

**5 SCOB [2015] HCD 74**

**HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)**

WRIT PETITION NO.12210 of 2013  
With  
WRIT PETITION NO.12211 of 2013  
WRIT PETITION NO.12212 of 2013

**Shoel Textile Mills Ltd and another.**  
..... Petitioner  
(In writ petition No. 12210 of 2013)

**Rahnuma Fashion Wears Ltd. and another.**  
..... Petitioner  
(In writ petition No.12211 of 2013)

**Harp Fashion Wears Ltd. and others.**  
..... Petitioner  
(In writ petition No. 12212 of 2013)

**Versus**

**Bangladesh Bank represented by  
Governor and others**  
..... Respondents

**Present:**  
**Mr. Justice Md. Ashfaul Islam**  
**And**  
**Madam Justice Kashefa Hussain**

**Bank Companies Act, 1991**  
**Section 5 GaGa:**

**The moment a bank or any other financial institutions reschedules a loan or grants any kind of loan, credit facilities or any other sort of financial assistance in favour of any person, it is virtually an admission on its part that the person to whom such financial assistance is being granted is not a loan defaulter under the definition provided in Section 5 GaGa of Bank Companies Act,1991. ... (Para 13)**

**Bank Companies Act, 1991**  
**Section 27 KaKa:**

**Granting of loan to a person whose name has been included as a loan defaulter in the CIB list, by granting him such loan or by rescheduling the loan or extending any other credit facilities, it is practically redeeming a person from the classification of loan defaulter within the definition provided in Section 5GaGa of Bank Companies Act, 1991. ... (Para 14)**

Mr. A.K.M. Asiful Haque, with  
Md. Atikul Islam , Advocates  
..... For the petitioners  
Mr. S.M. Moniruzzaman, D.A.G with  
Mrs. Shuchira Hossain, and  
Mr. S.M. Quamrul Hasan, A.A.Gs.  
.....For the respondents  
Heard and Judgment on 05.04.2015

## Judgment

### **Kashefa Hussain, J:**

1. Let the supplementary affidavit do form part of the main petition.
2. All these Writ petitions are heard together and disposed of by a single judgment as there are involved common questions of fact and law.
3. In writ petition No. 12210 of 2013 on an application under Article 102 (2)(a)(i) of the Constitution filed by the petitioners Shoel Textile Mills Ltd and another, Rule was issued in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why respondent nos. 1-3 should not be directed to strike-off the name of the petitioners from the CIB list maintained by the respondent no.3 in views of reschedulement of the written-off liabilities of the petitioners by the respondent nos. 4 and 5 through its board decision dated 23.05.2011 should not be declared to have been made without lawful authority and is of no legal effect.
4. The petitioner no. 1 in Writ Petition No. 12210 of 2013 is Sohel Textile Mills Limited represented by its Managing Director and the petitioner no. 2 is Mr. Md. Razzakul Hossain who is the Managing Director of Petitioner no.1, Sohel Textile Mills Limited.
5. The respondent no.1 is Bangladesh Bank represented by its governor, i.e. the respondent no.2, is governor Bangladesh Bank, respondent no.3 is the General Manager of Credit Information Bureau, (hereinafter called as CIB) Bangladesh Bank, the respondent no.4 is United Commercial Bank Pvt. Ltd. (hereinafter called as UCBL) represented by its Managing Director while respondent no.5 is a Branch of the respondent no.4 represented by its Branch Head.
6. The facts leading to the Rule of Writ Petition No. 12210 of 2013 in short, is that the petitioner is a registered Private Limited Company and in course of its business the respondent nos. 4 and 5 allowed the petitioners to enjoy various credit facilities of Tk.36,11,98,288.58 inter-alia, through negotiation of some letter of credits for its export business and at one stage the petitioner failing to pay the monthly installments against credit facilities and failing to adjust all the local and foreign export proceeds according to payment schedule became defaulter and upon the petitioner’s failure to pay the outstanding dues within a certain period, the respondent no.5 the branch office of UCBL with consent of the respondent no.1 Bangladesh Bank had written-off the entire claim amount, and, thereafter, the respondent no.5 under instruction of respondent no.4 the Head Office of UCBL filed Artha Rin Suit No. 140 of 2009 against the petitioner impleading them as defendants for realization of the outstanding dues of Tk. 36,11,98,288.58 including interest. The petitioners duly appeared in the Artha Rin Suit and subsequently approached the respondent no.5 the branch office of UCBL for adjustment of written-off liabilities through a letter dated 14.03.2010 and upon consideration of the said approach, the respondent no.5 on 08.08.2010 referred the matter to its Head Office (the respondent no.4) for necessary actions. In pursuance of the matter, the respondent no.4 through its Board decision dated 23.05.2011 arrived at a decision to settle the matter and subsequently reached an agreement of understanding executed on 09.06.2011 and in pursuance of such agreement both the parties i.e. the petitioners and the respondent nos. 4 and 5 filed a solenama in the Artha Rin Suit No.

