
(2010) 04 MAD CK 0011

In the Madras High Court

Case No : Writ Petition No. 23328 of 2009

Hamosons Apparels Pvt. Ltd.

APPELLANT

Vs

Indian Bank and Others

RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 13(2), 13(4), 14, 17, 18

Citation : (2010) 4 BC 148

Hon'ble Judges : T.S. Sivagnanam, J;C. Nagappan, J

Bench : Division Bench

Advocate : T.R. Rajagopalan and Zaffarullah Khan, for the Appellant; G. Masilamani and Jeyesh B. Dolia, for the Respondent Nos. 1 and 2 A.R.L. Sundaresan and A. Damodaran, for the Respondent No. 3, for the Respondent

Final Decision : Dismissed

Judgement

C. Nagappan, J.—The Petitioner-Company has sought for issuance of a writ of certiorari to quash the records of the Debts Recovery

Appellate Tribunal, Mumbai, in IN (SA) No. 40 of 2008, dated 6.11.2009, confirming the notice issued by the first Respondent on 12.11.2005

u/s 13(4) of the Act.

2. Briefly, the facts are as follows:

The Petitioner-Company and its group concerns comprising M/s. Hanif Brothers; M/s. H.M. Hajee Mosa; and M/s. Hamosons availed loan of Rs.

233.83 lakh by mortgaging two immovable properties with Respondents 1 and 2-Bank and there was default in repayment and Respondent-Bank

filed application in O.A. No. 1517 of 1998 before the Debts Recovery Tribunal-I, Chennai, for recovery of a sum of Rs. 2,51,69,849.27 from the

Petitioner-Company and it was transferred to the Debts Recovery Tribunal-II, Chennai, and re-numbered as O.A. No. 1214 of 2001 and

Respondents 1 and 2-Bank filed another Application in O.A. No. 1526 of 1.998 before the Debts Recovery Tribunal-I, Chennai, for recovery of

a sum of Rs. 31,31,686.75 from M/s. Hanif Brothers and it was transferred to the Debts Recovery Tribunal-II, Chennai, and re-numbered as

O.A. No. 1217 of 2001 and they also filed Application in O.A. No. 1525 of 1998 before the Debts Recovery Tribunal-I, Chennai, against M/s.

Hamosons for recovery of a sum of Rs. 17,21,609.21 and it was transferred to the Debts Recovery Tribunal-II, Chennai, and re-numbered as

O.A. No. 1371 of 2001 and Respondents-Bank filed a mortgage Suit in O.S. No. 2578 of 1999 before the City Civil Court, Chennai, against

M/s. H.M. Hajee Moosa for recovery of a sum of Rs. 4,86,134.13 and mortgage final decree was passed on 13.11.2002 and to execute the

same, an Application in O.A. No. 53 of 2004 was filed on 19.2.2004 before the Debts Recovery Tribunal-II, Chennai, claiming a sum of Rs.

14,38,694.48 with further interest as per the decree.

The first Respondent issued notice dated 27.1.2004 u/s 13(2) of the SRFAESI Act calling upon the Petitioner-Company and the other

constituents of its group concerns to pay a total sum of Rs. 7,68,63,527.90. The Petitioner through their Counsel sent representation, dated

7.7.2004. The first Respondent-Bank sent reply dated 26.8.2004 stating that the representation is unacceptable. The possession notice u/s 13(4)

of the SRFAESI Act was issued on 12.11.2005 for both the properties. The Petitioner herein challenged the same by filing S.A. No. 20 of 2007

on the file of the Debts Recovery Tribunal-II, Chennai, and the Tribunal by Order dated 6.7.2007 dismissed the Application. The Petitioner herein

preferred Appeal u/s 18 of the SRFAESI Act before the Debts Recovery Appellate Tribunal, Chennai, with an Application to condone the delay

in filing the Appeal in IA-112/2008 in IN (SRFAESI) 40/2008 and the Appellate Tribunal by Order dated 28.1.2008 allowed the Application to

condone the delay on condition of payment of Rs. 2,50,00,000 by the Petitioner to Respondents 1 and 2-Bank in two equal instalments, the first

instalment on or before 5.3.2008 and the second instalment on or before 31.3.2008.

