IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
09.03.2023	29.03.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS.13173 OF 2018, 9908 OF 2020 & 15028 OF 2021
AND
W.M.P. NOS. 15492 TO 15494 OF 2018
W.M.P. NOS. 12040 & 12042 OF 2020

W.P. No.13173 of 2018

Dinesh Chand Surana .. Petitioner

- Vs -

1. The Deputy General Manager
IDBI Bank Ltd.
No.115, Anna Salai
Saidapet, Chennai 600 015.

2. M/s.Surana Industries Ltd.
Rep. by Interim Resolution Professional
Mr. Ramakrishnan Sadasivan
No.29, Whites Road
2nd Floor, Royapettah
Chennai 600 014.

3. The Assistant General Manager
Punjab National Bank

No.46-49, Royapettah High Road
Royapettah, Chennai 600 014.

4. The Assistant General Manager
State Bank of India – SAM Branch
No.32, Monteith Road
Chennai 600 008.

5. The Assistant General Manager
Bank of Baroda
No.74, Thiyagaraya Road
T.Nagar, Chennai 600 017.

6. The Assistant General Manager
Canara Bank
No.574, Anna Salai
Teynampet Branch, Chennai 600 018.

7. The Deputy General Manager
Bank of India
Large Corporate Banking Branch
No.826, Anna Salai, Chennai 600 002.

8. The Assistant General Manager
Allahabad Bank
Industrial Finance Branch
No.41, Mount Road, Chennai 600 002.

9. The Assistant General Manager
Indian Overseas Bank
Commercial & Institutional Credit Branch
98-A, Dr. Radhakrishnan Salai
Mylapore, Chennai 600 004.

10. The Assistant General Manager
UCO Bank, Flagship Corporate Branch

No.212, Anna Salai, Chennai 600 002.

11. The Assistant General Manager
Central Bank of India
Corporate Finance Branch
Addison Buildings, No.803
Anna Salai, Chennai 600 002.

12. The Assistant General Manager
Oriental Bank of Commerce
No.63, Dr. Radhakrishnan Salai
Mylapore, Chennai 600 004.

13. The Assistant General manager
Syndicate Bank, Corporate Finance Branch
No.170, Eldams Road
Teynampet, Chennai 600 018.

14. The Assistant General Manager
Dena Bank, Corporate Business Branch
C-10, G-Block, B.K.Complex
Bandra East, Mumbai 400 051.

15. The Assistant General Manager
Bank of Maharashtra
No.118, Broadway, Chennai 600 108.

16. The General Manager
IFCI Ltd., No.142, M.G.Road .. Respondents
Nungambakkam, Chennai 600 034.

W.P. No.9908 of 2020

1. M/s.Punjab National Bank
Rep. by its Chief Executive Officer

Corporate Office, Dwarka, Sector 10
New Delbhi 110 075.

2. The Executive Director
Punjab National Bank
SASTRA Division, Corporate Office
Dwarka, Sector 10, New Delhi 110 075.

3. The General Manager
Punjab National Bank
SASTRA Division, Corporate Office
Dwarka, Sector 10
New Delhi 110 075.

4. The General Manager – Credit
Punjab National Bank
SASTRA Division, Corporate Office
Dwarka, Sector 10, New Delhi 110 075.

5. The Deputy General Manager
Punjab National Bank
3rd Floor, Corporate Office
Dwarka, Sector 10, New Delhi 110 075.

6. M/s.IDBI Bank Ltd.
Rep. by its Deputy General Manager
No.115, Anna Salai, Saidapet
Chennai 600 015.

7. M/s.Indian Bank
(previously Allahabad Bank)
Rep. by its Asst. General Manager
No.41, Mount Road
Chennai 600 002.

8. M/s.Bank of Baroda

(previously Dena Bank)
Rep. by its Asst. General Manager'
Raheja Towers, Beta Wing 1st Floor
177, Anna Salai, Chennai 600 002.

9. M/s.Life Insurance Corporation of India
Rep. by its General Manager
Central Office, Investment Department
Yogashema, Jeevan Bima Marg
P.B. No.19953, Mumbai 400 021.

10. M/s.L & T Infrastructure Finance
Company Ltd., rep. by its
General Manager, 2nd Floor
Monteith Palace, No.47
Monetith Road, Egmore
Chennai 600 008.

11. M/s.PTC India Financial Services Ltd.
Rep. by its General Manager
2nd Floor, NBCC Tower, No.15
Bhikaji Cama Palace, New Delhi 110 066.

12. M/s.State Bank of India
(previously State Bank of Patiala)
Rep. by its Asst. General Manager
No.157, Anna Salai, Chennai 600 002.

13. M/s. Uco Bank
Rep. by its Asst. General Manager
PLA Towers, No.212, Anna Salai'
Chennai 600 006.

14. M/s.Surana Power Ltd.
Rep. by its Liquidator
Mr. Srikanth Dwarakanath

No.29, Whites Road, Royapettah
Chennai 600 014.

