In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

<u>W.P.A. No. 25033 of 2023</u>

Sk Sajahan
Vs.
Union of India and others

For the petitioner	:	Mr. Koushik Bhatta, Mr. K. Chakraborty, Mr. K.S. Haque
For the UOI	:	Mr. Debasish Choudhury, Mr. Manabendra Bandyopadhyay,
For the respondent nos. 3 to 6	:	Mr. Debasish Saha, Ms. S. Das
For the respondent no.7	:	Ms. Soni Ojha, Ms. Sambrita B. Chatterjee, Ms. Sonia Nandy
Hearing concluded on	:	02.01.2024
Judgment on	:	05.01.2024

Sabyasachi Bhattacharyya, J:-

1. The petitioner took term loan facilities from the respondent no.3-Bank. Subsequently, having failed to service the said loans, an One-Time Settlement (OTS) was arrived at between the petitioner and the said Bank, in terms of which the petitioner paid off the entire settled amount and obtained a No Dues Certificate from the Bank.

2. Subsequently, the petitioner approached a financial assistance provider for grant of a business loan which was refused on the ground that the CIBIL [Credit Information Bureau (India) Limited] score of the petitioner is only 706. Due to such low credit rating, the petitioner was denied further financial assistance. Coming to know of the same, the petitioner obtained a report dated August 29, 2023 and learnt that the credit facility status of the petitioner was shown as "written-off" in the CIBIL report. The said status was shown on the basis of the communication made by the respondent no. 3-Bank.

3. Even after numerous attempts to have the said rating altered, the petitioner's requests allegedly fell on deaf ears, for which the present writ petition has been preferred. Learned counsel for the petitioner cites *Sujith Prasad Vs. Reserve Bank of India and others*, reported at *2021 SCC OnLine Ker 221*, for the proposition that in cases of repayment of loan, the CIBIL rating should be upgraded accordingly.

4. Learned counsel also argued that in respect of a different loan with another Bank, upon settlement of the account, the credit facility status was shown as "Post (WO) Settled".

5. Learned counsel appearing for the Bank places reliance on the Write-Off Policy of the State Bank of India, a copy of which is handed over in Court and argues that the petitioner failed to repay the entire amount of loan taken by him and the Bank had to write-off a major portion the dues after the OTS. As such, learned counsel justifies the intimation by the respondent no. 3-Bank to the CIBIL Authorities with regard to the petitioner's credit status as "written-off".

6. The issue in contention here is whether upon settlement of the loan by way of OTS, the petitioner is entitled as a matter of right to have his credit facility status re-written and the endorsement "written-off" removed from the CIBIL records.

7. The judgment cited by the petitioner rendered by a learned Single Judge of the Kerala High Court is not relevant for adjudication of the present case. In paragraph no. 2 of the said judgment, it is recorded that the petitioner there repaid the entire loan, upon which the CIBIL ratings were not modified accordingly. By placing reliance on Section 21 of the Credit Information Companies (Regulation) Act, 2005, which deals with alteration of credit information files and credit reports, the Court proceeded to direct the CIBIL ratings of the petitioner therein to be altered accordingly without undertaking any further inquiry on the issue. In the present case, however, the petitioner admittedly did not repay the full loan amount but entered into an OTS.

8. There are two perspectives to the issue. The first perspective is that of the petitioner who was relieved of payment of the entire amount of loan by dint of entering the OTS. The No Dues Certificate issued by the Bank dated December 27, 2017 accordingly reflects that the settlement amount was paid by the borrower in full. However, even in the said certificate, it was mentioned that the same does not preclude the Bank to proceed against the borrower/guarantor as the case may be in respect of other loan liabilities if any.

9. Even if the last sentence is discounted and taken to refer to other loans which are not the subject-matter of the present writ petition, the fact remains that the petitioner was absolved from the liability to pay the rest of the Bank's dues at a price. The price was that the petitioner's credit ratings would reflect the fact that the petitioner had not repaid the entire amount.

10. From the perspective of the Bank, on the other hand, its dues were not totally repaid by the petitioner. The Bank agreed to the OTS to avoid further blocking of its resources in pursuit of a bad debt in accordance with its banking policy and financial prudence. However, insofar as the rest of its dues from the petitioner is concerned, the Bank could not have any other option but to write off the same from its books. Thus, although the petitioner was absolved from any further liability to face recovery proceedings, the fact remains that the Bank could not recover its entire dues and had to write off a part of its dues from the petitioner in its records.

11. Thus, it cannot be said that the Bank's intimation to the CIBIL authorities of the debt being written-off was unjustified.

12. However, since the intimation of the Bank directly affects the future prospects of the petitioner's business insofar as the capability of the petitioner to obtain business loans is concerned, the intimation on the part of the Bank and the corresponding reflection in the CIBIL website ought to be accurate. Although the Bank did write off a part of its claim, it is required to be reflected in the CIBIL records that the writing-off was partial and that the petitioner had actually repaid the amount agreed between the Bank and the petitioner by way of the OTS. Hence, the proper recourse before the Bank was to intimate the CIBIL Authorities that the credit facility status of the petitioner was partially written-off upon an OTS being entered into.

13. Accordingly, WPA No. 25033 of 2023 is disposed of by directing the respondent nos. 3 to 6 to intimate to the respondent no. 7, that is, the CIBIL Authorities within a fortnight from date that the credit facility status of the petitioner be modified to "partially written-off post-OTS".

14. Immediately upon such intimation being received by the respondent no. 7, the latter shall modify the relevant entries on its website and records accordingly by showing the credit facility status of the petitioner as "partially written-off post-OTS".

15. The respondent no. 7 shall, accordingly, upgrade the CIBIL Score of the petitioner by giving due credit to such modification in terms of its governing norms. Such entire exercise shall be concluded by the respondent no. 7 within a further week from the date of intimation by the respondent nos. 3 to 6 in terms of the above direction.

16. There will be no order as to costs.

17. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)