SHAGUFTA QUTBUDDIN PATHAN

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION NO. 742 of 2025
WITH
INTERIM APPLICATION (LODGING) NO.1785 OF 2026
IN
COMMERCIAL ARBITRATION PETITION NO. 742 of 2025

A. Navinchandra Steel Private Limited,
Having registered office at 704,
Ecstasy Commercial Building, City of Joy,
Nirmal Lifestyle, Jata Shankar Dosa Marg,
Mulund (W), Mumbai - 400 080 ...Petitioner/ Applicant

Versus

1. Board of Directors of the Abhyudaya Co-Op. Bank Limited,
   Having its administrative office at:
   K.K. Tower, Abhyudaya Bank Lane,
   Off. G.D. Ambedkar Marg,
   Parel Village, Mumbai - 400 012

2. The Authorized Officer,
   Abhyudaya Co-op. Bank Ltd.,
   Having its administrative office at:
   K.K. Tower, Abhyudaya Bank Lane,
   Off. G.D. Ambedkar Marg,
   Parel Village, Mumbai - 400 012

3. Shri V.N. Lothey (Patil)
   Arbitrator, Appointed u/s 84 of
   Multi-State Co-op Societies Act, 2002,
   NM Joshi Marg, Mahalaxmi,
   Mumbai 400 011 ...Respondents

WITH
COMMERCIAL ARBITRATION PETITION NO 200 OF 2025
WITH
INTERIM APPLICATION NO.478 OF 2026

IN

COMMERCIAL ARBITRATION PETITION NO 200 OF 2025

1. Shree Shantinath Steels
   706, Ecstasy Commercial Bldg, City of Joy,
   Nirmal Life Style Ltd.,
   Jata Shankar Dosa Marg,
   Mulund (West), Mumbai – 400080 ...Petitioner

2. Nilaben Rajesh Soni
   Proprietor of Shree Shantinath Steels
   706, Ecstasy Commercial Bldg, City of Joy,
   Nirmal Life Style Ltd.,
   Jata Shankar Dosa Marg,
   Mulund (West), Mumbai-400080.

Versus

1. Board of Directors of the
   Abhyudaya Co-Op. Bank Limited,
   Having its administrative office at:
   K.K. Tower, Abhyudaya Bank Lane,
   Off. G.D. Ambedkar Marg,
   Parel Village, Mumbai - 400 012

2. The Authorized Officer,
   Abhyudaya Co-op. Bank Ltd.,
   Having its administrative office at:
   K.K. Tower, Abhyudaya Bank Lane,
   Off. G.D. Ambedkar Marg,
   Parel Village, Mumbai - 400 012

3. V.N. Lothey (Patil)
   Arbitrator, Appointed u/s 84 of
   Multi-State Co-op Societies Act, 2002,
   NM Joshi Marg, Mahalaxmi,
   Mumbai 400 011 ...Respondents

WITH

INTERIM APPLICATION NO.7412 OF 2025

IN

COMMERCIAL ARBITRATION PETITION NO 200 OF 2025

1. Nilaben Rajesh Soni
   Proprietor of M/s. Shree Shantinath Steels
   706, Ecstasy Commercial Bldg, City of Joy,
   Nirmal Life Style Ltd.,
   Jata Shankar Dosa Marg,
   Mulund (West), Mumbai-400080.

...Petitioner

Versus

1. The Board of Directors of
   Abhyudaya Co-op. Bank Limited,
   Having its administrative office at:
   K.K. Tower, Abhyudaya Bank Lane,
   Off. G.D. Ambedkar Marg,
   Parel Village, Mumbai - 400 012

2. The Authorized Officer,
   Abhyudaya Co-op. Bank Ltd.,
   Having its administrative office at:
   K.K. Tower, Abhyudaya Bank Lane,
   Off. G.D. Ambedkar Marg,
   Parel Village, Mumbai - 400 012

3. V.N. Lothey (Patil)
   Arbitrator, Appointed u/s 84 of
   Multi-State Co-op Societies Act, 2002,
   NM Joshi Marg, Mahalaxmi,
   Mumbai 400 011

...Respondents

Mr. Mathews Nedumpara a/w. Ms. Hemali Kurne and Mr. Dayanand, for the Petitioner.
Mr. Madhur Rai a/w. Sanjiv P., Mr. Durgesh Telang and Mr. Yogesh Mishra i/b. PRS Legal, for Respondent Nos. 1 and 2.

