

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28<sup>TH</sup> DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.6037 OF 2023 (GM-RES)

**BETWEEN:**

GSTAAD HOTELS PVT. LTD.,  
INCORPORATED UNDER THE COMPANIES ACT,  
HAVING ITS REGISTERED OFFICE  
AT 4<sup>TH</sup> FLOOR, RAHEJA CHAMBERS  
LINKING ROAD AND MAIN AVENUE  
SANTACRUZ WEST, MUMBAI – 400 054.

AND CARRYING ON ITS BUSINESS AT  
JW MARRIOTT HOTEL  
NO. 24/1, VITTAL MALLYA ROAD  
BENGALURU – 560 001.  
THROUGH ITS DIRECTOR  
MR. ADITYA RAHEJA

... PETITIONER

(BY SRI. AJESH KUMAR S., ADVOCATE)

**AND:**

1 . UNION OF INDIA  
THROUGH THE SECRETARY  
DEPARTMENT OF FINANCIAL SERVICES  
MINISTRY OF FINANCE  
GOVERNMENT OF INDIA  
HAVING OFFICE AT 3<sup>RD</sup> FLOOR  
JEEVAN DEEP BUILDING

SANSAD MARG  
NEW DELHI – 110 001.

- 2 . RESERVE BANK OF INDIA  
HAVING ITS REGIONAL OFFICE AT  
10/3/8, NRUPATHUNGA ROAD  
AMBEDKAR VEEDHI  
BENGALURU – 560 001.  
REP. BY ITS REGIONAL DIRECTOR
- 3 . NATIONAL CREDIT GUARANTEE  
TRUSTEE COMPANY LTD.,  
INCORPORATED UNDER  
THE COMPANIES ACT, 2013  
BY THE DEPARTMENT OF  
FINANCIAL SERVICES  
MINISTRY OF FINANCE  
GOVERNMENT OF INDIA  
HAVING ITS REGISTERED OFFICE AT  
MSME DEVELOPMENT CENTRE  
C-11, G-BLOCK, BANDRA KURLA COMPLEX  
BANDRA(EAST), MUMBAI – 400 051.  
REP. BY ITS CHAIRMAN AND  
MANAGING DIRECTOR
- 4 . PHL FININVEST PVT. LTD.,  
INCORPORATED UNDER THE  
COMPANIES ACT, 2013  
HAVING ITS REGISTERED OFFICE  
AT 4<sup>TH</sup> FLOOR, PIRAMAL TOWER  
PENINSULA CORPORATE PARK  
GANPATRAO KADAM MARG  
LOWER PAREL, MUMBAI – 400 013  
REP. BY ITS AUTHORISED OFFICER  
(MERGED WITH RESPONDENT-5  
PIRAMAL ENTERPRISES LIMITED  
FROM 18/08/2022)

- 5 . PIRAMAL ENTERPRISES LIMITED  
INCORPORATED UNDER THE  
COMPANIES ACT, 2013  
CIN: L24110MH1947LC005719  
PIRAMAL ANANTA  
AGASTYA CORPORATE PARK  
OPPOSITE FIRE BRIGADE  
KAMANI JUNCTION  
LBS MARG, KURLA (WEST)  
MUMBAI – 400 070.  
REP. BY ITS AUTHORIZED OFFICER
  
- 6 . PIRAMAL CAPITAL AND HOUSING FINANCE LTD  
(PIRAMAL FINANCE), FORMERLY KNOWN AS  
DEWAN HOUSING FINANCE LTD.,  
INCORPORATED UNDER  
THE COMPANIES ACT, 2013  
CIN: U65910MH1984PLC032639  
REGISTERED ADDRESS:  
601, 6<sup>TH</sup> FLOOR, AMITI BUILDING  
AGASTYA CORPORATE PARK  
KAMANI JUNCTION  
OPPOSITE FIRE STATION  
LBS MARG, KURLA (W)  
MUMBAI, MAHARASTRA – 400 070.  
REP. BY ITS AUTHORIZED OFFICER
  
- 7 . OMKARA ASSETS RECONSTRUCTION PRIVATE LIMITED  
INCORPORATED UNDER THE COMPANIES ACT, 2013  
HAVING ITS CORPORATE OFFICE  
C/515, KANAKIA ZILLION  
JUNCTION OF L.B.S ROAD AND C.S.T ROAD  
B.K.C ANNEXE KURLA (WEST)  
MUMBAI – 400 070.  
  
