

**IN THE HIGH COURT OF TELANGANA AT HYDERABAD****W.P.No.2015 of 2023****Between:**

Shree Jaya Laboratories Pvt.Ltd.

... Petitioner

And

Reserve Bank of India and others

... Respondents

**JUDGMENT PRONOUNCED ON: 29.11.2023**

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

1. Whether Reporters of Local newspapers : Yes  
may be allowed to see the Judgment?
2. Whether the copies of judgment may be  
marked to Law Reporters/Journals? : Yes
3. Whether Their Lordships wish to  
see the fair copy of the Judgment? : Yes

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**SUREPALLI NANDA, J**

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA****W.P.No.2015 of 2023****% 29.11.2023****Between:**

# Shree Jaya Laboratories Pvt.Ltd.

..... Petitioner

**And**

\$ Reserve Bank of India and others

... Respondents

&lt; Gist:

&gt; Head Note:

! Counsel for the Petitioner : Mr Vimal Varma Vasireddy

^ Standing counsel for Respondent No.2 : Mr B.N.Swamiji

^ Standing counsel for respondent No.3:Mr V.Nitesh

? Cases Referred:

**HON'BLE MRS JUSTICE SUREPALLI NANDA**

**W.P.No.2015 of 2023**

**ORDER:**

Heard Mr Vimal Varma Vasireddy, learned counsel appearing on behalf of the petitioner, Mr B.N.Swamiji, learned standing counsel appearing on behalf of respondent No.2 and Mr V.Nitesh, learned standing counsel appearing on behalf of respondent No.3.

**2. This Writ Petition is filed seeking a Writ of Mandamus as under:**

A. Declare inaction of the Respondent No.2 in not considering the representations of the petitioner dated 05.08.2022, 22.08.2022, 03.09.2022, 08.09.2022 and 21.09.2022 as being arbitrary and illegal and contrary to law.

B. declare that the petitioner company is not a "defaulter" vis-à-vis Respondent No.2

C. Direct the Respondent No.2 to communicate to the Respondent No.3 to recall the adverse entries against the petitioner company in Respondent No.3's report/database and consequently direct the Respondent No. 3 to delete the adverse entries against the petitioner company in its report/database.

**3. The case of the Petitioner as per the averments made by the petitioner in the affidavit filed by the**

**petitioner in support of the present Writ Petition, in brief, is as follows:**

a) The Petitioner Company is having a manufacturing unit of bulk drug intermediates located at Malkapur Village, Choutuppall Mandal, Yadadri - Bhongir District. One P. Praful & Company Agency (India) Pvt. Ltd., was supplying chemicals "3,5 Lutidine" to the petitioner company and the petitioner company has cleared all valid and legal purchase bills till 06.02.2019 and no amount is due from the Petitioner Company to them.

b) However, the 2<sup>nd</sup> Respondent through legal notice dated 05.11.2019 demanded the Petitioner Company to pay an amount of Rs.3,40,72,500/- to it by virtue of a Factoring Agreement between P. Praful & Company Agency (India) Pvt. Ltd., and itself. Upon enquiry by the petitioner company, it was realized that P. Praful & Company Agency (India) Pvt. Ltd. had raised ten (10) false invoices between the period of 02.04.2019 to 05.06.2019 amounting to Rs.3,40,72,500/- with respect to raw materials (chemicals) which was never placed by the Petitioner Company.

c) Furthermore, the 2<sup>nd</sup> Respondent and P. Praful & Company Agency (India) Pvt. Ltd., have a factoring agreement, pursuant to which the P. Praful & Company Agency (India) Pvt. Ltd. got the invoices raised in the Petitioner Company's name and factored to the 2<sup>nd</sup> Respondent. In this particular instance, the 2<sup>nd</sup> Respondent is the assignee, the P. Praful & Company Agency (India) Pvt. Ltd. is the assignor and the Petitioner Company is the customer and there is no contract between the assignee and customer. The acceptance letter dated 11.04.2018 received by the 2<sup>nd</sup> Respondent is illegal as the employee of the petitioner, who is actively involved in perpetuating the aforementioned acts of raising fake invoices is not an authorized person to represent the petitioner company.

