IN THE HIGH COURT OF SINDH,
AT KARACHI

C.P No. D-1434 of 2024

<u>Present:</u>
Yousuf Ali Sayeed and
Muhammad Osman Ali Hadi, JJ

M/s. Executive Aviation Pvt. Ltd……………………….Petitioner

Versus

Federation of Pakistan & others……………………..Respondents

Badar Alam, Advocate for the Petitioner a/w Muhammad Kashif Badar.
Manzoor Hussain, Advocate for Respondent No.2.
Aijaz Hussain Shirazi, Advocates for the Respondent No.3.
Muhammad Akbar Khan, Assistant Attorney General.

Date of hearing : 13.04.2024

<u>ORDER</u>

<u>YOUSUF ALI SAYEED, J.</u> The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution, assailing the status of its borrowings being reported by the Respondent No.3, a scheduled commercial bank, as being overdue in the Electronic Credit Information Bureau **(“eCIB”)** established by the Respondent No.2, the State Bank of Pakistan (“**SBP**”), in terms of Section 25-A of the Banking Companies Ordinance, 1962 (“**BCO**”).

2. It is unnecessary to for present purposes to dwell in detail upon the nature and quantum of the facilities obtained by the Petitioner from the Respondent No.3. Suffice it to say that certain facilities were apparently availed and the status of those borrowings came to be reported through the eCIB as being overdue in the wake of cross proceedings commenced by the Bank and Petitioner under the Financial Institutions (Recovery of Finances) Ordinance, 2001 (the "**2001 Ordinance**"), with such action having been assailed by the Petitioner on the touchtone of the judgment rendered by a learned Division Bench of this Court in the case reported as A & A Services through Proprietor Vs. Federation of Pakistan through Secretary Ministry of Finance & Askari Bank Ltd. & others 2014 CLC 809 as violating the principle of natural justice and Article 10-A of the Constitution.

3. Learned counsel for the Petitioner presented his arguments along the lines of the grounds raised in terms of the pleadings, contending that the act of placing the name of the petitioner on the eCIB without prior notice affording an opportunity of hearing, during pendency of the proceedings instituted under the 2001 Ordinance was mala fide, and against the principle of natural justice. He submitted that in the case of A&A Services (Supra), the practice of placing of a name on the eCIB without application of mind on the part of the SBP had been disapproved. He argued that the placement of an alleged defaulter on the eCIB prior to adjudication of the matter by the Banking Court violated the fundamental right guaranteed under Article 10-A of the Constitution. He submitted that in the instant case, the SBP had placed the name of the Petitioner on the eCIB without applying its independent mind as to the correctness of the information provided by the Respondent No.3.

4. Conversely, learned counsel appearing on behalf of the Respondents Nos. 2 and 3 pointed out that the reporting undertaken in the matter was a mandatory requirement in terms of the Section 25-A of the BCO, and relied upon a judgment dated 19.04.2021 rendered by a Division Bench of this Court in CP. No. D-4106 of 2019 (Re; M/s. Elite Screener v. Federation of Pakistan and others) and connected matters, where similar grounds raised with reference to A&A Services (Supra) under analogous circumstances had been repelled while considering that judgment. It was also pointed out that the A&A Services judgment had been appealed before the Supreme Court through Civil Appeal No. 77-K/2015, which was disposed of vide an Order dated 17.12.2018, observing that it would not serve as a precedent, with the Order reading as follows:

> "It is admitted that name of respondent No.1 has been deleted from the CIB List of State Bank of Pakistan and even the suit filed by respondent No.3 against respondent No.l has been dismissed. In view of such development in the case, the question before this Court in this very appeal has taken a turn that it is now an academic one as no live issue between the parties is pending nor they have reason to press for hearing of the matter.
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> 2. Be that as it may, Mr. Ijaz Ahmed Zahid, ASC for the appellant states that in the very impugned judgment of High Court, the High Court has made certain observations, which may cause some prejudice to appellants in obtaining of credit information of banks and then putting on its record in terms of section 25-A of Banking Companies Ordinance, 1962 and that if the appellant is allowed to agitate such question in future live proceedings and this impugned judgment will not be an obstacle, the appellant is agreeable to have the appeal disposed of in such terms. The appeal in the above terms stands disposed of."

