IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 6925/2019

(SAMEER YESHWANT DAMLE **VERSUS** BANK OF BARODA, NAGPUR & OTHERS)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders.	Court's or Judge's order

Shri Nitin Vyawahare, counsel for the petitioner.
Shri S.N. Kumar, counsel for the respondents.

CORAM : NITIN W. SAMBRE AND VRUSHALI V. JOSHI, JJ.
DATE : FEBRUARY 06 , 2025

P. C.

Heard the learned counsel for the parties.

2. The challenge in the writ petition is to the communication dated May 29, 2019 at Annexure 14 whereby it was communicated by the respondent no.3 to the petitioner that after hearing the borrower and upon perusal of the documents on record, the Committee of Executives on Wilful Defaulters (COE) of the Bank of Baroda has noted that M/s Rasoya Protein Limited and its Directors have defaulted in meeting its re-payment obligation to the lender and has siphoned off the funds as the same were not utilized for the specific purpose for which the finances were availed. As such, the Bank's Review Committee on Wilful Defaulters has confirmed the decision of the Committee of Executives.

3. The brief facts necessary for deciding the writ petition are as under:-

The respondent no.1-Bank of Baroda (for short, 'the respondent-Bank') pursuant to the request made by M/s Rasoya Proteins Limited (for short, 'the Company') had provided the Bills Purchased Facility of Rupees Twenty Crores to 213 persons who claimed to be the farmers by M/s Rasoya Proteins Limited against the Bills Purchase Facility. The Company was to purchase Soya seeds from the farmers on ninety days' credit, for which the cheques were issued in favour of the farmers by the Company. These cheques were to be purchased by the respondent-Bank and the amount reflected in the cheques was to be credited in the respective accounts of the farmers. The cheques were to be honoured by the Company on the due dates alongwith the interest. The Bank purchased the cheques of 213 farmers, which led to the credit being given to the farmers of Rupees Twenty Crores in their account (Bills Purchase Facility). However, the proceeds were transferred by the Company from the accounts of the alleged farmers, who were in fact the workers of the Company, to the account of its associate Company, M/s Rasoya Food Drinks and not real farmers. As the funds were misappropriated, criminal prosecution by the Central Bureau of Investigation came to be initiated.

4. In the aforesaid loan transaction, the present petitioner, a Director of the Company has acknowledged the terms and conditions of the sanctioned financial facility for which the Company had executed the corporate guarantee. It was the petitioner alongwith another Director, Shri Anil Lonkar, who have executed the corporate guarantee on behalf of the Company. The communication dated June 19, 2014 issued by the petitioner, being Executive Director of the Company, is regarding making of a request for disbursement of Bills Purchase Facility through Banker's Cheques to the individual farmers after the sanction of the

finance facility on June 18, 2014. Since the Company has failed to return the amounts, the proceedings were taken out before the National Company Law Tribunal, Mumbai by one of the creditors of the Company. In the said proceedings, the National Company Law Tribunal, Mumbai issued an order of liquidation on October 30, 2018. The respondent no.3 issued a show cause notice to the Company as well as other Directors including the petitioner on March 31, 2018 seeking their response as to why they should not be declared as 'Wilful Defaulters' in the wake of the Master Circular issued by the Reserve Bank of India on July 01, 2015. They were asked to submit their response within a period of fifteen days. As a consequence of the above, *vide* impugned communication dated May 29, 2019, the petitioner came to be declared as 'Wilful Defaulter' by the respondent-Bank including other Directors of the Company to whom the show cause notice was served. Feeling aggrieved, the petitioner has filed the present writ petition.

5. Shri Nitin Vyawahare, counsel for the petitioner submits that the decision of the respondent-Bank in declaring the petitioner as 'Wilful Defaulter' in the capacity of the Director of the company is not sustainable in law. According to him, the procedure contemplated in the Master Circular, particularly Clauses 3(a) and (b) issued by the Reserve Bank of India on July 01, 2015 is not complied with. According to him, the respondent no.3 has no authority to issue the show cause notice to the company or its Directors as under the Master Circular it is necessary to forward the proposal to the respondent no.2, who in turn after satisfaction, can cause the show cause notice. According to him, after issuing the show cause notice, the proposal was forwarded to the

