

*** HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND**

HON'BLE SRI JUSTICE P.KESHAHA RAO

+ Writ Petition Nos.7082, 8350 and 9673 of 2018

% Date: 18-12-2018

W.P.No.7082 of 2018:

1. M/s Transstroy India Ltd., A company incorporated under the Companies Act, 1956 and having its Regd. Office at:
H.No.8-24-42, Tobacco Colony, Mangalagiri Road,
Guntur-522 001, and
Corporate office at: 201, 202A & 202B, Guttala Begumpet,
Kavuri Hills, Hyderabad, Rep. by its Managing Director

Ch.Sridhar

S/o Ch.Jagannadha Rao, Aged about 52 years

2. Ch.Sridhar S/o Late Jagannadha Rao, Aged about 52 years,
Occ: Business, 201, 202A & 202B, Guttala Begumpet,
Kavuri Hills, Hyderabad

... Petitioners

Vs.

\$ 1. M/s Canara Bank, Rep. by its Dy. General Manager,
Prima Corporate Branch, TSR Complex, 2nd Floor,
1-701, S.P. Road, Park Lane, Secunderabad-500 003

2. M/s Andhra Bank, Specialised Corporate Finance
Branch, Rep. by its Chief General Manager and
Authorised Signatory, The Belvedere, 6-3-891&892,
Rajbhavan Road, Somajiguda, Hyderabad-500 082

3. M/s Corporation Bank, Rep. by its Dy. General Manager,
Corporate Banking Branch, 10th Floor, Hindustan Times House,
18/20, K.G. Marg, Connaught Place, New Delhi-110 001

4. M/s Bank of India, Rep. by its Dy. General Manager,
Large Corporate Branch, 10-1-1199/2, PTI Building,
1st Floor, A.C. Guards, Hyderabad-500 004

5. M/s Central Bank of India, Rep. by its Asst. General Manager,
Corporate Finance Branch, Bank Street, Koti, Hyderabad

6. M/s Dena Bank, Rep. by its Asst. General Manager,
Bank Street, Hyderabad-500 195

7. M/s Bank of Baroda, Rep. by its Dy. General Manager,
Corporate Financial Services, Hyderabad Branch, 3-6-262/6,
Tirumal Estates, 3rd Floor, Himayatnagar, Hyderabad

8. M/s Allahabad Bank, Rep. by its Asst. General Manager,
IF Branch, 6-3-850/3, Ameerpet, Hyderabad
9. M/s United Bank of India, Rep. by its Chief Manager,
Shop No.4-3-331, Bank Street, Koti, Hyderabad-195
10. M/s South India Bank Ltd., Rep. by its Asst. General Manager,
Corporate Branch, Dega Towers, Somajiguda, Hyderabad
11. M/s UCO Bank, Rep. by its Asst. General Manager,
Flagship Corporate Branch, 6-3-1108, Ground Floor,
Navabharat Chambers, Raj Bhavan Road,
Somajiguda, Hyderabad-500 082
12. M/s Union Bank of India, Rep. by its Asst. General Manager,
Khairatabad Branch, 6-2-984, Pavani Plaza,
Commercial Complex, Raj Bhavan Road, Hyderabad-02
13. M/s Vijaya Bank, Rep. by its Asst. General Manager,
Corporate Banking Branch, Head Office Building,
41/2, M.G. Road, Bangalore
14. M/s Bank of Maharashtra, Rep. by its Asst. General
Manager, Sultan Bazar Branch, 4-3-379, 1st Floor,
Bank Street, Koti, Hyderabad-01
15. M/s GPVR Engineers Ltd., Having its Regd. Office at
82293/82/A,
Plot No.739A, Road No.37, Jubilee Hills, Hyderabad-33,
Rep. by its Managing Director G.Veera Sekhar Reddy

... Respondents

! Counsel for Petitioners: Mr. S. Ravi, Senior Counsel,
(in W.P.No.7082/2018) Rep. Mr. Ch. Pushyam Kiran

Counsel for Petitioners: Mr. M. Laxminarasimham
(in W.P.Nos.8350&9673/2018)

Counsel for Respondents: Mr. R. Raghunandan Rao,
Senior Counsel, representing
Smt. V. Dyumani, Standing Counsel for
Andhra Bank;
Mr. S. Niranjan Reddy, Senior Counsel,
representing Ms Gorantla Sri Ranga
Pujitha and Ms Rubaina S. Khatoon
for Auction Purchaser;
Ms T. Vidya Rani,
Standing Counsel for Canara Bank;

