprive borrowers of any

meaningful remedy. Every subsequent judgment interpreting the SARFAESI Act including on Section 14 traces its pedigree to *Mardia Chemicals*.

VI. CONCLUSION

The SARFAESI Act, 2002 is a carefully calibrated statute that balances creditor efficiency with borrower protection. Section 14 arms secured creditors with administrative state machinery in the form of the District Magistrate to enforce possession of secured assets swiftly. The judiciary has refined this power as ministerial in nature, ensuring that the DM does not become a forum for re-litigating the borrower's dispute, while simultaneously ensuring that borrowers retain meaningful rights through the DRT under Section 17. The *Mardia Chemicals* judgment remains the constitutional bedrock of this entire framework, confirming that speedy debt recovery and borrower rights are not mutually exclusive they must coexist in a fair legal order.