

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) No. 744 of 2010

SUMITOMO CORPORATION INDIA PVT. LTD.
& ANR.

..... Petitioners

Through: Mr. Sanjay Jain, Sr. Advocate with
Ms. Manjula Gandhi & Ruchi Jain, Advocates.

versus

STATE OF UTTAR PRADESH & ANR.

..... Respondents

Through: Mr. Anil Mittal, Advocate

CORAM: JUSTICE S. MURALIDHAR

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| 1. Whether reporters of local paper may be allowed to see the judgment? | No |
| 2. To be referred to the reporter or not? | Yes |
| 3. Whether the judgment should be referred in the digest? | Yes |

ORDER
16.12.2010

1. The prayer in this writ petition is for a direction to the State of Uttar Pradesh, Respondent No.1, to honour its guarantee in respect of the 14.9% redeemable bonds issued by U.P. Co-operative Spinning Mills Federation Ltd. (Respondent No. 2) and pay the Petitioner a sum of Rs. 20,32,491/- towards the principal amount of the bonds together with interest as well as overdue interest till payment.

2. The background facts are that Respondent No. 2 wished to raise a sum of Rs. 55 crores to meet the working capital requirements of its member mills. It, therefore, came out with a bonds issue through private placement. The face value of each bond was Rs. 5,000 and tenure 5 years. The bonds were to carry interest @ 14.9% per annum payable annually on 26th December of

each year. The bonds were to be redeemed in three instalments at par at the end of 4th, 4½ and 5th year @ 33%, 33% and 34% respectively. It is stated that RR Financial Consultants Limited and Dara Shaw Badar Financial Services Pvt. Ltd., having their office at Delhi besides other places, were appointed as the arrangers to the issue.

3. In the brochure giving the details of the issue, the commitment of the Respondent No.1, Government of Uttar Pradesh, in the form of an unconditional and irrevocable guarantee as well as the fact that loans worth Rs. 43 crores of the UP Government were converted in equities in Respondent No. 2 were prominently highlighted. The security for the bonds was stated to be the said unconditional and irrevocable guarantee of the Government of Uttar Pradesh for payment of interest and redemption of the principal amounts. It is stated that consistent with the assurance given, a letter dated 2nd June 1998 was addressed by the Special Secretary, Government of UP to the Managing Director of Respondent No. 2 conveying the decision of the former to guarantee the payment in respect of the said bonds.

4. Acting on the representations made by the Respondents, the trustees of the Petitioner thought it prudent to make an investment of Rs. 5.5 lakhs by purchasing bonds of Respondent No. 2 of an equivalent amount. The Petitioner states that they proceeded on the assumption that the investment was secure on account of the irrevocable guarantee provided by Respondent No. 1.

5. On the Petitioner's application dated 17th June 1998 for 90 bonds and 30th June 1998 for 20 bonds, Respondent No. 2 allotted to the Petitioner bonds of the total value of Rs. 5.5 lakhs. Copies of the debenture bonds have been enclosed which clearly indicate that the allotment was of 14.9% (taxable) secured redeemable UPSCMFL debenture bonds "fully guaranteed by the Government of Uttar Pradesh on private placement basis".

6. The Petitioner states to have received interest in the sum of Rs. 63,758/- for a period of twelve months. However, despite numerous reminders between August 2001 August 2008, no further payments were forthcoming.

7. On 2nd September 2008, the Financial Controller of Respondent No. 2 informed the Petitioner that under the one time settlement programme of 2005 ('OTS'), it has sent proposals to Respondent No. 1 and requested it to release a sum of Rs. 9.5 crores in that regard.

8. The Petitioner received a communication dated 9th October 2001 and 6th February 2002 from Respondent No. 2 wherein Respondent No. 2 informed the Petitioner that due to financial crunch they are unable to make the payment of interest and re-payment of principal sum and have approached Respondent No. 1 for releasing the amount under guarantee. Respondent No. 2, vide letter dated 28th September 2002, informed Petitioner that a Receiver is being appointed by the Bombay High Court in an appeal filed by Respondent No. 2 arising out of the suit filed by Maharashtra State Road Transport Corporation, Mumbai, a debenture bond-holder in Suit No. 2792 of 2000 for recovery of Rs. 5.89 crore.

9. By a letter dated 10th January 2005, Respondent No. 2 authorised its lead arranger to approach the investors for the OTS. Consequently, on 24th January 2005, Respondent No. 2 approached the Petitioner. The Petitioner, by a letter dated 11th August 2005, agreed to the OTS proposal. However, it is submitted that no payment has been made.

