

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

**WP(C) No. 622/2023
CM No. 1471/2023, CM No. 1472/2023**

Reserved On: 11.11.2025
Date of Pronouncement: 18.11.2025
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Aman Hospitality Pvt. Ltd.
Having its registered office at – L-4,
Green Park Extension, New Delhi- 110016
Through Brijesh Darbal, age 42 years
Also at,
The Leela Ambience Convention Hotel,
Plot No.1, Central Business District,
Surjamal Vihar, Near Yamuna Sports Complex
Shahdara, Delhi 110032

...Petitioner(s)

*Through: Mr. Tanveer Ahmad Mir, Senior Advocate with
Mr. Arfat Rashid, Advocate.*

Vs.

1. Jammu and Kashmir Bank Ltd.
Having its corporate Head Office at:
Corporate Headquarters Building,
M. A. Road Srinagar
Jammu & Kashmir 190001
2. Reserve Bank of India
6, Sansad Marg,
New Delhi- 110001
Also at
Reserve Bank of India
New Central Office Building,
Shahid Bhagat Singh Rd,
Fort, Mumbai, Maharashtra 400001

...Respondent(s)

Through: Ms. Insha Haroon, Advocate.

CORAM:

Hon'ble Mr. Justice Wasim Sadiq Nargal, Judge.

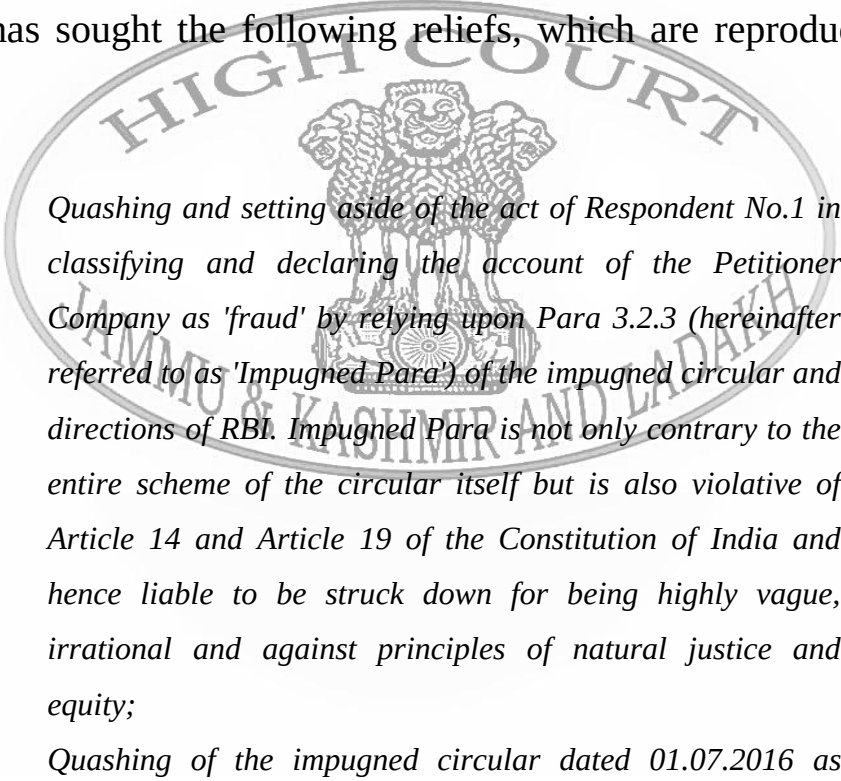
JUDGMENT

Brief Facts of the Case:

- 1.** The present writ petition has been filed by the petitioner company under Article 226 of the Constitution of India challenging

the Circular issued by Reserve Bank of India (hereinafter referred to as "RBI") by the Respondent No.2, i.e., the Master Directions on Frauds - Classification and Reporting by Commercial Banks and Select FIs bearing No. RBI/ DBS/2016-17/ 28 DBS. CO. CFMC. BC. No. 1/ 23.04.001/ 2016-17 dated 01.07.2016, updated as on 03.07.2017 (hereinafter referred to as the "RBI Circular/"Impugned Circular") as well as the action of Respondents No.1 to classify and declare the account of the Petitioner Company M/s Aman Hospitality Pvt. Ltd. (hereinafter referred to as "AHPL") as "Fraud" pursuant to the said RBI Circular and directions (hereinafter referred to as the "Impugned Action").

