IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2944 OF 2021
WITH
INTERIM APPLICATION NO. 1033 OF 2020
IN
WRIT PETITION NO. 2944 OF 2021

Punit Agarwal .. Petitioner

Versus

Reserve Bank of India and anr .. Respondents

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Mr. Ashish Kamat, Sr. Advocate a/w Mr. Siddha Pamecha and Mr. Akash Warang, for the Petitioner.
Mr. Harsh Sheth i/b MDP Legal, Advocate for Respondent No.2- Union Bank of India.

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 18th MARCH, 2026

ORAL JUDGMENT (PER BHARATI DANGRE J)

1. The Petition is filed by Mr. Punit Agarwal, challenging his classification as willful defaulter by the Union Bank of India Respondent No.2, and the claim of the Petitioner is that the said action is without authority and jurisdiction, and is in violation of the guidelines issued by the Reserve Bank of India.

2. We have heard learned Senior Counsel, Mr. Ashish Kamat, for the Petitioner and Mr. Harsh Sheth for the Union Bank of India.

3. On the pleadings being completed, by consent of parties, we deem it appropriate to issue ‘Rule’ by making it returnable forthwith.

4. The background facts in which the Petition is framed reveal that M/s Promart Retail India Private Limited was incorporated in the

year 2011, with its initial shareholders and subscribers, being the Petitioner and Tanaya Enterprises Private Limited, in which the Petitioner was a substantial shareholder and its first Directors were the Petitioner and one Mrs. Neetu Punit Agarwal. The Petitioner and Tanaya Enterprises Private Limited, sold their entire shareholding in the Company to Mr. Ashish Garg and Mrs. Shaloo Garg, as a result of which the Board composition underwent a change and Mr. Ashish Garg became the Managing Director and he and his family became the beneficial owners of the entire shareholding.

Somewhere in the month of March 2012, the Petitioner invested in the Company due to its growth and funding requirements and held approximately 2.60 % of the shareholding till December 2013. However, in January 2014, the Petitioner sold his entire shareholding to Mr. Ashish Garg's group.

5. It is the case of the Petitioner that the Union Bank sanctioned credit facility including Cash Credit and Inland/Import LC aggregated to INR. 40,00,00,000/- (Rupees Forty Crores only) in favour of the Company. In the course of obtaining the said loan, as a sanction condition the petitioner executed a personal guarantee in favour of the Respondent No.2, Bank. The Petitioner continued to function as an employee/Director of the Company and received salary upto February 2014, after which no payment was received by him and the Petitioner reliably learn that the Promoter Director Mr. Ashish Garg had allegedly transferred funds to related entities in violation of sanction terms.

On 15/01/2014, the Petitioner tendered his resignation as a Director of the Company, which was accepted on the same day. In the

resignation letter he also made a request that the Registrar of the Companies, Mumbai, shall be informed about his resignation.

According to the Petitioner, subsequent to his resignation, Mr. Garg requested the Petitioner to continue with the Company and assured that monies transferred to the group companies would be brought back and the Petitioner agreed to continue in the management in order to run the Company's business and safeguard the livelihood of its employees. The Petitioner gave certain statements at the Joint Lenders Forum Meeting held on 19/05/2014, as the Minutes recorded that Mr. Agarwal would be taking major steps in the interest of the Company, which had achieved huge turnover with a new profit about 2-2.5 % and the Company was in the process of preparing provisional balance sheet of the Company for the FY 2013-14 which would be submitted by the month end.

However, when Mr. Garg failed to bring the monies transferred from the Company, the Petitioner filed e-Form DIR 11 before the Registrar of Companies, Mumbai, thereby intimating about his resignation, which was accompanied by the resignation letter dated 29/07/2014 clearly stating that he had already resigned on 15/01/2014 and the resignation was accepted by the Company, but since the request was made for its smooth transition, he continued in good faith but since the Managing Director failed to take responsibility and he was used a scapegoat, he had put his papers as Director of the Company.

The aforesaid letter was acknowledged by Mr. Ashish Garg.

