IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
16.09.2025	26.09.2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 14640 OF 2022
AND
W.M.P. NO. 13842 OF 2022

1. Rajiv Rai
2. Ritesh Rai .. Petitioners

- Vs -

1. Bank of Baroda
Rep. By its General Manager
Stressed Assets Management Branch (SAM)
No.45, Moore Street, JBAS Building 4th Floor
Chennai 600 001.

2. The Reserve Bank of India
Rep. By its Regional Director
Fort Glacis, No.16, Rajaji Salai
Chennai 600 001. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records of the 1st respondent in Letter No.BARB/SAM/WFD/SBQ/01/3/2021 dated 14.12.2021 and Letter No.BARB/SAM/WFD/SBQ/02/4/2022 dated 11.05.2022 and quash the same and to forbear the 1st respondent from taking any coercive steps.

For Petitioners	:	Mr.S.R.Raghunathan
For Respondents	:	Mr. M.L.Ganesh for R-1 No Appearance for R-2

ORDER

Aggrieved by the impugned order in and by which the petitioners have been declared as wilful defaulters, the present writ petition has been filed by the petitioners seeking quashment of the said order.

2. It is the averment of the petitioners that they are the erstwhile Directors of SBQ Steels Ltd., which was into production of High Grades of Steel and Generating Power. The 1st respondent had extended a term loan facility to SBQ Steels along with a consortium of nine lenders. In the year 2011, due to severe financial crisis and other extraneous factors, SBQ Steels was brought under Corporate Debt Restructuring as early as 2011 and despite diligent efforts to revive the company by the Directors/Promoters, the restructuring failed and the company was declared as Non-Performing Asset (for short 'NPA') in the year

2012 and between 2012 and 2014, the activities of the company was on the basis of the approval of the concurrent auditors appointed by the lead banker.

3. It is the further averment of the petitioners that proceedings were thereafter initiated under the Insolvency and Bankruptcy Code (for short 'IBC') before the National Company Law Tribunal (for short 'NCLT') and a Corporate Insolvency Resolution Process (for short 'CIRP')was initiated and a Resolution Professional was appointed to manage the affairs of the company in the year 2017. However, as no viable resolution plan could be formulated, the company was ordered to be liquidated in the year 2019 and the assets of the company were sold as a going concern and proceeds were disbursed to the creditors including the 1st respondent.

4. It is the further averment of the petitioners that the 1st respondent was a term loan lender and also participated in the resolution process. However, in the year 2021, after the expiry of about 9 years from the date on which the company was declared as a NPA and 4 years after the initiation of CIRP, show cause notice dated 26.7.2021 and 11.8.2021 were issued to the petitioners by the

1st respondent calling upon them to show cause as to why the petitioners should not be declared as wilful defaulters. It is the further averment of the petitioners that the show cause notice was on the basis of a forensic audit initiated by the 1st respondent without following any of the procedures contemplated by the Reserve Bank of India and further the copy of the audit report was also not provided to the petitioners. It is the further averment of the petitioners that the said show cause notice dated 11.8.2021 was challenged before this Court in W.P. No.26560 of 2021. It is the further averment of the petitioners that though all the other banks in the consortium had proposed to declare the company as a wilful defaulter in the year 2014-2015, however, upon being satisfied with the explanation and other materials submitted by the petitioners, the Grievance Redressal Committee had dropped the proceedings.

5. It is the further averment of the petitioners that on 23.8.2021 on receipt of the show cause notice, a detailed explanation was submitted along with the material records setting out the situation under which the company became a NPA and sought for withdrawal of the notice. Consequent to the said reply, the petitioners were called for a personal hearing on 23.11.2021 vide notice dated

9.11.2021 for which the petitioners vide letter dated 18.11.2021 sought the authority/jurisdiction under which the 1st respondent was proceeding against the petitioners.

6. However, without considering the explanation submitted by the petitioners and without furnishing the copy of the forensic audit report, the 1st respondent passed the order declaring the petitioners as wilful defaulters vide order dated 14.12.2021. The decision of the Committee of Executive (for short 'CoE') was communicated to the petitioners vide letter dated 14.12.2021 and the petitioner was afforded with an opportunity of submitting further representation for consideration by the Review Committee to which the petitioners submitted their explanation vide letter dated 22.12.2021. However, the Review Committee confirmed the proceeding vide order dated 11.05.2022 aggrieved by which the present writ petition has been filed by the petitioners.

7. Learned counsel, at the very outset, submitted that the impugned orders passed are without any jurisdiction and violative of principles of natural

justice as it infringes the right of equality guaranteed under the Constitution of India.

