

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

211 (two cases)

CWP-19717-2018 (O&M)
AND
CWP-19726-2018 (O&M)

Date of Decision: 15.11.2023

APL INDUSTRIES LTD.

... Petitioner

VERSUS

BANKING OMBUDSMAN, RESERVE BANK OF INDIA
AND OTHERS

... Respondents

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

Present: Mr. Chanchal K. Singla, Advocate
for the petitioner(s).

Mr. Deepak Suri, Advocate
for respondent No.1/RBI in both petitions.

Mr. C.S. Pasricha, Advocate
for respondents No.2 to 6 in CWP-19726-2018.

Mr. Nitin Gupta, Advocate
for respondents No.2 to 5 in CWP-19717-2018.

VINOD S. BHARDWAJ, J. (ORAL)

This order shall dispose of two writ petitions bearing No.CWP-19717-2018 and CWP-19726-2018 as counsel for the parties agree that the questions of law that arise for determination in these two petitions are identical. Facts are however extracted from CWP-19726-2018 titled as APL Industries Vs. Banking Ombudsman, Reserve Bank of India and others.

Challenge in the said petition is to the impugned order dated 19.09.2017 (Annexure P-1) passed by respondent No.1-Banking Ombudsman with a further prayer that the respondent Bank be directed to pay the interest

accrued on the FDR lying with them since February 1996 to the petitioner herein without any further delay.

Briefly summarized, the facts of the present case are that the petitioner company had floated upon a Public Issue in the year 1996 and had appointed M/s Fintech Compu Systems Pvt. Ltd., New Delhi as Registrar to the Issue and the Punjab National Bank, Branch Office, Sansad Marg, New Delhi was appointed as the post issue lead Manager to issue prospectus and receive applications for its IPO. The said Registrar and the Banker as the post issue lead Manager were responsible for the complaints, processing of the forms including allotment of shares and refunding of the application money to the investors.

As per the SEBI guidelines, the original record had to be maintained by the Registrar to the Issue and the petitioner company had no role after the appointment of the Registrar had been made. All the record pertaining to the Issue had to be maintained by the Registrar and intimation qua all developments that took place therein had to be submitted to the SEBI by the Registrar. The said Public Issue was initially over-subscribed by almost 1.71 times as on the date of closure i.e. 08.03.1996, however, on account of certain withdrawals by the subscribers, the subscription fell to 94% of the total Public Issue after taking into account the rejections and withdrawals. In accordance with the regulations of the SEBI, the Chairman directed the petitioner company to refund the money vide order dated 22.05.1998 as the Public Issue was under subscribed. Aggrieved thereof, the petitioner company preferred an appeal before the S.A.T. which set aside the order of the SEBI vide its order dated 18.10.2000 and permitted the petitioner company to go ahead with the Public Issue. The said order of the S.A.T. was challenged before the Delhi High Court

by way of Writ Petition (C) No.1261 of 2002 (which was initially filed before the Bombay High Court and later on the same was transferred to the Delhi High Court). The Delhi High Court passed an interim order restraining release of the money to the petitioner by the banks. Eventually, vide judgment dated 14.01.2013, the writ petition preferred by the SEBI was allowed and the order passed by the S.A.T. was set aside. Refund of the subscription money alongwith interest at the rate of 15% was thus directed. A dispute thus arose with respect to the award of interest and a Writ Petition (C) No.8731 of 2014 was filed before Delhi High Court raising a challenge to the communication dated 17.11.2014 sent by the Securities Exchange Board of India calling upon the petitioner to pay the principal interest to the share-subscribers who had applied for the same, in terms of the order dated 14.01.2013 passed by the Delhi High Court in Writ Petition (C) No.1261 of 2002. The second relief sought for in the said petition was for issuance of directions to respondent No.1-SEBI to in turn direct the respondent Banks to expedite refund of the application moneys with interest to the share subscribers. The abovesaid writ petition was decided vide judgment dated 17.10.2016, whereby the Delhi High Court directed the respondent Banks to calculate the interest that would have accrued on the amounts received by them from each of the share subscribers and file an affidavit with such computation reflecting column wise, the names of the applicants, the principal amount received from them and the amount of interest payable on the principal amount till 31.10.2016. The affidavit was also supposed to indicate the interest earned on the amounts retained by the Banks and the extent of the shortfall in the interest component. It was further directed that the petitioner shall approach the Registrar of Shares for collecting relevant

