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Court No. - 40

Case :- WRIT - C No. - 26869 of 2023

Petitioner :- M/S Simbhaoli Sugars Limited
Respondent :- State Bank Of India And 7 Others
Counsel for Petitioner :- Rohan Gupta
Counsel for Respondent :- Satish Chaturvedi,Anadi Krishna Narayana,Ashok Shankar Bhatnagar,Manish Trivedi,Nishant Mehrotra,R.V. Pandey,Ramesh Kumar Shukla,Yashwant Singh

Hon'ble Mahesh Chandra Tripathi,J.
Hon'ble Prashant Kumar,J.

1. Heard Shri Rohan Gupta, learned counsel for the petitioner, Shri Anurag Khanna, learned Senior Advocate assisted by Shri Sandeep Arora, learned counsel for the State Bank of India, Shri Ashok Shankar Bhatnagar, learned counsel for Punjab National Bank and Oriental Bank of Commerce, Shri R.V. Pandey, learned counsel for the Bank of India, Shri Yashwant Singh, learned counsel for the UCO Bank, Sri Manish Trivedi, learned counsel for the ICICI Bank, Sri Abhinav Mehrotra, learned counsel for Bank of Baroda and Shri Nishant Mehrotra, learned counsel appearing for one of the Directors and Shri Ravindra Singh, learned counsel for Intervening Applicants (Cane Co-operative Societies).

2. This is a shocking case of clear connivance of unscrupulous businessman and banks, wherein the bank officials have knowingly allowed the petitioner to syphon away almost Rs.1300/- crores of the public money. Here the banks had advanced hundreds crores of rupees to the petitioner company knowing the fact that they have already defaulted with the loans taken by other banks previously and been declared N.P.A., still the banks went ahead and approved loans running into several hundred crores and the entire loan was disbursed without following the mandatory steps/procedures, which banks are supposed to take before disbursing the loan.

3. After the default of the petitioner in paying back the loan of the first bank, the bank instead of proceeding to recover this amount, gave a long rope to the petitioner to take loan from the second bank. This second bank

also very easily without following the mandatory steps grants a loan without any adequate security, which was never paid back by the petitioner. Thereafter, the petitioner moves on to the third bank for another loan and this bank also grants a loan without any due diligence, and without following the norms and guidelines of Reserve Bank of India for loans to the company, and without even adequate security or additional security and without doing any regulatory compliances this bank again disburses a huge loan and further, do not carry out the post disbursement supervision and lets the petitioner to syphon away the entire amount.

4. The petitioner adopted the same *modus operandi* again and again with 7 banks and surprisingly, rather shockingly, all the seven banks had extended loan facilities to the petitioner without any due diligence, credit approval, risk report appraisal and without following the RBI guidelines to advance loans to the companies and also without adequate security and in few of the cases a personal guarantee was given by the promoters to many banks.

5. Shockingly, the banks, even after declaring the petitioner's account as NPA has not taken any effective steps to recover the amount. In fact it will not be wrong to say that no sincere effort had been taken by the banks and all the efforts shown to have been taken was nothing but just an eyewash.

6. The facts of the instant petition are that the petitioner company has a Sugar Mill in Simbhaoli, District Ghaziabad. This Mill has two other units. The petitioner herein, in the course of the business, had been taking loans from the banks. The issue started sometimes in the year 2003 where the company started defaulting in payment of the loan taken by the banks. In fact, the company had entered into an agreement for debt restructuring way back in the year 2007 with State Bank of India. It seems that they have not honoured the terms of restructuring and, hence, the bank again in the year 2012 had to carry out another debt restructuring.

7. The petitioner company had been borrowing money from various banks and chose not to pay them back. As per the affidavits filed by the banks, the Company was declared NPA as on 31.03.2013. Once a Company

is declared NPA as per the “Prudential Norms of Income Recognition” issued by the RBI no other bank would grant any kind of loan to such companies. Inspite of this, shockingly, the petitioners had been getting hundreds of crores of loans from various banks without even giving adequate security. Later, the banks came in as a consortium and wanted to settle the same through a Joint Lenders Meeting as a huge hair cut. The bank also started proceeding against the petitioner company in NCLT, Allahabad.

8. Before this Court, the instant petition has been filed by the petitioner-Company seeking quashing of communication dated 26.07.2023 issued by the State Bank of India, wherein, the settlement offer of the petitioner was rejected and the bank had communicated that they will proceed to take legal action against the company.

9. The reliefs sought in the instant writ petition is extracted below:-

> *“(a) Issue an appropriate writ, order or direction in the nature of certiorari quashing the impugned communication dated 26.07.2023 sent by the respondent no.1, State Bank of India.*
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> *(b) Issue an appropriate writ, order or direction in the nature of mandamus directing the respondent no.1, State Bank of India to convene a meeting of the Joint Lenders’ Forum forthwith, in order to finalize the Settlement Proceedings, in accordance with the provisions of the RBI Circular dated 07.06.2019.*
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> *(c) Issue a writ, order or direction in the nature of certiorari quashing the impugned proceedings registered as CP (IB) No.66/ALD/2022, State Bank of India v. M/S Simbhaoli Sugars Ltd., under Section 7 of the Insolvency and Bankruptcy Code, 2016, pending before the National Company Law Tribunal, Allahabad.”*

10. The matter was taken up on 10.08.2023 on which this Court has passed the following order:-

> *“1. The counsel for the petitioner mentioned the matter to be taken up on the ground of urgency as the matter was listed today before the National Company Lat Tribunal, Allahabad (in short "NCLT') and the petitioner apprehended that IRP might be appointed.*
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> *2. Heard Sri Manish Goyal, learned Senior Advocate along with Sri Rohan Gupta, learned counsel for the petitioner, Sri Anurag Khanna, learned Senior Advocate along with Sri Sandeep Arora, learned counsel for respondent no.1, Sri Ashok Shankar Bhatnagar, learned counsel for respondent no.2, Sri Anil Kumar Pandey, learned counsel for respondent no.5 and Sri Manish Trivedi, learned counsel for respondent no.6.*

3. In this writ petition the petitioner has prayed for a direction in the nature of mandamus directing the respondent no.1, State Bank of India to convene a meeting of the Joint Lender's Forum in order to finalize the settlement proceedings.

