GAHC010111722019

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

WP(C)/3302/2019

GHOSH BROTHERS HOSPITALITY PVT. LTD. AND 3 ORS.
D-204
BLOCK-D
2ND FLOOR
CITY CENTRE
DC-1
SECTOR-1
SALT LAKE
KOLKATA- 700064

2: GHOSH BROTHERS ELECTRONICS PVT. LTD.
N.H. 37
BETKUCHI
ADJACENT TO DTO OFFICE
GHY- 34

3: PRANAB KUMAR GHOSH
H.NO. 5
BYE LANE 4
MANIK NAGAR
ZOO ROAD
GHY

4: PRATUL KUMAR GHOSH
S/O- SHRI PRANAB KUMAR GHOSH
H.NO. 5
BYE LANE 4
MANIK NAGAR
ZOO ROAD
GHY
VERSUS

IDBI BANK AND 2 ORS.
NPA MANAGEMENT GROUP

KOLKATA
IDBI BANK LTD.
IDBI HOUSE
44
SHAKESPEARE SARANI
KOLKATA- 700017

2:IDBI BANK
IDBI BANK LTD.
IDBI TOWER
WTC COMPLEX
CUFFEE PARADE
MUMBAI- 400005
3:IDBI BANK LTD.
G.S.ROAD
GHY-5

Advocate for : MR. S MITRA
Advocate for : MR. M DUTTA appearing for IDBI BANK AND 2 ORS.

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

Date : 11-12-2020

JUDGEMENT & ORDER

Heard Shri S Mitra, learned counsel for the petitioners as well as Shri M Dutta, learned counsel representing the respondents-IDBI Bank (for short Bank).

2. Considering the subject matter of dispute wherein a show cause notice dated 17.05.2019 has been put to challenge and also considering that the pleadings have been exchanged, the writ petition is taken-up for disposal at the admission stage.

3. The petitioner nos. 1 and 2 are business houses and the petitioner nos. 3 and 4 are the present and previous Directors of the petitioner nos. 1 and 2. Both the petitioner nos. 1 and 2 had availed financial assistance from the Bank. However, due to reason beyond their control, there was loss caused in the business and consequently, there was default in making

timely repayment to the Bank. In this regard, a show cause notice dated 17.05.2019 has been issued by the Bank as to why the petitioners should not be declared as willful defaulters and the said notice was also published in the news paper. The petitioners are aggrieved that no opportunity was granted before such publication which has caused immense hardships and damage to their image in the public. It is also submitted that by such action, the reputation of the petitioners has also been harmed. Accordingly, the petitioners have approached this Court for setting aside the sow cause notice dated 17.05.2019 which was published in the news paper, 'The Telegraph' and also for a direction to the Bank to compensate the petitioners for harassment and damage. This Court while issuing notice on 21.06.2019 had passed an order directing the Bank not to take any further steps pursuant to the impugned show cause notice dated 17.05.20219.

4. Shri Mitra, learned counsel for the petitioners has submitted that the show cause notice has been issued with a pre-conceived notion. It is contended that a bare reading of the same would show that the Bank had already come to a conclusion that the petitioners are willful defaulters and there was a legal requirement to afford an opportunity to the petitioners before going ahead with the publication. It is further submitted that considering the long period of transaction of the petitioners with the Bank, such discriminatory action was least expected from the Bank and the publication made in the news paper, 'The Telegraph' had caused immense damage to the reputation of the petitioners.

5. By referring to the Master Circular issued by the Reserve Bank of India (RBI), it is submitted that the petitioners would not come within the definition of 'Willful Defaulter' and, therefore, it is a fit case for interference by this Court by making absolute the interim order passed. By referring to the said Master Circular, the learned counsel has submitted that the entire object of issuing the Master Circular was to prevent misuse of public money and to safeguard the same and there was no such occasion or allegation of siphoning and diversion of funds and it is because of genuine reasons that the timely repayment could not be made. The fact that the business of the petitioners was on a downward trend was within the knowledge of the Bank and instead of taking any sensible step by taking into consideration all

the relevant facts, the Bank had taken the extreme decision of issuing a publication in the news paper.

6. *Per contra*, *Shri* M Dutta, learned counsel for the Bank has submitted that necessary affidavit-in-opposition has been filed in this case. By referring to the said affidavit-in-opposition dated 25.09.2019, Shri Dutta, learned counsel has raised issues on maintainability of the writ petition on the ground of suppression of material facts. The learned counsel submits that recourse to the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 was taken under the facts and circumstances of the case and all such recourse was preceded by the requirements under the law. So far as the maintainability of the writ petition is concerned, Shri Dutta has submitted that the matter is at a preliminary stage where a final decision is yet to be taken by the Bank and, therefore, it is premature on the part of the petitioners to approach the Court of law. He, accordingly, prays for vacating the interim order and also for dismissal of the writ petition. Though no rejoinder-affidavit has been filed in this case, such a rejoinder-affidavit has, however, been filed in the connected writ petition with the same subject matter pertaining to an identical notice concerning the sister concern with the same Director.

7. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

8. A perusal of the notice dated 17.05.2019 which is the subject matter of dispute would show that the petitioners were advised to show cause on certain grounds which have been specifically mentioned. The penultimate paragraph of the notice reads as follows: -

> "*4. In view of above, you are hereby advised to show cause, if you so desire, within 15 days from the date of this letter as to why your company/directors/guarantors should not be reported as willful defaulters to RBI.*"

9. Upon reading of the said show cause notice, this Court is of the view that a final

decision on the grounds on which the petitioners have been directed to be show caused is yet to be taken by the Bank. The petitioners have not made any submissions with regard to the jurisdiction of the Issuing Authority to issue such show cause notice and in absence of such complaint, the scope of this Court to interfere in such matter becomes absolutely constricted. Any observation made by this Court at this stage on the merits of the charges would cause prejudice to either of the parties and, therefore, this Court is not inclined to make any observation on the inter-se merits of the parties. This Court has also noticed that the grounds/points on which the explanation is sought for from the petitioners have been specifically stated and, therefore, it cannot be pleaded that the show cause has proceeded on vague grounds. In absence of jurisdictional error or the show cause not having any grounds for explanation, it would not be prudent on the part of this Court to interfere at this stage. This Court also finds force in the contention of Shri Dutta that the voluminous documents annexed to the rejoinder-affidavit filed in the connected writ petition are not relevant for the purpose of deciding the present dispute as no observation on the merits of the case of the respective parties has been made in this order which is not even the scope of the present challenge.

10. In view of the aforesaid facts and circumstances, the present challenge is not found to be legally tenable and, accordingly, the writ petition is dismissed. While dismissing the writ petition, this Court reiterates that no observation is made on the inter-se merits of the parties and any action taken by the Bank after the show cause shall be strictly in accordance with law.

11. Since the impugned show cause had granted 15 days time from 17.05.2019, this Court stipulates that the reply may be furnished within 15th of January, 2021.

12. It is needless to say that since this order is passed in the presence of the parties, failure on the part of the petitioners to furnish such reply within the time stipulated would entail the Bank to proceed in accordance with law. Till furnishing the show cause notice

within the specific time, no coercive action be taken by the Bank.

13. Writ petition is accordingly disposed of. No costs.

JUDGE

Comparing Assistant