IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

2 CIVIL APPLICATION NO.7606 OF 2023
IN WP/5948/2020 WITH WP/5948/2020

THE REGIONAL PROVIDENT FUND COMMISSIONER II
VERSUS
IDBI BANK LIMITED THROUGH IT'S MANAGING DIRECTOR AND ANOTHER

Mr.N.K.Choudhari, Advocate for the Applicant.
Mr.S.V.Adwant, Advocate for Respondent No.1.
Mr.D.S.Bagul, Advocate for Respondent No.2.

**(CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.)**

DATE : OCTOBER 30, 2023

PER COURT :

1. The Applicant is the Regional Provident Fund Commissioner-II/Recovery Officer, PPF, Nasik, which has put forth prayer clause B(i) and (ii) as under :-

"B(i) Pending the hearing and final disposal of the above mentioned Writ Petition :-

Respondent No.1 herein/petitioner bank may be directed to release the sum of Rs.1,12,58,621.37/- available in the bank account no.0483102000008624 of establishment (maintained with the Respondent No.1 bank / original petitioner), along with interest accrued thereon, towards the part recovery of the outstanding *provident fund and allied dues determined u/s 7A of the Act, 1972, and for that purpose issue necessary orders; and / or*

(ii) in the alternative, the applicant are praying for vacating the effect of the order dtd. 02.12.2020 annexed supra, so as to enable the office of the applicant to proceed further with the recovery action for realizing the outstanding provident fund and allied dues, and for that purpose issue necessary orders."

2. We have considered the submissions of the learned Advocates for the respective sides, who have canvassed marathon submissions on Friday - 27.10.2023 and today.

3. The Petitioner before us is a Bank which approached this Court in view of the recovery order dated 19.03.2020 alongwith the recovery notice dated 05.05.2020 and the show cause notice dated 17.06.2020 issued by Respondent No.1 to the Petitioner. The industrial establishment has admittedly defaulted in payment of provident fund and allied contributions / charges in respect of it's employees for the period December 2016 to February 2019. The recovery order dated 19.03.2020 is u/s 8F of the EPF and MP Act, 1952 indicates an outstanding sum of Rs.1,36,36,648/- as on 19.03.2020, as assessed u/s 7A of the Act. Hence, the Bank account of the industrial establishment

bearing Current A/C No.0483102000008624, was frozen under the provisions of the Act.

4. After the Petitioner approached this Court, this Court issued notice on 02.09.2020. However, this Court did not grant interim protection to the Petitioner. Subsequently, on 02.12.2020, this Court recorded that the PF Department is not precluded from taking a decision pursuant to the show cause notice and no precipitative action would be taken against the Bank.

5. Having heard the lengthy submissions of the learned Advocates for the respective sides, the peculiar features of this case can be summarised as under :-

[a] The industrial establishment obtained a loan of Rs. 107 crores from the Bank.

[b] The OTS between the Bank and the Industrial establishment was arrived at on 22.10.2021 and as against a recoverable amount of Rs.117,34,92,078.00, the OTS was for an amount of Rs.27 crores only.

[c] A conditional no dues certificate was issued by the Bank to the

Establishment. The mortgaged property was released.

[d] In the entire OTS document alongwith the annexures, there is no mention of the IDBI current savings bank account held by the industrial establishment.

[e] However, the industrial establishment executed an undertaking dated 15.02.2021 wherein it was mentioned by the industrial establishment that if the establishment fails to comply with certain conditions of the OTS document, the Bank can proceed to recover an amount of Rs.1.10 crore together with interest from the Current Account No.0483102000008624.

[f] With the passage of time, it is now undisputed that the recoverable amount is Rs.84,99,046/- only, as against the revenue recovery certificate, which is issued for recovering the unpaid PF contributions for the period December 2016 to February 2019 by the industrial establishment.

