IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.6809 of 2018
and
W.M.P.No.8429 of 2018

Rajiv Surana ...Petitioner

Vs.

1. IDBI Bank Ltd.,
Rep. by its Deputy General Manager,
NPA Management Group,
No.115, Anna Salai, P.B.No.805, Saidapet,
Chennai – 600 015.

2. Reserve Bank of India,
Fort Glacis, Rajiv Salai,
Chennai – 600 001.

3. Credit Information Bureau (India) Ltd.,
Hoechst House, 6th Floor,
193, Backbay Reclamation,
Nariman Point, Mumbai – 400 021. ...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus quashing the impugned order in Ref.No.1399/NMG/SIL/2017-18 dated 14.02.2018 passed by the 1st Respondent bank and direct the Respondents not to include the name of the Petitioner in the list of wilful defaulters with the respondents and other banks, financial institutions and all Credit Information Companies.

For Petitioner : Mr.N.Surya Senthil
for Mr.D.Dorairajan

For Respondents : Mr.T.Ravichandran, for R1

ORDER

Aggrieved by the order passed by the respondents declaring the petitioner as willful defaulter in the list of Directors, the petitioner is before this Court.

2. The petitioner claims that he was a non-promoter Director in Surana Industries Limited (in short 'Company') between 26.03.2012 and 01.04.2013. The said company has availed financial facilities from the 1st respondent bank. On account of the default committed by the company, the 1st respondent has declared the Directors as willful defaulters, including the petitioner. However, the petitioner claims that he resigned from the post of Director on 01.04.2013 and hence the respondent should not declare him as a defaulter. He further submits that his role was to coordinate with project engineers for execution of the project activities and was in no way connected with the financial dealings of the company.

3. While that being so, the petitioner has received a letter dated 04.02.2018 from he 1st respondent declaring the petitioner as willful defaulter. The allegation of the petitioner is that even though the impugned order refers to various notices, only one show cause notice dated 01.08.2017 has been served upon him, for which he has filed a reply. The allegation of the petitioner is that without considering his reply the respondents have declared the petitioner as willful defaulter, which is in violation of Master Circular issued by the Reserve Bank of India dated 01.07.2014.

4. Learned counsel for the petitioner submits that, the impugned order has been passed in violation of principles of natural justice. Further Clauses 2 and 3 of the Master Circular contains guidelines and the mechanism for identification of willful defaulters which was not followed by the first respondent Bank. He further submits that the first respondent have issued recovery proceedings against the company and hence, the impugned order has no basis. He also submits that the petitioner has neither signed any documents pertaining to the financial assistance granted by the 1st

respondent Bank nor was in-charge of handling any of the transactions mentioned in the letter, which were part of the CDR package by the company after the petitioner's resignation on 01.04.2013. Hence, the respondents may be directed not to include the name of the petitioner in the list of willful defaulters.

5. Per contra, learned counsel for the 1st respondent submits that the 1st respondent has followed the procedure laid down under RBI Circular and the petitioner was declared willful defaulter after affording an opportunity of hearing to the petitioner. Furthermore, the annual balance sheets for the years 2011 and 2012 reveal that the petitioner was holding key managerial position as well as Executive Director at that time and hence the allegation that the petitioner was not in charge of the day-to-day operations of the company has no basis. He further submits that the first respondent has admittedly initiated recovery proceedings, however, that will not dis-entitle the first respondent from declaring the petitioner as willful defaulter, as initiation of recovery proceedings is different from classification of a person as willful defaulter. The petitioner being a Director responsible for the day-to-day management of the company, is also responsible for the loss caused

to the public exchequer.

6. Heard learned counsel for both sides and perused the materials placed before this Court.

7. The first respondent (R1) is a Scheduled Commercial Bank regulated under the provisions of Banking Regulation Act, 1949 and is bound by the Circulars issued by the Reserve Bank of India from time to time. The 1st respondent had extended various financial facilities to the company for setting up of an integrated steel plant at Raichur. On account of the liquidity issues faced by the company, its account was restructured under CDR during March 2014 and thereafter the account was recommended to be classified as RFA by R1. Hence, in order to examine the reasons for such payment defaults, a committee has been constituted to look into whether there was any diversion or siphoning off of funds. Show cause notice has been issued to the borrower and directors by the Company, reply solicited and personal hearing afforded.

8. After considering the replies filed and hearing the notices, the

Committee has passed an order dated 08.01.2018 holding that the funds borrowed from banks are utilised for purposes unrelated to the operations of the borrower, to the detriment of the financial health of the entity and declared some of the Directors of the company, including the petitioner, as willful defaulters. In light of the order passed by the Committee, R1 has issued the impugned order declaring the petitioner as willful defaulter and reporting the same to all Credit Information Companies and/or RBI.

9. It is relevant to note at this juncture what the term 'wilful default' means as per the guidelines issued by the Reserve Bank of India, reading thus:

> *“(a) The unit has defaulted in meeting its payment/repayment obligations to the lender even when it has the capacity to honour the said obligations;*
>
> *(b) The unit has defaulted in meeting its payment/repayment obligations to the lender and has not utilized the finance from the lender for the specific purposes for which finance was availed of but has diverted the funds for other purpose;*
>
> *(c) The unit has defaulted in meeting its payment/repayment obligations to the lender and has*

siphoned off the funds so that the funds have not been utilized for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets;

(d) The unit has defaulted in meeting its payment/repayment obligations to the lender and has also disposed off or removed the movable fixed assets or immovable property given by him or it for the purpose of securing a term loan without the knowledge of the bank/lender; "

10. As seen from the order passed by the Committee dated 08.01.2018, the petitioner was given an opportunity of hearing and hence the allegation that there is violation of principles of natural justice has no basis. Further, the petitioner has not challenged the minutes recorded at the meeting held on 04.12.2017 stating that the petitioner was well aware of the operations of the company, since he was the key managerial personnel and Executive Director during the financial years 2011 and 2012.

11. Hence as per RBI guidelines, a non-whole time director should not be considered as a willful defaulter unless it is established that he was aware of the default by the borrower. In the present case, the petitioner

being the Executive Director is very much aware of the financial operations of the company, including the diversion of funds and siphoning off of funds.

12. The contention of the petitioner that the 1st respondent having initiated recovery proceedings is not entitled to declare the petitioner as willful defaulter is unacceptable, as both are different. The declaration of willful defaulter is for the reason that the petitioner has had the knowledge of willful default. However, the recovery proceedings initiated is in order to recover the amount to meet out the financial implications caused by the company.

13. Furthermore, as against the impugned order, the petitioner has an alternate remedy. Without availing the alternative remedy, the petitioner has come before this Court. Since the issue in this Writ Petition involves disputed questions of fact, this Court, sitting under Article 226 of the Constitution of India, is not inclined to interfere with the impugned order.

14. In light of the aforesaid discussion, this Writ Petition stands

dismissed. Consequently, connected Miscellaneous petition is closed. No costs.

06.03.2023

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NCC : Yes / No
Speaking Order : Yes / No
Index : Yes / No

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