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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 2543/2024 & CM APPL. 10379/2024, CM APPL.
10380/2024, CM APPL. 10422/2024

SANJAY TIKU & ORS.

..... Petitioners

Through: Mr. Dayan Krishnan, Sr.
Advocate with Ms. Shraddha
Deshmukh, Mr. Apoorv Agarwal,
Ms. Prachi Darji, Mr. Bhanukaran
Singh Jodha and Mr. Sukrit Seth,
Advocates.
Mob: 7984830374

versus

RESERVE BANK OF INDIA & ANR.

..... Respondents

Through: Mr. Sidhartha Barua, Advocate
for R-2.
Mob: 9899040660

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Date of Decision: 20th February, 2024

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

CM APPL. 10380/2024 & CM APPL. 10422/2024 (For Exemptions)

1. Exemptions allowed, subject to just exceptions.
2. Applications are disposed of.

W.P.(C) 2543/2024 & CM APPL. 10379/2024

3. The present petition has been filed by the petitioners challenging



the action of the respondent no. 2/IDBI Bank to declare the account of the petitioners as 'Fraud' purportedly in terms of Master Direction on Frauds-Classification and Reporting by Commercial Banks and select FIs bearing No. RBI/DBS/2016-17/28 DBS. CO. CMFC.BC. No. 1/23/04.001/2016-17 dated 1st July, 2016 updated as on 03rd July, 2017 issued by the respondent no.1-Reserve Bank of India ("RBI").

4. Learned Senior Counsel appearing for the petitioners submits that the aforesaid action by the respondent no. 2-bank is patently illegal, as the same has been done without following the Principles of Natural Justice, as directed to be read in the Master Circular by the Supreme Court vide judgment in the case of *State Bank of India & Ors Vs. Rajesh Aggarwal & Ors*, reported as **2023 SCC OnLine SC 342**.

5. Learned Senior Counsel appearing for the petitioners has drawn the attention of this Court to the E-mail dated 8th February, 2024 written by the petitioner to the respondents, wherein they have stated that they have learnt about the decision taken to declare the accounts of the petitioner as 'Fraud', however, such decision taken by the bank was in violation of the aforesaid judgment, as no hearing or notice was given to the petitioner in this regard. The E-mail dated 8th February, 2024 issued by the petitioner reads as under:

“-----Forward message-----

From: **Sanjay Tikku** Sanjay.Tiku@gmail.com

Date: Thu, Feb 8, 2024 at 3:04 PM

Subject: Regarding JMT Auto Limited

To: <sunit.pandey@idbi.co.in>, <fm.adhikari@idbi.co.in>,
<prashant.kachhap@idbi.co.in>, <gro.delhi@idbi.co.in>,
<rahul.nawkar@idbi.co.in>

To,



1. IDBI Bank Ltd,
9th Floor, Plate B,
Block 2, NBCC Office Complex,
East Kidwai Nagar,
New Delhi-Pin Code – 110023

2. IDBI Bank Limited,
Zonal Office, IDBI House,
2nd Floor, Unit-9,
Janpath, Bhubaneshwar,
Odisha -751022.

3. IDBI Bank Limited
IDBI Tower, WTC Complex
Cuffe Parade, Mumbai-400 005

E-Mail: sunit.pandey@idbi.co.in, fm.adhikari@idbi.co.in, prashant.kachhap@idbi.co.in, gro.delhi@idbi.co.in, rahul.nawkar@idbi.co.in

Dear Sir,

I am one of the erstwhile directors of the company viz. M/s JMT Auto Limited in which CIRP under the IBC, 2016 had commenced w.e.f. 23.02.2022 and pursuant thereto the resolution plan was approved vide Order dated 21.08.2023 of the Hon'ble NCLT, Delhi.

I have reliably learned that your Bank has taken a decision to declare the accounts of the M/s JMT Auto Limited as fraud. We are deeply concerned at any such decision taken by your Bank as no opportunity has been provided to make our submissions before any such decision is taken by your Bank.

Kindly Note that any such decision, if has been taken by your Bank, is in complete violation of the judgment passed by the Hon'ble Supreme Court in State Bank of India vs. Rajesh Agarwal and the RBI Guidelines.

In view of the same, any such decision taken by you/your Bank should be withdrawn immediately and the same should be informed to the Undersigned.

Please be informed that in failing to withdraw any such action, the Undersigned shall be constrained to take appropriate steps and remedy in the Court of law.

