IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE :-

THE HON'BLE JUSTICE SHAMPA SARKAR

THE HON'BLE JUSTICE AJAY KUMAR GUPTA

M.A.T. No. 820 of 2026
IA No. CAN 1 of 2026

SREI Equipment finance Limited
vs.
BSCPL Infrastructure Limited & Ors.

For the Appellant	:	Mr. Ranjan Bachawat, Sr. Adv. Mr. Paritosh Sinha, Adv. Mr. Shounak Mukhopadhyay, Adv. Mr. Saubhik Chowdhury, Adv. Ms. Sayantani Banerjee, Adv.
For the Respondent No. 1	:	Mr. Suman Kumar Dutt, Adv. Mr. Rajarshi Dutta, Adv. Mr. S. Chaudhury, Adv. Ms. A.P. Barwalla, Adv.
Judgment reserved on	:	25.06.2026
Judgment pronounced on	:	14.07.2026
Judgment uploaded on	:	14.07.2026.

Shampa Sarkar, J.

1. The appeal arises out of a judgment and order dated April 8, 2026, passed in WPA 3211 of 2026. By the impugned order, the learned Single Judge held that although, the show cause notice issued to the respondents mentioned that certain transaction/events and circumstances were identified as wilful default by the Wilful Defaulter Identification Committee of the appellant, in its meeting dated

December 18, 2025, but the extract of the said meeting did not contain the specifications and details of the events and incidents which led the Committee to identify acts of wilful default. The contents of the notice dated February 6, 2025 and August 13, 2025 also did not per se indicate instances of wilful default. The circumstances which would go to show that the respondent Nos. 1 and 2, despite having sufficient means to pay back the dues, had wilfully disposed of movable and immovable assets which were in the nature of security for the credit facility availed of, were not pointed out. His Lordship was of the view that, those notices were issued only for the purpose of calling upon the respondents to pay up the amount due along with interest, failing which the secured creditor would be compelled to initiate proceedings under the provision of the Insolvency and Bankruptcy Code (IBC) and invoke arbitration. His Lordship took notice of the fact that arbitral proceedings were pending between the parties. Upon such findings, His Lordship set aside and quashed the show cause notice dated January 15, 2026. The minutes of the meeting of the Wilful Defaulter Identification Committee dated December 18, 2025, was also quashed, upon holding that the subject proceeding was not a case of wilful default.

2. Mr. Ranjan Kumar Bachawat, learned senior Advocate submitted that the respondents failed and neglected to make any payment despite being guarantors. The appellant had made enquiry and had come to learn that the respondents had been making payments and servicing instalments in respect of other credit facilities availed of from various other financial institutions, but did not care to pay back the amount claimed by the appellant. Thus, the proceeding for declaration of the respondent Nos. 1 and 2 as wilful defaulters had been initiated at the appropriate level of the appellant and the matter was placed before the Wilful Defaulter Identification Committee. On the basis of the notices dated February 6, 2025 and August 30, 2025 as also the CIBIL Report dated November 13, 2025, the Identification Committee of the appellant found sufficient material to issue a show cause notice to the respondent Nos. 1 and 2.

3. According to learned senior Advocate, the said show cause notice was issued on January 15, 2026. The extracts of the third meeting of the Wilful Default Identification Committee, indicating its decision that the CIBIL Reports and the two notices demonstrated events of wilful default, were annexed to the show cause notice. Those were sufficient materials for the proceeding to continue, upon the respondents filing their reply. According to Mr. Bachawat, the writ petition was not maintainable. The same was premature. The writ court had limited jurisdiction to intervene in matters which were exclusively within the domain of the Wilful Default Identification Committee and the Review Committee.

4. According to Mr. Bachawat, a show cause notice need not be in any particular format. A show cause notice was not akin to a petition that was filed before a court or a plaint. The events of default and the instances of unwillingness to pay the dues, despite having sufficient means to do so, need not be elaborately narrated in the notice. As per the 'definition of wilful default by guarantors' in the Master Circular, wilful default would be deemed to have occurred if the guarantors did not honour the guarantees when invoked by the lender, despite having sufficient means to make payment of the dues or if the guarantor had consciously disposed of immovable and movable assets which were provided to secure the credit facility, without the approval of the lender.