CORAM : SHARMILA U. DESHMUKH, J.
RESERVED : JANUARY 29, 2026
PRONOUNCED : FEBRUARY 12, 2026

JUDGMENT:

1. Both the Petitions filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, "***the Arbitration Act***") challenges the Award passed by the learned Arbitrator appointed under Section 84 of the Multi-State Co-operative Societies Act, 2002 (for short, "***the MSCS Act***"). Commercial Arbitration Petition No 200 of 2025 challenges the Award dated 3rd July, 2023 passed in Arbitration Case No ARB/ACB/VNL/2063 of 2021 and Commercial Arbitration Petition No 742 of 2025 challenges the Award dated 5th December, 2022 passed in Arbitration Case No ARB/ACB/VNL/2055 of 2021. Common submissions were canvassed and both the Petitions are being disposed of by this common judgment.

2. Considering that submissions canvassed were confined to legal submissions and did not assail the findings of fact and rightly so in view of the restrictive scope of Section 34 of Arbitration and Conciliation Act, 1996, this Court has not referred to the facts of the case. Suffice for our purpose is to state that by reason of default in repayment of financial assistance availed by the Petitioners, the Respondent Bank had invoked the provisions of Section 84 of Multi- State Co-operative Societies Act, 2002 and referred the Dispute to the arbitration of

Learned Arbitrator leading to passing of the impugned Awards. In addition, the Respondent bank also invoked the provisions of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "**Sarfaesi Act"**) for enforcement of security of mortgaged property.

3. The findings of the learned Arbitrator can be broadly summarized as under :-

(i) There is no dispute about availing of financial facilities and default occurred in payment of outstanding dues.

(ii) The Petitioner is a member of the bank and therefore the dispute under Section 84 of the MSCS Act is maintainable before the Tribunal.

(iii) The provision of sub Section 3 of Section 84 of MSCS Act empowers the arbitral tribunal to decide whether any particular dispute is entertainable before the Tribunal and for appointment of Tribunal no consent of the parties is required as the same is statutory arbitration.

(iv) The MSCS Act prevails over the Sarfaesi Act and if the opponents are aggrieved against the measures adopted by the bank under Section 13 of the Sarfaesi Act, the provision of Section 17 of the Sarfaesi Act provides the remedy.

4. Mr. Nedumpara, learned counsel for the Petitioner would assail the jurisdiction of the Arbitrator to decide the Dispute under Section 84 of the MSCS Act in view of the provisions of The Recovery of Debts and Bankruptcy Act, 1993 (for short, **"RDB Act")** and Sarfaesi Act. According to him, it is the central legislation which will govern the proceedings for recovery of debts as banking is relatable to Entry 45 of List I of Seventh Schedule of Constitution of India. He points out to the stated object of the MSCS Act to contend that the object is the governance of co-operative societies and to consolidate and amend the law relating thereto. He submits that in contradistinction the provisions of the Sarfaesi Act and the RDB Act have been enacted with the stated object of adjudication and recovery of debts due to banks and financial institutions and matters connected thereto. To buttress the submission that recourse can be taken only to the provisions of RDB Act for recovery of dues by banks and financial institutions, he points out the provisions of Section 17 and Section 19 of the RDB Act. Drawing support from the said provisions, he contends that the proper procedure has been provided under the RDB Act and the dispute in the present case is in the realm of recovery of money, MSCS Act has no application.

5. He submits that recovery of debt is permitted under the Sarfaesi Act, and the RDB Act and it is desirable that the recovery procedure be initiated in one forum. He submits that the Respondent Bank has invoked multiple jurisdiction as it has approached the Arbitrator under Section 84 of MSCS Act, filed application under Sarfaesi Act and has also invoked Insolvency and Bankruptcy Code for declaring insolvency of the Petitioners. He submits that under the Micro, Small and Medium Enterprises Development Act, 2006 (for short, **"MSME Act"**), a mechanism is provided for resolution of distressed industries and the notification dated 29th May, 2015 provides for revival and rehabilitation by formation of committee.