d) While things stood, the 2<sup>nd</sup> Respondent has issued Show Cause Notice dated 19.12.2020 threatening to declare the Petitioner Company as a "willful defaulter" and that the Petitioner Company vide letter dated 07.01.2021 to the 2<sup>nd</sup> Respondent, clarified that it is neither a lender nor banker to the Company and hence, it cannot declare the Petitioner

Company as a "willful defaulter". Thereafter, in response, the 2<sup>nd</sup> Respondent issued another show cause notice on 25.02.2021 reiterating the same allegations against the Petitioner Company.

e) Thereafter, the 2<sup>nd</sup> Respondent Company filed Section 7 of IBC against the Petitioner Company alleging that the Petitioner Company committed default in payment of Rs.4,23,22,712/- (principal amount of Rs.3,40,72,500/- along with interest of Rs.82,50,212/- calculated @ 18% per annum from the date of alleged default occurred till 31.12.2020) and the 2<sup>nd</sup> Respondent has issued a 3<sup>rd</sup> show cause notice dated 24.03.2021. Aggrieved by the same, the Petitioner Company filed W.P No. 20779 of 2021 before this Court and this Court through interim order dated 02.09.2021 suspended the said Show cause notice dated 24.03.2021.

f) Subsequently, the NCLT vide its order dated 21.07.2022 dismissed the petition filed by the 2<sup>nd</sup> Respondent holding that there is no jural relationship of creditor and borrower between the 2<sup>nd</sup> Respondent and the writ petitioner in respect of the financial debt. The Tribunal also noted that the said client of M/s Canbank Factors Ltd., i.e., P. Praful & Company Agency

(India) Pvt. Ltd., adopted the same *modus operandi* in committing fraud on M/s Metrochem API Pvt. Ltd also.

g) Later on, the Petitioner Company through representations dated 05.08.2022, 22.08.2022, 03.09.2022, 08.09.2022 and 21.09.2022 requested the 2<sup>nd</sup> Respondent for updating of CIBIL data basing on the above-mentioned order of the NCLT, but the 2<sup>nd</sup> Respondent has not taken any steps to delete the name of Writ Petitioner as a defaulter in CIBIL data maintained by 3<sup>rd</sup> Respondent.

h) As a consequence of highhanded, arbitrary and illegal action on the part of the 2<sup>nd</sup> Respondent in reporting the name of Writ Petitioner Company as a defaulter, and continuing to being shown in the records of Respondent Nos. 2 and 3 as a defaulter, the fundamental right of the Petitioner to carry on business under Article 19(1)(g) is violated. Hence, this Writ Petition.

**4. Counter Affidavit filed by the Respondent No. 2, in brief, is as under:**

a) P. Praful and Company Agency availed factoring limits from 2<sup>nd</sup> respondent vide sanction letter bearing No. CBFL/AHM/CC-13/P.PRF/2014-15/SBF, dated 23.01.2015. On 20.01.2015 M/s P. Praful and Company Agency (India) Pvt. Ltd. entered into a Factoring Agreement with the 2<sup>nd</sup> respondent and gave Power of Attorney to authorizing them.

b) Thereafter, M/s P. Praful and Company supplied the materials to the petitioners and as per the Factoring Agreement, the 2<sup>nd</sup> respondent paid the bills raised against the petitioner company to the 2<sup>nd</sup> respondent's client immediately after deducting the margin, upon receipt of e-mail confirmation from the petitioner's company for receipt of the material in good condition and if the petitioner company has cleared all the bills till 06.02.2019 and there is no amount due, then the 2<sup>nd</sup> respondent company should not have paid Rs.4,16,934/- on 10.06.2019 to their client, but the 2<sup>nd</sup> respondent did pay in Escrow Account No. 0174-201-002038 maintained in Canara Bank, Paldi, Ahmedabad Branch.

