

Sahara Credit Cooperative Society vs Union Of India on 22 March, 2022

Author: Vipin Sanghi

Bench: Navin Chawla, Vipin Sanghi

\$~56, 61 & 62

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 669/2021 & CM Nos.13568/2022, 13570/2022, 13572/2022, 13574-75/2022, 13578/2022, 13872/2022, 13886/2022

SAHARA CREDIT COOPERATIVE SOCIETY

..... Petition

Through: Mr.S.B. Upadhyay, Sr. Advocate
Mr.Simranjeet Singh, Ms.Ne
Gupta, Ms.Rhea Dube, Advocates.

versus

UNION OF INDIA

..... Res

Through: Mr.Chetan Sharma, A
Solicitor General, Mr.Ajay Digp
Central Government
Counsel, Mr.Asheesh Jain, Mr.Am
Gupta, Mr.Vinay Yadav, Mr.R.V.
Prabhat, Mr.Sahaj Garg, Mr.Rish
Dubey and Mr.Kamal R. Digpaul,
Advs. for UOI.
Mr.Sumeer Sodhi,
Nandrajog, Mr.Arjun
Mr.Rohit Saroj, Advs. for appli
CM Nos.2210910/2021,
54/2022.
Mr.Manish Miglani, Advocate for
Applicants/Inteverner in
Application No. 13872/2022 and
13886/2022

(61) W.P.(C) 670/2021 & CM Nos.1625/2021, 22404/2021, 22405/2021, 30219/2021, 45756/2021, 45858/2021, 46030/2021, 7800/2022, 8252/2022, 8519/2022, 8731/2022, 8732/2022

SAHARAYN UNIVERSAL MULTIPURPOSE
SOCIETY LIMITED

..... Petition

Through: Mr. S.B. Upadhyay, Sr. Advocate
with Mr. Simranjeet Singh, Ms. Neha

Signature Not Verified
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BATRA
Signing Date:25.03.2022

16:00:21

Gupta, Ms. Rhea Dube, Advocates

versus

UNION OF INDIA

..... Resp

Through: Mr.Chetan Sharma, Ad
Solicitor General, Mr.Ajay Digpa
CGSC, Mr.Asheesh Jain, CGSC,
Mr.Amit Gupta, Mr. Vinay Yadav,
Mr. R.V. Prabhat, Mr. Sahaj Garg
Mr. Rishav Dubey and Mr. Kamal R
Digpaul, Adv. for UOI.
Mr.Sumeer Sodhi, M
Nandrajog, Mr.Arjun
Mr.Rohit Saroj, Adv. for applic
CM Nos.4316-17/2022.
Mr.Manish Miglani, Advocate for
Applicants/Inteverner in
Application No. 13872/2022 and
13886/2022

(62) W.P.(C) 817/2021 & CM Nos.2093/2021, 45857/2021, 4316/2022,
4317/2022, 8170/2022

HUMARA INDIA CREDIT COOPERATIVE
SOCIETY

..... Petitione

Through: Mr.S.B. Upadhyay, Sr. Advocate with
Mr.Simranjeet Singh, Ms.Neha
Gupta, Ms.Rhea Dube, Advocates.

versus

UNION OF INDIA

..... Respon

Through: Mr.Chetan Sharma, Addit
Solicitor General, Mr.Ajay Digpa
CGSC, Mr. Asheesh Jain, CGSC,
Mr.Amit Gupta, Mr. Vinay Yadav,
Mr.R.V. Prabhat, Mr.Sahaj Garg,

Signature Not Verified
Digitally Signed By:SHAL00
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16:00:21

Mr.Rishav Dubey and Mr.Kamal
Digpaul, Adv. for UOI.
Mr.Sumeer Sodhi, Mr.
Nandrajog, Mr.Arjun
Mr.Rohit Saroj, Adv. for app
in Nos.22404-05/2021, 8731-32

