



IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 29.10.2021
CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

Writ Petition Nos. 12291 and 12305 of 2020
and WMP.Nos.15088, 15089 and 15112 of 2020

Ahmed A.R. Buhari
5, Thomson Lane
41-02 SKY @ Eleven
Singapore - 297724
represented by his constituted attorney.. Petitioner in both
Mr. S. Rajasekaran the Writ Petitions

Versus

1. The Department of Banking Regulation
Reserve Bank of India
13th Floor, Central Office Building
Mumbai - 400 001
2. IDBI Bank
having its registered office at
IDBI Tower, WTC Complex, Cuffe
Parade Mumbai 400 005

and a Branch office at
No.115, Anna Salai
Saidapet, Chennai - 600 015
3. Coastal Energy Private Limited
having its registered office at
Door No.11, Mahalingapuram Main Road
Nungambakkam, Chennai - 600 034

and represented by
Resolution Professional
Mr. S. Rajagopal, having registration number
IBPI/IPA-002/IP-N00082/2017-18/10223

.. Respondents in both
the Writ Petitions

WP No. 12291 of 2020:- Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari calling for the records of the second respondent in respect of the impugned communication dated 8 December 2017 bearing number 1121/IDBI/NMG/CHN/CEPL/2017-18 and all proceedings connected and in relation thereto, and quash the same as being illegal, arbitrary and violative of principles of natural justice.

<https://hcservices.ecourts.gov.in/hcservices/>

WP No. 12305 of 2020:- Petition filed under Article 226 of The Constitution of India praying to issue a Writ of



Declaration that the entire proceedings of the second respondent bank commencing with the issuance of the show cause notice dated 25th July 2017 and culminating in the declaration of the petitioner as a wilful defaulter under the RBI Master Circular dated 1st July 2015 are unconstitutional and ultra vires, and in total disregard of the safeguards provided under the RBI Master Circular dated 1st July 2015.

For Petitioner : Ms. Madhu Preetha
for Mr. R. Parthasarathy
in both the Writ Petitions

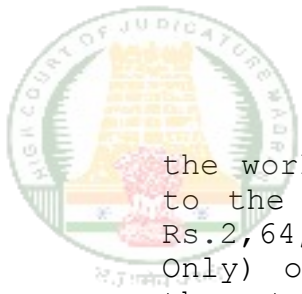
For Respondents : No appearance for R1
in both the Writ Petitions

Mr. N.V. Srinivasan
for Mr. Varur Srinivasan for R2
in both the Writ Petitions

Mr. B. Danaraj for R3
in both the Writ Petitions

COMMON ORDER

According to the petitioner in these two writ petitions, he is the founder and director of various Group of companies, including Coal & Oil Company LLC and Coastal Energen Private Limited (Energen), which have been involved in the business of coal trading and power generation, respectively. Both Coal & Oil Company LLC and Coastal Energen Private Limited, among other companies have been closely associated with the third respondent company (CEPL) due to common management and connecting businesses. Since these companies were under common management, had connecting businesses as well as common bankers, transactions were entered into between the companies for purchase and sale of coal. During the course of such business, the third respondent herein had availed working capital facilities aggregating Rs.2,77,00,00,000/- (Rupees Two Hundred and Seventy Seven Crores Only) from the second respondent bank in terms of facility agreement dated 07.01.2010. The facilities availed were secured by hypothecation of the current assets, personal guarantee and omnibus counter guarantee dated 10.09.2009 furnished by the third respondent, besides corporate guarantee by Coal and Oil Company LLC. Such facilities of the third respondent were also revised and/or enhanced from time to time by the second respondent bank with credit limits of Rs.14,59,00,00,000/- (Rupees One Thousand Four Hundred and Fifty Nine Crores Only). That apart, the third respondent availed disbursements aggregating Rs.5,20,00,00,000/- (Rupees Five Hundred and Twenty Crores Only). On 16.07.2011, a supplementary facility agreement was executed between the respondents 2 and 3, for which security documents were also executed. On 29.04.2015,



the working capital facilities granted by the second respondent to the third respondent were renewed for an aggregate sum of Rs.2,64,00,00,000/- (Rupees Two Hundred and Sixty Four Crores Only) on the terms and conditions contained therein read with the terms of the facility agreement and supplementary agreement.

