Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 120 OF 2023

Milind Patel ...Petitioner
Versus
IDBI Bank Ltd ...Respondent

Mr Rohaan Cama, *with Pheroze Mehta, i/b Dastur Kalambi & Associates, for the Petitioner.*
Mr Zarir Bharucha, *with Rishi Thakur & Dhwani Gala, i/b ZBA, for Respondent No. 1.*

CORAM **G.S. Patel & Neela Gokhale, JJ.**
DATED: **30th March 2023**

PC:-

ARUN RAMCHNDRA SANKPAL
Digitally signed by ARUN RAMCHNDRA SANKPAL Date: 2023.03.31 18:51:54 +0530

1. The Petition is directed against the 1st Respondent, the IDBI Bank Ltd.. We note at the forefront that Mr Bharucha for IDBI Bank raises a preliminary objection as to the maintainability of the Petition. In view of the order that we propose to pass, we need not address that, and it is enough to leave contentions open. We say this because Mr Cama for the Petitioner claims there is a complete answer to the question of maintainability.

2. The challenge in the Petition is to the declaration by IDBI Bank's Wilful Defaulter Identification Committee ("**WDIC**") of the

Petitioner as a Wilful Defaulter. This declaration was reaffirmed or confirmed by IDBI Bank's Review Committee ("**RC**"). Both the WDIC and the RC acted, or so they say, in consonance with the applicable master circular, circular or guidelines issued by the 2nd Respondent, the Reserve Bank of India ("**RBI**").

3. The present dispute is not about the guidelines or their applicability. It is about the procedure that is said to have been followed, or more accurately, not followed. For Mr Cama's complaint is that while the show-cause notice issued by the WDIC and the entire hearing proceeded on the basis of a draft forensic audit report by Grant Thornton, only selective portions of this were disclosed to the Petitioner. His complaint is that there is other material in that very draft report which is capable of being used by the Petitioner in answer to the show-cause notice. That opportunity was, in his submission, denied to the Petitioner only because of this selective disclosure.

4. On this portion, we believe prima facie that Mr Cama's submission has considerable substance. We do not believe it can be denied that if a party proposes to rely on a document, the entirety of that document must be disclosed. A party may choose to reference or to rely only a part of it, but the other side must be given the whole document and not just selective portion or portions with redactions. This will apply equally to any other documents referenced or relied on the show-cause notice. In short, when a party is asked to meet a case, that party must know the basis on which the case is brought against him. Every document proposed to be used against him must be made available to him in full and then the authority in question can proceed to a decision on merits. Without that disclosure, the decision-making process itself gets compromised because available defences are cut off before they can even be raised simply by saying that the material is not being brought before the authority. From any perspective, that is unacceptable.

5. At the same time, we understand that the IDBI Bank is required by law to operate within the parameters of the it's the circulars or guidelines. We are not addressing the merits of either the WDIC or it's the RC decisions. But we do find the procedure they followed to have been faulty and therefore we make the following order.

6. The impugned orders dated ***15th June 2022*** and 4th November 2022 of the WDIC and the RC respectively are presently suspended. IDBI Bank will make available to the Petitioner a complete copy not only of the draft forensic audit report by Grant Thornton but all other documents referenced, referred to or relied on in the show-cause notice. This is to be done by 6th April 2023. No fresh show-cause notice is required. The Petitioner will file a further reply to the show-cause notice no later than by 17th April 2023. The Petitioner will then appear before the WDIC on such date as is convenient to that committee but not later than 26th April 2023. After hearing the Petitioner, it is open to the WDIC to vary, modify, rescind or recall its first order or to reaffirm it. It is also open to the WDIC if it thinks fit to furnish reasons, or additional or supplemental reasons, or to make an additional or supplemental order after the second round of hearing.

7. If the WDIC either reaffirms or supplements its original order and the matter goes before the RC, the RC will consider the matter afresh, along with the fully disclosed material, the additional material and the additional reply, and it will then pass an order either varying, modifying, recalling its earlier order or supplementing it or reaffirming it.

8. We are not to be misunderstood to have directed either the WDIC or the RC to decide the matters before them in any particular manner or to adopt any particular reasons. All contentions are expressly kept open on both sides.

9. Should the WDIC and the RC both confirm or reaffirm their original orders, then the effective date of those orders will be the dates of the orders under challenge in the Writ Petition and not some later date.

10. Until this process is complete, all credit rating agencies, whether or not they are parties to the Petition, are directed not to act upon the impugned orders dated 15th June 2022 and 4th November 2022.

11. If the final order after the second round is against the Petitioner, the credit agencies will not act on those for a further period of two weeks thereafter to enable the Petitioner to approach the Court if required.

12. Mr Cama points out that the IDBI Bank website lists the name of the Petitioner as a wilful defaulter. That online notice is to be rectified in view of this order.

13. Mr Bharucha clarifies that it was not the intention of the IDBI Bank to withhold information but the only reason for adopting this course of action was that the draft forensic audit report deals with other extraneous matters unrelated to the Petitioner, some of which are potentially sensitive. The submission is noted.

14. The Petition is disposed of in these terms. No costs.

(Neela Gokhale, J) **(G. S. Patel, J)**

Note: This order is modified by an order passed on a praecipe dated 31st March 2023. Corrections are shown in bold and italics.