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WP-25641-2021

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

ON THE 17th OF MAY, 2025WRIT PETITION No. 25641 of 2021*MR. GULAB AGRAWAL AND OTHERS**Versus**IDBI BANK LIMITED AND OTHERS*

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Appearance:

Shri Satish Agrawal - Advocate for the petitioners.

Shri Bhavil Pandey - Advocate for respondent no. 1.

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Reserved on :- 01/04/2025

Pronounced on :- 17/05/2025

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ORDER

This writ petition is filed being aggrieved of communication dated 23/08/2021 sent by the first respondent informing that second respondent has passed the order dated 21/08/2021 to declare the petitioners as wilful defaulter.

2. Petitioner is also challenging the communication dated 30/09/2021 issued by the first respondent along with the order dated 30/09/2021 passed by the third respondent approving the order dated 21/08/2021 declaring the petitioners to be wilful defaulters.

3. Learned counsel for the petitioners submits that all the actions of the respondents are arbitrary, illegal and amounts to denying fair representation to the petitioners before Wilful Default Committee, the Review Committee.



4. It is submitted that M/s Sanwaria Consumer Limited is a company incorporated with the object of manufacturing and trading of edible oil etc. It is engaged in manufacturing of Soya De-oiled Cake (DOC), solvent oil and refined oil, Soya lecithin and Acid oil.
5. Petitioner nos. 1 to 3 are Directors of Sanwaria Consumer Limited and petitioner no. 4 is a Guarantor to the said company.
6. Shri Satish Agrawal, learned counsel for the petitioners submits that allegation on the petitioners is that they have defaulted in making its payment and repayment obligations to the lender and diverted financial assistance taken by IDBI. It is submitted that one of the Directors namely Shri Anil Agrawal died on 29/05/2021, therefore, he is not made a party.
7. Shri Satish Agrawal submits that chronology of events is that petitioners were given a show-cause notice dated 7/05/2021 alleging diversion of funds without there being any evidence or documents supporting such claim.
8. On 24/05/2021, petitioners submitted a reply and raised several objections to oppose the show-cause notice. They demanded documents relied on by the respondent Wilful Defaulters Committee (WDC) and evidence to classify the petitioners as wilful defaulters. They also demanded personal hearing in terms of guidelines of RBI dated 1/07/2015.
9. Respondents rejected all the contentions raised in the representation dated 24/05/2021 vide communication dated 14/06/2021 and provided some extracts of Forensic Audit report.
10. On 25/06/2021, petitioners protested against the rejection of their representation dated 24/05/2021 and submitted that representation is by an



officer not competent in law to do so.

11. Vide communication dated 6/07/2021, first respondent rejected the protest filed by the petitioners alleging that personal hearing was not attended. Thereafter, vide communication dated 17/07/2021, first respondent informed that hearing is scheduled on 29/07/2021. Petitioners sought time due to demise of one of their Directors in view of Covid-19 but it is submitted that vide communication dated 23/08/2021, first respondent communicated the order dated 21/08/2021 passed by the second respondent and directed the petitioners to submit representation before the review committee within fifteen days.

12. On 2/09/2021, petitioners submitted their representation before the review committee. Vide communication dated 30/09/2021, first respondent communicated the order passed by the third respondent approving the order dated 21/08/2021 passed by the second respondent.

13. Thus, it is submitted that whole proceedings were fraught with lack of transparency.

14. Learned counsel for the petitioners submits that in terms of the judgment of the Supreme Court in **State Bank of India Vs. Jah Developers Private Limited and others (2019) 6 SCC 787**, the Hon'ble Supreme Court has held that firstly, the In-House Committees are not vested with any judicial power at all. Their powers being administrative powers given to In-House Committees to gather facts and then arrive at a result and secondly, it cannot be said that the circulars in any manner vests the State's judicial power (i.e. the power to decide a lis between the parties after gathering



evidence and applying the law, as a result of which, a binding decision is reached) in such In-House Committees.

15. It is thus submitted that the Supreme Court has held that RBI Master Circular on Wilful Defaulters i.e. Revised Circular dated 1/07/2015 is to be read with RBI Circular dated 1/07/2013. It is pointed out that mechanism for identification/declaration of wilful defaulters as provided in Revised Circular dated 1/07/2015 is to necessarily incorporate the steps from the earlier Master Circular dated 1/07/2013.