15. M/s.Surana Corporation Ltd.
Rep. by its Liquidator
Mr. C.Ramasubramaniam
No.30, GNT Road, Madhavaram .. Respondents
Chennai 600 110.

W.P. No.15028 of 2021

1. The Review Committee on
Wilful Defaulters, State Bank of India
Rep. by its Chairman
Nariman Point, Mumbai 400 021.

2. The Wilful Defaulter Identification Committee-I
State Bank of India, rep. by its Chairman
Corporate Centre, State Bank Bhavan
Nariman Point
Mumbai 400 021.

3. The State Bank of India
Rep. by its Asst. General Manager
Red Cross Buildings, 32, Red Cross Road
Egmore, Chennai 600 008.

4. M/s.IDBI Bank Ltd.
Rep. by its Deputy General Manager
No.115, Anna Salai, Saidapet
Chennai 600 015.

5. M/s.Punjab National Bank
Rep. by its Chief Executive Officer
Corporate Office, Dwarka
Sector 10, New Delhi 110 075.

6. M/s.Indian Bank
(previously Allahabad Bank)
Rep. by its Asst. General Manager
No.41, Mount Road
Chennai 600 002.

7. M/s.Bank of Baroda
(previously Dena Bank)
Rep. by its Asst. General Manager
Raheja Towers, Beta Wing, 1st Floor
177, Anna Salai, Chennai 600 002.

8. M/s.Life Insurance Corporation of India
Rep. by its General Manager
Central Office, Investment Department
Yogashema, Jeevan Bima Marg
P.B. No.19953, Mumbai 400 021.

9. M/s.L & T Infrastructure Finance
Company Ltd., rep. by its
General Manager, 6th Floor
KGN Towers, No.62
Ethiraj Salai, Egmore
Chennai 600 008.

10. M/s.PTC India Financial Services Ltd.
Rep. by its General Manager
2nd Floor, NBCC Tower, No.15
Bhikaji Cama Palace
New Delhi 110 066.

11. M/s.UCO Bank
Rep. by its Asst. General manager
PLA Towers, No.212, Anna Salai
Chennai 600 006.

12. M/s.Surana Power Ltd.
Rep. by its Liquidator
Mr. Srikanth Dwarakanath
No.29, Whites Road, Royapettah
Chennai 600 014. .. Respondents

W.P. No.13171 of 2018 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records pertaining to the order dated 14.02.2018 bearing Ref. No.1399/NMG/SIL/2017-2018 and the consequential notice dated 19.05.2018 bearing Ref. No.182/IDBI/NMG/SIL/2017-2018 on the file of the 1st respondent and quash the same.

W.P. No.9908 of 2020 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records pertaining to the notice dated 12th March, 2020, issued by the respondents 2 to 4 on behalf of the 1st respondent and quash the same and forbearing respondents 1 to 13 from classifying the petitioner as a 'wilful defaulter' except in accordance with the procedure established by law.

W.P. No.15028 of 2021 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records pertaining to the order dated 4.5.2021 bearing Order No.2021-22/01/10 passed by the 1st respondent and quash the same and forbearing respondents 1 to 11 from classifying the petitioner as a 'wilful defaulter' except in accordance with the procedure established by law.

For Petitioner : Mr. K.Surendar in WP No.9908/20
Mr. P.Krishnan in WP 13173/18

For Respondents : Mr. M.L.Ganesh, for RR-1, 6, 8 & 12
In W.P. No.9908/20
Mr. Vinod Kumar for R-11 in WP 9908/20
Mr.T.Ravichandran for R-8 in
WP No.13173/18
Mr. V.Suthakar for R-10 in WP 13178/18
Ms. I.Sivakami for RR-1 & 12 in
WP 13178/18
Mr. M.L. Ganesh for RR-4 & 6 in
WP 13178/18

COMMON ORDER

The present writ petitions, at the instance of the petitioner, a full-time Director in the 2nd respondent, has assailed the act of the respondents/consortium of Banks (for short 'consortium') in publishing the petitioner as a 'wilful defaulter' in gross non-adherence of the Master

Circular of the Reserve Bank of India and seeks quashment of the said publication.

2. Three writ petitions have been filed by the very same petitioner and for a better understanding of the case, the facts, as has been narrated in the individual petitions, shorn of unnecessary details, are briefly summarized.

Facts in W.P. No.13173/2018 :

3. The petitioner is one of the Directors of the 2nd respondent company, which is a public limited company, engaged in the manufacture and trading of iron and steel products having branches at Gummidipoondi and Raichur, Karnataka. For the purpose of expanding the operations, the 2nd respondent sought to avail credit facilities from respondents and 3 to 16, who had formed a consortium and the consortium, upon execution of necessary documents and completing the formalities had offered credit facilities to the 2nd respondent.

