

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 3953/2023 and CM APPL. 15419/2023**

Date of Decision: **28.03.2023**

IN THE MATTER OF:

ASHIMA GOYAL

Proprietor - M/s B.B. Enterprises
B-49, CC Colony, New Delhi 110007
Email: 1311.ashima@gmail.com

..... PETITIONER

Through: Mr. A.K. Singh, Mr. Shivam Garg and
Mr. Tanuj Gulati, Advocates.

versus

RESERVE BANK OF INDIA

Sansad Marg, New Delhi
Through Regional Director
Email: CRPC@rbi.com

..... RESPONDENT NO.1

CHOLAMANDALAM INVESTMENT & FINANCE CO. LTD.

1st & 2nd Floor, Plot No.6, Main PUSA Road
Karol Bagh, New Delhi - 110005
Through Regional Manager/Auth. Representative
Email: sudhirt@chola.murugappa.com

.....RESPONDENT NO.2

Through: Mr. Sanjeev Bhandari, Mr. Sushant
Bali, Mr. Kunal Mittal and Mr.
Saurabh Tanwar, Advocates for R-2.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

CM APPL. 15420/2023(for exemption)

1. Allowed, subject to all just exceptions.

2. The application is disposed of.

W.P.(C) 3953/2023 and CM APPL. 15419/2023

3. Learned counsel appearing on behalf of the petitioner has prayed for the following reliefs:-

“(i) direct respondent no. 1 in exercise its power U/s 45 (JA) of the Reserve Bank of India Act, 1934 to require respondent no. 2 to adhere to NPA norms applicable to MSME loan account, before deciding non-performing assets (NPA) in face of its Covid-19 pandemic directives and regulatory package directed to be drawn in accordance with Hon'ble Apex Court judgment circulated vide its circular dated 07.04.2021 (Annexure-G)

(ii) Set-aside/quash respondent no.2's order dated 16.06.2021 (Annexure-I) being non-speaking non-reasoned and in violation, disregard to respondent no.1's directives applicable to MSMEs sector;

(iii) direct respondent no. 2 to draw One Time Settlement in respect to petitioner loan account by enabling petitioner to deposit the same considering petitioner's property valued to be substantially & significantly much more than amount recoverable by respondent no.2 and payable by petitioner in its loan account.

(iv) set-aside/quash respondent no. 2's order dated 10.03.2023 (Annexure-P) delivered on 15.03.2023 as non-speaking, non-reasoned made without considering the petitioner's representation alongwith directing respondent no. 2 to produce statement of account pertaining to petitioner a MSME term loan account No. XOHEELD00003123193 taken aid for passing said order dated 16.06.2021;

(v) set-aside/quash respondent no. 2's order (Auction Order) dated 11.03.2023 (Annexure-Q) delivered on 15.03.2023 as non-speaking, non-reasoned made without considering the petitioner's representation.”

4. He argues that the respondents have violated the provisions of Section

45 (JA) of the Reserve Bank of India Act, 1934 while not accepting the One-Time Settlement (hereinafter referred to as OTS) proposal submitted by the petitioner. Learned counsel for the petitioner has also taken this court through the order passed by this court in W.P. (C) No.14779/2022 dated 02.03.2023. He states that in terms of the directions given by this court, the respondents, without extending any opportunity of hearing to the petitioner by a non-speaking and non-reasoned order, rejected the proposal for OTS. He, therefore, states that in the instant case, if the entire facts are analysed, the same would demonstrate that firstly, the declaration of the petitioner's account as a Non Performing Asset (hereinafter referred to as NPA) on 16.06.2021, is in violation of various circulars issued by the RBI. Secondly, not only the petitioner's account has been wrongly declared as NPA, but even the request for entering into an OTS has been denied without passing any reasoned order. He, therefore, states that under the facts of the instant case, this court should call upon the respondents to explain as to why the reasonable OTS proposal submitted by the petitioner was not accepted. He also states that the endeavour of the petitioner is to close the entire loan account and not to keep the litigation pending.

5. Mr.Sanjeev Bhandari, learned counsel appearing on behalf of respondent No.2, on advance instructions points out that the petitioner is already prosecuting her remedy before the Debts Recovery Tribunal (hereinafter referred to as DRT) for certain reliefs. He also states that when this court directed *vide* order dated 02.03.2023 in W.P. (C) No.14779/2022 that the respondent-NBFC to place on record the reasons as to why, the OTS proposal had not been accepted, the NBFC, therefore, reasonably considered the said aspect by a speaking order and the same has been communicated to

the petitioner. He also states that in the abovementioned writ petition i.e. W.P. (C) No.14779/2022, this court on 19.10.2022 has already observed that the petition under Article 226 of the Constitution of India pertaining to the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the SARFAESI Act, 2002) is *prima facie* not maintainable.

