

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

Date of decision: 11.3.2013  
CWP No. 4371 of 2013

Ram Paul

.....Petitioner

vs.

Haryana Financial Corporation and ors

.....Respondents

**CORAM: - HON'BLE MR. JUSTICE HEMANT GUPTA  
HON'BLE MS. JUSTICE RITU BAHRI**

Present: - Mr. Satish Goel, Advocate for the petitioner.

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Challenge in the present writ petition is to the communication dated 10.10.2012 (Annexure P-8) whereby the settlement proposal submitted by guarantor-the present petitioner was declined, primarily in view of the value of the available securities with the State Financial Corporation.

M/s Punjab Cotton Factory, Bhiwani availed financial assistance from respondent-Corporation of which the petitioner stood as a guarantor. The Corporation framed a policy for settlement of chronic non-performing of assets in the year 2011. The petitioner submitted a proposal for settlement but such proposal was declined by the sub-committee in its meeting held on 26.9.2012 (Annexure P-5) against *Item No. 6*. The minutes of the meeting reads as under: -

"Item No. 6

M/s Punjab Cotton Factory, Bhiwani

- i. The proposal of the firm to settle its loan accounts was considered by the committee under the policy for Compromise Settlement of Chronic Non-Performing Assets (Doubtful Loan Accounts) of HFC-2011.
- ii. It was observed that as against the disbursed amount of Rs. 35.85 lakh the Corporation had, recovered an amount of Rs. 62.22 lakh.
- iii. The Committee observed that the Corporation had already disposed of the primary security on 24.3.2004 for Rs. 37.75 lakh. Two collateral securities in this case being the commercial building on land measuring 124-52 Sq. yards and three shops on land measuring 64.54 Sq. yards, both situated at Jagdamba Road, Mansa, could not be sold in spite of 12 attempts as these properties are occupied by the tenants.
- iv. The Committee observed that as per policy, the computed settlement amount worked out to Rs. 2,34,849/- in Term Loan A/c & Rs. 5,16,778/- in WCTL A/c. As per policy, but the settlement amount is to be linked with the realizable value of the available mortgaged collateral securities which has been assessed by NITCON at Rs. 37.50 lakh. If the settlement amount is linked with the value of mortgaged securities as per policy, it comes to Rs. 37.50 lakh. But the firm has requested to settle the loan account without linking with value of collateral securities.
- v. With the above observations, the Committee decided to decline the request of the firm to settle its loan account without linking with the value of available securities and further decided to initiate action for recovery of Corporation's dues through the state of mortgaged collateral securities.”

Learned counsel for the petitioner relied upon a judgment of Hon'ble the Supreme Court reported as M/s Sardar Associates & ors vs. Punjab & Sind Bank and ors. (2009) 8 SCC 257, to contend that the guidelines framed by the Reserve Bank of India (RBI) are binding upon the Corporation and that the fact, the Corporation is having sufficient security is not a ground to decline the settlement proposal submitted by the petitioner.

We do not find any merit in the argument raised. A Division Bench of this Court in Lal Chand Katia vs. Punjab Financial Corporation. 2008(1) ISJ (Banking) 74, has examined the guidelines issued by Reserve Bank of India (RBI) in terms of Section 21 of the Banking Regulation Act, 1949 and held that the State Financial Corporations established under State

Financial Corporation Act, 1951 are not governed by the guidelines issued by the RBI and it was held to the following effect: -

17. A conjoint reading of the provisions of the enactments, referred to hereinabove, makes it clear that the RBI does not have any role in the establishment of the SFCs or Joint Financial Corporation, their share capital, management and business. It cannot give directions or lay down policy guidelines for regulating the functions of SFCs. The only role which it can play vis-a-vis SFCs is to give prior approval to the acceptance of deposits from a local authority and other persons, deposit of funds of the Financial Corporation and furnishing of returns (Sections 8(1), 33(2) and 38 of the State Financial Corporation Act, 1951 (for short the 1951 Act). As against this, the IDBI used to play and now SIDBI plays some role under various provisions, i.e. Sections 3-A, 4-A, 4-B, 4-E, 10 (c), 15(1), 25 (3), 33(2), 35-A, 37-A, 39, 40 (2) (b) and 48(1) of the 1951 Act. The State Government plays a major and significant role not only in the establishment of SFCs and Joint Financial Corporation, but also in their share capital, constitution of the Board of Directors, appointment of Chairman, Managing Director, establishment of offices and agencies of the financial Corporation and appointment of special authority. Section 39 of the 1951 Act empowers the State Government to give instructions on the question or policy and declares that the Board shall be guided by such instructions. The Board can frame regulations under **Section 48(1)** only after obtaining prior sanction from the State Government.

