

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 615 of 2024

[Arising out of Order dated 21.03.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-II in C.P. (IB) No. 1031/MB/2021]

IN THE MATTER OF:

**Terry E D'Souza
(Suspended Director of C & M Farming Ltd.)**

....Appellant

Vs.

Omkara Assets Reconstruction Pvt. Ltd. & Ors.

...Respondents

For Appellant:

Mr. Abhijeet Sinha, Sr. Advocate with Mr. Firoze Patel, Mr. Akhil Abraham Roy, Advocates.

For Respondents:

Mr. Arun Kathpalia, Sr. Advocate with Mr. Abhishek Anand, Mr. Karan Kohli, Ms. Palak Kalra, Advocates

**J U D G M E N T
(30th August, 2024)**

Ashok Bhushan, J.

This Appeal by a Suspended Director of the Corporate Debtor has been filed challenging the order dated 21.03.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court-II admitting Section 7 application filed by Omkara Assets Reconstruction Pvt. Ltd.- Respondent herein. Appellant aggrieved by the order has come up in this Appeal.

2. Brief facts of the case necessary to be noticed for deciding this Appeal are:-

2.1. The Corporate Debtor- 'C&M Farming Ltd.' has obtained financial assistance from Business Co-operative Bank Ltd. On account of default being committed by the Corporate Debtor in repayment of the financial facilities, the account of the Corporate Debtor was declared as NPA on 15.04.2003. A reference was filed before the BIFR under Sick Industrial Companies Act, 1985 on 15.09.2006 by the Corporate Debtor. Corporate Debtor was declared as Sick Company on 17.04.2007. Reference before the BIFR was terminated after enforcement of the IBC. The Financial Creditor- Business Co-operative Bank assigned its debt to the Respondent- Omkara Assets Reconstruction Pvt. Ltd. on 05.12.2020. Financial Creditor filed an application under Section 7 against the Corporate Debtor on 09.09.2021 claiming financial debt amounting to Rs.6,42,56,279/-. Adjudicating Authority permitted the Appellant to amend Form-1 on 18.02.2022. The Corporate Debtor filed a suit before the Civil Court challenging the assignment in favour of the Financial Creditor. The Suit filed by the Corporate Debtor was dismissed by the Civil Court on 01.03.2023 on an application under Order 7 Rule 11 of the CPC filed by the Financial Creditor. An Appeal has been filed by the Corporate Debtor against the order of the Civil Court in which no interim order has been granted by the Bombay High Court. By the impugned order dated 21.03.2024, the Adjudicating Authority admitted Section 7 application. Aggrieved by which order, this Appeal has been filed.

3. In the Appeal, Counsel for the Respondent was allowed a week's time to file an Additional Affidavit bringing on record the relevant material with regard to pleadings as well as assignment. Respondent has filed an Additional-Affidavit as permitted by this Tribunal.

4. We have heard Shri Abhijeet Sinha, Learned Senior Counsel for the Appellant and Shri Arun Kathpalia, Learned Senior Counsel appearing for the Respondent- Financial Creditor.

5. Counsel for the Appellant challenging the order raised two principle submissions. It is submitted that the date of default being 15.04.2003 when the loan account of the Corporate Debtor was classified as NPA. Section 7 application which has been filed only on 09.09.2021 is clearly barred by time. In reference which was placed before the BIFR, the Corporate Debtor was declared Sick Company only on 17.04.2007 by which time the limitation for filing the application has expired. It is submitted that before the Adjudicating Authority, Corporate Debtor had filed audited balance sheets only for the F.Y. 2015-16 onwards and there was no pleading of extension of limitation under Section 18 of the Limitation Act. In Section 7 application, Appellant cannot bring additional materials in this Appeal i.e. balance sheet of the corporate debtor as on 31.03.2004 and the correspondences regarding the OTS to come over the issue of limitation. Secondly, it is contended that the assignment in favour of the Financial Creditor dated 05.12.2020 is not a valid assignment. An assignee under the IBC can file proceeding under Section 7 only on the basis of valid assignment which is the statutory scheme. Assignment dated 05.12.2020 is

