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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 3 July 2025
Pronounced on: 8 August 2025

\+ LPA 294/2024

PUNJAB NATIONAL BANK .....Appellant
Through: Mr. Sanjay Bajaj, Mr. Shivam Takkar and Mr. Sarthak Sehgal, Advs.

versus

NITA PURI .....Respondent
Through: Mr. Rajeev Goyal, Mr. Vaibhav Mishra, Mr. Anshul Mishra, Mr. Ekansh Mishra and Mr. Manu Krishnan, Ms. Devika Mohan, Mr. Vikram Choudhary, Advs.

\+ LPA 357/2024

PUNJAB NATIONAL BANK .....Appellant
Through: Mr. Sanjay Bajaj, Mr. Shivam Takkar and Mr. Sarthak Sehgal, Advs.

versus

RATUL PURI .....Respondent
Through: Mr. Rajeev Goyal, Mr. Vaibhav Mishra, Mr. Anshul Mishra, Mr. Ekansh Mishra and Mr. Manu Krishnan, Ms. Devika Mohan, Mr. Vikram Choudhary, Advs.

\+ LPA 396/2024 & CM APPL. 30156/2024

BANK OF BARODA .....Appellant
Through: Mr. Kush Sharma, Mr. Nishchaya Nigam and Ms. Vagmi Singh, Advs.

versus

RATUL PURI .....Respondent

Through: Mr. Rajeev Goyal, Mr. Vaibhav Mishra, Mr. Anshul Mishra, Mr. Ekansh Mishra and Mr. Manu Krishnan, Ms. Devika Mohan, Mr. Vikram Choudhary, Advs.

\+ LPA 398/2024 & CM APPL. 30171/2024

BANK OF BARODA .....Appellant

Through: Mr. Kush Sharma, Mr. Nishchaya Nigam and Ms. Vagmi Singh, Advs.

versus

RATUL PURI .....Respondent

Through: Mr. Rajeev Goyal, Mr. Vaibhav Mishra, Mr. Anshul Mishra, Mr. Ekansh Mishra and Mr. Manu Krishnan, Ms. Devika Mohan, Mr. Vikram Choudhary, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

% JUDGMENT
08.08.2025

C. HARI SHANKAR, J.

1. These appeals assail substantially similar judgments passed by a learned Single Judge of this Court in writ petitions which raised substantially similar challenges. They are, therefore, being disposed of by this common judgment. However, for the sake of convenience, we propose to treat LPA 396/2024 as the lead case and to extrapolate our decision in that appeal to the other appeals before us.

LPA 396/2024 [*Bank of Baroda v Ratul Puri*]

The *lis*

2. The Bank of Baroda[1] assails judgment dated 29 February 2024 passed by a learned Single Judge of this Court in WP (C) 4181/2023[2].

3. By the impugned judgment, the order dated 23 March 2023 passed by the Review Committee of the BOB, declaring the respondent to be a "wilful defaulter" within the meaning of Clause 2.1.3 of the Master Circular on Wilful Defaulters, 2015[3], issued by the Reserve Bank of India[4], has been set aside.

Background

4. Moser Baer India Ltd[5] availed loans from various banks. These included a loan from BOB, which was sanctioned *vide* letters dated 12 December 2006 and 24 April 2010. At the time of availing of the loan, the respondent Ratul Puri was a whole-time director of MBIL. In 2010, he decided to exit from MBIL, though he continued to remain a director on its board.

5. Following the decline in the fortunes of MBIL, BOB and other

[1] "BOB" hereinafter
[2] **Ratul Puri v Bank of Baroda**
[3] "Master Circular" hereinafter
[4] "RBI" hereinafter
[5] "MBIL" hereinafter

lenders, which lent monies to MBIL, found MBIL to be a fit case to consider debt restructuring. A Joint Lenders Meet[6], of all lenders of MBIL, therefore, was convened on 3 February 2012. Among the lenders who participated in the JLM was BOB. MBIL placed a restructuring plan before the JLM. The JLM, after considering the plan, decided to admit MBIL for Corporate Debt Restructuring[7], in accordance with the CDR Master Circular issued by the RBI.

6. To ascertain sustainability of the CDR, MBIL was required to submit a Flash Report, which would set out the reasons for its decline, its viability and its plan for revival. The Flash Report was intended to be forwarded by the lenders of MBIL to an independent agency for obtaining a Techno Economic Viability Report[8], which would indicate whether the restructuring plan proposed by MBIL was financially viable.

7. In terms of the aforesaid directions, MBIL submitted a Flash Report with the CDR cell of the lender banks on 18 February 2012. Among the reasons cited in the Flash Report to which the financial decline of MBIL was attributable, was the inability of MBIL to realise investments made in its two subsidiaries, Moser Baer Photo Voltaic Ltd[9] and Moser Baer Solar Ltd[10]. MBPV was later renamed Helios Photo Voltaic Ltd[11].

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[6] "JLM" hereinafter
[7] "CDR" hereinafter
[8] "TEV Report" hereinafter
[9] "MBPV" hereinafter
[10] "MBSL" hereinafter
[11] "HPVL" hereinafter

8. After perusing the flash report submitted by MBIL, the CDR Empowered Group[12] decided, on 24 February 2012, to admit the proposal of MBIL for restructuring. In the decision, MBIL was placed in the Class-B category under the CDR Scheme, which covered "Corporates/promoters affected by external factors and also having weak resources, inadequate vision and not having support of professional management".

9. The monitoring bank of the lenders was the Central Bank of India[13]. On 4 April 2012, MBIL informed the Central Bank that the respondent was no longer associated with the day-to-day functioning of the MBIL. It was pointed out that he had exited MBIL and it was requested that the CDR proposal submitted by MBIL be considered taking into account this fact.

10. On 30 April 2012, the respondent resigned as Executive Director of MBIL and submitted Form-32 with the Registrar of Companies[14] to that effect. He also, therefore, ceased to be a shareholder of MBIL and transferred his shareholding in MBIL to his father.

11. The lender banks forwarded the flash report submitted by MBIL to an external agency Ernst and Young[15] for examination. E & Y submitted its detailed TEV Report on 9 June 2012, which opined that MBIL was considered to be viable.

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[12] "CDR-EG" hereinafter
[13] "Central Bank" hereinafter
[14] "ROC" hereinafter
[15] "E & Y" hereinafter

12. On 20 July 2012, another JLM was convened of all the lender banks, including BOB. The JLM considered the Flash Report submitted by MBIL, the TEV report of E & Y and a stock audit report of RRCA & Associates, and issued a Final Restructuring Scheme[16] dated 20 July 2012.

13. In accordance with the FRS, MBIL and the Consortium of Banks, including BOB and the Central Bank as the monitoring institution, signed a Master Restructuring Agreement[17] dated 27 December 2012 for implementation of the CDR package agreed between the parties. Clause 6.1 (iv) of the MRA required MBIL to execute a Trust and Retention Account[18]. Consequent to execution of the TRA agreement, MBIL was required to transact, for its day-to-day functioning, only through the TRA account.

14. On 16 November 2012, the respondent resigned as Director of MBIL and filed Form-32 to that effect, with the ROC. This constituted complete exit, by the respondent, from MBIL.

15. In terms of clause 6.1(iv) of the MRA, the TRA Agreement was executed between the lender banks and the MBIL on 12 February 2013.

16. Despite all these efforts, MBIL was unable to repay the loan

[16] "FRS" hereinafter
[17] "MRA" hereinafter
[18] "TRA" hereinafter

amounts and committed defaults. On account of these defaults, the lender banks decided to exit from the approved CDR Scheme on 10 October 2016.

17. In 2017, Alchemist Asset Reconstruction Company Ltd., one of the financial creditors of MBIL, filed an application before the National Company Law Tribunal[19] under Section 7(1)[20] of the Insolvency and Bankruptcy Code 2016[21] for triggering the Corporate Insolvency Resolution Process[22] of MBIL. *Vide* its order dated 14 November 2017, the NCLT appointed one Mr. Anil Kohli as the Interim Resolution Professional[23] of MBIL. The IRP directed M/s. GSA Associates, Chartered Accountants to conduct a forensic audit of MBIL. GSA Associates submitted its Forensic Audit Report[24] on 3 June 2019.

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[19] "NCLT", hereinafter

[20] **7. Initiation of corporate insolvency resolution process by financial creditor**. –
(1) A financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government, may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred:
Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6-A) of Section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:
Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:
Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.
Explanation.—For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

[21] "IBC", hereinafter

[22] "CIRP", hereinafter

[23] "IRP", hereinafter

18. On 13 March 2020, BOB issued a show cause notice to the respondent to show cause as to why he be not declared a wilful defaulter under the Master Circular. The show cause notice contained six allegations against the respondent. Allegations 2 to 6 were subsequently dropped, and the present dispute, therefore, essentially concerns Allegation 1, which read:

> "MBIL has made substantial investment in subsidiaries and related entities amounting to Rs.1586.75 Cr as on 31.12.13. During the period from 01.04.13 to 31.03.15 provision and write off made amounting to Rs.287.03 Cr."

19. The respondent responded to the aforesaid show cause notice on 30 March 2020 and 12 August 2020. The respondent sought to be supplied the documents on the basis of which it was proposed to declare him a wilful defaulter. In response thereto, BOB on 11 January 2021 forwarded a copy of the FAR to the respondent. *Vide* communication dated 2 June 2021, the respondent submitted that the FAR did not disclose any event of wilful default on his part.

