

\$~11 (2021 Cause List)

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

Date of Decision: 07th September, 2021

+ W.P.(C) 4399/2020 & CM APPL. 15840/2020

FROST INTERNATIONAL LIMITED & ORS. Petitioners

**Through: Mr. Saurabh Kirpal, Senior
Advocate with Mr. Malak
Bhatt, Ms. Neeha Nagpal,
Advs.**

versus

BANK OF BARODA

..... Respondent

Through: Mr. Arun Aggarwal, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

PRATEEK JALAN, J. (Oral)

The proceedings in the matter have been conducted through video conferencing.

1. The petitioners assail a communication dated 05.10.2019 by which the decision of the respondent–Bank of Baroda [“the Bank”] to declare the petitioners as wilful defaulters under the Master Circular on Wilful Defaulters dated 01.07.2015 [“the Master Circular”] issued by the Reserve Bank of India [“RBI”] was communicated to the petitioners. The petitioners also challenge a communication dated 11.06.2020 by which the decision of the Review Committee under the Master Circular was communicated to them.

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2. The Bank issued a show cause notice dated 25.02.2019 [Annexure P-10 to the writ petition] to the petitioners, enumerating 17 grounds upon which it intended to classify the petitioners as wilful defaulters. The petitioners responded to the show cause notice by way of representations dated 12.03.2019 and 30.05.2019. The petitioners sought to meet the allegations contained in the show cause notice [which were based upon a Forensic Audit Report by M/s Haribhakti & Co. LLP] with reference to deliberations in certain meetings between the petitioners and representatives of the consortium of lenders. They also submitted reports of M/s PricewaterhouseCoopers [“PWC”] and M/s Khaitan & Co., Advocates.

3. The petitioners participated in a personal hearing on 30.05.2019 and made a written submission on that date as well. The final report of PWC was filed with the Bank on 25.06.2019.

4. The Identification Committee of the Bank considered the petitioners’ case at its meeting on 16.09.2019, the minutes of which have been placed on record by the Bank. The case of the petitioners is that the aforesaid minutes were not served upon them. In any event, the minutes set out various grounds from the show cause notice and record the receipt of the representations as well as the personal hearing. With regard to the personal hearing on 30.05.2019, the following observations have been made in the minutes dated 16.09.2019:-

<i>Details of personal hearing dated 30.05.19</i>	<i>Mr.Udai Jayant Desai, Mr.Anoop Kumar Wadhera, Mr.Sujay Uday Desai, Mr.Sunil Verma, Mr.Nipun Verma appeared before the COE on 30.05.2019. They informed</i>
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	<i>that the forensic auditor (M/s Haribhakti & Co. LLP) has not taken into consideration of the submissins/replies given by the company. They have approached Law firm M/s Khaitan & Co. for analyzing the observations of the report by M/s Haribhakti & Co. M/s.Khaitan & Co., in order to conduct exhaustive findings mandated to M/s.Price Waterhouse Cooper (PWC) and report received from PWC. They have submitted the copy of the report and informed that they have already requested the Lead Bank, BOI for convening a high level consortium meeting to discuss the findings of the M/s.Haribhakthi & Co. LLP and PWC.</i> <i>Taking into consideration of the above, Committee <u>decided to defer</u> the matter at present and will be discussed, after consortium meeting and concluding the finding of the both the reports.</i>
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5. It appears from the minutes that a meeting of the consortium of lenders was thereafter held, at which it was decided that the report of M/s Haribhakti & Co. should be taken into cognizance as the Forensic Audit Report has already been thoroughly discussed in many meetings. On this basis, the Identification Committee recorded the following decision:-

<i>Decision of COE</i>	<i>Taking into consideration of the above, Committee <u>decided to declare</u> M/s.Frost International Ltd. Mr.Udai Jayant Desai (MD & Guarantor), Mr.Anoop Kumar Wadhera (Director & Guarantor), Mr.Sujay Uday Desai (Director & Guarantor), Mr.Sunil Verma</i>
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	<i>(Director) and Guarantors Mr.Udai Jayant Desai HUF, Mrs.Nilima U Desai, Mr.Sunil Verma HUF, Mrs.Rita Verma, Mr.Nipun Verma, Mr.Saraj Verma, Ms.Sanjana Desai, Mrs.Poonam Wadhera, M/s.N.S.D. Nirman Pvt Ltd, M/s.R.S.Builders(P) Ltd, M/s.Globiz Exim Private Ltd and M/s.Commet Overseas (P) Ltd as willful defaulters.</i>
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6. The express contention of the petitioners, which is unrebutted, is that a copy of the minutes dated 16.09.2019 was not served upon them. The petitioners were instead served with a communication dated 05.10.2019 which set out the decision and granted 15 days' time to the petitioners to file a representation for consideration of the Review Committee.

