IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-06-2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

WP No. 23661 of 2021

1. Manish Agarwal
S/o. Surendra Nath Agarwal

Petitioner(s)

Vs

1. Union of India
Department of Financial Services,
Jeevan Deep Building,
Sansad Marg,
New Delhi - 110 001.

2.Reserve Bank of India
Department of Building, Fort Glacis,
Rajaji Salai, Chennai - 600 001.

3.Bank of Baroda
Rep by its Chief Manager,
Stressed Asset management Branch,
No. 45, Moore Street,
JBAS Building, 4th Floor,
Chennai - 600 001.

Respondent(s)

PRAYER

Call for the records of the decision of the Committee of Executives on Wilful Defaulter dated 09.03.2021 vide letter No. SAM:01:BASE:2021 culminating in the decision of the Review Committee of the Respondent no. 3 dated 12.08.2021 vide Letter No. SAM-02-BASE-2021 (Impugned Decisions) and quash the Impugned Decisions as being arbitrary, illegal, void in derogation of the Master Circular and the law laid down by the Hon'ble Supreme Court of India in Jah Developers.

For Petitioner(s):	Mr.Sathish Parasaran, Senior Counsel for Ms.R.S.Pornima
For Respondent(s):	Mr.V.Ashok Kumar for R1 Mr.C.Mohan & Ms.A.Rexy Josephine Mary for M/s.King & Partridge for R2 Mr.R.Ramasubramaniam Raja Standing Counsel for R3

ORDER

The present writ petition has been filed challenging the decision taken by the Review Committee of the 3rd respondent Bank dated 12.08.2021, whereby the decision taken by the Committee of Executives dated 09.03.2021 was confirmed and the petitioner was shown as a wilful defaulter.

2. The case of the petitioner is that he is a Non-Executive Director in a company called M/s. Base Corporation Limited and that he did not participate in the day-to-day affairs of the company and did not receive any remuneration from the company. Apart from that, the petitioner also submitted his resignation through a letter dated 10.04.2016, and the resignation letter was acted upon by the Board of Directors and it was accepted. While so, the 3rd respondent Bank initiated proceedings to declare the company and the Directors as Wilful Defaulters. A show cause notice dated 22.07.2020 was issued in this regard. On receipt of the show cause notice, the petitioner submitted a reply. The petitioner took a stand that he was a Non-Executive Director and he had nothing to do with the functioning of the company, when he had already resigned from the company.

3. The Committee of Executives, through proceedings dated 09.03.2021, came to a conclusion that the company and its Directors, including the petitioner, must be declared as Wilful Defaulters on the grounds mentioned in the show cause notice, since the company had defaulted in meeting its payments/repayments and the Directors have siphoned off the funds, which were not used for the purpose for which they were lent.

4. The petitioner submitted a representation to the Review Committee of the 3rd respondent Bank on 23.03.2021. On receipt of the same, the Review Committee passed an impugned order dated 12.08.2021, reiterating the decision taken by the Committee of Executives. Aggrieved by the same, the present writ petition has been filed before this Court.

5. The 3rd respondent has filed a counter affidavit. In the counter affidavit, a stand has been taken to the effect that the petitioner was unable to justify his stand that he is a Non-Executive Director and that he had resigned from the company. That apart, the Committee of Executives as well as the Review Committee found that the petitioner was part of the audit committee during the period when the irregularities took place, and the petitioner was unable to provide any documentary evidence or give any justification for the irregularities that occurred during the relevant period when he was a member of the audit committee. Hence, the petitioner was provided with sufficient opportunity and the Review Committee has confirmed the decision taken by the Committee of Executives and declared the company and its Directors as Wilful Defaulters. Accordingly, the 3rd respondent has sought for the dismissal of the writ petition.

6. Heard Mr.Sathish Parasaran, learned Senior Counsel for Ms.R.S.Pornima learned counsel for the petitioner and Mr.V.Ashok Kumar, learned counsel for the 1st respondent, Mr.C.Mohan & Ms.A.Rexy Josephine Mary for M/s.King & Partridge for the 2nd respondent and Mr.R.Ramasubramaniam Raja, learned Standing Counsel for 3rd respondent.

