[REPORTABLE]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8 OF 2022

(Arising out of SLP(C) No.6533 of 2020)

SMALL INDUSTRIES DEVELOPMENT
BANK OF INDIA APPELLANT(S)

VERSUS

M/S. SIBCO INVESTMENT PVT. LTD. RESPONDENT(S)

WITH

CIVIL APPEAL NO. 9 OF 2022

(Arising out of SLP(C) No.2876 of 2021)

J U D G M E N T

Hrishikesh Roy, J.

Leave granted.

2. The challenge in these appeals is to the judgment and order dated 25.11.2019 of the Division Bench of the High Court of Calcutta, whereby the decision of the Single Judge dismissing the suit i.e. CS No. 79/2006 of M/s. SIBCO Investment Pvt Ltd (for short SIBCO) was reversed. The suit was filed against Small Industries Development Bank of India (SIDBI) seeking interest on the alleged belated payment of principal sum and accrued interest to the plaintiff for the Bonds issued by SIDBI.

3. The question to be answered in this case is whether plaintiff has set forth a just claim, based on the Bonds issued by the defendant or is it a case of that trial in *Shakespeare's The Merchant of Venice* where *Shylock* is claiming the promised pound of flesh in the form of interest on delayed payment on the Bonds purchased by the plaintiff. The 41 Bonds related to this case were initially issued by SIDBI to M/s. CRB

Capital Markets Ltd. (Hereinafter referred to as "CRB Capital") in 1993. Those Bonds were then sold by CRB Capital to one Shankar Lal Saraf in February, 1997 and those in turn were then sold on 1.7.1998 to SIBCO – the plaintiff and the respondent herein. In the meantime, CRB Capital faced winding up proceedings at the instance of the RBI in the Delhi High Court. The said proceeding will have a bearing on this case.

4. The following relevant facts necessary for consideration of this appeal are broadly culled out from the judgment of the Calcutta High Court:-

4.1 The Plaintiff SIBCO purchased the Bonds in the form of promissory notes issued by the defendant SIDBI. These are termed as SIDBI Bonds 2003 (4th Series) carrying 13.50% interest and SIDBI Bonds 2004 (5th Series) generating interest at the rate of 12.50%, from one Shankar Lal Saraf on 1st July, 1998. The interest is payable on a half-yearly basis on/or before 21st day of June and 21st day of December of every year. The 5th series Bonds were agreed to be redeemed on 21st December, 2004 whereas the 4th series Bonds were to be

redeemed on 21st December, 2003. The Bonds are freely tradable in the market. M/s. SIBCO purchased 15 Bonds (interest payable @ 13.50%) and 26 Bonds (interest payable @12.50%) of face value of ten lakhs each for an aggregate price of Rs. 3.69 crores on 1st July, 1998 by M/s. SIBCO from the said Shankar Lal Saraf. The Bonds were deposited with M/s. SIDBI (defendant) on July 2, 1998 with the request to endorse the name of the Plaintiff-purchaser on the said Bonds. On refusal to register and/or record the name of the SIBCO by the defendant on the ground that CRB Capital had gone into involuntary liquidation proceedings at the instance of the RBI. At first the Plaintiff filed the W.P. No. 1456 of 1998 before the Calcutta High Court seeking a mandamus upon defendant to transfer the aforesaid Bonds in favour of the plaintiff and also to pay the interest accrued on them.

4.2 The Calcutta High Court on 09.01.2001 held that writ court is not the proper forum and permitted the petitioner to approach the Company Court, being the High Court at Delhi, seeking intervention in the

liquidation proceeding initiated against CRB Capital. Though an intra-court appeal was preferred against the said order but it was not proceeded with. On the request of the plaintiff, the Shankar Lal Saraf (the plaintiff's predecessor-in-interest) filed an interlocutory application in the pending liquidation proceeding before the Company-Court, claiming that the aforesaid transactions should be treated as outside the purview of the liquidation proceeding, under *the Companies Act, 1956*.

4.3 By a judgment dated 17th December, 2004, the Learned Company Court held that the subject Bonds are beyond the purview of the liquidation proceeding and directed Shankar Lal Saraf to put up the matter before the defendant. On 17th February, 2005 the above judgment of the Company Court was communicated and the Bonds were presented to the defendant. Then on 21st February, 2005 the defendant made the payment of the principal amount together with the interest calculated up to the date, as promised in the said Bond to M/s SIBCO with TDS deduction at around 20%. By a letter

dated 24th February, 2005, the Plaintiff raised an objection over the rate on which the TDS was deducted, which was accepted by the defendant as it issued a further warrant covering a sum of Rs. 58,86,833/- on account of excess TDS deductions.

4.4 The case projected in the plaint in the CS No. 79/2006, was that the defendant during their audit detected that the interest was calculated up to 31st October, 2005 and demand was raised on account of interest on delayed payment of the principal amount and the interest on Bonds through a letter dated November 10, 2005. The defendant refused to accede to the demand made by the plaintiff in its reply letter dated November 23, 2005. Aggrieved by the refusal, M/s SIBCO filed the CS No. 79/2006 for a sum of Rs. 3,25,54,483/- from M/s SIDBI.

4.5 The defendant disputed the claim on account of delayed payment or in other words, delayed redemption of the aforesaid Bonds. It was categorically pleaded that a liquidation proceeding was initiated against CRB Capital, who at one point of time was the holder of the

aforesaid Bonds and sold it to the said Shankar Lal Saraf on February 20, 1997 and on April 7, 1997. The RBI issued a facsimile dated June 9, 1997 advising the defendant not to affect any transfer, register any lien or otherwise deal with such security invested by CRB Capital and its Group Companies, without prior permission of the Official Liquidator appointed by the Company Court at Delhi. Since Shankar Lal Saraf as well as the plaintiff were pressing hard for enfacing their name on the said Bonds, a clarification was sought on December 23, 1997 by the defendant from the RBI seeking advice for further action in the matter on January 29, 1998. The RBI advised the defendant to take up the matter with the Official Liquidator which was accordingly done on April 3, 1998.

