

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 02<sup>ND</sup> DAY OF AUGUST, 2022

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

CRIMINAL PETITION No.919 OF 2021

**BETWEEN:**

1. STEEL HYPERMART INDIA PVT. LTD.,  
HAVING ITS REGISTERED OFFICE AT  
MANNAT, 1<sup>ST</sup> FLOOR, 2/1A,  
NANJAPPA ROAD, SHANTHI NAGAR  
BENGALURU - 560 027  
REPRESENTED BY ITS  
MANAGING DIRECTOR  
SRI MAHENDRA KUMAR SINGHI.
2. SRI MAHENDRA KUMAR SINGHI
3. SMT.SUMAN MAHENDRA KUMAR SINGHI
4. SRI MUKESH SURANA

... PETITIONERS

(BY SRI SANDESH J.CHOUTA, SR.ADVOCATE A/W  
SRI AKSHAY RAVINDRA PRABHU, ADVOCATE)

**AND:**

1. CENTRAL BUREAU OF INVESTIGATION  
BANKING SECURITIES FRAUD BRANCH  
NO.36, BELLARY ROAD  
GANGANAGAR  
BENGALURU - 560 032.
2. SRI PUTTA LAKSHMI NARAYANA  
DEPUTY GENERAL MANAGER/  
ZONAL MANAGER, INDIAN BANK  
ZONAL OFFICE, BENGALURU  
4<sup>TH</sup> FLOOR, EAST WING  
RAHEJA TOWERS, #26,27  
M.G.ROAD  
BENGALURU - 560 001.

... RESPONDENTS

(BY SRI PRASANNA KUMAR P., SPL.P.P. FOR R1;  
SRI SHASHI KIRAN SHETTY K., SR.ADVOCATE A/W  
SRI U.S.YOGESH KUMAR, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF  
CR.P.C., PRAYING TO QUASH THE FIR IN RC0782021E0002 OF THE  
BANKING SECURITIES FRAUD BRANCH OF THE CENTRAL BUREAU  
OF INVESTIGATION, BENGALURU REGISTERED FOR THE OFFENCE  
P/U/S 420, 468, 471 R/W 120(B) OF IPC AND SECTION 7 AND  
13(2) R/W 13(1)(d) OF PREVENTION OF CORRUPTION ACT  
PENDING ON THE FILE OF XXI ADDITIONAL CITY CIVIL AND

SESSIONS JUDGE AND PRINCIPAL JUDGE FOR CBI CASES,  
BENGALURU (CCH-4) AGAINST THE PETITIONERS.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND  
RESERVED FOR ORDERS ON 14.07.2022, COMING ON FOR  
PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

**ORDER**

The petitioners are before this Court calling in question registration of crime in RC0782021E0002 for offences punishable under Sections 420, 468, 471 r/w Section 120B of the IPC and Sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

2. Brief facts that led the petitioners to this Court in the subject petition are as follows:-

The 1<sup>st</sup> petitioner - M/s Steel Hypermart Indian Private Limited ('the Company' for short) was established by one Mahendra Kumar Singhi, the 2<sup>nd</sup> petitioner herein with the objective of trading in various iron and steel products like hot rolled, cold rolled, coated colour roofing sheets, colls and angles. The company was sanctioned an open cash credit limit of Rs.137.50 crores by the

Indian Bank against an already sanctioned limit of Rs.125/- crores by the State Bank of India. On 08-02-2018 when the Bank of Baroda joined the consortium with a cash credit limit of Rs.24.50 crores, joint documentation of Rs.162/- crores which was the outer limit was done in favour of Directors of the Company. By 30-06-2018 the Company closed the loan by paying it in full to the Indian Bank and as on 01.10.2018 it had excess ad hoc limit of Rs.13.75 crores.

