

**IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPO No. 1505 of 2023

**Bhanwar Lal Jajodia
Vs
State Bank of India and Ors**

For the petitioner	:	Mr. Anuj Singh, Adv. Mr. S. Gole, Adv. Ms. A. K. Awasthi, Adv. Ms. M. Barman, Adv.
For the respondents	:	Mr. Soumya Roy, Adv. Mr. Benazir Kazi, Adv.
Hearing concluded on	:	19.07.2024
Judgment on	:	05.08.2024

Sabyasachi Bhattacharyya, J:-

1. The present challenge has been preferred by a Director of a company by the name of UIC Udyog Limited which has since undergone a Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the IBC").
2. The case of the respondents is that the petitioner was also a guarantor in respect of loan taken by the said Company from the respondent no.1, the State Bank of India. On July 20, 2019, the respondent-Bank (SBI) sent a show-cause notice to the petitioner and the borrower company under the Master Circular on Wilful Defaulters dated July 1,

2015 issued by the Reserve Bank of India (RBI).The petitioner gave a reply thereto, upon which on March 3, 2020, the Wilful Defaulter Identification Committee declared the petitioner and the borrower company to be Wilful Defaulters.

3. A challenge was preferred against the same by the petitioner before this Court, upon which, by an order dated January 27, 2022, this Court granted a liberty to the petitioner to take all points raised by him before the Review Committee.
4. Accordingly, the petitioner filed a representation before the Review Committee and ultimately the said Committee, by an order dated December 30, 2022, affirmed the decision of the first Committee, thereby declaring the petitioner to be a Wilful Defaulter.
5. In the meantime, the borrower company was admitted to Insolvency Resolution under the IBC on September 30, 2019. On April 7, 2021, the Resolution Plan was approved by the National Company Law Tribunal (NCLT).
6. Learned counsel for the petitioner contends that the petitioner, in the capacity of personal guarantor, is not liable to the SBI (respondent no.1-Bank) after assignment of the remaining portion of the debt to one DRP Trading and Investment Private Limited, a Non Banking Financial Company (NBFC) under the approved Resolution Plan of Laser Power and Infra Private Limited.
7. It is contended that as soon as a debt is assigned, the principal debtor ceases to be liable to the original creditor and becomes a borrower/debtor of the assignee. Thus, even if it is assumed that the

corporate debtor/personal guarantor is still in debt due to borrowings of the corporate debtor, the liability would be towards the assignee, that is, DRP Trading and Investment Private Limited and not the respondent-Bank.

8. In support of such contention, learned counsel for the petitioner cites *ICICI Bank Ltd. v. Officials Liquidator APS Star Industries Ltd. And others* reported at (2010) 10 SCC 1.
9. It is next argued by the petitioner that from the approved Resolution Plan, it appears that the assignment has been made in respect of the debt owed against the corporate debtor, although the personal guarantees have been excluded from such assignment. Thus, upon assignment of debt to DRP Trading and Investment Private Limited, the assignee becomes a creditor for that portion of the debt which is assigned.
10. However, the respondent-Bank argues that since the personal guarantees were excluded from the purview of assignment, the bank retained the right to invoke personal guarantee and proceeded against the personal guarantor notwithstanding the assignment of the entire portion of remaining debt in favour of the DRP Trading and Investment Private Limited.
11. Learned counsel appearing for the petitioner contends that such conundrum was dealt with by the High Court of Australia in *Hutchens v. Deauville Investments Pty. Ltd* reported in (1986) 68 367 at pages 372 and 373, where it was clarified that it is impossible to assign the debt while retaining the benefit of a guarantee and thereby convert

one debt owing to one creditor by both the principal debtor and guarantor into two debts (one owed by the principal debtor and the other by the guarantor).

