SUPREME COURT OF INDIA

Sardar Associates

Vs.

Punjab & Sind Bank

C.A.Nos.4970-4971 of 2009

(S.B. Sinha and Deepak Verma JJ.)

31.07.2009

JUDGMENT

S.B. SINHA, J :

1. Leave granted.

2. Source of power on the part of the Reserve Bank of India to issue circulars and guidelines as regards one time settlement is the question involved herein. It arises out of a judgment and order dated 1.02.2008 passed in Review Petition No. 7 of 2008 and order dated 21.11.2007 passed by a Division Bench of the Punjab and Haryana High Court in C.W.P. No. 8267 of 2007 whereby and whereunder an order dated 13.04.2007 passed by the Debt Recovery Appellate Tribunal, Delhi (for short the Appellate Tribunal) directing the respondent - bank to settle the case of the appellants herein in terms of the said guidelines as applicable at the time of declaring the account as Non Performing Assets (NPA) and not to recover the said amount in terms of the judgment and recovery certificate dated 23.11.2006 issued by the Debts Recovery Tribunal - II, Chandigarh (for short the Tribunal) in Appeal No. 26 of 2007, was set aside.

3. Bereft of all unnecessary details, the fact of the matter reads as under: Appellants herein as also the Performa respondent Nos. 2 to 11 along with one Smt. Darshan Kaur (since deceased) obtained the facilities for grant of loan for a sum of Rs. 3, 54,50,000/- for business purposes which was being carried out by them under the name and style of M/s. Sardar Associates Limited, appellant No. 1 herein. The said amount was sanctioned and disbursed from time to time. Indisputably, the appellant No. 2 and the Proforma respondent Nos. 2 to 11 as also the said Smt. Darshan Kaur stood as guarantors. Appellant Nos. 1 and 2 as also Proforma respondent Nos. 5 and 7 also mortgaged their properties in favour of the respondent - Bank by way of security to the said amount. Defaults having

been made in discharging their liabilities, their assets were declared as NPA as per the guidelines issued by the Reserve Bank of India.

4. A proceeding was initiated by the respondent - Bank purporting to be under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short the 2002 Act) for recovery of the said amount together with interest upon due service of a notice in terms of Sub-section (4) of Section 13 thereof. The total amount of claim laid before the Tribunal by the bank as against the debtors was Rs. 4,16,85,443.62 inclusive of interest upto 31.07.2003. The said application was allowed by the Tribunal whereagainst an appeal was preferred before the Appellate Tribunal.

5. Indisputably, pursuant to the judgment and order of the Tribunal, a recovery certificate was issued for recovery of a sum of Rs. 4,16,58,581.62 along with pendent lite and future interest at the rate of 12% p.a. with quarterly rests from the date of filing of the application till realization. It is at that stage, the appellant No. 1 approached the respondent - bank for settlement of their disputes purported to be in terms of the guidelines issued by the Reserve Bank of India. They made an offer for a one time settlement for a sum of Rs. 345.31 lakhs. The said proposal, however, was not accepted by the respondent - Bank.

6. Respondent - Bank issued a circular bearing No. 176 dated 18.10.2005. Questioning the validity of the said circular, the appellant No. 1 filed a writ petition before the High Court contending that the same was contrary to the guidelines issued by the Reserve Bank of India insofar as the same relates to the scheme for one time settlement for the Small and Medium Enterprises. A prayer was also made therein that the respondent - Bank be directed to settle the matter as per the RBI guidelines. The said writ petition was dismissed only on the premise that the appellant No. 1 had not disclosed therein that it had already approached the Tribunal for recovery of the amount in question.

7. A special leave petition filed thereagainst which was marked as SLP (C) No. 21134 of 2006 was, however, dismissed by this Court on 31.01.2007.

8. Appellants approached the Appellate Tribunal in terms of Section 21 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short the 1993 Act). The appeal was entertained. Respondent - Bank also preferred an appeal before the Appellate Tribunal claiming pendent lite and future interest at the rate of 16.50% with quarterly rests instead of 12% p.a. as had been granted by the Tribunal in its order dated 23.11.2006. The Appellate Tribunal by a judgment and order dated 13.04.2007, dismissed the appeal preferred by the respondent - Bank and allowed that of the appellants and the Performa Respondent Nos. 2 to 11 directing the respondent - Bank to make one time settlement in terms of the guidelines issued by the Reserve Bank of India as was prevailing at the relevant time.

