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

\+ W.P.(C) 4941/2020 and CM Nos. 17853-54/2020

VARDHMAN ROLLER
FLOUR MILLS PVT. LTD. ..... Petitioner
Through Mr. Abhinav Mukhi, Adv.

versus

PUNJAB NATIONAL BANK & ANR. ..... Respondents
Through Mr. Rajesh, Adv. for R-1
Mr. Ramesh Babu, Adv. for RBI

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

O R D E R

% **27.08.2020**

This hearing is conducted through video conferencing.

CM APPL. 17854/2020 *(interim relief)*

1. Issue notice.

2. Learned counsel for the respondent 1 – PNB accepts notice. PNB may file reply within 10 days.

3. This application is filed on behalf of the petitioner seeking interim relief to restrain the respondent No.1/PNB from taking any coercive action pursuant to declaring them as 'fraud' in terms of the impugned circular dated 01.07.2016.

4. The case of the petitioner/applicant is that they were availing the credit facilities from PNB/Respondent No.1 and other consortium bank.

The present petition is filed to quash the decision of respondent no.1/PNB of declaring the account of the petitioner as "fraud" and further directing the respondents to not take any coercive action against the petitioner. A prayer is also made challenging the circular of RBI dated 01.07.2016 being violative of Article 14 of the Constitution of India as it does not provide an opportunity of representation or hearing to an aggrieved party before declaring it as a fraud.

5. It is further stated that the applicants got knowledge of the order declaring the applicants as fraud passed by PNB when in a meeting on 19.06.2020 between the petitioner and respondent no.1/PNB it was informed by the respondent no.1 that the bank shall no longer be able to accept their OTS proposal for the loan account as it has been categorised as "fraud" and referred to respondent no.2/RBI. It was then the petitioner was informed that they have been declared as fraud. Reliance is placed on the order of this Court in W.P.(C) 306/2019 titled as ***Apple Sponge and Power Ltd & Ors. Vs Reserve Bank of India & Anr.*** dated 15.02.2019 stating that the said interim order was also passed on identical facts and circumstances and on identical orders passed by respondent no.1/PNB.

6. Learned counsel for PNB has filed a status report dated 13.08.2020 as per the order of this court dated 05.08.2020. In the said status report he has pointed out that PNB in terms of the circular of RBI dated 01.07.2016 is in process of filing a complaint with CBI and that nothing further remains to be done by PNB.

7. I may first look at the order of this court in ***Apple Sponge and Power Ltd & Ors. Vs Reserve Bank of India & Anr. (Supra)***. Relevant paras of the said order read as follows:-

“9. The contentions and counter-contentions notwithstanding, in my *prima facie* view there clearly appears to be something amiss inasmuch as RBI's Master Directions dated 01.07.2016 relating to classification and reporting of 'fraud' does not contain any provision for issuance of show-cause notice or affording a hearing to the affected party, even though a decision by a bank, whether taken individually or collectively with other banks, to classify an account as 'fraud' is a significant administrative decision taken in the commercial realm, having serious consequences for the account holder. That is to say, while a bank may most certainly *report* fraudulent transactions in an account to law enforcement agencies under the criminal law regime *without* issuing a show cause notice or hearing an affected party, but if an account is to be *declared* 'fraud' by an administrative decision in the framework of civil law, such action it appears on first principles, cannot be taken without giving to the affected party an opportunity of hearing to show cause against it.

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11. It is noteworthy that while the RBI circular dealing with 'wilful defaulters' provides a mechanism whereby a hearing is given to the affected party, no opportunity of hearing appears to be available in the circular that deals with declaring an account as 'fraud', which latter is a much more serious matter.

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17. To me it prima facie appears that declaring an account as 'fraud' would arise in a case of egregious default on the part of an account holder, something more than the account holder being a 'wilful defaulter'. For an account to be declared as 'fraud' must entail an element of *criminality* on the part of the account holder, which ought to be inferred *only* on the basis of some substantial material which must be put to the errant account holder; and after considering any explanation such account holder has to offer; and not unilaterally by a stroke of the pen.

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> 19. In the circumstances, without prejudice to the rights and contentions of the parties, all of which are kept open, it is directed that respondent No. 2/bank shall *not* take any further steps or actions prejudicial to the petitioners based upon the petitioners' account being declared 'fraud' until the next date of hearing."

8. Clearly, the court while passing the said order dated 15.02.2019 in ***Apple Sponge and Power Ltd & Ors. Vs Reserve Bank of India & Anr. (Supra)*** was prima facie of view that RBI's master directions dated 01.07.2016 relating to Classification and Recording of 'fraud' does not contain any provision for issuance of show cause notice or affording a hearing to an affected party, even though a decision by a bank to classify an account as a 'fraud' is a significant administrative decision which has serious consequences. The court also held that reporting of fraudulent transactions to law enforcement agencies under the criminal law regime would not require issuing of a show cause notice or hearing of an affected party.

9. In my opinion, the facts of this case are identical to the facts in the case ***Apple Sponge and Power Ltd & Ors. Vs Reserve Bank of India & Anr. (Supra)***. The aforesaid order would clearly apply to the facts and circumstances of the present case also.

10. Without prejudice to the rights and contentions of the parties, all of which are kept open, PNB will not take any further steps or actions prejudicial to the petitioner based on the petitioners' account being declared fraud till the next date of hearing.

11. It is clarified that this interim order does not prevent PNB from

issuing a show cause notice to the petitioners and passing a reasoned order after giving a personal hearing to the petitioner. They are free to pass a reasoned order in terms of the circular dated 01.07.2016. This order will also not in any manner hamper any steps or investigations that are sought to be carried out by the concerned investigating agencies.

12. List this matter on 4.11.2020.

JAYANT NATH, J

AUGUST 27, 2020
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