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W.P.No.13676 OF 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2025

CORAM

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

W.P.No.13676 of 2025

and

W.M.P.Nos.15368 and 15369 of 2025

Kambala Bapiraju

.. Petitioner

Vs.

1.The Indian Overseas Bank,
Stressed Assets Management Department,
rep by its General Manager,
P.B.No.3765, 763 Anna Salai,
Chennai-600 002,
Tamil Nadu.

2.The Reserve Bank of India,
rep by its Authorised representative,
16, Balaji Salai,
Fort Glacis,
Chennai-600 001,
Tamil Nadu.

.. Respondents

Writ petition has been filed under Article 226 of the Constitution of India seeking for the issuance of writ of certiorarified mandamus to call for the records relating to the order passed by the first respondent in CO/SAMD/GM/(BARP)/1708/21-22, dated 29.09.2021 and quash the



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same and direct the first respondent to remove the petitioner's name from the list of willful defaulters from its website and all other publications and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.R.Sankaranarayanan, SC
for Mr.Ramaswamy Meyyappan

For Respondents : Ms.V.Rajeswari, Standing Counsel for R-1
Mr.C.Mohan, Standing Counsel
assisted by Ms.A.Rexy Josephine Mary
for M/s.King and Patridge for R-2

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ORDER

The petitioner has filed the present writ petition challenging the impugned order, dated 29.09.2021 passed by the first respondent, wherein the petitioner was declared as willful defaulter and was given 15 days time to furnish his written representation if any to the review committee and to quash the same and seeking for a direction to the first respondent to remove the petitioner's name from the list of wilful defaulters from its website and all other publications.

2.The petitioner is the Non Executive Director of 'M/s.Sai Regency Power Corporation Private Limited' ['SRPCPL' for short]. The petitioner



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was appointed as Non Executive / Non whole time Director of SRPCPL on 05.07.2005 with no involvement in the company's day today activities and his limited role is reflected in the statutory filings, i.e., Form 32 and Form MGT-7 and SRPCPL's annual reports. The SRPCPL is a power generation company and has entered liquidation under the NCLT in 2019-2020. The first respondent has issued a show cause notice on 21.01.2021 alleging default by SRPCPL. The said notice lacks particulars such as the quantum of loan procured by the borrower, the dues to be paid by the borrower, chain of transactions to establish any siphoning, etc., The petitioner has sent a reply to the said notice on 01.02.2021 asserting his non involvement and citing the Reserve Bank of India's ['RBI' for short] Master circular, 2015 which exempts non executive directors unless proven complicity. On 03.04.2021, the first respondent had issued a notice of personal hearing, to which the petitioner had sent a reply dated 16.04.2021 stating that the petitioner being the non whole time director is not required to participate in the proceedings and also raised pandemic related travel constraints at that point of time. Thereafter, the petitione was required to provide documents to prove his claim and the petitioner has also furnished the documents. But the first respondent vide its

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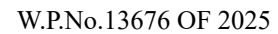


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impugned order dated 29.09.2021 declared the petitioner as a willful defaulter solely relying on an undisclosed forensic Audit report dated 25.01.2019. Therefore, the petitioner challenges the impugned order on the ground that it suffers from patent illegality and arbitrary exercise of power, rendering it constitutionally untenable and legally unsustainable. The forensic report was neither disclosed to the petitioner nor was subjected to rebuttal. Further, the impugned order is a non speaking order, devoid of reasoning or factual nexus between the allegations and the petitioner's role as a non executive director. Though the petitioner has filed a review before the Review Committee on 26.10.2021, the same is pending. Hence, the present writ petition has been filed.

3.It is the stand of the first respondent Bank that the first respondent Bank had sanctioned credit facilities to the company based on the credentials and the projections submitted by the management of the company. During the year 2018-19, the first respondent bank conducted forensic Audit of the company for the period 2013-14 to 2017-18 through an audit firm M/s.P.Chandrasekhar LLP and the firm had submitted a report on 25.01.2019. As per the audit report, it was observed that several unauthorised transactions were done by the company and number of

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of willful default. The first respondent Bank has issued a fresh show cause notice on 21.01.2021 to all the Directors of the company who were in active management of the company at the time of availing the loan. The said show cause notice was duly acknowledged by them including the petitioner as evidenced by the replies dated 01.02.2021.

