

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: May 29, 2019

Judgment delivered on: July 01, 2019

+ W.P.(C) 3356/2019, CM No. 23095/2019

TIRUPATI BUILDINGS AND OFFICES PVT. LTD.

..... Petitioner

Through: Mr. Parag P. Tripathi, Sr. Adv.
with Mr. Pulkit Deora, Ms. Mishika
Bajpai and Ms. Sylvine Sarmah, Advs.

versus

RESERVE BANK OF INDIA

..... Respondent

Through: Mr. Suhail Dutt, Sr. Adv. with
Mr. H.S. Parihar, Mr. Kuldeep Parihar,
Mr. Azhar Alam, and
Mr. Sankalp Goswami, Advs. for RBI.
Mr. Arun Aggarwal, Adv. for R2.
Mr. Prateek Kushwaha, Adv. for R3.
Mr. K.P.S. Kohli, Adv. for R-4

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by the petitioner with the following prayers:

“In view of the facts and circumstances mentioned above it is most humbly prayed that this Hon’ble Court may graciously be pleased to:

- (a) Direct the Respondent No.1 to take a decision on the Assignment pertaining to the sale of the Loan Account of the Petitioner belonging to the Dena Bank i.e. Respondent No.2 herein, with respect to which a bid has already been placed by Edelweiss Asset Reconstruction Company Limited i.e. Respondent No.3, and which has been accepted by the Respondent No.2, within reasonable time preferably within one week;*
- (b) Alternatively, direct the respondent No.2 to go ahead with the assignment of Loan of the Petitioner to Respondent No.3 without waiting for the formal approval of the Respondent No.1 and*
- (c) Direct Respondent No.2, to keep its insolvency application in abeyance since the entire exercise related to sale of asset has been completed by Respondent No.2 and Respondent No.3 has already been selected as highest bidder.*
- (d) Pass such other and further orders as may be deemed fit and proper in the facts and circumstances of the case.”*

2. It is the case of the petitioner in the writ petition that it had on December 17, 2008 entered into a facility agreement with State Bank of India, State Bank of Mysore, State Bank of Indore, Dena Bank, Bank of India and Vijaya Bank (hereinafter referred as ‘Consortium Lenders’) for providing term loan facility of ₹250 crores. The State Bank of India was appointed as the lead Bank.

That pursuant to the said facility agreement, the consortium lenders entered into Inter creditor Agreements on December 17, 2008, August 28, 2010 and finally May 29, 2012. That additional Inter Creditor Agreement dated August 28, 2010 was executed on account of an additional facility granted by the consortium lenders of ₹52 Crores. An additional facility agreement was granted by the State Bank of India in the form of a bank guarantee of ₹10 Crores. The final Inter Creditor Agreement dated May 29, 2012 was executed on account of a Facility Agreement dated May 29, 2012 executed between the petitioner and the consortium lenders to inter-alia synchronize the repayment schedule / resetting of term loan repayment installments sanctioned and disbursed by the consortium lenders, which in effect novate the terms of the foregoing facility agreements. The said final facility agreement was conceived to cover the cumulative amount of money lent by the consortium lenders in the sum of ₹312 Crores.

3. It is the case of the petitioner that in terms of the recitals F, G, H, I and J of the final facility agreement, the consortium lenders were to act in consonance such that any such action must be initiated by the lead bank or lenders' agent. It is averred that the petitioner was servicing the facility provided by the consortium lenders, since the commencement of repayment schedule, as per the facility agreement, in October 2010 till July 2012. It is, however, due to unavoidable and unforeseen circumstances, inter-alia inordinate delays in grant of various licenses and completion certificate by Delhi Development

Authority and unplanned opening of hotels in Aerocity due to which the inventory of rooms in Delhi doubled. The final license was granted by Delhi Pollution Control Committee on July 10, 2013. These events eventually led to financial stress for the petitioner, compounded by the continued mounting of interest, as a consequence of which the consortium lenders classified the credit facilities sanctioned by them as NPA on July 29, 2012.

4. It is the case of the petitioner that in the interregnum between the declaration of NPA, dated July 29, 2012 and the agreed repayment plan dated February 01, 2017 a number of assignments of interests took place pursuant to the provisions of Section 5 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. It is stated that the State Bank of India assigned its interest to Edelweiss Asset Reconstruction Company Limited; State Bank of Mysore assigned its interest to Edelweiss by way of assignment deed; Vijaya Bank assigned its interest to Phoenix ARC Private Limited; Bank of India assigned its interest to Alchemist Asset Reconstruction Company Limited.

5. It is the case of the petitioner that the respondent No.2, erstwhile Dena Bank had retained their interest in the facility till November 29, 2018 when it had conducted an e-auction for sale of asset to potential Securitization Company / Reconstruction Company, and the respondent No.3 Edelweiss Asset Reconstruction Company Limited thereby selected as the highest bidder. It is averred that pursuant to negotiations with Edelweiss and intricate financial modelling to arrive at a restructuring

scheme, a restructuring proposal was made by the petitioner to Edelweiss and finally it was decided for repayment of the amount of ₹450 Crores; with ₹185 Crores as cash generated from Hotel operations and rental income; ₹100 Crores as net sale proceeds of commercial premises; ₹50 Crores as property tax, insurance, capex, repairs and refurbishment, ₹235 crores as cash flow for debt service and ₹215 crores as refinance. It is stated in the petition that in the e-mail dated February 01, 2017 the petitioner was advised to continue to make payments pursuant to the restructuring proposal, which the petitioner had accepted. It is the case of the petitioner that placing reliance on the said e-mail, the petitioner believed that other members of the consortium consented for the agreed repayment plan and therefore, it continued to make payments in accordance thereof, inasmuch as ₹15,98,76,393 has been paid by the petitioner.

6. According to the petitioner, similar e-mails were exchanged between the petitioner and Phoenix ACR, in their capacity as assignees of the interest which was previously held by Vijaya Bank, in the consortium debt, during June and July 2017 wherein executives of Phoenix ACR had advised the petitioner of their intention to seriously consider and possibly accept the restructuring proposal and that the petitioner would likewise make payments in accordance therewith. It is averred that a W.P. (C) 939/2018 was filed before this Court by one Abhishek Sehrawat titled as Abhishek Sehrawat v. Govt. of NCT of Delhi and Ors. wherein the petitioner, herein, was arrayed as a respondent which first came up for hearing on February 02, 2018

alleging that the petitioner's hotel did not comply with fire safety regulations, and that there was a petrol pump in the south west proximity of the said hotel. That in the subsequent hearing strictures were passed against the petitioner therein along with his counsel for having mislead the Court and abusing the process of law to resolve some personal property dispute with the petitioner. The writ petition was dismissed in *limine*.

