BEFORE THE DEBTS RECOVERY APPELLATE TRIBUNAL, AT: MUMBAI

Present: Justice Vivek Bharti Sharma, Chairperson

Regular Appeal No. 191/2012

The Saraswat Co-operative Bank Ltd.
Having its Head Office at Sailor Building, D.H. Road, Next to American Dry Fruit Store, Opp. Hutatma Chowk, Fort, Mumbai.
And
Having its Recovery Department at 74-C, Samadhan Bldg., 2nd Floor, Senapati Bapat Marg, Tulsi Pipe Road, Dadar (W), Mumbai-400 028.

The Branch Office At
The Sarasawat Co-operative Bank Ltd.,
Pratiksha Apartment, Opposite Filmistan Studio, S.V. Road, Goregaon (W),
Mumbai-400 062. **Appellant/s**

V/s

1. **KBC Bank N.V.,**
A Banking Company Constituted under Belgian Law and having its Registered Office at 1080 Brussels, 2 Havenlaan, Belgium and Mumbai Diamond Branch, Office at 5th Floor, 510 Trade Centre, Bandra Kurla Complex, Bandra(E), Mumbai-400 05.

2. **Minstone,**
A Partnership Firm duly registered

under the Indian Partnership Act, 1932, having its Registered Office At 514, Panchratna, 5th Floor, Mama Parmanand Marg, Opera House, Mumbai-400 004.

3. Yatin Dalpatlala Chaudhary
Of Mumbai, Indian Inhabitant,
Residing at Santities, 9-B Krishna Sanghi Path,
Gamdevi, Mumbai: 400 007.

4. Yogesh Jayendra Mehta
Adult Indian Inhabitant,
Residing at Flat No. 72, 7th Floor, Vidhani Apartment, Narayan Dabholkar Road,
Malabar Hill, Mumbai: 400 006.

5. Samir Sirish Mehta
Adult Indian Inhabitant, Residing at Flat No. 93, 9th Floor B-wing, Menka, Napean Sea Road, Malabar Hill, Mumbai: 400 006.

6. Rita Yatin Chaudhary
Adult Indian Inhabitant,
Residing at Santities, 9-B Krishna Sanghi Path Gamdevi, Mumbai: 400 007.

7. Yash Yatin Chaudhary
Of Mumbai, Indian Inhabitant,
Residing at Santities, 9-B Krishna Sanghi Path, Gamdevi, Mumbai: 400 007.

8. Swati K. Chaudhary
of Mumbai, Indian Inhabitant,

Residing at 39, Meera Building, 8th Floor, L. D. Ruparel Marg, Malabar Hill, Mumbai: 400 006.

9. Mehta Corporation

A partnership firm duly registered under the provision of Indian Partnership Act, 1932, having its Registered office at 514, Panchratna, 5th Floor, Mama Parmanand Marg, Opera House, Mumbai: 400 004.

10. Rajendra Kumar & Co

A partnership firm registered under the provisions of Indian Partnership Act, 1932, having its Registered office at Gold Mohar, 2nd floor, 174 Princess Street, Mumbai: 400 002.

11. Sudhir Kailash Mehta

Of Mumbai, Indian Inhabitant, Residing at, 6th floor, Navneet House, 4A Babulnath, 1st Cross Lane, Chowpatty, Gamdevi, Mumbai : 400 007.

12. Sachin Subodh Mehta

Of Mumbai, Indian Inhabitant, Residing at, 528–28 A, Little Gibbs Road No. 3, Malabar Hill, Mumbai: 400 006

13. Prakash Jayantilal Mehta

Of Mumbai, Indian Inhabitant, Residing at, 5 Krishna Kunj, 2nd Floor, 29/30, Chowpatty Road, Near Merchant Club, Mumbai : 400 007.

14. Roopa Yogesh Mehta
Of Mumbai, Indian Inhabitant, Residing at, Flat no. 72, 7th floor, Vidhani Apartment, Narayan Dabholkar Road, Malabar Hill, Mumbai : 400 006.

15. State Bank of India
A Statutory Corporation constituted under the State Bank of India Act, 1955 and having its Central Office at Madame Cama Road, Nariman Point, Mumbai : 400 021.
AND
A branch amongst others, known as Diamond Branch at Majestic Shopping Centre, 144, J.S.S. Road, Girgaon Mumbai:400 004.

16. Abn Amro Bank NV
Incorporated in Netherlands and having its Head office at Gustav Mahlerlaan 101082PP, Amsterdam and having a branch amongst others at Sakhar Bhavan, 4th Floor, Nariman Point, Mumbai : 400 021.