2. The petitioner further stated that post 2014-2015, the third respondent company faced severe financial hardship on account of reasons beyond their control. Resultantly, they were unable to meet its payment obligations to the second respondent bank. Therefore, during the year 2016, the petitioner's account with the second respondent bank as well as other lender banks were classified as SMA 2 (Special Mention Account 2) category accounts. On 05.01.2016, a Joint Lenders Meeting of the Petitioner's lender banks including the second respondent bank was held to decide the future course of action inter alia to infuse funds to avoid declaration of the accounts as Non-performing Asset (NPA). Subsequently, on 30.03.2016, the second respondent along with other lender banks executed a joint lenders forum agreement for formulation of a corrective action plan for resolution of the stress in the third respondent's accounts. On 07.04.2016, the third respondent submitted a proposal to the second respondent bank for settlement. Thereafter, on various dates, joint lenders meetings were held, in which re-structuring of debt and other requisitions were made by the third respondent company and there were exchange of communications between them. While so, on 19.04.2017, the second respondent send a demand notice to the petitioner and the third respondent calling upon them to pay the debts, to which, the third respondent has offered 400 acres of Tuticorin land as fulfilment of their obligations towards creation of collateral security. Subsequently, on 19.05.2017, the second respondent bank sent a communication with regard to observation made by the forensic auditor in its report. Ultimately, on 25.07.2017, the second respondent issued a show cause notice to the petitioner and the third respondent calling upon them to show cause as to why they should not be declared as a Wilful defaulter by citing the forensic audit report conducted at the instance of the second respondent. A detailed reply dated 10.08.2017 was submitted by the third respondent. Notwithstanding the same, by the communication dated 08.12.2017 of the second respondent informed about the order of the identification committee identifying the petitioner and the third respondent as wilful defaulter, as confirmed by the Review committee. Challenging the communication dated 08.12.2017, the petitioner has filed WP No. 12291 of 2020 to quash the same.

3. The petitioner has also filed WP No. 12305 of 2020 praying to issue a Writ of Declaration to declare that the entire proceedings of the second respondent bank commencing with the issuance of the show cause notice dated 25th July 2017 and culminating in the declaration of the petitioner as a wilful defaulter under the RBI Master Circular dated 1st July



2015 as unconstitutional and ultra vires, and in total disregard to the safeguards provided under the RBI Master Circular dated 1st July 2015.

4. Denying the averments made in the writ petitions, the second respondent filed a common counter affidavit in detail, wherein it is inter alia stated that all actions taken by the second respondent were in consonance with the RBI norms particularly the circular dated 01.07.2015, with thorough adherence to the principles of natural justice.

5. The principal contention of the learned counsel for the petitioner is that the second respondent bank has systematically and deliberately proceeded to seriously affect and harm the reputation and business interest of the petitioner and other promoters/directors of the third respondent company, by conducting audit and proceedings for alleged "wilful default" secretly, but giving wide publicity of their declaration of wilful defaulters, without furnishing a copy of the decision or reports or an opportunity to the petitioner to demonstrate the very untenability of proceedings initiated against the petitioner. Further, even after two years of passing the order, declaring the petitioner and third respondent as Wilful defaulters, the second respondent bank did not furnish the copy of the proceedings before the Identification Committee, the Review Committee as well as the alleged forensic audit report which formed the basis for such declaration. Thus, according to the learned counsel, the non-furnishing the said documents vitiates the entire proceedings of declaration of the petitioner and the third respondent as Wilful defaulters and on this ground alone, the writ petitions will have to be allowed.

6. Heard the learned counsel appearing for the second respondent bank as well as the third respondent company and perused the materials placed on record.

7. In these writ petitions, the petitioner challenges the entire proceedings initiated by the second respondent bank, culminating in declaration of the petitioner as wilful defaulter, mainly on the ground that the same is arbitrary, illegal and violative of the principles of natural justice, stating that even after two years of the decision of wilful defaulter taken by the second respondent bank, copies of the proceedings of the Identification committee and Review committee and the alleged forensic audit report have not been furnished to the petitioner, to put forth his defence.

