

Anil Kumar Jain vs Idbi Bank Limited on 26 August, 2020

Author: Najmi Waziri

Bench: Najmi Waziri

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 4521/2020 & CM APPL. 16315/2020 (stay)

ANIL KUMAR JAIN

.....Petitioner

Through:

Mr Salman Khurshid, Senior
Advocate with Mr Rohan Jaitley, Mr
Keshav Mohan, Mr Rishi K. Awasthi,
Mr Prashant Kumar Ms Jyoti Singh
and Mr Piyush Vatsa Advocates.

versus

IDBI BANK LIMITED

..... Respondent

Through:

Mr S.K. Garg, Advocate.

+ W.P.(C) 4401/2020 & CM APPL. 15846/2020 (stay)

SUPERTECH LIMITED

.....Petitioner

Through:

Mr Salman Khurshid, Senior
Advocate with Mr Rohan Jaitley, Mr
Keshav Mohan, Mr Rishi K. Awasthi,
Mr Prashant Kumar Ms Jyoti Singh
and Mr Piyush Vatsa Advocates.

versus

IDBI BANK LIMITED

..... Respondent

Through:

Mr S.K. Garg, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI
ORDER

% 26.08.2020 The hearing was conducted through video conferencing. CM APPL. 20483/2020 (exemption)

1. Allowed, subject to all just exceptions. The application stands disposed-off.

W.P.(C) 4521/2020

2. Learned counsel for the parties have been heard. It is not denied by the respondent Bank that the order of the Review Committee of the respondent-Bank, rejecting the petitioner's representation against the decision of the First Committee/Wilful Defaulter Committee (WDC) to categorize them as a 'wilful defaulter', has not been served upon the petitioners. The said order, in terms of the decision of the Supreme Court in State Bank of India v. M.s Jah Developers Pvt. Ltd. (2019) 6 SCC

747, is required to be a reasoned order. The said judgment, inter alia, requires, "The review committee must then pass a reasoned order on such representation which must then be served on the borrower".

(emphasis supplied)

3. Mr Khurshid, learned Senior Advocate for the petitioner, states that the reply to the so-called decision of the First Committee/WDC would at best be deemed 'preliminary', because the decision is not in accordance with what is envisaged in law. That the rationale, if any, behind the decision of the First Committee has not been communicated to the petitioners. Therefore, the petitioners' representation to the Review Committee, has not been able to address the actual reasoning behind the decision of the First Committee. The said Committee is said to comprise the Executive Director and two other senior officials of the Bank - as discussed in *State Bank of India v. M.s Jah Developers Pvt. Ltd.* (supra).

4. Mr Garg, learned counsel for the respondent-Bank, submits that Annexure-P20, a document dated 07.01.2020, contains the entirety of the First Committee/WDC's decision and was communicated to the petitioner. The said document reads as under:

"REGISTERED POST WITH ACKNOWLEDGMENT DUE Ref No.IDBI Bank/NMG/SL/281/2019-20 January 07,2020 Supertech Ltd., Supertech Ltd., 1114, Hamkund Chambers, B-28-29, Sector 58, 89, Nehru Place, New Delhi-Noida-201307, Uttar Pradesh. 110019 Supertech Ltd., Shri Ram Kishor Arora, Supertech E Square, Plot No.C-2, C-1/10, Sector-36, Gautam Budh Sector-96, Noida-201303, Uttar Nagar, Noida-201301, Uttar Pradesh Pradesh Shri Anil Kumar Sharma, Shri Vikas Kausal, 446, Gali No.7, Aspire-2, Flat No.1101, Rajiv Gandhi Marg, Supertech Emerald Court, Sector- East Babarpur, Shahdara, 93-A, Garhi Chaukhandi, New Delhi-110032 Maharishi Nagar, Dadri, Gautam B. Nagar, Noida-201304, Uttar Pradesh.

Shri Anil Kumar Jain,
Flat No.C-106, Rail Vihar,
Vasundhara, Sector-3,
Ghaziabad-201010, Uttar
Pradesh
Smt. Sangita Arora,
C-1/10, Sector-36, Gautam Budh
Nagar, Noida-201 301, Uttar
Pradesh.

Shri Pradeep Kumar Goel,
1104, Aspire-2 Supertech
Emerald Court, Sector-93-A,
Noida-201304,
Uttar Pradesh
Shri Mohit Arora,
C-1/10, Sector-36, Gautam Budh
Nagar, Noida-201301, Uttar
Pradesh.

Dear Sir/Madam,

Declaration of your account M/s. Supertech Ltd. and its Directors/Guarantors as Wilful Defaulters and Opportunity for Representation thereagainst.

1. We refer to our Show Cause Notices (SCNs) No. IDBI Bank/NMG/SL/1814-1822/2019-20 dated May 16, 2019 for declaring Supertech Ltd. and its directors/guarantors as wilful defaulters on the following grounds:

Sr. Criteria for Wilful Default Position of Borrower No. i. Siphoning off of funds: Escrow account was opened in The unit has defaulted in December 2013 with Lead Bank i.e. meeting its Union Bank of India for purpose of payment/repayment depositing of all project proceeds. obligations to the lender Lead Bank was holding and and has siphoned-off the administering the money deposited funds so that the funds in the Escrow account. have not been utilized for the specific purpose for As per the escrow agreement, which finance was availed Company has confirmed that the off, nor are the funds receivables including the sale available with the unit in proceeds out of the project shall be form of other assets. credited directly into the Escrow account. All amount credited to the (As per RBI Master escrow account shall be utilized to Circular on Wilful meet the cost of the project and Defaulter dated July 01, other expenses relating to operation 2015 - Criteria No.2.1.3 and maintenance of the project,

(c) [2.2.2]} payment and repayment of interest and principal amount of the instalment due and payable.

