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

%	Date of Decision: 09.07.2020

\+	W.P.(C) 3725/2020 and CM No. 13345/2020

ISHWAR CHAND GOEL AND ANR	..... Petitioners

Through	Mr.Sumesh Dhawan, Ms.Vatsala Kak and Ms.Ankita Bajpai, Advs.

versus

SHREE AMBICA INTERNATIONAL FOOD PVT LIMITED AND ORS	..... Respondents

Through	Mr.Mahesh Bansal, RP.
Mr. O.P. Gaggar, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. This writ petition is filed by the petitioners seeking an appropriate writ /direction for setting aside/quashing the impugned action of respondent No. 2 Bank in declaring the petitioners as wilful defaulters as unlawful and illegal. Directions are also sought to direct respondent No. 2 Bank to give an opportunity of personal hearing to the petitioners to present the case in terms of the RBI Circular dated 01.07.2015 on wilful defaulters.

2. The case of the petitioners is that respondent No. 2 Bank issued a show cause notice on 18.07.2018 for classification of the petitioners as wilful defaulters. The petitioners gave a reply on 25.08.2018. On 01.09.2018, a communication was received from respondent No.2 stating

that they have decided to declare the petitioners as wilful defaulters.

3. In the meantime, the NCLT in a petition filed by SBI appointed Mr.Mahesh Bansal as an RP for respondent No. 1. It was the RP who had informed the petitioners that the petitioners have been declared as wilful defaulters.

4. I have heard learned counsel for the parties.

5. Learned counsel for the petitioners has strongly urged that respondent No. 2 Bank has failed to abide by the Circular of the RBI dated 01.07.2015. It is also pleaded that respondent No. 2 has also failed to abide by the directions given by the Supreme Court in the case of ***SBI v. Jah Developers (P) Ltd.*****, (2019) 6 SCC**. Hence, it is further pleaded that the First Committee that sat and came to the conclusion that the petitioners' case is a fit case to declare them as wilful defaulters never communicated its decision or reasons to the petitioners. Hence, the petitioners were not able to make any representation to the Review Committee. No communication was also received by the petitioners from the Review Committee. It is pleaded that now with the counter-affidavit respondent No. 2 Bank has placed on record the minutes of the meeting of the First Committee dated 31.10.2018 where a proposal has been made to declare the petitioners as wilful defaulters. It is pleaded that the grounds for declaring the petitioners as wilful defaulters were never earlier communicated to the petitioners.

6. Learned counsel for respondent No. 2 Bank has pleaded that the judgment of the Supreme Court in the case of ***SBI v. Jah Developers (P) Ltd.(supra)*** has no application to the facts of this case as in that case the issue involved was as to whether a lawyer can represent a defaulter in the proceedings initiated in terms of the Circular of RBI dated 01.07.2015.

7. I may look at the judgment of the Supreme Court in the case of ***SBI v. Jah Developers (P) Ltd.(supra),*** relevant part of which reads as follows:-

> "24**.** Given the above conspectus of case law, we are of the view that there is no right to be represented by a lawyer in the in-house proceedings contained in Para 3 of the Revised Circular dated 1-7-2015, as it is clear that the events of wilful default as mentioned in Para 2.1.3 would only relate to the individual facts of each case. What has typically to be discovered is whether a unit has defaulted in making its payment obligations even when it has the capacity to honour the said obligations; or that it has borrowed funds which are diverted for other purposes, or siphoned off funds so that the funds have not been utilised for the specific purpose for which the finance was made available. Whether a default is intentional, deliberate, and calculated is again a question of fact which the lender may put to the borrower in a show-cause notice to elicit the borrower's submissions on the same. However, we are of the view that Article 19(1)(*g*) is attracted in the facts of the present case as the moment a person is declared to be a wilful defaulter, the impact on its fundamental right to carry on business is direct and immediate. This is for the reason that no additional facilities can be granted by any bank/financial institutions, and entrepreneurs/promoters would be barred from institutional finance for five years. Banks/financial institutions can even change the management of the wilful defaulter, and a promoter/director of a wilful defaulter cannot be made promoter or director of any other borrower company. Equally, under Section 29-A of the Insolvency and Bankruptcy Code, 2016, a wilful defaulter cannot even apply to be a resolution applicant. Given these drastic consequences, it is clear that the Revised Circular, being in public interest, must be construed reasonably. This being so, and given the fact that Para 3 of the Master Circular dated 1-7-2013 permitted the borrower to make a representation within 15 days of the preliminary decision of the First Committee, we are of the view that first and foremost, the Committee comprising of the Executive Director and two other senior officials, being the First Committee, after following Para 3(*b*) of the Revised Circular dated 1-7-2015, must

give its order to the borrower as soon as it is made. The borrower can then represent against such order within a period of 15 days to the Review Committee. Such written representation can be a full representation on facts and law (if any). The Review Committee must then pass a reasoned order on such representation which must then be served on the borrower. Given the fact that the earlier Master Circular dated 1-7-2013 itself considered such steps to be reasonable, we incorporate all these steps into the Revised Circular dated 1-7-2015. The impugned judgment [*SBI* v. *Jah Developers (P) Ltd.*, LPA No. 113 of 2015 sub nom *Punjab National Bank* v. *Kingfisher Airlines Ltd.*, 2015 SCC OnLine Del 14128 : (2016) 154 DRJ 164] ' [*Kingfisher Airlines Ltd.* v. *Union of India*, 2015 SCC OnLine Bom 6075 : (2016) 2 Mah LJ 838] is, therefore, set aside, and the appeals are allowed in terms of our judgment. We thank the learned Amicus Curiae, Shri Parag Tripathi, for his valuable assistance to this Court."

8. Clearly, in terms of the above judgment, the First Committee comprising Executive Director and two other senior officials must give its order to the borrower as soon as it is made. It is thereafter that the borrower can then represent against such an order within a period of 15 days to the Review Committee. Thereafter, the Review Committee has to pass a reasoned order on such representation

9. The facts of this case are that the First Committee did not serve on the petitioners any copy of its order that was made in the meeting on 31.10.2018. In fact, it is the case of the petitioners that no communication was received by the petitioners saying that the Committee had decided to declare the petitioners as wilful defaulters. This information was given to the petitioners by the RP.

10. In the absence of receipt of a copy of the order of the First

Committee, the petitioners were deprived of their rights to make an appropriate representation to the Review Committee. The Review Committee has passed an order on 19.03.2019. However, a copy of the said order is not placed on record along with the counter-affidavit. It is manifest from the above that respondent No. 2 Bank has failed to fully abide by the terms of the RBI Circular dated 01.07.2015. They have also failed to abide by the procedure which has been clarified by the Supreme Court in the case of ***SBI v. Jah Developers (P) Ltd.(supra).***

11. In view of the above, the order declaring the petitioners as wilful defaulters passed by the Review Committee is accordingly set aside.

12. The decision of the First Committee has been placed on record with the counter-affidavit by respondent No. 2. Hence, to that extent, the petitioners are now aware of the order of the First Committee. An opportunity is granted to the petitioners to within two weeks from today to make a representation against the said order to the Review Committee. Thereafter, the Review Committee is free to take a decision on the said representation of the petitioners as per law. The Review Committee is requested to expeditiously pass an appropriate order as per law.

13. The petition stands disposed of. Pending application also stands disposed of.

JAYANT NATH, J

JULY 09, 2020
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