
(2025) 11 P&H CK 1955

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 365 Of 2022 (O&M)

Sandeep Jindal And Others

APPELLANT

Vs

Bank Of Baroda And Others

RESPONDENT

Date of Decision : 12-11-2025

Acts Referred:

Constitution Of India, 1950 — Article 19(1)(G)
Insolvency And Bankruptcy Code, 2016 — Section 29A

Citation : (2025) 11 P&H CK 1955

Hon'ble Judges : Sheel Nagu, CJ; Sanjiv Berry, J

Bench : Division Bench

Advocate : Aalok Jagga, C.S.Pasricha

Final Decision : Disposed Of

Judgement

Sanjiv Berry, J

1. By way of the instant writ petition, the petitioners have assailed the impugned order dated 16.02.2021 (Annexure P-13) passed by respondent No.2 and order dated 20.10.2021 (Annexure P-16) passed by respondent No.3 whereby the petitioners have been declared as wilful defaulters, allegedly the same has been done by respondent No.2 and 3 in contravention of the Reserve Bank of India circulars, besides seeking other reliefs.

2. In nutshell, it is the case of the petitioners that the petitioners being Directors had obtained a loan from Bank of Baroda and on default, OA No. 1627 of 2015 (renumbered as 542 of 2017) titled as 'Bank of Baroda vs. M/s Jindal Medicot Limited, was filed before the Debts Recovery Tribunal-III, Chandigarh and the same was allowed vide order dated 15.11.2017 (Annexure P-8). Subsequently, vide order dated 19.11.2020 (Annexure P-10) show-cause notice was issued to the petitioners for declaring them as willful defaulters, petitioners No.5 and 6 sent reply/representation dated 02.12.2020 (Annexure P-11) claiming that they were not the Directors/Promoters of the Company at the relevant time when the

loan was applied/ availed and nor had signed any loan document. The petitioners were called for personal hearing on 09.02.2021 vide letter dated 03.02.2021(Annexure P-12), and the same was received by the petitioners after the date fixed for hearing. However, the petitioners were declared as willfull defaulters vide impugned letter dated 16.02.2021 (Annexure P-13). Petitioners No.5 and 6 again filed representation dated 18.02.2021 (Annexure P-14) before the Review Committee, however, vide order dated 20.10.2021 (Annexure P-16) the respondent No.3- Review Committee had upheld the decision of declaring the petitioners as willful defaulters. Hence the writ petition.

3. The learned counsel for the petitioner inter alia contends that the impugned order dated 16.02.2021 (Annexure P-13) and 20.10.2021 (Annexure P-16) passed by the respondent No.2 and 3 are in contravention of the circular issued by the Reserve Bank of India. He submits that the petitioners No. 5 and 6 had submitted reply dated 02.12.2020 (Annexure P-11) to the show cause notice (Annexure P-10) dated 19.11.2020. Consequent thereto, a letter dated 03.02.2021 (Annexure P-12) was issued by the respondents asking the petitioners No.5 and 6 to appear in person on 09.02.2021 at 2:30 pm. However, the said letter dated 03.02.2021 was dispatched by the bank on 06.02.2021 and was received by the petitioners after stipulated time had already passed. He contends that the impugned order dated 16.02.2021 (Annexure P-13) was passed by respondent No.2 even without considering the representation dated 02.12.2020 (Annexure P-

11) moved by the petitioner No.5 and 6 and even the representation moved before the Review Committee vide Annexure P-14 dated 18.02.2021 was not considered by respondent No.3 while passing the impugned order dated 20.10.2021 (Annexure P-16). As these orders are silent about the plea raised by the petitioner No.5 and 6 in their response to the show cause notice as well as the representation, there is clear violation of the principles of natural justice as enshrined in the Constitution of India. Reference is made to the judgment of Hon'ble Apex Court in State Bank of India vs. Jah Developers, 2019(6) SCC 787 in this regard and he submitted that as the opportunity of being heard was not afforded to the petitioner No.5 and 6 and the factum of their being neither the promoter-directors at the relevant time nor the signatory to the loan agreement was ever considered by the concerned authorities, as such the impugned orders are liable to be set-aside.

