IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 18297 of 2020
Date of Decision: 3rd November, 2020

Raman Kumar Aggarwal and another
....Petitioners

VERSUS

Punjab National Bank and another
....Respondents

CORAM: JUSTICE S. MURALIDHAR
JUSTICE AVNEESH JHINGAN

Present: Mr. Aalok Jagga, Advocate for the Petitioners.

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Dr. S. Muralidhar, J.

1. The Petitioners claim to be erstwhile directors of M/s J.R. Agro Tech Private Limited (hereinafter, 'company'), in respect of which insolvency proceedings were commenced before the National Company Law Tribunal, Chandigarh Bench ('NCLT') and an order was passed by the NCLT on 27th July, 2018, appointing a Resolution Professional ('RP') in respect of the said company. Those proceedings are stated to be pending.

2. The Petitioners are aggrieved by two notices, the first being a notice dated 31st January, 2020, informing the Petitioners that the Selection Committee of the Oriental Bank of Commerce ('OBC'), since then merged with the Punjab National Bank (Respondent No. 1), had in its proceedings on 24th July, 2019 decided that the matter pertaining to the declaration of the company's account as 'willful defaulter', in respect of which a show cause notice ('SCN') dated 1st July, 2019 had been issued to the company and the Petitioners, should be placed before the Review Committee of the Board on Willful Defaulters and Non-Cooperative Borrowers for consideration. The letter further states that when the matter was placed before the Review Committee on 17th December, 2019, the Committee decided to give the

Petitioners a final opportunity to submit written submissions within 15 days from the date of the letter, before taking a decision in the aforesaid matter.

3. The challenge in the present petition is also to the consequential communication dated 30th March, 2020 of OBC informing the Petitioners, as well as the company and co-guarantor Ms. Sudha Aggarwal, that with no representation having been received from the Petitioners, in response to the notice dated 31st January, 2020, the Review Committee at its meeting on 19th March, 2020 had decided that the company's account be approved for "declaration as willful defaulter".

4. It is vehemently contended by Mr. Aalok Jagga, learned Counsel for the Petitioners, on the strength of a judgment dated 14th February, 2017 of a Division bench of this Court in CWP No. 3307 of 2016 ***(M/s Oswal Apparels Private Limited, Ludhiana v. State Bank of India, Ludhiana)***, that the OBC had failed to provide the Petitioners with a copy of the Forensic Audit Report on the basis of which the initial SCN was issued to the Petitioners on 1st July, 2019 for declaring the account as 'willful defaulter'. It is further submitted that the stand taken by the OBC in its letter dated 15th July, 2019, in response to the Petitioners' reply dated 9th July, 2019 to the SCN seeking a copy of the aforesaid report, is incorrect for the simple reason that the financial statements, which form the basis of the Forensic Audit Report, were not available with the Petitioners since the NCLT had appointed a RP for the company in question.

5. This Court notes that when the Petitioners first replied to the SCN on 9th July, 2019, the stand taken was that in absence of the forensic audit report, mentioned in the aforesaid SCN, being provided to them, they would neither be in position to reply to queries nor will there be any logic of attending the committee's meeting on 12th July, 2019. The OBC in a response dated 15th July, 2019 to the Petitioner's aforesaid reply, pointed out, while requesting the Petitioners to appear at the committee's meeting scheduled on 24th July, 2019, that the observations made in the forensic audit report were based purely on the financials made available to the Forensic Auditors by the

Petitioners. It was accordingly stated that there was no need to provide a copy of the report to the Petitioners.

6. In the further reply dated 22nd July, 2019, the Petitioners virtually repeated verbatim the contents of the earlier letter dated 9th July, 2019. The stand now taken by Mr. Aalok Jagga before the Court is that, in view of the RP being appointed by the NCLT in respect of the company, the Petitioners have no access to their financials. However, this fact does not even find mention in the further reply dated 22nd July, 2019.

7. The further fact of the matter is that when the Petitioners were informed by the letter dated 31st January, 2020 that a decision had been taken to place the matter before the Review Committee for the purposes of "declaring the company's account as willful defaulter" and written submissions were called for from the Petitioners, the Petitioners chose not to file any submissions. It is for this reason that the letter dated 30th March, 2020, declaring the account as willful defaulter states as under:-

> "However, no written representation is received at our end in response to the above mentioned letter within the stipulated time frame. Therefore, the matter was placed before and perused by the Review Committee of the Board on Non-Cooperative Borrowers and Willful Defaulters in its meeting held on 19th March, 2020 and reviewed the orders of the Screening Committee, records of the matter and other relevant papers/documents. On the basis of deliberation and discussion and perusal of above mentioned records the Review Committee has decided that your Name/Account be approved for declaration as willful defaulter."

8. In the facts and circumstances, the Court finds the reliance by Mr. Aalok Jagga on the decision of this Court in ***M/s Oswal Apparels Private Limited, Ludhiana*** *(supra)* to be misplaced. In the present case, it is difficult to accept the plea of the Petitioners, who were the Directors of M/s J.R. Agro Tech Private Limited, that throughout the time that they were Directors they did not have access to the financials. It appears that while Petitioner No. 1 resigned sometime in 2018, Petitioner No. 2 continued as Director till the admission of the petition by the NCLT and the appointment of the RP i.e. till 27th July, 2018. It is, therefore, difficult to believe that neither of the

Petitioners had any access to the financials till this date. There is no statement anywhere in the petition or in any of the replies that the Petitioners had not retained the copies of the balance-sheet and accounts of the company, which had been earlier submitted by them to the Forensic Auditors. This is an argument being made only before this Court for the first time.

9. In the circumstances, the Court finds nothing unreasonable in the stand taken by the OBC that since the forensic audit report was based on the financials submitted by the Petitioners to OBC, there was no need to provide a separate copy thereof to the Petitioners. It appears to the Court that the Petitioners were only buying time to postpone the inevitable of the Petitioners being declared as willful defaulters. Accordingly, the Court declines to interfere with the impugned notices.

10. The Court notes that the proceedings before the NCLT are pending. If and when the company is revived, the NCLT will certainly take into account whether there would be any justification for continuing the status of the Petitioners as willful defaulters.

11. The petition is dismissed in the above terms.

(S. MURALIDHAR)
JUDGE

(AVNEESH JHINGAN)
JUDGE

3rd November, 2020
jk

Whether speaking/reasoned Yes/No
Whether reportable Yes/No