

**In The High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPO NO.2291 OF 2022

**M/S. ETIBAR INVESTMENT PVT. LTD. AND ANOTHER
VS
CENTRAL BANK OF INDIA AND ANOTHER**

WITH

WPO NO.2970 OF 2022

**M/S. TRACO ENTERPRISES AND ANOTHER
VS.
BANKING OMBUDSMAN AND OTHERS**

For the petitioners in
WPO 2291 of 2022 and
For the respondent no.4 in
WPO 2970 of 2022

: Ms. Soni Ojha, Adv.

For the respondent no.1 in
WPO 2291 of 2022

: Mr. Gunjan Shah, Adv.
Mr. Chitrabhanu Gupta, Adv.
Ms. Sreya Agarwal, Adv.

For the petitioners in
WPO 2970 of 2022

: Mr. Chayan Gupta, Adv.
Mr. Rishabh Karnani, Adv.
Mr. Pranav Sharma, Adv.
Mr. S. Rai, Adv.

For the respondent bank in
WPO 2970 of 2022

: Mr. Bishwambher Jha, Adv.

For the respondent no.2 in
WPO 2970 of 2022

: Mr. Subhankar Chakraborty, Adv.
Mr. Saptarshi Bhattacharjee, Adv.
Ms. R. Manna, Adv.

Hearing concluded on

: 13.06.2023

Judgment on

: 28.06.2023

The Court:

1. There are four characters in the *dramatis personae* of the present litigation. The first is M/s. Etibar Investment Pvt. Ltd. (for short, “Etibar”), the writ petitioner in WPO 2291 of 2022. The second is M/s. TRACO Enterprises (in brief, “TRACO”), a creditor of Etibar. Etibar’s bank is the Central Bank of India (CBI) and TRACO’s bank is the ICICI Bank, respectively the third and fourth characters.
2. Etibar paid two cheques to TRACO to meet its debts towards the latter. TRACO presented those to its Bank, the ICICI, and the amounts were duly credited to the account of TRACO. In the meantime, however, the CBI intimated the petitioner that the cheque could not be honoured due to insufficient funds in the account of Etibar with the CBI. Similar communication was also made to ICICI from the CBI but due to glitches in the inter-banking virtual communication system, the communication did not reached ICICI Bank in due time, for which the amount was credited by the ICICI in favour of TRACO.
3. Subsequently, the CBI has claimed the said amount from Etibar and, pursuant to the claim, has marked a lien on the account of Etibar for a particular sum and has deducted the rest of the claim from the amount lying in the account of Etibar with the CBI.
4. On the other hand, ICICI also claimed a similar amount from TRACO and has put a lien on the account of TRACO with the ICICI.

5. Etibar's contention is that, as per its understanding with TRACO, TRACO was to present the cheques subsequently. TRACO, in violation of the same, presented the cheques earlier, that is, on January 28, 2020. As such, the cheques were dishonoured.
6. However, the Current Account of Etibar lying with the CBI was marked as lien for an amount of Rs.22,64,000/- without prior intimation to Etibar. A message from the Bank in that regard was sent to Etibar only on March 16, 2020. The CBI sought to justify their illegal act in a reply dated March 17, 2020. Etibar alleges that the CBI admitted its error due to system failure for having given the green signal to ICICI to disburse the fund to Etibar's creditor, namely TRACO.
7. On March 31, 2020, the CBI further debited an amount of Rs.15,00,000/- from the account of Etibar. Challenging such action of the CBI, Etibar has preferred WPO 2291 of 2022. It is argued that in view of the illegalities, the entire action of the CBI ought to be reversed and neutralised.
8. On the other hand, TRACO denies that there was any such agreement with Etibar to present such cheques later. According to it, TRACO, a partnership firm, was approached in July, 2019 by Etibar to provide an Inter Corporate Deposit to Etibar at an interest at the rate of 15 per cent per annum.
9. The amounts were credited to Etibar *vide* RTGS and was duly acknowledged by Etibar. The said ICD/temporary loan was further

renewed from time to time as per agreed terms and conditions. Etibar made part payments; however, an amount of Rs.55,00,000/- was still due, for which Etibar issued two cheques bearing Cheque No.444038 dated December 23, 2019 and Cheque No.444082 dated January 10, 2020 for Rs. 15,00,000/- and Rs.40,00,000/- respectively. TRACO submits that, as per request of Etibar, both the cheques were presented with ICICI Bank and were duly honoured by being credited in the account of TRACO, being Account No.128405000053 on January 28, 2020.

