**HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

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**CWP No.8570 of 2015**
**Date of Decision: 30.10.2019**

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Ashish Bagrodia ... Petitioner

VS.

Punjab National Bank & Ors. ... Respondents

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**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH**
**HON'BLE MR.JUSTICE GIRISH AGNIHOTRI**

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Present: Mr. Manish Jain, Advocate for the petitioner

None for respondent No.1

Mr. CS Pasricha, Advocate for respondent No.2

None for respondent No.3

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**GIRISH AGNIHOTRI, J.**

(1) The present writ petition has been filed by the petitioner, namely, Ashish Bagrodia seeking a writ in the nature of *certiorari* for quashing the impugned letters/notices dated 16.02.2015 and 11.03.2015 (P1 & P2, respectively) issued by respondent No.1-Bank.

(2) The petitioner was appointed as non-executive Director of M/s Winsome Yarns Ltd. (hereinafter called as respondent No.2-Company) on 13.06.2000. The pleaded case of the petitioner *inter alia* is that he played no active role in the day-to-day affairs of the company. The petitioner then contended that he never executed any guarantee in favour of the Bank nor has mortgaged any of his properties for the facilities granted to the said Company, by respondent No.1-Bank.

(3) The petitioner has then contended that in fact the petitioner is Chairman and Managing Director of an another company, namely, M/s Winsome Textile Industries Ltd. having its registered office at Solan (hereinafter called as 'the second company'). In the petition, various facts

*qua* the second company have been mentioned. However, for the sake of brevity, it is deemed appropriate not to make detailed reference of the same.

(4) The positive case pleaded by the petitioner is that on account of his pre-occupation with the business of the second company, the petitioner tendered his resignation from the Board of Directors of respondent No.2-Company on 16.09.2013 (P4). It is further contended that the resignation of the petitioner was duly accepted by the Board of respondent No.2-company in its meeting held on 30.09.2013 (P5).

(5) It is urged that as per the provisions of Sections 303(2), 264(2), 266(1)(a) and 266(1)(b)(iii) of the Companies Act, 1956, Form-32 so prescribed had also been submitted to the Registrar of Companies. A copy of Form-32 which appears to have been submitted around 30.09.2013 is appended as Annexure P6 with the writ petition.

(6) In the above factual background, it is the grievance of the petitioner that in spite of the above on 23.08.2014, respondent No.1-Bank issued a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to respondent No.2 as well as the petitioner as 'the Promoter-Director' of the company.

(7) Counsel for the petitioner Mr. Manish Jain, contended that the petitioner has replied to the above-mentioned notice vide letter dated 10.11.2014 (P8) *inter alia* pointing out that the petitioner is neither the Director nor the Promoter of the company (especially on the date when the loan was classified as NPA). The petitioner then submitted that letter dated 16.02.2015 (P1) came as a shock to him vide which, the respondent No.1-Bank proposed to classify him as 'willful defaulter' on account of default in

payment of dues by respondent No.2. The petitioner therefore has filed the present writ petition with a prayer to quash the impugned notices dated 16.02.2015 and 11.03.2015 (P1 & P2, respectively) issued by respondent No.1-Bank indicating the petitioner as 'willful defaulter'.

(8) Notice of motion was issued in this case on 04.05.2015. On 30.11.2018 this Court had recorded that despite several opportunities no reply has been filed.

(9) The record of the case show that vide order dated 02.05.2016, this Court had given liberty to the petitioner to amend the writ petition by impleading M/s Edelweiss Asset Reconstruction Company Ltd. as respondent No.3. This was so ordered after recording the statements of counsel for respondent No.1 who stated that respondent No.1 has assigned the debt to this Company.

(10) However neither on 30.11.2018 nor till today respondents No.1&3 have come forward to file their replies.

(11) We have heard learned counsel for the parties present and gone through the record.

(12) The petitioner had submitted reply vide letter dated 05.03.2015 (P10). The respondent had raised objection(s) regarding considering him as willful defaulter and publishing his name. The Respondent-Bank has arbitrarily issued notices (P1 & P2) ignoring the procedure laid down by RBI, in its Master Circular on "Willful Defaulter" dated 01.07.2014. The respondent-Bank, through letter dated 16.02.2015, continued to address the petitioner as 'willful defaulter'.

