

CWP No.13207 of 2015

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

CWP No.13207 of 2015
Date of decision: 15.12.2015

M/s S.P. Singla Construction Pvt. Ltd.

....Petitioner

Versus

Reserve Bank of India and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- | | | |
|----|--|------------|
| 1) | Whether Reporters of the local papers may be allowed to see the judgment ? | Yes |
| 2) | To be referred to the Reporters or not ? | Yes |
| 3) | Whether the judgment should be reported in the Digest ? | Yes |

Present: - Mr. Akshay Bhan, Sr. Advocate, with
Mr. A.S. Talwar, Advocate, for the petitioner.
Mr. Deepak Suri, Advocate, for respondents No.1 and 2.
Mr. Anil K. Ahuja, Advocate, for respondents No.3 and 4.
Mr. Vivek Singla, Advocate, for respondent No.5.

PARAMJEET SINGH, J.

Instant writ petition under Article 226 of the Constitution of India has been filed for issuance of a writ in the nature of *certiorari* for setting aside the letter dated 20.01.2015 (Annexure P-12) written by respondent No.3 – State Bank of Bikaner & Jaipur (for short 'SBB&J'), impugned order dated 18.05.2015 (Annexure P-18) passed by SBB&J and caution advice No.3425 (Annexure P-1) issued by respondent No.1 - Reserve Bank of India (for short 'RBI') without considering the material fact that petitioner is not an associate concern of respondent No.5 – Sarvodaya Highways Limited (for short 'SHL'), with further prayer to remove the name of the petitioner company from the list of caution

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advice No.3425 maintained by RBI on advice of respondent No.3. Further prayer has been made for directing respondents No.1 and 2 to intimate all the banks not to put on hold the application filed by the petitioner company for enhancement of the facilities and further prayer has been made for issuance of a writ in the nature of *mandamus* directing an independent and impartial agency to conduct an inquiry against the bank officials of respondents No.3 and 4, who disbursed the loan to respondent No.5 without considering the report dated 24.12.2011 submitted by State Bank of Patiala.

Brief facts of the case, as averred in the petition, are that petitioner is a private limited company and registered under the Companies Act, 1956 having its registered office within the State of Haryana. Petitioner company is a leading company engaged in the business of infrastructure activities. Respondent No.1 – RBI is responsible for regulating the banking sector from time to time. RBI relying upon the information supplied by various banks for initiating administrative and/or quasi-judicial action against the borrowers at the instance and/or recommendation of the bankers concerned for frauds/manipulations in accounts of the said borrowers, has issued guidelines pertaining to laying down the procedure qua issuance of caution advice to be circulated amongst all the bankers thereby cautioning the bankers to make detailed and in-depth enquiries while dealing with the parties/borrowers mentioned in such advice. As a result, various restrictions are put on the banks in continuing facilities or

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enhancing facilities or recalling the facilities, as the case may be, to the said borrowers/account holders.

In the instant case, caution advice No.3425 (Annexure P-1) was issued by respondent No.1 noticing serious irregularities committed in the conduct and operation of the accounts relating to respondent No.5 – SHL of which Gurinder Kumar Garg is one of the directors. Number of irregularities have been committed by SHL wherein Gurinder Kumar Garg and his family members got diverted the loan proceeds to their accounts, thus allegedly defrauded the bank to the tune of ₹ 901.87 crores. The turnover of the petitioner company is ₹ 801 crores (Approx.) and petitioner company is leading construction company engaged in the business of infrastructure activities. Respondent No.3 – SBB&J is an associate of State Bank of India and is banker of respondent No.5. Respondent No.3 sought to take action against respondent No.5. Respondent No.5 is also an infrastructure company engaged in the construction of highways, roads and other buildings and has borrowed large amounts from respondent No.3. Respondent No.5 allegedly played a fraud to avail/obtain loan and utilize the credit facilities which has resulted into recommendation by respondent No.3 to respondent No.1, which has led to issuance of caution advice displaying the name of the petitioner company on the list of caution advice issued by respondent No.1. Reflection of name of the petitioner company has been on account of an alleged mis-representation by respondent No.5 stating that petitioner is an associate of respondent No.5 and thus while listing

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respondent No.5 in the caution list, name of petitioner also finds mention as an associate concern. The only connection of petitioner which is sought to be projected with respondent No.5 is that directors of respondent No.5 are holding 10.59% shares in the petitioner company and one of its directors, namely, Gurinder Kumar Garg is a main guarantor of petitioner company. Except the above, the petitioner company has no concern and relationship with respondent No.5 - SHL.

The main prayer in the present petition is for withdrawal and removal of petitioner company from the caution advice No.3425 issued by respondent No.1 – RBI, in which petitioner company has been shown as associate concern of respondent No.5 – SHL wherein information/fraud reported by respondent No.3 allegedly committed by respondent No.5 has been shown, resulting thereby showing linkage or association of the petitioner with respondent No.5. It is contended that on 22.09.2011, respondent No.5 – SHL requested respondent No.4 – SBB&J for sanction of credit facilities but it wrongly referred that Gurinder Kumar Garg, director of respondent No.5 is associated with petitioner company since its inception and Gurinder Kumar Garg is the main guarantor in fund based and non-fund based credit facilities of the company from State Bank of Patiala. The relevant letter is dated 22.09.2011 (Annexure P-2). As per credit information report dated 24.12.2011 (Annexure P-3) given by petitioner's banker State Bank of Patiala, Sector 8, Chandigarh, name of respondent No.5 does not find mention in the names and addresses of associate concerns of the

