

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**MAT/1625/2024
With
IA NO: CAN/1/2024**

**PUNJAB NATIONAL BANK
VS
ATIBIR INDUSTRIES CO. LTD.**

For the Appellant	:	Mr. Mainak Bose, Senior advocate Ms. Aparajita Rao, Mr. Sanwal Tibrewal, Advocates
For the Respondent	:	Mr. Ranjan Bachawat, Senior Advocate Mr. Suman Kr. Dutt Mr. Arijit Bardhan, Mr. Sarosij Dasgupta, Mr. Soumyajit Mishra, Advocates
Heard & Judgment On	:	February 20, 2025

DEBANGSU BASAK, J.

1. Appeal is at the behest of Punjab National Bank and directed against order dated May 15, 2023 passed in WPA 11422 of 2023.
2. Impugned order is interim in nature.

3. By the impugned order, learned Single Judge restrained the appellant from taking steps in terms of a web notice dated April 29, 2023 in respect of the e-bidding.
4. Learned senior advocate appearing for the appellant submits that the writ petitioner obtained both fund based as well as non-fund based credit facilities from the appellant. He submits that, the credit facilities were classified as Non Performing Assets (NPA) with effect from June 6, 2021. A notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was issued on January 18, 2022. Despite receipt of the same, the writ petitioner did not respond thereto. Writ petitioner, however, submitted a proposal for one time settlement dated April 13, 2023. Such one time settlement was not accepted.
5. Learned senior advocate appearing for the appellant submits that, appellant thereafter decided to issue a web-notice dated April 29, 2023 in order to transfer the account of the writ petitioner, which is financial asset of the appellant to an asset reconstruction Company. He draws the attention of the Court to Section 5 of the Act of 2002 and submits that, an Asset Reconstruction Company within the

meaning of Section 5 is entitled to purchase any financial asset of any banker or a financial institution.

6. Learned senior advocate appearing for the appellant draws the attention of the Court to the Master Direction –Reserve Bank of India Transfer of Loan Exposure Directions, 2021 dated September 24, 2021 updated as on December 5, 2022. He submits that, the appellant is governed by such Master Directions of 2021. He refers to definitions contained in such Master Directions of 2021 particularly to stress loan. He submits that, appellant is entitled to transfer its financial asset to an Asset Reconstruction Company in the event, the account mentioned in the financial asset is classified as Non Performing Asset (NPA) or is a Special Mention Account (SMA). He refers to the Prudential Framework for Resolution of Stress Assets for the definition of Special Mention Account.
7. Referring to the facts of the present case, learned senior advocate appearing for the appellant submits that, the writ petitioner became a defaulter and its account was classified as NPA on June 6, 2021. He submits that, the web notice was issued on April 24, 2023. Between the period of the notice under Section 13(2) of the Act of 2002 dated January 18, 2022, till the web notice dated April 24,

2023, it is not the case of the writ petitioner that the account of the writ petitioner became regular. Consequently, as on the date of the web notice being April 29, 2023, the account was not only a SMA but also NPA.

8. Learned senior advocate appearing for the appellant submits that the writ petition was filed on May 8, 2023 and that the impugned order was passed on May 15, 2023. He submits that, the impugned order proceeds on the basis of wrong classification of the account as NPA. He submits that, the issue as to whether, the classification of the account as NPA was correctly done or not did not fall for consideration in the writ petition as issuance of a web notice for selling a financial asset did not require the account to be NPA. A banker can transfer a financial asset if the account is SMA. There is no finding by the learned Single Judge passing the impugned order of injunction restraining transfer the account concerned, that, the account cannot be classified as SMA also.
9. Learned senior advocate appearing for the appellant submits that, learned single Judge proceeded on the basis of classification of the account as NPA on June 4, 2021. According to him, learned Single Judge was required to consider the account either as SMA or NPA as

on the date of the web notice, that is, April 24, 2023. He submits that, as on such date, the account was SMA if not NPA.

