

Marlas situated in village Maraka, Tehsil & District Lahore belonging to National Industrial Cooperative Finance Corporation ("**NICFC**") in exchange for cash deposit receipts ("**CDRs**") issued by the NICFC and National Industrial Cooperative Credit Corporation ("**NICCC**"), both being defunct undesirable cooperative corporations ("**CFCs**").

2. Learned counsel for the petitioners submits that the concurrent findings given by the High Court and the Chairman, PCBL are barred by *locus poenitentiae*. The said transaction of sale in favour of the petitioners was concluded under two agreements to sell executed on 28.10.1991 and 05.11.1991 by Ch. Abdul Majeed, Chairman of the both NICFC and NICCC. Out of total sale consideration of Rs.25.268 million, an amount of Rs.25.093 million already stood adjusted against CDRs for funds held by the petitioners before this Court in the accounts of the two defunct CFCs, with the balance amount of Rs.74,229/- being payable in cash on execution of the sale deed. On 30.10.1997 the Chairman, PCBL gave his NOC to the sale in favour of the petitioners and on 26.06.1999 he gave permission to execute sale deed in their favour. The petitioners state that the sale consideration under the agreements to sell exceeds the value for the land transacted and the cancellation of NOC dated 30.10.1997 by the Chairman, PCBL on 28.04.2001, as affirmed by the High Court, violates the vested rights of the petitioners.

3. We have heard the learned counsel for the parties and have carefully scanned the record of the case. The following features in this case may be noted before discussing the plea taken by the learned

counsel for the petitioners. In the early 1990s, the Province of Punjab was engulfed in a financial scandal involving a number of CFCs, which were engaged in unlawful deposit taking, lending and investment of public money without obtaining licenses for such activities from the State Bank of Pakistan. When billions of rupees of public money got jeopardized for one reason or the other, the Provincial Legislature passed legislation, namely, the Punjab Undesirable Cooperatives Societies (Dissolution) Act, 1993 (**"PUCS Act, 1993"**). The PUCS Act, 1993 was preceded by Punjab Undesirable Cooperative Societies (Dissolution) Ordinance XX of 1992 and Cooperative Societies (Amendment) Ordinance XII of 1992 issued by the Governor of the Province and other executive actions including attachment order passed by the Deputy Registrar, Cooperative Societies on 26.08.1991 in exercise of powers under Section 55 of the Cooperative Societies Act, 1925. The said events merely set out the context in which the disputed transaction of sale in the present case was concluded pursuant to agreements to sell dated 28.10.1991 and 05.11.1991. It is a matter of record that whereas the land under sale belongs to NICFC, its price is being paid, *inter alia*, by adjustment of CDRs issued by NICCC that are held by some of the petitioners. No resolution of the Board of Directors or the General Body of the NICFC was passed to authorize the sale of its land, fix the sale price thereof or to authorize adjustment of its value against CDRs issued by NICFC or another CFC. The agreement to sell is executed by Mr. Abdul Majeed without delegation of authority by the Board of Directors of NICFC. Nothing has been brought on record

to show that the said Chairman has authority under the charter of the said CFCs to unilaterally or single handedly sell the immovable property of the NICFC. Consequently, the impugned judgments and the impugned order have considered the underlying agreements to sell to be collusive. This is concluded also for the reason that at least 23 unconnected persons holding CDRs in the two CFCs have, without being members of a family or a legal entity or having any other mutual link, combined to purchase immovable property from NICFC. This is done without even fixing their individual shares in the property agreed to be purchased, indicating the presence of *benami* interests. The enterprise undertaken by the petitioners ostensibly seeks pre-emptive recovery of their blocked funds in the two defunct CFCs by the acquisition of an asset having readily realizable value. By this means, they purport to secure priority and advantage over other similarly placed depositors/creditors of the two defunct CFCs.

4. The provisions of the PUCS Act, 1993 and its preceding legislation appoint PCBL as liquidator of defunct CFCs. The liquidation of these CFCs is ordained by the said law on account of their illegal activities, heavy indebtedness to the public and consequent insolvency. It is a settled principle of law that a liquidator/receiver of an insolvent entity is vested with the power to avoid voluntary transfers made by the insolvent. Likewise, a liquidator/receiver has the power to avoid transactions that may be deemed to constitute fraudulent preferences. These powers are codified, *inter alia*, in Section 53 and 54 of the Provincial Insolvency Act, 1920. The principles of law

enshrined in the said provisions have also been incorporated in the Companies Ordinance, 1984. In relation to the defunct CFCs, similar powers have been vested in the PCBL under the provisions of Section 7(b), (e), (h) and (p) of the PUCS Act, 1993 that are reproduced below:

"7. Powers of a Co-operatives Board. A Cooperative Board when appointed as a Liquidator under this Act shall have all the powers exercisable by a Liquidator under the Co-operative Societies Act, 1925 and in addition to that shall have the power to--

- (a) ...
- (b) unearth and proceed against any concealed or hidden property of an Undesirable Co-operative Society, whether in the name of any Director, Officer, agent or any of the members of their families or in the name of any other person, body, company or firm acquired or purchased by using or diverting the funds of such a society;
- ...
- (e) cancel all agreements entered into by an Undesirable Co-operative Society or its previous managements or Directors, officers or agents which in the opinion of the Co-operatives Board, are *mala fide* and against the interest of such a society or the members thereof;
- ...
- (h) determine the validity of adjustment of the deposits, loans, deposit certificates, securities and other such instruments;
- ...
- (p) satisfy wholly or partly the verified claims with the approval of the Co-operative Judge at any time pending winding up proceedings and final determination of assets and liabilities of an Undesirable Co-operative Society; ... "

One purpose of aforesaid provisions that confer power on PCBL to cancel agreement is, *inter alia*, for the general creditors of a CFC to be treated fairly and equally. Any discrimination by the erstwhile management/controllers of the entity under liquidation for benefiting some over its other creditors belonging to the same class must therefore be curtailed and prevented. This would, however, be subject

to any lawful scheme notified by the PCBL or the Provincial Government under the PUCS Act, 1993 for settlement or adjustment of claims by depositors. Otherwise the settled principle of law for distribution of assets among the same class of creditors of an insolvent is done '*pro rata*' through proportionate abatement of claims as envisaged in Section 61 of the Provincial Insolvency Act, 1920. By this method, all the creditors of equal standing, in the present case, the CDR holders of a defunct CFC are put to equal risk/loss in case of non-realization of their respective debts in entirety.

5. The foregoing approach is noticeable in the impugned order dated 28.04.2001 passed by the Chairman, PCBL, which mentions the provisions of clauses (b) and (e) of Section 7 of the PUCS Act, 1993. Quite apart from the said valid grounds adopted by the impugned decisions, to our minds, the general powers of a liquidator/receiver, namely, to avoid voluntary transfers and make *pro rata* distribution meant to treat similarly placed creditors of an insolvent entity equally are encapsulated in the provisions of Section 7 of the PUCS Act, 1993. Accordingly, the preference given to the petitioners over other similarly placed creditors of the two defunct CFCs defeats any claim of *locus poenitentiae* posited by the petitioners. The said reason therefore suffices to cancel the NOC issued in favour of the petitioners. Consequently, the impugned judgments of the High Court and the impugned order of the Chairman, PCBL are lawful and valid.

For the foregoing reasons, we do not find any merit in this petition, which is accordingly dismissed alongwith all ancillary Misc. Applications. Leave to appeal is refused.

CJ.

J.

J.

Islamabad,
15.10.2015.
*Irshad Hussain /**

APPROVED FOR REPORTING.