16. It is submitted that Article 19(1)(g) of the Constitution is attracted in the facts, 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. Further, given the drastic consequences involved, the Revised Circular, being in public interest, must be construed reasonably. Thus, it is held that as per para 3 of the Master Circular dated 1/07/2013, permitted the borrower, to make a representation within fifteen days of the preliminary decision of the First Committee. It is held that first and foremost, the Committee comprised of the Executive Director and two other senior officials, being the First Committee, after following para 3(b) of the revised RBI circular dated 1/07/2015.

17. The order passed in terms of this clause, should be given to the borrower as soon as it is made. The borrower can then represent against such order within a period of fifteen 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 be then served on the borrower.

18. Thus, it is submitted that there are twin requirements incorporated in the Master Circular dated 1/07/2013 i.e. granting a hearing before the grievance redressal committee headed by the Chairman/Managing Director and also provided that the borrower should be provided fifteen days time of making a representation against the preliminary decision of the First Committee. It is submitted that these conditions are not fulfilled and, therefore, the decision of the committee is defective.

19. Shri Satish Agrawal, learned counsel for the petitioners places reliance on the judgment of the Delhi High Court in **Ratul Puri Vs. Punjab National Bank 2024 SCC Online Del 1412** and submits that in para 83 and 84, the Delhi High Court has mentioned as under :-

"83. The Review Committee in the impugned order has recorded that the forensic auditor concluded that the lease agreements between MBIL and MBSL were created for diverting banks funds. The learned Senior Counsel for the petitioner has taken this Court through the forensic audit report to show that no such observation is made in the forensic audit report. The Review Committee has attempted to add words to the forensic auditor, which is non-existent in the report.

84. When the petitioner made the aforesaid submissions before the Review Committee, the Review Committee, instead of dealing with each of them on merits, again rejected them by relying on the observations made in the forensic audit report. Thus, there appears



to be no independent application of mind by the respondent Bank."

20. Thus, it is submitted that when complete forensic report was not provided to the petitioners and only extracts were given, then no reliance can be placed on such report. It is further submitted that if the findings of the First Review Committee have not correctly referred to Forensic Audit report, then it cannot be taken into consideration.

21. Reliance is also placed on the judgment of the Calcutta High Court in **Suresh Kumar Patni and others Vs. Punjab National Bank and another AIR ONLINE 2020 CAL 678**, referring to this judgment, it is pointed out that in paragraphs 48, 49 and 50, it is held that mere reference to the forensic report in the orders of the committees is not enough, in the absence of any opportunity of rebuttal being given to the petitioners, as no copy of the report was served on the petitioners at any point of time.

22. Thus, it is submitted that non-service of the forensic report on the petitioners at the relevant juncture assumes fatal propositions, vitiating the sanctity and legality of the orders of both the committees.

23. Reliance is also placed on the judgment of the High Court of Bombay in **Finolex Industries Limited and another Vs. Reserve Bank of India and others 2011 SCC Online Bom 1781** wherein placing reliance on paragraphs 41 and 42, it is held that "consistent with the principles of natural justice, it would be impermissible to accept the submission which has been urged on behalf of the third respondent that the minutes of the meeting of the Willful Defaulters' Committee of 18 March 2010 were not required to be submitted to the borrower."



24. It is submitted that the Bombay High Court has held that the minutes which are relied upon in the notice to the show-cause to the borrower should therefore have been disclosed consistent with the principles of natural justice and thus, it is submitted that non-disclosure will vitiate the proceedings.

25. It is submitted that the decision of the Supreme Court in **Kotak Mahindra Bank Limited Vs. Hindustan National Glass & Industries Limited and others (2013)7 SCC 369** has affirmed the decision of the Bombay High Court in **Finolex Industries Limited (supra)**.

26. Reliance is also placed on the decision of the Kerala High Court in **Ravis Exports and others Vs. Union of India, Represented by its Secretary and others 2022 SCC Online Ker 2488**. Referring to para 20 of the said judgment, it is submitted that "In the absence of serving the order of COE on the petitioners, there could never have been a declaration of the petitioners as wilful defaulters since the Master Circular as directed by the Supreme Court contemplates declaration as wilful defaulter only after serving the copy of the order of COE and the consequent decision of the Review Committee."

27. Thus, it is submitted that in the absence of the compliance, impugned orders cannot be sustained in the eyes of law.

28. Reliance is also placed on the judgment of the Bombay High Court in **Milind Patel Vs. Union Bank of India and others 2024 SCC Online Bom 745**. Referring to para 22 and 23, it is submitted that the Bombay High Court has noted that "It is now trite law that in proceedings that can inflict serious civil consequences on any citizen, the noticee should be able to appreciate the case made out against him so that he may deal with the allegations to the best of his ability. The only means of doing so is to



provide detailed proper notice of the reasons for having formed a prima facie view when calling upon the noticee to show cause why such prima facie view must not translate into a final view. Such an approach would enable the noticee to understand in a cogent manner the case that he is supposed to meet."

