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**IN THE COURT OF THE HON'BLE ADDL. CHIEF
JUDICIAL MAGISTRATE, NAVSARI.**

CRMA No. 600 of 2026

Exh. .

Applicant	:	<u>MOTILAL OSWAL HOME FINANCE LTD.</u> (Formerly known as Aspire Home Finance Corporation Ltd.) having is registered office at Motilal Oswal Tower, Rahimtullah Sayani Road, Opposite Parel ST Depot, Prabhadevi, Mumbai – 400025, and its branch office: at MOTILAL OSWAL HOME FINANCE LTD. SECOND FLOOR, ROCKFORD BUSINESS CENTER, ABOVE DCB BANK, UDHANA DARWAJA, RING ROAD, SURAT – 395 002. <u>Through its' Authorized Officer:-</u> Mr. Hemant Rajput.
Opponents	:	V/s. (1) NASIMUDEEN NIJAMMUDEEN HAFEZ ADD.:- 1269, Behind Kanyashala No. 4, Tahhakar Bapa Vas Navsari, Gujarat – 396445. Also at:- Azad Icecream Parlour, 13/a shop No. 6, ROYAL PALACE, OPP. AGARWAL BHAVAN, GHODDOD ROAD,

	SURAT, GUJARAT - 395004. ALSO AT:- FLAT NO. 502, AREA ADM 985 SQ. FT. AND FLAT NO. 503, AREA ADM 940 SQ. FT. TOTAL AREA ADM 1700 SQ. FT. AT ROYAL PALACE-B, SURVEY NO. 51, 50, 54 TOTAL ADM. 34364,92 SQ. MTS. MUNICIPAL WARD 5, CITY SURVEY TIKKA NO. 10/2, MOJE; NAVSARI SUB DIST. NAVSARI SURAT, SURAT GUJARAT. (2) NAJBIBI NASIMUDEEN HAFEZ, ADD.:- 1269, Behind Kanyashala No. 4, Tahhakar Bapa Vas Navsari, Gujarat - 396445. ALSO AT:- HEALTH & FITNESS, AD HEALTH & FITNESS LAXMI COMPLEX, NEAR FOUNTAIN AREA, GROUND FLOOR, NAVSARI, SURAT, GUJARAT. (3) ZARA MOHAMMED IRFAN IQBAL ADD.:- 4/962, TULSI PADIYA, B/H. MOTI CINEMA BEGUMPURA, SURAT GUJARAT 395003.
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Ld. Advocate S.A. GHEVARIYA for the Applicant.

Ex-Parte against the Opponents.

Subject: The Application filed under section-14 of the SARFESI ACT 2002.

J U D G M E N T

1. The present application has been filed by the applicant against the Opponents under section-14 of the Secularization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as SARFESI Act) Act

for taking possession of secured asset as defined in section-2(zc) of the SARFESI Act mentioned in the application and forward it to the applicant. The concise statement of the applicant's case is that the applicant is secured creditor as defined in Section-2 (zd) of the SARFESI Act and the opponents are borrowers as defined under section-2(f) of the SARFESI Act. The applicant has been notified as financial institution for the purpose of the SARFESI Act. It is further averred in the application that the applicant has satisfied all the requirement of section-14 of the SARFESI Act and the applicant's authorised officer has submitted his affidavit to that effect. Hence, the present application.

EVIDENCE OF APPLICANT

2. The applicant has submitted his affidavit along with the application as required by the first Proviso to Section-14 (1) of the SARFESI Act and has submitted documents vide mark- 3/1 to 3/7 support of his application.

SUBMISSIONS ON BEHALF OF THE APPLICANT.

3. The Ld. Advocate on behalf of the applicant has argued as per the averments made in the application.

SUBMISSIONS ON BEHALF OF THE OPPONENTS.

4. None as the matter was proceeded ex-parte against the opponents.

5. Following issues have arose before this court for a just and fair determination of this case:-

ISSUES

Sr. No.	Points for Determination
1.	Whether the applicant is entitled to the relief in the application ?
2.	What Order ?

6. My findings for the above issues are as under

Sr. No.	Finding
1.	Affirmative
2.	As per final order.

REASONS FOR THE DECISION

7. Before determination of this case, it would be necessary to refer some of the pronouncements governing the determination of an application filed under section-14 of the SARFESI Act, 2002. The Hon'ble Supreme Court in "**Standard Chartered Bank v. V. Noble Kumar**" reported in **(2013) 9 SCC 620** has held as under;

21. Under the scheme of Section 14, a secured creditor who desires to seek the

assistance of the State's coercive power for obtaining possession of the secured asset is required to make a request in writing to the Chief Metropolitan Magistrate or District Magistrate within whose jurisdiction, the secured asset is located praying that the secured asset and other documents relating thereto may be taken possession thereof. The language of Section 14 originally enacted purportedly obliged the Magistrate receiving a request under Section take possession of the secured asset and documents, if any, related thereto in terms of the request received by him without further scrutiny of the matter.

