

O.A.No.360 of 2015

PUSHPA SATHYANARAYANA, J.

The interesting question that arises for consideration in this application is whether the applicant can invoke arbitration clause against the first respondent based on the credit information report ?

2. The relevant facts, which are required for the determination of the above issue, are as follows :

(i) The applicant is the Managing Director of M/s.Ambika Conductors, which is a manufacturer and supplier of aluminum conductors to various companies and governmental agencies. The applicant had been in the business for the last forty five years and towards expansion of the business, he required additional credit facilities, for which purpose, he approached M/s.Andhra Bank, Chetpet Branch, Chennai, in July 2014. The applicant also has been maintaining a personal account with the said branch for the last five years. In the process of sanctioning loan, the Andhra Bank had sought for and obtained the credit information report of the applicant from the first respondent. The said credit information report reflected negative credit score of the applicant and hence, the Andhra Bank expressed difficulty in processing its credit facility to the company.

(ii) The first respondent, which is the Credit Information Company, maintains the credit information about the borrowers, guarantors, etc., who have availed various credit facilities from various financial institutions. The credit information, thus, collected and collated by the Credit Information Company is provided to various Credit Institutions, who propose to lend or provide credit facilities to prospective borrowers.

(iii) The first respondent company is also registered in terms of Section 5 of the Credit Information Companies (Regulation) Act, 2005 (in short, "CICRA") and they are controlled by the second respondent, namely, Reserve Bank of India (RBI).

(iv) The first respondent is statutorily bound to maintain true and correct data pertaining to any person, be it a borrower or guarantor. When the credit score was on the negative, the applicant could not get the particulars for the same. With great difficulty, the applicant got a copy of the credit information report generated by the Andhra Bank, wherein, there were four entries under the account type "Credit Card" showing the Credit Card dues to a total extent of Rs.1,27,14,413/-, which was classified as "Overdue" and other than the said details, no other detail was disclosed.

(v) The credit score attributed to the applicant also fell within the category of "High Risk" as was informed to him by the Andhra Bank.

(vi) The applicant further stated that he had only two credit cards - one with M/s.Citi Bank and the other with M/s.Standard Chartered Bank. There was a dispute with respect to the credit facility issued to the applicant by the Standard Chartered Bank, which culminated into a criminal case and ended before this Court in CrI.O.P. No.7670 of 2000. The Standard Chartered Bank informed the Court that the credit card account pertaining to the said account was fully and finally settled and letter dated 30.07.2003 to that effect was issued to the applicant. Thus, the said criminal case also ended on 08.08.2003.

(vii) The applicant also sent a letter to the first respondent on 20.08.2014 and requested that the credit information be deleted from the information data, as the applicant had not defaulted any repayment. It is stated that as there was no response from the first respondent and the negative credit information about the applicant continued to remain in their website, the above application is filed seeking an interim injunction restraining the first respondent from continuing to publish the data furnished by it in its Credit Information Report.

3. This application is resisted by both the respondents 1 and 2.

3.1. The first respondent contended that it functions as a Credit Information Company under the provisions of the CICRA and furnishing of credit information is strictly to a closed user group of members and specified users as permitted under the provisions of the CICRA. According to the first respondent, as there is no privity of contract between the applicant and the first respondent, the application itself is not maintainable. The CICRA allows the creation of Credit Information Companies, which will enable the Bank or financial institutions that are members of the Credit Information Companies to readily access the full credit history of any borrower or credit applicant. Any rectification in the database of credit information or change in the credit information can only be made in accordance with the provisions of Section 21(3) of the CICRA, which is subject to certification by the concerned Credit Institution.

3.2. As the first respondent cannot make any unilateral corrections to the credit information, the allegations of the applicant are denied. It is also clarified that the first respondent is not responsible for the correctness and veracity of the data that is submitted by the Credit Institution. The correctness of the data that is submitted to the first respondent is solely the prerogative and

responsibility of the Credit Institutions. Therefore, in the absence of any privity of contract with the Credit Institution's customer, the first respondent cannot verify the data submitted by the Credit Institution. Therefore, the relief sought for by the applicant cannot be granted against the first respondent.

