

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 4945 OF 2021

1. MILTECH INDUSTRIES PVT. LTD
Through its managing director
Pradeep S/o Govindlal Agrawal,
Having its Registered Office at Plot F-27/01,
MIDC Hingna Industrial Area, Hingna Road,
Nagpur-440016.
2. Shri Pradeep S/o Govindlal Agrawal,
Aged about 58 years, Occ. Business,
R/o Plot No.80, Kotwal Nagar, Ring Road,
Vivekanand Nagar, S.O. Nagpur-440015.
3. Shri Govindlal S/o Nityanand Agrawal,
Aged about 83 years, Occ. Business,
R/o Plot No.80, Kotwal Nagar, Ring Road,
Vivekanand Nagar, S.O. Nagpur-440015.

PETITIONERS

.....VERSUS.....

1. State Bank Of India,
Stressed Assets Management Branch – II,
through its Dy. General Manager, Mumbai,
Raheja Chambers, Ground Floor,
Wing-B Free Press Journal Marg, Nariman Point,
Mumbai-400021.
2. Willful Defaulter Identification Committee-I of
State Bank Of India,
Raheja Chambers, Ground Floor,
Wing-B Free Press Journal Marg, Nariman Point,
Mumbai-400021.
3. Review Committee Of State Bank Of India,
Samb-II, Raheja Chambers, Nariman Point,
Mumbai-400021.
4. Reserve Bank Of India,
Main Building, Shahid Bhagat Singh Marg,
Mumbai-400001.

RESPONDENTS

Shri Sahil Dewani, Advocate for the petitioners.
Shri M. Anil Kumar, Advocate for respondent Nos. 1 to 3.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI - PHALKE, JJ.

DATE : SEPTEMBER 15, 2022

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned Counsel for the parties.

2. The challenge raised in this Writ Petition is to the order dated 7/1/2021 passed by the Wilful Defaulters Identification Committee declaring the petitioners to be the wilful defaulters. Further challenge has also been raised to the order passed by the Wilful Defaulters Review Committee dated 27/9/2021 by which the review application has been dismissed.

3. The facts relevant for considering the aforesaid challenges are that the petitioners had obtained credit facilities from respondent No.1 – Bank. On failure to abide by the terms of repayment, the loan of petitioner No.1 was declared to be a non-performing asset from 25/11/2018. On 11/3/2020, a show cause notice was issued to petitioner No.1 calling upon it its response as to why its name should not be included in the list of wilful defaulters. The justification seeking to

declare petitioner No.1 as a wilful defaulter was indicated. In response thereto, reply was submitted and it was denied that petitioner No.1 was liable to be declared as a wilful defaulter. On 29/12/2020, a notice was issued by respondent No.1 – Bank informing petitioner No.1 that hearing would be conducted by the Wilful Defaulters Identification Committee on 7/1/2021 at Mumbai. The representative of petitioner No.1 was not present on the scheduled date. The Wilful Defaulters Identification Committee held that the name of petitioner No.1 was liable to be entered in the list of wilful defaulters. Subsequent thereto, on 11/1/2021, the Director of petitioner No.1 – Company issued a communication to the Bank stating therein that on account of ill health, he could not remain present before the Committee on 7/1/2021. Another opportunity to appear before the Committee was sought. Notwithstanding the said request, petitioner No.1 preferred a Review Application against the order dated 7/1/2021. In that application, various grounds were sought to be raised including request for supply of various documents mentioned therein. The Review Committee considered the application and on 27/9/2021 observed that the grounds raised were not supported by any documents and hence those grounds were not tenable. The Review Application was accordingly dismissed.

Being aggrieved, the aforesaid orders have been challenged in the present Writ Petition.

4. The learned Counsel for the petitioners submitted that petitioner No.1 had been declared as wilful defaulter without granting due opportunity to it to contest the show cause notice. Though the notice dated 29/12/2020 was received by petitioner No.1, its representative could not remain present on 7/1/2021 on account of his ill health. The Identification Committee passed an adverse order on the same day. The stand taken in the reply to the show cause notice was not properly considered. It was further submitted that in the Review Application, the applicant had made a request for supply of various relevant documents to substantiate the stand of petitioner No.1 that it was not a wilful defaulter. This request was not considered and without assigning any reason, the Review Application came to be rejected. Placing reliance on the decision of the Hon'ble Supreme Court in *State Bank Of India Vs. Jah Developers Private Limited And Others [(2019) 6 SCC 787]* as well as the decision of the Division Bench in *Finolex Industries Limited and Another Vs. Reserve Bank Of India and Others [2011 SCC OnLine Bom 1781]*, it was submitted that declaration of Company as a wilful defaulter ought to be made after complying with the principles of natural justice and by granting due opportunity to the entity that is sought to be declared as a wilful defaulter. Petitioner No.1 was not heard when the initial order was passed by the Identification Committee. Similarly, the Review Committee did not consider the request made for supply of relevant documents and

passed a cryptic order. It was urged that though the Review Committee was shown to consist of three members, the order dated 27/9/2021 passed by that Committee was signed only by one member. It was not clear as to whether the Committee comprising of three members considered the Review Application. The consequence of being declared as a wilful defaulter had a cascading effect and therefore it was necessary for the entire Committee to have considered the matter. It was thus submitted that the impugned orders were liable to be set aside on that count.

