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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.26640 to 26645 of 2014
and

M.P.Nos.1 of 2014 (6MP) and 2 of 2014 (3MP)

Best & Crompton Engineering Project Limited,
Rep by its Managing Director,
57, PGP House,
2nd Floor, Sterling Road,
Nungambakkam,
Chennai.

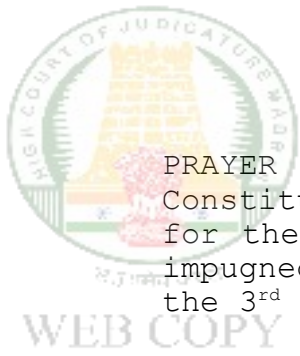
Murali Bellari
Meka Ramakrishna Varma
Kakulammarri Srinivas Kalyan
Seshagiri Rao Ippagunta
B.Narayansamy

...Petitioner in 26640 of 2014
...Petitioner in 26641 of 2014
...Petitioner in 26642 of 2014
...Petitioner in 26643 of 2014
...Petitioner in 26644 of 2014
...Petitioner in 26645 of 2014

Vs.

1. The Corporation Bank,
Rep. By its Chairman and Managing Director,
Corporate Banking Branch,
38 & 39, Whites Road,
Chennai - 600 014.
2. Grievance Redressal Committee,
Headed by the Chairman and Managing Director,
Corporation Bank,
Corporate Banking Branch,
38 & 39, Whites Road,
Chennai - 600 014.
3. The Assistant General Manager,
Corporation Bank,
Corporate Banking Branch,
38 & 39, Whites Road,
Chennai - 600 014.

...Respondents in all WPs



PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records on the file of the respondents and to quash the impugned order in OR:ADV:245:2014-15 dated 6.9.2014 passed by the 3rd respondent.

For Petitioner [in all Wps]	:Mr.M.Vijayan For M/s.King and Partridge
For Respondents [in all Wps]	:Mr.N.Sivabalan [For R1 to R3]

COMMON ORDER

The relief sought for in all the present writ petitions is to quash the impugned order passed by the 3rd respondent in proceedings in OR:ADV:245:2014-15 dated 06.9.2014.

2. The writs on hand have been instituted, questioning the validity of the order dated 06.09.2014 passed by the third respondent, declaring the writ petitioners as "Wilful defaulters".

3. The petitioners are Best & Crompton Engineering Project Limited, Represented by its Managing Director, and its Board of Directors. The history as narrated in the affidavit regarding the formation and development of the Company may not require an adjudication in the present writ petitions as the order under challenge is the order passed by the respondent-Corporation Bank, now amalgamated with the Union Bank of India, declaring the petitioners as 'Wilful defaulters'.

4. The learned counsel for the petitioners mainly contended that the procedures followed for declaring the petitioners as 'Wilful Defaulters' are directly in violation of the Directives of the Hon'ble Supreme Court of India in the case of State Bank of India Vs Jah Developers Private Limited and Others, reported in (2019) 6 Supreme Court Cases 787.

5. It is an admitted fact that the petitioners are defaulters and not paid the dues. However, an opportunity must be provided to the petitioners and merely declaring the petitioners as 'Wilful defaulters' will result in serious adverse consequences in running the Company and therefore, the order impugned is to be revisited with reference to the Directives issued by the Apex Court and accordingly, the writ petitions are to be allowed.

6. The learned counsel for the petitioners drew the attention of this Court with reference to the order impugned, which was issued by the Assistant General Manager as per the



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Directives of the Apex Court of India. The Assistant General Manager is not a competent authority and a decision must be taken by the Committee constituted by the Chairman and the General Managers and in the present case, such a procedure had not been followed and thus, the order impugned is in violation of the procedures as contemplated.

7. No doubt, a Show Cause Notice had been issued and the petitioners also responded to the Show Cause Notice by submitting their explanations. Regarding initiation of Wilful default proceedings, the respondent-Bank issued a letter about Mechanism for Redressal of the Grievance. However, they have not followed the procedures as contemplated.

