OD 2

WPO 1984 of 2022

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

VISHAMBHAR SARAN
VERSUS
STATE BANK OF INDIA & ANR.

BEFORE:
The Hon'ble JUSTICE RAJASEKHAR MANTHA
Date : 27th April, 2022.

APPEARANCE:
Mr. Sabyasachi Choudhury,Sr. Adv.
Mr. Rajarshi Dutta,Adv.
Mr. VVV Sastry,Adv.
Mr. Tridib Bose,Adv.
Mr. Debjyoti Saha,Adv.
Ms. Vidhi Sharma,Adv.

Mr. Ashim Kumar Rout,Adv.
Ms. S.R. Mishra,Adv.

The Court:- The writ petitioner challenges a finding of the first committee/Identification Committee (IC) under the Wilful Defaulter guidelines of the Reserve Bank of India.

The brief facts of the case are that by a communication dated 28th May, 2020, the petitioner was asked to explain as to why he should not be declared a wilful defaulter on the grounds indicated in the master circular of the Reserve Bank of India. The petitioner was a constituent of the State Bank of India and a director of the principal borrower, one M/s. Visa Power Ltd.

The petitioner replied to the said notice by communication dated 7th July, 2020 issued by his learned Advocates.

The petitioner was granted a virtual personal hearing before the (IC) by communication dated 4th October, 2020. The hearing was deferred from time to time. A dispute was raised that the petitioner should be allowed to appear virtually from his residence whereas the bank insisted that the petitioner should appear virtually from the ground floor of their office at Shakespeare Sarani, Kolkata. No specific ground has been urged in the writ petition is this regard.

Across the Bar, Mr. Sabyasachi Chowdhury, Senior Counsel appearing for the writ petitioner would submit that the finding of the (IC) is rather perverse. It is submitted that the basis of the order and prima facie finding of the identification committee is a report of a Liquidator appointed under Section 33 of the IBC, 2016. The said liquidator which is a firm of auditors Conducted a forensic audit wherein a large number of omissions and commissions have been found. Based on the said report he approached the National Company Law Tribunal at Kolkata (NCLT) in CA IB No. 1168 KB/2018 in CP(IB) No. 574/KB/2017 under Sections 45 and 66 of the Code. The liquidator applied for directions upon, inter alia, the petitioner to, inter alia, replenish funds, which according to the liquidator, were siphoned off from the principal debtor.

The NCLT did not find favour with the liquidator and dismissed the applications by an order dated 25th July, 2019. The said order came to be confirmed by the National Company Law Appellate Tribunal (NCLT) Appeal No. 1007 of 2019.

It is argued by Mr. Chowdhury that since the only document based on which the (IC) of the State Bank of India has found the petitioner prima facie a wilful defaulter is the said forensic audit report of the Liquidator and the report not having been accepted by the NCLT and the NCLT and the National Company Law Appellate Tribunal, the same could not form any basis for proceedings under the wilful defaulter guidelines of the Reserve Bank of India.

It is next argued that the findings of the (IC) do not, in any way, discuss as to why the decision of the NCLT and NCLAT should not bind the State Bank of India. The findings of the (IC) also do not address or reply to any of the grounds urged by the petitioner. The above grounds are in substance on merits of the findings of the (IC).

However, placing reliance on grounds III & IX, in this writ petition Mr. Chowdhury would argue that there is violation of the principles of natural justice. Reference is made to the decision of the Supreme Court in the case of **State Bank of India vs. Jah Developers Private Limited** reported in **(2019) 6 SCC 787**. Placing reliance on para 24 it is argued that the petitioner ought to have been allowed personal hearing virtually from his residence. Not having been so allowed, he has been denied and deprived of natural justice.

The ground of violation of the principles of natural justice appears to have been made belatedly and that too across the Bar for the first time and has not been raised in clear terms in the writ petition. The stage has, however, passed, and the matter has crystallized into findings of the I.C. There are letters in writing, however, available issued by the petitioner and/or on his behalf to the bank asking for personal hearing from his residence. The grievance was never pursued. The grounds urged in the cause shown to the (IC) clearly demonstrate the petitioner's defense. No prejudice, for such alleged information whatsoever has been demonstrated either in the writ petition or in oral arguments by the writ petitioner.

Even in the Jah Developers (supra) decision, it has been recognized that the bank may grant personal hearing to persons like the petitioner only, if it deems necessary and at its discretion. What has been mandated by the Supreme Court is that the petitioner should get an opportunity of representation which he has been given. This Court therefore finds no violation of natural justice.

On the other ground i.e. on the merits of the findings of the I.C., Mr. Chowdhury has laboured to argue that there is perversity. The orders of the NCLT and NCLAT have been placed at length. The order of the (IC), according to the petitioner, is mechanical oral evasive.

This Court is of the view that the challenge to the findings of (IC) even before the Review Committee takes any decision thereon is rather premature. This is so as the findings of the (IC) can at best be described as tentative. Such findings do not result in or materialize into any civil consequences or for that matter any consequences under Article 19(1)(g), unless the final order is passed by the Review Committee.

This Court is also not inclined to accept the argument of the petitioner that the order of the NCLT or NCLAT would be binding on the State Bank of India in so far as the wilful defaulter guidelines are concerned. Admittedly, the requirements of proof of liability under, and the scope and purport of, Sections 45 and 66 of the IBC are completely different from the proceedings under the wilful default guidelines of the Reserve Bank of India. The scope of enquiry and the purpose thereof, and the process of identification of wilful default under the RBI guidelines are completely different from and independent of, any liability or otherwise under Sections 45 and 66 IBC.

The petitioner had a right of representation before the Review committee which has not been availed till now. It could be interpreted that he has waived the same. However, for the ends of justice and with a view to provide an additional opportunity to represent before the Review Committee and as an exceptional case, this Court permits the petitioner to represent comprehensively against the findings of the (IC) to canvass that they are not wilful defaulters under RBI guidelines, within a period of 15 days from date.

With the aforesaid observations, WPO No. 1984 of 2022 is disposed of, without any other orders.

No order as to costs.

(RAJASEKHAR MANTHA, J.)

S.chandra