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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2021

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MS.JUSTICE R.N.MANJULA

W.A.NOS.2501, 2516, 2524, 2541 AND 2542 OF 2018
AND

C.M.P.NOS.20497, 20294, 20354, 20403, 20404, 20495,
20517, 20292 AND 20518 OF 2018

The Deputy General Manager,
State Bank of India,
Stressed Assets Management Branch (SAMB),
No.1112, Raja Plaza, Avinashi Road,
Coimbatore - 641 037.

... Appellant in
all cases

.Vs.

Maharaja Prawn and Farming Oil Dealers Pvt Ltd.,
Door No.119, Bhavani Road,
Veerappan Chatram, Erode-Taluk,
Erode District - 638 004
Rep. by its Director K.Paramasivam

... Respondent in
W.A.No.2501/18

Mr.K.Paramasivam

... Respondent in
W.A.No.2516/18

Maharaja Sivam Industries Pvt Ltd.,
Door No.119, Bhavani Road,
Veerappan Chatram, Erode-Taluk,
Erode District - 638 004
Rep. by its Director K.Paramasivam

... Respondent in
W.A.No.2524/18

P.Sathiyamoorthy

... Respondent in
W.A.No.2541/18

Maharaja Kalai Arangam Pvt. Ltd.,
Door No.119, Bhavani Road,
Veerappan Chatram, Erode-Taluk,
Erode District - 638 004
Rep. by its Director K.Paramasivam

... Respondent in
W.A.No.2542/18



PRAYER:-

Appeals filed under Clause 15 of Letters Patent against the order dated 27.07.2018 made in W.P.Nos.19254 to 19258 of 2018.

Prayer in W.P.Nos.19254 to 19258 of 2018:-

Petitions under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus to quash the notice dated 12.07.2018 bearing No.SAMB/CBE/CLO-III/532 and consequently direct the respondent to handover the documents relied upon by it to the petitioners and permit the petitioners to be represented by a lawyer/chartered accountant.

For Appellant : Mr.M.L.Ganesh
(in all cases)

For Respondent : Mr.Sri Ganesh
For Mr.P.J.Rishikesh
(in all cases)

COMMON JUDGMENT
(Delivered by M.M.SUNDRESH, J.)

These writ appeals are directed against the order dated 27.07.2018 made in W.P.Nos.19254 to 19258 of 2018, whereby the learned single Judge allowed the writ petitions.

2. The only issue involved in all these appeals is with respect to the entitlement of the respondents/borrowers to represent before the Wilful Defaulters Committee either through their counsel or Chartered Accountant. The aforesaid issue has been answered by the Apex Court in State Bank of India Vs. Jah Developers Pvt. Ltd. and Ors. ((2019) 6 SCC 787), wherein it has been held in para 21 as follows:

21. 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 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



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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 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.



3. Learned counsel appearing for both sides submit that in view of the aforesaid pronouncement, the writ appeals are to be allowed. Accordingly, the order of the learned single Judge stands set aside and the writ appeals are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

The Deputy General Manager,
State Bank of India,
Stressed Assets Management Branch (SAMB),
No.1112, Raja Plaza, Avinashi Road,
Coimbatore - 641 037.

+5ccs to Mr.P.J.Rishikesh, Advocate, S.R.No.33213

W.A.NOS.2501, 2516, 2524,
2541 AND 2542 OF 2018

RLD(CO)
PBS/18/08/2021