7. It is also stated that same Abhishek Sehrawat has made a complaint against Subhash Dabas, director of petitioner Company to the consortium of lenders alleging fraud committed by petitioner. The petitioner was informed of the said complaint in the JLF meeting dated July 06, 2018 and accordingly was requested to furnish specific reply on specific queries which have been raised by the members of the JLF pursuant to the said complaint. A reference is made to Abhishek Sehrawat being an unscrupulous person, and the fact that he is accused of offences of criminal conspiracy, abduction etc. and filing of FIR No.163/2010 against him. It is averred that in the Joint Lenders' Meeting held on July 06, 2018 the restructuring proposal was also discussed and all lenders, excluding Dena Bank, expressed interest in accepting the said proposal subject to certain minor alterations. In the meantime, the petitioner sent a detailed letter on July 09, 2018 with supporting documents to respondent Nos.2, 3 and 4 to clarify its position on the frivolous complaint made by Abhishek Sehrawat. It is stated that the respondent No.3 leader of the consortium and respondent No.4 along with Phoenix ARC holding 80% of the total consortium debt, were satisfied by the

letter given by the petitioner explaining the correct facts on the contents of the frivolous complaint and the lenders subsequently closed the complaint without any further investigation; whereas the respondent No.2 appointed Messrs. M.K. Aggarwal and Company to conduct forensic audit of the petitioner. In the meantime, the respondent No.4 had in-principle gave its approval to the restructuring plan as proposed by the petitioner vide its letter dated July 26, 2018. Even the lenders' agent i.e. Edelweiss also issued a letter, dated August 16, 2018 to the petitioner wherein Edelweiss has considered the restructuring proposal submitted by the petitioner and communicated their agreement to restructuring the existing liability as due to it. During the Joint Lenders' Meeting held on September 07, 2018 it requested that the respondent No.2 to consider the restructuring proposed by company and not to file the insolvency application.

8. It is the case of the petitioner that that the respondent No.2 erstwhile Dena Bank sometime in the month of August 2018, not heeding to the request of leader of consortium and other members, filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 before the NCLT, New Delhi, wherein notice was issued to the petitioner herein on August 10, 2018. On receipt of the above said notice, the petitioner approached the respondent No.2 erstwhile Dena Bank and further to their discussions provided them with the details of all payments made by them to all members of the consortium, in their letter dated September 10, 2018. It was also stated in the letter that the petitioner has made payments in accordance with

the terms of the agreed restructuring plan until the end of the financial year 2017-018. It is also averred that on August 28, 2018 the respondent No.2 provided the petitioner's a copy of a report of Forensic Audit conducted by Messrs. M.K. Aggarwal and Company Chartered Accountants, as appointed by respondent No.2 (erstwhile Dena Bank) and sought responses / comments from the petitioner in respect of the reported preliminary observations / clarifications sought, within three days of the receipt of the same. The petitioner sent a letter dated October 01, 2018 to the respondent No.2 on the clarifications sought regarding the sale of its property and payments made to the consortium.

9. It is the case of the petitioner that it had been specifically clarified that the payment of ₹71,07,49,655/- has been made by the petitioner to the consortium of banks in the financial year 2010-11 and 2011-12 as opposed to receipt from sale of the said property of ₹17.60 Crores. In other words, it was clarified that the receipt was used towards repayments which were due to the consortium lenders. It is stated that upon the receipt of the said clarification, the Forensic Auditors, Messrs. M.K. Aggarwal and Company appointed by the respondent No.2 issued a letter dated October 08, 2018 providing their response to a letter dated October 04, 2018 wherein they have inter-alia stated that they have gone through the letter submitted by party i.e. petitioner herein dated October 01, 2018 to the bank explaining the remittance made to consortium of banks during the period 2010 to 2012 amounting to ₹71.07 Crores, and the amount of ₹17.16

Crores received on account of sale proceeds of commercial space has been verified from their files which were received in the bank accounts of the party. The petitioner also referred to a letter dated October 15, 2018 of Messrs. M.K. Aggarwal and Company to the respondent No.2 (erstwhile Dena Bank) wherein they have stated that nowhere during the period covered under audit, they have come across any diversion of funds and therefore, it did not find mention in their forensic audit report. It is also stated that the matter regarding forensic audit of the party i.e. petitioner need no further submissions by them and the same be closed without any further reference to them.

10. It is the case of the petitioner that upon further enquiry from the Dena Bank, the petitioner again provided further clarifications, regarding the sale of a non-core asset / property belonging to the petitioner in the year 2011-012 when the petitioner stated that it had received ₹17.60 Crores by way of sale consideration and that the entire amount had been utilized towards making a pari-passu repayment to all members of the consortium loan. The petitioner again provided a break up of all receipts and payments made during that period showing application of the said funds, in its letter to the Dena Bank dated January 29, 2019. It is averred that the Joint Lenders on February 01, 2019 in their meeting acknowledged the stand of the Dena Bank, that they have put the account of the petitioner on sale in December 2018 and Edelweiss ARC was the highest bidder for this account but the sale is yet to be concluded as Dena Bank requires RBI approval for the sale of this account. Meanwhile,

EARC had required Dena Bank to expedite to resolve the queries raised by the RBI to enable quick consummation of the assignment transaction. It is averred that on February 18, 2019 despite the aforesaid understanding due to the inadvertent lack of instructions on the part of the learned counsel appearing for the Dena Bank before the NCLT the matter was heard and judgment was reserved.

11. It is stated by the petitioner that as per some information orally made available by the Dena Bank that it had mistakenly and prematurely, without a cause of action, reported the account as fraud to the RBI sometime in October 2018 and then immediately accepted its mistake by withdrawing the fraud reported to RBI on the basis of final report of forensic auditor. The report of the forensic auditor appointed by the Dena Bank exonerated the petitioner of any diversion of funds. It is averred that the respondent No.1 purportedly is investigating the allegations of fraud in the account / transfer pertaining to the petitioner albeit without there being any formal pending complaint qua the petitioner by any stakeholder. It is averred that the petitioner vide its letter dated March 01, 2019 had sought for an update from the Dena Bank about the status of query pending with the respondent No.1 pertaining to petitioner's account. That apart, it is stated by the petitioner that the actions of the respondent Nos.1 and 2 are totally alien to the scheme of the master directions on frauds promulgated by the respondent No.1 itself dated July 01, 2016 (as a last update on July 03, 2017) wherein the approval of the respondent No.1 is not a prerequisite

to accept the assignment. It is the case of the petitioner that as the respondent No.1 has still not taken a final decision pertaining to some issues, on the sale of the loan account of the petitioner belonging to the Dena Bank where a bid has been received from the respondent No.3 and has been admittedly accepted as the highest bid by the Dena Bank everything has come to a halt.