Mr. Ch. Siva Reddy, SC for Central Bank of India;
M/s M.V. Kini & Co., Advocates & Solicitors,
for Dena Bank;
Mr. G. Vivekanand, SC for United Bank of India;
Mr. Manohar Reddy Nandyala, SC for UCO Bank;
Mr. B.S. Prasad, SC for Union Bank of India and
Vijaya Bank;

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> Head Note:

? Cases referred:

- 1) (1994) 5 SCC 213
- 2) (1996) 5 SCC 280
- 3) (2010) 10 SCC 1



HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE P.KESHAHA RAO

Writ Petition Nos.7082, 8350 and 9673 of 2018

Common Order: *(per V.Ramasubramanian, J.)*

A company in respect of which a "Resolution Process" has been initiated in terms of the provisions of the Insolvency and Bankruptcy Code, 2016 has come up with the above three writ petitions, challenging in the first writ petition the measures taken by the secured creditors under the Securitisation Act, 2002, purportedly in violation of the directions issued by the Reserve Bank of India (RBI) under Section 35AB of the Banking Regulation Act, 1949 and challenging in the second and third writ petitions, the auction sale of some properties under the *Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act*, 2002 (the Securitisation Act, 2002, for short).

2. Heard Mr. S. Ravi, learned Senior Counsel and Mr. M. Laxminarasimham, learned counsel appearing for the petitioners, Mr. R. Raghunandan Rao, learned Senior Counsel appearing for Andhra Bank, Mr. S. Niranjan Reddy, learned Senior Counsel appearing for the auction purchaser, Ms. T. Vidya Rani, learned Standing Counsel for Canara Bank, Mr. Ch. Siva Reddy, learned Standing Counsel for Central Bank of India, M/s. M.V. Kini & Co., Advocates & Solicitors, for Dena Bank, Mr. G. Vivekanand, learned Standing Counsel for United Bank of India, Mr. Manohar Reddy Nandyala, learned Standing Counsel for UCO Bank and Mr.

B.S. Prasad, learned Standing Counsel for Union Bank of India and Vijaya Bank.

3. The first petitioner in these writ petitions is an infrastructure company, which had purportedly taken up several roads and irrigation projects. During the course of its business, the petitioner availed Fund based and Non-Fund based Term Loans and working capital limits from 14 banks. The account of the petitioner with the banks became a non performing asset, during the period from 2014 to 2016. The names of the banks from which facilities were availed, the dates on which the accounts became NPA and the amounts outstanding as on the date of classification of NPA are filed by the petitioners themselves in the form of a tabular column as follows:

Sl. No.	Bank Name	Date of NPA	Amount due as on the date of classification of NPA (in crores)
1	Canara Bank	30-5-2015	273.12
2	Union Bank of India	30-12-2015	227.50
3	Bank of Baroda	10-5-2014	419.68
4	UCO Bank	31-01-2015	60.04
5	Andhra Bank	31-12-2015	293.61
6	Central Bank of India	30-01-2015	232.63
7	Bank of India	31-12-2015	172.79
8	Dena Bank	03-12-2014	123.50
9	Allahabad Bank	31-12-2014	246.23
10	Vijaya Bank	22-10-2014	15.00
11	Corporation Bank	28-11-2014	298.14
12	The South Indian Bank	31-3-2016	80.00
13	United Bank of India	22-10-2014	124.94
14	Bank of Maharashtra	31-12-2015	119.95
			Rs. 2687.13 cr.

4. For securing the due repayment of the loans, the petitioners had mortgaged all the immoveable properties to various banks. About 11 items of properties were mortgaged to the Andhra Bank,

one item mortgaged to the Bank of Baroda, 6 items of properties mortgaged to Bank of India and so on and so forth.

