

CANARA BANK AND ORS.
v.
NATIONAL THERMAL POWER CORPORATION AND ANR.

DECEMBER 5, 2000

[K. T. THOMAS AND R. P. SETHI, JJ.]

Companies Act, 1956—Sections 111 and 153—Mutual Fund under the Trusteeship of a Public Sector Bank—Purchase of bonds of Public Sector Corporation by the Trust from a banking company, which subsequently went into liquidation—Deposit of bonds by Trustee with Corporation for registration in the name of Trustee—Refusal of registration for want of 'no objection certificate' from the banking company which sold the bonds—Corporation adjusting redemption proceeds of the bonds against other dues of the Trustee—Reference of disputes to High Powered Committee by High Court—Held, there is no genuine dispute for reference to High Powered Committee—Corporation cannot adjust redemption proceeds as the bonds are held in trust.

Appellant-Public Sector Bank as Principal Trustee/Settler created a trust Can bank Mutual Fund (CBMF) through which it conducted business of mutual fund. In August 1988, the CBMF purchased bonds of Respondent-Public Sector Corporation worth Rs. 2.17 crores through a stock broker from Bank of Karad, the respondent Banking Company. CBMF lodged he bonds in different lots during 1992-93 with the Corporation for registration of the same in the name of the trustee. Meanwhile, the Banking Company went into liquidation. The Corporation wanted a no-objection certificate from Official liquidator of the Banking Company before registering the transfer of bonds. Appellant-bank requested the Liquidator of the Banking Company to issue the no-objection certificate in favour of CBMF to the Corporation stating that the purchase of bonds was *bona fide* and that the transaction had taken place much prior to the relevant period prescribed under Section 531 of the Companies Act, 1956. On failure to get the required certificate from the Liquidator of the Banking Company, the Corporation returned back the original bond certificates to CBMF. Appellant-Bank filed an appeal before Company Law Board under Section 111 of the Companies Act, 1956 against the Corporation for direction to transfer the bonds in the name of the trustee and to pay redemption proceeds with interest at 24% from the date of maturity till the date of payment. The Board held that in view of restriction imposed

- A** under Section 153 of the Companies Act, 1956, only the name of the appellant-Bank can be entered in register of holdings and not the name of the trustee. The Board, however, held that the Corporation cannot adjust the redemption proceeds against dues of the appellant-bank as the bonds were held in trust. The Board further held that the dictum of this Court in *Oil & Natural Gas Commission and Anr. v. Collector of Central Excise*, [1995] Supp. 4 SCC 541
- B** for reference of dispute to High Powered Committee was not applicable to the facts of the case. On appeal by the Corporation, High Court set aside the orders of the Board and referred the disputes to the High Powered Committee. Hence these appeals.
- C** Appellant-Bank contended that the reference of disputes to High Powered Committee was not necessary as there did not exist a genuine dispute between the parties.

Allowing the appeals, the Court

- D** **HELD : 1.1.** The judgment in *ONGC's* case is intended to prevent frivolous litigation between the Government Departments and Public Sector Undertakings in the Courts and resolve the disputes amicably by the High Powered Committee specially set-up for the purpose. There does not appear to be a genuine dispute between the Government of India undertakings. The Board was justified in holding that the real litigation is between CBMF and the Corporation and not between the two undertakings. The claim preferred on behalf of CBMF was not denied by the Corporation but in turn a counter claim with respect to the liability of a subsidiary of the Bank was raised. The dispute raised is without laying any basis or placing on record any evidence in support thereof. Imaginative disputes raised only to defeat the undisputed claim of the Trustee could not be made the basis to deprive the Trustees and ultimately the public at large, of the value of the bonds which had, admittedly, been received by the Corporation with unambiguous undertaking to repay the same. [395-B-E]
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- F**
- G** **1.2.** The bonds were transferable and the Corporation was under a contractual and statutory obligation, to pay the value thereof to the transferee. Such a transferee could not be denied the payment of the value of the bonds on the ground of the liability of the transferrer or any of its subsidiary. The perusal of the bond incorporating the condition of payment unambiguously shows that no dispute can be raised by the Corporation for payment of the amount on demand to its holder or order. The claim of the Corporation, if any,
- H** can be enforced separately against the subsidiary of the appellant-bank but

cannot be made a ground to resist the claim of the appellants. The High Court was not right in referring the alleged disputes to the High Powered Committee with the aid of judgment in *ONGC's* case. It was under an obligation to give a finding with regard to the directions given by the Board to pay the redemption to the appellant-bank. The Trustees of the Trust constituted by the appellant-bank as Settlor for the benefit of numerous units holders cannot be termed and styled as Government Company or Public Sector Undertaking. The dispute raised by the Corporation with the appellant-bank was imaginary and even prima facie not real. The Board in its order had dealt with all aspects of the matter and rightly concluded that *ONGC's* judgment was not applicable in the facts and circumstances of the present case. [395-F, G, H; 396-A-B]

Oil & Natural Gas Commission & Anr. v. Collector of Central Excise, [1995] Supp. 4 SCC 541, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7103 and 7104 of 2000.

