

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

208

CWP-25954-2015 (O&M).
Reserved on: 02.05.2023.
Date of Decision: 01.06.2023

RANA GURJEET SINGH AND OTHERS

.. Petitioners

Versus

PUNJAB ENERGY DEVELOPMENT AGENCY AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Rajiv Partap Atma Ram, Sr. Advocate, with
Mr. Rahul Sharma, Advocate,
for the petitioners.

Mr. Aditya Grover, Advocate,
for respondent No.1.

Mr. Avinit Avasthi, AAG, Punjab.

VINOD S. BHARDWAJ, J.

Challenge in the present writ petition is to the Recovery Certificate dated 19.11.2015 (Annexure P-6) and the Notification dated 21.09.2015 (Annexure P-3) whereby the respondents have initiated the process for recovery of outstanding dues under the Punjab Public Moneys (Recovery of Dues) Act, 1983 (hereinafter referred to as 'the Act of 1983') by appointing an Authorized Officer for recovery of dues.

FACTS AND PLEADINGS OF PETITIONER

The petitioners are the promoters of M/s Rana Sugars Limited and had entered into a Tripartite Financial Collaboration Agreement dated

28.03.2000 with the Company namely M/s Rana Sugars Limited and Punjab Energy Development Agency (hereinafter to be referred as 'PEDA'). The said Tripartite Financial Collaboration Agreement (hereinafter referred to as 'Collaboration Agreement') was later on amended vide a Supplementary Tripartite Financial Collaboration Agreement executed between the parties on 20.11.2000 for setting up of a bagasse based co-generation Project. The petitioners-Promotees as well as respondent No.1-PEDA had invested in the equity share capital of M/s Rana Sugars Limited. The Collaboration Agreement contained a clause whereby the petitioners were bound to buy back the shares of M/s Rana Sugars Limited held by respondent No.1-PEDA after the expiry of 10 years from the date of commercial production of the co-generation project. The date of commercial production of the Project was 13.01.2001. The cause of action to enforce buy back of the shares thus accrued in favour of the respondent No.1-PEDA on 13.01.2011. The respondents did not take any steps for enforcement of Clause 8 (g) of the Collaboration Agreement within the period of limitation i.e. till 12.01.2014 and the only steps that were taken were sending of letters/reminders. On 21.09.2015, the Government of Punjab issued a Notification declaring respondent No.2 as the "Authorized Officer" for recovery of the Government dues, invested as equity by respondent No.1-PEDA, on behalf of the State Government in the matter of M/s Rana Sugars Limited." It is pleaded that no Notification for the appointment of an "Authorized Officer" could be issued as the claim of respondent No.1-PEDA does not fall within the purview of the Punjab Public Moneys (Recovery of Dues) Act, 1983. Accordingly, the petitioners submitted a representation to the respondents invoking the Arbitration Clause in terms

of the 'Collaboration Agreement.' However, instead of acceding to the demand raised by the petitioners, respondent No.1-PEDA claimed that an amount of Rs.9,44,93,441.46 is to be recovered from the petitioners and that the liability of the petitioners does not need any determination. A recovery certificate was thereafter issued by the Authorised Officer for the recovery of the above amount calculated upto 30.09.2015 vide Memo dated 19.11.2015. It was further averred that neither any notice was issued to the petitioners nor any opportunity was provided to them to put forth their defence before the issuance of the Recovery Certificate. The process was thus challenged on grounds noted during arguments.

RESPONSE OF THE RESPONDENTS

A short reply on behalf of respondents No.1 to 3 had been filed wherein it was averred that a baggase based demonstration, co-generation project of 10.2 MW capacity was sanctioned by the Ministry of New and Renewable Energy, Government of India, vide its communication dated 28.09.1999 for setting up in Sugar Mill of M/s Rana Sugars Limited at village Buttar Seviyan, District Amritsar. The Government of Punjab through Department of Science, Technology, Environment and Non-Conventional Energy Sources decided for equity participation of Rs.255 Lakhs in the project vide letter dated 13.03.2001 to the Nodal Agency i.e. respondent No.1-PEDA. After seeking the requisite approvals/sanctions from all the concerned quarters, a Tripartite Financial Collaboration Agreement was executed between the parties on 28.03.2000 which was supplemented on 20.11.2000. The agreement specifically contained a recital that respondent No.1-PEDA has been granted sanction by the State Government to invest funds to the tune of Rs.255 lakhs in the equity of M/s

Rana Sugars Limited whereupon the sanction for investment of the amount was accorded on 28.03.2003 and funds were disbursed. As per the Government of Punjab directions, the Governments funds were invested as equity funds and the requisite shares were allotted to the respondent No.1-PEDA. The baggase based project was commissioned by M/s Rana Sugars Limited on 13.01.2001 as the supply of power to the grid of distribution licensee commenced from said date i.e. 13.01.2001. There was a lock-in period of 10 years from the date of production for the investment made by the State Government. The promoters had the option, with prior sanction of the State Government/PEDA to retire/buy the equity in yearly installments/lump sum after period of 05 years. If the Promoters did not exercise such option after expiry of the period of 05 years, they were bound to buy back the shares held by PEDA on expiry of a term of 10 years from the date of Commercial Production. The repayment of the amount of the shares subscribed by PEDA, along with interest, was to be collected at the rates mentioned under Clause 8 (b) (i). The Promoters failed to fulfill their bounden obligation as per the Collaboration Agreement. A communication dated 15.05.2013 was sent to the petitioners to buy back the 25.50 Lakh equity shares. However, as the promoters did not exercise the above said option, PEDA was entitled to recover the amount payable as Government dues without prejudice to its other rights under the agreement. The respondents reminded the petitioners about their obligations and sought payment of Rs. 5,86,72,992.69 within a period of one month failing which the action was to be taken in terms of the clause 8 (g) of the agreement vide letter dated 15.05.2013. However, the petitioners did not pay any heed to the said requests/reminders that were sent again on 06.09.2013, 06.02.2014

as well as on 06.06.2014. Consequently, vide Notification dated 21.09.2015, respondent No.2 was appointed as Authorized Officer under the provisions of the Punjab Public Moneys (Recovery of Dues) Act, 1983. A recovery certificate was eventually issued by the Authorized Officer on 19.11.2015 for the State Government dues recoverable from M/s Rana Sugars Limited. It is averred that the petitioners are obligated to buy the equity shares subscribed by respondent No.1-PEDA and the liability being strict, the same had to be discharged by the petitioners. The communications had been repeatedly sent to the petitioners **to pay the outstanding dues, however, they chose to be non-responsive and non-committal in response compelling the Authorised Officer for issuance of recovery certificates.**

The petitioners had also enjoyed other additional financial benefits such as grant from Government of India and availed loan along with fiscal incentives. Despite having availed multifarious benefits, the petitioners failed to fulfill their bounden obligation. In the event of the petitioners not repaying the amount, huge loss would be caused to the Public Exchequer. The proceedings were thus defended as rightly invoked as per the Collaboration Agreement.

No rejoinder/replication was filed to the written statement.

ARGUMENTS OF PETITIONERS

Learned counsel for the petitioners referred to the provisions of the Punjab Public Moneys (Recovery of Dues) Act, 1983 (hereinafter referred to as 'Act of 1983') and has argued that respondent No.1-PEDA is neither a Corporation nor a State Government and is only a Society registered under the Societies Registration Act, 1860. Act of 1983 was

enacted to provide for speedy recovery of certified dues payable to the State Government or the Punjab Financial Corporation or any other Corporation notified by the State Government or a Government Company or a Banking Company. It is contended that respondent No.1-PEDA does not fall in any of the said categories described under the Act of 1983. The object of the Act of 1983 being recovery of loan, advance or grant as is referred to in Section 3 read with Section 2 (h) (i), the Statute would not apply as the arrangement in the instant case was for purchase of the equity shares which are always open to be redeemed by sale in stock market. A dispute could not thus be resolved under the Act of 1983 but could only be resolved by any other lawful means including and not restricted to arbitration or civil suit. It is further argued that the investment not have been done by the Government; Government Company; Government Corporation or a Banking Company, as required under the Act of 1983, recovery of any other amount cannot be effected through the above Act. In so far as recovery pursuant to an agreement between the parties to effect recovery is concerned, the same can be involved only in an eventuality where the money is payable to the State Government. Since, the money in the present case was payable, if at all, to PEDA and not to the Government, hence, even the above clause of Section 3 can also not be resorted to. It is further argued that the basic order of issuance of a recovery certificate is thus not only unlawful but has also been passed without adhering to the principles of the natural justice and in violation of the rule of *Audi Alteram Partem* rendering the recovery certificate liable to be quashed. It is further contended that the Act of 1983 ousts the jurisdiction of Civil Court and therefore, it is necessary to determine the “sum due” and no material was placed before the authorized

officer which could justify the determination of the “sum due” and issuance of the recovery certificate. It was also contended that there was no consideration that had flown from respondent No.1-PEDA to the petitioners and as such, the Tripartite Financial Collaboration Agreement is void and unenforceable against the petitioners for want of consideration. A further argument was raised that the claim has also not been raised within the period of limitation which ended on 12.01.2014 and Sovereign Power cannot be invoked for effecting recovery of a time barred debt by taking recourse to a coercive mode of recovery. A reference was made to the judgment of the Hon’ble Supreme Court in the matter of **S. K. Bhargava Vs. Collector, Chandigarh and others, reported as (1998) 5 Supreme Court Cases 170**. The relevant extract of the said judgment reads thus:-

“8. It is clear from the perusal of the above quoted Section that before a certificate can be issued by the Managing Director under sub-section (2) of Section 3, he must determine the ‘sum due’ from the defaulter as enjoined upon him by Section 3 (1) (b). It is difficult to appreciate the contention of the learned counsel for the respondent Financial Corporation that any such determination can take place without notice to the defaulter. The jurisdiction of the civil courts to go into the questions as to what is the amount due is expressly ousted by sub-section (4) of Section 3. In its place, the power has been given to the Managing Director under Section 3 (1) (b) to determine as to what is the amount due from the defaulter. There can be no doubt that any such determination by the Managing Director will result in civil consequences ensuing. The determination being final and conclusive, would have the result of the passing of a final decree, inasmuch as the defaulters from whom any amount is found to be due, would become liable to pay the amount so determined and the

Collector will have the right to recover the same as arrears of land revenue.