8. Learned counsel further submitted that the impugned orders are non-speaking orders as the objections raised by the petitioners have not been considered and, therefore, the said orders are liable to be set aside by following the dictum laid down by the Apex Court in ***Kranti Associates Pvt. Ltd. & Anr. – Vs – Massod Ahmed Khan & Ors. (2010 (9) SCC 496).***

9. It is the further submission of the learned counsel that the impugned proceedings are barred by limitation. It is the submission of the learned counsel that the company was declared as NPA in the year 2012 while the notice for initiating the impugned proceedings to declare the petitioners as wilful defaulters was issued only on 11.8.2021. In this regard it is the submission of the learned counsel that notwithstanding the objection to the right of the 1st respondent to initiate the present proceedings, the same has not been raised within a reasonable time and it has been raised after a lapse of 9 years and, therefore, it is

liable to be set aside by following the decision of the Apex Court in ***J.Sheikparith – Vs – The Commissioner of Customs (2020 SCC OnLine Mad 15651).***

10. It is the further submission of the learned counsel that the proceedings to declare the petitioners as wilful defaulters is without any legal authority and jurisdiction and the impugned orders also does not reveal the source of power/circular of the authority under which the orders have been passed, thereby, the fundamental right of the petitioners to defend is affected and, therefore, the impugned order is in patent violation of equity and justice and is contrary to the provisions of law.

11. It is the further submission of the learned counsel that the impugned order is an abuse of powers vested with the 1st respondent under the provisions and guidelines issued by the 2nd respondent and, therefore, the same deserves to be set aside. It is the further submission of the learned counsel that the impugned orders have been passed by the 1st respondent without considering the objections raised by the petitioners and the impugned orders are bereft of any material particulars.

12. It is the further submission of the learned counsel that the RBI Master Circular on wilful defaulters dated 1.7.2011 was in force at the time when the account of the company was declared as NPA, which circular does not confer any authority on the 1st respondent for initiating proceedings against a Director/individual guarantor and declare them as wilful defaulter. Therefore the action of the 1st respondent in declaring the petitioners as wilful defaulters is *per se* without any authority and jurisdiction.

13. Learned counsel appearing for the petitioner further submitted that the Master Circular was amended by the 2nd respondent only in the year 2015 in and by which the Directors/individual Guarantors were brought under the purview to be declared as wilful defaulters and clause 2.6 therein clearly stipulates that the operation of the circular is prospective and not retrospective and the company in the present case having been declared as NPA way back in 2012, the petitioners cannot be declared as wilful defaulters based on the aforesaid circular.

14. It is the further submission of the learned counsel that the 1st respondent having already initiated proceedings before the NCLT under the IBC, the present proceedings declaring the petitioners as wilful defaulters is grossly erroneous as the act of the 1st respondent in approaching the NCLT while parallelly initiating proceedings to declare the petitioners as wilful defaulters in view of the dismissal of the petition by NCLT is nothing but an act of forum shopping and, therefore, the impugned orders is a colourable exercise of power.

15. It is the further submission of the learned counsel that the impugned order is barred by limitation, as the company was declared as NPA in the year 2012 and the present impugned order had come to be passed only in the year 2021. Further the company went into CIRP in the year 2017 and is in liquidation since 2019 and, therefore, the present act of the 1st respondent is barred u/s 33 (5) of IBC.

16. It is the further submission of the learned counsel that the main allegation against the petitioners that they had diverted the funds of working capital for long term purpose. However, the 1st respondent was never part of the

monitoring committee and had never lent any working capital to the company and further between 2011 and 2014 when the bank funds were withdrawn, a concurrent auditor, stock auditor and lenders engineer were monitoring the operations and, therefore, without there approval the funds could not be diverted, which clearly shows that the impugned had been passed without any application of mind.

17. It is the further submission of the learned counsel that the other allegation of the 1st respondent that it had opened current account without the approval of the 1st respondent is wholly misconceived as the current accounts were opened only on the written approval of Edelweiss Asset Reconstruction Company Ltd., which controls 83% of the debt of the company and, therefore, the proceedings declaring the petitioners as wilful defaulters is premeditated.

18. It is the further submission of the learned counsel that the copy of the forensic audit report has not been provided to the petitioners so as to enable the petitioners to provide clear explanation to the allegations. However, inspite of non-furnishing of the forensic audit report, the petitioners have submitted

detailed explanation along with substantiating records with respect to all the queries raised by the 1st respondent in the show cause notice.

19. In fine, it is the submission of the learned counsel that the petitioner was participating in the proceedings during CRIP and also before the Resolution Professional, but had present impugned order had been come to be passed by the 1st respondent on mere surmises and is only with an intention to harass the petitioners and, therefore, the impugned order requires interference at the hands of this Court.

