IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3671 OF 2023

Mr.Milind Patel
13-A Vaibhav, 80 Bhulabhai Desai Road,
Next to American Consulate,
Cumballa Hill, Mumbai 400 026.
]... Petitioner

Versus

1. Union Bank of India
On behalf of its Wilful Defaulter's
Identification Committee and Wilful Defaulter's Review Committee, Union Bank, 239 Vidhan Bhavan Marg, Nariman Point,
Mumbai 400 021.

2. Reserve Bank of India
Constituted under the Reserve Bank of India Act, 1934,
having its Mumbai headquarters at
Main Building, Shahid Bhagat Singh Marg,
Mumbai 400 001.

3. Trans Union CIBIL Limited
(formerly known as Credit Information Bureau (India) Limited)
having its office at One World Centre, Tower 2A, 19th Floor, Senapati Bapat Marg, Elphinstone Road, Mumbai 400 013.

4. Experian Credit Information Company of India Private Limited
having its office at 5th Floor, East Wing, Tower 3, Equinox Business Park, L.B.S. Marg,
Kurla (W), Mumbai 400 070.

5. Equifax Credit Information Services Private Limited,

having its office at Unit No.931, 3rd Floor, Building No.9, Solitaire Corporate Park, Andheri Ghatkopar Link Road, Andheri East, Mumbai 400 093.

6. CRIF High Mark Information Services Private Limited, having its office at B-04, 05, 06, 4th Floor, Art Guild Home, Phoenix Market City, L.B.S. Marg, Kurla (W), Mumbai 400 070.

...Respondents

Mr.Rohaan Cama, a/w Pheroze F. Mehta, i/b Dastur Kalambi & Associates, *Advocates for Petitioner.*

Mr. Jamshed Ansari, *Advocate for Respondent No.1.*

Mr. Prasad Shenoy a/w Vijay Salokhe i/b BLAC Co ., *Advocate for Respondent No. 2 (RBI).*

Mr. V. Mannadiar a/w Dhannya Prasad i/b V. Mannadiar & Co., *Advocate for Respondent No. 3.*

Ms.Garima Singh i/b MLS Vani & Associates, *Advocates for Respondent Nos.4 & 5.*

Mr.Mohit Sahani, a/w. Mr. Meiron Damania, i/b Pamela Dalal, *Advocates for Respondent No. 6.*

Mr.Vikas Srivastava, *Chief Manager and* ***Mr. Man Mohan Sharma,*** Senior Manager, *officials of the Union Bank of India, Respondent No. 1.*

CORAM : B.P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.

DATE : MARCH 4, 2024

ORAL JUDGEMENT: (Per, Somasekhar Sundaresan J.)

1. Rule. By consent, rule is made returnable forthwith, and the

writ petition is taken up for final hearing and disposal.

Show Cause Notice and Context:

2. This Petition seeks various declaratory reliefs whereby adherence to principles of natural justice, including provision of inspection of relevant material, is sought to be read into the due process stipulated by the Respondent No. 2, the Reserve Bank of India ("***RBI***"), in connection with declaration of bodies corporate, their promoters and directors, as "wilful defaulters".

3. The Petitioner is a former Joint Managing Director of IL&FS Financial Services Limited ("***IFIN***"), a wholly-owned subsidiary of Infrastructure Leasing & Financial Services Limited ("***ILFS***"). The Petitioner has worked with ILFS since June 1993, except for a brief period between February 2003 and August 2005. The Petitioner was eventually designated as a Joint Managing Director of IFIN with effect from 1st April 2014. The Petitioner ceased to be in the services of IFIN with effect from 31st March 2018. The Petitioner's role as a "whole time director" of IFIN is up for consideration by Respondent No. 1, Union Bank of India ("***Union Bank***") in proceedings to declare IFIN, and consequently the Petitioner, as wilful defaulters.

