IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3220 OF 2024

Dipanikar Pal & Anr. .....Petitioners
Vs.
Union of India & Ors. .....Respondents

Mr. Karl Tamboly a/w Mr. Anuj Desai i/b Mr. Jawahar Prajapati, for Petitioner.
Mr. Ashutosh Mishra, for Respondent No.1
Mr. Vivek S. Sawant, for Respondent No.3
Adv. Atika Vaz a/w Adv. Parth Gokhale, Adv. Aditi Tomar and Adv. Aboli Mandlik i/b Shardul Amarchand Mangadas & Co., for Respondent No.4
Ms. Kirti Ojha (through VC) a/w Mr. Ankit Upadhyay i/b Bank & Co., for RBI

CORAM : REVATI MOHITE DERE &
DR. NEELA GOKHALE, JJ.
DATE : 24th JANUARY 2025

P.C.:-

1. The Petitioners essentially assail the listing of the name of the Petitioner No.1 in the defaulters list in furtherance of the "Defaulter" classification/declaration as per RBI's circular dated 27th June 2014 in that regard. The Petitioner No.1 was a director of Odisha Slurry Pipeline Infrastructure Limited (OSPIL) from 1st June 2015 to 13th October 2016 and he is presently the director of the Petitioner No.2 company.

2. The facts of the case reveal that the Respondent No.4-IDBI Bank, a Financial Creditor of the Petitioner No.2 company filed a Company Petition No.352/KB/2018 before the National Company Law Tribunal (NCLT), Cuttack Bench under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) initiating Corporate Insolvency Resolution Process (CIRP) against OSPIL. By an order dated 14th May 2019, NCLT admitted the Company Petition and CIRP was initiated against OSPIL. Thereafter, by an order dated 2nd March 2020 a resolution plan was approved by the NCLT and the CIRP process was terminated. The said resolution plan was challenged before the NCLAT, which came to be rejected by an order dated 18th January 2022. The matter was carried to the Supreme Court, however vide order dated 10 November 2022, the Apex Court also dismissed the company appeal. Hence, the resolution plan of OSPIL stood confirmed.

3. Mr. Jawahar Prajapati, learned counsel appeared for the Petitioners and Mr. Ashutosh Mishra appeared for the Union of India. Ms. Kirti Ojha, represented the Respondent No.2-RBI, Mr. Vivek Sawant, appeared for the Respondent No.3-State Bank of India and Ms. Atika Vaz, appeared for the Respondent No.4-IDBI Bank.

4. Mr. Prajapati submitted that the only reason as to why IDBI treated Petitioner No.1 as a Defaulter and reported his name to the RBI as a “Defaulter” was that he was a Director of OSPIL, at the relevant time. He brought to our attention an email dated 25th January 2024 issued by IDBI replying to the Petitioner that his name was reported as Defaulter under the RBI master circular on “Collection and dissemination of information on defaulting borrowers of banks and financial institutions” on the ground that some Applications challenging the approved resolution plan were pending before the NCLT. He drew our attention to the said email. The relevant portion reads thus:

> *“Since loan account of "Odisha Slurry Pipeline Infrastructure Limited" has not been closed by the Bank due to pendency of various applications challenging the approved resolution plan and other reliefs; there are chances that the Hon'ble Court may order in favour of either side.*
>
> *In view of the foregoing, Bank would not be in a possesion to remove your name from defaulter list at this point in time.”*

5. Ms. Vaz admitted the said email and confirmed that the Petitioner’s name was reported as Defaulter as some applications

assailing the resolution of OSPIL were filed and pending before the NCLT. Ms. Ojha, for the RBI submitted that they had no grievance against the Petitioner and they had published his name only due to IDBI reporting him as a Defaulter.

6. We have considered the submissions of all the counsels and perused the papers.

7. We find that the sole reason including the Petitioner in the defaulter list is pendency of some applications challenging the resolution plan before the NCLT. Admittedly, the appeal preferred in the NCLAT challenging the acceptance of the resolution plan was dismissed. The dismissal of the Appeal by the NCLAT was challenged before the Supreme Court which appeal was also dismissed. Thus, the resolution plan has attained finality. Pendency of applications, again assailing the same resolution plan is redundant to that extent. As things stand as on date, the OSPIL is out of CIRP and the resolution plan submitted by the Resolution Applicant, namely, M/s ArcelorMittal India Private Limited stands approved. In these circumstances, the basis of reporting the name of the Petitioner as "Defaulter" only on the ground that some applications in that regard are pending is unjustifiable.

8. Considering the aforesaid, we find that continuance of the name of the Petitioner in the Defaulter's list published by the RBI amounts to perpetuating an illegality and deserves to be removed forthwith. The Respondent No.2-RBI is directed to remove the Petitioner's name from its Defaulter list. Consequently, the other prayers pertaining to issuance of directions to the Respondent No.3-SBI to consider the Petitioners' Application for loan without taking into consideration that the name of the Petitioner No.1 is on the Defaulters list does not survive.

9. Needless to state, that it is open for the Respondents to initiate appropriate action in this regard against the Petitioners in future on any other ground, if any. All contentions of all the parties in this regard are kept open.

10. Accordingly, the Petition is allowed in the aforesaid terms.

11. All parties to act on an authenticated copy of this order.

(DR. NEELA GOKHALE, J.) **(REVATI MOHITE DERE, J.)**