IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

W.P.A. No. 24869 of 2026

Kitply Industries Limited & Ors.

Vs.

Reserve Bank of India & Anr.

Mr. Suman Kumar Dutt, Sr. Adv.
Mr. Sumanta Biswas
Mr. Kanishk Kajriwal
Mr. Sk. Saad Islam

....For the petitioners.

Mr. Ranjan Bachawat, Sr. Adv.
Mr. Suddhasatva Banerjee
Mr. Prithwish Roy Choudhury
Ms. Debomita Sadhu
Mr. Bhavesh Garodia

....For the respondent no. 2.

Hearing Concluded On : 18.09.2026

Judgment Delivered On : 23.09.2026

Judgment Uploaded On : 23.09.2026

Krishna Rao, J.:

1. The petitioners have filed the present writ petition challenging the Show Cause Notice dated 17th June, 2026, wherein the petitioners have been directed to submit their reply within 21 days from the date of receipt of the Show Cause Notice as to why the petitioners shall not be declared as Wilful Defaulters.

2. Mr. Suman Kumar Dutt, Learned Senior Advocate, representing the petitioners submits that in the month of May, 2024, the SREI Equipment Finance Limited (hereinafter referred to as “SEFL”), the respondent no.2 herein has initiated a proceeding under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “IBC”) before the National Company Law Tribunal (hereinafter referred to as “NCLT”), Guwahati Bench on the allegation of default of a sum of Rs. 333,58,76,382/- being CP (IB) No. 08/GB/2024 on the basis of two loan agreements dated 24th January, 2019, entered between the petitioner no.1 and the respondent no.2 and its parent company, SREI Infrastructure Finance Limited (hereinafter referred to as “SIFL”) and other documents.

3. During pendency of the insolvency petition, the respondent no.2 has filed an application before this Court under Section 9 of the Arbitration and Conciliation Act, 1996, praying for an injunction over the assets and properties of the petitioner no.1 on the basis of the loan agreements dated 24th January, 2019. The Court has passed an order of injunction over some of immovable properties of the petitioners and equity share in the petitioners company.

4. Subsequently, in an application filed by SEFL under Section 11 of the Arbitration and Conciliation Act, 1996, the Court has appointed an Arbitrator to adjudicate upon the dispute between the parties. In the meantime by an order dated 17th December, 2025, the application filed by the Respondent no.2 under Section 9 of the Arbitration and Conciliation Act, 1996, was disposed of with the direction upon the Learned Sole Arbitrator to treat the same as an application under Section 17 of the Act of 1996. The Learned Sole Arbitrator by an order dated 19th December, 2025, extended the interim order dated 2nd July, 2025, till disposal of the application.

5. By an order dated 2nd June, 2026, the Learned National Company Law Tribunal, Guwahati Bench, dismissed the insolvency petition of SEFL recording that the records reveals that SEFL, through its Administrator has questioned the genuineness and legality of the transactions with Kitply and that arbitral proceedings are ongoing to adjudicate the disputes relating to the same transactions.

6. Mr. Dutt submits that during pendency of the arbitration proceeding, the SEFL has issued the impugned show cause notice to the petitioners on 17th June, 2026, threatening the petitioners to declare wilful defaulters on the allegation of wrongful sale or non-accountability of 256 hects of land allegedly mortgaged with the SEFL. He submits that the impugned show cause notice is issued immediately after the insolvency petition of SEFL was dismissed and on the basis of the title search report obtained by the SEFL eight (8) months back on 21st November, 2025.

7. Mr. Dutt submits that the show cause notice is issued with the oblique motive of the SEFL to over reach the Arbitration proceeding. He submits that the SEFL could not have issued the show cause notice during the pendency of the arbitral proceeding where one of the issues is to be decided is the validity and genuineness of the sums disbursed to the petitioners.

8. Mr. Dutt submits that challenging the show cause notice, the petitioners have filed an application under Section 17 of the Arbitration and Conciliation Act, 1996, before the Learned Sole Arbitrator and also prayed for interim stay on any further proceeding. He submits that though the Learned Sole Arbitrator has not granted stay on the show cause notice but has observed that the issue whether Kitply is a defaulter or not in the alleged loan taken from SEFL, would remain opens before the Learned Sole Arbitrator.

