

THE HONOURABLE SRI JUSTICE K. LAKSHMAN

WRIT PETITION No.26813 OF 2022

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WRIT PETITION No.26815 OF 2022

COMMON ORDER:

Heard Sri Vikram Posarla learned Counsel for the petitioners in W.P.No.26815 of 2022 and learned Counsel representing M.Abhinay Reddy, learned Counsel for the petitioner in W.P.No.26813 of 2022 and Sri Amir Bavani, learned Counsel for the respondents in both the Writ Petitions.

2. *Lis* involved and parties in both the writ petitions are one and the same, therefore, they were heard together and are being disposed of by way of this common order.

3. Petitioners in both the writ petitions sought to quash the orders passed by the First Level Committee of the respondent dated 16.06.2022 by declaring it as illegal and contrary to the procedure laid down in Master circular dated 01.07.2015 issued by the Reserve Bank of India.

4. Petitioners in both the writ petitions are claiming that they are the members of the suspended Board of Directors of M/s. Ind Bharath Power (Madras) Ltd., (hereinafter referred to as "IBPML"). The petitioners in Writ Petition No.23815/2022 are claiming that they were appointed on 24.06.2006 and 05.11.2007 respectively and the petitioner in W.P.No.24813/2022 was appointed on 24.06.2006. According to them, they were suspended due to initiation of Corporate Insolvency Resolution Process against the aforesaid company by National Company Law Tribunal, Hyderabad, with effect from 14.08.2017. According to them the said company is under liquidation.

For the purpose of implementation of 660 MW Coal Based Thermal Power Project at Sasthavinallur and Pallakkurichi villages, Sattankulam Taluq, Tuticorin District of Tamilnadu State, loan was sanctioned by the respondent as part of total financial assistance of

Rs.2,655 Crores, sanctioned by REC, PFC and Axis Bank to IBPML. The respondent is one of the core lenders of consortium of lenders. Subsequently, a Novation Notice was issued by Axis Bank to PFC with a copy to IBPML. By virtue of the said novation, all the rights of Axis Bank Ltd., stood transferred to Infrastructure Finance Company Ltd (IIFCL). IBPML obtained disbursement to a tune of Rs.947.71 Crores from the respondent-PFC, REC and IIFCL. At the relevant time, the management of the aforesaid company was in the hands of the petitioners, being the directors of the company.

Pending utilization of funds disbursed for the project, Axis Bank was authorized to invest the surplus funds available in the TRA Account in certain permitted investments. The said investments were to be made upon the request, if any, by IBPML and liquidation/realization value of investment were to be remitted in the TRA Account

in order to protect the interests of the Lenders. IBPML made investments in the form of Fixed Deposits with Bank of India to a tune of Rs.569.43 Crores and to a tune of Rs.8.46 crores with UCO Bank. Fixed deposits were utilized/leveraged to obtain loans for other group of companies of the borrower/company and the FDs were liquidated to pay off the debt of the group companies of IBPML.

The company entered into an EPC contract with M/s. Sokeo Power Private Limited (SPPL) and an amount of Rs.370.86 Crores was given to the said company as EPC advance. The FDs were lien marked by SPPL for granting loans to the related parties of IBPML. The said FDs were created and loans against them were made based on the request letters of SPPL as well as the request letters of the corresponding beneficiary related parties of IBPML and the remaining amount against advances to SPPL was directly

transferred from SPPL bank account to the related of IBPML.

Thus, the funds, advanced to SPPL by IBMPL for project execution, were the Lenders' monies and have been misutilized by IBPML and its Ex-Directors to meet the liabilities/obligations of other group companies in contravention of the terms of Amended FA. Therefore, the respondent had issued show-cause notice dated 09.01.2019 as to why the petitioners should not be declared as 'willful defaulters' on account of diversion and misutilization of funds to meet the liability/obligations of other group companies in contravention of the terms of Amended FA and the Amended TA agreement.

The petitioners herein filed Writ Petitions vide W.P.Nos.1420, 1421 and 1428 of 2019 challenging the aforesaid show-cause notice. This Court, vide order dated 12.07.2019 dismissed the said writ petitions with certain

observations viz., further proceedings pursuant to impugned show-cause notice may be kept on hold till criminal proceedings are concluded, and if criminal proceedings initiated are likely to be unduly delayed, it is open for the respondent to proceed in the matter by granting sufficient time, not less than four weeks to file explanation to the above show cause notice by the petitioners, in such an event all the contentions are kept open to the petitioners.