8. At this juncture, it is relevant to refer to the decision of the supreme court in SBI v. Jah Developers (P) Ltd [(2019) 6 SCC 787], wherein, it was held that 'Article 19(1)(g) is attracted, as the moment a person is declared to be a wilful defaulter and the impact on its fundamental right to carry on business is direct and immediate'. For better appreciation, the relevant passage of the said decision is extracted below:

"24. Given the above conspectus of case law,



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we are of the view that there is no right to be represented by a lawyer in the in-house proceedings contained in paragraph 3 of the Revised Circular dated 01.07.2015, as it is clear that the events of wilful default as mentioned in paragraph 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 29A 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 paragraph 3 of the Master Circular dated 01.07.2013 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 paragraph 3(b) of the Revised Circular dated 01.07.2015, 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 01.07.2013 itself considered such steps to be reasonable, we incorporate all



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these steps into the Revised Circular dated 01.07.2015. The impugned judgment 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."

9. The High court of Telangana at Hyderabad in Rajesh Agarwal v. Reserve Bank of India [2021 (2) ALD 290] was of the view that "considering the grave civil consequences and penal action, which would be followed as a result of classifying a borrower as 'a fraudulent borrower' or 'a holder of a fraudulent account', it is imperative that principles of natural justice must be read into clauses 8.9.4 and 89.9.5 of the Master Circular" and accordingly, the writ petition was allowed, with the following directions and the terms:

70.1. Firstly, the principle of audi alteram partem, part of the principles of natural justice, is to be read in Clause 8.9.4 and 8.9.5 of the Master Circular.

70.2. Secondly, the decision, dated 15.02.2019, passed by the JLF, and the resolution dated 31.07.2019, passed by the FIC are, hereby, set aside.

70.3. Thirdly, the JLF is directed to give an opportunity of hearing by furnishing copies of both the Reports, namely the Forensic Auditor Report, dated 06.04.2018 and the subsequent Report submitted by Dr. K.V. Srinivas, IRP, to the petitioner, and to the OL.

70.4. Fourthly, the JLF is directed to give an opportunity of personal hearing both to the petitioner and to the OL before taking any decision on the issue whether the account should be classified as 'fraud' or not?

70.5. Fifthly, after the JLF has taken its decision, the FIC is directed to pass its resolution whether the decision of the JLF should be confirmed or not?

70.6. Lastly, the said exercise shall be carried out by the JLF within a period of three months from the date of receipt of the certified copy of this judgment. Furthermore, the subsequent exercise by FIC shall be carried out within two months from the date of the decision of the JLF.

10. The aforesaid order of the High Court of Telangana at Hyderabad in Rajesh Agarwal case was put to challenge by the Bank before the supreme court in Special Leave to Appeal (C) No.3931 of 2021. However, the supreme court by order dated 15.04.2021, has stayed the order of the High Court in respect of grant of personal hearing, alone.

11. Applying the aforesaid legal proposition to the facts of the present case, wherein, the petitioner along with the third respondent was declared as wilful defaulter, at the



instance of the second respondent bank, without even furnishing the copies of the orders of the identification committee and review committee as well as the forensic audit report, which was the basis for such declaration, this Court is of the view that there cannot be any impediment for the second respondent bank to supply the non-confidential documents, which were relied against the petitioner as well as the third respondent company, for the purpose of declaring them as Wilful defaulters. Accordingly, the second respondent bank is directed to furnish the copies of non-confidential documents sought for by the petitioner as well as the third respondent company, including the forensic audit report, within a period of two weeks from the date of receipt of a copy of this order. At the same time, it is made clear that the second respondent bank shall retain those documents, which are categorised as 'confidential documents'. On receipt of the documents from the second respondent bank, it is open to the petitioner as well as the third respondent company to approach the appropriate authority, including the review committee constituted by the second respondent bank by filing necessary objections or for appropriate relief as are available to them under law, within a period of two weeks thereafter, failing which, it is open to the second respondent to proceed further in the manner known to law.

12. These writ petitions are disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Department of Banking Regulation
Reserve Bank of India
13th Floor, Central Office Building
Mumbai - 400 001
2. IDBI Bank
having its registered office at
IDBI Tower, WTC Complex, Cuffe
Parade Mumbai 400 005
and a Branch office at
No.115, Anna Salai, Saidapet, Chennai - 600 015

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+2 ccs to Mr.N.V.S.Associates, Advocate Sr.NO.57046,57047
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