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petitioner. The petitioner came to know about the caution advice on 16.12.2014 and it immediately wrote to M.D., SBB&J, H.O. Tilak Marg, Jaipur (Rajasthan) asking as to why the name of the petitioner company has been included as an associate concern of respondent No.5 as inclusion of petitioner company's name in the caution advice has caused an irreparable loss to it. On 10.01.2015 petitioner company filed a complaint (Annexure P-11) to the Banking Ombudsman requesting to take necessary action against SBB&J and to instruct them to act expeditiously to get the petitioner company's name removed from the caution advice No.3425 of RBI. On 27.01.2015 reply was received from Public Information Officer, office of G.M. Banking Operations and Supervision, RBI, Centre-1, Cuffe Parade, Colaba-Mumbai stating that RBI issues caution advices to banks for the frauds reported by them to enable the banks to make detailed and in depth enquiries before granting/renewing any facility to the named entities/firms. On 05.02.2015 (Annexure P-14) petitioner company sent a letter to the General Manager, HR & General Administration, SBB&J (Fraud Monitoring Cell) H.O. Tilak Marg, Jaipur (Rajasthan) through M/s Thakordas & Madgavkar Advocate and Solicitor and it was submitted that the petitioner company cannot be victimized and punished by arbitrary acts of the bank causing irrevocable damage to the reputation of the company and collateral damage viz-a-viz other banks. The concerned officers were requested to take remedial action. After feeling aggrieved by the order dated 27.01.2015 passed by Central Public Information

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Officer, RBI, on 10.02.2015 (Annexure P-15) petitioner filed first appeal under RTI Act, 2005 before Dr. Smt. Deepali Pant Joshi Executive Director, RBI, World Trade, Centre, Cuffe Parade, Mumbai for a direction to the RBI to supply the complete information relating to application dated 27.12.2014. On 24.03.2015 order (Annexure P-17) was passed by Dr. Deepali Pant Joshi ED RBI and it was stated that the response furnished by the CPIO was just and reasonable and there was no scope for any interference.

In pursuance of notice of motion, respondents filed their respective written statements.

Respondents No.1 and 2 in their written statement have averred that there is no violation of any legal and/or fundamental rights of the petitioner and further there is no violation of the principles of natural justice, therefore, this writ petition is not maintainable and deserves dismissal. The impugned Caution Advice is founded on sound reasons and rational principles, and is not unreasonable, colourable, arbitrary or violative of any fundamental rights or any provisions of the Constitution or statute and the same has been issued by RBI to ensure the stability of banking system in the country in public interest. Respondent No.1 has been constituted under the Reserve Bank of India, Act, 1934 (hereinafter referred to as 'the 1934 Act') for regulating the issue of bank notes and for keeping of reserves with a view to securing monetary stability in India and generally to operate the currency and credit system of the Country, to its advantage. RBI acts as the Central

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Bank of the country, exercises supervisory and regulatory powers as contemplated under the 1934 Act, Banking Regulation Act, 1949 as well as under the various other allied laws. Respondent No.1 being the regulatory and supervisory authority for the banking system in the country, it is its utmost duty to protect the interests of the banks in this Country. As per the instructions issued by respondent No.1, all banks in this Country are required to report the cases which have been classified as 'fraud'. This information is strictly between the reporting bank and respondent No.1. Unless the concerned bank reports that a particular entity is involved in certain transactions which could be classified as 'fraud', no caution advice would be issued by respondent No.1. The purpose of issuing the 'caution advice' is nothing but informing banks to exercise 'caution' while dealing with the particular entity. Mere inclusion of name in the caution advice or issuing a caution advice is not a direction to banks to stop granting facilities and/or continuing existing facilities enjoyed by them. The purpose of issuing caution advice is nothing but suggesting the banks to make detailed and in depth enquiries before granting/enhancing credit facilities. Whether to grant credit facilities or not or extending the existing credit facilities is purely commercial decision of concerned banks. Respondent No.1 has no role in such decision making process. Caution advice is not black listing. Issuance of caution advice is based on information received from various banks and circulated in confidence for the advantage of other banks which are likely to deal with the requests for credit facilities. Respondent

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No.1 is not responsible in any way for the loss, if any, caused to the borrower since there is no instruction from RBI to any bank not to grant/enhance credit facilities in any way. The primary responsibility of respondent No.1-RBI is to ensure the stability of the banking system in the country. The Guidelines are issued by it from time to time keeping in view this objective. Section 36(1) of the Banking Regulation Act empowers respondent No.1 to caution or prohibit banks against entering into certain transactions and generally give advice to any bank. Thus, the impugned Caution Advice is legal as the same has been issued under the statutory powers vested in respondent No.1. The impugned Caution Advice has been issued by respondent No.1 based on a fraud reported by SBB&J wherein the petitioner company was mentioned as an associate company of respondent No.5.