respondent no.2 and as such there is a violation of the Master Circular. He would further claim that the Master Circular provides for the grant of opportunity of personal hearing and it is the respondent no.3 who has issued the notice for hearing and not the respondent no.2. Here also, the provisions of the Master Circular are violated. He would further claim that there is a failure to constitute the Review Committee consisting of the Chairman/Chairman & Managing Director or the Managing Director & Chief Executive Officer/CEO's and in addition, two independent Directors/non-executive Directors of the Bank. As such, his contentions are, the impugned order is without jurisdiction as the Master Circular does not confer any authority to pass the order on the Authority who has passed the impugned order. He would further claim that there is a breach of Clause 2.1.3 of the Master Circular issued by the Reserve Bank of India. According to him, if the track record of the company is appreciated, there is a reason to believe that the funds were used for the business purposes and there is no siphoning of the funds and therefore, there is a violation of Clause 2.1.3 of the Master Circular. As such, he would urge that the impugned order is liable to be quashed and set aside as it is in violation of the principles of natural justice.

6. As against the above, Shri S.N. Kumar, counsel appearing for the respondents would support the impugned order. According to him, the petitioner being the Executive Director (Employee) of the Company has forwarded a letter dated June 19, 2014 after the sanction of the financial facility on June 18, 2014 for disbursement of the Bills Purchase Facility through the Banker's Cheque to the individual farmers. He would claim that the mechanism provided for identification of the

wilful defaulters in the Master Circular is duly complied with. According to him, Clause 3(d) of the Master Circular provides that a Director who is not a whole time Director is considered as a wilful defaulter, if the wilful default has taken place with his consent and connivance. According to him, there is sufficient material to infer that the petitioner has actively participated in the loan process and the business of the company in the capacity of the Director.

According to him, though the petitioner is claiming to be the employee of the Company, the fact remains that the employees were shown to be the farmers of the company and as such there is connivance of the petitioner in siphoning of the funds which has rightly prompted the Authority to pass the impugned order. He would claim that the show cause notice dated March 31, 2018 was served on the petitioner through 'Speed Post' on the recorded address on April 03, 2018. However, the same was returned back on April 05, 2018 and April 06, 2018 with an endorsement 'Item delivery attempted, Door Locked-Intimation served'. He would further claim that the show cause notice in two newspapers viz. Indian Express and Loksatta, both having wide circulation, in the edition dated June 07, 2018 was published. As such, it can be inferred that there was a sufficient notice to the petitioner. The change in address was never communicated by the petitioner to the Bank as the notices were sought to be served on the address which was registered in the Bank records. It is further claimed that the Committee of Executives on Wilful Defaulters had decided to give personal hearing to the petitioner and accordingly the communication dated July 26, 2018 was issued which was also returned back by the postal authorities with an endorsement 'Left'. As such, it can be inferred that the petitioner by his conduct has avoided the service of notice and has tried to get mileage for Bank's failure to grant opportunity of personal hearing. According to him, the Committee of Executives on Wilful Defaulters consisted of Executive Director, General Manager (NPA Recovery) and other three General Managers who had considered the matter on August 13, 2018 and decided to declare the company and the petitioner alongwith other Directors as wilful defaulters. He would also invite our attention to the decision of the Review Committee which was consisting of the Managing Director, CEO and two independent Directors who had reviewed the decision of the Committee of Executives on Wilful Defaulters in its meeting dated October 12, 2018 and has confirmed the same. As such, according to him, the absolute compliance of the terms of the Master Circular can be inferred. That being so, he has sought for the dismissal of the writ petition.

7. We have considered the rival submissions.

8. The respondent-Bank issued the sanction letter dated June 18, 2014 thereby sanctioning a limit of Twenty Crores towards the Bills Purchase Facility. The sanction letter consisted of the following condition:-

> "*It is a precondition for the loan/advances given to you by our Bank that in case you commit default in the repayment of the loan/advances or in the repayment of interest thereon or any of the agreed instalment of the loan on due date/ dates our Bank and/or Reserve Bank of India will have an unqualified right to disclose or publish the name of your company/firm/unit and its directors/partners/ proprietor as defaulter in such manner and through such medium as the Bank or Reserve Bank of India in our absolute discretion may think fit.*"

