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ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE

RVWO/8/2022
IA No. GA/1/2022

RAHUL TANTIA AND ANR.
VERSUS
STATE BANK OF INDIA AND ORS.

BEFORE:
The Hon'ble JUSTICE RAJASEKHAR MANTHA
Date : 30th June, 2022

<u>*Appearance:*</u>
Mr. K. R. Thaker, Adv.
Mr. R. N. Ghose, Adv.
Ms. Pritha Ghose, Adv.
... for the petitioner.

Mr. Ajay Gaggar, Adv.
Mr. U. Mallick, Adv.
... for the respondent no.1.

Mr. Abhishek Banerjee, Adv.
Ms. Parna Roy Choudhury, Adv.
... for the respondent no.2.

RVWO/8/2022

The Court :- Review is sought of the order dated 15th March, 2022 passed by this Court.

It is submitted that the Court was not appraised of the prayers made in the writ petition. The prayers were not placed before the Court. It is also submitted that contrary to what Counsel argued on the 15th March, 2022, the petitioner was not in any way aggrieved with any willful defaulter proceedings in the writ petition. The process against the petitioners under the Master Circular of the Reserve Bank of India for identifying willful defaulters, was still ongoing.

Indeed, it appears to this Court that the prayers made in the writ petition are quite different from what was submitted on the said date by the learned Counsel for the petitioner.

In that view of the matter the order dated 15th March, 2022 is reviewed and recalled as prayed for and the petition is taken up for consideration afresh.

It appears from the writ petition that the petitioner, in fact, challenges a communication dated 18th June, 2021 issued by the Indian Overseas Bank.

The communication was made by the said Bank to the lead banker i.e. the State Bank of India recording consent to lodge a formal complaint with the Central Bureau of Investigation (CBI) against M/s. Tantia Construction Limited and its Directors. The said decision of the Indian Overseas Bank is based on an addendum report dated 4th September, 2020, of auditors engaged by the consortium.

Mr. Thaker, learned Counsel appearing for the petitioner would firstly submit that the said audit report contradicts an earlier audit report already submitted in proceedings before the National Company Law Tribunal being CP/IB/148(KB)/2018. It is next argued that the petitioner was entitled to be heard before the auditors or even the bank, for that matter, before any new report is finalized and prepared.

The audit report finds fraudulent conduct on the part of M/s. Tantia Construction Limited and its directors.

It is now well-settled that corporate civil proceedings stand on a completely different footing from criminal proceedings. The degree of proof and nature of evidence required under the provisions of the Insolvency and Bankruptcy Code

2016, are quite different from that of a proceeding under the IPC and/or Cr.P.C. and/or any allied criminal law.

The object and purpose of the IBC, 2016 is also quite different from that of criminal proceedings. The first argument of Counsel for the petitioner, therefore, cannot be accepted.

The second argument that the petitioner ought to have been heard before the auditors pronounced any final report, is to say the least is preposterous. There is no right in law or equity, that Ld. Counsel has been able to demonstrate before this Court, of any participation in any process of enquiry or audit by a creditor into a debtor's books. It is ridiculous to invoke or apply the Principles of Natural Justice against an audit report.

In any event there is no prejudice suffered by the petitioner as on date merely by observations made in an audit report. Any person is entitled to lodge any complaint as regards commission of an offence. It is only upon the law and enforcement authorities taking cognizance of such complaint that, any rights, if at all maintainable in law, would accrue to an accused.

This Court is of the view that the writ petition is otherwise premature, apart from these being serious doubts on its maintainability.

The writ petition fails and is therefore dismissed.

(RAJASEKHAR MANTHA, J.)

mg/S. Chandra