# IN THE DEBTS RECOVERY TRIBUNAL-II, BANGALORE

Dated this 30th Day of September 2026

**PRESENT: SHRI T. RAJESH**
Hon'ble Presiding Officer

## O.A. No. 234 of 2021

Karnataka Bank Ltd.,
CMC No. 6-1-2121,
Raichur – Gangavathi Road,
Sindhanur -584128, Raichur District,
Rep. by its Branch Manager,

**. . . Applicant**

Versus

1. Sri. Pampanagouda,
   S/o. Sidramanna,
   Residing at
   # Near Sridevi Temple Nagoli Village,
   Arakera Hobli, Devadurga Taluq,
   Raichur District -584111.

2. M/s. Star Agriwarehousing And
   Collateral Management Limited,
   Regd. Off.: G-102, P. No. 29,
   Molshree Residency, Mission Compound,
   Ajmer Road, Jaipur -302006
   Rajasthan State

   Corp. Office:
   3rd Floor, Wing B-1,
   NSE Exchange Plaza,
   Bandra – Kurla Complex,
   Bandra (East), Mumbai,
   Maharashtra, India -400051.

**---Defendants**

**Ld. Counsels on record / appeared :-**

Counsel for Applicant :- Nithin Chandra M
Counsel for Defendant No.1 :- Exparte
Counsel for Defendant No.2 :- H. R. Giridhar (No Vakalat)

**-:O R D E R:-**

1. The Application is filed Under Section 19 (1) of the Recovery of Debt And Bankruptcy Act, 1993 seeking for issuance of a Recovery Certificate for Rs. 48,44,346/- with interest from the date of filing of the application and also seeking permission to recover the same from the defendants which is alleged to be due in a Goods loan facility availed by the Defendant No.1.

2. The case of the applicant as put forth in the OA is as follows: The 1st defendant approached the applicant Bank and got availed the credit facility against the pledge of goods storage receipts in respect of total guarantee of Rs.345.600 Metric Tons of paddy [Sona Masuri] stored in ware house of 2nd defendant. It is also stated that the 1st defendant had executed necessary loan documents in respect of the facility.

3. It is also contended that the applicant bank had authorized the 2nd defendant to release part of pledge goods, to the extent of 1200 bags of paddy against the receipt of Rs.18,80,000/- which stood appropriated to the loan account. It is the further case of the applicant that with an intention to taken the remaining 3600 bags, and in order to liquidate the same they approached 2nd defendant who in turn informed the applicant

that the 1st defendant replaced 3600 bags of paddy with paddy Husk. In this regard it is the specific case of applicant that the 2nd defendant having allowed the 1st defendant to replace paddy with husk had acted glove in hand with the 1st Defendant which resulted in heavy loss to the applicant, which the defendants are liable to make good.

4. It is further contented that despite the issuance of lawyer notice to the 1st defendant, no repayment was made and thereby necessitating the filing of the present OA. In view of the conduct of the 2nd defendant as narrated above the 2nd defendant is also made a party and claim is also made against it.

5. Summons was taken out and despite the service on both the defendants, only the 2nd defendant entered appearance. The 1st defendant remained absent and hence ex party.

6. The 2nd defendant filed their written statement contenting as follows. The 2nd defendant is engaged in providing reliable ware house services, risk management service. It is also contended that the applicant bank entered into an agreement for collateral Management services where by the 2nd defendant was appointed as a collateral manager. The case of the applicant as to the disbursement of the loan for Rs.50,00,000/- to the 1st Defendant against the pledge of 4800 units of paddy is admitted by the 2nd defendant. In respect of the contentions as to the storage of pledge goods, it is the case

of the 2nd defendant that the 1st defendant had originally stored the pledged commodity in an unlicensed ware house by name “Ibrahim Ware House”. Thereafter the ware house owned entered into a lease agreement dated 16.12.2017 with defendant no.1 who in turn subleased the same to the 2nd defendant. It is also admitted by the 2nd defendant had on 14.12.2017 and ware house inspection report was also procured. The issuance of ware house receipt SR-1629612 dated 21.02.2017 is also admitted by the 2nd defendant.

