IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 841 of 2023
In R/SPECIAL CIVIL APPLICATION NO. 19261 of 2022
With
CIVIL APPLICATION (FOR INTERIM RELIEF) NO. 1 of 2023
In R/LETTERS PATENT APPEAL NO. 841 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL

and
HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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JAGDISH PRASAD SABOO
Versus
IDBI BANK LIMITED

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Appearance:
MR ADITYA A GUPTA(7875) for the Appellant(s) No. 1
MR MOHIT A GUPTA(8967) for the Appellant(s) No. 1
MR BH BHAGAT(153) for the Respondent(s) No. 1

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CORAM: **HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL**
And
HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE

Date : 06/11/2023
ORAL JUDGMENT
(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)

1. The present appeal is directed against the order of the learned Single Judge dated 27.03.2023 whereby the writ petition challenging the order dated 12.05.2022 passed by the Willful Defaulter Identification Committee (WDIC) and the order dated 30.08.2022 passed by the Willful Defaulter Review Committee (WDRC) as also the impugned communication dated 16.05.2022 declaring the appellant as 'Willful Defaulter', has been dismissed.

2. Certain relevant facts of the case noted by the learned Single Judge are to be recorded herein. The respondent - IDBI Bank Limited is a part of consortium of the banks being Canara Bank, Bank of Baroda, E-Dena Bank, Andhra Bank (now Union Bank of India) and IDBI Bank. The consortium of the banks is led by Canara Bank. The appellant was the Director of the company, namely Surya Exim Limited (SEL), the account of which turned into a Non-Performing Asset (NPA) in the books of various consortium member banks, including the respondent bank. Such account of the appellant was declared as NPA by the consortium members in the

month of August, 2019. The account of SEL (Company) was red-flagged on 09.10.2019 and an internal investigation was carried out by Canara Bank and the report dated 13.02.2020 was made by the consortium. The Forensic Auditor was appointed by Canara Bank to carry out a forensic audit of the account of SEL. It is an admitted fact of the matter and on the record that the Forensic Auditor (SKVM & Co.) appointed by Canara Bank, vide email dated 14.02.2020, sought clarification from the appellant in the form of a questionnaire, which is stated to have been replied by the appellant through his company (SEL). Further queries were made by the Forensic Auditor vide letter dated 14.05.2020. It is stated by the appellant that, on 08.07.2020, it came to the knowledge of the appellant that without waiting for his reply on the clarification, the Forensic Audit Report was submitted on 08.07.2020, though the reply was submitted by the appellant on 13.07.2020. It is contended that the appellant was kept in dark regarding the Forensic Audit Report dated 08.07.2020 as it was never supplied to the appellant. The Forensic Audit Report, however, is filed before this Court under the order passed by the writ Court.

3. It is then contended that unaware of the Forensic Audit Report, the appellant had replied the clarifications sought by the Forensic Auditor vide letter dated 14.05.2020, through the communication dated 13.07.2020. On 18.01.2021, the appellant wrote a letter asking for all documents including the Forensic Audit Report, declaring the appellant's company's account as a fraud account. No reply, however, was given. The appellant had, thus, no option but to approach this Court and a writ petition, namely Special Civil Application No.2233 of 2021 was filed wherein interim order dated 05.02.2021 was granted in favour of the appellant. A show cause notice dated 28.05.2021 was issued to the appellant under the Master Circular on Willful Defaulters, but no documents were provided along with the show cause notice. It is contended by the learned counsel for the appellant that from the contents of the show cause notice, it can be seen that they are page-lifted from the queries/communication of the Forensic Auditor. The appellant submitted his reply dated 17.06.2021. Another communication dated 02.08.2021 was sent by the respondent bank heavily relying upon the Forensic Audit Report prepared by the Forensic Auditor but the copy of the report was still not provided to the appellant. Despite repeated letters sent by the appellant, the copy of the Forensic Audit

Report was not provided. Vide order dated 13.12.2021, the appellant was declared as 'Willful Defaulter' reiterating the grounds mentioned in the show cause notice. However, the said order was revoked as it was passed without grating opportunity to the appellant.