4. It is the further averment of the petitioner that due to ban on mining and other allied issues, there was blockage in the production of the 2nd respondent company leading to the 2nd respondent requesting the consortium for restructuring of the loan liabilities and after due audit, which cleared the 2nd respondent company of diversion, siphoning or mismanagement of funds, the consortium entered into the Master Restructuring Agreement with the 2nd respondent on 24.3.2014 with retrospective effect from 1.6.2013. However, it is the further averment of the petitioner that the consortium, instead of realizing the priority loan to the tune of Rs.41.79 crores, had released an amount only to an extent of Rs.32.76 Crores out of the total sanctioned amount and an amount of Rs.15.01 crores was adjusted towards interest dues, in utter violation of the restructuring scheme.

5. It is the further averment of the petitioner that the consortium, resorting to such tactics, had appropriated an amount of Rs.1.15 crores towards opening of Letters of Credit, which were never opened and which amount was also adjusted towards the interest dues. Inspite of all the above, the consortium led by the 1st respondent sought to declare the petitioner as a

willful defaulter by issuing show cause notice dated 1.8.2017 alleging diversion of funds to which due reply was submitted by the petitioner on 21.08.2017. However, without considering the reply dated 21.08.2017, the 1st respondent passed the order dated 14.2.2018 declaring the 2nd respondent and its other directors as 'wilful defaulters'.

6. It is the further averment of the petitioner that the 1st respondent has reported the 2nd respondent and its other directors as willful defaulters to Reserve Bank of India (for short 'RBI') and other Credit Information Companies. Further, the 1st respondent had issued another notice dated 19.5.2018 seeking payment of a sum of Rs.232.54 crores within a period of fifteen days to the petitioner threatening the petitioner that failure of payment will result in publishing of name and photograph of the petitioner in the newspapers/magazines.

7. It is the further averment of the petitioner that application was moved before the National Company Law Tribunal, Chennai, u/s 9 of the Insolvency and Bankruptcy Code, 2016, for initiating corporate insolvency

resolution process with respect to the 2nd respondent company, which resulted in an order being passed appointing an Interim Resolution Professional by order dated 12.01.2018 and that the 2nd respondent company is under moratorium, which prohibits any proceeding against its debtors till the completion of the Corporate Insolvency process. It is the further case of the petitioner that having initiated the resolution process, the act of the 1st respondent in threatening the petitioner with publication would cause irreparable loss and damage and the act of the 1st respondent is filled with *mala fides* and, therefore, left with no other alternative, the present petition has been filed.

<u>Facts in W.P. No.9908/ of 2020</u> :

8. It is the case of the petitioner that he was the Managing Director of the 14th respondent company, which was planned to set up a Coal based Thermal Power Plant, which proposition was funded by the consortium comprising of respondents 1 and 6 to 13 with the 6th respondent being the lead banker under a *pari passu* agreement. The total loan amount sanctioned was to the tune of Rs.1800 crores with infusion of Rs.600 crores by the 14th

respondent company in the ratio of 75% : 25% and towards compliance, the 14th respondent had infused an amount of Rs.350 Crores into the project.

9. It is the further averment of the petitioner that Technical Due Diligence Report was submitted by the Lender's Independent Engineer and the funding of the project was handled by the consortium through a Trust and Retention Account and the construction of the project was managed by a Management Committee and the project was overseen regularly by M/s.Tata Consulting Engineer, who placed periodical reports before the consortium which resulted in disbursal of loan based on the progress.

10. It is the further averment of the petitioner that the the delay in disbursement of the loan had resulted in sudden withdrawal of sanction, which drastically affected the progress of the project, which is directly attributable to the consortium as it was handling the Trust & Retention Account. Inspite of all the efforts of the petitioner through several prospective investors, the efforts were foiled by the consortium which had failed to approve the project cost over-run.

11. It is the further case of the petitioner that inspite of the intervention of the Cabinet Committee on Investment, Department of Financial Services, Government of India, the project was reappraised by the Lender's Independent Engineer and the capital outlay of the project was revised, however, the consortium, even thereafter, failed to approve the project cost over-run, which had stalled the physical progress of the project at 58%. The prime cause of the stalling of the project was due to the consortium and as a result, the outstanding, which originally stood at Rs.1400 Crores kept increasing drastically.

12. It is the further averment of the petitioner that the 14th respondent was subjected to Corporate Insolvency and Bankruptcy Proceedings by way of an order dated 19.2.2018 by the National Company Law Tribunal, Chennai, which eventually ordered liquidation vide order dated 28.1.2019, which liquidation is still going on.

