IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2020

C O R A M

THE HON'BLE MR.A.P.SAHI, THE CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

WRIT APPEAL NOS.454 TO 456 OF 2020
&
C.M.P.NOS.7021, 7022 & 7024 OF 2020

Cynthia K.Theleepan
D/o.C.Devadasa Sundaram
... Appellant in W.A.No.454/2020

C.Devadasa Sundaram
... Appellant in W.A.No.455/2020

M/s.Cee Dee Yes Health Care Services Pvt. Ltd.,
(Formerly known as Cee Dee Yes Standard Towers Pvt. Ltd.,)
Rep. By its Managing Director,
No.383, Velachery-Tambaram Road,
Velachery, Chennai-600 042.
.. Appellant in W.A.No.456/2020

Vs

1. The Reserve Bank of India,
Fort Glacis, No.16, Rajaji Salai,
Chennai-60 001.

2. IndusInd Bank Ltd.,
Old No.115, 116 New No.34,
G.N.Chetty Road,
T.Nagar, Chennai-600 017.
... Respondents in all W.As.

PRAYER in W.A.No.424 of 2020:
Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order passed in W.P.No.17136 of 2019 dated 28.02.2020 and allow the writ petition.

PRAYER in W.A.No.425 of 2020:
Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order passed in W.P.No.17134 of 2019 dated 28.02.2020 and allow the writ petition.

PRAYER in W.A.No.426 of 2020:

Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order passed in W.P.No.17128 of 2019 dated 28.02.2020 and allow the writ petition.

W.P.No.17128 of 2019:-

Directiing the 1st Responent herein to enquire into the Petitioner complaints dated 27.05.2019 and 28.05.2019 with regard to the classification of the petitioner Loan Account No.514003464863 as Non Performing Assets (NPA) by the 2nd respondent contrary to the Guidelines issued by the RBI/the 1st respondent contrary to the Guidelines issued by the RBI/the 1st respondent herein and thereby to take necessary action against the 2nd respondent herein.

W.P.No.17134 of 2019:-

Directing the 1st respondent herein to enquire into the petitioner complaints dated 27.05.2019 and 28.05.2019 with regard to the classification of the petitioner Loan Account No.516003438127 as Non Performing Assets (NPA) by the 2nd respondent contrary to the Guidelines issued by the RBI/the 1st respondent contrary to the Guidelines issued by the RBI/the 1st respondent herein and thereby to take necessary action against the 2nd respondent herein.

W.P.No.17136 of 2019:-

Directing the 1st respondent herein to enquire into the petitioner complaints dated 27.05.2019 and 28.05.2019 with regard to the classification of the petitioner Loan Account No.516003433658 as Non Performing Assets (NPA) by the 2nd respondent contrary to the Guidelines issued by the RBI/the 1st respondent contrary to the Guidelines issued by the RBI/the 1st respondent herein and thereby to take necessary action against the 2nd respondent herein.

For Appellant : Mr.R.Thiagarajan, senior counsel for
[in all Writ Appeals] Mr.R.Amardeep

For Respondents : Mr.C.Mohan for M/s.King&Partridge
[in all Writ Appeals] for R1
Mr.Om Prakash, senior counsel for
Mr.Ilaiyaraja Kumar for
M/s.Ramalingam Associates for R2

COMMON JUDGMENT

SENTHILKUMAR RAMAMOORTHY J.,

These three appeals are filed in respect of the declaration of the loan accounts of the respective Appellant as a non-performing asset (NPA) by the fourth Respondent bank (the Bank). In each of the cases, writ petitions were filed by the respective Appellant for a Writ of Mandamus to direct the RBI to enquire into the complaints dated 27.05.2019 and 28.05.2019 with regard to the classification of the respective loan account as a NPA. The RBI Master Circular No.DBR.No.BP.BC.2/21.04.048/2015-16 dated 01.07.2015 deals with, inter alia, asset classification. As per Clause 2.1.2 thereof, an account would be declared as a NPA if interest and/ or an installment of principal remain overdue for a period of more than 90 days in respect of the term loan. As per clause 4.2.4 of this Master Circular, an account may also be classified as a NPA, if material terms of the loan facility are violated.

