

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 7636 of 2023**

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MS VARIA ALUMINIUM PVT. LTD.

Versus

UNION OF INDIA

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Appearance:

MR IH SYED, SENIOR ADVOCATE WITH MR ANKIT B PANDYA(5906) for
the Petitioner(s) No. 1,2,3MR SHAAN M MUNSHAW(10825) for the Petitioner(s) No. 1,2,3
for the Respondent(s) No. 1,2,3,4,5,6,7

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CORAM: HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**Date : 26/04/2023****ORAL ORDER**

Learned advocate for the petitioners has tendered a draft amendment. Amendment is allowed in terms of the draft. Same shall be carried out forthwith.

2. Mr I.H. Syed, learned Senior Advocate assisted by Mr Shaan M. Munshaw, learned advocate for the petitioners, states that he is not pressing prayer 14B and consequently, urges for deletion of respondent nos.2,5,6 and 7 at this stage, reserving liberty to challenge the same in case of necessity.

3. Request is acceded to with the aforesaid liberty. The respondent nos.2,5,6 and 7 are deleted from the array of respondents in the captioned writ petition.

4. Mr I.H. Syed, learned Senior Advocate submitted that the Master Circular on Wilful Defaulters dated 01.07.2015 and more particularly, paragraph 3, provides for mechanism for identification of wilful defaulters. It envisages that the evidence of wilful default

on the part of the borrowing company and its promoter/whole-time director, should be examined by a Committee headed by an Executive Director or equivalent and consisting of two other senior officers of the rank of General Manager/Deputy General Manager. It further provides that there has to be a conclusion by the Committee that an event of wilful default has occurred. Having concluded so, show cause notice is required to be issued to the concerned borrower and the promoter, calling for their submissions and after considering the submissions, issue an order recording the fact of wilful default and the reason for the same. It is submitted that after consideration of the submission and passing of the order, the said order, is required to be served upon the borrower and/or the promoter, enabling it to approach the Review Committee. It is submitted that the proceedings before the Review Committee, also contains serving of the order upon the borrower/promoter/whole-time director.

5. Reliance is placed on the judgment of the Apex Court in the case of *State Bank of India vs. Jah Developers Private Limited* reported in (2019) 6 SCC 787. It is submitted that the Apex Court, has held and observed that given these drastic consequences, it is clear that the Revised Circular, being in public interest, must be construed reasonably. It has been held and observed that the Committee being the First Committee, must give its order to the borrower as soon as it is made, so that the borrower can then represent against such order within a period of 15 days to the Review Committee. The Review Committee, shall then pass a reasoned order on such representation which must then be served on the borrower. It is submitted that the Apex Court has held and observed that given the fact that the earlier Master Circular dated of

the year 2013 itself considered such steps to be reasonable, all the steps contained in the Circular of 2013 were incorporated in the revised Circular of the year 2015.

6. Further reliance is placed on the judgment of the High Court of Calcutta in the case *Atlantic Projects Ltd. vs. Allahabad Bank* reported in 2019 SCC OnLine Cal 611. It is submitted that in the said judgment, it has been pointed out that all administrative functions cannot be delegated. Where law requires an identified administrative authority to decide on a particular issue or subject, such administrative authority cannot delegate its power to decide. It has also been held that issuance of the show cause notice, is an integral part of the decision making process and hence, the act of issuance of show cause notice, can also not be delegated to any officer and it has to be done by the Committee itself.

7. It is submitted that in the present case, as is clear, the show cause notice dated 04.05.2021, has not been issued by the Committee, but by the Chief Manager. Similarly, the communication/order dated 28.07.2021, is not by the Committee, but by the Chief Manager. It is therefore, submitted that in the first place, the Chief Manager, had not authority to issue the notice or pass order and secondly, that no such order of the Committee, has ever been issued to the petitioners. Therefore, the act on the part of the respondent, would be against the principle laid down by the Apex Court in the case of *State Bank of India vs. Jah Developers Private Limited* (supra).

8. It is submitted that the factum of declaration of the account of the petitioners as a wilful defaulter, was made known only through the publication pursuant to the order dated 28.07.2021 by the Bank

of Baroda.

9. Considered the submissions. Issue notice to the respondents, returnable on 21.06.2023.

BINOY B PILLAI

(SANGEETA K. VISHEN,J)