20. This was followed by an opportunity of personal hearing which the respondent availed on 5 August 2021 following which he submitted written submissions on 4 September 2021. In the said written submissions, apart from pointing out that he had nothing to do with the affairs of the MBIL during the period in question, it was further submitted that investments of MBIL in its subsidiaries were made from its internal accruals, and not from borrowed funds and that therefore, these investments could not be used as a justification to

[24] "FAR", hereinafter

declare the respondent to be a wilful defaulter. It was further pointed out that the details of these investments had been disclosed in the audited financial statements of MBIL, which had been submitted to all lenders including BOB.

21. The Identification Committee of the BOB proceeded to pass order dated 19 August 2022 declaring the respondent to be a wilful defaulter in terms of the Master Circular. Of the six allegations against the respondent in the show cause notice dated 13 March 2020, Allegations 2 to 6 were dropped. Allegation 1 was, however, confirmed and, consequently, the respondent was declared as a wilful defaulter in terms of the Master Circular. In arriving at this conclusion, the Identification Committee observed that during the period when the funds had been invested by MBIL in its subsidiaries, which constituted diversion and siphoning of funds in terms of the Master Circular, the respondent was a whole time Director in MBIL and in complete control of its affairs. It was further opined by the Identification Committee that the investments made by the MBIL in its subsidiaries, which triggered a shortage of funds, amounted to diversion of funds in terms of Clause 2.1.3 (b) and (c) of the Master Circular. Following these findings, the Identification Committee held the respondent to be a wilful defaulter.

22. The respondent filed a Review Petition challenging the findings of the Identification Committee, on 22 September 2022.

23. The Review Committee by order dated 23 March 2023

confirmed the findings of the Identification Committee.

24. Aggrieved thereby, the respondent approached this Court by means of WP (C) 4181/2023. The prayer clause in the writ petition read thus:

> "Hence, in view of the circumstances mentioned herein above, the Petitioner herein most respectfully pray that this Hon'ble Court may graciously be pleased to:
>
> a. Issue a writ/ order/ direction of mandamus and/or certiorari quashing/setting aside the Order passed by the Review Committee of the Respondent Bank in its meeting held on 23.03.2023 (impugned order), by which order it has arbitrarily, unfairly and unreasonably declared the name of the Petitioner as a Willful Defaulter.
>
> b. Issue a writ/ order/ direction prohibiting the Respondent and or/its servants, agents, assigns and officers and/or anyone claiming through or under them from giving any effect and/or further effect and/or taking any steps and/or acting in furtherance of the Review Committee Order dated 23.03.2023, in any manner whatsoever.
>
> Pass such other orders as may be deemed fair and equitable in the facts of the case and in the interests of justice."

25. By the impugned judgment, the learned Single Judge has allowed WP(C) 4181/2023. The present appeal, at the instance of the BOB, challenges the said decision.

The Impugned Judgment

26. The findings of the learned Single Judge may be enumerated thus:

(i) The Master Circular was issued by the RBI in exercise of the powers conferred by Sections 21 and 35 A of the Banking Regulation Act, 1949. Clause 2.1.3 thereof read thus:

> "2.1.3 Wilful Default: A 'wilful default' would be deemed to have occurred if any of the following events is noted:
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> *****
>
> (b) The unit has defaulted in meeting its payment / repayment obligations to the lender and has not utilised the finance from the lender for the specific purposes for which finance was availed of but has diverted the funds for other purposes.
>
> (c) The unit has defaulted in meeting its payment / repayment obligations to the. lender and has siphoned off the funds so that the funds have not been utilised for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets.
>
> *****
>
> 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/incidents. The default to be categorised as wilful must be intentional, deliberate and calculated."

(ii) Thus, "wilful default" could be said to have taken place only if the loan amounts lent by the bank, which constituted the "borrowed funds", were diverted or siphoned off by the borrower, for purposes other than those for which the loan was granted.

(iii) Clause 2.2 of the Master Circular defined diversion and

siphoning off funds thus:

> "2.2 Diversion and siphoning of funds: The terms "diversion of funds" and "siphoning of funds" should construe to mean the following: -
>
> 2.2.1 Diversion of funds, referred to at para 2.1(b) above, would be construed to include any one of the undernoted occurrences:
>
> (a) utilisation of short-term working capital funds for long-term purposes not in conformity with the terms of sanction;
>
> (b) deploying borrowed funds for purposes / activities or creation of assets other than those for which the loan was sanctioned;
>
> (c) transferring borrowed funds to the subsidiaries / Group companies or other corporates by whatever modalities;
>
> (d) routing of funds through any bank other than the lender bank or members of consortium without prior permission of the lender;
>
> (e) investment in other companies by way of acquiring equities / debt instruments without approval of lenders;
>
> (f) shortfall in deployment of funds vis-à-vis the amounts disbursed / drawn and the difference not being accounted for.
>
> 2.2.2 Siphoning of funds, referred to at para 2.1(c) above, should be construed to occur if any funds borrowed from banks / FIs are utilised for purposes un-related to the operations of the borrower, to the detriment of the financial health of the entity or of the lender. The decision as to whether a particular instance amounts to siphoning of funds would have to be a judgement of the lenders based on objective facts and circumstances of the case."

Again, it was clear from Clause 2.2 that funds could be said to

have been diverted or siphoned off only if they were borrowed funds. It was only when borrowed funds were deployed or used for a purpose other than the purpose for which the loan was sanctioned, that they could be said to have been diverted or siphoned off. Further, the decision regarding diversion or siphoning off funds had to be made by the Bank based on the objective facts and circumstances of the case.

(iv) Clause 3 of the Master Circular provided the mechanism for identification of a borrower as a wilful defaulter. The evidence in that regard was first to be examined by the Identification Committee headed by an Executive Director or equivalent and consisting of two other senior officers of the bank of the rank of GM /DGM. If the Identification Committee concluded that an event of wilful default had occurred, it would issue a show cause notice to the borrower. After considering the response of the borrower, a final order on the aspect of whether the borrower could be treated as a wilful defaulter would be issued by the Identification Committee, prior to which the borrower would be afforded an opportunity of personal hearing. The decision of the Identification Committee would be reviewed by a Review Committee headed by the Chairman/ MD/CEO and also comprising two other independent non-executive Directors of the bank. A declaration of a borrower as a wilful defaulter would be final only after confirmation by the Review Committee.

(v) Clause 3 further provided that in terms of Section 2(60)[25] of the Companies Act, 2013, an officer could be treated as a wilful defaulter only if he was a whole time Director or fell within one of the categories of exceptions enumerated in the said clause.

(vi) The consequences of declaration of a person as a wilful defaulter were drastic. A wilful defaulter was barred from availing any loan facility in the future or floating any new venture. He was also exposed to criminal proceedings. A label of wilful defaulter also affected the reputation of the person concerned, with whom business entities would hesitate to conduct any business. Financial institutions would also be chary of providing loans to wilful defaulters. Characterization as a wilful defaulter, therefore, was in the nature of a financial death knell of the individual or entity concerned. The drastic nature of declaration of a person as a wilful defaulter had also been noted by the Supreme Court in its judgment in ***SBI v Jah***

[25] (60) "**officer who is in default**", for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:
(i) whole-time director;
(ii) key managerial personnel;
(iii) 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;
(iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;
(v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;
(vi) 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 without objecting to the same, or where such contravention had taken place with his consent or connivance;
(vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

***Developers*[26].** In the said decision, the Supreme Court had underscored the necessity of construing the Master Circular reasonably, in the matter of characterisation of anyone as a wilful defaulter thereunder. Other judgments which were relevant in this regard were ***Sukhwant Singh v State of Punjab*[27], *Subramanian Swami v UOI*[28]** and ***Om Prakash Chautala v Kanwar Bhan*[29].**

(vii) Given the drastic consequences which ensued as a result of declaration of someone as wilful defaulter, the validity of such an order, when questioned, required a close scrutiny as to whether it fell within the four corners of the Master Circular.

(viii) Adverting, after alluding to these aspects, to the core issue of whether the respondent could be regarded as a wilful defaulter within the meaning of the Master Circular, the learned Single Judge observed and held as under:

> (a) By order dated 28 November 2023, the learned Single Judge had required the BOB to place, on record, the evidence on the basis of which the Identification Committee concluded that an event of wilful default had occurred. In compliance therewith, the BOB had placed the Minutes of Meeting dated 24 February 2020 on record, under which it was decided to issue a show cause notice to the respondent, proposing to declare him a

[26] **(2019) 6 SCC 787**
[27] **(209) 7 SCC 559**
[28] **(2016) 7 SCC 221**
[29] **(2014) 5 SCC 417**

wilful defaulter. The annexure to the Minutes revealed that the only evidence on the basis of which a decision to treat the respondent as a wilful defaulter had been taken was the FAR. There was no other document or reasoning contained in the said Minutes of Meeting.

(b) Clauses 3(a) and (b) of the Master Circular enjoined on the Identification Committee to examine the evidence and conclude whether an event of wilful default had, or had not, accrued. The words "examine" and "conclude" involved application of mind, following a process which was just, fair and reasonable. The Minutes of Meeting date 24 February 2020, however, revealed that the BOB had merely referred to the FAR before issuing show cause notice to the respondent. No reasons for arriving at a conclusion that an event of wilful default had accrued, was forthcoming. No preceding documents were referred to. The manner in which the matter had been examined fell short of the necessary requirements. The Identification Committee had, therefore, failed to discharge its obligations envisaged in Clause 3(a) and (b) of the Master Circular before issuing show cause notice to the respondent.

(c) In his written submissions filed before the identification committee by way of response to the show cause notice, the respondent submitted that:

(i) no investment had been made by MBIL in its subsidiaries from any borrowed funds,

(ii) all investments were from internal accruals/PE[30] Funds/FCCBs[31], and were disclosed to the BOB in the audited financial statements during the financial years 2003-2011,

(iii) these investments were evaluated at the time of sanction of loan on 24 April 2010, and no objection was raised,

(iv) the investments were also evaluated by the lender banks at the time of formulation of the CDR Scheme, and

(v) the writing off the investments in subsidiaries took place between 01 April 2013 and 31 March 2015, after the respondent had exited MBIL on 16 November 2012.

