



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 1240/2024

1. Sh. Harendra Singh Rathore S/o Late Sh. Dilip Singh Rathore, Aged About 40 Years, R/o D-9, Pashchim Vihar, Vaishali Nagar, Jaipur (The Then Director And Guarantor Of M/s. Hotel Gaudavan Pvt. Ltd.)
2. Sh. Deependra Singh Rathore S/o Late Sh. Dilip Singh Rathore, Aged About 41 Years, R/o D-9, Pashchim Vihar, Vaishali Nagar, Jaipur (The Then Director And Guarantor Of M/s. Hotel Gaudavan Pvt. Ltd.).
3. Sh. Hanuvant Singh Shekhawat S/o Sh. Magan Singh Shekhawat (Wrongly Mentioned In The Order As Rathore), Aged About 52 Years, R/o 41-A, Pashchim Vihar, Vaishali Nagar, Jaipur.

----Petitioners

Versus

1. State Bank Of India (S.b.i.), Having Its Corporate Centre At Madame Cama Road, State Bank Bhawan, Mumbai And Head Office At 11, Sansad Marg, New Delhi 110001 Through Its General Manager Stressed Assets Management Branch At 6Th Floor, Mohan Singh Place, Baba Kharak Singh Marg, Near Rivoli Cinema, Cnnaught Place, New Delhi- 110001.
2. Alchemist Assets Reconstruction Company Ltd., Having Its Registered Office At D-54, Defense Colony (First Floor), New Delhi- 110024 Through Its Vice President.
3. M/s. Hotel Gaudavan Pvt. Ltd., Having Its Registered Office At Fort Rajwada, No 1, Hotel Complex, Jodhpur - Barmer Link Road, Jaisalmer, Presently Represented Through J.f.c. Finance (India) Ltd., Through Its Director, Having Its Registered Office At 944/9 And 944/10, Ground Floor, Laxmi Complex, Nehru Road, Arjun Nagar, Kotla Mubarakpur, New Delhi.
4. Sh. Lokendra Singh Rathore S/o Late Sh. Dilip Singh Rathore, Aged About 36 Years, R/o D-9, Pashchim Vihar, vaishali Nagar, Jaipur (The Then Director And Guarantor Of M/s. Hotel, Gaudavan Pvt. Ltd.).
5. Sh. Jitendra Singh Rathore S/o Sh. Rajendra Singh Rathore, R/o 82, Pashchim Vihar, Vaishali Nagar, Jaipur.
6. Smt. Mohan Kanwar W/o Late Sh. Dilip Singh Rathore, Aged About 61 Years, R/o D-9, Vaishali Nagar, Jaipur.

----Respondents

For Petitioner(s)	:	Mr. Anil Kumar Singh with Mr. Abhyudai Singh
For Respondent(s)	:	Mr. Vikas Balia, Sr. Adv. assisted by Mr. Ashu Kansal Mr. Abhishek Mehta

**HON'BLE MS. JUSTICE REKHA BORANA****Order****23/09/2025**

1. The present writ petition has been filed with the following prayers:

It is, therefore, most respectfully prayed that the writ petition of the petitioners may kindly be allowed and by an appropriate writ or direction:

1) Decide that assignment deed dated 20.03.2014 between S.B.I. and Alchemist as illegal and void being made contrary to R.B.I. Circulars and Guidelines as also being vitiated by fraud and gross irregularities.

2) Direct initiation of enquiry/investigation by Special Investigation Team of Police/C.B.I. to enquire into the sale of financial assets of Hotel Gaudavan Pvt. Ltd. by S.B.I. to Alchemist.

3) Direct restoration of status, position, rights and title of the shareholders and directors of Hotel Gaudavan Pvt. Ltd. over the company as also restoration of status, position, rights and title of Hotel Gaudavan Pvt. Ltd. over its assets prior to execution of assignment deed dated 20.03.2014 or as if the said assignment deed did not exist.

4) Declare that Alchemist and J.F.C. had no legal rights to the financial assets of Hotel Gaudavan Pvt. Ltd. and assignment of debt to Alchemist by S.B.I. is illegal, unlawful and void.

5) To quash and set aside the order of D.R.T. dated 18.05.2022 marked as annexure 43 and notice of recovery dated 08.01.2024 marked as annexure 45.

