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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 23.03.2023

Judgment pronounced on: 05.04.2023

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+ **LPA 202/2023**

SH. LAGADAPATI MADHUSUDHAN RAO & ORS.Appellants
Through: Mr. Saurabh Kirpal, Sr. Adv. along
with Mr. Malak Bhatt, Ms. Neeha
Nagpal, Mr. Rajat Bector and Mr.
Nikhil Arora, Advs.

versus

STATE BANK OF INDIA Respondent
Through: Mr. Rajiv Kapur, Mr. Akshit Kapur
and Mr. Tushar Bagga, Advs.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

LPA 202/2023

1. The present appeal has been filed by the appellants being aggrieved by the order dated 13.03.2023, passed by the learned Single Judge in W.P.(C) 12672/2022. The said writ petition was filed by the appellants seeking (i) setting aside of the letter dated 19.08.2022 issued by the respondent, whereby the appellants have been declared as Wilful Defaulters; and (ii) setting aside of the decision taken by the Identification Committee of the respondent bank on 27.07.2022 identifying the appellants as Wilful Defaulters.

2. By the aforesaid impugned order dated 13.03.2023 the learned Single Judge has dismissed the writ petition filed by the appellants and has granted liberty to the appellants to file a detailed representation within 10 days from the date of the said order before the Review Committee under the RBI Master Circular, which would be considered by the said Review Committee, and a reasoned order passed thereon. The contention of the appellants that relevant documents were not supplied to them was also left open to be considered by the Review Committee. The said order reads as under:-

“1. After hearing the learned counsel appearing on behalf of the parties, it is seen that the instant petition is against the order passed by the Wilful Defaulter Identification Committee.

2. The petitioners have not yet approached the Review Committee under RBI Master Circular.

3. As far as the argument raised by the learned counsel appearing on behalf of the petitioner to the effect that the relevant documents were not supplied to the petitioner to enable him to challenge the impugned order is concerned, the same would be for the Review Committee to consider in accordance with law.

3. Leaving all questions raised by the petitioner in the instant petition open, this court grants liberty to the petitioner to file a detailed representation within 10 days from today before the Review Committee under the RBI Master Circular

4. If such a representation is filed, the Review Committee is under an obligation to decide the same in accordance with law by a reasoned order to be communicated to the petitioner immediately thereafter.

5. Having considered the facts and circumstances in the instant case, especially, the order dated 05.09.2022 whereby the stay was granted, this court finds it necessary to direct that once the order is passed by the Review Committee, the same shall not be given effect for a period of 15 days to enable the petitioner to take appropriate recourse in accordance with law.

6. Leaving all questions open, the instant petition stands disposed of.”

3. The contention of the appellants in the present appeal is that the learned Single Judge failed to appreciate that there has been breach of principles of natural justice inasmuch as the appellants have been declared as Wilful Defaulters by the respondent without being given an opportunity to make submissions before the Identification Committee. It is submitted that the learned Single Judge has failed to appreciate that the respondent bank has failed to follow the procedure as prescribed under clause 3 of the RBI Master Circular bearing No. DBR No. CID.BC.22/20.16.003/2015-16 dated 01.07.2015¹ read with judgment of the Supreme Court in *State Bank of India v. Jah Developers Put. Ltd. & Ors.*². It is stated that basis of such declaration against the appellants is a Forensic Audit Report/Transaction Audit Report, yet the appellants were provided only with the relevant extracts of the said report, instead of the full report and the appellants were constrained to obtain the said report from another bank of the consortium. It is contended that the learned Single Judge has failed to appreciate that the respondent bank has not provided the appellants with any document, material or evidence (except for two pages of Forensic Audit Report), which have been relied on by the respondent bank, before declaring them as a Wilful Defaulters. It is submitted that no effective representation could be made by the appellants before the Identification Committee due to unavailability of the said documents. It is contended that till the time all such documents substantiating the event of wilful default are provided to the appellants, the proceedings before the Review Committee will be an exercise in futility. It is also contended that the scope and ambit of the Review

¹ “Master Circular”

² (2019) 6 SCC 787

Committee is limited and it only looks into the correctness of the decision-making process followed by the Identification Committee and therefore, the same is not an efficacious remedy. The appellants thus contend that the impugned order dated 13.03.2023 be set aside.

4. A perusal of the record indicates that there is no merit whatsoever in the contentions sought to be raised by the appellants.

5. A show cause notice as to why the appellants' name should not be indicated in the list of Wilful Defaulters as per the extant RBI Guidelines was issued as far back as on 05.11.2019. The said show cause notice reads as under:-

“Reference: SAMB-II/2019-20/2070

SHOW CAUSE NOTICE

Dt. 05.11.2019

To,

<i>Shri G. Venkatesh Babu (Managing Director) M/s Lanco Infratech Limited (LITL), Plot No.4, Software Units Layout, HITECH City, Madhapur, R. R. District, Shaikpet Mandal, Hyderabad-500081 (Telangana)</i>	<i>Shri G. Venkatesh Babu (Managing Director) M/s Lanco Infratech Limited (LITL), Also at : Lanco House, Plot-397, Udyog Vihar, Phase-3, Gurgaon-122016 (Haryana)</i>
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Dear Sir,

State Bank of India (Migrated from SBI, CAG-II, Gole Market, New Delhi {17313} on 29.05.2018), had extended credit facilities to M/s Lanco Infratech Ltd. (LITL) which were renewed/enhanced from time to time. As the Company and its Directors did not adhere to the terms and conditions on which credit facilities were sanctioned and disbursed and also defaulted in repayment of the facilities as per the agreed terms, the loan account has been classified as Non-Performing Asset (NPA) w.e.f. 30.09.2013. The Wilful Defaulter Identification Committee of the Bank (hereinafter referred to as "Committee") has examined the conduct of the account and utilization of credit facilities and has concluded that the

acts/events of willful default as detailed in the Annexure have been committed by you.

