



2024 : DHC : 4226



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

+ W.P.(C) 928/2024 & CM APPLs. 3838/2024, 21626/2024 & 26454/2024

SH. LAGADAPATI MADHUSUDHAN RAO & Ors. Petitioners

Through: Mr. Dayan Krishnan, Senior Advocate with Mr. Malak Bhatt, Ms. N. Nagpal, Mr. Mandeep Singh and Mr. Sukrit Seth, Advocates.
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versus

PUNJAB NATIONAL BANK

..... Respondent

Through: Mr. Santosh Kumar Rout with Ms. Dharna Veragi, Advocates for respondent no. 1, 6, 7 and 9.
(M): 99904382878
Email: skrlawfirms9@gmail.com
Mr. Rajiv Kapur with Mr. Akshit Kapur, Mr. Aditya Saxena and Ms. Riya Sood, Advocates for respondent no. 3/SBI.
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Ms. Aditi, Advocate for respondent no. 4/ICICI Bank.
(M): 6206113989
Mr. Sidhartha Barua with Mr. Praful Jindal, Mr. Akash Mohan Srivastav and Mr. Raj Nandini Singh, Advocates for respondent no. 8/IDBI Bank.
Respondent No. 5 (Canara Bank) - Adv. Priyadarshini Dewan

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Date of Decision: 22nd May, 2024

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA



J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

1. The present petition seeks quashing and setting aside of Show Cause Notice (“SCN”) dated 05th September, 2023 issued by ICICI Bank, SCN dated 04th October, 2023 issued by J&K Bank, SCN dated 07th October, 2023 issued by Canara Bank, SCN dated 06th November, 2023 issued by State Bank of India (“SBI”), SCN dated 08th November, 2023 issued by the Bank of Baroda, SCN dated 21st November, 2023 issued by Punjab National Bank (“PNB”), SCN dated 05th January, 2024 issued by Central Bank of India, SCN dated 15th January, 2024 issued by the Union Bank of India, and, SCN dated 09th February, 2024 issued by IDBI Bank.
2. The aforesaid SCNs have been issued to the petitioners for classification of the accounts of the petitioners as ‘Fraud’ under the ‘Master Directions on Frauds-Classification and Reporting by Commercial Banks and Select FIs’ (“RBI Master Directions”), issued by the Reserve Bank of India (“RBI”). The present petition came to be filed, since no documents were provided to the petitioners pursuant to issuance of the aforesaid SCNs.
3. The petitioners are the Director/Vice Chairman/Managing Director/Guarantor of M/s LANCO Infratech Limited (the company, currently under liquidation). Learned Senior Counsel appearing for the petitioners submits that the respondent-banks have failed to consider that the petitioners have not been a party of the management of the company since 2017 and the management of the company is with the Resolution Professional (“RP”) since the year 2017 and with the Liquidator since the year 2018. Thus, the petitioners do not have access to the records and documents of the company. Accordingly, it is not possible for the petitioners



to give an effective and proper reply, in the absence of the relevant documents.

4. During the course of pendency of the present petition, the petitioners were directed to approach the respective banks with request to supply the requisite documents. Learned Senior Counsel for the petitioners submits that while some banks have provided partial documents, others have not even responded.

5. Responding to the aforesaid, learned counsels appearing for the respondent-banks submit that relevant documents have been provided to the petitioners, and they have no objection to providing the underlying documents, on the basis of which, the SCNs had been issued to the petitioners.

6. I have heard learned counsels for the parties and have perused the record.

7. It is of vital importance that underlying documents, which form the basis of a SCN, are provided to the petitioners. This is a critical requirement, as declaration of account as 'Fraud', under the RBI Master Directions, entails Civil and Penal consequences. The concerned parties ought to be given fair opportunity of representation, which cannot be done in the absence of the documents, on the basis of which, a SCN has been issued. Thus, the Hon'ble Supreme Court in the case of *Kavi Arora Versus Securities and Exchange Board of India, 2022 SCC OnLine SC 1217*, relying upon its previous judgment, in the case of *T. Takano Versus Securities and Exchange Board of India and Another, (2022) 8 SCC 162*, has held as follows:

“xxx xxx xxx

35. As held by this Court in *T. Takano (supra)*, it would be



fundamentally contrary to the principles of natural justice if the relevant material were not disclosed to the noticee.