4. Learned Counsel appearing on behalf of the respondent-Banks stated that the proposal given by the petitioner had already been rejected. The petitioner does not seem to be serious and no concrete proposal has been given by them. They are only trying to buy time to avoid insolvency proceedings. It is further submitted that if the petitioners are serious they should give a firm offer along with some upfront money to prove their bonafide. Unless the petitioner shows its bonafide there is no question of holding the meeting of Joint Lender's Forum.

5. Mr. Goyal, Senior Advocate submitted that the petitioner is ready to deposit a sum of Rs.10 crores by 17th of August, 2023 and another Rs.10 crores by 24th of August, 2023 and will also give a concrete proposal by 17th of August, 2023 to the banks. He submits that once he deposits the amount, the bank should simultaneously proceed for holding the meeting of Joint Lender's Forum for which the counsel appearing for the banks have no objection. He submitted that the amount so deposited may be kept in No Lien Account.

6. Mr. Khanna, Senior Advocate appearing on behalf of the lead Bank i.e. State Bank of India suggested that the proposal of the petitioner should be better than the earlier proposal given to the bank.

7. He further submits that after depositing the money, the meeting of Joint Lender's Forum would be convened immediately.

8. Learned counsel for the State Bank of India, however, apprised the Court that the matter listed before NCLT, Allahabad has been adjourned to 4th September, 2023.

9. On this counsel for the petitioner requested that this matter may be listed before the next date fixed in the NCLT, Allahabad.

10. Accordingly, on the request of counsel for the parties the matter is directed to be listed on 29.08.2023 as fresh."

11. Thereafter, the matter was again taken up on 19.09.2023 where this Court has passed the following order:-

"1. The instant writ petition has been filed by the petitioner-Company seeking quashing of the communication dated 26.07.2003 sent by the State Bank of India, wherein, the State Bank of India had rejected the offers of the settlement of the petitioner-Company and communicated that they will proceed to take legal action against the Company.

2. Following the communication, the State Bank of India had filed for Insolvency under Section 7 of the Insolvency and Banking Code before the National Company Law Tribunal, Allahabad (hereinafter referred to as 'NCLT'). It was at that point of time the petitioner had filed the instant writ petition praying for quashing of the communication dated 26.07.2023 sent by State Bank of India and sought a mandamus directing the State Bank of India to convene a Joint Lender's Forum to finalize the settlement proceedings given by the Company, and further sought direction to quash the abovementioned Insolvency Proceedings.

3. The matter was listed before the NCLT, Allahabad on 10.08.2023 and on the same day, Mr. Manish Goyal, learned Senior Advocate mentioned, and the matter was taken up before this Court on 10.08.2023. After hearing both the parties a detailed order was passed. The relevant paragraphs of the order dated 10.08.2023 are quoted hereunder:-

> *"4. Learned Counsel appearing on behalf of the respondent-Banks stated that the proposal given by the petitioner had already been rejected. The petitioner does not seem to be serious and no concrete proposal has been given by them. They are only trying to buy time to avoid insolvency proceedings. It is further submitted that if the petitioners are serious they should give a firm offer along with some upfront money to prove their bonafide. Unless the petitioner shows its bonafide there is no question of holding the meeting of Joint Lender's Forum.*
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> *5. Mr. Goyal, Senior Advocate submitted that the petitioner is ready to deposit a sum of Rs.10 crores by 17th of August, 2023 and another Rs.10 crores by 24th of August, 2023 and will also give a concrete proposal by 17th of August, 2023 to the banks. He submits that once he deposits the amount, the bank should simultaneously proceed for holding the meeting of Joint Lender's Forum for which the counsel appearing for the banks have no objection. He submitted that the amount so deposited may be kept in No Lien Account.*
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> *6. Mr. Khanna, Senior Advocate appearing on behalf of the lead Bank i.e. State Bank of India suggested that the proposal of the petitioner should be better than the earlier proposal given to the bank.*
>
> *7. He further submits that after depositing the money, the meeting of Joint Lender's Forum would be convened immediately.*
>
> *8. Learned counsel for the State Bank of India, however, apprised the Court that the matter listed before NCLT, Allahabad has been adjourned to 4th September, 2023.*
>
> *9. On this counsel for the petitioner requested that this matter may be listed before the next date fixed in the NCLT, Allahabad."*

4. On the basis of the order dated 10.08.2023 proceedings before the NCLT, Allahabad were adjourned. The Bank had objected saying that the petitioner is not serious and had not given a concrete offer, they were only trying to buy time to avoid Insolvency Proceedings. On this Senior Advocate, Mr. Goyal appearing for the petitioner agreed to pay Rs.20 crores (Rs.10 crores by 17.08.2023 and another 10 crores by 24.08.2023).

5. Mr. Khanna has very fairly stated that if the petitioner-Company pays the money and given the concrete proposal better then the earlier propsal, they will call for the Joint Lender's Forum and convene a meeting. He also apprised that the matter pending before the NCLT, Allahabad had been adjourned.

6. On the next date of hearing, the matter stood adjourned but the petitioner chose not to honour the commitment given in the Court.

7. The matter is taken up today and the counsel for the respondent-Bank, Mr. Anurag Khanna, Senior Advocate pointed out that the petitioner has flouted the terms of the order dated 10.08.2023 and chose not to deposit second tranche of Rs.10 crores, which was to be deposited by 24.08.2023. If the petitioner had any difficulty they ought to have moved an application for modification immediately.

8. On being confronted, the counsel for the petitioner filed an application for exemption to pay Rs.10 crores. Having availed the benefits of the order for more than a month, and keeping the Insolvency Proceedings at bay. It was not open for the petitioner to move an application for exemption to pay Rs.10 crores.

