HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1277 of 2019

1. M/s Salasar Steel and Power Ltd., a Company duly registered under the relevant provisions of the Companies Act, 1956 Acting in the premises through its Authorized Signatory Shri Harish Chandwani, Having Its Registered Office At 1st Floor, Bhatia Complex, Opposite Rajkumar, College Ge Road, Raipur, District : Raipur, Chhattisgarh

2. Harish Chandwani S/o Shri Radhkrishna Chandwani Aged About 58 Years Authorized Signatory of M/s Salasar Steel and Power Ltd R/o E-542/543, Samta Colony Raipur, District : Raipur, Chhattisgarh

--- Petitioners

Versus

Bank of Baroda through Its Assistant General Manager of Its Zonal Stressed Asset Recovery Branch At 1489, Wright Town Near Manas Bhawan,jabalpur (Mp) 482002, Amongst Other Branches a Branch Office at Mahavir Goushala Complex,k.K. Road Raipur, and a Branch as Mid Corporate Branch (Also Known As Whole-sale Banking Branch), Pandri, Raipur District : Raipur, Chhattisgarh

--- Respondent

For the Petitioners : Mr. B.P. Sharma, Advocate

For the respondent : Mr. Ankit Singhal, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

20-08-2019

1. Heard.

2. The present petition is against the order/letter dated 01.03.2019 (Annexure P-1) whereby the petitioners' Company and its directors have been declared as willful defaulters.

3. It is contended that the said order was not in accordance with the Guidelines/Master Circular dated 01.07.2015. In the case in hand, the petitioner had represented before the Executive Committee wherein after hearing them, the orders were passed on 26th

October 2018 and thereafter further review was made on 23.01.2019 by the Review Committee. It is contended that in view of the recent law laid down by the Supreme Court in case of ***State Bank of India (2019) 6 SCC 787 – State Bank of India Vs. Jah Developers Private Limited (2019) 6 SCC 787*** wherein further opportunity to make a full representation before the Review Committee has been given, therefore, the petitioner may be given liberty to make a full representation before the Review Committee as per the law laid down at para 24 of the said decision.

4. Learned counsel for the respondent opposes the argument.

5. Heard learned counsel for the parties as also perused the records and the recent case law reported in *SBI v. JAH Developers (P) Ltd (supra)*. Para 24 of the said judgment would be relevant here and is quoted below :

> "**24.** Given the above conspectus of case law, we are of the view that there is no right to be represented by a lawyer in the in-house proceedings contained in Para 3 of the Revised Circular dated 01.07.2015, as it is clear that the events of wilful default as mentioned in para 2.1.3 would only relate to the individual facts of each case. What has typically to be discovered is whether a unit has defaulted in making its payment obligations even when it has the capacity to honour the said obligations; or that it has borrowed funds which are diverted for other purposes, or siphoned off funds so that the funds have not been utilised for the specific purpose for which the finance was made available. Whether a default is internal, deliberate, and calculated is again a question of fact which the lender may put to the borrower in a shown cause notice to elicit the borrower's submission on the same. However, we are of the view that Article 19(1)(g) is attracted in the facts of the present case as the moment a person is declared to be a

> wilful defaulter, the impact on its fundamental right to carry on business is direct and immediate. This is for the reason that no additional facilities can be granted by any bank/financial institutions, and entrepreneurs/promoters would be barred from institutional finance for five years. Banks/financial institutions can even change the management of the wilful defaulter, and a promoter/director of a wilful defaulter cannot be made promoter or director of any other borrower Company. Equally, under Section 29-A of the Insolvency and Bankruptcy Code, 2016, a wilful defaulter cannot even apply to be a resolution applicant. Given these drastic consequences, it is clear that the Revised Circular, being in public interest, must be construed reasonably. This being so, and given the fact that Para 3 of the Master Circular dated 01.07.2013 permitted the borrower to make a representation within 15 days of the preliminary decision of the First Committee, we are of the view that first and foremost, the Committee comprising of the Executive Director and two other senior officials, being the First Committee, after following Para 3(b) of the Revised Circular dated 1-7-2015, must give its order to the borrower as soon as it is made. The borrower can then represent against such order within a period of 15 days to the Review Committee. Such written representation can be a full representation on facts and law (if any). The Review Committee must then pass a reasoned order on such representation which must then be served on the borrower. Given the fact that the earlier Master Circular dated 01-07-2013 itself considered such steps to be reasonable, we incorporate all these steps into the Revised Circular dated 01.07.2015. The impugned judgment is therefore set aside, and the appeals are allowed in terms of our judgment. We thank the learned *Amicus Curiae*, Shri Parag Tripathi, for his valuable assistance to this Court."

6. Taking into consideration the nature of representation made before the Review Committee and in view of the recent law laid down by Hon'ble Supreme Court in *(2019) 6 SCC 787 (supra),* one chance needs to be given to the petitioners to make full representation before the Review Committee. Accordingly, the

petitioners are further granted liberty to make full representation before the Review Committee within a further period of 30 days from today. On such representation being filed, the Review Committee shall pass a reasoned order and thereafter shall communicate the same to the borrowers/petitioners. Consequently, at this stage the order dated 01.03.2019 *(Annexure P-1)* whereby the petitioners have been declared as wilful defaulters will not be given effect to until adjudication of the case by Review Committee.

7. With such observation, this petition stands disposed of.

Sd/-
(Goutam Bhaduri)
Judge

Rao