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE NAVIN CHAWLA
ORDER

% 22.03.2022

1. We have heard the submissions of the learned senior counsel for the petitioners on the one hand and the learned Additional Solicitor General (in short, „the learned ASG) on the other hand. We have also heard the learned counsels for the interveners, who have intervened in these proceedings.
2. The challenge in these proceedings are to the show cause notices issued by the Central Registrar under Section 86 of the Multi-State Cooperative Societies Act, 2002 (hereinafter referred to as „the Act).
3. The challenge is premised on the averment that the show cause notices has been issued without conducting an audit under Section 70; or special audit under Section 77; or an inquiry under Section 78; or an inspection under Section 79 of the said Act.
4. To this, the submission of the learned ASG is that the Central Registrar has the power to suo moto issue notice for winding up of the Multi-State Cooperative Society under Section 80(2) of the said Act and in particular, he places reliance on Clause (b) of Section 80(2) to submit that the notices have been issued under the said provision. He submits that for invocation of the power to issue a notice under Section 80(2), it is not necessary that an audit, special audit or an inquiry should have been held under one of the aforesaid provisions mentioned in Section 80(1) of the Act.
5. Our attention has also been drawn to the averment made by the respondent nos. 1 & 2 in their counter affidavits filed in these matters. Paragraph 6 of the counter affidavit filed in WP(C) 669 of 2021 states as under:

"b. Sahara Credit Cooperative Society Ltd. has taken deposits of Rs. 47,245 Crore from approximately 4 Crore depositors, Saharayn Universal Multipurpose Society Ltd. has taken deposits in the form of contributions amounting to Rs. 18,000 Crore from approximately 3.71 Crore members; Stars Multipurpose Cooperative Society Ltd. has taken deposits in form of contributions amounting to Rs. 8,470 Crore from approximately 37 lakh members and Humara India credit cooperative society Ltd. has taken deposits of Rs. 12,958 Crore from approximately 1.8 Crore members. Total deposits taken by these four cooperative societies as disclosed by their management amounts to approximately Rs. 86,673 Crore.

c. Information provided by the management of these four cooperative societies has revealed that Sahara Credit Cooperative Society Ltd. has invested Rs. 28,170 Crore in Aamby Valley Limited, a company incorporated under the Companies Act, Saharayn Universal Multipurpose Society Limited has invested Rs. 17,945 Crore in Aamby Valley Limited, Stars Multipurpose Cooperative Society Ltd. has invested Rs. 6,273 Crore in Aamby Valley Ltd. and Humara India Credit Cooperative Society Ltd. has

invested Rs. 10,255 Crore in Aamby Valley Limited. A total amount of Rs. 62,643 Crore has shown to be invested in Aamby Valley Limited by these four cooperative societies against their total deposits of Rs. 86,673 Crore.

d. In addition to large scale investment in Aamby Valley Limited which is a Sahara Group Company significant investments have also been depicted in the accounts of these four cooperative societies purported to have been made in other Sahara Group Companies like Sahara India Commercial Corporation Limited, Sahara Prime City Limited Lucknow, Sahara Housing Projects in Versova, Mumbai, Sahara Financial Corporation Limited, Sahara Hospitality, Sahara India Limited etc. e. The examination of Profit and Loss accounts of these cooperative societies reveal that fictitious profits have been shown for transaction of sale and purchase of shares of Aamby Valley Limited amongst the group entities. These entities show income from sale of shares whereas such transfers have happened within the group entities only.

f. During the hearing, management of Sahara Credit Cooperative Society Ltd. also revealed that an amount of Rs. 2,253 Crore has been taken out from the funds of the society and deposited with SEBI on account of the dispute of Sahara Real Estate Limited and has been shown as an advance to Shri Subarato Sahara. How such a large sum has been siphoned off and deposited on account of the liability of another company namely Sahara Real Estate Limited remains unexplained."

6. In the rejoinder filed by the petitioner in WP(C) 669 of 2021, there is no denial of the fact that indeed an amount of Rs. 2,253 Crore was taken out from the funds of the petitioner-society, that is Sahara Credit Cooperative Society. The explanation furnished by the petitioner, which prima facie does not satisfy us, is that the said amount was advanced to Mr. Subarato Ray against the pledge of his shares in the company, namely Ambey Valley Ltd.

The said transaction, prima facie, does not come within the scope of Section 64 of the Act that stipulates the manner in which the Multi-State Cooperative Societies may invest or deposit its funds. We, hereunder, quote the explanation given by the petitioner for the above referred transfer of Rs. 2,253 Crore:

"f. That the contents of Para 6f of the counter affidavit under reply are denied being wrong, false and incorrect. It is denied that during the hearing, management of Sahara Credit Cooperative Society Ltd. also revealed that an amount of Rs. 2,253 Crore has been taken out from the funds of the society and deposited with SEBI on account of the dispute of Sahara India Real Estate Corporation Limited and has been shown as an advance to Shri Subrata Roy Sahara. It is denied that such a large sum has been siphoned off and deposited on account of the liability of another company namely Sahara India Real Estate Corporation Limited remains unexplained. In this regard it is submitted that after the compliance of order of Hon'ble Supreme Court's order, the petitioner society deposited an amount of Rs.2152.88 Crores to SAHARA SEBI A/c, and Sh. Subrata Roy Sahara, Chairman, Sahara India Group had

approached the Petitioner Society for grant of security of Rs.2152.88 Crores, Accordingly, an Agreement for Pledge of Shares dated 30.06.2014 was entered between Sh. Subrata Roy Sahara and Sahara Credit Co-operative Society Limited whereby Sh. Subrata Roy Sahara had pledged his holding of equity shares of Aamby Valley Limited and against the same was treated as a loan of Rs.2152.88/- Crores. Hence, the deposits of the members of the Petitioner society was duly secured by the Petitioner Society as the holding of shares of Shri Subrata Roy Sahara were held by the Petitioner Society against the amount. This understanding was arrived at between the parties in order to safeguard the society from Contempt of Orders passed by the Hon'ble Supreme Court of India."

7. Mr. Sharma points out that the pledge shares had become worthless and were not being traded and the assets of the Ambey Valley Limited have been attached.

8. There are scores of intervention applications that have been filed in these writ petitions by the investors who have alleged that their monies invested with the petitioner societies have matured since 2017 and thereafter, and they have not been repaid by the petitioner societies.

9. Mr. Upadhyay, the learned senior counsel appearing for the petitioners, has argued that by way of the impugned notices under Section 86, the Central Registrar has passed the orders restraining the petitioners from collecting any further deposits. He submits that if the petitioners are restrained from collecting further deposits, the same would hamper their business and they would not be in a position to service their obligations owed to their members.

10. He has also placed reliance on a Special Audit Report prepared by S.N. Kapoor and Associates, the Chartered Accountants, in respect of Sahara Cooperative Societies Limited, to submit that the Special Audit Report is in favour of the petitioner.

11. To this, Mr. Sharma, the learned ASG, has pointed out that the Special Audit Report is itself suspect and in this regard, he has placed reliance on the notice dated 10.04.2019 issued by the respondent, which shows that the Special Auditor was not made aware of the hundreds of applications received against the petitioner society with regard to members/depositors not being repaid the amounts that were due to them.

12. Mr. Upadhyay submits that the petitioner societies have all the intention to repay all its investors/depositors without any delay. He submits that the petitioner societies, in fact, are in a position to repay all the members/depositors whose amount has become due and payable.

13. We have considered the submissions made. From the Short Reply/Affidavit on behalf of the Respondent/UOI quoted herein above and the rejoinder thereto, also quoted herein above, we prima facie find that there are serious allegations of siphoning of the funds by the petitioner-Societies. From the intervention applications also, we prima facie find that there are score of investors who complain of non-payment of their dues. These investors appear to be small-time investors who may have invested their hard-earned life savings into the petitioner-societies and are

likely to suffer irreparable harm in case their interests are not protected.

14. In the light of the aforesaid, we in the interim restore impugned orders/notices insofar as they direct the petitioners not to collect any further deposits. To test the bona fide of the petitioners, we direct the Central Registrar to look into the claims which have either been received by it or have been filed before us by way of the intervention applications and after examining the same, pass orders directing the petitioners to refund the amounts to such members/investors/depositors whose amounts are found to have become due and payable. Mr. Upadhyay, learned senior counsel appearing for the petitioners has assured us that such members/investors/depositors shall be duly paid the amount found due and payable to them. Accordingly, we direct that the petitioners shall pay the amounts due to the members within two weeks of such determination being made. Proof of such payment shall be filed by the petitioners with the Central Registrar.

15. For the purpose of verification of claims, the Central Registrar shall also call for the petitioners to provide the requisite inputs and information. The petitioner shall nominate one nodal officer for that purpose and it shall be the responsibility of the nodal officer so nominated to communicate with the Central Registrar by all means promptly. Failure to do so shall be looked at adversely. In case the petitioners fail or refuse to provide any information called for, the Central Registrar shall be entitled to pass orders in the absence of the petitioners.

16. Status report on the above exercise shall be filed by the Central Registrar before us on the next date.

17. List on 23rd May, 2022.

VIPIN SANGHI, ACJ NAVIN CHAWLA, J MARCH 22, 2022/Arya