IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.06.2024

Pronounced on : 11.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.13954 of 2020 and
WMP.No.4249 of 2021

V.Ramalingam ... Petitioner

Vs.

1.The Reserve Bank of India
Represented by its Regional Director,
Fort Glacis, No.16, Rajaji Salai,
Chennai 600 001
2.M/s.Hinduja Leyland Finance Ltd.,
Rep. By its Zonal Head,
No.1, Sardar Patel Road, Guindy, Chennai 600 032
3.S.Nagarajan
4.Dheeraj G Hinduja
5.Gopal Mahadevan
6.Sudhanshu Tropathi
7.Atul Kapur
8.R.S.Sharma
9.Debabrata Sarkar
10.Manju Agarwal
11.Andreas Biagosch
12.G.S.Sundararajan ... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Mandamus directing the first respondent to appoint an arbitrator as envisaged under Section 18(2)(a) of the Credit Information Companies (Regulation) Act, 2005 to enable the said arbitrator to proceed in accordance with law or alternatively direct the first respondent to direct the petitioner and the second respondent, who are the parties to the dispute, to appoint an arbitrator in accordance with 2nd proviso to Section 18(2) of the aforesaid Act.

For Petitioner : Mr.K.Bijai Sundar

For Respondents
For R1 : Mr.C.Mohan,
for M/s.King & Partridge

For R2 to 12 : Mr.S.R.Sundar

ORDER

This writ petition has been filed for direction to the first respondent to appoint an arbitrator as envisaged under Section 18(2)a of the Credit Information Companies (Regulation) Act, 2005.

2. The petitioner is the proprietor of Rajalingam Group of Transports. He has been associated with several group of companies including the second respondent. In order to obtain loans, a credit score is required in terms of Section 2(g) of the Credit Information Companies (Regulation) Act, 2005 (hereinafter called as 'the Act'). The first respondent is empowered to permit credit information companies to

register under itself. Such credit information companies issued credit scores, which determines the credit worthiness of borrowers, based on which the lenders lend loans. The petitioner's lenders credit information company is Trans Union CIBIL whose credit score is called as CIBIL score.

2.1 The petitioner used to avail loans from the second respondent against immovable properties. Due to various reasons, the petitioner ran into severe financial crisis. Therefore, the petitioner invested on vehicles, manpower, new geographies and technology to endorse his commercial operations for which he approached nationalised banks for meeting his requirements. However, the nationalised banks refused to extend any working capital facility to the petitioner. Later the petitioner found the cibil records on the reason for refusal of loan. According to the petitioner, it is because of the second respondent failed to update requirements as directed in terms of law and provisions of the Credit Information Companies (Regulation) Act, 2005. Even after full settlement of financial loans, the second respondent has failed to update the zero balance accounts with cibil. Therefore, the petitioner was made to suffer financially and economically and subjected to mental trauma and loss. Hence, the petitioner had sent so many e-mails to the second respondent seeking updation of the petitioner's cibil records. The petitioner also approached the Trans Union CIBIL for obtaining the credit score report. However, the said report is also false and he was shown as wilful defaulter.

2.2 As per the guidelines of the first respondent, the second respondent failed to record the closure of the previous loans availed by the petitioner and update the credit score of the petitioner. The failure of non updating the credit scores and the delay in updating the credit scores of the petitioner created great loss and hardship to the petitioner. The second respondent is solely liable and responsible for all loss and hardship caused to the petitioner. Therefore, the petitioner lodged complaint dated 26.11.2019 to the Ombudsman, Non Banking Financial Companies(hereinafter called as 'NBFC') of the second respondent. Therefore, the petitioner requested the first respondent to invoke provision under Section 18(1) of the Credit Information Companies (Regulation) Act, 2005 for the disputes and differences which arisen between the petitioner and the second respondent to refer the same to the arbitration and request for an arbitrator to be appointed by the first respondent in terms of Section 18(2) of the Act. However, there is no reply. Hence the writ petition.

3. On perusal of the counter filed by the first respondent and also the submissions made by the learned counsel appearing for the first respondent revealed that on receipt of the complaint from the petitioner, NBFC Ombudsman issued notice to the second respondent. On receipt of the said notice, the second respondent had replied and the petitioner's cibil score was rectified. As such, the grievance of the petitioner was resolved with the intervention of NBFC Ombudsman and the complaint was closed. In fact, the said report was duly communicated to the petitioner on 06.04.2020. However without satisfying with the report of the NBFC Ombudsman, the petitioner has approached this Court for direction to appoint an arbitrator under Section 18(2)(a) of the Act.

Insofar as the maintainability of the writ petition, the first respondent raised preliminary issue as to whether the writ petition is maintainable when the dispute arises between the borrower and the credit institution. It is relevant to extract provision under Section 18(1) & (2) of the Act hereunder:

> ***18. Settlement of dispute-***
>
> *(1) Notwithstanding anything contained in any law for the time being in force, if any dispute arises amongst, credit information companies, credit institutions, borrowers and clients on matters relating to business of credit information and for which no remedy has been provided under this Act, such disputes shall be settled by conciliation or arbitration as provided in the Arbitration and Conciliation Act, 1996 (26 of 1996), as if the parties to the dispute have consented in writing for determination of such dispute by conciliation or arbitration and provisions of that Act shall apply accordingly*
>
> *(2) Where a dispute has been referred to arbitration under sub-section (1), the same shall be settled or decided,-*
>
> *(a) by the arbitrator to be appointed by the Reserve Bank,*

(b) within three months of making a reference by the parties to the dispute:

Provided that the arbitrator may, after recording the reasons therefor, extend the said period up to a maximum period of six months:

