ML 14
03.09.2024
Court. No. 9
GB

W.P.A. 16247 of 2024

Amit Iron Private Limited & Anr.
Vs.
Axis Bank

Mr. Deepan Sarkar,
Mr. Suryaksh Mandal,
Mr. Aishwarya Kumar Awasthi
... for the Petitioners.
Mr. Avishek Guha,
Mr. Ankush Majumdar
... for the Respondent.

1. The petitioners submit that the Axis Bank had declared the account of the petitioners (borrowers) as fraud on the basis of the master circular, without issuing any show cause notice. They could not file any written objection and were never heard.
2. This Court has already decided a similar issue in the matter of ***Sweta Agarwal versus State Bank of India*** passed in ***W.P.A. No.10601 of 2024***. This Court is of the view that the order of declaration of fraud passed by the Axis Bank should be set aside on the ground of violation of the principles of natural justice. The petitioners are entitled to a show cause notice which would reflect the reasons as to why the Axis Bank was of the, prima facie, view that the account should be declared as fraud. The petitioners are entitled to answer to such queries. The petitioners are also entitled to copies of any report or document, on the basis of which the bank decided to proceed in

terms of the master circular. The petitioners are further entitled to a hearing on the issues involved.

3. The relevant paragraphs of the decision of the Hon'ble Apex Court in the matter of ***State Bank of India & Ors. versus Rajesh Agarwal & Ors.*** reported in ***(2023) 6 SCC 1*** are quoted below:-

"80. Audi alteram partem has several facets, including the service of a notice to any person against whom a prejudicial order may be passed and providing an opportunity to explain the evidence collected. In Tulsiram Patel, this Court explained the wide amplitude of audi alteram partem: (SCC p. 476, para 96)

"96. The rule of natural justice with which we are concerned in these appeals and writ petitions, namely, the audi alteram partem rule, in its fullest amplitude means that a person against whom an order to his prejudice may be passed should be informed of the allegations and charges against him, be given an opportunity of submitting his explanation thereto, have the right to know the evidence, both oral or documentary, by which the matter is proposed to be decided against him, and to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses who are to give evidence against him examined in his presence and have the right to cross- examine them, and to lead his own evidence, both oral and documentary, in his defence. The process of a fair hearing need not, however, conform to the judicial process in a court of law, because judicial adjudication of causes involves a number of technical rules of procedure and evidence which are unnecessary and not required for the purpose of a fair hearing within the meaning of audi alteram partem rule in a quasi-judicial or administrative inquiry." (emphasis supplied)

81. Audi alteram partem, therefore, entails that an entity against whom evidence is collected must: (i) be provided an opportunity to explain the evidence against it; (ii) be informed of the proposed action, and (iii) be allowed to represent why the proposed action should not be taken. Hence, the mere participation of the borrower during the course of the preparation of a forensic audit report would not fulfil the requirements of natural justice. The decision to classify an account as fraud involves due application *of mind to the facts and law by the lender banks. The lender banks, either individually or through a JLF, have to decide whether a borrower has breached the terms and conditions of a loan agreement, and based upon such determination the lender banks can seek appropriate remedies. Therefore, principles of natural justice demand that the borrowers must be served a notice, given an opportunity to explain the findings in the forensic audit report, and to represent before the account is classified as fraud under the Master Directions on Frauds."*

4. The relevant discussion by this Court in the matter of ***Sweta Agarwal*** (supra) are quoted below:-

"The Hon'ble Apex Court held that principles of natural justice demanded that the borrowers were to be served with notice, given an opportunity to explain the findings in the forensic audit report and to represent their case, before the account was classified as fraud under the Master Directions on Frauds.

In the interpretation of this Court, specific directions had been passed with regard to service of notice, opportunity to explain the contents of the notice and to represent. The expression 'represent' implies that the person who had filed the reply to the show cause notice, should be allowed to represent his case by explaining to the authority why the account should not be declared as fraud. Representation and filing of an explanation are two distinct and separate steps prescribed by the Hon'ble Apex Court. However, the Hon'ble Apex Court has also clarified such position on the request of the learned Attorney General of India which is a part of the order passed in the Miscellaneous Application.

The Hon'ble Apex Court was of the view that not only should a person be allowed to answer to the show cause notice, but the forensic audit report which if not supplied, should be supplied to the borrower, even if the borrower was present during such audit. The borrower was allowed to represent his case before the authority concerned.

Upon a meaningful reading of the decision in Rajesh Agarwal and another (supra) and the order passed in the miscellaneous application, this Court holds that before declaring an account as fraud, the documents relied upon by the identification committee should be mentioned in the show cause notice and also supplied to the borrower The borrower should be allowed to represent his case by filing an answer to the show cause notice and also by dealing with the documents which the committee proposed to rely upon. The borrower should be *allowed to represent his case before the authority, by way of a personal hearing and thereafter, the order may be passed with reasons.”*

5. All these steps have not been undertaken by the Axis Bank. Thus, all decisions taken, including declaration of fraud and consequential steps are set aside.
6. Accordingly, the writ petition is disposed of.
7. This order will not prevent the Axis Bank from proceeding in accordance with law, upon compliance of the requirements as discussed above.
8. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)