

SECURITY INTEREST (ENFORCEMENT) RULES, 2002

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SECURITY INTEREST (ENFORCEMENT) RULES, 2002

In exercise of the powers conferred by Sub-section (1) and clause (b) of Sub-section (2) of Section 38 read with Sub-Sections (4), (10) and (12) of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest 1[Act], 2002, the Central Government hereby makes the following rules, namely:--

1. Short title and commencement :-

(1) These rules may be called the Security Interest (Enforcement) Rules, 2002,

(2) They shall come into force from the date of their publication in the Official Gazette (20.09.2002).

2. Definitions :-

In these rules, unless the context otherwise requires,

(a) "authorised officer" means an officer not less than a chief manager of a public sector bank or equivalent, as specified by the Board of Directors or 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 ¹[Act];

(b) demand notice means the notice in writing issued by a secured creditor or authorised officer, as the case may be, to any borrower pursuant to sub-Section (2) of Section 13 of the ¹[Act];

(c) ¹["Act" means the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002)];

(d) "approved valuer" means a valuer as approved by the Board of Directors or Board of Trustees of the secured creditor, as the case may be ;

(e) Words and expressions used and not defined in these Rules but defined in the ⁴[Act] shall have the meanings respectively assigned to them in the ⁵ [Act].

Substituted by Security Interest (Enforcement) Amendment Rules, 2007, w.e.f. 02-02-2007. Earlier the text was as under: "Ordinance" means the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002 (Ord. 3 of 2002)

Substituted for the word "Ordinance" by Security Interest (Enforcement) Amendment Rules, 2007, w.e.f. 02-02-2007.

3. Demand Notice :-

(1) The service of demand notice as referred to in Sub-section (2) of Section 13 of the ⁶ [Act] shall be made by delivering 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 acknowledgement due, addressed to the borrower or his agent empowered to accept the service or by Speed Post or by courier or by any other means of transmission of documents like fax message or electronic mail service:

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

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

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

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

Substituted for the word "Ordinance" by Security Interest (Enforcement) Amendment Rules, 2007, w.e.f. 02-02-2007.

3A. Reply to Representation of the borrower :-

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(a) After issue of demand notice under sub-section (2) of Section 13 , if the borrower makes any representation or raises any objection to the notice, the Authorized Officer shall consider such representation or objection and examine whether the same is acceptable or tenable.

(b) If on examining the representation made or objection raised by the borrower, the secured creditor is satisfied that there is a need to make any changes or modifications in the demand notice, he shall modify the notice accordingly and serve a revised notice or pass such other suitable orders as deemed necessary, within seven days from the date of receipt of the representation or objection.

(c) If on examining the representation made or objection raised, the Authorized Officer comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection, the reasons for non-acceptance of the representation or objection, to the borrower.

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In the SECURITY INTEREST (ENFORCEMENT) RULES, 2002, rule 3A inserted as follows :- [3A. Reply to Representation of the borrower:- (a) After issue of demand notice under sub-section (2) of section 13, if the borrower makes any representation or raises any objection to the notice, the Authorized Officer shall consider such representation or objection and examine whether the same is acceptable or tenable. (b) If on examining the representation made or objection raised by the borrower, the secured creditor is satisfied that there is a need to make any changes or modifications in the demand notice, he shall modify the notice accordingly and serve a revised notice or pass such other suitable orders as deemed necessary, within seven days from the date of receipt of the representation or objection. (c) If on examining the representation made or objection raised, the Authorized Officer comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate within one week of receipt of such representation or objection, the reasons for non-acceptance of the representation or objection, to the borrower."] by Security Interest

(Enforcement) Amendment Rules, 2007, w.e.f. 02-02-2007.

4. Procedure after issue of notice :-

If the amount mentioned in the demand notice is not paid within the time specified therein, the authorised officer shall proceed to realise the amount by adopting any one or more of the measures specified in Sub-section (4) of Section 13 of the ⁸ [Act] for taking possession of movable property, namely:--

(1) Where the possession of the secured assets to be taken by the secured creditor are movable property in possession of the borrower, the authorised officer shall take possession of such movable property in the presence of two witnesses after a Panchanama drawn and signed by the witnesses as nearly as possible in Appendix-I to these rules,

(2) After taking possession under sub-rule (1) above, the authorised officer shall make or cause to be made an inventory of the property as nearly as possible in the form given in Appendix-II to these rules and deliver or cause to be delivered, a copy of such inventory to the borrower or to any person entitled to receive on behalf of borrower.