8. The learned counsel for the petitioner solicited the attention of this Court with reference to the serious consequences in the event of classifying a Company as a 'Wilful defaulter'. In view of the fact that the petitioners have been declared as defaulters, no additional facilities to be granted by any Bank/Financial institutions, Entrepreneurs/Promoters would be barred from institutional finance for a period of 5 years, Any legal proceedings can be initiated, including Criminal complaints, Banks/Financial institutions to adopt a proactive approach in changing the management of the Wilful defaulter, Promoter/Director of wilful defaulter shall not be inducted by another borrowing company. As per Section 29-A of the Insolvency and Bankruptcy Code, 2016, a wilful defaulter cannot be a resolution applicant.

9. This being the serious consequences of declaring the petitioners as the 'Wilful defaulters', the respondent-Bank ought to have taken adequate care to ensure that the procedures had been followed strictly in consonance with the Directives issued by the Supreme Court of India. But in the present case, its is not followed and thus, the order impugned is liable to be set aside.

10. The learned counsel appearing on behalf of the respondent-Bank objected the said contentions raised on behalf of the petitioners by stating that all the procedures as contemplated were scrupulously followed and there is no infirmity as such in respect of the order impugned. Even now the petitioners are defaulters, committed default to the tune of Rs.120 Crores and the fact regarding the default is not disputed. The only question raised by the petitioners is the procedures followed by the Bank. The Committee of Executive Director, Assistant General Manager, Deputy General Manager and two General Mangers was constituted, who in turn, convened a meeting on 28.10.2013 at the Chamber of the Executive Director at Head Office to examine of the 'Wilful Default'. Agenda No.1 deals with the Petitioner / M/s.Best & Crompton Engineering



Projects Ltd., CBB Chennai. Paragraph 1.4, the committee arrived a conclusion that as the borrower has defaulted in meeting its payment / repayment obligations to the Bank and in view of the above observations the Committee resolved to treat the borrowal company as well as its directors/guarantors as "Wilful Defaulters". Thus, a decision was taken by the competent Committee and such Committee examined the documents as well as the prevailing situations during the relevant point of time and taken a decision and passed a resolution, resolving to treat the borrowal company as well as its directors / guarantors as 'Wilful Defaulters'. Thereafter, the show cause notice was issued to the writ petitioners in proceedings dated 28.11.2013. Perusal of the show cause notice reveals that the reasons recorded by the Competent committee was communicated to the petitioners through the show cause notice. The reasons for classifying the writ petitioners as 'Wilful Defaulter' has communicated in the show cause notice, which reads as under:

(i) Unit has defaulted in meeting its payment/repayment obligations to the Bank even when it has the capacity to honour the said obligations.

(ii) Unit has defaulted in meeting its payment / repayment obligations to the Bank and has not utilized the finance from the Bank for the specific purposes for which finance was availed of, but has diverted the funds for other purposes.

(iii) Unit had defaulted in meeting its payment/repayment obligations to the Bank and has siphoned off the funds so that the funds have not been utilized for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets.

In case you intend to make a representation against the above proposal to declare you as a "Wilful Defaulter", you may make a representation to Grievance Redressal Committee headed by the Chairman & Managing Director of the Bank within 15 days from the date of receipt of this letter. On receipt of your representation, if any, you will be given a hearing by this Committee at our Head Office, before a final decision to declare you as "Wilful Defaulter" are taken by the Bank."

