

**IN THE COURT OF CHIEF METROPOLITAN MAGISTRATE,
ESPLANADE, MUMBAI**
(Presiding Officer – M. A. Shinde)

Case No.294/SA/2018
(CNR NO. MHMM11-003142-2018)

Bank of India.
Having its Head Office at
Star House, C-5, G-Block,
Bandra Kurla Complex,
Bandra (East), Mumbai 400051.
Through its Authorized Officer
Mr. Prabhakar Jha.

... Applicant

Vs.

- 1] M/s. Xpro IT Innovations Private Limited.
- 2] Mr. Lakhan Dangi.
- 3] Mr. Pradeep Kumar Pandey.
- 4] Mr. Jatin Vinay Kumar Jain.
- 5] Mr. Jalpesh V. Shah.
- 6] Mr. Vinay Kumar Shah.
- 7] Mrs. Sunita L. Dangi.

....Respondents.

Appearance :-
For Applicant :- Advocate Manoj Kumar.

ORDER BELOW EXH.1

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 assets known as :-

“(I) Flat No.1401, 14th Floor, Sugee Heights, Dwarkesh Nagar Co-operative Housing Society Limited, Opposite St. Puis Church, Nahur Road, Mulund (West), Mumbai 400080. (II) Flat No.901, 9th Floor, Sugee Heights, Dwarkesh Nagar Co-operative Housing Society Limited, Opposite St. Puis Church, Nahur Road, Mulund (West), Mumbai 400080. (III) Flat No. C-506, 5th Floor, Greenwood Complex Co-operative Housing Society Limited, M. V. Road, Chakala, Andheri (East), Mumbai 400093. and (IV) Flat No. A-2, 1104, 11th Floor, Conwood Astoria, Goregaon (East), Mumbai.”

2] Brief contents of application are as under :-

Applicant bank has granted various financial assistance to the respondents viz. Rs.4,75,00,000/- (Rs. Four Crore Seventy Five Lakh Only.) on 28.03.2013 and Rs.9,00,00,000/- (Rs. Nine Crore Only) on 22.10.2014, which was reviewed on 20.04.2016.

As against financial assistance Borrowers and Guarantors have created security interest over above referred secured assets. Secured assets are 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 and assets. In pursuance to granting of financial assistance and creating of security interest over secured assets various documents are executed by respondents in favour of applicant. In due course borrower has committed default in repayment of the financial assistance, thus the account of the borrower has been classified as “Non Performing Asset”. In sequel, notices U/Sec. 13(2) of the SARFAESI Act was issued on 30.11.2017 and served upon

borrowers and called upon them to repay outstanding amount within 60 days from the date of service of notice. But borrower has not repaid financial assistance despite of such notice. Hence, applicant is constrained to file this application, which is well in limitation.

3] 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 to respondents.

4] It is requirement of Section 14 of SARFAESI Act that Authorised 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 Authorised Officer had filed affidavit at Exh.3, 5 and 6. In addition to affidavit, copies of documents are placed on record. Authorised Officer has also tendered original documents before Court, for verification with copies on record. Such documents are loan sanction order, loan agreement, documents relating to mortgage to create security interest over secured assets, notice under section 13(2) of SARFAESI Act to respondents, its postal receipts and acknowledgments etc.

5] I have gone through pleading, affidavit and documents as well as heard to Advocate Manoj Kumar, for applicant.

From the scenario what reveals is that applicant bank has granted various financial assistance to the respondents viz. Rs.4,75,00,000/- (Rs. Four Crore Seventy Five Lakh Only.) on

28.03.2013 and Rs.9,00,00,000/- (Rs. Nine Crore Only) on 22.10.2014, which was reviewed on 20.04.2016. In pursuance of such financial assistance respondents have executed various documents in favour of applicant to create security interest over secured assets known as (I) Flat No.1401, 14th Floor, Sugee Heights, Dwarkesh Nagar Co-operative Housing Society Limited, Opposite St. Puis Church, Nahur Road, Mulund (West), Mumbai 400080. (II) Flat No.901, 9th Floor, Sugee Heights, Dwarkesh Nagar Co-operative Housing Society Limited, Opposite St. Puis Church, Nahur Road, Mulund (West), Mumbai 400080. (III) Flat No. C-506, 5th Floor, Greenwood Complex Co-operative Housing Society Limited, M. V. Road, Chakala, Andheri (East), Mumbai 400093. and (IV) Flat No. A-2, 1104, 11th Floor, Conwood Astoria, Goregaon (East), Mumbai. However, in due course failed to repay loan. Thus applicant constrained to declare borrowers account as “Non Performing Asset” and constrained to issue two notices on 30.11.2017 U/Sec. 13(2) of SARFAESI Act, demanding total outstanding amount of Rs.9,04,78,173.97 (Rs. One Crore Four Lakh Seventy Eight Thousand One Hundred Seventy Three and Paise Ninety Seven Only), but in vain, as respondents have not complied the notice within stipulated period of 60 days. Thus present application came to be filed. Whereas secured assets are located in territorial jurisdiction of this Court and claim of applicant is well in limitation. More so, it transpires that secured assets are not in possession of any lessee/tenant/third party. As well there is no stay to present proceeding by any competent Court. So I do not found any barrier to pass order in favour of applicant Under Section 14 of SARFAESI Act to take over possession of secured assets known as (I) Flat No.1401, 14th Floor, Sugee Heights, Dwarkesh Nagar Co-operative Housing Society Limited, Opposite St.