5. It appears that various banks have filed applications under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 before the Debts Recovery Tribunal at Hyderabad, details of which are as follows:

Sl. No.	Case No.	Bankers Name	Amount Claimed Rs. (In crores)
1	O.A.No.445/2016	UCO Bank	72.73
2	O.A.No.1145/2016	Bank of Maharashtra	74.03
3	O.A.No.1153/2016	Allahabad Bank	521.30
4	O.A.No.1333/2016	Dena Bank	106.98
5	O.A.No.1184/2016	Bank of Maharashtra	111.81
6	O.A.No.1555/2016	Andhra Bank	584.13
7	O.A.No.2797/2017	South India Bank	37.67
8	O.A.No.3115/2017	Canara Bank Central Bank of India Union Bank of India Corporation Bank Bank of India United Bank of India South India Bank Dena Bank	398.97 342.71 267.07 453.29 199.05 166.16 108.19 162.14
	Total		3694.47

6. After the coming into force of various provisions of the Insolvency and Bankruptcy Code, 2016, with effect from various dates, an ordinance known as “Banking Regulation (Amendment) Ordinance, 2017” was brought, for amending Banking Regulation Act, 1949. Pursuant to the Ordinance, an Internal Advisory Committee (IAC) was constituted by the Reserve Bank of India for tackling the problem of stressed assets in the banking sector. Based on the recommendations of the IAC, 12 accounts were identified for immediate reference to resolution.

7. Thereafter, the Reserve Bank of India issued a Directive in DBR.No.BP.BC.1941/21.04.048/2017-18, dated 28-8-

2017. In paragraph-3 of the said Directive, it was provided that out of the 12 accounts identified, those where more than 60% of the total outstanding was classified as NPA on Central Repository of Information on Large Credits (CRILC), will be given time till December 13, 2017 for resolution outside the Insolvency and Bankruptcy Code (IBC) and that if no viable resolution plan was finalised before the said date, insolvency proceedings under the provisions of the IBC may be initiated before December 31, 2017.

8. The account of the petitioner with the Canara Bank was identified as one of those 12 accounts covered by the said Directive, dated 28-8-2017, of the RBI.

9. In paragraph-4 of the Directive dated 28-8-2017, the RBI advised the Canara Bank along with the other lenders who were part of the Joint Lenders' Forum/Consortium to make every effort to complete the Resolution Process before December 13, failing which to initiate insolvency proceedings before December 31, 2017.

10. Since the entire dispute on hand revolves around the binding nature of the RBI's Directive dated 28-8-2017, the same is extracted in entirety as follows:

"Resolution of Stressed Assets

Please refer to the Press Release No.2016-17/3363 dated June 13, 2017 issued by the Reserve Bank of India on the recommendations of the Internal Advisory Committee (IAC) constituted pursuant to the Banking Regulation (Amendment) Ordinance, 2017. Based on the recommendations of the IAC, 12 accounts were identified for immediate reference for resolution under the Insolvency & Bankruptcy Code, 2016 (IBC).

2. As regards other NPA accounts, the IAC had recommended that banks may be required to finalise a resolution plan within six months, failing which these may be

directed for reference under IBC. The IAC has since met twice to deliberate on the specific contours of the approach to be followed in respect of such NPA accounts.

3. Based on the IAC recommendations, it has been decided that of the above accounts, those which are materially NPA as on June 30, 2017, i.e., where more than 60 per cent of the total outstanding is classified as NPA on CRILC, will be given time till December 13, 2017 for resolution outside IBC. In the event that a viable resolution plan is not finalised and implemented before the said date, insolvency proceedings under the provisions of the IBC may be initiated before December 31, 2017, unless already initiated.

4. Accordingly, enclosed are two separate lists of accounts, one, where the Canara Bank is the lead bank (Annex 1), and, two, where the Canara Bank is a member of the Joint Lenders' Forum (JLF) (Annex 2). The JLF process should already have been initiated in respect of these accounts. We advise that the Canara Bank, along with other lenders that are part of the JLF/consortium, make every effort to complete the resolution process and implement a viable resolution plan for these accounts before December 13, 2017, failing which, the JLF/ consortium may initiate insolvency proceedings in respect of the account/s under the provisions of the IBC, before December 31, 2017, unless already initiated. The resolution plan, wherever feasible, may involve restructuring under any of the existing guidelines or sale of the stressed debt to an interested buyer/investor, including any other viable and legal restructuring plan.

5. With a view to avoiding bunching of references to National Company Law Tribunal (NCLT), the JLF/ consortium may, at their discretion, refer cases under IBC even earlier. In this connection, it may be observed from the remarks against the accounts in the Annexures that in most cases, more than 60 per cent of the total outstanding has been NPA since June 30, 2016, indicating that these accounts have eluded a resolution despite passage of time. In some cases, restructuring has been attempted under some scheme but has been unsuccessful to date.