10. Subsequently not having received any amount, the Petitioners invoked the guarantee given by Respondent No. 1 by a letter dated 27th May 2008. Further, a legal notice was sent to the Respondents on 7th March 2009 invoking the guarantee and demanding a sum of Rs. 20,32,491/- with interest @ 14.9%.

11. The Petitioner states that another identically placed secured creditor M/s. Modern Food Industries (India) Ltd. ('MFIL') which was subsequently taken over by Hindustan Unilever Limited ('HLL') was also an investor in the above issue of Respondent No.2 on the basis of the guarantee provided by the Respondent No.1. MFIL filed Writ Petition (C) No. 16462-63 of 2004 in this Court. This Court, by an order dated 21st November 2005, directed Respondent No.1 to pay the principal and the interest under the bonds within 60 days of the order. The Supreme Court by a judgment dated 15th October 2008 in Civil Appeal No. 6126 of 2008 (*State of UP v. Hindustan Unilever Limited*) upheld the order of this Court and ordered that Respondent No.1 was liable to make the guaranteed payment to the investors. On the strength of the said judgment of the Supreme Court, on 7th March 2009 the Petitioner wrote to both Respondents 1 and 2 requesting them to make payment of Rs. 64,29,552/- and reminded that these payments had become overdue by then.

12. The Petitioner submits that the present case is squarely covered by the judgment dated 21st November 2005 passed by this Court in *Modern Food Industries (India) Ltd. v. State of Uttar Pradesh* and the subsequent judgment of the Supreme Court in Civil Appeal No. 6126 of 2008. It is further pointed out that both the matters relate to the same bond issue of Respondent No. 2 guaranteed by Respondent No. 1.

13. In para 8 of the judgment, this Court held as under:

“The factum of the receipt of Rs. 15,00,000/- is not in dispute. The sovereign guarantee extended by the State of Uttar Pradesh stands admitted. It is not sanguine to submit that had this sovereign guarantee not been extended the Provident Funds of the Workmen would not have been invested by the Trustees with Respondent No.2. Both the Respondents are jointly and severally liable for the repayment of the principal amount together with interest thereon at the rate of 14.90 per cent per annum. There is little likelihood of this amount being liquidated by the principal debtor, namely, Respondent No.2 and, therefore, it would be appropriate to order recovery from the Guarantor of Respondent No.1. I am galvanized and propelled to exercise jurisdiction vested in this Court under Article 226 of the Constitution of India keeping in perspective the fact that the amounts invested with Respondent No.2, under sovereign guarantee of Respondent No.1, constitute the Provident Funds of the Workmen. The Petitioners are entitled to receive the principal sum of Rs. 15,00,000/- together with interest thereon at the rate of 14.90 per cent per annum from the date of investment. The amounts already paid,

that is, Rs. 1,15,118/- and Rs. 1,73,980/- aggregating Rs. 2,89,098/- shall be deducted therefrom. These amounts shall be paid by Respondent No. 1 to the Petitioners within sixty days from today. Respondent No.1 shall be fully empowered to make recoveries from Respondent No.2 for the amounts paid by it to the Petitioners. The petition is allowed with costs quantified at Rs. 15,000/-.”

14. The Petitioners point out that the facts are not in dispute and no adjudication is required. The only direction sought is to Respondent No.1 to honour its solemn obligation and commitment made to the Petitioner on the basis of which the Petitioner altered its position and made the investment in the bonds issued by Respondent No. 2. It is pointed out that a sovereign government is bound by its undertaking. It is also bound to honour the obligations since it is only on the assurance of the Government of Uttar Pradesh, which was acting as a guarantor, that parties like the Petitioner made their investments.

15. Learned counsel for the Petitioners submits that the case of the Petitioner is no different from the case of *Hindustan Unilever Ltd.* and, therefore, directions should be issued in terms of the order dated 15th October 2008 passed by the Supreme Court in that case which has recently been followed by this Court in *Tirath Ram Shah Charitable Trust v. State of UP [order dated 9th July 2010 - passed in W.P.(C) 9150 of 2009]*.