18. In view of the above analysis of the provisions of the various enactments, we hold that the RBI cannot give directions to the SFCs in the matter of transaction of their business, including grants of loans and recovery thereof and it is within the exclusive domain of the SFCs to take appropriate decisions in the matter subject, of course, to the direction which may be given by the State Government in consultation with and after obtaining advice of the SIDBI on questions of the policy.

Mere fact that the eligibility of settlement in terms of the policy adopted by the Corporation is as per the RBI guidelines, will not make the RBI guidelines applicable to the Corporation incorporated under different statute than the Banking Regulation Act 1949.

In fact the Full Bench of this Court in a judgment reported as *M/s Saini & Company Rice Mills & etc vs. State of Punjab & etc., AIR 2010 P & H 12*, examined the binding nature of the guidelines issued by Small

Industrial Development Bank of India. The Court held to the following effect: -

24. There is no provision under the SIDBI Act, 1989 or under the State Financial Corporation Act, 1951 comparable to the provisions of Sections 21 and 35A of the Banking Regulation Act, 1949 extracted above. In the absence of any such analogous provision, it is difficult to see how the rationale underlying the decision of the Supreme Court in Central Bank of India vs. Ravindra and ors. (2002) 1 SCC 367 or M/s Sardar Associates & ors v. Punjab & Sind Bank & ors 2009 AIR SCW 5886 can be called in aid by the petitioners. The answer to the question that arises for our consideration does not lie in the provisions of the Banking Regulation Act, 1949 but in the State Financial Corporation Act, 1951 and the SIDBI Act both of which do not support the view that the SIDBI has the power to issue any binding directions to the Financial Corporation or that latter is constituted as an agent of the former so as to carry out the instructions issued to it.

25. That brings us to the argument that the Corporation has without proper deliberation, discussion or application of mind rejected the guidelines issued by SIDBI. There is in our opinion no merit even in that contention. If SIDBI has no statutory power to issue guidelines that are binding upon the Corporations and the guidelines themselves permit the Corporations to formulate their own One Time Settlement Schemes to suit their peculiar needs, we find it difficult to see how the Corporation can be accused of having acted unfairly, arbitrarily or in a manner that is insensitive towards larger public interest. That the guidelines were brought before the Corporation and were discussed is evident from the resolution, which the Board of Directors have passed. The resolution extracted in the earlier part of this judgment makes it clear that the Board has recorded reasons why the One Time Settlement Scheme formulated by it is sufficient to meet its requirement. There is nothing irrational or perverse in those reasons to call for our intervention in exercise of our extraordinary jurisdiction. The criticism leveled against the Corporation's decision is, therefore, wholly uncalled for and unfounded.

The judgment referred to by learned counsel for the petitioner relates to a settlement in pursuance of a Scheme circulated by RBI. It has been held there in that the guidelines issued by RBI are binding on the Banks and that the Bank could not have taken recourse to a policy decision which is per se discriminatory. Such judgment provide little assistance to

the petitioner who is a borrower of the State Financial Corporation governed by a different statute.

Whether the particular account should be settled or not lies in a commercial discretion of the Corporation? The Corporation is the custodian of the public money and in discharge of its functioning, has to keep the public interest in mind. If the borrower including guarantor has a security which is sufficient to realize the public money, then the public money cannot be sacrificed. The recovery of the public money will outweigh the individual's interest.

In view of the said fact, we do not find any merit in the present petition.

Dismissed.

(HEMANT GUPTA)  
JUDGE

(RITU BAHRI)  
JUDGE

11.3.2013  
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