IN THE HIGH COURT OF SINDH, AT KARACHI

Present:
Muhammad Ali Mazhar and
Yousuf Ali Sayeed, JJ

Constitutional Petition No. D-4106 of 2019

M/s. Elite Screener.....**Petitioner**

Versus

Federation of Pakistan and others.....**Respondents**

Constitutional Petition No. D-732 of 2020

Shazia Arif.....**Petitioner**

Versus

Federation of Pakistan and others.....**Respondents**

Constitutional Petition No. D-733 of 2020

Danish Elahi.....**Petitioner**

Versus

Federation of Pakistan and others.....**Respondents**

Haris Rasheed for the Petitioner in C.P. No. D-4106 of 2019, and Haider Waheed, Advocate, for the Petitioners in C.P. Nos. D-732 & 733 of 2020.

Jaffer Raza, Advocate, for the Respondent No. 3 in C.P. No. D-4106 of 2019, and Shahab Sarki, Advocate, for the Respondent No. 3 in C.P. Nos. 732 & 733 of 2020.

Hussain Bohra, AAG and Manzoor-ul-Haq, Advocate, for the Federation and for the State Bank of Pakistan respectively, in all Petitions

Dates of hearing : 13.03.2020, 09.09.2020, 02.11.2020, 07.12.2020 and 21.12.2020

JUDGMENT

YOUSUF ALI SAYEED, J - The captioned Petitions all pertain to the Electronic Credit Information Bureau ("**eCIB**") established by the State Bank of Pakistan ("**SBP**") in terms of Section 25-A of the Banking Companies Ordinance, 1962 ("**BCO**"), with the respective Petitioners having each invoked the jurisdiction of this Court under Article 199 of the Constitution, assailing the status of their borrowings being reported by the concerned commercial bank as being overdue.

2. The reporting of the Petitioner in C.P. No. D-4106/2019, namely Minhaj-ul-Shams, has apparently ensued in the name of his proprietary concern through MCB Bank Limited ("**MCB**"), whereas the Petitioners in C.P. Nos. D-732/2020 and D-733/2020, who are mother and son, are apparently the sole proprietors of business concerns operating under the name and style of M/s. Zafar Agencies and of a concern termed the Elahi Group of Companies respectively - both maintaining a banking relationship as such with Bank Islami Pakistan Limited ("**BIPL**) and having been reported to the eCIB accordingly, ergo BIPL and MCB being arrayed as the Respondent No.3 in the relevant Petitions.

3. Albeit filed later in time, C.P. No. D-732/2020 nonetheless proceeded as the lead Petition, with the composite arguments advanced by learned counsel appearing for the Petitioner in that *lis* as well as connected C.P. No. D-733/2020 being largely adopted by the Petitioner's counsel in C.P. No. D-4106/2019, hence the matters will be dealt with by us in that order.

4. For present purposes, it is unnecessary to dwell in detail upon the nature and quantum of the facilities obtained by the Petitioners in each case. 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, with recovery proceedings having been commenced by the concerned banks under the Financial Institutions (Recovery of Finances) Ordinance, 2001 (the "**2001 Ordinance**") and certain suits having also been instituted by the Petitioners in C.P. No. D-4106/2019 and C.P. No. D-733/2020 before this Court under its original civil jurisdiction, disavowing their liability.

5. Turning firstly then to C.P. Nos. D-732/2020 and D-733/2020, succinctly stated, the case of the Petitioners in those matters is that the reporting made to the SBP by BIPL in respect of their borrowings is steeped in error, and has ensued without any prior notice to them, in the absence of any prior adjudication as to default or liability by any judicial forum, and *sans* any verification or application of mind on the part of the SBP.

6. To the extent of M/s. Zafar Agencies, it was submitted that the concerned officers of the BIPL (i.e. Mr. Saad Madni, the then Head of Corporate Banking of BIPL, and Mr. Adnan Naseem, the then head of the Southern Region, visited the office of said Petitioner and admitted the error on the part of the bank and provided assurances that the same would be rectified. In an endeavour to bolster the argument as to erroneous reporting, particular emphasis was placed on an undertaking said to have been given on 05.07.2019 by those employees following their separation from BIPL, ostensibly reflecting a transactional error underpinning the disputed liability. The same reads as follows:

"UNDERTAKING

This is a statement that we are giving on our own free will without duress.

