



2025:DHC:1031



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

Date of decision: 12<sup>th</sup> FEBRUARY, 2025

IN THE MATTER OF:

+ **CS(COMM) 1206/2024**

**STCI FINANCE LTD**

.....Plaintiff

Through: Mr. Sandeep Sethi, Sr. Advocate &  
Mr. Asim Vachhar, Sr. Advocate  
with Mr. Atul Sharma Mr. Abhishek  
Aggarwal, Mr. Abhinav Mukhi, Mr.  
Abhishek Srivastav, Mr. Shantanu  
Tomar, Advs.

versus

**MS AVIOM INDIA HOUSING FINANCE PRIVATE LIMITED &  
ORS**

.....Defendants

Through: Mr. Amarjit Singh Chandhiok, Senior  
Advocate with Ms. Pooja Mahajan,  
Mr. Karan Singh Chandhiok, Mr.  
Rahul Narayan, Mr. Mehul Parti, Ms.  
Harshita Malik, Mr. Gyanendra  
Singh, Ms. Nancy Patel, Advocates  
for D-1 & D-2  
Mr. Chandrashekhar Chakalabbi and  
Mr. Varnik Kundaliya, Advs for  
Defendant No. 5/ICICI.  
Ms. Neelam Rathore, Advocate for  
D-7

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT**

**I.A. 274/2025**

1. The present Application has been filed by the Defendants No.1 & 2 seeking vacation of interim relief granted to the Plaintiff by this Court *vide* Order dated 24.12.2024.



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2. The present Suit is one for a decree of permanent injunction in favour of the plaintiff and against Defendants No. 1 & 2 restraining the Defendants No.1 & 2, their respective representatives, attorneys, assignees, servants or anybody else acting for and on their behalf from selling, transferring, conveying, creating any third party interest of any nature or otherwise dealing with the whole or part of receivables hypothecated/charge by the Defendant No 1 in favour of the Plaintiff till the recovery and realization by the Plaintiff of entire amount outstanding under the loan facility agreements. The Plaintiff has also sought for a decree of permanent injunction in favor of the Plaintiff and against the Defendant Nos. 3 to 12 thereby restraining the Defendants Nos. 3 to 12 from appropriating or permitting appropriation of any amount pertaining to or in respect of any of the receivables hypothecated / charged by the Defendant No. 1 in favour of the Plaintiff and transfer all such amounts in favour of the Plaintiff till the recovery and realization by the Plaintiff of entire amount outstanding under the Facility Agreements.

3. Shorn of unnecessary details, the facts, in brief, leading to the present application are that the Plaintiff, is a Non-Banking Financial Company (NBFC) sanctioned three term loan facilities for Rs.10 crore each in favour of the Defendant No.1 *vide* sanction letters dated 08.02.2022, 29.03.2023 and 25.09.2024 and three loan facility agreements dated 18.02.2022, 30.03.2023 and 26.09.2024 were executed between the Plaintiff and Defendant No.1 and Defendant No.2. It is stated that Defendant No.1 is engaged in the business of housing finance with a license from the National Housing Bank. It is stated that the Term Loan Facilities were availed and utilized by Defendant No. 1 towards funding and rendering further home loans and home improvement loans to its end customers. It is stated that in order to secure the repayment of the loan availed under the Term Loan Agreements, Defendant No.1 created first exclusive charge in favour of the Plaintiff over “all monies and amounts owing to or received by the



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borrower accruing to or arising out of the clients/customers of the borrowers”, i.e. receivables. It is stated that Defendant No.2, who is the Managing Director of Defendant No.1, stood as a personal guarantor for the said loan facilities. It is stated that there were some defaults on the part of the Defendant No.1 in repayment of the loan amount. It is stated that waivers were sought by the Defendant No.1. It is further stated that on 20.09.2024 a whistleblower complaint was received by the National Housing Bank. It is stated that on the basis of the complaint, the NHB conducted an onsite snap inspection of the Defendant No.1 company on 30.09.2024. It is stated that after the inspection, statutory board of Defendant No.1 company requested Board of Defendant No.1 company to initiate investigation/audit. It is stated that on 10.10.2024, NHB appointed a third-party independent Auditor for forensic audit. It is further stated that the Defendant No.1 company appointed Alvarez and Marsal to conduct a forensic audit. It is stated that on 19.11.2024 Defendant No.1 filed a criminal complaint with the Economic Offences Wing stating that there has been a falsification of its books of accounts and the financial statements for the financial year 2023-24 through dummy entries for fictitious collections which were covered up by fabrication of mutual fund investment statements to cover the shortfall in the collection from borrowers. It is stated that on 18.12.2024, on finding out the irregularities, the Plaintiff recalled all the three loans and demanding repayment of Rs.21,82,54,243/- as on 18.12.2024 along with the interest till the date of repayment.

