

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-5764-2019 (O&M)
Date of Decision: 18.07.2019

M/s Venus Remedies Limited and another

..... Petitioners

Vs.

Union of India and others

..... Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE ARUN KUMAR TYAGI

Present: - None for the petitioners.

Mr. Gaurav Pathak, Central Government Counsel,
for UOI/respondent No.1

Mr. Deepak Suri, Advocate,
for respondent No.2/RBI.

Ms. Madhu Dayal, Advocate and
Mr. Chetan Dayal, Advocate
for respondent No.3/SBI.

Mr.Gaurav Goel, Advocate,
for respondents No.4, 11 & 12.

Mr.Tejinder Singh, Advocate,
for respondent No.5/IDBI

Mr.Rakesh Gupta, Advocate,
for respondents No.6 & 7.

RAKESH KUMAR JAIN, J. (ORAL)

The following prayers are made in this petition:-

*(a) Declare Section 35AB of the Banking
Regulation Act, 1949 (Annexure P-18) as
being unconstitutional and strike down
Section 35AB of the Banking Regulation At,
1949.*

- (b) *Quash the impugned circular regarding the Resolution of Stressed Assets – Revised Framework (Annexure P-19) issued by the respondent No.2 (Reserve Bank of India) on 12.02.2018 issued in exercise of the powers under Section 35AB of the Banking Regulation act, 1949, for being ultra vires the Banking Regulation Act, 1949 as well as being unconstitutional.*
- (c) *Issuance of a writ in the nature of mandamus directing the respondent No.3 to 12 to consider and implement and accept the “Resolution Plan” submitted by the petitioner company on 18.12.2018 with respect to the accounts of the petitioner company.*
- (d) *Direct, at the interim/ad interim stage, during pendency of the above adjudication in the instant petition and/or till such period as this Hon’ble Court may deem expedient and necessary to secure the ends of justice and to save the instant petition from being rendered infructuous, stay of the ongoing proceedings initiated by respondent No.4 under the Insolvency and Bankruptcy Code, 2016 and restraining the Respondents No.3 to 12 from proceeding or continuing further with*

actions with respect to recovery of debt and initiating any proceeding in respect thereof including any insolvency proceedings, with respect to the petitioner.

On 18.3.2019, at the time of preliminary hearing, following order was passed by this Court: -

“Present: Mr. Atul V. Sood, Advocate, for the petitioner.

The primary challenge in this writ petition is to the Circular dated 12th February, 2018, under Section 35AB of the Banking Regulation Act, 1949 (in short 'the Act'), issued by the Reserve Bank of India.

It was inter alia submitted that the provisions of the 35AB of the Act are also ultra vires, which empowers the Reserve Bank of India to issue directions in respect of the 'specific stressed assets'. Reliance was placed on CWP No. 15685 of 2018, wherein, the status quo order passed by this Court was affirmed by the Apex Court in T.P. (C)No. 1116/2018. The learned counsel furnished various orders of the Apex Court passed in different cases on the similar issue, where status quo as on the date of passing of the order was directed to be maintained in the meantime. The aforesaid compendium is taken on record, subject to all just exceptions. Office to tag the same at the appropriate place.

Further reliance was placed on CWP No. 497 of 2019, titled “Accil Auto

Steels Private Limited and another vs. Union of India and others.”

Notice of motion to the respondents for 27.03.2019.

Mr. Gaurav Pathak, Advocate, who is present in Court, accepts notice on behalf of respondent No.1.

Dasti process for respondents No. 2 to 7.

In the meantime, status quo as of today shall be maintained till the next date of hearing.

To be heard alongwith CWP-3492-2019.”

The interim order is continuing in this case. However, on 17.7.2019, when the case was listed in the post-lunch session, counsel appearing on behalf of the respondents-banks submitted that the present petition has become infructuous. It is submitted that prayer (a) in regard to the declaration of Section 35AB of the Banking Regulation Act, 1949 as illegal, ultra vires of the Constitution of India, has become redundant because the constitutionality of the said provision has been upheld by the Supreme Court in the case of **“Dharani Sugars and Chemicals Ltd. vs. Union of India and others”** 2019 (4) JT 2016. In so far as prayer (b) is concerned, circular dated 12.2.2018 issued by the Reserve Bank of India has also been quashed in the case of **Dharani Sugars and Chemicals Ltd. (Supra)**. Prayer (d) is only regarding the interim order. However, the only prayer which has been left out is prayer (c) in which the petitioner has prayed for the issuance of a writ in the nature of mandamus directing respondents No.3 to 12 to consider, implement and accept the “Resolution Plan” submitted by the petitioner-company on 18.12.2018.

Learned counsel for the respondents/banks has drawn the attention of this Court to the minutes of Joint Lenders Meeting [JLM] dated 20.12.2018 in which restructuring proposal of the petitioners has been considered and rejected. The relevant para of the said meeting note read thus:-

“The present Restructuring Proposal submitted by the Company was declined on behalf of all the consortium members with freedom to each individual bank to proceed for recovery action against the company/its directors through all legal measures available to each of them as they deem fit.”

Learned counsel for the respondents has submitted that the said decision of the JLM is not under challenge in this petition, therefore, the mandamus cannot be issued.

The case was kept for today but no one has put in appearance on behalf of the petitioners, therefore, the present petition is hereby dismissed for non-prosecution.

(RAKESH KUMAR JAIN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

18.07.2019

Vivek

Whether speaking /reasoned : *Yes/No*

Whether Reportable : *Yes/No*