c) Furthermore, as per the arrangements made through the factorizing agreement, the 2<sup>nd</sup> respondent was paying the



discounted invoices to their client and the same is collected from Petitioner Company after expiry of credit period i.e. 90 days. For this arrangement the petitioner company submitted a letter to the 2<sup>nd</sup> respondent on 11.04.2018 and mentioned that they will pay the amounts to the 2<sup>nd</sup> respondent directly in Escrow account.

d) Thereafter, the 2<sup>nd</sup> respondent discounted the bills amounting to Rs.3,40,72,500/- and paid the amount to their client and the 2<sup>nd</sup> respondent was sending monthly statement of outstanding debt to petitioner company and officials of petitioner company had received the statements of outstanding debt and acknowledged the same with signature & seal by the officials of the petitioner company.

e) On 22.08.2019, the 2<sup>nd</sup> Respondent received an e-mail dated 22.08.2019 from petitioner company denying all the legitimate dues towards factored bills. Further the 2<sup>nd</sup> respondent continuously followed up with the petitioner company for releasing the amounts as per the due dates but the petitioner company failed to respond.

f) It was alleged by the petitioners that they have cleared all bills till 06.02.2019 and no amount is due but they made payment of Rs.4,16,934/-on 10.06.2019 to the 2<sup>nd</sup> Respondent in Escrow Account No. 0174-201-002038 maintained by M/s P Praful & Company Agency (India) Pvt Ltd with Canara Bank and the petitioner company sent e-mail through its representative Mr. P.L.Kameshwara Rao on 30.10.2019 to 2<sup>nd</sup> Respondent, wherein petitioner company informed that as per their books, amount payable was Rs.44,808/- to P Praful and co. The petitioner company had submitted the forged books of account particularly the ledger of client "P Praful and Company Agency Pvt. Ltd." which shows the balance of Rs. 44,808/- outstanding only against the total liability of Rs. 3,40,72,500 owed towards the 2<sup>nd</sup> Respondent.

g) The petitioner company submitted a letter stating that they will pay the bills raised by the P. Praful Company and Agency (India) Pvt. Ltd. against their company. They further assured that if they failed to pay the amounts, the 2<sup>nd</sup> respondent will have right to initiate necessary recovery

proceedings before competent court of law, but not as alleged by the petitioner herein.

h) Vide letter dated 11.04.2018, petitioner guaranteed the 2<sup>nd</sup> respondent for the payment of the outstanding dues against the invoices raised by P Praful & Company Agency (India) Private Limited. Thus, it is clearly establishes that the petitioner company guaranteed to the 2<sup>nd</sup> respondent that they will pay the outstanding amounts within a period of 90 days.

i) On 11.04.2018, P. Praful Company and Agency (India) Pvt. Ltd. addressed a Letter to petitioner requesting them to pay the due invoice amounts to the 2<sup>nd</sup> respondent and the petitioner company accepted the same and duly signed on the letter that they will pay the amounts. As per the acceptance given by the petitioner company, the petitioner has to pay the bill amounts to the 2<sup>nd</sup> respondent, but P. Praful Company and Agency (India) Pvt. Ltd. and petitioner colluded with each other and not paid the amounts to this respondent.

j) Moreover, the Petitioner Company confirmed the 2<sup>nd</sup> respondent by e-mails for receiving the materials and

genuineness of transactions and also acknowledged the monthly statement of outstanding debt, sent by this Respondent. Hence, the 2<sup>nd</sup> respondent is having right to recover the amounts from the petitioner company and the petitioner company is a willful defaulter. As per the acceptance of petitioner company dated 11.04.2018, this respondent released the amounts to the P. Praful Company and Agency (India) Pvt. Ltd. and given a credit time of 90 days and grace period of 30 days in total 120 days to the petitioner company.

k) Therefore, due to non-payment of amounts by the petitioner company, this respondent informed the CIBIL authorities about its fraud. Till date the amounts are not paid by the petitioner company, hence, the CIBIL authorities have not removed the flag of willful defaulter. As per the arrangement, the petitioner company is bound to pay the amounts mentioned in acceptance letter dated 11.04.2018 to the 2<sup>nd</sup> respondent. Hence, the Writ Petition is devoid of merits and is liable to be dismissed.

