2026 INSC 1156

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos. OF 2026
@ SLP (C) Nos. 21029-30 OF 2024

ATIBIR INDUSTRIES CO. LTD. …APPELLANT

VERSUS

STATE BANK OF INDIA & ANR. …RESPONDENTS

J U D G M E N T

V. MOHANA, J.

1. Leave Granted.

2. The present Appeals arise out of a common judgment and order dated 25.07.2024 passed by the Division Bench of the Calcutta High Court in APO No.180 of 2023 and APOT No.393 of 2023 filed by the Respondents herein.

3. The Appellant, a borrower of the consortium of banks led by the Respondent No.1, had challenged the classification of its loan account as a Non-Performing Asset and its subsequent assignment by Respondent No.1 in favour of the Respondent No.2 which is an asset reconstruction company.

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Reason:

4. The Appellant is engaged in the business of manufacturing sponge iron, pig iron and allied products. It availed various credit facilities including cash credit, term loans and letters of credit from a consortium of banks led by Respondent No.1. The credit facilities were secured by hypothecation of the Appellant's current assets, ranking *pari passu* with the other consortium banks and of its plant and machinery**;** by equitable mortgages, also ranking *pari passu* over its factory land and buildings and over leasehold factory land and commercial plots owned by two group companies**;** and by the personal guarantees of five of its promoters and the corporate guarantees of those two companies.

5. The Respondent No.1, by letters dated 18.01.2019 and 17.03.2020, informed the Appellant of the devolvement of bills under foreign and domestic letters of credit and requested the debtor to regularise its loan account and submit a cash budget covering at least until June, 2020. By letter dated 17.01.2020, the Appellant informed the Respondent No.1 of its inability to pay the dues and undertook to regularise the account by 22.01.2020. Thereafter, the Appellant submitted resolution plans to the Respondent No.1 including the revised plan dated 11.06.2020 in which it acknowledged that as against a sanctioned limit of Rs.155 crores, the outstanding cash credit was Rs.278.56 crores as on 31.03.2020 and which became Rs.302 crores as on 06.06.2020. The Appellant attributed its default to several factors including the COVID-19

pandemic, and relied upon three circulars dated 27.03.2020, 17.04.2020 and 23.05.2020 issued by the Reserve Bank of India (for short the "RBI") under which the RBI extended the moratorium on repayment up to 31.08.2020. By a letter dated 15.09.2020, the Respondent No.1 revised the term loan repayment schedule, fixing the first instalment on 30.09.2020. The Appellant, thereafter, paid Rs.21,07,157/- on 01.11.2020 and Rs.80 lakhs on 11.12.2020.

6. By a letter dated 05.04.2021, Respondent No.1 informed the Appellant that its account had been irregular since 17.01.2020**;** that the Supreme Court vide judgment dated 23.03.2021 in ***Small Scale Industrial Manufacturers Association v. Union of India***[1] had lifted the blanket ban on classification of accounts as NPA**;** and that the account of the Appellant had been classified as NPA on 31.03.2021 with effect from 16.10.2020. The letter also sets out the dues of the Appellant as Rs.310.46 crores in the cash credit account and seven working capital loan accounts, Rs.16 crores in the term loan account and Rs.27.05 crores in four funded interest term loan accounts. The Respondent No.1 demanded that the Appellant should clear the overdues or submit a comprehensive resolution plan.

[1] (2021) 8 SCC 511

7. On 17.01.2022, the Respondent No.1 issued a recall notice demanding Rs.341 crores by way of principal along with accrued interest and other charges from the Appellant. The Respondent No.1 also approached the Debts Recovery Tribunal-I, Kolkata, by instituting OA No.260 of 2022 under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 to recover a sum of Rs.396,36,17,844.

8. In the meantime, the Respondent No.1 also filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short the "IBC") before the National Company Law Tribunal, Kolkata (for short the "NCLT") seeking initiation of corporate insolvency resolution process against the Appellant (for short the "NCLT Proceedings").

9. The Appellant proposed one-time settlement to the Respondent No.1 through its letters dated 25.01.2022, 27.01.2022, 28.02.2022 and 23.05.2022. The offer was increased from Rs.227 crores to Rs.237 crores, none of which was accepted by the Respondent No.1. The final offer was revised to Rs.238 crores on 07.02.2023. The Appellant paid about Rs.25 crores to the Respondent No.1 from time to time between 06.02.2021 and 25.01.2023.

10. On 08.07.2022, the Respondent No.1 issued a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short the "SARFAESI Act") recording the default and the classification of the Appellant's account as a Non-Performing

Asset as on 16.10.2020, and directed the Appellant to pay Rs.410,26,78,340/- along with further interest, incidental expenses and costs. The Appellant did not respond to the above notice. On 28.10.2022, the Respondent No.1 issued a notice under Section 13(4) of the SARFAESI Act which was recalled by a subsequent notice dated 04.11.2022.

