

ITEM NO.6

COURT NO.6

SECTION IVB

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

PETITION(S) FOR SPECIAL LEAVE TO APPEAL (C) NO(S). 2120-2121/2014
(ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 19/12/2011
IN CWP NO. 1609/2006 AND DATED 17/02/2012 IN RA NO. 38/2012 IN CWP
NO. 1609/2006 PASSED BY THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH)

M/S DEVIDAYAL CASTINGS PVT LTD

PETITIONER(S)

VERSUS

HARYANA FINANCIAL CORPORATION AND ANR RESPONDENT(S)
(WITH APPLN. (S) FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS AND
INTERIM RELIEF AND OFFICE REPORT)
(FOR FINAL DISPOSAL)

WITH

SLP(C) NO. 16426-16427/2014

(WITH APPLN. (S) FOR EXEMPTION FROM FILING O.T. AND PERMISSION TO
FILE ADDITIONAL DOCUMENTS AND PERMISSION TO PLACE ADDL. DOCUMENTS
ON RECORD AND OFFICE REPORT)

SLP(C) NO. 22778/2013

(WITH INTERIM RELIEF AND OFFICE REPORT)

Date : 06/09/2016 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI

HON'BLE MR. JUSTICE PRAFULLA C. PANT

For parties (s)

Mr. Jayant Bhushan, Sr. Adv.
Mr. Vikas Mahajan, Adv.
Mr. Vinod Sharma, Adv.
Mr. Arun Singh, Adv.
Mr. Bhaskar Y. Kulkarni, Adv.
Mr. Amarnath Singh, Adv.

Mr. Vikas Singh, Sr. Adv.
Mr. Ajay Sharma, Adv.
Mr. Rajeev Sharma, Adv.
Ms. Neelam Sharma, Adv.
Ms. Diksha Kukrety, Adv.
Ms. Deepika Kaliya, Adv.

Mr. Maninder Singh, ASG
Mr. Devender Kr. Saini, Addl. A.G.
Mr. Amit Dayal, Adv.
Mr. Gurdeep Rekhi, Adv.
Mr. Prabhas Bajaj, Adv.
Mr. Surya Kant, Adv.
Mr. Sanjay Kumar Visen, Adv.
Mr. Gurbir Singh Raikhy, Adv.

Mr. Abhishek Vikas, Adv.
Mr. Fanish Jain, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

Appeals arising out of Special Leave Petition
(Civil) Nos. 2120-2121 of 2014 and Special Leave Petition
(Civil) Nos. 16426-16427 of 2014 filed by the borrowers are
allowed and appeal arising out of Special Leave Petition
(Civil) No. 22778 of 2013 filed by the Corporation is
dismissed in terms of the signed order.

[VINOD LAKHINA]
COURT MASTER

[ASHA SONI]
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.8797-8798 OF 2016
[Arising out of Special Leave Petition
(Civil) No.2120-2121/2014]

M/S DEVIDAYAL CASTINGS PVT.
LTD. ...APPELLANT

VERSUS

HARYANA FINANCIAL CORPORATION
AND ANR. ...RESPONDENTS

WITH
CIVIL APPEAL NOS.8799-8800 OF 2016
[Arising out of Special Leave Petition
(Civil) No.16426-16427/2014]

CIVIL APPEAL NO.8801 OF 2016
[Arising out of Special Leave Petition
(Civil) No.22778/2013]

ORDER

1. Leave granted in all the cases.
2. The appellants, namely, M/s Devidayal Castings Pvt. Ltd. and M/s Tibrewala Industries Pvt. Ltd. in Civil

Appeals arising out of Special Leave Petition (Civil) Nos. 2120-2121 of 2014 and Special Leave Petition (Civil) Nos. 16426-16427 of 2014 respectively are the borrowers and the appellant in Civil Appeal arising out of Special Leave Petition (Civil) No. 22778 of 2013 is the Haryana State Financial Corporation (hereinafter referred to as "the Corporation"). In 2005, the Corporation adopted and promulgated a policy whereby borrowers were given an option to settle their dues on the basis of the principal amount of the outstanding in the loan accounts as on the date on which the accounts were declared as Non-Performing Assets (NPA). Pursuant to the said policy, admittedly, letters were written and offers were given to the applicants-borrowers to deposit 10% of such dues as a pre-condition for consideration of their cases. The borrowers accepted the said offer and responded accordingly. The said response, however, came to be rejected

