



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF JUNE 2019

BEFORE

THE HON'BLE MR. JUSTICE ALOK ARADHE

WRIT PETITION NOS.49864-865 OF 2013 (GM-RES)

BETWEEN:

1. UNITED SPIRITS LIMITED
A COMPANY INCORPORATED UNDER THE
COMPANIES ACT, 1956, HAVING ITS
REGISTERED OFFICE AT 'UB TOWER'
#24, VITTAL MALLYA ROAD
BANGALORE - 560 001.
REPRESENTED BY ITS
COMPANY SECRETARY
MR.V.S.VENKATARAMAN.
2. USL BENEFIT TRUST
'UB TOWER', #24,
VITAL MALLYA ROAD
BANGALORE - 560 001
REPRESENTED BY ITS TRUSTEE
MR.A.K.RAVI NEDUNGADI.

... PETITIONERS

(BY MR. P. CHIDAMBARAM, SENIOR COUNSEL ALONG WITH
MR. C.K. NANDA KUMAR, ADV.)

AND:

1. IDBI BANK LIMITED
HAVING ITS REGISTERED OFFICE AT
IDBI TOWER, WTC COMPLEX
CUFFE PARADE, MUMBAI - 400 005.

AND HAVING ONE OF ITS BRANCH
OFFICES AT SPECIALIZED CORPORATE
BRANCH, 3RD FLOOR
102, SHAKTI COMFORT TOWERS
K.H.ROAD, BANGALORE - 560 027.

REPRESENTED BY ITS
DEPUTY MANAGER.

2. UNIT TRUST OF INDIA INVESTMENT
ADVISORY SERVICES LIMITED
A COMPANY INCORPORATED UNDER THE
COMPANIES ACT, 1956 AND
HAVING ITS REGISTERED OFFICE
AT UTI TOWER 'GN' BLOCK, BANDRA
KURLA COMPLEX, BANDRA (EAST)
MUMBAI - 400 051.
REPRESENTED BY ITS
GENERAL MANAGER.

... RESPONDENTS

(BY MR.N.V.SRINIVASAN AND
MR.VARUN SRINIVASAN FOR
M/S N.V.S.ASSOCIATES FOR R1
NOTICE TO R2 IS SERVED AND UNREPERESENTED)

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THESE WRIT PETITIONS ARE FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA WITH A PRAYER TO
QUASH THE IMPUGNED CONDITION AS CONAINED IN THE
RESPONDENT'S LETTER DATED 06.06.2013 (ANNEXURE-S) AS
BEING ILLEGAL AND ARBITRARY..

THESE WRIT PETITIONS HAVING BEEN HEARD AND
RESERVED ON 14.06.2019 FOR HEARING AND COMING ON FOR
PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT MADE
THE FOLLOWING:-

ORDER

Mr.P.Chidambaram, learned Senior counsel along
with Mr.C.K.Nanda Kumar, learned counsel for the
petitioners.

Mr.N.V.Srinivasan and Mr.Varun Srinivasan, learned counsel for M/s N.V.S. Associates for respondent No.1.

In these writ petitions under Article 226 and 227 of the Constitution of India, petitioners *inter alia* seek a writ of certiorari for quashment of impugned condition contained in the communication dated 06.06.2013 sent by respondent No.1. The petitioners also seek a writ of mandamus directing the respondent to appropriate a sum of Rs.628 Crores remitted by petitioner No.1 in cash credit account maintained by respondent No.1 towards full repayment of all outstanding loans including the interest and charges till 6.6.2013. The petitioner also seeks a writ of mandamus directing the respondent No.1 and 2 to release the pledged security including 34, 59, 090 equity shares of the petitioner No.1 pledged by USL benefit Trust under the agreement of pledge of shares dated 17.06.2010. The petitioners also seek a

writ of mandamus directing respondent No.1 to issue No Due Certificate.