6. He, however, states that since the petitioner had shown her willingness to deposit certain amount by 30.11.2022, this court had passed certain directions. He also states that the petitioner defaulted in making the payment as was undertaken and again on 12.12.2022, the time was extended to deposit the said amount. According to him, even out of Rs.1 Crore which was required to be deposited as was undertaken by the petitioner, only Rs.50 Lacs was deposited with the Registrar General of this court. He also states that while passing the reasoned order, the respondent-NBFC has also issued an auction notice dated 11.03.2023 and the auction is stated to be scheduled for 31.03.2023. He further states that in any case, if the petitioner has any grievance including with respect to non-acceptance of OTS proposal after issuance of auction notice, the remedy would ultimately lie before the DRT under Section 17 of the SARFAESI Act, 2002.

7. In rejoinder submissions, learned counsel appearing on behalf of the petitioner states that in the instant petition, the petitioner is not agitating any grievance with respect to the measures taken for recovery of debt. He further states that the case of the petitioner is with respect to the manner in which the OTS proposal has been rejected. He, therefore, states that when the statutory regulations or provisions of an Act are violated, this court can still entertain a writ petition and direct the respondent-NBFC to consider the

proposal of OTS on the basis of circulars issued by the RBI.

8. I have considered the submissions made by learned counsel appearing for the parties and perused the record.

9. The Hon'ble Supreme Court in the case of *'United Bank of India V. Satyawati Tandon and Ors.'*¹ has held that the remedy under section 17 of the SARFAESI Act, 2002 is available to any person who may be affected by the action taken under Section 13(4) or Section 14.

10. The impugned communication dated 10.03.2023 reads as under:-

“.....

.....

1. We, M/s Cholamandalam Investment and Finance Company Ltd (hereinafter referred to as "we/us" for brevity's sake) are in receipt your undated letter much after the lapse of period time of deposit of Rs.50.00 lacs i.e. dated 30.11.2022 as per order dated 19.10.2022 passed by Hon'ble Delhi High Court in W.P.(C) No.14779 of 2022, and by this undated letter, which is clearly submitted after 31.12.2022 (which is evident from the said OTS letter) wherein you have referred a letter dated 31.12.2022) by which, on one hand you asking for settlement with respect to captioned loan account and on other hand, raising dispute of amount(s), which already stood adjudicated before Ld. Debts Recovery Tribunal-III New Delhi in your petition i.e. SA No. 119 of 2022 against the measures taken by us under section 13(2) of the Securitisation. We wish to respond to the same in the manner as mentioned below, without prejudice to our rights and contentions available in law.

2. At the very outset, we deny each and every averment of your undated letter that are made against us as the same are unsubstantiated and sans any supporting documents. Besides, it is matter of record that every payment made by you is duly reflected in the statement of account that is maintained by us.

3. Having said that, all the payments made by you towards your loan account stands adjusted which is apparent from perusal of the statement of accounts. Besides, all of you borrowers and co-borrowers approached us seeking financial assistance to boost your business. After your

¹(2010) 8 SCC 110

complete satisfaction, you all had agreed to accept the terms and conditions forming part of sanction letter issued by us as well as loan agreement. Therefore, it is nothing but an after-thought with mala fide intention to state that we are attempting to usurp your monies without due justification.

4. At the very outset, it is submitted that the Hon'ble High Court, vide order dated 19.10.2022 passed the following order in WP(C) No. 1177 of 2012 which read Inter alia as under:-

“8. In view of the above following directions are passed:

- a. The statements made by respective camel are taken on record and parties are held bound to the same.*
- b. Petitioners shall submit their settlement proposal Respondent No 2 within a period of fifteen days from the setting out a detailed repayment plan.*
- c. Petitioners shall deposit Rs. 50 lakhs with the Court on or before 1st November, 2022, and a further Rs.50 lakhs by 30th November 2012.*
- d. In case the Petitioners do not make the above-mentioned deposit within stipulated timelines, Respondent No.2 will be free to take action as per law.*
- e. In order to facilitate the settlement process ties are referred to Delhi High Court Mediation and Conciliation Centre The Mediation Centre is requested appoint Mr Sudhanshu Batra Senior Advocate in the Mediate in the present case, who is requested to conduct the same expeditiously and attempt to concede, not later than 1 month from today.*

5. Despite getting extension of time, to deposit Rs 50.00 lacs, which you were required to make by 30.11.2022, therefore, you undertook to pay a sum of Rs 50.00 lacs by 30.01.2023. You, vide CM APPL. 1643/2023 sought the modification of order dated 12.12.2022, passed by Hon'be High Court, the Hon'ble High Court passed order dated 25-01-2023 reads inter-alia as under:-

"After some arguments, learned counsel for the petitioner seeks leave to withdraw the application. He further submits that the sum of Rs. 50,00,000/- (Rupees

Fifty Lakhs only), as already directed by this Court vide order dated 12.12.2022, will be paid to the respondent on or before 30.01.2023. The said statement is taken on record"

6. That you even failed to deposit the said amount of Rs.50.00 lacs as per your statement which is matter of record vide order dated 25.01.2023. In this regard appropriate proceedings are being initiated by us before the Hon'ble High Court.