20. In support of the aforesaid submissions, learned counsel placed reliance on the following decisions :-

i) *T.Takano – Vs – SEBI (2022 (8) SCC 162);*
ii) *SBI & Ors. – Vs – Rajesh Agarwal & Ors. (2023 (6) SCC 1;*
iii) *Vijay Kumar Jain & Ors. – Vs – RBI & Ors. (2024 SCC OnLine MP 1199);*
iv) *Milind Patel – Vs – Union Bank of India & Ors. (2024 (251) Comp Cases 1);*
v) *SBI – Vs – Sweta Agarwal (FMA 1201 of 2024 Cal HC);*

vi) *Kranti Associates Pvt. Ltd. – Vs – Masood Ahmed Khan & Ors. (2010 (9) SCC 496); and*

vii) *J. Sheik Parith – Vs – Commissioner of Customs & Anr. (2020 SCC OnLine Mad 15651)*

21. Per contra, learned counsel appearing for the 1st respondent, basing his submissions on the counter, submitted that the petitioners have not challenged the initial order dated 14.12.2021 declaring the petitioners as wilful defaulters but had come before the court belatedly only after the order has been passed by the review committee on 11.5.2022. It is the further submission of the learned counsel that all procedural formalities have been complied with including issuance of show cause notice and affording reasonable opportunity of hearing to the petitioners and the explanation offered by the petitioners with regard to diversion of funds, siphoning of funds, written off assets and related party transactions while performing their business operations was not found to be satisfactory, it resulted in the passing of the impugned orders.

22. It is the further submission of the learned counsel that the action of the 1st respondent is the off-shoot of the independent investigation conducted by

the bank, the Resolution Professional appointed by NCLT and also the transaction auditor, who had prima facie observed fraudulent transactions taken place in the course of business operation. It is the further submission of the learned counsel that besides the 1st respondent, Union Bank of India had also conducted forensic audit, which exposed fraudulent transactions as found by the forensic auditor while examining the business transactions of the company.

23. It is the further submissions of the learned counsel that the RBI circular mandate the bank to test the guidelines as provided under clauses 2.1.3 (a), 2.1.3 (b), 2.2.1 (b), 2.2.1 (c), 2.2.1 (d), 2.1.3 (c) and 2.1.3 (d) before issuing show cause notice and after following the guidelines enumerated in the aforesaid clauses, show cause notice was issued to the petitioners on 26.7.2021 and 11.8.2021.

24. It is the further submission of the learned counsel that there were diversion of funds and siphoning of funds, which were jointly lent by the banks to the company. The company booked raw material at higher cost than the value of production by 117.74%, 249.18% and 128.57% in FY 2013-2014, FY 2014-2015, FY 2016-2017 an FY 2017-2018, which clearly show that either the goods were sold

at a lower price or that the goods were sold outside the books of the company. It is the further submission of the learned counsel that the scrutiny of the ledger entries and the account books of the company revealed startling facts relating to the siphoning off of the funds which resulted in the issuance of show cause notice.

25. It is the further submission of the learned counsel that the company had written off assets worth over Rs.572.02 Crores as impairment to the fixed assets and that the said impairment valuation of assets was not done on the basis of any valuation carried out by any external technical agency appointed by the company or the lenders, but by the company on its own accord.

26. It is the further submission of the learned counsel that amounts to the tune of Rs.52.77 Crores and 18.68 crores as per ledger formed the transactions with regard to related parties and without the knowledge of the bank.

27. In this backdrop of the startling revelations, which came out in the forensic audit report as also the independent investigation conducted by the

various entities, including the 1st respondent, the show cause notice was issued on 26.7.2021 calling upon the petitioners to offer their explanation, but curiously, the petitioners, though gave a reply, however, have not given direct answer to the issues raised in the show cause notice.

28. It is the further submission of the learned counsel that based on the explanation submitted by the petitioners, the Wilful Defaulter Identification Committee had passed order on 14.12.2021 referring the matter to the review committee by following the guidelines mandated by RBI and also directing the petitioners to submit their representations before the review committee to which the petitioners have also given their representations on 27.12.2021.

29. It is the further submission of the learned counsel that the grant of permission by Edelweiss ARC for the petitioners to open current accounts, as it is the consortium leader would not be binding on the 1st respondent, as the said permission granted by the assignee would not be binding on the other two lender banks, viz., the 1st respondent and the union Bank of India, as the said decision is prejudicial to the interest of the lender banks.

30. It is the further submission of the learned counsel that the 1st respondent has meticulously followed the due process of law and principles of natural justice before declaring the writ petitioners as wilful defaulters in accordance with the RBI Master Circular. It is the further submission of the learned counsel that the RBI Master Circular on wilful defaulters is to put in place a system to disseminate credit information pertaining to wilful defaulters for cautioning banks and financial institutions to ensure that further bank finance is not made available to those defaulters.

31. It is the further submission of the learned counsel that the stand of the petitioners that all the activities of the company were based on approval of concurrent auditors appointed by the lead banker and all payments were made based on the concurrence of the auditors and the accounts were periodically scrutinized in the joint lenders meeting.

32. It is the further submission of the learned counsel that merely because the loan account of the company was declared as NPA nine years back, the

contention that the 1st respondent cannot cause show cause notice is grossly erroneous and misconceived. The show cause notice was issued to the key managerial persons and the petitioners, who were holding the position as the directors then and who had committed serious irregularities, the show cause notice was issued to them in the capacity of their directorship and not based on their personal guarantee.

33. It is the further submission of the learned counsel that the Resolution Professional had conducted transactional audit and as adverse remarks were observed, forensic audit was conducted by the Bank of Baroda and Union Bank of India for the period from 2010-2011 to 2017-2018. The forensic audit conducted and the report reveals diversion of funds, siphoning of funds, related party transactions had taken place and following the due process as contemplated by RBI for conducting forensic audit action was initiated against the petitioners.