7. Pursuant to the petitioners' representation dated 17.10.2019, the Review Committee of the Bank considered the petitioners' case at a meeting held on 29.02.2020. The representations of the petitioners were rejected on the ground that the consortium had decided to accept the report of M/s Haribhakti & Co. This decision was communicated to the petitioners by a communication dated 11.06.2020, which was in the following terms:-

“The representation/s received from the Company and Mr. Udai Jayant Desai (MD & Guarantor), Mr. Anoop Kumar Wadhera (Director & Guarantor), Mr. Sujay Uday Desai (Director & Guarantor), Mr. Sunil Verma (Director) and Guarantors Mr. Udai Jayant Desai HUF, Mrs. Nilima U Desai, Mr. Sunil Verma HUF, Mrs. Rita Verma, Mr. Nipun Verma, Mr. Saral Verma, Ms. Sanjana Desai, Mrs. Poonam Wadhera, M/s. N.S.D. Nirman Pvt Ltd, M/s. R.S. Builders(P) Ltd, M/s. Globiz Exim Private

Ltd and M/s. Commet Overseas(P) Ltd dated 07.11.19 have been placed before the Review Committee.

In the aforesaid circumstances, and after perusal of documents on record and representations received from the company and its directors/guarantors, Bank's Review Committee on Wilful Defaulters in its meeting held on 29.02.2020 confirmed the decision of the Committee of Executives on Wilful Defaulters (COE).

Thus after following the due procedure, it has been decided to declare M/s. Frost International Ltd and Mr. Udai Jayant Desai (MD & Guarantor), Mr. Anoop Kumar Wadhera (Director & Guarantor), Mr. Sujay Uday Desai (Director & Guarantor), Mr. Sunil Verma (Director) and Guarantors Mr. Udai Jayant Desai HUF, Mrs. Nilima U Desai, Mr. Sunil Verma HUF, Mrs. Rita Verma, Mr. Nipun Verma, Mr. Saral Verma, Ms. Sanjana Desai, Mrs. Poonam Wadhera, M/s. N.S.D. Nirman Pvt Ltd, M/s. R.S. Builders(P) Ltd, M/s. Globiz Exim Private Ltd and M/s. Commet Overseas (P) Ltd as Wilful Defaulters. Bank reserves the Right to publish the name and photograph of Wilful Defaulter in News Paper and will initiate the necessary recovery action as per extant guidelines issued by Reserve Bank of India."

8. Having heard Mr. Saurabh Kirpal, learned Senior Counsel for the petitioners, and Mr. Arun Aggarwal, learned counsel for the Bank, I am of the view that the orders of the Identification Committee and the Review Committee in the present case cannot be sustained. The requirements of the Master Circular, as interpreted by the Supreme Court in *State Bank of India vs. Jah Developers Private Limited and Others* (2019) 6 SCC 787, are that a show cause notice must be issued, the response of the borrower must be considered by the Identification Committee, and a reasoned order be passed. The borrower is required

to be given an opportunity to make a representation before the Review Committee which is also to be considered and a reasoned order passed and served upon the borrower. The judgment in *Jah Developers* (supra) makes it clear that the requirements of natural justice have been read into the Master Circular in view of the drastic consequences which declaration as a wilful defaulter visits upon the borrower.

9. In the present case, the minutes of the meeting of the Identification Committee dated 16.09.2019 demonstrate that at the stage of personal hearing, the Identification Committee decided to defer the matter. The final decision has thereafter been taken based upon a meeting of the consortium, which decided to accept the report of M/s Haribhakti & Co. There does not appear to have been any further opportunity of hearing given to the petitioners, and the decision of the Identification Committee is also unreasoned, except to record the conclusion of the consortium. In the meeting of the Review Committee also, the only ground for rejecting the representations of the petitioners is the consortium's decision.

10. I am of the view that the aforesaid procedure adopted by the Bank falls short of the requirements of natural justice as embodied in the Master Circular and the judgment in *Jah Developers* (supra). The Identification Committee has proceeded on the basis of a consortium meeting held after the personal hearing was granted to the petitioners, without any further opportunity of making a representation or of hearing. The minutes of the meeting of the Identification Committee were not served upon the petitioners, although they were communicated by the letter dated 05.10.2019. The communications

dated 05.10.2019 and 11.06.2020 also do not spell out in sufficient detail the reasons for which the Identification Committee and the Review Committee have rejected the representations.

11. In view of the above, the writ petition succeeds, and the proceedings of the Identification Committee and the Review Committee culminating in the impugned communications dated 05.10.2019 and 11.06.2020 are set aside. The Bank is free to issue a further notice to the petitioners for a personal hearing before the Identification Committee. In the event the Bank wishes to rely upon documents not already served upon the petitioners, it may serve the same upon them and give the petitioners 15 days' time thereafter to make a representation. In the event the Identification Committee takes a view adverse to the petitioners, its reasoned order will be served upon the petitioners, and the petitioners will be given 15 days' time to make a representation to the Review Committee, as required by *Jah Developers* (supra).

12. The writ petition, alongwith the pending application, is disposed of in these terms.

PRATEEK JALAN, J.

SEPTEMBER 07, 2021

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