We understand that there is a dispute in the accounts of M/s. Zafar Agencies w.r.t Liabilities of M/s. MSA Industries (Pvt) Ltd., & M/s. SIGMA/Refrigeration Limited. This is due to the error in Banking transactions for which we are responsible and will make sure that the same is rectified within a period of two weeks. We take full responsibility for the same.

M/s. Zafar Agencies have nothing to do with the Liabilities of M/s. MSA Industries (Pvt) Ltd., & M/s. SIGMA Refrigeration Limited and it's inadvertently being reflected into the accounts of M/s. Zafar Agencies. BIPL showing of Rs.300 million in the account of M/s. Zafar Agencies is wrong. This is a bonafide mistake based on our misunderstanding for which we are responsible.

We also undertake that if within the period of four weeks (5th August, 2019) if the same is not rectified then this undertaking may be shown to the BIPL and FIA for appropriate legal action against Bank.

Saad Ahmed Madni
Ex-Head of Corporate Banking
Bank Islami Pakistan
Limited.

Adnan Naseem
Ex-Corporate South
Bank Islami Pakistan
Limited.

Dated: 5th July, 2019."

7. Learned counsel for the Petitioners in the lead Petitions argued along the very lines of the grounds raised in terms of the pleadings – and in essence, the submissions advanced were as follows:

(a) That no notice or opportunity of hearing was ever provided to the Petitioners by BIPL or the SBP before reporting them as a "defaulter" on the eCIB, as required in terms of Circular No.1 of 2010, hence the reporting, being in contravention of the said Circular, was unlawful and the names of the Petitioners ought to be removed from the eCIB on that score alone.

(b) While S.25-A of the BCO and the Circulars of the SBP require financial institutions to *inter alia*, furnish data through the eCIB regarding those persons who have defaulted in their commitments towards said financial institutions, a declaration to that effect by a competent Court of law is a *sine qua*

non before anyone can be so declared and reported for purposes of the eCIB. In the absence of any adjudication of liability against the Petitioners by a competent judicial forum, BIPL had no authority to make an adverse report against them on the eCIB.

(c) That by subsequently initiating recovery proceedings, the Respondent No.3 has conceded that the authority for adjudicating any alleged liability is that of the concerned Court having jurisdiction, yet has acted as a judge in its own cause by declaring that the Petitioner be termed a "defaulter".

(d) That the reporting of a party as a defaulter should be undertaken with due care and caution, whereas in the present case there was a serious dispute as to the alleged liability, hence the reporting was mala fide and illegal, constituting an act of coercion for obtaining payments which were not due.

(e) That the consequences for the Petitioners in terms of resultantly being deprived of any further finance, has had a serious, detrimental and irreparable impact on the carrying on of their business.

(f) That the SBP acted in dereliction of its statutory duty and its functionaries failed to apply their minds to the requests for inquiry made by the Petitioners, instead, on the mere allegation of BIPL the SBP reported the Petitioners as a "defaulter" on the eCIB, and continued to maintain such reporting. The SBP ought to have conducted an inquiry and offered the Petitioners an opportunity of hearing before adding their names to the eCIB.

8. Reliance was placed on the judgments rendered in the context of the eCIB by learned Division Benches of this Court in the cases reported as A & A Services v. Federation of Pakistan 2014 CLD 809 and Sukkur Beverages (Private) Limited v. Federation of Pakistan and others 2020 CLD 110, with it being contended with reference to the principle laid down by the Honourable Supreme Court in the case reported as Multiline Associates v. Ardeshir Cowasjee and others 1995 SCMR 362 that the judgment rendered by another learned Division Bench on the subject of the eCIB in the case

reported as Syed Wajahat Hussain Zaidi v. State Bank of Pakistan through Governor and 7 others 2016 CLD 1084 ought not to be followed in as much as the decision in A & A Services (Supra) was earlier in time, thus ought to hold the field.

9. Learned counsel for the Petitioner in C.P. No. D- 4106 of 2019 largely adopted the preceding arguments, but emphasised that in his particular case the SBP had failed to consider the fact that in the recovery suit filed by MCB under the 2001 Ordinance, the Leave to Defend Application of the Petitioner had also been granted, hence there was a genuine dispute between the parties requiring evidence and the claim of MCB was yet to be proven. Accordingly, the action taken against the Petitioner of placing his name in the defaulter list was completely arbitrary and mala fide. It was also submitted that under Section 24 of the Credit Information Bureaus Act, 2015, the SBP was under an obligation to take reasonable steps to ensure that unverified and misleading information was not placed in the eCIB, which had not been done in the instant case, hence the reporting was unlawful.