2. You are hereby called upon to show cause and make submissions in writing within 30 days from the date of receipt of this letter as to why your name should not be included in the list of Willful Defaulters as per RBI guidelines.

3. If you do not make any submission within 30 days as mentioned above, the Committee will pass necessary orders.

4. This communication is issued as per the order and direction of the Committee.

Yours faithfully,

*(Mukesh Kumar Dhingra)
Deputy General Manager”*

6. It is seen that the annexure to the aforesaid notice clearly sets out the acts/events of wilful default and also the evidence/documents sought to be relied upon for “substantiating each event of wilful default”. The said annexure reads as under:-

Justification/Reasons for declaring the Borrower as Wilful Defaulter

<i>Criteria for classification as Wilful Defaulter as per RBI Master Circular No.RBI/2015-16/100 DBR No. CID. B.C. 22/20. 16.003/2015-16 Dated July 01.2015</i>		
<i>Relevant criteria of RBI Circular</i>	<i>Events of Wilful Default</i>	<i>Evidences / documents substantiating each event of willful default</i>
<i>2.1.3.b The unit has defaulter in meeting its payment / repayment obligations to the lender and has not utilized the finance from the tender for the specific purposes for which finance was availed of but has diverted the funds for other purposes.</i>	<i>a. Loan of Rs.31.54 Crore given to Lanco Amarkantak Power Ltd. (LAPL) was converted to equity shares to maintain equity capital contribution of the promoters in LAPL.</i>	<i>As per Page 18 of the Transaction Audit Report of Grant Thornton India LLP.</i>
	<i>b. Loan of Rs. 12.26 Crore given to Lanco Hills Technology Park Pvt. Ltd. (LHTTPL) was converted to preference shares to maintain the contribution of the promoters in LHTTPL.</i>	
<i>2.2.1.c Transferring borrowed funds to the subsidiaries / Group companies or other</i>	<i>Hence, it is concluded that the company has transferred</i>	

<i>corporate by whatever modalities.</i>	<i>borrowed funds to subsidiaries/ Group Companies.</i>	
<i>2.1.3.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.</i>	<i>The Company sold the fixed assets to the tune of Rs.375.67 Crore by way of slump sale to Lanco Solar (Gujarat) Private Limited (LSGPL). No sale consideration for the fixed assets was received in the account and instead these were converted into equity shares of Rs.10.00 each of LSGPL.</i> <i>Hence, it is evident that the Company has defaulted in meeting its payment/repayment obligations to the lenders and has also disposed off or removed the movable fixed assets or immovable property without the permission of the lenders.</i>	<i>As per Page 34 of the Forensic Audit Report of Grant Thornton India LLP.</i>

7. A detailed response dated 06.12.2019 was sent by L. Madhusudhan Rao, the appellant No.1 (Director/Guarantor/Ex-Executive Chairman of M/s. Lanco Infratech Limited) wherein elaborate comments/justifications were offered in response to the allegations set out in the show cause notice dated 05.11.2019. While offering detailed comments on the allegations, it was not even urged that there was any constraint on account of unavailability of any information or documents. The said response dated 06.12.2019 to the show cause notice dated 05.11.2019 reads as under:-

“To

Date: December 6, 2019

The Deputy General Manager,
State Bank of India,
Stressed Asset Management Branch-II.
11th floor, STC Building, 1, Tolstoy Marg, Janpath,
New Delhi-110 001.

Dear Sir,

Sub: Reply to show cause notice on wilful default-Reg

As informed by the Directors and Guarantors of Lanco Infratech Limited, I am herewith submitting this reply.

I wish to bring to your kind notice the following facts and records in respect of the Lanco Infratech Limited (hereinafter referred as LITL or The Company) loans availed from State Bank of India and other banks.

LITL which was one of the major power EPC contractor in the Country, suffered setback in its EPC operations due to various factors which were beyond the control of the company and its Directors.

LITL approached the CDR EG in July 2013 for admitting the company under CDR to enable the company to revive its EPC operations. The CDR EG have approved the CDR package in December 2013. At the time of application to CDR i.e., in July 2013 all loan accounts of the company were Standard accounts and no NPA account.

The CDR package implementation was delayed and the priority loan which was approved under the CDR package was mostly disbursed towards the bank dues thereby leaving little amount for the revival of EPC operations. Due to delayed implementation of CDR package and adjustment of most of the priority loan towards the bank dues, the consortium of banks have decided to provide Long Term Working Capital Loan (LTWCL) to revive the EPC operations. Even the disbursement of LTWCL was delayed and mostly used for bank dues again. Due to non-release of required funds to the revival of EPC operations both from the Priority Loan and LTWCL, the company's EPC operations could not be restored/revived as planned. Some of the loan accounts of the company became NPA during FY 2016-17 and some during FY 2017-18,

The non-restoration/revival of EPC was treated as failed CDR and some banks have taken the date of CDR, as consequential NPA date, thereby showing the company accounts as NPA with effect from September 2013, even though in real terms the accounts became NPA during FY 2016-17 in some banks and FY 2017-18 in some banks.