(d) Pursuant to the above response of the respondent to the show cause notice, the Identification Committee arrived at the view that, as substantial investments had been made by MBIL in its subsidiaries and related parties from its account, resulting in shortage of capital, the act of making such investments amounted to diversion/siphoning off, within the meaning of Clauses 2.1.3 (b) and (c) of the Master Circular. As such, the respondent and Nita Puri (his mother) were wilful

[30] Private Equity
[31] Foreign Currency Convertible Bonds

defaulters.

(e) The respondent filed a representation challenging the decision and findings of the Identification Committee, before the Review Committee. In the representation, it was again reiterated that the investments made by MBIL in its subsidiaries had been made from its own internal accruals and were disclosed in its audited financial statements. Besides they have been evaluated at the time of sanction of credit facilities and approval of CDR and no objections or concerns had been raised at that time. These investments could not, therefore, suffice to characterize the respondent as a wilful defaulter.

(f) The Review Committee, as already noted, concurred with the decision of the Identification Committee.

(g) The prime issue which arose for consideration was, therefore, whether the investments made by MBIL in its subsidiaries, amounted to "diversion or siphoning off" funds within the meaning of sub-clauses (b) and (c) of clause 2.1.3 of the Master Circular.

(h) The definition of "diversion of funds" in Clause 2.2.1 and "siphoning off funds" in Clause 2.2.2 of the Master Circular made it clear that, in either case, the funds which were diverted or siphoned off had to be

"borrowed funds". When borrowed funds were used for a purpose other than the purpose for which the loan was sanctioned, it amounted to diversion or siphoning off. If the investment was not of funds which had been borrowed from the lender banks, the Master Circular was not applicable. The Master Circular, therefore, also required the lender bank to arrive at an objective decision as to whether there had in fact occurred diversion of funds or siphoning of funds.

(i) This, in turn, required an objective decision regarding the source of the funds.

(j) The source of funds which were invested by MBIL in its subsidiaries was available in the FRS, which was a document prepared by the lender banks themselves in 2012, before the CDR scheme was finalised. Clause 1.3.2 of the FRS recorded the fact that MBIL had made investments in its subsidiaries, which had been disclosed in the Flash Report submitted by it. Significantly, Clause 5.1.2 of the FRS acknowledged that the investments made by MBIL in its subsidiaries were funded by the "substantial cash surplus," generated by MBIL from years 2006 and 2008. Clause 5.1.2 of the FRS, which so stated, reads thus:

> "5.1.2 Constrained ability to unlock value from investments in subsidiaries under present circumstances

- The company had chalked out a clear-cut long term plan to strategically invest in the R&D activities and to develop businesses around its core technological and commercial focus areas. In-line with its vision, it began making strategic investments year after year. *These investments had been fully funded from the substantial Cash Surpluses generated by the company in earlier years – from FY-06 onwards and partially from FCCB issuance in FY-08.*

- At the time of making these investments, the growth potential and expected profitability from its core businesses and these businesses were substantial – as were the access to capital for each of these businesses. No one had expected the unprecedented disruptions all these related businesses had come to face especially in FY-11."

Thus, the lender banks, in their own FRS, acknowledged the fact that the investments made by MBIL in its subsidiaries were from its own cash surpluses from FY 2006 and 2008. These investments were not, therefore, from "borrowed funds". As such, the Master Circular was not applicable. The issuance of the show cause notice itself, thereby, stood vitiated.

(k) Inasmuch as this fact had not been taken into account either by the Identification Committee or the Review Committee, the order dated 23 March 2023, passed by the Review Committee, was patently vitiated by non-application of mind. The finding of the Identification Committee, as well as of the Review

Committee, that the investments made by MBIL in its subsidiaries amounted to "diversion" and "siphoning" off funds, within the meaning of Master Circular was, therefore, not sustainable.

(l) Moreover, if the lenders had, during the CDR process, found investments made by MBIL in its subsidiaries as amounting to "diversion of funds", MBIL ought to have been placed in Class C and not in Class B.

(m) BOB sought to contend that placement of MBIL in Class B during the CDR process was irrelevant, as the lenders, at that time, did not have the advantage of the FAR. This contention was unacceptable. In its counter-affidavit, BOB had admitted that the lender banks were all along aware of the investments made by MBIL in its subsidiaries. The CDR Master Circular required the lender banks to change the management of the company, if there was "diversion of funds" and, wherever necessary, also to carry out forensic audit of the company. However, the lenders, including BOB did not deem it necessary either to change the management of MBIL or have its forensic audit conducted. In the FRS, which was the banks own document, the investments made by MBIL in its subsidiaries were never characterised as diversion of funds. In these circumstances, the mere fact that no FAR was available

at the time of the CDR was irrelevant.

(n) In the circumstances, it had to be held that the Identification Committee and Review Committee had failed to discharge the obligations cast on them by Clause 2.2.2 of the Master Circular, which required them to decide cases of wilful default objective, with application of mind and after considering all relevant facts and circumstances.

(o) BOB also sought to contend that, before making investments in its subsidiaries, MBIL did not take prior approval. This contention was also untenable. There was no evidence of any objection having been raised, at any time, to the investments made by MBIL in its subsidiaries, though the lenders were aware of these investments at all points of time. Rather, in the FRS, these investments were regarded as potentially financially sound. The question of obtaining prior approval arose only if the investments were made using borrowed funds. As it was an admitted position, in the FRS, that the investments were made from cash surplus of MBIL, no prior approval, before making the investments, was required.

(p) Further, BOB had, vide its letter dated 20 September 2007 addressed to MBSL, intimated that, against MBSL's request or loan of ₹ 439.21 crores, DOB

was able to provide only ₹ 292.82 crores and the balance would have to be raised by MBSL through its promoters. MBIL, as the 100% parent company of MBSL, had infused the differential balance of ₹ 147 crores by way of investments. This, therefore, was as per the advice of BOB, and within its knowledge.

(q) Inasmuch as the investments by MBIL in its subsidiaries were not out of borrowed funds, the writing off of the investments, besides being in accordance with Standard Accounting Practices, would not amount to wilful default.

(r) In characterising the Respondent as a wilful defaulter, the Identification Committee and Review Committee had not acted in accordance with Clause 2.1.3 of the Master Circular, which required a default, in order for it to be regarded as "wilful", to be intentional, deliberate and calculated. In the present case, at the time of making investments, even the lender Banks found the investments to contain potential and expected profitability. On the investments later not succeeding in realising returns, they could not be regarded as "wilful default".

(ix) The learned Single Judge thereafter proceeds to refer to the FAR. The FAR as been found to lack credibility as it was prepared without verifying the source of funds which were

invested by MBIL in its subsidiaries, as specifically acknowledged in Clause D (iv) of the FAR, thus:

> "iv. Please further note that source of funds of the investments made by the company in its subsidiaries, associates and joint ventures were not verified by us as these investments were made before our period of review."

Without verifying and ascertaining that the investments made by MBIL in its subsidiaries were out of "borrowed funds", the very issuance of show cause notice by the Investigating Committee to MBIL was illegal. The genesis of diversion, or siphoning, of funds, was in the funds themselves being borrowed funds. Inasmuch as the only material relied upon, for issuing show cause notice to MBIL and the Respondent, was the FAR, and the FAR does not even examine the source of the funds which were invested by MBIL in its subsidiaries, the entire exercise of issuance of show cause notice to MBIL, and all its sequelae, was completely misplaced.

27. Following the above observations and findings, the learned Single Judge has, by the impugned judgment, concluded thus:

> "154. The aforesaid provisions in the CDR scheme lead to the conclusion that the categorization of a borrower in one of the categories between A and D has to be based on an objective satisfaction.
>
> 155. This Court is of the view that it is incumbent upon banks who are dealing with public funds and discharging a public duty to make appropriate enquiries as to whether a borrower is in genuine financial difficulty or whether there exists any event(s) of fraud and malfeasance. If the lender banks find fraud or malfeasance, the CDR-EG must either refuse CDR completely or impose such additional onerous conditions as provided in the CDR Scheme

itself.

> 156. In the present case, the lender banks were aware of the investments made by MBIL in its subsidiaries. This fact is part of the documents leading to the finalization of the CDR scheme. The investments were treated as strategic with growth potential and expected profits. The investments were found to have been made from the cash surpluses of MBIL. The lender banks did not find these investments as diversion or siphoning of borrowed funds. The lender banks placed MBIL in Class-B of CDR Master Circular which cannot be assigned if there is diversion of funds. They found no occasion to order a forensic audit of MBIL either before finalization of CDR scheme or after its failure. The lender banks, therefore, never treated the investments in subsidiaries as an act of diversion or siphoning either during finalization of the CDR scheme or after its failure.
>
> 157. In view of the aforesaid discussion, the reasons assigned in the impugned order dated 23.3.2023 passed by the Review Committee confirming the petitioner as wilful defaulter under the Master Circular are unsustainable and therefore, the impugned order is accordingly quashed and set aside. The petition is allowed in the aforesaid terms and disposed of alongwith pending application(s), if any."

28. Aggrieved by the decision of the learned Single Judge, BOB has filed the present appeal.

29. We have heard Mr. Kush Sharma, learned Counsel for BOB and Mr. Vaibhav Mishra, learned Counsel for the Respondent, at length. Both sides have also filed written submissions, which we have considered.

