

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

Writ Petition No.5517 of 2019

M/s Talon Sports (Pvt.) Limited, Sialkot

Versus

The State Bank of Pakistan, Lahore & others

J U D G M E N T

Date of hearing: 30.01.2020.

Petitioner by: Mr. Shahid Ikram Siddiqui, Advocate.

Respondents by: Zahid Sikandar and Zarish Fatima, Assistant Attorney Generals for Federation of Pakistan along with Ameer Abbas Ali Khan, Assistant Advocate General Punjab.

Mr. Rehan Nawaz, Advocate for State Bank of Pakistan (“SBP”) along with Umair Ghafoor, Officer Legal.

Majid Ali Wajid, Advocate for respondent No.2 / Standard Chartered Bank (“SCB”).

MUHAMMAD SAJID MEHMOOD SETHI, J.: Through instant petition, petitioner has challenged the vires of actions of respondents taken under Section 25A of the Banking Companies Ordinance, 1962 (“**the Ordinance of 1962**”) and sought direction for respondents to remove its name from the Electronic Credit Information Bureau (“**eCIB**”).

2. Brief facts of the case are that respondent No.2 / Standard Chartered Bank instituted a suit i.e. C.O.S. No.16/2014 for recovery of amount against petitioner before this Court under the provisions of the Financial Institutions (Recovery of Finances) Ordinance, 2001 (“**the Ordinance of 2001**”). Meanwhile, petitioner and respondent No.2 reached an amicable settlement after negotiations, discussions and reconciliation of accounts and record, and

accordingly a Settlement Agreement dated 29.09.2016 was executed. In terms of said agreement, pending litigation also came to an end. Subsequently, SCB reported the name of petitioner to SBP for its placement in eCIB, allegedly without determination of liability against petitioner. Petitioner applied for financial assistance from National Bank of Pakistan on 01.02.2017 and at that time no amount was reflecting on eCIB against Overdue and Write Off columns. However, subsequently on 08.08.2018, an amount of Rs.196.50 Million appeared on eCIB against Writes Off column, hence, petitioner could not get financial assistance from any bank. Petitioner repeatedly approached respondent No.2 to communicate with SBP but needful was not done. Hence, instant petition.

3. Learned counsel for petitioner, at the very outset, submits that he does not want to press this petition to the extent of vires of Section 25A of the Ordinance of 1962, however he submits that inclusion of petitioner's name in eCIB, on the behest of respondent No.2, is illegal and against the terms of Settlement Agreement because there was no write off in said agreement. He adds that petitioner has not been declared defaulter of loan by any Court of competent jurisdiction, thus, impugned action under the garb of Section 25A of the Ordinance of 1962 is not justified. He further submits that impugned action is also against the instructions of SBP to all banks and provisions of the Constitution of the Islamic Republic of Pakistan, 1973. He argues that banks are bound to send intimation to their borrowers before reporting any overdue and give reasonable time for reconciliation / settlement of overdue liabilities but petitioner has not been provided such opportunities and access to eCIB database. He contends that amount shown in eCIB has already been settled and once the matter has been settled between the parties, the same could not have been re-opened. He further submits that determination of liability must be conducted in accordance with requirements of substantial justice, which has not

been done in the instant case. In support of his submissions, he has referred to Human Rights Commission of Pakistan and 2 others v. Government of Pakistan and others (PLD 2009 Supreme Court 507), Sarosh Haider v. Muhammad Javed Chundrigar and others (PLD 2014 Supreme Court 338), Dr. Muhammad Javaid Shafi v. Syed Rashid Arshad and others (PLD 2015 Supreme Court 212), Pakistan Olympic Association through President and others v. Nadeem Aftab Sindhu and others (2019 SCMR 221), Messrs Yousaf Sugar Mills v. Trust Leasing Corporation and others (2006 CLD 1191), The State and others v. Director-General, FIA and others (PLD 2010 Lahore 23), AF Industries through Proprietor and 2 others v. Federation of Pakistan (2010 CLD 1765), A & A Services through Proprietor v. Federation of Pakistan through Secretary Ministry of Finance and others (2014 CLD 809), Jahangir Mehmood Cheema and another v. Government of Pakistan, Ministry of Interior, Islamabad through Secretary and 2 others (2014 CLD 1384), and Sahibzada Faisal Ali Khan v. Federation of Pakistan and others (2017 CLD 463).