4.6 The defendant stated that despite multiple reminders till July 18, 2001 no reply was received from the Official Liquidator in this regard. The specific stand is that due to the embargo imposed by RBI, the defendant couldn’t act in defiance of the RBI’s directions. It is further stated that because of the

pendency of the writ petition before the Calcutta High Court, the matter was not taken up and, therefore, neither the interest nor the redemption was paid. According to the defendant, after the Company Court order in the liquidation proceeding, the plaintiff's name was put down upon the said Bonds and the holder was paid the principal, as well as the interest up to the date of redemption. As such there is no latches, negligence and delay on the part of the defendant to honour the Bonds to the plaintiff.

4.7 The central case projected by the plaintiff was that the amount, both principal and interest, were paid beyond the maturity period and, therefore, the defendant is liable to pay the interest for delayed payment. According to the plaintiff, the defendant has unreasonably withheld the said amount, whereas, the defendant says that because of the embargo and restriction by the RBI and the pending proceedings, the maturity amount was not paid on the date of maturity. The reliance appeared to have been placed by both the

sides on the facsimile dated 9th June, 1997 issued by the RBI.

I. TRIAL COURT FINDINGS

5. The learned Trial Judge in his judgment noted that there is a clear stipulation against affecting any transfer, register any lien or otherwise deal with, the securities of CRB Capital with further stipulation that it should not part with the interest, dividend or principal without the permission of the Official Liquidator. Additionally it appears from the order passed by the Company Court that there was a notification issued on 10th April 1997 under *Section 45-MB* of the *RBI (Amendment) Act, 1997* directing the said Company not to sell, transfer, create charge or mortgage or deal in any manner with any of its profits and assets without the permission of the RBI for a period of six months from the date of the said notification. The Official Liquidator was appointed on 22nd May, 1997 who subsequently treated the subject Bonds as fraudulent preference under *Section 531* of *the*

Companies Act, 1956. Though it was held by the Company Court vide its judgment dated 17.12.2004, that the transactions are genuine and cannot be declared as fraudulent preference at the instance of the Official Liquidator, the fact remains that there was some claim over the subject Bonds.

5.1 The RBI is found to be empowered to control the management of the Banking Company in certain situations and can lay down the parameters enabling Banking Companies to expand business and regulate the paid up capital, reserve funds, cash funds and above all policies in the matter of advances to be made by the Banking Companies and allocation of resources etc. The RBI is authorized by the Parliament to enact the policy and to issue directions/guidelines which have statutory force, as held in case of *ICICI Bank Ltd. Vs. Official Liquidator of APS Star Industries Ltd.*[1] In support for the aforesaid proposition, the Trial Court also relied on the ratio in *Sudhir Shantilal Mehta Vs. Central Bureau of India*[2] to comment on the Regulatory role of

1(2010) 10 SCC 1.
2(1992)2 SCC 343.

the RBI *vis-à-vis* the business of the banking companies.

5.2 This suggests that once the RBI has issued directions, any action contrary thereto, may not only attract the civil liability but might also invite criminal breach of trust. According to the Trial Court the defendant was not sitting in slumber after receiving the RBI instructions but sought advice immediately thereafter and was directed to approach the Official Liquidator. The defendants sought clarification from the Official Liquidator but did not receive any reply. Ultimately on 17th December, 2004, the application of Shankar Lal Saraf before the Company-Court succeeded and within a short span of time, the redemption value along with interest was paid to the plaintiff. The Learned Trial Judge did not agree with the submission of the plaintiff that there was any deliberate attempt to delay the payment of the maturity amount by the defendant. It would be worth noting that the Trial Court relied on defendants'

witness to hold that the accrued interest was transferred to the accrued interest head and, therefore, it was not utilized nor any benefit was taken therefrom.

5.3 As can be seen, the Suit was dismissed primarily on two grounds: -

(A) The bonds in question could not be transferred by the petitioner since the RBI had initiated winding up proceedings against CRB Capital before the Delhi High Court, whereafter the RBI has issued a directive dated 9.6.1997 to the petitioner herein directing not to register transfer of CRB Capital’s Bonds in question, or to part with any payment pertaining to the said Bonds, without consent of the Official Liquidator. The learned Judge therefore found that the petitioner had acted entirely in accordance with the directive of the RBI, by requesting permission from the Official Liquidator, and thereby promptly making the payment of the amounts due under the Bonds after appropriate orders were passed by the Delhi High Court where

winding up proceedings were going on. Hence, the defendant could not be held liable for the delayed payment.

(B) The learned Trial Judge also noted the conduct of the plaintiff, in accepting the payment under the Bonds, including interest, without any protest in February, 2005. The plaintiff thereafter slept over this issue for almost 8 months, and for the first time claimed interest for the delayed payment in October 2005. The court therefore found that since the plaintiff had accepted the encashment without protest the law laid down by this Court in *Bhagwati Prasad Pawan Kumar v. Union of India*[3] would apply, since there was acceptance by conduct. In *Bhagwati Prasad (supra)*, the Court has held: -

> *"**19.** It is well settled that an offer may accepted by conduct. But conduct would only amount to acceptance if it is clear that the offeree did the act with the intention (actual or apparent) of accepting the offer. The decision which we have noticed above also proceed on this principle. Each case must rest on its own facts. The courts examine the evidence to find out whether in the fact and circumstances of the case the conduct of*

3(2006) 5 SCC 311.

the "offeree" was such an amounted to an unequivocal acceptance of the offer made. If the facts of the case disclose that there was no reservation in signifying acceptance by conduct. On the other hand, if the evidence discloses that the "offeree" had reservation in accepting the offer, his conduct may not amount to acceptance of the offer in terms of Section 8 of the Contract Act."