Submissions and Analysis

30. <u>Submissions of Mr. Kush Sharma</u>

30.1 Mr Sharma submits that BOB acted, at all times, in accordance with the law. It became necessary to engage GSA & Associates as an independent forensic auditor, as Banks are not experts in identifying preferential, undervalued, fraudulent or extortionate transactions. There is, therefore, no illegality in BOB acting on the basis of the FAR submitted by the forensic auditor.

30.2 In his written submissions, Mr. Sharma has considered that the FAR submitted by GSA & Associates did not conclude that the investments made by MBIL in its subsidiaries amounted to diversion or siphoning off funds. Nonetheless, the observations contained in the FAR prompted BOB to issue a show cause notice to the Respondent. Of the 6 allegations in the show cause notice, the Respondent was ultimately declared a wilful defaulter only by confirming Allegation 1, whereas Allegations 2 to 6 were dropped. Thus, the entire exercise was objective and unprejudiced, and following due process. After examining all aspects, including the reply submitted by the Respondent to the show cause notice and after following the procedure prescribed by the Master Circular of the RBI and independent application of mind, the Identification Committee "rightly concluded that Respondent was liable for diversion and siphoning off funds with respect to transactions between MBIL and its subsidiaries and related parties amounting to ₹ 1586.75 crores (which included acts of provisioning and writing off). The Review Committee also rightly concurred with the decision of the Identification Committee, which was in sync with the opinion expressed in the FAR.

30.3 In these circumstances, Mr. Sharma submits that the impugned judgment of the learned Single Judge cannot sustain, and deserves to be set-aside.

31. Submissions of Mr. Vaibhav Mishra

31.1 Mr. Vaibhav Mishra, appearing for Respondent, besides relying on the observations and findings of the learned Single Judge, submits that the balance sheets of MBIL, which were and continue to be in the public domain, indicate that, every year between 2004 and 2011, the value of the net current assets and fixed assets of MBIL far exceeded its borrowings. This, even by itself, he submits, indicates that MBIL utilised the borrowed funds for the purposes for which they were lent, and that there was no mis utilisation at any point of time. In fact, as per admitted balance sheets, MBIL had cash accruals of ₹ 4304 crores during the period of alleged misutilisation. Reliance has been placed, in this context, on the judgment of a Division Bench of the High Court of Bombay in ***CIT v Reliance Utilities & Power Ltd***[32] for the proposition that, if interest free funds are available to an assessee, sufficient to meet its investments, and the assessee simultaneously raises a loan, it can be presumed that the investments were from the available interest free funds.

31.2 Mr. Mishra submits, further, that the Respondent, as well as all other accused in the associated criminal proceedings[33] by the Central

[32] **2009 SCC OnLine Bom 2169**
[33] **CC No. CBI 92/2024**

Bureau of Investigation[34] stand discharged by the learned Special Judge, *vide* judgment dated 24 May 2025. The decision of the High Court of Bombay in ***Reliance Utilities***, he points out, has been relied upon, by the learned Special Judge.

31.3 The CBI, too, concluded, after 6 years of investigation, that, as "TRA was monitored account, therefore, diversion of loan funds cannot be attributed to the company, as the funds were completely under the control of the banks".

31.4 Mr. Mishra further submits that, before approving MBIL's CDR package and issuing the FRS, the lenders, including BOB had appointed E & Y, which had submitted its TEV Report on 9 June 2012, confirming that MBIL, and its investments, were viable and had growth potential. This was recorded in great detail in the FRS. Even the FAR concluded that, during the period of review, there was no "opportunity for any diversion of funds".

31.5 In conclusion, Mr. Mishra submits that the impugned judgment of the learned Single Judge is comprehensive and detailed, and does not admit of any exception whatsoever.

Analysis

32. The controversy in issue is empirically fundamental. The Respondent has been declared a wilful defaulter by the Identification

[34] "CBI" hereinafter

Committee, whose decision has been affirmed by the Review Committee. All that the Court has to see is whether the declaration of the Respondent as a wilful defaulter conforms to substantive and procedural due process.

33. "Wilful default" has been alleged to have been committed, by the Respondent and MBIL in terms of sub-clauses (b) and (c) of Clause 2.1.3 of the Master Circular. Clause 2.1.3 (b) applies where the "finance from the lender" is not used for the specific purposes for which it was availed, but is diverted for other purposes. Clause 2.1.3 (c) applies where the funds obtained from the lender are siphoned off, so that they are not utilised for the specific purpose for which the finance was availed and the unit has defaulted in meeting its payment/repayment obligations to the lender.

34. Absent "diversion" or "siphoning" of the funds obtained from the lender, i.e. the borrowed funds, therefore, Clause 2.1.3(b) and (c) would not apply. This, by itself, would render the decision to treat the respondent as a wilful defaulter illegal.

35. "Diversion" and "siphoning" of funds are defined by Clause 2.2 of the Master Circular. Apropos Allegation 1 of the allegations in the show cause notice issued to him, which alone has confirmed and made the basis of declaring the respondent a wilful defaulter, "diversion of funds" would be construed to take place if borrowed funds are transferred to subsidiaries or Group companies, and "siphoning off funds" would be construed to take place if borrowed funds are utilised

for purposes unrelated to the operations of the borrower.

36. The standard to be maintained while examining whether a particular borrower is, or is not, liable to be treated as a "wilful defaulter" is also clearly set out in the Master Circular. Clause 2.1.3 clearly states that the identification of wilful default has to be made keeping in view the track record of the borrowers and should not be decided on the basis of isolated transactions or incidents. In order to be characterised as wilful, the default must be intentional, deliberate and calculated. Every default, therefore, is clearly not a "wilful default". Clause 2.2.2 further states that the decision, as to whether siphoning off funds has taken place, "would have to be a judgment of the lenders based on objective facts and circumstances of the case".

37. Characterisation as a "wilful defaulter" invites, in its train, several penal measures, enumerated in Clause 2.5 of the Master Circular. These include proscription on grant of any additional facilities to the wilful defaulter by any bank or financial institution, initiation of legal process and foreclosure of recovery of dues expeditiously, initiation of criminal proceedings wherever necessary, change of management of the wilfully defaulting unit and incorporation, in loan agreements with companies entered into by the banks or financial institutions to the effect that the borrowing company should not induct, on its board, any person who is a wilful defaulter. The learned Single Judge is correct in his estimate that these measures, which would follow on declaration of a person or entity as a wilful defaulter, would result in civil death. There has, therefore, to

be strict and absolute compliance with the requirements of the Master Circular, and absolute adherence to the degree of objectivity and circumspection that is advised in the Master Circular, before taking a decision to declare a person or an entity as a wilful defaulter. Anything short of that degree of care and circumspection would vitiate the decision in its entirety.

38. The impugned judgment of the learned Single Judge is detailed, comprehensive and compendious. We can hardly do better than to express our complete concurrence with the views expressed by the learned Single Judge. In fact, two factors, even by themselves, whether seen individually or together, would be sufficient to set aside, in its entirety, the decision to declare the respondent as a "wilful defaulter".

39. The first is that "wilful default", even as per Clause 2.1.3 of the Master Circular, takes place only when borrowed funds are diverted or siphoned off. The definition of diversion and siphoning off, as contained in Clause 2.2.1 and 2.2.2 of the Master Circular, also defined the misfeasances as covering only when borrowed funds are transferred to subsidiaries or group companies or used for purposes unrelated to the operations of the borrower, to the detriment of the financial health of the borrower or of the lender. In any event, the misfeasances has to occur with respect to borrowed funds.

40. The learned Single Judge has held that the investments in MBSL, by MBIL, were not of borrowed funds, or funds lent by the

banks, but of their own funds. This fact, notes the learned Single Judge, is acknowledged even in the FSR prepared by the banks themselves, in which it was specifically stated that the investments by MBIL in its subsidiaries "had been fully funded from the substantial cash surplus generated by the company in earlier years from FY 2006 and partially from FCCB issuance in FY 2008". As the learned Single Judge has correctly held, the investments in the subsidiaries were, therefore, made from the internal accruals and cash surpluses of MBIL, and not from borrowed funds. This being the acknowledged position, even as per the documents of BOB and other lender banks in the form of the FSR, there could be no question of any diversion or siphoning off funds being alleged or, consequently, of MBIL or the respondent being regarded as a "wilful defaulter".

41. The second aspect, which completely demolishes the credibility of the decision to declare the respondent as a "wilful defaulter", arises from two candid acknowledgements. The first is the acknowledgement, in the Minutes of Meeting dated 24 February 2020 of the BOB, that the only evidence on the basis of which the Identification Committee concluded that any event of wilful default had occurred, was the FAR. The second is the acknowledgement, in Clause D (iv) of the FAR, that the source of funds of the investments made by MBIL in its subsidiaries has not been verified by GSA Associates before drawing up the FAR on 3 June 2019. In other words, the most important aspect which was to be objectively assessed before declaring the Respondent as a "wilful defaulter", i.e., whether the investments by MBIL in its subsidiaries were of

"borrowed funds" was not examined by the FAR, and the FAR was the sole material on the basis of which the Identification Committee arrived at the conclusion that the respondent was a "wilful defaulter". Thus, the very proposal to declare the respondent as a "wilful defaulter" was vitiated *ab initio*, as it was not preceded by any assessment of examination of whether the investments by MBIL in its subsidiaries were of "borrowed funds" or of its own accruals.

42. Each of these two aspects, even seen by itself, would be sufficient to completely discredit, and justify setting aside of, the decision to declare the respondent as a "wilful defaulter". Seen cumulatively, they fatally imperil the decision. We are in complete agreement with the learned Single Judge in the view that he has expressed in this regard.

