

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF MAY, 2025

PRESENT

THE HON'BLE MR JUSTICE V KAMESWAR RAO

AND

THE HON'BLE MR JUSTICE T.M.NADAF

WA NO. 478/2024

BETWEEN:

- 1 . MR. DEEPAK RAHEJA
MAJOR IN AGE,
S/O LATE BHAGWANDAS RAHEJA,
DIRECTOR OF SUSPENDED BOARD OF
GSTAAD HOTELS PVT. LTD.,
- 2 . MRS. ANITA RAHEJA,
MAJOR IN AGE,
W/O DEEPAK RAHEJA,
DIRECTOR OF SUSPENDED BOARD OF
GSTAAD HOTELS PVT. LTD.,
GSTAAD HOTELS PVT LTD.,

APPELLANTS NO.1 AND 2 HAVING ADDRESS AT:
4TH FLOOR, RAHEJA CHAMBERS,
LINKING ROAD AND MAIN AVENUE,
SANTACRUZ WEST, MUMBAI-400054.

3. GSTAAD HOTELS PVT. LTD.,
INCORPORATED UNDER THE COMPANIES ACT
HAVING ITS REGISTERED OFFICE,
4TH FLOOR, RAHEJA CHAMBERS,
LINKING ROAD AND MAIN AVENUE,
SANTACRUZ WEST, MUMBAI-400054.
AND CARRYING ON ITS BUSINESS AT:
JW MARRIOTT HOTEL,
NO.24/1, VITTAL MALLYA ROAD,
BENGALURU-560001.

REPRESENTED BY ITS DIRECTOR
MR. ADITYA RAHEJA.

...APPELLANTS

(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 3RD FLOOR,
JEEVAN DEEP BUILDING,
SANSAD MARG, NEW DELHI-110001.
- 2 . RESERVE BANK OF INDIA,
HAVING ITS REGIONAL OFFICE AT:
10/3/8, NRUPATHUNGA ROAD,
AMBEDKAR VEEDHI, BANGALORE-560001.
REPRESENTED BY ITS REGIONAL DIRECTOR.
- 3 . NATIONAL CREDIT GUARENTEE 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-400051.
REPRESENTED BY ITS CHAIRMAN AND
MANAGING DIRECTOR.
- 4 . PHL FININVEST PVT. LTD.,
HAVING ITS REGISTERED OFFICE AT:
4TH FLOOR, PIRAMAL TOWER,
PENINSULA CORPORATE PARK,
GANPATRAO KADAM MARG,
LOWER PAREL,
MUMBAI-400013.

REPRESENTED BY ITS AUTHORISED OFFICER.
(MERGED WITH PIRAMAL ENTERPRISES LIMITED
FROM 18/08/2022)

- 5 . PIRAMAL ENTERPRISES LIMITED.,
CIN: L24110MH1947LC005719,
PIRAMAL ANANTA, AGASTYA CORPORATE PARK,
OPPOSITE FIRE BRIGADE, KAMANI JUNCTION,
LBS MARG, KURLA (WEST), MUMBAI-400070.
REPRESENTED BY ITS AUTHORIZED OFFICER.
- 6 . PIRAMAL CAPITAL AND HOUSING FINANCE LTD.
(PIRAMAL FINANCE), FORMERLY KNOWN AS
DEWAN HOUSING FINANCE LTD.,
CIN: U65910MH1984PLC032639,
REGISTERED ADDRESS 601, 6TH FLOOR,
AMITI BUILDING, AGASTYA CORPORATE PARK,
KAMANI JUNCTION, OPPOSITE FIRE STATION,
LBS MARG, KURLA (W), MUMBAI, MH-400070.
REPRESENTED BY ITS AUTHORIZED OFFICER.
- 7 . OMKARA ASSETS RECONSTRUCTION PRIVATE LIMITED,
HAVING ITS CORPORATE OFFICE C/515,
KANAKIA ZILLION, JUNCTION OF L B S ROAD AND
CST ROAD, B K C ANNEXE KURLA(WEST),
MUMBAI-400070.
HAVING ITS REGISTERED OFFICE AT NO.9,
M P NAGAR FIRST STREET,
KONGU NAGAR EXTENSION, TIRUPUR-641607,
REPRESENTED 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-400001.
ALSO AT:
UNIVERSAL INSURANCE BUILDING,
GROUND FLOOR, SIR P M ROAD,
FORT MUMBAI, MAHARASHTRA-400001.

ALSO AT:

C/O IDBI BANK LTD., 2ND FLOOR,
IDBI HOUSE, 58, MISSION ROAD,
BENGALURU, KARNATAKA-560027.

- 9 . OFFICE OF JAYESH SANGHRAJKA
INTERIM RESOLUTION PROFESSIONAL IN THE MATTER
OF GSTAAD HOTELS PVT LTD.,
INCORP RESTRUCTURING SERVICES LLP,
REGISTRATION NO.IBBI/IPE/0129
405-407,
HIND RAJASTHAN BUILDING,
D.S. PHALKE ROAD,
DADAR EAST, MUMBAI-400014
T NO. 912240774624
jayesh. sangharajka@incorpadvisory.in

