**In the High Court at Calcutta**
**Constitutional Writ Jurisdiction**
**Original Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya**

**W.P. No.78 of 2020**

**Kejriwal Mining Pvt. Ltd. and others**
**Vs.**
**Allahabad Bank and another**

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| For the petitioners | : | Mr. Joy Saha,<br>Mr. Sarojit Dasgupta,<br>Mr. Meghajit Mukherjee,<br>Mr. Vikas Tewari,<br>Mr. Varun Pradha |
| For the respondents | : | Ms. Deblina Lahiri,<br>Mr. Shibaji Kumar Das,<br>Mr. Mrinmoy Chatterjee, |
| Hearing concluded on | : | 02.03.2020 |
| Judgment on | : | 26.06.2020 |

**The Court:-**

The present challenge is against the decision of the Wilful Defaulter Identification Committee (WDIC) of the respondent no. 1-bank, dated July 3, 2019, by which the petitioners were declared to be 'Wilful Defaulters', as well as the preceding show cause notice dated April 6, 2019 and the communication regarding such declaration to the petitioner, dated January 18, 2020.

The relevant facts are as follows:

A show cause notice dated April 6, 2019 was issued to the petitioners by the WDIC of the respondent no. 1, requiring a reply within 15 days from the date of receipt of the notice. By a letter dated April 29, 2019, the petitioner no. 1 asked for certain documents, information and clarifications from the WDIC. The documents sought were permitted to be

inspected by the agents of the petitioner no.1-borrower on June 18, 2019. The time for filing reply to the show cause notice was also extended for 15 days.

Again on June 19, 2019 the petitioner no. 1 allegedly sent a letter for a further extension of time to file reply, seeking two weeks' time. Allegedly, vide letter dated June 20, 2019, the WDIC granted a further extension of time for ten days for the petitioners to file their reply, clarifying that no further extension would be allowed. An opportunity of personal hearing was given as well to the petitioners, fixing 12:30 p.m. on July 3, 2019 for such hearing.

On June 29, 2019, the petitioner no. 1 wrote a letter to the concerned branch of the respondent no. 1-bank offering to pay certain amounts, which was rejected by the bank by a letter issued on the same day. A reply to the show cause notice dated April 6, 2019 was also served with a covering letter (bearing no. GJM/KMPL/19-20/008) of even date, that is, June 29, 2019.

Vide letter dated July 2, 2019, bearing GJM/KMPL/419-20/10, the petitioner no. 1 requested a postponement of the hearing for another three weeks on the ground that the petitioner no. 1-borrower would make payment of the amount sanctioned under an OTS (One-Time Settlement) proposal dated March 16, 2015.

As per the allegation of the respondents, the WDIC received such request after commencement of its meeting on July 3, 2019, wherein the impugned decision declaring the petitioners wilful defaulters was taken. However, the petitioners' version is that the request letter was served on the respondent no. 1-bank on July 2, 2019 itself and the WDIC ought to have been aware of the same on that date itself.

The petitioners did not appear for personal hearing before the WDIC but sent another letter dated July 2, 2019 praying for sanction of the aforementioned OTS proposal. The WDIC held its meeting on July 3, 2019, in the absence of the petitioners,

and declared the petitioners to be wilful defaulters on the reasons as recorded in the minutes of the said meeting.

Such decision was communicated to the petitioners on January 18, 2020.

Hence the writ petition has been filed with its three-pronged challenge, as stated above.

The parties and counsel were gracious enough to file written notes of their respective arguments, apart from oral hearing having been held in the matter.

The petitioners contend that the Show Cause Notice dated April 6, 2019 was issued by an Assistant General Manager of the Bank, who did not qualify even for being a member of the WDIC. As per Clause 3 (a) of the Master Circular issued by the Reserve Bank of India (RBI), such a committee has to be headed by an Executive Director or equivalent and should consist of two other senior officers of the rank of GM/DGM. As such, the Show Cause Notice, which was the genesis of the entire chain of events declaring the petitioners to be wilful defaulters, was bad in law. In this context, learned senior advocate appearing for the petitioners cites the judgment of *Jai Balaji Industries Ltd. v. Punjab National Bank*, reported at *(2003)4 SCC 630*. Relying in particular on paragraph nos. 5 and 6 of the said reported judgment, wherein the Supreme Court held that a notice to show cause under the Central Excise Act was to be issued only by the Collector, Central Excise and since such notice in the said case was issued by the Deputy Collector, it was wholly without jurisdiction.

The petitioners' counsel argues that the petitioners were denied Natural Justice, since their reply to the Show Cause Notice, dated June 29, 2019, was not considered by the WDIC while declaring the petitioners to be wilful defaulters, on the ground that the said reply was filed later than the last (extended) date stipulated by the WDIC. However, the reply was received by the Respondent No. 1-Bank on July 1, 2019 itself as, according to the petitioners, was evident from the receipt stamp on the service copy of the reply,

but the WDIC alleged to have received it on July 3, 2019 after commencement of the meeting convened to decide whether the petitioners were wilful defaulters.

