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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/1573/2023
SANJAY PRAKASH BANSAL AND ANR.
VS
THE RESERVE BANK OF INDIA AND ORS.

WITH

WPO/1729/2023
SANJAY PRAKASH BANSAL AND ANR
VS
THE RESERVE BANK OF INDIA AND ORS.

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date: 12th December, 2023.

Appearance:
Mr. Ranjan Bachawat Sr, Adv.
Mr. Arijit Bardhan, Adv.
Mr. Avirup Chattterjee, Adv.
Mr. Rishov Das, Adv.
Mr. Prasenjit Pal, Adv.
. . .for the petitioner.

Mr. Shashwat Nayak, Adv.
Mr. Santosh Kr. Ray, Adv.
Ms. Antalina Guha, Adv.
. . .for the respondents.

The Court: In WPO 1573 of 2023, the writ petitioners have challenged an order passed by the Wilful Defaulter Identification Committee (first committee) declaring the petitioners to be a wilful defaulters. In WPO 1729 of 2023, in continuation of the same process, the Review Committee affirmed the findings of the First Committee, which lead to the filing of the second writ petition.

Learned senior counsel appearing for the petitioner contends that insofar as the Review Committee is concerned, the Master Circular clearly provides in Clause 3(c) as to the exact composition of the Review Committee.

In the present case, however, the Zonal Manager of the concerned bank took it upon himself to pass the said order of the Review Committee, which is thus palpably *de hors* the Master Circular. The Zonal Manager, under no stretch of imagination, could exercise the powers of the Review Committee as envisaged in the Master Circular.

Hence, the entire order of the Review Committee is a nullity, being devoid of jurisdiction. In support of such proposition, learned senior counsel cites *Sanjay Prakash Bansal and Anr. versus Reserve Bank of India and Ors.* reported at *2023 SCC online Cal 4657* where a similar proposition was upheld by this Court.

Learned senior counsel next argues that there is palpable discrepancy between the allegations made in the show cause notice and the observations of the First Committee as well as the Review Committee (the later being almost an exact replica of the First Committee order). Whereas in the show cause notice, under the head “Disposing of Assets”, it was alleged that no stock was available with the borrower company and stocks were disposed of without any credit proceeds with the bank account, in the orders of the Review Committee as well as the First Committee which preceded the same, it was observed that the entire block of “fixed assets” having a net block of Rs.113.80 lac have been written off without any justification and documentary evidence for writing off the assets. The entire premise of the said declaration was such alleged writing off of the fixed assets, which is in gross variance with the allegation in the show cause regarding stocks being allegedly disposed of. It is argued that stocks cannot, by any stretch of imagination, be equated with fixed assets, movable or otherwise. It is, thus, argued that the orders of the First Committee as well as the Review Committee ought to be set aside on such score as well.

Learned counsel for the respondent bank controverts the allegations made by the petitioners. It is argued that in the show cause notice itself, the relevant clauses of the concerned R.B.I. Circular, being Clause 2.1.3(d) and Clause 2.6, were also quoted. Selective quoting of the particular provisions itself indicates that the said provisions should also be read into the allegations made in the show cause notice. Mention of those particular clauses of the R.B.I. Master Circular itself indicates that the said language of the clauses were a component of the allegations levelled against the petitioner. Since the relevant clause speaks about removal of movable fixed assets or immovable property, it is argued that the show cause notice incorporated such allegation and was, thus, in consonance with the orders of both the committees.

That apart, it is sought to be pointed out by learned counsel for the bank that in the orders of both the committees, allegations under Clause 2.6 of the R.B.I. Master Circular were also levelled. Clause 2.6, it is argued, pertains to guarantors. In the present case, the petitioners acted in the capacity of directors as well as guarantors. Taking into account the guarantor component of the allegations, it is argued by learned counsel for the bank that guarantors stand on a slightly different footing than directors. A distinction is sought to be drawn by learned counsel for the bank between wilful default committed by a director of the borrowing company and a guarantor. Insofar as the guarantor is concerned, the act of default, it is argued, commences with the guarantor failing to repay the debts despite demand having been made to the guarantor, in spite of having sufficient means to do so.