12. The observation of the High Court of Australia has been elaborately dealt with in the judgment of the Delhi High Court in the matter of *Vineet Saraf v. Rural Electrification Corporation Ltd.* reported at (2023) SCC OnLine Del 4291, which is also cited by the petitioner.
13. Learned counsel appearing for the petitioner argues that as per the Resolution Plan, upon approval thereof, the liability against the corporate debtor and/or its directors, members, share holders etc. stood discharged for all purposes. Learned counsel places particular reliance on various clauses of the said Plan in support of such contention.
14. It is next argued by the petitioner that the assignee is not a “Lender” as per the definition in Clause 2.1 of the Master Circular.
15. It is further contended that as per the Master Data of DRP Trading and Investment Private Limited, one Purusattam Dass Goel is one of its Directors while the Master Data of Laser Power and Infra Private Limited (the successful Resolution Applicant) shows that one Deepak Goel is one of its Directors. Again, both of them are Directors of a sister concern of the successful Resolution Applicant. Thus, the Successful Resolution Applicant and the sister concern namely one Laser Aluminium Company Limited, are essentially companies run by the Goel family members.

- 16.** Learned counsel also contends that the proceedings initiated against the petitioner under the concerned Master Circular is not a proceeding *in rem*. Citing *Vidya Drolia and others v. Durga Trading Corporation* reported at (2021) 2 SCC 1, It is argued that actions which determine the interest of parties themselves in the subject-matter of the case are actions *in personam* and actions *in rem* refer to those which determine the property and rights of the parties not merely amongst themselves but also against all the persons at any time claiming an interest in the property. Another point of difference highlighted was that ordinarily actions *in rem* are adjudicated by courts and other public fora.
- 17.** Subsequently in *Indus Biotech Private Limited. v. Kotak India Venture (Offshore) Fund, (Earlier known as Kotak India Venture Limited) and others* reported at (2021) 6 SCC 436, the Supreme Court, when faced with the question whether Section 7 proceedings under the IBC are actually *in rem* proceedings, held that merely filing of a proceeding under Section 7 of the IBC and its pendency could not be deemed to be a proceeding *in rem* and that it was only upon admission of an application under Section 7 of the IBC that proceedings can be construed as *in rem*. The ratio was that before admission of a Section 7 application, the NCLT was under the obligation to assess if there had been a default in respect of a debt due to the financial creditor by the corporate debtor, after hearing the corporate debtor. Only where default is found to exist, a proceeding under Section 7(5) of the IBC continues and CIRP commences; whereas if there is no default, the application under Section 7 is to be dismissed. Thus, according to the

Supreme Court, *in rem* proceedings would begin with the admission of the application under Section 7.

- 18.** It is argued by the petitioner that the substance of both the judgments in *Vidya Drolia (supra)* and *Indus Biotech (supra)* can be applied to the instant case. The Master Circular allows a lender to initiate an action against a certain defaulter and constitute a Committee to examine it on the grounds as mentioned under Clause 2.1.3 of the same. The concerned defaulter against whom a show-cause notice is issued, has an occasion to answer or object to the allegations of the Committee and until completion of such exercise and subsequent orders of the Review Committee, the proceeding is significantly constrained to assessment of the case of the defaulter.
- 19.** Only when such examination is completed, the order of Wilful Default is passed and the name of the Wilful Defaulter is published in the manner as provided in the Annexure to the Master Circular.
- 20.** In the light of Clause 2.6 of the Master Circular, it is argued that Wilful Defaulter proceedings could not have been initiated against the petitioner, as the said Clause specifically states that such proceedings against personal guarantors could be initiated only in respect of guarantees which were given on and after September 9, 2014, which was included in the Master Circular dated July 1, 2014 by way of amendment dated September 9, 2014.
- 21.** The provision as to prospective effect has been retained in the current Master Circular dated July 1, 2015. In the instant case, it is

submitted that the guarantees were given by the petitioner prior to September 9, 2014, which was the cut-off date.

