

**IN THE HIGH COURT AT CALCUTTA**  
**(Constitutional Writ Jurisdiction)**  
**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Krishna Rao**

**W.P.A. No. 3211 of 2026**

**BSCPL Infrastructure Limited & Anr.**

**Vs.**

**Reserve Bank of India & Anr.**

Mr. Suman Kumar Dutt, Sr. Adv.

Mr. Rajarshi Dutt

Mr. Varun Kothari

Mr. A.P. Agarwalla

....For the petitioners.

Mr. Aman Agarwal

Mr. Debabrata Das

Mr. A. Sarkar

Mr. Pratik Acharjee

.... For the R.B.I.

Mr. Ranjan Bachawat, Sr. Adv.

Mr. Paritsoh Sinha

Mr. Shounak Mukhopadhyay

Mr. Saubhik Chowdhury

Ms. Sayantani Banerjee

.... For the Respondent No.2.

Hearing Concluded On : 24.03.2026

Judgment on : 08.04.2026

**Krishna Rao, J.:**

1. The petitioners have filed the present writ petition challenging the Show Cause Notice dated 15<sup>th</sup> January, 2026 and the decision of the Wilful Defaulter Identification Committee dated 18<sup>th</sup> December, 2025.
  
2. Mr. Suman Kumar Dutt, Learned Senior Advocate representing the petitioners submits that the petitioner no.1 and one C&C Constructions Limited (herein after referred to as "C&C") had entered into a 50:50 Joint Venture by an agreement dated 17<sup>th</sup> September, 2010, for execution of various infrastructure projects in India and abroad. The petitioner no.1 and C&C were 50:50 partners and both had to make equal contribution in the Joint Venture. The respondent no.2 had sanctioned loans in favour of C&C in which C&C defaulted in repayment. C&C being an equal partner had failed to invest its share of contribution as required in the Joint Venture and continuous failure on the part of the C&C to bring in required contribution had a bearing on the execution of the contracts which ultimately forced the petitioner no.1 to infuse more and more funds in excess of contribution of C&C. Due to continuous imbalance in contribution by C&C forced the petitioner no.1 to take control of all the projects undertaken by the Joint Venture to secure the interest of both the partners and the bankers who had provided bank guarantees to the extent of Rs. 350 crores to ensure performance of contracts.

- 3.** Mr. Dutt submits that C&C was admitted to Corporate Insolvency Resolution Process (CIRP) on 14<sup>th</sup> February, 2019, in terms of the order passed by the Learned National Company Law Tribunal, New Delhi. On 7<sup>th</sup> October, 2022, C&C was admitted to liquidation by the Learned National Company Law Tribunal (NCLT), New Delhi. As the C&C went into liquidation, the respondent no. 2 had lodged its entire claim amount of Rs. 1,46,50,26,106/- before the Liquidator of C&C. Out of the entire amount claimed by the respondent no.2, an amount of Rs. 18,78,16,347/- was admitted by the Liquidator of the C&C.
- 4.** The respondent no.2 had filed four applications under Section 11 of the Arbitration and Conciliation Act, 1996 before the Coordinate Bench of this Court for appointment of Arbitrators and by an order dated 26<sup>th</sup> February, 2026, in all four applications, Arbitrators have been appointed. During pendency of the applications, the respondent no.2 had issued impugned notices proposing to declare the petitioner nos.1 and 2 along with Joint Venture as wilful defaulters.
- 5.** Mr. Dutt submits that issuance of the impugned notices with respect to the alleged claim, when Arbitrators have been appointed and the respondent no.2 has also invoked remedies under the Insolvency and Bankruptcy Code, 2016, is arbitrary, impermissible and amounts to abuse of process of law. He submits that the show cause notice is vague as it is bereft of particulars. The minutes of Wilful Defaulter Identification Committee do not refer to any of the particular loan transaction whereas from the show cause notice, it appears that more

than one transactions, was for consideration before the Wilful Defaulter Identification Committee in its meeting dated 18<sup>th</sup> December, 2025. He submits that “Wilful Default” does not include within its definition “misuse of funds” as alleged in the show cause notice. He submits that in the absence of “Wilful Default” there cannot be a “Wilful Defaulter” as there is no allegation of “siphoning of funds”. He submits that the show cause notice is issued in violation of principle of natural justice.

6. Mr. Dutt in support of his submissions, has relied upon the judgment in the case of ***Indian Commodity Exchange Limited Vs. Neptune Overseas Limited & Ors.*** reported in ***(2020) 20 SCC 106*** and submits that when reliance is placed several documents, it would not be fair to expect that the party in question ferrets through its own record trying to locate the documents, when on the basis of formation of an opinion for issuance of the show cause notice, logic and requirement of law both would dictate that the show cause notice should be comprehensive enough with full supporting documents being handed over. He submits that in the present case, the respondents have enclosed bunch of documents consists of several pages, it would not be possible to locate the documents on the basis of which the impugned notice is issued.

7. Mr. Ranjan Bachawat, Learned Senior Advocate representing the respondent no. 2 submits that the petitioners have challenged the show cause notice dated 15<sup>th</sup> January, 2026 and the Minutes of the Wilful Defaulter Identification Committee dated 18<sup>th</sup> December, 2025, on the

ground that Arbitrators have been appointed and the respondent no.2 has also invoked remedies under the Insolvency and Bankruptcy Code, 2016 but the petitioners have not shown any law that pendency of arbitration proceeding and invocation of the remedies under the Insolvency and Bankruptcy Code, 2016, no show cause notice can be issued by proposing to declare Wilful Defaulter.

