IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM:NAGALAND:MEGHALAYA:MANIPUR:
TRIPURA:MIZORAM & ARUNACHAL PREDESH)
SHILLONG BENCH

W.P.(C) No. 371(SH) of 2011

M/s North Eastern India Trust for
Education & Development (NEITED),
Represented by its Secretary
Shri CM Jha of Laitumkhrah,
Shillong 793003. : Petitioner

Versus

1. Union of India
Represented by its Secretary,
Ministry of Housing and Urban Poverty
Alleviation, Nirman Bhawan,
New Delhi- 110001.

2. The Chairman & Managing Director
Housing Urban Development Corporation Ltd
(HUDCO) HUDCO Bhawan,
India Habitat Centre,
Lodhi Road, New Delhi- 110001.

3. The Regional Chief,
HUDCO Ltd HUDCO Niwas,
RG Barua Road, Guwahati-781005.
: Respondents

4. The Chairman & Managing Director,
National Housing Bank Core 5A,
India Habitat Centre, 3rd – 5th Floor,
Lodhi Road, New Delhi – 110003.
: Proforma Respondent

B E F O R E
THE HON'BLE MR JUSTICE T VAIPHEI

For the petitioner : Mr SP Sharma
Mr BK Deb Roy
Mr M Sharma
Advocate

For the respondents : Mr R Debnath,
CGC

Date of Hearing : 21.3.2012

Date of Judgment & Order : 27-4-2012

JUDGMENT AND ORDER

In this writ petition, the petitioner is praying for directing the respondent Nos. 2 and 3 to consider and accept the application dated 30-3-2000 filed by it for one time-settlement of its outstanding dues under the One-Time Settlement Scheme of Reserve Bank of India in accordance with the judgment of the Apex Court in ***Sardar Associates v. Punjab & Sind Bank, (2009) 8 SCC 257***.

2. The petitioner who claims to be a public charitable trust was established in the year 1999 and was duly so registered. The trust was established, among others, for rendering services in the field of education, development, relief and relief to the poor irrespective of caste, creed, race, religion or language. In order to achieve its objects, the petitioner decided to establish a college under the name and style of "Shillong Engineering and Management College". The Government of Meghalaya in the Education Department accorded its permission for the establishment of the said College. Similarly, the All India Council for Technical Education (AICTE), New Delhi also accorded its approval for 180 seats in the three Course up to the Degree level. The petitioner claims that it is the first private sector Engineering College in the entire North Eastern Region without any Government grant-in-aid or financial contribution from the Government. For establishing the college, it purchased a huge plot of land covering an area of 26 acres near Jorabat in the Ri-Bhoi District and accordingly constructed the college campus, etc. It then approached the Regional Chief, HUDCO Ltd. (respondent No. 3) for extending a term loan of `6.00 crores, and was assured of the release of `2.00 crores by way of first instalment against the mortgage of the 26 acres of land in terms of the agreement of loan executed on 30-1-2004, for which it had handed over 100 numbers of duly signed blank cheques drawn from Vijaya Bank in favour of the respondent No. 3 against the term loan of `2.00

crores. According to the petitioner, till the month of January, 2004, it had spent a total of `2.33 crores on account of construction of the infrastructures such as the college building, etc. Though the respondent No. 3 was required to release the loan amount in 4 instalments within a period of 10 months i.e. 1-10-2004, the loan was released in 6 instalments spreading up to 16 months, that too, after persistent and constant reminders.

3. It is also the case of the petitioner that in the month of December, 2004, the petitioner applied to the respondent No. 3 for another loan amounting to `2.00 crores, but was granted only `188.00 lakhs for construction of hostels and staff quarters through the loan agreement dated 5-12-2005, but the loan amount was never released despite repeated reminders. Finally, it requested for waiver of interest and penalty and for the release of `188.00 lakhs vide its letter dated 2-3-2009 and also submitted an application for One Time Settlement (OTS) of the loan on 30-3-2009 along with a demand draft of `50,000/-. In order to expedite the matter, it had sent a sum of `1.00 lac by demand draft in favour of the respondent No. 4 (The Chairman & Managing Director, National Housing Bank) with a request to finalise the OTS offer to enable it to make necessary payments vide the letter dated 25-7-2009. Notwithstanding such application, the respondent No. 3 in violation of the OTS guidelines and circular of the National Housing Bank issued to the Housing Finance Companies (HFCs), without the knowledge of the petitioner, lodged three post-dated cheques amounting to `2,31,22,320/- (which had been handed over by the petitioner to respondent 3 in advance for payment of monthly instalments of the loan) with the Bank knowing quite well that it would not be honoured as there was no sufficient balance, which obviously got bounced and thereafter issued the notice dated 8-9/1/2010 under Section 138 Negotiable Instruments Act. Despite repeated reminders, the respondent No. 3, instead of considering the application for OTS, initiated criminal proceedings against the Board of Trustees of the petitioner in violation of the guidelines of the National

