



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on : 27th March 2025**
Judgment pronounced on: 26th May 2025

+ W.P.(C) 2765/2023

RATUL PURI

.....Petitioner

Through: Mr. Vaibhav Mishra, Mr.
Ekansh Mishra and Mr.
Shubham Tiwari, Advs.

versus

BANK OF BARODA

.....Respondent

Through: Mr. Kush Sharma, Standing
Counsel with Mr. Nishchaya
Nigam and Mr. Vagmi Singh,
Advs.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

REVIEW PET. 488/2024 (For review of judgment dated 25.10.2024)

1. The present petition has been preferred by the petitioner seeking a review of the judgment dated 25.10.2024 passed by this Court in the instant writ petition thereby requesting for corrections of some minor typographical errors and especially a detailed findings on the allegations levelled against it by the respondent Bank through its Counter Affidavit dated 30.10.2023 and Written Submissions filed on 08.10.2024, which have been traversed by the petitioner by way of its Rejoinder dated 15.07.2024, Supplementary Affidavit dated 16.09.2024, and Written Submissions filed on 14.10.2024.



BRIEF FACTS

2. The board factual matrix of the present matter has been detailed in the judgment of which review is sought and not repeated herein for the sake of brevity, and may be read as a part and parcel of this order. Shorn of unnecessary details, the case of the petitioner is that he is the Chairman of Hindustan Power Group Private Limited, which operates 1200 MW¹ power plant and supplies electricity to three States *viz.*, State of Uttar Pradesh, State of Madhya Pradesh and State of Haryana. It is stated that in order to run its business, the company was engaged in negotiations with SBI² for availing certain loan facilities. To his shock, the petitioner discovered, through an email dated 22.02.2023 from the officers of the SBI, that his name appeared in the Central Fraud Registry³ at the instance of the respondent/Bank of Baroda (*hereinafter referred as the respondent-bank*) with regard to the account of M/s. Moser Baer Solar Limited [*hereinafter referred as "MBSL"*]. The petitioner agitates that the actions of the respondent-bank are in complete violation of principles of natural justice, and therefore, *void ab initio*.

3. The petitioner states that his father founded Moser Baer India Limited [*hereinafter referred as "MBIL"*] in 1983, initially manufacturing Time Recorder Units and over a long time, MBIL diversified into digital storage products, including floppy diskettes, CD⁴s, and DVD⁵s, enjoying substantial business success from 1993 to

¹ Megawatt

² State Bank of India

³ CFR

⁴ Compact Discs



2005. However, with technological advancements rendering CDs/DVDs increasingly obsolete post-2005, MBIL sought to diversify into emerging sectors, notably into alternate energy, in response to global warming concerns. Consequently, MBIL established two subsidiaries: Moser Baer Photo Voltaic Limited (*hereinafter referred as 'Helios Photo Voltaic Limited/HPVL'*) in 2005 and MBSL in 2007 for manufacturing Solar Cells and Modules.

4. The petitioner states that MBIL's solar business was valued at over USD 1 billion in 2007, with substantial investments from financial institutions. However, the global financial crisis of 2007, and the Government of India's failure to curb dumping by foreign entities, severely impacted the financial stability of MBIL and its subsidiaries. Consequently, in 2011-12, MBSL approached the Corporate Debt Restructuring⁶ Cell of the RBI. Pursuant thereto, a debtor-creditor agreement was executed, a TEV⁷ report and stock audit were commissioned, and subsequently, a Master Restructuring Agreement [*hereinafter referred as "MRA"*] and Trust and Retention Agreement [*hereinafter referred as "TRA"*] were executed to implement the CDR package.

5. The petitioner further submits that due to differences with his father, he resigned from MBSL with effect from 30.04.2012, formally recorded on 16.11.2012. His resignation was intimated to the respondent-bank, as recorded in the Joint Lenders' Meetings dated 10.10.2012 and 22.03.2013. Despite this, the respondent-bank and

⁵ Digital Video Disc

⁶ CDR



other lenders sought his personal guarantee, along with that of Mr. Deepak Puri and Mrs. Nita Puri. MBSL, *vide* letter dated 30.03.2013, informed the lenders that the petitioner no longer held any executive role and proposed alternative collateral.

