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

+ W.P.(C) 8066/2014

VINOD SIROHI

..... Petitioner

Through: Mr Mohit Chaudhary and Mr D.
Kishore Sharma, Advocates.

versus

RESERVE BANK OF INDIA & ORS

..... Respondents

Through: Mr H. S. Parihar and Mr Kuldeep S.
Parihar, Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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21.11.2017

1. The petitioner has filed the present petition, *inter alia*, impugning decision of M/s ING Vysya Bank (now known as Kotak Mahindra Bank – respondent no.2 herein), whereby the petitioner was held to be a wilful defaulter in respect of financial assistance lent by ING Vysya Bank to M/s Bush Foods Overseas Private Limited (hereafter ‘the Company’).
2. The petitioner states that he joined M/s Bush Foods, a partnership firm, in May, 1998 as a Senior Accountant. In July, 2005, the said firm was converted into the Company (namely, M/s Bush Foods Overseas Private Limited). The petitioner continued to look after the matters relating to the accounts of the Company. The petitioner states that although there was no formal post he acted as a Chief Accountant of the Company since February, 2008.
3. The petitioner was appointed as a Director (Executive) of the

Company on 04.05.2011. The petitioner believes that the same was to comply with the requirement of the investors who had invested funds in the Company. The petitioner states that although he was appointed as a Director he, essentially, continued to be an employee of the company and carried out the instruction as issued to him by the Board of the Company as well as the Chairman cum Managing Director, Mr Awasthi who was also the principal promoter of the company.

4. It is the petitioner's case that he had no control over the affairs of the Company and, therefore, had no ability to repay its debts. He states that he was a salaried employee and continued to act as such. The decision to borrow funds or repay the same were taken by the Promoters of the Company.

5. The Company was unable to pay its debts and the financial assistance lent by ING Vysya Bank to the Company was classified as a non performing asset on 27.04.2014.

6. Notwithstanding the petitioner's claim that he had no effective control over the affairs of the company nor was ever in a position to take decision regarding the repayment of debt, the petitioner has been held to be a wilful defaulter.

7. The petitioner had also asked for relevant material on the basis which ING Vysya Bank had concluded that the petitioner was a wilful defaulter. However, the same was not supplied to the petitioner.

8. The present petition was moved on 21.11.2014 and on the said date this Court passed an order recording its *prima facie* view that the petitioner's challenge was well founded and, accordingly, stayed the impugned order till the next date of hearing.

9. Despite sufficient notice and opportunity ING Vysya Bank has not filed any reply to the present petition.

10. On 21.04.2015, this Court was informed that ING Vysya Bank was merged with Kotak Mahindra Bank and the copy of the order dated 31.03.2015 passed by the Reserve Bank of India in this regard was also referred to by the learned counsel for the ING Vysya Bank (then arrayed as respondent no.2). In view of the above, M/s Kotak Mahindra Bank Ltd was substituted as respondent no.2 in the present petition.

11. On 07.04.2016, learned counsel for Kotak Mahindra Bank (respondent no.2) made an unequivocal statement that the petitioner was not on Kotak Mahindra Bank's defaulters list. Kotak Mahindra Bank Ltd has also not filed a counter affidavit and it is seen that there has been no representation on behalf of respondent no.2 for the past three hearings.

12. In view of the above, the averments made by the petitioner that he was not in control of the affairs of the company are not traversed and have to be accepted. In this view, the impugned order dated 08.09.2014 passed by the ING Vysya Bank to the limited extent that it holds the petitioner to be a wilful defaulter, is set aside.

13. Respondent no.3 shall also carry out any rectification in its record as may be necessary to give effect to the present order.

14. The present petition is disposed of

VIBHU BAKHRU, J

NOVEMBER 21, 2017
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