The first Respondent published Tender-cum-Auction Sale Notice in the newspaper on 3.4.2008 fixing the upset price of both the properties at Rs.

20,00,00,000/-and the auction was scheduled to be held on 6.5.2008. The Respondents herein challenged the Order of the Appellate Tribunal

passed in Condone Delay Application by filing Writ Petitions in W.P. Nos. 3958 and 3959 of 2008 and this Court in its Order dated 25.4.2008

recorded the payment of Rs. 2.35 crores made by the Petitioner herein to the first Respondent-Bank and permitted the auction sale, but, directed

not to confirm the sale until further Order. The auction was conducted on 6.5.2008 and the highest bid of Rs. 20.50 crores made by the third

Respondent in the inter se bidding was accepted and it was declared as successful bidder. This Court disposed of the Writ Petitions in W.P. Nos.

3958 and 3959 of 2008 along with the Writ Petition in W.P. No. 5172 of 2008 filed by the Petitioner herein by common order dated 18.11.2008

by directing that the sale in favour of auction purchaser, namely, the third Respondent herein, not be confirmed till the Appeal is decided by the

Appellate Tribunal on merits. The Debts Recovery Appellate Tribunal, Mumbai, [holding additional charge of DRAT, Chennai] dismissed the

Appeal in IN (SA) No. 40 of 2008 with costs on 6.11.2009. The sale confirmation letter was given by the first Respondent to the third

Respondent on 6.11.2009. The Debts Recovery Appellate Tribunal, Mumbai, on 6.11.2009, at 3.00 p.m. passed an order stating that

confirmation of sale may take place on or after 16.11.2009. According to Respondents 1 and 2-Bank, the order was pronounced by the

Appellate Tribunal at 12.30 p.m. on 6.11.2009 and it was communicated over telephone to Asset Recovery Management Branch, Chennai, and

immediately the sale was confirmed by them and the Sale Certificate was issued to the third Respondent on 30.12.2009. The Order of the

Appellate Tribunal dismissing the Appeal is under challenge in the present writ petition.

3. Mr. T.R. Rajagopalan, learned Senior Counsel appearing for the Petitioner, submitted that the scheme in relation to One Time Settlement was

issued by Reserve Bank of India in exercise of its statutory power and the first Respondent Bank has adopted a discriminatory attitude with One

Time Settlement proposal offered by the Petitioner and its group concerns and the D.R.A.T. has misdirected itself and the impugned order is bad

in law and liable to be set aside. The learned Senior Counsel drew our attention to various correspondences exchanged by and between the parties

to urge that the Petitioner submitted proposal for One Time Settlement on various dates and Respondent-Bank were not willing to respond. In

support of his submission, the learned Senior Counsel mainly relied on the decision of the Supreme Court in *Sardar Associates and Others Vs.*

Punjab and Sind Bank and Others, , and also the decision of this Court in *MSG Arts Crafts Vs. State Bank of India*, .

4. Per contra, Mr. G. Masilamani, learned Senior Counsel appearing for the Bank, namely, Respondents 1 and 2, submitted that the Petitioner and

its group concerns had not given their proposal in tune with the R.B.I. Guidelines and hence, the proposal could not be considered and the

Petitioner has not raised this ground either in its Application u/s 17 before D.R.T. or in its Appeal filed u/s 18 of the SRFAESI Act before

D.R.A.T. and no pleadings were made for the purpose of enforcing the R.B.I. Guidelines in respect of One Time Settlement and only for the first

time in this writ petition such a ground is raised and the Petitioner is entitled to urge only the grounds raised, argued and adjudicated before the

D.R.T. and the D.R.A.T. and it is impermissible to allow the Petitioner to raise this ground in the absence of pleadings.

5. We also heard Mr. A.R.L. Sundaresan, learned Senior Counsel appearing for the third Respondent, namely, the Court Auction Purchaser.