I wish to confirm and reiterate that the Company and its Directors always adhered to the terms and conditions on which credit facilities were sanctioned and disbursed. Due to non-revival/ restoration of EPC operations, the debt servicing obligations could not be met out of the operations of the company.

The Company and its Directors time and again requested the consortium banks to provide funds from the approved loans towards restoration of EPC activity. The

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Company and its Directors always wants the credit facilities to be used for restoration of EPC activity which in turn could restore the business operations of the company to sustain the debt servicing as planned.

It is not true that the Company, Directors and the Guarantor have not adhered to the terms and condition on which credit facilities were sanctioned and disbursed.

I would like to submit point wise clarifications and evidences showing that there were no willful defaults made by the Company, its Directors and the Guarantors.

SBI Remarks 1:

Justification/reasons mentioned by SBI for declaring LITL/Lanco Group Limited/Director as willful defaulters

Relevant criteria of RBI Circular:

2.1.3b) 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.

2.2.1c) Transferring borrowed funds to the subsidiaries/Group companies or other corporates by whatever modalities.

Event mentioned by SBI for treating as willful default

a) Loan of Rs. 31.54 Cr given to Lanco Amarkantak Power Limited (LAPL) was converted to equity shares to maintain equity capital contribution of the promoters in LAPL

Reply to SBI remark 1:

LITL as holding company and sponsor of 1320 MW LAPL has given undertakings to support the project for its equity requirements as per the approval given by Power Finance Corporation (PFC) led consortium which financed the LAPL As per the PFC approval the equity contribution is permitted in the form of equity and/or preference share capital and/or unsecured loans. The Sanction letter of PFC is enclosed as Annexure 1.

LITL provided equity support to LAPL in the form of equity capital and unsecured loans. This was approved by PFC led consortium and the relevant certificates submitted to PFC In this regard are enclosed as Annexure 2.

Date-wise funding of Rs. 31.54 Cr to LAPL and the sources for funding are as under:

<i>Date of funding</i>	<i>Amount Rs.</i>	<i>Sources of funding</i>
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26-Mar-15	3,01,00,000	Part of Promoter contribution provided by Lanco Group Limited as per the CDR package terms and conditions
26-Mar-15	2,05,00,000	Part of Promoter contribution provided by Lanco Group Limited as per the CDR package terms and conditions
26-Mar-15	9,28,41,722	IOB released loan to recover the IOB dues in LAPL
31-Mar-15	4,00,00,000	Part of Udupi Project sale proceeds
30-Jun-15	2,50,00,000	VAT refund of Rs. 2.53 Cr
6-Jul-15	7,00,00,000	Proceeds from Fixed deposit closure in Yes bank of Rs. 11 Cr
31-Aug-15	1,86,00,000	Out of Current Account balances/deposits/debtors & advances realization
30-Sep-15	5,00,00,000	
TOTAL	34,70,41,722	

Date of Conversion	Amount of Conversion in Rs	Remarks
19-May-15	3,16,15,620	Converted in to equity
14-Sep-16	31,54,26,102	Converted in to equity

The amounts provided in the above table are out of operating funds of the company and sale proceeds of Udupi Power Project except one where funds were provided by a particular lender to recover dues of the same lender in LAPL. The company has not used any of the loans funds drawn by the company for making Investments/loans to the Group/subsidiary companies without the approval of the lender/s.

There was no transfer of borrowed funds by the company to its subsidiaries/group companies as mentioned in the annexure to the notice. From the above table each of the funding to LAPL was clearly out of company operating cash flows and/or proceeds from sale of investments as per the CDR approval except one transaction which was done by a Bank to recover its dues.

An amount of Rs. 31.54 Cr was converted into Equity shares on September 14, 2016. Part of Rs. 31.54 Cr unsecured loan was already taken as promoter contribution for the LAPL as per the PFC sanction terms and conditions.

Conversion of unsecured loan into equity is not a fresh funding transaction as reported by the bank in the annexure to the notice. The conversion of loan into equity is only a mere compliance requirement of terms and conditions of the loan agreements of LAPL and Companies Act. As a sponsor LITL is under obligation to the consortium lenders of LAPL for promoter contribution support.

The SBI conclusion that the company did not utilise the finance from the lenders for the specific purposes for which finance was availed off but has diverted the funds for other purposes is not correct.

There is no wilful default either at the funding stage or at the conversion stage. The compliance of terms and conditions stipulated by the lenders should not be treated as wilful default Hence the allegation of wilful default is to be withdrawn

SBI Remark 2:

Justification/reasons mentioned by SBI for declaring LITU/Lanco Group Limited/Directors as wilful defaulters

Relevant criteria of RBI Circular:

2.1.3.b) The unit has defaulted in meeting its payment/repayment obligations to the lender and has not utilised the finance from the lender for the specific purposes for which finance was availed of but has diverted the funds for other purposes.

2.2.1.c) Transferring borrowed funds to the subsidiaries/Group companies or other corporates by whatever modalities.

