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Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction

WPA 322 of 2020

Makahal Agro Storage and Processing
Unit Private Limited & Ors.
-versus-
Indian Overseas Bank & Ors.

Mr. Bikramaditya Ghosh,
Mr. Debjit Mukherjee
…..for the petitioners.

Mr. Prasanta Joarder
….for the respondent nos.1, 2, 3 & 5.

The petitioners have challenged a notice issued by the General Manager, being a Member of the Identification Committee of the respondent bank issued on 2nd December, 2019 informing the petitioners that the Identification Committee set up in terms of the Reserve Bank of India guidelines have reasons to believe that the petitioners are 'willful defaulter'. The petitioners say that the notice is issued by the General Manager who claims to be a Member of the Identification Committee. Who are the members who consists the Identification Committee of the respondent bank is not known to the petitioners. The notice according to the Reserve Bank of India Master Circular dated 1st July, 2015, should have been issued by the Identification Committee and not by an individual claiming to be a member of the Identification Committee. According to the petitioners, the notice therefor is without jurisdiction and cannot be allowed to remain or acted upon.

The bank in reply thereto by relying on clause 8 of the said notice submits that the General Manager, being a member of the committee, is authorised to issue such notice.

The petitioners have also alleged violation of principles of natural justice. The petitioners submit that they have been asked to show-cause on the points mentioned in the notice within a time frame, but no supporting document, which forms the basis of the opinion of the Identification Committee that the petitioners should be termed as 'wilful defaulter', has been provided to the petitioners to reply to the show-cause notice. The petitioners say that their reply is therefor not a substantive one.

The bank submits that there is no provision in the circular for supply of such materials and as such, it is not obligatory on the part of the bank or the Identification Committee to supply such documents.

After considering the rival contentions and materials on record, I am of the opinion that unless the documents on the basis whereof the Identification Committee formed an opinion and claims to have the evidence for declaring the petitioners as 'wilful defaulter' are not provided to the petitioners, then there will be no transparency in the matter, particularly in view of the fact that the decision of the Identification Committee has a widespread ramification in the future of the petitioners in the event they are declared wilful defaulters.

The bank has issued only the show-cause, but no date has been fixed for the hearing. It is correct that unless the documents on the basis whereof the Identification Committee formed its opinion are not made over to the petitioners, the petitioners will not be in a position to properly defend their case. In view of the time-frame provided in the show-cause for the reply, the petitioners have already replied to the show-cause, but in the same they have mentioned about their inability to reply in details in absence of the documents.

The bank says that only a show cause has been issued and on the basis of the reply a hearing will take place and an order will be passed. The said order is also assailable before a review committee and as such, the petitioners have not been declared 'wilful defaulter' and unless the procedure as laid down and mentioned hereinabove is concluded, the question of declaring the petitioners as 'wilful defaulter' does not arise.

In the facts and circumstances as aforesaid, I think justice will be sub-served if I direct the bank to provide the documents on the basis whereof the Identification Committee of the respondent bank has formed a prima facie opinion that the petitioners should be declared as 'wilful defaulter'.

No purpose will be sub-served in keeping the writ petition pending at this stage. I, therefore, dispose of the writ petition by directing the writ petitioners to intimate within ten days from date to the respondent bank, the documents they need for effectively replying to the show cause notice dated 2^{nd} December, 2019.

The bank shall supply such documents within a period of a fortnight from receipt of such written request from the petitioners, if the same are in the possession of the bank.

The petitioners, within a fortnight from receipt of such documents from the bank, will reply to the show cause notice dated 2^{nd} December, 2019.

The bank shall treat the reply which may be given by the petitioners as part of the earlier reply already given and treat the two replies as the consolidated reply to the show cause notice dated 2^{nd} December, 2019. The bank shall not proceed with the show cause notice dated 2^{nd} December, 2019 till the petitioners' objections are disposed of. The hearing on the petitioners' objection has to be concluded within four weeks from the receipt of the petitioners' reply.

It is made clear that in the event the petitioners do not file their reply to the show cause within the timeframe provided, the matter shall be proceeded in absence of such reply. The bank shall, however, grant a personal hearing to the petitioners while deciding on the issues mentioned in the show cause dated 2nd December, 2019.

The Identification Committee shall communicate its reasoned order after hearing on the issues mentioned in the show cause to the petitioners.

The writ petition is disposed of in terms of the following directions as given hereinabove.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on usual undertakings.

(Arindam Mukherjee, J.)