6. The Petitioner Company challenged the possession notice issued u/s 13(4) of the SRFAESI Act by the first Respondent-Bank by filing

Application u/s 17 of the SRFAESI Act in S.A. No. 20 of 2007 on the file of D.R.T. II, Chennai, and on its dismissal, the Petitioner preferred

appeal u/s 18 of the SRFAESI Act before the Debts Recovery Appellate Tribunal and in both the proceedings, the grounds raised by the

Petitioner were that the first Respondent-Bank cannot take action under the SRFAESI Act while the Application under RDDB & FI Act is

pending and the provision u/s 13(3-A) of the SRFAESI Act was not complied with and Section 14 of the SRFAESI Act was invoked without any

justification and both the authorities have rejected the grounds on merits. The Petitioner has not challenged the impugned order of the Debts

Recovery Appellate Tribunal on the grounds raised and canvassed by it and for the first time, the Petitioner has raised grounds in the writ petition

stating that the first Respondent-Bank has failed to follow the Guidelines issued by the Reserve Bank of India in respect of One Time Settlement.

Having failed to raise pleadings seeking for enforcement of the said Guidelines before the Authorities below, it is not known as to how the

Petitioner seeks for quashing the impugned order on this ground in the writ petition. In fact, in the Memo of Grounds in the writ petition the

Petitioner has alleged that the Debts Recovery Appellate Tribunal failed in not taking into consideration the binding nature of the R.B.I. Guidelines

and the obligations of the commercial Banks to follow the same. There was no occasion for the Debts Recovery Appellate Tribunal to consider the

R.B.I. Guidelines on account of lack of pleadings and submissions.

7. It is the contention of the learned Senior Counsel appearing for the Petitioner that the Guidelines issued by the R.B.I, from time-to-time were

considered to be non-statutory and not binding on the Banks till the decision was rendered by the Supreme Court in Sardar Associates" case

(stated supra) and hence the Petitioner did not seek for enforcement of such a right against the first Respondent-Bank.

8. We are unable to accept this contention. The Constitution Bench of Supreme Court in Central Bank of India Vs. Ravindra and Others, , has laid

down that the Reserve Bank of India is conferred with the authority of issuing binding directions, having statutory force. The ratio of the said

decision was followed by the Supreme Court in Sardar Associates" case (supra).

9. The Petitioner Company was represented by Advocate throughout and in fact, the objections to Section 13(2) notice was sent only by the

Counsel on behalf of the Petitioner and its group concerns. Still, the Petitioner did not seek for enforcement of the R.B.I. Guidelines either in its

application u/s 17 challenging the measure or in its Appeal preferred u/s 18 of the SRFAESI Act and only in the year 2009 the Petitioner has

sought for such an enforcement belatedly, that too assailing the impugned order of the Appellate Tribunal.

10. The case pleaded by the Petitioner, in the affidavit filed in support of the Writ Petition, is that the Reserve Bank of India had brought in a One

Time Settlement concept by their notification dated 29.1.2003 and to avail the opportunity, the Petitioner repeatedly made offers for full and final

settlement of all dues of the group and Respondents 1 and 2-Bank did not

choose to disclose the amounts which would be acceptable to it and was not willing to respond and choose to adopt a discriminatory attitude and rejected the offers in violation of the Guidelines. Respondent-Bank have denied the allegations and have stated in the counter that the Petitioner did not give proposals in conformity with the R.B.I. Guidelines and hence, those proposals could not be considered.

11. The merit and purport of the correspondences exchanged between the parties may be noticed so as to enable us to consider as to whether the first Respondent-Bank had applied the said Guidelines in the case of the Petitioner or not. The first Respondent-Bank is a public sector Bank and bound by R.B.I. Guidelines. The Revised Guidelines for Compromise Settlement of Chronic Non-Performing Assets (NP As) of Public Sector Banks, dated 29.1.2003, issued by the Reserve Bank of India, contain the following salient features:

(i) Coverage

(a) The revised Guidelines will cover all NP As in all sectors irrespective of the nature of business, which have become doubtful or loss as on 31st March, 2000 with outstanding balance of Rs. 10.00 crore and below on the cut-off date.