11. After withdrawing the notice under Section 13(4) of the SARFAESI Act, the Respondent No.1 issued a web notice dated 10.02.2023 classifying the loan account of the Appellant as a stressed loan exposure and placing it for transfer to eligible asset reconstruction companies, banks and financial institutions through e-auction. The Appellant challenged the said notice dated 10.02.2023 before the High Court by filing WPO No.428 of 2023 in which the learned Single Judge granted an interim order dated 06.03.2023 directing the deferment of the e-auction. Subsequently, the writ petition was withdrawn by the Appellant on 21.03.2023 with liberty to file a fresh writ petition. On 23.03.2023, the Respondent No.1 issued a corrigendum advancing the e-auction process of the stressed loan exposure to 24.03.2023. The Appellant on 24.03.2023 filed WPO No.722 of 2023 seeking cancellation of the web notice dated 10.02.2023, corrigendum dated 23.03.2023 and challenging the classification of its account as a Non-Performing Asset. It contended that the classification was contrary to the master circular on asset classification and the COVID-19 relief circular issued by the RBI.

PROCEEDINGS BEFORE THE HIGH COURT: -

12. During the pendency of the writ, Respondent No.1 assigned the loan to Respondent No.2 under an assignment agreement (for short the "Assignment Agreement") on 24.03.2023 for a consideration of Rs.250 crores.

13. Before the learned Single Judge, the Petitioners challenged that the classification of the Petitioner's account as NPA was palpably *de hors* the relevant circular issued by the RBI during the pandemic period. It was submitted that in terms of several RBI circulars extending the benefit of moratorium to all debtors during the COVID-19 period, the Petitioner was exonerated from paying any amount to the Respondent No.1 till 30.11.2023**;** that the circulars dated 27.03.2020, 17.04.2020 and 23.05.2020 extended the moratorium till 31.08.2020**;** that the cumulative effect would be that the Appellant was exempted from paying the installments of the term loans till 30.11.2020, therefore, the default would have commenced only from 01.12.2020 and, hence the account of the Appellant could not have been classified as NPA on 16.10.2020.

14. It was submitted that even otherwise the revised repayment schedule dated 15.09.2020 exonerated the Appellant from paying any amount to the Respondent No.1 till 30.09.2020 when the Appellant was required to pay an amount of Rs.80 lakhs only. It was contended that the account could be classified as NPA only if interest and/or installment of the principal remains

overdue for a period of more than 90 days in respect of a term loan. Even assuming for the sake of argument, the account was running irregular from January, as per IRAC norms, 90 days of default was required to classify an account as NPA. The Appellant further contended that the loan could not have been branded as a stressed loan exposure and, therefore, it could not have been placed for transfer to an asset loan reconstruction company. It was further contended that the OTS proposals offered by the Appellant were not considered and it was dealt with in a perfunctory manner. The Respondent No.1 contended that the asset was declared as NPA and no steps were taken by the Appellant to challenge the classification and that the bank can transfer even when loans are not in default and not stressed loans. The Respondent No.2 submitted before the High Court that a bank decides to assign its stressed loan exposure in accordance with the decision taken by the banks as per their commercial wisdom and that restructuring of stressed loans and management of Non-Performing Asset are commercial matters which should be left to the expertise of large nationalised bank like the State Bank of India and that a defaulting borrower has no locus to undo an assignment in favour of the asset reconstruction company while in default of more than Rs.342 crores. The learned Single Judge, while examining all the issues, came to the conclusion that the Appellant was justified in arguing that the due date of repayment was shifted across the board till after 31.08.2020. The learned Single Judge held that in view of the moratorium having been extended till 31.08.2020, the due

date for the purpose of marking the account overdue was shifted till 01.09.2020 and, therefore, to classify an account as NPA, the bank had to wait for 90 days thereafter, in terms of the 2015 circular. Hence, it was held that the classification of the account of the Appellant as NPA with effect from 16.10.2020 was premature and clearly in contravention of the RBI Master Circular dated 01.07.2015 read with the pandemic circular issued by the RBI and, therefore, the declaration that the account was NPA was set aside. As a consequence, the Single Judge set aside the assignment of the debt to the Respondent No.2 since the account is not a stressed loan which could be transferred to an asset reconstruction company and allowed the Writ Petition WPO No.722 of 2023 setting aside the classification of the Appellant's term loan account with the Respondent No.1 as NPA with effect from 16.10.2020 and consequentially the web notice dated 10.02.2023 issued by the Respondent No.1 for e-auction of the loan account of the Appellant as also the corrigenda issued by the Respondent No.1. All actions taken in pursuance of the same were quashed and reversed.

15. Aggrieved by the judgment of the learned Single Judge, two Appeals were filed before the Division Bench of High Court by the Respondent Nos.1 and 2 herein respectively. The Division Bench by its impugned judgment dated 25.07.2024 allowed both the Appeals. The Division Bench held that the classification of any of the credit facilities as NPA would affect the borrower

across the spectrum of credit facilities enjoyed, as the asset classification must be borrower-wise and not account-wise. Though this argument was not taken by the Respondents before the learned Single Judge, the Division Bench took the above submissions of the Respondents and held that since the account of the Appellant had become stressed asset because of default in the cash credit account, his term loan account can also be classified as NPA though it may not have been NPA. The Division Bench held that assuming that the borrower/Appellant may claim the benefit of doubt concerning the classification of the term loan account as NPA, even then, the account of the Appellant so far as the cash credit facilities are concerned turn NPA and, therefore, the account was correctly classified as NPA by the Respondent No.1. It further held that the Respondent No.1 could proceed under Section 5 of the SARFAESI Act and sell the financial asset upon such financial asset becoming NPA or Special Mention Account (for short the "SMA") before the date of sale. Though, under the SARFAESI Act the bank had issued a notice under Section 13(2) and there was a mechanism subsequently which had to be followed under Section 13(3A) of the SARFAESI Act, if the borrower fails to discharge the liability, the Respondent No.1, in this case, had chosen to sell its financial assets under Section 5 of the SARFAESI Act and, therefore, it is not a measure contemplated under Section 13(4) of the SARFAESI Act. The Division Bench held that the date on which the account should be considered as NPA or not for a sale under Section 5 of the SARFAESI Act, in the facts of the case, would be