3. When things stood thus, on 09-01-2019 a GST raid was conducted against the 1<sup>st</sup> petitioner/Company and all the records were seized and directions were issued to the Banks not to interact with the Company. Due to this problem, the loans of the 1<sup>st</sup> petitioner insofar as they pertain to the Banks i.e., Indian Bank and Bank of Baroda slipped into becoming a Non-Performing Asset (NPA) and having waited for another year, the consortium of Banks which was consisting State Bank of India, Indian Bank headed by Bank of Baroda caused a legal notice upon the Company under Section 13(2) of the SARFAESI Act. On 29.05.2019 one of the member of the consortium i.e., Bank of Baroda declared the

accounts of the Company with them as NPA. The petitioners replied to the legal notice issued by the Indian Bank and the Indian Bank on consideration of the reply notice went on to exercise its powers under Section 13(4) of the SARFAESI Act and sought to mortgage immovable properties of the petitioners. This came about on 22-07-2019.

4. Since GST raid had been conducted, a forensic audit was sought to be conducted of the accounts with the consortium of Banks covering the period from 26-09-2017 to 31-05-2019 and pending report of the forensic audit, the Indian Bank sought to proceed further in terms of a notice that was given on 22-07-2019 under Section 13(4) of the SARFAESI Act by issuing possession notices. Those possession notices were challenged before this Court in Writ Petition No.32112 of 2019. This Court did not entertain the petition, but directed the petitioners to approach the Debt Recovery Tribunal at Bangalore under the provisions of the SARFAESI Act. The respondents began to seal the godowns of the petitioners situated in Karnataka which came to be challenged before this Court and other parts of the country wherever godowns were

sought to be sealed and on 14-02-2020 the Indian Bank issued a communication to the petitioners informing them that the Bank has taken a decision to declare the Company as 'wilful defaulter' and a notice with regard to the same was issued upon the petitioners on 20-02-2020. This was called in question before this Court in Writ Petition No. 4777 of 2020. This Court by its order dated 02-03-2020 stayed all further proceedings initiated by the Bank which was to be in operation till the next date of hearing.

5. Pending the aforesaid writ petition, the other member of the consortium namely Bank of Baroda gave its consent to the Indian Bank which was the leader of the consortium for filing of a complaint with the CBI in terms of its communication dated 09-03-2020. It is here the respondent/CBI comes into the picture. A case in No.RC0782021E0002 came to be registered by the CBI, Banking Securities Fraud Branch on 12.01.2021 against the petitioners for offences punishable under Sections 420, 468, 471 r/w 120B of the IPC and Sections 7, 13(2) and 13(4) of the Prevention of Corruption Act. It is calling the action of registration

of the crime, the petitioners have knocked the doors of this Court in the subject petition.

6. Heard Sri Sandesh J.Chouta, learned senior counsel appearing for the petitioners, Sri P.Prasanna Kumar, learned Special Public Prosecutor for respondent No.1 and Sri K. Shashikiran Shetty, learned senior counsel appearing for respondent No.2.

7. The learned senior counsel representing the petitioners would contend that the procedure stipulated by the Reserve Bank of India in terms of its circulars for declaration of a Company to be a 'willful defaulter' is not followed. Willful defaulter stands on a different footing and for reference of the matter to the CBI those companies stand on a different footing. It has to pass through the circulars issued from time to time by the Reserve Bank of India which are in the nature of master circulars. He would further contend that in the teeth of the earlier interim order granted by this Court, the Indian Bank could not have registered a complaint with the CBI as all further proceedings had been stayed by this Court.

The writ petition came to be disposed of after registration of the crime on the ground that the Bank would reconsider the case of the petitioners insofar as it pertains to declaration of the Company to be a willful defaulter. He would finally contend that the entire proceedings are to be annulled and the matter be remitted back to the appropriate authority to reconsider the matter afresh from the stage of declaration of the petitioner as a willful defaulter.

8. On the other hand, the learned counsel appearing for the 2<sup>nd</sup> respondent/complainant, the Indian Bank, would contend that those circulars are not even applicable to the facts of the case. The Bank cannot lose its right of filing a complaint for offences punishable under the IPC, before any competent investigating authority as declaration of willful defaulter and registration of crime for offences under the IPC are entirely different. If the case of the petitioners is considered on the plea of technicalities Rs.200/- crores would be at stake which is public money.

