IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.15420 of 2021 and
W.M.P.Nos.16319 and 16320 of 2021

A.Senthil Kumar ...Petitioner

-Vs-

1.The General Manager,
Stressed Assets Management Branch,
Indian Overseas Bank,
Central Office, PB No.3765,
763, Anna Salai,
Chennai – 600 002

2.The General Manager,
Corporate Credit,
Indian Overseas Bank,
Central Office, PB No.3765,
763, Anna Salai,
Chennai – 600 002

3.The Executive Director,
Indian Overseas Bank,
Central Office, PB No.3765,
763, Anna Salai,
Chennai – 600 002 ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records of the respondents in connection with its communication dated 12.07.2021 in CO/SAMB/GM/629/2021-2022 and quash the same as lacking reasoning as well as application of mind in addition to being vindictive and being against the principles of natural justice.

For petitioner	:	Mr.G.Vijayakumar
For Respondents	:	Mr.N.Somasundar

ORDER

This writ petition has been filed challenging the order passed by the respondents dated 12.07.2021 declared as willful defaulter as per RBI guidelines.

2. The petitioner is the Ex-Managing Director of Senthil Papers and Boards. During the year 2014, the company was taken over by the petitioner and proposed to set up a plant for manufacture of coated paper Board from recycled paper by installing two independent paper board machines. Therefore, the petitioner approach the bankers for financial assistance. At the time of financial closure when the consortium/inter se

Agreements were to be executed on 25.03.2013 for fixing commencement of commercial production. The company completed the installation of BM-II and co-gen power plant and successfully commissioned and recorded the minutes. The company further sought for financial assistance from the Tamilmadu Mercantile Bank to the tune of Rs.30 crores. The petitioner company was sanctioned additional fund with the condition of availment only if all the member banks has sanctioned their agreed share in the Corrective Action Plan. Further, the company had written letter that without implementation of Board Machine 3 was in peril and so was the viability of the entire plant. If BM-III was implemented, there would be increased production, savings in utilities by the use of latest technologies, which would in turn yield good returns ensuring comfortable profitability and positive cash flow for the company, as there would be proper balancing of ancillary equipment. However, the bankers did not support the project and as such the company ran into bad weather and committed default. Therefore, classified as Non-performing Assets(NPA) by the respondents on 30.09.2017. Thereafter, the petitioner was served with show cause notice dated 04.08.2020 stated that the willful defaulter identification committee had examined the account and utilization of the credit facilities of the company and concluded that the company had committed willful default on the following grounds :

Criteria laid by RBI Circular	Instances cited by Respondent for invoking the provision of circular	Reply furnished by the petitioner
Criteria 2.1.3a of RBI's circular on wilful default: The unit had defaulted in meeting its 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 purposes.	The company has been maintaining and operating accounts with Indian Bank and carrying out its business without prior consent from the consortium	The Account with Indian Bank was opened even before the loans were obtained from the Consortium and were operated purely to service vendors and other dues. It is requested that the specific instances of alleged diversion may be furnished for a detailed reply
Criteria 2.2.1d of RBI's circular on wilful default: Routing of funds through a bank other than one of the lender banks, without the permission of the lenders.	The company has opened a current account in Indian Bank and has routed funds through banks other than lender banks without permission of the lender	There has been no routing of funds. The allegations of routing must be substantiated with specific instances rather than a bland allegation

3. On receipt of the same, the company submitted explanation and pointed out that the company encountered in commissioning the project and that except for TamilNadu Mercantile Bank, none of the other consortium members were willing to sanction additional term loans and therefore, there was no willful default committed by the company and that after the audited balanced sheet relied by the respondent, the company has only incurred cash loss from the date of commencement of commercial operation. Without satisfying the said explanation, the respondents by its communication dated 12.07.2021 declared the petitioner as willful defaulters.

