APO No. 72 of 2020
with
WP No. 78 of 2020
IN THE HIGH COURT OF CALCUTTA
In appeal from its
CONSTITUTIONAL WRIT JURISDICTION
CIVIL APPELLATE JURISDICTION

Kejriwal Mining Pvt. Ltd. & Ors.
Versus
Indian Bank & Anr.

Before:
The Hon'ble Justice I. P. MUKERJI
And
The Hon'ble Justice SUBHENDU SAMANTA
Date: 22nd August 2022

Appearance:
Mr. Joy Saha, Sr. Advocate
Mr. Prantik Garai, Advocate
Mr. Surojit Dasgupta, Advocate
Mr. Meghajit Mukherjee, Advocate
Mr. Vidhya Bhushan Upadhyay, Advocate
for the appellants

Ms. Deblina Lahiri, Advocate
Mr. Debasish Sarkar, Advocate
Mr. Mrinmoy Chatterjee, Advocate
Ms. Teresa Chetri, Advocate
for the respondent bank

The Court: This is an appeal from a judgment and order made by a learned single judge on 26th June 2020 in a writ application (WP No. 78 of 2020 *Kejriwal Mining Pvt. Ltd. & Others vs. Allahabad Bank And Another*).

By the said order the review committee was directed to review the order dated 3rd July 2019 of the Wilful Defaulter Identification Committee (WDIC) declaring the appellants as wilful defaulters.

By its order dated 28th July 2020 this bench admitting the appeal inter alia directed that the appellants would have the option of depositing Rs. 64 lakhs with the respondent bank. The bank was to rectify its records by inserting against the words "wilful defaulter" "sub-judice before the High Court at Calcutta". Upon Rs. 64 lakhs being deposited the respondent bank would not take any further step towards declaration of the appellants as wilful defaulters. We are told that this amount has been duly deposited by the appellants.

The declaration of an account as non-performing is serious enough for a borrower. More drastic and damaging is the declaration that he is a wilful defaulter. This declaration by the lending institution immediately affects the business of the borrower, disqualifies him from availing of loan from other financial institutions and in general carries a very bad reputation of him in the business circle. Therefore, this declaration should only be made by a lending institution most cautiously only if the facts and circumstances so permit. A borrower may be a defaulter by circumstance. His business may not be running profitably enough to enable him to repay the loan. Hence he may be in default. This default is not wilful. "Wilful defaulter", in our opinion, signifies a culpable or guilty state of mind where inspite of ability the borrower does not make payment of his outstanding dues to the financial institutions intentionally and remains in default. Or misapplies or misappropriates the loan fund knowing fully well that his action will result in default in its repayment.

On 16th March 2015 the bank by a letter approved a "compromise offer" by the appellants. The accepted amount was Rs.4,11,02,726/- which has been described as "one time settlement". This settled amount was to be liquidated by a down payment of 5% amounting to Rs. 20,55,136/- and the balance by equated monthly instalments. On 27th March 2019 WDIC decided to issue a show cause to the appellants for declaring them as wilful defaulters, apparently as per the master circular dated 1st July 2013 of the Reserve Bank of India.

On 6th April 2019 a show cause notice was issued. On 18th January 2020 the appellants were declared as wilful defaulters.

Mr. Saha, learned senior advocate appearing for the appellants made out his case first on the basis that there was no premise or foundation on which the respondent bank could have proceeded to issue the show cause notice to declare the appellants as wilful defaulters.

Apart from this main attack on the show cause notice, Mr. Saha's other ground was that this declaration was made by WDIC without complying with the rules of natural justice. The reply to the show cause made by the appellants, although received before consideration by WDIC of the case, was not considered by it on the ground of delay. Furthermore, he submitted that his grievance about non-consideration of his case by WDIC could not be remedied by the review committee which had only limited jurisdiction.

With regard to the first ground taken by Mr. Saha which is considered by us to be most important, it does appear from a supplementary affidavit prepared and filed by the appellants that from 19th January 2015 till 11th August 2020 substantial payments aggregating to Rs. 4,11,02,726/- were made and only the interest amount of Rs. 1,46,98,630/- was outstanding. Furthermore, Mr. Saha submitted that his clients were willing to repay whatever outstanding of the respondents on such terms as the court may set.

Ms. Lahiri appearing for the bank has also handed up a statement showing outstanding dues, credits and adjustments in relation to the account of the appellants. She prays for further time to produce more accounts. That would not be necessary in view of her submission that what is due and payable by the appellants to the bank is interest as stated by her client in the affidavit. The principal sum appears to have been paid.

In this situation prima facie it is not possible for this court to accept that the appellants could be declared as wilful defaulters. Prima facie the intention to deprive the bank appears to be lacking. The factum of periodic payments by the appellants of the loan amount which has resulted in repayment of the entire principal and their willingness to pay off the outstanding would at least, prima facie, not depict the appellants as wilful defaulters. On the contrary, they have also shown their bona fides by depositing Rs. 64 lakhs with the bank further to our said interim order in the appeal.

In those circumstances, we are of the opinion that this case requires readjudication by WDIC. The review committee does not have the jurisdiction to decide the factual issues involved.

In view of our findings above, the decision of the respondent bank dated 18th January 2020 declaring the appellants as wilful defaulters is set aside. The declaration of the appellants as wilful defaulters or proposed wilful defaulters has to be forthwith erased completely from the records of the respondent bank. We direct readjudication of the show cause notice by the WDIC without such declaration, upon considering the reply filed by the appellants, upon hearing them and by passing a reasoned order to be passed within three months of communication of this order.

The impugned judgment and order dated 26th June 2020 is set aside.

All points are kept open before the WDIC.

The appeal is allowed to the above extent.

No order as to costs.

(I. P. MUKERJI, J.)

(SUBHENDU SAMANTA, J. )

R. Bose