34. It is the further submission of the learned counsel that merely because the other lender banks had dropped the proceedings against the petitioners way back in the year 2014-2015 cannot be a ground for the 1st respondent to desist

from taking any action against the petitioners, as Bank of Baroda and Union Bank of India are the two members of the consortium, who have retained the accounts with them as the other lenders have assigned the debts in favour of ARC. On the basis of the transactional audit, forensic audit was directed to be conducted and the irregularities flagged in the forensic audit had resulted in the impugned proceedings, which was passed as the petitioners failed to substantiate their stand. Learned counsel submits that Union Bank of India has also declared the account as fraud.

35. It is the further submission of the learned counsel that the show cause notice is in consonance with the Master Circular of RBI on wilful defaulters dated 1.7.2015 and the petitioners having stood as guarantors, their liability is co-extensive with that of the borrower and no steps have been taken by the petitioners to settle the dues to the bank. Further, the guidelines for wilful defaulters are not akin to those covered under the moratorium u/s 96 of IBC as the said section deals only with 'debt' and not against initiation of proceedings against guarantors. In this regard, reliance is placed on the decisions in ***Suresh Kumar Patni & Ors. – Vs – SBI (AIR 2021 Kol 249)*** and ***Adarsh Jhunjhujwala – Vs***

– ***SBI*** wherein it has been observed that there is no bar to proceed parallel under the two laws as the purpose of the two proceedings are completely different.

36. It is the further submission of the learned counsel that the transaction audit pertains only two years and the scope of forensic audit is beyond the transaction audit, which reveals that serious irregularities were committed by the petitioners and merely because the application filed by the 1st respondent was dismissed by NCLT, that cannot be the basis to allow the petitioners to escape from the proceedings relating to wilful default.

37. In fine, it is the submission of the learned counsel that upon proper application of the guidelines laid down in the RBI Master Circular and also adhering to the principles of natural justice by issuing show cause notice and affording reasonable opportunity to the petitioners, the impugned proceedings had come to be issued, which is in accordance with law and the same does not require any interference at the hands of this Court.

38. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record, as also the decisions relied on in support of their respective submissions.

39. Useful reference can be had to the decision of the Apex Court in ***State Bank of India – Vs - M/s.Jah Developers Pvt. Ltd. & Ors. (Civil Appeal No.4776/2019)***, which relates to the manner in which the enquiry has to be conducted along with the materials that should be furnished, which are relied upon by the bank, which proposes to classify the borrower as a defaulter, the relevant portion of which is as under:-

> *"21. Given the above conspectus of case law, we are of the view that there is no right to be represented by a lawyer in the in-house proceedings contained in paragraph 3 of the Revised Circular dated 01.07.2015, as it is clear that the events of wilful default as mentioned in paragraph 2.1.3 would only relate to the individual facts of each case. <u>What has typically to be discovered is whether a unit has defaulted in making its payment obligations even when it has the capacity to honour the said obligations; or that it has borrowed funds which are diverted for other purposes, or siphoned off funds so that the</u>*

<u>funds have not been utilised for the specific purpose for which the finance was made available. Whether a default is intentional, deliberate, and calculated is again a question of fact which the lender may put to the borrower in a show cause notice to elicit the borrower's submissions on the same</u>. However, we are of the view that Article 19 (1)(g) is attracted in the facts of the present case as the moment a person is declared to be a wilful defaulter, the impact on its fundamental right to carry on business is direct and immediate. This is for the reason that no additional facilities can be granted by any bank/financial institutions, and entrepreneurs/promoters would be barred from institutional finance for five years. Banks/financial institutions can even change the management of the wilful defaulter, and a promoter/director of a wilful defaulter cannot be made promoter or director of any other borrower company. Equally, under Section 29A of the Insolvency and Bankruptcy Code, 2016, a wilful defaulter cannot even apply to be a resolution applicant. Given these drastic consequences, it is clear that the Revised Circular, being in public interest, must be construed reasonably. <u>This being so, and given the fact that paragraph 3 of the Master Circular dated 01.07.2013 permitted the borrower to make a representation within 15 days of the preliminary decision of the First Committee, we are of the view that first and foremost, the Committee comprising of the Executive Director and two other senior</u>

> *<u>officials, being the First Committee, after following paragraph 3(b) of the Revised Circular dated 01.07.2015, must give its order to the borrower as soon as it is made</u>. The borrower can then represent against such order within a period of 15 days to the Review Committee. Such written representation can be a full representation on facts and law (if any). The Review Committee must then pass a reasoned order on such representation which must then be served on the borrower........"*
>
> *(Emphasis Supplied)*

40. Keeping the above proposition in mind, this Court would now proceed to analyze the materials available on record to find out whether the contentions advanced on behalf of the petitioners with regard to non-furnishing of materials, violation of principles of natural justice and the applicability of the Master Circular are made out.