From the Judgment and Order dated 6.7.99 of the Delhi High Court in Company Appeal Nos. 23 and 22 of 1996.

R.N. Trivedi, Additional Solicitor General, Gopal Subramaniam, Dr. A.M. Singhvi, N. Menon, Jay Savla, Ms. Sunita Dut, Rakesh K. Sharma, Ciccu Mukhopadhaya, Manish Kumar, V. Krishnamurthy and Pramod Dayal for the appearing parties.

The Judgment of the Court was delivered by

SETHI, J. Leave granted.

As the question of law in both the appeals is common and the facts similar, the appeals are being disposed of by this common judgment.

The appellants are aggrieved of the impugned judgment passed by the High Court in Company Appeals by which the orders passed by the Company Law Board have been set aside and disputes allegedly existing between the parties referred to the High Powered Committee in terms of the judgment of this Court in *Oil & Natural Gas Commission & Anr. v. Collector of Central Excise*, [1995] Supp. 4 SCC 541. It is contended that the dictum of this Court in *ONGC's* case was not applicable to the facts of the cases under appeals, as there did not exist a genuine dispute between the parties which could be referred to the High Powered Committee.

A The facts giving rise to the filing of the present appeals, as extracted from the Appeal arising out of SLP (C) No. 14660, are as under.

The appellants filed Company Petition Nos. 11/111/-95CLB & 12/111/95-CLB under Section 111(4), (5) & (7) of the Companies Act before the Company Law Board, Northern Region Bench, New Delhi, stating therein that they were

B Trustees of Canbank Mutual Fund (hereinafter referred to as "CBMF"), a Trust constituted under the Indian Trusts Act, 1882. The main object of the Trust is to conduct business of mutual fund by permitting savings of small and individual investors through various schemes, inviting subscriptions from the prospective investors and channelising the funds into the capital market for attractive returns. From September, 1993 CBMF was being managed

C by an Asset Managing Company, the Appellant No. 6. Appellant No.1 is a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1971. The Bank as "Settlor" by an Adventure of Trust dated 17th December, 1987 had constituted the Trust CBMF, the Settlor being its Principal Trustee. The National Thermal Power Corporation,

D respondent No.1 (hereinafter referred to as "the corporation") is a Government of India Enterprise and respondent No. 2 a Banking Company which went into liquidation. On 5.8.1988 the CBMF purchased 14% NTPC Bonds (of the corporation) having face value (FV) of Rs. 2.17 crores along with several other bonds through the Broker M/s.Batliwala & Karani in respect of which Cheque

E No. 80961 dated 5.8.1988 was issued in favour of Bank of Karad, second respondent-bank who in turn issued a BR undertaking to deliver the securities. In 1989 the BR was liquidated by delivery of bonds. Out of the aforesaid bonds the respondent-company vide its letter dated 11.8.1992 lodged the bonds valuing Rs. 4 crores for registration of transfer in the name of Canara Bank, Trustee of the CBMF. On 25th September, 1992, CBMF lodged with the

F corporation for registration of the bonds of FV Rs. 50.05 lacs in the name of Canara Bank, Trustee CBMF. On the same date the CBMF lodged bonds of FV Rs. 50 lacs with the Corporation with a request to register the same in the name of Canara Bank, Trustee CBMF. Again on 11.2.1993 CBMF lodged the bonds of FV Rs. 113 lacs with the respondent corporation for registration in the name of Canara Bank, Trustee CBMF after removing the objections. The

G Corporation wanted the CBMF to produce no objection certificate from the Official Liquidator of the Bank of Karad for the purpose of registering the transfer of the bonds for which letter dated 17.5.1993 of the Bank of Karad was furnished with all documentary proof of the purchase of bonds of FV of Rs. 2.17 crores from the Bank of Karad on 5.8.1988. Request was made to the