9. We must, however, place on record that the Appellate Tribunal affirmed the judgment as also the validity of the recovery certificate dated 23.11.2006.

10. It furthermore permitted the appellants and the Proforma Respondent Nos. 2 to 11 to sell the secured properties for clearing the dues in terms of one time settlement scheme and ordered that such an exercise must be completed within a period of four months during which period the bank was restrained from taking any coercive steps against them.

11. Respondent - Bank filed writ application thereagainst which by reason of the impugned judgment has been allowed. Appellants filed a review application before the High Court which has been dismissed.

12. Dr. Abhishek Manu Singhvi, learned senior counsel appearing on behalf of the appellants would contend that the scheme in relation to one time settlement having been issued by the Reserve Bank of India in exercise of its statutory power conferred upon it under Section 21 of the Banking Regulation Act, 1949 (for short the 1949 Act), the impugned judgment cannot be sustained.

The learned counsel in this behalf has furthermore drawn our attention to various correspondences exchanged by and between the parties to urge that the respondent - Bank entertained the said application asking for proposal from the appellants and, thus, they are estopped and precluded from contending that the Board of Directors of the respondent - Bank themselves had made a scheme which was required to be followed.

13. Mr. I.P. Singh, learned counsel appearing on behalf of the respondent - Bank, on the other hand, urged:

(i) The Appellate Tribunal committed a serious illegality in issuing the directions upon the bank to undertake implementation of scheme of one time settlement in terms of the guidelines issued by the Reserve Bank of India as no such prayer was made in the memo of appeal.

(ii) The respondent - Bank in law was entitled to make a deviation from the guidelines issued by the Reserve Bank of India. (iii) Only in terms of the guidelines issued by the Board of Directors of the respondent - Bank the relaxation was to be granted to the extent of 30% wherefor the extent of the value of NPA was required to be considered and keeping in view of the fact that the amount available with the Bank was more than sufficient to wipe off the debts, the bank was not bound to accept the one time settlement.

(iv) The Appellate Tribunal had no jurisdiction to declare the guidelines issued by the bank to be a nullity particularly when no such case was made out in the memo of appeal nor the appellants had pleaded the same. The purpose and object for which the RBI guidelines were issued was for realization of the loan amount from chronic defaulters.

(v) The guidelines issued by the Reserve Bank of India were not in terms of Section 21 of the 1949 Act but were in terms of Section 35A thereof and, thus, the same was not binding on the banks.

14. The Reserve Bank of India is a statutory authority. It exercises supervisory power in the matter of functionings of the Scheduled Banks. The matter relating to supervision of Scheduled Banks is also governed by the Reserve Bank of India Act. For the aforementioned purpose, the Reserve Bank is entitled to issue guidelines from time to time.

15. The Parliament also enacted the 1949 Act to consolidate and amend the law relating to banking.

Section 5(l) of the 1949 Act defines Reserve Bank to mean the Reserve Bank of India constituted under Section 3 of the Reserve Bank of India Act, 1934.

By reason of various provisions of the 1949 Act, the Reserve Bank is empowered to control and supervise the functioning of the Scheduled Banks. The 1949 Act also provides for power of the Reserve Bank to control advances by banking companies in terms of Section 21 of the 1949 Act which reads as under:

21 - Power of Reserve Bank to control advances by banking companies (1) Where the Reserve Bank is satisfied that it is necessary or expedient in the public interest or in the interests of depositors or banking policy so to do, it may determine the policy in relation to advances to be followed by banking companies generally or by any banking company in particular, and when the policy has been so determined, all banking companies or the banking company concerned, as the case may be, shall be bound to follow the policy as so determined.

(2) Without prejudice to the generality of the power vested in the Reserve Bank under sub- section (1) the Reserve Bank may give directions to banking companies, either generally or to any banking company or group of banking companies in particular, as to-

(a) the purposes for which advances may or may not be made,

(b) the margins to be maintained in respect of secured advances,

(c) the maximum amount of advances or other financial accommodation which, having regard to the paid-up capital, reserves and deposits of a banking company and other relevant considerations, may be made by that banking company to any one company, firm, association of persons or individual,

(d) the maximum amount up to which, having regard to the considerations referred to in clause (c),guarantees may be given by a banking company on behalf of any one company, firm, association of persons or individual, and (e) the rate of interest and other terms and conditions on which advances or other financial accommodation may be made or guarantees may be given.