13. It is the further averment of the petitioner that a show cause notice dated 12.3.2020 was sent by respondents 2 to 4 through speed post to the petitioner, the 14th respondent and other promoters of the company, which was received by the petitioner on 15.7.2020 seeking response within fifteen days to show cause why the petitioner should not be identified as a willful defaulter in terms with the Master Circular on Wilful Defaulters notified by the RBI on 1.7.2015. The petitioner submitted that respondents 2 to 4 have found the petitioner as willful defaulter after allegedly issuing a show cause notice dated 13.4.2017, which was not served on the petitioner, which order was passed under Paragraph 3 (b) of the Master Circular dated 1.7.2015. Without providing an opportunity to the petitioner, the said show cause notice was issued, which is contrary to the provisions of RBI's Master Circular. It is the further averment of the petitioner that pursuant to the said order, respondents 2 to 4 have called upon the petitioner to show cause within fifteen days of receipt of the said notice as to why the petitioner should not be classified as a willful defaulter.

14. It is the further averment of the petitioner that the said show cause notice mentions that the loan account pertains to the 15th respondent with which the petitioner and the 14th respondent is in no way concerned and the Master Circular could in no way be applicable to the petitioner, as the petitioner stood only as an individual guaranter for the loan account of the 15th respondent, that too prior to 9th September, 2014 and, therefore, the petitioner cannot be fastened with any loan liability with regard to the 15th respondent.

15. It is the further case of the petitioner without providing the order copy, which sought to classify the petitioner as a willful defaulter, the show cause notice issued in pursuance of the said order would have no legs to stand and the said show cause notice is in utter violation of the order of the Apex Court in the case of ***State Bank of India – Vs - M/s.Jah Developers Pvt. Ltd. & Ors. (Civil Appeal No.4776/2019)***.

16. It is the further averment of the petitioner that a show cause notice dated 12.3.2020 was issued to the petitioner with providing a copy of the

order passed, which has resulted in the show cause notice, which is in utter violation of the aforesaid decision. It is the further averment of the petitioner that without the order copy, the petitioner could not put forth his contentions before the Review Committee as per the RBI Master Circulat dated 1.7.2015.

17. It is the further averment of the petitioner that though the show cause notice of the respondents 2 to 4 is unsustainable, however, to show his *bona fide*, the petitioner had submitted his representation to the 5th respondent refuting the allegations. It is the further averment of the petitioner that the classification of the petitioner as 'wilful defaulter' has been challenged before this Court in W.P. No.29057/16 and W.P. No.13173/18 in which interim orders of injunction has been granted. Hence, the present petition has been filed by the petitioner for the relief supra.

<u>Facts in W.P. No.15028 of 2021</u> :

18. While the averments in the present petition are almost identical to that of the petition in W.P. No.9908/20, it is further averment of the petitioner that the 12th respondent herein was subjected to Corporate

Insolvency Resolution Process under the Insolvency and Bankruptcy Code by way of an order dated 19.2.2018 passed by the National Company Law Tribunal, Chennai and liquidation was ordered vide order dated 28.1.2019, which is still going.

19. It is the further averment of the petitioner that the 3rd respondent herein issued a notice dated 6.2.2020 informing that the 2nd respondent had concluded that the petitioner had committed willful default and to show cause why the name of the petitioner should not be included in the list of willful defaulters as per the RBI Guidelines and threatened to publish the petitioner's photographs in the newspapers as a willful defaulter.

20. It is the further averment of the petitioner that the Master Circular of RBI on Wilful Defaulters mandates that any decision taken on the above lines should be well documented and supported by requisite evidence and that the evidences shall be examined before arriving at a conclusion. It is the averment of the petitioner that the 2nd respondent, without affording an opportunity of hearing and without furnishing the copies of the findings had

arrived at a finding that the petitioner is a willful defaulter by showing some tabulations, which is on the basis of a Forensic Audit. However, materials, which were taken into consideration in the Forensic Audit, which resulted in arriving at the above findings were not provided to the petitioner.

21. It is the further averment of the petitioner that though the petitioner was handicapped from filing a proper explanation to the show cause, the petitioner filed a reply on 27.2.20 and, thereafter, an opportunity of hearing through video conferencing was granted on 22.12.20 in which the petitioner submitted that the alleged willful default is not supported by any evidence. Pursuant to the said hearing, the 3rd respondent forwarded an order passed by the 2nd respondent, which is of even date, which exposes the undue haste in the passing of the said order, which is unsupported by any evidence.

22. It is the further averment of the petitioner that as against the order passed by the 2nd respondent, the petitioner preferred a review before the 1st respondent and requested the 1st respondent to grant an opportunity of

personal hearing. However, the 1st respondent, without considering the request of the petitioner had passed the order dated 4.5.2021 by affirming the order of the 2nd respondent. The findings of the respondents 1 and 2 with regard to the petitioner being a willful defaulter are on the basis of the Audit Report and without considering the explanations offered by the petitioner. Therefore, left with no other alternative, the petitioner has filed the present petition.