Respondents No.3 and 4 in their written statement have averred that on the request of respondent No.5, it was allowed financial accommodation comprising of working capital limit of ₹ 25.00 Crores, including a Bank Guarantee limit of ₹5.00Crores, in December 2011, by them, which stood augmented to ₹55.00 Crores, including a Bank Guarantee limit of ₹5.00 crores, in July, 2012, on the request of respondent No.5. The accounts of respondent No.5 with them stood classified as “Non Performing Asset” on 22.08.2013. SHL's account was declared as a Fraud Account on 19.05.2014. An FIR stands registered, on their complaint against respondent No.5 and its promoters/management which is presently under investigation by Central

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Bureau of Investigation. As per the mandates of RBI, the fraud perpetrated by respondent No.5 was reported to respondent No.1-RBI on the prescribed format, called FMR 1 on 29.05.2014, whereupon respondent No.5 was listed in the caution list maintained by RBI vide caution list No.3425 dated 16.09.2014. So far as the averments relating to association of the petitioner and respondent No.5 are concerned, it is submitted by respondents No.3 and 4 that while applying for credit facilities in the year 2011, respondent No.5 submitted its profile to them clearly stating that its main promoter, Sh. Gurinder Kumar Garg has been associated with construction sector for the last 15 years with the petitioner and has given collateral security and his personal guarantee for the credit facilities availed by the petitioner from State Bank of Patiala, Axis Bank Ltd. and ICICI Bank to the tune of ₹475.00 cores and purported that the petitioner and respondent No.5 belong to the same group. Further in his own profile, Sh. Gurinder Kumar Garg, also submitted that he has incepted the petitioner. It was further declared that the other promoter, Sh. Aashutosh Garg, had undergone intensive training from the petitioner and the promoter directors of respondent No.5, namely, Sh. Gurinder Kumar Garg, Smt. Aruna Garg, Sh. Aashutosh Garg and Sh. Aayush Garg, held respective investments of ₹25.85 lakhs, ₹24.10 lakhs, ₹20.00 lakhs and ₹15.00 lakhs, totalling to ₹84.95 lakhs, in the petitioner company. Gurinder Kumar Garg, the main promoter of respondent No.5, has been associated with the petitioner as its Auditor and Chartered Accountant since the inception of the

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petitioner till 2010, had been its Director in the year 2010, and is very closely related to Sh. Sat Pal Singla, the main promoter of the petitioner. The four promoter Directors of respondent No.5 also filed their respective affidavits as regards their assets and liabilities showing their investments in the petitioner. Therefore, petitioner is an associate of respondent No.5 and accordingly named as such in the related column of the prescribed format i.e. FMR 1 submitted to RBI. The caution advice, as a whole does not suffer from any illegality, arbitrariness or even impropriety.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner vehemently contended that caution advice is misdirected against the petitioner alleging that petitioner is an associate concern of respondent No.5 – SHL. Admittedly, the information in respect of the account of respondent No.5 with respondent No.3, mentioned in the caution advice is supplied by respondent No.3 – SBB&J to respondent No.1. Petitioner company is not borrower/guarantor in respect of any facilities granted by respondent No.3 to respondent No.5. None of the directors of the petitioner company are directors or shareholders in respondent No.5 and have no connection with respondent No.3. Impugned caution advice is in respect of the conduct/default of respondent No.5 and no reference has been made in the caution advice No.3425 to the petitioner company or its involvement in the alleged fraud by respondent No.5 played with

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respondent No.3. The State Bank of Patiala in its confidential report given to respondent No.3 has stated that petitioner is nowhere connected with respondent No.5. Petitioner does not fall in the definition of “associate concerns” as per guidelines of RBI or the Companies Act. Thus, the impugned caution advice is misdirected, resultantly affecting the credibility of the petitioner. Caution advice is the result of non-application of mind, without any justification and also without taking into consideration any relevant factors, as such not sustainable in the eyes of law. Admittedly, the caution advice is issued under the provisions of the 1934 Act and the guidelines issued under the said provisions. The guidelines are statutory in nature. Caution advice (Annexure P-1) has been issued without following the principles of natural justice and is the result of undue haste. Since it affects the credibility of the petitioner and as such is not only violative of Article 14 of the Constitution of India but also Article 19(1)(g) of the Constitution of India.

Per contra, learned counsel for the respondents virtually argued what is stated in the written statements and briefly noticed above. However, sum and substance of the contentions raised by learned counsel for the respondents is that learned counsel for respondents No.1 and 2 vehemently contended that there is no violation of any legal or fundamental rights of the petitioner or the principles of natural justice. Caution advice issued by respondent No.1 is founded on sound reasons and rational principles and is not unreasonable or colourable or arbitrary

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exercise of powers. Caution advice has been issued by the RBI to ensure stability of banking system in the country and is in the public interest. The purpose of caution advice is nothing but to inform the banks to exercise caution while dealing with the particular entity. Mere inclusion of name in the caution advice or issuing caution advice is not a direction to the bank to stop granting facilities or continuing existing facilities enjoyed by anyone. The basic purpose of such caution advice is to make aware banks to make detailed and in-depth enquiries before granting and enhancing credit facilities. Caution advice (Annexure P-1) is legal and has been issued exercising the statutory powers vested in RBI.

Learned counsel for respondents No.3 and 4 vehemently contended that Gurinder Kumar Garg who is main guarantor of the petitioner company, is director of respondent No.5 and also director of other companies and on his personal guarantee the credit facilities have been availed by the petitioner from State Bank of Patiala, Axis Bank Ltd. and ICICI to the tune of ₹475.00 crores. Gurinder Kumar Garg one of the directors of respondent No.5 remained associated with the petitioner till 2010 as its auditor and also guaranteed credit facilities availed by the petitioner. Petitioner is indeed an associate concern of respondent No.5 for limited purpose of caution advice in terms of fraud committed by the directors of respondent No.5 and one of its directors i.e. Gurinder Kumar Garg being main guarantor for the petitioner.

