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

\+ LPA 550/2024 & C.M.Nos.37453-37455/2024

IDBI BANK LTD .....Appellant

Through: Mr.Sidhartha Barua with Mr.Praful Jindal, Mr.Akash Mohan Srivastav and Mr.Nandlal Singh, Advocates.

versus

SH LAGADAPATI MADHUSUDHAN RAO & ORS. .....Respondents

Through: Mr.Malak Bhatt, Advocate.

% Date of Decision: 08th July, 2024

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. Present appeal has been filed challenging the order dated 22nd May, 2024 passed by the learned Single Judge in W.P. (C) 928/2024 to the extent that the learned Single Judge granted liberty to the respondents to request for a personal hearing, which was to be considered by the Appellant/Bank.

2. Learned counsel for the Appellant states that Respondent Nos.1 to 4 and Respondent No.6 are whole-time director/vice chairman/ managing director/ guarantor of Respondent No. 5/Lanco Infratech Limited ("Defaulter Company"), a company which has defaulted in making payments under the financing facilities availed from the Appellant. He states that an examination of the conduct of the account utilization of the credit facilities reveals that acts of fraud have been committed in terms of the

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Master Directions of Frauds - Classification and reporting by Commercial Banks and Select Financial Institutions issued by RBI ("RBI Master Directions").

3. He states that the Appellant issued a Show Cause Notice dated 02nd February, 2024 under the RBI Master Directions to the Respondents asking as to why the accounts of the Respondents should not be classified as fraudulent and subsequent action be not taken against the Respondents in terms of the RBI Master Directions. He further states that after receipt of the Show Cause Notice, Respondents invoked the writ jurisdiction of this Court praying inter-alia for quashing of the Show Cause Notice and the proceedings therein, on the ground that no documents on the basis of which Show Cause Notice had been issued were supplied to the Respondents. He states that thereafter on 10th May, 2024, Appellant-Bank provided the Respondents with a copy of the Forensic Audit Report with all the annexures, which forms the basis of the Show Cause Notice.

4. He states that vide the impugned order, the learned Single Judge also granted liberty to the Respondents to request for a personal hearing from the Appellant-Bank, which was to be considered. He submits that neither the RBI Master Directions nor the Hon'ble Supreme Court in ***State Bank of India v. Rajesh Agarwal [(2023) 6 SCC 1]*** states that the borrowers or promoters should be afforded a personal hearing.

5. He states that the principles of natural justice cannot be stretched to afford a personal hearing to be provided to such persons and borrowers when the director /promoter has had a fair opportunity to present their defense and file the same in writing i.e. by written representation to the Appellant, which would be followed by a fair consideration of their written

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representation. Therefore, according to him, there would be no scuttling of principles of natural justice if no personal hearing was given to the promoter/ director. He further contends that the Supreme Court in its order dated 12th May, 2023 passed in Miscellaneous Application No. 810 of 2023 in ***State Bank of India v. Rajesh Agarwal [(2023) 6 SCC 1]***, clarified that it had never *inter alia* directed that the grant of personal hearing is mandatory.

6. Per contra, learned counsel for the Respondents, who appears on advance notice, denies the allegation of fraud and/or defalcation of funds by the Respondents. He points out that the direction, which is impugned in the present appeal, is not a mandatory direction. He states that by virtue of the said direction, the Respondents have been given liberty to make a request for personal hearing and it is open to the Appellant-Bank to either accept or reject the same. He states that, in the event the Respondents are aggrieved by the decision of the Appellant-Bank, the Respondents shall be at liberty to challenge the same in accordance with law.

7. He further states that the Supreme Court in the clarificatory order dated 12th May, 2023 has not prohibited the grant of personal hearing by the Bank.

8. Having heard learned counsel for the parties, this Court has perused the impugned direction i.e. Para 11(vii) of the impugned order, which reads as under:-

> *"11.xxxxxx*
> *(vii). The petitioners are at liberty to make request for personal hearing to the respondent-banks, which shall be considered, accordingly.*

9. This Court is of the view that para 11(vii) does not contain a mandatory direction inasmuch as it is open to the Appellant-Bank to accept

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or reject the request for personal hearing.

10. Consequently, the present appeal along with the applications is disposed of with liberty to the Appellant-Bank to either accept or reject the Respondents' request for personal hearing. It is clarified that it shall be open to the Appellant-Bank to reject the request of the Respondents for personal hearing on the grounds stated in the present appeal. However, the Appellant-Bank shall give reasons for arriving at its conclusion. Needless to state, in the event the Respondents are aggrieved by the decision of the Appellant-Bank, they shall be at liberty to challenge the same in accordance with law. The rights and contentions of all the parties are left open.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

JULY 08, 2024
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