IN THE DEBTS RECOVERY TRIBUNAL-2, KERALA
AT ERNAKULAM

PRESENT: SRI.SOVAN KUMAR DASH
PRESIDING OFFICER

Dated this the 16th day of April, 2026

Securitization Application No.225/2025

Between

Thomas T.P.,
Aged 73 years,
S/o. Poulose T.P.,
Thelappilly House,
Convent Road,
Kallur P.O.,
Thrissur – 680 317. …Applicant

And

State Bank of India,
Stressed Assets Recovery Branch–II,
Ernakulam, SARB-II) 40/947,
Ist Floor, R.S. Building,
Near Metro Pillar No.697,
Opp: Maharajas College Ground,
M.G. Road,
Ernakulam–682 011,
Represented by its Authorised officer. …Defendant

This Securitization Application having been heard on 16.03.2026 in the presence of Advocate Ms. Moly E.V. for the applicant and Advocate Ms. Sally Thomas Chacko for the defendant and stood over to this day for consideration, the Tribunal delivered the following:

F I N A L O R D E R

This SA is filed by the applicant under S.17(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act') praying to set aside the entire securitization proceeding.

Brief facts of the case:

2.1 The applicant is the sole Proprietor of M/s.Thelappilly Vessels, registered as MSME under Micro Small and Medium Enterprise. The business was commenced on 12.05.2014 dealing with retail sale of electrical household appliances, furniture lighting equipment and other household articles, furniture etc. The applicant availed housing loan of Rs.8,00,000/- in the month of March, 2009 by creating security interest over the immovable property consisting of an extent of 6.07 Ares of land and building having approximately 4000 sq. ft. as described in the SA. The repayment was made regularly. Subsequently the applicant availed another term loan of Rs.10,18,000/- by extending the mortgage of the subject matter property and also the applicant availed loans in the year 2015 of an amount of Rs.15,00,000/- under SME Vyapar Mitra after executing relevant documents. The limit was enhanced to Rs.22,00,000/- in the year 2017 on execution of relevant

documents. The applicant's son has also availed a vehicle loan of Rs.11,80,000/- by executing hypothecation agreement. All the loans were restructured on 31.03.2021 on hypothecation of stocks and other assets. The equitable mortgage created on 15 cents of land with residential building was extended to cover the entire loans.

2.2 After the demise of the wife of the applicant in the year 2022 and due to some matrimonial dispute of his son, the business was affected and the loan could not be repaid in time. The defendant issued a demand notice on 05.10.2024 calling the applicant to discharge the liability followed by issuance of possession notice under section 13(4) of the SARFAESI Act on 24.02.2025. The defendant initiated a proceeding under section 14 of the SARFAESI Act before the Chief Judicial Magistrate Court, Thrissur in Crl. M.P. No.4448/2025 to take physical possession of the secured asset. The applicant amended the SA in challenging such measure taken under Section 14 of the SARFAESI Act. An Advocate Commissioner is appointed by the learned Chief Judicial Magistrate to take possession of the secured asset. Being aggrieved with the said proceeding, the applicant prayed to set aside the entire securitization proceeding.

2.3. The applicant has also claimed in the SA that business concern of the applicant is MSME, registered under Ministry of Micro, Small and Medium enterprises. Before classifying the loans as NPA the defendant has not followed the instruction issued by the RBI under "Framework for Revival and Rehabilitation of MSMEs'. No step was taken by the defendant to identify the incipient stress in the account of MSME unit of the applicant before classifying the loan as NPA. Hence the securitization proceeding is illegal and not sustainable.

3.1 The defendant filed written statement denying the averments and claimed *inter alia* that all the statutory measures are duly complied in issuing the demand notice and possession notice. Relevant documents in compliance of statutory requirement are produced along with the written statement. The secured asset was also duly registered in the CERSAI portal. Due to non-repayment of the loan by the applicant and the successors of his wife, OA No.237/2025 was filed for recovery of an amount of Rs.44,55,017.30. The applicant has never claimed to grant any benefit of MSME. However, several facilities were granted to the applicant such as FITL, WCTL to the Proprietary concern of the applicant to facilitate to overcome the difficulties arose by the

business concern of the applicant. In spite of the same, no step was taken to redeem the loans.

3.2 The defendant filed additional written statement denying the averments in the amended SA and claimed that there is no illegality in the measure under Section 14 of the SARFAESI Act. In the absence of any illegality, the defendant claims for dismissal of the SA.

