

**IN THE COURT OF THE CHIEF METROPOLITAN MAGISTRATE,
AT ESPLANADE, MUMBAI**

(I/c. Presiding Officer – M. R. A. Shaikh)

Case No.397/SA/2021

(CNR No.MHMM11-003050-2021)

KOTAK MAHINDRA BANK LTD.

Applicant/Secured Creditor.

Through it's Authorized Officer-

Mr. Gurpal Singh.

Having their registered office at :-

27 BKC, C 27, G Block, Bandra Kurla Complex,
Bandra (E), Mumbai-400 051.

.... Applicant.

Versus

1. Mr. Sunil Dattaram Devrukhkar

S/o Mr. Dattaram Devrukhkar

2. Mr. Sanjay Dattaram Devrukhkar

S/o Mr. Dattaram Devrukhkar

3. Mr. Dattaram Devrukhkar

S/o Mr. Ram Chandra Devrukhkar

4. Mrs. Sujata Sunil Devrukhkar

W/o Mr. Sunil Dattaram Devrukhkar

5. Mrs. Shobha Sanjay Devrukhkar

W/o Mr. Sanjay Dattaram Devrukhkar

All at :

R/o, 54, Floor, Gr A2, Omkar, Dr. Babasaheb
Ambedkar Path, Kalachowki, Mumbai-400033.

Also All at :

Flat No.624, 6th Floor, C Wing, Shree Krupa,
CHSL., Dr. Babasaheb Amedkar Road, Kalachowki,
Chinchpokli (E), Mumbai-400 033.

....Respondents.

Appearance :-

For Applicant:- Ld. Adv. Sandeep D. Rankhambe.

Ld. Adv. Anita Sonawane-Sachdev.

ORDER BELOW EXH.1

(Delivered on 29.09.2022)

1. This is an application Under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "SARFAESI Act") for taking possession of the secured asset known as :-

"All that piece and parcel of the property bearing Flat No.624, area admeasuring 225 Sq.Ft. (Carpet Area) situated on the 6th Floor, in the building of Shree Krupa CHS Ltd., lying and situated at DR. Amedkar Road, Kalachowki, Chinchpokli (E), Mumbai-400 033".

Brief contents of application are as under :-

2. Initially, on the request of Respondents, the assignor of the applicant financial institution viz. **Karvy Financial Services Ltd. (KFSL)** has granted **Loan Facilities** of Rs.23,00,000/- (Rupees Twenty Three Lakh Only) and Rs.8,00,000/- (Rupees Eight Lakh Only) i.e. total loan amount of **Rs.31,00,000/-** (Rupees Thirty One Lakh Only) to the Respondents vide Sanction Letter dated 25.05.2015.

3. Furthermore, the **Karvy Financial Services Ltd. (KFSL)** has transferred its entire business in favour of **Mape Finserve Private Limited (MFPL)** subsequently known as **Small Business Fincredit India Private Limited (SBFC)** vide Business transfer agreement dated 01.08.2017.

4. In due course, **Small Business Fincredit India Private Limited (SBFC)** vide **Assignment Agreement dated 14/03/2019**, *inter alia*, sold, assigned, transfer and released to/in favour of the applicant all its rights

title, interests, benefits, due receivable from the respondents in respect of the loan agreement underlying security and security interest created in respect of immovable properties for repayment of the same. The applicant is entitled to recover dues under the said facilities and hence, to proceed with the same as per law, the applicant stepped into the shoes of **Small Business Fincredit India Private Limited (SBFC)**.

5. It is contended that, the Respondents executed necessary documents in respect of the said property in favour of applicant for the repayment of the loan availed; the Respondent has created security interest over their said asset. The Respondents also deposited Title Deeds of the the Secured Asset.

6. The secured asset is situated within territorial jurisdiction of this Court. Till the date of filing of this application, applicant is holding a valid and subsisting security interest over secured asset. In due course, borrowers have committed default in repayment of the financial assistance as agreed. Thus, the account of the borrowers have been classified as **“Non Performing Asset”** on **05/08/2018**.