Event mentioned by SBI for treating as wilful default

b) Loan of Rs. 12.26 Cr given to Lanco Hills Technology Park Private Limited (LHTPPL) was converted to preference shares to maintain the contribution of the promoters in LHTPPL

Reply to the SBI Remark 2:

LITL as holding company and sponsor of 100 Acre integrated IT Park Lanco Hills Technology Park Private Limited (LHTPPL) has given undertakings to support the project for its equity requirements as per the approval given by Punjab National Bank (PNB) led consortium which financed the LHTPPL As per the PNB approval, the equity contribution is permitted in the form of equity and/or preference share capital. The Sanction letter of PNB is enclosed as Annexure 3. LITL provided promoter contribution support to LHTPPL in the form of equity/preference share capital and unsecured loans.

Funding by LITL to LHTPPL towards promoter contribution is as under:

<i>Date of funding</i>	<i>Amount Rs.</i>	<i>Source for funding</i>
<i>30.09.15</i>	<i>1,86,04,000</i>	<i>Debtors Realisation</i>
<i>30.11.15</i>	<i>2,40,00,000</i>	<i>Canara Bank released loan to recover the Canara Bank Debtors Realisation dues in</i>

		<i>LHTPPL</i>
<i>10.12.15</i>	<i>3,00,00,000</i>	<i>Proceeds from Fixed deposit closure</i>
<i>20.05.16</i>	<i>5,00,00,000</i>	<i>Mobilisation Advances refunded by vendors</i>
<i>Total</i>	<i>12,26,04,000</i>	
<i>Date of Conversion</i>	<i>Amount of Conversion of Rs</i>	<i>Remarks</i>
<i>21-May-16</i>	<i>12,26,00,000</i>	<i>Converted in to preference capital</i>

The amounts provided in the above table are out of operating funds of the company except one where funds were provided by a particular lender to recover dues of the same lender in the subsidiary company. The company has not used any of the loans funds drawn by the company for making investments/loans to the Group/subsidiary companies, without the approval of the lender/s.

As per the LHTPPL consortium sanction terms and conditions, LITL has to provide equity/preference capital as part of the promoter contribution. In line with the LHTPPL consortium terms and conditions LITL has provided Rs. 12.26 Cr initially as unsecured loan which was converted into preference share capital in compliance with the terms.

The SBI conclusion that the company has transferred borrowed funds to subsidiaries/Group companies without lender/s approval is not correct.

The company used its operating funds to contribute towards the promoter contribution of its subsidiary. A particular lender released loan in LITL Instead of releasing loan in LHTPPL to recover the same lender dues in LHTPPL. There was no transfer of borrowed funds by the company to its subsidiaries/group companies without the approval of lender/s as mentioned in the annexure to the notice.

Conversion of unsecured loan into equity/preference is not a fresh funding transaction as concluded by SBI in the annexure to the notice. The conversion of loan into preference capital is only a mere compliance requirement of terms and conditions of the loan agreements of LHTPPL and the Companies Act. As a sponsor LITL is under obligation to the consortium lenders of LHTPPL for promoter contribution support.

There is no wilful default either at the funding stage or at the conversion stage. The compliance of terms and conditions stipulated by the lenders should not be treated as wilful default.

The transaction is done as per the approval given by the relevant lenders. Hence the allegation of wilful default is to be withdrawn.

SBI Remark 3:

Justification/reasons mentioned by SBI for declaring LITL/Lanco Group Limited/Directors as willful defaulters

Relevant criteria of RBI Circular

2.1.3. 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.

Event mentioned by SBI for treating as wilful default

The company sold the fixed assets to the tune of Rs. 375.67 Cr by way of slump sale to Lanco Solar (Gujarat) Private Limited (LSGPL). No sale consideration for the fixed assets was received in the account and instead these were converted into equity shares of Rs.10.00 each of LSGPL.

Reply to the SBI Remark 3:

LITL, a profit making EPC Company Invested in solar power generation project of 35 MW to optimise its tax outflows The lenders have given consent for creation of specific charge on Solar 35 MW project to the lenders of Solar 35 MW project. SBI also given its consent vide letter bearing nos. CAG/AMT-8/2012-13, dated July 5, 2012 and CAG-ND/AMT-8/2013-14 dated February 1, 2014 which are enclosed as Annexure 4.

Subsequently when the LITL was referred to CDR, as per the CDR approved package the solar 35 MW project was excluded from the CDR lenders' charge and continued as a specific charge asset to the lenders of solar 35 MW project. The copy of relevant page of Master Restructuring Agreement is enclosed as Annexure 5

The slump sale was informed to the consortium at the consortium meeting held on July 4, 2016. The slump sale will ring-fence the operating cash flows of the company to the specific project lenders. The slump sale was initiated to protect the interest of the specific project lenders. Out of 35 MW, 30 MW was funded by IDBI Bank and 5 MW was funded by Yes Bank IDBI Bank approved the slump sale of 30 MW. Accordingly the company completed the slump sale of 30 MW on February 23, 2017, The relevant correspondence and approvals by IDBI Bank, Gujarat Urja Vikas Nigam Limited (GUVNL) and Gujarat Power Corporation Limited (GPCL) are enclosed as Annexure 6.

The details of slump sale are as under:

	Rs. Cr.
<i>Value of the project/assets</i>	<i>385.99</i>
<i>Less: Project loan</i>	<i>377.25</i>
<i>Value of equity</i>	<i>8.74</i>

Any slump sale to an exclusive wholly owned subsidiary would be done by issuing equity shares to the holding company for the value equivalent to equity in the slump sale computation. As per the details mentioned above, LSGPL which has

taken the project/assets having a value of Rs. 385.99 Cr along with a project debt obligation of Rs. 377.25 Cr need to issue equity shares to the tune of Rs. 8.74 Cr. Accordingly LSGPL issued Rs. 8.74 Cr equity capital to the holding company LITL in compliance with the slump sale structure.