11. On receipt of the show cause notice, the petitioner submitted its objections/explanations and thereafter, in letter dated 20.12.2013, the respondent issued a letter, stating about the Mechanism for redressal of the grievances. The respondent-Bank requested the petitioner to attend for the personal hearing before the Grievance Redressal Committee headed by the Chairman and the Managing Director of the Respondent Bank at Bank's Corporate Office, Mangalore on 31.12.2013 at 10.30 a.m., to hear



the representation submitted by the writ petitioner. Thus, an opportunity of personal hearing was provided to the writ petitioner after taking a decision by the competent Committee, classifying the petitioners as "Wilful Defaulters". In letter dated 03.04.2014, the respondent-Bank again communicated that the loan account standing in the name of the petitioner Company have become NPA on 15.10.2012 and the petitioner was identified as 'Wilful Defaulter' by the Committee for Examination of Wilful Default on 28.10.2013 as per the RBI circular on Wilful Default.

12. It is further communicated that the Grievances Redressal Committee meeting was held 31.12.2013 at the Head Office and the petitioner company was represented by Mr.K.Srinivas Kalyan Rao, Chairman and Mr.Narayana Swamy, Director.

13. In view of the submissions made by the petitioner company, the Grievances Rederssal Committee decided to re-examine the issue of observation of Wilful default taken by the competent Committee in its resolution dated 28.10.2013, the Grievances Redressal Committee convened meeting on 30.06.2014 and CMD and Charmian of the Grievances Redressal Committee was the Chairman of the meeting, two General Managers were the members of the Committee. The Deputy General Manager was the Convener and the Executive Director and the General Manager participated as invitees. The Grievances Redressal Committee again considered the decision taken by the Committee for examination of Wilful Default on 28.10.2013 and the representations submitted by the writ petitioners and accordingly, taken a decision, confirming the resolution passed by the Committee for examination of Wilful Defaulter on 28.10.2013. Accordingly, the writ petitioners were finally declared as 'Wilful Defaulter' and the final decision of the Committee was communicated to the writ petitioners through the impugned order by the Assistant General Manager.

14. Let us now examine the Directives of the Hon'ble Supreme Court of India in the case of State Bank of India Vs Jah Developers Private Limited (cited supra). Paragraphs 3 and 4 of the judgment are relevant, which reads as under:

"3. Under this Master Circular, "wilful default" has been defined as follows:

"2.1. Definition of wilful default.-The term "wilful default" has been redefined in supersession of the earlier definition as under:

A "wilful default" would be deemed to have occurred if any of the following events is noted:

(a) The unit has defaulted in meeting its payment/repayment obligations to the lender even when it has the capacity to honour the said obligations.



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(b) The unit has defaulted in meeting its payment/repayment obligations to the lender and has not utilised the finance from the lender for the specific purposes for which finance was availed of but has diverted the funds for other purposes.

(c) The unit has defaulted in meeting its payment/repayment obligations to the lender and has siphoned off the funds so that the funds have not been utilised for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets.

(d) The unit has defaulted in meeting its payment/repayment obligations to the lender and has also disposed off or removed the movable fixed assets or immovable property given by him or it for the purpose of securing a term loan without the knowledge of the bank/lender."

4. The grievance redressal mechanism is set out in Para 3 of the Master Circular as follows:

"3. Grievances Redressal Mechanism.—Banks/FIs should take the following measures in identifying and reporting instances of wilful default:

(i) With a view to imparting more objectivity in identifying cases of wilful default, decisions to classify the borrower as wilful defaulter should be entrusted to a Committee of higher functionaries headed by the Executive Director and consisting of two GMs/DGMs as decided by the Board of the bank/FI concerned.

(ii) The decision taken on classification of wilful defaulters should be well documented and supported by requisite evidence. The decision should clearly spell out the reasons for which the borrower has been declared as wilful defaulter vis-à-vis RBI guidelines.

(iii) The borrower should thereafter be suitably advised about the proposal to classify him as wilful defaulter along with the reasons therefor. The borrower concerned should be provided reasonable time (say 15 days) for making representation against such decision, if he so desires, to a Grievance Redressal Committee headed by the Chairman and Managing Director and consisting of two other senior officials.

(iv) Further, the above Grievance Redressal Committee should also give a hearing to the borrower if he represents that he has been wrongly classified as wilful defaulter.

