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

\+ **<u>W.P.(C) 8450/2018</u>**

ROYAL TREXIM PVT LTD ..... Petitioner

Through Mr Puneet Kharbanda, Advocate.

versus

STATE BANK OF INDIA & ORS ..... Respondents

Through: Mr Arjun Harkauli and Mr Vardaan Wanchoo, Advocates for R-1/SBI.
Mr H. S. Parihar and Mr K. S. Parihar, Advocates for RBI/R-3.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% 13.08.2018

<u>CM No.32500/2018</u>

1. Allowed, subject to all just exceptions.

2. The application is disposed of.

<u>W.P.(C) 8450/2018 & CM 32499/2018</u>

3. Issue notice. The learned counsel appearing for the respondent accepts notice.

4. The petitioner has filed the present petition, *inter alia*, impugning orders dated 15.02.2018 and 18.04.2018 whereby the respondent no.1 (hereafter 'SBI') has declared the petitioner as wilful defaulter. The said action has been taken in the context of the financial assistance extended by SBI to M/s Rana Iron & Power Ltd. (known as Rana Sponge Limited at the material time when the loan was extended). There is no dispute that the

petitioner had guaranteed the financial assistance which was extended to M/s Rana Iron & Power Ltd.

5. Admittedly, M/s Rana Iron & Power Ltd. has defaulted in repayment of its dues to SBI. The petitioner has also not failed to discharge its obligations as a surety (corporate guarantor). It is well settled that the liability of a guarantor is co-terminus with that of the principal borrower. It is also not disputed that a demand had been made by SBI on the petitioner, but the petitioner has failed to pay the amount due to SBI. Therefore, there is no doubt that petitioner is a defaulter; the issue is whether it is a "wilful defaulter".

6. It is apparent from the impugned order that the concerned Committee of SBI has concluded that M/s Rana Iron & Power Ltd. is a wilful defaulter for several reasons as stated in the impugned orders. However, the question in the present case is not whether M/s Rana Iron & Power Limited is a wilful defaulter but whether the petitioner is a wilful defaulter. In order to address the said question, it was necessary for SBI to ascertain whether the petitioner has the means to pay the amounts due but had failed and neglected to do so. Or, whether the petitioner has acted in a manner to avoid paying its liability.

7. It is seen that in the present case that the concerned Committee of SBI has not addressed these issues but has proceeded simply on the basis that Rana Iron & Power Limited is a wilful defaulter. The said company (principal borrower) may be a wilful defaulter but that does not necessarily mean that the petitioner is a wilful defaulter as well. It does not necessarily follow that if the principal borrower is a wilful defaulter, the guarantor would also be one.

8. In the aforesaid view, the impugned orders to the extent that the

petitioner is declared as a wilful defaulter, is set aside. It is open for SBI to issue a fresh show cause notice and take an informed decision in this regard.

9. The petition is, accordingly, disposed of. The pending application is also disposed of.

VIBHU BAKHRU, J

AUGUST 13, 2018

pkv