Thirdly, the petitioners submit, the writ petition was maintainable as there was no equally efficacious alternative remedy available to the petitioners. As per Clause 3 (c) of the RBI Master Circular dated July 1, 2015, the order of the WDIC should be 'reviewed' by another Committee and the order shall become final only after it is 'confirmed' by the Review Committee. However, since there was no consideration by the WDIC of the petitioners' representation dated June 29, 2019, the question of 'reviewing' its decision does not arise. Consequentially such a purported decision could not be confirmed by the Review Committee as well. Moreover, according to the petitioners, the language of Clause 3 (c) of the Master Circular dated July 1, 2015 makes it clear that the proceeding before the Review Committee is a continuation of the proceedings before the WDIC and as such, without there being an order on merits upon due consideration of the reply/representation of the petitioners, there could be no consideration/reconsideration of the impugned declaration of wilful defaulter dated July 3, 2019. Although the respondents rely on the judgment of *State Bank of India v. Jah Developers*, reported at *AIR 2019 SC 2854*, to argue that the petitioners were free to represent against the decision of Wilful Defaulter within 15 days before the Review Committee, learned senior advocate for the petitioners argues that the ratio in the said reported judgment does not convert the Review Committee into an appellate authority but only provides for representation before the Review Committee since the proceedings before such committee would be more 'tangible and meaningful'. Moreover, alternative remedy is not an absolute bar, as held in *Whirlpool Corporation v. Registrar of Trade Marks*, reported at *(1998) 8 SCC 1*.

Learned counsel for the petitioners further contends that the classification of the petitioners as wilful defaulters was mala fide, high-handed, in colourable exercise of authority and an afterthought. This proposition is sought to be demonstrated by the delay in communication of the order declaring the petitioners wilful defaulters, which was

passed on July 3, 2019, but was communicated only on January 18, 2020. Such delay of over 6 months remains unexplained by the respondents, according to the petitioners.

The petitioners then submit that, since the show cause notice dated April 6, 2019 was issued on the petitioner nos. 1 and 2 and not on the petitioner nos. 3 and 4, the ensuing decision of wilful defaulter dated July 3, 2019, declaring all the petitioners, including petitioner nos. 3 and 4, to be defaulters was *ex facie* illegal and liable to be set aside.

Learned counsel for the petitioners labels the impugned order of wilful defaulter to be cryptic and unreasoned, warranting interference. In support of such proposition, learned counsel relies on a judgment of a co-ordinate Bench of this Court, being reported at *2015 SCC OnLine Cal 6386 [ East India Laminates (P) Ltd. & Anr. v. Union Bank of India & Ors.]*. A learned Single Bench of this court held therein, inter alia, that the reply of the Bank in that case was not in compliance with Section 13 (3) (A) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI ACT, 2002), since the reply was short and cryptic and did not disclose adequate reasons for overruling the objections raised by the writ petitioners therein, which reasons should be indicated with sufficient clarity, according to the learned Single Judge, so that if the writ petitioners were unhappy with such reasons, they might challenge the same at the appropriate stage before the appropriate forum.

The learned senior advocate for the petitioners goes on to argue that the petitioners had been approaching the bank for settlement since May, 2013 and, in order to facilitate such settlement, made payment from time to time, of a total amount of Rs. 3,47,08,785.09 p. It is claimed that the petitioner no. 1, on November 8, 2019, accepted to abide by an One-Time Settlement offer of March 16, 2015. Accordingly, it is argued, the petitioners attempted to repay the bank's claim repeatedly and are ready and willing to repay the outstanding dues which, according to the petitioners, come to Rs. 64 lakhs. Hence the petitioners cannot be classified as wilful defaulters.

Lastly, learned counsel for the petitioners seeks to controvert the allegations made in the impugned Show Cause Notice dated April 6, 2019 in terms of the petitioners' reply dated June 29, 2019 to the said notice.

The petitioners squarely deny the first allegation regarding siphoning off funds to the extent of Rs. 424 lakh, primarily due to the reduction of Rs. 476 lakh in receivables of the petitioner no. 1-company between March 31, 2015 and June 31, 2016 being treated by the WDIC to imply receipt of such amount by the company, which contradicted with the total credit turnover of the company for the financial year 2015-2016, the latter being Rs. 52 lakh, and the difference of Rs. 424 lakh between the two figures being deemed as siphoned-off funds. As per the petitioners, the recovery and/or realization of the petitioner no. 1-company for the financial year 2015-2016 was not Rs. 476 lakh, as alleged, but Rs. 970 lakh and the same was spent by the company during the said financial year in usual and normal course of business, some details of which were provided by the petitioners. The said expenditure, the petitioners sought to explain, was by way of repayment to the respondent no.1-bank to the tune of Rs. 52 lakh, another Rs. 515 lakh for purchase of assets required in the conduct of the business of the petitioner no.1 and payment of Rs. 413.6 lakh to SREI Infrastructure Finance Limited. Certain documents pertaining to a schedule containing the list of assets alleged to be purchased during the period and to the payment of Rs. 413.6 lakh to SREI Infrastructure Finance Limited are mentioned in the written notes of arguments of the petitioners to be annexed to such written notes, although actually not annexed thereto.