HAVING ITS REGISTERED OFFICE AT  
NO. 9, M.P NAGAR FIRST STREET  
KONGU NAGAR EXTENSION

TIRUPUR – 641 607.  
REP. BY AUTHORIZED OFFICER

- 8 . IDBI TRUSTEESHIP SERVICES LIMITED  
A COMPANY INCORPORATED UNDER  
THE COMPANIES ACT, 1956  
CIN: 55102MH2004PTC187649  
HAVING ITS REGISTERED OFFICE  
ASIAN BLDG., GROUND FLOOR  
17, R.KAMANI MARG, BALLARD ESTATE  
MUMBAI – 400 001.

ALSO AT,  
UNIVERSAL INSURANCE BUILDING  
GROUND FLOOR, SIR P.M. ROAD  
FORT MUMBAI  
MAHARASHTRA – 400 001.

ALSO AT,  
C/O IDBI BANK LTD.,  
2<sup>ND</sup> FLOOR, IDBI HOUSE  
58, MISSION ROAD  
BENGALURU, KARNATAKA – 560 027.  
REP. BY ITS AUTHORISED OFFICER

... RESPONDENTS

- (BY SMT. ANASUYA DEVI K.S., CGC FOR R1;  
SRI. PRASHANT N.HEGDE, ADVOCATE FOR R3;  
SRI. PRAMOD NAIR, SENIOR ADVOCATE FOR  
SRI. SRINIVAS B.R., ADVOCATE FOR R4 TO R6;  
SRI. UDAYA HOLLA, SENIOR ADVOCATE A/W.,  
MS. KRUTIKA RAGHAVAN, ADVOCATE FOR R7;  
SRI. BHAIKAV KUTTAIAH, ADVOCATE FOR R8)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND  
227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT  
THE LOAN ACCOUNT HAVING FACILITY ID ECLGS-20-  
21/T/PHL/022, ECLGS-21-22/T/PHL/028, IC-18-18-00542/T/001,  
IC-17-18-00542/N/003 AND IC-17-18-00542/N/002 OF THE

PETITIONER WITH THE RESPONDENT NO.4-6-PIRAMAL ENTERPRISES LIMITED AND PIRAMAL CAPITAL AND HOUSING FINANCE LTD WAS NOT DECLARED AS A NON-PERFORMING ASSET OR A STRESSED ACCOUNT IN ACCORDANCE WITH THE LAW/RULES/POLICY/GUIDELINES/NORMS PROMULGATED BY THE R-2 RESERVE BANK OF INDIA AND THEREFORE THE R-4-6 PIRAMAL ENTERPRISES LIMITED AND PIRAMAL CAPITAL AND HOUSING FINANCE LTD., COULD NOT HAVE ASSIGNED THE LOAN ACCOUNT OF THE PETITIONER TO THE R-7 OMKARA ASSETS RECONSTRUCTION PRIVATE LIMITED UNDER OMKARA ASSETS RECONSTRUCTION PRIVATE LIMITED UNDER SECTION 5 OF THE SECURITIZATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTERESTS ACT, 2002 AND CONSEQUENTLY DECLARE THAT ALL ACTIONS TAKEN PURSUANCE THEREOF INCLUDING THE RECALL NOTICE DTD 15.02.2023 APPENDED AT ANNEX-A AND (REF:- OMKARA/MUM/RO957/2022-23) AND THE NOTICES DTD 20.02.2023 APPENDED AT ANNEX-B (REF:- OMKARA/MUM/RO971/2022-23) AND C (REF:- OMKARA/MUM/RO973/2022-23) INVOKING THE PERSONAL AND CORPORATE GUARANTEE TO BE NULL VOID AND NON-EST; IN SO FAR AS THE PETITIONER HEREIN

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

### **ORDER**

The petitioner is before this Court seeking the following prayer:

- (i) *Issue a suitable writ, order or direction to declare that the Loan Account having facility of ID ECLGS-20-21/T/PHL/022, ECLGS-21-22/T/PHL/28, IC-18-18-00542/T/001.IC-17-18-00542/N/003 and IC-17-18-00542/N/002 of the petitioner with the respondent*

