



**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.**

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**CWP-25702-2022 (O&M).
Date of Decision: 12.02.2024.**

THE JUTE CORPORATION OF INDIA LTD.

... Petitioner(s)

Versus

THE STATE OF PUNJAB AND OTHERS

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Rahul Deswal, Advocate, with
Mr. Umang Goyal, Advocate, for the petitioner.

Mr. Sourav Verma, Addl. A.G. Punjab,
for respondents No.1 and 2.

Mr. Vikas Mohan Gupta, Advocate,
for respondent No.3.

VINOD S. BHARDWAJ, J.

1 The instant petition has been preferred by the petitioner-trust seeking writ of mandamus whereby direction is sought to be issued against respondent no.1 and respondent no. 2 to discharge their obligation as a guarantor of the bonds issued by respondent no. 3 and to pay the accrued interest on the delayed payment of bonds and actual interest accrued on the bonds.



2 The primary question that comes up for consideration of this Court is whether an investor is entitled to claim guaranteed interest on the bonds issued by a Public Sector Undertaking and guaranteed by the sovereign, when he accepts only the principal amount without guaranteed interest, under an imminent fear of loosing out on the entire invested amount.

FACTS IN PETITION

3 The facts of the present case are that the petitioner is a Trust which has been constituted for instituting provident fund scheme for its employees as per rules and regulations set in the respective Trust deed. The object of constituting the trust was to collect/accumulate amount from its employees and to invest the same for the benefit of the employees in service of Jute Corporation of India. That the petitioner – trust has been recognized as “Provident Fund” under the Income Tax Act, 1961 and it is managed and administered in accordance with the provisions of the “Employees Provident Fund and Miscellaneous Provisions Act, 1952” and Rules made thereunder and further the petitioner-trust is the representative of the Management and employees of Jute Corporation of India.

4 That in the year 2005, the respondent no. 3-Punjab State Industrial Development Corporation (hereinafter referred to as ‘PSIDC’) came out with several bond investment schemes issued with different coupon rates and it was highlighted in all the said bond investment schemes that they are backed by unconditional and irrevocable guarantee from respondent



no. 1-State of Punjab and respondent no. 2-Department of Industries and Commerce in Government of Punjab in the matter of paying the accrued interest and regarding repayment of the principal amount. The said scheme was open for investment from accretions by non-government provident funds, superannuation and gratuity funds. The repayment of principal and interest was guaranteed by respondent no. 1 & 2 vide notification no. 15/24/03-51B/2226 dated 04.10.2005. The relevant part of the same is extracted as under: -

“Guarantee

The Bonds are unconditionally and irrevocably, guaranteed as to the timely repayment of principal and payment of interest by Government of Punjab”

5 That in pursuance of the above-mentioned guarantees on behalf of respondent no. 1 & 2, the petitioner – trust purchased the bonds of respondent no. 3 as detailed hereunder: -

Date of allotment	Name of the bond	Nos. of bonds purchased	Distinctive nos.	Amount (Rs.) invested	Redemption Scheduled
27.01.2006	7.80% bond 2016	26	12759 - 12784	26,00,000	30% - April , 2014 30% - April, 2015 40% - April, 2016
15.02.2007	9.32% bond, 2017	54	1686 - 1739	54,00,000	30% - April, 2015 30% - April, 2016 40% - April, 2017
			Total =	80,00,000	

6 That as per the scheme and bonds purchased by the petitioner – trust, 30% of the total- value of the bonds carrying an interest rate of 7.80% for 26 bonds (1lakh each) were to be redeemed in April, 2014 and



further redemption of 30% in April, 2015 and the last redemption of 40% in April, 2016. Secondly, 30% of the total value of the bonds carrying an interest rate of 9.32% for 54 bonds (1 lakh each) were to be redeemed in April, 2015 and further redemption of 30% in April, 2016 and the last redemption of 40% in April, 2017. That as per the investment schemes of the bonds, the petitioner – trust was to get the interest on the invested amount periodically on the above stated rate till its final redemption.

7 The petitioner- trust, vide communication dated 12.11.2014 (Annexure P-5), sent a request to respondent no. 3-PSIDC for redemption of the 30% of the first installment and it was also requested that interest on the bonds i.e. at the rate of 7.80% on Rs. 26,00,000 for the period from 2006 till November 2014 be also credited to the petitioner – trust account but to no avail. A reminder letter dated 22.01.2015 (Annexure P-6) was issued by the petitioner- trust requesting again for redemption of 30% bond due towards it since January, 2014. That in pursuance of the reminder letter, respondent no. 3-PSIDC vide its reply dated 05.02.2015 (Annexure P-7), assured that funds are being arranged for the pending redemption & interest on PSIDC Bonds and requested petitioner-trust to bear with them for some time keeping in view the fact that PSIDC is wholly owned undertaking of the State Government and it was making its best efforts to discharge its obligations.



8 However, even after the assurances provided by the respondent no. 3-PSIDC nothing fruitful was done. The petitioner - trust was constrained to again send reminders for release of the same on 04.05.2015 (Annexure P-8), 02.11.2015 (Annexure P-9) and 24.06.2016 (Annexure P-9A). In response to the reminder letter dated 02.11.2015 (Annexure P-9); PSIDC issued communication dated 07.12.2015 (Annexure P- 10) stating that the delay in the payment was caused due to the financial crunch faced by the respondent Corporation. The said communication also pointed out that inflow of funds are shortly expected and again a request was made to bear with them reiterating that PSIDC is wholly owned undertaking of the State Government and making its best efforts to discharge its obligations. Being a State entity, petitioner believed the said assurance.

9 That despite promises of respondent no. 3-PSIDC for repayment of the amount due to the petitioner-trust at the earliest, the needful was not done, hence, the petitioner was constrained to make communication dated 08.01.2016 (Annexure P- 11) to the Chief Secretary, Punjab requesting release of its rightful claims but no heed was paid on the same. The petitioner – trust again sent reminders dated 24.06.2016 (Annexure P-12) and 28.02.2017 (Annexure P-13) to respondent no.3-PSIDC requesting redemption of the bonds, as per the agreed terms and conditions of issue, against which reply dated 03.04.2017 (Annexure P- 14) was sent by the respondent no. 3-PSIDC praying again for some more time to release the payment. The petitioner – trust again sent reminder letter dated 04.03.2019 (Annexure P-14 A) but to no avail.



10 After many efforts, meetings and reminders, the respondents only returned the principal amount invested by the petitioner – trust on 21.09.2020 expressing their inability to give interest amount and even stating that in the event petitioner-trust does not settle for the principal amount and forego the interest component, the principal amount may even be lost. Having been left with no choice and considering that no interest or principal was released despite the same having fallen due in January 2014 and more than 6½ years had elapsed thereafter, the petitioner feared loss of the principal hard earned contributions of the worker of the Jute Corporation. The State itself having chosen not to respond despite the representations sent to the Chief Secretary who was fully aware of the sovereign guarantee, the fear of petitioner losing out on the entire capital was well founded.

11 It was specifically pleaded that a meeting of the officials of the petitioner was held with officials of the PSIDC on 10.02.2020. The specific recorded stand of PSIDC in the said meeting is extracted as under:-

“Sh. S.K. Ahuja, Sr. G.M. explained that every effort has been taken to repay the dues to the investors and mentioned that in view of the acute financial position, at the request of the Bondholders, PSIDC has settled their claim at the principal amount and similar settlement can be made with the Jute Corporation of India Ltd. CPF Trust.”

