IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2022

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.NO.15109 OF 2022
AND
W.M.P.NOS.14314 & 14315 OF 2022

Anjani Kumar Goyal
... Petitioner

-Vs-

1. Indian Overseas Bank,
Stressed assets Management Department,
Identification Committee (ID Committee),
Central office, 763, Anna Salai,
Chennai - 600 002 through its General Manager,
Sri.B.A.R.Patro, Member ID Committee

2. Indian Overseas Bank,
India Exchange Place Branch,
International Business Branch,
2, Wood Street, Kolkata - 700 071
Through its Chief Manager.
... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records in and connected with order dated 30.04.2022 passed by the 1st respondent and quash the same.

For Petitioner : Mr.B.Satish Sundar

For Respondents : Mr.V.Kadhir Velu
for R1 and R2

O R D E R

This Writ Petition has been filed challenging the order dated 30.04.2022 passed by the 1st respondent declaring the petitioner as a willful defaulter.

2. Mr.V.Kadhirvelu, learned standing counsel accepts notice on behalf of the respondent Bank. He questioned the maintainability of this writ petition on the ground that the petitioner has approached this Court even before passing of the final order by the review committee.

3. The Identification Committee has been constituted by the respondent Bank as per the Master Circular issued by the Reserve Bank of India in the year 2015. The petitioner challenged the impugned order declaring him as a willful defaulter on the following ground .

(a) The issuance of the show cause notice dated 06.09.2021 and the impugned order dated 30.04.2022 issued by the 1st respondent are bad in law, malafide and biased.

(b) In the show cause notice dated 06.09.2021, the 1st respondent has intentionally and deliberately ignored/ withheld the findings arrived during the Joint Lenders Meeting, Forensic Audits report and the Minutes 1 to 6 (Meeting of Committee of Creditors) of Rabirun Vinimay Pvt.Ltd., where the petitioner was a Director.

(c) The consortium of the Banks have got Forensic Audits done on various occasions and the forensic auditor in their findings clearly had mentioned that there was no diversion/siphoning of funds and the funds have not been used for any other purpose, for which, it was availed and the funds of audits had been discussed in the Joint Lenders Meeting(JLM) and the reports were closed without any adverse comments. The 2nd respondent, being the participant in the Joint Lenders Meeting dated 20.11.2017, were fully aware of each and every details of Forensic Auditors Report for the period 01.04.2013 to 30.04.2014 and 01.05.2014 to 30.06.2016. According to the petitioner, the above Forensic Audit Reports were undertaken at the behest of consortium.

(d) In addition to the above audits, the lenders had also appointed various consultants and professionals like Lender's Independent Engineer(LIE), Lender's Chartered Accountant (LCA), Stock Auditors, Concurrent Auditors etc. for monitoring the utilization of funds and none of them had reported any adverse remarks/observation classifying diversion/siphoning of funds.

(e) All the guarantors had also pledged their 100% share holdings in the Company with the above lenders showing their intent to repay the loans during the course of Corporate Debt Restructuring(CDR). The petitioner, being one of the shareholders at the time of CDR also pledged the entire share holdings in favour of the lenders. Therefore, the petitioner has not diverted any funds and has utilised the funds specifically for the purpose for which it was given.

(f) Consequent to the CIR process, Committee of Creditors (CoC) was constituted by IRP under the provisions of IBC and the above members of the consortium along with Syndicate Bank became members of CoC. The respondent Bank is also the member of CoC and has participated in all CoC meetings convened by IRP/RP.

(g) The definition of willful default in the Master Circular issued by the Reserve Bank of India on 01.07.2014 clearly shows that, to fall within the ambit of willful default, the happenings as stated in the above para must be met and the default to be categorised as willful, must be intentional, deliberate and calculated. The petitioner does not fall within any of the said categories.

(h) The issuance of the show cause notice dated 06.09.2021 by the 1st respondent after a lapse of more than 5 years for declaring the petitioner as willful defaulter is not maintainable and uncalled for and is barred by law of laches.

(i) The impugned order dated 30.04.2022 has been passed completely in breach of the order dated 21.01.2022 passed by this Court in W.P.No.27995 of 2021 filed by another Director and the said writ petition was admitted and Rule NISI was issued. The impugned order was passed without affording the petitioner an opportunity of being heard. The 1st respondent, by its letter dated 07.10.2021, fixed the hearing date on 29.10.2021 through Video Conferencing and the petitioner was mandated to go to Kolkata office of the Bank to attend the Video Conferencing with IDC at Chennai and accordingly, Mr.Sandeep Goyal reached Regional Office on the scheduled date. According to the petitioner, he was also represented by Mr.Sandeep Goyal, the other Director. The Video Conferencing was not working and after waiting for some time, Mr.Sandeep Goyal was connected to IDC Member at Chennai through Video call over phone for 8-10 minutes but no hearing could take place. The petitioner, by his letter dated 03.11.2021, requested the 1st respondent to give fresh hearing so that he can explain the documents and the facts of the case and sought leave to be represented by accountants and legal professionals. However, according to the petitioner, neither the petitioner nor Mr.Sandeep Goyal received any response from the 1st respondent till date. The impugned order dated 30.04.2022 has been passed in a mechanical manner without application of mind.

(j) The impugned order of the 1st respondent dated 30.04.2022 has serious civil consequences and therefore, it is unsustainable having regard to the grounds on which it has been assailed. Therefore, according to the petitioner, the balance of convenience is in his favour for quashing of the impugned order.

4. Admittedly, the 1st respondent is only an Identification Committee. If aggrieved by the order of the Identification Committee, one more opportunity is granted to the petitioner under the Master Circular issued by the Reserve Bank of India to contest the order declaring him as a willful defaulter before the Review Committee. Only to safeguard the interest of the defaulters in the repayment of the loans, two committees have been constituted under the Master Circular issued by the Reserve Bank of India. In case, one committee commits an error, the second committee is in a position to rectify the same. Before the review committee has taken a decision with regard to the impugned order passed by the 1st respondent, the petitioner has approached this Court pre-maturely. Though the petitioner may have raised certain valid grounds in this writ petition to support his case that the impugned order declaring him as a willful defaulter is bad in law and is not in accordance with the Master Circular issued by the Reserve Bank of India, the petitioner ought to have waited for the outcome of the review committee which is yet to hear the petitioner's contention which have been raised in this writ petition.

5. Therefore, this Court is of the considered view that since the petitioner has approached this Court pre-maturely, without waiting for the outcome of the review committee's order, the relief sought for in this Writ Petition cannot be granted in favour of the petitioner, at this stage. However, the review committee will have to necessarily consider the grounds raised by the petitioner in this writ petition as stated supra before passing final orders.

6. Accordingly, this Writ Petition is disposed of by directing the review committee, once constituted, to consider all the grounds that have been raised by the petitioner in this writ petition which have been stated supra, on merits and in accordance with law and only after affording a fair hearing to the petitioner, including granting him the right of personal hearing and also by furnishing him with the documents/ records, based on which, the final order is going to be passed. If any adverse order is passed by the review committee against the

petitioner, he is granted liberty to challenge the same in the manner known to him under law. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The General Manager,
Indian Overseas Bank,
Stressed assets Management Department,
Identification Committee (ID Committee),
Central office, 763, Anna Salai,
Chennai - 600 002

2. The Chief Manager,
Indian Overseas Bank,
India Exchange Place Branch,
International Business Branch,
2, Wood Street, Kolkata - 700 071

+2ccs to M/s.B.Sathish Sunder, Advocate, S.R.No.36618

W.P.No.15109 of 2022

AK-II(CO)
RLP(30/06/2022)