Annexure - 1

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER REGULATION 29 (3) OF SEBI (STOCK BROKERS & SUB BROKERS) REGULATIONS, 1992 AGAINST SHRI PRAKASH K SHAH , MEMBER , THE STOCK EXCHANGE MUMBAI .

M/s Amara Raja Batteries Ltd. (hereinafter referred to as 'ARBL') , which was initially incorporated as a private limited company in 1985 and the same was subsequently converted into a public limited company in the year 1990. 'ARBL' came out with a public issue in the year 1991 and the shares of 'ARBL' got listed on The Stock Exchange, Mumbai (BSE), National Stock Exchange (NSE), Hyderabad Stock Exchange Ltd. (HSE) and Calcutta Stock Exchange Association Ltd. (CSE). The price of the scrip of 'ARBL' at BSE was Rs.91/- in the first week of October, 2000 and went up to Rs.205/- on January 1, 2001 and further touched a high of Rs.320/- on March 8, 2001.

On March 9, 2001, BSE closed the normal trading at 2 p.m. to facilitate the Badla session and the price at that time was Rs.308.40/-. On that date, NSE was functioning till 4.30 p.m. and the price of the scrip fell to Rs.266.75/- and therefore on March 12, 2001, BSE adjusted the price of various scrips to that of NSE including that of 'ARBL'. The price of 'ARBL' further fell down and thereafter touched a low of Rs.78.50/- on March 19, 2001. It is also found that the volumes in the scrip of 'ARBL' were approximately 50,000-60,000 shares per day in October , 2000 and went up to around 8-15 lakhs shares per day in the month of February and first week of March, 2001 at both BSE & NSE. The average trading in the scrip of 'ARBL' from January to March 2001 went to the extent of 10-15 lakhs shares per day and this constituted approximately 30% of the free floating stock of 'ARBL' .

Securities and Exchange Board of India (SEBI) received complaints regarding the market manipulations / irregularities in the trading in the scrip of 'ARBL' and therefore, SEBI ordered a detailed investigations in the matter to enquire into the alleged violations of the provisions of SEBI Act, 1992 , SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 and SEBI (Stock Brokers & Sub Brokers) Regulations, 1992 and other Regulations and the role played by various persons / intermediaries including Shri. Prakash K Shah , Member, The Stock Exchange Mumbai (hereinafter referred to as "the broker member").

The investigations prima facie revealed that Shri Harinarayan Bajaj and his son, Shri Rahul Bajaj were the predominant traders in the scrip of 'ARBL' during the period August 2000 to March 2001 (hereinafter referred to as "the relevant period"). Their trading has accounted for approximately 30% of the total trading on BSE & NSE and they had absorbed most of the deliveries in the scrip by purchasing and carrying forward their position on BSE. During the relevant period, Shri Bajaj started making use of the different trading cycles of BSE & NSE to shift his position from one exchange to another. It was also found that Shri Harinarayan Bajaj and his son, Shri Rahul Bajaj were shifting positions of approximately 5.5 lakhs shares of 'ARBL' between BSE & NSE in settlement No.1 of NSE and the same was increased approximately to 11 lakhs shares in Settlement No. 9 of NSE. Further, it was found that Shri Bajaj was not having the requisite funds to pay for the deliveries and also for the margins. The investigation also found that when the price of the scrip of 'ARBL' fell down, Shri Bajaj could not purchase any further shares due to lack of funds.

The investigations further revealed that various members of BSE & NSE had aided and abetted Shri Harinarayan Bajaj in creating a false market in the scrip of 'ARBL' and they have failed to exercise due care and skill in their dealings. The broker member had started dealing in the scrip of 'ARBL' since October 2000 and was transacting through M/s Khandwala Shah & Associates . The broker member submitted before the investigating authority that average trading in the scrip of ARBL in each settlement was in the range of 60,000 to 80,000 shares. He further stated that normally the purchases were made on the first two days of the settlement and the sales were executed towards the end of the settlement. The settlement wise trading of the broker member for Shri Harinarayan Bajaj through M/s. Khandwala Shah & Associates, its sub broker are as follows :

Trading, Delivery & Carry Forward (Badla) Position

Of

Amara Raja Batteries Ltd. From Aug 00 to March 01

Settl. No.	Purchase	Sales	C/f	Delivery
A-30	13,740	Nil	13,740	Nil

A-31	20,250	14,107	19,883	Nil
A-32	61,257	81,200	(60)	Nil
A-33	23,268	23,208	Nil	Nil
A-34	10,000	10,000	Nil	Nil
A-35	62,150	62,150	Nil	Nil
A-36	1,07,926	1,07,926	Nil	Nil
A-37	1,02,401	1,02,401	Nil	Nil
A-38	1,20,065	1,08,403	11,662	Nil
A-39	1,37,762	1,11,662	37,762	Nil
A-40	1,55,000	1,47,762	45,000	Nil
A-41	62,075	91,075	5,010	10,990
A-42	2,05,273	2,05,273	5,000	10
A-43	1,60,000	1,60,000	Nil	5,000
A-44	1,18,993	1,00,000	18,993	Nil
A-45	1,25,000	1,38,293	Nil	5,700
A-46	1,00,000	1,00,000	Nil	Nil
A-47	75,000	75,000	Nil	Nil
A-48	75,000	75,000	Nil	Nil
A-49	95,000	95,000	Nil	Nil
A-50				
05-03-01	1,20,000	Nil		
07-03-01	Nil	50,000		
08-03-01		23,135		
09-03-01	Nil	40,000	30,000	Nil
TOTAL	19,50,160	18,98,460		21,700

It was admitted by the broker member before the investigating authority that on enquiry with his sub broker and other market participants in the last week of February, they came to know that Shri Shailesh Bajaj, a defaulter member of BSE was involved in the trading of the scrip. However, after few days the broker member submitted an affidavit stating that in fact Shri Harinarayan Bajaj was trading in the scrip and that he had wrongly mentioned the name of Shri Shailesh Bajaj.

SEBI, therefore, in view of the above facts, vide its order dated June 18, 2001 appointed an Enquiry Officer to enquire into the affairs of the broker member in his dealings in the scrip of 'ARBL' and for the possible violations of the provisions of rules, Bye Laws & Regulations of BSE , provisions of SEBI Act, 1992, SEBI(Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 and SEBI (Stock brokers and sub brokers) Regulations, 1992.

Accordingly the Enquiry Officer issued a notice dated July 6, 2001 along with the findings of the investigations related to the broker member's alleged involvement in the price manipulation in the scrip of 'ARBL'. The alleged charges leveled by the Enquiry Officer against the broker member is as under :

A "The broker member had aided and abetted Shri Harinarayan Bajaj and his family members in creating a false and misleading market in the scrip of 'ARBL' and therefore violated the provisions of Regulation 4 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995.

B(1) The broker member by virtue of his trading in 'ARBL' on behalf of Shri Harinarayan Bajaj had failed to exercise due skill and care in its dealings.

B(2) The broker member had allowed the client to take position which is beyond his financial position

B(3) The broker member had traded in the scrip of ARBL beyond his sub broker's financial capacity"

and thereby violated Regulation 7, Schedule II of SEBI (Stock brokers & sub brokers) Regulations, 1992 (hereinafter referred to as the 'said Regulations') .

The broker member vide his letter dated August 11, 2001 had submitted the reply to the show cause notice dated July 6, 2001 before the Enquiry Officer and interalia stated that there was no complaint of any nature and all the payments were paid by the sub broker, M/s. Khandwala Shah & Associates in time. The broker member further stated that 90% of the trades in the scrip of ARBL were effected by M/s. Khandwala Shah & Associates.

An opportunity of personal hearing was granted by the Enquiry Officer to the broker member on October 12, 2001 . The Enquiry Officer after conducting the enquiry and after perusing the reply of the broker member and the submissions made on behalf of the broker member found that the broker member is not guilty of violating the provisions of SEBI(Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995. However, the Enquiry Officer found that the broker member had given high exposure in one single scrip to his sub broker . Ultimately they were forced to take delivery of shares at the end of the final settlement of his trading with the sub broker, M/s Khandwala Shah & Associates and the same shows that the broker member traded in the scrip of ARBL beyond his sub broker's financial capability . By executing transaction , as mentioned above , for his sub broker in the scrip of ARBL , the broker member failed to exercise due care and skill as mandated by Clause A(2) of the Code of Conduct prescribed under the said Regulation and recommended that the certificate of registration granted to the broker member may be suspended for a period of 3 months.

SEBI issued a notice dated March 13, 2002 under regulations 29 (1) of the said regulations asking him to show cause why the penalty as recommended by the Enquiry Officer not be imposed against him . A copy of the Enquiry Report was also forwarded to the broker member along with the show cause notice . The broker member vide his letter dated April 8, 2002 requested extension of time upto April 30, 2002 for filing his reply and subsequently the broker member filed his reply vide letter dated April 25, 2002. The broker member stated that M/s. Khandwala Shah & Associates are their registered sub brokers since 1997 and they had entered into the concerned agreement for the registration of the sub broker. As per the said agreement the registered sub broker is supposed to take individual client registration form and also to enter into an agreement with the clients.

The broker member also stated that till February 2001 the working of the sub broker with respect to the margins, deliveries, payments etc. have been always regular and that they have given no opportunity for any complaint or dispute. Further the broker member stated that as per the agreement with the sub broker it is the duty of the sub broker to monitor scrip level and client level. Further, the broker member stated that they made enquiries with the sub broker and they were informed in late February 2001 by Shri Sanjay Shah, partner of the sub broker that they were trading for and on behalf of their client Shri Bajaj and in the process the sub broker also informed them that they collected required margin from their client before executing any transaction. The broker member also stated that they had warned the sub broker to clear the position without any delay of any nature and accordingly in Valan Nos.50 & 51 the sub broker cleared the position.

The broker member further stated that due to the financial strength, family background and market reputation of the sub broker they used to allow the sub broker the daily volume of Rs.1 crore in the ordinary course of business and they had collected margin in the range of Rs. 35 to 80 lakhs from the sub broker and the same was deposited with BSE. The broker member stated that they had given the required information as sought by BSE without any delay and BSE did not inform the broker member about the probable malpractices suspected by it. The broker member vide its reply referred above agreed to undertake and / or indemnity as may be considered by SEBI.

An opportunity of personal hearing was granted to the broker member on July 3, 2002 and the broker member along with its representative and the accountant appeared before me and made their submissions. The representative reiterated the same submissions which they made vide their reply dated 25th April, 2002 and admitted that by executing the aforesaid transaction for its sub broker in their dealings in the scrip of ARBL , the broker member failed to exercise due skill and care, as mandated under the provisions of the said Regulations. The broker member also requested to take a lenient view. Subsequent to the aforesaid personal hearing the broker member vide its letter dated July 11, 2002 admitted that their activities attracts the fiduciary responsibility as they are the principal for their sub broker, M/s Kahndwala Shah & Associates .

I have perused the extracts of the investigation report , the Enquiry Report, the reply filed by the broker member and the submissions made on behalf of the broker member at the time of the personal hearing. It is observed that due to the transactions of Shri Harinarayan Bajaj and his son Rahul Bajaj, the volumes in the scrip of ARBL went up to around 8-15 lakhs shares per day in the month of February & first week of March 2001 from 50,000 -60,000 shares per day in Oct, 2000. It is also observed that the broker member had started dealing in the scrip of ARBL since October 2000.

It is observed that the broker member transacted in the scrip of ARBL through its sub broker M/s Khandwala Shah &

Associates. The broker member had executed trades in the scrip of ARBL and purchased 19,50,160 shares and sold 18,98,460 shares from Settlement No. A 30 to A-50 .

In this regard I feel that , by executing such a huge transactions especially when the price of the scrip of ARBL which was ruling at very high price during the said period, the broker member had failed to exercise due skill and care in the conduct of his business .The broker should not have given such a huge exposure when the market price of the scrip of ARBL was very high. The broker member had taken delivery of 21,700 shares during the relevant period. It is pertinent to note that the broker member had given such huge exposure to his sub broker particularly in the scrip of ARBL at a time when the market price of the scrip was ruling very high. It is observed that the broker member had executed trades with buy position ranging from 13,742 to 2,05,273 shares per settlement. Such a big exposure to the sub broker is not indicative of any prudential risk management norms adopted by broker member .

The above mentioned acts of the broker member clearly indicates that he had traded in the scrip beyond his sub broker's financial capability and thereby the broker member violated Clause A (2) of the Code of Conduct prescribed under regulation 7 of the said regulation which state as follows:

Schedule II

A General

1) .....

2) Exercise of due skill and care : A stock Broker , shall act with due skill , care and diligence in the conduct of all his business.

.....

It is concluded that the broker member failed to exercise due skill and care and was not diligent in the conduct of his business by giving high exposure to his sub broker in one scrip, i.e. in ARBL and by executing trades with buy position ranging from 13,742 to 2,05,273 shares per settlement at a time when the market price of the scrip of ARBL was ruling very high.

In view of the above circumstances, it is concluded that the broker member had failed to exercise due care and skill in his dealing with his sub broker, M/s. Khandwala Shah & Associates and thereby violated Clause A(2) of the Code of Conduct prescribed regulation 7 of SEBI (Stock brokers & sub brokers) Regulations, 1992.

