In the High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side

The Hon'ble Justice Sabyasachi Bhattacharyya

WPO No. 722 of 2023

Atibir Industries Co. Ltd.
Vs.
State Bank of India and Another

For the petitioner	:	Mr. Ranjan Bachawat, Sr. Adv., Mr. Suman Kr. Dutt, Adv., Mr. Arijit Bardhan, Mr. Sarosij Dasgupta, Adv., Mr. Soumyajit Mishra, Adv.
For the respondent no.2	:	Mr. S.N. Mookherji, Sr. Adv., Mr. Ratnanko Banerji, Sr. Adv., Mr. Subhankar Nag, Adv., Mr. Deepanjan Dutta Ray, Adv., Mr. Naman Choudhury, Adv., Ms. Sanjana Jha, Adv., Mr. Chetan Kumar Kabra, Adv.
For the respondent Bank	:	Mr. Joy Saha, Sr. Adv., Mr. Santosh Kumar Ray, Adv., Ms. Sonal Agarwal, Adv.
Hearing concluded on	:	17.08.2023
Judgment on	:	05.10.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioner-Company was a debtor of the respondent no.1-State Bank of India (SBI). The SBI marked the account of the petitioner, due to alleged non-repayment of a term loan, as a 'Non-Performing Asset' (NPA). As a consequence, the Bank published a web-notice dated February 10, 2023, and a subsequent corrigendum to the same dated March 23, 2023, for transferring the loan of the petitioner as asset to the respondent no.2, an Asset Reconstruction Company

(ARC). The premise of the transfer was that the said loan was a stressed loan exposure of the Bank.

2. Learned Senior Counsel appearing for the petitioner contends that the classification of the petitioner's account as NPA was palpably *de hors* the relevant Reserve Bank of India (RBI) Circulars issued during the pandemic period. It is submitted that in terms of the several RBI Circulars extending the benefit of moratorium to all debtors during the Covid-19 period, the petitioner was exonerated from paying any amount to the respondent no.1-Bank till November 30, 2020. Learned Senior Counsel places reliance on the RBI Circulars dated March 27, 2020, April 17, 2020 and May 23, 2020 in such context. The moratorium was lastly extended till August 31, 2020. The cumulative effect of the Circulars would be that the petitioner was exempted from paying the instalment of termloans till November 30, 2020. Thus, the default if any for the purpose of classification of the account as NPA would have commenced from December 1, 2020. The instalment of Rs.80,00,000/- was paid on December 11, 2020. Hence, the petitioner's account could not have been classified as NPA on October 16, 2020.

3. It is argued that even otherwise, the revised repayment schedule dated September 15, 2020 exonerated the petitioner from paying any amount to the respondent-bank till September 30, 2020, when the petitioner would be required to pay an amount of Rs.80 lakh only. By relying on the relevant Circular of the RBI, learned senior counsel for the petitioner argues that an account could be classified as NPA only if interest and/or instalment of principal remains overdue for a period of more than ninety days in respect of a termloan. Even if assuming for the sake of argument the account of the petitioner was running irregular from January 17, 2020 as alleged by the respondent-Bank, the account of the petitioner was classified as NPA on the 90th day of default, contrary to the IRAC norms which mandate more than 90 days of default in payment of principal and interest.

4. It is seen from the accounts of the petitioner that the term loan facility was within limits even on April 6, 2020. Rule 2.1.1. of the Master Circular of the RBI relating to Prudential Norms on Income Recognition, Asset Classification and provisioning pertaining to advances provides that an NPA is a loan or an advance where interest and/or instalment of principal remains overdue for a period of more than 90 days in respect of a term loan.

5. The respondent no.1-Bank, by its purported notice under Section 13(2) of the SARFAESI Act, 2002 (hereinafter referred to as, "the 2002 Act") dated July 8, 2022, indicated that the petitioner's account had been classified as NPA on October 16, 2020. It is argued that subsequently a notice under Section 13(4) of the 2002 Act was issued on October 28, 2022, which was later withdrawn by the Bank, depriving the petitioner of an opportunity to take out an application before the concerned Debts Recovery Tribunal (DRT) under Section 17 of the 2002 Act. Hence, the petitioner had no opportunity to challenge the impugned action of the Bank. In any event, it is argued that it is beyond the scope of the DRT to adjudicate on the issue of classification of NPA and the veracity thereof. Hence, it is argued that the present challenge under Article 226 of the Constitution, against the classification of NPA and the purported assignment of loan to the ARC/respondent no.2 are maintainable before this Court.