4. IFIN and the Petitioner were served with a common Show Cause Notice dated 5th July 2022 ("***SCN***") by Union Bank, which had sanctioned credit limits aggregating to Rs.175 Crores to IFIN. The SCN stated that Union Bank had formed a *prima facie* view that IFIN and the Petitioner deserved to be declared as wilful defaulters in connection with the facilities sanctioned to IFIN. The SCN sets out nine broad heads of reasons to allege diversion and siphoning of funds by IFIN in the context of default by IFIN in servicing the indebtedness owed to Union Bank. Some of the heads of reasons were generic in nature, even while other heads of reasons made reference to specific amounts involved, and specific number of instances of allegedly deviant conduct by IFIN. The SCN does not set out any detail of the Petitioner's individual involvement in the nine heads of reasons, except for identification of the Petitioner as a noticee in his capacity as a "whole time director". No other whole time director or promoter is a noticee in the SCN.

Master Circular on Wilful Default:

5. The process of declaring any body corporate as a wilful defaulter and consequently, any person in charge of or responsible to the body corporate as a wilful defaulter, is governed by the RBI's Master Circular on Wilful Defaulters dated 1st July, 2015

("***Master Circular***"). Paragraph 3 of the Master Circular sets out the *Mechanism for Identification of a Wilful Defaulter*. Paragraph 2.5 sets out the "*Penal Measures*" that would follow once a person is identified as a wilful defaulter. The term "wilful default" itself is defined in Paragraph 2.1.3 of the Master Circular.

6. In the interest of brevity, each of these paragraphs from the Master Circular is not being reproduced, but the salient features of these paragraphs may be summarised thus:

a) Wilful default by a borrower would be deemed to have occurred[1] if a borrower defaults in paying the bank or financial institution despite having capacity to honour the payment obligations. Such wilful default will also be deemed to have occurred if the borrower does not utilise the monies raised from the lender for the designated purposes, and instead diverts the funds towards other purposes, or if the borrower siphons out the funds borrowed;

b) To declare a person as a wilful defaulter, "*the evidence of wilful default*"[2], on the part of the borrower and its whole-time Director "*at the relevant time*" should be

[1] Paragraph 2.1.3 of the Master Circular
[2] Paragraph 3(a) of the Master Circular

examined by a Committee headed by an Executive Director of the bank along with two other Senior Officers in the rank of General Manager or Deputy General Manager ("***Identification Committee***");

c) If such Identification Committee concludes that an event of wilful default has occurred, a show cause notice must be issued to the borrower and its relevant whole-time directors and call for an explanation. After considering the submissions in reply, and providing an opportunity of being heard (should the Identification Committee feel such an opportunity is necessary)[3], a reasoned order recording the wilful default must be issued; and

d) The aforesaid reasoned order is not a final order, but it is a draft order that is subjected to review by another Committee headed by the Chairman or the Chairman and Managing Director or the CEO of the bank or financial institution, along with two *independent directors* or *non-executive directors* ("***Review Committee***")[4]. It is only upon review of the Identification Committee's order and its confirmation by such Review Committee, that the draft

[3] Paragraph 3(b) of the Master Circular
[4] Paragraph 3(c) of the Master Circular

order would become final.

7. Once a final order is passed, multiple grave and serious "penal"[5] consequences (it is the Master Circular that terms the consequences to be "penal" in character) follow for the persons identified as wilful defaulters. In a nutshell, the wilful defaulters are ostracised from access to the financial sector. No additional facilities can be granted to such a person by any bank or financial institution. Bodies corporate declared to be wilful defaulters, and their promoters and directors, would be debarred from access to institutional finance from scheduled commercial banks, financial institutions and non-banking financial companies for a period of five years after the date on which their names are eventually removed from the list of wilful defaulters. So also, wherever warranted, civil recovery proceedings and criminal proceedings are to be initiated against such persons. We are not setting out other implications under other legislations that fasten on to wilful defaulters once such a declaration is made, and are restricting ourselves to the consequences set out in the Master Circular.

8. The gravity and import of the aforesaid salient features have been underlined and cautioned by the RBI, inasmuch as the Master Circular itself explicitly contains, the following note of

[5] Paragraph 2.5 of the Master Circular

caution.