4. It is stated that in the meantime on 07.03.2022, an insolvency petition was filed against the appellant under Section 94/95 of the Insolvency and Bankruptcy Code, 2016 (in short 'I&B Code') and an interim moratorium was triggered as per Section 96 of the I&B Code. The copy of the order dated 07.03.2022 of the National Company Law Tribunal, Ahmedabad, is appended at page '174' of the paper-book. A perusal thereof indicates that the insolvency petition under Section 95 of I&B Code was filed by TATA Capital Finance Service Limited against the personal guarantor of the corporate debtor, namely Surya Exim Limited (SEL).

5. There is no dispute about the fact that the order dated 16.05.2022 declaring the appellant as Willful Defaulter was passed after providing personal hearing to the appellant. The representation made by the appellant to the Review Committee against the order of the Identification Committee

has been rejected by the Review Committee vide order dated 30.08.2022.

6. It is argued by the learned counsel for the appellant that even the Review Committee has passed the order mechanically relying upon the Forensic Audit Report, without providing a copy of it to the appellant. It is further argued that there is no independent application of mind by the Review Committee and the order passed by it reflects that it was a mechanical exercise of reiterating the contents of the show cause notice dated 28.05.2021 and the letter dated 02.08.2021. Another notice dated 16.09.2022 was issued by the respondent Bank on 20.09.2022, to publish the photograph of the appellant in the newspaper. Objection was sent to the notice on 22.09.2022.

7. In the writ petition, namely Special Civil Application No.19261 of 2022, out of which the present appeal has arisen, the writ Court had initially stayed the notice dated 16.09.2022. *Vide* order dated 16.11.2022, the writ Court had further directed the respondent bank to produce a copy of the report of the Forensic Auditor which has been filed with the additional affidavit dated 21.11.2022.

8. The learned counsel for the appellant has challenged the decision of the learned Single Judge mainly on two grounds :-

(i) That with the commencement of the moratorium contemplated under Section 96 of the I&B Code, the proceedings under the RBI Master Circular on Willful Defaulter could not have continued. The learned Single Judge has erred in interpreting the provisions of Section 96 of the I&B Code to hold that the moratorium only applies to the proceedings which are pertaining to the recovery of debt.

(ii) The second argument is that the orders impugned have been passed in utter violation of the principles of natural justice, inasmuch as, there was a necessity to supply the report which has been denied to the appellant. Moreover, while rejecting the representation, no independent reasoning has been given by the Review Committee. The order passed by the Review Committee is cut, copy and paste of the contents of the show cause notice. As the order does not reflect independent application of mind on the part of the Review Committee, the order of rejection of representation filed by the appellant seeking to review the decision of the

Identification Committee is liable to be set aside. The opinion drawn by the learned Single Judge to reject the said argument is erroneous.

9. Reliance is placed on the decision of the Apex Court in **P.Mohanraj and others vs. Shah Brothers Ispat Private Limited - (2021) 6 SCC 258** to assert that the moratorium would engulf the proceedings under the RBI Master Circular for Willful Defaulter. The decision of the Apex Court in **State Bank of India and others vs. Rajesh Agarwal and others - (2023) 6 SCC 1** has been relied to assert that in view of necessity of supply of the Forensic Audit Report to the appellant, the decision of the respondent is liable to be set aside being in violation of the principles of natural justice. A reference has been made to the decision of the Apex Court in **State Bank of India vs. M/s.Jah Developers Private Limited and others - (2019) 6 SCC 787** to assert that the fundamental right of the borrower to carry on business cannot be taken away in a casual manner.