Housing Bank and the Reserve Bank of India. The respondent No. 3 also filed an application before the Debt Recovery Tribunal, Guwahati on 30-11-2010 for issuing a certificate for a sum of `3,82,41,507/- together with interest @ 12.25% per annum and other reliefs. This led the petitioner to address the letter dated 5-7-2011 to the respondent No. 3 for withdrawal of both the cases and for allowing one time settlement (OTS) and for re-scheduling the payment terms in 8 equal half yearly instalments, but the request has not been acted upon till date.

4. It is further stated by the petitioner that frustrated by the unhelpful conduct of the respondents, the petitioner was compelled to file a complaint against the Ex-Regional Chief of HUDCO, Guwahati before the Central Vigilance Commission, New Delhi. Instead of taking action against the erring official, the respondent No. 2 rejected the application for OTS filed by the petitioner vide the impugned letter dated 11-11-2011 on the ground that such OTS could not be considered as the value of the property was much more than the outstanding dues as on 30-9-2011. Due to the refusal of the respondent No. 3 to release the sanctioned term loan, the petitioner had to borrow heavily from other sources to pay its dues to the respondents and for completion of the construction work, and till 24-10-2011, it has deposited a total sum of `1,05,92,014/-. It is contended by the petitioner that as per norms and guidelines issued by the Reserve Bank of India and the National Housing Bank, the interest on Non-Performing Assets (NPA) should be calculated at simple rate, but the respondent 3 in violation of such norms and guidelines charged penal interest as well as compounded interest on the outstanding dues of the term loan taken by it, which became NPA on 31-3-2005. According to the petitioner, it had adjusted a sum of `75,75,430/- towards the interest from the amount of `1,05,92,014/- paid for the OTS and, moreover, the dues for the quarter ending 31-12-2011, the respondent No. 1 had shown a sum of `1,17,00,000/- as the outstanding principal and a sum of `2,06,08,044/- towards interest due thereby making a total outstanding of

`3,23,08,044/- . It is contended by the petitioner that the refusal of the respondent No. 3 to consider the application of the petitioner for the OTS is contrary to the guidelines issued by the Reserve Bank of India and is, therefore, illegal, arbitrary and unreasonable: this has created a right in the petitioner to approach this Court for issuance of a writ of mandamus under Article 226 of the Constitution.

5. Except for the respondent No. 1, none of the remaining respondents contested the writ petition despite proper service of notices upon them. After hearing Mr. S.P.Sharma, the learned counsel for the petitioner and Mr. R. Debnath, the learned CGC, appearing for the respondent No. 1, it becomes clear that the sole question which falls for consideration in this writ petition is whether this Court can issue a writ of mandamus for directing the respondent No. 3 to consider the application of the petitioner for one time settlement of its Non-Performing Assets? There is no dispute at the bar that the respondent No. 2,3 and 4 come within the purview of One-Time Settlement Scheme of Reserve Bank of India as will be evident hereafter. The question as to whether the above guidelines of the OTS Scheme are binding upon the public sector banks came up for consideration before the Apex court in ***Sardar Associates*** *(supra)*. It was held therein that such guidelines are binding upon public sector banks. This is what the Apex Court said:

> *"18. Indisputably, the guidelines were issued by the Reserve Bank of India by reason of a letter dated 3-9-2005 addressed to the Chairman/Managing Director of all public sector banks. It clearly refers to a Circular dated 19-8-2005 issued by Reserve Bank of India in terms whereof it was directed that One-Time Settlement Scheme for recovery of NPA below Rs. 10 crores was laid down. The said letter was issued pursuant to the aforementioned circular in terms whereof One-Time Settlement Scheme was formulated for recovery of NPA below Rs. 10 crores. It was categorically stated therein that the same was required top be implemented by all public sector banks. The guidelines issued were to provide a simplified, non-discretionary and non-discriminatory mechanism therefore in small and medium enterprises sector. It was categorically stated that all public sector banks shall uniformly implement these guidelines.*
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> *19. The respondent Bank concededly is a public sector bank. It was, therefore, bound by the said guidelines. The salient features of the RBI guidelines are as under:*

" * * *

(c) the guidelines will cover cases on which the banks have initiated action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and also cases pending before courts/DRs/BIFR, subject to consent decree being obtained from the courts/DRTs/BIFR.