(3) Every banking company shall be bound to comply with any directions given to it under this section.

16. A bare perusal of the aforementioned provision would clearly show that the Reserve Bank of India is entitled to formulate the policies which the banking companies are bound to follow. Sub-section (3) of Section 21 of the 1949 Act clearly mandates that every banking company shall be bound to comply with the directions given to it in terms thereof. Section 35A of the 1949 Act, which was inserted by the Banking Companies (Amendment) Act, 1956, empowers the Reserve Bank to issue directions inter alia in the interest of banking policy. Section 36 of the 1949 Act also provides for further powers and functions of the Reserve Bank of India; clause (d) of Sub-section (1) whereof reads as under:

36. Further powers and functions of Reserve Bank - (1) The Reserve Bank may-

(a) *** *** ***

(b) *** *** ***

(c) *** *** ***

(d) at any time, if it is satisfied that in the public interest or in the interest of banking policy or for preventing the affairs of the banking company being conducted in a manner detrimental to the interests of the banking company or its depositors it is necessary so to do, by order in writing and on such terms and conditions as may be specified therein-

(i) require the banking company to call a meeting of its directors for the purpose of considering any matter relating to or arising out of the affairs of the banking company; or require an officer of the banking company to discuss any such matter with an officer of the Reserve Bank;

(ii) depute one or more of its officers to which the proceedings at any meeting of the Board of directors of the banking company or of any committee or of any other body constituted by it; require the banking company to give an opportunity to the officers so deputed to be heard at such meetings and also require such officers to send a report of such proceedings to the Reserve Bank;

(iii) require the Board of directors of the banking company or any committee or any other body constituted by it to give in writing to any officer specified by the Reserve Bank in this behalf at his usual address all notices of, and other communications relating to, any meeting of the Board, committee or other body constituted by it; (iv) appoint one or more of its officers to observe the manner in which the affairs of the banking company or of its offices or branches are being conducted and make a report thereon;

(v) require the banking company to make, within such time as may be specified in the order, such changes in the management as the Reserve Bank may consider necessary.

17. We may, however, place on record that the Parliament, in its wisdom, inserted Section 36A of the Act by the Banking Companies (Amendment) Act, 1959 in terms whereof some of the provisions of the 1949 Act were not to be applied to certain banking companies.

18. Indisputably, the guidelines were issued by the Reserve Bank of India by reason of a letter dated 3.09.2005 addressed to the Chairman/ Managing Director of all public sector banks. It clearly refers to a circular dated 19.08.2005 issued by the Reserve Bank of India in terms whereof it was directed that one time settlement scheme for recovery of NPA below Rs. 10 crore was laid down. The said letter was issued pursuant to the aforementioned circular in terms whereof one time settlement scheme was formulated for recovery of NPA below Rs. 10 crores. It was categorically stated therein that the same was required to be implemented by all public sector banks. The guidelines issued were to provide a simplified, non- discretionary and non-discriminatory mechanism therefor in SME sector. It was categorically stated that all public sector banks shall uniformly implement these guidelines.

19. Respondent - Bank concededly is a public sector bank. It was, therefore, bound by the said guidelines. Salient features of the guidelines are as under:

(c) The guidelines will cover cases on which the banks have initiated action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and also cases pending before Courts/DRTs/BIFR subject to consent decree being obtained from the Courts/DRTs/BIFR XXX XXX XXX (ii) Settlement Formula amount a) NPAs classified at Doubtful or Loss as on March 31, 2004. The minimum amount that should be recovered in respect of

compromise settlement of NPAs classified as doubtful or loss as on 31st March 2004 would be 100% of the outstanding balance in the account as on the date on which the account was categorized as doubtful NPA.

b) NPAs classified as sub-standard as on 31st March, 2004 which became doubtful or loss subsequently: The minimum amount that should be recovered in respect of NPAs classified as sub-standard as on 31st March, 2004 which became doubtful or loss subsequently would be 100% of the outstanding balance in the account as on the date on which the account was categorized as doubtful NPAs plus interest at existing Basic Prime Lending Rate from 1st April, 2004 till the date of final payment. (iii) Payment The amount of settlement arrived at in both the above cases, should preferably be paid in one lump sum.

