IN THE DEBTS RECOVERY TRIBUNAL – II AT CHENNAI

Dated this 20th day of August, 2026

PRESENT: **SHRI SHARANG DHAR UPADHYAY**
Presiding Officer

SA No.56 of 2024

1. Lakshmanan Muniyandi
S/o A. Lakshmanan
Old No.10M, New No.21, Solaiappan Street
Old Washermenpet, Chennai – 600 021

2. Mrs. Jayalakshmi
W/o Lakshmanan Muniyandi
Old No.10M, New No.21, Solaiappan Street
Old Washermenpet, Chennai – 600 021 …**Applicants**

Versus

1. The Authorized Officer
Indiabulls Housing Finance Limited
No.20, Apex Chamber, 1st Floor
Sri Thyagaraya Road, T. Nagar
Chennai – 600 017

2. The Authorized Officer
CFM Asset Reconstruction Pvt. Ltd.,
No.001, Manito Comanders Marbel
Duo Marvel Layout, Ananthapura Road
Yelahanka, Bengaluru – 560006 **…Respondents**

Counsel on Record / Appeared

Applicants by	:	M/s D. Durairaj
Respondents by	:	M/s T. Sai Krishnan, Tarang K. Sancheti

ORDER

1. This petition is filed under Section 17(1) of the SARFAESI Act challenging the measures initiated by the respondent bank pursuant to the order of the Learned Chief Metropolitan Magistrate, Egmore in Crl.

M.P. No.5305 of 2020 dated 18.02.2020 and subsequent action taken by the Ld. Advocate Commissioner pursuant to his notice dated 05.01.2024.

Brief facts of the case as averred in the application

2. The facts leading the impugned order is that the 1st applicant had approached the respondent bank and availed a business loan for his business firm in the name and style of M/s New Star Enterprises and considering the said request the respondent sanctioned a sum of Rs.3,31,50,000/- on 30.11.2014 repayable in 442 installments commencing from 05.04.2015 to 05.11.2051. The applicants were making the remittances regularly and have paid Rs.2,25,00,000/- till the date of declaration of the account as NPA. However, the respondent issued the demand notice dated 11.02.2019 demanding a sum of Rs.3,31,85,345/-, which is totally incorrect.

3. The applicants raised objections to the demand notice, but the respondent without replying the same issued the possession notice dated 10.05.2019 for a sum of Rs.3,40,61,859/-. The applicant challenged the said possession notice by filing SA No.225 of 2019, which the applicants came to know has been dismissed for default.

4. It is stated that the due to COVID-19 pandemic the applicants suffered loss and hence they approached the respondent for assistance, but the same was not considered by the respondent. The assignment of debt

by the 1st respondent bank to the 2nd respondent was not intimated to the applicants.

5. All the measures taken by the respondent bank under the SARFAESI Act and the Rules made thereunder are contrary to law. The respondent bank failed to furnish the statement of accounts to the applicants. The amount claimed as due in the Section 14 application is not correct.

6. The following grounds are urged in the SA: -

(a) The demand notice dated 11.2.2019 is against law and the respondent failed to give reply to the objections raised by the applicant to the demand notice.

(b) The account was wrongly classified as NPA.

(c) The respondent failed to comply with Rule 8(1) and 8(2) of the Security Interest (Enforcement) Rules, 2002.

7. Along with the SA, the applicants have filed, copy of Section 14 application filed by the 1st respondent bank, Affidavit of the 1st respondent bank. Impugned order dated 18.2.2020, Warrant dated 10.08.2023, statement of accounts and Advocate Commissioner's Notice dated 05.01.2024.

Counter by Respondent Bank

5. Upon notice, the defendant bank filed its counter denying the averments in the SA and submitted that the SA is liable to be dismissed in limine.

6. At the request of the applicants, the 1st respondent sanctioned a credit facility of Rs.3,31,50,000/- to the applicants and the applicants executed necessary documents on 30.11.2014. It is submitted that in view of the default committed by the applicants the loan account was classified as NPA on 11.02.2019 and the demand notice under Section 13(2) of the SARFAESI Act was issued on the same day. It is stated that the demand notice is duly published in newspapers and the applicant not raise any objection to the demand notice. The 1st respondent thereafter issued the possession notice under Section 13(4) of the Act on 10.05.2019. The possession notice was published in newspapers i.e., vernacular language on 16.5.2019 and English daily on 14.05.2019. The applicants filed SA No.225 of 2019 challenging the said possession notice, in which this Tribunal passed interim conditional order on 25.06.2019, however the same was not complied with by the applicants. The said SA came to be dismissed for default on 14.07.2021. The 1st respondent issued the sale notice on 25.5.2019 fixing the sale on 3.7.2019 for recovery of a sum of Rs.3,39,33,987/-. As the said auction failed the 1st respondent issued the 2nd sale notice on 23.07.2019 fixing the auction sale on 19.8.2019 and the same also failed. Therefore, the 1st respondent issued the third sale notice dated 22.08.2019 fixing the