5. Thus, Mr. Bachawat's contention was that, the learned Single Judge erred in holding that the show cause notice should mandatorily mention that the respondents had failed and/or neglected to pay the dues, in spite of having sufficient means. The moment a show cause notice was issued to the respondents, calling upon them to show cause as to why they would not be declared as wilful defaulters, the presumption was that, the Identification Committee had come to a, prima facie, conclusion that incidents and events of wilful default had occurred and the respondents were required to answer to the show cause notice. It was further contended that a writ court, in exercise of power of judicial review, could not have interfered with the notice, thereby, setting aside the same and coming to a finding that the case was not one of wilful default.

6. According to Mr. Bachawat, pendency of proceedings before the learned arbitrator would not be a bar for initiation of proceedings for wilful default. It was further submitted that the learned Judge exceeded his jurisdiction in interfering with the show cause notice. The learned Judge was persuaded by the fact that the proceedings with regard to the defaulted amount and the claim of the appellant against the guarantors, were subject matters of arbitration and as such, the proceedings for wilful default were legally barred.

7. According to Mr. Bachawat, the order impugned was perverse and deserved to be set aside. The respondents raised factual objections before the writ court and the writ court entertained the same. Those ought to have been a part of the reply to be filed, in answer to the show-cause notice. Those facts could not have been appreciated by the learned single judge. Issuance of the show cause notice was the prerogative of the appellant and the the writ court could not prohibit the lender from initiating proceedings under the Master Circular for wilful default.

8. Reliance was placed on the Master Circular, in support of the contention that, if the guarantor refused to comply with the demand made by the NBFC, such guarantor could be considered for being classified as a wilful defaulter, by following the mechanism as set out in paragraphs 5 and 6 of the Master Circular. Reliance was placed on the decision of the learned Single Judge in ***Gouri Prasad Goenka Vs. State Bank of India*** reported in ***2021 SCC Online Cal 1942,*** to buttress the contention that, the Master Circular did not contemplate that, specifications and instances of wilful default, should be narrated in the show cause notice. Refusal of the guarantor to pay the amount claimed was sufficient ground for the initiation of the proceedings. The show cause notice would not be vitiated even if specific allegations to that effect were absent.

9. Further reliance was placed on the decision of ***Kaustuv Ray vs. IDBI Bank and Others,*** reported in ***2023 SCC OnLine Cal 656.*** It was held that a court should be reluctant to interfere with the show-cause notice. Only after the reply was filed to the show cause notice, the proceeding could either be dropped if the reply was satisfactory or if the reply was not satisfactory, in that case, on the basis of the reply, the proceedings would continue. Mr. Bachawat submitted that the proceedings initiated with the issuance of the show cause notice could not have been set aside by the learned Judge.

10. The show cause notice indicated a, prima facie, decision of the Identification Committee that, incidents of wilful default had occurred. If the reply of the respondents was satisfactory and contained adequate materials which negated the allegation of incidents of wilful default, in that event, the proceedings would automatically stand dropped. Assuming that the respondents were unsuccessful before the Identification Committee at the hearing, the Review Committee also could have reviewed the matter, and altered the decision of the Identification Committee, upon taking note of the materials on record and the contentions of the respondents. Thus, prayer was made before us, for setting aside the order impugned and to permit the proceeding to continue, as per the Master Circular.

11. Mr. Suman Dutt, learned Senior Advocate for the respondents submitted that a show cause notice could be interfered with by a writ court under very limited circumstances namely, lack of jurisdiction, patent illegality, vagueness, violation of principles of natural justice and mala fide. Mr. Dutt referred to the show cause notice and submitted that the same was not issued in terms of paragraph 5 of chapter 3 of the Master Circular, which dealt with treatment of wilful defaulters.

12. The mechanism for identification and classification of wilful defaulters had been stipulated in the Master Circular. They were not followed by the appellant. It was further submitted that, the issue with regard to default was already pending before the learned arbitrator, in various proceedings. The respondents were defending the claim of the appellant. They had a right to defend the money claim arising out of the subject loan agreements. According to respondents, nothing was due and payable. Thus, such claim was still to be adjudicated by the learned arbitrator. Unless a decision was taken by the arbitral tribunals, upon adjudication of the alleged claims and the arbitral tribunals arrived at a specific finding with regard to the amount due, the question of initiation of proceedings for wilful default did not arise. Mr. Dutt submitted that the effect of declaration of the respondents as 'wilful defaulters' in terms of the Master Circular, were serious and far reaching. The appellants were actually trying to put the respondents out of business and had adopted an arm twisting method for recovery of the disputed claim.