6. It is further advised that any resolution plan finalised in respect of the said account outside IBC will be subject to a rating requirement, i.e., in all resolution plans where the lenders continue to hold a portion of the debt, the residual debt must be rated as investment grade by two external credit rating agencies (CRAs)

accredited by the Reserve Bank for bank loan ratings. In case the resolution plan is not able to get the required rating, such accounts shall be required to be referred for resolution under IBC before December 31, 2017.

7. There will be no change in the asset classification norms and income recognition norms in respect of the said accounts, i.e., the accounts will continue to be classified as standard or non-performing as per extant norms even after the insolvency proceedings are initiated. However, the minimum provisions required to be maintained against those accounts against which resolution proceedings are initiated under the IBC would be the higher of the following:

(a) 50 per cent for secured portion of the outstanding balance plus 100 per cent for the unsecured portion.

(b) Provisions required to be maintained as per the extant asset classification norms.

8. The accounts of the borrowers, in respect of whom the Adjudicating Authority under the IBC passes a liquidation order, shall attract 100 per cent provision on an immediate basis from the date of such order.

9. In respect of accounts which have already been classified as NPA as on the date of IBC filing, the said provisions will be applicable from such date. For other accounts classified as 'Standard' as on the date of IBC filing, the above provisioning norms will be effective from the insolvency commencement date, i.e., the date of admission of the application for initiating corporate insolvency resolution process by the Adjudicating Authority under the IBC.

10. The additional provisions, as required in each case shall be required to be made in the course of the current financial year, i.e., before March 31, 2018. These additional provisions will be allowed to be reversed if and when account becomes standard."

11. It appears that pursuant to the said Directive, a meeting of the Members of the Joint Lenders' Forum was convened first on 20-12-2017 and then on 27-12-2017 in which the representatives of all the banks and the borrowers participated. Though one of the banks wanted to consider the chances of recovery both outside and

through the National Company Law Tribunal (NCLT), the majority of the lenders opined that an application for resolution shall be filed before NCLT before the due date viz., 31-12-2017 as instructed by the RBI, in their Directive dated 28-8-2017.

12. Accordingly, a petition was filed by the Canara Bank in the last week of December 2017 before the NCLT. The petition was admitted by the NCLT on 10-10-2018, with effect from which a moratorium in terms of Section 14 of the IBC, 2016 came into effect.

13. In the meantime, the Andhra Bank which is one of the Members of the Joint Lenders' Forum issued an auction sale notice on 11-01-2018, conducted an auction of the secured assets on 15-02-2018 and issued a Sale Certificate on 02-3-2018 under the Securitisation Act, 2002. Therefore, the petitioner first came up with the writ petition W.P.No.7082 of 2018 challenging the measures taken by the Andhra Bank under the Securitisation Act, 2002, as being contrary to the Directives issued by the RBI under Section 35AB of the Banking Regulation Act, 1949. Subsequently, the petitioners came up with two more writ petitions, challenging the auction sales and the Sale Certificates issued.

14. Before proceeding further, we must record the fact that all the three writ petitions were filed in March, 2018, immediately after the sale was conducted. At the time when the writ petitions were filed, the application filed by the Canara Bank under the IBC, 2016 had not been admitted. It was actually admitted on 10-10-2018.

15. It must also be recorded at this juncture that challenging the Sale Notices, the petitioners have also filed an appeal in

S.A.No.60 of 2018 on the file of the Debts Recovery Tribunal-II, Hyderabad, under Section 17 of the Securitisation Act, 2002. In the said appeal, the petitioners sought stay of the auction proposed to be held on 15-02-2018. The Tribunal granted a conditional order of stay directing the petitioners to deposit 30% of the total dues. The petitioners obviously did not comply with the conditional order but have come up with the above writ petitions.

16. The primary contention of Mr.S.Ravi, learned Senior Counsel for the petitioners is that the directions issued by the RBI under Section 35AB of the Banking Regulation Act, 1949 are binding on all the banks and that therefore once a decision was taken, as per the directives of RBI, in the meeting of the Members of the Joint Lenders' Forum to initiate a Resolution Process for the benefit of all the stake holders, it was not open to a member bank to proceed under the Securitisation Act, 2002, to recover the dues, for appropriation of the sale proceeds to themselves.

17. We have carefully considered the above submissions. Since the entire dispute revolves around the RBI directives and the reach of section 35 AB of the Banking Regulation Act, 1949, it would be useful to start with the historical background of the statute.