Factual matrix:

2. The Petitioner No.1 is a public limited company and is incorporated under the provisions of the Companies Act 1956, which is engaged in the business of manufacturing, marketing and selling Indian made foreign liquor, wine and other alcoholic beverages. USL Benefit Trust is a private trust set up for the purpose of holding equity shares of and in United Spirits Limited for the benefit of the petitioner No.1, its successors and assigns. The respondent No.1 is a Government of India owned Bank and is a Banking company within the meaning of Section 5(c) of the Banking Regulations Act, 1949. The respondent No.2 has been appointed as security trustee under the security trustee agreement dated 17.06.2010 entered into between petitioner No.1 and respondent No.2 to hold the security created by petitioner No.1 in favour of respondent No.1.

3. The petitioner No.1 approached the respondent No.1 for financial assistance and vide a sanction letter dated 18.01.2010, the respondent No.1 sanctioned a Rupee Term Loan to the tune of Rs.450 Crores in favour of the petitioner No.1 subject to terms and conditions contained in the loan agreement dated 19.01.2010. Thereafter, vide a sanction letter dated 08.04.2010 the petitioner No.1 was sanctioned a further rupee term loan of Rs.200 Crores by respondent No.1, on terms and conditions contained in the sanction letter read with loan agreement dated 08.04.2010 entered into between petitioner No.1 and respondent No.1. The share pledge agreement was executed between the parties on 17.06.2010. The USL Benefit Trust created a pledge for the benefit of respondent No.1 in respect of 34, 59, 090 equity shares of the petitioner No.1 held by USL Benefit Trust, which respondent No.2 who was appointed as security trustee in pursuance of security trustee agreement dated 17.06.2010.

4. The petitioner No.1 executed an agreement for pledge of shares and a declaration from indemnity dated 17.06.2010 pledging 34, 59, 090 equity shares of petitioner No.1 held by USL Benefit Trust on pari passu basis in favor of respondent No.1 and the Punjab National Bank. A sum of Rs.625,45,056/- was disbursed by the respondent No.1 to the petitioner No.1 under the loan agreement dated 09.1.2010 and 08.04.2010. On 09.11.2012 certain promoters of petitioner No.1 viz., United Breweries (Holdings) Ltd., Kingfisher Finvest India Ltd., along with SWEW Benefit Company, USL Benefit Trust etc., entered into an agreement with DIAGIO Plc and Relay B.V. for sale of 252,26,839 equity shares of petitioner No.1. The petitioner No.1 by a communication dated 28.01.2013 sought permission of respondent No.1 in respect of the proposed transaction. The respondent No.1 vide its response dated 09.04.2013 refused to grant approval for implementation of the proposed transaction.

5. It is averred in the writ petition that various attempts made by officers of petitioner No.1 to convince the respondent no.1 about the proposed transaction failed to yield any result. The petitioner No.1 also expressed its willingness to pre pay the loan amount. Thereafter by communications dated 30.5.2013 and 04.06.2013, the petitioner No.1 again made a request to respondent No.2 to release the pledge shares, on receipt of the outstanding amount of loan. The petitioner No.1 on 06.06.2013, transferred a sum of Rs.628 Crores to its cash credit account with respondent No.1 towards prepayment of the entire loan availed of by the petitioner No.1. The petitioner No.1 vide communication dated 06.06.2013 requested the respondent No.1 to close the loan facility availed of, by petitioner No.1, as the outstanding amounts under the loan agreements have been repaid in full. The petitioner No.1 made a request to the respondents to release the security created by petitioner No.1 and USL Benefit

Trust pursuant to the pledge agreement and to issue a No Due Certificate.

6. The respondent No.1 by a letter dated 06.06.2013 agreed to proposal of petitioner No.1 for prepayment of the amount of loan subject to the conditions mentioned therein, which are reproduced below for the facility of reference:

(i) Prepaying the said loan along with prepayment premium of Rs.4 Crore (Rupee Four Crore only) plus applicable taxes (actual amount to be worked out reckoning the date of actual prepayment.

