

1st December,
2023
(AK)
19

W.P.A. 25317 of 2023

Vijay Bothra
Vs.
Indian Overseas Bank and another

Mr. Sabyasachi Chowdhury
Mr. Rajarshi Dutta
Mr. Sanjib Dawn
...for the petitioner.

Mr. Shiv Mangal Singh
...for the respondent-Bank.

1. Learned senior counsel appearing for the petitioner contends that the petitioner was declared as a wilful defaulter by the Identification Committee and thereafter by the Review Committee *de hors* the provisions of the RBI Master Circular and the principles of natural justice.
2. It is submitted that the relevant documents on which the Bank relied for so declaring, primarily the Forensic Audit Report (FAR), were not supplied to the petitioner at any point of time despite the petitioner

having pointed out the same in the petitioner's objection to the show-cause.

3. That apart, it is contended that the orders of the Wilful Defaulter Identification Committee as well as the Review Committee are cryptic in nature and do not refer at all to the documents produced by the petitioner and/or the arguments advanced by the petitioner.

4. Learned counsel places reliance on a judgment of a coordinate Bench of this court rendered in *M/s. Atlantic Projects Ltd. and others vs. The Allahabad Bank and others*.

5. Learned counsel appearing for the Bank contends that although it was recorded in the order dated November 20, 2023 that despite service none appeared for the Bank, it had been intimated to the bank that the matter would be taken up on the next date, that is, November 21, 2023 whereas the same was heard on November 20, 2023.

6. Hence, it is pointed out that the Bank did not have an opportunity to controvert the matter at the relevant juncture.

7. It is further submitted that the petitioner was fully aware and participated in a CIRP process with regard to the borrower-company where each of the components of the concerned FAR was discussed threadbare. However, such facts have been suppressed by the petitioner.

8. Learned counsel for the Bank contends that he has a copy of the minutes of the said proceedings and is agreeable to produce the same if so directed by the court.

9. Learned counsel for the Bank also points out that the petitioner is a defaulter in respect of at least ten financial institutions to the tune of more than Rs.900 crore. It is argued that the petitioner, having not come with clean hands, ought not to be permitted to move the present writ petition.

10. Learned counsel for the Bank further submits that the petitioner never challenged the order of the first committee and, as such, ought to be precluded from moving the present challenge.

9. A perusal of the ratio laid down in *M/s. Atlantic Projects Ltd.* (supra) indicates that the learned Single Judge observed that the delinquent must have the entirety of the materials that were placed before the Identification Committee for the delinquent to give a meaningful submission. Abiding by the said principle, which is also a cardinal principle of natural justice, since a man ought not to be heard without getting full opportunity to address all materials on which he is indicted, I find that in the present proceeding neither the FAR nor other relevant documents were served on the petitioner at any point of time by the Bank.

10. The arguments of the Bank regarding the components of the FAR having been discussed in a

Corporate Insolvency Resolution Process is neither here nor there.

11. Such “discussion” in a minutes recorded in connection with such process does not amount to service of a copy of the FAR on the petitioner at all.

12. Moreover, it is not the case of the Bank that even in connection with the said CIRP, any copy of the FAR was handed over to the petitioner.

13. Thus, the point remains that the documents which were crucial for coming to the conclusion of wilful defaulter were never handed over to the petitioner by the Bank.

14. I find from a perusal of several paragraphs of the objection to the show-cause, given by the petitioner, that the petitioner categorically pointed out that the purported evidence placed before the Identification Committee, by virtue of which the said committee had come to the conclusion that evidence of default has occurred in the account, were never served on the petitioner.

15. The petitioner also pointed out that in the absence of such information and document, the petitioner was never provided the opportunity to make a meaningful and effective representation to the allegation of wilful default.

16. It is further seen from the objection to the show-cause and the representation before the Review Committee given by the petitioner that detailed particulars of several transactions of the petitioner and

supporting documents were placed by the petitioner before the said committees.

17. However, unfortunately, none of the said pleadings or documents are reflected in the order of the Identification Committee or the Review Committee.

18. The first committee, as rightly contended by the petitioner, rendered a cryptic order, finding the petitioner to be a wilful defaulter.

19. The Bank merely stated, by copying the contents of the show-cause notice, that it has “direct proof” for diversion of funds by the borrower and its Directors.

20. Neither the said perceived direct proof is referred to categorically, nor is any particular thereof given in the said order.

21. The Review Committee tried to improve the cryptic nature of the first committee’s order to an extent by attributing three apparent reasons in addition.

22. The first reason was, however, that the forensic audit report proves that there was diversion of funds, which takes us back to the first submission of the petitioner that no copy of the said document was given to the petitioner at any point of time.

23. The rest of the allegations referred to perceived irregularities by the petitioner, without adverting to in specific terms or even vaguely the specific details and chain of transactions disclosed by the petitioner in his reply to the show-cause.

24. Thus, the order of the Wilful Defaulter Identification Committee as affirmed by the Review Committee suffers from patent violation of principles of natural justice as well as utter paucity of reasons.

25. Moreover, the relevant documents and pleadings of the petitioner were never taken into consideration. On such grounds, none of the said orders can survive the scrutiny of judicial review.

26. Accordingly, WPA No. 25317 of 2023 is allowed on contest, thereby setting aside the orders of the Wilful Defaulter Identification Committee and the Review Committee whereby the petitioner was held to be a wilful defaulter.

27. The first committee, that is, the Wilful Defaulter Identification Committee, shall now proceed on the basis of the show-cause notice initially given to the petitioner by furnishing to the petitioner the forensic audit report as well as all other documents on which the respondent-bank seeks to rely in support of its allegation of wilful defaulter.

28. Upon such copies being furnished and an opportunity of hearing being given to the petitioner, the Wilful Defaulter Committee shall revisit the issue and decide on the question as to whether the petitioner can be declared to be a wilful defaulter under the relevant Master Circular of the RBI.

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.)