12 The petitioner thereafter convened a meeting of its shareholders on 18.02.2020. The resolution passed in the said meeting is extracted as under:-



“Default of payment of interest and redemption of Principal dues on 7.80% PSIDC Bond 2005 (1 Series) - ISIN No. INE973F09038 - Face value - Rs. 26.00 Lacs and 9.32% PSIDC Bonds (2 Series) - ISIN No. INE973F09061-face value - Rs. 54.00 Lacs.”

The Board may kindly recall that during the last BOT Meeting held on 06th January 2020 a decision was taken to send a team of two officials namely of Sri P. Santra & Sri S. Saha to Chandigarh to physically assess the status of PSIDC and the possibility of recovery the Principal and interest on the above stated Bonds. Accordingly, Sri P. Santra and Sri S.Saha visited the Office of the PSIDC, at Udyog Bhawan, 18, Himalaya Marg, Sector-17, Chandigarh -160017 and met the officials on 10th and 11th February 2020. During the meeting the PSIDC officials given consent (copy enclosed) in writing that the Principal amount of Rs. 80,00,000/- (Rupees Eighty Lacs) would be paid within March 2020, if the BOT of JCICPF Trust agreed to forgo the Interest portion.

"RESOLVED THAT, consent in writing be Provided to M/s Punjab State Industrial Development Corporation Limited (PSIDC) to forgo total receivable interest amount due on above PSIDC Bonds as on date."

"FURTHER RESOLVED THAT, a confirmation in writing from PSIDC be obtained to release the payment of Principal Amount of Rs. 80,00,000/- (Rupees Eighty Lacs only) within this Financial Year from the date of submission of consent for forgo Interest."

- 13 The necessary documents for redemption were hence released.
- 14 After the receipt of the principal amount on 21.09.2020, the petitioner decided to pursue for its forced waiver of the claim and



submitted a request to the PSIDC for release of interest since they retained their money for 13 years and have not paid any interest. The above request dated 11.03.2021 was declined by PSIDC vide its reply dated 19.03.2021.

REPLY

15 Learned counsel for the State of Punjab made a statement on 20.02.2023 that he does not intend to file reply as the contest is with respondent No.3-PSIDC.

16 A written statement was filed by PSIDC wherein it was admitted by it that its financial health was not strong, hence, it submitted a proposal to the petitioner to accept only the principal and to forego the interest. The same was voluntarily accepted by the Board of the petitioner, after due consideration of all pros and cons.

17 After receipt of the consent from the petitioner, the proposal became final and binding. The principal amount was thereafter released and accepted by the petitioner as full and final settlement of all claims between the parties. There was thus no further subsisting liability. The parties having acted on a settlement arrived at after negotiation cannot seek to re-claim what had been voluntarily given up during settlement. The relevant part of the reply filed by the respondent No.3-PSIDC is extracted as under:-

PRELIMINARY SUBMISSIONS:

“2. That, the petitioner has not approached this Hon'ble Court with clean hands and thus writ petition deserves to be



dismissed. It is submitted that a proposal was made by the answering respondent for settlement of the payment of the bonds only on payment of principal amount, thus to forego the amount of interest payable to the petitioner. Such proposal was given, as the financial condition of the answering respondent is not upto mark and is under losses. The said proposal was duly considered by the petitioner in its Board meeting and same was accepted, wherein it agreed to close the account with the answering respondent, if the principal amount is paid. Accordingly, the proposal advanced by answering respondent after due consideration and accepting the same by the petitioner, the entire amount payable as per settlement was paid to the petitioner and thus the accounts inter se the parties comes to an end. Therefore, once a full and final settlement has been acted upon by the petitioner, by way of acceptance the principal amounts only, answering respondent is discharge of its all liabilities and contract comes to an end. Therefore, now petitioner is stopped by his own act and conduct to raise further claim qua the interest amount. Once there has been full and final satisfaction of all the claims of the petitioner, instant petition is liable to be dismissed.

3. That, in this regard, it is submitted that meeting was held between the petitioner and the answering respondent on 10.02.2020, wherein a note was taken that an amount of Rs. 80 lakhs has been invested by the petitioner in the bonds floated by the answering respondent and a proposal was mooted to settle the dues of the petitioner on payment of the principal amount only. The minutes of meeting dated 10.02.2020 is appended herewith as Annexure P-15. In pursuance thereto, the matter was duly considered by the petitioner by their Board of Trustees and a resolution dated 18.02.2020 was passed whereby the Board of Trustees of



the petitioner consented to receive the principal amount only, thus foregoing the payment of interest amount, considering the financial condition of the answering respondent. The copy of resolution dated 18.02.2020 passed by the Board Trustees of the petitioner is already appended as Annexure P- 15/A. Same was followed by another communication between the parties and submission of the requisite documents by the petitioner on 17.03.2020 which was duly acted upon in terms of the settlement arrived at inter se between the parties and thus in consideration thereof, as full and final settlement amount of Rs. 80 lakhs was disbursed by the answering respondent to the petitioner and thus the entire liability stood discharged.

Not only this, it may further be pertinent to mention here that as the settlement was arrived inter se between the parties before the brake out of Covid-19 Pandemic and thus even extension for such settlement was called for by the answering respondent from the petitioner and such consent was also granted by the petitioner. In this respect, the email dated 18.09.2020 sent by answering respondent and its due engagement by the petitioner are reproduced as under:-

"Email sent on 18.09.2020 by PSIDC-

This is with reference to telephonic conversation you had with Sr. GM / undersigned today on the subject. It is requested to revise the payment resolution of the trust so that payment can be released on receipt of the same. Reply sent by petitioner on 18.09.2020- In reference to the trailing mail, we are attaching herewith certified true copy of resolution, passed by the Board of Trustees of JCI (CPF) regarding



extension of redemption date (upto 30.09.2020) of PSIDC bonds."

Thereafter, the amount was remitted on 21.09.2020 through RTGS.

4. That, petitioner has no right to claim that the proposal mooted by answering respondent to clear the accounts on payment of Principal amount only, foregoing the alleged rights of the petitioner to recover the interest amount on the ground of mis-representation, concealment of fact, coercion and forcing to accept the proposal, answering respondent being in a dominant power are wrong and denied. Moreover, such being the disputed question of law and fact, this Hon'ble Court has no jurisdiction to try and to entertain such disputed facts. It may further be submitted that the payment was made on 21.09.2020 without there being any coercion, fraud or with deceitful manners, which was a result of an acceptance by the petitioner and thus resulted into a concluded contract. Therefore, any dispute being raised thereupon after 6 months would be hit by the principal of estoppel.

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ON MERITS

9. That, the contents of Para No. 9 of the writ petition are matter of record. Since answering respondent is facing a financial crunch, therefore, a proposal was mooted to refund the amount of investment made by the petitioner without payment of interest component which was duly agreed upon by the petitioner and in pursuance thereto, the principal amount was paid which resulted into acceptance of the proposal by the petitioner and as the entire amount as per settlement stood paid, same resulted into a concluded



contract and thus full and final payment was paid to the petitioner. Now petitioner cannot backout from the proposal duly accepted and acted upon by the answering respondent.

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19 & 19A. That, the contents of Para No. 19 & 19A of the writ petition are wrong and hence denied to the extent that answering respondents were pressurize the petitioner trust to settle the claim amount on payment of principal amount only. It is also wrong and denied that the officials of petitioner trust had not consented to agree for the settlement of the claim on payment of principal amount only. As mentioned in the preliminary submission, the matter stood already settled as full and final payment, as per settlement has been made and thus a concluded contract has come into existence which now petitioner cannot revoke, as there was no fraud, coercion or misrepresentation while arriving at such settlement. It is totally wrong and denied that there was any threat from the answering respondent, as agitated by the petitioner in the instant petition. It is also wrong and denied that the resolution (Annexure P-15A) was passed under compelling circumstances.”