17. Industrial Development Bank
Of India Limited, A body Corporate constituted by and under the banking companies {Acquisition and transfer of the undertakings}
Act, 1970/80 and having its head office at Cuffe Prade, Mumbai and a branch amongst others at 224-A, Mittal Court, 2nd Floor, A Wing, Nariman Point, Mumbai: 400 021.

18. Karnataka Bank Ltd.
Constituted under the Companies Act, 1913, having its Head Office At Kankandy, Mangalore and Branch amongst others at 104-106, 1st floor Jmnalal Bajaj Marg, Nariman Point, Mumbai : 400 021.

19. Bharat Diamond Bourse
Having its Heard office at 91, Dr. D. B Marg, Swastik Cinema Building, Mumbai : 400 004 and project office at Bandra-Kurla Complex, G-Block, Mumbai : 400 051.

Respondent/s

Reserved on 13/08/2026
-: Order dated 03/09/2026 :-

Present as under:

Mr. Charles De'Souza, i/b Mr. Vinay Deshpande, Counsel for Appellants.

Mr. Bidan Chandran along with Mr. Adwait H., i/b M/s. M.V. Kini & Co., Counsel for Respondent No.1.

Ms. Somya T., i/b M/s. T. N. Tripathi & Co., Counsel for Respondent No.5.

Ms. Priti Bhalerao, i/b Mr. R.L. Motwani, Counsel for Respondent No.17.

Ms. Sujata Dahigaonkar, i/b Mr. Vivek Sawant, Counsel for Respondent No.19.

Respondent Nos. 2 , 3, 4 , 6 , 7 , 8 , 9, 10, 11 , 12, 13, 14, 15, 16, 18- Ex-parte

2 This order shall dispose of the above Regular Appeal filed under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ("*RDDB & FI Act*"), by the Appellant, Saraswat Co-operative Bank Ltd., impugning the Judgment dated 13.03.2012 passed by the Learned Presiding Officer, Debts Recovery Tribunal-II, Mumbai ("*DRT*"), in Original Application (*O.A*) No. 188 of 2009, whereby, inter alia, the Appellant was directed, along with other consortium member-banks, to distribute the surplus sale proceeds of ₹5.24 crores, together with accrued interest, lying with it.

3. Brief facts necessary for disposal of the Regular Appeal are as under:

M/s. Minstone, a partnership firm, and its partners/guarantors availed credit facilities from a consortium of banks, including Respondent No. 1 (*Antwerp Diamond Bank N.V., renamed KBC Bank N.V. vide order dated 02.08.2022 in this proceeding*) and the other consortium member-banks arrayed as Respondents ; that, separately, in the year 2006, M/s. Minstone applied to the Appellant for a term loan of ₹5,20,00,000/- ("*Term Loan IV*") for its unit at Navsari, Gujarat, which was sanctioned vide letter dated 30.12.2006. The consortium banks, by letters dated 14.02.2007, 15.02.2007 and 19.02.2007, conveyed their "*No Objection*" to the Appellant sanctioning Term Loan IV and creating an exclusive charge over the assets of the Navsari unit ; that, pursuant thereto, M/s. Minstone executed in favour of the Appellant a demand promissory note, letter of lien and set-off, letter of pledge, letter of guarantee, agreement of

hypothecation, power of attorney and loan agreement, all dated on or about 30.03.2007. The property at R.S. No. 76, P. 75/2, Minstone Complex, Dada Nagar, Navsari ("*Secured Asset*") was stated by the Appellant to have been exclusively mortgaged in its favour ; that, on Minstone committing default, its account with the Appellant was classified as NPA on 30.06.2009, and a Demand Notice dated 09.07.2009 under Section 13(2) of the SARFAESI Act was issued demanding ₹24,06,41,410.27/-. The Appellant took physical possession of the Secured Asset on 02.07.2010 under Section 13(4), and after valuation and a public auction notice dated 20.08.2010 (*reserve price ₹8,20,00,000/-*), confirmed sale in favour of M/s. Akshay Industries Pvt. Ltd. for ₹8,37,00,000/- ; that, in the meantime, Respondent No. 1 had filed O.A. No. 188 of 2009 before the DRT against Minstone and its partners/guarantors for recovery of consortium dues, impleading the Appellant and other consortium banks and claiming, inter alia, a share in the surplus sale proceeds realised by the Appellant ; that, by the impugned order, the Learned Presiding Officer partly allowed O.A. No. 188/2009 against Minstone and its partners/guarantors for recovery of ₹1,87,22,352.06/- with interest @ 12% p.a., secured by equitable mortgage of certain properties ranking *pari-passu* amongst the Appellant and other consortium banks. As regards the surplus of ₹5.24 crores lying with the Appellant, the DRT held that since neither Respondent No. 1 nor the Appellant held an exclusive charge over the said surplus, all consortium banks, including the Appellant and Respondent No. 1, were entitled to share it rateably as per their respective shares in the

consortium, together with interest @ 9% p.a. with half-yearly rests. Aggrieved, the Appellant has preferred the present Appeal.