10. The learned counsel appearing for the respondent bank, on the other hand, placing page-’357’ of the paper-book, the contents of the Forensic Audit Report, would submit that the

break up therein indicates that it was a case of diversion and routing of funds by the appellant's company (in liquidation). It was the reason of declaration of the appellant as Willful Defaulter after as personal hearing was given to the appellant on three occasions. As per the procedure prescribed in the RBI Master Circular on Willful Defaulter, a reasoned notice was required to be given and a personal hearing is to be provided by the Identification Committee. The decision of the Identification Committee is given effect only after the Review Committee confirms the same. In the instant case, however, three time opportunity was given to the appellant. Reliance is placed upon the decision of the Apex Court in **SBI vs. Rajesh Agarwal and others (supra)** to assert that the question of violation of principles of natural justice settled therein is not attracted in the instant case, inasmuch as, that was a case of RBI master direction on fraud, wherein no provision of show cause notice or personal hearing are existing. Reference is made to the paragraph '81' of the said decision to submit that no prejudice caused to the petitioner could be shown as no plausible objection could be raised by the petitioner on the grounds mentioned in the show cause notice based on the Forensic Audit Report, to initiate action.

11. Testing these submissions of Mr.Aditya Gupta, learned counsel for the appellant and Mr.B.H.Bhagat, learned counsel for the respondent bank and perused the record, when we have gone through the opinion drawn by the learned Single Judge, we find that no benefit can be derived by the appellant from the fact that an insolvency petition has been entertained by the Debt Recovery Tribunal, seeking to set aside the decision taken by the respondent in the matter of Willful default under the RBI Master Circular on 'Willful Defaulter'. The findings on this aspect in paragraphs '8 to 12' of the judgment of the learned Single Judge are relevant to be noted hereinunder :-

> *"8. The aforementioned observations made by the Apex Court under the provision of Section 96 of the IBC pertain to the legal action of the proceedings with respect to any debt, which shall be stayed when interim moratorium under Section 96 of the IBC has been issued. The Apex Court, while dealing with the proceedings under Section 138 of the Negotiable Instruments Act, 1881 (for short "the N.I.Act") has held that expression "in respect of any debt" has wide connotation and includes anything done directly or indirectly with respect to recovery of any debt and any legal proceedings being indirect recovery of any debt would be covered. The petitioner is equating his case of having being declared as Wilful Defaulter to the proceedings in respect of any debt as envisaged under Section 96 of the IBC.*
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> *9. The intention of the moratorium, granted under Section 96 of the IBC cannot be extended to the proceedings with respect to a borrower, who has*

been declared as a Wilful Defaulter. The interim moratorium under Section 96 of the IBC can be referred only to the debt, as mentioned therein. If such interpretation, which has been put by the petitioner is accepted, the very object and purpose of the Master Circular of the RBI, which is meant for Wilful Default of the Wilful Defaulter cautioning the other lenders from further lending money, would get frustrated.

10. The High Court of Calcutta in the case of Adarsh Jhunjhunwala(supra), after considering the observations made by the Apex Court in the case of V.Ramakrishnan ((supra)), has held thus:

> *"In the backdrop of the above this Court is inclined to accept the argument of Mr. Rai for the bank that the moratorium in respect of debt is restricted to proceedings of recovery of any debt against the respondent "in person". This is in harmony with dicta at paragraph 20 in the Ramakrishnan Case (supra). To stay wilful defaulter proceedings, criminal proceeding or quasi criminal proceeding under any Moratorium under Section 96 would defeat the object and purpose of the part III of the IBC. Stay of such collateral proceedings would also result in putting a premium on the impropriety and illegality for which the proceedings under Section 95 are initiated. The argument of Mr. Rajarshi Dutta that the continuation of the wilful defaulter proceedings would seriously hamper and impede his client's ability to make good repay or come up with; a scheme to satisfy creditors is fallacious. Such stay would also amount to permitting a wrong doer to commit a further wrongs for the purpose of remedying an existing wrong. All lenders are required to be put on notice of the Wilful default who to prevent further erosion of public finances. The observation in Para 22 do not apply in this instant case as have not been applied in the conclusion of the said decision. It appears to this Court that the Ramakrishnan decision has not been placed before the Coordinate Bench in the Ayan Mallick case (supra). As already stated earlier any moratorium under the IBC cannot permit a wrong doer to continue to such doing."*