9. During the course of argument, the counsel for the Bank pointed out that as per the petitioner-Company, the total outstanding towards all the banks are around Rs.1436 crores. They have misused the orders of this Court by giving an undertaking to pay the amount and postponing the Insolvency Proceedings before the NCLT, Allahabad and at the same time chose not to honour the undertaking given in the Court. The petitioner has committed a wilful default and the act of the petitioner is contemptuous in nature.

10. The Hon'ble Supreme Court in the matter of ***Balwantbhai Somabhai Bhandari Vs. Hiralal Somabhai Contractor (Deceased) Rep. by Lrs. & Ors. (Civil Appeal No.4955 of 2022)*** *has held that wilful breach of an assurance in the form of undertaking given by a counsel/ advocate on behalf of his client to the court would amount to "civil contempt" as defined under Section 2(b) of the Act 1971.*

11. In view of directions issued by Hon'ble Supreme Court, we find that the conduct of the petitioner is contemptuous in nature and is prejudicial and has harmed the banks, who had abided by the orders, and has kept the Insolvency Proceedings in abeyance.

12. The Court requested the counsel for the petitioner, Mr. Rohan Gupta to give the names of the Directors of the Company during the course of the hearing. Mr. Rohan Gupta had given the following names and addresses of the Directors of the company:-

S. No	***Name***	***Designation***	***Present/Permanent Address***
1.	*Mr. Gurmit Singh Mann s/ o Late Sardar Gurprit Singh Mann*	*Chairman*	*C-176, Defence Colony,New Delhi-110024*
2.	*Ms. Gursimran Kaur Mann w/o Mr. Anirudh Suri*	*Managing Director*	*C-176, Defence Colony, New Delhi-110024*
3.	*Mr. Gurpal Singh s/o Late Sardar Pritam Singh Sandhu*	*Director*	*12, Tilak Marg, New Delhi-110001*
4.	*Mr. S.N. Mishra s/o Late Kedar Nath Misra*	*Director, Chief Operating Officer*	*WZ-401, HRC Professional Hub, ½ Vaibhav Khan, Indirapuram, Ghaziabad, UP-14*

13. Hence, we have no other option except to issue notice to the Chairman, Managing Director, Director, Director (Chief Operating Officer), who are incharge of the affairs of the company and on whose behalf an undertaking was given in the Court. Before formally impleading the Chairman, Managing Director, Director & Director (Chief Operating Officer) of the company as necessary parties in the present proceeding and before referring the matter to the competent contempt court for initiation of the contempt proceeding against them, the response is necessary from the aforesaid Directors of the company.

14. We direct the Director Nos.1 to 4, who are Chairman, Managing Director, Chief Operating Officer to file the response as to why the contempt proceedings may not be initiated against them.

15. Respondent Nos.1 to 7 are represented by their Counsel so no formal notice is necessary. However, issue notice to respondent no.8 returnable at an early date for which steps may be taken within three days.

16. The respondent-Banks are also directed to file detailed affidavits.

17. List the matter on 27.09.2023 as fresh."

12. Mr. Anurag Khanna, learned Senior Advocate, appearing on behalf of the State Bank, of India submitted that the total outstanding of the bank as on date would be around Rs.900 crores towards principal and another Rs.400 crores towards interest. The total outstanding against the company is around Rs.1300 crores. However, the banks are ready to take a hair cut of an amount, which is 70 to 75% of the total outstanding, and are ready to settle with the petitioner somewhere around Rs.400 crores and as per the bank the current valuation of the assets of the company is far less than the loan given by the bank.

13. Astoundingly, the petitioner company had not only syphoned the money from the banks but have also not paid the cane dues to the farmers, who had supplied the sugar cane to the petitioner-Company. It was brought to the notice of this Court that even today almost Rs.279 crores are outstanding, which is for the last crushing season i.e. 2022-23, which has not been paid and surprisingly the petitioner is allowed by the Cane Commissioner, U.P., to continue to take more cane from the farmers, without making the last years payment for the cane dues.

14. Mr. Anurag Khanna, learned Senior Counsel appearing on behalf of the State Bank of India submitted that the writ petition has almost become infructuous as during the pendency of this petition the consortium of the banks had a Joint Lenders Meeting and the proposal given by the petitioner company has been rejected. Moreover, the other prayer for quashing the proceeding before the NCLT cannot be granted and, hence, the instant petition may be dismissed as nothing survives in the petition.

15. The petitioner has just not defrauded the banks but has also taken the cane growers for a ride in not paying them the cane dues and still continue to take sugar cane from them. The petitioner has also mislead this Court by giving an undertaking to pay Rs.20 crores and did not pay the same and enjoyed the interim protection for three months. The entire endeavour of the

petitioner company was just to buy time and not to pay back the loan amount.

16. This Court had an opportunity to peruse the affidavits filed by the banks and realized that there is a clear connivance whereby 1300 crores principal plus interest of the public money has been given away by the banks to the petitioner company. Normally, this Court would not venture to enhance the scope of the writ petition but in this case since fraud has been played by the petitioner in connivance with the banks, which is writ large and contrary to the interest of general public and also the gullible farmers, in case, we just dismiss the petition as infructuous then we will be failing in our duty by letting the petitioners (in connivance of the respondents) palm off 1300 crores of the public money. There is a larger public interest involved, and apparently an unfair advantage was given to the petitioner.

17. The Hon'ble Supreme Court in the matter of **Shangrila Food Products Limited and another Vs. Life Insurance Corporation of India and another**[1] has held that the High Court in exercise of its jurisdiction under Article 226 of the Constitution can take cognizance of the entire facts and circumstances of the case and pass appropriate orders to give the parties complete and substantial justice. This jurisdiction of the High Court, being extraordinary, is normally exercisable keeping in mind the principles of equity. One of the ends of the equity is to promote honesty and fair play. If there be any unfair advantage gained by a party priorily, before invoking the jurisdiction of the High Court, the court can take into account the unfair advantage gained and can require the party to shed the unfair gain before granting relief.

