



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.08.2024

Pronounced on: 06.11.2024

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.Nos.34669, 34662 & 34679 of 2023
and WMP.Nos.34621, 34622, 34640, 34641, 34615 & 34616 of 2023

V.Srinivasan

...Petitioner in WP.34669 of 2023

Saravana Sivasankaran

...Petitioner in WP.34679 of 2023

Sanjeev Bafna

...Petitioner in WP.34662 of 2023

Vs.

IDBI Bank Limited
No.115, Anna Salai,
P.B.No.805, Saidapet,
Chennai-600 015.

...Respondent in all WPs

Prayer in WP.No.34669 of 2023: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari calling for the records of the Review Committee of Respondent in the impugned Order No.WDRC/24/(FY2023-24)/WPEL dated 12.10.2023, quash the same.



Prayer in WP.No.34679 of 2023: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari calling for the records of the Wilful Defaulters Review Committee of Respondent in the impugned Order No.WDRC/24/(FY2023-24)/WPEL dated 12.10.2023, quash the same.

Prayer in WP.No.34662 of 2023: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari calling for the records of the Review Committee of Respondent in the impugned Order No.WDRC/24/(FY2023-24)/WPEL dated 12.10.2023, quash the same.

Case Nos.	For Petitioners	For Respondents
WP.No.34669 of 2023	Mr.P.V.Balasubramanian, Senior Counsel For Mr.R.Palaniandavan	Mr.Omprakash, Senior Counsel For M/s.Ramalingam Associates
WP.No.34662 of 2023	Mr.A.K.Sriram, Senior Counsel For Mr.R.Palaniandavan	Mr.Omprakash, Senior Counsel For M/s.Ramalingam Associates
WP.No.34679 of 2023	Mr.T.Mohan, Senior Counsel For M/s.Vivrti Law	Mr.Omprakash, Senior Counsel For M/s.Ramalingam Associates

COMMON ORDER

The Writ Petitioners were Directors in Winwind Power Energy Private Limited (in short 'Company'). They challenge proceedings of the Defaulters Review Committee (DRC) of the IDBI Bank on various grounds.



2. Mr.P.V.Balasubramanian and Mr.A.K.Sriram, learned Senior Counsels appear for Mr.R.Palaniandavan, learned counsel on record for the petitioners in W.P.Nos.34669 and 34662 of 2023, Mr.T.Mohan, learned Senior Counsel appears for Vivriti Law, learned counsel on record for the petitioner in W.P.No.34679 of 2023 and Mr.Omprakash, learned Senior Counsel appears for M/s.Ramalingam Associates, for the respondent bank.

3. The submissions of the petitioners are as follows:

- i) All petitioners accede to the factum of Directorship in the company.
- ii) They accede to the fact that the company had availed financial facilities from IDBI.
- iii) None of the petitioners are either direct borrowers, nor are they co-borrowers/guarantors in respect of the loan facilities availed by the company.
- iv) The loan account of the company was classified as a Non-Performing Asset (NPA) on 30.09.2014, with effect from 30.06.2012.
- v) While an ambiguity has been raised as to how the classification as NPA would be with effect from 30.06.2012 as the loan facility was re-structured only on that date, it has been explained by the bank as follows:



a) It is true that on defaults by the company, there was a request for re-structuring which was also accepted and the financial arrangement restructured on 29.06.2012.

b) However, the defaults in repayment continued and hence the loan account was classified as NPA on 30.09.2014.

c) On classification as NPA, the date would revert back to the original date when the defaults had been identified and the loan restructured and hence the classification as NPA would run from the original date of default onwards.

d) This is the procedure that is followed in accordance with the Reserve Bank of India (RBI) mandate in this regard.

vi) The above explanation is accepted as being proper and appropriate and in accordance with the extant Rules of RBI.

vii) The company had gone into Corporate Insolvency Resolution Process (CIRP) in 2018 under the provisions of the Insolvency and Bankruptcy Code, 2016 (in short 'Code').

viii) It was transferred as a going concern to Agniti Industrial Parks Private Limited on 14.10.2020 and the take-over was approved by the National Company Law Tribunal (NCLT), Chennai on 08.02.2021.



ix) Only thereafter, in 2022, did the bank wake up and examine the accounts of the company.

x) A show cause notice was issued on 16.06.2022 alleging wilful default in respect of the financial facilities availed by the company.