9. In our opinion, even though Section 3 does not expressly provide for an opportunity being given to the alleged defaulter to explain as to whether any amount is due or not but in view of the nature of the said provision, the principles of natural justice must be read into it. The requirement of determination of the sum due by the Managing Director must be regarded as providing for the Managing Director hearing the alleged defaulter before coming to the conclusion as to what is the sum due. The very use of the words 'determine' and 'sum due' implies that there may be a lis between the parties and they have to be heard before a final conclusion is arrived at by the Managing Director. It is not a mere claim of the Corporation which is forwarded to the Collector for realisation, but it is the 'sum due' as determined by the Managing Director which alone is recoverable. As already observed, this determination cannot be done without notice to the alleged defaulter."

A reference was also made to the judgment of the Hon'ble Supreme Court in the matter of **Iqbal Naseer Usmani Vs. Central Bank of India and others, reported as 2006 (2) SCC 241**, wherein challenge had been raised to the issuance of recovery certificate under Section 3 of the Uttar Pradesh Public Moneys (Recovery of Dues) Act, 1972. The relevant extract of the said judgment reads thus:-

"6. There is no doubt that the first respondent is a banking company within the meaning of Section 2(f) of the Act. Section 3(b) of the Act provides that where any person is party "to any agreement relating to a loan, advance or grant given to him or relating to credit in respect of or relating to hire-purchase of goods sold to him, by a banking company or a Government

company, as the case may be, under a State-sponsored scheme" and such person makes any default in the repayment of the loan or advance or any instalment thereof, on a certificate as to default along with a request from the concerned company to the Collector, the Collector shall proceed to recover the amount stated therein as arrears of land revenue. While there is no doubt that the appellant had obtained a loan from the first respondent-banking company and defaulted in repayment thereof there is no evidence to suggest that the loan was relating to hire-purchase of goods sold to him under a "State-Sponsored scheme." The learned Counsel for the respondent frankly conceded that the loan was not under any such "State-sponsored scheme." In our view, the provisions of the Act are not intended to supplant the machinery for execution of all decrees under the provisions of the Code of Civil Procedure. They can only be utilised for recovery of sums due in the special cases enumerated in Section 3(1) of the Act.

7. Upon a perusal of the record, and after hearing learned Counsel, we are not satisfied that the case of the appellant falls within the parameters of Section 3 of the Act. Consequently, the revenue officers have neither the authority to issue any certificate for recovery, nor the power to take any steps for recovery of the decretal amount. The High Court seems to have been impressed by the fact that the money was public money, and that in order to encourage development in the country, banks are providing loan facilities to persons who are willing to purchase vehicles and further that if such a loan is treated as a commercial loan, it would be difficult for the Bank to recover the same by filing a civil suit, which takes years and years to decide. According to the High Court "the money of the Bank and financial institutions is public money, which should be in circulation, otherwise the Bank and depositors will suffer." We are afraid that while this may be very good

sentiment, it cannot apply in the face of Section 3 of the Act for the reason that Section 3 does not envisage the provisions of the Act being utilised for recovery of every loan taken. Section 3(1)(b) permits this to be done only in respect of loans taken under a "State-sponsored scheme", which expression has been defined in Section 2(g) of the Act. Since it is admitted that the loan taken by the appellant was not under or in relation to a "State-sponsored Scheme" within the meaning of Section 2(g), whatever else it may be, it would not be recoverable by recourse to the machinery under Section 3 of the Act."

A further reference was made to the judgment of the Allahabad High Court in the matter of **Sharda Devi , Smt. Vs. State of U.P. and others, reported as 2002 AIR (Allahabad) 1.** The relevant extract of the said judgment reads thus:-

"19. A reading of sub-section (1) of S. 3 would show that clauses (a), (b) and (c) relate to different types of loans, advances or credits. Clause (a) relates to loans, advances or credits given by way of financial assistance. Financial assistance has a special meaning and has been defined in sub-section (b) of S. 2. Clause (c) relates to loans raised by industrial concern. Here again 'industrial concern has a special meaning under the Act and it has been defined in sub-section (d) of S. 2. Clause (b) relates to loans or advances or credits given by a banking company or a Government Company, as the case may be, under a State Sponsored Scheme, which has been defined in sub-section (g) of S. 2. The words under a state sponsored scheme" are conspicuous by their absence in clauses (a) and (c). These three clauses namely, (a), (b) and (c) identify the type of loans, advances or credits and, therefore, they have been separately provided. If the intention of the Legislature was that any loan, advance or credit given by a banking company which was not under a

State sponsored scheme could also be recovered under the provisions of the Act if an agreement had been executed by the borrower with the bank, a separate provision similar to clause (d) would have been enacted. It is noteworthy that any money, advance or credit given by the State Government or a corporation which is not of the type covered by clauses (a), (b) and (c) viz. it is not by way of financial assistance or under a State Sponsored Scheme or is in respect of a loan raised by an industrial concern, cannot be recovered under the provisions of the Act unless there is a specific agreement between the borrower and the State Government or the Corporation to the effect that it shall be recoverable as arrears of land revenue. Clause (d) which deals with such a situation clearly contemplates existence of an agreement specifically providing for recovery of the loan as arrears of land revenue. Therefore the contention that in clause (b) of sub-section (1) of S. 3, the expression under a State Sponsored Scheme" do not qualify a loan, advance or credit given by a banking company cannot be accepted. With profound respects we are unable to accept the view taken in Krishna Rice Mills (supra), to the effect that the words to any agreement relating to a loan, advance or grant given to him" is a clause sufficient to include the petitioner and, therefore, the proposition 'or appearing thereafter creates another contingency which is 'relating to the credit in respect of, or relating to hire-purchase of goods sold to him by a banking company. under a State Sponsored Scheme, and the second clause is independent of the first clause. What is relevant to be seen here is whether the expression under a State Sponsored Scheme" would also qualify the words 'by a banking company or they qualify the words 'government company alone. The agreement may relate to either a loan or advance or credit in respect of or relating to hire-purchase of goods sold. The purpose for which the money is given namely, it is a loan simpliciter or is relating to hire-purchase of goods sold to him is not at all relevant for deciding the

controversy. What is decisive is whether the loan or advance or credit was given under a State Sponsored Scheme. In our opinion, clause (b) applies to only such categories of loans or advances or credits which have been given under a State Sponsored Scheme by a banking company or a Government company and not to all kinds of loans or advances.

20. In a matter relating to repayment of loan by installments there can be a serious and bona fide dispute regarding the exact amount which has accrued as interest and also about the total amount outstanding against a borrower. Under the scheme of the Act, power has been conferred upon the bank to send a certificate to the Collector mentioning the amount due from a borrower and thereafter the amount is recovered as arrears of land revenue. The bank is empowered to take a unilateral decision regarding the quantum of the amount which is due from the borrower as neither a notice nor an opportunity of hearing to the borrower at the time of taking of such a decision is provided under the Act. Under sub-section (5) of S. 3, the certificate sent to the Collector is final and cannot be questioned in any suit or in any reference to arbitration proceedings. No civil Court or any other authority can grant an injunction in respect of any action taken or intended to be taken in pursuance of any power conferred by or under the Act. The only remedy available to the person from whom recovery is sought to be made is to pay the amount under protest, whereupon the recovery proceeding shall be stayed and thereafter make a reference under or otherwise enforce an arbitration agreement in respect of amount so paid or file a suit against the State Government in the Civil Court for the amount so paid where he will have a right to give evidence of the amount, if any, which he alleges to be due from him in accordance S. 287-A, U. P. Zamindari and Land Reforms Act. Filing of a suit for recovery of the amount after the money has already been paid is rather a harsh remedy for

a borrower who disputes the correctness of the amount mentioned in the recovery certificate. This shows that the provisions of the Act are very stringent. The Act may be constitutionally valid as under the State Sponsored Schemes credit is conveniently available to weaker section of society without furnishing collateral security and at a rate of interest which is lower than the market rate, and the repayment has to be made in easy installments over a long period. The moneys advanced by the State Government have got to be recovered expeditiously so that fresh advances may be made to others who have not yet received financial assistance as pointed out in Director of Industries v. Deep Chand, AIR 1980 SC 801. But the Act may in a given case cause untold hardship on the borrower as the bank is empowered to take a unilateral decision by itself regarding the quantum of the amount which is due from a borrower. In view of these salient features of the Act, it is necessary to give it a strict meaning and should be held applicable only to those cases which clearly and squarely fall within its ambit.”