10. In the wake of these submissions, it was sought with reference to the prayers advanced through the Petitions that the reporting in respect of the Petitioners in the eCIB without providing a fair opportunity of hearing and without determining the merits/credibility of the reports of BIPL and MCB be declared as unlawful and unconstitutional, with the SBP being directed to remove their names from the eCIB until the time that such an opportunity of hearing was afforded or a competent Court had adjudicated the existence of their liability.

11. Conversely, learned counsel appearing on behalf of the SBP submitted with reference to Section 25-A of the BCO and the relevant Circulars issued by the SBP that it was a mandatory requirement of law for every banking company to furnish credit information regarding its borrowers to the SBP and for every banking company proposing to enter into any financial arrangement to obtain credit information regarding the prospective borrower from the SBP. He explained that it was a misconception that the eCIB was a 'defaulters list', as the reporting merely reflected the credit history of a borrower and the outstanding and overdue position and repayment history of a borrower, but did not determine liability or declare the borrower to be a defaulter. Furthermore, he refuted the very premise that it was the SBP that had reported the Petitioner, clarifying that as per the overall scheme underpinning the eCIB, reporting was a function and obligation of the concerned banks, which was to take place electronically though data entry at their end, without further data input on the SBP's part.

12. By way of further clarification, learned counsel stated that the eCIB merely provided a mechanism to facilitate transparency and enabled financial institutions holding depositors' funds to make informed decisions prior to embarking on a financial commitment, but the reporting of a person's borrowings in the eCIB as being overdue did not place a bar on that borrower obtaining further financing from the concerned bank or any other bank(s) for that matter. Moreover, in terms of the Prudential Regulations for Corporate/Commercial Banking, the SBP has allowed banks to take credit exposure even on those borrowers with over dues/write-offs in their accounts on the condition that while doing so they should strictly follow their risk management policies and credit approval

criteria and properly record reasons and justifications in the approval form. The financial institutions were thus at liberty to make their own lending decisions, based on their credit policies, past track record of borrower and repayment capacity.

13. Referring to the judicial precedents cited on behalf of the Petitioners, it was submitted that the case of Sukkur Beverages (Supra) was distinguishable as that matter turned on the absence of a financial agreement recording the relationship between the parties as 'customer' and 'financial institution' within meaning of the FOIRA, whereas there was no such issue in the instant case. Furthermore, the judgment in A & A Services (Supra) was shorn of its precedential value due to the Order made by the Honourable Supreme Court on 17.12.2018 in the ensuing Civil Appeal bearing No. 77-K of 2015, the operative part of which reads as follows:

> "It is admitted that name of respondent No.1 has been deleted from CIB List of State Bank of Pakistan and even the suit filed by respondent No.3 against respondent No.1 has been dismissed. In view of such development tin the case, the question before this Court in this very appeal has taken a turn that is now an academic one as no live issue between the parties is pending nor they have reasons to press for hearing of the matter.
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> 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 is disposed of in such terms. The appeal in the above terms stands disposed of."

14. It was submitted that the Petitions were even otherwise not maintainable in view of Section 18 of the Federal Ombudsmen Institutional Reforms Act, 2013 ("**FOIRA**"), coupled with Sections 82A and 82B of the BCO, providing for the appointment of a Banking Mohtasib, as there was an alternate remedy available to the Petitioners before that special forum. Moreover, it was argued that even if the Petitions were deemed to have surmounted the threshold of maintainability on that particular score, the same were nonetheless liable to be dismissed as the relief sought was contrary to the statutory mandate of Sections 25A, 90, 93C and 94 of the BCO, hence could not be granted.

15. Learned counsel appearing on behalf of BIPL and MCB submitted that the said banks were under a statutory duty to submits periodic reports to the SBP through the eCIB in accordance with S.25-A of the BCO and the relevant Circulars issued from time to time by the SBP, and as the Petitioners had failed to make timely payment in accordance with their repayment obligations in respect of the facilities availed by them, the facilities had fallen overdue and their status had been reported accordingly. As the outstanding obligations remained overdue, they were then reported in the "past due 90 days plus", category in due course. It was emphasised that such reporting was incumbent upon banks as part of their mandatory obligation under statute and had nothing to do with the adjudication or determination of default by any Court of law. It was also submitted that the Petitioner in C.P. No. D- 4106 of 2019 had acknowledged his liability by agreeing to a settlement.