(ii) Dr.Vijay Mallya and United Breweries (Holdings) Limited (UBHL) depositing the sale proceeds in respect of share holding of Dr.Vijay Mallya and family stake/UBHL's stake sale in United Spirits Limited to Diageo Plc (Diageo) in Escrow/TRA account as may be decided by IDBI Bank, in context of personal

guarantee furnished by Dr.Vijay Mallya and Corporate Guarantee furnished by UBHL to IDBI Bank in respect of exposure of Kingfisher Airlines Limited.

(iii) Payment of processing fees of Rs.30 Lakh (Rupees Thirty Lakh Only) plus applicable taxes (pending amount to be paid by the company) towards renewal of working capital facilities.

7. The respondent No.1 by another communication dated 07.06.2013, reiterated the aforementioned terms and conditions. It is the case of the petitioner that in the aforesaid communication, it has been admitted that the cash credit account of petitioner No.1 maintained with respondent No.1 had received several credits to the tune of Rs.628 Crores on 06.06.2013. However, the respondent No.1 refused to debit the cash credit towards full and final settlement of the loan facilities availed of by petitioner No.1 until and

unless the petitioner No.1 agreed to the conditions referred to by respondent No.1 in its communication dated 06.06.2013. Despite communications sent by petitioner No.1 on 29.07.2013 and 28.08.2013, no response was received from the respondent No.1 Bank. Thereupon the petitioner No.1 sent notice through Advocate on 06.09.2013 to which a reply was sent by respondent No.1 on 25.09.2013. It is averred in the petition that actions of respondent No.1 in refusing to credit a sum of Rs.628 Crores remitted by way of prepayment of the term loan by the petitioner No.1 to the cash credit account of petitioner No.1, in refusing to release the pledge security including 34, 59, 090 shares of petitioner No.1 and in unilateral imposing condition No.(ii) as contained in the communication dated 06.06.2013, prior to accepting the prepayment of the loan availed by petitioner No.1, are arbitrary, illegal and unreasonable. In the aforesaid factual background, the petitioner has approached this Court.

Submissions:

8. Mr.P.Chidambaram, Learned Senior Counsel for the petitioners at the outset submitted that the petitioners withdraw their challenge conditions No.(i) and (iii) contained in the communication dated 06.06.2013. However, the challenge of the petitioners in this petition is confined to condition No.(ii) contained in the aforesaid communication. It is further submitted that petitioners have a legal and contractual right to pre pay the loan under Clause 1.8 of the loan agreement and the condition No.(ii) is arbitrary as it does not form part of either of sanction letter or loan agreements between the parties. It is pointed out that United Spirits Ltd., and UBHL are separate and distinct legal entities and Kingfisher Airlines Ltd., is also a separate listed entity. It is also urged that petitioner No.1 was the sole borrower under the loan agreement of respondent No.1 and a co lender viz., Punjab National Bank has accepted the similar proposal made by the petitioners for prepayment of the loan and has issued no due

certificate. It is also argued that petitioner No.1 has no control or influence whatsoever over the affairs of any of its shareholders such as Dr.Vijay Mallya, UBHL and all its subsidiaries and therefore, is not in a position to ensure compliance with condition No.(ii) imposed by respondent No.1-Bank. It is contended that guidelines framed by the Reserve Bank of India have been adopted by respondent No.1 Bank. It is also submitted that respondent No.1 being a public sector bank discharging public functions is 'State' in terms of Article 12 of the Constitution of India and is amenable to the writ jurisdiction of this Court and is supposed to act in a fair and rational manner even in contractual field. In support of aforesaid submission reference has been made to decisions of the Supreme Court in '**ZONAL MANAGER CENTRAL BANK OF INDIA VS. DEVI ISPAT LIMITED AND OTHERS**', (2010) 11 SCC 186 and '**SARDAR ASSOCIATES AND ORS. VS. PUNJAB AND SIND BANK AND ORS.**', (2009) 8 SCC 257. It is also argued that writ petition to enforce the contractual

obligations of a State or its instrumentality is maintainable. In this connection reference has been made to decisions in the case of '**ABL INTERNATIONAL LTD., VS. EXPORT CREDIT GUARANTEE CORPN. OF INDIA LTD.,**', (2004) 3 SCC 553 and '**PIMPRI CHINCHWAD MUNICIPAL CORPORATION AND OTHERS VS. GAYATRI CONSTRUCTION COMPANY AND ANOTHER**', (2008) 8 SCC 172. It is also urged that guidelines framed by the Reserve Bank of India are binding on respondent No.1 and a person cannot be compelled to remain a borrower or under a debt by a Bank. In this connection, reliance has been placed on decision of Delhi High Court in '**DLF LIMITED VS. PUNJAB NATIONAL BANK**', 180 (2011) DELHI LAW TIMES 435.