6. It is next argued by learned senior counsel for the petitioner that the loan exposure of the petitioner could not have been branded as a stressed loan exposure and, thus, could not be placed for transfer to an eligible asset loan reconstruction company. Learned senior counsel places reliance on the Reserve Bank of India (Transfer of Loan Exposure) Directions, 2021 (for short, "the 2021 Directions") in such context.

7. The definition of stressed loans as laid down in the 2021 Directions and the requirement that the policy on transfer of stressed loans must be based *inter alia* on the principle that at a minimum, all loans classified as NPA above a threshold amount decided by the Board/Board Committee shall be taken on transfer, make it clear that unless the loan/account has been classified as NPA, the same cannot be transferred in terms of the Directions.

8. It is argued that the purported Deed of Assignment dated March 24, 2023 executed by respondent no.1-Bank in favour of the respondent no.2/ARC indicates that such assignment was on the basis of the account being marked as an NPA.

9. Learned senior counsel next argues that the petitioner has been approaching the respondent no.1-Bank with offers of One-Time Settlement (OTS). On January 27, 2022 an offer was made for Rs.228

Crore, with an upfront advance of Rs.11,40,00,000/-. Again, on July 15, 2022, a further amount of Rs.22,80,00,000/- was paid by way of upfront payment. The offer was revised to Rs.237 Croreon November 22, 2022 and to Rs.238 Croreon February 7, 2023. The Bank has given no explanation as to why the OTS offers were not accepted when the exposure was purportedly transferred to the respondent no.2 for Rs.250 Crore.

10. It is argued by the petitioner that the respondent no.1-Bank being a statutory authority had a duty to act fairly. In the present case, the Bank withdrew the notice under Section 13(4) of the 2002 Act to prevent the petitioner from approaching the DRT for adjudication of the propriety of the classification of its Loan Account as NPA, thereby acting *mala fide.*

11. The OTS proposals of the petitioner were also considered in a perfunctory manner.

12. Learned senior counsel for the respondent no.1-Bank submits that on April 5, 2021, the Bank had written to the petitioner that its account was irregular from January 17, 2020 and had been classified as NPA on March 31, 2021 with effect from October 16, 2020. However, the present writ petition was affirmed on March 24, 2023. For the said two years, no steps were taken by the petitioner to challenge the NPA classification. Hence, the writ petition is barred on the ground of delay, it is argued.

13. It is next contended that the petitioner has suppressed the proceedings pending before the National Company Law Tribunal

(NCLT).

14. Thirdly, it is argued that the account of the petitioner became irregular on January 17, 2020. The RBI moratorium started on March 1, 2020. Thus, the account remained irregular between January 17 and March 1, 2020, that is, for 44 days. The moratorium ended on September 1, 2020. Thus, adding further 46 days, the 90 days contemplated for classification of an account as NPA elapsed on October 16, 2020.

15. It is argued that on September 15, 2020, the Bank agreed to change the repayment schedule at the request of the petitioner. The revised repayment schedule was duly accepted by the petitioner. Out of the revised schedule, an amount of Rs.80,00,000/-was paid only on November 11, 2020, which was beyond the period of such payment even as per the revised schedule.

16. Learned senior counsel for the Bank contends that the petitioner's argument of the assignment in favour of the respondent no.2 being invalid on the ground that the NPA classification was not proper is not tenable in the eye of law. The RBI Circular dated September 24, 2021/December 5, 2020 contains separate provisions for both stressed and non-stressed loans. Chapter III deals with transfer of loans which are not in default, which specifically excludes stressed loans. Chapter IV deals with transfer of stressed loans. Thus, the Bank can transfer even when loans are not in default and not stressed loans.

17. It is argued that Section 5 of the 2002 Act deals with acquisition of rights and interest of financial interest by Asset Reconstruction Companies. There is no stipulation therein that an account must be NPA for such transfer.