a void document and not valid. Business Co-operative Bank from whom the Respondent No.1 purports to have obtained the debt which was registered as a co-operative bank was not entitled to assign to Reconstruction Company. Only on 24.09.2021 the Reserve Bank of India (RBI) issued a Circular permitting the District Central Co-operative Banks to transfer loans to securitization and/or reconstruction companies. Prior to 24.09.2021, District Co-operative Banks/ Business Co-operative Banks were not permitted to transfer or sell its assets to reconstruction company, hence, the assignment deed dated 05.12.2020 prior to RBI Circular was impermissible. Hence, the assignment deed dated 05.12.2020 is void and not a valid document.

6. Counsel for the Respondent refuting the submissions of the Counsel for the Appellant contends that the application filed under Section 7 by the Financial Creditor was well within time and there is no infirmity in the assignment deed dated 05.12.2020. Replying the submissions of the Appellant on the question of limitation, it is submitted that the account was declared as NPA on 15.04.2003. Corporate Debtor has acknowledged the debt of Rs.64,92,410/- on 07.06.2003. It is further submitted that the corporate debtor has made part payments from 04.09.2003 to 30.03.2007 which shall extend the limitation. It is further submitted that the corporate debtor in the balance sheet for the F.Y. 2003-2004 acknowledged the default of credit facilities extended by the original lender. Appellant has also referred to various requests received from the Corporate Debtor to the lender to provide the Balance Confirmation Certificate and NPA Interest Certificate.

On 28.02.2018, Corporate Debtor again made a One Time Settlement proposal to the original lender whereby liability to repay has been acknowledged. The fresh period of limitation shall commence from the acknowledgment vide OTS dated 28.02.2018 and the application filed under Section 7 was well within time. It is submitted that the period during 15.09.2006 till 13.06.2016 during which reference was pending before the BIFR shall be excluded. It is submitted that there being continuous acknowledgment in the balance sheet by the Corporate Debtor, it cannot be said that application was barred by time. The balance sheet as on 09.12.2020 again clearly acknowledged the debt.

6.1. Coming to the second submission of the Appellant, Business Co-operative Bank could not have assigned the debt to Respondent, it is submitted that the Business Co-operative Bank was a District Co-operative Bank within the meaning of Maharashtra Co-operative Society Act and it was fully covered within the definition under Section 2(c) of the SARFAESI Act, 2002. It is further submitted that the RBI issued Master Circular on 01.07.2015 which was addressed to all primary/urban co-operative bank under which the co-operative banks were fully entitled to assign their debt. The RBI Circular which is being relied by the Appellant dated 24.09.2021 has no application in the facts of the present case. Counsel for the Respondent has referred to the relevant Circular issued by the RBI along with the Affidavit to support his submission that co-operative banks were in no manner precluded from transferring their debt to Reconstruction Company.

7. We have considered the submissions of the Counsel for the parties and perused the record.

8. We proceed to examine the submissions made by the parties as noted above under the heading of 'Limitation' and 'Assignment'.

LIMITATION:-

9. Both the parties do not dispute that default was committed by the Corporate Debtor on 15.04.2003 when the account of the Corporate Debtor was classified as NPA. It is also pleaded in Part-IV of Form-1. We need to notice Column 2 of Part-IV where date on which the default has occurred has been pleaded. Column 2 of Part-IV is as follows:-