Puis Church, Nahur Road, Mulund (West), Mumbai 400080. (II) Flat No.901, 9th Floor, Sugee Heights, Dwarkesh Nagar Co-operative Housing Society Limited, Opposite St. Puis Church, Nahur Road, Mulund (West), Mumbai 400080. (III) Flat No. C-506, 5th Floor, Greenwood Complex Co-operative Housing Society Limited, M. V. Road, Chakala, Andheri (East), Mumbai 400093. and (IV) Flat No. A-2, 1104, 11th Floor, Conwood Astoria, Goregaon (East), Mumbai.

6] As per Section 14(1A) of the SARFAESI Act this Court may authorise 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 authorising subordinate officer of this court for taking over possession of secured assets.

7] In this scenario, it is significant to take aid of ratio laid down by *Hon'ble Bombay High Court* in case of *M/s. J. Marks Exim (India) Pvt. Ltd. V/s Punjab National Bank in Writ Petition No. 3248/2017, order dated 17/03/2017*. Wherein it is held that, “*no prejudice to the petitioner, if a member of the Bar is appointed as Court Commissioner to take possession of the secured assets*”.

8] In consultation with Esplanade Bar Association this Court has prepared a list of Advocates, who are budding Advocates and interested to work as Court Commissioner. No doubt secured creditor has to bear charges of Court Commissioner. Now question is how much

fees is to be paid to Court Commissioner? It is common experience of court that Court Commissioners have to exhaust 3 to 4 days for taking over possession of each secured assets, because as and when he or she used to fix date for taking over possession of secured assets, then some times Authorised Officer could not make available himself for taking over possession or some time concerned Police Station Officers could not make available police constables for assistance to take over possession. More so, some times secured assets are found to be located at remote place. So keeping in mind all these aspects I am of candid opinion that Rs.10,000/- (Rs. Ten Thousand Only) towards Court Commissioner's fees, whereas Rs.3,000/- (Rs. Three Thousand Only) towards to and fro charges to Court Commissioner for each secured assets are justifiable.

9] 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 Authorised 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 Authroised Officer Mr. Prabhakar Jha is permitted to take over possession of secured assets on behalf of applicant bank.

II. **Advocate Mr. Sudarshan P. Khawase**, having address at C-701, Coral Crown City CHSL, Adharwadi Jail Road, Nr. Shri. Complex, Kalyan (W), Thane (Mobile No.8108693729/8169365679), is hereby appointed as Court Commissioner to take over possession of the secured assets known as (I) Flat No.1401, 14th Floor, Sugee Heights, Dwarkesh Nagar Co-operative Housing Society Limited, Opposite St. Puis Church, Nahur Road, Mulund (West), Mumbai 400080. (II) Flat No.901, 9th Floor, Sugee Heights, Dwarkesh Nagar Co-operative Housing Society Limited, Opposite St. Puis Church, Nahur Road, Mulund (West), Mumbai 400080. (III) Flat No. C-506, 5th Floor, Greenwood Complex Co-operative Housing Society Limited, M. V. Road, Chakala, Andheri (East), Mumbai 400093. and (IV) Flat No. A-2, 1104, 11th Floor, Conwood Astoria, Goregaon (East), Mumbai and hand over to Authorised Officer Mr. Prabhakar Jha only, under panchanama, and not to handover to any other officer of the applicant, who is not Authorised Officer on record in this proceeding.

III. 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 Authorised Officer of the applicant after preparing panchanama and taking inventory.

IV. 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.

V. Court Commissioner Advocate Mr. Sudarshan P. Khawase shall report compliance within 90 days from the receipt of Writ of the Commission. However, in 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.

VI. 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.

VII. 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.

VIII. 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.

IX. 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.

X. Applicant to pay Rs.13,000/- (Rs. Thirteen Thousand Only) for each secured assets to the Court Commissioner as a fees, as well to and fro charges to him/her, by Cash/Pay Order/Demand Draft/cheque in favour of Court Commissioner Advocate Mr. Sudarshan P. Khawase, 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 Authorised Officer.

XI. Authorised Officer to furnish his 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, Authorised Officer are directed not to dictate/direct/suggest to Court Commissioner by any mode to deffer 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.

Order

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XII. On compliance of Clause No. X & XI, issue Writ of Commission.

Sd/-xxxx

(M. A. Shinde)

I/C Chief Metropolitan Magistrate,
Mumbai.

20.04.2019

mbc/-