11. The Apex Court in the aforementioned case of P Mohanraj (supra) has not dealt with the aspect of Wilful Defaulter and has only confined its observations with regard to the proceedings under Section 138 of the N.I.Act and with regard to recovery proceedings of debt, as envisaged under Section 96 of the IBC. The proceedings of declaring the borrower, as per the Master Circular as a Wilful Defaulter, are in absolutely different realm than the recovery proceedings of debt and hence, the provision of Section 96 of the IBC cannot be extended to the petitioner, which has been declared as Wilful Defaulter.

11.1 Thus, the proceedings of Wilful Defaulter cannot be equated to the recovery of debt and hence, the moratorium under Section 96 of the IBC cannot frustrate the action of the respondents declaring the petitioner as a Wilful Defaulter.

*12. The petitioner has also contended that since the FAR of SKVM & Co. was not supplied, the impugned orders, being in violation of principles of natural justice, are required to be quashed and set aside. In this regard, it would be apposite to incorporate the observations made by the Division Bench of this Court dated 02.01.2023 passed in Letters Patent Appeal No.596 of 2022 in Special Civil Application No.2518 of 2022 and allied matters. The Coordinate Bench of this Court in identical set of facts, wherein FAR was not supplied and borrower was declared Wilful Defaulter after considering the Master Circular issued by the RBI dated 01.07.2015, which defines the Wilful Defaulter, has dismissed the writ petition filed by the Wilful Defaulter. *** *** ***"*

12. Coming to the submission of the learned counsel for the appellant that with the filing of application by the creditor under Section 95 of the I&B Code initiating insolvency process, all proceedings in relation to all the debts, including

the proceedings under RBI Master Circular for 'Willful Defaulter' shall come to a halt, it would be apt to go through the provisions of Insolvency and Bankruptcy Code, 2016 (in short as I&B Code) as contained in Part-III in relation to 'Insolvency resolution and bankruptcy for individuals and partnership firms'. Part III of I&B Code consists of seven chapters. Chapter III for insolvency resolution process is relevant for our purposes as the issue raised by the learned counsel for the appellant pertains to the insolvency resolution process, which has been initiated against the debtor namely the appellant herein under Section 95 contained in Chapter III of the I&B Code. Section 95 applies to the insolvency resolution process initiated by the creditor before the adjudicating authority in relation to the debtor who may be an individual or partnership firm. **The interim moratorium period under Section 96 commences on the date of the application filed under Section 94 or Section 95, in relation to all the debts**. Section 99 as contained in Part III, Chapter III provides that the resolution professional shall submit a report to the adjudicating authority recommending for approval or rejection of the application. Sub-section (2) of Section 99 says that where application has been filed under

Section 95, the resolution professional may require the debtor to prove repayment of debt claim or unpaid by the creditor by furnishing the following :-

(a) evidence of electronic transfer of the unpaid amount from the bank account of the debtor;
(b) evidence of encashment of a cheque issued by the debtor; or
(c) a signed acknowledgment by the creditor accepting receipt of dues.

13. Sub-section (3) of Section 99 further states that where the debt for which an application has been filed by a creditor is registered with the information utility, the debtor shall not be entitled to dispute the validity of such debt. As per Sub-section (9) the resolution professional shall have to record the reasons for recommending for the acceptance or rejection of the application in the report to be prepared as per Sub-section (7) of Section 99.