10. However, *vide* e-mail dated March 2, 2020 from its banker, the ICICI, TRACO was requested to refund the amount of Rs.55,00,000/-. ICICI Bank, on March 12, 2020, issued a letter to TRACO demanding reversal of the amounts of Rs.15,00,000/- and Rs.40,00,000/- credited in the account of the petitioner against the said cheques. ICICI Bank, in such communication, admitted that both the cheques were duly presented and credited on January 28, 2020.
11. The ICICI, thereafter, received an e-mail from the drawee bank (CBI) to return both the cheques on grounds of “funds insufficient”. Accordingly, the CBI intimated to TRACO that the latter’s account was marked as ‘under lien’ by the ICICI. TRACO submits that the said embargo by way of lien on the account of TRACO was patently illegal, there being no irregularity or illegality on the part of the TRACO. It is submitted that TRACO is being harassed, being not able to utilise the funds amount to approximately Rs.9,00,000/-, which is lying in the current account of TRACO with the ICICI Bank. Despite the letter of

TRACO dated July 1, 2020, the ICICI Bank in its reply dated July 6, 2020 reiterated its stand and, instead of removing the lien marked over the account of TRACO, ICICI made a request to the petitioner to make available a further sum of Rs.46,08,261, so that the amount of Rs.55,00,000/- could be remitted to the CBI.

- 12.** It was further intimated by ICICI that since the CBI had recovered an amount of Rs.55,00,000/- from Etibar, the lien to the extent of Rs.15,00,000/- was removed and that TRACO was to put in a sum of Rs.30,72,581/- in its account for remittance back to CBI by the ICICI. TRACO has challenged such action, along with subsequent consequential acts of the ICICI, in WPO 2970 of 2022.
- 13.** A perusal of the pleadings of parties in both the matters, which have been taken up for hearing due to identity and inextricability of causes of action, clearly brings out certain facts.
- 14.** Etibar handed over two cheques dated December 23, 2019 (for Rs.15,00,000/-) and January 10, 2020 (for Rs.40,00,000/-) in favour of TRACO. Although Etibar alleges that, as per agreement between TRACO and Etibar, TRACO was to submit the cheques later but presented them earlier, the said dispute is a non-issue for adjudication of the present *lis*.
- 15.** The moment a cheque is drawn, it is deemed that the date put on it is sacrosanct and the person drawing the cheque undertakes to pay an amount mentioned therein to the payee.

- 16.** Even if it was to be deemed that Etibar had left the space designated for putting in dates blank in the said cheques, the option, it is to be deemed, was left open by Etibar to its payee TRACO to insert the date as per the convenience of the payee. Hence, the excuse put up by Etibar that TRACO deposited the cheques earlier than agreed, is flimsy in the present context.
- 17.** We must next proceed to examine the chain of events which happened, from the focal perspective of the cheques.
- 18.** Following the money trail, the cheques were duly presented by TRACO with its banker ICICI and the amount of Rs.55,00,000/- was duly credited against the said cheques to the account of TRACO on January 28, 2020. Thus, there was no illegality whatsoever on the part of TRACO in the entire dealing.
- 19.** As regards the dispute inter se between TRACO and Etibar, sought to be raised by Etibar, the same cannot be the subject-matter of the present litigation and can only be examined in a proper civil suit and/or criminal proceeding initiated at the instance of either of the two.
- 20.** What is relevant here is that, upon TRACO having deposited the said two cheques to the ICICI for collection, the Regional Cheque Processing Centre (RPC) presented the cheques duly to the CBI on January 28, 2020 through the Cheque Truncation System (CTS). As per the CTS clearing system, the amount was debited from the nominal account of the CBI. Since there was no sufficient fund in the

account of Etibar to honour those cheques, the CBI uploaded the message of returning the cheques in the system with the FTL Portal.

- 21.** What happened thereafter is crucial. Due to system failure on technical score, such communication was not delivered to the Nodal Agency for Inter Bank Settlement (NPCI). Hence, the amount could not be debited from the account of TRACO held with the ICICI.
- 22.** The cheques were, thus, returned to ICICI Bank over the counter on June 8, 2020. As per standard procedure of CTS, the amount of the two cheques, that is, Rs.55,00,000/- was debited from the account of CBI and credited to the account of TRACO held with ICICI.
- 23.** In the entire chain of transactions, the genesis of this snowball was the refusal to honour the cheque of Etibar due to funds of Etibar being insufficient. The series of events following next was merely a fallout of such event. The technical glitch in the banking system was the real culprit, for which the intimation of ICICI, although given to the appropriate authorities in time, was not delivered to the Nodal Agency, which led to the amount not being debited from the account of TRACO held with the ICICI Bank.
- 24.** Thus, neither the ICICI Bank nor TRACO can be held guilty of any illegality, since ICICI Bank acted in due course befitting a prudent person in terms of banking norms. TRACO, holding two cheques, which are valid negotiable instruments, presented the same and had them honoured, by virtue of its account with ICICI Bank being credited.

