

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(Original Side)

APOT No. 63 OF 2022

With

WPO 340 OF 2022

IA No. GA 1 OF 2022

Reserved on : 13.01.2023

Pronounced on: 20.03.2023

Kaustuv Ray

...Appellant

-Vs-

IDBI Bank & Ors.

...Respondents

Present:-

Mr. Suvankar Nag,
Mr. Dwaipayan Ghosh,
Mr. Aditya Mondal, Advocates

... for the Appellant

Mr. Chanyan Gupta,
Mr. Kausik De,
Mr. Roshan Pathak, Advocates

..... for the Respondents

**Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE**

**THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE**

Rajarshi Bharadwaj, J:

1. This appeal is at the instance of the Writ Petitioner challenging the order of the Learned Single Judge dated 21.03.2022 whereby W.P.O. No 340 of 2022 (Kaustuv Ray-versus-IDBI Bank and others) has been disposed of with certain directions.

2. The facts in a nutshell are that respondent No. 1 herein IDBI Bank Ltd granted working capital facilities to R.P Info Systems Limited of Rs 138 crores. The Company did not adhere to the terms and conditions on which the credit facilities were sanctioned. Rather it defaulted in repayment of the facilities as per agreed terms.

3. The writ petitioner, herein the appellant, one Kaustuv Ray, a promoter/guarantor of M/s R.P Info Systems Limited amongst many others on September 17, 2021 by a notice dated June 16, 2021 issued by respondent bank was asked to show cause and make submissions before the Wilful Defaulter Committee of the bank (First Committee) (hereinafter referred to as 'WDC') as to why the appellant's name should not be included in the list of Wilful Defaulters as per RBI guidelines either in person or in virtual mode by September 24, 2021. The appellant who had failed to intimate the change of permanent address to the respondent Bank did not receive the show cause notice, owing to which responded to the letter on September 20, 2021 requesting respondent No. 1 not to proceed with the hearing.

4. The issuance of the show cause notice by respondent bank was in compliance with the Master Circular no. DBR No. CID.bc.57/20.16.003/2014-15 issued by the Reserve Bank of India on matters related to wilful defaulters. Clause 3 (b) of the Circular provides that if the Committee examining the evidence of wilful default concludes that an event of wilful default has occurred, it shall issue a show cause notice to the concerned borrower along with the promoter/whole time director and call for their submissions. Thereafter, considering their submissions, it shall 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.

5. The respondent No. 1 thereafter through an email to the appellant on October 16, 2021 offered an opportunity for personal hearing either physically or through video conferencing before the WDC on October 26, 2021. The appellant replied to the same by calling upon respondent No.1 to furnish a copy

of show cause of June 16, 2021 as per RBI regulations, to provide additional documents to effectively meet with the entirety of the allegations levelled in the show cause notice and sought for adjournment of hearing. The personal hearing before the WDC was further extended to November 30, 2021 by letter dated November 20, 2021 by the respondent Bank.

6. Being aggrieved with the purported show-cause notice dated June 16, 2021 the appellant/writ petitioner preferred a writ petition (WPA No. 1207 of 2021) wherein the Learned Single Judge was pleased to dispose of the writ petition by directing the respondent Bank to handover copies of relevant documents. In pursuance of the said order, the respondent Bank handed over the Transaction Audit Report (hereinafter referred to as 'TAR') from the year 01.04.2008 to 03.04.2020 to the appellant.

7. However, on account of not providing the requisite documents by the respondent Bank the appellant/writ petitioner filed another writ petition wherein the Learned Single Judge was pleased to pass an order not in favour of the appellant. Thus, being aggrieved by the impugned order passed by the Learned Single Judge the instant appeal has been filed by the appellant.

8. Submissions of the Learned Counsel for the appellant/writ petitioner are:

- I. The impugned notice dated June 16, 2021 was not in conformity with the guidelines of the Master Circular relating to the classification of wilful defaulter. As according to its Clause 2.6, the said circular cannot be applied to guarantors who executed guarantees prior to September 9, 2014 nor can it be applied retrospectively. The appellant was a corporate guarantor in respect of financial facilities availed by RP Infosystem Pvt Ltd in terms of a sanction dated August 16, 2008.
- II. The respondent Bank is duty bound to form opinion on the basis of evidence/documents of wilful default. In the instant case, there has been complete departure from the same. The WDC has not applied its mind to the evidence/documents, but proceeded on the basis of a purported TAR and issued the impugned show cause notice without forming any opinion,

wherein the issuance of detailed and articulated show cause notice by the WDC is a sine qua non for the initiation of the process of classification as a wilful defaulter.