18. Learned senior counsel for the Bank next contends that the petitioner has not replied to the notice issued under Section 13(2) of the 2002 Act under Section 13(3A) of the said Act. Having not availed the alternative remedy, the writ petition is barred.

19. It is submitted that upon auction sale/assignment of the stressed loan account held on March 24, 2023 by execution of a deed of assignment by the Bank in favour of the respondent no.2, which is irreversible, the writ petition has become infructuous.

20. Learned senior counsel appearing for the respondent no.2 argues that a Bank decides to assign its Stressed Loan Exposures in accordance with the decisions taken by the Banks as per their commercial wisdom. Learned senior counsel places reliance on *ICICI Bank Ltd. v. Official Liquidator of APS Star Industries Ltd. and others*, reported at *(2010) 10 SCC 1*in support of such proposition.

21. A default may be different from an NPA, as held by the Supreme Court in *Laxmi Pat Surana v. Union Bank of India and another*, reported at *(2021) 8 SCC 481*. It is argued that in the present case neither the first writ petition nor the second discloses the fact that another writ petition was pending and that the corporate debtor is trying to reverse the decision of the Bank to assign the stressed loan after initiation of Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as, "the IBC").

22. Learned senior counsel argues that the restructuring of stressed loans and management of non-performing asset are commercial matters which should be left to the expertise of a large nationalised bank as the State Bank of India. A defaulting borrower has no jurisdiction to undo an assignment in favour of an asset restructuring company, when it is itself in default of more than Rs.342 Crore. The writ petition is only an attempt to deflect the continuous default, it is argued.

23. A defaulting borrower, it is argued, has no *locus standi* to seek a reversal of any kind which affects the statutory power under Section 5 of the 2002 Act available with the Bank.

24. The letter declaring the petitioner to be an NPA dated April 5, 2021 is relied on by the respondent no.2 as well. It is argued that there being no challenge to the same and the declaration before or after initiation of Section 7, IBC proceedings, the present challenge is an afterthought to stall the restructuring of the defaulting borrower's loan and/or a resolution of the debt under the IBC by the ARC. It is argued that the proceeding under Section 7, IBC is pending for more than one year prior to the assignment.

25. Learned senior counsel highlights the huge default of the corporate debtor which, along with interest, allegedly comes to around Rs.400 Crore as on date.

26. It is argued that the petitioner is trying to allege infraction of the RBI Circular dated September 24, 2021 which is not a subject-matter of the writ petition. There are no pleadings in support of such arguments.

27. No relief has been claimed in the writ petition as to which part of the RBI Circular has been infringed during the assignment by the respondent no.1 to the respondent no.2.

28. Though the payment of Rs.80,00,000/- was made by the petitioner on account of term loan on April 6, 2020 to meet the requirements of the Master Circular-Prudential Norms, it failed to pay interest and/or instalment of principal, which remained overdue for a period of more than 90 days. In case of a term loan, it is contended, the basis of calculation of overdue amount does not require continuity of the default committed by the borrower in payment of interest and/or principal. It implies that the default for making payment of interest and/or instalments of term loan for a total period of 90 days at any point of time constitutes NPA for such term loan. Once an NPA is not cured, retrospective reassessment of the same despite being in default is a complete deviance from the RBI Circular.

29. Learned senior counsel places reliance on the definitions of 'default' and 'stressed loan' in the 2021 Guidelines and supports the actions impugned in the writ petition.

30. Certain questions have cropped up in the present matter.

31. The petitioner argues that the assignment of loan could not be made in favour of the respondent no.2, an ARC, unless it was a stressed loan.

32. The said argument hits at the root of the matter, as on the day of filing of the present writ petition, the Bank has assigned the loan in favour of the respondent no.2.

33. The petitioner has placed reliance on a coordinate Bench judgment reported at *2023 SCC OnLine Cal 143 [Olive Tree Retail Private Limited and Another Vs. South Indian Bank Limited and Another]*, for the proposition that the RBI Circulars have statutory force, being issued under the Reserve Bank of India Act, 1934. There is no quarrel with the said proposition at all.