4. The second respondent, which is the RBI, also had filed a counter-affidavit challenging the maintainability of the application itself under Section 9 of the Arbitration and Conciliation Act, 1996 (in short, A & C Act). It is stated that as the second respondent is neither necessary nor a proper party, it sought for dismissal of the application, as there is an effective remedy available under Section 21 of the CICRA and thus, there is no necessity to invoke Section 18 of the said Act.

5. Before the issue could be answered, it would be useful to advert to the relevant provisions of the CICRA. Section 14 of the said Act, which deals with the functions of the Credit Information Company, reads as follows :

"14. Functions of a credit information company.—

(1) A credit information company may engage in any one or more of the following forms of business, namely:—

(a) to collect, process and collate information on trade, credit and financial standing of the borrowers of the credit institution which is a member of the credit information company;

(b) to provide credit information to its specified users or to the specified users of any other credit information company or to any other credit information company being its member;

(c) to provide credit scoring to its specified users or specified users of any other credit information company or to other credit information companies being its members;

(d) to undertake research project;

(e) to undertake any other form of business which the Reserve Bank may, specify by regulations as a form of business in which it is lawful for a credit information company to engage.

(2) No credit information company shall engage in any form of business other than those referred to in subsection(1).

(3) Any credit information company for the purposes of carrying on the business of credit information may—

(a) register credit institutions and other credit information companies, at their option as its member, subject to such terms and conditions as may be pre-determined and disclosed by such credit information company;

(b) charge such reasonable amount of fees, as it may deem appropriate not exceeding the maximum fee, as may be specified under Section 27, for furnishing credit information to a specified user;

(c) generally to do all such other acts and perform such other functions as are necessary to facilitate proper conduct of its affairs, business and functions in accordance with the

provisions of this Act."

5.1. Section 21 of the CICRA deals with the alteration of credit information files and credit reports. Section 21 reads as follows :

"21. Alteration of credit information files and credit reports.—

(1) Any person, who applies for grant or sanction of credit facility, from any credit institution, may request to such institution to furnish him a copy of the credit information obtained by such institution from the credit information company.

(2) Every credit institution shall, on receipt of request under sub-section (1), furnish to the person referred to in that sub-section a copy of the credit information subject to payment of such charges, as may be specified by regulations, by the Reserve Bank in this regard.

(3) If a credit information company or specified user or credit institution in possession or control of the credit information, has not updated the information maintained by it, a borrower or client may request all or any of them to update the information; whether by making an appropriate correction, or addition or otherwise, and on such request the credit information company or the specified user or the credit institution, as the case may be, shall take appropriate steps to update the credit information within thirty days after being requested to do so :

Provided that the credit information company and the specified user shall make the correction, deletion or addition in the credit information only after such correction, deletion or addition has been certified as correct by the concerned credit

institution :

Provided further that no such correction, deletion or addition shall be made in the credit information if any dispute relating to such correction, deletion or addition is pending before any arbitrator or tribunal or court and in cases where such dispute is pending, the entries in the books of the concerned credit institution shall be taken into account for the purpose of credit information."

5.2. Section 18 of the CICRA reads thus :

"18. Settlement of dispute.—

(1) Notwithstanding anything contained in any law for the time being in force, if any dispute arises amongst, credit information companies, credit institutions, borrowers and clients on matters relating to business of credit information and for which no remedy has been provided under this Act, such disputes shall be settled by conciliation or arbitration as provided in the Arbitration and Conciliation Act, 1996 (26 of 1996), as if the parties to the dispute have consented in writing for determination of such dispute by conciliation or arbitration and provisions of that Act shall apply accordingly.