In cases where the borrowers are unable to pay the entire amount in one lump sum, at least 25% of the amount of settlement should be paid upfront and the balance amount of 75% should be recovered in installments within a period of one year together with interest at the existing Prime Lending Rate from the date of settlement up to the date of final payment. XXX XXX XXX (V) Non-discretionary treatment:

Banks shall follow the above guidelines for one time settlement of all NPAs covered under the scheme, without discrimination and a monthly report on the progress and details of settlement should be submitted by the concerned authority to the next high authority and their Central Office. Banks may go for wide publicity and also give notice January 31, 2006 to the eligible defaulting borrowers to avail of the opportunity for one time settlement of their outstanding dues in terms of these guidelines. Adequate publicity to these guidelines through various means must be ensured. XXX XXX XXX

4. Any deviation from the above settlement guidelines for any borrower shall be made only by the Board of Directors.

The said circular letter was issued by the Chief General Manager of the Reserve Bank of India. The High Court in its impugned judgment inter alia was of the opinion that he had no authority therefor.

20. Before, however, adverting to the question as to whether the Board of Directors of the respondent -Bank could deviate from the aforementioned guidelines and, if so, to what extent, we may notice the following correspondences, which was exchanged by the parties hereto, so as to enable us to consider as to whether the respondent - Bank had itself applied the said guidelines in case of the appellants or not.

21. We may notice that the respondent - Bank appears to have accepted the said guidelines as is evident from the letter dated 24.11.2005 by the respondent Bank to the appellants in the following terms: As per head office guidelines, one time settlement scheme for recovery of NPA accounts upto 10 crores has been formulated. Your account also falls within this scheme. As the said scheme is Non-discretionary, you are advised to come forward for settlement of your account as per terms conditions of the scheme

Clauses 4.1 and 4.2 read as under:

4.1 NPAs classified as Doubtful or Loss as on 31st March 2004:

The minimum amount that should be recovered in respect of compromise settlement of NPAs classified as doubtful or loss as on 31st March, 2004 would be 100% of the outstanding balance in the account as on the date on which the account was categorized as doubtful NPA. 4.2 NPAs classified as sub-standard as on 31st March, 2004 which became doubtful or loss subsequently:

The minimum amount that should be recovered in respect of NPAs classified as sub-standard as on 31st March, 2004 which became doubtful or loss subsequently would be 100% of the outstanding balance in the account as on the date on which the account was categorized as doubtful NPAs plus interest at existing Basic Prime Lending Rate from 1st April, 2004 till the date of final payment. Under the heading Non-Discretionary Treatment, the bank stated: 7.1 RBI has advised that the guidelines for compromise settlement of NPAs in SME sector are non-discretionary and non-discriminatory. Therefore, if the borrower fulfills the eligibility criteria for consideration of OTS under these guidelines then amount of OTS will be determined strictly in terms of Clause No.4.1 and 4.2 above irrespective of any other factor.

22. Furthermore, the respondent - Bank in its letter dated 1.12.2005, stated:

Please refer our letter regarding the above mentioned policy of R.B.I. We are again enclosing herewith the photocopy of the policy. You are requested to come forward as per policy for settlement of the account at your earliest. The respondent - Bank yet again in its letter dated 01.03.2006, stated: This is in continuation of our letter dated 17.02.2006 on the above subject. Please note the OTS scheme of RBI is valid upto 31.03.2006 as such please send your request well within the last date so that the proposal may be put up to the competent authority.

23. It is on the aforementioned premise, the merit and purport of the correspondences exchanged between the parties must be considered. The said correspondences clearly show that the respondent - Bank had resorted to the guidelines issued by the Reserve Bank of India alone and pursuant to or in furtherance of the offer made by the bank, a proposal came to be made by the appellants in terms of its letter dated 2.03.2006; the relevant portion whereof reads as under:

2. As per RBI guidelines, the minimum amount that shall be recovered in respect of one time settlement of NPAs classified as doubtful of loss as on march 31, 2004 will be 100% of the outstanding balance in the account as on the date on which the account was categorized as doubtful NPA. As the outstanding balance in our account as on March 31, 2004 was Rs.285.38 lacs, the settlement amount in respect on one time settlement of our account works out to be Rs.283.38 lacs as per RBI guidelines, out of which we have already deposited a sum of Rs.26.76 lacs (including Rs.25.00 lacs in Third Party No lien account subject to the condition that the said amount shall be appropriated by the bank only after approval of compromise proposal submitted by us plus Rs.1.76 lacs in instalments). Hence we are unable to understand how you have worked out the minimum recoverable amount to be Rs.370.49 lacs.

