IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P.Nos.20118 & 18057 of 2018
and W.M.P.Nos.23594 of 2018

S.Pathy ..Petitioner in W.P.No.20118/2018

N.Jaychander ..Petitioner in W.P.No.18057/2018

Vs.

1. State Bank of India,
Stressed Assets Management,
1112, Raja Plaza, First Floor,
Avanashi Road, Coimbatore - 641037.

2. TransUnion CIBIL Limited,
One Indiabulls Centre, Tower 2A,
19th Floor, Senapati Bpat Marg,
Elphinstone Road,
Mumbai-400013. ..Respondents in both the WPs

Prayer in W.P.No.20118 of 2018: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus calling for the records of the first respondent in Resolution passed by its Committee for Identification/Inclusion of Willful Defaulters, Mid Corporate Group, Chennai Region, in its Meeting No.2011-12/11, held on 08 December 2011, in Agenda Item No.WD/2011-12/03, Branch:SAMB Chennai, pertaining to the borrower M/s.Lakshmi Synthetic Machinery Manufacturers Ltd., and quash the same in so far as the petitioner is concerned and consequently direct the respondents to remove the name of the petitioner as a wilful defaulter in relation to the amounts borrowed by Lakshmi Synthetic Machinery Manufacturers Ltd. (in liquidation) from their respective physical and electronic database, including internal database circulated to banks and financial institutions and forbear the respondents from identifying and/or publishing the petitioner as a willful defaulter except in accordance with law and more particularly in compliance with the Reserve Bank of India's Master Circular on Wilful Defaulters No.DBR No.CID.BC.22/20.16.003/2015-16, dated 01 July 2015. (Prayer amended as per order dated 24.02.2022 made in WMP 4324/2022 in WP. 20118/2018)

Prayer in W.P.No.18057 of 2018: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus calling for the records of the first respondent in Resolution passed by its Committee for Identification/Inclusion of Willful Defaulters, Mid Corporate Group, Chennai Region, in its Meeting No.2011-12/11, held on 08 December 2011, in Agenda Item No.WD/2011-12/03, Branch:SAMB Chennai, pertaining to the borrower M/s.Lakshmi Synthetic Machinery Manufacturers Ltd., and quash the same in so far as the petitioner is concerned and consequently direct the respondents to remove the name of the petitioner as a wilful defaulter in relation to the amounts borrowed by Lakshmi Synthetic Machinery Manufacturers Ltd. (in liquidation) from their respective physical and electronic database, including internal database circulated to banks and financial institutions and forbear the respondents from identifying and/or publishing the petitioner as a willful defaulter except in accordance with law and more particularly in compliance with the Reserve Bank of India's Master Circular on Wilful Defaulters No.DBR No.CID.BC.22/20.16.003/2015-16, dated 01 July 2015. (Prayer amended vide order dated 24.02.2015 made in WMP 4421/2022 in WP 10857/2018)

For Petitioners in both WPS	:	Mr.Ramakrishnan Viraraghavan SC for Mr.C.Seethapathy
For Respondent 2 in both WPs	:	Mr.K.Chandrasekaran

COMMON ORDER

The petitioners are directors of one Lakshmi Synthetic Machinery Manufacturers Limited.

2. Earlier the company borrowed loan from the first respondent bank and committed default. Thereafter, proceedings have been initiated by the respondent bank to declare the company as well as its directors as wilful defaulters. Without giving any opportunity to the petitioners, who are the Directors of the company, the impugned order has been passed declaring them as wilful defaulters. Hence, the present writ petitions have been filed.

3. Mr.Ramakrishnan, learned senior counsel appearing for the petitioners would submit that before declaring a company or its directors as wilful defaulters, 15 days notice has to be served on them calling for explanation. Thereafter, the Grievance Redressal Committee only after affording an opportunity of hearing to the parties counsel pass its order. But in the instant case, admittedly, without giving any notice and without affording an opportunity of hearing to the petitioners, the impugned order has been passed. The Circulars issued by the Reserve Bank of India to that effect is binding on the respondents The learned senior counsel relied upon a judgment of the Hon'ble Supreme Court in State Bank of India

Vs. Jah Developers Private Limited reported in (2019) 6 SCC 787, in support of his contention.

4. Mr.K.Chandrasekaran, learned counsel appearing for the second respondent submitted that the petitioners being the directors of the company, on their request, loan has been sanctioned and subsequently they have committed default and there are allegations that the petitioners are also involved in diversion of funds. In such circumstance only the petitioners have been declared as wilful defaulters.

5. I have considered the above submissions and also perused the records carefully.

6. From perusal of the records, it could be seen that the impugned order has been passed without issuing any notice to the petitioner and without conducting any enquiry. The Circulars issued by the Reserve Bank of India in the year 2011 and subsequent Circular issued in the year 2015, wherein it is clearly stated that before declaring a company or its directors as wilful defaulters, a fair opportunity should be given to them. The above said Circulars are binding on the respondent bank.