6. The petitioner states that the Flash Report of MBSL for CDR purposes was formally admitted on 24.05.2012, whereupon the CDR-EG classified MBSL as a Class-‘B’ borrower, indicating external factor impact, weak resources, and lack of professional management support. Through the Flash Report, the banks, including the respondent-bank, were placed on notice regarding MBSL’s financial condition, capital infusions, and reasons for decline. Pursuant thereto, independent stock audit and TEV studies were conducted, resulting in reports by M/s Feedback Infra (dated 27.09.2012) and M/s Mehrotra and Mehrotra Chartered Accountants (dated 29.08.2012). Based on these, the CDR-EG approved a Final Restructuring Scheme (FRS) on 21.01.2013, subsequent to the petitioner’s resignation. The FRS led to execution of the MRA on 28.03.2013 (amended on 27.05.2014) and the TRA on 05.06.2013 (amended on 27.05.2014), after the petitioner’s exit from Moser Baer Group. The petitioner emphasizes that during this period, no fund diversion or wilful default was reported by the banks, including the respondent-bank.

7. The petitioner further contends that the CDR efforts began declining from 26.10.2016 owing to the banks’ decision to exit the restructuring process. Thereafter, proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016, were initiated by financial

⁷ Techno Economic Viability



dated 22.02.2023 from SBI, intimating him about his classification as 'fraud' in the Central Fraud Registry, to which, despite representations, no satisfactory response was received, prompting the filing of the present writ petition.

10. The respondent-bank, through its counter-affidavit dated 30.10.2023 filed by Mr. Vikas Mehra, Chief Manager, Stressed Assets Management Branch, New Delhi, contends that MBSL was sanctioned a credit limit of ₹97 crores in 2007 from the CFS Branch, New Delhi, and that the account was classified as NPA on 14.10.2012. It is further stated that a forensic audit conducted by M/s Haribhakti & Company LLP revealed various irregularities.

11. It is stated in the counter-affidavit that the forensic audit conducted by M/s Haribhakti & Company revealed that capital transactions by the Group entities were undertaken without proper documentation and involved irrational investments. Consequently, MBIL and MBSL were classified as 'fraud' entities on 20.06.2019 and reported to the RBI on 08.07.2019. It is further submitted that a complaint was filed by the consortium of banks, including the respondent-bank, against the companies and their directors alleging fraud and cheating, culminating in registration of FIR No. RC2232020A0002 dated 25.06.2020.

12. The petitioner, by way of rejoinder dated 15.07.2024, submitted that he had instituted W.P.(C) 4128/2023 [*Ratul Puri v. Bank of Baroda*] challenging the order dated 23.03.2023 passed by the Review Committee of the respondent-bank affirming his classification as a

⁸ Show Cause Notice



‘wilful defaulter’ under the RBI Master Circular of 2015. It is pointed out that the said writ petition was allowed *vide* judgment dated 01.03.2024, quashing the classification for being in derogation of the RBI Master Circular and contrary to the judgment in *State Bank of India v. Rajesh Aggarwal*⁹. Similarly, the petitioner succeeded in W.P.(C) 9491/2023 against Punjab National Bank, wherein similar action was set aside *vide* judgment dated 29.02.2024.

FINDINGS OF THIS COURT ON MERITS

13. This Court, *vide* judgment dated 25.10.2024, had allowed the present writ petition, thereby setting aside the impugned order dated 20.06.2019 passed by the respondent-bank, whereby the petitioner had been declared, classified, and categorized as ‘fraud’. Accordingly, the impugned order dated 20.06.2019, as also all consequential actions taken pursuant thereto, stand quashed. Furthermore, in view of the decisions of the Coordinate Bench in W.P.(C) Nos. 9491/2023 and 4128/2023, it was directed that there existed no justifiable grounds for declaring, classifying, or categorizing the petitioner as ‘fraud’ merely on account of non-payment of institutional loans by MBSL.

14. By way of the present review application, the petitioner seeks detailed findings on the specific allegations levelled against him by the respondent-bank.

15. For the sake of completeness, it would be apposite to reproduce hereinbelow the allegations as set out in the counter-affidavit dated 30.10.2023 filed by the respondent Bank: -

“7. That in pursuant to the declaration of the account of the

⁹ (2023) 6 SCC 1



company as NPA, the forensic audit of the company was conducted by M/s Haribhakti and Co. LLP, the findings of the Forensic audit report are as follows:

