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

\+ **W.P.(C) 9446/2019 & CM APPL. 38858/2019**

J. K ARORA AND ANR. ..... Petitioners

Through: Mr.Sameer Rohatagi with Mr.Manohar Malik, Mr.Kartikey Singh & Mr.Prateek Chauhan, Advocates

versus

RESERVE BANK OF INDIA AND ORS. ..... Respondents

Through: Ms. Nisha Sharma, Ms.Manisha Singh, Advocates for R-1.
Mr. Hashmat Nabi with Ms. Dima Kaur, Advocates for R-2.
Mr. Santosh Kumar Rout, Standing Counsel with Mr. Abhishek Chakraborty and Mr.Pawan Kumar Dhiman, Advocates for R-3.

% Date of Decision: 25th April, 2023

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

MANMOHAN, J: (ORAL)

1. Present writ petition has been filed challenging legality and validity of the circular dated 1st July, 2016 bearing number DBS.CO.CFMC.BC. No.1/23.04.001/2016-17 issued by the Respondent No.1-Reserve Bank of India to the extent it violates Article 14 of the Constitution of India as well as the decision/order of the Respondent-Banks declaring and categorising and reporting the accounts of the petitioner as 'fraud'.

2. On the last date of hearing, the present matter was adjourned to await the judgment of the Supreme Court in S.L.P.(C) No.3931/2021.

3. The Supreme Court in ***State Bank of India & Ors. Vs. Rajesh Agarwal & Ors.*** vide judgment and order dated 27th March, 2023 has held that the rule of *audi alteram partem* ought to be read in Clauses 8.9.4 and 8.9.5 of the Master Direction on Fraud. The relevant portion of the said judgment is reproduced hereinbelow:-

> "*79. In light of the legal position noted above, we hold that the rule of audi alteram partem ought to be read in Clauses 8.9.4 and 8.9.5 of the Master Directions on Fraud. Consistent with the principles of natural justice, the lender banks should provide an opportunity to a borrower by furnishing a copy of the audit reports and allow the borrower a reasonable opportunity to submit a representation before classifying the account as fraud. A reasoned order has to be issued on the objections addressed by the borrower. On perusal of the facts, it is indubitable that the lender banks did not provide an opportunity of hearing to the borrowers before classifying their accounts as fraud. Therefore, the impugned decision to classify the borrower account as fraud is vitiated by the failure to observe the rule of audi alteram partem. In the present batch of appeals, this Court passed an ad-interim order restraining the lender banks from taking any precipitate action against the borrowers for the time being. In pursuance of our aforesaid reasoning, we hold that the decision by the lender banks to classify the borrower accounts as fraud, is violative of the principles of natural justice. The banks would be at liberty to take fresh steps in accordance with this decision.*
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> *81. The conclusions are summarized below:-*
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> *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 panel 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;*
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> *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;

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;*

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.*"

4. As argued by learned counsel for the petitioners the aforesaid judgment passed by the Supreme Court is squarely applicable to the facts of the present case as here also no opportunity of hearing was granted to the petitioners, which fact has not been controverted by learned counsel for the Respondent-Banks.

5. Accordingly, the order declaring the petitioners herein as 'Fraud' is hereby set aside. However, liberty is granted to the Respondent-Banks to proceed ahead in accordance with law in light of the judgment delivered by the Supreme Court. The petition stands disposed of in the aforesaid terms along with the pending application.

MANMOHAN, J

SAURABH BANERJEE, J

APRIL 25, 2023/*akr*