4. Per Contra, learned counsel for the contesting respondent submits that the petitioners have been rightly declared willful defaulters in accordance with law. He contends that none of the petitioner except for petitioner No.5 and 6 have made any representation. Representation dated 02.12.2020 (Annexure P-11) made by petitioner No. 5 and 6 against the show cause notice, was duly considered by the competent authority and even their representation (Annexure P-14) was also duly considered by Review Committee-respondent No.3. He contends that the petitioner No.5 and 6 were duly appointed Directors by the

borrower Company as per the information received from Ministry of Corporate Affairs, and were declared wilful defaulters in accordance with law, hence prayed for dismissal of the writ petition.

5. After considering the rival contentions and perusing the record, it transpires that the respondent Bank had initiated the process of declaring M/s Jindal Medicot Limited and its Directors/ Promoters/ Guarantors as wilful defaulters and in this regard show cause notice dated 19.11.2020 (Annexure P-10) was issued. Admittedly, except for petitioner No.5 and 6 none of the other petitioners had raised any objection to the said show cause notice nor moved any representation against the same.

6. The petitioner No.5 and 6 moved their respective representation/reply to the aforesaid show cause notice vide (Annexure P-11) dated 02.12.2020 specifically contending that they were not the promoter-director /guarantor at the time when the loan was applied for/ availed and no loan document was ever signed by them nor they had ever approached the respondent Bank for such loan facility and further they had no control over the finances and funds of the Company, as such, prayed for the petitioner No.5 and 6 be not declared as wilful defaulters.

7. It is evident from the (Annexure P-12) dated 03.02.2021 issued by the respondent Bank that the petitioners were called for hearing by the Committee of Executives (COE) on 09.02.2021 at 2:30 pm in the Zonal office of Bank of Baroda at New Delhi.

8. Thereafter, vide letter dated 16.02.2021 (Annexure P-13) the respondent Bank declared M/s Jindal Medicot Limited and its Directors- Promoters/Guarantors as wilful defaulters. The perusal of this communication reveal that consequent to the Bank issuing the show cause notice dated 19.11.2020, duly received by the petitioners, the representation dated 02.12.2020 (Annexure P-11) was received only from petitioner No.5 and 6. The petitioners were called for hearing before the Committee on 09.02.2021 but none of the Directors appeared before the Committee on that day. It is further mentioned therein that considering the facts and circumstances and perusing the documents on record, the Committee of Executives (COE) had declared the petitioners as wilful defaulters.

9. It was the petitioner No.5 and 6 only who had responded and submitted the representation (Annexure P-14) against the order dated 16.02.2021 (Annexure P-13) declaring the petitioners as willful defaulters which was being placed before respondent No.3 for consideration. The Review Committee-respondent No.3 had thereafter passed the impugned order dated 20.10.2021 (Annexure P-16) declaring the petitioners as wilful defaulters. Although, the petitioners claimed that petitioner No.1 Sandip Jindal had also moved representation dated 03.03.2021 (Annexure P-15) but there is nothing on record qua the same having ever been received by the Respondents.

10. Considering the submissions made by learned counsel for the parties and perusing the record, it is evident that although the show cause notice dated

19.11.2020 (Annexure P-10) was received by the petitioners, however it was only the petitioner No.5 and 6 who responded to the same by filing representation/reply dated 02.12.2020 (Annexure P-11). Consequently, the petitioners were called for personal hearing vide communication dated 03.02.2021 (Annexure P-12) asking them to appear for personal hearing on 09.02.2021 at 2:30 pm. It is, however, contended by learned counsel for the petitioner that this communication was dispatched on 06.02.2021 and was received by the petitioners much after the stipulated date, as a consequent, petitioner No.5 and 6 could not appear for personal hearing and this fact is even mentioned in the impugned order dated 16.02.2021 that none of the petitioners had appeared before Committee of Executives (COE) on 09.02.2021. Similarly, the petitioners No.5 and 6 had even moved representation against the order (Annexure P-13) to the Review Committee vide Annexure P-14 dated 18.02.2021 the receipt whereof is mentioned in the final order passed by the Review Committee vide impugned order dated 20.10.2021 (Annexure P-16). However, the perusal of the impugned orders reveal that the contentions raised by the petitioners No.5 and 6 were neither mentioned nor amply considered while passing the impugned orders by the respondents.