A reference was also made to the judgment of Hon'ble Supreme Court in the matter of **B.O.I. Finance Ltd. Etc. Vs. The Custodian and others, etc. reported as 1997 (10) SCC 488**. The relevant extract of the said judgment reads as under:-

“40. Section 57 applies to cases where two sets of promises are distinct. When the void part of an agreement can be properly separated from the rest, the latter does not become invalid. The ready-forward transaction consists of two parts. In the ready leg there is a purchase or sale of securities at a stated price which is executed on payment of consideration for the spot delivery of the security certificates together with transfer forms. The full and absolute ownership of the title in securities vests in the purchaser, the entire property in the security

passing immediately upon such delivery and payment. The seller is divested of all the rights, title and interests in the said securities. The forward leg is to be performed at a later date on the stated price being paid. The securities are to be delivered back when the title in interest therein would pass to the original seller. It is clear that such a ready- forward transaction consists of a set of reciprocal promises. The first set of promises were fully executed, but the second set remained executory. Section 57 of the Contract Act would thus be attracted to the present case, the effect of which would be that the first set of promises would constitute a binding contract but the second or the forward leg would be void and unforceable. Neither the object nor the consideration of the ready leg is illegal, unlawful or prohibited under Section 23 of the Contract act. the forward leg is neither the consideration nor the object for entering into the ready leg. At best it may be that the forward leg provided the parties with the motive for entering into the contract but that would not affect the severability of the forward leg which alone is declared illegal under the Securities Control Regulation Act.”

Learned Senior counsel further refers to the judgment in the matter of **Foreshore Co-operative Housing Society Limited Vs. Praveen D. Desai (Dead) through LRs and others, reported as 2015 (6) SCC 412**, to contend that where a Court has no jurisdiction, it cannot be conferred upon it by consent or waiver of the parties. Reliance was also placed on the judgment in the matter of **Nithinbhai Saevatilal Shah and another Vs. Manubhai Manjibhai Panchal and another, reported as 2011 (9) SCC 638** to corroborate the aforesaid argument and to emphasis that no amount of consent by the parties can confer jurisdiction where there exists none, on a

Court of law nor can they divest a court of jurisdiction which it possesses under the law.

ARGUMENTS BY RESPONDENT

On the other hand, learned counsel for the respondent No.1- PEDDA has vehemently argued that Tripartite Financial Collaboration Agreement executed between the parties specifically provide that in the event of default by the promoters in buying back the shares of PEDDA, it shall be entitled to recover the amount payable as Government dues, without prejudice to its other rights under the agreement. He further contends that the respondent-Society was only a Nodal Agency for investing funds of the State Government and that the promoters being bound to buy back the said equity, committed a default in doing so. The amount in question is actually an advance/loan by the Government and being public money it can rightly recover the same by taking recourse to the Act of 1983.

It is further contended that similar issue had earlier been examined by a Coordinate Bench of this Court in the matter of **M/s Rama Petrochemical Limited and others Vs. Punjab State Industrial Development Corporation Limited and others, CWP No.12861 of 2006 decided on 27.11.2009**, wherein the judgments relied upon by the petitioners were considered by this Court under a similar agreement executed between the petitioner therein with the Punjab State Industrial Development Corporation Limited (PSIDC). The relevant extract of the said judgment reads thus:-

“15. Mr. Rahul Sharma, learned counsel for the petitioners has made the following submissions to attack the order dated

31.5.2006 (P-9) and the consequential recovery certificate (P-14) sent by the PSIDC to the Collector, SAS Nagar, Mohali, to make recovery as per the provisions of Section 3 of the 1983 Act.

16. Mr. Sharma has firstly submitted that the claim made by PSIDC does not fall within the purview of 1983 Act as no loan or grant has been sanctioned by it in favour of the petitioner under State sponsored Scheme. According to the learned counsel it is only the loan advanced from State-sponsored Scheme which are covered by the 1983 Act and recovery of only such loan amount could be effected by adopting the mode provided by 1983 Act. In support of his submission learned counsel has placed reliance on a judgment of Hon'ble the Supreme Court rendered in the case of Iqbal Naseer Usmani v. Central Bank of India, (2006) 2 SCC 241 and argued that in absence of evidence to suggest that the loan was advanced under a State-sponsored Scheme as required by Section 3, the 1983 Act would not apply and the proceedings initiated therein are wholly without jurisdiction. Mr. Sharma has also placed reliance on a Full Bench judgment of Allahabad High Court in the case of Smt. Sharda Devi v. State of U.P., AIR 2002 All 1 (F.B.), and argued that the U.P. Public Moneys (Recovery of Dues) Act, 1972 (for brevity, 'the U.P. Act') is pari materia to that of 1983 Act. The question by the Full Bench of Allahabad High Court was decided which support the claim of the petitioner and it was held that the loan advanced by a banking company to a borrower under State-sponsored Scheme alone could be recovered by taking recourse to Section 3 and not otherwise.

17. The second submission of Mr. Sharma is that clause 22 of the Financial Collaboration Agreement (P-1), which is the basis of the claim made by PSIDC is illegal, void and, therefore, the same cannot be enforced in law. According to

the learned counsel, clause 22 of the Financial Collaboration Agreement is not a spot delivery contract and it violates Section 16 of the Securities Contracts (Regulation) Act, 1956. According to the learned counsel clause 22 of the Financial Collaboration Agreement contemplates the purchase of security at a future date and, therefore, it is speculative in nature. In support of his submission, learned counsel has placed reliance on a judgment of Hon'ble the Supreme Court rendered in the case of B.O.I. Finance Ltd. v. The Custodian, AIR 1997 SC 1952, and argued that a circular issued by the Reserve Bank of India under Section 36(1) prohibits the banking company from entering into buyback transactions which are not made public. They were required not to enter into buyback contracts which were not according to the circular. He has then placed reliance on a judgment of Calcutta High Court in the case of B.K. Holdings (P) Ltd. v. Prem Chand Jute Mills, [1983] 53 Company Cases 367, and argued that the un-quoted shares of public limited company are also marketable securities as there is express prohibition by the 1956 Act. Another ground of attack raised by Mr. Sharma is that no consideration had flown from PSIDC to the petitioners. The Financial Collaboration Agreement (P1) itself is void as per provisions of Section 25 of the Contract Act, 1872 (for brevity, 'the Contract Act'). In that regard he has placed reliance on the judgment of Hon'ble the Supreme Court in the case of B.O.I. Finance Ltd. (supra).

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23. In the background of the aforesaid factual position, Mr. N.S. Boparai has submitted that the constitutional validity of the U.P. Act has been upheld by Hon'ble the Supreme Court in the case of Director of Industries, U.P. v. Deep Chand Aggarwal, (1980) 2 SCC 332. He has further claimed that the provisions of the 1983 Act are pari materia to the U.P. Act because both the Acts aimed at one object, which enable the

State Government and the Corporation to recover the sums advanced as arrears of land revenue. He has also placed reliance on two Division Bench judgments of this Court rendered in the cases of Vivek Sarin's case (supra) and Vipin K. Singla v. Haryana Financial Corporation, 2000 (1) PLR 303, wherein the constitutional validity of the Haryana Act has been upheld. Learned counsel has also relied upon a Single Bench judgment of this Court rendered in the case of Swaraj Engines Limited v. Punjab State Industrial Development Corporation, 2008(1) Bankers' Journal 390, upholding the constitutional validity of the 1983 Act, which in turn is based on the judgment of Hon'ble the Supreme Court rendered in S.K. Bhargava's case (supra). Therefore, there is no doubt that the State legislature enjoys competence to enact such Acts for recovery of its dues.

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26. Mr. Boparai then argued that the Financial Collaboration Agreement cannot be attacked on the ground of lack of valuable consideration. In that regard he has placed reliance on Section 2(d) of the Contract Act, 1872, which clearly spells out that any promise made or done or abstained from doing would also be called 'consideration' for such promise.