The second allegation, also rebutted by the petitioners, is that the petitioner no.1 had not submitted any bills of purchase to substantiate creation of any asset, coupled with the allegation that officials of the international branch of the respondent no. 1-bank visited the company unit of the petitioner no. 1 on November 1, 2018, when the unit was found closed and no stock was available. In this regard, the petitioners submit that the petitioner no.1-company had purchased assets worth Rs. 5,15,68,541 during 2015-2016. To

demonstrate particulars thereof, the petitioners rely on a purported schedule indicating such assets and invoices and/or receipts regarding such purchase, allegedly annexed to the written notes of arguments of the petitioners, but not found in the court's file. (In any event, such documents, even if filed, would have been produced for the first time with the written notes and were not a part of the pleadings in the writ petition. As such, those documents, even if filed, could not have been looked into at this belated stage.)

It is further alleged that on November 1, 2018 the officers of the respondent no.1-bank had visited the registered office of the petitioner no. 1 at 12A, N.S. Road, Kolkata – 700 001 and not its unit/factory premises/mining site inter alia situated at Rungta Mines Ltd., Jajang Iron & Mines PO Jajang, Keonjhar, Orissa – 758 052. Moreover, the petitioners submit that neither the unit nor the registered office was closed on November 1, 2018; certain tax invoices, of November 8, 2018 for the period from October 16, 2018 to October 31, 2018 and of November 22, 2018, for the period between November 1, 2018 and November 15, 2018 are also alleged to have been annexed to the written notes, but cannot be found. The petitioners argue that stocks could not be expected in the registered office, which the bank officials visited, and that the purchased assets do not comprise of stocks, but tangible machinery and equipment such as dumpers, excavators, dozers. etc.

The third allegation, rather a corollary to the first two, is that the international branch of the respondent no. 1-bank sent a letter dated January 16, 2018 to the petitioner, asking for an explanation for the aforesaid irregularities, to which the petitioner no. 1 replied, vide letter dated February 12, 2018 which, according to the respondent no. 1, offered only a vague explanation and lack of viable reasoning and justification. Such allegation is denied by the petitioners, who also submit that an allegation of wilful default cannot be substantiated, maintained or justified on the strength of alleged vagueness or ambiguity in the answer to a letter.

The fourth allegation speaks of fake title deeds being submitted by the borrower with a mala fide intention to defraud the bank, for which complaint was allegedly lodged by the respondent no. 1-bank with the Central Bureau of Investigation (CBI), EOW, Kolkata on July 28, 2012. In answer, the petitioners deny such allegation as to submission of fake title deeds. It is sought to be elaborated that the concerned title deeds dated July 29, 2009, executed by late Murari Mohan Kejriwal, registration details of which are given in the written notes of the petitioners, were genuine and above suspicion. Such allegation, it is submitted, was never raised, neither have the parties to the deeds and/or any third party disowned and/or disputed the genuineness and authenticity of the documents. The petitioners allege that the respondents simply chose to disregard the reply of the petitioner no.1, as being filed out of time, since the respondents had no answer to such reply.

In answering the further allegations levelled in the impugned order declaring the petitioners to be wilful defaulters, the petitioners argue that purported failure of the petitioner to keep the bank informed about the change in name does not constitute an event of wilful default in terms of the RBI Master Circular dated July 1, 2015 (on which both sides rely).

The petitioners further argue that the bank's allegation about repayment of loan to SREI International to the tune of Rs. 4.14 crore by the petitioners without routing it through the respondent no. 1-bank is *ex facie* baseless. In support of this contention, the petitioners place reliance on a sanction letter from the respondent no.1-bank dated November 12, 2019, annexed to the writ petition, which "expressly provides", as per the petitioners, the purpose of the sanction to be "Working Capital Finance and Term Loan to take over the term finance with SREI". Such direct payment by the petitioners to SREI, according to the petitioners, could neither be deemed to be unauthorized, nor constitute an event of wilful default.

At the outset of their arguments, the respondents take an objection to the maintainability of the writ petition, thus controverting the argument of feasibility of the writ jurisdiction advanced by the petitioners. The respondents say that the impugned declaration of the WDIC dated July 3, 2019, which was communicated by the impugned correspondence dated January 18, 2020, was the declaration of the "First Committee", being the identification committee, but not reviewed by second committee, being the Review Committee. As such, the said order of the identification committee is yet to attain finality. The petitioners had the right of representation on fact as well as on law, if they were aggrieved with the impugned order of the WDIC, before the Wilful Defaulter Review Committee (WDRC), being the second committee empowered to review the order of the first committee. Without exhausting such remedy and without the order of the WDIC having attained finality (since not yet reviewed by the WDRC), the petitioners could not have approached this court by way of the present writ petition.