5. In the context of the matter at hand, it merits consideration that Section 25-A of the BCO lays down the statutory framework for the collection and sharing of credit information in the following terms:

> **25A. Power of the State Bank to collect and furnish credit information. -** (1) Every banking company shall furnish to the State Bank credit information in such manner as the State Bank may specify, and the State Bank may, either of its own motion or at the request of any banking company, make such information available to any banking company on payment of such fee as the State Bank may fix from time to time:
>
> Provided that, while making such information available to a banking company, the State Bank shall not disclose the names of the banking companies which supplied such information to the State Bank:
>
> Provided further that, a banking company which proposes to enter into any financial arrangement which is in excess of the limit laid down in this behalf by the State Bank from time to time shall, before entering into such financial arrangement, obtain credit information on the borrower from the State Bank.

6. As per the explanation provided for purposes of Section 25-A, the term "credit information" means any information relating to-

> *(i)* *the amounts and the nature of loans or advances or other credit facilities, including bills purchased or discounted, letters of credit and guarantees, indemnities and other engagements extended by a banking company to any borrower or class of borrowers;*
>
> *(ii)* *the nature of security taken from any borrower for credit facilities granted to him;*
>
> *(iii)* *the guarantees, indemnities or other engagements furnished to a banking company by any of its customers;*
>
> *(iv)* *and operations or accounts in respect of loans, advances and other credit facilities referred to in this clause.*

7. As is apparent, the eCIB is intended to serve as a platform for the gathering, organizing and dissemination of information relating to the credit worthiness of borrowers so as to facilitate risk management through the sharing of credit information between financial institutions. Its genesis can be traced to BCD Circular No.6 dated 15.01.1990 issued by the Banking Control Department of the SBP in exercise of the powers conferred in terms of S.25-A of the BCO read with S.3(A) thereof, for establishing what was then termed the Credit Information Bureau', with quarterly reporting required physically in a prescribed form, with the evolution of the eCIB to its online form taking place through further circulars then issued by the SBP from time to time. As matters stand, the eCIB is presently regulated in terms of BC&CPD Circular No. 06/2021 dated 22.06.2021, being a master circular issued under Section 25-A in supersession of all previous instruction on the subject, stipulating as follows:

"**Master Circular on Electronic Credit Information Bureau (eCIB) of State Bank of Pakistan**
1. Purpose of eCIB:

1.1 Credit Information Bureau collects and collates credit data on borrowers from its member Financial Institutions (FIs). The financial data is then aggregated in the system and the resulting information (in the form of credit reports) is made available online to the member FIs for the purpose of credit assessment and credit risk management. The major purpose of this system is to enable the Financial Institutions (FIs) to know the credit history of their current and prospective customers thus enabling them to make informed and timely lending decisions.

2. Types of Credit Reports:

2.1 Currently, the member FIs can generate two types of reports from the eCIB system i.e. eCIB report for (i) Consumer/ Individual Borrowers and (ii) Corporate Borrowers by paying the service charges as specified by SBP from time to time (the FIs may recover only actual charges from their customers). Consumer Credit Report reflects the credit information of individuals/sole proprietorship borrowers while Corporate Credit Report reflects the credit information of public/private companies, firms/partnerships, corporations, and other forms of businesses.

2.2 The eCIB report contains position of funded & non-funded facilities including the amount of outstanding, overdue, write-off and repayment history of the borrower. However, eCIB report does not debar any FIs from taking credit exposure on borrowers with over dues/ late payments/ write-offs in their credit reports. The FIs make their own lending decisions based on their credit policies, the past track record of borrowers, and their repayment capacity.

3. Confidentiality of eCIB Reports:

3.1 Under section 25-A of the Banking Companies Ordinance 1962, the information of the eCIB is confidential and can only be used by SBP and its member FIs for their internal use and cannot be shared, published, or disclosed.

In order to facilitate the member FIs, consolidated general and specific instructions for reporting borrower's credit information to eCIB of SBP (as per format already shared and attached herewith at Annexure 1 to 4) are as follows for their meticulous compliance:

4. General Instructions for all the eCIB Member FIs for Reporting to eCIB of SBP:

4.1 All the eCIB member FIs are required to submit monthly data of their borrowers (excluding staff loans allowed to their employees in light of their boards' approved HR policies) electronically through the system to eCIB of SBP by the 10th of every month. In case of any problem at the end of the FI, the request for extension should be made by at least the Departmental/Business/Group Head of the respective FI along with proper justification to Director BC & CPD.