2.	<p><i>AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)</i></p>	<p><i>For Term Loan Limit</i></p> <p><i>Total Outstanding as on 31st July 2021 Rs. 31,22,387/- along with Further Interest 15% monthly rest (including penal interest @2% monthly rest) cost etc receivable from the borrower from 01.08.2021</i></p> <p><i>For cash credit limit</i></p> <p><i>Total outstanding as on 31st July 2021 Rs. 6,11,33,892/- alongwith further interest @ 15% monthly rest and cost etc. (including penal interest @2% monthly rest) receivable from the borrower from 01.08.2021</i></p> <p><i>Grand Total Rs. 6,42,56,279/- Hereto annexed and marked as Exhibit E is a copy of a particulars claim.</i></p> <p><i>The Financial Creditor craves</i></p>
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	<p><i>leave of this Hon'ble Tribunal to amend the claim and/or submit a further claim, if and what required.</i></p> <p><i>"Date of Default: 9th December 2020 (viz. the date of the latest audited balance sheet for the year FY 2019- 2020, of the Corporate Debtor). The Applicant submits that there has been a continuous default in the account which commenced on 15th April 2003 when the loan account of the Corporate Debtor was classified as Non-Performing Asset in view of the default in making payments by the Corporate Debtor.</i></p> <p><i>Subsequently, the Corporate Debtor was registered with Board for Industrial and Financial Restructuring (BIFR) in the year 2006 and came out of BIFR on 13th June 2016. A copy of BIFR order dated 13th June 2016 whereby the BIFR proceedings against the Corporate Debtor was discharged is annexed hereto and marked as Exhibit A1.</i></p> <p><i>Thereafter, the Corporate Debtor has acknowledged its liability with respect to the loans availed by it, vide OTS proposal letter dated 28th February 2018. A copy of said OTS proposal letter dated 28th February 2018 addressed by the Corporate Debtor is enclosed hereto and marked as Exhibit A2.</i></p> <p><i>In fact, the Corporate Debtor has been making some nominal part payments towards the repayment of the loan amount, which is clearly reflected in the statement of account of the</i></p>
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	<p><i>Corporate Debtor. The last of such payment was made by the Corporate Debtor on 2nd March 2019 and the same also amounts to acknowledgement of liability of the Corporate Debtor. A copy of statement of account of the Corporate Debtor, reflecting payments made by the Corporate Debtor in its loan account is annexed hereto and marked as Exhibit A3.</i></p> <p><i>The Corporate Debtor has thereafter unconditionally and unequivocally acknowledged their liability to the Applicant (and/or its Assignor) in their following audited balance sheets:</i></p> <p><i>(i) Financial Year 2019-2020-dated 9th December 2020, a copy of which is annexed hereto and marked as Exhibit A4</i></p> <p><i>(ii) Financial Year 2018-2019-dated 19 September 2019, a copy of which is annexed hereto and marked as Exhibit A5</i></p> <p><i>(iii) Financial Year 2017-2018 - dated 30th August 2018, a copy of which is annexed hereto and marked as Exhibit A6;</i></p> <p><i>(iv) Financial Year 2016-2017-dated 31st August 2017, a copy of which is annexed hereto and marked as Exhibit A7:</i></p> <p><i>(v) Financial Year 2015-2016 dated 24th August 2016, a copy of which is annexed hereto and marked as Exhibit AS."</i></p>
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10. Counsel for the Appellant has submitted that there are no pleadings by the Appellant with regard to extension of limitation under Sections 18

and 19 of the Limitation Act. Counsel for the Appellant has relied on the judgment of the Hon'ble Supreme Court in "**Shanti Conductors Pvt. Ltd. vs. Assam State Electricity Board & Ors.- (2020) 2 SCC 677**" decided on 18.12.2019. The case before the Hon'ble Supreme Court arose out of the money suit filed by Shanti Conductors (P) Ltd. in the Court of Civil Judge, Senior Division. One of the issues framed was whether the suit filed by the Appellant is barred by limitation. Counsel for the Appellant has relied on paragraphs 11, 12 and 13 of the judgment which are as follows:-

"11. The above provision makes it clear that in event, a suit is instituted after the prescribed period, it shall be dismissed although limitation has not been set up as a defence. The Court by mandate of law, is obliged to dismiss the suit, which is filed beyond limitation even though no pleading or arguments are raised to that effect. The provisions of Sections 4 to 20 are exceptions when suit beyond the period of limitation as prescribed in the Schedule shall not be dismissed as required by Section 3. In this context, we need to refer to Order VII Rule 6 of the Civil Procedure Code. Order VII deals with plaint. Order VII Rule 6 contains a heading "Grounds of exemption from limitation law". Order VII Rule 6 is as follows:-

"6. Grounds of exemption from limitation

law. - *Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed:*

Provided that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such

ground is not inconsistent with the grounds set out in the plaint."