9. On the other hand, Mr.N.V.Srinivasan Learned Senior Counsel for respondent No.1 has submitted that the writ petition is not maintainable as the dispute between the parties is purely contractual. It

is further submitted that disputed questions or rival claims of the parties with regard to breach of contract are required to be determined on the basis of the evidence which may be led by the parties which can only be done in a properly instituted civil suit. It is urged that the petitioner is guilty of committing breach of corporate guarantee furnished by it and without seeking permission of the respondent No.1 and during the subsistence of the loan, the petitioner had sold its share to DIAGIO. It is also submitted that the assets of the petitioner company have been stripped without permission of the respondent No.1, notwithstanding the fact that respondent No.1 has refused to agree to the proposal for transfer of shares contained in the communication dated 28.01.2013 and the same was conveyed to the petitioner by a letter dated 09.04.2013. In this connection, attention of this court has been invited to various clauses of the corporate guarantee furnished by the petitioner. It is contended that respondent No.1 is acting within the realm of contract

and the petitioner cannot seek specific performance of the contract and writ jurisdiction of this Court under Article 226 of the Constitution of India cannot be exercised in favour of petitioners who have committed breach of contract.

10. It is pointed out that there is no element of public law. It is further pointed out that the petitioner has filed a civil suit on the original side of Bombay High Court seeking a declaration that corporate guarantee furnished to respondent No.1 is void. It is also submitted that the doctrine of reverse piercing has to be invoked to find out the real character of the company. It is also pointed out that during pendency of the petition, the respondent no.1 has been classified as a Private Bank by Reserve Bank of India after acquisition of its 51% stake by Life Insurance Corporation and is no more 'State' as per Article 12 of the Constitution of India vide Circular dated 14-03-2019 issued by Reserve Bank of India. It is contended that the action of the

petitioners by no stretch of imagination can be said to be arbitrary and the terms and conditions of the contract are binding on the parties. It is argued that respondent No.1 has rightly exercised its legitimate right under para 2.5.2(iv)(c) of the circular issued by the Reserve Bank of India which provides that lenders should release all securities on receiving payment of loan or realization of loan subject to any legitimate right or lien for any other claim lenders may have against borrowers.

11. It is further submitted that the aforesaid circular applies against UBHL and Dr.Vijay Mallya as they are borrowers. It is pointed out that reliance placed by Learned Senior Counsel for the petitioner in the case of **DEVI ISPAT** supra is misconceived as in the aforesaid decision no due certificate was issued by the financial institution, whereas in the instant case the no due certificate has neither been issued nor the offer of the petitioner has been accepted. In support of his

submissions, reliance has been placed on decision of the Supreme Court in ***PLATTS, INC. Vs. PLATTS* (49 Wn.2d 203 (Wash 1956), *SHAMROCK OIL AND GAS CO. Vs. ETHRIDGE & PLATTS, INC. Vs. PLATTS* (159F, Supp.693 (D.Colo, 1958), 'RE PHILLIPS: CONNOLLY Vs. ENGLEWOOD, COLORADO SUPREME COURT 2006 (CASE NO.05SA316), 'PIMPRI CHINCHWAD MUNICIPAL CORPORATION AND OTHERS VS. GAYATRI CONSTRUCTION COMPANY AND ANOTHER', (2008) 8 SCC 172, 'ROSHINA T VS. ABDUL AZEEZ K.T. AND ORS.', CIVIL APPEAL NO. 11759/2008, decision of the Division Bench of Allahabad High Court in 'M/S IPJACKET TECHNOLOGY INDIA PRIVATE LIMITED VS. M.D.UTTAR PRADESH RAJKIYA NIRMAN NIGAM LTD.', WRIT-C NO.34346 OF 2018 and Single Bench Decision Of High Court Of Calcutta In '**STAR BATTERY LIMITED AND ORS. VS. STATE BANK OF INDIA AND ORS.**', W.P.NO.524/2017.**

