

(I) Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, S. 2(f) - Borrower - Definition - Includes any person who has given any guarantee or created any mortgage or pledge as security for financial assistance - Petitioner being a guarantor and mortgagor for a third-party loan account falls within the definition of borrower - Cannot escape liability by claiming to be merely a guarantor. [Para 8]

"It is clearly provided in Section 2(f) of SARFAESI Act that "borrower means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for financial assistance granted by any bank or financial institution... There is no occasion or ground for holding that in the present case definition of 'Borrower' as above is not applicable." [Para 8]

(II) RBI, Master Circular - Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances, Clause 4.2.7(i) - Asset Classification - Borrower-wise vs. Facility-wise - All facilities granted by a bank to a borrower must be treated as NPA if any one facility becomes irregular - Provision is in line with international practices and financial norms - Not unconstitutional or violative of Article 14. [Paras 7, 8 & 10]

"It is specifically provided in Clause 4.2.7(i) that asset classification has to be borrower-wise and not facility-wise... the said provision has been incorporated keeping in line with international practices and as per recommendations made by the Committee on Financial System. Rationale behind the Clause is absolutely clear." [Paras 8]

(III) RBI - Master Circular - Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances, Clause 4.2.5 - Upgradation of NPA Accounts - Where a borrower has multiple facilities and one is a third-party account where the borrower is a guarantor/mortgagor, the individual loan account cannot be upgraded to 'standard' until all linked accounts (borrower-wise) are cleared - Relied on *M/s. Oswal Spinning & Weaving Mills Ltd. v. Reserve Bank of India*. [Para 9]

"Therefore, once account of M/s. Navrang Infrastructure Inc. is not cleared, there can be no upgradation of loan account in question from NPA to standard." [Para 9]

(IV) Constitution of India, Art. 226 - Writ Jurisdiction - Alternate Remedy - SARFAESI Act, S. 17 - Challenges to notices under Section 13(2) and 13(4) - Petitioner has an efficacious alternate remedy of approaching the Debt Recovery Tribunal - High Court declined interference in writ jurisdiction regarding the merits of SARFAESI proceedings. [Paras 5 & 12]

"In so far as any grievance which the petitioner might have qua proceedings under SARFAESI Act, it is open to petitioner to avail remedy(ies) as may be available to him in accordance with law." [Para 10]

(V) Banking - Refund of Deposit - Amount deposited during pendency of litigation

to show bona fides - Where amount is deposited in discharge of loan liability and withdrawn by bank as per court orders not challenged by the petitioner, the same cannot be sought to be refunded - Distinguishing *M/s. Kut Energy Pvt Ltd. v. The Authorized Officer, Punjab National Bank* - Constitution of India, Art. 226. [Para 11]

“We do not find any merit in the said argument inasmuch as the said amount was clearly deposited by petitioner in discharge of his liability towards the loan amount... This order was never subjected to challenge by petitioner, thereby reflecting that this amount is accepted to be deposited by petitioner qua discharge of his liability.” [Para 11]

Cases Referred to :

1. 2019 (3) PLR 81, *M/s. Amor Alloys Pvt Ltd.(Regd.) v. State of India* (Stayed by SC). [Para 4]
2. 2019 AIR (SC) 4994, *M/s. Kut Energy Pvt Ltd. v. Authorized Officer, PNB* (Regarding refund). [Para 4]
3. CWP-13888-2015, *M/s. Oswal Spinning & Weaving Mills Ltd. v. RBI* (Asset classification). [Para 9]
4. Mr. H.S. Jagdev, Advocate for the petitioner.

Mr. Deepak Suri, Advocate and Mr. Sidhant Suri, Advocate for respondent no.1. Mr. C.S. Pasricha, Advocate for respondent no.2.

Facts:

The petitioner availed a housing loan of ₹90 lakhs and a car loan from Punjab National Bank. Due to financial indiscipline, the accounts were declared NPA. The petitioner's residential property was also mortgaged as security for a loan availed by *M/s. Navrang Infrastructure Inc.* (owned by petitioner's brother), where the petitioner stood as a guarantor. The petitioner cleared his own overdue amounts and sought upgradation of his account to 'Standard'. The Bank refused, citing Clause 4.2.7(i) of the RBI Master Circular, which mandates that asset classification is "borrower-wise" and not "facility-wise," meaning all accounts linked to a borrower (including those as a guarantor) must be regular for any one to be upgraded. The petitioner challenged the constitutionality of this clause and sought a refund of deposits made during the proceedings.

[2024 PLRonline 0020 = ID 431700Download](#)