43. Though the above reasoning is by itself enough to uphold the impugned judgment of the learned Single Judge, we deem it appropriate to supplement our conclusions with the following additional reasons:

(i) At the time of approving MBIL for CDR, the CDR-EG was duty-bound to satisfy itself that MBIL was in genuine financial difficulty and in need of corporate debt restructuring. This included an assessment of whether MBIL was engaged in diversion or siphoning of borrowed funds. The learned Single Judge has correctly rejected the submission of BOB, in this regard, that, at the time of approving MBIL for CDR, the lender

banks did not have, with them, the FAR. As has been correctly noted by the learned Single Judge, Clause 3 of the Master Circular of the RBI, governing the CDR Scheme, provided for intensive scrutiny at the stage of approval of a unit for CDR. It specifically required that, if the unit was found to have diverted or siphoned funds, the management of the company was required to be changed. Wherever necessary, the Banks were also required to carry out a forensic audit of the company. The fact that the Banks, including BOB, did not resort to either of these alternative courses of action, despite being aware of the investments made by MBIL in its subsidiaries, indicated that BOB, and other lenders, were completely satisfied regarding the financial feasibility as well as the bona fides of MBIL, and its entitlement to restructuring via the CDR pathway.

(ii) The period of review, considered by GSA Associates was 2012-2015. As per the MRA dated 27 December 2012, all inflow and outflow of MBIL's funds had to take place, during a majority of the period of review, through the TRA Account. The TRA Account was directly monitored by all lenders. As such, it could not lie in the mouth of the lenders, including BOB, to contend that the investments made by MBIL in its subsidiaries infracted Clause 2.1.3 (b) and (c) of the Master Circular, resulting in an act of wilful default. It is nobody's case that MBIL had dealt with its monies or its accounts otherwise than as required by the MRA.

(iii) Every default – assuming a default had taken place – is not "wilful default", within the meaning of the Master Circular. A default, in order to be wilful, had to be "intentional, deliberate and calculated". It cannot be said, by any stretch of imagination, in the facts of the present case as were before the learned Single Judge and as are before us, that any event of "wilful default", on the part of MBIL or the Respondent, had taken place. It is inconceivable as to how the FAR arrived at such a conclusion even without examining the source of funds. The FAR, as well as the Identification Committee and Review Committee, appear to have proceeded on a completely misguided premise that investment of any funds of MBIL, in its subsidiaries, would constitute diversion of funds. Clause 2.2 (c) of the Master Circular sets this at rest, by envisaging only transfer of "borrowed funds" to subsidiaries as diversion of funds. Without a scintilla of material to indicate that MBIL had transferred any borrowed funds to its subsidiaries, the FAR came to a conclusion that MBIL had diverted its funds within the meaning of the Master Circular.

(iv) Insofar as siphoning off funds is concerned, the position is even worse, as siphoning off funds requires utilisation of borrowed funds for purposes unrelated to the operations of the borrower, to the detriment of the financial health of the entity or of the lender. None of these ingredients have been shown to exist. Further, Clause 2.2.2 of the Master Circular also requires any decision, as to whether a particular instance amounts to

siphoning off funds or not, to being the nature of judgment of the lenders based on objective facts and circumstances of the case. The words "judgment" and "based on the objective facts and circumstances" cannot be regarded as mere tautology or surplusage. They are specific expressions, obviously used for a specific purpose. They indicate that the decision and determination that siphoning off funds has taken place as to partake of the nature of a quasi-judicial exercise in complexion, even if it does not partake of all its procedural indicia. There has to be deep and pervasive application of mind, and that is sorely lacking in the present case.

(v) Tested on the above principles, it cannot be said that the FAR makes out any conclusive case of diversion or siphoning of funds by MBIL. The findings of the learned Single Judge in this regard are unexceptionable. It was, therefore, wholly inappropriate, on the part of the BOB, to commence wilful defaulter proceedings against the respondent solely on the basis of the FAR. In doing so, the BOB appears also to have failed to realize the drastic consequences of declaring someone as a wilful defaulter which, as we have already noted, is akin to a civil death.

(vi) Another significant feature of Clause 2.1.3 of the Master Circular is that it requires any identification of wilful default to be made "keeping in view the track record of the borrowers", not based on any isolated transactions or incidents. This

requirement is further qualified by adjectivizing the "wilful" nature of the default as having to be "intentional, deliberate and calculated". *Mens rea* is, therefore, an indispensable element of wilful default. There can be no innocent, or accidental, wilful default. Further, there can be no presumption of wilfulness of the default. The onus to establish the existence of every ingredient of "wilful default", within the meaning of the Master Circular, is on the Banks or lenders; in other words, on the Identification Committee and Review Committee. When one examines the track record of MBIL, it has to be noted that, in the period of twelve years starting FY 2006-2007, MBIL had been subjected to three separate and independent forensic audits, by Kashyap Sikdhar & Co. and Rajvanshi & Associates and GSA & Associates, none of which detected any fraud or diversion, much less siphoning off of funds. Even at the time of approving the CDR, the CDR-EG gave MBIL a clean chit. Post CDR, as already noted, all inflow and outflow of accounts took place through the TRA, which was managed by the lender Banks and maintained by the Central Bank. Not a single proceeding was ever initiated against MBIL, at any point of time. In the same context, it is worthwhile to note that MBIL had accumulated cash accruals of ₹ 4304 crores as recorded in its balance sheets, the veracity of which has not been disputed by BOB.

44. We, like the learned Single Judge, are, therefore, not satisfied that MBIL, or the respondent, can be characterised as a "wilful

defaulter", within the meaning of the Master Circular. Indeed, that seems to have been the view of all concerned, including the lenders, the Banks and the CDR-EG, till the FAR of GSA Associates. This is why, quite obviously, the Minutes of Meeting dated 24 February 2020 of the BOB cited the FAR, and the FAR alone, as the basis for the decision to issue show cause notice to the respondent. The FAR itself, as we have already observed, does not commend itself to credibility.

45. It is a matter of no little significance, in this regard, that, in the criminal proceedings initiated against the respondent by the BOB, all accused, including the respondent, stand discharged by the learned Criminal Court by a detailed and well-considered judgment. We do not wish to say anything further, as we are not seized with the said judgment, or any challenge thereto. Suffice it to state that the decision of the Criminal Court, at the very least, fortifies our conclusions, as well as the impugned judgment of the learned Single Judge.

46. We do not deem it necessary to say anything more, as the impugned judgment of the learned Single Judge is eloquent, explicit, and thoroughly reasoned. Any further comments by us would be merely repetitive. We entirely endorse the reasoning and conclusions of the learned Single Judge.

Conclusion

47. The appeal is therefore dismissed with no order as to costs.

LPA 398/2024

48. This appeal, also at the instance of BOB, is directed against judgment dated 1 March 2024, passed by the learned Single Judge in WP(C) 4128/2023[35].

49. Several of the issues arising in this appeal, and in the impugned judgment of the learned Single Judge, especially the scope of examination by the Identification Committee and the Review Committee, while declaring a borrower as a wilful defaulter, the procedure to be followed in that regard, and the evidentiary value of the FAR, among other issues, overlap with the discussion supra, in respect of LPA 396/2024.

50. Nonetheless, there are certain distinctive features in the present appeal, with which it is necessary to deal.

51. We may note, at the outset, that, as in the case of LPA 396/2024, we are entirely in agreement with the reasoning and conclusion of the learned Single Judge in is judgment dated 29 February 2024 in WP (C) 4128/2023, from which the present appeal emanates.

52. The respondent Ratul Puri was, in this case, declared as a wilful defaulter by order dated 19 August 2022 by the Identification Committee of BOB, whose decision was affirmed by the Review

[35] **Ratul Puri v Bank of Baroda**

Committee of BOB by order dated 23 March 2023. In this case, however, the respondent was declared a wilful default with respect to his association with MBSL, rather than MBIL. MBSL was a 100% subsidiary of MBIL, which was engaged in the business of manufacture of solar cells and modules. The respondent was appointed as a director of MBSL on 29 March 2007.

53. BOB sanctioned credit facilities to MBSL on 20 September 2007, 22 February 2008, 5 April 2011 and 5 April 2013. Consequent to a global financial crisis of 2008, there was a drastic fall in the prices of solar panels, which were also being dumped in India by Chinese companies at low prices. This resulted in MBSL facing financial decline and a looming threat of loan re-payment default. As in the case of MBIL, MBSL's case was considered for CDR in accordance with the CDR Master Circular of the RBI. A Flash Report was submitted by MBSL on 24 March 2012, including a financial proposal for its revival based on restructuring of its debt. In its meeting held on 7 May 2012, the CDR-EG decided to admit MBSL's proposal to CDR. This fact was noted by the lender banks vide letter dated 24 May 2012.

54. Punjab National Bank[36] was nominated as the monitoring institution. As with MBIL, MBSL was also placed, under the CDR Master Circular, as a Class-B borrower.

55. A TEV study was called from Feedback Infra, economic viability assessment from PNB Investments Services Ltd and Stock

[36] "PNB" hereinafter

Audit from M/s Mehrotra and Mehrotra, Chartered Accountants. This was followed by JLMs on 20 July 2012 and 10 October 2012. After taking into consideration the TEV study of Feedback Infra, the economic viability assessment of PNB Investments Services Ltd and the Stock Audit of M/s Mehrotra and Mehrotra, the JLM suggested that the core strategy and operating plan of MBSL were technically feasible. This was followed by an FRS of MBSL issued by the lender banks, followed by a modified FRS on 21 January 2013.