In view of *State Bank of India v. Jah Developers (supra)*, communication of the declaration of the first committee (WDIC) to the borrower is mandatory, the respondents contend. Hence, in the present case, the communication of the declaration dated July 3, 2019 was made to the petitioners vide letter dated January 18, 2020. On receipt of such communication, the borrowers/petitioners had the right of representation, both on law and facts, before the Wilful Defaulter Review Committee (WDRC) within 15 days. Instead, the petitioners approached this court. Therefore, it is argued, since the order dated July 3, 2019 is not a final order unless confirmed by the WDRC, within the scheme of the Circular of 2015 and the judgment referred to immediately above, the writ petition is premature and not maintainable.

As far as the challenge to the show cause notice dated April 6, 2019 is concerned, the petitioners allegedly never raised the same previously; rather, they chose to exchange correspondences with respect of the same and had been given "ample opportunities by inspection of documents, filing of written objections, personal hearing, all as per the

guidelines issued by the Reserve Bank of India (RBI). Thus, the respondents argue, there is no scope for the petitioners to challenge the said show cause notice in the present writ petition.

The second argument of the respondents revolves around alleged suppression of material facts. The petitioners' declaration as wilful defaulters was allegedly under consideration much prior to their proposal for revised One Time Settlement. The respondents say that the wilful defaulter declaration procedure is entirely different from that of the proposal for One Time Settlement given to the bank. It is alleged that the petitioners also have relation with other group accounts of petitioner no. 1 and a writ petitioner bearing WP No. 13367(W) of 2019 was filed by the present petitioner nos. 2, 3 and 4 in July, 2019 in respect of a loan account maintained with the Rash Behari Branch of the respondent no. 1-bank, with regard to which the respondent no. 1 also proceeded with declaring the present petitioner nos. 2 to 4 as wilful defaulter. The respondents submit that, as per the order passed in the said writ petition and in *State Bank of India v. Jah Developers (supra)*, it was required to formulate revised guidelines after seeking clarifications in this regard, due to which there was a delay in communicating the order of the WDIC, allegedly within the knowledge of the petitioners. An opportunity was given to the petitioners, as per such orders and revised guidelines issued by the bank, to move the WDRC before passing final order. In view of such developments, the order dated July 3, 2019 was communicated by the letter dated January 18, 2020, affording the petitioners an opportunity of presenting their submission, if any, within 15 days. Hence, the respondents argue, there has been no violation of the guidelines and that the principles of Natural Justice have been complied with duly by the respondents at every stage. As per the respondents' version, the present writ petition is merely a part of the delaying tactics being adopted by the petitioners since the loan account turned Non Performing Assets (NPA) on June 27, 2011.

Learned counsel for the respondents next dwells on the reasons and evidence behind the grounds given in the show cause notice in details. To avoid unnecessary elaboration, the gist of the said argument is stated here:

The first reason, with corroborative evidence, is said to conform to Guidelines 2.1.3(a), 2.2.1(d) and 2.2.2 of the Master Circular No. DBR.No.CID.BC.22/20.16.003/2015-16 dated July 1, 2015. It is alleged that no satisfactory reply was submitted by the petitioners to the WDIC in that regard and the explanation sought to be afforded by the petitioners, as to the difference in receivables not being reflected in the cash credit account of the petitioners, could not be proved beyond doubt.

The modes of expenditure given in the petitioners' repayment should have been routed, according to the respondents, through the cash credit account only, as the respondent no. 1 is the sole banker of the petitioner no.1. Keeping the petitioners' account with the respondent no.1 'NPA', repayment of loan to NBFC and purchase of assets through another bank account is not permissible.

The second reason in the show cause is submitted to be in line with Guideline 2.2.1(b) of the said Master Circular dated July 1, 2015. The respondents argue that the petitioners could not prove the fact that they had submitted the bill of purchase of assets or compliance with the sanction terms and conditions. The respondents factually refute the petitioners' allegation of non-visit by the bank officials on November 1, 2018. It is alleged that the officials of the international branch, Kolkata of the bank visited the respondent no. 1-company, which had altered its name to M/s Kejriwal Mining Pvt. Ltd. from Parijat Vyapaar Pvt. Ltd. without any permission from the bank and was unable to submit stock statement which they ought to have submitted at the time of such visit, either at the registered office or on site. The invoices/bills in support of the purchase of tangible machinery and equipment such as dumpers, excavators, dozers etc. were allegedly not produced by the borrower-company.

The third reason in the show cause notice, it is submitted, attracts Guideline 2.1.3(d) of the Master Circular and referred to a letter dated January 16, 2018, which had specifically mentioned that it had come to the knowledge of the bank that the office premises mortgaged with the respondent no.1-bank to secure the loan-in-question was already mortgaged by the petitioners to secure other credit facility, which allegation was not dealt with in the reply to the referred letter, dated February 12, 2018. Even the explanation given in the reply to the show cause notice was vague and lacked any viable reasoning and justification.

The respondents also allege that the petitioner no.-1 company changed its name and Directors without obtaining any consent/ 'no objection' from the respondent no. 1-bank, as allegedly accepted in the reply of the petitioner no.1 dated February 12, 2018, and did not intimate the changes well in time which, according to the respondents, proves the mala fide action of the petitioners while dealing with respondent no. 1.