*No.4 – 6 – Piramal Enterprises Limited and Piramal Capital & Housing Finance Limited was not declared as a Non-Performing Asset or a Stressed Account in accordance with the Law/Rules/Policy/Guidelines/Norms promulgated by the respondent No.2 – Reserve Bank of India and therefore, the respondent No.4 – 6 – Piramal Enterprises Limited and Piramal Capital & Housing Finance Limited could not have assigned the Loan Account of the petitioner to the respondent No.7 – Omkara Assets Reconstruction Private Limited under Section 5 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 and consequently declare that all actions taken pursuance thereof, including the Recall Notice dated 15-02-2023 appended at Annexure-A (Ref:- Omkara/Mum/RO957/2022-23) and the Notices dated 20-02-2023 appended at Annexure-B (Ref:- Omkara/Mum/RO971/2022-23) and C (Ref:- Omkara/Mum/RO973/2022-23) invoking the Personal and Corporate Guarantee to be null, void and non est insofar as the petitioner herein;*

- (ii) Issue a suitable Writ, Order or Direction to the respondent No.4 – 6 – Piramal Enterprises Limited and Piramal Capital & Housing Finance Limited to consider the eligibility of the petitioner under the ECLGS 3.0/ECLGS3.0 Extension Scheme and sanction /disburse a sum of INR 37 Crores, without any further condition other than what is specified in the Operational Guidelines and FAQ's of the Scheme appended at Annexure N & P;*
- (iii) Issue a suitable Writ, Order or Directing the respondent No.1 and 2 i.e., the Union of India and the Reserve Bank of India to take appropriate action as against the respondent No.4 – 6 – Piramal Enterprises Limited and Piramal Capital & Housing Finance Limited and against the respondent No.7 – Omkara Assets Reconstruction Private Limited for their aforesaid acts being in contravention to the various laws of the land and the Law/ Guidelines/Norms/Policies promulgated by the respondent No.2 – Reserve Bank of India.*

2. Heard Sri Ajesh Kumar S, learned counsel appearing for the petitioner, Smt. Anasuya Devi K.S., learned Central Government Counsel appearing for respondent No.1, Sri Prashant N. Hegde, learned counsel appearing for respondent No.3, Sri Pramod Nair, learned senior counsel appearing for respondents 4 to 6, Sri Udaya Holla, learned senior counsel appearing for respondent No.7 and Sri Bhairav Kuttaiah, learned counsel appearing for respondent No.8.

3. Facts, in brief adumbrated are as follows:-

The petitioner claims to be in the hospitality business and owns land and building at No. 24/1, Kasturba Road and its Marriott Hotels India Private Limited operates a 5-Star Hotel known as JW Marriott. Respondent No.5 – Piramal Enterprises Limited sanctions a loan of ₹450/- crores to the petitioner in addition to a revolving credit facility of ₹50 crores for the purpose of repayment of its existing dues to Yes Bank and general corporate purposes. In furtherance of the said transaction a loan agreement was executed on 26-12-2017. Respondent No.5 further enters into a cash

management agreement with the petitioner. It is the averment in the petition that between December 2017 and up to March 2020 the account of the petitioner was regular and was servicing the loan to the 5<sup>th</sup> respondent/Piramal Enterprises Limited and the interest thereon was duly paid through the mechanism agreed upon in the cash management agreement. It is the further averment that approximately ₹115.25 crores towards the loan excluding a sum of ₹7/- crores towards securing credit facilities was paid at regular intervals. The petitioner claims that its account was regular and standard at all times to come up to 2020.

4. Recourse is taken to projection of COVID-19 spreading across the globe and as a consequence thereof, volumes of cash flow of majority businesses started to be impacted. The petitioner being in the hospitality industry found it difficult to survive in the then market scenario due to the intermittent national lock down. It is then two schemes were launched - one Guaranteed Emergency Credit Line ('GECL') and Emergency Credit Line Guarantee Scheme ('ECLGS') through respondent No.5/Piramal Enterprises Limited. The Scheme provided for 100% guarantee coverage for additional



working capital in the form of additional term loans. It is the claim of the petitioner that as on 29-02-2020 the account was standard and regular and, therefore, it was eligible for the scheme under ECLGS. Then the petitioner was also granted/sanctioned an amount of ₹98/- crores under the Scheme by the 5<sup>th</sup> respondent/Piramal Enterprises Limited. Plethora of averments is made in the petition with regard to disputes between the petitioner and Piramal Enterprises Limited in implementation or grant of benefits under the Scheme. Several disputes between Piramal Enterprises Limited and the petitioner galore and, therefore, the trustees of the 5<sup>th</sup> respondent filed an application before the National Company Law Tribunal ('NCLT') invoking Section 7 of the Insolvency and Bankruptcy Code, 2016 ('the Code' for short). The said proceedings are pending consideration before the NCLT.