6. On 17/10/2014, the Union Bank of India, pointed out the irregularities in the Cash Credit (CC) Account of M/s. Promart Retail India Pvt Ltd, stating that due to persisting nature of irregularities, the bank has taken the decision of liquidating the fix deposit prematurely and crediting it to the Company's CC Account, and had reduced the limits to Rs. 28,24,00,000/- (Rupees Twenty Eight Crores Twenty Four Lakhs Only) from Rs. 40,00,00,000/- (Rupees Forty Crore Only).

On 18/12/2014, the cash credit account of M/s Promart Retail India Pvt Ltd, the company was classified as Non Performing Asset (NPA) as on 12/12/2014 calling upon the company to adjust/clear all the bank dues immediately. Since copy of the said letter was also forwarded to the Petitioner, the Petitioner communicated with the bank on 2/03/2015, submitting that in the wake of the Company Petition No.658 of 2013, the Provisional Liquidator was appointed on the Company which is under liquidation. He also clarified that he is no more Director of the company, but his guarantee as per the 'Guarantee Deed' continued and he is liable to that extent to pay the amount as assessed as a Guarantor.

7. On 8/08/2015, the Union Bank of India issued a notice to the Company as well as Mr. Ashish Garg and the Petitioner, classifying them as willful defaulters for failure to regularize the Company's CC Account, by alleging default in repayment and diversion of funds with reference to the RBI guidelines regarding furnishing details of directors to the Credit Information Companies.

The said notice set out that the bank had sanctioned the limits aggregating to Rs. 40,00,00,000/- (Rupees Forty Crores) for making

financial requirements and there was an outstanding sum of Rs. 28,85,79,948.18/-, which is overdue or irregular and therefore it has become necessary to classify the noticee as willful defaulters for the following reasons:-

> *"3. 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 utilized for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets.*
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> *4. The unit has defaulted in meeting its payment/ repayment obligation to the lender and has also disposed of or removed the movable fixed assets or immovable property given by it for the purpose of securing a term loan without the knowledge of the bank/lender."*

8. The Petitioner filed reply to the show cause notice on 4/09/2015, reiterating his stand that he had already resigned as Director on 15/01/2014, prior to the NPA classification on December, 12, 2014, and therefore, he could not be classified as willful defaulter. He also denied the allegation of siphoning of funds, by stating that he was not a Director at the relevant time, and he requested that an opportunity be afforded to him for hearing, if the bank decides not to withdraw the notice. The request was made to offer the hearing by the Committee constituted under 'Mechanism for identification of Wilful Defaulters' or such other Higher Committee/ Authority as the case may be.

9. On 14/12/2015, the Petitioner was granted an opportunity of hearing by the Respondent No.2 and the Petitioner also submitted written submissions on 26/12/2015, specifically referring to his resignation from the Company and that he had no role to play in the Company being classified as NPA. In the said written submission, he specifically pleaded thus:-

"12. I have been informing your esteemed bank time and again, that at present I am not associated with the company 'Promart Retail India Private Limited' in any manner whatsoever. I had resigned from the position of the Director of the Company on 15th January, 2014. Attached herewith and marked as ANNEXURE 'J' is my resignation letter and as ANNEXURE 'K' a copy of the Board Resolution of the Company accepting my resignation. At this point of time the account was well functioning and there was no default in repayment terms.

13. All of the above stated matters have been informed to you vide my earlier letter dated 04.09.2015 and I am highly obliged to you for providing me an opportunity of being heard. I would also like to inform you that Punjab National Bank, ECE House, Delhi, had placed my name in the wilful defaulters list published as on 31.03.2015 without giving any opportunity of being heard. Attached herewith as ANNEXURE 'L' is the copy of the extract of the wilful defaulters list published by PNB as on 31.03.2015. Thereafter giving me a chance to put forth my representations and upon receiving the same and being satisfied, removed by name from the list of wilful defaulters published as on 30.09.2015. Attached herewith as ANNEXURE 'M' is the copy of the extract of the wilful defaulters list published by PNB as on 30.09.2015."