14. A further perusal of Section 100 contained in the same chapter shows that on admission of an application under Sub-section (1) of Section 100, the adjudicating authority on the request of the resolution professional, may issue instructions

for the purpose of conducting negotiations between the debtor and creditors and for arriving at a repayment plan. Sub-section (4) of Section 100 provides that if the application referred to in Section 94 or 95, as the case may be, is rejected by the adjudicating authority on the basis of the report submitted by the resolution professional that the application was made with the intention to defraud its creditors or the resolution professional, the order under Sub-section (1) shall record that the creditor is entitled to file for an bankruptcy order under Chapter IV. With the admission of the application under Section 100, a moratorium commences in relation to all the debts, which will be operative for a period of 100 days, beginning with the date of the application or the date on the Adjudicating Authority passes an order on the repayment plan under Section 114, whichever is earlier.

15. The effects of the moratorium period under Sub-section (2) of Section 101 are :-

> *"(2) During the moratorium period -*
>
> > *(a) any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed;*
> >
> > *(b) the creditors shall not initiate any legal action or legal proceedings in respect of any debt; and*

> *(c) the debtor shall not transfer, alienate, encumber or dispose of any of his assets or his legal rights or beneficial interest therein;"*

16. Section 105 provides for preparation of repayment plan and mandates the debtor to prepare, in consultation with the resolution professional, a repayment plan containing a proposal to the creditors for restructuring of his debts or affairs. As per Sub-section (2), the repayment plan may authorize or require the resolution professional to - (a) carry on the debtor's business or trade on his behalf or in his name; or (b) realise the assets of the debtor; or (c) administer or dispose of any funds of the debtor. Sub-section (3) of Section 105 provides that the repayment plan shall include - (a) justification for preparation of such repayment plan and reasons on the basis of which the creditors may agree upon the plan; (b) provision for payment of fee to the resolution professional; (c) such other matters as may be specified.

17. Section 106 further provides that the resolution professional shall have to submit the repayment plan under Section 105 along with his report on such plan to the adjudicating authority within a period of twenty one days from

the last date of submission of claims under Section 102. The report referred to in Sub-section (1) shall include - (a) the repayment plan is in compliance with the provisions of any law for the time being in force; (b) the repayment plan has a reasonable prospect of being approved and implemented; and (c) there is a necessity of summoning a meeting of the creditors, if required, to consider the repayment plan. Section 109 confers power on a creditor to vote in respect of the repayment plan in accordance with the voting share assigned to him and authorise the resolution professional to determine the voting share to be assigned to each creditor in the manner specified by the Board. Only such creditor shall be entitled to vote who is mentioned in the list of creditors prepared by the resolution professional under Section 104. Section 111 provides that the repayment plan or any modification to the repayment plan shall be approved by a majority of more than 3/4th in value of the creditors present in person or by proxy and voting on the resolution in a meeting of the creditors. Under Section 112 the resolution professional shall have to prepare a report of the meeting of the creditors on repayment plan thereafter and submit the same with such other information as the resolution professional thinks appropriate

to make known to the adjudicating authority. The adjudicating authority is empowered to approve or reject the repayment plan under Section 114 or to order for its modification. Where the adjudicating authority approves the repayment plan, it may also issue directions for implementing the repayment plan. Section 115 lays down the effect of order of the adjudicating authority on repayment plan as under :-

> *"**115. Effect of order of Adjudicating Authority on repayment plan** - (1) Where the Adjudicating Authority has approved the repayment plan under section 114, such repayment plan shall—*
>
> *(a) take effect as if proposed by the debtor in the meeting; and*
>
> *(b) be binding on creditors mentioned in the repayment plan and the debtor.*
>
> *(2) Where the Adjudicating Authority rejects the repayment plan under section 114, the debtor and the creditors shall be entitled to file an application for bankruptcy under Chapter IV.*
>
> *(3) A copy of the order passed by the Adjudicating Authority under sub-section (2) shall be provided to the Board, for the purpose of recording an entry in the register referred to in section 196."*