56. On 18 March 2013, the CDR cell issued a letter stating that, on 21 January 2013, it had approved the proposed restructuring package of MBSL. PNB was appointed as the Monitoring Institution. MBSL was classified as Class B borrower, as a "corporate/promoter affected by external factors and also having weak resources, inadequate vision and not having support of provisional management". Class C dealt with corporates who have diverted funds, but MBSL was not classified as a Class C borrower. On 28 March 2013, an MRA was executed between MBSL and the lender banks restructuring MBSL's debt, followed by a TRA on 5 June 2013 and a supplementary MRA dated 27 May 2014, the TRA required MBSL to transact, for its day to day functioning, only through the TRA account. On 30 November 2016, the CDR cell decided to exit the lender banks from the CDR package on account of the CDR failure. Following an application filed by one of the creditors under Section 7 of the IBC, the NCLT, *vide* order dated 14 November 2017, appointed an IRP. The IRP appointed one Haribhakti & Co. LLP, Chartered Accountants, as the forensic auditor of MBSL. Haribhakti submitted its FAR on 1 March 2019 to

the IRP.

57. On the basis of the said report, BOB issued a show cause notice to the respondent on 13 March 2020, proposing to classify him as a wilful defaulter as MBSL had defaulted in meeting its loan repayment obligations. The show cause notice contained four allegations of which, subsequently, Allegations 1 and 2 were dropped and Allegations 3 and 4 were confirmed.

58. Identification Committee declared the respondent as a wilful defaulter on 19 August 2022. This order was confirmed by the Review Committee on 23 March 2023, on the basis of Allegations 3 and 4.

59. Thus, while, in the case of WP(C) 4181/2023, leading to LPA, 396/2024, the respondent was declared a wilful defaulter by confirming Allegation 1 apropos his relationship with MBIL, in this case, the respondent was declared a wilful defaulter in respect of Allegations 3 and 4 *vis-à-vis* his relationship with MBSL. The learned Single Judge has, thereafter, considered the sustainability of the decision to declare the respondent as wilful defaulter based on Allegations 3 and 4 in the FAR of Haribhakti.

60. Allegation 3 was based on investments made by MBSL in HPVL, despite the fact that HPVL was incurring continuous losses since 2011-12.

61. In this context, the learned Single Judge has noted thus:

(i) By order dated 28 November 2023, this Court directed the BOB to place on record the document on the basis of which the BOB had arrived at the satisfaction that show cause notice was required to be issued to the respondents. The BOB placed on record, by way of response, minutes of meeting dated 24 February 2020 which, as in the case of MBIL, indicated that the only material on the basis of which BOB deemed it appropriate to issue show cause notice to the respondents was the FAR of Haribhakti. As in the case of MBIL, BOB was not justified in issuing show cause notice to the respondents solely on the basis of the FAR of Haribhakti. The fact that BOB was aware of the investments made by MBSL in HPVL was also borne out from email dated 6 October 2008 written by BOB to MBSL, in which it was specifically stated that MBSL's balance sheet indicated that it had made investments in HPVL. The details of such investments were sought, which were provided by MBSL by a return email dated 7 October 2009.

(ii) The investments made by MBSL in HPVL were out of its own funds raised from PE Investors, and were within the knowledge of the lender banks from the beginning. They were duly reflected in the financial statements and audited balance sheets of MBSL.

(iii) Despite this, the respondent was categorised as a category B defaulter, instead of category C, which applied to entities

which diverted or siphoned funds. This also indicated that BOB, and the CDR-EG was, in full awareness of the investments made by MBSL in HPVL, nonetheless of the view that MBSL had not diverted or siphoned any funds. There was no justification, therefore, much later in time, to allege that the investments made by MBSL in HPVL amounted to diversion of funds within the meaning of the Master Circular.

(iv) The Flash Report submitted by MBSL as part of the CDR scheme in 2012 also disclosed the investments made by it in HPVL. In its letter dated 18 March 2013, which approved the restructuring package, BOB had noted the investments made by MBSL in HPVL. It was specifically stated, in this regard, as under:

> "(iii) Sale of surplus assets/ investments
>
> There are no significant surplus assets/ investments proposed for sale.
>
> The investments are towards equity and preference share capital in its 100% fully owned subsidiary MBPV. These investments are required to be retained in terms of non-disposal undertaking executed with secured lenders of MBPV. Hence, no disposal of these investments is proposed."

(v) In the FRS, which was a document of BOB issued before the finalisation of the CDR package, it was again noted that MBSL had made investments in HPVL and that the investment was required to be retained as it was a strategic investment, as HPVL supplied PV cells to MBSL in its assembly modules. The

relevant paragraph from the FRS read thus:

> "2.3 Comments on financial position and working results
>
> …the Long-Term Surplus of Rs. 429.88 crore during FR 2008-09, which was used towards the following during FY 2010 to FY 2012.
>
> a) ******
>
> b) ******
>
> c) *******
>
> d) Investments in wholly owned subsidiary – MBPV
>
> Investments:
>
> The investments are towards equity and preference share capital in 100% fully owned subsidiary MBPV. These investments are required to be retained in terms of non-disposal undertaking executed with secured lenders of MBPV. Further, investment in MBPV is strategic investment, whereby MBPV supplies PV cells to MBSL in its assembly of modules."

(vi) In its counter affidavit filed by way of response to the writ petition, the justification provided by BOB for regarding the investments made by MBSL in HPVL to amount to wilful default, despite BOB having had full knowledge of the said investments at all points of time, was that MBSL continued to invest in HPVL even though HPVL was incurring losses since 2011-2012. This was a manifestly unacceptable stand. The FAR itself nowhere regarded the investments made by MBSL in HPVL as diversion of funds. Rather, the FAR stated, "owing to inadequacy of documents explaining arrival, basis and justification of investments made in HPVL raises question on

need of such investments. Further, considering the current financial status of HPVL, recovery of these investments seems to be doubtful." The FAR, therefore, had not arrived at any conclusion that the investments made by MBSL in HPVL amounted to diversion of funds.

(vii) At all points, in the CDR process, therefore, the MBSL was directed to retain its investments in HPVL, as they were found to be strategic in nature. It could not, therefore, be said that the investments were misguided or ought not to have been made or that MBSL should have recouped the amounts so invested.

(viii) Clause 2.1.3 read with clause 2.5 of the Master Circular required any "wilful default" to be intentional, deliberate and calculated, based on objective facts and circumstances of the case. Transferring funds to a subsidiary would amount to wilful default, only if, it was intentional, deliberate and calculated. The FAR did not even come to a conclusion that the investments made by MBSL in HPVL amounted to diversion of funds much less that it was intentional, deliberate or calculated. The decision to issue show cause notice, as was apparent from the minutes of meeting dated 24 February 2020, was based solely on the FAR and on nothing else. Clearly, therefore, the decision was misguided.

(ix) In this context, it was also necessary to note that even

after making investments in HPVL, MBSL created fixed assets of ₹ 477.46 Crores which implied that the loan amount was used for the purpose for which it was granted. The investment in HPVL was towards creation of fixed assets, as it manufactured PV cells, which was a critical component for solar cells manufactured by MBSL. Investments made for creation of assets, which supported the main business of MBSL, could not be regarded as diversion of funds.

62. Following this discussion, the learned Single Judge holds that allegation 3 against the respondent, qua his directorship in MBSL, was not made out.

63. Allegation 4, had been found by the Identification Committee to be an act of wilful default as MBSL had engaged in trading activities in the course of which it had purchased from and sold to HPVL amounting to ₹ 173.34 crores and ₹ 93.47 crores respectively.

64. In this context, the learned Single Judge observes as under:

(i) FAR noted that forensic auditor was unable to verify actual movement of goods against these amounts.

(ii) These amounts were also duly reflected in the financial statements of MBSL and in its balance sheet to which BOB had access at all times.

(iii) Despite this, MBSL was placed in Category B of the

CDR Master Circular and not in category C, which deals with units which diverted funds.

(iv) The FAR could not be regarded as having treated the aforesaid amounts, involved in the sale and purchase transactions between MBSL and HPVL as amounting to diversion of funds as it was admitted position in the FAR that owing to non-availability of supporting documents, the forensic auditors were unable to verify actual movement of goods against the purchase and sale transaction. The FAR, therefore, at worst, remained inconclusive.

(v) The decision to issue show cause notice to the respondent in respect of allegation 4, too, therefore, did not meet the standard investments envisaged in the Master Circular, which required an act of wilful default to be intentional, deliberate and calculated and for the bank and the CDR-EG to arrive at a conclusion in that regard of objective assessment of all the materials including the prior history of the borrower.

65. Following the above discussion, the learned Single Judge has held that allegation 4 was also not made out against the respondent and could not, therefore, constitute a basis to issue show cause notice to him.

66. The learned Single Judge has further held, relying on the following passages from the judgment of the High Court of Calcutta

in ***Prashant Bothra v Bureau of Immigration***[37]**,** that the FAR was, at best, entitled to the status of the expert opinion, which could not be regarded as conclusive proof of the allegations of finding contained therein:

> "21. The very premise of the request was a forensic audit report allegedly authored by a particular concern. The said report, at best, is a piece of evidence in the liquidation proceeding and is in no manner conclusive proof of evidence of any illegality committed by any entity. In fact, it is common experience that each and every such forensic audit report contains several disclaimers, restricting the operation of the same to the proceeding in which they are filed, as well as confined to the impression of the authors thereof on the basis of the documents which are available to them.
>
> 22. Under no stretch of imagination can such a report be conclusive proof of the allegations against the petitioners."

The learned Single Judge has expressed his concurrence with the decision of the High Court of Calcutta, and we do likewise.

67. We are in entire agreement with the learned Single Judge that the Master Circular does not envisage categorisation of a borrower as wilful defaulter without the requisite degree of circumspection and examination. The bank, in each case, was not justified in mulcting the respondent with "wilful defaulter tag" solely on the basis of the FAR, without any independent analysis. The factors which are required to be borne in mind, while declaring a borrower as wilful defaulter are set out in the Master Circular itself, but they do not appear to have engaged the attention of the banks before issuing show cause notice to the respondent, in each case. The Identification Committee and the

[37] **2023 SCC OnLine Cal 2643**

Review Committee have also proceeded merely on the basis of the allegation and certain observations in the FAR, ignoring the fact that the FAR in each case itself noted that the requisite details were not available with the concerned Chartered Accountant Firm before issuing the FAR. The observations in the FAR, therefore, were, at best, tentative.