13. Reliance was placed on a decision of the Hon'ble Apex Court in ***Techno Prints Vs. Chhattisgarh Textbook Corporation & Anr.*** reported in ***2025 INSC 236,*** in support of the contention that strong, independent and overwhelming materials should be available with the NBFC before a proceeding for wilful default could be initiated.

14. Heard the learned advocate for the respective parties and considered the rival contention. A brief factual background is necessary. The respondent Nos. 1 and 2 filed a writ petition being WPA No. 3211 of 2026, challenging the show cause notice dated January 15, 2026 and the decision of the Identification Committee dated December 18, 2025. The respondents had been issued a show cause notice, asking them to show cause as to why, they should not be declared as wilful defaulters, under the Master Circular of the Reserve Bank of India.

15. The respondent No. 1 was one of the partners of a joint venture undertaking (JV) with T&C Constructions Ltd. The JV had taken various loans and availed of credit facilities from the appellant. The JV entered into loan agreements under which amounts had been disbursed in favour of the JV and a corporate guarantee had been extended by the respondent No. 1 in order to secure such loans disbursed to the JV.

16. The JV also availed of credit facilities under which sums were advanced to the said JV and personal guarantees had been extended by the respondent No. 2 in order to secure the sum lent and advanced, under the loan agreements.

17. According to the appellant, the JV defaulted in making payment of the amount due under the loan agreement.

18. Thus, the appellant claimed that the partners of the said JV were jointly and severally liable to the appellant in respect of the amount lent and advanced to the said JV. That apart, as per the guarantees extended by the respondent Nos. 1 and 2, the said respondents were jointly and severally liable for the loans taken by the said JV. T&C Constructions Ltd. was admitted into a Corporate Insolvency Resolution Process on or about February 14, 2019. Thereafter, in 2021, T&C was directed to undergo liquidation under the Insolvency and Bankruptcy Code, 2016. The appellant had filed a claim in respect of 50% of the amount due and payable by the said JV in the CIRP proceeding, i.e., in relation to C&C. The respondent No. 1 took over the projects of the JV, upon C&C being admitted into CIRP.

19. The appellant alleged that on February 6, 2025, the appellant invoked the corporate guarantee of the respondent No. 1 in relation to the two loans taken by the said JV. The details of such invocation, are stated below :-

> "Re: Financial Facility is extended to BSC-C&C JV
> Sub: Invocation of Corporate Guarantee

This has reference to the below mentioned financial facility/ies availed by BSC-C&C JV ("Borrower") which were inter alia secured by corporate guarantee of BSCPL Infrastructure Limited amongst other securities. To secure the below mentioned financial facility / ies availed by the Borrower, you have executed an irrevocable, unconditional Deed of Corporate Guarantee, (hereinafter referred to as the "Guarantee") in the below mentioned agreement(s) (hereinafter referred to as the "Agreement(s)").

Agreement No(s)	Corporate Debtor	Facility Amount (Rs.)	Date of Agreement(s)
123703	BSC-C&C JV	59,78,87,917	05-01-2017
123346	BSC-C&C JV	55,26,12,083	05-01-2017

In terms of the said Guarantee you have guaranteed that the Borrower will duly and regularly repay the Loan together with interest, compound interest, liquidated damages, and other charges whatsoever stipulated in the Agreement(s) and also in any instrument or instruments that may thereafter be executed by the Borrower in favour of Srei Equipment Finance Limited ("Srei").

The Borrower has now committed defaults in repayment of principal and payment of interest, compound interest, liquidated damages, and other charges, in respect of the loan availed from Srei.

Under the said Guarantee you have absolutely, irrevocably and unconditionally agreed that in the event of any default on the part of the Borrower in repayment of the Loan together with, interest, compound interest, liquidated damages and other charges due in respect of the Loan, you will forthwith upon our notifying such deault, (such notification being conclusive proof of the default), make payment to us of all amounts due to Srei under the Agreement(s)."