7. It is also matter of record as per clause No.d of para No.8 of order dated 19.10.2022, that "In case the Petitioners do not make the abovementioned deposit within stimulated timelines. Responders No 7 will be free intake action per low therefore we are proceeding to put the property auction for the recess of the debt being me f the measures under section 13(4) of the Securitisation Act 2002.

8. It is also matter of record that the Hon'ble High Court in its order dated 19.10.2022 has categorically recorded in para No.5, which reads as under-

"4. Having regard to the well-settled position in law regarding maintainability of a writ petition in matters pertaining to SARFAESI Act, the Court prima facie finds no good ground to entertain the present petition."

9. In first page of up-numbered Paras of first page of letter dated NIL by you had been admitted that there is delay on your part in submitting the proposal of settlement.

10. It is submitted your account became Non-Performing Asset on 16.06.2021) and thus has been duly mentioned in demand notice dated 09.08.2021 under section 13(2) of the Securitization Act 2002 which was issued to you and others demanding Rs.4,72,35,064.00. Since you failed to discharge the liability of the debt as claimed by us, we proceeded to take measures under section 13(2) of the Securitization Act 2002. In addition, to this loan, you have also availed loan Le. Emergency Credit Guarantee line (ECGL) for a sum of Rs.91,17,945.00 after the COVID, as per the Government of India guidelines, and in the said loan you have to pay a sum of Rs.85,29,573.00 as on date in addition to the outstanding as per demand notice dated 09.08.2021. Now, as per the as per valuation, the value of the secured asset is Rs.5.50 crore, which will be

put to auction being one of the measures under section 13(4) of the Securitization Act 2002.

11. That you filed a petition under section 17(1) of the Securitization Act 2002 before Ld. Debts Recovery Tribunal New Delhi, and the Ld. DRT-II Delhi after considering your all contentions and objections was pleased to pass detailed speaking order dated 14.09.2022 in S.A.No.119 of 2022, and dismissed your case petition. Order dated 14.09.2022 is annexed by you with your petition at page No.44 as Annexure P-4.

12. Thus, the remedy against the said order dated 14.09.2022 lies before the Hon'ble Debts Recovery Appellate Tribunal, New Delhi under section 18(1) of the Securitization Act 2002. by way of appeal within 30 days from passing the said order, which you never availed. Rather, you preferred the writ petition by impleading Reserve Bank of India as respondent No 1 herein, and sought relief(s) against the measures taken by us under Securitization Act 2002 with regard to secured asset, which is liable to be sold for the recovery of the debt.

13. That you had a chance to represent and in file objections under section 1363A) of the Securitization Act 2002 again the demand notice dated 09.08.2021 under section 1323 of the Securitization Act 2002 was issued to you Since you failed to discharge the liability of the debt as claimed by us we proceeded to take measures under section 13(2) of the Securitization Act 2002, which you failed to file Rather the Ld. DRT II Delhi after considering your all contentions and objections was pleased to pass detailed speaking order dated 14.09 2022 in S.A.No 119 of 2022, and dismissed your case petition.

14. At the very first page last para of your letter dated NIL, you are questioning the form and of the statement of accounts, which should have been depicted in the statement of account. In this regard, the statement of accounts are clear and detailed Complete statement of accounts were provided to you from time to time also now you asking demanding dues of the bank by us, you are raising such frivolous dispute about the form of the statement of accounts. Now asking the statement of accounts in three columns, as per your version, is neither in law nor as per procedure of the company. The statement of accounts maintained by us in ordinary course of banking business activity, is rather more exhaustive and detailed and the copy of the same has been provided to you from time 10 time. The amount(s) of interest and principal and or instalments,

are clearly shown outstanding and thus, you stand in this regard not acceptable and thus rejected.

15. Your redrafted so called ledger is completely vague and not as per the terms of the sanction, rather, you are raising disputed of the alleged debt/secured asset, which stood adjudicated by La DRT-III Delhi vide dated 14.09.2022.

16. Your letter dated 31.12.2022, raising various disputes and asking for information, we have already submitted statement of accounts to you from time to time and now, after the dismissal of your case by Ld. DRT-III Delhi you have again raised the issues vide OTS letter and also letter dated 31.12.2022. The statement of accounts submitted by us are correct and legal and there is no legal infirmity in the same.

