$~31 (2021 Cause List)

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

Date of Decision 15th July, 2021

\+ W.P.(C) 6581/2021

KAVI ARORA ..... Petitioner

Through: Mr. Madhav Khurana, Advocate with Mr. Ankit Bhatia & Mr. Kartikeye Dang, Advocates.

versus

CENTRAL BANK OF INDIA ..... Respondent

Through: Mr. O. P. Gaggar, Advocate

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

PRATEEK JALAN, J. (*Oral*)

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

CM APPLs. 20627-20628/2021 *(exemption)*

Exemption allowed, subject to all just exceptions.

The applications stand disposed of.

W.P.(C) 6581/2021 with CM APPL. 20626/2021 *(for stay)*

1. Issue notice. Mr. O.P. Gaggar, learned counsel, accepts notice on behalf of the sole respondent/Central Bank of India ["the Bank"]. The petition is taken up for disposal with the consent of learned counsel for the parties.

2. This petition under Article 226 of the Constitution is directed against proceedings taken by the Bank against the petitioner under the Master Circular on Wilful Defaulters dated 01.07.2015 ["Master Circular"] issued by the Reserve Bank of India ["RBI"].

3. The petitioner was the Managing Director and Chief Executive Officer of a company by the name of Religare Finvest Limited ["Religare"] from 14.11.2011. According to the petitioner, he resigned from this position with effect from 12.11.2017.

4. The Bank issued a show cause notice dated 04.11.2020, calling upon the petitioner to show cause as to why he should not be treated as a wilful defaulter under the Master Circular, and also seeking information as to whether there was any change in his status as a Director of Religare.

5. The petitioner, through counsel, responded to the aforesaid show cause notice by a communication dated 21.11.2020.

6. The petitioner's contentions were not accepted by the Bank, and this was communicated to the petitioner by a letter dated 22.12.2020. The Bank took the position that the proceedings against the petitioner were in terms of the Master Circular, and also confirmed that it would afford a personal hearing to him.

7. The petitioner responded by a communication dated 07.01.2021, addressed by his wife to the Bank, as he was then in judicial custody.

8. By a further communication dated 07.06.2021, the Bank reiterated that it had allowed a personal hearing to the petitioner and advised him to seek directions from the competent court to enable him to appear for the personal hearing by video conference.

9. The petitioner thereafter, by a letter dated 14.06.2021, requested the Bank to supply the documents relied upon in the show cause

notice. The Bank has supplied certain documents under cover of a letter dated 29.06.2021.

10. Mr. Madhav Khurana, learned counsel for the petitioner, submits that the documents supplied by the Bank do not include all the documents referred to in the show cause notice. In particular, he states that of the five documents mentioned in the petitioner's letter dated 14.06.2021, only the Forensic Audit Report submitted by M/s Kirtane & Pandit LLP and the letters by which the credit facilities were sanctioned to Religare have been provided. The Bank has not provided the ledger accounts of Religare with respect to the loan accounts or any other documents relied upon in the show cause notice or by the Identification Committee, and has also not identified the date upon which the default is stated to have occurred. Mr. Khurana relies upon the judgment of this Court in *Shantanu Prakash vs. Union Bank of India & Ors.* 2021 SCC OnLine Del 2436 [W.P.(C) 5309/2021, decided on 13.05.2021].

11. Mr. Gaggar, on the contrary, submits that the documents supplied are sufficient to enable the petitioner to meet the case made out against him in the show cause notice. He states that the Forensic Audit Report contains the basis upon which the allegations are made against the petitioner and the Bank intends to rely only upon the documents already supplied.