xi) Replies had been sent by the petitioners on various dates.

xii) The constitution of the wilful Defaulters Identification Committee (Identification Committee) was unknown to the petitioners, despite a specific request for the same having been made in the replies to the show cause notices.

xiii) In sum and substance, the reply of the petitioners was that they had no liability in respect of the defaults committed by the company as they were neither borrowers nor co-borrowers nor guarantors in respect of the loan facility.

xiv) Personal hearing was granted and written submissions were also filed.

xv) The Identification Committee had passed a cryptic order concurring with the observations of the 'Dealing Group' overriding the responses of the petitioners.

xvi) Though the petitioners had sought material in support of the alleged wilful default committed by them, no material was provided.

xvii) The replies of the petitioners had also referred to the Master Circulars issued by the RBI which were also given a go-by by the Identification Committee.



xviii) The original order of the Identification Committee was never served and only a copy was served on the petitioners.

xix) As regards the petitioner in W.P.No.34669 of 2023, the Committee noted that this petitioner had been declared as a wilful defaulter even by the State Bank of India when in fact that order had been challenged before, and quashed by this Court.

xx) All petitioners filed Review Petitions before the wilful Defaulters Review Committee (Review Committee).

xxi) The order of the Identification Committee had been confirmed. However, the original order was not provided and only a copy of the same was served on the petitioners.

xxii) The order of the Review Committee has been issued under the name of the Chief General Manager, NPA Management Group of the respondent bank.

xxiii) However, the Chief General Manager is not a competent person to serve on the Review Committee per applicable RBI Master Circulars.

xxiv) The orders are non-speaking and reveal absolutely no application of mind to the various and series of grounds that had been set forth by the petitioners.



xxv) The petitioners would, in one voice, pray that the impugned orders be quashed as being wholly arbitrary, illegal and in contravention of the Circulars of RBI.

4. The submissions of the respondent are as follows:

i) The Writ Petitions are not maintainable as IDBI is not a 'State' under Article 12 of the Constitution. Moreover, the facts and circumstances do not merit the applicability of the parameters touching upon 'instrumentality of the State' as contained in Article 12 of the Constitution of India.

ii) The bank has been re-categorized as a private sector bank for regulatory purposes with effect from 21.01.2019. Hence, all the more is it clear that it is neither a State nor an instrumentality of the State.

iii) Without prejudice to the question on maintainability, there are various assertions claiming to be facts which the respondent denies. Hence these Writ Petitions are not maintainable in the face of the manifold disputed facts at play.

iv) The Master Circulars issued by RBI have clearly set out the procedure to be followed by the Identification Committee and thereafter by the Review Committee.

v) The procedure followed has been scrupulous and there has also been full adherence to principles of natural justice.



vi) The company had availed Rupee Term Loan (RTL) to the limit of Rs.47.50 Crores during August, 2008 and Working Capital facility of a sum of Rs.80.00 Crores in January, 2009. The Working Capital facility was reduced to Rs.60 Crores thereafter.

vii) There had been defaults and on the request of the borrower, the lead bank, State Bank of India, had proposed a restructuring package which was accepted and implemented by all lenders, of which IDBI was one.

viii) The restructuring was effected under sanction letter dated 29.06.2012.

ix) The defaults continued and hence the account was closed as NPA in 2014, with effect from 2012.

x) CIRP was initiated in 2018 and as there was no acceptable resolution plan that was arrived at, liquidation was ordered by the NCLT on 08.08.2019.

xi) At an auction conducted in the course of the liquidation process, a successful proposal was received from Agniti Industrial Parks Pvt. Ltd. and the company was sold as a going concern, approved by the NCLT on 08.02.2021.

xii) The angle of wilful default was examined only thereafter by the Identification Committee.



xiii) According to the bank, there were two irregularities. The first was a diversion of funds, meaning specifically non-utilisation of monies borrowed for a specific purpose but diverted for other purposes.

xiv) They would also allege that the utilization of Working Capital funds was not in conformity with the terms of the sanction.

xv) They also allege that in 2010 and 2011, the bank borrowings were far in excess of the total Working Capital requirements and hence it was suspected that the utilization of funds were for other purposes than for which the loan had been sanctioned.

xvi) Thus, as a second irregularity, there was an allegation of siphoning off of funds to related parties, namely, Siva Renewable Power and Energy Ltd (SRPL) and Hi-tech Housing Project Pvt. Ltd. (HPPL).

xvii) The procedure followed post issuance of Show cause notices was proper and an opportunity of personal hearing had been granted in all cases.

xviii) Admittedly, the petitioners have been Directors at the relevant point in time and hence there is no merit in the Writ Petitions which are liable to be dismissed.

