

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 08.09.2014

+ **W.P. (C) 3824/2014 & CM 7715/2014**

TRIVENI ENGINEERING & INDUSTRIES LTD Petitioner

Versus

UNION BANK OF INDIA & ORS. Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Sanjeev Anand, Mr Abhas Kumar,
Mr Subham Tripathi and Mr Arush Khanna.

For the Respondents : Mr Janendra Lal and Ms Yamini Tarapore.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The above captioned writ petition has been filed by the petitioner company under Article 226 of the Constitution of India challenging the action of Union Bank of India i.e. the respondent bank in forwarding the names of the petitioner and its Directors to the Credit Information Bureau of India Limited (CIBIL), respondent no.3, for posting on its websites as defaulters and *inter alia* praying for direction against the respondents to withdraw/remove the name of the petitioner company and all its Directors from the 'List of Defaulters' from CIBIL's website.

2. The controversy that is required to be addressed in the present proceeding is whether in the given circumstances of the case, the

respondent bank was correct in placing the name of the petitioner company and its directors as defaulters with CIBIL.

3. In order to address this controversy, it would be necessary to recount certain relevant facts which are outlined as under:

3.1. On 14.10.1993, the petitioner company entered into an agreement with M/s Piccadily Sugar and Allied Industries Limited (hereinafter referred to as 'Piccadily') for supply, procuring, manufacturing, supervision, erection and commissioning of a sugar plant. In terms of the said agreement, at the instance of the petitioner, three Bank Guarantees for an amount aggregating to ₹3,54,16,750/- were issued by the respondent bank in favour of Piccadily. The details of the said Bank Guarantees are as under:-

Bank Guarantee Nos.	Dated	Amount of Bank Guarantees
GL/IFB/106/93-94	14.10.1993	65,41,750/-
GL/IFB/107/93-94	14.10.1993	2,06,25,000/-
GL/IFB/108/93-94	14.10.1993	82,50,000/-
Total		3,54,16,750/-

3.2. By a letter dated 26.08.1994, the petitioner informed the respondent bank that equipment had been supplied for the entire value against Bank Guarantees No.106/ 93 and 108/93. Supply of equipment had been made in part against Bank Guarantee No.107/93 and supply of machinery for the balance amount of ₹1,54,19,711.04/- remained outstanding. The said adjustment was informed to Piccadily for confirmation by the respondent

bank, however, by its letter dated 05.09.1994, Piccadily reverted that the supplies had not been reconciled and that untill such supplies in terms of the contract are made, the respondent bank would remain liable.

3.3. The respondent bank, by its letter dated 07.09.1994, informed the petitioner that the liabilities under the Bank Guarantees could not be reduced until Piccadily accepts the supplies. Thereafter, by its letters dated 25.10.1994 and 29.10.1994, Piccadily requested the respondent bank to extend the validity of the said Bank Guarantees for a further period of six months and if the same were not extended, treat the letters as a claim on full value of the Bank Guarantees. On 29.10.1994, the respondent bank again informed the petitioner that the approval of Piccadily was required for reduction of its liabilities under the Bank Guarantees failing which the respondent bank would either extend the Bank Guarantees or would pay Piccadily the amount under the guarantees.

3.4. This dispute remained unresolved. Resultantly, the Bank Guarantees were invoked by Piccadily. The respondent bank paid ₹3,54,16,750/- to Piccadily and by its letter dated 31.10.1994 called upon the petitioner to repay the said sum of ₹3,54,16,750/- alongwith interest.

3.5. Thereafter, on 09.01.1995, the petitioner filed a suit (No.28/1995) for recovery, declaration and permanent injunction against Piccadily and the respondent bank before Senior Sub-Judge, Chandigarh. On 20.07.1995, the respondent bank filed an Original Application (O.A No.166/1995) before Debt Recovery Tribunal, Delhi (DRT) seeking recovery of an amount of ₹4,05,82,575/- (₹3,54,16,750/- being the amount of the Bank Guarantees

alongwith interest and costs) from the petitioner. In order to resolve the disputes with the respondent bank, the petitioner approached the respondent bank, by its letter dated 28.11.1995, with a settlement proposal. The same was duly accepted by the respondent bank and a joint application was filed with the DRT for recording the compromise. The extract of the relevant portion of the arrangement agreed between the petitioner and respondent bank is quoted below :-

“1. That we shall deposit with you, to the credit of a new and separate escrow account monies in the following manner:

I/ Rs.30 lacs at the time of accepting this offer.