(13) Paragraph 2.1 and Paragraph 3 of the Master Circular dated 01.07.2014 (P3) is reproduced hereunder:-

***"2.1 Definition of wilful default***

*The term 'lender' appearing in the circular covers all banks/FIs to which any amount is due, provided it is arising on account of any banking transaction, including off balance sheet transactions such as derivatives, guarantee and Letter of Credit.*

*The term 'unit' appearing therein has to be taken to include individuals, juristic persons and all other forms of business enterprises, whether incorporated or not. In case of business enterprises (other than companies), banks/FIs may also report (in the Director column) the names of those persons who are in charge and responsible for the management of the affairs of the business enterprise.*

*The term "wilful default" has been redefined in supersession of the earlier definition as under:*

*A "wilful default" would be deemed to have occurred if any of the following events is noted:-*

*(a) The unit has defaulted in meeting its payment / repayment obligations to the lender even when it has the capacity to honour the said obligations.*

*(b) The unit has defaulted in meeting its payment / repayment obligations to the lender and has not utilised the finance from the lender for the specific purposes for which finance was availed of but has diverted the funds for other purposes.*

*(c) The unit has defaulted in meeting its payment / repayment obligations to the lender and has siphoned off the funds so that the funds have not been utilised for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets.*

*(d) The unit has defaulted in meeting its payment / repayment obligations to the lender and has also disposed off or removed the movable fixed assets or immovable property given by him or it for the purpose of securing a term loan without the knowledge of the bank/lender."*

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***"3. Mechanism for identification of Wilful Defaulters***

*The transparent mechanism referred to in paragraph 2.5(d) above should generally include the following:*

*(a) The evidence of wilful default on the part of the borrowing company and its promoter/whole-time director at the relevant time should be examined by a Committee headed by an*

*Executive Director and consisting of two other senior officers of the rank of GM/DGM.*

*(b) If the Committee concludes that an event of wilful default has occurred, it shall issue a Show Cause Notice to the concerned borrower and the promoter/whole-time director and call for their submissions and after considering their submissions issue an order recording the fact of wilful default and the reasons for the same. An opportunity should be given to the borrower and the promoter/whole-time director for a personal hearing if the Committee feels such an opportunity is necessary.*

*(c) The Order of the Committee should be reviewed by another Committee headed by the Chairman / CEO and MD and consisting, in addition, of two independent directors of the Bank and the Order shall become final only after it is confirmed by the said Review Committee.*

*(d) As regard a non-promoter/non-whole time director, it should be kept in mind that Section 2(60) of the Companies Act, 2013 defines an officer who is in default to mean only the following categories of directors:*

*(i) Whole-time director*

*(ii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;*

*(iii) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings and who has not objected to the same, or where such contravention had taken place with his consent or connivance.*

*Therefore, except in very rare cases, a non-whole time director should not be considered as a wilful defaulter unless it is conclusively established that*

*I. he was aware of the fact of wilful default by the borrower by virtue of any proceedings recorded in the Minutes of the Board or a Committee of the Board and has not recorded his objection to the same in the Minutes, or,*

*II. the wilful default had taken place with his consent or connivance.*

*A similar process as detailed in sub paras (a) to (c) above should be followed when identifying a non-promoter/non-whole time director as a wilful defaulter."*

(14) Further perusal of the guideline(s) mentioned in Paragraph 5.1 of the Master Circular on Wilful Defaulter -2014, would clearly show that the Bank at best could extend the said provision to those Directors who were associated with the Company at the time when the account was classified as defaulter. Paragraph 5.1 so reproduced in ground (e) of the petition, is extracted hereunder:-

***"5.1 Need for Ensuring Accuracy***

*RBI / Credit Information Companies disseminate information on non-suit filed and suit filed accounts respectively, as reported to them by the banks/FIs and responsibility for reporting correct information and also accuracy of facts and figures rests with the concerned banks and financial institutions. Therefore, banks and financial institutions should take immediate steps to up-date their records and ensure that the names of currect directors are reported. In addition to reporting the names of current directors, it is necessary to furnish information about directors who were associated with the company at the time the account was classified as defaulter, to put the other banks and financial institutions on guard. Banks and FIs may also ensure the facts about directors, wherever possible, by cross-checking with Registrar of Companies."*

(15) This Court has noticed that the petitioner submitted his resignation on 16.09.2013 (P4). Even in the impugned notice dated 16.02.2015 (P1), it has been mentioned as "*Facility Amount Due as on 17.06.2014*'. Thus it is evident that much before this date, the petitioner had

resigned. The effective date of resignation as mentioned in Form-32 is w.e.f. 16.09.2013.

(16) Learned counsel has placed reliance upon another judgment of this Court passed in ***CWP No.3307 of 2016 (M/s Oswal Apparels Pvt.Ltd. Ludhiana & Ors. vs. State Bank of India, Ludhiana & Anr.)*** decided 14.02.2017.

(17) In view of the undisputed position and the reasons recorded above, the present writ petition is allowed. The action of the respondents in proposing to declare the petitioner as 'willful defaulter' is held illegal. Consequently, the impugned notices dated 16.02.2015 and 11.03.2015 (P1 & P2, respectively) are quashed.

(18) No cost as to costs.

**30.10.2019** **(Jaswant Singh)** **(Girish Agnihotri)**
*vvishal* **Judge** **Judge**

*1. Whether speaking/reasoned?* ***Yes/No***
*2. Whether reportable?* *Yes/No*