

**IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL  
COMMISSION**

**Date of Institution: 16.06.2015**

**Date of Hearing: 22.02.2024**

**Date of Decision: 30.05.2024**

**FIRST APPEAL NO.- 306/2015**

**IN THE MATTER OF**

**BANK OF BARODA.**

BANK OF BARODA BUILDING,

PARLIAMENT STREET

NEW DE;HI-110001

**(Through: Mr. Arun Aggarwal, Advocate)**

...Appellant

**VERSUS**

**1. MR. PREM CHAND CHACHRA,**

**2. MS. ASHA CHACHRA,**

BOTH 1&2 AT

J-14, SAKET,

NEW DELHI-110017.

**3. HINDUSTAN DEVELOPERS CORPORATION LTD.,**

MODY BUILDING, 27, SIR R.N. MUKHERJEE ROAD,

CALCUTTA-700001.

...Respondent in Person

**CORAM:**

**HON'BLE JUSTICE SANGITA DHINGRA SEHGAL  
(PRESIDENT)**

**HON'BLE MS. PINKI, MEMBER (JUDICIAL)**

Present: Mr. Praful Rawat, counsel for the Appellant.  
Respondent in person.

**PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL,**

**PRESIDENT**

**JUDGMENT**

1. The facts of the case as per the District Commission record are as under:

*“The complaint in respect of Debenture Redemption amount of 14% of 100 no, Folio no. P118162, certificate no.233541 & 223509 of Rs.50/- each, totaling to Rs 13,500/- inclusive of interest of Rs.8,500/- on total value of certification of Rs.5,000/-.*

*It is alleged that Bank of Baroda, is mortgages and trustee of above debentures and has granted payment of same along with interest on behalf of company and OP1, which has committed to pay the same in 5 equal installments from 20.04.099 to 20.04.03. However, no payment was received despite reminders. It is alleged that bank had not released the amount by taking the plea that they have filed cases against the original company OP2, stating that matter is sub-judice.*

*Therefore, this complainant praying for direction to OP1 for honoring the commitment to make above payment to complainant along with cost & damages etc.*

*he OP1 filed evidence on affidavit along with judgments of Consumer Dispute Redressal Commission of West Bengal in the Case of Bank of Baroda Vs. Vishwanath Poddar & others, dated 11.09.099 in FA/09/05. It's case is that in term of the trust deed dated 24.02.93 (Series IX), the debenture was secured by equitable mortgage of plants and immovable assets of OP2, and OP1 was empowered to enforce the security and institute proceedings for recovery of money & interest in respect of debentures, for benefit of all the debentures holders and not the individual debenture holder, and stated that it took all steps to protect the interest of debenture holders but OP2 proposed a scheme of arrangement with Hindustan Engine & Industries Ltd. Exh.OP1/2, and which is pending and OP2 filed a reference before BIFR, New Delhi, vide Exh.OP-1/10 dated 07.01.02. It has relied on the judgment of West Bengal Consumer*

*Dispute Redressal Commission, to say that consumer dispute does not lie between the debenture holder and trustees as relation between the complainant & OP was of debtor or creditor.*

*OP2 is exparte.*

2. The District Commission after taking into consideration the material available on record passed the order dated **07.04.2015**, whereby it held as under:

*“We have considered the rival case. The complainant has produced before us a judgment of full bench of Hon'ble National Consumer Dispute Redressal Commission in RP*

no.1299/203- 1301/2003, 1170/2005, 1076/2007, 3206/2007, 4059/2007, decided on 04.07.08, by Justice M.B Shah, the President.