(v) A final declaration as "wilful defaulter" should be made after a view is taken by the Committee on the representation and the borrower should be suitably advised."



15. Regarding the definition of 'Wilful Default', no doubt, the petitioners have not paid the dues and the documents placed before the Committee was considered by the said Committee and a decision was taken, classifying the petitioners as 'Wilful Defaulters'. The violations raised by the petitioners are regarding the procedures followed with reference to Paragraph 4 of the judgment, which speaks about Grievances Redressal Mechanism. Accordingly, the Bank should take measures in identifying and reporting instances of Wilful default to classify the borrower as the wilful defaulter should be entrusted to a Committee of higher functionaries headed by the Executive Director and consisting of two GMs/DGMS as decided by the Board of the Bank. The second step would be the decision taken on classification of wilful defaulters should be well documented and supported by requisite evidence. Such a decision should clearly spell out the reasons for which the borrower has been declared as wilful defaulter vis-à-vis RBI guidelines.

16. The borrower should thereafter be suitably advised about the proposal to classify him as wilful defaulter along with the reasons ("Show Cause Notice"). The borrower concerned should be provided reasonable time (say 15 days) for making representation. The Hon'ble Supreme Court of India further proceeded by stating that if he so desires, to a Grievance Redressal Committee headed by the Chairman and Managing Director and consisting of two other senior officials. The Grievance Redressal Committee should also give a hearing to the borrower if he represents that he has been wrongly classified as wilful defaulter.

17. In this context, we have to examine the procedures followed by the Bank in the present case. Admittedly, the committee for examination of Wilful Default held on 28.10.2013. The petitioner's company has been included in the Agenda No.1 and the reasons are also stated for forming an opinion and the said Committee for examination of Wilful Default arrived a conclusion and resolved to treat the borrower company as well as its Directors / Guarantors as Wilful Defaulters. Thus, the Committee for examination of Wilful Default examined the document, included the Petitioner's Company in Agenda No.1, furnished reason, took a decision and passed a resolution. Based on the resolution passed by the Committee, show cause notice was issued to the petitioner in proceedings dated 28.11.2013.

18. The committee's decision as well as the reasons for passing a Resolution, classifying the petitioners as 'Wilful Defaulters' also furnished in the show cause notice issued to the petitioners. Thus, the petitioners were provided with an opportunity to understand the reasons and the basis for classifying the petitioners as 'Wilful Defaulters' and

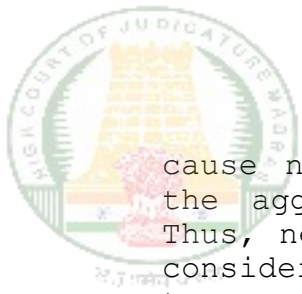


responding the said notice, the petitioner submitted its explanations/objections. Further, the notices were communicated to the Directors of the company also in proceedings dated 28.11.2013. The said notice also indicates that the reasons furnished by the Committee was communicated to the Directors. Thereafter, the matter was referred to the Grievances Redressal Committee and the representation submitted by the petitioner was considered. The objections also considered and matter was referred to the Grievances Redressal Committee constituted by the CMD and Chairman of Grievance Redressal committee and two General Managers, who in turn, convened a meeting on 30.06.2014 and considered the decision taken by the Committee for examination of Wilful Default, objections submitted by the petitioner and other documents and accordingly, confirmed the decision taken by the Committee for examination of Wilful default. The said decision of the Grievance Committee was communicated to the writ petitioner by the Assistant General Manager in proceedings dated 06.09.2014, which is impugned in the present writ petitions.

19. The learned counsel for the petitioners emphasized that Paragraph 3 of the Master Circular on Wilful Defaulters issued by the Reserve Bank of India dated 01.07.2014 has been violated in this case, more specifically, the procedures contemplated in Paragraph 3 of the Master Circular are violated.

