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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision:- 14.12.2022

+ W.P.(C) 16838/2022 & CM APPL. 53322/2022 -Stay.

RAM KISHORE ARORA & ORS Petitioner
Through: Ms.Jayashree Shukla Dasgupta, Adv.

versus

UNION BANK OF INDIA & ANR Respondent
Through: Mr.Alok Kumar with Ms.Garima
Soni, Advs for R-1.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The petitioners have approached this Court assailing the order dated 17.06.2022 passed by the Wilful Defaulters' Identification Committee as also the consequential order dated 17.11.2022 passed by the Wilful Defaulters' Review Committee of the respondent no.1's bank recommending that the petitioners be declared as wilful defaulters.
2. The primary contention of the learned counsel for the petitioners is that the impugned orders are cryptic, having been passed without even supplying them copies of the documents relied upon by the respondent while passing these orders. Moreover, the respondent has not even dealt with the detailed submissions made by the petitioners in its representations and therefore, contends that the impugned orders, have been passed without following the principles of natural justice and are, therefore liable

to be set aside. In support of her plea, she seeks to place reliance on the decisions of this Court in *Shantanu Prakash vs. Union Bank of India and Ors. (2021) SCC Online Del 2436* and *Frost International vs. Punjab National bank, (2021) SCC Online Del 3683*.

3. On 09.12.2022, this Court, after considering the preliminary submissions of the learned counsel for the petitioners, had granted time to the learned counsel for the respondent no.1 to obtain instructions as to whether the said respondent was willing to recall the aforesaid orders with liberty to pass a fresh order in accordance with law by dealing with the grounds raised by the petitioners in their representations.

4. Today, learned counsel for the respondent no.1 submits that the reasons for categorizing the petitioners as wilful defaulter are available on record of the said respondent and therefore, the respondent is not inclined to recall the said order. He, however, concedes that the impugned orders do not even show any semblance of consideration of the grounds raised by the petitioners in their representations.

5. In the light of this admitted position, no counter affidavit is called for and the writ petition is, with the consent of the parties, taken up for disposal today itself.

6. Since the primary plea of the petitioners is that the impugned orders, which are almost similarly worded, have been passed without even referring to the submissions made by them in their representations, it would be appropriate to refer to the impugned order dated 17.06.2022 in its entirety. The same reads as under:

“In terms of RBI Master Circular on Wilful Defaulter DBR.No.CID.BC.22/20.16.003/2015-16 dated 01.07.2015, a

show-cause notice dated 02.03.2022 was served to the borrower/ its promoters/ directors/ guarantors and personal hearing opportunities were provided on 29.03.2022 & 27.05.2022. The party attended meeting held on 27.05.022 and submitted their representations.

After careful examination of the facts of the case and the submission from borrower/ representative and Bank, the Identification Committee in its meeting held on 27.05.2022 passed the order as under-

The Committee observed that no satisfactory justification/ defense could be submitted by the borrower/ its promoters/ directors/ guarantors against Bank's wilful defaulter connotation. Hence, the Committee decided to classify them as wilful defaulters based on the grounds mentioned in the show cause notice served to them which are reproduced herein below- (emphasis supplied)

The forensic auditor has observed that due to mis-utilization of the funds and weak project management practices, the project remained incomplete and the borrowing entity has been grappling with the issue of meeting loan repayment commitments. The auditor concluded that amount of Rs. 69.39 crores of the disbursed funds had been utilized for the payment to other parties who were neither suppliers nor contractors of the Eco Village-III meaning that the funds of Rs. 69.39 crores was not available with the company in the form of application of funds and the funds have siphoned off. Similarly, funds to the tune of Rs. 56,98 crores were paid to connected parties without availing any goods or services from them.

It was noted that borrower company had paid excess amount to certain vendors against material supplied or services rendered which itself concludes that vendors either supplied material or rendered services in some other projects for which the payments were made from term loan or payments were made to these vendors without any procurement of material or expenses. It

show diversion of funds amounting to Rs. 35.84 crores and also non-adherence to the terms of sanction.

Upon cross examination of Inventory sheet as on 30.06.2019 and RERA approval dated 09.04.2014, discrepancy was observed in number of units (3256 units as per inventory sheet and 3048 units as per RERA approval). Thus the borrower has been wilfully a intentionally sharing incorrect number of units to the lenders despite RERA approval for lower number of units.