7. It is further contented by the 2nd defendant that during inspection on 20.08.2018, it is found that 1st defendant had kept husk bags inside the inner layer, pursuant to which the 1st defendant was called upon by the 2nd defendant to make good the loss. Even though the 1st defendant assured to make good the losses only a part payment of Rs.18,80,000/- was made for which a reciprocal release of 1200 bags were made. It is also the case of the 2nd defendant that the 2nd defendant was assured by the 1st defendant that they will clear the liability with the Bank in 33 days. It is also stated that the 2nd defendant filed compliant to the police to safe guard and interest of Applicant which was followed by another complaint to the Superintend of police.

8. It is also contented by the 2nd defendant that the applicant cannot be allowed to fix any liability on the 2nd defendant on the basis of collateral

management agreement as the same is a district one having its own terms and is not connected with the subject matter in issue. It is also contended that the subject matter of the OA is relating to loan agreement executed by the 1st defendant with the Applicant Bank. It is also pointed out that the collateral management agreement contains an Arbitration clause and if at the bank is having any grievance as against the 2nd Defendant, the same is to be resolved by resorting to Arbitration. Hence in nutshell the 2nd defendant is contenting that no orders could be passed against the 2nd defendant as the 2nd defendant had performed all its obligation as per Collateral Management Agreement.

9. The applicant had let in evidence through AW1 who filed their proof affidavit in terms of the pleadings and got marked the following documents as Ext A1 to A10.

Ext A1 - Power of Attorney.
Ext A2 – Sanction order dated 22.12.2017.
Ext A3 - Pledge Letter dated 22.12.2017.
Ext A4 - Storage Receipt dated 21.12.2017.
Ext A5 - Take Delivery Letter dated 22.12.2017.
Ext A6 - Declaration letter dated 22.12.2017.
Ext A7 - Release Letter dated 18.04.2019.
Ext A8 & A8(a) – Legal notice along with postal RPAD receipt dated 07.06.2019

Ext A9, A9(a) to A9(c) - Legal notice along with postal RPAD receipt

and online postal tracking dated 09.10.2020.

Ext A10 - Certified account statement.

The 2nd defendant had filed their proof affidavit in terms of their defense and produced and marked following documents:

Ext D1 – Authorization letter
Ext D2 – Collateral Management Agreement dated 25.07.2014.
Ext D3 – Sub Lease Agreement dated 20.04.2018.
Ext D4 – Certified copy of Police Compliant dated 08.02.2019.
Ext D5 – Certified copy of Police Compliant dated 13.06.2019.

10. The following issues arise for consideration in the above matter.

i) whether the applicant bank had established its claim against the defendants? if so for what extent and for what amount.

ii) whether the applicant bank is entitled for pendentatilte and future interest? if so at what rate?

Both these issues are gone into and decided together.

11. The applicant case as to the availment of loan facility against the pledge of 4800 unit of paddy which is not in dispute by any defendants. Annexure A2 sanction ticket coupled with Annexure A3 pledge letter along with storge receipts also substantiate the case of the applicant in this regard. Annexure A5, the Demand promissory note and take delivery letter

also fortifies the case of the applicant as put forth in the pleadings against the 1st Defendant.

12. Further case of the applicant as to the liquidation of 1200 units of paddy and appropriation of the proceeds to the loan account is also not in dispute by any of the Defendants. The above fact also proves that the balance liability is not liquidated and is due.

