$~116

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

\+ W.P.(C) 12994/2024

CREST CAPITAL GROUP PVT. LTD. .....Petitioner

Through: Mr. Anuj. K. Agarwal, Adv.

versus

RESERVE BANK OF INDIA & ANR. .....Respondents

Through: Mr. Abhinav Sharma, Mr. Ayush Srivastava and Mr. Snehashish Bhattacharya, Advs. for R-1.

Mr. Aman Leekha and Ms. Nehal Bansal, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

O R D E R

% **25.10.2024**

CM APPL. 54121/2024 – EXMP.

1. Allowed, subject to all just exceptions.

2. The application stands disposed of.

W.P.(C) 12994/2024

3. The petitioner is invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, 1950 thereby seeking quashing of the impugned order dated 02.01.2024 passed by the respondent No.1/RBI[1] through banking Ombudsman.

4. Learned counsel for the respondent No.1/RBI as well as learned counsel for respondent No.2/HDFC[2] are present on advance notice.

5. In a nutshell, it is the case of the petitioner that there was an unauthorized debit of ₹4,10,000/- from his account with the

[1] Reserve Bank of India
[2] Housing Development Finance Corporation Limited

respondent No.2/HDFC on 17.01.2023 through cheque No. 000755 and credited to Siddhi Enterprises. It is the case of the petitioner that the said transaction was neither carried out by the petitioner nor authorized in any manner by it.

6. Learned counsel for the petitioner urged that the respondent No.1/RBI did not afford any opportunity of hearing to the petitioner and passed the impugned order mechanically based on the defences raised by the respondent No.2/HDFC.

7. A careful perusal of the impugned order passed by the respondent No.1 through banking Ombudsman would show that it took into account the fact that cheque book in question with the relevant series number had been requested through 'Mobile Banking Mode' as substantiated by the 'system snapshot' that showed the status as 'delivered' and since the cheque was below ₹ 5,00,000/-, the 'positive pay' mandate as per the RBI policy was not mandatory. In other words, the impugned order reflects that the bank was not enjoined upon to seek approval of the petitioner/drawer on the said cheque.

8. It is further recorded by the Ombudsman that pursuant to the legal notice received from the complainant dated 24.01.2023 not only a reply was given on 10.10.2023 but also the opinion of handwriting and fingerprints examiner and forensic document expert was taken, who submitted a report dated 20.12.2023 to the effect that the disputed instrument i.e. the cheque contained the signatures of the complainant, namely Mr. Gagan Ghai.

9. *Ex facie,* the matter involves adjudication of disputed questions of facts which cannot be adjudicated in the writ jurisdiction.

10. Accordingly, the present writ petition is dismissed with liberty

to the petitioner to raise a commercial dispute or other appropriate legal proceedings against the respondent No.2/HDFC in accordance with law.

DHARMESH SHARMA, J.

OCTOBER 25, 2024/*sm*