- a. In terms of the RBI guidelines and in order to ensure that no leakage of revenue, the MBSL is allowed to operate and maintain accounts only with the banks under consortium members. The sale proceeds generated from the business/working capital funds lent were not deposited with the complainants/lending institutions/CDR lenders as they were routed through banks outside the complaints/lending institutions/CDR lenders thereby indicating the fraudulent intentions for siphoning of funds.
- b. The MBSL instead of utilising an amount towards repayment of lenders dues invested a sum of Rs. 696.51 crores in Helios Photovoltaic Limited, a related company, which had been booking losses since 2011-2012, Helios Photovoltaic Limited (hereinafter referred as "HPVL") is a group concern and is being managed and looked after by related persons. Deepak Puri and Nita Puri are the directors of the said company. The gross assets as on 31st March 2015 of Helios Photovoltaic Limited were only to the extent of Rs. 455.86 crores and as such investments were difficult to recover. There is no arrangement or consent of complainants/ lending institutions/ CDR lenders to the effect.
- c. The MBSL has made an interest-free security deposit of Rs. 135.50 Crores to Moser Baer India Limited (MBL), a group concern for a lease rental agreement as per the Forensic Audit Report submitted at ours. These security deposits were on the much higher side as compared to the yearly lease rental paid for land building and utilities deposits and such security deposits ranged upto 58.82 times higher than an agreed annual rental.
- d. The Lease rental income amounting to Rs. 142.69 Crores was booked by MBSL which lease rental relating to the utilities which were taken on finance lease from MB in 2010 and leased back as an operating lease to MBIL. The MBSL did not use the utilities taken on a finance lease from MBIL. It was immediately leased back as an operating lease to MBIL.
- e. On review of the agreement provided to the auditors, it



was observed that 2 out of 9 agreements had expired before the review period. However, the expenses were booked against the expired agreement, which has impacted an amount of Rs. 3.16 crores.

- f. That total supplied advance and loan were given by MBSL as of 31.03.2012 to the tune of Rs. 25.60 Crores and as on 31.03.2015 to the tune of Rs. 26.97 Crores. No adequate recovery steps have been taken against the doubtful advance and doubtful debts as before making provisions amounting to Rs. 26.24 Crores. The provisions for doubtful advance made during the audit period amounts to Rs. 18.12 Crores and provisions for doubtful debtor made during the period amounts to Rs. 8.12 Crores.
- g. The Forensic Auditor observed that the material has been purchased from and sold to HPVL amounting to Rs. 173.34 Crores and Rs. 93.47 Crores respectively the total purchase from HPVL were made 44.6% of the total purchase of MBSL 79.6% of such purchase from HPVL, were purchase of material which was also sold to HPVL. The total sale to HPVL, was 15.59% of the total sale of MBSL 86.58% of such sales to HPVL was sales of material which was also purchased from HPVL.”

ANALYSIS AND DECISION:

16. I have given my thoughtful consideration to the submissions advanced by the learned counsel for the parties. I have also carefully perused the relevant record of the case.

17. **First things first**, there are indeed certain typographical errors which are quite apparent on the face of the record. In paragraph (11), it is inadvertently recorded that the petitioner instituted W.P.(C) 4128/2023 titled as ‘Ratan Puri v. Bank of Baroda’ assailing the order dated 23.03.2023 passed by the Review Committee. The correct title of the aforesaid writ petition should be read as ‘Ratul Puri v. Bank of Baroda’, other things remaining same.

18. Likewise, in the same paragraph, there is an inadvertent



omission to the effect that the aforesaid writ petition was decided *vide* judgment dated 01.03.2024 in favour of the petitioner and categorization of the petitioner as ‘wilful defaulter’ was struck down/quashed for the same being not only in derogation to the Master Circular of the RBI but also falling foul of decision in the case of *State Bank of India v. Rajesh Aggarwal*. It appears that inadvertently the judgment of Supreme Court Supreme Court in the case **SBI v. Jah Developers (P) Ltd.**¹⁰, was not quoted, which was in fact cited with affirmation in the case of **State Bank of India v. Rajesh Aggarwal**.

19. The aforesaid two mistakes are corrected and this order may be read as an addendum of the earlier Judgment dated 25.10.2024, which is sought to be reviewed.

20. That brings us to the plea raised by the learned counsel for the applicant/petitioner that this Court, in paragraph (17) of the Judgment dated 25.10.2024, referred to the findings of Coordinate Benches of this Court in two writ petitions, *viz.*, W.P.(C) no. 4128 of 2023 & W.P.(C) No 9491 of 2023. While this Court, in the judgment under review, concurred with the said decisions to the extent that no grounds ever existed for declaring, classifying, or categorizing the petitioner as a ‘wilful defaulter’ on account of the non-payment of institutional loans on the part of the MBSL to the respondent-bank, however, it is contended that no separate detailed findings were rendered with respect to the declaration of the account of the petitioner as “fraud”.

21. In this regard, learned counsel for the applicant/petitioner relied

¹⁰ (2019) 6 SCC 787



on decision in **Radha Raman Samanta v. Bank of India**¹¹, wherein it was held that it is not improper for the High Court to examine undisputed documents and draw an inference as to the status of the parties concerned. The argument appears to be that, inasmuch as a finding has already been rendered by the Coordinate Benches that the grounds relied upon by the respondent Bank for declaring of the petitioner's account as a 'wilful defaulter' were without merit, the same grounds, by no stretch of imagination or legal latitude, could be found sustainable for declaration of the account of the petitioner as 'fraud'.