18. Having extensively gone through the provisions contained in Chapter III, in Part III of I&B Code, we find that the insolvency resolution process for individuals is in relation to all the debts of the creditors included in the list to be

prepared by the resolution professional under Section 104 and aims towards repayment of the debt by restructuring the debts or affairs of the debtor. The repayment plan contains the manner of repayment of debts of the creditors, who have been given primacy in the matter of approval, modification or rejection of the repayment plan as per the procedure prescribed in Sections 108, 109, 110 and 111 contained in Chapter III, Part III. In a case where repayment plan is approved by the adjudicating authority, it shall be binding on creditors mentioned in the repayment plan as also the debtor and in case of rejection of repayment plan, the debtor and the creditors shall be entitled to file application for bankruptcy under Chapter IV. It is, thus, evident that the insolvency resolution process initiated under Chapter III, Part III of the Insolvency and Bankruptcy Code, 2016 is aimed at repayment of debt of the creditors or recovery of the unliquidated amount by restructuring of debt or the affairs of the debtors. Section 96 which provides for interim moratorium reads as under :-

> *"**96. Interim-moratorium** - (1) When an application is filed under section 94 or section 95-*
>
> *(a) an interim-moratorium shall commence on the date of the application in relation to all the debts and*

shall cease to have effect on the date of admission of such application; and

(b) during the interim-moratorium period—

(i) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and

(ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.

(2) Where the application has been made in relation to a firm, the interim-moratorium under sub-section (1) shall operate against all the partners of the firm as on the date of the application.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator."

19. A careful reading of Section 96 in light of the above noted provisions would indicate that the interim moratorium which commences on the date of the application is 'debt-centric'. It will apply in relation to all the debts and the legal action or proceedings pending in respect of the debt which shall deemed to have been stayed. The creditors of the debtor are prohibited from initiating any legal action or proceedings in respect of any debt. Section 96 does not provide any immunity to the debtor in the matter of the proceedings under the RBI Master Circular for 'willful default'. The interim moratorium commenced under Section 96 will apply only to

such legal action or proceedings, which are in respect of recovery of any debt and does not apply to any action against the debtor, which does not have any relation to the restructuring of debts, which would have to be included in the repayment plan to be prepared under Section 105 of the I&B Code on admission of the application by the adjudicating authority.

20. The distinction between the two sections of moratorium under Section 14 contained in Part-II and Section 96 in Part-III of I&B Code has been considered by the Apex Court in the case of ***State Bank of India vs. V. Ramkrishnan and another*** **- (2018) 17 SCC 394** as under :-

> *"20. Section 14 refers to four matters that may be prohibited once the moratorium comes into effect. In each of the matters referred to, be it institution or continuation of proceedings, the transferring, encumbering or alienating of assets, action to recover security interest, or recovery of property by an owner which is in possession of the corporate debtor, what is conspicuous by its absence is any mention of the personal guarantor. Indeed, the corporate debtor and the corporate debtor alone is referred to in the said Section. A plain reading of the said Section, therefore, leads to the conclusion that the moratorium referred to in Section 14 can have no manner of application to personal guarantors of a corporate debtor.*
>
> *xxx xxx xxx*

> *26. We are also of the opinion that Sections 96 and 101, when contrasted with Section 14, would show that Section 14 cannot possibly apply to a personal guarantor. When an application is filed under Part III, an interim-moratorium or a moratorium is applicable in respect of any debt due. First and foremost, this is a separate moratorium, applicable separately in the case of personal guarantors against whom insolvency resolution processes may be initiated under Part III. Secondly, the protection of the moratorium under these Sections is far greater than that of Section 14 in that pending legal proceedings in respect of the debt and not the debtor are stayed. The difference in language between Section 14 and 101 is for a reason.*
>
> *26.1 Section 14 refers only to debts due by corporate debtors, who are limited liability companies, and it is clear that in the vast majority of cases, personal guarantees are given by Directors who are in management of the companies. The object of the Code is not to allow such guarantors to escape from an independent and co- extensive liability to pay off the entire outstanding debt, which is why Section 14 is not applied to them. However, insofar as firms and individuals are concerned, guarantees are given in respect of individual debts by persons who have unlimited liability to pay them. And such guarantors may be complete strangers to the debtor – often it could be a personal friend. It is for this reason that the moratorium mentioned in Section 101 would cover such persons, as such moratorium is in relation to the debt and not the debtor."*
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> *(emphasis supplied)*