As to the fourth reason/ground in the show cause notice, the respondents argue that the same is in consonance with Guideline 2.1.3(d) of the Master Circular and that no satisfactory reply was submitted by the petitioners to disprove the allegation of fake title deeds being submitted by the borrower with mala fide intention to defraud the bank. The petitioner no.1-company availed the loan by fraudulent mortgage of property which was already mortgaged with Indian Bank and Punjab National Bank. A complaint in this regard was lodged with the CBI, EOW, Kolkata by the petitioner no. 1-bank on July 28, 2012.

It is further alleged that the petitioners defaulted in repayments under the One Time Settlement scheme and sought to mislead by connecting the same with the exemption of their liability, which was apparently mentioned in the OTS sanction letter dated March 16, 2015, in particular covered by item nos. 7 and 9 thereof. This indicates the fraudulent motive of the borrower, which wilfully siphoned off the bank's funds.

The respondents allege that the petitioners are adopting delaying tactics at each step of recovery undertaken by the respondent no. 1-bank. Irrelevant correspondence is being sent to buy time, by suppressing material facts.

The next argument of respondents' counsel is directed at the conduct of the petitioners in replying to the show cause notice dated April 6, 2019. Although the petitioners were required to reply to the notice within 15 days from the date of its receipt, the petitioners wrote a letter dated April 29, 2019 requesting certain information/documents/clarification from the WDIC. The borrower was given inspection of the required documents on June 18, 2019 and was granted an extension of 15 days for putting in their reply. However, vide letter dated June 19, 2019 the petitioner/borrower sought another extension of two weeks' time to reply. Vide letter dated June 20, 2019, the petitioners were granted further extension of 10 days, specifically mentioning that no further extension would be granted, which letter was allegedly received by hand on behalf of the petitioners. An opportunity for personal hearing was also given to the petitioners, fixing such hearing on July 3, 2019 at 12.30 pm at the head office of the bank.

The respondents allege that, instead of replying to the show cause notice, the petitioner no. 1 wrote a letter to the concerned branch of the Respondent No.1-bank (as opposed to the WDIC) on June 29, 2019 proposing payment, etc. which was rejected by the bank by a letter of even date. The petitioner no. 1, with a covering letter dated June 29, 2019, served a reply to the show cause notice dated April 6, 2019, beyond the period of 10 days which was granted to the petitioners by the letter dated June 20, 2019.

As per the respondents, the petitioner no. 1 wrote another letter dated July 2, 2019, which was received by the WDIC only after commencement of its meeting on the scheduled date, that is, July 3, 2019, seeking postponement of personal hearing for a further period of three weeks on the ground that the borrower committed to make payment of the amount sanctioned under the OTS proposal of March 16, 2015. The

petitioner no. 1 apparently sent another letter on July 2, 2019 itself, praying for sanction of One Time Settlement proposal.

The above conduct of the petitioners, it is argued, clearly shows the delaying tactics adopted by the petitioners.

Next controverting the petitioners' allegation of violation of the principles of Natural Justice, the respondents submit that the minutes of the meeting dated July 3, 2019 by the WDIC recorded the entire series of events as alleged by the respondents and the time for submission of the petitioners' reply was extended twice. The letter praying for postponement of personal hearing was allegedly received by the WDIC only on the date of the meeting. Despite being given ample opportunity, the petitioners chose not to attend the personal hearing with the intent of delaying the proceedings unfairly.

On the allegation of non-consideration of the show cause reply submitted by the petitioner no. 1 while passing the order dated July 3, 2019, the respondents reiterate that the petitioners adopted dilatory tactics despite getting ample opportunity, including inspection of the required documents as sought for. However, the WDIC considered the reply received from the petitioners, although it was beyond time. However, a perusal of the reply to the show cause dated June 29, 2019, submitted on July 1, 2019 by the petitioner no. 1, only makes it evident that the said reply did not adequately deal with the reasons and evidence indicated in the show cause notice.

The respondents further submit that the petitioners' OTS proposal was initially sanctioned, giving the latter considerable time for payment, which the petitioners failed to meet. The petitioners also violated the terms of sanction while, on the other hand, the bank proceeded in terms of the guidelines issued by the RBI.

The issue to be decided at the outset is the scope of interference by a writ court in the matter. Injustice is the key trigger for interference, in whatever language couched. It

may be in the form of violation of a fundamental right or tenets of Natural Justice, or in the form of arbitrariness, gross miscarriage of justice, a patent illegality or exercise of powers by the State, its instrumentalities or entities discharging the functions of the State, beyond their jurisdiction. These are various shades of injustice, but by no means exhaustive.

In the present case, the decision of the first committee, that is the WDIC, can undoubtedly by reviewed by the second, that is, the WDRC. Such recourse is particularly open to the aggrieved borrower on questions of law and in some cases on legal or mixed questions as well. Such position of law has by now been settled by the Supreme Court as well as provided in the guidelines of the RBI dated July 1, 2015, as contained in the Master Circular of even date governing the declaration of wilful defaulters.