36. In *T. Takano* (supra), this Court approved and followed the law laid down in *Natwar Singh* (supra) and **reiterated that the Adjudicating Authority had the duty to disclose the materials that had been relied upon during the stage of adjudication. It is also true that the Adjudicating Authority cannot exercise unfettered discretion to redact documents necessary for the noticee to defend his case.**

xxx xxx xxx

50. It is well settled that the documents which are not relied upon by the Authority need not be supplied as held in *Natwar Singh* (supra) where this Court held:—

“48. On a fair reading of the statute and the Rules suggests that there is no duty of disclosure of all the documents in possession of the Adjudicating Authority before forming an opinion that an inquiry is required to be held into the alleged contraventions by a noticee. Even the principles of natural justice and concept of fairness do not require the statute and the Rules to be so read. Any other interpretation may result in defeat of the very object of the Act. Concept of fairness is not a one way street. The principles of natural justice are not intended to operate as roadblocks to obstruct statutory inquiries. Duty of adequate disclosure is only an additional procedural safeguard in order to ensure the attainment of the fairness and it has its own limitations. The extent of its applicability depends upon the statutory framework.”

51. The High Court rightly did not interfere with the proceedings at the stage of the Show Cause Notice. The Petitioner has apparently been permitted to inspect the opinion formed under Rule 3 of the SEBI Adjudication Rules. There is apparently no rule which requires SEBI to furnish the opinion under Rule 3 to the noticee in its entirety. The documents relied upon for formation of opinion under Rule 3, are not required to be disclosed to the noticee unless relied upon in the inquiry. **In the event, the Petitioner is prejudiced by reason of any adverse order, based on any materials not supplied to the Petitioner, or any prejudice is demonstrated to have been caused to the Petitioner, it would be open to the Petitioner to approach the appropriate forum.**

xxx xxx xxx”

(Emphasis Supplied)

8. Elucidating on the Principles, as laid down by the Hon’ble Supreme Court in the case of *T. Takano* (Supra), to necessarily mean providing all



relevant material forming the basis of a SCN, Bombay High Court in its judgment dated 04th March, 2024 in the case of *Milind Patel Versus Union of India and Others*, Writ Petition No. 3671/2023, has held as follows:

“xxx xxx xxx

24. It is now well settled that due compliance with principles of natural justice must essentially entail compliance with the obligation to provide access to the material on which the allegations are based.

.....

25. A plain reading of *Takano* would throw light on how the Master Circular must be construed. The Master Circular consciously enables inflicting “penal” consequences, and underlines the “imperative” need to adhere to a “transparent mechanism”. The avoidance of information asymmetry and the means of ensuring transparency as outlined by the Hon’ble Supreme Court in *Takano* would necessarily mean that principles of natural justice, including the need to provide the underlying material, are inherent and implicit in the process stipulated under the Master Circular. The material and information in question for disclosure to the notice would be all “relevant” material and not just information that is “relied upon” or “referred to” in the SCN.

26. Not only must information that is referred to and relied on in the SCN be supplied but also information that may undermine the allegations contained in the SCN (which may therefore not be referred to or relied on) must be supplied – only to ensure that everything relevant to arrive at the truth is available to both parties. The objective of the proceedings initiated by issuance of a SCN is not to somehow find the notice guilty of willful default on the same terms as alleged. Instead, the objective is to arrive at the truth as to whether or not an individual in question is to be subjected to “penal” (in the RBI’s words) consequences. Therefore, if the bank has conducted a forensic investigation into alleged diversion and siphoning of funds, and specific roles played by specific individuals is brought out in the investigation, and such a probe would point to plausible interpretation that certain individuals did not play any role in the diversion and siphoning, the material underlying such plausible inference would undermine the allegations. Therefore, fair and transparent symmetrical access to information, as stipulated by the Hon’ble Supreme Court in *Takano* would mean providing access to not only incriminating material but also exculpatory material, since all such information would be relevant for arriving at the truth. Therefore, access to the record is a vital element of complying with principles of natural justice. In the instant case, not only has no material been supplied, but also Union Bank has actually asserted on oath that it was not required to



provide any material whatsoever, and that it is for the notice to prove his innocence.