II/ Rs.20 lacs within five (5) days of an order being passed on a joint application filed by the Bank and Triveni before the Tribunal in OA 166 of 1995 adjourning the said proceedings, sine die, till the disposal of suit No.28 of 1995 and thereafter as follows:

III/ Rs.40 lacs by 31.12.1995

Rs.40 lacs by 31.1.1996

Rs. 40 lacs by 28.2.1996

Rs. 35 lacs by 31.3.1996

IV/ Balance Rs. 200 lacs as follows:

Rs.29 lacs by 30.9.1996

Rs.29 lacs by 31.12.1996

Rs.29 lacs by 31.3.1997

Rs. 29 lacs by 30.6.1997

Rs.29 lacs by 30.09.1997

Rs.29 lacs by 31.12.1997

Rs.26 lacs by 31.3.1998.

Total : Rs. 405 lac

2. Pursuant to the acceptance of this settlement and pending the final decision of the suit the bank shall not debit any interest on the amounts paid to Piccadily against the encasement of guarantees.

The amount deposited by us as aforesaid shall be kept in an Interest free separate escrow account to be dealt with as provided hereinafter:

- 2.1 That in the event of the court in suit no.28 of 1995 dismissing Triveni's suit and holding that the invocation of the guarantees (being the subject matter of the suit) by Piccadily was valid and the payment by the bank was validly made, the bank would then be entitled to immediately appropriate the amounts deposited by Triveni as aforesaid in the escrow account. Towards reimbursement of its claims against the payments made against the said guarantees. In that event Triveni shall pay interest at such rate as may be decreed by the Court subject to the condition that payment made by Triveni as mentioned in para 1 above, shall then be deemed to have been made towards the debt and interest shall be accordingly calculated on the reducing balances upto the respective dates of deposits. For this purpose Triveni will give a separate letter of authority to the bank for appropriation under the aforesaid circumstances.
- 2.2 In the event of the court in suit No.28 of 1995 holding that the bank has rightly paid against the demands made on it although Piccadily was not entitled to invoke the guarantees accordingly the suit against bank being dismissed, the same position as mentioned in Para (2.1) above shall apply regarding the bank's right then of appropriation of the amounts held in escrow account, charging of interest as also calculation thereof. Triveni shall by a separate letter confirm the bank's right of appropriation on these conditions.

2.3 In the event of suit No.28 of 1995 being decreed in favour of Triveni and it being held that the invocation of any guarantees by Piccadily and the payment by the bank were both wrong, then in that event the parties shall proceed as follows:

- a/ the bank shall not be entitled to appropriate the amounts deposited by Triveni in the escrow account as mentioned above and shall refund the same back to Triveni together with interest thereon at such rate as allowed by the court. Interest shall be calculated from the dates of deposits of installments upto the date of refund.
- b/ Triveni shall assign in favour of the bank the decree and/or all benefits arising under the decree that may be passed in favour of Triveni in suit no.28 of 1995 and against piccadily. Triveni further agrees to take all such steps for the execution of the decree against Piccadily as the bank may reasonably request and at the bank's cost to enable expeditious recovery of the amounts from Piccadily as permitted by the court decree.
- 3/ In the event of an appeal/(appeals) being filed from the judgment/decreed of the courts of senior sub-judge, Chandigarh, the rights of the parties in terms hereof shall be subject to the final outcome of the said appeal/ (appeals) and pending disposal of the appeals, the interim arrangement shall continue and the monies deposited by Triveni in the escrow account shall continue to remain with the Bank.”

(emphasis supplied)

3.6. A letter dated 30.11.1995 confirming the acceptance of the above arrangement was also sent by the respondent bank. Thereafter, a joint application was filed before DRT for recording the said settlement.