Thus, insofar as the petitioners' capacity as guarantors is concerned, there is no discrepancy between the allegations made in the show cause notice and the orders of both the committees.

On consideration of the materials on record, undoubtedly, it is the Zonal Manager of the concerned bank who signed the impugned order of the Review Committee. Although the Zonal Manager indicated that it was being done on behalf of the Review Committee, such statement *per se* cannot justify the Zonal Manager signing the order himself.

Contrary to the argument of the respondent/bank that the said document annexed to the writ petition was a mere communication of the order of the Review Committee and not the order itself, the very tenor of the said annexure shows that the same comprised of the order itself and was not a mere communication of the order. In no portion of the said order of the Review Committee do I find mention of proper constitution of the Review Committee as envisaged in Clause 3(c) of the Governing Master Circular of the R.B.I. Moreover, the Zonal Manager himself was the author and signatory of the order. Hence, the order of the review committee suffers from gross contravention of Clause 3(c) of the Master Circular. Hence, the said order is a nullity, being devoid of jurisdiction.

Insofar as the order of the Wilful Defaulter Identification Committee is concerned, the petitioners are justified in arguing that there is gross variation between the allegation made in the show cause notice and the order of the Identification Committee, which was subsequently repeated by the Review Committee.

Whereas the show cause notice alleged that no stock was available with the company and stocks were disposed of without any credit proceeds with the bank account, which was the plinth of the allegations, the order of the First Committee as well as that of the Review Committee spoke about fixed assets having been written off. Such gross discrepancy between the allegations of the show cause notice and the orders of the committees itself vitiates the orders, since it is well-settled that in a show cause notice, the grounds on which the accused person is sought to be indicted are to be clearly mentioned. Since the orders of the committees deviate from the said allegations in the show cause notice on cardinal aspects, it cannot be said that the orders of either of the committees could be sustained on such score as well.

The last point argued by the bank is that the wilful default committed by a guarantor can be differentiated from that of the borrower-company or its directors.

Such argument, however, is absurd. The act of wilful default emanates from non-payment of debt, which constitutes a default on the part of the borrower. A guarantor, as indicated in Clause 3 as well as Clause 2.6 of the Master Circular, has co-extensive liabilities with the borrower. Even from the language of Clause 2.6 it is evident that the act of default which ultimately incriminates the guarantor is that of the borrower, which is the genesis of the entire proceeding under the Master Circular.

The expression "co-extensive" itself is a sufficient indicator of the fact that the liability of the guarantor is on an equal footing with the borrower and its director. Thus, the default committed by the guarantor for coming within the purview of the Master Circular is not an isolated or standalone act of default different from that committed by the borrower. The act of wilful defaulter remains the same, which is committed at the first instance by the borrower, the effect of which is co-extensive vis-à-vis a guarantor.

Hence, the argument sought to be advanced by the petitioner that the act of wilful default on the part of a guarantor is distinct and different from that of the borrower is not supported by the Master Circular or commercial jurisprudence in general. Hence, the observations of the First Committee in its order declaring the petitioners to be a wilful defaulter cannot also be sustained.

In such view of that matter, WPO No.1573 of 2023 and WPO 1729 of 2023 are allowed, thereby setting aside the orders of both the Wilful Defaulter Identification Committee (First Committee) and the Review Committee declaring the petitioners to be Wilful Defaulters under the concerned Master Circular of the

R.B.I. Any action, if taken consequentially or in terms of such declaration, also stands automatically revoked and reversed.

It is made clear, however, that nothing in this order shall preclude the respondents from proceeding afresh on the basis of the show cause notice which was the genesis of the present proceeding and/or, at the choice of the respondent, to issue a fresh show cause notice and start the proceeding *de novo*.

No order as to costs.

Urgent certified website copy of this order, if applied for, be made available to the parties subject to compliance with the requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)

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