10. Learned senior advocate appearing for the appellant relies upon **2024 SCC OnLine Cal 7113 (State Bank of India vs. Atibir Industries Co. Ltd. and Another)** and submits that, the same issue as involved in the facts of the present case, was decided there. He submits that, although, a Special Leave Petition was filed directed against **Atibir Industries (supra)**, the judgment and order is yet to be set aside. He submits that in such Special Leave Petition proceeding, the writ petitioner offered to make payment to State Bank of India, the banker involved therein.
11. Learned Senior Advocate appearing for the writ petitioner submits that, appellant made no effort to establish that, the account was NPA as on June 6, 2021. He submits that, the finding of the learned Single Judge that the account was not NPA on June 6, 2021 is correct.
12. Learned Senior Advocate appearing for the writ petitioner draws the attention of the Court to the renewal of credit facilities granted by the appellant. He submits that, in aggregate, a credit facility of Rs.91.60 crores was renewed by the appellant. The amount

outstanding, going by the so-called notice under Section 13(2) of the Act of 2002 is a sum in excess of Rs.78.25 crores. The amount shown to be outstanding is, therefore, well within the limit sanctioned. Therefore, according to him, the account can neither be classified as "NPA" nor as a "SMA".

13. Learned Senior Advocate appearing for the writ petitioner submits that, since the account of the writ petitioner was within the renewed sanctioned limits, the appellant was not entitled to put up the accounts for sale.
14. Learned Senior Advocate appearing for the writ petitioner draws the attention of the Court to the Master Directions of 2021 and in particular the Chapter IV: Transfer of stressed assets and Rule 52 thereof. He submits that, the Master directions of 2021 prescribes that, at the minimum, all loans must be classified as NPA above a threshold amount decided by the Board/Board Committee for the banker to transfer such account to an Asset Reconstruction Company.
15. Learned Senior Advocate appearing for the writ petitioner submits that, his client enjoyed cash credit facility and bank guarantee facility. So far as the classification of a cash credit facility as NPA is

concerned, the time limit is 90 days. He submits that, there is nothing on records to demonstrate that, the classification of the account as NPA was correct taking such dates of default as laid down in the prudential norms.

16. Referring to the judgment of this Court in **Atibir Industries Co. Ltd. and Another** (supra), learned Senior Advocate appearing for the writ petitioner submit that, the factual scenario between that case and the present case are different. He submit that, in that case, the accounts were already sold to an Asset Reconstruction Company while in the present case, the accounts are yet to be sold. Moreover, he draws the attention of the Court to the fact that, Special Leave Petition is pending in which, Hon'ble Supreme Court passed diverse orders. He also points out that, there subsists an order directing the parties to maintain status quo by the Hon'ble Supreme Court.
17. Learned Senior Advocate appearing for the writ petitioner submits that, in the present stay application, appellant produced various documents which were not before the learned Single Judge when the impugned order was passed. He submits that, the writ petition is ready for hearing with the parties filing their affidavits. The writ

petition may be directed to be heard and disposed of. Since the impugned order is interim in nature, the appeal court be pleased not to interfere with the same.

- 18.** Writ petitioner obtained credit facilities from the appellant. Credit facilities was renewed from time to time. The last renewal placed on record and accepted by the parties is a letter dated April 24, 2020.
- 19.** The grand total of renewed credit facilities is Rs.91.60 crores. The break up of such renewed credit facilities shows that the Fund Based credit facility was for Rs.40 crores. Letter of Credit was for Rs.48 crores and Bank Guarantee was for Rs.3.60 crores. Therefore, the Non-Fund Based credit facility was Rs.51.60 crores by adding the Letter of Credit of Rs.48 crores and Bank Guarantee of Rs.3.60 crores.
- 20.** Bank issued a noticed dated January 18, 2022 stating it to be under Section 13(2) of the Act of 2002. Despite receipt of such notice, writ petitioner did not reply thereto. Non-reply thereof raises a rebuttable presumption of acknowledgement of liability as stated in the notice. Nothing is placed on record to rebut the presumption of liability to the extent mentioned in the notice under Section 13(2) of the Act of 2002.

