IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

WP.No.8371 of 2019

Hotel Ambica Empire,
A Division of Ambica Agarbathies
Aroma & Industries Ltd.,
Rep. By its CEO & President
Mr.P.V.V.P. Krishna Rao,
No.79, 100 Feet Road, Vadapalani, Chennai 600 026.
... Petitioner

vs.

1. The Reserve Bank of India,
Rep. By its Chief General Manager,
Having Regional office at:
Fort Glacis, No.16, Rajaji Salai,
Chennai 600 001.

2. IDBI Bank Ltd.,
Vadapalani Branch,
Rep. By its Branch Manager,
No.98, 100 Feet Road,
Vadapalani, Chennai 600 026.

3. Trans Union CIBIL Limited,
(Formerly: Credit Information Bureau (India) Limited,
Rep. By its Managing Director,
Having Regd. Office at: One India Bulls Centre,
Tower 2A, 19th Floor, Senapati Bapat Marg,
Elphinstone Road, Mumbai 400 013. ... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 1st respondent to remove the misleading information and adverse remarks in respect of 'Ambica Agarbathies Aroma & Industires Ltd.' from the 'CFR (Central Fraud Registry) Portal' and to further direct the 1st respondent to issue appropriate direction to the 3rd respondent as envisaged under Sec.11 of the Credit Information Companies (Regulation) Act, 2005 to forthwith remove the adverse entries relating to “Ambica Agarbathies Aroma & Industries Ltd.” from its portal/database.

For Petitioner : Mr.G.Ashokpathy
for M/s.Pass Associates

For Respondents : Mr.T.Poornam
Standing Counsel for RBI -R1

Mr.P.Elayarajkumar
for M/s.Ramalingam Associates, for R2

Mr.S.Parthasarathy, for R3

O R D E R

The prayer in the writ petition reads as follows:

> "To direct the 1st respondent to remove the misleading information and adverse remarks in respect of 'Ambica Agarbathies Aroma & Industires Ltd.' from the 'CFR (Central Fraud Registry) Portal' and to further direct the 1st respondent to issue appropriate direction to the 3rd respondent as envisaged under Sec.11 of the Credit Information Companies (Regulation) Act, 2005 to forthwith remove the adverse entries relating to "Ambica Agarbathies Aroma & Industries Ltd." from its portal/database."

The brief facts that led to the filing of the writ petition are as follows:

2. The petitioner which is a part of the larger business group called Ambica Agarbathies Aroma & Industries Ltd., is engaged in hospitality business. In the course of the said business, the petitioner was favoured with certain facilities by the 2nd respondent Bank. The facilities included Merchant Agreement which allowed payments through credit cards at the business premises of the petitioner.

3. Later in the year 2013, the facilities granted to the petitioner were improved and the petitioner was provided with the facility to avail payments through credit cards without the card being produced physically or the card holder being present physically. While the transactions were on, in the year March 2017, the volume of the transactions nearly doubled and the 2nd respondent Bank which had provided the facilities received certain complaints from the card issuing Banks to the effect that certain credit cards have been misused at the premises of the petitioner.

4. Since the transactions were of very high value, the Bank took up the matter to the petitioner and negotiations were on for over a period of six months. During which there were several correspondence between the parties, wherein, the petitioner in fact, admitted that certain dubious transactions had taken place and claimed to have been defrauded by some agents who have gained its confidence in the course of the business. The petitioner repeatedly assured the 2nd respondent Bank that the amount involved in such dubious transactions which was quantified to the tune of Rs.1,07,69,880/- would be repaid within the particular time. The petitioner did not honour its commitment.

5. After repeated reminders and extensions granted by the 2nd respondent Bank, the 2nd respondent Bank finally lodged an FIR seeking criminal prosecution of the petitioner and the persons in-charge. Since no action was taken, a complaint under Section 156(3) was placed before the concerned Magistrate. Since the same was rejected by the Magistrate on the ground that it is a civil dispute, the 2nd respondent Bank was forced to approach this Court in Crl.R.C.No.24 of 2019, which resulted in a direction to the police to register an FIR against the accused and investigate the matter. It is now stated that the FIR has been registered and the investigation is on.

