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

\+ W.P.(C) No. 1087/2019

PUNJ LLOYD LTD. ..... Petitioner

Through: Mr. Karan Luthra, Mr. Rishi Agrawala & Ms. Niyati Kohli, Advs.

versus

ORIENTAL BANK OF COMMERCE AND ANR. ..... Respondents

Through: Mr. S.K. Sharma, Adv. for R1.

**CORAM:**
**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

**O R D E R**

**% 07.02.2019**

**CM APPL. No. 4996/2019 (for exemption from filing originals) & CM APPL. No. 4997/2019 (for exemption from filing typed copies)**

Allowed, subject to just exceptions.

Applications stand disposed of.

**W.P.(C) No. 1087/2019 & CM APPL. No. 4995/2019 (for interim relief)**

The petitioner company impugns show-cause notice dated 08.11.2018 and subsequent communications dated 06.12.2018, 10.12.2018 and 15.01.2019 issued by respondent No. 1, whereby the respondent bank has initiated the process of declaring the petitioner 'wilful defaulter' as per the Reserve Bank of India Master Circular on 'Wilful Defaulters' dated 01.07.2015.

The petitioner contends that under Clause 3(a) and 3(b) of the said Master Circular which lays down the mechanism for identification of 'wilful defaulters', the Committee that is to consider the issue is required to examine ‘evidence of wilful default’ on the part of the borrower company and its promoter/whole time director; and further a show-cause notice is to be issued *only if* the Committee ‘concludes that an event of wilful default has occurred’; whereupon the borrower and the promoter/full time director are to be issued a show-cause notice and are to be given an opportunity for personal hearing.

The petitioner further contends that in this case the show-cause notice issued by the respondent is bereft of any specifics or particulars, much less any details of the default alleged against the petitioner; and the notice only reproduces verbatim certain clauses of guideline 2.1.3 of the Master Circular which defines ‘wilful default’.

In spite thereof, the petitioner contends, that in response to notice dated 08.11.2018, the petitioner sent a reply dated 27.11.2018 pointing-out the infirmities in the show-cause notice, at the same time also setting-out the financial position of the petitioner company *inter- alia* that a Corrective Action Plan (CAP) was being implemented in respect of petitioner under the aegis of a consortium of lenders, of which consortium the respondent bank was also a member.

Learned counsel appearing for the petitioner further states that although the CAP, which was operating under an earlier RBI Circular now stands abrogated; a resolution plan under the currently applicable RBI guidelines is still ongoing and financial restructuring of the petitioner company is underway.

It is further the petitioner’s contention that apart from not disclosing relevant material to the petitioner, on the basis of which the petitioner company is being sought to be declared ‘wilful defaulter’, the respondent bank is also not permitting the petitioner to be represented by a lawyer at such hearing.

As per communication dated 15.01.2019 received from the respondent bank, the next meeting of the Committee that is considering the matter is scheduled on 11.02.2019.

Issue notice.

Mr. S.K. Sharma, learned counsel for the respondent bank appears on advance copy and accepts notice.

Learned counsel appearing for the respondent bank concedes that show-cause notice dated 08.11.2018 did not set-out any specifics or particulars of the defaults alleged or the material based on which the petitioner company is being sought to be declared 'wilful defaulter'. Counsel states however that the bank would be willing to furnish to the petitioner all materials on the basis of which the bank initiated wilful defaulter proceeding against the petitioner company, and the bank will also afford to the petitioner a hearing, with permission to be represented by a lawyer alongwith a promoter/director/whole time director of the company.

In view of the above, the present petition is disposed of with the following directions:

(a) The respondent bank will furnish to the petitioner company *all relevant material and/or references* on the basis of which show-cause notice dated 08.11.2018 was issued, within two weeks from today. It is clarified that, in particular, any material to which the petitioner company is neither party nor privy shall be supplied by the respondent bank;

(b) The respondent bank will schedule a hearing for the petitioner company before the Committee within two weeks after supplying the material to consider the issue of declaring the petitioner wilful defaulter, at which hearing the petitioner will be entitled to be represented by a lawyer alongwith a promoter/director/whole time director of the company.

(c) After the above process is completed, the respondent bank will take a decision in the matter and furnish to the petitioner a reasoned order if the Committee concludes that the petitioner is to be declared 'wilful defaulter'.

In view of the above, the hearing before the Committee scheduled for 11$^{th}$ February, 2019 is cancelled.

The writ petition is disposed of in the above terms.

Order be given *dasti*.

**ANUP JAIRAM BHAMBHANI, J.**

**FEBRUARY 07, 2019/***uj*