12. It is the case of the petitioner that when the respondent No.3 is keen to assume assignment of the interest held by the Dena Bank, and accordingly extended the already formulated restructuring plan which it had also accepted for its existing interest, amounting to 47.30% of the total debt, there is no reason why the assessment be accepted otherwise grave prejudice would certainly be fall the petitioner and respondent Nos.3 and 4. It is the case of the petitioner that proposed restructuring plan had stipulated the sale of non-core asset / property belonging to the petitioner to reduce the exposure of all consortium lenders, on a pari-passu basis, and whereas the petitioner was keen to dispose of the said asset in accordance with the restructuring plan and whereas the petitioner had also identified a potential purchaser, the requisite approval was withheld by the respondent No.2, (erstwhile Dena Bank) on account of some queries on the petitioner's account pending with itself, as raised by the respondent No.1. The petitioner had also on February 19, 2019 sent a letter to the Dena Bank requesting them to expedite the process of resolution of the queries raised by the respondent No.1. The petitioner had also made known to the Dena Bank that due to the pending resolution of queries by the Dena Bank (Dena

Bank) to the respondent No.1 the entire process of sale of commercial asset to the potential buyer, as per the requirements of the restructuring proposal has come to a standstill. In was in this background that the aforesaid writ petition has been filed.

13. Counter affidavit has been filed by the respondent No.1 Reserve Bank of India wherein it is stated that it is a statutory Corporation constituted by the provisions of Section 3 of the Reserve Bank of India Act, 1934 for the purpose of regulating the issue of Bank Notes and keeping of reserves with a view to securing the monetary stability in India and generally to operate currency and credit system of the country. It is also stated that under the Banking Regulation Act it has been vested with various powers to determine Banking Policy in the interest of banking system. It is also stated, being the regulator and supervisor of banks in the country, RBI had issued many instructions to banks sensitizing them against banking frauds and to have deterrent systems against such frauds. The RBI had referred to the circular dated March 22, 2001 on frauds including the circulars issued on the subject till that date. In 2016, RBI has started issuing Master Directions on each subject matter covering all instructions on that subject. The master directions are being updated suitably whenever there is a change in the policy. It has also referred to the master circular issued on July 01, 2016 which is a updation of the circular dated July 01, 2015. It also stated that a subsequent updation was made on July 02, 2017.

14. According to RBI, if the bank identifies an account as fraud, then it is to be reported to RBI and to the investigating

agencies. Once a fraud is reported by a bank, it is important that other banks are sensitized regarding the fraud. In this regard, RBI issues Caution Advices (CA) to the banks mentioning the details about the concerned borrowers and related parties and also about the modus operandi of the reported fraud, so that banks can exercise due diligence while dealing with the entities / individuals mentioned in the CA. In January 2016, Central Fraud Registry (CFR) a web enabled database of frauds, reported by banks, replaced the issuing of Caution Advices, with a few exceptions. Access to CFR has been given only to the banks and select Financial Institutions. The Reserve Bank of India seeks to protect the banking system from being exploited by fraudsters, more than one and by using the modus operandi used on the first occasion again, elsewhere. The RBI has stated that it does not assess whether every report is accurate or not. The CFR made available to other banks is expressly for providing critical information for aiding credit assessment. The RBI does not impose a bar on extension of credit or banking facilities merely on the reporting of a fraud. The dissemination of the fraud report among banks is meant to facilitate exercise of caution by other banks about the reported fraudster and the modus operandi followed.

15. In the case in hand, the erstwhile Dena Bank had reported fraud in the account of the petitioner. Subsequently, they had vide their letter dated October 26, 2018 approached the RBI with a request to withdraw the FMR Report. Reserve Bank had carefully considered its request and observed that besides,

irregularities in the petitioner's account, perceptible gaps / inconsistencies in the internal control mechanism as also absence of due approval from the competent authority of the bank in seeking permission from RBI, for withdrawal of the said FMR. In view of this, request of the Dena Bank has been rejected. The Dena Bank was also advised to review the case in its Special Committee of the Board of Large Value frauds, for appropriate action. They have stated that vide para 9.2 of Master Direction on Frauds Classification and Reporting by commercial banks and select FIs dated July 01, 2016 as updated on July 03, 2017, the RBI had advised the bank to properly ascertain that the pool of assets being sold to asset reconstruction companies does not contain any loan originated fraudulently or has been classified as fraud as on the date of sale.

16. The respondent No.2 Bank of Baroda in its counter affidavit has taken a preliminary objection on the maintainability to the petition, as the petitioner is neither the assignor nor the assignee of the account. Hence, as such there are no direct stakes which could have been affected or become ground to maintain the present petition under Article 226. In other words, no right of the present petitioner has ever been violated, either by the assignor or the assignee. That apart, it is stated the reliefs are not maintainable. The commercial disputes cannot be raised under extra ordinary jurisdiction. On merit it is the case, that the assignor i.e. Dena Bank was of the opinion that there had been some element of fraud. The matter was therefore reported to RBI. The petitioner has no prerogative to challenge the reporting

or even the subsequent withdrawal.

17. It is stated that as per the policies of the assignor the account having element of fraud cannot be assigned. The transaction otherwise was supposed to be completed within 60 days after opening the bid. The financing bank therefore was very much within its right to proceed under IBC, 2016. The petition under Section 7 has already been entertained and could have been dealt with to its finality in terms of the orders passed by the NCLT on April 09, 2019.

18. It is stated that it is the prerogative of the assignor or the assignee to call off the transaction since it was only at the bidding stage. No case can be set up having facts and the circumstances or even the relief purely on commercial basis. All issues remained open and ample opportunities have been afforded to the petitioner under the IBC, 2016. Not even one ground has been urged in the present petition which may question maintainability of the proceedings before NCLT. Even otherwise it is stated that the assignor and assignee had already understood the terms of the tendered documents which of course included that the transaction should have been through within 60 days and also that it could have been called off anytime depending upon the facts of the case. That apart, it is stated that the fraud was reported on September 25, 2018. Thereafter, the withdrawal was of course moved on October 26, 2018 i.e. well before the e-auction on November 29, 2018. However, it may be noted that 60 days have already passed after November 29, 2018.

