

**In The High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.O No.1488 of 2023

**Shrivardhan Goenka
VS
State bank of India and Others**

For the petitioner : Mr. Jishnu Saha, Snr. Adv.
Mr. Suddhasatva Banerjee,
Mr. Ishaan Saha
Mr. Shubradip Roy
Ms. Akhanka Banerjee
Ms. Sananda Ganguly,
Ms. Soumi Guha Thakurta,

For the
respondent
nos. 1, 2 and 3 : Ms. Deblina Lahiri
Mr. Mrinmoy Chatterjee

For the
respondent no.4 : Ms. Soni Ojha
Ms. Sambrita B. Chatterjee

Heard on : 19.12.2025

Reserved on : 19.12.2025

Judgment on : 09.01.2026

Sabyasachi Bhattacharyya, J:-

1. The petitioner claims to be a Non-Whole Time Executive Director of the Duncans Industries Limited, a Registered Company, which was, along with some of its Whole Time Directors, declared to be Wilful Defaulters under the Reserve Bank of India (RBI) Master Circular on Wilful Defaulters dated July 1, 2015. Although the petitioner was also declared to be a Wilful Defaulter initially by the Wilful Defaulter Identification Committee (for short, "the IC"), which decision was affirmed by the Review

Committee (for short, “the RC”), the petitioner claims to fall outside the ambit of the Master Circular. The present writ petition has been preferred against such declaration.

2. Learned senior counsel appearing for the petitioner submits that the RC, while adjudicating the petitioner to be a Wilful Defaulter, failed to decide on the jurisdictional objection raised by the petitioner. It is contended that under Clause 3 of the Master Circular, which provides for the mechanism for identification of Wilful Defaulters, the promoters and Whole Time Directors have been placed on a different footing than Non-Promoters/Non-Whole Time Directors. Clause 3(d) provides that, except in very rare cases, a Non-Whole Time Director should not be considered as a Wilful 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 meeting 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.
3. Learned senior counsel places reliance on the representation made by the petitioner to the RC, where it was categorically pointed out that the petitioner is neither a Promoter nor a Whole Time Director of the Company, but was merely a Non-Executive Director of the borrower-Company, i.e., Duncans. Learned senior counsel also places reliance on the prospectus of the Company, which did not include the petitioner among the original subscribers of shares/promoters.
4. Learned senior counsel appearing for the petitioner next cites the Annual Report of Duncans for the financial year 2013-2014, where the petitioner

was shown as a member of the Board of Directors of the Company. However, it is also reflected from the same that the petitioner was shown as a “Non-Executive” Director.

5. Learned senior counsel contends that, as apparent from the said Annual Report, the petitioner was not a member of the Audit Committee and, as such, did not have anything to do with the financial transactions of the Company.
6. Learned counsel for the petitioner further places reliance on a communication by ISG Traders Ltd., one of the Promoters of Duncan’s Industries Ltd., to the National Stock Exchange of India Ltd., as well as the Bombay Stock Exchange Ltd., where the petitioner did not feature in the list of Promoters.
7. However, in the notice sent to the petitioner, the petitioner was mentioned as a Promoter and as an Executive Director and both the IC and the RC held the petitioner to be a Wilful Defaulter.
8. It is further pointed out that as per the order of the RC, the relevant period during which the alleged default occurred was during the financial years 2015-16, 2016-17 and 2017-18. However, the petitioner had already resigned from the company on October 7, 2015. The account of the borrower-Company was classified as a Non-Performing Asset (NPA) subsequently, on October 29, 2016. Hence, the petitioner could not have anything to do with the borrower-Company’s financial affairs during the alleged period of default.
9. It is contended that since the Master Circular contemplates penal consequences of a serious nature, the same should be strictly construed.

The RC, however, without taking into consideration the provisions of Clause 3(d) of the Master Circular, declared the petitioner to be a Wilful Defaulter, without the yardsticks stipulated therein being satisfied at all.

