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26.04.2024
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R.V.W. 91 of 2024
with
C.A.N. 1 of 2024
With
C.A.N. 2 of 2024

Regional Technical Manager,
Credit Technical Department
Vs.
M/s. Nag Choudhury Associatges & Anr.

Ms. Sonal Shah,
Mr. Kushagra Shah,
Ms. Rittwik Banerjee
... for the review applicant

Mr. Debasish Ghosh,
Ms. Antara Biswas
...for the respondents

1. In view of sufficient explanation having been given for the delay in preferring the review application, CAN 1 of 2024 is allowed, thereby condoning the delay in filing RVW 91 of 2024.

2. RVW 91 of 2024 is now taken up for admission hearing.

3. Learned counsel for the review applicant contends that the review application has been filed with the limited prayer of revisiting paragraph no. 31 of the order dated January 10, 2024 passed in W.P.A. No. 21220 of 2023, whereby it was directed that in the event a proceeding regarding removal of a professional

valuer of the applicant no. 1 is taken by the Bank, an appropriate committee shall be formed with a representation of valuers/valuers' association in terms of Clause 3.4 of the IBA Handbook in the committee. Learned counsel submits, by placing on the documents annexed to C.A.N. 2 of 2024, which is the stay application filed in connection with the review application, that it would be evident from the said documents that Clause 3.4 of the IBA Handbook has since been done away with. In support of her proposition, learned counsel places reliance on several documents, including the subsequent policies of the IBA of 2014, 2017 and 2020 as well as a model SOP dated March 01, 2023.

4. By placing reliance on the provisions of the said documents, it is shown that the provisions regarding there being a representation of the valuers' body in the committee designated for removal of a valuer is absent in the said subsequent policies.

5. Learned counsel, at the time of hearing, hands over a copy of a Master Circular regarding property valuation and argues that Clause 4 thereof, dealing with removal of valuers, also does not contain any reference to

the representation of a valuers' body or an expert body of valuers.

6. It is, thus, argued that even on the date of the order under review, there was no provision of representation of the valuers' body in the committee designated for removal of a valuer. As such, it is argued that the said clause in the order under review ought to be modified.

7. Learned counsel for the writ petitioners/respondents in the review application points out that there was never an alteration in the IBA (Indian Banks' Association) Handbook of 2011.

8. Learned counsel places particular reliance on the fact that in the subsequent policy decisions of 2014, 2017 and 2022, all of which were apparently authored by the IBA, there is no specific abrogation of Clause 3.4 of the 2011 Handbook.

9. It is argued that in all of the said policies, it has been clearly mentioned that the procedure laid down by the IBA in its procedural guidelines should be scrupulously followed. As such, it is argued that the review applicants' premise of making the application is

not justified by the documents annexed to the pleadings of the said applicants.

10. Insofar as the purported 2023 policy is concerned, it is pointed out by learned counsel for the writ petitioner that at internal page 47 of the same, a format of terms and conditions applicable for valuers has been given, which specifically refers to the South Indian Bank, that is, the review applicant. The said fact, is argued, belies the contention that the 2023 policy was authored or issued by the IBA.

11. The Bank's internal policy, it is argued, cannot have the effect of abrogating Clause 3.4 of the IBA Handbook. Further, in Format-E of the 2023 policy, it is pointed out, in Clause (f), it has been specifically mentioned that the applicant has read the Handbook on Policies, Standards and Procedure for Real Estate Valuation, 2011 of the IBA and the report is in conformity to the standards enshrined for valuation in Part-B of the above Handbook to the best of the applicant's ability.

12. It is argued that the said fact itself belies the contention that the 2011 Handbook had been replaced.

13. Learned counsel also points out that unlike the policy guidelines of 2014 and 2017,

the 2023 Model SOP is not preceded by any reference to the policy being that of the IBA (Indian Banks' Association). Insofar as the Master Circular handed over in Court today, it is argued that the same is also a product of South Indian Bank and not a general IBA Guideline.

14. Upon hearing learned counsel for the parties, a scrutiny of the documents annexed with C.A.N. 2 of 2024 is deemed necessary.

15. It is found from the annexures thereto that the last Handbook of the IBA, annexed to the said application, is that of 2011 which, in Clause 3.4, in no uncertain terms stipulates that the composition of the committee, that is, the Bank Valuation Conflict Resolution Committee, shall be decided by the respective Banks/HFIS and *shall include representatives from professional valuers' association/ independent reputable valuers.*

16. The next document is a report of the IBA Working Group on Standardization of Procedures for Empanelment of Valuers by Banks, annexed at page 75, which, in its second page, contains an observation of the working group that IBA had published two reports on valuation of securities by banks and circulated

the reports to all member banks as guidance documents on valuation of properties. The first of the same, mentioned thereunder, is the 2011 IBA Handbook.

17. The next paragraph mentions that the aforesaid two reports on valuation deals extensively with policy on valuation and explains the purpose of valuation, etc.

18. The said two documents, including the 2011 Handbook, were thus adopted as a standard procedure even by the IBA in the said report.