details of the shares subscribers alongwith their upto date interest and the petitioner shall make good the said shortfall in the interest accrued and shall also be liable to pay the expenses to be incurred by the Banks for refunding the application moneys to the share subscribers. The liability was thus fastened upon the petitioner company to pay the interest component ordered at the rate of 15% per annum alongwith the expenses, however, it was granted liberty to seek the interest that may have accrued upon the subscription money deposited with the respective banks. The primary liability was, however, cast upon the petitioner. Liberty was granted to the petitioner to also pursue its remedies for recovery of the shortfall of the interest amount from the respondent Banks, if so permissible in law. The relevant extract of the said judgment is reproduced as under:-

“17. It is therefore deemed appropriate to direct the respondents No.2 and 3/Banks to calculate the interest that would have accrued on the amounts received by them from each of the share applicants and file an affidavit with such computation reflecting column-wise, the names of the applicants, the principal amount received from them and the amount of interest payable on the principal amount till 31.10.2016. The affidavit shall also indicate the interest earned on the amounts retained by the Banks and the extent of shortfall in the interest component. Needful shall be done within three weeks from today with copies to the counsels for the petitioner and the respondent No.1/SEBI.

18. The petitioner shall simultaneously approach the respondent. No.4, Registrar of Shares for gathering relevant details of the share applicants alongwith their upto date addresses. As counsel for the petitioner claims that his client has not been able to trace the current address of the respondent No.4 and learned counsel for the respondent No.3/Bank informs the court

that the bank has been able to do so, counsel for respondent No. 3/ Bank shall furnish the relevant details to the counsel for the petitioner in the course of the day. The petitioner shall thereafter approach the respondent No.4 at the earliest for obtaining a complete list of the share applicants under its seal and signatures, for being furnished in turn to the respondents No.2 and 3/Banks within two weeks from today.

19. On being supplied the said list of share applicants with their upto date addresses, and on receipt of the affidavits from the respondents No.2 and 3/Banks intimating the extent of shortfall in the interest component, in the first instance the petitioner shall make good the said shortfall including the expenses to be incurred by the Banks for refunding the application monies to the share applicants. The said amounts shall be deposited by the petitioner with the respondents No.2 and 3/Banks respectively within two weeks from the date of receipt of the affidavits of the Banks

20. Upon receiving the list of share applicants and the shortfall of the money that the petitioner/company has been directed to pay towards the interest component, calculated @15% per annum alongwith the expenses, the respondents No.2 and 3/Banks shall take immediate steps to start the process of dispatching the refund warrants to the share applicants and endeavour to complete the entire process within four weeks from the date of commencement

21. Once the process of issuing refund warrants in favour of the share applicants is completed, respondents No.2 and 3/Banks shall give a written intimation in that regard to the petitioner and the respondent No.1/SEBI. The petitioner shall separately file a compliance report with the respondent No.1/SEBI, in accordance with the rules stipulated in that regard.

22. The petition is disposed of alongwith the pending applications. Liberty is however granted to the petitioner to pursue its remedies for recovery of the shortfall of the interest amount

*from the respondents No.2 and 3/Banks, if so permissible in law.
There shall be no orders as to costs.”*

It is submitted that the respondent Banks did not furnish the affidavit/details of the interest income accrued. Resultantly, a Civil Misc. Application was filed before the Delhi High Court, however, the said application was dismissed primarily for the reason that the petitioner company had already been granted the right of recovery, if so permissible in law, from the concerned Banks.

Attention of this Court is also drawn to the communication (Annexure P-8) dated 05.10.1996, whereby the Punjab National Bank had conveyed to the petitioner that the FDR has been renewed regularly and total interest that had accrued till 05.10.1996 was Rs.83,300/-. Further reference has been made to certain communications as regards the discrepancy in the amount being claimed by the petitioner to have accrued, and was disputed by the bank. However, vide communication dated 21.01.1997, it was informed by the respondent Bank that an amount of Rs.18,38,250/- had been kept in FDR and all applications alongwith stock investment were handed over to the representatives of the Registrar. The said fact about the amount being kept in the FDR is further crystallized through the communications dated 22.05.1997, 02.06.1997, 10.06.1998, 15.01.2000, 13.11.2000 as well as the communication of 08.05.2002, which reiterate that the amount had been kept in FDR and that interest had accrued thereupon. Further, it is contended that the petitioner sought the TDS certificate with respect to the interest income accrued on the said FDR, which was, however, declined by the respondent Bank on the ground that the claim of the petitioner for entitlement to interest itself is subjudice

before the Delhi High Court and as such, the TDS certificate could not be issued in favour of the petitioner.