Historical Background :

18. The Banking Regulation Act, 1949 has traces of the colonial past. Provisions relating to Banking Companies were first introduced in 1936, in Part-XA of the Indian Companies Act, 1913, but they were found to be inadequate. Therefore, a bill to amend the law relating to Banking Companies was introduced in the Legislative

Assembly in November, 1944. After the bill lapsed, a fresh bill with certain modifications was introduced in March, 1946 and was referred to the Select Committee in April, 1946. When the report was pending, the Indian Independence Act, 1947 was passed and a motion for continuation of the previous bill was adopted. But for various reasons the bill was withdrawn on 30-01-1948, (the date on which Mahatma was assassinated). Thereafter, a Banking Companies bill was introduced, with various features, such as to bring within the scope of legislation, institutions which received deposits, repayable on demand or otherwise etc. The features of the bill included (1) inspection of books of accounts of banks by the Reserve Bank, (2) bringing the Reserve Bank of India into closer touch with Banking Companies, and (3) widening the powers of the Reserve Bank of India so as to enable it to come to the aid of Banking Companies in times of emergency.

19. The Banking Companies bill was passed into an Act known as "The Banking Companies Act, 1949". The nomenclature of the Act was later changed to Banking Regulation Act, 1949 under the Banking Laws (Application to Cooperative Societies) Act, 1965.

20. The Banking Companies Act, 1949 has so far undergone several amendments (perhaps more than about 40). By one of those amendments namely the Banking Companies (Amendment) Act, 1956 (Act 95 of 1956), Section 35 A was inserted into the Banking Regulation Act, 1949. Section 35A (1) in its present form reads as follows:

“35A Power of the Reserve Bank to give directions. —

(1) Where the Reserve Bank is satisfied that—

(a) in the [public interest]; or

(aa) in the interest of banking policy; or

(b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or

(c) to secure the proper management of any banking company generally,

it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.

21. The words “public interest” appearing in clause (a) of sub-section (1) of Section 35A was substituted for the words “national interest” by Amendment Act, 7 of 1961. Similarly, the words appearing in clause (aa) of sub-section (1) of Section 35A were inserted by way of Amendment Act 58 of 1968.

22. Though sweeping amendments were made to the Banking Regulation Act, 1949, under the Banking Laws (Amendment) Act, 2012 (Act 4 of 2013), Section 35A remained untouched. However, after the enactment of The Insolvency and Bankruptcy Code, 2016, another amendment was passed under the Banking Regulation (Amendment) Act, 2017 primarily for (1) insertion of two provisions under Sections 35AA and 35AB and (2) amendment of Section 51. Section 35 AA empowers the Central Government to authorise the Reserve Bank to issue directions to Banking Companies to initiate insolvency resolution process under the provisions of the Insolvency and Bankruptcy Code. Section 35AB empowers the Reserve Bank

itself to issue directions to any banking company for resolution of stressed assets. Sections 35AA and 35AB read as follows:

“Power of Central Government to authorize Reserve Bank for issuing directions to banking companies to initiate insolvency resolution process.

35AA. *The Central Government may, by order, authorize the Reserve Bank to issue directions to any banking company or banking companies to initiate insolvency resolution process in respect of a default, under the provisions of the [Insolvency and Bankruptcy Code, 2016](#).*

Explanation.—For the purposes of this section, “default” has the same meaning assigned to it in clause (12) of section 3 of the Insolvency and Bankruptcy Code, 2016.

Power of Reserve Bank to issue directions in respect of stressed assets.

35AB. *(1) Without prejudice to the provisions of section 35A, the Reserve Bank may, from time to time, issue directions to any banking company or banking companies for resolution of stressed assets.*

(2) The Reserve Bank may specify one or more authorities or committees with such members as the Reserve Bank may appoint or approve for appointment to advise any banking company or banking companies on resolution of stressed assets.’ ”

The Distinction between sections 35 AA and 35 AB

23. Primarily the distinction between Sections 35AA and 35AB appear to be as follows:

(1) Section 35AA empowers the **Central Government to authorise** the Reserve Bank of India to issue directions. But Section 35AB empowers the **Reserve Bank of India itself** to issue directions;

(2) The direction to be issued under Section 35AA is for **the initiation of insolvency resolution process under the IBC, 2016**. But the directions to be issued under Section 35AB are **for a mere resolution and not the insolvency resolution process**;

(3) The direction under Section 35AA for the initiation of insolvency resolution process, should be **in respect of a default**. But the direction to be issued under Section 35AB should be **in respect of the stressed assets**.