3. RBI guidelines on OTS for SME account nowhere links the amount that shall be recovered with the fair market value of the security charged to the bank. The fair market value of security is just an assessment of the market value of the security and not the actual value of the security.

4. RBI guidelines are very clear for one time settlement of dues for SME accounts with outstanding of Rs.10.00 crore or less before March 31, 2004, that those account should be settled at principal

amount.

5. NPAs classified as doubtful as on March 2004 are settling their accounts as per these guidelines. We also seek justice and deserve the right to settle our account strictly as per RBI guidelines, which are non-discretionary and non- discriminatory in nature. Its worth while to mention here that other nationalized bank in country are settling NPAs as per guidelines of RBI.

However, to avoid any further litigations and to show our sincere intentions to settle the account, we are even ready to pay the interest for 2 years, as per your instructions and categorization, upto the time when the account was first categorized as doubtful by bank.

Therefore, we request you to consider our proposal for one time settlement at Rs.345.31. The proposed amount of Rs.345.31 lacs has been arrived at as the amount which would have been outstanding in our account on the date when our account was categorized doubtful for the first time, i.e., by adding interest for 2 years at PLR Rs.59.93 lacs on the amount of Rs.285.38 lacs which was outstanding in our account as on the date when our account was categorized as non performing asset.

24. Such a proposal was made bona fide. It was within the framework of the guidelines issued by the Reserve Bank of India.

25. It is not necessary to place on record the further correspondences exchanged between the parties although our attention has been drawn thereto in terms whereof the appellants had all along been making sincere efforts to one time settlement within the parameters of the guidelines issued by the Reserve Bank of India.

26. It may be true that the appellants filed a writ petition before the Punjab and Haryana High Court which was dismissed on the ground of suppression.

In Arunima Baruah v. Union of India and Ors. [(2007) 6 SCC 120] the question involved was how far and to what extent suppression of fact by way of non- disclosure would affect a person's right of access to justice which is a human right.

It was held:

21. Ubi jus ibi remedium is a well-known concept. The court while refusing to grant a relief to a person who comes with a genuine grievance in an arguable case should be given a hearing. (See Bhagubhai Dhanabhai Khalasi.) In this case, however, the appellant had suppressed a material fact. It is evident that the writ petition was filed only when no order of interim injunction was passed. It was obligatory on the part of the appellant to disclose the said fact.

22. In this case, however, suppression of filing of the suit is no longer a material fact. The learned Single Judge and the Division Bench of the High Court may be correct that, in a case of this nature, the Court's jurisdiction may not be invoked but that would not mean that another writ petition would not lie. When another writ petition is filed disclosing all the facts, the appellant would be approaching the writ court with a pair of clean hands, and the Court at that point of time will be entitled to determine the case on merits having regard to the human right of the appellant to access to justice, and keeping in view the fact that judicial review is a basic feature of the Constitution of

India.

It was opined:

12. It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.

[See also S.J.S. Business Enterprises (P) Ltd. v. State of Bihar and Others (2004) 7 SCC 166]

27. The said order of the Punjab and Haryana High Court dated 21.11.2006 again indisputably has been affirmed by this Court. But, in our opinion, the same by itself did not preclude the appellants to approach the Appellate Tribunal. The jurisdiction of the appellate tribunal is co-extensive with the powers of the Tribunal. The memo of appeal filed by the appellants before the Tribunal clearly shows that the contentions with regard to the enforcement of the aforementioned provisions had been made therein.

28. It is, therefore, not correct to contend that no pleadings were made for the purpose of enforcing the RBI guidelines in respect of one time settlement.