The claim preferred before the Banking Ombudsman was, however, declined vide order dated 25.07.2017 and 21.12.2017 for the reason on the ground that the issue raised by way of complaint had already been dealt with the Court and as such, the same deserves to be closed in view of the provisions of Clause 9(3) (d) of the Banking Ombudsman Scheme, 2006. Hence, the present petition.

Written statement had been filed on behalf of respondents No.2 to 6, wherein the submissions made by the respondents are to the effect that the order passed by the Banking Ombudsman was in accordance with the Banking Ombudsman Scheme as amended and by correctly appreciating the clauses contained therein including Clause 9(3)(d) thereof. It is further averred that the order dated 17.10.2016 passed by the Delhi High Court grants the liberty to the petitioner to pursue alternative remedies, if so permissible in law. It is contended that instead of pursuing the said remedies of recovery, the petitioner has filed the instant petition. A further contention has been made that the remedy of approaching Banking Ombudsman was even otherwise barred under the Banking Ombudsman Scheme, 2006. On a factual part, it was averred that the limitation period of recovery of interest from the respondent Bank had already expired and that no board resolution/letter to extend the tenure of the FDR of the petitioner were made available to the respondent Bank after 08.05.2002 despite several requests and that no suit for recovery has ever been filed by petitioner against the respondent Bank after 17.10.2016. Since the liberty was granted to the petitioner to seek recovery of the interest, if

permissible in law, it was doubtful whether the petitioner was entitled to recover the interest, once the limitation has come to an end. It was also averred that as the petitioner had initially approached the Delhi High Court, hence, the present writ petition deserves to be dismissed on the ground of judicial discipline and that the petitioner ought to have approached the Delhi High Court, if so advised, against the order passed by the Banking Ombudsman. The order was sought to be defended in terms of the justification given and the same to be as per the Banking Ombudsman Scheme 2006. A prayer was thus made for dismissal of the present petition.

Counsel for the respondent-Reserve Bank of India has also referred to the Banking Ombudsman Scheme 2006 and has contended that rest of the issue relates to an inter se dispute between the banks and the petitioner and that the Reserve Bank of India has no further role to play.

Learned counsel for the petitioner has argued that the rejection of the application was misconceived. The mandate of Clause 9(3)(d) prohibits maintainability of a complaint before the Banking Ombudsman if the cause of action has already been pursued before the any other Court/Tribunal/Arbitrator or Forum and the same is pending or a Decree or Award has been passed by such Court/Tribunal/ Arbitrator or Forum. Further, Clause 9(3)(e) of the aforesaid Scheme prohibits cognizance of the complaint if the same is found to be frivolous or vexatious in nature. A further reference is made to Clause 13(a) of the above said Scheme of 2006, where the Banking Ombudsman has been entitled to reject a complaint if it appears that the complaint is made on the grounds of the complaint referred to in Clause 8 thereof, which are dealt with in Chapter IV of the aforesaid Scheme. It is contended by the counsel that the

Banking Ombudsman has misread the provisions as also the import of the judgment/orders passed by the Delhi High Court. The Delhi High Court having granted the right of recovery to the petitioner, if permissible in law, would keep the right of the petitioner to institute the proceedings before the Banking Ombudsman open and that there was neither any lis pending adjudication before any Court/Tribunal/ Arbitrator or Forum nor had any Award/Order or Decree been passed by any competent Court/Tribunal/ Arbitrator or Forum. The right of recovery having been protected and the petitioner having been granted liberty to pursue his alternative remedies in accordance with law, thus entitled the petitioner to institute the proceedings before the Banking Ombudsman. Hence, the dismissal of the complaint filed by the petitioner before the Banking Ombudsman was based on misconceived interpretation and understanding of the Regulations in the Scheme of 2006. He further contends that the petitioner company has already ordered refund and that the documents/ communications generated by the respondent itself shows that it has generated interest income for the bank. Having benefited by way of generation of interest income, the respondent Bank cannot retain the said benefit to itself, more so, when the bank has collected the service charges from the petitioner company for effecting disbursement of the subscription money alongwith interest in terms of the orders passed by the SEBI. The Bank has thus retained for itself an undue gain and has unduly enriched itself at the cost of the petitioner company.

