

OD - 11

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction

ORIGINAL SIDE

WPO/669/2024
IDEAL AURUM NIRMAN LLP AND ORS
VS
RESERVE BANK OF INDIA AND ANR

BEFORE :
THE HON'BLE JUSTICE SHAMPA SARKAR

Date : 30th July, 2024

Appearance :
Mr. Jishnu Saha, Sr. Adv.
Mr.S. Dubey, Adv.
Mr. Ishaan Saha, Adv.
Mr. Sourajit Dasgupta, Adv.
Mr. Ramender Agarwal, Adv.
...for the petitioner.

Mr. Utpal Bose, Sr. Adv.
Ms. Suchishmita Ghosh, Adv.
.. . for the respondent no.2.

The Court : The petitioners have challenged a show cause notice issued by Yes Bank in terms of clause 3(b) of the Master Circular on wilful defaulters published by the Reserve Bank of India. Clause 3(b) of the said Circular deals with the mechanism for declaration of a borrower is a wilful defaulter. The same is quoted below :

"3. Mechanism for identification of Wilful Defaulters

(b) If the Committee concludes that an event of wilful default has occurred, it shall issue a Show Case Notice to the concerned borrower and the promoter/whole-time director

and call for their submissions and after considering their submissions issue an order recording the fact of wilful default and the reasons for the same. An opportunity should be given to the borrower and the promoter/whole-time director for a personal hearing if the Committee feels such an opportunity is necessary."

It is contended by Mr. Saha, learned Senior Advocate that the Identification Committee has issued show cause notice upon being satisfied that there are reasons to believe that a proceeding should be initiated. Such reason is founded on the forensic audit report which was not supplied to the petitioners. It is contended that unless the petitioners are aware of the basis for formation of such opinion against the petitioners, which led to the issuance of the show cause notice, the petitioners would not be able to answer the same. Moreover, it is contended that if a report is used against a party, such report should be supplied to the party to enable the party to deal with the same. Non-supply of the report would be violative of the principles of natural justice.

Mr. Bose, learned Senior Advocate appearing for the respondent no.2, submits that the submissions made before this Court are contrary to the representation of the petitioners. The petitioners had asked for some time to reply to the show cause notice as the petitioners needed to collect certain documents

which were relevant for proper adjudication of the dispute. On a different plea and on other allegations, the writ court has been approached for necessary orders, which is not permissible.

The commercial transaction between the petitioners and the bank is a contractual one and the writ court should be slow to interfere with the action taken by the bank.

The Master Circular provides the procedure to be followed. It states that if the Identification Committee is of the opinion that a wilful defaulter proceeding has to be initiated, such opinion would require issuance of a show cause notice. The defaulter is permitted by the Circular to file a reply. Clause 3(b) of the Circular also provides that a hearing should be given to a promoter or to the whole time director of the company. The Identification Committee is to pass orders upon hearing and on the basis of the reply. If the Identification Committee holds that the borrower is a wilful defaulter, a Review Committee is to be constituted and the Review Committee is to review such decision of the Identification Committee.

This court is of the opinion that as the Identification Committee relied upon of the forensic audit report at the time of arriving at the conclusion that a case of wilful default existed and a show cause notice should be issued, under such circumstances, the forensic audit report should be supplied to

the petitioners. Such report must be supplied within 10 days from the date of communication of this order. The petitioner will file a reply within two weeks from the date of receipt of the report and thereafter, the authority shall proceed in accordance with the mechanism provided by the Circular.

With the above observations, the writ petition stands disposed of.

All parties to act on server copy of the order and or learned Advocate's communication.

(SHAMPA SARKAR, J.)