5. Reliance is placed on the following Circulars:

i) RBI Circular DBOD No.BC/CIS/47/20.16.002/94 dated 23.04.1994



- ii) DBOD No.BC.DLW)12/20.16.002(1)/98-99 dated 20.02.1999
- iii) DBOD No.DL(W)BC.110/20.16.003/2001-02 dated 30.05.2002
- iv) DBOD No.CID.BC.3/20.16.003/2013-14 dated 01.07.2013
- v) RBI/2023-24/06 DOR.STR.REC.3/21.04.048/2023-24 dated 01.04.2023

6. Reliance is placed on the judgments in *State Bank of India and others V. Rajesh Agarwal and others* ((2023 6 SCC 1) and *State Bank of India V. Jah Developers Private Limited and others* (2019) 6 SCC 787.

7. Heard all learned Senior Counsels, perused the material particulars and studied the cases and Circulars relied upon. The original records were sought and, on production, have been perused.

8. The tabulation of the relevant particulars relating to the petitioners is set out below:

S.No	Name	Date of appointment	Cessation	Status of the petitioner in the company	Date of reply to SCN	Date of order of the identification committee
1	Vaidyanathan Srinivasan	9.8.2007	14.1.2015	Director	27.6.2022	30.11.2022
2	Sivasankaran Saravanan	17.9.2008	20.7.2015	Promoter	6.7.2022	30.11.2022
3	Sanjeev Bafna	15.10.2009	14.3.2017	Director	27.6.2022	30.11.2022



WEB COPY

9. The background to the action to be taken in respect of wilful defaulters has been set out by the Supreme Court in the cases of *Rajesh Agarwal* (supra) and *Jha Developers Private Limited* (supra). A note of caution was sounded as early as in 1994 by RBI vide its Circular dated 23.04.1994, wherein referring to the speech of the then Finance Minister, an alert was sounded to banks and financial institutions to put them on guard and alert them against entities who are habitual defaulters, or at least those who are known to have defaulted in respect of their dues to banks and financial institutions. Several measures were initiated in this respect.

10. RBI had stated that it would place in public domain the list of those borrowers in respect of whom litigation has been initiated by the RBI. In general, the move was to collect and disseminate information in regard to the defaults and the pecuniary threshold in this regard was fixed at a sum of Rs.1 crore and above.

11. A public notice was issued which revealed the measures to be taken in regard to the defaulting borrowers including the authorization extended to CIBIL (Credit Information Bureau (India) Limited) to publish the defaulters list. The measures continued under communication dated 20.02.1999 where the instructions of the Central Vigilance Commission for collection of information of wilful



defaulters was collated and a scheme was set out by the RBI under which banks and financial institutions were required to submit details of wilful defaulters.

12. The Scheme provided inter alia, and for the first time, that the banks/financial institutions would form a Committee consisting of three General Managers (GM)/Deputy General Managers (DGM) for identifying the cases of wilful default. This is what has come to be referred to as Identification Committee.

13. On 30.05.2002, the scheme for dealing with wilful defaulters was streamlined and clarity was provided on the procedure that was to be followed. A definition was provided for wilful default, as follows:

A "wilful default" would be deemed to have occurred if any of the following events is noted:-

(a) the unit has defaulted in meeting its payment / repayment obligations to the lender even when it has the capacity to honour the said obligations.

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

(c) The unit has defaulted in meeting its payment / repayment obligations to the lender and has siphoned off the funds so that the funds have not been utilised for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets.



14. In Circular DBOD No.BC/CIS/47/20.16.002/94 dated 23.04.1994, financial institutions and banks were advised to compile a list of wilful defaults and submit them to the RBI at regular intervals. All previous Circulars were collated and a Master Circular was issued on 01.07.2013 which, for the first time, set out a detailed structure on the measures that would be taken in order to address the issue of wilful default. These measures provide inter alia, for grievance redressal mechanisms, and criminal action to be initiated against wilful defaulters.