34. In the said judgment, the learned Single Judge observed that both parties would be benefitted if the Bank permitted the petitioners to service their loans. The petitioner cannot take advantage of the said observation in the present case, since much water has flown thereafter and an assignment has been made to the respondent no.2 by the respondent no.1-Bank.

35. The petitioner also places reliance on another judgment of the said coordinate Bench in *WPA No. 11422 of 2023 [Atibir Industries Co. Ltd. Vs. Punjab National Bank].*

36. The learned Single Judge, in the said case, observed that the starting point of acquisition of rights or interests in the financial assets of any Bank or financial institution by an ARC is the account being declared NPA which, according to the learned Single Judge, is provided under the Master Direction of September 24, 2021 as updated on December 5, 2022 issued by the RBI. The learned Single Judge placed reliance on Clause 52(b) of the said Circular.

37. While concurring with the said judgment, the said aspect is required to be scrutinized more closely.

38. As repeatedly argued by the respondents, Section 5 of the 2002 Act speaks about acquisition of rights or interests in financial assets by ARCs. The said Section does not contain any specific bar to a non-stressed loan being acquired by ARCs. The only rider is that the acquisition of financial assets has to be for the purpose of asset reconstruction or securitisation.

39. Since Section 5 speaks about acquisition of 'financial assets', we are required to take a look at the definition of "financial assets" in Section 2(1)(l) of the 2002 Act. The said provision also does not restrict financial assets to stressed loans. However, a closer look indicates that Section 5 of the 2002 Act deals with the modalities of acquisition of financial assets by ARCs rather than the nature of the financial assets to be acquired by it.

40. For ascertaining the nature of the assets, we are to examine the Master Direction-Reserve Bank of India (Transfer of Loan Exposure) Directions, 2021 dated September 24, 2021, as updated on December 5, 2022.

41. Clause 3 of the 2021 Directions stipulates the entities, collectively referred to as 'lenders', to whom the provisions of the directions apply, "unless specified otherwise". ARCs, which are in a class by themselves and not mere financial institutions, are not specifically mentioned among the said entities.

42. Chapter II of the Directions deals with general conditions applicable for all loan transfers. Chapter III speaks about transfer of loans which are not in default. Clause 28 specifies that the provisions of Chapter

III do not apply, *inter alia*, to sale of stressed loans. Read in conjunction, Clause 3 and Clause 28 shows that ARCs are not entities, since not 'specified otherwise', to whom sale of stressed loans can be made.

43. In contrast, Chapter IV speaks specifically about transfer of stressed loans. Conspicuously, Clause 49 stipulates that the instructions of Chapter IV would cover transfer of stressed loans, "including transfer to ARCs". Read in the light of Clause 3, it is 'specified otherwise' that entities to whom stressed loans can be transferred include ARCs.

44. Clause 52 under Chapter IV speaks of the principle on which the policy of transfer of stressed loans is based. Clause (b) thereunder specifies that at a minimum, all loans classified as NPA above a threshold amount decided by the Board/Board Committee shall be reviewed by the Board/Board Committee. The loans identified for transfer shall be listed for purpose of transfer as indicated thereinabove.

45. Clause 9, sub-clause (k) of the 2021 RBI Directions defines "stressed loans" as loan exposures that are classified as Non-Performing Assets (NPA) or as Special Mention Accounts (SMA). In the present case, it is nobody's case that the petitioner's account was classified as an SMA.

46. Clause 73 of the Master Directions, 2021 provides that subject to the Circulars mentioned therein, all stressed loans which are in default in the books of the transferees "are permitted to be transferred to ARCs".

47. Clause 73 falls within the sub-head 'C' which provides for transfers of loans to ARCs.

48. Another aspect which is to be looked into here is Clause 56 of the 2021 directions which provides that when negotiated on a bilateral basis, such negotiations must necessarily be followed, in respect of transfer of stressed loans, by an auction through Swiss Challenge Method if the loan exposure is Rs.100 Crore or more, as in the present case.

49. The broad contours of the Swiss Challenge Method have been specified in Clause 85 of the 2021 Directions. Under the said provision, a prospective transferee interested in acquiring a specific stressed loan may offer a bid to the lender, termed as the base-bid. The lender then publicly calls for counter-bids from other prospective buyers on comparable terms by disclosing the essential elements of the base-bid and specifying the minimum mark-up acceptable. If no counter-bid crosses the mark-up specified in the invitation the base-bid becomes the winning bid.

