DEBTS RECOVERY TRIBUNAL No.3, MUMBAI
AT: DRT-II, MUMBAI

I/c PRESIDING OFFICER: HARISH KUMAR KAUSHIK

SECURITISATION APPLICATION NO.397 OF 2024

Date of Institution: 12.09.2024
Date of Decision: 15.06.2026

1. M/s. Kanchan Motors HUF Through its Karta Nishant Prakashchandra Bhutada, Age:48, Occu: Business Tigrania Corner, Opp. Tractor House, Mumbai- Agra Road, Dwarka Nashik.
2. M/s Magic Motors, A Partnership Firm, through its Partner Nishant Prakashchandra Bhutada, Age:48, Occu: Business ABB Circle, Nashik-Trimbak Road, Nashik- 422 005
3. M/s Shaurya Motors, A Proprietorship Firm, through its Proprietor Nishant Prakashchandra Bhutada, Age:48, Occu: Business Opp. Swayambar Mangal Karyalay, Pimpalgaon Baswant, Tal. Niphad, Dist. Nashik
4. Nishant P Bhutada (Karta)
5. Nishant P Bhutada
6. Sarita Nishant Bhutada
7. Siddhi Nishant Bhutada
8. Riddhi Nishant Bhutada
9. Shaurya Nishant Bhutada
10. Prakashchandra G Bhutada

10(a) Kanchan P Bhutada

10(b)	Nishant P Bhutada	
11.	Kanchan P Bhutada Applicant No.4 to 11, all residing at 8, Chopda Deplex, Kala Nagar, Near Chopda Lawns, Gangapur Road, Nashik.	... Applicants

Versus

Indian Bank Through its Authorised Officer, Nashik City Branch, 480 y, Swami R.P. Road, Old Mumbai – Agra Raod, Meher Singnal, Nashik	...Respondent

APPEARANCES

For the Applicants	:	Mr Puneet Gogad - Advocate
Applicant No.7 in person	:	Ms Siddhi Bhutada
For Respondent		Mr Sidharth Samantaray and Mr V.N. Ajikumar i/b M/s. VNA Legal – Advocates

Final Order

(1) The present Securitisation Application No.397 of 2024 is filed under Section 17 of the SARFAESI Act challenging the measures taken by the Respondent Bank under the provisions of SARFAESI Act, 2002.

Factual matrix of the case:

(2) The Applicants approached the Oriental Bank of Commerce for finance facility to the tune of Rs.802.50 lakhs and Rs.200 lakhs. In order to

secured the loan facility availed by the Applicants, created memorandum of deposit of deed of title of the property owned by the Applicants being Gat No.610/5 and Gat No.610/3/2, new showroom, adm. 8000 sq, mts. and 4000 sq. mts. respectively at Malegaon, near Subhash Dairy, Mumbai Agra Road, Chandanpuri Shivar, Tal. Malegaon, Dist. Nashik **(hereinafter referred as 'said property'.)**.

(3) That the Respondent claims that despite several reminders, the Applicants failed to repay the loan amount and therefore, issued a demand notice dated 12.11.2018 for a sum of Rs.6,92,84,669/- along with interest under Section 13(2) of SARFAESI Act to which the Applicants replied to the demand notice dated 12.11.2018 vide its letter dated 02.12.2018 under section 13(3-A) of the SARFAESI Act, 2002. Thereafter, the Respondent tried to take possession of the said property, however, the Applicants denied handing over possession of the said property and therefore, symbolic possession was taken under Panchnama dated 12.02.2019.

(4) That the Respondent Bank without any intimation to the Applicants illegally and unlawfully exercising the powers laid down in Section 13(4) of SARFAESI Act and thereafter preferred S.A. No.327 of 2019 under Section 14 for taking physical possession of the said property. However, the

Application came to be rejected vide order dated 26.06.2020 which is not challenged by the parties.

(5) Further that, without taking into consideration of the aforesaid S.A. the Respondent Bank filed a new S.A. No.10 of 2024 on 03.01.2024 under Section 14 of the SARFAESI Act, before Ld. District Magistrate seeking assistance to take possession of the said property for recovery of Rs.6,92,84,669/- along with interest. The S.A. No.10 of 2024 came to be decided vide order dated 05.01.2024 wherein the Ld. District Magistrate without pursuing the said S.A. and supporting affidavit passed an order allowing the Respondent Bank to take forceful possession of the said property.

(6) That the Applicants were served with the notice dated 29.08.2024 from the office of the Tehsildar, Malegaon, Nashik that Circle Office along with Respondent shall visit the said property on 23.09.2024 to take physical possession of the said property. Thereafter, the Applicants immediately preferred an application seeking certified copy of the entire papers and proceedings in S.A. No.10 of 2024 which was provided on 12.09.2024.