**5. Counter Affidavit filed by the Respondent No. 3, in brief, is as under:**

a) The State Bank of India has reported the Petitioner as willful defaulter in several quarters and thus, the 3<sup>rd</sup> Respondent website reflects the names of the Petitioner as willful defaulter with respect to Respondent Nos. 2 and 3.

b) Furthermore, the Petitioner has wrongly made the 3<sup>rd</sup> Respondent party to the Writ Petition as it is not in the domain of the 3<sup>rd</sup> Respondent to declare any person/ entity to be a willful defaulter' and/ or to decide to publish the names of the willful defaulters' or not and the 3<sup>rd</sup> Respondent merely publishes names of such 'willful defaulters' following the aforesaid declaration and therefore ,the 3<sup>rd</sup> respondent merely abides/ follows the statutory obligation cast upon it.

c) There is a loan account no. 11309 reported by the 2<sup>nd</sup> Respondent which is reported with NPA flag on the Petitioner's CIR, as alleged by the petitioner and thereafter, the 3<sup>rd</sup> respondent, in accordance with the provisions of CICRA, raised the details of loan account No. 11309 with the 2<sup>nd</sup> respondent and requested to confirm whether there is any

change/modification/update is required in the credit information reported by the 2<sup>nd</sup> Respondent in the said account.

e) As per the proviso to section 21(3) of the CICRA, the Respondent cannot make a correction, deletion or addition to the credit information until the same has been certified as correct by the concerned credit institution. Hence, the Writ Petition is devoid of merits and is liable to be dismissed.

**6. Paras 6 and 7 of the counter affidavit filed by the 2<sup>nd</sup> respondent, reads as under:**

"6. In reply to Paras 13 to 15 of the affidavit, the contentions and allegations of the petitioner are not correct and there is no lots of truth in its allegations. On 11/04/2018 P. Praful Company and Agency (India) Pvt. Ltd addressed a Letter to petitioner company and requested them to pay the due invoice amounts to this respondent i.e. Canbank Factors Limited. The petitioner company accepted the same and duly signed on the letter that they will pay the amounts to the respondent No.2 ie. Canbank Factors Limited. As per the Factoring Agreement between P. Prafil Company and Agency (India) Pvt. Ltd., with this respondent, the respondent released the entire invoice amount availed by the petitioner company. As per the acceptance given by the

petitioner company the petitioner has to pay the bill amounts to this respondent, but P. Praful Company and Agency (India) Pvt. Ltd. and petitioner colluded with each other and not paid the amounts to this respondent. The petitioner company cheated and did not abide on their commitment for payments, hence this respondent informed the CIBIL authorities against the petitioner company. The respondent No.2 has not filed any appeal against the NCLT orders. Even Non-banking finance companies (NBFC) like respondent No.2 having power to initiate necessary proceedings under Section 7 of Insolvency and Bankruptcy Act against the petitioner company but not as contended by the petitioner herein. There is no restriction by the RBI against the NBFC's for initiation of proceedings before NCLT as contended by the petitioner herein. The contention of the petitioner is that factoring business is not banking transaction as per the provisions of Indian Law and general understanding of trade practice is not correct and it is totally vague. The petitioner submitted Escrow Account-Authorization Letter that they will pay the amounts to respondent No.2 in Escrow Account 0174-201-002038 maintained by M/s P Praful & Company Agency (India) Pvt. Ltd with Canara Bank, against the invoices raised in their name within the stipulated period. Petitioner Company undertook/acknowledged in Escrow Account-Authorization Letters that "This arrangement/Instruction should not be altered till you (Petitioner Company) get