9. Mr. Dutt submits that after the arbitral proceeding dated 13th August, 2026, the SEFL by a letter dated 19th August, 2026, rejected the request of the petitioners to defer the further proceeding against the petitioners pursuant to the show cause notice until conclusion of arbitral proceeding. He submits that the SEFL threatened the petitioners that if the petitioners will not file reply to the show cause notice within 21 days from the date of receipt of the notice dated 19th August, 2026, the SEFL will proceed with the matter and declare the petitioners as wilful defaulters.

10. Mr. Ranjan Bachawat, Learned Senior Advocate, representing the respondent no. 2 submits that the writ petition filed by the petitioners is not maintainable. He submits that the Identification Committee of the SEFL has issued the show case notice to the petitioners by providing 21 days to the petitioners to submit their reply but instead of submitting reply, the petitioners have filed the present writ petition. He submits that at first the petitioners have taken chance by filing an application before the Learned Sole Arbitrator under Section 17 of the Arbitration and Conciliation Act and when the Learned Sole Arbitrator refused to grant any interim order to the petitioners, the petitioners have filed the present writ petition.

11. Mr. Bachawat submits that at first the petitioners should file their reply to the show cause notice and on receipt of show cause notice, the same will be forwarded to the Review Committee and after consideration of the reply, the Review Committee will take appropriate decision and if the decision of the Review Committee will go against the petitioners, the petitioners have the right to challenge the same before the appropriate forum.

12. Mr. Bachawat submits that the Learned Sole Arbitrator has categorically held that the proceeding for declaring the borrower as a wilful defaulter has its source in statute and the Reserve Bank of India guidelines. It is substantially independent of the dispute which is subject-matter of the arbitration.

13. Mr. Bachawat has relied upon the Master Direction issued by the Reserve Bank of India dated 30th July, 2024 and submits as per the said Master Direction, if the borrower has disposed of immovable or movable assets provided for the purpose of securing the credit facilities without the approval of the lender amounts to wilful defaulter. He submits that the petitioners have disposed of the immovable property without the approval of the lender.

14. The SEFL has issued the Show Cause notice to the petitioners dated 17th June, 2026, on the allegation that the petitioners have disposed of the movable and immovable assets provided for the purpose of securing the credit facility without approval of the SEFL/ Lender.

15. The petitioners have relied upon the interim protection granted to the petitioners in an application under Section 9 of the Arbitration and Conciliation Act, 1996, initiated by the SEFL against the petitioners being AP-COM No. 489 of 2025 dated 2nd July, 2025 wherein the Coordinate Bench of this Court held that whether the money given to "Kitply" was in effect of a loan or a sham transaction and used for round tripping and to meet the expenses of the erstwhile directors or promotors of SEFL is a matter which has to be decided by the Learned Arbitrator. The dispute between the parties will have to be resolved in an arbitration proceeding in terms of the clause.

16. The petitioners have relied upon the judgment passed by the Learned National Company Law Tribunal, Guwahati Bench, dated 2nd June, 2026, under Section 7 of the IBC, 2016 wherein the SEFL had initiated the said proceeding against the petitioner no. 1 and in the said proceeding also the agreements and the loan amount sanctioned in favour of the petitioners was involved. Learned Tribunal has disposed of the said proceeding on 2nd June, 2026, by passing the following order:

> *"**77.** Thereafter, on 17.09.2025 in AP-COM/741/2025, the Hon'ble Calcutta High Court observed the following:*
>
> > *"With the above observations, this application is allowed by appointing Justice Indra Prasanna Mukerji, former Chief Justice of the Meghalaya High Court as the sole arbitrator, to arbitrate upon the dispute between the parties"*
>
> ***78.** Thus, this Tribunal notes that a Sole Arbitrator has already been appointed to adjudicate the disputes inter se arising out of the Loan Agreement dated 24.01.2019 relating to Contract Nos. 1268, and 177125, which also form the basis of the present Section 7 proceedings. This Tribunal further takes note that, in the proceedings under Section 9 of the Arbitration and Conciliation Act, 1996 being A.P. (Com) No. 489 of 2025, SEFL itself has sought protection and recovery measures in respect of the alleged outstanding dues arising from the same transactions, including injunctions concerning, pledged shares and secured mortgage properties which were secured in favour of the petitioner in connection with the alleged loan facilities.*

