Received On : 13/03/2025

Registered On: 13/03/2025

Disposed On: 08/05/2025

Duration:

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE , RAJKOT.

Cr.M.A. No. 959/2025

Exh- ___

Applicant:-

AMBIT FINVEST PRIVATE LIMITED

A Company within the meaning of the Companying Regulation Act, 1949 and having its

REGISTERED OFFICE AT-

Ambit House, 449, Senapati Bapat Marg, Lower Parel, Mumbai-400 013.

BRANCH OFFICE SITUATED AT-

Office No. B-706, The First Building, B/h. ITC Narmada, Nr. Keshavbaug, Vastrapur, Ahmedabad- 380 015

THROUGH ITS AUTHORISED OFFICER,

MR. HIRENKUMAR BADMALIYA

v/s

Opponent:-

1. Nilkanth Pathology Laboratory (Borrower)

Shashikunj Complex, Nr. Nirmala Convent School, nirmala Main Road, At: Rajkot, Dist. & Sub Dist.: Rajkot-360007.

2. Vanmail Ravjibhai Borad (Co-Borrower)

Flat No. 401 & 402, Shashikunj Apartment, Mangalam Park, Nr. Hanuman Madhi, Nr. Niramala Convent School, Raiya Road. At: Rajkot, Dist & Sub Dist.: Rajkot-360007.

3. Shardaben Vanmail Borad (Co-Borrower)

Flat No. 401 & 402, Shashikunj Apartment, Mangalam Park, Nr. Hanuman Madhi, Nr. Niramala Convent School, Raiya Road. At: Rajkot, Dist & Sub Dist.: Rajkot-360007.

SUB: An Application under section 14 of the Securitisation and Reconstruction of financial assets and enforcement of Security Interest Act,2002. (SARFAESI Act)

Appearance:-

1) Ld. Advocate Mr. J.N.Shukla for the applicant.

:: J U D G M E N T ::

1. This application has been preferred by the authorized person of the applicant. It is the say of the applicant that the applicant is a bank/ financial institute. It is the further say of the applicant that the borrowers / mortgagors had approached the applicant bank for the grant of loan which was sanctioned by the applicant bank. It is say of the applicant that the present application falls under provisions of **The Securitisation and Reconstruction of financial assets and enforcement of Security Interest Act,2002** (for the sake of bravity hereinafter referred to as ”Sarfaesi Act”). It is further averred by the applicant that the opponent has not taken care of repayment of the loan amount and therefore, the opponents were classified as none performing assets i.e. NPA.

2. It is also averred by the applicant that statutory demand notice was served upon the opponents under section 13 of the Sarfaesi Act 2002 and opponents were called upon to pay the loan amount along with interest but within the period of 60 days from the service of the notice, the borrowers i.e opponents have failed to repay the loan amount of the plaintiff, so, this application under section 14 of the act has been preferred by the present applicant.

3. In the present matter authorized person of applicant has filed the present application which is supported by an affidavit. As per the affidavit opponent has borrowed loan amount of **Rs 75,41,323/-** on the day of filing of the present application Rs. **70,18,780/- (Rupees Seventy Lakhs Eighteen Thousand Seven Hundred Eighty Only)** amount remains unpaid to the applicant and the present application is filed within the time limit.

4. Applicants have relied upon the case of Indian Overseas Bank Vs. Shree Arvind Steel Ltd. reported in AIR-2009 Madras at page 10 wherein it has been held that there is no need of service of notice on opponent under section 14 of SARFAESI ACT, court has only to see that whether secured creditors have served the notice under section 13(2) of the act on opponent.

5. The present applicant have produced certain documents like applicants have served the notice under section 13(2) of the act, the copy of notices at **Mark 3/5** which is served through RPAD post / by paper publication. As per the record the notice under section 13(2) of the act was served on opponent on **19/12/2024**. The opponent has failed to repay the loan amount within 60 days from date of service of aforesaid notice.

6. It is contemplated as per section 14(3) of Sarfaesi act 2002 , "No act of the Chief Metropolitan Magistrate or the District Magistrate [any officer authorized by the Chief Metropolitan

Magistrate or District Magistrate] done in pursuance of this section shall be called in question in any court or before any authority" also, as per section 35 - Act to have over-riding effect.

7. The applicant is directed to inform prior to this Court in writing before taking possession of secured assets in case of there is any stay of Hon'ble Supreme Court or High Court, Debt Recovery Tribunal or National Company Law Tribunal.