23. Learned counsel appearing for the petitioner, mounted his attack on the impugned order by submitting that there is gross violation of principles of natural justice as the petitioner was not granted with an opportunity of hearing before the order to classify the petitioner as a willful defaulter was passed. It is the further submission of the learned counsel that the clause 3 (iii) of the Master Circular of RBI dated 1.7.2013 provides that the borrower should be suitably advised about the proposal to classify him as willful defaulter along with reasons thereof. However, before such classification is made, no opportunity was given to the petitioner as per the ratio laid down by the Apex Court in *Jah Developers case (supra)*.

24. It is the further submission of the learned counsel that the decision to classify a person as willful defaulter should be well documented and supported by requisite evidence and that the decision should clearly spell out the reasons for which the borrower has been declared as willful defaulter as per the RBI guidelines. However, the order not having been provided to the petitioner and also the petitioner not having been granted an opportunity of hearing, the basis on which the said order has come to be passed is wholly whimsical and the said order cannot stand the test of judicial scrutiny.

25. It is the further submission of the learned counsel for the petitioner that the providing of opportunity is not an empty formality, but has a reasonable nexus as the non-consideration of material would cause grave prejudice to the individual if classified as willful defaulter and only keeping the said view in mind, guidelines have been formulated by RBI. It is the further submission of the learned counsel that the very same circular, with few revisions, has been reiterated in the Revised Circular dated 1.7.2015.

26. In this regard, learned counsel for the petitioner drew the attention of this Court to the decision of the Apex Court in *Jah Developers case* to submit that once the first committee, following paragraph 3 (b) of the Revised Circular dated 1.7.2015, passes an order, the borrower should be provided the order as soon as it is made so as to enable the borrower to represent against such order within a period of 15 days to the Review Committee. However, the petitioner has not been provided with the order of the first committee and, therefore, there is violation of principles of natural justice. Therefore, the impugned orders deserve to be set aside.

27. Per contra, the learned counsel appearing on behalf of the respective respondents, while concurred with the agreement between the petitioner and the consortium with regard to extension of credit facilities, further submitted that the failure of the company to pay the dues due to liquidity issues since 2013, led to the Master Restructuring Agreement being entered into between the petitioner and the consortium. It is the further suibmission of the learned counsel that inspite of the restructuring agreement, the petitioner and the company having not paid the amount and

were in default, led to the filing of recovery proceedings before the National Company Law Tribunal, by initiation of Corporate Insolvency Proceedings, which resulted in the order of liquidation being passed by appointing a resolution professional.

28. It is the further submission of the learned counsel that the Master Circular dated 1.7.2013 was issued by RBI only for purpose of putting in place a system to disseminate credit information pertaining to willful defaulters for cautioning the banks and financial institutions so as to ensure that further bank finance is not made available to them. It is the further submission of the learned counsel that even according to the petitioner, it is not his case that there was no default and, in fact, the petitioner himself has admitted the default. That being the case, the First Committee considering the Audit report has arrived at a finding that the petitioner requires to be classified as a willful defaulter, which act cannot be said to be unreasonable.

29. It is the further submission of the learned counsel that clause 3 of the Master Circular dated 1.7.2013 does not speak about granting an

opportunity to the person, whose case is considered under the willful defaulter category. The said guideline only prescribes the manner in which the First Committee has to deal with the matter when finding a person to be a willful defaulter. Upon reference by the First Committee, it is only the Review Committee, which has to offer an opportunity to the person to show cause as against the recommendation made by the First Committee. It is the submission of the learned counsel that the Review Committee, upon issuing show cause notice, has granted an opportunity of hearing to the petitioner and has, thereafter, classified the petitioner as willful defaulter, which cannot be said to be in contravention of the guidelines in the Master Circular.

30. It is the further submission of the learned counsel that even it is the admitted case of the petitioner that the petitioner has been granted an opportunity of hearing by the Review Committee before passing the order. However, the grievance of the petitioner is that the petitioner has not been provided with a copy of the order passed by the First Committee recommending action against the person sought to be classified as a willful defaulter. It is the submission of the learned counsel that the Master Circular

does not speak about providing a copy of the order to the person, who is sought to be classified as a willful defaulter, but the said guidelines only provides that the show cause notice should provide a reasonable time for the person to be classified as a willful defaulter to respond. In this regard, the reference to the decision in *Jah Developers case* by the petitioner is sought to be distinguished by the respondents by pointing out that the Supreme Court has only stated that the order of the First Committee has to be communicated to the petitioner as soon as it is made so as to enable the person, who is to be classified as a willful defaulter to place his representation. However, the Supreme Court has not stated that the guidelines had provided for furnishing of the order and failure would result in violations of principles of natural justice.