> *"It would be **imperative** on the part of the banks and FIs **to put in place a transparent mechanism for the entire process** so that the **penal provisions are not misused** and the **scope of such discretionary powers are kept to the barest minimum**. It should also be ensured that a solitary or isolated instance is not made the basis for imposing the penal action."*
>
> ***[Emphasis Supplied]***

Process Adopted by Union Bank's Committees:

9. It is a matter of record that Union Bank did not enclose with the SCN any of the material or records based on which the allegations were levelled. Therefore, *vide* a letter dated 12th July, 2022, the Petitioner sought a copy of the material available with Union Bank, and on which it based the SCN. The Petitioner also made submissions on the scope of his responsibilities on IFIN to submit that since March 2014, his role fundamentally changed from overseeing lending business to overseeing equity investments and advisory operations. The Petitioner did not get a response to this request, but on 25th July, 2022, Union Bank issued to the Petitioner a hearing notice giving him an opportunity of being heard, scheduling such hearing for 5th August 2022 by video conferencing. On 31st July, 2022, the Petitioner reiterated his request for the underlying documents, information and other material, in order to effectively deal with the allegations contained

in the SCN, without any response.

10. On 5th August, 2022, the Petitioner participated in a personal hearing, and on 15th August, 2022, filed his written submissions pursuant to the personal hearing. In these submissions, the Petitioner yet again requested access to essential documents based on which the SCN came to be issued. The Petitioner also made other submissions to the extent he was able to, with the documents and information available with him. His written submissions ran into 46 pages with various annexures from annual reports and other material in the Petitioner's possession.

11. Thereafter, the Petitioner states that he heard from Union Bank, nearly seven months later. On 28th February, 2023, Union Bank issued the final order passed by the Review Committee, essentially reproducing the contents of the SCN purporting to confirm that the Petitioner has been identified as a wilful defaulter. The Review Committee's order asserted that the Identification Committee had passed an order at its meeting held on 5th August, 2022 and that such order had been conveyed to the Petitioner on 8th September, 2022. In other words, according to Union Bank, on the same day and right after conducting the

personal hearing on 5th August, 2022, the Identification Committee forthwith passed its order. That would mean that the detailed written submissions made on 15th August, 2022 (ten days later), were not and could not have been considered by the Identification Committee. According to the Petitioner, such draft order of the Identification Committee was not communicated to the Petitioner, and that he directly received the final order from Union Bank on ***27th October, 2023.***

12. It is the Petitioner's case that he had never been, and till date has not been, served with a copy of the draft order prepared by the Identification Committee, which Union Bank claims to have conveyed on 8th September, 2022. From the record before us, we find that Union Bank has not brought anything on record to substantiate its assertion that is contested by the Petitioner. Be that as it may, the final order of the Review Committee does not even purport to deal with the submissions of the Petitioner made on 15th August, 2022. Assuming for the sake of argument that the draft order of the Identification Committee had indeed been served on the Petitioner, inexplicably, there is not even a whisper of the contentions of the Petitioner recorded in the final order, much less any analysis of such submissions.

13. Be that as it may, *vide* a letter dated 2nd November, 2023, the Petitioner protested non-receipt of the Identification Committee's draft order, and asserted that the Review Committee's final order was a product of violation of the inherent safeguards contained in the Master Circular, and that in any case, basic principles of natural justice had been violated. The Petitioner, therefore, sought rescission of the Review Committee's order, and sought an opportunity of personal hearing before the Review Committee, after being served with draft order of the Identification Committee. There is no response from Union Bank to these requests from the Petitioner.

14. It is against the aforesaid factual backdrop that the Petitioner has filed this writ petition seeking intervention from a constitutional court *inter alia* by way of a declaration that all documents referred to and relied upon in the SCN ought to be provided, and, seeking the quashing of the final order of the Review Committee.

