**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**CWP No.12679 of 2015**

**Date of decision: 7.7.2015**

**M/s Mahabir Techno Ltd. ….Petitioner**

**VERSUS**

**Union Bank of India and others .....Respondents**

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA**

**HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Bhal Singh Malik, Advocate for the petitioner.

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**HEMANT GUPTA, J.**

The petitioner has invoked the writ jurisdiction of this Court to claim a writ of mandamus for directing the Bank to follow the procedure prescribed by statutory guidelines issued by Reserve Bank of India (for short 'RBI') under Section 21 and 35A of the Banking Regulation Act, 1949.

The petitioner is a medium enterprise entity in terms of Micro, Small and Medium Enterprises Development Act, 2006 (for short 'the Act'). As per the said Act, a medium enterprise is an enterprise where the investment in plant and machinery is more than Rs.5 crore but does not exceed Rs.10 crore. As per the petitioner, it has installed a solvent extraction unit where raw rice bran is extracted to produce 85% de-oil for the purpose of cattle and poultry feed and the remaining 15% crude oil is extracted for in-house refinery consumption.

The assertion of the petitioner is that the petitioner is a Scheduled Industry falling in Heading 28 i.e. ‘Vegetable Oils and Vanaspati’ in the First Schedule of the Industries (Development and Regulation) Act, 1951, therefore, the Central Government is bound to protect the industry in public interest.

The assertion of the petitioner is that there has been an exponential growth of the business of the petitioner and the annual turnover in the financial year 2007-08 was Rs.47.19 crores which has touched Rs.128.50 crores in the year 2014-15. The petitioner alleged that the respondent-Bank has been arbitrarily charging excessive, usurious and exorbitant rate of interest, penal interest, compound interest, interest on interest etc. which the petitioner is not legally or contractually bound to pay. The request of the petitioner to reverse the excess amount of Rs.350 lacs has not been accepted. The petitioner claims that the petitioner has shown signs of ‘Incipient Sickness’ and has reached the ‘Handholding Stage’ as per the RBI directives but the Bank is not extending any help to enable the unit of the petitioner to come out of the financial difficulties, which it is bound in terms of the RBI guidelines issued from time to time particularly that on 01.11.2012 (Annexure P-3).

Learned counsel for the petitioner refers to large number of judgments to show that the guidelines issued by RBI are binding and to be followed by the Bank. It is admitted that the Bank has not initiated any action so far against the petitioner.

The question as to whether the RBI guidelines are binding is not an issue arising for consideration at this stage. On the strength of the guidelines, the petitioner wants additional funds from the Bank to come out of its financial problems. Whether additional funds should be provided or not is a complex decision of the Bank dependent upon commercial expediency, credit worthiness and credit rating of the borrower. The guidelines by RBI are of different nature like charging of interest examined by a Constitution Bench of Hon'ble Supreme Court in Central Bank of India v. Ravindra and others, (2002) 1 SCC 367. Such binding guidelines can be given effect to by the Banks and the financial institutions.

On the other hand, though the guidelines for rehabilitation of sick Micro, Small and Medium Enterprises are binding but the binding nature is of the consideration of the request of the borrower for rehabilitation. There cannot be any mandate that the Bank must give additional funds to a borrower even if the Bank finds that infusing of further funds with an entity of defaulter will not be in the interest of the Bank and that the Bank has a potential to lose the additional funds as well.

Still further, we find that whether the Bank considers the proposal submitted by the petitioner or not or decides to take any action against the petitioner for not paying the dues of the Bank cannot be examined at this stage. No action has been taken by the Bank yet against the petitioner. Therefore, it could not be examined at this stage whether the guidelines have been violated or being followed. There is nothing on record to presume that the Bank will not follow the guidelines. Therefore, the present is not a stage to examine any of the contentions raised by the petitioner.

The present writ petition is premature and is thus dismissed.

**(HEMANT GUPTA)**
**JUDGE**

**JULY 7, 2015**
'D. Gulati'

**(LISA GILL)**
**JUDGE**