(b) ...

(c) These Guidelines will cover cases on which the Banks have initiated action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and also cases pending before Courts/ DR Ts/BIFR, subject to consent decree being obtained from the Courts/ DR Ts/BIFR.

(ii) Settlement Formula-amount and cut-off date

(a) NP As classified as Doubtful or Loss as on 31st March, 2000. The minimum amount that should be recovered under the revised Guidelines in respect of compromise settlement of NP As classified as doubtful or loss as on 31st March, 2000 would be 100% of the outstanding balance in the account as on the date of transfer to the protested bills account or the amount outstanding as on the date on which the account was categorised as doubtful NP As, whichever happened earlier, as the case may be.

12. The accounts of the Petitioner and its group concerns were classified as NP

As and applications for recovery of the balance outstanding in the accounts were filed in the year 1998 on the file of the Debts Recovery Tribunal, Chennai, and they are still pending and a Suit on the file of City Civil Court, Chennai, for recovery of the balance outstanding in the account against one concern came to be filed in the year 1999 and a decree was also passed and it is pending in execution. The Petitioner in its letter dated 29.9.2003 addressed to the first Respondent-Bank has made the offer for One Time Settlement and the relevant portion reads as under:

...We reiterate our intention to resolve the dispute amicably without prejudice to our rights and defences to our legal proceedings before the Debts

Recovery Tribunal and other forums. We had at every occasion explained to you, our acute financial difficulties and have tried to invoke the

Bank's support to find a solution that would be mutually accepted. With this in mind we hereby make out offer of One Time Settlement by paying

a sum of Rs. one crore (including our Group concerns) within a time-frame of 12 months. The first Respondent-Bank declared the offer as too low

and requested to improve the same in its letter dated 30.12.2003, which reads as under:

This is to inform that we are unable to consider your OTS offer of Rs. 100 lakh expressed vide your letter HMS/068/02-03 dated 29.9.2003

since it is too low compared to the dues outstanding. However, we request you to improve your offer.

Again, the Petitioner in its letter dated 31.12.2003, addressed to the first Respondent-Bank, has made offer of Rs. 125 lakh for One Time

Settlement of its dues and for better appreciation, the relevant portion of the letter is extracted below:

Hence we wish to make one time settlement of our total dues of our Group concerns on making the payment of Rs. 125 lakh (Total Book balance

due Rs. 234 lakh less statutory dues Rs. 85 lakh and loss due to the quota and other losses Rs. 30 lakh).

It is relevant to note that the Petitioner was aware of the total book balance due as Rs. 234 lakh, but offered only a sum of Rs. 125 lakh claiming

deductions. The first Respondent Bank rejected the offer by letter dated 21.1.2004 by observing thus:

This is to inform that your OTS offer of Rs. 125 lacs is not acceptable to us in

terms of the revised Guidelines for OTS under RBI Scheme, 2003.

So please be hereby informed that your OTS offer of Rs. 125 lacs which is too low stands rejected.

13. Notice u/s 13(2) of the SRFAESI Act was issued by the first Respondent Bank to the Petitioner and its group concerns on 27.1.2004

demanding repayment of the balance outstanding in their respective accounts. The Petitioner by letter dated 27.1.2004 again made an offer of

payment of Rs. 125 lakh as One Time Compromise Settlement and the letter reads thus:

We wish to bring to your kind notice that the total amount payable by us as per the recent scheme announced by the RBI in respect of Long NPA

A/cs is the book balance as on 31.3.1997 which is Rs. 234 lacs. The amount of ECGC claims not made is Rs. 90 lacs and further the Statutory

Dues is Rs. 85 lacs by way of workmen dues, tax dues, etc. Therefore the total amount payable as per the Scheme less the above amount works

out to Rs. 59 lacs. However, we agree to make a one time lumpsum payment of Rs. 125 lacs which proves our intention to clear the dues in time

to the Bank.