II. APPELLATE COURT PROCEEDINGS:

6. Aggrieved by the order of the learned Trial Judge of the Calcutta High Court, the plaintiff preferred an intra-court appeal which was numbered as *APD 291/2015.* On 25th November 2019, The Learned Division Bench, allowed the plaintiff's appeal, and set-aside the judgment favoring the defendant. The High Court observed in the appeal that, even after the RBI communication dated 09th June 1997, the defendant had paid interest accruing in June, 1997 to the plaintiff's predecessor-in-interest, Shankar Lal Saraf. The court relied on a letter issued by the defendant to RBI dated 23rd December 1997, wherein the defendant had admitted that it was impossible to withhold payment forever. Based on these observations, the learned Division bench held that the RBI communication dated 09th June, 1997

was merely a suggestion to the defendant and not an order passed by the RBI exercising its statutory authority. Hence, the defendant was without a reasonable cause, when it chose to withheld payment duly accrued to the respondent.

6.1 It was accordingly held that the suit was not barred either by accord or satisfaction as the plaintiff gave no acknowledgment that all claims stood satisfied at the time of receiving the payment warrants on 21st February 2005. Hence, the plaintiff was at liberty to raise further demands including demand for interest on delayed payment. The Learned Division Bench further held that reliance on *Bhagwati Prasad (Supra)* by the trial judge was misplaced as it was not cited by either parties and was relied on without giving the parties a chance to rebut it. The defendant was accordingly directed to pay simple interest @ 6% per annum on interest, from date of accrual and 8% simple interest per annum on principal amount from date of maturity of respective Bonds by 29.02.2020.

III. DISCUSSION AND DECISION:

7. The present appeals are filed impugning the above judgment of the Division Bench of the Calcutta High Court. The defendant seeks relief of setting aside the judgment of the Division Bench *in toto.* Whereas, the plaintiff seeks *pendente lite* interest over and above the interest already awarded, and is disputing the rate of interest awarded by the Learned Division bench on interest and Principal amount.

7.1 Assailing the legality of the judgment of the appellate Bench of the Calcutta High Court, Mr K V Viswanathan, learned Senior Counsel for the defendant makes the following arguments:-

(i) SIDBI acted entirely in accordance with the directives issued by the RBI, as any prudent financial institution would;

(ii) Withholding of payment under the Bonds in question, was justified in light of possibility of transfer of the Bonds by CRB Capital being a Fraudulent Preference under *S. 531* of the *Companies Act, 1956*;

(iii) SIBCO bought the bonds in question in 'suspect spell' with the knowledge that two installments of interest had accrued and not been paid; not established that he is a "holder in due course"; there is a cloud on its title;

(iv) Petitioner acted proactively by preferring numerous letters to RBI/Official Liquidator; amounts cannot be said to have been wrongfully withheld;

(v) Neither Saraf nor SIBCO claimed interest for delayed payment of interest or the maturity amounts under the Bonds in previous litigation; barred by constructive res judicata;

(vi) The payments made were accepted by Respondent without protest and amount to accord and satisfaction;

(vii) The Respondent/SIBCO's claim for interest *pendente lite* is a clear after-thought, and in any event, not justified;

7.2 Per contra, Mr. Sabyasachi Chaudhury, learned Senior Counsel representing the plaintiff (respondent) contends that:

(i) The RBI merely issued an advice which pertained to assets held by

CRB Capital and was inapplicable to the Bonds in question, which were owned by plaintiff when the advice was issued;

(ii) SIDBI's action of withholding payment, on apprehension of fraudulent preference by M/s. CRB Capital was not *bona fide*, in absence of any objection by the Official Liquidator;

(iii) SIDBI is barred by *res judicata* from arguing fraudulent preference, as this issue is settled by the judgment of Company Court dated 17th December, 2004;

(iv) The payment was made in furtherance of promissory notes, which are unconditional undertakings, and not in pursuance of any reciprocal

promise. Thus, the issue of 'accord and satisfaction' doesn't arise;

(v) Plaintiff has claimed interest *pendente lite* consistently at trial, as well as appellate level.

IV. RBI's 09.06.1997 COMMUNICATION- 'ADVICE' OR 'DIRECTIVE':

8. In order to ascertain the effect of the RBI Communication on the Bonds in question, it will be beneficial to examine the statutory provisions which empower the RBI. For efficient discharge of its functions, the RBI has been granted special powers for controlling and regulating various financial institutions, as is clear from different provisions of *The RBI Act, 1934* and *The Banking Regulation Act, 1949.* As per the *RBI Act, 1934,* we find that the RBI has wide supervisory jurisdiction over all Banking Institutions in the country. This court speaking through Justice V.

