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

+ LPA 679/2018 & CM APPLs. 51163-66/2018

IDBI BANK LTD Appellant

versus

SUJIT DAS GUPTA Respondent

+ LPA 681/2018 & CM APPLs. 51203-06/2018

IDBI BANK LTD Appellant

versus

DINESH BAHADUR SINGH & ANR Respondents

+ LPA 683/2018 & CM APPLs. 51211-14/2018

IDBI BANK LTD Appellant

versus

SANDEEP JAJODIA Respondent

Present: Mr. Sidhartha Barua with Ms. Adity Gupta, Advs. for
appellant in LPA 679/2018 & LPA 681/2018.
Ms. Lamine Dhamkuwala with Mr. Sidhartha Barua &
Ms. Adity Gupta, Advs. for appellant in LPA 683/2018.
None for respondent.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

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ORDER
07.12.2018

CM APPLs. 51163/2018 & 51165/2018 (both for exemption) **in LPA 679/2018**

CM APPLs. 51203/2018 & 51205/2018 (both for exemption) **in LPA 681/2018**

CM APPLs. 51211/2018 & 51213/2018 (both for exemption) **in LPA 683/2018**

Allowed, subject to just exceptions.

The applications stand disposed of.

CM APPL. 51166/2018 (condonation of delay) **in LPA 679/2018**

CM APPL. 51206/2018 (condonation of delay) **in LPA 681/2018**

CM APPL. 51214/2018 (condonation of delay) **in LPA 683/2018**

In view of the reasons stated in the applications, delay in filing the appeals is condoned.

The applications stand disposed of.

LPA 679/2018 & CM APPL. 51164/2018 (stay)

LPA 681/2018 & CM APPL. 51204/2018 (stay)

LPA 683/2018 & CM APPL. 51212/2018 (stay)

1. Seeking exception to orders passed in the three writ petitions by a common order passed on 04.10.2018, these appeals have been filed under Clause 10 of the Letters Patent.

2. Petitioners in each case who are respondents before us in these appeals filed the writ petitions *inter alia* making a prayer that in proceedings initiated and pending before the respondent – Bank under Master Circular dated 01.07.2015 issued by the Reserve Bank of India in terms of Para 3(b), petitioners be permitted assistance of an advocate to represent them in the proceedings. As the writ petition is allowed and the Bank has been directed

to provide assistance of an advocate in the proceedings as per the aforesaid Master Circular, these appeals under Clause 10 of the Letters Patent.

3. Petitioners/respondents herein were either Whole-Time Directors or Promoter Directors in various companies which were provided working capital facilities or various other financial assistance. Each of the company defaulted in repayment of its dues and therefore proceedings have been initiated under the Insolvency and Bankruptcy Code, 2016 in certain cases and subsequently the Bank has initiated proceedings for declaring the companies as wilful defaulters in accordance to the Master Circular dated 01.07.2015 and the proceedings are pending before the competent authority of the Bank. *Inter alia* claiming that in the proceedings pending before the Committee of the Bank, the petitioners/respondents herein were entitled to be represented by advocate, the writ petitions in question were filed and the same having been allowed, these appeals by the Bank under Clause 10 of the Letters Patent.

4. It is the case of the Bank that the writ petitions have been allowed in view of a Division Bench judgment of this Court in the case of *Punjab National Bank v. Kingfisher Airlines Ltd.*, LPA 589/2014 decided on 17.12.2015. It is stated that the case of *Kingfisher Airlines* (supra) was decided by the Division Bench based on the earlier Master Circular of the Reserve Bank of India dated 01.07.2013 and now as action is being taken as per the Master Circular issued subsequently on 01.07.2015, the wordings of the Master Circular being different, the order passed by the learned writ court placing reliance on *Kingfisher Airlines* (supra) is unsustainable. It is tried to be emphasized that Bombay High Court and the Calcutta High Court in certain other cases have taken a different view.

5. The learned writ court examined the issue and found after comparing both the circulars dated 01.07.2013 and the present circular dated 01.07.2015 that except for some change in the constitution of the Committees the only difference pointed out was that in the earlier circular of 2013 the Grievance Redressal Committee (GRC) was required to give a hearing to the borrower. However, in terms of the new circular issued on 01.07.2015, the concerned Committee is required to give to the borrower or the promoter or the Whole-Time Director a personal hearing. Holding that there is not much difference between the words used, namely, “hearing” and “personal hearing”, the law laid down in the case of *Kingfisher Airlines* (supra) which has been followed by the learned writ court reads as under:

“borrowers who are proposed to be classified/declared 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.”

6. In our considered view, after taking note of the wordings of the two circulars as indicated hereinabove, the discretion exercised by the learned writ court and the reliance placed on the earlier judgment of the Division Bench in the case of *Kingfisher Airlines* (supra) does not call for any interference. The learned writ court in Para 13 has clearly held that there is only material change in the mechanism for identification of wilful defaulters in terms of the circulars. Earlier, under the circular of 2013 the mechanism was through the Grievance Redressal Committee (GRC). Now, under the circular of 01.07.2015 a Committee headed by the Executive Director or a

person of equivalent rank is to examine the evidence of wilful default and if the Committee comes to the conclusion that a wilful default has occurred it is required to issue show-cause notice to the concerned borrower, promoter or Whole-Time Director, call for their submission and thereafter issue orders. The learned writ court finds that even though there is a change in the mechanism for declaring a person as a wilful defaulter, the essential element of providing a hearing has been retained and if the essential element of providing a hearing is retained the decision in the case of *Kingfisher Airlines* (supra) decided by the Division Bench of this Court would squarely apply and allowed the writ petition.

7. In our considered view, the aforesaid reasoning and justification of the learned writ court is in accordance to the requirement of law and we see no error in the same warranting reconsideration. However, apart from making various submissions, learned counsel appearing for the appellant – Bank informed us that the same issue is pending consideration in another LPA pending before this Court. We are conscious and aware of the said LPA but we may clarify and observe that in the LPA pending before this Court the import of the subsequent circular and the mechanism provided and the provisions for hearing in both the circulars being identical in nature was not taken note of. In that case the writ petition was disposed of simply following the law laid down in the case of *Kingfisher Airlines* (supra) without referring to the circular of 2015 and as it is the case of the appellant - Bank in the said LPA that the circular dated 01.07.2015 has not been taken note of while deciding the matter in the said LPA, therefore, the issue is pending consideration after issuing notice to the respondents. However, in this case the learned writ court has taken note of both the circulars and

thereafter interpreted it as indicated hereinabove whereas in the earlier case wherein the LPA is pending the second circular was not at all taken note of and the issue decided in the manner now done by the learned writ court and therefore pendency of the earlier LPA at the instance of the appellant – Bank, in our considered view, will have no bearing in the present appeals.

8. Accordingly, finding no merit in the appeals, the same stand dismissed. The pending applications also stands disposed of.

CHIEF JUSTICE

V. KAMESWAR RAO, J

DECEMBER 07, 2018

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