18 Thus, aggrieved by the said act the present petition is preferred by the petitioner – trust.

ARGUMENTS BY PETITIONER

19 Learned Counsel appearing on behalf of the petitioner – trust contends that it had invested in the said scheme on the basis of the assurances provided by the respondents backed by a sovereign guarantee of the State. However, respondent no. 3-PSIDC not only failed to



redeem the said bonds on time but also failed to pay the interest accrued in favor of the petitioner trust to the tune of Rs. 2,14,36,682/- (as on 31.10.2022). As per the scheme of investment, respondent no. 3 had to redeem 30% of the total value of 7.80% bonds in April, 2014, 30% in April, 2015 and the last redemption of 40% in April, 2016 and on the other hand 30% of the total value of 9.32% bonds in April, 2015, 30% in April, 2016 and 40% in April, 2017. Notwithstanding the above-mentioned timeline, the Respondent no. 3, acting in an arbitrary and wholly unreasonable manner, coerced petitioner – trust to only accept the principal amount i.e. Rs. 80 lakh as full and final settlement despite having retained and utilized the amount for more than 12 years.

20 It is pointed out by the Learned Counsel for the petitioner – trust that the respondent-PSIDC kept on giving false assurances of repayment and vide their replies repeatedly requested the petitioner to give them some time to discharge their obligations. It is also pointed out by the Counsel that vide every reply respondent no. 3-PSIDC gave assurances of repayment pointing it to be a wholly owned undertaking of the State Government thus creating an image in the mind of the petitioner-trust that the state would not default in discharging its obligations. It is also argued that respondent no. 3 had been pressurizing the petitioner – trust to settle their claim amount at the principal amount only, citing reason of severe financial crunch. In order to coerce settlement only on principal amount from the petitioner –trust, PSIDC cited the examples of Hindustan Organic Chemical Limited Employees Contributory Provident Fund of District Raigad, Maharashtra and of the Container



Corporation of India Limited, New Delhi who had settled for the principal amount only and cited their helplessness time and again even stating that they have started selling their properties. It is also contended that an impression was given by the respondent no. 3-PSIDC that in the event petitioner – trust does not accept the principal amount, then it might not even get a single penny. Due to such portrayal on behalf of respondent no. 3, the petitioner – trust was coerced to accept/settle only for the principal amount foregoing the interest accrued on the said deposit and interest on delayed payment under the terms and conditions of the scheme. He further contends that had the respondents fulfilled their obligations, there would have been no need for the petitioner – trust to pass a forced resolution dated 18.02.2020 (Annexure P- 15A) accepting only the principal amount in the apprehension of losing the same. He further places reliance upon the judgment of Hon'ble Apex Court in *State of U.P. vs. Hindustan Unilevers Limited* reported as *2008 SCC OnLine SC 11* wherein it was held that the State Government cannot raise the ground of financial difficulties in repayment of interest as it will defeat the whole idea and very purpose of Guarantee. The relevant part of the Judgment is extracted below: -

“6. Such a contention is not tenable. The amount invested by first respondent belongs to the workmen of first respondent. The amount was invested in the bonds of the Federation in view of the express guarantee by the State Government that the same will be repaid with interest upto 15.5% p.a. The very purpose of the State Government guarantee is to ensure payment in case the Federation was



not able to make payment. In the circumstances, the fact that the Federation is in financial difficulties cannot be a ground for the State Government to say that it will not make payment of interest, even though it had guaranteed the repayment with interest. If such a contention is accepted, the very purpose of the guarantee will be defeated. We are indeed surprised that such a plea is put forward on behalf of the State of Uttar Pradesh.”

21 He further submits that the above judgment has been followed again in **Pradeshiya Industrial Development Corporation Limited, U.P. vs. Hindustan Aeronautics Limited (Lucknow Division) and Ors.** reported as **(2018) 15 SCC 216**.

22 Learned counsel for the petitioner-trust further contends that the passing of resolution for acceptance of the principal amount only should not be construed as waiver on part of the petitioner-trust as the same was done under coercion and undue influence and to safeguard the interest of the employees of the petitioner- trust. He places reliance on the judgment of the Hon’ble Supreme Court in the case of **All India Power Engineer Federation & Ors. vs. Sasan Power Ltd. & Ors.** reported as **(2017) 1 SCC 487** and relevant part of the same is reproduced herein below: -

“20. Regard being had to the aforesaid decisions, it is clear that when waiver is spoken of in the realm of contract, Section 63 of the Indian Contract Act governs. But it is important to note that waiver is an intentional relinquishment of a known right, and that, therefore, unless there is a clear intention to relinquish a right that is fully known to a party, a party cannot be said to waive it. But the



matter does not end here. It is also clear that if any element of public interest is involved and a waiver takes place by one of the parties to an agreement, such waiver will not be given effect to if it is contrary to such public interest. This is clear from a reading of the following authorities.

21. In *Lachoo Mal v. Radhey Shyam* (1971) 1 SCC 619, it was held: The general principle is that everyone has a right to waive and to agree to waive the advantage of a law or Rule made solely for the benefit and protection of the individual in his private capacity which may be dispensed with without infringing any public right or public policy. Thus the maxim which sanctions the non-observance of the statutory provision is *cuilibet licet renuntiare juri pro se introducto*. (See *Maxwell on Interpretation of Statutes*, Eleventh Edn., pp. 375 and 376). If there is any express prohibition against contracting out of a statute in it then no question can arise of anyone entering into a contract which is so prohibited but where there is no such prohibition it will have to be seen whether an Act is intended to have a more extensive operation as a matter of public policy. [para 6]

22. In *Indira Bai v. Nand Kishore* (1990) 4 SCC 668, it was held: The test to determine the nature of interest, namely, private or public is whether the right which is renounced is the right of party alone or of the public also in the sense that the general welfare of the society is involved. If the answer is latter then it may be difficult to put estoppel as a defence. But if it is right of party alone then it is capable of being abnegated either in writing or by conduct. [para 5]”

23 Relying upon the above judgment Learned counsel for the petitioner – trust vehemently argues that no waiver could be construed



and principle of estoppel won't apply in the present case as the act done was under pressure to save the principal amount invested by the petitioner, which is the money of the employees working under the Jute Corporation of India Ltd. In the end Learned counsel for the petitioner-trust has placed reliance on the judgment of this court in **CWP-37948-2018** in the case of **Ashok Leyland Employees Hosur Provident Funds Trusts and others vs. State of Punjab and another** wherein vide judgment dated **28.08.2019** while allowing the writ petition against the present respondent no. 3-PSIDC, it was held that the submission that PSIDC is facing acute financial crunch cannot be accepted and the PSIDC was directed to make payment along with interest in terms of the bonds executed between the parties.

