

LANDMARK RULING gives small borrowers respite, but bigger ones may try delaying tactics: Experts Hear Out, Show Proof to Borrowers Suspected of 'Wilful Default': HC

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Mumbai: A Bombay High Court ruling directing commercial banks to produce evidence to defaulting customers before invoking the master circular on wilful default will bring respite to small borrowers arm-twisted into settling loans, but it may also encourage large borrowers to go to courts and delay recovery, said industry experts.

This landmark order delivered by the high court last week and the banking regulator's directive to banks that the defaulter be given an in-person hearing will significantly change the way banks tag borrowers as wilful, they added.

A division bench comprising justices BP Colabawalla and Somasekhar Sundaresan issued the order in a case involving IL&FS director Milind Patel versus Union Bank of India.

"The order that lenders should prescribe a reason for invoking the wilful defaulter master circular will remove the banks' discretion and make them more responsible for taking action against borrowers," said Abizer Diwanji, head of financial servi-

Rule of Law

16,883 accounts with ₹3.5 lakh cr loans are classified as wilful defaulters

Bank's Contention:

- ▶ Not obliged to share any material to prove its allegations
- ▶ Borrower must prove innocence

HC's Stance:

- ▶ This conflicts with first principles of the rule of law
- ▶ Share with the borrower evidence before invoking the wilful default circular

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ces at EY. "However, there is an apprehension that based on this order, some promoters may challenge the bank's action, contending that they were not provided adequate evidence to show the occurrence of a wilful default. This is because evidence in the forensic audit report often indicates the money trail, but it is not always conclusive," he added.

The Reserve Bank of India defines a wilful defaulter as a person or company that has defaulted despite having the capacity to honour the loans by diverting or siphoning off funds or failing to infuse the committed equity after availing of a loan facility.

The Bombay High Court directed Union Bank of India to supply all material to arrive at the finding on the petitioner's (borrower) role in the alleged wilful default, deal with the fresh reply after an in-person hearing, and identify members of the identification and review committee, and share a reasoned order:

"The order will bring more transparency and discipline in handling such cases by bank committees. The onus will be on banks to provide substantive evidence to borrowers before declaring them wilful defaulters," said Sujit Kumar Verma, former deputy managing director of State Bank of

India and independent director on the boards of Tata Clean-tech and Waaree Group.

The bank contended that RBI norms do not require them to share evidence with borrowers.

In its order, the court observed that once a bank accuses someone of being a wilful defaulter, the accused has to shoulder the onus and burden of proving his innocence, and the final order is a verbatim replica of show cause notice. "The

aforesaid stance flies in the teeth of the 'imperative' requirements of transparency stipulated by the RBI in the master circular," the order stated.

Anoop Rawat, partner at law firm Shardul Amarchand Mangaldas, said, "Banks can no longer take a casual approach to issuing notices or invoking the master circular. They need to put in place a defect-free process to ensure that they have a strong case for taking this action."

Last September, RBI issued a draft circular detailing the process that banks need to follow before tagging a borrower as a wilful defaulter while a final guideline is awaited.