(2019) 07 CAL CK 0057

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 381, 401 (W) Of 2018

Moser Baer India Ltd And Others APPELLANT

Vs

UCO Bank & Anr RESPONDENT

Date of Decision : 16-07-2019

Acts Referred:

Citation : (2019) 07 CAL CK 0057

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : Jishnu Saha, Abhrajit Mitra, Rudraman Bhattacharyya, Sushovit Dutt Majumder, Sanjoy Ginodia, Rupak Ghosh, Shantanu Mishra, Shyamal Santra, Debnath Ghosh, Aditya Ginodia

Final Decision : Disposed Off

Judgement

Debangsu Basak, J

Two writ petitions have been taken up for analogous hearing as they involve similar issues. Both the writ petitioners have challenged a decision of the

Review Committee established under the provisions of the Master Circular on Wilful Defaulters issued by the Reserve Bank of India. The Company

enjoying the credit facilities from UCO Bank has filed W.P. No. 381 of 2018. For the sake of convenience it is referred to as the first writ petition.

The guarantors of such credit facilities have filed W.P. No. 401 of 2018. For the sake of convenience it is referred to as the second writ petition.

Learned Senior Advocate appearing in support of the first writ petition has submitted that, the Company enjoyed credit facilities from UCO Bank. The

Company faced proceedings under the Insolvency and Bankruptcy Code (IBC) before the National Company Law Tribunal, New Delhi. In such

proceedings, initially, a resolution professional was appointed by NCLT, New Delhi by its Order dated November 14, 2017. Subsequently, a liquidator

has been appointed in respect of the affairs of the Company.

Learned Senior Advocate appearing in support of the first writ petition has referred to the provisions of the Master Circular on Wilful Defaulters of

Reserve Bank of India dated July 1, 2015. He has submitted that, the Company was not given any opportunity of hearing either by the Identification

Committee or by the Review Committee. He has relied upon the judgment and order dated November 5, 2019 passed in W.P. No. 1399 (W) of 2019

(Pawan Kumar Patodia & Ors. v. Union Bank of India & Ors.), 2019 SCC Online Cal. 611 (Atlantic Projects Ltd. & Ors. v. Allahabad Bank &

Ors.) and the judgment and order dated May 8, 2019 passed in Civil Appeal No. 476 of 2019 (State Bank of India v. M/s. Jah Developers Pvt. Ltd. &

Ors.) in support of his contentions that, a notice of hearing by the Review Committee to the petitioner is mandatory. Since no notice was given, the

impugned decision of the Identification Committee is bad in law. He has drawn the attention of the Court to the decision of the Review Committee and

submitted that, the decision itself, is uninformed with reasons. The order of the Review Committee merely reiterates what the Identification

Committee allegedly held. Application of mind of the Review Committee is not apparent from the Order Sheet of the Review Committee. Therefore,

according to him, the Order of the Review Committee should be quashed.

Learned Advocate appearing for UCO Bank has questioned the locus standi of the person verifying the writ petition. He has submitted that, the writ

petition is affirmed by the authorised signatory of the resolution professional of the Company. Since there is a liquidator appointed over the affairs of

the Company and since the liquidator is not prosecuting the petition, the writ petition should be held as not maintainable.

Referring to M/s. Jah Developers Pvt. Ltd. & Ors. (supra), learned Advocate appearing for UCO Bank has submitted that, the Review Committee

did not have the benefit of such judgment and order to modulate its affairs. The ratio laid down in M/s. Jah Developers Pvt. Ltd. & Ors. (supra)

should not be applied to test the decision of the Review Committee. He has drawn the attention of the Court to the fact that, the decision of the interim

Committee is not under challenge in the present writ petition. He has referred to the various grounds of challenge made in the writ petition and has submitted that, since the challenge is limited to the decision of the Review Committee and since, the Review Committee did not have the benefit of

M/s. Jah Developers Pvt. Ltd. & Ors. (supra) on the date of taking of the decision, the same should not be faulted. The entire proceedings under the

Master Circular on Wilful Defaulters should not be set aside.

Learned Advocate appearing in support of the second writ petition has submitted that, the petitioners were sought to be proceeded under the Master

Circular on Wilful Defaulters. He has contended that, the Order of the Identification Committee was not served upon the petitioners. The petitioners

did not receive notice of hearing of the Review Committee. Therefore, the petitioners were unable to place their case before the Identification

Committee as well as the Review Committee. He has referred to the various provisions of the Master Circular on Wilful Defaulters and has submitted

that, the petitioners are entitled to a notice of hearing both by the Identification Committee as well as by the Review Committee. He has relied upon

the authorities cited on behalf of the first writ petitioner in support of his contentions.

Learned Advocate appearing for the Bank has reiterated his contentions with regard to the applicability of the ratio of M/s. Jah Developers Pvt. Ltd.

& Ors. (supra). He has also contended that, the order of the Identification Committee is not under challenge although, the petitioners are aware at

least from the recordings of the Order of the Review Committee that there is a decision of the Identification Committee. The Order of the

Identification Committee not being under challenge, the same should not be looked into by the Court.

