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W.P.No.14667 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2024

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.14667 of 2020

and

W.M.P.Nos.18237 & 18238 of 2020

1. M/S.Point Red Telecom Ltd.,
rep. by its Managing Director,
R.Vijay Kumar,

2. R.Vijay Kumar,
Managing Director,
M/s.Point Red Telecom Ltd,

3. Ramkumar,
Managing Director,
M/s.Point Red Telecom Ltd,

... Petitioners

Vs.

The Deputy General Manager,
State Bank of India,
Stressed Assets Management Branch,
Red Cross Buildings, 32 Montieth Rd,
Egmore, Chennai.

... Respondent

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, calling for the records leading up to the passing of the Impugned order dated 08.08.2019 bearing No. SAMB/ CHE/ CLO-IV/ 19-20/ 708, passed by the respondent and quash the same.



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For Petitioners : Mr.Roshan Balasubramanian

For Respondent : Mr.M.L.Ganesh

ORDER

The inclusion of name of the petitioner company and its Directors/Guarantors in the Credit Information Company (CIC), list of liquid defaulters, by the State Bank of India, in proceeding dated 08.08.2019, is under challenge in the present writ proceedings.

2. The petitioner is a company of Indian 3G/4G Equipment Manufacturers. It is not in dispute that the petitioner company borrowed a substantial loan from the State Bank of India and committed default in repayment. In consequence, the petitioner company and its Director/Guarantors in credit were declared as wilful defaulters.

3. The learned counsel for the petitioner would submit that the procedures as contemplated by the Hon'ble Supreme Court of India in the case of *State Bank of India Vs. M/s.Jah Developers Pvt.Ltd. & Ors., reported in (2019) 6 SCC 787*, has not been followed in the present case.

The petitioners are entitled for an opportunity to represent their case before



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the Review Committee and such an opportunity having denied, the present writ petition is to be considered.

4. The learned counsel for the petitioner would urge to look into the directions issued by the Hon'ble Supreme Court in paragraph no.24 in the above said case and submit that the petitioner is entitled for an opportunity.

5. The learned counsel for the respondents would oppose by stating that the said judgement of the Apex Court has no application with reference to the facts of the present case. In the present case, the Identification Committee initially passed a resolution and thereafter, the Review Committee confirmed the decision taken by the willful defaulter /Identification Committee. The Identification Committee passed a resolution on 29.12.2018 and the review committee passed a resolution on 19.03.2019. Both the decisions were taken prior to the date of the judgement in the case of ***Jah Developers Pvt.Ltd.,*** and therefore, the application of the said judgement would not arise in the case of the petitioners.

6. With reference to the contention of the petitioners that no opportunity was given to the petitioners, the learned counsel for the State



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Bank of India (SBI) would submit that opportunities and several personal

hearings were provided to the petitioners and even the judgement of the

Hon'ble Supreme Court has been complied with. In this context the typed

set of papers filed by the SBI would reveal that the Show Cause Notice was

issued to the petitioner company on 20.07.2016, setting out the facts and

details. Notice for personal hearing was issued on 31.10.2016, providing an

opportunity of personal hearing to the petitioner before the wilful defaulter /

Identification Committee. The Identification Committee passed a resolution

on 24.11.2016 in Meeting No.2016-17/51. Thereafter, an opportunity of

personal hearing was given on 02.01.2017. The Identification Committee

further passed a resolution on 18.01.2017. It is found that several such

opportunities of personal hearing, to appear before the wilful defaulter /

Identification Committee was given to the petitioner company and its

Directors and then finally a resolution was passed by the Identification

Committee on 29.12.2018. Before taking a final decision on 29.12.2018,

one more opportunity of personal hearing was granted to the petitioner vide

letter date 18.12.2018. The matter was referred to the review committee

and the review committee convened its meeting on 19.03.2019. The Review

Committee affirmed the decision of the Identification Committee. Perusal of

the documents would reveal that at every stage, opportunities were



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provided to the writ petitioner to defend their case and therefore, the ground raised by the petitioner that the rules of natural justice have been violated is untenable.

7. Beyond all the facts, the learned counsel for the respondent SBI submitted the order passed by the National Company Law Tribunal, in Cp/1B/17/CHE/2022, dated 24 March 2022. The application was filed under Section 95 (1) of the Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal (NCLT) and the NCLT has already passed an order on 24.03.2022. Once an application under Section 95 of the Insolvency and Bankruptcy Code, 2016 was filed, Section 96 would come into operation, i.e., interim moratorium. Under Section 96(1)(b)(i) “any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed”.

8. In the present case, the application under Section 95 was filed and the NCLT has already passed an interim order and therefore, the present writ petition is not maintainable so as to declare that the petitioner company is not a wilful defaulter.



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9. This Court is of the considered opinion that the judgement of the

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Hon'ble Supreme Court in the case of ***Jah Developers Pvt.Ltd.,*** would have no retrospective application with reference to the present case on hand, since the Identification Committee and the Review Committee had taken the final decision before the date of the judgement. Such decisions taken prior to the judgement of the Apex Court if reopened, would result in opening of Pandora's box and many such wilful defaulters, would come with an application to undo the decision taken by the Identification Committee and the Review Committee. More so, in the present case, the Identification Committee and the Review Committee had given sufficient opportunities to the petitioner to defend their case and thus, the rules of natural justice have been followed. Thus, the judgement of the Hon'ble Supreme Court in the case of ***Jah Developers Pvt.Ltd.,*** is of no avail to the petitioner for the purpose of assailing the order impugned in the present writ proceedings.

10. In view of the fact that the NCLT has already passed an order pursuant to the application filed by the Bank under Section 95 of the Insolvency and Bankruptcy Code, 2016, the petitioner is not entitled for the relief as such sought for in the present writ petition.



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11. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes
Speaking Order
Neutral Citation : Yes
(sha)

To

The Deputy General Manager,
State Bank of India,
Stressed Assets Management Branch,
Red Cross Buildings, 32 Montieth Rd,
Egmore, Chennai.



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S.M.SUBRAMANIAM. J.,

(sha)

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