22. *However, the Bombay High Court in Trade Well v. Indian Bank [2007 Cri LJ 2544 (Bom)] opined:*

“2. ... CMM/DM acting under Section 14 of the NPA Act is not required to give notice either to the borrower or to the third party.

3. He has to only verify from the bank or financial institution whether notice under Section 13(2) of the NPA Act is given or not and whether the secured assets fall within his

jurisdiction. *There is no adjudication of any kind at this stage.*

4. It is only if the above conditions are not fulfilled that the CMM/DM can refuse to pass an order under Section 14 of the NPA Act by recording that the above conditions are not fulfilled. If these two conditions are fulfilled, he cannot refuse to pass an order under Section 14.”(emphasis supplied)

The said judgment was followed by the Madras High Court in Indian Overseas Bank v. Sree Aravindh Steels Ltd. [AIR 2009 Mad 10] Subsequently, Parliament inserted a proviso to Section 14(1) [“Provided that any application by the secured creditor shall be accompanied by an affidavit duly affirmed by the authorised officer of the secured creditor, declaring that—(i) the aggregate amount of financial assistance granted and the total claim of the bank as on the date of filing the application;(ii) the borrower has created security interest over various properties and that the bank or financial institution is holding a valid and subsisting security interest over such properties and the claim of the bank or

financial institution is within the limitation period;(iii) the borrower has created security interest over various properties giving the details of properties referred to in sub-clause (ii) above;(iv) the borrower has committed default in repayment of the financial assistance granted aggregating the specified amount;(v) consequent upon such default in repayment of the financial assistance the account of the borrower has been classified as a non-performing asset;(vi) affirming that the period of sixty days' notice as required by the provisions of sub-section (2) of Section 13, demanding payment of the defaulted financial assistance has been served on the borrower;(vii) the objection or representation in reply to the notice received from the borrower has been considered by the secured creditor and reasons for non-acceptance of such objection or representation had been communicated to the borrower; (viii) the borrower has not made any repayment of the financial assistance in spite of the above notice and the authorised officer is, therefore, entitled to take possession of the secured assets under the provisions of sub-section (4) of

Section 13 read with Section 14 of the principal Act;(ix) that the provisions of this Act and the rules made thereunder had been complied with:Provided further that on receipt of the affidavit from the authorised officer, the District Magistrate or the Chief Metropolitan Magistrate, as the case may be, shall after satisfying the contents of the affidavit pass suitable orders for the purpose of taking possession of the secured assets:Provided also that the requirement of filing affidavit stated in the first proviso shall not apply to proceeding pending before any District Magistrate or the Chief Metropolitan Magistrate, as the case be, on the date of commencement of this Act.”] and also sub-section (1- A) **“14. (1-A)** *The District Magistrate or the Chief Metropolitan Magistrate may authorise any officer subordinate to him—(i) to take possession of such assets and documents relating thereto; and(ii) to forward such assets and documents to the secured creditor.(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the District Magistrate may take or cause to be taken*

such steps and use, or cause to be used, such force, as may, in his opinion, be necessary.(3) No act of t **Indian Bank v. D. Visalakshi, (2019) 20 SCC** District Magistrate any officer authorised by the Chief Metropolitan Magistrate or District Magistrate done in pursuance of this section shall be called in question in any court or before authority.”] by Act 1 of 2013.

25. *The satisfaction of the Magistrate contemplated under the second proviso to Section 14(1) necessarily requires the Magistrate to examine the factual correctness of the assertions made in such an affidavit but not the legal niceties of the transaction. It is only after recording of his satisfaction the Magistrate can pass appropriate orders regarding taking of possession of the secured asset.*

8. The Hon'ble High Court of Gujarat has in "**IDBI Bank Ltd- through Authorized Signatory Vs. District Magistrate**" reported at

2011 SCC OnLine Guj 1280 held as under;

5. So far as the first principal contention of the petitioner is concerned, the same merits consideration because the Chief

Metropolitan Magistrate and the District Magistrate, under Section 14 of the Securitisation Act are not empowered to decide the question of legality and propriety of any of the actions taken by the secured creditor under Section 13(4), which be assailed under Section 17 of the Secularization Act by the aggrieved person. Under sub-section (3) of Section 14, the act of the Chief Metropolitan Magistrate or District Magistrate done in pursuance of the said section cannot be called in question in any court or before any authority. From the aforesaid provisions of law, it is evident that Chief Metropolitan Magistrate or District Magistrate is bound to assist the secured creditor in taking possession of the secured assets.

6. The Authority who is called upon to act under Section 14 of the Secularization Act can only assist, nay, is bound to assist the secured creditor in taking possession of the secured. As the Chief Metropolitan Magistrate and District Magistrate under Section 14 is not empowered to decide the question of legality and propriety of any of the actions taken by the secured creditor under Section 13(4), which may

be assailed under Section 17 of the by the aggrieved person, under sub-section (3) of Section 14 of the Secularization Act, the act of the Chief Metropolitan Magistrate or District Magistrate done in pursuance of said Section cannot be called in question in any court or before any authority. It is evident from the provisions of law that the District Magistrate while bound to assist the secured creditor in taking possession of the secured assets and to take the possession of the documents relating thereto and forward such assets and documents to the secured creditor, he is not empowered to decide the question of genuinity or propriety of such documents, including the document signed or agreed between the borrower and the secured creditor.

