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

+ **W.P.(C) 10166/2018**

GAURAV DALMIA

..... Petitioner

Through: Ms Anna Malhotra, Advocate.

versus

RESERVE BANK OF INDIA & ORS

..... Respondents

Through: Mr H. S. Parihar and Mr K. S. Parihar, Advocates for RBI.

Mr O. P. Gaggar and Mr Gautam Krishna Deka, Advocates for R-2.

AND

+ **W.P.(C) 10206/2018**

RAGHU HARI DALMIA

..... Petitioner

Through: Ms Anna Malhotra, Advocate.

versus

RESERVE BANK OF INDIA & ORS

..... Respondents

Through: Mr H. S. Parihar and Mr K. S. Parihar, Advocates for RBI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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26.09.2018

CM No.39614/2018 in W.P.(C) 10166/2018

CM No. 39813/2018 in W.P.(C) 10206/2018

1. Allowed, subject to all just exceptions.

W.P.(C) 10166/2018

W.P.(C) 10206/2018

2. The petitioners have filed these petitions, *inter alia*, impugning notices dated 10.07.2018 (hereafter 'the impugned notices') issued by respondent no.3 (Assistant General Manager, Union Bank of India), whereby the petitioners have been called upon to respond within a period of 15 days as to why the report of the default committed be not communicated to the credit information companies (CICs) for further action. The impugned notices read as if a decision has already been taken to declare the petitioners as wilful defaulters; however, the learned counsel appearing for the parties are *ad idem* that the said notices are to be treated as show cause notices and not as orders holding the petitioners as wilful defaulters. In this view, the petitioners have full opportunity to respond to the allegations made in the impugned notices.

3. The impugned notices clearly indicate that the allegations against the petitioners are (a) that M/s Pro Minerals Private Limited had failed to discharge its repayment obligations despite having capacity to do so; (b) that M/s Pro Minerals Private Limited/its directors had availed of loans but have diverted the funds other than the purposes for which the loan had been undertaken; and (c) that the funds had been siphoned off from the said company (M/s Pro Minerals Private Limited).

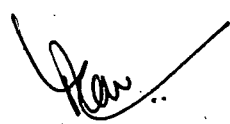
4. The petitioners have already responded to the aforesaid allegations and have now been called for an oral hearing.

5. In view of the statement of learned counsel for respondent nos.2 and 3 banks that the impugned notices are in the nature of show cause notices and must not be read to mean that the committee has already formed an opinion, no interference at this stage is warranted.

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6. The contention advanced on behalf of the petitioners that the impugned notices do not indicate any basis for making the allegations, is also incorrect. It is an admitted case that M/s Pro Minerals Private Limited has failed to discharge its obligations. The only question to be considered is whether the petitioners are wilful defaulters or not. The allegations made are also very specific. The onus to show that the funds borrowed by M/s Pro Minerals Private Limited were utilized for the purposes for which they were taken rests with the petitioners. It is also noticed that the petitioners have already submitted their response stating that although the loans initially were taken for a captive power plant, subsequently, the funds were utilised for setting up a modern material handling system with the permission of the respondent banks. This contention would also be considered by the concerned committee.

7. As stated above, no interference is called for at this stage. The petitions are, accordingly, dismissed.


VIBHU BAKHRU, J

SEPTEMBER 26, 2018
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