2. Each of the Appellants herein were sanctioned loans between December 2016 and December 2017. By a communication dated 05.05.2018, the respective loan accounts were classified as NPA. Subsequent thereto, notices under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the SARFAESI Act) were issued and measures were taken under Section 13(4) thereof. Challenging such measures, proceedings were initiated by the respective Appellant under Section 17 of the SARFAESI Act before the Debts Recovery Tribunal (DRT) and such proceedings are said to be pending. Upon receipt of the communication dated 05.05.2018 classifying the account as NPA, each Appellant made objections to such classification by letter dated 08.05.2018. Thereafter, complaints were filed with the RBI on 27.05.2019 and 28.05.2019. On account of the failure of the RBI to respond to the complaints, W.P. Nos.17128, 17134 and 17136 of 2019 were filed for Writs of Mandamus to direct the RBI to enquire the complaints dated 27.05.2019 and 28.05.2019. All the writ petitions were dismissed by a common order dated 28.02.2020. The said order is challenged in these proceedings.

3. We heard Mr.R.Thiagarajan, the learned senior counsel for the Appellant in all the writ appeals; Mr.C.Mohan, the learned counsel for the RBI; and Mr. E. Om Prakash, the learned senior counsel for the Bank.

4. Mr.R.Thiagarajan, the learned senior counsel for the Appellants, invited the attention of this Court to the Master Circular dated 01.07.2015 of the RBI and pointed out that a loan

account can be classified as a NPA only if there is default in paying interest or an installment of the principal for a period of more than 90 days. In the case at hand, he submitted that the loan accounts were classified as NPA although neither principal nor interest was overdue for a period of more than 90 days. He further submitted that the Appellants immediately objected to the said classification of their accounts as NPA by communication dated 08.05.2018. They also complained to the RBI on 27.05.2019 and 28.05.2019. Consequently, he contended that the Appellants were entitled to the relief requested whereas the learned single Judge erroneously rejected the writ petitions on the ground that an alternative remedy is available. In support of his contentions, Mr.Thiagarajan relied upon the judgment of the Hon'ble Supreme Court in Sudhir Shantilal Mehta vs. Central Bureau of Investigation [(2009) 8 SCC 1], paragraphs 58 and 68 whereof are extracted herein under:-

> "58. Whether a circular letter issued by a statutory authority would be binding or not or whether the same has a statutory force, would depend upon the nature of the statute. For the said purpose, the intention of the legislature must be considered. Having regard to the fact that the Reserve Bank of India exercises control over the Banking Companies, we are of the opinion that the said Circular letter was binding on the Banking Companies. The officials of UCO Bank were, therefore, bound by the said circular letter.
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> 68. Any act of omission or commission on the part of any authority of the Bank would amount to acting in violation of any direction of law. A direction of law need not be a law made by the Parliament or a Legislature; it may be made by an authority having the power therefor; the law could be a subordinate legislation, a notification or even a custom. "

By drawing reference to above paragraphs, he contended that the circulars of the RBI are binding on banking companies and the violation thereof would amount to violation of law.

5. On the contrary, Mr.Mohan, the learned counsel for the RBI submitted that these were group accounts. The said group accounts were declared as NPA in May 2018. Thereafter, a notice under Section 13(2) of the SARFAESI Act was issued by the Bank in November 2018 and measures were taken under Section 13(4) of the SARFAESI Act thereafter. The Appellants challenged those

measures before the DRT. Once proceedings under the SARFAESI Act are undertaken, he pointed out that the statutory remedy is to initiate proceedings under Section 17 of the SARFAESI Act and, in fact, such proceedings were initiated by the Appellants. Therefore, no case is made out and the rejection of the writ petitions are in order.