H Liquidator, appointed in the winding up proceedings against the said Bank,

to confirm to respondent Corporation that the CBMF's purchase was *bonafide* and the transaction had taken place much prior to the relevant period prescribed under Section 531 of the Companies Act. On 17.5.1993 a letter was sent to the respondent-corporation setting out the particulars of the purchase of the bonds and re-stating that the relevant document had already been submitted in proof of the bonafide title to the bonds. The request was renewed by the CBMF again by writing letter to the Corporation on 28th June, 1993. Another letter dated 21st September, 1993 was addressed to the official liquidator requesting him to issue a no objection certificate as demanded by the corporation. On 18.10.1993 the CBMF was informed that as 'no objection certificate' had not been furnished, the original bond certificates were being returned for further necessary action by the CBMF. On 2.11.1993, Appellant No.6, the Canbank Investment Management Services Ltd. addressed a letter to the official liquidator of the Bank of Karad suggesting that CBMF would move the court for a direction to the CBI for production of relevant documents of Bank of Karad, under liquidation, and the official liquidator could obtain copies of those documents on the basis of which he could issue a no objection certificate. Inaction attributable to the official liquidator was intimated vide letters dated 18.11.1993 and 15.7.1994. It was contended before the Company Law Board that the official liquidator was not justified in not issuing the no objection certificate. It was submitted that the corporation was bound and liable in law to transfer the aforesaid bonds in the name of Canara Bank, Trustee of CBMF and pay the redemption proceeds in respect thereof since the transaction was not transgression of Section 531 of the Companies Act. The appellants therefore, prayed:

“(a) Respondent No.1 company be ordered and directed to transfer the bonds stated below, in the name of Canara Bank: Trustee: Canbank Mutual Fund.

THE DETAILS OF THE BOND CERTIFICATES

Certificate	From Number to	Value Certificate Rs. Each	Total Rs. in Lacs	
128802	130801	2000	5,000	100.00
165338		1	1,00,000	1.00
165586	165588	3	1,00,000	3.00
0000007	0000010	4	10,00,000	40.00

A	0000012		1	10,00,000	10.00
	0006647	0006651	5	1,00,000	5.00
	0006684	0006541	58	1,00,000	58.00

TOTAL VALUE OF CERTIFICATES ENDORSED BY BOX LIMITED
217.00

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(b) Respondent No. 1 be ordered and directed to rectify the Register of Bond Holders and delete the name of Bank of Karad or any other holder appearing in such Register and instead insert the name of Canara Bank: Trustee Canbank Mutual Fund.

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(c) Respondent No.1 be ordered and directed to pay to Canara Bank: Trustee Canbank Mutual Fund the redemption amount in respect of the said bonds along with other interest at 24% from the date of maturity till the payment.”

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The petition was resisted by the respondents on various preliminary objections raised in the reply filed before the Company Law Board. On merits it was stated:

“It is respectfully submitted that the Company ought not to have returned the bond certificates which were lodged for registration. The company was indulging in dilatory tactics and was unnecessarily delaying in entering the name of Canara Bank: Trustee Canbank Mutual Fund in the register of bond holders and paying the redemption amount, without any justifiable cause or reason.

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The Company Law Board (hereinafter referred to as “the Board”) formulated the following questions for its determination:

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“(a) As regards 13% bonds whether the register should be rectified to enter the name of ‘Canara Bank-Trustee Canbank Mutual Fund’ in place of Canara Bank and whether NTPC should be directed to pay to Canara Bank the redemption amount in respect of these bonds.

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(b) As regards the 14% bonds whether NTPC should be directed to rectify the register by entering the name of ‘Canara Bank - Trustee Canbank Mutual Fund’ in place of Bank of Karad and whether it should be directed to pay the redemption amount to Canara Bank.”

On considering the material placed before it, the Board found that the Corporation had specifically recognised the holdings in the name of the

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Mutual Fund. Canara Bank had, therefore, approached the Board in the representative capacity of the Trust and not in its individual capacity. The Corporation could not deny such fact as it had admitted having registered transfers in the name of the Trust earlier. Under Section 6 of the Banking Regulations Act, 1949 the Bank as a part of its banking function could also take up the Trusteeship function. A Trustee could not mix up the Trust's funds with its own funds. Dealing with the facts of the case, the Board held:

“We are convinced that Canbank Mutual Fund is the real owner of both 13% and 14% bonds and that Canara Bank is holding the bonds only in the capacity of a trustee. In fact this is not seriously contested by NTPC as well. Since the relationship of trustee and beneficiary is proved, in accordance with the Trust Act we could have directed the NTPC to register the bonds in the name of ‘Canara Bank Trustee-Canbank Mutual Fund’. We are, however, not in a position to grant this prayer of the petitioner despite recognising the relationship as there is a statutory prohibition under Section 153 of the Act to take cognizance of any relationship of trustee and beneficiary in the Register. Therefore, any order to this effect would be in direct violation of section 153 of the Act which prohibits a company from taking notice of any trust express, implied or constructive. This statutory prohibition was the reason for the Company Law Board [Western Bench] in not granting a similar prayer of the petitioners in *Bharat Petroleum Ltd. v. Stock Holding Corporation Ltd.*”

Rejecting the alleged dispute raised by the Corporation, the Board held:

“NTPC has no right to adjust the proceeds of redemption against dues if any from Canara Bank as this would result in a breach of trust to which the Trustees would be forced to. It should also be remembered that these Bonds are secured Bonds and there is a Trustee for these Bonds. Applying the equitable principle the holder of the Bond is also entitled to enforce the security and those Trustee would be bound to realise the security. Hence from whatever angle one looks at the case, the proceeds has to be given to the Mutual Fund.”

