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

\+ W.P.(C) 3733/2024 & CM APPL. 15396/2024

GAURAV GOEL & ORS. ..... Petitioners

Through: Mr. Dayan Krishnan, Senior Advocate with Mr. Kanishk Arora, Ms. S. Goyal, Ms. Nidhi Vardhan, Mr. Sukrit Singh and Mr. Pradeep Arora, Advocates.
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versus

IDBI BANK LIMITED & ORS. ..... Respondents

Through: Mr. V.P. Singh with Mr. Akshat Singh, Ms. Dacchita Shahi, Mr. Bhanu Gupta, Mr. Utkarsh Kandpal and Mr. Rajat Shah, Advocates for respondent no. 1/IDBI Bank.
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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 has been filed by suspended Board of Directors of the respondent no.3-company, i.e., the borrower, *inter-alia* seeking setting aside of the Show Cause Notice ("SCN") dated 03rd February, 2024 and letter dated 29th February, 2024 issued by the respondent no.1/IDBI Bank Limited. By way of the aforesaid SCN and letter, the respondent no.1 has sought to classify the account of the petitioners and the company, as '*Fraud*'

under the 'Master Directions on Frauds-Classification and Reporting by Commercial Banks and Select FIs' ("RBI Master Directions"), issued by the respondent no. 2-Reserve Bank of India ("RBI").

2. As per the case canvassed in the present petition, aforesaid SCN has been issued merely as a procedural formality devoid of any accompanying supporting documents. Despite the petitioners repeatedly requesting the respondent-bank to supply the requisite documents, the respondent-bank has conveniently and deliberately failed to provide the same, on account of which, the present petition has come to be filed.

3. Perusal of the documents on record show that in response to the aforesaid SCN dated 03rd February, 2024, a reply dated 18th February, 2024 was submitted by the petitioners, wherein, it was stated as follows:

> *"xxx xxx xxx*
>
> ***PRELIMINARY OBJECTIONS***
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> *3. At the very outset, it is submitted that a perusal of the SCN would demonstrate that, the Bank has deliberately chosen to not supply of the supporting/relied upon documents with the Letter, which is not only against principles of natural justice but also in the teeth of the law laid down by the Hon'ble Supreme Court in its judgment dated 27.03.2023 titled as **State Bank of India** & **Ors v. Rajesh Agarwal** being Civil Appeal No. 7300/2022.*
>
> *xxx xxx xxx"*

4. Subsequently, by letter dated 05th March, 2024, the petitioners had requested certain documents from the respondent-bank, along with a request for personal hearing.

5. Learned Counsel appearing for the respondent no.1-bank submits that, the relevant documents, out of the list of documents, as requested by the petitioners vide letter dated 05th March, 2024, have been supplied to the petitioners, vide letter dated 02nd April, 2024 issued by the respondent no.1-

bank. He further submits that the petitioners have requested for additional documents, and have provided another list of documents to the bank, solely with the purpose to delay the process.

6. Per contra, learned Senior Counsel appearing for the petitioners submits that though certain documents have been provided to the petitioners, the same are not complete documents, which form the basis of the SCN issued to the petitioners.

7. Having heard learned counsels for the parties and having perused the record, it is imperative to note that the RBI Master Directions, entail a time bound process for declaring an account, as '*Fraud*'.

8. The Supreme Court in the case of ***State Bank of India and others versus Rajesh Agarwal and Others, (2023) 6 SCC 1***, has held that the rule of *Audi Alteram Partem* is to be read in the RBI Master Directions. Further, Clauses 8.9.4 and 8.9.5 of the RBI Master Directions provide a timeline, within which, an individual bank and the consortium of banks, must complete the audit, and report the account as '*Fraud*', to the RBI and Investigating Agencies. However, the concerned entity is required to be provided a reasonable opportunity for representation consistent with the Principles of Natural Justice, which includes providing the underlying documents, which form the basis of issuance of a SCN.

9. Thus, Supreme Court in the case of ***Rajesh Agarwal (Supra)*** has held as under:

> *"xxx xxx xxx*
>
> *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***

<u>of natural justice.</u> *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.* ***<u>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</u>***.

xxx xxx xxx

95. In light of the legal position noted above, ***<u>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.</u>*** *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 Agrr 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.*

xxx xxx xxx"

(Emphasis Supplied)

10. Likewise, holding that Principles of Transparency and Accountability govern an adjudicating authority, which demands providing relevant information to the concerned party, Supreme Court 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

C.2. Duty to disclose investigative material

27. While the respondents have submitted that only materials that have been relied on by the Board need to be disclosed, the appellant has contended that all relevant materials need to be disclosed. While trying to answer this issue, we are faced with a multitude of other equally important issues. These issues, all paramount in shaping the jurisprudence surrounding the principles of access to justice and transparency, range from identifying the purpose and extent of disclosure required, to balancing the conflicting claims of access to justice and grounds of public interest such as privacy, confidentiality and market interest.

