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

% *Date of Decision: 04.12.2019*

\+ **W.P.(C) 13713/2018 & CM No.53539/2018**

G GEHANI ..... Petitioner

Through : Mr. Rajeev Sharma and Mr. Saket Chandra, Advs.

versus

RESERVE BANK OF INDIA & ANR. ..... Respondents

Through : Mr. Arjun Krishnan, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

JUSTICE RAJIV SHAKDHER (ORAL):

1. This is a writ petition in which a direction has been sought for quashing the order dated 23.03.2018, issued by respondent no.2 i.e the Export Import Bank of India (in short "Exim Bank"). By virtue of this order, the petitioner has been declared a wilful defaulter.

2. It is not in dispute that the petitioner was on the Board of Directors of the company by the name PSL Ltd. (in short "PSL").

3. PSL, it appears to have obtained a loan in its favour. PSL, apparently, defaulted in repayment of the loan.

4. The record shows that the loan was restructured and despite the loan being restructured, PSL did not come through and repay the outstanding loan amount to Exim Bank. This led to initiation of action against PSL and its directors by Exim Bank *inter alia* under the RBI Master circular dated

01.07.2015.

5. It is in this connection that a show cause notice dated 04.10.2017 was issued to the petitioner. The record shows that the petitioner has responded to the said show cause notice. The reply to the show cause notice is dated 18.10.2017.

6. Evidently, the reply filed by the petitioner did not cut much ice with the Exim Bank and it proceeded to declare the petitioner as a wilful defaulter, as noted hereinabove, on 23.03.2018. The said order was served on the petitioner under the cover of a letter dated 27.08.2018. Pertinently, this very letter of the Exim Bank notices the fact that the petitioner's case was put before the Review Committee which, apparently, confirmed order dated 23.03.2018 vide its order dated 13.06.2018.

7. What is not in dispute is that under the Master Circular dated 01.07.2015, there is a two-step procedure provided for declaring any entity or person as a wilful defaulter.

8. In the first stage, the delinquent's case is put before a committee (hereafter referred to as "the first committee") comprising the Executive Director and two senior officers of the concerned bank.

9. Once a decision is rendered by the first committee, the delinquent can take up the matter with the review committee in case he obtains a decision which is adverse to his interest.

10. The grievance of the petitioner in this writ petition is, broadly, as follows :

(i) Firstly, that the order dated 23.03.2018, passed by the first committee, is a non-speaking order.

(ii) Secondly, that the first committee's order dated 23.03.2018 was served on the petitioner only *via* letter dated 27.08.2018.

(ii)(a) It is, therefore, the contention of the petitioner, that the order of the first committee was not only served late but was also served after the Review Committee had confirmed the order of the first committee. For this purpose, as noted hereinabove, my attention was drawn to the contents of the letter dated 27.08.2018.

(iii) Lastly, that no opportunity whatsoever was given for making a representation to the Review Committee. According to the petitioner, had the copy of the first committee's order been served upon him in time, he could have made a representation before the Review Committee, which then, would have had the opportunity of passing a reasoned order in consonance with the judgment of the Supreme Court in ***State Bank of India v. M/s Jah Developers Pvt. Ltd. & Ors., (2019) 6 SCC 787.***

11. On the other hand, learned counsel for Exim Bank says that the principles of natural justice have been followed inasmuch as the copy of the order of the first committee was served upon the petitioner.

11.1 Prior to the first committee passing its order, a show cause notice was issued and an opportunity was given to the petitioner to file a reply.

11.2 Furthermore, the petitioner was also given a personal hearing by the first committee before passing the order dated 23.03.2018.

11.3 Insofar as the other aspect that no opportunity was given to make a representation before the Review Committee is concerned, learned counsel submits that the declaration of the law on that aspect of the matter was made by the Supreme Court only on 08.05.2019 when the judgment in ***M/s Jah Developer Pvt. Ltd.*** was rendered. In other words, the contention of the learned counsel was that under the old regime, Exim Bank was not required to give any such opportunity to the petitioner.

11.4 Thus, in a nutshell, the argument advanced on behalf of Exim Bank is that the impugned order need not be interdicted.