4. From the respective case of the applicant and defendant, the following points are emerged for adjudication in this case:

(i) Whether the securitization proceeding initiated by the defendant suffer from any illegality or defect or irregularity to intervene with the same?

(ii) Whether the applicant is entitled to get any relief in this proceeding?

FINDINGS:

Point Nos.(i) & (ii):-

5. Admittedly the applicant, as sole Proprietor of his business concern, availed various credit facilities from the defendant. His wife stood as a guarantor for the loans and executed relevant documents in mortgaging the subject matter property. Due to default in repayment, the securitization proceeding was initiated and a demand notice was issued to the applicant and his son including legal heirs of the deceased guarantor, late Mary Thomas,

wife of the applicant vide Ext.A2 and Annexure-B1(a) filed by the defendant. No objection was raised by the applicant against the demand notice in disputing the claim advanced by the defendant bank.

6. During argument the learned counsel for the applicant raised contentions against the securitization proceeding as follows:-

(I) The applicant business unit, being MSME, the defendant ought to have followed the Master Circular issued by the RBI for MSME unit. In absence of the same, classification of the loan of the applicant as 'NPA' is illegal.

(II) The measure under Section 14 of the SARFAESI Act clubbing all the loans is illegal. So also the order passed by the Chief Judicial Magistrate Court, Thrissur, being in printed format, amounts to non-application of mind and hence the proceeding is liable to be set aside.

7. The learned counsel for the defendant submitted that there is no illegality in the securitization proceeding. In absence of any illegality, interference with the same is not at all warranted. Further it is contended that the applicant has never claimed to avail benefit of MSME for revival of his business unit. In absence of the same, the applicant cannot claim any relief claiming his business as MSME. Further all the procedural measures are taken in accordance with the law. In absence of any material illegality in the measure under section 14 of the SARFAESI Act, the SA may be dismissed.

8. It is seen from the materials on record that the demand notice under Section 13(2) of the SARFAESI Act dated 16.12.2024 marked Annexure-A2 was issued to the applicant as Proprietor of M/s. Thelappilly Vessels in respect of cash credit, WCTL Loan and home loan of the applicant. A separate demand notice was issued to the applicant for the car loan availed by his son Siju Thomas for which he stood as a guarantor. The defendant also produced Annexure B1(a) notice which was issued to the other legal heirs of late Mary Thomas on 16.12.2024 who stood as a guarantor by creating mortgage in respect of the subject matter property. No illegality in such demand notice is raised by the applicant. No objection or representation was also submitted by the applicant against such demand notice claiming any benefit under MSME.

9. The Hon'ble Apex Court in a judgement reported in 2024 (4) KLT 761 in the case of ***Pro Knits vs. The Board of Directors of Canara Bank & others*** held as follows:-

> *"16. We may hasten to add that under the "Framework for Revival and Rehabilitation of MSMEs", the banks or creditors are required to identify the incipient stress in the account of the Micro, Small and Medium Enterprises, before their accounts turn into non-performing assets, by creating three sub-categories under the "Special Mention Account" Category, however, while creating such sub-categories, the Banks must have some authenticated and verifiable material with them as produced by the concerned MSME to show that loan account is of a Micro, Small and Medium Enterprise, classified and registered as such under the MSMED Act. The said Framework*

also enables the Micro, Small or Medium Enterprise to voluntarily initiate the proceedings under the said Framework, by filing an application along with the affidavit of an authorized person. Therefore, the stage of identification of incipient stress in the loan account of MSMEs and categorization under the Special Mention Account category, before the loan account of MSME turns into NPA is a very crucial stage, and therefore it would be incumbent on the part of the concerned MSME also to produce authenticated and verifiable documents/material for substantiating its claim of being MSME, before its account is classified as NPA. If that is not done, and once the account is classified as NPA, the banks i.e. secured creditors would be entitled to take the recourse to Chapter III of the SARFAESI Act for the enforcement of the security interest."

10. The Hon'ble Apex Court in the case of ***Shri Shri Swami Samarth Construction & Finance Solution & another vs. The Board of Directors of NKGSB Co-operative Bank Ltd. & others*** *[judgment dated 28.07.2025 in Writ Petition (Civil) No.684/2025]*, at paragraph 6 it is held as follows:

"6. ……. In our reading, the terms of the FRAMEWORK do not prohibit the lending bank/secured creditor (assuming that it has no conscious knowledge that the defaulting borrower is an MSME) to classify the account of the defaulting MSME as NPA and to even issue the demand notice under Section 13(2) of the SARFAESI Act without such identification of incipient stress in the account of the defaulting borrower (MSME); however, upon receipt of the demand notice, if such borrower in its response under Section 13(3-A) of the SARFAESI Act asserts that it an MSME and claims the benefit of the FRAMEWORK citing reasons supported by an affidavit, the lending bank/secured creditor would then be mandatorily bound to look into such claim keeping further action under the SARFAESI Act in abeyance; and, should the claim be found to be worthy of acceptance within the framework of the

FRAMEWORK, to act in terms thereof for securing revival and rehabilitation of the defaulting borrower."