(7) Therefore, the Applicants filed the present S.A. No.397 of 2024 before this Tribunal challenging the illegal and unlawful conduct and action of the Respondent Bank with a prayer which is reproduced below:

(a) *That this Hon'ble Tribunal may be pleased to declare that the impugned notice dated 29.08.2024 issued by the office of the Tehsildar, Malegaon, Nashik in furtherance of the impugned order in S.A. No.10 of 2024 is not consonance with the provisions of SARFAESI Act and Rules thereunder and thus, deserves to be quashed and set aside as being illegal and unlawful;*

(b) *That this Tribunal may be pleased to declare that the impugned order dated 05.01.2024 passed by the Ld. District Magistrate Nashik, in S.A. No.10 of 2024 is not in consonance with the provisions of SARFAESI Act and Rules thereunder and thus, deserves to be quashed and set aside as being illegal and unlawful;*

(c) *That this Hon'ble Tribunal be pleased that the S.A. qua Applicant Nos.7, 8 and 9 who admittedly were/are minors at the time of the Respondent claiming to have granted the credit facilities is not maintainable as no facilities could be granted to or in favour of minor and therefore, the impugned order dated 05.01.2024 in S.A. No.10 of 2024 and any action in furtherance thereto ought to be quashed and set aside as being illegal and unlawful qua Applicant Nos.7, 8 and 9;*

(d) *That this Hon'ble Tribunal be pleased to hold and declare that the Demand Notice dated 12.11.2018 issued by the Respondent under Section 13(2) of the SARFAESI Act is contrary to the provisions of SARFAESI Act and Rules framed thereunder and thus, deserves to be quashed and set aside.*

(e) *That this Hon'ble Tribunal be pleased to declare and conclude that the manner in which the Respondent Bank has acted/proceeded till date towards the Applicants is bad in law and not in conformity with the SARFAESI Act and Rules framed thereunder;*

(f) *That the Respondent, their servants and agents, representatives, Authorised officers, claiming through or under them be restrained by an order of this Tribunal from in any manner dispossessing the Applicants or their tenants from the said property i.e., Gat No.610/5 and Gat No.610/3/2, new showroom, adm. 8000 sq, mts. and 4000 sq. mts. respectively at Malegaon, near Subhash Dairy, Mumbai Agra Road, Chandanpuri Shivar, Tal. Malegaon, Dist. Nashik;*

(g) *That the Respondent, their servants and agents, representatives, Authorised officers claiming through or under them be restrained by an order of this Hon'ble Tribunal from in any manner alienating, encumbering, transferring, auctioning, selling and or creating any third party right in respect of the said property i.e., Gat No.610/5 and Gat No.610/3/2, new showroom, adm. 8000 sq, mts. and 4000 sq. mts. respectively at Malegaon, near Subhash Dairy, Mumbai Agra Road, Chandanpuri Shivar, Tal. Malegaon, Dist. Nashik;*

Reply affidavit of Respondent Bank

(8) Ld. Advocate for Respondent Bank stated that the Applicants, namely, (i) MA. Kanchan Motors (HUF) through its Karta Mr. Nishant P. Bhutada, (ii) M/s. Magic Motors (Partnership Firm) through its Partner Mr. Nishant P. Bhutada, and (iii) M/s. Shaurya Motors (Proprietorship) through its Proprietor Mr. Nishant P. Bhutada (collectively "the said borrowers"), the Bank sanctioned various credit facilities during the period 2013-2016.

(9) That in December 2012, M/s. Kanchan Motors approached the Bank's Nasik City Branch seeking

financial assistance, pursuant to which the Bank sanctioned an Overdraft Facility of Rs.2 Crores and a Medium-Term Loan of Rs.8,02,50,000/- vide sanction letters dated 06.03.2013 and subsequent amendments.

(10) To secure the said facilities, the borrowers executed necessary loan and security documents, including agreements of hypothecation, demand promissory notes, and guarantees in March 2013. On 13.03.2013, the mortgagors deposited original title deeds with the Bank, thereby creating a valid equitable mortgage over immovable properties situated at Village Chandanpuri, Taluka Malegaon, District Nasik (the "secured assets") vide Letter of Equitable Mortgage dated 14.03.2013.

(11) Further, by affidavit dated 12.03.2013, Applicant No.10 (since deceased, represented through legal heirs) declared that the subject property was free from encumbrances and not subject to any charge or legal proceedings.