6. He would further submit that the MSCS Act has been enacted by the Parliament in exercise of powers under Article 252 of the Constitution of India and has acted as a delegatee of State Legislature. He submits that the subject of banking is relatable to Entry 45 of List I and co-operative societies is relatable to Entry 32 of List II of Seventh Schedule of Constitution of India. He submits that the Respondent Bank being co-operative bank, its banking activity is governed by law enacted under Entry 45 of List I i.e RDB Act and Sarfaesi Act considering the doctrine of pith and substance and to other operations apart from banking activities, laws enacted by the State Legislature will

apply. He submits that therefore it is the RDB Act which will apply and not MSCS Act.

7. He would assail the Learned Arbitrator's finding on its jurisdiction and would submit that the Arbitrator being appointed under the statute could not decide a challenge to its own jurisdiction. In support, he relies upon the decision in the case of ***Vidya Drolia and Ors. Durga Trading Corporation***[1].

8. *Per contra*, Mr. Rai, learned counsel for the Respondents would submit that under the provisions of section 84(2) of the MSCS Act, the dispute can be referred to arbitration as it is a dispute touching the business of the Society i.e. the recovery of loan. He would further point out that the learned Arbitrator has considered the arguments of the Petitioner that the Arbitrator cannot decide the challenge to its own jurisdiction and has held that the appointment of Arbitrator is under Section 84 by the Central Registrar which does not contemplate any consent of the parties. He would further submit that the objection that the Arbitrator cannot rule on its own jurisdiction has been rejected. He would further point out that the learned Arbitrator has held that once the party has obtained loan and has become member of the bank,

1 (2019) 20 SCC 406

both the parties are bound by the provisions of MSCS Act being a special Act.

9. He would further submit that in the action taken under Section 13 of the Sarfaesi Act, is for the purpose of securitisation of the financial assets and enforcement of security interest and not for recovery of debt. He submits that in view of Section 84 of MSCS Act, it is not necessary to approach the Tribunal under the RDB Act. He would submit that Section 37 of the Sarfaesi Act provides that the provisions of Sarfaesi Act are in addition to the other laws.

10. Rival contentions now fall for determination:

11. The Respondent Bank is a Multi-State Co-operative Society registered under the provisions of MSCS Act and carries on business of banking. The MSCS Act is a self contained legislation providing the mechanism for redressal of disputes under Section 84 of MSCS Act. RDB Act facilitates the recovery of dues by banks and financial institutions under the aegis of Tribunal established under the Statute without being burdened by the technicalities of Civil Procedure Code. Sarfaesi Act enables the banks, financial institutions and other secured creditors to recover their dues without intervention of Courts or

Tribunals. The contention of Mr. Nedumpara is that the mechanism of arbitration contained in MSCS Act gets excluded when the multi State co-operative banks seeks to recover the dues in which case the exclusive jurisdiction lies with the Tribunal under the RDB Act or Sarfeasi Act which are central legislations. The issue as to whether co-operative banks which are co-operative societies also are governed by Schedule VII List I Entry 45 or List II Entry 32 of Constitution of India and to what extent came up for consideration before the Constitution Bench of Hon'ble Apex Court in ***Pandurang Ganpati Chaugule vs Vishwasrao Patil Murgud Sahakari Bank Ltd***[2]. The moot question was the applicability of Sarfaesi Act to co-operative banks. The Hon'ble Apex Court affirmed that Sarfaesi Act will also apply to co-operative banks and Parliament was competent to amend Section 2(c) of Sarfaesi Act by adding sub-clause (iva) a multi State Co-operative bank. The Hon'ble Apex Court examined the scope of legislative field covered by Entry 45 of List I i.e Banking and Entry 32 of List II of Seventh Schedule of Constitution of India to hold that multi state level co-operative societies registered under MSCS Act with respect to banking are governed by legislation related to Entry 45 of List I of Seventh Schedule of Constitution of India. It held that recovery of debt would be an essential function of banking institution and Parliament can

2 (2020) 9 SCC 215

enact law under List I Entry 45 and it is open for Parliament to provide remedy under Section 13 of Sarfaesi Act. Co-operative bank's entire operation and act of banking are governed by law enacted under List I Entry 45 i.e. Banking Regulation Act, 1949 and Reserve Bank of India Act under Entry 38 of List I. It held that no conflict has been created by providing additional procedure under Section 13 of Sarfaesi Act and it is open for bank to adopt procedure which it may choose.

