

\$~1

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: 09.03.2015

+ **CS(OS) 234/2005, I.As. 13038/2006, 13039/2006 and 4214/2012**

DTC EMPLOYEES SUPERANNUATION (PENSION) TRUST & ORS.

..... Plaintiff

Through: Ms. Anchal Chaudhary, Adv. for Mrs.
Avnish Ahlawat, Adv.

Versus

**U.P. CO-OP. SPINNING MILLS FEDERATION LTD. & AND
ANOTHER FC+**

..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This is a suit for recovery of Rs.6,79,11,306/- along with pendente lite and future interest with effect from 01.09.2004 till realisation of the same.
2. Defendant No.1, i.e., U.P. Co-operative Spinning Mills Federation Ltd. has been proceeded *ex parte* on 29.10.2013 and defendant No.2, i.e., Govt. of Uttar Pradesh has been proceeded *ex parte* on 31.07.2013. The plaintiff has led *ex parte* evidence.
3. Plaintiff No.1 is a registered Trust, i.e., DTC Employees Superannuation (Pension) Trust (hereinafter referred to as 'the Trust'). The Trust was constituted for the purpose of disbursement of pension to the

retirees covered under the DTC Pension Scheme. The Trust holds the pension fund of the employees, to be put to permissible use and investment so as to generate optimum returns therefrom. The Trust is required to make investments and allocation of the funds available, with varied Central Government approved schemes in compliance of the directions/instructions issued by the Ministry of Labour, Government of India vide its notification dated 19.6.1998. It is stated that defendant No.1 company, while handing its proposal dated 25.08.1998 to the plaintiffs, represented itself to be an apex co-operative society set up by the Govt. of Uttar Pradesh, consisting of eleven co-operative spinning mills located in various parts of the State and that 95% of its shares were held by the State Government. It was further represented that for the Financial Year 1996-97, the company has earned a net profit of Rs.10.00 crores, but in FY 1997-98 its profit had arisen to Rs.14.55 Crores by December, 1997 itself.

4. Based on these representations, the plaintiffs had invested in debenture bonds of the defendant. The investment in the said bonds was for a period of 5 years and the promised rate of interest was 14.9 per cent per annum, which was to be paid at the end of the 4th, 4 and a half and 5th year. The plaintiffs accepted the proposal of defendant No.1 and invested Rs.4.00 crores on 28.08.1998 through cheque No.888841, dated 28.08.1998, drawn on Syndicate Bank, I.P. Estate, New Delhi. The letter of allotment was issued by defendant No. 1 on 25.12.1998 confirming allotment of bonds to the tune of Rs.4.00 crores. It was mentioned in the letter that the debenture bonds shall yield 14.9% interest (taxable), payable annually and the same were secured redeemable debenture bonds fully guaranteed by the Govt. of U.P. By a letter dated 02.06.1998, defendant No.2 confirmed the guarantee

apropos the repayment of the amounts of Rs.4.00 crores with interest @ 14.9 per cent per annum.

5. The defendant No.1 remitted a sum of Rs.15,41,436/- on 25.12.1998 after deducting TDS on the interest earned for the period 30.08.1998 - 25.12.1998. Another sum of Rs.46,39,504/- was remitted by defendant No.1 as interest, treating the period 26.12.1998 - 25.12.1999 as the financial year, after deducting TDS of Rs.13,11,200/-. This payment was released on 21.07.2000. Thereafter, the defendants failed to pay any monies towards interest although they continued to hold and utilise the investment. Through a letter dated 27.12.2001, the defendant No.1 acknowledged the liability but showed its inability to pay the amount due to economic recession which affected the business severely. They also promised that all efforts were being undertaken to pay the amount due, at the earliest. Their letter dated 27.12.2001 reads as under:

*“G.C. Pathak,
I.A.S., Managing Director ,
Uttar Pradesh Katai Mills Sangh Ltd.
117/173, O-Block, Geetan Nagar, Kanpur,
Tel: 243 144, TELEFAX: 243151*