I have given my anxious and thoughtful consideration to the contentions raised by learned counsel for the parties.

Before I deal with the contentions raised by learned counsel for the parties, it would be appropriate to refer to the relevant provisions of law under which the RBI exercises its powers.

POWER OF RBI TO ISSUE MASTER CIRCULAR AND CAUTION ADVICE

RBI is the monetary regulator and one of the watchdogs of finance and economy of the nation. It derives its power from the Act of 1934 and the Banking Regulation Act, 1949 (hereinafter referred to as 'the 1949 Act').

Section 5(ca) of the 1949 Act reads as under: -

"5(ca). 'banking policy' means any policy which is specified from time to time by the Reserve Bank in the interest of monetary stability or sound economic growth, having due regard to the interests of the depositors, the volume of deposits and other resources of the bank and the need for equitable allocation and the efficient use of these deposits and resources."

Section 5(ca) of the 1949 Act defines the banking policy as specified from time to time by the RBI in the interest of banking system/in the interest of monetary stability and sound economic growth keeping due regard to the interests of the depositors, volume of deposits and other resources of the bank. Section 6 of the 1949 Act specifies the forms of business in which the banking companies may engage. Section 21 of the 1949 Act states that where RBI is satisfied that it is necessary or expedient in the public interest or in the interest of depositors or banking policy so to do, it may determine the policy in relation to the advances to be followed by the banking companies generally or by any

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banking company in particular. The concerned banking companies shall be duty bound to follow the policy so determined. Under Section 22 of the 1949 Act no company can carry on banking business in India, unless it holds a license issued by the RBI. In view of Section 22(4) of the 1949 Act RBI can cancel the license of the banking company. Section 35 of the 1949 Act authorizes the RBI to conduct statutory inspection of any banking company or cause a scrutiny of the affairs of a banking company and its books of accounts. Under Section 35-A of the 1949 Act, RBI has been empowered to issue directions to the banking companies generally or to any banking company in particular in public interest keeping in view the interest of the banking policy or to prevent the affairs of the banking company being conducted in a manner detrimental to the interest of its depositors or in a manner prejudicial to the interest of the banking company. Under Section 36(1) of the 1949 Act, RBI is empowered to caution or prohibit banks against entering into certain transactions and generally give advice to any bank. In this manner, RBI is empowered under the law and as it may consider appropriate and essential, it may issue directions from time to time keeping in view the larger interest of a banking company, its depositors and the banking sector as a whole. In April 1994, the RBI framed a scheme of disclosure of information on defaulting borrowers of banks and the financial institutions (FIs) for collection/dissemination of information from/to "banking companies". Under the Scheme, the banks and the notified FIs were advised on 23.04.1994 to furnish to the RBI the

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prescribed details of defaulting borrowers with outstanding amount (both funded and non-funded) of one crore and above which may have been classified as doubtful and/or loss. The main objectives of the Scheme are (i) to alert the banks and FIs and to put them on guard against the borrowers who had defaulted in their dues to other lending institutions and (ii) to make public the name of the defaulting borrowers against whom suits had been filed by the banks/FIs. The Central Vigilance Commission convened a meeting with the bankers on 24.11.1998. In the said meeting it was decided that the banks would report all cases of willful default of ₹ 25 lac and above to the RBI, which in turn, would circulate such lists to all banks on a quarterly basis. In pursuance of the instructions of the Central Vigilance Commission, the RBI framed a scheme with regard to willful defaulters and the same was made applicable with effect from 01.04.1999. The RBI continues to disseminate exclusively to the banks and financial institutions for their confidential use the credit information regarding willful defaulters of ₹ 25 lac and above (non-suit filed accounts) in a consolidated manner as reported for the purpose by the banks and financial institutions. In view of the 1934 Act and the 1949 Act, circulars are issued which are carefully designed by a body of experts. The objective is to build up an adequate, comprehensive and reliable information system on borrowers so that such willful defaulters are barred from further institutional credit in terms of the penal measures listed out therein. From time to time RBI issued master circulars which set out broad guidelines. The banks/FIs

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are expected to follow them while dealing with individual cases. It is common knowledge that many types of frauds are committed and units are shown as “Non-performing Assets” (NPA), which is a big threat to the economy of the nation. The borrowers misuse the amount disbursed by the banks/FIs thereby causing immense loss to a particular bank. Keeping in view the nature of duties, functions and role which RBI plays as premier regulator of financial health of the country, it is within the scope and power of the RBI to issue master circular/caution notice which are always in the interest of the banking system and economy of the country.

In the light of above provisions, now I would examine the legality and validity of the caution advice No.3425 (Annexure P-1) issued by the RBI, as the entire issue revolves around the issuance of the said caution advice.

