A-04
Ct No.09
07.08.2023
TN

WPA No. 17465 of 2023

M/s Father Tractor and others
Vs.
Bank of Baroda and others

Mr. Shashwat Nayak,
Mr. Mitul Chakraborty,
Ms. Payel Nath

.... for the petitioners

Mr. Rahul Sarkar,
Ms. Dipika Sarkar,
Mr. Siddhant Srivastava

.... for the respondent/Bank

Learned counsel for the petitioners has taken three objections to the impugned order of the First Committee, identifying the petitioners as willful defaulters.

The first ground is that no show-cause notice was served on the petitioners prior to passing of the impugned order.

Secondly, only a single person signed the said order, although the RBI Master Circular concerning willful defaulters stipulates that there has to be at least three designated members of the said Committee.

Thirdly, it is argued that the order does not contain any reason.

On the above grounds, it is contended that the impugned order is a nullity and, as such, the remedy to go before a Review Committee, otherwise available to the petitioners, would be a merely illusory remedy here.

Learned counsel appearing for the Bank opposes such contentions and argues that, in terms of the Master Circular of the RBI, there has to be certain designated members present, being three in number. In the present case, by handing over a copy of a purported attendance sheet dated June 02, 2023 of a Meeting of the Committee of Executives on Willful Defaulters, it is argued that as many as seven persons signed the same.

By stressing upon the designations of the said persons, it is contended that the statutory conditions as stipulated in the Master Circular were met in the present case. Only the communication of the order was made by a single member.

Secondly, it is contended that a prior show-cause notice was duly issued to the petitioners.

Insofar as the arguments as to reasons is concerned, learned counsel for the respondent-Bank argues that, in an order passed by a Willful Defaulters Committee, no detailed reasons need be given, on the same footing as a civil court.

Heard learned counsel for the parties.

Insofar as the argument of non-service of show-cause notice is concerned, since the same is disputed by both the parties, the same takes the nature of a factual dispute between the parties.

As far as the argument relating to lack of reasons is concerned, the argument advanced by the Bank is rather more acceptable, since it is not expected that a Willful Defaulter Identification Committee will give detailed reasons such as a judicial forum.

In the present case, in the impugned order dated June 02, 2023, it was recorded that the show-cause notice was issued on the grounds as stated therein. The ground was that as per the unit inspection dated July 19, 2022, the Unit was found closed and no stocks available. The Firm had disposed off the stock without informing to the bank and proceeds of stock sold were not routed through cash credit account but the funds were diverted.

It is further stated in the said order that even after service of notice, no representation was received from the borrower/guarantor against the show cause notice. In such view, it is mentioned, the Committee of Executives (COE) was of the view that the borrower/guarantors have nothing to submit against the charges levelled against them in the show cause notice. In the light of the said facts, the Committee was of the view that the borrower/guarantors had indulged in the act of willful default as per RBI guidelines on Willful Defaulters.

As such, it was observed that the unit had defaulted in meeting its payment/repayment obligations to the lender and had not utilized the finance from the lender for the specific purposes for which finance was availed of but had diverted the funds for other purposes.

On such grounds, the Committee observed that the petitioners are willful defaulters.

Insofar as reasons are concerned, I do not find any dearth of reasons, since the Committee adverted to the allegations made against the petitioners, the fact that the petitioners had not responded to the show cause and also touched the main allegation within the contemplation of the Master Circular, which was levelled against the petitioners prior to labelling it as willful defaulter.

However, insofar as the third contention of the petitioners is concerned, the same carries sufficient weight. The Master Circular of the RBI on Willful Defaulters, in Clause (v)(a), stipulates that the evidence of willful 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 and consisting of two other senior officers of the rank of GM/DGM.*

Although the Bank has alleged that there were as many as seven members of the said meeting, including the persons required to form such a Committee as per the RBI guidelines, there is no reflection of the same in the order communicated to the petitioners. The said order clearly depicts only the name of the Deputy General Manager, who is described as a member of the Committee of Executives on Willful Defaulters and is the sole signatory therein. Nothing in the said order reflects that the other committee members in terms of the RBI Master Circular were present and signed the said order.

Although the text of the order itself indicates that the decision was taken by the Committee of Executives, in the absence of any reflection of the presence of the other members in the order itself, mere subsequent production of a list of attendance, which purportedly indicates that the relevant portfolio-holders were present, cannot cure such incurable defect in the order.

Hence, on such ground alone, the order is palpably vitiated.

As such, the remedy available to the petitioners, to go before a Review Committee, would, as rightly contended by the petitioners, be merely an illusory remedy in the present case, since there was no prior adjudication worth the name by the First Committee, that is, the Willful Defaulters Identification Committee, a "review" of which could be contemplated by the Second Committee.

As such, the impugned order dated June 02, 2023, identifying the petitioner as a wilful defaulter, is set aside. It is made clear that nothing in this order shall preclude the Willful Defaulters Identification Committee to give a fresh hearing to the petitioners and to decide afresh on the proposed declaration of willful defaulter in respect of the petitioners. Nothing in this order shall prejudice the rights of either of the parties, if such a fresh exercise is undertaken.

Insofar as the writ petition is concerned, in view of the considerations in the present order revolving only around questions of law, no affidavits were directed and, as such, it is deemed that none of the allegations made in the writ petition are admitted by the respondents.

WPA No. 17465 of 2023 is, accordingly, disposed of.

The documents handed over in court today be kept on record.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)