Ramasubramaniyan, in the case of *Internet and Mobile Association of India vs. RBI*[4], elucidated on the position of the RBI as a statutory body, with immense power in financial/ monetary field:

> ***"190.*** *But given the scheme of the RBI Act, 1934 and the Banking Regulation Act, 1949, the above argument appears only to belittle the role of RBI. RBI is not just like any other statutory body created by an Act of legislature. It is a creature, created with a mandate to get liberated even from its creator…Therefore, RBI cannot be equated to any other statutory body that merely serves its master. It is specifically empowered to do certain things to the exclusion of even the Central Government. Therefore, to place its decisions at a pedestal lower than that of even an executive decision, would do violence to the scheme of the Act. "*

8.1 Through *Chapter IIIB* of *The RBI Act, 1934,* the RBI is empowered to regulate and also monitor the conduct of every Non-Banking Financial Institutions (NBFC) in India. Under *S. 45-JA* of *the RBI Act, 1934,* the RBI is empowered, in public interest or to protect the

4 (2020) 10 SCC 274.

interests of the depositors or to regulate the financial system of the country, to determine the policy and issue directions to NBFCs. *S. 45-K* grants authority to the RBI to collect information pertaining to the NBFCs and to give directions pertaining to deposits to them. Whereas, under *S. 45-L,* general powers are conferred on the RBI to call for information from the Financial Institution and issue directions to regulate the credit system of the country. *S. 45-M* of the *RBI Act, 1934* casts an obligation upon the NBFCs, to furnish all information and details as required by the RBI and to comply with RBI's direction given under *Chapter IIIB* of the RBI Act.

8.2 Similar powers are granted to the RBI in respect of Banks under *the Banking Regulation Act, 1949.* In the case at hand, we are concerned with *S. 35-A* of *the Banking Regulation Act, 1949* which enables the RBI to give directions to banking companies: -

> *"35A. Power of the Reserve Bank to give directions:*
>
> *(1) Where the Reserve Bank is satisfied that-*

(a) in the public interest; or

(aa) in the interest of banking policy; or

(b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or

(c) to secure the proper management of any banking company generally, it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions."

8.3 The Section *S. 45-MB* of the *RBI Act, 1934 being* relevant in the above context which empowers the RBI, to *inter alia* prohibit the acceptance of deposit and alienation of assets by Non-Banking Financial Companies, when they fail to comply with RBIs direction or infringe any statutory provisions, is extracted for ready reference as under:

> *"45MB. Power of Bank to prohibit acceptance of deposit and alienation of assets:*
>
> *(1) If any non-banking financial company violates the provisions of any section or fails to comply with any direction or order given by the Bank under any of the provisions of this Chapter, the Bank may prohibit the non-banking financial company from accepting any deposit.*
>
> *(2) Notwithstanding anything to the contrary contained in any agreement or instrument or any law for the time being in force, the Bank, on being satisfied that it is necessary so to do in the public interest or in the interest of the depositors, may direct, the non-banking financial company against which an order prohibiting from accepting deposit has been issued, not to sell, transfer, create charge or mortgage or deal in any manner with its property and assets without prior written permission of the Bank for such period not exceeding six months from the date of the order."*

8.4 At this juncture, it is pertinent to extract the exact wordings of the RBI communication dated 09.06.1997 addressed to the defendant:

> *"We understand that M/s. CRB Capital Markets Ltd. and its associates have invested in the shares/bonds/other securities of your institution. As you*

are aware, RBI has filed a petition for the winding up of the said company in the High Court, Delhi. We, therefore, advise you not to effect any transfer, register any lien, or otherwise deal with such securities and also not to part with the interest/dividends or principal without the permission of the Official Liquidator, appointed by the High Court of Delhi. Please confirm and advise the amount of investments so held by the company/companies with your institution."

8.5 As is apparent from above, the RBI in its communication has informed SIBCO of the winding up proceedings initiated against CRB Capital and categorically prohibited the defendant from, inter alia, parting with the interest on securities. However, the RBI has not mentioned any provision under which the above-mentioned communication was issued. This has encouraged the Learned Counsel for the plaintiff to argue that it is merely an 'advice' from RBI, and not a statutorily enforceable directive.

8.6 In the case at hand, vide the previous Notification dated 10.04.1997, the RBI restrained CRB Capital (an NBFC), from alienating or creating charge over their assets in 'public interest', and through the

consequential directive dated 09.06.1997 has restrained the defendant from parting with any money in relation to securities held by the said NBFC. Even though, on the date of the prohibitory Notification dated 10.04.1997, the Bonds were in Shankar Lal Saraf's ownership, and not held by CRB Capital, the Notification and subsequent directive dated 09.06.1997 was still applicable as there was a clear shadow over the Shankar Lal Saraf's title.

8.7 A conjoint reading of the statutory provisions mentioned above, makes it abundantly clear that for 'public interest' the RBI is empowered to issue any directive to any banking institution, and to prohibit alienation of an NBFC's property. The term 'Public interest' has no rigid definition. It has to be understood and interpreted in reference to the context in which it is used. The concept derives its meaning from the statute where it occurs, the transaction involved, the state of society and its needs.[5] Justice V. Ramasubramanian, speaking for a three judges Bench

5 *Bihar Public Service Commission vs. Saiyed Hussain Abbas Rizwi and Anr.; (2012) 13 SCC 61.*

in *Internet and Mobile Association of India*[6]*, (Supra)*, gave a wide meaning to 'public interest', in context of *S. 35-A of the Banking Regulation Act, 1949:*

> *"**176.** ……As we have indicated elsewhere, the power under Section 35-A to issue directions is to be exercised under four contingencies, namely, (i) public interest, (ii) interest of banking policy, (iii) interest of the depositors and (iv) interest of the banking company. The expression "banking policy" is defined in Section 5(ca) to mean any policy specified by RBI (i) in the interest of the banking system, (ii) in the interest of monetary stability and (iii) sound economic growth. Public interest permeates all these areas…"*

8.8 On the omission to advert to the statutory provisions on the basis of which the RBI acted, we can seek guidance from the ratio in *Peerless General Finance and Investment Co. Ltd. Vs. RBI*[7] where this court, speaking through Justice N. M. Kasliwal, held that:

> ***"71. It is settled law that so long as the power is traceable to the statute, mere omission to recite the provision does not denude the power of the***

6 *Supra* at 4.
7 (1992)2 SCC 343.

