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

Date of Pronouncement: 17.04.2018

+ **W.P.(C) 3764/2018 & CM Nos.14933-34/2018**

GAURAV DALMIA

..... Petitioner

Through : Mr. Prashanto Chadra Sen,
Sr. Adv with Mr. Anish
Dayal, Mr. S.K. Singh, Mr.
Jishnu Chaudhary, Mr.
Shivanshu Singh, Ms.
Rupam Sharma, Mr. Arjit
Pratap Singh and Mr. Ritul
Tandon, Advs.

versus

RESERVE BANK OF INDIA & ORS Respondents

Through : Mr. H.S. Parihar and Mr.
K.S. Parihar, Advs. for R-1.
Mr. Arun Aggarwal, Adv.
for R-2 & 3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J (ORAL)

CM No.14934/2018

1. Allowed, subject to just exceptions.

W.P.(C) 3764/2018 & CM No.14933/2018

2. Learned counsel for the petitioner at the outset, says that respondent no.3 can be deleted from the array of parties. The said request is acceded to. Respondent no.3 is deleted from the array of parties.

3. Issue notice to the respondents. Mr. Arun Aggarwal accepts

notice on behalf of respondent no.2 and 3, while Mr. H.S. Parihar accepts notice on behalf of respondent no.1.

4. In view of the order that I propose to pass, learned counsels for the respondents say that he does not wish to file a counter affidavit in the matter.

5. Broad averments which have been made in the captioned writ petition are as follows:

5.1 The petitioner at the relevant point and time was the Director on the Board of a Company by the name of Pro Minerals Private Limited (in short 'PMPL'). The said company had borrowed funds from a consortium of banks which included the Bank of Baroda/respondent no.2. This agreement was executed by PMPL with the consortium on 26.9.2014.

5.2 Apparently, there were defaults committed in repayment of debt owed to the consortium of lenders including respondent no.2. Consequently, proceedings were triggered against the petitioner for declaring him a wilful defaulter.

5.3 A show cause notice dated 6.2.2018 was issued to the petitioner in this behalf.

5.4 The broad allegations made in the show cause notice read as follows:

“1. The company has envisaged Captive Power Plant (CPP) as part of the project. Rs.49.17 crores drawn for CPP project. Only Rs.10.68 cr incurred towards expenses i.e., the company has not utilised the Bank's funds for the purpose for which Bank finance was availed. In spite of several demands the

company has not refunded the balance amount of Rs.38.49 cr.

2. The company is maintaining current account with ICICI Bank (outside the consortium) without prior approval of the consortium members and has not closed even after giving several commitments,

3. Company was maintaining current account with SBI (Member of the consortium) without prior approval of the consortium.

4. The company has availed CC limit of Fis.8.20 cr from our Bank. However, as per the stock statement as on 28.02.2017, the DP arrived is only Rs.0.30 lacs (our share).

Thus the unit has defaulted in meeting its payment/repayment obligations to the lender even when it has the capacity to honour the said obligations and has diverted/siphoned off the funds so that the funds have not been utilised for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets.”

(emphasis is mine)

5.5 In response to the show cause notice, the petitioner preferred a reply dated 20.2.2018. The petitioner, as expected, denied the allegations made against him and has in fact asked for being furnished that specific information, *inter alia*, with regard to allegation of siphoning and diversion of funds.

5.6 Furthermore, the petitioner also asked for documents on which reliance is sought to be placed by respondent no.2. It appears that pursuant to the said reply, the petitioner was issued

impugned notice dated 3.4.2018.

5.7 By virtue of the impugned notice, the petitioner was directed to appear before the Wilful Defaulters Committee (in short 'committee') constituted by respondent no.2, on 18.4.2018, at 10 a.m.

6. Aggrieved by the same, the petitioner has approached this court via the instant writ petition.

7. The immediate grievance of the petitioner is that neither the Committee has supplied the relied upon documents, nor has an opportunity was given to the petitioner for being represented by a lawyer. In regard to the latter, reference is made by the counsel for the petitioner to clause 4 of the impugned notice dated 3.4.2018.

7.1. In support of the submission advanced on behalf of the petitioner that a lawyer is permitted to participate in the proceedings, reliance is placed on the Division Bench judgment of this Court in the matter of: *Punjab National Bank & Ors. vs. Kingfisher Airlines Limited & Ors 2016 (154) DRJ 164 (DB)*.

8. On the other hand, Mr. Aggarwal, learned counsel for the respondent no 2 and 3 says he cannot but argue that principles of natural justices have to be adhered to. However, it is the submission of Mr. Aggarwal that relied upon documents have already been furnished to the petitioner. Insofar participation of lawyer(s) is concerned, learned counsel says that respondent no.2 and 3 can have no objection to the same. The only caveat that Mr. Aggarwal sought to enter in this regard is that questions may have to be put to the petitioner which he would need to answer.

8.1 Mr. Parihar, who appears on behalf of the respondent no. 1 made no submissions on the merits. As regards, submission with regard to guidelines set forth in circular dated 01.07.2015, were concerned, they were not required to be made as the petitioner at this juncture did not press the same.

9. I have heard learned counsels for the parties. According to me, the writ petition can be disposed of with the following directions given the fact that the difference in stands of the opposing parties is narrow.

(i) The Committee will reconvene a meeting qua the petitioner as the time between today and the date of meeting already fixed by via the impugned notice is short. Accordingly, due written notice will be given to the petitioner with regard to the same. The Committee will attempt to convene a meeting at the earliest, though, not later than four weeks from the date of receipt of a copy of the order.

(ii) The Committee will furnish at least, two weeks prior to the meeting a complete set of relied upon documents to the petitioner.

(iii) The Committee will permit the lawyer to accompany the petitioner for the hearing. It would be up to the petitioner as to whether he would like to answer the questions directly or via his lawyer.

(iv) The petitioner will remain present, as agreed, by his counsel.

10. Needless to say, I have not examined the tenability of the challenge made subject to the guidelines contained in circular No.DBR No.CID.BC.22/20.16.2003/2015-16 dated 1.7.2015.

11. The pending applications are closed accordingly.
12. Dasti.

RAJIV SHAKDHER, J

APRIL 17, 2018/mk

