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

\+ **W.P.(C) 10330/2018 & C.M. Nos. 40278/2018, 40279/2018 & 40280/2018**

SUJIT DASGUPTA ..... Petitioner

Through: Ms Anannya Ghosh, Advocate.

versus

IDBI BANK LTD ..... Respondent

Through: Mr Sidhartha Barua, Ms Adity Gupta and Ms Jasmin Damkewala, Advocates.

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\+ **W.P.(C) 10331/2018 & C.M. Nos. 40281/2018, 40282/2018 & 40283/2018**

DINESH BAHADUR SINGH AND ANR. ..... Petitioners

Through: Ms Anannya Ghosh, Advocate.

versus

IDBI BANK LTD. ..... Respondent

Through Mr Sidhartha Barua, Ms Adity Gupta and Ms Jasmin Damkewala, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 04.10.2018

CM No. 40279-40280/2018 in W.P.(C) 10330/2018
CM No. 40282-40283/2018 in W.P.(C) 10331/2018

1. Allowed, subject to all just exceptions.

2. The applications are disposed of.

W.P.(C) 10330/2018
W.P.(C) 10331/2018

3. The petitioners have filed the present petitions, *inter alia*, praying that the petitioners be permitted to be represented by advocate(s) at the personal hearing afforded to the petitioners in terms of paragraph 3(b) of the Master Circular dated 01.07.2015 issued by the Reserve Bank of India (hereafter 'RBI').

4. The petitioner in W.P. (C) 10330/2018 is the Whole Time Director of Energo Engineering Projects Ltd. (hereafter 'Energo'), which is now being liquidated. The petitioners in W.P. (C) 10331/2018 are Promoter Directors of Energo.

5. The respondent bank (hereafter 'IDBI') had provided working capital facilities to Energo. Admittedly, Energo defaulted in repayment of its dues to IDBI. Since Energo was unable to discharge its liabilities, a petition under the Insolvency and Bankruptcy Code, 2016 (hereafter 'IBC') was filed before the National Company Law Tribunal (NCLT). By an order dated 05.09.2017 passed by the NCLT, the insolvency proceedings in respect of Energo were commenced.

6. Subsequently, by an order dated 21.08.2018, the NCLT has also directed liquidation of Energo under the IBC. In the meantime, IDBI commenced proceedings in terms of the RBI's Master Circular dated 01.07.2015 for declaring the petitioners as wilful defaulters. On 04.06.2018, IDBI issued notices to the petitioners to show cause why they should not be reported as "Wilful Defaulters" to RBI. The petitioners sent their separate

responses to the said notices, *inter alia*, contending that the said proceedings were contrary to the proceedings as prescribed under the RBI's Master Circular dated 01.07.2015.

7. IDBI issued separate notices affording the petitioners an opportunity to be heard; however, it had declined their request for being represented by advocate(s). This has led the petitioners to file the present petitions.

8. The issue whether a noticee is entitled to an assistance of an advocate was considered by a Division Bench of this Court in ***Punjab National Bank v. Kingfisher Airlines Limited***: ***LPA 589/2014***, ***decided on 17.12.2015*** whereby, it was held that "*borrowers who are proposed to be classified/declarerd as wilful defaulters and are given an opportunity of hearing before the Grievance Redressal Committee are entitled to be represented therein through advocates. We however hasten to clarify that the GRC would be fully empowered to control including as to the duration and guide the hearing and if finds dilatory and vexatious tactics being adopted, to take suitable consequential actions*."

9. The learned counsel appearing for IDBI submitted that the said decision is not applicable since the same was rendered in the context of RBI's Master Circular dated 01.07.2013. They contended that the procedure for declaring a person a wilful defaulter under the Master Circular dated 01.07.2015 is materially different. In terms of the Master Circular dated 01.07.2013, the Grievance Redressal Committee (GRC) was required to give a "hearing" to the borrower; however, in terms of the Master Circular dated 01.07.2015, the concerned Committee is required to give the borrower and the Promoter/Whole Time Director "a personal hearing" .

10. They also contended that the question whether a borrower or its

promoter/full time director was a wilful defaulter was first required to be considered by a Committee constituted by the Executive Director or a person of equivalent designation and two other senior officers of the rank of GN/DGM. If the said Committee came to the conclusion that the person was a wilful defaulter, it was required to issue an order to the said effect. The said order would then be subject to review of another Committee headed by the Chairman or Managing Director and Chief Executive Officer and two other independent Directors/Non-Executive Directors.

11. The order declaring a person to be a wilful defaulter would become effective only if it was confirmed by the Review Committee.

12. The learned counsel also relied on the decision of the Calcutta High Court in ***Kingfisher Airlines v. Union of India and Others*** : ***(2015) 1 Comp LJ 151 (Cal)*** and the decision of the Bombay High Court in ***Kingfisher Airlines Limited v. Union of India and Ors.*** : ***2015 (6) Bom CR 315*** and contended that the said Courts had taken a different view.

13. Undoubtedly, there is a material change in the mechanism for identification of wilful defaulters. In terms of the Master Circular dated 01.07.2013, the decision for classification of a person as a wilful defaulter was required to be taken up by a committee of high functionaries; the borrower was required to be suitably advised about the proposal to classify him as a wilful defaulter; and further provided a reasonable opportunity for making a representation against such decision. The Grievance Redressal Committee (GRC) was required to afford the borrower a hearing if he represented that he was wrongfully classified as a wilful defaulter.

14. In terms of the Master Circular dated 01.07.2015, a Committee headed by the Executive Director or a person of equivalent rank is required

to examine the evidence of wilful default and if such Committee concludes that an event of wilful default has occurred, it is required to issue a show cause notice to the concerned borrower and the Promoter/Whole Time Director and call for their submissions. The said Committee is, thereafter, required to issue an order after considering the submissions of the concerned person. It is also expressly provided that an opportunity should be given to the borrower and the promoter/whole-time director for a personal hearing if the Committee feels such an opportunity is necessary.

15. Thus, although there is a change in the mechanism for declaring a person as a wilful defaulter, the essential element of providing a hearing is retained. There is no material difference between the term "hearing" as used in the Master Circular dated 01.07.2013 and the term "personal hearing" as used in the Master Circular dated 01.07.2015. The essential object is to provide a person a reasonable opportunity to meet the allegation of wilful default.

16. The decision in the case of ***Kingfisher Airlines Limited v. Union of India & Ors***: ***W.P.(C) 5532/2014***, ***decided on 28.08.2014*** rests on the principle that the consequences of declaring a person a wilful defaulter are serious. The action is itself punitive in nature and, therefore, the party concerned must have full opportunity to defend himself.

17. In this view, the said decision of the Division Bench of this Court in ***Punjab National Bank v. Kingfisher Airlines Limited*** (*supra*) is equally applicable to the RBI's Master Circular dated 01.07.2015. The said decision is binding on this Court.

18. In view of the above, the present petitions are disposed of by directing the concerned Committee of IDBI to ensure that the petitioners are afforded

an opportunity to be heard by the concerned Committee and are also permitted to the assistance of advocate(s). It is, however, clarified that representation by an advocate is not in substitution of the presence of the petitioners; they would be entitled to be accompanied by advocate(s) (of their choice). The concerned Committee is also not precluded from seeking responses to their queries from the petitioners.

19. The petitions are allowed in the aforesaid terms. All the pending applications are also disposed of.

VIBHU BAKHRU, J

OCTOBER 04, 2018

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