29. It may be that no specific prayer was made but the same, in our opinion, keeping in view the provisions of the 2002 Act, did not preclude the Appellate Tribunal to consider the offer of the appellants. The Appellate Tribunal in terms of the provisions of the Act like the original Tribunal is interested only in recovery of the amount. While doing so, it, in our considered opinion, has the requisite jurisdiction to consider the prayer made by a debtor for one time settlement particularly in view of the fact that the same is within the purview of One Time Settlement Scheme of the Reserve Bank of India. If a public sector bank is otherwise bound by any guidelines issued by the Reserve Bank of India, we see no reason as to why the same cannot be enforced in terms of the provisions of the Act by the Tribunal and consequently by the Appellate Tribunal. It is not a case where the appellants had prayed for quashing of a policy decision taken by the respondent - Bank. The question which arose for consideration before the Appellate Tribunal as also before the High Court was as to whether offer having been made by the bank to the appellants herein, it could have turned around and contend that only because the appellants had furnished security to the extent of Rs. 11 crores, the same by itself would entitle it to take recourse to a discriminatory treatment. The answer to the said question must be rendered in the negative.

30. We may notice that the offer made by the appellants in terms of the RBI guidelines for one time settlement was Rs. 3,45,31,000/-, however, keeping in view the fact that the respondent - Bank had a better security available to it demanded a sum of Rs. 4.92 crores.

31. The Board of Directors of the Bank itself had accepted the guidelines. It, however, in its own

guidelines, stated:

II.3 After calculation of the MRA as per point II.1 and II.2 above, due consideration to Securities available charged in the case is to be given, in case of secured and partially secured assets. In these accounts, MRA is to be calculated as under: MRA = 70% of the value of securities as per valuation certificate, issued in terms of Law Circular No. 171.

32. Does it satisfy the non-discriminatory clause laid down by the Reserve Bank of India and accepted by the Reserve Bank is the question. 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. Respondent - Bank is a `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 the Reserve Bank of India.

33. 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.

34. The fact that the appellants were defaultors is not in dispute. It is also not in dispute that it comes within the purview of the Small and Medium Enterprises sector.

35. It is furthermore not in dispute that the respondent - Bank itself had made an offer to accept the proposal of the appellants in regard to enforcement of one time settlement pursuant to the RBI guidelines. Indisputably, it was all along aware that the amount of securities was lying with it. It is only pursuant thereto the directions had been issued by the Tribunal

36. The question as to whether the guidelines issued by the Reserve Bank of India are binding or not now stands concluded by reason of a Constitution Bench Judgment of this Court in Central Bank of India v. Ravindra and Others [(2002) 1 SCC 367] in the following terms: 55... (5) The power conferred by Sections 21 and 35-A of the Banking Regulation Act, 1949 is coupled with duty to act. The Reserve Bank of India is the prime banking institution of the country entrusted with a supervisory role over banking and conferred with the authority of issuing binding directions, having statutory force, in the interest of the public in general and preventing banking affairs from deterioration and prejudice as also to secure the proper management of any banking company generally. The Reserve Bank of India is one of the watchdogs of finance and economy of the nation. It is, and it ought to be, aware of all relevant factors, including credit conditions as prevailing, which would invite its policy decisions. RBI has been issuing directions/circulars from time to time which, inter alia, deal with the rate of interest which can be charged and the periods at the end of which rests can be struck down, interest calculated thereon and charged and capitalised. It should continue to issue such directives. Its circulars shall bind those who fall within the net of such directives. For such transaction which are not squarely governed by such circulars, the RBI directives may be treated as standards for the purpose of deciding whether the interest charged is excessive, usurious or opposed to public policy.

37. Yet again in Corporation Bank v. D.S. Gowda and Another [(1994) 5 SCC 213], this Court held:

17...As pointed out earlier, under the Banking Regulation Act wide powers are conferred on the Reserve Bank to enable it to exercise effective control over all banks. Sections 21 and 35-A enable it to issue directives in public interest to regulate the charging of interest on loans or advances made from time to time...

38. We may, however, notice that a Division Bench of this Court without noticing the decision of the Constitution Bench in Central Bank of India (supra) in Oriental Bank of Commerce v. Sunder Lal Jain and Another [(2008) 2 SCC 280] opined as under:

8. A perusal of the aforesaid revised guidelines issued by Reserve Bank of India on 29-1-2003 for compromise settlement of chronic non-performing assets (NPAs) of public sector banks will show that the same will be applicable and will cover NPAs classified as substandard as on 31-3-2000 which have subsequently become doubtful or loss. The revised guidelines have no application where the NPAs have not been classified as substandard as on 31-3-2000. It is not in dispute that the account of the respondents was a performing account between 1-4-2000 and 31-3-2001.