the date of publication of the web notice and it need not be pinned to the date of NPA mentioned in the notice under Section 13(2). Hence, the Division Bench held that the act of assignment or the process to assign the financial asset does not violate any right of the borrower. On the issue of whether the cash credit account having becoming NPA could be taken to declare the entire credit facility as NPA, the Division Bench held that such an issue, though not raised before the learned Single Judge, can be permitted to be raised for the first time in the Appeal. The Division Bench held that the Respondent No.1-bank has proceeded under Section 5 of the SARFAESI Act and not under Section 13(4) thereof and in any event the Appellant-borrower has failed to discharge the burden of rebutting the presumption that the account became NPA on the date of the web notice which is 10.02.2023 and held that the Respondent No.1 has acted in the manner recognized by law and, hence, allowed the Appeals filed by the Respondent Nos.1 and 2 and dismissed the WPO No.722 of 2023. Hence, the Appeals by the Appellant.

PROCEEDINGS BEFORE THIS COURT: -

16. When the matter was first taken up by this Court on 17.09.2024, the Appellant was granted the short time to get instructions regarding the discharge of the substantial part of the loan liability within a short time. Subsequent to that, by an order dated 20.09.2024 a proposal was placed by the Appellant before this Court to discharge the liability of Rs.250 crores in a time bound

manner. The relevant portion of order dated 20.09.2024 of this Court reads thus:-

> "2. In compliance with the order dated 17.09.2024, the learned Senior Counsel for the petitioner has placed on record the following proposal:
>
> > "(i) Upfront payment on or before September 25, 2024 :- Rs 25 Crores
> >
> > (ii) On or before October 31, 2024 : - Rs. 50 Crores
> >
> > (iii) On or before November 30, 2024 : - Rs. 50 Crores
> >
> > (iv) On or before December 31, 2024 : - Rs. 50 Crores
> >
> > (v) On or before January 31, 2025 : - Rs. 50 Crores
> >
> > (vi) On or before February 28, 2025 : - Rs. 25 Crores"
>
> 3. As there this is a dispute concerning the total liability of the petitioner-Company, we find that except the offer of total amount of Rs.250 crores by the petitioner, the rest of the proposal, being just and fair, can be accepted to save the running industry. Regarding the total liability of the petitioner, the same can be determined by a judicial/quasi-judicial forum, subject to further intervention by this Court. S/Shri Dr. Abhishek Mani Singhvi and Shyam Divan, learned Senior Counsel for respondent No.2 seek one week to obtain instructions in this regard.
>
> 4. Post these matters for further consideration on 27.09.2024.
>
> 5. The petitioner shall bring a cheque of Rs.25 crores on the date fixed.
>
> 6. The parties shall maintain status quo, as it exists today, till the next date of hearing."

17. This Court, after considering the schedule, passed an order whereby the offer of this total amount of Rs.25 crores and the rest of the proposal being just and fair, in order to save the running industry of the Appellant suggested a proposal that a quasi-judicial forum or the judicial forum can be directed to quantify the further liability and, therefore, directed the parties to seek

instructions in that regard. During the subsequent hearings dated 27.09.2024, 04.11.2024 and 14.10.2024, certain amounts have been paid in terms of the undertaking by the Appellant to the Respondent No.2. On 09.12.2024, this Court passed the following order:-

> "1. Vide paragraph 2 of the order dated 20.09.2024, a schedule for payment of Rs.250 crores by the petitioner-Company to the respondent was laid down. As there was some dispute with regard to the total liability of the petitioner-Company over and above Rs. 250 crores, it was suggested that let such liability, if any, of the petitioner-Company be determined by a judicial or quasi-judicial forum, of course, subject to final approval by this Court.
>
> 2. Learned senior counsel for the parties jointly state that the third installment of Rs.50 crores, which was payable by 30.11.2024 has also been paid by the petitioner-Company.
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> 3. Adverting to the suggestion given by Dr. Abhishek Manu Singhvi, learned senior counsel and in deference to paragraph 3 of the above-mentioned order dated 20.09.2024, we resolve to appoint Hon'ble Mr. Justice Anil R. Dave, former Judge of this Court, to adjudicate the claim for interest and/or any other liability over and above Rs. 250 crores.
>
> 4. We request Hon'ble Mr. Justice Anil R. Dave to permit the parties to submit their claims in writing in this regard and thereafter accord one opportunity of oral submissions to them.
>
> 5. Having regard to the facts and circumstances of this case, we request Hon'ble Mr. Justice Anil R. Dave to give his report at the earliest, subject to His Lordship's convenience.
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> 6. We are consciously not illustrating the issues that may be determined by Hon'ble Mr. Justice Anil R. Dave, as we leave it to the parties to raise all such issues for determination.
>
> 7. We request Hon'ble Mr. Justice Anil R. Dave to determine his own fee, which shall be payable by the petitioner-Company.
>
> 8. Learned counsel for the parties may approach Hon'ble Mr. Justice Anil R. Dave along with copy of this order."