Thanking you in anticipation

Best Regards

Sanjay Tikku.

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*Sanjay Tikku
+91 9711005555*

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*Sanjay Tikku
+91 9711005555"*



6. Issue notice. Notice is accepted by learned counsel appearing for the respondent no. 2/IDBI Bank. Learned counsel appearing for respondent no.2- IDBI Bank submits that the petitioners' account was declared as 'Fraud' vide order dated 28th December, 2021 and intimation in this regard was given to the RBI on 6th January, 2022.

7. He further submits that since the aforesaid decisions were taken much prior to the decision of the Supreme Court in the case of **Rajesh Aggarwal (Supra)**, therefore, no notice was issued to the petitioners and no hearing was granted to the petitioners in this regard.

8. Having heard learned counsels for the parties, it is clear that the declaration of 'Fraud' of the petitioners' account, by the respondent no. 2 – IDBI Bank, is clearly in violation of the judgment passed by the Supreme Court in the case of **Rajesh Aggarwal (Supra)**. Supreme Court has categorically held that Principles of Natural Justice, particularly the Rule of *Audi Alteram Partem*, has to be necessarily read into the Master Directions on 'Fraud' to save it from the vice of arbitrariness. It has categorically been held that classification of 'Fraud' entails serious civil consequences for the borrower, therefore, a reasonable opportunity has to be granted to the concerned persons. The relevant findings by the Supreme Court are as under:

“xxx xxx xxx

67. The Master Directions on Frauds do not expressly exclude a right of hearing to the borrowers before action to class their account as frauds is initiated. The principles of natural justice can be read into a statute or a notification where it is silent on granting an opportunity of a hearing to a party whose rights and interests are likely to be affected by the orders that may be passed.

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70. In *Mangilal v. State of M.P.* [*Mangilal v. State of M.P.*, (2004) 2 SCC 447 : 2004 SCC (Cri) 1085] , a two-Judge Bench of this Court held that the principles of natural justice need to be observed even if the statute is silent in that regard. In other words, a statutory silence should be taken to imply the need to observe the principles of natural justice where substantial rights of parties are affected : (SCC pp. 453-54, para 10)

“10. Even if a statute is silent and there are no positive words in the Act or the Rules made thereunder, there could be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary. No form or procedure should ever be permitted to exclude the presentation of a litigant's defence or stand. Even in the absence of a provision in procedural laws, power inheres in every tribunal/court of a judicial or quasi-judicial character, to adopt modalities necessary to achieve requirements of natural justice and fair play to ensure better and proper discharge of their duties. Procedure is mainly grounded on the principles of natural justice irrespective of the extent of its application by express provision in that regard in a given situation. It has always been a cherished principle. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment. ... Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules operate only in areas not covered by any law validly made. They are a means to an end and not an end in themselves.”

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75. As mentioned above, Clause 8.9.6 of the Master Directions on Frauds contemplates that the procedure for the classification of an account as fraud has to be completed within six months. The procedure adopted under the Master Directions on Frauds provides enough time to the banks to deliberate before classifying an account as fraud. During this interval, the banks can serve a notice to the borrowers, and give them an opportunity to submit their reply and



representation regarding the findings of the forensic audit report. Given the wide time-frames contemplated under the Master Directions on Frauds as well as the nature of the procedure adopted, it is reasonably practicable for banks to provide an adequate opportunity of a hearing to the borrowers before classifying their account as fraud.

76. The exclusion contemplated in the decision of this Court in *Tulsiram Patel* [Union of India v. Tulsiram Patel, (1985) 3 SCC 398 : 1985 SCC (L&S) 672] would not be applicable because giving an opportunity of a hearing to the borrowers will not obstruct the taking of prompt action under the Master Directions on Frauds.

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79. In *Swadeshi Cotton Mills* [Swadeshi Cotton Mills v. Union of India, (1981) 1 SCC 664], this Court held that a company is entitled to an opportunity to explain the evidence collected against it and represent why the proposed action should not be taken : (SCC p. 707, para 85)

“85. The contention does not appear to be well founded. Firstly, this documentary evidence, at best, shows that the Company was in debt and the assets of some of its “units” had been hypothecated or mortgaged as security for those debts. Given an opportunity the Company might have explained that as a result of this indebtedness there was no likelihood of fall in production, which is one of the essential conditions in regard to which the Government must be satisfied before taking action under Section 18-AA(1)(a). Secondly, what the rule of natural justice required in the circumstances of this case, was not only that the Company should have been given an opportunity to explain the evidence against it, but also an opportunity to be informed of the proposed action of take over and to represent why it be not taken.”