19. Even otherwise, it is a fact that the withdrawal dated

October 26, 2018 was not accorded and the same was rejected. It is also stated that certain properties were found to have been transacted by the promoters to their own relatives for a consideration which was opined to not have been sufficient. The reflection of sale consideration also remained questionable. The explanations were however sought and based upon the same the assignor / the lending bank found it appropriate to withdraw the reporting of fraud hence an attempt was made vide communication dated October 26, 2018.

SUBMISSIONS:

20. Mr. Parag P. Tripathi, learned Senior Counsel appearing for the petitioner at the outset stated that the petitioner shall maintain the writ petition with regard to prayer 'b' and 'c' of the writ petition. In other words, the petitioner has given up the prayer 'a' which is primarily directed against the respondent No.1. According to Mr. Tripathi that the present petition is directed against the Bank of Baroda (as Dena Bank stands merged) as the erstwhile Dena Bank has not taken any decision on the bids invited by it for sale / transfer of the debt of respondent No.2 in favour of the petitioner to respondent No.3 Edelweiss Asset Reconstruction Company Limited.

21. It was the submission of Mr. Tripathi that the Dena Bank being an instrumentality of State had to act responsibly in conformity with Article 14 of the Constitution which necessitates that its decisions are to be tested by the application of Wednesbury principle of reasonableness. He stated that neither does the Dena Bank in its counter affidavit pleaded unequivocally

that the right to cancel the auction process was ever in fact exercised, nor has it placed any other document / pleading on the record to show such a decision ever having been taken and / or communicated to any party.

22. He stated that sub clause 27 of clause V gives the absolute discretion to the assignor to reject a tender, but the same does not give any arbitrary power to it to reject a bid either by a party merely it has that power. He also stated that even the plea of Mr. Arun Aggarwal, learned counsel for the respondent No.2 that, upon expiry of 60 days from the date of auction of bid is automatically stands cancelled is also unsustainable, inasmuch as this argument of Mr. Aggarwal is not supported by any file noting or minutes of meeting to show that the decision to reject the bid of Edelweiss / cancel the bid was taken on that basis. In this regard, he stated that while auction took place on November 29, 2018, but on the 64th day dated February 01, 2019 Dena Bank at a Joint Lenders' Forum Meeting stated that it had put the petitioner's loan for sale and Edelweiss was the highest bidder, but the sale is yet to be concluded as Dena Bank requires RBI approval for the sale of this account. Hence, the Dena Bank having itself alluded to the sale not having come to an end on the 60th day, it should certainly imply that such a period was not sacrosanct. The submission of Mr. Tripathi was that the rejection of Dena Bank's withdrawal letter dated October 26, 2018 by RBI is inconsequential as its rejection of the withdrawal was not because RBI find any fraud in the accounts maintained by the petitioner but because the request was not made by an authorized

officer. That apart, even RBI's affidavit makes it clear that it is treating the account of the petitioner only as "irregular". Therefore, the Dena Bank cannot take any benefit of this self-induced and self-created wrong viz issuing the withdrawal letter by a person or officer who does not have the authority to do so.

23. It was his submission that Edelweiss the highest bidder in Dena Bank's e-auction has continued to express its keenness to take over the interest of Dena Bank. In that regard, he had referred to the minutes of JLF meeting dated February 01, 2019 wherein the Edelweiss had requested Dena Bank to expedite to resolve the queries raised by the RBI and also referred to letter dated February 28, 2019 of Edelweiss writing to the petitioner stating that they are the largest lender with 47.30% share in total debt and assure extension of the same restructuring plan to the said interest pending assignment, but since Dena Bank needed RBI's approval to assign the account to Edelweiss, the acquisition transaction is still pending.

24. That apart, it was his submission that even the procedure prescribed by the RBI master directions on closure of frauds would not be triggered in the present case since the forensic auditors declared that there were no traces of fraud in the petitioner's account. In this regard, he would rely on the judgment of a Coordinate Bench of this Court in ***Apple Sponge And Power Ltd. and Ors. v. RBI, W.P. (C) 306/2019*** dated February 15, 2019.

25. It was the submission of Mr. Tripathi that even the forensic auditors were required to be appointed in consultation

with other members of the joint lender forum, the same was not done by Dena Bank. Further the account of the petitioner stands restructured, and there is no default at present, therefore, no cause for Dena Bank to pursue an application for insolvency resolution before the NCLT in respect of the petitioner. In this regard, he would rely upon the judgment of the Supreme Court in the case of *Dharani Sugars and Chemicals Ltd. v. Union of India and Others, W.P. (C) 1460/2018* to contend that as the circular dated February 12, 2018 stands ultra vires today and as such, the erstwhile circulars which were repealed would naturally be reinstated. According to him, one of the circulars mentioned in Annexure – 3 viz. Timelines for Stressed Assets Resolution dated May 05, 2017 (r/w Framework for Revitalizing Distressed Assets in the Economy- Guidelines of Joint Lenders’ Forum and Corrective Action Plan dated February 26, 2014), facilitates timely implementation of a corrective action plan to preserve the economic value of stressed assets. Clause 4 of the circular dated May 05, 2017 reiterates that lenders must scrupulously adhere to the timelines prescribed in the Framework for finalizing and implementing the CAP. To facilitate timely decision making, the decisions agreed upon by a minimum of 60 % of creditors by value and 50% of creditors by number of the JLF would be considered as the basis for deciding the CAP, and will be binding on all lenders, subject to the exit (by substitution) option available in the Framework. Lenders shall ensure that their representatives in the JLF are equipped with appropriate mandates, and that decisions taken at the JLF are implemented by

the lenders within the timelines. In the present case, the petitioner has the majority lender's approval up to 63.7% (47.30% of Edelweiss ARC and 16.40% of Alchemist ARC). Therefore, the application before the NCLT is, in light of the restructuring, not maintainable, rather the delay being caused on account of Dena Bank's pending approval with RBI is stultifying the ability of the petitioner from performing in accordance with the restructuring package.