13. The document produced and marked in evidence are all admissible in evidence and are sufficient to prove the claim of the applicant as to the disbursement, the defaults and also to the liability of the 1st defendant who availed the loan. The applicant's contentions as taken against the 1st defendant is not refuted by the said defendant as the said defendant failed to contest the matter. Even the 2nd defendant who contested the matter is also admitting the case of the applicant as against the 1st defendant and the claims put forth by the bank as against the 1st defendant. In view of the above this Tribunal is convinced that the applicant had succeeded in proving the case as against the 1st defendant.

14. In far as the case of the applicant as against the 2nd defendant is concerned the execution of agreement for collateral management service is not in dispute. The 2nd respondent contents that the pledged commodity was originally stored in an unlicensed ware house which later sub leased to the 2nd defendant. However, in view of the admitted fact that ware house

inspection was done on 14.12.2017, there cannot be any dispute as to the availability of pledged goods at the time of sub lease by virtue of which the goods came in custodianship of the 2nd defendant. The applicant in the OA had specifically alleged that the 2nd defendant had allowed the 1st defendant to replace paddy with husk in respect of 3600/- bags and had caused loss to the applicant bank. This contention is specifically denied by the 2nd defendant. The 2nd defendant in turn is admitting that during inspection on 20.08.2018, it is found that bags containing husk were kept inside the inner layers of pledged commodity resulting execution of an undertaking come indemnity by the 1st defendant. It is clear that the indemnity as produced by the 2nd defendant from which it is clear that the indemnity executed by the 1st defendant as 1st party and the 2nd defendant as the 2nd party. Even though the indemnity clearly indicates about the closure of the loan availed from the applicant bank the applicant bank is not a party to the indemnity. By virtue of the above the only inference that can be drawn is that the 2nd defendant was the custodian of goods stored in the warehouse.

15. The Ld. counsel for the 2nd defendant contents that the 2nd defendant had discharged all the contractual obligation with due diligence. In considering the same a reference to Collateral Management Agreement is essential. Even though the applicant had not produced the same along with

their documents, to the surprise of this Tribunal, the 2nd defendant had produced the said document, which enables this Tribunal to consider the nature of the agreement Clause or 5(B)(VI) of the said agreement stipulates that "star agri shall be responsible for ensuring the quantity of goods received in terms number of bags and estimated weight" Similarly clause 5(B)(VII) stipulates that "star agri shall be responsible for preservation and maintenance of the goods, i.e, by way of aeration, fumigation, etc" The above clauses make it clear that there is the contractual obligation on the 2nd defendant to keep the article under safe custody. The agreement also provide for sending weekly report about the quantity and safety of the articles and also the monthly report about the quality, quantity and general safety which indicates the role of the 2nd defendant as the custodian of the articles.

16. The 1st and foremost defense put forth by the 2nd defendant is that the fraud has been committed by the 1st defendant without knowledge of the 2nd defendant and also that the 2nd defendant had took immediate and pro active steps protect the interest of the bank. It is also pointed out that only the 2nd defendant had initiated criminal proceedings against 1st defendant. It is contended that the debt sought to be recovered arises out of loan documents executed by the 1st defendant in favour of the applicant bank and the Service Agreement governing the relationship of 2nd

Defendant with Applicant is to be treated independently. The Ld. counsel also placed reliance on the following decisions of DRTs Visakhapatnam, Hyderabad, Bengaluru and Chennai wherein the respective DRTs had gone into the issue as to the liability of the 2nd defendant in similar situations. It is also contended that the agreement for collateral management service provides for resolution of disputes through Arbitration. A brief references the respective DRTs are as follows;

i. In OA No. 434/2020 and OA No. 774/2018 before the DRT, Hyderabad, held that Star Agro's indemnity obligation under Clause 9 of the Agreement did not entitle the applicant bank to invoke the provisions of the RDB Act, particularly as the procurement of the stipulated fidelity insurance cover was not established. The Tribunal further observed that disputes between the applicant bank and Star Agro were subject to arbitration under Clause 30 of the Agreement and therefore fell outside its jurisdiction. Accordingly, the OA claims against Star Agro were dismissed.

