IN THE DEBTS RECOVERY TRIBUNAL – I AT CHENNAI

Dated this 31st day of December, 2021

PRESENT: SHRI T. RAJESH
PRESIDING OFFICER (i/c)

OA No.198 of 2019

HDFC Bank Limited
Represented by its Authorised Signatory
Mr. T. Mahendiran
No.128, Nelson Manickam Road,
East West Centre, Ground Floor,
Aminjikarai, Chennai 600 029.

And also at:

"Ceebros"
110, 4th Floor, Nelson Manickam Road,
Aminjikarai, Chennai 600 029

…..Applicant

Versus

1. Mr. R. Velusamy
No.6/172D, Pongegoundanputhur
Thathanur, Avinashi,
Near Pudhu Santhai Bus Stop,
Tirupur 638 406.

2. Mr. P. A.Ramasamy,
No.6/172D, Pongegoundanputhur
Thathanur, Avinashi,
Near Pudhu Santhai Bus Stop,
Tirupur 638 406.

….Defendants

Counsel for the Applicant Bank	:	Shri T.K.M. Sai Krishnan
Defendants 1 and 2	:	Exparte

ORDER

1. This application is filed by the applicant bank under Section 19(1) of Recovery of Debts due and Bankruptcy Act, 1993 (formerly Recovery of Debts Due to Banks and Financial Institutions Act, 1993) to issue a recovery certificate for a sum of Rs.13,06,933.29p, due as on 20.2.2019 under Light Commercial Vehicle Loan together with interest thereon @14.01% p.a. and all other applicable overdue charges against the defendants jointly and severally from 20.2.2019 till the date of realization in full and sale of the schedule property along with costs of this application.

2. The facts of the case as stated in the OA, in brief, are as follows:- It is the case of the applicant that the defendants approached the Applicant Bank seeking for a Light Commercial Vehicle Loan and the applicant after considering the same sanctioned the said loan facility to the tune of Rs.14,38,000/- under Loan Account Number 50418353. The Defendants have agreed to the terms and conditions of the loan facility and executed the loan agreement dated 26.8.2017. The defendants also executed other necessary loan documents to secure the above said loan. It is further submitted that as per the stipulated terms and conditions of the said loan agreement, the defendants were bound to repay the aforementioned loan amount along with interest at 14.01% per annum in 48 equated monthly instalments of Rs.39,300/- each, which would commence from 5.10.2017 and end at 5.9.2021. The defendants availed the said loan and purchased the commercial vehicle morefully described in the schedule and duly hypothecated the same in favour of the applicant bank.

3. It is further submitted that the defendants failed to adhere to the terms and conditions of the loan agreement and defaulted in paying the legitimate dues on the respective dates. Hence, the applicant bank issued a legal notice dated 25.2.2019 demanding a sum of Rs.13,06,933.29p as on 20.2.2018 along with interest with effect from the date of the said notice, till realization. Since the said legal notice did not evoke any response from the defendants the present OA before this Tribunal.

4. *Summons were taken out to the defendants and the summons were duly served. As there was no representation for the defendants on 21.6.2019, service was held sufficient and the defendants were called absent and set exparte. The Ld. Counsel for Applicant Bank filed proof affidavit and Exhibits A1 to A12 were marked and thereafter the applicant counsel made his submissions on 21.12.2021 and thereafter the matter stood to this date for passing final orders.*

5. The following issues arise for consideration in the matter: -

(a) Whether the applicant had succeeded in proving the liability of the defendants?

(b) What order as to cost of the proceedings need be passed?

These issues are considered together.

6. Heard the Ld. Counsel for the applicant, perused the OA averments and the record placed before the Tribunal.

7. The evidence of the applicant is led by AW1 who has produced the documents Exhibit A1 to A12 along with the proof affidavit. Exhibit A-1 is the certified copy of the Power of Attorney dated 30.7.2018. Ex.A2 is the original Loan Application Form dated 21.8.2017. Ex.A3 is the Loan Agreement cum Key Fact Statement dated 26.8.2017. Ex.A4 is the original Irrevocable Power of Attorney dated 26.8.2017. Ex.A5 is the original Priority Sector Advance Declaration by Customer Availing Loan dated 26.8.2017. Ex.A6 is the original Forex Un-hedged Exposure Letter dated 26.8.2017. Ex.A7 is the original quotation along with payment receipt of Prabal Motors, Coimbatore. Ex.A8 is the original Declaration submitted by the defendants dated 26.8.2017. Ex.A9 is the original legal notice dated 25.2.2019. Ex.A10 and Ex.A11 are the original proof of service of legal notice in respect of defendants 1 and 2 respectively dated 1.3.2019. Ex.A12 is the statement of accounts duly certified dated 20.2.2019..

8. The proof affidavit of the applicant bank remained unchallenged and unrebutted. Therefore, on a careful consideration of proof affidavit along with Exhibits filed on behalf of the applicant bank, besides the material placed before the Tribunal, this Tribunal is satisfied that the applicant bank has successfully proved the OA claim against the defendants. Point is answered accordingly.

9. In view of the aforementioned discussions, the only conclusion this Tribunal can draw is that the applicant had clearly proved the disbursement of the loan, which the applicant is entitled to realize. Hence, OA is disposed off in the following manner: -

(a) OA No.198 of 2019 stands allowed.

(b) Applicant is permitted to realize a sum of Rs.13,06,933.29p together with interest thereon @14.01% p.a. (simple) against the defendants jointly and severally from 21.2.2019 till the date of realization in full, after deducting the amounts **received or realised under SARFAESI Act** or otherwise during the pendency of OA, from the defendants, and also by selling the schedule mentioned property and other assets of the defendants.

(c) If the sale proceeds are not found sufficient to cover the amount due and payable to the Applicant Bank, the defendants are personally liable for all such amounts due.

(d) Applicant is permitted to realize cost of the proceedings and shall file cost memo within 7 days from the date of the order.

(e) The Recovery Certificate shall be drawn up and issued to the Recovery Officer in terms of this final order.

10. Communicate a copy of the order to the parties concerned in terms of Section 19(21)(i) of the RDB Act, read with Rule 16 of DRT (Procedure) Rules, 1993.

(Dictated to Steno(SN), transcribed by him, corrected, signed and pronounced by me in Virtual Court, through Video Conference on this 31st day of December, 2021)

Sd/-
(T. RAJESH)
PRESIDING OFFICER
(i/c) DRT-I, CHENNAI