7. Then, Demand Notice **dated 14/11/2019** U/Sec.13 (2) of the SARFAESI Act was issued to the Respondents by R. P. A. D. and calling upon them to repay the outstanding amount within 60 days from the date of service of notice. As per Postal Tracking Reports said notices were duly served to Respondents through R. P. A. D. Thereafter, the Applicant has published said demand notice in two Newspapers namely **“Free Press Journal”** and **“Navshakti Times”**. Thus, the said demand notices were served upon the Respondents by Newspaper publication.

Despite, the service of said notice, Respondents have not complied with the requisitions for payment of outstanding loan amount within stipulated period of 60 days. Hence, Applicant is constrained to file this application, which is well in limitation.

8. However, in due course respondents failed to repay the said loan amounts. Thus, applicant is constrained to declare borrower's account as "**Non Performing Asset**". Then Applicant issued Demand Notice U/Sec.13 (2) of SARFAESI Act, demanding total outstanding amount of **Rs.36,31,293.87** (Rupees Thirty Six Lakh Thirty One Thousand Two Hundred Ninety Three and Eighty Seven Paisa Only).

9. In catena of judgments Hon'ble Supreme Court and Hon'ble Bombay High Court have settled the position of law that no notice is required to be issued to borrowers and guarantors when application Under Section 14 of SARFAESI Act is filed. Thus, no notices are issued by Court to respondents.

10. It is requirement of Section 14 of SARFAESI Act that, Authorized Officer of applicant financial institute has to file affidavit containing therein facts mentioned in Section 14(1)(b)(i) to 14(1)(b)(ix). Accordingly, Authorized Officer had filed **Affidavit at Exh.3**. In addition to affidavit, copies of certain documents are placed on record. Authorized Officer has also tendered original documents before Court, for verification with copies on record. Such documents are loan sanction orders, loan agreements, title deeds of mortgage property, notice given under section 13(2) of SARFAESI Act to respondent, postal receipts, paper publication, etc.

11. As per Section 14(1A) of the SARFAESI Act this Court may authorize any subordinate officer of court to take over possession of secured assets. However, looking that this court is flooded with applications under section 14 of SARFAESI Act and considering that already subordinate officers of this court are overburdened with workload, it seems that it is neither practicable nor feasible to take over possession of secured assets expeditiously by authorizing subordinate officer of this court for taking over possession of secured assets. In this scenario, it is significant to take aid of ratio laid down by **Hon'ble Supreme Court of India in NKGSB Co-operative Bank Ltd. Vs. Subir Chakravarty SPL (C) 30240 of 2019, Order dated 25/02/2022** to appoint additional members from Bar as Court Commissioner. Hence, in consultation with The Bombay Metropolitans' Courts' Bar Association, Esplanade Court, Mumbai, this Court has prepared a list of Advocates, who are interested to work as Court Commissioner. From the said list, Advocate **Mr. Mintoo Rajaram Gond** is appointed as a Court Commissioner for taking over the possession of the aforesaid secured assets.

12. Before parting with order, I would like to mention here that, this Court has experienced time and again that under the garb of settlement talks are going on, the applicant bank through its Authorized Officer is dictating/suggesting/directing to Court Commissioner that not to comply the writ of commission within stipulated time granted by the Court. Such attempt by Bank/financial institution may amounts to contempt of Court. Thus, such practices have to be deprecated. The Bank/financial institutes have to permit Court Commissioner to comply writ of commission and if any settlement works out then release the property to concerned. But at any cost not

required to be restrained to Court Commissioner from compliance of writ of commission. Thus, I proceed to pass following order;