*No. 39650
Dated: 27.12.2001*

*Mr.Ramesh Chander
Addl. Chief Accounts Officer
Delhi Transport Corporation,
Indraprastha Estate (DTC HQ),
New Delhi-110002*

Dear Sir,

*Please refer your letter No. PC/INVESTMENT/
2001/ 851 dated 8.11.2001 regarding payment of interest*

due to UPCSMF Debenture bond. In this respect it is stated that on account of recession in the textile industry member Mills of Federation have suffered heavy losses on account of which a number of Mills have been closed down and very few Mills are in operation, but that too are running in heavy losses. On account of recession, the entire financial planning and viability was severely affected. We have requested to State Govt. of U.P. to release the funds and as soon as we get funds from State Govt. the liabilities of all debenture bond holder will be discharged.

Further it is stated that T.D.S. of Rs.3,85,359.00 was deducted and Rs.15,41,436.00 was paid to you which was also received by you. The TDS Certificate dated 28.01.1999 was also sent to you vide our letter No.26060/SMF dated 26.02.1999. A copy of the same is enclosed for your reference.

Thanking you,

Yours faithfully,

Sd/-

(G.C.Pathak)

Managing Director.”

6. Through a letter dated 26.05.2001, defendant No.2 acknowledged to the plaintiff that it had guaranteed repayments under the bonds but refused to abide by it. It reads as under:

*“AKHAND PRATAP SINGH
Industrial Development Commissioner & Principal
Secretary,
Govt. of Uttar Pradesh
Secretary Annexe,
[Tel:\(0522\) 238283](tel:0522238283) Fax: 238255
Lucknow-226001
DO No.Ms-91/77.1.200/-22(T)/2001
Industrial Development Section-I
Lucknow: dated: 26th May 2001*

Dear Sir,

This is in reference to your correspondence regarding payment of interest on the funds invested by your organisation in the Bonds floated by U.P. Cooperative Spinning Mills Federation Limited, Kanpur in the year 1998.

This is to bring to your notice that Uttar Pradesh Cooperative Spinning Mills Federation Limited, Kanpur raised 76.00 Crores rupees by way of private placement of Bonds in the year 1998, part of which was secured by Government guarantee. Your organisation is also one of the investors in those bonds. The Federation, instead of utilising the fund for the purpose for which it was raised, misappropriated into some other activities and an enquiry has been set up and special audit ordered to enquire into the irregularities and to fix responsibility six out of eleven mills of the Federation have been closed and neither the concerned mills nor the Federation, for the time being are, in a position to make repayment. The State Government is also not in a position to give further financial assistance to the Federation. Needful would be done after enquiry is completed.

Thanking you,

Yours faithfully,

Sd/-

(AKHAND Pratap Singh)

*DTC EMPLOYEES SUPERANNUATION (PENSION)
TRUST, I.P. ESTATE, DTC-HQ, NEW DELHI."*

7. Thereafter, the plaintiffs as well as the Delhi Transport Corporation took numerous steps including writing letters dated 04.09.2001, 08.11.2001, 08.12.2001, 19.11.2001 and 20.12.2001 to defendant No.1 as well as to the

Chief Secretary, Govt. of Uttar Pradesh demanding refund/repayment of the principal amount along with interest accrued thereon, since the bonds carried unconditional and irrevocable guarantee by defendant No.2. The plaintiffs also raised this issue with the Commissioner of Transport, State Transport Authority, Delhi Government. The plaintiffs also requested the Regional Director, PDO, Reserve Bank of India, New Delhi to remit the principal amount along with interest accrued thereon out of the funds sanctioned by Govt. of India to be advanced to the Govt. of U.P.

8. The plaintiffs claim that the entire sum of Rs.4.00 crores became eligible for redemption in 2002; 33% of it was to be encashed on 30.08.2002, another 33% at the end of the 4 and a half years, i.e., on 28.02.2003 and the remaining 34% at the end of the 5th year, i.e., on 30.08.2003. However, none of these amounts have been paid till date. Even the principal amount remains unpaid.