The other way of doing slump sale to an exclusive wholly owned subsidiary is to provide equity capital by the holding company to the subsidiary company equivalent to equity value in the slump sale computation and the subsidiary company paying back to the holding company the same am as consideration for equity value. The resultant effect is same as the subsidiary company issuing equity shares for the equity value in the slump sale transaction, without any fund transfers.

As concluded by SBI, the company did dispose off or removed the movable fixed assets of immovable property given for the purpose of securing a term loan without the knowledge of the bank/lender is not correct.

The lender IDBI Bank approved the slump sale to the exclusive wholly owned subsidiary of the company, LSGPL.

Therefore this should not be concluded that the company has defaulted in meeting its payment/repayment obligations to the lenders and has also disposed off or removed the movable fixed assets or immovable property without the permission of the lenders.

The transaction is done as per the approval given by the lender IDBI Bank. Hence the allegation of wilful default is to be withdrawn.

Please feel free to ask for any further information in this regard

*Thanking you,
Yours faithfully.*

(L. Madhusudhan Rao)"

8. As can be seen, the aforesaid response dated 06.12.2019 squarely deals with the allegations in the show cause notice dated 05.11.2019. Certain documents were also enclosed to rebut the allegations made in the said show cause notice.

9. The respondent itself vide letter dated 31.12.2019, responded to the aforesaid communication dated 06.12.2019 as under:-

"Reference: SAMB-II/2019-20/2626

Dt. 31.12.2019

To,

<i>Shri G. Venkatesh Babu (Managing Director) M/s Lanco Infratech</i>	<i>Shri G. Venkatesh Babu (Managing Director) M/s Lanco Infratech</i>	
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<i>Limited (LITL), Plot No.4, Software Units Layout, HITECH City, Madhapur, R. R. District, Shaikpet Mandal, Hyderabad-500081 (Telangana)</i>	<i>Limited (LITL), Also at : Lanco House, Plot-397, Udyog Vihar, Phase-3, Gurgaon-122016 (Haryana)</i>	
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Dear Sir,

Sub: Your replies to show cause notice on wilful default issued by us vide our letter

No. SAMB-II/2019-20/2070 Dt. 05.11.2019 in respect of Lanco Infratech Ltd. (LITL)

In the captioned matter we enclose herewith relevant evidences/documents substantiating each even of wilful default as requested by you vide letter under reference. Further, while perusing your replies, we have observed some anomalies which are as under:

- (i) While replying to our observation i.e. “Loan of Rs.31.54 Crore given to LancoAmarkantak Power Ltd. (LAPL) was converted to equity shares to maintain equity capital contribution of the promoters in LAPL”, you have stated that this transaction was approved by PFC led consortium but no such approval from PFC is provided in this regard. Copies of documents enclosed by you as Annexure-I & II to support these transactions are irrelevantas no such approval was given to LITL by its lenders for excluding loan to LAPL.*
- (ii) While replying to our observation i.e. “Loan of Rs. 12.26 Cram given to Lanco Hills Technology Park Pvt. Ltd. (LHTTPL) was converted to preference shares to maintain the contribution of the promoters in LHTTPL., you have mentioned about approval of PNB by enclosing copy of letter Dt. 29.03.2016 issued by PNB as Annexure-III, which is irrelevant in this matter as no such approval was given to LITL, by its lenders for extending loan to LHTTPL.*
- (iii) While replying to our observation i.e. The Company sold the fixed assets to the tune of Rs. 375.87 Crore by way of slump sale to Lanco Solar (Gujarat) Private Limited (LSGPL). No sale consideration for the fixed assets was received in the account and instead these were converted into equity shares of Rs. 10.00 each of LSGPL. You have neither clarified that why the sale proceeds couldn't be routed through the account of lenders*

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nor you have provided any approval for converting the sale proceeds in equity of LSGPL.

You are therefore requested to kindly attend the aforesaid observations enabling us to proceed further in this matter.

Yours faithfully

Deputy General Manager”

10. Thereafter, opportunities of hearing were offered by the respondent/bank on 20.03.2020, 17.07.2020 and 07.08.2020. However, the same were not availed of by any of the appellants. Instead of proceeding in the matter, the respondent/bank again sent a communication dated 21.08.2020 stating as under:-

“Registered AD/Speed Post
NOTICE FOR PERSONAL HEARING

To,

*Shri Lagdapati Madhusudhan Rao (Personal Guarantor/Executive Chairmen),
M/s Lanco Infratech Ltd., (LITL)
B-11, Pushpanjali Farm, Bijwasan,
Delhi-110061.*

*Madam/Dear Sir,
SAMB/ND-II/2020-21/CL-II/997*

Dated: 21.08.2020

PERSONAL HAERING BEFORE THE WILFUL DEFAULTER IDENFICATION COMMITTEE

We refer to the notice dated 05.11.2019 issued to you to show cause and make submission as to why your name should not be included in the list of wilful defaulters as per RBI guidelines.

