IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2024

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.5939 of 2024
and
WMP.No.6591 of 2024

Ganesan Rajkumar ...Petitioner

Vs.

1. State Bank of India,
Rep. by its Assistant General Manager,
Stressed Assets Resolution Group,
Fraud Monitoring Department, Corporate Center,
21st Floor, Maker Tower, 'E',
Cuffe Parade, Mumbai-400 005.

2. State Bank of India,
Rep. by its Deputy General Manager,
Stressed Assets Management Branch,
'Red Cross Buildings', 32, Red Cross Road,
Egmore, Chennai-600 008.

...Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari calling for records in and connected with show cause Notice in F.No.SARG/FMD/2023-24/801 dated 15.02.2024 attributable to the 1st respondent herein and quash the same as it is without jurisdiction, arbitrary and illegal.

For Petitioner : Mr.C.Manishankar, Senior Counsel
for Mr.B.Satish Sundar

For Respondents : Mr.M.L.Ganesh

ORDER

This Writ petition has been filed seeking quashment of the notice dated 15.02.2024 in and by which, the 1st respondent called upon the petitioner to show cause as to why his account/name should not be categorized as fraud as per the guidelines of the Reserve Bank of India.

2. The case of the petitioner is that during November 2012, the petitioner joined in M/s.ReGen Powertech Private Limited as Head Insurance vertical, which is the parent company of M/s.Regen Infrastructure and Services Private Limited. Both the said companies were involved in wind energy generation and ancillary activities. During the year 2014, the petitioner was appointed as the Additional Director of the subsidiary company. However, he subsequently resigned the job on 21.08.2017 and it was accepted by the management and pursuant to which, the management also filed the statutory form No.DIR12 before the Registrar of Companies (in short 'ROC'), Chennai. While so, all of a sudden, the petitioner's name

was included in the Wilful defaulters list, the proceedings were conducted and personal hearing was afforded on various dates and the petitioner also gave a reply to the proposal of the Wilful Defaulter Identification Committee stating that he resigned from the directorship even before availing of the credit facilities and that in his capacity as the Non Executive Director handling insurance related issues, the petitioner had no role to play in the day to day functioning of the management. Based on the said reply submitted by the petitioner, vide communication dated 23.06.2021, the Wilful Defaulter Identification Committee attached to the 2nd respondent exonerated the petitioner from the list of wilful defaulters. However, after a period of two years, the petitioner received the present impugned notice dated 15.02.2024 requiring to show cause as to why he should not be categorized as fraudster as per the guidelines of the RBI. Challenging the same, the petitioner is before this Court.

3. Learned counsel for the petitioner submitted that, upon inquiry the petitioner came to know that, during March 2018, the subsidiary company availed cash credit and bank guarantee facilities from the State Bank of India, Industrial Finance Branch, Chennai to an extent of Rs.60 Crores, however, there had been a default subsequently and the account was

declared as a non performing asset in 2019. Further, without the knowledge of the secured creditor, under the business transfer agreement dated 21.02.2019, the subsidiary company allegedly transferred some of its business to another group company by way of slump sale, which included transfer of assets and there was an allegation that the purchase consideration was not received by the subsidiary company and thereby, the subsidiary company approached the Corporate Insolvency Resolution Process on 19.2.2020, as a result of which, proceedings are pending before the National Company Law Tribunal. Thereafter, the office of the Wilful Defaulter Identification Committee attached to the 2nd respondent issued orders on 16.10.2020 advising to declare the subsidiary company and its guarantors as wilful defaulters by including their names in the Credit Information Companies List of Wilful Defaulter, pursuant to which, the petitioner's name was also included in such notice and pursuant to the reply gave by the petitioner, the Wilful Defaulter Identification Committee attached to the 2nd respondent, vide communication dated 23.6.2021 exonerated the petitioner from the list of wilful defaulters. While such being the position, once again, the impugned notice dated 15.02.2024 came to be issued by the 1st respondent, calling upon the petitioner to show cause as to why his account/ name should not be categorized as fraud as per the guidelines of the Reserve

Bank of India, which is wholly unsustainable, since, all these transactions happened only after his resignation from the post in the year 2017 and the petitioner had no role to play in the above said transactions and credit facilities availed by the said company. Accordingly, he prayed for appropriate orders.

