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

Judgment pronounced on: 9.2.2018

\+ W.P. (C) 5475/2017, CM APPL.22994/2017

TRISTAR GLOBAL INFRASTRUCTURE PRIVATE LIMITED AND ORS ..... Petitioners

Through: Mr. Vijay Nair with Mr. Rahul Malhotra, Advocates.

versus

PUNJAB NATIONAL BANK AND ANR ..... Respondents

Through: Ms. Nishi Chaudhary, Advocate for PNB/Resp-1.

Mr. H.S. Parihar with Mr. K.S. Parihar, Advocates for RBI.

CORAM:-
HON'BLE MR. JUSTICE RAJIV SHAKDHER

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RAJIV SHAKDHER, J. (ORAL)

1. This writ petition has been preferred to assail a communication dated 1.6.2017, issued by the respondent no.1, i.e., Punjab National Bank (hereafter referred to as "PNB").

1.1 By virtue of this communication, PNB sought to bring to the notice of the petitioners that they had availed of various facilities which in all amounted Rs.36,51,92,382.68 as on 31.08.2016. Furthermore, it also brought to the notice of the petitioner that their account maintained with PNB was declared a NPA on 30.9.2016 and that the facility was recalled.

2. What has troubled the petitioners and which is why they approached this Court is the following part of the impugned communication; which for the sake of convenience is extracted hereafter: -

> *"Please be informed that it is proposed to classify you (borrower) and Directors etc. as a "willful defaulter", inter-alia, for the following reasons:*
>
> *1. Diversion of Funds;*
> *2. Siphoning of Funds;*
>
> *If the default(s) is/are not rectified within 10 days from receipt of this notice, bank intends to disclose or publish your name or the name/s of your company/unit and your Director/s as willful defaulter in such manner and through such medium as the bank or RBI in their absolute discretionary think fit."*

3. Upon issuance of notice, counter affidavit has been filed, in which, broadly, PNB has stated that said communication was issued only for identification of the default in the loaning accounts maintained by the petitioner as "willful". PNB, goes on to say in its counter affidavit that the petitioners were merely put to notice with an intent to have them rectify the default and repay the recalled amount which was outstanding as on 31.8.2016. The amount which was outstanding as on 31.8.2016 has already been mentioned by me hereinabove. According to the PNB, as on 29.9.2017, the amount payable by the petitioners has ballooned to Rs.42,92,03,674.44/-.

4. What comes through clearly on perusal of the record, is that, if a borrower such as the petitioners have to be declared as a willful defaulters, then, PNB as the lender would necessarily have to follow

the guidelines of respondent no.2/RBI which are contained in the Master Circular dated 1.7.2015 (hereafter referred to as "Circular"). This Circular sets out the guidelines for declaring borrowers as willful defaulters. Apart from anything else, the mechanism for identification of willful defaulters is provided in Clause 3 of the aforementioned Circular.

5. It is in this background, the counsel for the parties have addressed their arguments. Mr. Nair, who appears for the petitioners says that the tone and tenor of the impugned communication shows that PNB has already made up its mind to declare the petitioners willful defaulters. This step, according to Mr. Nair, was taken, despite the fact that a detailed reply was sent to PNB setting out as to why petitioners ought not to be declared as willful defaulters. Mr. Nair contends that the petitioners have neither diverted nor siphoned off the funds as alleged or at all.

6. Ms. Nishi Chaudhary, who appears for PNB, on the other hand, argues in line with the counter affidavit that impugned communication was only a proposal and that undoubtedly if PNB were to proceed to declare the petitioners as willful defaulters, it would necessarily have to be abide with the guidelines contained in the Circular issued by respondent no.2/ RBI.

7. Having regard to the facts obtaining in the present case and the submissions of the counsel for the parties, I am of the view that writ petition can be disposed of with the direction that if PNB were to take further steps in pursuance of its impugned communication, it would necessarily follow the Circular issued by respondent no.2/ RBI.

7.1 Since, the petitioners have already filed their reply to the impugned communication, which is, dated 10.6.2017, PNB would take further steps in accordance with the guidelines set out in the Circular which includes formation of a Committee headed by an Executive Director or equivalent and consisting of two other senior officers of the rank of General Manager/Dy. General Manager.

7.2 Personal hearing would be given to the petitioners and reasons would be set out if the Committee concerned comes to a conclusion that petitioners have, indeed, committed willful default.

8. I may only indicate that there is also a provision under Clause 3(c) of the said Circular for oversight. The said Clause provides that the order of the Committee has to be reviewed by another Committee headed by the Chairman/Chairman & Managing Director or the Managing Director & Chief Executive Officer/CEOs besides two independent Directors/non-Executive Directors of the concerned bank. Any order of the Committee according to the said clause can become final only after it is confirmed by the said Review Committee.

9. The writ petition is, as indicated above, disposed of in the aforementioned terms.

10. Consequently, pending application also stands closed.

RAJIV SHAKDHER, J

FEBRUARY 09, 2018
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