20. It was further claimed by the appellant that on August 13, 2025, a notice indicating the sums due and payable by the respondent No. 2 as the personal guarantor in respect of seven loan agreements, had been issued.

21. According to the appellant, the fact that the respondents were paying instalments and servicing loans in respect of credit facilities availed of from some other financial institutions, clearly indicated that the said respondents had the capacity to pay the amount due against the borrower, but had intentionally and wilfully neglected to do so.

22. The fact that the respondent No. 1 had written to the appellant on February 25, 2025, offering to settle the disputes between the parties pertaining to the loan transactions with the said JV, was a clear indication of acknowledgment of the liability to make payments in respect of the loans availed of by the said JV. Such offer clearly indicated that the respondents were conscious of the dues to be paid by them and had also offered to make payments. Unless the respondent No. 1 was in a position to pay back the amount, the respondent No. 1 would not have made the offer. The appellant claimed that, in spite of invocation of the guarantee, the respondents failed and neglected to make any payment. Thus, on the basis of the notices dated February 6, 2025 and August 30, 2025, as well as the CIBIL Report of the borrower, dated November 13, 2025, the Identification Committee of the appellant found sufficient materials to issue a show-cause notice to the respondents. The show-cause notice was issued on January 15, 2026. The extract of the minutes of the meeting of the Identification Committee was forwarded along with the CIBIL Report as annexures to the said show cause notice. According to the appellant, the incidents and events of default were a part of the show cause notice. The annexures to the show cause notice reflected those incidents and events of default. The CIBIL Report of the borrower indicated that other loans were serviced, but the subject loans were not repaid.

23. The show cause notice is quoted below:-

<table>
<tr><td colspan="2">1. M/s BSC & CC (JV)
Address: M. No. 8-2-502/1/A, JIVI Towers, Road No. 7, Banjara hills, Hyderabad, Hyderabad, Telengana, India, 500034</td></tr>
<tr><td>2. BSCPL Infrastructure Limited Partner of M/s BSC & CC (JV) Address: M. No. 8-2-502/1/A, JIVI Towers, Road No. 7, Banjara Hills, Hyderabad, Hyderabad, Telengana, India, 500034, Email id – cs@bscpl.net, PAN: AAACB8316K</td><td>3. Krishnaiah Bolhneni
Personal Guarantor of M/s BSC & CC (JV), Address:- H No. 8-2-546/2, Road No.-7, Banjara Hills, Hyderabad-500034, Telangana, PAN:- ACVPB8494N, DIN:- 00025094</td></tr>
</table>

Sub: Show Cause Notice for declaration of Wilful Defaulter as per RBI Guidelines

Sir/Madam,
SREI Equipment Finance Limited (hereinafter referred to as "SEFL"), had extended credit facilities to M/s BSC & CC (JV) ("Borrower").
Certain transactions/events/facts/circumstances were identified as amounting to wilful default by the Wilful Defaulter Identification Committee ("WDIC") in its meeting held on 18th December, 2025, and the WDIC has resolved to issue a Show Cause Notice ("SCN") to the Borrower and its Partners, Personal Guarantors and are hereby called upon for their submissions within 21 (twenty-one) days from the date of receipt of this SCN.
Accordingly, as the representative duly authorized by the WDIC, I am issuing this SCN along with extracts from the Resolution passed

in the meeting of WDIC held on 18th December, 2025 along with supporting documents as Annexure.
You are requested to provide your submissions within 21 (twenty-one) days from the receipt of this SCN.
Yours faithfully,

Sd-
SREI Equipment Finance Limited"

24. Admittedly, the show cause notice is a combined notice to the JV (borrower) and the respondent No. 1, partner of the JV/corporate guarantor and the respondent No. 2, i.e., the personal guarantor. The notice states that certain transaction, events, facts and circumstances were identified by the Committee to be instances of wilful default. In its meeting dated December 18, 2025, the Identification Committee had resolved to issue a show cause notice to the borrower, his partner and personal guarantor. The duly authorized representative of the Identification Committee, issued the show cause notice. The extracts of the minutes of the meeting in which such decision was taken by the Identification Committee was communicated. The extracts of the minutes of the meeting and the supporting documents, annexed to the show cause notice, were relied upon to demonstrate the instances and events of wilful default, as per the appellant. The extract of the minutes of the third meeting of the Identification Committee is quoted below:-

"On perusal of the proposal for identification of facts/circumstances of wilful default along with the related evidences, as stated below, and after due consideration of the same, the Wilful Defaulter Identification Committee ("WDIC") had decided to issue this show cause notice ("SCN") to the following persons and call for their submissions within 21 days from issuance of this Show Cause Notice.