2. The petitioner company, through the medium of the instant petition, has sought the following reliefs, which are reproduced as under:

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- a) *Quashing and setting aside of the act of Respondent No.1 in classifying and declaring the account of the Petitioner Company as 'fraud' by relying upon Para 3.2.3 (hereinafter referred to as 'Impugned Para') of the impugned circular and directions of RBI. Impugned Para is not only contrary to the entire scheme of the circular itself but is also violative of Article 14 and Article 19 of the Constitution of India and hence liable to be struck down for being highly vague, irrational and against principles of natural justice and equity;*
 - b) *Quashing of the impugned circular dated 01.07.2016 as updated on 03.07.2017 for being arbitrary, vague and most pertinently for being violative of Article 14 of the Constitution of India on account of complete and absolute dereliction of principles of natural justice and equity as mandated by Article 14. The circular covenants far reaching civil as well as penal consequences having a direct bearing on the business of the borrowing company, thereby*

necessitating a strong need for providing mechanism for affording an opportunity to the affected party before any coercive step is taken;

- c) *Quashing and setting aside of all the proceedings, actions and steps taken by the Respondent No. 1 pursuant to classifying and declaring the account of the Petitioner Company as 'fraud'.*

3. Heard learned Counsel for the parties and perused the material on record.

4. When the instant petition was taken up on 11th of November, 2025, Mr. Tanveer Ahmad Mir, learned Senior Counsel appearing on behalf of the petitioner made a categorical statement that respondent No. 2 be deleted from the array of respondents as he does not claim any relief against the said respondent in light of the change in circumstances. His statement was taken on record. The prayer of the petitioner was allowed, and respondent No. 2 was struck off from the array of respondents in the instant petition. Moreover, the Registry was directed to make the necessary corrections accordingly in the memo of parties.

5. At this stage, Ms. Insha Haroon, learned counsel for the respondent-Bank, respondent No. 1 herein, who was earlier directed to obtain instructions in the matter submitted that a short affidavit has already been filed. In the affidavit, the respondent-Bank has specifically stated that, in compliance with the instructions of the RBI and the latter part of Para 3.2.23 of the Master Directions on Fraud – *Classification and Reporting by Commercial Banks and Select Financial Institutions* dated July 1, 2016 (as updated on July

3, 2017), the account of Aman Hospitality Pvt. Ltd. was declared as fraud.

6. It has further been stated that the applicability of the principles of natural justice depends upon the facts and circumstances of each case. On this basis, learned counsel for the respondent-Bank submitted that it was the RBI, and not the Bank, that was required to follow the rules of natural justice.

7. Accordingly, the learned counsel for respondent-Bank contended that its action cannot be faulted merely on the ground that it did not comply with the principles of natural justice, as the responsibility to do so rests with the RBI.

8. No other ground was canvassed by the learned counsel appearing on behalf of the respondent No. 1.

9. Per contra, today when the instant matter was taken up, Mr. Tanveer Ahmad Mir, learned counsel for the petitioner, has drawn the attention of this Court to the judgment passed by the Hon'ble Apex Court in case titled ***“State Bank of India & Ors vs Rajesh Agarwal & Ors”*** reported in ***2023 “SCC Online SC 342”*** decided on 27th March, 2023, wherein it has been observed as under:

- a) *“98. The conclusions are summarized below:*
- b) *98.1. No opportunity of being heard is required before an FIR is lodged and registered.*
- c) *98.2 Classification of an account as fraud not only results in reporting the crime to investigating agencies, but also has other penal and civil consequences against the borrowers;*
- d) *98.3 Debarring the borrowers from accessing institutional finance under Clause 8.12.1 of the Master Directions on*

Frauds results in serious civil consequences for the borrower.

- e) 98.4. Such a debarment under Clause 8.12.1 of the Master Directions on Frauds is akin to blacklisting the borrowers for being untrustworthy and unworthy of credit by banks. This Court has consistently held that an opportunity of hearing ought to be provided before a person is blacklisted.*
- f) 98.5 The application of audi alteram partem cannot be impliedly excluded under the Master Directions on Frauds. In view of the time frame contemplated under the Master Directions on Frauds as well as the nature of the procedure adopted, it is reasonably practicable for the lender banks to provide an opportunity of a hearing to the borrowers before classifying their account as fraud.*
- g) 98.6 The principles of natural justice demand that the borrowers must be served a notice, given an opportunity to explain the conclusions of the forensic audit report, and be allowed to represent by the banks/ JLF before their account is classified as fraud under the Master Directions on Frauds. In addition, the decision classifying the borrower's account as fraudulent must be made by a reasoned order.*
- h) 98.7 Since the Master Directions on Frauds do not expressly provide an opportunity of hearing to the borrowers before classifying their account as fraud, audi alteram partem has to be read into the provisions of the directions to save them from the vice of arbitrariness.*
- i) 99. In the result, the judgment of the Division Bench of the High Court of Telangana dated 10-12-2020 is upheld. The judgments of the High Court of Telangana dated 22-12-2021 and 31-12- 2021 and of the High Court of Gujarat dated 23-12-2021 are accordingly set aside. The Civil Appeals are disposed of. Writ Petition (C) No. 138 of 2022 is also disposed of in above terms. There shall be no order as to costs.*
- j) 100. Pending application(s), if any, shall stand disposed of."*

10. From a bare perusal of the operative part of the judgment of the Apex Court, it is emphatically clear that since Master Directions

on fraud do not expressly provide an opportunity of hearing to the borrowers before classifying their account as fraud, *audi alteram partem* has to be read into the provisions of the directions to save them from the vice of arbitrariness.