4.2 The member FIs are required to ensure correct, complete, and up-to-date reporting of information to SBP. In case of any wrong/ misreporting, the FI will be responsible for legal and other consequences.

4.3 The member FIs should also ensure upfront disclosure to their current and potential customers at the time of credit approval regarding the eCIB reporting requirements and the implications of any delinquency or non-payment of their liabilities on a timely basis.

4.4 Before reporting an overdue/ late payment of the concerned borrower (s) (i.e. Corporate/ Consumer/Individual) to eCIB, the member FIs shall send an intimation letter on their registered address or registered e-mail address to the concerned borrower (s) before reporting 90 days overdue against his/ her name to eCIB. Such letter shall, interalia, inform the borrower about the implications of reporting of name to eCIB, and allow a reasonable period (at least 15 days) for reconciliation/settlement of overdue liabilities.

4.5 In case of any financial relief i.e. write-off/waiver/restructuring or any other relaxation allowed to
a customer, the concerned FI should clearly mention in the offer, settlement, or clearance letter as the case may be in bold legible letters about its reporting to eCIB.

4.6 In case of subsequent clearance by the borrower of overdue/ defaults, the member FIs shall invariably report the same to eCIB online through the interim update option of the system, within three working days from the date of such repayment/ settlement.

4.7 The member FIs are required to report any financial relief allowed to their customers as write off/waiver in eCIB, however, the financial relief does not include financial reversals (such as credit card fee, annual charges, bank's commission, late payment charges, etc.) made by the FIs as per their own policy/ industry practices, on regular consumer loans/ financing. Hence the member Fis are not required to report the same to eCIB.

4.8 The member FIs should only report the actual amount of write-off/ waiver for which the FI recorded the accounting entry in their books.

4.9 A write off/ waiver/ payment holidays announced and allowed to certain borrowers by the Federal/Provincial Governments or by SBP due to any type of catastrophe or force majeure such as earthquake, flood, pandemic or war, etc., shall be exempted from the eCIB reporting as overdue/write off/ waiver/ restructuring, etc.

4.10 In cases of litigation(s), the member FIs should report the specific disputed amount which is under litigation in any court of law in the column 'under litigation' in the provided formats.

4.11 The member FIs should not report loan/advances facility (ies) of the borrowers, which are either expired/ matured or fully paid off and having no outstanding liabilities against the subject facility (ies).

5. Specific Instructions for all the eCIB Member FIs for Corporate and Consumer/ Individual Borrowers Credit Reporting:

5.1 Corporate Credit Information Reporting:
The member FIs should ensure the following in case of reporting of the credit information of their corporate borrowers (i.e. Private/ Public Limited Companies/ Corporations/ Firms/ Partnerships etc.).

5.1.1 The member FIs should arrange borrower code for their borrowers and their group/associated companies by searching the eCIB system/approaching SBP for issuance of the borrower code after conducting proper due diligence and providing required particulars to SBP.

5.1.2 The member FIs should ensure to report correct, complete, and up-to-date information related to borrowers like name, NTN number, facilities details and updated information of Directors and their CNICs as per the latest BBFS/Loan Application Form and SECP record.

5.1.3 The member FIs should ensure to report the overdue, classification category, risk ratings, etc. as per the format attached herewith.

5.1.4 Similarly, in the case of rescheduling/ restructuring of loans and advances, the member Fis should report only once when the loan/ advance is rescheduled/ restructured. However, in the case of consortium/ syndicated financing, if a loan facility (ies) of a customer is/ are rescheduled/ restructured, only the lead/ agent FI should report the same into eCIB, when it is rescheduled/ restructured. The history of the rescheduling/ restructuring will appear in the credit report for 5 years.

5.1.5.Write-off/ waiver allowed by the FI to its corporate borrowers will be reported in the same month data, in which actual accounting entry for write-off/ waiver is recorded/ passed in the books. The same will be reflected in the eCIB report of the concerned borrower for the period specified by SBP from time to time, currently, it is 10 years.

5.1.6 While the subsequent recovery in the reported write-off/ waiver shall be reported by the FI in the field of "Amount recovered against the written-off amount" as per the prescribed format.