29. Shri Satish Agrawal submits that it is evident from Annexure P-4 dated June 14th, 2021 that the only relevant objects of forensic audit report was given and not complete forensic report, therefore, injustice has been done and there is violation of the principles of natural justice calling for interference.

30. It is also submitted that communications made by Deputy General Manager or any officer who was not forming part of the committee will not be relevant because there is no provision in the RBI circular for transmission of information through a delegatee.

31. Shri Bhavil Pandey, learned counsel for respondent no. 1 Bank submits that all the allegations made by the petitioners are wild and baseless. It is a feeble attempt to wriggle out of the clutches of the proceedings which have been undertaken in just and legal manner to declare the petitioners as wilful defaulter. It is pointed out that Annexure R-1 dated 5/01/2019 deals with constitution of Wilful Defaulter's Committee (WDC) and Non-Cooperative Borrower's Committee (NCBC). The committee constitutes the Deputy Managing Director handling corporate as Chairman and DMD handling retail vertical as Alternate Chairman. It also constitutes of the Executive Director-LCG as Member and provides for Executive Director-MCG as Alternate Member. Third Member is ED-NMG or in the Alternate ED-Compliance.



The Quorum will be one DMD and two EDs as specified in RBI Master Circular.

32. It is pointed out that the scope of work of WDC is to consider all proposals regarding identifying/declaring the Company/Directors/Guarantors as Wilful Defaulters. It is submitted that vide Annexure P-9 which is the notice dated 21st August, 2021 in regard to declaration of Directors/Promoters/Guarantors of Sanwaria Consumers Limited as Wilful Defaulters and opportunity for representation there against, it is evident that it is signed by DMD, ED-LCG and ED-NMG and, therefore, requirements of constitution of WDC is properly made.

33. It is also submitted that the committee clearly noted all the incidences of wilful default and the communication was merely made by the Deputy General Manager NPA management group. Making of communication by any officer of the bank, once a decision was taken by the properly constituted WDC cannot be said to have vitiated because it is not the requirement of law that the committee should send a communication on its own.

34. It is also submitted that the petitioners were given clear fifteen days time to send their further submission/representation in writing for consideration by the review committee on wilful defaulters.

35. It is further submitted that Annexure R-2 considered petitioner's financial position, defaults and noted in point no. 2 and 3 the aspect of diversion of funds, routing of funds through other bank other than lender bank or members of lender consortium without prior permission of the lender. It also considered investment in other companies by way of acquiring equities, debt instruments without approval of lenders.



36. Thus, it is noted that since HDFC was not part of the seven bank consortium, the allegation of routing money, maintaining bank accounts outside the consortium stood proved. Petitioners also acquired the company without the permission of the lenders and on said basis, a show-cause notice was issued.

37. Shri Bhavil Pandey further submits that in Annexure P-3, reply furnished by learned counsel for the petitioners, there is an admission of holding an account outside the consortium. It is pointed out that in para 78 of this reply, there is an admission before FAR was given that "Since the freezing of account by Punjab National Bank on 6/08/2019, SCL has requested number of times to Punjab National Bank and other consortium member banks to allow SCL "Holding on Account" to run the business and to keep the company as going concern but unfortunately no bank or any consortium member banks allowed SCL to run any bank account without understanding the fact that the business of the company became standstill due to freezing of account first by PNB then all consortium member Banks. It means that SCL was forced to make transaction through a Bank Account, out of consortium to run the business and keep the company as a going concern. SCL has written a letter to this effect also (letter dated 09.11.2019 attached)." It is pointed out in para 79 that "maintaining of this current account was within the knowledge of Punjab National Bank and other consortium member banks, they had written several letters to HDFC Bank to close account."

38. Similarly, in para 82, it is accepted that petitioners had acquired Sawaria Energy Limited (SEL) and then in para 85 accepts the knowledge of



observations of the forensic auditor by saying that

"85. The company has not diverted/siphoned any Bank funds and has always used fund for manufacturing/trading purposes, which can be duly verified from the available records and infact forensic auditor has verified and checked all the transactions and use of funds."