20. The learned counsel for the petitioner failed to note that the very same Paragraph 3 of the Reserve Bank of India Master Circular, grievance redressal mechanism had been considered by the Hon'ble Supreme Court of India in the case of State Bank of India (cited supra). The Apex Court extracted Clause 3 of the Master Circular and the present facts and circumstances also considered with reference to the Master Circular of the Reserve Bank of India and also the ruling of the Hon'ble Supreme Court. Thus, the very contention raised by the learned counsel for the petitioner is misconceived as the Apex Court considered the Reserve Bank of India Master Circular for the purpose of declaring a person as 'Wilful Defaulter'. Thus, the Reserve Bank of India Master Circular as well as the Directives issued by the Apex Court of India are followed and the principles of natural justice has been complied in respect of the present case on hand.

21. The learned counsel for the petitioners made a submission that even before issuing a show cause notice, an opportunity must be provided to the petitioners. Such an idea mooted out neither contemplated nor necessary. If an aggrieved person contemplates a procedure of providing an opportunity before issuing a show cause notice and such a procedure if accepted, would result in unnecessary complications as the show



cause notice itself is a notice, providing an opportunity to the aggrieved person to submit their explanations/objections. Thus, new contemplation made by the petitioners deserve no merit consideration. The Hon'ble Supreme Court of India in unequivocal terms set out the procedures. Accordingly, in identifying cases of Wilful default, the committee of higher functionaries must be allowed to take a decision and in the present case, the Higher level committee had taken a decision, classifying the petitioners as 'Wilful defaulters'. Thereafter, the decision taken along with the reasons were communicated to the writ petitioners as per the RBI guidelines through a notice. On receipt of notice, the petitioners also submitted their explanations/objections, which was also taken into consideration and thereafter, the matter was referred to the Grievances Redressal Committee constituted by the CMD and Chairman of the Grievances Redressal Committee along with two General Managers.

22. The Grievances Redressal Committee also considered the issues, reasons, documents along with the objections / explanations submitted by the petitioners and formed the decision taken by the Committee, classifying the petitioners as 'Wilful defaulters'.

23. This being the procedures, which all are undoubtedly in consonance with the principles of natural justice and in-between procedures cannot be suggested nor be followed by the authorities for the purpose of taking any undue advantage. The principles of natural justice require a fair opportunity is provided to the aggrieved persons. Once the procedures followed are fair and reasonable and the persons aggrieved are provided with an opportunity to represent their case, the said procedure would be sufficient to meet out the requirement of the principles of natural justice and further, opportunity or otherwise or contemplation of in-between procedures are uncalled for and such procedures will destroy the very decision making process and on some occasions, it will provide undue advantage to such defaulters for the purpose of escaping from the clutches of law. Thus, Courts would not approve such procedures, which all are unnecessary and Court must ensure that a person aggrieved is provided with a fair and reasonable opportunity to represent their grievances and the grievances represented are considered by the competent authorities and reasons are furnished for taking a decision. When these basic requirements are complied with, then there is no reason to interfere with the processes adopted by the competent authorities.

24. In view of the facts and circumstances, the petitioners have not made out any acceptable ground for the purpose of interfering with the order impugned passed by the respondents



and consequently, all the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman and Managing Director,
The Corporation Bank,
Corporate Banking Branch,
38 & 39, Whites Road,
Chennai - 600 014.

2. The Chairman and Managing Director,
Grievance Redressal Committee,
Corporation Bank,
Corporate Banking Branch,
38 & 39, Whites Road, Chennai - 600 014.

3. The Assistant General Manager,
Corporation Bank,
Corporate Banking Branch,
38 & 39, Whites Road,
Chennai - 600 014.

+1 cc to Mr.S.Sethuraman, Advocate Sr.NO.67285

+6 ccs to M/s.King and Partridge,Advocate

Sr.NO.67388,67389,67390,
67391,67392,67393

W.P.Nos.26640 to 26645 of 2014

NK(CO)

A.SK(11.01.2022)