Therefore by considering the above facts and circumstances , I agree with the recommendations given by the Enquiry Officer and therefore under the provisions conferred upon me under Section 4 (3) of SEBI Act, 1992 and under Regulation 29(3) of SEBI (Stock Brokers & Sub Brokers) Regulations, 1992, I, hereby suspend the certificate of registration granted to Shri. Prakash K. Shah, Member, Mumbai Stock Exchange for a period of 3 months w.e.f August 1, 2002

G.N. BAJPAI

CHAIRMAN

SECURITIES AND EXCHANGE BOARD OF INDIA

Annexure - 2

स्थाई लेखा संख्या /PERMANENT ACCOUNT NUMBER

AABPB4242J

नाम /NAME

RAHULKUMAR KAMALNAYAN BAJAJ

पिता का नाम /FATHER'S NAME

KAMALNAYAN JAMNALAL BAJAJ

जन्म तिथि /DATE OF BIRTH

10-06-1938

हस्ताक्षर /SIGNATURE

आयकर निदेशक (पद्धति)

DIRECTOR OF INCOME TAX (SYSTEMS)

Annexure - 3a

भारतीय रिज़र्व बैंक

RESERVE BANK OF INDIA

www.rbi.org.in

RBI/2015-16/100
DBR.No.CID.BC.22/20.16.003/2015-16

July 1, 2015

i) All Scheduled Commercial Banks (excluding RRBs) and
ii) All India Notified Financial Institutions

Dear Sir / Madam

Master Circular on Wilful Defaulters

Please refer to the Master Circular no. DBR No.CID.BC.57/20.16.003/2014-15 dated July 1, 2014 consolidating instructions/guidelines issued to banks/FIs till June 30, 2014 and updated as on January 7, 2015 on matters related to wilful defaulters.

2. This Master Circular consolidates instructions on the above matters up to June 30, 2015.

Yours faithfully,

(Sudha Damodar)
Chief General Manager

बैंकिंग विनियमन विभाग, केंद्रीय कार्यालय,13 मंजिल, केंद्रीय कार्यालय भवन, शहीद भगत सिंह मार्ग, मुम्बई 400001
Department of Banking Regulation, 13th floor, Central Office Building, Mumbai 400001
Tel No: 22661602, 22601000 Fax No: 022-2270 5670, 2260 5671, 5691 2270, 2260 5692

Master Circular on 'Wilful Defaulters'

Purpose:

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

Application: To all Scheduled Commercial banks (excluding RRBs) and All India Notified Financial Institutions.

Structure:

1 Introduction
2 Guidelines on Wilful Defaulters
  - 2.1 Definitions of Lender, Unit and Wilful Default
  - 2.2 Diversion and siphoning of funds
  - 2.3 Cut-off Limits
  - 2.4 End-use of Funds
  - 2.5 Penal Measures
  - 2.6 Guarantees furnished by individuals, group companies & non-group companies
  - 2.7 Role of Auditors
  - 2.8 Role of Internal Audit / Inspection
  - 2.9 Reporting to Credit Information Companies
3 Mechanism for identification of Wilful defaulters
4 Criminal Action against Wilful Defaulters
  - 4.1 JPC recommendations
  - 4.2(i) Monitoring End-Use of Funds
  - 4.2(ii) Criminal Action by Banks / FIs
5 Reporting
  - 5.1 Need for Ensuring Accuracy
  - 5.2 Position regarding Guarantors
  - 5.3 Government Undertakings
  - 5.4 Inclusion of Director Identification Number (DIN)
6 Annex 1 - Reporting Format
  Annex 2 - List of Circulars consolidated

1. Introduction

Pursuant to the instructions of the Central Vigilance Commission for collection of information on wilful defaults of Rs.25 lakhs and above by RBI and dissemination to the reporting banks and FIs, a scheme was framed by RBI with effect from 1st April 1999 under which the banks and notified All India Financial Institutions were required to submit to RBI the details of the wilful defaulters. The scheme was modified in May 2002, based on recommendations of Working Group on wilful defaulters, which was also revised from time to time as per the recommendations of the Committee on Data Format for Furnishing of Credit Information to Credit Information Companies and various feedbacks received from different stakeholders.

2. Guidelines on Wilful Defaulters

2.1 Definitions of 'Lender', 'Unit' and 'wilful default'

2.1.1 Lender: The term 'lender' covers all banks / FIs to which any amount is due, provided it is arising on account of any banking transaction, including off balance sheet transactions such as derivatives, guarantees and letters of credit.

2.1.2 Unit: The term 'unit' includes individuals, juristic persons and all other forms of business enterprises, whether incorporated or not. In case of business enterprises (other than companies), banks / FIs may also report (in the Director column of Annex 1) the names of those persons who are in charge and responsible for the management of the affairs of the business enterprise.

2.1.3 Wilful Default: A 'wilful default' would be deemed to have occurred if any of the following events is noted:

(a) The unit has defaulted in meeting its payment / repayment obligations to the lender even when it has the capacity to honour the said obligations.

(b) The unit has defaulted in meeting its payment / repayment obligations to the lender and has not utilised the finance from the lender for the specific purposes for which finance was availed of but has diverted the funds for other purposes.

(c) The unit has defaulted in meeting its payment / repayment obligations to the lender and has siphoned off the funds so that the funds have not been utilised

for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets.

(d) The unit has defaulted in meeting its payment / repayment obligations to the lender and has also disposed off or removed the movable fixed assets or immovable property given for the purpose of securing a term loan without the knowledge of the bank / lender.

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. The default to be categorised as wilful must be intentional, deliberate and calculated.

2.2 Diversion and siphoning of funds

2.2.1 Diversion of Funds: The term 'diversion of funds' referred to at paragraph 2.1.3(b) above, should be construed to include any one of the undernoted occurrences:

(a) utilisation of short-term working capital funds for long-term purposes not in conformity with the terms of sanction;

(b) deploying borrowed funds for purposes / activities or creation of assets other than those for which the loan was sanctioned;

(c) transferring borrowed funds to the subsidiaries / Group companies or other corporates by whatever modalities;

(d) routing of funds through any bank other than the lender bank or members of consortium without prior permission of the lender;

(e) investment in other companies by way of acquiring equities / debt instruments without approval of lenders;

(f) shortfall in deployment of funds vis-à-vis the amounts disbursed / drawn and the difference not being accounted for.

2.2.2 Siphoning of Funds: The term 'siphoning of funds', referred to at paragraph 2.1.3(c) above, should be construed to occur if any funds borrowed from banks / FIs are utilised for purposes unrelated to the operations of the borrower, to the detriment of the financial health of the entity or of the lender. The decision as to whether a

particular instance amounts to siphoning of funds would have to be a judgment of the lenders based on objective facts and circumstances of the case.

2.3 Cut-off Limits

While the penal measures indicated at paragraph 2.5 below would normally be attracted by all the borrowers identified as wilful defaulters or the promoters involved in diversion / siphoning of funds, keeping in view the present limit of Rs.25 lakh fixed by the Central Vigilance Commission for reporting of cases of wilful default by the banks / FIs to RBI, any wilful defaulter with an outstanding balance of Rs.25 lakh or more, would attract the penal measures stipulated at paragraph 2.5 below. This limit of Rs.25 lakh may also be applied for the purpose of taking cognisance of the instances of siphoning / diversion of funds.

2.4 End-Use of Funds

In cases of project financing, the banks / FIs seek to ensure end use of funds by, *inter alia*, obtaining certification from the Chartered Accountants for the purpose. In case of short-term corporate / clean loans, such an approach ought to be supplemented by 'due diligence' on the part of lenders themselves, and to the extent possible, such loans should be limited to only those borrowers whose integrity and reliability are above board. The banks and FIs, therefore, should not depend entirely on the certificates issued by the Chartered Accountants but strengthen their internal controls and the credit risk management system to enhance the quality of their loan portfolio.

The requirement and related appropriate measures in ensuring end-use of funds by the banks and FIs should form a part of their loan policy document. The following are some of the illustrative measures that could be taken by the lenders for monitoring and ensuring end-use of funds:

(a) Meaningful scrutiny of quarterly progress reports / operating statements / balance sheets of the borrowers;

(b) Regular inspection of borrowers' assets charged to the lenders as security;

(c) Periodical scrutiny of borrowers' books of accounts and the 'no-lien' accounts maintained with other banks;

(d) Periodical visits to the assisted units;

(e) System of periodical stock audit, in case of working capital finance;

(f) Periodical comprehensive management audit of the 'credit' function of the lenders, so as to identify the systemic-weaknesses in their credit administration.

(It may be kept in mind that this list of measures is only illustrative and by no means exhaustive.)

2.5 Penal Measures

The following measures should be initiated by the banks and FIs against the wilful defaulters identified as per the definition indicated at paragraph 2.1.3 above:

a. No additional facilities should be granted by any bank / FI to the listed wilful defaulters. In addition, such companies (including their entrepreneurs / promoters) where banks / FIs have identified siphoning / diversion of funds, misrepresentation, falsification of accounts and fraudulent transactions should be debarred from institutional finance from the scheduled commercial banks, Financial Institutions, NBFCs, for floating new ventures for a period of 5 years from the date of removal of their name from the list of wilful defaulters as published/disseminated by RBI/CICs.
b. The legal process, wherever warranted, against the borrowers / guarantors and foreclosure for recovery of dues should be initiated expeditiously. The lenders may initiate criminal proceedings against wilful defaulters, wherever necessary.
c. Wherever possible, the banks and FIs should adopt a proactive approach for a change of management of the wilfully defaulting borrower unit.
d. A covenant in the loan agreements, with the companies to which the banks / FIs have given funded / non-funded credit facility, should be incorporated by the banks / FIs to the effect that the borrowing company should not induct on its board a person whose name appears in the list of Wilful Defaulters and

that in case, such a person is found to be on its board, it would take expeditious and effective steps for removal of the person from its board.

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.

2.6 Guarantees furnished by individuals, group companies & non-group companies

While dealing with wilful default of a single borrowing company in a Group, the banks / FIs should consider the track record of the individual company, with reference to its repayment performance to its lenders. However, in cases where guarantees furnished by the companies within the Group on behalf of the wilfully defaulting units are not honoured when invoked by the banks / FIs, such Group companies should also be reckoned as wilful defaulters.

In connection with the guarantors, in terms of Section 128 of the Indian Contract Act, 1872, the liability of the surety is co-extensive with that of the principal debtor unless it is otherwise provided by the contract. Therefore, when a default is made in making repayment by the principal debtor, the banker will be able to proceed against the guarantor / surety even without exhausting the remedies against the principal debtor. As such, where a banker has made a claim on the guarantor on account of the default made by the principal debtor, the liability of the guarantor is immediate. In case the said guarantor refuses to comply with the demand made by the creditor / banker, despite having sufficient means to make payment of the dues, such guarantor would also be treated as a wilful defaulter. This treatment of non-group corporate and individual guarantors was made applicable with effect from September 9, 2014 and not to cases where guarantees were taken prior to this date. Banks/FIs may ensure that this position is made known to all guarantors at the time of accepting guarantees.

2.7 Role of auditors

In case any falsification of accounts on the part of the borrowers is observed by the banks / FIs, and if it is observed that the auditors were negligent or deficient in conducting the audit, they should lodge a formal complaint against the auditors of the borrowers with the Institute of Chartered Accountants of India (ICAI) to enable the ICAI to examine and fix accountability of the auditors. Pending disciplinary action by ICAI, the complaints may also be forwarded to the RBI (Department of Banking Supervision, Central Office) and IBA for records. IBA would circulate the names of the CA firms, against whom many complaints have been received, amongst all banks who should consider this aspect before assigning any work to them. RBI would also share such information with other financial sector regulators / Ministry of Corporate Affairs (MCA) / Comptroller and Auditor General (CAG).

With a view to monitoring the end-use of funds, if the lenders desire a specific certification from the borrowers' auditors regarding diversion / siphoning of funds by the borrower, the lender should award a separate mandate to the auditors for the purpose. To facilitate such certification by the auditors, the banks and FIs will also need to ensure that appropriate covenants in the loan agreements are incorporated to enable award of such a mandate by the lenders to the borrowers / auditors.

In addition to the above, banks are advised that with a view to ensuring proper end-use of funds and preventing diversion / siphoning of funds by the borrowers, lenders could consider engaging their own auditors for such specific certification purpose without relying on certification given by borrower's auditors. However, this cannot substitute a bank's basic minimum own diligence in the matter.

2.8 Role of Internal Audit / Inspection

The aspect of diversion of funds by the borrowers should be adequately looked into while conducting internal audit / inspection of their offices / branches and periodical reviews on cases of wilful defaults should be submitted to the Audit Committee of the bank.

2.9 Reporting to Credit Information Companies

(a) Reserve Bank of India has, in exercise of the powers conferred by Section 5 of the Credit Information Companies (Regulations) Act, 2005 and the Rules

and Regulations framed thereunder, granted Certificate of Registration to (i) Experian Credit Information Company of India Private Limited, (ii) Equifax Credit Information Services Private Limited, (iii) CRIF High Mark Credit Information Services Private Limited and (iv) Credit Information Bureau (India) Limited (CIBIL) to commence/carry on the business of credit information.

(b) Banks / FIs should submit the list of suit-filed accounts and non suit filed accounts of wilful defaulters of Rs.25 lakh and above on a monthly or more frequent basis to all the four Credit Information Companies. This would enable such information to be available to the banks / FIs on a near real time basis.