(4) The directions to be issued under section 35AA are specifically for taking recourse to the provisions of IBC, 2016. But Section 35 AB does not speak of IBC, 2016 at all.

24. The above distinctions between Sections 35AA and 35AB assume significance in the light of the nature and source of power. **If the directions issued by the Reserve Bank of India are for the initiation of insolvency resolution process under the Insolvency and Bankruptcy Code, then such directions must be issued only under Section 35 AA and there must be an authorization by the Central Government for the Reserve Bank of India to issue such directions. But if the directions are for a mere resolution of stressed assets outside the purview of the Insolvency and Bankruptcy Code, then the source of power can be traced to Section 35AB, wherein the authorization of the Central Government may not be necessary.**

The status of the RBI letter dated 28-08-2017

25. If we have a look at the Reserve Bank of India's letter dated 28-08-2017, around which the entire case revolves, the same could fall only within the purview of Section 35AB and not Section 35AA. This is why paragraph 3 of the Reserve Bank of India's letter dated 28-08-2017 speaks about a resolution plan outside the Insolvency and Bankruptcy Code. If the Reserve Bank of India directive dated 28-08-2017 has to be construed as a directive under Section 35AA, then the Reserve Bank of India should have had authorization from the Central Government. It is not the case of the petitioners nor any of the banks and it is also not borne out by the

Reserve Bank of India's letter dated 28-08-2017 that there was an authorization by the Central Government for the Reserve Bank of India to issue a direction under Section 35AA. The petitioners themselves are pitching their claim only on the basis that the letter dated 28-08-2017 is a directive under Section 35AB.

26. If the Reserve Bank of India directive dated 28-08-2017 is one under Section 35AB, its binding nature would extend only up to the time when a resolution process (and that too in respect of stressed assets) outside the IBC, 2016 fails. A further directive to the banks to initiate insolvency resolution process through IBC, 2016, upon the failure of the resolution plan under Section 35AB could have been issued only upon authorization by the Central Government under Section 35AA. Keeping this important aspect in mind, let us now turn our attention to the binding nature of the Reserve Bank of India directives.

Binding nature of RBI directives

27. Since Sections 35AA and 35AB could be taken only as species, Section 35A being their genus, the case law developed on Section 35A may equally apply to Sections 35AA and 35AB.

28. In **Corporation Bank v. D.S. Gowda**¹, the Supreme Court pointed out that banks could violate the directives issued by the Reserve Bank of India only at the peril of inviting penal action. This decision was followed in **Bank of Baroda v. Jagannath Pigment & Chemicals**². A Constitution Bench of the Supreme Court in **Central Bank of India v. Ravindra ((2002) 1 SCC 367)** cited with approval

¹ (1994) 5 SCC 213

² (1996) 5 SCC 280

the decision in **D.S. Gowda** by pointing out that the directions issued by the Reserve Bank of India have statutory flavour. The decision in Central Bank of India was followed in **Sardar Associates v. Punjab & Sind Bank ((2009) 8 SCC 257)** and in **Sudheer Santilal Mehta v. Central Bureau of Investigation ((2009) 8 SCC 1)**. In **Sudheer Santilal**, the Court pointed out that the directions of the Reserve Bank of India are statutory in character.

29. In so far as the binding effect of the Reserve Bank of India's directions are concerned, there is virtually no difference between (i) the directions issued under Section 35A (ii) the directions issued under Section 35AA and (iii) those issued under Section 35AB. All of them have an equally binding force. But the nature of the directions that could be issued under these 3 provisions greatly vary. Essentially the directions that could be issued under Section 35A may arise out of public interest or the interest of the banking policy or the prevention of the affairs of the banking company from being conducted in a manner prejudicial to the interests of the depositors or the banking company or the securing of proper management of the banking company. But the directions to be issued under Section 35AA is for the initiation of an insolvency resolution process under the IBC, 2016 in respect of a default. This is in contrast to the directions that could be issued under Section 35AB for the resolution of stressed assets. In other words, while the nature and scope of the directions issued by the Reserve Bank of India may vary from Section 35A to Section 35AA to Section 35AB, their binding nature does not undergo any change.