- 10.** Lastly, it is argued that one Shri R. K. Bhargava, an Independent Non-Executive Director of the borrower-Company standing on similar footing as the petitioner, was let off by the impugned order of the RC only on the ground that he was a Non-Executive Independent Director and as such his name shall not be included in the CIC list of Wilful Defaulters, despite Shri Bhargava being a member of the Audit Committee as reflected in the Annual Report of the borrower-Company, of which the petitioner was not a member.
- 11.** It is pointed out by learned senior counsel for the petitioner that in the list of Directors shown in the Annual Report of 2013-2014, the said Shri Bhargava was shown as a Director along with the petitioner. Thus, the petitioner seeks parity with Shri Bhargava inasmuch as the outcome of the RC decision is concerned.
- 12.** Learned counsel for the bank opposes the contentions of the petitioner and contends that from the IC decision dated February 26, 2021, it would be evident that the borrower-Company entered into a marketing-cum-management contract agreement with one Nagri Farm Tea Company Ltd. for the Marybong Tea Estate on July 5, 2013, much prior to the financial year 2015-16, when the petitioner was very much a director of the borrower-Company. In the said notice itself, it was mentioned that the loan account had been classified as NPA with effect from January 16, 2012. Thereafter, upon a restructuring, the account was classified again

as NPA on October 29, 2016. It is argued that, thus, the NPA declaration goes back to January 16, 2012, when the petitioner was a Director of the Company. In any event, it is submitted by the bank that the adjudication of Wilful Defaulter has nothing to do with NPA classification and relates to wilful default committed by the borrower and its directors/promoters, which operates on an entirely different footing than the banking function of marking defaulting accounts as NPA.

13. Learned counsel for the bank next contends that it would be evident from the reply of the petitioner, along with one Gauri Prasad Goenka, another Director of the company and one Mrs. Kavita Marketing Pvt. Ltd., that the petitioner described himself as a promoter/director of the Company. Furthermore, in paragraph 47 of the said reply, it was admitted that the transactions through the defaulting account was admitted to be within the knowledge of the petitioner. That apart, in a letter dated May 23, 2022 issued on behalf of the petitioner to the Deputy General Manager of the State Bank of India, it was admitted that the petitioner was a promoter. Hence, the exception under sub-clause (d) of Clause 3 of the Master Circular is not applicable to the petitioner at all.

14. It is argued that the petitioner sought to rely on the list of promoters given in the prospectus to show that his name was not contained therein. However, G.P. Goenka, an admitted Promoter and Director of the Company, was also not named therein, whereas the said G.P. Goenka's name is reflected as a Promoter in the disclosure made by ISG Traders Limited, which is relied on by the petitioner himself.

- 15.** In the reply of the petitioner to the Show-Cause Notice issued by the IC, it was admitted further in paragraph 35 that he ceased to have control over the finances of the company on March 5, 2020, implying that he had full knowledge of the transactions entered into by the company till then. Such period, thus, covers the period during which the alleged wilful default took place.
- 16.** It is next contended by the Bank that the status of an Independent Director is completely different from an ordinary Non-Executive Director, inasmuch as the former is a professional appointed to act independently and, thus, falls outside the management ecosystem of the company. Hence, R.K. Bhargava, who was let off in the investigation by the IC and the RC, stood on a completely different footing than the petitioner, who was admittedly a Promoter as well as a Non-Executive Director.
- 17.** Learned counsel appearing for the bank next takes the court through several documents, including balance sheets and profit and loss accounts of the borrower-Company, to show that the name of the petitioner appears as a Director therein, indicating that the petitioner had signed such documents for the relevant period, being the financial year 2013-2014, and thus had full knowledge of the fraudulent transactions-in-question.
- 18.** It is shown from the Annual Report relied on by the petitioner himself that the petitioner had attended, unlike other directors, all five Board meetings held during the year, ending with September 30, 2014, and had even attended the last AGM held on December 30, 2013. From the materials on record, the bank points out that the petitioner used to draw remuneration from the company during the relevant period. From the Consolidated

Financial Statements of the borrower-Company as on September 30, 2014, it is pointed out that one of the heads was 'Other Advances', under which a sub-heading was 'Considered Doubtful', which amounted to Rs.282.65 lakh. It is argued that the said financial statement was a part of the documents signed by the petitioner, thus showing his full complicity and knowledge regarding the financial transactions leading to the allegation of wilful default.