III. TAR was the only document extensively relied upon by the respondents while issuing the show cause notice, which was evident from the letter dated January 3, 2022 and the same cannot be a basis of the substance of the allegations made in the show cause notice. The respondent Bank had not provided the appellant with any other required documents to deal with the vague ground of the show cause notice. Thus, the finding of the Learned Single Judge that it would be premature for the writ court to adjudicate the issue involved since such an adjudication would tantamount to prejudging the issue prior to those being decided by the WDC without appreciating the scope of the argument.

9. The Learned Counsel for the respondents submits that:

I. The WDC of the Bank constituted as per RBI Circular on wilful defaulters dated July 1, 2015 had examined the conduct of the account and utilization of credit facilities and had concluded that the appellant's company during the financial year 2011-12 had advanced an amount of Rs.5.94 crore to its associate companies which significantly rose to Rs. 41.79 crore in the financial year 2013-14. These advances still have a balance outstanding of Rs. 25.93 crore as on March 31, 2019. Moreover, the company has repaid unsecured loans obtained from body corporates and promoters by an amount of Rs. 7.30 crore in the financial year 2018-19 and the repayment was done by the company when it already has standing obligation to pay financial creditors. Thus, the appellant had deployed the borrowed funds for purposes/activities or creation of assets other than those for which the loan was sanctioned.

II. The WDC of the Bank has relied upon the findings and conclusions made in the TAR carried out during the Corporate Insolvency Resolution Process (CIRP) before the Hon'ble National Company Law Tribunal (NCLT), Kolkata under the proceedings of Insolvency and Bankruptcy Code 2016 (IBC).

TAR is the summary finding of the transactions by the auditor appointed under the provisions of the IBC on the basis of bank statements, consortium documents, recall notices, e-filing of documents of the defaulter company as well as the audited balance sheet filed with the Ministry of Corporate Affairs. These documents are principally the accounts of the defaulter company itself which the appellant No.1 had access. There was no occasion to supply the same documents again.

III. The respondents initiated proceedings against the appellant/writ petitioner to declare him a wilful defaulter on the basis of the fact that the appellant/writ petitioner has defaulted in making payments to various nationalised banks in respect of several loan accounts. Moreover, a charge sheet dated December 30, 2018 has been registered by the CBI against the appellant in a particular case. The name of the appellant as wilful defaulter has been published in the CIBIL website.

IV. The manner in which the respondent bank proceeded without supplying the relevant documents is valid as there has been independent application of mind on part of respondent No.1. Documents relied upon for the formation of opinion are not required to be disclosed unless relied upon in the process of inquiry. A show-cause notice brings forth only a prima facie and tentative conclusion for the purpose of giving an opportunity of representation to the appellant/writ petitioner on the allegations. The appellant No.1 has not been subjected to inquiry because he failed to appear before the WDC for personal hearing in the first place.

10. Having heard the learned counsel for the parties and on perusal of the records, it is observed that in *Trade Tax Officer, Saharanpur v. Royal Trading Co.* reported in (2005) 11 SCC 518, Supreme Court held that against a mere issuance of a show cause notice a Court should be reluctant to interfere. It was further held in the above judgement that only after a reply is filed as against a show cause notice, the notice could either be dropped or if the reply is not satisfactory then based on the reply further inquiries could be made. However, no adjudicating proceedings must be stalled by Courts. It must be noted that

while issuing a show cause notice, what has been entertained by the respondent bank is only a prima facie view, on the basis of which the show cause notice was issued. The determination comes only after a representation is preferred by the appellant. As a part of his response, the respondent bank may view all possible issues and only thereafter the determination or decision could be arrived at. Thus, the Learned Single Judge was correct in holding that the appellant/petitioner, who has already filed a partial reply to the show cause notice has a remedy to approach WDC with a representation to be prepared by him. Moreover, even if the appellant/petitioner is branded as a wilful defaulter by the WDC, there is scope for further review by the Review Committee headed by the Chairman of the respondent bank before the order becomes final upon confirmation by the Review Committee. Therefore, it would be premature for the writ court to adjudicate the issue involving the issuance of a show cause notice.

11. This Court shall therefore, be slow and circumspect in entertaining any appeal where the challenge is thrown to a show cause notice notably when there is no justification to hinder with the said show cause notice in the present case.

12. Hence, we find no reason to interfere in the order of the Learned Single Judge and for that reason the appeal is dismissed. All pending applications are also accordingly disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata

20.03.2023
PA(BS)