5.2 Consumer/ Individual Borrowers Credit Information Reporting:

The member FIs should ensure the following in case of reporting of the credit information of their consumer/ Individual borrowers:

5.2.1 In case of charge off loans and advances under the relevant regulations of SBP currently applicable to agriculture and microfinance borrower, the member FIs are required to report the same as overdue instead of write-off/ waiver till the time it is actually written-off/ waived off as per their board's approved policies.

5.2.2 The member FIs while issuing NOC should explicitly mention that the negative history (i.e. overdue/ late payment/ write-off/ waiver.) will be reflected for two years after settlement.

5.2.23The member FIs should only report their borrower's loans/ advances data to eCIB and avoid reporting of the advance/ instant balance/ top-up amounts allowed by the cellular companies for their prepaid or postpaid customers. In case of overdrawn deposit (s) account due to their systems or operational errors/lapses, the FIs should fix their systems and avoid its reporting to eCIB.

5.2.4 The member FIs shall not report overdue/ write-off of auto and other similar loans of those borrowers/ lessees to eCIB, whose vehicles financed/ leased by them have been stolen or snatched/ total loss, provided the respective FI is fully secured to recover the entire outstanding amount from an insurance company under a valid insurance policy.

6. The member FIs should strictly comply with BC & CPD Circular No.1 of 2021 for ensuring quality data reporting in eCIB of SBP.

7. The member FIs should create awareness of eCIB reporting and its positive and negative implications for its customers and relevant staff members through proper guidance, disclosure and display in their branches and websites.

8. In case of any dispute/ complaint, the FIs should resolve the customer complaint within the timelines stipulated by SBP from time to time through a well-defined consumer grievance handling mechanism and avoid unnecessary referral of the complainants/borrowers towards SBP for its resolution until and unless it is unavoidable.

9. The member FIs should regularly review the borrower's financial and non-financial data and in case of any discrepancy/ inaccuracy, amend/ update the same accordingly to avoid unnecessary complaints.

8. As is apparent, under the prevailing statutory regulatory framework, the *vires* of which has not been impugned, the status of all bank lending is to be periodically reported on an ongoing basis through the eCIB irrespective of the quantum of exposure and whether overdue or otherwise and even the status of facilities that are not overdue is required to be reported. Ergo, to regard the eCIB as a defaulters list is a misconception. In fact it has been clarified for the avoidance of doubt through the circulars issued by the SBP that reporting is not tantamount to a declaration of default, and that the mere reporting of the status of a customer‘s borrowings as being overdue does not preclude that customer from obtaining further finances from either the bank in question or any other bank or financial institution, which remain at liberty to make an independent assessment for purpose of their lending in terms of their own credit policies. Furthermore, the standard format of the Consumer Credit Information Report reflects *inter alia* that where the individual facilities availed by a borrower are reported as being overdue, the reporting is staggered so as to commence from an initial threshold of 30+ daysoverdue, graduating to 60+ days before progressing to the 90+ day threshold contemplated in terms of CPD Circular Letter No.1 of 2010. As such, it falls to be considered that where the initial reporting of a facility as being overdue at 30+ days overdue is not subject to the requirement of notice as per the aforementioned Circular, it cannot then be said that prior notice is a *sine qua non* for reporting to the eCIB.

9. That being said, turning to the judgment in CP. No. D-4106 of 2019, being an analogous case concerning allegations of reporting of credit information in violation of law and the instructions of the SBP then in force, as given through circulars issued on the subject of the eCIB by the

SBP setting out instructions similar to BC&CPD Circular No. 06/2021, it merits consideration that the judgment in A&A Services (Supra) was considered along with the judgment in another matter reported as Syed Wajahat Hussain Zaidi v. State Bank of Pakistan through Governor and 7 others 2016 CLD 1084, with it being observed that while the same ostensibly reflected divergent views of Division Benches regarding recourse under such circumstances to Article 199, neither dealt with the question of the alternate remedy available before the Banking Mohtasib under Sections 82A(3) and 82B(5) of the BCO, with it being held that such disputes essentially fell within that domain, and that an aggrieved party ought to agitate its grievance before that forum rather than resorting to recourse before a Constitutional Court.

10. In view of the foregoing, the Petiton is found to be misconceived, and stands dismissed accordingly.

JUDGE

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