Sl.	Name of the Person	Designation	DIN/PAN	From	To
1	BSCPL Infrastructure Ltd	Partner	AAACB8316K		-
2	Krishnaia Bollineni	Guarantor	ACVPB8494N DIN: 00025094		-

Reason of proposed wilful default	Facts/Circumstances	Documentary evidences
A. Misuse of Fund	Loans taken from other lenders are closed.	CIBIL Report dt. 13.11.2025.
B. Non-honouring of the guarantee by the Guarantor when invoked by the Lender	Invocation notice dt. 06.02.2025 to CG and dt. 13.08.2025 have been sent, but not honoured.	Copies of the Notices dt. 06.02.2025 & 13.08.2025.

The Committee Members hereby authorizes the official of Legal Department to issue this show cause notice to the concerned person(s) on behalf of the Committee. The Partners would be cited Reason A, and the Guarantors would be cited Reason B.

Sd-
SREI Equipment Finance Limited"

25. The documents discussed hereinabove were the foundational basis for issuing the show cause notice, which, according to the appellant indicates misuse of funds and failure of the guarantors to honour the guarantees despite invocation thereof by the lender. The facts supporting misuse of funds was that the loans of the borrower from other lenders were closed. The facts supporting the allegation against the guarantor that they had not honoured the guarantee were that, although invocation notices had been served, they were totally ignored. In the show cause notice, the allegation of misuse of funds was pointed towards the respondent No. 1/partner and the allegation of dishonour of the guarantee by the guarantor, was pointed at the respondent No. 2. The CIBIL Report which was relied upon to support the allegation of wilful default in respect of the partner, that is, the respondent No. 1 consists of almost 100 pages. The allegation was that, the loans of the other lenders had been closed. The report allegedly indicated incidents of misuse of funds and wilful default. In our view, even if the decision to issue the show cause notice was taken on the basis of the decision of the Identification Committee which arrived upon a, prima facie, finding that incidents and events of wilful default had occurred, the analysis of the CIBIL report, and the factors considered by the Committee while analyzing the report ought to have been stated in the show cause notice. The CIBIL Report was in respect of the borrower. Thus, the portions of the said report which applied to the respondent No. 1 and how the data demonstrated instances of wilful default by the respondent No. 1, should have been mentioned in the show cause notice. Secondly, the notices relied upon as invocation of the corporate guarantee and the personal guarantee, were issued upon the respondent No. 1 and the respondent No. 2, respectively, calling upon them to pay up the principal amount and the interest, within a particular date, failing which the appellant reserved the right to initiate proceedings under the Insolvency and Bankruptcy Code, 2016 and also take other necessary steps, including appointment of arbitrator. Mr. Bachawat contended that, under clause 7 of the Master Circular dealing with liability of a guarantor, the NBFC was entitled to proceed against the guarantor even without exhausting the remedies against the principal debtor. When an NBFC had made a claim against the guarantor on account of default made by the principal debtor, the liability of the guarantor was immediate. If the guarantor refused to comply with the demand made by the NBFC, the guarantor could be considered for classification as wilful defaulter, by following the mechanism as set out in Clause 5 and 6 of the Master Circular.

26. We are of the view that, the NBFC could proceed against the guarantor, irrespective of whether the NBFC had tried to exhaust other remedies available in law. The moment the guarantor refused to comply with the demand, the NBFC could consider classification of such guarantor as a wilful defaulter. In this case, one combined show cause notice was issued to the borrower(JV) and the respondents. The respondent No. 1 was the partner and corporate guarantor of the loan availed of by the JV and the respondent No. 2 was the personal guarantor. Reliance was placed on a 100 page CIBIL Report, without delineating which part of the report would indicate that the respondent No. 1 was responsible for misuse of funds. Unless such, prima facie, finding on the basis of the CIBIL report was provided in the show cause notice, it would be impossible for the respondent No. 1 to take steps by filing a meaningful reply and defend the proceedings. The situation was akin to finding a needle in a haystack. Secondly, the alleged notice of invocation dated February 6, 2025, was issued to the respondent No. 1 and not the respondent No. 2. The notice dated August 13 was issued to the respondent No. 2. It was a notice invoking arbitration under Section 21 of the Arbitration and Conciliation Act, 1996. The details of the claim were indicated and the appellant had nominated a sole arbitrator to adjudicate the dispute between the parties. The relevant portions of the said notice are quoted below:-