22. In essence, what is sought is a finding on merits with respect to each of the grounds relied upon by the respondent Bank for declaring the petitioner's account as 'fraud'. It is pertinent to note that the learned counsel for the respondent, in all fairness, acceded to this proposition to the extent that a finding may be rendered on merits for the sake of administrative convenience and future guidance. The plea advanced is that the impugned action, whereby the petitioner's account has been declared as 'fraud', cannot be sustained on the same grounds which were earlier relied upon for declaring the account as that of a 'wilful defaulter', grounds which have already been found unsustainable. It is further submitted that, as compared to the burden of proving wilful default, the burden of proof required to establish that an account is fraudulent is significantly higher and must be discharged beyond reasonable doubt.

23. The submissions advanced by the learned Counsel for the

¹¹ (2004) 1 SCC 605



applicant/petitioner can be summarised as under:

- (i) In particular, the allegation referred to in Paragraph 7(a), concerning the purported acts of diversion and/or siphoning of funds by MBSL, has been expressly rejected in the aforementioned writ petitions categorically holding that the respondent Bank had consistent knowledge of MBSL's investments and transactions, including the lease arrangements, over several years, and at no point during this period was any objection raised alleging wilful default, diversion, siphoning of funds, or fraud;
- (ii) That the respondent Bank, having acquiesced to and acted upon these transactions for over a decade, cannot now, after a lapse of eleven years, be permitted to take a contrary and self-serving stand by branding the same transactions as fraudulent under the applicable Fraud Circular;
- (iii) As regards aforesaid allegation contained in paragraph 7(b) of the counter-affidavit dated 30.10.2023 too it was found that the investments made by MBSL in HPVL were funded through capital raised from private equity investors, and were at all times within the knowledge of the lender banks; and that the respondent Bank after the passage of several years is estopped from



alleging that such investments constitute an act of wilful default.

- (iv) That it was found that the investment in HPVL was a strategic business decision, being integral to MBSL's operations in the manufacture and supply of photovoltaic cells, a critical component in its solar cell assembly line, which were duly disclosed in the audited financial statements and balance sheets of MBSL, to which the lender banks, including the respondent Bank, had continuous access pursuant to the terms of loan sanctions from September 2007 onwards and all relevant information had been shared from time substantiated by via email dated 06.10.2008, whereby the respondent Bank had addressed a letter to MBSL noting that the balance sheet of MBSL reflected investments made in HPVL and the relevant details were duly furnished by MBSL through its email dated 07.10.2008;
- (v) That prior to MBSL's admission into the CDR mechanism, MBSL had submitted its Flash Report in the year 2012 to the consortium of lender banks, which *inter alia* disclosed the said investments in HPVL so much so that during the deliberations leading to the consideration of the CDR package, a Joint Lenders' Meeting was convened on



10.10.2012 and nothing objectionable was found, which fact is substantiated by letter dated 18.03.2013, whereby the restructuring package sanctioned for MBSL was detailed in Annexure-1 appended thereto. Under Clause 1.1(iii) of the said annexure, and it was expressly recorded by the lender banks that MBSL had made investments in its wholly-owned subsidiary, and it was specifically decided that such investments would be retained and that no proposal for their disposal was contemplated;

- (vi) That after taking cognizance of the investments made by MBSL in Helios Photovoltaic Limited, the lender banks classified MBSL as a Class-B borrower under the CDR Master Circular, a classification applicable to companies impacted by external factors, as opposed to Class-C, which pertains to cases involving diversion of funds;
- (vii) That the petitioner resigned from his position as Executive Director on 30.04.2012 and a Full Time Director w.e.f. 16.11.2012, and therefore, he cannot be held accountable for any investments, if any, made after the fiscal year 2011-12;
- (viii) That the Forensic Audit Report did not categorize the aforesaid investments as diversion of funds and rather the conclusion that was drawn was only to



the effect 'owing to the inadequacy of the documents explaining the rational, basis, and justification for the investment made in HPVL, question arise regarding necessity of such an investment'. In short insofar as allegations contained in paragraph 7(c) to 7(e) in the aforesaid counter affidavit dated 30.10.2023 are concerned, it is urged that the security deposit paid by MBSL to MBIL under the lease agreements cannot, by any stretch of reasoning, be categorized as diversion of funds, given that the same were refundable in nature. The pleading that the assertion that the deposits were 58.82 times the annual lease rental is factually incorrect since it was approximately 3.05 of the annual rental.