8. Mr. Bachawat submits that the petitioners have admitted in the writ petition that the petitioners have taken control of all the projects undertaken by the Joint Venture to secure the interest of the partners and the bankers who have provided Bank Guarantee to ensure performance of contracts. He further submits that the petitioner no.1 is also a corporate guarantor.
9. Mr. Bachawat submits that in the minutes of the Wilful Defaulter Identification Committee dated 18<sup>th</sup> December, 2025, it is categorically mentioned about two documents i.e. invocation notices dated 6<sup>th</sup> February, 2025 and 13<sup>th</sup> August, 2025, which have been sent but not been honoured which are the part of the documents served to the petitioners and the petitioners have submitted their reply to the show cause notice in detail.
10. Mr. Bachawat submits that the petitioners have challenged the show cause notice in the present writ proceeding but the Court cannot interfere with the show cause notice. In support of his submissions, he has relied upon the judgment in the case of ***Kaustuv Ray Vs. IDBI***

**Bank and Others** reported in **2023 SCC OnLine Cal 656**. He submits that the petitioners have filed reply to the show cause notice if the bank is satisfied with the reply, the notice could either be dropped or if the reply is not satisfactory then based on the show cause notice and reply, further steps would be taken in accordance with law, but adjudicating proceedings cannot be stalled.

11. Mr. Bachawat submits that the petitioner no. 1 is a corporate guarantor and the respondent no.2 is a personal guarantor, thus declaration of Non-Performing Assets is not required. He submits that even if the IBC proceeding is pending, the respondents are free to proceed against the petitioners, against the show cause notice issued to the petitioners. Mr. Bachawat submits that the petitioners by a communication dated 25<sup>th</sup> February, 2025, requested for revised proposal for One Time Settlement (OTS) of the Equipment Funding which itself proves that the petitioners have sufficient means.
12. Willful default defined in Clause (xviii) of the Reserve Bank of India (Non-Banking Financial Companies-Treatment of Wilful Defaulters and Large Defaulters) Directions, 2025, which reads as follows:

***“(xviii) “wilful default”***

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

- (a) the borrower has the capacity to honour the said obligations;*

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

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

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

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

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

- 13.** In the Minutes of Meeting of the Wilful Defaulter Identification Committee dated 18<sup>th</sup> December, 2025, it was decided to issue show cause notice to the petitioners on the reasons of misused of funds and non-honouring of the guarantee by the guarantor when invoked by the lender. The respondents have relied upon invocation notices dated 6<sup>th</sup> February, 2025 and 13<sup>th</sup> August, 2025. In the notice dated 6<sup>th</sup> February, 2025, the respondent no.2 called upon the petitioner no.1 to pay an aggregate sum of Rs. 240,47,44,165/- as on 24<sup>th</sup> January,

2025, together with further interest and other charges till the realization of the outstanding debts to the respondent no.2. In the said notice, it is further mentioned that in case of failure of the said demand, the respondent no.2 shall initiate legal proceedings including filing an application under the Insolvency and Bankruptcy Code, 2016.

- 14.** By a letter dated 13<sup>th</sup> August, 2025, the respondent no.2 informed the petitioner no.2 that inspite of receipt of notice dated 28<sup>th</sup> July, 2025, the petitioner no. 2 failed to repay an amount of Rs. 181,66,49,616.09 and accordingly the respondent no.2 has referred the matter to the sole arbitrator and the said notice be treated as notice under Section 21 of the Arbitration and Conciliation Act, 1996.
- 15.** By an order dated 7<sup>th</sup> October, 2022, the application of the Resolution Professional of M/s C&C Constructions Limited was allowed by the Learned National Company Law Tribunal wherein out of the total amount claim of Rs. 146,50,26,106/- an amount of Rs. 18,78,16,347/- was admitted by the Liquidator.
- 16.** In none of the notices, there is any allegation that despite of having sufficient means to make payment of dues or have disposed of movable or immovable assets provided for the purpose of securing the credit facilities. In the show cause notice, it is mentioned that certain transactions, events, facts/circumstances were identified as amounting to wilful default by the Wilful Defaulter Identification Committee in its meeting dated 18<sup>th</sup> December, 2025 but in the Minutes of Meeting, no

such transactions, events, facts/ circumstances are recorded. Learned Advocate for the respondent no. 2 have only relied upon two letters dated 6<sup>th</sup> February, 2025 and 13<sup>th</sup> August, 2025 but in those letter, there is no such transactions, events and facts/ circumstances have been indicated to show that the petitioners having sufficient means to make payment of the dues or disposed of immovable or movable assets provided for the purpose of securing the credit facilities.

- 17.** On the other hand, in both notices, the respondent no.2 has called the petitioners to pay the amount along with interest, failing which they will initiate proceeding under the Code of 2016 and will appoint Arbitrator.
- 18.** It is also admitted that as per the prayer of the respondent no.2, the Coordinate Bench of this Court already appointed Arbitrators in four arbitration proceedings.
- 19.** This Court finds that the respondents have not shown any act of the petitioners that either the petitioners despite having sufficient means to make payment of the dues or have disposed of immovable or movable assets provided for the purpose of securing the credit facilities without the approval of the lender. Thus, the case is not covered under the definition of “Wilful Default”.
- 20.** In view of the above, the show cause notice dated 15<sup>th</sup> January, 2026 and the Minutes of the Meeting of the Wilful Defaulter Identification Committee dated 18<sup>th</sup> December, 2025, are set aside and quashed.

**21. WPA No. 3211 of 2026 is allowed.**

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

**(Krishna Rao, J.)**