4. Conversely, learned Law Officers, assisted by learned counsel for respondents, submit that placement of name in eCIB does not blacklist anyone and prevent to enter into lawful business or relationship with the banks. They argue that eCIB report merely shows outstanding position and repayment history of the borrower without declaring the borrower as defaulter. They have referred to Abdul Aziz Nawab Khan v. Federation of Pakistan, Ministry of Finance and others (2006 CLD 1080), Azam Wazir Khan v. Messrs Industrial Development Bank of Pakistan and others (2013 SCMR 678), Messrs Abdul Aziz Nawab Khan & Company v. Federation of Pakistan, Ministry of Finance and others (2006 CLC 55), Messrs J. S. Developers through Chief Executive and another v. State Bank of Pakistan through Governor SBP and another (2015 CLD 173), Syed Wajahat Hussain Zaidi through Procurator /

Authorized Representative v. State Bank of Pakistan through Governor and 7 others (2016 CLD 1084) and Sahibzada Faisal Ali Khan v. Federation of Pakistan and others (2017 CLD 463).

5. Arguments heard. Available record perused.

6. Under Section 25A of the Ordinance, 1962, every banking company is required to furnish credit information to SBP in the manner specified by it. SBP may, either of its own motion or at the request of any banking company, make such information available to any banking company on payment of fee. A banking company, intending to enter into any financial arrangement, in excess of limits prescribed by SBP, has to obtain credit information on the borrower from the SBP. The primary object for collecting credit information is to equip the financial institutions about financial status of the customers to decide course of their business so that they may not be deceived by the defaulters. Placement of name of a company / customer on eCIB List is a caution for financial institutions, however, they are at liberty to extend financial assistance to a borrower.

7. Perusal of contents of Settlement Agreement dated 29.09.2016 shows that during pendency of the suit, the parties mutually agreed and decided to settle their financial matters out of the Court. According to which, an amount of Rs. 165 million was to be paid by the Customer / petitioner as a full and final discharge of the liability towards the SCB. Upon receipt of said amount, SCB was to write letter to SBP for clearance of name of petitioner from eCIB forthwith, failing which petitioner was entitled to adopt process of law. It was further clarified that upon receipt of said amount, SCB would issue a Clearance Letter to petitioner for removal of lien from revenue department etc., confirming that entire liability has been settled in full in accordance with terms and conditions of this Agreement and SCB would not agitate any claim

against petitioner before any forum, once the said amount is paid. Even otherwise, the account between the parties was reconciled and the amount due was settled and cleared by petitioner. There is neither mention of petitioner's request of write off nor the bank extended concession of writing off the loan. The relevant portion from Settlement Agreement is reproduced hereunder:-

"WHEREAS the Customer had been availing finance facilities from SCB from time to time. However, on account of certain financial disputes amongst the Parties, SCB filed a suit for recovery against the Customer and others before the Lahore High Court, Lahore, vide COS No.16/2014, which is still pending adjudication thereon.

AND WHEREAS during the pendency of the above referred litigation, the Parties herein have mutually agreed and decided to settle all their financial affairs, out of court, once and for all. **After detailed rounds of negotiations, discussions and reconciliation of accounts and record, the Parties have mutually agreed that an amount of Rs.165 is liability of the customer towards bank under this agreement. An amount of Rs.165 Million is to be paid by the Customer as a full and final discharge of their liability towards the bank.**

NOW THEREFORE, the Parties have reached this Settlement and agree as follows:

A. That the Customer shall pay the amount of Rs.165 Million in lump sum to SCB as per this Agreement, as a full and final settlement of the matters.

B. **That upon receipt of the settled amount, SCB shall write letter to State Bank of Pakistan for clearance of name of the Customer from the ECIB of the State Bank of Pakistan, forthwith. In case, the name of Customer is not cleared from ECIB, then the Customer shall be entitled to get clearance of its name from ECIB by adopting the process of law.**

C. It is further agreed and declared by both the parties to this Agreement that upon complete realization of the due amount i.e. Rs.165 Million, the securities/mortgage/charge documents, personal guarantees furnished by the Customer and or his directors, shall be released/redeemed/discharged by SCB. The Property(ies) shall be redeemed by SCB and original title documents shall be returned to the Customer forthwith.

D. That upon receipt of the amount of Rs.165 Million under this agreement, SCB shall issue a Clearance Letter to the Customer for removal of lien from Revenue Department etc and confirming that the entire liability of the Customer in the books of SCB has been settled in full in accordance with Customer at any forum whatsoever, once the settled amount is paid...." **[Emphasis supplied]**

8. Furthermore, the SBP, vide Circular letter No.1 of 2015 dated 02.11.2015, has issued certain directions to be observed while

issuing clearance certificate and eCIB reporting, relevant portion from said letter is reproduced hereunder:-

“2. While issuing clearance certificate to their customers after receipt of overdue amount, the banks / FIs do not mention that their overdue / write off / late payment history in CIB report will continue to be reported for a period of one year from the date of adjustment of overdue amount. The customers, therefore, have understanding about clearance of their liabilities immediately after payment, which subsequently leads to unnecessary correspondence / legal proceedings against the banks / FIs and State Bank of Pakistan;