- (ix) That the MBSL in March, 2007 entered into an agreement with Applied Material, USA for procurement of thin solar module line; and that possessed 27.5 acres of land designated as Special Economic Zone, Greater Noida, Uttar Pradesh and MBIL developed requisite structure including buildings and manufacturing facilities at cost of 353 crores;
- (x) That subsequent to the passing of the judgment by this Court dated 25.10.2024, the petitioner along with other Directors besides the company MBSL



have since been discharged of all the offences on the same grounds by the learned CJM, Rouse Avenue Courts, New Delhi *vide* order dated 17.01.2025 in case titled as CBI V. M/s. Moser Baer Solar Ltd.¹².

24. At the outset, there is considerable weight in the submissions advanced by the learned counsel for the applicant/petitioner. To put it succinctly, the Coordinate Benches of this Court, in their decisions in W.P.(C) No. 4128 of 2023 and W.P.(C) No. 9491 of 2023, have dealt with allegations substantially similar to those raised by the respondent bank in the counter affidavit filed in the present matter. It is a matter of record that, upon conducting a detailed analysis of the undisputed documents, the Coordinate Benches found none of the grounds to be sustainable. In fact, in the second writ petition, W.P.(C) No. 9491 of 2023, the respondent-Punjab National Bank also sought to justify the declaration of the petitioner as a ‘wilful defaulter’ on similar grounds, which were again held to be unsustainable. Consequently, in both cases, this Court quashed the declarations of the petitioner as a ‘wilful defaulter’.

25. It is pertinent to mention that in the cited, W.P.(C) 4128/2023 titled as **Ratul Puri v. Bank of Baroda**¹³, this Court referred to Clause 3(a) of the Master Circular, which places an obligation on the Identification Committee to examine the evidence of ‘wilful default’, and clause 3(b), which stipulates that if the Identification Committee

¹² CBI/31/2022

¹³ 2024 SCC OnLine Del 1516



(c) of the Master Circular. As discussed above, the definition of “diversion of funds” and “siphoning of funds” in Clause 2.2.1 and Clause 2.2.2 of the Master Circular makes it explicitly clear that the event of “diversion of funds” or “siphoning of funds” can take place only when the “borrowed funds” are deployed or used for a purpose other than for which the loan was sanctioned. In other words, the Master Circular is not triggered unless the allegation of “diversion” or “siphoning” pertains to borrowed funds from the bank. A bank has no jurisdiction to invoke the Master Circular unless the allegations pertain to funds borrowed from the bank. The said provision also places an obligation on the bank to make the judgment about “diversion of funds” or “siphoning of funds” based on objective facts and circumstances of the case.

120. The question regarding the source of the funds which were invested by MBIL in its subsidiaries is answered by the lender banks including the respondent-Bank in their admittedly “*own document*” i.e., the FRS.

121. The FRS, is a document prepared by the lender banks in the year 2012 before finalisation of the CDR Scheme. Clause 1.3.2 of the FRS records that MBIL has made investments in its subsidiaries. The constraints in realising the said investments are also discussed. In Clause 1.6.1, the FRS noted the inability of MBIL to realise the investments in the subsidiaries as a reason for the financial hardships. In Clause 1.6.5, the lender banks noted the contents of the Flash Report submitted by MBIL, which had disclosed the investments in the subsidiaries. Most importantly, in Clause 5.1.2, the lender banks noted that one of the reasons for poor performance of MBIL was constraints in realising the investments in the subsidiaries. The lender banks noted that MBIL had chalked out a clear strategy around its core technological and commercial areas. Accordingly, MBIL made strategic investments in its subsidiaries over the years. The investments in the subsidiaries by the MBIL are funded by its “*substantial cash surplus*” generated by MBIL in earlier years of FY 2006 and FY 2008. Initially, at the time of investments, the expected profitability from these investments was substantial. No one expected the unprecedented disruptions. Clause 5.1.2 of the FRS reads as under:—

“5.1.2 Constrained ability to unlock value from investments in subsidiaries under present circumstances

- *The company had chalked out a clear-cut long term plan to strategically invest in the R&D activities and to develop businesses around its core technological and commercial focus areas. In-line with its vision, it began making*



strategic investments year after year. These investments had been fully funded from the substantial Cash Surpluses generated by the company in earlier years - from FY-06 onwards and partially from FCCB issuance in FY-08.

• *At the time of making these investments, the growth potential and expected profitability from its core businesses and these businesses were substantial - as were the access to capital for each of these businesses. No one had expected the unprecedented disruptions all these related businesses had come to face especially in FY-11.”*

122. Thus, the lender banks including the respondent-Bank, in their own internal document acknowledged that they were fully aware of the investments made by MBIL in its subsidiaries. The investments had substantial potential of high growth and profit. No one expected the unprecedented disruptions. These investments were made by MBIL from its substantial cash surpluses generated in earlier years of FY 2006 and FY 2008. It is, therefore, the lender banks’ own stand that the investments in the subsidiaries were made from the internal accruals/cash surpluses of MBIL. In other words, the investments were not made from the borrowed funds.