The first Respondent-Bank in its reply dated 26.2.2004 has stated that an OTS amount of Rs. 350 lakh was indicated to the Petitioner during the

personal discussion and the offer of Rs. 125 lakh does not conform to the Revised Guidelines of RBI Scheme. For better appreciation, the text of

the letter is reproduced below:

1. Your earlier offer of Rs. 100 lakh and later enhanced to Rs. 125 lakh was rejected by us due to the low offer against the huge outstanding in

these accounts as well as it did not conform to the Revised Guidelines issued by RBI with regard to settlement of chronic NPA accounts.

2. However, we had indicated an OTS amount of Rs. 350 lakh which was subject to the approval of our higher authorities when you along with

your Advocate, Mr. Jaffrullah Khan discussed with us on 5.4.2003 regarding OTS.

3. As per the RBI Scheme for settlement, your statutory dues and other business losses are not required to be taken into consideration, while

arriving at settlement amount.

4. Similarly, ECGC settlement has nothing to do with your settlement of dues with us. Any amount to be recovered has to be shared with ECGC

for claim settled accounts.

5. Your present offer of Rs. 125 lakh for the outstanding liabilities of your group concerns is not acceptable to us as it does not conform to the

Revised Guidelines of RBI Scheme for the settlement of chronic NPA accounts.

6. It may also be noted that the present value of the securities given to the Bank is very much more than your present offer of Rs. 125 lakh.

7. You are hereby advised to improve the offer and submit a compromise proposal on reasonable terms under the revised RBI Guideline for

consideration of the same on merits by the competent authority for necessary sanction.

Again the Petitioner in its letter dated 1.6.2004 made an offer of Rs. 140 lakh and the letter reads thus:

A one time full and final settlement payment of Rs. 140 lakh, will be made within 30 to 45 days from the receipt of your acceptance letter.

The first Respondent-Bank categorically replied, by its letter dated 22.6.2004, stating that it could consider only an offer above Rs. 250 lakh

towards OTS Scheme and the offer of Rs. 140 lakh is rejected and also informed the Petitioner that the Guidelines are available till 31.7.2004 and

sought for improved offer from the Petitioner. The relevant portion reads as under:

We wish to inform you that considering the substantial security available to the Bank, the Bank could consider an offer above Rs. 250 lakh

towards full and final settlement of the outstanding in the group accounts. Hence, your offer of Rs. 140 lakh stands rejected.

As the RBI policy is available upto 31.7.2004 only, your improved offer may kindly be sent to us early for the consideration of the Bank.

The Petitioner in its letter dated 4.10.2004 addressed to the first Respondent-Bank expressed that their efforts to resolve the dispute have been

stonewalled and they requested the first Respondent-Bank to adopt a course which could be mutually beneficial. The first Respondent-Bank

through their Counsel sent reply dated 9.10.2004, which reads thus:

Our client states that there was a meeting that was held at your office on 28.6.2004 wherein the Chief Manager, AGM/Circle Head of ARMB

along with other officials of Indian Bank, ARMB-I had clearly clarified to you on all the issues and sought yourselves to submit a well improved

offer if you seriously desired of settling the account under RBI's One Time Settlement (OTS). In spite of such and other repeated efforts from our clients Indian Bank, you had failed to respond to our client's considerate decision of exploring settlement though compromise/negotiated settlement.

14. As per the R.B.I. Guidelines, dated 29.1.2003, the minimum amount that should be recovered under the Guidelines would be 100% of the outstanding balance in the account on the date on which the accounts were categorized as doubtful NP As and insofar as the present case is concerned, it is the total amount sought to be recovered in the pending applications and Suit, which is Rs. 233.83 lakh. As already seen, the Petitioner itself has stated in its letter dated 31.12.2003 that the total book balance due is Rs. 234 lakh. The Petitioner did not offer the said sum of Rs. 233.83 lakh during the period when the Guidelines dated 29.1.2003 were in force.

