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ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/265/2025

VIJAY BOTHRA
VS
BANK OF INDIA AND ANR.

BEFORE:
The Hon'ble JUSTICE GAURANG KANTH
Date: 29th April, 2025.

Appearance
Mr. Sabyasachi Chowdhury, Sr. Adv.
Mr. Rajarshi Dutta, Adv.
Mr. Anirudha Saha Roy, Adv.
Mr. Sanjib Dawn, Adv.
...for the petitioner.

Mr. Debasish Saha, Adv.
Mr. Avirup Roy Sanyal, Adv.
Ms. Sucheta Pal, Adv.
...for the respondent bank.

The Court: The petitioner in the present writ petition is challenging the show cause notice dated 27th February, 2024 and the impugned order dated 27th March, 2025.

The petitioner is the Director of M/s Kohinoor Power Pvt. Ltd., which is currently undergoing liquidation as per the order dated 04.10.2019 passed by the NCLT, Kolkata. The said company had availed credit facilities from Respondent No. 1 Bank.

Respondent No. 1, vide show cause notice dated 27.02.2024, informed the petitioner and others that the Identification Committee had identified the petitioner as a 'wilful defaulter' in terms of the RBI Master Circular on wilful Defaulters dated 01.07.2015. The petitioner submitted a reply to the said notice on 05.04.2014

Mr. Chowdhury, learned Senior Counsel appearing for the petitioner contends that the petitioner had identified as a 'wilful defaulter' by the Identification Committee of the bank dehors the provisions of the RBI Master Circular on Wilful Defaulter and the principles of natural justice. It is submitted that the key document relied upon by the bank, namely, the Forensic Audit Report dated 21st May, 2019-conducted by Kabra and Company, was never supplied to the petitioner at any point prior to the declaration. The petitioner has raised this specific issue in their reply to the said show-cause notice.

Additionally, learned Senior Counsel contends that the order of the Wilful Defaulter Identification Committee is cryptic in nature, failing to address all the documents produced and the arguments advanced by the petitioner. It is further contended that the final order dated 27th March, 2025 itself shows that the same has been issued under the RBI Master Circular dated 30th July, 2024 which was not in force at the time when the initial show cause notice dated 27th February, 2024 was issued. Therefore, he claims that any order passed under the later show cause notice is in contravention of law.

Learned Senior Counsel places reliance on a judgment of a Co-ordinate Bench of this Court in the case of ***Atlantic Projects Ltd. and Others -versus- Allahabad Bank and Others*** reported in ***2019 SCC Online Cal 611***.

Learned Counsel for the respondent bank has appeared and stated that the said submission made by learned Senior Counsel for the petitioner is not correct and that the forensic audit report on which they have relied in the show cause notice, indeed from the year of 2019 and the subsequent show cause notice was issued only in the year 2024. However, he stated that no document was supplied to the petitioner along with the show cause notice. He further contends that the Master Circular of 30th July, 2024, under which the final order dated 27th March, 2024 of the Wilful Defaulter Identification Committee was issued, provides greater safeguards and more opportunities to the petitioner. Hence, the argument that the order should have been passed under the earlier Circular is without merit and does not prejudice the rights and contentions of the petitioner.

Learned Counsel for the respondent bank further contends that the petitioner is entitled to challenge the order passed by the Wilful Defaulter Identification Committee before the Wilful Defaulter Review Committee. Hence, the present writ petition is premature as the petitioner has a remedy available under the law before the Wilful Defaulter Review Committee.

This Court has heard the arguments advanced by both the parties and has perused the materials on record. A perusal of the ratio laid down in ***Atlantic Projects Ltd. (supra)*** indicates that the learned Single Judge therein observed that a delinquent must have furnished with all materials placed before the Identification Committee for delinquent in order to make a meaningful submission. Abiding by the said principle which is also a cardinal principle of natural justice, that no one should be condemned unheard and without access to the materials used against him. In the present proceeding it is clear that neither the forensic audit report nor any relevant documents were supplied to the petitioner at the time of issuance of the show cause notice by the bank. The argument of the respondent bank that the Forensic Audit Report was discussed during the corporate insolvency resolution process is irrelevant. Such discussion in other proceedings does not amount to formal service of the forensic audit report upon the petitioner at all. Thus, the point remains that the document which was crucial for coming to the conclusion of the wilful defaulter was not handed over to the petitioner by the bank.

It is evident from various paragraphs of the petitioner's objection to the show cause notice that the petitioner categorically raised the issue of non-receipt of the documents relied upon by the Identification Committee. Learned Counsel for the petitioner rightly argues that in the absence of these documents, the petitioner was denied a fair opportunity to submit an effective and meaningful representation to the allegations of wilful default.

This court also notes that the final order passed under the RBI Master Circular of 2024, whereas the show cause notice was issued under the earlier RBI Master Circular of 2015. This aspect itself holds the order to be contrary to law and the same can be set aside on this ground as well.

Thus, the order of Wilful Defaulter Identification Committee suffers from a patent violation of the principles of natural justice and lacks evidentiary support.

Accordingly, the present writ petition is allowed. The impugned orders of Wilful Defaulter Identification Committee, whereby the petitioner was declared as a 'wilful defaulter', are hereby set aside. The first Committee which is the Wilful Defaulter Identification Committee shall now proceed afresh, based on the original show cause notice issued to the petitioner, by furnishing the forensic audit report and all other relevant documents relied upon by the bank. After providing the petitioner an opportunity of hearing. the committee shall re-examine the matter and decide whether the petitioner can be declared a wilful defaulter under the applicable Master Circulation of the RBI.

It is recorded that the petitioner has not pressed the contention that the show cause notice itself is defective and agrees to participate in the proceedings initiated pursuant to that notice. Learned Counsel for both parties agree that the proceedings will continue in accordance with the Master Circular that was in effect at the time the show cause notice was issued.

Accordingly, the present writ petitioner is disposed of.

No order as to costs.

(GAURANG KANTH, J.)

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