5. It appears that on 27-12-2022 the loan account of the petitioner was assigned by Piramal Enterprises Limited to the 7<sup>th</sup> respondent/Omkara Assets Reconstruction Private Limited. After reassignment of loan in favour of the 7<sup>th</sup> respondent, respondents 4 to 6 – Piramal continued to be corresponding with the petitioner

in respect of loan account. On 15-02-2023 the 7<sup>th</sup> respondent issued a notice to recall the main facility loan as well as the loans granted under the ECLGS Scheme and also cautioned that if the petitioner would not repay the entire outstanding sums it would result in legal proceedings. On 20-02-2023, the 7<sup>th</sup> respondent causes a legal notice seeking to invoke the corporate and personal guarantee in respect of the loans and in terms of the recall notices so issued. It is then, the petitioner has knocked at the doors of this Court in the subject petition seeking stalling of the recall notice and questioning the assignment of loan in favour of the 7<sup>th</sup> respondent by respondents 4 to 6.

6. The learned counsel Sri S. Ajesh Kumar appearing for the petitioner would vehemently contend that reassignment of loan is contrary to law. Law, he would mean that it is contrary to the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('the Act' for short) as also the Master Circulars issued by the Reserve Bank of India from time to time on the issue. He would submit that the assignment of loans in favour of the 7<sup>th</sup> respondent could have happened only

after declaring the loans of the petitioner to be a non-performing asset. Without such declaration, the transfer could not have been made. It is his submission that the petitioner was not even issued a notice prior to reassignment of loans in favour of the 7<sup>th</sup> respondent and, therefore, the action is in violation of the principles of natural justice. He would submit that outstanding dues as on today to be paid to Piramal Enterprises Limited is only to the tune of ₹54/- to ₹60/- crores. The 7<sup>th</sup> respondent deliberately wants to recover ₹696/- crores that is the entire amount of loan that is taken by the petitioner. He would seek intervention of this Court as the entire transaction is contrary to the Act and the circulars issued by Reserve Bank of India.

7. Per-contra, the learned senior counsel Sri Udaya Holla representing the 7<sup>th</sup> respondent would vehemently refute the submissions to contend that an account need not be declared as an NPA for reassignment of loan. If the account becomes stressed on account of default in payment, such account can always be transferred to the 7<sup>th</sup> respondent or the like even without notifying the borrower. He would submit that these are banking transactions

which would not become amenable to judicial review under Article 226 of the Constitution of India. He would emphasise on the fact that what the petitioner in effect is seeking is a writ against a private party to enforce a private agreement. Such agreement is between the petitioner, a private entity and respondents 4 to 6, again a private entity and insofar as it concerns the 7<sup>th</sup> respondent, again private entity. He would seek dismissal of the petition.

8. Learned senior counsel Sri Pramod Nair representing respondents 4 to 6 would toe the lines of the learned counsel senior counsel Sri Udaya Holla and add that the loan of the petitioner did become a stressed asset as repayments were wholly irregular. Availing of the scheme or otherwise would be of no avail to the petitioner. All the money that was offered/granted under the Scheme was used only to service interest part of it and since the petitioner is in huge default no fault can be found with the action of respondents 4 to 6 in assigning the account to the 7<sup>th</sup> respondent. He would also seek dismissal of the petition. Counsels on both sides have relied on several judgments which would bear consideration *qua* their relevance in the course of the order.

9. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

10. The afore-narrated facts are not in dispute; they are all a matter of record. The dispute is undoubtedly between the petitioner, a private entity and respondents 4 to 6 who are even a private Company. A writ, in the normal course would not even be maintainable to consider the grievances of the petitioner as projected before this Court *qua* the agreements entered into between private entities. What merits consideration is, the projection of the action being contrary to the statute i.e., SARFAESI Act, 2002 and the Master Circulars issued by the Reserve Bank of India which the Apex Court has held them to have a statutory force. Therefore, the limited scrutiny at the hands of this Court would be whether they are in tune with the Act and the Circulars. Barring this, no other submission with regard to various grievances, as submitted by the petitioner, would merit any consideration, as the

parties to the *lis* are before the NCLT which has heard all the parties on the same submissions and has reserved its orders.

11. The projection of the learned counsel for the petitioner is, making of reference to the following provisions of the SARFAESI Act. He would place reliance upon Sections 2(ba), 2(o), 5 and several Master Circulars issued by the Reserve Bank of India from time to time. Section 2(ba) defines what is 'asset reconstruction company'. It reads as follows:

**"2. Definitions.—***(1) In this Act, unless the context otherwise requires,—*

... ..