3.7. By an order dated 11.10.2001, the joint application and the Original Application (O.A No.166/1995) were disposed of by the DRT in terms of

the arrangement/settlement reached by the petitioner and the respondent bank on 28.11.1995. The DRT recorded that the petitioner had paid a sum of ₹4.05 crores to the respondent Bank, although a cheque for ₹20 lacs had not been encashed. The said order indicates that the respondent bank opposed the disposal of the case in terms of the said settlement, however, the said contention was rejected by DRT and it was held as under:-

“....I have carefully gone through the terms of compromise between the parties and I have given my thoughtful consideration to the submissions made by counsel for parties. In my opinion the compromise between the parties is quite genuine. The applicant bank has made a claim against the defendants through this OA filed on 20.7.95 for 4,05,82,575/- and as against this amount the defendant has settled this matter with the bank just after four months of filing of the OA for an amount of Rs.4.05 crores which is almost equal to the suit amount. The said compromise amount is stated to have been paid in terms of compromise between the parties. Under the circumstances I accept the compromise between the parties and disposed off the present OA in terms of compromise between the parties. However, the parties shall remain bound by the terms of their compromise referred hereinabove.”

3.8. Thereafter, an appeal (Appeal No.78/2002) was filed by the respondent bank before Debt Recovery Appellate Tribunal, Delhi (DRAT) challenging the order dated 11.10.2001 of DRT, which was withdrawn by the respondent bank on 11.01.2010.

3.9. In June 2012, the name of the petitioner was included in the ‘List of Defaulters’ on account of non-payment of ₹4.06 crores to the respondent bank. The said information was placed by CIBIL on its website. The petitioner addressed a letter dated 26.06.2012 to the respondent bank

informing that despite payment of amount in the escrow account, in terms of the settlement arrived between the parties, the names of the petitioner and its Directors were included in the 'List of Defaulters'. In pursuance of the said representation, the names of the petitioner and its Directors were removed from the 'List of Defaulters'.

3.10. Subsequently, by a judgment and decree dated 21.02.2013 passed in Suit No.28/1995, the Civil Court, Chandigarh held that an amount of ₹1,99,97,038.96/- was wrongly paid by the respondent bank to Piccadily and therefore, the petitioner was entitled to recover the said amount jointly and severally from the respondent bank and Piccadily alongwith *pendent lite* and future interest @9% per annum from the date of filing the suit. The total amount due and recoverable by the petitioner from the respondent bank and Piccadily worked out to ₹5,32,99,528.32 till the date of the said decree.

3.11. Respondent bank challenged the judgment dated 21.02.2013 in an appeal (Appeal No.940/2013) filed before ADJ, Chandigarh. The respondent bank furnished a Bank Guarantee for an amount of ₹5,32,99,528.32/- and by an order dated 09.05.2013, the operation of the decree dated 21.02.2013 with respect to the respondent bank was stayed by the said appellate Court.

3.12. Thereafter, on 29.08.2013, respondent bank filed an Original Application (O.A No. 828/2013) before the Debts Recovery Tribunal, Chandigarh (DRT-Chandigarh) seeking recovery of an amount of

₹5,37,53,197.77 jointly and severally from Piccadily and the petitioner alongwith *pendent lite* and future interest @ 9% per annum.

3.13. The Banker of the petitioner (M/s Canara Bank), by its email dated 28.04.2014, informed the petitioner that the names of the petitioner and its Directors were reflected in RBI's Defaulter List on account of non-payment of dues amounting to ₹4.06 crores of the respondent bank as of September 2013. By its letter dated 30.04.2014, the petitioner requested the respondent bank for removing the names of the petitioner and its Directors from the list of defaulters as there was no default on the part of the petitioner. The respondent bank turned down the said request, by its e-mail dated 13.05.2014, alleging that the proceedings before DRT-Chandigarh were pending. Aggrieved by the said action of the respondent bank, the petitioner has filed the present petition.

3.14. After the petition was filed, the respondent bank filed an application, on 25.07.2014, seeking amendment of O.A No. 828/2013 to inter alia seek recovery of an amount of ₹5,37,53,197.77 alongwith *pendent lite* and future interest @ 9% per annum from Piccadily and recovery of an amount of ₹7,17,59,480.25/- alongwith *pendent lite* and future interest @ 18.5% per annum from the petitioner.