68. These are all factors which form part of the "objective facts and circumstances of the case" which Clause 2.5 of the Master Circular required the bank to bear in mind, while examining whether the borrower had committed "intentional, deliberate and calculated" acts of wilful default.

69. The learned Single Judge is, therefore, entirely correct in his view that the decision to categorize the respondent as wilful defaulter is not arrived at after undertaking the exercise envisaged by the Master Circular.

70. We also agree with the learned Single Judge that the decision to issue show cause notice to the respondent, followed by the decision of the Identification Committee, and the Review Committee, have entirely ignored the contents of the FRS, which is a document of the bank itself, at the time of approval of the CDR restructuring of the MBSL/MBIL. In the present case, paras 92 to 96 of the impugned judgment of the learned Single Judge merit reproduction:

> "92. In the FRS, the lender banks have noted that MBSL is a subsidiary of MBIL and engaged in the manufacturing of photovoltaic cells. The company used the SEZ Unit in Greater

Noida to design, manufacture, sell, export photovoltaic cells in the global market. It had a production capacity of 90 MW selective emitter crystalline cells, 50 MW crystalline modules and 40 MW Thin Films PV. The company began its commercial operations at an initial cost of Rs.439.21 Crores. In 2011, the company consolidated and set up project for advanced high performance selective emitter high efficiency crystalline silicon cell with annual capacity of 90 MW. The cost of this project was Rs.624.69 Crores. The company demonstrated strong EPC capabilities and quality manufacturing. It has commissioned more than 50 PV projects in India and Germany. The company has significant customer base in Europe, Asia, Pacific, Middle East and the US.

93. The FRS noted that 2011-12 onwards, the company's financial operations were adversely affected due to (a) global solar photovoltaic market was operating under stress due to huge supply addition from China; (b) China offering USD 43 billion subsidy to its domestic companies, which led to abnormal fall in the prices of solar cell. The company, however, has been able to service its debt till 31.12.2011. The CDR-EG had admitted MBSL in Class-B as per the CDR Master Circular, which applies where MBSL was classified as Class-B borrower under the CDR Scheme, which has Classes from A to D. In the Class-B category, MBIL was classified as "*Corporate/promoters affected by external factors and also having weak resources, inadequate vision and not having support of professional management*." Class-C is assigned to those corporates who "*diverted funds*" to unrelated fields with or without lenders' permission. Thus, the lender banks considered MBSL to be a borrower which was affected by external factors and not by diversion of funds.

94. Before finalization of the CDR package, the lender banks obtained a TEV Report and Stock Audit Report from external agencies. After considering the said Reports, the lender banks approved the CDR package. The net worth of MBSL even as on 31.3.2012 was found to be Rs.658.66 Crores.

95. In the Flash Report, it is noted that MBSL could service all its debts till 30.11.2011 and even repaid the principal sum of the term loans.

96. The aforesaid position, which is accepted by the lender banks in their own document i.e., the FRS, does not show a consistent negative track record of MBSL. MBSL was seen as a global player in photovoltaic cells. It had presence in several countries. It had serviced its debt and largely repaid the principal dues. The Respondent Bank, under Clause 2.1.3 read with Clause

> 2.5 of the Master Circular, was obligated to reflect upon the entire track record of MBSL and then conclude whether there existed events of Wilful Default and not on the basis of isolated transactions/incidents."

71. The factors noted by the learned Single Judge in paras 92 to 96 of the impugned judgment were also required to be borne in mind by the bank before arriving at a conclusion that the respondent was a wilful defaulter.

72. For all these reasons, we are of the opinion that the learned Single Judge has correctly exercised his jurisdiction even in respect of the judgment forming subject matter of challenge in the present appeal which is, therefore, upheld in its entirety.

73. The appeal is consequently dismissed.

LPA 357/2024

74. This LPA assails judgment dated 29 February 2024 of the learned Single Judge in WP (C) 9491/2023[38], which, in turn, challenged order dated 13 July 2022, of the Identification Committee, declaring the respondent as a wilful defaulter as well as order dated 20 April 2023 of the Review Committee, confirming the said decision.

75. The dispute in these proceedings is largely analogous to that in the writ petitions involving BOB. PNB was also one of the lenders of

[38] **Ratul Puri v PNB**

MBSL. Consequent on MBSL failing to repay the loans extended to it by PNB, MBSL's case for CDR was considered in terms of the CDR Master Circular. MBSL submitted its Flash Report on 24 March 2012. In its meeting dated 7 May 2012, the CDR-EG decided to admit the proposal of MBSL for CDR, and nominated PNB as the monitoring institution. PNB was also entrusted to prepare the final draft FRS. MBSL was categorized as a Class-B borrower.

76. On 20 July 2012, a JLM was convened to discuss the final CDR package of MBSL. This was followed by a second JLM on 10 October 2012. In the second JLM, the technical viability study of MBSL received from Feedback Infra, the economic viability assessment received from PNB Investments Services Ltd and Stock Audit Report from Mehrotra and Mehrotra were considered. The core strategy and operating plans of MBSL were found to be technically feasible. On that basis, a final FRS of MBSL was issued by the lender banks, followed by a modified FRS on 21 January 2013.

77. The CDR-EG approved the proposed restructuring package of MBSL on 21 January 2013. In accordance therewith, an MRA was executed on 28 March 2013, restructuring the debt of MBSL, followed by a supplementary MRA on 27 May 2014. MBSL and the lender banks executed the TRA on 5 June 2013.

78. However, as MBSL failed to liquidate its loans, the CDR cell decided to exit the lender banks from the CDR package on 30 November 2016.

79. Following an application filed by a financial creditor under Section 7 of the IBC, the NCLT appointed an IRP *vide* order dated 14 November 2017. Haribhakti was appointed by the IRP as a forensic auditor. Haribhakti submitted its FAR on 1 March 2019.

80. On the basis thereof, PNB issued a show cause notice to the respondent on 9 April 2019 proposing to classify him as a wilful defaulter under the Master Circular. The respondent replied, following which on 7 February 2020, the Identification Committee of the PNB declared the respondent as a wilful defaulter.

81. This decision was, however, withdrawn, following which a second show cause notice was issued by PNB to the respondent on 10 June 2020, alleging wilful default. This was followed by a third show cause notice on 14 February 2022.

82. *Vide* order dated 13 July 2022, the Identification Committee declared the respondent as wilful defaulter. The decision was confirmed by the Review Committee on 20 April 2023, resulting in the respondent instituting WP (C) 9491/2023 before this Court.

83. The learned Single Judge copiously refers to his order dated 29 February 2024 in WP (C) 4181/2023, from which has emanated LPA 396/2024, emphasizing that the issues in that writ petition and the present writ petition were largely identical, legally speaking.

84. In the present case, too, the learned Single Judge, by order date 28 November 2023, directed the PNB to place, on record, the documents evidencing the satisfaction arrived at, by the PNB, to issue show cause notice to the respondent. In response, the PNB placed on record the minutes of the meeting dated 8 November 2019. A perusal thereof discloses that the only basis for the decision to issue a show cause notice to the respondent was the FAR of Haribhakti. The learned Single Judge has, therefore, reiterated his view – with which we entirely concur – that solely on the basis of the FAR of Haribhakti and without any independent application of mind as to whether there was any intentional, deliberate or calculated default by the respondent, on the basis of the overall facts and circumstances, the PNB could not have taken a decision to issue a show cause notice to the respondent.

85. The learned Single Judge has thereafter proceeded to examine whether, on facts, the conclusion that the respondent had committed acts of wilful default was at all sustainable. In this case, the learned Single Judge has noted that there were two grounds, relied upon by the Identification Committee, to declare the respondent as a wilful defaulter. The first was that MBSL had given interest-free deposit of ₹ 135.50 crores to MBIL under various lease agreements, which was upto 58.82 times the yearly rentals. The second was that MBSL had executed financial lease agreements with MBIL, so that, instead of utilizing the utilities on its own, MBSL leased back the utilities to MBIL on operating lease. Both these acts, according to Identification Committee, constituted diversion of funds within the meaning of Master Circular.

86. The learned Single Judge has examined each of these allegations independently.

87. Apropos the interest-free deposit of ₹ 135.50 crores given by MBSL to MBIL under various lease agreements, the learned Single Judge has observed that they were refundable security deposits and could not, therefore, be regarded as diversion of funds. The observation that they were 58.82 times the yearly rentals was found to be factually incorrect as the total security deposit was only 3.05 times the yearly rental. A chart evidencing this had been placed on record by the respondent, which had not been controverted by PNB. As such, the allegation that by providing interest-free deposit of ₹ 135.50 crores to MBIL, MBSL had committed an act of wilful default, was found to be predicated on factually wrong premise.

88. Besides, even commercially speaking, the learned Single Judge has found the deposits to be justified and viable. As per the agreement entered into with M/s Applied Materials, US, for supply of thin film solar module line, MBSL was required to establish a manufacturing unit. MBIL, the holding company of MBSL, had 27.5 acres of land in Greater Noida as an SEZ. MBIL was approved as the developer of SEZ. MBIL, therefore, developed the requisite infrastructure, including buildings and manufacturing facilities, at the SEZ, for ₹ 353.53 crores, which were then given by MBIL to MBSL on financial and operating leases of 7 to 20 years duration.