18. Further, the Hon'ble Supreme Court in the matter if **City Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwala and others**[2] has held that the Court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the Court and

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1**(1996) 5 SCC 54**

2 **(2009) 1 SCC 168**

particularly in cases where public revenue and public interest are involved. Such directions are always required to be complied with by the State.

19. In the light of the aforesaid judgements, this Court is duty bound to take into account the apparent unfair advantage gained by the petitioner with the connivance of respondent banks and would not allow such a fraud to perpetuate on the people.

20. Apparently, the loan disbursement method adopted by the bank looked quite unnatural and what was more shocking was the conduct of the bank in recovering the money. On the last date of hearing we had asked the banks to give details as to what method had they adopted for valuing the company before the loans were approved. Who were the members of the credit/management committee of the banks, who had approved the loan. How could the bank advance loans when the company had already defaulted/defaulting with the payment of loans with other banks. After the disbursement of loan when was the first default, and what action was undertaken by the bank to recover the said amount. What were the collateral security/personal guarantees taken by the bank and why no action was taken in time to recover the said amount. Were the loans approved and disbursed as per the RBI circulars.

21. In response to the quarries, of this court, shockingly all the banks have chosen not to divulge most of the information sought by the Court, only a part of the information was put in the affidavit. The contents of the affidavits are absolutely surprising.

22. Now we will deal with the contentions of the affidavits filed by the individual banks.

First Bank - State Bank of India

23. As per the affidavit of State Bank of India, the petitioner-company has been banking with it since 1933. Sometime in the year 2002 the petitioner-company had defaulted in making the payment, hence:-

(i) The bank had for the first time **restructured the loan in the year 2003**.

(ii) After the restructuring, the petitioner-company once again defaulted in servicing the loan. The bank for the second time had to again **restructure the loan in the year 2007.** After 2007, when the credit account of the petitioner had again become irregular and the interest as required was not being serviced, the account was referred to "Corporate Debt Restructuring Forum" a non-statutory voluntary mechanism set up by the Reserve Bank of India (in short "RBI") for efficient restructuring of debt.

(iii) A meeting of the CDR group was held on 26.02.2012 and again the debt was **restructured for the third time in 2012.**

(iv) This restructuring was not followed, **so the fourth restructuring was carried out in the month of July, 2015.** As per the State Bank of India the valuation of the company in 2016 was Rs.930.83 crores (fixed asset 901.63 plus current asset 29.20). As per the State Bank of India the debt service coverage ratio of the company in the year 2011-12 was 1.26 and the collateral given by the company was only Rs.7.44 crores, against the total outstanding dues (as on 16.05.2016) of Rs.150 crores.

The bank further states that they had personal guarantee of two of the guarantors, whose total net-worth was Rs.57.24 crores (Rs.41.32 crores plus 15.92 crores).

24. As per the bank, the account of the petitioner was declared Non Performing Assets (in short **"NPA") on 24.12.2012.**

25. It was after a lapse of more than three years from the last restructuring, an Original Application was filed before the DRT, Delhi only on 15.12.2018 and the order sheet reveals that no serious action was taken by the bank before the DRT.

26. Eventually, it was in the year 2022 a petition had been filed before NCLT, Allahabad. However, the bank is silent as to whether the financial condition of the petitioner company (who continuously defaulted in making the payments) been informed to the Reserve Bank of India, as per the RBI Circular. It therefore, seems that like the petitioner company, the SBI chose not to follow the RBI guidelines as well.

Second Bank - UCO Bank

27. The counsel for the UCO Bank had filed an affidavit on 24.09.2023 stating that first time a loan was granted to the petitioner company in the year 2009 to the tune of Rs.45 crores, which was paid by the company, hence, the loan was enhanced to Rs.75 crores in the year 2010, which was also repaid. Subsequently, in the year 2012 a loan of Rs.120 crores was sanctioned by the respondent-Bank repayable within a period of 12 months. Subsequently, the petitioner gave a proposal of a loan of Rs.150 crores, which was sanctioned by the competent authority on 27.11.2012 through multiple banking for Agri loan for various farmers Kisan Credit Card financed tie-up (4064 accounts) arrangement of UCO Bank with Simbhaoli Hapur Branch. It seems that the petitioner had started defaulting immediately after disbursal of the loan, with the result the loan was classified as NPA on 31.03.2013. A loan can only become NPA if the borrower had default for a few consecutive times. Since the account was classified as NPA on 31.03.2013 so it seems that the first default happened in December, 2012, January and February, 2013 and then the loan was classified as NPA in the month of March, 2013.

28. As per the affidavit of UCO Bank the petitioner had given a cheque of outstanding amount of Rs.150 crores (Rs.128 crores and second cheque of Rs.32 crores) and both the cheques got dishonoured. The bank filed an application under Section 138 of Negotiable Instruments Act on which summons were issued on 27.08.2015, on his non-appearance bailable warrants were issued. Against the issuance of bailable warrants, the petitioner had preferred Criminal Revision No.03 of 2015, which was dismissed on 21.10.2022. Thereafter, since the petitioner chose not to appear, non-bailable warrants were issued. This order of issuance of non-bailable warrants was again challenged by the petitioner in Criminal Revision No.164 & 165 of 2022 before the District & Sessions Judge, Hapur, which is still pending there.

29. The UCO bank states that they are not the members of the consortium. Apart from the proceeding taken under Section 138 of N.I. Act, the bank has not taken any steps to recover the said amount neither had taken adequate securities while granting the loan. One wonders, how could a bank grant and disburse such a huge amount without any proper security and without knowing the facts that the petitioners have been defaulting to pay the other banks since 2003. How was the loan given without any adequate securities. In the affidavit, the bank is silent as to who were the officers, who authorized for the disbursal of the loan. The company had defaulted in payment from March, 2013 but no serious efforts were made by the bank in the last ten years to recover the said amount.