(3) The authorised officer shall keep the property taken possession under sub-rule (1) either in his own custody or in the custody of any person authorised or appointed by him, who shall take as much care of the property in his custody as an owner of ordinary prudence would, under the similar circumstances, take of such property:

Provided that if such property is subject to speedy or natural decay, or the expense of keeping such property in custody is likely to exceed its value, the authorised officer may sell it at once.

(4) The authorised officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed of.

(5) In case any secured asset is:--

(a) a debt not secured by negotiable instrument; or

(b) a share in a body corporate;

(c) other movable property not in the possession of the borrower except the property deposited in or in the custody of any court or any like authority, the authorised officer shall obtain possession or recover the debt by service of notice as under :--

(i) in the case of a debt, prohibiting the borrower from recovering the debt or any interest thereon and the debtor from making payment thereof and directing the debtor to make such payment to the authorised officer, or

(ii) in the case of the shares in a body corporate, directing the borrower to transfer the same to the secured creditor and also the body corporate from not transferring such shares in favour of any person other than the secured creditor. A copy of the notice so sent may be endorsed to the concerned body corporate's Registrar to the issue or share transfer agents, if any;

(iii) in the case of other movable property (except as aforesaid), calling upon the borrowers and the person in possession to hand over the same to the authorised officer and the authorised officer shall take custody of such movable property in the same manner as provided in Sub-rule (1) to (3) above;

(iv) movable secured assets other than those covered in this rule shall be taken possession of by the authorised officer by taking possession of the documents evidencing title to such secured assets.

Substituted for the word "Ordinance" by Security Interest (Enforcement) Amendment Rules, 2007, w.e.f. 02-02-2007.

5. Valuation of movable secured assets :-

After taking possession under sub-rule (1) of rule 4 and in any case before sale, the authorised officer shall obtain the estimated value of the movable secured assets and thereafter, if considered necessary, fix in consultation with the secured creditor, the reserve price of the assets to be sold in realisation of the dues of the secured, creditor.

6. Sale of movable secured assets :-

(1) the authorised officer may sell the moveable secured assets taken possession under sub-rule (1) of rule 4 in one or more lots by adopting any of the following methods to secure maximum sale price for the assets, to be so sold--

(a) obtaining quotations from parties dealing in the secured assets or otherwise interested in buying such assets; or

(b) inviting tenders from the public; or

(c) holding public auction; or

(d) by private treaty.

(2) The authorised officer shall serve to the borrower a notice of thirty days for sale of the movable secured assets, under sub-rule (1):

Provided that if the sale of such secured assets is being, effected by either inviting lenders from the public or by holding public auction, the secured creditor shall cause a public notice in two leading newspapers, one in vernacular language, having sufficient

circulation in that locality by setting out the terms of sale, which may include,--

(a) details about the borrower and the secured creditor;

(b) description of movable secured assets to be sold with identification marks or numbers, if any, on them;

(c) reserve price, if any, and the time and manner of payment;

(d) time and place of public auction or the time after which sale by any other mode shall be completed;

(e) depositing earnest money as may be stipulated by the secured creditor;

(f) any other thing which the authorised officer considers it material for a purchaser to know in order to judge the nature and value of movable secured assets.

(3) Sale by any methods other than public auction or public tender, shall be on such terms as may be settled between the parties in writing.

7. Issue of certificate of sale :-

(1) Where movable secured assets is sold, sale price of each lot shall be paid as per the terms of the public notice or on the terms as may be sealed between the parties, as the case may be, and in the event of default of payment, the movable secured assets shall be liable to be used for sale again.

(2) On payment of sale price, the authorised officer shall issue a

certificate of sale in the prescribe form Appendix-III to these rules specifying the movable secured assets sold, price paid and the name of the prescribe form and thereafter the sale shall become absolute. The certificate of sale so issued shall be prima facie evidence of title of the purchaser.

(3) Where the movable secured assets are those referred in sub clauses (iii) to (v) of clause (I) of sub-section (1) of Section 2 of the ⁹ [Act], the provisions contained in these rule and rule 7 dealing with the sale of movable secured assess shall, mutatis mutandis, apply to such assets.

