

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-COM No.21 of 2016
Date of Decision:-08.02.2017

Mr.Davinder Khanna and another

.Petitioners

Vs.

M/s Cholamandalam Investment and Finance Company Ltd.

.Respondent

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Mr.Rohit Suri, Advocate,
for the petitioner.

Ms.Puja Chopra, Advocate,
for the respondent.

RAKESH KUMAR JAIN, J. (ORAL)

This petition is directed against the notice issued under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 [for short 'the Act') and the possession notice dated 16.01.2017 issued under Section 13(4) of the Act on the ground that the classification of the accounts of the petitioners as NPA on 5.12.2014 by the respondent was illegal because it was only registered as 'Financial Institution' in terms of Section 2(m) of the Act on 5.8.2016. There is no dispute that the accounts of the petitioners with the respondent were classified as NPA on 5.12.2014. It is also not in dispute that at that time, the respondent was a Non-Banking Financial Institution [NBFI], notified as

‘Financial Institution’ on 5.8.2016 to bring it in tune with the provisions of Section 2(1)(m)(iv) on the basis of which the respondent had issued the notice under Section 13(2) & 13(4) of the Act.

Learned counsel for the petitioners has submitted that at the time when the account of the petitioners, with the respondent, were declared NPA, it was not a ‘Financial Institution’ in terms of Section 2(m) of the Act and the guidelines related to the assets classification issued by the Reserve Bank of India [RBI] were not followed.

On the other hand, learned counsel for the respondent has submitted that the classification of the accounts of the petitioners as NPA was only procedural, the issuance of notification on 5.8.2016 would cover the case of the petitioners and relies upon a Full Bench judgment of the Orissa High Court in the case of ***“Sarthak Builders Pvt. Ltd. Cuttak and another Vs. Orissa Rural Development Corporation Limited, Bhubaneswar & others”*** 2015(3) RCR (Civil) 8.

Learned counsel for the respondent has also submitted that the notice issued under Section 13(4) of the Act can be challenged by the petitioners in terms of Section 17 of the Act before the Debt Recovery Tribunal [DRT] and that the respondent is a private ‘Financial Institution’, therefore, the writ petition is not maintainable.

Learned counsel for the petitioners, at this stage, prays for withdrawal of the petition in order to avail their remedy of filing an application under Section 17 of the Act before the DRT and has prayed that they may be allowed to raise all the issues involved in this

petition before the DRT. Learned counsel for the respondent has not objected and hence, the present petition is hereby disposed of as withdrawn with liberty to the petitioners to avail their remedy of filing application under Section 17 of the Act before the DRT, in accordance with law, if so advised and are permitted to raise all the issues involved in this petition before it.

08.02.2017
Vivek

(RAKESH KUMAR JAIN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>