

Misc. Criminal 06/2024

Order dt. 05.06.24.

The record is put up today as one application U/s.14(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (as amended), hereinafter abbreviated as SARFAESI Act praying for necessary order.

I have heard the Ld. Advocate for the petitioner being Kotak Mahindra Bank Ltd., a financial company who submitted that they have preferred the application against the respondents as they have defaulted payment of loan despite several efforts taken from their end and as such now they have preferred this application U/s.14(2) of the SARFAESI Act to accord necessary sanction for taking possession of the schedule properties. I would like to further highlight that the NPA date was on 15.06.23 and notice U/s.13(2) of the SARFAESI Act was issued on 05.08.23 whereto the respondents replied on 04.10.23.

In support of their contention they have produced copies of a bulk of documents which I have gone through and after conjoint reading of the materials on record and provisions of law the following points are being observed by this court:-

1. that originally the provision empowered the CMM and the DM to accord such sanction by directing the Law enforcing authority to assist the financial institution
2. however, subsequently in **Indian Bank Vs D. Visalakshi (2019) IBC Law.in 130 S.C** the Hon'ble Supreme Court was pleased to extend the ambit of section by empowering the Ld. CJM to accord such sanction.

Subsequently in **RD Jain Vs Capital First Ltd. (2022) IBC Law.in 93 SC** the Hon'ble SC observed that :-

“as mandated by Sec.14 of the SARFAESI Act, the CMM/DM has to act within the stipulated time limit and pass a suitable order for the purpose of taking possession of the secured assets within a period of 30 days from the date of application which can be extended for such further period but not exceeding in the aggregate, 60 days. Thus, the powers exercise by the CMM/DM is a ministerial act. He cannot brook delay. Time is the essence. This is the spirit of special enactment.”

The same position was boosted up by another decision in **C.Bright Vs. The District Collector and others** and ACJM.,Bidhannagar.

Considering the facts and circumstances and the materials on record, I found that due notice was served and the application was preferred within time. Now so far as the power of the ACJM to entertain cases U/s.14 of the SARFAESI Act the Hon'ble Supreme Court in **RD Jain & Co. Vs Capital First Ltd and others** has held that the expression, the D.M and CMM in Sec.14 of the SARFAESI Act will include Additional District Magistrate and Additional Chief Metropolitan Magistrate. In **K.O.Anto & another Vs. State of Akerala and another**, Hon'ble High Court of Kerala was pleased to observe that the powers of the ACJM regarding Sec.14 of the SARFAESI Act is at per with that of the Ld. CJM.

In view of the above facts and circumstances and being satisfied, I think the application was duly made and this court is empowered to entertain the same as there is no legal impediment and therefore the prayer is allowed considering the exigency of the matter. Be it mentioned

here that previously the application was preferred before the Ld. CJM, Barasat was pleased to transfer the same before the court for adjudication.

At the juncture Ld. Advocate for the petitioner preferred the decision of the SC in **Standard Chartered Bank Vs. Noble Kumar and Others** pointing out that for enforcement of Sec.14 of (N) P.S is directed Act the court may appoints receivers as per order 40 of the CPC by any of the Ld. Advocate save the Ld. Advocate on record. In this regard, I found that this court has no empanelled Ld. Advocates to be appointed as receivers, the Secretary of Bidhannagar Bar Association is hereby requested to provide name of any suitable Ld. Advocate in this regard by seven days from passing of this order. Be it mentioned here that substantive order in this regard will be passed after getting name from the local Bar as referred above.

To 20/06/2024 for passing of further order.

Let copy of this order be forwarded to the Secretary of Bidhannagar Bar Association for taking notice and compliance thereof.

Dictated by,

ACJM

ACJM.,Bidhannagar