27. Referring to the principles of mutuality, Mr. Boparai has argued that it does not lie in the mouth of the petitioner to challenge a part of the Financial Collaboration Agreement and accept the other part as valid. A party to a contract cannot accept or reject the same transaction by keeping the advantageous under un-challenged part. In such a situation a party has to accept the other part also, no matter howsoever dis-advantageous it may be. In the same breath, learned counsel has explained another aspect by arguing that no party could rescind a contract or term it illegal at a mature stage at his convenience. In support of the aforesaid submission, learned counsel has placed reliance on two judgments of

Hon'ble the Supreme Court rendered in the cases of Ganga Retreat and Towers Ltd. v. State of Rajasthan, (2003) 12 SCC 91 (paras 28 to 32) and Nagubhai Ammal v. B. Shama Rao, AIR 1956 SC 593 (para 21). According to the learned counsel once a contract stand concluded between the parties then it cannot be altered after enjoying advantages from such a contract and challenge the same to be illegal or void.

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31. Keeping in view the aforesaid facts, pleadings and rival contentions of the parties, I find that the following substantive questions of law would arise for determination in this matter:-

“(A) Whether the admitted outstanding dues of a financial corporation could be recovered by it under Section 3 of the Punjab Public Moneys ` (Recovery of Dues) Act, 1983?

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RE: QUESTION (A):

33. The PSIDC is covered by the 1983 Act and a notification dated 18.9.1986 to that effect was issued under Section 2(c) of the 1983 Act, which is Mark 'A'. The aforesaid notification reads thus:-

“No. S.O. 42/PA1/85/S.2/86.- In pursuance of the provisions of clause (c) of section 2 of the Punjab Public Moneys (Recovery of Dues) Act, 1983 (Punjab Act No. 1 of 1985), the Governor of Punjab is pleased to specify the following Corporations for the purposes of the above-said Act, namely:-

- 1. The Punjab State Industrial Development Corporation Limited.*
- 2. to 6. xxx xxx xxx”*

34. It is pertinent to notice that the expression 'corporation' used in Section 2(c) of the 1983 Act means the Punjab Financial Corporation established under the State Financial Corporation Act, 1951. It includes any other corporation owned or controlled by the Central of State Government which

the State Government by notification may specify. Accordingly, notification dated 18.9.1986 (Mark 'A') has been issued stipulating that the 1983 Act was applicable to PSIDC.

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36. A close analysis of Section 3 would show that if a person is a party to any agreement resulting to a loan, advance or grant given or relating to credit or relating to higher purchase of goods sold by the State Government, a banking company, a corporation or a Government company under a State-sponsored Scheme then the recovery could be effected under the provisions of the 1983 Act. It is evident that a person is required to be a party to any agreement relating to a loan, advance or grant given by the State Government, a banking company, a corporation or a Government company, would not necessarily mean that it has to be only under a State-sponsored Scheme. The expression 'State-sponsored Scheme' has been defined by clause (h) of Section 2 of the 1983 to mean a scheme sponsored by way of financial assistance by the State Government under which it advances money to a corporation or a Government company for the purposes of disbursing loans, advances or grants or for the purpose of sale of goods on credit or hire-purchase. Section 2(h) of the 1983 Act reads thus:-

“2(h) “State-sponsored scheme” means a scheme sponsored by way of financial assistance by the State Government under which it- (i) advances money to a Corporation or a Government Company for the purpose of disbursing loans, advances or grants or for the purpose of sale of goods on credit or hire purchase; or (ii) guarantees or agrees to guarantee the repayment of a loan advanced or grant or the payment of the price of goods sold on credit or hire-purchase.”

37. The present case involves the dues of a Government company which has received all its finances from the State and

provisions of Section 3 of the 1983 Act cannot be stretched by interpretation to confine the recovery by way of arrears of land revenue only in respect of State-sponsored Schemes. Such an interpretation would defeat the very object of the 1983 Act, which was enacted for speedy recovery of the dues of the State Government or the Punjab Financial Corporation or any other Corporation like PSIDC.

38. The matter is not res integra. Hon'ble the Supreme Court in the case of Deep Chand Aggarwal (supra) has considered similar provisions of U.P. Public Moneys (Recovery of Dues) Act, 1965. Another similar provision of the Haryana Act came up for consideration of Hon'ble the Supreme Court in the case of S.K. Bhargva (supra). In both the aforesaid cases it has been held that the dues of a corporation could be recovered as arrears of land revenue. A Division Bench of this Court has the occasion to consider the aforesaid issue in the case of Vivek Sarin (supra). One of the question raised in the said case was whether the provisions of the Haryana Act were ultra vires. The Division Bench held that by virtue of Entry 43 of List-II, the State legislature is competent to legislate in respect of public debts of the State. The State law is calculated to ensure a quick recovery of public dues. For the aforesaid proposition the Division Bench placed reliance on the judgment of Hon'ble the Supreme Court in Deep Chand Aggarwal's case (supra). Similar view has been taken by a Division Bench of this Court in the case of Vipin K. Singla (supra) and by a learned Single Judge of this Court in the case of Swaraj Engines Limited (supra).

39. Moreover, the petitioners have agreed by execution of Financial Collaboration Agreement (P-1) and Supplementary Agreement (P-2) that the 1983 Act shall be applicable. It cannot now be argued by them that such an Act would not apply. It is one thing to say that there is no estoppel against a

statute but it is quite another thing that the parties by mutual agreement may resolve a particular mode of payment and recovery which might have reflections in a statute. The petitioners having agreed to the aforesaid mode cannot now wriggle out of the covenants duly signed and accepted. The arrangement made by the parties by signing the solemn covenants cannot now be defeated by raising arguments based on technicality of a statute.

40. The argument of the learned counsel for the petitioners based on the judgment of Hon'ble the Supreme Court in Iqbal Nassir's case (supra) is wholly misplaced. In that case the Central Bank of India after obtaining a decree from a civil court had sought its execution for recovery of decretal amount as arrears of land revenue. Hon'ble the Supreme Court held that the provisions of the U.P. Act were not intended to supplant the machinery for execution of all decrees under the provisions of the Code of Civil Procedure and were confined to special cases enumerated in the Act. The amount of loan was advanced by the Central Bank of India for the purchase of a motor vehicle and decree was obtained on account of default in payment of instalments. The aforesaid judgment has no application to the facts of the present case. The loans which have been advanced by the PSIDC to the petitioners partakes the character of Government dues as it is a Government company wholly financed by the State. All its finances have been contributed by the State Government as is evident from the data provided by it in Annexure R-1. The basic reason for excluding the banking company like the Central Bank of India from the operation of any State law like the U.P. Act was that the law in respect of banking could be framed by the Parliament as per Entry 45 of List-I of the Constitution. In the instant case we are not dealing with a banking company. It is also worthwhile to notice that the Central Bank of India was not engaged in the implementation of the State-sponsored

Scheme. There are schemes like Marginal Money Scheme by the Khadi Village and Industries Commission, which are implemented through Cooperative Banks or the Punjab National Bank of other banking companies. Therefore, the argument has no substance and I have no hesitation to reject the same.

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43. The judgment of Hon'ble the Supreme Court in the case of B.O.I. Finance Ltd. (supra) on which reliance has been placed by Mr. Sharma, learned counsel for the petitioner, would not be attracted to the facts of the present case because that was a case under Section 16(1) of the 1956 Act and the contract in that case was held to be unlawful as it was in contravention of the provisions of Section 53 of the Contract Act. Likewise, the Financial Collaboration Agreement cannot be regarded as a contract without 'consideration' as has been sought to be urged by the learned counsel for the petitioner. He cited Section 25 of the Contract Act to argue that if a contract lacks 'valuable consideration' then as per Section 25 it is void. Such an argument lacks complete understanding of the expression 'consideration' as defined in Section 2(d) of the Contract Act. The aforesaid provision reads thus:-

"2. Interpretation-clause. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:-

(a) to (c) xxx xxx xxx

(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;"

44. In the present case, the PSIDC has invested huge sum of money with the object of promoting and improving industrial development in the State of Punjab, which is one of the object enumerated in the Memorandum and Articles of Association. Apart from the above, Clause 22(a) of the Financial Collaboration Agreement (P-1) has incorporated promises by the petitioner to repay the amount to the PSIDC. The arrangement of repayment is that the first instalment would be repaid when period of three years would expire after the date of production. The second instalment would become payable within one year of the expiry of three years. Petitioner No. 1 Rama Petrochemical Company had also undertaken to purchase the equity share holdings to the extent of the share of the PSIDC in two equal instalments on the date of expiry of third and fourth year. The Financial Collaboration Agreement has been further supplemented by Supplementary Agreement executed on 12.10.2000 (P-2). According to clause 8 of the Supplementary Agreement it has been categorically provided that in the event of failure of Rama Petrochemical Company to buy back the equity share holdings of the PSIDC then BLIP and THIP are to be jointly and severally responsible to buy back the equity shareholding of the PSIDC along with the Collaborator i.e. Rama Company at the same price and terms & conditions as mentioned in the Financial Collaboration Agreement dated 18.3.1999 (P-1). Therefore, there is no question of lacking of 'consideration' as sought to be urged by the learned counsel for the petitioners. It is, thus, clear that by virtue of clause 22 of the Financial Collaboration Agreement, Rama Company and by virtue of Supplementary Agreement BLIP and THIP along with Rama Company are liable to buy back the equity of PSIDC invested in the new venture Rama Industry. The aforesaid amount became payable as per terms of clause 22(a) of the Financial Collaboration Agreement supplemented by the Supplementary Agreement when the period of three years expired from the date of commercial

production by the company. The undisputed date of commercial production is 1.7.2001 and accordingly the period of three years expired on 31.6.2004 and the amount of first installment became payable. The second installment also became payable on 30.6.2005 and the same is recoverable from the petitioner. In para 10 of the written statement filed by the PSIDC it has been pointed out that the petitioner has admitted the existence of outstanding dues vide letters dated 5.11.2004 and 7.1.2005. There is no mention of any proceedings under SICA Act. Accordingly, no fault can be found in the order dated 15.2.2006 (P-11) and 31.5.2006 (P-9) and consequential recovery certificate dated 14.6.2006 for recovery of Rs. 441.96 lacs (as on 31.3.2005).