12. I have heard learned counsel for the parties and perused the record.

13. A perusal of the order dated 23.03.2018 shows that it is cryptic. I may indicate herein that this order is appended on page132 of the paper book. The order is preceded by a letter dated 27.08.2018 which is marked as Annexure P-14 and is appended on pages 126 to 131 of the paper book. Each of these sheets carry the endorsement "continuation". The argument which was sought to be advanced on behalf of Exim Bank is what is recorded on page 132 and is, as is apparent, only in continuation of what precedes the said order.

13.1 Mr. Sharma, on the other hand, says that the document marked as Annexure P-14 terminates at page 131 as the foot of this page bears the signatures of the General Manager. Therefore, it is Mr. Sharma's contention that the document appended on page 132 which purports to be the order of the first committee is a stand-alone document and cannot be linked with the document preceding the same.

14. I tend to agree with Mr. Sharma's submission. The reason why I say so is that not only the document marked as Annexure P-14 terminates on page 131 of the paper book with the signatures of the General Manager, the document on page 132 purports to indicate that it has been signed by the committee members. It cannot be the Exim Bank's case that it was a single member committee. Even as per the circular dated 01.07.2015, the committee ought to have included the Executive Director and two senior officers of the Exim Bank.

14.1 Therefore, as indicated above, the two documents cannot be linked.

15. The order of the first committee is cryptic can be seen upon a bare perusal. For the sake of convenience, the entire order is extracted hereafter :

"LAG / PEG/ DErl25 J12 /2018 August 27, 2018

ORDER

The Borrower viz. PSL Limited and its following Directors viz. a) Mr. Ashok Punj, Managing Director, b) Mr. R.' K. Bahri, Whole Time Director, c) Mr. S. P. Bhatia, Whole Time Director, d) Mr. C. K. Goel, Whole Time Director, e) Mr. Alok Punj, Non - Executive Director, f) Mr. M. M. Mathur, Whole Time Director, g) Mr. D. N. Sehgal, Whole Time Director and h) Mr. G. Gehani, Whole Time Director, are hereby declared as "Wilful Defaulters", in terms of RBI Circular No. Ref. DBR. No. CID. BC.'22/20.16.003/2015-16 dated July 01, 2015.

Sd/-
Committee Members
Dated : March 23, 2018"

15.1 Thus, in my opinion, Mr. Sharma's argument that the order of the first committee is bereft of reasons has weight.

16. Insofar as the other submission which was advanced before me by Mr. Sharma which is that the petitioner had no opportunity to assail the first committee's order dated 23.03.2018, in my opinion, also has merit.

17. Nothing has been shown to me by the learned counsel for the Exim Bank that the order dated 23.03.2018 was served upon the petitioner prior to 27.08.2018.

18. As noted hereinabove, the letter dated 27.08.2018 clearly adverts to the fact that the Review Committee vide its order dated 13.06.2018 has

sustained the first committee's order dated 23.08.2018.

19. Given this factual scenario, the petitioner had no chance whatsoever to file a representation before the Review Committee.

19.1 The argument of the learned counsel for Exim Bank that this right is given to a delinquent only pursuant to the judgment rendered by the Supreme Court in ***M/s Jah Developer Pvt. Ltd.*** case, in my view, is untenable.

19.2 The reason why I say so is that the Supreme Court has declared the law as it ought to be. There is nothing in the judgment which is suggestive of the fact that the judgment will operate prospectively. The Supreme Court in fact by giving the right to the borrower to make a representation within 15 days has sustained the master circular dated 01.07.2015 which otherwise may, perhaps, have been struck down.

20. Therefore, for the foregoing reasons, the order dated 23.03.2018 is set aside. The first committee will reconsider the matter and for this purpose, issue a formal written notice of hearing to the petitioner. The notice will indicate the date, time, as well as, the venue as to where the hearing will be held.

21. The parties will also furnish all documents on which they wish to rely upon including forensic report of the auditor. In case any documents are required from the petitioner, the notice will indicate the same in as many words.

22. Needless to add, the first committee after hearing the petitioner will pass a speaking order.

23. The aforesaid exercise will be completed by the first committee with due expedition, though, not later than 12 weeks from the date of receipt of a

copy of this order.

24. It is made clear nothing stated hereinabove will impact the merits of the case *qua* either party i.e. the petitioner or the Exim Bank.

25. Pending the hearing by the first committee, the interim order dated 19.12.2018 shall continue to operate.

RAJIV SHAKDHER, J

DECEMBER 04, 2019
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