Third Bank - ICICI Bank

30. As per the affidavit filed by the ICICI Bank the total outstanding of the ICICI Bank was Rs.23.84 crores. The loan of the ICICI Bank became NPA on 30.6.2015 and they claim that they had recalled the loan on 20.09.2016. In the affidavit they have also not divulged the name of the people, who were responsible for sanctioning of loan knowing the fact that the petitioner had already been defaulting with the various other banks. Evasively, the bank is trying to hide behind the mask that they have a personal guarantees of Mr. Gurmit Singh Mann and Ms. Gursimran Kaur Mann. These two people, whose assets put together would not be sufficient enough to pay back one of the loans, have given personal guarantee to various banks and taken loans, which was far more than their assets. The ICICI bank claims that they had moved to Debt Recovery Tribunal, Delhi in 2016 and thereafter, the bank and the petitioner company made a settlement on 16.05.2017 but as usual the petitioner had no intention of paying the bank and was only doing things to buy time. The petitioner did not fulfil their part of obligation of the settlement, with the result the settlement failed. Subsequently, the bank requested the DRT to issue a recovery certificate on 22.12.2017. Surprisingly this application also does not get listed till 13.01.2020. The order sheet shows the number of adjournments taken by the bank itself. The entire settlement story set up by the bank was nothing but a

fraud played being hand in gloves with the petitioner. The steps taken by the bank to recover the money is again astounding. Apparently, the proceeding before the DRT is nothing but an eyewash.

Fourth Bank - Oriental Bank of Commerce

31. After taking loan and not paying to State Bank of India, UCO Bank and ICICI bank, the petitioner turned towards Oriental Bank of Commerce. Again surprisingly the credit/management committee of the Oriental Bank of Commerce happily proceeded to sanction a loan of Rs.110 crores and more surprisingly the State Bank of India, who themselves were to recover money from the petitioner had gone ahead and given a No Objection Certificate on 28.06.2016 for ceding first sub-servient charge on the entire fixed assets of the borrower company in favour of Oriental Bank of Commerce. Why would State Bank of India give away its own security to the other banks to get a loan. The Oriental Bank of Commerce had granted this loan on the personal guarantee of Mr. Gurmit Singh Mann & Ms. Gursimrat Kaur Mann. Not to the surprise of this Court, the Bank had concealed the names of the members of the credit committee/management committee, who had sanctioned the loan. Within ten months of sanctioning of loan the loan of the petitioner became NPA on 29.11.2016. However, the loans were recalled even after one year of the loans being NPA. The bank claims to have filed an Original Application before Debt Recovery Tribunal-II, Delhi on 23.11.2017, they also claim that they moved before National Company Law Tribunal, Allahabad in the year 2017 but surprisingly both the matters in DRT, Delhi and NCLT, Allahabad are pending for last six years. It seems that the bank is not interested in recovering the money and they have not been following the cases diligently. There is nothing brought on record by the Oriental Bank of Commerce to show as to whether they have done a background check/due diligence before sanctioning such a huge amount. Obviously, they were aware that there were other bank loans on the petitioner, which they have defaulted because they asked for NOC from the State Bank of India that was the bank in which the petitioner had already defaulted in making payments.

32. It was brought to the notice that the Oriental Bank of Commerce had filed a case of Money Laundering with the Enforcement Directorate and the Enforcement Directorate is said to have attached the assets of Simbhaoli Sugar Mills for default and defrauding of Rs.148 crores. It was also brought to the notice that a First Information Report has been lodged against the directors of Simbhaoli for cheating and defrauding the Oriental Bank of Commerce.

Fifth Bank - Punjab National Bank

33. The petitioner after defaulting State Bank of India, UCO Bank, ICICI Bank and Oriental Bank of Commerce now moves to Punjab National Bank and very shockingly the credit committee/management committee of the Punjab National Bank again sanctions a loan of Rs.156.09 crores on 16.06.2016 and again the personal guarantees of Mr. Gurmit Singh Mann and Ms. Gursimran Kaur Mann was taken. These two people had already given personal guarantees to various banks. The security of the loan was stock of Sugar and first Pari-pasu charge over the Plant & Machinery. Here, as per the Punjab National Bank, the debt service coverage ratio of the petitioner was 0.65 on 31.03.2015, which was projected as 1.98 on 31.03.2016. This projection by the petitioner is nothing but a manipulation of the accounts to play fraud on the banks.

34. After getting this loan, the petitioner once again siphoned away the entire money. The stock of the sugar was mortgaged and according to the petitioner when the stock are mortgaged, it can only be released when the sale price is deposited in the Escrow account with the bank. Shockingly, the sugar stocks were sold, and the Punjab National Bank allowed it to be sold off, without asking for the money. Within five months from taking this loan the account was declared NPA on 31.03.2017. However, the first legal notice was sent on 29.10.2017, but it took more than half year for the bank to issue notice under Section 13 (2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act. After issuing the notice under Section 13 (2) of SARFAESI Act nothing has happened till date. The

banks seems to have filed an Original Application before Debt Recovery Tribunal, Delhi in November, 2019 that is almost two and half years after the account was declared NPA. There is nothing on record to show why the bank was sitting quite for two and a half years and took no action to recover the money.

35. The bank has also approached the National Company Law Tribunal, Allahabad in 2019 and filed a case but for last four years nothing has proceeded. It is apparent that no substantial steps were taken by the bank to recover the amount.

36. The Punjab National Bank, very well knowing the fact that the petitioner was a habitual defaulter and had been defaulting in paying money of the banks still went ahead and sanctioned the loan and took no serious steps to recover the same.

Sixth Bank - Bank of India

37. After the default from State Bank of India, UCO Bank, ICICI Bank, Oriental Bank of Commerce and Punjab National Bank the petitioner proceeds to Bank of India and the credit/management committee of the Bank of India went ahead and sanctioned a loan on 28.09.2017 for an amount of Rs.366.90 crores. Against this loan, the security was the fixed asset of borrowing company on the written down value and the company was given first sub-servient charge on the fixed asset. As per the bank, even for the financial year 2017-18 the debt coverage ratio was 1.28. They took the personal guarantees of Sri Gurumeet Singh Mann and Smt. Gurusimran Kaur Mann.