In compliance of the said order, the respondent had issued notice on 25.11.2019 seeking response/explanation from the petitioners to the show-cause notice dated 09.01.2019. On receipt of the same, the petitioners sought certain documents and the same were furnished to the petitioners by the respondent.

The petitioners filed Contempt Case vide CC No.265 of 2020 alleging willful disobedience of the aforesaid order

of this Court dated 12.07.2019 in W.P.Nos.1420, 1421 and 1428 of 2019. The said Contempt Case is pending.

Another follow-up notice was issued to the petitioners on 01.04.2022. The petitioners herein have submitted their response/explanation dated 03.05.2022. Again the petitioners have sought certain documents and the same was replied vide letter dated 18.05.2022 stating that it has already furnished the documents. However, the petitioners have replied vide letter dated 26.05.2022 reiterating the earlier position and sought certain material/documents relied upon by the First level Committee for arriving at a conclusion.

The First Level Committee met on 08.06.2022 and 14.06.2022 and found that there is delay in conclusion of criminal proceedings and the material/documents being relied upon by the First Level Committee have already been provided in the Annexure of Show-cause notice dated

09.01.2019 and notice dated 01.04.2022. Considering the entire facts and also relying upon certain documents, by following the procedure laid down in the RBI circular dated 01.07.2015, the First Level Committee found that the petitioners are the willful defaulters. The same was informed to the petitioners on 16.06.2022. I

In the said order it is specifically mentioned that in terms of RBI circular dated 01.07.2015, petitioners were given opportunity to represent within 15 days from the date of receipt of said order, so that, representation, if any, can be placed before the Review Committee. After receipt of representation, if any, from the petitioners along with the order of the First Level Committee, will be put up to Review Committee for confirmation and for issuance of final orders. The order of the First Level Committee become final only after it is confirmed by the Review committee. Challenging the said order dated 16.06.2022

issued by the respondent; the petitioners have filed the present Writ Petitions.

5. Sri Vikram Pooserla, learned Counsel appearing in both the petition would submit that the order dated 16.06.2022 is contrary to the procedure laid down in RBI Master Circular dated 01.07.2015. As per clause (3) (a) of the said Circular, the First Level Committee should be headed by an Executive Director or equivalent and consisting of two other Senior Officers of the rank of GM/DGM, but the impugned order does not disclose formation of such committee. The impugned order dated 16.06.2022 is signed by CGM (Law), for and on behalf of REC Limited and the CGM, is not authorized to sign the said order. As per the RBI Master Circular dated 01.07.2015 the First Level Committee has no power to delegate power to any official including the CGM (Law).

The impugned order is contrary to clause 3 (b)(c) of RBI Master Circular dated 01.07.2015. The impugned order is also contrary to the findings given by this court in W.P.Nos.1420, 1421 and 1428 of 2019.

A case in Crime N.196 of 2018 was registered by Economic Offences Wing of Delhi Police against the petitioners herein. Investigation in the said crime is at advance stage. There is delay of about three years. Even then the respondent has passed the impugned order without following the procedure laid down in the RBI master circular dated 01.07.2015. With the said submissions he sought to quash the aforesaid order dated 16.06.2022.

6. The respondent had filed counter, contending as follows:

This Court vide common order dated 12.07.2019, granted liberty to the respondent to proceed in the matter by granting sufficient time in the event of unduly delay in concluding the criminal proceedings. Therefore, as a follow-up action, after issuing notice and giving sufficient opportunity, on receipt of response, on consideration of the same and also documents, the First Level Committee had passed the order dated 16.06.2022 declaring the petitioners as willful defaulters. If the petitioners are aggrieved of the same, they have to approach the review committee in terms of the very same RBI Master Circular dated 01.07.2015. Instead of approaching the review committee, the petitioners have filed the present Writ petitions. The petitioners are trying to stall the proceedings contemplated in the aforesaid circular at every stage. The First Level Committee authorized the CGM to sign and issue the order. The composition of the

committee need not be motioned in the impugned order dated 16.06.2022. The petitioners filed the present writ petitions with a *mala fide* intention to drag on the proceedings. With the said submissions he sought to dismiss both the writ petitions.