As per the escrow account statement, the amount credited in the account since 31.12.2013 till 12.12.2018 was Rs.416.98 crores excluding the disbursements of IDBI Bank (Rs.200.00 crores) and Union Bank of India (Rs.150.00 crores).

IDBI Bank entered in this particular project in the month of February, 2014 and prior to assistance availed by the bank, company booked 1970 units. It may be mentioned that 5132 units/flats were constructed in the 34 towers at Eco Village-II, Phase-I, Greater Noida.

As per the minutes of meeting held on June 20, 2018, total 3935 units were booked (3850 flats and 85 shops). Thus, 1965 fresh units/flat were booked during the period February, 2014 to June 2018.

ii. Disposal removing Assets financed	Escrow account statement showed minimal routing of sales consideration even after sale of most of the flats.
The unit has defaulted in meeting its payment repayment obligations to the lender and has also disposed off or removed the movable fixed assets or immovable property	As per the Construction Facility Agreement dated 14.03.2014 entered into between Company and Lenders, the Company was to obtain No Objection Certificates (NOCS permission from the lenders, for sale of flat property pertaining to the project. The Company was also to include a Clause in the Agreement to sale, to be entered into between the

given by him or it for the purpose of securing a term loan without the knowledge of the bank/lender.

As per RBI Master Circular on Wilful Defaulters dated July 01, 2015 - Criteria No. 2.1.3 (d)}

company and any intended purchaser of any of the properties that payment made shall be to the credit of the Escrow Account.

As per the minutes of meeting held on June 20, 2018, 3935 units were booked (3850 flats and 85 shops). However, Lead Bank has issued only 242 NoCs (232 Flats and 10 Shops) as against 3935 units booked. Total number of units to construct under the project was 5132 flats in 34 Towers.

It may be mentioned that Lead Bank vide its letter dated 19.02.2019 has communicated to L&T Finance Ltd. that NoC dated 28.03.2018 for selling 213 units to Devya Propcorn Pvt. Ltd. (customer availing finance from L&T Finance Ltd) issued by the Lead Bank is no longer valid and stands revoked. Hence, the Company has sold these flats without the knowledge of the lenders.

2. As you are aware that our branch had sent the show cause notice referred above by registered post on May 17, 2019 which you have received on May 20, 2019. In response to SCN, none of the directors/ guarantors had made any representation or response and only the Company had vide letter dated May 24, 2019 submitted the comments / explanation, which were placed before WDC for consideration.

In the light of the aforesaid facts and circumstances and after examining the comments submitted by you and the documents on record, the WDC of the Bank has declared the Company/Borrower and its Directors/ Guarantors as 'Wilful Defaulters' on the grounds mentioned in the show cause notice.

3. In order to comply principles of natural justice, it is proposed to provide you the final opportunity to submit your further representation, if any of the classification as Wilful Defaulter. If you, so desire, you may send your further submission/representation in writing, if any, for consideration by the Review Committee on Wilful Defaulters within 15 days from the date of this letter as to why your account and/or you may be not classified by Bank as a Wilful Defaulter.

4. Please note that, in case your further submission/representation against your classification as Wilful Defaulter is not received within 15 days from the date of this letter, it will be deemed that you have nothing to submit and the Bank will proceed further to classify your account as Wilful

Defaulter and report the same to Credit Information Companies (CICS).

5. Further, the Bank reserves the right to publish the name and photographs of Wilful Defaulter in news papers and will initiate the necessary recovery action per extant guidelines issued by Reserve Bank of India.

This communication is issued as per the directions of the Wilful Defaulters Committee (WDC) of the Bank.

Yours faithfully, Authorized Officer...."

5. The learned Senior Advocate for the petitioners contends that this communication cannot be considered as decision of the First Committee as it does not show application of mind to the facts of the case; the actual reasoning is not given; the details and copy of the order of the First Committee/WDC, declaring the petitioners as wilful defaulters, has not been supplied. Indeed, they have so protested in their representation to the Review Committee. It is contended that this withholding of vital information has prejudiced the petitioners from making a full representation, against their categorisation as 'wilful defaulters', on facts and in law, as envisaged in *State Bank of India v. M.s Jah Developers Pvt. Ltd.* (supra).

6. Let the petitioners be supplied within a week by IDBI, a copy of the order/decision of the Review Committee, which purportedly contains the reasons for the dismissal of the petitioners' representation. The communication shall be by way of registered post, courier, email and other viable electronic modes. The email IDs of the petitioner are as under:

"headoffice@supertechlimited.com and akjain@supertechlimited.com

7. The petitioners seek to refer to and rely on the decision of the Supreme Court, dated 20.7.2020, in *Bikram Chatterji & Ors. v Union of India & ors.* (W.P.(C) No.940/2017), apropos a government scheme for 'last mile financing' and relief regarding the real estate sector. The respondent-Bank, submits that such a remedy could be sought only when it is so available in law.

8. The interim order shall continue only till the moment the petitioners receive a copy of the order of the Review Committee, by any of the aforementioned modes. It will be open to the petitioners to subsequently pursue their remedies as may be available to them in law.

9. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the counsels through email.

NAJMI WAZIRI, J AUGUST 26, 2020/rd