Explanation

In this connection, it is clarified that banks need not report cases where

(i) outstanding amount falls below Rs.25 lakh and

(ii) in respect of cases where banks have agreed for a compromise settlement and the borrower has fully paid the compromised amount.

(c) Credit Information Companies (CICs) have also been advised to disseminate the information pertaining to suit filed accounts of wilful defaulters on their respective websites.

3. Mechanism for identification of Wilful Defaulters

The mechanism referred to in paragraph 2.5 above should generally include the following:

(a) The evidence of wilful default on the part of the borrowing company and its promoter / whole-time director at the relevant time should be examined by a Committee headed by an Executive Director or equivalent and consisting of two other senior officers of the rank of GM / DGM.

(b) If the Committee concludes that an event of wilful default has occurred, it shall issue a Show Cause Notice to the concerned borrower and the promoter / whole-time director and call for their submissions and after considering their submissions issue an order recording the fact of wilful default and the reasons for the same. An opportunity should be given to the borrower and the promoter / whole-time director for a personal hearing if the Committee feels such an opportunity is necessary.

(c) The Order of the Committee should be reviewed by another Committee headed by the Chairman / Chairman & Managing Director or the Managing Director & Chief Executive Officer / CEOs and consisting, in addition, to two independent directors / non-executive directors of the bank and the Order shall become final only after it is confirmed by the said Review Committee. However, if the Identification Committee does not pass an Order declaring a borrower as a wilful defaulter, then the Review Committee need not be set up to review such decisions.

(d) As regard a non-promoter / non-whole time director, it should be kept in mind that Section 2(60) of the Companies Act, 2013 defines an officer who is in default to mean only the following categories of directors:

(i) whole-time director

(ii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;

(iii) every director, in respect of a contravention of any of the provisions of Companies Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings and who has not objected to the same, or where such contravention had taken place with his consent or connivance.

Therefore, except in very rare cases, a non-whole time director should not be considered as a wilful defaulter unless it is conclusively established that:

I. he was aware of the fact of wilful default by the borrower by virtue of any proceedings recorded in the minutes of meeting of the Board or a Committee of the Board and has not recorded his objection to the same in the Minutes; or,

II. the wilful default had taken place with his consent or connivance.

The above exception will however not apply to a promoter director even if not a whole time director.

(iv) As a one-time measure, Banks / FIs, while reporting details of wilful defaulters to the Credit Information Companies may thus remove the names of non-whole time directors (nominee directors / independent directors) in respect of whom they already do not have information about their complicity in the default / wilful default of the borrowing company. However, the names of promoter directors, even if not whole time

directors, on the board of the wilful defaulting companies cannot be removed from the existing list of wilful defaulters.

(e) A similar process as detailed in sub-paragraphs (a) to (c) above should be followed when identifying a non-promoter / non-whole time director as a wilful defaulter.

4. Criminal Action against Wilful Defaulters

4.1 JPC Recommendations

Reserve Bank examined, the issues relating to restraining wilful defaults in consultation with the Standing Technical Advisory Committee on Financial Regulation in the context of the following recommendations of the JPC and in particular, on the need for initiating criminal action against concerned borrowers, viz.

a. It is essential that offences of breach of trust or cheating construed to have been committed in the case of loans should be clearly defined under the existing statutes governing the banks, providing for criminal action in all cases where the borrowers divert the funds with malafide intentions.

b. It is essential that banks closely monitor the end-use of funds and obtain certificates from the borrowers certifying that the funds have been used for the purpose for which these were obtained.

c. Wrong certification should attract criminal action against the borrower.

4.2 Accordingly, banks / FIs are advised, as under:

(i) Monitoring End-Use of Funds

In reference to Para 2.4 of this circular, it is advised that banks / FIs should closely monitor the end-use of funds and obtain certificates from borrowers certifying that the funds are utilised for the purpose for which they were obtained. In case of wrong certification by the borrowers, banks / FIs may consider appropriate legal proceedings, including criminal action wherever necessary, against the borrowers.

(ii) Criminal Action by Banks / FIs

It is essential to recognise that there is scope even under the existing legislations to initiate criminal action against wilful defaulters depending upon the facts and circumstances of the case under the provisions of Sections 403 and 415 of the Indian Penal Code (IPC), 1860. Banks / FIs are, therefore, advised to seriously and promptly consider initiating criminal action against wilful defaulters or wrong certification by borrowers, wherever considered necessary, based on the facts and circumstances of each case under the above provisions of the IPC to comply with our instructions and the recommendations of JPC.

It should also be ensured that the penal provisions are used effectively and determinedly but after careful consideration and due caution. Towards this end, banks / FIs are advised to put in place a transparent mechanism, with the approval of their Board, for initiating criminal proceedings based on the facts of individual case.

5. Reporting

5.1 Need for Ensuring Accuracy

Credit Information Companies disseminate information on non-suit filed and suit filed accounts respectively of Wilful Defaulters, as reported to them by the banks / FIs and therefore, the responsibility for reporting correct information and also accuracy of facts and figures rests with the concerned banks and financial institutions. Banks / FIs may also ensure the facts about directors, wherever possible, by cross-checking with Registrar of Companies.

5.2 Position regarding Guarantors

Banks / FIs may take due care to follow the provisions set out in paragraph 3 of the this circular in identifying and reporting instances of wilful default in respect of guarantors also. While reporting such names to RBI, banks/FIs may include 'Guar' in brackets i.e. (Guar) against the name of the guarantor and report the same in the Director column.

5.3 Government Undertakings

In the case of Government undertakings, it should be ensured that the names of directors are not reported. Instead, a legend 'Government of -------- undertaking' should be added.

5.4 Inclusion of Director Identification Number (DIN)

Ministry of Corporate Affairs had introduced the concept of a Director Identification Number (DIN) with the insertion of Sections 266A to 266G in the Companies (Amendment) Act, 2006. In order to ensure that directors are correctly identified and in no case, persons whose names appear to be similar to the names of directors appearing in the list of wilful defaulters, are wrongfully denied credit facilities on such grounds, banks / FIs have been advised to include the Director Identification Number (DIN) as one of the fields in the data submitted by them to Credit Information Companies.

It is reiterated that while carrying out the credit appraisal, banks should verify as to whether the names of any of the directors of the companies appear in the list of defaulters / wilful defaulters by way of reference to DIN / PAN etc. Further, in case of any doubt arising on account of identical names, banks should use independent sources for confirmation of the identity of directors rather than seeking declaration from the borrowing company.

****

Annex 1
(Refer Para 2.9)

Format for submission of data on cases of wilful default (non-suit filed accounts) of Rs.25 lakh & above to all four CICs on monthly or more frequent basis:

The banks / FIs are required to submit data of wilful defaulters (non-suit filed accounts) on FTP Platform and/or in Compact Disks (CDs) to all four CICs on monthly or more frequent basis, using the following structure (with the same field names):

Field	Field Name	Type	Wi-dth	Description	Remarks
1	SCTG	Numeric	1	Category of bank/FI	Number 1/2/4/6/8 should be fed 1 SBI and its associate banks 2 Nationalised banks 4 Foreign banks 6 Private Sector Banks 8 Financial Institutions
2	BKNM	Character	40	Name of bank/FI	Name of the bank/FI
3	BKBR	Character	30	Branch name	Name of the branch
4	STATE	Character	15	Name of state	Name of state in which branch is situated
5	SRNO	Numeric	4	Serial No.	Serial No.
6	PRTY	Character	45	Name of Party	The legal name
7	REGADDR	Character	96	Registered address	Registered Office address
8	OSAMT	Numeric	6	Outstanding amount in Rs. lakhs (Rounded off)	
9	SUIT	Character	4	Suit filed or not	Type 'SUIT' in case suit is filed. For other cases this field should be kept blank.
10	OTHER_BK	Character	40	Name of other banks/ FIs	The names of other banks/FIs from whom the party has availed credit facility should be indicated. The names may be fed in abbreviated form e.g. BOB for Bank of Baroda, SBI for State Bank of India etc.

11	DIR1	Character	40	Name of director	(a) Full name of Director should be indicated. (b) In case of Government companies the legend 'Govt. of ____undertaking' alone should be mentioned. (c) Against the names of nominee directors of banks/ FIs/ Central Govt./ State Govt., abbreviation 'Nom' should be indicated in the brackets. (d) Against the name of independent directors, abbreviation 'Ind' should be indicated in the brackets.
12	DIN_DIR1	Numeric	8	Director Identification Number of DIR1	8 digit Director Identification Number of the Director at DIR1
13	DIR2	Character	40	Name of director	As in DIR1
14	DIN_DIR2	Numeric	8	Director Identification Number of DIR2	8 digit Director Identification Number of the Director at DIR2
15	DIR3	Character	40	Name of director	As in DIR1
16	DIN_DIR3	Numeric	8	Director Identification Number of DIR3	8 digit Director Identification Number of the Director at DIR3
17	DIR4	Character	40	Name of director	As in DIR1
18	DIN_DIR4	Numeric	8	Director Identification Number of DIR4	8 digit Director Identification Number of the Director at DIR4
19	DIR5	Character	40	Name of director	As in DIR1
20	DIN_DIR5	Numeric	8	Director Identification Number of DIR5	8 digit Director Identification Number of the Director at DIR5
21	DIR6	Character	40	Name of director	As in DIR1

22	DIN_DIR6	Numeric	8	Director Identification Number of DIR6	8 digit Director Identification Number of the Director at DIR6
23	DIR7	Character	40	Name of director	As in DIR1
24	DIN_DIR7	Numeric	8	Director Identification Number of DIR7	8 digit Director Identification Number of the Director at DIR7
25	DIR8	Character	40	Name of director	As in DIR1
26	DIN_DIR8	Numeric	8	Director Identification Number of DIR8	8 digit Director Identification Number of the Director at DIR8
27	DIR9	Character	40	Name of director	As in DIR1
28	DIN_DIR9	Numeric	8	Director Identification Number of DIR9	8 digit Director Identification Number of the Director at DIR9
29	DIR10	Character	40	Name of director	As in DIR1
30	DIN_DIR10	Numeric	8	Director Identification Number of DIR10	8 digit Director Identification Number of the Director at DIR10
31	DIR11	Character	40	Name of director	As in DIR1
32	DIN_DIR11	Numeric	8	Director Identification Number of DIR11	8 digit Director Identification Number of the Director at DIR11
33	DIR12	Character	40	Name of director	As in DIR1
34	DIN_DIR12	Numeric	8	Director Identification Number of DIR12	8 digit Director Identification Number of the Director at DIR12
35	DIR13	Character	40	Name of director	As in DIR1
36	DIN_DIR13	Numeric	8	Director Identification Number of DIR13	8 digit Director Identification Number of the Director at DIR13
37	DIR14	Character	40	Name of director	As in DIR1
38	DIN_DIR14	Numeric	8	Director Identification Number of DIR14	8 digit Director Identification Number of the Director at DIR14
	Total bytes		**953**		

(1) If total numbers of directors exceed 14, the name of additional directors may be entered in blank spaces available in the other directors' columns.

(2) The data / information should be submitted in the above format on **FTP Platform / CD**. While submitting the CD, the banks/FIs should ensure that:

- the CD is readable and is not corrupted / virus-affected.
- the CD is labelled properly indicating name of the bank, name of the list and period to which the list belongs, and the name of list indicated on label and in the letter are same.
- the name and width of each of the fields and order of the fields is strictly as per the above format.
- records with outstanding amount of less than Rs.25 lakh have not been included.
- no suit-filed account has been included.
- use of following types of words have been avoided (as the fields can not be properly indexed) : 'M/s', 'Mr', 'Shri' etc.
- the words 'Mrs', 'Smt', 'Dr' etc. have been fed at the end of name of the person, if applicable.
- Except for field "SUIT" and some of the fields from DIR1 To DIR 14, as applicable, information is completely filled in and columns are not kept blank.

(3) In case of 'Nil' data, there is no need to send any CD and the position can be conveyed through a letter/fax.

(4) A certificate signed by a sufficiently senior official stating that 'the list of wilful defaulters has been correctly compiled after duly verifying the details thereof and RBI's instructions in this regard have been strictly followed' is sent along with the CD.