39. It is submitted that Annexure P-4 page 214 gives the list of the Banks namely Axis Bank Bhopal, HDFC Bank Bhopal, HDFC Bank Ltd. Itarsi, IndusInd Bank Bhopal, Ing Vysya Bank and Yes Bank Itarsi where the funds were diverted and accounts were maintained outside the consortium. From page 215 to 217 enclosed with the petition are the copy of the invoices showing the petitioner company was using HDFC account for payment of invoices.

40. It is submitted that the allegation of representation being not considered is incorrect and first opportunity was given on 30/06/2021 for personal hearing. It is clearly mentioned in the communication Annexure P-4 dated June 14th, 2021 "Since you have sought personal hearing in the matter, bank is agreeable to give you personal hearing on June 30, 2021. Accordingly, if you would like to avail the said opportunity, you may remain present in person at the venues :: at 10:30 A.M. To avail this facility you are requested to submit your self-attested copy of Aadhar Card, Pan Card or Passport to confirm your identity prior to attending the proceedings and position in the Company. The details can be submitted to :: on or before June 28, 2021 (10:00 A.M) along with your email ids as well as mobile number on which you want to receive the link of aforementioned meeting.



41. The second opportunity was granted vide communication dated July 6, 2021 in terms of petitioners' representation dated June 25, 2021 asking the petitioners to appear for personal hearing on July 15, 2021.

42. Annexure P-7 is the communication dated July 17, 2021 offering third and final opportunity for personal hearing before the Wilful Defaulters' Committee asking the petitioners to appear on July 29, 2021. Since, petitioners did not appear, thus committee passed the order. Since, the show-cause notice was issued at the instance of the qualified committee and it was merely dispatched by the DGM, it will not vitiate the notice.

43. It is pointed out that vide Annexure P-9, the Wilful Defaulter's Committee (WDC) in para 5 noted its deliberations which are as under :-

5. The Committee deliberated on the memorandum submitted by the Dealing Group in its meeting held on 29/07/2021 and noted the following:

- The Promoters/Directors/Guarantors of the Company could not provide satisfactory reply of the wilful default charges in their reply dated May 24, 2021.
- The Promoters/Directors/Guarantors of Sanwaria Consumers Limited [Shri Gulab Chand Agrawal, Shri Satish Kumar Agrawal, Shri Ashok Agrawal and Smt. Geeta Devi Agrawal] did not appear for personal hearing despite providing three opportunities of personal hearing on 30/06/2021, 15/07/2021 and 29/07/2021 respectively.
- Sanwaria Consumers Limited was admitted in to NCLT. Hence, it was excluded from Wilful Defaulter declaration proceedings.



- Shri Anil Kumar Agrawal, Promoter/Director/Guarantor of SCL, passed away on 29/05/2021. Hence, he may be excluded from declaring as Wilful Defaulter.
- Based on un-audited results as on September 30, 2019, SCL has registered revenue of Rs. 2239.43 crore from operations. However, SCL has stopped routing transactions through PNB led consortium, after lead bank's query about debtors anomalies to the extent of Rs.239 crore as on June 30, 2019 and reduction in DP to the tune of Rs.164.59 crore.
- During joint visit of IDBI & SBI to the company's plant at Mandideep on September 25, 2019, it was noticed by the officers that in few invoices, HDFC Bank's account number [a non lender bank] was provided for payment for dispatches from the plant.
- It was mentioned in the Forensic Audit Report that SCL has been maintaining 8 current accounts with outside consortium banks and in some of these accounts, debtors have been realized and payments were made directly to suppliers. As per the statement of account from HDFC Bank provided in the Forensic Audit Report for the period Aug-Oct 2019, it was observed that total debit credit summation during that period was about Rs.29.58 crore.
- The borrower company had sold six Wind Electric Generator having WDV of Rs.31.07 crore in FY 2013-14 to its group company namely Sanwaria Energy Limited (SEL). In consideration of the same, 3.11 crore shares of Rs.10 each were allotted to Sanwaria Consumers Ltd. (SCL) as a result of which the SEL became the wholly owned



subsidiary of SCL. This was done without the approval of lenders.

44. Thus, it is pointed out that there is complete deliberation on the submissions made by the petitioners and further vide Annexure P-11, grievance of the petitioners was considered in totality by the Wilful Defaulter's Committee in its meeting held on September 16, 2021 at 11:00 A.M. It has considered replies/written representation dated September 2, 2019 received on September 13, 2021 from Promoters/Directors/Guarantors of the company and also considered the observations of WDRC. It also noted that petitioners while filing their representation before WDRC had not filed any documents.