Legal Principles:

12. The order of mandamus is, in form, a command issuing from the High Court and directed to any person, Corporation or inferior tribunal, requiring him or it to do some particular thing specified in it which pertains to his or its office and is in the nature of public duty. **[See: Halsbury Laws of England 4th Edition Volume 11 Page 802]**. A writ of mandamus is available to secure performance of judicial, statutory and executive duties of a public nature which includes compelling for bearance as well as compelling action. A writ of mandamus is issued where legal public duty is clear, unqualified and specific and at the instance of a person who establishes that he has a legal right to enforce performance of a public duty. Such right or duty may not be constitutional and may founded on statute or common law but relief by way of mandamus will be available only when legal right or petitioner and legal duty of respondent is of public nature.

13. Similarly, a writ of certiorari can be issued under Article 226 against a body, which has legal authority, duty to act judicially and has authority to determine rights of subjects, where it acts in want or excess of jurisdiction in violation of procedure or in utter disregard to principles of natural justice. Unless there is manifest in justice or a manifest error apparent on record, the writ of certiorari will not be issued in exercise of writ jurisdiction. [See: '**RAMPRASAD NARAYAN SAHI VS. STATE OF BIHAR**', 1953 SCJ 246, '**T.C.BASAPPA VS. T.NAGAPPA AND ANOTHER**', AIR 1954 SC 440, '**NAGENDRANATH VS. COMMISSIONER OF HILLS DIVISION ASSAM**', 1958 SCJ 798 and '**SYED YAKOOB VS. K.S.RADHAKRISHNAN AND OTHERS**', AIR 1964 SC 477. It is equally well settled legal proposition that issuance of writ of certiorari is in court's discretion and the party seeking it must not be guilty of conduct disentitling him to such a relief. The jurisdiction of the court in certiorari proceeding is not that of a court of

appeal [See: '**T.C.BASAPPA VS. T.NAGAPPA AND ANOTHER**', AIR 1954 SC 440, '**CIT VS SAURASHTRA KUTCH STOCK EXCHANGE LTD.,**', (2008) 14 SCC 171 and '**MOHD SHAHNAWAZ AKHTAR VS DISTRICT JUDGE VARANASI**', (2010) 5 SCC 510.]

14. The Supreme Court in '**LIC OF INDIA VS. ESCORTS LTD.**', (1986) 1 SCC 264 has held in matter pertaining to contractual obligations, the court would not examine the action of the state unless it has some public law element. The Supreme Court in '**UNION OF INDIA VS. S.B.VOHRA**', (2004) 2 SCC 150 has held exercise of discretion of court to issue writ of mandamus will also depend on the law which governs the field. It has further been held that in order to invoke public law remedy under Article 226 of the Constitution of India, actions of authority need to fall in the realm of public law and the High Court will not exercise its jurisdiction wherein public law element is not involved. Similarly, in '**ZEE TELEFILMS LTD. VS. UNION OF INDIA**',

(2005) 4 SCC 694, it has been held that powers of judicial review can be invoked in a case which has a public law element, as contradistinguished from a private law dispute. It has further been held that whether a particular action falls within public law domain or private law field has to be decided in each case with reference to the particular action. In '**ANDI MUKTA SADGURU SHREE MUKTAJEE VANDAS SWAMI SUVARNA JAYANTI MAHOTSAV SMARAK TRUST AND OTHERS VS. V.R RUDANI AND OTHERS**', **(1989) 2 SCC 691**, it was again reiterated that in the matter of private character or purely contractual field, no element of public duty is involved and the writ of mandamus will not be issued.