6. The learned Advocate for the Petitioner Bank has canvassed that though the OTS is conditional and a no dues certificate has already been issued to the industrial establishment, the undertaking executed by the industrial establishment and the subsequent communication of

the Bank dated 12.05.2023, would indicate that if the Petitioner/Bank succeeds in the Writ Petition, the amount of Rs.1.10 crores with interest towards the OTS amount, would be recovered from the said current bank account. It is further canvassed that the Bank is a secured creditor and, therefore, before the amount towards the PF accumulations could be apportioned as against the revenue recovery certificate, the Bank has the first charge.

7. The learned Advocate for the PF Department submits that the submissions of the Bank are fallacious for the reason that the OTS is already accepted and a no dues certificate has been issued. There was no reason for the Bank to indulge in granting a conditional OTS. While recovering Rs.117,34,92,078/-, the Bank Authorities agreed for an amount OTS of Rs.27 crore only, practically waiving Rs.90 crores towards the recoverable loan amounts from the industrial establishment. Once the OTS is arrived at and the loan account is closed, there is no question of the Bank being a secured creditor.

8. The learned Advocate for the Bank has relied upon the following judgments :-

[1] Central Bank of India Vs. State of Kerala and others [(2009) 4 SCC 94]

[2] ICICI Bank Ltd., Vs. SIDCO Leathers Ltd., and others [(2006) 10 SCC 452]

[3] Maruti Udyog Ltd., Vs. Ram Lal and Others [(2005)2 SCC 638]

[4] Solidaire India Ltd., Vs. Fairgrowth Financial Services Ltd., and others [(2001) 3 SCC 71]

[5] Kalupur Commercial Co.op.Bank V/s. State of Gujarat [2019 SCC Online Gujarat 1892]

[6] State Bank of India Vs. Union of India and others [WP No.20196/2019 (High Court of Telangana)

[7] State Bank of India Vs. State of Maharashtra and others [2020 SCC Online Bombay 4190]

[8] Assistant Commissioner v/s Indian Overseas Bank and another [2016 SCC Online Madras 10030]

[9] Asix Bank Ltd., Vs. State of Maharashtra and another [2017 SCC Online Bombay 274]

[10] Inbasagaran and another Vs. S.Natarajan [(2015) 11 SCC 12]

9. The learned Advocate for the industrial establishment submits that the mortgaged property has been released by the Bank, voluntarily. The amount of Rs.1,12,58,621.37 is parked in the above referred account of the industrial establishment, held with the Petitioner/Bank. The learned Advocate for the PF Department submits that the amount is in the account held by the Industrial Establishment.

Once the OTS is arrived at and a no dues certificate is issued, though being conditional, the Petitioner Bank is no longer a secured creditor. There was no reason for the Bank to release the immovable properties, which were mortgaged to the Bank by the Industrial establishment while taking the loan of Rs.30 crores.

10. In the communication dated 12.05.2022 addressed by the Bank to the industrial establishment, it is specifically mentioned in clause 1 that, "*In case of favorable judgment in favour of IDBI Bank in the matter pertaining to EPFO pending before HC of Mumbai, the amount of Rs.1.10 crore shall accrue to IDBI* **over** ***and above the OTS settlement amount***. It is further stated in clause 3 that "*That, on failure to comply to the specific condition no. i) of the LOA, the Bank shall be at liberty to proceed to recover the amount of Rs.1.10 crore together with the interest accrued in current account no.0483102000008624 of PSSGL with IDBI Bank, branch Shirpur.* ".

11. What is required to be considered is that, prima facie, the Petitioner/Bank cannot be said to be a secured creditor once the OTS is arrived at, the mortgaged property is released and the conditional no

dues certificate has been issued. Even in the OTS, the Petitioner/Bank has nowhere mentioned that it would recover the amounts from the industrial establishment from the above stated current account. All that is now mentioned with regard to the current account, is only after the authorities passed an order on the u/s 7A enquiry dated 30.01.2020 and the recovery order was issued u/s 8F dated 19.03.2020. Anticipating that the PF authorities would now initiate action with regard to the current account held by the industrial establishment for recovery of the amounts under the provisions of the EPF Act, that, prima facie, the Petitioner/Bank started having correspondence with the industrial establishment and mention the said account number in the said communications. If that amount was due and payable by the industrial establishment to the Bank, there is no explanation as to why the Bank allowed the industrial establishment to keep large sums of money in the said current account without the Bank apportioning the said amounts towards any of the terms of settlement of the OTS.