9. The learned Special Public Prosecutor representing the 1<sup>st</sup> respondent/CBI would submit that since a complaint was registered



before the CBI by the 2<sup>nd</sup> respondent on behalf of the consortium of Banks, the CBI has proceeded to investigate into the matter. Both the learned counsel for the respondents would seek dismissal of the petition contending that it is a matter of trial for the petitioners to come out clean.

10. I have given my anxious consideration to the submissions made by the respective learned senior counsel, the learned Special Public Prosecutor for the CBI and learned counsel for 2<sup>nd</sup> respondent and have perused the material on record.

11. The afore-quoted facts are not in dispute. To consider the contentions so advanced of the petitioner/Company to be a willful defaulter or otherwise, it is germane to notice master circulars issued by the Reserve Bank of India which is binding upon consortium of Banks. The Reserve Bank has issued a master circular on 'willful defaulter'. The purpose of issuing the master circular is as follows:

*"To put in place a system to disseminate credit information pertaining to willful defaulters for cautioning banks and financial institutions so as to ensure that further bank finance is not made available to them."*

The application of the said circular is to all scheduled commercial banks and All India notified financial institutions. Its applicability to the consortium of Banks or to the 2<sup>nd</sup> respondent/Bank is not in dispute. Whether it is applicable to the case at hand is the dispute. Clause 2 of the said circular deals with willful defaulters. Clause 2.1.3 defines who would be the willful defaulter and it reads as follows:

*"2.1.3. Willful Default: a 'willful default' would be deemed to have occurred if any of the following events is noted:*

- (a) The unit has defaulted in meeting its payment/repayment obligations to the lender even when it has the capacity to honour the said obligations.*
- (b) The unit has defaulted in meeting its payment/repayment obligations to the lender and has not utilized the finance from the lender for the specific purposes for which finance was availed of but has diverted the funds for other purposes.*
- (c) The unit has defaulted in meeting its payment/repayment obligations to the lender and has siphoned off the funds so that the funds have not been utilized for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets.*
- (d) 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 given for the purpose of*

*securing a term loan without the knowledge of the bank/lender.*

*The identification of the willful default should be made keeping in view the track record of the borrowers and should not be decided on the basis of isolated transactions/ incidents. The default to be categorized as willful must be intentional, deliberate and calculated."*

Clause 2.5 deals with penal measures and reads as follows:

*"The following measures should be initiated by the banks and FIs against the willful defaulters identified as per the definition indicated at paragraph 2.1.3 above:*

- a. No additional facilities should be granted by any bank/FI to the listed willful defaulters. In addition, such companies (including their entrepreneurs/ promoters) where banks/FIs have identified siphoning/diversion of funds, misrepresentation, falsification of accounts and fraudulent transactions should be debarred from institutional finance from the scheduled commercial banks, Financial Institutions, NBFCs, for floating new ventures for a period of 5 years from the date of removal of their name from the list of willful defaulters as published/disseminated by RBI/CICs.*
- b. The legal process, wherever warranted, against the borrowers/guarantors and foreclosure for recovery of dues should be initiated expeditiously. The lenders may initiate criminal proceedings against willful defaulters, wherever necessary.*
- c. Wherever possible, the banks and FIs should adopt a proactive approach for a change of management of the willfully defaulting borrower unit.*

- d. *A covenant in the loan agreements, with the companies to which the banks/FIs have given funded/non-funded credit facility, should be incorporated by the banks/FIs to the effect that the borrowing company should not induct on its board a person whose name appears in the list of willful defaulters and that in case, such a person is found to be on its board, it would take expeditious and effective steps for removal of the person from its board.*

*It would be imperative on the part of the banks and FIs to put in place a transparent mechanism for the entire process so that the penal provisions are not misused and the scope of such discretionary powers are kept to the barest minimum. It should also be ensured that a solitary or isolated instance is not made the basis for imposing the penal action."*

Clause 3 deals with mechanism for identification of willful defaulters. Relevant clauses read as follows:

- (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 Director or equivalent and consisting of two other senior officers of the rank of GM/DGM.*
- (b) *If the Committee concludes that an event of willful 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 willful 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."*

Clause 4 deals with criminal action against willful defaulters.