50. In the present case, the Swiss Challenge Method has been adopted by the respondent no.1 in transferring the asset to the respondent no.2.

51. The respondent no.2 offered the first bid. The auction notice and its corrigendum clearly mentioned that the e-auction was being held under the Swiss Challenge Method.

52. The web-notice dated February 10, 2023, which was followed up by corrigenda since the previous writ petition of the petitioner was dismissed as withdrawn with liberty to the petitioner to sue afresh, was captioned as "Transfer of Stressed Loan Exposures by SBI".

53. The very first sentence thereof mentioned that in terms of the Bank's policy on transfer of stressed loan exposures, in line with the RBI guidelines on Transfer of stressed loan exposures, the "stressed loan exposures" were being placed for transfer to eligible ARCs/Banks/NBFCs/ FIs.

54. It was mentioned clearly that the auction was under the Swiss Challenge Method based on an existing offer in hand, who will have the right to match the highest bid.

55. Clause 3 of the said impugned notice mentioned that further details of the "stressed loans" would be sent in the form of PIMs. The expression "stressed loans" has been used throughout the said notice. Thus, there cannot be any iota of doubt that the Bank proceeded on the premise that it was a stressed loan transfer. The pre-requisite for a loan account to be a stressed loan, in terms of Clause 9(k) of the 2021 Master Directions, it that the same has to be classified as NPA or SMA.

56. In the present case, it being the case of none of the parties that the account was SMA, it has to be assumed that the Bank and all concerned clearly proceeded on the premise that the account was NPA and, hence, a stressed loan which was eligible to be transferred to the respondent no.2-ARC.

57. Thus, we move on to the next issue as to whether the account could be labelled as a stressed loan at all. If not, the assignment itself, which was on the premise that its subject-matter was a 'stressed loan', would be vitiated.

58. As discussed earlier, to be a stressed loan under the 2021 Directions, an account had to be NPA. Thus, the focus of attention shifts to the validity of the classification of the petitioner's account as NPA.

59. Learned senior counsel places reliance on *Manish Jaiswal Vs. Bank of Baroda and another,* in *WPA No. 19170 of 2022*, where this court had relied on Clause 2.1.2(ii) of the RBI Circular dated July 1, 2015 to hold that if the account remains "out of order" as indicated in Clause 2.2 in respect of an overdraft/cash-credit it can be declared to be an NPA. The said judgment is not directly applicable in the present case.

60. The RBI Master Circular-Prudential Norms on Income Recognition, Asset Classification and provisioning pertaining to advances, dated July 1, 2015, defines NPAs. As per Clause 2.1.2 thereof, an NPA is a loan or an advance where, *inter alia*, interests and/or instalment of principal remain overdue for a period of more than 90 days in respect of a term loan.

61. 'Overdue' has been defined in Clause 2.3 of the said Circular to mean any amount due to the Bank under any credit facility if it is not paid on the "due date" fixed by the Bank.

62. Thus, to be classified as NPA, an account has to remain unserviced with regard to interest and/or instalment of principal for a period of "more than" 90 days.

63. Another important aspect is the "due date", which is a determinant of commencement of a loan as overdue.

64. In such context, the three Pandemic Circulars issued by the RBI granting moratorium in repayment of loans comes to the fore.

65. The first such RBI Circular dated March 27, 2020 provided in respect of term loans that all commercial banks were permitted to grant a moratorium of three months on payment of all instalments falling due between March 1, 2020 and May 31, 2020. Importantly, the repayment schedules for such loans as also the residuary tenor were to be shifted across the Board by three months after the moratorium period. The said Circular was followed by Circulars dated April 17, 2020 and May 23, 2020. The last of the above extended the moratorium till August 31, 2020.

66. As on the date when the first Circular was issued, the petitioner's account was labelled to be "irregular". However, upon payment of an amount of Rs.80,00,000/- by the petitioner to the Bank on April 6, 2020, in terms of a repayment schedule entered into between the petitioner and the Bank on September 15, 2020, it cannot be said that the account of the petitioner remained "irregular". Since the Bank itself entered into such repayment schedule, such repayment schedule has to be read in the context of the RBI Circulars during the Pandemic period.