ARGUMENTS BY RESPONDENT

24 Per Contra, Learned Counsel appearing on behalf of the Respondent no.3 denies all the averments made by the petitioner – trust and further contends that a proposal was made by them for settlement of the payment of the bonds only on payment of principal amount, thus to forego the amount of interest payable to the petitioner -trust. He contends that the proposal was floated by them as the financial condition was not upto the mark and the respondent Corporation was under heavy losses. He vehemently argues that the said proposal was duly considered by the petitioner-trust in its Board meeting and same was accepted, wherein they agreed to close the account with the respondent, if the principal amount is paid. He contends that the proposal floated by



Respondent Corporation was duly accepted by the petitioner - trust and there was no coercion or misrepresentation on their behalf. He further contends that once the proposal floated by the respondent corporation is accepted by the petitioner – trust and acted upon by the respondent corporation it becomes a binding contract and petitioner – trust cannot be allowed to back-track or wriggle their way out from the same because the terms of the agreement is not suited/favorable or onerous to them. He further contends that once a full and final settlement has been acted upon by the petitioner - trust, by way of acceptance of the principal amount only, respondent - corporation is discharged from all its liabilities and contract comes to an end.

25 He further submits that a meeting was held between the officials of the petitioner - trust and respondent corporation on 10.02.2020, wherein a note was taken that an amount of Rs 80 lakh has been invested by the petitioner – trust in the bonds floated by the respondent corporation and a proposal was mooted to settle the dues of the petitioner on payment of the principal amount only. He submits that the arguments advanced on behalf of the petitioner – trust of coercion on behalf of the respondent corporation does not form any basis as the decision to take the principal amount only was a informed decision as the petitioner – trust did not immediately acceded to the proposal made by the respondent corporation, the said proposal was kept before the Board of Trustees and discussed by them and only when the Board of Trustee found it reasonable a resolution dated 18.02.2020 was passed by them accepting the proposal.



26 He further points out that the settlement was arrived inter – se between the parties and even further extension was granted by the petitioner – trust for payment of the principal amount which was duly transferred by the respondent corporation on 21.09.2020. He again reiterates that the petitioner – trust had ample time and opportunity to go through the proposal of settlement made by the respondent corporation and to deny the same if need be but to the contrary the petitioner – trust not only accepted the proposal of settlement out of free will but also provided extension of time for payment of the principal amount, thus the point of coercion raised by the petitioner – trust cannot be accepted and the present petition is clearly an afterthought.

27 He further vociferously contends that the reliance placed by the petitioner – trust in the judgment of this Hon’ble Court in **CWP-37948-2018 (Supra)** is misplaced as the above judgment is clearly distinguishable on the facts of it. He states that in the above-mentioned judgment no such proposal for one time settlement was floated by the respondent corporation to the petitioners therein and therefore it is not applicable to the facts and circumstances of the present case. It is further contended by the counsel that once the proposal of settlement floated by the respondent corporation is accepted by the petitioner – trust, the principle of waiver and estoppel will come into picture and petitioner – trust cannot now be allowed to backtrack from the same, no matter how onerous the condition of said settlement may be felt by them. He further places reliance upon the judgment of the Hon’ble Supreme Court in the matter of **Bhagwati Prasad Pawan Kumar vs. Union of India** reported



as (2006) 5 SCC 311 and contends that offer may be accepted by conduct and once it is clear that the offeree did the act with the intention of accepting the offer, the same will tantamount to an unequivocal acceptance of the offer made. The relevant extract of the same is reproduced herein below: -

“19. It is well settled that an offer may be accepted by conduct. But conduct would only amount to acceptance if it is clear that the offered did the act with the intention (actual or apparent) of accepting the offer. The decisions which we have noticed above also proceed on this principle. Each case must rest on its own facts. The courts must examine the evidence to find out whether in the facts and circumstances of the case the conduct of the "offered" was such as amounted to an unequivocal acceptance of the offer made. If the facts of the case disclose that there was no reservation in signifying acceptance by conduct, it must follow that the offer has been accepted by conduct. On the other hand if the evidence disclose that the "offered" had reservation in accepting the offer, his conduct may not amount to acceptance of the offer in terms of Section 8 of the Contract Act.”

28 No other arguments have been advanced.

CONSIDERATION

29 I have heard the Learned Counsel appearing on behalf of the respective parties and have gone through the documents appended along with the present petition with their able assistance.



30 The undisputed facts that appear from the facts of the present writ petition is that the petitioner – trust bought bonds of the investment scheme floated by the respondent no. 3-PSIDC and that as per the said scheme of investment, respondent-PSIDC had to redeem 30% of the total value of 7.80% bonds in April, 2014, 30% in April, 2015 and the last redemption of 40% in April, 2016 and on the other hand 30% of the total value of 9.32% bonds in April, 2015, 30% in April, 2016 and 40% in April, 2017. It is not in dispute that respondent no. 3-PSIDC is a fully owned undertaking of the State Government and vide notification no. 15/24/03-51B/2226 dated 04.10.2005, respondent no. 1 & 2 had undertaken guaranteed repayment of principal and interest amount accrued in favor of the investor who had bought bonds under the scheme of investment floated by respondent no. 3. It is also established that in all its earlier replies, the respondent-PSIDC admitted its liability to repay the entire amount along with interest. It pleaded financial hardship and sought extension of time to make arrangements while constantly reminding that it was a State owned Corporation and thus invoked its sovereign guarantee status. However, it later expressed serious concern about investment going bad and the entire money to be left unpaid. Vide resolution dated 18.02.2020 the Board of trustees agreed to accept the payment of only principal amount of Rs. 80 lakh as one time full and final settlement and agreed to forgo the interest component. That on 21.09.2020 the respondent corporation made the payment of Rs. 80 lakh to the petitioner – trust as one time full and final settlement.



31 At the outset, this court is aghast to see the dishonest conduct of the respondent Corporation which has blatantly misused its power and coerced the present petitioner – trust to come to its knees and accept the proposal of one time full and final settlement. The respondent Corporation, rather than performing its obligation undertaken as per the investment bond scheme, has chosen the delaying tactic and stories of financial crunch to negotiate an unconscionable settlement. The apathy shown by the respondent Corporation towards its investors, who are compelled to enter into settlement in order to save their principal amount is regrettable. The role of the State in the present case is apparently that of an accomplice. While it chose to lend its name and goodwill to the Corporation and to enable it to attract investment on its guarantee, it chose to look the other way when an occasion arose. Even in the present writ petition, it chose not to file a reply and to portray as if it had no contesting interest in the matter. The pleadings thus remained un rebutted even to the extent of sovereign guarantee. Non-denial thereof would amount to admission of factual assertions made with respect to the State.

32 The moot question which arises for the consideration of this court is whether after the acceptance of the proposal of one-time settlement by the petitioner – trust, should it now be allowed to claim the interest accrued on the said investment, by claiming consent under coercion and undue influence.



33 Before proceeding further with the matter, it is relevant to reproduce certain relevant provisions of the Indian Contract Act, 1872 and the same are extracted as herein below: -

INTERPRETATION CLAUSE

“2 (a) -When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal;

2 (b) - When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise;

2 (d) - When, at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;

2 (e) - Every promise and every set of promises, forming the consideration for each other, is an agreement;

2(g) - An agreement not enforceable by law is said to be void;

2 (h) - An agreement enforceable by law is a contract;

3. Communication, acceptance and revocation of proposals. —*The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking, by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.*



7. Acceptance must be absolute. —In order to convert a proposal into a promise, the acceptance must—

(1) be absolute and unqualified;

(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but, if he fails to do so, he accepts the acceptance.