16. In rebuttal, counsel for the Petitioners sought to establish the maintainability of the Petitions through recourse to the counter-argument that Section 25-A of the BCO and the Circulars of the SBP envisaged and related to the furnishing of correct/accurate information, whereas the reporting by BIPL and MCB was *mala fide* and flawed, thus could not be regarded as 'information' and therefore fell beyond the pale of S.25-A, and as such reporting had also ensued without adjudication of liability by a Court as well as without prior notice/intimation to the Petitioners, such an action was violative of the principles of natural justice, hence justiciable under Article 199 of the Constitution. Particular emphasis was placed on BPRD Circular/Letter No.01 of 2010 dated 12.01.2010, whereby all banks and Development Finance Institutions ("**DFIs**") had been advised to send an intimation letter to the concerned borrower before reporting 90 days overdue against his/her name to eCIB, inter alia, inform the borrower about the implications of such reporting and allowing a reasonable time period (at least 15 days) for reconciliation/settlement of overdue liabilities.

17. Having heard various sets of arguments advanced by learned counsel for the Petitioners, the SBP as well as the concerned commercial banks, viz.- BIPL and MCB, and having examined the material placed on record, we would commence our examination of the matter from S.25-A of the BCO, which lays down the basic 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.

18. Furthermore, 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; and

(iv) *operations or accounts in respect of loans, advances and other credit facilities referred to in this clause.*

19. The genesis of the eCIB as it stands can then 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 and in a prescribed form.

20. If the reason for that initiative were not already self-evident from a plain reading of the enabling statutory provision, the same can be readily discerned from a perusal of that formative Circular, which inter alia reads as follows:

BCD Circular No.6. **15th January, 1990.**

All banks and NBFIs.

Dear Sirs,

CREDIT INFORMATION BUREAU

It has been decided to establish a Credit Information Bureau in the State Bank of Pakistan. The Bureau will record details of borrowings, over dues and similar financial data as well as descriptive information in respect of individuals, sole proprietors, partnerships and limited companies and other entities whose overall liabilities to a bank or non-bank financial institution (NBFI) exceed a certain minimum amount which shall be prescribed by the State Bank from time to time. It has been decided that initially data on borrowers having overall liabilities of Rs. one million and above shall be recorded. The data to be recorded by the Bureau shall be based on information and returns furnished by the banks and non-bank financial institutions. The data will be updated every quarter.

2. The State Bank shall provide, on request or its own motion, such aggregated credit data in respect of borrowers to banks and non-bank financial institutions that may be used in the management of their credit and investment portfolio. The banks and non-bank financial institutions shall be free to obtain credit information on borrowers from the State Bank on payment of such fee as State Bank may fix from time to time."

21. As such, it is apparent that the Bureau was 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, and its evolution can be charted through further circulars then issued from time to time by the concerned departments/directorates of the SBP, leading up to its conversion as an online facility. BSD Circulars No.4 of 2003 and No. 06 of 2006 are significant in that regard, reading as follows:

"**BSD Circular No.04 February 25, 2003**

The Presidents/Chief Executives
All Banks/ DFIs/NBFCs
Dear Sirs/Madam,

CIB ON-LINE

You will be pleased to know that State Bank of Pakistan has made its Credit Information Bureau (CIB) facilities online in collaboration with Pakistan Banks Association (PBA). Through this facility, banks/financial institutions can now seek credit worthiness reports and submit their monthly credit data to the Bureau electronically via dial up. Resultantly, the time lag in submission of data to CIB and retrieval of credit reports will be minimized so as to promote efficiency in the credit appraisal processes of banks/DFIs/NBFCs.

2) For availing online facility of obtaining Credit Worthiness Reports, banks/DFIs/NBFCs shall be required to sign an agreement with SBP on the prescribed format, the specimen of which can be obtained from this office effective from 28th February 2003. The applicant banks/DFIs/NBFCs will be connected online after signing of the agreement and payment of joining fee of Rs. 130, 000/-. Banks shall pay the joining fee to PBA, while DFIs and NBFCs shall pay the fee to SBP. After completion of above formalities, SBP shall provide necessary guidelines, software, users ID etc. to the banks/DFIs/NBFCs. All banks/DFIs/NBFCs are advised to join CIB online at the earliest but not later than 30th April 2003. The State Bank shall not entertain any request for issuance of credit reports manually after 30th April 2003.