18. On 27.01.2025, this Court perused the proceedings held before Hon'ble Mr. Justice Anil R. Dave on 02.01.2025 and found that he had not been able to

proceed with the hearings owing to the delay on the part of the Respondent No.2 in filing its claim. On the undertaking that the Respondent No.2 would extend full cooperation, this Court requested Hon'ble Mr. Justice Anil R. Dave to take up the matter on priority basis and to submit the report at the earliest. This Court also took note of the failure of the Appellant in adhering to the payment schedule and recorded that the instalments at serial Nos.1, 2 and 3 of the order dated 20.09.2024 have been paid but there has been a default in respect of serial No.4, and instalment at serial No.5 had fallen due. The Court recorded the fact that the Appellant had handed over cheques for Rs.10 crores to the Respondent No.2 which was accepted without prejudice to the rights of the parties to seek further payment as per the schedule. By subsequent orders dated 28.02.2025, 21.03.2025 and 16.05.2025 further payments were recorded and on 15.07.2025, and it was noted that Hon'ble Mr. Justice Anil R. Dave had submitted his report. This Court recorded the fact that the amount of Rs.250 crores have been received from the Appellant by the Respondent No.2. On 13.01.2026, this Court granted time to the parties to submit suggestions, if any, to the report dated 09.07.2025 by Justice Anil R. Dave.

19. Both the Appellant and the Respondent Nos.2 have submitted their suggestions to the report filed by Justice Anil R. Dave. On 07.10.2026, the parties made elaborate submissions and on 09.10.2026, both parties filed their written submissions and additional written submissions before this Court.

20. Though the parties had advanced elaborate submissions before the High Court in respect of various issues with regard to classification of the debt as NPA and challenged the validity of the assignment in favour of the Respondent No.2, before this Court, submissions were predominantly confined to the report filed by Justice Anil R. Dave and as to the issue whether any sum is payable to the assignee of the debt, namely, Respondent No.2 by the Appellant over and above the sum of Rs.250 crores.

21. It is a fact that the issue as to classification of the asset as a Non-Performing Asset was done with effect from 16.10.2020 retrospectively by a letter dated 31.03.2021 by the Respondent No.1. It is also not disputed that the classification of term loan as NPA had been done irrespective of the fact that there was a COVID-19 circular operating by the RBI by which the moratorium period was extended up to 31.08.2020. The Respondent No.1 had revised the term loan repayment schedule fixing the first instalment as 30.09.2020 and subsequently monies have been received by the Respondent No.1 on 01.11.2020 and 11.12.2020.

22. It is relevant to point out that the Respondent No.1 after issuing a recall notice of the loan on 17.01.2022, and after filing an application for recovery before the DRT-I, Kolkata, also filed a petition under Section 7 of the IBC before the NCLT seeking initiation of the CIRP against the Appellant. The said application is still pending in the NCLT.

23. Subsequently, the Respondent No.1 also issued a notice dated 08.07.2022 under Section 13(2) of the SARFAESI Act, recording the default of the Appellant's account as NPA as on 16.10.2020 and demanded the Appellant to pay a sum of Rs.410,26,78,340/- along with further interest, incidental expenses and costs. On 28.10.2022, the Respondent No.1 issued a notice under Section 13(4) of the SARFAESI Act, however, this was recalled by a further notice dated 04.11.2022.

24. It is clear from the above that the Respondent No.1 has been initiating proceedings in the DRT, NCLT and started the proceedings under the SARFAESI Act, all simultaneously. Though this Court in the case of ***Transcore v. Union of India and Another***[2] has held that the remedy under the SARFAESI Act is treated as an additional remedy along with that contemplated under the DRT Act and, therefore, withdrawal of an original application pending before the DRT under the DRT Act is not a pre-condition for taking recourse to the SARFAESI Act and it is for the bank or the financial institution to exercise its discretion as to cases in which it may apply for leave and in cases where it may not apply for leave to withdraw the DRT application before proceeding under the SARFAESI Act.

[2] (2008) 1 SCC 125

25. This Court is also conscious of the judgment in ***ICICI Bank Limited v. Official Liquidator of APS Star Industries Limited and Others***[3], wherein it has been held:-

> "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)."

26. The Respondent No.2 has also relied upon a judgment of this Court in ***Bijnor Urban Cooperative Bank Limited, Bijnor And Others v. Meenal Aggarwal and Others***[4] wherein it was held that no writ of mandamus could be issued by High Court under Article 226 directing a bank or a financial institution to positively grant benefit of OTS to a borrower and it is always

[3] (2010) 10 SCC 1
[4] (2023) 2 SCC 805

subject to eligibility criteria mentioned under the OTS scheme and guidelines issued from time to time.