*It is an illuminating vast judgement on the issue in similar case of bank of India and the Hon'ble National Commission in this vast judgement held that (a) the debenture holders are 'Consumers' and (b) bank as a trustee has a duty to first verify, at every stage, the financial position of the*

*Company which issued the debentures and secondly to ensure that these assets were at all relevant times adequate to meet the financial obligation of the Company to the debenture holders and Bank should have discharged its duty as a professional corporate trustee and if the loss was caused to the debenture holders due to its deficiency in not taking special care and in not exercising its special expertise as a corporate trustee, which is its profession, then it is liable for its deficiency in service.*

*In the light of above discussion that OP1 cannot take shelter behind its own deficiency, by relying upon the scheme of Arrangement initiated by OP2, and getting it declared a sick company. The remedy of consumer dispute holder is independent against the bank trustee and not against Company, for bank's deficiency in not at all times saving the interest of debenture holders.*

*In the light of above discussion, we direct OP1 bank to pay to complainant a sum of Rs.13,500/- with interest @ 12.5%*

*from date 20.04.03 till payment and we also award compensation of Rs.15,000/- for deficiency and Rs.10,000/- for litigating expenses since filing of complaint in 2003.*

*The order shall be complied with within 30 days of the receipt of the copy of the order; otherwise action can be taken under Section 25/27 of the Consumer Protection Act.”*

3. Aggrieved by the aforesaid order of the District Commission, the Appellant/Opposite Party No.1 has preferred the present appeal contending that the District Commission has failed to appreciate the fact that these issues are governed by a scheme. The counsel for the Appellant/Opposite Party No.1 submitted that the District Commission failed to peruse the trust deed and further failed to refer to any clause in the said deed. Lastly, the counsel submitted that without consent of BIFR, funds of the Respondent No.3 could not have been dealt with and only Respondent no.3 could have redeemed the debentures. Pressing the aforesaid submissions, the Appellant prayed for setting aside the impugned judgment.
4. The Respondent, on the other hand, denied all the allegations of the Appellant and submitted that there is no error in the impugned order as the entire material available on record was properly scrutinized before passing the said order.
5. We have perused the material available on record and heard both the parties.
6. The *only question* for consideration before us that *whether Appellant/Opposite Party No.1 is actually deficient in providing its services to the Respondent No.1&2.*

7. To deal with this issue, it is imperative to refer to **Regulations 15 (1) (n) of the Security Exchange Board of India (Debenture Trustees) Regulations, 1993**, wherein it is provided as under:-

*“15 Duties of the debenture trustees*

*(1) It shall be the duty of every debenture trustee to*

*(n) Perform such acts as are necessary for the protection of the interest of the debenture holders and do all other acts as are necessary in order to resolve the grievances of the debenture holders”*

8. Analysis of the aforesaid Regulation enunciates that the role of the Trustees is for safeguarding the financial interest of the debenture holders which also leads us to the conclusion that since, the Appellant being the mortgagee and trustee of the aforesaid debentures furthermore, the Appellant had guaranteed the payment of the same along with interest on behalf of the Respondent No.2/Opposite Party No.2. However, it is evident from the records that a sum of Rs. 13,500/- which is inclusive of interest of Rs. 8,500/- was not received by the Respondent No.1 as Debenture Redemption amount with respect to his total value of certification of Rs.5,000/-.
9. Therefore, it is clear that, the bank as a trustee has a duty to verify, at every stage, the financial position of the Company which issued the debentures and as a corporate trustee the bank/Appellant had an obligation to take special care and expertise in protecting and safeguarding the financial interest of the debenture holder/Respondent No.1 after exercising due diligence. Moreover, the contentions raised by the Appellant with respect to clauses in the trust deed holds no water.
10. Consequently, we are in agreement with the reasons given by the District Commission and fail to find any cause or reason to reverse the findings

of the District Commission. *Consequently, we uphold the order dated 07.04.2015 passed by the District Consumer Disputes Redressal Commission, M -Block, Vikas Bhawan, I.P. Estate, New Delhi-110002.*

11. Consequently, the present Appeal stands dismissed with no order as to costs.
12. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment.
13. FDR, if any be released in favour of the Respondent No.1.
14. The judgment be uploaded forthwith on the website of the commission for the perusal of the parties as well as forwarded to the corresponding E-mail address available on the record i.e. advarun36@gmail.com (Appellant).
15. File be consigned to record room along with a copy of this Judgment.

**(JUSTICE SANGITA DHINGRA SEHGAL)  
PRESIDENT**

**(PINKI)  
MEMBER (JUDICIAL)**

Pronounced On:  
**30.05.2024**

LR-SM