
(1996) 09 DEL CK 0046

In the Delhi High Court

Case No : Company Appeal No. 34 of 1995

Housing and Urban Development Corporation Ltd.

APPELLANT

Vs

Standard Chartered Bank

RESPONDENT

Date of Decision : 04-09-1996

Acts Referred:

Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 —
Section 2

Citation : (1996) 64 DLT 4 : (1996) 39 DRJ 34

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : A.M. Singhvi, G. Sai Kumar, G.L. Sanghvi, U.A. Rana, Mukul Rohatagi, A.L. Pandya and Sandeep Mittal, for the Appellant;

Judgement

Vijender Jain, J.

(1) This appeal has been filed against the order of the Company Law Board dated 15.11.95.

(2) DR.SINGHVI, learned counsel for the appellant, has raised similar contentions which were argued by the appellant before the Company Law Board (hereinafter referred to as the "Board"). In short, learned counsel for the appellant has argued that order of Board directing transfer of shares in favor of respondent no. 1, i.e. Standard Chartered Bank (hereinafter referred to as "Standard Chartered") was against public policy and in violation of law and, Therefore, the order of the Board in this regard is illegal. Dr.Singhvi further contended that as the Controller of Capital Issues had imposed a condition regarding sale of 20% Bonds over the counter to the general public, condition having been communicated to respondent no.2, i.e. Andhra Bank Financial Services Ltd. (hereinafter referred to as ABFSL) and as said Abfsl and Standard Chartered Bank have violated the condition, the order of the Board directing Appellant to transfer the Bonds in favor of Standard Chartered is unsustainable. Dr.Singhvi took great pains in arguing that Abfsl concealed the transfer of Bonds in favor of Standard Chartered

for over nine months although Abfsl has sold the bonds to Standard Chartered after 5 days after the same were purchased from the appellant by ABFSL. Yet another contention raised by learned counsel for the appellant was that having accepted the interest on the bonds from the appellant in the month of August, Abfsl ought not to have encased the same if they had transferred the bonds in February 1992 itself. Sum and substance of the arguments of Dr.Singhvi was that the transfer in favor of Standard Chartered was sham and bogus and to lift the veil the court may quash the order of the Board directing appellant to transfer the shares in favor of Standard Chartered. Next contention of learned counsel for the appellant was that it was highly improbable for the Standard Chartered to wait for a period of nine months and ask for transfer of the bonds in their names when Standard Chartered had purchased the bonds from Abfsl in February 1992 itself. The last argument which was canvassed vehemently before me by the counsel for the appellant was that Abfsl had link with Fair growth and, Therefore, on that account Company Law Board has no jurisdiction to hear the matter in view of Sec 2(c) of the Special Courts Act. 1992.

(3) On the basis of above submissions Dr.Singhvi has contended that the transfer of bonds by Abfsl to Standard Chartered on 24.2.92 was in violation of law and no registration can be granted in favor of Standard Chartered by the appellant as it was against public policy. Even as per Articles of Association Dr.Singhvi further contended, the Board took a different view in interpreting Article 24(2) of the Articles of Association of the appellant company which gives a specific power to the appellant to refuse registration. Dr.Singhvi in support of his submissions cited Mannalal Khetan and Others Vs. Kedar Nath Khetan and Others, and Bk Holdings (P) Ltd. Vs. Prem Chand Jute Mills and Ors. 1983 (53) C C 367. He also prayed that at least an enquiry should be conducted into the affairs of allotment of bonds to Abfsl and the funds used by the Abfsl to purchase the bonds from the appellant.

(4) Briefly advertng to the facts of this case, on 10.12.1991 the Controller of Capital Issues gave its approval to the issue to the appellant of the value of Rs.300 crores tax free bonds in denomination of Rs.1000/= or any such denomination to be decided by the Company on private placement basis with the financial institutions, banks, their subsidiaries with the condition that at least 20% of the bonds shall be offered to general public over the counter.

(5) Controversy has been raised by the appellant over the stipulation of private placement of at least 20% of bonds being offered to general public over the counter which I shall deal later.

(6) On 19.2.1992 appellant allotted bonds for Rs.30 crores to Abfsl passing on the condition of placement of 20% of the bonds to general public over the counter to ABFSL. As per terms of Abfsl, the appellant also agreed to deposit Rs.25.50 crores after deducting the amount for fees for a period of 12 months at 12% interest with ABFSL. The whole controversy, it seems, has tarred on account of non-payment of the sum of Rs.25.50 crores by Abfsl along with the

interest after the period of deposit to the appellant.

