IN THE COURT OF THE 30TH ADDL.CHIEF METROPOLITAN MAGISTRATE, BENGALURU

Dated: This the 15th day of December, 2020.

:Present:
Sri. I.P.Naik, B.A., LL.B.,
30th ACMM, Bengaluru

C.Miss.No.5419/2020

Petitioner	**:**	**Union Bank of India,** **Erstwhile Corporation Bank)** **Domlur Branch,** **No.294, 7th Cross, Domlur Layout,** **Domlur,** **Bangalore-560 071.** **Rep by its authorised Officer/** **Chief Manager,** **Sri.P.Srinivasu,** **Aged about 46 years,**
		-V/s-
Respondent	**:**	**1.S.Srinivas,** **S/o.Subbanna,** **Aged about 42 years,** **2. Smt.Shwetha.B.S** **W/o.S.Srinivas,** **Aged about 32 years,** **Both are residing at:** **No.17/1, 2nd Floor,** **Mahendra Singh Layout,** **Chunchaghatta Main Road,** **Bangalore-560 062.**

###

-:ORDERS ON PETITION:-

The petitioner Bank has filed this petition U/sec.14 of SARFAESI ACT, (hereinafter, SARFAESI ACT referred as Act), seeking order for taking physical possession of secured interest asset:

2}. **The factual matrix of the petitioner's case as under:-**

The respondents have applied for sanction of loan. As per the application, the petitioner bank sanctioned loan of **Rs.43,90,000/-.** The respondents have executed mortgage deed infavour of the petitioner bank. The Respondents failed to repay the loan amount in terms and conditions of the documents executed by themselves only. Thereafter, the petitioner bank has classified the account of respondents as **NPA on 30.12.2017** by following the guidelines issued by the RBI bearing No. DBR.No.BP.BC 45/21.01.048/2018 under category of doubtful asset. On **16.01.2018,** the petitioner bank has got issued demand notice U/s.13(2) of SARFAESI ACT calling upon them to pay the **outstanding of Rs.29,75,389.50/-** with interest, within 60 days from the date of receipt of notice. The respondents have failed to pay the amount within 60 days. Hence, petitioner bank filed this petition for recovery of loan U/s.14 of SARFAESI ACT.

3. Heard the learned counsel for the petitioner. At the time of hearing, verified the original documents and

immediately the same is returned to learned counsel for the petitioner.

4. The following points arise for my consideration:

1. Whether the petitioner bank is entitled for the relief as sought for.?

2. What Order.?

5. By considering the affidavit of Authorised Officer, documents and hearing of the parties, my answer to the above point is as under:-

Point No.1 : Affirmative

Point No.2 : As per final order

.....................following.

REASONS

6. In arguments the learned counsel for the petitioner reiterated the petition averments in arguments and also reiterated the Provisions of SARFAESI ACT and Guidelines issued by the Reserve Bank of India. This court already held that, respondents applied for sanction of loan, On that basis the petitioner bank sanctioned loan. At that time, the respondents executed loan agreement. The respondents have mortgaged the secured interest property by depositing of title deeds at Annexure-2 and statement of loan account of respondents discloses that, respondents have failed to repay the amount of **Rs.29,75,389.50/-.**

7. In this case, the petitioner bank got issued **demand notice on 16.01.2018,** U/s.13 of SARFAESI ACT calling upon the respondents to pay the balance loan amount and accrued interest within 60 days from the date of receipt of notice. The speed post duly served on the respondents. It reflects from the acknowledgement.

8. Before going to merits of the case, this court has followed law laid down by Hon’ble High Court of Bombay and Hon’ble High Court of Karnataka, this court is not decides the rights, title interest of parties. This court meticulously perused the compliance of guidelines issued by the RBI as defined in Sec.2 (o) of SARFAESI ACT. At this stage, court has relied on classification of account and classification of secure interest asset.

9. This court has relied on Judgement of Hon’ble High Court of Bombay as under:-

Writ Petition No.1273/2017 dated 3.5.2018

Kotak Mahindra Bank Ltd., Vs. State of Maharashtra & Ors.

Para No.19:-We are therefore, of the view that the Magistrate is required to ascertain whether the statements are made by the bank under the nine clauses below Section 14(1) and once he is satisfied that the statements as required in those nine clauses have been made by the bank in its WP 1273 affidavit, the Magistrate/DM would

proceed to grant the application under Section 14(3).

10. In petition as well as affidavit of authorised officer it clearly discloses that, the petitioner bank has classified the loan account of the respondent on **30.12.2017,** under category of doubt full asset.

11. Further, the petitioner bank himself stated that, said account has been remained NPA for a period of more than or equal to 12 months in the account as books of petitioner's bank. In para No.8 petitioner bank specifically pleaded that, on **16.01.2018,** got issued demand notice U/s.13(2) of Sarfesia Act.

12. This court has relied on the Circular issued by RBI bearing No. bearing No. DBR.No.BP.BC 45/21.04.048/2019-18, dated 7.6.2019. This Notification has called as RBI, Prudential Frame Work for the Resolution of trust assets.

13. In these directions, RBI (directions 2019) laid down guidelines classification of NPA and classification of Assets as under:-

I- Prudential Norms:

A. Asset Classification:

In case of restructuring, the accounts classified as 'standard' shall be immediately downgraded as non-performing assets (NPAs), ie., 'sub-standard' to begin with.