8. Upon considering the entire record of the case and considering the documents and affidavit produced on record. It is amply clear that the applicant had given certain loan amount to the opponent and the opponent has taken no pains to repay the alleged loan amount and it is Prima Facie borne out that the applicant has scrupulously followed the rules and regulations of RBI and also followed provisions of the Sarfaesi Act and therefore, this court is inclined to allow the present application.

9. Having thus regard to the facts and circumstances of the present case, opponent has failed to repay the amount during the time prescribe by the law inspite of the notice as per the Act have been served on opponent, the application is required to be allowed, accordingly I pass the following Order.

:: FINAL O R D E R ::

1] The application is allowed.

2] Under section 14(1-A) of the Sarfaesi Act-2002 Mr. R.A. Zala, Gujarati Stenographer, Additional District Court, Gondal is hereby appointed as court commissioner.

3] The authorized officer of the applicant/ bank shall remain present at the time of taking possession of the property in question.

4] The court commissioner is hereby directed to take the possession of the following property and the same shall be handed over to the applicant/bank.

Description of the properties

(Schedule of Properties)

No. 401:

Description of the All The Piece And Parcel Of A Residential Flat No. 401, Having Carpet Area 68.56 Sq. Mtrs. (Built Up Area 82.27 Sq. Mtrs.,) On 4th Floor, In the Building Known As "Shashikunj", Constructed On Land Adm. 339.85 Sq. Mtrs. of Plot No. 5-A & Plot No. 5-B, In the Area Known As "Mangal Park" of Rajkot Revenue Survey No. 461/6 Paikee, Of Rajkot City Ward No. 15/2, Of City Survey No. 1/A, Of T.P. Scheme

No. 1 of F.P. No. 621 Paikee, Situated At: Rajkot, Dist & Sub Dist.: Rajkot.

Bounded by:

North: Flat No. 402, Lift And Stair

South: Margin Then Other Property

East: Margin Then Other Property

West: Margin Then Nirmala Convent Road

No. 402:

Description of the All The Piece And Parcel Of A Residential Flat No. 402, Having Carpet Area 41.81 Sq. Mtrs. (Built Up Area 50.172 Sq. Mtrs.,) On 4th Floor, In the Building Known As "Shashikunj", Constructed On Land Adm. 339.85 Sq. Mtrs. of Plot No. 5-A & Plot No. 5-B, In the Area Known As "Mangal Park" of Rajkot Revenue Survey No. 461/6 Paikee, Of Rajkot City Ward No. 15/2, Of City Survey No. 1/A, Of T.P. Scheme No. 1 of F.P. No. 621 Paikee, Situated At: Rajkot, Dist & Sub Dist.: Rajkot.

Bounded by:

North: Margin Space Then Other Property

South: Flat No. 401

East: Stair And Lift

West: Margin Then Nirmala Convent Road

5] If aforesaid property is found to be closed or locked, the appointed court commissioner shall take possession in accordance with procedure established by law.

6] At the time of taking of the possession of the disputed property if any kind of house hold or any materials are found therein the property details with separate list shall be prepared by the court commissioner and it shall be handed over to the applicants and the copy of the list/Panchnama of schedule of property shall be produced before this court.

7] The concerned Police Station in whose jurisdiction the property is situated shall provide the necessary help to the court commissioner at the time of taking of possession of the alleged property in case of any request made by the court commissioner and police shall give police protection accordingly.

8] It is clarified that the expenses and cost of the police protection shall be paid and deposited in advance by the applicant/bank. Applicant/bank also to provide legal assistance to the Court commissioner, if required, for that expenses shall be borne by the applicant/bank.

9] The applicant/ bank shall pay the remuneration of Rs 15,000/- (Rs. Fifteen Thousand Only) to court commissioner at the first instance towards court commission. But if properties are more than two then applicants have to pay Rs. 5,000/- for each of the property to court commissioner towards remuneration. If the amount towards the remuneration towards court commission is not deposited within 30 days from the date of this order then after 30 days the applicant to pay cost of Rs. 100 in DLSA for the delay of each day. The court commissioner is directed to take the possession of secured assets within 90 days from amount deposited towards commission-work.

The order is signed and pronounced in the open court today on 08th May, 2025.

Sd/-

Date: 08/05/2025 **(Naran Hardas Nandaniya)**

Rajkot Chief Judicial Magistrate,

UIC No. GJ 00906