IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-01-2026

CORAM

THE HON'BLE MS. JUSTICE P.T. ASHA

WP No. 33283 of 2024
AND
WMP Nos. 36077 to 36079 of 2024

1. Raj Hari Eswaran
   Pasupathinath, A Block
   No.26, Desika Road
   Mylapore, Chennai.

2. Hari Haran Eswaran
   Pasupathinath, A Block
   No.26, Desika Road
   Mylapore, Chennai.

3. Eswaran and Sons Engineers Ltd.,
   Temple Tower, 6th Floor
   No.476, Annasalai, Nandanam
   Chennai-600 035.

..Petitioner(s)

Vs

1. State Bank of India
   Stressed Assets Management Branch
   Red Cross Buildings, Montieth Road
   Egmore, Chennai-600 008.

2. TransUnion CIBIL Limited
   (Formerly Credit Information Bureau (India) Limited)
   Rep. by its Authorized Representative
   One Indiabulls Centre, Tower 2A, 19th Floor
   Senapati Bapat Marg, Elphinstone Road
   Mumbai-400 013.

..Respondent(s)

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the order dated 14.12.2021 passed by the Willful Defaulter Review Committee of the 1st respondent in order No.2021-22/06/20 quash the same and consequently direct the 2nd respondent herein to remove the name of the petitioners from the list of Willful Defaulters published on the website https//suit.cibil.com and pass orders.

For Petitioner(s): Mr. T.K.Bhaskar

For Respondent(s): Mr. M.L.Ganesh for R1
Ms. Madhupreetha Elango for R2

ORDER

The sum and substance of the grievance of the petitioners is that they have been declared as willful defaulters and the same being published in the website of the second respondent, without giving them an adequate opportunity to putforth their contentions.

2. The facts that led to the filing the above writ petition are herein below set out :

a) The first petitioner is the Managing Director of one Easun Reyrolle Limited [hereinafter referred to as "Company"] and the authorised signatory of the 3rdpetitioner. The second petitioner is his father, who is the Executive Director of the said Company. The said Company was a Public Limited Company incorporated under the provisions of Companies Act, 1956. It has around 13,400 sharers and the shares of the Company were listed on National Stock Exchange and Bombay Stock Exchange. Unfortunately, the Company had gone through a financial crisis, and Corporate Insolvency Resolution Proceedings [in short 'CIRP'] were initiated against the Company by the National Company Law Tribunal, Chennai Bench, on 05.05.2020, under the provisions of the Insolvency and Bankruptcy Code 2016 and a Resolution Professional was appointed. Ultimately, on 17.02.2022, following the unsuccessful insolvency process, the Company was ordered into liquidation.

b) The petitioner would submit that prior to initiation of CIRP, the first respondent had extended the credit facilities to the Company by sanction letter dated 01.01.2000 and this credit facility was extended from time to time. The 1st petitioner stood as Personal Guarantor for the said credit facilities and the 3rd petitioner and one Switchcraft Europe GmbH stood as Corporate Guarantors.

c) Be that as it may, the petitioners received a show cause notice from the first respondent dated 23.10.2020, which was purported to be issued based on the Master Circular of Reserve Bank of India, wherein it has stated that during the deliberations of the Willful Defaulter

Identification Committee of the first respondent-Bank, the Company was found to have committed certain events of willful default. The events of willful default was on account of the fact that the Company had maintained accounts with the ICICI Bank, Hosur, through which it had routed a transaction of Rs.48.78 Crores from 01.04.2018 to 31.05.2020, without prior permission of the lender Bank.

d) According to the petitioner, the sole material relied upon by the first respondent in the show cause notice was the Current Account Statement of the Company's account maintained with the ICICI Bank for the period 01.04.208 to 30.05.2020, but this document did not accompany the show cause notice. Therefore, the petitioner vide his letter dated 04.11.2020 had requested the first respondent to furnish the said document and accordingly, this document was furnished to the petitioners only on 16.11.2020 by the first respondent.

e) By a communication dated 24.11.2020, the first respondent had provided an opportunity of personal hearing which directed the petitioners to appear physically at the venue. This was replied by each of the petitioners vide separate correspondences. By letter dated 06.12.2020, the 1st petitioner had responded in detail, denying the allegations contained in the said show cause notice and contending that he was not available on the said date and requested to postpone the date of hearing. On 04.12.2020, the 2nd petitioner replied that he was not responsible for the operation of accounts with the ICICI Bank as he was the non-executive Director and he is not involved in the day to day operations of the Company. The 3rd petitioner sent an individual communication stating that he was not responsible for the operation of the accounts of ICICI Bank as he did not involve in the management of the Company. In the meanwhile, the first respondent sent a letter dated 05.12.2020 to the petitioners herein stating that the date of personal hearing was postponed to 18.12.2020.

