IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No. 3307 of 2016
Date of Decision: 14.02.2017

M/s Oswal Apparels Private Limited, Ludhiana and others ..Petitioners

versus

State Bank of India, Ludhiana and another .Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Manish Jain, Advocate,
with Mr. Mayur Kanwar, Advocate,
for the petitioners.

Mr. Ashish Gupta, Advocate, for respondent no.1-bank.

RAMENDRA JAIN, J.

1. The petitioner-Company, which is engaged with the business of textile, had availed various credit facilities sanctioned by respondent no.1-bank from time to time. The petitioner-Company could not re-pay the loan amount on account of recession in the textile industry during the years 2012-2013. The petitioners requested respondent no.1-bank for restructuring of the loan amount as also routing the transactions on a reduction basis, which was not accepted by the respondent-bank. Finding no other option, the petitioners took a decision to route its transactions through ICICI Bank and HDFC Bank. In the meantime, to the utter dismay, the petitioners received letter dated 06.06.2014 (Annexure P-1) issued by the respondent-bank, proposing their name to be included in the list of `wilful defaulters'. In response to the letter dated 06.06.2014 (Annexure P-1), the petitioners filed their reply dated 23.6.2014 (Annexure P-6) requesting the

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respondent-bank not to include their name in the list of wilful defaulters. Subsequently, the petitioners also received another letter dated 22.12.2014 (Annexure P-7) issued by the respondent-Bank, requiring them to appear for a personal hearing before the Grievance Redressal Committee. In the said communication, a specific direction was issued to the petitioners that they will not be allowed to be represented through "lawyers, chartered accountants, consultants, agents. However, in pursuance of the aforesaid directions, Shri Vikas Jain (petitioner no.2), on behalf of all the petitioners, appeared before the Grievance Redressal Committee on 27.12.2014 and submitted his explanation, reiterating his stand taken in his previous letter dated 06.06.2014. The petitioners also requested the respondent-bank to supply them the copy of orders passed by the Grievance Redressal Committee, but to no avail. After spanning over seven months, respondent-Bank again issued letter dated 25.07.2015 (Annexure P-2) intimating the petitioners that the Grievance Redressal Committee had rejected their pleas and recommended their names to be included in the RBI list of wilful defaulters.

2. Feeling aggrieved against the inaction on the part of the respondent-authorities, the petitioners, invoking extra-ordinary writ jurisdiction under Articles 226/227 of the Constitution of India, had filed Civil Writ Petition No. 27522 of 2015, challenging orders dated 06.06.2014 and 25.07.2015 (Annexures P-1 and P-2) issued by respondent no.1-bank, whereby they were classified as wilful defaulters in violation of the guidelines laid down in the Master Circular on "wilful Defaulters" dated 01.07.2014 (Annexure P-3). The said writ petition was dismissed as withdrawn vide order dated 06.01.2016 passed by a co-ordinate Bench of

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this court granting liberty to the petitioners to file fresh one with better particulars. Pursuant thereto, the petitioners under the Right to Information Act, 2005 (for short "the RTI Act") filed an application dated 06.01.2016 (Annexure P-4) for obtaining copy of the order passed by the Grievance Redressal Committee. In response to the said application, vide reply dated 07.02.2016 (Annexure P-5), the respondent-bank intimated that information sought had already been supplied vide letters dated 22.12.2014 and 25.07.2015. Meaning thereby that, the Grievance Redressal Committee had not passed any order on the application.

3. Now the petitioners, have again knocked at the door of this court, by way of filing the instant writ petition under Articles 226/227 of the Constitution of India, praying for quashing letters dated 06.06.2014 and 25.07.2015 (Annexures P-1 and P-2), whereby respondent no.1-bank proposed to declare them as "wilful defaulters" in violation of the guidelines dated 01.07.2014 (Annexure P-3) laid down in the Master Circular on `wilful defaulters.' Further prayer has also been made that respondent no.1-bank may be restrained from publishing their name in the list of wilful defaulters during the pendency of the instant petition.

4. Though Mr. Ashish Gupta, Advocate, had put in appearance on behalf of respondent no.1-bank, but he did not file any reply.

5. Learned counsel for the petitioners, at the very out-set, submits that the primary prayer now is that the petitioners be allowed to be represented by an advocate and/or a financial consultant at the time of personal hearing by Grievance Redressal Committee. It was pointed out that the controversy qua representation by a borrower before Redressal Grievance Committee through an advocate and/or a financial consultant has

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been set at rest for all intents and purposes by a decision of the Delhi High Court in Kingfisher Airlines Limited versus Union of India and others W.P. (C) 5532 of 2014, decided on 28.08.2014. The said decision has been upheld in Letters Patent Appeal in Punjab National Bank versus Kingfisher Airlines Limited, 2015 SCC OnLine Delhi 14128, which fact, during the course of hearing, has not been disputed by the learned counsel for respondent no.1-bank.

6. After giving our thoughtful considerations to the submissions raised by the learned counsel for the parties, we are of the view that the writ petition merits acceptance.

7. The action of the respondent-bank in declining the right to be represented by an advocate and/or a financial consultant before the Redressal Grievance Committee cannot be countenanced, keeping in view the fact that the entire similar controversy, as is involved in the instant petition, has been resolved by a Division Bench of the Delhi High Court in Punjab National Bank's case (supra). A relevant portion of the said judgment is extracted here-in-below:

> "(LL) We are therefore of the opinion that the GRC satisfies the tests prescribed to qualify as a Tribunal.
>
> (MM) Once the GRC is held to be Tribunal within the meaning of Section 30 of the Advocates Act, the advocates would have a right to practice before it and axiomatically the borrower before such GRC will have a right to engage and avail the services of an advocate."

8. It is also settled principle of law that the documents that are relied upon by any authority in arriving at a conclusion must be made

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available to the affected party to conform to the principles of natural justice. That apart, the petitioners ought to have been afforded adequate opportunity to present their case in its correct perspective.

9. For the reasons recorded hereinabove, the writ petition is allowed. The letters dated 06.06.2014 and 25.07.2015 (Annexures P-1 and P-2) issued by respondent no.1-bank, classifying the petitioners as wilful defaulters, are quashed. The respondent-bank is directed to permit the petitioners to be represented through an advocate and/or a financial consultant at the time of personal hearing before the Grievance Redressal Committee. Further, the respondent-bank shall provide the petitioners with copies of all the documents that are relied upon by it, within a period of two months from the date of receipt of a certified copy of this order. The petitioners would also be at liberty to file written submissions along with any document that they intend to rely upon before the Grievance Redressal Committee on the date fixed who shall thereupon pass fresh order in accordance with law.

(RAMENDRA JAIN)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

14.02.2017
VK

1. Whether reasoned/speaking Yes/No

2. Whether reportable Yes/No

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