Need to issue caution advice appears to prevent the borrowers/guarantors from indulging in fraudulent transactions on the basis of misrepresentation/false record etc. It is common knowledge that many a times frauds are committed with various banks/FIs. The purpose of issuance of master circulars/caution advice appears to be part of the banking policy and to maintain transparency with regard to advancement of loans to various borrowers. Even under the master circular which is issued in pursuance of the meeting with the Chief Vigilance Commission, the grievance redressal mechanism is provided, which is with a purpose so that borrowers may not be harassed by the bank

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officials and their grievance could be redressed in accordance with law. The Parliament has enacted the Act of 1934 and the Act of 1949 for regulation of banking business which is a special kind of business. Banking business is the business of acceptance of withdrawable deposits of money from the public for the purpose of lending or investment. Banks and FIs are the principal means of transmitting the credit policies of the country. Keeping in view the delicate issue of country's economy, the failure of one bank can have a disastrous effect on the whole banking system. All these basic principals are embodied in the banking laws of India i.e. the 1934 Act, and the 1949 Act. The banks as financial instrumentalities are required to strive to fulfill, not only the object of achieving commercial efficiency, but also to serve the object of public interest. The scope of powers of RBI has been examined in various judgments by various Courts of the country.

Hon'ble Supreme Court in ***Peerless General Finance and Investment Co. Ltd. v. Reserve Bank of India***, AIR 1992 SC 1033 has held as under :-

"30. Before examining the scope and effect of the impugned paragraphs (6) and (12) of the Directions of 1987, it is also important to note that the Reserve Bank of India which is bankers' bank is a creature of statute. It has a large contingent of expert advisers relating to matters affecting the economy of the entire country and nobody can doubt the bona fides of the Reserve Bank in issuing the impugned directions of 1987. The Reserve Bank plays an important role in the economy and financial affairs of India and one of its

*important functions is to regulate the banking system in the country. It is the duty of the Reserve Bank to safeguard the economy and financial stability of the country. While examining the power conferred by section 58A of the Companies Act, 1956, on the Central Government to prescribe the limits up to which, the manner in which and the conditions subject to which deposits may be invited or accepted by non-banking companies, this court in **Delhi Cloth and General Mills Co. Ltd. v. Union of India, AIR 1983 SC 937**, observed as under :-*

"Mischief was known and the regulatory measure was introduced to remedy the mischief. The conditions which can be prescribed to effectuate this purpose must, a fortiori, to be valid, fairly and reasonably, relate to checkmate the abuse of juggling with the depositors/investors hard earned money by the corporate sector and to confer upon them a measure of protection namely availability of liquid assets to meet the obligation of repayment of deposit which is implicit in acceptance of deposit. Can it be said that the conditions prescribed by the Deposit Rules are so irrelevant or have no reasonable nexus to the objects sought to be achieved as to be arbitrary ? The answer is emphatically in the negative. Even at the cost of repetition, it can be stated with confidence that the rules which prescribed conditions subject to which deposits can be invited and accepted do operate to extend a measure of protection against the notorious abuses of economic power by the corporate sector, to the detriment of depositors/investors, a segment of the society which can be appropriately described as weaker in relation to the mighty corporation. One need not go

so far with Ralph Nader in America incorporated to establish that political institutions may fail to arrest or control this ever-widening power of corporations. And can one wish away the degree of sickness in private sector companies ? To the extent companies develop sickness, in direct proportion the controllers of such companies become healthy. In a welfare State, it is the constitutional obligation of the State to protect socially and economically weaker segments of the society against the exploitation by corporations. We, therefore, see no merit in the submission, that the conditions prescribed bear no relevance to the object or the purpose for which the power was conferred under section 58A on the Central Government."

31. The function of the court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts.

*52. This court in **Joseph Kuruvilla Vellukunnel v. Reserve Bank of India**, AIR 1962 SC 1371 held that the RBI is 'a bankers' bank and 'lender of the last resort'. Its objective is to ensure monetary stability in India and to operate and regulate*

the credit system of the country. It has, therefore, to perform a delicate balance between the need to preserve and maintain the credit structure of the country by strengthening the rule as well as apparent credit structure of the banks operating in the country and the interest of depositors. In an underdeveloped country like ours, where majority of the population are illiterate and poor and are not conversant with banking operations and in underdeveloped money and capital market with mixed economy, the Constitution charges the State to prevent exploitation and so the RBI would play both promotional and regulatory roles. Thus the RBI occupies a place of 'pre-eminence' to ensure monetary discipline and to regulate the economy or the credit system of the country as an expert body. It also advises the Government in public finance and monetary regulations. The banks or non-banking institutions shall have to regulate their operations in accordance not only with the provisions of the Act but also the rules and directions or instructions issued by the RBI in exercise of the power thereunder. Chapter 3-B expressly deals with regulations of deposit and finance received by the RNBCs. The directions, therefore, are statutory regulations."

Hon'ble Supreme Court in ***All India Bank Employees Association v. National Industrial Tribunal***, AIR 1962 SC 171 has held as under:-

"If it was not the Reserve Bank of India, the only other authority that could be entrusted with the function would be the Finance Ministry of the Government of India and that department would necessarily be guided by the Reserve Bank having regard to the intimate knowledge which the Reserve Bank has of the banking structure of the country as a whole

and of the affairs of each bank in particular.