Findings and Analysis:

15. We are not getting into the merits of whether IFIN, and thereby the Petitioner are guilty of committing wilful defaults. What is noteworthy is that the RBI itself had expressed a clear

policy view that it was arming banks and financial institutions with serious powers to inflict the drastic civil consequences on borrowers (the RBI terms these as "penal"). Banks are essentially commercial entities without quasi-judicial expertise or experience. Therefore, the RBI took care to stipulate that it would be "***imperative***" for banks to put in place a "***transparent mechanism***" so that the "***penal***" provisions are not mis-used and the scope of "***discretionary powers***" are kept to the "***barest minimum***". In fact, the RBI has mandated that evidence of wilful default must be examined by the bank. Evidence of the default can only come from material relevant to arriving at a finding on whether there has been wilful default and the role of individuals accused of having been instrumental in committing such wilful default.

16. The very "imperative" cast in the Master Circular of ensuring a "transparent mechanism" would entail being transparent with a noticee with all relevant facts that would form the basis of a determination of whether there has been a wilful default. The discretion conferred on these commercial banking entities to inflict penal consequences was meant to be kept to the bare minimum, which only underlines that the exercise of discretion has to be reasonable and not arbitrary. The absence of transparency with the reasons would render the exercise of

discretion to be arbitrary. In this light, various petitions have been dealt with by writ courts including the Hon'ble Supreme Court of India and multiple benches of this very High Court, in connection with declaration of borrowers as wilful defaulters. However, for purposes of these proceedings, and in the interest of brevity, we highlight just a few of them.

17. In *State Bank of India Vs. Jah Developers Private Limited and Others([2019] 6 SCC 787)* ***("Jah Developers")*** the need for the due process in the context of the Master Circular was analysed by the Hon'ble Supreme Court. After noting earlier judgments of the Hon'ble Supreme Court in connection with the Master Circular, the Court went on to declare the following[6]:

> *"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***

[6] In Paragraph 24 of the judgement

> ***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 29-A 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 Para 3 of the Master Circular dated 1-7-2013 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 Para 3(b) of the Revised Circular dated 1-7-2015, 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 1-7-2013 itself considered such steps to be reasonable, we incorporate all these steps into the Revised Circular dated 1-7-2015"*
>
> ***[Emphasis Supplied]***

18. The decision in ***Jah Developers*** was rendered on 8th May, 2019, i.e., well before the SCN issued on 5th July, 2022. Therefore, as a matter of declared law, it was an imperative that the order, whether passed by the Identification Committee or by the Review Committee, must necessarily be a reasoned order. The draft order must be reasoned, and it must be served upon the noticee, who

may then make submissions on the reasoning arrived at by the Identification Committee. It would follow that the Review Committee must deal with such submissions and must, with reasons, deal with them, accepting or rejecting them to arrive at the final findings.

19. In the context of the Master Circular, a Division Bench of this Court in the case of *Kanchan Motors and Others Vs. Bank of India & Ors. (2018 SCC OnLine Bom 1761)* (***Kanchan Motors***)[7] has articulated the need for clarity in the SCN and the importance of providing reasoned orders at both stages, namely the draft order by the Identification Committee and the final order by the Review Committee. Non-speaking orders have been frowned upon and orders which did not comply with such requirements were set aside.

20. Likewise, in the case of *Narendra Seoomal Sabnani & Others Vs. State Bank of India & Others (2021 SCC OnLine Bom.4604)* (***Narendra Seoomal***)[8], another Division Bench of this Court has made it clear that the penal measures being quite substantial and severe, the principles of natural justice and fair play with recorded reasons would be an imperative. Here too, this

[7] Paragraphs 14 to 21 thereof
[8] Paragraphs 12 to 25

Court set aside the non-speaking orders considering that the orders in question were not reasoned orders.