3) The existing formats of data collection and credit worthiness reports of CIB have been critically examined in consultation with PBA to bring them at par with international best practices. As a result, the existing formats of data collection (viz. CIB-I, II & III) circulated vide our BSD Circular No.16 dated 26th March 2001 have been revised thereby deleting certain redundant fields/items, increasing the width of few fields and adding some new fields/items. The Revised CIB I, II & III formats are enclosed as Annexure-I

4) Banks/DFIs/NBFCs are advised to submit CIB data of borrowers of Rs.0.5 million and above on the revised formats online through their authorized persons, effective from the month ending 30th April 2003 from their pre-notified telephone numbers, within 15 days from the close of each calendar month. However during the three months parallel run period (upto June, 2003), Banks/DFIs/NBFCs shall continue to submit the above data on floppy diskettes (DBF format) also.

Please acknowledge receipt."

BSD Circular No. 06 of 2006 May 08, 2006

The Presidents/Chief Executives,
All Banks/DFIs/NBFCs/Modarabas

Dear Sirs / Madam,

eCIB DATA REPORTING LIMIT

As you know that SBP is working on a project of extending the scope of its Credit Information Bureau by removing the existing CIB data reporting limit of Rs. 500,000. This project was undertaken to cater to the increasing consumer credit information of the financial institutions. In this regard, data capturing software application was rolled out to all member financial institutions in September, 2005 with the instructions to report the data to CIB on the new system as well. Thus, both the systems i.e. old and new have been running parallel since October 2005.

2) The new system is now fully operational and financial institutions can generate separate credit information reports in respect of consumer and corporate borrowers irrespective of size of outstanding amount of exposure. It has, therefore, been decided to discontinue the reporting to CIB on old system. Accordingly, you are advised to submit data for the month of April 2006 through the new system only by May 20, 2006 and onwards by 15th of the following month. However, for generation of Credit Worthiness Reports (CWR), the old system will also remain alive till May 31, 2006 and thereafter CWR will only be generated on the new system and old system will be suspended altogether.

3) It may be recalled that all banks/institutions were earlier advised vide our letter No.BSD/SU-61/101/949/2006 dated March 03, 2006 to ensure complete reporting under the new eCIB system, as institutions themselves will be responsible for consequences of non or partial reporting in the event of discontinuance of the old system. It is, once again, reiterated to ensure complete reporting of the data under the new eCIB system from the month of April, 2006 and onwards as non/partial reporting will result in deletion of borrowers of your bank/institution from the CIB system.

Please acknowledge receipt."

22. It merits consideration in the matters at hand that the Petitioners have not impugned the vires of S.25A of the BCO or challenged any circular issued in that regard. Instead, their case proceeds on certain disparate assertions as to the eCIB being a defaulters list, to which

a report of default cannot be made in the absence of an adjudication in that regard by a competent Court, as well as the assertion that such reporting requires prior notice in terms of CPD Circular Letter No.1 of 2010 dated 12.01.2010, whereby all banks/DFIs were advised that to send an intimation letter to the concerned borrower before reporting 90 days overdue against his/her name to eCIB, stating the implications of such reporting and providing a curing period of 15 days. Indeed, it has been stated in the written arguments filed in that matter that the "*petitioner at hand does not contend that the Circulars in and of themselves are unconstitutional, but the actions of the State Bank in permitting private banks to publish "information" which is false, which it knows to be in dispute and without affording an opportunity of hearing to the party that will be affected as result of any inaccurate reporting. The State Bank cannot be considered absolved of its duty, if it is the entity maintaining the e-CIB list / source of information, from verifying and ensuring that information transmitted is correct*". The aforementioned CPD Circular Letter No.1 of 2010 reads as follows:

> "**REPORTING TO eCIB**
>
> Please refer to BSD Circular No.16 dated November 6, 2004, wherein banks/DFIs were advised to follow the instructions contained therein with regard to reporting of credit data to private credit bureaus. In this connection banks/DFIs are advised to observe the following instructions before reporting an overdue to eCIB of State Bank of Pakistan:-
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> The banks/DFIs shall send an intimation letter to the concerned borrower 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 reasonable time period (at least 15 days) for reconciliation/settlement of overdue liabilities.
>
> All other instructions on the subject shall, however, remain unchanged.
>
> Please acknowledge receipt."

23. In this regard, it is noteworthy that under the prevailing regime, 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+ days overdue, 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.