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Nor do the powers of the Reserve Bank end there. The Reserve bank not only has powers over banking companies while they are functioning, but it has also powers when the banking companies wish or are forced to cease to function. If a banking company wants to suspend its business and applies to the High Court for a moratorium, the application is not maintainable, unless it is accompanied by a report of the Reserve Bank indicating that in the opinion of the Reserve Bank the banking company will be able to pay its debts. When the High Court grants the reliefs without such report, it has to call for a report from the Reserve Bank. The High Court is also required to have regard to the interests of the depositors, and even during the period of moratorium granted by the High Court, the Reserve Bank can apply for the winding up of the banking company. Sections 39 and 41A give special powers to the Reserve Bank in winding up proceedings. Even in voluntary winding up of a banking company, the Reserve Bank has to certify that the banking company is able to pay in full all its debts to its creditors, as they accrue. In amalgamation of banking companies, the scheme has to be approved by the Reserve Bank. Similarly, in compromises or arrangements between the banking company and its creditors, the Reserve Bank has to be satisfied. In all these matters, the satisfaction, inter alia, must be as to the interests of the depositors. In reconstruction of banking company after an application by the Reserve Bank for an order of moratorium, the Reserve Bank has to satisfy itself and prepare a scheme, which inter alia must be in the interests of the depositors."

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In the light of above discussion, law is well-settled that the RBI which is the supreme bank of the country is empowered to regulate the banking system and issue directions from time to time under the 1934 Act as well as under the 1949 Act.

Now the question, which arises for consideration, is whether issuance of caution advice No.3425 by the RBI is justified and before issuance, opportunity of hearing was required to be given to the petitioner?

The facts which need to be considered for this purpose are that admittedly respondent No.5 is the main guarantor of the petitioner and has given a bank guarantee. Gurinder Kumar Garg is one of the directors of SHL and is the main guarantor of the petitioner-company. Account of respondent No.5 was declared as a fraud account on 19.05.2004 and respondent No.5 has also been declared as “Non-performing Asset”, even FIR has been registered against respondent No.5, its promoter and management which is under investigation by the CBI. It is admitted fact that Gurinder Kumar Garg has given collateral security as his personal guarantee for credit facilities availed by the petitioner from the State Bank of Patiala, Axis Bank and ICICI Bank to the tune of ₹475.00 cores. Otherwise also, Gurinder Kumar Garg, the main promoter of respondent No.5, has remained associated with the petitioner as its Auditor and Chartered Accountant since the inception of the petitioner till 2010, and had also been its Director in the year 2010, and is very closely related to Sh. Sat Pal Singla, the main promoter of the

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petitioner-company. Gurinder Kumar Garg, his wife Smt. Aruna Garg and his sons Sh. Aashutosh Garg and Sh. Aayush Garg, held respective investments totalling to ₹84.95 lakhs in the petitioner company. Thus, it appears that they have direct concern with the petitioner. Thus, it is clear that Gurinder Kumar Garg, the main promoter of respondent No.5, also remained associated with the petitioner as its Auditor and Chartered Accountant since the inception of the petitioner till 2010, and had also been its Director and his family members have made investment in the petitioner company. It is sufficient to conclude that Gurinder Kumar Garg, main guarantor of the petitioner company and director/promoter of respondent No.5, which is a defaulter to the tune of about ₹ 910 crores, is certainly associated with the petitioner. The status of borrower and the guarantor is the same. In case petitioner fails to pay the amount, the recovery can only be made from the guarantor. So I am of the definite view that issuance of impugned caution advice is justified and I find nothing wrong in it.

Now the question arises whether before issuance of caution advice, hearing was required to be given to the petitioner?

The feasibility and practicability of granting hearing, recording of reasons and communicating the same to the parties has been explained by the Hon'ble Supreme Court in ***Joseph Kuruvilla Vellukunnel v. Reserve Bank of India***, AIR 1962 SC 1371, as under: -

"But the most important function of the Reserve Bank is to regulate the banking system generally. The Reserve Bank has

been described as a bankers' bank. Under the Reserve Bank of India Act, the scheduled banks maintain certain balances and the Reserve Bank can lend assistance to those banks 'as a lender of the last resort'. The Reserve Bank has also been given certain advisory and regulatory functions. By its position as a central bank, it acts as an agency for collecting financial information and statistics. It advises Government and other banks on financial and banking matters, and for this purpose, it keeps itself informed of the activities and monetary position of scheduled and other banks and inspects the books and accounts of scheduled banks and advises Government after inspection whether a particular bank should be included in the Second Schedule or not. Every scheduled bank is required to send to the Reserve Bank and to the Central Government a weekly return of its position in a form, which is prescribed. Sometimes, however, the Reserve Bank allows a particular bank to send its returns once a month instead of every week. From these returns, the Reserve Bank prepares and publishes consolidated statements showing the monetary position in the country. The inclusion of a bank in the Second Schedule is the function of the Reserve Bank, and under sections 42(6)(a)(iii) and (b)(ii) it satisfies itself, inter alia, that the affairs of the particular bank are not being conducted in a manner detrimental to the interests of its depositors. The Reserve Bank has further the power to prohibit any scheduled bank from receiving, after a week, any fresh deposits."

Hon'ble Supreme Court in **Virendra v. The State of Punjab and another**, AIR 1957 SC 896 has observed as under: -

"Legislature had to ask itself the question : who will be the appropriate authority to determine at any given point of time as to whether the prevailing circumstances require some

restriction to be placed on the right to freedom of speech and expression and the right to carry on any occupation, trade or business and to what extent ? The answer was obvious, namely, that as the State Government was charged with the preservation of law and order in the State, as it alone was in possession of all material facts it would be the best authority to investigate the circumstances and assess the urgency of the situation that might arise and to make up its mind whether any and, if so, what anticipatory action must be taken for the prevention of the threatened or anticipated breach of the peace. The court is wholly unsuited to gauge the seriousness of the situation, for it cannot be in possession of materials which are available only to the executive Government. Therefore, the determination of the time when and the extent to which restrictions should be imposed on the Press must of necessity be left to the judgment and discretion of the State Government and that is exactly what the Legislature did by passing the statute... Quick decision and swift and effective action must be of the essence of these powers and the exercise of it must, therefore, be left to the subjective satisfaction of the Government... To make the exercise of these powers justiciable and subject to the judicial scrutiny will defeat the very purpose of the enactment."

