IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.738 OF 2015

Deccan Chronicle Holdings Pvt.Ltd. ... Petitioners
v/s
IDBI Bank Ltd. and another ... Respondents

Mr Rohan Cama with Mr Prathamesh Kamat i/b Ms Sapana Rachure and Dhir and Dhir Associates for Petitioners.
Mr Venkatesh Dhond, Sr. Counsel with Mr Darshan R. Mehta, Ms Nirali Sanghavi i/b M/s Dhruve Liladhar and Co. for Respondent No.1.
Mr P.S. Gujar for Respondent No.2.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA JJ.

DATE : 23RD SEPTEMBER 2015

***P.C.*:-**

1. We have heard both the sides at some length.

2. The challenge in this Writ Petition essentially was to the action of the Respondents in proceeding with a notice which was issued to the Petitioners. The Petitioners claim that this notice refers to certain loan facilities granted by IDBI Bank Ltd. There is a

mechanism known as Willful Defaulters Redressal Committee to deal with chronic and willful defaulters. This Committee of the IDBI Bank Ltd. informed the petitioners that the Petitioners have committed defaults in payment of loan amount, copy of which is at page 53 of the paper book dated 13th August 2014. It sets out the nature of the facilities, the loan agreements, their dates, personal guarantees and other securities. The Bank informed the Petitioners that the principal amount of loan and repayment schedule was to be followed. Thereafter, the interest component also had to be remitted and in terms of the agreement. It is stated that short term loan of Rs.250/- crores was due for repayment in March 2012. The Bank refers to certain extension granted to roll over this facility. Thereafter, the repayment was rescheduled and at the request of the Petitioners. Since the Petitioners failed to pay, it is alleged that this failure and neglect led to proceedings particularly under section 138 of the Negotiable Instruments Act 1881, recalling of the advances and invocation of the personal guarantees. That also led to initiation of recovery proceedings in the Debt Recovery Tribunal at Hyderabad. With all this, the defaults continued and therefore a notice to show cause came to be issued calling upon the Petitioners to show cause as to why in terms of the criteria evolved by the Reserve Bank of India, the Petitioners should not be labeled and termed as a willful defaulter, the name of Company and its Directors be reported to the RBI for inclusion in the list of willful defaulters on the ground that loans raised from the Bank were being diverted for other non-business purposes, the Company was misrepresenting the final numbers to reflect the exaggerated position to show better results.

3. The Petitioners replied to this notice and denied the allegations. It also requested that before the Bank or the Committee proceeds in terms of this notice, the Petitioners be provided all the materials and documents on which the Bank intends to rely. The Petitioners also relied upon the order passed by the Hon'ble High Court of Delhi in the matter of Kingfisher Airlines Ltd. v/s Union of India in Writ Petition (C) No.5532 of 2014.

4. The correspondence continued and the grievance of the Petitioners was that such documents as were sought never came to be supplied. The Petitioners also insisted on appearing before the Committee through an Advocate and sought permission in that

regard. Finding that the Committee may not agree to it that the Petitioners approached this Court.

5. During the pendency of this Petition and as initially filed on 18th December 2014, an affidavit in reply was filed by the IDBI Bank Ltd. The IDBI Bank Ltd. informed this Court that the Committee has passed an order on 24th December 2014 declaring the Petitioners as willful defaulters.

6. A copy of this order is annexed to the affidavit in reply and there are denials of the allegations in the Writ Petition. There is a rejoinder affidavit placed on record as well. When the Petition reached hearing, Mr Cama, in support, canvassed these submissions. The first contention is that the order as passed violates the principles of natural justice. The second submission is that a very reasonable request of the Petitioners to supply the materials and documents on which the Committee wishes to rely and prior to hearing on the show cause notice, is also not adhered to and accepted by the Committee. Thirdly, the Committee has passed an order without hearing the petitioners or its legal representative and the request of personal hearing through the legal representative was also

reasonable but denied. Lastly, the Committee has hastily passed an order and without waiting for the Petitioners' response casts a serious doubt on the impartiality and fairness of the proceedings before the Committee.

7. Upon such allegations and contentions, we inquired from Mr Dhond, learned Senior Counsel who appears for the contesting Respondent No.1 as to whether the Bank and the Committee would be ready and willing to grant a personal hearing to the petitioners and thereafter pass a fresh order, meaning thereby is the Bank and the Committee agreeable to have the impugned order quashed on the short ground of violation of principles of natural justice with liberty to pass a fresh order after conclusion of the fresh hearing. Mr Dhond took instructions and informed the Court that in order to obviate and avoid further delay, the Bank is agreeable to the course suggested by the Court. However, Mr Dhond opposed the request of the Petitioners of oral / personal hearing through an Advocate. He would submit that assuming without admitting that the order passed and impugned in this Petition has civil consequences but a right of oral or personal hearing does not necessarily carry a further right to

engage an Advocate and liberty to the Advocate to make submissions. He would submit that since commercial and contractual dealings are best known to parties, the proceedings are not complicated nor involve legal issues. Hence, the presence of the Advocate is not necessary. Reliance is placed upon the Division Bench judgment of this Court to which one of us (B.P. Colabawalla J) was a party in Writ Petition (L) No.1684 of 2015, decided on 15th July 2015.

8. After hearing both sides at length, we are of the view that the Writ Petition can be disposed of by accepting the course suggested by Mr Dhond. We of the opinion that once the Bank is ready and willing to have the earlier order dated 17th November 2014 quashed and set aside, then, the Petitioners have to be satisfied with this outcome. The Petitioners would now get a full and complete opportunity of being heard in person. Prior to such hearing, inspection and perusal of the documents relied upon be given and thereafter the Committee would grant personal hearing and pass a fresh reasoned order. In the facts and circumstances peculiar to this case, we are of the view that the Petitioners' request

for presence of an Advocate at the hearing cannot be accepted. We have ensured that principles of natural justice are followed in letter and spirit. We do not think that the Petitioners can insist on presence of a lawyer or submissions being made with the assistance of a lawyer. Therefore, that request is declined.

9. We allow the Writ Petition by quashing and setting aside the impugned order. The Petitioner will now appear before the Committee for a fresh hearing in person. The Petitioners shall be at liberty to inspect all the documents which the Committee / Bank intends to rely. Further if the Petitioners desire to obtain any copies of the same so as to be in a position to make an effective and proper representation, such copies shall be provided by the Bank at the cost and charges of the Petitioners. The hearing shall not be of more than one day. The Petitioners must cooperate with the Committee and not seek unnecessary and frivolous adjournments. Preferably the Committee / Bank should intimate the date, time and venue of hearing as also the date, time and venue for inspection of documents well in advance so that the proceedings are not delayed. We clarify that we have not expressed any opinion on the rival contentions.

We also clarify that this order and direction has been passed in the facts peculiar to this case and without examining any larger or wider issues and controversy. We also direct that in passing a fresh order, the Committee / Bank shall not influence itself by any earlier findings / observations and conclusions. The Writ Petition is allowed in these terms. No costs. These directions are issued with the consent of both sides. Needless to clarify that at the conclusion of the oral hearing or even prior thereto, the Petitioners can tender written submissions. Our order and direction does not mean that the Petitioners must canvass oral submissions only. They are at liberty to file written submissions.

(B.P. COLABAWALLA, J.) **(S.C.DHARMADHIKARI J.)****

** **CERTIFICATE**
Certified to be a true and correct copy of the original signed Judgment/Order.