2. The Wilful Defaulter Identification Committee of the Bank is pleased to offer you an opportunity for personal hearing to make your submissions before the Committee. Accordingly, if you would like to avail, the said opportunity you may make your submissions through video conferencing arranged at State Bank of India, Stressed Assets Management Branch-II, 11th Floor, Jawaher Vyapar Bhawan, 1, Tolstoy Marg, New Delhi-110001 on 11.09.2020 at 10.30 AM.

3. Please note that the above opportunity is for making your personal submission if any in the matter and the Lawyers/Chartered Accountants/Consultants who are

not partners/Directors/ Officers/Employees of the firm/ Company will not be allowed, in substitution of your personal presence and submission before the Committee.

4. Please bring your PAN card and other documents to prove your identity and position in the firm/company.

5. Please note that you have failed to avail the opportunities given earlier to you on 20.03.2020, 17.07.2020 & 07.08.2020. Now, this is the last opportunity and if you fail to avail this opportunity of personal hearing on the above mentioned date and time, it will be presumed that you have nothing to submit before the Committee by availing personal hearing. If you are declared as willful defaulter by the Committee, the Bank reserves the right to publish your photograph in newspapers informing the public that the bank has declared you as willful defaulter as per RBI guidelines.

6. This communication is issued as per the approval and directions of the Committee.

Yours faithfully,

-sd-

Deputy General Manager”

11. It was only at this stage that, vide communication dated 02.09.2020, it was sought to be asserted by the appellants that the respondent had not supplied a copy of the “Transaction Audit Report” prepared by M/s Grant Thornton which had been relied upon by the bank.

12. It has been averred in the writ petition that the appellants were able to obtain a copy of the said Transaction Audit Report prepared by M/s Grant Thornton from another bank of the consortium. Yet, the appellants did not avail any of the various opportunities of personal hearing offered by the respondent and instead took the plea that the underlying documents and material that formed the basis of the Forensic Audit Report be supplied to them. As noticed hereinabove, such a stand was taken despite the fact that in the original response dated 06.12.2019 to the show cause notice dated

05.11.2019, specific and detailed comments have been offered by the appellants to the alleged events of 'wilful default'.

13. Further opportunities of hearing were thereafter again offered by the respondent bank to the appellants by issuing various communications offering personal hearing to the appellants. Notably, communication dated 08.12.2020 of the respondent specifically deals with the contention regarding non-supply of forensic audit report/supporting documents. The said communication reads as under:-

"Dear Sir

*PERSONAL HEARING BEFORE THE WILFUL DEFAULTER
IDENTIFICATION COMMITTEE SCHEDULED ON 09.12.2020: M/S
LANCO INFRATECH LIMITED*

With reference to trail mail and letter dated 01.12.2020, requesting us to provide documents or evidence substantiating the events of wilful default, we would like to advise that we have already shared the relevant documents and information along with show cause notice dated 05.11.2019. Further, the Forensic Audit report was discussed in detail in the JLM held on 20.02.2020 (the copy of minutes dated 20.02.2020 with relevant pages attached) where the Promoter group was represented by Mr. Adi Babu (CFO) of the company. In the above back drop we want to reiterate that the Bank has already shared the relevant documents/evidence several times in the past. We are once again sending you the relevant pages of Forensic Audit and Transaction Audit report for your ready reference.

Regards

For Deputy General Manager

For the State Bank of India

Stressed Assets Management Branch-II

11th Floor, Jawahar Vyapar Bhawan

1, Tolstoy Marg

New Delhi-110001

Contact Person Name:

Mobile:"

[emphasis supplied]

14. Again vide communication dated 19.12.2020, another opportunity of personal hearing was offered and it was stated as under:-

“5. Please note that you have failed to avail the opportunities given earlier to you on 20.03.2020, 17.07.2020, 07.08.2020, 11.09.2020 & 09.12.2020. Now, this is the last opportunity and if you fail to avail this opportunity of personal hearing on the above mentioned date and time, it will be presumed that you have nothing to submit before the Committee by availing personal hearing. If you are declared as Wilful defaulter by the Committee, the Bank reserves the right to publish your photograph in newspapers informing the public that the bank has declared you as wilful defaulter as per RBI guidelines.”

15. Similar communications offering personal hearing were also issued on 26.02.2021, 09.04.2021, 05.06.2021 and 11.07.2022.

16. None of the appellants availed any of the numerous opportunities of personal hearing offered by the respondent bank.

17. In the counter-affidavit filed on behalf of the respondent bank before the learned Single Judge, it has been specifically averred as under:-

“.....

10. That the Show Cause Notice dated 05.11.2019 was issued to the petitioners and 08 Notices for attending personal hearing were issued to the petitioners whereby the petitioners were called upon for personal hearing before the Identification Committee, all documents on the basis of which the respondent bank has declared the accounts of the petitioners as wilful defaulters has been supplied to the petitioners. The petitioners were also granted an opportunity to submit a representation before the Review Committee vide the impugned communication. However, the petitioners chose not to appear before the Identification Committee despite granting several opportunities to them by the respondent bank, and therefore, the petitioners cannot raise the issue of violation of principles of natural justice. Therefore, the respondent bank cannot be faulted.