* * * *

(ii) Settlement formula – amount

(a) NPAs classified as doubtful or loss as on 31-3-2004

The minimum amount that should be recovered in respect of compromise settlement of NPAs classified as doubtful or loss as on 31-3-2004 would be 100% of the outstanding balance in the account as on the date on which the account was categorised as doubtful NPA.

(b) NPAs classified as substandard as on 31-3-2004 which became doubtful or loss subsequently

The minimum amount that should be recovered in respect of NPAs classified as substandard as on 31-3-2004 which became doubtful or loss subsequently would be 100% of the outstanding balance in the account as on the date on which the account was categorised as doubtful NPA plus interest at the existing basic prime lending rate from 1-4-2004 till the date of final payment.

(iii) Payment

The amount of settlement arrived at in both the above cases, should preferably be paid in lump sum. In cases where the borrowers are unable to pay the entire amount in one lump sum, at least 25% of the amount of settlement should be paid upfront and the balance amount of 75% should be recovered in instalments within a period of one year together with interest at the existing prime lending rate from the date of settlement up to the date of final payment.

* * * *

(v) Non-discriminatory treatment

Banks shall follow the above guidelines for one-time settlement of all NPAs covered under the scheme, without discrimination and a monthly report on the progress and details of settlement should be submitted by the authority concerned to the next higher authority and their central office. Banks may go for wide publicity and also give notice by 31-1-2006 to the eligible defaulting borrowers to avail of the opportunity for one-time settlement of their outstanding dues in terms of these guidelines. Adequate publicity to these guidelines through various means must be ensured.

* * * *

4. Any deviation from the above settlement guidelines for any borrower shall be made only by the Board of Directors."

6. The fact that the respondent No. 3 accepted the aforesaid guidelines is evident from the letter dated 11-11-2011 of Sr. Manager (Finance), Housing and

Urban Development Corporation Ltd., Guwahati addressed to the Secretary of the petitioner, the relevant portion whereof is reproduced below:

> **"Sub:- OTS proposal of NETTED.(Scheme No. 18122)**
>
> **Sir,**
>
> **With reference to the above, it is informed that the proposal for OTS has been recommended to H.O. for consideration of approval of competent authority. However, H.O. has indicated that OTS of the agency cannot (be?) considered as the value of the property is much more than the outstanding dues as on 30th Sept. 2011. Accordingly, as advised, legal action is initiated for recovery of the liabilities of HUDCO."**

7. The contents of the aforementioned letter unmistakably show that the OTS Scheme is also applicable to the respondent No. 3, but the only hurdle standing in their way from considering the application of the petitioner for OTS, according to them, is "the value of property mortgaged by it is much more than the outstanding dues as on 30-9-2011". In other words, according to the respondent No. 3, the question of considering the application of the petitioner for OTS could be considered only if the property of the petitioner so mortgaged is less than the outstanding dues as on 30-9-2011. In my judgment, the stance taken by the respondent No. 3 in not considering the application of the petitioner for OTS is misconceived and legally untenable and goes against the law laid down by the Apex Court in ***Sardeb Associates case*** *(supra)*. That was a case in which the appellant along with others had obtained loan facilities for a sum of Rs. 3,54,50,000/- from Punjab and Sind Bank for business purposes which was being carried out by them under the name and style of M/s Sardar Associates Ltd., i.e. the appellant therein. The said amount was sanctioned and disbursed from time to time. The appellant 2 and two other pro forma respondents as also one Smt. Darshan Kaur stood as guarantors while two other pro forma respondents mortgaged their properties in favour of the Bank by way of security to the loan. Default having been made in discharging their liabilities, their assets were declared as NPA as per the guidelines issued by Reserve Bank of India. A proceeding was initiated by the Bank purporting to be under Section 13(2) of the Securitisation

and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 for recovery of the said amount together with interest upon due service of a notice in terms of sub-section (4) of Section 13 thereof. The total amount of claim laid before the Tribunal by the Bank as against the debtors was `4,16,85,443.62 inclusive of interest up to 31-7-2003. The said application was allowed by the Tribunal where against an appeal was preferred before the Appellate Tribunal.