79. *The filing of the present petition based on the same set of facts and transactions demonstrate that the Financial Creditor has apparently engaged in forum shopping. Such conduct militates against scheme and object of the IBC.*

80. *Thus, the disputes now pending before the learned Arbitrator are not confined merely to computation of dues or contractual enforcement. Rather, they extend to:*

- *The very nature and legitimacy of the transactions,*
- *Allegations of sham and collusive arrangements,*
- *Questions relating to control of the Corporate Debtor through connected entities,*
- *Allegations of round-tripping and structured transactions.*

81. *In such circumstances, this Adjudicating Authority exercising summary jurisdiction under Section 7 of the Code cannot enter into a parallel adjudication which may directly impact the rights, protections, securities and interim injunction already operating pursuant to orders passed by the Hon'ble Calcutta High Court in relation to the same transactions and secured assets.*

82. *The issue involved in the present proceedings is not merely determination of default simplicity, but adjudication of the legitimacy and enforceability of the underlying transactions themselves, which are already subject matter of arbitral adjudication pursuant to orders passed by the Hon'ble Calcutta High Court.*

83. *Simultaneously, this Tribunal also cannot ignore that proceedings under Section 66 of the Code are pending before the Hon'ble NCLT, Kolkata Bench concerning the very same transactions under Contract Nos. 1268 and 177125 and allegations of fraudulent and wrongful trading.*

84. *Accordingly considering, the serious disputes regarding the genuineness of the transactions, the appointment of the learned Sole Arbitrator for detailed adjudication of the disputes*

> *and the pending proceedings concerning fraudulent transactions before another Coordinate Bench, this Tribunal is of the considered view that the present matter involves complicated and disputed questions which cannot appropriately be adjudicated within the limited and summary jurisdiction exercised under Section 7 of the Insolvency and Bankruptcy Code, 2016."*

17. After issuance of the impugned Show Cause Notice to the petitioners by the SEFL, the petitioners have also filed an application before the Learned Sole Arbitrator challenging the Show Cause Notice and prayed for interim order. Learned Sole Arbitrator in a proceeding dated 13th July, 2026, passed the following order:

> *"**4.** In agreement with the submission of Mr. Ranjan Bachawat, learned Senior advocate appearing for the claimant, I say that this proceeding for declaring the borrower as a wilful defaulter has its source in statute and Reserve Bank of India guidelines. It is substantially independent of the dispute which is the subject matter of the arbitration before this tribunal, which in short, is whether the respondent has any debt due and owing payable to the claimant. Secondly, any adjudication of this show-cause notice would not be confined to the parties herein but would have effect on third parties and on transactions both present and future which are not the subject matter of this arbitration. Hence, this arbitral tribunal does not have jurisdiction to deal with the show-cause and the proceedings commencing from it*
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> ***5.** But an argument of some substance made by Mr. Dutt, is that the foundation of this show-cause notice is in the supplementary affidavit of the claimant affirmed before a notary on 6th March, 2026 and filed before this tribunal on 6th April, 2026 with all the documents appended thereto. It would appear in paragraphs 3, 4 and 5 of this supplementary affidavit that much subsequent to the order of the Hon'ble High Court passed in the Section 9 application on 2nd July, 2025 and*

commencement of the sittings of this arbitral proceeding on 1 November, 2025, the claimant discovered that the respondent had without their permission, alienated properties in the period 2023 to 2025. In their affidavit in opposition, particularly in paragraph 7 thereof, the respondent relying on some correspondence between the parties stated that they had the right to do so, after release of encumbrances by the claimant.

