"Critical Analysis Of '*Sunil Agarwal v. LIC Housing Finance Limited & Ors*'"[1]

-By Adab Singh Kapoor[2]

I. Background

A credit score enables banks and financial institutions to assess the credit worthiness and capacity of a borrower to discharge his obligations with respect to the credit facility availed or to be availed. In essence a healthy credit score is essential for a person desiring to seek financial assistance from a credit institution. No wonder, in today's day and age, a person is very cautious to keep his credit score commensurate to his requirement of financial assistance.

At times a borrower discovers that his credit information is not updated, or is not correct in any aspect for whatever reason and desires that the same be modified/altered, so that an accurate account of his credit information be provided through the Credit Information Companies to the concerned financial institutions from which it does or may seek financial assistance.

II. Introduction

This article analyses the captioned judgment of the Hon'ble Calcutta High Court, upon a petition under Article 226 of the Constitution of India, 1950, *inter alia* seeking a writ of mandamus against the Reserve Bank of India (Hereinafter referred to as "**RBI**"). The Petitioner was aggrieved on account of his alleged inaccurate credit information supplied by the Credit Institution, L.I.C Housing Finance Limited (Hereinafter referred to as "**LIC**"), to the Credit Institution Company (Credit Information Bureau (India) Ltd(Hereinafter referred to as "**CIBIL**") in this case) and moved an application under section 18 of the Credit Information Companies (Regulation) Act, 2005(Hereinafter referred to as the "**Act of 2005**") for settlement of the dispute before the RBI, which was not acted upon. Hence, the writ petition.

[1] Sunil Agarwal v. LIC Housing Finance Limited, CIBIL and RBI, [2012] 173 CompCas476(Cal).

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The Hon'ble Calcutta High Court, disposed of the writ petition, by directing the RBI to treat it as a reference under section 18 of the Act of 2005, which in the opinion of the author was an erroneous observation as recourse to section 18 of the Act of 2005 could only be taken when no other remedy was available under the Act of 2005. There are specific provisions in the Act of 2005 to deal with instances when a person is aggrieved about the correctness of his credit information and accordingly, in the humble opinion of the author, the judgment has not laid down good law.

The author is of the opinion that the above mentioned judgment has erroneously given a license to any client/borrower to approach the RBI under section 18 of the Credit Information Companies (Regulation) Act, 2005(Hereinafter referred to as "Act of 2005"), for any grievance with respect to his credit information with a credit information company; despite there being an express bar to approach the RBI under the said provision when there are other remedies available in the Act of 2005.

III. Relevant Facts and Provisions:

FACTS

The Petitioner in this case, was a director of Siddhartha Carriers Private Limited. One Sudip Sen was an erstwhile employee in the same company. Showing the Petitioner as a guarantor, Sudip borrowed money from L.I.C. On Sudip's default, LIC supplied information to CIBIL, resulting in it showing the Petitioner as a defaulter of the payment obligation. Aggrieved by such record, the Petitioner filed an application under Section 18 of the Act of 2005. Further aggrieved by the inaction of the Respondents, the Petitioner filed a Writ Petition under Article 226 of the Constitution of India in the Hon'ble High Court of Calcutta, praying for a writ of mandamus directing the Respondents to settle the dispute.

Relevant Provision of the Act of 2005

Section 18 of the Act reads as follows:

> ***"S 18. Settlement of Dispute:***
> *(1) Notwithstanding anything contained in any law for the time being in force, if any dispute arises amongst, credit information companies, credit institutions, borrowers and clients on matters relating to business of credit information and* ***for which no remedy has been provided under this Act****, such disputes shall be settled by conciliation or arbitration as provided in the Arbitration and Conciliation Act, 1996(26 of 1996), as if the parties to the dispute have consented in writing for determination of such dispute by conciliation or arbitration and provisions of that Act shall apply accordingly.*
>
> *(2) Where a dispute has been referred to arbitration under sub-section (1), the same shall be settled or decided,--*
> *(a) by the arbitrator to be appointed by the Reserve Bank;*
> *(b) within three months of making a reference by the parties to the dispute:*
> *Provided that the arbitrator may, after recording the reasons therefor, extend the said period up to a maximum period of six months:*
> *Provided further that, in an appropriate case or cases, the Reserve Bank may, if it considers necessary to do so (reasons to be recorded in writing), direct the parties to the dispute to appoint an arbitrator in accordance with the provisions of the Arbitration and Conciliation Act, 1996(26 of 1996), for settlement of their dispute in accordance with the provisions of that Act.*
>
> *(3) Save as otherwise provided under this Act, the provisions of the Arbitration and Conciliation Act, 1996(26 of 1996) shall apply to all arbitration under this*

Act as if the proceedings for arbitration were referred for settlement or decision under the provisions of the Arbitration and Conciliation Act, 1996."

