

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CWP No.9054 of 2001

Date of Decision: 27.04.2015

M/s Saraswati Paper Board Mills

...Petitioners

Versus

Haryana Financial Corporation & others

...Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. J.R.Mittal, Senior Advocate, with
Mr. Dhirinder Chopra, Advocate, for the petitioner.
Mr. Kamal Sehgal, Advocate &
Mr. Rajesh Hooda, Advocate, for the respondents.

HEMANT GUPTA, J. (ORAL)

The petitioner has invoked the writ jurisdiction of this Court claiming a writ of mandamus directing the respondents to settle the loan account of the petitioner as per the Reserve Bank of India Guidelines dated 27.07.2000 extended up to 30.06.2001 (Annexure P-2). The petitioner has also challenged the communication dated 28.03.2001 (Annexure P-4), whereby the petitioner was communicated the amount of Rs.32.50 lacs, which is payable for settlement under the Reserve Bank of India guidelines as adopted by the Corporation.

The petitioner applied for a loan for the purchase of machinery in the year 1994. A sum of Rs.26.41 lacs was sanctioned as loan out of which Rs.26.37 lacs was disbursed. Subsequently, another loan of Rs.4.55 lacs was disbursed on 03.02.1995 to meet out the working capital requirements. The petitioner, thereafter, applied for a fresh loan of Rs.13.20 lacs for technical up-gradation of unit, but a sum of Rs.12.06 lacs was disbursed on 18.06.1996. Since the petitioner failed to make the payments of the loan amounts, a notice dated 31.01.1997 (Annexure P-1) was issued demanding a sum of Rs.41,38,371/- as the outstanding amount due and payable by the petitioner as on 31.10.1996.

In the meantime, Reserve Bank of India came out with a proposal to settle the dues relating to Non Performing Assets (NPAs) for Public Sector Banks on 27.07.2000. Such guidelines of the Reserve Bank of India were adopted by the

respondent-Corporation and a circular in this regard was issued on 01.01.2001. A copy of such circular is appended as Annexure R-2. The settlement formula is contained in Clause (a) whereas the Sanctioning Authority, in respect of the amount of compromise, waiver or remission or write off, was delegated to Sub Committee.

The relevant clause reads as under:

“SETTLEMENT FORMULA – AMOUNT AND OFF DATE:

(a) NPAs classified as doubtful or loss as on 31st March, 1997.

The minimum amount that should be recovered under the guidelines in respect of compromise settlement of NPAs classified as doubtful or loss as on 31st March, 1997 would be 100% of the outstanding balance in the account as on the date on which loan was categorized as doubtful non-performing asset.

(d) Sanctioning Authority:

The decision on the compromise settlement and consequent sanction of waiver or remission or write off should be delegated to Sub Committee which will be placed before the Board of Directors for confirmation.”

However, the Sub Committee in its meeting held on 19.01.2001 changed the norms to determine the due amount. The revised norms are as under:

“(a) NPAs Classified as Doubtful or loss as on 31.03.1997

The minimum amount recoverable under the guidelines should be the outstanding balance as on 31.03.1997 and not the outstanding balance as on date on which the loan was categorized as doubtful/loss Non-Performing Assets + interest at SIDBI’s present refinance rate in respect of small scale and IDBI’s present refinance rate in respect of medium scale w.e.f. 01.04.1997 till the adjustment of loan amount in full;”

On the basis of the guidelines framed, the Corporation has communicated on 28.03.2001 that a sum of Rs.32.50 lacs is amount payable as per the Reserve Bank of India guidelines as adopted by the Corporation and that the petitioner should deposit a sum of Rs.8.12 lac as down payment on or before 31.03.2001 for consideration and further action. However, the petitioner did not accept the offer and invoked the writ jurisdiction of this Court.

Learned counsel for the petitioner has vehemently argued that the Sub Committee was only constituted to consider the waiver or remission or write off of the loan amount, but was not competent to modify the Reserve Bank of India Guidelines, which were adopted by the Board vide Circular dated 01.01.2001.

Mr. Sehgal, learned counsel representing the Corporation, pointed out that such decision of the Sub Committee was considered by the Board in its 270th Meeting under Agenda Item No.270.20 on 06.02.2001 and the proposal as contained in the Agenda Note was approved. The Agenda Note was for modification in RBI Scheme – Guidelines for recovery of dues relating to Non Performing Assets (NPAs).