9. A legal notice dated 17.02.2004 was posted through Registered AD on 23.02.2004 calling upon the defendants to pay the principal amount of Rs.4.00 crores along with interest accrued thereon, but it elicited no response from the addressees/defendants.

10. It is the plaintiffs' case that they agreed to invest with defendant No.1 purely on account of the fact that the said debenture bonds carried an unconditional and irrevocable guarantee by the Govt. of Uttar Pradesh and that the amount was entrusted in the safe custody of assured investment with the State Govt., on the specific assurance that timely interest amount would be paid and on maturity the principal amount too would be repaid. It is stated that since the guarantee by defendant No.2 is a continuing one, it will continue to subsist till the entire amount is repaid and the liability is

discharged; that the money was entrusted with the defendants with an aim to utilize the same in the best possible way, within the bounds of the notification issued by the Ministry of Labour, Govt. of India and that the investment carried the guarantee of a State Government with respect to the terms of the bonds. For any prudent investor, there can be no higher guarantee than an assurance by the State Government and in the present case, the State Government had assured that the principal amount along with interest @ 14.9 per cent shall be paid annually. The plaintiffs claim that the State Government is answerable to the beneficiaries of the DTC Pension Fund.

11. There is no opposition to the claim made in this suit.

12. The evidence led by the plaintiffs through one Mr. R.N. Gupta, Additional Chief Accounts Officer, DTC and Secretary, DTC Employees Superannuation (Pension) Trust states that 95% shares of defendant No.1 is with the Government of Uttar Pradesh and the said monies were invested with the defendants for safe and guaranteed returns since the monies held by plaintiff No. 1 was in fiduciary capacity for the benefit of the employees enrolled under the pension scheme.

13. This Court is of the view that insofar as defendant No.1 had acknowledged the receipt of the said application and the application money vide its letter dated 22.10.1998 (Ex. PW1/11), the amounts are to be reimbursed along with interest accrued thereon. The letter dated 26.05.2001 (Ex. PW1/23) only states that instead of utilizing the fund for the purpose for which it was raised, the Uttar Pradesh Cooperative Spinning Mills Federation Ltd, Kanpur misappropriated the monies into some other activities and an enquiry has been set up to enquire into some irregularity

committed by defendant No.1 and that the State Government would not be in a position to extend further financial help to the commission and further that it would revert back after the enquiry is complete. However, no further communication was made to the plaintiffs.

14. Be that as it may, the State Government had extended Government guarantee in favour of the investment stating, vide letter dated 2.6.1998 by Special Secretary to the M.D. of U.P. Spinning Mills Ltd., that “*a decision had been taken principally to give Govt. Guarantee in favour of investors who have opted for the bonds issued by Federation to operate the members Mills of U.P. Cooperative Spinning Mills Ltd.*”, the amounts would be payable by the Govt. of U.P. which in any case holds/held 95% of the shares in defendant No.1.

15. The information memorandum for private placement Exhibit PW1/8 of UPCSMFL Bonds reads as under:

“PRESENT ISSUE

U.P. Co-operative Spinning Mills Federation (UPCSMF) is raising Rs.55 crores by issuing secured bonds through private placement. UPCSMF is an umbrella organization for 11 member cooperative spinning mills situated in various parts of U.P. with a combined installed capacity of 2.37 lakh spindles and a combined annual turnover of Rs.169 crores in 1996-97 and Rs.126 crores upto Dec '97 most of the member mills of UPCSMF have now diversified from the traditional spinning of cotton yarn to spinning of synthetic fibers.

OBJECTS OF THE ISSUE

The issue is being made of the purpose of augmenting resources for normal business operations.

