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

% ***Date of Decision: 22nd May, 2024***

\+ W.P.(C) 7210/2024 & CM APPL. 30084/2024

M/S SUICH INDUSTRIES LIMITED & ANR. ..... Petitioners

Through: Mr. Sanjeev Bhandari, Mr. Rajesh Sharma and Mr. Karan Mehta, Advs. M: 9910030525

versus

STATE BANK OF INDIA ..... Respondent

Through: Mr. Rajiv Kapoor, Mr. Akshit Kapur, Mr. Aditya Saxena and Ms. Riya Sood, Advs. M: 9634644652 Email: rajiv@rpkapur.com

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

MINI PUSHKARNA, J *(ORAL)*

1. The present petition has been filed seeking to challenge the unilateral decision of respondent-State Bank of India in classifying the account of the petitioner no.1 and its directors/petitioners as '*Fraud*', without giving any Show Cause Notice/opportunity of hearing to the petitioners.

2. Mr. Sanjeev Bhandari, learned counsel appearing for the petitioner submits that it is only upon lodging of an FIR, when the petitioners were called by the Central Bureau of Investigation ("CBI") for joining the investigation, that the petitioners came to know that the account of the petitioners has been declared as '*Fraud*'.

3. Today, learned counsel appearing for the respondent-State Bank of India ("SBI"), submits that the declaration of '*Fraud*' was made by the respondent-bank on 15th September, 2022, and FIR was lodged on 13th June, 2023. He submits that the accounts were declared as 'Fraud' in the present case, prior to the judgment dated 27th March, 2023 passed in the case of ***State Bank of India Versus Rajesh Agarwa & Ors., 2023 SCC OnLine SC 342***.

4. He further submits that the said declaration was done on the basis of the *'Master Direction on Frauds-Classification and Reporting by Commercial Banks and Select FIs'* issued by the Reserved Bank of India ("RBI"), as per the law prevailing at that point of time.

5. Considering the aforesaid submission made by learned counsel appearing for the respondent, it is manifest that the declaration of the account of the petitioners as '*Fraud*', without issuance of Show Cause Notice and without following the due procedure of Principles of Natural Justice, cannot stand in the eyes of law.

6. This Court notes that in the case of ***Rajesh Agarwal (Supra)***, Supreme Court has given detailed procedure, which is to be followed before the account of any entity is declared as '*Fraud*'. Thus, declaration of the account of the petitioners as '*Fraud*', without giving any opportunity of representation to the petitioners, is palpably illegal.

7. Supreme Court in case of ***Rajesh Agarwal (Supra),*** has held as follows:

> *"xxx xxx xxx*
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> *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.*

xxx xxx xxx

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 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.*

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(Emphasis Supplied)

8. Accordingly, the declaration of petitioners' account as '*Fraud*', is hereby, set aside. However, it will be open to the respondent-bank to proceed afresh, in accordance with law, in the light of the judgment of

Supreme Court in the case of ***Rajesh Agarwal (Supra)***.

9. Further, it is clarified that the investigation being carried out by the CBI shall continue, in accordance with law.

10. With the aforesaid directions, the present petition is disposed of.

MINI PUSHKARNA, J

MAY 22, 2024/kr