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46. The aforesaid discussion shows that petitioner No. 1 having agreed to various terms of contract is making an attempt to wriggle out of it by putting forward one excuse or the other. It is well settled that when two parties agrees to terms of a contract then it is not for the courts to interpret those contracts unless there is some ambiguity. The general principle appears to be that in agreements and contracts concerning mercantile dealings any one who wants to make a stipulation in derogation from the ordinary law regulating the rights of the parties must do so in clear and unambiguous terms. These principles have been echoed by the Constitution Bench of Hon'ble the Supreme Court in the cases of Central Bank of India, Ltd., Amritsar v. The Hartford Fire Insurance Co. Ltd., AIR 1965 SC 1288 and General Assurance Society Ltd. v. Chandmull Jain, AIR 1966 SC 1644. Therefore, it has to be held that once the parties have agreed to terms of contract howsoever harsh they may be, even if incorporating the provisions of a statute, it would not be open to them to argue that the Act would not apply because the parties had freedom to contract and are supposed to be guided by a sound legal advise in that regard. The Financial Collaboration Agreement

(P-1 and Supplementary Agreement (P-2) are not those type of contracts which are hit by the principle of ‘unconscionable contracts’ or ‘leave it or sign it’ type of contracts. Therefore, the parties must perform the contract and cannot avoid the performance of the same by engaging the corporation like PSIDC in the litigation.”

Relying on the above, learned counsel for the respondents contends that the issue in question has already been examined and after considering the judgments relied by the petitioner, this Court had come to the conclusion that the proceedings for recovery of the dues under the Act of 1983 in agreements relating to equity buy back could be duly invoked. He further contends that the PEDDA is wholly controlled State entity and the money in question also belongs to the State Government. The necessary sanctions and approvals for advancing the said money was also accorded by the State Government and that merely because the respondent No.1-PEDDA acted as an intermediary, the same would not alter the nature of the investment. The money being a public due has to be recovered expeditiously and that any such concession ought not to be given to the petitioners as would have an impact of giving premium to the violator himself.

CONSIDERATIONS

I have heard the learned counsel appearing for the respective parties and have also gone through the documents appended along with the present petition as well as the judgments relied by the respective parties extracted above.

STATUTORY CLAUSES

The Government of Punjab had notified the Punjab Public Moneys (Recovery of Dues) Act, 1983 to provide for speedy recovery of certain dues of the State Government or the Punjab Financial Corporation or any other Corporation noticed by the State Government in this behalf or a Government Company or a banking Company. The relevant clauses of the aforesaid Act of 1983 reads thus:-

2. (c) *"Corporation" means the Punjab Financial Corporation established under the State Financial Corporations Act, 1951 and includes any other corporation owned or controlled by the Central Government or the State Government which the State Government may, by notification specify;*

xxx xxx xxx

(e) *"Government Company" means a Government company as defined in Section 617 of the Companies, Act, 1956;*

xxx xxx xxx

(h) *"State Sponsored scheme" means a scheme sponsored by way of financial assistance by the State Government under which it—*

xxx xxx xxx

(i) advances money to a Corporation or a Government Company for the purpose of disbursing loans, advances or grants or for the purpose of sale of goods on credit or hire-purchase, or

(ii) guarantees or agrees to guarantee the repayment of a loan advance or grant or the payment of the price of goods sold on credit or hire-purchase.

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3. *Recovery of certain as arrears of land revenue (1) where any persons is a party-*

(a) to any agreement, relating to a loan, advance or grant given, or relating to credit in respect of or relating to hire-purchase of goods by the Government, a banking company, a Corporation or a

Government Company, as the case may be, under a State sponsored scheme; or

(b) to any agreement relating to a guarantee given by the State Government, a Banking Company, a Corporation, or a Government Company in respect of a loan raised by an Industrial Concern; or

(c) to any agreement providing that any money payable thereunder to the State Government shall be recoverable as an arrear of land revenue; and such person-

(i) makes any default in repayment of the loan or advance or any installment thereof; or

(ii) having become liable under the conditions of the grant to refund the grant or any portion thereof, makes any default in the refund of such grant or any portion thereof; or

(iii) otherwise fails to comply with the terms of the agreement; then in the case of the State Government such officer as may be authorized in that behalf by the State Government by notification, and in the case of a banking company, a Corporation or a Government Company, the Managing Director thereof, by whatever name called may send a certificate to the Collector mentioning the sum due from such person and requesting that such sum together with costs of the proceedings be recovered as if it, were an arrear of land revenue.

(2). A certificate sent under sub-section (1) shall be conclusive proof of the matter stated therein and the Collector on receiving such certificate shall proceed to recover the amount stated therein as arrear of land revenue.

3. Where the property of a person referred to in sub-section (1) is subject to any mortgage, charge/pledge or other encumbrance in

favour of the State Government, a Banking Company a Corporation or a Government Company, as the case may be, then-

(a) in every case of a pledge of goods, proceedings shall first be taken for the sale of goods so pledged and if the proceeds of such sale are less than the sum due, then proceedings shall be taken for recover of the balance: Provided that where the State Government is of opinion that it is necessary so to do for safeguarding the recovery of the sum due to it, a Banking company, a Corporation or a Government Company, as the case may be, it may for reason to be recorded in writing direct proceedings to be taken for recovery of the sum due before or at the same time as the proceedings are taken for sale of the goods pledged;

(b) In every case of a mortgage, charge or other encumbrance on immovable property, such property or, as the case may be the interest therein of the person referred to in sub-section (1) shall first be sold in proceedings for recovery of the sum due from that person and any other proceedings may be taken only if the Collector certifies that there is no prospect of realisation of the sum due through the first mentioned process within a reasonable time.”

CLAUSES OF THE AGREEMENT BETWEEN THE PARTIES

Additionally, it would also be necessary to refer to certain clauses of the Tripartite Financial Collaboration Agreement dated 28.03.2000 executed between the parties. The relevant clauses are extracted as under:-

“This Agreement is made at Chandigarh this 28th day of March in the year Two Thousand BETWEEN the Punjab Energy Development Agency, a society registered under the provisions of Societies Registration Act, 1860, having its Registered Office at SCO 54- 56, Sector 17-A, Chandigarh acting through

Sh. P.S. Aujla, IAS, its Chief Executive (hereinafter called "PEDA", which expression shall, unless repugnant to the context or meaning thereof, include the said PEDA, its successors and agreed assigns) of the FIRST PART

AND

Rana Sugars Limited a Company promoted by Punjab Agro Industries Corporation (PAIC) and M/s. Rana Gurjeet Singh and Associates (herein after called "The promoters" and the term shall include their successors, legal heirs, executors, representatives and agreed assigns) and registered under the Companies Act, 1956 having its registered office at SCO No. 49-50, Sector 8-C, Madhya Marg, Chandigarh acting through Sh. Rana Gurjeet Singh its Managing Director (hereinafter called "RSL", which expression shall, unless repugnant to the context or meaning thereof, include the said RSL, its heirs, executors, representatives and agreed of the SECOND PART.

AND

Sh. Rana Gurjeet Singh son of Sh. Rana Daljit Singh Resident of 53, Sector 4, Chandigarh and Sh. Rana Ranjit Singh son of Sh. Rana Daljit Singh Resident of 53, Sector 4, Chandigarh and Sh. Rana Mohinderjit Singh son of Sh. Rana Daljit Singh Resident of 50, Sector 4, Chandigarh and Sh. Rana Hardeep Singh son of Sh. Rana Mohinderjit Singh Resident of 50. Sector 4, Chandigarh, and Mrs Rajbans Kaur wife of Sh. Rana Gurjeet Singh Resident of 53, Sector 4, Chandigarh and Mrs B.K. Nagra wife of Sh H.S.Nagra Resident of 53, Sector 4 Chandigarh the core promoters of Rana Sugar Limited acting through Sh. Rana Gurjeet Singh and herein after called the "PROMOTERS", which expression shall, unless repugnant to the context or meaning thereof, include their heirs, executors, representative: and agreed assigns) of the THIRD PART.