Provided further that, in an appropriate case or cases, the Reserve Bank may, if it considers necessary to do so (reasons to be recorded in writing), direct the parties to the dispute to appoint an arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996), for settlement of their dispute in accordance with the provisions of that Act

3.1 Therefore, it would apply when the dispute arises on matters relating to business of credit information and that too for which no remedy is provided under the Act and that the dispute between the borrower including any dispute arising out of correctness or otherwise. The credit information given by the credit institution to the credit information companies is not a dispute relating to the business of credit information. Therefore, the writ petition itself is not maintainable seeking direction to appoint an arbitrator under Section 18(2)(a) of the

Act. Further Section 18 of the Act provides that for any dispute arising amongst credit information companies, credit institutions, borrowers and clients on matters relating to the business of credit information and for which no remedy has been provided under this Act. Therefore, only on matters pertaining to the business of credit information and for which no remedy is available under the Act shall be referred for appointment of an arbitrator.

4. In the case on hand, the allegation alleged by the petitioner is with regards to non updation of credit information by the second respondent for which remedy has been provided under Section 21(3) of the Act and Rule 22 of its Rules, 2006. In fact, the grievance of the petitioner was already addressed to the Ombudsman of NBFC by way of complaint and the same was resolved on receipt of the reply from the second respondent. The said information was duly communicated to the petitioner as early as on 06.04.2020. It is relevant to extract provisions under Section 21(3) of Credit Information Companies Act and Rule 22 of Credit Information Companies Rules, 2006 hereunder:

*Section 21(3)-**Alteration of credit information files and credit reports-***

(3) If a credit information company or specified user or credit institution in possession or control of the credit information, has not updated the information maintained by it, a borrower or client may request all or any of them to update the information; whether by making an appropriate correction, or addition or otherwise, and on such request the credit information company or the specified user or the credit institution, as the case may be, shall take appropriate steps to update the credit information within thirty days after being requested to do so:

Provided that the credit information company and the specified user shall make the correction, deletion or addition in the credit information only after such correction, deletion or addition has been certified as correct by the concerned credit institution:

Provided further that no such correction, deletion or addition shall be made in the credit information if any dispute relating to such correction, deletion or addition is pending before any arbitrator or tribunal or court and in cases where such dispute is pending, the entries in the *books of the concerned credit institution shall be taken into account for the purpose of credit information."*

*Rule 22-**Updation of the Credit information by Credit Institution of the CIC Rules, 2006***

Without prejudice to the provisions of Rule 21, if there is any change in the data, information or credit information, already furnished to a credit information company due to change in the liability of the borrower or his guarantor, on account of write off in full or in part of the amount of outstanding dues of the credit institution or the repayment thereof by the borrower or his guarantor, or release of the guarantor, or any scheme of arrangement entered into between the credit institution and the borrower, or the final settlement of the amount payable by the borrower pursuant to any scheme of arrangement with the credit institution, as the case may be, or on account of any such other reason, the credit Institution shall,- -

(a) continue to update such data, information or credit information promptly or in any event, by the end of each reporting period not exceeding thirty days until the termination of the respective account relating to such credit information; and

(b) furnish an updated credit information to the credit information company at the earliest in this behalf."

4.1 Thus it is clear that the dispute between the borrower and the credit institution are not covered under Section 18 of the Act. Such grievance is specifically covered under Section 21 (3) of the Act which mandates credit institutions / credit information company, as the case may be, to take appropriate steps to update the credit information within 30 days after being requested to do so.

5. However, if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by the Hon'ble Supreme Court of India not to operate as a bar in at least three contingencies i.e. where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. In the case of ***Rashid Ahmed Vs. Municipal Board, Kairana*** reported in ***AIR 1950 SC 163***,

the Hon'ble Supreme Court of India held that existence of an adequate legal remedy was a factor to be taken into consideration in the matter of granting writs. This was followed in another case of ***K.S.Rashid and Son Vs. Income Tax Investigation Commission*** reported in ***AIR 1954 SC 207*** which reiterated the above proposition and held that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226. This proposition was considered by Constitution Bench of the Hon'ble Supreme Court of India in the case of ***A.V.Venkateswaran, Collector of Customs Vs. Ramchand Sobhraj Wadhwani*** reported in ***AIR 1961 SC 1506***.

5.1 The case on hand does not fall under any of the category to entertain the writ petition under Article 226 of the Constitution of India. Therefore, this writ petition is not maintainable.

6. It is also seen from the counter filed by the second respondent that the second respondent had lent loan around Rs.12,00,00,000/- and present outstanding is about Rs.7.72 crores for 45

assets. In fact, the second respondent initiated Loan Recall Notice and issued demand notice. Therefore, the second respondent had taken symbolic possession of the property and was taken for sale under SARFAESI Act. Though Debt Recovery Tribunal granted interim order on condition to pay 25% of the demand amount, the said interim order was not complied with and auction was concluded in respect of four properties and realised a sum of Rs.216.50 lakhs. That apart, there were so many complaints lodged as against the petitioner including Economic Offences Wing to take appropriate action on the criminal acts committed by the petitioner. Therefore, the petitioner was declared as wilful defaulter.

7. In view of the above, the direction sought for in this writ petition cannot be granted and the writ petition itself is devoid of merits and liable to be dismissed. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

11.06.2024

Neutral Citation:Yes/No

Index: Yes/No
Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To
1.Regional Director,
The Reserve Bank of India
Fort Glacis, No.16, Rajaji Salai,
Chennai 600 001
2.Zonal Head,
M/s.Hinduja Leyland Finance Ltd.,
No.1, Sardar Patel Road, Guindy,
Chennai 600 032

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