**(2004) 08 DEL CK 0109**

**In the Delhi High Court**

**Case No :** CA. 817 of 2003 in C.P. No. 191/97

Shri N. Hariharan and Another APPELLANT

Vs

Small Industries Development Bank of India and Another RESPONDENT

**Date of Decision :** 31-08-2004

**Acts Referred:**

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 17
Negotiable Instruments Act, 1881 (NI) — Section 50, 8
Reserve Bank of India Act, 1934 — Section 45 MC

**Citation :** (2004) 08 DEL CK 0109

**Hon'ble Judges :** A.K. Sikri, J

**Bench :** Single Bench

**Advocate :** Sangeeta Panicker, for the Appellant; Abraham N.A., for the Respondent

## Judgement

A.K. Sikri, J.—M/s.C.R.B.Capital Markets Ltd. has gone into provisional liquidation. Order dated 22.5.1997 is passed by this Court to this effect in CP.191/97 filed by Reserve Bank of India (RBI) seeking winding up of the respondent company u/s under Section 45MC1(c) of the Reserve Bank of India Act . The Official Liquidator attached to this Court has been appointed as the Provisional Liquidator by the same order.

2. This application has been filed by two applicants. Applicant No.1 is the Trustee of M/s.Larsen and Toubro Officers and Supervisory Staff Provident Fund (hereinafter referred to as `the Fund'' for short). This Trust was created as a Provident Fund u/s 17 of the Employees Provident Fund and Miscellaneous Provisions Act,1952 in which Provident Fund contributions by the employees and employers are deposited. The Fund maintains account with Standard Chartered Bank (SCB). Applicant No.2 (SHN) is a company registered under the Companies Act and is wholly owned subsidiary of SCB. SCB, inter alia, provides custodial services for clients and includes holding of securities and bonds in the vaults, collection of interest and redemption proceeds on due dates as mandated by its clients. The securities held by SCB on behalf of its clients are registered in the

 

name of SHN to facilitate the administration and collection of interest and redemption proceeds and to identify SCB''s own investments from investments held by SCB on behalf of its clients. It is the case of the applicants that on 27.12.96 the Fund purchased through GFC 7.5% IDBI Bonds 1998 (25/3-9) of face value of Rs.20 lacs issued by IDBI (hereinafter referred to as '''' IDBI Bonds'''') . For this, consideration amounting to Rs.19,24,153.67 was paid to GFC vide cheque No.083107 dated 27.12.96 drawn on SCB. Thereafter on 30.12.1996 the Fund purchased from M/s.G.F.C. Securities and Finance Ltd. (GFC) being the Broker,12.5% SIDBI Bonds 2004 (20/6-12) of face value of Rs.14 lacs issued by Small Industries Development Bank of India (hereinafter referred to as ''''SIDBI Bonds'''') . The consideration amounting to Rs.13,22,864/- was paid to GFC vide cheque no.083109 dated 30.12.96 drawn on SCB. The broker also issued delivery challan dated 3.1.1997 delivering the aforesaid SIDBI bonds and IDBI bonds. In order to substantiate its averments that the Fund is the bona fide purchaser of these bonds, the said delivery challan is annexed as Annexure-A; Bank Statement dated 31.12.1996 is filed showing encashment of the aforesaid two cheques; Receipt dated 27.12.1996 and the Form-B dated 27.12.1996 issued by GFC in respect of IDBI Bonds are also filed as Annexure-B ; Receipt dated 30.12.1996 and Form B dated 30.12.1996 issued by GFC in regard to purchase of SIDBI bonds are filed as Annexure-C; true copies of SIDBI and IDBI bonds are filed as Annexure-D.

3. It is averred that these bonds were in the nature of Promissory Notes and encashable which could be transferred by endorsement and delivery. It is claimed that on the payment of the amount in question for the two Bonds and delivery thereof to the Fund with the said endorsements, the Fund became owner of these bonds. The details of these bonds as per original certificates are contained in para-7 of the application.

4. After the purchase of these bonds, vide letter dated 3.1.1997, the Fund requested SCB, its bankers, to keep the SIDBI Bonds duly endorsed in the name of SHN in safe custody and to collect the interest on due dates from SIDBI and credit the same in the saving bank account of the Fund maintained with its bankers. Similar, letter dated 10.3.1997 was written in respect of IDBI Bonds. SCB also informed SIDBI vide letter dated 5.1.1997 about the purchase of SIDBI bonds which letter is annexed with the application as Annexure-F.

5. When the interest became due on these bonds, SCB on 16.8.1997 forwarded SIDBI Bonds to SIDBI for payment of interest due on 20.6.1997 and on 29.9.1997 forwarded IDBI Bonds to IDBI for payment of interest due on 25.3.1997 and 25.9.1997. This interest was, however, not paid and action was not taken. It transpired later on the information given by SIDBI and IDBI orally to the applicants that since at one point of time these bonds were held by M/s.C.R.B.Capital Markets Ltd., the company was in provisional liquidation because of orders dated 22.5.1997 of this court whereby the court had directed the Official Liquidator to seize all the assets of the said company, the interest could

 

not be released. In the meantime IDBI Bonds matured on 26.3.1998 and the Fund again wrote to the SCB to credit the redemption proceeds along with interest which was not done by the IDBI for the same reasons indicated above. Same thing happened in respect of SIDBI Bonds as well.

6. In these circumstances, present application is filed seeking clarification that directions dated 22.5.1997 passed in CP.191/97 do not cover these IDBI and SIDBI Bonds and SIDBI and IDBI be directed to make payment of these bonds with interest. It is clear from the narration of the aforesaid facts which are not in dispute that transaction for purchase of these bonds took place in December,1996 when the bonds were delivered to the Fund after endorsement. The Fund , Therefore, became `holder in due course'' of these bonds for valid consideration as provided u/s 8 of the Negotiable Instrument Act and even legal title passed in favor of the Fund which consequence is envisaged u/s 50 of the said Act. In fact company (in provisional liquidation) did not even deal with the applicants and was holder in due course at one point of time. There are other intermediary purchasers and the applicant/the Fund purchased these Bonds from the last purchaser.

7. The legal position in this respect is discussed in detail in CA(M)No.21-2002 and CA.1156/2003 in same Company Petition No.191/97 which judgment has been delivered today in the aforesaid applications and, Therefore, it is not necessary to repeat the same.

8. A copy of that judgment shall be placed in the file of this case also. The outcome would be to allow this application by clarifying that the order dated 22.5.1997 passed in CP.191/97 would not come in the way of the applicants in getting the bonds transferred in their names and realizing the proceeds thereof by way of redemption together with interest as accrued thereon in their favor. IDBI and SIDBI will comply with these directions.

9. This application is disposed of accordingly.

 