(2) Where a dispute has been referred to arbitration under sub-section (1), the same shall be settled or decided,—

(a) by the arbitrator to be appointed by the Reserve Bank;

(b) within three months of making a reference by the parties to the dispute :

Provided that the arbitrator may, after recording the reasons therefor, extend the said period up to a maximum period of six months :

Provided further that, in an appropriate case or cases, the Reserve Bank may, if it considers necessary to do so (reasons to be recorded in writing), direct the parties to the dispute to appoint an arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996), for settlement of their dispute in accordance with the provisions of that Act.

(3) Save as otherwise provided under this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to all arbitration under this Act as if the proceedings for arbitration were referred for settlement or decision under the provisions of the Arbitration and Conciliation Act, 1996."

6. The question now arises for determination is whether there is a dispute on matter relating to business of credit information between the applicant and the first respondent from the facts culled out in the instant case ?

7. Learned counsel for the applicant invited the attention of this Court to the definition clause contained in Section 2(c)(ii)(A) of the CICRA, which is a inclusive definition, as it counts the prospective borrower also. Therefore, it is argued that the applicant, who had applied for sanction of the loan from the Bank, was a prospective borrower, whose application was rejected on account of the credit

information report published by the first respondent.

8. At this juncture, it is to be noted that whether the business of credit information is confined to a transaction only between the applicant and the Credit Institution is also to be considered.

9. A person's credit score and credit information report is a measure of his creditworthiness. The companies like the first respondent consolidate every individual's borrowing credit history sourced from different member credit institutions, which includes Banks. The second respondent grants licence to the first respondent and similar institutions, which are governed by the CICRA and rules made thereunder. A credit report is a detailed breakdown of an individual's history prepared by the credit bureau. The credit report are used by the lenders to determine the creditworthiness of the loan applicant. The shared credit information will put an end to habitual defaulters. For this purpose, the accuracy of captured information will be the crucial element.

10. Rule 25 of the Credit Information Companies Rules, 2006

deals with accuracy of data provided by a credit information company. It provides for the procedure to be adopted by every credit information company. Section 25(5) states that if the credit information company, for any reason, fails to take steps as per sub-rule (3) of Rule 25, it shall be liable for contravention of the provisions of the Act.

11. As mentioned supra, Section 2(c) defines a 'client' and the relevant part of the said provision reads as follows :

2. Definitions – *In this Act, unless the context otherwise requires -*

(c) "client" includes -

(i) *****

(ii) a person -

(A) who has obtained to seeks to obtain financial assistance from a credit institution, by way of loans, advances, hire purchase, leasing facility, letter of credit, guarantee facility, venture capital assistance or by way of credit cards or in any other form manner ;

*****"

12. In the given case, the applicant would very well come within the definition of a 'client' and the dispute relates to the correctness of the credit information published by the credit information company/the first respondent. The applicant had vide letter dated 20.08.2014 had requested that the credit information be deleted from its credit

information date, as maintained by the first respondent. According to the applicant, the first respondent had not only had not responded, but also had not cared to intimate the name of the credit institution, which had furnished such damaging and false credit date against the applicant, so that it would enable the applicant to take up the issue with such credit institution/company/Bank. The applicant has already invoked Section 18 of CICRA and issued a letter to the respondent calling upon them to treat the matter as an arbitration dispute. As Section 18 of the CICRA provides for settlement of disputes that arise amongst the credit information companies, borrowers and clients on matters relating to business of credit information, the applicant being a client, who is seeking to obtain financial assistance from a credit institution, is entitled to the relief sought for. Therefore, it cannot be said that it is mainly a dispute between the applicant and the Bank, which provided the information and if the applicant are aggrieved by the said action of the Bank, their remedy may lie somewhere.