21. We have reviewed the final order of the Review Committee, which is the order impugned in this writ petition, which on the face of it, would show that the submissions of the Petitioner (although made to the Identification Committee after the personal hearing) have not even been recorded, much less, been dealt with. Seeking to resist the writ petition, Union Bank has turned on its head, the imperative requirement of having a transparent mechanism as mandated in the Master Circular. The affidavit asserts that the Master Circular does not provide for giving any document to the person who is proposed to be declared as a wilful defaulter. The affidavit-in-reply dated 21st February, 2024 asserts the following :-

> *"9. ...I say* ***the circular dated 1st July 2015 does not provide for giving any documents*** *to the person who is proposed to be declared as a willful defaulter.* ***It is for the person who is proposed to be declared as a willful defaulter to submit all the relevant documents to prove his innocence****. I say that the present case after issuance of show cause , notice dated 5th July 2022, the Petitioner has submitted his response dated 12th July 2022, 31st July 2022 and 15th August 2022. He was also given opportunity to attend personal hearing which has taken place on 5th August 2022. Thus, the grievance of denial of natural justice is misplaced.*

> *10. .....the Circular dated 1st July 2022 does not provide that the document had to be supplied by the Bank. **It is for the Petitioner to submit documents to support his case**.*
>
> *11. .....At the cost of repetition, I say and submit that the **Petitioner was not entitled to be provided with the documents by the Bank**. I say that the said allegation of making out the case of willful defaulter is clearly spelt out in the show cause notice dated 5th July 2022. The Petitioner was also afforded opportunity of a personal hearing on 5th August 2022. **Thus, the allegation that the Petitioner was not provided with the documents and not given an opportunity to prove his case is false and bogus**.*
>
> *19 .....**I say and submit that there is no provision in the. Master Circular dated 1st July 2015 that along with show cause notice, documents has to be provided to the borrower**. I say that the **demand of the Petitioner is something which is utterly unreasonable** and **beyond the scope of Master Circular** dated 1st July 2015."*
>
> *[**Emphasis Supplied**]*

22. In other words, the Union Bank is firmly of the view that it is not obligated to provide any material to prove its allegations and that the onus is on the Petitioner to prove his innocence. Therefore, the stance of Union Bank is in conflict with first principles of the rule of law in India. Put differently, once a bank has accused someone of being a wilful defaulter (without providing supporting material), the person accused has to shoulder the onus and burden of proving his innocence. The

affidavit in reply makes no bones about the Union Bank's belief that no underlying material needs to be disclosed to any noticee under the Master Circular. The Review Committee's final order is a near-verbatim replication of the SCN. Even if the Identification Committee formulated the draft order within hours of the hearing on 5th August, 2022, as has been asserted, at the least, it was imperative for the Review Committee to consider the detailed written submissions that came to be made by the Petitioner on 15th August, 2022. There cannot be a concept more alien to the constitutional protections available under the rule of law in India. The aforesaid stance flies in the teeth of the "imperative" requirements of transparency stipulated by the RBI in the Master Circular.

23. It is now trite law that in proceedings that can inflict serious civil consequences on any citizen, the noticee should be able to appreciate the case made out against him so that he may deal with the allegations to the best of his ability. The only means of doing so is to provide detailed proper notice of the reasons for having formed a *prima facie* view when calling upon the noticee to show cause why such *prima facie* view must not translate into a final view. Such an approach would enable the noticee to understand in a cogent manner the case that he is supposed to meet.

Takano – the law on inspection for natural justice:

24. It is now well settled that due compliance with principles of natural justice must essentially entail compliance with the obligation to provide access to the material on which the allegations are based. In the case of *T.Takano Vs Securities and Exchange Board of India & Anr. [(2022) 8 SCC 162]* (**Takano**), after considering the law declared on access to the material underlying the allegations, across various types of enforcement proceedings under various legislations, the Hon'ble Supreme Court pithily summarized the relevance of disclosure of information and record in the following words:

> *"C.2. Duty to disclose investigation material*
> *27. While the respondents have submitted that only materials that have been relied on by the Board need to be disclosed, the appellant has contended that all relevant materials need to be disclosed. While trying to answer this issue, we are faced with a multitude of other equally important issues. These issues, all paramount in shaping the jurisprudence surrounding the principles of access to justice and transparency, range from identifying the purpose and extent of disclosure required, to balancing the conflicting claims of access to justice and grounds of public interest such as privacy, confidentiality and market interest.*
>
> *28. An identification of the purpose of disclosure would lead us closer to identifying the extent of required disclosure. There are three key purposes that disclosure of information serves:*