31. It is the further submission of the learned counsel for the respondents that notice was issued to the company as well as the Directors by the First Committee, which notice could not be served on the petitioner, as he was not available in the said address inspite of efforts taken. The report of the Committee reveals that some of the Directors participated and submitted

their explanation/representations, which were duly considered by the Committee before placing its report for classifying the company and its directors as willful defaulters. The petitioner having not partaken in the proceedings cannot claim that there is violation of *audi alterm partem*, in that he had not been granted an opportunity of hearing. Further, the report is on the basis of the representations made by the company and its directors, which report is only for the purpose of the Review Committee, the details of which had been furnished in the show cause notice and, therefore, the stand of the petitioner that he was not provided with the order is wholly imaginary and cannot be sustained.

32. In fine, it is the submission of the learned counsel that the case of the petitioner is wholly misconstrued as he was granted all the opportunities as provided under the Master Circular of RBI and the contention of violation of principles of natural justice is wholly whimsical and cannot be sustained and the decision in *Jah Developers case* would be of no avail to the case of the petitioner as the issue therein falls in a totally different sphere. Accordingly, learned counsel prays for dismissal of the petitions.

33. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and also perused the materials available on record as also the decision in *Jah Developers case*.

34. The whole case before this Court revolves upon two aspects of the issue, viz., the Master Circular dated 1.7.2013 and the decision of the Apex Court in *Jah Developers case.* Therefore, before adverting to the facts in issue, this Court would have a bird's eye view of clause (3) of Master Circular dated 1.7.2013, which is quoted hereunder :-

*"**3. Grievances Redressal Mechanism :***

Banks/FIs should take the following measures in identifying and reporting instances of wilful default:

(i) With a view to imparting more objectivity in identifying cases of wilful default, decisions to classify the borrower as wilful defaulter should be entrusted to a Committee of higher functionaries headed by the Executive Director and consisting of two GMs/DGMs as decided by the Board of the concerned Bank/FI.

(ii) The decision taken on classification of wilful defaulters should be well documented and

supported by requisite evidence. The decision should clearly spell out the reasons for which the borrower has been declared as wilful defaulter vis-à-vis RBI guidelines.

(iii) The borrower should thereafter be suitably advised about the proposal to classify him as wilful defaulter along with the reasons therefor. The concerned borrower should be provided reasonable time (say 15 days) for making representation against such decision, if he so desires, to a Grievance Redressal Committee headed by the Chairman and Managing Director and consisting of two other senior officials.

(iv) Further, the above Grievance Redressal Committee should also give a hearing to the borrower if he represents that he has been wrongly classified as wilful defaulter.

(v) A final declaration as 'wilful defaulter' should be made after a view is taken by the Committee on the representation and the borrower should be suitably advised."

35. As aforesaid, reference of this Court was also drawn by the petitioner to the decision of the Apex Court in *Jah Developers case*, for the purpose of driving home the point that providing a copy of the order by the

First Committee, which proposes to classify the borrower as a defaulter should be provided to the borrower, the relevant portion of which is as under:-

> *"21. Given the above conspectus of case law, we are of the view that there is no right to be represented by a lawyer in the in-house proceedings contained in paragraph 3 of the Revised Circular dated 01.07.2015, as it is clear that the events of wilful default as mentioned in paragraph 2.1.3 would only relate to the individual facts of each case. <u>What has typically to be discovered is whether a unit has defaulted in making its payment obligations even when it has the capacity to honour the said obligations; or that it has borrowed funds which are diverted for other purposes, or siphoned off funds so that the funds have not been utilised for the specific purpose for which the finance was made available. Whether a default is intentional, deliberate, and calculated is again a question of fact which the lender may put to the borrower in a show cause notice to elicit the borrower's submissions on the same</u>. However, we are of the view that Article 19 (1)(g) is attracted in the facts of the present case as the moment a person is declared to be a wilful defaulter, the impact on its fundamental right to carry on business is direct and immediate. This is for the reason that no additional facilities can be granted by any bank/financial institutions,*

and entrepreneurs/promoters would be barred from institutional finance for five years. Banks/financial institutions can even change the management of the wilful defaulter, and a promoter/director of a wilful defaulter cannot be made promoter or director of any other borrower company. Equally, under Section 29A of the Insolvency and Bankruptcy Code, 2016, a wilful defaulter cannot even apply to be a resolution applicant. Given these drastic consequences, it is clear that the Revised Circular, being in public interest, must be construed reasonably. <u>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</u>. 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........"

(Emphasis Supplied)

36. Keeping the above in mind, this Court would now proceed to analyze the materials available on record to find out whether the contention advanced by the petitioner with regard to violation of principles of natural justice could be made out.