26. He would rely upon the following judgments in support of his contentions:

1. ***National Insurance Co. Ltd. v. Jugal Kishore, (1988) 1 SCC 626;***
2. ***Maganbhai Vanarshibhai Patel v. The State of Gujarat and Ors. MANU / GJ / 0080/1976;***
3. ***Tata Cellular v. Union of India, (1994) 6 SCC 651;***
4. ***Food Corporation of India v. Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71;***
5. ***Kamedhenu Cattle Feed Industries v. Food Corporation of India, PLR (1992) 102 P&H 493 and;***
6. ***Union of India v. Dinesh Engineer Corporation, (2001) 8 SCC 491.***

27. On the other hand, Mr. Suhail Dutt, learned Senior Counsel appearing for RBI has stated that the present petition is not maintainable as no writ or direction can be issued to the effect that a debt owed by a borrower to a bank be assigned to a third party unless the assignor is ready and willing to do so. According to him, admittedly Bank of Baroda / erstwhile Dena Bank had not

entered into any binding contract with the respondent No.3 for the assignment of the debt owed by the petitioner to the Bank. He stated that without prejudice to the above, in any case only prayer (a) is directed against the respondent No.1 which is misconceived and untenable in law and in fact given up during arguments. It was submitted that permission of RBI is not required to be taken for assignment of debt. RBI has issued a master direction on frauds classification and reporting under Section 35 A of the Banking Regulation Act, 1949 in public interest. It provides procedure relating to reporting of fraud by banks in any loan account maintainable by the said bank. The purpose inter alia of the said directions is for banks to identify fraud accounts and report the same to Central Fraud Registry (CFR) under para 3.1 so that other banks are cautioned in regard to the critical information about the said accounts so reported.

28. It was further submitted that the erstwhile Dena Bank had reported fraud in the account of the petitioner on September 25, 2018. Subsequently, a withdrawal letter was received by the RBI on October 26, 2018. However, after careful consideration, it was observed that there were irregularities in the petitioner's account and perceptible gaps / inconsistencies in internal control mechanism. Furthermore, due approval from the competent authority of the Bank in seeking permission from RBI for withdrawal of the said FMR was also absent. Thus, the same was rightly rejected and erstwhile Dena Bank was advised to review the case in its Special Committee of the Board on Large Value Frauds for appropriate action.

29. It was stated by Mr. Dutt that the RBI vide para 9.2 of master direction on frauds classification and reporting, has advised the banks to properly ascertain that the pool of assets being sold to assets reconstruction companies such as respondent No.3 does not contain any loan originated fraudulently or has been classified as fraud as on the date of sale.

30. In view of the foregoing, the present writ petition is not maintainable and in any event no relief can be granted against the respondent No.1 RBI. Therefore, the present writ petition as against the RBI is liable to be dismissed.

31. Mr. Arun Aggarwal, learned counsel appearing for the Dena Bank now Bank of Baroda in terms of the amended memo of parities has stated that this petition has been preferred by the petitioner mainly for prayers (b) and (c) as during arguments prayer (a) was not really insisted in view of certain facts or otherwise, therefore mainly prayer (b) and (c) remains to be considered. Prayer (c) may be taken as almost dependent on prayer (b) but independently the prayer (c) would not be maintainable in view of the specific provision under IBC, 2016.

32. He further stated that the admitted factual position would remain, that an attempt was made by respondent No.2, being erstwhile Dena Bank now Bank of Baroda, to assign the account of petitioner to respondent No.3 in view of the best bid. Interalia the terms and conditions stipulated, the offer to assign would remain alive for 60 days. It remains a fact that the respondent No.2 was at a given point of time had huge debt to be brought down hence was assigning the debts. The auditor of respondent

No.2 pointed out certain discrepancies and therefore before assignment respondent No.2 sought permission from respondent No.1 for its approval for continuing with the assignment though later on the permission was withdrawn based upon certain observations by the auditor. The withdrawal however, not permitted by respondent No.1. Before assignment respondent No.2 had already preferred O.A. No.327 of 2016 titled as Dena Bank v. Triupati Buildings and Offices Pvt. Ltd. and Ors. inter alia for issuance of R.C. in the sum of ₹1,19,76,22,073.21/- along with interest w.e.f. March 29, 2016 and the OA is now next listed for completion of evidence. With the introduction of IBC 2016 the respondent No.2 preferred petition under Section 7 being Company petitioner (IB) -952 (PB) /2018, which now next listed on July 04, 2019 and was at the stage of pronouncement of final order. As such the Section 7 petition is about a hearing away from attaining finality.

33. It is stated that the major events which took place in between would therefore remain; preferring of Section 7 petition and above all the merger of respondent No.2 w.e.f. April 01, 2019 with Bank of Baroda in terms of gazette notification dated January 02, 2019. The reasons and purpose of merger which are widely discussed and are available in public domain are that somehow the erstwhile Dena Bank had a weaker balance sheet hence required to be merged with a bank having not so weak balance sheet. Therefore, the merger took place and the present petition was listed on April 03, 2019 having been filed somewhere on April 01, 2019 after supplying advance copy.

34. It was further submitted by Mr. Aggarwal that the petitioner except for its commercial interest would have nothing to bring the petition under the extra ordinary umbrella of Article 226. The petitioner at no stage could bring any document on record that the transaction of assignment would never be agreeable to by respondent No.2 even if the board of directors and other contemporary circumstances have changed.

35. He submitted that it is an admitted position that the decision was taken for merging the erstwhile Dena Bank in view of its balance sheet and financial status. The merger has already taken place. Respondent No.2 in fact remain nonexistence but in view of scheme notified vide gazette dated January 02, 2019 all assets, litigations, contracts have been taken over as it is by the bank being Bank of Baroda. Now the financial status of Bank of Baroda is altogether different than the erstwhile Dena Bank. Not only the board of directors have changed, policy is also different with the Bank of Baroda and in view of absence of any concluded contract between respondent Nos.2 and 3 even respondent No.3 find it difficult to maintain any litigation against respondent No.2. The impression is being created as if the erstwhile Dena Bank after merger with Bank of Baroda is perhaps indulging in encashing situation for its monetary benefit. Purely it was a commercial decision to offer particular account or any account for assignment. The same could have been recalled at any stage. The tender document clearly stipulates:

“8. Bid shall remain valid for a period of 60 days from the date of submission of Bid. However, Dena Bank may seek extension of

the validity of such period as may be determined by Dena Bank at its discretion. Dena Bank reserves the right to reject any Bid which does not meet this requirement.

36. He stated that there is no concluded contract within the stipulated period however the respondent No.2 has always been open for any discussion since the same could have been and were apparently so allowed without again any obligation either on respondent Nos.2 and 3. Even for a minute it is concluded that respondent No.2 is trying to indulge in protecting or resiling from alleged commitment at any stage, even withdrawal by respondent No.2 is already embedded within the terms of assignment. The withdrawal could have happened at any point of time. The activities of petitioner are lacking not only commercial vision but apparently a deliberate attempt for diversion of funds. It remains a fact again that each development, document, financial status and even parameters are well within the knowledge of the petitioner. Not only petitioner is guilty in approaching this Court with unclean hands but also invoking a jurisdiction which may not be so invokable at least qua commercial transactions between proposed assignor or the proposed assignee. In any case at any stage if it is found that there is any viable offer available to respondent No.2 as per is policy, parameters including the quantum being so offered the respondent No.2 would always remain open for a discussion. The fight may not be lost that ₹119 Lacs were already due at a point of time and it is not the case of petitioner that similar or equivalent amount had at any time being offered to the respondent No.2 by the petitioner. The settlements

can always take place subject to modalities, discussion including the commercial and legal aspects.