15. The structure in brief, as set out in the above Master Circular on Wilful Defaulters is extracted below:

1	Introduction
2	Guidelines issued on wilful defaulters on May 30, 2002
	2.1 Definition of Wilful Default
	2.2 Diversion and siphoning of funds
	2.3 Cut-off limits
	2.4 End-use of Funds
	2.5 Penal measures
	2.6 Guarantees furnished by group companies
	2.7 Role of Auditors
	2.8 Role of Internal Audit / Inspection
	2.9 Reporting to RBI / Credit Information Companies
3	Grievances Redressal Mechanism
4	Criminal Action against Wilful Defaulters
	4.1 J P C recommendations
	4.2 Monitoring of End Use
	4.3 Criminal Action by Banks / FIs
5	Reporting Names of Directors
	5.1 Need for Ensuring Accuracy
	5.2 Position regarding Guarantors
	5.3 Government Undertakings
	5.4 Inclusion of Director Identification Number (DIN)
6	Annex 1 - Reporting Format
	Annex 2 - List of Circulars consolidated



WEB COPY

16. Master Circulars on wilful defaults appear to have been issued annually thereafter, incorporating the instructions and guidelines periodically issued in regard to cases of wilful default. It is seen that the procedure has been updated from time to time.

17. In Master Circular bearing DBR No.CID.BC.22/20.16.003/2015-16 dated 01.07.2015 which consolidates all instructions and guidelines issued till 30.06.2015 the mechanism for identification of wilful defaulters has been set out in detail, as follows:

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 / 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. 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.

18. The constitution of the Identification and Review Committees has also been amended. As far as criminal action is concerned, there is no difference and the word of caution that figures in the earlier Master Circulars to the effect that penal provisions must be used with due caution and in a transparent manner, continues. The proposal for initiation of criminal action as contained in Circular No DBOD No.CID.BC.3/20.16.003/13-14 dated 01.07.2013 thus remains constant over the years in the following terms:

4. Criminal Action against Wilful Defaulters

(ii) Criminal Action by Banks / FIs

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



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

19. The need for accurate reporting and transparency has thus remained constant through the Master Circulars and the substantive amendments to the Master Circulars as seen over the years would relate to the mechanisms that have been put in place to address defaults and the change in the constitution of the Identification and Review Committees. In the present cases, one of the main contentions of the petitioners is in regard to the fact that neither the Identification nor the Review Committees have remained true to the constitution as set out in the Master Circulars. According to them, this would go to the root of the matter.

20. The fact that RBI has amended the constitution over the years would indicate due application of mind to the constitution of the committees. Senior members of the Committee have been inducted to ensure that the mandate of transparency and accuracy is maintained throughout.

21. There is thus some merit in the contention that the constitution of the Committees must be in tandem with what is prescribed under the Master Circulars. Any deviation from this aspect shall be fatal to the integrity of the procedure and ultimately the proceedings themselves.



22. In the present case, the Identification Committee is seen to comprise of Chairman, J.Samuel Joseph, DMD, Member, S.G.Nadkarni, ED-LCG and Member Murali Sourirajan, ED-NMG and the Review Committee contains only the signature of A.Mallikarjun, Chief General Manager, NPA Management Group. Shri Rakesh Sharma, MD & CEO – Chairman, Shri SamareshParida, Independent Director and Smt.P.V.Bharathi, Independent Director are stated to have attended through Video Conference from Bengaluru but the records do not contain any order duly signed by all members.

23. Contrast this with the stipulations under the Master Circulars as per which the Identification Committee should be headed by an Executive Director or equivalent and comprise of two other senior officers of the rank of GM/DGM. The Review Committee should be headed by Chairman/Chairman & Managing director or the Managing director and Chief Executive Officer/CEOs and two independent directors/non-executive directors of the bank. On this comparison, I find a marked difference between the requirements as per the Circulars and the actual constituents of the Committees.

24. I have carefully perused the orders of the Identification Committee as well as the Review Committee. The Supreme Court in the case of *Jah Developers Private Limited and others* (supra) has indicated that there is no necessity for an



opportunity of hearing to be granted both at the level of the Identification as well as the Review Committees. However, in this case, the respondents are at pains to point out that they have, in fact, heard the petitioners on both instances.