However, review, although before a hierarchically co-ordinate forum, can take place only when the matter has been decided justiciably at the first instance by the first committee, being the WDIC, untainted by bias and/or patent miscarriage of justice. As such, a small window is still open for the borrower to approach this court under its writ jurisdiction, on the above limited grounds. Unless there is a legally tenable first decision, there cannot be any scope of 'review', because the second committee would then be effectively the first committee adjudicating the matter and the two rungs - initial identification as defaulter and subsequent review - as contemplated in the RBI Master Circular mentioned above, would lose all meaning.

In the present case, however, there does not appear to be such patent mala fide, arbitrariness, bias or abuse of the process of law by the WDIC as may attract judicial intervention. The fast-track scheme of the relevant legislation and RBI guidelines operating in the field would be frustrated if the courts interfere at the drop of a hat in every case of probable mistake, even if the same requires a thread-bare scrutiny to establish. The declaration of the petitioners as wilful defaulters, in the present case dated

July 3, 2019, was backed by sound and feasible reasoning, which may not, arguably, be fool-proof to an elaborate enquiry befitting a civil suit but was sufficiently reasonable, keeping in mind that it was merely the initial step in fixing responsibilities to curtail shady transactions and conduct which eat into the precious little commerce generated by the country. The said decision, as borne out even by the arguments of both parties, was supported by enough reasons to satisfy judicial conscience.

The declaration was also preceded by a proper show cause notice dated April 6, 2019, which was fully in consonance with the guidelines provided in the RBI Master Circular dated July 1, 2015. The grounds stated in the show cause notice cannot be said to have traversed *de hors* the specific provisions, particularly Clause 3, of the said guidelines which furnish the indicators for arriving at a finding of wilful defaulter. A notice (show cause notices included), it is by now well settled, ought not to be looked in to with a view to find a technical fault therein but has to be read as a whole. In the present case, the show cause notice-in-question was amply clear as to the grounds which the borrower would have to meet in the hearing. As regards the alleged non-service of notice on some of the petitioners, since notice was admittedly served on the petitioner no.1-company, petitioner nos. 2 to 4 are deemed to have the same too, since their declaration as wilful defaulters was not merely in their individual capacities but due to acts committed as directors of the petitioner no. 1 too. Feigning ignorance under the corporate veil is not possible for the petitioner nos. 2 to 4, as the said principle does not even apply to the present case in this context.

Several extensions of time were granted as per the petitioners' prayers on more than one occasion, of which the petitioners failed to take benefit. On one pretext or the other, the petitioners have been biding time, thereby adopting dilatory tactics to stall their declaration as wilful defaulters. The first writ petition notwithstanding (which was, of course, a valid legal remedy otherwise), even thereafter the petitioners sought clarifications and inspection of documents, which was given to them. Opportunities galore

were afforded by the WDIC to the petitioners for giving representation against the decision of the first committee and even for personal hearing. The petitioners deliberately did not avail of those, but chose to rely on technical pivots, like the delay in communication of the decision and non-consideration of their delayed reply.

However, enough justification for the purported delay in communication, between the date of the decision (July 3, 2019) and its communication to the petitioners (January 18, 2020), being provided by the pendency of the previous litigation. In any event, there is no statutory bar in late communication, provided sufficient opportunity is given to the borrower before and after the decision to redress any grievance. Such opportunities were afforded to the present petitioners in the instant case.

Another question raised by the petitioners is the non-acceptance of the reply to the show cause notice due to delay as, according to the petitioners, there is no statutory time-limit to file such reply. However, the process of declaration of wilful defaulter is not a mechanical process where the WDIC has no power to restrict the time for giving such reply. In fact, in the present case, more than sufficient time was granted to the petitioners, acceding to their request for inspection of documents as well. Time is the essence of the wilful defaulter declaration process, due to the commercial nature of the allegations which add up to make the entire economy porous and non-viable for business, which generates jobs as well. The banks' money is public money, which cannot be blocked for an indefinite period on the whims of an individual borrower.

The issues raised by the petitioners, like the alleged factual incorrectness of the visit of the bank's officials to the unit of the petitioner no.1, are mostly technical in nature and are not relevant or germane in the context. As correctly argued by learned counsel of the respondents, a visit to the registered office or production unit of the company is sufficient to afford the borrower enough opportunity to produce all relevant papers regarding the alleged purchase of assets and establishing satisfactorily the channelization

route of the loan. Evidence on trial to examine the factual correctness of the factum or situs (unit/factory or registered office of the borrower-company) of visit by the bank officials is irrelevant, unnecessary and beyond the scope of the instant writ petition. It was the duty of the petitioners to produce documents to the satisfaction of the bank to dispel the allegations of financial misconduct committed by the petitioners, which they failed to do.