auction on 20.09.2019 and the same also did not succeed. The 1st respondent preferred an application under Section 14 of the SARFAESI Act in Crl. M.P. No.5305 of 2020 before Ld. Chief Metropolitan Magistrate, Egmore, Chennai. The 1st respondent assigned the debt in favour of 2nd respondent vide Assignment Agreement dated 05.10.2020. The 2nd respondent issued fourth sale notice dated 12.2.2021 fixing the sale on 05.03.2021 and the said auction also failed. The 2nd Respondent issued fifth sale notice dated 10.08.2022 fixing the auction sale on 30.08.2022. The sale was successful and the respondent issued sale confirmation letter dated 30.08.2022 in favour of the higher bidder M/s A.K.S. Housing Development Company Pvt. Ltd., for Rs.3,51,00,000/-. Respondent No.2 filed petition to substitute the name of the petitioner in Crl. M.P. No.5302/2023 before the Ld. CMM, Egmore and thereafter the impugned order came to be passed on 10.08.2023. As the warrant could not be executed time was sought for by the 2nd respondent and the warrant was extended by three months and thereafter the Advocate Commissioner issued the vacate notice dated 5.1.2024. Hence the present SA came to be filed and interim order was passed on 29.1.2024 but the same was not complied with by the applicants.

7. It is submitted that the applicants suppressed the fact that if failed to comply with the conditional order dated 25.06.2019 passed by this Tribunal in SA No.225/2019.

8. It is also submitted that the third party rights have been created in favour of the auction purchaser as sale certificate has been issued in favour of the auction purchaser and once a sale certificate has been issued the sale can be set aside only on grounds of fraud and there is no whisper about fraud in the SA by applicant. The respondents relied on the judgment of Hon'ble Supreme Court in Valji Khimki and Company and Official Liquidator of Hindustan Nitro Product (Gujarat) Limited and CELIR LLP Vs. Bafna Motors.

9. It is submitted there is no illegality in the proceedings initiated by the respondent financial institution under SARFAESI Act and there is no violation of provisions of the Act and the Rules made thereunder. The present SA has been filed with an attempt to frustrate the purpose of the Act. No valid ground has been raised in this SA by the application. The SA is devoid of merits and is liable to be dismissed in limine.

10. It is also submitted that the present application is barred by limitation. The order was passed by the Ld. CMM, Egmore on 18.02.2020 and therefore the applicants cannot maintain this SA filed after about 4 years and as such the SA is liable to be dismissed on this ground also.

Documents filed by the Respondent Bank

11. The Respondent Bank filed the following documents viz., Loan Agreement dated 30.11.2014, Title deeds of the properties, MoDT dated 29.12.2014, Receipt deed dated 02.01.2015, Demand Notice

under Section 13(2) of the Act dated 11.2.2019 along with postal receipts and paper publication, Possession Notice dated 10.05.2019, SA filed by applicant challenging possession notice, Counter filed by 1st respondent in SA No.225 of 2019 dated 1.6.2019, Order of the Tribunal dismissing the SA 225 of 2019 for default, Sale notices dated 25.5.2019, 23.07.2019 and 22.08.2019 issued by the 1st respondent along with postal receipts and paper publication, Valuation report, fifth sale notices dated 12.2.2021 and 10.08.2022 with postal receipts, tracking and paper publication, Bid Form, Impugned order along with warrant, memo filed by advocate commissioner, sale certificate issued by 2nd respondent, Assignment Agreement dated 05.10.2020 and affixture of fifth sale notice and possession notice.

12. The matter is heard. In the wake of available material on record, the following points arise for consideration in the present SA:

"Whether the impugned order of Ld. Chief Metropolitan Magistrate, Egmore, Chennai dated 18.02.2020 in Crl. M.P. No.5305/2020 suffers from any illegality or impropriety rendering it void in law?"