> "However, after making payment of only 9 installments and a part of 10 instalment in respect of Contract Nos. 179178, 179179, 179180, 179181 and 179182 and 10 monthly installments and the part of the 11 instalments in respect of the Contract Nos. 178448 and 179183 the said BSC C&C JV have failed and neglected to pay any further amount whatsoever to our client. Moreover, they have failed and neglected to adhere to the schedule of the said contracts which were part of the Master Facility Agreement in which time was the essence of the contract.
>
> The said BSC C&C JV have caused breach of the Master Facility Agreement and failed to clear the dues of our client, inspite of repeated reminders. The said Master Facility Agreement has also expired due to efflux of time. Inspite of having failed to honour the said Agreement and that the Master Facility Agreement has come to an end BSC C&C JV are still holding back the said equipment in their custody. As a result of such breach the default clause provided under the Master Facility Agreement has become operative.
>
> You are aware that in order to guarantee performance of agreement dated 1 July, 2019 entered into between our client abovenamed and BSC C&C JV you had executed a deed of

personal guarantee dated 1 July, 2019 guaranteeing due performance of the obligation of the said BSC C&C JV under the said agreement for repayment of the loan by paying monthly Installments.

After giving due credit of all sums paid by BSC C&C JV, as on 24th January, 2025 a sum of Rs. 181,66,49,616.09 (Rupees One Eighty One Crores Sixty Six Lacs Forty Nine Thousand Six Hundred Sixteen Point Zero Nine Paisa) only have become due and payable to our client, details of dues under each of the said contracts where of are also available in the sheets marked "B" (collectively) enclosed herewith. Thus, under the said contracts, the following amounts are due and payable by you.

PARTICULARS

Contract No.		Amount Due
178448	Rs.	8,50,10,241.17
179178	Rs.	8,56,79,781.30
179179	Rs.	9,35,90,952.13
179180	Rs.	8,67,73,158.49
179181	Rs.	49,64,60,294.73
179182	Rs.	51,58,95,038.94
179183	Rs.	45,32,40,139.33
Total amount outstanding as on 24th January, 2025	Rs.	181,66,48,616.09

R.N. Ghose & Associates Continuation Sheet
Advocates & Legal Consultants

Inasmuch as the sald BSC C&C JV failed to repay the amount of Rs.181,66,49,616.09/- in spite of demand, you as a guarantor are also liable to pay the same jointly and/or severally and we have been instructed by our client to call upon you and demand from you payment of the aforesaid sum of Rs. 181,66,49,616.09 only, together with further overdue interest from 25 deg January, 2025 until payment at the agreed rate provided under the said agreement, which we hereby do.

As per instructions from our client we had issued a notice to you dated 28th July, 2025 demanding payment of the aforesaid outstanding amount of Rs. 181,66,49,616.09 within 7 (seven) days from the date of receipt of the notice, falling which we have received instructions from our client to refer the matter to

> arbitration. The notice dated 28th July, 2025 was duly received by you.
>
> Since, you have failed and neglected to pay the aforesaid amount within the stipulated time of 7 (seven) days the arbitration clause in the said Personal Guarantee Agreement governed by the said Master Facility Agreement dated 1st July, 2019 has now become operative and enforceable due to the existence of the above dispute.
>
> We on behalf of our client now refer the matter in dispute to the Sole Arbitrator, Mr. Kaushik Banerjee, Advocate of "Nicco House", 2, Hare Street, Room No. 20, 6th Floor, Kolkata-700 001, in terms of the relevant arbitration clause contained in the said Personal Guarantee Agreement governed by the said Master Facility Agreement dated 1st July, 2019 without further reference to you. Needless to mention that you will be held liable for all costs and consequences thereof.
>
> Please also treat this as a notice under Section 21 of the Arbitration and Conciliation Act, 1996."