(12) That in 2016, M/s. Magic Motors and M/s. Shaurya Motors separately approached the Bank for additional credit facilities, which were sanctioned vide letters dated 19.03.2016 by executing loan and security documents, including demand promissory notes, loan agreements, and personal guarantees, and further created/extended mortgage over the secured assets by constructive delivery of title deeds

(13) That the mortgage was duly registered with the Sub-Registrar, and intimation thereof was given to the Bank on 12.04.2016. The charge was also registered with CERSAI on 20.03.2013. The loan accounts were classified as Non-Performing Assets (NPA) as under: (i) M/s. Magic Motors on 19.08.2018, (ii) M/s. Shaurya Motors on 25.09.2018, and (iii) M/s. Kanchan Motors (HUF) on 28.10.2018. Upon such classification, the Respondent Bank issued separate demand notices dated 12.11.2018, 12.11.2018 and 15.12.2018 under Section 13(2) of the SARFAESI Act, 2002 to the borrowers/mortgagors/guarantors. Despite receipt, the said parties failed to comply with the demands.

(14) That the Respondent Bank took symbolic possession of the secured assets on 12.02.2019 under Section 13(4) of the SARFAESI Act and duly published the possession notice in two newspapers.

(15) Thereafter, the Bank attempted to auction the secured assets on eleven occasions between 20.12.2019 and 25.09.2024. However, each time, a third party claiming to be a "tenant" issued caution notices in newspapers, falsely alleging that the borrowers had no rights in the property and that purchasers would not acquire valid title. Due to such misleading publications, no bidders participated in the e-auctions.

(16) That the Bank was thus constrained to file proceedings under Section 14 of the Act before the District Magistrate, Nashik, seeking assistance for taking physical possession. During such proceedings, a third party intervened and raised objections claiming tenancy rights, which are legally untenable as per the scheme of the Act.

(17) That vide order dated 05.01.2024, the Ld. Addl. District Magistrate, Nashik allowed the Bank's application under Section 14 and directed the Tahsildar, Malegaon to take physical possession of the secured assets and hand over the same to the Bank. Pursuant thereto, the Tahsildar, Malegaon issued notice dated 09.07.2024 calling upon' the borrowers to hand over peaceful possession on 07.08.2024 failing which forcible possession with police assistance was to be taken.

(18) That the Respondent has followed the procedures under SARFAESI Act, 2002 while enforcement of said property. Thus, the present S.A. filed by the Applicants is frivolous and vexatious just to create obstacles and delay the execution and implementation of the order passed under Section 14 of SARFAESI Act, 2002, Therefore, the present S.A. is liable to be dismissed with compensatory costs.

Rejoinder affidavit of the Applicants:

(19) In rejoinder, Ld. Advocate for the Applicants stated that the affidavit in reply is incomplete, not an

answer to the important issues which are under consideration rather reply is mostly based on mere denials, wrong interpretation of law.

(20) That in the demand notice under Section 13(2), the Respondent Bank does not disclose the proper details and designation of the signatory. There is multiple date of NPA. There are serious errors, defects, suppressions and false submission made in Section 14 proceedings and 9 pointer affidavit. There is no CERSAI Registration of the secured property before invocation of the SARFAESI measure. There is a violation of Section 26B of SARFAESI Act. In the light of aforesaid, the present S.A. No.397 of 2024 should be allowed.

(21) Heard Ld. Advocates for the parties. Considered their contentions, judgment produced. Perused the record.

(22) The Respondent Bank has raised a preliminary objection regarding limitation and has contended that symbolic possession of the secured asset had already been taken in the year 2019 and that the Applicants were well aware of the measures undertaken under the SARFAESI Act. It is further contended that various proceedings concerning the secured asset were pending and therefore the Applicants cannot be permitted to challenge the measures at such a belated stage.

(23) This contention is not acceptable in the facts of the case. The record indicates that earlier proceedings

initiated for obtaining physical possession had culminated vide order dated 26.06.2020. That order was not against the Applicants, so, they had no occasion to challenge the said proceedings. The present challenge is directed against the subsequent proceedings took place in view of the order dated 05.01.2024 passed under Section 14 of the SARFAESI Act and the consequential measures undertaken for obtaining physical possession. Thus, the cause of action for the present Securitisation Application arose from the subsequent proceedings undertaken for obtaining physical possession and not from the earlier measures. Accordingly, the objection regarding limitation is rejected.

(24) The Applicants have further contended that the subsequent application filed by the Respondent Bank under Section 14 of the SARFAESI Act was not maintainable in view of the earlier proceedings. This contention also cannot be accepted. The SARFAESI Act does not prohibit filing of a subsequent application under Section 14. As the proceedings under Section 14 are ministerial in nature and the statute does not create any embargo against filing of a subsequent application merely because an earlier application had not culminated in favour of the secured creditor. Hence, this contention is rejected.

(25) The Applicants have also relied upon proceedings concerning alleged tenancy rights in respect of the secured asset and have contended that the order under Section 14 ought not to have been passed. This Tribunal is unable to accept the said contention. The authority exercising powers under Section 14 is not expected to adjudicate complicated questions relating to title or alleged tenancy. Mere existence of proceedings concerning an alleged tenancy does not by itself invalidate proceedings under Section 14 of the SARFAESI Act. Accordingly, this contention also deserves rejection and rejected.