123. In this view of the matter, there cannot be any applicability of the Master Circular. As discussed above, the jurisdiction under the Master Circular can be invoked only in respect of borrowed funds. The lender banks’ own internal document of FRS admits the knowledge of investments from the inception, as also the source of such investments being the cash surpluses of MBIL from previous years. The issuance of show cause notice in respect of allegation no. 1, which does not pertain to borrowed funds, in itself is without jurisdiction.

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148. As discussed above, Clauses 2.1.3(b) and (c) read with Clauses 2.2.1 and 2.2.2 of the Master Circular, “diversion” and siphoning” can be triggered by a bank only in respect of the borrowed funds. The respondent-Bank has tried to justify its show cause notice and orders passed by the Identification Committee and Review Committee on the basis of the Forensic Audit Report.

149. However, a perusal of the Forensic Audit Report, specially Clause D(iv), reveals that the said Report has clarified that the source of funds of investments made in subsidiaries was not verified in the Forensic Audit Report as the same were made prior to the period of review. The relevant portion of Forensic Audit Report is reproduced as under:—



“iv. Please further note that source of funds of the investments made by the company in its subsidiaries, associates and joint ventures were not verified by us as these investments were made before our period of review”.

150. Thus, the Forensic Audit Report did not verify the source of funds which were invested in the subsidiaries. The respondent-Bank, could not have issued show cause notice to the petitioner for wilful default, without verifying the source of funds that were invested. Unless the funds that were invested were found to be borrowed funds, the respondent-Bank did not have jurisdiction to invoke the Master Circular. The very genesis of “*diversion*” or “*siphoning of*” funds is dependent on the funds being borrowed funds. The reliance placed by the respondent-Bank on the Forensic Audit Report is clearly misconceived. The Forensic Audit Report does not record any conclusion regarding diversion or siphoning of funds *qua* the petitioner. The reliance placed by the respondent-Bank on the Forensic Audit Report to issue show cause notice of wilful default to the petitioner is clearly misplaced.

27. This Court also examined the Consequences of admitting MBIL for CDR under the CDR Scheme by the lender’s banks including the respondent bank and it was observed as under:

151. Before parting, this Court deems it apposite to make certain observations regarding the scheme of the CDR Master Circular. The CDR Master Circular is equipped with several measures to ensure that cases involving frauds or diversion of funds with *mala fide* intent are not admitted for CDR.

152. These include provisions like Clause 6.3 read with paragraph no. 4 of Annexure III, which renders corporates indulging in fraud and malfeasance as ineligible for CDR. Further, CDR scheme provides for four Classes - A to D, out of which Categories C and D relate to cases of diversion of funds and the said categorisation has to be done by the lenders on their own.

153. The classification has a direct bearing on eligibility as also the conditions to be imposed upon the borrower. The lower the category, the more stringent the conditions to be imposed upon a borrower in accordance with paragraphs C and D of Annexure IV. Significantly, “*Before CDR Reference/Approval*”, Clause 3.3 of CDR Scheme expressly empowers banks to commission a Forensic



Audit “*wherever necessary and specially in cases of diversion of funds.*”

154. The aforesaid provisions in the CDR scheme lead to the conclusion that the categorization of a borrower in one of the categories between A and D has to be based on an objective satisfaction.

155. This Court is of the view that it is incumbent upon banks who are dealing with public funds and discharging a public duty to make appropriate enquiries as to whether a borrower is in genuine financial difficulty or whether there exists any event(s) of fraud and malfeasance. If the lender banks find fraud or malfeasance, the CDR-EG must either refuse CDR completely or impose such additional onerous conditions as provided in the CDR Scheme itself.

156. In the present case, the lender banks were aware of the investments made by MBIL in its subsidiaries. This fact is part of the documents leading to the finalization of the CDR scheme. The investments were treated as strategic with growth potential and expected profits. The investments were found to have been made from the cash surpluses of MBIL. The lender banks did not find these investments as diversion or siphoning of borrowed funds. The lender banks placed MBIL in Class-B of CDR Master Circular¹⁴ which cannot be assigned if there is diversion of funds. They found no occasion to order a forensic audit of MBIL either before finalization of CDR scheme or after its failure. The lender banks, therefore, never treated the investments in subsidiaries as an act of diversion or siphoning either during finalization of the CDR scheme or after its failure.”