xxx xxx xxx”

(Emphasis Supplied)

9. It is also apposite to note the judgment of the Calcutta High Court dated 02nd February, 2024, in the case of ***Hemant Kanoria Versus Bank of India, 2024 SCC OnLine Cal 1012***, wherein, it has been held as follows:

“xxx xxx xxx

61. Although the process of fraud declaration is summary under the Master Directions, the principles of natural justice have to be read into it as much as possible, since such principles are the basic features of Rule of Law and cannot be short shrifted.

62. However, there is no scope of any detailed trial and, as such, the procedure is to be streamlined.

63. Keeping such backdrop in view, in the light of the judgments rendered in Rajesh Agarwal (supra) and Neptune Overseas Limited (supra), the following procedure is, in the opinion of this Court, apt to serve the purposes of the Master Directions as well as to take care of the principles of natural justice, in particular the tenet of Audi Alteram Partem and ensure that an effective opportunity of rebutting the allegations is given to the borrower and its Directors.

64. First, a show-cause notice is to be issued, enumerating the exact offences alleged against the borrower/Director. If any FAR or other document forms the basis of the show-cause, the same is to be served along with the show-cause notice. *(Both the said criteria have, in fact, have been satisfied in the present case in respect of BOL, BOB and UBL.)*

65. A fortnight thereafter would be ample time to give reply to the show- cause notice. In its reply, the noticee shall, apart from addressing the allegations and controverting those specifically, specify the documents which are required to be provided to the noticee by the Banks/financial institutions. If necessary, in the reply, the borrower/Director or promoter can reserve its rights to give a further additional reply upon receiving such documents.

66. Within a week from receiving such replies, the Banks can give an inspection of the documents, if extremely voluminous, and/or furnish copies of the particular documents which are sought by the borrower.



67. Within a further fortnight, if necessary, the noticee/borrower can be given an opportunity to file additional reply, in the light of the documents which have by now been inspected served on them. Thereafter, a hearing shall be fixed by the bank on the basis of the reply.

68. Upon such hearing being concluded, a decision shall be taken whether or not to declare the borrower-company or its Director/promoter as "fraud" or "perpetrator of fraud". The aforesaid procedure would take, at the most, 8 weeks in total to be concluded, which would be sufficient compliance of the Master Directions of the RBI. Thereafter, if declared as fraud/perpetrator of fraud, the same can be intimated by the Bank to the RBI.

xxx xxx xxx”

(Emphasis Supplied)

10. Thus, it is manifest that Principles of Natural Justice have to be read into the RBI Master Directions. Moreover, the Principles of Natural Justice, cannot be reduced to an empty formality by not providing the underlying documents, that form the basis of a SCN.

11. Accordingly, the following directions are issued:

- (i) The petitioners and/or their authorized representative, shall be allowed inspection of the records of the company, as available with the respondent-banks, on the basis of which, the SCNs were issued to the petitioners.
- (ii) Since, record of the company is also stated to be in the possession of the liquidator, it is directed that the petitioners and/or his authorized representative, shall also be allowed to inspect the record of the company, as available with the liquidator.
- (iii) Upon inspection of the record, as made available by the respondent-banks and the liquidator, the petitioners shall state the specific documents, that are required from the said record. The same shall be provided to the petitioners, thereafter.
- (iv) The cost of providing copies of the relevant documents to the



petitioners, shall be borne by the petitioners.

(v) The aforesaid process of inspection of the record of the company and stating the specific documents, shall be completed by the petitioners, within a period of ten days. The process of providing the relevant documents to the petitioners, shall be completed by the respondent-banks and the liquidator, within a period of ten days, thereafter.

(vi) Upon receipt of the documents, the petitioners shall file reply to the SCNs, within a period of two weeks, thereafter.

(vii) The petitioners are at liberty to make request for personal hearing to the respondent-banks, which shall be considered, accordingly.

12. The present petition is disposed of in terms of the aforesaid directions.

MINI PUSHKARNA, J

MAY 22, 2024/kr