27. Be that as it may, the conduct of the Respondent No.1-bank in initiating proceedings before the DRT and the NCLT and subsequently classifying the assets as NPA with retrospective effect and issuing a notice under Section 13(2) of the SARFAESI Act despite there being several communications between the Appellant and Respondent No.1 regarding a proposed one time settlement and the subsequent issue of notice under Section 13(4) of the SARFAESI Act which was withdrawn by a further notice dated 04.11.2022 subsequent to which an OTS was proposed for a sum of Rs.238 crores on 07.02.2023. In fact, towards this OTS the Appellant had paid about Rs.25 crores during the period of OTS talks. Because of this the e-auction notice dated 10.02.2023 issued by the Respondent No.1 placing the loan account for transfer to eligible asset reconstruction companies, banks and financial institutions came as a bolt out of the blue for the Appellant. The Appellant had challenged this notice dated 10.02.2023 by filing a WPO No.428 of 2023 before the High Court and by an interim order dated 06.03.2023, the High Court deferred the e-auction. Since there were talks between the parties, it appears that this writ petition was withdrawn on 21.03.2023. However, on 23.03.2023 the Respondent No.1 issued a corrigendum advancing the e-auction process of the stressed loan exposure to 24.03.2023. The Appellant immediately preferred WPO No.722

of 2023 seeking cancellation of the web notice dated 10.02.2023, corrigendum dated 23.03.2023 and also challenging the classification of its account as a Non-Performing Asset. The Appellant contended before the High Court that the classification was contrary to the RBI's master circular on asset classification and the COVID-19 relief circulars. Any default would have commenced only from 01.12.2020 and without a valid classification, the loan could not have been transferred as a stressed loan. While the Single Judge had allowed the writ petition, the Division Bench, by the impugned judgment, has reversed the same.

PROCEEDINGS BEFORE HON'BLE MR. JUSTICE ANIL R. DAVE: -

28. Pursuant to this Court's order dated 09.12.2024, Hon'ble Mr. Justice Anil R. Dave, former Judge of this Court, issued notices to the parties on 25.12.2024 and held a preliminary meeting on 02.01.2025. Respondent No.1 did not take part and abstained during the course of the proceedings.

29. The hearing took place on 11.02.2025. The Appellant stated that it was ready and willing to pay Rs. 250 crores, along with reasonable interest from the date the Respondent No.2 had paid that amount to Respondent No.1. Respondent No.2 disagreed, on the ground that Respondent No.1 had assigned its rights to it and that it was entitled to act in pursuance of those rights. The hearing before Hon'ble Mr. Justice Anil R. Dave concluded on 06.03.2025, and the parties were directed to place on record their short submissions.

30. The Appellant *inter alia* submitted that the sum of Rs. 250 crores paid by Respondent No.2 to Respondent No.1 was not its own money, but Respondent No.2 was funded by CFMARC Vinimay Private Limited, which was controlled by the Patwari Family. The Patwari family also held substantial shares in Rashmi Metalics Limited, a competitor of the Appellant in the same business. According to the Appellant, the Patwari Family orchestrated the entire episode to take over its running business.

31. On the other hand, Respondent No.2 submitted that, as an assignee, it was entitled to recover whatever amount the Appellant owed to Respondent No.1, including interest and the penal interest. It further submitted that the 7.5% offer was unreasonable, as the Appellant's dues already exceeded Rs. 250 Crores and therefore there is no question of the Appellant making payment of Rs. 250 Crores to Respondent No 2. It was further submitted that, as on the date of assignment of the debt by Respondent No. 1 in favour of Respondent No. 2, Rs. 342 Crores was payable towards the principal amount, and interest thereon was Rs. 112 Crores. The Appellant is therefore liable to pay the said amount, to Respondent No.2 along with interest thereon, from the date on which the debt was assigned to Respondent No. 2. It was also submitted that the manner in which it funded the sum of Rs. 250 Crores was irrelevant to the Appellant's liability. The relevant portions of the Report read as under: -

> "28. On the other hand, the learned counsel for the Company submitted that the Company has a right, as an assignee, to recover whatever amount, the Petitioner had to pay to the Bank. Upon the assignment, all rights

which the Bank had against the Petitioner, had been assigned to the Company, and therefore the Company has to recover whatever amount the Petitioner had to pay to the Bank, the principal amount and interest, including the penal interest thereon.

30. According to him, the principal amount payable by the Petitioner to the Bank as on 24 March 2023, as per the Assignment Agreement was ₹3,41,57,84,535/-. He submitted that the said amount being the principal amount as on that date, the Petitioner is bound to pay interest thereon also. In view of the said fact, the Company has rightly claimed a sum of ₹341 crores from the Petitioner. As a matter of fact, according to the learned counsel, the Petitioner would be paying much less than what it was bound to pay to the Bank, even if the Petitioner pays a sum of ₹341, crores to the Company.

37. As the facts and circumstances of the case have already been narrated in brief here in above, I need not repeat the same. Suffice is to state that after hearing both sides and looking at the facts of the case, I have to decide the amount which the Petitioner is liable to pay by way of interest and/or any other amount over and above ₹250 crores to the Company.

39. Subsequently, perhaps some negotiations had taken place between the Petitioner and the creditor Bank and a proposal was given by the Petitioner to the Bank to pay a sum of ₹227 crores by way of One Time Settlement on 27th January, 2022. The said offer had not been accepted by the Bank and therefore the said offer was revised by the Petitioner on 15th July, 2022, whereby the Petitioner had offered ₹228 crores to the Bank by way of One Time Settlement. Even that offer was not accepted by the Bank and thereupon another offer was given by the Petitioner to the Bank on 22nd November, 2022, which was of ₹237 crores. Even the said offer was not accepted.