41. The main ground of attack on the impugned proceedings by the petitioners is three-fold, viz.,

i) That the Master Circular of RBI, which was in vogue, viz., 1.7.2011, when the company was declared as NPA did not provide any authority to the 1st respondent to initiate proceeding against a Director/individual guarantors to declare them as wilful defaulter and that the Master Circular of RBI dated 1.7.2015, which forms the basis of the proceedings has only prospective operation and does not have retrospectivity and the company having been declared as NPA as back as in the year 2012, as per the circular, the petitioners cannot be declared as wilful defaulters;

ii) That the forensic audit report, which formed the basis of initiating the impugned proceedings has not been provided to the petitioners;

iii) That reasonable and sufficient opportunity has not been granted to the petitioners to put forth their case, more particularly in the light of non-furnishing of the forensic report and, thereby, there is clear violation of principles of natural justice.

42. There is no quarrel with the fact that initially RBI Master Circular on Wilful Defaulters dated 1.7.2011 was in force at the time when the account of SBQ Steels was declared as NPA. The said circular did not provide any authority to the 1st respondent for initiating proceeding against a Director/individual guarantors and declare them as wilful defaulters.

43. The aforesaid Master Circular was replaced with a Master Circular in the year 2013, dated 1.7.2013, wherein clause (3) therein provided for Grievance Redressal Mechanism. Thereafter, the present Master Circular came to be issued on 1.7.2015 based on which action has been initiated by the 1st respondent against the petitioners.

44. While the petitioners claim that the Master Circular cannot be applied retrospectively, reliance has been placed on clause 2.6 of the said Circular, which, for better appreciation, is quoted hereunder :-

"2.6 Guarantees furnished by individuals, group companies & non-group companies

While dealing with wilful default of a single borrowing company in a Group, the banks/FIs should consider the track record of the individual company, with reference to its repayment performance to its lenders. However, in cases where guarantees furnished by the companies within the Group on behalf of the wilfully defaulting units are not honoured when invoked by the banks/FIs, such Group companies should also be reckoned as wilful defaulters.

................"

45. Clause 2.6 of the Master Circular, as extracted above, does not speak about prospectivity or retrospectivity of operation of the said clause. Further, it relates to guarantees furnished by individuals, group companies and non-group companies and it does not relate to borrowed capital by the Directors on behalf of the companies.

46. As per the Master Circular of RBI dated 1.7.2015, the guidelines to be followed by the banks before declaring the borrower or its director or guarantor

as wilful defaulter are provided under clauses 2.1.3 and 2.2.1 and the said clauses are quoted hereunder for better clarity :-

> *"**2.1.3 Wilful Default :** A 'wilful default' would be deemed to have occurred if any of the following events is noted :*
>
> *(a) The unit has defaulted in meeting is 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.*
>
> *(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.*
>
> *The identification of the wilful default*
>
> ***2.2. Diversion and siphoning of funds***

*2.2.1 **Diversion of Funds :** The term 'diversion of funds' referred to at paragraph 2.1.3 (b) above, should be construed to include any one of the undernoted occurrences :*

(a) utilisation of short-term working capital funds for long-term purposes not in conformity with the terms of sanction;

(b) deploying borrowed funds for purposes/activities or creation of assets other than those for which the loan was sanctioned;

(c) transferring borrowed funds to the subsidiaries/group companies or other corporate by whatever modalities;

(d) routing of funds through any bank other than the lender bank or members of consortium without prior permission of the lender;

(e) investment in other companies by way of acquiring equities/debt instruments without approval of lenders;

(f) shortfall in deployment of funds vis-a-vis the amounts disbursed/drawn and the different not being accounted for.

47. From the above provisions, it is clear that where there is infraction in the utilisation of the funds lent by the lenders for purposes other than those for which it has been given, if the said utilisation falls under any of the above heads, then it is open to the lender, viz., the banks/FIs to take action to declare the said company/director/guarantor as wilful defaulter.

48. Therefore, the main requirement for declaring a company/director/guarantor as a wilful defaulter is that the acts committed by the company/director/guarantor should meet the criteria laid down in clauses 2.1.3 and 2.2.1. In this backdrop, this Court has to analyze whether the acts of the petitioners, who are directors of the company, which has been declared as NPA falls within the parameters of the aforesaid clauses to be proceeded against as wilful defaulters and consequently to be declared as wilful defaulters.

49. The Master Circular on Wilful Defaulters, which was initially put in place in the year 2002, has been revised from time to time as per the recommendations of the Committee on Data Format for furnishing Credit Information to Credit Information Companies. The very purpose of the said 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".*

50. The first leg of contention advanced on behalf of the petitioners is that the Master Circular of RBI, which was in vogue in 1.7.2011 does not confer any authority on the banks/FIs from proceeding against Directors/individual guarantors to declare them as wilful defaulter and even the Master Circular dated 1.7.2015, which has been revised, does not confer retrospectivity and would operate only prospectively and, therefore, the circular dated 1.7.2015, which has brought in the Directors/individual guarantors to be declared as wilful defaulters cannot form the basis of declaring the petitioners, who are the Directors of the company, as wilful defaulters, as the company was declared as NPA in the year 2012 during which point of time, the Master Circular dated 1.7.2011 only was in force.

