

GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF ECONOMIC AFFAIRS

LOK SABHA  
UNSTARRED QUESTION NO. 4598  
TO BE ANSWERED ON MONDAY, 22<sup>nd</sup> JULY/ ASHADHA 31, 1941 (SAKA)

WILFUL DEFAULTERS

QUESTION

4598. SHRI NALIN KUMAR KATEEL

Will the Minister of Finance be pleased to state:

- (a): whether the Government has debarred wilful defaulters and companies with wayward borrowers from accessing capital markets to raise funds;
- (b): if so, the details thereof;
- (c): the number of companies which are debarred from becoming wilful defaulters in India during the last three years; and
- (d): the details of total funds raised by the said wilful defaulters and companies till date?

ANSWER

MINISTER OF STATE IN THE MINISTRY OF FINANCE  
(SHRI ANURAG SINGH THAKUR)

(a) to (b): SEBI (Issue and Listing of Debt Securities) Regulations, 2008, SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013, SEBI (Issue and Listing of Debt Securities by Municipalities) Regulations 2015 and SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 specify provisions under which an eligible entity can raise funds through listed debt securities/ Non-Convertible Redeemable Preference Shares/Equity Shares.

An issuer under SEBI (Issue and Listing of Debt Securities) Regulations, 2008 and SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013 is not eligible to raise funds through public issue, in case the issuer or any of its promoters or directors is a wilful defaulter.

Further, an issuer is not eligible to issue debt securities to public under SEBI (Issue and Listing of Debt Securities by Municipalities) Regulations 2015, in case the corporate municipal entity, its promoter, group company or director(s), have been named in the list of the wilful defaulters published by the Reserve Bank of India.

Similarly, an issuer under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 is not eligible to make an initial public offer if the issuer or any of its promoters or directors is a wilful defaulter. While issuing final observations on an offer document filed by an issuer company, SEBI checks the TransUnion CIBIL database, which has been entrusted by RBI to collect and circulate information on suit-filed accounts & list of defaulters to confirm compliance with the above regulation.

Additionally, in terms of Securities and Exchange Board of India (substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2016, wilful defaulters and companies with wilful defaulters as promoters/directors have been debarred from accessing capital markets to raise funds.

As per RBI's instructions, wilful defaulters are not sanctioned any additional facilities by banks or financial institutions, and their unit is debarred from floating new ventures for five years. In addition, the Insolvency and Bankruptcy Code, 2016 has debarred wilful defaulters from participating in the insolvency resolution process.

(c): RBI on July 1, 2015 had issued Master Circular on Wilful Defaulters with the purpose being to put in place a system to disseminate credit information pertaining to wilful defaulters for cautioning banks and financial institutions so as to ensure that further bank finance is not made available to them. According to the Master Circular a 'wilful default' would be deemed to have occurred if any of the following events is noted:

- i. The unit has defaulted in meeting its payment / repayment obligations to the lender even when it has the capacity to honour the said obligations.
- ii. 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.
- iii. 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.
- iv. 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.

In light of above definition, companies cannot be debarred from becoming wilful defaulters.

(d): As replied above in (a) to (b), wilful defaulters and companies are not allowed to access capital markets to raise funds.

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