ORDER

- (I) Application Under Section 14 of the SARFAESI Act is allowed and Authorized Officer **Mr. Gurpal Singh** is permitted to take over possession of aforesaid secured asset on behalf of applicant Bank.
- (II) Advocate **Mr. Mintoo Rajaram Gond**, R/o. 43/03, Sundar Baug Indira Nagar, Hill No.1, Near Shiv Mandir, Kamani, Kurla (W), Mumbai-400070 (Mobile Nos.9820688539/7738973398), is hereby appointed as Court Commissioner to take over possession of the secured asset known as **"All that piece and parcel of the property bearing Flat No.624, area admeasuring 225 Sq.Ft. (Carpet Area) situated on the 6th Floor, in the building of Shree Krupa CHS Ltd., lying and situated at DR. Amedkar Road, Kalachowki, Chinchpokli (E), Mumbai-400 033"** and hand over to abovesaid Authorized Officer only, under panchanama, and not to handover to any other officer of the applicant, who is not Authorized Officer on record in this proceeding.
- (III) Applicant to pay **Rs.10,000/- (Rupees Ten Thousand Only)** for taking possession of aforesaid secured asset to the Court Commissioner as a fees as well as to and fro charges to him/her, by Cash/Pay Order/Demand Draft/cheque in favour of aforesaid Court Commissioner within fifteen days from the date of this order, and take care that cheque will not be bounced for any

reason, otherwise it will be viewed seriously to take appropriate action against the concerned Authorized Officer.

- (IV) Authorized Officer to furnish his/her full office address, residential address, mobile number, land line numbers of office and residence, in order to facilitate Court commissioner to contact him/her. The Bank/Financial Institute, Authorized Officer are directed not to dictate/direct/suggest to Court Commissioner by any mode to defer taking over possession of secured assets, unless stay granted by any Competent Court, and if any one does so, then it is subject to appropriate action against him or her whoever may be so.
- (V) Court Commissioner to issue 15 days advance notice to the concerned party/parties and to take such steps and use such force including breaking open the lock or any hurdle thereof by taking assistance of police if required at the expenses of the applicant and if any articles/documents found in the secured assets then deliver its possession to the Authorized Officer of the applicant after preparing panchanama and taking inventory.
- (VI) The Police Station Officer within whose territorial jurisdiction secured assets are located, is hereby directed to provide police aid to Court Commissioner if he/she required so for taking over possession of secured assets. Despite of advance letter from Court Commissioner to provide police aid, if such police officer failed to provide police aid for no reason or petty or unreasonable ground then it will be viewed seriously for taking appropriate action. Equally if such police officer gives any ill-

treatment or insulting treatment to Court Commissioner, then it is also subject to appropriate action. Such police officer is also directed not to indulge himself in the issue of legality or illegality of order.

- (VII)** Court Commissioner shall report the compliance within 90 days from the receipt of Writ of the Commission. However, in the meantime, if any Competent Court grants stay to execute this order then automatically until such stay order will be in force, time to comply writ of commission will be deemed to be extended and no separate application for extension of time for execution of writ of commission will have to be filed before this Court by the Court Commissioner.
- (VIII)** If any person attempts to seek favour from Court Commissioner in order to delay the taking over possession of secured assets, then Court Commissioner is duty bound to communicate such fact to this Court and provide details of said person, including landline or mobile number of that person if any, to facilitate this Court to take appropriate action against said person.
- (IX)** If Court Commissioner found to be indulged in favouring to any person for delay to take over possession of secured assets then such act will be subject to appropriate action, including reference to Bar Council of Maharashtra & Goa for necessary action for misconduct.
- (X)** If Court Commissioner failed to execute possession warrant for any default on his part, then Court Commissioner fees as well as

to and fro charges are subject to refund to applicant along with interest @18% per annum from the date of its receipt. Thus, before receipt of Court Commissioner fees, Court Commissioner to give undertaking accordingly.

- (XI) If any contingency arises in future to refund Court commissioner fees and Court Commissioner failed to repay it to applicant, then it is subject to reference to Bar Council of Maharashtra and Goa for taking appropriate action for misconduct.
- (XII) On compliance of Clause No. III & IV, issue Writ of Commission.

(M. R. A. Shaikh)

Addl. Chief Metropolitan Magistrate
03rd Court, Esplanade, Mumbai.

Date:- 29.09.2022.

I/c. Chief Metropolitan Magistrate, Mumbai

SBA/-