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WPO/244/2024
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

AASHISH JHUNJHUNWALA
VS
UCO BANK

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date: 21st March, 2024.

*Appearance:*
*Mr. Suman Kumar Dutt, Adv.*
*Mr. Arijit Bardhan, Adv.*
*Mr. Sutanu Karmakar, Adv.*
*. . .for the petitioner.*

*Mr. Shashwat Nayak, Adv.*
*Mr. Santosh Kr. Ray, Adv.*
*Ms. Antalina Guha, Adv.*
*. . .for the respondent bank.*

The Court: Affidavit of service filed in Court be taken on record.

The petitioner challenges a show cause notice issued under the Master Directions on Frauds-Classification and reporting by Commercial Nanks and select FIs issued by the Reserve Bank of India on July 1, 2016 (updated as on July 3, 2017). Learned counsel for the petitioner contends that the impugned show cause notice is as vague as possible. No details or particulars of the alleged offences against the petitioner have been disclosed, thereby rendering the exercise of giving a reply thereto an illusory exercise.

Secondly, it is argued that the Zonal Manager of the Bank, who issued the show cause notice, is not the appropriate authority to issue the same. In such context, learned counsel places reliance on Clause 4.4.1 read with Clause 2.1.2 of the Master Directions.

Thirdly, it is contended that the grounds on which the show-cause notice was issued are not sustainable in any event, in view of a previous order of this Court passed in connection with a show-cause notice which was previously issued to the petitioner. Learned counsel points out that the premises of the previous show cause notice, which was set aside by this Court, are almost identical as the present show cause notice, which vitiates the currently impugned show-cause notice.

Learned counsel also argues that a copy of a Forensic Audit Report (FAR) has been served on the petitioner along with the show-cause notice, although no reference has been made to the said FAR in the notice itself.

Learned counsel for the petitioner, by placing reliance on a Section of the said report, Section 66 to be precise, argues that under the key findings, Clause (ii) specifically states that based on the review of the auditors, the auditors are not in a position to comment on whether business has been carried out by the borrower with intent to defraud the creditors.

Thus, the very premise of the show-cause notice itself contends an admission that the borrower’s alleged act of fraud is not established on the basis of the FAR itself.

Accordingly, it is argued, the show-cause notice should be set aside.

Learned counsel appearing for the bank places reliance on a judgment rendered in *WPO No. 204 of 2024 (Atibir Industries Company Limited & Ors. Vs. Indian Bank.)* where it was held inter alia that under normal circumstances, Courts are loathe to interfere at the show-cause stage since the noticee has the remedy of giving a reply thereto available to it. The merits of the allegations and the defences can only be gone into by the First Committee while deciding the matter. Seeing from such perspective, it was held that the arguments on the merits of the offences alleged in the show-cause notice cannot be adjudicated at this stage. The Court further held that suffice to say, that the impugned show-cause notice is not so bland, vague, and devoid of proper ingredients so as to justify nipping the same at the bud.

Learned counsel also places reliance on a judgment rendered by the Supreme Court reported at (2020) 12 SCC 572 where the Supreme Court inter alia observed that all the possible submissions can always be advanced and considered during the course of hearing pursuant to issuance of show cause notice. It was held that the scheme of Section 11A of the Central Exercise Act 1944 does not contemplate that before issuance of any show-cause notice there must be prima facie a preliminary determination that the process of activity undertaken in the matter amounts to manufacture and before arriving at such preliminary determination, any hearing to the person concerned is contemplated.

Learned counsel, by placing reliance on the same, seeks to impress upon the Court that the allegations made by the petitioner cannot be decided at the premature stage of show-cause notice but can only be finally adjudicated upon a final decision being taken on the allegation of fraud against the petitioner.

Insofar as the allegation of the show-cause notice being vague is concerned, learned counsel for the bank reiterates his submission that even the said allegation cannot be decided at this premature stage. In any event, it is argued that the allegations indicated in the show-cause notice are sufficient insofar as the show-cause notice is concerned, which is not expected to carry detailed particulars of the exact offences committed by the petitioner.

Learned counsel for the bank argues that there is no provision whatsoever in the Master Directions of the RBI regarding the author of the show-cause notice. As such, it is contended that the argument of the petitioner that the show-cause notice was issued by a wrong authority cannot be sustained. It is argued that the Supreme Court has carved out into the provisions of the Master Direction a requirement to give an opportunity of hearing to the noticee. However, it has been clarified by the Supreme Court that the hearing need not be a personal hearing at all.

