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WPO/1776/2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

AMIT KUMAR KEJRIWAL
VS
UCO BANK AND ORS.

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date: 18th December, 2023.

Appearance:
Mrs. Noelle Banerjee, Adv.
Mr. Ritoban Sarkar, Adv.
Mr. Dipak Dey, Adv.
Ms. Megha Das, Adv.
…for the petitioner

Mr. Shashwat Nayak, Adv.
Mr. Santosh Kr. Ray, Adv.
Ms. Antalina Guha, Adv.
…for the respondent bank

The Court: At the outset, it is submitted by learned counsel for the bank that in view of all the necessary documents being annexed to the writ petition, the bank does not want to use any affidavit-in-opposition to the writ petition. Accordingly, no affidavits are directed. However, it is deemed that none of the allegations made in the writ petition are admitted by the respondents.

Learned counsel for the petitioner throws a challenge to the show-cause notice issued against the petitioner for declaration of the petitioner as willful defaulter as well as the orders of the Willful Defaulter Identification Committee (First Committee) and thereafter the Review Committee.

It is pointed out that the show cause notice itself practically quoted a Forensic Audit Report (FAR) which itself was inconclusive.

The petitioner duly gave representation to the first committee as well as to the Review Committee, none of the contents of which were reflected in the orders of either committee. Both the committees, it is argued, placed reliance blindly on the Forensic Audit Report and came to the conclusion that the petitioner was required to be declared as a willful defaulter. It is argued that as such, the same vitiates not only the show cause notice but the subsequent orders of both committees.

It is further argued that the Review Committee was constituted unlawfully de hors the provisions of the concerned Master Circular on Willful Defaulter issued by the Reserve Bank of India.

Learned counsel for the bank contends that although the show cause notice referred to the Forensic Audit Report as its basis, the independent allegations quoted from the said FAR in the show cause notice were required to be rebutted by the petitioner by cogent evidence, which has not been done in the present case.

It is argued that the Review Committee was duly constituted but the order was communicated only by the zonal head of the bank. As such, the argument that the committee was not duly constituted is refuted.

Upon a consideration of the materials annexed to the writ petition, it is clear that the premise of the show cause notice and the subsequent orders was essentially the Forensic Audit Report which was allegedly not accepted by the National Company Law Tribunal in parallel proceedings.

The Forensic Audit Report, as is evident, was not only inconclusive but full of disclaimers, which robs the same of any conclusive value. In any event, the Forensic Audit Report could at best be a piece of evidence which would initiate a further detailed enquiry by the respondent authorities prior to declaring the petitioner to be a willful defaulter. The same having not been done by the respondents, the impugned orders as well as the show cause notice are vitiated.

The inconclusive FAR could not be a valid premise of the show cause notice or the orders of the committees. In fact, the show cause notice, apart from quoting the provisions and observations in the said FAR, did not independently make any allegation of particular acts done by the petitioner within the purview of the Master Circular.

More importantly, neither the first Committee nor the Review Committee considered the answers given by the petitioner in the petitioner's representations to both the said committees. The pleadings of the petitioner in the petitioner's representations are not even reflected in the order of either committee.

Also, the premise of both the committees' orders was the FAR itself. Since the FAR was inconclusive and full with disclaimers, as rightly contended by the petitioner, in the absence of any further independent material to indict the petitioner on the allegations as made in the show cause notice and the said orders, both the committees acted de hors the Master Circular in declaring the petitioner to be a willful defaulter.

Moreover, the contention of the respondent bank that the document annexed to the writ petition as the order of the Review Committee was a mere communication by the zonal manager of the bank is not tenable since the said document is clearly the order itself and not a mere communication. In view of the Review Committee being improperly constituted contrary to the directions of the Master Circular on Willful Defaulters, the order of the Review Committee is rendered a nullity as well.

In such view of the matter, the show cause notice as well as the subsequent orders of both the committees do not survive the scrutiny of law.

Accordingly, WPO/1776/2023 is allowed on contest, thereby setting aside the impugned show-cause notice and the orders of both the Willful Defaulter Identification Committee and the Review Committee declaring the petitioner to be a willful defaulter.

Nothing in this order shall preclude the respondent form initiating a fresh proceeding for declaration of willful default against the petitioner in accordance with law.

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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