

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.1572-1576 OF 2020
(Arising out of SLP (C) Nos.4284-4288 of 2020)
(Diary No. 21011 of 2019)

BANK OF INDIA

Appellant(s)

VERSUS

AGRAWAL INDOTEX LTD. & ORS.

Respondent(s)

WITH

T.C. (C) NO. 1 OF 2020

T.C. (C) NO. 2 OF 2020

T.C. (C) NO. 3 OF 2020

T.C. (C) NO. 4 OF 2020

O R D E R

Delay condoned.

Leave granted.

Heard learned counsel for the parties.

All these matters will stand disposed of in terms of this common order.

Respondent No.1 was declared Non-Performing Asset (NPA) on 30.09.2011 with outstanding amount of Rs.28,26,41,868/- (Rupees twenty eight crore twenty six

lakh forty one thousand eight hundred sixty eight only). Respondent No.1 filed successive writ petitions before the High Court, first to challenge the action initiated by the appellant-Bank of India under Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 and later questioning the decision of the bank rejecting the offer given by respondent No.1 and lastly to avail the benefit of One Time Settlement Scheme, 2014.

As the issues are overlapping, we thought it appropriate to hear these matters analogously. Accordingly, the writ petitions which were pending before the High Court, were withdrawn to this Court and are being heard analogously.

During the pendency of these matters, we had permitted respondent No.1 to pursue the representation in reference to One Time Settlement Scheme. Pursuant thereto, the competent authority of the appellant-Bank of India has taken a decision to reject the proposal given by respondent No.1 and to reiterate the offer given by the bank of Rs.17,74,00,000/- (Rupees Seventeen crore seventy four lakh only) as One Time Settlement amount under the revised One Time Settlement Scheme, 2018.

The grievance of respondent No.1 is that the computation done by the appellant-Bank of India is based on erroneous assumption that the property offered as security titled 'PV Division' could be invoked by the appellant-Bank of India. For, the same has since been disposed of to third party and out of the sale proceeds, the amount was paid to the secured creditors having first charge thereon, namely, SBI and MPFC. We do not agree with this submission. Be it noted that the said third party Purchaser is also party to these proceedings and is represented through counsel, who has supported the plea of respondent No. 1.

The fact that PV Division has been sold to third party and the sale proceeds has been made over to the secured creditors having first charge, in our view, does not affect the claim of the appellant-Bank of India over the secured asset-PV Division. For, admittedly, the appellant had a second charge on the stated property at the relevant time. By virtue of sale and appropriation of sale proceeds towards the outstanding dues of the secured creditors having first charge as referred to above, and that being satisfied, in law, the charge of appellant-Bank of India (second charge) stood converted

into as first charge secured creditor qua PV Division, albeit now owned by a third party (Purchaser). In other words, the third party, in law, had purchased the property (PV Division) alongwith the charge of appellant-Bank of India thereon intact.

Resultantly, the claim of the Bank of India qua the two secured assets would remain intact; and due to the aforesaid reason, the appellant has acquired the status of first charge on PV Division secured asset, which it can invoke for realization of its outstanding dues from respondent No.1 being the defaulter.

Furthermore, as the respondent No.1 is not willing to avail of the offer given by the appellant-Bank of India of One Time Settlement Scheme, 2018 to pay Rs.17,74,00,000/- (Rupees Seventeen crore seventy four lakh only), it must take the consequences thereof and for which reason, the appeal(s) preferred by the appellant-Bank of India deserves to be allowed and the writ petitions filed by respondent No.1 ought to be dismissed. We order accordingly.

In view of this order, any interim protection given to respondent No.1 in respect of the properties referred to in these proceedings stands vacated forthwith.

The appellant-Bank of India is free to proceed against the stated secured assets in accordance with law.

Pending applications, if any, stand disposed of.

.....J
(A.M. KHANWILKAR)

.....J
(DINESH MAHESHWARI)

New Delhi
February 13, 2020

ITEM NO.5

COURT NO.7

SECTION IV-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 21011/2019

BANK OF INDIA

Appellant(s)

VERSUS

AGRAWAL INDOTEX LTD. & ORS.

Respondent(s)

(I.R. and IA No.145366/2019-CONDONATION OF DELAY IN FILING and IA No.145368/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.145367/2019-CONDONATION OF DELAY IN REFILING)

WITH

T.C. (C) No. 1/2020 (XVI-A)

T.C. (C) No. 2/2020 (XVI-A)

T.C. (C) No. 3/2020 (XVI-A)

T.C. (C) No. 4/2020 (XVI-A)

Date : 13-02-2020 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE MR. JUSTICE DINESH MAHESHWARI

Counsel for the Parties:

Mr. B.B. Sawhney, Sr. Adv.
Mr. Vipin Kumar Jai, AOR

Mr. Devashish Bharuka, AOR

For Respondent(s)

Mr. Devashish Bharuka, AOR
Mr. Ravi Bharuka, Adv.
Ms. Sarvshree, Adv.
Mr. Justine George, Adv.
Mr. Vipin Kumar Jai, AOR

Mr. Anshuman Shrivastava, Adv.
Mr. Ashijeet Shrivastava, Adv.
Mr. B. Ramana Murthy, AOR

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

Leave granted.

The appeals are allowed and the Transferred Cases are disposed
of in terms of the signed order.

Pending applications, if any, stand disposed of.

(DEEPAK SINGH)
COURT MASTER (SH)

(VIDYA NEGI)
COURT MASTER (NSH)

[Signed order is placed on the file]