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

Dated: This the 17th day of November, 2022.

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

C.Miss.No.6050/2022

Petitioner	**:**	**Omkara Assets Reconstructions Private, Limited., (hereinafter referred to as OARPL) In its capacity as Trustee of Omakara PS06/2021-22 trust, Having its registered office at C/515, Kanakia Zillion, junction of L.B.S. Road and CST Road, B.K.C. Annexe, Near Equinox, Kurla (West) Mumbai -400070. A Secularization & Asset Reconstruction Company incorporated under the Companies Act, 1956, having its Registered Office at Interalia its Regd office at: No.9, M.P.Nagar, First Street, Kongu Nagar Extension, Tirupur – 641607 Represented by its authorized officer Mr.Rajesh B Jumani.**
		-V/s-
Respondent	**:**	**1.M/s Samrudhi Renewables Solutions, Rep by its Proprietors No.281, 5th Main Road, MICO Layout, BG Road, Arekere, Bangalore-560076.** **2.Mr.Pramod Prakash Rao (as a Karta of HUF) S/o Prakash Rao No.281, 5th Main Road, MICO Layout, BG Road, Arekere, Bangalore-560076.** **3.Mr.Pramod Prakash Rao S/o Prakash Rao No.281, 5th Main Road, MICO Layout, BG Road, Arekere, Bangalore-560076.** **4. Mrs.Seema Pramod W/o Pramod Prakash Rao No.281, 5th Main Road, MICO Layout, BG Road, Arekere, Bangalore-560076.**

**5.Mr.Prakash Rao (as a Karta of HUF)
S/o Appanna Rao
No.281, 5th Main Road, MICO Layout,
BG Road, Arekere, Bangalore-560076.**

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-:ORDERS ON PETITION:-

The petitioner institution has filed this petition U/sec.14 of SARFAESI ACT, seeking order for take physical possession of secured asset property:

2. **Description of the property.**

All that piece and parcel of the house property bearing site No.E-2/281, H1, Katha Old No.E-2, presently HL No.481, V.P.Katha No.467, situated at Arakere Gramathana, Begur Hobli, Bangalore South Taluk, measuring East to West 40 feet, North to South Tqluk and bounded on:

East by: Property No.E-2/276
West by: Road
North by: Property No.E-2/282
South by: Property No.E-2/280.

Herein after this property is referred as secure asset;

Brief facts of the case:

3. The respondent are approached Indusind Bank Limited for financial assets. The Indusind Bank granted loan of Rs.202.32/- (Rupees Two Hundred Two Lakhs Two only) in favour of respondents on 08.06.2018. At that time of availing loan the respondents executed

various documents including Loan Agreement, Deed of Hypothecation Agreement, Letter of Guarantee and Memorandum of Entry. The respondents utterly failed to repay the loan availed by them. The respondents are due of Rs.1,57,73,738.35/- on 27.10.2021.

4. As per the guidelines issued by Reserve Bank of India loan account of respondents classified as **NPA on 06.11.2020 & 21.03.2021.** The original lend i.e. Indusind Bank Limited assigned the loan in favour of petitioner/secured creditor to take action against respondents for recovery of loan under provisions of SARFAESI ACT, 2002.

5. After classification of the account of respondents as **NPA on 11.11.2021**, petitioner got issued demand notice for payment of loan dues from the respondent. After lapse of 60 days petitioner institution got issued possession notice and also published in 'Vishwavani' and 'Financial Express' dated 19.03.2022. In spite of service of demand notice and possession notice the respondents failed to repay the dues from them. Hence construed to this petition.

6. As per the guidelines issued by Hon'ble High Court of Karnataka in ILR 2007 KAR 16 notice against respondents is hereby dispensed with.

7. Heard arguments. (At the time of hearing original documents are verified with copies produced along with the petitioner, same are correct. Thereafter, original documents are returned to the learned counsel for the petitioner.)

8. The following points arise for my consideration:

> ***1. Whether petitioner is entitle relief as sought for?***
>
> ***2. What Order.?***

9. By considering the affidavit of Authorized Officer, documents and hearing of the party, my answer to the above point is as under:-

Point No.1 : Affirmative

Point No.2 : As per final order

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

REASONS

10. The learned counsel for the petitioner urged that, in this case respondents are availed loan from Indusind Bank Limited and handover the total documents and executed the various documents. The respondents are utterly failed to repay the amount of loan availed by them. Thereafter, the loan account of the respondents classified on NPA in accordance with guidelines issued by Reserve Bank of India. Thereafter got issued demand notice and possession notice and also published possession notice in newspapers. The service of these notice is satisfied. The petitioner institution complied ingredients of sec.14 of SARFAESI ACT. Hence, prays to allow the application.

11. At this stage, I have relied on recent judgment of Hon'ble Apex Court rendered in M/s.R.D.Jain and Co and Capital first limited & Ors. (AIR 2022 SC 4820). In this case their lordships opined that District Magistrate/Chief Metropolitan Magistrate/Additional Metropolitan Magistrate are not required to decide any rights of the parties, but the Magistrates shall satisfied the conditions of Sec.14 of SARFAESI ACT. If he is satisfied with conditions he can pass appropriate order.

12. Further I have also relied on judgment of Hon'ble Apex Court rendered in Balakrishna Rama Tarle V/s Phoenix ARC Pvt. Ltd.(AIR 2022 SC 4756). In this case also their lordships opined that steps taken by the cmm u/sec.14 of SARFAESI ACT is ministerial in nature did not involve adjudicature process. By filing these guidelines issued by their lordships I have examined the petition, affidavit and documents noticed furnished by the petitioner in order to pass ministerial order.

13. The original documents itself discloses that, at the time of availing loan the respondents executed various documents i.e. loan agreement, deed of guarantee, deed of hypothication and deposit of title deeds by executing memorandum of entry these are clearly shows that, the respondents availed loan from the Indusind Bank. The demand notice and possession notice itself discloses that the respondents utterly failed to repay the loan availed them. Accordingly the petitioner institution classified the account of respondents or npa are also take action against the respondents as contemplated u/sec.13 and 14 of SARFAESI ACT. By considering entire file of this case itself discloses that the petitioner successfully satisfied the pre condition of sec.14 of SARFAESI ACT. Therefore it is held that petitioner institution is entitled for relief as sought for. Accordingly, **Point No.1 is answered in the Affirmative.**

14. ***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 SARFAESI 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, Sri.Shivakumar.B, Advocate, 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.

(Dictated to the Stenographer and after corrections then pronounced by me in the Open Court on this the **17th day of November, 2022).**

30th ACMM, Bangalore.

(Order typed vide separate sheet)

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XXX, ACMM, Bangalore.