Submissions

4. It was submitted by the learned counsel for the petitioner that in terms of the judgment and decree dated 21.02.2013 passed by the Civil Court at Chandigarh, it is respondent bank who has to pay an amount of ₹5,32,99,528.32/- to the petitioner. It was contended that inspite of the fact

that no amount is due and payable by the petitioner to the respondent bank, names of the petitioner and its Directors were illegally and malafidely included in the list of defaulters. It was further contended that neither a show cause notice was served upon the petitioner nor an opportunity of hearing was granted to the petitioner by the respondent bank before taking any such action and therefore, the principles of natural justice were violated. It was also contended that the respondent bank had not followed the 'Gist of RBI Schemes of Defaulter Lists' prescribed by RBI before taking any such action.

5. It was submitted by the learned counsel for the respondent bank that although, the suit filed by the petitioner before the Senior Sub Judge, Chandigarh had been decreed in favour of the petitioner in respect of Bank Guarantees to the extent of ₹1,99,97,038.96/-, the action of the respondent bank in honouring the Bank Guarantees for a sum of ₹1,54,19,711.04 was not found to be wrongful. It was contended that, consequently, the respondent bank was entitled to recover a sum of ₹7,17,59,480.25 from the petitioner.

6. It was contended that the respondent bank committed no error in communicating the name of the petitioner to CIBIL as a defaulting borrower as the petitioner was a debtor to the respondent bank for a sum of more than ₹1 crore. It was contended that the name of the petitioner was placed in the 'List of Defaulters' under the category of 'Suit filed Accounts of ₹1 crore and above' in terms of the directions and circulars issued by Reserve Bank of India as a suit of over ₹1 crore (i.e. O.A No. 828/2013) was pending against the petitioner before DRT-Chandigarh.

Analysis and Conclusion

7. Undisputedly, the proceedings initiated by the respondent bank before the DRT (OA No.166/1995) were settled; The DRT in its order dated 11.10.2001 recorded that *“As per terms of compromise between the parties which were accepted by the applicant bank on 30.11.95, the defendant has admittedly paid the entire compromise amount of Rs. 4.05 crores to the applicant bank. However, a cheque of Rs. 20 lakhs given by the defendant 1 to the applicant bank which forms part of compromise amount has not been encashed by the applicant bank for reasons best known to it”*.

8. Although, the respondent bank has filed an Original Application (O.A. No.828/2013) against the petitioner and Piccadilly praying for a *“recovery certificate for an amount of Rs. 5,37,53,197.77 along with costs and pendente lite and future interest @ 9% per annum.”*, it is important to examine the basis on which the claim against the petitioner was preferred. A bare perusal of the said OA indicates that the same is occasioned by the decree obtained by the petitioner against the respondent bank. The decree has been stated to be the *“cause of action”* for instituting the said Original Application. The basis of the claim made by the respondent bank against the petitioner (arrayed as defendant no.2 in (OA No. 828/2013) can be understood from the following extract from the said Original Application:-

“(xiii) the defendant No.2 thereafter, filed civil suit against the applicant-Bank, defendant No.1 and others before the court of Civil Judge (Sr. Div.), Chandigarh for recovery, declaration and permanent injunction on 09.01.1995. The said suit was contested by the applicant-Bank and defendant No.1 and vide

judgment and decree dated 21.02.2013, the court of Sh. Rajnish Kumar Sharma, Addl. Civil Judge (Sr. Div.), Chandigarh has held that the Bank guarantees were wrongly invoked and encashed and since the applicant-Bank has already made the payment of the Bank Guarantees amounting to Rs.3,54,16,750/- to the defendant No.1 way back on 31.10.1994 and the said invocation having been rendered illegal vide the aforesaid judgment and decree dated 21.02.2013, therefore, the defendant No.1 is liable to pay back the said amount to the applicant-Bank along with interest @ 9 %, per annum as ordered by the Civil Court. Copy of the judgment and decree dated 21.02.2013 is enclosed and marked as **Exhibit A-18**.