24. Turning to the judgments relied upon in the matter by the Petitioners, it bears mention that the case of Sukkur Beverages (Supra) is apparently distinguishable as the crux of the determination in that matter was whether the placement of the petitioner on the eCIB was just and proper when there are no financial agreements recording the relationship between the parties as

customer and financial institution, within the contemplation of the FOIRA, and there was also no security documentation purporting to secure any obligation that may have accrued. It was in that particular context that the learned Division Bench (of which one of us, namely Mohammad Ali Mazhar, J, was a member) concluded that the adverse reporting of that petitioner through the eCIB, prior to determination of the very agreement in respect whereof a default is alleged, was unwarranted under such facts and circumstances.

25. Where however there is admittedly a banking relationship entailing a borrowing, the Constitutional jurisdiction does not present the appropriate vehicle for determination of a dispute gravitating around the question as to whether the reporting being made in that regard is accurate or not. Needless to say, the purported acknowledgment, that too of erstwhile employees of the bank, can scarcely be taken as determinative of the fact.

26. Furthermore, as to the judgments in the case of A & A Services (Supra) and that of Syed Wajahat Hussain Zaidi (Supra), whilst it transpires that the same ostensibly reflect divergent views taken by different learned Division Benches of this Court regarding the recourse available under Article 199 of the Constitution to a party aggrieved by reporting to the eCIB - it being held in the former that adverse reporting prior to an adjudication of default by a competent Court would violate Article 10A of the Constitution and it contrarily being held in the latter that reporting to the eCIB in consonance with S.25-A of the BCO as well as the relevant circulars issued by the SBP did not in any way encroach upon fundamental rights, at the end of the day, the effect of the Order in Civil Appeal bearing No. 77-K of 2015 aside, it is manifest that neither of those matters dealt with the question of

maintainability arising in view of the alternate remedy available before the Banking Mohtasib under Sections 82A(3) and 82B(5) of the BCO, as agitated here on behalf of the Respondents.

27. Those particular Sections of the BCO circumscribe the jurisdiction and authority of the Banking Mohtasib as follows:

S. 82A (3) "the jurisdiction of the Banking Mohtasib in relation to banking transactions shall be to —

(a) enquire into complaints of banking malpractices;

(b) perverse, arbitrary or discriminatory actions;

(c) violations of banking laws, rules, regulations or guidelines;

(d) inordinate delays or inefficiency and

(e) corruption, nepotism or other forms of maladministration."

S.82-B(5) - In relation to all banks operating on Pakistan, the Banking Mohtasib shall be authorised to entertain complaints of the following nature: -

(i) failure to act in accordance with banking laws and regulations including policy directives or guidelines issued by the State Bank from time to time.

Provided that if there is a dispute as to the proper interpretation of any regulations, directions or guidelines the same shall be referred to the State Bank for clarifications.

(ii) delays or fraud in relation to the payment or collection of cheques, drafts or other banking instruments or the transfer of funds;

(iii) fraudulent or unauthorized withdrawals or debit entries in accounts:

(iv) complaints from exporters or importers relating to banking services and obligations including letter of credits.;

(v) complaints from holders of foreign currency accounts, whether maintained by residents or non-residents;

(vi) complaints relating to remittances to or from abroad;

(vii) complaints relating to markup or interest rates based on the ground of a violation of an agreement or of State Bank directives; and

(viii) complaints relating to the payment of utility bills."

28. In the matter at hand, other than the factual plea as to the reporting being inaccurate, as already discussed herein above, the principal thrust of the arguments advanced on behalf of the Petitioners on a legal plane is that of notice being required prior to an amount being reported as overdue, which gravitates around CPD Circular Letter No.1 of 2010 dated 12.1.2010, thus bringing the matter within the orbit of S.82A(3) read with S.82B(5)(i) of the BCO. As such, the maintainability of the Petitions comes into question in view of the existence of that alternate remedy under the given circumstances, it being well settled that the jurisdiction under Article 199 is not a substitute for the remedy available before an alternate forum under the relevant law – in this case the BCO.

29. That being so, in view of the alternate forum being available under S.82A(3) read with S.82B(5)(i) of the BCO, we are of the opinion that the instant Petitions are not maintainable under Article 199 of the Constitution, hence the same are dismissed, leaving the Petitioners to avail their remedy before the Banking Mohtasib, if so desired.

JUDGE

JUDGE

Karachi
Dated _____