8. Pursuant to the judgment and order of the Tribunal, a recovery certificate was issued for recovery of a sum of `4,16,58,581.62 along with pendent elite and future interest at the rate of 12% p.a. with quarterly rests from the date of filing of the application till realization. It was at that stage that the appellant approached the Bank for settlement of their disputes purported to be in terms of the guidelines issued by the Reserve Bank of India. They made an offer for a one-time settlement for a sum of `345.31 lakhs, which was not accepted by the Bank. The Bank thereafter issued a Circular bearing No. 176 dated 18-10-2005. Questioning the validity of the said circular, the appellant filed a writ petition before the High Court of Punjab & Haryana contending that the same was contrary to the guidelines of the Reserve Bank of India in so far as the same relates to the Scheme for one-time settlement for the small and medium enterprises. A prayer was also made therein that the Bank be directed to settle the matter as per RBI guidelines. The writ petition was dismissed on the ground that the appellant did not disclose that it had earlier approached the Tribunal for recovery of the amount in question. The special leave petition filed before the Apex Court was also dismissed. The appellant thereafter approached the Appellate Tribunal under Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The Appellate Tribunal by the judgment and order dated 13-4-2007 allowed the appeal preferred by the appellants by directing the Bank to make one-time settlement in terms of the guidelines of the Reserve Bank of India as was prevailing at the relevant time. It may be noted that the Appellate Tribunal,

however, affirmed the impugned judgment as also the validity of the recovery certificate dated 23-11-2006. It also permitted the appellants and pro forma respondents to sell the secured properties for clearing the dues in terms of the one-time settlement scheme and ordered that such an exercise was to be completed within a period of four months during which period the Bank was restrained from taking any coercive steps against them. The Bank filed a writ petition there against which by reason of the impugned judgment had been allowed. The review petition filed by the appellants was also dismissed. The special leave petition filed by the appellants was allowed. The following observations of the Apex Court in paras 31, 32, 33, 34, 35, 36, 37 and 42 of the judgment are instructive and are, accordingly, reproduced *in extenso*:

> *"31. It may be that no specific prayer was made but the same, in our opinion, did not preclude the Appellate Tribunal to consider the offer of the appellants. The Appellate Tribunal in terms of the provisions of the Act like the original Tribunal is interested only in recovery of the amount. While doing so, it, in our considered opinion, has the requisite jurisdiction to consider the prayer made by a debtor for a one-time settlement particularly in view of the fact that the same is within the purview of One-Time Settlement Scheme of Reserve Bank of India.*
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> *32. If a public sector bank is otherwise bound by any guidelines issued by Reserve Bank of India, we see no reason as to why the same cannot be enforced in terms of the provisions of the Act by the Tribunal and consequently by the Appellate Tribunal. It is not a case where the appellant had prayed for quashing a policy decision taken by the respondent Bank.*
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> *33. The question which arose for consideration before the Appellate Tribunal as also before the High court was as to whether an offer having been made by the Bank to the appellants herein, it could have turned around and contended that only because the appellants had furnished security to the extent of Rs. 11 crores, the same by itself would entitle it to take recourse to a discriminatory treatment.*
>
> *34. We may notice that the offer made by the appellants in terms of RBI Guidelines for one-time settlement was Rs. 3,45,31,000, however, keeping in view the fact that the respondent-Bank had a better security available to it, demanded a sum of Rs. 4.92 crores.*
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> *35. The Board of Directors of the Bank itself had accepted the guidelines. It, however, in its own guidelines, stated:*
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> > *"II.3.—After calculation of the MRA as per Points II.1 and II.2 above, due consideration to securities available charged in the case is*

to be given, in case of secured and partially secured assets. In these accounts, MRA is to be calculated as under:

MRA + 70% of the value of securities as per valuation certificate, issued in terms of Law Circular No. 171."

Does it satisfy the non-discriminatory clause laid down by Reserve Bank of India and accepted by the Reserve Bank is the question.