4. Learned counsel appearing on behalf of the respondents submitted that, even though the petitioner was not a whole time director of the borrower company, he actively involved in the day to day affairs in the capacity of Professional Director, from 2015 till the date of his resignation. Further, during the financial years 2017, 2018 and 2019, the borrower company had not routed the entire sale proceeds through the secured creditor and instead, they routed the major portion of the sale proceeds through the accounts opened with the HDFC Bank, the Karur Vysya Bank and the Ratnakar Bank Ltd., without taking any approval from the secured creditor namely the State Bank of India. As per the audited balance sheet for the aforesaid financial years, the net sales realization of the borrower company was Rs.290 Crores, Rs.188 Crores and Rs.190 Crores respectively. But, the credit summation in the cash credit account of the borrower company during the corresponding periods was Rs.143 Crores, Rs.74

Crores and Rs.2 Crores respectively as against the share of the respondent bank. Even though the borrower company had the capacity to honour the loan obligation, for the subsequent financial years also, the funds available with the borrower company by way of sale proceeds and realization of receivables were not utilized for reducing the loan outstanding and the borrower company had not obtained prior permission for making investment in several subsidiary companies. For the show cause notice dated 16.10.2020, the respondent bank afforded personal hearing on various dates to both the borrower company as well as its directors including the petitioner, in which, he also appeared and gave his explanation. Pursuant to that, the respondent bank asserted that they dropped the wilful defaulter proceedings as against the petitioner. However, subsequently, the respondent bank engaged the services of the forensic auditor to investigate into the various business transactions of the borrower company during the period from 01.04.2010 to 31.03.2020 and it confirmed the acts of omission and commission on the part of the borrower company. Prior to the report of the forensic auditor, the respondent bank dropped the wilful defaulter proceedings as against the petitioner and one Mr.Madhav Mukund Digraskar. Since a fresh cause of action had arisen, the impugned show cause notice has been issued to the petitioner along with the extracts of the report of the forensic auditor and the petitioner can offer his explanation to the respondent bank after taking cognizance of the extracts of the forensic audit report. During the relevant point of time, the petitioner ought to have dissented to the decisions taken by the borrower company causing detriment to the interest of the respondent bank. Accordingly, he sought to dismiss this Writ petition.

5. Heard the learned counsel on either side and perused the materials available on record.

6. A perusal of the records, more particularly the impugned show cause notice reveals that, the loan transactions are of the year 2018. Earlier, after conducting the inquiry and after affording sufficient opportunity of personal hearing to the petitioner on several occasions, vide proceedings dated 23.06.2021, the Wilful Defaulter Identification Committee attached to the 2nd respondent exonerated the petitioner from the defaulters' list. At a later point of time, the respondent bank thought it fit to engage the services of the forensic auditor, who confirmed the acts of commission and omission by the borrower company and this lead to the issuance of the present show cause notice to the petitioner.

7. When the Wilful Defaulter Identification Committee attached to the 2nd respondent had taken a decision on 23.06.2021 and this was communicated to the petitioner immediately thereafter, it is not known as to how the 1st respondent issued the present show cause notice requiring the petitioner once again to offer his explanation. As stated by the petitioner in the affidavit filed in support of the writ petition, the entire loan transactions had taken place after the petitioner resigned from the services of the borrower company in the year 2017 and the petitioner had no role to play in the day to day affairs of the borrower company even subsequently. Having convinced with the explanation given by the petitioner, the Wilful Defaulter Identification Committee attached to the second respondent exonerated the petitioner from the list of wilful defaulters. Hence, the issuance of the present show cause notice now once again requiring the petitioner to offer his explanation, in the considered view of this Court, is not at all sustainable and the same has to necessarily be interfered with.

8. Accordingly, the Writ petition stands allowed and the impugned show cause notice dated 15.02.2024 issued by the 1st respondent is set aside. No costs. Consequently, the connected miscellaneous petition is closed.

03.09.2024

skt

Index : Yes (or) No
NCC : Yes (or) No
Speaking order : Yes (or) No

<u>Note to office:</u> Issue order copy on 29.11.2024.

To

1. The Assistant General Manager,
State Bank of India,
Stressed Assets Resolution Group,
Fraud Monitoring Department, Corporate Center,
21st Floor, Maker Tower, 'E',
Cuffe Parade, Mumbai-400 005.

2. The Deputy General Manager,
State Bank of India,
Stressed Assets Management Branch,
'Red Cross Buildings', 32, Red Cross Road,
Egmore, Chennai-600 008.

M.DHANDAPANI, J.

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