WHEREAS RSL has its existing unit at Village Buttar Seviyan, Baba Bakala Taluk, District Amritsar (Punjab) and currently producing Sugar and besides generating energy for its own use and also supplying surplus 4 MW to PSEB.

WHEREAS PEDDA is the nodal agency of the Punjab Govt. mainly established for promotion and development of non-conventional energy projects and programmes in the state of Punjab.

AND

WHEREAS PEDDA has been granted sanction by the State govt. to invest funds to the tune of Rs. 255 lacs in the equity of RSL for the purpose of promoting the setting up of a bagasse based co-generation (demonstration) Project at Village Buttar Seviyan, Baba Bakala Taluk, District Amritsar (Punjab) to generate 10.2 MW Surplus power to be fed into the Grid of PSEB at Sathiala District Amritsar (hereinafter referred to as "the PROJECT").

And WHEREAS under the Scheme of the Government of India, MNES of which sanction is given thereto vide their letter no. 1/137/98-CPG dated 28.9.99.

Now this deed witnesseth and it is hereby agreed and declared by and between the parties hereto as under: -

- 1. The "PEDDA" shall participate in the equity share capital of the RSL to the extent of Rs. 2.55 crores @Rs. 25.00 lacs per MW of surplus power to be fed into the Grid Equity investment by PEDDA in the project shall be made in direct*

proportion to the equity contribution made by the promoters of RSU

2. *The equity contribution on the account of promoter's share to the extent of Rs. 711.50 lacs shall be made by the PROMOTERS of RSL.*
3. *The parties hereto agree and undertake to accept and abide by the conditions, if any, that have been/may be imposed by the Central Government as part of the sanction letter and by the Central Financial Institutions and/or Bank(s) while providing/agreeing to provide Medium and/or long term finance to the RSL for the implementation of the PROJECT and such conditions shall be deemed to form an integral part of this Agreement and shall bind the parties as though herein specifically embodied.*

xxx xxx xxx

8. (a) *The fresh equity of State Government to the tune of Rs. 2.55 Crores through PEDDA shall be for a period of 10 (Ten) years from the date of Commercial production and shall not be withdrawn before the stipulated period. However, the promoters shall have the option with the prior consent of the State Govt./PEDDA to retire/buy the said equity by equal installments/lump sum after 5 years from the date of commercial production and for this purpose no accruals from the project shall be utilized. Further the PROMOTERS of RSL contributing Rs. 711.50 lacs in the project through equity, shall not sell/transfer the same till the expiry of 10 years from the date of commercial production and/or until the equity of State government PEDDA is fully retired whichever is later.*

b) *The sale price of such shares shall be determined by adopting the following methods and higher price arrived at by*

any one of these method: shall be taken as the final sale price of the shares:

- (i) An amount equivalent to the amount paid by the PEDDA for the acquisition of the said shares plus the simple rate of interest equal to the term lending rate of the IDBI as applicable for a given area, from the date of subscription of shares by PEDDA for the shares in question to the date of payment of the sale price by the promoters of RSL less dividend if any, received by PEDDA in respect of the said share in the intervening period.
- (ii) *As the shares of RSL are listed the stock exchanges in India and the market price thereof is being quoted, the highest price at which the shares were traded at any one of those stock exchanges during a period of three months prior to the date of exercising the option of three months prior to the date on which the Promoters of RSL ought to purchase, the shares, whichever is higher.*
- (iii) *The Promoters of RSL while exercising the option shall deposit 10 percent of the offer amount along with the letter exercising the option and shall complete the buy back within one month of the date of exercising the option.*
- c) In case the promoters of RSL exercise the option and deposit 10 percent of the offer amount, then PEDDA shall be bound to sell the equity to the Promoters of RSL only.
- d) *The sale and purchase of the shares, as aforesaid, payment of price therefor and delivery of share-scripts and transfer deed relative thereto, shall be completed within one month of the exercise by the PEDDA of its right to sell its shares in the RSL and/or by the RSL of its right to buy the said shares from the PEDDA.*

(e) Without prejudice to the provisions of clause 6(c) above, the PEDAs shall also, in the event of the RSL failing to purchase the equity shares of the PEDAs/State Govt. in the RSL as provided in clause above, be entitled to sell its shares in the RSL at the risk and cost of the RSL either by public auction or through recognised share brokers of the Stock Exchanges where the shares are listed by private negotiations.

(f) In the event the sale and purchase of shares is not completed in time as provided in Clause 6(d) above, the total price to be paid by the RSL for the purchase of shares as determined in terms thereof shall carry further simple interest @ 20% per annum with half yearly rests from the date on which the price was payable by the RSL until the actual date of payment

(g) The PROMOTERS OF RSL shall be bound to buy the shares of PEDAs as per the terms and conditions of this agreement after the expiry of 10 (Ten) years from the date of commercial production and RSL guarantees the repayment of the amount of shares subscribed by PEDAs alongwith the interest thereon calculated at the rates mentioned under clause (8)(b)(i) to PEDAs and in case the shares are not bought back by the Promoters within the stipulated period then PEDAs shall without prejudice to the other rights under this agreement, be entitled to recover the amount payable as Government dues.”

xxx xxx xxx

17. Project cost and means of finance as approved by MNES, GOI is as under”-

(Rs. In Lakhs)

S.No.	Source of Finance	Amount
1	Promoter’s (i.e. M/s RSL’s) Equity	711.50
2	Capital subsidy to be provided by the Ministry 430.04 @Rs. 70.00 per	430.04

	<i>MW of surplus power limited to Rs. 600.00 lakhs minus the USAID grant of Rs. 169.96 lacs.</i>	
3	<i>Grant from the Ministry to the IREDA @Rs. 130.00 lacs per MW of surplus power to be provided in turn by the IREDA to M/s. RSL as a soft loan, the rate of interest being 9% per annum,</i>	755.71
4	<i>Grant from the USAID under the ABC component of the GEP project</i>	169.96
5	<i>Fresh Equity contribution by the State government through PEDDA @Rs. 25.00 lacs per MW of surplus power</i>	255.00
6	<i>Revised term loan from the IREDA</i>	49.29
	<i>Total Project Cost</i>	2371.50

xxx xxx xxx

PERIOD OF AGREEMENT:

23. *Subject to the provisions herein contained, this agreement shall continue to remain in force and operation so long as the PEDDA including its nominees continues to hold any shares in RSL or any other amount remains to be paid by the Promoters of RSL.*

ARBITRATION:

24. *All differences and disputes between the parties hereto on any clause or matter herein contained or their respective rights, claims or liabilities hereunder or otherwise, howsoever, in relation to or arising out of this agreement, shall be referred to arbitration by two arbitrators (one to be by each party) who shall, before proceedings with the reference, appoint an Umpire and such arbitration shall be governed by the Indian*

Arbitration & Conciliation Act, 1996 or any modification or re-enactment thereof for the time being in force.

xxx xxx xxx

27. This Agreement shall only be cancelled/rescinded by either of the parties to it when the shares of PEDDA/State govt. are retired/Purchased by RSL as per provisions contained in this agreement.

(Emphasis supplied)

By virtue of the Supplementary Agreement, the following amendments were incorporated in the Tripartite Financial Collaboration Agreement:-

Clause No.	Amendments
8(e)	(i) The word “RSL” in the 2 nd line should be replaced by the words “PROMOTERS” (ii) The 4 th line should be amended as follows “its shares in the RSL at the risk and cost of the PROMOTERS either by public auction or”
8(f)	The word “RSL” in the 2 nd line and 5 th line should be replaced by the words “PROMOTERS”
8(g)	(i) In the First line the words “PROMOTERS OF RSL” should be replaced by the words ‘PROMOTERS’ (ii) The words “RSL” in the 3 rd line should be replaced by the words “PROMOTERS”
28	The words “RSL in the 6 th , 8 th line and 11 th line should be replaced by the words “PROMOTERS”
30	The words “RSL” in the 1 st line and 5 th line should be replaced by the words “PROMOTERS”

The prime question which arises for consideration is as to whether the amount invested by respondent No.1-PEDA which is a Society, could a “Government due” and recovery thereof could be effected under the Punjab Public Moneys (Recovery of Dues) Act, 1983.

The contention of the petitioners is that the amount invested to the tune of Rs.255 Lakhs was an equity contribution by the State Government and that the same cannot be construed either as an ‘advance’ or ‘grants’ or ‘loan’ for sale of goods on credit or hire purchase or an agreement relating to loan, advances of grant by the State Government, a Banking Company, a Corporation or a Government Company. It was contended that respondent No.1-PEDA does not fall under either of the said categories. It was further contended that Clause 3 (i) (c) refers to an agreement where the money is due to the State Government. Since the money recoverable under the agreement in question is not due to the State Government and was to be released to PEDA i.e. the Society, the provisions of the Act of 1983 cannot be invoked for effecting recovery. Respondents may, if so advised, take recourse to the ordinary remedies/procedure available to it under the common law for effecting recovery of the outstanding amount.