ii. In OA Nos. 149/2019, 356/2020, 181/2019, 245/2019, 182/2019, 183/2019 and 254/2019 before the DRT, Visakhapatnam, the Tribunal observed that no material had been placed on record against Star Agro, except warehouse

receipts evidencing the storage of the borrowers' pledged goods in its warehouses. It further noted that Star Agro was neither a borrower nor a guarantor but had executed a Standard Agreement for Collateral Management Services with the applicant bank, which contained an arbitration clause under Clause 23.4. Accordingly, the Tribunal held that disputes between the applicant bank and Star Agro were referable to arbitration and dismissed the claims against Star Agro as being beyond its jurisdiction.

iii. In OA No. 15/2018 this Tribunal held that Star Agro, being merely the custodian of the pledged goods under the Collateral Management Agreement dated 28.08.2012, was not directly involved in the loan transaction between the applicant bank and the borrower, and the bank had failed to establish Star Agro's joint and several liability. As the pledged goods had already been taken possession of by the Advocate Commissioner and sold through public auction, the Tribunal held that no further proceedings against the goods or the godown owner were warranted and that the borrower alone was liable for the claim.

iv. In TA Nos. 420/2018 and 471/2018 the DRT-I, Chennai, held that the claim against Star Agro was maintainable under the RDB

Act, as the contractual relationship arose in the course of the applicant bank's business activities. However, the bank failed to establish any specific breach of the indemnity obligations, Star Agro's involvement in the alleged theft of commodities, or any loss attributable to its acts or omissions. Accordingly, the Tribunal dismissed the claim against Star Agro while allowing the claim against the borrower alone.

17. This Tribunal had gone into the clauses of the Agreement for Collateral Management where further stipulates as per clause 7 that 7) "STAR AGRI shall be liable for any loss damages, cost, expenses caused to the Bank as a result of breach of its obligation under the agreement caused an account of negligence, fraud or dishonesty of its employees or agents". The liability of 2nd defendant due to the loss of quantity and shortage of weight due to moisture, sampling and damage arise out of insured events, breach of Banks warranties. Further clauses of the agreement provides that access to pledged goods shall be restricted by the 2nd defendant to persons specified in the said clause, which in turn makes it clear that the custody of goods are with the 2nd defendant and the 2nd defendant is having control as to the access to the goods stored in the ware house.

18. The fact that after the sublease or lease of the storage go down and inspection as admitted by the 2nd Defendant be done on 14.12.2017 the 2nd

defendant was having control over the goods when the same had be lost. It is also to be noted that which by virtue of the agreement the 2nd defendant was the custodian of the goods at the relevant point of time which of course is on behalf of Applicant and that the pledged goods were kept under the custody of 2nd Defendant.

21. The applicant is putting forward their claim against the 1st defendant for recovery of amount due in the loan account is also putting forward a case about the loss of pledged goods which is caused by replacement of 3600 units of paddy (sona masurei) with paddy husk, which alleged to have occurred when the goods are storied in the godown admittedly under the 2nd defendant. The case as to the loss of 3600 units of paddy is admittedly when the same is stored under 2nd defendant. Even the 2nd defendant has no case that the loss due to replacement happened before 16.12.2017, when the ware house came under the collaring of the 2nd defendant. In the light of admitted case of the contesting parties as to the replacement of 3600 bags of rice with husk by the borrower when the same is kept in the ware house under the domain of the 2nd defendant, this Tribunal is of the view that the 2nd defendant is liable for the loss of pledged goods, which were kept under their domain by virtue of the agreement to keep the securities infact.

22. In view of the discussion as held above this Tribunal is of the view that the applicant is entitled to proceed against the 2nd defendant also in respect of loss of pledge to the extent of 3600 units of paddy. The issue whether the said liability of the 2nd defendant is a debt to be adjudicated under section 19 of the Recovery of Debts to Bank and Bankruptcy Act is no more an unanswered question as it is settled any amount due to the bank in lieu of common banking business by the bank is a debt.