written communications from Canbank Factors Ltd.” Further Petitioner Company confirmed the Respondent No.2 by e-mails for receiving the materials and genuineness of transactions and also acknowledged the monthly statement of outstanding debt, sent by this Respondent No. through RPAD. Hence the respondent No.2 is having right to recover the amounts from the petitioner company, but not as stated by the petitioner herein. Once the petitioner company assured the respondent No.2 by way of the aforementioned authority letter, e-mails to pay the outstanding amounts directly to this respondent is sufficient to initiate necessary recovery proceedings against the petitioner company. Hence the petitioner company is a willful defaulter. As per the acceptance of petitioner company Dt: 11/04/2018, this respondent released the amounts to the P. Praful Company and Agency (India) Pvt. Ltd. and given a credit time of 90 days and grace period of 30 days in total 120days to the petitioner company. After lapse of 120 days this respondent continuously followed up the petitioner company and P. Praful Company and Agency (India) Pvt. Ltd. for payment. But one pretext or the other the petitioner company dragged the matter without paying any amount to this respondent. There is no other alternative left with this respondent except to initiate necessary action against the petitioner company. This respondent not violated the Article 19(1) 9(g) as alleged by the petitioner herein.



7. In reply to para 16 to 19 of the affidavit, due to non-payment of amounts by the petitioner company, this respondent informed the CIBIL authorities about its fraud. P. M/s Praful Company and Agency (India) Pvt. Ltd. supplied chemicals to the petitioner company and certain amounts on different dates. On the basis of purchase orders the material supplied to the petitioner company and petitioner company is having responsibility to pay the amounts to this respondent as per the letter Dt: 11/04/2018. The petitioner company not availed any factoring limits from this respondent, but they have given undertaking to pay the amounts which were already received by P. Praful Company and Agency (India) Pvt. Ltd. from this respondent. Till date the amounts are not paid by the petitioner company to this respondent, hence the CIBIL authorities not removed the flag of willful defaulter. Once the petitioner company accepted to pay the amounts which were already received by P. Praful Company and Agency (India) Pvt. Ltd. who is none other than the customer of this respondent. As per the arrangement the petitioner company is bound to pay the amounts mentioned in acceptance letter Dt: 11/04/2018 to this respondent. The contention of the petitioner company is that there is no jural relationship between the petitioner and this respondent as a borrower nor creditor is not correct. Once the petitioner company steps into the shoes of P.

Praful Company and Agency (India) Pvt. Ltd. for making the payment as per its acceptance letter Dt: 11/04/2018 this respondent submitted a representation to the CIBIL authorities i.e. 3<sup>rd</sup> respondent herein to show as a willful defaulter. The NCLT bench, Hyderabad vide in its Order Dt: 21/07/2022 stating that the petitioner is not a willful defaulter, but as per the knowledge of this respondent the NCLT not given any finding not to liable for payment of petitioner company to this respondent."

**7. Paras 4(h) and 4(i) of the counter affidavit filed by respondent No.3, reads as under:**

"4(h) In the backdrop of the above, the respondent No.3 states that on receipt of the said writ petition, the respondent No.3 checked the petitioners name in its suit filed database. It was observed that the petitioner's name was not reflecting in both Suit Filed Accounts – Willful Defaulters Rs.25 lacs and above along with Suit Filed Accounts – Defaulters Rs.1 crore and above maintained by respondent No.3.

**4(i) Further, it is submitted that on perusal of the petition along with annexures, it was observed that there is no loan account No.11309 reported by respondent No.2 which is reported with NPA flag on the petitioner's CIR, as alleged by the petitioner. As a matter of abundant caution and with regard to provisions of CICRA, respondent No.3 raised the details of loan account No.11309**

with respondent No.2 and requested to confirm whether there are any change/modification /update is required in the credit information reported by respondent No.2 in the said account. The response from respondent No.2 is awaited. On receipt of the response from respondent No.2, respondent No.3 craves leave to file the correspondence during the course of hearing or file an additional affidavit, if this Hon'ble Court allows at a later stage."