12. Mr. Gaggar further states that the observations of the Bank in the aforesaid communications addressed to the petitioner are *prima facie* in nature and that the Identification Committee has not arrived at

a conclusive decision at this stage, which will be done only after affording the petitioner an opportunity of hearing

13. Having heard learned counsel for the parties, I am of the view that the proceedings taken by the Bank ought not to be interdicted at this stage. It is clear from the submissions of Mr. Gaggar that the Identification Committee is yet to give a hearing to the petitioner and reach a final decision. Subsequent to the decision of the Identification Committee, the petitioner would also have an opportunity of making a representation to the Review Committee of the Bank constituted under Clause 3 (c) of the Master Circular. The judgment of the Supreme Court in *State Bank of India vs. Jah Developers Private Limited and Others* (2019) 6 SCC 787, makes it clear that this is also a valuable safeguard under the Master Circular, as the affected party can make a full representation on facts and law. The representation must then be considered by the Review Committee, and a reasoned decision passed. I am therefore of the view that the Bank is entitled to undertake the procedure under the Master Circular, leaving it open to the petitioner to take his legal remedies thereafter.

14. However, the issue of supply of documents by the Bank to the petitioner has been considered by this Court in *Shantanu Prakash* (supra) cited by Mr. Khurana, wherein it was held as follows:-

> *"23. In view of the fact that the matter is being remanded to the Bank for a fresh consideration of the issue, it is not necessary to conclusively decide this issue at this stage. Suffice it to say that the Bank is required to disclose the documents and evidence which the Identification Committee has relied upon to arrive at the decision to*

issue the show cause notice. The disclosure must be such as to enable the noticee to appreciate the scope of the allegations made against it and, if the allegations are based upon documents which the Bank states are already in the possession of the noticee, such as its own accounts, to identify the transactions upon which the Bank seeks to rely.

24. The fundamental principle, as laid down by the Supreme Court in Natwar Singh v. Director of Enforcement (2010) 13 SCC 255 (paragraph 30) is that "nothing should be used against the person which has not been brought to his notice". In paragraph 26 of the said judgment, the Court also reiterated the flexible approach to be adopted while considering claims of violation of natural justice. Upon a consideration of the applicable statutory and regulatory scheme, the Court held that the petitioner therein was entitled to the documents relied upon by the authority, but not to other documents in its possession.

25. In the facts of the present case Mr. Gaggar may be correct in submitting that the Bank will not be required to supply copies of the Company's own accounts to the Company itself. However, at the very least, the transactions based upon which the Bank has arrived at its conclusion must be identifiable from the disclosure. Mr. Krishnan points out that the petitioners in the present case are not the Company itself, which is under the control of a resolution professional, but its erstwhile directors - one who claims to have resigned in 2014 and the other who was a director until the Company went under the resolution process.

xxxx xxxx xxxx

27. As the proceedings are being remanded to the Bank, it is for the Bank to take a call as to the extent of disclosure required in law, if any, bearing the aforesaid observations in mind. The rights and contentions of the parties in this regard are reserved."

15. These observations are applicable in the present case also. The matter remains pending before the Bank, and it is for the Bank to ensure that the documents relied upon are supplied to the petitioner, in compliance of the principles of natural justice. While doing so, the Bank will also have to bear in mind the petitioner's contention that he is not a serving director or officer of Religare, and may not have access to the company's records.

16. For the reasons aforesaid, the writ petition is disposed of with the following directions:-

a) In the event the Bank wishes to rely upon any further documents in terms of the aforesaid principles, it may supply those documents to the petitioner. Mr. Gaggar states that this will be done within one week from today.

b) The petitioner will be entitled to submit a further representation to the Bank within 15 days thereafter.

c) The Identification Committee will give the petitioner an opportunity of personal hearing thereafter, and pass a reasoned order as per the principles laid down in *Jah Developers* (supra). The observations contained in the communications addressed by the Bank to the petitioner are to be treated only as *prima facie* observations, and the petitioner's case will be considered independently by the Identification Committee, in terms of Mr. Gaggar's statement recorded in paragraph 12 above.

d) In the event the order passed by the Identification Committee is adverse to the petitioner, he will have the opportunity to make a representation before the Review Committee within 15 days from the date of communication of the said order, and the Review Committee will thereafter proceed to pass a reasoned order thereupon, in accordance with law.

17. The writ petition stands disposed of in the aforesaid terms. No order as to costs.

PRATEEK JALAN, J

JULY 15, 2021
'j'