51. The purpose for which the Master Circular on Wilful Defaulters has been published is writ large even from the purpose codified in the Master Circular, which is only to provide the banks/FIs with information about the wilful defaulters so that further bank finance is not made available to them. Even a bare perusal of the purpose shows that it is to disseminate information, which is anterior in point of time, which is provided to the banks/FIs cautioning them

from dealing with persons who are wilful defaulters by providing them further finance. Therefore, necessarily, there is an element of retrospective analysis of the data, which has been disseminated, which has resulted in the non payment/repayment of the loan advanced by the lender so as to caution the financial institutions to desist to make available any further bank finance to the company/director/guarantor.

52. Further, it is also to be pointed out that the guidelines are only for the purpose of safeguarding the interests of the banks/FIs and it is not for the purpose of shielding the defaulters and, therefore, the contention advanced by the learned counsel on behalf of the petitioners that only the guidelines of 1.7.2011 would be applicable and not the later ones, viz., 1.7.2015 is grossly misconceived and it is nothing but a last bit effort on the part of the petitioners to wriggle out of the predicament through intelligent counsel.

53. It is further to be pointed out that based on the acts of default perpetrated by various wilful defaulters, the guidelines are being revised by RBI from time to time so as to save the banks/FIs from financial skulduggery by

unscrupulous elements, the last of which dated 1.7.2015 was revised, through which the petitioners have been roped in by the 1st respondent.

54. It is also not to be lost sight of that merely because the company was declared as NPA in the year 2011 would not render the banks/FIs powerless from launching any probe into the affairs of the company, as it is only for the said purpose, different modes of auditing are prescribed inclusive of report by the Resolution Professional. After declaration of a company as NPA, if any financial fraud committed by the company comes to the notice of the banks/FIs, the banks/FIs are definitely empowered to take action against the company/directors/guarantors and merely because the company has been declared as a NPA would not absolve the company/directors/guarantors from being declared as wilful defaulters. The Master Circular of RBI has been issued, which is being revised taking into consideration the ground realities and white collar frauds that are being committed day-in and day-out by unscrupulous elements by bleeding the banks/FIs of their money is sought to be curbed through the guidelines and declarations about such companies/directors/guarantors through credit rating against such entities.

55. Further, it is to be pointed out that in cases related to money lending by banks, not all the black listed comes to light at the first instance, even in case an investigation is taken up. It requires continuous investigation and monitoring the activities, which alone would reveal the clandestine activities that have been undertaken in siphoning of the funds by the companies. Only to this end, the guidelines are being revised on periodic basis and merely because at one point of time the petitioners were not held to be wilful defaulters, that too by some of the banks in the consortium, cannot preclude the respondent bank from carrying out an investigation, as the respondent bank too, as a consortium member is inclined to safeguard the interests of the public fund of which it is a custodian of.

56. Further, if this Court renders any finding that upon declaration of NPA, no action for declaring a company/director/guarantor as a wilful defaulter could be made, it would run counter to the efforts of RBI and would only be a boon in disguise to such entities to defraud the banks/FIs. In such view of the matter, the action of the 1st respondent in taking steps to declare the petitioners as wilful

defaulters, which has resulted in the impugned orders being passed cannot be said to be erroneous, arbitrary, perverse or unreasonable.

57. The second limb of the contention of the petitioners relate to the delay in issuing the show cause notice and also non-furnishing of forensic audit report, which had precluded the petitioners from effectively canvassing their case. In this regard, the decisions in *Milind Patel* and *Sweta Agarwal* passed by the Bombay and Calcutta High Courts are pressed into service.

58. In *Milind Patel case (supra)*, a Division Bench of the Bombay High Court referring to *Jah Developers case (supra)* held that furnishing of the materials on which reliance is placed must be supplied to the person to whom show cause notice is issued so as to ensure that everything relevant to arrive at the truth is available to both the parties. In this regard, it has been held as under :-

> *"17. In State Bank of India Vs. Jah Developers Private Limited and Others([2019] 6 SCC 787) ("Jah Developers") the need for the due process in the context of the Master Circular was analysed by the Hon'ble Supreme Court. After noting earlier judgments of the Hon'ble Supreme Court in connection*

with the Master Circular, the Court went on to declare the following:

> *"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"

[Emphasis Supplied]

* * * * * *

26. Not only must information that is referred to and relied on in the SCN be supplied but also information that may undermine the allegations contained in the SCN (which may therefore not be referred to or relied on) must be supplied - only to ensure that everything relevant to arrive at the truth is available to both parties. The objective of the proceedings initiated by issuance of a SCN is not to somehow find the noticee guilty of wilful default on the same terms as alleged. Instead, the objective is to arrive at the truth as to whether or not an individual in question is to be subjected to "penal" (in the RBI's words) consequences.