Counsel for the petitioners has emphatically argued that Section 3 (1) (a) and (b) would not be applicable since the agreement does not relate to loan, advance or grant by the Government or its Companies/Corporation under State Sponsored Scheme as defined under Section 2 (h) read with Section 2 (d) of the Act of 1983. Argument against Section 3 (1) (c) has been noticed above.

It is undisputed that PEDDA is registered as a Society and is not a Government Company or Corporation within the meaning of the Act.

It would thus also be necessary to examine the status of the Punjab Energy Development Agency and to consider as to whether any transaction initiated by the State Government through the Punjab Energy Development Agency has to be construed as an independent transaction or such a transaction is primarily a transaction with the Government through an agent.

The respondent-Punjab Energy Development Agency was formed in September 1991 as a State Nodal Agency for promotion and development of Renewable Energy Programmes/Projects and Energy Conservation Projects in the State of Punjab as per the information available on the official website of the said Agency. It is also stated therein that it is a registered Society under the Societies Registration Act, 1860. The projects are provided financial and fiscal assistance by respondent No.1-PEDA under the NRSE Policy 2012 of the Government of Punjab. Further the Punjab State Electricity Regulatory Commission has also designated PEDDA as the Nodal Agency for the purposes of the REC Regulations and monitoring of Renewable Purchase Obligations (RPO) in the State of Punjab. It is also the State Designated Agency for Energy Efficiency and Conservations under the Energy Conservation Act, 2001 by the Bureau of Energy Efficiency, Ministry of Power. The list of Members of Board of Governors of the PEDDA is as under:-

- 1 Additional Chief Secretary,
Department of New & Renewable Energy Sources,
Punjab Civil Secretariat-1,
Chandigarh

- 2 Additional Chief Secretary,
Department of Agriculture,
Mini Secretariat, Sector 9,
Chandigarh
- 3 Financial Commissioner,
Department of Rural Development and Panchayat
Vikas Bhawan, Sector 62, SAS Nagar (Mohali)
- 4 Principal Secretary,
Department of Planning,
SCO No. 70-72, Sector 17,
Chandigarh.
- 5 Principal Secretary, Department of Power,
Mini Secretariat, Sector-9,
Chandigarh.
- 6 Principal Secretary, Department of Industries,
Udyog Bhawan, Sector 17,
Chandigarh.
- 7 Principal Secretary, Department of Irrigation,
Irrigation Bhawan, Sector 18, Chandigarh
- 8 Managing Director,
Punjab Infrastructure Development Board,
SCO-89-90, Sector-34 A, Chandigarh.
- 9 Chief Executive,
Punjab Energy Development Agency.
- 10 Chairman-cum-Managing Director,
Punjab State Power Corporation Limited,
The Mall, Patiala.

A perusal of the aforesaid clearly shows that the respondent-PEDA is wholly owned and controlled by the State of Punjab. As an Agency under the Department of New and Renewable Energy Projects, it provides financial and fiscal assistance under the NRSE Policy of the Government of Punjab. Thus even the financial dealings undertaken by the Agency are conducted by respondent No.1-PEDA for and on behalf of the Government of Punjab, through the concerned Department. Extending financial or fiscal assistance for implementing the projects under NRSE

Policy of the Government of Punjab, the acts undertaken by respondent No.1-PEDA cannot be construed as its independent and exclusive acts. The actions are primarily undertaken by the respondent No.1-PEDA in its status as an agent of the Government of Punjab. It creates a binding and enforceable obligation for and against the Government of Punjab. Consequently, the activities undertaken by respondent No.1-PEDA have to be construed as acts of the agent for and on behalf of the Principal and the Rights of the Principal cannot be ousted by alleging that there is no privity of contract between the principal and the other signatory.

Further, a perusal of the Tripartite Financial Collaboration Agreement executed between respondent No.1-PEDA and the petitioners herein specifically recites that the respondent No.1-PEDA is the Nodal Agency of the State of Punjab and that it has been granted sanction by the Government of Punjab to invest funds to the tune of Rs.255 lakhs in the equity for the purposes of promoting and setting up of co-generation projects. It is further pointed out that the above said project has been given sanction under the Scheme of Government of India vide letter dated 28.09.1999 and was being executed for the profitable implementation and operation of the project. Further, even in Clause 8 (a) of the Agreement, it was stated that the equity to the tune of Rs.255 lakhs through PEDA is that of the State Government and that the sale price of the equity was to be determined after a period of 10 years by adopting the higher price arrived at by the method given under Clause 8 (b). Further, a prohibition was also imposed on the promotes against selling their equity till the equity of State Govt. is fully retired or for a period of 10 years, whichever is later. Hence, it was specifically known to the contracting parties and especially the parties

herein that the equity investment is that of the State Govt. and not of the Society. It was also specified that the sale price shall be assessed by either taking the amounts paid for the acquisition of shares plus the simple rate of interest equal to the term lending rate of IDBI from the date of subscription of the shares less the dividend, if any, received in respect of the said shares in the intervening period or the share price during the period of 03 months prior to exercising the option, whichever is higher. It was further provided that in the event of the petitioners failing to purchase the equity shares, the PEDDA/State Government was entitled to sell the shares at the risk and cost of the petitioners apart from creating a binding obligation on the petitioners to purchase said shares as per the terms and conditions of the agreement. There was thus a guarantee of repayment of the amount of the shares along with interest at pre-approved rates with a specific understanding that respondent No.1-PEDDA shall be entitled to recover the amount payable as Government dues.

The above clauses clearly show that the investment had not only originated from the Government but was also to be returned to the Government. The investment stipulated interest as prescribed or the share value whichever was higher. It was also stipulated that while calculating the value on the basis of the interest, the value of dividend released to the Government shall be deducted. Accordingly, it cannot be said that the release of financial assistance was in the nature of an equity investment entailing the risk. Rather, the investment stipulated a minimum guaranteed return equivalent to the landing interest rate of IDBI. The deduction of the dividend from the payable amount to the State Government, on maturity of the lock-in period, further establishes that the transaction in question is not

just an investment option and is rather in the nature of a loan transaction by the Government through its Agency. The petitioners cannot, at this stage, be permitted to dispute the nature of the transaction.

The Hon'ble Supreme Court has held in the matter of **Bangalore Electricity Supply Company Limited (BESCOM) Vs. E.S. Solar Power Private Limited and others, reported as 2021 (6) SCC 718** that while interpreting a contract, the Court must consider the underlying purpose and intent of contract. The broad principles of interpretation of contract as laid down by the Hon'ble Supreme Court in the above said judgment are extracted as under:-

“16. Before embarking on the exercise of interpretation of the agreement it is necessary to take stock of the well- settled canons of construction of contracts. Lord Hoffmann in Investors Compensation Scheme Limited vs. West Bromwich Building Society summarized the broad principles of interpretation of contract as follows:

(1) Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.

(2) The background was famously referred to by Lord Wilberforce as the "matrix of fact," but this phrase is, if anything, an understated description of what the background may include. Subject to the requirement that it should have been reasonably available to the parties and to the exception to be mentioned next, it includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man.

(3) The law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent. They are admissible only in an action for rectification. The law makes this distinction for reasons of practical policy and, in this respect only, legal interpretation differs from the way we would interpret utterances in ordinary life. The boundaries of this exception are in some respects unclear. But this is not the occasion on which to explore them.

(4) The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax. (See: Mannai Investments Co Ltd v Eagle Star Life Assurance Co Ltd [1997] 2 WLR 945.

(5) The "rule" that words should be given their "natural and ordinary meaning" reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had. Lord Diplock made this point more vigorously when he said in The Antaios Compania Neviera SA v Salen Rederierna AB [1985] 1 AC 191, 201:

"... if detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business commonsense, it must be made to yield to business commonsense."

17. The duty of the Court is not to delve deep into the intricacies of human mind to explore the undisclosed intention, but only to take the meaning of words used i.e. to say expressed intentions (Smt. Kamla Devi Vs. Seth Takhatmal and another). In seeking to construe a clause in a Contract, there is no scope for adopting either a liberal or a narrow approach, whatever that may mean. The exercise which has to be undertaken is to determine what the words used mean. It can happen that in doing so one is driven to the conclusion that clause is ambiguous, and that it has two possible meanings. In those circumstances, the Court has to prefer one above the other in accordance with the settled principles. If one meaning is more in accord with what the Court considers to be the underlined purpose and intent of the contract, or part of it, than the other, then the court will choose former or rather than the later. Ashville Investment v. Elmer Contractors. The intention of the parties must be understood from the language they have used, considered in the light of the surrounding circumstances and object of the contract. Bank of India and another Vs. K. Mohan Das and others. Every contract is to be considered with reference to its object and the whole of its terms and accordingly the whole context must be considered in endeavoring to collect the intention of the parties, even though the immediate object of inquiry is the meaning of an isolated clause. Bihar State Electricity Board, Patna and others Vs. M/s Green Rubber Industries and others reported as (1990) 1 SCC 731."

It is thus well laid down that the intent of the parties and

declaration can be duly looked into to ascertain the understanding of the

parties at the time of execution of the contract. The purpose behind execution of the contract amongst the parties attains primacy. The Court is not required to delve deep into the intricacies so as to various hyper technical dimensions which may never have been meant by the contracting parties.