(5) **The technical working group comprising of member banks, IBA and CICs, which is headed by CIBIL, will be deciding a new format subsequently.**

Annex 2

List of Circulars consolidated by the Master Circular

Sr. No.	Circular No.	Date	Subject	Para No.
1.	DBOD.No.DL(W).BC.12/ 20.16.002(1)/98-99	20.02.1999	Collection and Dissemination of Information on Cases of Wilful Default of Rs.25 lakh and above	1
2.	DBOD.No.DL.BC.46/20. 16.002/98-99	10.05.1999	Disclosure of information regarding defaulting borrowers - Lists of Defaulters/ Suit filed accounts and Data on Wilful Default	Annex 1
3.	DBOD.No.DL(W).BC 161/20.16.002/99-2000	01.04.2000	Collection and Dissemination of information on defaulting borrowers of banks and Financial Institutions	5 and Annex 1
4.	DBOD.No.DL.BC.54/20. 16.001/2001-02	22.12.2001	Collection and dissemination of information on defaulters	5
5.	DBOD.No.DL(W).BC.11 0/20.16.003(1)/2001-02	30.05.2002	Wilful defaulters and action there against	2, 2.1 to 2.8
6.	DBOD.No.DL.BC.111/20 .16.001/2001-02	04.06.2002	Submission of Credit Information to Credit Information Bureau (CIB)	2.9
7.	DBOD.No.DL(W).BC.58/ 20.16.003/2002-03	11.01.2003	Wilful defaulters and Diversion of funds - Action there against	2.1, 2.2
8.	DBOD.No.DL.BC.7/20.1 6.003/2003-04	29.07.2003	Wilful Defaulters and action there against	3
9.	DBOD.No.DL.BC.95/20. 16.002/2003-04	17.06.2004	Annual Policy Statement for the year 2004-05 - Dissemination of Credit Information - Role of CIBIL	2.9
10.	DBOD.No.DL.BC.94/20. 16.003/2003-04	17.06.2004	Annual Policy Statement: 2004-05 - Wilful Defaulters – Clarification on Process	3

11.	DBOD.No.DL.BC.16/20.16.003/2004-05	23.07.2004	Checking of wilful defaults and measures against Wilful Defaulters	4
12.	DBOD No.DL(W)BC.67/20.16.003/2007-08	28.05.2008	Wilful Defaulters and action there against	2.1
13.	Mail-Box Clarification	17.04.2008	Reporting of accounts under compromise settlement	2.9
14.	DBOD No.DL 12738/20.16.001/2008-09	03.02.2009	Submission of information about List of Defaulters (non-suit filed accounts) / Wilful Defaulters (non-suit filed accounts) on Compact Disks.	Annex 1
15.	DBOD.No.DL.15214/20.16.042/2009-10	04.03.2010	Grant of 'Certificate of Registration' – For Commencing business of credit information – Experian Credit Information Company of India Private Limited	2.9
16.	DBOD.No.DL.BC.83/20.16.042/2009-10	31.03.2010	Grant of 'Certificate of Registration' – For Commencing business of credit information – Equifax Credit Information Services Private Limited	2.9
17.	DBOD.No.DL.BC.110/20.16.046/2009-10	11.06.2010	Submission of data to Credit Information Companies – Format of data to be submitted by Credit Institutions	2.9
18.	DBOD No.CID.BC.40/20.16.046/2010-11	21.09.2010	Submission of credit data to Credit Information Companies – Inclusion of Director Identification Number (DIN)	5.4 and Annex1
19.	DBOD.No.CID.BC.64/20.16.042/2010-11	01.12.2010	Grant of 'Certificate of Registration' – For Commencing business of credit information – High Mark Credit Information	2.9

			Services Private Limited	
20.	DBOD.No.CID.BC.30/20.16.042/2011-12	05.09.2011	Submission of Credit Information to credit Information Companies – Defaulters of Rs.1 Crore and above and Wilful Defaulters of Rs.25 lakh and above- Dissemination of Credit Information of suit filed accounts.	2.9
21.	DBOD.No.CID.BC.84/20.16.042/2011-12	05.03.2012	Grant of 'Certificate of Registration' – For carrying on the business of credit information – Credit Information Bureau (India) Limited	2.9
22	DBOD.BP.BC.No.97/21.04.132/2013-14	26.02.2014	Framework for Revitalising Distressed Assets in the Economy – Guidelines on Joint Lenders' Forum and Corrective Action Plan	2.9
23	DBOD.BP.BC.No.98/21.04.132/2013-14	26.02.2014	Framework for Revitalising Distressed Assets in the Economy- Refinancing of Project Loans, Sale of NPA and Other Regulatory Measures	2.7, 5.4
24	DBOD.CID.BC.128/20.16.003/2013-14	27.6.2014	Defaulters of Rs.1 crore and above (non-suit filed accounts) and Wilful Defaulters of Rs.25 lakhs and above (non-suit filed accounts) – Changes in reporting to RBI/CICs	2.9
25	DBOD.No.CID.41/20.16.003/2014-15	09.09.2014	Guidelines on Wilful Defaulters – Clarification regarding Guarantor, Lender and Unit	2.1, 2.6 and 5.2
26	DBR.No.CID.BC.60/20.16.056/2014-15	15.01.2015	Membership of CICs	2.5 and Annex I
27	DBR.No.CID.BC.90/20.16.003/2014-15	23.04.2015	Collection and Dissemination of Information on Wilful	3

			Defaulters	
28	Mail box clarification	05.06.2015	Wilful defaulters-setting up of the Review Committee	3
29	Mail box clarification	05.06.2015	Defaulters/Wilful Defaulters – Removal of the names of Non-whole time directors for already classified and reported accounts.	3

Annexure - 36

Master Circular on Wilful Defaulters

RBI/2014-15/73
DBR.No.CID.BC.57/20.16.003/2014-15

July 1, 2014
(Updated up to January 07, 2015)

i) All Scheduled Commercial Banks (excluding RRBs and LABs) and
ii) All India Notified Financial Institutions

Dear Sir / Madam

Master Circular on Wilful Defaulters

RBI has been receiving references from banks and other agencies seeking clarification as well as posing certain issues concerning the various guidelines contained in the current Master Circular on Wilful Defaulters. These references have been examined and the Master Circular has been modified accordingly. A copy of the same is attached.

2. While quite a few of the modifications in the guidelines are definitional and clarificatory in nature, certain substantive changes have been made to bring in greater transparency and accountability in the due process required to be adopted for identification of Wilful Defaulters (paragraph 2.5(d) and 3). Further, in view of the limited role of non-promoter/non-whole time directors (Nominee and Independent directors) in the management of a company's debt contracts, their names shall now be excluded from the list of Wilful Defaulters, except in the rarest circumstances which also have been specified at paragraph 3 of the Master Circular.

3. The modifications to the Master Circular have been furnished separately in the Annex.

Yours faithfully,

(Sudarshan Sen)
Chief General Manager-in-Charge

Annex

Modifications to Master Circular on 'Wilful Defaulters'

(i) The meanings of terms 'Lender' and 'Unit' have been clarified at paragraph 2.1 as per the circular dated September 9, 2014 on Guidelines on Wilful Defaulters.

(ii) Paragraph 2.2.1(c) has been changed as below:

Transferring borrowed funds to the subsidiaries / Group companies or other corporates by whatever modalities

(iii) Paragraph 2.5(d) has been changed as below:

A covenant in the loan agreements with the companies in which the banks/FIs have significant stake, should be incorporated by the banks/FIs to the effect that the borrowing company should not induct on its board a person whose name appears in the list of Wilful Defaulters and that in case, such a person is found to be on its board, it would take expeditious and effective steps for removal of the person from its board. 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.

(iv) Paragraph 2.6 on guarantees furnished by individuals, group companies and non-group companies have been modified as per the circular 'Guidelines on Wilful Defaulters – Clarification regarding Guarantor, Lender and Unit' dated September 9, 2014.

(v) Paragraph 3 on 'Grievances Redressal Mechanism' would now be titled 'Mechanism for identification of Wilful Defaulters' and read as below:

The transparent mechanism referred to in paragraph 2.5(d) above should generally include the following:

a. The evidence of wilful default on the part of the borrowing company and its promoter/whole-time director at the relevant time should be examined by a Committee headed by an Executive Director and consisting of two other senior officers of the rank of GM/DGM.

b. If the Committee concludes that an event of wilful default has occurred, it shall issue a Show Cause Notice to the concerned borrower and the promoter/whole-time director and call for their submissions and after considering their submissions issue an order recording the fact of wilful default and the reasons for the same. An opportunity should be given to the borrower and the promoter/whole-time director for a personal

hearing if the Committee feels such an opportunity is necessary.

c. The Order of the Committee should be reviewed by another Committee headed by the Chairman / CEO and MD and consisting, in addition, of two independent directors of the Bank and the Order shall become final only after it is confirmed by the said Review Committee.

d. As regard a non-promoter/non-whole time director, it should be kept in mind that Section 2(60) of the Companies Act, 2013 defines an officer who is in default to mean only the following categories of directors:

i. Whole-time director

ii. where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;

iii. every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings and who has not objected to the same, or where such contravention had taken place with his consent or connivance.

Therefore, except in very rare cases, a non-whole time director should not be considered as a wilful defaulter unless it is conclusively established that

I. he was aware of the fact of wilful default by the borrower by virtue of any proceedings recorded in the Minutes of the Board or a Committee of the Board and has not recorded his objection to the same in the Minutes, or,

II. the wilful default had taken place with his consent or connivance.

A similar process as detailed in sub paras (a) to (c) above should be followed when identifying a non-promoter/non-whole time director as a wilful defaulter.

(vi) Paragraph 5.1 on 'Need for ensuring Accuracy' with respect to reporting would read as below:

RBI / Credit Information Companies disseminate information on non-suit filed and suit filed accounts respectively of Wilful Defaulters, as reported to them by the banks / FIs and therefore, the responsibility for reporting correct information and also accuracy of facts and figures rests with the concerned banks and financial institutions.

(vii) Paragraph 5.2 has now been titled 'Position regarding guarantors' and contains instructions issued vide the circular dated September 9, 2014. Position regarding Independent and Nominee Directors has now been incorporated in paragraph 3.

(viii) Remark (e) against field 11 of Annex 1 is deleted as it is no longer required.

Master Circular on 'Wilful Defaulters'

Purpose:

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

Application:

To all scheduled commercial banks (excluding RRBs and LABs) and All India Notified Financial Institutions.

Structure:

1	Introduction	
2	Guidelines issued on wilful defaulters on May 30, 2002	
	2.1	Definition of Wilful Default
	2.2	Diversion and siphoning of funds
	2.3	Cut-off limits
	2.4	End-use of Funds
	2.5	Penal measures
	2.6	Guarantees furnished by individuals, group companies & non-group companies

	2.7	Role of Auditors
	2.8	Role of Internal Audit / Inspection
	2.9	Reporting to RBI / Credit Information Companies
3	Mechanism for identification of Wilful defaulters	
4	Criminal Action against Wilful Defaulters	
	4.1	J P C recommendations
	4.2	Monitoring of End Use
	4.3	Criminal Action by Banks / FIs
5	Reporting	
	5.1	Need for Ensuring Accuracy
	5.2	Position regarding Guarantors
	5.3	Government Undertakings
	5.4	Inclusion of Director Identification Number (DIN)
6	Annex 1 - Reporting Format	
	Annex 2 - List of Circulars consolidated	

1. Introduction

Pursuant to the instructions of the Central Vigilance Commission for collection of information on wilful defaults of Rs.25 lakhs and above by RBI and dissemination to the reporting banks and FIs, a scheme was framed by RBI with effect from 1st April 1999 under which the banks and notified All India Financial Institutions were required to submit to RBI the details of the wilful defaulters. Wilful default broadly covered the following:

a) Deliberate non-payment of the dues despite adequate cash flow and good networth;

b) Siphoning off of funds to the detriment of the defaulting unit;

c) Assets financed either not been purchased or been sold and proceeds have been misutilised;

d) Misrepresentation / falsification of records;

e) Disposal / removal of securities without bank's knowledge;

f) Fraudulent transactions by the borrower.

Accordingly, banks and FIs started reporting all cases of wilful defaults, which occurred or were detected after 31st March 1999 on a quarterly basis. It covered all non-performing borrowal accounts with outstandings (funded facilities and such non-funded facilities which are converted into funded facilities) aggregating Rs.25 lakhs and above identified as wilful default by a Committee of higher functionaries headed by the Executive Director and consisting of two GMs/DGMs. Banks/FIs were advised that they should examine all cases of wilful defaults of Rs 1.00 crore and above for filing of suits and also consider criminal action wherever instances of cheating/fraud by the defaulting borrowers were detected. In case of consortium/multiple lending, banks and FIs were advised that they report wilful defaults to other participating/financing banks also. Cases of wilful defaults at overseas branches are required to be reported if such disclosure is permitted under the laws of the host country.

2. Guidelines issued on wilful defaulters

Further, considering the concerns expressed over the persistence of wilful default in the financial system in the 8th Report of the Parliament's Standing Committee on Finance on Financial Institutions, the Reserve Bank of India, in consultation with the Government of India, constituted in May 2001 a Working Group on Wilful Defaulters (WGWD) under the Chairmanship of Shri S. S. Kohli, the then Chairman of the Indian Banks' Association, for examining some of the recommendations of the Committee. The Group submitted its report in November 2001. The recommendations of the WGWD were further examined by an In House Working Group constituted by the Reserve Bank. Accordingly, the Scheme was further revised by RBI on May 30, 2002.

The above scheme was in addition to the Scheme of Disclosure of Information on Defaulting Borrowers of banks and FIs introduced in April 1994, vide RBI Circular DBOD.No.BC/CIS/47/20.16.002/94 dated 23 April 1994.

2.1 Definition of wilful default

The term 'lender' appearing in the circular covers all banks/FIs to which any amount is due, provided it is arising on account of any banking transaction, including off balance sheet transactions such as derivatives, guarantee and Letter of Credit.

The term 'unit' appearing therein has to be taken to include individuals, juristic persons and all other forms of business enterprises, whether incorporated or not. In case of business enterprises (other than companies), banks/FIs may also report (in the Director column) the names of those persons who are in charge and responsible for the management of the affairs of the business enterprise.