25. However, in order to render the hearing effective, the order must reflect all contentions as raised by the parties. While it is true that hearing notices have been issued and the petitioners heard, many of the contentions raised in the written submissions do not find place in the orders. To illustrate the aforesaid finding, I extract below the operative portion of the order of the Identification Committee:

The dealing group verified the factual aspects of the submissions made by Shri Vaidyanathan Srinivasan, Shri. Sanjeev Bafna and Shri Sivasankaran Saravana during the personal hearing and written submissions made by them and submitted their comments as under:

- ✓ *In respect of wilful default charge 2.2. 1(a) - (Diversion of funds), submission made by Directors of WPEL is not tenable as bank borrowings availed by WPEL was more than the total WC requirement. Therefore, it appears to be utilization of funds for the purposes other than the purpose for which loan was sanctioned.*
- ✓ *In respect of wilful default charge (Clause: 2.1.3(c) 2.2.2 - Siphoning off of funds) Promoters/Directors have admitted the transactions effected between Siva Renewable Power and Energy Ltd. and Hi-tech Housing Project Pvt. Ltd. As per transaction audit report, it is stated that in terms of sanction letter of the credit facility provided by the banks, all the current asset of the company has been hypothecated to the bank, which means bank had first right towards the receivable of SRPL. Hence the aforesaid transaction leads to preferential payments made to related parties and that is detrimental to the financial*



WEB COPY



health of the lender. In view of the above, the submission made by Shri Sanjeev Bafna and Shri Vaidyanathan Srinivasan are not acceptable.

- ✓ *Promoter / Director viz., Shri Sivasankaran Saravana had not given any specific reply to the transactions observed under Diversion / Siphoning of funds and had mentioned that he was NRI for the period from 2011 to 2015 and not a Director in charge of day to day affairs nor a signatory.*
- ✓ *Submissions made during the personal hearing and subsequently vide letter dated August 05, 2022 were similar to what was stated in their earlier letters and without any sufficient justification for the transactions mentioned in the SCN.*
- ✓ *Since, Shri Sivasankaran Saravana had not given any specific reply to the transactions observed under Diversion / Siphoning of funds, his submission were not acceptable.*
- ✓ *There were no response from other Promoter/directors viz., Shri. ShajuPadamattumel Sebastian Stephen, Shri. Sultan Ahmed Al Jaber, Shri Ziad Tassabehii and Shri. Henri Antti Erik Grundsten. SCN forwarded to their address were returned and emails sent were not acknowledged. Undelivered SCN published in newspaper.*

5. WDC at its meeting held on October 17, 2022 deliberated on memorandum and submission made by Dealing Group and noted as under.

- ✓ *The Committee concurred with observations of Dealing Group mentioned hereinabove.*
- ✓ *Shri Shri Vaidyanathan Srinivasan, Shri. Sanjeev Bafna and Shri Saravana Sivasankaran could not provide convincing and conducive replies to the wilful default charges in their reply to*



SCN on behalf of themselves, company and directors / guarantors.

WEB COPY

- ✓ They also failed to provide supportive documents in support of their submissions. There were no responses from other Promoter/directors viz., Shri. ShajuPadamattumel Sebastian Stephen, Shri. Sultan Ahmed Al Jaber, Shri Ziad Tassabehii and Shri. Henri Antti Erik Grundsten.
- ✓ SBI(Lead Bank) has declared the account as wilful defaulter along with following directors: (i) Shri C Sivasankaran, (ii) Shri Padmavathy Suresh (iii) Shri S Sarvanan (iv) Shri Sanjeev Bafna (v) Shri Shankar Vardharajan (vi) Shri Vaidyanathan Srinivasan and following corporate guarantors : (vii) Hi Tech Housing Project Pvt. Ltd (viii) Siva Compulink Ltd (ix) Siva Industries and Holdings Ltd, (x) Sterling Agro Produce Pvt. Ltd (xi) Winwind OY, Finland.

6. The Committee therefore concluded that the Promoters / Erstwhile Directors of WEL viz. (i) Shri Saravana Sivasankaran, (ii) Shri Vaidyanathan Srinivasan, (iii) Shri Sanjeev Bafna, (iv) Shri ShajuPadamattumel Sebastian Stephen, (v) Shri Sultan Ahmed Al Jaber, (vi) Shri Ziad Tassabehji and (vi) Shri Henri Anti Erik Grundsten are fit to be declared as wilful Defaulter in terms of Clauses 2.1.3 (b) (2.2.1 (a)) & 2.1.3 (c) (2.2.2) of RBI circular dated July 01, 2015 on Wilful Defaulters as summarized at para 3 above.

