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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 18th September, 2024**

+ **W.P.(C) 13082/2024 & CM APPL. 54622/2024**

DISRUPTIVE HEALTH SOLUTIONS PRIVATE LIMITED & ORS.Petitioners

Through: Mr. Akhil Sibal, Sr. Advocate
with Mr. Pallav Palit, Mr.
Arnav Dasgupta, Mr. Mahender
Kumar Arya, Ms. Sugandh
Shani and Mr. Krishnesh Bapta,
Advs.

versus

KOTAK MAHINDRA BANK LIMITED & ANR.

.....Respondents

Through: Mr. Suresh Dobhal and Mr.
Abhinav Sharma, Advs. for R-1

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

CM APPL. 54623/2024 – EXMP.

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 13082/2024 & CM APPL. 54622/2024

3. The petitioner No.1 company, which claims itself to be registered under the MSMED Act¹, along with its Directors, who are petitioners No. 2 and 3, is invoking the writ jurisdiction of this Court

¹ Micro, Small and Medium Enterprises Development Act, 2006



under Article 226 of the Constitution of India, 1950 for directions to declare the ‘assignment agreement’ dated 30.03.2024 executed between the respondent No.1/Kotak Mahindra Bank Limited [“**KMBL**”] and respondent No.2/Pridhvi Asset Reconstruction and Securitisation Company [“**PARSCL**”] as invalid and not enforceable, claiming the same to be in violation of the statutory regulations of the RBI² and thereby seeking other consequential reliefs.

4. Learned counsels for the respondent No.1/KMBL and respondent No.2/PARSCL are present on advance notice.

5. Shorn of unnecessary details, it appears that petitioner No.1 had been availing Over Draft facility [“**OD facility**”] from the respondent No.1/KMBL which was eventually raised to the upper ceiling of ₹ 8 crores. Thereafter, the petitioner No.1 was served with a notice of assignment dated 02.04.2024 by the respondent No.1/KMBL *inter alia* bringing out that the loan account pertaining to the OD facility had been assigned to the respondent No.2/PARSCL in terms of the assignment agreement dated 30.03.2024.

6. Mr. Akhil Sibal, learned Senior Counsel, while alluding to the statement of account for the period 01.04.2023 to 31.03.2024 of the petitioner No. 1, has pointed out that as on 31.03.2024, the account of the petitioner was not categorized as a ‘stressed loan’ within the meaning of Clause 9(k) of the **Master Direction- Reserve Bank of India (Transfer of Loan Exposures) Directions, 2021 updated as on December 05, 2022**. In other words, it was urged that the account

² Reserve Bank of India



had not been declared either as NPA³ or SMA⁴ at the time of assignment; and further inviting attention to the Part-B of Master Directions⁵ dated 01.04.2023, it was pointed out that in case of revolving credit facilities like cash credit/over draft, the SMA sub-category is to be considered as follows:

“8.2 In the case of revolving credit facilities like cash credit/overdraft, the SMA sub-categories will be as follows:

SMA Sub-categories	Basis for classification-Outstanding balance remains continuously in excess of the sanctioned limit or drawing power, whichever is lower, for a period of:
SMA-1	More than 30 days and up to 60 days
SMA-2	More than 60 days and up to 90 days

7. Pointing out that the said parameters are applicable to the respondent No.1/KMBL as per its Assets Clarification Norms, it was urged that despite repeated requests, the copy of the assignment agreement dated 30.03.2024 has not been shared. Further, alluding to the notice under Section 13(2) of the SARFAESI Act⁶ it was pointed out that it is only the respondent No.2 that has claimed that the loan facility to the petitioner No.1 had become a ‘stressed loan’ whereas no such thing has been indicated in the reply of the respondent No.1/KMBL dated 09.08.2024. It was vehemently urged that the claim of the respondent No.1/KMBL in reply dated 09.08.2024 that

³ Non Performing Asset

⁴ Special Mention Account

⁵ Master Direction-Reserve Bank of India (Transfer of Loan Exposures) Directions, 2021

⁶ The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002



sum of ₹ 9.5 crores was overdue, is also false and belied from the statement of bank account for the period 01.04.2023 to 31.03.2024.

8. Lastly, relying on the decision of the Supreme Court in the case titled **Pro Knits v. Board of Directors of Canara Bank**⁷, it was urged that since the petitioner No.1 company is a registered MSME⁸, the restructuring process as contemplated *vide* notification dated 29.05.2025 issued by the Ministry of Micro, Small and Medium Enterprises is binding upon the schedule banks, as is the status of respondent No.1/KMBL; and it was canvassed that before considering the account of the petitioner as NPA or SMA in terms of notification dated 29.05.2015, the matter should have been considered by the Committee for Stressed Micro, Small and Medium Enterprises.

9. *Per contra*, learned counsel for the respondent No.1/KMBL has urged that a notice under Section 13(2) of the SARFAESI Act has been served by the respondent No.2/PARSCL on 29.07.2024 and on the same day, the petitioners replied to it, raising certain objections, which have been rejected by the respondent No.1/KMBL *vide* reply dated 09.08.2024, whereas respondent No.2/PARSCL has rejected such objections *vide* reply dated 12.08.2024. It was vehemently urged that as yet, no notice has been issued under Section 13(4) of the SARFAESI Act and the petitioners, after conveniently waiting for 50 days, are approaching this Court and challenging the assignment agreement, which is a registered document that cannot be assailed in writ proceedings.

