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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 7113/2013**

DIPAK BHATTACHARYYA Petitioner

Through: Mr. Rajesh Kumar, Advocate

versus

THE BANKING OMBUDSMAN & ORS Respondents

Through: Mr. K.S. Parihar, Adv. for R-1 & 2

Mr. Dhruv Wahi and Mr. Ashish Sindhu,

Advocates for R-3

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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04.02.2015

1. This is a writ petition filed under Article 226 of the Constitution, to assail the order dated 19.09.2012, passed by the Banking Ombudsman.

1.1 The short issue involved in the present petition is : whether the petitioner can continue to maintain its account with respondent no.3/bank, at its branch located at Barakhamba Road, New Delhi, without fulfilling the Know Your Customer (KYC) norms in the manner desired by the said respondent.

2. The petitioner says that he has been maintaining the account with the respondent no.3/bank since 2001, and that, he has been denied access to the account maintained with it, for reasons, which are not sustainable in law.

3. The record shows that the petitioner had opened a Business Vantage account with respondent no.3/bank in June 2001.

4. Upon respondent no.2 i.e., Reserve Bank of India (RBI) formulating regulatory guidelines qua KYC norms, the petitioner, was informed that

those norms, had to be fulfilled.

5. According to respondent no.3/bank, communication in this behalf was sent to the petitioner on several occasions. The letters sent by respondent no.3/bank are dated : 08.07.2010, 26.10.2010, 12.05.2011 and 02.11.2011.

5.1 It is not in dispute that the petitioner sent documents, which he thought fulfilled the KYC norms. These documents were received by respondent no.3/bank under the cover of letters dated 15.06.2011, 30.08.2011, 15.10.2011 and 16.05.2012. There is no dispute though that what according to respondent no.3/bank, were discrepancies, were communicated to the petitioner vide letters dated 16.06.2011, 02.09.2011, 18.10.2011 and 21.05.2011.

5.2 The petitioner responded thereafter by sending his response and the documents on 24.02.2012 and 25.04.2012.

5.3 It appears in between communication was sent by respondent no.3/bank on 15.03.2012, and thereafter, on 21.05.2012 pointing out therein that the requisite document had to be filed by the petitioner to fulfil KYC norms, so that their record could be updated.

6. The petitioner, being aggrieved approached the Banking Ombudsman with a complaint dated 25.07.2012.

6.1 It is that complaint which was disposed of by the Banking Ombudsman vide the impugned order dated 19.09.2012.

7. The petitioner is, inter alia, aggrieved by the following :-

- (i). that the impugned order was passed without according a hearing to him; and
- (ii). that the Banking Ombudsman has incorrectly applied the KYC

norms.

8. In short, the controversy between the parties, centres on one singular issue, which is : as to whether the petitioner, who is the sole proprietor of Tottenham India Law Associates is to furnish documents, as required under the KYC guidelines in the name of the concern or his own individual name.

9. On previous occasions, I had asked the counsel for the respondents to examine the documents, which the petitioner was willing to furnish with regard to his residence located in Delhi.

9.1 The learned counsel for the petitioner had claimed before me that the petitioner resides at P-122, Chitranjan Park, New Delhi. It is also the case of the petitioner that his office, is also, located in the aforementioned premises.

10. In this behalf, directions accordingly, were issued by me on 14.01.2015 and 20.01.2015.

11. At the hearing held today, the counsel for the respondents have not disputed that the petitioner has filed three (3) sets of documents, namely, the adhar card, the election card, and an electricity bill issued to him by BSES. Each of these documents reflect the name of the petitioner. These document also reflect the petitioner's address as, P-122, Chitaranjan Park, New Delhi.

12. The learned counsel for the respondents have stated before me that these documents would suffice, in so far as, it concerns the petitioner in his individual capacity. According to the respondents, these documents are not sufficient vis-a-vis the proprietorship concern, that the petitioner runs, which is, *Tottenham India Law Associates*. For this purpose, the respondents rely upon the KYC norms, which is part of the record placed

before me.

13. According to me, the stand of the respondents appears to be unsustainable, for the reason, that a proprietorship concern is represented only via its proprietor. There cannot be any doubt and there is none raised before me that Mr. Dipak Bhattacharyya, that is, the petitioner herein, is the proprietor of *Tottenham India Law Associates*.