4. The learned counsel for the petitioner would submit that the petitioner shall not served with any details with regards to Division of fund as alleged in the show cause notice. In fact, in the reply, the petitioner categorically stated and requested to furnish the details about the diversion of fund. The petitioner was not given any opportunity to plead his case before invoking drastic measure such as classification of borrower as willful defaulter. The petitioner was not given opportunity for personal hearing before the declaration of willful defaulter. The forensic committee report

does not whisper that the petitioner defaulted willfully in repayment but rather substantiates the contention of the petitioners that the accounts were used only for the purpose of the business and there was no routing or siphoning.

5. On perusal of the counter affidavit filed by the respondents revealed that admittedly, the loan account of the petitioner was declared as NPA as on 30.09.2017 in accordance with the RBI norms and guidelines. Thereafter, the petitioner was served with showcause notice dated 04.08.2020. Thereafter, examination of account and the utilization of the credit facilities and affording of personal hearing on 26.03.2021. In fact, the petitioner had appeared and made his submission before the identification committee. Even as per their own reply revealed that the petitioner's company ought not to have continued its operation in the Indian Bank Account after availing of the credit limits from the Consortium and in the absence of its seeking and obtention of permission from Consortium for carrying out of such operations. Therefore, the petitioner was given opportunity of hearing and there is no question of violation of principles of

natural justice. As per the Master Circular on willful defaulters issued by the Reserve Bank of India dated 01.07.2015 defined that willful default is 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 purposes. Insofar as the diversion of siphoning of funds defined that it should be construed to occur if any funds borrowed through any bank other than the lender bank or members of consortium without prior permission of the lender. The petitioner was issued with show cause notice and stated that during initial review it was observed that the petitioner had continuously defaulted in payment/repayment obligations in violation of agreed terms, and has also acted in a manner as under, which is deemed to be act of willful default as per RBI guidelines.

6. On receipt of the same, the petitioner submitted explanation. As per their reply, admitted that account with Indian Bank was opened even before the consortium and were utilized for service vendors and other dues. Therefore, admittedly, the funds were diverted through Indian Bank and the

funds were utilized for service vendors and other dues. That apart, the petitioner was served with forensic committee report. As per the report the company has been maintaining accounts with Indian Bank and carrying out business operations through the said account. Therefore, it would amounts to diversion of fund and the petitioner was declared as willful defaulter. Further, report which was submitted by the identification committee has been challenged in this writ petition. On perusal of the report the committed advised to issue notice to all the persons enclosing copy of the order and giving time to furnish their written representation to the review committee within a period of 15 days for passing final orders.

7. The Hon'ble Division bench of this Court in a similar case in W.P.No.6896 of 2021 dated17.03.2021 had observed as follows:

"3. Ordinarily, this jurisdiction is not open to receive challenges against show-cause notices, particularly since a show-cause notice does nothing more than invite the recipient thereof to furnish an explanation and the consideration is postponed to another date or before another body. It is not as if the petitioner has been branded as a willful defaulter by the impugned notice, but

only that a preliminary view has been taken for the appropriate committee the bank to consider the matter upon the petitioner furnishing appropriate material in response to the notice.

4. Petitions against show-cause notices, first information reports and the like are generally not entertained in this extraordinary jurisdiction since they do not cause any immediate prejudice and since there is a further forum before which the petitioner may present the petitioner's case. There are recognized exceptions, however to the principle, particularly when the show-cause notice is shown to be completely absurd or without jurisdiction or the like.

5. In the present case, it cannot be the petitioner's contention that the notice has been issued without jurisdiction or that the petitioner had no transaction with the bank and the notice has to be regarded as having been issued without application of mind.

6. Since there is a remedy available to the petitioner before the review committee, upon the petitioner furnishing the papers sought and, in any event, the petitioner has not been branded as a willful defaulter as yet, there is no question of entertaining this petition on merits and the petitioner is left to work the matter out before the review committee of the bank, in accordance with law. "

8. Therefore, without even submitting any explanation on the report submitted by the identification committee and without even passing any final orders, the petitioner approached this Court challenging the report submitted by the identification committee.

9. Therefore, in view of the above, this court cannot find any infirmity or illegality in the impugned communication dated 12.07.2021 passed by the respondents. Accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petitions are closed. No costs.

16.04.2024

Index : Yes/No
Speaking/Non-Speaking order
Neutral Citation : Yes/No
gvn

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