- 25.** The trouble started in fixing liability on CBI, since CBI could not be held to be “guilty” as such for the comedy of errors which ensued. The real guilt lay on the glitch in the banking system which cannot, as such, be attributed to any particular person or persons. An enquiry in that regard, in fact, due to its intricacy and magnitude, would not be commensurate with the cause of action for the present writ petitions between individual entities.
- 26.** However, both TRACO and Etibar could not be penalised for the same error. As held above, no fault could be attributed to TRACO whatsoever and, as such, the ICICI Bank went beyond its authority as the banker of TRACO in putting a hold over the account of TRACO. Since TRACO did not commit any irregularity or unlawful act in the entire course of its banking with ICICI, the ICICI bank had no business to put a lien on its account due to a fault of the banking system.
- 27.** Thus, the lien put on the account of TRACO ought to be reversed.
- 28.** Taking the liabilities inter se the CBI and the ICICI, neither of the two could be faulted. However, at the end of the day, at least notionally, the amount credited to the account of TRACO was money belonging to the CBI. Due to the Inter Banking modalities, ICICI could not be held to be liable, being only the disbursing authority, having credited the amount from the nominal account of Etibar to that of TRACO, acting as a mere agent inbetween.

29. Hence, the loss suffered cannot but be tracked down to CBI, whose money was ultimately paid to TRACO by mistake. The buck has to stop with the CBI and cannot be shifted further to ICICI.
30. Neither the ICICI nor TRACO can be made liable therefor. Hence, the claim of CBI as against ICICI, directing reversal of TRACO's account held with the ICICI and disbursal of Rs.55,00,000/- back to the CBI is *de hors* the law and patently contrary to principles of equity.
31. The ultimate dispute which arises is between CBI, whose money was erroneously debited due to a misrepresentation by Etibar and Etibar, which seeks to defend its action by raising a dispute, *ipso facto*, with TRACO, which can have no bearing on the present issues.
32. Hence, there is no liability on the part of the ICICI to make good the loss from the account of CBI. The prerogative now is of the CBI to recover the amount from Etibar.
33. Since, within the contemplation of Section 138 of the Negotiable Instruments Act and even otherwise, the entire liability for dishonour of a cheque on the ground of insufficient funds lies on the person paying the cheque, the liability of Etibar in that regard cannot be denied.
34. Hence, insofar as the CBI is concerned, it was justified in debiting Rs.15,00,000/- from the account of Etibar held with it as well as putting a lien on the rest of the amount of Rs.40,00,000/-.
35. No illegality can be found in such act by the CBI, to make good the loss suffered by it due to the fault of Etibar, whose account held

insufficient funds to honour cheques drawn by Etibar, which were duly presented as per the dates written on the same.

- 36.** Hence, the challenge of Etibar cannot succeed in any manner whatsoever.
- 37.** Accordingly, **WPO No.2291 of 2022** is dismissed on contest without any order as costs. It is made clear, however, that the petitioners in WPO No.2291 of 2022 will be at liberty to initiate appropriate proceedings against M/s. TRACO, petitioner no.1 in WPO No.2970 of 2022, if, in the perception of the petitioners in WPO No.2291 of 2022, M/s. TRACO is liable to pay any amount to them. Nothing in this order shall unnecessarily influence the forum/court deciding such disputes between the M/s. Etibar Investment Pvt. Ltd. and M/s. TRACO Enterprises.
- 38.** **WPO No.2970 of 2022** is allowed on contest, thereby directing the respondent no.2 therein, that is, the ICICI Bank Limited, to immediately reverse and negate the impugned action taken by it against petitioners, by negating and neutralising the lien marked regarding the account of the petitioners held with the ICICI Bank and crediting back any amount, which might have been debited by the ICICI Bank Limited, in respect of accounts held by M/s. TRACO Enterprises with it, on the alleged cause of action which has been impugned in WPO No.2970 of 2022.
- 39.** There will be no order as to costs.

- 40.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)