IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTTUR

PRESENT : Tmt.Gajara R.Jiji,M.A.,LL.M.,
Chief Judicial Magistrate,
Virudhunagar District at Srivilliputtur
Monday this the 26th day of December 2022

Crl.M.P.No.8034/2022

The Union Bank of India,
Represented by its Authorized Officer,
R.Sowmya,
No.142, Railway Feeder Road,
Rajapalayam,
Virudhunagar District. ... Petitioner

/ Vs/

1. M/s.Superfine Garments
Represented by its partners
1. Mr.Periathambi Hussain Ibrahim,
2. Mr.Asik Ibrahim,
Door oNo.416, 417 Seethakathi
Sammanthapuram, Rajapalayam,
Virudhunagar District.

2. Mr.Periathambi Hussain Ibrahim,
S/o. Ahamed Ibrahim,
Door No. E21, Second Street,
E Block, Anna Nagar East,
Chennai - 600 102.

3. Mr.Aasik Ibrahim,
S/o. Periathambi Hussain Ibrahim,
Door No.40, First Cross Street,
Back side of Periyar Building,
CIT Nagar, Nandanam,
Chennai - 600035. ... Respondents

This petition coming for final hearing before this court on 14.12.2022 in the presence of M/s.S.Babu, Advocate for the petitioner and upon hearing petitioner's side arguments, perusing affidavit, petition and other relevant documents, and having stood over for consideration till this day, this Court delivered the following :-

ORDER

1) This Petition has been filed by the petitioner for Assistance under Section 14(1) and 14(2) of the Securitisation And Reconstruction of Financial Assets And Enforcement of Security Interest Act 2002 (hereinafter referred to as SARFAESI Act)

2) The Case of the petitioner bank is that, the bank had sanctioned 1) Cash Credit loan for a sum of Rs.20,00,000/- and 2) Term loan for a sum of Rs.20,00,000/- totally loan sum of Rs.40,00,000/- to the respondents. Due to the default of the respondents in repaying the loan amount, it was declared as Non Performing Asset (NPA) on 12.08.2020. In order to realize the loan amount together with interest, the petitioner bank issued demand notice to the respondents under section 13(2) of the SARFAESI Act calling upon the respondents to pay the dues to a tune of Rs.42,61,691.48/- as on 27.11.2020. The respondents though received the notice, they neither sent any reply nor paid the demand amount. The guarantors of the principal borrower also had not raised any objection and also have not repaid the amount. Since, the respondents had not repaid the outstanding loan amount, the petitioner issued possession notice under section 13(4) of the SARFAESI Act on 07.12.2021. The possession notice was also published in English and Tamil Newspaper on 10.12.2021. The respondents have not surrendered physical possession and hence the petitioner has approached this court under section 14 of the SARFAESI Act to assist them in taking physical possession of the schedule property.

3) Point for determination:

Whether the petitioner is entitled for assistance of this court in taking physical possession of the schedule property under section 14 of the SARFAESI Act as prayed for ?

4) The petitioner examined PW.1 and marked Ex.P1 to Ex.P.15. The submissions of the learned counsel for the petitioner heard and carefully considered and the exhibits produced by the petitioner carefully perused.

<u>5) Point and Answer:</u>

(i) The petitioner is M/s. Union Bank of India, which falls squarely within the definition of bank in Sec.2(1)(c) of the SARFAESI Act. The petitioner produced Ex.P.15, Authorization Letter wherein it has authorized the Chief Manager to be the authorized officer to represent the bank in the SARFAESI Act proceedings.

(ii) The 1st respondent is a partnership concern and the respondents 2 and 3 are the partners of the 1st respondent. The respondents had availed the Cash Credit loan for a sum of Rs.20,00,000/- and Term loan for a sum of Rs.20,00,000/-. Ex.P.1, Sanction letter, Ex.P.2 and Ex.P.3 Demand Promissory Note, Ex.P.4 Hypothecation Agreement of goods and debts, Ex.P.5 Gerneral Term Loan Agreement would show that the respondents had availed loans as stated by the petitioner.

(iii) The Loan has been sanctioned against property. The petition schedule property has been mortgaged with the bank by depositing the title deeds. The 3rd respondent who is also one of the partners of the 1st respondent created equitable mortgage by deposit of title deeds. The Memorandum of deposit of title deeds marked as Ex.P.6 was executed by the 3rd respondent. The petitioner bank produced Encumbrance Certificate of the schedule property as Ex.P.13. The memorandum of deposit of title deed is reflected in the encumbrance certificate and there is no other encumbrance over the property after execution of the memorandum of deposit of title deeds in favour of the petitioner bank. It is candid from the Encumbrance Certificate, Ex.P.13 that the schedule property is located in Rajapalayam Taluk and thereby within the jurisdiction of this court. The 3rd respondent has thus created security interest over the schedule property and the petitioner bank has valid and subsisting security interest over the schedule property.

(iv) The respondents have defaulted in repayment of the loan amount obtained from the petitioner bank which is evident from Account Statement produced as Ex.P14 . Hence, the loan has been declared as Non Performing Asset on 12.08.2020 as per the guidelines of the Reserve Bank of India.