As noted above two writ petitions have been taken up for hearing. The first writ petition is at the behest of the Company who enjoyed the credit

facilities from the Bank. The Company after it obtained credit facilities from the Bank underwent a Corporate Debt Restructuring process in the year

2012-2013. Master Restructuring agreement dated December 27, 2012 subsequently amended on March 30, 2013 was entered into. The Company

however failed to pay its debts. The Company has claimed that, the product manufactured by the Company suffered technological obsolescence and

therefore became unviable. The second writ petition is at the behest of the guarantors of the credit facilities enjoyed by the Company. In both the writ petitions, challenge has been levelled against a decision of the Review Committee dated July 9, 2018. The Bank has proceeded against the petitioners

in both the writ petitions under the provisions of the Master Circular on Wilful Defaulters dated July 1, 2015. M/s. Jah Developers Pvt. Ltd. & Ors.

(supra) has considered the Master Circular on Wilful Defaulters dated July 1, 2015 and the Master Circular on Wilful Defaulters dated July 1, 2013. It

has considered the Master Circular on Wilful Defaulters in the context of allowing the borrower an opportunity to defend himself before he is declared

a Wilful Defaulter and held that, however, under the revised circular of 2015, the borrower is only entitled to one opportunity to make his case i.e.

before the Identification Committee which would issue him a show cause notice if they proposed to declare him a wilful defaulter. The borrower may

make his submissions upon such notice being served. The Identification Committee was left with the discretion to decide whether the borrower should

be given a personal hearing. The Identification Committee is not barred from finding that the borrower should be declared a wilful defaulter without

hearing him further. The Identification Committee's order becomes final once a Review Committee confirms the same. M/s. Jah Developers Pvt. Ltd.

& Ors. (supra) cannot be construed to mean that, decisions of Banks under the Master Circular on Wilful Defaulters taken prior to the date of the

judgment of M/s. Jah Developers Pvt. Ltd. & Ors. (supra) cannot be questioned on the ratio laid down therein.

Courts of Law decide on the law available. It declares, in a given case, the interpretation of the existing law. Such a declaration does not mean that,

the Court has laid down a new law. It has interpreted the existing law and stated the interpretation of such existing law. In my view, M/s. Jah

Developers Pvt. Ltd. & Ors. (supra) declared what, the procedure is required before followed while disposing of a proceedings under the two Master

Circulars on Wilful Defaulters of Reserve Bank of India. It declared what such Master Circulars on Wilful Defaulters required the Bank and the two

Committees established under the Master Circulars to follow. The contention that, the decision of the Review Committees made prior to M/s. Jah

Developers Pvt. Ltd. & Ors. (supra) cannot be called in question or be inferred by reason of the fact that, such decisions were taken prior to M/s. Jah

Developers Pvt. Ltd. & Ors. (supra), cannot be accepted.

Atlantic Projects Ltd. & Ors. (supra) has considered the Master Circular on Wilful Defaulters dated July 1, 2015 in the context of a show-cause

notice issued by a Deputy General Manager (Recovery) of Allahabad Bank purporting to act as the Identification Committee under such Master

Circular. In such context, it has held that, the Identification Committee cannot delegate its function to the Deputy General Manager or to any other

person. In the facts of that case, it has held that, the notice issued on behalf of the Identification Committee was bad and quashed the same.

In neither of the two writ petitions before the Court, the petitioners therein have challenged the decision of the Identification Committee or the steps

and procedures taken upto the decision of the Review Committee. The Master Circular on Wilful Defaulters dated July 1, 2015 contemplates two tier

decision making process for the purpose of identification of a wilful defaulter. The Master Circular contemplates establishment of an Identification

Committee consisting of the specified number of personnel with the requisite qualifications and the Constitution of a Review Committee, again of the

requisite number and qualification. Once such committees are established, the Master Circular requires that a bank having material to proceed against

an account, to have the same declared as a wilful defaulter, under such Master Circular, to place such material before the Identification Committee.

Upon the Identification Committee being satisfied with the sufficiency of the materials placed before it, and is of the view that, there are sufficient

grounds to suspect that, the account can be classified as a wilful defaulter, then, it is required to issue a show-cause notice to the account holder, for

such account holder to respond thereto. The response is thereafter considered by the Identification Committee. If the decision of the Identification

Committee is adverse to the account holder, then, the account holder is at liberty to prefer an appeal before the Review Committee, within the period

stipulated. On such an appeal, the Review Committee is to decide such appeal in accordance with law. M/s. Jah Developers Pvt. Ltd. & Ors. (supra)

has held that, the Identification Committee must give its order to the borrower as soon as it is made. It has also held that, the Review Committee must

pass a reasoned order on the representation made by the borrower.

In the present case, the decision of the Review Committee under challenge, is not informed with reasons. Although, the Review Committee is at liberty to concur with the finding of the Identification Committee, it has to deal with the representation made by the borrower before it.

The challenge of the petitioners being limited to the order of the Review Committee, the same is quashed. There is substance in the condition of the

Bank that, the petitioners did not challenge the order of the Identification Committee in neither of the two writ petitions. Efforts have been made to

rely upon the grounds made in the writ petition in support of the contention that, the orders of the Identification Committee are under challenge.

However, at least in the second writ petition, the writ petitioners were aware of the procedures undertaken by the Bank under the provisions of the

Wilful Defaulters on Master Circular. They have not challenged the procedure deployed or the decision taken by the Identification Committee in their

writ petition. There is no prayer for quashing of such process or the orders of the Identification Committee. The Bank will therefore start the process

under the Master Circular from the stage of the decision of the Identification Committee.

W.P. No. 381 of 2018 and W.P. No. 401 of 2018 are disposed of accordingly. No order as to costs.