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

% **Date of decision:13th August, 2024**

\+ W.P.(C) 3042/2021

SHARMA ENTERPRISES .....Petitioner

Through: Mr. Shekhar Nanavaty, Mr. Shubham Dhyani & Ms. Shikha Gupta, Advs. along with petitioner present-in-person.

versus

THE BANKING OMBUDSMAN & ANR. .....Respondents

Through: Mr. Abhinav Sharma & Mr. Dipan Sethi, Advs. for R1.
Mr. Gyanendra Agrawal, Adv. for R2.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. The petitioner, which is a proprietorship concern and registered as MSME[1] Unit (SSI[2] Unit) invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, 1950, seeking the following reliefs:

> "(a) Issue an appropriate Writ thereby quashing the Order dated 11/02/2021passed by the respondent no.1 in a mechanical manner and withoutassigning any reason to the same, or/ and,
> (b) Remand-Back the matter with direction to the respondent no.2 to followthe procedure as mentioned in the Banking Ombudsman Scheme, 2006while deciding the complaint of the petitioner and to further dispose thesame with a reasoned and just Order.
> (c) Issue an appropriate Writ thereby directing the respondent no.2 to showthe reasons and procedure adopted by them for declaring the. petitioner asanNPA.

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[1]Micro, Small and Medium Enterprise
[2]Small Scale Industries

(d) Direct the respondent no.2 to compensate the petitioner to the tune ofRs.50,00,000/- (Rupees Fifty Lacs only) for illegally and unethicallydeclaring the petitioner's account as an NPA and further for the lossescaused to the petitioner due to the said actions of the respondent no.2."

2. Having heard the learned counsels for the parties at length and after going through the record of the case, unhesitatingly, this Court finds that the petitioner is not entitled to discretionary reliefs as claimed above and for not having come to the Court with clean hands.

3. Shorn of unnecessary details, the petitioner in terms of the sanction letter dated 16.01.2018 availed credit facilities from respondent No.2/bank. It appears that a letter dated 04.09.2019 was written/sent by the respondent No.2/bank to another bank *viz.,* Vijaya Bank, now 'Bank of Baroda ["**BOB**"] whereby, pursuant to some queries raised by the BOB, it was intimated as under:

> "The said account with our bank is not regular and also has become NPA. It is under recovery stage. Hence we request you that under no circumstances it should be transferred to saving account...."

4. The grievance of the petitioner is that consequent to the aforesaid letter, his whole business came to a stand-still. Although he cleared the entire outstanding dues to the satisfaction of respondent No.2/bank in terms of the certificate dated 16.11.2019 (**Annexure-'A-12')** respondent No.2/bank, a complaint was instituted by the petitioner with respondent No.1 i.e. the Banking Ombudsman (Delhi) (*hereinafter referred to as the 'Ombudsman')* raising a grievance that its account had been declared as NPA[3] contrary to the notification dated July 01, 2015 issued by the Reserve Bank of India under the

[3]Non-Performing Asset

"Secutrization Companies and Reconstruction Companies (Reserve Bank) Guidelines and Directions dated 2003" without following the prescribed procedure. The said complaint was dismissed by the Ombudsman assigning the following reasons:

> "5. Your complaint has thus been closed under clause 13(1)(a) of the Banking Ombudsman Scheme,2006 (As amended upto July 01,2017) which states that the "The Banking Ombudsman may reject a complaint at any stage. If it appears to him that the complaint made is not on the grounds of complaint referred to in clause 8 of the BOScheme,2006, as amended." The closure under clause 13(1) (a) does not provide for an appeal to the Appellate Authority under the Scheme. It is pertinent to mention that the Banking Ombudsman is only an alternate forum for grievance redressal and the complainant, is free to approach any other forum, if so desires, if he is not satisfied withthe resolution provided by this office."

5. Learned counsel for the petitioner vehemently urged that the impugned order dated 11.02.2021 cannot be sustained in law as the Ombudsman had ample powers to consider his complaints *vide* clause 8(2) (d) (f)[4] of the Scheme[5].It was, thus, vehemently urged that non-observance of the directions or instructions by the Reserve Bank of India conferred jurisdiction upon the Ombudsman to decide the complaint and thereby, award appropriate damages to the petitioner.

6. During the course of arguments, it is brought out that in terms

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[4]**8. GROUNDS OF COMPLAINT**

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2) A complaint on any one of the following grounds alleging deficiency in banking service in respect of loans and advances may be filed with the Banking Ombudsman having jurisdiction:

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(d) non-adherence to the provisions of the fair practices code for lenders as adopted by the bank or Code of Bank's Commitment to Customers, as the case may be;

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(f) non-observance of any other direction or instruction of the Reserve Bank as may be specified by the Reserve Bank for this purpose from time to time.

[5]Banking Functioning Scheme, 2006

of the sanction letter dated 16.01.2018 *vide* Clause (29)*inter alia,*it was specifically provided that "company firm will deal exclusively with us *viz. (*Bank) and will not open any account in any other bank without our permission". Further,one of the other terms & conditions of the sanction letter stated that an undertaking would be filed by the petitioner to the effect that "***party has to route the whole turn over through our account only"***. While it was conveniently brought out by the learned counsel for the petitioner that the bank account with the BOB was opened as per the certificate dated 20.05.1996 (A-9)and was much prior to the sanction letter dated 16.01.2018, it clearly appears that there is more to the story than to meet the eyes.

7. This Court may hasten to point out that although submissions with regard to Clause 8 (2) (d) & (f) are tenable in law and the Ombudsman had jurisdiction to pass appropriate orders, learned counsels for respondents No.1 and 2 clearly brought to the fore that the account of the petitioner was never declared as an 'NPA', instead, *it was irregular for their being several blemishes on its part* and evidently,the petitioner is not coming clean since after the sanction/ credit facilities by respondent No.2/bank, sale proceeds appear to have been diverted and routed through the other bank i.e. BOB as per the statement of account placed on the record by respondent No.2 (**Annexure R1-2)**, which would show that a credit of Rs. 34,82,875/- and Rs. 39,78,746/- on RTGS[6] from BSF, Jammu was routed and credited in the account with BOB on 23.05.2019 and 30.07.2019 respectively, instead of being credited to the account of respondent

[6]Real Time Gross Settlement

No.2/bank.

8. Faced with the aforesaid fact, learned counsel for the petitioner sought to withdraw the present writ petition unconditionally. However, since the misconduct of the petitioner comes out into theopen, who has taken the Court for a ride, wasting much precious time of this Court and pursuing with this petition right from its institution i.e.,since 08.03.2021, it is expedient that such request be not only declined,but also the petitionershould also be visited with exemplary costs.

9. There is no gainsaying that the grant of prerogative writs are discretionary reliefs and can be denied where the petitioner has not cometo the Court with clean hands. Unhesitatingly, the petitioner has abused the process of law as he was in wanton breach of the sanction letter and thus, isnot entitled to any relief. The present writ petition is dismissed with token costs of Rs. 50,000/-, which be deposited with the Registrar General of this Court within a month from today, failing which the petitioner shall be liable to pay interest @ 6% per annum from the date of this order till payment.

10. The present writ petition stands disposed of accordingly.

DHARMESH SHARMA, J.

AUGUST 13, 2024

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