5. The learned Counsel for respondent Nos. 1 to 3 supported the impugned orders. He submitted that after giving show cause notice along with a notice of hearing, the Identification Committee had declared petitioner No.1 to be a wilful defaulter. All material that was available was indicated to the petitioners and the reply as filed was also considered. Since no satisfactory ground was made out, petitioner No.1 was declared as a wilful defaulter. The documents referred to in the Review Application were being sought for the first time and no such request was made at any earlier point of time. The scope of review proceedings could not have been expanded in such manner. Since the requirement of the Master Circular in question was complied with and as the impugned orders were passed after giving due opportunity to the

petitioners, there was no reason to interfere with the same. It was thus submitted that the Writ Petition was liable to be dismissed.

6. We have heard the learned Counsel for the parties and we have perused the material on record. The issuance of show cause notice dated 11/3/2020 to petitioner No.1 and the subsequent notice of hearing issued on 29/12/2020 are not in dispute. The Identification Committee passed its order on 7/1/2021 and as per the application moved by the representative of petitioner No.1, he was not well on that date and hence he could not attend the proceedings. A request for grant of further opportunity was made on 11/1/2021 after passing of the initial order. Against that order, petitioner No.1 preferred a Review Application as contemplated by the Master Circular. In that application, while seeking to substantiate its stand that it was not liable to be declared as a wilful defaulter, demand was made for supply of certain documents that have been referred to in paragraphs 1.7 to 1.7.6 of the Review Application. Other grounds seeking re-consideration were also raised. Perusal of the order passed by the Review Committee indicates that a reference has been made to such demand of documents. After reproducing the factual aspects, it has been observed by the Review Committee that the reply furnished by the Company and its Director was not supported by any documents and hence the stand was not tenable. The Review Committee

has not considered the request for supply of various documents as made by petitioner No.1. The aspect whether those documents as demanded were relevant or not has also not been considered. When petitioner No.1 was seeking to substantiate its stand by referring to certain documents and had also demanded some of them, it was incumbent upon the Review Committee to have considered and commented upon that request. The same could either have been accepted or refused by assigning reasons. The order dated 27/9/2021 however does not indicate any reason whatsoever in that regard. In fact, there is no reference to consideration of the request for supply of documents.

7. In *State Bank Of India (supra)*, it has been held by the Hon'ble Supreme Court that considering the consequences of declaring an entity as a wilful defaulter, it was necessary that due and proper opportunity ought to be furnished to such party before making such declaration. In *Finolex Industries Limited (supra)*, the Division Bench has observed that consistent with the principles of natural justice, it would be impermissible to accept the stand of the Committee that it was not required to submit necessary documents to the noticee. In fact, for making an effective representation against the proposed action, the material in that regard ought to be disclosed. Though it is true that the request for supply of documents was made by petitioner No.1 before the

Review Committee, it was necessary for that Committee to have at least considered such request and given reasons for either accepting or declining that request. Perusal of the impugned order does not indicate consideration of such request. It need not be emphasized that the procedure prescribed under the Master Circular on wilful defaulters issued by the Reserve Bank Of India is mandatory in nature. Though it was urged on behalf of the petitioners that the order dated 27/9/2021 passed by the Review Committee was signed by only one member which aspect was denied by respondent Nos. 1 to 3 by filing an additional affidavit pursuant to the order dated 26/7/2022, we do not find it necessary to go into that aspect since we find that the Review Committee has failed to consider the request made on behalf of petitioner No.1 for supply of documents.

8. Thus, on account of failure to consider the request made on behalf of petitioner No.1 to supply necessary documents, the matter requires re-consideration at the hands of the Wilful Defaulters Review Committee.

9. For the aforesaid reasons, the following order is passed :

i. The order dated 27/9/2021 passed by the Wilful Defaulters Review Committee is set aside. It is directed that the Review Application

preferred by petitioner No.1 shall be re-considered in the light of the grounds raised in the Review Application. After giving due opportunity to the petitioner, that application be decided on its own merits and in accordance with law. It is clarified that the observations made in this judgment are only for the purposes of deciding the challenge as raised. The Review Committee shall not be influenced by any such observations made in this judgment.

ii. Rule is made absolute in the aforesaid terms. No costs.

(URMILA JOSHI - PHALKE, J.)

(A.S. CHANDURKAR, J.)

Sumit