140 of 2009 and the Artha Rin Adalat upon appreciation of the said Solenama and upon duly examining the parties allowed the Solenama by its order dated 15.01.2012 and accordingly a Sole-decree was drawn on 22.01.2012 by the said Adalat. After the said Sole decree in respect of outstanding dues, the respondent no.3 the General Manager of CIB did not take any appropriate action to strike off the name of the petitioners from the CIB list though the petitioners have been paying regular installments to the respondent no.5, Thereafter, the petitioners approached the respondent no.5, the Branch office of the UCBL to issue a clearance certificate in respect of reschedulement of the outstanding amount and in pursuance of the matter the respondent no. 5 issued a certificate on 10.10.2013 to that effect which is marked as Annexure-'D' in Writ Petition No. 12210 of 2013. In spite of reschedulement of the credit facilities, the petitioners are facing problems in seeking fresh credit facilities from other banks,

7. when the concerned bank enquired about the status of the petitioner from the respondent no.3, the respondent no. 1 in proceeding for credit facilities sought by the petitioners, and, thereafter, without finding any alternative the petitioners through their Advocate served a notice demanding justice on 26.11.2013 with registered post to the respondent nos. 1-3 with a copy of the same to the respondents no. 4 and 5 requesting the respondent nos. 1-3 for taking appropriate action to strike out the name of the petitioners from the CIB list maintained by respondent no.3. After receiving the aforesaid notice, the respondents neither yet informed the petitioners or their lawyer that they have struck out the name of the petitioners from the said CIB list nor did they take any action according to the request of the petitioners and at this stage the petitioner moved this Division and obtained the present Rule. (Annexure-E).

8. Learned Advocate Mr. A.K.M. Asiful Haque appeared on behalf of the petitioner, while learned Advocate Mr. Ali Mustafa Khan by filing an Affidavit-in-opposition represented the respondent no.5, Branch office of the UCBL.

9. Learned Advocate Mr. A.K.M. Asiful Haque on behalf of the respondent Nos. 1-3 submits that in spite of reschedulement of the credit facilities in terms of the sole decree and the clearance certificate granted by the respondent no.5 and in spite of request made to the respondent nos. 1- 3, they are unlawfully maintaining the name of the petitioners in the CIB list. The learned Advocate for the petitioners assails that once the reschedulement was granted in terms of the sole decree and clearance certificate was given to that effect by the respondent no.5, the respondent nos. 1- 3 have no legal right to include the name of the petitioner in the CIB list. He contends that by including the name of the petitioners in the CIB list maintained by the respondent no.3, the respondent nos. 1- 3 are violating the statutory provisions provided in section 27 KaKa of the Bank Companies Act and such acts of the respondent nos. 1- 3 being conflictive with the statutory provisions of the Act, the Rules therefore should be made Absolute for ends of Justice.

10. On the other hand, learned Advocate Mr. Ali Mustafa Khan for the respondents by filing an affidavit-in-opposition opposes the Rule and argues that even after issuance of the certificate by the respondent no.5, the petitioner violated the terms of the compromise with respondent no.5 and also assails that the respondent 'merely' issued a certificate to the effect that the petitioner had a written off liability of Tk. 36,11,98,288.58 with the respondent no.5 and he further asserts that "mere" issuance of a certificate does not imply that the petitioner has no liability with the respondents, and, therefore, the petitioner is definitely a defaulter

within the terms of section 5 GaGa of Bank Companies Act, 1991 and persuades that the Rules ought to be discharged.

11. We have heard the Learned Advocates, perused the documents and other materials placed before us. From perusal of the same, it transpires that though the petitioner's name was included in the CIB list, yet at one stage in Artha Rin Suit No. 140 of 2009, a sole decree was drawn upon mutual compromise and the credit facilities were rescheduled within the terms of the sole decree and in pursuance of the terms of the sole decree respondent no.5 also issued a clearance certificate, the first one dated 10.10.2013 and subsequently another one dated 08.03.2015, which is marked in the supplementary-affidavit as Annexure-'E' filed by the petitioners. But it is also evident from the records as is placed before us that the petitioners had informed them of the current status in consequence of the sole decree and the notice demanding justice and requested the respondent nos. 1- 3 to that effect, but as is obvious from the records of the respondent nos. 1- 3, particularly the respondent no.3 i.e. General Manager of CIB remained passive in this matter and failed to take any steps from excluding and cancelling the name of the petitioner from the CIB list. The learned Advocate for the petitioner had contended, that in spite of having full knowledge of subsequent reschedulement status of the petitioner, in accordance with the statutory provisions of law, and, thereafter, the respondent Nos. 1-3 failure to exclude the petitioner's name from the CIB list is clearly in violation of the provisions of section 27 KaKa of the Bank Companies Act,1991.

