(2011) 05 CAL CK 0103

In the Calcutta High Court

Case No : Writ Petition No. 22233 (W) of 2010 with C.A.N. No. 3067 of 2011

Sunil Agarwal APPELLANT

Vs

LIC Housing Finance Ltd. and Others RESPONDENT

Date of Decision : 05-05-2011

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Credit Information Companies (Regulation) Act, 2005 — Section 15, 17, 18, 18(1), 18(2)

Citation : (2012) 173 CompCas 476

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Susobhan Sengupta and Ms. Priyanka S. Tibrewal, for the Appellant;Pallab Kumar Chakraborti and Sandipan Mitra for The Finance Company, Kunaljit Bhattcharjee for The Credit Information Bureau and Amalendu Mitra and Prasun Ghosh for the Reserve Bank of India, for the Respondent

Judgement

Jayanta Kumar Biswas, J.—The petitioner in this article 226 petition dated November 12, 2010, is alleging that on the basis of his application dated July 20, 2010 (at page 59) u/s 18 of the Credit Information Companies (Regulation) Act, 2005, the respondents have not taken steps for settlement of the disputes. The petitioner was a director of one Siddharta Carriers P. Ltd., of which one Sudip Sen was an employee. Showing the petitioner as a guarantor Sudip borrowed money from LIC Housing Finance Ltd., that, on Sudip''s default on the loan, supplied information to one Credit Information Bureau (India) Ltd., which recorded information showing the petitioner as a defaulter. Noticing the information, the petitioner submitted section 18 application.

2. Mr. Sengupta appearing for the petitioner has submitted that Credit Information Bureau (India) Ltd., a State within the meaning of article 12, for its activities are regulated by the provisions of the Credit Information Companies (Regulation) Act, 2005, is under a statutory obligation to record only accurate information.

3. His argument is that since in view of the provisions of section 18 of the Act the Reserve Bank of India was under a statutory obligation to appoint an arbitrator for deciding the dispute between the petitioner and Credit Information Bureau (India) Ltd., and both this company and the Reserve Bank of India have failed to discharge their statutory duties, the petitioner is entitled to a mandamus commanding them to settle the disputes.

4. LIC Housing Finance Ltd., is a credit institution within the meaning of the provisions of the Credit Information Companies (Regulation) Act, 2005.

5. And Credit Information Bureau (India) Ltd., is a credit information company. It is a company registered under the Companies Act, 1956 and the Reserve Bank of India has granted it a certificate of registration under sub-section (2) of section 5 of the Credit Information Companies (Regulation) Act, 2005, to commence and carry on the business of credit information.

6. I do not find any reason to hold that Credit Information Bureau (India) Ltd., is a State within the meaning of article 12 of the Constitution of India. Simply because its activities are regulated under the provisions of the Credit Information Companies (Regulation) Act, 2005, it cannot be treated as a State within the meaning of article 12. It is just a private company not amenable to article 226 jurisdiction of the High Courts.

7. Being a credit institution within the meaning of the Credit Information Companies (Regulation) Act, 2005, LIC Housing Finance Ltd., was required to be a member of a credit information company; this is a requirement of section 15 of the Act. Accordingly, it became a member of the Credit Information Bureau (India) Ltd.

8. In view of the provisions of section 17 of the Act, as a credit institution LIC Housing Finance Ltd., was required to provide credit information to Credit Information Bureau (India) Ltd. Accordingly, it provided credit information that included the information concerning Sudip, and Credit Information Bureau (India) Ltd., has stored information showing the petitioner as a defaulter on Sudip''s loan as Sudip''s guarantor.

9. Storage of information concerning the petitioner by Credit Information Bureau (India) Ltd., has made the petitioner aggrieved, because, according to him, the information is totally incorrect. His case is that he never did anything to give guarantee or security for the loan granted to Sudip by LIC Housing Finance Ltd.

10. Under the provisions of the Credit Information Companies (Regulation) Act, 2005, a borrower includes a client of a credit institution, and a client includes a guarantor or a person who proposes to give guarantee or security for a borrower of a credit institution.

11. It is, therefore, evident that the real dispute raising which this petition has been filed is about the accuracy of the information showing the petitioner as guarantor for the loan LIC Housing Finance Ltd., granted to Sudip and collection,

storage and use of the information by Credit Information Bureau (India) Ltd. The question is how the dispute is to be settled.

12. Sub-section (1) of section 18 of the Credit Information Companies (Regulation) Act, 2005, provides as follows (page 23 of [2005] 126 Comp Cas (St.)) :

(1) Notwithstanding anything contained in any law for the time being in force, if any dispute arises amongst, credit information companies, credit institutions, borrowers and clients on matters relating to business of credit information and for which no remedy has been provided under this Act, such disputes shall be settled by conciliation or arbitration as provided in the Arbitration and Conciliation Act, 1996 (26 of 1996), as if the parties to the dispute have consented in writing for determination of such dispute by conciliation or arbitration and provisions of that Act shall apply accordingly.

13. Sub-section (2) of section 18 of the Act provides as follows (page 23 of [2005] 126 Comp Cas (St.)) :

(2) Where a dispute has been referred to arbitration under subsection (1), the same shall be settled or decided,--

(a) by the arbitrator to the appointed by the Reserve Bank;

(b) within three months of making a reference by the parties to the dispute :

Provided that the arbitrator may, after recording the reasons therefor, extend the said period up to a maximum period of six months :

Provided further that, in an appropriate case or cases, the Reserve Bank may, if it considers necessary to do so (reasons to be recorded in writing), direct the parties to the dispute to appoint an arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996), for settlement of their dispute in accordance with the provisions of that Act.

14. Sub-section (3) of section 18 provides as follows (page 23 of [2005] 126 Comp Cas (St.)) :

(3) Save as otherwise provided under this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to all arbitration under this Act as if the proceedings for arbitration were referred for settlement or decision under the provisions of the Arbitration and Conciliation Act, 1996.

15. It seems to me that the petitioner has reason to feel aggrieved by the inaction on the part of the Reserve Bank of India to which section 18 application dated July 20, 2010, was sent. In my opinion, treating the application as a reference (for the provisions of the Act do not provide any specific mode for referring a dispute to arbitration under sub-section (1) of section 18), the Reserve Bank of India ought to have taken steps in terms of sub-section (2) of section 18.

16. It is nobody''s case that with respect to the present dispute concerning the credit information collected and stored by Credit Information Bureau (India) Ltd., the petitioner has some other remedy under the Credit Information Companies (Regulation) Act, 2005.

17. It is to be noted that counsel for LIC Housing Finance Ltd., Credit Information Bureau (India) Ltd., and the Reserve Bank of India have not argued that the petitioner''s section 18(1) application referring the dispute between him and Credit Information Bureau (India) Ltd., was not entertainable by the Reserve Bank of India. On the contrary, counsel for the Reserve Bank of India has submitted that the bank will need at least four weeks for taking a decision in terms of section 18(2) of the Act. For these reasons, I dispose of the petition ordering as follows. Within four weeks from the date of communication of this order the Reserve Bank of India shall give its decision dealing with the petitioner''s application dated July 20, 2010, treating it as a reference u/s 18(1) of the Credit Information Companies (Regulation) Act, 2005. The decision shall be communicated to all concerned. C. A. N. No. 3067 of 2011 shall be deemed to be disposed of. No costs. Certified xerox.