- 22.** Learned counsel for the petitioner thereafter argues that declaration of the account of the corporate debtor as NPA (Non-Performing Asset) could not have preceded the purported event of defaults on the basis of which the petitioner has been deemed as a Wilful Defaulter. It is contended that the allegations of default in the present case are subsequent to declaration of the said account as NPA and as such, not tenable in the eye of law. It is further argued that for commission of wilful default in terms of Clause 2.1.3, there has to be a default in the first place.
- 23.** It is contended by the petitioner that unutilized balance remained as on March 2016 and 2017 to repay the debt of the respondent Bank, for which the Review Committee declared the petitioner and others as Wilful Defaulter within the meaning of Clause 2.1.3 of the Master Circular. Strangely, it is argued, dispute the fact that the account of the corporate debtor maintained with the respondent Bank was declared as NPA on August 31, 2013, the Bank has considered events which occurred post declaration of NPA as well.
- 24.** Thus, it is argued by learned counsel appearing for the petitioner that the declarations of the petitioner as Wilful Defaulter by the Identification Committee as well as the Review Committee are required to be set aside.
- 25.** Learned counsel appearing for the respondent no.1-Bank (SBI), on the other hand, submits that the liability of the petitioner (personal

guarantor) is not extinguished as per the approved Resolution Plan. The order dated April 7, 2021 passed by the NCLT, Kolkata approving said Plan has not been challenged by the petitioner. The SBI, it is contended, retains its right to proceed against the writ petitioner in terms of the Resolution Plan.

- 26.** It is argued that the SBI received only the meagre amount of 53.84 per cent of Rs. 30.50 crore, which was the total amount received by the three creditor banks. Hence, the personal guarantors were not let off the hook in the Resolution Plan. The respondent no. 1-bank, it is argued, is entitled to recover the balance amount from the petitioner.
- 27.** The activity of assigning debts by accepting deposits has actually not happened in the present case as this assignment is in terms of the approval of the Resolution Plan of the Committee of Creditors (CoC) by the NCLT.
- 28.** With regard to the case of *ICICI Bank (supra)*, it is submitted that the ratio of the same is not applicable to the present case.
- 29.** The fact that the DRP Trading and Investment Private Limited has been assigned the debt and not the SBI does not make a difference in the present case.
- 30.** Learned counsel appearing for the bank distinguishes the judgment in the matter of *Vineet Saraf (supra)* on the ground that the court therein refused to issue a writ of prohibition to prevent the creditor from approaching the NCLT under Section 95 of the IBC against the personal guarantors.

31. Learned counsel next argues that the present assignment is not an absolute assignment. The debt was not split but both the mortgage and assignee are eligible to attempt recovery of the dues.
32. Upon assignment of debt to DRP Trading and Investment Private Limited, the assignee becomes the creditor for that portion of debt which is so assigned and the SBI may endeavour to recover the rest portion of the unassigned public debt from the guarantors.
33. Learned counsel for the Bank argues that in the case of *Lalit Kumar Jain (supra)*, it was held the release or discharge of a principal borrower from the debt owed by it to its creditors by an involuntary process, that is by operation of law, or due to liquidation or insolvency process, does not absolve the surety/guarantor of his/her liability arising out of an independent contract.
34. The terms of the Resolution Plan are also required to be looked into, it is submitted. Learned counsel for the bank relies on the Resolution Plan itself in support of such submissions. It is reiterated that the bank could recover only a fraction of its dues by the assignment.
35. Since the Resolution Plan in the present case excludes personal guarantees from the purview of the assignment, the bank retains the right to invoke the personal guarantee and proceed against the personal guarantor notwithstanding that the entire portion of the remaining debt stood assigned to DRP Trading and Investment Private Limited. The liability of guarantor, it is argued, is co-extensive to that of the principle debtor.