f) The 1st petitioner had responded to the above letter dated 05.12.2020, vide his reply dated 10.12.2020, wherein he had stated that on account of the COVID lockdown from 23.03.2020, its Companies operations were in stand-still and therefore, he required some more time to obtain the relevant information and documents to enable him to attend the personal hearing and sought for an adjournment.

g) By a communication dated 30.12.2020, the first respondent-Bank had required the petitioners to produce a copy of the consent letter issued by them to operate the accounts with ICICI Bank. This letter was responded to by the petitioners vide their letter dated 28.01.2021, wherein the petitioners had stated that their Company had been operating the accounts with the ICICI Bank only with the consent of the first respondent Bank and no diversion of funds has occurred till date. Further, the consent to operate with the ICICI Bank was issued to the petitioners some 18 years ago and since the Company is under lockdown, and the Resolution Professional has taken charge, it would be impossible to trace the said 18 year old document at this juncture.

h) The 1st petitioner had agreed to provide the statement of accounts reflecting the transactions from 2010. The petitioners had also sought for a video conferencing of the hearing, as it was impossible to appear in person owing to COVID lock down.

i) On 07.01.2021, the first respondent addressed a letter to the petitioners informing them that the personal hearing would be on 29.01.2021, in which, the petitioners were to appear in person.

j) Thereafter, under cover of letter dated 01.02.2021, the 1stpetitioner had enclosed the statement of accounts reflecting the transactions with the ICICI Bank and Mookandapalli Branch of the first respondent.

k) The first respondent sent a communication on 16.02.2021, reiterating the physical presence of the petitioners at the venue. Thereafter, by its letter dated 23.02.2021, the first respondent had informed the petitioners that the hearing was rescheduled to 06.03.2021. Subsequently, by letter dated 04.03.2021, the first respondent informed the petitioners that the hearing scheduled on 06.03.2021, had been cancelled.

l) Yet again, the first respondent by its letter dated 01.04.2021, had informed the petitioners to appear for physical hearing. However, this was even postponed to 07.05.2021, by 1st respondent's letter dated 12.04.2021. Vide 1st petitioner's letter dated 03.05.2021, the petitioners once again renewed their request for a virtual hearing in the surge of COVID cases.

m) By the letter of the 1st respondent on the very same day i.e., on 03.05.2021, the hearing scheduled on 07.05.2021 stood cancelled. This hearing was thereafter postponed and date for physical hearing was fixed on 23.06.2021.

n) In the meantime, the 1st petitioner vide his letter dated 21.06.2021 had requested the 1st respondent to respond to the letters sent by the Company, before they appear for hearing. The 1st petitioner by letter dated 19.07.2021 had again reiterated their inability to attend the physical hearing, on account of lock down. Thereafter, the hearing was fixed on 15.09.2021 and this was communicated to the petitioners by letter of the 1st respondent dated 25.08.2021.

o) The 1st petitioner vide his letter dated 13.09.2021, had expressed their inability to attend the hearing scheduled on 15.09.2021, as they were not able to have access to the documents from the Resolution Professional, as the software system pertaining to the Company, was down since 07.07.2021, and therefore their absence in producing the documents before the 1st respondent, would render the hearing futile. Hence, the petitioners had sought for some more time.

p) To their shock and dismay, on 13.10.2021, vide the 1st respondent's letter, the petitioners were served with the Resolution dated 15.09.2021 passed by the Willful Defaulter Identification Committee. The Resolution had declared the Company, its suspended Directors i.e., the 1st and 2nd petitioner and its guarantors i.e., the 3rd petitioner, ERL International Pte Ltd., and Switchcraft Europe GmbH as "Willful Defaulters". The said communication also conveyed that the said Resolution would be placed before the Review Committee set up by the 1st respondent.

q) On 09.11.2021, the petitioners made a representation to the Review Committee to aside the order of the Willful Defaulter Identification Committee, for which, the petitioners did not receive any response.

r) Be that as it may, when the 1st petitioner was browsing the website of the 2nd respondent on 14.03.2024, he had learnt that the petitioner-Company was shown as "Willful Defaulter" and same was also published in 2nd respondent's website.

s) The petitioners' contention is that the without responding to their email dated 09.11.2021, the 2nd respondent had published the names of the petitioners and the Company as "Willful Defaulter" in its website, is bad in law and it violates the RBI Master Circular and the principles of natural justice.