28.1. ***Reliability****: The possession of information by both the parties* ***can aid the courts in determining the truth of the contentions****. The* ***role of the court is not restricted to interpreting the provisions of law but also determining the veracity and truth of the allegations*** *made before it. The court would be able to perform this function accurately* ***only if both parties have access to information and possess the opportunity to address arguments and counter-arguments related to the information****.*

28.2. ***Fair trial****: Since a* ***verdict of the Court has far-reaching repercussions on the life and liberty*** *of an individual, it is* ***only fair that there is a legitimate expectation that the parties are provided all the aid*** *in order for them* ***to effectively participate in the proceedings****.*

28.3. ***Transparency and accountability****: The* ***investigative agencies and the judicial institution are held accountable through transparency and not opaqueness of proceedings****. Opaqueness furthers a* ***culture of prejudice, bias, and impunity—principles that are antithetical to transparency****. It is of utmost importance that* ***in a country grounded in the Rule of Law, the institutions adopt those procedures that further the democratic principles of transparency and accountability****. The principles of* ***fairness and transparency of adjudicatory proceedings are the cornerstones of the principle of open justice****. This is the* ***reason why*** *an adjudicatory authority* ***is required to record its reasons for every judgment or order*** *it passes. However, the* ***duty to be transparent in the adjudicatory process does not begin and end at providing a reasoned order. Keeping a party bereft of the information that influenced the decision of an authority undertaking an adjudicatory function also undermines the transparency*** *of the judicial process. It* ***denies the party concerned and the public at large the ability to effectively scrutinise the decisions of the authority*** *since it create an* ***information asymmetry****.*

29. ***The purpose of disclosure of information is not merely***

> ***individualistic, that is to prevent errors in the verdict but is also towards fulfilling the larger institutional purpose of fair trial and transparency***. *Since the purpose of disclosure of information targets both the outcome (reliability) and the process (fair trial and transparency),* ***it would be insufficient if only the material relied on is disclosed***. *Such a rule of disclosure, only holds nexus to the outcome and not the process.* ***Therefore, as a default rule, all relevant material must be disclosed***.
>
> [***Emphasis Supplied***]

25. A plain reading of ***Takano*** would throw light on how the Master Circular must be construed. The Master Circular consciously enables inflicting "***penal***" consequences, and underlines the "***imperative***" need to adhere to a "***transparent mechanism***". The avoidance of information asymmetry and the means of ensuring transparency as outlined by the Hon'ble Supreme Court in ***Takano*** would necessarily mean that principles of natural justice, including the need to provide the underlying material, are inherent and implicit in the process stipulated under the Master Circular. The material and information in question for disclosure to the noticee would be all "relevant" material and not just information that is "relied upon" or "referred to" in the SCN.

26. Not only must information that is referred to and relied on in the SCN be supplied but also information that may undermine the allegations contained in the SCN (which may therefore not be

referred to or relied on) must be supplied – only to ensure that everything relevant to arrive at the truth is available to both parties. The objective of the proceedings initiated by issuance of a SCN is not to somehow find the noticee guilty of wilful default on the same terms as alleged. Instead, the objective is to arrive at the truth as to whether or not an individual in question is to be subjected to "penal" (in the RBI's words) consequences. Therefore, if the bank has conducted a forensic investigation into alleged diversion and siphoning of funds, and specific roles played by specific individuals is brought out in the investigation, and such a probe would point to plausible interpretation that certain individuals did ***not*** play any role in the diversion and siphoning, the material underlying such plausible inference would undermine the allegations. Therefore, fair and transparent symmetrical access to information, as stipulated by the Hon'ble Supreme Court in ***Takano*** would mean providing access to not only incriminating material but also exculpatory material, since all such information would be ***relevant*** for arriving at the truth. Therefore, access to the record is a vital element of complying with principles of natural justice. In the instant case, not only has no material been supplied, but also Union Bank has actually asserted on oath that it was not required to provide any material whatsoever, and that it is for the

noticee to prove his innocence.

