<u>:- Order Below Exh. 5 In Cr. M. J. No. 2589/2026.</u>

Read the application, heard, perused the record and proceedings. Considering the final order passed in this application, it appears that a typing mistake has been occurred in the name of the opponent. The prayer made by the applicant is genuine and deserved to be allowed in order to avoid any future query. Hence, this application is allowed, and the concerned staff is directed to carry out the necessary correction.

Order signed and pronounced today.

Date : 11-05-2026
Place : Surat.

Ms. M. B. Bhalia
6th Additional Chief Judicial Magistrate, Surat.
ID CODE GJ01476

IN THE COURT OF 6TH ADDITIONAL CHIEF JUDICIAL MAGISTRATE SURAT.

CRMA J No. 2589 of 2026

Exhibit-

Applicant	:	**The Surat People's Co-Op. Bank Ltd.,** Having it's office address at : " Vasudhara Bhavan" Timaliawad, Nanpura, Surat – 395001. **Through It's Authorized Officer**

Versus

Opponents	:	**M/s Shivani Textiles, Prop- Bimbadar Krupasindhu Biswal.** **Add :** 73 to 76, 81 & 82, Anikt Ind. Estate, Sayan-Sugar Factory Road, Olpad, Sayan, Surat. **Also at :** 27, Nilkantheshwar Society, Katargam, Surat. **Guarantors :** **1. Damodar** (As per order below Exh.5) **Krupasindhu Biswal** ~~**Ghelabhai Chokhawala**~~ Add. 27, Nilkantheshwar Society, Katargam, Surat. **2. Vasantbhai Ghelabhai Chokhawala** Add. 10, Devikrupa Society, Fulpada, Surat. **3. Pravinbhai Ukabhai Chodvadiya,** Add. 64, Shyamdham Sankul-1, Shivam Row-House, Shyamdham Chowk, Puna-Simada Road, Punagam, Surat.

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Appearance: Ld. Advocate **Mr. J. B. Patil** for the Applicant.

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Subject: The Application filed under section-14 of the SARFAESI Act, 2002

<u>J U D G M E N T</u>

1. The present application has been filed by the applicant against the opponents u/S.14 of the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (herein after referred to as SARFAESI Act) for taking possession of secured asset as defined u/S. 2(zc) of the SARFAESI Act mentioned in the application and forwarded it to the applicant. The concise statement of the applicant state is that, the applicant is secured creditor as defined in Sec.2(zd) of the SARFAESI Act and the opponent are borrower as defined u/S.2(f) of the SARFAESI Act. The applicant has been notified as financial institute for the purpose of the SARFAESI Act. It is further averred that the applicant has satisfied all the requirement of the Sec.14 of the SARFAESI Act and the applicant's Authorized Officer has submitted his 9 points affidavit in support of his application and prayed for take physical possession of the secured asset and to deliver the possession to the applicant. Further, prayed that to appoint a Court Commissioner to take possession and hand-over the peaceful possession to the applicant's Authorized Person.

2. The applicant has submitted his affidavit along with documents in support of his affidavit.

3. Further, Ld. Adv. on behalf of the applicant and perused the application as well as documents produced on the record by the applicant. Before determination of this case on hand, it would be necessary to refer pronouncements governing the determination of an application filed u/S.14 of the SARFAESI Act. The ***Hon'ble Bombay High Court*** in the case of ***Trade Well v. Indian Bank 2007 Cri. Law Journal 2544 (Bombay)*** held that, ***"CMM/DM acting u/S.14 of the NAP Act is not required to give***

Notice either to the borrower or to the third party. It is also held by the Hon'ble High Court of Bombay that, he has to only verify from the Bank or the Financial Institute whether Notice u/S.13(2) of the NPA Act is given or not and whether the secured assets follow within the jurisdiction. There is no adjudication of any kind at this stage". Further, the ***Hon'ble High Court of Gujarat*** in the case of ***IDBI Bank Ltd, (Through Authorized Signatory) v. District Magistrate & Ors.,*** held in Para-8 (xi) that, ***"the Chief Metropolitan Magistrate Court has no power to adjudicate the dispute between the parties".***

4. Upon perusal of the pronouncement of the Hon'ble High Court of Gujarat & High Court of Bombay, the Chief Metropolitan Magistrate / CJM has very limited scope with respect to the cases u/S.14 of the SARFAESI Act. Hence, this Court can not go into the merits of the claim. Taking into consideration the application, affidavit and documents produced on record, it is apparent that, applicant has granted the financial assistance to the respondents. In pursuance of such financial assistance respondents have executed various documents in favour of applicant to create security interest over the aforesaid secure assets. However, in due course fail to repay the loan amount to the applicant. Further, upon perusing record, it is transpires to this Court that, applicant has satisfy the requirement of Sec.14 of the SARFAESI Act, so as to entitle it to have assistant of this Court. Further, on examination of the documents it is transpires that the secured assets has been situated within the jurisdiction of this Court. As per the pronouncement of the ***Hon'ble Supreme Court of India*** in the case of ***R.D. Jani and Company v. Capital First Ltd,.*** CA No.175 of 2022 on 27th July, 2022, the Additional Chief Judicial Magistrate can exercise powers u/S.14 of the SARFAESI Act. So, in view of the aforesaid reasons and discussion I hereby pass the following final order in the interest of justice:

<u>F I N A L O R D E R</u>

1. The applicant's application is hereby allowed.

2. I Authorize **Mr. Hardikkumar S. Parekh** (Bench Clerck-III) as Court Commissioner u/s.14 (1-A) of the SARFAESI Act.

3. The Court Commissioner is directed to take possession of secured assets mentioned in Page No. 2 of the application, under the heading description of mortgaged property / secured assets.

<u>The description of the property is as under</u>

" ***Gala No. 4, Devikrupa Co-Op. Housing Society Limited, SMC Tenement No. 15G-03-0031-0-001, Nr. New GIDC, Katargam, Fulpada, Surat.*** ” *(The secured asset is more particularly described in the application, affidavit and demand notice)*

4. If the secured asset is found in closed condition, the Court Commissioner may take possession of this secured assets by breaking / opening the lock or may take any other steps he may thinks fit.

5. After taking the possession of the secured asset, the Court Commissioner shall prepare the inventory of any item, documents relating to the assets if found in secured assets and hand-over the same to the applicant.

6. The concerned Police Inspector (PI) of the concerned Police Station under whose jurisdiction the aforesaid secured assets is situated shall provide necessary Police assistance / protection to the Court Commissioner for taking possession of secured assets as per ***the Circular of Ministry of Home Affairs bearing no. SB-II, GNH/112017/998-PART FILE, dated 03-12-2020.*** The applicant bank shall complete the necessary formalities for seeking Police protection and also bear the expenses thereof.

7. Applicant is hereby directed at present to deposit amount of **Rs.17,000/-** (**Seventeen Thousand rupees only**) by DD towards the expense & remuneration of Court Commissioner within one month from the pronouncement date of this order. On depositing the above mentioned amount in the Court, the Court Commissioner is directed to complete the said procedure within the period of **Ninety (90)** days or within the time limit extended by the Court and submit the compliance report of completion of the whole proceedings.

8. The Court Commissioner shall carry out the said proceedings on Public Holidays or except Court working hours.

Order Signed & Pronounced today in open Court.

Date : 20-04-2026
Place : Surat.

Ms. M. B. Bhalia
6th Additional Chief Judicial Magistrate, Surat.
ID CODE GJ01476