10. After the aforesaid event, there was no communication received by the Petitioner in this regard from Respondent No.2, but it is subsequently revealed to the Petitioner that on this day itself i.e. on 14/12/2025, the Petitioner was declared as willful defaulter but the order was never communicated to him. It is only on 30/03/2019, the Petitioner became aware of his name being put in the list of willful defaulters in the A/c. M/s. Promart Retail India Pvt Ltd. when he received a communication from Vijaya Bank, Banglore with reference to his representation. The bank informed the Petitioner that as per the RBI guidelines, the decision of identification Committee was placed before the Review Committee headed by the Managing Director and the Chief Executive Officer and after detailed deliberations, it is observed from the CIBIL Website that Union Bank of India is also reporting his name from 31/03/2017 onwards and it was therefore indicated that if his name is removed from the willful

defaulters list of Union Bank of India, his name shall also be removed from its list of defaulters.

11. The Petitioner thereafter addressed a communication to the Union Bank through his Advocate on 5/12/2019, setting out the whole background and specifically pointing out that the Petitioner had been wrongly classified as willful defaulter as at the time of declaring the Company's account NPA, he was not a Director nor has he indulge in any act which can be qualified as a ground for declaring him as a 'Willful defaulter'. It was also stated that the name of the Petitioner was removed from the list by Punjab National Bank and Vijaya Bank and therefore a request is made that the name of the Petitioner should be removed by the Union Bank also.

However, since no steps were taken in this regard, the Petitioner is constrained to approach this Court seeking a direction against Respondent No.2 to forthwith remove the Petitioner's name from the impugned list of willful defaulters.

12. The learned Senior Counsel Mr. Kamat, has urged before us that even before including the name of an entity/individual in the list of willful defaulters, it is imperative to precede the said action by following the principles of natural justice. He would heavily rely upon the decision of the Apex Court in case of *State Bank of India vs. Jah Developers Private Limited and Ors*[1] with reference to the RBI's Master Circular on willful defaulters dated 01/07/2015 read with circular dated 01/07/2013. In particular he would rely upon the following observations of the Apex Court.

1 (2019) 6 SCC 787

"24.…Whether a default is intentional, deliberate, and calculated is again a question of fact which the lender may put to the borrower in a show cause notice to elicit the borrower's submissions on the same. However, we are of the view that Article 19(1)(g) is attracted in the facts of the present case as the moment a person is declared to be a wilful defaulter, the impact on its fundamental right to carry on business is direct and immediate. This is for the reason that no additional facilities can be granted by any bank/financial institutions, and entrepreneurs/promoters would be barred from institutional finance for five years. Banks/financial institutions can even change the management of the wilful defaulter, and a promoter/director of a wilful defaulter cannot be made promoter or director of any other borrower company. Equally, under Section 29A of the Insolvency and Bankruptcy Code, 2016, a wilful defaulter cannot even apply to be a resolution applicant. Given these drastic consequences, it is clear that the Revised Circular, being in public interest, must be construed reasonably. This being so, and given the fact that paragraph 3 of the Master Circular dated 01.07.2013 permitted the borrower to make a representation within 15 days of the preliminary decision of the First Committee, we are of the view that first and foremost, the Committee comprising of the Executive Director and two other senior officials, being the First Committee, after following paragraph 3(b) of the Revised Circular dated 01.07.2015, must give its order to the borrower as soon as it is made. The borrower can then represent against such order within a period of 15 days to the Review Committee. Such written representation can be a full representation on facts and law (if any). The Review Committee must then pass a reasoned order on such representation which must then be served on the borrower. Given the fact that the earlier Master Circular dated 01.07.2013 itself considered such steps to be reasonable, we incorporate all these steps into the Revised Circular dated 01.07.2015. The impugned judgment is, therefore, set aside, and the appeals are allowed in terms of our judgment…"

13. According to Mr. Kamat, in the sequence of events narrated before us, the Union Bank of India issued showcause notice to the Petitioner on 08/08/2015 as regards classification of the Petitioner along with the Company as willful defaulter to which he promptly replied on 4/09/2015. On 14/12/2015, the Petitioner was afforded an opportunity of hearing and he even submitted his written submissions, canvassing his stand in an attempt, not to include his name in the list of willful defaulters, but apparently the Respondent No.2 did not wait for the response or apparently did not consider

stand of the Petitioner as on the very same date i.e. on 14/12/2015, the Petitioner is declared as willful defaulter.