7. Accordingly, the Committee recorded its findings as under:

(a) WPEL has defaulted in meeting its payment / repayment obligations to the lender and the Promoters / erstwhile Directors / Guarantors of WPEL viz. 1.Shri Saravana Sivasankaran, 2. Shri Vaidyanathan Srinivasan, 3. Shri Sanjeev Bafna, 4. Shri ShajuPadamattumel Sebastian Stephen, 5. Shri Sultan Ahmed Al Jaber, 6. Shri Ziad Tassabehji and 7. Shri Henri Antti Erik Grundsten have committed wilful default as per the RBI's Master circular on Wilful Defaulters dated July 01, 2015 in terms of Clauses 2.1.3 (b) (2.2.1 (a)) & 2.1.3 (c) (2.2.2)



WEB COPY

(b) The Promoters / Erstwhile Directors of WPEL viz. 1. Shri Saravana Sivasankaran, 2. Shri. Vaidyanathan Srinivasan, 3. Shri Sanjeev Bafna, 4. Shri Shaju Padamattumel Sebastian Stephen, 5. Shri Sultan Ahmed Ai Jaber, 6. Shri Ziad Tassabehji and 7. Shri Henri Antti Erik Grundsten are fit to be declared as Wilful Defaulters and the decision of the Committee may be submitted to Wilful Defaulters Review Committee for confirmation and thereafter for reporting to Credit Information Companies (CICs) and other actions to be initiated as specified in RBI Circular.

26. There are no findings in regard to the issues raised by the petitioners and all contentions have merely been brushed away without any reasons being assigned in that regard.

27. Additionally, and as regards the order of the Review Committee, since what has been served upon the parties is a single page order bereft of any reasoning, I had specifically sought from Mr. Omprakash a clarification on whether that constituted the entirety of the order. He had explained that the order had, in fact, been more elaborate, but that for administrative and logistic purposes, what has been communicated was only the operative portion. I had hence sought the records to peruse the entirety of the order of the Review Committee.

28. The records do not contain any order other than the one-page order impugned in these Writ Petitions. That order of the Review Committee reads as follows:

The WDRC deliberated on the records and order passed by WDC carefully examined the contents of the submissions and written



WEB COPY

representations made by the erstwhile Promoter / Directors) of WPEL and after thorough perusal of the records of the matter, the WDRC resolved that:

The erstwhile Promoter / Directors) of WPEL, viz, 1. Shri Vaidyanathan Srinivasan 2. Shri Sanjeev Bafna and 3. Shri Saravana Sivasankaran are fit to be declared as wilful defaulter in terms of criteria Clause 2.13 (c) [2.2.2] as laid down in RBI's Circular and that to withdraw wilful defaulter proceedings initiated against the erstwhile Promoter / Director(s), viz., (i) Shri Shaju Padamattumel Sebastian Stephen, (ii) Shri Sultan Ahmed Al Jaber, (iii) Shri Ziad Tassabchji and (iv) Shri Henri Antti Erik Grundsten.

In view of the above, it is ordered that erstwhile Promoter / Directors) of WPEL viz., 1. Shri Vaidyanathan Srinivasan 2. Shri Sanjeev Bafna and 3. Shri Saravana Sivasankaran are fit to be declared as wilful defaulter in terms of criteria Clause 2.1.3 (c) (2.2.2] as laid down in RBI Circular and their names are to be reported to the CIC and other actions be initiated against all of the above as specified in RBI Circular.

BY THE ORDER OF THE WILFUL DEFAULTER'S REVIEW COMMITTEE.

*A.Mallikarjun
Chief General Manager
NPA Management Group*

29. As the petitioners point out, the Scheme formulated to deal with wilful defaulters is stringent in many ways. It proceeds on the position that the noticee is an economic defaulter which by itself, is stigmatizing. The consequences of being fastened with this allegation are manifold. The authorities are bound to, in line with the Circulars of the RBI, report the defalcations indicated by the RBI with all



attendant consequences, such as bar of Directorship in all companies. The levy of penalty is stringent and the penal provisions under the Scheme are as follows:

4. Criminal Action against Wilful Defaulters

4.1 J.P.C. Recommendations

Reserve Bank examined, the issues relating to restraining wilful defaults in consultation with the Standing Technical Advisory Committee on Financial Regulation in the context of the following recommendations of the JPC and in particular, on the need for initiating criminal action against concerned borrowers, viz.

a. It is essential that offences of breach of trust or cheating construed to have been committed in the case of loans should be clearly defined under the existing statutes governing the banks, providing for criminal action in all cases where the borrowers divert the funds with mala fide intentions.

b. It is essential that banks closely monitor the end-use of funds and obtain certificates from the borrowers certifying that the funds have been used for the purpose for which these were obtained.

c. Wrong certification should attract criminal action against the borrower.