28. In view of the aforesaid observations made on merits by the Coordinate Benches in the earlier writ petitions, reverting to the present matter, insofar as Ground 7(a) is concerned, it is pertinent to note that no such imputation is found in the FAR. Evidently, the restriction regarding the operation or opening of accounts of MBSL was imposed only after the approval of the CDR Scheme on

¹⁴ **Borrower Class ‘B’:**

Corporate/promoters affected by external factors and also having weak resources, inadequate vision, and not having support of professional management.



18.03.2013, which was subsequent to the exit of the applicant/petitioner from MBSL. It is also borne out from the record that no SCN was issued to the applicant/petitioner on the said ground. Therefore, the allegation of diversion or siphoning of funds cannot be attributed to the applicant/petitioner.

29. With respect to Ground 7(b) as disclosed in the counter affidavit, it is brought to the fore that MBSL invested Rs. 753.90 crores in HPVL, and not Rs. 696.51 crores, from funds raised through private equity; no diversion of borrowed funds is shown. Furthermore, the respondent Bank has not controverted the factual assertions, supported by documents, that MBSL created fixed assets worth Rs. 477.46 crores as against a corporate loan of Rs. 261.35 crores during the financial year 2009–10. It remains uncontroverted that the funds were utilized for the purposes for which they were sanctioned. Lastly, it is also undisputed that MBSL possessed fixed assets amounting to Rs. 941.53 crores as against the Bank's disbursal of Rs. 601.65 crores, and that MBSL had gross block assets worth Rs. 1,159.06 crores as on 31.03.2012.

30. In response to Ground 7(c), the learned counsel for the applicant/petitioner submitted that the allegation pertains to a leasing transaction between MBIL and its 100% subsidiary, MBSL. Taking this Court through the documents on record, including the rejoinder and supplementary affidavit, it has been pointed out that during the financial years 2008–09 and 2009–10, MBSL had established two manufacturing plants, one for thin film solar modules and another for crystalline silicon solar modules. It has been clearly demonstrated that



appears that the Auditors only questioned certain transactions because they were unable to verify the actual movement of goods due to the absence of certain transportation receipts. However, it was also found that the plants of MBSL and HPVL were located in the access area allotted to MBIL by the Greater Noida Industrial Development Authority, which were hardly 50 meters apart, and hence no lorries were deployed.

33. The allegation under Ground 7(e), as disclosed in the counter affidavit, again pertains to transactions between MBIL and its 100% subsidiary, MBSL. It remains uncontroverted from the pleadings and the documents placed on record by the applicant/petitioner that it was never the respondent Bank's case that the lease agreements in question were not acted upon. The mere expiry of lease agreements between a parent company and its subsidiary cannot, by itself, constitute sufficient evidence to assume or assert that the transaction was fraudulent. A perusal of the relevant documents, including the balance sheets for the corresponding financial years, reveals that lease transactions continued to be booked, thereby establishing that the transactions were genuine and remained operative. Significantly, this allegation did not even find mention in the SCN issued to the applicant/petitioner.

34. Lastly, the allegation under Ground 7(f) in the counter affidavit, that supplier advances and loans were extended by MBSL to VSEL to the tune of Rs. 25.60 crores as of 31.03.2012, and a further Rs. 26.97 crores as of 31.03.2015, with no adequate recovery steps taken prior to making provisions amounting to Rs. 26.24 crores, is also found to be



unsustainable. *Firstly*, no SCN was issued to the applicant/petitioner in respect of this allegation. Secondly, the case of the applicant/petitioner stands substantiated to the effect that VSEL was engaged in the business of solar products, including wafers used as raw material in the production of modules. As per the available records, MBSL was, in fact, liable to pay Rs. 7.2 crores to VSEL. The averment made by the applicant/petitioner that no amount was recoverable from VSEL and that no financial loss was caused to MBSL appears to be plausible and is not controverted by the respondent Bank.

35. Before finally drawing curtains on the present review petition, it is necessary to note that the learned counsel for the applicant/petitioner took this Court through the company's balance sheets for the financial years 2006–07 to 2011–12. These documents evidently demonstrate significant cash accruals in the form of credit bank balances and accounts receivable, which facilitated all transactions with related as well as third parties, including investments, sales, services, and lease rentals. Notably, the value of these accruals was substantially higher than the cumulative value of the transactions. Upon perusal of the balance sheets, this Court is of the view that the respondent Bank's plea, that the company utilized borrowed funds for these transactions and thereby diverted borrowed funds, lacks merit and fails on the face of the record.