...RESPONDENTS

(BY SMT. ANASUYA DEVI K S, CGC FOR R1,
SRI. K N PHANINDRA, SR. COUNSEL FOR
SMT. KRUTIKA RAGHAVAN, ADVOCATE FOR R7,
SRI. PRASHANTH N HEGDE, ADVOCATE FOR R3,
SRI. VAKITI VINEETH REDDY, ADVOCATE FOR
SMT. APARNA MAHESH HIEMATH, ADVOCATE
FOR R4 TO R6,
SRI. BHAIKAV KUTTAIAH, ADVOCATE FOR R8,
R2 IS SERVED AND UNREPRESENTED
V/O/DTD 22/4/2025 R9 IS DISPENSED WITH)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE
KARNATAKA HIGH COURT ACT, 1961 PRAYING TO ALLOW
THE PRESENT WRIT APPEAL BY SETTING ASIDE THE ORDER
DATED 28.02.2024 PASSED BY THE LD. SINGLE JUDGE IN
WRIT PETITION No. 6037/2023, ETC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED
FOR JUDGMENT ON 22.04.2025, COMING ON FOR
'PRONOUNCEMENT OF JUDGMENT' THIS DAY, **V KAMESWAR
RAO J.**, DELIVERED THE FOLLOWING:

CORAM: THE HON'BLE MR JUSTICE V KAMESWAR RAO
AND
HON'BLE MR JUSTICE T.M.NADAF

CAV JUDGMENT

(PER: THE HON'BLE MR JUSTICE V KAMESWAR RAO)

This intra-court appeal has been filed by the appellants Sri. Deepak Raheja and Smt. Anita Raheja as Directors of Suspended Board of GSTAAD Hotels Pvt. Ltd. and GSTAAD Hotels Pvt. Ltd., challenging the order dated 28.02.2024 passed by the learned Single Judge in WP No.6037/2023, whereby the learned Single Judge has dismissed the writ petition filed by GSTAAD Hotels Pvt. Ltd., by stating in paragraphs No.16 and 17 as under:

"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 [W.P.No.2004 of 2022 decided on 8-08-2022] 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."

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. LTD10; 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 it's 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."

2. Some of the brief facts to be noted are, the appellant No.3 is in a 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 sanctioned a loan of Rs.450 Crores to the appellant No.3 in addition to a revolving credit facility of Rs.50 Crores for the purpose of repayment of its existing dues to Yes Bank and general corporate purposes. A loan agreement dated 26.12.2017 was

executed. Respondent-Piramal Enterprises enters into a cash management agreement with appellant No.3.

3. It was the case of the appellant No.3 that between December 2017 and upto March 2020, the account of the said appellant was regular and was servicing the loan to respondent-Piramal Enterprises and the interest thereon was duly paid through the mechanism agreed upon in the cash management agreement. It was also the case that, approximately Rs.115.25 Crores towards the loan excluding a sum of Rs.7 Crores towards securing credit facilities was paid at regular intervals.

4. Because of COVID-19, the appellant No.3 being in the hospitality industry, found it difficult to survive in the then market scenario due to the intermittent national lockdown. It is then two schemes were launched: (i) Guaranteed Emergency Credit Line (GECL) and Emergency Credit Line Guarantee Scheme (ECLGS) through respondent-Piramal Enterprises. The scheme

provided for 100% guarantee coverage for additional working capital in the form of additional term loans. It was the case of appellant No.3 that, on 29.02.2020, the account was standard and regular, and therefore it was eligible for the scheme under ECLGS. Then, appellant No.3 was also granted/sanctioned an amount of Rs.98 Crores under the scheme by respondent No.5-Piramal Enterprises. Disputes arose between the appellant No.3 and respondent-Piramal Enterprises. The respondent-Piramal Enterprises filed an application before the National Company Law Tribunal ('NCLT' for short) invoking Section 7 of the Insolvency and Bankruptcy Code, 2016 ('IBC' for short). It is also noted that, on 27.12.2022, the loan account of appellant No.3 was assigned by respondent-Piramal Enterprises to the respondent No.7-Omkara Assets Reconstruction Private Limited ('Omkara' for short). After reassignment of loan in favour of respondent No.7-Omkara, respondents No.4 to 6-Piramal continued to be corresponding with appellant No.3 in respect of loan account. On

15.02.2023, respondent No.7-Omkara issued a notice to recall the main facility loan as well as the loans granted under the ECLGS scheme and also cautioned that if appellant No.3 would not repay the entire outstanding sums, it would result in legal proceedings. On 20.02.2023, respondent No.7-Omkara 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 under such situation, appellant No.3 filed the writ petition before the learned Single Judge.

5. The case of appellant No.3 before the learned Single Judge was, 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 ('SARFAESI Act' for short) and also the Master Circulars issued by the Reserve Bank of India from time to time on the issue. According to the appellant, the assignment of loan in favour of respondent No.7-Omkara could have happened

only after declaring the loans of appellant No.3 to be a non-performing asset ('NPA' for short). Without such declaration, the transfer could not have been made. It was also the case that, no notice prior to reassignment of loans in favour of respondent No.7-Omkara was issued. Therefore, there is a violation of Principles of Natural Justice. It was the case that, as on that date, dues to the tune of Rs.54 to 60 Crores are only payable to respondent-Piramal Enterprises. Respondent No.7-Omkara deliberately wants to recover Rs.696 Crores i.e., the entire amount of loan that is taken by appellant No.3.

6. On the other hand, the case of respondent No.7-Omkara was that, it is not necessary that the account need to 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 respondent No.7-Omkara or the like even without notifying the borrower. It was the case that, these banking transactions would not become amenable to judicial review under Article 226 of the Constitution of

India. It was also stated that, appellant No.3 is seeking a writ against a private party to enforce a private agreement. Such agreement is between appellant No.3 and the respondent-private entities i.e., Omkara and Piramal Enterprises and as such, the petition needs to be dismissed.