> ***legislature or rule making authority to make the regulations, nor considered without authority of law.*** *Section 114(e) of the Evidence Act draws a statutory presumption that official acts are regularly performed and reached satisfactorily on consideration of relevant facts.* ***The absence of reiteration of objective satisfaction in the preamble as of one under Section 45-L does not denude the powers, the RBI admittedly has under Section 45-L, to justify the actions.*** *Though Section 45-L was neither expressly stated nor mentioned in the preamble of the Directions of the required recitation of satisfaction of objective facts to issue the directions from the facts and circumstances it is demonstrated that the RBI had such satisfaction in its consideration of its power under Section 45-L, when the Directions were issued. Even otherwise Section 45-K(3) itself is sufficient to uphold the directions."* (Emphasis added)

8.9 The above makes it clear that, it is not necessary for RBI to mention a specific provision before issuing directions, for it to have statutory consequences. All that is required is the authority under the law, to issue such direction.

8.10 The learned Senior Counsel for the defendant in our estimation is correct in his submission that RBI

directives carry statutory force, gathering authority from the provisions of both the *RBI Act, 1934* and *the Banking Regulation Act, 1949.* In *Peerless General Finance (I)*[8]*,* in the context of *S. 45-K* and *S. 45-L* of *the RBI Act, 1934* this court, speaking through Justice N M Kasliwal, relied on *State of U.P. Vs. Babu Ram Upadhya*[9]*,* and *D.K.V. Prasada Rao vs. Government of A.P.*[10] to significantly pronounce that directions issued by RBI, are incorporated and become a part of the act and must therefore be governed by the same principles as the statute itself. This view was further affirmed by this court in case of *Internet and Mobile Association of India*[11] *(Supra).* Hence, it is undisputed that any direction by the RBI, is compelling and enforceable similarly like the provisions of *the RBI Act* by its very nature.

8.11 In *Sudhir Shantilal Mehta*[12] *(Supra),* Justice S. B. Sinha interpreting the implications of actions under *S. 35-A* of *the Banking Regulation, 1949* and the intention

8 *ibid*.
9 AIR 1961 SC 751.
10 AIR 1984 AP 75.
11 *Supra* at 4.
12 *Supra* at 2.

of legislature, rightly observed that the directions under the said provision are binding upon banking companies:

> *"**57.** The distinction between exercise of jurisdiction under the enabling provisions contained in Section 36(1) and the ones under Sections 21 and 35-A of the Banking Regulation Act and the provisions contained in Section 45-L of the Reserve Bank of India, 1934 is absolutely clear and unambiguous.* ***In terms of Section 36, Reserve Bank of India may caution or prohibit the banking companies but in terms of Sections 21 and 35-A of the 1949 Act it can issue binding directions*** *…*
>
> ***58. Whether a circular letter issued by a statutory authority would be binding or not or whether the same has a statutory force, would depend upon the nature of the statute. For the said purpose, the intention of the legislature must be considered.*** *Having regard to the fact the Reserve Bank of India exercised control over the banking companies, we are of the opinion that the said circular letter was binding on the banking companies. The officials of UCO Bank were, therefore, bound by the said circular letter."* (Emphasis added)

8.12 Justice S. C. Agarwal, speaking for this Court in *RBI vs. Peerless General Finance and Investment Co.*

Ltd. (II)[13] held in the context of *S. 45-K of the RBI Act, 1934,* that RBI has the authority to issue any directions for ensuring effective implementation of its orders, and to achieve the object of the Act:

> ***"27.*** *…In the matter of construction of enabling statutes the principle applicable is that if the Legislature enables something to be done, it gives power at the same time, by necessary implication, to do everything which is indispensable for the purpose of carrying out the purpose in view. (See Craies on Statutes, 7th Edn. p. 258.) It has been held that the power to make a law with respect to any subject carries with it all the ancillary and incidental powers to make the law effective and workable and to prevent evasion."*

8.13 For ensuring effective implementation of relevant directions, RBI as was declared is not only vested with curative powers but also *preventive* powers, as was held in *Ganesh Bank of Kurundwad Ltd. Vs. Union of India.*[14] Hence, it is not necessary for the bank to wait for a direction to be violated, and then launch penal actions against the offenders. But the RBI can also issue

13 (1996) 1 SCC 642.
14 (2006) 10 SCC 645.

directions to ensure that the relevant orders/directions are effectively followed.

8.14 Based on the discussion above, the RBI under *Ss. 45-MB* of *the RBI Act, 1934* and *35-A* of *the Banking Regulation Act, 1949* in our understanding has the requisite authority to issue the communication dated 09th June, 1997. The omission by the RBI to mention any enabling provision, doesn't change the nature and status of the direction. The statutory arrangement and interpretation as above persuade us to hold that actions in furtherance of grounds of 'public policy' by the RBI was justified, for issuing the Notification dated 10.04.1997. The notification itself clearly mentioned that it is issued for the benefit of depositors and creditors of CRB Capital. The RBI's communication dated 09.06.1997 was in fact a direction, with the appropriate statutory backing traceable to *S. 45-MB of the RBI Act* as well as *S. 35-A* of the *Banking Regulation Act.* The Learned Senior Counsel for the defendant is therefore correct in saying that the 09.06.1997 direction was issued, in furtherance of and

to effectively implement the 10.04.1997 notification issued earlier by the RBI. As such the RBI's 09.06.1997 Notification was definitely binding on the defendant which as noted earlier, is a banking institution.

8.15 Situated thus, the actual status of the RBI Notification would have a bearing on the claim against the defendant in the suit and the later proceeding. The plaintiff, as can be noted, always had the option of challenging its legality but they have never specifically challenged those in the Suit. Therefore, when the legality of the RBI Notification is not under challenge, relief can't be granted in the Suit without determining its legality. This in our perception can by itself, put a quietus on the issue at hand.

