

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

**WPO No. 1805 of 2023
Bhanu Properties Ltd. & Anr.
Vs.
Reserve Bank of India & Ors.**

For the petitioners	:	Mr. Joy Saha, Sr. Adv. Mr. Tanish Ghaneriwala, Adv. Mr. Ramendu Agarwal, Adv.
For the respondent no. 2:		Ms. Soni Ojha, Adv. Ms. Sambrita B. Chatterjee, Adv. Ms. Sonia Nandy
Hearing concluded on	:	27.02.2024
Judgment on	:	11.03.2024

Sabyasachi Bhattacharyya, J:-

1. The petitioners have preferred a two-pronged challenge in the present writ petition – the classification of the petitioners' account as Non Performing Asset (NPA) on June 30, 2023 and the Notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002 dated September 11, 2023.
2. Learned senior counsel appearing for the petitioners contends that the interim order dated December 6, 2023 passed in the writ petition has not been challenged by the respondent-Bank. Hence, the findings in the same have attained finality. In the absence of any change of circumstances thereafter, it is argued that there is no reason why the said order should not be maintained.

3. Secondly, learned senior counsel assails the classification of the petitioners' account as NPA. It is argued that the Statement of Accounts shows that the limit of the Cash Credit Facility was Rs. 7.5Cr. The credits availed of by the petitioners never exceeded the said limit. Hence, there was no occasion for the account to be classified as NPA.
4. Moreover, the credit facility was recalled *vide* Communication dated March 28, 2023. Thus, there was no occasion to classify the account as NPA on June 30, 2023.
5. It is argued that the ground of non-renewal of the credit facility was taken for the first time during arguments and in the affidavit-in-opposition to the writ petition and, as such, cannot be a valid ground of classification of NPA. The reliance placed by the Bank on the Master Circular relating to Prudential Norms on Income Recognition, Asset Classification and Provisioning Pertaining to Advances dated April 1, 2023 issued by the Reserve Bank of India (RBI) is not applicable to the present case, since it was issued subsequent to the classification of the account as NPA on June 30, 2023.
6. Learned senior counsel argues that the claim of the respondent no. 2-Bank is palpably erroneous and exaggerated and the Bank levied interests on penal interest which is illegal and unauthorized as per the case of *Central Bank of India Vs. Ravindra and others*, reported at (2002) 1 SCC 367.
7. It is argued that the entire loan was repaid to the Bank.

- 8.** Learned senior counsel argues that as per the RBI Circular dated July 1, 2011, in terms of Clause 2.2.1 thereof, Banks should not treat an advance as NPA merely due to existence of some deficiencies which are of temporary nature such as non-availability of adequate drawing power, balance outstanding exceeding the limit, non-submission of stock statements and the non-renewal of the limits on the due date. The amendment to the said Master Circular *vide* Circular dated April 1, 2023 also provides a similar premise in Clause 4.2.4 which stipulates that the classification of an asset as NPA should be based on the record of recovery and cannot be on the ground of balance outstanding exceeding the limit temporarily and non-renewal of the limits on the due date.
- 9.** It is argued that the Bank acted in a *mala fide* manner and sought to frustrate the writ petition by initiating steps under Section 13(4) of the SARFAESI Act during pendency of the writ petition, merely to render the writ petition infructuous.
- 10.** Learned counsel for the Bank contends that the RBI Circular dated April 1, 2023 has specifically granted liberty to the Banks to classify an account as NPA on grounds additional to the amount being outstanding for a period of more than 90 days. Clause 4.2.4(c) specifically provides that a cash credit account can be treated as NPA in the event of non-renewal of the said account within a period of 180 days from the due date of *ad hoc* sanction. In the present case, the loan account was lastly renewed on September 29, 2022 and was valid

up to December 31, 2022, which has not been denied by the petitioners.

- 11.** After December 31, 2022, the account was not renewed any further and after expiry of 180 days on June 29, 2023, the account was classified as NPA on the 181st day, that is, on June 30, 2023. The petitioners were called upon to regularize their account *vide* Recall Notice dated March 28, 2023 which the petitioners failed to do. Thereafter several e-mail Notices were also issued to the petitioners, calling upon them to provide stock statements at the earliest and to regularize the account, which the petitioners failed to do.
- 12.** Once the credit facilities are not renewed, it is contended, the sanction limit drops to zero and any amount outstanding at that point of time becomes due and payable irrespective of the fact that it has or has not crossed the sanction limit.
- 13.** Thus, it is argued that the classification of the account of the petitioners as NPA was perfectly justified.
- 14.** It is argued that the dispute raised in the writ petition is purely commercial in nature, arising out of a private contract between the petitioners and the respondent-Bank, and there is no violation of any fundamental right calling for interference under Article 226 of the Constitution of India. Thus, the Bank seeks dismissal of the writ petition.
- 15.** Upon hearing learned counsel for the parties, certain dates acquire relevance.

16. Admittedly, the credit facility was last renewed on September 29, 2022 and was valid up to December 31, 2022, after which the same was not renewed. The period of 180 days expired on June 29, 2023. Thus, under Clause 4.2.4(c) of the RBI Circular dated April 1, 2023, the account was fit to be declared NPA since the regular/*ad hoc* credit limits were not reviewed or renewed within 180 days from the due date of *ad hoc* sanction.
17. Although the credit facility was recalled on March 28, 2023 the petitioners were still given opportunity to regularize the credit facility. As on June 30, 2023, when the account was classified as NPA, the April 1, 2023 Master Circular had already come into force. Thus, it cannot be said that as on the date of NPA classification, the April 1, 2023 Master Circular was inapplicable.
18. Seen from a different perspective, the credit facility expired on December 31, 2022 when the last renewal spent its force. After waiting for 90 days thereafter, on March 28, 2023 the account was recalled. The same was declared NPA after a further period of 90 days thereafter on June 30, 2023. The Master Circular of the RBI dated November 12, 2021 was in force during the relevant period. As per Clause 6 of the same, under the heading **“C. Classification regarding definition of ‘out of order’ ”**, a cash credit account is classified as NPA if it is ‘out of order’. In cases where the outstanding balance in the principal operating account is less than the sanctioned limit/drawing power, the extant Directions *inter alia* stipulate that the account should be treated as ‘out of order’ if there are no credits

continuously for 90 days as on the date of balance sheet or credits are not enough to cover the interest debited during the same period.