7. The stand of respondent-Piramal Enterprises was also that, the loan of appellant No.3 did become a stressed asset as repayments were wholly irregular. Availing of the scheme or otherwise would be of no avail to appellant No.3. All the money that was offered/granted under the scheme was used only to service interest part of it and since appellant No.3 is in huge default, no fault can be found with the action of respondent-Piramal Enterprises in assigning the account to the respondent No.7-Omkara.

8. The learned Single Judge has delineated the scope of the writ petition in paragraph No.10, which we reproduce as under:

"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."

9. The learned Single Judge has also referred to the provisions of Section 2(ba), 2(o), of the SARFAESI Act as well as the Master Circulars issued by the Reserve Bank of India dated 01.04.2023. He was of the following view:

"12. xx xx xx xx xx

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* [(2020) 10 SCC 1] 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 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 7th 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 7th 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* [(2018) 14 SCC 783] 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 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.”

Submissions of Sri. Ajesh Kumar, learned counsel for the appellants:

No notice that account was either a stressed account or non-performing asset:

10. Appellant No. 3 has never been notified that their account was a Non-Performing Asset or a Stressed Asset.

11. The Appellant No. 3 was not notified that their account had turned into a special mention account ('SMA' for short) or NPA before or after it was assigned by Respondents No.4 to 6 (hereinafter referred to as "Respondent Piramal") to Respondent No. 7 (hereinafter referred to as "Respondent Omkara") on 27.12.2022. In the said Letter dated 27.12.2022, there is no reference to the account of the Petitioner/Appellant No. 3 being either an SMA or an NPA;

12. Even in the Recall Notice dated 15.02.2023 issued by the Respondent Omkara, there is no mention that the account of the Petitioner/Appellant No. 3 is an SMA or an NPA;

13. No Notice of Default under the Loan Agreement for the alleged default on 15.11.2022 was given by Respondent Piramal as per the Loan Agreement dated 26.12.2017;

14. No Notice of Default under the Cash Management Agreement dated 16.01.2018 ("CMA") for a default on 15.11.2022 was given;

15. Notice to borrower that account is an SMA is mandatory under the Master Circular dated 21.03.2014 [DNBS (PD) CC. No. 371/03.05.02/2013-14], as it has civil consequences including assignment of a debt to an Asset Reconstruction Company ('ARC' for short). This is reiterated in the Master Direction dated 19.10.2023 [Reserve Bank of India (Non-Banking Financial Company Scale Based Regulation) Directions 2023];

16. The Respondent Piramal while contending that the account of the Petitioner/Appellant No. 3 was an SMA on 14.11.2022, does not state that the

Petitioner/Appellant No. 3 was so notified. In fact, the Respondent Piramal contends that there is no such legal requirement.

17. According to him, the Respondent Omkara does not state that the Petitioner was notified that the account was an SMA. The Respondent Omkara contends that there is no legal requirement to notify the borrower that the account is an SMA.

18. According to Sri. Ajesh, despite the fact that the Petitioner/Appellant No. 3 was never notified that their account was either a Non-Performing Asset or a Stressed Asset, in contravention of the law prescribed by the Reserve Bank of India ("RBI") and the Master Circulars, the account was assigned to Respondent Omkara incorporated under Section 5 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, ("SARFAESI Act") by Respondent Piramal.

Appellant No.3's account was not under incipient default or stress:

19. According to Sri. Ajesh, appellant No. 3 was an Eligible borrower under the Emergency Credit Line Guarantee Scheme ("ECLGS Scheme").

20. As per the ECLGS 2.0 Agreement executed on 30.12.2020, a sum of INR. 98 Crores was disbursed and a sum of INR. 65 Crores was disbursed under ECLGS 3.0 Agreement dated 11.03.2022.

21. He stated, in the said Agreement dated 11.03.2022 it is stated that there is no potential default or an event of default has occurred as of the execution date or is continuing or might reasonably be expected to result from borrowing the loan or the entry into the performance of or any transaction contemplated by any finance document.

22. Therefore as on March 2022, the account of the Petitioner/Appellant No. 3 was not under incipient stress or default.

23. He stated, an amount of Rs.15.84 Crores approx. was received by the Petitioner/Appellant No.3 from Respondent Piramal between 29.12.2022 and 03.03.2023;

24. It is for this reason that the Respondent Piramal withdrew proceedings before the National Company Law Tribunal, Mumbai ("NCLT") in CP(IB) No. 1292 (MB) of 2021 on 13.12.2022 and CP(IB) No. 1287 (MB) of 2021 on 02.01.2023 without liberty;

25. The evergreening by Respondent Piramal using to an extent of Rs.139 crores (approx.) out of Rs.163 Crores disbursed under the Emergency Credit Line Guarantee Scheme ("ECLGS Scheme") is in contravention of the said scheme and the Loan Agreement dated 11.03.2022;

26. Until even October 2023, Respondent Piramal demanded and collected payment for the repayment of loan under the CMA;

27. According to Sri. Ajesh, the Repayment of ECLGS 3.0 was not due then.

28. According to Sri. Ajesh, on 11.04.2023, the Learned Single Judge noted that the account of the Petitioner/Appellant No. 3 was not an NPA. He also stated, on that date, there was no submission by the Respondent Omkara that the account was an SMA. He relied on the following Master Circulars in support of his submission:

Sl.	Master Circular	Date	Topic/ref in Telegraphic Text
1	Asset Reconstruction Companies	12.08.2022 updated	"standard asset" means an asset which is not a NPA. Ref. Clause 2 (1) (xiii) at Pg. No. 689
2	Framework Revitalising Distressed Assets	26.02.2014	A financial asset may be sold where the asset is reported as SMA-2.
3	Early Recognition of Financial Distress	21.03.2014	The NBFC is bound to notify the Borrower about their Account being an SMA. Ref. Clause 2.1.3 at Document No. 1 appended to Memorandum Submissions