27. Thus, the facts relied upon in the notices cannot be taken as adequate compliance of the mechanism provided under clause 5 of the master circular. The NBFC was required to disclose all materials and information on the basis of which the show cause notice was issued. Reference to a 100-page CIBIL Report and the two notices, one for invocation of the guarantee and the other for invocation of the arbitral proceeding, in our opinion, are not sufficient compliance. The Identification Committee was required to examine the incidents of wilful default and only upon being satisfied that events of wilful default had occurred, the show cause with specific allegations and instances could have been issued. Moreover, the default to be categorized as 'wilful' must be intentional, deliberate, calculated and must meet the conditions set out under Clause 3 (XVIII)(B) of the

Master Circular. Specific examples and evidence of disposal of movable assets provided for securing the loan and failure to infuse equity despite having the ability to do so, ought to have been reflected in the show cause notice. The relevant definition in the Master Circular is quoted below:-

> "3. Definition
> Wilful Default:-
> (B) by a guarantor shall be deemed to have occurred if the guarantor does not honour the guarantee when invoked by the lender, despite having sufficient means to make payment of the dues or has disposed of immovable or movable assets provided for the purpose of securing the credit facility, without the approval of the lender or has failed in commitment to the lender to infuse equity despite having the ability to infuse the equity, although the lender has provided loans or certain concessions to the borrower based on this commitment."

28. Thus, annexing a series of documents with the show cause notice, which was issued jointly to the borrower as well as to the respondents, with an expectation that the respondents will try to decipher from those papers, the incident and event and or facts relating to wilful default, is rather absurd. The Identification Committee of the NBFC has to examine the evidence on record and arrive at a, prima facie, conclusion on the basis of such material, that there were incidents of wilful default. Such incidents, which led to the Committee's satisfaction that wilful default had occurred, should have been mentioned in the show cause notice. It is true that, the show cause notice need not be in any particular form and does not need to specifically mention that, although the respondents had the capacity to pay, they continued to ignore the demand. However, the events, incidents, facts and situations which led the Identification Committee to a, prima facie, finding that those materials disclosed wilful default, ought to have been specifically stated in the show cause notice. If those incidents, events etc. are not properly stated, it is impossible for the respondents to file an effective, meaningful and pointed reply, by dealing with the, prima facie, findings of wilful default. We agree with Mr. Bachawat to the extent that the pendency of the arbitral proceeding could not have been one of the reasons for the learned Single Judge to hold that this was not a case of wilful default. Such reason could been a defence and could have been raised at the appropriate stage and in the reply. Secondly, we also hold that pendency of the arbitration proceeding could not debar the issuance of a show cause notice. Sub-Clause (xix) of Clause 3 of Chapter l defines Wilful Defaulter to mean a borrower or a guarantor. Thus, such observations of the learned Single Judge are set aside. The provision is quoted below :-

> "Chapter l – Preliminary
> 3. **Definitions**
> (xix) "wilful defaulter" shall mean:
> (a) A borrower or a guarantor who has committed wilful default and the outstanding amount is ₹25 lakh and above, or as may be notified by Reserve Bank of India from time to time, and
> (b) Where the borrower or a guarantor committing the wilful default is a company, its promoters and the director(s), subject to the provisions of Paragraph 5(14), or
> (c) In case of an entity (other than a company), persons who are in charge and responsible for the management of the affairs of the entity."

29. However, we also hold that His Lordship has not committed any error in coming to a conclusion that the show cause notice was vague and did not mention the incidents of wilful default. The materials ought to have been examined in further detail by the Identification Committee and specific allegations of wilful default ought to have been provided in the show cause notice, so that the respondents got a fair opportunity to respond. Vague and omnibus allegation, vitiates the notice. The acts and omissions which constitute wilful default ought to have been mentioned with relevant dates, nature of the transaction and events. Inability or failure to pay must have been intentional, and conscious. Those incidents ought to have been mentioned in the notice. Materials should have been disclosed to enable the notices to understand and appreciate the exact nature of wilful default alleged against them. Failure to provide adequate particulars, amounts to violation of the principles of natural justice.

