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

+ **W.P.(C) 1480/2024 & CM APPL. 6122-6123/2024**

SANJAY JAIN

..... Petitioner

Through: Mr. Vijay Aggarwal, Mr. Yash
Agarwal, Mr. Hardik Sharma, Ms.
Barkha Rastogi & Mr. Ashish Rawat,
Advs.

M: 9557744709

Email: rawatashish140599@gmail.com

versus

PUNJAB NATIONAL BANK & ORS.

..... Respondent

Through: Mr. Santosh Kumar Rout, Adv. for R-
1. M: 9990432878

Email: advskrout@yahoo.com

Mr. Akshit Kapur & Mr. Aditya
Saxena, Advs. for R-3.

M: 9716076533

Email: rajiv@rpkapur.com

Mr. Sumit Goel, Ms. Sreeparna Basak
& Ms. Manisha Arya, Advs. for R-5.

M: 9871772403

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

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05.02.2024

CM APPL. 6123/2024 (For Exemption)

1. Exemption is allowed, subject to just exceptions.
2. Application is disposed of.

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3. The present petition has been filed by the erstwhile director of respondent no. 2-M/s SVIL Mines praying for a direction for declaration that the decision of the respondent nos. 1, 3, 4, 5 & 6 in categorizing the



account of respondent no.2-M/s SVIL Mines as 'Fraud' and all the consequential proceedings arising therefrom, as null and void.

4. At the outset, learned counsel appearing for the petitioner submits that he is not pressing prayers B to D for the time being.

5. Learned counsel appearing for the petitioner submits that respondent banks have committed a violation of the Principles of Natural Justice by denying the petitioner a right to hearing while declaring the account of respondent no.2-M/s SVIL Mines as 'Fraud', which runs contrary to the judgment of the Hon'ble Supreme Court in the case of ***State Bank of India Versus Rajesh Agarwal & Ors., 2023 SCC OnLine SC 342.***

6. It is submitted that the respondent nos. 1, 3, 4, 5 & 6 have declared the account of respondent no.2 as fraud without hearing the petitioner, which could not have been done.

7. Learned counsel appearing on behalf of respondent no.1 and respondent no.3 submits that in the present case declaration of 'Fraud' had been done in the year 2021 by respondent no.1 and in the year 2023 by respondent no.3.

8. It is further submitted that since the transactions in question pertained to the period prior to the judgment of the Supreme Court, therefore, the declaration of 'Fraud' was done without granting any hearing to the petitioner.

9. Considering the aforesaid position, it is clear that the declaration of 'Fraud' of the account of the respondent no. 2-M/s SIVIL Mines, is against the judgment of the Supreme Court in the case of ***Rajesh Agarwal (supra)***, wherein the Supreme Court has given categorical directions that the application of 'Audi Alteram Partem' cannot be excluded under the Master



Direction on Frauds. Thus, the Supreme Court has categorically held that the Principles of Natural Justice demand that the borrowers must be served a notice thereby giving an opportunity to explain the conclusions of the Forensic Audit Report and be allowed to represent before the bank, before their account is classified as 'Fraud' under the Master Directions on Frauds.

10. Mr. Sumit Goel, learned counsel appearing for respondent no.5-ICICI Bank Ltd. submits that he has no instructions in the matter for the time being.

11. In view of the aforesaid clear position, the present petition is allowed. The decision of the respondent-banks in categorizing the account of the respondent no.2 as 'Fraud' is hereby set aside. However, liberty is granted to the respondent-banks to carry out fresh action against the petitioner after following due procedure by issuance of notice to the petitioner in that regard and passing appropriate order after granting opportunity of hearing to the petitioner.

12. With the aforesaid directions, the present petition is disposed of along with the pending applications.

MINI PUSHKARNA, J

FEBRUARY 5, 2024/kr