7. The aforesaid facts would reveal that the respondent had issued show cause notice on 09.01.2019 to all the three petitioners in the above writ petitions as to why they should not be declared as willful defaulters on account of diversion and misutilization of loan availed from the respondent and be subjected to further civil and criminal proceedings in term of applicable laws. The petitioners herein instead of submitting reply/explanation to the said show-cause notice, have filed aforesaid three Writ petitions viz., 1420, 1421 and 1428 of 2019 challenging the said show-cause notice on several grounds. On hearing the

petitioners, as well as the respondent, this court vide order dated 12.07.2019 dismissed three writ petitions holding that the show-cause notice cannot be quashed on any of the grounds raised in the writ petitions. Para No.22 of the above said order is relevant, and the same is extracted below:

“On the above analysis of the matter, the impugned show-cause notice cannot be quashed on any of the grounds raised in the writ petitions and the writ petitions fails and are accordingly dismissed. However, in the light of the admission by the respondent at para No.16 of the impugned show-cause notice that on the same set of allegations criminal proceedings are imitated and pending adjudication, in the light of the observations of the Hon’ble Supreme Court in **M.S.SHERIFF’S** case (6 supra) and in view of the facts and circumstances of the case, further proceedings pursuant to the impugned show-cause notice may be kept on hold till he

criminal proceedings are concluded and if criminal proceedings initiated are likely to be unduly delayed, it is open for the respondent to proceed in the matter by granting sufficient time, not less than four weeks to file explanation to the show-cause notice by the petitioners, in such an event all contentions are kept open to the petitioners. It is needless to observe that the observations made hereinabove are only for the purpose of adjudication of the writ petitions and may not be construed as contentious issues raised by the petitioners; as what is impugned in these writ petitions is only show-cause notices under the Master Circular. Consequently the connected miscellaneous petitions, if any, pending, are also disposed of. There shall be no order as to costs”

8. As stated above, Economic Offences Wing of Delhi Police, have registered a case vide Crime No.196 of 2018 against the petitioners. Though the crime was registered in

the year 2018, there was delay in concluding the investigation and filing charge sheet. However, in view of the liberty granted by this court vide common order 12.07.2019 in the aforesaid writ petitions and also considering that there is delay in concluding the proceedings, the respondent had issued follow-up notice on 25.11.2019 asking the petitioners to submit the explanation to the show-cause notice dated 09.01.2019. Vide letter dated 14.12.2019 the petitioners requested the respondent to furnish copy of minutes of the meeting of the First Level Committee held on 15.11.2019 and copies of documents etc.. The same was replied by the respondent vide letter dated 21.09.2020 granting 15 days time to submit explanation.

9. It is relevant to note that the petitioners herein filed Content Case vide CC No.267 of 2020 alleging willful and

deliberate violation of the aforesaid common order passed by this Court by the respondent and the said Contempt case is pending. The respondent had also filed counter in the said Contempt Case.

10. The respondent had issued follow-up notice on 25.11.2019 and another notice on 01.04.2022. Vide letter dated 03.05.2022 the petitioners again requested the respondent to furnish the material/documents relied upon by the First Level Committee for arriving at a decision. Vide letter dated 18.05.2022 the respondent had reiterated that the documents were already provided along with the show-cause notice dated 09.01.2019. However, 14 days time was granted to the petitioners to submit the written response. Vide letter dated 26.05.2022 again the petitioners requested the respondent to furnish the aforesaid documents.

11. The First Level Committee met on 08.06.2022 and 14.06.2022 and on examination of the entire material, it has found that there is delay in conclusion of the criminal proceedings and the material documents relied upon by the First Level Committee were already been furnished to the petitioners herein. Therefore, the allegation made by the petitioners that the respondent has not furnished documents as sought by them is untenable.