67. As per the Circular dated May 23, 2020, the moratorium was extended till August 31, 2020. Thus, the repayment schedule for the loan as well as the residuary tenor got shifted, commencing from September 1, 2020.

68. Hence, the petitioner is justified in arguing that the due date of repayment was shifted across the board till after August 31, 2020.

69. The expression "residuary tenor" which was also envisaged in the

Master Circulars, covers the 90 days period for classifying an account as NPA.

70. Coming back to the 2015 Circular, an account becomes “overdue” if it is not paid on the ‘due date’.

71. In view of the moratorium having been extended till August 31, 2020, the due date for the purpose of marking the account overdue was shifted till September 1, 2020. Hence, to classify the account as NPA, the Bank had to wait for 90 days thereafter in terms of Clause 2.1.2(i) of the 2015 Circular.

72. Interestingly, the language used in the said Clause is, for a period of “more than”90 days in respect of a term loan.

73. Even if the Bank’s calculation was to be accepted, the account was classified with effect from October 16, 2020, which was the 90^{th} day when the account was overdue. Thus, on such date, the account was not overdue for a period of “more than” 90 days.

74. In any event, the entire residuary tenor having shifted, the commencement of the period of 90 days for the purpose of classifying the account as NPA had to start from September 1, 2020. Thus, the classification of the petitioner’s account as NPA from October 16, 2020 was premature and clearly in contravention of the RBI Master Circular of July 1, 2015 read with the Pandemic Circular issued by the RBI.

75. As such, the NPA declaration itself, being vitiated, cannot but be set aside.

76. As observed above, in the event the classification of the account as ‘NPA’ goes, the account does not assume the character of a ‘stressed loan' and could not have been transferred as a stressed loan to the ARC/respondent no.2.

77. Another aspect which has to be considered here is that the respondent no.1-Bank acted in hot haste in completing the process of assignment in favour of the respondent no.2.

78. The previous writ petition, bearing WPO No. 428 of 2023, was dismissed as withdrawn with liberty to file afresh on March 21, 2023. From March 6, 2023, pursuant to an interim order granted by the learned coordinate Bench in the said writ petition, the Bank desisted from taking any steps in terms of the impugned web-notice dated February 10, 2023. Immediately upon the petitioner's previous writ petition being dismissed on March 21, 2023, the bank issued a corrigendum on March 23, 2023, giving out that the auction-transfer would take place on the very next date, that is, March 24, 2023. Thus, although the petitioner filed the present writ petition on March 24, 2023 itself, that is, merely two days after the dismissal of the previous writ petition as withdrawn, the same was sought to be frustrated by the Bank by carrying through with the assignment in favour of the respondent no.2 on the same date that is March 24, 2023.

79. The argument of the Bank that the petitioner is delayed in challenging the NPA classification does not hold good for the following reasons:

80. Not only did the Bank retrospectively classified such account as NPA from October 16, 2020 by a letter dated April 5, 2021 to the petitioner, such classification was allegedly done on March 31, 2021 with effect from October 16, 2020.

81. The said classification did not furnish a cause of action as such to the petitioner, in view of the repayment schedule entered into between the petitioner and the respondent no.1-Bank.

82. Since the petitioner paid the first instalment of Rs. 80,00,000/- under the said repayment schedule, there was no reason why the petitioner would have challenged the classification of NPA since such a classification, by its very nature, is not absolute. Upon the loan being serviced properly, under the repayment schedule or otherwise, the said account would, in any event, be reverted to a standard account. Therefore, the cause of action for the challenge occurred only when the Bank threatened to give effect to the NPA classification and carry it further by issuing an e-auction sale on February 10, 2023.