12. Nevertheless, the Bank has mentioned in its correspondence dated 12.05.2022 that Rs.1.10 crore would accrue to the Bank '*over and above the OTS settlement amount*', and this is after

a letter of approval dated 22.10.2021 sanctioning the OTS was issued by the Petitioner/Bank.

13. There is no dispute that the PF accumulations gather interest which is to be paid by the PF department to the employees. Interest under the provisions of the EPF and MP Act continues to mount on the said amounts. Eventually, when the employees are to be granted their PF accumulations, interest as is admissible under the Rules, has to be paid by the PF Department. There is no reason for the PF Department to pay such interest component from their own accounts as these interest components are leviable on the PF account held by the industrial establishment, provided the amounts are deposited by the employer.

14. Keeping in view that, prima facie, the Petitioner / Bank is not a secured creditor in the light of the above developments, it cannot claim to have a right over the amount parked by the industrial establishment in its above mentioned current account with the Bank. The PF contributions, being a part of social security legislation, would therefore be a right of the employees.

15. In order to balance the equities, we find that if eventually, the Petitioner / Bank succeeds in the Writ Petition before this Court, it may have a right to claim an amount of Rs.1.10 crores from the industrial establishment. It would be open for the industrial establishment to contend that this amount is beyond the OTS settlement. We have no reason to delve into this controversy between the Bank and the industrial establishment at this interim stage, since that issue needs to be left open and all contentions of these parties to that extent will naturally be available to them.

16. In so far as the various citations that have been placed on record by the learned Advocate for the Petitioner, it is obvious that the only issue that needs to be considered is whether, prima facie, the Petitioner/Bank can be said to be a secured creditor. Not a single judicial pronouncement is cited before us which would indicate that, after a Bank, while recovering an amount of Rs.117,34,92,078/- settles the OTS with the industrial establishment for an amount of Rs.27 crores as a full and final settlement and releases the mortgaged property, could still be a secured creditor.

17. Therefore, considering the comparative hardships and the fact that the PF Department will have to shoulder the onerous burden of paying interest on the PF accumulations to the workers, we deem it appropriate to partly allow the Civil Application filed by the PF Department with the following directions :-

[a] The PF Department will now be entitled to an amount of Rs.84,99,046/- from the Current Account No. 0483102000008624 of the industrial establishment, keeping in view that the industrial establishment has deposited certain amounts during the pendency of this Petition.

[b] The Petitioner/Bank would transmit an amount of Rs.84,99,046/- from the Current Account No.0483102000008624 of the industrial establishment to the PF Department in the PF Code No. of the industrial establishment, within 15 days from today.

[c] With the above compliance, the Revenue Recovery Certificate under the EPF and MP Act, stands satisfied for the period December 2016 to February 2019.

[d] If the Petitioner Bank succeeds in the Writ Petition before this Court, the Petitioner is at liberty to initiate steps as may be advised, if at

all it has any amounts to be recovered from the industrial establishment and to balance the equities, we record that the Bank and the industrial establishment would be at liberty to canvass all their contentions on this issue.

[e] It be noted that the reasons and observations appearing in this order are only in relation to the amount which the Provident Fund Authorities are legally entitled to recover under the RRC and the same shall not mean that this Court has arrived at any specific conclusion with regard to the financial dispute between the Petitioner Bank and the industrial establishment.

(Y. G. KHOBRAGADE, J.) **(RAVINDRA V. GHUGE, J.)**