17. The letter with reference to OTS and letter dated 31.12.2022 is nothing but asking our explanation in form of question, after the adjudication of your case which stood dismissed by Ld. DRT-III Delhi vide order dated 14.09 2022 is completely out of context and no sanctity in the eyes of law.

18. You have submitted alleged OTS for a sum of Rs.250.00 lacs as against the total outstanding of Rs.5,26,85370/- as on 19.10.2022 and Rs.85,29,573.00/- as on date (total Rs.6,12,14,943.00/-) and your offer to pay Rs 250.00 crores is completely vague and no rationale with the value of the property/secured asset i.e. secured asset with us. During discussions in the month of December 2022 we told you that if you pay Rs 50 crores by 31.03.2021 with interest at the rate at 12 wef 19.10.2022, before 15.03.2023, we can refer the matter to for approval to which you did not agree.

19. The loss of business and also loss in the family has been duly considered by us and we assured you at that point of time in December 2022, that we can consider the waiver the balance amount and told you that for rest of the balance we will not file suit for recovery of recovery case in DRT. if you pay the said amount by 15.03.2023 which was reasonable and bonafide, but you kept on pressing to accept Rs 250.00 lacs, which we are unable to accept

20. You have admitted an amount of Rs.274.74 lacs being the principal amount by asking for complete waiver of interest, from the date of sanction of loan, which is not possible and hence rejected.

21. Since you have failed to liquidate the entire dues as stated in this reply/letter, and also violated the order dated 19.10.2022 and order dated 25.01.2023 passed by Hon'ble High Court, we are proceeding ahead under section 13(4) of the Securitisation Act 2002 against the secured asset."

11. It is seen that in the instant case, what is being stated by the petitioner is that she is entitled to enter into OTS on account of various reasons as has been indicated. The fact remains that the respondent-NBFC has already issued an auction notice and the auction is scheduled for 31.03.2023. Whether the circulars issued by the RBI are applicable in the instant case of the petitioner and whether petitioner is at all entitled for any benefit thereunder, are all issues which can still be adjudicated by the concerned DRT if appropriate proceedings are taken up before it. It is also to be noted that the petitioner with respect to the recovery measures has already been prosecuting her case before the DRT.

12. In view of the aforesaid facts and circumstances of the case, this court under Article 226 of the Constitution of India normally cannot be called upon to adjudicate the justifiability of not entering into the OTS under the specific terms. It is completely a commercial decision to be taken by the respondent-NBFC. The Hon'ble Supreme Court in the case of '**Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir**²' has held as under:-

"18. Even otherwise, it is required to be noted that a writ petition against the private financial institution — ARC — the appellant herein under Article 226 of the Constitution of India against the proposed action/actions under Section 13(4) of the Sarfaesi Act can

² (2022) 5 SCC 345

be said to be not maintainable. In the present case, the ARC proposed to take action/actions under the Sarfaesi Act to recover the borrowed amount as a secured creditor. The ARC as such cannot be said to be performing public functions which are normally expected to be performed by the State authorities. During the course of a commercial transaction and under the contract, the bank/ARC lent the money to the borrowers herein and therefore the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed by the State authorities. If proceedings are initiated under the Sarfaesi Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the Sarfaesi Act and no writ petition would lie and/or is maintainable and/or entertainable.”

13. It is also to be noted that the impugned decision is taken by the respondent-NBFC in terms of the observations made by this court in its order dated 02.03.2023 in W.P. (C) No.14779/2022. In the said petition, this court on 19.10.2022 had *prima facie* noted that no good ground is made out to entertain the petition, and only on account of settlement proposal, some directions were given.

14. This court *vide* order dated 25.01.2023 in CM APPL. 1643/2023 again extended the time to pay certain amount, which are as under:-

“1. After some arguments, learned counsel for the petitioner seeks leave to withdraw the application. He further submits that the sum of Rs.50,00,000/- (Rupees Fifty Lakhs only), as already directed by this Court vide order dated 12.12.2022, will be paid to the respondent on or before 30.01.2023. The said statement is taken on record.

2. The application is, accordingly, dismissed as withdrawn.”

15. The said petition i.e. W.P. (C) No.14779/2022 is still pending. The directions passed therein are not complied with.

16. In view of the aforesaid, this court is not inclined to accept the prayer made by the petitioner. There cannot be multiple proceedings before multiple

authorities with respect to the same cause. The nature of relief sought in the instant petition, if is granted, the same would have effect on the recovery proceeding of debt. The instant petition is thus dismissed along with the pending application.

17. Order *dasti*.

PURUSHAINDRA KUMAR KAURAV, J

MARCH 28, 2023/nc