9. The Hon'ble Supreme Court has in **Indian Bank v. D. Visalakshi** reported in **(2019) 20 SCC 47** held as under;

52. Applying the principle underlying this decision, it must follow that substitution of functionaries (CMM as CJM) qua the administrative and executive or so to say non-judicial functions discharged by them in light of the provisions of the Code of Criminal Procedure, would not be

inconsistent with Section 14 of the 2002 Act; nay, it would be a permissible approach in the matter of interpretation thereof and would further the legislative intent having regard to the subject and object of the enactment. That would be a meaningful, purposive and contextual construction of Section 14 of the 2002 Act, to include CJM as being competent to assist the secured creditor to take possession of the secured asset.

54. To sum up, we hold that CJM is equally competent to deal with the application moved by the secured creditor under Section 14 of the 2002 Act.

10. Considering the material produced by the applicant and perusing the affidavit submitted by the authorised officer of the applicant, it transpires to this court that the applicant has satisfied the requirements of section-14 of the SARFESI Act so as to entitle them to have assistance of this Court. The secured asset has been situated within the jurisdiction of this court. As per the pronouncement of Hon'ble Supreme Court in Indian Bank Case (supra), the Chief Judicial Magistrate is also empowered to entertain the application filed under section-14 of the SARFESI Act. So, in view of the aforesaid

reasons and discussion, my finding on issue no-1 is in affirmative. So far as to issue no-2 is concerned, I hereby pass the following final order in interests of justice

FINAL ORDER

- 1.** The Application of the applicant is hereby allowed.
- 2.** I authorize, **Shri B.M. Solanki, Senior Clerk, A.D.M. Branch** (An employee of this Court is considered to be an officer of the Court), to act as Court Commissioner under section- 14 (1-A) of the Secularization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
- 3.** Court Commissioner is directed to take possession of asset and forward such asset to the secured creditor. The description of such asset is as under:-

SCHEDULE / SECURED ASSET

"ALL THAT PIECE AND PARCEL OF PROPERTY BEARING FLAT NO. 502, AREA ADM 985 SQ. FT. AND FLAT NO. 503, AREA ADM 940 SQ. FT. TOTAL AREA ADM 1700 SQ. FT. ROYAL PALACE-B, SURVEY NO. 51,50,54 TOTAL ADM 34364,92 SQ. MTS. MUNICIPAL WARD 5, CITY SURVEY TIKKA NO-10/2, MOJE: NAVSARI, SUB-DIST. NAVSARI."

BOUNDARIES OF FLAT NO. 502

East:- ADJ. PROPERTY,

West:- FLAT NO. B 503,

North:- PASSAGE,

South:- APPLICABLE ROAD.

BOUNDARIES OF FLAT NO. 503

East:- FLAT NO. 502,

West:- DASHAMA MATA TEMPLE,

North:- COMMON PASSAGE,

South:- APPLICABLE ROAD.

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 think fit.

5. After taking the possession of the secured assets, Court Commissioner shall prepare the inventory of any item, Documents relating to the assets if found in secured Assets and handover the same to the applicant.

6. The Police Inspector of the concerned police station under whose Jurisdiction, the aforesaid Secured Assets is situated, shall provide necessary police Assistance / protection to the Court Commissioner on the date appointed by the Court Commissioner for taking possession of the secured assets.

7. The Applicant Bank shall complete the necessary formalities for seeking police protection and also bear the expenses thereof.

The Court Commissioner may take or cause to be taken such steps and use, or cause to be used such force, as may, in her opinion be necessary.

8. Copy of this Order be sent to the concerned Police Station.

Applicant shall bear the expenses incurred in taking possession of the secured assets and shall provide all necessary assistance to the court commissioner in taking possession of the secured assets.

9. Applicant is hereby directed to deposit lump-sum amount of **Rs. 20,000/- (Rs. Twenty thousand Only)** towards the expenses and remuneration of court commissioner, within fifteen days from the date of Order. Upon deposit of the said amount, the Commissioner shall initiate the process of handing over vacant and peaceful possession of the premises. For this purpose, the commissioner shall issue a 30 days prior notice to the opponent. The purpose of such notice is to provide sufficient time to the opponent to remove his/her belongings from the premises and to make an alternative arrangement for residence or business activities, further the Court Commissioner shall complete the said procedure

within 90 days or within the time limit extended by the court and submit the compliance report of completion of proceedings.

The court commissioner shall carry out the said proceedings on public holidays or except court working hours.

Signed and Pronounced in Open Court on 24th June, 2026.

Place: Navsari.

P. K. Rai

Date: 24/06/2026

**Addl. Chief Judicial Magi.,
GJ01112, Navsari.**

K. J. Gurjar