D/L.18.
May 13, 2024.
MNS.

WPA No. 13249 of 2024

Biswarup Enterprise
Vs.
Punjab National Bank and others

Mr. Subir Sanyal,
Mr. Sutirtha Das

… for the petitioner.

Ms. Parna Roy Choudhury,
Ms. Ankana Roy

…for the respondent-bank.

1. Affidavit-of-service filed in Court today be kept on record.
2. Learned counsel for the petitioner submits that the petitioner had a cash credit facility with the respondent-bank. Of late, the Statutory Auditor initially gave a report in favour of the petitioner, but subsequently altered the same.
3. The petitioner, being apprehensive, sought to represent its case before the bank. The petitioner now apprehends that the bank may take any coercive action by classifying the petitioner's account as Non Performing Asset (NPA) without giving the petitioner any hearing.

4. Learned counsel for the bank submits that the Statutory Auditor is a private entity and the challenge thrown to the report of the said entity is not maintainable by way of a writ petition.
5. It is further submitted that the writ petition is premature since the bank, upon getting a copy of the auditor's report, has written to the petitioner on April 19, 2024, which has been annexed at page 95 of the writ petition, seeking the petitioner's stand on the issue and the petitioner has already been given a reply thereto on the next date, which is also annexed to the writ petition.
6. Learned counsel appearing for the petitioner submits that the petitioner should be given a hearing on the representation of the petitioner before the bank takes any coercive action on the basis of the Statutory Auditor's report.
7. Insofar as the challenge to the Statutory Auditor's report is concerned, the learned Advocate for the bank is justified in arguing that the said component does not have a public law element, neither is any legal or fundamental right of the petitioner infringed to invoke the writ jurisdiction of the court, since

the Statutory Auditor is a private entity and does not come within the purview of Article 12 of the Constitution of India.

8. Insofar as the apprehension of action by the bank in classifying the petitioner's account as NPA is concerned, the same is also premature, since the bank has shown its *bona fides* in writing to the petitioner, thereby seeking to know the stand of the petitioner on the said report of the Statutory Auditor.

9. Since the petitioner has already given a representation, an additional right of hearing need not be read to the extant provisions of law, since there is no legal right of the petitioner to be heard at the stage of the bank considering the Auditor's report to decide whether to classify the account as NPA. Thus, we cannot read into the same the principle of *audi alterem partem*. If such is proposition is read into each administrative action of the bank, the banking system of the country would be paralyzed and the banks would not be able to function at all.

10. In any event, if the petitioner is ultimately aggrieved by any coercive action taken by the bank on the basis of the Auditor's report,

either by classifying the petitioner's account as NPA or otherwise, there are sufficient statutory remedies available to the petitioner.

11. Thus, WPA No. 13249 of 2024 is disposed of by expressing hope and trust that the bank shall, before taking any coercive action against the petitioner on the basis of the Auditor's report mentioned herein, consider the detailed representation of the petitioner given on the query of the bank dated April 19, 2024 and take such action, if at all, only upon consideration of such representation.
12. There will be no order as to costs.
13. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)