#### **DISCUSSION AND CONCLUSION**

8. A bare perusal of the averments made in the counter affidavit filed by respondent No.2 and duly considering the submissions put forth by the learned counsel appearing on behalf of the 2<sup>nd</sup> respondent it is evident that the 2<sup>nd</sup> respondent based on the confirmation of the petitioner company made to the 2<sup>nd</sup> respondent by e-mails for receiving the materials and based on the genuineness of the said transactions, and the petitioner company having acknowledged the monthly statement of outstanding debt sent by respondent No.2 through RPAD, the respondent No.2 contends that the respondent No.2 has a right to recover the amounts from the petitioner company and to initiate

necessary recovery proceedings against the petitioner company and hence, therefore, the petitioner company is a willful defaulter.

9. It is further evident through the averments made in the counter affidavit filed by respondent No.2 that as per the acceptance of petitioner company dated 11.04.2018, the respondent No.2 released the amounts to the P.Praful & Company Agency (India) Pvt. Ltd. and extended a credit of 90 days and grace period of 30 days, in total 120 days to the petitioner company and after lapse of 120 days the 2<sup>nd</sup> respondent continuously followed up the petitioner company and P.Praful Company and Agency (India) Pvt. Ltd. For payment, but on one pretext or the other the petitioner company dragged the matter without paying any amount to the 2<sup>nd</sup> respondent and therefore, the 2<sup>nd</sup> respondent was left with no other alternative except to initiate necessary action against the petitioner company.

**10. A bare perusal of the averments made in the counter affidavit filed by the 3<sup>rd</sup> respondent in June, 2023 and duly considering the submissions made by the learned counsel appearing on behalf of the 3<sup>rd</sup>**

**respondent, it is evident that respondent No.3 raised the details of loan Account No.11309 which is reported with NPA Flag on the petitioner's CIR to confirm whether any change/modification/update is required in the credit information reported by respondent No.2 in the said account and that the response from respondent No.2 is awaited.** The averments in the counter affidavit filed by the 3<sup>rd</sup> respondent further clearly indicate that the respondent No.3 being a Credit Information Company cannot make any changes unilaterally and the 3<sup>rd</sup> respondent has no role to play in a bank/financial institution declaring any of its borrower as a willful defaulter.

11. Taking into consideration, the fact as borne on record that the petitioner addressed representations, dated 05.08.2022, 22.08.2022, 03.09.2022, 08.09.2022 and 21.09.2022 to the 2<sup>nd</sup> respondent pertaining to petitioner's request for updation of CIBIL data base basis and also the request of the 3<sup>rd</sup> respondent made to the 2<sup>nd</sup> respondent to confirm whether there are any changes/modification/update required in the credit information reported by respondent No.2

in the loan account No.11309, which is reported with NPA flag on the petitioner's CIR and since response from respondent No.2 is awaited as averred by the respondent No.3 specifically in para 4(i) of the counter affidavit filed in the present writ petition, this Court opines that the 2<sup>nd</sup> respondent is bound to consider the request of the petitioner made vide representations dated 05.08.2022, 22.08.2022, 03.09.2022, 08.09.2022 and 21.09.2022 pertaining to updation of CIBIL data base basis and also the request of the 3<sup>rd</sup> respondent pertaining to updation of petitioner's loan account No.11309, within a reasonable period.

**12. Taking into consideration the aforesaid facts and circumstances, the writ petition is disposed off directing the 2<sup>nd</sup> respondent to consider the request of the petitioner made vide representations dated 05.08.2022, 22.08.2022, 03.09.2022, 08.09.2022 and 21.09.2022 pertaining to updation of CIBIL data base basis and also the request of the 3<sup>rd</sup> respondent pertaining to updation of petitioner's loan account No.11309 and pass appropriate orders in accordance to law duly communicating the decision to the petitioner and the 3<sup>rd</sup>**

**respondent herein within two weeks from the date of receipt of the copy of the order. However, there shall be no order as to costs.**

Miscellaneous petitions, if any, pending shall stand closed.

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**SUREPALLI NANDA, J**

Date: 29.11.2023

Note: L.R.Copy to be marked.

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