37. He further stated that there may not be any law available to the effect that two contracting parties who have not agitated any of the terms conditions or raised grievance may have to be compelled by third party though may be affecting its commercial status to continue to discuss a particular transaction in a particular manner even if the same was at primitive or preliminary stage or may be even well before.

38. According to Mr. Aggarwal that it is very much clear that the petitioner is not only facing acquisitions having qualified to be declared as willful defaulter and already facing proceedings under Section 7 tried to play situation commercially and now encashing the situation under Article 226 without any responsibility, liability on cost or court fees etc. A calculated commercial venture is being thrust upon the respondent No.2, may be even on respondent No.3 also under the heavily unquestionably empowered umbrella of Article 226.

39. According to him, the petitioner is only playing and abusing the provisions of law hence would not deserve any relief in any manner whatsoever. In any case whatever grievance it may have, ample opportunities have already been availed under Section 19 of RBD Act, 1993 in the OA and even under Section of IBC 2016.

40. According to him, the petition would therefore lack merit and preferably be dismissed along with any relief on account of the loss of interest, abuse of provisions by the petitioner.

41. Mr. Prateek Kushwaha, learned counsel appearing for the respondent No.3 has during the submissions stated that the respondent No.3 is prepared to take loan of the Dena Bank in favour of the petitioner provided they are assigned the loan pursuant to the tender issued by Dena Bank and bid submitted by the said respondent.

42. In his rejoinder arguments Mr. Tripathi would submit that the primarily objection on the maintainability of the writ petition is untenable on the following grounds that; (i) firstly, the dispute did not arise out of any contractual obligations which had to be fulfilled either by Dena Bank or RBI; (ii) the dispute was pursuant to Dena Bank's inaction on taking a decision in furtherance to the auction dated November 29, 2018 despite continuous requests by the successful bidder (Edelweiss) and the petitioner for the consummation of the sale; (iii) Dena Bank had on February 01, 2019 stated before the JLF that the sale was yet to be concluded as it requires RBI approval for the sale of this account; (iv) this pendency was due to Dena Bank's fraud reporting on September 25, 2018 which was later withdrawn on October 26, 2018 (after the clean chit given by the forensic auditor on October 15, 2018) and; (v) this was presumably done as per the RBI Master Directions on Fraud classification, which was rather an executive / legislative exercise undertaken by the state instrumentality herein Dena Bank.

43. He reiterates his plea on the stand of the respondent No.2 Bank of Baroda that the transaction should have been through within 60 days by stating that this was neither supported by any

file noting nor any Minutes of Meeting, to show that the decision to cancel Edelweiss's bid was taken on this basis. Moreover, on the 64th day after the date of the e-auction, Dena Bank itself stated that it had put the petitioner's loan for sale and Edelweiss was the highest bidder, but the sale is yet to be concluded as it is awaiting RBI's approval.

44. Even on the interpretation given to clause 27 of the tendered documents by Mr. Aggarwal has been responded by Mr. Tripathi to state that Clause 27 of the tender document (tendered by Dena Bank on May 07, 2019) states that Dena Bank reserves the right to cancel the process at any stage before the final confirmation and in that event, in absolute discretion, to follow a different method for sale / transfer of the financial assets. While the clause gives discretion to the assignor / Dena Bank to reject a tender, the same does not give an arbitrary power to it to reject the bid offered by a party merely because it has that power.

45. Even on the aspect of fraud, it was the submission of Mr. Tripathi that Dena Bank had not appointed the forensic auditor in consultation with the members of the Joint Lenders' Forum. The stand some of the properties are sold to own relatives is untenable. According to him, this was orally explained to the auditor during their document inspection at the company's office from October 01, 2018 to October 04, 2018. Few parties shared the common last name (Dabas) with the director of the petitioner, however they are not related.

46. According to Mr. Tripathi, the stand that consideration is closer to circle rates whereas higher rate could be fetched is also

untenable. He stated that the average sale realization value from sale of asset was ₹1,11,049/- per sq. m. whereas the circle rates existing at the time were ₹13050, ₹18500 and ₹29400 (on account of revision of circle rates) and this was also explained to Dena Bank vide email dated February 07, 2019. The letter attached in the email showed that the properties sold were at a value much higher than the circle rates. The above statement made by Dena Bank in the FMR is factually incorrect and deviates from the one made by forensic auditor in initial forensic report. The initial report of forensic auditor made the following observations:

A) The company has sold properties for ₹17.60 crore but as per fixed asset schedule in the audited balance sheet of FY 2011-12 and FY 2012-13, sale of property of ₹13.33 Crore is shown.

In this regard, Mr. Tripathi stated that it was orally explained to the forensic auditor during their site visit from October 01, 2018 to October 04, 2018 that the fixed asset schedule in the balance sheet had ₹13.33 Crore as book value of the asset. The consideration paid above the book value of ₹13.33 Crore (17.60 Crore – 13.33 Crore = 4.27 Crore) was accounted as income in the statement of profit and loss as per GAAP standard accounting procedure rather than a reduction in the fixed asset on the balance sheet.

B) The sale consideration towards sale of properties on which advance was received is also not accounted as income in the books of accounts.

In this regard, Mr. Tripathi stated that it was also

explained during the auditors site visit from October 01, 2018 to October 04, 2018 that as per standard GAAP accounting procedure, since the above transactions were not consummated, and only initial advance was received, the payments were recorded on the balance sheet as other current liabilities and not recorded as part of income in the statement of profit and loss.

47. Even on the RBI letter dated March 25, 2019 Mr. Tripathi would submit that RBI failed to; (i) hear the petitioner or examine its replies before the forensic auditor; (ii) examine the closure report dated October 15, 2018 filed by the forensic auditor and; (iii) examine whether the forensic auditor had been appointed in consultation with the consortium of bank as per Clauses 8.9.4, 8.9.5 RBI master directions.

48. Further, he has submitted that the RBI rather proceeds on the premise that Master Directions relating to closure of fraud would apply to the present case. According to him, this would not apply since the forensic auditor declared that there were no traces of fraud in the petitioner's account. He also submit a bare perusal of the clause 5 would reveal that the closure is triggered by any of the events mentioned in clause 5.2 which are-

- i. Fraud case disposed of by CBI / police
- ii. Examination of staff accountability has been completed
- iii. Amount of fraud has been recovered / written off
- iv. Insurance claim wherever applicable has been settled
- v. Bank has reviewed the system, identified the causative factors and plugged the lacunae, which has been certified by the appropriate authority.