38. We failed to understand, how could Bank of India advance Rs.366.90 crores to a company, which has already been defaulted in servicing the interest and instalments of other banks, where the other banks had been declared the petitioner to be as NPA. The bank claims to have checked the CIBIL score at the time of sanctioning of its loan. When the company was already declared NPA by various banks way back in 2012-13, then how

could CIBIL score would be such inviting which entails sanctioning of loan. Surprisingly, the loan was sanctioned on 28.09.2017 and within three months on 31.12.2017 the account was declared NPA, however, the bank claims that they had moved for recovery of money to Debt Recovery Tribunal, Delhi on 14.10.2019. When a query was put, as to why did the bank waited for good two years to initiate the recovery proceedings, no credible answer was given by the bank. The bank has also not annexed the order sheet which could show the alacrity in recovering the said account.

Seventh Bank - Bank of Baroda

39. Inspite of Counsel entering appearance in the proceedings but reason best known to the bank, it has chosen not to file any response in the matter.

Farmers Outstanding

40. During the course of argument an intervention application was filed by the Cooperative Cane Development Union, who informed the Court that the petitioners have taken cane from the cane growers/farmers and they have not even paid the cane dues, a whopping sum of Rs.279 crores for the last crushing year 2022 is still outstanding towards the farmers.

41. From the above facts and record, it is evident that the instant case is a clear case of fraud being played by the petitioner in connivance with the bank officers as the banks one after the other had gone to sanction loans to the petitioner knowing the fact that the petitioner has defaulted in paying money to the other banks and shown no intention of paying back the loan. The loans given by the banks as working capital was well secured with the sugar stocks, even if the petitioner want to sell a bag of the sugar, the sale consideration, would necessarily has to come in the Escrow account. Surprisingly, every time when the loan is given, on the security of sugar stocks how come the amount was not recovered by the banks and how the stocks were allowed to be sold without the bank getting its dues

42. The banks while disbursing the loans have miserably failed or purposely did not carry out proper due diligence, credit appraisal, following

the prudential norms, consider the risk report, did not take appropriate collateral security, failed to carry out regulatory compliances. Few of the banks even did not ask for personal guarantees of the promoters and the others got a personal guarantees of the promoters, who had given personal guarantees to various other banks. There was no post disbursement supervision by the banks, which is mandatory. The banks chose not to ask for additional security, no proper steps to recover the amount was taken by the banks even after the account were declared NPA. There is RBI guideline to advance the loans to the companies, which is an essential condition and surprisingly the same has not been followed by the banks.

43. The petitioner while applying for the loan must have given some documents showing the capacity to pay back. Obviously, the said documents were either fabricated or forged as the petitioner never had the capacity to pay back the loans. We cannot presume the bank to be naive enough to fall for the documents given by the petitioner and without scrutinizing the same, sanctioned a huge amount, unless they themselves are involved and are part of the bigger fraud of defrauding public money.

44. It is also apparent that the banks had been sanctioning the loan without following the guidelines of the Reserve Bank of India and its own banking procedure. A huge amount of loans are sanctioned and disbursed to the petitioner without even taking appropriate security/collateral. It is quite shocking that the petitioner was defaulting to pay a bank and the account was classified as NPA, even after that, the other banks goes ahead sanctions and disburses the huge amount of loan without proper collateral. More shocking is the way all the banks have proceeded to recover the money. All action taken by the banks is nothing but an eyewash. They seem to have just filed the petitions before DRT and NCLT and thereafter, failed to pursue the same. Apparently, its a clear case of connivance and fraud played by the petitioner on the banks.

45. The Reserve Bank of India had issued a circular on 1st July, 2009, wherein, it had made mandatory on all the banks for classification and reporting of frauds, and sought for streamline the reporting system so the

fraud is reported by a bank without any delay. The RBI went to the extent of stating that the banks must fix staff accountability in respect of delay in reporting frauds. Clause 2 of the circular lays down classification of frauds. Clause 2.1 (c) lays down that in case of unauthorized credit facilities extended for reward or for illegal gratification, it comes within the ambit of fraud. Clause 3.2 of the circular of RBI is as follows:-

> *"3.2* ***Frauds committed by unscrupulous borrowers***
>
> *3.2.1 It is observed that a large number of frauds are committed by unscrupulous borrowers including companies, partnership firms/proprietary concerns and/or their directors/partners by various methods including following:*
>
> > *(i) Fraudulent discount of instruments or kite flying in clearing effects.*
> >
> > *(ii) Fraudulent removal of pledged stocks/disposing of hypothecated stocks without the bank's knowledge/inflating the value of stocks in the stock statements and drawing excess bank finance.*
> >
> > *(iii) Diversion of funds outside the borrowing units, lack of interest or criminal neglect on the part of borrowers, their partners, etc. and also due to managerial failure leading to the unit becoming sick and due to laxity in effective supervision over the operations in borrowal accounts on the part of the bank functionaries rendering the advance difficult to recover.*
>
> *3.2.2 In respect of frauds in borrowal accounts, additional information as prescribed under Part B of FMR -1 should also be furnished.*
>
> *3.2.3. Banks should exercise due diligence while appraising the credit needs of unscrupulous borrowers, borrower companies, partnership/proprietorship concerns and their directors, partners and proprietors, etc. as also their associates who have defrauded the banks.*
>
> *In addition to above borrower- fraudsters, third parties such as builders, warehouse/cold storage owners, motor vehicle/tractor dealers, travel agnts, etc. and professionals such as architects, valures, chartered accountants, advocates, etc. are also to be held accountable if they have played a vital role in credit sanction/disbursement or facilitated the perpetration frauds. Banks are advised report to Indian Banks Association (IBA) the details of such third parties involved in frauds.*
>
> *Before reporting to IBA, banks have to satisfy themselves of the involvement of third parties concerned and also provide them with an opportunity of being heard. In this regard the banks should follow formal procedures and the processes followed should be suitably recorded. On the basis of such information, IBA would, in turn, prepare caution lists of such third parties for circulation among the banks.*