15. The first Respondent-Bank was repeatedly pointing out that the offers made by the Petitioner did not conform to the revised Guidelines issued by the Reserve Bank of India and has requested the Petitioner to improve its offer. In addition, the first Respondent-Bank intimated the Petitioner that its statutory dues and other business losses are not required to be taken into consideration while arriving at settlement amount as per Reserve

Bank of India Scheme. Thereafter, the Petitioner in its letter dated 27.3.2006 made an offer to pay a sum of Rs. 2 crores in the following terms:

We had without prejudice to our rights and contentions offered a Settlement package, Vide our letters above cited. We had offered to pay a sum of Rs. 2,00,00,000/- (Rupees two crores only) as full and final settlement of the Groups liability. We had further offered that this amount would be paid within 48 hours of your accepting the quantum.

The first Respondent-Bank rejected the said offer in its letter dated 10.4.2006 stating that the offer of Rs. 200 lakh is unacceptable.

16. In the meanwhile, Mahomed Hanif Osman addressed four individual letters dated 29.3.2006 on behalf of four concerns to the first Respondent

Bank claiming that they are covered by One Time Settlement Policy for all SME (Small and Medium Enterprises) Accounts and they noticed from

the Guidelines that 100% of the balance in the accounts as on the date of the

accounts categorized as NPA, to be recovered from the account

holders and they are prepared to pay the amounts mentioned in their respective letters as One Time Settlement. The first Respondent-Bank in its

letter dated 28.6.2006 rejected the request by stating thus:

With reference to the above, after consideration of your offer towards the adjustment of liabilities of the Group Accounts under OTS-RBI Policy

for SME, the Bank regrets its inability to accept your offer as your offer is less than the Minimum Recoverable Amount. You are requested to

improve the offer. In case if you desire to settle the dues under Bank Policy, you are free to do so.

It is relevant to note that the Petitioner did not offer 100% of the balance as on the date of categorization as NPA, namely, a sum of Rs. 233.83

lakh, even under the One Time Settlement policy for SME accounts, which came into effect from September, 2005.

17. The application filed u/s 17 of the SRFAESI Act by the Petitioner challenging the measure, came to be dismissed by Order of the Debts

Recovery Tribunal, dated 6.7.2007. The sale notice dated 17.12.2007 issued by the first Respondent-Bank fixing the date of auction on

23.1.2008 was published in the news paper. At that time, the Petitioner, by its letter dated 2.1.2008, offered to pay the entire principal amount of

Rs. 233.83 lakh by stating thus:

We submit that we had already approached the Bank for One-Time Settlement of our Group dues, on 27.3.2006. But our offer was turned down

advising that our offer of Rs. 200 lakh is not acceptable and advised us to come up with higher amount. Now, with great difficulty, we have

arranged funds from outside source and are prepared to settle the entire principal amount of Rs. 233.83 lakh as total outstanding in all our Group

accounts, as mentioned below:

...

As promoter, we have with maximum possible effort, mobilized this amount and request you to accept our One Time Settlement offer so that we

can remit the amount immediately.

Further, the Petitioner in its letter dated 21.1.2008 addressed to the first Respondent-Bank again offered to settle the entire principal amount of

Rs. 2.33 crores with simple interest at 6% straight.

18. In the meanwhile, the Petitioner preferred Appeal with an Application to condone the delay in filing the same and the Debts Recovery

Appellate Tribunal in its order dated 28.1.2008 allowed the Application on payment of Rs. 2.50 crores by the Petitioner to the first Respondent-

Bank. That Order was challenged by the Petitioner in W.P. Nos. 3958 and 3959 of 2008 and this Court in its Order dated 25.4.2008 has

recorded that a sum of Rs. 2.35 crores remitted by the Petitioner has been accepted by the first Respondent-Bank and kept in ""interest bearing no

lien account"" and the Bank was directed not to confirm the sale. This Court by Order dated 19.6.2009 directed the Appellate Tribunal to dispose

of the Appeal on merits by the end of September 2009. Accordingly, the Debts Recovery Appellate Tribunal, Mumbai, [holding additional charge

of the Debts Recovery Appellate Tribunal, Chennai] dismissed the Appeal on merits on 6.11.2009 by the impugned order. The Petitioner has

challenged the same in this writ petition and has also in its letter dated 27.11.2009 addressed to the first Respondent-Bank offered a sum of Rs.