8.16 That apart, when the claim in the Suit is relatable to the embargo by the RBI, it was necessary to implead RBI in the litigation, for getting more clarity on the issue. The plaintiff omitted to do so at their own peril despite the defense set out on this basis. Here we need to observe that the plaintiff is

dominus litus, and they cannot be compelled to seek relief against anyone.

8.17 According to us, the plaintiff cannot be granted parity with its predecessor-in-interest, Shankar Lal Saraf, who was paid interest which accrued in July, 1997 despite the RBI directive of 09.06.1997. The defendant has explained this aberration by clarifying that the payment to Shankar Lal Saraf was made before the defendant was in receipt of the RBI directive. Hence, the plaintiff cannot claim any advantage for themselves or parity with its predecessor-in-interest, on this cause.

V. SHADOW OVER SHANKAR LAL SARAF'S TRANSACTION:

9. The *S. 531* of *the Companies Act, 1956* (Corresponding *Ss. 328 and 329* of *the Companies Act, 2013)* being relevant for the question, is extracted:

> *"531. Fraudulent Preference:*
>
> *(1) Any transfer of property, movable or immovable, delivery of goods, payment, execution or other act relating to property made, taken or done by or against a* ***company within six months before the commencement of its winding up which****, had it been*

made, taken or done by or against an individual within three months before the presentation of an insolvency petition on which he is adjudged insolvent, would be deemed in his insolvency a fraudulent preference, shall in the event of the company being wound up, be deemed a fraudulent preference of its creditors and be invalid accordingly… "(Emphasis added)

9.1 *S. 441(2)* of *the Companies Act, 1956* reveals that winding-up proceedings other than voluntary winding-up, are said to have commenced from the date of presentation of petition. For quick reference, *S. 441* of *the Companies Act, 1956* is extracted herein:

"441. Commencement of winding up by tribunal:

(1) Where, before the presentation of a petition for the winding up of a company by the Tribunal, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the Tribunal, on proof of fraud or mistake, thinks fit to direct otherwise, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a company by the Tribunal shall be deemed to commence at the time of the

presentation of the petition for the winding up."

9.2 A conjoint reading of *Ss. 531 and 441(2)* of *the Companies Act, 1956 prima facie* reveals that any transfer of property by or against a company in involuntary winding up, the *suspect spell* for deemed fraudulent transaction is *six months* before presentation of the winding up petition. In the present case, the petition for winding-up was submitted by RBI on 22.05.1997 and admittedly, the transfer in Shankar Lal Saraf's favor was executed in February, 1997. Hence, the defendant's *prima facie* suspicion that the transfer during the *suspect spell,* may be deemed fraudulent, is not misplaced. Relevant here would be to note that in 2019, a Division bench of this court speaking through Justice Mohan Shantanagoudar in the case of *IDBI vs. Official Liquidator*[15] clarified that two conditions need to be satisfied for a transaction to be qualified as fraudulent preference: *First,* Company's dominant motive to prefer a particular

15 (2020) 15 SCC 517.

creditor; *Second,* transfer executed within six month, preceding filing of winding-up petition. The issue of fraudulent preference is therefore no longer *res integra,* and it is unnecessary to labour on the issue any further.

9.3 The suspicion harboured by the defendant is during the *suspect spell* as supported by the Calcutta High Court in its order dated 09.01.2001, where the Writ Court refused to interfere on the grounds that the issue was in the teeth of the litigation pending in the Delhi Company Court.

9.4 Significantly it has been admitted by Shankar Lal Saraf in his Application *(CA 1380/1998)* to the Delhi Company Court that the defendant was acting under the advice of RBI, which treated the transfer of Bonds as fraudulent. Additionally, the Learned Single Judge of the Calcutta High Court, in his judgment dated 13.03.2015 recorded a finding that initially both, RBI and the Official Liquidator, treated the transfer in Shankar Lal Saraf’s favor, as fraudulent in the following words:-

> *"…On a winding up petition having moved on 22nd May, 1997, the Company Court appointed a Professional Liquidator. The RBI issued a letter to the bank not to deal with the subject bonds as the liquidator has treated the same as fraudulent preference under S. 531 of the Act…*
>
> *Though it was held that the transactions are genuine and cannot be declared as fraudulent preference at the instance of the Official Liquidator, but the fact remains that there was some claim over the subject bonds…"*

9.5 While the Division Bench of the Calcutta High Court has set-aside the order of the Learned Single Judge, the finding mentioned above at the relevant time, is not refuted by the contesting party.

9.6 The cloud over the issue was cleared by the Company Court judgment (17.12.2004) wherein, the defendant's claim that the transfer in Shankar Lal Saraf's favor was 'fraudulent preference', was rejected. Significantly as soon as this decision was communicated to the defendant, payment was promptly made by the defendant to the plaintiff, without hesitation.

9.7 At this juncture it is apposite to mention, that the validity of the Company Court judgment dated 17.12.2004 has not been challenged by either party. Hence, the judgment has attained finality and the issue whether the transfer in Shankar Lal Saraf's favor was fraudulent, is therefore put to rest.

9.8 Based on the above discussion, it is clear that the defendant's impression that the transfer in favour of Shankar Lal Saraf was not legitimate, was a reasonable opinion, shared by many, including the RBI and the Official Liquidator. The defendant was in receipt of the RBI's directions, not to part with payment as the Official Liquidator had treated the transaction as fraudulent. This had clearly placed a shadow over the plaintiff's title to the Bonds and consequences must flow therefrom.