9. In support of the aforesaid transaction, a corporate guarantee was executed by the Company and the petitioner was one of the signatories to the same as could be inferred from the documents produced on record by the petitioner himself. Peerless Finance Services Limited, a financial creditor, moved the National Company Law Tribunal by filing a petition being TCP.No.856/I&BP/NCLT/MAH/2017 in the matter of Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. In the said proceedings, the company of which the petitioner was the Director, was styled as a Corporate Debtor and the company has failed to appear before the National Company Law Tribunal which has led to passing of the order dated June 27, 2017 thereby admitting the said proceedings. In the said proceedings, *vide* order dated October 30, 2018, the company viz. the Corporate Debtor of which the petitioner was a Director was ordered to be liquidated in accordance with Chapter III of the IBC by issuing a Public Announcement and a Resolution Professional came to be appointed. The Resolution Professional issued a sale notice of the assets of the debtor company. The same has led to the respondent-Bank taking recourse to the Master Circular thereby causing notices to the company and its Directors including the petitioner. The petitioner on May 29, 2019 was informed by the respondent-Bank about the declaration of the account of the Corporate Debtor as 'Wilful Defaulter'. The said document is produced at Annexure-14 by the petitioner. As such, it has to be inferred that the issue of declaring the company and its Directors as 'Wilful Defaulters' was within the knowledge of the petitioner.

10. Apart from above, it appears on perusal of the show cause notice dated March 31, 2018 calling upon as to why the company and its Directors may not be declared as 'Wilful Defaulters' that an opportunity for representation was offered to the petitioner. The record depicts that the said notice was admittedly served on the address of the petitioner which was available with the respondent-Bank and the petitioner without intimating the change of his address, locked the door of the Office for a considerable time. Similarly, the said notice was also published in two newspapers viz. Indian Express and Loksatta, which have wide circulation.

11. On July 26, 2018, another communication was sought to be served on the petitioner. However, the delivery of the same was not accepted by the petitioner, he having locked the door of the premises. The same has led the Committee of Executives on Wilful Defaulters to proceed with the hearing. On August 13, 2018, in the meeting presided over by the Executive Director, General Manager (NPA Recovery) and three Department Heads, the decision of proceeding to examine the position of wilful defaulters was taken. The aforesaid Committee provided an opportunity of personal hearing to those who were present for hearing. The Committee then recorded the following minutes as regards the defaulter company of which the petitioner is the Director :-