12. Order VII Rule 6 uses the words "the plaint shall show the ground upon which exemption from such law is claimed". The exemption provided under Sections 4 to 20 of the Limitation Act, 1963 are based on certain facts and events. Section 19, with which we are concerned, provide for a fresh period of limitation, which is founded on certain facts, i.e., (i) whether payment on account of debt or of interest on legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy, (ii) an acknowledgement of the payment appears in the handwriting of, or in a writing signed by, the person making the payment. We may notice the judgment of this Court dealing with Section 20 of the Limitation Act, 1908, which was akin to present Section 19 of the Limitation Act, 1963. In Sant Lal Mahton Vs. Kamla Prasad and Others, AIR 1951 SC 477, this Court held that for applicability of Section 20 of the Limitation Act, 1908, two conditions were essential that the payment must be made within the prescribed period of limitation and it must be acknowledged by some form of writing either in the handwriting of the payer himself or signed by him. This Court further held that for claiming benefit of exemption under Section 20, there has to be pleading and proof. In paragraphs 9 and 10, following has been laid down:-

"9. It would be clear, we think, from the language of s. 20, Limitation Act, that to attract its operation two conditions are essential : first, the payment must be made within the prescribed period of limitation and secondly, it must be acknowledged by some form of writing either in

the handwriting of the payer himself or signed by him. We agree with the Subordinate Judge that it is the payment which really extends the period of limitation under s. 20, Limitation Act; but the payment has got to be proved in a particular way and for reason of policy the legislature insists on a written or signed acknowledgment as the only proof of payment and excludes oral testimony. Unless, therefore, there is acknowledgment in the required form, the payment by itself is of no avail. The Subordinate Judge, however, is right in holding that while the section requires that the payment should be made within the period of limitation, it does not require that the acknowledgment should also be made within that period. To interpret the proviso in that way would be to import into it certain words which do not occur there. This is the view taken by almost all the High Courts in India and to us it seems to be a proper view to take (See Md. Moizuddin v. Nalini Bala A.I.R. (24) 1937 Cal 284 : I.L.R. (1937) 2 Cal. 137; Lal Singh v. Gulab Rai 55 All 280, Venkata Subbhu v. Appu Sundaram 17 Mad. 92, Ram Prasad v. Mohan Lal A.I.R. (10) 1923 Nag 117 and Viswanath v. Mahadeo 57 Bom. 453.

10.If the plaintiff's right of action is apparently barred under the Statute of limitation, O. 7, R. 6, Civil P.C. makes it his duty to state specifically in the plaint the grounds of exemption allowed by the Limitation Act upon which he relies to exclude its operation; and if the plaintiff has got to allege in his plaint

the facts which entitle him to exemption, obviously these facts must be in existence at or before the time when the plaint is filed; facts which come into existence after the filing of the plaint cannot be called in aid to revive a right of action which was dead at the date of the suit. To claim exemption under s. 20. Limitation Act the plaintiff must be in a position to allege and prove not only that there was payment of interest on a debt or part payment of the principal, but that such payment had been acknowledged in writing in the manner contemplated by that section.....”