None of the allegations levelled in the show cause notice was properly met by the petitioners, which is borne out by the reasoning leading to the declaration of wilful defaulter, as found in the impugned order of the WDIC dated July 3, 2019. The grounds for declaration of wilful defaulter relied on by the WDIC were legally tenable, being in consonance with the guidelines of the RBI, as reflected from the RBI Master Circular of July 1, 2015. A threadbare analysis thereof, on a reconsideration of documents or consideration of fresh documents at this stage, requiring a detailed enquiry dependent on re-appreciation of evidence, is entirely beyond the scope of the writ court and could at best be addressed by the review committee. Although in *Jah Developers case (supra)* the review committee was not observed to be an appellate authority, yet the Supreme Court interpreted Clause 3 of the Master Circular dated July 1, 2015 in the light of Article 19 (1) (g) of the Constitution of India and made it abundantly clear that there is scope of representation before the review committee, and consideration by the committee, on all legal and factual grievances of the borrower relating to the decision of the WDIC. Such remedy was open to the petitioners all along, but they chose to opt for another writ petition, being the present one, which would obviously procrastinate the possible declaration of wilful defaulter inordinately.

In the *Whirlpool Corporation case (supra)*, the Supreme Court reiterated the principle that the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, especially in a case where the authority against whom the writ is filed is shown

to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation. It was found in the facts of the said case, which was primarily on the Trade and Merchandise Marks Act, 1958, that the concerned High Court was not justified in dismissing the writ petition at the initial stage without examining the contention that the show-cause notice issued to the appellant therein was wholly without jurisdiction and that the Registrar, in the circumstances of the case, was not justified in acting as the "Tribunal", as defined in Section 2 of the said Act. The scheme of the Act was discussed threadbare and it was concluded that the forum before which a proceeding was pending, be it the High Court or the Registrar, would partake the character of a "Tribunal" under the 1958 Act. If a particular proceeding is pending before the Registrar, any other proceeding which may, in any way, relate to the pending proceeding will have to be initiated before and taken up by the Registrar and the High Court will then act as the appellate authority of the Registrar under Section 109 of the Act-in-question. On the other hand, it was held, if the proceedings are pending before the High Court, the Registrar will keep his hands off and not touch those or any other proceedings which may, in any way, relate to those proceedings, as the High Court, under Section 3 of the 1958 Act, besides being the appellate authority of the Registrar, has primacy over the Registrar in all matters under the Act.

However, the context is entirely different in the present case, as the previous legal position, as laid down in the RBI Master Circular of July 1, 2013, had changed with the July 1, 2015 Circular and the review committee was conferred jurisdiction to review the first decision of the wilful defaulter identification committee. So there arises no question of any 'concurrent' jurisdiction, which was required to be clarified in the cited judgment under discussion, since the High Court has been conferred both original and appellate powers, the first of which might be construed to be concurrent with the Registrar. The original powers conferred on the said two fora, however, were similar.

As opposed to that, the 2015 guidelines confer distinct and different powers on the first (identification) committee and the second (review committee) which, although of co-ordinate nature with respect to their composition, operate in two different and distinct fields. The review committee, as also explained in *Jah Developers (supra)*, has the power to reconsider the initial decision of the identification committee and the aggrieved borrower is free to submit a representation within 15 days of such first decision before the review committee, both on legal and factual questions. Hence, although of co-ordinate nature as far as composition is concerned, the powers and functions of the two committees – identification and review – are not concurrent but distinct from each other. Hence the ratio of *Whirlpool Corporation (supra)* cannot be blindly applied in the present case.

With regard to the question of jurisdiction of the writ court vis-à-vis *Whirlpool (supra)*, in the present case the two committees-in-question had different functions and fields of operation and there was no jurisdictional error, at least of such gravity that the powers of this court under Article 226 of the Constitution can be liberally exercised. None of the tests laid down in *Whirlpool Corporation (supra)* , for the writ court to interfere, is satisfied in the case at hand.

As regards the co-ordinate bench judgment of this court in *East India Laminates (P) Ltd. & Anr. (supra)*, the learned Single Judge dealt with Section 13 (3A) of The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, (SARFAESI Act), 2002 and allied provisions. In the cited matter, the writ petitioners had given a detailed representation in response to the bank's notice under Section 13 (2) of the SARFAESI Act, to which a cryptic reply was sent by the bank, without disclosure of adequate reasons for overruling the objections raised by the writ petitioners.

However, in contrast, the writ petitioners in the instant case had avoided submitting their reply to the show cause notice of the bank, despite getting several opportunities,

even within the extended time afforded by the bank. In spite of the delay, although the bank was under no obligation to do so, it dealt with the salient objections raised by the petitioners in their reply, in the impugned order declaring the petitioners to be wilful defaulters. Sufficient reasons were provided for the decision, the factual and legal merits of which are for the review committee, and not this court, under Article 226 of the Constitution, to enter into and decide. Moreover, the purview and context of a notice under Section 13 (2) under the SARFAESI Act are somewhat different from those of a wilful defaulter decision of the WDIC under the RBI guidelines of 2015. Not only are the scope and purpose of the two provisions different, but it is the legally constituted WDIC, and not the concerned bank, which passes such order in the latter case. As such, the element of neutrality (not so convincingly, though), can arguably be said to be a shade ahead in case of a formally constituted identification committee than the bank itself, which acts as a judge, jury and executioner in its own cause, albeit within a legal framework, under the SARFAESI Act. That apart, the consequences of a wilful defaulter decision are preliminary in nature and amenable to review on facts as well as law by a co-ordinate forum, which is required to confirm the identification committee's decision upon giving opportunity of making a representation and personal hearing, if deemed necessary, to the aggrieved borrower. However, the fallout of a notice under Section 13 (2) is more serious and takes only about two more steps for the bank to take penal action against the borrower under the SARFAESI Act. Hence the scope of interference in writ jurisdiction logically ought to be wider in case of a violation of Section 13 (3A), SARFAESI Act than a wilful defaulter declaration, the latter being somewhat more preliminary in nature and subject to further checks and bounds, particularly a confirmation by the review committee upon considering the legality and factual veracity of the declaration.