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b. The banks / FIs should provide complete information to borrowers while giving financial relief in the form of write off / reversal of mark up and will categorically inform them in writing that this financial relief will be reported to CIB;

c. Banks are advised to ensure that reporting CIB is invariably discontinued immediately after the settlement and closure of facility;

d. If any requisite correction is pointed out by the customer to the concerned bank / FI who reported the data, they should make necessary correction at their end and will not advise the customers to approach State Bank of Pakistan for the same;”

Vide Circular / letter No.01 of 2010 dated 12.01.2010, the SBP issued instructions regarding reporting to eCIB, which reads as under:-

“Please refer to BSD Circular No.16 dated November 06, 2004, wherein banks / DFIs were advised to follow the instructions contained therein with regard to reporting of credit data to private credit bureaus. In this connection banks / DFIs are advised to observe the following instruction before reporting an overdue to eCIB of State Bank of Pakistan:-

The banks / DFIs shall send an intimation letter to the concerned borrower before reporting 90 days overdue against his / her name to eCIB. Such letter shall, interalia, inform the borrower about the implications of reporting of name to eCIB, and allow reasonable time period (at least 15 days) for reconciliation / settlement of overdue liabilities.”

Circulars issued by the SBP, are in the nature of directions to the financial institutions and the respondent bank was under obligation to follow the instructions given by SBP in contemplation of Sections 3-A, 25 and 41 of the Ordinance of 1962. It appears from available record that above procedure has also not been

adopted by respondent bank and the petitioner has been condemned unheard. When an act inflicts civil consequences on a person in respect of his financial dealings, business, property or reputation which is harmful to his interest, he is entitled to be heard before such an action or order is taken or passed.

Although placement of name of a customer in eCIB List is to caution lending institutions about default and does not result into blacklisting of such individual and, despite placement of name of a customer on the List, lending institution is at liberty to extend financial assistance to that individual but the practice of the Banking Companies is to the contrary as they usually refuse to provide finance facilities if the name of a person appears in the List, which means placement of a person on eCIB List of defaulters places a restraint on his right to enter freely into a contract with financial institutions etc. Therefore, in absence of any adjudication by court in the matter, placement of name of an alleged defaulter on the eCIB List by SBP without verifying the genuineness of claim of the bank and without providing that person even an opportunity of hearing appears to be in violation of fundamental right guaranteed under Article 10A of the Constitution. Reference in this regard can be made to A & A Services (supra) and Messrs Yousaf Sugar Mills (supra).

9. Admittedly, petitioner satisfied the outstanding liability which, according to the above agreement dated 29.09.2016, was determined after reconciliation of accounts and record, and consequently the recovery suit bearing C.O.S. No. 16 of 2014 was dismissed as withdrawn vide order dated 14.02.2017 of this Court. Corporate Credit Information Report of the petitioner bearing Report Ref. CPD/PU-101/01-02-2017 dated 01.02.2017 shows that no amount is appearing against petitioner in the column of Write-offs (During the last fifteen years). However, vide letter dated 11.12.2018, SCB informed the petitioner that subsequent to receipt

of amount of Rs. 165 Million as full settlement, an amount of Rs. 196,503,029 was written-off in SCB's books and was reported to SBP, which seems not in accordance with Clause-B of the Settlement Agreement, reproduced above. It was statutory duty of SCB to provide correct information to SBP under Section 25A of the Ordinance of 1962, and once it was agreed in writing by SCB that Rs. 165 Million would be the full and final amount payable by the petitioner and on receipt of full and final payment the SCB would be liable to write letter to SBP to get the name of the petitioner cleared from eCIB List, the subsequent wrong negative reporting after receipt of full payment appears to be based on mala fide and is a fraud on statute.

SBP, being the regulatory body, was required to ascertain genuineness and truthfulness of the information provided by the respondent bank before making it available to other Financial Institutions. It is well settled that where the power conferred on an authority is exercised without due care or in bad faith or for any purpose against the concept of law, act of such authority can be struck down by the High Court which is equipped with power of judicial review under the Constitution. Under the law, the SBP being a public functionary is required to act within the parameters of authority conferred upon it under the law and it has to justify its actions with reference to some contemporary law. Public and executive functionary is required to act reasonably, judiciously and with justice, equity, fairness and in accordance with spirit of provision under which powers is sought to be exercised as required by the principles of due process and Articles 4, 5, 9, 10-A, 18 and 25 of the Constitution, and Section 24-A of General Clauses Act, 1897.

10. The case law cited by learned counsel for respondents is on distinguishable facts and is not attracted to the facts and circumstances of instant case.

11. In view of the above, the instant petition is **allowed** and action of SBP regarding placement of name of the petitioner on eCIB List without notice and without ascertaining the genuineness of the information provided by SCB is declared without lawful authority and with no legal effect.

(Muhammad Sajid Mehmood Sethi)
Judge

Announced in open court on 18.03.2020.

Judge

APPROVED FOR REPORTING

Judge

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