12. The Hon'ble Apex Court thus upheld the legislative competence of the Parliament to provide the additional procedure for recovery under Section 13 of Sarfaesi Act and held that the provisions of Section 2(1)(c)(iva) adding multi state co-operative bank is not ultra vires. Even if it is held that recovery of debts is banking activity and Parliament has the legislative competence to enact law and has enacted the law, the question is whether the provisions of MSCS Act are excluded for seeking recovery of debts and exclusive jurisdiction is under RDB Act. The answer to this question can be found in the RDB Act itself. The statutory provision of RDB Act does not place an absolute embargo on the mechanism provided under the MSCS Act and on the contrary, admits of the right of a multi State co-operative society to initiate proceedings under MSCS Act to recover debts. By amendment Act 1 of 2013, the RDB Act came to be amended and sub section (1A) and (1B)

came to be introduced in Section 19 of RDB Act, which governs the procedure for recovery of debt by a bank or financial institution by approaching the Tribunal established under the RDB Act. Sub sections (1A) and (1B) of Section 19 reads as under:

> "(1A) Every bank, being multi State co-operative bank referred to in sub clause (vi) of clause (d) of Section 2, may at its option, opt to initiate proceedings under the Multi State Co-operative Societies Act, 2002(39 of 2002) to recover debts, whether due before or after the date of commencement of the Enforcement of the Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 from any person instead of making an application under this Chapter.
>
> 1B. In case, a bank being, multi State co-operative bank referred to in sub-clause (vi) of clause (d) of Section 2 has filed an application under this Chapter and subsequently opts to withdraw the application for the purpose of initiating proceeding under the Multi-State Co-operative Societies Act, 2002(39 of 2002) to recover debts, it may do so with the permission of the Tribunal and every such application seeking permission from the Tribunal to withdraw the application made under sub-section (1A) shall be dealt with by it as expeditiously as possible and disposed of within thirty days from the date of such application.
>
> Provided that in case the Tribunal refuses to grant permission for withdrawal of the application filed under this sub-section, it shall pass such orders after recording the reasons therefor."

13. The amendment gives an option to multi-State co-operative bank defined in Section 2(vi)(d) of RDB Act to initiate the proceeding under MSCS Act instead of approaching the Tribunal for recovery of its debts. Even accepting that the business of banking is covered by legislations relatable to Entry 45 of List I of Seventh Schedule to the Constitution of India, the central legislation i.e. RDB Act itself permits the Respondent No 1 Bank to choose the mechanism of recovery provided under the MSCS Act. It is only where the application is first filed before the Tribunal under RDB Act and thereafter the bank seeks to exercise the option to initiate proceedings under MSCS Act, that the Tribunal is required to consider whether permission should be granted or not. In the present case, the Respondent Bank has chosen to initiate proceedings under the MSCS Act, instead of approaching the Tribunal, which cannot be said to be without jurisdiction. As the option is made available by the statute itself, it cannot be accepted that the exclusive jurisdiction vested in the Tribunal constituted under the RDB Act and Arbitrator had no jurisdiction under Section 84 of MSCS Act.

14. It is also pertinent to note that Section 84 of the MSCS Act is prefaced with *non obstante* clause which provides that notwithstanding anything contained in any other law for the time being in force, if any

dispute touching the constitution, management, or business of a multi-state co-operative society arises among the classes set out in clause (a) to (d) of sub Section (1) of Section 84, the same shall be referred to arbitration. The *non obstante* clause gives overriding effect if there is anything inconsistent with any other law. Sub clause (a) of sub Section (2) of Section 84 provides that a claim by the multi-state co-operative society for any debt or demand due to it from a member is deemed to be a dispute touching the constitution, management or business of the multi-state co-operative society. Though initially it was sought to be contended by Mr. Nedumpura, that the Petitioner is not a member of the Society, upon instruction, he would fairly concede that, the Petitioner is a member of the Respondent Bank. In any event there is finding of fact by the Learned Arbitrator that the Respondent Bank has placed on record the documents of membership application form signed by the Petitioners. The Respondent being a society carrying on business of banking, the advancing or recovery of debt due to it constitutes business of the society and claim of multi state co-operative society for any debt or demand due to it from its member is squarely covered by Section 84 of MSCS Act. There is no provision of MSME Act pointed out which mandates the applicability of MSME Act before adopting remedy under Section 84 of MSCS Act.