19. In Clause 5, which finds place in the said report, which is of 2014, it is provided under the head "Removal of valuers from bank's panel", that before reporting the name of the TPEs, the Bank shall ensure that the procedure laid down by IBA in its procedural guidelines are scrupulously followed. Conspicuously, nothing is mentioned in the said policy regarding the composition or constitution of the committee for resolution of the disputes.

20. In the 2017 policy of the Indian Banks' Association, in Clause 5, again, a similar sentence is repeated that before reporting the name of TPEs, the Bank shall ensure that the procedure laid down by IBA in its procedural

guidelines are scrupulously followed. It is noteworthy that in the 2017 document as well, there is no mention of any different composition of the committee in question.

21. The next document annexed to the application is a model SOP (Standard Operating Procedure) for valuation of properties issued also by the IBA.

22. At page 120 of the said application, in Clause 1.5(ii), which is the IBA Model SOP for valuation of properties, it is clearly mentioned that the IBA's Guidelines shall continue to be applicable for valuations, which are not mandatorily required to be done under the Companies Act, 2013.

23. The deviation from the above policies is found only in the document annexed at page 163 of C.A.N. 2 of 2024, which is captioned to be a Policy on Valuation of Security and Empanelment of Expert Valuers. Conspicuously, in stark contradiction with the previous policies of the IBA, all of which, without exception, found the caption "Indian Banks' Association" at its head, no such caption is there in the purported policy annexed at page 163.

24. The policy guidelines mentioned therein do not refer to anything which can connect it to the IBA in any manner whatsoever. In Clause 5, the removal clause thereof, it has been mentioned that in cases where the valuer has been found to be indulging in unfair practices, guilty of professional misconduct or lapses, violating the code of ethics and professional practice, he shall be removed from the panel of expert valuers, after being examined by a panel of three executives constituted by MD & CEO from the credit vertical.

25. The said clause is the first variation, in the entire set of documents annexed to the application, from the established practice of the IBGA policies to rely on its own policy guidelines, which is last found in the 2011 Guidelines.

26. As mentioned earlier, the same does not contain anything to indicate that it was issued by the IBA.

27. On the contrary, in internal page 47 of the self-same document, the terms and conditions applicable for valuers is given, which starts with an address to the South Indian Bank, which belies the argument of the review

applicant that the document was authored by the IBA.

28. Learned counsel for the review applicant seeks to argue that from the said page, a different annexure has been appended to the application. It is sought to be argued that the policy relied on by the review applicant ends in the previous page at running page 208 of the application.

29. However, even the most gullible Judge would not accept such contention since at the bottom of each of the pages of the said policy, it is found that there is a continuous pagination. The running page 208, at its bottom, contains a mention of internal page 46 of the document, which is continued in the next running page, that is, 209, being internal page 47, as mentioned in the bottom. Thus, without any doubt whatsoever, the terms and conditions appended at page 209 of the application is a part and parcel of the policy, which has been sought to be made out by the review applicant to be an IBA Guideline. However, the facts defy such an explanation, since definitely, the same refers to the South Indian Bank as the addressee of the terms and conditions, which clearly indicates that the document was issued

not by the IBA but by the review applicant Bank itself.

30. Learned counsel for the writ petitioner is further justified in contending that at running page 204 of the application, which is internal page 42 of the same policy document of the South Indian Bank itself, it is reiterated that the Format-E pertaining to declaration from valuers, contains a clause that the valuer has read the Handbook on Policy, Standards and Procedures for Real Estate Valuation, 2011 of the IBA, which proves beyond reasonable doubt that the 2011 Handbook was still in force and was adhered to even by the review applicant Bank itself. The only aberration in the policy of the review applicant Bank was the clause where the composition, as stipulated in he Handbook, has been sought to be altered, contrary to the standard practice which has been followed throughout the years, at least in 2011, 2014 and 2017 as well as 2020, as per the documents annexed to the stay application itself.

31. From the discussions above, there cannot be any manner of doubt that even on the date when the order under review was being passed, Clause 3.4 of the IBA Handbook of 2011, which

was the very premise of paragraph 31 of the order under review, which is sought to be modified now, was still in force, as it is till date.

32. Coming to the Master Circular for Property Valuation, which is handed over in Court today, just as the document annexed at page 163 of the stay application, that said document also contains no mention at its heading indicating that the same had been issued by the IBA.

33. In the said document, clause 4 pertains to removal of a valuer, where also, consistently with its other documents, the review applicant has apparently sought to incorporate an alteration in the body/panel which will decide on the removal of valuers, contrary to the 2011 Handbook of the IBA, which was the premise of the order under review. Such attempts by the South Indian Bank, being dead against Clause 3.4 of the IBA Handbook, cannot be accepted as a justified ground for the proposition that Clause 3.4 was not in existence at the point of time when the order under review was passed. In fact, one of the premises of the order under review was that the review applicant/Bank, being a signatory, constituent and member of the Indian Bank Association, cannot deviate

from the standard practice adopted by the said body.

34. As such, the very premise of the review application is not tenable in law and hereby turned down in the light of the above discussions.

35. Accordingly, R.V.W. 91 of 2024 along with C.A.N. 2 of 2024 are hereby dismissed on contest without, however, any order as to costs.

36. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)