VI. WHETHER WITHHOLDING PAYMENT *BONA FIDE*?

10. Assuming *ad arguendo,* that the RBI directions could be disregarded yet the Bonds and the interest accrued thereon, were in the teeth of the litigation, pending in the Company Court. The defendant

proactively applied to the Official Liquidator on multiple occasions seeking clarification on interest payment. But, the Official Liquidator did not respond. Hence, it is clear that despite the defendant's best intentions and proactive efforts, it would be imprudent for the defendant to release the payment accrued on the suspect Bonds. When the Bonds were released from dispute pending before the Company Court, the defendant promptly complied with the order of the Learned Company Court.

10.1 The Learned Counsel for the plaintiff has failed to show how the defendant derived any undue benefit by withholding the payment accrued on the Bonds. The amount due on the Bonds was immediately transferred to the 'Accrued Interest' head and was not used by the defendant for their business. Hence, the plaintiff's contention that the defendant's actions of withholding payment were *mala fide,* is not acceptable to us.

10.2 The plaintiff also argues that the Company Court judgment (17.12.2004) has attained finality and the defendant is barred by *res judicata* from raising the

issue of fraudulent preference. The issue of fraudulent preference is no longer *res integra* and none sought to challenge the Company Court's judgment and re-agitate the issue. Hence, this contention will be of no advantage for the plaintiff.

VII. BOND STATUS AND OBLIGATION: "HOLDER IN DUE COURSE":

11. *S. 8 of the Negotiable Instruments Act* defines a 'Holder' of promissory note as any person who in his own name is entitled to the possession of the note and to recovery of due amount, pursuant to the said note. For ready reference, the relevant *S. 9* of *the Negotiable Instruments Act, 1881* which defines a 'holder in due course' is extracted as under:

> *"9. "Holder in due course"—*
>
> *"Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if payable to order, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title."*

11.1 This court speaking through Justice K Jayachandra Reddy in the context of a cheque in the case of *U. Ponnappa Moothan Sons, Palghat Vs. Catholic Syrian Bank Ltd. and Ors.*[16] juxtaposed the Indian position on 'holder in due course' with the position in English Law to declare the following:-

> *"**17…**Under the Indian law a holder, to be a holder in due course, must not only have acquired the bill, note of cheque for valid consideration **but should have acquired the cheque without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title. This condition required that he should act in good faith and with reasonable caution.** However, mere failure to prove bona fide or absence of negligence on his part would not negative his claim. **But, in a given case it is left to the Court to decide whether the negligence on part of the holder is so gross and extraordinary as to presume that he had sufficient cause to believe that such title was defective**…"*(Emphasis added)

11.2 The principles stated above in the context of cheques can be extrapolated for promissory notes as

16 (1991) 1 SCC 113.

well. Resultantly an obligation has been imposed on the transferee of the promissory notes, to be deemed to be a ‘Holder in due course’, that the notes should have been acquired in good faith; after exercising reasonable care and caution about the holder’s title. In the present case, while the Shankar Lal Saraf’s (holder) title over the Bonds/Promissory Notes is not in dispute but as discussed earlier, Shankar Lal Saraf’s holding stood cleared by the Company Court only on 17.12.2004 but before the said judgment, there was a cloud over his title. Consequently, the plaintiff’s status as ‘holder in due course’ was *suspect* at the relevant point of time.

11.3 The defendant bank was therefore justified in withholding payment till conclusion of dispute in Company Court, even though the relief claimed was in respect of an ‘unconditional undertaking’, as there were reasonable legal concerns for the transaction during the *suspect spell*, for making such payments.

VIII. ENTITLEMENT FOR INTEREST ON DELAYED PAYMENT AND *PENDENTE LITE* INTEREST:

12. It flows from the above discussion, that the defendant was justified in withholding the accrued dues. The actions of SIDBI were *bona fides,* in furtherance of RBI directives, which were issued in public interest. In the case of *Clariant International Ltd. Vs. SEBI*[17]*,* this court speaking through Justice S B Sinha held that two conditions need to be satisfied before awarding interest. *First*, that money should be wrongfully withheld from the rightful owners; *Second*, that there should be equitable considerations for awarding said interest. In the case at hand, neither of these conditions are found to be satisfied.

12.1 As per *S. 34 of the Code of Civil Procedure (CPC),* award of interest is a discretionary exercise, steeped in equitable considerations. Interest is payable for different purposes such as compensatory, penal, etc. but these are not the situations in the case before us. Here *firstly,* the defendant was justified in withholding payment, as they were under RBI's direction to do so; *secondly,* the defendant hasn't derived any

17 (2004) 8 SCC 524.

undue benefit by their act and; *thirdly,* due payment was promptly made to the plaintiffs upon settlement of rights by the court. Moreover, the concerned transactions were during the *"suspect spell".* This in our view shows that the defendant acted *bona fide* and there was no undue delay on their part, to remit the dues.

12.2 The plaintiff did pray for *pendente lite* interest in the Trial Court but neither did the trial court frame any issue in this regard, nor were any arguments recorded. This shows that such claim was not pressed by the plaintiff. Further, no ground is urged in the appeal memo, that such an issue ought to have been framed. Hence, it is clear that the plaintiff is not serious on its claim for *pendente lite* interest. The issue is rested accordingly.

IX. WAS PLAINTIFF'S DEMAND BARRED BY WAIVER/ ACQUIESCENCE?:-

13. It is evident from the record, that when the payment warrants were received by the plaintiff, it effaced the warrants by handwritten remark 'Received'.