*(ba) "asset reconstruction company" means a company registered with Reserve Bank under Section 3 for the purposes of carrying on the business of asset reconstruction or securitisation, or both;"*

An asset reconstruction company would mean a company registered with the Reserve Bank under Section 3 for the purpose of business of asset reconstruction or securitization or both. Section 2(o) reads as follows:

*"(o) "non-performing asset" means an asset or account of a borrower, which has been classified by a bank or*

*financial institution as sub-standard, doubtful or loss asset,—*

- (a) in case such bank or financial institution is administered or regulated by any authority or body established, constituted or appointed by any law for the time being in force, in accordance with the directions or guidelines relating to assets classifications issued by such authority or body;*
- (b) in any other case, in accordance with the directions or guidelines relating to assets classifications issued by the Reserve Bank;”*

Section 2(o) defines a non-performing asset to be an asset or account of a borrower which has been classified by a Bank or financial institution or sub-standard, doubtful or loss asset or in any other case in accordance with the directions or guidelines issued by the Reserve Bank of India. Section 3 deals with registration of an asset reconstruction company which the 7<sup>th</sup> respondent is. Section 5 deals with acquisition of rights or interest in financial assets by the asset reconstruction company. Therefore, the asset reconstruction company also has a statutory foundation under the Act.

12. Certain circulars of Reserve Bank of India are also relied on by the learned counsel for the petitioner. Master Circular of Reserve Bank of India was notified on 01-04-2023. Clause 2 thereof deals with non-performing assets and reads as follows:

**"2. DEFINITIONS**

*2.1 Non-performing Assets*

*2.1.1 An asset, including a leased asset, becomes non-performing when it ceases to generate income for the bank*

*2.1.2 A non-performing asset (NPA) is a loan or an advance where;*

- i. interest and/ or instalment of principal remains overdue for a period of more than 90 days in respect of a term loan,*
- ii. the account remains 'out of order' as indicated at paragraph 2.2 below, in respect of an Overdraft/Cash Credit (OD/CC).*
- iii. the bill remains overdue for a period of more than 90 days in the case of bills purchased and discounted,*
- iv. the instalment of principal or interest thereon remains overdue for two crop seasons for short duration crops,*
- v. the instalment of principal or interest thereon remains overdue for one crop season for long duration crops,*
- vi. the amount of liquidity facility remains outstanding for more than 90 days, in respect of a securitisation transaction undertaken in terms*



*of the Reserve Bank of India (Securitisation of Standard Assets) Directions, 2021 as amended from time to time.*

- vii. in respect of derivative transactions, the overdue receivables representing positive mark-to-market value of a derivative contract, if these remain unpaid for a period of 90 days from the specified due date for payment.*

*2.1.3 In addition, an account may also be classified as NPA in terms of certain specific provisions of this Master Circular, including inter alia Paragraphs 4.2.4, 4.2.9 and Part B2."*

Clause 4.2.4 which deals with accounts with temporary deficiencies reads as follows:

*"4.2.4 Accounts with temporary deficiencies*

*The classification of an asset as NPA should be based on the record of recovery. Bank should not classify an advance account as NPA merely due to the existence of some deficiencies which are temporary in nature such as non-availability of adequate drawing power based on the latest available stock statement, balance outstanding exceeding the limit temporarily, non-submission of stock statements and non-renewal of the limits on the due date, etc. In the matter of classification of accounts with such deficiencies banks may follow the following guidelines:*

- a) Banks should ensure that drawings in the working capital accounts are covered by the adequacy of current assets, since current assets are first appropriated in times of distress Drawing power is required to be arrived at based on the stock statement which is current. However, considering the difficulties of large borrowers, stock statements relied upon by the banks for determining drawing power should not*

*be older than three months. The outstanding in the account based on drawing power calculated from stock statements older than three months, would be deemed as irregular.*

- b) A working capital borrowal account will become NPA if such irregular drawings are permitted in the account for a continuous period of 90 days even though the unit may be working or the borrower's financial position is satisfactory.*
- c) Regular and ad hoc credit limits need to be reviewed/ regularised not later than three months from the due date/date of ad hoc sanction. In case of constraints such as non-availability of financial statements and other data from the borrowers, the branch should furnish evidence to show that renewal/ review of credit limits is already on and would be completed soon. In any case, delay beyond six months is not considered desirable as a general discipline. Hence, an account where the regular/ ad hoc credit limits have not been reviewed/ renewed within 180 days from the due date/ date of ad hoc sanction will be treated as NPA."*