- 19.** The said Clause provides further that, in order to avoid ambiguity regarding determination of 'out of order' status of CC accounts on a continuous basis, it is clarified that under sub-Clause (i), an account shall be treated as 'out of order' if the outstanding balance in the CC/OD account remains continuously in excess of the sanctioned limit/drawing power for 90 days.
- 20.** Under sub-Clause (ii), the account shall be treated as 'out of order' if the outstanding balance in the CC/OD account is less than the sanctioned limit/drawing power but there are no credits continuously for 90 days or the outstanding balance in the CC/OD account is less than the sanctioned limit/drawing power but credits are not enough to cover the interest debited during the previous 90 days period.
- 21.** Hence, exceeding the upper limit of credit sanction, harped on by the petitioners, is not the only determinant in classification of an account as NPA.
- 22.** In the present case, the credit facility was valid up to December 31, 2022. Thus, thereafter, the sanctioned limit dropped to zero. The amount outstanding from then onwards became due and payable in the absence of any renewal to the credit facility irrespective of the fact that the sanctioned limit was not crossed. The outstanding balance of the petitioners remained less than the sanctioned limit and the credits were not enough to cover the interest debited during the previous 90 days period. After the lapse of the credit facility on December 31,

2022, the outstanding balance constantly remained below the credit facility.

- 23.** On March 28, 2023, after waiting for a period of 90 days from the expiry of the credit facility, the same was recalled. During the entire period of 90 days between December 31, 2022 and March 28, 2023, the petitioners had ample opportunity to increase the outstanding amount above the debts and interests payable, which they failed to do.
- 24.** Upon waiting for 90 days thereafter, the account was declared to be NPA on June 30, 2023.
- 25.** Hence, both in terms of the RBI Master Circular date November 12, 2021 and that dated April 1, 2023, the respondent no. 2-Bank was justified and acted within the purview of the RBI Circulars in declaring the petitioners account as NPA. In such view of the matter, the challenge of the petitioners to the said classification fails.
- 26.** The petitioners were given several opportunities to make good the deficit balance in the credit facility account but failed to do so. As such, it cannot be said that the deficits were of a temporary nature and/or that the antecedents and recovery record of the petitioners were favourable to them.
- 27.** The petitioners have argued that in the absence of any change of circumstances, the findings in the interim order passed in connection with the writ petition hold good and should be made absolute. Such argument is inherently fallacious, since it is well-settled that findings rendered at the *ad interim* stage are merely tentative and not conclusive or binding at the stage of final hearing of the writ petition.

In the interim order itself, the findings clearly indicated that those were of a *prima facie* nature, to ascertain whether an arguable and triable issue had been raised by the petitioners. Hence, the said findings cannot be held to be conclusive at the final hearing stage of the writ petition.

- 28.** The notice under Section 13(2) of the SARFAESI Act dated September 11, 2023 clearly mentions the date of classification of the petitioners' account as NPA to be June 30, 2023. Such a notice is not required to contain elaborate or detailed reasons for the classification of NPA, the same not being a judicial or quasi-judicial order.
- 29.** During pendency of the writ petition, the Bank, in pursuance of the provisions of Section 13(4) of the SARFAESI Act, has taken measures within the contemplation of the said Section in pursuance of the notice under Section 13(2) of the Act. Since the classification of NPA itself was justified, as held above, the Bank could not be faulted for issuance of the consequential notice under Section 13(2) and thereafter initiating measures under Section 13(4) of the SARFAESI Act. Hence, there is no scope of interference in the writ petition.
- 30.** The proposition laid down in *South Indian Bank Ltd. and others v. Naveen Mathew Philip and Another*, reported at 2023 SCC OnLine SC 435, cited by the Bank, is apt in the context, since the writ petition had been filed against the proposed action to be taken under Section 13(4), of which the notice under Section 13(2) was a mere precursor.

31. Since the NPA classification has been upheld above, the subsequent steps taken under Section 13, sub-sections (2) and (4) of the SARFAESI Act were also justified.
32. In the above circumstances, the challenge to the NPA classification as well as the issuance of the notice under Section 13(2) of the SARFAESI Act and further consequential measures under Section 13 (4) fails.
33. Accordingly, WPO No. 1805 of 2023 is dismissed on contest, without any order as to costs.
34. Nothing in this order shall preclude the petitioners from approaching the concerned Debts Recovery Tribunal with a challenge under Section 17 of the SARFAESI Act, 2002, if the petitioners so choose, which is the appropriate remedy of the petitioners in view of the measures taken by the Bank under Section 13(4) of the said Act in the meantime.
35. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

Later:

After the above judgment is passed, learned counsel for the petitioners seeks an interim order of protection.

In view of the above dismissal, I am of the opinion that no such interim order ought to be granted, since the same will be blatantly contradictory to the contents of the above judgment. Accordingly, such prayer is refused.

(Sabyasachi Bhattacharyya, J.)