6. It is at this stage, the 2nd respondent Bank took steps to notify the fraud with the Central Fraud Registry and also the CIBIL regarding the fraud committed by the petitioner under the Credit Information Companies (Regulation) Act, 2005. It is this action of the Bank that triggered this writ petition.

7. I have heard Mr.G.Ashokpathy, learned counsel appearing for the petitioner, Mr.P.Elayarajkumar, learned counsel appearing for the 2nd respondent Bank, Mr.Poornam, learned Standing Counsel appearing for the 1st respondent and Mr.S.Parthasarathy, learned counsel appearing for the 3rd respondent.

8. Mr.G.Ashokpathy, learned counsel appearing for the petitioner would vehemently contend that the facility for payment through Key Entry Mode without credit card being produced physically or the card holder being present in person, enables the card holder to make payments by using their credit card by keying in information regarding the credit card and transact payments through such keying in information without using the cards. According to the learned counsel, if a fraud has been committed by a person who keyed in the information and misuse of the card has happened, the petitioner cannot be held responsible for such misuse. He would also add that the 2nd respondent Bank has not furnished any information regarding any

complaint received by it, of such misuse and it has not shown that it has been forced to make payments to the card holders whose cards have been misused.

9. The learned counsel would further submit that if the cards have been misused by a third party, mere fact that the point of sale was the petitioner's premises cannot by itself make the petitioner guilty of fraud. Therefore, according to the learned counsel, the action of the 2nd respondent Bank in treating the transactions as fraud and reporting it under the Credit Information Companies (Regulation) Act, 2005 and the circular issued by the Reserve Bank in dealing with Banking fraud dated 1st July 2016 is beyond its powers and hence the 3rd respondent should be directed to remove those entries which has been made by it on the basis of the information provided by the 2nd respondent.

10. Contending contra, Mr.P.Elayarajkumar, learned counsel appearing for the 2nd respondent would submit that the petitioner had in fact admitted that the cards have been misused and certain documents which ought to have been collected were not collected by the petitioner, which enable such misuse. Further arguing, the learned counsel would submit that such misuse cannot happen without active connivance of the person in-charge of the operations at the point of sale viz., premises of the petitioner. He would also draw my attention to the correspondence which according to him, would show that the petitioner has claimed that it had acted on a bonafide impression believing certain agents who have gained its confidence through certain transactions and he would also point out that the petitioner had in fact stated that certain documents which ought to have been collected at the time of the transactions were not collected by the petitioner which resulted in the fraud being perpetrated. The learned counsel would also rely upon the repeated assurances given by the person in-charge of the Management of the petitioner to the Bank to make good the loss.

11. Mr.T.Poornam, learned Standing Counsel appearing for Reserve Bank of India would submit that the Reserve Bank has no role to play in the whole transaction and as a Regulatory Body it is for the Reserve Bank of India to notify as to how these transactions have to be dealt with and it is within the domain of the 2nd respondent Bank to carryout the directions of the Reserve Bank.

12. Mr.S.Parthasarathy, learned counsel appearing for the 3rd respondent would submit that the 3rd respondent is the Central Registry and all that the 3rd respondent does is to maintain the Central Fraud Registry and CIBIL scores and make entries based

on information provided by the Banks. It has no machinery to verify the authenticity of the information provided by the Bank independently.

13. Considered the rival submissions. Though the submissions of the counsel for the petitioner seems to be attractive, on a deeper examination, I find that there is a fallacy in the argument of the counsel for the petitioner. Once the fraud was detected some time in March 2017, the 2nd respondent Bank has pointed out the fraud and required the petitioner to make good the loss. Though the petitioner had given repeated assurance to make good the loss, it has failed to do so.