36. While making a deviation, the Board of Directors of a public sector bank could not have taken recourse to a policy decision which is per se discriminatory. The respondent is "State" within the meaning of Article 12 of the Constitution of India apart from the fact that it is bound to follow the guidelines issued by Reserve Bank of India. If, therefore, the broad policy decisions contained in the guidelines were required to be followed, the power of the Board of Directors to make deviation in terms of Clause 4 thereof would only be in relation to some minor matters which does not touch the broad aspects of the policy decision and in particular the one governing the non-discriminatory treatment. In a case of this nature, the respondent Bank is guilty of violation of the equality clause contained in the Reserve Bank of India Guidelines as also Article 14 of the Constitution of India.

37. The fact that the appellants were defaulters is not in dispute. It is also not in dispute that it comes within the purview of the small and medium enterprises sector. It is furthermore not in dispute that the respondent Bank itself had made an offer to accept the proposal of the appellants in regard to the enforcement of one-time settlement pursuant to the RBI Guidelines. Indisputably, it was all along aware that the amount of securities was lying with it. It is only pursuant thereto the direction had been issued by the Tribunal.

* * * *

42. If in terms of the guidelines issued by Reserve Bank of India a right is created in a borrower, we see no reason as to why a writ of mandamus could not be issued. We would assume, as has been contended by Mr. Singh, that while exercising its power under Article 226 of the Constitution of India, the High Courts may or may not issue such a direction but the same, in our opinion, by itself, would not mean that the High Court would be correct in interfering with an order passed by the Appellate Tribunal which was entitled to consider the effect of such one-time settlement."

9. From the above observations of the Apex Court, there can now be no room for doubt that as long as the minimum amount that that has to be recovered from the borrower for one-time settlement would be 100% of the outstanding balance in the account as on the date on which the account was categorised as doubtful NPA, a condition admittedly fulfilled by the petitioner, then the respondent No. 2, 3 and 4 have no discretion but to consider the application filed by the petitioner for on-time settlement in accordance with the guidelines issued by the Reserve Bank of India. In

the course of hearing, I have permitted the Court Officer of the respondent No. 2 and 3 to make submissions by supplementing the arguments of Mr. R. Debnath, the learned CGC. Additional reasons were being projected by her for not entertaining the application of the petitioner for OTS, but such reasons cannot now be considered by this Court as they were not the reason reflected in the impugned letter. The ground on which the application of the petitioner was not entertained as indicated in the impugned letter was that "the value of the property is much more than the outstanding dues as on 30th Sept.2011" meaning thereby that only if the value of the property mortgaged is less than the outstanding due as on 30-9-2011, the application for OTS can be considered. The additional reasons projected by the Law of the institution for not entertaining the application for OTS are, therefore, no admissible. As early as 1952, such issue had been raised before the Apex Court in ***Commr. Of Police v. Gordhandas Bhanji, AIR 1952 SC 16*** and had been repelled in the following manner:

> *"25. We are clear that public orders, publicly made in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of hose to whom they are addressed and must be construed objectively with reference to the language used in the order itself."*

10. The aforesaid legal position was reiterated in the recent decision of the Apex Court in ***Hindustan Petroleum Corpn. Ld. v. Darius Shapur Chenai, (2005) 7 SCC 627*** by holding that when an order is passed by a statutory authority, the same must be supported either on the reasons stated therein or on the grounds available there from, in the record and that a statutory authority cannot be permitted to support its order relying on or on the basis of the statements made in the affidavit dehors the order or for that matter dehors the records. Need I say more? The ground stated by the respondents for not entertaining the application for OTS filed by the petitioner is, therefore, not permissible by the RBI guidelines already referred to and is not tenable

in law as laid down by the Apex Court in Sardar Associates Ltd. case (supra). Consequently, the impugned letter is illegal, and cannot be sustained in law.

11. The offshoot of the foregoing discussion is that this writ petition succeeds. The impugned letter dated 11-11-2011 issued by the Sr. Manager (Finance), Housing & Urban Development Corporation Ltd., Guwahati is hereby quashed. The respondents are directed to consider accepting the application of the petitioner for one-time settlement filed by it on 30-3-2009 (Annexure-IX) in accordance with the guidelines issued by the Reserve Bank of India under One-Time Settlement Scheme as interpreted by the Apex Court in ***Sardar Associates Ltd. case*** *(supra)*. The entire exercise shall be carried out by the respondents within a period of 45 days from the date of receipt of this judgment. It is made clear that such decision will be independent of the recovery proceeding pending before the Debt Recovery Tribunal at Guwahati against the petitioner and that till the time such application for OTS is disposed of, no recovery of the debts outstanding against it shall be made. No costs.

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