16. A counter affidavit has been filed on behalf of Respondent No. 2 in which it is first contended that Respondent No. 2 is under liquidation and,

therefore, the present writ petition is not maintainable. It is submitted that a number of debenture holders have filed suits for recovery of the interest as well as the principal amount against Respondent No. 2. Further, in Suit No. 279 of 2000 the Division Bench of the Bombay High Court, by an order dated 3rd December 2001, has appointed a Receiver. Subsequently, by an order dated 27th June 2006 an application seeking permission for liquidation of Respondent No. 2 and its member mills has been allowed and the process of liquidation has been initiated. It is further submitted that there is also a liability on the member mills of Respondent No. 2 to the tune of Rs. 418.33 crores besides the liability of debenture holders of approximately Rs. 153.47 crores as on 31st March 2006 which will be settled by the Liquidator as per the U.P. Cooperative Societies Act, 1965. A decision has been taken by Respondent No. 2 in a meeting on 3rd June 2010 under the chairmanship of the Chief Secretary, State of U.P. to decide the policy for the payment of debenture holders, to pay off the principal amount of the government guaranteed debentures to debenture holders who have agreed to the OTS without any condition.

17. This Court has considered the above submissions.

18. It appears that the facts of the present case are more or less similar to the facts in *State of UP v. Hindustan Unilever Ltd.* A perusal of the order shows that the fact of Respondent No. 2 being under liquidation was noticed in para 4 which reads as under:

“4. The Federation sustained losses and went under liquidation. It did not redeem the bonds as agreed and

undertaken, in spite of demands. The amounts due were not paid except part payment of Rs. 1,73,980/- and Rs. 1,15,118/- in all Rs. 2,89,098/- towards interest. As the amounts due under the bonds and interest were not paid by the State Government in terms of guarantee, in spite of demand for payment, the respondent approached the Delhi High Court for relief. The High Court, by order dated 21.11.2005, directed the State Government, as guarantor, to pay the sum of Rs. 15,00,000/- (Rupees Fifteen Lakhs) with interest at the rate of 14.9% (the rate agreed under the bonds) less amounts already paid. The said order is challenged in these two appeals by the State Government and the Federation.”

19. The Supreme Court expressly also negated the contention of Respondent No. 2 that “as the State Government has paid principal amount, the Respondent should be relegated to other remedies in law for recovery of interest”. The Supreme Court observed as under:

“6. Such a contention is not tenable. The amount invested by first respondent belongs to the workmen of first respondent. The amount was invested in the bonds of the Federation in view of the express guarantee by the State Government that the same will be repaid with interest upto 15.5 % p.a. The very purpose of the State Government guarantee is to ensure payment in case the Federation was not able to make payment. In the circumstances, the fact that the Federation is in financial difficulties cannot be a ground for the State Government to say that it will not make payment of interest, even though it had guaranteed the repayment with interest. If such a contention is accepted, the very purpose of the guarantee will be defeated. We are indeed surprised that

such a plea is put forward on behalf of the State of Uttar Pradesh.”

20. Ultimately, the Supreme Court passed the following order:

“7. In the circumstances, we are of the view that the State Government should pay the interest also. However, on the facts and circumstances, we are of the view that interest should be paid at the rate of 14.9% p.a. for a period of five years from the date of deposit and thereafter at the rate of 9.5% per annum (which is equal to the minimum rate of interest that is payable by the first respondent to its workers on the provident fund dues). The above concession regarding interest is granted on the peculiar facts of these appeals. Three months’ time is granted to the Government of Uttar Pradesh to pay the balance of interest.”

21. This Court is unable to find any factor which can distinguish this case from the case of *Hindustan Unilever Ltd.* which was disposed of by the Supreme Court in the above terms. Even though the specific provisions of the UP Co-operative Societies Act, 1965 may not have been referred to in the above order of the Supreme Court, the fact of Respondent No. 2 having gone into liquidation has certainly been taken note of. The prayer that for recovery of interest the Petitioner should avail of other remedies, has also been negated.

22. Accordingly, following the judgment of the Supreme Court in *Hindustan Unilever Ltd.*, it is directed that Respondent No. 1 will pay to the Petitioner the principal amount together with simple interest @ 14.9% per

annum for the period of 5 years from the date of the deposit and thereafter @ 9.5% simple interest per annum (which is equal to the minimum rate of interest that is payable by the first Respondent to its workers on the provident fund dues). Respondent No. 1, Government of UP will pay the aforementioned principal and interest amounts to the Petitioner within a period of twelve weeks from today failing which it will pay penal simple interest at 15% per annum for the period of delay.

23. With the above directions, the writ petition is disposed of, but in the circumstances, with no order as to costs.

S. MURALIDHAR, J

DECEMBER 16, 2010

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