4	RBI (Transfer of Loan Exposures) Directions	05.12.2022 updated	"stressed loans" means loan exposures that are classified as Non-Performing Assets (NPA) or as Special Mention Accounts (SMA) Ref. Clause 9(k) at Pg. No. 751 The instructions contained in this Chapter would cover transfer of stressed loans including transfer to ARC. Ref. Clause 49 at Pg. No. 762
			Subject to Master Circular of 2019, all stressed loans which are in default in the books of transferor are permitted to be transferred to ARC. Ref. Clause 73 at Pg. No. 768
			Paragraph Nos. 3 and 4 of Master Circular dated 26.02.2014 repealed is Ref. Point 12 at Clause 88 at Pg. No. 776
7	Prudential Framework for Resolution of Stressed Assets	07.06.2019	Lenders shall recognise incipient stress in loan accounts. Ref. Clause 6 at Pg. No. 780
			As per May 2014, Lenders shall report classification of an

			account as an SMA. Ref. Clause 8 at Pg. No. 781
			Lender shall not conceal actual status of account or evergreen stressed accounts. Ref. Clause 23 at Pg. No. 785
6	Reserve Bank of India (Non- Banking Financial Company - Scale Based Regulation)	19.10.2023	The NBFC is bound to notify the Borrower about SMA. Ref. Clause 1.1.3

Legal Submissions

29. The submission of Sri. Ajesh is that, in terms of the Master Circular dated 24.09.2021, an asset being an NPA or an SMA has been put on the same footing and therefore, have similar consequences qua transfer to an ARC.

30. Therefore, when an Asset is classified as an SMA it involves serious civil consequences such as being permitted to be transferred to an ARC, which would differ from a Financial Institution/Non-Banking Financial Institution in the terms of the loan, interests, etc.

31. Since the classification of the Account being of an SMA/NPA would have serious civil consequences similar to those of being classified as a Wilful Defaulter/Fraud Account or giving locus to an ARC to prosecute the Petitioner, therefore it requires that a Borrower be made aware prior to any such classification to remedy any such shortfall, if any.

32. It is for this reason that the RBI Master Circular stresses on the concepts of early recognition and uses the terminology of 'Incipient Stress' which would mean a stress occurring, if any, prior to any event of Default.

33. Therefore, the RBI thought it fit to include in Master Circular dated 21.03.2014 and Master Circular dated 19.10.2023 as stated herein above in Circular No. 7 and 8 for early identification and the Lender approaching the Borrowers to cure any such deficiency.

34. Therefore according to him, in view of the non-intimation of the account purportedly to be either in

stress or a purported Special Mention Account, there is a Statutory infringement, and any such classification is on the whims and fancies of the Lender, which ought not to be permitted.

35. That as on 14.11.2022, there was no jural Relationship between the Borrower/Petitioner/Appellant No. 3 and the Respondent Omkara.

36. In view of the foregoing, all such actions taken pursuant to the purported Classification of the account of the Borrower as an SMA, is bad in law and cannot be propagated to validate the impugned assignment.

37. Regardless of the intimation or otherwise, according to Sri. Ajesh, the account of the Borrower/Petitioner/Appellant No.3 was not a Stressed Account;

38. That if the account of the Borrower was purportedly declared to be a SMA on 14.11.2022, then 60 days thereafter, it ought to have been declared as an NPA. Such is not the case and before this Court in

WP No.6037/2023. This Court on 11.04.2023, had recorded the submission of the Lender Piramal that the account of the Borrower was not an NPA.

39. According to Sri. Ajesh, in view of the account not being declared as an NPA, as per the Master Circular dated 03.04.2023, a Standard Asset means an Asset which is not an NPA. Therefore, there is no concept of a Stressed account qua the Borrower.

40. He stated, there has been no intimation either under the Loan Agreements and/or under the Cash Management Agreement whereby the Lender has sought for the borrower/obligor to bring in any sums/deficit, if any.

41. That upon the utilisation of the ECLGS sums, notwithstanding the same being in contravention to law of over INR. 140 Crores, there was no stress/default in the account of the Borrower. It is for this reason that, the 1st round of NCLT petitions came to be withdrawn.

42. He stated, since the Order of the NCLAT dated 08.01.2025, a sum of over INR 130 Crores has been transferred from the Retention Account.

43. He stated, the NCLAT has held in favour of the Borrower GSTAAD on the following counts -

44. That the question of assignment was not looked into, in view of the pendency of the present writ appeal.

45. The motive of Omkara is to be looked into while filing successive petitions and in spite of the date of default falling while a petition was pending before the NCLT, Mumbai.

46. That the Corporate Debtors being GSTAAD and Neo Capricorn were running hotels and earning revenue, profitable companies and earning substantial profits.

47. That the Corporate Debtor had indeed disputed that there was a debt and a default thereof and therefore, it could not have been considered as an undisputed fact by the Adjudicating Authority, NCLT.

48. The aspect of the sums transferred under the ECLGS Scheme being used to service the Lender-Piramal, debts without the same being utilised for working capital ought to be adjudicated and looked into by the Adjudicating Authority.

49. The Analysis as provided by the Chartered Accountant showcasing excess interest charged, Debt Service Reserve Account being unutilised, and there being a Write off by the Lender-Piramal, amounting to over Rs.100 Crores is to be adjudicated by the NCLT.

50. There is no default in so far as ECLGS-2 is concerned.

51. That the learned Single Judge did not have the benefit of the Order passed by the NCLAT and whereas the same is pronounced now and therefore, would have a bearing on the present case as it is pronounced by a Court of Competent Jurisdiction upon going through the facts and documents placed before it.