6) Any other order which this Hon'ble court may deem fit in the facts and circumstances of the present case may kindly be passed in favour of the petitioners.

7) Cost of petition may kindly be awarded in favour of the petitioners.

2. The facts essential for adjudication of the present petition are that the State Bank of India (SBI) granted a term loan of Rs. 24,00,00,000/- with a credit limit of Rs. 1,00,00,000/- to Hotel Gaudavan Private Limited (HGPL) vide agreement dated 04.01.2008. The said loan was restructured vide agreement dated





16.01.2009. However, due to non payment of the due instalments, SBI classified the loan of HGPL as 'Non Performing Asset' (NPA) on 28.06.2010.

3. Vide assignment agreement dated 20.03.2014, SBI transferred the loan of HGPL to M/s Alchemist Asset Reconstruction Company Limited (AARC). AARC served demand notice dated 21.07.2014 under Section 13(2) and possession notice dated 04.03.2015 under Section 13 (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (herein after referred to as the 'SARFAESI Act') on HGPL.

4. The above action of AARC was challenged by HGPL before the Debts Recovery Tribunal, Jaipur (DRT) who, vide order dated 06.05.2015, allowed the application of applicant HGPL and declared the classification of NPA by SBI to be illegal.

5. Appeal as filed against the said order by AARC before the Debts Recovery Appellate Tribunal, Delhi (DRAT) also stood dismissed vide order dated 07.12.2015.

6. A writ petition against the above orders was preferred by AARC before the Delhi High Court. As meanwhile the possession of the property in question had been taken over by HGPL in pursuance to the order passed by DRT, an interim relief for restoring the possession back was prayed for by AARC in the said writ petition. On instructions of the Court, possession was handed over back to AARC. Subsequently, vide order dated 19.01.2016, the Court directed for a status quo to be maintained as of the said date, regarding the property in question. Vide order dated 14.12.2016, a liberty was also granted by the Court to AARC to



serve a fresh notice on the petitioners in terms of Section 13(2) of the SARFAESI Act.

7. AARC served fresh notice in terms of Section 13(2) of the SARFAESI Act on the borrower as well as the guarantors. AARC also filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) before the National Company Law Tribunal, New Delhi (NCLT) wherein an Independent Resolution Professional (IRP) was appointed by the NCLT.

8. Subsequent to the same, several petitions before Hon'ble the Supreme Court and again before the NCLT were filed and several orders continued to be passed. The same not being relevant for the purposes of the present writ petition, this Court does not deem it proper to refer to the same.

9. The present writ petition has been filed with a basic averment that once the classification of the loan account as NPA was declared to be illegal by DRT and upheld by the DRAT, SBI was not even entitled to assign the loan to AARC in terms of Section 5 of the SARFAESI Act. Therefore, assignment agreement dated 20.03.2014 itself being bad, deserves to be quashed and all the further proceedings subsequent thereto, also deserves to be set aside.

10. Further, a prayer has been made that after assignment agreement dated 20.03.2014 being declared to be void, the possession of the property be directed to be restored to the directors and shareholders of HGPL.

11. Further, a prayer for setting aside of order dated 18.05.2022 passed by DRT and recovery notice dated 08.01.2024, has been made.





12. Learned counsel for the petitioners submitted that in terms of Section 13(2) of the SARFAESI Act, it is only after an account is classified as NPA that a notice in terms of the said provision can be served on the borrower. Further, it is only after a borrower failing to discharge his liability in terms of Section 13(2), that a secured creditor can take recourse to one or more of the measures as provided under Section 13(4), assignment or sale of the secured asset being one of the said measures.

13. Counsel submitted that as soon as the classification of the account as NPA was declared illegal by a competent Court, the subsequent act of assignment of the secured asset by the Bank, *ipso facto* became illegal and redundant. He submitted that action in terms of Section 13(4) of the SARFAESI Act could have been undertaken only if the liability was not discharged by the borrower within the period specified in Section 13 (2) and after the compliance of Section 13(2) of the SARFAESI Act. Once the order of classification as NPA itself was set aside, no further proceedings in terms of Section 13(4) could have even undertaken. The same having been taken, was definitely a nullity. Therefore, assignment agreement dated 20.03.2014 deserves to be declared void and further orders passed by the DRT deserve to be quashed.