4,00,00,000/- (Rupees four crores only) in addition to the sum of Rs. 2.35 crores which was deposited into a No Lien account, as One Time

Settlement of all the dues in respect of group accounts. The first Respondent Bank by its letter dated 4.12.2009 rejected the said offer as not

acceptable as per their norms.

19. As already seen, the Petitioner did not submit proposal for One Time Settlement by offering to pay 100% of the outstanding balance as on the

date on which the accounts were categorized as doubtful NP As, namely, the sum of Rs. 233.83 lakh, claimed by the first Respondent-Bank in the

recovery proceedings. Hence, the proposals made by the Petitioner in the years 2003, 2004 and 2006, referred to above, were not bona fide and

they were not in conformity with the Guidelines issued by the Reserve Bank of India. For the first time only on 2.1.2008 at the time of preferring

the appeal u/s 18 of the Act, the Petitioner made an offer to pay the entire principal amount of Rs. 233.83 lakh. The Appellate Tribunal passed an

order to deposit the sum of Rs. 2.5 crores for allowing the Application filed by the Petitioner to condone the delay in preferring the Appeal and

while challenging that order, the Petitioner has made deposit of Rs. 2.35 crores

into a No Lien account as per the Order of the Court.

20. In *Sardar Associates*" case (cited supra) the balance outstanding in the borrowers" account as on the date of categorization as doubtful NPA

was Rs. 285.38 lakh and the borrowers submitted a proposal by letter dated 2.3.2006 for OTS at Rs. 345.31 lakh and the Bank worked out the

minimum recoverable amount to be Rs. 370.49 lakh and in those circumstances, the Supreme Court held that the proposal made by the borrowers

was bona fide and it was within the framework of the Guidelines issued by the Reserve Bank of India and the correspondences exchanged

between the parties showed that the borrowers had all along been making sincere efforts for One Time Settlement within the parameters of the

Guidelines issued by the Reserve Bank of India and the borrowers sought for enforcement of the Guidelines by raising pleadings in the

Memorandum of Appeal preferred by them and the Appellate Tribunal directed the enforcement of the same and that Order was set aside by the

High Court and the same was challenged before the Supreme Court and in those circumstances, on facts, the Supreme Court held that the High

Court was not correct in interfering with the Order passed by the Appellate Tribunal which was entitled to consider the effect of such One Time

Settlement. In the present case, the Petitioner never made any proposal within the frame work of the Guidelines issued by the Reserve Bank of

India and did not seek for enforcement of the Guidelines by raising pleadings either in the Application u/s 17 or in the Appeal filed u/s 18 of the

SRFAESI Act and hence, the ratio of the above decision is not applicable.

21. In the other decision in *MSG Arts, Crafts*" case (cited supra), relied on by the learned Senior Counsel appearing for the Petitioner, the

borrower challenged the notice u/s 13(2) of the SRFAESI Act and asked for a direction to the Bank to consider the One Time Settlement

proposal in terms of the Guidelines issued by the Reserve Bank of India and a Division Bench of this Court issued direction to the Bank to

consider the proposal and pass appropriate order within a time frame and kept the notice in abeyance till then. The above decision does not help

the case of the Petitioner in any way.

22. The impugned order in the writ petition is the order passed by the Appellate Tribunal upholding the measure taken by the first Respondent

Bank u/s 13(4) of the Act. The contention raised in the writ petition with regard to the enforcement of the R.B.I. Guidelines in respect of One Time

Settlement was not raised as a ground before the Appellate Tribunal. If the impugned order is otherwise valid in law, it cannot be set aside on a

ground which was not taken before the Appellate Tribunal. On facts also, we have already seen that the proposals submitted by the Petitioner

were not in conformity with the Guidelines issued by the Reserve Bank of India for One Time Settlement and the Petitioner is not entitled to seek

for enforcement of the same. The impugned order of the Appellate Tribunal is not liable to be set aside.

23. There are no merits in the Writ Petition and the same is dismissed. No costs. Consequently, M.P. Nos. 1 to 3, 5 and 7 of 2009 are dismissed.