83. Hence, the objection as to delay in preferring the challenge to the NPA classification cannot be accepted.

84. The respondent-Bank cites the judgment of *Small Scale Industrial Manufacturers' Association Vs. Union of India [Writ Petition (C) No. 476 of 2020]*. The apparent insinuation is that the moratorium is merely to extend the period for repayment and the moment the moratorium ended, the repayment became due. Learned senior counsel for the bank argues that the moratorium merely postponed the payment of the loan. However, credit accrued on the loan amount, which indicates that the 90 days for the purpose of NPA declaration was not postponed till after 90 days from the end of the moratorium period. However, such argument cannot be accepted. Nothing of that sort was held in the cited judgment, which was passed on a different footing, explaining the impact and ratio of the moratorium. In any event, the judgment itself arose out of a writ petition asking for extension of the moratorium period, in which context, the Supreme Court made its observations. The said observations have nothing to do whatsoever with declaration of NPA under the 2015 RBI Circular.

85. Respondent no.2 has cited *Gajendra Sharma Vs. Union of India and another,* reported at *(2021) 1 SCC 210*, where the Supreme Court observed that the accounts which were not declared NPA till August 31, 2020 shall not be declared NPA until further orders.

86. With utmost respect, the said three-sentence order did not propound any ratio at all. Since the matter was adjourned on the request of the learned Solicitor General, the learned Senior Advocate appearing for the intervener in one of the matters had submitted that no account shall become NPA at least for a period of two months, on which premise the Supreme Court observed as it did. The said judgment did not lay down any ratio as such, which could have any bearing in the present context.

87. Coming to the judgments cited by the respondent no.2, in the said reports, the Supreme Court observed that an outstanding in the account of the borrower is a debt due and payable to the bank and the bank is the owner of such debt. It was held that the debt is an asset in the hands of the Bank as a secured creditor and the Bank can always transfer its asset. Such asset transfer, it was observed, was not 'trading' but a mere transfer of assets on the part of the Bank.

The Supreme Court, in the said judgment, did not deal with the Master Circulars issued by the RBI at all. Hence, the said judgment cannot be apposite in the present context.

88. In *Laxmi Pat Surana (supra)*, the Supreme Court was considering default for the purpose of Section 7 of the IBC.

89. In the present case, the IBC context acquires relevance only in the light of the adjudication of veracity of the NPA classification and subsequent assignment in favour of the respondent no.2.

90. Since the NPA classification as well as the consequential 'stressed loan' transfer in favour of the respondent no.2 have been held to be vitiated and in contravention of law, the context of the IBC proceeding does not come in at all. In fact, although the present adjudication might have an effect on the IBC adjudication, the same is consequential and incidental. The converse is not true. The questions which have fallen for adjudication in the present case, cannot be governed by the pendency of the IBC proceedings.

91. Insofar as the maintainability of the writ petition under Article 226 is concerned, Section 17 of the 2002 Act is not a bar, since the Bank withdrew its notice under Section 13(4) and, in the absence of any measure being taken under Section 13(4), the affected party/borrower does not have any scope of approaching the Tribunal.

92. The challenge to the classification of the petitioner's account as NPA and the consequential web-notice dated February 10, 2023 fall within the specific domain of the writ jurisdiction, since the respondent-authorities have palpably violated the provisions of the RBI guidelines which have the force of law, which vitiates such actions on the part of the respondents.

93. The contravention of the RBI guidelines was done *de hors* the authority of the Bank and the respondent no.2. Moreover, the Bank being a public entity, failed its high standards of fairness in such capacity. Public entities like the Bank, which deal with public money, ought to keep a balance between its commercial considerations and responsibilities to adhere to principles of natural justice and fairness. It does not require mention that an illegal act on the part of the Bank or any other authority, even if in the commercial interest of the Bank, is vitiated in law and must be set aside.

94. Thus, in view of the above discussions, WPO No. 722 of 2023 is allowed on contest, thereby setting aside the classification of the petitioner's term loan account with the respondent no.1-Bank as NPA with effect from October 16, 2020. Consequentially, the web notice dated February 10, 2023 issued by the respondent no.1-Bank for e-auction of the loan account of the petitioner along with all its corrigenda, are also set aside.

95. In view of the web notice being set aside, the assignment of the petitioner's loan account in favour of the respondent no.2 by the respondent no.1, pursuant to such quashed web notice dated February 10, 2023, is also set aside and reversed. All actions taken in pursuance of the account NPA classification, web notice dated February 10, 2023 and its corrigenda and the quashed assignment are, accordingly, also set aside and stand reversed.

96. There will be no order as to costs.

97. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)