Several chances were afforded to the petitioners, not only for personal hearing but for submitting their defence to the allegations made in the show cause notice in the present case, but the petitioners went on a dilatory spiral instead of addressing the issues

and/or presenting the relevant documents before the identification committee at the first instance, and thereafter before the review committee, to meet the allegations against the petitioners.

As far as the allegations are concerned, those were sufficiently justified in the context and as reflected in the impugned decision declaring the petitioners wilful defaulters. Although the representation of the petitioners was submitted much beyond even the extended time, the essence of the same was, in fact, dealt with in the order of the WDIC dated July 3, 2019.

For the initial declaration of wilful defaulter, reasonable satisfaction of the identification committee is sufficient. In the present case, the direct re-routing of the petitioners' loan to SREI instead of channelizing the same through the respondent no.1-bank was contrary to the terms of sanction. Even the terms of the sanction letter for the loan-in-question, dated November 20, 2009 borne out the purpose of the sanction to be "Working Capital finance and Term Loan to takeover the term finance with SREI". The expression "takeover" clearly indicates that the respondent no. 1-bank was to take charge of the term finance of the borrower-company with SREI. However, the petitioner no. 1 directly transacted with the SREI regarding the loan.

That apart, the alleged purchase of assets was not routed through the respondent no. 1-bank, who was supposed to be sole banker of the petitioner no. 1 during the relevant period. On demand, the petitioners failed to produce relevant papers pertaining to such purchase of assets and repayment of term loan to SREI to the satisfaction of the respondent no.1-bank. Instead, the petitioners chose to bide time unnecessarily by seeking extension after extension of the time to file their reply to the bank's show cause notice, filed such notice late and even did not attend the personal hearing afforded to the petitioners, repeating their protracting methods by seeking for another adjournment.

The petitioners found time to approach this court directly, but not to file a representation to the review committee specifying their objections within the time granted by the WDIC, in consonance with the RBI guidelines.

In fact, the declaration of wilful defaulter by the WDIC has not yet attained finality sans confirmation by the review committee, before which the petitioners had a remedy in law as well as on facts. No rare or exceptional case has been made out by the petitioners to justify interference by this court in its writ jurisdiction at this stage, even before exhaustion of the remedy of the petitioners before the review committee.

The attempt to mix up the One Time Settlement procedure between the bank and the petitioner no. 1 with the wilful defaulter declaration by the WDIC is frivolous and mala fide, since the same had nothing to do with the conduct of the petitioners in diverting the loan amounts and even changing the name of the petitioner no. 1 behind the back of the respondent no. 1, let alone failing to honour the OTS itself by paying instalments as agreed. Rather, the OTS proposal dated as far back as March 16, 2015 has been raked up by the petitioners by offering to agree to it at this belated stage, waking up from hibernation all on a sudden, when they became aware of the wilful default declaration proceeding being on the anvil. This prima facie appears to be a ruse to further delay the wilful defaulter proceeding.

A thorough perusal of the impugned wilful defaulter order by the WDIC does not show any discrepancy or gross miscarriage of justice to call for interference under Article 226. A detailed examination of the factual disputes, requiring consideration of various documents, is within the domain of the review committee and not of this court.

In the light of the above discussions, the present writ petition, bearing W.P. No. 78 of 2020, fails and is thus dismissed. For the unnecessary harassment caused to the respondents and to deprecate the dilatory tactics adopted by the petitioners, the petitioners shall pay to the respondents costs of Rs. 50,000/- within July 6, 2020, the said

date inclusive. However, liberty is given to the petitioners to submit to the Wilful Defaulter Review Committee of the respondent no. 1-bank a representation taking all objections on facts and law, including those raised in the present writ petition, within July 15, 2020 (keeping in view the pandemic lockdown, which is being relaxed phase-wise), by personal service, registered post and/or electronic mode. In default of payment of such costs to the respondents and/or of the submission of the aforementioned representation within the time-frame stipulated above, the liberty given to the petitioners to file such representation will stand automatically annulled and the review committee shall proceed to review the order dated July 3, 2019 passed by the Wilful Defaulter Identification Committee without giving any further hearing to the petitioners. However, in the event both such conditions are adhered to, the concerned review committee, to be constituted in consonance with the RBI Master Circular dated July 1, 2015, shall proceed to review the said order dated July 3, 2019 (whereby the petitioners were declared to be wilful defaulters) at the earliest, upon consideration of the representation to be given by the petitioners before it and, if necessary, upon giving personal hearing to the petitioners and/or their authorized representative on the objections taken in the representation.

Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

**( Sabyasachi Bhattacharyya, J. )**