SUBMISSIONS

4. Learned Counsel for the Appellant submitted that the Secured Asset stood exclusively mortgaged with the Appellant ; that, the consortium banks, by their respective No Objection Certificates ("*NOCs*"), consented to the Appellant sanctioning Term Loan IV secured by an exclusive mortgage ; that, the Recording Letter Evidencing Deposit of Title Deeds dated 30.03.2007 and the Letter of Lien and Set-off dated 30.03.2007 (*extending the security to other liabilities of Minstone as well*) evidence such exclusivity ; that, the DRT discarded this documentary material without assigning reasons ; that, the relief of rateable distribution was never prayed for in the Original Application and could not have been granted ; that, the Respondent No. 1 never challenged the SARFAESI measures taken by the Appellant ; that, the Appellant, as an exclusive mortgagee, is entitled to appropriate the entire sale proceeds without any obligation to share the same with the consortium.

5. Learned Counsel for Respondent No. 1 would vehemently oppose the Appeal, relying upon the Working Capital Consortium Agreement dated 19.12.2006 and the Inter Creditor Agreement dated 19.12.2006, particularly Clause 3(e) thereof, which provides for *pari-passu* distribution of recoveries amongst consortium banks in

proportion to their outstanding ; that, the NOCs of February 2007 permitted the Appellant to sanction Term Loan IV and take security therefor, but did not amount to a waiver of the *pari-passu* arrangement ; that, Term Loan IV was a standalone facility and Respondent No. 1 has no grievance qua the Appellant's enforcement of security for that facility alone ; that, the grievance is confined to the surplus remaining after satisfaction of Term Loan IV, which surplus is referable to the consortium facilities and must be shared ; that, the consortium banks stand in a fiduciary/co-trustee relationship inter se qua recovery proceeds ; that, a preliminary objection was also raised that the Appeal suppresses the application (Exhibit 34) and order passed thereon by the DRT restraining the Appellant from disbursing the surplus.

6. Learned Counsel for Respondent No. 5 adopted and supplemented the above submissions, contending that the Appellant led no evidence and filed no Written Statement before the DRT to establish an exclusive charge, and cannot rely on fresh documents for the first time in Appeal ; that, the NOC dated 14.02.2007 was, by its own terms, confined to Term Loan IV and did not extend to any other liability and that a facility-specific consent cannot be enlarged into a general lien over the entire Secured Asset, relying on *State Bank of India v. Jayanthi, 2011 (2) CTC 465*, and *Sree Vadimbigai Ginning Industries Pvt. Ltd. v. Tamil Nadu Mercantile Bank, (2015) 2 LW 792*.

7. Learned Counsel for Respondent No. 17 adopted the

submissions of Respondent Nos. 1 and 5, and additionally relied on the Sanction Letter dated 30.12.2006 itself reflecting the facility as a Consortium Account, in support of the DRT's finding at paragraph 25 of the impugned order.

8. Considered. Perused the records and impugned order. The following questions arise for determination in this Regular Appeal:

(i) Whether the Secured Asset, and consequently the surplus sale proceeds realised therefrom, stood exclusively charged in favour of the Appellant, or whether the charge/consent was confined to Term Loan IV alone?

(ii) Whether the direction of the DRT for rateable distribution of the surplus amongst the consortium banks, being relief not specifically prayed for in the Original Application, is sustainable in law?

(iii) What order?

9. It is not in dispute that Minstone was a consortium borrower and that the assets of the borrower, including the Navsari unit, were, in the ordinary course, available as security to the consortium as a whole under the Working Capital Consortium Agreement and the Joint Deed of Hypothecation. The Appellant's claim to an exclusive charge rest entirely upon the NOCs of February 2007. On a plain reading, each of the said NOCs records the consent of the respective consortium bank to the Appellant sanctioning a specific, additional

term loan facility of ₹5,20,00,000/- (*Term Loan IV*) to Minstone for its Navsari unit, and to the Appellant securing that facility by way of a charge on the said unit. Nothing in the NOCs, as placed on record, purports to release or subordinate the consortium's pre-existing, general security interest in the borrower's assets qua any liability other than Term Loan IV, nor do the NOCs purport to surrender the consortium's rights under the Inter Creditor Agreement.