- 36.** Learned counsel for the petitioner refutes the argument that the assignee is not the lender, which proposition, it is contended, does not come to the aid of the writ petitioner. The SBI has also proceeded against the writ petitioner before the NCLT, where final judgment is yet to be pronounced.
- 37.** It is also argued by the SBI that a proceeding under the Master Circular is a proceeding *in rem*.
- 38.** It is next argued that the deed of guarantee was executed on March 28, 2014. Clause 2.6 only refers to the debt in respect of such personal guarantors being made applicable after September 9, 2014, which does not mean that the guarantees executed before such time cannot be proceeded against.
- 39.** The loan, it is submitted, was restructured on March 28, 2014, after which the borrower company did not mend its ways and the loan again became bad, for which the NPA date was shifted back as per the RBI guidelines to the original date of NPA, that is, August 31, 2013.
- 40.** Thus, it is argued that the present writ petition ought to be dismissed.
- 41.** The conclusions of the Court, upon hearing learned counsel for both sides, are summarized below.
- 42.** The first contention which has been raised by the petitioner is the in view of the assignment of debt by approval of the Resolution Plan by the NCLT, the principal debtor ceases to be liable to the original corporate creditor/bank and it becomes a borrower/debtor of the assignee. Thus, even if it is assumed that the corporate debtor or personal guarantor is still in debt due to the borrowing of the

corporate debtor, the liability if any would be towards the assignee, namely DRP Trading and Investment Private Limited, and not the bank.

43. The bank objects to such argument on the ground that the liability of the personal guarantor is not extinguished as per the approved Resolution Plan and that only a part of the debt was assigned and that the entire dues of the respondent no.1/bank were not satisfied even after the Resolution. It is argued by the Bank that for such balance amount, the bank is entitled to proceed against the petitioner/guarantor.
44. In *ICICI Bank Ltd. (supra)*, the context of consideration was different from the present case. There, the Supreme Court observed that debt due and payable by the borrower is an asset in the hands of the bank as a secured creditor or mortgagee or hypothecatee and that the bank can always transfer its assets. Such transfer, it was held, in no manner affects any rights or interest of the borrower.
45. In the present case, such ratio is not relevant, since no question has arisen as to whether the rights or interest of the borrower are affected by the assignment. Thus, the ratio of the said judgment need not be looked into in the present context.
46. In *Hutchens (supra)*, the High Court of Australia clarified that it is impossible to assign the debt while retaining the benefit of a guarantee and thereby convert one debt owing to one creditor by both the principal debtor and guarantor into two debts. The Delhi High Court considered the said judgment in *Vineet Saraf (supra)*. In *Vineet*

Saraf, the court considered whether the dictum of *Hutchens (supra)* is constrained by the peculiar facts of the case or is a general pronouncement on the rights of the surety.

47. In paragraph no. 154 of *Vineet Saraf*, the Delhi High Court observed preliminarily that the principles in *Hutchens* operate in different fields. While a reservation of rights clause is a private agreement between the parties, *Hutchens (supra)* on the other hand seems to be concerned with the legal compliance to the form and substance of a contract of guarantee. In fact, ultimately, the Delhi High Court refused to issue a writ of prohibition.
48. In agreement with the said judgment, this Court also finds that in *Hutchens*, the Australian High Court was generally dealing with the principles of assignment of debt. It was held therein that it would be simply impossible as a matter of basic principle to assign the benefit of a guarantee or security for it (as distinct from the property secured), while retaining the benefit of the guaranteed debt and thereby to convert the one debt owing to both principal debtor and guarantor to the one creditor into two debts, one owing by the principal debtor to the creditor and the other owing by the guarantor to the assignee.
49. Such principle, however, is not applicable to the present case. The Resolution Plan in the present case is the governing document to ascertain the actual position and interplay between the rights of the respondent no.1 bank and the assignee vis-a-vis the petitioner/personal guarantor.