TERMS OF THE ISSUE

<i>Issue Size</i>	<i>Rs.55 crores</i>
<i>Security</i>	<i>Exclusive Charge of 1.50 times</i>
<i>Credit Enhancement</i>	<i>Un-Conditional & Irrevocable Guarantee of U.P. Government for payment of interest and repayment of principal Escrow account for servicing and repayment of bonds</i>
<i>Additional Credit Enhancement</i>	<i>Sinking Redemption fund</i>
<i>Tenure</i>	<i>5 years</i>
<i>Interest</i>	<i>14.90% p.a. payable annually</i>
<i>Put</i>	<i>At par at the end of 3 years. Ceiling of 50%</i>
<i>Call</i>	<i>At par at the end of 3 years</i>
<i>Interest on application money</i>	<i>From the date of realization of cheque/DD</i>
<i>Redemption</i>	<i>At par at the end of 4th, 4 ½ and 5th year: 33%, 33% and 34% respectively.</i>

SECURITY

Asset Cover: These bonds are secured by an exclusive charge, with an asset cover of 1.50 times the issue size. There is no other charge on the assets and any future creation of charge will be after permission from the trustees of this issue.

Guarantee: *U.P. Government has provided an irrevocable and un-conditional guarantee for payment of principal and re-payment of*

interest.”

16. The learned counsel for the plaintiffs relies upon the dicta of the Supreme Court in ***State of U.P. v. Hindustan Unilevers & Ors., Civil Appeal No. 6126 of 2008***, decided on 15.10.2008. In that case, the defendant had invited applications for private placement of debenture bonds in the year 1998 representing that repayment thereof was unconditionally and irrevocably guaranteed by the Government of Uttar Pradesh. The State Government issued a Government Order dated 12.08.1998 guaranteeing repayment of the principal amounts and interest accrued thereon in respect of debenture bonds issued by the U.P. Cooperative Spinning Mills Federation Ltd. The Federation sustained losses and went under liquidation. It did not redeem the bonds as agreed and undertaken. The amounts due were not paid except part payments towards interest. The Supreme Court held that the amounts were invested in the bonds of the Federation in view of the express guarantee by the State Government that the same will be repaid with interest upto 15.5% per annum. The very purpose of the State Government guarantee is to ensure payment in case the Federation was not able to make the payment. In the circumstances, the fact that the Federation is in financial difficulties cannot be a ground for the State Government to say that it will not make payment of interest.

17. In ***Trirath Ram Shah Charitable Trust & Anr. v. State of Uttar Pradesh and Anr.*** WP(C) 9150 of 2009, decided on 09.07.2010, this Court following the judgment in ***Hindustan Unilever*** (supra) directed respondent No.1 therein, i.e., the present defendant No.1 to pay the principal amount together with simple interest @ 14.9 per cent per annum for the period of 5

years from the date of the deposit and thereafter @ 9.5% simple interest per annum which was the minimum rate of interest that was payable by respondent No.1, i.e., the Govt. of U.P. The principal and interest amounts were directed to be paid within a period of 12 weeks failing which penal simple interest @ 15% p.a. was directed to be paid for the delayed period.

18. Similarly, in *Airport Authority of India & Ors. v. State of Uttar Pradesh & Anr.* WP(C) 7949/2009, decided on 23.11.2010, this Court relied upon the ratio in *Hindustan Unilever (supra)* where the defendant had given an unconditional and irrevocable guarantee for the payment of interest and repayment of the principal amount as per the scheme in which the petitioner therein had invested.

19. In view of the aforesaid, the Court finds that the information memorandum highlighted that defendant No.2 had given an unconditional and irrevocable guarantee for payment of interest @ 14.9% per annum and also the repayment of the principal amounts. The plaintiffs had, indeed, prudently invested the monies only in such a scheme which carried a guarantee of repayment of the principal amount as well as payment of the interest accrued thereon. In light of the judgment of the Supreme Court in *Hindustan Unilevers & Ors.* as well as subsequent judgments passed by this Court, the defendants are liable to repay the principal amount to the plaintiff along with interest @ 14.9% p.a. for the duration of the scheme and thereafter @ 9.5% p.a. simple interest. These amounts shall be paid by defendants within a period of 12 weeks from today, failing which the defendants shall pay penal simple interest @ 15% per annum for the period of delay. The suit is decreed in the aforesaid terms with costs of Rs.50,000/- to be paid by the defendants to the plaintiffs.

20. Let the decree sheet be drawn up accordingly.
21. The suit stands disposed off in the above terms.

MARCH 09, 2015/acm

NAJMI WAZIRI, J.