> *"Therefore, if the bank has conducted a forensic investigation into alleged diversion and siphoning of funds, and specific roles played by specific individuals is brought out in the investigation, and such a probe would point to plausible interpretation that certain individuals did not play any role in the diversion and siphoning, the material underlying such plausible inference would undermine the allegations. Therefore, fair and transparent symmetrical access to information, as stipulated by the Hon'ble Supreme Court in Takano would mean providing access to not only incriminating material but also exculpatory material, since all such information would be relevant for arriving at the truth. Therefore, access to the record is a vital element of complying with principles of*

> *natural justice. In the instant case, not only has no material been supplied, but also Union Bank has actually asserted on oath that it was not required to provide any material whatsoever, and that it is for the noticee to prove his innocence."*

59. The decision in *Sweta Agarwal case (supra)* is also on similar lines, wherein the Division Bench of the Kolkata High Court, held that furnishing of materials is *sine qua non* to establishing proper enquiry has been conducted coupled with a fair and reasonable opportunity to represent the case.

60. There could be no quarrel with the fact that materials on which reliance is placed by the bank based on which show cause notice is issued has to be necessarily supplied to the party against whom the show cause notice is issued so as to enable the person to give an effective representation. Non-furnishing of the materials referred in the show cause notice would definitely vitiate the enquiry.

61. In this backdrop, it is necessary for this Court to analyse the materials placed to appreciate whether the materials referred to in the show cause notice has been provided so as to enable the petitioners herein to effectively submit their representation.

62. Two show cause notices, dated 26.7.2021 and 11.8.2021have been issued to the petitioners calling upon them to show cause as to why they should not be declared as wilful defaulters. The show cause notice reveals the grounds on which such an action is sought to be initiated, which shows that there is diversion of funds, siphoning of funds and related party transactions. The details of such transactions under all the aforesaid heads have also been provided.

63. Pursuant to the show cause notice, the petitioners have submitted their explanation vide their reply dated 23.8.2021. The relevant portion of the reply, for better appreciation, is quoted hereunder :-

> *"We have been caught completely unaware by the referred letter dated 26th July 2021 and the subsequent notice dated 11th August 2021 and it is apparent from all the above that the invalid and arbitrary identification of 'Wilful*

Defaulter' is made as the Committee is not appraised the true facts and it is our strong suspicion that only the Forensic Audit Report is produced without the explanations/clarifications provided and as such the further statement that a declaration would be made of the like indicated in your Notice is bad in the eyes of the law.

In fact the RBI in its circular No.RBI/DBS/2016-17/28 to all Scheduled Commercial Banks has stated in clause 8.9 the conditions to be followed if the account is lending under Consortium banking arrangement, which should squarely apply in our case. However, it is clearly evident that your bank has not followed the procedure under clauses 8.9.3, 8.9.4, 8.9.5 and 8.9.6 as far as appointment of a Forensic auditor, when the account is under a consortium banking arrangement.

* * * * * * *

Further, if in case the Identification Committee comes to the conclusion of seeking to declare as 'Wilful Defaulters', we shall be provided with the Grievance Redressal mechanism as per the RBI Circular and in which case we reserve our right to put forward our arguments, in person at the personal hearing before the "Grievance Redressal Committee" which will be attended in person by us with a view to put forward the above arguments and such further and additional arguments as we may consider relevant and appropriate."

(Emphasis Supplied)

64. Following this reply, letter dated 9.11.2021 has been issued by the bank with regard to the personal hearing granted to the petitioners before the Committee of Executives and during the personal hearing, which is not refuted by the petitioners, a reply has been given wherein it has been mentioned that the bank has not specified the documents which they seek to rely upon before the Grievance Committee in support of the show cause notice and, therefore, it has been stated that the petitioners, in the absence of the details, could not make an effective representation. Thereafter, the impugned order dated 14.12.2021 by the Committee of Executives had come to be passed, whereinafter, representation was given by the petitioners, dated 22.12.2021 for the purpose of consideration of the Review Committee in line with the guidelines of the Reserve Bank.

65. On a holistic consideration of the whole sequence of events right from the issuance of show cause notice to the replies submitted by the petitioners to the impugned order issued by the Committee of Executives and the further representation before the Grievance Redressal Committee, there is not even a

faint whisper by the petitioners with regard to the materials, which they require, or the materials, which have been relied upon by the 1st respondent, but not provided to the petitioners, which has precluded them from making an effective representation. Only a sweeping allegation is made in the reply dated 22.12.2021 pursuant to the impugned order of the Committee of Executives, which was submitted to the Grievance Redressal Committee that the petitioners have not been provided with any details/copy of documents, which were placed by the Bank before the grievance committee. When the petitioners have not made pointed demand as to the materials which they require to make an effective representation and it is only a needle of suspicion that the whole issue was on the basis of some Forensic Audit Report and even such of the materials have not been sought for through their communication, for the first time before this Court in the present writ petition, the case of the petitioners is improved by claiming that the report of the Forensic Audit has not been made available to the petitioners thereby barring the petitioners from making an effective representation.