28. An identification of the purpose of disclosure would lead us closer to identifying the extent of required disclosure. There are three key purposes that disclosure of information serves:

28.1. Reliability : ***The possession of information by both the parties can aid the courts in determining the truth of the contentions. The role of the court is not restricted to interpreting the provisions of law but also determining the veracity and truth of the allegations made before it. The court would be able to perform this function accurately only if both parties have access to information and possess the opportunity to address arguments and counter-arguments related to the information.***

28.2. Fair trial : Since a verdict of the Court has far-reaching repercussions on the life and liberty of an individual, ***it is only fair that there is a legitimate expectation that the parties are provided all the aid in order for them to effectively participate in the proceedings.***

28.3. Transparency and accountability : The investigative agencies and the judicial institution are held accountable through transparency and not opaqueness of proceedings. Opaqueness furthers a culture of prejudice, bias, and impunity—principles that are antithetical to transparency. ***It is of utmost importance that in a country grounded in the Rule of Law, the institutions adopt those procedures that further the democratic principles of transparency and accountability.*** *The principles of fairness and transparency of adjudicatory proceedings are the cornerstones of the principle of open justice. This is the reason why an adjudicatory authority is required to record its reasons for every judgment or order it passes. However, the duty to be transparent in the adjudicatory process does not begin and end at providing a reasoned order.* ***Keeping a party bereft of the information that influenced the decision of an authority undertaking an adjudicatory function also undermines the transparency of the judicial process.*** *It denies the party concerned and the public at large the ability to effectively scrutinise the* *decisions of the authority since it creates an information asymmetry.*

29. ***The purpose of disclosure of information is not merely individualistic, that is to prevent errors in the verdict but is also towards fulfilling the larger institutional purpose of fair trial and transparency. Since the purpose of disclosure of information targets both the outcome (reliability) and the process (fair trial and transparency), it would be insufficient if only the material relied on is disclosed. Such a rule of disclosure, only holds nexus to the outcome and not the process. Therefore, as a default rule, all relevant material must be disclosed.***

xxx xxx xxx"

(Emphasis Supplied)

11. Highlighting that the basic Principle of Natural Justice requires that the person being proceeded against, has to be furnished with copies of the material, which are being relied upon by the authority, Division Bench of this Court in the case of ***Poonam Jain Versus Union of India and Others, 2017 SCC OnLine Del 8872***, has held as follows:

"xxx xxx xxx

9. *The exception includes both the 'persons' and 'authorities.'* ***It is inconceivable that the person against whom the prosecution or the proceedings is proposed can be denied the material relied upon to prosecute such person. The basic principle of natural justice requires that the person being proceeded against has to be furnished with copies of the material (whether in the form of documents or statements) gathered against such person and which is being relied upon by the authority which is prosecuting such person.*** *This may, in a given case, and if the prosecution or agency makes out a case in that behalf, be subject to safeguards requiring the person to maintain the confidentiality of such document depending on their nature and contents. But to say that the person being prosecuted or proceeded against can only be 'shown' such documents, but not provided copies thereof is untenable even on a plain reading of Article 26(2) of the OECD Model Convention.*

xxx xxx xxx"

(Emphasis Supplied)

12. Considering the aforesaid, it is imperative that the underlying documents, which form the basis of issuance of a SCN, ought to be provided to the concerned entities, as right to represent against a SCN is not a mere

formality, but a valuable right.

13. Accordingly, following directions are issued:

(i) The petitioners and/or their authorized representative, shall be allowed inspection of the record by the respondent no.1-bank, on the basis of which, the SCN was issued to the petitioners.

(ii) Upon inspection of the record, as made available by the respondent-bank, the petitioners shall state the specific documents that are required from the said record. The same shall be provided to the petitioners thereafter.

(iii) The cost of providing copies of the relevant documents to the petitioners, shall be borne by the petitioners.

(iv) The aforesaid process of inspection of the record made available by the respondent no.1-bank, and stating the specific documents, shall be completed by the petitioners within a period of ten days from today. The process of providing the relevant documents to the petitioners, shall be completed by the respondent no.1-bank, within a period of one week, thereafter.

(v) Upon receipt of the documents from the respondent no.1-bank, the petitioners shall file reply to the SCN, within a period of ten days, thereafter.

(vi) The petitioners are at liberty to make request for personal hearing to the respondent no.1-bank, which shall be considered accordingly.

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

MINI PUSHKARNA, J

MAY 22, 2024/kr