52. He stated, the learned Single Judge, without any discussion on either the facts or the documents placed before it (at Paragraphs No.12 and 13), concludes that there is no dispute in the account of the Petitioner being stressed. The same is factually wrong as per the Law and the Master Circulars.

53. He stated, the learned Single Judge relied on the judgement in ICICI Bank Ltd. vs. Official Liquidator of APS Star Industries Limited, wherein the transfer of assets was from a bank to another bank whereas the case at hand is between an NBFC and an ARC.

54. According to him, the learned Single Judge in paragraph No.14 of the Impugned Order, held that it was the contention of the Petitioner that they were not informed of the Assignment, whereas such a case was never argued. It was the case of the Petitioner/Appellant No. 3 that they were neither notified to be either a Stressed/SMA or an NPA.

55. According to him, the learned Single Judge has failed to consider the fact that no notice was given prior to any asset classification as enunciated in the Loan Agreements and or the Master Circulars which have a Statutory Force.

56. He stated, that the basis of which the learned Single Judge concludes at paragraph No.13 to be a Stressed Account, has already been set aside by the Order of the NCLAT and therefore such a finding is unsustainable. In view of the foregoing, his prayer is the Order Impugned is liable to be set aside.

Submissions of Sri. Vakiti Vineeth Reddy, learned counsel for respondents No.4 to 6:

57. At the outset, Sri. Vakiti Vineeth Reddy submits that it is settled law that a debt is in the nature of an asset of a lender and such asset can always be assigned or transferred under the provisions of SARFAESI Act, 2002, read with allied rules which very much recognises the rights *interse* the assignor/transferor and assignee/transferee. He further submitted that, such assignment/

transfer does not concern or affect the rights of the borrower in any manner. It is for this reason that the borrower does not have any locus or right to challenge the assignment of a debt in the first place and therefore the borrower has no say whatsoever in the matter concerning the assignment of loans. For this reason alone, the captioned Writ Appeal is liable to be dismissed at the threshold.

58. Without prejudice to the above, he submitted that the question before this Court is whether the assignment of the loan facility from the Respondent Nos 4 to 6 to Respondent No.7 is in accordance with law or not.

59. He submitted that the contention of the Appellants is that the Appellant No.3's loan account was not a stressed account does not hold any merit because the loan account of the appellant No.3 was already declared as an SMA as on 14.11.2022.

60. Thereafter, the Respondent Nos.4 to 6 assigned all the Facilities in favour of Respondent No.7 herein under Assignment Agreement dated 27.12.2022 as per the Master Circular dated 24.09.2021 (as updated on 05.12.2022) issued by the RBI, it is clear that lenders are permitted to transfer only 'stressed loans'. Further, the stressed loan has been defined as "loan exposures that are classified as non-performing assets (NPA) or as a special mention account (SMA)", as per the said circular. Hence, the assignment of the Petitioner's loan facility from the Respondent Nos. 4 to 6 to Respondent No. 7 has been done in accordance with law.

61. It is submitted that the perusal of the Master Circular dated 07.06.2019 issued by the RBI would clearly denote the manner in which an account gets classified as an SMA. The relevant portion of the said circular is extracted hereinbelow:

"6. 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: (Annexure AL of the Writ Appeal at Page 780, the relevant provision)

<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>1-30 Days</i>
<i>SMA-1</i>	<i>31-60 Days</i>
<i>SMA-2</i>	<i>61-90 Days</i>

”

62. Further, upon perusal of the aforementioned clause also makes it very clear that the "Lenders shall recognise incipient stress in loan accounts, immediately on default, by classifying such assets as special mention accounts (SMA)", which means an event of classifying an account as SMA comes after the event of default.

63. Therefore, the Appellants contention that their account was not in default is entirely not tenable under law. Furthermore, the definition of default as per the RBI Master circular is definition of default as per the IBC which defines default as "non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be".

64. He submitted, even as per the definition of the default as per the RBI Circular, the Appellants account was in default as it was classified as the SMA on 14.11.2022, which means the amount is wholly or partly overdue between 1-30 days, therefore it classifies as default as per the definition because the whole or any part or instalment of the amount of debt has become due and payable and was not paid by the Appellants.

65. He further submitted that, as per the guidelines issued by RBI, Banks and NBFCs are obligated to provide credit information about their borrowers with an aggregate fund-based and non-fund based exposure of and over Rs. 5 Crores (Rs. 50 million) and also report the SMA status of their borrowers to CRILC constituted by the RBI, to collect, store, and publish data on all borrowers' credit exposures. Accordingly, the Respondent No.5 has reported the list of accounts which have become NPA or SMA to the Respondent No.2 on 30.11.2022. In the said Report reported on 30.11.2022, the details of the account of the Petitioner are disclosed

at Sl. No.15. Though the CRILIC Report was generated on 31.03.2023, however, the same was reported/submitted by the lender on 30.11.2022, which is crystal clear from the perusal of the said CRILIC Report. In this regard he submitted that, the date of generation of the CRILIC Report is completely irrelevant and the relevant date in this regard is the date of reporting/submission of the CRILIC Report by the lender, which is 30.11.2022. He seeks dismissal of writ appeal.