(xiv) As per the aforesaid judgment and decree dated 21.02.2013, the applicant-Bank has been burdened with the liability of the decretal amount which comes out to Rs.5,37,53,197.77 Ps. as on 31.07.2013 and since the amount due under the guarantees has already been paid by the applicant bank to defendant No.1, therefore, the execution of the decree would mean that the applicant-Bank would have to suffer financial loss to the extent of the decretal amount. In the said eventuality, both the defendants would enrich themselves at the cost and expense of the applicant-Bank. The applicant-Bank can pay the decretal amount after recovering the same from defendant No.1 as the invocation of the Bank guarantees by defendant No.1 has been held to be illegal and since the amount of the Bank guarantees has already been taken by defendant No.1 from the applicant-Bank, therefore, the defendant No.1 is liable to pay back the said amount to the applicant-Bank along with interest so as to enable the applicant-Bank to satisfy the decree, in case the need arises. It is worthwhile to mention here that the applicant bank has preferred an appeal against the judgment and decree dated 21.02.2013, which is pending adjudication before the court of Ld. ADJ, Chandigarh, Nevertheless, the burden of satisfying the judgment and decree dated 21.02.2013 lies upon the applicant-bank till the same is in existence.

(xv) The applicant-Bank is thus entitled to a sum of Rs.5,37,53,197.77 Ps. along with pendente-lite and future

interest @ 9% per annum from the date of filing of the present application till realization from the defendants jointly and severally. The applicant is also entitled to costs of these proceedings.”

9. It is apparent from the above that the respondent bank was seeking to recover amounts from the petitioner as well as Piccadilly to honour the decree which has been passed in favour of the petitioner. Thus, although the Original Application preferred by the respondent bank (OA No. 828/2013) ostensibly reads as if, it is a recovery suit against the petitioner but a close examination of the said petition indicates that it is only for the purposes of satisfying the decree in favour of the petitioner. And, according to the respondent bank filing of this Original Application labels the petitioner as a defaulter.

10. In my view, the stand of the respondent bank that the petitioner is a “*defaulter*, term most charitably described as ” is mindless. The expression ‘defaulter’ would necessarily mean a person who has committed a default. If one examines the conduct of the petitioner and the respondent bank in the context of the controversies that have arisen, it is apparent that the petitioner cannot be termed as a defaulter.

11. Undoubtedly, the respondent bank had issued bank guarantees at the instance of the petitioner and had also made payments in respect of the said guarantees. However, the petitioner contested the legality of the invocation as well as the action of the respondent bank in making payments against the said guarantees. Even though the claim of the petitioner was pending before the court, the petitioner agreed to deposit the entire amount in an escrow account with the respondent bank. Thus, the claims of the respondent bank

were duly settled. The respondent bank had accepted the payment, which at the material time was almost the amount that the respondent bank had claimed from the petitioner, and had agreed to keep the same in an escrow. This arrangement, thus, clearly discharged the petitioner from any liability in respect of the said guarantees except interest, which could be charged by the respondent bank in terms of the agreed compromise arrangement. The petitioner succeeded in obtaining a decree and the respondent bank is, admittedly, the judgment debtor (although the decree against the respondent bank has been currently stayed in appeal). It would not only be unfair but also incomprehensible for the petitioner to now be termed as a defaulter.

12. The purpose of insisting that all banks share their data with CIBIL and file a list of defaulters is to ensure that the other lenders are aware of the creditworthiness of the borrowers in question. To achieve this end, Reserve Bank of India has advised the banks to share information with respect to defaulters against whom suits for recovery in excess of ₹1 crore have been instituted. In the present case, the advice given by the respondent bank terming the petitioner to be defaulters in respect of whom a suit of ₹1 crore and above has been filed, is *ex-facie* untenable as the petitioner having paid the amount of bank guarantees along with interest to the respondent bank in terms of the compromise, cannot be stated to be a *defaulter*.