The relevant clause that is germane is clause 4.2 and it reads:

*"4.2 Accordingly, banks/FIs are advised, as under:*

*(i) Monitoring End-use of Funds:*

*In reference to Para 2.4 of this circular, it is advised that banks/FIs should closely monitor the end-use of funds and obtain certificates from borrowers certifying that the funds are utilized for the purpose for which they were obtained. In case of wrong certification by the borrowers, banks/FIs may consider appropriate legal proceedings, including criminal action wherever necessary, against the borrowers.*

*(ii) Criminal Action by Banks/FIs.*

*It is essential to recognize that there is scope even under the existing legislation to initiate criminal action against willful defaulters depending upon the facts and circumstances of the case under the provisions of Sections 403 and 415 of the Indian Penal Code (IPC), 1860, Banks/ FIs are, therefore, advised to seriously and promptly consider initiating criminal action against willful defaulters or wrong certification by borrowers, wherever considered necessary, based on the facts and circumstances of each case under the above provisions of the IPC to comply with our instructions and the recommendation of JPC.*

*It should also be ensured that the penal provisions are used effectively and determinedly but after careful consideration and due caution. Towards this end, banks/FIs are advised to put in place a transparent mechanism, with the approval of their Board, for initiating criminal proceedings based on the facts of individual case."*

The aforesaid clauses are the ones which identify, declare, penalize and take the said issue of willful default to its logical end. Clause

2.1.3 directs that a unit which has defaulted in its payment to the lender and has not utilized the finance from the lender for the specific purpose for which finance was availed of, but has diverted the funds for other purposes, such a unit would be declared a willful defaulter. Sub-clause (b) of clause 2.5 directs that legal process, wherever wanted against borrowers, guarantors and foreclosure of recovery of dues should be initiated expeditiously on those persons who are declared to be willful defaulters. Identification of willful defaulters is dealt with under Clause 3. A committee is to be constituted headed by the Executive Director and that committee should conclude that the unit is to be declared as willful defaulter and issue a show cause notice to the concerned borrower, call for submissions, record the same and then declare the unit as willful defaulter. Criminal action against such willful defaulters should be initiated after careful consideration and due caution is what clause sub-clause (ii) of clause 4.2 mandates. This is the scheme of declaration of a unit to be a willful defaulter.

12. Subsequent to the circular so issued by the Reserve Bank of India on 1<sup>st</sup> July 2015, a subsequent circular is issued on 1<sup>st</sup> July

2016 in furtherance of the said circular. The circular was called the Reserve Bank of India (Frauds Classification and Reporting by Commercial Banks and Select FIs) Directions 2016. The purpose for issuance of the said circular is as found in clause 1.3 which reads as follows:

**"1.3 Purpose:**

*These directions are issued with a view to providing a framework to banks enabling them to detect and report frauds early and taking timely consequent actions like reporting to the investigative agencies so that fraudsters are brought to book early, examining staff accountability and do effective fraud risk management. These directions also aim to enable faster dissemination of information by the Reserve Bank of India (RBI) to banks on the details of frauds, unscrupulous borrowers and related parties, based on banks' reporting so that necessary safeguards/ preventive measures by way of appropriate procedure and internal checks may be introduced and caution exercised while dealing with such parties by banks."*

Clause 2.2 deals with classification of frauds and it reads as follows:

**"2.2 Classification of Frauds.**

*2.2.1 In order to have uniformity in reporting, frauds have been classified as under, based mainly on the provisions of the Indian Penal Code:*

- a. Misappropriation and criminal breach of trust.*
- b. Fraudulent encashment through forged Instruments, manipulation of books of account or*

*through fictitious accounts and conversion of property.*

- c. Unauthorised credit facilities extended for reward or for illegal gratification.*
- d. Cash shortages.*
- e. Cheating and forgery.*
- f. Fraudulent transactions involving foreign exchange.*
- g. Any other type of fraud not coming under the specific heads as above.*