Submissions of Sri. K.N.Phanindra, learned Senior Counsel for respondent No.7:

66. Sri. K.N.Phanindra, learned Senior Counsel appearing for respondent No.7 would contend that, the appellant No.3-GSTAAD Hotels Pvt. Ltd. is the borrower of certain loans from respondents No.4 to 6-Piramal Enterprises. The said enterprises acting in their capacity as the original lenders, sanctioned and disbursed loans to the appellant-GSTAAD. The loan agreements executed between the parties were placed in escrow with IDBI Trusteeship Services Limited-respondent No.8 which was designated as the security trustee. As a fiduciary holding

custody of all loan related documents, IDBI was responsible for ensuring compliance with the terms of the loan agreements and facilitating the rights and obligations of the parties under the financing agreements.

67. According to Sri. Phanindra, subsequently the Piraamal Enterprises in accordance with the provisions of the loan agreements, assigned the entirety of the debt to respondent No.7-Omkara. According to him, the assignment occurred after the appellant No.3's account was classified as a SMA-1 - a category indicative of signs of financial stress. The assignment was effected in compliance with the applicable RBI guidelines and regulatory frameworks governing the assignment of stress assets.

68. He stated, following the assignment, the respondent No.7 - the new lender and assignee of the debt, initiated corporate insolvency resolution proceedings under the IBC against appellant No.3. In

response, the appellant had filed the writ petition being WP No.6037/2023 challenging the assignment and seeking relief against Piramal Enterprises and Omkara including directions concerning the release of credit under the ECLGS.

69. According to Sri. Phanindra, the case of appellant No.3 before the learned Single Judge was, challenging the assignment of its loan to respondent No.7-Omkara as legally invalid and unsustainable, as the same has been effected without prior notice or intimation to the appellant and that the assignment in favour of respondent No.7-Omkara could not have been effected as appellant No.3's account was neither stressed nor declared as an NPA within the guidelines of RBI. According to him, in addition to challenging the assignment, appellant No.3 had also argued that the RBI was under an obligation to direct the Piramal Entities to release funds under ECLGS-a government backed credit relief scheme intended to provide liquidity support to businesses during periods of economic distress. The case

of appellant No.3 was, the refusal of the respondents No.4 to 6-Piramal Enterprises to extend credit under the ECLGS was arbitrary and contrary to the intended objectives of the scheme. Sri. Phanindra highlighted the defence of respondent No.7 before the learned Single Judge by stating that the appellant's contention by asserting that an account need not be classified as an NPA to be eligible for assignment. It was the case of respondent No.7 that the RBI guidelines expressly permit the assignment of any stress account which includes accounts classified NPA or SMA as SMA-0, SMA-1 or SMA-2. Since the appellant's account has been categorized as SMA-1, the assignment was in strict compliance with the regulatory norms and could not be impugned on the grounds advanced by appellant No.3.

70. Even on the discretion in the ECLGS release, it was the case of respondent No.7 duly supported by respondents No.4 to 6 that, the release of funds under the ECLGS was entirely discretionary. It was the case of the said respondent that, the scheme did not create a

vested right in borrowers to demand disbursal of additional credit, particularly when the lending institution based on its assessment of financial risk, deemed such disbursement unviable.

71. Sri. Phanindra has justified the impugned order of the learned Single Judge, who according to him, after a meticulous examination of relevant RBI circulars and legal framework, concluded that there was no mandatory requirement for an account to be classified as an NPA before it could be assigned. According to him, the learned Single Judge has rightly held, as the appellant No.3's account was classified as SMA-1, there was sufficient justification for assignment of the loan to respondent No.7-Omkara. Sri. Phanindra has also justified the learned Single Judge's conclusion that the release credit under ECLGS was within the discretion of the lending institutions as the scheme did not impose an absolute obligation upon lenders to extend credit and thus the appellant No.3's claim for such relief was untenable.

72. Even the arguments put forth by Sri. Ajesh has been contested by Sri. Phanindra by stating that, the plea of Sri. Ajesh that the correctness of the learned Single Judge's order that its loan or loan account ought to have been classified as SMA-2 or at the very least as a default before any assignment could be effectuated, is clearly untenable as according to him, the respondents maintained that assignment is permissible for any stressed account as per RBI guidelines. The definition of stressed account includes both NPAs and SMA-0, SMA-1 and SMA-2. Thus, the classification of appellant's account as SMA-1 fully justified the assignment. In fact, Sri. Phanindra has laid stress on the fact that appellant No.3 has categorically admitted before the learned Single Judge that there is a default; hence the appellants cannot dispute the occurrence of default. His submission was, the assignment was carried out in strict compliance with the RBI directives which do not prescribe SMA-2 classification as prerequisite for assignment. He also stated that, the issue of whether the appellants/appellant

No.3 are in default, is a matter of adjudication exclusively by NCLT under the IBC. The definition of 'default' under RBI regulations is aligned with the IBC and Sri. Ajesh's arguments are misplaced. He further stated, the RBI circular relied upon by the appellant which purportedly mandated SMA-2 classification for assignment is repealed in 2021. The 2021 guidelines which permit assignment of SMA-0, SMA-1 and SMA-2 accounts superseded the earlier circular and govern the present transaction. He stated, that the impugned order of the learned single judge is justified and the appeal being without any merit, is liable to be dismissed.

Analysis:

73. Having heard the learned counsel for the parties and perused the record, the issue which arises for consideration is, whether the learned Single Judge is justified in negating the challenge of the appellants to the assignment of loan of the appellants to respondent No.7. The submission of Sri. Ajesh can be summed up as under:

- i. The assignment has been effected on 27.12.2022 without prior notice or intimation to the appellants.
- ii. No notice of default of loan agreement/cash management agreement on 15.11.2022 was given.
- iii. The appellants were not notified that their account was either NPA or a stressed asset.
- iv. In terms of circular dated 21.03.2014, the individual notified NBFCs shall closely monitor the accounts reported as SMA-1 or SMA-0 as these are the early warning signs of weaknesses in the account. They should take up the issue with the borrower with a view to rectify the deficiencies at the earliest and such a position has not been followed in the present case.
- v. The assignment in favour of respondent No.7 could not have been effected as the appellant's account is neither stressed nor declared as NPA within the applicable RBI guidelines.
- vi. The RBI was under an obligation to direct the respondents No.4 to 6 to release the funds under the ECLGS - a government backed credit relief scheme intended to promote the liquidity in support of businesses during the period of economic distress. So the refusal is arbitrary.