46. Clause 3.3 is as follows:-

3.3 Frauds involving Rs.100.00 lakh and above

In respect of frauds involving Rs.100 lakh and above, in additional to the requirement given at paragraphs 3.1 and 3.2 above, banks may report the fraud by means of a D.O. letter addressed to the Chief General Manager in charge of the Department of Banking Supervision , RBI, Central Office, within a week of such frauds coming to the notice of the bank's Head Office. The letter may contain brief particulars of the fraud such as amount involved, nature of fraud, modus operandi in brief, name of the branch/office, names of parties involved (if they are proprietorship/partnership concerns or private limited companies, the names of proprietors, partners and directors), names of official involved, and whether the complaint has been lodged with the Police/CBI. A copy of the D.O. letter should also be endorsed to the Regional Office of RBI under whose jurisdiction the bank's branch, where the fraud has been perpetrated, is functioning.

47. Clause 6.1 and 6.2 are as follows:-

6.1 Private sector banks (including foreign banks operating in India) should follow the following guidelines for reporting of frauds such as unauthorized credit facilities extended by the bank for illegal gratifiction, negligence and cash shortages, cheating, forgery, etc. to the State Police authorities:

(a) In dealing with cases of fraud/embezzlement, banks should not merely be actuated by the necessity of recovering expeditiously the amount involved, but should also be motivated by public interest and the need for ensuring that the guilty persons do not go unpunished.

(b)Therefore, as a general rule, the following cases should invariably be referred to the State Police:

i) Cases of fraud involving an amount of Rs.1.00 lakh and above, committed by outsiders on their own and/or with the connivance of bank staff/officers.

ii) Cases of fraud committed by bank employees, when it involves bank funds exceeding Rs.10,000/-.

(C) Fraud cases involving amounts of Rs.1.00 crore and above should also be reported to the Director, Serious Fraud Investigation Office (SFIO), Ministry of Company Affairs, Government of India, Second Floor, Paryavaran Bhavan, CGO Complex, Lodhi Road, New Delhi 110003. Details of the fraud are to be reported to SFIO in FMR-1 Format.

6.2 Public sector banks should report fraud cases involving amount of Rs.1 crore and above to CBI and those below Rs.1 crore to local police, as detailed below:

Case to be referred to CBI

(a) Cases of Rs.1.00 crore and above upto Rs.5.00 crore

** Where staff involvement is prima facie evident – CBI (Anti Corruption Branch)*

** Where staff involvement is prima facie not evident – CBI (Economic Offences Wing)*

(b) All cases involving more than Rs.5.00 crore – Banking Security and Fraud Cell of the respective centres, which is specialised cell of the Economic Offences Wing of the CBI for major bank fraud cases.

Cases to be referred to Local Police

Cases below Rs.1 crore – Local Police.

i) Cases of financial frauds of the value of Rs.1.00 lakh and above, which involve outsiders (private parties) and bank staff, should be reported by the Regional Head of the bank concerned to a senior officer of the State CID/Economic Offences Wing of the State concerned.

ii) For cases of financial frauds below the value of Rs.1.00 lakh but above Rs.10,000/- the cases should be reported to the local police station by the bank branch concerned.

iii) All fraud cases of value below Rs.10,000 involving bank officials, should be referred to the Regional Head of the bank, who would scrutinize each case and direct the bank branch concerned on whether it should be reported to the local police station for further legal action.

48. The RBI guidelines are absolutely clear that, if a fraud is committed by the unscrupulous borrower by removal of stocks/hypothecating and disposing of the stocks, inflating the value in the stock statement and drawing excess bank finance, diversion of funds outside the borrowing unit and also due to managerial failure leading to the unit becoming sick and due to laxity in effective supervision, the banks have to report to the CBI. The instant case clearly falls under the ambit of Clause 3.2.1 and 3.2.4 where the unscrupulous borrower enjoy credit facilities under valuable banking arrangement after defrauding one of the financial banks continue to enjoy facilities of other financial banks and in some cases availed even higher limit at those banks. Clause 3.2.4. of the circular is as follows:-

3.2.4. Frauds in borrowal accounts having multiple banking arrangements

Certain unscrupulous borrowers enjoying credit facilities under "multiple banking arrangement" after defrauding one of the financing banks, continue to enjoy the facilities with other financing banks and in some cases avail even higher limits at those banks. In certain cases the borrowers use the accounts maintained at other financing banks to siphon off funds by diverting from the bank on which the fraud is being perpetrated. This is due to lack of a formal arrangement for exchange of information among various lending banks/Fis. In some of

the fraud cases, the securities offered by the borrowers to different banks are the same.

49. Further, the RBI in Clause 6.2 of the circular makes it mandatory on public sector banks to report to the economic offence wings of the Central Bureau of Investigation (in short "CBI") in all cases involving more than Rs.5.00 crores to the banking security and fraud cell of the CBI.

50. As per the RBI Guidelines it is mandatory for the banks before approval of the loan to carry out a proper due diligence, credit appraisal, to consider the risk report and follow all the norms laid down. It is clearly apparent from the way the loans were sanctioned and disbursed that the banks have failed to carry out regulatory compliances. Even adequate security was not taken before disbursing the loans. A number of loans were given on the personal guarantee of two promoters, whose net-worth was far less than the loans taken by them from the banks.

51. There is a guideline as to how the banks will supervise and monitor the loaned amount post disbursement. Clearly in most of the cases there was no supervision on the disbursed amount. Further, all the loans have been sanctioned and disbursed without taking proper security. Even after the loans sanctioned and disbursed, the banks have not taken any serious steps to recover the said amount even after the accounts were declared NPA.

52. It is surprising that none of the banks while sanctioning or disbursing the funds have ever checked the background of the petitioner-company. The petitioner-company was already defaulting and was NPA in the other banks but still the other banks went ahead with sanctioning huge amount of loan to the petitioner without any proper collateral security or documentation.