[Emphasis Supplied]

Section 21 of the Act read with Rule 25 of the Credit Information Companies Rules, 2006 (Hereinafter referred to as "Rules of 2006") reads as under:

"S 21. Alteration of credit information files and credit reports:

(1) Any person, who applies for grant or sanction of credit facility, from any credit institution, may request to such institution to furnish him a copy of the credit information obtained by such institution from the credit information company.

(2) Every credit institution shall, on receipt of request under sub-section (1), furnish to the person referred to in that sub-section a copy of the credit information subject to payment of such charges, as may be specified by regulations, by the Reserve Bank in this regard.

(3) ***If a credit information company or specified user or credit institution in possession or control of the credit information, has not updated the information maintained by it, a borrower or client may request all or any of them to update the information; whether by making an appropriate correction, or addition or otherwise, and on such request the credit information company or the specified user or the credit institution, as the case may be, shall take appropriate steps to update the credit information within thirty days after being requested to do so****:*

Provided that the credit information company and the specified user shall make the correction, deletion or addition in the credit information only after such correction, deletion or addition has been certified as correct by the concerned credit institution:

Provided further that no such correction, deletion or addition shall be made in the credit information if any dispute relating to such correction, deletion or addition is pending before any arbitrator or tribunal or court and in cases where such dispute is pending, the entries in the books of the concerned credit institution shall be taken into account for the purpose of credit information."

"R 25. Accuracy of data provided by a credit information company:

(1) Every credit information company shall adopt appropriate procedure with the approval of the Reserve Bank-

(a) ***for verifying the data, information or credit information maintained by them on the basis of the information obtained by them from credit institution or credit information company, as the case may be****; and*

(b) ***to ensure, before furnishing data, information or credit information to a specified user or making disclosure thereof to anyone else in accordance with the Act, that such data, information or credit information maintained by them is accurate, complete and updated*** *with reference to the date mentioned therein by the respective credit institution or credit information company, as the case may be.*

(2) If, for any reason beyond control, it is not possible for any credit information company to furnish complete and updated data, information or credit information, as per sub-rule (1), the credit information company shall make a remark with reference to the date up to which its accuracy and completeness has been verified and found to be correct.

(2) *Subject to the provisions of sub-sections (2) and (3) of section 21 of the Act, in respect of alteration and updating of credit information* ***on request of a***

borrower in accordance with said provisions, if a credit information company after furnishing the data, information or credit information to a specified user or making disclosure thereof to anyone else, in accordance with the Act, discovers of its own, or is informed about any inaccuracy, error or discrepancy in respect of the data, information or credit information, the credit information company shall,-

(a) latest by seventh day, send the intimation to the specified user or the individual, as the case may be, of such inaccuracy, error or discrepancy;
(b) take immediate steps to correct such inaccuracy, error or discrepancy; and

(c) forward the corrected particulars of the data, information or credit information to the specified user or the individual, as the case may be, within a period of thirty days from the date when the credit information company had discovered or was informed of such inaccuracy, error or discrepancy*.*

(4) If, for any reason beyond control, it is not possible for the credit information company to furnish corrected information as per sub-rule (3), the credit information company shall inform the specified user or the individual, as the case may be, of the steps taken by it at their end for correction of such inaccuracy, error or discrepancy and also the reasons for its inability to comply with the provisions of sub-rule (3);

(5) ***Any credit information company failing to take steps as per sub-rule (3), without any sufficient reason for its inability to comply with the said provisions, shall be liable for contravention of the provisions of the Act."***

[Emphasis Supplied]

IV. RELEVANT EXCERPTS FROM THE JUDGMENT

The Single Bench of the Hon'ble Court observed vide para 11 as under:

> "*It is, therefore, evident that the real dispute raising which this petition has been filed is about the accuracy of the information showing the petitioner as guarantor for the loan LIC Housing Finance ltd., granted to Sudip and collection, storage and use of information by Credit Information Bureau(India) Ltd. The question is how the dispute is to be settled."*

The Bench vide para 15 observed as under:

> "*It seems to me that the petitioner has reason to feel aggrieved by the inaction on the part of the Reserve Bank of India to which section 18 application dated July 20, 2010, was sent. In my opinion, treating the application as a reference (for the provisions of the Act do not provide any specific mode for referring a dispute to arbitration under sub-section (1) of section 18),* ***the Reserve Bank of India ought to have taken steps in terms of sub-section (2) of section 18****."*

The Hon'ble Court further observed in para 16 as under:

> "*It is nobody's case that with respect to the present dispute concerning the credit information collected and stored by Credit information Bureau(India) Ltd., the petitioner has some other remedy under the Credit Information Companies(Regulation) Act, 2005"*

Lastly, the Hon'ble Court observed in para 17 as under:

> "*It is to be noted that counsel for LIC Housing Finance Ltd, Credit Information Bureau(India) Ltd, and the Reserve Bank of India have not argued that the petitioner's section 18(1) application referring the dispute between him and the Credit Information Bureau(India) Ltd., was not entertainable by the Reserve Bank of India. On the contrary, counsel for the Reserve Bank of India has submitted that the bank will need at least four weeks for taking a decision in terms of section 18(2) of the Act****. For these reasons , I dispose of the petition ordering as follows. Within four weeks from the date of communication of this order the Reserve Bank of India shall give its decision dealing with the petitioner's application dated July 20, 2010, treating it as a reference under section 18(1) of the Credit Information Companies(Regulation) Act, 2005****…"*

V. CRITICAL ANALYSIS OF THE JUDGMENT IN LIGHT OF THE PROVISIONS

Sub-section (1) to section 18, provides for settlement of disputes and *inter alia* describes the parties to a dispute and the scope for applicability of the section. The parties referred to are credit information companies, credit institutions, borrowers and clients and the scope is confined to the matters relating to the business of credit information and for which no remedy has been provided under the Act of 2005.

It is relevant to note and is reiterated that recourse to section 18 of the Act of 2005 can only be taken when there is no other remedy provided under the said Act.

A bare perusal of section 21 of the Act of 2005 read with Rule 25 of the Rules of 2006 would clearly demonstrate that there are specific provisions to deal with the grievance of a borrower with respect to his inaccurate credit information. In the event the concerned

credit institution or the Credit Information Company, does not take steps to redress the grievance of the borrower with respect to his inaccurate credit information, in accordance with the Act of 2005 and the Rules made thereunder, then the said credit institution or the credit information company shall be subject to penalties (as prescribed under section 23 or section 25 of the Act of 2005). Accordingly, a dispute pertaining to inaccurate credit information, for which a specific remedy has been provided in the Act of 2005, can not be resolved by taking recourse to section 18 of the Act of 2005. As such the Hon'ble High Court, has erred in observing vide para 15 that the RBI ought to have taken steps in terms of sub-section (2) of section 18 of the Act of 2005.

Vide para 16, the Hon'ble High Court has observed that it is none of the parties' case that the Petitioner has some other remedy under the Act of 2005 and further vide para 17 has observed that neither of the parties have stated that the petition under section 18 of the Act of 2005 was not entertainable by RBI. The Hon'ble Court has then concluded by observing that the RBI ought to treat the petitioner's application as a reference under section 18(1) of the Act of 2005.

The author would like to pause here a while and ask himself the following question:

"Whether in light of express provisions contained in section 21 of the Act of 2005 read with Rule 25 of the Rules of 2006, should the Hon'ble Court merely proceed on the basis of what the parties have to say, even when the same is in stark contrast with the letter of the law?"

In light of the analysis above, the author is of the opinion that the Petitioner has erred in initiating proceedings under Section 18 of the Act and the Hon'ble Court, in the aforementioned judgment, erred in permitting the initiation of proceedings pursuant to

Section 18 of the Act since as per the language of the section, an application under Section 18 of the Act may be initiated only when a dispute arises between the parties and no remedy has been mentioned within the Act. The RBI *vide* their statement seeking four weeks time to make a decision under Section 18(2) have also erred by entertaining the Petitioners application. The RBI should have pointed out clearly that the Petitioners application is not entertainable as he has other remedies under the Act.

By observing that the Petitioner's application can be treated as a reference under section 18(1) of the Act of 2005, the Hon'ble Court has opened a Pandora's Box, as it now gives every borrower or a client a chance to initiate proceedings under Section 18 even if other remedies under the Act of 2005 are available to them therefore deviating from the language and intent of Section 18 of the Act of 2005.