74. Insofar as the submission of Sri. Ajesh at (i) above is concerned, the submission is not merited for the reason that notice/intimation of assignment dated 27.12.2022 has been issued to the appellants. The date of 27.12.2022 is the date of assignment of the loan to respondent No.7. Intimation in that regard to the appellants can be seen from pages No.636 to 638 of the paper book. The requirement of law can only be an intimation, not a prior notice. This we say so in view of the settled law which has been noted by the learned Single Judge in paragraph No.13 of the impugned order by referring to the judgment of the Supreme Court in the case of **ICICI Bank Limited -Vs.- Official Liquidator of APS Star Industries Limited [(2020) 10 SCC 1]**. Similarly he has referred to the case of **Indiabulls Housing Finance Limited -Vs.- Deccan Chronicle Holdings Limited [(2018) 14 SCC 783]** in paragraph No.14 of the impugned order, on a similar proposition. The same reads as under:

"14. Yet another submission is made that the petitioner was not put on notice of such transfer of

*asset in favour of 7th 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 7th 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** [(2018) 14 SCC 783] 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 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."

The submission of Sri.Ajesh in regard to **ICICI Bank Limited** (supra) is primarily that, the said judgments have no applicability as they relate to the transfer of loan account from a Bank to another Bank unlike a case in hand where a transfer is from NBFC to ARC. We are not in agreement with the said submission of Sri. Ajesh for the simple reason that, in the case of **Indiabulls**

Housing Finance Limited (supra), the Supreme Court has referred to the judgment of the **ICICI Bank Limited** (supra) to hold that, the Indiabulls Housing Finance Limited had right to transfer/assign its assets to any person without seeking the consent of the borrower. Such a transfer/assignment is recognized in the case of **ICICI Bank Limited** (supra), wherein the same has been upheld.

75. Insofar as the submission of Sri. Ajesh at (ii) to (v) above are concerned, one of the plea of Sri. Ajesh was relying upon the circular dated 21.03.2014. At the outset we may state that, the said circular was neither referred to nor relied upon by the appellants before the learned Single Judge. The same has been filed by the appellants in this Court along with the written submissions. Be that as it may, the said circular was issued with the subject matter of early recognition of financial distress, prompt steps for resolution and fair recovery for lenders; framework for revitalizing the stress asset in the economy. It was in

that context the circular stipulated that the NBFC must take up with the borrower with a view to rectifying the deficiencies at the earliest that too only when the accounts are reported as SMA-1 or SMA-0 as the said circulars contemplate as soon as the account is reported as SMA-2 by one or more lending banks/notified NBFCs, the same will trigger the mandatory formation of joint lenders forum and formulation of corrective action plan as envisaged in paragraph No.2.3 of the framework. But the same is not the position in the circulars issued between the years 2019 and 2023, which governs the assignment in this case. The said circulars as held by the learned single judge deals with four factors, (i) declaration of an account to be an NPA, (ii) what is a standard or stressed asset, (iii) framework for resolution of standard or stressed asset, (iv) transfer of asset to an ARC. As per the master circular dated 24.09.2021 as updated on 05.12.2022 it is clear that the lenders are permitted to transfer only stressed loan. The stressed loan is defined as loan exposures that are classified as

NPAs or SMAs. The master circular dated 07.06.2019 issued by the RBI clearly denote the manner in which the accounts get classified as SMA in as much as the lenders shall recognize incipient stress in loan accounts immediately on default by classifying such assets as SMAs as per the following categories, which means that an event of classifying an account as SMA comes after the event of default:

<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>1-30 Days</i>
<i>SMA-1</i>	<i>31-60 Days</i>
<i>SMA-2</i>	<i>61-90 Days</i>

The IBC, 2016 defines 'default' to mean non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be.

76. It is the case of the respondents No.4 to 6 that, the account of the appellant has been classified as SMA

on 14.11.2022, which means the amount is wholly or partially overdue between 1-30 days. Therefore, it classifies as default as per the definition because the whole or any part or installment of the amount of debt has become due and payable and was not paid by the appellants. So, the classification of account as SMA is in view of operation of the circulars issued by the RBI. In other words, by the operation of the circulars, the account is classified as SMA and operation of the circulars in itself is a notice to the borrowers to pay the installment on time to avoid being classified in any of the SMA.