13. We need to notice as to whether the petitioners in plaint have pleaded any exclusion of time under Section 19 of the Act or not. The plaint is filed as Annexure P/2 in Civil Appeal Nos. 8442-8443 of 2016. A perusal of the plaint indicates that there is no pleading as to exception of limitation by running any fresh period of limitation as per Section 19. In paragraph 10, the details of delivery challans have been given, last challan being dated 04.10.1993 has been mentioned by which supply was made. In paragraph 12, details of payments received have also been mentioned, in which last being made on 05.03.1994 has been mentioned, but for the last payment made on 05.03.1994, there was no pleading of an acknowledgment on the part of the respondents, which could result in start of fresh period of limitation. Further in paragraph 21, it has been further specifically pleaded that provisions of Limitation Act do not apply in view of the provisions contained in the Act, 1993 as because the Act, 1993 is having overriding effect over the Limitation Act and

all other Acts. Paragraph 21 of the plaint is referred to for ready reference:-

“21. That the transaction between the plaintiffs and the defendants are duly maintained by the plaintiffs in the Books of Accounts like ledger, Sale Register etc., which are kept in the usual course of the business of the plaintiffs and those accounts between the plaintiffs and the defendants are in continuity and the interest payable by the defendants to the plaintiffs are carried over till date. As such the suit of the plaintiffs is in within time. Apart from that the provisions of the Limitation Act do not apply in view of the provisions contained in the Act, 1993 as because the Act of 1993 is having overriding effect over the Limitation Act and all other Acts.”

11. There can be no quarrel to the proposition of law laid down by the Hon’ble Supreme Court in the above case. In the present case, we are considering the proceeding initiated under Section 7 of the IBC where application is to be filed in prescribed form along with the relevant documents annexed therein. When we look into Part IV, Column-2, it is clear that the date of default is mentioned. It was further pleaded that the Corporate Debtor was registered with BIFR in the year 2006 and came out of BIFR on 13.06.2016. Copy of the BIFR Order dated 13.06.2016 was also brought on record. The pleading also contained OTS Proposal letter dated 28.02.2018. Further pleading was that the Corporate Debtor has been making nominal part payments towards the repayment of the loan amount. One of the payments made on 02.03.2019 has also pleaded. Copy of the

statement of account of the corporate debtor, audited balance sheets for the F.Y. 2019-2020 dated 09.12.2020 and for the F.Y. 2018-2019 dated 19.09.2019 were also brought on the record. Other audited balance sheets for the F.Y. 2017-2018, 2016-2017, 2015-2016 were also brought on record. Counsel for the Appellant has submitted that reference was registered before the BIFR in June 2006 and Corporate Debtor was declared a sick company only on 17.04.2007 before which the limitation for filing application had expired. We need to first examine this contention. It is true that all balance sheets of the Corporate Debtor were not filed along with Section 7 application but on liberty granted by this Tribunal, Additional- Affidavit has been filed by the Financial Creditor where the balance sheet of the corporate debtor as on 31.03.2004 has been brought on record referred as 23rd Annual Report which report is signed on 30.10.2004. Annual Report contains clear acknowledgment of debt to the Business Bank in letter of credit and SCC-Loan of Rs.30 Lacs and Rs.64.98 Lacs respectively. The aforesaid acknowledgment in the balance sheet clearly gives a fresh period of limitation and before the said period came to an end, the Corporate Debtor was registered with BIFR as pleaded in Section 7 application. Corporate Debtor registered in BIFR till June 2016. Balance sheets of the Corporate Debtor for the F.Y. 2015-2016, 2016-2017, 2017-2018 and 2018-2019 have been filed along with Section 7 application as has been noted above. Balance sheets clearly contain acknowledgment of debt of the financial creditor. Financial creditor in the Additional Affidavit has also brought on record large number of letters of the corporate debtor acknowledging the debt and part payments made. Communication for OTS

given by the Corporate Debtor to financial creditor in the year 2006 and part payments made between 04.09.2003 to 30.03.2007 has been clearly pleaded and proved from the materials which have been brought on the record as well as in the Additional Affidavit. Balance Sheets as on 24.08.2016 and as on 31.08.2017 have been referred to by the Counsel for the Respondent which has been brought on record along with the Additional Affidavit which contains acknowledgment. Corporate Debtor on 28.02.2018 has made OTS proposal which has been filed along with the Appeal itself at Page 350.

