

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-19222-2016(O&M)
Date of decision-01.04.2019

M/s Little Bee International Pvt. Ltd.

...Petitioner

Vs.

Oriental Bank of Commerce

...Respondent

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Gaurav Goel, Advocate
for the petitioner.

Mr. B.R. Bansal, Advocate for the respondent.

JITENDRA CHAUHAN, J.

This writ petition under Articles 226/227 of the Constitution of India has been filed for the issuance of a writ, in the nature of certiorari for quashing the notice dated 03.07.2015 (Annexure P-2) as well as letter dated 25.04.2016 (Annexure P-4) issued by the respondent, whereby the petitioner had been declared 'WILFUL DEFAULTER'.

Learned counsel for the petitioner contends that the Reserve Bank of India had issued circular dated 02.07.2012 (Annexure P-3) wherein a few measures have been indicated to be followed by the Bank/FI's in identifying and reporting instances of 'wilful defaulter'. The Deputy General Manager issued a notice dated 03.07.2015 (Annexure P-2) by stating that the bank had identified the petitioner as a 'Wilful Defaulter' on the ground that the unit had defaulted in meeting its payment/repayment obligations to

the bank and had also disposed off or removed the movable fixed assets or immovable property. Learned counsel contends that no such notice was ever served upon the petitioner. He submits that not even a single instance has been mentioned in the notice that how any movable or immovable asset was removed and the petitioner had elaborated its funds in every stock statement submitted to the bank and the said statements stood accepted by the bank from time to time. The petitioner-firm is running in losses and is not having any cash flow for the payment of the dues. However, the stock statements as well as the balance sheets are with the bank which clearly shows that the petitioner firm is not in a capacity to repay the loan at this point of time and further has used the funds for the purpose for which the same were availed. Hence the notice sent by the respondent is clearly general and vague in nature.

On the other hand, learned counsel for the respondent submits that inasmuch as the impugned notice dated 03.07.2015 (Annexure P-2) is concerned, it was not only served on the petitioner but the same was also duly replied through their detailed communication dated 15.07.2015 (Annexure R-5). He further states that the petition has been filed merely to delay and defeat the lawful process for the recovery of huge outstanding by distorting true facts. Learned counsel for the respondent submits that the petitioner has not filed any replication to controvert these facts.

Heard.

This Court had passed the following order on 16.09.2016 while issuing notice of motion in this case:-

“Learned counsel for the petitioner, inter alia, contends that the action has been initiated pursuant to a show cause notice dated 03.07.2015 served upon it.

Notice of motion for 26.09.2016. Dasti.

It is made clear that if it is found that the statement made by the learned counsel for the petitioner is incorrect, then this petition shall be dismissed with exemplary costs of ₹5,00,000/-.”

In view of the above uncontroverted facts, it is evident that the impugned notice dated 03.07.2015 (Annexure P-2) was not only served but also duly replied vide detailed communication dated 15.07.2015 (Annexure R-5) and as the petitioner concealed the facts.

It is crystal clear as per the reply filed by the respondents that the petitioner was in receipt of notice dated 03.07.2015 (Annexure P-2) which was duly acknowledged on 08.07.2015, prior to the filing of the present petition. In this view of the matter, it is made out that the petitioner has not approached this Court with clean hands and the statement made at bar was against the record. Therefore, this Court is not inclined to go further into the merits of the case, Accordingly, the present petition is dismissed with exemplary costs of ₹5,00,000/-, as per order *ibid*.

01.04.2019

ps-I

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :

Yes

No

Whether Reportable :

Yes

No