- 50.** In such context, the relevant clauses of the Resolution Plan acquire relevance. Step 4 and Step 7 of the said plan are reproduced hereinbelow:

Step 4: Assignment of Debt	The Financial Creditor shall assign the Entire Admitted Debt of Cd to NBFC (DRP TRADING & INVESTMENT PVT.LTD) for an aggregated consideration of INR 30.50 Crore (apportioned on a pro-rata basis to the relative Debt). Further the RA confirmed that, the aforesaid NBFC is complied the provision of 29A of the IBC On successful assignment, Financial creditors shall be free to remit the consideration as agreed from the Escrow Account. As a part of the assignment, all the securities interest held by the Financial Creditors including but not limited to any security provided for the loan not accounted in the books of account of the Company and/ or any third-party security provided excluding Corporate Guarantee, Collateral Securities given by other person other than the Corporate Debtor and personal guarantee provided by the existing promoters of the Company shall be assigned to the NBFC Company. The approval of this Resolution Plan by the NCLT shall be deemed to have all the approval for procedural requirements in terms of relevant Section of the CA 2013 and Rules and RA will comply with all the procedural requirements, if required. It is hereby clarified that this Resolution Plan does
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Step 7: Conversion of Assigned Debt into Preference Share	not deal with personal Guarantors or Corporate Guarantors given by other person other than company. It should be noted that, Company and/or RA shall be immune from any subrogation right by whatsoever nature arising out of enforcement of such Guarantee/obligation. RA proposed to convert the part of the assigned debt as mentioned in step 4. into Preference Share with Face Value of Rs.10 each, which shall be issued to NBFC The nature of the Preference Shares to be decided at the time of implementation of the Step. Implementation of this step is the sole discretion of the Resolution Applicant and purely based on business need. The approval of this Resolution Plan by the NCLT shall be deemed to have all the approval for procedural requirements in terms of relevant Section of the CA 2013 and Rules and RA will comply with all the procedural requirements, if required.
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- 51.** A salient feature of the assignment is that the financial creditors shall assign the entire admitted debt of the Corporate Debtor (CD) to the Non-Banking Financial Institution. Thus, the argument of the respondent no.1 bank that only a portion of the debt was assigned and that the respondent no.1 bank still retains the right to recover

the other portion is baseless. The assignment covers the entire admitted debt of the corporate debtor, thus leaving no scope of partial satisfaction of the debt.

- 52.** However, such assignment of debt, although covering the entire admitted debt, was only with regard to the CD and not the guarantors. In the fourth paragraph of Step 4, it is clearly mentioned that as a part of the assignment, all the securities interest held by the Financial Creditors including but not limited to any security provided for the loan not accounted in the books of account of the company and/or any third party security provided shall be assigned to the NBFC company. However, in the same sentence, corporate guarantee, collateral securities given by other persons than the corporate debtor and personal guarantee provided by the existing promoters of the company were specifically excluded from the purview of such assignment.
- 53.** In the very next paragraph, it is further clarified that the Resolution Plan does not deal with personal guarantors or corporate guarantors given by any other person than the company. Also, the company and/or Resolution Applicant have been made immune from any subrogation right of whatsoever nature arising out of enforcement of such guarantee/obligation.
- 54.** Thus, there is no ambiguity in Step 4, which is the specific clause relating to assignment of debt in the Resolution Plan, that the entire debt of the financial creditors (including the SBI) was assigned to the NBFC, that is, DRP Trading & Investment Private Limited, only

in so far as the CD was concerned. Even the handing over of securities by assignment to the NBFC was restricted to the CD itself, specifically excluding guarantors from the purview of such assignment.

55. Thus, the clear position as per the said clause is that the liabilities for the debt taken by the CD, in so far as the CD is concerned, after the assignment, are owed to the assignee and no longer to the bank.
56. As regards the personal guarantors, the assignment does not take into account or include the liabilities of such entities. The obvious fallout is that the financial creditors, including the SBI, retain the right to recover the debt from the personal guarantors.
57. A dichotomy which seemingly arises at the first blush in such a scenario is that, in the same breath, the assignee, to whom the entire debt has been assigned, can recover the debt from the CD whereas in respect of the same debt, the original financial creditors can simultaneously recover the same debt from the personal guarantors, which is absurd, since the self-same debt, in such case, would be mutated into two separate debts for the same amount.
58. However, the said conundrum can be resolved if we consider Step 7 of the Resolution Plan, relating to conversion of the assigned debt into shares. The debt which is assigned to the NBFC is converted by the resolution plan into preference shares with face value of Rs.10/- each, which shall be issued to the NBFC. Thus, the net effect is that the NBFC does not retain the right *per se* to realize the assigned debt from the corporate debtor but is compensated for the