11. In the aforesaid backdrop, the Division Bench judgment of the High Court of Telangana dated 12th December, 2020 was upheld by the Hon'ble Apex Court in the case titled as ***State Bank of India vs. Rajesh Aggarwal*** supra.

12. The case of the Petitioner, as admitted and not denied by Respondent No. 1 in the reply affidavit dated 05.04.2023, is that the Petitioner was never given any *Show Cause Notice* before the Bank declared the account of the Petitioner as *Fraud*.

13. The Petitioner submits that the law on this aspect is no longer *res integra* inasmuch as the Supreme Court, in ***State Bank of India vs. Rajesh Aggarwal*** supra, has clearly observed that any declaration of fraud without affording a Show Cause Notice violates fundamental rights and, therefore, deserves to be struck down and quashed.

14. It is stated that the aforesaid judgment of the Hon'ble Supreme Court of India is being strictly followed by all other Constitutional Courts.

15. It is the specific case of the learned Senior Counsel that the petitioner was not given any show cause notice before the respondent-Bank declared the account of the petitioner as fraud. The learned Senior Counsel further places reliance on the judgment of the Bombay High Court in ***Writ Petition (L) No. 3098 of 2025***, titled **Anil D. Ambani vs. Canara Bank**, and submits that the Court, in the said matter,

held that Canara Bank could not have declared the account of Mr. Ambani and its concerned entity as 'fraud' without first affording an opportunity to show cause. It is further submitted that, pursuant to the said finding, Canara Bank has removed and recalled the fraud classification. As a matter of fact, the Hon'ble Bombay High Court in the aforesaid judgment observed as follows:

"We have directed the Ld. Senior Counsel for the Petitioner to implead the RBI as party Respondent No.2 considering that repeatedly we have come across Banks not complying with the RBI Master Directions 2016 and the judgments of the Apex Court as well as this Court. We would like to know from the RBI, the steps that RBI can possibly take against such Banks, where the Banks fail to abide by their Master Directions."

16. The learned Senior Counsel further stated that in light of the judgment passed by the Hon'ble Apex Court in case titled **State Bank of India vs. Rajesh Aggarwal** supra, the Division Bench of the Bombay High Court vide its judgment/order dated 19th June, 2023 in WP(L) No. 15240 of 2023 titled **S.S. Hemani vs The Reserve Bank of India & Ors.**, clearly held and observed as under:

"13. Further, all banks are also at liberty to rescind, withdraw or cancel any orders already passed under the Master Circular and which may be inconsistent with the Supreme Court judgment in Rajesh Aggarwal; initiate the process consistent with the Supreme Court decision. We have not stayed the operation of the Master Circular (which has not been struck down by the Supreme Court decision). The Supreme Court has only read certain requirements into the Master Circular. It follows, therefore, that actions under the Master Circular consistent with the Supreme

Court judgment and decision may undoubtedly proceed.”

17. A plain reading of the judgment supra passed by the High Court of Bombay shows that directions were issued to all banks to rescind, withdraw, or cancel any orders passed under the Master Circular that were inconsistent with the Supreme Court’s judgment in ***State Bank of India vs. Rajesh Aggarwal*** supra. The Court further directed that the process be re-initiated in accordance with the Supreme Court’s decision.

18. It can therefore safely be concluded that the Hon’ble Supreme Court has merely read certain requirements into the Master Circular, and any action taken under it, so long as it is consistent with the Supreme Court’s judgment, may validly proceed.

19. Thus, in the light of the law laid down by the Apex Court and also in the light of the circular issued by the Reserve Bank of India dated 15th July, 2024, no financial institution/bank can declare the account of any person/s who had borrowed facilities from the bank/financial institution as “fraud” unless and until a detailed show cause notice is not issued prior and a reasonable time is given to the said person/s for placing on record the reply.

20. In the light of the law laid down by the Hon’ble Apex Court as also in the light of the law laid down by various High Courts, the impugned communication issued by the respondent Bank declaring the account of the petitioner-Hospital as fraud having violated the *audi alteram partem* in the nature of show cause notice cannot

sustain the test of law and is liable to be quashed as issuance of show cause notice was mandatory.

21. In the aforesaid backdrop, the writ petition preferred by the petitioner is allowed and the impugned communication declaring the account of the petitioner as fraud and the proceedings arising out of the impugned communication shall stand **quashed**, however, quashing of the communication impugned in the light of the judgment passed by the Hon'ble Apex Court in **State Bank of India vs. Rajesh Aggarwal** supra shall not come in the way of the respondents to issue fresh notice, provided an opportunity of being heard is given to the petitioner in case the respondent intend to proceed against the petitioner.

SRINAGAR:

18.11.2025

Bisma J/S

(Wasim Sadiq Nargal)
Judge

❖ Whether Judgment is Speaking?

Yes/No.

❖ Whether Judgment is Reportable?

Yes/No