30. In my considered view, the procedure followed by the respondent lacks transparency, particularly when the consequence of the Scheme are onerous. Aside from that, the respondents have not adhered to the requirements under the Scheme in terms of the constitution of the Committee. The impugned orders reflect pre-determination of the issue and many of the contentions advanced by the petitioners have not been addressed.



31. While the discussion as above would suffice to justify the conclusion arrived at, a word on the merits itself. The tenure of Directorship of the petitioners have been set out in the tabulation at paragraph 8 above. Undoubtedly, they were Directors at the relevant point in time. It is however their contention that they were never actively engaged in the management of the company. This has not been denied by the respondents.

32. In addition, Mr.Saravana Sivasankaran, petitioner in WP.34679 of 2023 has contended that he was not in the Country during the tenure of Directorship as he had been pursuing academic studies abroad. However, in my considered view, this may not be a factor to exonerate a Director if negligence or malfeasance is made out otherwise. In the present case, the respondent has not established this critical aspect of the matter.

33. I also find that there has been substantial delay on the part of the respondents in taking necessary steps. The company has been declared as an NPA in 2014 with retrospective effect from 2012. It has gone into CIRP in 2018 and has been wound up by an order of NCLT in 2021. It is only thereafter that the respondent has even looked into the accounts, coming to the conclusion that there has been wilful default.



34. No doubt, since the defaults in financial arrangements have a direct impact on public money and public interest, the ground of delay on the part of the bank would not, by itself, be fatal to its interests, or stand in the way of action being taken as against the company or its directors. However, it is a pre-requisite that wilful default must be established prior to such action being initiated.

35. The reasons advanced by the bank to classify the petitioners as wilful defaulters were originally two fold. However, they have, in the course of the proceedings, been reduced only to one, as the explanations tendered in regard to one of the alleged defaults have been accepted by the bank. Even in the case of the lone default that has been identified, an explanation has been tendered by the petitioners. That default relates to the allegation that financial facilities were far in excess of the working capital requirements. Hence there was an inference that the excess financial facilities would have been diverted to the Directors.

36. This is a mere assumption. If at all this allegation were to be the basis of the impugned action, it is necessary that sufficient evidence be brought on record by the bank to establish such diversion. Merely because the quantum of loans were in excess of working capital requirements, it cannot be assumed that a) the amounts had been diverted, b) it was the Directors who were responsible for the



diversion and c) the Directors or their nominees were beneficiaries of the diverted funds.

37. The larger question that would arise is the role of the bank in granting such financial facilities without ascertaining the working capital requirements of the company. After all, it is the bank, which is the custodian of public funds. Even assuming that the company or its officials had been remiss, they are commercial players who would have to face the consequences in the event of default being established. However, there is no excuse for a bank dealing with public funds to blindly extend financial facilities allegedly in excess of working capital requirements and, more importantly, detecting lapses, if at all, 7 years after the alleged occurrence.

38. While the Court is fully in sync with the tone, tenor, scope and object of the wilful defaulters Scheme and agrees that the same must be implemented ruthlessly and without exception, there has to be a modicum of responsibility in the administration of the Scheme by the bank. In the present case, the Court finds this aspect conspicuous by its absence.

39. Thus, on a combined appreciation of the three factors, that the respondents have not made out wilful default by the petitioners, the procedure followed is not in line with the stipulations under the Scheme/RBI Circulars and



the bank is itself seen to be remiss in the administration of the Scheme, I set aside

the impugned orders and allow these Writ Petitions. No costs. Connected

Miscellaneous Petitions are closed.

06.11.2024

Index: Yes

Speaking order

Neutral Citation: Yes

Sl



WEB COPY

W.P.Nos.34669, 34662 & 34679 of 2023



DR. ANITA SUMANTH, J.

sl

W.P.Nos.34669, 34662 & 34679 of 2023

06.11.2024