40. Finally, the debt was assigned on 24th March, 2023 by the Bank in favour of the Company and as on that day, the total amount payable by way of debt by the Petitioner to the Bank, which was assigned to the Company, was approximately ₹453.83 crores. Out of the said amount, ₹341.95 crores approximately were towards principal amount and approximately ₹111.88 crores were towards interest. Thus, the above stated debt payable by the Petitioner to the Bank was assigned in favour of the Company for a total sum of ₹250 crores. Thus, the amount paid by the Company or the investment made by the Company was to the tune of ₹250 crores."

32. Hon'ble Mr. Justice Anil R. Dave held that, since Respondent No. 1 had already assigned its right to recover the amount from the Appellant in favour of Respondent No. 2, the pre-assignment dues of Rs. 453.83 crores were not to be considered in satisfying Respondent No. 2. Respondent No. 2's investment was the sum of Rs. 250 crores paid on 24.03.2023, and it was entitled to a reasonable return on that amount. He did not accept the 7.5% interest rate proposed by the Appellant as the assignment was a business transaction in which Respondent No. 2 was entitled earn a profit, and the Appellant itself had been paying 9.9% and 13.9% to Respondent No. 1. He also noted that it appears Respondent No. 2 had to borrow some amount to pay Respondent No. 1, but the rate at which the amount was borrowed was not available to him. The relevant portions of the Report read as under:-

> "42. If one looks at the liability of the Petitioner towards the Bank, forgetting everything about the assignment in favour of the Company, the total amount due and payable by the Petitioner to the Bank as on 24th March, 2023 was ₹453.83 crores. However, in my opinion, as the Bank has already assigned its right to recover the amount from the Petitioner in favour of the Company, there is no question of making any payment by the Petitioner to the Bank and, therefore, the abovestated amount may not be considered for the purpose of satisfying the Company, in whose favour the debt has been assigned for a consideration of ₹250 crores.
>
> 43. As seen above, the Company has invested a sum of ₹250 crores on 24th March, 2023. That is the investment of the Company for getting the debt of the Petitioner assigned in its favour. If the Petitioner has to get relieved of its liability, and if the Company is to be compensated adequately, Company should be paid reasonable return on the amount which it has invested while getting the debt assigned in its favour.

> 44. Though, it has been submitted on behalf of the Petitioner that the rate of interest which the Company should get should be 7.5% per annum from the date on which the debt was assigned in favour of the Company i.e. from 24th March, 2023, in my opinion, the said submission is not at all reasonable because it is not only the minimum interest that should be paid to the Company as getting the debt assigned was a business transaction so the Company must get something more also by way of profit. In fact, on the working capital borrowed by the Petitioner, the Petitioner was paying interest at the rate of 9.9% p.a. and on the term loan at the rate of 13.9% p.a. As the Bank is not in the picture at present, the interest which is payable to the Bank is not relevant at this stage. In any case, the rate of interest suggested by the Petitioner is not at all reasonable.
>
> 45. In the course of the submissions made by both sides, it appears that the Company had to borrow some amount for making payment of ₹250 crores to the Bank while getting the debt assigned in its favour. In the circumstances, the Company must have paid some interest to somebody. The rate at which the amount was borrowed by the Company is not available with me but in my opinion, the Company should be rewarded sufficiently."

33. Hon'ble Mr. Justice Anil R. Dave recorded that he had requested Respondent No.2 to submit its financial statements in order to ascertain its normal rate of return, but it was not inclined to submit them. In these circumstances, with the assistance of Chartered Accountant Mr Sudhir K Jain, he computed the return on the outstanding amount after crediting the payments the Appellant made from time to time up to 01.03.2025. The return came to Rs. 57,74,13,699 at 13% per annum, Rs. 62,18,30,37 at 14% per annum, and Rs. 66,62,46,575 at 15% per annum. He stated that these amounts were in addition to the principal of about Rs. 100 crores that remained unpaid on 01.03.2025. The relevant portions of the Report read as under: -

"46. The Company should get adequate return on the amount invested by it, which is ₹250 crores. I wanted to know the normal rate of return on the capital invested by the Company or the profit it gets from its business. So, I had requested the Company to submit its financial statements for a last few years but the Company was not inclined to submit the same.

47. In the circumstances, I have to simply do some guesswork and suggest to this Hon'ble Court as to how much return may be awarded to the Company by this Hon'ble Court. For that purpose, I have got some calculations done on the basis of possible returns which might be awarded to the Company.

49. On the balance amount i.e. after reducing the amount paid by the Petitioner to the Company from time to time, if the return on the amount actually invested by the Company is calculated :

(a) at the rate of 13% p.a., the amount of the return (or interest) would be ₹57,74,13,699/-.

(b) at the rate of 14% p.a., the amount of the return (or interest) would be ₹62,18,30,137/-.

(c) at the rate of 15% p.a., the amount of the return (or interest) would be ₹66,62,46,575/-.

50. Possibly, the above return would also include reasonable profit of the Company. The above amount would be in addition to ₹100 crores, which has remained unpaid as on 1st March, 2025. If any amount has been repaid after 1st March, 2025, the capital invested by the Company would be reduced to that extent and additional return will have to be paid on the reduced investment to the Company. If complete details about all payments actually made are made available, further calculations would be provided by the Chartered Account within a week from getting the details."