(7) MR.G L Sanghi, learned counsel appearing for the respondent has contended that Abfsl had no obligation to inform appellant about the purchase of shares by Standard Chartered from ABFSL. He has particularly taken this Court to the letter of allotment at page 43 of the paper book in which the instructions forming part of the letter of allotment by the appellant itself, inter alia, states as follows I -

"THE Bond(s)/Certificate(s) when in existence covered by this Letter of Allotment will be transferred by endorsement and delivery."

(8) And particularly Clause-4 of the said terms is as follows I

"SURRENDER of the Letter of Allotment to the Company duly discharged by the holder(s) shall be conclusive evidence in favor of the Company that the parties surrendering it has/have a clear title to the Bond(s) and a right to receive the Bond(s) from the Company."

(9) On the basis of this Letter of Allotment, Mr.Sanghi has contended that holding of Bonds by Standard Chartered was a conclusive evidence in favor of respondent that they were holders in due course and a bona fide purchaser of the bonds and bonds being negotiable instruments, the appellant could not refuse registration on any grounds whatsoever. Mr.Sanghi has contended that on 24.2.1992 Standard Chartered had purchased these bonds of face value of Rs.30 crores for Rs.25.57 crores from Abfsl for which the money was paid to the Abfsl by the Standard Chartered. Mr.Sanghi has also contended that the condition imposed by the Controller of Capital Issues was a condition, which was imposed on the appellant. Appellant in terms of letter dated 10.12.1991 regarding sale of bonds of at least 20 percent to general public through offer for sale or over the counter was bound by such condition and in any event respondent Standard Chartered was not bound and had no notice of the condition of Controller of Capital Issues in this regard.

(10) Repelling the contention of learned counsel for the appellant that the Board has no jurisdiction to direct appellant to transfer the bonds in favor of respondent on account of allegations of appellant that funds of Fair growth Financial Services Limited were used for purchase of these bonds, Mr.Sanghi has contended that no such plea was raised by the appellant before the Board except general and vague allegations and that were simply to harass the respondent. He has contended that an application was filed by the appellant praying for a direction to be issued to Standard Chartered and Abfsl to produce all correspondence and documents between them and Fair growth Financial Services Limited, a notified person under the Special Courts Act before the Board. To this application, reply was filed by the respondent. Standard Chartered, wherein it was reiterated that the transaction was a direct deal between Standard Chartered and Abfsl and there was no other party Involved and that being so, Abfsl had nothing to do with Fair growth Financial Services Limited qua this transaction. He contended that if some money of Abfsl was stuck with Fair growth a notified person that will not invest

the Special Court with jurisdiction over the matter which was an independent transaction, nor will divest the Board with jurisdiction to hear the matter and adjudicate upon. in support of his contentions, he has relied upon Kudremukh Iron Ore Co. Ltd. Vs. Fair growth Financial Services Ltd. and Another, .

(11) Learned counsel appearing for the respondent-standard Chartered further contended that the appellant cannot refuse registration of bonds unless and until a specific power is given either under the statute or under the Articles of Association and in support of his contention has cited Luxmi Tea Co.Ltd. Vs. Pradip Kumar Sarkar 1990 (67) C.C. 518. Lastly, he contended that the bonds were separately transferable and the transferee, who had no notice of-any understanding between the appellant and the Abfsl, cannot be denied registration of Bonds. In the alternative, Mr.Sanghi contended that the condition of 20% bonds to be offered for sale to general public over the counter or any such condition for that matter was not binding on the transferee and, as a matter of fact, the condition was imposed on the appellant which the appellant has grossly violated and they cannot impose that condition on subsequent transferee.

(12) MR.MUKUL Rohtagi, learned counsel appearing for the Abfsl, has contended that Abfsl had no obligation to inform appellant about the transfer. Mr.Rohtagi has further contended that on 18.2.1992 the respondent-ABFSL wrote a letter to the appellant and that letter, inter alia, was the acceptance of the offer of the appellant where no such stipulation of 20% sale of the bonds was agreed to by the ABFSL. Repelling the contention of learned counsel for the appellant, Mr.Rohtagi contended that it was not necessary that after acquiring the bonds from the appellant the bonds were to be offered to general public over the counter. However, as appellant wanted the bonds to be offered to the general public, the Abfsl did advertise for the sale of the bonds to the general public over the counter and kept the offer open for the period as stipulated by the appellant. As no application was received from the general public, there was no sale over the counter. Mr.Rohtagi contended that the arguments of learned counsel for the appellant that when the bonds had already been sold on 24.2.1992 to the Standard Chartered, the advertisement by Abfsl on 28.4.1992 was not bona fide, was incorrect as Abfsl was always in a position to acquire the bonds from the market so as to deliver them to the general public in case there was any application from general public and invited the attention of this Court to the letter dated 4.12.1993 written by Abfsl, which is at page-134 of the paper book, in which this fact finds mention. The letter also states:-

"THAT no prudent business establishment will lock in funds to the extent of Rs.6 crores without any prospect of sale when it is very much known that there will be no demand for the bonds from the general public."