The Board also found that the dictum of this Court in ONGC's case was not applicable to the facts of the present case.

In ONGC's case the Cabinet Secretary was shown to have taken appropriate initiative as per direction of the Court dated 11.9.1991 and reported to the Court that the dispute between the Government Department and the

A public sector undertaking of the Union of India had been settled. In that view of the matter no further action was taken on the petition. The Cabinet Secretary in his Report had stated:

B “I would also like to state that the Government respects the views expressed by this Honourable Court and has accepted them that public undertakings of Central Government and the Union of India should not fight their litigation in Court by spending money on fees on counsel, court fees, procedural expenses and wasting public time. It is in this context that the Cabinet Secretary has issued instructions from time to time to all Departments of the Government of India as well as to public undertakings of the Central Government to the effect that all disputes, regardless of the type, should be resolved amicably by mutual consultation or through the goods offices of empowered agencies of the Government or through arbitration and recourse to litigation should be eliminated.”

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D In the light of the Report of the Cabinet Secretary this Court directed as under:

E “We direct that the Government of India shall set up a Committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of Government of India, Ministry and public sector undertakings of the Government of India and public sector undertakings in between themselves, to ensure that no litigation comes to Court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation. Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior Officers only should be nominated so that the Committee would function with status, control and discipline.

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G It shall be the obligation of every Court and every Tribunal where such a dispute is raised hereafter to demand a clearance from the Committee in case it has not been so pleaded and in the absence of the clearance, the proceedings would not be proceeded with.

H The Committee shall function under the ultimate control of the Cabinet Secretary but his delegate may look after the matters. This Court would expect a quarterly report about the functioning of this system

to be furnished to the Registry beginning from 1.1.1992.”

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What the Court has directed in ONGC's case is that frivolous litigation between Government Departments and Public Sector Undertakings of the Union of India should not be dragged in the courts and be amicably resolved by the Committee. The judgment is intended to prevent avoidable litigation between the Government Departments and the Undertakings of the Union of India. In the present litigation there does not appear to be a genuine dispute between the Government of India undertakings. In this case one of the public sector undertaking is shown to be acting not as an undertaking but as Trustee of a Trust. The Board was, therefore, justified in holding “that the real litigation in this case, therefore, is between Mutual Fund and NTPC” and not between the two undertakings. The meaning of word “dispute” is, ‘a controversy having both positive and negative aspects. It postulates the assertion of a claim by one party and its denial by the other’. In the instant case the claim preferred on behalf of the CBMF was not denied by the Corporation but in turn a counter claim with respect to the liability of a subsidiary of the Bank was raised. The dispute raised is without laying any basis or placing on record any evidence in support thereof. Imaginative disputes raised only to defeat the undisputed claim of the Trustee could not be made basis to deprive the Trustees and ultimately the public at large, of the value of the bonds which had, admittedly, been received by the Corporation with unambiguous undertaking to repay back the same.

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A perusal of the bonds, purchased by the appellants, would indicate that such bonds were termed and styled as “Instrument of Bond in the nature of promissory bond”. The Corporation had agreed “to pay on demand to the above named bond-holder or order the sum of”. In other words the bonds were transferable and respondents undertaking, under a contractual and statutory obligation, to pay the value thereof to the transferee. Such a transferee could not be denied the payment of the value of the bonds on the ground of the liability of the transferor or any of its subsidiary. The perusal of the bond incorporating the condition of payment unambiguously shows that no dispute can be raised by the Corporation for payment of the amount on demand to its holder or order. The claim of the Corporation, if any, can be enforced separately against the subsidiary of the Canara Bank but cannot be made a ground to resist the claim of the appellants. We are of the opinion that the High Court was not right in referring the alleged disputes to the High Powered Committee with the aid of judgment in ONGC's case. It was under an obligation to give a finding with regard to the directions given by the

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- A** Board to pay the redemption amount to the appellants. The Trustees of the Trust constituted by the Canara Bank as Settlor for the benefit of numerous units holders cannot be termed and styled as Government Company or Public Sector Undertaking. The dispute raised by the respondents with the appellant was imaginary and even *prima facie* not real. We are further of the opinion that the Board in its order had dealt with all aspects of the matter and rightly concluded that ONGC's judgment was not applicable in the facts and circumstances of the present case.
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Under the circumstances, the appeals are allowed by setting aside the judgments of the High Court and restoring the orders of the Board. The appellants are also held entitled to costs quantified at Rs. 10,000.

B.S.

Appeals allowed.