4.It is further submitted that the Identification committee in compliance with the RBI circular on classification of borrowers as willful defaulters had issued a letter dated 03.04.2021 advising the petitioner and other Directors to be present for physical hearing on 20.04.2021 before the Identification committee of the first respondent Bank at Chennai. The petitioner had replied by letter dated 16.04.2021 once again stating that he was a non whole time director and is not required to participate in the proceedings. According to the first respondent Bank, he has not produced any proof for his contentions and he did not appear for the personal hearing. Therefore, the orders came to be passed on 29.09.2021 declaring the petitioner and other two Directors of the company as willful defaulters. The order of the identification committee was communicated to the petitioner on 16.10.2021 asking him to submit his written representation if any. Even thereafter, though the petitioner has sent his



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submissions to the Review committee, the main submission of the petitioner was that his presence was not required for personal hearing. It was noticed that the petitioner was not utilized the opportunity of personal hearing and therefore, orders of the Identification committee declaring him as willful defaulter was confirmed. It was further submitted that based on a recent circular of the RBI issued on 30.07.2024 on Treatment of Willful Defaulters and Large Defaulters Directions 2024, giving effect to the same as on 28.10.2024, the petitioner was removed from the list of the Willful defaulters since the unit of the company was sold as a going concern in the liquidation process under the IBC. However, penal measures in respect of the erstwhile promoters / directors / guarantors who were in-charge and responsible for the management of the affairs of the entity and also the entities they are associated as promoters / directors are in-charge of management will continue to apply as per the said circular. Hence, in view of the removal of the petitioner's name from the list of willful defaulters, the consequential prayer sought for in the writ petition has become infructuous.



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5.The learned Senior counsel appearing for the writ petitioner submits that though as per the latest circular of the RBI dated 30.07.2024, the petitioner's name was removed from the list of willful defaulters, however the penal measures in respect of the erstwhile promoters / directors / guarantors who were in-charge and responsible for the management of the affairs of the entity and also the entities they are associated as promoters / directors are in-charge of management would continue to apply as per the circular of the RBI. Hence it is the contention of the learned senior counsel that once the petitioner is only a non whole time Director and he is not involved in any affairs of the company, continuing penal measures in respect of the erstwhile promoters or non whole time Director cannot be valid in the eye of law and the same is without any justification and directly contradictory to the circular of the RBI issued on 01.07.2015. To buttress his submissions that the petitioner has not participated in the affairs of the company, he has also brought to the notice of this court the Annual Return filed by the company to indicate that the petitioner did not have any shares and further, he was not part of any of the committee meetings. The return also indicates that the petitioner was not paid any remuneration at any point of time. As per the

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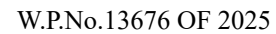
Master circular on Wilful Defaulters of the RBI vide RBI/2014-15/73, DBR.No.CID.BC.57/20.16.003/2014-15, dated 01.07.2014, the modifications to master circular on 'Wilful Defaulters' would indicate that as regard a non-promoter/non-whole time director, it should be kept in mind that section 2(60) of the Companies Act, 2013 defines an officer who is in default to mean only the director, who is (i) Whole-time director; (ii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified; and (iii) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings and who has not objected to the same, or where such contravention had taken place with his consent or connivance. Therefore, except in very rare cases, a non-whole time director should not be considered as a willful defaulter unless it is conclusively established that he was aware of the fact of wilful default by the borrower by virtue of any proceedings recorded in the minutes of the Board or a committee of the Board and has not recorded



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his objection to the same in the minutes or the wilful default had taken place with his consent or connivance. Therefore, unless it is conclusively established by the bank that the petitioner was aware of the fact of wilful default by the borrower by virtue of any proceedings recorded in the minutes of the Board or a committee of the Board and has not recorded his objection to the same in the minutes or the wilful default had taken place with his consent or connivance, the penal measures cannot be put against the petitioner as per the RBI Circular.