12. In view of the pleadings in the application as well as materials brought on the record before the Adjudicating Authority and before this Tribunal, we are of the view that the application filed by the Financial Creditor was well within time. Financial Creditor was clearly entitled for exclusion of period during which Corporate Debtor was registered with the BIFR and prior to the registration as well as subsequent to June 2016, there is acknowledgment of debt in the balance sheets of the Corporate Debtor. Application, thus, filed on 09.09.2021 was well within time.

Assignment:-

13. Now we come to the submissions made by the Appellant with regard to Assignment. The submission of the Counsel for the Appellant is that the assignment in favour of the Financial Creditor was not valid since the District Co-operative Banks were not entitled to transfer their debt to securitization company or reconstruction company. We need to first notice

the provisions of the SARFAESI Act, 2002 in the above reference. Section 2(c) of the SARFAESI Act, 2002 defines 'Bank'. Section 2(c) is as follows:-

"2. Definitions.- (c) "bank" means—

- (i) a banking company; or
- (ii) a corresponding new bank; or
- (iii) the State Bank of India; or
- (iv) a subsidiary bank; or
- (iva) a multi-State co-operative bank; or
- (v) such other bank which the Central Government may, by notification, specify for the purposes of this Act;"

14. Ministry of Finance and Company Affairs vide Notification dated 28.01.2003 in exercise of powers conferred under item (v) of clause (c) of Sub-Section (1) of Section 2 of the SARFAESI Act specifying the 'co-operative bank'. Notification dated 28.01.2003 is as follows:-

**"MINISTRY OF FINANCE AND COMPANY AFFAIRS
(Department of Economic Affairs)
(BANKING DIVISION)**

NOTIFICATION

New Delhi, the 28th January, 2003

S.O. 105(E)- *In exercise of the powers conferred under item (v) of clause (c) of Sub-section (1) of Section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002), the Central Government hereby specifies "Co- operative Bank" as defined in clause (cci) of Section 5 of Banking Regulation Act, 1949 (10 of 1949) as "bank' for the purpose of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002).*

[F. No. 1/2/2002-BO-1)

SHEKHAR AGARWAL, Jt. Secy.”

15. Co-operative Bank, thus, came within the purview of the SARFAESI Act, 2002 by virtue of Section 5(1), any asset reconstruction company may acquire financial assets of any bank or financial institution. Section 5(1) of the SARFAESI Act, 2002 is as follows:-

“5. Acquisition of rights or interest in financial assets.—*(1) Notwithstanding anything contained in any agreement or any other law for the time being in force, any [asset reconstruction company] may acquire financial assets of any bank or financial institution—*

(a) by issuing a debenture or bond or any other security in the nature of debenture, for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them;
or

(b) by entering into an agreement with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them.....”

16. Counsel for the Respondent has placed reliance on the Judgment of the Constitution Bench of the Hon’ble Supreme Court in **“Panduranga Ganpati Chaugule vs. Vishwasrao Patil Murgud Sahakari Bank Ltd.- (2020) 9 SCC 215”** where question arose as to whether Bank/Banking Company under SARFAESI Act shall include the co-operative banks, whether registered under State legislation or otherwise. Constitution Bench after considering relevant statutory provisions and judgments of the Hon’ble

Supreme Court answered the reference made to the Constitution Bench by its judgment and order dated 05.05.2020. Question No.20.1 and 20.2 as framed before the Constitutional Bench in paragraph 20 of the judgment are as follows:-

“20. The following questions arise for consideration:

20.1. (1) Whether "cooperative banks", which are cooperative societies also, are governed by Schedule VII List I Entry 45 or List II Entry 32 of the Constitution of India, and to what extent?

20.2. (2) Whether "banking company" as defined in Section 5(6) of the BR Act. 1949 covers cooperative banks registered under the State Cooperative Laws and also multi-State cooperative societies?”

17. Constitution Bench after considering the submissions answered the questions in paragraph 142. Paragraph 142 is as follows:-

“142. Resultantly, we answer the reference as under:

142.1. (1)(a) The cooperative banks registered under the State legislation and multi-State level cooperative societies registered under the MSCS Act. 2002 with respect to "banking" are governed by the legislation relatable to Schedule VII List 1 Entry 45 of the Constitution of India.