(13) He has further argued that vide letter dated 4.12.1993 Abfsl had written to the appellant that interest warrants was issued in the name of Abfsl for the period 19.2.1992 to 18.8.1992 as Abfsl were the registered holders of the bonds in the books of the appellant and Abfsl had sold the bonds to Standard Chartered

and Standard Chartered made the claim on the Abfsl for the interest since the bonds were sold to them, the interest accrued was paid to ABFSL. But before doing so, Abfsl even had written to the appellant asking them to intimate if there was any objection for Abfsl refunding the amount to Standard Chartered but that letter was not replied to by the appellant. These facts find mention in the letter dated 4.12.1993.

(14) Lengthy arguments were advanced by the learned counsel for the parties. After hearing the learned counsel for the parties, in my considered opinion the arguments advanced by the appellant has no force.

(15) The argument advanced by the learned counsel for the appellant that the transfer of shares could be refused by the appellant has no force. In Luxmi Tea Co.Ltd.'s case (supra) Supreme Court had the occasion to deal with the question of transfer of shares and held as under I -

"UNLESS there is any impediment in the transfer of a share of a public limited company, a shareholder has the right to transfer his shares correspondingly, in the absence of any impediment in this behalf, the transferee of a share, in order to enable him to exercise the rights of a shareholder as against the company and third parties which is not possible until the transfer is registered in the company's register, is entitled to rectification of the share register of the company by insertion of his name therein as a registered shareholder of the share transferred to him. This right of the transferee can be defeated by the company or its directors only in pursuance of some power vested in them in this behalf. Such power has to be specified and provided for. it may be residuary but it should be provided for and traceable to some provisions either in the Act or the articles of association of the company. Even if the power of refusal is so specified and provided for, the registration of a transferred share cannot be refused arbitrarily or for any collateral purpose and can be refused only for a bona fide reason in the interest of the company and the general interest of the shareholders. If neither a specific nor residuary power of refusal has been so provided, such power cannot be exercised on the basis of the so-called undeclared inherent power to refuse registration on the ground that the company or its directors take the view that, in the interest of the company and the general interest of the shareholders, registration of the transfer of shares should be refused. So far as refusal to register the transfer of a share is concerned, it is almost the consistent view of in decided cases that there is no inherent power in this behalf."

(16) In the present case, nothing has been brought to the notice of this Court as to how transfer is against public policy except belated argument of the appellant regarding jurisdiction of Board.

(17) Adverting to the argument of learned counsel for the appellant that the respondent Abfsl had dealing with a notified person and Trial of Offence relating to Transaction of Securities Special Courts Act, 1992 was empowered to deal with

the matter and not the Company Law Board. I may add that Board also dealt with this argument and rightly rejected on the ground that in the case before the Board no order was sought against a notified person but against non-applicants (Standard Chartered and ABFSL) to disclose information as the order for discovery of documents was sought on the basis of apprehension which was based on surmises and suspicion and on the assumption that as Abfsl had transactions with the notified person, Therefore, the prayer of the appellant was rejected and no order for discovery and inspection was made in favor of the appellant. In M/s Kudremukh Iron Ore Co. Ltd. (supra). Apex Court while dealing with some what similar question held:-

"THE reasoning implicit in the order under appeal is that the power to order payment of amounts due from a "notified person" "to any bank or financial institution or mutual fund" presupposes and proceeds on the existence of obligations inter-se between the parties based on contractual, statutory or other legally recognised rights and that such vinculum-juries is absent as between the appellant on the one hand and the Fair growth Financial Services Ltd. on the other. What is further implicit is that the appellant which is a stranger to the consideration respecting transactions between the Andhra Bank Financial Services Ltd. and the Fair growth Financial Services Ltd., cannot seek to enforce the obligations thereunder. The remedy of the appellant against its debtor which itself is not a notified person, lies in the ordinary courts of the land. This reasoning is not shown to be unsound."

