IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2024

CORAM:

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P. No.21295 of 2021
and
W.M.P. Nos.22534, 22535 & 22537 of 2021
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1. PKP Spintex Mills Pvt.Ltd.,
   Rep. By its authorized signatory,
   Having registered office at No.69,
   Adhiyaman Bye-Pass Road,
   Dharmapuri – 636 701.

2. P.K. Pounraj

3. P. Thilagavathi

4. M/s. PKP Minerals Pvt. Ltd.,
   Rep. by its authorized signatory
   Having registered office at 51/5,
   South Railway Road,
   Kumarasamypet,
   Dharmapuri – 636 703

5. M/s. Sathya Granites,
   Rep.by its Partner P.K. Pounraj,
   No.69, Adhiyaman Bye-Pass Road,
   Dharmapuri – 636 701. .. Petitioners

Versus

1.The Branch Manager,
Stressed Assets Management Branch,
State Bank of India,
No.1112, Raja Plaza,
Avinashi Road, Coimbatore – 641 037.

2. Willful Defaulter Identification Committee-II,
State Bank of India,
Corporate Center, State Bank Bhavan,
Madame Cama Road, Nariman Point,
Mumbai, Maharashtra – 400 021.

3. The Reverse Bank of India,
Department of Banking Regulation,
13th Floor, Central Office Building,
Mumbai – 400 001. .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 2nd respondent relating to the impugned order dated 23.07.2021 (Agenda Item No.4422), mechanically declaring the petitioners as a 'Wilful Defaulters', quash the same as illegal, incompetent and unconstitutional, and consequently forbear the respondents herein from declaring the petitioners herein as a 'Wilful Defaulters'.

For Petitioners : Ms. R.S. Poornima

For Respondents : Mr. Om Prakash, (for R1 and R2)
for M/s. Ramalingam Associates.
: Mr. C. Mohan, (for R3)
M/s. Kind & Partridge

ORDER

Challenging the order passed by the second respondent/Wilful Defaulter Identification Committee-II, State Bank of India on 23.07.2021 (Agenda Item No.4422), declaring the petitioners as 'Wilful Defaulters', the petitioners have come forward with this writ petition.

2. The first petitioner is a private company, running the business of spinning mill. The 2nd and 3rd petitioners are directors of the first petitioner company. The 4th and 5th petitioners are Corporate Guarantors of the first petitioner company. According to the petitioners, the first petitioner availed a Term loan from the first respondent bank to the tune of Rs.39 crores and Rs.15 crores as cash credit limit under Consortium of Finance from the State Bank of India and State Bank of Mysore. Thereafter, the loans availed from State Bank of Mysore were undertook by the Asset Reconstruction Company India Limited (ARCIL). Later, a charge was created over the properties of the petitioners with SBI Salem and SBI Mysore ranks with “ Pari Passu Charge”. In order to find out the ways and means for settlement of the loan, a joint meeting was held with both SBI banks and ARCIL for a compromise. According to the petitioners, in the meeting, they have explained that due to

volatile domestic markets, drastic fall in pricing and prices of raw materials the Textile Industry was under loss for more than 9 years as a result of which, the petitioner's Mill was closed due to working capital constraints. Notwithstanding such explanation, the petitioners account was classified as 'Non Performing Asset' (NPA) w.e.f., 01.12.2012. Thereafter, a joint meeting was held on 24.12.2019 about the settlement of dues. In the meantime, the first respondent issued a show cause notice dated 02.03.2020 and asked reasons as to why the first petitioner should not be declared as a 'Wilful Defaulters' as per the RBI guidelines. According to the petitioners, they sent proper and detailed reply about the payment and dues of the Term loan and also established their inability of repayment of outstanding dues. According to the petitioners, even though the respondent offered personal hearing, due to Covid-19 pandemic situation, they were unable to appear and the same was also properly intimated to the respondent and requested to postpone the hearing date. However, without any prior notice the second respondent issued the impugned order dated 23.07.2021.

3. The main grievance of the petitioners is that as per RBI circular DBR.No.CID.BC.22/20.16.003/2015-16 dated 01.07.2015, the petitioners

will not come under the classification of 'Wilful Defaulters'. Further, the impugned order has been passed without affording sufficient opportunity to the petitioners. Hence, the impugned order issued to the petitioners is in violation of principles of natural justice. Furthermore, the second respondent, in the impugned order, erroneously recorded as if the petitioners have voluntarily evaded to appear for the personal hearing, which is factually incorrect. Therefore, the petitioners have filed the present Writ Petition before this Court for the relief mentioned above.

