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

\+ W.P.(C) 8393/2018 & CM No.32277/2018

TWENTY FIRST CENTRY WIRE RODS LTD. & ANR. ..... Petitioners

Through: Ms Manmeet Arora, Mr Sarad K. Sunny and Mr Keshav Sehgal, Advocates.

versus

INDUSTRIAL DEVELOPMENT BANK OF INDIA ..... Respondent

Through: Mr Sumit Nagpal Advocate for IDBI.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 14.08.2018

1. The petitioners have filed the present petition, *inter alia,* praying as under:-

> "a. Issue a Writ of Certiorari or any other appropriate Writ, order thereby quashing die decision of the Respondent's willful defaulter committee, thereby declaring the Petitioners as willful defaulters in pursuance to the show cause notice dated 30.05.3018 as it has been passed in violation of the procedure of fairness prescribed by the Reserve Bank of India's master circular dated 01.07.2014;
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> b. Issue an appropriate Writ or direction thereby restraining the Respondent and its Review Committee from declaring the Petitioners as willful defaulters."

2. The learned counsel appearing for the petitioners states that the

decision of the concerned committee of the respondent bank has not been communicated to the petitioners, however, the petitioners believe that the petitioners have been declared as wilful defaulters. The respondent bank has also not produced the said decision. A perusal of the show cause notice dated 30.05.2018 issued to the petitioners indicates that the only allegation made against petitioner no.1 is that it had routed its funds through a bank account other than the one maintained with the respondent bank or the members of the consortium, without any prior permission of the respondent bank. The relevant extract of the said show cause notice indicating the aforesaid ground is set out below:-

Sr.No.	**Criteria for Wilful Default**	**Position of Borrower**
2.2.1(d)	Routing of funds through any bank other than the lender bank or members of consortium without prior permission of the lender.	It is observed from the CRILIC report; that the Company is having Current Account with Oriental Bank of Commerce (OBC), who does not have lending relationship. The company was advised several times to disclose the bank account details through which the company was routing funds along with the bank account statements. However, the company has not responded positively. The company has not sought permission of lenders for opening/maintaining account with OBC.

3. The petitioners grievance is essentially two-fold. First, that the petitioner no.1 has not been allowed representation through an advocate despite the petitioners expressly requesting for such an opportunity. Second, that in fact there was no bar for the petitioners to operate a second bank account, which was maintained with Oriental Bank of Commerce (hereafter 'OBC').

4. In addition, the petitioners claim that the existence of the said bank account (with OBC) was fully known to the respondent bank. Ms Arora, learned counsel appearing for the petitioners contends that the bank account maintained with OBC was also disclosed in the balance sheets of petitioner no.1, which were periodically provided to the respondent bank. She states that it was necessary to maintain the said account as petitioner no.1 was required to remit the statutory dues online and this facility was not available with the respondent bank.

5. Notice in the present petition was issued on 10.08.2018 and the respondent bank was also asked to take instructions whether the petitioner can be offered an opportunity of hearing through an advocate.

6. The learned counsel appearing for the respondent bank states that the respondent bank is not agreeable to provide any hearing through an advocate for the reason that the concerned committee is also not represented through an advocate. As far as the other contentions are concerned, the learned counsel submits that he has no instructions in this regard.

7. It is noticed that there is only a solitary allegation against the petitioners. The petitioners have provided substantial grounds in response to the said allegation. The concerned committee of the respondent bank would

be required to examine the same and take an informed decision. This Court is of the view that the petitioners ought to have been provided an opportunity to be represented through an advocate. The contention that the same is not done because the concerned committee is also not represented by an advocate, is unmerited. Apparently, the respondent bank has misunderstood the role of its committee. The proceedings before the concerned committee are not adversarial. The respondent bank has to take an informed decision whether the default is wilful or not. In this regard, one would expect that the respondent bank (concerned committee) would accept all assistance to take an informed decision.

8. The learned counsel appearing for the respondent bank submits that full detailed hearing was provided to the representative of the petitioner. Be that as it may, the request of the petitioners was that they be represented by an advocate. This Court in ***Punjab National Bank & Others v. Kingfisher Airlines Limited & Ors.: W.P.(C) 5532/2014***, ***decided on 28.08.2014*** also observed as under:-

> "I have heard the learned counsel for the parties. At the outset, the contention that since the Committee is not constituted by Law Graduates, the petitioner should be deprived of a representation through an advocate is not acceptable. It is settled law that in a case where a person is pitted against legally trained mind, denial of representation through a legal presentation would violate an essential principle of natural justice. This does not necessarily imply that where the adjudicating authority is not legally trained representation through a legal practitioner ought to be denied. The proceedings before the Committee ought not to be, necessarily, considered as adversarial. Undisputedly, an adverse decision by the Committee would be highly prejudicial to the interest of the petitioner and its Directors

> and would have significant implications. In the given circumstances, while one can appreciate the effort of the respondent bank to expeditiously dispose of the matters. The idea of preventing adequate representation to the affected parties, for such disposal is unacceptable. The right to be represented by a legal advocate is not an integral part of natural justice and it is not necessary that in all cases before domestic forums, representation through a legal practitioner should be permitted. However, the courts have always leaned towards allowing representation through legal practitioners to obviate any handicap that the person may feel in representing his case. In cases where adverse decision would have serious civil and pecuniary consequences, denial of representation through a legal practitioner may in given facts be violative of natural justice. Indisputably, the consequences of holding the petitioner as a wilful defaulter would be serious for the petitioner and the petitioner ought to be afforded adequate opportunity to present its perspective on the issue."

9. In view of the above, the respondent bank is directed to schedule a fresh hearing and the petitioner would be given full opportunity to be represented by an advocate. The concerned committee of the respondent bank shall, after examining the contentions advanced on behalf of the petitioners, pass a reasoned order.

10. The petition and the pending application are disposed of in the above terms.

11. Order *dasti*.

VIBHU BAKHRU, J

AUGUST 14, 2018
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