30. We have already noted the distinguishing features between Section 35AA and Section 35AB. At the cost of repetition, it may be pointed out that the primary distinction is that the directions issued under Section 35AA should be for initiation of insolvency resolution process in respect of a default, under the Insolvency and Bankruptcy Code, 2016, while the directions under section 35 AB are for a resolution of the stressed assets. The word “default” is defined in the Explanation under Section 35AA to have the same meaning as assigned to it under Section 3 (12) of the Insolvency and Bankruptcy Code, 2016. Section 3 (12) of the Insolvency and Bankruptcy Code defines a “default” to mean non payment of a debt, when the whole or any part of the amount of debt has become due and payable, but is not repaid by the debtor. Therefore, every default will be covered by Section 35AA, since an insolvency resolution process under the Insolvency and Bankruptcy Code is not merely for recovery of the dues but also for balancing the interests of all the stakeholders. On the contrary, the directions under Section 35AB are confined to a resolution of stressed assets (not mere defaults) outside the Insolvency and Bankruptcy Code. **As we have noted earlier, one of the important distinctions between Section 35AA and Section 35AB is that the former speaks about “insolvency resolution process”, while the latter speaks about “resolution process”. The focus of Section 35AA is on default, while the focus of Section 35AB is on “stressed assets”, which expression is not defined either in the Banking Regulation Act or in the Insolvency and Bankruptcy Code, 2016.**

31. Therefore, ***there is clear compartmentalization between (1) the source of power under Section 35AA and the source of power under Section 35AB, (2) the nature of the directives that could be issued under these provisions and (3) the type of resolution process that both of them speak about.***

32. From the aforesaid distinguishing features, it will be clear that a direction issued by the Reserve Bank of India in exercise of the power conferred by Section 35AB, has a binding force only up to the stage of a final outcome reached in the resolution process outside the Insolvency and Bankruptcy Code. Once a Bank has explored the resolution process outside the Insolvency and Bankruptcy Code and it failed, the Bank has complied with the directive issued by RBI under Section 35AB. Thereafter, the Bank will be free to choose its own course of action for recovery of dues. If the Bank is to be bound to take recourse only to the provisions of IBC, 2016, then the RBI should have issued directions under section 35AA, for which an authorization from the Central Government was necessary. In this case, the RBI letter dated 28-08-2017 comprises of 2 parts, the first directing the Banks to seek resolution outside IBC, 2016 on or before 13.12.2017 and the second directing the Banks to seek resolution under the provisions of IBC after 13-12-2017 but before 31-12-2017. The second part of the direction did not have a statutory force since it was not issued with the authorization of the Central Government under section 35AA. Hence the measures taken by the Andhra Bank under the Securitization Act,

2002, after the failure of the resolution process outside the IBC, cannot be said to be violative of the direction issued by the RBI.

33. There is one more aspect. ***Section 2 of the Banking Regulation Act, 1949 makes it clear that the provisions of the said Act shall be in addition to and not, save as expressly provided therein, in derogation of the Companies Act, 1956 and any other law for the time being in force.*** In *ICICI Bank v. Official Liquidator*³, the Supreme Court made it clear that the Banking Regulation Act, 1949 is in addition to and not in derogation of any other law.

34. ***If the provisions of the Banking Regulation Act, 1949 are in addition to and not in derogation of any other law, we fail to understand how the directives issued by the Reserve Bank of India in exercise of the power conferred by Section 35AB of the said Act would not be in addition to and in derogation of the provisions of the Securitisation Act, 2002.*** Any directives issued by the Reserve Bank of India to a banking company to initiate an insolvency resolution process could not be understood to mean that the power conferred upon the banks and financial institutions by the Securitisation Act, 2002, to enforce their security interest stood suspended. If the Banking Regulation Act, 1949 itself is in addition to and not in derogation of any other law, any direction issued by RBI under the Act could also only be in addition to and not in derogation of any other law. To put it differently, ***if the primary legislation***

³ (2010) 10 SCC 1

itself is in addition to and not in derogation of any other law, the subordinate legislation would equally be so.

35. In fact, even the Securitisation Act, 2002 confers powers upon the Reserve Bank of India to issue directions to asset reconstruction companies, as the Banking Regulation Act does not cover asset reconstruction companies. Section 12 (1) of the Securitisation Act, 2002 empowering the Reserve Bank of India to issue directions to asset reconstruction companies, is almost *in pari materia* with Section 35A of the Banking Regulation Act, 1949.