In the light of above provisions, I am of the opinion that it was not necessary that petitioner should have been given detailed opportunity of hearing in this regard. Otherwise also, petitioner already availed the remedy before the Executive Director of the RBI with regard to issuance of caution advice.

The basic purpose of the caution advice is nothing but

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informing the banks to exercise caution while dealing with a particular entity, corporation, individual etc. Mere inclusion of name in the caution advice or issuing caution advice is not a direction to the bank to stop granting facilities or continuing existing facilities enjoyed by them. It is only suggestion to the banks to make detailed and in-depth enquiries before granting/enhancing credit facilities. To grant credit facilities or not or extend existing credit facilities or not is purely commercial decision of the concerned banks and RBI has no role to play in such decision making process. Caution advice is not a black-listing. Caution advice is based on information supplied by various banks and circulated in confidence for the advantage of other banks which are to deal with the requests for credit facilities. In this manner, it is only the internal correspondence which is of confidential nature between the RBI and banks and the FIs.

Hon'ble Supreme Court in ***Sudhir Shantilal Mehta v. C.B.I.***, AIR 2009 SCW 5709 has held as under: -

"...Having regard to the fact that the Reserve Bank of India exercises control over the Banking Companies, we are of the opinion that the said Circular letter was binding on the Banking Companies. The officials of UCO Bank were, therefore, bound by the said circular letter."

The Madhya Pradesh High Court in ***The State of Madhya Pradesh v. Ramcharan***, AIR 1977 MP 68 has held as under:-

"6. Although the Constitution does not contain any generic definition of law, it defines "law" for purposes of Article 13

to include "any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law". Article 366(10) of the Constitution also defines the expression "existing law" to mean "any law, Ordinance, Order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any legislature authority or person having power to make such law, Ordinance, order, bye-law, rule or regulation". Another definition which is relevant here is the definition of the expression "Indian law" in the General Clauses Act, 1897. Section 3(29) of this Act defines "Indian Law" to mean "any Act, Ordinance, regulation, rule, order or bye-law, which before the commencement of the Constitution had the force of law in any Province of India or part thereof and hereafter has the force of law in any Part A State or Part C State or part thereof, but does not include any Act of Parliament of the United Kingdom or any Order in Council, rule or other instrument made under such Act". These definitions go to confirm that under our legal order "law" does not include only legislative enactments but it also includes rules, orders, notifications etc. made or issued by the Government or any subordinate authority in the exercise of delegated legislative power.

*... 7. The question relating to a post-constitution order or notification in the context whether it amounts to law was considered by the Supreme Court in **Jayantilal Amratlal v. F.N. Rana**, AIR 1964 SC 648. ...The Court further observed as follows :-*

"This is not to say that every order issued by an executive authority has the force of law. If the order is purely administrative, or is not issued in exercise

of any statutory authority it may not have the force of law. But where a general order is issued even by an executive authority which confers power exercisable under a statute, and which thereby in substance modifies or adds to the statute, such conferment of powers must be regarded as having the force of law." ..."

The contention of learned counsel for the petitioner that caution advice is against Articles 13, 14 and 19(1)(g) of the Constitution of India is mis-conceived and not sustainable in eyes of law. Otherwise also, it is not within the scope of writ jurisdiction to review the decision taken by the RBI, which is a specialized body and the matter has been further examined by Dr. Smt. Deepali Pant Joshi Executive Director, RBI, by passing order dated 24.03.2015 (Annexure P-17) and it has been found that the information furnished by the CPIO was just and reasonable and there was no scope for interference. Scope of jurisdiction in such matters has also been settled in various judgments by Hon'ble Supreme Court, including **Joseph Kuruvilla Vellukunnel** (supra).

Basic contention of the learned counsel for the petitioner is that with the issuance of caution advice unreasonable restrictions have been imposed upon the petitioner, its promoter/directors, which are virtually in the nature of debarring them from availing any additional facility for further development of the project or floating a new venture and these unreasonable restrictions are violative of Article 19(1)(g) of the Constitution of India i.e. to practise any profession, or to carry on

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any occupation, trade or business, which is a fundamental right.

I have considered the contention raised by learned counsel for the petitioner. It is true that right to business is a fundamental right but the right is subject to reasonable restrictions under Article 19(6) of the Constitution of India. While examining the issue of unreasonable restrictions, if any by any authority, and to see whether such restrictions are reasonable under Article 19(6) of the Constitution of India, the Court must see the subject matter, extent of restrictions, the mischief it seeks to check etc.