In view of this ratio decided by the Hon'ble Apex Court, the applicant, having not produced any documents claiming benefit available to MSME before his loan account is classified as NPA and also heaving not raised such issue after receipt of demand notice in the objection/ representation submitted by him under section 13(3-A) of the SARFAESI Act, the submission made by the learned counsel for the applicant is not acceptable. The applicant cannot claim any benefit of the instructions issued by the RBI under "Framework for Revival and Rehabilitation of MSMEs'.

11. The learned counsel for the applicant has also raised the issue that the order passed by the CJM is not in accordance with the law. The order was passed in a printed format by the learned Chief Judicial Magistrate which is not acceptable as a valid order. On careful consideration of the submission and referring the order passed by the CJM, Thrissur in Crl. M.P. No.4448/2025 it appears that the learned CJM has simply filled the name of the Advocate and the date in a printed format which amounts to non-application of mind and hence the order is not sustainable in view of the Judgment of the Hon'ble High Court of Kerala in the case of ***The South Indian Bank Ltd. v. Jahfer M.*** *(Judgment dated 18.03.2025 in OP(DRT) No.336/2024)***.** Hence the applicant is

entitled for limited relief in setting aside the proceeding under section 14 of the SARFAESI Act. However, the defendant may proceed afresh under Section 14 of the SARFAESI Act in accordance with the law before the CJM having jurisdiction and may proceed to take possession of the secured asset in pursuance to order of the CJM. In the event of challenge to such proceeding in future by the applicant, he shall not be permitted to raise any issue which is adjudicated in this proceeding and the same cannot be re-agitated. Points framed are answered accordingly.

Hence it is ordered:-

ORDER

12. In view of the foregoing reasons and with the above observation, the SA is allowed in-part and the proceeding under Section 14 of the SARFAESI Act is hereby set aside, but in the circumstances without costs.

(Dictated to my PA, corrected and pronounced by me in the open Tribunal on this the 16th day of April, 2026).

[SOVAN KUMAR DASH]
PRESIDING OFFICER

Documents on the part of the applicant

Annexures	Date	Particulars of documents
Annexure-A1	28.07.2021	True copy of the Udayam registration certificate.
Annexure-A2	16.12.2024	True copy of the demand notice issued by the defendant bank.
Annexure-A3	24.02.2025	True copy of the possession notice issued by the defendant bank.
Annexure-A4	16.09.2025	True copy of the notice received by the applicant along with English translation.
Annexure-A5	19.05.2025	True copy of the certified copy of the order in Crl.M.P. No.4448/2025 appointing Advocate Commissioner.
Annexure-A6		True copy of the certified copy of the application (Crl.M.P. No.4448/2025) received by the applicant from the file of CJM Court, Thrissur.
Annexure-A7		True copy of the certified copy of the affidavit in support of Section 14 application filed by the Authorised Officer received by the applicant.

Documents on the part of the defendant

Annexures	Date	Particulars of documents
Annexure-B1(a)	16.12.2024	True copy of the notice under Section 13(2) of the SARFAESI Act issued to the legal heirs of the deceased guarantor, Mary Thomas.
Annexure-B1(b) series		Copies of the acknowledgment cards (2 Nos.)
Annexure-B1(c)	24.02.2025	True copy of notice under Rule 8(1) issued to the applicant as well as legal heirs of the deceased guarantor.

Annexure-B1(d) series		Copies of the acknowledgment cards (2 Nos.)
Annexure-B1(e) series	27.02.2025	Copies of the extract of the newspapers "Business Line" and "Kerala Kaumudi".
Annexure-B1(f)		Copy of the affixture report.
Annexure-B1(g)		Copy of the photograph to prove the affixture.
Annexure-B1(h)		Copy of the extract of the registration under CERSAI.

PRESIDING OFFICER

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PRESIDING OFFICER

Dated the 16th April, 2026

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Represented by
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FINAL ORDER