The term "wilful default" has been redefined in supersession of the earlier definition as under:

A "wilful default" would be deemed to have occurred if any of the following events is noted:-

(a) The unit has defaulted in meeting its payment / repayment obligations to the lender even when it has the capacity to honour the said obligations.

(b) The unit has defaulted in meeting its payment / repayment obligations to the lender and has not utilised the finance from the lender for the specific purposes for which finance was availed of but has diverted the funds for other purposes.

(c) The unit has defaulted in meeting its payment / repayment obligations to the lender and has siphoned off the funds so that the funds have not been utilised for the specific purpose for which finance was availed of, nor are the funds available with the unit in the form of other assets.

(d) The unit has defaulted in meeting its payment / repayment obligations to the lender and has also disposed off or removed the movable fixed assets or immovable property given by him or it for the purpose of securing a term loan without the knowledge of the bank/lender.

2.2 Diversion and siphoning of funds

The terms "diversion of funds" and "siphoning of funds" should construe to mean the following:-

2.2.1 Diversion of funds, referred to at para 2.1(b) above, would be construed to include any one of the undernoted occurrences:

(a) utilisation of short-term working capital funds for long-term purposes not in conformity with the terms of sanction;

(b) deploying borrowed funds for purposes / activities or creation of assets other than those for which the loan was sanctioned;

(c) transferring borrowed funds to the subsidiaries / Group companies or other corporates by whatever modalities;

(d) routing of funds through any bank other than the lender bank or members of consortium without prior permission of the lender;

(e) investment in other companies by way of acquiring equities / debt instruments without approval of lenders;

(f) shortfall in deployment of funds vis-à-vis the amounts disbursed / drawn and the difference not being accounted for.

2.2.2 Siphoning of funds, referred to at para 2.1(c) above, should be construed to occur if any funds borrowed from banks / FIs are utilised for purposes un-related to the operations of the borrower, to the detriment of the financial health of the entity or of the lender. The decision as to whether a particular instance amounts to siphoning of funds would have to be a judgement of the lenders based on objective facts and circumstances of the case.

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. The default to be categorised as wilful must be intentional, deliberate and calculated.

2.3 Cut-off limits

While the penal measures indicated at para 2.5 below would normally be attracted by all the borrowers identified as wilful defaulters or the promoters involved in diversion / siphoning of funds, keeping in view the present limit of Rs. 25 lakh fixed by the Central Vigilance Commission for reporting of cases of wilful default by the banks/FIs to RBI, any wilful defaulter with an outstanding balance of Rs. 25 lakh or more, would attract the penal measures stipulated at para 2.5 below. This limit of Rs. 25 lakh may also be applied for the purpose of taking cognisance of the instances of 'siphoning' / 'diversion' of funds.

2.4 End-use of Funds

In cases of project financing, the banks / FIs seek to ensure end use of funds by, *inter alia*, obtaining certification from the Chartered Accountants for the purpose. In case of short-term corporate / clean loans, such an approach ought to be supplemented by 'due diligence' on the part of lenders themselves, and to the extent possible, such loans should be limited to only those borrowers whose integrity and reliability are above board. The banks and FIs, therefore, should not depend entirely on the certificates issued by the Chartered Accountants but strengthen their internal controls and the

credit risk management system to enhance the quality of their loan portfolio.

Needless to say, ensuring end-use of funds by the banks and the FIs should form a part of their loan policy document for which appropriate measures should be put in place. The following are some of the illustrative measures that could be taken by the lenders for monitoring and ensuring end-use of funds:

(a) Meaningful scrutiny of quarterly progress reports / operating statements / balance sheets of the borrowers;

(b) Regular inspection of borrowers' assets charged to the lenders as security;

(c) Periodical scrutiny of borrowers' books of accounts and the no-lien accounts maintained with other banks;

(d) Periodical visits to the assisted units;

(e) System of periodical stock audit, in case of working capital finance;

(f) Periodical comprehensive management audit of the 'Credit' function of the lenders, so as to identify the systemic-weaknesses in the credit-administration.

(It may be kept in mind that this list of measures is only illustrative and by no means exhaustive.)

2.5 Penal measures

In order to prevent the access to the capital markets by the wilful defaulters, a copy of the list of wilful defaulters (non-suit filed accounts) and list of wilful defaulters (suit filed accounts) are forwarded to SEBI by RBI and Credit Information Bureau (India) Ltd. (CIBIL) respectively.

The following measures should be initiated by the banks and FIs against the wilful defaulters identified as per the definition indicated at paragraph 2.1 above:

a) No additional facilities should be granted by any bank / FI to the listed wilful defaulters. In addition, the entrepreneurs / promoters of companies where banks / FIs have identified siphoning / diversion of funds, misrepresentation, falsification of accounts and fraudulent transactions should be debarred from institutional finance from the scheduled commercial banks, Development Financial Institutions, Government owned NBFCs, investment institutions etc. for floating new ventures for a period of 5 years from the date the name of the wilful defaulter is published in the list of wilful defaulters by the RBI.

b) The legal process, wherever warranted, against the borrowers / guarantors and foreclosure of recovery of dues should be initiated expeditiously. The lenders may initiate criminal proceedings against wilful defaulters, wherever necessary.

c) Wherever possible, the banks and FIs should adopt a proactive approach for a change of management of the wilfully defaulting borrower unit.

d) A covenant in the loan agreements with the companies in which the banks/FIs have significant stake, should be incorporated by the banks/FIs to the effect that the borrowing company should not induct on its board a person whose name appears in the list of Wilful Defaulters and that in case, such a person is found to be on its board, it would take expeditious and effective steps for removal of the person from its board. 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.

2.6 Guarantees furnished by individuals, group companies & non-group companies

While dealing with wilful default of a single borrowing company in a Group, the banks /FIs should consider the track record of the individual company, with reference to its repayment performance to its lenders. However, in cases where guarantees furnished by the companies within the Group on behalf of the wilfully defaulting units are not honoured when invoked by the banks /FIs, such Group companies should also be reckoned as wilful defaulters.

In connection with the guarantors, banks have raised queries regarding inclusion of names of guarantors who are either individuals (not being directors of the company) or non-group corporates in the list of wilful defaulters. It is advised that in terms of Section 128 of the Indian Contract Act, 1872, the liability of the surety is co-extensive with that of the principal debtor unless it is otherwise provided by the contract. Therefore, when a default is made in making repayment by the principal debtor, the banker will be able to proceed against the guarantor/surety even without exhausting the remedies against the principal debtor. As such, where a banker has made a claim on the guarantor on account of the default made by the principal debtor, the liability of the guarantor is immediate. In case the said guarantor refuses to comply with the demand made by the creditor/banker, despite having sufficient means to make payment of the dues, such guarantor would also be treated as a wilful defaulter. It is clarified that this treatment of non-group corporate and individual guarantors would apply only prospectively and not to cases where guarantees were taken prior to this circular. Banks/FIs may ensure that this position is made known to all prospective guarantors at the time of accepting guarantees.

2.7 Role of auditors

In case any falsification of accounts on the part of the borrowers is observed by the banks / FIs, and if it is observed that the auditors were negligent or deficient in conducting the audit, they should lodge a formal complaint against the auditors of the borrowers with the Institute of Chartered Accountants of India (ICAI) to enable the ICAI to examine and fix accountability of the auditors. Pending disciplinary action by ICAI, the complaints may also be forwarded to the RBI (Department of Banking Supervision, Central Office) and IBA for records. IBA would circulate the names of the CA firms against whom many complaints have been received amongst all banks who should consider this aspect before assigning any work to them. RBI would also share such information with other financial sector regulators/Ministry of Corporate Affairs (MCA) / Comptroller and Auditor General (CAG).

With a view to monitoring the end-use of funds, if the lenders desire a specific certification from the borrowers' auditors regarding diversion / siphoning of funds by the borrower, the lender should award a separate mandate to the auditors for the purpose. To facilitate such certification by the auditors the banks and FIs will also need to ensure that appropriate covenants in the loan agreements are incorporated to enable award of such a mandate by the lenders to the borrowers / auditors.

In addition to the above, banks are advised that with a view to ensuring proper end-use of funds and preventing diversion/siphoning of funds by the borrowers, lenders could consider engaging their own auditors for such specific certification purpose without relying on certification given by borrower's auditors. However, this cannot substitute bank's basic minimum own diligence in the matter.

2.8 Role of Internal Audit / Inspection

The aspect of diversion of funds by the borrowers should be adequately looked into while conducting internal audit / inspection of their offices / branches and periodical reviews on cases of wilful defaults should be submitted to the Audit Committee of the bank.

2.9 Reporting to RBI / Credit Information Companies

(a) Banks/FIs should submit the list of suit-filed accounts of wilful defaulters of Rs.25 lakh and above as at end-March, June, September and December every year to a credit information company which has obtained certificate of registration from RBI in terms of Section 5 of the Credit Information Companies (Regulation) Act, 2005 and of which it is a member. Reserve Bank of India has, in exercise of the powers conferred by the Act and the Rules and Regulations framed thereunder, granted Certificate of Registration to (i) Experian Credit Information Company of India Private Limited, (ii) Equifax Credit Information Services Private Limited, (iii) CRIF High Mark Credit Information Services Private Limited and (iv) Credit Information Bureau (India) Limited (CIBIL) to commence/carry on the business of credit information. Credit Information Companies (CICs) have also been advised to disseminate the information pertaining to suit filed accounts of Wilful Defaulters on their respective websites.

(b) Banks / FIs should, however, submit the quarterly list of wilful defaulters where suits have not been filed only to RBI in the format given in Annex 1.

(c) In order to make the current system of banks/FIs reporting names of suit filed accounts and non-suit filed accounts of Wilful Defaulters and its availability to the banks by CICs / RBI as current as possible, banks / FIs are advised to forward data on wilful defaulters to the CICs/Reserve Bank at the earliest but not later than a month from the reporting date.

d) After examining the recommendations of the Committee to Recommend Data Format for Furnishing of Credit Information to Credit Information Companies (Chairman: Shri. Aditya Puri) it has been decided to implement the following measures with regard to reporting and dissemination of information on wilful defaulters:

a. Banks/FIs may continue to furnish the data on wilful defaulters (non-suit filed accounts) of Rs. 25 lakhs and above for the quarter ending June 30, 2014 and September 30, 2014 to RBI in the existing format.
b. In terms of Credit Information Companies (Regulation) Act, 2005, banks/FIs are advised to furnish the aforementioned data in respect of wilful defaulters (non-suit filed accounts) of Rs. 25 lakhs and above for the quarter ending December 31, 2014 to CICs and not to RBI. Thereafter, banks/FIs may continue to furnish data in respect of wilful defaulters to CICs on a monthly or a more frequent basis. This would enable such information to be available to the banks/FIs on a near real time basis.

Explanation

In this connection, it is clarified that banks need not report cases where

(i) outstanding amount falls below Rs.25 lakh and

(ii) in respect of cases where banks have agreed for a compromise settlement and the borrower has fully paid the compromised amount.

3. Mechanism for Identification of Wilful Defaulters

The transparent mechanism referred to in paragraph 2.5(d) above should generally include the following:

(a) The evidence of wilful default on the part of the borrowing company and its promoter/whole-time director at the relevant time should be examined by a Committee headed by an Executive Director and consisting of two other senior officers of the rank of GM/DGM.

(b) If the Committee concludes that an event of wilful default has occurred, it shall issue a Show Cause Notice to the concerned borrower and the promoter/whole-time director and call for their submissions and after considering their submissions issue an order recording the fact of wilful default and the reasons for the same. An opportunity should be given to the borrower and the promoter/whole-time director for a personal hearing if the Committee feels such an opportunity is necessary.

(c) The Order of the Committee should be reviewed by another Committee headed by the Chairman / CEO and MD and consisting, in addition, of two independent directors of the Bank and the Order shall become final only after it is confirmed by the said Review Committee.

(d) As regard a non-promoter/non-whole time director, it should be kept in mind that Section 2(60) of the Companies Act, 2013 defines an officer who is in default to mean only the following categories of directors:

(i) Whole-time director

(ii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;

(iii) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings and who has not objected to the same, or where such contravention had taken place with his consent or connivance.

Therefore, except in very rare cases, a non-whole time director should not be considered as a wilful defaulter unless it is conclusively established that

I. he was aware of the fact of wilful default by the borrower by virtue of any proceedings recorded in the Minutes of the Board or a Committee of the Board and has not recorded his objection to the same in the Minutes, or,

II. the wilful default had taken place with his consent or connivance.

A similar process as detailed in sub paras (a) to (c) above should be followed when identifying a non-promoter/non-whole time director as a wilful defaulter.

4. Criminal Action against Wilful Defaulters

4.1 J.P.C. Recommendations

Reserve Bank examined, the issues relating to restraining wilful defaults in consultation with the Standing Technical Advisory Committee on Financial Regulation in the context of the following recommendations of the JPC and in particular, on the need for initiating criminal action against concerned borrowers, viz.

a. It is essential that offences of breach of trust or cheating construed to have been committed in the case of loans should be clearly defined under the existing statutes governing the banks, providing for criminal action in all cases where the borrowers divert the funds with malafide intentions.

b. It is essential that banks closely monitor the end-use of funds and obtain certificates from the borrowers certifying that the funds have been used for the purpose for which these were obtained.

c. Wrong certification should attract criminal action against the borrower.