(18) While arguing the matter, I had recorded in my order dated 9.5.1996 that not a single averment was made by the appellant to the effect that Abfsl used the funds for purchase of bonds by Fair growth Financial Services Limited. The main emphasis before the Company Law Board was regarding the stipulation of 20% of the bonds to be sold to general public or by sale over the counter but during the course of hearing of this appeal a letter was filed from one Acharia Arun Dev, Chairman, Fair growth Financial Services on record with an affidavit filed on 30.4.96 of Mr.R.Mathur of the appellant. In para 5 of the said affidavit it was mentioned that appellant had no transaction what so ever with M/s Fair growth Financial Services Limited and that no claim for repayment of any amount has been made by Hudco on Fair growth Financial Services Limited. On the same day, counsel appearing for Abfsl also made a categorical statement that for the purchase of bonds or for the sale of the bonds to Standard Chartered, Fair growth Financial Services Limited was not at all involved. In view of this development court issued notice to Acharia Arun Dev, Chairman of Fair growth Financial Services Limited as to on what basis letter dated 19.3.96 was written by him to the Chairman of the appellant company. On 15.5.96 Mr.K K Bhatnagar, Chairman of Hudco was present in Court and stated that Acharia Arun Dev, Chairman Fair growth Financial Services Limited used to visit the office of the appellant and met him and other officers in connection with raising loans with regard to his proposal for building a township at Ghaziabad. Acharia Arun Dev further told the Chairman of the appellant company that he had bought Fair

growth Financial Services Limited and was keen to settle the matter with all the creditors and it was Acharia Arun Dev who assured the Chairman of Hudco that he will also get the matter settled regarding payment by Abfsl to Hudco and on this assurance of Arun Dev, Chairman of the appellant company asked the Chairman of Fair growth Financial Services Limited to send the letter in consonance to their talks and that is how the letter dated 15.3.1990 was written to him. With great difficulty Acharia Arun Dev was served. His statement was recorded on 23.5.1996, but what is significant in the statement of Acharia Arun Dev was that it Was Mr.K K Bhatnagar, Chairman of the appellant company, who told him to write a letter in confirmation of the talks and he wrote the letter in question. From his statement, it would be borne out that he stated that the money which was paid by Hudco to Abfsl, Abfsl in turn had paid the money to Fair growth Financial Services Limited. The total sum was Rs.25,50 crores and Fair growth Financial Services Limited had to pay Rs.286 crores to ABFSL. He did not mention that the money which was paid by Standard Chartered to Abfsl or the money which was paid by Abfsl to the appellant for the purchase of the bonds was in any way concerned with the notified person. On 23.5.1996 after recording the statement of Acharia Arun Dev, this Court directed him to file an affidavit specifying as to how much amount was due from each of the five Public Sector Undertakings in terms of his statement with the further direction that he would specify as to how he came to know and on what basis Abfsl informed him that the amount of Rs.25.50 crores was paid to Fair growth Financial Services Limited. After this direction, said Acharia Arun Dev did not file anything nor represented himself before this Court in spite of various orders. In any event of the matter, nothing would turn on the statement of Acharia Arun Dev as it was not his statement that Standard Chartered had purchased the Bonds with the money advanced by a notified person. Keeping this background in view, I am of the opinion that this stand was adopted by the appellant as an arm- twisting tactics by placing the letter dated 19.3.1996 before this Court, which was procured by the appellant from said Acharia Arun Dev. No effort was made by the appellant to serve Acharia Arun Dev after passing of the order dated 23.5.1996 no effort was made to see that the affidavit in terms of the directions of this Court was filed by him when according to the statement of the Chairman of the appellant company, Acharia Arun Dev was a visitor was known to other officers and to the Chairman of the appellant company. That being the situation, there is no force in the arguments of learned counsel for the appellant that Board had no jurisdiction to grant direction to the appellant regarding transfer as same would be against public policy or on the ground that Board did not have jurisdiction to adjudicate the matter. Even otherwise the stay put up by the appellant regarding Fair growth connection is belied by its own Board's resolution, where the ground of non-registration was on account of not adhering to the stipulation of 20% bonds to be sold to general public as will be borne out by the records of this appeal at pages 275 and 276. The authorities cited by learned counsel for the appellant in Mannalal Khetan etc. etc. (supra) and B.K. Holdings Pvt. Ltd. (supra) have no application to the facts of the present case. This also demolishes the

case of appellant that direction of the Board regarding transfer of Bonds was against public policy.