A Division Bench of this Court in Lal Chand Katia Vs. Punjab Financial Corporation 2008 (1) ISJ (Banking) 74 has considered the provisions of the Banking Regulation Act, 1949 and the powers of the Reserve Bank of India to issue guidelines and its binding nature on the Corporations established under the State Financial Corporation Act, 1951 (for short ‘the SFC Act’). It has been held that the guidelines issued by the Reserve Bank of India under Section 21 read with Section 35-A of the Banking Regulation Act, 1949 are binding on the Scheduled Banks, but not on the Corporations established under the SFC Act and/or established under the Small Industries Development Bank of India Act, 1989. The relevant extract from the said judgment reads as under:

“17. A conjoint reading of the provisions of the enactments, referred to hereinabove, makes it clear that the RBI does not have any role in the establishment of the SFCs or Joint Financial Corporation, their share capital, management and business. It cannot give directions or lay down policy guidelines for regulating the functions of SFCs. The only role which it can play vis-à-vis SFCs is to give prior approval to the acceptance of deposits from a local authority and other persons, deposit of funds of the Financial Corporation and furnishing of returns (Sections 8(1), 33(2) and 38 of the 1951 Act). As against this, the IDBI used to play and now SIDBI plays some role under various provisions, i.e. Sections 3-A, 4-A, 4-B, 4-E, 10(c), 15(1), 25(e), 33(2), 35-A, 37-A, 39, 40(2)(b) and 48(1) of the 1951 Act. The State Government plays a major and significant role not only in the establishment of SFCs and Joint Financial Corporation, but also in their share capital, constitution of the Board of Directors, appointment of Chairman, Managing Director, establishment of offices and agencies of the financial Corporation and appointment of special authority. Section 39 of the 1951 Act empowers the State Government to give instructions on the question or policy and declares that the Board shall be guided by such instructions. The Board can frame regulations under Section 48(1) only after obtaining prior sanction from the State Government.

18. In view of the above analysis of the provisions of the various enactments, we hold that the RBI cannot give directions to the SFCs in the

matter of transaction of their business, including grants of loans and recovery thereof and it is within the exclusive domain of the SFCs to take appropriate decisions in the matter subject, of course, to the direction which may be given by the State Government in consultation with and after obtaining advice of the SIDBI on questions of the policy.

19. As a logical corollary to the above conclusion, we hold that Corporation is not bound to follow the guide-lines contained in letter dated 27.07.2000 read with letter dated 28.07.2000 and the same can neither be enforced against it nor a writ in the nature of mandamus can be issued directing it to settle the accounts of the petitioners in accordance with those guide-lines.”

In view of the said decision, the guidelines issued by the Reserve Bank of India are not per se binding on a Corporation established under the SFC Act. The Corporation through its Board is competent to modify the existing scheme of Reserve Bank of India or to frame its own scheme. The Corporation has decided to adopt the guidelines issued by the Reserve Bank of India with certain modifications. Such modifications were further modified by the Sub Committee in its meeting held on 19.01.2001. Such changes were subsequently approved by the Board of Directors on 06.02.2001.

Learned counsel for the petitioner has further argued that the Board could delegate its functions to the Sub Committee in terms of Section 43A of the SFC Act and that minutes of every meetings of the Sub Committee are to be laid before the Board in the next following meeting of the Board. Therefore, the Sub Committee can act only in terms of the powers delegated, but could not decide earlier for adoption of its decision by the Board.

We do not find any merit in the argument raised. The Board was to delegate any of its functions to a Committee, but even if such Committee has taken a decision, the Board could ratify any decision of the Sub Committee. The ratification has the affect of validating the decision of the Sub Committee from the date it was taken. In LPA No.39 of 2011 titled 'Sat Pal Vs. State of Punjab & others' decided on 09.09.2011, relying upon Hon'ble Supreme Court judgments reported as Parmeshwari

Prasad Gupta Vs. Union of India (1973) 2 SCC 543; High Court of Judicature for Rajasthan Vs. P.P.Singh (2003) 4 SCC 239; Marathwada University Vs. Seshrao Balwant Rao Chavan (1989) 3 SCC 132 and Maharashtra State Mining Corporation Vs. Sunil (2006) 5 SCC 96, a Division Bench of this Court of which one of us (Hemant Gupta, J.) was a Member has held that action of the Managing Committee in ratifying a decision, ratifies the act from the date, such decision was taken by the President.

In view of the aforesaid judgments, we find that the decision of the Sub Committee having been ratified by the Board in its meeting held on 06.02.2001, the guidelines as modified would alone can form basis of settlement of the loan account of the borrower such as the petitioner.

Consequently, we do not find any merit in the present writ petition. The same is dismissed. However, it shall be open to the petitioner to submit a proposal for One Time Settlement in terms of the Scheme, if any applicable, which shall be considered by the respondent-Corporation in accordance with law.

(HEMANT GUPTA)
JUDGE

27.04.2015
Vimal

(LISA GILL)
JUDGE