34. He further added, in addition to the above amount, the principal amount and return thereon, Respondent No.2 must be compensated and in the absence of any specific details on the expenditure incurred, Rs. 50 Lakhs might be reasonable towards the costs. At paragraph 52 of the Report, he stated that this Court might consider awarding the aforesaid amount to Respondent No.2,

subject to adjustment of the amount made after 01.03.2025 in order to settle the dispute amicably, so that the Appellant could continue to do its business and Respondent No.2 may also get reasonable return on the amount invested by it. The relevant portions of the Report read as under:-

> "51. In addition to the above amount, the principal amount and return thereon, towards expenses, the Company must be compensated and in absence of any specific details, the amount of expenditure which might have been incurred by the Company may be quantified by the Hon'ble Court. However, in my view, looking at the nature of the litigation, ₹50 lakhs might be quite reasonable towards costs.
>
> 52. Thus, subject to adjustment of the amount paid by the Petitioner to the Company after 1st March, 2025, the Hon'ble Court might think of awarding the aforesatated amount to the Company by the Petitioner so as to settle the dispute amicably in the interest of both sides, so that the Petitioner can continue to do its business and the Company may also get reasonable return on the amount invested by it."

35. The report was placed before this Court on 15.07.2025 and the following order was passed:-

> "1. Hon'ble Mr. Justice Anil R. Dave, former Judge of this Court, had sent the report in terms of our order dated 09.12.2024. Let copy of the said report be handed over to the learned counsel for the parties. Another copy be also tagged with the paperbook of Hon'ble Mr. Justice Joymalya Bagchi. The suggestions, if any, be submitted by the parties within two weeks.
>
> 2. Post the matter for further consideration on 05.08.2025."

36. The appellant filed its suggestions by way of an affidavit dated 28.07.2025. On 13.01.2026, Ld. Counsel for Respondent No. 2 informed this Court that the Appellant had received the entire amount of Rs. 250 Crores. The order of that date read as follows:-

> "1. Learned counsel for the respondents informs that the amount of Rs.250 crores has been received from the petitioner. He seeks and is granted two weeks' time to submit the suggestions, if any, on the report dated 09.07.2025 of Hon'ble Mr. Justice Anil R. Dave, former Judge of this Court.
>
> 2. It goes without saying that as soon as the liability of the assignee of SBI (CFM ARC) is discharged, the new lender (Kaventer Capital Limited) will have a similar charge on the property already mortgaged to the SBI.
>
> 3. Post the matters on 03.02.2026 (NMD)."

ANALYSIS AND CONCLUSIONS: -

37. This Hon'ble Court, by its order dated 13.01.2026, directed the parties to file their suggestions to the report filed by Hon'ble Mr. Justice Anil R. Dave. The Appellant had filed an additional affidavit subsequent to the report stating that it has certain suggestions towards the recommendation made in the report that the Respondent No.2 may be entitled to a reasonable rate of return in the range of 13% to 15% in addition to a sum of Rs.50 lakhs towards costs. The Appellant submitted that the acquisition of the loan by the Respondent No.2 for a consideration of Rs.250 crores was contrary to the guidelines and directives issued by the RBI and that its bonafides are seriously disputed. It is further submitted that the entire consideration of Rs.250 crores were not funded from the own sources of Respondent No.2 but it was transferred to the Respondent No.2 by an entity called CIMMCO Vinimay Private Limited in nearly 250 installments from its account with ICICI Bank to the account of Respondent No.2 with the Union Bank of India which was subsequently transferred to the

Respondent No.1. The Appellant also contended that Rashmi Metaliks Limited-a company engaged in the iron and steel business and operating in the same sector as the Appellant is under the control of Mr. Sajjan Kumar Patwari and his sons and the very same individuals controlled the company called CIMMCO Vinimay Private Limited. It was submitted that the Appellant's apprehension is that the assignment of the loan and the acquisition may be with the objective of indirectly facilitating the takeover of its business operations in which the Respondent No.2 has played the role of a facilitator. Hence, it was submitted by the Appellant that any commercial return on this may not be justified especially since the funds did not emanate from the resources of the Respondent No.2 and the transaction itself is under doubt. Finally it was submitted by the Appellant that in case the Court comes to any conclusion that any financial consideration over and above Rs.250 crores has to be awarded to the Respondent No.2, it may be restricted to a reasonable rate of interest not exceeding 7.5% per annum which is aligned with the prevailing Maximum Marginal Cost of Landing Rate (MCLR) and any amount beyond this rate will potentially confer an undue benefit to the Respondent No.2.

38. On the other hand, Respondent No.2 submitted that the Appellant has been a habitual chronic defaulter and has misused the indulgence granted to it. It was submitted that the Appellant was granted time by this Court to effect payment of Rs.250 crores, the Appellant did not adhere to certain timelines and

sought modification to allow them to make a payment of the balance amount within a period of 60 days from the date of determination by Hon'ble Mr. Justice Anil R. Dave and sought certain deferment of the instalments from this Hon'ble Court. The Respondent No.2 submitted that the report of Hon'ble Mr. Justice Anil R. Dave has travelled beyond the mandate/terms of reference and overlooked the statutory and commercial framework within which the ARCs operate and thereby obliterating the essential distinction between the debt value and the acquisition value. Finally, it was submitted that the exercise undertaken in the report determining a "reasonable compensation" on the acquisition value of the debt is contrary to settled law and inconsistent with the statutory and commercial rights of ARCs under the governing legal framework. Therefore, it was submitted that no further indulgence should be granted to the Appellant and in the alternative it was prayed that the matter may be remanded for a specific and confined determination of the total liability of the Appellant towards the Respondent No.2 in accordance with contractual documents.

