$~16

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

\+ W.P.(C) 889/2019 & CM. No. 4003/2019

KUNWER SACHDEV ..... Petitioner

Through: Mr. Gopal Jain, Sr. Adv. with Mr. Ajay Bhargava, Mr. Anirudh Bakhru and Ms. Wamika Trehan, Advs.

versus

IDBI BANK LIMITED AND ANR. ..... Respondents

Through: Mr. Siddharth Barua and Ms. Adity Gupta, Advs. for R1.
Mr. H.S. Parihar and Mr. K.S. Parihar, Advs. for RBI.

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

<u>O R D E R</u>

% **05.08.2019**

The present petition has been filed by the petitioner with the following prayers:

> *"In the facts and circumstances of the case and in the interest of justice it is most respectfully prayed that this Hon'ble Court be pleased to:*
>
> *(a) issue appropriate Writ / Order / Direction for quashing the Orders passed by the Identification Committee of the Respondent No.1 recording the fact of Willful Default by the Petitioner and the subsequent confirmation of the said Order by the Order passed by the Review Committee of the Respondent No.1.*
>
> *(b) Issue appropriate Writ / Order / Direction for quashing the impugned Letter dated 12 December, 2018 issued by Respondent No.1 bank to the petitioner.*
>
> *(c) Issue appropriate Writ / Order / Direction to the Respondents restraining them for acting pursuant to and / or in furtherance of the impugned Letter dated 12 December 2018 and the impugned Orders allegedly passed by the*

Identification Committee of the Respondent No.1 recording the fact of Willlful Default by the Petitioner and the subsequent confirmation of the said Order by the Order passed by the Review Committee of the Respondent No.1;
(d) Issue appropriate Writ / Order / Direction for quashing the impugned Letter dated 9 January 2019 issued by Respondent No.1 bank to the petitioner.
(e) Issue appropriate Writ / Order / Direction to the Respondent bank to place on record all those documents which are in their power and possession and are the basis for issuing impugned communication dated 12 December 2018 along with a copies of orders passed by Identification Committee and Review Committee.
(f) Pass any other order (s) as this Hon'ble Court may deem fit in the facts and circumstances of the present case."

In substance, the challenge of the petitioner is to the communications dated December 12, 2018 and January 9, 2019 communicating to the petitioner the decision of the respondent Bank declaring him as wilful defaulter and pursuant thereto the Bank has informed the petitioner if in the eventuality the petitioner does not pay the amount as stated, the Bank shall put the petitioner's name and photograph in the newspaper and magazines.

The only submission made by Mr. Gopal Jain, learned Senior Counsel appearing for the petitioner is that the decision of the Bank to declare the petitioner a wilful defaulter is without giving him a copy of the order of the Identification Committee to enable the petitioner give a representation within 15 days to the Review Committee to enable the Review Committee consider the same and pass order in terms of the judgment of the Supreme Court in the case of ***State Bank of India v. Jah Developers Pvt. Ltd. and Ors. 2019 SCC Online 688*** more particularly Para 21, wherein the Supreme

Court has held as under:

> *"21. 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 paragraph 3 of the Revised Circular dated 01.07.2015, as it is clear that the events of wilful default as mentioned in paragraph 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 intentional, deliberate, and calculated is again a question of fact which the lender may put to the borrower in a show cause notice to elicit the borrower's submissions 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 29A 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 paragraph 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 paragraph 3(b) of the Revised Circular dated 01.07.2015, 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."*

Mr. Siddharth Barua, learned counsel appearing for the respondent Bank states, a copy of the Identification Committee has since been supplied to the petitioner along with the counter-affidavit. So it follows as a copy of the order of the Identification Committee having been given along with the counter-affidavit filed by the respondent Bank, in view of the judgment of the Supreme Court the petitioner shall have the liberty to file a representation to the order of the Identification Committee to the Review Committee within 15 days from today.

The Review Committee shall consider the representation so made by the petitioner and pass an order as expeditiously as possible.

Resultantly the communications dated December 12, 2018 and January 9, 2019 are set aside.

The petition stands disposed of.

CM. No. 4003/2019 (for stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

AUGUST 05, 2019/*jg*