in a meeting of the Executive Committee of the Board held on 22nd December, 2015 wherein an in-principle decision was taken that in cases where the value of the securities was more than the settlement amount, the Corporation should resort to the sale of the secured properties. The aforesaid resolution of the Executive Committee was subsequently approved by the Board. On the basis of the aforesaid decision taken by the Executive Committee and the Board of Directors the applications of the borrowers for settlement of their cases in terms of the policy outlined above were rejected. Aggrieved, the borrowers moved the High court which answered two writ petitions in question in favour of the Corporation and one against the Corporation. Aggrieved, the present appeals have been filed.

3. The short issue that would require consideration of the Court is whether the

decision of the Executive Committee dated 22nd December, 2005 as approved by the Board of Directors of the Corporation not to accept the settlement amount under the policy in force in cases where the value of the secured properties is more than the said settlement amount, amounts to a change of policy to the detriment of the borrower and, therefore, the Corporation should be held bound to accept the settlement amount as per the policy in force.

4. We have heard the learned counsels for the parties.

5. The policy in vogue in the Financial Corporation is known as "The Policy For Compromise Settlement of Chronic Non-Performing Assets (NPAs) of Haryana Financial Corporation, 2005" The essential features thereof have already been noticed. Under the terms of the Policy the Board of Directors is the competent authority to

grant any relaxation in a policy on a case to case basis or even to amend the policy in general. Insofar as the power to amend/vary the policy is concerned the decision of this Court in Sardar Associates and Others Vs. Punjab & Sind Bank and Others¹ may indicate the contours of the said power which was understood not to extend to varying the core of the policy but only to the non-essential features thereof. Sardar Associates (supra) dealt with a similar policy containing a similar power of deviation therefrom which was laid down by the RBI to govern the policy of settlement of outstanding dues by borrowers to public sector banks. The principles laid down in Sardar Associates (supra) would not be altogether irrelevant or redundant in view of the similar provisions in the two policies governing the two institutions in question. Viewed in the aforesaid context the observations in paragraph 36 of Sardar Associates (supra)

1 (2009) 8 SCC 257

extracted below would not be irrelevant to the present case as understood in M/s. Saini and Co. Rice Mills Etc. Vs. State of Punjab² and Ram Paul Vs. Haryana Financial Corporation and Ors.³.

"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 Bank 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, we are satisfied that 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."

6. A further question that looms large

2 AIR 2010 P&H 12

3 C.W.P. No. 4371/2013 decided on 11.03.2013

before the Court is even conceding that the deviation, though the same is with regard to a core matter, is permissible, whether the same would be applicable in a situation where the offer made to the borrowers, in terms of the original policy in force, was acted upon by a positive response from the borrowers to settle their dues in terms of the original policy. Surely, if an offer had been made in terms of the policy in force (which did not contain the exception in question) the policy could not have been departed from and the exception acted upon to the detriment of the borrowers.

7. A further fact that cannot be ignored is that even the exception carved out in the decision of the Executive Committee approved by the Board of Directors was departed from in individual cases, as is evident from the materials laid before this Court by the appellants, which are in the form of replies of the Corporation furnished

to the queries made under the RTI Act. Though the Corporation has sought to explain the aforesaid departures (from the exception to the policy) as being made by reference to certain principles like dispute as to title, absence of any bids or dilapidated condition of the security offered, no details in this regard are forthcoming, in the absence whereof the legality of the said actions cannot have the benefit of any adjudication of this Court.

8. In the light of that we have said above, we are of the view that the actions of the Corporation in rejecting the cases of the borrowers for settlement of the dues as per the policy in force should not have the approval of the Court. We accordingly interfere with the orders of the High Court and allow the appeals arising out of Special Leave Petition (Civil) Nos. 2120-2121 of 2014 and Special Leave Petition (Civil) Nos.16426-16427 of 2014

filed by the borrowers and dismiss the appeal arising out of Special Leave Petition (Civil) No. 22778 of 2013 filed by the Corporation.

.....,J.
(RANJAN GOGOI)

.....,J.
(PRAFULLA C. PANT)

NEW DELHI
SEPTEMBER 06, 2016