IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 16222 of 2014

Global Rebars Pvt. Ltd. and Others .... ***Petitioners***

Mr. M.K. Rajguru, Proxy counsel on behalf of Mr. Tanmay Mishra, Advocate

-versus-

State Bank of India, Bhubaneswar and Another .... ***Opp. Parties***

Mr. Bikram Pr. Das, Advocate for the Bank

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER (Oral)

Order No. **23.06.2022**

12. **1.** This matter is taken up through virtual/physical mode.

2. Petitioner No.1 is a private company and Petitioner No.2 it's Managing Director, and Petitioner Nos.3 & 4 it's directors. The present Writ Petition has been filed challenging the letter dated 18.08.2014 (Annexure-7), issued by the State Bank of India/Opposite Party Nos.1 & 2 for inclusion of their names as willful defaulters.

3. Succinctly put, the grievance raised is that the names of the petitioners have been uploaded as willful defaulter in the RBI portal without affording them any personal hearing which has caused prejudice with serious consequences.

4. This Court while issuing notice vide order dated 17.09.2014 had directed as an interim measure that no action declaring the petitioners as willful defaulter in absence of a reply shall be taken till the next date.

5. Upon notice, a counter affidavit dated 15.10.2014 has been filed on behalf of the contesting Bank/Opposite Party Nos.1 & 2, wherein it is asserted that the petitioner-company has admittedly committed financial indiscipline in violation of the terms of sanction of loan as it has diverted funds to the tune of Rs.10.37 crores to another group company; and as such come within the Meaning "willful defaulter" as per the RBI Master Circulars. The Bank is obliged to follow the directives of the RBI identifying and reporting instances of willful default on quarterly basis. It is also apparent that vide impugned Memo dated 18.08.2014 (Annexure-7), the Bank has intimated an advice to the petitioners to appear before the Grievance Redressal Committee, meeting to be held on 27.08.2014 at the assigned place at 11 A.M., for personal hearing in respect of the final decision for inclusion of the names of the company and its directors as willful defaulter. The petitioners without availing such an opportunity have approached this Court and the present Writ Petition being premature is liable to be dismissed. It is also stated that the Bank has initiated recovery process under the SARFAESI Act, 2002 after the loan account was classified as NPA on 28.11.2013 as per Reserve Bank of India guidelines.

6. After hearing, learned counsel for the parties and perusing the pleadings, we find the Writ Petition is devoid of any merits. There is no provision in the RBI guidelines to provide for personal hearing against the tentative decision of the Bank for inclusion of the names of the company and its directors as willful defaulters. As regards the claim of the personal hearing, it is asserted that the Bank vide impugned Memo dated 18.08.2014 has provided the petitioner a reasonable opportunity to present their case before the Grievance Redressal Committee in accordance with the RBI Master Circulars on willful defaulter. In fact, it is before the Grievance Redressal Committee against the proposed decision, an opportunity for personal hearing is provided, which precisely was to be done vide Memo dated 18.08.2014 (Annexure-7). We are in agreement to the stand taken by the Bank that the present Writ Petition, thus, is premature.

We further find that the recovery process under the SARFAESI Act, 2002 for recovery of a sum of Rs.11,97,70,573/- due as on 31.10.2013 plus further interest and expenses another charges had been initiated by the SBI leading up to the issuance of sale notice dated 19.08.2014 fixing the auction sale of the mortgaged properties dated 23.09.2014 *qua* which no challenge has been laid nor any relief claimed.

7. In view of this, we find no ground to invoke our writ jurisdiction. Accordingly, the present writ petition is dismissed.

(Jaswant Singh)
Judge

(M. S. Raman)
Judge

Basudev

23rd June, 2022
Cuttack