12. Now let us take a look into the relevant provisions of section 27 KaKa of the Bank Companies Act,1991 which reads as follows:

27 KK| tLj vcx FY MhixZvi Zvij Kv, BZ'w` (1) c0Z'K e'isK-tKv=úvbx ev Aw\_R c0Z0vb, mgq mgq, Dnvi tLj vcx FY MhixZv`i Zvij Kv evsj v`k e'isK t`k0Y Kwi te|

2| Dc-aviv (1) Gi Aaix c0B Zvij Kv evsj v`k e'isK t`tki mKj e'isK-tKv=úvbx I Aw\_R c0Z0v`b tKvbi:fc FY mjevav c0vb Kwi te b|

3| tKvb tLj vcx FY MhixZvi Abk:tj tKvb e'isK-tKv=úvbx ev Aw\_R c0Z0vb tKvbi:fc FY mjevav c0vb Kwi te b|

4| AvcvZZt ej er Ab` tKvb AvBtb hvni uKQB`\_vKK b| tKb, tLj vcx FY MhixZvi nei:t`x FY c`vbKvix e'isK-tKv=úvbx ev t`TgZ, Aw\_R c0Z0vb c0vij Z AvBb Abjviti gvij v`vtqi Kwi te|

13. We have very minutely examined sections 27 KaKa particularly Sub-Section 3 of Section 27 KaKa, where it is unequivocally stated that no banking company or financial institutions shall grant any kind of loan facilities in favour of any defaulter borrower. Therefore, upon an interpretation of the law, it is our considered view that the moment a bank or any other financial institutions reschedules a loan or grants any kind of loan, credit facilities or any other sort of financial assistance infavour of any person, it is virtually an admission on its part that the person to whom such financial assistance is being granted is not a loan defaulter under the definition provided in Section 5 GaGa of Bank Companies Act,1991. Section 5GaGa clearly defines the class of persons who come within the definition of a loan defaulter which reads as follows:

"5(MM) tLj vcx FY MhixZvi A\_`Kvb e'w`3 ev c0Z0vb, hvni ubtRi ev `t`msuk0 c0Z0v`bi Abk:tj c0E AMlg, FY ev Dnvi Ask ev Dnvi Dci AwRZ` mý evsj v`k e'isK KZ`R RvixKZ.msAv Abjvix tqqt`vE`® nI qvi 6 (Oq) gvm AwZewwZ nBqvtQ|

5(O) t`br`vi A\_`j vF-`TviZi fVvfvwM, Lwi` ev BRvivi wfiE`Z ev Ab` tKvbfite Aw\_R mjhvM mjevav MhYKvix e'w`3 tKv=úvbx ev c0Z0vb Ges Rwg`vi Bnvi Ašif` nBte|"

14. Therefore, as is obvious from a comparison of the relevant sections particularly Sub-section 3 of section 27 kaka where it is quite unambiguously laid down that a “loan defaulter” shall not be entitled to the benefits of any loan or any other credit facilities by any bank or any financial institutions in the country and from our interpretation of the law particularly section 27kaka of the Bank Companies Act, 1991, we are of the view that granting of loan to a person whose name has been included as a loan defaulter in the CIB list, by granting him such loan or by rescheduling the loan or extending any other credit facilities, it is practically redeeming a person from the classification of loan defaulter within the definition provided in Section 5GaGa of Bank Companies Act, 1991, since the law is very clearly laid out in section 27 KaKa on the point. We find a paradox both in their actions and in terms of the relevant law, that the respondents on the one hand declares the petitioner a loan defaulter while on the other hand they do not hesitate to reschedule loan facilities to him.

15. As is evident, sub-section 3 of section 27 KaKa unambiguously states that no loan defaulter shall be accorded any kind of loan facilities. Therefore, our considered view is that the moment, through reschedulement of loan facilities or by any other manner any sort of financial assistance is granted to any such person, he can no more be classified nor by any other manner be treated as a loan defaulter within the meaning of section 5 GaGa of the Bank Companies Act, 1991 or under any other law. The exercise of any statutory power by the public functionaries must be just, fair, reasonable, transparent, bonafide, and their actions must be consistent ,and, as such, the impugned CIB list maintained by the office of the respondent Nos. 1-3, showing the petitioners as a loan defaulter while simultaneously rescheduling the loan is a self contradictory act on the part of the respondents and is in clear violation of the relevant provisions of law, in particular the provisions of sub-section 3 of Section 27 KaKa of the Bank Companies Act, 1991.

16. Under the foregoing facts and circumstances, our conclusion is that inclusion of the petitioner’s names in the CIB list is unlawful being in contravention of the statutory provisions provided for in the Bank Companies Act, 1991 and is in utter disregard of the fundamental rights of the petitioner guaranteed under the constitution.

17. In that view of the matter, we find substance in the Rules and are of the view that all the 3 (three) Rules ought to be made absolute.

18. Consequently, the enlistment of the petitioner’s name in the CIB list by the office of the respondent Nos. 1-3 treating the petitioners as a loan defaulter is declared to have been passed without any lawful authority and is of no legal effect.

19. In the result, all the 3 (three) Rules are made absolute without any order as to costs.

20. Let a copy of this judgment be sent to the office of the Bangladesh Bank, Bangladesh Bhaban, Motijheel, Dhaka for future reference and guidance.