19. Learned counsel for the bank submits that the last sentence of Clause 3 (d) of the RBI Master Circular stipulates that the exceptions enumerated therein in respect of Non-Whole Time Directors do not apply to a Promoter Director, even if not a Whole Time Director.

20. Lastly, learned counsel argues that even if the reasoning in the decision of the RC is not elaborate, it has to be considered that after all the said Committee is an administrative body and was performing an administrative function. Thus, elaborate reasoning similar to a civil court ought not to be expected. Small omissions or technical dearth in reasoning may be supplied by this Court in the event the conclusion of the RC is found to be correct.

21. Heard both sides.

22. The first question which falls for consideration is whether the petitioner could be classified as a Promoter of the Company. The bank has relied on the reply to the Show-Cause Notice issued by the IC, sent *inter alia* on behalf of the petitioner, to allege that the petitioner was a promoter. However, paragraph 44 of the said reply, relied on by the bank, speaks otherwise. The complete sentence, a part of which was placed by the

bank, stated that it is further settled law that upon conclusion of the Corporate Insolvency Resolution Process either with the passing of a resolution plan or the liquidation of the said Company, the said Company shall itself stand absolved of any wilful default and in the circumstances, *no allegation of wilful default against either Mr. G. P. Goenka or Mr. Srivardhan Goenka (the petitioner) in the capacity of Promoter, Directors of the company can survive* (emphasis supplied).

23. Again, paragraph 47 of the said reply, which is also cited by the bank, states *inter alia* that the total transactions through the account maintained with the ICICI bank, Darjeeling Branch, for operational convenience of gardens managed by the said Company during that period, was only a paltry sum and *to the knowledge of Mr. G. P. Goenka and Mr. Srivardhan Goenka, the said account of the said company has been seized by the Chief Labour Commissioner on account of the outstanding Provident Fund Dues of the workers engaged at the said company* (emphasis supplied).

24. Thus, from neither of the above paragraphs, relied on by the bank, does this Court find any admission on the part of the petitioner that he was a Promoter of the defaulter Company. In paragraph no. 35 of the self-same reply, it was stated on behalf of the petitioner that the Interim Resolution Professional accordingly took charge of the company on and from 5th March 2020 and Mr. G. P. Goenka and Srivardhan Goenka, who are members of the Board of said Company, stood suspended and ceased to have any control over the affairs of the Company from that date onwards and the bank accounts of the said Company were under the control of

and operated by the said Interim Resolution Professional. As such, they had no means to settle the dues of the SBI. Isolated excerpts cannot be culled out from the rest of the reply out of context. The reply nowhere admits the petitioner to be a Promoter or Director of the borrower-Company. In any event, we find from the Prospectus of the Company that the petitioner's name does not feature in the list of the original subscribers/Promoters of the Company.

25. In the letter issued on behalf of the petitioner to the bank dated May 23, 2022, the petitioner states in the first paragraph that the letter of the bank dated May 7, 2022 issued to the petitioner “alleging him to be the promoter of Duncan's Industries Limited...”. Thus, it was merely the allegation of the bank which was being referred to. In the caption, the petitioner, within parenthesis, was mentioned as a promoter, since the said letter was a reply to the bank's communication dated May 7, 2022, where the petitioner was alleged to be a promoter. Thus, such letter does not contain any admission as such that the petitioner was a Promoter, particularly in the absence of any document being produced by the bank to substantiate such allegation. In fact, we do not find any document on record to indicate that the petitioner was ever a Promoter of the borrower-Company, nor does the impugned decision of the RC refer to any such document to substantiate such allegation.