8. Acceptance by performing conditions, or receiving consideration. —Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

10. What agreements are contracts. —All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in [India] and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

14. “Free consent” defined. —Consent is said to be free when it is not caused by—

(1) coercion, as defined in Section 15, or



- (2) *undue influence, as defined in Section 16, or*
(3) *fraud, as defined in Section 17, or*
(4) *misrepresentation, as defined in Section 18, or*
(5) *mistake, subject to the provisions of Sections 20, 21 and*
22.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

15. “Coercion” defined. — *“Coercion” is the committing, or threatening to commit, any act forbidden by the Indian Penal Code (XLV of 1860), or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.*

Explanation. —*It is immaterial whether the Indian Penal Code (XLV of 1860), is or is not in force in the place where the coercion is employed.*

16. “Undue influence” defined. — (1) *A contract is said to be induced by “undue influence” where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.*

(2) *In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—*

(a) *where he holds a real or apparent authority over the other or where he stands in a fiduciary relation to the other; or*



(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provision of Section 111 of the Indian Evidence Act, 1872 (I of 1872).

19. Voidability of agreements without free consent. —
When consent to an agreement is caused by coercion, [*
] fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representation made had been true.

Exception. —If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of Section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation. —A fraud or misrepresentation which did not cause the consent to a contract of the party of whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable



19-A. Power to set aside contract induced by undue influence. —When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.”

34 Section 2(g) of the Contract Act provides that an agreement, not enforceable by law, is said to be void, whereas, Section 2(h) declares that an agreement enforceable by law, is a contract. The distinction between an agreement and a contract is noticeable. Not every agreement is a contract. Only those agreements, which are enforceable, are treated as contracts. The result of a contract, ceasing to be enforceable, is that, the contract becomes void. Free consent is indispensable for making an agreement, a contract, under Section 10. Free consent has been defined in Section 14 and it must be read in conjunction with Sections 15 to 18 which define coercion, undue influence, fraud and misrepresentation, respectively. The consequence of there being coercion, fraud or misrepresentation in securing the consent of a party, is provided for in Section 19 of the Contract Act. The presence of these elements result in what is described as a contract voidable at the option of the party, whose consent was so caused.

35 There exists no unassailable rule. In instances where a claimant alleges that consent was procured through fraud, coercion, duress, or undue influence, and the opposing party challenges the veracity of such



claims, it is incumbent upon the judiciary to scrutinise the matter to ascertain, at a preliminary level, the bona fides and authenticity of the dispute. Should the contestation regarding the legitimacy of the consent secured by the claimant hold merit, it falls to the court to adjudicate the matter based on the facts presented. In discussions pertaining to the termination of a contract by mutual agreement or acceptance, or through the settlement of a final amount by one party, reference is made to a conclusion or settlement enacted validly and of one's own volition. Should a party assert that its agreement to a contract's termination was influenced by fraud, coercion, or undue influence exerted by the counterpart, and succeeds in substantiating such a claim, then evidently, the contract's conclusion under such terms is deemed invalid and unenforceable. Moreover, the ancient maxim 'necessitas non habet legem' underscores that necessity recognises no law. Occasionally, an individual may be compelled to yield to the demands of a more dominant negotiating partner. Nonetheless, contractual rights remain inviolable and are subject to enforcement by a court of law.

36 It is manifest from the particulars of the current case and the documents submitted into evidence that the petitioner – trust persistently entreated the respondent – corporation – to fulfil its duties and settle the outstanding amount accruing in their favour. Regrettably, the respondent – corporation – disregarded such legitimate demands and obligations, opting instead to exert coercion and undue influence to compel the formation of an agreement for a full and final settlement, thereby attempting to evade their responsibilities. It is impermissible for



the respondent corporation to exploit the agreement, procured through coercion or undue influence, to subsequently evade their obligations. The Hon'ble Supreme Court in Brojo Nath Ganguly, reported as (1986) 3 SCC 156 held that due to inequality of bargaining power, unreasonable terms, unreasonable favour to the stronger party may involve an element of deception or compulsion, or may show that the weaker party had no real choice. It was further observed that in the sphere of law of contract, the test of reasonableness or fairness had emerged and an unreasonable clause cannot be enforced as that would be unreasonable. The contracts, which are the outcomes of misrepresentation, coercion, undue influence etc, cannot be enforced, and inequality of bargaining power merit intervention of court. A term which exempts the stronger party from his ordinary common law liability should not be given effect to unless it is reasonable. The courts must construe contract according to the tenor. In today's complex world of giant corporations with their vast infrastructural organisations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possession wholly disproportionate and unequal bargaining power. An unreasonable, unfair and unconscionable contract affecting large number of people is voidable. The court would not compel each person who is party to such contract to go to court to adjudge contract voidable. Further, as far as public policy is concerned, same is not the policy of a particular Government but connotes matter which concerns



public good and public interest. Action has to be subservient to public policy. Section 23 of the Contract Act states that the consideration or object of an agreement is lawful unless inter alia the court regards it as opposed to public policy. Under Section 24 of the Contract Act, if any part of a single consideration for one or more objects, or any part of any one of several considerations for a single object is unlawful, the agreement is void. With the advent of the standard form of contract, the interpretation of law of contract has undergone change. The individual is compelled to accept the terms of contract in toto or else to forego. Thus, freedom of contract is now largely an illusion. The doctrine of “reasonableness or fairness” of the terms and conditions of contract vis-à-vis the relative bargaining power of the contracting parties will not allow for the enforceability of an unfair and unreasonable contract or an unfair and unreasonable clause in a contract, entered into between parties who are unequal in bargaining power.

37 The concept of coercion as defined under Section 15 of the Contract Act, 1872, also stipulates threatening to detain any property to the prejudice of any person with an intention of causing any person to enter into any agreement. The Indian Legal System has recognised various form of coercion which includes physical as well as ‘**economic coercion.**’ A threat to withhold payment, terminate employment or otherwise to cause harm to financial interest is recognised as a form of economic coercion. The law with regard to ‘economic duress’ as recognized by English Law is laid down by Lord Scarman, speaking for



the Privy Council in **Pao on v. Lau Yin (3) (1979) 3 All. ELR 65** at 79
as follows:

“... But, since the question has been fully argued in this appeal, their Lordships will indicate very briefly the view which they have formed. At common law money paid under economic compulsion could be recovered in an action for money had and received; see Astley v. Reynolds ((1731) 2 STRA 915). The compulsion had to be such that the party was deprived of ‘his freedom of exercising his will.’ It is doubtful, however, whether at common law any duress other than duress to the person sufficed to render a contract voidable; see Blackstone’s Commentaries (12th Edn. (1793) Vol. I pp. 130-131) and Skeate v. Beale (1841) 11 Ad & El. 983). American law (Williston on Contracts-3rd Edn. (1970) Ch. 47) now recognises that a contract may be avoided on the ground of economic duress. The commercial pressure alleged to constitute such duress must, however, be such that the victim must have entered the contract against his will, must have had no alternative course open to him, and must have been confronted with coercive acts by the party exerting the pressure; see Williston on Contracts (3rd Edn. (1970) Ch. 47 s. 160). American Judges pay great attention to such evidential matters as the effectiveness of the alternative remedy available, the fact or absence of protest, the availability of independent advice, the benefit received, and the speed with which the victim has sought to avoid the contract. Recently two English judges have recognised that commercial pressure may constitute duress the pressure of which can render a contract voidable: see Kerr, J. in The Siboen and the Sibotre ((1976) 1 Lloyd’s Rep. 293) and Mocatta, J. in North Ocean Shipping Co.



Ltd. v. Hyundai Construction Co. Ltd. ((1978) 3 All. E.R. 1170). Both stressed that the pressure must be such that the victim's consent to the contract was not a voluntary act on his part. In their Lordship's view, there is nothing contrary to principle in recognising economic duress as a factor which may render a contract voidable, provided always that the basis of such recognition is that it must amount to a coercion of will, which vitiates consent. It must be shown that the payment made or the contract entered into was not a voluntary act.”