45. It is also submitted that this High Court while dealing with Writ Petition No. 13194/2022 **M/s RiteBanc Green Agro Solutions Pvt. Ltd. and others Vs. Central Bank of India** in para 76 has dealt with the issue of show-cause notice and referring to the judgment of Calcutta High Court in **Union Bank of India and others Vs. Sudhir Kumar Patodia and others 2020 SCC Online Cal 3259** has held that the omission referred to the decision taken by the Committee neither invalidates the show-cause notice nor it is that only because the master circular does not express to provide for delegation of power to issue the show-cause notice to any other Officer of the Bank. Therefore, in the absence of any prejudice being shown to the petitioners, judgment of the Hon'ble Supreme Court in **Central Bank of India Vs. Ravindra and others (2002) 1 SCC 367** will not have any assistance to them so to assail the proceedings undertaken by the respondents merely on the ground that notice was issued by any subordinate officer. In para 84, this



court had an occasion to deal with the objections contained in the Master Circular and it is held by this court that mere some technicalities will not be sufficient to defeat the purpose and set aside the decision of the committee which otherwise does not suffer from any vice of malafides or arbitrariness.

46. It is pointed out that the judgment in the case of **Finolex Industries Limited** (supra) will not be applicable because it was dealing with derivative transactions which is not the case in present. It is also pointed out that in the case of **Finolex Industries Limited** (supra), the Bombay High Court observed in para 37 that Bank had refused to supply the material but it is not the case in present. It is in para 46, 47 and 48, the issue of Advocates not given a hearing is dealt with and also that no personal hearing was given but in the present case, that too is not available.

47. In the case of **Jagdish Prasad Saboo Vs. IDBI Bank Limited** decided by the High Court of Gujarat at Ahmedabad in R/Special Civil Application No. 19261/2022 vide order dated 27/03/2023, it is held that when the show-cause notice itself incorporates the details of diversion, routing and siphoning of funds by the petitioner and the petitioner accordingly responded to the aforesaid show-cause notice, then petitioner was again given opportunity of explanation and he was informed that the respondent does not concur with the stand taken by him, then the Bank having forwarded the report of WDIC declaring the petitioner as a Wilful Defaulter. Besides, petitioner was also afforded a personal hearing, then mere non-supply of forensic science report in toto will not adversely affect the case of the Bank establishment when the Wilful Defaulter was aware about all the two irregularities levelled against him.



48. It is submitted that since facts are similar, no indulgence is called for in this behalf.

49. Reliance is also placed on the judgment of the High Court of Gujarat at Ahmedabad in R/Letters Patent Appeal No. 596/2022 in R/Special Civil Application No. 2518/2022 **Kirtilal RavchandBhai Sanghavi Vs. Reserve Bank of India** that if the borrower was aware of the alleged irregularities, then non-supply of forensic audit report cannot be said to have caused prejudice. In para 23, the Gujarat High Court observed that "Firstly, the copies of the audit reports were very much available with the petitioners and petitioners themselves delved upon these reports in the reply submitted to the show cause notice and such bogie of violation of principles of natural justice raised by the petitioners on the ground of non-furnishing of copies referred to in the impugned order has resulted in great prejudice is liable to be considered only for the purpose of outright rejection and we do so. It is observed that when petitioners had themselves delved with diversion of funds and opening of account in another bank which was not part of the consortium, then no indulgence can be shown.

50. It is submitted that it is also a settled principle of law that the matter which was left to the experts should be left to them as courts are not sitting as an appellate authority.

51. At this stage, Shri Satish Agrawal makes a submission that Annexure R-3 says that the minutes of the First Committee are affirmed but vide Annexure P-11, details are given which means that Annexure R-3 is forged. This argument raised by Shri Satish Agrawal needs to be discarded at the threshold because it is outrageous. Fact of the matter is that Annexure P-11



contains details whereas Annexure R-3 is the summary. Therefore, both are co-relatable.

52. After having heard learned counsel for the parties and going through the record, the issues which have been raised by learned counsel for the petitioners are :-

- (i). That notice issued by WDC was not served by WDC but by the subordinate officer to whom, the authority of serving notice has not delegated.
- (ii). The second issue is that Forensic Audit Report was not made available to the petitioners.
- (iii). Thirdly, petitioners were not given proper opportunity of hearing.

53. Therefore, it is submitted that great prejudice has been caused to the petitioners and a prayer is made to quash the notices initiating proceedings to declare the petitioners as Wilful Defaulter and, thereafter, the decision of the review committee.

54. As far as first aspect is concerned, this court had an occasion to deal with the aspect of service of notice in W.P. No. 13194/2022 **M/s RiteBanc Green Agro Solutions Pvt. Ltd.** (supra).