15. In '**JOSHI TECHNOLOGIES INTERNATIONAL INC VS. UNION OF INDIA**', **(2015) 7 SCC 728**, the aforesaid principles have been reiterated and it has been held that once, on facts of a particular case it is found that nature of activity or

controversy involves public law element, then the matter can be examined by the High Court in a writ petition under Article 226 of the Constitution of India whether action of the State or its instrumentality or agency of State is fair, just and equitable. It is also held that Dichotomy between public law remedies and private law field cannot be demarcated with precision. Each case has to be examined on its facts whether contractual relations between the parties bear insignia of public element. The scope of judicial review in cases of disputes falling within domain of contractual obligations may be more limited and in doubtful cases parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes.

Analysis

16. In the backdrop of aforementioned well settled legal position, the facts of the case in hand may be examined. Admittedly, On the request of Kingfisher Airlines, one of the group companies of United

Breweries Brewing (Holdings) Limited, the respondent provided rupee term loan facility as per warranties and covenants in terms of the loan sanctioned and executed on 19.01.2010 and 08.04.2010. Under the aforesaid agreements, loan of Rs.450 and 200 Crores was advanced to the petitioners. The petitioner No.1 also agreed not to create any subsidiary or permit any company to become a subsidiary and further agreed not to resort to any merger, consolidation, reorganisation, compromise or scheme of arrangements with creditors or shareholders or effect any scheme of amalgamation or reconstruction without specific intimation to respondent No.1. The petitioner No.1 also entered into an agreement on 17.06.2010 for pledge of shares. Apart from the securities mentioned in the agreement dated 19.01.2010 and 08.04.2010, the petitioner No.1 created a pledge of 34, 59, 090 equity shares of United Spirits limited held by United Spirits Limited Benefit Trust on Pari Passu basis with other lenders refinancing the aggregate debt of Rs.1,325 Crores.

17. The Petitioners on 21.08.2013 sought approval of the respondent-Bank to seek sale of shares of United Breweries (Holdings) Limited, Kingfisher Finvest India Limited, SWEW Benefit Company, USL Benefit Trust, Palmer Investment Group Limited and UB Sports Management Overseas Limited and additional sale of shares to Relay B.V. The respondent-Bank thereupon by a communication dated 09.04.2013 examined a proposal sent on behalf of the petitioners and informed the petitioners that it is not agreeable to the request of USL Benefit Trust, as the same would amount to change of ownership, will result in change of control, constitution of the board under the proposed transaction, which in turn will also result in amendment to the Articles of Association, thereby affecting the very basis of credit appraisal.

18. The loan documents and the guarantees executed in favour of the respondent-Bank contain a specific stipulation that structure of loan should not be

altered without prior/consent of the lenders and the purpose of the aforesaid clause was to avoid asset/equity stripping. It is also pertinent to mention that the petitioners in their communication dated 21.08.2013 admitted that sale of shares may result in change of ownership and even capital structure of the company may undergo a change and pursuant to which the acquirer was expected to be the single largest shareholder of the company and the company would cease to be part of UBI group. However, notwithstanding the fact that the respondent did not agree to the proposal of the petitioners, the petitioners on 06.06.2013 unilaterally transferred a sum of Rs.628 Crores to its cash credit account.

19. The petitioners in utter disregard to covenants and stipulations contained in the agreements diluted the stakes of the petitioner company and has violated guarantee furnished by it in favour of the bank. The dilution of assets has brought down the net worth

of the guarantor namely UBHL. The respondent No.1 had refused to accept the money worth Rs.628 Crores credited to the cash credit account to ensure that corporate guarantee and personal guarantee are not rendered as paper guarantees and it should not be a silent spectator to asset stripping resorted to by the petitioners.