<table>
<tr><th>S.No</th><th>Zone</th><th>Region</th><th>Branch</th><th>Name of the account</th><th>NPA date</th><th>O/s.Bal (Rs.in Crs)</th><th>Sec.Value (Rs.in Crs)</th></tr>
<tr><td>7</td><td>Pune</td><td>Nagpur</td><td>Pratapnagar</td><td>M/s Rasoya Proteins Ltd.</td><td>29.12.14</td><td>26.75</td><td>Hyp of CA</td></tr>
<tr><td colspan="3">SCN details</td><td colspan="5">As directed by the COE show cause notices have been issued to M/s Rasoya Proteins Ltd and its Mrs.Anil Narayan Lonkar (Director and guarentor) and Mr.Sameer Y Damle (Director) on 31.03.2018 on the basis of FMR. (Our Nagpur region informed that our Pratapnagar branch not issued SCN to other directors Mr.P.G. Duchakke and Mr.Ajay Kunwar Singh vide their letter dated 08.08.18 and issued on 09.08.2018</td></tr>
<tr><td colspan="3">Grounds for declaring the borrower as wilful defaulter</td><td colspan="5">1. The company is procuring soya seeds directly from the farmers.
2. A scheme for financing to individual farmers against the security of postdated cheque issued by the M/s Rasoya Proteins Ltd. aggregating to Rs.20.00 cr sanctioned on 09.06.2014 for the season 2014-15.
3. As per the scheme, the company will purchase soya seeds from the farmers on 90 days credit and will issue postdated cheques in favour of respective farmers.
4. The company will issue the receipt/challans with market receipt for having received soya seeds.
5. The company will submit receipted challan, other details of the farmers (for KYC purpose), PDC along with the list of payments/ procurements made on daily basis to the Bank requesting to purchase the PDC. The cheques will be purchased by the Bank and will be credited to the individual accounts of the farmers and the cheques will be honoured by the company on due dates with charge and interest.
6. Our Bank has purchased cheques for 213 farmers.
7. As reported by CBI officials, investigation carried out from the angle of fraud.
8. It was noticed that the proceeds of the cheques purchased for individual farmers were retransferred to the company's/its associate M/s Rasoya Food Drinks accounts.
9. Further it was observed that the company misappropriated funds by showing their workers as farmers.
10. The cheques given by the company were not honoured on due dates.
11. Thus the company has siphoned off the funds.
12. These workers were made to open SB accounts with our branch by telling that it is for crediting their salary and for mediclaim purpose. None of these farmers visited the branch or met any of our staff member for the purpose and not aware of any BP facility sanctioned to them. One worker has even lodged a complaint with Police Station, Wani about fraudulently showing him as farmer for the purpose. A total of 213 accounts were opened of which one is closed.
The borrower has defaulted in meeting its payment/repayment obligations to the lender and has siphoned off the funds so that the funds have not been utilized for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets.</td></tr>
<tr><td colspan="3">Whether Notices served on the borrowers.</td><td colspan="5">SCN sent to Mr.Anil Narayan Lonkar delivered. As the SCN sent to Mr.Sameer Y. Damle, returned undelivered, the same was published in newspapers as per the extant guidelines and submitted the copies of the publication.</td></tr>
<tr><td colspan="3">Representation Received.</td><td colspan="5">In response to the SCN representation received from Mr.Anil Lonkar, COE in its meeting held on.</td></tr>
<tr><td colspan="3">Details of the personal hearing.</td><td colspan="5">Mr.A.N. Lonkar (Director & Guarantor) appeared before the committee and represented that they had business losses and could not pay bank's dues. He further submitted that at present the company does not have any concrete proposal to repay bank's dues.</td></tr>
<tr><td colspan="3">Decision of COE</td><td colspan="5">Taking into consideration of the above, Committee decided to declare M/s Rasoya Proteins Ltd. and its Mrs.Anil Narayan Lonkar (Director and Guarantor) and Mr.Sameer Y. Damle (Director) as wilful defaulters.</td></tr>
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The said proceedings were placed before the Committee of Executives on Wilful Defaulters. Its meeting was held on October 12, 2018 which was presided over by the Managing Director & CEO, two Directors and General Manager (NPA Recovery). Thereafter it proceeded to review the recommendations of the Committee of Executives in respect of the finding recorded on the petitioner and his company. This Committee accordingly reviewed the decision of the Committee of Executives and declared the Company and its Directors including the petitioner as Wilful Defaulters. It is worth to mention here that in the transaction in question, the petitioner had executed a corporate guarantee also.

12. The fact remains that the petitioner has questioned the authority to issue the show cause notice by the respondent no.3 and also the communication of personal hearing which he claims to have caused prejudice. The fact remains that the petitioner has not disputed that he has not been served with the notice of personal hearing by the respondent no.3. He has only disputed the authority to issue the notice. The petitioner in such an eventuality ought to have demonstrated that (a) the prejudice caused to him; and (b) the same has led to the order declaring him as wilful defaulter being illegal or *non-est* in law which he has failed to demonstrate. Rather, from the constitution of the Committee and from the conduct as reflected in the factual matrix, it is apparent that the Committee of Executives has rightly proceeded against the petitioner

and his company and such conduct of the respondents appears to be in accordance with the mandate provided under the Master Circular. For the purposes of the appreciation of the contentions of the petitioner, we have tested the same in the light of the provisions of the Master Circular which defines not only 'wilful defaulter' but also 'lender' under Clause 2. It also defines diversion of funds and siphoning of funds. Clause 3 of the same provides for the mechanism to be adopted for identification of the wilful defaulters and empowers the Committee headed by the Executive Director or equivalent and two other officers of the rank of General Manager or the Deputy General Manager to examine the proposals. The Committee accordingly issued the show cause notice and proceeded to examine the proposal and submitted the same to the Review Committee which in turn had proceeded to accept the recommendations of the Committee of Executive on Wilful Defaulters.

13. We hardly see any reason to interfere with the impugned order in any way when the provisions of the Master Circular, particularly Clause 3 or the clause as regards the procedure to be adopted by the Review Committee, are not at all violated. That being so, we see no reason to cause interference in the extraordinary writ jurisdiction, particularly when the petitioner has failed to demonstrate that there is a denial of an opportunity of hearing or that the order impugned is illegal.

14. In view of the above, the writ petition fails. The same stands dismissed. There shall be no order as to costs.

(MRS.VRUSHALI V. JOSHI, J.) **(NITIN W. SAMBRE, J.)**

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