7. The main ground that was alleged by the learned counsel for the petitioner is that the Review Committee did not take into consideration any of the grounds that were raised by the petitioner, and the Review Committee has virtually reiterated the findings of the Committee of Executives and hence, the decision taken by the Review Committee suffers from non application of mind.

8. Per contra, the learned counsel for the 3rd respondent Bank submitted that the petitioner was not able to substantiate his stand that he was a Non-Executive Director and also his so-called resignation, and on the material available, it is seen that the petitioner was participating in the day-to-day affairs of the company and he was part of the audit committee during the relevant period when such irregularities took place and therefore, the Review Committee had confirmed the decision taken by the Committee of Executives after affording opportunity to the petitioner.

9. This Court is testing the decision taken by the Review Committee dated 12.08.2021. Hence, it must be seen as to whether the review committee really applied its mind to the grounds taken by the petitioner and provided any reasons to confirm the decision taken by the Committee of Executives.

10. The reasoning given by the Committee of Executives through the proceedings dated 09.03.2021 is extracted hereunder,

> *"In response to the show cause notice/paper publication we have received representation. In response to your representation dated 04.08.20, opportunity for personal hearing before the committee*

has been given on 13.11.20. Mr.Manish Agrawal appeared before the Committee at New Delhi ZO, through Microsoft Office and he informed that he is independent director but he could not provide any documentary evidence and could not justify the points mentioned in the SCN.

In the light of the aforesaid facts and circumstances, after hearing the borrower and perusing the documents on record the Committee of Executives on Wilful Defaulters (COE) of bank has decided to declare M/s. Base Corporation Ltd and its chairman, MD & guarantor Mr. Girish Kumar Arora and directors Mr.Ranjit Dongra Mr.Manish Agrawal and guarantors Mr.Aditya Arora, Mrs. Radha Devi, Mr.Rakesh Kumar Sharma, M/s Base Holding Ltd. M/s Girish Sons Investment Ltd, M/s. Paxin Vincom Pvt Ltd, M/s Statefield Distributors P Ltd. Mis Wofin Leasing & Finance P Ltd, M/s Pragati Goods P Ltd, M/s. Popular Tie-up Pvt Ltd, M/s. Maxim Tie-up Pvt Ltd. M/s Base Liesures P Ltd, M/s Doyen Vanijya P Ltd, M/s Omkar Sales Pvt Ltd, M/s Manikaram Vayapar-Pvt Ltd. Mis. Real-Tradecom P Ltd, M/s. Skylark Vanijya Pvt Ltd as 'Wilful Defaulters' on the grounds mentioned in the show cause notice, after concluding that the company 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"

11. The reasoning given by the Review committee is extracted hereunder,

> *"In response to paper publication representation has been received. In response to the SCN, Mr.Manish Agarwal submitted representation vide letter dated 04.08.2020. COE in its meeting held on 18.09.2020 consented for personal hearing and called on 13.11.2020. None of the chairman & MD /guarantors appeared before the committee on 13.11.2020. Hence, another opportunity of personal hearing has been given on 09.12.2020. Mr. Manish Agrawal appeared before the Committee at New Delhi ZO, through Microsoft Office, but he could not submit the proper reply/justify the points mentioned in SCN.*
>
> *In the light of the aforesaid facts and circumstances and perusing the documents on record the Committee of Executives on Wilful Defaulters (COE) of bank has decided to declare M/s. Base Corporation Ltd and its chairman & MD, guarantor Mr. Girish Kumar Arora and directors Mr. Ranjit Dongra, Mr. Manish Agrawal and guarantors Mr. Aditya Arora, Mrs. Radha Devi, Mr. Rakesh Kumar Sharma, M/s Base Holding Ltd. M/s. Girish Sons Investment Ltd, M/s. Paxin Vincom Pvt Ltd, M/s. Statefield Distributors Pvt Ltd, M/s. Wofin Leasing & Finance P Ltd, M/s Pragati Goods P Ltd, M/s Popular Tie-up Pvt Ltd, M/s Maxim Tie-up Pvt Ltd, M/s Base Liesures P Ltd, M/s Doyen Vanijya P Ltd, M/s. Omkar Sales Pvt Ltd, M/s Manikaram Vayapar Pvt Ltd, M/s. Real Tradecom P Ltd, M/s. Skylark Vanijya Pvt Ltd as 'Wilful Defaulters' on the grounds mentioned in the*

show cause notice, after concluding that the company has defaulted in meeting its payment/repayment obligations to the lender and has siphoned off the funds so that the funds have not been utilized for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets.