30. Under such circumstances, we uphold the decision of His Lordship to the extent of quashing the show cause notice and the extract of meeting of the Identification Committee which were part of the Annexure to the show cause notice, on the ground of vagueness and lacking in material particulars. We do not agree with His Lordship that, the case was not one of wilful default. Such finding is premature and beyond the powers of the writ court, at the stage of a challenge to the show cause notice. We set aside the finding. The Identification Committee will be at liberty to consider the materials on record and arrive at its finding. If, the Committee is, prima facie, satisfied that the records indicate events of wilful default, a fresh show cause notice will be issued. The provision of clause 5 of the Master Circular which is quoted below, shall be complied with:-

> "**5. Mechanism for Identification and Classification of Wilful Defaulters**
>
> (1) A NBFC shall identify and classify a person as a 'wilful defaulter' by following the procedure enumerated in these Directions. The identification of the wilful 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.
>
> (2) The default to be categorised as wilful must be intentional, deliberate, calculated and meeting the conditions set out in paragraph 3 (1) (xviii) above.
>
> (3) The evidence of wilful default shall be examined by an Identification Committee.
>
> (4) If the Identification Committee is satisfied that an event of wilful default has occurred, it shall issue a show-cause notice to borrower / guarantor / promoter / director / persons who are in charge and responsible for the management of the affairs of the entity, and call for the submissions from them within 21 days of issuance of show cause notice. The NBFC shall disclose to them all materials and information on which show cause notice is based. Explanation: Director (s) / persons who are in charge and responsible for the management of the affairs of the entity means who were associated with the company / entity at the time when the acts of omission or commission by the company / entity led to the default.
>
> (5) After considering the submissions and where satisfied, the Identification Committee shall make a proposal to the Review Committee for classification as a wilful defaulter by explaining the reasons in writing. Explanation: If the Identification Committee concludes that the borrower / guarantor / promoter / director / persons who are in charge and responsible for the management of the affairs of the entity, do not qualify for classification as a wilful defaulter, such cases need not be referred to the Review Committee.
>
> (6) The borrower / guarantor / promoter / director / persons who are in charge and responsible for the management of the affairs of the entity shall thereafter be suitably advised about the proposal to classify them as wilful defaulter along with the reasons therefor.

(7) An opportunity shall be provided to borrower / guarantor / promoter / director / persons who are in charge and responsible for the management of the affairs of the entity for making a written representation to Review Committee within 15 days of such a proposal from the Identification Committee.
(8) The proposal of the Identification Committee along with the written representation received shall be considered by the Review Committee.
(9) The Review Committee shall provide an opportunity for a personal hearing also to the borrower / guarantor / promoter / director / persons who are in charge and responsible for the management of the affairs of the entity. However, if the opportunity is not availed or if the personal hearing is not attended by the borrower / guarantor / promoter / director / persons who are in charge and responsible for the management of the affairs of the entity, the Review Committee shall, after assessing the facts or material on record, including written representation, if any, consider the proposal of the Identification Committee and take a decision.
(10) As the above classification process is an in-house proceeding, the borrower / guarantor / promoter / director / persons in charge and responsible for the management of affairs shall not have the right to be represented by a lawyer.
(11) The Review Committee shall pass a reasoned order and the same shall be communicated to the wilful defaulter.
(12) The designated official shall issue the show cause notice and serve written order on behalf of the Identification Committee and Review Committee respectively.
(13) The show-cause notice and the order served by the designated official shall clearly state that this has the approval of the competent authority, i.e., Identification/ Review Committee and must identify its members.
(14) A director other than whole-time director, including an independent director / nominee director, shall not be considered as wilful defaulter unless it is conclusively established that: (i) the wilful default by the borrower or the guarantor has taken place with their consent or connivance or (ii) they were aware of the fact of wilful default by the borrower or the guarantor, as revealed from the proceedings recorded in the minutes of the meeting of the Board or a Committee of the Board, but have not recorded their objections to the same.
(15) The name of a non-whole-time director / independent director / nominee director who has been classified as a wilful defaulter shall be reported in Annex II indicating that they are a non-whole-time director / independent director / nominee director."

31. With the above observations and modification of the order impugned, the appeal and application are disposed of.

32. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the relevant parties upon fulfilment of requisite formalities.

(Shampa Sarkar J.)

I agree.

(Ajay Kumar Gupta J.)