



2024:DHC:1646

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **W.P. (C) NO.10568 of 2023& CM APPL. 41028 of 2023**

Between: -

NITA PURI

W/O LATE SHRI DEEPAK PURI
A-187, NEW FRIENDS COLONY
NEW DELHI-110025

..... PETITIONER

(Through: Mr. Dayan Krishnan, Senior Advocate with Mr. Vaibhav Mishra, Mr. Karan Batura, Mr. Ekansh Mishra and Mr. Jayant Chawla, Advocates)

AND

PUNJAB NATIONAL BANK
THROUGH MANAGING DIRECTOR &
CHIEF EXECUTIVE OFFICER
SH. ATUL KUMAR GOEL
HEAD OFFICE, PLOT NO.4
SECTOR 10, DWARKA, NEW DELHI - 75

..... RESPONDENT

(Through: Mr. Sanjay Bajaj alongwith Mr. Shivam Takkar and Mr. Sarthak Sehgal, Advocates)

Pronounced on: 29.02.2024

J U D G M E N T

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KUMAR KAURAV

1. The petitioner has filed the instant writ petition under Article 226 of the Constitution of India, praying for the following reliefs:-

“i. Issue a writ/ order/ direction of mandamus and/or certiorari quashing/setting aside the Order dated 20.04.2023 passed by the Review Committee of the Respondent Bank, by which order it has arbitrarily, unfairly and unreasonably declared the name of the Petitioner as a Wilful Defaulter;

ii. Issue a writ/ order/ direction prohibiting the Respondent and or/its servants, agents, assigns and officers and/or anyone claiming through or under them from giving any effect and/or further effect and/or taking any steps and/or acting in furtherance of the Review Committee Order dated 20.04.2023, in any manner whatsoever;”

2. This Court in W.P. 9491/2023 titled as ***Ratul Puri v. Punjab National Bank***, while deciding an identical challenge, has set aside the order of the Review Committee of the respondent-Bank declaring the petitioner therein as a wilful defaulter. Paragraph nos. 123 to 126 of the said decision read as under:-

"123. This Court is of the view that it is incumbent upon banks who are dealing with public funds and discharging a public duty to make appropriate enquiries as to whether a borrower is in genuine financial difficulty or whether there exist events of fraud and malfeasance. If the lender banks find fraud or malfeasance, the CDR-EG must either refuse CDR completely or impose such additional onerous conditions as provided in the CDR Scheme itself.

124. In the present case, the lender banks were fully aware of all the transactions, which are now alleged to be acts of Wilful Default. This fact is part of the documents leading to the finalization of the CDR scheme. Despite noting all transactions, financial statements, balance sheets, TEV Report and Stock Audit Report, the lender banks placed MBSL in Class-B of CDR Master Circular which cannot be assigned if there is diversion of funds. They found no occasion to order a forensic audit of MBIL before finalization of CDR scheme. The lender banks, therefore, never treated the alleged acts of Wilful Default as an

act of diversion or siphoning either during finalization of CDR scheme or after its failure.

125. It may so happen that that during the finalisation of CDR Scheme, the lender banks are not aware of certain acts of commission or omission, which may constitute acts of Wilful Default. The lender banks may become aware of such acts subsequently, may be, on their own, or on the basis of subsequent Forensic Audit Report. Having considered such acts, which were known subsequently, the lender banks may take an objective decision under the Master Circular on whether such acts constitute Wilful Default or not. In such a situation, the mere fact that an earlier CDR Scheme was finalised and nothing negative was flagged at that stage, may not come in way of the lender banks in invoking jurisdiction under the Master Circular. However, it may not be open for lender banks to classify known acts as events of Wilful Default merely because subsequently, in respect of the same known acts, the Forensic Audit Report has made certain observations. To declare a person as a Wilful Defaulter, lender banks have to independently find that the "Wilful Default" is "intentional, deliberate and calculated" and the said conclusion is based on "objective facts and circumstances of the case", as required under the Master Circular. The Forensic Audit Report, at best, can act as a piece of corroboration for the said exercise, but not the sole basis.

*126. To take any other view would entail the transfer of jurisdiction to determine acts of Wilful Default to Forensic Auditors, which, by law under the Master Circular, is vested in the Identification and Review Committee of the Respondent Banks. When a law requires a particular act to be done in a particular manner, then it has to be done in that manner alone and no other. [See: **Tata Chemicals Ltd. v. Commr. of Customs and Krishna Rai v. Banaras Hindu University**].*

127. In view of the aforesaid discussion, the reasons assigned in the impugned order dated 20.04.2023 passed by the Review Committee confirming the Petitioner as Wilful Defaulter under the Master Circular are unsustainable and the impugned order is accordingly, quashed and set aside. The Writ Petition is allowed in the aforesaid terms. Pending application(s), if any are disposed of."

3. In view of the aforesaid decision, this Court finds that the reasons assigned in the impugned order are unsustainable. Since the similar impugned order stands set aside, this Court deems it

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appropriate to quash the impugned order dated 20.04.2023, passed by the Review Committee of the respondent-Bank, *qua* the petitioner as well. The writ petition is allowed and disposed of alongwith the pending application(s).

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

FEBRUARY 29, 2024/shs

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