38 The concept of economic duress awaits a precise and succinct definition. Two elements are necessary to constitute duress, i.e.

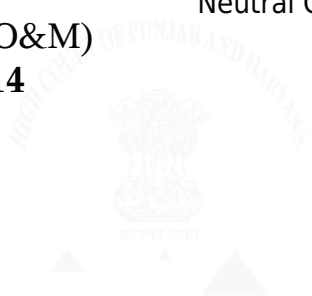
1. Pressure amounting to compulsion of the will of the victim.
2. The illegitimacy of the pressure exerted.

For all practical purposes, the victim of duress must have no other choice. The early law of duress dealt with threat to life and limb. The later development recognises threat to property or threat to business or trade or duress. So in recent years some courts have gone further and recognised the category of “**Economic Duress**”. The essence of economic duress is that the plaintiff is induced to give way to a demand by pressure which the law doesn't regard as legitimate. Prof. Birks (An Introduction to the Law of Restitution (1985, Reprinted 2003) 177) explains, “Can lawful pressures also count? This is difficult question, because if the answer is that they can, the only viable basis for discriminating between acceptable and unacceptable pressure is not positive law but social morality.” In other words, the judges must say



what pressures (though lawful outside the “restitutionary context”) are improper as contrary to prevailing standards. That makes the judges, not the law or the legislature, the arbiters of social evolution. On the other hand, if the answer is that lawful pressure are always exempt, those who devise outrageous but technically lawful means of compulsion must always escape restitution until the legislature declares the abuse unlawful. It is tolerably clear that, at least where they can be confident of a general consensus in favour of their evaluation, the courts are willing to apply a standard of impropriety rather than technical unlawfulness. There are a number of cases where the English courts have accepted that a threat may be illegitimate when coupled with a demand for payment even if the threat is for lawful action. Thus, economic duress is a form of duress. It amounts to “recognize that certain threats or forms of pressure, not associated with threats to the person, nor limited to the seizure or withholding of goods, may give grounds for relief to a party who enters into a contract as a result of the threats or the pressure”. The concept has been expressed in terms of a definition by Ogilvie (M.H. Ogilvie, *Contracts — Economic Duress — Inequality of Bargaining Power — Quo vadis?* (1981) 59 *Canadian Bar Review* 179, 187) as follows:

“Economic duress is the unconscionable exercise of a superior contractual bargaining position to deprive the victim of commercially and legally viable alternative to voluntary submission to the coercion. The Prime factual determinant of its presence is the absence of alternative other than insolvency and bankruptcy, which in turn points to the abuse of a bargaining position.”



39 The concept of economic duress, an innovation of the English judiciary, has been applied by the courts in the following cases, and they can be conveniently analyzed under the following heads:-

1. Lack of alternative choice.
2. Fear of disastrous economic consequences.
3. Threat to commit a breach of contract.
4. Commercial pressure.

40 In India also, one party exerting pressure, which is not physical, but akin to economic or commercial, over the other party to the contract is not uncommon. The Indian judiciary in order to deal with such contracts having unconscionable bargain have resorted to the concept like economic duress as was done by their English counterparts and dealt with the same under the concept of undue influence. The psychological dominance of one party over the other enabling it to exert non-physical pressure over the other resulting in an unconscionable bargain and giving an unfair advantage to the dominant party vitiates free consent on the part of the party in weak bargaining power is the philosophy underlying the concept of undue influence. This concept has been successfully employed by Indian judiciary.

41 The Supreme Court in **Brojo Nath Ganguly (Supra)**, recognised the possibility of entering into unconscionable, unfair and unreasonable contracts due to pressure, economic and others, and held that the remedy



can be provided either by invoking the defence of undue influence or the defence of opposed to public policy. Though the Court in that case was concerning itself with a contract of employment, its observations are general in nature, and can be applied mutatis mutandis to the commercial contracts. Especially the following observation made by Madon J is indeed well conceived:

“In the vast majority of cases, however, such contracts are entered into by the weaker party under pressure of circumstances, generally economic, which results in inequality of bargaining power. Such contracts will not fall within the four corners of the definition of ‘undue influence’ given in Section 16(1) of the Indian Contract Act. Further the majority of such contracts are in a standard or prescribed form or consist of a set of rules. They are not contracts between individuals containing terms meant for those individuals alone. Contracts in the prescribed or standard forms or which embody a set of rules as part of the contract are entered into by the party with superior bargaining power with a large number of persons who have far less bargaining power or no bargaining power at all. Such contracts which affect a large number of persons or a group of persons, if they are unconscionable, unfair and unreasonable, are injurious to the public interest. To say that such a contract is only voidable would be to compel each person with whom the party with superior bargaining power had contracted to go to court to have the contract adjudged voidable. This would only result in multiplicity of litigation which no court should encourage and also would not be in public interest. Such a contract or such a clause in a contract ought, therefore, to be adjudged void ... under



Section 23 of the Indian Contract Act ... as opposed to public policy.”

42 Hence, the two new doctrines of economic duress and inequality of bargaining power are accepted by our Supreme Court as a part of Indian legal system. Therefore the victim of economic duress in Indian law has a double remedy, viz., defence of “undue influence” and “opposed to public policy”.

43 In *DTC v. Mazdoor Congress reported as AIR 1991 SC 101*, Justice K. Ramaswamy observed:-

“As a court of constitutional functionary exercising equity Jurisdiction, the Court would relieve the weaker parties from unconstitutional contractual obligations, unjust, unfair, oppressive and unconscionable rules or conditions when the citizen really unable to meet on equal terms with the State. It is to find whether the citizen, when entered into contract or service, was in distress need or compelling circumstances to enter into contract on dotted lines or whether the citizen was in a position of either to ‘take it or leave it’ and if it finds to be so, the Court would not shirk to avoid the contract by appropriate declaration. Therefore, though certainty is an important value in normal commercial contract law, it is not an absolute and immutable one but is subject to change in the changing social conditions.”

44 In the case of *Dai-ichi Karkaria (P) Ltd. v. Oil & Natural Gas Commission reported as AIR 1992 Bom 309*, it was held that coercing the plaintiff to renegotiate the contract coupled with threat not to



perform the original contract at a time when the plaintiff would be placed in great jeopardy of adverse financial consequences affecting the economic viability of the plaintiff if the defendant refused to take delivery of the contract goods amount to economic duress. The defendant coerced and duressed to agree to a stipulation in the bank guarantee that it should be enforceable by defendant even if the plaintiff was not able to obtain refund of the customs duty. The enforcement of the bank guarantee without taking the refund of customs duty in breach of understanding and assurances given may amount to committing of fraud. Hence, the defendant was not entitled to invoke the bank guarantee unless the refund of customs duty was made available by the Government of India to the plaintiff.

45 When the above principles are tested on the facts of the present case it is established that various casual, temporary Group 'D' workers had invested their hard earned contributions in the bond Scheme floated by respondent No.3-PSIDC having a sovereign guarantee. The said money was retained by PSIDC for nearly 13 years which includes a periodical delay of more than 06 years after the payments fell due to the petitioner. In the joint meeting with PSIDC, it showcased its inability to repay the amount no more than the principal. Being faced against risking even the principal in pursuit of the interest, the petitioner had no option but to accept what appeared best in the platter. There was no equal bargaining power. An association of workers trusted its money to a Government owned Company under a sovereign guarantee where the sovereign detached itself, left no choice, the petitioner having risked the



collective funds could not afford loss of the same. The State also failed in its obligation to protect the rights of citizens and became an accomplice in enabling PSIDC to negotiate unconscionable terms with petitioner under threat to financial interest of the petitioner-trust. Its turning a blind eye was a conduct unbecoming of State and amounted to dishonouring its guarantee.