4.2 Monitoring of End Use

Banks / FIs should closely monitor the end-use of funds and obtain certificates from borrowers certifying that the funds are utilised for the purpose for which they were obtained. In case of wrong certification by the borrowers, banks / FIs may consider appropriate legal proceedings, including criminal action wherever necessary, against the borrowers.

4.3 Criminal Action by Banks / FIs

It is essential to recognise that there is scope even under the existing legislations to initiate criminal action against wilful defaulters depending upon the facts and circumstances of the case under the provisions of Sections 403 and 415 of the Indian Penal Code (IPC) 1860. Banks / FIs are, therefore, advised to seriously and promptly consider initiating criminal action against wilful defaulters or wrong certification by borrowers, wherever considered necessary, based on the facts and circumstances of each case under the above provisions of the IPC to comply with our instructions and the recommendations of JPC.

It should also be ensured that the penal provisions are used effectively and determinedly but after careful consideration and due caution. Towards this end, banks / FIs are advised to put in place a transparent mechanism, with the approval

of their Board, for initiating criminal proceedings based on the facts of individual case.

5. Reporting

5.1 Need for Ensuring Accuracy

RBI / Credit Information Companies disseminate information on non-suit filed and suit filed accounts respectively of Wilful Defaulters, as reported to them by the banks / FIs and therefore, the responsibility for reporting correct information and also accuracy of facts and figures rests with the concerned banks and financial institutions.

5.2 Position regarding Guarantors

Banks/FIs may take due care to follow the provisions set out in paragraph 3 of the Master Circular on Wilful Defaulters dated July 1, 2014 in identifying and reporting instances of wilful default in respect of guarantors also. While reporting such names to RBI, banks/FIs may include "Guar" in brackets i.e. (Guar) against the name of the guarantor and report the same in the Director column.

5.3 Government Undertakings

In the case of Government undertakings, it should be ensured that the names of directors are not to be reported. Instead, a legend "Government of ——— undertaking" should be added.

5.4 Inclusion of Director Identification Number (DIN)

Ministry of Corporate Affairs had introduced the concept of a Director Identification Number (DIN) with the insertion of Sections 266A to 266G of Companies (Amendment) Act, 2006. In order to ensure that directors are correctly identified and in no case, persons whose names appear to be similar to the names of directors appearing in the list of wilful defaulters, are wrongfully denied credit facilities on such grounds, banks/FIs have been advised to include the Director Identification Number (DIN) as one of the fields in the data submitted by them to Reserve Bank of India / Credit Information Companies.

It is reiterated that while carrying out the credit appraisal, banks should verify as to whether the names of any of the directors of the companies appear in the list of defaulters/ wilful defaulters by way of reference to DIN/PAN etc. Further, in case of any doubt arising on account of identical names, banks should use independent sources for confirmation of the identity of directors rather than seeking declaration from the borrowing company.

Annex 1
(Refer Para 2.9)

Format for submission of data on cases of wilful default (non-suit filed accounts) of Rs.25 lakh & above to RBI on quarterly basis:

The banks/FIs are required to submit data of wilful defaulters (non-suit filed accounts) in Compact Disks (CDs) to RBI on quarterly basis, using the following structure (with the same field names):

Field	Field Name	Type	Width	Description	Remarks
1	SCTG	Numeric	1	Category of bank/FI	Number 1/2/4/6/8 should be fed 1 SBI and its associate banks 2 Nationalised banks 4 Foreign banks 6 Private Sector Banks 8 Financial Institutions
2	BKNM	Character	40	Name of bank/FI	Name of the bank/FI
3	BKBR	Character	30	Branch name	Name of the branch
4	STATE	Character	15	Name of state	Name of state in which branch is situated
5	SRNO	Numeric	4	Serial No.	Serial No.
6	PRTY	Character	45	Name of Party	The legal name
7	REGADDR	Character	99	Registered address	Registered Office address
8	OSAMT	Numeric	6	Outstanding amount in Rs. lakhs (Rounded off)	
9	SUIT	Character	4	Suit filed or not	Type 'SUIT' in case suit is filed. For other cases this field should be kept blank.

10	OTHER_BK	Character	40	Name of other banks/ FIs	The names of other banks/FIs from whom the party has availed credit facility should be indicated. The names may be fed in abbreviated form e.g. BOB for Bank of Baroda, SBI for State Bank of India etc.
11	DIR1	Character	40	Name of director	(a) Full name of Director should be indicated. (b) In case of Government companies the legend "Govt. of ____undertaking" alone should be mentioned. (c) Against the names of nominee directors of banks/ FIs/ Central Govt./ State Govt., abbreviation 'Nom' should be indicated in the brackets. (d) Against the name of independent directors, abbreviation 'Ind' should be indicated in the brackets.
12	DIN_DIR1	Numeric	8	Director Identification Number of DIR1	8 digit Director Identification Number of the Director at DIR1
13	DIR2	Character	40	Name of director	As in DIR1
14	DIN_DIR2	Numeric	8	Director Identification Number of DIR2	8 digit Director Identification Number of the Director at DIR2
15	DIR3	Character	40	Name of director	As in DIR1
16	DIN_DIR3	Numeric	8	Director Identification Number of DIR3	8 digit Director Identification Number of the Director at DIR3
17	DIR4	Character	40	Name of director	As in DIR1
18	DIN_DIR4	Numeric	8	Director Identification Number of DIR4	8 digit Director Identification Number of the Director at DIR4
19	DIR5	Character	40	Name of director	As in DIR1
20	DIN_DIR5	Numeric	8	Director Identification Number of DIR5	8 digit Director Identification Number of the Director at DIR5
21	DIR6	Character	40	Name of director	As in DIR1
22	DIN_DIR6	Numeric	8	Director Identification Number of DIR6	8 digit Director Identification Number of the Director at DIR6
23	DIR7	Character	40	Name of director	As in DIR1
24	DIN_DIR7	Numeric	8	Director Identification Number of DIR7	8 digit Director Identification Number of the Director at DIR7
25	DIR8	Character	40	Name of director	As in DIR1
26	DIN_DIR8	Numeric	8	Director Identification Number of DIR8	8 digit Director Identification Number of the Director at DIR8
27	DIR9	Character	40	Name of director	As in DIR1
28	DIN_DIR9	Numeric	8	Director Identification Number of DIR9	8 digit Director Identification Number of the Director at DIR9
29	DIR10	Character	40	Name of director	As in DIR1
30	DIN_DIR10	Numeric	8	Director Identification Number of DIR10	8 digit Director Identification Number of the Director at DIR10
31	DIR11	Character	40	Name of director	As in DIR1
32	DIN_DIR11	Numeric	8	Director Identification Number of DIR11	8 digit Director Identification Number of the Director at DIR11

33	DIR12	Character	40	Name of director	As in DIR1
34	DIN_DIR12	Numeric	8	Director Identification Number of DIR12	8 digit Director Identification Number of the Director at DIR12
35	DIR13	Character	40	Name of director	As in DIR1
36	DIN_DIR13	Numeric	8	Director Identification Number of DIR13	8 digit Director Identification Number of the Director at DIR13
37	DIR14	Character	40	Name of director	As in DIR1
38	DIN_DIR14	Numeric	8	Director Identification Number of DIR14	8 digit Director Identification Number of the Director at DIR14
	Total bytes		953		

(1) If total numbers of directors exceed 14, the name of additional directors may be entered in blank spaces available in the other directors' columns.

(2) The data / information should be submitted in the above format in **Compact disks as .dbf file only**. While submitting the CD, the banks/FIs should ensure that:

- the CD is readable and is not corrupted / virus-affected.
- the CD is labelled properly indicating name of the bank, name of the list and period to which the list belongs, and the name of list indicated on label and in the letter are same.
- the name and width of each of the fields and order of the fields is strictly as per the above format.
- records with outstanding amount of less than Rs.25 lakh have not been included.
- no suit-filed account has been included.
- use of following types of words have been avoided (as the fields can not be properly indexed) : 'M/s', 'Mr', 'Shri' etc.
- the words 'Mrs', 'Smt', 'Dr' etc. have been fed at the end of name of the person, if applicable.
- Except for field "SUIT" and some of the fields from DIR1 To DIR 14, as applicable, information is completely filled in and columns are not kept blank.

(3) In case of 'Nil' data, there is no need to send any CD and the position can be conveyed through a letter/fax.

(4) A certificate signed by a sufficiently senior official stating that 'the list of wilful defaulters has been correctly compiled after duly verifying the details thereof and RBI's instructions in this regard have been strictly followed' is sent along with the CD.

List of Circulars consolidated by the Master Circular **Annex 2**

Sr. No.	Circular No.	Date	Subject	Para No.
1.	DBOD.No.DL(W).BC.12/20.16.002(1)/98-99	20.02.1999	Collection and Dissemination of Information on Cases of Wilful Default of Rs.25 lakh and above	1
2.	DBOD.No.DL.BC. 46/20.16.002/98-99	10.05.1999	Disclosure of information regarding defaulting borrowers - Lists of Defaulters/ Suit filed accounts and Data on Wilful Default	Annex 1
3.	DBOD.No.DL(W).BC 161/20.16.002/99-2000	01.04.2000	Collection and Dissemination of information on defaulting borrowers of banks and Financial Institutions	5 and Annex 1
4.	DBOD.No.DL.BC.54/20.16.001/2001-02	22.12.2001	Collection and dissemination of information on defaulters	5
5.	DBOD.No.DL(W).BC.110/20.16.003(1)/2001-02	30.05.2002	Wilful defaulters and action thereagainst	2. 2.1 to 2.8

6.	DBOD.No.DL.BC.111/20.16.001/2001-02	04.06.2002	Submission of Credit Information to Credit Information Bureau (CIB)	2.9
7.	DBOD.No.DL(W).BC5820.16.003/2002-03	11.01.2003	Wilful defaulters and Diversion of funds - Action thereagainst	2.1, 2.2
8.	DBOD.No.DL.BC.7/20.16.003/2003-04	29.07.2003	Wilful Defaulters and action thereagainst	3
9.	DBOD.No.DL.BC.95/20.16.002/2003-04	17.06.2004	Annual Policy Statement for the year 2004-05 - Dissemination of Credit Information - Role of CIBIL	2.9
10.	DBOD.No.DL.BC.94/20.16.003/2003-04	17.06.2004	Annual Policy Statement: 2004-05 - Wilful Defaulters – Clarification on Process	3
11.	DBOD.No.DL.BC.16/20.16.003/2004-05	23.07.2004	Checking of wilful defaults and measures against Wilful Defaulters	4
12.	DBOD No.DL(W)BC.87/20.16.003/2007-08	28.05.2008	Wilful Defaulters and action thereagainst	2.1
13.	Mail-Box Clarification	17.04.2008	Reporting of accounts under compromise settlement	2.9
14.	DBOD No.DL12738/20.16.001/2008-09	03.02.2009	Submission of information about List of Defaulters (non-suit filed accounts) / Wilful Defaulters (non-suit filed accounts) on Compact Disks.	Annex 1
15.	DBOD No.DL.16214/20.16.042/2009-10	04.03.2010	Grant of 'Certificate of Registration' – For Commencing business of credit information – Experian Credit Information Company of India Private Limited	2.9
16.	DBOD.No.DL.BC.83/20.16.042/2009-10	31.03.2010	Grant of 'Certificate of Registration' – For Commencing business of credit information – Equifax Credit Information Services Private Limited	2.9
17.	DBOD.No.DL.BC.110/20.16.046/2009-10	11.06.2010	Submission of data to Credit Information Companies – Format of data to be submitted by Credit Institutions	2.9
18.	DBOD No.CID.BC.40/20.16.046/2010-11	21.09.2010	Submission of credit data to Credit Information Companies – Inclusion of Director Identification Number (DIN)	5.4 and Annex1
19.	DBOD.No.CID.BC.64/20.16.042/2010-11	01.12.2010	Grant of 'Certificate of Registration' – For Commencing business of credit information – High Mark Credit Information Services Private Limited	2.9
20.	DBOD.No.CID.BC.30/20.16.042/2011-12	05.09.2011	Submission of Credit Information to credit Information Companies – Defaulters of Rs. 1 Crore and above and Wilful Defaulters of Rs. 25 lakh and above- Dissemination of Credit Information of suit filed	2.9

			accounts.	
21.	DBOD.No.CID.BC.84/20.16.042/2011-12	05.03.2012	Grant of 'Certificate of Registration' – For carrying on the business of credit information – Credit Information Bureau (India) Limited	2.9
22	DBOD.BP.BC.No.97/21.04.132/2013-14	26.02.2014	Framework for Revitalising Distressed Assets in the Economy – Guidelines on Joint Lenders' Forum and Corrective Action Plan	2.9
23	DBOD.BP.BC.No.98/21.04.132/2013-14	26.02.2014	Framework for Revitalising Distressed Assets in the Economy- Refinancing of Project Loans, Sale of NPA and Other Regulatory Measures	2.7, 5.4
24	DBOD.CID.BC.128/20.16.003/2013-14	27.6.2014	Defaulters of Rs. 1 crore and above (non-suit filed accounts) and Wilful Defaulters of Rs. 25 lakhs and above (non-suit filed accounts) – Changes in reporting to RBI/CICs	2.9
25	DBOD.No.CID.41/20.16.003/2014-15	09.09.2014	Guidelines on Wilful Defaulters – Clarification regarding Guarantor, Lender and Unit	2.1, 2.6 and 5.2

Annexure - 4

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. BM/AO-132 /2013]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of

Naresh Chandra Sharma

(PAN: ADWPS6154J)

In the matter of Bank of Rajasthan Ltd.