10. The Letter of Lien and Set-off dated 30.03.2007, relied upon by the Appellant to extend the security to "other accounts and liabilities" of Minstone, is a bipartite document executed by the borrower alone in favour of the Appellant. It cannot, by its own force, bind the consortium banks who were not signatories thereto, nor can it enlarge the scope of a facility-specific consent recorded in the NOCs into a general charge over the Secured Asset. A borrower cannot unilaterally confer, in favour of one consortium member, security rights that impinge upon the *pari-passu* entitlement of the other members without the informed consent of those members to that specific extension. No such consent, extending beyond Term Loan IV, has been shown to exist on record.

11. It is also relevant that the Appellant did not file any Written Statement before the DRT, nor lead evidence at that stage, to establish the exclusivity now claimed; the documents now pressed into service were, on Respondent No. 5's submission, not put before the Learned Presiding Officer for adjudication in the manner now sought to be

argued. Even taking the NOCs and allied documents at their highest, as placed before this Tribunal, they support only a facility-specific security for Term Loan IV, and not an exclusive, general charge over the Secured Asset displacing the consortium's residual interest.

12. It is not disputed by Respondent No. 1 or the other contesting Respondents that the Appellant was entitled to enforce its security under the SARFAESI Act to recover the dues under Term Loan IV, and no challenge has been laid to the measures taken under Section 13(4), the valuation, or the auction sale in favour of M/s. Akshay Industries Pvt. Ltd. The dispute is confined to the destination of the surplus remaining after satisfaction of Term Loan IV. Once it is held that the underlying consent (NOC) was facility-specific, the necessary corollary is that the exclusivity of the Appellant's charge is co-extensive with Term Loan IV alone; the surplus remaining after full satisfaction of that facility reverts to the character of an asset of the borrower otherwise available to the consortium as a whole, and cannot be appropriated by the Appellant towards its other, unrelated dues.

13. Question No. (i) is accordingly answered against the Appellant and in favour of the Respondents. The Appellant's charge over the Secured Asset, and hence over the sale proceeds thereof, was exclusive only to the extent of Term Loan IV. The surplus remaining thereafter is referable to the consortium facilities and is not exclusively appropriable by the Appellant.

14. It was contended for the Appellant that the DRT could not have granted the relief of rateable distribution of the surplus, as no such specific prayer was made in the Original Application. This contention does not assist the Appellant. Respondent No. 1 had, in the Original Application, sought a share in the surplus sale proceeds lying with the Appellant, and had, during the pendency of the proceedings, moved an application (Exhibit 34) specifically raising the issue of the surplus and obtained an order restraining its disbursal pending disposal. The question of entitlement to the surplus was thus squarely in issue between the parties and was necessary for a complete adjudication of the consortium's rights inter se. A Tribunal exercising jurisdiction under the RDDB & FI Act is not confined to a strict, technical reading of the prayer clause where the substance of the controversy, and the relief consequential thereupon, has been fully agitated between the parties who had due notice and opportunity of hearing. No prejudice on account of want of a specific prayer has been demonstrated by the Appellant and therefore, the question No. (ii) is accordingly answered against the Appellant.

15. For the reasons discussed above, this Tribunal finds no infirmity in the impugned Judgment dated 13.03.2012 passed by the Learned Presiding Officer, DRT-II, Mumbai, in O.A. No. 188 of 2009, insofar as it holds that the Appellant does not hold an exclusive charge over the surplus sale proceeds of ₹5.24 crores, and directs that the same, together with accrued interest, be distributed amongst the consortium banks, including the Appellant, in proportion to their respective

shares.

16. In the result, Regular Appeal No. 191 of 2012 (***The Saraswat Co-operative Bank Ltd. v/s KBC Bank N.V. & Ors.***) is dismissed. The impugned Judgment dated 13.03.2012 passed by the DRT-II, Mumbai in O.A. No. 188 of 2009 is confirmed.

17. The Appellant, Saraswat Co-operative Bank Ltd., is directed to release and distribute the surplus sum of ₹5.24 crores lying with it, together with interest accrued thereon @ 9% p.a. with half-yearly rests as directed by the DRT, amongst the consortium banks, in proportion to their respective shares in the consortium, within a period of two weeks from the date of this Order.

18. All Pending Interlocutory Applications, if any, stand disposed of accordingly.

Sd/-
Chairperson

MKS(PS)