In this regard 2(g) of the RDB Act, refers "debt" which is as under:-

> *"(g) debt means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil Court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application [and includes any liability towards debt securities which remains unpaid in full or part after notice of ninety days served upon the borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of debt securities or"*

The Collateral Management Agreement, which Defendant No. 2 admits to having executed with the Applicant Bank, can only be regarded as having been executed in the course of the Bank's business activities. It is a settled principle of law that any amount due in respect of business activities undertaken by a bank constitutes a debt. Hence, this Tribunal is of the view

that an application under Section 19(1) of the Act is maintainable against Defendant No. 2 as well.

23. The Ld. Counsel for the 2nd Defendant contents that by virtue of the Arbitration clause in the binding contract between the Applicant and 2nd Defendant, this Tribunal cannot decide the lis. In support of the same reliance was placed on decision of DRT -II Hyderabad, where in the said Tribunal in OA No. 434/2020 held that on view of the Arbitration clause in the Agreement for Collateral Management were referable to arbitration and could not be adjudicated by the Tribunal. In this regard, the Tribunal observed as follows:

*" 18. The agreement between the applicant bank and 2nd Defendant is not borrower-oriented but is a distinct Agreement hence I am afraid the judgements relied upon by the learned counsel for the applicant bank are applicable to the present case.*

*19. In view of the above circumstances, I Conclude that this Tribunal cannot overstep its jurisdiction over arbitrational matter between the applicant bank and the 2nd Defendant and accordingly OA claim against the 2nd Defendant is liable to be dismissed." (Emphasis supplied)*

24. This Tribunal is not in agreement with the decision taken by the Ld. Tribunal for more than one reason. The question whether provisions of RDB Act prevail over the provisions of the Arbitration Act is no more '*res intergra*' as the Hon'ble Supreme Court in '*Vidya Drolia and others v/s*

*Durga Trading Corporation' (2022 (2) SCC 1)* while deciding the scope of the Arbitration Act had held as :

> *36. In Transcore, on the powers of the Debt Recovery Tribunal (DRT) under the DRT Act, it was observed: "18. On analysing the above provisions of the DRT Act, we find that the said Act is a complete code by itself as far as recovery of debt is concerned. It provides for various modes of recovery. It incorporates even the provisions of the Second and Third Schedules to the Income Tax Act, 1961. Therefore, the debt due under the recovery certificate can be recovered in various ways. The remedies mentioned therein are complementary to each other. The DRT Act provides for adjudication. It provides for adjudication of disputes as far as the debt due is concerned. It covers secured as well as unsecured debts. However, it does not rule out the applicability of the provisions of the TP Act, in particular, S.69 and S.69 - A of that Act. Further, in cases where the debt is secured by a pledge of shares or immovable properties, with the passage of time and delay in the DRT proceedings, the value of the pledged assets or mortgaged properties invariably falls. On account of inflation, the value of the assets in the hands of the bank / FI invariably depletes which, in turn, leads to asset - liability mismatch. These contingencies are not taken care of by the DRT Act and, therefore, Parliament had to enact the NPA Act, 2002." Consistent with the above, observations in Transcore on the power of the DRT conferred by the DRT Act and the principle enunciated in the present judgment, we must overrule the judgment of the Full Bench of the Delhi High Court in HDFC Bank Ltd. v. Satpal Singh Bakshi (2013 (134) DRJ 566 (FB)), which holds that matters covered under the DRT Act are arbitrable. It is necessary to overrule this decision and clarify the legal position as the decision in HDFC Bank Ltd. has been referred to in M.D. Frozen Foods Exports Private Limited, but not examined in light of the legal principles relating to non - arbitrability. Decision in HDFC Bank Ltd. holds that only actions in rem are non - arbitrable, which as elucidated above is the correct legal position. However, non - arbitrability may arise in case the implicit prohibition in the statute, conferring and creating special rights to be adjudicated by the courts / public fora, which right including enforcement of order / provisions cannot be enforced and applied in case of arbitration. To hold that the claims of banks and financial institutions covered under the DRT Act are arbitrable would deprive and deny these institutions of the specific rights including the modes of recovery specified in the DRT Act. Therefore, the claims covered by the DRT Act are non - arbitrable as*