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation into the affairs of Bank of Rajasthan Ltd. (hereinafter referred to as '**BoR**') during the period June 2007 to December 2009 (hereinafter referred to as the '**investigation period**'). Investigations revealed that the promoters of BoR led by Mr. Pravin Kumar Tayal, along with some companies that were connected to Mr. Pravin Kumar Tayal and/ or his relatives, by way of their continuous disclosure, publicly announced that their stake had come down from 44.18% as on quarter ending June 2007 to 28.61% as on quarter ending December 2009. However, it was alleged, though as per disclosure their holding seemed to have reduced, but in reality the holding of the promoters actually increased with the active collusion of front entities. It was alleged that the promoter companies of BoR and some companies that were connected to Mr. Pravin Kumar Tayal and/ or his relatives transferred shares of BoR in the off market and funds to other connected/ related companies and also made third party payments to certain brokers as consideration for purchase of shares of BoR by related/ connected companies from the market. Thus, it was alleged that the shareholding of the promoters of BoR with persons acting in concert (PACs) had increased from 46.80% in June 2007 to 63.15% in December 2009. It was alleged that while the promoters conveyed the impression that they were reducing their shareholding, they did not dilute their controlling

stake in BOR. On the contrary they had actually increased their holding in a deceptive manner with the active collusion of their front entities and allegedly made wrong disclosures to the exchange.

2. In view of the above it was alleged that **Naresh Chandra Sharma** (hereinafter referred to as **'the Noticee'**), as a director of Eskay K'n'it (India) Ltd. (hereinafter referred to as **'Eskay'**) a company connected/ related to Pravin Kumar Tayal and/ or his relatives, through the above actions violated Section 12 A (a), (b) and (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act'**) and Regulation 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(f) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulation, 2003 (hereinafter referred to as **'PFUTP Regulations'**). The above violations make the Noticee liable for monetary penalty under Section 15 HA of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

3. I was appointed as the Adjudicating Officer, vide order dated January 25, 2012, under Section 15 I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the **'Rules'**) to inquire into and adjudge under Section 15 HA of the SEBI Act for the alleged violation committed by the Noticee.

SHOW CAUSE NOTICE, HEARING AND REPLY

4. Vide common Show Cause Notice dated June 20, 2012, July 5, 2012 and July 9, 2012 (hereinafter referred to as **'SCN'**) issued under Rule 4 of the Rules, the Noticee was asked to show cause as to why an inquiry should not be held against him and penalty not be imposed under Section 15 HA of the SEBI Act for the alleged violations specified in the SCN.

5. The Noticee replied to the SCN vide his letter dated July 25, 2012 stating therein that he was a non executive independent director in Eskay, a listed company, during the investigation period. Vide hearing notice dated December 17, 2012, the Noticee was granted an opportunity of personal hearing before me on January 11, 2013. Subsequently, the hearing was preponed to January 4, 2013, and on the scheduled date, Dr. SK Jain, the authorized representative of the Noticee, appeared for the hearing, and made submissions before me on

behalf of the Noticee, reiterating the earlier written submissions. Thereafter, the Noticee was advised to submit the evidence in support of his submission that he was an independent director in Eskay. In this regard, Eskay submitted the Annual Report of the company for 2008-2009 and 2009-2010. I note that under the corporate governance report, the Noticee is named as an independent director. Further, a confirmation was sought from Eskay with regard to the role of the Noticee in the company. In reply to the same, Eskay has submitted that during the investigation period the Noticee was an independent director in the company.

CONSIDERATION OF ISSUES AND FINDINGS

6. I have examined the SCN, the reply of the Noticee and the documents available on record. I observe that the allegation in the SCN is that the promoters of BoR and their PACs, by their act of concealment of correct disclosure, defrauded the investors of BoR and the market at large. Eskay was alleged to be a PAC and the Noticee was a director of Eskay. Through the above actions, the Noticee, as a director of the above named company, was alleged to have violated Section 12 A (a), (b) and (c) of the SEBI Act and Regulation 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(f) of the PFUTP Regulations.

7. Now the issues that arise for consideration in the present case are :

   a. Whether the Noticee violated Section 12 A (a), (b) and (c) of the SEBI Act and Regulation 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(f) of the PFUTP Regulations?
   b. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15 HA of the SEBI Act?
   c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of the SEBI Act?

8. Before moving forward, it will be appropriate to refer to the relevant provisions of the SEBI Act and PFUTP Regulations, which read as under:

PFUTP Regulations

Prohibition of certain dealings in securities

3. No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely :—

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities.

SEBI Act

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control

12A. No person shall directly or indirectly-

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

9. On perusal of Form 32 submitted by the Noticee, I observe that he was appointed as the director of the company Eskay on October 21, 2008. I note from the submissions made by the Noticee, Annual Report of 2008-2009 and 2009-2010 of Eskay and the letter submitted by

Eskay that the Noticee was an independent director of Eskay during the investigation period and was not involved in the day today affairs of the company. I observe that investigation has not brought out any specific role of the Noticee in the day to day management of the company.

10. The Hon'ble Securities Appellate Tribunal (SAT) in the matter of *Vijay Remedies Ltd. Vs. SEBI* (February 11, 2005) while considering the role of two directors pleading that they were independent directors and not associated with the day to day management and control of the company, held that there must be some element of lack of due diligence on the part of the appellants to hold that they were in violation of regulations. Since the two independent directors had nothing to do with the day to day affairs of the company, the Hon'ble SAT held that they cannot be fastened with any liability.

11. In view of the above I give the benefit of doubt to the Noticee and do not hold the Noticee guilty of the charges of violation of the provisions of Section 12 A (a), (b) and (c) of the SEBI Act and Regulation 3(a), 3(b), 3(c), 3(d), 4(1) and 4(2)(f) of the PFUTP Regulations.

ORDER

12. After taking into consideration all the facts and circumstances of the case and material available on record, I do not find it a fit case to impose any monetary penalty. The case is accordingly disposed of.

13. In terms of Rule 6 of the Rules, copy of this order is sent to the Noticee also to the Securities and Exchange Board of India.

Date: **February 20, 2013**
Place: **Mumbai**

BARNALI MUKHERJEE
ADJUDICATING OFFICER

Annexure - 5

WTM/KMA/93/IVD/07/2009

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: DR. K.M. ABRAHAM, WHOLE TIME MEMBER

ORDER

UNDER SECTION 11(4) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF GHCL LIMITED

1. Securities and Exchange Board of India (hereinafter referred to as SEBI) received a complaint alleging that GHCL Limited (hereinafter referred to as GHCL) had been reporting false shareholding details of its promoters in its quarterly filing with the stock exchanges. Thereafter, an examination of the records of holdings of promoter entities of GHCL from the stock exchanges and Link Intime India Private Limited (the registrar of GHCL) was carried out to verify the authenticity of the disclosures made by GHCL. From the said examination, it was observed that the disclosures made by GHCL with respect to its promoters holding, across the four quarters of the year 2008, were at significant variance with the actual holdings of the promoters. The observed differences in the holding is as divergent as 17.65% being the actual and 40.30% being the disclosed holding for the quarter ended September, 2008 - a difference of more than 100%. As it appeared that GHCL had filed false shareholding of the promoters repeatedly over the four quarters of 2008, the said conduct of GHCL, its promoters and management were *prima facie* found to be in violation of Regulation 4(2)(f) and 4(2)(r) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as PFUTP Regulations). In view of the same, SEBI, vide an ad-interim ex-parte order dated April 20, 2009 *inter alia* directed the promoters of GHCL namely, Alankar Commercial Private Limited, Banjax Limited, Bharatpur Investment

Limited, Carefree Investment Company Limited, Chirawa Investment Limited, Dalmia Finance Limited, Divine Leasing & Finance Limited, Excellent Commercial Enterprises and Investment, Gems Commercial Company Limited, General Exports and Credits Limited, GTC Industries Limited, Harvatax Engineering & Processing Company Limited, Hexabond Limited, Hindustan Commercial Company Limited, Hotex Company Limited, International Resources Limited, Lakshmi Vishnu Investment Limited, Lhonak International Private Limited, Moderate Investment and Commercial Enterprises, Mourya Finance Limited, Nareshchandra Jain, Oval Investment Private Limited, Pashupatinath Commercial Private Limited, Ram Krishna Dalmia Foundation, Ricklunsford Trade and Industrial Investment, Sanjay Trading Investment Company Private Limited, Sikar Investment Company Limited, Sovereign Commercial Private Limited, Suman Jain, Swastik Commercial Private Limited, Trishul Commercial Private Limited, WGF Financial Services Limited and World Growth Fund Limited not to buy, sell or deal in the securities market until further orders. Further, GHCL was directed to reconcile and file the correct shareholding details with the stock exchanges. The aggrieved parties were advised that they may file their objections, if any, to the said order.

2. Pursuant to the aforesaid interim order, Alankar Commercial Private Limited, Banjax Limited, Bharatpur Investment Limited, Carefree Investment Company Limited, Chirawa Investment Limited, Dalmia Finance Limited, Divine Leasing & Finance Limited, General Exports and Credits Limited, GTC Industries Limited, Hexabond Limited, Hotex Company Limited, Lakshmi Vishnu Investment Limited, Mourya Finance Limited, Nareshchandra Jain, Pashupatinath Commercial Private Limited, Ram Krishna Dalmia Foundation, Ricklunsford Trade and Industrial Investment, Sanjay Trading Investment Company Private Limited, Sikar Investment Company Limited, Sovereign Commercial Private Limited, Suman Jain, Swastik Commercial Private Limited,

Trishul Commercial Private Limited, WGF Financial Services Limited and World Growth Fund Limited filed their objections to the said ad interim order, vide separate letters dated May 05, 2009. Thereafter, an opportunity of hearing was afforded to the aforesaid 25 entities/persons on May 22, 2009, when they were represented by Mr. P. N. Modi and Mr. Vinay Chauhan, Advocates, who made submissions on their behalf. Subsequently, a letter was received by SEBI on June 01, 2009 from Corporate Law Chambers (Advocates on behalf of the aforesaid 25 entities) providing details of sale/purchase made by Bharatpur Investment Limited, Dalmia Finance Limited and General Exports and Credits Limited.

3. Excellent Commercial Enterprises and Investment, Gems Commercial Company Limited, Harvatax Engineering & Processing Company Limited, Hindustan Commercial Company Limited, International Resources Limited, Lhonak International Private Limited, Moderate Investment and Commercial Enterprises and Oval Investment Private Limited filed their objections vide separate letters dated June 04, 2009 and sought for a personal hearing. Subsequently, vide separate letters dated June 10, 2009, the aforesaid entities *inter alia* requested that they be allowed to withdraw their request for personal hearing and to adopt the arguments/oral submissions made by the aforementioned 25 promoter entities made by them during the hearing on May 22, 2008. For the sake of convenience, the entities/persons mentioned in Paragraph 1 above shall hereinafter be collectively referred to as promoter entities.

4. In the meanwhile, the promoter entities filed appeals in Appeal Nos. 95 & 96 of 2009 before the Hon'ble Securities Appellate Tribunal against the ex-parte ad interim order dated April 20, 2009. The Hon'ble Securities Appellate Tribunal

disposed of the said appeals on June 29, 2009 with a direction to SEBI to pass an order on or before July 10, 2009.

5. I have examined the objections filed by the promoter entities, submissions made during the hearing held on May 22, 2009 and other material available on record. The only issue that requires consideration in this order is to see whether the interim directions issued vide order dated April 20, 2009 against the promoter entities need to continue or not. Though the promoter entities had filed separate submissions, the same are more or less similar in substance. The said submissions in brief, are as follows:

a. That they had no role to play in the reporting of the shareholding done by GHCL to the stock exchanges. That they were not even aware of the shareholding disclosures made by GHCL to the stock exchanges.
b. That no opportunity was afforded to clarify or explain the position with respect to the allegation regarding reporting of wrong shareholding before passing of the order.
c. That the order does not justify the invocation of the provisions of the PFUTP Regulations.
d. That the purported expression of desire of Al Rostamani Group of purchasing 25% of shares in GHCL and the said desire having failed to take shape had been wrongly understood as an intention on the part of the promoters to dilute their 25% shareholding in GHCL without there being any evidence of the same. That they had no role to play in the publication of the said news report (in the Economic Times on June 11, 2008).
e. That they had not traded in the shares of GHCL between June 11, 2008 and June 18, 2008.

f. That there was no variation between their shareholding as disclosed to the stock exchanges under Clause 35 of the Listing Agreement by GHCL and their shareholding as recorded in the Register of Members maintained by the share transfer and register of GHCL.

g. That they requested that the ex-parte interim order be withdrawn.