⁷ 2024 SCC OnLine SC 1864

⁸ Micro, Small and Medium Enterprises



10. It was vehemently urged that the account of the petitioners had become 'stressed' as on 31.07.2023 since there were very few credits or transactions recorded up to 31.03.2024.

11. Learned counsel for the respondent No.2/PARSCL towed the same line of arguments as advanced by the learned counsel for the respondent No.1/KMBL, reiterating that the petitioner No.1 had become a 'defaulter' and he also disputed the correctness of the statement of bank account submitted by the petitioners.

12. Having heard the learned counsels for the parties and on perusal of the record, first things first, the present writ petition is certainly maintainable if it is demonstrated that the respondents have been guilty of violating the statutory provisions of law. However, having said that, this Court cannot go into the disputed questions of facts, and inquire into and render a finding as to whether or not the OD account had become a 'stressed loan' as on 31.03.2024. Evidently, as per the averments made in the writ petition, the upper sealing of ₹ 8 crores had been breached several times and the amounts were being debited with interest from month to month for the OD facility, and evidently, prior to April, 2024, there were hardly any receipts or credits into the account for about a year.

13. Further, the plea by learned counsel for the petitioners that the assignment deed is questionable as a copy of the same has not been shared with the petitioner No. 1 or its consent was not taken before such agreement, cannot be sustained in law. It is well ordained in law that when a borrower is under a liability to pay secured creditors and makes defaults in the re-payment of secured debts or any installment



thereof, the account of the borrower can be classified as ‘NPA’ and in such a case, the borrower shall have no say or legal right to challenge the assignment of such debt by the secured creditor in favour of any assets reconstruction company, for which reference can be invited to decision by the Supreme Court in the case of **ICICI Bank Limited v. Official Liquidator of APS Star Industries Limited**⁹.

14. Insofar as the plea raised by the learned counsel for the petitioners that the matter should have been referred to the Committee in terms of notification dated 29.05.2015 issued by the Central Government under Section 9 of the MSMED Act, it is pertinent to mention that as per **RBI Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises (MSMEs) dated March 17, 2016** vide clause 2.3¹⁰, an option was available to the petitioner No.1 as well to move an application before the Committee for immediate convening of the meeting and deciding on the issue of reconstruction of its financial liabilities. However, no such application had been preferred.

15. As a matter of fact, the petitioners in their “cease and desist” notice dated 29.07.2024 did not seek reference of their dispute to the Committee either. Indeed, the notification dated 29.05.2015 is

⁹ (2010) 10 SCC 1

¹⁰ **2.3 Identification by the Borrower Enterprise** - Any MSME borrower may voluntarily initiate proceedings under this Framework, if the enterprise reasonably apprehends failure of its business or its inability or likely inability to pay debts or there is erosion in the net worth due to accumulated losses to the extent of 50% of its net worth during the previous accounting year, by making an application to the branch or directly to the Committee as referred in para 3.3, wherever applicable.. When such a request is received by lender, the account with aggregate loan limits above Rs.10 lakh should be referred to the Committee. The Committee should convene its meeting at the earliest **but not later than five working days** from the receipt of the application, to examine the account for a suitable CAP. The accounts with aggregate loan limit up to Rs.10 lakh may be dealt with by the branch manager / designated official for a suitable CAP.



binding on the scheduled banks. However, the advantage should have been claimed at the earliest available opportunity. It would be pertinent to refer to the observations of the Supreme Court in the case of *Pro Knits (supra)*, which provides as under:-

“17. It is also pertinent to note that sufficient safeguards have been provided under the said Chapter for safeguarding the interest of the Defaulters-Borrowers for giving them opportunities to discharge their debt. However, if at the stage of classification of the loan account of the borrower as NPA, the borrower does not bring to the notice of the concerned bank/creditor that it is a Micro, Small or Medium Enterprise under the MSMED Act and if such an Enterprise allows the entire process for enforcement of security interest under the SARFAESI Act to be over, or it having challenged such action of the concerned bank/creditor in the court of law/tribunal and having failed, such an Enterprise could not be permitted to misuse the process of law for thwarting the actions taken under the SARFAESI Act by raising the plea of being an MSME at a belated stage. Suffice it to say, when it is mandatory or obligatory on the part of the Banks to follow the Instructions/Directions issued by the Central Government and the Reserve Bank of India with regard to the Framework for Revival and Rehabilitation of MSMEs, it would be equally incumbent on the part of the concerned MSMEs to be vigilant enough to follow the process laid down under the said Framework, and bring to the notice of the concerned Banks, by producing authenticated and verifiable documents/material to show its eligibility to get the benefit of the said Framework.”

{underlined portions emphasized}

16. In view of the foregoing discussion, unhesitatingly, this Court finds that the petitioners are attempting to invoke the issue of it being an MSME at a much belated stage, coupled with raising certain disputed questions of facts, thus, they are not entitled to any discretionary relief in the present writ petition. The petitioners shall be at liberty to agitate their grievances in terms of Section 17 of the SARFAESI Act, before the appropriate forum, as and when a notice



under Section 13(4) of the SARFAESI Act is issued. Nothing contained in this order shall tantamount to an expression of opinion on the merits of the matter.

17. The present writ petition along with pending application stands disposed of accordingly.

DHARMESH SHARMA, J.

SEPTEMBER 18, 2024

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