t) Aggrieved by the same, the petitioners filed W.P.No.9004 of 2004 seeking to quash the said order of the Willful Defaulter Identification Committee declaring them as Willful Defaulters. In the said W.P.No.9004 of 2004, it is only the first respondent who had filed the counter affidavit. The 1st respondent had placed before the Court about the order passed by the Review Committee dated 14.12.2021, finalising the order of the Willful Defaulter Identification Committee dated 15.09.2021. Recording the same, this Court by order dated 04.09.2024 had disposed of W.P.No.9004 of 2024, by granting liberty to the petitioners to challenge the said order of the Review Committee.

u) The petitioners contention is that they were not put on notice before the order was passed by the Review Committee. Therefore, the petitioners are before this Court challenging the order of the Review Committee dated 14.12.2021.

3. The petitioners' grievance is that the order passed by the Willful Defaulters Review Committee on 14.12.2021 and the name of the petitioners' being uploaded in the website of the 2nd respondent as Willful Defaulters is *per se* erroneous inasmuch as the petitioners have not been granted a personal hearing to make their submissions. More particularly, when the case of the petitioners is that the first respondent is very much aware that the petitioners' are having accounts with the ICICI Bank and the fact that the first respondent themselves had consented for the operation of accounts with the ICICI Bank by

the petitioners, the first respondent declaring the petitioners as Willful Defaulters goes to show that there is patent non-application of mind on the part of the first respondent-Bank. The further grievance of the petitioners is that the Review Committee had passed the impugned order, without hearing them, appears to be arbitrary in nature. Hence, the petitioners are before this Court to quash the impugned order.

4. The first respondent has filed the counter affidavit in which they had denied the allegations of the petitioners. The first respondent it its counter dated 19.11.2024, has stated as follows and also sought for the dismissal of the writ petition :

> *" 14. I stoutly deny the allegation made by the petitioners that no fair and reasonable opportunity afforded to them before passing an order by WDIC and Review Committee. It is a matter of record that the first respondent Bank had sent show-cause notice on 23-10-2020 for which the petitioners had given a letter on 13-09-2021 seeking for postponement of the personal hearing by citing vexatious reasons. As a matter of fact, personal hearing before the committee held on 13-11-2020, 18-12-2020, 29-01-2021, 23-07-2021 and 15-09-2021 and on all the hearing dates, the petitioners not appeared for obvious reasons. The petitioners cannot cite COVID-19 pandemic situation since hearings were fixed after the relaxation of COVID or lifting of lock-down. It is needless to mention that the petitioners could have very well attended through video conferencing but not chosen to do so for obvious reasons.*
>
> *15. I further submit that as per the sanction letter dated 28-02-*

*2015, the borrower company not supposed to deal with or transact with other banks which is mandatory. While so, the borrower company had transacted with ICICI Bank running into several crores which necessitated the first respondent bank to send letters on 24-12-2016 and 03.11.2016 to close the said account forthwith. The petitioners have not produced any consent letter given by the first respondent bank empowering the borrower company to operate with ICICI Bank. Hence, adverse inference to be drawn against the petitioners for non-production of the alleged and purported consent letter given by the first respondent bank."*_

5. Heard the learned counsel on either side and also perused the materials available on record.

6. Admittedly, the enquiry by the first respondent had taken place during the COVID-19 lock down. The second petitioner is aged over 80 years and he is susceptible to comorbidities. The first petitioner is his care taker and he could not expose himself as there is every possibility of him transmitting the virus to the second respondent. Further, the petitioners have clearly stated and had also provided the documents to show that from 2010 onwards there have been transactions between the first respondent and the said ICICI Bank, for and on behalf of the Company. Therefore, the first respondent cannot feign ignorance and contend that the petitioners have committed an act of willful default. These factors had to be substantiated with documents. Therefore, it is imperative that the petitioners be given another opportunity to submit their case.

7. In the light of the above, the writ petition is allowed and the impugned order of the Review Committee dated 14.12.2021 is set aside and the matter is remitted back to the first respondent, to once again hold an enquiry, give a personal hearing to the petitioners and give them an opportunity to submit the documents and thereafter pass speaking orders. Consequently, the second respondent shall remove the name of the petitioner from the list of Willful Defaulters published in the website https//suit.cibil.com. No costs. Consequently, connected miscellaneous petitions are closed.

06-01-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

DS

To:

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   Red Cross Buildings, Montieth Road
   Egmore, Chennai-600 008.

2. TransUnion CIBIL Limited
   (Formerly Credit Information Bureau (India) Limited)
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   One Indiabulls Centre, Tower 2A, 19th Floor
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P.T.ASHA J.

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