The Hon'ble Supreme Court in ***Md. Murtaza v. State of Assam***, 2011(9) SCALE 526 considered the identical issue although in different factual background and observed as under: -

"10. It may be mentioned that to test the reasonability of a restriction we have to see the subject matter, extent of restriction, the mischief which it seeks to check, etc. The reasonableness of the restriction has to be determined in an objective manner and has to be seen from the point of view of the interest of the general public and not merely from the point of view of the persons upon whom the restrictions are imposed vide Hanif Quareshi v. State of Bihar, AIR 1958 SC 731. Moreover, the impugned action of the authorities cannot be said to be unreasonable merely because in a given case, they may operate harshly, vide State of Gujarat v. Shantilal, AIR 1969 SC 634 (vide Para 52). As observed by the Supreme Court in Laxmi Khandsari v. State of UP., AIR 1981 SC 873; Divert v. State of Gujarat, AIR 1986 SC 1323; State of Madras v. Row, 1952 SCR 597; Peerless v. Reserve Bank, AIR 1992 SC 1033; and Harakchand v. Union of India, AIR

1970 SC 1453 etc., the nature of the right alleged to have been infringed, the underlying purpose of the restriction imposed and the extent and urgency of the evil sought to be remedied thereby, disproportion of the imposition, prevailing conditions at the time etc., are the relevant considerations for determining whether the restriction is reasonable.

*11. Further, as held in **Jyoti Pershad v. Union Territory of Delhi**, AIR 1961 SC 1602, the standard of reasonableness must also vary from age to age and be related to the adjustments necessary to solve the problems which communities face from time to time. In adjudging the validity of the restriction the Court has necessarily to approach the question from the point of view of the social interest which the State action intends to promote, vide **Puthumma v. State of Kerala**, AIR 1978 SC 771; **P.P. Enterprises v. Union of India**, AIR 1982 SC 1016 and **Jyoti Pershad v. Union Territory of Delhi** (supra), etc.*

12. Judged by these standards the impugned action of the authorities cannot be faulted on the ground of lack of reasonableness. As stated in the counter-affidavits filed in these cases, the existing wholesale markets have become the cause of immense traffic congestion in the city, apart from causing diseases, pollution etc. Hence, shifting the wholesale markets to the outskirts of the City or beyond is clearly reasonable.

13. It must be remembered that certain matters are by their very nature such as had better be left to the administrative authorities instead of Courts themselves seeking to substitute their own views and perceptions as to what is the best solution to the problem. The present is clearly an instance where this Court should not interfere with the steps taken by the respondents to resolve a pressing problem. In matters of

policy the Courts have a limited role and it should only interfere with the same when it is clearly illegal. That clearly is not the case here. The impugned action is a salutary step for undoing a mischief, which was crying out for redress for a long time, and it is not illegal.

*14. As observed by the Supreme Court in **Mohd. Hanif Qureshi v. State of Bihar, AIR 1958 SC 731**, the Court must presume, that the legislature understands and correctly appreciates the need of its own people. The legislature is free to recognize degrees of harm, and may confine its restrictions to those where the need is deemed to be the clearest. In our opinion, the same principle would apply to executive action also, unless there is clear violation of a statute or a constitutional provision.*

15. In our opinion, the State should not be hampered by the Court in dealing with evils at their point of pressure. All legislation, including delegated legislation (such as the kind we are examining) and executive action is essentially ad hoc. Since, social problems nowadays are extremely complicated, this inevitably entails special treatment for distinct social phenomena. If legislation or executive action is to deal with realities it must address itself to variations in society. The State must, therefore, be left with wide latitude in devising ways and means of social control and Regulation, and the Court should not, unless compelled by the law, encroach into this field.

*16. As Justice Frankfurter of the U.S. Supreme Court observed in **American Federation of Labour v. American Sash and Door Co., 335 US 538 (1949)** :-*

"Even where the social undesirability of a law may be convincingly urged, invalidation of the law by a Court debilitates popular Democratic Government.

Most laws dealing with social and economic problems are matters of trial and error. That which before trial appears to be demonstrably bad may belie prophecy in actual operation. But, even if a law is found wanting on trial, it is better that its defects should be demonstrated and removed by the legislature than that the law should be aborted by judicial fiat. Such, an assertion of judicial power defeats responsibility from those on whom in a democratic society it ultimately rests. Hence, rather than exercise judicial review Courts should ordinarily allow legislatures to correct their own mistakes wherever possible."

In our opinion the same principle would apply to executive action too.

*17. Similarly, in his dissenting judgment in **New State Ice Co. v. Liebemann**, 285 U.S. 262 (1932), Mr. Justice Brandeis, the celebrated Judge of the U.S. Supreme Court observed that the government must be left free to engage in social experiments. Progress in the Social Sciences, as in the Physical Sciences, depends on "a process of trial and error" and Courts must not interfere with necessary experiments.*

18. Justice Brandeis also observed :-

"To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation.""

Thus, in view of the above and keeping in view the provisions of the 1934 Act and the 1949 Act, the RBI has issued the impugned caution advice. It cannot be said that the same is an unreasonable

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restriction and violative of Article 19(1)(g) of the Constitution of India. The sum and substance of the above discussion is that the impugned caution advice does not suffer from any illegality or perversity nor in any way imposes any unreasonable restriction under Article 19(1)(g) of the Constitution of India.

The contention of the learned counsel for the petitioner that petitioner was not an associate concern of respondent No.5 is not required to be elaborately discussed as this Court has already come to the conclusion that respondent No.5 which is a willful defaulter, its promoter and directors are directly related to the petitioner as discussed in foregoing paragraphs. Thus, the issuance of impugned caution advice is legal and valid.

In view of above, petition is dismissed. However, petitioner will be at liberty to avail other remedies available to it in accordance with law.

No order as to costs.

(Paramjeet Singh)
Judge

December 15, 2015
R.S.