There is no definition of 'loan'; 'advance' or 'grant', under the Act of 1983. It would thus be necessary to assign meaning to them.

Loan

The meaning of Loan has been expressed in Chitty on Contracts, Vol.II 30th Edn., p.909, as:-

“A contract of loan of money is a contract whereby one person lends or agrees to lend a sum of money to another, in consideration of a promise express or implied to repay that sum on demand, or at a fixed or determinable future time, or conditionally upon an event which is bound to happen, with or without interest.”

The above said definition has also been relied by the Hon'ble Supreme Court in the matter of **“Keshavlal Khemchand and Sons Pvt. Ltd. and others Vs. Union of India and others,”** Writ Petition (Civil) No.901 of 2014, decided on 28.01.2015, wherein under paragraph No.37, the Hon'ble Supreme Court has held as under:-

“37. The expression 'loan' has a well- settled connotation i.e., advancing of money by one person to another under an agreement by which the recipient of the money agrees to repay the amount on such agreed terms with regard to the time of repayment and the liability to pay interest.”

The other words commonly mean as under:-

Advance

As per the Law Lexicon Dictionary, 2nd Edition, 1977, p-64 defines the word 'Advance' as

- 1) *"a noun means that precedes, something paid in advance, such as a payment of money made before it is due;*
- 2) *The word advance conveys the idea of furnishing, tendering or offering something which may be returned in the same form. Azir Ahamed Khan Anhar Hasan, AIR 191 All 469 471 (UP Zamindari Debt Reduction Act (15 of 1953);*
- 3) *The expression means something due to a person but which is paid to him ahead of the time when it is due to be paid. Commissioner of Income Tax v. E Srinivasan, (1963) 50 ITR 788. 797 (Mad). (Income Tax Act, 1961, S. 2(22);*
- 4) *Advances - Moneys paid before or in advance of the proper time of payment, money or commodities furnished on credit, money advanced to be repaid conditionally (Black 42)."*

Further, it was held in **K.M. Mohommed Abdul Kadir Rowther v. S. Muthich Chettiar, (1960) 2 Mad LJ 13 at 15** that "advance" means literally a payment beforehand; in certain cases it may be a loan but it cannot be said that a sum paid by way of advance is necessarily a loan.

Grant

As per the Law Lexicon Dictionary, 2nd Edition, 1977, p-800 the word "grants" has been defined as under:-

"Grant - An operative word of conveyance, particularly appropriate to deeds of grant, properly so called, but used in other conveyances also, such as deeds of bargain and sale, and leases; a gift or assignment of money etc. out of a fund [S. 13,

Industrial Development Bank of India Act] or the thing granted or bestowed or to bestow by a formal act.”

Apart therefrom the Usurious Loans Act, 1918 as amended in the year 2018, defines a “loan to mean and include any other transaction which is, in the opinion of the Court, in substance a loan.” Therefore, each and every transaction and its nature is open to judicial scrutiny as to whether such a transaction should be construed as a loan or not.

Hence, power has been vested in the Court to undertake judicial scrutiny and Court may determine whether the transaction is in the nature of loan or not. Applying the above test and considering that the agreement stipulated return along with minimum agreed interest (being the Benchmark) and return on equity to be adjusted in the payable amount, the transaction in question can solely be held as a “loan” transaction between the Government and the petitioners through the respondent NO.1-PEDA.

Admittedly, it is also seen that the parties had agreed under Clause 8 (g) that in the event of default, the respondent shall be entitled to recover the amount payable as Government dues. Such an agreement amongst the parties seals the procedure that had been agreed amongst them for effecting recovery of the amount. It has been held by the Hon’ble Supreme Court in the matter of **Shreejee Traco (I) Pvt. Limited Vs. Paperline International Inc. , Arbitration petition No.2 of 2002 decided on 17.12.2002,** that the parties have the freedom to choose the law which would govern them.

The reading of the clause 8 (g) of the agreement clearly shows that the parties agreed to subject themselves to the procedure prescribed in the Act of 1983 for recovery of the due amount as Government dues.

Having agreed to the law to be enforced for effecting recovery of such amount, it would not be open to the petitioners to now contend that notwithstanding their consent, they are not subjected to the agreed mode of recovery of the money as Government dues under the provisions of the Punjab Public Moneys (Recovery of Dues) Act, 1983. The petitioners thus would be estopped from raising such a plea at the stage when the liability became due and they had already enjoyed the money for its complete tenure as per the agreement. The plea of the petitioner that Section 3 of the Act of 1983 cannot be enforced for recovery of the amount is thus rejected. The transaction is essentially between the petitioners and the State Government through its agent PEDDA and the amount invested in equity was largely a loan transaction amongst the parties. The case in hand would thus be covered under Section 3 (1) (c) of the Act of 1983 and the respondents cannot be held to have acted illegally in invoking the said Act of 1983 for recovery of the Government dues.

Adverting to the contention of the petitioners that claim in question is barred by limitation, a perusal of the agreement shows that the same was executed on 28.03.2000 with a lock-in period of 10 years. The argument raised by the petitioners that the process of recovery under the Act of 1983 having been initiated through the recovery certificate issued in the year 2015, it would be barred by limitation which is 03 years from the date when the amount fell due i.e. 27.03.2010.

The said contention fails to impress this Court for the reasons that the aforesaid period of 10 years was a lock-in period whereafter the petitioners were bound to buy back the shares at the rates as mentioned under Clause 8 (b). The Promoter was however, given an option to purchase

the shares after the expiry of a period of 05 years with the prior consent of the State/PEDA. Hence, the said clause cannot be interpreted to contend that the obligation to buy back was only on expiry of a period of 10 years and not anytime thereafter. Rather, expiry of the period of 10 years creates a binding obligation on the petitioners to buy back the said shares at the agreed share price and procedure prescribed.

I am further supported in my aforesaid view by Clause 23 of the Said agreement which specifies that the agreement in question shall remain in force and in operation so long as the respondent continues to hold any shares or any other amount remains to be paid by the promoters. Hence, the agreement remains operative till payment of the sum due. Consequently, the limitation has to be examined from the date when the demand in question was raised and not on the expiry of the lock-in period of 10 years itself.

The demand in question was raised by respondent No.1-PEDA vide communication Bearing Memo No.1224-30 dated 15.05.2013, and as such the proceedings in question cannot be said to be time barred. Subsequent reminders were also sent by the respondents and in its communication dated 06.06.2014, respondent No.1-PEDA had specifically stated that the Government would have no option left but to refer the case to the Government for recovery of the amount as Government dues as per the provisions of Clause 8 (g) of the Tripartite Financial Collaboration agreement. The recovery officer was thereafter notified by the State. A certificate was issued later on by the recovery officer for the amount to be realized from the petitioners. The above said order, even though does not refer to any opportunity having been granted to the petitioners to respond

qua the amount due, however, it is evident from a perusal of the averments contained in the petition that they have not disputed the said determination. Petitioners have failed to refer to any material and/or the terms of the Tripartite Financial Collaboration Agreement to establish that the recovery certificate issued by the recovery officer or the amount found due was not in consonance with the terms and conditions of the Collaboration agreement. There may have been some reasons for this Court to examine the above said agreement in case the petitioners would have been able to demonstrate that the assessment made by the recovery officer was improper or in violation of the contract executed between the parties. In the absence thereof, setting aside of the recovery certificate merely for a technical compliance of principles of natural justice would not, in my opinion, be appropriate considering that huge sums of public dues are recoverable and further that the present petition has also remained pending for nearly 08 years.

It is well settled by the Hon'ble Supreme Court in the matter of **"Natwar Singh Vs. Director of Enforcement and another"** reported as **(2010) 13 SCC 255**. The relevant paragraph No.26 of the said judgment is extracted hereinafter below:-

"26. Even in the application of the doctrine of fair play there must be real flexibility. There must also have been caused some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with and so forth. Can the courts supplement the statutory procedures with requirements over and above those specified? In order to ensure a fair hearing, courts can insist

and require additional steps as long as such steps would not frustrate the apparent purpose of the legislation.”

Emphasis supplied

Principles of natural justice are not just an empty formality. There has to be a real prejudice occasioned as a result of non-compliance to the principles of natural justice. The recovery proceedings are not required to be set to naught only for a mere technical compliance of principles of natural justice and in the absence of any material before the Court to even prima facie suspect that the calculation made by the recovery officer. The plea is seemingly intended solely to delay recovery of the public money and hence cannot be accepted.

A writ Court is also required to keep in mind as to whether the plea is based on valid considerations or is only a mischievous way to delay the discharge of a liability and to create an impediment in an expeditious recovery of the public dues. The object of the parties agreeing to the procedure of effecting recovery as Government dues under the Act of 1983 was to ensure an expeditious recovery of the Government dues and public funds. The said object cannot be allowed to be defeated for an assumed and unsubstantiated prejudice.

For the foregoing reasons and finding no merits, the present petition is dismissed.

No order as to costs.

June 01, 2023
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No