- 21.** In the notice dated January 18, 2022, appellant claimed that, the outstanding amount was Rs.78,25,58,742.93 as against a credit facilities of a limit of Rs.43.70 crores. Such notice was also stated that, the account has been classified as NPA on June 6, 2021.
- 22.** Writ petitioner submitted a One Time Settlement Proposal by a writing dated April 13, 2023. This One Time Settlement Proposal was not accepted by the appellant.
- 23.** Appellant thereafter issued a web notice dated April 29, 2023 proposing to transfer the financial assets of the appellant in relation to the writ petitioner to an ARC/permitted transferee through Swiss Challenge Method. This web notice dated April 29, 2023 was made the subject-matter of the writ petition filed by the writ petitioner on May 8, 2023 in which the impugned order dated May 15, 2023 was passed. Appellant was restrained from proceeding with the web notice dated April 29, 2023 during the pendency of the writ petition, by the impugned order.
- 24.** Section 5 of the Act of 2002 allows any Asset Reconstruction Company to acquire financial assets of any bank or financial institutions, notwithstanding anything contained in any agreement or any other law for the time being in force.

25. Appellant is a banker, put up its financial assets for transfer through the web notice dated April 29, 2023. This exercise of the appellant is not a measure under the Act of 2002. Therefore, requirement of compliance with the rigours of Section 13 of the Act of 2002 commencing with the issuance of a notice under Section 13(2) of the Act of 2002 is imbibed to an action of a banker seeking to transfer its financial asset to an ARC.
26. Action of the appellant in issuing the web notice to sell its financial asset is governed by Master Directions of 2021 issued by the Reserve Bank of India. Relevant provisions of the Master Directions of 2021, attention of which were drawn to the Court, are as follows:

“(k) “stressed loans” mean loan exposures that are classified as non-performing assets (NPA) or as special mention accounts (SMA);

.....

52. The policy on transfer of stressed loans shall be based on the following principles:

- a. The process of identification of stressed loans beyond a specified value, as may be determined by a lender’s policy, for transfer shall follow a top-down approach i.e., the head office/corporate office of the lender shall be actively involved in identification of stressed loans for transfer;***

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- b. 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 at periodic intervals and a view, with documented rationale, be taken on transfer or otherwise. The loans identified for transfer shall be listed for the purpose of transfer as indicated above.***

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73. Subject to the provisions of the circulars DNBR.PD (ARC) CC. No. 07/26.03.001/2018-19 dated June 28, 2019 and DOR. NBFC(ARC)CC.No.8/26.03.001/2019-20 dated December 6, 2019, all stressed loans which are in default in the books of the transferors are permitted to be transferred to ARCs. This shall include loan exposures classified as fraud as on the date of transfer provided that the responsibilities of the transferor with respect to continuous reporting, monitoring, filling of complaints with law enforcement agencies and proceedings related to such complaints shall also be transferred to the ARC. The transfer of such loan exposures to an ARC, however, does not absolve the transferor from fixing the staff accountability as required under the extant instructions on frauds."

- 27.** Stressed loan as defined under the Master Directions of 2021 includes NPA as well as SMA. SMA is defined in the Prudential Framework of Resolution of Stressed loans dated June 7, 2019. The prudential norms of 2019 provides for a framework for resolution

of stressed assets and the framework for early identification and reporting of stress. It requires lenders such as the appellant to recognize incident of stressed loan accounts immediately on default, by classifying such assets as SMA in terms of the category laid down therein. In case of revolving credit facilities like cash credit, SMA sub-categories are also specified under the prudential norms.