6.The learned counsel appearing for the first respondent Bank submits that despite several opportunities given to the petitioner to prove that he was a non whole time director, no proof whatsoever was filed. Hence, it is her contention that since the petitioner's name has been removed from the list of wilful defaulters pursuant to the latest circular of the RBI, the writ petition has become infructuous. However, the penal measures will continue against the petitioner since the petitioner has not even produced any materials to show that he had never participated in any of the meetings and that he was not aware of the wilful default by any of the borrowers. Therefore, as long as the first respondent has followed the RBI circular and the relief sought for by the petitioner for removal of his



7. The learned counsel appearing for the RBI submits that though the master circular on wilful defaulters deals with the penal measures, except in very rare cases, a non whole time director should not be considered as a willful defaulter unless it is conclusively established that he was aware of the fact of willful default by the borrower by virtue of any proceedings recorded in the minutes of the board or a committee of the board and has not recorded his objection to the same in the minutes or the willful default had taken place with his consent or connivance. However, he would submit that there is no proceedings to show that the first respondent has conclusively established the above fact to place the petitioner on penal measures.

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erstwhile promoters / directors / guarantors who were in-charge and responsible for the management of the affairs of the entity and also the entities they are associated as promoters / directors are in-charge of management will continue to apply as per the said circular.

9.It is relevant to note that the circular bearing number RBI/DoR/2024-25/122, DoR.FIN.REC.No.31/20.16.003/2024-25, dated 30.07.2024 issued by the RBI deals with mechanism for identification and classification of wilful defaulters which is in Chapter II [Treatment of Wilful Defaulters]. As per the above circular, Clause 4(1) of Chapter II says that the identification of the wilful default should be made keeping in view the track record of the borrowers and should not be decided on the basis of isolated transactions or incidents. The default to be categorised as wilful must be intentional, deliberate, calculated and meeting the conditions set out in para 3(1)(t). Paragraph 3(1)(t) of the said circular deals with 'Wilful default' which reads as follows:

'(t)"wilful default"

(i)by a borrower shall be deemed to have occurred when the borrower defaults in meeting payment/ repayment obligations to the lender and any one or more of the following features are noticed:



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(A)the borrower has the capacity to honour the said obligations;

(B)the borrower has diverted the funds availed under the credit facility from lender;

(C)the borrower has siphoned off the funds availed under the credit facility from lender;

(D)the borrower has disposed of immovable or movable assets provided for the purpose of securing the credit facility without the approval of the lender;

(E)the borrower or the promoter has failed in its commitment to the lender to infuse equity despite having the ability to infuse the equity, although the lender has provided loans or certain concessions to the borrower based on this commitment and other covenants and conditions.

(ii)by a guarantor shall be deemed to have occurred if the guarantor does not honour the guarantee when invoked by the lender, despite having sufficient means to make payment of the dues or has disposed of immovable or movable assets provided for the purpose of securing the credit facility, without the approval of the lender or has failed in commitment to the lender to infuse equity despite having the ability to infuse the equity, although the lender has provided loans or certain concessions to the borrower based on this commitment.'

10.Before declaring a person as wilful defaulter, the borrower should come in any of the categories mentioned in the above definition.



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The penal and other measures against the wilful defaulter has also been provided in the said circular in Chapter II. Sub clause (3)(a) of Paragraph 5 deals with the penal and other measures against wilful defaulters, which reads as follows:

'(3)Penal and other measures against wilful defaulters

(a)The penal measures mentioned below shall be implemented by the lenders.

(i)No additional credit facility shall be granted by any lender to a wilful defaulter or any entity with which a wilful defaulter is associated.

(ii)The bar on additional credit facility to a wilful defaulter or any entity with which a wilful defaulter is associated shall be effective for a period of **one (1) year** after the name of wilful defaulter has been removed from the List of Wilful Defaulters (LWD) by the lender.

(iii)No credit facility shall be granted by any lender for floating of new ventures to a wilful defaulter or any entity with which a wilful defaulter is associated for a period of **five (5) years** after the name of wilful defaulter has been remove from the LWD by the lender.

(iv)Wilful defaulters or any entity with which a wilful defaulter is associated shall not be eligible for restructuring of credit facility. Subsequent to removal of the name of wilful defaulter from the LWD, the wilful defaulter or any entity with which a wilful defaulter is associated shall be eligible for



restructuring, subject to the provision contained in para 5(3)(a)(ii) above.