26. Thus, we have to consider the case of the petitioner on the premise that he was a Non-Executive Director of the Company.

27. As rightly argued by the petitioner, he was not a member of the Audit Committee.

- 28.** The allegation of the bank that the petitioner signed the balance sheets and the profit and loss accounts is unsubstantiated from the records. The petitioner's name is only mentioned at the bottom of some of the pages of the said documents as a Director of the Company, without specifying the character of such Directorship.
- 29.** However, no signature of the petitioner appears from any of such documents. In any event, the said documents are filed in compliance of the relevant provisions of the Company Law, generally by Chartered Accountants, the accounts being audited ones, and as such the Directors personally need not sign such documents.
- 30.** The reflection in the Audit Report of the petitioner attending certain meetings of the Company does not *per se* bring the petitioner within the fold of Clause 3(d) of the Master Circular.
- 31.** Despite the petitioner having specifically raised the jurisdictional issue as to non-applicability of the mechanism for identification of equal defaulters to him under Section 3(d) of the Master Circular, such issue was not even adverted to in the impugned decision of the RC which, in law, is duty-bound to consider on merits the representation of the accused persons.
- 32.** Going by the exception clause in sub-clause (d) of Clause 3, this Court does not find that the bank has referred to or brought on record any minutes of any meeting of the Board or a Committee of the Board by virtue of which the petitioner could be aware of the fact of wilful default by the borrower, let alone the petitioner having had to record his objection to the same in such minutes. Also, the consent or connivance of the petitioner in the alleged acts of wilful default has not been substantiated

in any manner whatsoever. No exceptional circumstance or rare case has been made out in terms of the exception clause in the case of the petitioner.

33. The mere fact of the petitioner being a Non-Whole Time Director in the borrower-Company during the relevant period does not satisfy the parameters of Clause 3(d) insofar as such Directors are concerned. This Court finds abject failure on the part of the bank to substantiate any of the parameters laid down in the said provision of the Master Circular to indict the petitioner for wilful default or any complicity on the part of the petitioner in the wilful default allegedly committed by the borrower-Company.

34. Although R.K. Bhargava was let off only on the ground that he was a Non-Executive Independent Director, without entering into any other question, the petitioner, who was also a Non-Executive Director, was held to be a Wilful Defaulter, thereby violating equitable principles. The mere fact that Sri R.K. Bhargava was an Independent Director does not make any material difference in that regard.

35. In fact, we find no reference in the impugned decision of the RC to the jurisdictional objection taken by the petitioner, nor any material to bring the petitioner, who was a Non-Whole Time Director, within the fold of the exception clause of Clause 3(d) of the Master Circular.

36. The bank argues that even if the reasoning of the RC was not proper, if a correct conclusion was arrived at, this Court can supply the reasons. However, we find no reasons at all in the impugned RC decision, nor reference therein to any incriminating material to hold the petitioner to be

a Wilful Defaulter. Such utter lack of reasons or materials thus vitiates the conclusion itself in that regard.

37. In view of the above observations, the impugned decision of the RC dated April 18, 2023, to the extent that the petitioner was held to be a Wilful Defaulter, cannot be sustained.

38. Accordingly, WPO No.1488 of 2023 is allowed on contest, thereby setting aside the impugned decision of the Review Committee dated April 18, 2023 to the extent that the petitioner was held to be a Wilful Defaulter. Consequentially, since the decision of the Wilful Defaulter Identification Committee attains finality only upon the Review Committee affirming the same, the declaration of the petitioner as a Wilful Defaulter by the Identification Committee is also nipped in the bud and is hereby held to have no effect in law whatsoever.

39. The respondent-Bank is directed to take immediate steps to give effect to the present judgment by taking down the name of the petitioner from the CIC list of Wilful Defaulters and reversing any step, if taken in furtherance of the declaration of the petitioner as a Wilful Defaulter, at the earliest, positively within a month from date.

40. There will be no order as to costs.

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

(Sabyasachi Bhattacharyya, J.)