Clause 4.2.18 which deals with transfer of loan exposures reads as follows:

**"4.2.18 Transfer of Loan Exposures**

*The asset classification and provisioning requirements in respect of transactions involving transfer of loans shall be as per the Reserve Bank of India (Transfer of Loan Exposures) Directions, 2021."*

In the circular issued on 03-04-2023 with regard to Asset Reconstruction Companies, what is a standard asset is defined. It reads as follows:

*"(xiii) "Standard asset" means an asset, which is not an NPA;"*

A standard asset is an asset which is not a non-performing asset. Clause 8 of the circular dated 01-04-2023 deals with the framework for resolution of stressed assets. It reads as follows:

***"PART B1-Framework for Resolution of Stressed Assets***

***8. Early identification and reporting of stress***

*8.1 Lenders shall recognise incipient stress in loan accounts, immediately on default, by classifying such assets as special mention accounts (SMA) as per the following categories.*

<i>SMA Sub-categories</i>	<i>Basis for classification - Principal or interest payment or any other amount wholly or partly overdue between</i>
<i>SMA-0</i>	<i>Up to 30 days</i>
<i>SMA-1</i>	<i>More than 30 days and up to 60 days</i>
<i>SMA-2</i>	<i>More than 60 days and up to 90 days</i>

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

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

*8.3 The above-mentioned instructions on classification of borrower accounts into SMA categories are applicable for all loans (including retail loans), other than agricultural advances governed by crop season-based asset classification norms, irrespective of size of exposure of the bank.*

*8.4 Classification of borrower accounts as SMA as well as NPA shall be done as part of day-end process for the relevant date and the SMA or NPA classification date shall be the calendar date for which the day end process is run. In other words, the date of SMA/NPA shall reflect the asset classification status of an account at the day-end of that calendar date.*

*Example: If due date of a loan account is March 31, 2022, and full dues are not received before the bank runs the day-end process for this date, the date of overdue shall be March 31, 2022. If it continues to remain overdue, then this account shall get tagged as SMA-1 upon running day-end process on April 30, 2022 i.e., upon completion of 30 days of being continuously overdue. Accordingly, the date of SMA-1 classification for that account shall be April 30, 2022.*

*Similarly, if the account continues to remain overdue, it shall get tagged as SMA-2 upon running day-end process on May 30, 2022 and if continues to remain overdue further, it shall get classified as NPA upon running day-end process on June 29, 2022."*

The afore-quoted frame work of resolution of assets has been in circulation right from 2019 in terms of the Circular issued by the Reserve Bank of India on 07-06-2019. All these circulars deal with four factors – (i) declaration of an account to be a non-performing asset; (ii) what is a standard or stressed asset; (iii) frame work for resolution of standard or stressed asset and (iv) transfer of assets to an asset reconstruction company. It is these that are required to be noticed in the case at hand. No securitization process is taken up against the petitioner under the Act. Therefore, the actions will have to be judged only in terms of Master Circulars *supra*. The Master Circulars issued by the Reserve Bank of India from 2019 to 2023 would indicate that for transfer of an asset to an asset reconstruction company an account need not be declared to be a non-performing asset. If the account becomes stressed that would suffice. The account of the petitioner getting stressed is not in dispute as the clauses of the Circulars of the Reserve Bank of India so quoted hereinabove insofar as they deal with the frame work for resolution of stressed assets permits early identification and reporting of stress. The classification is, if interest payment falls overdue between 1 to 30 days it is declared as zero

stress, if it goes beyond 30 days up to 60 days it becomes a special mention account category-1 and if it goes beyond 60 days up to 90 days, it becomes a special mention account category-2.

13. It is not in dispute that petitioner's account with Piramal Enterprises Limited was not regular. The service amounts from the scheme GECL was secured. It was only to service interest, which would clearly depict that the account of the petitioner was not regular as is claimed and may not even be declared as a non-performing asset but undoubtedly a stressed account in category-2, declaring it to be a special mention account. If the petitioner's account was to be declared as category-3 of a special mention account, the right of the lender to transfer the amount to asset reconstruction company does get triggered. What is the effect of it is dealt with by the Apex Court in **ICICI BANK LIMITED v. OFFICIAL LIQUIDATOR OF APS STAR INDUSTRIES LIMITED**<sup>1</sup> wherein the Apex Court has held as follows:

**"46.** *As stated above, an outstanding in the account of a borrower(s) (customer) is a debt due and payable by the borrower(s) to the bank. Secondly, the bank is the owner of*

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<sup>1</sup> (2020) 10 SCC 1

*such debt. Such debt is an asset in the hands of the bank as a secured creditor or mortgagee or hypothecatee. The bank can always transfer its asset. Such transfer in no manner affects any right or interest of the borrower(s) (customer). Further, there is no prohibition in the BR Act, 1949 in the bank transferring its assets inter se. Even in the matter of assigning debts, it cannot be said that the banks are trading in debts, as held by the High Court(s). The assignor Bank has never purchased the debt(s). It has advanced loans against security as part of its banking business. The account of a client in the books of the bank becomes non-performing asset when the client fails to repay. In assigning the debts with underlying security, the bank is only transferring its asset and is not acquiring any rights of its client(s). The bank transfers its asset for a particular agreed price and is no longer entitled to recover anything from the borrower(s). The moment ICICI Bank Ltd. transfers the debt with underlying security, the borrower(s) ceases to be the borrower(s) of the ICICI Bank Ltd. and becomes the borrower(s) of Kotak Mahindra Bank Ltd. (assignee).*

**47.** *At this stage, we wish to once again emphasise that debts are assets of the assignor Bank. The High Court(s) has erred in not appreciating that the assignor Bank is only transferring its rights under a contract and its own asset, namely, the debt as also the mortgagee's rights in the mortgaged properties without in any manner affecting the rights of the borrower(s)/mortgagor(s) in the contract or in the assets. None of the clauses of the impugned deed of assignment transfers any obligations of the assignor towards the assignee."*

The Apex Court holds that what the assignor Bank has done is transferring its right under a contract and its own asset to another Bank without in any manner affecting the right of the borrower. Therefore, that matter should not have been a subject matter of judicial review before the High Court.

14. Yet another submission is made that the petitioner was not put on notice of such transfer of asset in favour of 7<sup>th</sup> respondent and that is in violation of principles of natural justice. This is again is unacceptable as the petitioner was notified on 27-12-2022 that the assets would be transferred to the 7<sup>th</sup> respondent. The petitioner was made aware of such transfer and the silence of the petitioner was in vindication of such transfer from respondents 4 to 6 in favour of respondent No.7. The submission that the petitioner was not even made aware of this is contrary to the record, as the document appended to the statement of objections clearly indicates knowledge of the petitioner of such transfer. Whether reassignment could be done without even hearing the borrower also bears consideration at the hands of the Apex Court in the case of **INDIABULLS HOUSING FINANCE LIMITED v. DECCAN CHRONICLE HOLDINGS LIMITED**<sup>2</sup> where the Apex Court has held as follows:

**"34.** *Thus, on sanction of the scheme of amalgamation, all loans, recoveries, security, interest, financial documents, etc. in favour of IBFSL got transferred to and stood vested in the appellant including the loans given by IBFSL to the respondent borrowers, debts recoverable*

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<sup>2</sup> (2018) 14 SCC 783



*by IBFSL from the respondent borrowers in favour of IBFSL, security documents executed by the respondent borrowers in favour of IBFSL, etc. On the sanctioning of the scheme, the respondent borrowers became the borrower of the appellant as if the financial assistance was granted by the appellant to the respondent borrowers.*

**35.** *There is a force in the contention raised by the appellant that the debt with underlying securities is the asset of IBFSL and that IBFSL had right to transfer/assign its assets to any person without seeking consent of the borrower. Such transfer/assignment is recognised and that this Court in APS Star Industries [ICICI Bank Ltd. v. APS Star Industries Ltd., (2010) 10 SCC 1: (2010) 4 SCC (Civ) 1] has recognised and upheld such an assignment."*

The Apex Court holds that the lender has a right to transfer/ assign its assets to another person without seeking consent of the borrower. The Apex Court also notices that earlier in APS Star Industries – (2010) 10 SCC 1 it has recognized and upheld such assignment. Though the Apex Court was dealing with a situation where the account had been declared to be a non-performing asset it proceeded under SARFAESI Act on merit.

15. The underlying principle is that the assignment of asset to a new entity by the lender need not be on an express consent of the borrower. Knowledge to the borrower would be suffice and knowledge to the petitioner in the case at hand cannot be disputed.

