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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 4296/2015

F.S. SAGGU

..... Petitioner

Through: Mr. Mathews Nedumpara, Adv.

versus

THE UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Vikram Jetley, CGSC for R1.
Mr. H.S. Parihar and Mr. K.S. Parihar,
Adv. for R2.
Mr. Rajiv Kapur, Adv. for R3 to 9.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **05.05.2015**

1. The following prayers have been made in the writ petition:-

“a) declare that the Guidelines bearing No.RBI/2014-15/74 DBOD No.BP.BC.9/21.04.2014-15 dated 01.07.2014 (Annexure-P1) purportedly issued by the Reserve Bank of India, by which the Petitioner's Firm account has been classified as NPA or likely to be classified so, and there upon the Respondent-Bank could invoke Sections 6, 13 or 14 of the SARFAESI Act, 2002 and thereby assign, alienate, transfer or take possession of the properties of the Petitioner/his Firm, which the Respondent Bank falsely claims to be a secured asset at its hands, is ultra vires, unconstitutional, and void, so also that any proceedings or action in terms of Section 6, 13 or 14 of the said Act, and to grant such other further consequential reliefs, remedies and in particular, writ of injunction and writ of prohibition restraining and prohibiting Respondent-Bank from invoking Sections 6, 13 & 14 of the said Act, as this Hon'ble Court may find appropriate; and

b) pass such other order or orders, as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.”

2. It is contended by Mr. Mathews that the source of power for issuance of the guidelines dated 1.7.2014 is not referred. The petitioner is aggrieved by the fact that the guidelines, referred to by him, has the power of classifying the petitioner's loan asset as “*Non-Performing Asset*” (in short the NPA). In fact, at the time the petition was filed, there was a likelihood of the loan asset being declared as an NPA.

3. I am informed by Mr. Mathews, learned counsel for the petitioner that the asset has already been declared as an NPA. His contention is that since, the source of power is not declared, it is per se bad in law and, therefore, all actions which flow therefrom are also without authority of law.

4. It may be noticed that the definition of the NPA has been referred to in Sections 2(1)(o) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short the SARFAESI Act), which is extracted hereinbelow:-

“2. Definitions (1) In this Act, unless the context otherwise requires,--

xxx

(o) "non-performing asset" means an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, doubtful or loss asset,-

(a) in case such bank or financial institution is administered or regulated by any authority or body established, constituted or appointed by any law for the time being in force, in accordance with the

directions or guidelines relating to assets classifications issued by such authority or body;

(b) in any other case, in accordance with the directions or guidelines relating to assets classifications issued by the Reserve Bank;

5. A perusal of the definition itself would show that the Act defines an NPA as an asset or an account of the borrower, which is classified by a bank or a financial institution, as a “sub-standard”, “doubtful” or “loss asset”.

5.1 As to how an asset has to be classified, is to be provided in the asset classification guidelines issued by any authority or body constituted or appointed by law for the time being in force to administer or regulate any bank or financial institution. In all other cases, the Reserve bank of India (in short the RBI) has been given the power of classification.

6. It may be pertinent to mention here that the challenge to the SARFAESI Act was examined by the Supreme court in its judgment in the case of: *Mardia Chemicals Ltd. Vs. Union of India, (2004) 4 SCC 311*. Paragraph 37 of the said judgment shows that the court noticed that the RBI had provided for guidelines for declaring assets as NPAs, and those, guidelines were known as: “RBI’s prudential norms on income recognition, asset classification and provisioning-pertaining to advances”, which were issued via a circular dated 30.8.2001.

7. From time to time, the RBI has updated these guidelines. The guideline, referred to by the petitioner, is the one such guideline.

8. The central issue raised in the petition which is the source of power is: clearly discernible on reading of Section 35A of the Banking Regulation Act, 1949. Under that Section, the RBI is empowered to issue directions from

time to time.

9. Having regard to the aforesaid, I find no merit in the writ petition. The same is dismissed.

10. It is well-settled that even if the source of power is not mentioned in a document that by itself will not render the document bereft of legal force. There is no doubt in my mind that power exists, with the Reserve Bank of India to issue, such like, guidelines for asset classification.

RAJIV SHAKDHER, J

MAY 05, 2015

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