55. This court had an occasion to deal with this very specific aspect and having noted the judgment of the Calcutta High Court in **Sudhir Kumar Patodia** (supra), in para 17 to 20, it is held as under :-



"17. Having regard to the scheme enshrined in the master circular as well as the object and purpose which is sought to be achieved by enforcement of the provisions thereof, in our considered view, the omission of the appellant No. 2 to refer to the decision taken by the committee neither invalidates the show-cause notice nor is it bad only because the master circular does not expressly provide for delegation of power to issue the show-cause notice to any other officer of the bank.

18. There can be no doubt that the master circular has been introduced to check siphoning of public funds by borrowers who, in the opinion of the lender bank, despite having resources to discharge their debt, neglect or omit to do so with a view to defraud the lender. While it is true that declaring a borrower as a willful defaulter may result in civil consequences, there are adequate safeguards provided in the master circular which are conceived in the interest of the borrower.

19. In paragraph 3 of the master circular, one would find a reference to the pronoun 'it'. Such pronoun ordinarily has to be read keeping in mind the noun preceding it, i.e., the Committee. The learned Judge literally read the provision and held that the identification committee is the sole repository of power to issue a show-cause notice. As can be discerned from the master circular, it is the primary duty of the identification committee to identify willful defaulters and power in that behalf has been conferred on it. If indeed the power of the identification committee to identify



and then declare a borrower as a willful defaulter is delegated to some officer, such action would incur the wrath of the Court and not withstand judicial scrutiny.

20. However, in the instant case, the power has been exercised by the identification committee to prima facie identify the company as a willful defaulter and such committee also retained the power to consider the objection that might be raised by the company and/or its directors as to why it/they should not be declared as willful defaulters, prior to a final order being made in this behalf in accordance with the master circular by the review committee. What the identification committee has delegated to the regional office of the appellant No. 1 is the issuance of the show-cause notice indicating the grounds on which the identification committee, prima facie, is of the view that there has been an occasion of willful default on the part of the company and/or its directors."

56. Thus, the issue of issuance of notice in the hands of a person not constituting the WDC stands concluded and admittedly, since it has not caused prejudice to the case of the petitioners, it cannot be used to defeat the notices etc. in the name of technicalities.

57. As far as second issue is concerned, as held by the Hon'ble Gujarat High Court at **Kirtilal RavchandBhai Sanghavi** (supra) and **Jagdish Prasad Saboo** (supra) infact admitted position is that petitioners were aware of the contents of the forensic audit report and they had complete knowledge about



the findings recorded in forensic audit report. Rather, petitioners admitted both the aspects of maintenance of accounts with banks outside the consortium and also admitted acquiring of a company without the consent of financial consortium.

58. Therefore, once these facts are admitted, then only supplying selective portions of forensic audit report dealing with the petitioners cannot be said to have caused prejudice to their interest or that principles of natural justice have been violated. This principle is now well settled as held by the Gujarat High Court in **Jagdish Prasad Saboo** (supra) and **Kirtilal RavchandBhai Sanghavi** (supra) which has been crystallized in final.

59. In the case of **Suresh Kumar Patni and others Vs. State Bank of India, Industrial Finance Branch and another** AIR 2021 Cal 249, the Calcutta High Court has held that :-

22. A Writ Court cannot go into weigh the sufficiency of reasons given by an administrative or quasi judicial authority. What is seen, is whether there are some reasons, however small, in support of the findings. This is so as it is only a bank and the lender, given their special relations that can assess whether any default on the part of a borrower is wilful or not. A writ Court does not possess such expertise.

60. The Calcutta High Court in **Suresh Kumar Patni** (supra) further observed that "the writ petitioners have not been able to demonstrate as to how they have been prejudiced by any of the alleged acts or omissions on the part of the respondent. Assuming for the sake of argument that there is



some infraction of procedure on the part of the bank (although the Court does not find any) it is now well settled that every infraction of the principle of natural justice would not ipso facto vitiate proceedings. The petitioner must be able to demonstrate clearly the prejudice suffered by the reason of such infraction. Hence even if one accepts the submission of Mr. Saha that there has been some minor infractions of natural justice or procedure, no prejudice appears to have been caused to the petitioners, by such infraction."

61. In the case of **Jah Developers Private Limited** (supra), the Supreme Court has observed that "there is no right to be represented by a lawyer in the in-house proceedings contained in Para 3 of the Revised Circular dated 1-7-2015, as it is clear that the events of wilful default as mentioned in Para 2.1.3 would only relate to the individual facts of each case." The Supreme Court further observed that "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."