89. Even after paying the security deposit and annual rental, MBIL, from these lease agreements, made only a 12.8 % internal rate of return, which could not be said to be extraordinary. The commercial lending rate, at that time, was around 13 %, so that 12.8% on investments represented a fair return. All these facts had been tabulated by the respondent in his writ petition, and they did not objectively establish that the lease agreements were intentional, deliberate and calculated acts of wilful default. Having thus found that, on facts, the lease agreements did not represent acts of wilful default on the part of MBSL, the learned Single Judge has gone on to examine the FAR. As the lease agreements had been executed prior to the review period in respect of which the FAR was issued, the auditors did not have the requisite documents before them. The FAR itself concluded that, in the absence of supporting documents justifying agreed rates for leased assets, lease income, electricity and water charges, the lease agreements were questionable. Thus, the finding to that effect, by the FAR, could not be said to represent any conclusive finding that, by executing the lease agreements, MBSL had diverted any borrowed funds.

90. Thus, the finding of diversion of funds, on the basis of the lease agreements executed by MBIL was arrived at, by the Identification Committee, on its own, without any such suggestion in the FAR and without any supportive material.

91. The learned Single Judge then examined the second ground relied upon by the Identification Committee as constituting wilful

default on the respondent's part. This was that, instead of utilizing the utilities, MBSL leased back the utilities to MBIL on operating lease.

92. This conclusion was also found to be unsustainable. The SEZ was owned by MBIL. Lease agreements were executed by MBIL to enable MBSL to manufacture in the SEZ. As per the approval letter issued by the Ministry of Commerce, Govt. of India, the right and responsibilities to operate utilities in the SEZ exclusively remained with MBIL. As per approval dated 22 May 2007, MBSL only received permission to manufacture thin film and crystalline silicon based solar modules. To comply therewith, however, MBSL had necessarily to give back the operation of power generation and utility assets for the operations to MBIL on operating lease. Against these leases, MBIL agreed to pay MBSL lease rent of ₹ 382.77/- crores.

93. Thus, over a period of 10 years, MBIL would have paid MBSL an amount of ₹ 382.77 crores under the operating leases, against ₹ 390.05 crores paid by MBSL to MBIL under the financial leases. Thus, there was no significant loss or profit made by either MBSL or MBIL in these transactions. MBSL, in fact, made a financial gain of ₹ 5.46 crores. Thus, it was found that no diversion of funds could be alleged.

94. Moreover, in Clause 13 of its Flash Report, MBSL categorically disclosed the details of the financial and operating lease agreements executed with MBIL. Thus, even at the time of consideration of MBSL's case for CDR, the CDR-EG, including the PNB, was fully

aware of the lease agreements and the nature of the transactions. Despite this, the restructuring package was approved by the CDR-EG on 18 March 2013, in Clause 9 of Schedule 1 thereto, the banks again acknowledged that MBSL had leased liabilities towards MBIL.

95. Even after approval of the CDR package, the lender banks issued the FRS, as their own internal document which contained no adverse findings against MBSL regarding the lease agreements. Subsequently, the lender banks, including PNB, entered into MRA and TRA with MBSL without demur.

96. In such circumstances, the learned Single Judge has observed that the decision to categorize the respondent as a wilful defaulter was arrived at, by the Identification Committee, without examining the matter in the manner required by the master circular and confirmed by the Review Committee in a mechanical fashion.

97. A third ground, on which the Identification Committee regarded the respondent as a wilful defaulter, was that MBSL had made investments of ₹696.49 crores in HPVL without the approval of the lenders.

98. Apropos this, it is not necessary for us to reiterate the findings of the learned Single Judge, as the situation is identical to that regarding the investments made by MBIL in MBSL, forming subject matter of LPA 398/2024. As in that case, the investments by MBSL in HPVL were not made out of borrowed funds but from funds raised by

the PE Investors.

99. Moreover, HPVL was a strategic investment made by MBSL. The investments were duly reflected in the financial statements and audited balance sheets of MBSL, to which the lender banks always had access and of which they were fully aware. The investments were also disclosed in the Flash Report submitted by MBSL. Even in the JLM meeting dated 10 October 2012, the representative of PNB Investment Services Ltd explained that long term funds had been utilized by MBSL for investment on subsidiaries. While approving the CDR package, MBSL was advised to retain the said investments and not to dispose of them. Even in the FRS issued by the lender banks, the investment made by MBSL in HPVL was noted. It was observed that the investment was required to be retained as it was a strategic investment, as HPVL was the supplier of PV cells to MBSL for use in its assembly modules.

100. Finally, after all these, MBSL was characterized only as a Class B borrower, and not as a Class C borrower, though entities which resorted to diversion of siphoning of funds had to be treated as Class C borrowers.

101. In these circumstances, the learned Single Judge has held that the investments made by MBSL in HPVL could also not be regarded as diversion of funds.

102. Following this, the learned Single Judge has dealt with the

value and effect of the FAR and the responsibilities of the Identification Committee to which we have already alluded earlier.

103. As in the case of the judgments of the learned Single forming subject matter of appeal in LPA 396/2024 and LPA 398/2024 and, for the same reasons, we do not find that any case exists, for us, to interfere with the extremely well-considered decision in WP(C) 9491/2023.

104. This appeal is also, therefore, dismissed.

LPA 294/2024

105. This appeal arises out of order dated 29 February 2024 passed by the learned Single Judge in WP (C) 10568/2023[39].

106. The learned Single Judge has found this case to be identical to WP (C) 9491/2023, involving an identical challenge.

107. For the reasons adduced in his judgment dated 29 February 2024 in WP(C) 9491/2023, the learned Single Judge has allowed WP (C) 10568/2023 as well.

108. Equally, for the reasons stated by us in LPA 357/2024, arising out of WP (C) 9491/2023, we uphold the decision of the learned Single Judge in WP (C) 10568/2023 as well.

[39] **Nita Puri v PNB**

109. This appeal is also, therefore, dismissed.

A Parting Note

110. Article 226 jurisdiction is, classically, not appellate in nature. Nonetheless, keeping the overwhelming element of public interest that permeates the Master Circular, and its implementation, the learned Single Judge, we feel, rightly entered into the merits of the findings of the Identification Committee and the Review Committee. We reiterate, most emphatically, the finding of the learned Single Judge that the categorization of a borrower as a "wilful defaulter" under the Master Circular cannot be a superficial exercise. In arriving at such a decision, the Master Circular envisages thorough scrutiny at four stages; first, in the drawing up of the FAR, secondly, at the stage of examination of the FAR and arriving at a conclusion as to whether the observations and findings therein justify a *conclusion* of wilful default, so as to require the borrower to show cause; thirdly, by the Identification Committee in arriving at the said conclusion after examining the response of the borrower to the show cause notice and, fourthly, by the Review Committee in examining the findings of the Identification Committee and the representation of the borrower thereagainst. At each stage, the scrutiny has to be precise and thorough. Most importantly, it has to be borne in mind that the default has to be intentional, deliberate and calculated. Every default is not a "wilful default" within the meaning of the Master Circular. Clearly, the expression "wilful" embodies a far stricter connotation, and

standard, than its normal etymological confines. In arriving at a conclusion regarding wilful default, at each stage, the examination has to be based on an *objective examination of the facts and circumstances of the case.* Isolated, or stray, incidents of default cannot be regarded as wilful default, and the decision *has also to factor in the track record of the borrower.* Facts which were known at the time of approval of the CDR package, and which were not regarded as wilful default at that time, cannot suddenly be regarded as wilful default at a later stage, without any additional material justifying such a change in stance. The categorization of the borrower is a factor of no little significance in this regard. If a borrower is diverting, or siphoning, funds, he has to be placed in the appropriate category. Holding a borrower, who is in Category B, to be a wilful defaulter, is *ex facie* incongruous. Again, while arriving at the conclusion of diversion or siphoning of funds, the meaning and import of the expressions, as defined in the Master Circular, has scrupulously to be borne in mind. In either case, the funds have to be *borrowed funds*. At each stage, therefore, there has to be a conscious examination of whether the funds, the dealing with which is being regarded as an act of wilful default, were, or were not, borrowed funds. The financial wherewithal of the company is also to be borne in mind, while arriving at this decision. If the funds were not "borrowed funds", there can, *ipso facto*, be no allegation of wilful default.

111. Though the impugned judgments keep all these factors in mind, we deemed it appropriate to paraphrase them, keeping in mind the drastic consequences of holding a borrower to be a wilful defaulter.

We are constrained, moreover, to enter this comment as we find, in these appeals, that the financial auditor, in the FAR, has acknowledged that all details, or facts, were not available with it. Unless the financial auditor is in possession of all facts and details, it *cannot* return even a tentative opinion on whether there has been diversion or siphoning of funds. An FAR which is issued without being possessed of all the necessary factual material and statistical details is really worthy of little credibility, and cannot constitute the basis for proceeding against the borrower for declaring him a wilful defaulter either under the Master Circular, or, we may venture to add, in any cognate proceedings either. While dealing with the issue of whether a borrower is, or is not, a wilful defaulter, and implementing the provisions of the Master Circular, the exordium of the Supreme Court in ***Jah Developers*** has to be borne in mind. The authorities, *at all stages*, have to be alive to the fact that a declaration of wilful default, within the meaning of the Master Circular, results in civil death. Strict compliance with the Master Circular, in scrupulous consciousness of its clauses and indicia is, therefore, the indispensable *sine qua non*.

A note of appreciation

112. Before parting, we express our appreciation of learned Counsel Mr. Kush Sharma for the appellants and Mr. Vaibhav Mishra for the respondents, who aided us in disposing of these appeals by presenting submissions which were crisp and precise.

Conclusion

113. All these appeals are, therefore, dismissed, with no orders as to costs.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

AUGUST 8, 2025
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