(19) There is considerable force in the argument of learned counsel for the respondent that imposition of the condition regarding sale of bonds of at least 20% to general public through offer for sale or over the counter was a condition which was imposed on the appellant and the appellant could not have passed the same to the respondent ABFSL. Although, Dr.Singhvi has argued at length that taking into consideration the past practice as well as totality of circumstances this condition was to be placed on each and every transferee. Even if I agree with the argument of learned counsel for the appellant to a specific query raised by this Court to the appellant as to how many bonds the appellant had sold to general public, in answer the Court was told that not a single bond was sold by the appellant to general public. Bond being negotiable in nature if there was no buyer of the bond from the general public then the submission of learned counsel for the respondent-ABFSL in this regard that in deference to the wishes of the appellant they still advertised the sale of 20% bonds, even though the bonds were transferred on 24.2.1992 in favor of Standard Chartered, was to give effect to the condition of Controller of Capital Issue seems correct, no financial institution will lock in its funds, that too amounting to Rs.6 crores knowing fully well that there is no buyer of the bonds in the market and bonds being negotiable instrument, in case of any demand from general public, Abfsl was always in a position to buy the bonds from the market to comply with the stipulation of the appellant. The stand taken by the counsel for the respondent in this regard seems bona fide. In any event of the matter, no such stipulation was imposed by Abfsl for sale of bonds of at least 20% to general public at the time of sale of the bonds of the face value of Rs.30 crores by Abfsl to Standard Chartered. Therefore, I hold that the direction issued by the Company Law Board in this regard was legal and valid. The appellant cannot refuse registration of bonds.

(20) Dealing with the arguments of learned counsel for the appellant that the intimation of sale of bonds by Abfsl to Standard Chartered after a considerable delay demonstrates that the transaction was sham and bogus and only a paper transaction, has also no force. Standard Chartered paid full amount of Rs.25.57 lakhs to Abfsl for the Bonds. Nothing was required to be done by a transferee as it would be evident from the letter of allotment, which is at page-43 of the paper book, which I have referred to hereinabove.

(21) The argument of the learned counsel for the appellant regarding encashment of cheque on account of interest by Abfsl in view of bonds already transferred in favor of Standard Chartered is also devoid of any merit. Firstly, the name of Abfsl was registered with the appellant, the interest was to be paid to ABFSL. Abfsl has sold the bonds to Standard Chartered, Therefore, Standard Chartered was entitled to the said interest. No irregularity was committed by Abfsl to transfer the said interest in favor of Standard Chartered. Secondly,

before Abfsl has written to the appellant regarding payment of interest to the Standard Chartered no reply was given to the said letter of Abfsl by the appellant. These facts find mention in the letter dated 4.12.1993 written by Abfsl to the appellant. There is a clear finding of fact by the Board that after examining "the- provisions of Articles of Association of Hudco, no power was available with the Board of Directors to refuse registration of transfer of bonds. The article dealing with the transfer of debentures/ bonds, i.e. Article 24(2), does not confer specifically the power to refuse registration of transfer of bonds. Nothing contrary to this has been brought on record or shown by the appellant to this Court. Standard Chartered being a bona fide purchaser of bonds from Abfsl having no notice of the terms of understanding between appellant and ABFSL. If Standard Chartered is denied registration on the pretext of what has been pleaded and argued before me by the appellant, would create havoc with the functioning of securities and will have serious repercussions to a growing economy like ours, it would amount to strangle the respiratory function of market economy.

(22) During the course of hearing, I had directed the Abfsl to make available the records of Abfsl regarding this transaction. The records were made available in this Court and I had allowed the appellant to inspect the same. After inspecting the same, appellant further demanded inspection of records, which did not pertain to this transaction. From the perusal of the records it was seen by this Court that the funds regarding the purchase of the bonds, was made available by Andhra Bank, once the funds were made available by Abfsl for the purchase of the bonds by Andhra Bank, nothing remains to be inspected or seen by the appellant regarding this transaction.

(23) DR.SINGHVI has contended that on account of restraint order passed by this Court, the respondent bank has suffered heavy losses and exemplary costs be awarded to the respondents. Appellant is a public sector undertaking and any cost imposed on the appellant will be cost on public exchequer, Therefore, I do not deem it fit to impose costs while dismissing the appeal of the appellant. Accordingly, I dismiss the appeal with no order as to costs. Interim order made earlier stands vacated.

(24) DR.SINGHVI has also prayed that the order dismissing the appeal be stayed so as to give him time to file an appeal against this order. That request is also declined.