<u>Answers to Point for Consideration</u>

13. It is to be noted that the Hon'ble Supreme Court in "***NKGSB Co-operative Bank Limited Vs. Suber Chakravarty"*** and "***R.D. Jain and Company Vs. Capital First Limited CA 1755 of 2022 dated 27.07.2022***" ruled that no adjudicatory powers are vested while deciding

the application under Section 14. In the matter of ***"Indian Bank Vs. Vishalakshi and Another CA 6295/2015 dated 23.09.2019"***, the Hon'ble Supreme Court had further held that the proceedings under Section 14 is a procedural step and purely an administrative order and there is no adjudicatory process involved. Keeping in mind the above rulings, this Tribunal can only examine whether there was compliance of the provisions by the defendant bank before the Learned CMM as mandated under Section 14(1) of the SARFAESI Act.

14. As per Section 14(1) of the SARFAESI Act, on a request being made by the by the secured creditor, the Chief Metropolitan Magistrate or the District Magistrate as the case be take possession of such asset and documents relating thereto and forward such assets and documents to the secured creditor. The financial institutions are to declare under the affidavit the aggregate sum of financial assistance and dues payable as on the date of the application. It should be averred that the borrower / guarantor having created security interest over the property and that the borrower had committed default; upon such default the account must have been classified as NPA. It is also mandatory to aver in the affidavit regarding the issuance of demand notice, the reply thereof and the response of the secured creditor and that the borrower had not made any repayment and therefore entitled to take possession and that the other provisions of the Act have been complied.

15. This Tribunal is aware of the Ruling of the Hon'ble Supreme Court **in "Authorised Officer, Indian Bank Vs. Vishalakshi and another CA No.6295/2015 disposed on 23.09.2019"** holding that the spirit of Section 14 of the SARFAESI Act is only a procedural step. It is purely an administrative order and no adjudication is involved. The orders of the Ld. CMM / DM is only an aid to the proceedings initiated u/s.13(4) of the Act.

16. It is only to be looked into whether the provision of section 14(1) of the Act is complied or not. From the impugned order it is seen the necessary details to be furnished u/s.14(1) of the Act has been complied.

17. However, this Tribunal has also considered the documents filed by the defendant. This includes the documents produced at S. No. 6 which is the demand notice dated 11.02.2019, the postal acknowledgements / tracking reports and the publication of demand notice in "Business Standard" dated 6.3.2019 and "Makkal Kural" dated 07.03.2019, **at Pages 118 to 164,** the same clearly reveals that the demand notice is duly served on the applicants.

18. As regards the contention of the applicants that the respondent has failed to comply with the Rule 8 (1) and 8(2) of the Security Interest (Enforcement) Rules, 2002 is concerned the 1st respondent has filed the possession notice dated 10.05.2019 at Sl. No.7 along with postal

receipts, acknowledgements / tracking reports (Pages 165 to 209), the proof of affixture of the possession notice at Sl. No.23 (Pages 638), the proof of service of possession notice at Srl No.6 (Pages 33-37) and the proof of publication of the same "Business Standard" dated 14.05.2019 and "Dinkaran" dated 29.08.2019 (Page 210 & 211) which clearly evidence that the possession notice has been served, published and affixed on the secured asset. Therefore, this ground of the applicants fall to the ground.

19. The other ground raised by the applicant that the 2nd respondent did not have any authority to pursue the Section 14 application filed by the 1st respondent cannot also be accepted for the reason that the debt and the underlying security has been assigned by the 1st respondent in favour of the 2nd respondent vide Assignment Agreement dated 05.10.2020 (Page 555 onwards) and the 2nd respondent has also got themselves substituted in the Section 14 application pending before the Ld. CMM Egmore and the same is also approved by the Ld. CMM, Egmore, Chennai.

20. Further, the applicants have not urged any grounds with regard to non-compliance of provisions under Section 14(1) of the SARFAESI Act by the secured creditor.

21. Therefore, in the absence of any allegations regarding non-compliance of the provisions of Section 14(1) of the Act and documentary evidence

produced by the defendant bank, this Tribunal is unable to find any illegality, impropriety or otherwise to set aside the impugned order. Hence the following:

ORDER

(i) The SA stands dismissed. The orders of the Ld. Chief Metropolitan Magistrate, Egmore, Chennai dated dated 18.02.2020 in Crl. M.P. No.5305 of 2020 and the subsequent actions taken by the Ld. Advocate Commissioner pursuant to his notice dated 5.1.2024 are hereby affirmed. All other pending IAs thus stand disposed of. Parties to bear their own costs.

(ii) A copy of this order be communicated to the parties concerned.

Sd/-
(SHARANG DHAR UPADHYAY)
PRESIDING OFFICER
DRT-II, CHENNAI

(Dictated to PS, who typed in the system directly, corrected, signed and pronounced by me in Open Court, on this 20th day of August, 2026)