Therefore, the plea of assignment being contrary to the Master Circulars as is projected is untenable and all submissions shrouded with the plea of it being contrary to Master Circulars are all unsustainable. Assignment or re-assignment by private entities or in the business of banking is best left to bankers, borrowers and the lenders unless it runs contrary to any statutory provision either under the SARFAESI Act or Circulars issued by the Reserve Bank of India which are held to have statutory force. I do not find any statutory aberration in the case at hand *qua* Master Circulars issued by the Reserve Bank of India. If there is no statutory aberration, the plea would be reduced to a dispute between the petitioner, a private entity and respondents 4 to 6, a private entity and respondent No.7 another private entity. Disputes between private parties for enforcement of a private agreement would not get the audience of this Court under Article 226 of the Constitution of India. It is also submitted across the bar that the petitioner has projected these very submissions that are being projected before this Court in the proceedings instituted by the respondents before the NCLT invoking the Code. Therefore, it is for the NCLT to consider the plea

of the petitioner. I do not find any warrant to interfere in the case at hand.

16. It would become germane to notice the judgment of a coordinate Bench in the case of ***M/S NITESH RESIDENCY HOTELS PRIVATE LIMITED v. UNION OF INDIA***<sup>3</sup> in answer to two submissions – one all the respondents not being a State under Article 12 of the Constitution and other being the concept of Emergency Credit Loan Guarantee Scheme and banker's prerogative. The coordinate Bench has held as follows:

**"E. AS TO EMERGENCY CREDIT LOAN GUARANTEE SCHEME AND BANKER'S PREROGATIVE:**

*(i) The ECLG scheme promulgated by the Central Government which the petitioner's counsel heavily banked upon in support of his case, at its guideline 18 (xiv) imposes an obligation on the lender bank to secure its interest by taking all reasonable measures. The same reads:*

*"The payment of guarantee claim by the Trustee Company to the lending institution does not in any way take away the responsibility of the lending institution to recover the entire outstanding amount of the credit from the borrower. The lending institution shall exercise all the necessary precautions and maintain its recourse to the borrower for entire amount of credit facility owed by it and initiate all necessary actions for recovery of the outstanding amount, including such action as may be advised by the Trustee Company."*

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<sup>3</sup> W.P.No.2004 of 2022 decided on 8-08-2022

*When the lender Banks in given facts & circumstances of the case take a decision as dictated by the prudence, for abruptly recalling the credit facilities, it is not for the courts to sit in appeal over their wisdom. Writ Courts neither have means nor the expertise to re-evaluate the "prudential decisions" of the Banks that are made in the ordinary course of their commercial transactions with accumulated wisdom in the trade.*

*(ii) After all, the scope of judicial review of 'Bankers Decisions' is too restrictive, as observed by a Division Bench of this Court in MANNE GURUPRASAD vs. M/S.PAVAMAN ISPAT PVT. LTD<sup>10</sup>; paragraphs III (iii) & (iv) of the said decision read as under:*

*"(iii) In matters between the Banker & borrower, a Writ Court has no much say except in two situations: where there is a statutory violation on the part of the Bank/financial institution, or where the Bank acts unfairly/unreasonably; Courts exercising constitutional jurisdiction u/A 226 do not sit as Appellate Authorities over the acts & deeds of the Bank and seek to correct them; even the doctrine of fairness/reasonableness does not convert the Writ Courts into appellate authorities over administrative decisions concerning the Banking business; unless the action of the Bank is apparently malafide, even a wrong decision taken by it cannot be interfered.*

*(iv) It is not for the Court or a third party to substitute its decision howsoever prudent or business like it may be, for the decision of the Bank; in commercial matters, the Courts do not risk their judgments for the judgments of the bodies to which that task is assigned; a Public Sector Bank or a Financial Institution cannot wait indefinitely to recover its dues; the fairness required of the Bank cannot be carried to the extent of disabling it from recovering what is due; in matters of loan transactions, fairness cannot be a one-way street; both the Bank & the borrower have to be equally fair to each other ..."*

As observed by the co-ordinate Bench, banking business is better left to bankers. This Court would not sit as a supervisor to banking activities between the lender and the borrower except in cases where the dispute between the banker and the lender would touch upon violation of any statutory provision. No such violation though projected with all vehemence is found in the case at hand. Therefore, I decline to grant any of the prayers sought by the petitioner noticed *supra*. It is for the petitioner to avail all such remedies as are available in law.

17. In the light of the preceding analysis, the petition lacking in merit stands rejected. Interim order, operating if any, shall stand dissolved.

Consequently, pending applications, if any, also stand disposed.

**Sd/-  
JUDGE**

Bkp  
CT:ss