14. In fact, in its letter dated 02.05.2017 addressed to the Bank, the petitioner has categorically admitted its involvement in the entire transaction and has claimed that it was because of the confidence reposed by it on some of the agents, who gained its confidence that necessary documents were not insisted upon at the time of booking and at the time when the payments were made. This very admission would go long way to show that there was some failure or absence of diligence on the part of the petitioner in accepting keying mode payments.

15. When the petitioner is required to follow certain procedure and demand certain documents when payments are sought to be made and the petitioner fails to take such documents, the petitioner would be automatically liable for any misuse of the facility. In fact in the said letter dated 02.05.2017 itself, the petitioner categorically accepts its failure and assures the Bank that it would make good the loss. This is followed by another letter dated 02.05.2017 where there is categoric admission for refund of the disputed amount of Rs.1.27 Crores. Finally after prolonged correspondence, the petitioner had sought for extension of time on 15.09.2017. Despite such extension, the petitioner has not made the payment.

16. It is therefore clear that the petitioner had a role whether intentionally or inadvertently in the fraud being committed. Whether the petitioner is guilty of fraud will have to be tested by appropriate Court in criminal proceedings that has been launched and it is not within my powers to go into that question sitting under Article 226 of the Constitution of India. The scope of the writ petition before me is only to see whether the 2nd respondent is justified in making complaint to the Central Fraud Registry and the 3rd respondent, to reflect the above details in the Central Fraud Registry and CIBIL rating. Once the petitioner admits that there was some failure on its part which enabled the fraud to be committed, it was open to the 2nd respondent Bank under the circular dated 1st July 2016 to

report fraud to the Central Fraud Registry. That is exactly what the Bank has done. Therefore, I do not see any reason to issue the first direction as prayed for to direct the 3rd respondent to remove the entry in the Central Fraud Registry.

17. As far as the 2nd prayer to remove the notice in the CIBIL Registry is concerned, the learned counsel would contend that the petitioner not being a borrower under Section 2(b) of the Credit Information Companies (Regulation) Act, 2005, the 2nd respondent Bank cannot provide such information to the 3rd respondent in order to reflect the CIBIL rating of the petitioner. The learned counsel would rely upon the definition of the term 'Borrower' under Section 2(b) of the Act, which reads as follows:

> "borrower" means any person who has been granted loan or any other credit facility by a credit institution and includes a client of a credit institution;

18. The definition is an inclusive definition, which not only covers a person who has granted a loan, it also includes client of the credit Institution. Therefore, the petitioner being a client of the 2nd respondent Bank would also be covered by the definition and the petitioner has categorically admitted that it owes a sum of Rs.1.27 Crores to the 2nd respondent Bank and it has undertaken to make the payment. Therefore, I have no doubt in my mind that the petitioner can be termed as "borrower" under Section 2(b) and the 2nd respondent Bank was well within its powers in informing the 3rd respondent regarding the fraud committed by the petitioner.

19. For the foregoing reasons, I find no merits in the writ petition. The writ petition therefore fails and it is accordingly dismissed. No costs. I make it clear that the Debt Recovery Tribunal before which the proceeding is pending for recovery as well as Criminal Court will not be in any manner influenced by any of the findings or observations made in this order.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

dsa

To

1. The Chief General Manager,
   Reserve Bank of India, Having Regional office at:
   Fort Glacis, No.16, Rajaji Salai, Chennai 600 001.

2. The Branch Manager,
   IDBI Bank Ltd., Vadapalani Branch, No.98, 100 Feet Road,
   Vadapalani, Chennai 600 026.

3. The Managing Director,
   Trans Union CIBIL Limited,
   (Formerly: Credit Information Bureau (India) Limited,
   Having Regd. Office at: One India Bulls Centre,
   Tower 2A, 19th Floor, Senapati Bapat Marg,
   Elphinstone Road, Mumbai 400 013.

+2ccs to M/s.Ramalingam Associates, Advocate, S.R.No.39366

+1cc to M/s.Pass Association, Advocate, S.R.No.39261

+1cc to Mr.T.Poornam, Advocate, S.R.No.38437

WP.No.8371 of 2019

GPL(CO)
UMA(07/07/2022)