6. As can be seen, for the quarter ended March 31, 2008, the number of shares held by the promoters as disclosed by GHCL was 4,70,73,557 whereas they had actually held 3,24,27,953, the difference being 14.64%. For the quarter ended June 30, 2008, the shares actually held by the promoters were 1,94,11,921, but the disclosed quantity to the stock exchange was 4,04,24,554 shares, a difference of 21.01%. Similarly, for the quarter ended September 30, 2008, the shares actually held by the promoters were 1,80,19,245, but the disclosed quantity by GHCL to the stock exchange was 4,03,11,856 shares, a difference of 22.28%. Likewise, for the quarter ended December 31, 2008, the number of shares held by the promoters as disclosed by GHCL was 3,83,27,618 whereas they actually held 1,87,42,935 shares, the difference being 18.74%. Thus, it is found that the disclosures made by GHCL across all the four quarters in the year 2008 in respect of its promoters holding are at noticeable variance with the actual holding by the promoters.

7. The promoter entities had submitted that they had no role to play in the reporting of the shareholding done by GHCL to the stock exchanges and that they were not even aware of the shareholding disclosures made by GHCL to the stock exchanges. It was further submitted that there was no variation between their shareholding as disclosed to the stock exchanges under Clause 35 of the Listing Agreement by GHCL and their shareholding as recorded in the Register of Members maintained by the share transfer agent & registrar of GHCL. Though, it may be so, the promoter group when taken as a whole

constitutes one single body for the purposes of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and for other purposes.

8. It was further submitted by the promoter entities that the purported expression of desire of Al Rostamani Group of purchasing 25% of shares in GHCL and the said desire having failed to take shape had been wrongly understood as an intention on the part of the promoters to dilute their 25% shareholding in GHCL without there being any evidence of the same and that they had no role to play in the publication of the said news report which appeared in the Economic Times on June 11, 2008. In this regard, it must be noted that the interim order had taken only a *prima facie* view that the said report was a ploy of GHCL to inject positive news about it in the market in order to induce investment by the public.

9. Having considered the facts and circumstances and the submissions made by the promoter entities, I am of the view that the restraint order in respect of the said 33 promoter entities need not continue. The issues are left open, as a detailed investigation in the matter is on going.

10. In view of the foregoing, the interim directions issued vide ex-parte ad-interim order dated April 20, 2009 against Alankar Commercial Private Limited, Banjax Limited, Bharatpur Investment Limited, Carefree Investment Company Limited, Chirawa Investment Limited, Dalmia Finance Limited, Divine Leasing & Finance Limited, Excellent Commercial Enterprises and Investment, Gems Commercial Company Limited, General Exports and Credits Limited, GTC Industries Limited, Harvatax Engineering & Processing Company Limited, Hexabond Limited, Hindustan Commercial Company Limited, Hotex Company Limited, International Resources Limited, Lakshmi Vishnu Investment Limited,

Lhonak International Private Limited, Moderate Investment and Commercial Enterprises, Mourya Finance Limited, Nareshchandra Jain, Oval Investment Private Limited, Pashupatinath Commercial Private Limited, Ram Krishna Dalmia Foundation, Ricklunsford Trade and Industrial Investment, Sanjay Trading Investment Company Private Limited, Sikar Investment Company Limited, Sovereign Commercial Private Limited, Suman Jain, Swastik Commercial Private Limited, Trishul Commercial Private Limited, WGF Financial Services Limited and World Growth Fund Limited stands vacated.

11. This order shall come into force with immediate effect.

DR. K. M. ABRAHAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Place: Mumbai
Date : July 07, 2009

Annexure - 6

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. DSR/AO-19/2008]

UNDER RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995 READ WITH SECTION 15I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992.

In respect of
Jamnalal Sons Private Limited
(PAN No. AAAGJ3176H)

BRIEF FACTS OF THE CASE:

1. Mukand Limited (hereinafter referred as 'MKL' or 'Target Company") has its registered office at Bajaj Bhavan , Jamnalal Bajaj Marg , 226 , Nariman Point, Mumbai and its shares are listed in Bombay Stock Exchange Limited (hereinafter referred to as "BSE"), and National Stock Exchange of India Limited (hereinafter referred to as "NSE"). MKL came out with a Rights issue of 50,636,880 equity shares of Rs.10 each for cash at par , aggregating to Rs. 5,06,368,800 to the equity shareholders of MKL in the ratio of nine equity shares for every four equity shares held as on January 9, 2004. The total paid-up equity share capital of MKL prior to the rights issue of 50,608,849 equity shares was 22,505,280 equity shares of Rs. 10/- each, amounting to Rs.2,25,052,800/- and subsequent to the rights issue the total paid-up equity share capital of MKL became 7,31,14,129 equity shares amounting to Rs. 7,31,141,290/-.

2. M/s Jamnalal Sons Private Limited (hereinafter referred to as "acquirer"), belonging to the promoter group held 96,259 shares prior to the rights issue, therefore, the acquirer was entitled for 2,16,583 equity shares in the rights issue. However, due to renunciation by other companies belonging to the promoter group and the rights issue being undersubscribed , the acquirer applied for additional 20,028,890 equity shares and was allotted 33,51,975 shares. Consequently, the acquirer's holding pursuant to the rights issue rose from 96,259 equity shares constituting 0.43% of the pre rights issue share capital of MKL to 20,632,240 constituting 28.22% of the post rights issue share capital of MKL.

3. Subsequently, the acquirer vide letter dated 29.09.2006, filed a report in terms of Regulation 3(4) of SEBI (Substantial Acquisition of Shares and Takeovers), Regulations, 1997 (hereinafter referred to as SAST), in terms of Regulation 3(1)(b) to claim exemption from the applicability of Regulation 11(1) of SAST. It was observed that the acquirer had filed the report with a delay of 900 days and was alleged that the acquirer had not complied with the provisions of Regulation 3(4) of SAST.

APPOINTMENT OF AO:

4. Shri Amit Pradhan was appointed as Adjudicating Officer under Section 15 I of SEBI Act, 1992, read with Rule 3 of SEBI (Procedure For Holding Inquiry And Imposing Penalties By Adjudicating Officer) Rules, 1995 (hereinafter referred as 'Adjudication Rules') vide order dated March 13, 2007 to inquire into and adjudge under section 15A (a) of SEBI Act, 1992, the alleged violation of Regulation 3(4) of SAST by the acquirer. Pursuant to the transfer of Shri. Amit Pradhan to Northern Regional Office, I was appointed as Adjudicating Officer vide order of the Whole Time Member, dated June 12, 2007 and the proceedings thereof were conveyed vide communication dated July 19, 2007.

SHOW CAUSE, REPLY AND HEARING:

5. A Show Cause Notice (SCN) dated May 24, 2007 was issued to the acquirer under Rule 4(1) of Adjudication Rules, wherein it was stated that the acquirer had acquired 20,535,981 shares of MKL in the rights issue on 22.03.2004, constituting 27.78% of MKL's post rights issue equity share capital, thereby increasing its aggregate holding in MKL from 0.43% to 28.22% of its equity as under:

Acquirer	Prior to rights allotment		After rights allotment	
	Shares	%	Shares	%
Acquirer (Promoter)	96,259	0.43	20,632,240	28.22
Promoters(Other than Acquirer)	90,32,682	40.13	12,278,480	16.79
Total Promoters	**91,28,941**	**40.56**	**32,910,720**	**45.01**

It was also stated in the SCN that in terms of Regulation 3(4) of SAST, the report should have been filed within 21 days of the date of acquisition

alongwith all the supporting documents to SEBI. However, as the said report was filed by the acquirer with a delay of 900 days, therefore, it was alleged that non compliance with the aforementioned Regulation attracts penalty under Section 15A(a) of SEBI Act, 1992.

6. The acquirer vide letter dated 07.06.2007, inter alia, submitted that the total promoters holding pursuant to the rights issue increased only by 4.45% (i.e from 40.56% to 45.01%) which is within the creeping acquisition limit of 5% as stipulated under Regulation 11(1) of SAST. Therefore, the filing of the report under regulation 3(4) of SAST by the acquirer was not required.

7. In the interest of natural justice, a notice of inquiry dated 22.08.2007 was issued to the acquirer fixing the date of inquiry on 4.09.2007. Thereafter, the representative made written submissions vide letter dated 04-09-2007 stating ,inter-alia, that Regulation 3(4) stipulates that if holding of the acquirer together with persons acting in concert entitles the person to exercise 15% or more of the voting rights in a company then the report is required to be filed, since the acquirer (who also belongs to the promoter group) in concert with other promoter group have only acquired 4.45% of the total voting capital, therefore, filing of report in terms of Regulation 3(4) was not required. Further, it was also submitted that the proviso to regulation 3(1)(b) states that regulation 11 will not be attracted provided the acquisition is made by persons presently in control of the company and adequate disclosures to this effect have been made in the letter of offer. The acquirer also submitted that the report under Regulation 3(4) of SAST was submitted as a measure of abundant caution in compliance with SEBI's letter dated September 11, 2006.

8. The acquirer vide letter dated 04-09-2007, inter alia, cited the decision of Hon'ble Securities Appellate Tribunal in the matter of Rahul Holding(P) Limited , wherein it was held that as the stock exchanges as well as SEBI were informed of the acquisition , it could be said that acquisition was not of a material development in the economic life of the Target Company requiring immediate compliance with Regulation 3(4) and the lapse was a condonable one particularly because none of the factors outlined in Section 15-J of SEBI Act, 1992 were attracted.

CONSIDERATION OF ISSUES AND FINDINGS THEREOF:

9. In the instant matter I note that the acquirer's individual holding rose from 0.43% to 28.22% subsequent to the acquisition of 20,535,981 equity shares of MKL in the rights issue. The acquirer belongs to the promoter group. The promoter group's shareholding rose from 91,28,941 equity shares constituting 40.56% of pre-rights issue of total paid up equity capital of MKL to 32,910,720 constituting 45.01% of post-rights issue total paid up equity capital of MKL.

In this context, the relevant provisions of SAST are reproduced as under :

Applicability of the regulation.

(1) Nothing contained in regulations 10, 11 and 12 of these regulations shall apply to:

(a).....

(*b*) allotment pursuant to an application made by the shareholder for rights issue,

(*i*) to the extent of his entitlement; and

(*ii*) up to the percentage specified in regulation 11:

Provided that the limit mentioned in sub-clause (*ii*) will not apply to the acquisition by any person, presently in control of the company and who has in the rights letter of offer made disclosures that they intend to acquire additional shares beyond their entitlement, if the issue is undersubscribed:

Provided further that this exemption shall not be available in case the acquisition of securities results in the change of control of management;

Consolidation of holdings.

Regulation 11. (1): No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than 75 percent of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5 per cent of the voting rights, in any financial year

ending on 31st March unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.

Definition:

"acquirer" means any person who, directly or indirectly, acquires or agrees to acquire shares or voting rights in the target company, or acquires or agrees to acquire control over the target company, either by himself or with any person acting in concert with the acquirer.

Regulation 3(4): In respect of acquisitions under clauses *(a)*, *(b)*, *(e)* and *(i)* of sub-regulation (1), the acquirer shall, within 21 days of the date of acquisition, submit a report along with supporting documents to the Board giving all details in respect of acquisitions which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him) would entitle such person to exercise 15 per cent or more of the voting rights in a company.

10. Upon careful perusal of the above provisions of law, I find merit in the contentions of the acquirer that filing of the report in terms of Regulation 3(4) of SAST was not warranted as the addition of 4.45% in shareholding of promoters is within the creeping limit (i.e 5%) as specified under Regulation 11(1) and filing of the report in terms of Regulation 3(4) is warranted only when the acquirer together with persons acting in concert is entitled to exercise 15% or more of the voting rights in a company, since the acquirer in concert with other promoter group was already having more than 15% shares /voting rights of MKL ,therefore, filing of report in terms of Regulation 3(4) was not warranted. Further, the argument of the acquirer, that as per the proviso to regulation 3(1)(b), regulation 11 will not be attracted provided the acquisition is made by persons presently in control of the company and adequate disclosures to this effect have been made in the letter of offer, is also convincing.

11. I note that, at page number 9 of the Letter of Offer, it has been disclosed that the total promoter group's holding as on January 12, 2004 (i.e prior to the rights issue) was 40.57%. Further, at page number 8 of the Letter of offer, it has been also disclosed that the promoters intend to acquire additional shares beyond their entitlement, if the issue is undersubscribed.

12. Further, upon careful examination of the definition of acquirer as provided under SAST, it is evident that acquisition of shares by the acquirer means acquisition by the acquirer along with other persons acting in concert. In the instant case, as the acquirer admittedly belongs to the promoter group, therefore, for determining the triggering of provisions of SAST, the acquisition made by the whole promoter group should be taken into consideration. I also note that the promoter group's total holding increased only by 4.45% (i.e from 40.56% to 45.01%) subsequent to the rights issue. This increase in the promoter group's holding is within the creeping acquisition limit (i.e 5%) as specified under Regulation 11(1) of SAST. Therefore, the question of claiming exemption by the acquirer from the applicability of Regulation 11(1) of SAST does not arise. Consequently, the question of filing of report by the acquirer, in the facts and circumstances of this case, does not arise. Thus, the allegation that the acquirer had filed the report with a delay of 900 days is untenable and the allegation against the acquirer does not stand established.

The matter is, accordingly, disposed of.

13. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to acquirer and also to Securities and Exchange Board of India.

DATE: AUGUST 28, 2008
PLACE: MUMBAI

D.S.REDDY
ADJUDICATING OFFICER