13. The only proceeding instituted by the respondent bank that currently survives is the application (OA No. 828/2013) filed before the DRT for recovery of a sum of ₹5.37 crores (approximately). As stated earlier, these proceedings were instituted only to recover the amount which is, otherwise,

decreed and payable by the respondent bank to the petitioner. The said OA to the extent that it sought a recovery certificate against the petitioner is fundamentally flawed and is ex-facie misconceived. A suit for recovery against a decree holder - in respect of the same subject matter which had resulted in the decree - cannot be filed to satisfy the decree. And, the contention that the decree holder can be termed as defaulter as a consequence thereof is palpably perverse.

14. Apparently, after filing of the present petition, the respondent bank has abandoned its claim of ₹5.37 crores, as framed in OA No. 828/2013. The application for amendment of the said Original Application filed by the respondent bank on 25.07.2014 abandons the earlier claim made against the petitioner and conjures up another claim of ₹7,17,59,480.25/-. It does not appear that the said application has been allowed as yet and the fresh claim sought to be made in this application is also not the basis on which the petitioner has been declared a defaulter. Nonetheless, it is apposite to examine this fresh claim made by the respondent bank. The bank guarantees by the respondent bank were for a sum of ₹3,54,16,750/-. The genesis of any possible claim by respondent bank can be traced to the said amount paid by the bank to Piccadily. On the basis of the said amount paid to Piccadily, a claim of ₹4.05 crores had been made by the petitioner and that was settled by the petitioner paying a sum of ₹4.05 crores in terms of the 1995 settlement. Thus, one is hard pressed to imagine as to how a claim of ₹7,17,59,480.25/- could now be made by the bank. Interestingly, the claim has been made on account of payment of ₹1,54,19,711.04/- against the Bank Guarantee which, apparently, has been held to be rightly

honoured by the respondent bank to the aforesaid extent. The respondent bank has simply calculated interest @ 18.5% on this amount and contrived its claim, completely ignoring the terms of the compromise and the amount received by the bank in pursuance thereof.

15. The petitioner had deposited a sum in excess of ₹1,54,19,711.04/- prior to 31.03.1996. In terms of the compromise, the respondent bank could appropriate the said amount of ₹1,54,19,711.04/- and also charge interest *“at such rate as may be decreed by the Court subject to the condition that payment made by Triveni as mentioned in para 1 above shall be deemed to have been made towards the date and interest shall be accordingly calculated on the reducing balance up to the respective dates of deposit.”* Thus, at best the respondent bank can claim a sum of ₹1,54,19,711.04/- and interest from the date of payment till the date the amount was received (i.e. on various dates in 1995-1996). This amount can be appropriated from the amount already paid by the petitioner and would be significantly less than that amount. In addition, given that the respondent bank is seeking recovery of 5.37 crores to pay the petitioner, the said liability is also to be taken into account. In the circumstances, the claim of ₹7,17,59,480.25/- made by the respondent bank is plainly whimsical, illusory and unreal.

16. Before concluding, it is necessary to observe that the conduct of the respondent bank has been less than fair, to say the least. I am quite inclined to accept the contention that the respondent bank has raised fanciful claims with a malafide intention to put undue pressure on the petitioner. The settlement entered into by the parties, the escrow arrangement and the

amount paid by the petitioner in pursuance thereof, does not find a mention in the Original Application (being OA No. 828/2013) as well as the amendment application, filed by the respondent bank to claim approximately a sum of ₹5.3/7.17 crores from the petitioner. The said Original Application filed by the respondent bank conceals the vital fact that the petitioner had already paid the sum of ₹4.05 crores. I have no doubt that non-disclosure of these facts is intentional and the proceedings instituted by the respondent bank are an abuse of the process of law. The fanciful claims concocted by the respondent bank are also clearly irresponsible.

17. In view of the above, the respondent bank is directed to forthwith take steps to remove the name of the petitioner as a defaulter by communicating the same to CIBIL. CIBIL is further directed to remove the name of the petitioner and its directors from the 'List of Defaulter' insofar as those names have been placed as a result of any communication sent by the respondent bank.

18. The petition is allowed in the aforesaid terms. CM No. 7715/2014 is also disposed of. The respondent bank is also directed to pay costs of ₹25,000/- to the petitioner.

VIBHU BAKHRU, J

SEPTEMBER 08, 2014
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