7. The Hon'ble Supreme Court in the judgment in State Bank of India Vs. Jah Developers Private Limited reported in (2019) 6 SCC 787, following the Master Circular issued by the Reserve Bank of India dated 01.07.2015, has held that the bank should give opportunity to the borrowers to represent themselves within a period of 15 days of the orders passed by the Review Committee and then the Review Committee should pass suitable orders. The relevant portion of the judgment is extracted hereunder:

> "3. Under this Master Circular, "wilful default" has been defined as follows:
>
> > "2.1.Definition of wilful default.— The term "wilful default" has been redefined in supersession of the earlier definition as under:
> >
> > A "wilful default" would be deemed to have occurred if any of the following events is noted:
> >
> > (a) The unit has defaulted in meeting its payment/repayment obligations to the lender even when it has the capacity to honour the said obligations.
> >
> > (b) The unit has defaulted in meeting its payment/repayment obligations to the lender and has not utilised the finance from the lender for the specific purposes

for which finance was availed of but has diverted the funds for other purposes.

(c) The unit has defaulted in meeting its payment/repayment obligations to the lender and has siphoned off the funds so that the funds have not been utilised for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets.

(d) The unit has defaulted in meeting its payment/repayment obligations to the lender and has also disposed off or removed the movable fixed assets or immovable property given by him or it for the purpose of securing a term loan without the knowledge of the bank/lender."

4. The grievance redressal mechanism is set out in Para 3 of the Master Circular as follows:

"3. Grievances Redressal Mechanism.—Banks/FIs should take the following measures in identifying and reporting instances of wilful default:

(i) With a view to imparting more objectivity in identifying cases of wilful default, decisions to classify the borrower as wilful defaulter should be entrusted to a Committee of higher functionaries headed by the Executive Director and consisting of two GMs/DGMs as decided by the Board of the bank/FI concerned.

(ii) The decision taken on classification of wilful defaulters should be well documented and supported by requisite evidence. The decision should clearly spell out the reasons for which the borrower has been declared as wilful defaulter vis-à-vis RBI guidelines.

(iii) The borrower should thereafter be suitably advised

> about the proposal to classify him as wilful defaulter along with the reasons therefor. The borrower concerned should be provided reasonable time (say 15 days) for making representation against such decision, if he so desires, to a Grievance Redressal Committee headed by the Chairman and Managing Director and consisting of two other senior officials.
>
> (iv) Further, the above Grievance Redressal Committee should also give a hearing to the borrower if he represents that he has been wrongly classified as wilful defaulter.
>
> (v) A final declaration as "wilful defaulter" should be made after a view is taken by the Committee on the representation and the borrower should be suitably advised."

5. On 1-7-2015, RBI issued another Master Circular consolidating instructions on how all scheduled commercial banks and notified financial institutions are to deal with wilful defaulters (Revised Circular). The definition of "wilful default" is substantially the same as in the earlier Master Circular. However, the mechanism for identification of wilful defaulters has been substituted as follows:

> "3. Mechanism for identification of wilful defaulters.—The mechanism referred to in Para 2.5 above should generally include the following:
>
> (a) The evidence of wilful default on the part of the borrowing company and its promoter/whole-time director at the relevant time should be examined by a Committee headed by an Executive Director or equivalent and consisting of two other senior officers of the rank of GM/DGM.
>
> (b) If the Committee concludes that an event of wilful default has occurred, it shall

issue a show-cause notice to the borrower concerned and the promoter/whole-time director and call for their submissions and after considering their submissions issue an order recording the fact of wilful default and the reasons for the same. An opportunity should be given to the borrower and the promoter/whole-time director for a personal hearing if the Committee feels such an opportunity is necessary.

(c) The order of the Committee should be reviewed by another Committee headed by the Chairman/Chairman & Managing Director or the Managing Director & Chief Executive Officer/CEOs and consisting, in addition, to two independent Directors/non-executive Directors of the bank and the order shall become final only after it is confirmed by the said Review Committee. However, if the Identification Committee does not pass an order declaring a borrower as a wilful defaulter, then the Review Committee need not be set up to review such decisions.”"

8. In the instant case, without giving any show cause notice to the petitioners as per the Master Circulars issued by the RBI, the first respondent has passed the impugned order and hence this Court is inclined to set aside the impugned order and accordingly the impugned order is set aside in so far as the petitioners are concerned and the writ petitions are allowed. The respondents are directed to follow the RBI Master Circular and the order passed by the Hon'ble Supreme Court cited supra and pass suitable orders, if they are so adviced. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. State Bank of India,
   Stressed Assets Management,
   1112, Raja Plaza, First Floor,
   Avanashi Road, Coimbatore - 641037.

2. TransUnion CIBIL Limited,
   One Indiabulls Centre, Tower 2A,
   19th Floor, Senapati Bpat Marg,
   Elphinstone Road,
   Mumbai-400013.

+1cc to Mr.K.Chandrasekaran Advocate SR. No.12466

W.P.Nos.20118 & 18057 of 2018
and W.M.P.Nos.23594 of 2018

SKM (CO)
PR (11/04/2022)