36. The sum and substance of the aforementioned discussion is that the respondent bank was always aware of not only the investments but also the trading transactions. The allegation regarding MBSL's



investment in its subsidiary HPVL was evidently through private equity investments and not through funds borrowed from any bank. In fact, the lender banks, including the respondent, reviewed the investments at the time of the CDR of MBSL and found no act of fraud, misutilization, diversion, or siphoning of funds. The detailed discussion of the evidently undisputed documents by the Coordinate Bench, which this Court fully endorses, suggests that the lender banks, including the respondent Bank, found the investments to be strategic and attuned to the specific time when there was a change in technology in the international market.

37. In summary, the aforesaid discussion brings to the fore that insofar as the allegation 7(a) is concerned, the same has been conclusively rejected by this Court. The allegations 7(b) and (g) have not been found to be sustainable either. The allegations in paragraph 7(c) to (e) were also found to be untenable since evidently, the lender banks were aware of the lease agreements, yet they continued with the credit facilities and no act of fraud, misutilization of funds, diversion or siphoning of funds was found. At the cost of repetition, all actions were reviewed at the time of consideration of CDR of the MBSL. The same findings were given with respect to the allegation in paragraph 7(f).

38. In the peculiar facts and circumstances of the instant matter, the proposition of law that emerges is that once the aforementioned grounds, which clearly emanated from the Forensic Audit Report of M/s Hari Bhakti & Company LLP, *were found to be insufficient or unsustainable on merits* for declaring the petitioner's account as



'wilful defaulter', the same grounds cannot be re-agitated to lay the foundation for declaring the petitioner's account as 'fraud' in terms of Circulars 8.9.4¹⁵ and 8.95¹⁶ in the absence of additional independent material. No such additional independent material has been evidently pleaded and produced in the instant matter. The declaration of the account of a person or entity as “fraud” requires a greater degree of criminality. The bottom line is that once the very substratum of the imputations is held to be unsustainable for lesser civil consequences such as being labelled a 'wilful defaulter' under the RBI Master Guidelines, the same grounds or imputations cannot form the foundation for declaring a person's or entity's account as 'fraud', which requires a greater degree of proof to be established.

¹⁵ **8.9.4** The initial decision to classify any standard or NPA account as RFA or Fraud will be at the individual bank level and it would be the responsibility of this bank to report the RFA or Fraud status of the account on the CRILC platform so that other banks are alerted. In case it is decided at the individual bank level to classify the account as fraud straightaway at this stage itself, the bank shall then report the fraud to RBI within 21 days of detection and also report the case to CBI/Police, as is being done hitherto. Further within 15 days of RFA/Fraud classification, the bank which has red flagged the account or detected the fraud would ask the consortium leader or the largest lender under MBA to convene a meeting of the JLF to discuss the issue. The meeting of the JLF so requisitioned must be convened within 15 days of such a request being received. In case there is a broad agreement, the account should be classified as a fraud; else based on the majority rule of agreement amongst banks with at least 60% share in the total lending, the account should be red flagged by all the banks and subjected to a forensic audit commissioned or initiated by the consortium leader or the largest lender under MBA. All banks, as part of the consortium or multiple banking arrangement, shall share the costs and provide the necessary support for such an investigation.

¹⁶ **8.9.5** The forensic audit must be completed within a maximum period of three months from the date of the JLF meeting authorizing the audit. Within 15 days of the completion of the forensic audit, the JLF shall reconvene and decide on the status of the account, either by consensus or the majority rule as specified above. In case the decision is to classify the account as a fraud, the RFA status shall be changed to Fraud in all banks and reported to RBI and on the CRILC platform within a week of the said decision. Besides, within 30 days of the RBI reporting, the bank commissioning/ initiating the forensic audit should lodge a complaint with the CBI on behalf of all banks in the consortium/MBA. For this purpose, if the bank initiating the forensic audit is a private sector bank, the complaint shall be lodged with the CBI by the PSU bank with the largest exposure to the account in the consortium/MBA. If there is no PSU bank in the consortium/ MBA or it is a solo bank lending by a private sector bank/foreign bank, the private bank/foreign bank shall report



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39. In view of the aforesaid discussion, the present application is allowed and the earlier judgment dated 25.10.2024 passed by this Court in W.P.(C) 2765/2023 is hereby reviewed, and thus, apart from correcting the typographical mistakes as indicated in paragraph (17) above, the discussion on merits of the purported impugned action by the respondent Bank in declaration the account of the petitioner as 'fraud' *vide* Show Cause Notice dated 20.06.2019 is hereby held to be arbitrary, unfair, illegal and untenable in law. Resultantly, the present order shall also be read as a part and parcel of the previous judgment dated 25.10.2024.

40. The present review petition stands disposed of accordingly.

DHARMESH SHARMA, J.

MAY 26, 2025

Sadiq

to the Police as per extant instructions. This would be in addition to the complaint already lodged by the first bank which had detected the fraud and informed the consortium/MBA.