36. Therefore, the principles that flow out a careful comparative analysis of the provisions of (1) the Banking Regulation Act, 1949, (2) the Securitisation Act, 2002 and (3) the Insolvency and Bankruptcy Code, 2016, can be summarized as follows:

(1) Since the source of power for the Reserve Bank of India to issue directions under Section 35AB differs from the source of power available under Section 35AA and also since the scope of the directions that could be issued under both provisions are different from each other, any direction issued by Reserve Bank of India under Section 35AB has a binding force only in relation to a resolution process outside IBC. To put it differently, if the Reserve Bank of India has to issue a direction to a bank to initiate an insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 to the exclusion of the remedies available to the bank under all other enactments including the Securitisation Act, 2002, (assuming that it has such a power inspite of section 2) then such a direction can be issued only under authorization from the Central

Government in terms of Section 35AA. If a direction is issued by Reserve Bank of India only under Section 35AB, the bank is bound to the extent of exploring a resolution process outside the Insolvency and Bankruptcy Code. The moment it fails the bank is free to take recourse to the other legal remedies.

(2) In view of Section 2 of the Banking Regulation Act, 1949, the provisions of the Banking Regulation Act itself are in addition to and not in derogation of any other law for the time being in force. The same would include the Securitisation Act, 2002. If the primary legislation, which confers power upon the Reserve Bank of India to issue statutory directions, itself is in addition to and not in derogation of any other law, the subordinate legislation cannot be in derogation of any other law.

(3) The Reserve Bank of India's letter dated 28-08-2017, which forms the sheet anchor of the case of the petitioners does not speak about any authorization given by the Central Government to initiate "insolvency resolution process" in respect of default, under the Insolvency and Bankruptcy Code. The Reserve Bank of India's letter speaks only about initiation "resolution process in respect of stressed assets". Therefore, the moment the respondent banks have complied with paragraphs 3 and 6 of the Reserve Bank of India's letter dated 28-08-2017 by exploring a process of resolution outside the Insolvency and Bankruptcy Code, the banks can be said to have sailed out of the Reserve Bank of India's directive safely after due compliance. It is the admitted case of the petitioners that a resolution process outside the Insolvency and Bankruptcy Code was initiated

and the same resulted in failure, after the Joint Lenders Forum Meeting held on 27-12-2017. By exploring the resolution process outside the Insolvency and Bankruptcy Code, the consortiums of banks have duly complied with the RBI's letter dated 28-08-2017. The moment the resolution process failed to yield any outcome, the banks became free to choose any one or more of the alternatives available to them. This is because the RBI's letter is in terms of Section 35AB and not in terms of Section 35AA.

37. Therefore, the one and only contention on the basis of which the petitioners have assailed the measures initiated by the Andhra Bank, under Section 13 (4) of the Securitisation Act, 2002 and the sale conducted thereunder, cannot hold water. Hence, the writ petitions are liable to be dismissed.

38. But before we conclude, we must also record one aspect. The Canara Bank has in fact filed an application under Section 7 of the Insolvency and Bankruptcy Code for a corporate insolvency resolution process. It is stated across the bar that the same was filed by 31-12-2017. The National Company Law Tribunal ordered notice on 13-02-2018 in the said application and it was eventually admitted on 10-10-2018. Therefore, the moratorium under Section 14 of IBC, 2016 has come into force. It is clear from the decision of the Supreme Court in **Arcelormittal India Private Limited v. Satish Kumar Gupta and others** decided on 04-10-2018 that the corporate insolvency resolution process commences from the date of admission of the application. Therefore, on and after 10-10-2018, even a secured creditor like a bank would not be entitled to proceed

to enforce the security interest by any other mode. But this bar for invoking the provisions of any other enactment arises, not on account of RBI's letter, but out of the Insolvency and Bankruptcy Code, 2016 with effect from the date of commencement of the corporate insolvency resolution process.

39. In the case on hand, the notice for auction sale was issued on 15-02-2018 and the sale took place on 02-03-2018. This was much before the date of commencement of the insolvency resolution process. This is why Mr. S. Ravi, learned senior counsel appearing for the petitioners did not pitch his claim on Section 14 or any other provisions of the Insolvency and Bankruptcy Code, 2016, but proceeded only on the basis of Section 35AB of the Banking Regulation Act.

40. As an upshot of the discussion, the writ petitions are liable to be dismissed, and accordingly, they are dismissed. No costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V.RAMASUBRAMANIAN, J

P.KESHA RAO, J

Date: 18-12-2018

Ak/Ksn

Note: L.R. copy to be marked.

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE P.KESHAHA RAO



Writ Petition Nos.7082, 8350 and 9673 of 2018

(Common Order -- per VRS, J.)

Ksn

18th December, 2018.