49. In substance it was his submission that the very invocation of the fraud classification was negated by the forensic auditor's report who gave a clean chit, so there would not arise an occasion for undertaking any remedial acts, thus triggering the closure under Clause 5. He further laid stress on the fact that the petitioner had majority lender's approval upto 63.7%. Therefore, the delay being caused on account of Dena Bank's approaching the RBI is completely stultifying and disincentivizing the restructuring scheme. He also stated that in terms of the share of Dena Bank as per the restructuring schedule, the petitioner has to pay ₹2,83,45,928/- whereas as on January 31, 2019, the petitioner has paid an amount of ₹3,07,43,597/- to the Dena Bank. The petitioner has paid an excess amount of ₹23,97,649/- till the time it was informed about the assignment transaction.

50. Further, he submitted that it is not the case of the Dena Bank that it has to seek RBI's approval for continuing with the assignment rather the only approval it sought was to withdraw the fraud report. In fact, even RBI maintains its stand that it does not impose a bar on extension of credit or banking facilities merely on the reporting of fraud. Though Dena Bank points out that ultimately the rights of the petitioner would be affected by the assignment in question, it did not answer the query put to it regarding its announcement of the assignment to Edelweiss before the JLF on the 64th day of the tender and whether the decision to cancel the bid was taken up after considering the supposed 60 day time period in mind. He also stated that it is noteworthy, that the merger was announced sometime in

September, 2018 and the e-auction of the petitioner's loan account was done on November 29, 2018. The counsel for Dena Bank on May 07, 2019 suggested that the reason for not going ahead with the bid could be for additional funds which they could have yielded on account of sale of petitioner's loan account. Surely, Dena Bank would have conducted a valuation of the petitioner prior to putting up the account for auction. Vijaya Bank, which has also merged with Bank of Baroda, had assigned its debt, with regard to the account of the petitioner, to Phoenix ARC. Bank of Baroda has itself sold various accounts to ARC's worth ₹4237 Crores on November 22, 2018 and ₹5929 Crores on February 27, 2019.

51. In the end he says that this Court can entertain the writ petition involving the disputed questions of fact as there is no absolute bar for entertaining a writ petition even if the same arises to enforce a contractual application. He relied upon these two judgments in the case of *ABL International Ltd. v. Export Credit Guarantee Corpn. Of India Ltd. (2004) 3 SCC 553* and *State of Kerala & Ors. v. M.K. Jose, (2015) 9 SCC 433*. He also relied upon the following judgments in support of his contentions:

1. *State of U.P. & Ors. v. Maharaja Dharmander Prasad Singh, 1989 SCR (1) 176;*
2. *Dwarka Nath v. Income Tax Officer, Special Circle, Kanpur, 1965 3 SCR 536;*
3. *Modi Spinning and Weaving Mills Co. Ltd. v. Ladha Ram & Co., (1976) 4 SCC 320;*

4. ***Gautam Sarup v. Leela Jetly and Others (2008) 7 SCC 85 and***

5. ***Ram Niranjana Kajaria v. Sheo Prakash Kajaria and Others with Jugal Kishore Kajaria v. Sheo Prakash Kajaria and Others (2015) 10 SCC 203.*** He seeks grant of prayer (b) and (c) in favour of the petitioner.

52. Having heard the learned counsel for the parties, the first and foremost question that needs to be decided is whether the petitioner has any locus standi to file the present petition. This is in the context of the submission made by Mr. Arun Aggarwal that the bid, to take over the loan of the Dena Bank in favour of the petitioner, was submitted by the respondent No.3 Edelweiss Asset Reconstruction Company Limited and it is not the claim of Edelweiss that the said bid be decided. This submission of Mr. Aggarwal is appealing for the reason that the present writ petition is primarily maintained in terms of prayer (b) [prayer (c) being consequential thereof] wherein a direction has been sought against the respondent No.2 to go ahead with the assignment of the loan of the petitioner to respondent No.3 Edelweiss without waiting for the formal approval of the respondent No.1.

53. Admittedly, no petition has been filed by the respondent No.3 Edelweiss Asset Reconstruction Company Limited; who had submitted the bid which was held to be highest. If the stand of the petition is that the said bid of the respondent No.3 has not been decided, then it shall be grievance of the respondent No.3 to raise an issue. Merely because the bid is for taking over of the loan given by the Dena Bank to the petitioner even though would

suggest some interest of the petitioner but that would not show locus of the petitioner to maintain the writ petition for a prayer as noted above, as it is settled law to maintain a writ under Article 226 of the Constitution of India it should be shown by the petitioner that its right has been infringed by the inaction on the part of the respondent No.2 to decide the bid submitted by the respondent No.3 Edelweiss Asset Reconstruction Company Limited, which according to Mr. Aggarwal it has failed. Further it is not the case of the petitioner that the present petition has been filed in public interest. Surely such cases are exception to the locus standi rule as held by the Supreme Court in various judgments including *Bandhua Mukti Morcha v. Union of India & Ors.*, AIR 1984 (SC) 802. Further, the submission of Mr. Tripathi that the Edelweiss and the petitioner have been writing to the Dena Bank for consummation of sale is concerned; the same can be a ground for Edelweiss but not the petitioner, who is not the bidder to approach the Court with relief as prayed for. So, the relief to the respondent No.3 cannot be given at the asking of the petitioner. In other words, the cause of action is the submission of bid which has not been decided. It is surely a cause for the respondent No.3 to approach the Court against Dena Bank and not the petitioner. So, it follows the judicial review of the inaction on the part of the Dena Bank to decide the bid on any ground at the behest of any party other than Edelweiss is impermissible. Hence, this plea of Mr. Aggarwal needs to be accepted and it must be held that the petitioner has no locus standi to seek prayer(s) as stated above in this writ petition. In

support of my aforesaid conclusion, I may refer to the following judgments of the Supreme Court on the issue of maintainability of the writ petition by a person who has no locus standi to file a petition:

In ***Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal***, AIR 1962 SC 1044, in para 5 the Supreme Court has held as under:

“...Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental rights can also approach the court seeking a relief thereunder. The Article in terms does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. In State of Orissa v. Madan Gopal, 1952 SCR 28 : (AIR 1952 SC 12) this Court has ruled that the existence of the right is the foundation of the exercise of jurisdiction of the Court under Art. 226 of the Constitution. In Charanjit Lal Chowdhuri v. Union of India, 1950 SCR 869 : (AIR 1951 SC 41), it has been held by this Court that the legal right that can be enforced under Art. 32 must ordinarily be the right of the petitioner himself who complains of infraction of such right and

approaches the Court for relief. We do not see any reason why a different principle should apply in the case of a petitioner under Art. 226 of the Constitution. The right that can be enforced under Art. 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified...” (emphasis supplied)

In **Mani Subrat Jain v. State of Haryana, AIR 1977 SC 276**, in para 9 the Supreme Court has held as under:

“..It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing something. (See Halsbury's Laws of England 4th Ed. Vol. I, paragraph 122); State of Haryana v. Subash Chander, (1974) 1 SCR 165 = (AIR 1973 SC 2216); Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed, (1976) 3 SCR 58 = (AIR 1976 SC 578) and Ferris Extraordinary Legal Remedies paragraph 198.”