The NPA's upon restructuring would continue to have the same asset classification as prior to restructuring. In both cases, the asset classification shall continue to be governed by the ageing criteria as per extant asset classification norms.

Another Circular bearing No.DCBR.BPD.(DCB) MC. No.12/09.14.000/2015-16, dated1.7.2015.

III- Asset Classification

3.1 Classification

3.1.1 Banks should classify their assets into the following broad groups, viz, -

(i) Standard Assets

(ii) Sub-Standard Assets

(ii) Doubtful Assets

(iv) Loss Assets

Definitions:

3.2.1 Standard Assets

Standard Asset is one which does not disclose any problems and which does not carry more than normal risk attached to the business. Such an asset should not be an NPA.

3.2.2-Sub-standard Assets

(i) With effect from March 31, 2005 an asset would be classified as sub-standard if it remained NPA for a period less than or equal to 12 months. In such cases, the current net worth of the borrowers/guarantors or the current market value of the security charged is not enough to ensure recovery of the dues to the banks is full. In other words, such assets will have will defined credit weaknesses that jeopardies the liquidation of the debt and are characterised by the distinct possibility that the banks will sustain some loss, if deficiencies are not corrected.

(ii) An asset where the terms of the loan agreement regarding interest and principal have been re-negotiated or rescheduled after commencement of production, should be classified as sub-standard and should remain in such category for at least 12 months of satisfactory performance under the re-negotiated or rescheduled terms In other words, the classification of an asset should not be upgraded merely as a result of rescheduling, unless there is satisfactory compliance of this condition.

(b) 3.2.3-Doubtful Assets

With effect from March 31, 2005 an asset is required to be classified as doubtful, it is has remained NPA for more than 12 months. For Tier banks, the 12-month period of classification of a substandard asset in doubtful category is effective from April 1, 2009. As in the case of sub-standard assets, rescheduling does not entitle the bank to upgrade the quality of an advance automatically. A loan classified as doubtful has all the weaknesses inherent as that classified as substandard, with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently known facts, conditions and values, highly questionable and improbable.

(c) 3.2.4-Loss Assets

A loss asset is one where loss has been identified by the bank or internal or external auditors or by the Co-operation Department or by the Reserve Bank of India inspection but the amount has not been written off, wholly or partly. In other words, such an asset is considered un collectible and of such title value that its continuance as a bankable asset is not warranted although there may be some salvage or recovery value."

3.3 Guidelines for Classification of Assets

3.3.1 Basic Considerations

(i) Broadly speaking, classification of assets into above categories should be done taking into account the degree of well defined credit weaknesses and extent off dependence on collateral security for realization of dues.

(ii) In respect of accounts where there are potential threats to recovery on account of erosion in the value of security, it will not be prudent for the banks to classify them first as sub-standard and then as doubtful after expiry of 12 months from the date the account has become NPA. Such accounts should be straight away classified as doubtful asset or loss asset, as appropriate, irrespective of the period for which itt has remained as NPA."

14. By considering the guidelines for classification of the asset the petitioner bank requires to classify the account of the respondent as Sub Standard Asset. If said classification continued up-to 12 months, immediately after expiry or 12

months it becomes doubt full asset. Based on this Circular this court has carefully perused petition, as well as affidavit of authorised officer. In para No.11 petitioner bank specifically stated that, account of the respondents classified as NPA and also further, said asset classified as Sub standard account, in Sec. 2(o) of Sarfasia Act , NPA the account of the borrower which has been classified by the bank as Sub Standard Asset or doubt full asset or loss asset. By considering the pleading and statement on oath in para No.11 of the petition, and in the affidavit it clearly discloses that, the petitioner bank has classified the asset of the respondent as Sub Standard asset by following Circular issued by the RBI as cited above, (Supra). By analyzing and appreciating the date of classification of account, classification of asset and satisfied the 9 clauses contents in Sec. 14(1) (I) to (ix) of Sarfasia Act, the petitioner bank is entitled for the relief as sought for. Accordingly, ***Point No.1 is answered in the Affirmative***.

15. Point No.2:- For the foregoing reasons, I proceed to pass the following.

ORDER

The petition filed by the petitioner Bank U/Sec 14 of SARFASI Act is hereby allowed and it is held that the petitioner Bank is entitled to take possession of schedule property in respect of recovery and satisfaction of loan due from the respondent/s.

Further, The CMO of 30th ACMM, is hereby appointed as Court Commissioner for taking possession of the schedule property with assistance of jurisdictional police. The court commissioner shall submits his report within reasonable time to this court. The commissioner's fee is fixed at Rs.5000/-.

Further, office is hereby directed to issue intimation to concern police station to provide necessary protection or assistance to court commissioner while executing order of this court.

The petitioner Bank shall bear the legal expenses, if any incurred in this regard.

By considering spreading of COVID-19 pandemic, the petitioner bank shall take physical possession and scheduled property after COVID-19 comes under control.

(Dictated to the Stenographer and after corrections then pronounced by me in the Open Court on this the **15th day of December, 2020**).

30th, ACMM, Bangalore.

(Order typed vide separate sheet)

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