46 A 'sovereign guarantee' is an assurance by the State to back the financial obligation or commitments of an entity. It's a commitment by the State to honour the financial obligation in the event of such entity failing. Backing of the State is the key strength as it represents faith and credit of the State issuing it. The Hon'ble Supreme Court of India elucidated the validity and enforceability of sovereign guarantee in the case of **Gujarat State Financial Corporation v. Messrs Lotus Hotels Private Limited, reported as (1983) 3 SCC 379**. The relevant paragraph of the same is extracted below:

“9. It was next contended that the dispute between the parties is in the realm of contract and even if there was a concluded contract between the parties about grant and acceptance of loan, the failure of the Corporation to carry out its part of the obligation may amount to breach of contract for which a remedy lies elsewhere but a writ of mandamus cannot be issued compelling the Corporation to specifically perform the contract. It is too late in the day to contend that the instrumentality of the State which would be other authority under Article 12 of the Constitution can commit breach of a solemn under taking on which other side has acted and then contend that the party suffering by



the breach of contract may sue for damages but cannot compel specific performance of the contract. It was not disputed and in fairness to Mr. Bhatt, it must be said that he did not dispute that the Corporation which is set up under Section 3 of the State Financial Corporation Act, 1955 is an instrumentality of the State and would be other authority under Article 12 of the Constitution. By its letter of offer dated July 24, 1978 and the subsequent agreement dated February 1, 1979 the appellant entered into a solemn agreement in performance of its statutory duty to advance the loan of Rs. 30 lakhs to the respondent. Acting on the solemn undertaking, the respondent proceeded to undertake and execute the project of setting up a 4-star hotel at Baroda. The agreement to advance the loan was entered into in performance of the statutory duty cast on the Corporation by the statute under which it was created and set up. On its solemn promise evidenced by the aforementioned two documents, the respondent incurred expenses, suffered liabilities to set up a hotel. Presumably, if the loan was not forthcoming, the respondent may not have undertaken such a huge project. Acting on the promise of the appellant evidenced by documents, the respondent proceeded to suffer further liabilities to implement and execute the project. In the back drop of this incontrovertible fact situation, the principle of promissory estoppel would come into play. In Motilal Padampat Sugar Mills Co. (P.) Ltd. v. State of U. P., this court observed as under : [SCC para 8, p. 425 : SCC (Tax) p. 160]The true principle of promissory estoppel, therefore, seems to be that where one party has by his words of conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the



other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not.”

47 In the case of **Modern Food Industries (India) Ltd. versus State of Uttar Pradesh and Ors. reported as 2005 SCC OnLine Del 1227** it was held:-

*“4. Learned Counsel for the respondent have raised a Preliminary Objection with regard to the maintainability of the Writ Petition. It stands uncontroverted that respondent No. 1 had extended its sovereign guarantee to the Bonds issued in favour of investors, such as the petitioners, issued by respondent No. 2. Over thirty years ago the Hon'ble Supreme Court had clarified in *The Gujarat State Financial Corporation v. Lotus Hotels Pvt. Ltd.*, (1983) 3 SCC 379 : AIR 1983 SC 848 that it was too late in the day to contend that the “State can commit breach of a solemn undertaking on which other side has acted and then contend that the party suffering by the breach of contract may sue for damages but cannot compel specific performance of the contract”. The Apex Court applied the principle of promissory estoppel for enforcement of such contractual undertakings. Thereafter, similar views have been expressed in *Kumari Shrilekha Vidyarthi v. State of U.P.*, JT 1990 (4) SC 211*

xxx xxx xxx



9. *The factum of the receipt of Rs.15,00,000/- is not in dispute. The sovereign guarantee extended by the State of Uttar Pradesh stands admitted. It is not sanguine to submit that had this sovereign guarantee not been extended the Provident Funds of the Workmen would not have been invested by the Trustees with respondent No. 2. Both the respondents are jointly and severally liable for the repayment of the principal amount together with interest thereon at the rate of 14.90 per cent per annum. There is little likelihood of this amount being liquidated by the principal debtor, namely, respondent No. 2 and, therefore, it would be appropriate to order recovery from the Guarantor of respondent No. 1. I am galvanized and propelled to exercise jurisdiction vested in this Court under Article 226 of the Constitution of India keeping in perspective the fact that the amounts invested with respondent No. 2, under sovereign guarantee of respondent No. 1, constitute the Provident Funds of the workmen. The petitioners are entitled to receive the principal sum of Rs.15,00,000/- together with interest thereon at the rate of 14.90 per cent per annum from the date of investment. The amounts already paid, that is, Rs.1,15,118/- and Rs.1,73,980/- aggregating Rs.2,89,098/- shall be deducted therefrom. These amounts shall be paid by respondent No. 1 to the petitioners within sixty days from today. Respondent No. 1 shall be fully empowered to make recoveries from respondent No. 2 for the amounts paid by it to the Petitioners. The Petition is allowed with costs quantified at Rs. 15,000/-.”*

48 Further, the relevant part of the judgment in the matter of **Airports Authority of India and others Vs. State of Jammu and Kashmir and others, reported as ILR (2012) IV Delhi 444**, is extracted as under:-



“18. The guarantee issued by the respondent no.1 is that of the State of Jammu and Kashmir, which is a sovereign guarantee. The State cannot say that it does not have the fund to honour its sovereign guarantee. The Court would enforce the sovereign guarantee, because a sovereign guarantee cannot be allowed to fail, if rule of law is to be upheld. This aspect, as well as the aspect of maintainability of the writ petition to recover amounts which have been guaranteed by the State has been dealt with by this Court in Modern Food Industries (India) Limited (supra).....”

49 It cannot be said with certainty that no person would ordinarily agree to waiving of its interest over a period of 13 years more-so when such investments were made in secured Government guarantee bonds even though it meant lesser rate of interest. The petitioner-trust never invested the money in a risky equity or a mutual fund market even though chances of return are higher and opted to play safe with contributed funds and invested the same on trust of the Government. Giving up the solitary expectation from the investment could have been done only when the risk of not accepting even what was offered was still bigger.

50 I have no hesitation to hold that the State used its dominant position to rob the poor of their earned interest under an imminent threat to the principal as well. It would be an act of gross injustice if such conduct of State is condoned as it erodes the confidence which the name of the State exudes.



51 Needless to mention that had the respondent – Corporation performed its obligations in time there would have been no necessity of agreeing to pass such a forced resolution. The petitioner – trust wrote many letters for release of the amount accrued in its favour and never hinted for the settlement on the principal amount. It is only after the meeting dated 10.02.2020 between the officials of the petitioner – trust and Respondent Corporation that the settlement was agreed upon. It is also evident from the Minutes of Meetings dated 10.02.2020 that official of the respondent corporation stated that, in view of the acute financial position, at the request of Bondholders, PSIDC has settled their claim at the principal amount and similar settlement can be made with the petitioner – trust.