According to the records of the Bank, the account was consigned to protest bill account on 15-10-2001 and was declared as NPA as per prudential norms of RBI on 31-3-2001. The respondents contested the case before DRT and did not admit their liability. No such plea was raised that their account had become NPA as on 31-3-2000 before DRT. Therefore, the revised guidelines issued by Reserve Bank of India on 29-1-2003 for compromise settlement of chronic non-performing assets (NPAs) of public sector banks were not at all applicable to the facts and circumstances of the case and no direction could be issued to declare the respondents' account as NPA from 31-3-2000.

39. Judicial discipline mandates the bench comprising of two Judges to follow the judgments of the Constitution Bench having regard to Article 141 of the Constitution of India.

40. If in terms of the guidelines issued by the Reserve Bank of India a right is created in a borrower, we see no reason as to why a writ of mandamus could not be issued. We would assume, as has been contended by Mr. Singh, that while exercising its power under Article 226 of the Constitution of India, the High Courts may or may not issue such a direction but the same, in our opinion, by itself, would not mean that the High Court would be correct in interfering with an order passed by the Appellate Tribunal which was entitled to consider the effect of such one time settlement.

41. The question pertaining to the present matter is regarding whether or not a circular issued by a statutory body for the governance and regulation of certain agreements confers a legal right upon the aggrieved party in case of non-compliance or complete and absolute deviation from the said guidelines by the body formulating such circulars. Alternately, can the aggrieved party, then, claim its right of judicial review under Article 32 or 226 to quash the said circular in case of discriminatory application of such rules/guidelines so mentioned in the circular.

42. In Union of India and Anr. v. Azadi Bachao Andolan and Anr [(2004) 10 SCC 1], it was held that a circular issued by the Central Board of Direct Taxes(CBDT) was not inconsistent with the provisions of the Income-Tax Act and was valid and efficacious. The assessing officers chose to ignore the guidelines and hence the CBDT was justified in issuing appropriate guidelines under Circular No. 789. The said Circular does not in any way crib, confine or cabin the powers of the assessing officers with regard to any particular assessment. It merely formulates broad guidelines to be applied in the matter of assessment of the assesses covered by the provisions of the Indo -

Mauritius Double Taxation Avoidance Convention, 1983.

43. In Commissioner of Income Tax v. Anjum M.H. Ghaswala and Ors. [(2002) 1 SCC 633], it was pointed out that the circulars issued by CBDT under Section 119 of the Income Tax Act have statutory force and would be binding on every income-tax authority although such may not be the case with regard to press releases issue by the CBDT for information of the public.

44. In UCO Bank v. CIT [(1999) 4 SCC 599], this Court opined that the circulars as contemplated therein cannot be adverse to the assessee. Thus, the authority which wields the power for its own advantage when required to wield it in a manner it considers just by relaxing the rigour of the law or in other permissible manners as laid down in Section 119. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interest.

45. In BSNL anr. v. BPL Mobile Cellur Ltd. ors. [2008 (8) SCALE 106], it was held that the direction contained in the said circular letters are relevant for the officers who are authorised not only to grant licenses but also enter into contracts and prepare bills. The circular letters having no statutory force undoubtedly would not govern the contract. A distinction, thus, must be made between statutory and non-statutory guidelines. A distinction must also be made between the circular which are relevant but not binding on the third parties and which are imperative in character.

46. As regards the Reserve Bank of India guidelines, it was the direction of the Appellate Tribunal that the Respondent-Bank should settle the case of the appellants under the RBI guidelines through a One Time Settlement and should invite a proposal for settlement and recovery of the agreed amount.

47. The Appellate Tribunal in passing its order followed the dicta laid down in Constitution Bench judgment in Central Bank of India (supra), wherein it was held that:

.....RBI directive have not only statutory flavour, any contravention thereof or any default in compliance therewith is punishable under sub- section (4) of S. 46 of the Banking Regulation Act, 1949.

48. We, therefore, are of the opinion that the impugned judgment cannot be sustained. It is set aside accordingly. The appeals are allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.