The decision of the COE was conveyed vide our letter No.SAM:01:BASE:2021 dated 09.03.21 with an opportunity for submission of further representation, if any, for consideration by the Review Committee on Wilful Defaulters, In terms of RBI guidelines and to comply principles of natural justice.

The representation received from Mr. Manish Agarwal vide letter dated 23.03.21 in response to the decision of COE was placed before the Review Committee.

In the aforesaid circumstances, after perusal of documents on record and representation received, Bank's Review Committee on Wilful Defaulters in its meeting held on 19.07.2021 confirmed the decision of the Committee of Executives on Wilful Defaulters (COE). T

Thus after following the due procedure, it has been decided to declare M/s. Base Corporation Ltd and its chairman & MD, guarantor Mr. Girish Kumar Arora and directors Mr. Ranjit Dongra, Mr. Manish Agrawal and guarantors Mr.Aditya Arora, Mrs. Radha Devi, Mr. Rakesh Kumar Sharma, M/s Base

Holding Ltd, M/s.Girish Sons Investment Ltd, M/s. Paxin Vincom Pvt Ltd, M/s.Statefield Distributors P.Ltd, M/s. Wofin Leasing & Finance P Ltd, M/s Pragati Goods P Ltd, M/s Popular Tie-up Pvt Ltd, M/s Maxim Tie-up Pvt Ltd, M/s Base Liesures P Ltd, M/s Doyen Vanijya P Ltd, M/s. Omkar Sales Pvt Ltd, M/s Manikaram Vayapar Pvt Ltd, M/s. Real Tradecom P Ltd, M/s. Skylark Vanijya Pvt Ltd as Wilful Defaulters. Bank reserves the Right to publish the name and photograph of Wilful Defaulter in News Paper and will initiate the necessary recovery action as per extant guidelines issued by Reserve Bank of India."

12. The Review Committee is expected to deal with the grounds raised by the petitioner and discuss the same by assigning reasons. Even if the Review Committee is ultimately confirming the decision taken by the Committee of Executives, some semblance of application of mind must be seen in the order. Such application of mind is always reflected based on the reasons assigned in the order. However, the Review Committee has virtually copied and pasted the reasoning assigned by the Committee of Executives, and there was no independent application of mind and no independent reasons are forthcoming in the order. The illegality of the decision taken by the Review Committee is apparent on the face of the order.

13. Learned counsel for the 3rd respondent Bank wanted to project the various irregularities that were committed by the company, in which the petitioner had taken an active part. It is not necessary for this Court to get into the merits of the case, since this Court finds that the decision taken by the Review Committee suffers from non application of mind. Therefore, without going into the merits of the case, this Court is inclined to remand the matter back to the Review Committee and direct the Review Committee to deal with the grounds raised by the petitioner and pass fresh orders within a time framed fixed by this Court.

14. In light of the above discussions, the impugned decision of the Review Committee in Letter No.SAM:02:BASE:2021, dated 12.08.2021 is hereby set aside insofar as the petitioner is concerned, and the matter is remanded back to the Review Committee of the 3rd respondent. The Review Committee shall consider the grounds raised by the petitioner and pass an order by assigning proper reasons, within a period of six weeks from the date of receipt of a copy of this order. Since this Court has not gone into the merits of the case and has not given any findings regarding the same, it is left open to the Review Committee to deal with the application submitted by the petitioner on its merits.

15. In the result, the writ petition is allowed with the above directions. No costs. Consequently, the connected miscellaneous petitions, if any, are closed.

17-06-2025

gd
Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No

To

1. Union of India
Department of Financial Services, Jeevan Deep Building,
Sansad Marg,
New Delhi - 110 001.

2.Reserve Bank of India
Department of Building, Fort Glacis, Rajaji Salai, Chennai - 600 001.

3.Bank of Baroda
Rep by its Chief Manager,
Stressed Asset management Branch, No. 45, Moore Street,
JBAS Building, 4th Floor,
Chennai - 600 001.

N.ANAND VENKATESH J.

gd

WP No. 23661 of 2021

17-06-2025