IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.04.2023

C O R A M

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

W.P.No.34391 of 2019

and W.M.P.Nos.25122 & 25123 of 2022

Meera Arun ... Petitioner

Vs

1. Ministry of Finance,
Represented by its Secretary,
Department of Financial Services,
Jeevan Deep Building,
Parliament Street,
New Delhi-110001

2. Reserve Bank of India,
Represented by its Chief General Manager,
Department of Banking Operations & Development,
Central Office, 13th Floor,
Central Office Building,
Shahid Bhagat Singh Road,
Mumbai-400 001.

3. Bank of Maharastra,
Asset Recovery Branch,
1st Floor, 4 Sivangnanam Road T.Nagar,
Chennai600 017.

4. TransUnion CIBIL Limited
(Formerly:Credit Information Bureau (India) Limited)
Represented by its Authorized Representative,
One Indiabulls Centre, Tower 2A, 19th Floor,
Senapati Bapat Marg, Elphinstone Road,
Mumbai-400 013.

5. Experian Credit Information Company of India Private Limited
Represented by authorized representative
5th Floor, East Wing,
Tower3 Equinox Business Park
LBS Marg, Kurla (West)
Mumbai 400070, India

6. Equifax Credit Information Services Private Limited
Represented by its authorized representative
Unit No.931, 3rd Floor, Building No.9
Solitaire Corporate Park,
Andheri Ghatkopar Link Road,
Andheri East
Mumbai 40093

7. CRIF High Market Credit Information Services Limited
Represented by its authorized representative
FOFB-04, 05, 06, Fourth Floor
Art Guild House, Phoenix Market City.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying to issue an order or direction or writ in the nature of Writ of Certiorarified Mandamus calling for the records of the 3rd Respondent relating to the impugned order vide letter No.AE78/ARB/2019-2020 dated 25.11.2019 declaring the petitioner as a 'Wilful Defaulter' with effect from 21.11.2019, quash the same as illega, incompetent and unconstitutional and consequently forbear the respondents 1-3 herein from declaring the petitioner as a 'Wilful Defaulter' pertaining to the Loan facility vide Sanction No.AY24/VHCL/2012-13 dated 06.10.2012.

For Petitioner ... Mr.Vikram Veerasamy
for Mr.Salai Varun

For Respondents ... Mr.V.Ashok Kumar for R1

... Mr.C.Mohan
for King & Patridge for R2

... Mr.T.Ravichandran for R3

... Ms.C.Vidhya for R4

... No Appearance for R5 & R6

ORDER

Aggrieved by the order passed by the 3rd respondent declaring the petitioner as a 'Wilful Defaulter', the petitioner is before this Court.

2. It is the case of the petitioner that she is one of the Directors of Vasan Healthcare Pvt. Ltd., which company had taken term loan to the tune of Rs.75 Crores from the 3rd respondent. The company had been paying the monthly dues properly. However, due to certain crisis, certain defaults

occurred, which resulted in the issuance of show cause notice by the 3rd respondent, dated 18.1.2018 calling upon the petitioner to show cause why she should not be declared as a 'Wilful Defaulter' as per the RBI Guidelines, to which the petitioner submitted her reply dated 1.7.2015 to the 3rd respondent. The petitioner also appeared personally before the Empowered Committee and submitted her reply along with a detailed written reply dated 16.4.2019 furnishing explanation with regard to each and every allegation levelled against her. However, without considering the same, the 3rd respondent has issued the impugned order dated 25.11.2019 mechanically declaring the petitioner as 'Wilful Defaulter'. The said act of the 3rd respondent is wholly contrary to the circulars/guidelines issued by the Reserve Bank of India dated 1.7.2013. Assailing the said order, the present writ petition has been filed.

3. Learned counsel appearing for the petitioner submits that the order passed by the 3rd respondent reflects total non-application of mind to the reply submitted by the petitioner. Though the petitioner has given detailed reply with regard to each and every allegation levelled against her, however, the order passed by the 3rd respondent reveals that the reasons submitted by the petitioner

have not been taken into consideration before passing the order. Therefore, the said order deserves to be set aside.

4. Learned counsel appearing for the respondents submitted that the order passed by the 3rd respondent is only a preliminary order and the petitioner can always challenge the same before the Review Committee by filing revision. Further, it is submitted by the learned counsel that when the petitioner has an appeal remedy by way of revision before the Review Committee, rushing to this Court by filing the present writ petition is wholly arbitrary. Therefore, no interference is warranted with the order impugned herein.

5. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

6. The factum of the case with regard to the company committing default in payment of dues is not disputed. It is also not in dispute that with regard to the show cause notice dated 18.1.2018, the petitioner submitted

preliminary explanation and also appeared before the 3rd respondent and submitted detailed explanation along with written explanation denying each and every allegation raised by the 3rd respondent. It is to be pointed out that pursuant to the show cause notice and explanation submitted by the petitioner to the 3rd respondent has passed the impugned order.

7. However, it is the case of the petitioner that the order is not in terms of the circular issued by the RBI dated 1.7.2013. Since a prima facie case was made out, this Court, vide order dated 31.07.2019, had granted the interim order.

8. However, pending the interim order, the 3rd respondent, vide its order dated 29.11.2019 has passed the final order, but without following the guidelines issued in the Master Circular of RBI, only due to which this Court had granted an order of stay. That being the case, it is clear that the preliminary order having merged with the final order and the preliminary order being not in consonance with the Master Circular of RBI only based on which this Court had granted the interim order, the final order cannot be sustained, as it is not in

consonance with the Master Circular of the RBI. Further, before passing the final order, the petitioner had not been granted an opportunity of personal hearing by the Identification Committee and further the final order passed by the 3rd respondent is also bereft of any reasons. Such being the case, necessarily the said order deserves to be set aside so as to enable the petitioner to approach the Review Committee with a revision.

9. Accordingly, the impugnd order of the 3rd respondent is set aside and the interim order of stay granted by this Court is made absolute directing the respondents not to proceed further in the matter in terms with the order dated 29.11.2019 till the decision of the Review Committee. Further, the petitioner is directed to file necessary revision before the Review Committee within a period of four weeks from the date of receipt of a copy of this order and if such revision is filed, the Review Committee is directed to take up the issue and pass orders on the said review taking into consideration the guidelines issued by the RBI in its Master Circular dated 1.7.2013 insofar as the petitioner is concerned.

10. The writ petition is allowed with the aforesaid observations and directions. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

26.04.2023

Index:Yes/No
Internet:Yes
NHS

To

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   Department of Financial Services,
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   Represented by its Chief General Manager,
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M.DHANDAPANI, J.

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