52 It is evident from the above that the respondent corporation tried to wriggle out their way from paying the interest accrued by playing the tune of financial crunch. The Hon'ble Supreme Court has already laid down a settled proposition of law on said tune of financial crunch in the matter of **State of U.P. vs. Hindustan Unilevers Limited (Supra)** the ratio of which has been followed in **Pradeshia Industrial Development Corporation Limited, U.P. vs. Hindustan Aeronautics Limited (Lucknow Division) and Ors. (Supra)**. So far as the contention advanced by the petitioner – trust is concerned it is evident that the resolution dated 18.02.2020 was passed in fear of losing on the principal amount. The Law of Contract unequivocally stipulates that an agreement transitions into a contract upon being established with the Free Consent of the parties involved, a concept further delineated within



the aforementioned Act. It is articulated that an agreement forged in the absence of free consent, or under the duress of coercion or undue influence, may be rendered voidable at the discretion of the party whose consent was thus compromised. The case at hand exemplifies the subtle exertion of coercion and undue influence by State Instrumentalities, aimed at mitigating their liabilities and evading their responsibilities.

53 The contention of the respondent Corporation to the effect that subsequent to the execution of a full and final settlement between the parties, wherein a principal sum of Rs. 80 lakh was transferred in favour of the petitioner trust, the latter was encumbered by the principles of waiver and acquiescence and thus ought not to be permitted to extricate itself from the agreement due to hardship or unfavourable terms, invoking estoppels also does not find favour with this Court.

54 Waiver signifies the relinquishment of a right in such a manner that the opposing party is entitled to invoke said relinquishment as a defence, should the right thereafter be asserted, and may be either explicitly stated or inferred from actions. An individual entitled to benefit from a stipulation solely for his advantage within a contract, or a statutory provision, may forego it, permitting the contract or transaction to proceed as if the stipulation or provision were non-existent. Such waiver is predicated on consent. In assessing whether a party has forfeited its rights, the conduct of said party is pertinent. To establish waiver, it must be demonstrated that a party, either expressly or through its actions, behaved in a way that is incompatible with the preservation



of its rights. Nonetheless, mere acts of leniency do not constitute waiver. A party alleging waiver is also precluded from claiming its advantages unless it has modified its stance in reliance upon the waiver. Waiver cannot invariably be deduced solely from a party's inaction to object. Waiver can only be inferred provided it is shown that the party was cognisant of the pertinent facts and understood its entitlement to object. The concepts of waiver and acquiescence, akin to election, presume that the individual bound is fully aware of his rights and, being so informed, either neglects to assert them or opts for one advantage over another. Thus, to apply the principle of waiver, it must be established that despite awareness of the pertinent facts and the right to object, a party has foregone such objection. While the principle of waiver is related to that of estoppel, estoppel serves not as a cause of action but as a rule of evidence, whereas waiver is contractual and can form the basis of a cause of action. It represents an accord between the parties whereby a party, fully cognisant of its rights, consents to waive a right in exchange for consideration.

55 Whenever waiver is invoked, the onus rests upon the party alleging such to demonstrate that an accord, relinquishing the right in return for some form of settlement, was established. To constitute acquiescence or waiver, it must be proven that, despite a party being aware of the pertinent facts and cognisant of its legal entitlements in a particular matter, it neglects to exercise its rights at the earliest feasible juncture, thereby erecting an effective barrier of waiver against itself. Acquiescence, on the other hand, refers to a situation where a party



remains passive while another infringes upon his rights. The acquiescence must be of a nature that it implies the granting of a licence, sufficient to vest a new right in the defendant. Waiver signifies a deliberate forgoing of a right. It encompasses the knowing forsaking of an extant legal right, advantage, benefit, claim, or privilege. It constitutes an agreement to refrain from asserting a right. A waiver cannot be recognised unless it is shown that the individual alleged to have waived was fully apprised of his rights and, with comprehensive understanding thereof, intentionally relinquishes them.

56 It is evident from the facts of the present case that the petitioner – trust did not, out of its conscious will, chose to forgo the interest amount accrued in their favor, rather, the said proposal was accepted under the fear of losing the principal amount. The said acceptance under fear cannot be held to be a free consent and therefore voidable at the option of the petitioner – trust. Once such option has been exercised by the petitioner – trust by writing letter dated 11.02.2021 (Annexure P -17) to the respondent – Corporation seeking recovery of interest accrued, the principle of waiver and acquiescence cannot apply and therefore the argument advanced by Learned Counsel for the respondent corporation is misplaced.

57 Further, the reliance placed on the judgment of **Bhagwati Prasad Pawan Kumar vs. Union of India** reported as **(2006) 5 SCC 311** by the Learned Counsel for the respondent –Corporation is misplaced as in the facts of that particular case there was no portrayal by the railway



authorities that if the applicant do not accept the settlement offer then they will not get anything from it and further in the said case there was no coercion/undue influence exercised by the railway authorities and a clear cut clause of acceptance was offered, however in the present case no fairness was exercised by the respondent corporation and coercion/undue influence was exercised as a means to enter into the agreement. Therefore the above said judgment would not be helpful or come to the aid of the present respondent – Corporation.

58 Thus taking into consideration all the above facts and arguments advanced by the parties, I am of the opinion that the respondent – Corporation, in order to obtain wrongful gain coerced the petitioner – trust and exercised undue influence to reach at an unfair, unjust and unconscionable settlement.

59 A Constitutional Court sits as a guardian of the accrued rights of persons/citizens against abuse of authority by the State. It would not allow the State to capitalize in an unholy bargain and divest the citizens of their dues. Being a social welfare State, its obligation to protect faith of people is even otherwise higher. Any attempt to the contrary deserves to be nipped and a stern message needs to be sent that such conduct is unacceptable and unpardonable in law, when it comes from the State.

60 Therefore taking into consideration the peculiar facts of the present case the writ petition is allowed. Respondents are directed to jointly or severally discharge their obligation as a guarantor and to discharge their obligations against the petitioner-trust within a period of



02 months of receipt of the certified copy of this order along with delayed payment interest, as per the Scheme.

61 While allowing the present Writ petition, I am conscious of the applicability of Section 64 of the Indian Contract Act, 1872, whereby when a party exercises its right to declare an agreement voidable on their end, it has to restore such benefits received, however in the present case the principal amount received by the petitioner – trust cannot be termed to be the benefit received by the party, rather it is the long overdue amount that was payable towards them and hence the same does not warrant any interference for return.

62 Prior to concluding this Judgment, it is imperative to highlight that in the matter at hand, the respondent authorities and their agents have conducted themselves in a manner that is not consonant with fairness. The Petitioner –trust operating as a provident fund organisation – has allocated the diligently saved earnings of its employees, which are now being unlawfully retained and refused by the respondent authorities. This is not the inaugural instance wherein the case against the current respondent no. 3, concerning the release of funds invested in a bond scheme, has been brought before this court. The authorities have, on numerous occasions, been instructed to reimburse the sums accrued to the benefit of the investors. Yet, through ministerial overreach and flagrant misuse of power, the issue recurrently emerges, with the legitimate entitlements of the investors being rebuffed under various guises. The instant case demands particular attention as, on this



occasion, the respondents have sought to evade their obligations by pressuring the petitioner – trust into an agreement, thereby negating their rightful claim through inducement, coercion, and undue influence.

63 Taking into consideration the act of the respondents, this court deems it just and favourable to burden the respondents with an additional cost of Rs. 5 lakh to be deposited in the PGI Poor Patients' Welfare Fund to deter the respondent no. 3 from relying upon such tactics of denying lawful claims and for coercing investors to enter into such agreements which are favourable to them. Let the amount be also deposited within the above period of 02 months.

February 12, 2024.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*