12. Notices dated 25.11.2019, 01.04.2022 and 18.05.2022 were issued to the petitioners to furnish the written responses to the show-cause notice dated 09.01.2019. On consideration of the entire material including the documents mentioned in Para No.12 (a to j) of the impugned order dated 16.06.2022, the First Level committee concluded that the debt was sanctioned and disbursed for the purpose of development and

implementation of 660 MW Coal Based Thermal Power Project at the aforesaid site. IBPML, to which the petitioners, being the Directors, defaulted in repayment of loan advanced advanced by the lenders and the account became NPA as on 31.12.2016. The petitioners, being the Ex-Directors of IBMPL, were directly responsible for the diversion and siphoning of funds to the group companies. Due to siphoning of funds the project could not be constructed and the debt given by the lenders became NPA. The loan was given to the borrower company for construction and implementation of the Project and not for meeting short fall of cash flows of the group companies of IBMPL. There are multiple transactions of diversion and siphoning of the borrowed funds and the *modus operandi* of the transactions clearly shows diversion and siphoning of borrowed funds and resultant willful default is intentional, deliberate and calculated. Therefore, such transactions

clearly constitute 'willful default' as per RBI Master Circular dated 01.07.2015. Thus vide order dated 16.06.2022, the First Level Committee had declared the petitioners as 'willful defaulters'.

13. To address the contentions raised by the petitioners, it is relevant to extract clause (3) (a) of RBI Master Circular dated 01.07.2015, which deals with mechanism for identification of Willful Defaulters.

“3 (a) The evidence of willful 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 or Equivalent and consisting of two other senior officers of the rank of GM/DGM”

14. In the impugned order there is specific reference with regard to the opportunity given to the petitioners and also

furnishing of documents by the respondent as sought by the petitioners. The First Level Committee had also considered the documents (i.e. a to j in the impugned order), and came to conclusion that there is siphoning and diversion of funds by the petitioners to the group companies and also modus operandi of the transactions.

15. As per Clause (3) (a) of the aforesaid Master Circular of RBI, the First Level Committee shall be headed by an Executive Director or equivalent and consisting of two other Senior Officers of the rank of GM/DGM. It does not say that the impugned order shall contain the composition and formation of such committee. However, in the impugned order dated 16.06.2022 there is specific mention about the meetings held by First Level Committee on 08.06.2022 and 14.06.2022. The reasons were specifically assigned in the impugned order. Thus, there is no

mention in the aforesaid clause (3) (a) that the order shall refer formation and composition of the said committee. Therefore, the said contention of the petitioners is unsustainable.

16. The impugned order was signed by the CGM (Law). In the said order itself it is specially mentioned that “the committee has authorized the undersigned to sign and issue this order”. Therefore, the CGM (Law) signed the order for and on behalf of the respondent. As per master Circular of RBI dt.01.07.2015 there is no bar or prohibition authorizing CGM(Law) of respondent, so sign and issue said order.

17. As discussed supra, First Level Committee met on 08.06.2022 and 14.06.2022 and after examination, has found the petitioners guilty of willful default and this order is being served on the petitioners accordingly. There is no

delegation of power by the committee as alleged. Committee met, examined the whole issue including the documents and found the petitioners are 'willful defaulters'. Committee then authorized CGM (law) to sign and issue order. Therefore, the Committee had authorized the CGM (Law) of respondent to sign and issue the said order. Therefore, there is no irregularity in signing the impugned order by the CGM (Law) of the respondent.

18. There is no dispute with regard legal position that the Master Circular dated.01.07.2015 is applicable and binding on the Banks.

19. Sri Vikram Poserla, learned Counsel for the petitioners relied upon the principle laid down by the Apex Court in **State Bank of India vs. Jah Developers Private**

Limited¹. In the said judgment, at para No.24, the Apex Court held as follows:

“This being so, and given the fact that paragraph 3 of the Master Circular dated 01.07.2013 permitted the borrower to make a representation within 15 days of the preliminary decision of the First Committee, we are of the view that first and foremost, the Committee comprising of the Executive Director and two other senior officials, being the First Committee, after following paragraph 3(b) of the Revised Circular dated 01.07.2015, must give its order to the borrower as soon as it is made. The borrower can then represent against such order within a period of 15 days to the Review Committee. Such written representation can be a full representation on facts and law (if any). The Review Committee must then pass a reasoned order on such representation which must then be served on the borrower. Given the fact that the earlier Master Circular dated 01.07.2013 itself considered such steps to be reasonable, we incorporate all these steps into the Revised Circular dated 01.07.2015. The impugned judgment is, therefore, set aside, and the appeals are allowed in terms of our judgment”.