21. In ***P. Mohanraj and others vs. Shah Brothers Ispat Private Limited*** **- (2021) 6 SCC 258**, while considering the fact of moratorium under Section 14 in relation to other moratorium sections in I&B Code, Sections 96 and 101 contained in Part-III, it was observed by the Apex Court in

paragraph No.35.3 that :-

> *"35.3 When the language of these Sections is juxtaposed against the language of Section 14, it is clear that the width of Section 14 is even greater, given that Section 14 declares a moratorium prohibiting what is mentioned in clauses (a) to (d) thereof in respect of transactions entered into by the corporate debtor, inclusive of transactions relating to debts, as is contained in Sections 81, 85, 96, and 101. Also, Section 14(1) (d) is conspicuous by its absence in any of these Sections. Thus, where individuals or firms are concerned, the recovery of any property by an owner or lessor, where such property is occupied by or in possession of the individual or firm can be recovered during the moratorium period, unlike the property of a corporate debtor."*

22. Coming to the object and purpose of Master Circular for "willful default", we may note that the object is to disseminate credit information of the willful defaulter so that other lenders are cautioned and do not lend any further money. The clause 2.1.3, which defines 'willful default', in relation to the events mentioned in clauses (a) to (d) therein, states that the identification of the willful default should be made keeping in view the track record of the borrowers and should not be decided on the basis of isolated transactions/incidents. It further emphasizes that the default to be categorized as willful must be intentional, deliberate and calculated. The identification of willful defaulters by the Master Circular of

"willful default" has been introduced pursuant to the instructions of the Central Vigilance Commission for collection of information on willful defaults of Rs.25 lakhs and above by Reserve Bank of India and dissemination to the reporting banks and financial institutions. The scheme was initially framed by RBI with effect from 1st April, 1999 under which the banks and notified All Indian Financial Institutions (FIs) were required to submit to RBI the details of the willful defaulters. This scheme was modified and revised from time to time based on the recommendations of the working group on willful defaulters and later of the Committee on Data Format for Furnishing of Credit Information to Credit Information Companies and various feedback received from different stakeholders. The purpose as mentioned therein is :

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

23. The scheme of identification of 'willful defaulters' under the Master Circular devices the mechanism to restrain the occurrence of diversion of funds and siphoning of funds and states that the decision as to whether a particular instance

amounts to siphoning of funds would have to be a judgment of the lenders based on objective, facts and circumstances of the case. The mechanism for identification of willful defaulters has been provided in Clause 3 of the Master Circular.

24. From the bare reading of the Master Circular of the Reserve Bank of India (RBI) on 'willful defaulters', makes it clear that it aims at preventing further fraud and loss of public money. The willful defaulter proceedings has no connection with the recovery of debt or the repayment of debt or restructuring of the same.

25. Part-III of I&B Code will not *ipso facto* extinguish default, already committed by the debtor. The moratorium under I&B Code is not aimed at letting wrong doer to get away, as has been held by the Apex Court in the case of ***Manish Kumar vs. Union of India*** reported in **(2021) 5 SCC 1**. [Reference judgment of the Calcutta High Court in **Adarsh Jhunjhunwala vs. State Bank of India** dated 24.12.2021 in W.P.O. No.1548 of 2021 (noted by the learned Single Judge)].

26. In the case of willful default proceedings, all lenders are required to put to notice of the willful default, so as to prevent further erosion of public finances. Recovery proceedings or the proceedings under Section 96 of the I&B Code or the insolvency proceedings, in our considered opinion, would have no bearing on the willful default proceedings, which only aim at dissemination of information of the default already committed.