Pertinently, in the first instance, protest was only raised in reference to excessive TDS deduction by the defendant while remitting the dues. The demand for interest on delayed payment, was raised after passage of 7 months, when the books of SIBCO were allegedly audited. This justification does not appear to be reasonable. In fact, as has been stated previously in this judgment, the plaintiff was entitled to demand interest for delayed payment in its writ petition as well. But SIBCO has consistently failed to raise this demand at every stage including at the stage of accepting the sum tendered by the defendant, without any protest.

13.1 Hence, it is clear that the plaintiff accepted the payment from the defendant as due settlement of its claims. SIBCO's failure to raise protest and demand for interest at the earliest possible stage, amounted to *sub-silencio* acceptance. Accordingly, the plaintiff is barred from raising this demand after several months applying the principle of waiver/acquiescence.

X. WHETHER PRESENT SUIT BARRED BY CONSTRUCTIVE *RES JUDICATA* ?:

14. The defendant has argued that the principle of constructive res judicata would also offset the plaintiff's claim. Pertinently, the previous Bond holder Shankar Lal Saraf could not possibly have claimed interest on delayed payment before the Company Court for it lacked the jurisdiction to adjudicate claims unrelated to the liquidation proceedings, against CRB Capital. But, the successor Bond holder i.e. the plaintiff could have claimed interest on delayed payment from the writ court. SIBCO's submission is not acceptable that the cause of action arose only on 23.11.2005, when the defendant refused to heed to the demand of interest on delayed payment. The cause of action for the plaintiff accrued the first time, when the defendant allegedly failed to pay timely interest. Since such a claim was not raised in the writ court, the subsequent Suit of SIBCO in our view, is barred by the principle of Constructive *Res Judicata.*

XI. CONCLUSION:

15. It is clear from the discussion above, that the RBI has wide supervisory powers over financial institutions like SIDBI, in furtherance of which, any direction issued by the RBI, deriving power from *the RBI Act* or *the Banking Regulation Act* is statutorily binding on the defendant. Admittedly, the RBI issued Notification dated 10.04.1997, deriving power from *S. 45-MB(2) of the RBI Act*. Thereby, the RBI froze the assets of CRB Capital on the grounds of public policy, for the purpose of protecting interests of creditors and depositors of CRB Capital.

15.1 The RBI did not cite any provision in its Direction dated 09.06.1997 to the defendant, as it was not under any compulsion to do so. It was sufficient that the RBI's power to issue such a direction could be traced to either S.45-MB*(2) of the RBI Act,* or *S. 35-A of the Banking Regulation Act.* Hence, the said direction was statutorily binding on the defendant. Without the said direction, the Notification dated 10.04.1997, would have been rendered toothless, causing

irreparable harm to the creditors and depositors of CRB Capital. In reference to the Directive dated 09.06.1997, the defendant proactively sought advice from the Official Liquidator in regards to the payment of interest income to the defendant. But, in absence of the Official Liquidator's consent and guidance, the defendant could not have made the payment without inviting onerous consequences for itself. Hence, it can be said that the defendant acted prudently, being conscious of the legal obligation, to withhold such payment to the plaintiff.

15.2 Further, in reference to *S. 531 of Companies Act, 1956* read with *S. 441(2)* of the same act, it cannot be denied that there was a suspicion over the title of the plaintiff's predecessor-in-interest. *Ipso facto,* the plaintiff's title with transaction during the *"suspect spell"* was also under a cloud. It is clear from the discussion above that such suspicion was not misplaced, as it was shared by the RBI as well as the Official Liquidator. Immediately after the Company Court vide its decision (17.12.2004), clarified the position that

the plaintiff was in the clear for the concerned transactions, the defendant has duly ensured compliance with the said order. Hence, it is clear that the defendant acted *bona fide* in withholding the payment.

15.3 The elements that could have weighed on the defendant for not making timely payments are: I) Contravention of the RBI Directives; II) Issue being related to the ongoing litigation in the Delhi Company Court; III) Concerns with the defendant's title over the Bonds/promissory notes transacted during the *"suspect spell"* and these perturbing elements can't be brushed aside as not relevant. We are therefore of the view that even though the payment was demanded in furtherance of an unconditional undertaking in the Bonds, the defendant was not entitled to it till the Company Court's order dated 17.12.2004.

15.4 The plaintiff's transaction of Bonds with Shankar Lal Saraf does not sound right in this court's estimation, with purchase being made during the *"suspect spell"* and concurrent alarm bells rung by the RBI, and the Court in that duration. When SIBCO

approached the Writ Court to validate their transaction, they failed to put forth any claim for interest on delayed payment. Curiously, the plaintiff chose not to approach the Company Court directly and instead relied upon Shankar Lal Saraf to secure a favourable verdict on the issue. They even chose to forgo the very first opportunity that arose for claiming interest on delayed payment, when the defendant was remitting the amount due to the plaintiff while complying with the Company Court verdict. Pertinently the payment was accepted without protest and only after about 7 months, additional sums were demanded on the Bonds. Despite all these disquieting factors, the plaintiffs, like the Shakespearean character of *Shylock*, have raised the demand *"I'll have my bond. Speak not against my bond."*[18] As we see the situation, the holder of the Bond has received their *'pound of flesh',* but they seem to want more. Additional sum in our estimation is not merited as SIBCO has already received their just entitlement and burdening the defendant with any further amount towards

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interest would be akin to *Shylockian* extraction of blood from the defendant. Therefore the question formulated in paragraph 3 of this judgment is answered accordingly against the plaintiff.

15.5 In view of the forgoing, the defendant's appeal against the impugned judgment is allowed by restoring the judgment of the Trial Court. The plaintiff's cross-appeal is however rejected.

15.6 With all the legal consequences flowing from the above order, the appeals stand disposed of without any order on cost.

……J.
[R. SUBHASH REDDY]

……J.
[HRISHIKESH ROY]

NEW DELHI
JANUARY 03, 2022