> *there is a prohibition against waiver of jurisdiction of the DRT by necessary implication. The legislation has overwritten the contractual right to arbitration. (Emphasis supplied)*

25. Furthermore, in re "Vidya Drolia" case (supra) the Hon'ble Apex court further held that:

> *46. Applying the above principles to determine non - arbitrability, it is apparent that insolvency or intracompany disputes have to be addressed by a centralized forum, be the court or a special forum, which would be more efficient and has complete jurisdiction to efficaciously and fully dispose of the entire matter. They are also actions in rem. Similarly, grant and issue of patents and registration of trademarks are exclusive matters falling within the sovereign or government functions and have erga omnes effect. Such grants confer monopoly rights. They are non - arbitrable. Criminal cases again are not arbitrable as they relate to sovereign functions of the State. Further, violations of criminal law are offenses against the State and not just against the victim. Matrimonial disputes relating to the dissolution of marriage, restitution of conjugal rights etc. are not arbitrable as they fall within the ambit of sovereign functions and do not have any commercial and economic value. The decisions have erga omnes effect. Matters relating to probate, testamentary matter etc. are actions in rem and are a declaration to the world at large and hence are non - arbitrable. (Emphasis supplied)*

26. The second reason for disregarding the prayer of the 2nd defendant for referring the dispute, if any, to arbitration is that the averments in the OA clearly indicate that the applicant has set up a composite case against both the Defendants. The case against the 2nd defendant is not severable as the cause of action against both the Defendants in the OA are composite. The grievance of the applicant as against the 2nd defendant cannot be independently agitated leaving aside the 1st defendant who is not a party to the agreement containing arbitration clause.

27. The discussions as held in forgoing paragraphs and findings entered there is leads to the opinion that the applicant had succeeded in proving the case put forth by them in the OA and is entitled to get an order allowing recovery of the amount as claimed against the 1st defendant. However, the liability of the 2nd defendant is only limited to value of 3600 bags of paddy (sona masuri) the loss of which is accounted due to their fault. In this regard it is to be noted that the OA is in respect of the amount secured by 3600 units of paddy.

28. Taking note of the fact that applicant had arrived at the OA claim by calculating interest at the agreed rate, which this Tribunal is of the considered opinion is on the higher side, pendentalite and future interest is reduced and awarded at 12%. (simple).

29. In the result

i) OA. 234 OF 2021 stands allowed.

ii) The applicant is permitted to recover an amount of Rs.48,44,346/- (Rupees forty-eight lakhs forty-four thousand three hundred forty-six only) with interest @ 12% (simple) per annum from the 06.11.2020 till realization from the defendants after giving credit to all the recovered and received during the pendency of the OA if any, and allow the same to be recovered by proceed against their assets and personally against the 1st defendant.

iii) Applicant is entitled for the cost of the proceedings for which cost memo is be filed within 14 days from the date the order.

iv) A Recovery certificate is to be drawn and issued to the Recovery officer to enable recovery of the amount.

v) Interim application pending, if any, stands disposed of in terms of this final order.

30. Communicate a copy of the order to the parties concerned in terms of Section 19(21)(i) of the RDB Act, read with Rule 16 of DRT (Procedure) Rules, 1993.

*(Dictated to PY directly on the Computer, after its transcription, corrected and pronounced by me in the open Court on this the 30th day of September, 2026).*

**Sd/-**
**(T. RAJESH)**
**PRESIDING OFFICER**