15. Section 84(5) of MSCS Act makes applicable to the provisions of Arbitration and Conciliation Act, 1996 to arbitration under Section 84 of MSCS Act unless provided otherwise. Section 16 of the Arbitration and Conciliation Act, 1996 Act provides that the arbitral tribunal is competent to rule on its jurisdiction and accordingly the Arbitrator in the present case has upheld its jurisdiction to decide the Dispute. I am therefore not inclined to accept the submission that the learned Arbitrator could not have ruled upon its own jurisdiction.

16. Dealing next with the objection that having invoked Section 13 of Sarfaesi Act for recovery of its dues, it was not open for Respondent bank to initiate proceedings under MSCS Act, the position is settled that Section 37 of Sarfaesi Act does not bar the application of other laws. Section 35 of Sarfaesi Act provides for over-riding effect of Sarfaesi, which will apply only in event conflict is demonstrated. In present case, no conflict is demonstrated between MSCS Act and Sarfaesi Act. in ***Indiabulls Housing Finance Limited vs Deccan Chronicle Holdings Limited & Ors.***[3]**,** one of the issues before the Hon'ble Apex Court was whether the provisions of Sarfaesi Act can be invoked by the amalgamated company when the original lender does not fall within the purview of Sarfaesi Act but the amalgamated

3 (2018) 14 SCC 783

company does and whether the invocation of arbitration proceedings bars the initiation of proceedings under Sarfaesi Act. The Hon'ble Apex Court on the aspect of simultaneous application of the Arbitration Act and Sarfaesi Act held that Sarfaesi Act is a special enactment which provides speedy remedy to the banks and financial institution and merely because steps are taken under the Arbitration Act which is statute of general nature would not mean that remedy under the special statute is foreclosed. It noted the decision in ***Transcore vs Union of India & Anr.***[4]**,** which had rejected the applicability of doctrine of election and held that the financial institution is not precluded form taking steps under Sarfaesi Act simply because it has availed remedy under RDB Act. It noted that Sarfaesi Act was enacted to regulate securitisation and reconstruction of financial assets and enforcement of security interest and matters connected therein. Liquidation of secured interest through a more expeditious procedure is what has been envisaged. Sarfaesi proceedings are in the nature of enforcement proceedings while arbitration is an adjudicatory process. In ***M.D Frozen Foods Exports Pvt Ltd & Ord vs Hero Fincorp Ltd.***[5] it was held that Sarfaesi and arbitration proceedings can go hand in hand and one remedy does not bar the other. The judicial pronouncements re-inforces and reiterates the complementary existence of Sarfaesi with

4 (2008) 1 SCC 125
5 (2017) 16 SCC 741

other enactment pertaining to recovery of debts due to banks and financial institutions.

17. The enforcement of security interest by invoking the provisions of Sarfaesi Act cannot be pressed into service to oust the jurisdiction of Arbitrator under Section 84 of MSCS Act, which is an adjudicatory process. The impetus is to provide speedy and expeditious procedure for recovery of debts and there is no prohibition demonstrated from the MSCS Act or Sarfaesi Act against initiation of proceedings under one enactment upon proceedings being initiated under the other enactment. There is no relevance shown of the decision of ***Vidya Drolia & Ors*** (supra) concerning the issue of certain disputes being non arbitrable in context of present proceedings.

18. In light of the above discussion, there is no warrant for interference with the Awards dated 5th December, 2022 and 3rd July, 2023. Resultantly the Petitions fail and stands dismissed.

19. Interim Applications do not survive for consideration and stands dismissed.

[SHARMILA U. DESHMUKH, J.]