Apart from the background, the Petitioner has set out in the Petition and also pleaded in his response to the showcause notice as well as written submissions, in terms of the circular on willful defaulters, it is necessary to adopt a prescribe procedure before a person is declared as willful defaulter and his name is included in the list.

The RBI, the Apex body has issued circular/s from time to time governing the issue of willful defaulters and when the Petitioner was declared as a willful defaulter in the year 2014, the RBI circular dated 1/07/2013, was prevailing, which contemplated grant of hearing before the Grievance Redressal Committee headed by the Chairman/Managing Director, and it also provided that the borrower should be provided 15 days' time for making a representation against the preliminary decision of the First Committee, though subsequently in the circular of 1/07/2015, there is some deviation from the aforesaid procedure. However, when we look into the circular of RBI, we find its purpose to be indicated as:-

> *"To put in place a system to disseminate credit information pertaining to wilful defaulters for cautioning banks and financial institutions so as to ensure that further bank finance is not made available to them."*

14. The Master Circular contemplate the Grievance Redressal Mechanism and direct the Banks/FIs to take certain majors in identifying and reporting instances of willful default by prescribing thus:-

> "***3. Grievance Redressal Mechanism.*** *– Banks/FIs should take the following measures in identifying and reporting instances of wilful default:*
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> *(i) With a view to imparting more objectivity in identifying cases of wilful default, decisions to classify the borrower as wilful defaulter should be entrusted to a Committee of higher functionaries headed by the Executive Director and consisting of two GMs/DGMs as decided by the Board of the bank/FI concerned.*
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> *(ii) The decision taken on classification of wilful defaulters should be well documented and supported by requisite evidence. The decision should clearly spell out the reasons for which the borrower has been declared as wilful defaulter vis-à-vis RBI guidelines.*
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> *(iii) The borrower should thereafter be suitably advised about the proposal to classify him as wilful defaulter along with the reasons therefor. The concerned borrower should be provided reasonable time (say 15 days) for making representation against such decision, if he so desires, to a Grievance Redressal Committee headed by the Chairman and Managing Director and consisting of two other senior officials.*
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> *(iv) Further, the above Grievance Redressal Committee should also give a hearing to the borrower if he represents that he has been wrongly classified as wilful defaulter.*
>
> *(v) A final declaration as 'wilful defaulter' should be made after a view is taken by the Committee on the representation and the borrower should be suitably advised."*

15. The aforesaid provision in the circular clearly contemplate that the decision to classify willful defaulter should be well documented and supported by requisite evidence and not only this, the Grievance Redressal Committee shall give an opportunity of hearing to the borrower if he represent that he has been wrongfully classified as willful defaulter and a final declaration as 'willful defaulter' should be made only after a view is taken by the Committee on the representation.

We do not find that the said procedure has been followed at all as the date on which the Petitioner is afforded an opportunity of hearing, on the same day, the order is passed classifying him as a willful defaulter.

Ashish

16. The above mechanism adopted by Respondent No.2 is clearly in teeth of the decision of the Apex Court in case of *Jah Developers Pvt Ltd (supra)* and therefore, we quash and set aside the impugned order classifying the Petitioner as willful defaulter as the decision of the Respondent No.2 to include the Petitioner in the list, is without following the procedure prescribed in the RBI circular.

From the reply affidavit filed by the Respondent No.2- Bank it is the specific stand that the Petitioner has been classified as 'willful defaulter' in pursuance to the hearing held on 14/12/2015, and that the Petitioner has not bothered to challenge the same for all these years do not appeal to us as the Petitioner was never communicated with the order and in any case, if the hearing was granted on 14/12/2015, we do not expect the decision to be taken on the same date, which is clearly reflective of non-application of mind by the Respondent No.2. For this reason, we quash the action of the Respondent No.2 including the name of the Petitioner in the list of 'willful defaulters'.

Needless to state, if by following proper procedure as prescribed by the prevailing circular, it is open for the Respondent No.2- Bank to initiate the action for declaring him as willful defaulter if the cause of action and the timelines permit, is permitted to do so.

Writ is made absolute in the aforesaid terms.

(MANJUSHA DESHPANDE, J.) **(BHARATI DANGRE, J.)**

Ashish