13.1 The specific clause of the KYC guidelines, on which, reliance is placed by respondent no.3 to deny the petitioner access to the account maintained with it, is therefore, extracted hereinbelow for the sake of convenience :-

“..viii. Accounts of proprietary concerns

Apart from following the extant guidelines on customer identification procedure as applicable to the proprietor, banks should call for and verify the following documents before opening of accounts in the name of a proprietary concern :

Proof of name, address and activity of the concern, like registration certificate (in the case of a registered concern), certificate / licence issued by the Municipal Authorities under Shop & Establishment Act, sales and income tax returns, CST/VAT certificate / registration documents issued by Sales Tax / Service Tax / Professional Tax authorities, Licence issued by the Registering Authority like Certificate of Practice issued by Institute of Chartered Accountants of India, Institute of Cost Accountants of India, Institute of Company Secretaries of India, Indian Medical Council, Food and Drug Control Authorities, registration / licensing document issued in the name of the proprietary concern by the Central Government or State Government Authority / Department. Banks may also accept IEC (Importer Exporter Code) issued to the proprietary concern by the office of DGFT, the complete Income Tax Return (not just the acknowledgement) in the name of the sole proprietor

where the firm's income is reflected, duly authenticated / acknowledged by the Income Tax authorities and utility bills such as electricity, water, and landline telephone bills in the name of the proprietary concern as required documents for opening of bank accounts of proprietary concerns.

Any two of the above documents would suffice. These documents should be in the name of the proprietary concern..."
(emphasis is mine)

13.2 A bare perusal of the aforesaid norms would show that documents, which are sought for by way of proof of name, address and activity, include, a certificate of practice issued by the Institute of Chartered Accounts of India, Institute of Costs Accountants of India, Institute of Company Secretaries of India and the Indian Medical Council.

13.3 One need only take judicial notice of the fact that these documents are issued in the name of the individuals and not in the name of proprietary concerns. A proprietary concern is, not, a juridical entity, and therefore, a proprietary concern can only be represented via its proprietor.

13.4 According to me, if the documents which have been supplied by the petitioner are sufficient from the point of view of proof of residence, and are otherwise in order, the petitioner, would have complied with the KYC norms. As mentioned above, there is no objection raised by respondent no.3/bank in this behalf.

14. There is one more aspect, which is outstanding, that is, with regard to the levy of charges, in the sum of Rs.20,000/- qua the account holder. These charges have been levied for failure of the account holder to maintain an Average Quarterly Balance (AQB) of Rs.1 Lakh.

14.1 The petitioner says that the failure to maintain AQB has, occurred, on

account of the fact that the account holder, was not granted access to the account in issue.

14.2 The impugned order shows that the period for which these charges were levied for purported failure to maintain AQB is, October 2010 to July 2012.

14.3 I must only note that respondent no.3/bank had levied in the first instance, charges equivalent to Rs.37,594.70 which, apparently, were scaled down to Rs.20,000/-. Therefore, in so far as levy of these charges is concerned, respondent no.3/bank will waive the charges if, it concludes that the petitioner, was not allowed access to the account between October 2010 to July 2012. This aspect can easily be determined by reference to the statement of account of the account in issue. Since the statement of account, according to Mr Wahi, is not presently available on record, the needful determination will be made by respondent no.3/bank. It is directed accordingly. However, if the contrary is evident, from the statement of account of the petitioner, then the, charges will have to be paid by the petitioner.

15. As regards the issue raised by the petitioner that he was not heard before the impugned order was passed, in view of the direction issued by me in the foregoing part of this order, that ground, has lost its efficacy.

16. Having regard to the aforesaid circumstances, respondent no.3/bank will permit the petitioner to operate the account in issue. In its record generated qua the account in issue though, respondent no.3/bank would include the name of the proprietor i.e., Mr. Dipak Bhattacharyya.

17. Needless to say, the petitioner will comply with the relevant rules and regulations as also with the requirement to maintain AQB.

18. At this stage, the learned counsel for the petitioner says that the petitioner be given two weeks to deposit the requisite amount, to enable him to meet the AQB requirement. The request is acceded to.

19. With the aforesaid observations in place, the captioned petition is disposed of.

RAJIV SHAKDHER, J

FEBRUARY 04, 2015

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