14. Per contra learned Senior Counsel appearing for the respondents submitted that the present petition is wholly misconceived and nothing but a gross abuse of the process of law as the issue regarding validity of the assignment agreement has already been raised by HGPL more than six times before different Courts/forums and the same stood decided against it all the times.



Now, once again the said issue has been raised which having already been settled, cannot be entertained by this Court.

15. To substantiate his argument, learned Senior Counsel pointed out order dated 05.02.2019 (Annex.R/2) passed by District Judge, Jodhpur Metropolitan; order dated 31.03.2017 (Annex.R/4) passed by the NCLT; order dated 06.04.2017 passed by the Jaipur Bench of this Court; order dated 26.04.2017 passed by Hon'ble the Apex Court; and several other orders passed by the same courts/forums.

16. Learned Senior Counsel further raised a specific ground that it is the settled position of law that a guarantor cannot challenge the assignment agreement. Herein, the borrower having already failed in his attempt to challenge the assignment deed, now it is the guarantor who is before this Court challenging the same. Learned Senior Counsel while relying upon the Hon'ble Apex Court judgment in **ICICI Bank Ltd. Vs. Official Liquidator of APS Star Industries Ltd. & Ors.; (2010) 10 SCC 1** submitted that the principal borrower nowhere being in picture now, the guarantor has no locus to challenge an assignment.

17. So far as the prayer for directing enquiry/investigation by CBI is concerned, learned Senior Counsel submitted that remedy for the same has also already been availed by the petitioner twice and hence, the said prayer can also not be entertained by this Court.

18. Heard learned counsel for the petitioners and learned Senior Counsel appearing for respondent No.2. Perused the record.

19. So far as the ground regarding the validity of assignment deed is concerned, it is evident on record that when an application



under Section 7 of IBC was filed by AARC before the NCLT, a specific ground qua the validity of assignment deed was raised by HGPL in its reply. NCLT, while dealing with the said ground observed and held as under:



"13 A combined reading of Section 5 of the SARFAESI Act with Section 2(1), 2(v) and 2(z) wherein "financial asset", "reconstruction company", "securitisation company" have been respectively defined which shows that the Financial Creditor was/is in a position to acquire rights or interest in a financial asset defined to include any debt or receivables secured by, mortgage of, charge on, Immovable property notwithstanding any thing contained in any agreement or any other law. The assignments of NPAs/debt has been considered elaborately by the Hon'ble Supreme Court in the case of ICICI Bank v. APS Star Industries reported in (2010) 10 SCC 1 and it has been held that banks have the power to assign the debts due to it since debt is an asset in the hands of bank as a secured creditor or mortgagee or hypothecatee and that a Bank can always transfer its asset and such transfer in no manner affects any right or interest of borrower (Corporate Debtor) and the moment bank transfers debt with underlying security, borrower(s) ceases to be borrower(s) of assignor Bank and becomes borrower(s) of assignee bank. In view of the above position of law we are unable to appreciate the contentions of the Corporate Debtor. It is also to be noted that for invoking the provisions of Section 13(2) of SARFAESI Act, NPA may be a criteria but in relation to unfolding the Corporate Insolvency Resolution Process as contemplated under the IBC, NPA classification is not a condition precedent and proceedings pending before the Hon'ble High Court of Delhi will not be a bar for this Tribunal in considering the instant petition."

20. Vide the above order, NCLT, while relying upon the Hon'ble Apex Court judgment passed in **APS Star Industries Ltd.** (supra) held that a Bank who has a debt/loan as its asset, can always transfer the same, it being a secured creditor of the said



asset. The transfer of such asset by the Bank can in no manner affect any right or interest of the borrower (corporate debtor).

21. Above order dated 31.03.2017 as passed by the NCLT was challenged by HGPL in a writ petition at Jaipur Bench of this Court whereby vide order dated 06.04.2017, the Court proceeded on to admit the petition only with respect to the challenge to constitutional *vires* of IBC and the Court declined to pass any interim order. Order dated 06.04.2017 was further challenged before the Hon'ble Apex Court and the said SLP was dismissed vide order dated 26.04.2017.