77. Be it noted it is the case of respondents No.4 to 6 that, the banks and NBFCs are obligated to provide credit information about their borrowers with an aggregated fund based and non-fund based exposure of and over Rs.5 Crores and also report the SMA status of their borrowers to CRILIC constituted by the RBI to collect, store and publish data of all borrowers' credit exposures. Accordingly, respondent No.5 has reported

the list of accounts which have become NPA or SMA to respondent No.2 on 30.11.2022. In the said report, on 30.11.2022, the details of the account of the appellant No.3 are also disclosed at Sl.No.15, which we reproduce as under showing that the appellant's account was in default as it was classified as the SMA on 14.11.2022:

**"NBFC CRILC
XBRL Publishing**

Reporting Institution	Piramal Enterprises Limited
Report Geerated on	31 Mar 2023 11:32:01
Reporting Friday	30-Nov-2022
Report Status	Provisional
Processing Status	Completed
Email Id	Pratik.sawant2@piramal.com

Sr. No.	PAN Number	Borrower/ Customer Name	x x x	Borrower Group Code	Group Name	Industry Code	Industry Name	Sector Code	Banking Arrangement	x x x	Internal Rating	x x x	Assets Classification	x x x	Special Mention Accounts (SMA)	Date of SMA Classification	x x x	Loan Buyout /Takeover Status	Date of Buyout /Takeover	x x x
xx	xx	xx	x x x	xx	xx	xx	xx	xx	xx	x x x	xx	x x x	xx	x x x	xx	xx	x x x	xx	xx	x x x
15	AACCG 1048B	GSTAAD HOTELS PRIVATE LIMITED		Z9999	Individual/Not belonging to any Group	55101	Hotels, Motels and Resorts	Private	Sole		V/G B-V		Standard		SMA-1	14/11/2022		Takeover from NBFC/HFC	22/03/2019	x x x

78. Insofar as the plea of Sri. Ajesh at (vi) above is concerned, the learned Single Judge has, in paragraph No.16 of the impugned order, by referring to the judgment of this Court in the case of **Nitesh Residency Hotels Private Limited -Vs.- Union of India [WP**

No.2004 of 2022, decided on 8-08-2022], has held as under, with which we agree:

"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 [W.P.No.2004 of 2022 decided on 8-08-2022] 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."

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. LTD¹⁰; 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."

It may be stated here that Sri. Ajesh has not contested that the principal or interest payment or any other amount wholly or partially was not overdue at any point of time. If that be so, if the respondents No.4 to 6

decided to assign the account to respondent No.7, surely in the facts of this case, the same cannot be faulted.

79. In support of his submissions, Sri. Ajesh has relied upon the following judgments on various propositions:

- Judgments of the Supreme Court:

Sl. No.	Citation	Proposition
1	<i>Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust -Vs.- V.R. Rudani and Others [(1989) 2 SCC 691]</i>	Mandamus even on a contract not only on statute
2	<i>Uttara Foods & Feeds (P) Ltd. -Vs.- Mona Pharmachem [(2018) 15 SCC 587]</i>	Settlement Law prior to Section 12A, IBC
3	<i>Pro Knits -Vs.- Board of Directors of Canara Bank and Others [(2024) 10 SCC 292];</i>	RBI Master Circular mandatory
4	<i>M.P. Power Management Co. Ltd. -Vs.- Sky Power</i>	Test of arbitrariness in

	<i>Southeast Solar India (P) Ltd. and Others [(2023) 2 SCC 703];</i>	a contract: Interference of a writ Court in a private contract
5	<i>Chittoori Subbanna -Vs.- Kudappa Subbanna and Others [1964 SCC OnLine SC 322]</i>	

Sl. No.	Citation	Proposition
1	Judgment of this Court in the case of <i>Velankani Information Systems Ltd. - Vs.- Secretary, Ministry of Home Affairs Government of India and Others [2020 SCC OnLine Kar 835]</i>	Court to be guided by aims of circular; Court can issue directions of circular to implement a circular
2	Judgment of Punjab and Haryana High Court at Chandigarh in the case of <i>M/s Amar Alloys -Vs.- State Bank of India [CWP No. 16490/2018, decided on 17.05.2019]</i>	Opportunity before NPA

3	Judgment of the National Company Law Appellate Tribunal in the case of <i>Lalan Kumar Singh -Vs.- Phoenix ARC Pvt. Ltd. and Another [2018 SCC OnLine NCLAT 835]</i>	
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79.1. Insofar as the judgment in the case of ***Lalan Kumar Singh*** (supra) is concerned, the facts in that case are, Pheonix ARC Pvt. Ltd. (financial creditor) filed an application under Section 7 of the IBC for initiation of corporate insolvency resolution process against GPI Textiles Ltd. (corporate debtor). The Adjudicating Authority NCLT, Chandigarh by order dated 06.07.2018, has admitted the application. The appellant and shareholder of the corporate debtor has preferred the appeal before NCLAT. The case of the appellant was, the loan was originally granted by HSBC India to GPI. The Pheonix's claim is based solely on an illegal assignment of a loan purported to have been granted by HSBC by way of an assignment deed dated 21.03.2012.

Therefore, according to the appellant, Phoenix is not the financial creditor of GPI and has failed to establish debt and default or that the debt was legally assigned or transferred within the meaning of IBC. It has come on record that, the corporate debtor has conveyed its consent for substitution of Phoenix as the secured creditor in place of HSBC during the course of proceedings before the BIFR on 20.04.2012. That apart, it has also come on record that, the corporate debtor agreed for assignment by HSBC in favour of Phoenix. The said judgment has no applicability to the facts of this case and the issue which arises for consideration in the present appeal and also in view of our findings above.

79.2. Insofar as the judgment in the case of ***Chittoori Subbanna*** (supra) is concerned, the issue in the said case was related to execution proceedings of a decree, which shall have no applicability to the facts of this case and the issue which arises for consideration in the present appeal.

79.3. We have seen the judgments (as referred above) relied upon by Sri.Ajesh on various propositions, the same shall have no applicability in view of the facts of this case and also in view of our conclusion above.

80. We agree with the final conclusion arrived at by the learned Single Judge rejecting the writ petition. We accordingly, ***dismiss*** the writ appeal being without merit.

In view of dismissal of the appeal, pending application(s), if any, shall stand *disposed of*.

No costs.

**Sd/-
(V KAMESWAR RAO)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**

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