142.1. (b) The cooperative banks run by the cooperative societies registered under the State legislation with respect to the aspects of "incorporation. regulation and winding up", in particular, with respect to the matters

which are outside the purview of Schedule VII List I Entry 45 of the Constitution of India. are governed by the said legislation relatable to Schedule VII List II Entry 32 of the Constitution of India.

142.2. (2) The cooperative banks involved in the activities related to banking are covered within the meaning of "banking company" defined under Section 5(c) read with Section 56(a) of the Banking Regulation Act, 1949. which is a legislation relatable to List 1 Entry 45. It governs the aspect of "banking" of cooperative banks run by the cooperative societies. The cooperative banks cannot carry on any activity without compliance of the provisions of the Banking Regulation Act. 1949 and any other legislation applicable to such banks relatable to "banking" in List I Entry 45 and the RBI Act relatable to Schedule VII List I Entry 38 of the Constitution of India.

142.3. (3)(a) The cooperative banks under the State legislation and multi- State cooperative banks are "banks" under Section 2(1)(c) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The recovery is an essential part of banking; as such, the recovery procedure prescribed under Section 13 of the SARFAESI Act. a legislation relatable to Schedule VII List I Entry 45 to the Constitution of India, is applicable.

142.4. (3)(b) Parliament has legislative competence under Schedule VII List 1 Entry 45 of the Constitution of India to provide additional procedures for recovery under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act. 2002 with respect to cooperative banks. The provisions of

Section 2(1)(c)(iv-a), of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, adding "ex abundanti cautela", "a multi-State cooperative bank" is not ultra vires as well as the Notification dated 28-1-2003 issued with respect to the cooperative banks registered under the State legislation."

18. The Constitution Bench in the above judgment has answered that the cooperative banks under the State legislation and multi- State cooperative banks are "banks" under Section 2(1)(c) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The above answer of the Constitution Bench clearly dispels the doubt that co-operative banks are not covered by the SARFAESI Act, 2002 and by virtue of Section 5(1), asset reconstruction company can fully acquire the debt of the co-operative bank.

19. Counsel for the Respondent has also referred to Circular dated 01.07.2015 of the Reserve Bank of India. The Circular has been addressed to all Primary (Urban) Co-operative Banks on the subject "Investments by Primary (Urban) Co-operative Banks". Counsel for the Appellant has relied on the Circular of the RBI dated 24.09.2021 which have been brought on the record along with the Appeal. The submission of the Counsel for the Appellant is that it was by Circular dated 24.09.2021 of RBI for the first time was brought under the purview of transfer of loan exposures. Paragraphs 1 to 3 of the Circular dated 24.09.2021 as follows:-

DOR.STR.REC.52/21.04.048/2021-22

September 24, 2021

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

Introduction

Loan transfers are resorted to by lending Institutions for multitude of reasons ranging from liquidity management, rebalancing their exposures or strategic sales. A robust secondary market in loans can be an important mechanism for management of credit exposures by lending institutions and also create additional avenues for raising liquidity. It is therefore necessary to lay down a comprehensive, self-contained set of regulatory guidelines governing transfer of loan exposures.

Accordingly, in exercise of the powers conferred by the Sections 21 and 35A of the Banking Regulation Act, 1949 read with Section 56 of the Banking Regulation Act, 1949; Chapter IIIB of the Reserve Bank of India Act, 1934; and Sections 30A, 32 and 33 of the National Housing Bank Act, 1987, the Reserve Bank, being satisfied that it is necessary and expedient in the public interest sa to do, hereby issues the directions hereinafter specified.