¹ (2019) 6 SCC 787

20. In the aforesaid judgment, the Apex Court held that the First Level Committee after following clause 3(b) of the revised circular dated.01.07.2015 must give its order to the borrower as soon as it is made. The borrower can then represent against such order within a period of 15 days to the Review Committee.

21. As discussed supra, in the present case, the respondent passed the order after giving sufficient opportunity to the petitioners. Therefore, there is no violation of aforesaid principle laid down by the Apex Court by the respondent while passing the impugned order dated 16.06.2022.

22. Referring to the principle laid down by the Apex Court in **Shani Silk Mills (P) Ltd., Vs. Employees State**

Insurance Corporation², the learned Counsel for the petitioners would submit that statutory power cannot be sub-delegated. In the aforesaid judgment the Director General of Employees State Insurance Corporation authorized the other officers to exercise power conferred under Section 94 (a) of Employees Insurance Act, was found fault with, whereas in the present case, the First Level Committee has authorized the CGM (law) by the respondent only to sign and issue the order. It has not authorized the CGM (law) to consider the material and pass the orders. It is the committee which passed the order and decided that the petitioners are the willful defaulters. It is only authorization that was given by the respondent to the CGM (law) to sign and issue such order. Therefore, the facts in the aforesaid judgment are different

² (1994) 5 SCC 346

to that of the facts present case. Therefore, the said judgment is not helpful to the case of the petitioners.

23. The learned Counsel for the petitioners has also relied upon another judgment of the Apex Court in **Maratwada University vs. Seshrao Balwant Rao Chavan**³, wherein also power was deligated. In the present case there is no delegation of power, and it was only an authorization given to the CGM (Law) of the respondent only to sign and issue the order. Therefore, the said judgment is also not helpful to the petitioners.

24. It is relevant to note that that during the course of arguments, the learned Counsel for the petitioners submitted that the petitioners have requested the respondent to furnish the legible copies of documents,

³ (1989) 3 SCC 132

however, he is not in a position to show the copy of letter or communication sent by the petitioners requesting the respondent to furnish the legible copies of documents. Therefore, the said contention of the petitioners is untenable.

25. As stated above, a crime was registered in 2018 against the petitioners by the Economic Offices Wing of Delhi Police and though four years have elapsed, the criminal proceedings were not concluded. Therefore, in view of the liberty granted by this court in the aforesaid order, the respondent, after giving sufficient opportunity to the petitioners had passed the impugned order dated 16.06.2022.

26. It is apt to note that as per clause 3 (c) of Master Circular daed.01.07.2015, the order passed by the First Level committee **'should'** be reviewed by another

Committee headed by the Chairman/Chairman & Managing Director or the Managing Director and Chief Executive Officer/CEOs and consisting, in addition, to two independent directors of the Bank and the Order **shall** become final only after it is confirmed by the said Review Committee.

27. Thus, if the petitioners are aggrieved by the impugned order passed by the First Level Committee, declaring the petitioners as willful defaulters, they shall approach the Review Committee seeking to review the order passed by the First Level Committee. In Clause 3 (c) the word “**should**” is mentioned. The orders passed by the First Level Committee shall become final only after it is confirmed by the review committee. Thus the petitioners herein, instead of approaching the review committee, filed the present petitions.

27. The aforesaid facts would reveal that the petitioners are trying to stall the proceedings initiated by the respondent in terms of RBI Master circular dated 01.07.2015 at every stage, as rightly contended by the learned Counsel for the respondent.

28. Viewed from any angle, petitioners failed to make out any case to interfere with the impugned order dated 6.06.2022 passed by the respondent and both the writ petitions are liable to be dismissed, and accordingly dismissed.

29. It is relevant to note that vide order dated 24.06.2022 this court granted interim stay of further proceedings pursuant to order dated 16.06.2022. In view of the same, the petitioners failed to approach the review committee within 15 days time granted by the respondent in the impugned order. Therefore, 15 days time is granted to the

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petitioners to approach the review committee in terms of clause (3) (c) of the Master Circular of R.B.I dated 01.07.2015.

Miscellaneous petitions, pending, if any, shall stand closed.

Date:12.10.2022
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K. LAKSHMAN, J