37. The facts, as is available on record, as stated by the petitioner in the affidavit filed in support of the petitions clearly reveal that the company as well as its directors, of which the petitioner is one, have been in default in payment of the amounts. Corporate Restructuring Agreement was entered into to ease out the pressures felt by the petitioner by the respondent/consortium. However, it is the case of the respondent/consortium that inspite of the restructuring agreement, the petitioner continued to be in default.

38. It is the further admitted position, even as per the affidavit that forensic audit was carried out in the companies, which had borrowed amounts, which audit revealed diversion of funds through round tripping

transactions, advancing loans to sister concerns/EPC contractors without valid commercial reasons. Based on the Forensic Audit report, the case of the companies as well as its Directors were taken up by the High Level Committee and upon careful perusal of the documents, the High Level Committee recommended that the companies and its Directors be classified as 'wilful defaulters'. Pursuant to the above recommendation, the Grievance Redressal Committee had issued the show cause notices to the petitioner as well as the companies and the other Directors of the companies calling upon to submit their representation.

39. It is only at this point, the petitioner has started raising a grievance, claiming that the order of the High Level Committee had not been provided to him and without affording him an opportunity, the petitioner is sought to be classified as a 'wilful defaulter'.

40. It is borne out by record that notices were served on the companies and its Directors with regard to the infirmities found by the Forensic Audit in respect of diversion of funds and other aspects. While some of the Directors

of the companies have appeared for the enquiry, however, the petitioner has not partaken in the enquiry. However, the said fact is conspicuously absent in the affidavit filed in support of the petitions. However, the petitioner claims that he has not been served any notice. But the fact remains that the notice sought to be served on the petitioner could not be served as the petitioner was not available. However, the other Directors have appeared for the enquiry and while some of the Directors have been absolved, against few others, similar action was recommended to be taken.

41. In this regard, a careful perusal of sub-clause (ii) of clause 3 of the Master Circular dated 1.7.2013 reveals that the High Level Committee constituted to take a decision on classification of wilful defaulters is required to take into account all the requisite evidence and its reasoning should be well documented which should spell out the reasons for which the borrower is declared as wilful defaulter. Sub-clause (iii) of Clause 3 speaks about the manner in which the next step should be taken before the borrower is classified as a 'wilful defaulter'. Sub-clause (iii) mandates that a reasonable time should be given to the borrower to make an effective representation to

the Grievance Redressal Committee and that sub-clause (iv) prescribes that an opportunity of hearing should also be given to the borrower to represent as to why the classification of the borrower as wilful defaulter is bad. This clearly reveals that a mechanism has been framed for the borrower to effectively represent his case with regard to classification.

42. Keeping the guidelines in mind, a careful perusal of the materials available on record, as already aforesaid, reveal that notice was given to the companies as well as the Directors, including the petitioner on the basis of the Audit Report. The petitioner had not turned up for the enquiry, though some of the other directors had participated in the enquiry. Thereafter, report was submitted recommending classifying the petitioner and some other directors as wilful defaulters. Pursuant to the said report, the Grievance Redressal Committee had issued the impugned show cause notices.

43. As stated supra, the grievance of the petitioner is that the order of the High Level Committee recommending classifying the petitioner as a wilful

defaulter has not been provided to the petitioner and, hence, there is violation of principles of natural justice as no opportunity was given to him for being heard before the report is given.

44. A careful perusal of Clause 3 clearly shows that nowhere the report of the High Level Committee is directed to be given to the borrower, who is sought to be classified as a wilful defaulter. It is only the show cause notice, which is issued pursuant to the report, which is supposed to contain the details on which the classification of the borrower as a wilful defaulter, calls upon the borrower to show cause by means of a representation on the aforesaid aspect within the prescribed time. Pursuant to the show cause notice, sub-clause (iv) provides for a personal hearing to the borrower before passing any order and in the case on hand, the petitioner has been provided with an opportunity of personal hearing and that the petitioner has also submitted his representation. Therefore, there is strict compliance of sub-clauses (iii) and (iv).

45. When sub-clause (ii) does not mandate providing the order to the borrower, the borrower cannot claim it as a matter of right. However, the Supreme Court in *Jah Developers case* has suggested that once an order is made the same should be made available to the borrower as soon as it is made so as to enable the borrower to submit the representation against the said report. In the case on hand, the petitioner has not partaken in the enquiry conducted by the High Level Committee and the notice, which was sought to be served on him was also not received by the petitioner. Therefore, following sub-clause (ii), the High Level Committee has proceeded to submit the report.

46. Based on the decision of the Supreme Court in *Jah Developers case,* there may be a procedural irregularity, but that irregularity cannot alone be the basis for this Court to set aside the impugned show cause notices and remand the matter to the respondents. As stated in the former portion of the discussion, it is the admitted case of the petitioner that the petitioner had defaulted in payment of the dues to the consortium. May be certain allegations are leveled against the consortium, but the fact remains that all is

not well with the company and that the National Company Law Tribunal has passed orders appointing Resolution Professional as orders of liquidation has been passed against the company. Therefore, it is not as if that all is well with the company and its Directors and that it is only the consortium that is responsible for this scenario.

