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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 28/2015

JAH DEVELOPERS PRIVATE LIMITED & ORS..... Petitioners
Through: Mr I.S. Alag & Mr J.S. Lamba, Advs.

versus

UNION OF INDIA & ORS Respondents
Through: Mr Rajesh Gogna, CGSC for R-1.
Mr Jitendra Kumar, Adv. with Mr Vishwas
Dhiman, Chief Manager for R- 2, 3 & 4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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05.01.2015

CM No. 56/2015 (Exemption)

Allowed subject to just exceptions.

WP(C) 28/2015 & CM No. 55/2015 (Stay)

1. This is a writ petition filed under Article 226 of the Constitution of India.
2. Issue notice.
3. Mr Rajesh Gogna accepts notice on behalf of respondent no.1, while Mr Jitendra Kumar accepts notice on behalf of respondent nos. 2, 3 & 4. They waive service of notice. Learned counsels for the respondents also convey that they do not wish to file a counter-affidavit in view of the order that I propose to pass.
4. The challenge in the writ petition is to two impugned communications dated 27.01.2014 and 22.08.2014. In addition, there is also a challenge to an undated letter which is marked as Annexure P-3. In brief, the challenge qua

these communications is that the Grievance Redressal Committee (in short the GRC), appointed by respondent no.2, i.e., the State Bank of India, seeks to declare the petitioners, albeit after considering their representation, as wilful defaulters, in view of the fact that the petitioners have not adhered to the terms and conditions under which loan was advanced to petitioner no.1 company. To be noted, petitioner nos. 2, 3 & 4 are guarantors to the loan advanced to petitioner no.1 company.

4.1 The limited grievance that Mr Alag has, qua the impugned communications, is that, the GRC would be relying upon documents which have not been furnished to the petitioners herein; therefore, he says, that there is a breach of principles of natural justice.

5. On the other hand, learned counsel for respondent nos.2 to 4, submits that documents, which are sought to be relied upon, are essentially the accounts and the audited balance sheets, which are generated by petitioner no.1 company itself and, therefore, there is no necessity of replicating that exercise.

6. Having heard the learned counsels for the parties, I am of the view that all that the principle of natural justice requires, in the present case, is that, if any material is relied upon by respondent no.2, in seeking to declare the petitioners as wilful defaulters, then the said material, will have to be supplied to the petitioners. At this stage, it may be difficult for the petitioners to articulate as to the material that respondent no.2 would seek to rely upon before the GRC. Therefore, this petition is disposed of with a direction to respondent no.2 that, it shall, give inspection of all materials it wishes to rely upon, and in case the petitioners seek copies of the material, the same will be supplied at their cost.

6.1 In so far as accounts and the audited balance sheets are concerned, though I quite agree with the submission of the respondents that, the said material ought to be in possession of the petitioners, to avoid any further litigation, it may be in the interest of the respondents to supply even those copies, if sought for by the petitioners.

7. At this juncture, Mr Alag seeks to place reliance on order dated 28.08.2014, passed in WP(C) No. 5532/2014, in the case titled: ***Kingfisher Airlines Limited vs Union of India & Ors.*** Mr Alag says that in this order, apart from a direction issued to the concerned bank for supplying the material, there is also a liberty granted to the petitioners to be represented by a legal practitioner. He submits that the court has indicated that denial of representation by legal practitioner, would be violative of natural justice.

8. While I have my doubts as to whether denial of representation by legal practitioner would amount to violation of any known principles of natural justice; especially, in view of the fact that the rules which operate qua the functioning of the GRC do not contemplate representation by lawyers either on behalf of the entity/ person who is purported to be the alleged wilful defaulter or on behalf of the creditor bank/ financial institution.

8.1 I would, however, in this particular case, permit representation by legal practitioner with an additional direction that respondent no.2 would also be entitled to be represented by a legal practitioner. The question of law is, however, kept open, and if necessary, may have to be referred to a Large Bench, on this particular aspect of the matter. I am, in any event, informed by Mr Alag, that the order dated 28.08.2014 has been carried in appeal, though there is no stay on the operation of the said order. The appeal

though, is numbered as: LPA No. 589/2014.

8.2. I may only indicate that I have passed the aforesaid direction only as a matter of propriety, as this court is bound by an order of a Co-ordinate Bench.

9. The writ petition and the application are disposed of with the aforesaid directions making it clear that respondent no.2 will issue an intimation to the petitioners, as well as their lawyers, indicating therein the date, time and venue, when inspection of the document(s) relied upon, can be made. The GRC shall also indicate a fresh date of hearing in the matter. If any written representation is made, the same will be considered by the GRC, while passing a reasoned order.

10. Pending the hearing before the GRC and the decision in the matter, no measures will be taken (including that which is indicated in communication dated 27.01.2014), which are inimical to the interest of the petitioners.

RAJIV SHAKDHER, J

JANUARY 05, 2015

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