Counsel for the respondent Banks, on the other hand, have laid emphasis that no specific direction/resolution had been received by the respondent Banks from the petitioner company authorizing them to revive the FDR and that in the absence of any resolution the petitioner cannot claim

benefit of any interest accrued on the deposit. Counsel for the respondent-Canara Bank, however, contends that it had not invested the money anywhere and that no interest had accrued against the abovesaid money which was deposited by the subscribers with them.

Rebutting the abovesaid submission, learned counsel for the petitioner has referred to the communication (Annexure P-7) dated 28.08.2014 attached alongwith CWP No.19717 of 2018 as per which the respondent Bank has conveyed about having deposited the money in FDR and interest income having accrued thereupon. Further reference is also made to the communication (Annexure P-9) dated 24.09.1998 and (Annexure P-10) dated 25.06.1999, which reiterates that the amount has been invested in term deposit and that interest accrued thereupon would be paid as per the prevalent Rules and Guidelines. It is thus contended that the assertions made on behalf of the respondent-Canara Bank are contrary to their own documents which are not disputed or denied by the respondents in their written statement. Hence, it would be impermissible for the respondent Bank to contend that no interest income has been derived or has accrued as a result of the aforesaid submission of the subscription money by the subscribers. Thus the stand of the respondents is contrary to their record, which has been brought before this Court.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

The facts which have remained undisputed are to the effect that the petitioner had issued a Public Issue for which the respondent Banks were the lead post issue manager and had received the subscription money from the

subscribers. The amount in question was duly received by the respondent Bank. The undisputed and un-impeached documents that have been appended alongwith the present petition substantially establish that the amount which was lying deposited with the respective banks had been invested in FDRs and interest income had accrued on the said amount. The matter as regards interest has already been decided by the High Court, Delhi. The Bank had been directed to disburse the amount in favour of the subscribers alongwith interest and to claim the differential interest from the petitioner. The Bank has been staking claim on retaining the accrued interest on technicalities such as absence of resolution or instruction and the clause under which subscription money does not given rise to claim interest. At the same time, it also emphasized that it never invested the amount, hence, no interest ever accrued in its favour. Insofar as the argument as to amount not having been invested is concerned, the undisputed documents on record establish that the above argument is wrong and incorrect. A false plea has thus been raised to stake a claim. The conduct of the Banks in this regard is deprecated.

Once the undisputed documents show that interest income has accrued by charging the subscription money in FDR, the burden lies on the Bank to establish how it is lawfully entitled to retain such accrued income. Counsel for the Bank has failed to refer to any statutory provision to press such right to retain the interest. Besides, the High Court of Delhi already ruled on the said issue while casting obligation on the petitioner to pay the differential interest and not the entire interest, it ruled against the entitlement of the Bank to retain the accrued interest. The said intent is reiterated while dealing with the subsequent application. Noticing that the Bank did not furnish the account

statement, it allowed the petitioner to claim interest income. Hence, the High Court of Delhi did not acknowledge the right of the Bank to retain the interest. The Bank did not challenge the said orders and the same have attained finality, insofar as the rights of the contesting parties, to the accrued interest are concerned. It was always open to the Bank to furnish the account sheet/ statement to establish that no interest income was derived or to refer to the legal provisions. Having not done so, it cannot be held entitled to retain for itself to which it is not so entitled in law.

Considering, the aspect of the actual interest that may have accrued and also that the respondent Banks cannot be held liable to pay any interest more than what has accrued thereupon and that the Delhi High Court, in its judgment had held the respondent Banks liable only to the extent of the accrued interest income and the petitioner company for the shortfall/deficiency of the interest, the respondent Banks cannot be held liable to disburse interest @ 15% p.a. or to be held liable for any interest income that exceeds the income generated in their favour from deposit of the said amount. The prayer of the petitioners to the said extent is hence declined.

Insofar as the issue of jurisdiction is concerned, it is undisputed that the registered office of the company is in Chandigarh and within the territorial jurisdiction. The earlier proceedings arise from an order passed by SEBI and the consequent appeal. The present proceedings relate to only an old relief. The cause of action thus also arises in part within this jurisdiction. A litigant is free to elect a Forum where he wishes to pursue his remedy. The act would not be *per se* illegal. No prejudice has also been shown by the respondent. The objection is hence declined.