Stance of Union Bank:

27. This matter has demonstrated the risk of placing serious discretionary powers to inflict penal measures in the hands of commercial entities such as banks, without appropriate capacity and training to appreciate requirements of the rule of law. First, the bank has asserted that no material needs to be provided. The bank has also asserted that the onus of proving innocence is on the accused. While IFIN may have been declared a wilful defaulter as a borrower, there is not a whisper of analysis of evidence at the relevant time demonstrating the role of the Petitioner for holding him to be individually responsible. The Petitioner had made submissions about who was in charge of lending activity and that his role was restricted to equity investments. There is nothing in the final order to even suggest show how all this has been considered and dealt with. In these circumstances, it is evident that the final order, a near-verbatim reproduction of the SCN, is not a reasoned order and is a product of non-compliance with the principles of natural justice.

28. In these circumstances, after having heard the submissions of the parties, we put it to the learned counsel for Union Bank to

ask his client to consider recalling the orders of the Identification Committee and the Review Committee, with liberty to conduct the proceedings afresh from the stage of the SCN, after providing proper access to the relevant material. After review of our suggestion, Union Bank, whose officials are also present in court today, have fairly instructed learned counsel to state that the orders of the Identification Committee and the Review Committee may be considered as withdrawn, with liberty to continue the proceedings from the stage of the SCN, and that Union Bank would provide the Petitioner full access to the relevant documents and the relevant material on record.

29. We say nothing more in view of the fair stance now taken by the Union Bank. We grant liberty to Union Bank to make a proper disclosure of materials and information on which the SCN is based. Once such disclosure is made to the Petitioner, the Petitioner is at liberty to submit a fresh reply to the SCN, after which a reasoned draft order may be issued by the Identification Committee. This draft order of the Identification Committee shall be served on the Petitioner so as to enable him to make his representation to the Review Committee why the said order ought not to be confirmed. Thereafter, a reasoned final order may be passed by the Review Committee, if it is found that there has been

a wilful default attributable to the Petitioner.

30. We are not foreclosing a fair and effective determination of the truth by Union Bank, for which it would be required to comply with due process of law and adhere to principles of natural justice, and give a full run to a transparent mechanism as mandated by the RBI.

Directions Issued:

31. In the result, we issue the following directions:

(a) We permit Union Bank to withdraw the final order dated 28th February, 2023 passed by the Review Committee as also the draft order dated 5th August, 2022 purported to have been passed by the Identification Committee, insofar as it relates to the Petitioner;

(b) Union Bank is given liberty to supply all the material underlying the SCN and relevant to arrive at a finding on the Petitioner's role in the alleged wilful default;

(c) The Petitioner is granted liberty to provide a reply to the SCN after appreciation of the material

disclosed by Union Bank;

(d) ***After giving a personal hearing to the Petitioner, the*** Identification Committee of Union Bank must deal with the Petitioner's fresh reply and his submissions, that may be made after having reviewed the material relevant for dealing with the SCN;

(e) Banks and financial institutions that seek to invoke the Master Circular to declare occurrence of wilful default, must identify the members of the Identification Committee and the members of the Review Committee, and share the reasoned orders passed by such committees. In the instant case, the SCN, the hearing notice and the final order are all signed by the same individual, who purports to communicate them, with no clarity on who were the persons who conducted the hearing and who were the persons who passed the orders;

(f) Any agency, including Respondent Nos. 3 to 6, that has published or disseminated the name of the Petitioner identifying him as a wilful defaulter on the strength of the orders that now stand withdrawn by

Union Bank, shall forthwith remove such identification from publicly accessible information resources.

32. Rule is made absolute in the aforesaid terms and the writ petition is disposed of accordingly.

33. We have persuaded ourselves that there shall be no order as to costs. We trust that the law declared in this judgement would provide guidelines for conduct of proceedings under the Master Circular, which itself is an important instrument of law aimed at dealing with societal conditions affecting the banking sector in India.

34. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.] [B. P. COLABAWALLA, J.]

Shraddha Talekar, PS