*2.2.2 As regards cases under (c) and (f) above cash shortages resulting from negligence and fraudulent forex transactions involving irregularities/violation of regulations have also to be reported as fraud if the intention to cheat/defraud is suspected or proved. Notwithstanding the above, the following cases shall be treated as fraud and reported accordingly.*

- a. cases of cash shortage more than Rs.10,000/- (including at ATMs) and*
- b. cases of cash shortage more than Rs.5,000/- if detected by management/auditor/inspecting officer and not reported on the day of occurrence by the persons handling cash."*

Chapter VI of the circular deals with guidelines for reporting frauds to Police/CBI. Clause 6.1 details about such reporting. In a case of public sector Bank if amount involved is below 30 million the agency to whom the complaint is to be made is the State Police and if it is 250 million and up to 500 million it is to the CBI. It is in



terms of this clause the Indian Bank has registered the complaint with the CBI. This is the broad framework of the master circulars issued by the Reserve Bank of India for declaration as wilful defaulters and borrowers who had indulged in fraud.

13. In the light of the afore-quoted framework, if the facts narrated, in the case at hand are considered, the unmistakable inference would be that the entire proceedings having been initiated against the petitioners in terms of the afore-quoted circulars, the submission that the circulars are not applicable to the facts of the case at hand is rendered unsustainable, as it is fundamentally flawed. The issue with regard to applicability of the circular or otherwise, will have to be placed to the background, in the light of the other submission made by the learned senior counsel for the petitioners with regard to the act of the respondents in overreaching the order, *albeit*, interim, passed by this Court.

14. The petitioners had been declared to be wilful defaulters by communications dated 14-02-2020 and 20-02-2020 by invoking the aforesaid circulars. They were called in question before this

Court in Writ Petition No.4777 of 2020. This Court granted an interim order of stay of all further proceedings pursuant to declaration of the petitioner/Company to be a willful defaulter. The interim order was operating up to 15-04-2021. On 15-04-2021 the counsel appearing for the 2<sup>nd</sup> respondent appeared before the Court and submitted that the petition may be disposed of remitting the matter to the Review Committee of the Indian Bank. Reserving liberty to the Committee to consider the matter afresh in the light of the judgment of the Apex Court in the case of State Bank of India v. M/s Jah Developers Private Limited, an order is passed by the Court accepting the submission of the learned counsel for the Indian Bank while disposing of the petition, which reads as follows:

**ORDER**

*Sri Shashi Kiran Shetty, learned senior Advocate for the respondent-Indian Bank,, in his usual fairness, submits that this petition may be disposed of by remitting the matter to the Review Committee of the Indian Bank, reserving liberty to the Committee to consider the matter afresh in the light of the decision of the Hon'ble Supreme Court in State Bank of India Vs. M/s Jah Developers Pvt.Ltd. & Ors. (Civil Appeal No.4776 of 2019).*

*2. Shri Akshay Ravindra Prabhu, learned Advocate for petitioners is satisfied with the submission of learned senior Advocate.*

*3. In view of the submission of Sri Shashi Kiran Shetty, this petition is disposed of by remitting the matter to the Review Committee of the Indian Bank to consider the same afresh in the light of the judgment of the Apex Court referred to supra."*

The order was passed on 15-04-2021. What the 2<sup>nd</sup> respondent/Bank would do is register a complaint before the CBI on 12-01-2021, the knowledge of which was never with the petitioners. It is not demonstrated by the 2<sup>nd</sup> respondent/Bank that the petitioners had the knowledge of registration of crime at any time before summons. Though the complaint was made by the 2<sup>nd</sup> respondent/Bank on 12-01-2021, it appeared before the Court and made a submission that the root of the matter would be re-considered, the root of the matter being declaration of the petitioner/ Company as a willful defaulter. To a pointed query of this Court to the learned counsel representing the 2<sup>nd</sup> respondent as to what has happened to the submission made on 15-04-2021 before this Court with regard to re-consideration of the case of the petitioner to be a willful defaulter, the learned senior counsel would submit that the matter is still pending consideration before the Competent Authority. Therefore, from 15-04-2021 till 14-07-2022

there was no progress in re-consideration of the case of the petitioner to be a willful defaulter.