53. There is RBI guideline to advance the loans to the companies, which is an essential condition and the same has openly been flouted by the banks. It is more shocking that even after the accounts were declared NPA, none of the banks had actually proceeded seriously to recover the money.

54. What is more shocking is that as per the RBI circular of 1st July, 2009 every bank, who had been defrauded for an amount more than Rs.5 crores

has to mandatorily report to the **"Banking Security and Fraud Cell"** of CBI but surprisingly none of the bank seems to have done that as there is no recital or whisper in this regard in any of the affidavits filed by the Banks.

55. During the course of argument, Mr. Ashok Bhatnagar appearing on behalf of the Punjab National Bank and Oriental Bank of Commerce states that at one point of time the farmers cane dues by all the sugar mills put together in the State of U.P. had crossed more than Rs.17,000/- crores, it was at that point of time action was taken against the sugar mill owners and almost 150 First Information Reports were filed by the farmers and cane societies across the State of Uttar Pradesh. At this stage counsel for the petitioner mentioned that after F.I.R. was lodged they had paid their dues. The other mill owners preferred a writ petition before this Hon'ble Court for quashing of the F.I.Rs. and the same was dismissed, shockingly, even then no action was taken against similarly situated Sugar Mill owners against whom F.I.R. was lodged, we are not going into this fact as it is not a subject matter in this *lis.*

56. Mr. Ravindra Singh, who has filed an impleadment application on behalf of the Cane Union has also mentioined that as of now Rs.379 crores of cane dues and interest of the farmers of the last year is outstanding (by all the three units of Simbhaoli). He further submits that as per the judgement of Hon'ble Supreme Court in the matter of **S.K.G. Sugar Limited vs. State of Bihar and others**[3] outstanding dues of the farmers has the first charge on the sugar and assets of the factory over any contractual liabilities. He further submits that a similar view has been taken in **Augusta Sugar and Chemicals vs. State of U.P. & Others**[4] and **Rashtriya Kisan Mazdoor Sangathan vs. State of U.P.**[5] wherein the Hon'ble Supreme Court has once again held that outstanding cane price of the farmers shall have priority over the assets mortgaged by the bank.

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3 **(1997) INSC 41**

4 **(1997) 10 SCC 99**

5 **2014 (8) ADJ 671**

57. It is just not the petitioner and the bank officers, who are responsible for allowing the petitioner to syphon away the fund but also the Cane Commissioner, who had not taken any action against the promoters and identically situated people and had failed to carry out his duties and the obligation, which was towards the farmers but had allowed the petitioner to sell the Sugar without paying the farmers.

58. The petitioner has filed the instant petition with the sole intention of holding back the NCLT proceedings. On the first date of hearing, the counsel for the petitioner gave an undertaking that they are ready to deposit Rs.20 crores in the "No Lien Account". They only deposited Rs.10 crores and the balance was not paid, it was nothing but a ploy to buy time and take the Court for a ride.

59. This Court following the judgement of Hon'ble Supreme Court in **Balwantbhai Somabhai Bhandari vs Hiralal Somabhai Contractor**[6] had inclined to issue notice for contempt on 19.11.2023. Thereafter, Mr. Rohan Gupta appearing for the petitioner submitted that they need a month's time to pay the balance amount. Now almost two months have passed but still they have not deposited the money. It is apparent that the petitioners have just not defrauded the banks but has also tried to mislead this Court by not paying the amount, which they had agreed to pay. It seems the petitioner is only interested in buying time.

60. During course of argument, it has been revealed that it is only the Oriental Bank of Commerce, who had reported the issue to the Enforcement Directorate, who after investigation have attached some of the properties of the petitioner-company.

61. This is a case, which shocks conscience of the Court as to how few of the bank officers in connivance of the petitioner had advanced almost Rs.900 crores, of public money and had allowed the petitioner to syphon away the funds and did nothing but were the mute spectators when the entire fund was syphoned off. Even after the entire amount was syphoned off, the banks did not take any effective steps to recover the said amount.

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6 **AIR 2023 (SC) 4390**

62. The RBI Circular dated 01.07.2009 mandates all the banks for classification and reporting of fraud. The said Circular does not provide any exemption or relaxation to the banks not to report regarding fraud committed by unscrupulous borrowers. Even, Clause-6 of the Circular also mandates all the Public Sector Banks to report to the Fraud Cell of CBI in cases of fraud involving more than Rs.5 crores.

63. In the present matter, we do not find any recital in the affidavits filed by the banks, which may indicate that any point of time they had communicated to the RBI in the matter. In case, there is any fraud then in every eventuality the matter is to be referred to the CBI for investigation. Even otherwise, there is complicity as indicated above.

64. We also find that the bank officials had given a complete go bye to the Circular. In such situation, we direct to the CBI to investigate against each and every bank as to how the loans were sanctioned in contravention of the RBI Guidelines and Circulars and also enquire the officers of the banks, who had accorded approval while sanctioning the loan being Member of the Board/Credit Committee and also the officers, who had not taken any effective steps to recover the amount and also against the officers of the banks who failed to take any prompt action to realise the amount from the borrower and allowed the petitioner to siphon off the money.

65. As the CBI is not a party before us, we request the Registrar General of this Court to communicate the present order to the Director, Central Bureau of Investigation, New Delhi.

66. In case, the CBI finds that there is a case of money laundering as per the provisions of Prevention of Money Laundering Act, 2002 they may also refer the matter to the Enforcement Directorate and take help to recover the said amount.

67. It is further directed that the petitioner will join the investigation and cooperate with the investigation team and if they do not do so, it is open for the investigation agency to proceed against the petitioner in accordance with law. The authorities should endeavour to find out the money trail, where it has been syphoned off and parked.

68. It is further clarified that the above observation given in this order would not come in the way of the investigating agency and they would investigate the matter *de novo.*

69. The writ petition is accordingly ***disposed of.***

Order Date:- 12.12.2023

S.P.