consideration paid by it for such assignment by issuance in its favour preference shares of the rejuvenated corporate debtor of an amount equivalent to the assigned debt. Such conversion, thus, takes away the apprehension that the assignee shall be entitled to recover the self-same debt from the corporate debtor, which right has also been retained by the financial creditors vis-à-vis the personal guarantors.

- 59.** Hence, from the standpoint of the NBFC/assignee, it invested an amount for having the entire admitted debt of the CD assigned to it and was compensated for the same by consideration in the form of preference shares of the revived CD being issued in its favour.
- 60.** Thus, insofar as the right to recover the original debt is concerned, the same is foregone by the NBFC by conversion of such debt into equivalent preference shares of the CD.
- 61.** The question which now arises is whether the NBFC, simultaneously with the original financial creditor/bank, can recover the debt from the guarantors. The answer is a resounding “No”, since the Resolution Plan itself contemplates that the assignment, including the security interests, in favour of the NBFC is confined only to the CD-company, categorically excluding the guarantors. In fact, it is further clarified in the Resolution Plan that it does not deal at all with personal guarantors or corporate guarantees given by other persons than the company.

- 62.** Hence, the personal guarantors, being excluded from the purview of the Resolution Plan, are by default also excluded from the assignment of the right to recover debt in favour of the assignee.
- 63.** Insofar as the surviving liability for the debt is concerned, the same is retained by the financial creditors, including the respondent no.1-bank herein, to be exercised in respect of the guarantors only.
- 64.** The CD is absolved by operation of law in terms of the Resolution Plan and the assignee of the debt never gets any right to recover the debt from the guarantors, since the guarantors are excluded from the Resolution Plan as well as from the process of assignment itself.
- 65.** Hence, the argument that the same debt is either split up or mutated into a double barrel engine is not tenable in the eye of law.
- 66.** The debt survives only between the financial creditors/bank and the guarantors.
- 67.** Thus, the argument of the petitioner that its liabilities are transferred to the assignee is not borne out by the Resolution Plan and the corresponding provisions of the IBC.
- 68.** Having held so, some of the other issues raised by the petitioner become academic, which are dealt with below nevertheless.
- 69.** For example, the petitioner has raised an issue that the assignee cannot be a 'lender' within the contemplation of the Master Circular of 2015. Although such question does not arise in the present case in view of the above observations, such proposition is also erroneous in law. The definition of 'lender' in the Master Circular focuses on all Banks/Financial Institutions to which "any amount

is due". The expression "is due", thus lends a present continuous element to the liability. The reference frame is not the initial point of grant of loan but the continuous liability of the debtor. Hence, the term "lender" cannot be confined to the initial financial creditor which granted the loan but also covers any subsequent assignee of the loan or any entity having, at a given point of time, the right to recover such loan. Thus, even an assignee of a loan comes within the purview of "lender" as contemplated in the Master Circular.

- 70.** Insofar as the Wilful Defaulter proceeding not being *in rem* is concerned, such argument of the petitioner is also specious. The declared purpose of the Master Circular is to put in place a system to disseminate credit information pertaining to Wilful Defaulters for cautioning banks and financial institutions so as to ensure that further bank finance is not made available to them. The decision to declare an entity as a Wilful Defaulter, although not a judicial adjudication, has the plenary effect of cautioning all banks and financial institutions to ensure that further bank finance is not made available to such defaulters. Hence, by its very nature, the effect of such a declaration is not confined to the lender and the defaulter but operates *in rem*, true against the whole world.
- 71.** Accordingly, such argument of the petitioner cannot be accepted.
- 72.** The proposition in *Indus Biotech (supra)* to the effect that a proceeding under Section 7 of the IBC partakes of the character of *in rem* after admission of the application has no bearing in the present context at all. The said proceeding in the present case, in

respect of the CD, has already culminated in a Resolution Plan being approved by the NCLT, thus attaining finality.