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* [Union of India v. Tulsiram Patel, (1985) 3 SCC 398 : 1985 SCC (L&S) 672], 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.”

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.

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87. Administrative proceedings which entail significant civil consequences must be read consistent with the principles of natural justice to meet the requirement of Article 14. Where possible, the rule of audi alteram partem ought to be read into a statutory rule to render it compliant with the principles of equality and non-arbitrariness envisaged under Article 14. The Master Directions on Frauds do not expressly provide the borrowers an opportunity of being heard before classifying the borrower's account as fraud. Audi alteram partem must then be read into the provisions of the Master Directions on Frauds.

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95. In light of the legal position noted above, we hold that the rule of audi alteram partem ought to be read in Clauses 8.9.4 and 8.9.5 of the Master Directions on Fraud. Consistent with the principles of



natural justice, the lender banks should provide an opportunity to a borrower by furnishing a copy of the audit reports and allow the borrower a reasonable opportunity to submit a representation before classifying the account as fraud. A reasoned order has to be issued on the objections addressed by the borrower. On perusal of the facts, it is indubitable that the lender banks did not provide an opportunity of hearing to the borrowers before classifying their accounts as fraud. Therefore, the impugned decision to classify the borrower account as fraud is vitiated by the failure to observe the rule of audi alteram partem. In the present batch of appeals, this Court passed an ad interim order [Shree Saraiwwalaa Agrar Refineries Ltd. v. Union of India, 2022 SCC OnLine SC 1905] restraining the lender banks from taking any precipitate action against the borrowers for the time being. In pursuance of our aforesaid reasoning, we hold that the decision by the lender banks to classify the borrower accounts as fraud, is violative of the principles of natural justice. The banks would be at liberty to take fresh steps in accordance with this decision.

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98. *The conclusions are summarised below:*

98.1. *No opportunity of being heard is required before an FIR is lodged and registered.*

98.2. *Classification of an account as fraud not only results in reporting the crime to the investigating agencies, but also has other penal and civil consequences against the borrowers.*

98.3. *Debarring the borrowers from accessing institutional finance under Clause 8.12.1 of the Master Directions on Frauds results in serious civil consequences for the borrower.*

98.4. *Such a debarment under Clause 8.12.1 of the Master Directions on Frauds is akin to blacklisting the borrowers for being untrustworthy and unworthy of credit by banks. This Court has consistently held that an opportunity of hearing ought to be provided before a person is blacklisted.*

98.5. *The application of audi alteram partem cannot be impliedly excluded under the Master Directions on Frauds. In view of the time-frame contemplated under the Master Directions on Frauds as well as the nature of the procedure adopted, it is reasonably practicable for the lender banks to provide an opportunity of a hearing to the borrowers before classifying their account as fraud.*

98.6. *The principles of natural justice demand that the borrowers must be served a notice, given an opportunity to explain the conclusions of the forensic audit report, and be allowed to represent by the banks/JLF before their account is classified as fraud under the Master*



Directions on Frauds. In addition, the decision classifying the borrower's account as fraudulent must be made by a reasoned order.

98.7. Since the Master Directions on Frauds do not expressly provide an opportunity of hearing to the borrowers before classifying their account as fraud, audi alteram partem has to be read into the provisions of the directions to save them from the vice of arbitrariness.

xxx xxx xxx”

9. In view of the aforesaid, it is clear that in the absence of any opportunity of being heard or opportunity of submitting any representation to the petitioners, the declaration of the account of the petitioners as ‘Fraud’, is clearly illegal. Accordingly, the declaration dated 28th December, 2021 of the petitioners’ account as ‘Fraud’ is hereby set aside. Consequently, any other ancillary proceedings which have been initiated by the respondent no.2- IDBI Bank shall also stand quashed.

10. However, liberty is granted to the respondent no. 2- IDBI Bank to initiate requisite proceedings against the petitioners in accordance with law, after granting due opportunity to the petitioners to make representation as well as after granting due opportunity in accordance with the directions passed by Supreme Court in the case of **Rajesh Aggarwal (Supra)**.

11. With the aforesaid directions, the present writ petition is disposed of.

MINI PUSHKARNA, J



2024:DHC:1510



FEBRUARY 20, 2024
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