Loans and advances of Rs. 330.33 crores were given In FY 2016-17 to Revital Reality Pvt. Ltd. which is an associate company. It was observed from perusal of balance sheet of Revital Reality Pvt. Ltd. that funds invested in this company had been used for making investment in land and for making further investment in M/s Sarv Realtors Pvt. Ltd. and no any major business activities was carried out by borrower company which clearly show that funds had been siphoned off.

It was observed that funds to the tune of Rs. 20.50 crores were not received in the Escrow account of the company which is violation of terms and condition of sanction letter of loans provided by consortium banks.

Against sanctioned terms for infusing promoters contribution of Rs 334.76 crores, promoters' have infused Rs. 140.38 crores only which means that the promoters had failed to comply terms and conditions of sanction,

In light of the above facts, the committee is of the view that borrower/ its promoters/ directors/ guarantors have indulged in the act of wilful default by diversion/ siphoning off bank's funds.

Hence, the committee concluded that the said borrower/ its promoters/ directors/ guarantors be declared as wilful defaulters

The Committee directed that the order be served on the

borrower its promoters/ directors/ guarantors allowing them to file appeal against the order of Identification Committee within 15 days to place the same before Review Committee for final view.

Ordered accordingly.”

7. From a perusal of the aforesaid order, it is evident that the respondent has not dealt with any of the submissions made by the petitioners in their representations and has merely observed that no satisfactory justification had been furnished by the petitioners. Even though the respondent/bank may, on the basis of the report submitted by the forensic auditor, have a justifiable cause in declaring the petitioners as wilful defaulters, it was incumbent upon it to at least, briefly refer to the detailed submissions made by the petitioners. In my view, the respondent has, by passing such a cryptic order, which has far reaching consequences qua the petitioners, given a complete go-by to the principles of natural justice. In this regard, reference may be made to the observations of the Co-ordinate Bench in para 12 and 15 of ***Frost International (supra)***. The same read as under:

“12. Although the allegations against the petitioners have been summarised while enumerating the grounds put up by the Convenor of the Committee, I do not find adequate discussion as to the representation of the petitioners and the reports submitted by them. The extract of the Supreme Court's judgment in Jah Developers quoted above clarifies the scope of consideration required before classifying a party as a wilful defaulter. The minutes of the meeting in the present case contain a recital that the financial statements of the company have been discussed, and that the reasons put up by the Convenor of the Committee are justified, but record conclusion without prescribing any meaningful reasons. The Supreme Court in Jah Developers has made it clear that the orders of both, the Identification Committee and the Review Committee, must be reasoned orders.

In the case of the Identification Committee, this is further necessary because the party concerned has been provided with a domestic remedy of representation before the Review Committee. If the constituent of a bank is inadequately apprised of the reasons which have weighed with the Identification Committee, its opportunity of filing a representation will become meaningless.

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15. This order is wholly unsatisfactory to meet the requirements of natural justice, as elucidated in the judgment of the Supreme Court in Jah Developers. The recital of conclusions does not substitute for an expression of reasons. The least that is expected of the Review Committee is to consider, howsoever briefly, the representations made by the petitioners against the order of the Screening Committee and to give its reasons for rejection of the representation.

8. For the aforesaid reasons, the impugned orders, being wholly unsustainable, deserve to be quashed and are accordingly, set aside. The matter is remanded back to the Wilful Defaulters' Identification Committee for passing a fresh order in accordance with law after dealing with the submissions made by the petitioners in their representations. Depending upon the order passed by this committee, it will also be open for the review committee to pass a fresh order in accordance with law.

9. It is however made clear that since the petitioners had already been given a personal hearing by the Wilful Defaulters' Identification Committee, there would be no requirement to grant any further opportunity of personal hearing to them and the fresh order, as indicated hereinabove, will be passed by dealing with the submissions made by the petitioners in their representations.

10. Needless to state that this Court has not expressed any opinion on the

merits of the petitioners' claim and, therefore, in case, the petitioners are aggrieved of any fresh order passed by the respondent no.1, it will be open for them to seek legal recourse as permissible in law.

(REKHA PALLI)
JUDGE

DECEMBER 14, 2022
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