Short title and commencement

1. *These directions shall be called the Reserve Bank of India (Transfer of Loan Exposures) Directions, 2021.*
2. *These directions shall come into force with immediate effect.*

Chapter 1: Scope and Definitions

A. Applicability and Purpose

3. The provisions of these directions shall apply to the following entities (collectively referred to as lenders in these directions), unless specified otherwise

- (a) *Scheduled Commercial Banks;*
- (b) *Regional Rural Banks;*

(c) *Primary (Urban) Co-operative Banks/State Co-operative Banks/District Central Co-operative Banks;*

(d) *All India Financial Institutions (NABARD, NHB, EXIM Bank, and SIDBI);*

(e) *Small Finance Banks; and*

(f) *All Non Banking Finance Companies (NBFCs) Including Housing Finance Companies (HFCs).*

Provided that:

- (i) *Lenders specified at sub-clauses (b) and (c) above are permitted as only transferor(s) of stressed loans under Chapter IV of these directions, and are not permitted as transferors(s) or transferee(s) in any other type of loan transfers.*
- (ii) *All lenders, where permitted to acquire loans, shall only do so from a transferor specified as a lender above unless specifically permitted.”*

20. Counsel for the Appellant submits that the earlier Circular dated 28.03.2014 was issued by the RBI which was only with respect to Multi State Urban Cooperative Banks on sale of financial assets to securitisation company/reconstruction company. It is submitted that co-operative banks were not included in the said Circular.

21. Counsel for the Respondent has referred to letter dated 15.03.2019 which was sent by the RBI to the Business Bank Urban Co-op Limited where RBI clearly opined that the efforts may be made through the enabling provisions of SARFAESI Act, 2002. It is useful to extract the letter dated 15.03.2019, which reads as follows:-

*“RESERVE BANK OF INDIA
www.rbi.org.in*

SBP N.No. 3219/15.04.548/2018-19

March 15, 2019

BY SPEED POST

*The Chief Executive Officer
Business Bank Urban Co-op Limited
Complex Datta Mandir Circle,
Nashik Road
NASHIK-422101.*

Sir

**One Time Settlement C & M Farming Limited &
Group Companies**

In the abovesaid subject, you are informed that the OTS suggestion submitted by you for concluding the loan accounts of C&M Farming and its group has not been recognized. You are informed to incessantly make all possible efforts to recover maximum amount through the enabling provisions of SARFAESI Act, 2002 and keep this office informed about the progress made in this direction.

Sincerely,

Sd/-

(PARAG SHANDAGULE)

MANAGER”

22. The above letter dispels doubts expressed by the Appellant and indicates that the co-operative banks were also entitled to sell their loan

exposures under the SARFAESI Act, 2002. Had co-operative banks were not covered under the SARFAESI Act, 2002. There is no occasion for the RBI writing on 15.03.2019 to the original lenders to use the provisions of the SARFAESI Act, 2002.

23. The submission advanced by the Appellant on the basis of Circular of the RBI dated 24.09.2021 in no manner can be read to mean that co-operative banks were not covered by the SARFAESI Act, 2002 prior to 24.09.2021. The Circular dated 24.09.2021 was issued with regard to multi state co-operative banks which the RBI was fully entitled to issue any direction. With regard to in exercise of powers under the Banking Regulation Act, 1949, no exception can be taken to Circular dated 24.09.2021 issued by the RBI but that Circular cannot be read to mean that the co-operative banks were excluded from exercising the powers under the SARFAESI Act, 2002. We have already noticed that the Constitutional Bench of the Hon'ble Supreme Court in "*Panduranga Ganpati Chaugule*" (*supra*) has clearly laid down that the co-operative banks registered under the State legislature are also covered by the SARFAESI Act and they are covered by the definition of the Banks under Section 2(1)(c). We have already noticed the Notification issued in the year 2003 by the Central Government notifying the co-operative banks under Section 2(1) (c).

24. In view of the above, we are of the view that there was no prohibition to the co-operative bank from assigning their debt to the Reconstruction Company and assignment in favour of the Respondent on 05.12.2020, which assignment cannot be faulted on the above submission. We, thus, do

not find any substance in the submissions of the Counsel for the Appellant. Both the submissions of the Counsel for the Appellant as noted above are devoid of any substance. There is no merit in the Appeal. The Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

New Delhi
Anjali