22. An appeal against order dated 31.03.2017 was then filed before the NCLT but the same was withdrawn and vide order dated 17.07.2017, the appeal stood dismissed as such.

23. Meanwhile, the resolution plan in the IBC proceedings was approved and while challenging the same in appeal filed before the NCLAT, again a challenge to order dated 31.03.2017 was laid. Vide order dated 29.10.2018, the said appeal stood dismissed. Order dated 29.10.2018 was further put to challenge in a Civil Appeal before the Hon'ble Apex Court which also stood dismissed vide order dated 05.03.2019.

24. In view of the above facts, it is crystal clear that the validity of the assignment deed had been raised by the petitioners before all the Courts/ forums at different points of time and the same has even been decided against them.

25. Even for the sake of arguments, if the ground as raised by counsel for the petitioners is taken into consideration, the issue is - whether a secured asset can be assigned without the same being classified to be NPA? Reliance on Hon'ble Apex Court



judgment in **APS Star Industries Ltd.** (supra) would be apt to answer the said issue. Therein, the Court specifically held that the Banks have the power to assign debts due to it and that it can always transfer its assets and such transfer, in no manner, affects any right or interest of the borrower (corporate debtor).

26. Further, as is the settled position of law, the act of assigning the loan is a legal transaction separate from the Bank's internal classification of that loan as NPA. The validity of assignment rests on the fact whether the Bank had the right to transfer the debt and not on the correctness of its NPA classification at the time of transfer. Meaning thereby, the Bank has the right to transfer a loan without even classifying the same to be NPA. When that is the settled position of law, classification of the said loan to be NPA or not, would be of no consequence. That is to say, even if the loan in question would not have been classified to be NPA, the Bank was entitled to transfer/assign the same. In that view of the matter, this Court is of the clear opinion that the assignment cannot be invalidated because of the classification having been declared to be incorrect/invalid subsequently.

27. The declaration of NPA to be invalid by DRT remained of no consequence also in view of the liberty granted by the Delhi High Court to AARC to issue a fresh notice in terms of Section 13 (2) of the SARFAESI Act. Furthermore, the same would also remain to be of no consequence because of the proceedings under IBC having been undertaken by AARC and the resolution plan having been approved in the said proceedings.

28. Lastly, the same would also be of no consequence in terms of the Hon'ble Apex Court judgment passed in Civil Appeal



No.16929/2017 whereby the Court, while allowing the appeal, directed as under:

*"8) As a result, the appeal is allowed and the steps that have to be taken under the Insolvency Code will continue **unimpeded by any order of any other Court.**"*

29. In view of the above overall analysis, prayer No.1 and consequential prayer Nos.3 and 4, being not tenable, cannot be entertained by this Court.

30. So far as prayer No. 2 is concerned, as is evident on record, FIR No. 37/2015 was first filed by HGPL on 03.07.2015 wherein a final closure report was filed by the investigating authority on 31.12.2015. Second FIR No.605/2017 was registered on 06.08.2017, the effect of which was stayed by NCLT vide order dated 22.09.2017. The said FIR was finally quashed by Hon'ble the Apex Court vide order dated 23.10.2017. A protest petition was however filed against the closure report in the first FIR and the Court, vide order dated 12.02.2020, while allowing the protest petition, took cognizance and issued arrest warrants against the accused. The said arrest warrants were stayed by the High Court in a petition being Criminal Miscellaneous Petition No.279/2022 filed under Section 482, Cr.P.C. The said petition remains pending till date.

31. In view of the above, it is clear that the criminal proceedings initiated by HGPL still remain pending adjudication. In view of the same, the present prayer for directing initiation of enquiry/ investigation is also misconceived and cannot be entertained by this Court.



32. So far as prayer No.5 is concerned, firstly, an alternative remedy qua the same definitely lies. Secondly, in view of the Hon'ble Apex Court direction to the effect that the steps that have to be taken under the Insolvency Code will continue unimpeded by any order of any Court, this Court definitely cannot entertain the said prayer.

33. As a consequence, none of the reliefs as prayed for by the petitioners can be entertained by this Court and the writ petition being totally misconceived, does not deserve any interference and the same is hence, **dismissed**.

34. Stay petition and pending applications, if any, stand **disposed of**.

(REKHA BORANA),J

281-manila/-