11. The petitioners have failed to establish in the present petition as to what prejudice has been caused even if the opportunity of personal hearing was not granted (though denied as 8 opportunities for personal hearing were granted by the respondent bank)) before declaring the account as wilful defaulter. It is submitted that the principles of natural justice are not unruly hors as held by the Hon'ble Supreme Court in the case of Vivekanand Sethi v. Chairman, J & K Bank Ltd. & Ors.: (2005) 5 SCC 337 that “the principle of natural justice, it is trite, is no unruly horse. The principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be a

straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case". It is also submitted that the procedure of declaration of the accounts as wilful defaulters has yet not been concluded as the final order has not been passed by the WDRC and the decision of the WDIC has not been confirmed qua declaration of the accounts as wilful defaulters.

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23. That the all the material documents and relevant information on the basis of which the respondent bank has declared the accounts of the petitioners as "wilful defaulters" have already been provided by the respondent bank to the petitioners. The petitioners have made incorrect averments and have come with unclean hands before this Hon'ble Court, therefore, it is not called upon for this Hon'ble Court for any any interference upon the decision of the bank.

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VII Non-Supply of documents

1. That the material relied upon by the Identification Committee in arriving at its decision is on the basis of the Forensic Audit Report, which was readily available with the petitioners (though not entitled), on the basis of which the decision was taken by the Identification Committee. That all the relevant documents available with the respondent bank were provided to the petitioners and the Forensic Audit Report is now in the possession of the petitioners, on the basis of which the committee has arrived at its decision to declare the account of the petitioner as wilful defaulter."

18. Attention is also drawn by learned counsel for the respondent to an e-mail communication dated 26.07.2022 addressed to the appellant no.1, wherein it has been stated as under:-

"Ma'am/Dear Sir,

PERSONAL HEARING BEFORE THE WILFUL DEFAULTER IDENTIFICATION COMMITTEE ON 27.07.2022: M/S LANCO INFRATECH LTD

With reference to your letter dated 25.07.2022 in response to an opportunity for Personal Hearing letter dated 11.07.2022, requesting us to provide documents or evidence relied upon substantiating the event of wilful default.

We would like to advise that we have already shared the relevant documents and information along with show notice dated 05.11.2019. The same was also provided again vide email dt. 08.12.2020 (copy of email attached).

Further, the Forensic Audit report was discussed in details in details in the JLM held on 20.02.2022 where Promoter group was represented by Mr. Adi Babu (CFO) of the Company (copy of which was also shared vide email dt. 08.12.2020).

In the above connection, we want to reiterate that the Bank has already shared the relevant and relied documents/ evidence several times in the past.

Regards

For Dy. General Manager

State Bank of India

Stressed Assets Management Branch-II

11th Floor, Jawahar Vyapar Bhawan

1, Tolstoy Marg

New Delhi-110001.”

19. In the above circumstances, the allegations made by the appellants regarding denial of sufficient opportunity to present their case before the Identification Committee and/or breach of the principles of natural justice, are thoroughly misconceived.

20. In this regard reference is apposite to the observations of the Supreme Court in ***State Bank of India Vs. Jah Developesrs***², wherein it has been observed as under:-

“15. ... It is even more difficult to state that in all cases oral hearings must be given, or else the principles of natural justice are breached. A number of judgments have held that natural justice is a flexible tool that is used in order that a person or authority arrive at a just result. Such result can be arrived at in many cases without oral hearing but on written representations given by parties, after considering which, a decision is then arrived at.”

21. A perusal of the order dated 27.07.2022, issued by the Wilful Defaulter Identification Committee of the respondent itself indicates that the following reasons were given for classification of the appellants as wilful defaulters:-

- “As per Page 18 of the Forensic Audit report of Grant Thornton India LLP,*
- a. Loan of Rs.31.54 Crore given to Lanco Amarkantak Power Ltd. (LAPL) was converted to equity shares to maintain equity capital contribution of the promoters in LAPL.*
 - b. Loan of Rs.12.26 Crore given to Lanco Hills Technology Park Pvt Ltd (LHTTPL) was converted to preference shares to maintain the contribution of the promoters in LHTTPL.*

22. According to the respondent, the aforesaid attracts criteria 2.1.3.b and 2.2.1.c of the Master Circular/ applicable RBI instructions on ‘wilful default’. It is seen from the order dated 27.07.2022 itself, that the justification/response of the appellants/borrowers/directors/guarantors in respect of the aforesaid allegations, was taken note of by the Identification Committee. In fact, with regard to one of the alleged events of ‘wilful default’, the Identification Committee found merit in the justification/response offered by the appellants/borrower/directors/guarantors. The said allegation/event is as under:-

“As per Page 34 of the Forensic Audit Report of Grant Thornton India LLP, the Company sold the fixed assets to the tune of Rs.375.67 Crore by way of slump sale to Lanco Solar (Gujarat) Private Limited (LSGPL). No sale consideration for the fixed assets was received in the account and instead these were converted into equity shares of Rs.10.00 each of LSGPL.”

With regard to the aforesaid, after taking note of the justification/response offered by the appellants/borrowers/directors/guarantors, it was observed by the Identification Committee as under:-

*“The response given by the company may be considered justifiable, as the referred fixed assets were charged to IDBI Bank and IDBI Bank approved the slump sale of these fixed assets.
Hence, the charge against clause 2.1.3 d of Wilful Default is dropped.”*

23. Whether or not the findings/conclusions of the Identification Committee are justified, is to be considered by the ‘Review Committee’ in the framework of the Master Circular dated 01.07.2015. This has also been acknowledged in the communication dated 19.08.2022 addressed by the respondent bank wherein it has been specifically stated as under:-

“3. You may, if you so desire submit your representation against the order of WDIC to the Wilful Defaulter Review Committee in writing with in a period of 15 days from the date of receipt of this letter and forward the same to us to enable us to put up the same before the Review Committee for their

consideration/appropriate orders. If you fail to do so, appropriate orders will be passed by the Review Committee on the order passed by the Wilful Defaulter Identification Committee (WDIC)."