66. The decision in *Milind Patel and Sweta Agarwal (supra)*, though mandate that the materials on which reliance has been placed has to be provided to the opposite party to make an effective representation, which decision, though not binding on this Court, but only has persuasive value, which is not sidelined by this Court, but nevertheless, when the petitioners have not sought for any particular materials from the 1st respondent vide their first reply dated 23.08.2021, non-furnishing of documents by the bank cannot be put against the bank, when public money is involved in the process.

67. Further, a careful perusal of the show cause notices reveal the details based on which the petitioners have been called upon to show cause as to why action for declaring them as wilful defaulters should not be taken. The said show cause notices, under the various heads like diversion of funds, siphoning of funds, related party transfer has given specific details with regard to the various suspicious transactions, the non-furnishing of documents would not in any way be prejudicial to the right of the petitioners, as the specific transactions, which are suspicious warranting an enquiry has been provided in the show cause notice and in such a backdrop, when the petitioners have not sought for any specific

documents, the only inference that the bank could have drawn from the same is that the details furnished in the show cause notice was suffice to give the explanation, as it is even evidenced from the explanation dated 23.8.2021 that no materials/documents were sought for from the bank by the petitioners.

68. When the petitioners have not made any specific request seeking documents/materials, taking the stand for the first time before this Court cannot be allowed to sustain and cause prejudice to the bank as the bank, being the custodian of public money is required to act in a diligent manner, more particularly, on the basis of the guidelines issued in the Master Circular by the Reserve Bank from time to time, moreso, when certain glaring discrepancies comes to its notice in the operations of the company at any point of time.

69. Further, it is also to be noted that even the letter dated 18.11.2021 of the petitioners, which is a reply to the notice of the bank referring the matter to the Grievance Redressal Committee, it is the stand of the petitioners that they have not been provided with the copies of the documents/materials, which have been placed before the Grievance Redressal Committee in support of the

impugned order passed by the Committee of Executives. It is not the case of the petitioners even then that the copy of the Forensic Audit Report has not been provided to them, which has precluded them from submitting an effective representation.

70. When all along the petitioners have not sought for any particular documents/materials from the bank and it is only before this Court that a plea is advanced that the Forensic Audit Report has not been provided to them, it cannot be stated that the non-furnishing of the Forensic Audit Report had prejudiced the petitioners. Further, as already stated above, it is only the suspicion of the petitioners that the whole issue has been taken up on the basis of a Forensic Audit Report, whereas nowhere in the show cause notice, it has been mentioned by the bank that a Forensic Audit was conducted which revealed glaring discrepancies in the accounts of the petitioners as a result of which the matter has been taken up. When it is not the case of the bank that the enquiry is an off-shoot of the forensic audit report the petitioners cannot presume and assume that the enquiry is on the basis of a forensic audit report and even though such a suspicion is casted, the petitioners have not sought for a copy of

the said report and, therefore, at this distant point of time, it would not be in the fitness of things for this Court to conclude that the Forensic Audit Report has not been provided, which has prejudiced the petitioners. Therefore, the plea of non-furnishing of Forensic Audit Report has prejudiced the petitioners does not merit acceptance.

71. The third limb of the argument advanced on behalf of the petitioners revolves around the violation of principles of natural justice as it is the claim of the petitioners that no reasonable opportunity of hearing was granted to them.

72. There is no quarrel about the fact that pursuant to the show cause notice, the petitioners submitted their explanation and an opportunity of hearing was also given to the petitioners and they presented themselves in person before the Committee of Executives to put forth their case and after hearing them, the Committee of Executives passed the impugned order declaring the petitioners as wilful defaulters and referring the matter to the Grievance Redressal Committee for further orders. It is further evident from the impugned order passed by the Grievance Redressal Committee that an opportunity for submitting explanation

and personal hearing was afforded to the petitioners by the Committee of Executives on 23.11.2021, though through virtual mode and, thereafter, upon reference of the matter to the Grievance Redressal Committee, the petitioners were afforded opportunity to submit their further representation, which was also submitted and taking into consideration the further representation and all the other materials, the impugned order declaring the petitioners and others, noted in the impugned order, as wilful defaulters had come to be passed.

73. The ratio on the issue of violation of principles of natural justice is settled and very many decisions in this regard had been placed before this Court. However, there is no necessity for this Court to advert to the said issues for the simple reason that the above sequence of events clearly proves that there is no violation of principles of natural justice. Therefore, the contention advanced in this regard does not merit consideration.

74. On an overall consideration of the entire materials placed before this Court and also on the basis of the discussion made above, this Court is of the considered view that the impugned orders declaring the petitioners as wilful

defaulters are based on materials and the petitioners have not taken any efforts to disprove the same, barring their claim that the bank has not proved the acts of the petitioners, and, therefore, this Court is not inclined to interfere with the orders passed by the respondents.

75. Accordingly, the writ petition fails and the same is dismissed confirming the orders impugned herein. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

26.09.2025

Index : Yes / No

GLN

M.DHANDAPANI, J.

GLN

PRE-DELIVERY ORDER IN
W.P. NO.14640 OF 2022

Pronounced on

26.09.2025