AD. 43.
January 6, 2021.
MNS.

W. P. A. 11867 of 2020
(**Via video conference**)

Om Prakash Agarwala and another
Vs.
Reserve Bank of India and others

Mr. Jishnu Chowdhury,
Mr. Ariutra Basu,
Ms. Ritu Basu,
Ms. Roshni D. Acharya,
Mr. S. K. Singhi

… for the petitioners.

Mr. Abhishek Banerjee,
Ms. Parna Roychoudhury

…for the respondent nos. 2 to 7.

Affidavit-of-service filed in Court today be taken on record.

Learned counsel for the petitioners contends that the respondent-bank has issued a show cause notice under the Reserve Bank of India Circular of 2015 on October 20, 2020 (at page – 98 of the writ petition), thereby reaching a foregone conclusion as to the petitioners being wilful defaulters even before issuing the said show cause notice. As such, learned counsel argues that the show cause notice itself is vitiated in law.

Learned counsel cites a judgment reported at (2019) 6 Supreme Court Cases 787 ***(State Bank of India Vs. Jah Developers Private Limited and others)*** for the proposition that even a preliminary decision of the first Committee has to be followed by service of a copy of such decision on the alleged willful defaulters prior to the petitioners' representation before the first Committee.

Learned counsel places specific reliance on the expression "preliminary decision" used in paragraph- 24 of the said judgment to advance such argument.

Learned counsel further submits that the show cause notice, annexed at page- 99 of the writ petition, refers to several documents, in particular a forensic audit report, on which the respondent-bank apparently relied on to come to the preliminary conclusion that the petitioners are willful defaulters. It is submitted that unless copies of such documents are furnished to the petitioners, the petitioners would not be in a position to give a meaningful representation on the show cause notice before the Wilful Defaulter Committee or subsequently before the Review Committee, if such stage is reached.

Learned counsel appearing for the respondent nos. 2 to 7 submits that the bank has no objection to serve copies of the relevant documents with regard to the show cause notice on the petitioners.

As regards the first question raised by the petitioners, the same cannot be accepted as a valid proposition of law in view of the specific language of clauses- 3(a) and (b) of 2015 circular. The said sub-clauses are quoted hereinbelow :

> *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 issued 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.*

Read conjointly, it is clear that the initial conclusion arrived at by the Committee to issue a show cause notice, as referred to in sub-clause-(b), need not be preceded by a justiciable order as such. Sub-clause (a) merely provides that upon there being evidence of willful default on the part of the borrowing company, such evidence should be examined by a Committee headed by an Executive Director or equivalent and consisting of other two senior officers of the rank of GM / DGM. There is no contemplation of any specific decision being arrived at by the said Committee, at least in sub-clause (a). Such examination, as envisaged in sub-clause (a), is followed by issuance of a show cause notice if the Committee “concludes” that wllful default has occurred. However, in view of the now-settled position of law, particularly after *Jah Developers Private Limited (supra)*, that copies of orders of both the Identification Committee and Review Committee passed upon considering the representation of the alleged willful defaulters have to be served on the concerned directors, there is no scope for introducing any further opportunity of representation by the petitioners prior to the show cause being issued. The expression "concludes" in the first sentence of sub-clause (b) does not, thus, indicate any justiciable order being arrived at by the Committee, but is merely conceives of a preliminary perception of the Committee regarding commission of wilful default, upon examination of the relevant materials.

The question of adjudication starts only after the show cause notice is issued, followed by a reply by the alleged willful defaulter, after which the said committee has to pass an order in writing and serve a copy thereof on the alleged defaulter. Prior thereto, there is no scope, even as per *Jah Developers (supra),* of furnishing copy of any order to the defaulter.

The expression "preliminary decision", as mentioned in paragraph- 24 of *Jah Developers (supra)* is succeeded by the rest of the sentence, in which the expression appears, which makes it clear that the preliminary decision referred to therein has to be after following para- 3(b) of the Revised Reserve Bank of India circular dated July 1, 2015, which envisages not the initial conclusion prior to issuance of show cause notice but the decision arrived at by the Identification Committee after show cause.

Thus, the first argument of the petitioners does not hold water.

As regards the other argument, that the respondent –bank ought to have served copies of the relevant documents on the petitioners, there is substance in that regard in view of the proposition laid down in *Jah Developers (supra)* and also subsequent decisions of this Court and the mechanism provided in clause- 3 of the 2015 circular itself.

Moreover, since learned counsel for the bank, in his usual fairness, submits that the bank shall furnish such copies, there is impediment in directing the bank to do so.

Accordingly, W. P. A. 11867 of 2020 is disposed of by directing respondent nos. 2 to 6 to supply copies of all relevant documents, which may be considered by the respondents-bank in arriving at a decision as to whether the petitioners are wllful defaulters, including the purported forensic audit report referred to in the impugned show cause notice, to the petitioners.

Needless to say, such copies shall be served on the petitioners sufficiently prior to the date of hearing (at least fifteen days before such date) by the first committee, in order to enable the petitioners to give a comprehensive and appropriate representation on the same before the first committee.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)