Insofar as the contention of the respondent Banks is concerned that the claim in question would be barred by limitation, I fail to find myself in agreement with the respondents. It is evident that the Delhi High Court had already passed an interim order in the year 2002 staying disbursement of the amount in favour of the petitioner. An act of Court can prejudice none is well settled position in law. The entire period for which matter remained with the Delhi High Court thus has to be ignored. The Delhi High Court granted the recovery rights to the petitioner and the petitioner had immediately moved an application before the Banking Ombudsman for recovery of interest. It is thus not a case where a litigant/claimant has remained sitting on a fence and had not claimed its rights. Rather, the petitioner had been pursuing its right. Counsel for the Bank could not refer to any material to the contrary. Since the claim was pending consideration before a Competent Court and interim order passed and finally granted right of recovery, limitation would commence thereafter. On such consideration, the claim is within limitation.

The next argument which has been raised pertains to the absence of the resolution passed by the respective company, as a result whereof, the respondent Bank contend that they could not reinvest the money.

I fail to find as to how the abovesaid contention can advance the cause of the respondent Banks any further. The liability of the Bank to defray the interest income accrued is to the extent and for the period that an interest had generated in favour of the Bank. The liability had thus been restricted to the extent of income derived by the Delhi High Court and the said order has already attained finality. If the amount has not been encashed, no income has been derived, hence, no liability. However, such claim is required to be established

by referring to documents. The Bank has, however, not been sharing such details despite order of Delhi High Court. The extent of liability to refund interest is to the extent of income derived. If the respondent Bank does not furnish its accounts, inference needs to be drawn against it. A mere oral claim cannot be held sufficient to accept what is argued by the Bank especially when law mandates the Bank to keep documented record of all moneys lying with it.

Further, a parting argument was made by the counsel for the respondent Bank that the principal of res-judicata would be applicable and the petitioner would not be entitled to claim interest since the recovery rights had not been granted by the Delhi High Court.

I find that the said contention is misconceived. As a matter of fact, the Delhi High Court did not rule against the right of the petitioner to seek recovery of the amount from the respective Banks qua the interest income generated in their favour. Rather, Delhi High Court in its judgment dated 17.10.2016 by necessary inference upheld the right of the petitioner to seek recovery of the interest income, in accordance with law and through the alternative remedy available to it. The said judgment was never challenged by the respondent Banks by agitating that no right survived in favour of the petitioners and no application for seeking any clarification was ever filed.

So far as the question of recovery rights of the petitioner are concerned, the liberty had been granted to the petitioner to agitate the same in a manner known to law and through an alternative mode/ remedy, hence, the said judgment of 17.10.2016 passed by the Delhi High Court does not operate as a res-judicata against the petitioner and invocation of Clause 9(3)(d) of the

Banking Ombudsman Scheme 2006 was wrongly applied by the respondent No.1-Banking Ombudsman.

Hence, the order passed by the Banking Ombudsman suffers from misappreciation of the legal provision to the said extent. As the question of recovery had been kept open, there can be no bar of res-judicata and the same has been wrongly applied by the Banking Ombudsman.

Taking into consideration the totality of the facts and circumstances noticed above as also the erroneous conclusions drawn by the Banking Ombudsman, the present petitions are allowed with the following directions:

- (i) That the respondent Banks shall furnish the details of the interest income that has been derived/accrued on the abovesaid deposits during the period the same were lying with them (whether in the form of an FDR or under a saving account.
- (ii) That the said interest income ought to be duly certified/ verified by the auditors appointed by the respondent Banks.
- (iii) Since the respondent Bank has already collected the service charges from the petitioner for the release of the said money to the individual customers, they would not be entitled to retain the interest income that has accrued on the deposit so made.
- (iv) That the abovesaid amount as certified/verified by the Auditors of the Bank towards interest income having been derived from the deposit of the subscription money shall be released in favour of the petitioner, if not already paid to the investors, within a period of

two months of the receipt of certification/ verification by the independent Auditors.

- (v) If the amount found due is not released in favour of the petitioner, the respondent-Bank shall be liable to payment of highest rate of interest applicable on the FDR w.e.f the filing of the present application before the Banking Ombudsman.

Petition stands allowed accordingly.

All other misc. application(s), if any, also stand(s) disposed of accordingly.

NOVEMBER 15, 2023

rajender

**(VINOD S. BHARDWAJ)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No