IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 23.07.2015

C.W.P.No.21031 of 2010

Sunil Mittal ...Petitioner

Versus

Union of India & another ...Respondents

C.W.P.No.2169 of 2011

Raj Kumar Avasthi & another ...Petitioners

Versus

Union of India & another ...Respondents

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

Present : Mr. Vaneet Sehgal, Advocate, for the petitioner(s).

Mr. Vivek Singla, Advocates, for respondent No.1.

Mr. V.M.Gupta, Advocate, for respondent No.2.

HEMANT GUPTA, J.

This order shall dispose of aforesaid two writ petitions raising identical question of law and facts i.e. the Punjab State Industrial Development Corporation (PSIDC) (for short 'the Corporation') is not a financial institution competent to initiate proceedings against the borrower under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short 'the Act').

Since the issue is legal, the facts for the present decision are not relevant. However, for the sake of brevity, it may be mentioned that the petitioners have availed financial assistance from the Corporation. Since the petitioners have failed to pay the amount of financial assistance, proceedings as contemplated under the Act or under the Securitisation and

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 against the petitioners were initiated. It is the said proceedings, which are sought to be disputed by the petitioners by way of present petitions.

The argument of learned counsel for the petitioners is based upon the fact that the respondent-Corporation has been declared to be a 'public financial institution' by way of notification dated 25.10.2005 (Annexure P-3) in terms of Section 4A of the Companies Act, 1956 (for short 'the Companies Act') by amending the notification dated 13.05.1978. The notification dated 25.10.2005 reads as under:

> "In exercise of the powers conferred by sub-section (2) of Section 4A of the Companies Act, 1956 (1 of 1956), the Central Government hereby specified the Punjab State Industrial Development Corporation Ltd. to be public financial institution and for that purpose makes the following further amendment in the notification of the Government of India, published in the Gazette of India, dated 13th May, 1978, in Part-II, Section 3(i) vide in the Ministry of Law, Justice and Company Affairs (Department of Company Affairs) number S.O.1329 dated 8th May, 1978, namely:-
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> In the said notification, after serial number 46, the following serial number and the entry relating thereto shall be inserted, namely:-
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> "47. The Punjab State Industrial Development Corporation Ltd. (PSIDC)""

It is pointed out that the respondent-Corporation has neither been established nor constituted by or under the Central Government, nor 51% of the paid-up share capital of the Corporation is controlled by the Central Government. In fact, it is 100% State owned Corporation registered under the Companies Act as a Government Company. The argument raised is that the respondent-Corporation is not an institution, which is controlled by the Central Government or the paid-up share capital is not less than 51% of the Central Government, therefore, such institution could not be declared as a 'public financial institution' in terms of Section 4A of the Companies Act. Therefore, the notification dated 25.10.2005 is illegal, as such Corporation could not have been declared as a 'public financial institution'.

In reply, the stand is that the Corporation is a Government Company, as provided under Section 617 of the Companies Act, wherein 100% holding is owned by the Government. The Central Government notified the respondent as a 'public financial institution' is based upon valid and justifiable reasons. The list of the public financial institutions declared under Section 4A of the Companies Act has been appended, which includes the National Housing Bank; Power Finance Corporation Limited; Indian Railways Finance Corporation Limited and Industrial Finance Corporation of India Ltd. apart from various State Financial Corporations established under the State Financial Corporation Act, 1951 etc. Therefore, the decision of the Central Government to notify the Corporation as a public financial institution is based upon reasonable criteria and is within the jurisdiction of the Central Government.

Section 2(h) of the Act and Section 2(m) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 read as under:

The Recovery of Debts Due to Banks and Financial Institutions Act, 1993

2. Definitions - xx xx

(h) "financial institution" means –

(i) a public financial institution within the meaning of section 4A of the Companies Act, 1956;

(ia) the securitization company or reconstruction company, which has obtained a certificate of registration under sub-section (4) of Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(ii) such other institution as the Central Government may, having regard to its business activity and the area of its operation in India by notification, specify;"

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

2. Definitions - xx xx

(m) "financial institution" means –

(i) a public financial institution within the meaning of section 4A of the Companies Act, 1956;

(ii) any institution specified by the Central Government under sub-clause (ii) of clause (h) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993;

(iii) the International Finance Corporation established under the International Finance Corporation (Status, Immunities and Privileges) Act, 1958;

(iv) any other institution or non-banking financial company as defined in clause (f)of section 45-I of the Reserve Bank of India Act, 1934, which the Central Government may, by notification, specify as financial institution for the purposes of this Act."

A 'financial institution' in terms of the aforesaid definitions is a public financial institution within the meaning of Section 4A of the Companies Act. On the other hand, sub-section (1) of Section 4A of the

Companies Act declares seven institutions mentioned therein as public financial institutions, whereas sub-section (2) empowers the Central Government to specify such other institution as it may think fit to be a public financial institution. The relevant extract of Section 4A of the Companies Act reads as under:

> "4A. Public financial institutions – (1) Each of the financial institutions specified in the sub-section shall be regarded, for the purposes of this Act, as a public financial institution, namely –
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> xx xx
>
> (2) Subject to the provisions of sub-section (1) the Central Government may, by notification in the Official Gazette, specify such other institution as it may think fit to be a public financial institution
>
> Provided that no institution shall be so specified unless –
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> (i) it has been established or constituted by or under any Central Act, or
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> (ii) not less than fifty-one per cent of the paid-up share capital of such institution is held or controlled by the Central Government."

Admittedly, the respondent-Corporation has been established as a Company wholly owned by the State of Punjab under the Companies Act, 1956. An institution, which can be declared to be public financial institution, has to satisfy either of the two tests i.e. it has been established or constituted by or under any Central Act or not less than 51% of the paid-up share capital of such institution is held or controlled by the Central Government.

In the present case, the respondent-Corporation has been incorporated under the Central Act i.e. the Companies Act, 1956. Therefore, it satisfies the parameters for declaring it to be a public financial institution in terms of sub-section (2) of Section 4A of the Companies Act.

In view of the above, we do not find any merit in both the writ petitions. The same are accordingly dismissed.

(HEMANT GUPTA)
JUDGE

23.07.2015
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(LISA GILL)
JUDGE