(emphasis supplied)

In ***Ghulam Qadir v. Special Tribunal***, (2002) 1 SCC 33, in para 38 the Supreme Court has held as under:

“38. There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid Article. The orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea change with the development of constitutional law in our country and the constitutional courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hypertechnical grounds. If a person approaching the court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition filed by such a person cannot be rejected on the ground of his having not the locus standi. In

other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi.” (emphasis supplied)

54. Further the expression “aggrieved person” has come up for consideration before the Supreme Court on many occasions wherein the Supreme Court has held, aggrieved person would mean who has suffered legal injury. In this regard reference can be made to its opinion in **Babua Ram v. State of U P, (1995) 2 SCC 689** wherein, in paragraph 17, it observed as under:

“17. In Collins English Dictionary, the word 'aggrieved' has been defined to mean 'to ensure unjustly especially by infringing a person's legal rights'. In Webster Comprehensive Dictionary, International Edition at page 28, aggrieved person is defined to mean 'subjected to ill-treatment, feeling an injury or injustice. Injured, as by legal decision adversely infringing upon one's rights'. In Strouds Judicial Dictionary, Fifth Edn., Vol. 1, pages 83-84, person aggrieved means 'person injured or damaged in a legal sense'. In Black's Law Dictionary, Sixth Edn. at page 65, aggrieved has been defined to mean 'having suffered loss or injury; damnified; injured' and aggrieved person has been defined to mean:

“One whose legal right is invaded by an act complained of, or whose pecuniary interest is directly

and adversely affected by a decree or judgment. One whose right of property may be established or divested. The word 'aggrieved' refers to a substantial grievance, a denial of some personal, pecuniary or property right, or the imposition upon a party of a burden or obligation."

The person aggrieved, therefore, must be one who has suffered a legal injury.

55. Further the Supreme Court in ***Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed***, AIR 1976 SC 578, while dealing with the expression "aggrieved person", has in paragraphs 12, 25, 29 and 38 observed as under:

"12. According to most English decisions, in order to have the locus standi to invoke certiorari jurisdiction, the petitioner should be an "aggrieved person" and in a case of defect of jurisdiction, such a petitioner will be entitled to a writ of certiorari as a matter of course, but if he does not fulfill that character, and is a "stranger", the Court will, in its discretion, deny him this extraordinary remedy, save in very special circumstances. This takes us to the further question: Who is an "aggrieved person"? And what are the qualifications requisite for such a status? The expression "aggrieved person" denotes an elastic, and, to an extent, an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its

features can be described in a broad tentative manner. Its scope and meaning depends on diverse variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him. English Courts have sometimes put a restricted and sometimes a wide construction on the expression "aggrieved person". However, some general tests have been devised to ascertain whether an applicant is eligible for this category so as to have the necessary locus standi or 'standing' to invoke certiorari jurisdiction.

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25. Emphasising the 'very special circumstances' of the case, the court read into the statute, a duty to act fairly in accordance with the principles of natural justice. Thus, a corresponding right to be treated fairly was also imported, by implication, in favour of the applicants. Viewed from this standpoint, the applicants had an interest recognised in law, which was adversely affected by the impugned action. They had suffered a wrong as a result of the unfair treatment on the part of the corporation.

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29. ...Salmon J. quoted with approval these observations of James LJ in *Re James LJ in Sidebotham* (1880) 14 Ch D 458 at p. 465 The words 'person aggrieved' do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something. (emphasis supplied)

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38. To distinguish such applicants from 'strangers', among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are: Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense that his interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered a legal grievance, a person 'against whom a decision has been pronounced

which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something? Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in the context of which the scope of the words 'person aggrieved' is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community? Or is it a statute dealing with private rights of particular individuals?" (emphasis supplied)

56. In a recent pronouncement the Supreme Court in ***Ayaaubkhan Noorkhan Pathan v. State of Maharashtra, (2013) 4 SCC 465***, while dealing with the expression "person aggrieved" in paragraph 9 observed thus:

"9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of

law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. [Vide State of Orissa v. Madan Gopal Rungta, AIR 1952 SC 12, Saghir Ahmad v. State of U.P., AIR 1954 SC 728, Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B., AIR 1962 SC 1044, Rajendra Singh v. State of M.P., (1996) 5

SCC460 and Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) v. S.C. Sekar, (2009) 2 SCC 784.]”
(emphasis supplied)

57. The Supreme Court in ***M S Jayaraj v. Commissioner of Excise, Kerala, (2000) 7 SCC 552***, examined the issue of “locus standi” and held that the person should be asked to disclose the legal injury suffered by him and if he cannot, then, obviously, the person has no locus standi to file a writ petition under Article 226 of the Constitution of India.

58. Insofar as the judgments relied upon by Mr. Tripathi are concerned, they are not relevant to the point on which, I have concluded that the petition at the behest of the petitioner is not maintainable and hence need to be rejected.

59. Having said that one submission of Mr. Aggarwal cannot be over looked which is when he stated “*in any case at any stage if it is found that there is any viable offer available to respondent No.2 as per its policy, parameters including the quantum being so offered the respondent No.2 would always remain open for a discussion*”. If that be so, the writ petition can be disposed of without advertng to the merits of the controversy that the petitioner shall be at liberty to make a representation to the Competent Authority of the respondent No.2 (in terms of the amended memo of parties) for its consideration within two weeks. If such a representation is made, the Competent Authority of the respondent No.2 shall consider the same within four weeks thereafter and pass appropriate orders.

60. Since the matter is listed before the NCLT on July 04,

2019, liberty shall be with the parties to seek deferment of the date beyond the period of six weeks to enable the Competent Authority of the respondent No.2 consider the representation and pass final order. The writ petition is disposed of.

CM No. 23095/2019

Dismissed as infructuous.

V. KAMESWAR RAO, J

JULY 01, 2019/aky