***6.** Prima facie, in my opinion, it was within the power of the claimant to have discovered these facts when the Section 9 application was being heard and to bring those to the knowledge of the Hon'ble Court.*

***7.** The above notice to show-cause notice had been issued some six months after commencement of the arbitral proceeding. Had the above facts been brought to the notice of the Court and had the show-cause been issued at that time, the parties may or may not have been referred to arbitration.*

***8.** It is also true that any finding or observation in the proceeding to declare the respondent as a wilful defaulter may be cited as a relevant fact in this arbitral proceeding.*

***9.** Considering all these factors, I am not minded to stay the show-cause.*

***10.** But, I do observe that whether the respondent is a defaulter or not in the alleged loan taken by them from the claimant, would be open before the arbitral tribunal as an issue as a result of the order referring the dispute to arbitration before me."*

18. Definition of Wilful Default and Wilful Defaulter is provided in para 3(t) and 3(u) and of the Reserve Bank of India (Treatment of Wilful Defaulters and Large Defaulters) Directions, 2024 which reads as follows:

*“**3. (t) “willful default”***

(i) 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.*

(ii) 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.

(u) "wilful defaulter" means

> *(i) a borrower or a guarantor who has committed wilful default and the outstanding amount is 25 lakh and above, or as may be*

notified by Reserve Bank of India from time to time, and

(ii) where the borrower or a guarantor committing the wilful default is a company, its promoters and the director (s), subject to the provisions of para 4 (1) (c) below. In case of entity (other than companies), persons who are in charge and responsible for the management of the affairs of the entity.

(2) Words and expressions used herein and not defined in these Directions, but defined in the Reserve Bank of India Act, 1934 or the Banking Regulation Act, 1949 or the Credit Information Companies (Regulation) Act, 2005, or the Companies Act, 2013, shall have the meanings assigned to them in those Acts."

19. SEFL has issued the show cause notice to the petitioners on the allegation that the borrower has disposed of the immovable and movable assets provided for the purpose of securing the credit facility without approval of the SEFL/Lender. The description of properties/ assets and the documentary evidence are also disclosed to the petitioners. It is not the case of the petitioners that the documents were not supplied to the petitioners on the basis of which the impugned show cause notice is issued. Issuance of the show cause notice by the SEFL is covered under para 3(t) & 3(i)(D) of the Master Directions, 2024.

20. The National Company Law Tribunal has disposed of the proceeding initiated by SEFL on the ground that the issue is referred to the Learned Sole Arbitrator. The petitioners have taken chance before the Learned Sole Arbitrator to obtain an interim order with regard to the impugned show cause notice but the petitioners could not succeed. Now the petitioners have filed the present writ petition. Pendency of the arbitration proceeding could not debar the issuance of show cause notice. The petitioners have tried to obtain an interim order before the Learned Sole Arbitrator with respect to the show cause notice but the petitioners failed to succeed to get any favourable order.

21. In the case of ***Kaustuv Ray Vs. IDBI Bank and Others*** reported in ***2023 SCC OnLine Cal 656,*** the Hon'ble Division Bench of this Court held that:

> ***"10.*** *Having heard the learned counsel for the parties and on perusal of the records, it is observed that in Trade Tax Officer, Saharanpur v. Royal Trading Co. reported in (2005) 11 SCC 518, Supreme Court held that against a mere issuance of a show cause notice a Court should be reluctant to interfere. It was further held in the above judgment that only after a reply is filed as against a show cause notice, the notice could either be dropped or if the reply is not satisfactory then based on the reply further inquiries could be made. However, no adjudicating proceedings must be stalled by Courts. It must be noted that while issuing a show cause notice, what has been entertained by the respondent bank is only a prima facie view, on the basis of which the show cause notice was issued. The determination comes only after a representation is preferred by the appellant. As a part of his response, the respondent bank may view all possible issues and only thereafter the determination or decision could be arrived at. Thus, the Learned Single Judge was correct in holding that the appellant/petitioner, who has already filed a partial reply to the show cause notice has a remedy to approach WDC with a representation to be prepared by him. Moreover, even if the appellant/petitioner is branded as a wilful defaulter by the WDC, there is scope for further review by the Review Committee headed by the Chairman of the respondent bank before the*

> *order becomes final upon confirmation by the Review Committee. Therefore, it would be premature for the writ court to adjudicate the issue involving the issuance of a show cause notice."*

22. Considering the above, this Court did not find any reasons to set aside the impugned show cause notice dated 17th June, 2026. Accordingly, time to file reply to the show cause notice is extended for a period of two (2) weeks from date.

23. **WPA No. 24869 of 2026** is **dismissed**.

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.)