11. The learned counsel for the petitioner has drawn attention of this Court to the judgment of Hon'ble Apex Court in Jah Developers case (supra) wherein it has been observed that the moment a person is declared to be a wilful defaulter, it has direct and immediate impact on his fundamental right to carry off his business as enshrined under Article 19(1)(g) of Constitution of India. The relevant para of the judgment reads as under:-

"21. Given the above conspectus of case law, we are of the view that there is no right to be represented by a lawyer in the in-house proceedings contained in paragraph 3 of the Revised Circular dated 01.07.2015, as it is clear that the events of wilful default as mentioned in paragraph 2.1.3 would only relate to the individual facts of each case. What has typically to be discovered is whether a unit has defaulted in making its payment obligations even when it has the capacity to honour the said obligations; or that it has borrowed funds which are diverted for other purposes, or siphoned off funds so that the funds have not been utilised for the specific purpose for which the finance was made available. Whether a default is intentional, deliberate, and calculated is again a question of fact which the lender may put to the borrower in a show cause notice to elicit the borrower's submissions on the same. However, we are of the view that Article 19(1)(g) is attracted in the facts of the present case as the moment a person is declared to be a wilful defaulter, the impact on its fundamental right to carry on business is direct and immediate. This is for the reason that no additional facilities can be granted by any bank/financial institutions, and entrepreneurs/promoters would be barred from institutional finance for five years. Banks/financial institutions can even change the management of the wilful defaulter, and a promoter/director of a wilful defaulter cannot be made promoter or director of any other borrower company. Equally, under Section 29A of the

Insolvency and Bankruptcy Code, 2016, a wilful defaulter cannot even apply to be a resolution applicant. Given these drastic consequences, it is clear that the Revised Circular, being in public interest, must be construed reasonably. This being so, and given the fact that paragraph 3 of the Master Circular dated 01.07.2013 permitted the borrower to make a representation within 15 days of the preliminary decision of the First Committee, we are of the view that first and foremost, the Committee comprising of the Executive Director and two other senior officials, being the First Committee, after following paragraph 3(b) of the Revised Circular dated 01.07.2015, must give its order to the borrower as soon as it is made. The borrower can then represent against such order within a period of 15 days to the Review Committee. Such written representation can be a full representation on facts and law (if any). The Review Committee must then pass a reasoned order on such representation which must then be served on the borrower. Given the fact that the earlier Master Circular dated 01.07.2013 itself considered such steps to be reasonable, we incorporate all these steps into the Revised Circular dated 01.07.2015. The impugned judgment is, therefore, set aside, and the appeals are allowed in terms of our judgment. We thank the learned Amicus Curiae, Shri Parag Tripathi, for his valuable assistance to this Court.”

12. In the case in hand, as stated above none of the petitioners except petitioner No.5 and 6 had responded to the show cause notice (Annexure P-10). Only the petitioner No.5 and 6 had filed representation/reply (Annexure P-11) wherein they had categorically stated that they were not the promoters/directors at the time when the loan was applied or availed and even no loan document was signed by them nor had they approached the Bank for the loan facility and even they had no control over the finances and funds of the Company. This aspect has not been considered either by the Committee of Executives (COE) while passing the impugned order dated 16.02.2021(Annexure P-13) nor by the Review Committee while passing the order 20.10.2021 (Annexure P-16) although the receipt of their representation is mentioned therein. It is also worth mentioning that vide communication dated 03.02.2021 (Annexure P-12) the petitioners were called for hearing on 09.02.2021, however there is categorical stand taken by the petitioners that such communication was received much after the stipulated date and there is no specific denial of this fact by the respondent Bank in the written statement except for the fact that no representation whatsoever was received from any of the petitioners against the show cause notice except for petitioner No.5 and 6.

13. In the light of the above discussion, we are of the considered opinion that the reply/representation moved by the petitioner No.5 and 6 dated 02.12.2020 (Annexure P-11) and 18.02.2021 (Annexure P-14) ought to have been considered by respondent No.2 and 3 respectively while passing the impugned orders declaring them as wilful defaulters and in this manner there has been clear violation of principles of natural justice, so far as the case of petitioner No.5 and 6 is concerned, as all other petitioners have not chosen to represent even

against the show case notice aforesaid.

14. Resultantly, the impugned orders dated 16.02.2021 (Annexure P-13) and 20.10.2021 (Annexure P-16) are hereby quashed and set aside only to the extent of the same declaring the petitioner No.5 and 6 as wilful defaulters and the matter is remanded back to the respondents to re-examine and decide their case afresh by considering their representation (Annexure P-11) and affording ample opportunities of being heard in accordance with law and the circulars issued by the Reserve Bank of India in this regard.

15. The writ petition stand disposed of accordingly.

16. Miscellaneous applications, if any shall also stand disposed of.