Substituted for the word "Ordinance" by Security Interest (Enforcement) Amendment Rules, 2007, w.e.f. 02-02-2007.

8. Sale of immovable secured assets :-

(1) Where the secured asset is an immovable property, the authorised officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property.

(2) The possession notice as referred to in sub-rule (1) shall also be published in two leading newspaper, one in vet a cular language having sufficient circulation in that locality, by the authorised officer.

(3) In the event of possession of immovable property is actually taken by the authorised officer, such property shall be kept in his own custody or in the custody of any person authorised or appointed by him, who shall take as much care of the property in his custody as a owner of ordinary prudence would, under the similar circumstances, take of such property.

(4) The authorised officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed off.

(5) Before effecting sale of the immovable property referred to in sub-rule (I) of rule 9, the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods :--

(a) by obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying the such assets; or

(b) by inviting tenders from the public;

(c) by holding public auction; or

(d) by private treaty.

(6) the authorised officer shall serve to the borrower a notice of thirty days for sale of the immovable secured assets, under sub-rule (5):

Provided that if the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in two leading newspapers one in vernacular language having sufficient circulation in the locality by setting out the terms of sale, which shall include,
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(a) the description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;

(b) the secured debt for recovery of which the property is to be

sold;

(c) reserve price, below which the property may not be sold;

(d) time and place of public auction or the time after which sale by any other mode shall be completed;

(e) depositing earnest money as may stipulated by the secured creditor;

(f) any other thing which the authorised officer considers it material for a purchaser to know in order to judge the nature and value of the property.

(7) Every notice of sale shall be affixed on a conspicuous part of the immovable property and may, if the authorised officer deems it fit, put on the web-site of the secured creditor on the Internet.

(8) Sale by any methods other than public auction or public tender, shall be on such terms as may be settled between the parties in writing.

9. Time of sale, Issue of sale certificate and delivery of possession, etc. :-

(1) No sale of immovable property under these rules shall take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) or notice of sale has been served to the borrower.

(2) The sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid or tender or quotation or

offer to the authorised officer and shall be subject to confirmation by the secured creditor:

Provided that no sale under this rule shall be confirmed, if the amount offered by sale price is less than the reserve price, specified under sub-rule (5) of rule 9 :

Provided further that if the authorised officer fails to obtain a price higher than the reserve price, he may, with the consent of the borrower and the secured creditor effect the sale at such price.

(3) On every sale of immovable property, the purchaser shall immediately pay a deposit of twenty five per cent of the amount of the sale price, to the authorised officer conducting the sale and in default of such deposit, the property shall forthwith be sold again.

(4) The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the parties.

(5) In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

(6) On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorised officer exercising the power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the Form given in Appendix V to these rules.

(7) Where the immovable property sold is subject to any encumbrances, the authorised officer may, if he thinks fit, allow the purchaser to deposit with him the money required to discharge the

encumbrances and any interest due thereon together with such additional amount that may be sufficient to meet the contingencies or further cost, expenses and interest as may be determined by him.

(8) On such deposit of money for discharge of the encumbrances, the authorised officer may issue or cause the purchaser to issue notices to the persons interested in or entitled to the money deposited with him and take steps to make the payment accordingly.

(9) The authorised officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7) above.

(10) The certificate of sale issued under sub-rule (6) shall specifically mention that whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not.

10. Appointment of Manager :-

(1) The Board of Directors or Board of Trustees, as the case may be, may appoint in consultation with the borrower any person (hereinafter referred to as the Manager) to manage the secured assets the possession of which has been taken over by the secured creditor.

(2) The Manager appointed by the Board of Directors or Board of Trustees, as the case may be, shall be deemed to be an agent of the borrower and the borrower shall be solely responsible for the commission or omission of acts of the Manager unless such commission or omission are due to improper intervention of the secured creditor or the authorised officer.

(3) The Manager shall have power by notice in writing to recover

any money from any person who has acquired any of the secured assets from the borrower, which is due to may become due to the borrower.

(4) The Manager shall give such person who has made payment under sub-rule (3) a valid discharge as if he has made payments to the borrower.

(5) The Manager shall apply all the monies received by him in accordance with the provisions contained in sub-section (7) of Section 13 of the **10** [Act].

Substituted for the word "Ordinance" by Security Interest (Enforcement) Amendment Rules, 2007, w.e.f. 02-02-2007.