4. The present Suit was filed along with IA No.49852/2024, which was an application seeking interim injunction. In IA No.49852/2024, the Plaintiff had prayed for the following reliefs:

*“A. Pass an ex - parte ad - interim order directing Defendant No. 1 and No. 2 to (a) Not to deal with or encumber the whole or part of receivables hypothecated by the Defendant No 1 in favour of the Plaintiff during*



*pendency of the present suit; (b) to disclose the amount repaid to Defendant no.3 to 12 since 20.09.2024; and*

*B) Pass an ex - parte ad - interim order directing Defendant Nos. 3 to 12 not to appropriate or allow appropriation of any amount pertaining to or in respect of any of the receivables hypothecated by the Defendant No.1 in favour of the Plaintiff except for payment of dues of the Plaintiff during pendency of the present suit, and*

*C) Pass an ex - parte ad - interim order directing Defendants no. 1 to 12 not to appropriate or allow appropriation of any balance amount pertaining to the Defendant Nos. 1 and 2 other than amount over which security created by the Defendant No. 1 and Defendant No. 2 in favour of the respective creditor has become enforceable, if any and such business expenses as this Hon'ble Court may allow during pendency of the present suit,*

*D) Pass an order directing the Defendant Nos 03 to 12 to refund the receivables appropriated by them from 20.09.2024 which were not hypothecated to them pending the hearing and final disposal of this suit; and*

*E) To appoint a Court Receiver to monitor all the collection accounts maintained by defendant No.1 with defendant no.3 to 12;*

*F) The Court Receiver to distribute the amount from the collection accounts as per the charge of the respective lenders on such amounts;”*

5. The matter came up for hearing on 24.12.2024 and the co-ordinate Bench of this Court registered the plaint as Suit and in IA No.49852/2024, the co-ordinate Bench of this Court noted that the loan was secured by the Defendant No.1 in the following manner:

*“i. Demand Promissory Note and Continuing security letter, thereby unconditionally and irrevocably promising to pay the Plaintiff a sum of Rs. 10 Cr. i.e.*



*loan amount together with interest;*

*ii. Deed of Personal Guarantee executed by Defendant No. 2;*

*iii. Unattested Deed of Hypothecation creating a first and exclusive charge by way of hypothecation in favour of the Plaintiff, over all monies and amounts owing to or received/receivable by the Defendant No. 1, present and future with a minimum asset cover of 1.20 times of the outstanding principal amount of the Facility and the same was duly registered with the Registrar of Companies ('ROC');*

*iv. Irrevocable Power of Attorney executed in favour of the Plaintiff in respect of the hypothecated assets in terms of the deed of hypothecation; and*

*v. Undertaking inter-alia stating, agreeing, declaring, confirming and undertaking that the promoters shall not dispose of or create any lien/ encumbrance over the hypothecated assets and comply with the terms and conditions of the loan facility.”*

6. The co-ordinate Bench of this Court noted the argument of the learned Counsel for the Plaintiff that receivables are exclusively hypothecated in favor of the plaintiff but they are being received and collected by Defendant Nos. 3 to 12 banks in accounts maintained by Defendant No. 1 with them. The coordinate Bench further noted that the argument of the learned Counsel for the Plaintiff that defendant nos. 3, 4, 7, 9, 10, and 12 are appropriating these receivables, and defendant nos. 3 to 12 are permitting the appropriation of deposits in such accounts toward payments of their own debts and/or debts owed to creditors other than the plaintiff. The co-ordinate Bench, after considering the fact that receivables which are hypothecated to



the Plaintiff but are being appropriated by other Defendants, passed the following Order:

*“30. On a prima facie consideration of facts and materials placed on record, this Court is of the opinion that the plaintiff has made out a case for interim orders. The balance of convenience lies in favour of the plaintiff, and there is likelihood of irreparable injury being caused to the plaintiff.*

*31. In view of the above, defendant nos. 1 and 2 are directed to not to deal with or encumber the whole or part of receivables hypothecated by the defendant no. 1 in favour of the plaintiff and to further disclose the amounts repaid to defendant nos. 3 to 12 since 20.09.2024 in its reply to the captioned application. In addition, defendant nos. 3 to 12 are directed to maintain status quo with respect to the amounts pertaining to or in respect of any of the receivables hypothecated by the defendant no. 1 in the favour of the plaintiff. The said directions shall operate until the next date of hearing.”*

7. It is this Order which is sought to be vacated in the present application.

8. Learned Counsel appearing for Defendants No.1 & 2 states that Defendant No. 1 has a loan portfolio of more than Rs. 1970 Crores and is serving more than 90,000 women borrowers. He further states that Defendant No.1 employs 4305 individuals and has a strong network of vendors and collection agents across India. He states that the Order passed by the co-ordinate Bench of this Court has been construed as an order freezing the account of the Defendants No.1 & 2 and thereby the Defendants No.1 & 2 are not able to operate their bank accounts. He states that the present Suit is one for injunction and the Order dated 24.12.2024, amounts



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to attachment, which could not have been passed in the present suit.