- 73.** The petitioner has raised another issue that an entity cannot be declared to be a Wilful Defaulter under the Master Circular dated July 1, 2015 if the alleged acts of default are committed after classification of the account of the defaulter as NPA, which is also not acceptable.
- 74.** There is no such restriction in the Master Circular. The Master Circular clearly defines the expression 'wilful default', in Clause 2.1.3, which has been further elaborated in Clause 2.2. There is no implicit bar in such acts of default being committed even after classification of an account as NPA. The marking of an account as NPA is not an absolute phenomenon, but upon subsequent servicing of a loan, the NPA classification may be removed and an account may very well be regularized by the Bank/Financial Institution.
- 75.** Hence, there is an element of continuity in the liability of the borrower to repay the debt. Seen from such perspective, a borrower may very well make good the loan taken by it even subsequent to the classification of its account as NPA, thereby regularizing the account. By a logical corollary, the converse is also true, that is, if the borrower, despite having the means, fails to repay the loan and continues the violations as envisaged in Clause 2.1.3 read with Clause 2.2 of the Master Circular, there is no bar in declaring the

borrower and the other entities contemplated in the Master Circular as Wilful Defaulters.

- 76.** Accordingly, there was otherwise no bar in the Respond No.1-Bank (SBI), from continuing with the Wilful Defaulter proceeding against the petitioner even after the approval of the Resolution Plan of the borrower-company by the NCLT, since it also retained the corresponding right to recover the loan, although not from the CD-company, from the guarantors, including the present petitioner.
- 77.** However, all said and done, the petitioner in the present case, as a guarantor, is saved by a whisker, the saving grace being the date when it entered into the guarantee agreement. The bank, in its written notes, has categorically admitted that the deed of guarantee was executed on March 28, 2014.
- 78.** The bank seeks to interpret Clause 2.6 of the Master Circular in a manner that the said clause would be applicable to guarantees on and from September 9, 2014, even if the guarantee was given prior to the said date. However, the clear language of Clause 2.6 of the Master Circular dated July 1, 2015 militates against such an interpretation.
- 79.** The said clause provides, in no uncertain terms, that “this treatment”, of non-group corporate and individual guarantors was made applicable with effect from September 9, 2014, *and not to cases where guarantees were taken prior to this date.*
- 80.** The expression, “this treatment”, is preceded by the statement that in case the guarantor refuses to comply with the demand made by

the creditor/banker, despite having sufficient means to make payment of the dues, such guarantor would also be “treated” as Wilful Defaulter. The use of the term “treated” in the preceding sentence, read with the expression “treatment”, makes it very clear that treatment as a Wilful Defaulter can only take place in respect of guarantors when the guarantee was taken on or after September 9, 2014. Since, in the present case, March 28, 2014 was the date when the petitioner executed the deed of guarantee, which is an admitted position, Clause 2.6 does not apply to the petitioner at all and as such, the declaration of the petitioner as a Wilful Defaulter in the capacity of a personal guarantor was bad in law.

- 81.** None of the parties have argued that the petitioner was liable to such declaration under any other capacity.
- 82.** In such view of the matter, WPO No. 1505 of 2023 is allowed on contest, thereby setting aside the impugned decision dated December 30, 2022, whereby the Review Committee confirmed the decision of the Wilful Defaulter Identification Committee that the petitioner is a Wilful Defaulter under the RBI Master Circular dated July 1, 2015.
- 83.** The respondents shall accordingly take all steps necessary to reverse any consequential action, if taken on the premise that the petitioner is a Wilful Defaulter, at the earliest and take down the name of the petitioner from the Wilful Defaulter's list, if uploaded in the meantime, within a fortnight from date.
- 84.** There will be no order as to costs.

- 85.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)