20. A borrower while submitting a proposal for a facility also provide the net worth statement of itself and proposed guarantors and it is one of the major and critical factor for any financier to consider the viability of the proposal. After availing the loan, if the net worth of any guarantor is diluted, it will directly affect the structure of a loan portfolio and will distort the security structure and financial and security ratios of the project. It is noteworthy that respondents vide communication dated 07.06.2013 had informed the applicant that the amount deposited by the petitioners, would not be treated as payment towards prepayment and the

aforesaid amount was adjusted in a phased manner as against the dues of the petitioners as and when principle and interest was falling due under the loan agreements dated 19.01.2010 and 08.04.2010. On the request being made by the petitioners, the statement of cash credit account was provided to the petitioners along with communication dated 29.05.2014 and the petitioners are well aware of the adjustments of the amount to its various loan accounts. The acceptance of a similar proposal by Punjab National Bank who is also a co-lender cannot bind the respondents in any manner.

21. United Spirits Limited and United Spirits Limited Trust are part of UBHL Group and USL is an independent publicly listed legal entity, which has its own Board of Directors including five independent Directors and distinct shareholders including mutual funds, foreign institutional investors. By a process of takeover, Stock Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 1997,

DIEGIO and allied companies took over the majority shareholding of USL and as on today, the shareholding of entire UBHL Group in USL is less than five percent.

22. From the factual matrix stated in preceding paragraphs, it is axiomatic that the dispute between the parties and rights and obligations of the parties arise from a contract and in fact the attempt was made to claim back the security under the guise of making prepayment and to allow a third party as acquirers of shares to enter the management of the company. It appears that an attempt was made to claim back the security under the guise of making prepayment and to allow a third party as acquirer of the shares to enter the management of the company. The rights of the parties and question of breach of terms and conditions of the contract requires determination in a Civil Suit, as the same requires recording of evidence for adjudication of the factual dispute.

23. The right of the parties are founded in contract and writ of mandamus in the fact situation of the case is not available to the petitioners as the duty of the respondents to close the loan account and to issue no due certificate and to release the pledged security under the agreement dated 17.06.2010 has no public law element. The writ of certiorari is in the nature of court's discretion and the petitioner who is guilty of committing breach of the contract is not entitled to the discretionary relief of writ of certiorari.

24. So far as reliance made on behalf of the petitioners in the case of **ZONAL MANAGER CENTRAL BANK OF INDIA** supra as well as decision in the case of **SARDAR ASSOCIATES AND ORS.** is concerned, the aforesaid decisions are an authority for the proposition that writ petition to enforce contractual obligations of the State or its instrumentality is maintainable. In **ZONAL MANAGER CENTRAL BANK OF INDIA** supra, the action of the High Court in issuance of a writ of

mandamus for return of title deeds, as entire amounts due to the respondent-Bank were repaid was upheld. Thus, the writ in the aforesaid case was issued on admitted facts and the aforesaid case did not deal with an issue of breach of contract. Similarly, in **SARDAR ASSOCIATES AND ORS.**, it was held that a writ of mandamus can be issued to enforce the legal right arising under one time settlement scheme of Reserve Bank of India for loan accounts. Admittedly, in the instant case, the petitioners had not submitted an offer under the 'One Time Settlement Scheme', therefore, the aforesaid decision is of no assistance to the petitioners in the fact situation of the case.

25. In the decision of **DLF Ltd.** supra, the Delhi High Court held that since the question in the aforesaid decision involved non compliance with RBI guidelines, therefore, an element of public law was present in the fact situation of the case. Accordingly, the writ petition was held to be maintainable. In the instant case, the

question of adherence to guidelines framed by the RBI is not involved. Similarly, in case of **ABL INTERNATIONAL LTD.**, the Supreme Court while dealing with an insurance contract held that when an instrumentality of State acts contrary to public interest, in its contractual, constitutional or statutory obligation, it really acts contrary to Article 14 of the Constitution of India. In the fact situation of the case, in paragraph 53 of the decision, the court found that relief as sought for by the petitioners should be granted. The aforesaid decision is also of no assistance to the petitioners.

26. In view of preceding analysis, I do not find any merit in the writ petition. The petitioners are at liberty to take recourse to such remedy as may be available to them under the law. Needless to state that in case petitioners resort to the remedy available to them under the law, the trial court shall deal with the lis without being influenced by any of the observations made and the findings recorded by this court in this order.

Accordingly, with the aforesaid liberty, the writ petitions are disposed of.

**Sd/-
JUDGE**

SS