11. Procedure for Recovery of shortfall of secured debt :-

(1) An application for recovery of balance amount by any secured creditor pursuant to sub-section (10) of Section 13 of the **11** [Act] shall be presented to the Debts Recovery Tribunal in the form annexed as Appendix VI to these rules by the authorised officer or his agent or by a duly authorised legal practitioner, to the Registrar of the Bench within whose jurisdiction his case falls or shall be sent by registered post addressed to the Registrar of Debts Recovery Tribunal.

(2) The provisions of the Debts Recovery Tribunal (Procedure) Rules, 1993 made under Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993), shall mutatis mutandis apply to any application filed by under sub-rule (1).

(3) An application under sub-rule (1) shall be accompanied with fee as provided in rule 7 of the Debts Recovery Tribunal (Procedure) Rules, 1993.

Substituted for the word "Ordinance" by Security Interest

(Enforcement) Amendment Rules, 2007, w.e.f. 02-02-2007.

12. Application to the Tribunal / Appellate Tribunal :-

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(1) Any application to the Debt Recovery Tribunal under sub-section (1) of Section 17 shall be, as nearly as possible, in the form given in Appendix VII to the rules.

(2) Any application to the Appellate Tribunal under sub section (6) of Section 17 of the Act shall be, as nearly as possible, in the form given in Appendix VIII to the said rules. Any appeal to the Appellate Tribunal under Section 18 of the Act shall be, as nearly as possible, in the form given in Appendix IX to the said rules.]

In the SECURITY INTEREST (ENFORCEMENT) RULES, 2002, rule 12 shall be inserted as follows: "[12. Application to the Tribunal / Appellate Tribunal:- (1) Any application to the Debt Recovery Tribunal under sub-section (1) of Section 17 shall be, as nearly as possible, in the form given in Appendix VII to the rules. (2) Any application to the Appellate Tribunal under sub section (6) of Section 17 of the Act shall be, as nearly as possible, in the form given in Appendix VIII to the said rules. Any appeal to the Appellate Tribunal under S.18 of the Act shall be, as nearly as possible, in the form given in Appendix IX to the said rules.]" by Security Interest (Enforcement) Amendment Rules, 2007, w.e.f. 02-02-2007.

13. Fees for applications and appeals under Section 17 and Section 18 of the Act :-

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(1) Every application under sub section (1) of Section 17 or an appeal to the Appellate Tribunal under sub-section (1) of Section 18 shall be accompanied by a fee provided in the sub-rule (2) and such fee may be remitted through a crossed demand draft drawn on a bank or Indian Postal Order in favour of the Registrar of the Tribunal or the Court as the case may be, payable at the place where the Tribunal or the Court is situated.

(2) The amount of fee payable shall be as follows:

No.	Nature of Application	Amount of Fee payable
1	Application to a Debt Recovery Tribunal under subsection (1) of section 17 against any of the measures referred to	

	<p>in subsection (4) of section 13</p>	
(a)	<p>Where the applicant is a borrower and the amount of debt due is less than Rs.10 lakhs</p>	<p>Rs. 500 for every Rs .1 lakh or part thereof</p>
(b)	<p>Where the applicant is a borrower</p>	<p>Rs. 5000 + Rs. 250 for every Rs. 1 lakh or part thereof in excess of Rs. 10 lakhs subject to a maximum of Rs. 1,00,000</p>

	<p>and the amount of debt due is</p> <p>Rs. 10 lakhs and above</p>	
(c)	<p>Where the applicant is an aggrieved party other than the borrower and where the amount of debt due is less than Rs.10 lakhs</p>	<p>Rs. 125 for every Rupees One lakh or part thereof</p>
(d)		<p>Rs. 1250 + Rs. 125 for every</p>

	<p>Where the applicant is an aggrieved party other than the borrower and where the amount of debt due is Rs.10 lakhs and above</p>	<p>Rs. 1 lakh or part thereof in excess of Rs. 10 lakhs subject to a maximum of Rs. 50,000/</p>
(e)	<p>Any other application by any person</p>	<p>Rs. 200/-</p>

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Appeal to
the
Appellate
Authority
against any
order
passed by
the Debt
Recovery
Tribunal
under
section 17

Same
fees as
provided
at
clauses
(a) to
(e) of
serial
number
1 of this
rule]