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WPO/339/2024
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SIDDHI VINAYAK HIMGHAR (P) LTD. AND ORS.
VS
PUNJAB NATIONAL BANK AND ANR.

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date: 29th April, 2024.

Appearance:
Mr. Sabyasachi Chowdhury, Adv.
Mr. Dwaipayan Basu Mallick, Adv.
Mr. Satadeep Bhattacharjee, Adv.
Mr. Rajesh Upadhyay, Adv.
Ms. Surabita Biswas, Adv.
. . .for the petitioners.

Mr. Sailendra Kumar Tiwari, Adv.
Mr. Shambhu Mahato, Adv.
. . .for the respondents.

The Court: The present challenge pertains to classification of the accounts of the petitioner as a fraud account under the Master Directions on Frauds - Classification and Reporting by Commercial Banks and select FIs dated July 1, 2016 (updated as on July 3, 2017) issued by the Reserve Bank of India (RBI). Learned counsel for the petitioner contends that the order classifying the petitioners' account as fraud suffers from various irregularities and legal errors. First, the DGM and Zonal Sastra head of the respondent bank did not have the authority to pass such an order.

In such context, learned counsel places particular reliance on Clauses 2.1.2, 2.2 and 4.4 of the Master Directions. It is argued that a Special Committee as envisaged under the said Master Directions ought to have been constituted for taking such decision.

Secondly, it is argued that the Forensic Audit Report, which was the sole premise of the show-cause notice which led to the impugned order, was not provided to the petitioner.

Thirdly, the impugned decision is devoid of any reason and as such vitiated on such count as well.

Although the petitioners' reply to the show-cause notice finds reflection in the impugned order, it is argued that the order paid mere lip-service to the said report and the same has not been elaborately considered.

Learned counsel appearing for the respondent bank argues on the basis of the show-cause notice that salient features of the FAR, which were the premise of the impugned order, were indicated in the show cause notice itself and as such, non-supply of a copy of the actual report does not vitiate the impugned order. Learned counsel also controverts the other arguments made by the petitioner.

Upon a bare perusal of the impugned order dated March 21, 2024 classifying the petitioner's account as fraud, the same strikes the eye as being cryptic and devoid of any reason.

The DGM and Zonal Sastra Head, moreover, who authored the order, did not have jurisdiction under the Master Directions to take such decisions.

As rightly contended by learned counsel for the petitioner, Clause 2.1.2 of the Master Directions clearly envisages 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.

The Special Committee of the Board and its constitution has been enumerated also in Clause 4.4.1 of the said Master Directions. 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, the DGM and Zonal Sastra Head of the Bank did not have the authority to issue the said order.

Moreover, as rightly argued by learned counsel for the petitioner, although the gist of the FAR was indicated in the show cause notice, prior to the petitioner being expected to file a comprehensive reply to the show-cause notice, it was desired that the entire forensic audit report was to be handed over to the petitioner in order to enable the petitioner to examine the veracity, validity and legality of the same on all counts. Thus, mere reference to the salient features of the report would not suffice.

In view of the above observations, the impugned decision of the respondent bank to declare the petitioner's account as fraud, being not tenable and valid in the eye of law, is hereby set aside.

WPO 339 of 2024 is accordingly allowed on contest, thereby quashing the decision dated March 21, 2024 taken by the respondent authorities to declare the petitioner's account as fraud under the Master Directions on Fraud of the RBI. All consequential steps, if any, taken by the bank pursuant to such classification are also hereby quashed and stand reversed.

Affidavit of service filed in Court be taken on record.

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.)

SP/