13. At this juncture, it is to be noted that Section 21(2) of the CICRA, which was extracted supra, mandates the credit institution to furnish the person, who applied for grant or sanction of credit facility, upon a request being received from him under Section 21(1) of the

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CICRA, a copy of the credit information obtained by such institution from the credit information company, subject to payment of such charges specified by the Reserve Bank of India. As contended by the learned counsel for the applicant, Section 21(3) permits a borrower or client to request the credit information company or specified user or credit institution in possession or control of the credit information or any one of them to update the information, if they have not updated the same maintained by them and also mandates such institutions to update the credit information within thirty days after being requested to do, subject to the fulfillment of the conditions contained in the provisos to that section. Section 21 of the CICRA is titled : "Alteration of credit information files and credit reports". The intention of the Legislature is clearly spelt out in the said provision to the effect that the borrower or client should be given information by the credit institution, when it is sought for. In the instant case, Andhra Bank is duty bound to provide the information that was obtained from the first respondent enabling the applicant to seek for alteration of credit information, if the same has not been updated. Unless such information is provided, no person is expected to get his grievance redressed.

14. It is to be stated that Regulation 10(b)(iv) of the Credit Information Companies Regulations, 2006 says that every specified user, credit information company, and credit institution, shall take prompt action in relation to updating of the credit information and to send the intimation and their response with property co-ordination amongst them so as to ensure that the requisite action is taken within the time limit as provided under sub-section (3) of Section 21 of the CICRA. Thus, when the applicant seeks for updation of the data, the first respondent has update the credit information within the time limit, if the same has not been updated.

15. At this juncture, it is to be stated that the first respondent has stated in its counter-affidavit that one Shaha Finlease Private Limited has taken over the NPAs of the Standard Chartered Bank, which has given the written off amount with respect to the applicant, and it gave those details to CIBIL. In fact, the applicant gave a criminal complaint against the officials of the Standard Chartered Bank (SCB) and the same was taken on file in C.C.No.7670 of 2000 for the offence punishable under Sections 409, 418, 469, 477-A, 500, 506(ii) and 511 read with 34 IPC. The officials of the SCB filed a petition under Section 482 Cr.P.C. in Crl.O.P.No.6706 of 2001 praying to quash

the said proceedings, wherein, the petitioners therein submitted before this Court that the Bank has no claims against a particular SCB Card. Recording the said amicable settlement, this Court quashed the criminal case pending against the officials of the said Bank. If there is any other amount outstanding from the applicant with respect to any other card, the officials of the SCB could have very well brought it the same in the said proceedings. Be that as it may, the initiation and quashing of the criminal proceedings against the officials of the SCB cannot be brushed aside lightly.

16. The learned counsel for the second respondent (RBI) relied on the judgment of the Division Bench of the Bombay High Court dated 24.11.2010 made in W.P.No.6409 of 2010 (**DSL Enterprises Private Limited & Ors. V. The Chief General Manager, DBOD, Reserve Bank of India & Ors.**) and the order of the High Court for the States of Telangana and Andhra Pradesh in **Srikanth Vairagare V. ICICI Bank Limited and Others, MANU/AP/0384/2018**. First of all, the petitioner before the Division Bench of the Bombay High Court was the successor-in-interest of a company, whose predecessor was a defaulter and a party to the proceedings before the B.I.F.R., which sanctioned a rehabilitation scheme covering the obligations of the Bank

of Maharashtra. Further, Section 2(c) (ii)(A) of the CICRA was not brought to the notice of the Division Bench. A cursory reading of the facts of the said case makes it clear that the same were the basis for the Division Bench to negative the similar prayer sought for by the petitioner therein and the facts of the case on hand are distinguishable from those facts. The order in **Srikanth Vairagare (supra)** was rendered relying the judgment of the Division Bench of the Bombay High Court and hence, the same has no avail to the facts of the present case.

17. A learned Single Judge of the Calcutta High Court in **Sunil Agarwal V. LIC Housing Finance Limited and Others, 2011 SCC OnLine Cal 5473**, dealt with a writ petition filed under Article 226 of the Constitution of India alleging that the respondents therein have not taken steps for settlement of the disputes on his application under Section 18 of the CICRA and held as follows :

"16. In is nobody's case that with respect to the present dispute concerning the credit information collected and stored by Credit Information Bureau (India) Ltd., the petitioner has some other remedy under the Credit Information Companies (Regulation) Act, 2005. It is to be noted that counsel for LIC Housing Finance Ltd., Credit Information Bureau (India) Ltd., and the Reserve Bank of India have not argued that the

petitioner's section 18(1) application referring the dispute between him and Credit Information Bureau (India) Ltd., was not entertainable by the Reserve Bank of India. On the contrary, counsel for the Reserve Bank of India has submitted that the bank will need at least four weeks for taking a decision in terms of Section 18(2) of the Act.