Explanation:

(A) If the wilful defaulter is a company, another company will be deemed to be associated with it, if that company is -

i. a 'subsidiary company' as defined under clause 2(87) of the Companies Act, 2013.

ii. falls within the definition of a 'joint venture' or an 'associate company' under clause (6) of section 2 of the Companies Act, 2013.

(B) If the wilful defaulter is a natural person, all entities in which he is associated as promoter, or director, or as one in charge and responsible for the management of the affairs of the entity shall be deemed to be associated.

(C) The penal provisions mentioned above, shall cease to be applicable on the associated entities when they are no longer associated with the wilful defaulters.

(D) In cases where the existing promoters are replaced by new promoters in terms of directions contained in circular 'Prudential Framework for Resolution of Stressed Assets' dated June 7, 2019 (as amended from time to time) and the borrower company is totally delinked from such erstwhile promoters/management, lenders may take a view on restructuring such accounts based on their viability, without prejudice to the continuance of criminal proceedings against the erstwhile promoters/management. '



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11.A perusal of the above penal and other measures against wilful defaulters makes it clear that once a person has been put in the penal and other measures, it will have serious impact and before passing such order, the bank has to satisfy that the person is a real wilful defaulter. It is relevant to note that the circular of the RBI dated 01.07.2014 in RBI/2014-15/73 deals with modifications to the Master Circular on 'Wilful Defaulters'. Clause (v)(d) of the Modifications to Master Circular on 'Wilful Defaulters' reads as follows:

‘(d)As regard a non-promotion/non-whole time director, it should be kept in mind that Section 2(60) of the Companies Act, 2013 defines an officer who is in default to mean only the following categories of directors:

(i)Whole-time director

(ii)where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;

(iii)every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings and who has not objected to the same, or



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where such contravention had taken place with his consent or connivance.

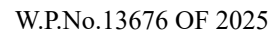
Therefore, except in very rare cases, a non-whole time director should not be considered as a wilful defaulter unless it is conclusively established that

I.he was aware of the fact of wilful default by the borrower by virtue of any proceedings recorded in the Minutes of the Board or a Committee of the Board and has not recorded his objection to the same in the Minutes, or,

II.the wilful default had taken place with his consent or connivance.

A similar process as detailed in sub paras (a) to (c) above should be followed when identifying a non-promoter/non-whole time director as a wilful defaulter. ‘

12.Therefore, the above guidelines in the master circular makes it clear that only except in very rare cases, a non-whole time director should not be considered as a willful defaulter unless it is conclusively established that he was aware of the fact of wilful default by the borrower by virtue of any proceedings recorded in the minutes of the Board or a committee of the Board and has not recorded his objection to the same in the minutes or the willful default had taken place with his consent or connivance. The show cause notice has been issued which has also been



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place with his consent or connivance, as a matter of fact, the non whole time director should not be considered as wilful defaulter as per the circular of the RBI in RBI/2014-15/73, dated 01.07.2014. Merely because the petitioner has not personally appeared before the Identification committee and the Review committee, that cannot be a ground to hold that the petitioner is still a defaulter. Though the petitioner's name has been removed from the defaulters list, the penal measures were directed to continue. As indicated above, the penal measures will have serious impact. Before placing a person under such penal measures, there must be conclusive evidence to the effect that he was aware of the fact of wilful default by the borrower by virtue of any proceedings recorded in the minutes of the Board or a committee of the Board and has not recorded his objection to the same in the minutes. Absolutely there is no material to show that the petitioner was party to any proceedings or minutes recorded in this regard and he has not recorded his objections in the minutes. The nature of the board meetings clearly indicates that except two board meetings, he never participated in any of the committee meetings. Therefore, in the absence of any fact that he was aware of the default of the borrower and the default has taken place with his consent or



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connivance, merely because he was shown as Director, he cannot be declared as a defaulter. When the name of the petitioner was removed from the list of wilful defaulters, the penal measures cannot continue as long as there is no conclusive evidence against him.

13.In the light of the above reasonings, the impugned order as far as the petitioner in this writ petition is concerned is liable to be quashed and accordingly, the impugned order insofar as the petitioner is concerned is set aside. This writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes

Neutral Citation : Yes

Speaking Order / Non speaking order

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To
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1. The General Manager,
The Indian Overseas Bank,
Stressed Assets Management Department,
P.B.No.3765, 763 Anna Salai,
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