(v) The petitioner bank issued notice under section 13(2) of the SARFAESI Act to the respondents demanding repayment of the loan amount. The notice under section 13(2) of the SARFAESI Act has been produced as Ex.P.7. The 2nd and 3rd respondents had received the notice which is evident from the Acknowledgment produced as Ex.P.8. The notice issued to the 1st respondent company has been returned as unclaimed though intimation delivered. The return cover is enclosed with the acknowledgements produced in Ex.P.8. The 1st respondent is a partnership concern and the 2nd and 3rd respondents who are the partners have received the demand notice. As such the notice to the partnership concern is deemed to be served. Even after receipt of the notice the respondents have not settled the outstanding loan. The petitioner bank is thus entitled to take physical possession of the schedule property. The petitioner bank has taken symbolic possession by issuing possession notice, Ex.P.9 and the possession notice has been published in Tamil Newspaper as seen from Ex.P.11 and English Newspapers as seen from Ex.P.12.

(vi) Though, the respondents received the possession notice, they have not surrendered physical possession of the schedule property. The authorized signatory of the petitioner bank has affirmed on oath that the respondents are purposely delaying surrender of possession of the schedule property and that there is no stay granted against taking possession of schedule property. From the affirmation of the authorized signatory of the petitioner on oath and on perusal of the documents exhibited on the side of the petitioner, this court is satisfied that the petitioner bank has properly complied with the conditions precedent for invoking the provision under section 14 of the SARFAESI Act. The petitioner bank has through the affidavit of the authorized signatory and through exhibits satisfactorily established the default on the part of the respondents in repayment of the loan amount, the loan amount being not barred by limitation, the schedule property having been offered as security for the loan secured and also that the schedule property is located within the jurisdiction of this court.

(vii) Thus, considering the above observations this court finds it fit to issue proper direction to take physical possession of the secured assets described in the schedule after taking proper inventory and also to handover the possession of the property to the petitioner bank and as such this petition is liable to be allowed.

In the result, this petition is allowed thereby appointing Mr. G.Muniyandi(MS.2632/2014) as Advocate Commissioner

1. to inspect the petition mentioned property;
2. take inventories;
3. Take physical possession and immediately hand over to the petitioner/secured creditor;
4. The Inspector of Police Rajapalayam North and the Village Administrative officer, Rajapalayam North are directed to provide suitable assistance to the Commissioner in executing the warrant and
5. The Advocate Commissioner may break open any locks put to the doors of the schedule property if the same is necessary for handing over physical possession.

A sum of Rs.25,000/- is fixed as remuneration for the said Advocate Commissioner. Out of Rs.25,000/- Rupees 12,000/- shall be paid directly to the commissioner and the remaining Rs.13,000/- shall be **deposited into this court within 10 days.** After executing the warrant and filing his report, the Advocate Commissioner is entitled to get the remaining remuneration of Rs.13,000/- from the court by filing the separate E-transfer application.

GAJARA R JIJI Digitally signed by GAJARA R JIJI

Chief Judicial Magistrate,
Virudhunagar District at
Srivilliputtur.

SCHEDULE OF THE PROPERTY

Virudhunagar District, Virudhunagar Registration District, Rajapalayam Sub Registration District, Circle the house building property bearing Door No.416, 417, situated in Seethakathi Street, in Election Ward No. 11, Town survey No.38, Survey Ward No.A, Block No.16, Revenue survey no. 77B /15 A part in Sammanthapuram Village in Rajapalayam Municipal Town Limit:

North : East - West Street

East : Egramullah House common Wall

South : House belonged to Sikkanthar Batcha and common wall

West : Mohammed Abdul Kadar house common wall

Measurements:

East - West Northern Edge 53 feet

East - West Southern Edge 56 feet

South - North western Edge 75 feet

South - North Eastern Edge 75 feet

Totally to an extent of 4087.50 sq feet.

Petitioner side Documents :

1.	Ex.P.1	14.02.2019	Sanction Letter	True Copy
2.	Ex.P.2	14.02.2019	Demand Promissory Note	True Copy
3.	Ex.P.3	14.02.2019	Demand Promissory Note	True Copy
4.	Ex.P.4	14.02.2019	Hypothecation Agreement of Goods and Debts	True Copy
5.	Ex.P.5	14.02.2019	General Term loan agreement	True Copy
6.	Ex.P.6	14.02.2019	Memorandum of Deposit of Title deeds infavour of Union Bank of India, Rajapalayam Branch through a registered a Memorandum of Deposit of Title deeds in Document No.653/2019, dated 14.02.2019	True Copy

7.	Ex.P.7	30.11.2020	13(2) Statutory Notice to the respondents with postal receipts	Original
8.	Ex.P.8	05.12.2020	Acknowledgement Cards	Original
9.	Ex.P.9	07.12.2021	Possession Notice	Original
10.	Ex.P.10	15.12.2021	Acknowledgement Cards	Original
11.	Ex.P.11	10.12.2021	Possession Notice published by Dinamani Tamil News paper	Original
12.	Ex.P.12	10.12.2021	Possession Notice published by the New Indian Express English Newspaper	Original
13.	Ex.P.13	13.09.2022	Online Encumbrance Certificate from 01.01.2000 to 12.09.2022	Online copy
14.	Ex.P.14	---	The Statement of Accounts	True Copy
15.	Ex.P.15	08.09.2022	Authorization Letter	Xerox Copy

GAJARA R JIJI Digitally signed by GAJARA R JIJI

Chief Judicial Magistrate,
Virudhunagar District at
Srivilliputtur.