HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.20678 of 2019

ORDER:

This writ petition is filed challenging the Notices dt.28.08.2019 issued by the respondent authorities, under which the petitioners are required to show cause in 30 days' time as to why they shall not be declared as wilful defaulters as per the Guidelines of Reserve Bank of India.

Heard learned counsel for the petitioners and learned Standing Counsel for the respondent Bank.

There is no dispute that the procedure for declaring an individual as a 'wilful defaulter' is governed by the Master Circular on 'Wilful Defaulters' dt.01.07.2015. For the purpose of disposal of the present writ petition, Para No.3 (a), (b) and (c) of the said Master Circular are relevant, which are extracted hereunder:

> "**3. Mechanism for identification of Wilful Defaulters:**
>
> The mechanism referred to in paragraph 2.5 above should generally include the following:
>
> (a) The evidence of wilful default on the part of the borrowing company and its promoter/whole-time director at the relevant time should be examined by a Committee headed by an Executive Director or equivalent and consisting of two other senior officers of the rank of GM/DGM.
>
> (b) If the Committee concludes that an event of wilful default has occurred, it shall issue a Show Cause Notice to the concerned borrower and the promoter / whole-time director and call for

their submissions and after considering their submissions issue an order recording the fact of wilful default and the reasons for the same. An opportunity should be given to the borrower and the promoter / whole-time director for a personal hearing if the committee feels such an opportunity is necessary.

(c) The Order of the Committee should be reviewed by another Committee headed by the Chairman / Chairman & Managing Director or the Managing Director & Chief Executive Officer / CEOs and consisting, in addition, to two independent directors / non-Executive directors of the Bank and the Order shall become final only after it is confirmed by the said Review Committee. However, if the identification Committee does not pass an Order declaring a borrower as a wilful defaulter, then the Review Committee need not be set up to review such decisions."

It is contended by the learned counsel for the petitioners that though it is not in dispute that as per the impugned Notices dt.28.08.2019, it is the Committee, which is required to take a decision and which is authorized to issue notice, para-4 of the impugned Notices dt.28.08.2019 is clear to the effect that as per the directions of the Committee, the Deputy General Manager of the Bank has issued the impugned Notices. Therefore, the objection raised by the learned counsel for the petitioners is unsustainable.

The method and manner in which the entire proceedings have to be conducted, which may, ultimately, culminate into declaration of an individual/ Entity as a wilful defaulter, was considered by the Hon'ble Supreme Court in SBI v. JAH DEVELOPERS (P) LTD.[1], wherein it was

[1] (2019) 6 SCC 787

interpreted that at the stage of forming a *prima-facie* opinion in terms of para-3(a) of the Master Circular dt.01.07.2015, there is no requirement of issuance of any notice and it is only at the stage of enquiry under para-3(b) of the Master Circular, notice and opportunity of hearing is required to be given to the individual prior to passing of an order.

In the instant case, the impugned Notices dt.28.08.2019, which the petitioners challenge, are at the stage of enquiry under para-3(b) of the Master Circular and for that precise reason, the Committee deemed it appropriate to give 30 days' time for the petitioners to show cause as to why they should not be declared as wilful defaulters. The petitioners are yet to submit their explanation.

In that view of the matter, it is directed that the petitioners shall submit their explanation on or before 15.02.2020 to the show cause notices dt.28.08.2019 and the same shall be considered strictly in terms of the Master Circular dt.01.07.2015, in particular para 3(b) and (c) thereof, before passing any order. In the event of the petitioners seeking personal hearing, the same shall be provided to them. The petitioners are also entitled to seek any further information from the respondent Bank with respect to the impugned show cause notices and the annexures enclosed therewith, which shall be furnished by the respondent Bank.

With the above observations and directions, this writ petition is disposed of. No order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE CHALLA KODANDA RAM

09.01.2020.
Msr

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