24. The procedure for declaration of Wilful Defaulters has been laid down in clause 3 of Master Circular dated 01.07.2015. The same reads as under:-

"3. Mechanism for identification of Wilful Defaulters

The mechanism referred to in paragraph 2.5 above should generally include the following:

- (a) The evidence of wilful 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 wilful default has occurred, it shall issue a Show Cause Notice to the concerned borrower and the promoter/wholetime 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. 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.*
- (c) The Order of the Committee should be reviewed by another Committee headed by the Chairman/Chairman & Managing Director or the Managing Director & Chief Executive Officer/CEOs and consisting, in addition, to two independent directors/non-executive directors of the bank and the Order shall become final only after it is confirmed by the said Review Committee. However, if the Identification Committee does not pass an Order declaring a borrower as a wilful defaulter, then the Review Committee need not be set up to review such decisions."*

25. With regard to the aforesaid, the Supreme Court in ***State Bank of India v. Jah Developers²***, has held as under:-

"24. 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 Para 3 of the Revised Circular dated 1-7-2015, as it is clear that the events of wilful default as mentioned in Para 2.1.3 would only relate to the individual facts of each case. 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. 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 29-A 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. This being so, and given the fact that Para 3 of the Master Circular dated 1-7-2013 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 Para 3(b) of the Revised Circular dated 1-7-2015, must give its order to the borrower as soon as it is made. 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. Given the fact that the earlier Master Circular dated 1-7-2013 itself considered such steps to be reasonable, we incorporate all these steps into the Revised Circular dated 1-7-2015. The impugned judgment [SBI v. Jah Developers (P) Ltd., LPA No. 113 of 2015 sub nom Punjab National Bank v. Kingfisher Airlines Ltd., 2015 SCC OnLine Del 14128 : (2016) 154 DRJ 164], [Kingfisher Airlines Ltd. v. Union of India, 2015 SCC OnLine Bom 6075 : (2016) 2 Mah LJ 838] is, therefore, set aside, and the appeals are allowed in terms of our judgment. We thank the learned Amicus Curiae, Shri. Parag Tripathi, for his valuable assistance to this Court.” [emphasis supplied]

26. Therefore, it can be seen that in terms of the aforesaid judgment of the Supreme Court in ***Jah Developers***², it is open to the borrower to make a representation against the order of the Wilful Defaulter Identification Committee to the Review Committee. Importantly, such representation can be a full representation on facts and law.

27. Recently, the Supreme Court in the judgment of *State Bank of India vs. Rajesh Agarwal & Ors.*,³ while dealing with the challenge to the Reserve Bank of India (Frauds Classification and Reporting by Commercial Banks and Select FIs) Directions 2016, has approved *Jah Developers*², and has specifically held as under:-

“41.

In Jah Developers (supra), this Court construed the Master Circular on Wilful Defaulters by harmonizing it with the principles of natural justice. Particularly, it was directed that: (i) the First Committee must give its order to the borrower as soon as possible; (ii) the Borrower, thereafter, can file a written representation against the order of First Committee to the Review Committee; and (iii) Review Committee must pass a reasoned order which must be provided to the borrower.

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78. Before concluding, we also want to address the argument by the borrowers that the requirement of passing a reasoned order must be read into the Master Directions on Frauds. The borrowers also relied on Jah Developers (supra) where it was held that a final decision of the Review Committee declaring the borrower as a ‘wilful defaulter’ must be made by a reasoned order. We agree with this contention of the borrowers because: (i) a reasoned order allows an aggrieved party to demonstrate that the reasons which persuaded the authority to pass an adverse order against the interests of the aggrieved party are extraneous or perverse; and (ii) the obligation to record reasons acts as a check on the arbitrary exercise of the powers.[Kranti Associates (P) Ltd. v. Masood Ahmed Khan, (2010) 9 SCC 496] The reasons to be recorded need not be placed on the same pedestal as a judgment of a court. The reasons may be brief but they must comport with fairness by indicating a due application of mind.”

28. In the above background, no fault can be found with the procedure followed by the Identification Committee and the directions contained in the impugned order granting liberty to the appellants to file a detailed representation before the Review Committee under the Master Circular dated 01.07.2015. The impugned order rightly observes/directs that upon a representation being filed, the Review Committee is under an obligation to decide the same in accordance with law by a reasoned order. It further goes

³ Civil Appeal No.7300/2022, decided on 27.03.2023

on to direct that once an order is passed by the Review Committee, the same shall not be given effect for a period of 15 days to enable the appellants to take appropriate recourse in accordance with law. This sufficiently safeguards the interest of the appellants.

29. In the circumstances, the present appeal alongwith pending application(s) is dismissed.

30. It is made clear that this court has not expressed any opinion as to the merits of the view taken by the Identification Committee. The appellants would be at liberty to urge all grounds in its representation before the Review Committee, which shall decide the same in accordance with law.

SATISH CHANDRA SHARMA, CJ.

SACHIN DATTA, J.

APRIL 05, 2023/ak