9. Per contra, learned Counsel appearing for the Plaintiff contends that the Order dated 24.12.2024, by which the Defendant No.1 was directed to disclose the amount repaid to Defendants No.3 to 12 has not been complied with. It is contended that the receivables which have been specifically hypothecated in favour of the Plaintiff are being diverted towards satisfaction of the loan advanced by other causing irreparable loss to the Plaintiff and, therefore, the Order dated 24.12.2024 does not require any interference.

10. Learned Counsel for Defendants No.1 & 2 has handed-over a letter dated 01.01.2025 which is in purported compliance of the Order dated 24.12.2024. A perusal of the same does not show that the Order dated 24.12.2024 has been complied with as the said letter does not disclose the amount repaid by the Defendant No.1 to Defendants Nos.3 to 12. It does not disclose the amount returned from the receivables hypothecated in favour of the Plaintiff which have been diverted to the account of Defendant No.1 maintained by Defendant Nos.3 to 12.

11. The Order which is sought to be vacated in the present application was passed in an application under Order XXXIX Rules 1 & 2. It is well settled that the consideration while passing an Order under Order XXXIX Rules 1 & 2 are that there must be prima facie case in favour of the person, the balance of convenience must lie in favour of the person and if Order is not passed then irreparable loss would be caused to the person seeking Order. The object of Order XXXIX Rule 1 & 2 is to protect the interest of the Plaintiff by ensuring that the suit property is not frittered away or that the suit itself is not rendered infructuous.



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12. The total loan amount of the Plaintiff is Rs.30 crores. The claim of the Plaintiff is that when the letter of recall of loan was issued a sum of Rs.21,82,54,243/- was due and payable. The interest of the Plaintiff, therefore, can be protected if the amount, as claimed by the Plaintiff, under the loan recall notice, is protected. It is the case of learned Counsel for Defendants No.1 & 2 that amount more than the claimed amount is lying in the bank accounts of the Defendants. Vide Order dated 24.12.2024, the Defendants No.3 to 12 have been directed to maintain status quo in respect of the receivables hypothecated in favour of the Plaintiff.

13. The Plaintiff has been able to prima facie show that all is not well in Defendant No.1. There are major defaults in the loans granted by Defendant No.1 and their accounts are being scrutinized and investigation is being conducted regarding the accounts of Defendant No.1 and Defendant No.2 is the personal guarantor. The apprehension of the Plaintiff is that the receivables which are exclusively hypothecated in favour of the Plaintiff are being collected by Defendants No.3 to 12 in bank accounts maintained by Defendant No.1 with them. At the same time, there is some merit in the arguments made by the learned Senior Counsel for Defendants No.1 and 2 that the entire bank accounts cannot be frozen and thereby jeopardizing the business of Defendant No.1. It is therefore made clear that the Order dated 24.12.2024 the vacation of which is being sought, cannot be understood as one of freezing the entire accounts. In order to protect the interest of the Plaintiff, the Defendants are therefore directed to open a separate account and maintain an amount of Rs.22,00,00,000/- as minimum balance pending the suit which the Plaintiff claims is due and payable which would balance the equities of the Plaintiff and the Defendants.

14. Undoubtedly, the present suit is only for injunction and order of



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attachment under Order 38 Rule 5 CPC cannot be passed in a suit for injunction. However, in a case where the allegation is that the receivables which are specifically hypothecated in favour of the Plaintiff are being appropriated by Defendants No.3 to 12 in accounts maintained by the Defendant No.1 and Defendant No.1 has not complied with the Order dated 24.12.2024 passed by this Court directing Defendant No.1 to disclose the amounts repaid to Defendants No.3 to 12 since 20.09.2024. This Court is inclined to pass the order directing Defendant No.1 to make a separate account and maintain Rs.22,00,00,000/- as minimum balance pending the suit. The amounts which are to be received by the Plaintiff have to be safeguarded, failing which irreparable loss and injury would be caused to the Plaintiff and the Plaintiff would then forced to institute multiple proceedings against Defendants No.3 to 12 to recover the amounts from them and demonstrate that accounts which were specifically hypothecated in favour of the Plaintiff have been diverted to the accounts of Defendants No.3 to 12 for the satisfaction of their loans advanced to Defendants No.1 and 2 which will cause prejudice to the Plaintiff.

15. The Order dated 24.12.2024 is therefore modified to this extent.

16. The application is disposed of.

**SUBRAMONIUM PRASAD, J**

**FEBRUARY 12, 2025**

*Rahul*