(2016) 09 RAJ CK 0112

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7488 of 2016

Moserbaer India Ltd. APPELLANT

Vs

State Bank of Bikaner RESPONDENT

Date of Decision : 07-09-2016

Acts Referred:

Citation : (2017) 2 WLC 64

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J.

Bench : Single Bench

Advocate : Mr. R.N. Mathur, Senior Advocate assisted by Mr. Apoorve Karol, Mr. Prateek Mathur and Mr. Shovit Jhajharia, Advocates, for the Petitioner; Mr. G.K. Garg, Senior Advocate assisted by Ms. Anita Agarwal, Advocate, for the Respondent Bank

Final Decision : Disposed Off

Judgement

Mr. Kanwaljit Singh Ahluwalia, J.—The present petition has been filed under Article 226 of the Constitution of India by Moserbaer India Ltd, praying that the respondent State Bank of Bikaner and Jaipur be directed to provide relevant information and documents relied upon by the Identification Committee for declaring petitioner company as ''Wilful Defaulter''.

2. Mr. R.N. Mathur, the learned Senior Advocate has very fairly submitted that the respondent Bank has not only afforded opportunity of hearing to the petitioner company and its Directors, but has also allowed their representation through Advocate. The learned Senior Advocate has referred to the Master Circular issued by the Reserve Bank of India, wherein procedure for declaring ''Wilful Defaulter'' has been prescribed. The learned Senior Advocate has submitted that declaration of Company and its Directors as ''Wilful Defaulter'' has penal consequence as is apparent from bare perusal of Clause 2.5 of the Master Circular.

3. Mr. Mathur, the learned Senior Advocate has contended that the hallmark of

the Circular is ''Transparancy'' which is ensured by following the procedure laid for declaration of defaulter as ''Wilful Defaulter''. The learned counsel has further referred to Clause 3, which lay mechanism of identification of ''Wilful Defaulter''. The learned counsel submitted that the evidence for declaring a company and its Promoters/Holder/Directors as ''Wilful Defaulter'' is required to be examined by the Committee headed by Executive Director, consisting of two other senior officers of the rank of GM/DGM. The learned counsel submitted that in the present case the Identification Committee has been constituted and the petitioner has appeared before the same. The learned counsel submits that once the Committee formulates presumptive opinion that a wilful default has occurred, it has to issue show cause notice to the concerned borrower and Promoters/ Whole-Time Director. The learned counsel for the petitioner has submitted that the Identification Committee has also issued notice to the petitioner company/ promoters and then Directors. The learned counsel has extensively referred to clause 3(a) and 3(b) of the Master Circular. The said clause reads as under:-

"3. Mechanism for identification of Wilful Defaulters

The transparent mechanism referred to in paragraph 2.5.

(d) above should generally include the following:

(a) The evidence of wilful default on the part of the borrowing company and its promoter/whole-time director at the relevant time should be examined by a Committee headed by an Executive Director and consisting of two other senior officers of the rank of GM/DGM.

(b) If the Committee concludes that an event of wilful default has occurred, it shall issue a Show Cause Notice to the concerned borrower and the promoter/ whole-time director and call for their submissions and after considering their submissions issue an order recording the fact of wilful default and the reasons for the same. An opportunity should be given to the borrower and the promoter/ whole-time director for a personal hearing if the Committee feels such an opportunity is necessary."

4. The learned Senior Counsel appearing for the petitioner company has submitted that once the Committee after examination of evidence formulates a prima facie view that the borrower company or its promoters and directors are to be declared ''Wilful Defaulters'', it has to give an opportunity of hearing to the borrower company and the promoters/whole-time director. The learned counsel for the petitioner submits that the principle of natural justice require that the Committee should share the evidence i.e. documents on which reliance has been placed for issuing show cause notice for declaring the petitioner company, its promoters or directors as ''Wilful Defaulter'', so that concerned company or its director is able to make submissions qua the evidence examined by the Committee for formulating prima facie opinion for issuing show cause notice.

5. The learned counsel has relied upon the judgment rendered by Single Judge of

Delhi High Court in Kingfisher Airlines Ltd. v. Union of India & Ors., WP(C) 5532/2014, decided on 28.8.2014, wherein it was held as under:-

"It is also trite law that the material that is relied upon by any authority in arriving at a decision must be made available to the affected party. (Emphasis supplied) This is an integral part of the principles of natural justice that are enshrined in Article 14 of the Constitution of India. There is no justifiable reason why the same should be departed from in the present case."

6. Mr. Mathur, the learned Senior Counsel has further submitted that at Bar that the order passed by the Single Judge was upheld by the Division Bench of Delhi High Court in Punjab National Bank v. Kingfisher Airlines Limited, 2015 SCC OnLine Del 14128.

7. An opportunity of hearing ought to be effective hearing. Fair play demand that the documents/evidence on which Identification Committee relied before issuing a show cause notice, must be shared or shown to the petitioner/borrower company so that they can put forward their defence and explain purport of the documents.

8. Consequently, the present petition is disposed of, by issuing following directions:-

i) That the petitioner company through its representative shall appear before the Identification Committee on 15.9.2016 at 10:00 AM.

ii) The Convener of the Identification Committee shall hand over the documents to the representative of petitioner company, which they have taken into consideration for formulating presumptive opinion that the petitioner company is to be declared as ''Wilful Defaulter''.

iii) After the documents are handed over to the representative of the petitioner company, seven days thereafter, the Identification Committee shall take into consideration the explanation/defence of the petitioner company for not declaring the petitioner company as ''Wilful Defaulter'' and shall formulate its final opinion and pass requisite orders. Liberty is granted to the petitioner company to furnish its explanation or defence in writing.