15. The entire issue of declaration of the petitioner as willful defaulter and subsequent action of registration of a crime was on the basis of the declaration of the petitioner to be a willful defaulter or a fraudulent borrower. That having been stayed by this Court and the stay being in operation up to 15-04-2021, the 2<sup>nd</sup> respondent concealing the said fact of pendency of the case, could not have registered the crime, as the basis for registration of crime was the account being slipped into NPA on whatever score it would be, and the declaration of the petitioner as willful defaulter having been stayed, it could not have appeared before the Court without divulging the fact that a complaint had already been registered before the CBI, get the matter disposed of, to re-consider the very root that led to registration of the crime. If the very root is to be reconsidered according to the Bank, it can hardly be justified as to how a crime could be registered in the teeth of subsistence of interim order during the pendency of the writ petition and subsistence of reconsideration at the hands of the 2<sup>nd</sup>

respondent/Bank. It is not the merit of the matter that needs consideration at the hands of this Court, but it is the act of the 2<sup>nd</sup> respondent/Bank in trying to overreach the interim order of this Court by registering the crime.

16. As a matter of fact even disposal of the writ petition did not obliterate the interim order. The petition was disposed of by remitting the matter to the Review Committee to consider the same afresh, that too on the submission made by the senior counsel representing the 2<sup>nd</sup> respondent/Bank. Therefore, the very act of the Bank in registering the crime during subsistence of the interim order and getting the matter closed where interim order was subsisting on the ground that it would reconsider the very declaration of the petitioner to be a willful defaulter was flawed. Without arriving at the said decision even as on date, the 2<sup>nd</sup> respondent cannot now justify that the proceedings have to go on pursuant to registration of crime. The meat in the merit of the matter need not be gone into at this juncture, as it is on the submission of the 2<sup>nd</sup> respondent/Bank itself, in the earlier

proceedings, the matter is required to be reconsidered from the issue of declaring the petitioner to be willful defaulter.

17. The submission of the learned senior counsel representing the 2<sup>nd</sup> respondent/Bank that master circulars are not even applicable to the case at hand is to be repelled as it is fundamentally flawed, as every action against the petitioner is taken under the master circulars. Since the matter is pending consideration before the Review Committee of the Indian Bank even as on date, it would be highly inappropriate to permit the 1<sup>st</sup> respondent/CBI to continue with the proceedings which were registered in the teeth and contrary to the interim order passed by this Court.

18. The other submissions made by the learned senior counsel with regard to the declaration of willful defaulter or a fraud would have to be placed behind the curtains, *albeit*, for the present, as it would depend upon the outcome of the decision of the Review Committee, before whom all the issues of declaration of the petitioner to be a willful defaulter are pending consideration. All

further actions of the respondents would depend upon the outcome of the decision of the Review Committee. Permitting further proceedings to continue in the teeth of the aforesaid facts would become an abuse of the process of law and result in permitting an action which is initiated in an attempt to overreach the orders of this Court, which action *sans* countenance.

19. For the aforesaid reasons, I pass the following:

**ORDER**

- (i) Criminal Petition is allowed.
- (ii) The First Information Report in No.RCO782021E0002 of the Central Bureau of Investigation and pending before the XXI Additional City Civil and Sessions Judge and Principal Special Judge for CBI Cases at Bangalore stands quashed.
- (iii) The respondents are at liberty to initiate such proceedings against the petitioners subject to the outcome of the decision of the Review Committee of the 2<sup>nd</sup> respondent/Bank in terms of the judgment of the Apex Court in M/s Jah Developers Private Limited (*supra*).

- (iv) In the event proceedings would be initiated against the petitioners pursuant to the decision of the Review Committee, the same shall be in accordance with law.

Consequently, I.A.No.2/2021 stands disposed.

**Sd/-  
JUDGE**

bkp  
CT:MJ