62. Thus, it has been concluded that if the procedure provided in the Master Circular is followed, then that will be sufficient compliance and it does not call for any interference.

63. The High Court of Judicature at Bombay in W.P. No. 1825/2019 in **Nitin S/o Mansukhlal Shah and others Vs. IDBI Bank Limited and others**



held that "Like every decision of the experts, even in this case, the parameters for interference therewith in writ jurisdiction are too well-settled to require any reiteration. The decision ought to be demonstrably unreasonable and perverse. The decision ought to be tested on the touchstone that no reasonable person in the position of the lender, the first respondent in this case, would arrive at the conclusion that the party before it is a wilful defaulter. That the default is not wilful has to be established by those who are charged with the same. The explanation in this case is not trustworthy, honest and reliable."

64. In the case of **Adarsh Jhunjhunwala Vs. State Bank of India and another** 2021 SCC Online Cal 3351, the High Court of Calcutta has held that the "the willful defaulter proceedings only aims at dissemination of information. The bank's responsibility to institute criminal proceedings would also be interfered with if the arguments of the petitioners are accepted." It is held that the "the object and purpose of the Master Circular for willful default is dissemination credit information of the willful defaulter so that other lenders are cautioned and do not lend any further money. It is also aim at preventing further fraud and loss of public money. A willful defaulter proceeding is not for recovery of debt. The repayment of debt will not ipso facto extinguish the default. This has to be assist and applied in the facts of the instant case. Like a moratorium is under the IBC is not aimed at letting a wrong doer to get away as held by the Supreme Court in the case of *Manish Kumar v. Union of India* reported in 2021 SCC OnLine SC 30."

65. Thus, it is evident that the purpose of proceedings to declare a person as Wilful Defaulter is to prevent and save loss of further public money.



66. The Calcutta High Court in the case of **Sandip Kumar Bajaj and another Vs. State Bank of India and another** 2020 SCC Online Cal 1659 held that "the Regional Office of the appellant/respondent being delegated the task of issuing the Show Cause Notice would not by itself invalidate the proceedings which had been initiated under the Master Circular for declaring the petitioners as wilful defaulters. Relying on *The Secretary, Ministry of Defence v. Prabhash Chandra Mirdha*; (2012) 11 SCC 565, it was additionally held that a Show Cause Notice does not give rise to a cause of action unless a strong case of abuse of process is made out."

67. Thus, it is clear that the process of issuance of notice by a person not forming part of WDC will not adversely affect the case of the respondents.

68. In the case of **M/s Sanwaria Consumer Limited and others Vs. Central Bank of India** decided by a coordinate Bench vide order dated 18th January, 2023 in W.P. No. 8606/2022, matter was remitted to the Bank as representation was rejected by Advocate of Bank whereas it is held that as per Clause 3(B), it is to be considered by the Committee and not by an Advocate, therefore, mechanism under Clause 3 (B) was held to be violated. In the present case, there being no such violation, the impugned judgment cannot be faulted with.

69. As far as reliance on different judgments placed by learned counsel for the petitioners is concerned, in **Ravis Exports** (supra), the High Court of Kerala in para 20 has held that "In the absence of serving the order of COE on the petitioners, there could never have been a declaration of the petitioners as wilful defaulters since the Master Circular as directed by the Supreme Court contemplates declaration as wilful defaulter only after



serving the copy of the order of COE and the consequent decision of the Review Committee." In the present case, both the documents are served i.e. the order of COE and the consequent decision of the Review Committee. Therefore, this judgment will not have any application on its own facts and is distinguishable.

70. As far as the decision of Bombay High Court in **Finolex Industries Limited** (supra) is concerned, in para 41 and 42, the principle which is laid down is that the material which is considered against the petitioners should be disclosed to them and that will be consistent with the principles of natural justice but at the same time, the law is also well settled as held by the Gujarat High Court that the material on the basis of which declaring a party to be a Wilful Defaulter, are, already within the knowledge of those parties, then there is no need for any additional material to be supplied and that will not be a ground for violation of principles of natural justice.

71. Therefore, decision in the case of **Finolex Industries Limited** (supra) will have a limited application in the light of the judgments of Gujarat High Court in **Jagdish Prasad Saboo** (supra) and **Kirtilal RavchandBhai Sanghavi** (supra).

72. As far as the judgment of Bombay High Court in **Milind Patel** (supra) is concerned, the ratio is that proceedings that can inflict serious civil consequences on any citizen, appropriate material should be provided so that noticee should be able to appreciate the case made out against him. In the present case, there is an admission that sufficient material was available to the petitioners in regard to diversion, routing etc. of funds and also in regard to acquiring of a company without consent of the financial consortium.