4. Learned counsel for the petitioners submitted that the first petitioner company availed a Term Loan of Rs.39 crores and Rs.15 crores as cash credit facility with the SBI, Salem and State Bank of Mysore. The petitioners have paid the dues regularly, however, during the nationwide lock down imposed to arrest Covid-19 pandemic situation, they suffered enormous loss. The petitioners have re-paid Rs.28 crores out of the total outstanding amount and in spite of the same, the second respondent declared them as 'Wilful Defaulters'. If the ARCIL had given the 'No Objection Certificate' to the SBI, the petitioners would have got reprieve from the 'Pari Passu Charge' but, it was not done so. Further, he submitted that the respondents are fully aware

of the financial situation confronted by the petitioners due to business loss, however, it was observed as if the petitioners have intentionally evaded to pay the dues and did not turn up for the enquiry. Moreover, as per RBI guidelines, the petitioners cannot be termed as 'Wilful defaulters' as classified by the second respondent/Wilful Defaulter Identification Committee-II, SBI. In any event, the petitioners were not given personal hearing by issuing proper show cause notice, hence, the impugned order passed by the second respondent is liable to be set aside. Accordingly, the learned counsel for the petitioners prayed to allow the Writ Petition.

5. Per Contra, learned counsel appearing for the respondents 1 and 2 has submitted that as against the order passed by the willful default identification committee, there is an effective appeal remedy available to the petitioners before the Reviewing Committee. The petitioners, without approaching the Reviewing committee by way of appeal, have approached this Court with this writ petition. When an alternative remedy is available, invocation of the writ jurisdiction by the petitioners is not proper. Therefore, the learned counsel for the respondents submit that the writ petition is not maintainable and it is liable to be dismissed.

6. Learned counsel appearing for the third respondent/ Reserve Bank of India has submitted that there is a delay on the part of the writ petitioners in filing the present writ petition. The first respondent communicated the decision of the second respondent/Wilful Defaulter Identification Committee-II, SBI dated 23.07.2021 immediately. The petitioners were also informed that as against the order dated 23.07.2021, an appeal can be filed before the Reviewing Committee within 15 days. However, the first petitioner sent a reply on 08.09.2021 stating that they are willing to settle the loan under OTS. Thereafter, the petitioners never settled the loan amount by availing OTS or filed an appeal before the Reviewing Committee. Thus, without filing appeal before the Reviewing Committee, the petitioners have hastily approached this Court only with an intention to drag on the recovery proceedings. In support of his contention, learned counsel appearing for the first respondent cited a decision rendered by the Hon' ble Supreme Court of India, in ***State Bank of India v. M/s. Jah Developers Private Limited,*** reported in ***2019 (6) SCC 787*** and submitted that the petitioners are adopting dilatory tactics to prevent the respondents from proceeding further. Accordingly, the learned counsel for the third respondent prayed for

dismissal of the writ petition.

7. Heard the learned counsel for the petitioner, the learned counsel appearing for the respondents 1 and 2 and the learned counsel appearing for the respondent No.3 and perused the materials on record.

8. It is an admitted fact that the petitioners have availed loan but did not repay the loan amount. According to the petitioners, due to adverse business condition and the impact of Covid-19 Pandemic, they could not repay the loan amount. It is also an admitted fact that the petitioners have made attempt to settle the loan amount by availing One Time Settlement (OTS) by getting waiver of the interest or other penal charges. However, such a claim made by the petitioners was rejected by the respondents bank. It is no doubt true that as against the impugned order of the second respondent, the petitioners have got an alternative and effective appeal remedy before the Reviewing Committee. The petitioners also, without availing such statutorily in-built remedy have approached this Court with this writ petition. Therefore, this Court is of the view that the present writ petition is not maintainable.

9. In the light of the above, the petitioners are directed to file a Statutory Appeal as against the order dated 23.07.2021 of the second respondent before the Review Committee within a period of two weeks from the date of receipt of a copy of this order. On receipt of appeal from the petitioners, the Reviewing Committee is directed to entertain the appeal notwithstanding the delay in filing such appeal, issue notice to the petitioners, afford them opportunity of hearing and then pass appropriate orders on merits and in accordance with law within a period of four weeks from the date of hearing the petitioners.

10. With the above observations and directions, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are also closed.

26.09.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order

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To

1.The Branch Manager,
Stressed Assets Management Branch,
State Bank of India,
No.1112, Raja Plaza,
Avinashi Road,
Coimbatore – 641 037.

2. Willful Defaulter identification Committee-II,
State Bank of India,
Corporate Center, State Bank Bhavan,
Madame Cama Road, Nariman Point,
Mumbai, Maharashtra – 400 021.

3. The Reverse Bank of India,
Department of Banking Regulation,
13^{th} Floor, Central Office Building,
Mumbai – 400 001.

M.DHANDAPANI, J.,

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