17. For these reasons, I dispose of the petition ordering as follows. Within four weeks from the date of communication of this order the Reserve Bank of India shall give its decision dealing with the petitioner's application dated July 20, 2010, treating it as a reference under Section 18(1) of the Credit Information Companies (Regulation) Act, 2005. The decision shall be communicated to all concerned. C.A.N.No.3067 of 2011 shall be deemed to be disposed of. No costs."

Though the petitioner therein was only shown as guarantor to a default loan transaction, he was shown as defaulter and he questioned the same under Section 18 of the CICRA. The Calcutta High Court directed the Reserve Bank of India to take a decision on the said application and communicate the same to all concerned.

18. In the above factual conspectus based on the interpretation of the provisions of the Act coupled with the order cited supra, this Court has no hesitation to hold that the applicant can invoke Section 18 of the Act for settlement of disputes by invoking the arbitration clause. In the meanwhile, the first respondent is injuncted from

continuing to publish the data furnished by it in its Credit Information Report.

19. This application is ordered accordingly.

.08.2019

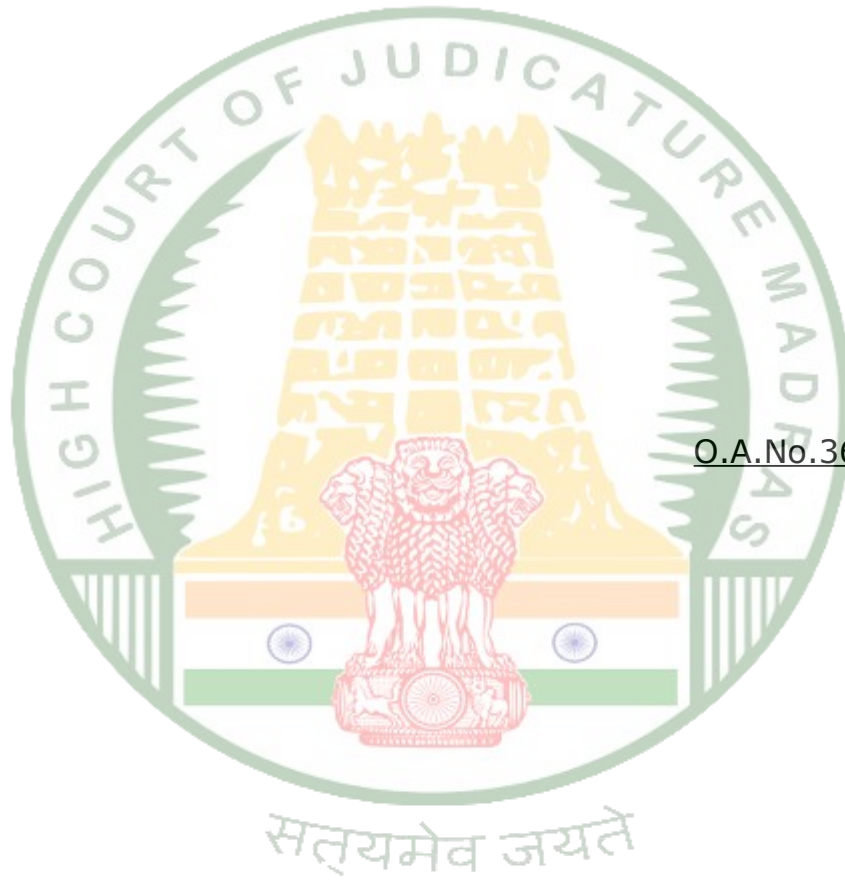
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