Therefore, this judgment too will not be of assistance to the petitioners.

73. As far as the law laid down by the Calcutta High Court in **Suresh Kumar Vs. Punjab National Bank** (supra) is concerned, the ratio is that not only the forensic report be referred to in the orders of the committee but petitioner should have an opportunity of rebuttal. In the present case, admittedly extracts of forensic audit report was provided and admittedly, petitioners were aware of the act of siphoning of funds, diversion, routing etc. and, therefore, this judgment too will not be of assistance to the petitioners.

74. In the case of **Ratul Puri** (supra), the ratio is that the Review Committee in the impugned order has recorded that the forensic auditor concluded that the lease agreements between MBIL and MBSL were created for diverting bank's funds but the forensic audit report did not show that any such observation, therefore, it was held that the Review Committee has attempted to add words to the forensic auditor, which is non-existent in the report but in the present case, there is no such attempt on the part of the respondents to tamper with the forensic audit report. Therefore, this judgment will not have any application.

75. As far as reliance of the petitioners on the judgment in **Kotak Mahindra Bank Limited** (supra) is concerned, as already submitted by Shri Bhavil Pandey discussed above, it deals with derivatives and not diversion of funds etc. which is the case in present.

76. Therefore, we are of the view that complete procedure is followed in terms of Clause 3 of Master Circular, namely, Wilful Defaulter's Committee, was formed as per the requirement of Master Circular. It issued a show-



cause notice and afforded an opportunity of hearing in terms of Clause 3 (B) of the Master Circular and, thereafter, matter was referred to the Review Committee in terms of Clause 3 (C) of the Master Circular and the Review Committee after giving opportunity of hearing, decided the matter and declared the petitioners to be Wilful Defaulters.

77. It is evident that a show-cause notice was issued to the petitioners on 7/05/2021 Annexure P-2. Time was granted to the petitioners to make their submissions. Thereafter, opportunity of hearing was granted to the petitioners by issuing letter dated 14/06/2021, Annexure P-4 asking the petitioners to appear on 30/06/2021. The second opportunity was given by issuing a letter dated 6/07/2021 to appear on 15/07/2021 as is evident from Annexure P-6. Thereafter, third and final opportunity was given by WDC vide their letter dated 17/07/2021 to appear on 29/07/2021 vide Annexure P-7. Thus, opportunities of hearing have been observed in the order dated 21/08/2021, Annexure P-9 passed by the WDC. It is also an admitted fact that petitioners failed to appear on the aforesaid dates and non-appearance of the petitioners were observed in the order dated 21/08/2021 Annexure P-9.

78. Thereafter, matter was referred to the Review Committee for affirmation of the decision of WDC. Thus, proceedings were undertaken by WDRC in its meeting dated 16/09/2021. Quorum of the committee was complete as per RBI circular. Deliberations on the committee order (WDC) dated 21/08/2021 were considered and it was observed that petitioners did not appear for three opportunities of hearing. Third reply dated 2/09/2021 was considered and it was also observed that borrowers had not submitted any new documents.



79. Thereafter, resolution was passed declaring the petitioners as Wilful Defaulters. It was duly communicated to the petitioners and, thereafter, name of the petitioners as Wilful Defaulters were duly published in the newspapers on 10/12/2021 Annexure R-4. In the aforesaid backdrop, it is evident that the committee in its meeting dated 11/06/2021 deliberated on the memorandum submitted by the petitioners and even noted the contents of the reply submitted by the borrowers. The committee had agreed to provide personal hearing to the petitioners. Petitioner did not appear for final hearing despite deletion of name of Shri Anil Kumar Agrawal from the proceedings in view of his demise. Petitioners' representation Annexure P-10 was properly considered and, therefore, I am of the opinion that neither there is any violation of the principles of natural justice nor the impugned orders have been passed by an incompetent authority and issuance of show-cause notice by DGM has not caused any prejudice to the petitioners.

80. Petitioners were already having the knowledge of the forensic audit report and also the facts mentioned therein in regard to diversion, siphoning and routing of funds to non-consortium banks and, therefore, when all these facts are taken into consideration, then respondents having acted in accordance with the RBI circular and there being no infraction of any of the terms of the said circular, the impugned orders of declaring the petitioners to be Wilful Defaulters cannot be faulted with.

81. Accordingly, the petition fails and is **dismissed**.

(VIVEK AGARWAL)
JUDGE