(26) The Applicants have further objected to impleadment of minor family members in the proceedings under Section 14. However, mere impleadment of minors through their natural guardian in proceedings under Section 14 does not render such proceedings invalid. The Applicants have failed to demonstrate any prejudice caused on account thereof. Hence, this objection is also rejected.

(27) The Applicants have also sought to contend that there exists discrepancy regarding the date of classification of the account as NPA. However, no material has been placed before this Tribunal demonstrating that such alleged discrepancy has resulted in any illegality in the classification of the

account as NPA. Mere variation in dates, without any substantive material establishing prejudice or illegality, cannot invalidate the measures undertaken by the secured creditor. Therefore, this contention is also not acceptable.

(28) The Respondent Bank has relied upon various judgments concerning the issues raised in the present matter. This Tribunal has carefully considered the principles laid down therein. There can be no dispute regarding the propositions of law emerging from the said judgments. In fact, while dealing with the objections regarding limitation, alleged tenancy, impleadment of minors and maintainability of the subsequent proceedings under Section 14 of the SARFAESI Act, this Tribunal has substantially applied the principles emerging from the said authorities and has rejected the corresponding contentions raised by the Applicants.

(29) Another challenge raised by the Applicants pertains to the validity of the demand notice dated 12.11.2018 issued under Section 13(2) of the SARFAESI Act. It is the contention of the Applicants that the demand notice does not contain adequate particulars of the amount claimed and therefore fails to satisfy the statutory requirements contemplated under Sections 13(2), 13(3) and 13(3A) of the SARFAESI Act.

(30) Upon perusal of the demand notice dated 12.11.2018, this Tribunal finds that though the notice refers to the facilities granted, account numbers, securities and the total amount claimed by the Respondent Bank, the notice merely specifies a consolidated amount allegedly due and payable. The notice does not disclose the breakup of principal amount, interest component, penal interest or other charges forming part of the claim. Nor does it indicate the basis upon which the quantified demand has been arrived at.

(31) The Applicants have relied upon various judicial pronouncements including **Punjab National Bank vs. Mithilanchal Industries Pvt. Ltd., Punjab National Bank vs. Tejstar Industries Pvt. Ltd., Bobdeipibai Arunkhai Dave vs. Kotak Mahindra Bank Ltd.** and the judgment rendered by the Hon'ble DRAT, Mumbai. The principles emerging from the aforesaid decisions emphasise that a borrower must be furnished with adequate particulars of the amount claimed so as to effectively exercise the statutory rights available under Sections 13(3) and 13(3A) of the SARFAESI Act.

(32) This Tribunal has carefully considered the principles enunciated by the Hon'ble DRAT and the judgments relied upon by the Applicants. This Tribunal gets guidance from the principles laid

down in the above judgements that a demand notice issued under Section 13(2) must furnish adequate particulars of the amount claimed so as to enable the borrower to effectively understand, verify and respond to the demand raised by the secured creditor. Examining the present demand notice from that perspective, it is evident that the notice merely specifies a consolidated amount allegedly due and payable without furnishing the constituent particulars forming the basis of such demand.

(33) The underlying objective of Sections 13(2), 13(3) and 13(3A) of the SARFAESI Act is not merely to intimate the borrower of a consolidated figure but to enable the borrower to effectively understand, verify and respond to the claim raised by the secured creditor. The statutory right to make representation or objection under Section 13(3A) would stand substantially diluted if only a lump sum demand is disclosed without furnishing the constituent particulars of the liability sought to be enforced.

(34) Accordingly, applying the principles laid down in the aforesaid judgments and other catena of judgments, this Tribunal is of the considered view that the demand notice dated 12.11.2018 does not furnish adequate particulars of the amount claimed as contemplated under Sections 13(2), 13(3) and 13(3A) of the SARFAESI Act. Consequently, the

demand notice, which forms the very foundation of the subsequent measures undertaken under the SARFAESI Act, is found to be defective.

(35) Once the foundation itself is found to be defective, the defect goes to the root of the matter and the consequential measures founded thereupon cannot be sustained. Consequently, all subsequent actions flowing from the said demand notice are liable to be set aside.

However, the Respondent Bank is at liberty to proceed afresh, complying with all the formalities as per law.

ORDER

(i) Securitisation Application No.397 of 2024 is allowed.

(ii) All pending IAs, if any, stands disposed of.

(iii) No order as to costs

Sd/-
(Harish Kumar Kaushik)
I/c Presiding Officer,
DRT-3, Mumbai
At: DRT-2, Mumbai

Radhika