Hence, the argument that the notice was issued by an authority having no jurisdiction to do so cannot be sustained according to the bank.

A perusal of the impugned show-cause notice itself shows that the same is absolutely bland, vague and devoid of proper ingredients which was one of the grounds observed in *Atibir Industries (supra)* to justify nipping the same at the bud. In fact, the petitioner is justified in contending that the primary ingredients and grounds of the present show-cause notice are substantially the same as those is taken in the previous show-cause notice issued to the petitioner, which was ultimately set aside by this Court.

Although the provisions of the Master Directions have been selectively quoted in the impugned show-cause notice, no particulars whatsoever have been disclosed in order to afford the petitioner a proper opportunity to defy the same and defend itself. In fact, if a reply is given to the show cause notice in its present form, the same would be nothing less than illusory.

That apart, the argument as to the challenge being premature cannot also be sustained. A show-cause notice is not as sacrosanct as sought to be made out by the respondent bank in the present case. Definitely, there cannot be any doubt and it has been well settled that under normal circumstances a show cause notice is not interfered with, leaving it open for the parties to thrash out the disputes at the time of final adjudication. However, if the show cause notice itself is totally vague, containing no ingredient of any allegation at all, there is no scope of giving any reply to the same worth the name, since unless an allegation or a positive assertion is made with some basic particulars, it is not possible for the noticee to even know as to against what he is to defend himself.

With regard to the authority of the DGM and Zonal Head of the Kolkata Zonal Office of the respondent bank to issue the impugned show-cause notice, the relevant clauses of the Master Directions are required to be looked into.

The general guidelines under Chapter II provideunder Clause 2.1.2 that the fraud risk management, fraud monitoring and fraud investigation function must be "owned" by the Bank's CEO, Audit Committee of the Board and the Special Committee of the Board. Further explanation comes forth in Clause 4.4.1 of the

Master Direction which clearly delineates frauds involving amounts of Rs.10 million and above as opposed to those below the said amount. The said clause stipulates that while Audit Committee of the Board (ACB) shall monitor all the cases of frauds “in general”, banks are required to constitute a Special Committee of the Board for monitoring and follow up of cases of frauds (SCBF) involving amounts of Rs.10 million and above exclusively.

Hence, read in conjunction, clauses 2.1.2 and 4.4.1 clearly denote that in cases of frauds of Rs.10 million and above, it is the Special Committee which exclusively owns the fraud risk management, fraud monitoring and fraud investigation function. The above three phrases, taken together, cover the entire gamut of the exercise from its inception to the ultimate culmination of taking a decision. At least, at the stage of issuance of a show-cause notice, the entity which owns the fraud investigation function must be construed to have the authority also to issue the show-cause notice.

Seen from such perspective, it is the Special Committee as formed under Clause 4.4.1 which is to issue a show cause notice for the purpose of classifying an account as fraud. Under the said clause, the said committee is to be constituted with five members of the Board of Directors, consisting of MD and CEO in case of Public Sector Banks and MD in case of SBI and Private Sector Banks, two members from ACB and two other members from the Board excluding RBI nominee.

Thus, there cannot be any manner of doubt that the impugned show cause notice is also bad on such ground as well. Insofar as the argument of the petitioner that the grounds taken in the show cause notice do not justify the classification of the petitioner's account as fraud, the petitioner has made out at least an arguable case insofar as the FAR sent along with the show cause notice, obviously indicating that the bank intends to rely on the same, itself carries the comment that based on the review of the auditors, the auditors are not in a position to comment on whether the business is being carried out by the borrower with intent to defraud the creditors.

However, I do not intend to deal with the last aspect of the matter in detail, since it would denude the appropriate authority under the Fraud Master Directions of the RBI to decide the issue, if ultimately a proper show cause notice in accordance with the said Master Directions is at all issued by the respondent bank.

Insofar as the present impugned show-cause notice is concerned, thus, the same cannot withstand the scrutiny of the judicial review.

Hence WPO No. 244 of 2024 is allowed on contest, thereby setting aside and quashing the impugned show-cause notice dated March 6, 2024. It is, however, made clear that nothing in this order shall preclude the respondent bank from issuing a fresh show-cause notice under the Master Directions of the RBI for classification of fraud if the respondent bank so deems fit, in accordance with the Master Directions, keeping in view the observations made in the present order.

All consequential steps, if taken by the respondent bank pursuant to the impugned show-cause notice, which has been hereby quashed, shall also be reversed by the bank with immediate effect.

No order as to costs.

Urgent certified website copy of this order, if applied for, be made available to the parties subject to compliance with the requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)

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