39. Heard the parties and perused the records, the report of Hon'ble Mr. Justice Anil R. Dave and the suggestions filed by both sides and the additional submissions filed by the Respondent No.2.

40. The facts and the conduct of the Respondents reveal that the classification of NPA itself was under challenge and the assignment by the Respondent No.1 in favour of the Respondent No.2 had happened in a very

quick succession after approaching the DRT, NCLT and after initiating the SARFAESI proceedings by a quick somersault by the Respondent No.1 all of a sudden after rejecting the OTS offer. It is a fact that there has been no denial about the allegations made by the Appellant as against the Respondent No.2 that the funds which have been advanced for taking over the asset from the Respondent No.1 were advanced by a competitor in business. In this regard the report of Hon'ble Mr. Justice Anil R. Dave also notices these contentions and the fact that the company had not provided any of the financial statements for the last few years despite his request to the Respondent No.2 to provide the same. It was also noticed that the Respondent No.2 had to borrow some amount for effecting the payment of Rs.250 crores to the Respondent No.1 while getting the debt assigned in its favour. Though it was requested by Hon'ble Mr. Justice Anil R. Dave to show the rate of interest at which the amount of Rs.250 crores was borrowed to get the debt assigned, it was not produced by the Respondent No.2. Be that as it may, it is in these peculiar facts and circumstances and in the interest of the Appellant-company which is a running concern that a number of employees whose livelihood will be affected and also considering the circulars issued by the RBI from time to time and the COVID-19 pandemic circulars, this Court has to pass an order in the interest of justice and equity and also to balance the interest of the Appellant and the Respondent No.2. Though there are disputed issues such as the classification of NPAs were valid or not, whether the assignment in favour of the Respondent No.2 itself

was valid or not in the light of the fact that the account being classified as NPA itself was in doubt and whether the transfer in favour of Respondent No.2 is in compliance with Section 5 of the SARFAESI Act, are all the issues which are kept open and not gone into due to the order that we propose to make in these proceedings.

41. Admittedly, during the pendency of the proceedings, a sum of Rs.250 crores have been advanced/paid by the Appellant to the Respondent No.2 under orders of this Court from time to time. However, it is also a fact that in certain schedule of payments were not adhered to by the Appellant during the pendency of this case before this Court and the extensions were granted.

42. Though in the report dated 09.07.2025, Hon'ble Mr. Justice Anil R. Dave has calculated interest at the rate of 13% per annum, return at the rate of 14% per annum and 15% per annum and arrived at different amounts as on 01.03.2025, Hon'ble Mr. Justice Anil R. Dave in his report has also directed that a sum of Rs.50 lakhs may be reasonably directed to be paid towards the cost of litigation to the Respondent No.1. So, in the peculiar circumstances of the case without going into any legal issues or whether the compensation amount will have to be calculated on the basis of the debt value or the acquisition value etc. and without expressing any opinion on the conduct of the parties, this Court directs that a sum of Rs.125 crores over and above a sum of Rs.250 crores will have to be paid by the Appellant to the Respondent No.2.

We have arrived at this sum, keeping in mind the highest rate of interest at 15% per annum as per Justice Anil R. Dave's report and the fact that more than 18 months have passed since the report, and the costs and expenses incurred by the Respondent no.2. This will be towards the full and final settlement of the entire dues payable by the Appellant towards the debt assigned by the Respondent No.1 in favour of the Respondent No.2. This amount has been fixed without going into the issue whether it is a return on investment or otherwise so as to bring an end to the dispute which is continued between the parties for years. While accepting the report with the above modification, we sincerely record our gratitude to Hon'ble Mr. Justice Anil R. Dave for undertaking the time consuming exercise.

43. This Court is not only the Court of law but also a Court of equity and the relief has been granted after balancing the interests of both parties and to do complete justice between the parties.

44. In view of the above discussion, this Court passes the following directions:-

- **i.** The appellant shall pay to the Respondent No.2 a further sum of Rs.125 crores, over and above the sum of Rs.250 crores already paid, within a period of 12 weeks from today.
- **ii.** The said sum shall act as full and final settlement of all claims of Respondent No. 2 as against the appellant, towards the debt.
- **iii.** On receipt of the said sum, Respondents shall together, within four weeks, return the title deeds and release all the other securities and guarantees held by them.

iv. The proceedings before the NCLT Kolkata initiated under Section 7 of the Insolvency and Bankruptcy Code, 2016 and before the DRT-1 Kolkata shall stand disposed of in the light of the above.

v. As the above directions have been passed in the peculiar facts and circumstances of the case and to balance the interest of both the parties, it is directed that the Appellant shall strictly adhere to the timelines as specified above i.e., 12 weeks from today for effecting the payment of Rs.125 crores to the Respondent No.2. In case, the Appellant does not abide by the said direction and the timeline, the Respondents will be at liberty to revive the proceedings as against the Appellant and it is clarified that the benefit of this judgment will not be available to the Appellant.

45. We dispose of the Appeals with the above directions. Pending applications, if any, shall also stand disposed of.

……CJI
(SURYA KANT)

……J.
(JOYMALYA BAGCHI)

……J.
(V. MOHANA)

New Delhi
October 26, 2026