47. The Supreme Court, in *Jah Developers case* has held that it is in the interest of justice that the borrower should be provided with a copy of the report so as to make an effective representation. However, the issue in the said case, which was allowed by the Supreme Court was totally different, as it pertained to engaging a legal practitioner, which is not the issue before this Court.

48. When the factum of default is admitted by the petitioner and the petitioner has also admitted that Corporate Restructuring Agreement was entered into, which has also not been effectively complied with resulting in further default and notice for enquiry having also been given to the petitioner and, thereafter, based on the report, show cause notices were issued and

opportunity of personal hearing was also granted, which ultimately led to the impugned orders declaring the petitioner as a wilful defaulter, the said act of the consortium/respondents cannot be said to be arbitrary or unreasonable.

49. It is just and necessary for the bank/financial institutions to equally safeguard itself from malicious attacks from borrowers, who take the banks for a ride by getting loans and, thereafter, fleeing without repaying the said amounts. The action of RBI to declare the borrowers, who had committed default to be classified as 'wilful defaulters' and to publish their list is only in the interest of the financial institutions/banks in the present day scenario, as many persons borrow money, but seldom repay the same back resulting in writing off the same as bad debt, which would not be in the interest of the bank, as the banks are the custodian of public money and it is their duty to safeguard the same with utmost care and caution.

50. In the case on hand, the petitioner had appeared for personal hearing pursuant to the show cause notice and had given his written representation and oral representation. Therefore, based on the Master

Circular, the petitioner having been granted an opportunity as provided for under Clause (3), the grievance of the petitioner that there is violation of principles of natural justice is wholly unjustified and unreasonable. Further, in *Jah Developers case*, the Supreme Court has categorically spelt out that whether a default committed by the borrower is intentional, deliberate and calculated, is a question of fact, which could be put to the borrower in the show cause notice to elicit the borrowers submissions. In the case on hand, the petitioner having been put on notice by issuing show cause notice, the petitioner has not only been given an opportunity of submitting his written representation, but also has been provided with an opportunity of personal hearing, the claim of the petitioner that there is violation of principles of natural justice is wholly fictitious and cannot be sustained.

51. Further, when the petitioner has been granted an opportunity of hearing by issuing show cause notice, the claim of the petitioner that the copy of the report has not been given and, therefore, there is violation of principles of natural justice cannot be sustained for the reason that the report of the High Level Committee is for the purpose of the Grievance Redressal

Committee to take a decision by issuing show cause notice to the petitioner and it is not a conclusive document, which automatically classifies the borrower as a wilful defaulter. Such being the case, the non-grant of the report to the petitioner would in no way be a detrimental factor, which has prejudiced the petitioner from making an effective representation more so, when the show cause notice has spelt out the reasons based on which the borrower is sought to be classified as a wilful defaulter.

52. In fact, the Revised Circular of RBI dated 1.7.2015, more specifically clause 3 (b) provides that where the Grievance Redressal Committee concludes that an event of wilful 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 wilful default and the reasons for the same. Further the Committee should also given an opportunity to the borrower and the promoter/whole-time Director for a personal hearing if the Committee feels such an opportunity is necessary.

53. Clause 3 (b) of the Revised Circular, as detailed aforesaid, reveals that only where the Committee feels an opportunity of personal hearing is necessary, the Committee, upon show cause, may grant such an opportunity. In the case on hand, the Committee having felt the need to hear the petitioner, had afforded an opportunity of hearing and such being the case, the violation pointed out by the petitioner stands totally wiped off, as the act of the Committee clearly shows not only full compliance, but also due diligence and such being the factual position, this Court is of the considered opinion that the orders impugned herein does not call for any interference.

54. Further, this Court has even perused the show cause notice and finds that the details that are required to be given to the petitioner with regard to classifying the petitioner as a wilful defaulter has been provided. Such being the case, the grievance of the petitioner with regard to violation of principles of natural justice has no legs to stand.

55. The amount of money which the companies and the petitioner as Director of the said companies are to repay the consortium/respondents is a

whooping figure spread across different companies and if steps are not taken by the respondents by putting the other banks on notice, any further acts by the petitioner or the companies would result in further loss to the banks and only in that backdrop the Master Circular has been issued by the RBI, the watchdog of the banking sector, in the interest and safety of the banks.

56. For all the reasons aforesaid, all the writ petitions fail and, accordingly, the same are dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

29.03.2023

Index : Yes / No

Internet : Yes / No

GLN

M.DHANDAPANI, J.

GLN

PRE-DELIVERY ORDER IN
W.P. NOS. 13173/ 2018,
9908/ 2020 & 15028/ 2021

Pronounced on
29.03.2023