27. It, therefore, logically follows that the proceedings initiated by a creditor under Section 95 contained in Chapter III, Part III of I&B Code, 2016 will have no bearing on the proceedings initiated against the debtor under the Master Circular of RBI to declare the debtor as willful defaulter. The argument of the learned counsel for the appellant that the interim moratorium under Section 96, which began on the application moved by the creditor, seeking for repayment plan in respect of the debt, would engulf the proceedings initiated against the debtor under the RBI Master Circular for 'Willful Defaulter', is liable to be rejected.

28. On the second line of submission of the violation of principles of natural justice, suffice it to say that the appellant

herein was initially called upon to participate during the forensic audit proceedings. On receipt of the Forensic Audit Report, show cause notice was given to the appellant extracting the contents of the Forensic Audit Report, declaring the appellant's company's account as a fraud account. On receipt of his reply, personal hearing was also provided to the appellant on three occasions. The show cause notice contains the reasons for declaration of the appellant as willful defaulter. The report of the Identification Committee has been affirmed by the Review Committee after grant of opportunity of personal hearing to the appellant. No infirmity in the said decision making process can be pointed out by the learned counsel for the appellant. The only submission that the complete copy of the Forensic Audit Report has not been provided to the appellant before taking the impugned decision to declare him a willful defaulter, cannot be a reason to interfere, as according to us, no prejudice has been caused to the appellant by non-supply of the complete copy of the Forensic Audit Report.

29. We may further note that the copy of the Forensic Audit Report had been brought on record of the proceedings before

the Writ Court and the appellant before the Writ Court could not submit any defence to dispute the contents of the said report. It is settled law that adherence to the principles of natural justice is not an empty formality. A person who is pleading violation of principles of natural justice has to demonstrate the prejudice caused to him because of any infraction at any of the stage of the decision making process. No such prejudice could be demonstrated by the appellant, as the appellant has not been able to dispute the findings of the Forensic Audit Report by showing any infirmity on the face value. We, therefore, do not find any good ground to set aside the orders impugned on the premise that the complete copy of the Forensic Audit Report had not been supplied to the appellant at the stage of the decision making process. The contentions with regard to non-application of mind by the Review Committee by showing the contents of the order are not sustainable.

30. Lastly, for the reasoning given by the learned Single Judge in paragraphs 13, 14, 15 and 16, we find that the allegations against the appellant are for diversion, routing and siphoning of funds and the appellant was given full

opportunity to explain the allegations before the order was passed by the Identification Committee to declare the appellant as a 'willful defaulter' in terms of the Master Circular dated 01.07.2015 issued by the RBI. The Identification Committee and the Review Committee both after thorough investigation have found that the appellant, without permission of the lenders, had diverted the funds, which act of his falls under the criteria of 'willful defaulter' as prescribed in the relevant clauses of the RBI Master Circular dated 01.07.2015.

31. The conclusion drawn by the learned Single Judge that while exercising the jurisdiction under Article 226 of the Constitution of India cannot transpose itself as an expert body, sitting in the armchair of the financial experts as to what should have been the business prudence, and it cannot be the subject matter of judicial scrutiny, is perfectly justified. It is settled law that this Court in exercise of power of judicial review cannot substitute with the opinion of the experts in the field of finance and banking and interference by the Writ Court is limited to the demonstrably perverse or illegal action/ orders.

32. Having reached at the above conclusion on an analysis of the provisions of I&B Code contained in Part III, Chapter III, the RBI Master Circular on 'Willful Defaulters' and the factual position of the instant case, we do not find any infirmity in the decision of the learned Single Judge. The appeal is dismissed, accordingly. Consequently, the connected Civil Application also stands dismissed.

(SUNITA AGARWAL, CJ)

(ANIRUDDHA P. MAYEE, J.)

GAURAV J THAKER