- 28.** Essentially, so far as cash credit is concerned, if the account is overdrawn or the balance remains outstanding for a period in excess of 31 days then, it is classified either as SMA 1 or SMA 2 depending upon the period of outstanding.
- 29.** Regulation 52 of the Master Regulations of 2021 may be construed to permit a banker to transfer a loan account classified as NPA and that too, above a threshold amount as decided by the Board/Board Committees to an Asset Reconstruction Company. One plausible view is that the account needs to be NPA before it is put up for transfer to an ARC.
- 30.** In the present case, the learned Single Judge proceeded on the basis that, the account was not a NPA as declared on June 6, 2021. There is no finding that, the account was not a NPA on the date, when the

account was put up for transfer through the web notice on April 29, 2023.

- 31.** Nothing is placed before us to suggest, let alone establish that, the account was not a NPA on April 28, 2023 being the date prior to the appellant put up the web notice.
- 32.** The contention of the writ petitioner that, the account was within the renewed sanctioned limit of Rs.91.60 crores is without any substance. The renewal of the credit facilities on April 24, 2020 was for an aggregate amount of Rs.91.60 crores. The break up of the renewed sanctioned is Rs.40 crores for Fund Based and Rs.51.60 crores for Non-Fund based. The debits for the Non-Fund based credit facility is obviously debited in the cash credit facility which the writ petitioner enjoyed.
- 33.** Limit in the cash credit facilities was Rs.40 crores. Non-Fund Based credit facility were invoked and the appellant was required to pay on behalf of the writ petitioner through the cash credit account of the writ petitioner, to the persons who were entitled to the receipts of the Letter of Credit or the Bank Guarantee, as the case may be. Consequently, upon Non-Fund Based credit facility devolved into the cash credit account. On such devolution the cash credit account

overshot the sanctioned limit of Rs.40 crores. Writ petitioner did not take any steps to regularize such cash credit facility limit from the time it stood in excess of the sanctioned limit.

- 34.** In terms of the prudential norms, the cash credit facility was surely a special mentioned account as on the date of the notice issued under section 13(2) of the Act of 2002. It was a NPA on the date when the web notice was issued on April 29, 2023, if it was not so on June 6, 2021 when it was so classified.
- 35.** The writ petitioner enjoyed credit facilities from another banker being State Bank of India. State Bank of India sold its financial assets being the accounts of the writ petitioner maintained with it to an Asset Reconstruction Company. This process was challenged by the writ petitioner in a writ petition in which was disposed of by the learned Single Judge. Two appeals carried against such judgment and order of the learned Single Judge was reversed in **Atibir Industries Co. Ltd. and Another** (supra). Special Leave Petition directed against **Atibir Industries Co. Ltd. and Another** (supra) is pending. There is an order of status quo passed in such Special Leave Petition.

36. Before the Hon'ble Supreme Court, the writ petitioner is paying State Bank of India. We enquired of the writ petitioner, in course of hearing of the present appeal, as to whether, the writ petitioner is ready and willing to pay of the appellant or not. In response to such query of the Court, on the first date, adjournment was sought for on behalf of the writ petitioner and granted. However, in course of hearing of the appeal, it is submitted on behalf of the writ petitioner that, they are not willing to pay any amount to the appellant.
37. As a banker, we do not find that the appellant acted in breach either of the prudential norms or the Master Directions of the 2021 or of the Act of 2002 in issuing a web notice dated April 29, 2023. No legal right of the writ petitioner stands infringed by such action of the appellant.
38. In such circumstances, we set aside the order of restraint on the appellant from transferring its financial assets to an Asset Reconstruction Company or to transferees entitled thereto.
39. **MAT 1625 of 2024** and **IA No.: CAN 1 of 2024** are disposed of without any order as to costs.

- 40.** Since we did not call for any affidavits in the present appeal, allegations made in the stay application are deemed to be denied by the respondents.

(Debangsu Basak, J.)

- 41.** I agree.

(Md. Shabbar Rashidi, J.)

Dd/AD