6. Mr.Om Prakash, the learned senior counsel for the Bank pointed out that both with regard to the IT Park Company and the Healthcare company, the loans were in the form of Lease Rent Discounting (LRD) facilities. Therefore, the servicing of the loan was by way of payment of the rent to the Bank. Therefore, the loan agreement stipulated that it would be an event of default if the lessee vacates the premises. The lessee of Cee Dee Yes Healthcare Services Private Limited vacated the premises in the year 2013. Therefore, the declaration of the accounts of the Appellants as NPA was entirely in conformity with the Master Circular dated 01.07.2015. He further submitted that there is no moratorium period as regards LRD facilities and that the moratorium is only for infrastructure loans. He also pointed out that the loan accounts were assigned to an asset reconstruction company after they were declared as NPA.

7. We considered the submissions of the learned senior counsel and the learned counsel for the respective parties and examined the materials placed on record.

8. As per clause 4.2.4 of the Master Circular of the RBI, it is clear that accounts would be classified as NPA in case of breach of the material terms of the loan agreement. In these cases, the contention of the Bank is that an event of default occurred because the lessees vacated the leased premises, thereby triggering an event of default. These loan accounts are said to have been declared as NPA in these circumstances. The admitted position is that notices under Section 13(2) of the SARFAESI Act were issued in November 2018 and measures under Section 13(4) thereof were taken. Pursuant thereto, the Appellants have initiated proceedings before the DRT. In United Bank of India v. Satyawati Tondon [2010 (8) SCC 110], the Hon'ble Supreme Court held as follows:

> "55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts

will exercise their discretion in such matters with greater caution, care and circumspection.”

9. Similarly, in Indian Overseas Bank v. Ashok Saw Mill (2009) 8 SCC 366, the object and scope of Section 17 of the SARFAESI Act was discussed and it was held as under:

> 35. In order to prevent misuse of such wide powers and to prevent prejudice being caused to a borrower on account of an error on the part of the banks or financial institutions, certain checks and balances have been introduced in Section 17 which allow any person, including the borrower, aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor, to make an application to the DRT having jurisdiction in the matter within 45 days from the date of such measures having taken for the reliefs indicated in sub-section (3) thereof.
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> 36. The intention of the legislature is, therefore, clear that while the banks and financial institutions have been vested with stringent powers for recovery of their dues, safeguards have also been provided for rectifying any error or wrongful use of such powers by vesting the DRT with authority after conducting an adjudication into the matter to declare any such action invalid and also to restore possession even though possession may have been made over to the transferee.
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> 37. The consequences of the authority vested in the DRT under sub-section (3) of Section 17 necessarily implies that the DRT is entitled to question the action taken by the secured creditor and the transactions entered into by virtue of Section 13(4) of the Act. The legislature by including sub-section (3) in Section 17 has gone to the extent of vesting the DRT with authority to even set aside a transaction including sale and to restore possession to the borrower in appropriate cases. Resultantly, the submissions advanced by Mr Gopalan and Mr Altaf Ahmed that the DRT has no jurisdiction to deal with a post-Section 13(4) situation, cannot be accepted.

Thus, it is clear that the DRT is empowered under Section 17 of the SARFAESI Act to decide all questions relating to the exercise of power under Section 13, which power is founded on and available only after declaring the accounts as NPA. In these circumstances, we are of the view that the question as to whether the declaration of the Appellants' accounts as NPA is valid or not is a question that should be decided by the DRT in the pending proceedings.

10. We further note that these were decisions taken by a private bank with regard to the servicing of its loan account and a determination of these issues involves disputed questions of fact. In these facts and circumstances, we are of the view that the decision of the learned single Judge to decline to exercise jurisdiction cannot be faulted with.

11. Therefore, these writ appeals are dismissed. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Reserve Bank of India,
   Fort Glacis, No.16, Rajaji Salai,
   Chennai-60 001.

2. IndusInd Bank Ltd.,
   Old No.115, 116 New No.34,
   G.N.Chetty Road,
   T.Nagar, Chennai-600 017.

+2cc to M/s.Ramalingam Associates, Advocate,SR.No.32763 to 32765
+1cc to M/s.King&Partridge, Advocate, S.R.No.32575

Writ Appeal Nos.454 to 456 of 2020
&
C.M.P.Nos.7021, 7022 & 7024 of 2020

GMR(CO)
CS/24/11/2020