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* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **Date of Decision: 02.11.2023**

% W.P.(C) 3191/2022

BOOM AGRO INDIA PVT LTD & ANR. ..... Petitioner

Through: Mr. Shankari Mishra, Advocate.

versus

RESERVE BANK OF INDIA & ANR. ..... Respondent

Through: Mr. Ramesh Babu M. R., Mr. Manish Singh, Ms. Nisha Sharma and Mr. Rohan Srivastava, Advocates for Respondent/ RBI.
Mr. Arun Aggarwal, Mr. Varun Bhatnagar and Ms. Madhu Yadav, Advocates for Respondents.

\+ W.P.(C) 3275/2022 and CM APPL. 9530/2022

BOOM BUYING PVT LTD & ANR.

..... Petitioner

Through: Mr. Shankari Mishra, Advocate.

versus

RESERVE BANK OF INDIA & ANR.

..... Respondent

Through: Mr. Ramesh Babu M. R., Mr. Manish Singh, Ms. Nisha Sharma and Mr. Rohan Srivastava, Advocates for Respondent/ RBI.
Mr. Arun Aggarwal, Mr. Varun Bhatnagar and Ms. Madhu Yadav, Advocates for Respondents.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

SATISH CHANDRA SHARMA, CJ. (ORAL)

1. At the outset, Learned Counsel for the Reserve Bank of India has stated before this Court that the issue involved in the present matter is already covered by a judgment delivered by the Hon'ble Supreme Court in Civil Appeal No. 7300/2022 titled ***State Bank of India & Others Vs. Rajesh Agarwal & Others***.

2. The aforesaid judgement of the Hon'ble Supreme Court arose out of a challenge to the Reserve Bank of India (Frauds Classification and Reporting by Commercial Banks and Select Financial Institutions) Directions 2016 (hereinafter, '**Master Directions on Frauds**') on grounds that it did not grant an opportunity of hearing to borrowers before classifying their accounts as fraudulent.

3. It was held by the Hon'ble Supreme Court that the principles of natural justice, particularly the rule of *audi alteram partem*, has to be necessarily read into the Master Directions on Frauds to save it from the vice of arbitrariness. It was so held that as the classification of an account as fraud entails serious civil consequences for the borrower, the directions must be construed reasonably by reading into them the requirement of observing the principles of natural justice. It was held that the administrative proceedings which entail significant civil consequences must be read consistent with the principles of natural justice to meet the requirement of Article 14. Where possible, the rule of *audi alteram partem* ought to be read

into a statutory rule to render it compliant with the principles of equality and non-arbitrariness envisaged under Article 14. The Master Directions on Frauds did not expressly provide the borrowers an opportunity of being heard before classifying the borrower's account as fraud. The Hon'ble Supreme Court, therefore, held that the principle of *audi alteram partem* must then be read into the provisions of the Master Directions on Frauds.

4. The relevant paragraphs of the judgement passed by the Hon'ble Supreme Court read as under:

> *"81. The conclusions are summarized below:*
>
> *i. No opportunity of being heard is required before an FIR is lodged and registered;*
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> *ii. 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;*
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> *iii. 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;*
>
> *iv. 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;*
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> *v. 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;*
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> *vi. 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; and

vii. 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. "

5. In light of the aforesaid judgment passed by the Hon'ble Supreme Court, as no opportunity of hearing was granted to the Petitioners herein, the action of the Respondent No. 2 Bank in declaring the accounts of the Petitioners as 'Fraud' is hereby set aside. However, liberty is granted to the Respondent No. 2 Bank to proceed in accordance with law laid down in ***Rajesh Agarwal*** (supra).

6. It is made clear that this Court has not commented upon any criminal case/ FIR registered against either of the Petitioners, if any.

7. The Petitions stand disposed of in the aforesaid terms.

SATISH CHANDRA SHARMA, CJ

TUSHAR RAO GEDELA, J

NOVEMBER 2, 2023
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